

BRIEFING NOTE

TO: Mark Lane
DATE: 14 July 2011

RE: CHUCKERY PHARMACY APPLICATION**Purpose**

- To update the Health Overview and Scrutiny Committee of the current progress and position in regards to the status of pharmacy services in Chuckery.

Action to Date

- The Limes Pharmacy (7-9 Kinnerley Street) relocated to The Limes Business Park, 5 Birmingham Road in May, 2010 (Application approved in January, 2010). This was a minor relocation under 500m (an exempt application) under Regulation 6 of the NHS (Pharmaceutical Services) Regulations 2005 and as such the PCT shall grant the application if it meets all the relevant criteria.
- Application received from Ph4macy Ltd., for a new 40 hour contact at 7-9 Kinnerley Street, The Chuckery, Walsall. The 4 Directors of the Company had to undertake the Fitness to Practise exercise with the PCT before a decision could be made on the application. The decision making process did take longer than expected, due to a change in panel members, following the death of Professor S. Ramaiah.
- Decision letter sent 1st April, 2011 (Appendix 1), application rejected
- Letter received from Councillor Z. Ali, 18th April, 2011, addressed to Rob Bacon. Reply sent 10th May, 2011 (Appendix 2), clarifying the PCT's decision.
- Letter from NHS Litigation Authority, 3rd May, 2011, stating Ph4macy Ltd., had appealed against the PCT's decision, requesting specific information. Reply letter date 10th May, 2011 (Appendix 3).
- Further letter from NHS Litigation Authority, 17th May, 2011, enclosing representations from Ph4macy Ltd., and other interested parties, requesting further comments from the PCT (Appendix 3). Representations from Ph4macy Ltd., included a petition and letters from Councillors and other parties, which had not been included with the initial application.

Current Position

- The NHS Litigation Authority has been contacted regarding the outcome of the application. The application is still to go to their Committee to make a decision or to hold an oral hearing.

The Pharmacy Needs Assessment is available on Walsall's Internet via the following link http://www.walsall.nhs.uk/communications/Walsall_pharmacies_surveyed.asp

Author

Mark Lane
Interim Director Strategy and Planning
01922 618303
mark.lane@walsall.nhs.uk

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The National Health Service (Pharmaceutical Services) Regulations 2005

2005 No. 641 PART 2 Regulation 6

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Applications involving a minor relocation within a Primary Care Trust's area

6.—(1) In the case of an application under regulation 5(1)(b), where the applicant intends to change within the neighbourhood the premises from which he provides pharmaceutical services, being the same services as he intends to provide from the new premises, and the Primary Care Trust is satisfied that—

- (a) the change is a minor relocation, and
- (b) the provision of pharmaceutical services will not be interrupted (except for such period as the Primary Care Trust may for good cause allow),

the Primary Care Trust shall grant the application, subject to regulations 9(2) and 21(10) (and accordingly regulations 11 to 20 shall not apply).

(2) Except where paragraph (3) applies, a Primary Care Trust shall determine an application to which paragraph (1) relates in accordance with the procedures set out in regulations 23, 24(1) and (3) to (6), 25, 26, 27 and 29.

(3) Where the minor relocation is to premises which are less than 500 metres by the most practicable route by foot from the applicant's existing premises ("a minor relocation of less than 500 metres"), the Primary Care Trust shall—

- (a) determine the application without giving notice of the application under regulation 23 or hearing any oral representations under regulation 24; and
- (b) grant the application.

unless, within the period of 30 days beginning with the date of receipt of the application it notifies the applicant that it considers that it is desirable that the application be determined as if it were a minor relocation to premises which are 500 metres or more by the most practicable route by foot from the applicant's existing premises ("a minor relocation of 500 metres or more").

(4) Where the Primary Care Trust determines under paragraph (3) that an application for a minor relocation of less than 500 metres should be determined as if it were a minor relocation of 500 metres or more, it shall send the applicant a statement in writing setting out—

- (a) its decision and its reasons for it, and
- (b) the applicant's right of appeal under paragraph (5).

(5) The applicant may within the period of 30 days beginning with the date of receipt of the notification under paragraph (4), appeal in writing to the Secretary of State against the decision notified to him under that paragraph.

(6) A notice of appeal under paragraph (5) shall contain a concise statement of the grounds of appeal.

(7) The Secretary of State may, when determining the appeal under paragraph (5)—

- (a) confirm the decision of the Primary Care Trust;
- (b) grant the appeal; or
- (c) grant the application.

