The Applications

By application dated 26th May 2011, Community Pharmacies (UK) Ltd applied to Oxfordshire Primary Care Trust ("the PCT") for preliminary consent prior to inclusion in the pharmaceutical list at in the vicinity of Long Furlong Medical Centre, Loyd Close, Abingdon, Oxfordshire, OX14 1XR. In support of the application it was stated:

1.1 Applications have previously been granted at this site (Ref SHA/14262 and SHA/15667).

1.2 This application is exactly the same as the previous applications which were approved by the Appeals Committee.

1.3 Community Pharmacies propose that the neighbourhood should be defined as the area to the north of Abingdon bounded by Oxford Road to the East, Dunmore Road to the North and West continuing into Wootton Road and Northcourt Road to the South back to its junction with Oxford Road. A map of the neighbourhood as defined is attached.

1.4 There is one surgery in the defined neighbourhood, Long Furlong Medical Centre in Loyd Close with a list size of 8,627 patients as at the end of Dec 2009. There is no pharmacy in the defined neighbourhood and patients of the surgery and local residents at present have to leave the neighbourhood to access pharmacy services and walk approximately 1.3km or drive 2km by road to the nearest pharmacy, Lloydspharmacy at Peachcroft Road.

1.5 The Appeals Panel (Ref: SHA/14262 and SHA/15667) recently concluded that pharmaceutical services in the neighbourhood are not adequate and that the granting of a pharmacy contract was expedient.

By application dated 28th May 2011, Matrix Primary Healthcare Ltd ("the Applicant") applied to Oxfordshire Primary Care Trust ("the PCT") for preliminary consent prior to inclusion in the pharmaceutical list at in the vicinity of Long Furlong Medical Centre, Loyd Close, Abingdon. In support of the application it was stated:

1.6 Matrix Primary Healthcare consider that the provision of pharmaceutical services in the proposed neighbourhood are less than wholly adequate so that it is both necessary and expedient to grant the application for the following reasons:-
Neighbourhood

1.7 The proposed location for the application is in the vicinity of Long Furlong Medical Centre, Loyd Close, Abingdon. The proposed neighbourhood for the application can be identified by the following boundaries:

1.7.1 Northern Boundary: Dunmore Road from the roundabout on Bath Street, eastwards to the roundabout on the A4183 Oxford Road.

1.7.2 Eastern Boundary: The A4183 Oxford Road from the roundabout at Dunmore Road to the junction with Northcourt Road.

1.7.3 Southern Boundary: Northcourt Road.

1.7.4 Western Boundary: Bath Street from the junction at Northcourt Road to the roundabout at Dunmore Road.

1.8 Appendix B contains a map showing the proposed neighbourhood.

Neighbourhood Demographics

1.9 The proposed neighbourhood had a resident population of approximately 5,300 based on the 2001 census. It is acknowledged that car ownership in the neighbourhood is slightly higher than the average for the Vale of White Horse District. Approximately 50% of households in the neighbourhood have access to one car or less.

1.10 However with a higher percentage of workers in the neighbourhood than the district average (55% compared to 47% of people aged 16-74 are in full time employment) it is submitted that the majority of these single car households will use them to commute to their place of work and so will not be available during the day.

Access to Existing Pharmacies

1.11 The proposed pharmacy will be in the vicinity of Long Furlong Medical Centre. It would therefore be easily accessible to all patients that use the surgery and residents of the proposed neighbourhood. There are no pharmacies in the neighbourhood. Patients who require access to pharmaceutical services must travel outside the neighbourhood to access the existing pharmacies. The need to travel outside the neighbourhood results in inadequacy of pharmaceutical services by reason of distance and barriers between the proposed neighbourhood and the existing pharmacies.

1.12 The existing pharmacy is at least 2.3 kilometres from the proposed site via an accessible route. Therefore it is an unsuitable walk for any person with mobility difficulties, such as those who are suffering from a limiting long term illness and for patients who are in a wheelchair or those pushing a pram or walking with small children.

