

NATIONAL APPEAL PANEL
constituted under
THE NATIONAL HEALTH SERVICE (PHARMACEUTICAL SERVICES)
(SCOTLAND) REGULATIONS 2009 (AS AMENDED)
("the Regulations")

DECISION

of the

CHAIR

of

THE NATIONAL APPEAL PANEL

in the application relating to

701-703 BALMORE ROAD, GLASGOW, G22 6QT

Applicant and Appellant:	Messrs Sood and Shabbir
Health Board:	NHS Greater Glasgow & Clyde
PPC Decision Issued:	13 September 2016
Panel Case Number:	NAP62(2016)

Decision of the Chairman of the National Appeal Panel

1. Background

- 1.1 This is an appeal against the decision of the Pharmacy Practices Committee (“the PPC”) of NHS Greater Glasgow & Clyde (“the Board”) which decision was issued on 13 September 2016.
- 1.2 Messrs. Vishaal Sood and Mohammed Shabbir (“the Applicants” or “the Appellants”) made an application for inclusion in the pharmaceutical list of the Board to provide pharmaceutical services in respect of the premises at 701-703 Balmore Road, Glasgow, G22 8QT (“the Premises”), said application dated 21 June 2016.
- 1.3 The PPC, under delegated powers of the Board, held a hearing on 29 August 2016 and took evidence from the Applicants and interested parties and considered supporting documentation, and following upon which it determined that the existing level of service provided by other contractors to the neighbourhood was currently adequate and that it was accordingly neither necessary nor desirable to grant the application for provision of pharmaceutical services in the neighbourhood in which the Premises were located by persons whose names are included in the Pharmaceutical list. It accordingly unanimously refused the application.
- 1.4 Lambhill Community Council (“the Council”) expressed concern at the PPC’s decision and which points of concern are summarised in paragraph 2.2 below.

2. Grounds of Appeal

- 2.1 The Appellants submitted a letter to the Board received on 2nd October 2016 the grounds of which may be summarised as follows:
 - 2.1.1 The PPC had stated that the services and businesses accessed by the residents of Lambhill were mainly outwith the boundary of the neighbourhood and that Lambhill did not have a suitable infrastructure to classify itself as a community or neighbourhood. The Appellants take issue with this statement standing that the residents of Lambhill had access to numerous amenities including the community centre, restaurants, grocery stores, dental practice, church, post office and others and that accordingly the neighbourhood as defined by the PPC was incorrect.
 - 2.1.2 The PPC stated that pharmacies in and around the surrounding areas offered core and a range of non-core services but ignored the innovative and pioneering prescribing service that would have been offered to the community by the Applicants. Specifically, the provision of a new prescribing clinic which would have provided an indispensable service to the community by reducing the burden on GPs.
 - 2.1.3 The PPC had stated that the population was accustomed to leaving the area to access amenities and services on a daily basis. The Appellants took issue with this as it was their view that patients should not have to travel outside their neighbourhood to access pharmaceutical services, particularly in an emergency situation.
 - 2.1.4 The PPC stated that there was no evidence of pharmaceutical inadequacy and had acknowledged that a new contract would appear to make life easier for a resident in the community. The Appellants’ view was that this statement appeared to be contradictory and that the purpose of a new contract was to permit the community to gain access to full pharmaceutical services locally 7 days a week.
 - 2.1.5 The PPC had discussed the low response to the Consultation Analysis Report (“CAR”). It was the Appellants’ contention that surveys such as these result in a low response rate especially so in a deprived area. In the minutes of the meeting the PPC had asked whether the people of Lambhill had any complaints regarding the services received and the representative for the Council had indicated that they had.
 - 2.1.6 The PPC make no mention of the new homes which were and are to be built within the

Appellants' defined neighbourhood which would have increased the population significantly. This evidence was excluded from the minutes and the Council and District Council had stated that construction was due to commence on April 2017 where 693 homes would be developed increasing the population by approximately 2425 persons (on the basis of an average of 3-4 residents per household). If this were added to the current existing population of Lambhill there could potentially be 4393 residing in Lambhill. A contract had been granted in Ayrshire in 2016 for a population of the target neighbourhood of 1259, a fact disregarded by the PPC. As also did they ignore the transient population attracted by the Post Office.

