APPEAL AGAINST NORTH LANCASHIRE PCT DECISION TO REFUSE RAJ PATEL'S APPLICATION FOR PRELIMINARY CONSENT PRIOR TO INCLUSION IN THE PHARMACEUTICAL LIST IN THE IMMEDIATE VICINITY OF OWEN ROAD SURGERY, 67 OWEN ROAD, SKERTON, LANCASTER LA1 2LG

1 The Application

By application dated 22 October 2011, Raj Patel ("the Applicant") applied to North Lancashire Primary Care Trust ("the PCT") for preliminary consent prior to inclusion in the pharmaceutical list 'in the immediate vicinity of Owen Road Surgery, 67 Owen Road, Skerton, Lancaster LA1 2LG'. In support of the application it was stated:

Neighbourhood

1.1 The neighbourhood was defined as:

East: Hest Bank Lane/Slyne Road junction (A6) towards Lancaster at Owen Road (A6) and Morecambe Road (A683) junction.

South: Owen Road (A6) and Morecambe Road (A683) junction and Morecambe Road (A683) towards Morecambe.

West: Continuation from Morecambe Road (A683) towards Morecambe up to Ovangle Road roundabout which is the junction of Lancaster Morecambe bypass (A683) and Morecambe Road (A683).

North: Ovangle Road roundabout junction through Lancaster and Morecambe college towards Russell Drive, towards Hasty Brow Road onto Hest Bank Lane towards Slyne Road (A6) junction.

Adequacy

1.2 The proposed location of this application is in the Lancaster urban area.

1.3 Within the proposed neighbourhood, the wards of Skerton West and Skerton East are encompassed, with a population of 6,811 and 6,665 respectively (2001 Office of National Statistics Census data).

1.4 This is therefore a combined population of 13,476 in 2001 and has since grown to date with a higher prevalence of young families and single parents compared to the national average.

1.5 From Lancaster Health Profile Statistics 2011 and index of Multiple Deprivation 2007 by Lower Super Output Area, it is evident that the proposed neighbourhood is classed as an area of high deprivation (fifth quintile) compared to the national average and includes the estates of Ryelands and Vale (Hare Runs Estate).

1.6 From the Health profile statistics it is apparent that the proposed application is within an area of high morbidity and disease prevalence. Health Summary for Lancaster in
the Health Profile 2011, indicates that there are a number of domains in which Lancaster is significantly worse than England average including:

1.6.1 Smoking in pregnancy.
1.6.2 Hospital stays for alcohol related harm.
1.6.3 Reduced life expectancy in males and females.
1.6.4 Smoking related deaths.
1.6.5 Early deaths in heart disease and stroke.
1.6.6 Early deaths due to cancer.
1.6.7 Road injuries and deaths.

1.7 This higher disease prevalence in the area is further evidential from the QOF database for Owen Road surgery, which shows higher prevalence and/or percentile of patients in the following disease areas:

1.7.1 Coronary heart disease.
1.7.2 Chronic obstructive pulmonary disease.
1.7.3 Diabetes Mellitus.
1.7.4 Hypertension.
1.7.5 Stroke and transient ischemic attacks.
1.7.6 Smoking in chronic disease.
1.7.7 Depression.
1.7.8 Chronic kidney disease.
1.7.9 Obesity.

1.8 From statistics published in the Health Profile 2011-Lancaster, it is worthy to note that life expectancy is 10.4 years lower for men and 7.4 years lower for women in the most deprived areas of Lancaster than in the least deprived areas (based on the slope index of inequality published on 5 January 2011).

1.9 Health profile 2011-Lancaster also indicates that an estimated 20.1% of adults smoke and 20.9% are obese. Rates of road injuries and deaths, smoking related deaths and hospital stays for alcohol related harm are higher than the average for England.

1.10 Within the proposed neighbourhood there are two doctors surgeries - Owen Road Surgery and Scale Hall surgery.

1.11 Owen Road Surgery - six doctor practice, opening hours being:

Mondays to Fridays: 8.00am to 8.00pm three nights per week.

8.00am to 6.30pm two nights per week.

This gives a total of 57 hours per week opening times.
1.12 Scale Hall surgery - branch surgery of Rosebank, with one doctor practising at Scale Hall (rotational) - opening hours being:

Monday, Tuesday, Thursday & Friday: 8.30 am to 6.00pm.

Wednesday: 8.30 am to 12.30pm -(Closed 2 Wednesdays per month).

This gives a total of 41.75 hours per week opening times.

1.13 The applicant has no doubt that there has been significant increase in prescription volumes in this deprived area over the years and whilst the applicant has no data to verify this, they are sure the PCT will have the data to confirm this. There has been no corresponding increase in pharmaceutical provision with in this neighbourhood.

1.14 There are a large number of young families, single parents, economically inactive residents and low car ownership - (2001 census data). This figure would have increased since 2001.

1.15 There are currently no pharmaceutical services within the proposed neighbourhood of this application. There is however a pharmacy across a busy A6 road with one pedestrian crossing - East boundary in this application.

1.16 The hours of opening of the adjoining neighbourhood pharmacy (Murray’s pharmacy) are:

Monday, Tuesday, Thursday, Friday: 9am to 6pm.

Wednesday: 9am to 5.30 pm

Saturdays: 9am to 12.30pm.

A total of 48 hours per week opening hours for Murray's Pharmacy.

Necessary & Desirable

1.17 The current provision of pharmaceutical services in the area is inadequate. The applicant believes the proposed application is both necessary and desirable to secure an adequate provision of pharmaceutical services within the vicinity for the following reasons:

1.18 Lancaster Health Profile 2011, gives a better understanding of the local communities needs and in addition strives to improve health and reduce health inequalities. In support of this NHS North Lancashire priorities include support to the people to:

Live longer - Reducing premature deaths from lifestyle choice.

Healthier lives - Better access for information on healthier living and advice.

Reduce health inequalities - Better access to appropriate resources and advice.

1.19 There are currently no pharmaceutical services with in the proposed neighbourhood within walking distance from the surgery, save for one (Murray pharmacy) in the adjoining area across the proposed east boundary of the busy A6 road with one pedestrian crossing.
1.20 The proposed pharmacy that this application relates to, will be on the same (west) side as the Owen Road surgery where the need to cross the busy A6 road, would be avoided especially for young parents with prams, pre-school children and the elderly.

1.21 Granting of this application would provide easy and convenient access to pharmaceutical services which is vital to support self care and assist towards achieving the priorities of NHS North Lancashire mentioned above.

1.22 This ease of access and convenience would be of specific benefit to the residents in the Skerton West ward (Vale and Ryelands Estate).

1.23 The proposed pharmacy opening hours (64 hours) will be greater than the existing hours provided by the nearby pharmacy (48 hours) within walking distance in the area, and will be in excess of Owen Road Surgery opening times (57 hours).

1.24 Increased range of services is proposed including advice on dangers of alcohol abuse, smoking, flu and travel vaccination, blood pressure monitoring, diabetic screening, cholesterol testing, and Lipotrim weight loss programme.

1.25 It is necessary and desirable to grant this proposed application as it would improve support and advice for residents and assist towards addressing the issues identified in the health profile 2011 mentioned above.

1.26 The applicant is of the opinion that granting of this application would deliver not only improved provision of pharmaceutical service but also support adequate pharmaceutical access and choice in the area. This would impact on the health of the population with near patient screening and testing, allowing early intervention and health promotion.

Competition & Choice - NHS Regulation 2005 -Part 2 - Regulation 12(2b)

1.27 In considering this, the applicant has had regard to the fact that the overriding objective for The Control of Entry Committee for NHS North Lancashire, is to determine the application in relation to the effect it will have on access to services for patients and not the effect it would have on other providers.

1.28 The nearest pharmacies to the proposed site in the Lancaster Urban area are:

Murray's pharmacy - approximately 0.1 miles across the busy A6 Owen Road, on the East side of the proposed boundary.

Halton pharmacy - approximately 2.5 miles across the busy A6 Road on the East part of the boundary.

Slyne pharmacy - approximately 2.0 miles on the North part of the proposed boundary.

Kings Chemist - approximately 1.75 miles on the North West part of the proposed boundary.

ASDA pharmacy - approximately 1.5 miles on the West part of the proposed boundary across the busy A683 Morecambe Road near the Ovangle roundabout.

1.29 Murray pharmacy is currently the only pharmacy, accessible by foot, nearest to the Owen Road surgery, for the residents of both Skerton East and West wards.

