

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

Hughfield Stores, Hughfield Road, Mauchline, KA5 6DJ

Applicant and Appellant:	Mauchline Pharmacy
Health Board:	NHS Ayrshire & Arran ("the Board")
PPC Decision Issued:	1 st June 2018
Panel Case Number:	NAP78 (2018)

Decision of the Chair of the National Appeal Panel

1. BACKGROUND

- 1.1. This is an appeal against the decision of the Pharmacy Practices Commission of NHS Ayrshire & Arran ("the PPC") which was issued on 1st June 2018.
- 1.2. Mauchline Pharmacy (the "Applicant" or "Appellant") made application for inclusion in the Pharmaceutical List of NHS Ayrshire & Arran ("the Board") to provide pharmaceutical services in respect of the premises at Hughfield Stores, Hughfield Road, Mauchline, KA5 6DJ ("the premises"); said application was dated 25th February 2018
- 1.3. The PPC under delegated powers of the Board held a hearing on 16th May 2018 taking evidence from the Applicant and Interested Parties and considered supporting documentation and following upon which determined that the provision of pharmaceutical services at the premises was neither necessary nor desirable in order to secure the provision of pharmaceutical services in the neighbourhood in which the premises were located on the basis that the current provision was adequate ; it accordingly refused the application.

2. SUMMARY OF GROUNDS OF APPEAL

- 2.1. The Appellant averred that an un-minuted "accusation" was implicit in a question from a panel member to the Lead Pharmacist of the Board suggesting that the Applicant's evidence was false and not credible.
- 2.2. The Lay members of the panel were not given sufficient time in order to consider the evidence.
- 2.3. The Community Council had not been given the option to appeal against the decision of the PPC.
- 2.4. The PPC failed to narrate accurate facts or reasons upon which the determination of the application was based and that the PPC misinterpreted the Community Council's representations.
- 2.5. The PPC had stated that the proposed pharmacy would only be accessible to half the population, ignoring the Applicant's evidence that the pharmacy would be located in the most deprived part of the town as also did it ignore evidence that a delivery service would be provided.
- 2.6. The PPC failed to utilise the facts of the Consultation Analysis Report ("CAR"), specifically stating that 70% of the residents had believed there were gaps in the service but that it was not clear from the CAR where the residents resided within the neighbourhood, whereas in relation to Question 3 of the CAR, 88.2% indicated that they lived in the neighbourhood. The Applicant made other references relating to the PPC's misinterpretation of the results of the CAR.
- 2.7. The PPC did not give any consideration to the Health Board's Pharmaceutical Care Services Plan

3. THE PPC DECISION

- 3.1. All parties, having summed up, left the hearing together with the Board Administrator. Each had previously indicated that they had had a full and fair hearing and that they had nothing further to add .
- 3.2. All returned after the PPC had adjourned their deliberations in order to discuss a query raised by a member of the PPC regarding the methadone dispensing programme and whether the

Applicant's assertion that he would only provide methadone to patients from Mauchline was correct. This was confirmed by the Lead Pharmacist.

- 3.3. In addition to the oral evidence, the PPC took into account all written representations and all supporting documents submitted by the Applicant, Interested Parties and those entitled to make representations. These included the CAR and the Board's Pharmaceutical Care Services Plan (2012).
- 3.4. In determining the **neighbourhood** the PPC broadly agreed with the Applicant and Interested Parties that it should be defined by a photograph provided in the Application but amended this to reflect the boundaries of a formal map of Mauchline.
- 3.5. In relation to **adequacy** the PPC had acknowledged that there had been a poor service provided by Well Pharmacy in Mauchline and accepted the evidence of Ms Griffiths-Mbarek on behalf of Well Pharmacy that this was due to the loss of a branch manager and staff and accepted that measures had been taken in order to improve the service level, but equally acknowledged that the community of Mauchline had lost confidence in Well Pharmacy which would take time to return.
- 3.6. As to accessing the proposed pharmacy, the PPC noted it would be uphill in one direction and approximately 15 minutes' walk, which would be difficult for elderly patients, as well as being on the other side of town and being accessible to only half the population of Mauchline.
- 3.7. The PPC noted that the representative of the Community Council had stated that it would be convenient for an additional pharmacy contract to be granted, especially one with more over-the-counter services which would be desirable. The PPC had noted that over-the-counter services providing non-core items could not be considered a pharmaceutical service.
- 3.8. The PPC reviewed the CAR, and noted that whilst 70% (*sic*) of residents believed there were gaps in the service, it was not clear from the CAR where the residents resided within the Neighbourhood. There had been extensive complaints about the existing pharmaceutical service and the PPC had acknowledged that the issues of stock shortage was a national issue and had noted a comment from one respondent on Page 33 of the CAR stating that, whilst there were issues with waiting times, the respondent was happy to give the existing pharmacy time to rectify this. The PPC also noted that 77% of respondents supported the opening of a new pharmacy but it had not been clear whether this was based on convenience or need. The PPC further noted that a smaller percentage (57.48%) believed it would improve services. In acknowledging the failings of Well Pharmacy, which had since improved, the PPC accepted evidence that there had been no complaints to the Health Board regarding the existing pharmacy.

4. DISCUSSION AND REASONS FOR DECISION

- 4.1. The Regulations are governed by Section 27 of the National Health Service (Scotland) Act 1978 wherein it is provided 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 drugs and medicines which are ordered by a Medical Practitioner in pursuance of his functions in the Health Service in Scotland. An application made in any case for pharmaceutical services shall 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 services specified in the application. Regulation 5(10) also refers.

