

**Minutes of the meeting of the NHS Forth Valley Pharmacy Practices Committee (PPC) held on Thursday, 17 August 2017 at 0900 hours in the Board Room, Carseview House, Castle Business Park, Stirling, FK9 4SW**

<b>Present:</b>	John Ford (Chair)	Non-Executive Director NHS Forth Valley
	Campbell Shimmins	Contractor Pharmacist Member
	Mike Hutchison	Contractor Pharmacist Member
	Morag Mason	Lay Member
	Sheila McGhee	Lay Member
	Helen McGuire	Lay Member
	Scott Hill	Non-Contractor Pharmacist Member
<b>Attendees:</b>	Brian McCarthy	Westburn Pharmacy, Applicant
	James Semple	Accompanying Applicant
	Tom Arnott	Lloyds Pharmacy, Interested Party
	Annette Wilson	Lloyds Pharmacy, Accompanying Mr Arnott
	Richard Grahame	Callander Pharmacy, Interested Party
	Kathleen Cowle	Boots UK Ltd, Interested Party
	Joanne Watson	Boots UK Ltd, Accompanying Ms Cowle
	Karen Moir (formerly Blackwood)	Tesco Pharmacy, Interested Party
	Kaye Findlay	Bantaskine Tenants' and Residents' Association, Interested Party
	Gillian Gordon	NHS National Services Scotland, SHSC Meetings
	Susan Murray	NHS National Services Scotland, Central Legal Office

**0.1 DECISION OF PPC 8 SEPTEMBER 2016 – RIGHT MEDICINE PHARMACY LTD**

The minutes of the meeting of the above Committee were noted.

**1.0 APPLICATION BY WESTBURN PHARMACY**

1.1.1 There was submitted an application and supporting documents from Westburn Pharmacy received on 10 May 2017, for inclusion in the pharmaceutical list of a new pharmacy at 13 Maggie Wood's Loan, Falkirk, FK1 5HR

**1.2 Submission of Interested Parties**

1.2.1 The following documents were received:

- i. Letter dated 5 June 2017 from Richard Grahame, Callendar Pharmacy
- ii. Letter dated 8 June 2017 from the Area Pharmaceutical I Committee (APC)

- iii. Email dated 14 June 2017 from Karen Blackwood, Tesco Pharmacy
- iv. Letter dated 14 June 2017 and 12 July 2017 from Joanne Watson, Boots UK Ltd
- v. Letter dated 16 June 2017 from Emma Griffiths-Mbarek, Well Pharmacy
- vi. Letter dated 16 June 2017 from Matthew Cox, Lloyds Pharmacy
- vii. Letter dated 20 June 2017 from Kaye Findlay, Bantaskine Tenants' and Residents' Association

### **1.3 Correspondence from the wider consultation process undertaken jointly by NHS Forth Valley and Westburn Pharmacy**

- 1.3.1 i) Joint Consultation Analysis Report (CAR)

## **2.0 Procedure**

2.1 At 0900 hours on Thursday, 17 August 2017, the NHS Forth Valley Pharmacy Practices Committee (“the Committee”) convened to hear the application by Westburn Pharmacy (“the Applicant”). The hearing was convened under Paragraph 2 of Schedule 3 of The National Health Service (Pharmaceutical Services) (Scotland) Regulations 2009, as amended, (S.S.I. 2009 No.183) (“the Regulations”). In terms of paragraph 2(2) of Schedule 4 of the Regulations, the Committee, exercising the function on behalf of the Board, shall “determine any application in such manner as it thinks fit”. In terms of Regulation 5(10) of the Regulations, the question for the Committee was whether “the provision of pharmaceutical services at the premises named in the application is necessary or desirable in order to secure adequate provision of pharmaceutical services in the neighbourhood in which the premises are located by persons whose names are included in the Pharmaceutical List”.

