

15 January 2010

REF: SHA/15304

APPEALS AGAINST PORTSMOUTH CITY PCT DECISION TO GRANT MORRISONS SUPERMARKETS PLC APPLICATION FOR INCLUSION IN THE PHARMACEUTICAL LIST AT MORRISON'S PHARMACY, COMMERCIAL CENTRE, ANCHORAGE PARK, PORTSMOUTH PO3 5UH

1 Preliminary Consideration

- 1.1 The Pharmacy Appeals Committee appointed by the Family Health Services Appeal Unit of the NHS Litigation Authority ("the Committee") had before it the papers considered by the PCT, together with a plan of the area showing existing pharmacies and doctors' surgeries and the site of the proposed pharmacy. It also had before it the responses to the Authority's own statutory consultation.
- 1.2 The Committee was of the view that an Oral Hearing should be held before the appeals were determined.

2 Oral Hearing

- 2.1 An Oral Hearing was therefore held on 11 December 2009 at Portsmouth Hilton Hotel, Farlington.
- 2.2 A copy of the Oral Hearing report is attached.

3 Further Consideration by the Committee

- 3.1 Each member of the Committee had read the Oral Hearing report in full which was considered together with all the other documents previously referred to.
- 3.2 The Committee had regard to Regulation 12(1), the necessary or desirable test, and in considering that test, had regard in particular to 12(2) of the National Health Service (Pharmaceutical Services) Regulations 2005 (as amended) ("the Regulations").
- 3.3 The Committee dealt with the application by way of reconsideration of all the issues.
- 3.4 The Committee noted the various appendices referred to in the Oral Hearing Report. As these had either previously been seen by the parties, or were not necessary to convey the decision in addition to the report, these are not included as part of this decision letter.
- 3.5 The Committee noted the Oral Hearing recommendation for the definition of the neighbourhood, made after a site visit. The Committee adopted this definition for the purpose of this application.
- 3.6 The Committee decided to accept the recommendation from the Oral Hearing for the reasons given in the oral hearing report. The Committee noted that at paragraph 5.14, the Panel had concluded that services within the neighbourhood could not be said to be wholly adequate (the Committee considered this was too high a test) and at paragraph 6 it was desirable/expedient to grant the application. However, the Committee determined that the report identified gaps which were sufficiently high on

the spectrum to conclude adequacy was not secured, and as such it was desirable to grant the application.

4 **Decision**

The Committee was of the view that the proposed pharmacy was at least desirable to secure the adequate provision of services in the neighbourhood. Accordingly the Committee dismisses the appeals.

Ray Bushell **Appeal Officer**

A copy of this decision is being sent to:

Mr D Gilder, Sainsbury's Supermarkets Ltd – Appellant
Mrs L Felstead, Copnor Pharmacy – Appellant
Mr K Tucker, Morrisons Supermarkets plc – Applicant
Mr G Warner – Hants & I.O.W LPC
Mr N Ford – Hants & I.O.W PPSA (on behalf of the PCT)
Ms C Jarrett – Lloyds Pharmacy Ltd
Mrs K Lockton – Boots UK Ltd
Oral Hearing Panel Members