1 The Application

By application dated 18 August 2010, Community Pharmacies (UK) Limited ("the Applicant") applied to Shropshire Primary Care Trust ("the PCT") for preliminary consent prior to inclusion in the pharmaceutical list in the vicinity of the new Primary Care Centre and Taylor Wimpey Homes Development to be constructed on land off Wolverhampton Road, Shifnal, Shropshire. In support of the application it was stated:

1.1 This application is both necessary and expedient in order to secure within the neighbourhood from which we intend to provide the services, adequate provision of pharmaceutical services.

1.2 The neighbourhood proposed by Community Pharmacies (UK) Ltd is outlined on the enclosed map, of which the boundaries are:

1.2.1 Northern Boundary: The train line

1.2.2 Eastern Boundary: The train line and the outskirts of the Taylor Wimpey housing development site.

1.2.3 Southern Boundary: The southern boundary of the Taylor Wimpey development site across open land to meet with the extent of the residential area to the south.

1.2.4 Western Boundary: Extent of Residential area to the meeting with the train line.

1.3 The neighbourhood proposed by Community Pharmacies (UK) Ltd is outlined on the enclosed map with the Taylor Wimpey development site outlined in brown.

1.4 The neighbourhood can be best described as Shifnal South

1.5 The proposed pharmacy will be in the vicinity of the new medical centre development to be constructed on land off Wolverhampton Road.

1.6 The new medical centre will be home to the towns GP Practice, District Nurses and Health Visitors that have a list size of some 10,000 patients. This development will significantly change the way in which primary care and other ancillary NHS services are both provided and sought by patients in the neighbourhood.

1.7 Taylor Wimpey is developing 178 new family homes which will add at least an estimated 450 residents to the reliant population of the area.

1.8 Currently the only pharmacy service available in the neighbourhood is provided by Boots. With their being no current choice of pharmacy service provider in the neighbourhood this is clearly an inadequacy that the granting of this application will
remedy ensuring that adequacy is secured for the resident and reliant population for the future.

2 The PCT Decision

The PCT considered and decided to refuse the application. The decision letter dated 3 February 2011 states:

2.1 Having carefully considered the application, taking into account all written evidence available, the Committee concluded that as the application specified no additional services to the pharmaceutical services already offered in the neighbourhood and no identified gap in provision of services it was neither necessary nor expedient. Therefore, your application has been refused. A copy of the reasons for the decision is attached for your information.

Extract from the PCT Pharmaceutical Contracts Committee Report

Consideration

2.2 The Committee discussed the determination of the neighbourhood and concluded that the neighbourhood should be considered as the whole of Shifnal and the South side should not be considered as a separate neighbourhood. It was noted that there is one existing pharmacy within Shifnal. If was also noted that there is a GP Medical Practice and an additional branch surgery which operates on a limited basis. Both practices are situation outside of the applicant’s defined area of practice. The Committee referred to the recent findings in the PNA which suggests no inadequacy of pharmaceutical services within the area. The housing development referred to in the application had not yet been built and there appeared to be no substantial changes within the next 12 months that may change the need of the resident population.

Decision

2.3 Following consideration, the Committee agreed that based on the current need and immediate future the application was neither necessary nor expedient.

2.4 The application was therefore refused.

3 The Appeal

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority (“the Appeal Unit”), dated 24 February 2011, Community Pharmacies (UK) Limited appealed against the PCT’s decision. The grounds of appeal are:

3.1 The PCT has failed to provide any adequate reasons for rejecting the application and in particular have failed to consider the adequacy of pharmaceutical services in the proposed neighbourhood.

3.2 The PCT has failed to indicate what, if any, weight it gave to any of the Applicant’s or Objector’s submissions.

3.3 The PCT has failed to indicate if any consideration was given to Regulation 12(2)(b), namely, whether or not the reliant population has a reasonable choice of both services and providers of these services in the neighbourhood.

3.4 The PCT has failed to consider the impact that the constructed on land off Wolverhampton Road will have on services within the neighbourhood.

4 Summary of Representations

This is a summary of representations received on the appeal. A summary of those representations made to the PCT are only included in so far as they are relevant and add to those received on the appeal.

4.1 COMMUNITY PHARMACIES (UK) LTD
Background
4.1.1 Community Pharmacies (UK) Limited (CPL) proposes to operate a pharmacy in the immediate vicinity of the New Medical Centre to be constructed on land off Wolverhampton Road, Shifnal, Shropshire.

4.1.2 Included in appendix one are the documents evidencing that planning has been approved for the development of up to 175 dwellings, a new health centre, public open space and associated landscaping and parking. Also included in appendix one is the development plan outlining the details of the development and the site plans.

4.1.3 This development will significantly change the way in which primary care and other ancillary NHS services are both provided and sought by patients in the neighbourhood.

4.1.4 It is CPL’s contention that pharmaceutical services are inadequate even now in the neighbourhood of Shifnal and with this in mind it would be our intention to open in appropriate premises within the neighbourhood as soon as is possible from the granting of our application.