(8) The Secretary of State shall notify the applicant and the Primary Care Trust in writing of his determination and shall include with the notification a written statement of the reasons for his determination.

(9) Where the determination of the Secretary of State is to grant the appeal, the Primary Care Trust shall within the period of 30 days beginning with the date of receipt of the notification under paragraph (8) determine the application in accordance with paragraph (3)(a).

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Chairman
Interim Chief Executive

Dr Geoff Archenhold
Mr. Robert Mackie

Jubilee House

Bloxwich Lane
WALSALL
WS2 7JL

Switchboard 01922 618388
Fax. 01922 618309
Direct Line 01922 618348

Ms. N. Khideja,
Director,
Ph4rmacy Ltd.
9 Westminster Close,
Dudley,
West Midlands.

DY1 2RA

Our Ref. AJS/pharm.apl.n.ph4rmacy 40

Date 1st April, 2011

Dear Ms Khideja,

Application for inclusion in the pharmaceutical list
At 7-9 Kinnerley Street, The Chuckery, Walsall, WS1 2LD

Further to your application to be included in the Pharmaceutical List at 7-9 Kinnerley Street, The Chuckery, Walsall. The application was considered by the Pharmacy Applications Group at its meeting and was determined under Regulation 5(1) and Regulation 12 of the National Health Service (Pharmaceutical Services) Regulations 2005.

I regret to inform you that the Pharmacy Applications Group (PAG) decided NOT to approve your application. It was agreed that it was neither necessary nor expedient to grant the application.

Your application follows the relocation of Shire Pharmacy to The Limes Business Park, 5 Birmingham Road in January, 2010 and you believed that this left the neighbourhood without access to pharmaceutical services. It was noted you defined the neighbourhood area as the same as the Walsall MBC. The application states the area is defined with its own places of worship, schools, park, residential homes, grocers, post office, granted home zone status, industrial places of work, SureStart services, electoral ward, barbers, hairdressers and neighbourhood watch. The majority of access outside the area of Chuckery is down a gradient which must be climbed on the return route. The nearest pharmacy is in a different locality and subject to crossing the main dual carriageway leading from Walsall town centre to Birmingham. There is only one point of assisted crossing resulting in a dangerous and unpractical route.

The application states the local community is isolated from pharmaceutical services following the relocation of Shire Pharmacy. You state a pharmacy has served the community and locality at the proposed site for over 100 years, the locality is significantly disadvantaged from accessing pharmaceutical services that it has accessed for over 5 generations. The population is densely urban, with terraced houses and blocks of flats. In addition there are several high rise apartment

blocks leading to a dense urban population. The nature of the population results in limited car and limited disposable income for public transport.

The Committee agreed that the applicant had failed to show that there are any difficulties for patients to access the services provided by other pharmacies. The applicant merely shows that patients may have to cross busy roads and walk up inclines. The applicant has not shown that there are inadequate road crossings on these busy roads. The applicant has failed to provide information on how many patients will be unable to access these pharmacies. The applicant has not proven that public transport is inadequate for patients to access these pharmacies.

There are 13 pharmacies within the 1 mile radius of the site, 5 of which are within 500 yards. The Committee dispute the walking times suggested by the applicant. Multimaps suggests a walking time of 11 minutes, less than half of the applicants suggestion. The Limes Pharmacy (Shire) has relocated a mere 200 yards from the site and still serves the community of Chuckery and there is no gap generated by this move. The applicant has not demonstrated any inadequacy of pharmaceutical services provision in the neighbourhood nor any complaints.

The Committee believe that the applicant had not demonstrated that an additional pharmacy is either necessary or expedient. There have been no changes in the surgeries, transport links or roads in the vicinity since Shire Pharmacy relocated. Evidence used to define the neighbourhood isn't bound by any significant physical boundaries.

The minor relocation of Shire Pharmacy which was granted by the PCT was appealed against. The Appeal Authority dismissed the appeal in April, 2010 and granted the minor relocation, stating that the Shire Pharmacy would still be serving the neighbourhood from which it had relocated. If there were significant boundaries then the relocation of Shire Pharmacy would not have been granted.

The Committee agreed that nothing had changed in the locality since the previous minor relocation in 2009 and that the applicant had not demonstrated that a new pharmacy in the area was either necessary or expedient. The Committee agreed with the comments made by pharmacies in the surrounding areas. Therefore the Committee agreed to reject the application.

