

IN CONFIDENCE – FOR MEMBERS’ INFORMATION ONLY

MINUTE: PPC/09/04

Minute of Meeting of the Pharmacy Practices Committee held on Friday, 27th February 2009 in the Boardroom, NHS Lanarkshire Headquarters, Beckford Street, Hamilton, ML3 0TA.

Chairman: Mr B Sutherland

Present: Lay Members Appointed by the Board

Mrs M Caraher
Mrs M Crawford
Mr J Woods

Pharmacist Appointed by The Royal Pharmaceutical Society of Great Britain

Mr E J H Mallinson

Pharmacist Nominated by Area Pharmaceutical Committee

Mr I Allan
Mrs J Park

In Attendance: Officers from NHS Lanarkshire - Primary Care

Mr G Lindsay, Chief Pharmacist – Primary Care
Mrs G Forsyth, Administration Manager – Primary Care

Officer from NHS Central Legal Office

Mr Ranald Macdonald, Senior Legal Adviser

Officer from Ubiquis

Mr Mark Woffenden, Transcriber

APPLICATION BY MR P HARRIS [REDACTED], EAST KILBRIDE, [REDACTED]

Application

There was submitted application by Mr Philip Harris, received 2nd September 2008, for inclusion in the Pharmaceutical List of Lanarkshire Health Board in respect of a new Pharmacy at 2 Scholar’s Gate, Whitehills, East Kilbride, G75 9DN (land to front of Little Sholar’s nursery) (“the premises”).

Submissions of Interested Parties

The following documents were received during the period of consultation and submitted:

1. Letter received from Boots UK Limited on 12th September 2008
2. Letter received from Boots UK Limited on 23rd September 2008
3. Letter received from Apple Pharmacy on 26th September 2008
4. Facsimile received Lloyds Pharmacy Ltd on 30th September 2008
5. Letter received from Frasers' Pharmacy on 30th September 2008
6. Letter received from Rowlands Pharmacy on 30th September 2008
7. Facsimile received from Lloyds Pharmacy Ltd on 2nd October 2008
8. Letter received from Greenhills Pharmacy on 3rd October 2008
9. Letter received from Area Pharmaceutical Committee of Lanarkshire Health Board on 7th October 2008

Procedure

At 16:00 on Friday, 27th February 2009, the Pharmacy Practices Committee (“the Committee”) convened to hear application by Mr Philip Harris (“the applicant”). The hearing was convened under paragraph 2 of Schedule 3 of The National Health Service (Pharmaceutical Services)(Scotland) Regulations 1995, (S.I. 1995/414), as amended (“the Regulations”). In terms of paragraph 2(2) of Schedule 4 of the Regulations, the Committee, exercising the function on behalf of the Board, shall “determine any application in such manner as it thinks fit”. In terms of Regulation 5(10) of the Regulations, the question for the Committee is whether “the provision of Pharmaceutical services at the premises named in the application is necessary or desirable in order to secure adequate provision of Pharmaceutical services in the neighbourhood in which the premises are located by persons whose names are included in the Pharmaceutical List”.

It was noted that Members of the Committee, together with Mr R Macdonald, Senior Legal Adviser – NHS Central Legal Office, Mr G Lindsay, Chief Pharmacist – Primary Care, NHS Lanarkshire, and Mrs G Forsyth, Administration Manager – Primary Care, NHS Lanarkshire had previously undertaken a site visit of East Kilbride on Monday, 16th February 2009, noting locations of the premises, existing Pharmacies, general medical practices, and other amenities within the town.

Prior to the arrival of parties the Chairman asked Members to confirm that they had received and considered the papers relevant to the meeting. Having ascertained that no Members, or officers in attendance, had any personal interest in the application the Chairman confirmed that the Oral Hearing would be conducted in accordance with the guidance notes contained within their papers. The Chairman then asked that the applicant and interested parties who had chosen to attend be invited to enter the hearing.

Attendance of Parties

The applicant Mr Philip Harris attended and was assisted by Mr Daniel Doyle. The first interested party, Greenhills Pharmacy, J P Fenton and Sons Ltd, 7 Greenhills Square, Greenhills, East Kilbride, Glasgow, G75 8TT was represented by Ms Felicity Fenton. The second interested party, Frasers' Pharmacy, Donald R Fraser, 16 Westwood Square, East Kilbride, Glasgow, G75 8JQ was represented by Mr Colin D Fraser. The third interested party, Rowlands Pharmacy, Whitehouse Industrial Estate, Rivington Road, Preston Brook, Runcorn, WA7 3DJ was represented by Mr David Young. The fourth interested party, Apple Pharmacy, of 23 Crow Road, Glasgow, G11 7RT was represented by Mr Neeraj Salwan. The fifth interested party was Lloyds Pharmacy Ltd, Lloydspharmacy, Sapphire Court, Walsgrave Triangle, Coventry, CV2 2TX was represented by Mr Danny McNally who was assisted by Mr Mark Sim.

The Chairman welcomed the applicant and interested parties to the meeting, and apologised for the delay in reconvening after concluding the second hearing of the day. He then introduced himself, the Members, and the officers in attendance from NHS Lanarkshire – Primary Care, NHS Central Legal Office, and Ubiquis. He continued to suggest to all parties present, who were involved in the second hearing, that in order to allow the hearing to convene without further delay, that they accept a verbal outcome of the decision reached in respect of the application made by Apple Pharmacy until such times as Mrs Forsyth was able to provide written notification to them during this meeting, as the Committee thought that it was particularly important for those present, in arguing this case, to have some insight into what they felt as a result of their deliberations of the neighbourhood.

Having obtained agreement from the relevant parties, the Chairman then provided an overview of the Committee's deliberations of the statutory test in respect of the application by Apple Pharmacy for a new Pharmacy at 7 Severn Road, Gardenhall, East Kilbride, before advising them that the Committee had concluded that the granting of the contract was neither necessary or desirable in order to secure adequate provision of Pharmaceutical Services within the neighbourhood in which the Premises were located by persons whose names are included in the Pharmaceutical List, and that accordingly the application by Apple Pharmacy had been rejected.

