

NOT YET ENDORSED AS A CORRECT RECORD

Pharmacy Practices Committee (04)  
 Minutes of a Meeting held on  
 Wednesday 14 August 2013  
 Kingspark Hotel, Mill Street  
 Rutherglen G73 2LX

PRESENT:	Mr Ross Finnie Mr Paul Gillon Mrs Margaret Dakers Thomson Ms Joan Miller Mr Wallace Stevenson	Deputy Chairman Lay Member Lay Member Non-Contractor Pharmacist Member Contractor Pharmacist Member
IN ATTENDANCE:	Mr Michael Stewart Mrs Gillian Gordon	Legal Advisor, CLO Secretariat, NSS SHSC
<b>With permission:</b>	Mrs Linda Bunney Mrs Lesley Garbutt	NHS Dumfries & Galloway (Observer) NHS Dumfries & Galloway (Observer)

**Prior to the consideration of business, the Chair asked members to indicate 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.**

ACTION

**No member declared an interest in the application to be considered.**

**1. APOLOGIES**

Apologies were received from Mr Michael Roberts

The Chair informed those present that Mrs Linda Bunney and Mrs Lesley Garbutt wished to observe the proceedings as a training exercise and sought the permission of those attending. This was given and they joined the meeting sitting at a table set apart from the main participants..

**2. Section 1 – Applications Under Regulation 5 (10)**

**APPLICATION FOR INCLUSION IN THE BOARD'S PHARMACEUTICAL LIST**

**Case No: PPC/INCL05/2011**

Kyle Square Ltd, Unit 5, 151 Western Road, Whitlawburn, Cambuslang, Glasgow , G72 8PE

The Committee was asked to consider an application submitted by Kyle Square Ltd to provide general pharmaceutical services from premises situated at Unit 5, 151 Western Road, Whitlawburn, Glasgow,G72 8PE under Regulation 5(10) of the National Health

Service (Pharmaceutical Services) (Scotland) Regulations 2009 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 Mr Dryden agreed that the application should be considered by oral hearing.

The hearing was convened under paragraph 3 (2) of Schedule 3 to the National Health Service (Pharmaceutical Services) (Scotland) Regulations 2009 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 was whether "the provision of pharmaceutical services at the premises named in the application was necessary or desirable to secure adequate provision of pharmaceutical service in the neighbourhood in which the premises were located by persons whose names were included in the Pharmaceutical List."

The Applicant, Mr David Dryden, appeared in person and was accompanied by Mr Michael Balmer. The Interested Parties who had submitted written representations during the consultation period and who had chosen to attend the oral hearing were Ms Nicola Burns (Burns Pharmacy) accompanied by Mr Jonathan Clarke; Mr Alasdair MacIntyre (Burnside Pharmacy); Mr Martin Green (M&D Green Dispensing Chemist Ltd) and Mr John Collington (Dickson Chemist).

The Chair asked the Applicant and the Interested Parties to confirm that they were not attending the Committee in the capacity of solicitor, counsel or paid advocate. They confirmed that they were not.

Prior to the hearing, the PPC had collectively visited the vicinity surrounding the Applicant's proposed premises, the existing pharmacies and GP surgeries and facilities in the immediate area of Whitlawburn, Cambuslang, Burnside and Cathkin.

The Committee noted that the premises were constructed and were in the Applicant's possession. They would be registered with the General Pharmaceutical Council in the Applicant's name dependent on the Committee's decision on the application.

The procedure adopted by the Pharmacy Practices Committee ("the PPC") at the hearing was that the Chair asked the Applicant to make his submission. There followed the opportunity for the Interested Parties and the PPC to ask questions of the Applicant. The Interested Parties were then asked to make their submissions. After each submission, there followed the opportunity for the Applicant and the PPC to ask questions of the Interested Parties. The Interested Parties and the Applicant were then given the opportunity to sum up.

### **The Applicant's Case**

Mr Dryden opened by drawing attention to the travel distances involved for residents of Whitlawburn to access pharmacy services. He stated that, if walking, they had to make a

more than two mile round trip to get to Cambuslang or Burnside. There was also a pharmacy in Cathkin but this also involved quite a walk. He stated that although there were buses, they all went along Western Road which would involve a walk to the bus stop. Taxis were not an economic option and the majority of residents did not have access to private transport. This caused problems for the elderly and also for parents with young families.

He continued to describe the neighbourhood as one of the most deprived in Scotland and communities with high levels of socio-economic deprivation had a higher requirement for pharmacy services. He stated that Whitlawburn had a number of services to help health and social well-being and that the new dental practice had been a welcome addition and that they deserved a pharmacy which was easy for them to access along their normal patterns of travel. He said that they were unlikely to go to Cambuslang Main Street on a daily basis but rather for special trips to the library or GP and Cathkin was out with a normal pattern of travel.