2.1.7 The PPC did not consider the projected 70 vulnerable patients who were to move into the neighbourhood and who would require fuller access to pharmaceutical services on a more regular basis.

2.2 The grounds of appeal of the Council (dated 26/9/16) may be summarised as follows:-

2.2.1 Lambhill was going through major redevelopment and that there had been 250 new homes built at the steelworks and with a further 73 homes on land opposite the Post Office with a further 300 projected in 2017. Taking an average 3-4 residents per new home this would equate to an increase in the population of approximately 2079-2772.

2.2.2 The community had mentioned a need for Sunday hours for pharmaceutical services and there is no pharmacy within close proximity to Lambhill open on a Sunday.

2.2.3 Whilst the PPC stated that banking was done outwith Lambhill, the community had been advised to bank at the Post Office which is at the heart of the community.

2.2.4 Whilst the other pharmacies deliver to Lambhill multiple times a day a specific time of delivery is not provided thus resulting in people waiting at home all day for a delivery. The service is not efficient.

3. Evidence of the parties to the hearing

3.1 The evidence of the Applicants may be summarised as follows:-

3.1.1 Mr Sood, on behalf of the Applicants described his proposed neighbourhood as lying to the north by Glentinar Road, to the east by Glentinar Road where it joins Castlebay Street moving south until Liddesdale Road, adjoining Birsay Road, on the south where Birsay Road joins School Road moving west where it joins Balmore Road then moving south reaching Possilpark and Parkhouse train station and to the west following a western direction adjoining a path NCR754 moving north. This was the area of Lambhill containing a population of 1968 and which would benefit from access to pharmaceutical services. The population would increase significantly as there were a number of new houses and flats that had been built and plans in place for more housing further increasing the population. It was a recognised regeneration area and in the top 5% of deprivation statistics and thus an increased demand for pharmaceutical services. The cost of accessing services outwith the neighbourhood was an issue.

3.1.2 Mr Sood argued that this was a neighbourhood for all purposes and that it had a number of schools, nurseries and primaries within the vicinity, 2 churches, grocery stores, local business, restaurants and others. Other pharmacies were so located resulting in significant travel distances to access them. Of the 7 pharmacies mentioned by him the distances ranged from 0.5 miles to 2 miles and a round trip of 1 mile to the nearest was unacceptable for an elderly or frail patient. He acknowledged that there were delivery services available but this could not be regarded as a suitable alternative to a face to face interaction with patients. He had attended Council meetings and there was clear support for a pharmacy.

3.1.3 As well as the core services Mr Sood had stated that his pharmacy would offer a chronic pain clinic (subject to funding) and access to pain professionals able to diagnose, prescribe and dispense pain relief medication and would include substance misuse, smoking cessation and other services. His pharmacy would open 7 days a

