

MINUTE: PPC/2012/01

Minute of Meeting of the Pharmacy Practices Committee held on 23rd January 2012 in the Meeting Room 3, Kirklands Hospital, Fallside Road, Bothwell, G71 8BB.

Chair: Mrs Sandra Smith

Present: Lay Members Appointed by NHS Lanarkshire Board

Mrs Margaret Caraher
Mrs Laura Robertson

Pharmacist Appointed by The Royal Pharmaceutical Society of Great Britain

Mr Edward J Mallinson

Pharmacist Nominated by Area Pharmaceutical Committee

Mrs Laura McGregor
Mrs Catherine Stitt

In Attendance: Officers from NHS Lanarkshire - Primary Care

Mr George Lindsay, Chief Pharmacist – Primary Care
Mrs Gillian Forsyth, Administration Manager – Primary Care
Miss Catherine Oates, Administration Team Leader – Primary Care

01 APPLICATION BY ANGELINE (SCOTLAND) LTD, T/A BOTHWELL PHARMACY, 3 ANDERSON STREET, PORT GLASGOW, PA14 5EP

Application

There was submitted application by Angeline (Scotland) Ltd, t/a Bothwell Pharmacy received 25th March 2011, for inclusion in the Pharmaceutical List of Lanarkshire Health Board in respect of a new pharmacy at 29-35 Main Street, Bothwell, G71 8RD (“the premises”).

Submissions of Interested Parties

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

- (i) Letter received on 5th April 2011 from Boots UK
- (ii) E-mail received on 11th April 2011 from J & JG Dickson & Son Ltd
- (iii) Letter received on 27th April from The Central Pharmacy Ltd
- (iv) Letter received on 28th April 2011 from The Area Pharmaceutical Committee, NHS Lanarkshire

Procedure

At 10:00 hours on Monday, 23rd January 2012, the Pharmacy Practices Committee (“the Committee”) convened to hear application by Angelline (Scotland) Limited, t/a Bothwell Pharmacy (“the applicant”). The hearing was convened under Paragraph 2 of Schedule 3 of The National Health Service (Pharmaceutical Services) (Scotland) Regulations 2009, as amended, (S.S.I. 2009 No.183) (“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 had previously undertaken site visits of the village of Bothwell and town of Uddingston and Hamilton independently in order to gain a flavour of the natural patterns of travel of residents and visitors during various times of the day and week. All confirmed that in so doing each had noted the location of the premises, pharmacies, general medical practices and other amenities in the area.

Prior to the arrival of parties the Chair asked Members to confirm that they had received and considered the papers relevant to the meeting, and that they had no personal interest in the application nor association. Having ascertained that no Members or officers in attendance had any personal interest in the application the Chair confirmed that the Oral Hearing would be conducted in accordance with the guidance notes contained within their papers. The Chair then instructed Miss Lea Ann Tannock to invite the applicant and interested parties in attendance to enter the hearing.

Attendance of Parties

The applicant Angelline (Scotland) Ltd, t/a Bothwell Pharmacy was represented by Miss June Friel who was accompanied by Mr James Friel. From the interested parties eligible to attend the hearing two had accepted the invitation. The first interested party, Boots UK, 59 Main Street, Bothwell, G71 8ER, was represented by Mr Charles Tait. The second interested party, The Central Pharmacy Ltd, t/a Central Pharmacy, was represented by Mrs Rose Gray, who was accompanied by Ms A Vardy (“the interested parties”).

The Chair introduced herself, the Members and the officers in attendance from NHS Lanarkshire - Primary Care, prior to asking the parties to confirm that they had received all papers relevant to the application and hearing. At this point the Chair clarified that this was the second time the application had been heard due to an error in convening the meeting, it was non-quorate which deemed the first PPC hearing invalid. She wished that her apologies be recorded and confirmed that the membership today excluded persons involved in the non-quorate meeting and that the application would be heard afresh.

The Chair then explained that the meeting was being convened to determine the application submitted by Angelline (Scotland) Ltd, t/a Bothwell Pharmacy for inclusion in the Pharmaceutical List of Lanarkshire Health Board in respect of a new pharmacy at 29-35 Main Street, Bothwell, G71 8rd according to the Statutory Test set out in Regulation 5(10) of the Regulations.

The Chair continued to explain the procedures to be followed as outlined within the guidance notes circulated with the papers for the meeting, and confirmed that all Members of the Committee had conducted a site visit, and that no members of the Committee or officers in attendance had any interest in the application.

Evidence Led

The Chair invited Miss Friel to speak first in support of the application.