1.13 Matrix Primary Healthcare believes that easy and convenient access to pharmaceutical services is vital in order to support self care. This statement is supported by a white paper published by the Department of Health in 2000 called “Pharmacy for the future - Implementing the NHS Plan”. “Meeting the changing needs of a patient” was one of the challenges set by this paper and this includes:

1.13.1 Ensuring people can get medicines or pharmaceutical advice easily and conveniently and, as far as possible, in a way, at a time and at a place of their choosing;

1.13.2 More support in using medicine; Extra help for those who need it to get the best out of their medicines - help which will mean fewer people being ill
because they are not using their medicines properly, and which will cut the amount of medicine which is simply wasted;

1.13.3 Building on the trust and confidence that people place in pharmacists and pharmacy services.

1.14 According to “A Vision for Pharmacy in the New NHS” published in July 2003, community pharmacies should:

1.14.1 Be - and be seen to be - an integral part of the NHS family in providing primary care and community services;

1.14.2 Respond to diverse and changing needs of patients and communities;

1.14.3 Be a source of innovation in the delivery of services;

1.14.4 Help tackle health inequalities.

1.15 Matrix Primary Healthcare believe that in granting this application, all the above will be achieved and help provide a seamless service.

Services to Be Provided By Proposed Pharmacy

1.16 Patients will benefit by obtaining easily accessible advice and information on common health problems and medicines, both prescription and over the counter within their own neighbourhood. In addition to essential services, the proposed pharmacy will provide advanced and enhanced services, of which some are exclusive to pharmacies, such as medication use reviews, emergency hormonal contraception via a patient group direction, supervised consumption, needle exchange scheme, minor aliment scheme and smoking cessation.

1.17 Other services would include diabetes and blood pressure monitoring, cholesterol testing, anticoagulant monitoring, weight management and an extensive prescription collection and delivery service. A community pharmacy is the cornerstone of primary care and should be easily accessible as it makes a vital contribution to patient care and health improvement, both as individual professionals and as part of the wider NHS.

Choice

1.18 There are no pharmacies in the proposed neighbourhood. Residents do not have a reasonable choice of either pharmaceutical services or service providers.

Summary

1.19 Matrix Primary Healthcare are proposing to site a pharmacy in the vicinity of Long Furlong Medical Centre, Loyd Close, Abingdon. There are no pharmacies in the proposed neighbourhood and residents currently have to travel at least 2.3 kilometres, via an accessible route, in order to access pharmaceutical services.

1.20 Matrix Primary Healthcare propose to offer all essential, enhanced services, and advanced services as commissioned by the PCT. Based on the rationale set out above the Matrix Primary Healthcare application, with respect to the current pharmaceutical service regulations ‘control of entry’ test, is both necessary and expedient. Therefore Matrix Primary Healthcare would respectfully ask the PCT to consider favourably the application for the neighbourhood a new pharmaceutical contract.

The PCT Decision

The PCT considered and decided to grant both applications. The decision letter dated 11th November 2011 states:
2.1 On 26 July 2011, Oxfordshire PCT determined that the applications from Matrix Primary Healthcare Ltd and Community Pharmacies (UK) Ltd were to be processed together and in relation to each other. Both applicants and all interested parties were advised of this decision.

2.2 Previous applications relating to Loyd Close, Abingdon

2.3 In August 2007, an application for preliminary consent was submitted by Assura Pharmacy Limited. This was refused by the PCT in December 2007 and the decision was overturned on appeal by the FHSAU following an oral hearing, as being ‘at least desirable to secure the adequate provision of pharmaceutical services in the neighbourhood’. A full consent application was received in February 2009. The full application was approved by the PCT in October 2009. Assura Pharmacy Limited had six months to commence the provision of pharmaceutical services. However, this application lapsed in June 2010.

2.4 In April 2008 an application for preliminary consent was submitted by Matrix Primary Healthcare Limited. This was refused by the PCT as the application from Assura Pharmacy Limited (as outlined above) was still current. No appeal was received against this decision.