You have the right to appeal against this decision. Any such appeal should be sent in writing and within 30 (thirty) days of the letter to the Family Health Services Appeals Unit, 1 Trevelyan Square, Boar Lane, Leeds, LS1 6AE.

Yours sincerely,

Alison Simmons (Mrs)
Primary Care Contracts Manager (Performer Lists)

APPENDIX 2

Chairman Dr Geoff Archenhold
Chief Executive Mr. Rob Bacon

Jubilee House

Bloxwich Lane
WALSALL
WS2 7JL

Switchboard 01922 618388
Fax. 01922 618309

Councillor Z. Ali,
Paddock Ward,
Portfolio Holder for Communities & Partnerships, Your Ref.ZA/LS
Walsall Metropolitan Borough Council, Our Ref. PG/AJS
The Civic Centre,
P.O. Box 23, Date 10th May, 2011
The Council House,
Walsall. WS1 1TP

Dear Councillor Ali,

Pharmacy in Chuckery Area

Thank you for your letter of 18th April, 2011, addressed to Rob Bacon regarding the above. As Managing Director of NHS Walsall I am writing in response to the issues you have raised.

Ph4rmacy Limited applied to open a new 40 hour pharmacy at 7-9 Kinnerley Street, Chuckery, following the relocation of the former pharmacy, Shire Pharmacy to the Limes Business Park, 5 Birmingham Road in January, 2010, less than 500 metres from its original location. The minor relocation of Shire Pharmacy was granted by the PCT, this decision was appealed against to the FHS Appeal Unit, NHS Litigation Unit. The Appeal Unit agreed with the PCT's decision that Shire Pharmacy would still be serving the same neighbourhood and upheld the PCT's decision. There had been no changes in GP Surgery locations, transport links or roads in the vicinity since Shire Pharmacy relocated. Evidence used to define the neighbourhood isn't bound by any significant physical boundaries. This evidence amongst other information was discussed by the Pharmacy Applications Group when making its decision not to approve a new pharmacy contract in the area. The applicant did not convince the Panel that a new pharmacy was neither necessary nor expedient. Nor did the applicant demonstrated any inadequacy of pharmaceutical service provision in the neighbourhood

There are 13 pharmacies within the 1 mile radius of the site in Kinnerley Street and 5 within 500 metres. An exercise has been undertaken to ascertain which GP practices the residents of the Chuckery area are registered with, please see Enclosure 1 (attached). From the analysis it can be seen that almost 70% of residents are registered to practices in Chuckery or neighbouring communities i.e. Walsall Central and Caldmore. Since the relocation of Shire Pharmacy the PCT has not received any comments or complaints from patients living in Chuckery regarding the

relocation, this might imply that patients are still able to access pharmaceutical services without any great difficulty.

The Pharmacy Needs Assessment states that Chuckery is one of 6 localities within Walsall without a pharmacy. Chuckery is a small locality approximately half of which is non-residential, there are good transport links to Walsall Central and Caldmore, these 2 localities have the largest number of pharmacies per 1,000 population. During the formal consultation process, the results of the focus group of Chuckery residents suggested that patient use of pharmacies is linked their use of GP practices and their shopping behaviour. In December, 2010, a new Tesco 100 hour pharmacy opened in the Walsall Central locality improving access further for these residents. The focus group was able to identify what members classed as their local pharmacy and did not identify any problems with accessing a pharmacy.

On receipt of the decision by the PCT the applicant was given 30 days to appeal to the FHS Appeal Unit, which they have done. The Appeal Unit will relook at all the evidence from the applicant and other pharmacies within a mile radius of the proposed site and may decide to hold an oral hearing, giving all parties the opportunity to give evidence and state their case. The Appeal Unit will then look at all evidence and information and make their decision, either to uphold the PCT's decision or to overturn the PCT's decision therefore allowing the applicant to open a pharmacy at Kinnerley Street, Chuckery.

The closure of the pharmacy in Kinnerley Street was one made by the pharmacy contractor not by the PCT. The pharmacy relocated under the Minor Relocation process for pharmacy applications. If the move is less than 500 metres, serves the same population and within the same neighbourhood, no physical barriers between the existing and proposed site that restrict the accessibility to the proposed new premises and there would be no interruption in the provision of pharmaceutical services then the PCT has no alternative but to approve the application. The Contractor does not have to notify the PCT of their reason for the minor relocation, although the move is closer to 1 of the GP practices.