Neighbourhood
4.1.5 As outlined in our application the proposed neighbourhood is bounded by:

4.1.5.1 Northern Boundary: the train line

4.1.5.2 Eastern Boundary: The train line and the outskirts of the Taylor Wimpey housing development site

4.1.5.3 Southern Boundary: The southern boundary of the Taylor Wimpey development site across open land to meet with the extent of the residential area to the south

4.1.5.4 Western Boundary: Extent of Residential area to the meeting with the train line

4.1.6 The neighbourhood proposed by Community Pharmacies (UK) Ltd is outlined (in red) on the enclosed map in appendix two with the Taylor Wimpey development site outlined in brown.

4.1.7 The neighbourhood can be best described as Shifnal South. The neighbourhood had a population of circa 1,514 according to the Bridgnorth 001C (Lower Layer Super Output Area) statistics from the 2001 census. With the new housing developments providing an additional 175 dwellings using the area average occupancy rate of 2.48 this will mean an increase to the neighbourhood population of circa 434 residents.

4.1.8 There is currently no access to or provision of pharmacy services in the neighbourhood of Shifnal South.

4.1.9 The demand for Pharmaceutical services within the neighbourhood will further increase once the new Medical Centre opens, significantly increasing the reliant population. There is no pharmacy in the neighbourhood. At present there is a resident population of circa 1,514 within the neighbourhood which will grow to circa 2,000 with the completion of the new residential units. With the opening of the new health centre the reliant population of the neighbourhood will grow to around 10,000 as it is expected that the additional services planned to be delivered from the new health centre will draw in new patients from the surrounding areas.

4.1.10 In appendix three the full business case for the new medical centre is provided. Below is an extract from the business case detailing the broad range of services that the practice wish to develop.

Service Developments
4.1.11 The Shifnal Medical Practice is keen to provide additional services in the new medical centre. The following list details the additional services that the practice is proposing to offer:

4.1.11.1 Specialist clinics through LBC i.e. diagnostic services
4.1.11.2 CBT
4.1.11.3 Audiology (recently removed)
4.1.11.4 Chiropody (currently held in the village hall)
4.1.11.5 ENT operating microscope
4.1.11.6 Physiotherapist
4.1.11.7 Baby clinics (including mother & toddler group activities)
4.1.11.8 Patient support groups/expert patient/patient education/PPG
4.1.11.9 24 hour ECG/holter monitor
4.1.11.10 Ultrasound
4.1.11.11 Increased carer support.

4.1.12 Additional services that have been requested by local residents include the following:

4.1.12.1 Citizens’ Advice Bureau
4.1.12.2 NHS dentist
4.1.12.3 Social Services.

4.1.13 At the outset the new centre will be able to include additional services provided on a sessional basis. The PCT and County Council are committed to joint working as described in the Joint Strategic Needs Assessment. Specifically, partnership is cemented through:

4.1.13.1 The Children’s Trust, bringing together all local children’s services to meet jointly identified needs
4.1.13.2 A shared commitment to improving health and reducing health inequalities
4.1.13.3 High quality adult social care services focused on prevention.

4.1.14 Within this partnership there is potential for the new surgery to support and host a range of services targeted towards meeting needs. Examples include:

4.1.14.1 Sexual health
4.1.14.2 Drug and alcohol counselling and intervention
4.1.14.3 Smoking cessation
4.1.14.4 Welfare rights increasing access to benefits
4.1.14.5 Carers support.

4.1.15 The new surgery will have capacity to support enhancements to these initiatives from the outset. The potential to expand the surgery building in a second phase could support the co-location of other services.

Extracted from “Proposed New Medical Centre, Shifnal - Business Case March 2010 prepared by EC Harris”

4.1.16 The Medical Centre development forms part of a wider regeneration project which incorporates the construction of 175 new homes. This will have the impact of increasing the resident and reliant population by a further 434 residents (assuming the neighbourhood average of 2.48 persons per home).
4.1.17 With the forecast increase in the reliant population the new medical centre will be an important part of the local community and is likely to be a focal point for many patients and their families. Access to a Pharmacy within the new medical facility will play an important role in ensuring that the project will be successful in supporting the local community and meeting patient needs.

4.1.18 The new medical centre and housing developments ensure that there will be a dramatic change in the demand for pharmaceutical services. The comments of Lord Drummond Young in Lloyds Pharmacy v NAP, June 2004 (paragraph 10), are particularly relevant to this application. The question that the decision-maker must address is the adequacy of the existing provision to serve the neighbourhood in question. In addressing that question, however, it is in our opinion proper to have regard to probable future developments, for two reasons.

First, the standard of adequacy in a particular neighbourhood will obviously change with time. The relevant neighbourhood may change, for example through the construction of new housing developments or the movement of population out of inner-city areas. Likewise, changes inevitably occur in pharmaceutical practice, and the standard of adequate pharmaceutical provision must accordingly develop over time. The proposal under consideration may well provide an illustration of how pharmaceutical practice is developing, and may be relevant to show what sort of provision is possible in the neighbourhood. We are in full agreement with the Lord Ordinary that changes in pharmaceutical practice should be taken into account by the decision-maker.