1.30 Patients currently visiting the doctors at Owen Road surgery would therefore have to cross a busy A6 road to access pharmaceutical services from Murray pharmacy.
1.31 All other pharmacies are at some distance, to which patients do not have easy access on foot.

1.32 Currently Murray pharmacy is serving a population in excess of 13,476 (2001 statistics).

1.33 The geographical footprint and considerable population served by a single pharmacy considerably reduces patient choice.

1.34 There is currently very little choice for local residents to access pharmaceutical services in the fifth quintile deprived area.

1.35 This area has a high morbidity and disease prevalence with low car ownership, high number of young families and single parents. (References from Census data 2001. Health Profile 2011- Lancaster and the QOF 2010 data).

1.36 The applicant feels that the current pressures experienced by a single pharmacy, does not allow it to adequately respond to the increasing and changing needs of the community it serves or deliver the wider range of pharmaceutical services that should be made available to the patients of this neighbourhood. This could be resolved if there was an additional choice offered through an additional provider.

1.37 The lack of providers of choice in this area contrasts significantly with those in the Lancaster City Centre where choice and provision are already provided to a much higher standard. This is because there is much more variety of choice of provider and premises.

1.38 The proposed site is on the Western side of Owen Road (A6). This is the same side of the road as Owen Road Surgery. If this application were granted, patients would then have a choice of not having to cross this extremely busy main road in order to access Murray pharmacy.

1.39 A successful application would assist in addressing some of the concerns expressed in the Health profile 2011 of Lancaster Health summary of Lancaster.

1.40 The profile has identified road deaths and injuries, in Lancaster as being greater than the average in England as one of the areas of concern.

1.41 The applicant is of the opinion, for the reasons outlined above, the current provision of pharmaceutical services in the wards of Skerton East and Skerton West, are not wholly adequate to meet the needs of the residents.

1.42 These residents have been consistently identified as being in an area of deprivation and health inequality. The statistics used and quoted are both locally and nationally sourced in support of this statement.

1.43 The applicant feels that it is both necessary and desirable that this situation is addressed by granting of this application to ensure adequate provision now and for the future.

1.44 The applicant is convinced that the granting of this application will undoubtedly improve the provision of pharmaceutical services in Skerton and especially for the residents of the Vale and Ryelands estates, by introducing choice as well as extended hours that are proposed in the application.

1.45 It will also serve to fulfil NHS North Lancashire’s objectives for addressing the issues highlighted in the Health Profile 2011 for Lancaster.

1.46 The applicant intends to provide:
All Essential services.

Advanced services.

All Local Enhanced services shown on the application form.

Other services (specified).

1.47 The applicant's proposed contractual (core) opening hours are:

Mon to Fri  9.00 to 1.00  2.00 to 18.00
Sat        Closed.
Sun        Closed.

1.48 Total opening hours:

Mon to Fri  8:00 to 20:00
Sat         9:00 to 13:00
Sun         Closed

2 The PCT Decision

The PCT considered and decided to refuse the application. The decision letter dated 2 February 2012 states:

2.1 The above application was considered by the PCT Control of Entry Committee on 25 January 2012 under regulations 5 and 12 of the NHS (Pharmaceutical Services) Regulations 2005.

2.2 As part of the process for considering such an application, a formal consultation exercise was undertaken with interested parties, in line with the NHS (Pharmaceutical Services) Regulations. A decision report is attached for information.

Extracts from the Decision report

Description of the area

2.3 The applicant has applied for preliminary consent to provide pharmaceutical services in the vicinity of Owen Road Surgery, Lancaster. An officer of North Lancashire PCT has undertaken a site visit to the identified area.

2.4 A search of planning applications with Lancaster City Council revealed no approved or pending housing developments or changes to the road links in this area.

2.5 Skerton is an area of Lancaster situated to the immediate North of the city centre of Lancaster with easy access to the M6 Motorway. There are a limited number of local amenities within the area all within walking distance of the proposed pharmacy.

2.6 The neighbourhood is dissected by the A6. This is a busy, single carriage main road which has 2 pedestrian crossings within 100m of the proposed site which will be in close proximity to the A6.

Current pharmacy provision
2.7 There is 1 pharmacy within the neighbourhood of Skerton. JN Murray is located in the immediate vicinity of the proposed site and across from the GP Surgery which is reached by a pedestrian crossing immediately opposite the surgery.

2.8 A further 8 pharmacies are located in Lancaster City Centre which is located approximately 0.5 miles away. Further pharmacies are located in Slyne, Torrisholme and in the Asda Superstore. An additional 100 Hour Pharmacy is due to open in March 2012 at Sainsbury's Store in the City.

Distance to nearest GP Surgery

2.9 There is 1 GP Surgery (Owen Road Surgery) within the neighbourhood of Skerton which is located in the immediate vicinity of the proposed application.

Consideration by the Committee

2.10 The above application was considered under the following regulations:

2.10.1 Regulation 5 (Preliminary application) and Regulation 12 (Preliminary Application). The Committee also considered the following matters when determining the applications:

2.10.2 If it is considered that there will be no prejudice to medical or pharmaceutical services the PCT will then consider if it is necessary or desirable to grant the application in order to secure the adequate provision of pharmaceutical services in the area (Regulation 12).

2.10.3 The Committee is also required to consider the application under the new criteria of Competition and Choice at Part 2 Regulation 12(2b). The overriding objective is to determine the application in relation to the effect it will have on access to services for patients and not the effect it would have on other contractors.

2.10.4 The proposed core hours of the pharmacy are 40 hours per week and will undertake the essential services as defined in the current NHS (Pharmaceutical Services) Regulations and any of the enhanced services that the PCT commission. The pharmacy will be manned at all times by a registered pharmacist supported by accredited medicine counter assistants.

2.10.5 Interested party letters were received and comments were noted from (list of parties provided).

Decision

2.11 The Committee reviewed the interested party letters, the main objections raised was that the application was neither necessary nor expedient due to the existing pharmaceutical service provision in the local neighbourhood and that the PCT did not identify any gaps in service provision of the pharmaceutical services in its Pharmacy Needs Assessment (PNA) document.

2.12 The applicant referred to the PCT’s Pharmaceutical Needs Assessment and stated that the document should not be relevant when considering the adequacy of the Pharmaceutical services in the neighbourhood. The Committee noted however, that the PNA is a PCT Commissioning document and therefore information contained within is relevant when referring to patient needs and choice available within the area.
2.13 The Committee noted that although the applicant had reflected the opening hours of the GP surgery, these were in fact supplementary hours which could potentially be reduced by the applicant upon opening.

2.14 It was also noted that the applicant is willing to undertake PCT commissioned services that the current pharmacy in the vicinity does not provide. The Committee was reminded that many local pharmacies in the area are willing to provide additional services but these services are not currently commissioned by the PCT.

2.15 After reviewing the evidence, the Committee were satisfied that the conditions of the regulations have not been met and the application was declined as neither necessary nor expedient to secure the adequate provision of pharmaceutical services in the neighbourhood.

3 The Appeal

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority ("the Appeal Unit"), dated 1 March 2012, Charles Russell LLP appealed on behalf of the Applicant, against the PCT's decision. The grounds of appeal are:

3.1 The applicant's grounds of appeal are that the PCT failed to have any proper regard to the demand for pharmaceutical services in the neighbourhood, the times at which pharmaceutical services are required by those in the neighbourhood, the lack of reasonable choice within the neighbourhood and the distance and barriers which exist to accessing alternative pharmacies.

3.2 In refusing the application, the PCT appears to have placed significant weight on its Pharmaceutical Needs Assessment. This was not the correct approach, since the PNA has been produced for a regulatory regime which is not yet in force. It is not an assessment of adequacy in the neighbourhood of the proposed pharmacy.

3.3 Whilst the PCT did not define a neighbourhood, it referred to the neighbourhood of the proposed site as being "Skerton". The PCT stated that the neighbourhood is dissected by the A6 which is a busy, single carriageway main road. The PCT appears to be of the view that, whilst the A6 is a busy road, it does not act as a neighbourhood boundary since the PCT considered that the proposed pharmacy (to the west of the A6) is in the same neighbourhood as the J N Murray pharmacy (to the east of the A6).

3.4 The applicant considers that the A6 does form a neighbourhood boundary because, as the PCT correctly noted, it is a busy main road. Whilst it has intermittent crossing points, when considered along its length as it runs north away from Lancaster city centre, it represents a barrier to pedestrians.