He defined the boundaries as: Greenlees Road to the east, the A749 dual carriage way to the West and the picket fence separating the social housing from Lomond View to the South and the playing fields and open ground to the north. He said that this was a defined neighbourhood which was well recognized by both the council and the people who lived there.

He pointed out that pharmacies were more than just dispensing prescriptions and had a role to play in promoting health and to do this, a pharmacy needed to be in the neighbourhood. The fact that residents of Whitlawburn had to travel to access these services pointed to it being inadequate.

He referred to the letters in objection and noted that most of these related to Burns Pharmacy and many referred to supervised methadone provision, which was part of Health Board policy. He also referred to the open letter from Burns which stated that a new pharmacy could affect its continued survival. He contended, according to research undertaken by his accountant, that there was no danger either Burns or to the wider network of pharmacies in the area. He acknowledged that these letters demonstrated a strong commitment to Burns as a local pharmacy but did not provide evidence that Whitlawburn had adequate access to pharmacy services and this was the area he was concerned with.

He then referred to the letters he had in support of a pharmacy in Whitlawburn which generally stated that pharmacy services were difficult to access, that the walk was too far and that the transport costs were high. He also referred to the problems with compliance aids (dosette boxes) where the other pharmacies had an issue with capacity and Kyle Square pharmacy in Rutherglen were providing this service for Cambuslang, Cathkin, Springhall and Whitlawburn.

Finally he urged the committee to approve the application.

#### **The Interested Parties Question the Applicant**

In response to questioning from Ms Burns (Burns Pharmacy Ltd), Mr Dryden responded that he disagreed with her GPS calculation that Burns Pharmacy was within 0.41 miles and said that it depended on where in Whitlawburn one lived. He said that his pharmacy would be at

the heart of the community and would be within 0.5 miles of anyone in Whitlawburn. Regarding dosette boxes, he disagreed that the GPs would be aware if there was a problem as it was normally the receptionists or nurses who dealt with repeat prescriptions and would get the calls from patients. He also said that he did not believe that Fernhill North was included in his prescription load projections as he had used the ISD datazones and if it was then this had been an oversight. He was making the point that there was ample prescription volume in the area to support an additional pharmacy.

In response to questions from Mr McIntyre (Burnside Pharmacy), who expressed doubts that the GP would be unaware if there was a difficulty in obtaining compliance aids, Mr Dryden replied that the GP had a wider range of duties than prescribing and that reception staff had a bigger role in the management of repeat prescriptions.

Mr Green, Dukes Road Pharmacy, asked Mr Dryden how many people in the area were over 90 or between 85 and 90. Mr Dryden did not know and Mr Green informed him that the numbers were 3 and 10 respectively which he did not think indicated significant numbers of elderly residents. Mr Dryden replied that the actual age was not so important but that Whitlawburn people, because of the socio-economic conditions, would suffer ill health earlier and go downhill rapidly. He also indicated that the majority of Whitlawburn residents lived south of Western Road and that there was high density housing, including the tower blocks west of the centre.

He confirmed that Whitlawburn had been previously criticised for not having services and that there was a large population in one place and it constituted a neighbourhood. Mr Green observed that there was a difference between the dictionary definition of a neighbourhood and a neighbourhood for all purposes.

Mr Dryden confirmed that he still had the premises on a lengthy lease and that the "To Let" sign was there at the request of his landlord to allow him the opportunity to find new tenants quickly, should the application fail.

The Chair asked CLO to clarify the issue of neighbourhood. Mr Stewart replied that there was no statutory test and it was primarily a matter for the PPC; the existence or otherwise of amenities had to be taken into account but were not a determining factor.

Mr Collington (Dickson's Pharmacy) had no questions.

### **The PPC Question the Applicant**

In response to questioning from Mrs Dakers Thomson, Mr Dryden said that a new pharmacy would provide a pharmacy service near to other Whitlawburn services and would cover: advice, prescriptions, minor ailments, smoking cessation, various public health messages such as vaccines. His previous experience indicated that if the pharmacy was in the community, it encouraged access to all the services and increased health benefits. Beyond the statutory level, he would be providing nicotine tablets which would avoid the need to go to a support group, as clients would if they went to their GP; he would also offer a collection and delivery service, although if the pharmacy was local, the need for deliveries could be avoided. At the younger end of the scale he could offer the morning after pill and offer advice if the same person was coming in repeatedly.

When questioned by Ms Miller, Mr Dryden said that he had come to know that the services were difficult to access from speaking to the locals. He accepted the need to travel to schools but there were two schools in Springhill and no pharmacy there or on the route there. He confirmed that his accountant had looked at the accounts of Burns Pharmacy to confirm that their financial viability would not be threatened by the opening of a pharmacy in Whitlawburn.