Secondly, regulation 5(10) uses the word “secure” in relation to the adequate provision of pharmaceutical services. That word seems to us to indicate that the decision-maker can look to more than merely achieving a bare present adequacy of pharmaceutical provision. Secure suggests that it should be possible to maintain a state of adequacy of provision into the future. That indicates that the decision-maker must have some regard to future developments, in order to ensure that an adequate provision can be maintained. The decision-maker must, however, determine the adequacy of the existing provision of pharmaceutical services at a specific time, the time of its decision, it must accordingly reach its conclusion on the adequacy of the existing provision on the basis of what is known at that time, together with future developments that can be considered probable rather than speculative. The decision-maker must also bear in mind that the critical question at this stage of its reasoning is the adequacy of the existing provision, not the adequacy or desirability of some other possible configuration of pharmaceutical services within the neighbourhood.

Access to and Choice of Pharmacy Services

4.1.19 There are currently no pharmacies in the proposed neighbourhood.

4.1.20 Community Pharmacies acknowledge that there are pharmacies outside of the defined neighbourhood which are available to the local population being Boots in Shifnal town centre (circa 750m from the medical centre development site). The distance to the next nearest pharmacy from the application site is over 2.5 miles which can in no way be deemed as provision of adequate choice. This is a significant distance and poses a difficult and lengthy round trip for the resident and reliant population particularly for the elderly, parents with young children and the disabled. We would also assert that a prescription collection and delivery service can in no way be seen as being a suitable alternative to a pharmacist-patient interaction.

4.1.21 Community Pharmacies would highlight that the needs of the resident and reliant population in relation to patient care should be considered to be paramount when looking at the issue of access and convenience. Expecting a sick patient to make a significant journey to a pharmacy outside the defined
neighbourhood to obtain a choice of provider is in our view, an unreasonable expectation. Having to access pharmacy services outside of the neighbourhood results in the patient having to experience a lengthy journey, additional financial costs, inconvenience and causes general detriment to the well being of a sick patient.

4.1.22 CPL would suggest that with the provision of a wide range of services being provided from the new medical centre development the absence of a pharmacy service would in itself be a significant gap in services.

4.1.23 CPL would ask the Panel to also consider this application in the light of the recent judicial review of a decision of the National Appeal Panel in Scotland. The comments of Lord Malcolm in Lloyds Pharmacy v NAP March 2010 (paragraph 28), are particularly relevant to this application.

“The matter can be resolved if one recognises that if the existing provision is missing a desirable feature, then it may not be adequate. That is wholly consistent with the statutory formula. Indeed otherwise one would come close to an assumption that Parliament was out to ensure that the population of a neighbourhood was deprived of all desirable improvements; a proposition for which no one at the hearing in the present case could offer any sensible explanation. The above suggestion would allow for the application of a two stage approach as set out in the Scottish decision, but in a manner which is consistent with the likely outcome of a similar application south of the border. Thus the differences in statutory construction demonstrated in the recent decisions on either side of the border can be reconciled, at least in terms of how they will operate in practice. Likewise the earlier interpretation as explained by the Second Division in Safeway Stores can be adopted without arbitrarily causing a different end result. As I understand the decision in Lloyds Pharmacy, the second stage is designed to deal with the question, does the proposal address the identified deficiency in provision? Thus, for example, if a panel identified a gap in the northern part of a neighbourhood, a new pharmacy in the southern section would fail the second stage. However, the first stage adequacy test will turn on whether a deficiency in the neighbourhood has been identified; and of course in the present case the health centre is in the neighbourhood and it serves the population in the neighbourhood. Even if the public can obtain all necessary services from the existing pharmacies, there is nothing to stop the panel from concluding that the existing provision vision is inadequate because of the absence of a pharmacy in the health centre. “ (emphasis added)

4.1.24 Equally, CPL would ask the Panel to also consider this application in the light of the recent Court of Appeal decision in relation to the same Lloyds Pharmacy v NAP. The comments of Lady Smith (paragraph 20), are particularly relevant to this application.

“the fact that there is a staircase in a multi- storey building may seem to provide adequate access to its upper floors until an assessment of it shows that the incorporation of a lift into it would be feasible. It would then be not at all surprising if the conclusion was that access to the upper floors of the building was inadequate. In our example, the assessor of the adequacy of access to the building would not be limited to examining the stairs and asking whether it was possible to climb them to reach the upper floors. He would require to take account of the fact that a lift could be incorporated into the building and certainly entitled to conclude that the existing access by stair alone was not adequate. Likewise, once a lift was installed he might readily come to the conclusion that the previous access was not adequate.”

4.1.25 CPL would ask that the panel consider that at the point that an individual needs healthcare, it is vital to ensure that their path is as easy and seamless as possible. Establishing a pharmacy within this new development is paramount for patient satisfaction, convenience and to secure adequacy of pharmaceutical services for the Shifnal South neighbourhood. It is our
submission that it is both necessary and expedient to have a Pharmacy in the new development to meet the current gap in services and to improve access to pharmacy services for the local patient population.

4.1.26 Under the NHS (Pharmaceutical Services) Regulations 2005, reasonable choice of both contractor and services have been included as a matter which the panel are obliged to have ‘particular regard’ to.