For the purposes of the minute it is standard practice within NHS Lanarkshire that all parties attending Pharmacy Practices Committee hearings are asked whether they intend to read from pre-prepared statements and if they would provide copies to the secretariat. This technique is employed as it allows the parties to have their submission incorporated within the minute in full.

Prior to entering the meeting Miss Friel intimated that she would read from a pre-prepared statement however did not wish to make these available to the secretariat. Accordingly due to the detail contained within her representation lasting in excess of one hour duration the minute reflects the salient points in summary format:

Miss Friel advised that she was a non-pharmacist and that the application was being made by Angelline (Scotland) Ltd, t/a Bothwell Pharmacy. All necessary steps have been taken to employ a Superintendent Pharmacist and apply to register with the General Pharmaceutical Council who have approved the application pending the outcome of entry to the Pharmaceutical List.

A lease has been entered into with the title owner of the premises. A revised internal floorplan for the premises has been circulated and includes a retail area, dispensary, private consultation rooms and private treatment area. Miss Friel is in dialogue with Dollar Rae Limited who have confirmed that the fit out can be completed in a three week period. No applications for planning permission or change of use are required. Car parking will be available including protected places for disabled and child/parents patients.

The pharmacy would provide all core pharmaceutical services and participate in locally negotiated services. In addition they would offer a free collection and free same day delivery service which is beneficial to non-ambulant patients or those unable to access a pharmacy during trading hours. The Doctors within Bothwell Medical Centre have been consulted and consider this a valuable service for their patients. Further free of charge clinic to be offered are: Weight Management, Children's General Health, Prescribing Independent Pharmacist, Hypertension and Pain Management. There would also be an information hour event every three weeks to discuss relevant health topics and interaction with the community through a patient focus group for continued service improvement, there would also be a text/e-mail alert service for managed repeats. Miss Friel opines that this would address shortcomings in the health promotion services available currently to Bothwell residents and use all of the clinical skills and expertise of Pharmacists as described in "The Right Medicine."

There is only one contract pharmacy in Bothwell “your local Boots pharmacy”. This is inadequate as in the last five years patient numbers have increased and the number of scripts dispensed has increased by an average of 30% with no increase in pharmaceutical provision.

The terms of Regulation 5(10) requires the PPC to determine adequacy of existing provision based on reference to existing supply and demand for pharmaceutical services within the neighbourhood, which excludes the supply of services from pharmacies located outside the neighbourhood. The neighbourhood for this application is the village of Bothwell defined as: the area bounded to the West by the natural curvature of the River Clyde, bounded to the South by the A725 road and bounded to the North by Hornal Road and Goldie Road through Bothwell Castle Golf Course and Bothwell Castle (remains) to the River Clyde.

Reference was made to the definition of a neighbourhood and associated services in relation to South Lanarkshire Council’s Local Plan. The facilities within Bothwell and the natural patterns of travel of residents accessing such services were also discussed. Miss Friel argued that the PPC should have regard to the decision of the Inner House in *Lloyds Pharmacy Limited v the National Appeal Panel* [2010] CFH55 and its implication that PPCs should consider what is possible to provide in the way of pharmaceutical services rather than simply consider what is currently provided. Additional references were also made to *Lloyds Pharmacy Limited v the National Appeal Panel and EA Baird Limited* 11 June 2004 and the importance of taking future housing developments into account. Also discussed was the outcome of a recent appeal against the PPC of Tayside Health Board which found that the current provision of services to a standard below expectations was relevant to a PPCs decision making.

Ms Friel then referred to a survey conducted on her behalf by Assenti Market Research. The results were from 315 interviews carried out with a representative sample of Bothwell residents between Wednesday 27th July and Saturday 25th August 2011. The following summary of findings was given:

- 68% had found that there was always a queue for prescriptions
- 56% had found they had to wait more than 20 minutes for their prescription of which 84% of that were collecting scripts with one or two items
- 53% had found their prescription was not ready
- 21% had been told they didn’t have their script in stock and would have to return
- 9% had found there was an error in their prescription
- 72% had never been given health promotion advice e.g. smoking cessation, health eating
- 91% would like to use pharmacist for health advice in the future
- 93% rated the comfort of the waiting area as poor
- 89% rated ease of access with a pram or wheelchair as poor
- 87% - taking everything into account there was 87% of local people who said that current provision for pharmacies in Bothwell could be improved
- 74% said that current pharmacy provision in Bothwell was not adequate for them and their family
- 89% of the total sample thought the new pharmacy was desirable
- 81% of the total sample thought the new pharmacy was necessary

Miss Friel referred to the terms of letters of support received for the application from local representatives including Cllr McMahon, Cllr Maureen Devlin, Cllr Henry T Mitchell, Michael McMahon MSP, and Margaret Mitchell MSP. She also referred to discussions with representatives of Bield Housing Association and residents of the McCarthy Stone development. She proffered that this information was support for an additional contract as each viewpoint led to a pattern emerging that all concerned felt that the pharmacy was wanted and needed within the village.