In response to questions from Mr Gillon, Mr Dryden confirmed that the picket fence referred to as a boundary was on the north side of the Housing Association. He confirmed that his view was that as there was a lot of high density housing and a lot of deprivation, Whitlawburn on its own could support a pharmacy without impacting on others. He also stated that he would be proactive in that he would follow up on people on the Champix programme and would engage with the local community. He gave as examples what he had done in Rutherglen where he had given talks to the Guild, had a health promotion event at the local primary and sponsored the primary football team by buying strips for them. He would propose to engage with the Whitlawburn community in the same manner and had already developed links with the West Whitlawburn Housing Corporation.

When questioned by Mr Wallace, Mr Dryden said that he had chosen the picket fence as a boundary because Lomond View was completely separate, in that there was one way in and one way out with no thoroughfare and Lomond View was not seen as part of the locality.

In response to questions from the Chair, Mr Dryden could not say to which community Lomond View belonged. Regarding the bus service, Mr Dryden believed that, although frequent, it was inadequate because it did not go into the residential streets. The people of Whitlawburn did not see why they had to take a bus to get to a pharmacy as people in other areas did not have to do so. He indicated that there were problems with the buses for buggies and wheelchairs as, if the space was already occupied, the individual would have to wait for the next bus. Also this was not conducive with the modern concept of a community pharmacy which was in part to take pressure off the GP. If people had to travel to a pharmacy, they would be as well going to their GP. He strongly believed that the pharmacy should be part of the local community.

### **The Interested Parties' Cases**

#### **1 Ms Nicola Burns – Burns Pharmacy**

Ms Burns opened by stating that the application rejected in March 2011 was less than twelve months prior to the present application in August 2011 and contended that this application should have fallen on the basis that there had been no significant change but set out her objection based on the legal test..

She first laid out what the neighbourhood was: North – B762, Dukes Road, along Cambuslang Main Street (A724); East – B759 Greenlees Road; South East Kilbride Road proceeding westwards to its junction with Dukes Road (A749). The basis for this was that these were main arterial roads encapsulating a wealth of amenities and could be defined by data zones and had a population of 7152. This was a larger neighbourhood than that described by the applicant which had a population of 2945 with a possible rise of around 61 when the new houses in Cathkin Rise were completed and occupied. She contended that

Whitlawburn was an area within the larger neighbourhood. She stated, that to be a neighbourhood, there had to be a range of basic amenities (schools, churches, banks, post office, library, supermarket, child-care, GP surgeries and access to pharmaceutical services). Whitlawburn lacked these key amenities and a recent newspaper article indicated that the Whitlawburn Community Resource Centre may face closure. She said that the neighbourhood she outlined was a reflection of a true neighbourhood where the residents shared a wealth of amenities encapsulated in natural boundaries.

Turning to the adequacy of Pharmacy services, she said that within her neighbourhood there were currently 4 pharmacies with an additional 2 on the periphery which provided a fully comprehensive range of core and enhanced services which had been endorsed by the PPC previously. To indicate the service she provided she said that 41% of her smoking cessation users were from Whitlawburn and 38% of her minor ailment prescriptions were from Whitlawburn residents which indicated that the residents were easily accessing pharmacy services.

Referring to the public support for the application, she had attended the open night which was attended by less than 2% of the applicant's defined neighbourhood and another public meeting in February 2013 which was attended by less than 1% of the defined neighbourhood. She did not feel that this indicated overwhelming public support for the opening of a pharmacy. She became aware that perhaps the residents of Whitlawburn were unaware of the services available in the area and had completed a leaflet drop, confirming opening hours and the services available. She intended to build on this in future as it took time to educate the population.

She acknowledged that the applicant had obtained letters of support from members of the public, local councilors and the MSP and while not doubting that these were genuine and in support, she doubted whether they were fully informed about the process of awarding new contracts, as many cited "convenience" as a reason. One letter had been submitted from a local councilor who had previously opposed the opening of a pharmacy in Whitlawburn. She referred to the letters she had submitted opposing the opening of a new pharmacy which cast doubt on the validity of the West Whitlawburn Housing Corporation as a vehicle for public opinion. Regarding the MSP's high profile support and petition, she believed that the content of his letter was misleading as Burns Pharmacy was not mentioned and on analysis of the results only 6.21% of the population in the applicant's defined neighbourhood responded in favour. This indicated that the majority thought the service was adequate.

She urged the committee to look at the evidence she had submitted, particularly from the GPs who had not mentioned any inadequacy or gap in the service but provided proof that the current service was adequate.

Regarding access to services, Ms Burns stated that the applicant had mentioned perceived barriers to accessing the existing pharmacies as there were no pharmacies within 0.8 miles of the proposed premises. She pointed out that Burns Pharmacy was 0.41 miles by foot (7 minutes) and 0.7 miles by car. It was also easily accessible by foot as there was a walkway and staggered pedestrian crossings which were suitable for prams and buggies. She pointed out that there was also a bus service from Western Road to Cathkin Bypass which took only 4 minutes. She believed this to be reasonable access to the services.