4.1.27 In the review of the Control of Entry Regulations, the government specifically set out the reasons for the explicit inclusion of choice in the 2005 Regulations. The reasons included:

4.1.27.1 Promote consumer choice and harness the benefits of increased competition.

4.1.27.2 Improve further the accessibility and convenience of pharmaceutical services.

4.1.28 Choice is part of the overall test of adequacy, but is nevertheless of particular importance and must be considered in each application for inclusion in the Pharmaceutical List. CPL assert that particular weight should be given to the consideration of choice in this application due to the significant distances involved in accessing pharmacy services currently and the low levels of accessibility to pharmacy services for the neighbourhood of Shifnal South.

4.1.29 There is no access to or choice of pharmacy services or service provider in the proposed neighbourhood.

CPL Service Provision

4.1.30 The Galbraith report Review of NHS pharmaceutical contractual arrangements identified areas where pharmacy could be improved and defined certain characteristic of a good pharmaceutical service which are highlighted below. The report suggested that getting the basics right was paramount to patient satisfaction.

4.1.31 CPL aims to provide a high quality service, improving choice and competition in the neighbourhood. The new Pharmacy will seek to uphold the principles in the report as summarised below:

4.1.32 Accuracy in dispensing - CPL will ensure that all Clinical Governance procedures are adhered to and facilitate excellent communication with the GPs in the Practice by seeking to attend Primary Care meetings to feedback problems and significant events that may have arisen.

4.1.33 Knowledgeable service - CPL provides ongoing training and support to our staff and Pharmacists and keep up to date with National and Local policies. We will ensure that the Pharmacist has protected time to attend professional development and training meetings.

4.1.34 Providing value for money - CPL will have a trained Pharmacist in MURS. This will help establish concordance and compliance and ensure the best use of medicines.

4.1.35 The provision of advanced and enhanced services in an easily accessible location which is designed to accommodate the needs of the neighbourhood’s residents will result in a good uptake of these services and support improvements in health outcomes.

4.1.35.1 CPL are prepared to provide all Enhanced Services.

4.1.35.2 We would propose to conduct pilots of Enhanced Services and perform a cost effectiveness analysis together with the PCT. If pilot services are a success, and the PCT is in agreement, the services could be rolled out to the benefit of patients and health outcomes.

4.1.36 Professional service - Our staff are highly trained to deliver a professional service at all times. The clinical services will conform to RPSGB Code of
Ethics. CPL will also look to put in place an internal service level agreement (SLA) between the GP practice and the new Pharmacy (ensuring that any SLA adheres to NHS regulations and patient confidentiality). For example any patient complaint that is received should be acknowledged and addressed within 24 hours of receipt. This will promote and encourage a high standard of working practices and procedures within the new medical centre and allow all parties to work together to ensure that patients get the best possible level of care.

4.1.37 Convenient Service - CPL conduct audits of pharmacy stock to ensure that commonly prescribed medications are readily available to patients.

4.1.38 The service that will be offered by CPL will be very convenient as all of the healthcare needs for the patients will be available under one roof, pharmacy included. This removes the inconvenience and additional costs of having to travel to an alternative pharmacy in order to obtain a pharmacy service. This element of convenience is highlighted further when consideration is given to the practical and logistical problems faced by elderly patients, patients with young children and those patients who have a disability and are less mobile.

4.1.39 Supporting patients - CPL will promote self care, with health promotion campaigns, leaflets and posters. In addition we will look to establish a minor ailments scheme to support self care and offer advice.

4.1.40 Personal service - The new pharmacy will have an adequate room for private consultation and a health promotion area. It will be designed with safety and privacy being paramount, for example the private consultation rooms will be soundproofed to ensure patient confidentiality and privacy. The Pharmacist will be able to tailor the advice to the individual patient and use the private consultation room if needed.

4.1.41 Informative service - CPL will promote NHS campaigns and have the services offered clearly advertised within the pharmacy and both on the CPL dedicated website and the NHS choices website. There will be poster campaigns and leaflets available for health promotion and also advertising locally of the Pharmacy services.

4.1.42 Accessible service - CPL will have a truly accessible Pharmacy, both in terms of physical accessibility to all groups of patients and also in terms of user-friendliness. No appointment will be needed to consult the Pharmacist.

4.1.43 Integrated service - The new pharmacy will strive to build an excellent relationship between the GP and pharmacy teams and provide a seamless transition of care for the patients.

4.1.44 One of our aims is to ensure that there is a successful and collaborative working relationship between all agencies and parties working in the new medical centre for example, the Pharmacist at the CPL pharmacy will seek to attend the Primary Care Meetings to improve communication and discuss ongoing issues for swift resolution. The Pharmacist will also be involved in ‘signposting’ the patient to other healthcare professionals and agencies as applicable to the individual patient, to create an integrated and holistic service. By positioning the Pharmacy within the new Primary Care Facility this ‘signposting’ service will be facilitated.

4.1.45 CPL is passionate about meeting the needs of the local population and aim to exceed patient expectations in regards to their care.

4.1.46 Regular evaluation of service - CPL will conduct regular Patient satisfaction surveys. There will be a Complaints Procedure in place so that the pharmacy team can resolve and learn from any complaints that are received.