Should you have any queries, please do not hesitate to contact Phil Griffin, Associate Director Primary Care Contracting on 01922 619995.

Yours sincerely,

Salma Ali
Managing Director - NHS Walsall

Copy Paul Sheehan, Chief Executive, Walsall MBC
Jamie Morris, Executive Director, Neighbourhood Services
Councillor Mike Bird, Leader of the Council
Clive Wright, Partnership Director
Councillor Barbara McCracken, Portfolio Holder for Social Care and Health
Rob Bacon, Chief Executive – Black County PCT Cluster
Phil Griffin, Assistant Director Primary Care Contracting

APPENDIX 3

Chairman Dr Geoff Archenhold
Chief Executive Mr. Rob Bacon

Jubilee House

Bloxwich Lane
WALSALL
WS2 7JL

Switchboard 01922 618388
Fax. 01922 618309
Direct Line 01922 618348

Mr. R. Bushell,
Appeal Officer,
NHS Litigation Authority,
1 Trevelyan Square,
Boar Lane.
Leeds. LS1 6AE

Our Ref. AJS/pharm.appeals.ph4rmacy

Your Ref. SHA/16263
Date 10th May, 2011

Dear Mr. Bushell,

SHA/16263 – Ph4rmacy Ltd.,
Application for inclusion on the Pharmaceutical List at
7-9 Kinnerley Street, The Chuckery, Walsall, WS1 2LD

I refer to your letter of 3rd May, 2011, concerning the above application.

Please find enclosed the following:-

1. A copy of the original application and associated documentation These documents were circulated – Appendix 1.
2. The PCT's request for representations and the circulation list – Appendix 2
3. Representations received by the PCT. These were circulated with the decision letter – Appendix 3
4. PCT's internal paperwork, agenda and minutes of decision making meeting – Appendix 4
5. Details of Enhanced Services provided by local pharmacies. There are no enhanced services that are commissioned by the PCT but are not being provided. – Appendix 5.
6. PCT's decision letter and full list of names and address of those notified – Appendix 6.

7. A minor relocation under 500 metres was granted from 7-9 Kinnerley Street, Chuckery to The Limes Business Park, 5 in January, 2010. The FHSA Authority upheld the PCT's decision that the application met the criteria for a minor relocation
 - There are no physical barriers between the existing and proposed site that restrict the accessibility to the proposed new premises.
 - The relocation is within the same neighbourhood.
 - Services offered by the pharmacy would continue to be provided at the new premises.
 - There would be no interruption in the provision of pharmaceutical services.
8. There are no current pharmacy applications in process for the area, either under consideration by Walsall PCT or on appeal.
9. There are no local pharmaceutical services provided in or to the neighbourhood or adjacent neighbourhood.
10. A map identifying:-
 - 10.1 The neighbourhood of the Proposed site.
 - 10.2 The proposed site.
 - 10.3 Existing pharmacies
 - 10.4 Existing GP Surgeries

Should you have any further queries, please do not hesitate to contact me on 01922 618348 or Mr. Bharet Patel, Pharmaceutical Advisor on 01922 619907.

Yours sincerely,

Alison Simmons (Mrs)
Primary Care Contracts Manager (Performer Lists)

Encs.

APPENDIX 4

Chairman Dr Geoff Archenhold
Chief Executive Mr. Rob Bacon

Jubilee House

Bloxwich Lane
WALSALL
WS2 7JL

Switchboard 01922 618388
Fax. 01922 618309
Direct Line 01922 618348

Mr. R. Bushell,
Appeal Officer,
NHS Litigation Authority,
1 Trevelyan Square,
Boar Lane,
Leeds. LS1 6AE

Your Ref. SHA/16263
Our Ref. AJS

Date 15th June, 2011

Dear Mr. Bushell,

SHA/16263 – Ph4rmacy Ltd., - Application for inclusion on the Pharmaceutical List at 7-9 Kinnerley Street, The Chuckery, Walsall, WS1 2LD-

Thank you for your letter of 17th May, 2011, requesting representations for the appeal on the above application.

The applicant states that the Pharmacy Applications Group felt the applicant had failed to demonstrate there are any difficulties for patients to access services provided by other pharmacies.