Ms Burns referred to the age of the population and particularly the elderly and quoted local statistics which showed that Whitlawburn had a relatively low elderly population and a significantly higher proportion of young people in contract to Cathkin which had a higher average elderly population. This proved that Burns Pharmacy was in the best possible position to serve these communities being slightly closer to the elderly who may not be so mobile and have a greater need of the service. The letters she had submitted in evidence showed that there were no barriers to access. She felt this highlighted a real concern if Burns Pharmacy were to close as a result of a new pharmacy in Whitlawburn.

Ms Burns then also referred to the other pharmacies in Cambuslang and Burnside which could easily be reached by bus and many people made the journey on a daily basis to access other amenities.

She went on to state that the introduction of a new pharmacy would have a destabilizing effect on the adequate provision of services as it could affect the viability of either a new pharmacy or Burns Pharmacy. The recent reduction in the pricing of the drug tariff would have a significant impact on all pharmacies in Scotland.

She pointed out that Whitlawburn had little in the way of amenities and residents regularly travelled to access a wide range of services and would still have to do so, even if there were a pharmacy there. She said that the applicant had made efforts to look at the finances of her company which she found somewhat intrusive. In any event, these were the abbreviated accounts held in Companies House which provided limited information and could not be used to confirm whether or not the company was viable and on a sound financial footing as the applicant claimed. What was more relevant was the dispensing figure which showed that Burns Pharmacy was a low dispensing pharmacy. Indeed it could efficiently operate with at least double the number of prescriptions. She stated that 30% of Burns' prescriptions were from Whitlawburn and such a loss would jeopardize the future.

She then referred to the GG&C plan which showed that there is an average population of 3792 per pharmacy contract. Within her defined area there was a population of 1192 per contract, including the 2 pharmacies on the periphery. If a new contract were offered this would reduce to 1021 per contractor. In addition, in GG&C there is on average a pharmacy every 1.4 square miles. In this neighbourhood, there are 4 pharmacies in 0.9 square miles with an additional 2 on the periphery. This would indicate that the area is densely populated with pharmacies and could indicate an overprovision.

Turning to any significant changes since the last application, Ms Burns said that the dental surgery had been considered the last time and she had built up a relationship with the practice and had not been made aware of any difficulty in fulfilling prescriptions. In any event the number of dental prescriptions was insignificant. The new housing development was small and almost complete and would result in another 11 persons. It was equidistant from Burns Pharmacy and the proposed pharmacy. To date Burns Pharmacy had experienced no problems in servicing those needs.

Ms Burns then continued to highlight the changes and improvements she had made since taking over the pharmacy in July 2010. These were: increased opening hours; more staff; collection and delivery service; approved for pre-registration training; engagement with local community through health promotion; higher smoking quit rates than the average for GG&C;

participation in pilot service for safe alcohol consumption; hosting a blood pressure event; a new website with online ordering.

In conclusion, she said that there had been no significant change in the area, there was adequate pharmacy provision; a new contract would destabilize current services. She therefore asked the PPC to reject the application.

Before proceeding to allow questions to Ms Burns, the Chair intervened to seek advice from Mr Stewart (CLO) as to whether the Regulation raised by Ms Burns regarding the need for an Applicant to demonstrate substantial change in circumstances if an application was made within twelve months of rejection applied in this case. The Applicant and the Interested Parties made their respective positions on this point and it was agreed to continue with the hearing and hold a brief adjournment before the summations to allow Mr Stewart to consider the legal position.

#### **Questions to the Interested Party**

In reply to questions from Mr Dryden, Ms Burns stated that she had held 3 or 4 smoking cessation events which she tried to time around the mother and toddler groups and the café opening hours. She also confirmed that she had been doing these since she took over the Pharmacy in 2010 and had had positive feedback with people signing up for the programme. She restated that she did not believe that the area described by Mr Dryden had the population to maintain 2 pharmacies and if there was one in Whitlawburn then people would not come to her pharmacy and Whitlawburn contributed about 30% of her prescription business. The rest of the population currently filled their prescriptions in Cambuslang where they went regularly to access the amenities.

In response to questions from Mr MacIntyre, Ms Burns confirmed that all the pharmacies in the area offered a full service and that the residents of Whitlawburn had access to these as part of the fabric of their daily lives.

In response to a question from Mr Collington, Ms Burns replied that she tried to engage with the residents of Whitlawburn and did what she could to participate in the wider area by: leafleting, visiting the community, offering a delivery and collection service, all the care services and blood pressure testing. She also made efforts to keep up to date and participated in PHAG initiatives to improve the services offered.

The committee then put their questions to Ms Burns

In reply to a question from Mrs Dakers Thomson, Ms Burns replied that she had initiated the letters from the GPs when she had visited them after the last application to find out if there were any problems with the pharmaceutical services and dosette boxes. She had also raised the petition to explain the situation and put her position to customers.

