

# National Appeal Panel

Constituted under

**THE NATIONAL HEALTH SERVICE (PHARMACEUTICAL SERVICES)**

**(SCOTLAND) REGULATIONS 2009 (AS AMENDED)**

**DECISION**

**of the**

**CHAIR**

**of**

**THE NATIONAL APPEAL PANEL**

**In the application relating to**

**2 Loch Street, Townhill, Fife, KY12 0HH**

**Applicant: Mr Mohammed Ameen**

**Appellants: Alderston Pharmacy, Lloyds Pharmacy and Boots UK Ltd**

**Health Board: NHS Fife “the Board”**

**PPC Decision: 10 December 2019**

**Panel case number: NAP97 (2020)**

## **Decision of the Chair of The National Appeal Panel**

### **1. Background**

- 1.1. Mr Mohammed Ameen trading as Village Pharmacy of 196 Nithsdale Road, Glasgow (hereinafter referred to as “the Applicant”) submitted an application to the Board to be included in the pharmaceutical list of the Board to provide pharmaceutical services from and in respect of premises at 2 Loch Street, Townhill, Fife, KY12 0HH (“the Premises”). The application was dated 11 April 2018.
- 1.2. The application was originally considered by the Board at a hearing of its Pharmacy Practices Committee (“the PPC”) on 6 September 2018. The PPC decided that the current provision of services in the neighbourhood defined by the PPC was inadequate and it was necessary for the application to be granted in order to secure the adequate provision of pharmaceutical services to the neighbourhood and in the circumstances the PPC granted the application. This decision of the PPC is referred to as ‘PPC1’
- 1.3. Appeals were lodged against PPC1 by Alderston Pharmacy, Lloyds Pharmacy and Boots UK Ltd (all herein after referred to as “the Appellants”).
- 1.4. Following upon a consideration of the appeals I remitted its decision back to the PPC with instructions to reconvene and issue a revised decision as I considered that the PPC had failed to properly narrate the facts and reasons upon which its decision was based. The PPC reconvened on 14 March 2019 and following upon which the PPC issued its revised decision (“PPC 2”).
- 1.5. The Appellants appealed PPC 2 and following upon which I issued a further decision dated 15 July 2019 (NAP84) again advising that the PPC had failed to properly narrate the facts and reasons upon which its decision was based and set out specific guidance notes as to what was expected of the PPC in its reconsidered decision. The PPC reconvened on 10 December 2019 following upon which it issued its further revised decision (referred to as “PPC3”).
- 1.6. The Appellants have now appealed this latest decision of the PPC.
- 1.7. Parties will require to note that my decision following requires to be read in conjunction with my decisions of 18 December 2018 (NAP82) and 15 July 2019 (NAP84).

### **2. Grounds of Appeal**

- 2.1. Alderston Pharmacy, Boots UK Ltd and Lloyds Pharmacy lodged appeals against the decision PPC3 on 23 January, 24 January and 27 January 2020 respectively. As I commented in NAP84 there were a number of aspects of the then appeals from each of these parties which apply in relation to PPC3 in that they are neither relevant nor competent for the purposes of the decision under PPC3. Either fresh issues have been raised unrelated to the issues raised by the original Appellants to PPC1 or alternatively issues that have already been dealt with by me have been referred to again. Accordingly, the only issues which are relevant are those which I have referred back to the PPC under NAP84. These issues are restricted to the CAR, the topography, whether the PPC has set out adequate reasons for considering that the current provision of pharmaceutical services was inadequate, the PCSP and viability. I do not propose to address any of the other issues raised by the Appellants.
- 2.2. The Consultation Analysis Report (“CAR”)

I had set out what was required of the PPC in NAP84 (para 7.2) and I need not go into the detail here. Suffice to say that in combining the PPC responses with its original and revised decisions it has set out a reasonable summary of the CAR indicating that it had placed considerable weight

on the responses regarding the existing provision particularly in relation to a lack of access to such provision due to poor public transport links, difficult pedestrian access, particularly for the elderly, disabled and young families, which it noted was a theme throughout the CAR. The PPC indicated that it had placed reliance on those who had considered that a pharmacy was required within the neighbourhood such that it would reduce the need for travel and benefit those classes of individuals referred to. The PPC acknowledged that the need for travel in itself would not be a reason for inadequacy but considered that it was supported by the particular topography of the area. In terms of schedule 3 paragraph 3 (6)(a) and (b) the PPC's decision must include a summary of the CAR and an explanation of how the CAR was taken into account in arriving at its decision. The PPC has recognised that the CAR is not determinative but have recognised circumstances in which such a public survey may be supported by other evidence, such as topography and the concomitant difficulties in accessing the existing provision. The PPC has given weight to the CAR and has sufficiently expanded upon its reasoning in its lending support to the application. Accordingly, this ground appeal has no prospects of success.

### 2.3. Topography

I had indicated in NAP 84 (para 7.3) that the significance of the PPC's opinion on topography was not clear and I had set out a series of questions for it to address. The PPC has responded that Townhill is a distinct and well defined community on its own with well defined open ground and woodland. It has stated that from the Ordnance Survey map of the neighbourhood provided by the Health Board it had determined that there was a height difference of approximately 180 feet between the residential areas in the neighbourhood and the nearest existing pharmacy. It considered that had an impact on access for pedestrians walking to any existing provision. It has noted that whilst access by public transport was possible there was evidence to indicate that there were difficulties with timings and cost. In the circumstances the PPC concluded that the steep incline, poor pedestrian access and limited public transport led the it to the view that topography was a significant factor in limiting access to existing services and this in itself had an impact on the adequacy of those services. The PPC made passing reference to delivery services but acknowledged that this was anecdotal and it is clear, certainly from its latest decision, that this was not a significant factor in its decision. I accept the PPC's explanation on this issue.