The Chairman then asked the parties present to confirm that they had received all papers relevant to the third application and hearing to be held today. He then confirmed that the meeting was being convened to determine the application submitted by Mr Philip Harris, for inclusion in the Pharmaceutical List of Lanarkshire Health Board in respect of a new Pharmacy at 2 Scholar's Gate, Whitehills, East Kilbride, Glasgow, G75 9DN according to the Statutory Test set out in Regulation 5(10) of the Regulations. He then continued to explain the procedures to be followed and advised that all Members of the Committee had conducted a site visit and were familiar with the proposed site, and that no members of the Committee, nor officers in attendance, had any interest in the application.

Evidence Led

The Chairman then invited Mr Harris to speak first in support of his application.

Mr Harris introduced himself and confirmed that he would present his case and that Mr Doyle was attending in a supportive capacity. Prior to starting Mr Harris asked for confirmation as to the version of the map that was being used during consideration of the neighbourhood, as he had an alternative version available that did not have legends covering part of his proposed area. The Chairman advised that they had many different versions available, however that it would be beneficial if he wanted to have his version distributed for uniformity. Copies were then distributed amongst all parties present before Mr Harris began his presentation of the following pre-prepared statement:

“The neighbourhood pertinent to this application can be defined as follows: the Northern boundary is provided by Stroud Road with the Southern boundary provided by Greenhills Road. The Western and Eastern boundaries are the connections between these two roads provided by Quarry Road and Strathaven Road. It consists of the residential area of Whitehills and the Kelvin Industrial Estate. Whitehills is one of the original areas of East Kilbride which came into being during the expansion of East Kilbride in the 1960s and 1970s. Within the community there are a selection of local amenities including a general store, newsagents with an off licence, a hairdresser, two gastro pub restaurants, a further restaurant and a takeaway outlet. In addition, the community is served by a church, a childrens’ nursery, a community hall and a large community sports facility. The area is represented by its own community council. In passing, I would point out that it remains the only one of the original areas of East Kilbride to have no Pharmaceutical service provision within it.

Turning to the population of Whitehills, the most recent population figures available from South Lanarkshire Council indicate the population to be 3,775. This was in 2006 and is compiled from the Scottish Neighbourhood Statistics. These figures, however, do not include the recent development of 43 large family homes at the top of High Whitehills Road where it joins onto Greenhills Road. At a conservative estimate the population will now have reached 3,900 including these houses. Furthermore, the area of the former St Andrew’s High School is included as part of the South Lanarkshire Local Development Plan, which outlines all future development of the town and surrounding area. Within this plan the Council has set aside the area of the former school as a further sports facility and also included consent for a further 152 houses on the site. Including the completed development and the new site, projected population figures for Whitehills would be at least 4,300. This residential population by itself would, in my opinion, merit consideration for any application for the provision of Pharmaceutical services. The neighbourhood, however, also includes the Kelvin industrial area, which is directly adjacent to the Whitehills area. This area is the largest industrial area in East Kilbride and has a large transient population as one of the town’s largest employment areas. I would expect a Pharmacy at the proposed site to also serve this population. The industrial area has 164 units and the amount of people employed in the area is approximately 2,500. For this population the closest access to Pharmaceutical care during working times, would be at the proposed site.

If I could move on to services within the neighbourhood. The two nearest Pharmacies are located at The Murray Square and at Greenhills Square. Neither is located within the defined

neighbourhood and as such at present no Pharmaceutical services are currently provided within the defined neighbourhood.

I would like to consider the adequacy of the current services provided. The nearest of the Pharmacies to the proposed site is the one at Murray Square at about a mile. The Murray is separated from Whitehills by a major road, Stroud Road. Stroud Road is one of the main connecting roads which bisects the Southern end of East Kilbride. There are no crossings on this road. The only connection between the two areas is a single, dark, damp, poorly lit and vandalised underpass. This is neither welcoming nor ideal for anyone wishing to access Pharmaceutical services. Furthermore, Whitehills is situated at the highest point in East Kilbride and The Murray at one of the lowest, so anyone walking from The Murray back to almost any part of the Whitehills is faced with a steep climb home. This would be daunting for any elderly or infirm patients seeking to access Pharmaceutical care. There are no direct road links between the two areas, so whilst they are close on the map anyone driving has a 2.6-mile journey to get to Murray Square or a 20-25-minute bus journey if they take public transport. The Greenhills Pharmacy is located at just over a mile as the crow flies or 1.4 miles by road. To access services at Greenhills, residents of Whitehills would have to rely on public transport or face a 20-25-minute walk across virtually the whole of Greenhills to reach Greenhills Square. When trying to access Pharmaceutical services the population or the community of Whitehills should not have to depend on either of these two options, especially when they may be frail or ill.

Local statistics provided by the Council suggest that residents would be likely to require access to Pharmaceutical services. For instance, of the over-65 population, 29% are described as, and I quote, 'health status not good' with the survey done. This is 7% higher than the Scottish average. The number of children in lone adult households or workless households is 2-3% above the Scottish average. These statistics plus the higher than average amount of Council-owned property within the area suggest the population of Whitehills would be expected to be higher than average users of NHS facilities, including those of community Pharmacy. It should also be noted that present government policy enclosed within the new contract for community Pharmacy and several guiding documents encourages the provision of clinical services on a local basis. The new Pharmacy contract is designed to ensure patients have convenient access to the full range of Pharmaceutical services at a local level. In my opinion, only the provision of a Pharmacy contract locally would ensure that for the people of Whitehills. The provision of a collection and delivery service by some of the local chemists does not, in my opinion, constitute a full Pharmaceutical service to the community.