3.5 The appropriate neighbourhood of the proposed site is therefore the A6 to the east, the A683 to the south, Lancaster & Morecambe College campus site to the west and Barley Cop Lane/Hammerton Hall Lane to the north. The PCT's defined neighbourhood appears to extend eastwards beyond the A6 to the river.

3.6 When assessing the adequacy of pharmaceutical services, the Authority must have regard to the population which is likely to be present in the neighbourhood and the likelihood that the population will require access to pharmaceutical services. It is therefore incumbent upon the Authority to consider the size and nature of the resident population because considering whether pharmacies secure adequacy to that population.

3.7 According to figures from the 2001 census, the neighbourhood has the following population characteristics (to assist the Authority, the figures in brackets are for the larger neighbourhood defined by the PCT):
3.7.1 8,813 (12,595) people live in the neighbourhood;

3.7.2 25% (25%) of homes are rented from the Local Authority. This is higher than the English average. The neighbourhood contains two large local authority estates - the Ryelands and Vale estates, both of which are located to the west of the A6;

3.7.3 35% (38%) of homes have no car or van. Fewer than 19% (18%) of homes have more than one car or van. Car ownership is lower than the English average;

3.7.4 Over 10% (10%) of residents rate their health as "not good". 19% (19%) suffer from a limiting long-term illness. This is higher than the English average.

3.8 There has been no improvement in health or other inequalities in the neighbourhood since the 2001 census was conducted. According to recent QOFF information obtained from Owen Road surgery, disease prevalence for many indicators is high amongst its patients. The applicant attaches a schedule which sets out the prevalence of 21 diseases. As the Authority will note, the Owen Road Surgery is in the highest quartile for coronary heart disease (95th centile), Asthma (98th centile), COPD (94th centile), stroke and TA (78th centile), mental health (75th centile), chronic kidney disease (95th centile), depression (93 centile), smoking (85th centile).

3.9 The neighbourhood contains two doctors' surgeries - the Owen Road Surgery and the Scale Hall Surgery. Doctors at the Owen Road Surgery, in close proximity to the proposed site, prescribe an average of over 14,000 items per month.

3.10 Having regard to the above, it is evident that the neighbourhood contains a large resident population, which suffers from high levels of ill health. Residents in the neighbourhood have reduced levels of mobility, evidenced by low car ownership and relatively poor health. The neighbourhood contains two large surgeries which are a source of a high number of prescriptions. Together these matters should lead the Authority to conclude that there is a high demand for pharmaceutical services within the neighbourhood.

3.11 The adequacy of pharmaceutical services must be considered against this background.

3.12 Depending on the neighbourhood which the Authority defines, there is either no or only one pharmacy in the neighbourhood. Neither that pharmacy nor pharmacies in adjacent neighbourhoods secure the adequate provision of pharmaceutical services in the neighbourhood.

3.13 The nearest pharmacy to the proposed site is operated by J N Murray Limited. Until a few years ago, there was an additional pharmacy in the neighbourhood. J N Murray Limited bought both its existing pharmacy and the other pharmacy at 2 Norfolk Street in May 1999 and May 2000 respectively. On 8 October 2000, J N Murray Limited closed the pharmacy at 2 Norfolk Street. The 2 Norfolk Street pharmacy had been providing pharmaceutical services for over 35 years.

3.14 The closure of the pharmacy at 2 Norfolk Street reduced the choice of pharmaceutical services in the neighbourhood; patients no longer have a choice of either pharmaceutical services or service providers. Even if the PCT's wider definition of the neighbourhood is preferred. As the Authority will be aware, it is required to have regard in particular to whether patients have a reasonable choice of both pharmaceutical services and service providers when assessing adequacy.

3.15 This lack of reasonable choice is striking given the high demand for pharmaceutical services in the neighbourhood created by the large resident population, which has
significant health needs and the presence of two surgeries. The lack of reasonable choice is of itself, sufficient evidence of an inadequacy such that it is at least expedient to grant this application.

3.16 However, the lack of reasonable choice presents additional difficulties to patients who require access to pharmaceutical services.

3.17 Firstly, the J N Murray Pharmacy is not open at times which match the Owen Road Surgery. As detailed in the letter from the Owen Road Surgery (provided), the surgery offers extended opening hours until 8pm on three evenings each week. However, the J N Murray pharmacy closes at 6pm Monday to Friday (5.30pm on Wednesday). The surgery confirms in the attached letter that there are;

3.17.1 123 scheduled GP appointments per week when the J N Murray pharmacy is closed;

3.17.2 An additional 10-15 GP appointments per week for "same day" bookings.

3.18 The surgery estimates that 250 items per week are prescribed at times when the J N Murray pharmacy is closed. In addition, 330 prescriptions per week are collected at times when the J N Murray pharmacy is closed (presumably because many patients collect prescriptions on their way home from work).

3.19 It is evident from this information that there is a significant demand both in the neighbourhood and in the vicinity of the proposed site for pharmaceutical services when the J N Murray pharmacy is closed. Notwithstanding such demand, the J N Murray pharmacy has not sought to alter its opening hours to match the surgery opening times. The result is that patients who have a GP appointment after 6pm during the week (or 5.30pm on Friday), or who collect a prescription after those times, either have to wait until the following day to have the prescription dispensed, or must travel significant distances (in excess of one mile) to access a pharmacy.

3.20 Secondly, because of the high demand for pharmaceutical services, the J N Murray pharmacy has been unable to meet the needs of local residents. The applicant provides a letter from Dr John Richmond (substance misuse specialist) who confirms that there have been capacity problems in Skerton for the provision of supervised consumption services. Dr Richmond also confirms that the J N Murray pharmacy does not provide needle exchange services and, indeed, there are only two pharmacies in the whole of Lancaster which provide this service. The Lancaster health profile confirms that the Skerton East and Skerton West wards (which largely correlate to the PCT's defined neighbourhoods) have high incidences of both alcohol and substance misuse.

3.21 In conclusion, the J N Murray pharmacy does not secure the adequate provision of pharmaceutical services either in or to the neighbourhood.

3.22 The next nearest pharmacies to the proposed site are located in Lancaster city centre. Whilst the PCT stated that the distance from the proposed site to these pharmacies is 0.5 miles, this distance is as the crow flies. The distance by most practicable route from the proposed site to the Lancaster city centre pharmacies is in excess of one mile, and the distance will be significantly further for many residents in the neighbourhood who live to the north of the proposed site.

3.23 This distance of itself creates a barrier to accessing those pharmacies, because many patients who require access to pharmaceutical services will simply be unable to walk a round-trip of two miles or more to access a pharmacy. However, there are other barriers which patients will experience in order to access the city centre pharmacies. Firstly, patients will have to walk along the busy A6. Patients must navigate across the junction of the A6 and A683 and then walk across Skerton Bridge. Skerton Bridge has very narrow pavements, making it unsuitable for many
pedestrians, particularly those with small children or using wheelchairs. Patients must then continue along the A6 and navigate across several busy road junctions in Lancaster city centre.

3.24 The applicant attaches a letter from PC Gough of Lancashire Constabulary which details the traffic problems in the area. The applicant also attaches a letter from Fisher Wrathall (Surveyors) confirming the distances to pharmacies in the city centre by most practicable route.

3.25 Even where patients have access to a car or van (and information from the 2001 census shows car ownership to be low), access to existing pharmacies by car is not easy. As the PCT notes in its decision letter, the A6 is a busy main road. It is often congested. According to information obtained from the local authority, the A6 between Barley Cop Lane and Torrisholme Road carries 15,000 vehicles per day with morning and evening peaks of between 1,200 and 1,400 vehicles per hour. Patients must also find a car parking space, and parking in the historic city centre is not easy, not least because car parks are not located in close proximity to the pharmacies. The majority of pharmacies in the city centre are located in the pedestrianised area.

3.26 Similarly, whilst there are buses that run along the A6, these are unlikely to offer easy or convenient access to a pharmacy. Firstly, patients must walk from their home to the bus stop. They must then wait for a bus. The route into the city centre presents the same difficulties as for access by car - the bus must travel along the busy and congested A6. Again since the majority of pharmacies in the city centre are located in the pedestrianised area, the buses do not stop near to existing pharmacies, and the main bus terminal is some distance away from the pharmacies. Patients must also pay to use the bus, and this cost can be prohibitive, particularly having regard to the relatively high levels of deprivation in the neighbourhood.