week. On questioning by parties and the PPC Mr Sood acknowledged that he had not considered the distance from his proposed site to other pharmacies to include distances and times to bus stops and that his neighbourhood did not incorporate any GP services and that the population of his neighbourhood were required to travel to their GP. He accepted that his pharmacy would be run from the Post Office and that the Post Office owner would run his business from a small part of the building and that the pharmacy would occupy the rest and there would be a consultation room to ensure privacy. Whilst stating that a round trip of 1 mile and the time of 20 minutes was unacceptable Mr Sood had stated that depending on one's health 100 yards could be a marathon journey to a pharmacy but distances were relative and depended on those who were requiring a service. He also acknowledged that the several schools referred to were those in the surrounding area, but he believed that there was a primary just on the border. When asked what his definition of neighbourhood was, bearing in mind that the boundaries did not incorporate major arterial roads or physical boundaries Mr Sood said he did not feel he had to explain the boundaries of the neighbourhood and it had been just the way it had been chosen to define it in terms of their application. Mr Sood had stated that the current building of 148 houses could result in another 700 people in his neighbourhood. In response to a question by a member of the PPC regarding the replies to question 7 in the CAR that 71.4% of the respondents said they did not know if there were other NHS services which should be provided which in itself did not indicate a lack of provision, Mr Sood stated that the local meeting indicated that they wanted an additional pharmacy. On being asked how many people had attended the Council meeting on 10 February Mr Sood stated that he thought there were about 20. Mr Sood acknowledged that the Lambhill Stables (the Community Centre) was not in his proposed neighbourhood but it was a meeting area for the population. Mr Sood acknowledged that there would be a 1 mile round trip for a resident in his proposed neighbourhood to another point in his neighbourhood. Mr Sood also acknowledged that there were a number of pharmacies in Saracen Street which was close to his neighbourhood albeit he had mentioned only pharmacies in the Maryhill area.

3.2 The evidence of Mr Church of Rowlands Pharmacy may be summarised as follows:-

- 3.2.1 Mr Church stated that he considered the neighbourhood to be: on the north Tresta Road, Skirsa Street, Balmore Road A879; on the east Balmore Road, Glentana Road, Liddesdale Road, Torogay Street and Ashgill Road; to the south the railway line; to the west Tresta Road meeting the railway line. In this neighbourhood there were 3 existing pharmacies with Rowlands Pharmacy on the edge of the defined neighbourhood only 0.6 miles from the Applicants' proposed site. The Applicants' argument was nothing more than convenience. One respondent to the CAR said that it would be always "handy" to have a new pharmacy open. This did not satisfy the legal test. There were 13 pharmacies within a 2km radius of the site and on this evidence alone another pharmacy was unnecessary and undesirable and had the current provision regarded as inadequate he would have expected significant engagement with a consultation process whereas there were 29 responses only. He was of the view that as GP services were outwith the neighbourhood as well as shopping, banking and other facilities residents would access these services on a regular basis and that the opening of a new pharmacy did nothing to improve that access to pharmaceutical services. His pharmacy provided all core services as well as additional services with waiting times extremely low and a comprehensive collection and delivery service. Rowlands were always looking for new services to get involved in.
- 3.2.2 In response to questions from the Applicants, interested parties and the PPC Mr Church conceded that the response rate was low but thought that if there had been a genuine lack of service the response would have been larger. Mr Church confirmed that he did dispense to the Lambhill area but could not be certain as to where, for example, someone from Torogay Street would describe themselves as living. Defining their neighbourhood was always difficult and some may say that they were from Lambhill and others from Milton and a line had to be drawn somewhere for this purpose. He was uncertain that there had ever been a health board Sunday rota for the north west Glasgow area but if there was to be one Rowlands would be willing to participate and that, further, he was unaware of any complaints about his pharmacies

and the nearest pharmacy was nowhere near capacity; Indeed there had been a slight drop in prescriptions since the relocation of the GP surgery.

3.3 The evidence of Mr Green of M & D Green Dispensing Chemist Limited may be summarised as follows:-

3.3.1 Mr Green considered the boundaries to be to the north and west by the Forth & Clyde Canal to its junction with the railway line, then along Balmore Road following this to Hawthorn Street, then running straight to Springburn Road and following this to the junction with Kirkintilloch Road to the lights then left along Coulston Road to Ashgill Road and following this north to Scaraway Street and thereafter taking the line along the open countryside back to the canal. This was well defined by a large arterial road and physical barriers with a range of services including 4 pharmacies with an additional 5 in the immediate surrounding areas of Cawdor, Summerston and Possilpark. The pharmacy provision in and to this area was not only adequate but offered considerable choice. Lambhill residents travel regularly on a daily basis for access to normal amenities. Schools were located in Milton. Cawdor and Springburn, groceries and fresh produce would be served by Asda in Summerston who offered a free regular bus and also there was a pharmacy next to this store. Extended opening hours were unnecessary as the area was well provided with pharmacies with extended opening hours. He expressed concern about viability and that of his 3 stores 2 (Cawdor and Westray) were considered as having low to medium volume thus if an additional pharmacy were to open within half a mile this could threaten their viability and suggested that if the new pharmacy were close to 2 low volume pharmacies the Applicants would require to consider their own financial viability. He considered that the Applicants' neighbourhood was not one which met the requirements of the Regulations and merely part of a larger neighbourhood which offered a large choice of pharmacies to the population.