4.1.47 CPL will provide all locally commissioned enhanced services including but not limited to:

4.1.47.1 Smoking Cessation
4.1.47.2EHC
4.1.47.3Needle Exchange
4.1.47.4Supervised Consumption
4.1.47.5Alcohol screening & Intervention Service

4.1.48 In addition to these CPL would provide the following services:
4.1.48.1Lipotrim Weight Management Programme
4.1.48.2Blood pressure screening
4.1.48.3Diabetes screening
4.1.48.4Cholesterol Screening
4.1.48.5Free prescription collection & delivery service.

4.1.49 With a significant elderly population and those with long term limiting illnesses there is a clear need for a pharmacy with facilities to serve the elderly and disabled. CPL will provide the following services:
4.1.49.1DDA compliant entry/exit doors with a ramp if required.
4.1.49.2Purpose built wheelchair prescription signing area on main counter.
4.1.49.3Induction hearing loop.
4.1.49.4’Ask for Help’ internal signage.
4.1.49.5Large dispensing labels if required.
4.1.49.6Assessment of patient needs and supply of tailored medicine dispensing monitored dose boxes.
4.1.49.7Aids to help people take their medication (tablet splitter, oral syringes, eye droppers etc).

4.1.50 All pharmacists employed will be qualified to provide Medicine Use Reviews (MUR’s) and the premises fitted out in such a way to provide a private consultation room. CPL ensure they have more than adequate staffing and second pharmacist cover to enable the delivery of MUR’s in a professional manner from dedicated consulting rooms with the most up to date information technology. The pharmacy will also be fitted with the relevant IT connectivity to enable electronic transmission of prescriptions and to enable communication electronically with other members of the primary care team.

Improving working relationships between Pharmacists and GPs

4.1.51 As the Galbraith report Review of NHS pharmaceutical contractual arrangements Report by Anne Galbraith highlights, there have been ongoing issues surrounding Primary Care and Pharmacy services. This will need to be addressed at a higher level if Government aspirations are to be met, as collaborative working arrangements between GPs and Pharmacists are few and far between.

4.1.52 Chapter 5 of the Pharmacy White Paper deals with a similar issue of working relationships between GPs and Pharmacists, it stated:

“The Government has asked NHS Employers to establish a working group to promote closer working between GP and pharmacists, through a shared understanding of how their respective clinical roles can help deliver more personalised and effective care for their patients.”

4.1.53 CPL will seek to work closely with the GP practice within the new development and provide a streamlined and holistic service with effective clinical governance. This will ensure safe practices are being upheld and will promote confidence in the advanced and enhanced services that will be offered by the CPL pharmacy. This will result in the GP practice encouraging
patients to utilise the pharmacy services to their full potential therefore meeting the medical needs of the local population.

4.1.54 It is CPL's view that a close working relationship with the GP practice will only benefit the patients. By being physically located in the new building and establishing excellent lines of communication with the other agencies the CPL pharmacy will be in a prime position to respond to the changing needs of the community, PCT and other primary health care services.

Conclusion

4.1.55 This application is both necessary and expedient in order to secure adequate pharmaceutical services in the neighbourhood for the following reasons:

4.1.56 A pharmacy at the proposed location would meet the needs of the substantial resident and reliant population in the neighbourhood. This includes 2,000 residents and the total of circa 10,000 patients who would look to secure services from the new medical centre development and who form the reliant population of the neighbourhood.

4.1.57 The new medical centre development ensures that there will be a dramatic change in the demand for pharmaceutical services which will add further to the gap in services currently evidenced in the Shifnal South neighbourhood.

4.1.58 The development of the new medical centre will further increase demand for pharmacy provision in the neighbourhood. It will also create the opportunity for an integrated pharmacy service focussed on addressing local health needs and reducing health inequalities in the neighbourhood. In considering this application, the standard of adequacy must be considered. The increase in patient numbers at the new medical centre will lead to a greater need for pharmaceutical services within the neighbourhood. In addition, the needs of the population within the neighbourhood for pharmaceutical services will continue to increase over time, particularly given that there is an aging population within the neighbourhood.

4.1.59 The significant increase in demand that will be created through new housing developments and the new health centre development will not be able to be met as things currently stand in relation to pharmacy service provision. A new pharmacy in the neighbourhood will bridge the service gap and secure adequacy for the future.

4.1.60 The next nearest pharmacies are not easily accessible from the neighbourhood and mean that the resident and reliant population have to undertake a significant round trip of 2.5 miles to access services which is clearly inadequate.

4.1.61 As Lord Drummond Young made clear in Lloyds Pharmacy v NAP it is appropriate for the panel to bear in mind the future needs of the neighbourhood, on the basis of those future developments which are probable. Considering the forthcoming needs of the neighbourhood will allow the panel to secure adequate pharmaceutical services within the neighbourhood on an ongoing basis. This will mean that the increased need for pharmaceutical services within the neighbourhood are met once the new health centre opens and as the needs of the local population increases, that further need will also be met.