3.27 The nearest pharmacy outside the city centre is the Asda pharmacy, but this is located approximately 1.5 miles from the proposed site by most practicable route. In order to access the pharmacy, patients would not only have to travel a significant distance, but must still travel along congested roads, including the A6 and the A683 (which is the main route to Heysham port, and is therefore a trunk road which carries a significant amount of heavy goods vehicular traffic). Figures from the local authority for the A683 show that it carries 25,000 vehicles from 7am to 7pm at its junction with the Ovangle Road roundabout (with 2,200 vehicles per hour at peak times).

3.28 Granting the application would secure the adequate provision of pharmaceutical services in the neighbourhood. It would give patients a reasonable choice of pharmaceutical services and service providers. Since the applicant proposes to open at times which will match the Owen Road surgery, the proposed pharmacy would allow access to pharmaceutical services at times which meet local demand, particularly having regard to the evening appointments at the Owen Road Surgery.

3.29 In addition, it would relieve the significant burden on the relatively small J N Murray pharmacy and would allow for the provision of additional pharmaceutical services. For example, the applicant is developing the provision of a wide-range of innovative services to meet the health inequalities present in the neighbourhood. The applicant provides a letter from Owen Road Surgery confirming the doctors’ support for the innovative services proposed by the applicant.

3.30 Finally, the application has the support of the local councillors. The applicant attaches a letter in support from Mr Roger Sherlock, which details the nature of the resident population and the current lack of choice of pharmaceutical services and service providers.

3.31 In conclusion, it is at least expedient to grant the application in order to secure, in the neighbourhood, the adequate provision of pharmaceutical services. The applicant therefore requests that the Authority upholds their appeal and grants its application.
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.

Halton Pharmacy

4.1 The comments made about the Pharmaceutical Needs Assessment (PNA) are irrelevant. Whilst it is agreed that the PNA is a document of no regulatory standing as yet, it has been produced partly with the aim of finding inadequacies in Pharmaceutical Services in the PCT and if it did not find any then it suggests that pharmaceutical services are adequately provided in the area. This is a reasonable basis to start on deciding whether an application is either necessary or desirable.

4.2 The A6 road is a busy road. However, this would only be a barrier to accessing pharmaceutical services if there were inadequate provision of pedestrian crossings. There are 2 perfectly adequate pedestrian controlled crossings within 50 metres of the surgery, one of which is right outside the surgery premises. These may well be ‘intermittent crossings’ but considering the positions they are sited in Halton Pharmacy suggests they more than adequately fulfil the need for ease of crossing the A6. Halton Pharmacy feels that the neighbourhood is properly defined by the river, not the A6 as this is what any person living in the locality would tell you.

4.3 Halton Pharmacy fail to see the relevance of the comments from the Police as to supposed improvements in traffic flow if these crossings were less used. It will still be a busy road and of no relevance to the application. The same A6 also comes through the centre of Lancaster and Halton Pharmacy does not think anyone has recently questioned whether Lancaster should be split into 2 neighbourhoods because of it (this was questioned many years ago, approximately 1990, but the then appeals panel decided it did not constitute a barrier because of the more than adequate pedestrian crossings). In fact, the presence of a new pharmacy in the location suggested would probably make traffic worse as the parking in the immediate vicinity is severely restricted and would probably lead to the patients having to walk further than they do now to access pharmaceutical services. The only premises in the vicinity of Owen Road Surgery (as Halton Pharmacy suggested on the map showing proposed location) are presently residential houses which whilst are easily converted to retail premises are not ideally suited to providing parking.

4.4 Despite the fact that the A6 has always been a busy road, the pharmacy currently operating opposite Owen Road Surgery (J N Murray) has successfully provided pharmaceutical services to the area for a long time now. Being in reasonably close competition with this pharmacy, Halton Pharmacy can say categorically that they have never had any complaints about their ability to provide pharmaceutical services or their opening times.

4.5 There is a large population of people with health problems or who are socially deprived in the area. However, Halton Pharmacy are talking about a walk of less than 50 metres from the surgery door to the pharmacy - not exactly onerous for the vast majority of these. Halton Pharmacy would also suggest that access to the surgery is pretty poor in that there is very little parking (none dedicated to the surgery that Halton Pharmacy are aware of) and the access is up a steep slope as the surgery building is set above the A6 along with most of the properties adjacent to it. As the applicant has not defined any premises as yet, it may well be that the access to any proposed pharmacy may well be even worse that that to the surgery, making the short trip over the road via the pedestrian crossing far easier for most of the population.

4.6 Prior to J N Murray Ltd opening, there was only one pharmacy in Skerton and had been for many, many years. This was purchased by J N Murray and then
subsequently closed so restoring the status quo. As far as patient choice goes, Halton Pharmacy would agree that reasonable choice is something that would be ideal. It is well known that the nearer to a surgery a pharmacy is, the more likely it is to gain prescription business. Given the proximity to Owen Road Surgery that the new application suggests (premises obviously have not been obtained as yet), if this application were to succeed then choice would be reduced as Halton Pharmacy have no doubt that J N Murray Ltd would close the pharmacy due to reduced business i.e. back to one pharmacy in the neighbourhood. Whilst Halton Pharmacy accept that the effect on existing business is not really a concern of the Appeal Unit, if choice is the reason for granting a new licence then Halton Pharmacy suggest it would have the opposite effect.

4.7 The letter from Dr Richmond regarding supervised consumption is misleading and vague in the extreme to say the least. As far as capacity in Skerton is concerned, it may well have been a problem in the past but certainly isn't at the moment and it would appear that the pharmacy has been provided a methadone dosing unit by the drug and alcohol team (Halton Pharmacy understand for which they pay a fee). Halton Pharmacy are sure this would not be the case if the drug teams were not confident that the pharmacy could cope with demand.

4.8 As far as needle exchange services go: this should come as no surprise to anyone (least of all Dr Richmond) as it is a PCT commissioned service and they have not commissioned any new providers for a long time (at least 3 years to Halton Pharmacy's knowledge and probably longer as Halton Pharmacy have applied to provide this service and been refused). This has nothing to do with the willingness or ability of a particular contractor to provide the service - it is purely down to PCT policy. As such, there is no certainty that any new pharmacy would be able to provide such a service, even if they wanted to.

4.9 In an ideal world, everyone would have a pharmacy and supermarket right outside their door. In the real world, people have to travel to get services of any description so the gist of the appeal suggesting that access to the city centre (or anywhere else come to that) is difficult is both spurious and irrelevant. Negotiation of the A6 crossing with the A683 is also by pedestrian crossing and not an issue. Accessing the city centre is actually very easy. The issue of parking is irrelevant as this applies to any town centre. Also, parking is an issue at Owen Road (as pointed out previously) where there is no dedicated surgery parking and on road parking is quite restricted in the vicinity.

4.10 In conclusion, this application is predatory and unnecessary. Whilst a lot has been made about access and population, in reality Lancaster is a very small city with a compact footprint and access is not a problem to the vast majority of the population. As most pharmacies have delivery services nowadays, this becomes even less of a problem and to base distribution of pharmaceutical services on the premise that all patients walk to and from a pharmacy is wrong.

Central Lancashire LPC

4.11 The LPC provides a copy of their letter sent to north Lancashire PCT on 30 November 2011.

4.12 At this time, the LPC has nothing further to add but wishes to be kept informed of future developments in this matter.

LPC letter to the PCT

4.13 A site visit showed that the proposed location is next door to a GP surgery. There is already another pharmacy opposite the surgery, across the road open 48 hours per week offering all the services currently commissioned by NHS North Lancashire. Slyne Road is a major road (the A6) however there is a pelican crossing to the left of
the surgery and another one 100m to the right of the surgery (not just one, as stated in the application).

4.14 NHS Choices lists eight pharmacies within a one mile radius of the proposed site offering a choice of independent and multiple provider. There are a further nine pharmacies if that distance is extended to two miles. Most if not all provide a collection & delivery service.

4.15 The applicant is proposing opening hours totalling 64 hours (8am-8pm weekdays, half day Sat and closed Sun); There is a hundred hour pharmacy 1.1 miles away open 9am-9pm Mon-Sat and 10-4 Sun.

4.16 The site is on a main bus route to Lancaster, Morecambe and also Slyne, Carnforth and Kendal.

4.17 The LPC therefore concluded that a new contract was neither necessary nor desirable in order to secure the adequate provision of pharmaceutical services in the vicinity of Owen Road Surgery.