3.3.2 On questioning by the Applicants, interested parties and the PPC Mr Green stated that residents of Lambhill had no option but to travel to access basic amenities and was done on a daily basis in that, for example, the primary schools were in Milton and Cawdor and mothers who routinely had to travel there did not cause them any difficulty. He acknowledged that Lambhill had an identity but that this did not mean that it was a neighbourhood for the purposes of the Regulations. Mr Green had confirmed that he dispensed to the Lambhill area and that the significance of the CAR was diluted and not truly representative. He added that there had been no complaints about their services. It was his opinion that a population size of 4,000 minimum would be a sustainable figure for a neighbourhood pharmacy and that it was his view that an acceptable distance for a pharmacy would be about 1 mile.

3.4 The evidence of Mr Mark Feeney of Bannerman's Pharmacy may be summarised as follows:-

3.4.1 Mr Feeney stated that his pharmacies in Saracen Street had invested in staff and premises and had a highly skilled and experienced team with 2 pharmacists training to be independent prescribers, trained accuracy checking technicians and registered technicians with modern premises with at least one consultation room at each pharmacy. The pharmacies provide full elements of the community pharmacy contract and that there was reasonable access provided by public transport.

3.4.2 In response to questions he had stated that parking could be difficult on the main street but that there was, however, parking on the side streets and he personally never had any problem parking or attending work at any time of the day. His pharmacies did deliver to Lambhill on a daily basis for patients who struggled to attend but could not give an exact figure but his pharmacies did have ample capacity to cope with any increase in demand and, further, there had been no complaints about Bannerman's Service.

3.5 The evidence of Mr Polson of Lambhill & District Community Council may be summarised as follows:-

3.5.1 Mr Polson stated that he considered Lambhill to be a hamlet which had existed for

over 100 years and there was very much a sense of community in the area. There were many in Lambhill who would welcome a new pharmacy which would avoid having to make a walk and that there had been one or two comments about the delivery service and the time that it took although he appreciated that not everyone could be first on the list of deliveries. The Council had supported the application as it was believed the area needed its own pharmacy.

3.5.2 In response to questions Mr Polson considered that the Post Office was the central point in Lambhill. The more so that the bank had removed the cash machine as well as its branch and he believed that there were discussions with the Post Office to offer a banking service there and confirmed that everyone that he had spoken to wished that there was a pharmacy nearer.

3.5.3 In response to questions Mr Polson stated he did his weekly shop to Asda or Tesco and used his car as did he use his car to access pharmaceutical services in Loanside. He stated that the Council met once a month and that there were about 20 on the committee. Regarding deprivation Mr Polson remarked that he was generally lucky that he could get a parking space close to his house as there were a lot of car owners and generally he considered it a fairly good area. He was aware of 3 recently completed developments totalling about 250-300 houses one on the site of the Foundry consisted of luxury flats and there was new builds for residential homes and 45 flats next to the chapel. All of these were new and not replacements.

4. The PPC's Decision

4.1 After each party had summed up their position and prior to their departure from the hearing the chair noted that all parties believed that they had received a full and fair hearing.

4.2 The PPC are noted to have considered all submissions written and oral including those who had made representation, information regarding the number of prescription items dispensed during the past 12 months, the Consultation Analysis Report and the evidence of the Applicants and interested parties as also the PPC's observations from the site visit.

