NHS Greater Glasgow and Clyde

NOT YET ENDORSED AS A CORRECT RECORD

Pharmacy Practices Committee (14)
Minutes of a Meeting held on
Wednesday 13th August 2008
Garfield House Hotel, Cumbernauld Road
Stepps, Glasgow G33 6HW

PRESENT:	Mrs Agnes Stewart	Chair
	Professor J McKie	Lay Member
	Mr William Reid	Deputy Lay Member
	Mrs Kay Roberts	Deputy Non Contractor Pharmacist Member
	Mr Gordon Dykes	Contractor Pharmacist Member

IN ATTENDANCE:	Trish Cawley	Contracts Supervisor – Community Pharmacy Development
	Richard Duke	Contracts Manager – Community Pharmacy Development
	David Thomson	Deputy Lead - Community Development Pharmacist

ACTION

Prior to the consideration of business, the Chairperson asked members if they had an interest in the application to be discussed or if they were associated with a person who had a personal interest in the application to be considered by the Committee.

No declarations of interest were made.

1. APOLOGIES

There were no apologies.

2. ANY OTHER BUSINESS NOT INCLUDED IN AGENDA

None.

<u>Section 1 – Applications Under Regulation 5 (10)</u>

3. APPLICATION FOR INCLUSION IN THE BOARD'S PHARMACEUTICAL LIST

Case No: PPC/INCL09/2008
Assura Pharmacy Ltd, Somerfield Supermarket, 63 Cumbernauld Road,

NHS Greater Glasgow and Clyde

Stepps, Glasgow G33 6NB

The Committee was asked to consider an application submitted by Mr Jim Campbell, on behalf of Assura Pharmacy Ltd, to provide general pharmaceutical services from premises situated at, Somerfield Supermarket, 63 Cumbernauld Road, Stepps, Glasgow G33 6NB under Regulation 5(10) of the National Health Service (Pharmaceutical Services) (Scotland) Regulations 1995 as amended.

The Committee had to determine whether the granting of the application was necessary or desirable to secure the adequate provision of pharmaceutical services in the neighbourhood in which the Applicant's proposed premises were located.

The Committee, having previously been circulated with all the papers regarding the application from Assura Pharmacy Ltd, agreed that the application should be considered by oral hearing.

The hearing was convened under paragraph 2(2) of Schedule 3 to the National Health Service (Pharmaceutical Services) (Scotland) Regulations 1995 as amended ("the Regulations"). In terms of this paragraph, the PPC "shall determine an application in such a manner as it thinks fit". In terms of Regulation 5(10) of the Regulations, the question for the PPC is whether "the provision of pharmaceutical services at the premises named in the application is necessary or desirable to secure adequate provision of pharmaceutical service in the neighbourhood in which the premises are located by persons whose names are included in the Pharmaceutical List."

The Applicant was represented in person by Mr Conor Daly ("the Applicant") assisted by Mr Jim Campbell. The interested parties who had submitted written representations during the consultation period, and who had chosen to attend the oral hearing were Mr Edoardo Ceresa (Stepps Pharmacy), assisted by Miss Emma Ceresa and Mr David Young (Rowlands Pharmacy) ("the Interested Parties").

The Chair asked all present to confirm that they were not appearing before the Committee in the capacity of solicitor, counsel or paid advocate. All confirmed that they were not.

Prior to the hearing, the Panel had collectively visited the vicinity surrounding the Applicants' premises, pharmacy, GP surgeries and facilities in the immediate area and the surrounding areas of Stepps.

At the opening of the meeting the PPC Chair apologised to those making representation for the late receipt of additional information received from Assura Pharmacy Ltd. This had been due to a Board administrative problem.

The procedure adopted by the PPC at the hearing was that the Chair asked the Applicant to make their submission. There followed the opportunity for the

Interested Parties and the PPC to ask questions. Each of the Interested Parties then gave their presentation, with the opportunity for the Applicant and the PPC to ask questions. The Interested Parties and the Applicant were then given the opportunity to sum up.

The Applicants' Case

The Applicant commenced his presentation introducing Mr Campbell, himself and the company, Assura Pharmacy Ltd to the Pharmacy Practices Committee.

Mr Daly introduced Mr Campbell as the Assura Pharmacy Ltd, Business Development & Operations Manager for Scotland, who had 20 years experience within the country. Mr Daly advised that he was a pharmacist and a barrister but was not appearing today as a counsel but as a full time paid employee of Assura Pharmacy Ltd. He went on to inform the Committee that, Assura Pharmacy Ltd had been incorporated 3 years ago and its first pharmacy in Scotland opened 2 ½ years in Bonnyrigg, Midlothian.