In reply to a question from Ms Miller, Ms Burns confirmed that she had plenty of capacity and could double her prescription load without any trouble. She employed local staff and trained and upskilled them. She believed that she offered a personal service, where her staff knew the customers and their backgrounds. She confirmed that the residents of Cathkin, Whitlawburn and Springhall all moved between the 3 areas as part of their daily

lives. She also stated that she was not aware of any complaints made about the service she gave.

In reply to questions from Mr Gillon , Ms Burns confirmed that the situation had not changed since the previous application and her reference to the Whitlawburn Centre closing was something she had ready a couple of days previously but believed it was worth noting. She confirmed that she had had a positive reaction from her leaflet drop which had been initiated by her attendance at the public meeting when she realised that there was low awareness of her services even though she had advertised.when she took over in 2010. When referring to the Councillor's letter, she would have liked an acknowledgement that she had changed her mind rather than seeing her letter in the evidence for the new application. She restated that she believed the opening of a new pharmacy would affect the viability of Burns; the other pharmacies had been there a long time and existed before the Regulations but they were able to survive because they were in areas with large footfalls and close to GP surgeries.

In response to questions from Mr Wallace, Mr Burns said that the service in the neighbourhood she had described was more than adequate; there had been no complaints and the information in the pharmacy care plan showed how densely populated the area was with pharmacies compared to others.

## **2 Mr Alasdair MacIntyre – Burnside Pharmacy**

Mr MacIntyre opened by defining the neighbourhood as the area bounded by : to the North the B762 Dukes Road which intersects and carries on along the A724 Glasgow Road/Cambuslang Main Street until it meets the B759 Greenlees Road; to the East the B759 Greenlees Road; to the South following the B759 Greenlees Road until it meets the A749 Glasgow Road/East Kilbride Road and to the West heading north along the A749 East Kilbride Road until it meets the northern boundary, the B762 Dukes Road. This was the same definition given by Ms Burns and the major arterial roads formed natural boundaries of the area of residential development south of Cambuslang town centre where most of the essential services and facilities were located.

He argued that Whitlawburn was a small community within a larger neighbourhood containing a relatively young population who as part of their daily lives accessed the facilities (schools, churches, shops, supermarkets, banks, libraries, GPs and leisure facilities) in the larger neighbourhood. In addition the centres of Burnside and Rutherglen were also within easy reach for access to services.

He stated that within the neighbourhood he defined there were already 4 pharmacies, there were 2 immediately on the border and a further 5 pharmacies in Rutherglen. Every one of these provided all of the core and the majority of the additional NHS pharmacy services as listed in the GG&C Pharmaceutical List which illustrated the availability of a full and comprehensive list of services. The applicant's main case seemed to be one of access and he referred to the frequent bus services; the fact that the distance was easily walkable and that delivery services were available for the housebound so access to pharmacy services was fully available. He also referred to Burns Pharmacy which was just outside his southern boundary but within a short easy walking distance of Whitlawburn. He acknowledged that it was on the far side of the A749 but this road was easily crossed via a staggered pedestrian

crossing and was not regarded as a barrier. Residents regularly crossed and recrossed the road to access the bus stops, to go the shops and to attend the primary and high school. He believed that from this it could be seen that the access to pharmaceutical services was adequate.

He noted that the only changes since the previous application, mentioned by the applicant were in the 12 new houses and the dentist which were not significant.

Turning to the other pharmacies in the area, he stated that Burns was a low intensity pharmacy and could easily cope with an increase in population on its own without taking into account the other pharmacies within his defined neighbourhood and pharmacies in Burnside and Rutherglen. Therefore, the existing pharmacy network could adequately provide pharmaceutical services to the residents of the new development.

He concluded by referring to the many previous applications for a pharmacy in Whitlawburn over the past 8 years which had all been turned down by the PPC and the National Appeals Panel who had commented on the potential destabilizing affect the granting of a new contract would have on the existing network. He asked the panel to refuse the application.

#### **Questions to the Interested Party**

In response to questions from Mr Dryden, Mr MacIntyre referred to the figures presented as concrete evidence of how a new pharmacy would adversely affect the viability of Burns Pharmacy. He also said that the low prescription volume of this pharmacy was due to the fact that residents naturally gravitated to Cambuslang, Rutherglen or Burnside to access services and had a wide choice of pharmacies in that area. If a pharmacy opened in Whitlawburn this would likely have a bigger impact on Burns as about 30% of prescriptions were from Whitlawburn residents; he imagined the other 70% of residents were fairly evenly spread over the other pharmacies and therefore made up a smaller proportion of their prescription load.

The other interested parties had no questions. The Committee then questioned Mr MacIntyre.