2.5 In August 2009, a second application for preliminary consent was submitted by Matrix Primary Healthcare Limited. Again, this was refused by the PCT in January 2010, as the application from Assura Pharmacy was still current. Matrix Primary Healthcare Limited appealed against this decision; the FHSAU upheld the appeal and overturned the PCT’s decision in June 2010 as the application from Assura Pharmacy Limited lapsed during the period in which the appeal was being processed. Matrix Primary Healthcare Limited was given six months, expiring in December 2010 to submit a full application. This full application was submitted in December 2010 and approved by the PCT. Matrix Primary Healthcare Limited was given six months, i.e. until August 2011 to commence trading. No extension was requested by Matrix to this original grant of six months and therefore the application lapsed in August 2011.

2.6 In May 2010 an application for preliminary consent was received from Community Pharmacies (UK) Ltd. This application was refused by the PCT in September 2010; the application from Matrix Primary Healthcare Limited was still current. Community Pharmacies Ltd did not appeal.

2.7 In November 2010 an application for preliminary consent was received from Sharief Limited. This application was refused by the PCT in February 2011; the approved application from Matrix Primary Healthcare Limited was still current. Sharief Limited did not appeal against this decision.

2.8 The two applications currently under discussion, for preliminary consent for premises in the vicinity of Long Furlong Medical Centre, Loyd Close, Abingdon were received within 5 days of one another with the same designated date of receipt of 6 July 2011.

NEIGHBOURHOOD

2.9 The PCT considered the neighbourhoods proposed by the applicants.

2.10 Matrix Primary Healthcare Ltd defined their neighbourhood as [see 1.7].

2.11 A map of the proposed neighbourhood was provided. The applicant’s definition of the neighbourhood is the same as that already determined by the PCT (and agreed by the FHSAU in relation to the previous application from Assura Pharmacy Ltd for a pharmacy contract at Loyd Close).

2.12 Community Pharmacies (UK) Ltd defined their neighbourhood as [see 1.3].
2.13 The PCT determined that the neighbourhood already determined by the PCT (and agreed by the FHSAU in relation to the previous application from Assura Pharmacy Ltd for a pharmacy contract at Loyd Close) was the most appropriate neighbourhood definition in relation to both the applications currently being determined. This neighbourhood is as follows:

2.13.1 To the south: the line of Northcourt Road.

2.13.2 To the east: the line of the A4183 Oxford Road from the roundabout at Dunmore Road to the junction with Northcourt Road.

2.13.3 To the north: the line of Dunmore Road from the roundabout on Bath Street to the roundabout on Oxford Road.

2.13.4 To the west: Bath Street from the junction at Northcourt Road to the roundabout at Dunmore Road.

CONSIDERATION

2.14 The PCT then considered the applications and other relevant information, including the following:

2.15 Both reports prepared by TVPCA which included information concerning the area (following a site visit), details of pharmacies and GP practices local to the applications’ site and other relevant information.

2.16 The locations and distances of existing pharmaceutical services both within and outside the neighbourhood.

2.17 Within the neighbourhood as defined above there were currently no pharmacies.

2.18 In December 2010, Matrix Primary Healthcare Ltd converted a preliminary consent to a full application for a pharmacy contract at the Long Furlong Medical Centre. Matrix Primary Healthcare Ltd was given 6 months, until August 2011 to commence trading. No extension was requested by Matrix and the application lapsed in August 2011.

2.19 There was currently one GP surgery within the above defined neighbourhood boundaries; this was the Long Furlong Medical Centre at Loyd Close.

2.20 GP list sizes and numbers of items dispensed by pharmacies.

2.21 Information contained in both applications, including proposed opening hours and services to be provided.

2.22 Representations from interested parties.

2.23 Representations from the applicants.

2.24 Unsolicited representations from Long Furlong Medical Centre.

2.25 Public transport.

2.26 Population demographics including:

2.26.1 the percentage of residents in Abingdon Dunmore Ward aged 65+ was less than that of the Vale of White Horse and the South East of England

2.26.2 the percentage of those describing their health as good and fairly good was approximately 97%, e.g. higher in Abingdon Dunmore Ward than the Vale of
White Horse and the South East of England, whilst those with a limiting long-term illness was less

2.26.3 9.76% of the population was retired

2.26.4 54.55% of the population were full time employees with 7.08% self-employed

2.27 A site visit carried out on 21 September 2011, which updated information from a site visit undertaken on 18 January 2010

2.28 The findings from the review of pharmaceutical services in Oxfordshire PCT in regard to the PNA (see below).

Pharmaceutical Needs Assessment (PNA)

2.29 The PCT had produced a PNA which had been published on 1 February 2011. The PCT noted that there was no gap in service provision identified in the PNA, bearing in mind the approved applications by Assura Pharmacy Ltd and subsequently Matrix Primary Healthcare Ltd, the last of which lapsed following publication of the PNA.