Gorgemead Ltd

4.18 There have been no complaints to Gorgemead's knowledge, regarding current pharmaceutical services in the area. There is no evidence given by Raj Patel that there are any gaps in the pharmaceutical services offered by the local pharmacies. Gorgemead believe that needle exchange is not offered at Murrays Pharmacy as the PCT have limited this service to two pharmacies within their PCT. Gorgemead is sure Murrays Pharmacy would offer any enhanced pharmaceutical services should the PCT wish to commission them.

4.19 Gorgemead agree with the reasons given by the PCT to reject this application. Gorgemead agrees with the PCT neighbourhood. The applicant's neighbourhood is very similar to the PCT neighbourhood, and conveniently misses out Murrays Pharmacy on Broadway. Gorgemead does not believe the A6 is a barrier as there are adequate crossing points.

4.20 Most people living in this area would travel into Lancaster to visit banks, large supermarkets and other large retail shops using public transport or car.

4.21 There are eight pharmacies within one mile of the site. Gorgemead believes this gives a choice to patients. They are easily accessed on foot. The land in this area is generally flat, and local residents will be familiar with the routes to these pharmacies from the local surgery on Owen Road. Cohens pharmacies all offer a collection and delivery service for prescriptions to all patients, which will help anyone experiencing a problem getting to a pharmacy.

4.22 There is a 100hour pharmacy at Sainsbury’s offering enhanced access to pharmaceutical services outside of normal pharmacy hours.

4.23 The Pharmaceutical Needs Assessment (Feb 2011) takes into account the deprivation of an area, based on both health and economy of the area. No gaps in pharmaceutical services were identified for this area. Contrary to Mr Patel’s appeal letter this does assess adequacy of pharmaceutical services.

4.24 The closure of a pharmacy in this area previously by Murrays does not indicate there was a need - in fact is indicates a lack of need. As this was 12 years ago, if there had been a need there would have been complaints by the GP surgery and local patients about the lack of pharmaceutical services - which Gorgemead do not believe there has been.
If there had been a need for pharmaceutical services during the extended surgery hours for patients then the GPs should have contacted the PCT who could have asked local pharmacies to offer extended hours. The new 100 hours pharmacies in the area offer these hours now. These extended hours are not new.

It is difficult to assess how independent the letters from the Property Consultants, Lancashire Constabulary, Delphi (a private company whose role in the drug service is unclear), the Labour councillor and Owen Road Surgery are. Mr Patel will no doubt have asked them for their opinion, but as they are unlikely to understand the nuances of the regulations will no doubt have been influenced to favour this application. Most people when asked if a pharmacy is a good idea would say yes.

Gorgemead request that the appeal be dismissed and the application be rejected on the grounds that it is neither necessary or expedient to secure the adequate pharmaceutical services for this area.

Boots UK Ltd

Boots agree with the PCT decision to reject the application and their reasoning.

There is one existing pharmacy less than 200 metres (a two minute walk) from the proposed pharmacy. The route between the two locations is straightforward and Owen Road can easily be crossed using the pedestrian controlled traffic lights close to the surgery. For this reason, Boots do not believe Owen Road presents a barrier to access for patients.

It is Boots understanding that Sainsbury’s at Cable Street, Lancaster, LA 1HH have recently opened a 100 hour pharmacy. This is 0.8 mile travelling distance from the proposed location. This pharmacy does not appear to be included on the map circulated with the letter of appeal.

Furthermore, a 100 hour application has been submitted for Owen Road Surgery, Lancaster. Given the exemption criteria for 100 hour applications, Boots see no reason why this application would not be approved.

Boots believe patients have reasonable access to the existing pharmacies in the centre of Lancaster. Boots would expect people living in Skerton to make regular journeys to the centre of Lancaster to access a wider range of amenities and services than available in the vicinity of the proposed location.

Between them, the existing pharmacies provide patients with a choice of both provider and services seven days and until late at night.

Boots pharmacy at Lancaster Gate, St Nicholas Arcade, Lancaster is 1 mile travelling distance from the proposed location. This pharmacy is open 09.00am - 06.00pm Monday - Saturday and 10.30am - 04.30pm on Sundays. Services available from this pharmacy include Medicine Use Reviews, New Medicine Service, Supervised Consumption of Methadone, Needle Exchange, Emergency Hormonal Contraception and Flu Vaccinations. A Free Repeat Prescription and Delivery Service covering the Skerton area are also available.

The area is well served by public transport with regular services stopping on Owen Road and dropping off at Lancaster bus station close to the existing pharmacies in Lancaster centre.

From visiting the area Boots noticed cars parked on roads and on drives, this indicates that people have access to vehicles and that car ownership has perhaps risen since the 2001 census.
4.37 Patients who do not have access to a private vehicle will find the existing pharmacies accessible by public transport or on foot.

4.38 Finally, the PCT have stated in their decision letter that the Pharmaceutical Needs Assessment (PNA) does not identify gaps for pharmaceutical services in the area. Boots would expect a PCT to have regard to their PNA when making such decisions whether the regulations have changed or not.

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

**Mundays LLP on behalf of J N Murray Ltd**

4.40 J N Murray believes that the appropriate neighbourhood for Skerton is as follows:

North: Barley Cop Lane, into Hammerton Hall Lane through to Green Lane and up to Halton Road Bridge.

East: From Halton Road Bridge along the River Lune as far as the bridge for Greyhound Bridge Road.

South: The River Lune from Greyhound Bridge Road as far as the cycle track, ad from Henderson Road along Salt Ayre Lane to Ovangle Road, and then Northgate to the Morecambe Bypass.

West: the Lancaster/Morecambe Bypass and thereafter through Lancaster and Morecambe College to the area that meets the junction of Lancaster Road and Barley Cop Lane.

4.41 These proposed boundaries reflect the true neighbourhood of Skerton, particularly as those people living within that area regard themselves as part of the same Skerton neighbourhood located with Lancaster. The Owen Road Surgery is located in the heart of that neighbourhood, and it is erroneous to suggest that Owen Road/Slyne Road (the A6) is a barrier thereby resulting in the restriction of the neighbourhood. People who live on the east side of Owen Road/Slyne Road consider themselves as part of the same neighbourhood and community as those who live on the west side, and indeed there are schools located on the east side of Owen Road/Slyne Road which are attended by school children who are resident on the west side of that road. Those children have no difficulty in crossing that road which consists of a single carriageway. There are several light controlled pedestrian crossings across that road, the first of which is located almost directly outside the Owen Road Surgery north of Aldrens Lane. There are additional crossing points at the junction of Torrisholme Road and Owen Road, and also the junction of Owen Road and Morecambe Road. Both school children and patients have little difficulty in crossing Owen Road/Slyne Road, and Owen Road/Slyne Road is a flat road providing no obstacles whatsoever to pedestrians.

4.42 Owen Road/Slyne Road has never been considered a barrier in the past to patients or pedestrians, and J N Murray has never received any complaints from any customers at all relating to any alleged difficulty accessing their pharmacy after having visited Owen Road Surgery. It would also be fair to say that there has been no significant change of traffic volume using that road over the last ten years. There are shops on both sides of this road that the population within the neighbourhood utilise.

4.43 If the Appeal Unit are happy to accept J N Murray's suggestion for the appropriate neighbourhood, then there are two existing pharmacies within that neighbourhood. There is J N Murray's own pharmacy which is located on Owen Road and in very close proximity to the Owen Road Surgery, together with the Asda Pharmacy located on Ovangle Road. In fact J N Murray's pharmacy is only a minute's walk from the
surgery. In addition to those two providers within the neighbourhood, there are a further seven providers of pharmaceutical services within Lancaster Town Centre which is located approximately half a mile away from the Owen Road Surgery. In addition, there is a pharmacy just west of that neighbourhood in Torrisholme (King’s Chemists) and new pharmacies have opened in Slyne (approximately one mile away) and Halton (three miles away). Many of the pharmacies within Lancaster City Centre open for extended hours, as does the pharmacy located at Asda within the suggested neighbourhood. Those pharmacies that are close to the neighbourhood should be considered when considering the adequacy of pharmaceutical services.

4.44 Owen Road provides easy access to the Town Centre. Those additional pharmacies in the town centre are no longer than a ten to fifteen minute walk from the Owen Road Surgery, or less than a five minute bus ride. There are regular buses every fifteen minutes from Slyne Road to Lancaster Town Centre, and the bus stops are no more than five minutes walk from the respective pharmacies.