In considering all of the previous information I believe that at present the provision of Pharmaceutical services within the neighbourhood is inadequate. In conclusion, I believe that Whitehills and the adjoining Kelvin Industrial Estate is a neighbourhood in its own right as defined at the beginning of my statement. It is my belief that this neighbourhood is at present poorly served in terms of provision of Pharmaceutical services and this is a situation which will only get worse with any future increase in population. For these reasons I believe that it is necessary and desirable to grant this application. Thank you very much."

The Chairman then invited questions from Mrs Felicity Fenton, Greenhills Pharmacy, to Mr Harris.

Ms Fenton asked Mr Harris if he thought that patients from the Whitehills area would be able to walk to The Murray Pharmacy [sic], to which he replied that there was an underpass however it was “not inviting”. This led Ms Fenton to ask for confirmation as to whether or not Mr Harris was agreeing that patients could walk and was advised that it was possible given that there was a path. Her next question was to ask if patients could get a bus to take them to Greenhills and was advised that this was also possible. Ms Fenton’s final question was to ask if Mr Harris had an opinion on where residents from Whitehills would obtain medical services. Mr Harris replied that as there was a choice of GP Surgeries all over East Kilbride and that he had no figures available, he would suggest that it could be from any of the Health Centres within the town. When Ms Fenton asked him to consider between surgeries located in The Murray or Greenhills, he replied that he did not know the answer.

Having ascertained that Ms Fenton had no further questions, the Chairman then invited questions from Mr Colin Fraser, Frasers’ Pharmacy to Mr Harris.

Mr Fraser’s first question was to ask if Mr Harris was aware of any complaints being received by NHS Lanarkshire concerning inadequacies of service within the area, and was advised that he was not. He then asked if he would agree that nothing has changed within the area since a previous application was rejected by the Board. Mr Harris replied that he disagreed with this statement as his view was that the expectations of Pharmaceutical services had changed within the intervening period. This led Mr Fraser to ask if there had been any change in population, to which he replied that he had outlined changes to the population within his presentation, and that whilst he was unaware of when the previous application to which Mr Fraser referred was made, he would have thought that it would have been before the new housing development was erected. Mr Fraser then asked if Mr Harris was able to advise when the houses at St Andrew’s school would be built, and was informed that there was no date set.

Mr Fraser’s attention then turned towards the services that Mr Harris intended to provide, and asked what he would offer that was different from the existing contractors in the area. Mr Harris replied that he proposed to offer a full Pharmaceutical service and that whilst he was aware that this is currently being provided in other Pharmacies, he was of the opinion that they were not being provided for the residents of Whitehills locally. Mr Fraser’s final question was to ask if Mr Harris’s Collection and Delivery service would include delivering to patients outwith his definition of the neighbourhood. Mr Harris’s response was that he didn’t mention in his presentation that he would collect, but that he would and furthermore he would do it for the whole of East Kilbride if necessary. This led Mr Fraser to ask if this meant that he would agree that his neighbourhood was different to that stipulated within his original application, and was advised that Mr Harris believed his neighbourhood to be that proposed in his presentation, however if he were to receive requests for a service from outwith his neighbourhood he would fulfil them.

Having ascertained that Mr Fraser had no further questions, the Chairman then invited questions from Mr David Young, Rowlands Pharmacy to Mr Harris

Mr Young stated that he had only one question and it was to ask Mr Harris if he had any tangible evidence that there is an inadequacy of Pharmaceutical services within his defined neighbourhood, and was advised by Mr Harris that he did not.

Having ascertained that Mr Young had no further questions, the Chairman then invited questions from Mr Neeraj Salwan, Apple Pharmacy Ltd to Mr Harris.

Mr Salwan asked Mr Harris if he knew the distance of the underpass from his Pharmacy, Mr Harris replied that whilst he did not know for certain he would guess that it was approximately 600 yards, as he had previously stated that there was a mile between Apple Pharmacy and his proposed site and that the underpass appeared to be located half way between. This led Mr Salwan to ask if Mr Harris would consider that 600 yards did not constitute a long walk to which he replied that it would take around 5-10 minutes. Mr Salwan's last question was to ask how long it would take to drive from Mr Harris's proposed site to Greenhills Pharmacy, to which he informed that he thought five minutes.

Having ascertained that Mr Salwan had no further questions, the Chairman then invited questions from Mr Danny McNally, Lloyds Pharmacy Ltd to Mr Harris.

Mr McNally noted that Mr Harris had referred to a letter of intent from the developer as to the premises and asked if terms have been agreed. Mr Harris advised that he brought a letter with him that stipulates the terms of the lease. Mr McNally's final question was to ask the size of the unit and was informed that it was approximately 50 square metres.

Having established that there were no further questions from the Interested Parties, the Chairman then invited questions from Members of the Committee in turn to Mr Harris

Mr Allan was invited to question first and stated that he would like to learn more about the premises and the timescales which Mr Harris would be able to comply with. Mr Harris replied that the only stipulation they have with regards to planning at the moment is that there is an adjustment to be made to the road layout to aid parking at the site. Mr Allan then asked for clarification as to the positioning of the unit with regards to the nursery, and was informed that the plans were for an extension or annexe to the existing nursery premises on the upper floor which would allow two retail units on the lower floor, furthermore that the existing parking spaces in front of the nursery would be retained with additional spaces in front of the retail units. Mr Allan asked if the plans were still in their infancy and was advised that the only matter outstanding was the final say from the Roads Department and that building could start as soon as that was addressed. Mr Allan had no further questions for Mr Harris and thanked him.

Mr Mallinson was next invited to question and stated that he would follow on from Mr Allan's questions and ask if Mr Harris could inform the Committee as to how long the application had been with the Roads Department. He replied that this was the final part of the process as the actual plans for the building had already gone through planning control however the Roads Department require the final say with regards to parking issues and access, given that there will require to be an adjustment made to pavements, but that it shouldn't take too long. When asked if he had any indication of timescale he advised that he did not, which led Mr Mallinson to question if this meant that Mr Harris was unable to guarantee that he would be able to open within six months if the contract was granted, he replied that he would be extremely surprised if consent wasn't available within that timescale.