4.3 In determining the **neighbourhood** it had noted that the neighbourhood could be a place where some describe themselves as coming from but could also be a place from where they received their services and from their visit to the area the PPC observed that the neighbourhood defined by the Applicants contained only a Post Office, some small shops and 2 churches. The main amenities which people accessed on a daily basis such as schools, banks, community centres, full range of shops, GPs surgeries, dentists and public houses lay outwith the Applicants' neighbourhood. The PPC's view was that whilst Lambhill saw itself as a community this was not sufficient and it was not a neighbourhood for all purposes. It also noted that most of the boundaries were not actual physical boundaries or major arterial routes and in the circumstances the PPC considered the neighbourhood should be defined as follows:-

To the south – the railway line from where it crossed Balmore Road at Broadholm Street along to where it crossed Herma Street;

To the west – Herma Street to the Crematorium at Skersa Street,

To the north – along Tresta Road where it crossed the canal at Balmore Road,

To the east – down Balmore Road to Broadholm Street.

The PPC consider this to be a neighbourhood which contained all the amenities and services which people require to access on a daily basis to carry out their lives.

4.4 As to **adequacy** of the existing pharmaceutical services the committee noted that there was one pharmacy within the boundaries of the neighbourhood as defined by it and 12 pharmacies within one mile of the proposed premises. These pharmacies all provided the core services and a range of non-core services. Whilst the Applicants had concentrated on the distance of 0.5 miles from the nearest existing pharmacies as evidence of its inadequacy and had emphasised that residents in their proposed neighbourhood would welcome a pharmacy in the

area the PPC considered this to be evidence of convenience only rather than inadequacy and that the population was accustomed to leaving the area on a daily basis to access services and amenities and that whilst it noted that the Applicants had referred to the CAR and the Community Council meeting as evidence that the service was inadequate only 28 people had responded to the CAR and about 20 had attended the meeting. Accordingly there was no overwhelming evidence of inadequacy. Indeed, the Council representative had stated in his evidence that a pharmacy in the area would make life easier. This was not evidence of inadequacy but rather convenience.

- 4.5 The PPC had taken into account prescribing statistics and of the evidence provided by the interested parties who had all stated that they were not operating at capacity and could cope with a rise in population. They also provided a full range of core and non-core services and in the circumstances the PPC considered that the level of existing services to and within the neighbourhood provided satisfactory access for those resident in the neighbourhood to pharmaceutical services. The PPC considered that the existing pharmaceutical services were adequate and that it was neither necessary nor desirable to grant the application.

Discussion and Reasons for Decision

- 5.1 The Regulations require to be considered in light of the objects of the scheme set out under the National Health Service (Scotland) Act 1978 and, in particular, Section 27, in that it shall be the duty of every Health Board to make arrangements as to its area for the supply to persons in that area of proper and sufficient drugs and medicines which are ordered for those persons by a medical practitioner in pursuance of his functions in the Health Service. An Application made in any case should be granted by the Board after procedures set out in Schedule 3 of the Regulations are followed, if the Board is satisfied that it is necessary or desirable to grant an Application in order to secure in the neighbourhood in which the premises are located the adequate provision by persons included on the list of the services specified in the Application. This is further extended by Regulation 5 (10) of the Regulations in that an Application shall be granted by the Board: (1) only if it is satisfied that 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 and: (2) if the boundaries of the neighbourhood within which the Applicants intend to provide pharmaceutical services falls within any part of a controlled locality, only if it is satisfied that the granting of such an application, in its opinion, would not prejudice the provision of NHS funded services in the controlled locality. For the purposes of clarification in terms of paragraph 1a of Schedule 3 of the Regulations, a controlled locality is an area within a Health Board which is remote or rural in character and which is served by a dispensing doctor. This latter provision does not apply in the current circumstances.
- 5.2 In terms of paragraph 3 (i) of Schedule 3, the PPC shall have regard to the pharmaceutical services already provided in the neighbourhood of the premises, the pharmaceutical services to be provided in the neighbourhood at those premises, any information available to the PPC which, in its opinion, is relevant to the consideration of the Application, the CAR, the Pharmaceutical Care Services Plan and the likely long-term sustainability of the pharmaceutical services to be provided by the applicants.
- 5.3 The grounds of appeal are limited to areas where the PPC has erred in law in its application of the provisions of the Regulations, that there has been a procedural defect in the way the Application has been considered, that there has been a failure by the PPC to properly narrate the facts or reasons upon which their determination of the Application is based, or there has been a failure to explain the application by the PPC of the provisions of the Regulations to those facts.
- 5.4 The principal point of the PPC's decision is whether or not it has exercised its judgement fairly and given adequate reasons for it and that it does not otherwise offend against the grounds of appeal set out in Schedule 3, paragraph 5 (2A) and (2B). It is relevant to note that the PPC comprises pharmacists and lay members who may be expected to understand the issues involved on the evidence before it. It is an expert tribunal. Equally, it must be understood that the PPC's decision must be intelligible and it must be adequate. It must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the principal issues and its reasoning does not give rise to any substantial doubt that it had erred