4.45 J N Murray believes that the existing provision of pharmaceutical services within the neighbourhood is adequate. The PCT has not identified any gaps in the provision of pharmaceutical services within the Skerton neighbourhood as illustrated by its Pharmaceutical Needs Assessment. In fact the PCT considers that there are no localities within Lancaster that suffer from inadequate provision of pharmaceutical services. There has been no change in the population or level of deprivation in the Skerton area over the last five years, and there is no objective evidence to suggest that there is inadequate provision of pharmaceutical services for that area. There is no evidence to suggest that there has been an increased demand for pharmaceutical services within Skerton in recent years.

4.46 J N Murray’s pharmacy is located closest to Owen Road Surgery. J N Murray’s pharmacy is committed to ensuring that staffing levels within all its branches are appropriate to enable its pharmacists to provide a comprehensive service towards customers including becoming involved in the Transforming Community Equipment Services (TCES) which was commissioned by the Government to increase the supply of disability aids on prescription. J N Murray’s branch in Skerton offers a collection and delivery service to all customers within and outside the neighbourhood, and J N Murray has always indicated its willingness to provide additional services which are required by the PCT, but those additional services have not been commissioned from J N Murray’s pharmacy (principally due to resources available to the PCT). For example, J N Murray would be willing to provide needle exchange facilities at their premises in Skerton but are unable to do so as the local PCT have restricted the number of sites where this service is offered to two. J N Murray have never been advised by the PCT that there are patients who require supervised consumption but are unable to access services in Skerton.

4.47 The proposed pharmacy opening hours of the Applicant claim to be greater than the existing hours supplied by J N Murray. However, the proposed hours do not take into account the opening hours of the nearby Asda Pharmacy or those additional pharmacies located in Lancaster town centre. J N Murray is extremely surprised at the contents of the Applicant’s Appeal, particularly those that state an expression of dissatisfaction from the Owen Road Surgery. There is close regular liaison between J N Murray and the PCT Pharmacist at Owen Road in order to help Owen Road achieve QOF points on asthma/COPD/smoking cessation. J N Murray has contributed in many areas to assist the owner of the surgery and throughout that time the Owen Road Surgery have never indicated to J N Murray that their opening hours are inadequate or that the actual pharmaceutical services provided by J N Murray are inadequate. The Owen Road Surgery know that whenever J N Murray has been made aware of any shortfall in service, then J N Murray always addresses such an issue in a positive manner. J N Murray’s staff regularly visit the Owen Road Surgery to request and collect prescriptions as part of their prescription management and delivery service, and regular meetings take place with the pharmacist at the surgery to identify areas where MURs and new medicine service interventions can be best
targeted to support the surgery in the treatment of patients. The doctors at the Owen Road Surgery know that J N Murray has at all times co-operated with all PCT initiatives on medicines management issues and with the GP Partners at Owen Road Surgery in a mutual desire to solve patient problems.

4.48 It is somewhat disingenuous of the Applicant to suggest that the provision of pharmaceutical services has been restricted by the closure of 2 Norfolk Street. Since 2 Norfolk Street closed, J N Murray have made a considerable investment in the property located at 2 Broadway which has resulted in it doubling in size. Its expansion has included an incorporation of a consultation room and a preparation room for the making up of medication trays. Staffing levels have increased appropriately, and J N Murray employ a full time delivery driver to collect and deliver scripts for housebound patients from Owen Road and all the Lancaster surgeries.

4.49 At no time has the surgery ever expressed or even opened dialogue with J N Murray to suggest that they should extend their opening hours to match surgery times. If such a conversation or request had been made, and assuming that there was sufficient demand for an extension of opening hours, then J N Murray would gladly accommodate such a request. It has been J N Murray's experience that the population of Skerton find the provision of pharmaceutical services within Skerton as adequate, and, in particular, J N Murray's pharmacy on The Broadway, Skerton is, to J N Murray's knowledge, well regarded. As an illustration, J N Murray provide a copy of customer survey results in respect of customer surveys that took place between February and March 2012 as carried out by the Informacist.

4.50 In addition to the choice of suppliers within the neighbourhood (Asda and J N Murray), there remains the additional choice of providers of pharmaceutical services located in Lancaster town centre which is immediately adjacent to the neighbourhood. As previously indicated, Lancaster town centre is easily accessible by foot, by car or by local transport for any people who wish to travel into Lancaster.

4.51 The PCT has not identified any gaps or shortfall in the provision of pharmaceutical services in this locality, and consideration must be given to those additional seven providers of pharmaceutical services (including the full extent of their services, their opening hours and the choice of different suppliers) when considering the adequacy of pharmaceutical services within the neighbourhood. It is incorrect to suggest that there is an increase in demand or change in the needs of the community within the neighbourhood, as there has been little change in the size and/or profile of the population located within Skerton over the last five years. In reality, the existing availability of pharmaceutical services from those current providers within the neighbourhood and from within the areas immediately surrounding the area, have met the needs of the community.

4.52 In summary, there is adequate provision for pharmaceutical services within the neighbourhood of Skerton. There is adequate choice for providers of pharmaceutical services within that neighbourhood. This is confirmed by the Pharmaceutical Needs Assessment and by the very fact that neither J N Murray, nor to their knowledge any other provider of pharmaceutical services, has received any complaint from the PCT, any local councillor or the owners of a surgery that there is inadequate provision of pharmaceutical services within the neighbourhood. It is neither necessary nor expedient for the application to be granted, and J N Murray invites the Appeal Unit to dismiss the Appeal.

Hill Dickinson (on behalf of the PCT)

Neighbourhood

4.53 It is submitted that it is a matter for the PCT to determine what constitutes a “neighbourhood” for the purposes of any application pursuant to the Regulations. The
Department of Health Guidance at Chapter 3 is instructive Paragraph 4 states (quote provided).

4.54 The PCT’s Control of Entry Committee determined the relevant neighbourhood with respect to the area covered by this application, after taking into account the boundaries in place for neighbouring neighbourhoods and natural boundaries in the surrounding area. The PCT respectfully submits that the boundary lines for this neighbourhood should be as follows:

4.54.1 The A683 to the South;

4.54.2 The boundary lines of Slyne neighbourhood (which follow the Canal to the West, Townfield Lane and Hest Bank Lane to the South, Main Road/Slyne Road to the East and, for completeness, Marine Drive to the North) /Foundry Road to the North;

4.54.3 The River Lune to the East and;

4.54.4 The boundary of Scale Hall neighbourhood (which follows the railway line) to the West.

4.55 Although the Applicant and the PCT agree that the A683 should be the neighbourhood boundary line to the South, the Applicant suggests alternative neighbourhood boundary lines to the North, East and West of the site of its application.

Northern boundary line

4.56 The PCT notes that the Applicant’s grounds of appeal delineate a different Northern boundary line to the suggested neighbourhood boundary line contained in the Applicant’s application and as shown on the map previously provided by the PCT to the FHS Appeals Unit. It is respectfully suggested that the Applicant is directed to confirm where it believes the Northern Boundary should lie.

4.57 The PCT submits that its Northern boundary line should be preferred on the basis that this boundary line takes into account the locality of Slyne, which is a separate neighbourhood, as defined by the PCT’s Control of Entry Committee on 6 March 2009 when determining an application in respect of that area.

Eastern boundary line

4.58 Both the Applicant and the PCT agree that the A6 is a busy, single carriage main road and that there are intermittent pedestrian crossing points. The Applicant’s proposed site is in close proximity to the A6. The A6 has a maximum speed limit of 30 miles per hour.

4.59 The applicant submits at the A6 forms a physical barrier to pedestrians and that it therefore forms a neighbourhood boundary line to the East of its proposed site. The PCT does not accept that the A6 is a barrier given numerous crossing points along its length including two pedestrian crossing points within 100m of the applicants proposed site. The A6 is flat, has adequate street lighting and does not involve any other obstacles to pedestrians. Residents use the A6 to access the residential area which predominately lies to the south of the neighbourhood.