Mr Mallinson then turned his attention to the services that Mr Harris proposed to provide, and asked if there were any that he anticipated supplying that weren't currently available and

within easy access of his neighbourhood. Mr Harris stated that he was of the opinion that he had mentioned earlier that his intimation with this application is not that existing Pharmacies are not providing services, it was that they were not available within his neighbourhood nor easily accessible for the residents of Whitehills. This led Mr Mallinson to remark that the crux of the application was then based on accessibility only to be interrupted by Mr Harris stating that the crux he would say is provision at a local level for a substantial population.

Mr Mallinson then asked Mr Harris what level of demand he anticipated from people who use Kelvin Industrial Estate, given that he had included this in his definition of the neighbourhood. He was advised that it was the biggest employment area in East Kilbride with an estimated 2,500 people working full time during the hours he intended to open, therefore any one of the workforce who wished to use Pharmaceutical services, for whatever reason, would hopefully migrate towards his Pharmacy given that it would be the closest. Mr Mallinson queried how feasible this was given that his proposed site was at the very far side of the defined neighbourhood from the Estate and would people not tend to travel to other Pharmacies closer to the centre of East Kilbride. Mr Harris accepted that the alternative would be to head toward the town centre at the far side, however that this would result in having to find, and pay, for a car parking space before walking to the chosen Pharmacy, and that his own personal choice would be to exit up on to Greenhills Road down High Whitehills Road towards his proposed site.

Mr Mallinson's final question was to seek clarification on the location of the parking facility, asking if it was the small area to the front of the nursery in the lower level with the "clinker finish" which was identified during the site visit. Mr Harris replied that he had the full architect's drawing with him which outlined two parking spaces either side of the two retail units, with a further four spaces within the area at the front. Mr Mallinson thanked the Chairman and confirmed that he had no further questions at this time.

Mrs Park was third invited to speak and she asked if Mr Harris was able to share the letter of intent from the developer with the Committee. Mr Harris passed the letter to the Chairman who advised that it was a letter from Hart Partnership dated 23rd February 2009, and that as it was quite short he would read it out to all parties present: "Dear Philip, Thank you for your continued support regarding this future project. We have been busy with our architects getting place drawings for the South Lanarkshire Planning Committee meeting due at the end of February. At this time the drawings will show a two-tier building with an annex to the current childrens' nursery on the second floor and the retail unit (Pharmacy) to be sited on the ground level. All going well at Planning we should look forward to offering your company an agreed 15-year lease for the site. Yours sincerely, Stephen Hart, Partner."

Mrs Park thanked Mr Harris and stated that she had no further questions.

Mr Woods followed Mrs Park and stated that he would like Mr Harris to clarify what he was asking the Committee to glean from his comments that "Whitehills is poorly served" during the part of his presentation around adequacy, as he was unclear from his references to the topography of the area, frequency of public transport, and the existing Collection and Delivery services in operation, if he was stating that current services were inadequate or difficult to access. Mr Harris replied that "The overall argument I think I made was that there's no direct provision or Pharmacy within that neighbourhood which actually has a population large enough to warrant such an application for provision of services, and whilst people could access other Pharmacies that the inconvenience of doing so and the time to get

to other Pharmacies whilst they provide the services, or from some of the other Pharmacies a delivery service, that wasn't an adequate replacement for having Pharmaceutical services available to that particular community." There followed an interchange between Mr Woods and Mr Harris with regards to the concept of adequacy, which concluded with Mr Harris indicating that, in his opinion, the ethos of the new Pharmacy contract is the provision of Pharmaceutical care at a localised level with easy access, and that he believes that the inadequacy of the current situation within his proposed neighbourhood exists because there is no provision within that large area. Mr Woods thanked the Chairman and stated that he had no further questions at this time.

Mrs Caraher was next to question and asked Mr Harris to give an overview of the services he intended to provide. Mr Harris advised that he proposed to provide full contract services to include dispensing of medicines, eMAS, any other localised Lanarkshire services, and the recent services introduced with the new contract e.g. emergency hormonal contraception and smoking cessation advice.

Mrs Crawford was then invited to speak and advised Mr Harris that she had noted he had said that there was 2,900 people in his neighbourhood together with a possible 2,500 transient population, making a total of 5,400, which led her to question if he would be able to provide services to the extent of his proposal given the amount of people. His response was that if his Pharmacy were to open he would be able to assist in the provision of Pharmaceutical services to those people and that the size of the unit would cater for this, and that taking the population of East Kilbride to be approximately 73,000 dividing this between the 11 existing contractors would result in circa 7,000 per Pharmacy and that there would be no reason why his Pharmacy could not cater for similar numbers.

The Chairman then asked Mr Harris what he thought persons within the residential area he had defined as his neighbourhood would answer if asked if they considered the area in which they lived to be Whitehills or next to Kelvin Industrial Estate? Mr Harris replied that they would say Whitehills. This led the Chairman to ask him in terms of the transient population in the Kelvin Industrial Estate, whether any of them would walk to the Whitehills area for any other form of services, and was advised that he had no figures or information to substantiate or deny that, which led the Chairman to state that from the site visit and the maps available it was his opinion that most people would tend to travel in and out using some form of transport rather than walking, and was advised that it was a possibility that they would use either public transport or their own.

The Chairman then referred to the map to state the exit and route he envisaged most of the workforce would use which in his opinion led them towards the existing Apple Pharmacy, therefore they would be just as likely to use it than travelling to Mr Harris's proposed site. This led Mr Harris to ask him if he had travelled along Kelvin Road and experienced all the speed bumps and all the traffic calming, to which the Chairman confirmed that he had. Mr Harris continued to state that in his opinion the easiest route was to travel along the South side on Greenhills Road and either turn right at the roundabout or North along Stroud Road and turn left at Quarry Road, both getting to his site, as he considered that route to be simpler, with a higher speed limit, and negating the need to go through the main residential area, rather than winding your way through to The Murray or having to overcome what he felt were problems accessing the town centre Pharmacies.