ADEQUACY AND CHOICE

2.30 The PCT then considered adequacy and choice of service provision to residents in the neighbourhood as defined above. The PCT was reminded that there did not have to be pharmaceutical services located within a neighbourhood for services to be provided to the residents of that area; service providers could be located in adjacent neighbourhoods. The PCT was mindful of the original application and Appeal findings (SHA/14262) of Assura Pharmacy Ltd.

Adequacy

2.31 The following points were noted:

2.31.1 There were currently no pharmacies within the above defined boundaries of the neighbourhood.

2.31.2 The nearest community pharmacy was Lloyds Pharmacy in Peachcroft Road (0.7 miles).

2.31.3 Although the population in the neighbourhood was generally mobile, the FHSAU considered that there were gaps in adequacy of service, having regard to those within the neighbourhood without the use of a car (SHA/14262/8, 3.4.6.1.)

2.31.4 There were currently 5 pharmacies within a 1.5 mile radius of the proposed pharmacy with a further 2 pharmacies within 2.2 miles.

2.31.5 Consult Pharmacy on Spring Road (owned by Sherby Pharma Ltd), held a ‘100 hour’ pharmacy contract. This was 1.5 miles from the proposed location.

2.31.6 There had been no complaints relating to existing pharmaceutical services.

2.32 Choice

2.32.1 Of the 7 pharmacies within 2.2 miles of the proposed location there were 6 different service providers.

2.32.2 Access to existing pharmacy contractors was considered adequate for a highly mobile population with high car ownership.
2.32.3 While there was adequacy in Abingdon Town Centre, the FHSAU Committee accepted that there was lack of reasonable choice and lack of safety for pedestrians in the town centre (SHA/14262/8 3.2.2.)

2.32.4 Within 3 miles of the proposed location there was 1 dispensing surgery, i.e. the Marcham Road Health Centre.

2.32.5 Residents living outside of the urban area of Abingdon and outside of a 1.6 kilometre (1 mile) radius of any pharmacy were entitled to receive dispensing services from GP practices.

DECISION

2.33 Having considered the applications, all representations received, a report prepared by TVPCA and information in the PNA, the PCT determined that it was not necessary, but was expedient to grant a pharmaceutical services contract for premises at Loyd Close, Abingdon for the following reasons:

2.34 Not Necessary:

2.34.1 There was a pharmacy in an adjacent neighbourhood providing Local Enhanced Services as commissioned by the PCT.

2.34.2 Car ownership was high. The population was in the main mobile, young and in good health.

2.34.3 The neighbourhood had not been highlighted in Oxfordshire PCT’s Pharmaceutical Needs Assessment as requiring additional pharmaceutical services.

2.35 Expedient:

2.35.1 Although there was deemed to be high car ownership in the neighbourhood, the PCT concurred with the FHSAU opinion that for pedestrians, “the walk to the nearest pharmacy was not a walk to be undertaken lightly by the elderly or young mothers with children during the hours of darkness or in foul weather”.

2.35.2 The PCT concurred with the FHSAU opinion that the combined residential, working and transient population of the neighbourhood, had grown since the 2001 census figure of 5,300 and could be as high as of 8,000, and as such, it was accepted that there was no pharmacy within the neighbourhood for that population.