4.60 The PCT repeats and agrees with the submission in the representations put forward to it by J N Murray Limited dated 28 December 2011 that "it would be incorrect to suggest that those people living on the east side of Owen Road would not consider themselves as being part of the same neighbourhood and community as those people who live on the west side. Further, there are several light controlled pedestrian crossings across Owen Road/Slyne Road, the first of which is located
almost directly outside Owen Road Surgery north of Aldrens Lane. There are additional crossing points at the junction of Torrisholme Road and Owen Road, and also at the junction of Owen Road and Morecambe Road. Patients have had little and will continue to have little difficulty in crossing Owen Road/Slyne Road to utilise Murrays Pharmacy on Owen Road. This is illustrated by the ease that children attending the high school at the bottom of Owen Road have in crossing Owen Road. It is also relevant that J N Murray’s existing pharmacy on Owen Road is only a minutes walk from Owen Road Surgery and Owen Road/Slyne Road is in fact a flat road providing no obstacles to pedestrians. Owen Road/Slyne Road is a single carriage way road with a 30 miles per hour speed limited, with shops on both sides of the road which people within the whole community of Skerton use.”

4.61 In the PCTs submission, the appropriate Eastern boundary line for this neighbourhood is the River Lune on the basis that this is a natural physical boundary.

Western boundary line

4.62 The Applicant suggests that the Western boundary line of this particular neighbourhood should be the Lancaster and Morecambe College.

4.63 The PCT submits that the appropriate Western boundary line should be the railway line, on the basis that it is a physical barrier which residents can only cross at three locations and therefore have limited access to areas beyond the railway line.

4.64 If, as it is submitted, the PCT’s definition of the relevant neighbourhood is to be preferred, the neighbourhood in which the premises from which the Applicant intends to provide services are located includes one surgery (the Owen Road Surgery), and one pharmacy owned by JN Murray.

Adequacy

4.65 The Applicant has submitted that the PCT’s reliance on its Pharmaceutical Needs Assessment dated 1 February 2011 (“PNA”) “was not the correct approach, since the PNA has been produced for a regulatory regime which is not yet in force. It is not an assessment of adequacy in the neighbourhood of (the Applicant’s) proposed pharmacy.” However, it is submitted that whilst the PNA may not be an assessment of adequacy (which is a matter for a PCT to decide pursuant to Regulation 12 of the Regulations) it is certainly indicative of the adequacy of pharmaceutical services in the areas that it covers, given that it identifies what needs are present in those areas and is an appropriate starting point.

4.66 Indeed, the Department of Health Guidance states at Chapter 3 paragraph 9 “Securing the adequate provision is the key for Primary Care Trusts. If a PNA has determined that access to pharmacy services for a given neighbourhood is wholly adequate or wholly inadequate then an application is likely to fail or succeed accordingly (original emphasis).”

4.67 Whilst the Department of Health guidance accepts that the test is not whether or not access is “wholly adequate,” it points out that R v FHSAA ex parte Lowe EWCA Civ 128 held that there is a sliding scale of adequacy and the PCT must make an assessment as to where, at a particular point in time, an application lies on the sliding scale of adequacy on its particular facts. The decision is essentially a pragmatic one for the PCT.

4.68 It is submitted that the fact that there is only one pharmacy within the area is not necessarily determinative of the issue of adequacy and it was open to the PCT to determine that pharmaceutical provision was adequate in this neighbourhood.
4.69 The PCI notes the submissions made by the Applicant with regard to the local population and its characteristics in respect of the Applicant’s suggested definition of the relevant neighbourhood and “the larger neighbourhood defined by the PCT”. It is not clear whether or not the Applicant has applied the neighbourhood boundary lines within the Applicant’s original application form or those set out in its grounds of appeal. However, in any event, the PCT does not accept that there has been a recent significant change in the local population within and without the neighbourhood or to its characteristics. Further, these characteristics were taken into account in the PNA referred to above. As discussed further below, the PNA concluded that there were no current gaps in pharmaceutical provision. As such in the PCT’s submission, the starting point is that the neighbourhood’s pharmaceutical needs are being wholly met.

Necessary or expedient

4.70 The PCT notes the representations made by the Applicant with regard to its extended opening hours and that it intends to match/exceed the opening hours of the Owen Road Surgery. However, it further notes that these are not core hours and that the extended opening hours are supplementary. As such, the PCT would have no control over the Applicant’s ability to later decide to reduce its opening hours, should its application be granted and pharmaceutical services are provided from this site.

4.71 In any event, the PCT does not believe that there is sufficient demand for further pharmaceutical services within the neighbourhood. J N Murray’s pharmacy is close by, opposite the Owen Road surgery, and, in the PCTs submission, it is easily accessible on foot across the A6 road via one of the two nearby pedestrian crossings.

4.72 The PCT is not aware of any complaints with regard to access to pharmaceutical services in the neighbourhood. None of the representations that it received pursuant to regulation 23 refer to any knowledge of such complaints. The lack of complaint from residents of this neighbourhood concerning the provision of either medical or pharmaceutical services would imply that residents of this area are satisfied with the current arrangements and do not find the need to travel the short distance to J N Murray pharmacy onerous. The Respondent also understands that J N Murray offer a collection and delivery service.

4.73 The PCT acknowledges the fact that there is only one pharmacy within its definition of the neighbourhood does impact upon the reasonableness of choice of provider for residents of the neighbourhood. However, it is submitted that the fact that there is only one pharmacy within the area is not necessarily determinative of the issue as to whether it is necessary or expedient for the Applicant’s application to be granted. There is no statutory requirement for each neighbourhood to have a multiplicity of pharmacies.

4.74 Furthermore, there are easily accessible pharmacies outside of the neighbourhood, many of which also offer collection and delivery services.

4.75 There is a 100 hours pharmacy run by Asda which the applicant acknowledges is approximately 1.5 miles away from its proposed site in a local superstore. This pharmacy is required to be open in excess of the hours proposed by the Applicant and in excess of those hours open by Owen Road surgery. There is a free car park available to those who are able to drive to this 100 hour pharmacy. It is submitted that, pharmacy is outside of the neighbourhood, it is likely to be within the normal pattern of travel for residents within the neighbourhood, given that the store is likely to be regularly visited for the other services that it provides.

4.76 There are seven other nearby pharmacies within Lancaster city centre. The distance by the most practicable route from the proposed site to one of these pharmacies, Boots, is, by the Applicant’s calculations, just over one mile. It is submitted that it is not unreasonable to expect that some residents may choose to walk such a distance. For those who are not, the city centre can be easily accessed by a short car journey.
Alternatively, public transport from Owen Road Surgery is readily available via a regular bus service that runs approximately every 15 minutes.

4.77 There is a new 100 hour pharmacy within a Sainsbury’s store, approximately one mile away from the Applicants proposed site, which opened in March 2012. There is also an on-going application for inclusion on the pharmaceutical list at Owen Road Surgery, Lancaster for preliminary consent for a 100 hour pharmacy under consideration by the PCT.

4.78 The PCT notes the Applicants submissions with regard to the need for residents to cross some roads to access pharmaceutical services. It is submitted that that should not be deemed to equate to a barrier to such services. The PCT further notes the Applicants submissions that there is a cost associated with the use of public transport for some residents and that public transport will involve some walking to/from residents homes/another pharmacy to a bus stop and waiting time at a bus stop. To the extent that these issues are an inconvenience, they are not unreasonable. It is also submitted that such journeys are likely to be within the normal pattern of behaviour of residents.

4.79 The Applicant has drawn attention to the increased range of services that it proposes to provide. The Applicant submits that J N Murray does not provide a needle exchange service and that, in relation J N Murray’s Supervised Consumption service, “there are times when Murrays is unable to accept new patients for this service because they have reached their maximum capacity. Supervised consumption patients are therefore forced to travel significant distances on a daily basis to access their methadone” (the letter from the Applicant’s solicitor to the PCT dated 23 January 2012 refers). It also refers to J N Murray being under pressure.

4.80 The PCT has not identified a need for any further needle exchange services to be commissioned at the present time and would only commission such a service if a full service review was carried out and such a need is identified. This information was by the PCT to the Applicant in an email exchange on 19 January 2012 which has already bee provided to the FHS Appeal Unit.

4.81 It also notes that it has received no evidence that J N Murray is under pressure.

4.82 With regard to Supervised Consumption, it is noted that if it is necessary for a patient to access another Supervised Consumption service other than at J N Murray’s pharmacy, such services are provided at the ASDA 100 hour pharmacy and the Boots pharmacy referred to above which, it is submitted, are not significant distances away, being approximately 1.5 miles and just over 1 mile away respectively and being accessible by public transport.