Mr Mallinson took the opportunity at this point to seek clarification from Mr Harris as to when the application for planning permission would be considered by the Planning Department, as he was unclear from the letter of intent that the Chairman read whether it gave an indication that the application had gone to them on 23rd February. Mr Harris replied that it had been going through the stages associated with planning control and that the final part is planned for the end of February. Mr Mallinson was still unclear as to the current position with the application and asked if he was stating that it went to Planning on 23rd, and was advised that the letter refers to the final part associated with the Roads Department, to which Mr Mallinson was able to suggest that thereafter it would go to the full Planning Committee in March. Mr Harris replied that he presumed that if the Roads Department agreed on the plans then it may be a straightforward matter to go through Planning as they were already content with the building plans. Mr Mallinson asked Mr Harris for a timescale for the application to be presented and was advised that he did not know the date of the next Planning Committee meeting.

Mr Woods then asked to have one final supplementary question, and asked Mr Harris whether or not he thought there would be an issue in the supply of a Methadone service given the juxtaposition between the site of the proposed Pharmacy and the nursery? Mr Harris advised that they would be two separate locations with two separate car parks and a separate entrance to the nursery, and that in his view you could make the same argument for any facility provided next to a Pharmacy, and that those concerns would be one the things he would take on board and hope that he was providing a safe and secure environment for people to get that service without affecting the neighbours.

Having ascertained that there were no further questions for Mr Harris, the Chairman then asked Mrs Felicity Fenton, Greenhills Pharmacy, to state her representation.

Mrs Fenton started by defining her views on the boundaries of the neighbourhood which in her opinion consist of “Newlandsmuir, Greenhills, Lindsayfield and Whitehills. The Northern boundary starting at the junction of Mossneuk Road and Westwood Hill, running along Westwood Hill, down towards Lickprivick Road and East along open ground to meet Stroud Road. It then heads east along Stroud Road to the Ballerup playing fields. It was at this point that Mr Harris interjected to advise that he was unable to follow Ms Fenton’s boundaries as he did not have a copy of her map detailing them, Ms Fenton let Mr Harris look at her copy in order that he may gain an appreciation of the area she was describing. Having been advised that he was now aware of the broad outline of the area being described she continued her submission stating:

“The Western boundary runs from the junction of Mossneuk Road and Westwood Hill, heading South to meet the Greenhills Road. The Southern boundary is open land South of East Kilbride and the Eastern boundary is the boundary of the Ballerup playing fields between Stroud Road and Greenhills Road, West along Greenhills Road and encompassing the housing estate at Lindsayfield.”

Having outlined her definition of the boundary she then advised that the next step in the process was to look at the existing services in the area, stating:

“If we consider the neighbourhood to be as I have described, which is Newlandsmuir, Greenhills, Lindsayfield and Whitehills, it’s served really by my Pharmacy at Greenhills shopping centre, which is conveniently located in the centre of the neighbourhood. There’s plenty of parking, easy disabled access and the Pharmacy is conveniently located next to

other neighbourhood facilities.” It was at this point that Mr Woffenden, Ubiquus asked if Ms Fenton could repeat part of her submission as it had not been picked up in the transcript. Ms Fenton obliged and agreed to recap from her statement regarding “existing facilities”. She continued:

“If we consider the neighbourhood as I have described, Newlandsmuir, Greenhills, Lindsayfield and Whitehills, it is served really by my Pharmacy at the Greenhills shopping centre, which is conveniently located in the centre of the neighbourhood. There’s plenty of parking, easy disabled access and the Pharmacy is conveniently located next to other neighbourhood facilities. It should be noted however that residents in the settlement in which the proposed premises are located also enjoy easy pedestrian access to The Murray Pharmacy [sic] and so I would expect a significant number to access services there. If we were to have a different take on the neighbourhood, which is the Committee’s take on the neighbourhood as laid out this morning, then the Pharmacy at Westwood Square would also be included as to providing services in the neighbourhood in which the proposed Pharmacy is located. Any residents who are requiring out of hours service can easily locate them at the Lloyds drive through.”

“And so to adequacy. If the Committee accept the neighbourhood as I have defined then there can be no question that services in the neighbourhood are adequate. Each neighbourhood in the wider area has a local Pharmacy providing a wide range of services with easy parking, disabled access and, to top it all off, a late night opening – a late opening drive-through Pharmacy almost on their doorstep. A key word is ‘adequate.’ The regulations are quite clear. In every application which is heard today, the most important question is: are services in the neighbourhood in which the proposed premises are located adequate? Not can they be improved, not can they be made more convenient, not would a Pharmacy here be a better choice of location. If the services provided to the area in question are currently adequate, then the application fails no matter how convenient or, indeed, important the local population or politicians believe a new Pharmacy might be. The regulations are designed to allow a new Pharmacy only where the current Pharmaceutical service is inadequate.”

“With this in mind let us consider the question of the adequacy of the services in the neighbourhood in which the premises are located. The most obvious fact is that there is a Pharmacy at the heart of the neighbourhood, mine, and as I described earlier we provide an excellent and comprehensive Pharmaceutical service to the entire neighbourhood supplemented by the Pharmacies in adjacent neighbourhoods, in particular the late opening drive through Lloyds. Again, if the Committee stand by their earlier defined neighbourhood then we can also include Westwood in providing services to these people. Residents can also access Pharmaceutical services at The Murray Pharmacy, which is a short walk or drive away. An application in Whitehills has previously been refused by The National Appeal Panel and there has been no change in the neighbourhood since then. The applicant has failed to provide any evidence of an inadequacy because there is none. Services are adequate and the application must fail. Thank You.”

The Chairman then remarked that he would depart from the procedure outlined within the guidance notes by asking each of the interested parties to give their representations at this point, and then invite questions from the applicant to each one in turn, prior to giving Members of the Committee their opportunity. All parties were in agreement to this deviation.