Mr Daly stated that irrespective of his qualifications, he would speak within the guidelines, identify the neighbourhood and address the demand for pharmaceutical services and discuss the Legal Test.

The Applicant stated there had been significant changes in Stepps over the last 30 years with the biggest changes occurring in the last 5 to 7 years. Stepps now covered an area of approximately 2 miles in length and he defined this as the neighbourhood for the purposes of this application.

Mr Daly advised that in the decade of the 1990's, there was around 100 new homes developed but in this recent decade, there has been one single housing development of approximately 400 homes. The population was now in excess of 6,000 and Stepps could no longer be classed as a village, it was now a town. He commented that the growth in retail premises has not expanded in the same way as the residential areas. Stepps had a very large business park, Bannatyne Fitness centre, a school but a low provision of retail services.

Mr Daly said that he defined Stepps as a single neighbourhood but suggested he questioned in his own mind whether this was too large to be considered one neighbourhood. He therefore invited the Committee to consider if this really was one neighbourhood. He stated that he believed the town was clearly split by the railway line running (north east to south west), which dissected the centre of the town.

Mr Daly stated that in the north east area of the town there was a single pharmacy, which was very busy and operated within a pleasant environment. There were two medical centres close-by, which had 6,000 registered patients. To the south west area of Stepps, there was no pharmacy requiring the residents in this area to travel approximately 1 mile to obtain pharmaceutical services. The town's supermarket, Somerfield's, was sited in this area and

contained the site of the premises for this application.

The Applicant stated he believed there were access issues for patients using Stepps Pharmacy. It was sited at a very busy junction, with double yellow lines and no direct parking. Mr Daly had noted that over last 2 days, parking was limited and what was available seemed to be permanently in use. In considering patient access, he had assumed that patients used a car. Mr Daly stated that the majority of households in Stepps had access to one car only which was likely to be used for work purposes and therefore not be available for the use by a mother and her children. In these instances, he would have expected the local pharmacy to have offered a collection and delivery service but this was not the case. Stepps Pharmacy did not offer a delivery service to patients.

Mr Daly referred to objection letters received by the Board. He said he believed Apple Pharmacy had used out-of-date statistics. Turning to Stepps Pharmacy, he commented that this letter had provided some interesting additional information about the pharmacy's development and the GP services. Stepps Pharmacy, he said, had raised a number of issues. One referred to a statement made in the Assura application stating there was an inadequate provision of pharmacy services within the neighbourhood. The Stepps Pharmacy had stated that they believed this to be a libellous statement. Mr Daly acknowledged it was for the Committee to decide if an adequate provision of services currently existed, which he realised did not necessarily need to be provided from within the defined neighbourhood. He added that he took his position here today seriously, speaking on behalf of a large reputable company and took exception to the allegations that had been made.

Mr Daly then considered the Legal Test and the adequacy of securing service provision for the neighbourhood. He referred to the *Court of Appeal, Lloyds Pharmacy Ltd v The National Appeal Panel, 2004* case, in which Lord Drummond Young clarified the word secure, which was of particular importance. An application may therefore be approved that may result in an over provision of services in preparation for potential demand in the future. He said that he suspected that this had probably been the case when Stepps Pharmacy had originally opened. Since then, 36 years had elapsed and the town of Stepps was now ready for a second pharmacy due to the growth in population and the increase in demand for pharmaceutical services.

As a final point, Mr Daly said that he understood that the Health Board did not publicly release dispensing figures. Stepps Pharmacy however, had stated in there objection letter that they dispensed between 4,500 to 5,000 prescriptions per month. This information was now to be considered as part of this hearing. He therefore stated he would seek clarification that this evidence was correct.

Mr Daly finally confirmed the neighbourhood as being the one defined within the additional application papers previously supplied i.e.

Northern boundary – Railway line and Mount Harriet Drive;
Eastern boundary – M80 onto Dewar Road;
Southern boundary – Local Authority border;
Western boundary – Station Road.

The Interested Parties Question the Applicant

In response to questioning from **Mr Young**, the Applicant stated he had no further comment to make or tangible evidence to provide in respect of the inadequacy of pharmaceutical services within the neighbourhood. This was entirely stated within his earlier presentation.

In response to a final question from Mr Young, Mr Daly clarified that his previous response had not implied he agreed there was an adequate current provision of services.

There were no questions to the Applicant from Mr Ceresa.

The PPC Question the Applicant

In response to questioning from **Mr Reid**, the Applicant said in his own mind he has questioned whether Stepps was one neighbourhood however; for the purpose of the application he confirmed the definition as stated previously.