4.83 As stated in the PCT’s PNA (which took into account the current local pharmaceutical provision of services and the health and pharmaceutical needs of the population) at Chapter 16:

"After considering all the elements of the PNA, North Lancashire PCT concludes that there is adequate provision of NHS dispensing services across the PCT with a range of high street pharmacies, 100 hour pharmacies, appliance contractors and dispensing practices. There is good pharmaceutical provision with a population of approximately 4130 patients served per pharmacy, which is significantly better than the England average of 1 pharmacy per 5000 population. There are no localities without adequate provision or access to pharmaceutical services and out of hours cover is also provided. There are also no localities where there could be an increase in the provision of enhanced services to reflect the populations’ needs. If this becomes an area to develop and commission further in the future, NHS North Lancashire will work with existing providers to improve access to these services."
4.84 J N Murray has stated in its representations to the PCT referred to above that "(it) has indicated that it is always willing to provide any additional services which are required by the PCT, but those additional services have not been commissioned, due to the limited resources available to the PCT." Further, as stated in its decision report dated 2 February 2012, "the (Control of Entry) Committee was reminded that many local pharmacies in the area are willing to provide additional services but these services are not currently commissioned by the PCT." It is not clear that the Applicant intends to provide these services on a voluntary basis if they are not commissioned by the PCT.

4.85 In light of the above submissions, the PCT requests that this appeal be dismissed and its decision to refuse the application for preliminary consent be upheld because it is not necessary or expedient for the Applicant’s application to be granted and the current of pharmaceutical services in the neighbourhood is adequate.

5 Further Correspondence

Email from Fisher Wrathall Chartered Surveyors and Estate Agents (on behalf of the Applicant)

5.1 I, Michael John Fisher, FRICS, Senior Partner of Fisher Wrathall, Chartered Surveyors and Estate Agents, Lancaster, have been asked by Mr Raj Patel to express a professional opinion upon the status of the main railway line as a boundary.

5.2 I have over 45 years experience of dealing with residential property in and around the whole of the Lancaster district. I was born within one mile of this railway line and attended the local Catholic primary school on Aldrens Lane, Skerton.

5.3 From a residential agency perspective, the railway line has never been seen as a boundary full stop. The main housing developments on either side of the railway line both started off as Local Authority housing, i.e. council houses, followed by peripheral private housing, with what I would describe as having identical social make up.

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 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 dealt with the application by way of reconsideration of all the issues.

6.6 The Committee considered the PCT’s Pharmaceutical Needs Assessment as a starting point in this case, conscious that the document provides a 'snapshot' of the
situation as it was perceived at the date of publication. The Committee bears in mind that, if matters which would affect a decision on inclusion in a pharmaceutical list were to change, a PCT must - pursuant to Regulation 3D(2) - revise its Pharmaceutical Needs Assessment unless to do so appears to it to be a disproportionate response. Where it appears disproportionate, the PCT may, but is not obliged by Regulation 3D(3), to issue a Supplementary Statement. In these circumstances, the Committee thinks it incumbent to examine the submissions and evidence provided by the parties against the backdrop of the current Assessment, without being bound by the Assessment's conclusions. In this case, the PCT has stated that its PNA had not identified any gaps in the provision of services which the application could fill.

6.7 The Committee noted the various neighbourhood definitions for the proposed pharmacy. The Committee noted that the applicant and PCT's neighbourhoods differed substantially, although the key differences were whether the A6 and the railway line are neighbourhood boundaries or not. Mindful that neighbourhoods for pharmaceutical list applications are usually defined having regard to geographical, social and physical factors, the Committee considered whether the railway line should be a boundary. On behalf of the applicant, Fisher Wrathall Chartered Surveyors and Estate Agents, argued that from a residential agency perspective, the railway line was not seen as a boundary. The Committee considered comments regarding the railway line fell short of showing for the purposes of the pharmaceutical regulations, that the population either side of the railway, would regard themselves as neighbours. In the Committee's view, the railway line with its limited crossing points, was a credible neighbourhood boundary to the west of the proposed site.

6.8 The Committee considered the applicant had failed to show that the A6 is a boundary between one neighbourhood and another. The Committee preferred the River Lune as the eastern boundary, as defined by the PCT. The Committee noted there was no disagreement regarding the southern boundary, and decided that it was reasonable. The Committee did not accept the PCT's northern boundary which extended apparently beyond the built up area. The applicant's boundary was too limited. The Committee preferred to use the extent of the Skerton built up area between the railway line eastwards to the M6 motorway, as the northern boundary.

6.9 The Committee thought it reasonable to conclude that there is a population in the neighbourhood of not insignificant size, for whom the adequacy of pharmaceutical services provision had to be considered.

6.10 The Committee noted there was no dispute that the neighbourhood includes a number of social and health related issues, and appreciated that these could lead to an increased demand for pharmaceutical services. That said, the applicant had not demonstrated that there is an elevated demand which is not currently being met.

6.11 The Committee noted the PCT's observation that there are limited services and amenities in the neighbourhood. The Committee had no information to show that the level of services is such, that the population would have little, or no need to access some of their requirements for services and amenities outside of the neighbourhood.

6.12 The Committee noted the applicant's claims regarding the convenience of their proposed pharmacy. Whilst convenience is not an irrelevant factor, it is but one matter the Committee had to take into account when determining the appeal.

6.13 The Committee noted that there is one existing pharmacy in the neighbourhood (should the 100 hours application for Owen Road Surgery be granted, there could be a reasonable choice of services and services providers) and one GP surgery (a source of prescriptions). The Committee was aware that there is no reasonable choice of pharmaceutical services or services provider in the neighbourhood however, choice is again, but one matter to which the Committee had to have regard in determining the appeal.
6.14 The Committee noted the PCT's comment that there are a number of existing pharmacies located outside of the neighbourhood including those in Lancaster town centre.

6.15 The Committee noted reference to there having been no complaints regarding the existing pharmaceutical services. The Committee was mindful that lack of complaints is not necessarily a reliable indicator that existing service are adequate.

6.16 The Committee considered ease of access to the existing pharmacy in the neighbourhood, and noted that distance to be short. The applicant provided a number of reasons as to why in their view, the population may find accessing the nearest existing pharmacy difficult. The Committee noted that the proposed site may not offer any more geographical advantage to most of the population. The Committee considered the applicant's information had fallen short of showing that the population whilst they may be faced with having to cross a busy road via a pedestrian crossing could not reasonably and conveniently access the existing pharmacy on foot. The Committee took into account the 30mph speed limit and existence of two pedestrian crossings on the A6.

6.17 For those people whose mobility is limited, the Committee noted the applicant's claim that there is low car ownership in the neighbourhood. Bus services are available to the city centre, and the applicant had not shown that the cost of those services is inhibiting there use. The Committee noted the applicant's comment that congestion on the roads could make accessing existing pharmaceutical services using a motor vehicle or by bus difficult. The Committee noted the copy letter from PC P A Gough of Lancashire Constabulary. That letter refers to congestion in the area, in part caused by the population using the pedestrian crossings on the A6. In the Committee's view whilst that letter, and other information provided by the applicant, confirms the busy nature of the A6 and possible challenges in finding parking space in the city centre, they fell short of showing that those people with their own vehicle or reliant on bus services, could not reasonably access existing pharmaceutical services.

6.18 The Committee noted reference to a collection and delivery service. Whilst the Committee did not doubt that such a service would be welcomed, it is not a substitute for the provision of services by a contractor included on the PCT's pharmaceutical list.

6.19 The Committee noted the applicant's claim that their proposed opening hours will be in excess of those of Owen Road surgery and those of the nearest existing pharmacy. The Committee had no information to show that there is a gap in services that the application could fill, and was mindful that where it considers that such a gap exists, the PCT already has the power to bring about changes to the opening hours of the existing pharmacy.

6.20 The Committee noted the applicant's proposed services. The Committee noted J N Murray pharmacy currently provides all services commissioned by the PCT, and had no information to show that where they are not already doing so, the existing pharmacy is unable or unwilling to provide the services proposed by the applicant.

6.21 The Committee concluded, having regard to the totality of the factors considered above, that choice could not be given significant weight.

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.
Ray Bushell  
Appeal Officer  

A copy of this decision is being sent to:  

Charles Russell LLP on behalf of Raj Patel - Applicant/Appellant  
Hill Dickinson (on behalf of the PCT)  
Mundays LLP (on behalf of J N Murray Ltd)  
Ms C Zommers - Boots UK Ltd  
Mr J Chambers - Halton Pharmacy  
Ms B Bentwood - Central Lancashire LPC  
Mr A Patel - Gorgemead Ltd