Moving to discuss adequacy Miss Friel referred to a previous application by Apple Pharmacy for proposed premises in Bothwell. Miss Friel referred to the PPC minute discussing that application and it was alleged that despite recognising the limitations of the internal layout of Boots, Bothwell Boots had failed to address the shortcomings and this impacted upon their compliance with the Equality Act 2010. She continued that it also showed a lack of commitment to non-ambulant patients and parents with prams etc. Miss Friel also alleged that the recent change in hours of service was a reaction to her application and not due to a desire to give more access in the interests of patient care. Her extended hours of service would be provided at no cost to NHS Lanarkshire and will particularly benefit commuters, young families and those whose opportunities to visit a pharmacy are limited. She remarked that her extended hours and no lunch time closure would significantly benefit all residents as it would increase the number of pharmacists available during the prime times of the day particularly if the Boots pharmacist was unavailable.

Her proposed premises are located in proximity to Bothwell Medical Centre. This is desirable in terms of convenience particularly since 22% of households in Bothwell do not have a car. The journey on foot to the pharmacy would be via a well-lit section of a main thoroughfare. For those who are inactive, permanently sick or disabled, or their carers there would be adequate spaces to park directly outside and behind the pharmacy. She would also offer a free collection and delivery service which is more than the current collection service offered by Boots. Bothwell residents see themselves as a distinct community and although the recent housing sector slow-down has impacted on the number of houses completed in the area (103 houses planned) this simply means that there is now less time to build out the structure plan.

Attention was then turned to prescribing and dispensing levels and information gained from ISD through Freedom of Information Act. Miss Friel reported that the number of prescriptions dispensed from community pharmacies in Scotland has increased year on year (38%) and that Bothwell has a greater figure approximately 18% above the Scottish national average. However she questions why despite a 25% increase in prescribing figures from Bothwell Medical Centre over three years there has not been a corresponding increase in dispensing from Boots, Bothwell. She mooted that the figures quoted indicated that approximately 68, 000 prescriptions are taken elsewhere which suggest patients have poor service expectations with Boots.

This led on to revising the requirements of the statutory test and the need for the PPC to limit decision making around services provided solely within the neighbourhood. She stated that the PPC would err in law if they considered services provided from outwith Bothwell and would discriminate against Bothwell residents.

Significant reference was also made to the ethos behind the South Lanarkshire Council Community Planning Partnership and Equality Act 2010.

Miss Friel then gave an overview on contract services e.g. CMS, AMS, MAS, PHS, EHC, MDS, Smoking Cessation, Stoma supplies, Palliative Care, and Oxygen with reference to NHS Lanarkshire's Pharmaceutical Care Services Plan. This was with a view to support the need for an additional pharmacy as she states that the increased workload impacted upon the capacity within Boots, Bothwell and their ability to provide an adequate service as per the findings of the Assenti Market Research. She opines that we are not a nation of complainers therefore no-one will actually know the views of patients on the service provision as they would not necessarily approach the Health Board and through local resolution Boots would deal with any complaints internally.

Over the next few years the population of Bothwell will increase. The granting of this contract would alleviate the workload of Boots, Bothwell by increasing the number of pharmacists in the neighbourhood, opening for longer hours, giving better choice, more convenience, free same day collection and delivery service, promoting smoking cessation and health lifestyles together with a number of free of charge clinics and services. The prevalence of specific diseases as a percentage within Bothwell Medical Practice had in general terms increased year on year for Cancer, COPD, Depression and Chronic Kidney Disease thus increasing prescriptions and again additional burden and workload of existing pharmacies. Bothwell is 122% above the national average for number of patients per community pharmacist' the volume of prescriptions dispensed has increased by 30%, prescribing has increased by 25%. Furthermore the population is increasing in size and age and will continue to do so. Indeed everything has increased apart from the number of pharmacies.

Miss Friel referred to the following supplementary issues through reference to the Patient Rights (Scotland) Act 2011, the conclusions of "Evaluating the impact of the Control of Entry regulations in the retail pharmacies market prepared for the Office of Fair Trading" published March 2010, the recommendations of "The Right Medicine, A Strategy for Pharmaceutical Care in Scotland", the Human Rights Act 1998, and Article 1 of the First Protocol to the European Convention on Human Rights.