4.1.62 As Lord Malcolm, and subsequently Lady Smith, laid out in their deliberations in relation to the Lloyds Pharmacy v NAP Fort William Judicial Review, and subsequent Reclaiming Motion through the Court of Appeal, we would invite the panel to consider this case in light of these decisions. It is appropriate for the panel to consider that the provision of a new health centre in the Shifnal neighbourhood that will see the doctors’ practice relocated to a new health centre along with the providers of other medical services, will put further substantial distances between those services and the place where such provision was made and the locations of the existing pharmacies in the
adjoining neighbourhood. Lady Smith states “It seems to us that those are the sort of changes that fall within the category of developments identified by the court at para [10] of its decision in Lloyds Pharmacy as being relevant to the consideration of the question of whether or not there is a deficiency in current provision. That, of course, was the question that the court identified as needing to be asked and answered when determining whether or not, in a particular neighbourhood, there is an adequate provision of pharmaceutical service.”

4.1.63 Importantly the granting of this application will bridge the current service gap and secure adequacy of pharmacy services which fall short in terms of adequacy.

4.1.64 Granting this application will provide for access to pharmacy services within the neighbourhood when services are looked for. The CPL pharmacy hours will mirror those of the local GP practice ensuring that patients have access to a convenient pharmacy service.

4.1.65 Community Pharmacies (UK) Ltd will work closely with all stakeholders to deliver the services needed in this neighbourhood.

4.1.66 The granting of this application would overcome all of these issues and secure adequate pharmaceutical services in the neighbourhood. The needs of the neighbourhood mean that there is not access to adequate pharmaceutical services within the neighbourhood, so it is necessary and expedient that this application be granted to meet these needs and to ensure that patients and residents within the neighbourhood have access to and a choice of pharmaceutical service providers.

4.2 BOOTS UK LTD

4.2.1 We agree with the PCT decision to reject the application and their reasoning

Neighbourhood

4.2.2 The PCT have determined the neighbourhood to be the whole of the town of Shifnal, We agree with this definition.

4.2.3 Shifnal is described as a small market town located approximately three miles east of Telford and near to the M54 motorway

4.2.4 The appellant has sought to split Shifnal into two neighbourhoods using the railway line as the boundary. However, it is apparent on visiting the area that the railway runs above ground level with bridges spanning the roads the line crosses. The railway line is therefore not a barrier to access nor do we believe it to be a neighbourhood boundary.

4.2.5 Our pharmacy in Shifnal is located at the heart of the neighbourhood amongst shops and amenities residents use as they go about their daily lives. The Post Office is next door and Co-op supermarket and banks are in close proximity.

4.2.6 Our pharmacy is accessible from all parts of the neighbourhood with virtually all residents living well within a one-mile radius of our pharmacy.

The proposed location

4.2.7 The proposed location is adjacent to the Thomas Beddoes Court development. Taylor Wimpey, the developers of Thomas Beddoes Court describe the developments as being between Park Street and Lower Upton and within walking distance of the vibrant towns amenities. Thomas Beddoes Court is a select development of 178 new dwellings of between 2-5
bedrooms, which would appear to be predominantly aimed at more affluent owner-occupiers.

4.2.8 The developer's brochure acknowledges the close proximity of the site to the M54 and M6 and that the areas of Telford and Wolverhampton are each just a short distance away for a huge choice of shopping, leisure and entertainment opportunities.

4.2.9 We concur with the view of the PCT that there would appear to be no substantial changes within the next 12 months that may change the need of the resident population. The first houses at Thomas Beddoes Court are not due to be completed until summer this year. We submit that even when fully occupied the development will not have a significant effect on the size or the population of the neighbourhood.

4.2.10 It is our understanding that the proposal to locate a medical centre at this site has received local opposition. Furthermore, the appellant has not provided any timescales for the completion of the proposed medical centre, which we believe may suggest that the application is still premature.

Adequacy

4.2.11 In their decision letter, the PCT have made specific reference to the recent findings of the Pharmacy Needs Assessment, which suggests no inadequacy of pharmaceutical services in the area.

4.2.12 Our pharmacy is currently open from 9am until 6:15pm Monday to Friday and until 5:30pm on Saturday. Our opening times ensure that the majority of patients attending a late appointment at the surgery will be able to have their prescription dispensed. We believe we have a very good relationship with the surgery and should an appointment run after 6pm and the surgery call ahead to let us know the patient was on their way, we would of course make every effort to wait for the patient.

4.2.13 Our pharmacy has a walk in consultation room and currently provides a range of services including; repeat dispensing, smoking cessation, blood pressure testing, emergency hormonal contraception, free prescription collection and delivery and a delivery service for the local District Nurse. We believe that our pharmacy provides patients with a reasonable choice of pharmaceutical services at times to meet their needs.

4.2.14 We currently have a permanent pharmacist in position that is accredited to provide these services supported by seven dispensing support staff including an ACT. To ensure continuity of services, our pharmacy has a regular pharmacist on Saturdays with holiday cover provided by Boots employed relief pharmacists.

4.2.15 We would like to take this opportunity to confirm that we would be willing to provide additional enhanced and advanced services should the PCT wish to commission them.