In response to questioning from Mrs Dakers Thomson regarding who serviced residential care homes, Mr MacIntyre said that he did not think that there were many in the area and he thought the Leslie's and Green's would provide this, along with Boots who had a central service on a national contract. The homes or their Head Offices would make the decision on which pharmacy to use and he could not see them changing provider unless there was a problem.

In response to questions from Mr Gillon, Mr MacIntyre said that there was a range and diversity of housing and socio-economic groups in Whitlawburn including bungalows valued at £250k, modern housing development, social housing and tower blocks. He agreed that the A749 was a distinctive boundary but all residents went back and forth across the road frequently and could use the crossing or underpass.

### **3 Mr Martin Green – Dukes Road Pharmacy**

Mr Green began by defining the neighbourhood from his point of view which was: North - Dukes Road (B762) onto Glasgow Road and Main Street, Cambuslang (A724); East – Greenlees Road (B759) to its junction with East Kilbride Road in the south and West – East Kilbride Road (A749) to its junction with Dukes Road. He believed these boundaries defined the residential area south of Cambuslang town centre which contained houses of varying style and age and residents of varying socio-economic status. All the essential services for the neighbourhood were provided within these boundaries.

Using data from Scottish Neighbourhood Statistics gave a population of 8055 and within this area there were four pharmacies and two immediately outside the neighbourhood. This gave an average of one pharmacy for every 1611 of population. In addition to this there were further pharmacies in Rutherglen and more in Halfway and Fernhill. These pharmacies provided a comprehensive range of core and non-NHS services. Speaking for his own pharmacies, he stated that they were not at capacity and would welcome any new patient wishing to access the service. He further stated that pharmacies within and on the periphery of this neighbourhood could easily be accessed by foot and by both public and private transport, indeed most of the Whitlawburn residents routinely travel to access the services which are not available there. He believed that the neighbourhood he described was adequately provided for and had a wealth of choice in pharmacy services.

He said that in the neighbourhood defined by the Applicant, there was no evidence to suggest that it was a “neighbourhood for all purposes” as most of the essential services required for daily living were missing (schools, churches, doctors, banks, post office). He referred to the Scottish Neighbourhood Statistics and said that Whitlawburn was not an exact fit for any of the datazones but he had identified 5 datazones which largely covered Whitlawburn but included Kirkhill and Springhall. From these zones he estimated the population of Whitlawburn to be 2500/2600 and that it appeared to be a fairly young population who tend to have less reliance on pharmacy services and are easily able to access services either on foot or by public transport.

Mr Green pointed out that there had been many applications to open a pharmacy none of which had been found to be either necessary or desirable. The amendment to the Regulations was supposed to give Boards powers to deal with repeat applications and he was concerned that this application would set a precedent for all applications which had been turned down since April 2011, The changes which the applicant referred to were: the new housing development which had been considered in previous applications; the opening of a dentist which would have little or no effect on the amount of prescriptions fulfilled; the list of public support which has been demonstrated before and appears to be balance out by the public objections to the application.

To conclude he stated that, while not having access to commercial information, some of the pharmacies had a relatively low prescribing volume and the introduction of another could result in destabilizing the current network. There was a need for a pharmacy in the area to the South of Cambuslang and Burns was already there. He contended that it was highly unlikely that the area would be able to support two pharmacies regardless of local preference. He therefore asked that the committee reject the application.

### **Questions to the Interested Party**

In response to questions from Mr Dryden, Mr Green restated that the petition was not new information as previous applicants had also submitted one. He confirmed that his pharmacy was yards outside the area and he could have included it but as it was custom and practice to use main arterial routes so he had done so when defining the neighbourhood. He acknowledged that one previous application had been approved by the PPC but had been rejected by the NAP. He confirmed that the residents of Whitlawburn would commonly access amenities and services in Cambuslang or Rutherglen

The other interested parties and the Committee had no questions for Mr Green.

### **4 Mr John Collington – Dickson's Pharmacy**

Mr Collington began by stating that he had a statement which he would read. The Chair reminded him that Interested Parties who were there to make representation should be prepared to answer questions. This was noted.

Mr Collington stated that Dickson's were strongly opposed to this repeated application as they firmly believed that, while it would be convenient for a pharmacy in this location, it was not necessary. He indicated that this application had already been turned down and it was his understanding that it was only being heard as a result of technical errors.

He restated Dickson's previous opinions that:: Burns pharmacy already served the population of Whitlawburn; Burns was not at capacity nor was it inaccessible as it was only a short walk away; there was a larger ageing population in the area around Burns Pharmacy; a new pharmacy would close or seriously destabilise Burns' service provision; Whitlawburn residents could not go about their daily lives without accessing services (banks, schools, shopping) in Burnside, Rutherglen or Cambuslang; there was an extremely good public transport system with frequent buses; there was arguably an overprovision of pharmacy services in the locality, albeit not in the most perfect locations which were historical; almost every pharmacy offered delivery services to cover for any historical gaps in accessibility.