2.36 Following the decision that a pharmaceutical services contract was expedient, the PCT then went on to consider the applications that had been submitted and in this regard noted the following: CONSIDERING MULTIPLE APPLICATIONS TOGETHER

2.37 The ‘Information for Primary Care Trusts - revised September 2009’ states:

2.37.1 4.61 “When a Primary Care Trust properly determines to consider two or more such applications together, it may, of course, reject all of them. It may deem that all meet the relevant criteria, under which they are determined and grant them all, potentially leaving market forces to play a role. However, if it determines to grant one of them, the determination to grant such applications should be based on a consideration of all the evidence provided to the Primary Care Trust about the competing claims of the applicants.”
2.37.2 4.62 “In such cases, a favourable determination should not be made simply on the grounds that one particular application was received before another. It should be made on the basis that the range and quality of services specified in the application in question is to be preferred. If the application does not provide sufficient information as to how the quality of services to be provided is to be assured, Primary Care Trusts may wish to seek further information from the applicant either in writing or by way of an oral hearing. However, where all other things are equal, Primary Care Trusts can ultimately determine competing applications on the basis of the time the first application was received. This is known as “the first past the post” principle.”

2.38 Taking into account the above, the PCT then considered whether there were any factors which would lead the PCT to favour one application over the other and noted:

2.38.1 Both applications were for preliminary consent.

2.38.2 Both applicants proposed to provide essential services.

2.38.3 Both applicants proposed to provide advanced services; Matrix Primary Healthcare Limited indicated that they were accredited to provide Medicines Use Reviews; Community Pharmacies (UK) Ltd stated that they were not accredited.

2.38.4 Both applicants proposed to provide all local enhanced services, if commissioned by the PCT.

2.38.5 The opening hours proposed by both applicants were similar; the PCT noted that Community Pharmacies (UK) Ltd were intending to open for an extra hour on Saturdays. However, apart from that, the opening hours were the same.

2.38.6 Unsolicited representations had been received from Long Furlong Medical Centre supporting the application from Community Pharmacies (UK) Limited.

2.39 Having considered the above, the PCT felt that there were no significant factors in either application which would lead it to favour one over the other.

2.40 The PCT then noted the Guidance which states: “However, where all other things are equal, Primary Care Trusts can ultimately determine competing applications on the basis of the time the first application was received. This is known as “the first past the post” principle.”

2.41 The application from Matrix Primary Healthcare Limited was received on 2 June 2011 and the application from Community Pharmacies (UK) Limited was received on 27 May 2011 and both had a designated date of receipt of 6 July 2011.

2.42 The PCT considered that there was a very short period between the applications actually being received, i.e. 6 days (irrespective of the same designated date of receipt) and did not feel that this warranted the PCT to prefer one application over the other.

2.43 Therefore, having considered all the relevant factors, the PCT determined to approve both applications for pharmaceutical services contracts in the vicinity of Long Furlong Medical Centre, Loyd Close, Abingdon, Oxfordshire.

The Appeals
In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority ("the Appeal Unit"), dated 25th November 2011, Lloyds Pharmacy Ltd ("the Appellant") appealed against the PCT’s decision. The grounds of appeal are:

3.1 With regard to the PCT’s decision Lloyds Pharmacy Ltd submit that it is unnecessary for both applications to be granted to the same site and that only one pharmacy contract is expedient to meet the needs highlighted in the PCT’s decision.

3.2 For the above reasons Lloyds Pharmacy Ltd would respectfully ask the FHSAU to uphold the appeal and refuse one of the applications as there is no evidence of need for two pharmacies to open at the same site.

4 **Summary of Representations**

This is a summary of representations received on the appeals. A summary of those representations made to the PCT are only included in so far as they are relevant and add to those received on the appeals.

4.1 **COMMUNITY PHARMACIES (UK) LTD**

4.1.1 Community Pharmacies (UK) Ltd would submit that if the appeal authority determine to uphold the appeal and to grant only one application that they find in favour of the Community Pharmacies (UK) Ltd application for the following reasons:

4.1.1.1 With there being no substantive difference between the two applications the first past the post principle should apply. Community Pharmacies (UK) Ltd applied some six days ahead of the Matrix application.

4.1.1.2 Community Pharmacies have the full support of the GPs meaning that they are the applicant able to actually open the contract in the health centre as evidenced in the application bundle.

4.2 **MATRIX PRIMARY HEALTHCARE**

4.2.1 Oxfordshire PCT has correctly decided to grant preliminary consent to Matrix Primary Healthcare in the vicinity of Long Furlong Medical Centre, Abingdon. There have been previous Appeals Unit decisions that a pharmacy is at least expedient at this site, most recently SHA/15667.