### 2.4 Adequacy/Inadequacy

I indicated that the PPC's consideration of inadequacy referred to submissions of the Community Council in relation to the desirability of a new pharmacy. I did suggest that more detailed consideration should be given as to why the PPC regarded the current provision as being inadequate. The PPC has responded in PPC3 giving weight and credence to the representative of the Community Council's evidence in which he reported on travel arrangements and cost between Townhill and the two nearest pharmacies separately by car, bus and walking. It had also noted his evidence of the reported difficulties of access due to the limited and costly public transport, poor pedestrian access (involving steep hills referred to above) and limited parking at the closest pharmacies. The Community Council representative also made reference to waiting times for prescriptions. The PPC discounted the delivery of prescriptions to the neighbourhood by the existing providers it being more important for the residents to receive a face to face service with a pharmacist. My understanding is although not referred to by the PPC that delivery services may be withdrawn at any time. The PPC made reference to the planned developments close to the village although did not explain what impact these would have. The PPC noted that whilst the existing pharmacies are supplying an adequate service to their community they were not so for the residents of Townhill. I have to assume that what the PPC meant by this was that the other pharmacies were providing an adequate service to those in their immediate localities. I would have preferred to have seen some evidence in support of the PPC's contention but I have noted that during the course of the evidence of the interested parties that the positions adopted by both the Applicant and the representative for the Community Council remained largely unchallenged. On balance the PPC its latest decision (PPC3) combined with PPC1 and PPC2 is adequate to explain its position on

adequacy and I am able to understand its reasons for so determining. The standard of adequacy is a matter for the PPC. It is a specialist Tribunal and ought to be expected to apply its knowledge of the pharmaceutical business to the task of determining an appropriate standard. It has done so here by reference to the CAR, the topography and the evidence of both the Applicant and representative of the Community Council which, as I have stated, was not sufficiently challenged. I am also cognisant of the fact that changes do occur in pharmaceutical practice in that an adequate pharmaceutical provision will develop over time and that what was acceptable in previous years is not acceptable now.

## 2.5 The Pharmacy Care Services Plan

I stated in NAP82 that the Pharmacy Care Services Plan (PCSP) was of less importance than the CAR. The regulatory requirement is to have regard to the PCSP. I did suggest in NAP82 that I did not feel I was required to reach a decision on that issue at that time as the PPC was to have the opportunity to provide further reasoning on other issues but I encouraged them to address the concerns of the Appellants in this regard. I noted that the reasoning in relation to the PCSP in PPC2 was linked to topography but the extent to which it endeavoured to explain it I felt was disappointing and again stated that whilst I would be reluctant to be too prescriptive about how much consideration requires to be given to the PCSP I referred it back to the PPC once again. It has since responded in PPC3 that whilst the PCSP had stated there were no gaps in service all members of the PPC had carried out a site visit and took the view that the issue of the geographical access was beyond that which was referenced in the PCSP and that it did not identify what the PPC regarded as specific gaps in local pharmaceutical service provision. I am prepared to accept that explanation.

## 2.6 Viability

Following upon the arguments adduced in evidence I requested the PPC to set out its reasons for considering that the proposed pharmacy will be viable. It has responded in PPC3 quoting the Applicant's evidence that the Townhill pharmacy would cater for a significant population of more than 1300. It took the view that the successful village pharmacies previously mentioned by the Applicant were in less deprived areas than Townhill and had a higher car ownership as well as a smaller population but were succeeding because of the delivery of a wider range of pharmacy services. As the PPC stated that it "recollected that the Applicant and Community Council representative thought the pharmacy would be viable" it would have been preferable had they made reference to the actual evidence of each. In noting the evidence, it is clear that both parties did so. Why the PPC did not refer to their evidence is surprising. Nevertheless, the Applicant's evidence and that of the representative of the Community Council was, as I have stated above, largely unchallenged and it is clear that the PPC accepted the evidence of the Applicant and the representative of the Community Council. Mr Dick was the only one who felt that the viability of his pharmacy would be affected but his evidence was such that he felt more a victim of the existing pharmacies than any threat from the Applicant. A view required to be taken by the PPC and on balance and relying upon its combined expertise considered that the Applicant's premises would be viable and that its provision would not adversely affect those of the Interested Parties

## 3. Disposal

- 3.1. I reject the Appellants' grounds of appeal for the reasons set out above and I am satisfied that said grounds for appeal disclose no reasonable grounds and as such have no reasonable prospects for success.
- 3.2. There are limited grounds upon which an appeal may be presented and I would encourage all parties for the future when considering submitting an appeal having regard to those grounds and to consider carefully whether the concerns they have with the decision or process are substantial and have a bearing on the outcome and should accordingly restrict themselves to those issues specifically addressed to the PPC.

- 3.3. This application has had a most unfortunate history. It was submitted by the Applicant on 11 April 2018, over two years ago, and, subject to any further appeal process, has been finally determined. As I stated in NAP84 I appreciate that membership of the PPC is voluntary, it is a quasi-judicial body and as such it must address the issues before it carefully and to give considered reasons to its decision.

(sgd) J Michael D Graham  
Chair  
National Appeal Panel  
30 April 2020