In response to a final question from Mr Reid, Mr Daly referred to Regulation 5 and paragraph 10 where 'secure' appears. He said that in the Court of Appeal 2004 Lloyds decision, Lord Drummond Young had stated, it was not just about achieving adequacy of services for the neighbourhood it was also about securing service provision, which might result in a degree of over provision. Mr Daly added the Committee was therefore entitled to take into consideration future developments, which is the reason why he was advocating that current services would not be able to cope with future demand.

In response to questioning from **Professor McKie**, the Applicant stated services were not adequate. He reiterated there had been a significant increase in population since the Stepps Pharmacy opened in 1973, which had made the pharmacy busier. The services offered were not adequate now and will become even less so in the future. He referred to the local council's plans which indicated continued development for Stepps, including retail units. There were therefore significant grounds for the projections he was making. His presentation was not based on just what had already happened.

In response to a further question from Professor McKie, Mr Daly said that the population of Stepps was large for a single pharmacy but it was also geographically large as it covered an area that stretched for some 2 miles.

In response to further questioning from Professor McKie, Mr Daly stated that he could not believe that 19,000 residents within a rural town would consider

themselves neighbours. 6,000 residents might consider themselves neighbours but this could easily be more or indeed less.

In response to a final question from Professor McKie, Mr Daly stated that he was unable to comment on the availability of public transport servicing the Stepps area.

In response to a question from **Mr Thomson**, the Applicant confirmed that when the Co-Operative took over ownership of the Somerfield supermarket they agreed to honour previous agreements. The pharmacy would still be located within the supermarket.

In response to a question from **Mrs Roberts**, the Applicant said that he did not know when Stepps was formally designated a town. He was aware that the local Council used this designation.

In response to a further question from Mrs Roberts, Mr Daly said he believed that convenience should be considered as part of adequacy. He added, that surely if something was considered as being so inconvenient, it would impact on adequacy. He referred to Judicial guidance delivered by Lord Justice Beldam in the Tesco case.

In response to a final question from Mrs Roberts, Mr Daly accepted that although he had stated the length of Stepps ran for 2 miles, this was an estimate and it could be less.

In response to questioning from **Mr Dykes**, the Applicant advised that the population figure of 6,000 came from 2001 Census and his population growth calculations were based on an estimate of 2.96 people resident per dwelling.

In response to a further question from Mr Dykes, Mr Daly accepted that people may choose to live in area where there is relatively poor access to pharmaceutical services but added that did not make existing services adequate.

In response to a final question from Mr Dykes, Mr Daly stated that he believed the Stepps Pharmacy to be very busy. He referred to the 4,500 to 5,000 per month prescriptions dispensed by Stepps Pharmacy, which he said he would dispute as he believed this to be more likely 7,000 items per month.

At this point of the meeting, Mr Ceresa requested Miss Ceresa be allowed to be excused from the hearing as she was required to return to work - agreed (2.05pm).

There were no questions to the Applicant from the Chair.

<u>The Interested Parties' Case – Stepps Pharmacy (Mr Edoardo Ceresa)</u>

Mr Ceresa said that he could not add anything more to what he had already stated in this letter of objection. On reflection, there were statements he would now withdraw but would be happy to offer any further clarification through questions should this be required.

The Applicant Questions Mr Ceresa

The Applicant had no questions for Mr Ceresa but asked the Committee if they could confirm the prescription dispensing statistics quoted in Mr Ceresa's letter of objection. The Committee declined to respond to this question.

There were no questions to Mr Ceresa from the other interested party

The PPC Question Mr Ceresa

In response to questioning from **Mr Dykes**, Mr Ceresa advised that Stepps Pharmacy did offer a delivery and collection service, but was a service that was not widely advertised and offered with discretion.

In response to a final question from Mr Dykes, Mr Ceresa said that he had been looking for larger premises in the area for the past 2 years in order to meet future challenges but as yet had been unsuccessful. He suggested that the credit crunch will likely have an impact on new retail developments in the area so he was not sure when these developments would recommence. He added that he felt that his current premises did provide an adequate pharmaceutical service.

In response to a question from **Mrs Roberts**, Mr Ceresa advised that his pharmacy ceased being classed as an Essential Small Pharmacy in 1985.

In response to questioning from **Professor McKie**, Mr Ceresa stated there was a half an hour bus service running both ways along Cumbernauld Road, which ran more frequently in the past. There also used to be services within the various housing areas but these had stopped as residents ceased to use them. There was also a dial-a-bus service that operated within the social housing areas of Cardowan and the Cumbernauld Road

In response to a question from **Mr Reid**, Mr Ceresa advised that the pharmacy did have a small car park at the rear but this was mainly used by the GP's from the neighbouring medical centre. He said that he had been attempting to purchase a piece of land off Cardowan Road for patient parking.