Access

4.2.16 Our pharmacy is centrally located with good, easy access from the high street. Parking is available directly outside the pharmacy and our premises have automatic doors to enable easy access particularly for wheelchair users and parents with pushchairs.

4.2.17 Further ample street car parking is available only a few metres away off the high street. 2001 census data for the area would suggest a high level of car
ownership with approximately 80% of households having access to at least one vehicle (Shifnal Civil parish dataset). Furthermore, it our understanding that the majority houses at Thomas Beddoes Court will have either a garage or at least one allocated car parking space.

4.2.18 Public transport is available for those who wish to use it with regular local bus services running throughout the day linking Shifnal with both Telford and Bridgnorth. Bus stops are located approximately 50 metres away from our pharmacy. Shifnal also benefits from having it's own railway station on the Shrewsbury to Wolverhampton line.

4.2.19 Local information including the Shifnal Town Plan suggests that the majority of residents visit Telford for their main shopping. Furthermore, given the good transport links from Shifnal to Telford, Wolverhampton and Birmingham. We believe many residents will commute from Shifnal to places of work in these areas and may choose to access services in these locations.

4.2.20 The accessibility of Shifnal to the surrounding areas is possibly best described again by Taylor Wimpey who state in their brochure that Shifnal is 'within easy reach of Telford, Wolverhampton and Birmingham — and benefiting from good education, health, transport and leisure facilities.'

4.2.21 In conclusion, we submit that the above application does not meet the required criteria of regulation 12(1), and respectfully urge the Appeal Authority to dismiss this appeal accordingly.

4.3 TA RHODES LTD

4.3.1 The proposed neighbourhood is incorrect and the correct neighbourhood has been previously defined by the PCT on more than one recent occasion and accepted in reaching a decision on this application.

4.3.2 The appeal should be based on the defined neighbourhood and not a micro neighbourhood which suits the applicants contention regarding adequacy of Pharmaceutical provision.

4.3.3 Taking all factors into account it is believed that the correct decision has been reached by Shropshire County NHS Primary Care Trust and that this appeal should be rejected.

In a letter to the PCT dated 23 October 2010 TA Rhodes Ltd stated:

4.3.4 I wish to register, on behalf of T A Rhodes Limited, an objection to this application.

4.3.5 Shifnal currently has one Community Pharmacy which provides an adequate Pharmaceutical service. It is neither necessary or desirable to grant this application in order to provide adequate Pharmaceutical services within the proposed neighbourhood.

4.3.6 The neighbourhood has already been defined in recent previous applications for Shifnal and this is the neighbourhood which should be applied (HW/Shifnal.repso8).

4.3.7 On grounds of patient choice Shifnal is in close proximity to four other existing Pharmacies which, together with the current Shifnal Pharmacy, provide a comprehensive range of services. Delivery and collection services within Shifnal are also provided by both internet based Pharmacies and other outside Pharmacy contractors.

4.3.8 The existing Pharmacy contractor within Shifnal is able and willing to respond to any changing requirement for Pharmaceutical services with the resources and backup one would expect of an experienced and professionally run Pharmacy group.
4.3.9 In view of the above comments I would respectfully suggest that this application offers no advantage in terms of either adequacy of service or “patient choice that would warrant the granting of outline consent and submit that the application should be rejected.

5 Unsolicited Comments

5.1 SHROPSHIRE LPC

5.1.1 We see no reason to overturn the decision of the PCT not to grant consent for this application, as the proposed health centre development and housing has not yet been built, and as such there is no change of health need in the local population. The proposed separate neighbourhood of ‘south Shifnal’ is served by a bus service which takes residents south and east of the A464 to existing medical practices.

5.1.2 Whilst we may agree that a future new health centre could benefit from closer pharmaceutical services, as the new development does not currently exist we fail to see how a new contract would be necessary or expedient at this time.

5.1.3 In determining whether this application is necessary or desirable, the LPC has referred to the NHS Regulations (Pharmaceutical Services).

5.1.4 Shifnal has a population of 7094 residents (2001 Census) and is currently served by one pharmacy, Boots, located at Cheapside, and two surgeries, Shifnal and Priorslee Surgery, Shrewsbury Road and Sutton Hill practice Surgery, Broadway, Shifnal.

5.1.5 The applicant defines the neighbourhood it wishes to serve as ‘south Shifnal’. In considering whether this is a separate neighbourhood to the rest of Shifnal, the Contracts Committee should consider physical boundaries and ease of access between the population north of the railway line and that south of the railway line. Arriva bus 891 operates from Priors through Shifnal down Park Street (A464) between the village centre where the current doctors’ surgeries are located, and the potential site of the new housing development and surgery.

5.1.6 Boots pharmacy provides services between the hours of 9am and 6.15pm Monday, Tuesday, Wednesday and Friday, and 9am and 5.30pm on Thursday and Saturday. The main surgery, Shifnal Medical Practice opens 8am-1pm and 2pm-6pm Monday to Friday. As such it can be deemed that the current pharmacy contract provides adequate services to the existing surgery locations.