- 4.2. In terms of paragraph 3(1) of schedule 3 of the Regulations, the PPC shall have regard to the pharmaceutical services already provided in the neighbourhood of the premises, of 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 Applicant.
- 4.3. The grounds for appeal are limited to areas where the PPC on behalf of the Board 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 and reasons upon which their determination of the application was based, or there has been a failure to explain the application by the PPC of the provisions of the Regulations to those facts.
- 4.4. The principal issue is whether or not the PPC has exercised its judgement fairly and given adequate reasons for it and it does not otherwise offend against the grounds for appeal set out in Schedule 3 paragraphs 5(2A) and 5(2B). It is important 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.
- 4.5. During the course of the evidence of both the Applicant and the representative of Well Pharmacy, there arose sufficient doubt amongst the members of the PPC as to whether the Applicant could restrict the provision of methadone to patients from Mauchline only, such that the PPC reconvened the hearing to have this matter addressed by the Lead Pharmacist who explained that methadone dispensing was an additional service and each pharmacy could decide whether to accept particular patients. The ultimate decision lay with the pharmacist. I can only deal with the minutes as I have them and have to assume that they are a true record of the proceedings. In the circumstances, the Appellant's assertion that this amounted as an "accusation" towards the Applicant's representative does not bear examination, nor does his assertion that this "may have falsely contributed to the decision". There was equally no foundation for the Appellant's assertion that the Lay Members had little time amongst themselves to discuss the evidence and come to the final decision. The members of the PPC may take such time as they consider appropriate in the circumstances. However I have noted that the Applicant and Interested Parties left the hearing at 14:35, and the PPC's deliberations were completed at 15:50, with a 10 minute interval for the question and answer session with the Lead Pharmacist; my view is that the PPC had more than ample time to discuss the evidence.
- 4.6. The Applicant states that Mr Lennox of the Community Council had not been given an option to appeal against the decision. Any Interested Party is entitled to appeal, and if the Community Council did not exercise that option, that is of no concern to the National Appeal Panel.
- 4.7. The Applicant had stated in his evidence that Well Pharmacy had not been providing an adequate service and, in support of this, referred to various responses in the CAR. In response, the representative for Well Pharmacy had indicated that there were national problems with stock availability over the past 12 months and in response to a question, the Applicant had indicated that he was aware of the problem. Ms Griffiths-Mbarek of Well Pharmacy stated in her evidence that whilst there was only one pharmacy physically within the neighbourhood it was supported by pharmacies from the wider area and ,further , Well Pharmacy was within half a mile from the extremities of the neighbourhood, whereas the Applicant's premises would not

be in a centralised location and would only serve one element of the whole of Mauchline, and considered that this did not provide sufficient access. She had indicated that she was not aware of any complaints to the Health Board but had acknowledged there had been a “perfect storm” between May-September 2017 when the Pharmacy Branch Manager had left together with a number of other staff and which had resulted in the pharmacy being run by an inexperienced team for 2-3 months, but that these issues had since been resolved. Mr Lennox of the Community Council initially considered that the existing service was insufficient. He also stated that Well Pharmacy had provided a good service, but the Village had been let down at the point of the “perfect storm”. He did indicate, however, that in recent months, the service had improved but that some patients had felt a loss of confidence which would remain for some time to come. He also stated that a new pharmacy at the location would be convenient and accessible.

- 4.8. In the circumstances, I do not believe the PPC has erred in its narration of the facts and it has given adequate reasons upon which it has determined that the current provision of pharmaceutical services is adequate. It seems clear that the issues arising from what Ms Griffiths-Mbarek described as the “perfect storm” was a temporary one and whilst there may be a loss of confidence in the existing pharmacy, it had adequately performed before the issues which had arisen and had, on the evidence of Mr Lennox, improved since.
- 4.9. There was another issue raised by Mr Reekie representing J & A Reekie Chemists that, of a small population of 4000, he expressed surprise whether it could support two pharmacies. This question on viability was not explored by the Applicant, nor the other Interested Parties, nor, indeed, was it discussed by the PPC. I do not intend to comment further on it.
- 4.10. The CAR was extensively commented on by the PPC. It must be understood that the CAR is useful in evidence, but it is certainly not determinative, and the PPC may apply such weight to it as it considers appropriate. Whilst 77% supported the opening of a new pharmacy, it is a matter of the expert opinion of the PPC to determine whether this was based on convenience or not. Whilst approximately 88% of respondents lived in the neighbourhood, 70% (*sic*) believed there were gaps in the service, but the PPC had declared it was not clear from the CAR where the residents resided within the neighbourhood. I am assuming the point the PPC was making was its uncertainty as to where in the neighbourhood that 70% (73.9% -correct figure) was living.
- 4.11. The Appellant states that the PPC did not give any consideration to the Health Board’s Pharmaceutical Care Services Plan. Paragraph 21.2(ix) indicates that in fact the PPC did note the terms of the Pharmaceutical Care Services Plan, albeit the last Plan appears to have been published in 2012. I assume the PPC placed such weight on it as it deemed appropriate.

5. **DECISION**

- 5.1. For the reasons set out above, I am satisfied that the terms of the letter of appeal set out by the Appellant discloses no reasonable grounds and accordingly I shall dismiss the Appeal..

(sgd) J Michael D Graham

Interim Chair

24 September 2018