4.2.2 Matrix Primary Healthcare Ltd have been and are currently in discussion with the practice manager and partners at Long Furlong Medical Centre, and agree with the PCT decision to grant the preliminary consent.

4.2.3 The PCT appears to have followed the guidance issued to PCT’s below.

4.2.4 “Information for Primary Care Trust (Control of Entry) revised September 2009 which states:

4.2.4.1 “Multiple applications

61... It may deem that all meet the relevant criteria, under which they are determined and grant them all, potentially leaving market forces to play a role…”

4.2.5 With this in mind, the PCT have acted in line with the guidance, and as such the appeal by Lloyds Pharmacy should be dismissed.

4.3 **THAMES VALLEY PCA, ON BEHALF OF THE PCT**
4.3.1 In determining the two applications, the PCT was mindful of the application history in relation to the proposed location.

4.3.2 Assura Pharmacy Ltd submitted an application in 2007 which was refused by the PCT, however, this decision was overturned by the FHSAU as being “at least desirable to secure the adequate provision of pharmaceutical services in the neighbourhood” (SHA/14262). A number of subsequent applications were refused whilst the Assura application was current, however, the Assura application lapsed in June 2010, and a subsequent application by Matrix Primary Healthcare Ltd was granted under appeal (SHA/15667) following the lapse of the Assura application. Again, subsequent applications were refused by the PCT whilst the Matrix application was current. The Matrix application lapsed in August 2011.

4.3.3 On 27 May 2011, the application from Community Pharmacies (UK) Ltd was received, and on 2nd June 2011, the application from Matrix Primary Healthcare Ltd was received; these are the applications which are under appeal herewith. They were received within 5 days of one another and the designated date of receipt of both was 6th July.

4.3.4 The PCT, via the Agency, has determined the first Wednesday of the month, following receipt of a BACS or cash payment, or clearance of a cheque through the Agency’s banking system, and a correctly completed application form, as the designated date of receipt.

4.3.5 When setting a designated date of receipt for applications, the PCT noted the following extract from the Information for Primary Care Trusts (Control of Entry) revised September 2009 as follows:

4.3.6 Setting a date for receipt of applications

4.3.6.1 Primary Care Trusts can fix a date for the receipt of applications.... Where a Primary Care Trust decides it wishes to do so it should determine the date and make this public (e.g. by publishing the designated date on their website). Primary Care Trusts may find it more convenient to designate a normal working day, and a specific day during the month (e.g. the first Tuesday, the third Thursday) rather than to designate a precise date - “the 3rd”, “the 19th” etc. Primary Care Trusts may also wish to avoid specifying Mondays or Fridays to avoid a clash with public holidays... The time period for determining applications should run from the designated date.

4.3.7 On 26th July 2011 the PCT decided that both applications were to be considered together and in relation to each other. Both applicants and all interested parties were advised of this decision.

4.3.8 In this regard, the PCT would remind the appellant of Regulation 24(7) which provides that the PCT:

4.3.8.1 “…may, where it thinks fit, consider two or more applications together in relation to each other, and, where it proposes to do so, it shall give notice in writing to the applicants and any person to whom copies of the application were sent…”

4.3.9 On 26th October 2011 the applications were determined and, having considered the applications, all representations received, a report prepared by TVPCA and information in the PCT’s Pharmaceutical Needs Assessment, the PCT determined that it was not necessary, but was expedient to grant a pharmaceutical services contract for premises at Loyd Close, Abingdon.
4.3.10 The PCT notes that the appellant does not dispute this decision. The full determinations of the PCT regarding the decision that it was expedient to grant a pharmaceutical contract can be found within the papers already supplied to the FHSAU and are therefore not duplicated here.

4.3.11 Having determined that it was expedient to grant a pharmaceutical services contract, the PCT then went on to consider the applications together and in relation to one another, noting the following extract from the ‘Information for Primary Care Trusts (Control of Entry) revised September 2009’ (The Guidance):

4.3.11.1 4.61 “When a Primary Care Trust properly determines to consider two or more such applications together, it may, of course, reject all of them. It may deem that all meet the relevant criteria, under which they are determined and grant them all, potentially leaving market forces to play a role. However, if it determines to grant one of them, the determination to grant such applications should be based on a consideration of all the evidence provided to the Primary Care Trust about the competing claims of the applicants.”