She concluded that the evidence she has provided clearly established inadequacy within the neighbourhood. This application would address those inadequacies with no detriment to existing contractors. In terms of the statutory test this application should be granted on the basis that it is both necessary and desirable.

When Miss Friel concluded her representation the Chair suggested that it would be beneficial to adjourn the hearing for a comfort break. This had agreement from all parties present. The Committee reconvened after ten minutes. The Chair then invited questions from Mr Charles Tait, Boots UK, to Miss Friel.

Mr Tait remarked that Miss Friel had made a very comprehensive presentation however he asked if she could identify any NHS services she had listed which were not currently provided by your local Boots pharmacy, Bothwell. Miss Friel replied that there were none. He then referred to eMAS and asked her if she was aware that this was only available to those patients previously exempt from prescription charges. Miss Friel confirmed that she was. The next service to be discussed was the provision of domiciliary oxygen and he asked if Miss Friel was aware that this service was likely to be devolved to a national supplier. She confirmed that whilst she was aware she didn't believe that this was likely to change in the

immediate future. This was followed by a discussion around the provision of dosette boxes and the recent RPSGB paper which indicated that this system is not automatically in a patient's best interest, to which Miss Friel remarked that the paper had still to be evaluated. He then referred to comments concerning the Office of Free Trading report on the liberalised entry to pharmaceutical lists in England. She clarified that reference to the OFT report was only to highlight that the findings did not suggest that the entry arrangements had not resulted in a dramatic loss of pharmacies, and that there was no immediate sign of Royal Assent being granted. Mr Tait's final remark was to ask for confirmation that Miss Friel understood that factors such as competition, choice, cost reduction and convenience were not part of the statutory test contained within the Regulations in force in Scotland and excluded from the decision making process the Committee had to follow. She confirmed that she did.

Having ascertained that Mr Tait had no further questions, the Chair then invited questions from Mrs Rose Gray, The Central Pharmacy Ltd to Miss Friel.

Mrs Gray's question was around the current state of the proposed premises remarking that they were in a bad state of repair. She asked Miss Friel if she believed that her proposed refit could be completed within three weeks or had she doubts over the timescale for such an ambitious plan. Miss Friel advised that she had contracted Dollar Rae who was a specialised company and one that she had no concerns over their performance or reliability. Mrs Gray then asked if she would own the land to the front and rear of the property and was committed to resurfacing Ferry Road. Miss Friel stated that she had purchased the land and premises and would tarmac Ferry Road up until the point of access to her property. Mrs Gray's final question was around staffing arrangements during the extended hours of service and the visiting healthcare providers for her clinics. Miss Friel confirmed that she will employ two pharmacists and had already met with possible visiting health professionals.

Mrs Gray advised that she had no further questions for Miss Friel. The Chair then invited questions from Members of the Committee in turn to Miss Friel.

Mrs Robertson wished to know why Miss Friel had given a great deal of consideration to extended hours of service but intended to close on Sundays. Miss Friel replied that she would review the hours of service if her patient group suggested it or there was a clear need. Mrs Robertson then asked for clarification on the disposal of premises as Miss Friel stated in her presentation that she had entered into a lease however she had advised Mrs Gray that she had purchased the property and adjacent land. Miss Friel apologised for the contradicting information and confirmed that she had an outline lease with the first option to purchase. Mrs Robertson final questions were around staffing and the health improvement/weight management clinics she intended to provide. Miss Friel intimated that she would employ two pharmacists, three dispensing technicians and four to five counter staff, she also advised that she knew of the need to have appropriately qualified and trained staff such as nutritionists, pharmacists, dieticians, and fitness trainers to run the clinics.

Mrs Caraher sought clarity on whether planning permission was required or an application for change of use. She was informed that Miss Friel has confirmation in writing that the building is currently listed as Class 1 therefore does not need any type of planning consent which her contractors have also stated. Her last question was to ask if Miss Friel had any experience in operating a pharmacy and was told that she is currently going through due

diligence for purchasing a contract and has already employed the relevant professionals to allow her to do this.

Mrs McGregor remarked that she had no questions to ask however was keen to learn why as a non-pharmacist Miss Friel was so interested in owning and operating a pharmacy. Miss Friel stated that her interest stemmed from having pharmacists in the family as well as having very entrepreneurial parents and wanted to follow in their footsteps.