5.1.7 Subject to regulations 25 and 26 and paragraph (4), in considering whether the necessary or desirable test is satisfied, a Primary Care Trust shall have regard in particular to—

(a) whether or not any of the following services are already provided by persons in the neighbourhood in which the premises named in the application are located—

(i) any pharmaceutical services specified in the application provided by persons included in a pharmaceutical list, or any directed services the applicant agrees to provide if his name is included in the pharmaceutical list, or

(ii) any local pharmaceutical services provided under a pharmacy pilot scheme which are of the same description as any pharmaceutical services specified in the application;

(b) whether the recipients of pharmaceutical services already have a reasonable choice with regard to—
(i) the pharmaceutical services provided in the neighbourhood in which the premises named in the application are located, by persons included in a pharmaceutical list, and

(ii) the persons included in a pharmaceutical list from whom such recipients may obtain pharmaceutical services in the neighbourhood in which the premises named in the application are located;

5.1.8 The Local Pharmaceutical Committee are satisfied that the PCT considered and interpreted the Regulations appropriately in regards to this application.

5.1.9 In conclusion, the LPC recommend that at present the appeal is denied as the applicant has failed to demonstrate any heightened need or change in population.

6 Consideration

6.1 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 (or location) of the proposed pharmacy.

6.2 It also had before it the responses to the Authority’s own statutory consultations.

6.3 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.

6.4 The Committee had regard to Regulation 12(1), the necessary or expedient test, and, in considering that test, had regard in particular to Regulation 12(2), (3) and (4) of the National Health Service (Pharmaceutical Services) Regulations 2005 (as amended) (“the Regulations”).

6.5 The Committee noted the comments from the appellant with regards to the Scottish Judgements however was mindful that these judgements are not binding on its decision under the relevant Regulations. The Committee dealt with the application by way of reconsideration of all the issues.

6.6 The Committee noted that the neighbourhood had been defined by the PCT as the whole of Shifnal which had been disputed by the applicant on appeal. The applicant had proposed that the area of Shifnal south should be considered a neighbourhood in its own right and that the railway line acted as a neighbourhood boundary, however no information had been provided as to why the railway line should be a neighbourhood boundary or that it was a barrier to movement. The Committee was of the view that the comments from parties indicated that all of those resident in Shifnal, whether to the north or the south of the railway line, would consider themselves to be neighbours of one another. The Committee accepted the PCT’s definition of the neighbourhood as the whole of Shifnal without prejudice to any future applications.

6.7 The Committee noted that within the neighbourhood there was currently one pharmacy which is located within the vicinity of both a main surgery and a branch surgery. The Committee noted the comments with regards to provision of services from outside of the neighbourhood, however was of the view that this was marginal given the distances involved. The Committee accepted that with one pharmacy in the neighbourhood there was currently no choice within the neighbourhood, however this did not automatically lead the Committee to the conclusion that services were inadequate and that the instant application should be granted.

6.8 The Committee noted that the existing pharmacy was approximately 750 metres from the site of the proposed pharmacy, which had not been disputed. The Committee further noted that there was nothing provided by the applicant to show that there were currently any issues with regards to accessing the existing pharmaceutical provision
within Shifnal. The Committee further noted the comments with regards to bus services, which had not been disputed, for those who were unable or unwilling to access such services on foot. In addition, there was nothing provided to show that for those who had access to and the use of a car that they were not able to access either the existing provision of services further afield. The Committee was of the view that there was nothing provided to show that there was currently a gap in respect of actual physical access to pharmaceutical services.

6.9 The Committee noted the comments with regards to the proposed new medical centre within the southern part of the neighbourhood, however the Committee was of the view that new medical provision did not automatically mean that existing services were inadequate. The Committee further noted the comments from the existing pharmacy at 4.2.8 and 4.2.20 that the developers have marketed the area as being "within easy reach of Telford, Wolverhampton and Birmingham". In addition, the Committee noted that while the applicant had proposed to offer a full range of services, there was nothing provided to show that the existing pharmacy was not currently providing all essential services as well as all enhanced and advanced services as commissioned by the PCT. The Committee noted that the existing pharmacy had also confirmed their willingness to provide any additional services as and when commissioned by the PCT. Further the Committee noted that the PNA had not identified a gap in provision for Shifnal. The Committee was of the view that there was currently no gap in respect of pharmaceutical services which this application could secure.

6.10 The Committee noted that there was nothing contained in the application, appeal or subsequent representations that showed that the existing pharmacy was not able to cope with the current demand for pharmaceutical services or any perceived future increase in demand, however this may arise.

6.11 The Committee accepted that regard has to be had to the fact that any alternative providers and thereby services are outside of the neighbourhood however the Committee concluded that having had regard to the totality of the factors above that choice could not be given significant weight. The Committee was of the view that there was nothing provided to show that there is a gap on the spectrum of adequacy to conclude that the provision of pharmaceutical services is not currently secured to the standard of adequacy.

7 Decision

The Committee was of the view that the proposed pharmacy was neither necessary nor expedient to secure the adequate provision of services in the neighbourhood. Accordingly the Committee dismisses the appeal.

Jill Jackson
Appeal Officer

A copy of this decision is being sent to:

Community Pharmacies (UK) Ltd
Boots UK Ltd
TA Rhodes Ltd
Shropshire County PCT