Mr Colin Fraser, Frasers' Pharmacy was the second interested party to make his representation

Mr Fraser began by thanking the Chairman then read the following pre-prepared statement:

“East Kilbride is currently well served by the current 11 community Pharmacies. In addition, Morrisons at Stewartfield and Lloyds at Alberta Avenue both provide extended hours of opening. The application is only three minutes drive away from Greenhills Pharmacy and five minutes walk from The Murray Pharmacy. Patients tend to access Pharmaceutical services nearest to their GP surgery. For example, Greenhills surgery patients will go to Greenhills Pharmacy. The proposed hours of opening are inferior to those currently provided by the Pharmacies in the area. There are no other supporting shops at Scholar's Gate. All you will find is a large nursing home, a public house and a nursery. There is no community at Scholar's Gate. Has the site just been chosen for its close proximity to The Murray surgery and the surrounding nursing homes? It appears that the applicant is blatantly trying to poach business from the surrounding Pharmacies, thereby jeopardising their ability to deliver Pharmaceutical services.”

“I would classify Greenhills, Lindsayfield, Newlandsmuir and Whitehills as one neighbourhood. The current population is insufficient to sustain another community Pharmacy. This neighbourhood is well served by the Greenhills Pharmacy and The Murray Pharmacy. NHS Lanarkshire has rejected an application by Mr Gordon MacDowell [sic] at exactly the same site a few years ago. No significant change in population has taken place. I'll reiterate the point that Greenhills Pharmacy is only three minutes away by car and five minutes walking distance. The granting of this application would have a detrimental effect on the services currently provided. Therefore, I would like the panel to reject this application.”

Mr David Young, Rowlands Pharmacy, was the third interested party to make his representation

Mr Young thanked the Panel and advised that he would accept Mr Harris's definition of the neighbourhood, and acknowledged that it did not contain a Pharmacy. However that he could not accept that this demonstrated inadequacy of the current service provision within the defined neighbourhood. He then referred to what he hailed as Mr Harris's admission that he had no tangible evidence whatsoever of any inadequacy, when Mr Young had questioned him earlier on this matter in the hearing. To conclude, Mr Young stated that he was of the opinion that “Mr Harris was quite clear about that and this implies to me that the current provision is adequate and I believe that speaks for itself.”

Mr Neeraj Salwan, Apple Pharmacy was the fourth interested party to make his representation

Mr Salwan advised that in his opinion there was already adequate provision of Pharmaceutical services in the area, and that in his view the majority of the residents of Whitehills would register with local medical practices, all of which have Pharmacies located closeby. He then expanded to advise that most Pharmacies in the town offer Collection and Delivery services from the local surgeries, thereby enabling any patients with travel or access problems to easily obtain their medicines. He is of the opinion that no evidence of

inadequacy has been provided by the applicant, and that all existing Pharmacies are providing an adequate service into the area. With regards to access he advised that there is a well established pathway only 750 yards or a 5 to 10 minute walk away from his Pharmacy at The Murray, which is well used by residents and pupils of the St Andrew's High School. He then continued to advise that Greenhill Pharmacy is also only a 5 minute drive away, so access to other Pharmacies, in his opinion, is not difficult from this area and that each of those Pharmacies are providing all the services that the residents need. Furthermore, regarding planning permission, he believes that Mr Harris has been unable to provide any legal letter or confirmation to suggest that this will definitely be approved.

Mr Salwan then began to make reference to the neighbourhood defined by the Committee in respect of an application heard earlier in the day, when Mr Harris interjected to object that Mr Salwan was referring to information he had not been provided with. Discussion followed regarding this aspect which led to Mr Lindsay, having first asked permission from the Chairman, to explain to Mr Harris that he had not been provided with information relating to applications considered earlier as he was not an interested party as defined within the Regulations. All parties thanked Mr Lindsay for clarifying the matter, and noted that the Chairman had notified all present of the outcome of the application by Apple Pharmacy prior to this hearing commencing. Mr Salwan stated that he had nothing further he wished to add.

Mr Danny McNally, Lloyds Pharmacy Ltd was the fifth and last interested party to make his representation

Mr McNally began his submission by saying that regardless of the neighbourhood being discussed at the moment, either by the Committee in an earlier decision or the one proposed by Mr Harris, it is irrelevant, as it is their belief that the resident community and transient workforce have access to sufficient Pharmaceutical services being provided by three of the existing Pharmacies, namely Greenhills Pharmacy, Frasers' Pharmacy and Apple Pharmacy. He continued that in his opinion the application being considered seems to be a speculative one which is not based on any identified need and furthermore with no negative feedback about inadequacy of services currently being provided. Lloyds Pharmacy Ltd therefore would submit that the existing services are adequate and as there is no evidence to the contrary, the application therefore should be refused.

Following Mr McNally's representation, the Chairman then invited Mr Harris to ask questions of the interested parties.

Mr Harris's first question was to ask Ms Fenton if she had a total population for the areas of Newlandsmuir, Greenhills and Whitehills which she had included in her definition of the neighbourhood. When he was advised that she did not he asked if she would agree with a rough estimate of circa 15,000, to which she replied that she would not like to make such a guess. This led him to refer to points made within her presentation which stated that the neighbourhood was already served by a Pharmacy, and that each other neighbourhood within the town also had a Pharmacy within, so could she offer any reason as to why the area of Whitehills should not have the same. Ms Fenton replied that it would only be necessary if you described Whitehills as a neighbourhood in its own right, which she would not agree with, as in her opinion it is a small settlement and part of a wider neighbourhood.