In response to a further question from Mr Reid, Mr Ceresa stated that most patients used their cars to visit the pharmacy. He added that Stepps Surgery patients tended to park in the medical centre car park located nearby. Patients of Drs McNeill, Barrie & Fergus normally used on street parking.

In response to a further question from Mr Reid, Mr Ceresa said that he believed car parking for patients had never been a problem.

In response to a further question from Mr Reid, Mr Ceresa explained why he had stated in his letter of objection that he believed this to be a hostile attempt to establish a pharmacy. He referred to the time before the Regulations were introduced when there were no contract limitations when new pharmacies were being set-up between existing contractors and GPs with a devastating affect on the established contractor's business. Mr Cereas was drawing a parallel between what had happened in the past to the Assura Pharmacy application of today. He said that nowadays, existing pharmacies tended to be sold and added that the Stepps Pharmacy was not for sale currently.

In response to a final question from Mr Reid, Mr Ceresa confirmed that he believed that another pharmacy in Stepps would affect the continued viability of his pharmacy.

There were no questions to Mr Ceresa from the Chair and Mr Thomson.

The Interested Parties' Case – Rowlands Pharmacy (Mr David Young)

Mr Young commenced his presentation by stating that he agreed with the other parties in their definition of the neighbourhood. He noted this had also been agreed by the APC CP Subcommittee who similarly did not consider there to be an unmet need in terms of pharmaceutical services within the neighbourhood.

Mr Young said Stepps Pharmacy has been providing an excellent service to this area for 35 years. During this time, the area has changed and developed and he believed that Stepps Pharmacy had also moved with the times so as to meet the needs of the local community.

Mr Young advised that Rowlands Pharmacy was situated outside of the defined neighbourhood but provided services to many patients in Stepps. He said that his pharmacy offered a free collection and delivery service but he had noted that the vast majority of patients from Stepps chose to drive to visit the adjacent surgery and his pharmacy. He believed the word "choose" was important.

Mr Young stated he considered Stepps to be a relatively affluent area, evidenced from the number of households with cars that could be seen when driving around the area.

Mr Young accepted there was only one pharmacy in Stepps but considered the area to be well served with at least another three pharmacies situated outside the locality. He stressed again, that in his opinion patients had a choice when deciding on where they could obtain services. He concluded his presentation by stating that another pharmacy in this area was neither necessary or

desirable.

The Applicant Questions Mr Young

In response to questioning from **Mr Daly**, Mr Young did not consider it to be a problem for patients to leave the defined neighbourhood to access services. He did not see driving to the pharmacy any different than driving for other services people might need. He added, people do choose to drive.

There were no questions to Mr Young from the other interested party.

The PPC Question Mr Young

In response to questioning from **Mrs Roberts**, Mr Young said he still believed it to be acceptable for people to drive even after taking the current economic situation into consideration. He added that his pharmacy did offer a delivery and collection service but some people still chose to drive.

In response to a question from **Mr Thomson**, Mr Young confirmed that a lot of Stepps residents were registered with the GP practice next to his pharmacy and the pharmacy was therefore convenient for them.

In response to a question from Professor **McKie**, Mr Young was unable to advise if there were any public transport services available from Stepps down Avenue End Road.

There were no questions to Mr Young from the Chair, Mr Dykes, and Mr Reid.

Summing Up

The Applicant and Interested Parties were then given the opportunity to sum up.

Mr Ceresa stated Stepps Pharmacy had operated in the area since 1973. This was a dedicated independent pharmacy with two full time pharmacists and well trained supporting staff, serving the healthcare needs of the area. During this time, the pharmacy had worked harmoniously with the other healthcare professionals within the area. The Pharmacy had moved with the times to maintain a lead in the rapidly and ever changing NHS and invested heavily to maintain above standard levels of service as required by the actual needs of the local community.

Mr Ceresa concluded his summing up by saying that he considered the application as a hostile, hypothetical, paper exercise, a test case, a precursor to expansion of the group nationwide, irrespective of the damage caused to the services provided in the immediate area and with the strong potential of irreparable harm to Scottish pharmacy.

Mr Young stated that the applicant had not provided any evidence of the existence of any inadequacy in pharmaceutical services available within the neighbourhood.