4.3.11.2 4.62 “In such cases, a favourable determination should not be made simply on the grounds that one particular application was received before another. It should be made on the basis that the range and quality of services specified in the application in question is to be preferred. If the application does not provide sufficient information as to how the quality of services to be provided is to be assured, Primary Care Trusts may wish to seek further information from the applicant either in writing or by way of an oral hearing. However, where all other things are equal, Primary Care Trusts can ultimately determine competing applications on the basis of the time the first application was received. This is known as “the first past the post” principle.”

4.3.11.3 4.63 “In recording the reasons for its decision, the Primary Care Trust should identify the factors which led it to favour one application over another. These might include, for example, taking into account:

4.3.11.3.1 the range and availability of services to be provided;

4.3.11.3.2 the times at which such services are to be available;

4.3.11.3.3 there is a realistic prospect that services will be provided (for example, the applicant has secured or will secure the relevant premises);

4.3.11.3.4 access for the disabled; or

4.3.11.3.5 the provision of staff with specialist language or interpreter skills where these are relevant factors”

4.3.12 When considering the above points, the PCT noted the following:

4.3.13 Both applications were for preliminary consent.

4.3.14 Both applicants proposed to provide essential services.

4.3.15 Both applicants proposed to provide advanced services; Matrix Primary Healthcare Limited indicated that they were accredited to provide Medicines Use Reviews; Community Pharmacies (UK) Ltd stated that they were not accredited.
4.3.16 Both applicants proposed to provide all local enhanced services, if commissioned by the PCT.

4.3.17 The opening hours proposed by both applicants were similar; the PCT noted that Community Pharmacies (UK) Ltd was intending to open for an extra hour on Saturdays. However, apart from that, both applications were evenly matched in terms of opening hours being offered.

4.3.18 Unsolicited representations had been received from Long Furlong Medical Centre supporting the application from Community Pharmacies (UK) Limited.

4.3.19 Both applicants indicated that premises were not in their possession yet and at this stage the PCT deemed it reasonable to conclude that either of the applicants would be able to secure premises in the vicinity of the Long Furlong Medical Centre.

4.3.20 Having considered the above, the PCT felt that there were no significant factors in either application which would lead it to favour one over the other. In line with the Guidance, in 4.61, the PCT therefore deemed that both the applications met “the relevant criteria, under which they are determined” and granted both applications, thereby “potentially leaving market forces to play a role.”

4.3.21 The PCT notes that the FHSAU came to a similar decision in relation to two previous Appeals, i.e. SHA/15767 (Wellbrooke Products Ltd) and SHA/15768 (Ms A Sew):

4.3.21.1 ‘The committee concluded that for all of the above reasons, neither applicant had demonstrated any significant advantage over the other. In the circumstances, the Committee decided to grant both applications in the knowledge that only one of the applications is likely to succeed in opening, and thereby secure the adequate provision of services in the neighbourhood’.

Summary of the PCT’s response

4.3.22 In line with the relevant Regulations and Guidance, and considering all the information available, the PCT believes it was correct in granting both applications, thereby securing adequate provision of services in the neighbourhood.

4.3.23 In conclusion, the PCT would like to reassure the Appeal Unit and the appellant that it gave careful consideration to all the relevant issues raised and that the application was dealt with appropriately and in accordance with the statutory requirements.

4.4 BOOTS UK LTD

4.4.1 Boots UK agrees that only one contract is expedient to meet the needs highlighted in the PCT’s decision. Other than that Boots have no further comments to add to those already submitted to the PCT. Boots may however wish to make further representations at a later stage and attend any oral hearing that may be held.

4.4.2 Boots would therefore be most grateful if you could keep us informed of the progress of the appeal and subsequently notify us of the decision of the Litigation Authority in due course.

Consideration
5.1 The Pharmacy Appeals Committee appointed by the Family Health Services Appeal Unit of the NHS Litigation Authority, ("the Committee") had before it the papers considered by the PCT, together with a plan of the area showing existing pharmacies and doctors’ surgeries and the site (or location) of the proposed pharmacy.