Mr Harris's next question was to Mr Fraser and it was to ask him if he was aware of the average population figure for each of the existing Pharmacies in East Kilbride. Mr Fraser replied that he was unable to answer that question as East Kilbride is a very mobile population so it was impossible to "pigeonhole" a population to a specific Pharmacy. Mr Harris informed that the answer was 6,800 which is "well above the Scottish national average, so there's no reason to suggest that further provision to another neighbourhood would reduce the viability of any of the other Pharmacies within East Kilbride." Mr Fraser responded to contest his view, as in his opinion Mr Harris's proposed neighbourhood was so close to The Murray Pharmacy, they were bound to serve patients residing within.

Mr Harris then referred to a statement Mr Fraser had made in his submission regarding a previous application within the area and his comment that there had been no significant change in population since then. Mr Harris advised that he had indicated the small changes that he felt there had been, and would Mr Fraser not say that there have been any significant changes within Pharmacy in the intervening six years. Mr Fraser replied that there had been significant changes in Pharmacy but not in the population Mr Harris would be looking to serve, which led Mr Harris to ask for confirmation that he would agree that such changes included an emphasis towards provision at a local level. Mr Fraser agreed and made reference to the excellent service he felt was being provided within a short distance of Mr Harris's proposed site by Apple Pharmacy at The Murray.

Mr Harris then asked Mr Salwan if he considered the Collection and Delivery services provided by other Pharmacies within East Kilbride to be a full Pharmaceutical service to any particular neighbourhood. When Mr Salwan replied no, Mr Harris then asked if he was saying that this particular aspect of Pharmaceutical provision is not relevant to his proposed neighbourhood. Mr Salwan replied "Yes, I agree that you can't provide a Pharmacy service from a van, but it's a very important service to get access to your medication." Mr Harris's last line of questioning to Mr Salwan related to the amount of consideration the relative closeness of Apple Pharmacy to his proposed site had been given and asked him if he believed that they would remain viable if his application was granted. Mr Salwan replied that he could not anticipate the effect as it would depend on how much business Mr Harris would "poach once you were in" because in his view the proposed neighbourhood would not support a Pharmacy, thus would rely on drawing patients from existing Pharmacies close by. This led Mr Harris to ask him if he was saying that he did not believe a population of over 4,000 with other itinerant workers in the neighbourhood would support a Pharmacy, to which Mr Salwan replied that the population would support a Pharmacy however the issue under consideration was inadequacy. Mr Harris's reply was that as Mr Salwan was trying to say that his proposed Pharmacy could only survive by "poaching" from him, he was therefore trying to establish whether it would result in Apple Pharmacy becoming unviable, despite Mr Salwan agreeing that the population could support a Pharmacy. Mr Salwan had nothing further to add other than to confirm that the issue under consideration was inadequacy.

Mr Harris's final question was to Mr Young, and asked that in recalling that he had agreed with his definition of the neighbourhood, did he believe that the population within it would be sufficient to support a Pharmacy. Mr Young replied that he did. Mr Harris thanked the Chairman and advised that he had no further questions.

Having ascertained that Mr Harris had no further questions, the Chairman then invited questions from Members of the Committee to each of the interested parties

Mr Mallinson was invited to question first and advised that he had no questions to ask of the interested parties.

The Chairman then asked Mrs Park if she had any questions at this point, and was advised that she had one question for Mr Salwan and it was to ask him if he would like to define the neighbourhood he considers his Pharmacy to serve. He advised that he would say that the Queensway is the Northern boundary, along Kingsway Road, to the West down The Murrayhill, albeit that this is a rough estimate as he was “put on the spot” and purchased the Pharmacy, so hadn’t actually driven the area to define his neighbourhood, and that it may also contain the Whitehills area. Mrs Park then asked if he knew where his patients came from and was advised that he knew that they definitely had patients from Whitehills, as a number of patients from that neighbourhood access Apple Pharmacy using the path shown on the map, which is only 750 yards away from them and takes 5 minutes to walk.

When invited by the Chairman, Mr Allan and Mr Woods stated that they had no questions to ask of the interested parties at this time.

Mrs Caraher was next to speak and sought clarification from Mr Harris if he was aware that once planning permission was granted there was a further step involved in the process which was the requirement to have a building warrant, and that to obtain this the plans have to pass through building control - a further separate process. Mr Harris asked her if that was not a matter for the builder to consider, which led Mrs Caraher to ask if he was aware then if the builder had made such an application. Mr Harris replied that he was not involved in such matters as his involvement was with the developers as a tenant. Mrs Caraher was keen to hear more in order to establish the likely timescale associated with the building of the proposed premises, and proffered that Mr Harris was unlikely to know when all the necessary permissions and documentation would be in place and was advised that given that one of the first things to apply for is a building warrant and so he presumed that the builder would have already gone through that process. Mrs Caraher replied that from her experience, it normally doesn’t happen like that, to which Mr Harris responded by saying that he stood corrected.

Mrs Crawford was last to be invited to question and advised that she had no questions to ask of the interested parties.

Having ascertained that there were no further questions to either the applicant or interested parties, the Chairman then invited the interested parties to sum up their representations, keeping to the previous order. Accordingly, Ms Fenton, Greenhills Pharmacy was first to speak.

Mrs Fenton intimated that she would just like to reiterate what she believed to be the most important fact in this case – that the current Pharmacy network in South East Kilbride provides an adequate Pharmaceutical service to every person in the area. She would contend that “no matter how you split this wider area into neighbourhoods the fact remains no one has difficulty in accessing Pharmaceutical services - the population least likely to have a car are close to the existing Pharmacies; the population in the newer housing estates further away from the existing Pharmacies all have cars and use their cars to access all their daily needs. Additional Pharmacies are a cost to the NHS and can only be justified when services are inadequate. Thank you.”

Mr Fraser, Frasers' Pharmacy was second to sum up his representation

Mr Fraser thanked the Chairman and advised that he was of the opinion that there is no evidence of inadequacy of Pharmaceutical services in the area - Greenhills Pharmacy is only three minutes by car and The Murray Pharmacy is only five minutes walking distance. He contended that "perhaps a close proximity to the many nursing homes is the main reason for this application. I urge you to reject this application on the basis that it is neither necessary nor desirable. Thank you."