Mrs Stitt thanked Miss Friel for clarification regarding the disposal of the lease however wished to know if she was aware that the premises were still being marketed online. Miss Friel replied that she had secured a lease agreement and was aware that other traders were using the front car park area presently however confirmed that she would put an end to this once the provision of services commenced. Mrs Stitt then referred to the independent market research Miss Friel had commissioned and asked if she would be willing to leave a copy with the Committee after she departed the hearing. Miss Friel advised that she would be happy to do this.

Mr Mallinson referred to Bothwell demographics and asked Miss Friel if she would agree that of Bothwell would you say that residents are well-endowed and a highly mobile population, whilst Miss Friel agreed that the majority were she referred to the pockets of council housing. He then asked for clarification as to her statement that the only reason why people went to Uddingston for pharmaceutical services was due to a lack of car parking spaces in Bothwell and asked if she had visited the car parks and used the facility. She replied that she knew that they were located behind Lloydspharmacy on the left hand side and also at Tunnocks factory and that it was easier to park there than Bothwell. He then referred to his local knowledge advising that Bothwell residents tended to walk into the village for a number of reasons and wondered why she thought that parking is such an issue, furthermore if she had any ideas as to how she would stop her spaces being abused. Miss Friel hoped that it wouldn't be an issue however she could introduce a time restraint system or have the cars removed given it was private property. Mr Mallinson then referred back to her quotation of Article A1P1 of the European Court of Human Rights remarking that there was nothing preventing her from opening a pharmacy for the provision of private scripts. Miss Friel agreed however stated that she wished her peaceful enjoyment to be derived from the provision of NHS services. This led to a discussion on staffing levels which Mr Mallinson estimated would be in the region of £0.25 million. She advised that they would be employed on a mix of part-time levels. Mr Mallinson questioned what would happen if she had only one pharmacist working at a time and that they were busy in the consultation room would this not lead to a queue waiting for them to finish. She agreed that this would be the same as Boots however the fact that Bothwell would have two pharmacies would mean overall extra provision. His final question was to ask if she was aware of case law indicating that it was in order for the PPC to consider services located outwith the neighbourhood providing services into the neighbourhood. She confirmed that she was however knew of other examples when a judicial review had resulted

Having ascertained that there were no further questions for Miss Friel, the Chair then invited Mr Charles Tait, Boots UK, to make his representation.

Mr Tait thanked the Chair for the opportunity to represent their objections to the application. He stated that whilst there is a general acceptance of the definition of neighbourhood being the village of Bothwell some areas such as the Bothwell Policies, Golf Club and Woodlands

actually encroach into Uddingston. Notwithstanding it is a comfortable and particularly nice place to live to a high standard.

The population including the policies area has increased during 2001 - 2010 by 83 persons, and mid-year estimates have it ranked amongst the most affluent areas within South Lanarkshire Council. Whilst there is a small pocket at Woodlands and North Fallside Road which are not as affluent they only rank at 6000 in terms of deprivation. An estimate of the population is around 5000 which is due to the area behind the golf course being a highly populous area. The village itself does not have a strong industry or retail input; it is primarily a nice place to live and residents require to access wider retail and leisure pursuits in neighbouring areas.

Whilst much has been said about extended opening times he does not believe that an extra half hour either way would make a significant difference. The reason for this viewpoint is that the majority of residents regularly and freely travel outwith the village at various points in time and in doing so can access a wide choice of pharmacies including one a few miles away in Viewpark which is open from 09:00 – 21:00. Furthermore there has been no additional NHS pharmaceutical services offered or proposed and that Miss Friel could provide the lifestyle and additional services she has offered without an NHS pharmaceutical contract.

To conclude whilst Miss Friel has stated that she has provided evidence to support claims of “inadequacy and desirability” this has been based on non-NHS services or facilities e.g. car parking and greater choice, however these factors do not form part of the statutory test upon which the Committee must base their decision. Accordingly, the application should not be granted.

Following Mr Tait’s representation, the Chair then suggested a departure from the procedure outlined within the guidance notes and that Mrs Gray the other interested party in attendance be given the opportunity to speak at this point. All members and parties in attendance agreed. The Chair then invited Mrs Rose Gray, The Central Pharmacy Ltd to make her representation.

Mrs Gray thanked the Committee for allowing her the opportunity to state her reasons why they are objecting to this application. She then read the following pre-prepared statement:

“Within one mile stretch along the main road between Bothwell and Uddingston there are already four pharmacies, namely Central Pharmacy, Boots and Lloyds in the Main Street, Uddingston and also Boots Pharmacy in the Main Street, Bothwell. Bothwell Medical Centre is 0.2 miles from the Main Street in Uddingston. I believe that the four established pharmacies adequately fulfil the needs of the residents of Bothwell and Uddingston.