in law. Such adverse inference will not readily be drawn.

- 5.5 The PPC had the advantage of not only hearing the evidence of and for the parties and the papers submitted by them or on behalf of the Board but also having the advantage of a site visit. On this basis they considered that the neighbourhood as defined by the Applicants was not appropriate as it contained only a post office, some small shops and two churches whilst the main amenities which people accessed on a daily basis such as schools, banks, community centre, a full range of shops, GP surgeries, dentist and public houses were accessed outwith the narrow neighbourhood as defined by the Applicant. It had been argued during the course of the evidence that the Applicants' neighbourhood was not bounded by any defining features and which was echoed in the PPC's decision. The PPC has thereafter delineated boundaries stating that they contained the main amenities which people accessed on a daily basis and itemised these. This, on the face of it, without further explanation, is an arbitrary definition of neighbourhood. The PPC ought initially to have considered the area in which the premises lie ignoring all the other issues such as who will use the premises or where the other premises are and where the GPs are located. The neighbourhood is a place. They ought to have considered the geography of the place, the rivers or canals (perhaps commenting on crossings), the railway lines which might or might not easily be crossed and thereafter the social factors which themselves are relevant to boundaries. Why has the PCC's neighbourhood been defined in the way it has? What are the distinctive features of the boundaries? What is the estimated population? What distinguishes this neighbourhood from that described by the Applicants especially so in that the PPC has stated that neighbourhood could be a place where residents receive pharmaceutical services? Could the same not also be said of a place that receives GP, dentist, bank and other services described above?
- 5.6 The PPC has determined that on the basis of the evidence there was one pharmacy within the boundaries of neighbourhood defined by it and 12 pharmacies within one mile of the premises and all providing core and non-core services.
- 5.7 On the basis of the facts adduced and encapsulated in the PPC's decision and subject to what I have stated in 6.1 below the PPC had sufficient grounds for determining an inadequacy of current service provision was not found and that such provision was secure for the future.

6. Conclusion

- 6.1 That there has been a failure by the PCC to sufficiently explain the application of the provisions of the Regulations to the facts adduced in that it has failed to explain the definition of neighbourhood as outlined in 5.5 above, the PPC is advised to reconsider the issue with a view to remedying the defect.
- 6.2 The Board is accordingly advised to reconvene the PPC as originally constituted at the earliest opportunity in order that this matter may be considered and a fresh decision issued to the Applicants and all interested parties.
- 6.3 Otherwise, the remaining grounds of appeal set out by the Appellants and the Council disclose no reasonable grounds and accordingly I dismiss the appeal in terms of paragraph 5(5)(a)(i) of Schedule 3 of the Regulations. In the circumstances, it falls that paragraphs 5(2)(A) and 5(2)(B) are not engaged

(Sgd. J M D Graham)

J Michael D Graham
Interim Chairman
National Appeal Panel
19 December 2016