When invited by the Chairman to sum up his representation, Mr Young, Rowlands Pharmacy advised that he was happy with his submission and had nothing further he wished to add.

Mr Salwan, Apple Pharmacy was fourth to sum up his representation

Mr Salwan stated that he believed that no evidence of inadequacy had been provided by the applicant today and hence the application fails the legal test.

Mr McNally, Lloyds Pharmacy Ltd was the fifth and final interested party to sum up his representation

Mr McNally stated that in his opinion the applicant had failed to provide evidence of inadequacy with the existing services, and that there was nothing further to add.

The Chairman then invited Mr Harris to sum up in relation to his application.

Mr Harris advised that he would just repeat the conclusion he made within his presentation at the beginning of the hearing, in that it is his belief is that he has adequately defined the neighbourhood, and the inadequacy that he defined is specific to that neighbourhood, in that no localised Pharmaceutical services are available without going outwith the neighbourhood; either on public transport or an inadequate path over a difficult terrain. For those reasons he believed that an application at his proposed site is necessary and desirable and would urge the Committee to grant it. He then thanked the Committee for their time.

Retiral of Parties

The Chairman then invited the Applicant and Interested Parties to confirm whether or not they considered that they had received a fair hearing, and that there was nothing further they wished to add.

Having being advised that all parties in attendance were satisfied, the Chairman then informed them that the Committee would consider the application and representations prior to making a determination, and that a written decision with reasons would be prepared and made available after the hearing had concluded. Parties were also advised that anyone wishing to appeal against the decision of the Committee would be informed in the letter as to how to do so and the time limits involved.

At the Chairman's request Mr Harris, Mr Doyle, Mr Salwan, Ms Fenton, Mr Fraser, Mr Young, Mr McNally, and Mr Sim withdrew from the meeting.

Supplementary Submissions

Following consideration of the oral evidence

THE COMMITTEE

noted:

- i. that they had undertaken a site visit of the proposed neighbourhood, noting the location of the proposed premises, the Pharmacies, the general medical practices, and some of the facilities and amenities within the town
- ii. map showing the location of the Doctors' surgeries in relation to existing Pharmacies in East Kilbride, and the site of the proposed Pharmacy
- iii. prescribing statistics of the Doctors within Blantyre, East Kilbride, Hamilton, and Strathaven during the period August to October 2008
- iv. dispensing statistics of the Pharmacies within Blantyre, East Kilbride, Hamilton, and Strathaven during the period August to October 2008
- v. demographic information on the townships of Blantyre, East Kilbride, and the village of Strathaven taken from the 2001 Census
- vi. comments received from the interested parties including existing Pharmaceutical Contractors in Blantyre, East Kilbride, and the area served by the Greater Glasgow & Clyde Health Board in accordance with the rules of procedure contained within Schedule 3 to the regulations
- vii. report on Pharmaceutical Services provided by existing Pharmaceutical contractors within the towns of Blantyre, East Kilbride, and Strathaven

Decision

THE COMMITTEE

then discussed the oral representations of the Applicant and the Interested Parties in attendance, and the content of the supplementary submissions received, prior to considering the following factors in the order of the statutory test contained within Regulation 5(10) of The National Health Service (Pharmaceutical Services) (Scotland) Regulations 1995, (S.I. 1995/414), as amended

- (i) Neighbourhood

THE COMMITTEE

in considering the evidence submitted during the period of consultation and presented during the hearing, and recalling observations from their site visit, deemed the neighbourhood to be the triangular area bounded by Ballerup Playing Fields down to join Greenhills Road

travelling to the roundabout to head up Stroud Road and following it along, to rejoin at the end of the Ballerup Playing Fields.

THE COMMITTEE

in reaching this decision was of the opinion that the neighbourhood constituted a distinct area bounded by significant roads and greenbelt as a natural boundary.

(ii) Existing Services

THE COMMITTEE

having reached a conclusion on the neighbourhood, was then required to consider the adequacy of existing Pharmaceutical services in that neighbourhood, and whether the granting of the application was necessary or desirable in order to secure adequate provision of Pharmaceutical services in that neighbourhood.

THE COMMITTEE

in doing so recognised that there were no existing contract Pharmacies within the neighbourhood but two in close proximity, indeed Apple Pharmacy is located within walking distance of an underpass leading to the proposed site. Therefore given the close proximity and ease of access by car and foot means that there are no barriers to prevent residents within the neighbourhood accessing Pharmaceutical services, as the characteristics of the neighbourhood are such that residents of the neighbourhood are used to travelling outwith to access their daily needs.

(iii) Adequacy

THE COMMITTEE

discussed the test of adequacy and agreed, for the reasons set out above, that existing services could be considered adequate as the written and oral evidence provided, including the report collated by the Chief Pharmacist – Primary Care, demonstrated that existing Pharmacies provided a comprehensive range of Pharmaceutical services alongside the core requirements of the new contract, including access to a seven day per week late night opening Pharmacy, all of which were easily accessible to the residents of the neighbourhood. Therefore these Pharmacies could be deemed adequate to meet the needs of the population within the neighbourhood, including the elderly, less mobile or disabled, young mothers and those requiring addiction services.

Accordingly, following the withdrawal of Mr I Allan and Mrs J Park in accordance with the procedure on applications contained within Paragraph 6, Schedule 4 of the National Health Service (Pharmaceutical Services)(Scotland) Regulations 1995, as amended, the decision of the Committee was unanimous that the provision of Pharmaceutical services at the Premises was neither necessary or desirable in order to secure adequate provision of Pharmaceutical

Services within the neighbourhood in which the Premises were located by persons whose names are included in the Pharmaceutical List and that, accordingly, Mr Harris's application was rejected subject to the right of appeal as specified in Paragraph 4.1, Schedule 3 of The National Health Service (Pharmaceutical Services)(Scotland) Regulations 1995, as amended.

Mr I Allan and Mrs Park were then requested to return to the meeting.