5.2 It also had before it the responses to the Authority’s own statutory consultations.

5.3 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.

5.4 The Committee had regard to Regulation 12(1), the necessary or expedient test, and, in considering that test, had regard in particular to Regulation 12(2), (3) and (4) of the National Health Service (Pharmaceutical Services) Regulations 2005 (as amended) ("the Regulations").

5.5 The Committee dealt with the application by way of reconsideration of all the issues. However in doing so, the Committee was mindful of the decisions reached in previous appeals ref. SHA/14262 and SHA/15667. The Committee noted applications had been granted to Assura Pharmacy Ltd and subsequently to Matrix Primary Healthcare Ltd however both applications had lapsed.

5.6 The Committee considered the PCT's Pharmaceutical Needs Assessment as a starting point in this case, conscious that the document provides a 'snapshot' of the situation as it was perceived at the date of publication. The Committee bears in mind that, if matters which would affect a decision on inclusion in a pharmaceutical list were to change, a PCT must - pursuant to Regulation 3D(2) - revise its Pharmaceutical Needs Assessment unless to do so appears to it to be a disproportionate response. Where it appears disproportionate, the PCT may, but is not obliged by Regulation 3D(3), to issue a Supplementary Statement. In these circumstances, the Committee thinks it incumbent to examine the submissions and evidence provided by the parties against the backdrop of the current Assessment, without being bound by the Assessment’s conclusions.

5.7 The Committee noted the PCT had defined the neighbourhood in accordance with that accepted in the previous appeals and no dispute on this matter had been raised on appeal. The Committee was content to accept the PCT neighbourhood for the purpose of determining the appeals.

5.8 The Committee noted that the Appellant sought to challenge the PCT decision to grant both applications. The Committee noted that it was common ground, at least not appealed against, that a pharmacy was expedient to secure the adequate provision of pharmaceutical services in the neighbourhood. The Committee was conscious of its findings in the previous appeals and in the absence of any dispute on this point concurred with the view that it was expedient to grant an application.

5.9 The Committee accepted that there was no suggestion that more than one pharmacy at the proposed site was needed to secure adequacy and therefore proceeded to consider whether one application should be preferred over the other.

5.10 The Committee noted that both applications were for preliminary consent for premises in the vicinity of the Long Furlong Medical Centre.

5.11 The Committee noted the Applicants had offered the same core hours Monday to Friday. Both applicants offer supplementary hours with Community Pharmacies (UK) Ltd offering one extra hour on Saturday. The Committee placed no weight on the extra supplementary hour given that it could be withdrawn at 90 days notice to the PCT.

5.12 The Committee noted the PCT had concluded that there was nothing to distinguish between the applications with regard to services offered.
5.13 The Committee noted Community Pharmacies (UK) Ltd contend that their application should be preferred on the basis of the first past the post principle given that it was received by the PCT six days before that by Matrix Primary Healthcare Ltd. The Committee noted the PCT had not favoured the Community Pharmacies application on this basis given the very short period involved. The Committee concurred that this was a reasonable approach.

5.14 The Committee noted Community Pharmacies (UK) Ltd state that they have the full support of the medical practice and would be able to open a pharmacy there, whilst Matrix Primary Healthcare Ltd state that they have been in discussion with the medical practice. The Committee was not persuaded that this factor should hold any weight whether one applicant had an advantage or not. The applications were for premises in the vicinity of the medical practice and it would be open to either applicant to secure premises other than at the practice itself, with advantages and disadvantages to either scenario.

5.15 Having had regard to the totality of the factors considered above the Committee concluded that neither applicant had demonstrated any significant advantage over the other. In the circumstances, the Committee decided to grant both applications in the knowledge that only one of the applications is likely to succeed in opening, and thereby secure the adequate provision of services in the neighbourhood.

6 Decision

Accordingly the Committee dismisses the appeals and grants both applications.

Abby Davies
Appeal Officer

A copy of this decision is being sent to:

Thames Valley PCA, on behalf of the PCT
Community Pharmacies (UK) Ltd
Matrix Primary Healthcare Ltd
Lloyds Pharmacy Ltd
Boots UK Ltd