As well as being the owner of the Central Pharmacy, I am also a resident in Bothwell and have been for 25 years. There are very strong links between Bothwell and Uddingston with the majority of residents using the shopping facilities in both areas. This also extends to the GP practice they are registered with, as some Bothwell residents are registered with

Uddingston practices and vice versa. I feel that the applicant has not taken this into account in her application.

With regard to the long list of services promised by the applicant, the extended opening hours to 60 hours and quote the "state of the art" premises, I am finding difficulty in understanding how a new pharmacy contract could support this. I have never applied for a new contract, but I would assume it would take some time to get established. I cannot foresee a mass exodus of patients from the already established pharmacy in the Bothwell village or from the pharmacies in Uddingston. The services and the opening hours promised would require a very large budget to maintain and above average staffing levels. In the current economical climate, which has also affected the pharmacy industry, I do not see how this can be achieved. I also note that the applicant states she will be providing a Domiciliary Oxygen Service and Palliative Care Service, am I not correct in saying that Boots in Bothwell already have the Oxygen Contract for Bothwell and Boots at Scotmid Retail are the Palliative Care pharmacy?

Central Pharmacy operates from large spacious premises, providing a large consultation room, disabled access and offers a full range of pharmacy services. We collect prescriptions from the Bothwell Medical Centre and also the Uddingston practices twice daily. We use our own uniformed drivers in our own liveried vehicles. We provide a delivery service twice daily to the residents of Bothwell and Uddingston, especially to those who are elderly or infirm. Our drivers work from 12.45 to 8.45pm, which enables us to make deliveries early afternoon and in the evening. If a patient finds it difficult to call at the pharmacy due to work restraints, we will also deliver to them at a convenient time. We also have no limitation on providing Monitored Dosage packs for patients who need help managing their medication. We open all public holidays, with the exception of the Christmas and New Year period. We also have the oxygen contract in Uddingston Main Street and deliver oxygen regularly to patients in the Bothwell and Uddingston area.

I also have concerns regarding the access and parking at the proposed premises. This is a very busy part of the Main Street and the entrance to the premises would be located just after a sharp bend with poor visibility. It is also a busy bus route and could potentially be an accident black spot if vehicles were slowing down to access the car park at the front of the proposed pharmacy. There are several restaurants and shops in this area and I find it difficult to understand how the car park at the front of the property could be kept for the exclusive use of patients visiting the pharmacy. With regard to the car park at the rear of the property, this I am assuming would be accessed via Ferry Road. Ferry Road is in a very bad state of repair and is unlit. Unless the applicant is proposing to resurface the whole of Ferry Road and provide lighting, I would not recommend that this would provide safe access to the proposed pharmacy either by car or on foot.

With regard to point 6 on the application, I do not see any sign of any new building in the Bothwell area and in light of the current economic climate it may be sometime before we see it again. The applicant mentions Earl's Gate, and the site at the Gasworks. There are only 18 houses in Earl's Gate, which are nearing completion and no sign of any development at the Gasworks, both of these areas are in fact nearer to Uddingston Main Street, than they are to Bothwell.

I therefore conclude that the granting of this contract is neither necessary nor desirable and would ask that the Pharmacy Practices Committee give consideration to my objections.

Thank You."

Following Mrs Gray's representation the Chair then invited Miss Friel to ask questions of the interested parties.

Mrs Friel asked Mr Tait to confirm that he received and read the letters of support from Councillors circulated in advance of the hearing. He replied that he received them via e-mail and noted that the contents did not contain any evidence with regards to the statutory test. She then asked him whether he thought that Bothwell was comparable to the village of Kilmacolm which had a branch of Boots. He reported that whilst he didn't have any figures relating to Kilmacolm they were both affluent areas however he considered Kilmacolm a more self-contained village than Bothwell which merges into Uddingston which is also a relatively affluent area.

Miss Friel then asked Mrs Gray why she was objecting to the application given that she did not anticipate a mass exodus of patients from her Pharmacy should the application be granted. Mrs Gray advised that she is applying the statutory test as the decision making factor and believes that there is no evidence of inadequacy and no need for an additional contract to cope with existing or any anticipated increase in demand for pharmaceutical services within the area.

Having ascertained that Miss Friel had no further questions, the Chair then invited questions from Members of the Committee to both Mr Tait and Mrs Gray.