Mr Daly referred to the objector's statements and comments saying that Stepps Pharmacy had provided advice on the pharmacy's long term development plans but said that consideration was required to compare existing services with probable long term need. He said, Rowlands Pharmacy had suggested that they believed it to be acceptable for patients to travel for their services if they do not have a pharmacy in Stepps. Mr Daly concluded by saying that he did not accept travelling a distance made the current provision of services adequate.

Before the Applicant and the Interested Parties left the hearing, the Chair asked them to confirm that they had had a full and fair hearing. All confirmed that they had.

The PPC was then required and did take into account all relevant factors concerning the issues of:-

a) Neighbourhood;

b) Adequacy of existing pharmaceutical services in the neighbourhood and, in particular, whether the provision of pharmaceutical services at the premises named in the application was necessary or desirable in order to secure adequate provision of pharmaceutical services in the neighbourhood in which the premises were located.

In addition to the oral submissions put forward, the PPC also took into all account all written representations and supporting documents submitted by the Applicant, the Interested Parties and those who were entitled to make representations to the PPC, namely:

a) Chemist contractors within the vicinity of the Applicant's premises;

b) The NHS Greater Glasgow & Clyde Area Pharmaceutical Community CP Subcommittee;

c) The Greater Glasgow & Clyde Area Medical Committee (GP Sub-Committee).

d) NHS Lanarkshire Area Medical Committee (GP Sub Committee).

The Committee also considered;-

e) The location of the nearest existing pharmaceutical services;

f) Demographic information regarding the area of G33.6, G33.5 and G33.3;

g) Information from Glasgow City Council's Department of Development and Regeneration Services regarding future plans for development within the area;

h) Information from North Lanarkshire Council's Environment Services regarding future plans for road development within the area; and

i) NHS Greater Glasgow and Clyde plans for future development of services.

DECISION

Having considered the evidence presented, and observation from the site visit the PPC had to decide first the question of the neighbourhood in which the premises to which the application related, were located.

The Committee considered the various neighbourhoods put forward by the Applicant, the Interested Parties and the APC CP Subcommittee in relation to the application and taking all information into consideration, the Committee considered that the neighbourhood should be defined as follows:

West: the western side of Station Road to Molendinar Burn;
South: the southerly edge of Frankfield Loch across to Craigendmuir;
East: across the fields to and along Woodhead Road
North: Garnkirk Burn and along to the railway line.

The Committee felt that this was distinct neighbourhood. Station Road marked a natural boundary between the residential areas of Stepps and Millerston. Molendinar Burn and Frankfield Loch as natural boundaries along with the Craigendmuir housing estate marked the southerly perimeter of Stepps, which was bounded by green open areas. The green fields to the east marked a natural boundary. The railway line and Garnkirk Burn formed a physical boundary to the north.

Adequacy of Existing Provision of Pharmaceutical Services and Necessity or Desirability

Having reached that decision, the PPC was then required to consider the adequacy of pharmaceutical services in that neighbourhood, and whether the granting of the application was necessary or desirable in order to secure adequate provision of pharmaceutical services in that neighbourhood.

The Committee noted that within the neighbourhood as defined by the PPC there was one pharmacy. This pharmacy provided a full range of pharmaceutical services including supervised methadone. The Committee further noted that there were two additional pharmacies within the extended area that also provided a full range of services. The Committee considered that the level of existing services ensured that satisfactory access to

pharmaceutical services existed within the defined neighbourhood. The Committee therefore considered that the existing pharmaceutical services in the neighbourhood were adequate.

The Committee was satisfied that no evidence had been produced by the Applicant, or had been made available to the Committee via another source which demonstrated that the services currently provided to the neighbourhood were inadequate.

Having regard to the overall services provided by the existing contractor within the vicinity of the proposed pharmacy, the number of prescriptions dispensed by this contractor in the preceding 12 months, and the level of service provided by this contractor to the neighbourhood, the committee agreed that the neighbourhood was currently adequately served.

In accordance with the statutory procedure the Chemist Contractor Member of the Committee Gordon Dykes and Board Officers were excluded from the decision process:

DECIDED/-

The PPC was satisfied that the provision of pharmaceutical services at the premises occupied by persons whose names are included in the Pharmaceutical List were adequate and therefore the application by the Applicant to open an additional pharmacy was not necessary or desirable in order to secure adequate provision of pharmaceutical services in the neighbourhood. In these circumstances, it was the unanimous decision of the PPC that the application be refused.

Contracts Services Supervisor

The Chemist Contractor Member of the Committee Gordon Dykes and Board Officers rejoined the meeting at this stage.

4. ANY OTHER COMPETENT BUSINESS

None.

5. DATE OF NEXT MEETING

The next scheduled meeting would take place on Wednesday 20th August 2008.

The Meeting ended at 3.00p.m.