There are 13 pharmacies within the 1 mile radius of the site in Kinnerley Street and 5 within 500 metres. An exercise has been undertaken to ascertain which GP practices the residents of the Chuckery area are registered with, from the analysis it can be seen that almost 70% of residents are registered to practices in Chuckery or neighbouring communities i.e. Walsall Central and Caldmore. Since the relocation of Shire Pharmacy in January, 2010, the PCT has not received any comments or complaints from patients living in Chuckery regarding the relocation, this might imply that patients are still able to access pharmaceutical services without any great difficulty.

The minor relocation of Shire Pharmacy was granted by the PCT, this decision was appealed against to the FHS Appeal Unit, NHS Litigation Unit. The Appeal Unit agreed with the PCT's decision that Shire Pharmacy would still be serving the same neighbourhood and upheld the PCT's decision. There have been no changes in GP Surgery locations, transport links or roads in the vicinity since Shire Pharmacy relocated. Evidence used to define the neighbourhood isn't bound by any significant physical boundaries. This evidence amongst other information was discussed by the Pharmacy Applications Group when making its decision not to approve a new pharmacy contract in the area. The applicant did not convince the Panel that a new pharmacy was neither necessary nor

expedient. Nor did the applicant demonstrate any inadequacy of pharmaceutical service provision in the neighbourhood.

The Pharmacy Needs Assessment states that Chuckery is one of 6 localities within Walsall without a pharmacy. Chuckery is a small locality approximately half of which is non-residential, there are good transport links to Walsall Central and Caldmore, these 2 localities have the largest number of pharmacies per 1,000 population. During the formal consultation process, the results of the focus group of Chuckery residents suggested that patient use of pharmacies is linked to their use of GP practices and their shopping behaviour. In December, 2010, a new Tesco 100 hour pharmacy opened in the Walsall Central locality improving access further for these residents. The focus group was able to identify what members classed as their local pharmacy and did not identify any problems with accessing a pharmacy.

Appendix 5 details letters of complaints from local councillors, chairman of the local mosque and local residents, none of these letters were received by the PCT following the relocation of Shire Pharmacy, the letters of complaints only appear with the applicants appeal information. Only one letter has been received by the PCT on 18th April, 2011, which was replied to on 10th May, 2011, today no further complaints or letters have been received from any of the Chuckery population.

The use of Multimap does take into account walking times but in this instance only walking distances were used. As stated before patients are registered to a number of local practices and the relocation of Shire Pharmacy is closer to one of their local GP practices.

Letters of complaints state that residents feel let down by the closure of the pharmacy in Kinnerley Street. Please note this decision was one made by the pharmacy contractor not by the PCT. The pharmacy relocated under the Minor Relocation process for pharmacy applications. If the move is less than 500 metres, serves the same population and is within the same neighbourhood, no physical barriers between the existing and proposed site that restrict the accessibility to the proposed new premises and there would be no interruption in the provision of pharmaceutical services then the PCT has no alternative but to approve the application. The Contractor does not have to notify the PCT of their reason for the minor relocation, although the move is closer to 1 of the GP practices.

The applicant states the regulations in determining the application were breached. The delay in determining the application was due to "not enough members for the PAG", this was true as one of the PCT members passed away suddenly and there was a delay in appointing to this particular post, therefore the Committee did not have sufficient membership.

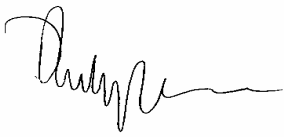
2.2 states the applicant has significant reason to believe that an individual took part in the PAG and subsequent decision making process was not in accordance with the regulations stated. The PCT would like to ask the applicant to identify this person to allow the PCT to make comment. Also a Freedom of Information 2000 request was made to the PCT on 7th April, 2011, the reply was sent on 4th May, 2011, within the recognised time limit for FOIs.

The applicant has provided information regarding access to the pharmacy at The Limes Business Park, 5 Birmingham Road, Walsall from Chuckery. But as mentioned above there were no complaints or comments from residents, patients or local community associations regarding access or indeed other services to 5 Birmingham Road. The applicant could not prove that the current pharmaceutical services to the area were inadequate.

The Pharmacy Applications Group viewed all evidence at its meeting and made the decision to reject the application as neither necessary nor expedient.

Should you have any further queries, please do not hesitate to contact Alison Simmons on 01922 618348.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Phil Griffin', with a long horizontal flourish extending to the right.

Phil Griffin
Assistant Director Primary Care Contracting