He then summarised the financial strains community pharmacies were facing due to the transition to the new contract and any new pharmacy would automatically reduce the pool of patients.

He urged the committee to reject the application.

### **Questions to the Interested Party**

In response to questions from the Applicant, Mr Collington stated that he had only mentioned pharmacy payments to make it clear that pharmacies were increasingly limited in resources to develop staff and services and that by introducing another pharmacy would be an example of robbing Peter to pay Paul. He also stated that he believed that all pharmacies in the area would lose business, not just Burns.

There were no questions from the other Interested Parties nor from the Committee.

**ADJOURNMENT 4.30 pm to 5 pm for CLO to consider the relevant regulatory provisions**

Following the adjournment, Mr Stewart, noted that the Committee was considering an application which had first been submitted on 5 October 2011; that an earlier application by the Applicant had been refused in March 2011; and that the 2009 Regulations had been amended in April 2011 to provide that new applications made within a period of 12 months from the refusal of a previous application relating to the same neighbourhood required to demonstrate evidence of significant change in circumstances in the neighbourhood since the refusal of the earlier application. He advised, however, that the amendments which came into effect in 2011 were not retrospective in effect. That meant that the Applicant in this case was not required as a condition precedent to submitting his Application to demonstrate that there had been significant change in the neighbourhood between March and October 2011 (or subsequently).

In response to a question regarding the terms of the application form used by the Applicant, Mr Stewart stated that the application form had probably been updated by the Health Board after the amendments referred to above came into effect in April 2011 and this would be why the applicant had included reference to changes since his previous application. However, the obligations on the Applicant were determined by the effect of the Regulations rather than by the form which the Health Board had provided.

The applicant confirmed that he had completed this section because he did not want to leave it blank. Mr Stewart indicated that changes in the neighbourhood (however defined) were still a relevant factor as the PPC would be basing its decision on the position today rather than the position when the application was first submitted in October 2011. The Committee required to consider the full extent of the application based on neighbourhood, adequacy of services and, if necessary, on the question of whether services were necessary and desirable.

The Chair stated that the Committee would proceed on the basis set out by Mr Stewart and invited the Interested Parties and the Applicant to sum-up their respective cases.

**Summing Up**

**Ms Burns** stated that there was no doubt that existing provision adequate and the perceived barriers did not exist as pharmaceutical services were easily accessible. In fact, there was an overprovision of service in the area which was 6 times more than other areas in the GG&C area. There was little public support for a new pharmacy other than for convenience. Further, the future of Burns Pharmacy would be jeopardised if the application was granted. She concluded by saying that this process had been going on for over 2 years and had caused her considerable time and stress to provide the necessary information to the committee to prove that another pharmacy was not required and asked the committee to reject the application.

**Mr MacIntyre** said that Whitlawburn was a small community in a bigger neighbourhood. He stated that the Applicant had not demonstrated inadequacy. He had shown that the current network was entirely adequate in the range of services offered and in the number of pharmacies was more than sufficient. He asked the Committee to conclude that the

application was neither necessary nor desirable.

**Mr Green** stated that in his view the Applicant had not given sufficient evidence to establish Whitlawburn as a neighbourhood. The current provision was adequate and there was a wealth of choice. He, therefore, recommended that the application be rejected.

**Mr Collington** said that the existing provision was more than adequate to serve the area and a new pharmacy would destabilise the viability of other pharmacies. He asked the committee to reject the application.

**The Applicant** stated that Whitlawburn was a neighbourhood in every sense of the word and that the local population were desperate to get a local pharmacy and felt aggrieved that they had to travel to access pharmacies. He said that a collection and delivery service was no substitute and that taxis and buses were not relevant as the service should be available in the community. He believed that inadequacy had been proved by the interested parties and referred to the smoking cessation clinics which were only held 3 or 4 times a year. He believed that the residents of Whitlawburn required this service and it should be within their own community. He asked the Committee to take the opportunity to invest in health care by allowing a pharmacy service which would make a positive contribution to the local community.

The Chair thanked all for their contributions and said that he would now close the open session. He reminded them that if further legal advice was required, all parties would be asked to come back and invited them to wait if they wished.

The Chair advised all parties that the Committee's decision would be relayed to the Board within 10 working days. After which the decision would be formally relayed to the applicant and interested parties within 5 working days. Thereafter, there would be 21 days within which appeals could be lodged against the PPC's decision (full details of how to do this would be included in the formal written notification of the decision).

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

At this juncture Mrs Bunney and Mrs Garbutt, the observers, also left

The PPC were required and did take into account all relevant factors concerning the issue 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 were 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 before them, the PPC also took into 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 Applicants' premises, namely:

Boots UK Ltd  
M&D Green Dispensing Chemist Ltd  
Leslie Chemist  
Burnside Pharmacy  
Burns Pharmacy  
J& J G Dickson & Son Ltd

had made representations to the Committee.