Mrs Robertson asked Mr Tait how many pharmacists were available and how breaks were covered. He replied that the pharmacists know to take breaks only at convenient times, and that if patients present whilst they are on a break but on the premises staff can ask them to check a script so that there would be no delay or need to return. Mrs Robertson then referred to the statistics provided by Miss Friel and asked his opinion on the findings in relation to waiting times. Mr Tait replied that it was difficult to establish a true estimate of waiting times as it depended upon the amount of items included in the prescription; however they try to organise their workflow around repeat prescriptions which can be managed and controlled easier than acute prescriptions.

Mrs Caraher asked Mr Tait if he could change anything regarding the branch what would he do to make the service better. Mr Tait replied that he would like to be able to alter the premises to lose the small lip at the entrance however his main wish would be to alter the existing contract to allow pharmacists to deliver on more complex aspects of medicines. When the same question was posed to Mrs Gray she replied that they were already delivering all required services and will continue to do so, and that there were no further modifications needed to their existing premises.

Mrs McGregor asked Mr Tait to clarify whether or not they provided a delivery service. He replied that whilst this is not advertised they can make exceptional arrangements with prior notice when there was a definite need for the benefit of the patients or circumstances dictated this was needed.

Mrs Stitt advised that she had no questions to pose to the interested parties in attendance. Mr Mallinson referred to Mr Tait's answer to Mrs Caraher and asked him to expand on why they did not alter the small lip into the pharmacy which seemed a relatively simple change to

make. Mr Tait agreed that whilst it did appear a simple matter it was not an easy task as there are strict planning restrictions within Bothwell which prohibits a fixed external ramp.

Having ascertained that there were no further questions from Members of the Committee to the interested parties, the Chair then invited the interested parties to ask questions of each other. Mr Tait and Mrs Gray confirmed they had no questions to pose.

Accordingly, the Chair then invited the interested parties to sum up their representations. Mrs Rose Gray, The Central Pharmacy Ltd was first to speak.

Mrs Gray remarked that she wished only to reiterate her views that pharmaceutical services in Bothwell and Uddingston are adequate and that application for a new contract is neither necessary nor desirable.

The Chair then invited Mr Charles Tait, Boots UK Ltd to sum up his representation.

Mr Tait remarked that he echoed Mrs Gray's sentiments. He added that if you look at the ebb and flow of people in Bothwell to neighbouring areas this provides evidence that they can access adequate pharmaceutical services both within the village and outwith.

The Chair then invited Miss Friel, to sum up in relation to the application by Angelline (Scotland) Ltd.

Miss Friel stated that she had not heard anything about the effects on patients during any of the representations made by the interested parties, only statements based on self-interest. If granted this application and the additional services offered would be at no cost to NHS Lanarkshire. The Committee is a public body and therefore bound by law to consider the statutory test and necessity and desirability based on services within the actual neighbourhood. Evidence presented has clearly proven that your local Boots pharmacy, Bothwell is not providing an adequate pharmaceutical service, and this application would address those inadequacies. There is also a direct violation of DDA and access for all residents by way of Boots failing to make reasonable adjustments to their premises. The Committee would be erring in law by failing to consider proposed developments within the neighbourhood. The pharmacy also has a large degree of support by elected representatives, local GP practice and residents.

Accordingly, in terms of the statutory test and the evidence presented the application should be granted as it is both necessary and desirable to secure adequate provision within the village of Bothwell.

Retiral of Parties

The Chair 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 Chair 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 a copy sent to them as soon as possible. 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 Chair's request Miss Friel, Mr Friel, Mr Tait, Mrs Gray and Ms Vardy withdrew from the meeting.

Supplementary Submissions

Following consideration of the oral evidence

THE COMMITTEE

noted:

- i. that they had each independently undertaken a site visit of the village of Bothwell and towns of Uddingston and Hamilton, noting the location of the proposed premises, the pharmacies, the general medical practices, and some of the facilities and amenities within.
- ii. maps showing the location of the Doctors' surgeries in relation to existing Pharmacies within the areas of Bothwell, Uddingston, Hamilton and Blantyre, and the site of the proposed pharmacy
- iii. prescribing statistics of the Doctors within the areas of Bothwell, Blantyre, Hamilton and Uddingston during the period July to September 2011
- iv. dispensing statistics of the Pharmacies within the areas of Bothwell, Blantyre, Hamilton and Uddingston during the period July to September 2011
- v. demographic information on the areas of Bothwell, Blantyre, Hamilton and Uddingston taken from the 2001 Census
- vi. comments received from the interested parties including existing Pharmaceutical Contractors within the village of Bothwell and township of Uddingston 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 village of Bothwell and townships of Blantyre, Hamilton and Uddingston.
- viii. communications received from a resident of Bothwell, South Lanarkshire Council, Councillor Henry Mitchell, Margaret Mitchell MSP, Councillor Jim McGuigan, Councillor Maureen Devlin and Michael McMahon MSP who whilst not interested parties as defined within the regulations, were clearly interested and wished their comments to be brought to the attention of the Committee and have their views taken into consideration

Decision

THE COMMITTEE

then discussed the oral representation 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 2009 (S.S.I. 2009 No. 183), as amended.