The Committee noted that:

Lloyds Pharmacy

were consulted as part of the statutory process, but had not taken the opportunity to respond within the consultation time period.

- b) The Greater Glasgow & Clyde Area Medical Committee had responded outwith the time period.
- c) The Greater Glasgow & Clyde Area Pharmaceutical Community Pharmacy Sub-Committee had made representation.
- d) NHS Lanarkshire Area Pharmaceutical Committee had made representation.

The Committee noted that in accordance with the requirement (Paragraph 2, Schedule 3) to consult those who might use the pharmaceutical services provided (if the application were granted), notification of the application had been sent to:

- e) Public Involvement Group CHCP had made no response

- f) The following community councils:

Rutherglen- no response was received;  
Halfway – no response was received;  
Cambuslang – no response was received;  
Burnside – no response was received;

The Committee also considered:-

- g) The location of the nearest existing pharmaceutical services;
- h) The location of the nearest existing medical services;
- i) Information from Glasgow City Council's Development & Regeneration Services

advising of the known developments within a one mile radius of the proposed premises and information from Roads Section at South Lanarkshire Council.

- j) Glasgow City Council's Department of Roads and Transportation and South Lanarkshire Council's Planning & Building Standards had also been consulted but had made no response.
- k) Population/Census information relating to the postcode areas surrounding the Applicant's proposed premises.
- l) Patterns of public transport in the area surrounding the Applicant's proposed premises;
- m) Information regarding the number of prescription items and Minor Ailment Service activity undertaken by pharmacies within the consultation zone;
- n) Complaints received by the Health Board regarding services in the area;
- o) Applications considered previously by the PPC for premises within the vicinity;
- p) The Pharmaceutical Care Services Plan;
- q) PPC and NAP decision of Kyle Square Ltd's application;
- r) A letter from a member of the public;
- s) Additional Information submitted by Mr David Dryden of Kyle Square Ltd;
- t) Additional Information submitted by Ms Nicola Burns of Burns Pharmacy;

## **DECISION**

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

The Committee considered that the neighbourhood should be defined as follows:

North the B762 Dukes Road between its junctions with East Kilbride Road and Cambuslang Main Street;  
 East - the B759 Greenlees Road;  
 South – continuing along the B759 Greenlees Road until it meets the A749 Glasgow Road/East Kilbride Road  
 West - north along the A749 East Kilbride Road until it meets the, the B762 Dukes Road.

In reaching this decision the Committee took the view that in general, whilst the neighbourhood defined by the Applicant was undoubtedly a community it was not a neighbourhood for all purposes as there were few facilities/amenities available within the area defined. In particular, the Committee found .the picket fence on the Southern boundary separating Lomond View an arbitrary division and not a natural boundary and equally did not

find the playing fields straddled by a school to be a natural boundary to the north. The Committee preferred the boundary proposed by the interested parties utilizing the main arterial roads which were capable of being crossed. The Committee believed its defined area had all the necessary amenities of churches, schools, GP surgeries, Post Office, banks and all the facilities which would be expected in a neighbourhood and easily accessible by a regular bus service.

#### **Adequacy of Existing Provision of Pharmaceutical Services and Necessity or Desirability**

Having defined the neighborhood , the PPC was then required to consider the adequacy of pharmaceutical services within 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 there were 4 existing pharmacies namely Boots UK Ltd, 2 x Leslie's and Dukes Pharmacy and 2 on the immediate periphery namely Burns and Burnside. In addition there were further pharmacies in Rutherglen.

The PPC considered that the population within the neighbourhood could access services both within the neighbourhood and out with the neighbourhood.

The Committee considered this existing network provided comprehensive service provision to the neighbourhood and all services required by the pharmacy contract, along with additional services. The Committee considered that access to services was readily achievable in a variety of ways either by foot, public transport or by car. A collection and delivery service was available for any resident finding access to services problematic.

The Committee considered the capacity of the existing network and noted that the prescribing statistics were generally quite low which indicated that there was scope for expansion and there were no plans which would indicate a significant increase in the population of the neighbourhood.

The PPC considered letters in support and the letters against the new pharmacy and noted that these were both solicited and would be expected represent the view of the individual soliciting the response. They also considered that these were evenly balanced with no overwhelming support for either case.

**In accordance with the statutory procedure the Pharmacist Members of the Committee, Ms Joan Millar and Mr Wallace Stevenson left the room during the decision process.**

#### **DECIDED**

Having regard to the overall services provided by the existing contractors within the vicinity of the proposed pharmacy, the number of prescriptions dispensed by those contractors in the preceding 12 months, and the level of service provided by those contractors to the

neighbourhood, the committee agreed that the neighbourhood was currently adequately served.

It was the unanimous decision of the PPC that the application be refused.

**5. ANY OTHER COMPETENT BUSINESS**

There being no further competent business the meeting was closed.

The meeting ended at 6.45 pm