(i) Neighbourhood

THE COMMITTEE

in considering the evidence submitted during the period of consultation, presented during the hearing, and recalling observations from their site visits, agreed with the definition of the boundary as proposed by the applicant: the area bounded to the West by the natural curvature of the River Clyde, bounded to the South by the A725 road and bounded to the North by Hornal Road and Goldie Road through Bothwell Castle Golf Course and Bothwell Castle (remains) to the River Clyde.

In reaching this decision the Committee was of the opinion that the neighbourhood constituted a distinct area bounded by significant natural barriers as described above, as well as being within the area signposted as the village of Bothwell by South Lanarkshire Council. The Committee also noted that this definition was accepted by the interested parties in attendance. It also considered that whilst residents within Bothwell would consider themselves as having a sense of belonging they appeared to freely and regularly travel outwith the neighbourhood to access a wider choice of shopping facilities within Uddingston and Hamilton.

(ii) Existing Services

THE COMMITTEE

having reached a conclusion on the neighbourhood, was then required to consider the adequacy of existing pharmaceutical services 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

acknowledged that there was one existing contract Pharmacy (your local Boots pharmacy) within the neighbourhood, with a further three Pharmacies located within the town of Uddingston which could be considered as providing services to the neighbourhood. Indeed the Committee heard evidence from Mrs R Gray, The Central Pharmacy, Uddingston which confirmed that they provided a daily collection & delivery service to residents of Bothwell.

THE COMMITTEE

also agreed that the pharmacies located approximately 0.5 miles away within Uddingston are easily accessible by foot via recognised routes, and with good transport infrastructure given the significant level of car ownership within the village. It was also noted that there was a frequent bus service (up to eight buses an hour) which incorporated stops at the medical practice and Central Pharmacy with a further stop adjacent to Lloyds Pharmacy with an approximate journey time of five minutes.

(iii) Adequacy

THE COMMITTEE

in assessing adequacy the Committee considered the views of the applicant who argued that increasing demands for pharmaceutical services provided evidence of the need for an additional pharmaceutical contract, and the findings of her independent market research which suggested inadequacy due to a poor level of service and customer satisfaction with “your local Boots pharmacy” in Bothwell. They also noted the concerns expressed by the applicant that patients with disabilities may not be adequately served by this branch and the fact that patients within Bothwell have no choice of pharmacy to use.

THE COMMITTEE

also considered the report collated by the office of the Chief Pharmacist – Primary Care, which indicated that the “your local Boots pharmacy” in the neighbourhood and the Uddingston pharmacies provided a comprehensive range of pharmaceutical services alongside the core requirements of the new contract.

THE COMMITTEE

noted that the applicant argued strongly that they should only consider the pharmacies within the defined neighbourhood. However the Committee referred to previous appeals heard by the National Appeal Panel (e.g. NAP 313, June 2011) which described a neighbourhood with no pharmacies within it but which receives an adequate service from existing pharmacies surrounding the neighbourhood. They also noted the dictum of Lord Carlway in *Sainsbury's Supermarkets Limited v National Appeal Panel*, (2003) SLT 688 at 21 “In conjunction with this consideration of adequacy, it was also legitimate for the Panel to have regard to the provision of pharmaceutical services in the neighbourhood not only by pharmacies located in the neighbourhood but also those upon its fringes. It is the adequacy of provision to persons in the neighbourhood which has to be looked at and that provision will not

necessarily come exclusively from pharmacies actually within the neighbourhood boundaries.” The Committee therefore considered that it is appropriate to consider services provided to the neighbourhood when discussing adequacy.

THE

COMMITTEE

therefore agreed that the existing services could be deemed adequate as they provide a breadth and range of NHS Contract services in line with contemporary standards, and were accessible and available to the residents of the neighbourhood including residents with disabilities.

Accordingly, following the withdrawal of Mrs McGregor and Mrs Stitt in accordance with the procedure on applications contained within Paragraph 6, Schedule 4 of the National Health Service (Pharmaceutical Services)(Scotland) Regulations 2009, 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, accordingly, the 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 2009, as amended.

Mrs McGregor and Mrs Stitt were then requested to return to the meeting, and were advised of the decision of the Committee.