2.2 The Chair welcomed all to the meeting and introductions were made. When asked by the Chair, members confirmed that the hearing papers had been received and considered. When committee members were asked by the Chair in turn to declare any interests in the application, none were declared.

2.3 It was noted that members of the committee had previously undertaken site visits to Falkirk independently during various times of the day and week to gather a sense of the natural working patterns of residents and visitors to the various premises. All confirmed that in doing so each had noted the location of the premises, existing pharmacies, general medical practices and other amenities in the area such as, but not limited to, banks, post office, supermarkets, churches, schools and sports facilities.

2.4 Having ascertained that there were no conflicts of interest or questions from Committee Members the Chair confirmed that the Oral Hearing would be conducted in accordance with the guidance notes contained within the papers circulated. The Applicant and Interested Parties were invited to enter

the hearing.

### **The open session convened at 0935 hours**

#### **3.0 Attendance of Parties**

- 3.1 The Chair welcomed all and introductions were made. The Chair explained that Ms Murray was in attendance to provide legal advice and Ms Gordon to provide Secretariat support. These attendees would not have any involvement in making a decision.
- 3.2 The Applicant, Westburn Pharmacy, was represented by Mr Brian McCarthy accompanied by Mr James Semple. From the Interested Parties eligible to attend the hearing, the following accepted the invitation: Mr Tom Arnott, accompanied by Ms Annette Wilson representing Lloyds Pharmacy, Mr Richard Grahame, representing Callander Pharmacy, Ms Kathleen Cowle, accompanied by Ms Joanne Watson, representing Boots, Ms Karen Moir, representing Tesco Pharmacy and Ms Kaye Findlay, representing the Residents' Association (who arrived at 0940 hours).
- 3.3 The Chair advised all present that the meeting was convened to determine the application submitted by Westburn Pharmacy in respect of a proposed new pharmacy at 13 Maggie Wood's Loan, Falkirk, FK1 5HR. The Chair confirmed to all parties present that the decision of the Committee would be based entirely on the evidence submitted in writing as part of the application and consultation process, and the verbal evidence presented at the hearing itself, and according to the statutory test as set out in Regulations 5(10) of the 2009 Regulations, as amended, which the Chair read out in part:
- 3.4 "5(10) an application shall be ... granted by the Board, ... only if it is satisfied that the provision of pharmaceutical services at the premises named in the application is necessary or desirable in order to secure adequate provision of pharmaceutical services in the neighbourhood in which the premises are located..."
- 3.5 The Chair confirmed that all had received the hearing papers by running through the titles of the papers which were included in the pack.
- 3.6 The three components of the statutory test were emphasised. It was explained that the Committee, in making its decision, would consider these in reverse order, i.e. determine the neighbourhood first and then decide if the existing pharmaceutical services within and into that neighbourhood were adequate. Only if the Committee decided that existing services were inadequate would the Committee go on to consider whether the services to be provided by the applicant were necessary or desirable in order to secure adequate services. That approach was accepted by all present.
- 3.7 The Chair advised all parties of the hearing procedure to be followed.
- 3.8 The Chair confirmed that members of the Committee had independently conducted site visits in order to understand better the issues arising from

this application. Assurance was given that no member of the Committee had any interest in the application.

- 3.9 The Chair asked for confirmation that all parties fully understood the procedures to be operated during the hearing as explained, had no questions or queries about those procedures and were content to proceed. All confirmed agreement.
- 3.10 The Chair reported that a joint consultation, as required under the 2014 Amendment, had taken place. This involved the Applicant and representatives from the Health Board's Primary Care Contractor Services agreeing the content and scope of the consultation. Two separate advertisements were placed in the Falkirk Herald; details appeared on NHS Forth Valley's website; the Applicant's website. The questionnaire was available in electronic format on both websites and a hard copy was available on request. The Applicant also did a mail drop and met with local councillors and other bodies. The consultation period ended on 9 February 2017 and the results of the consultation were contained within the Consultation Analysis report which had been agreed by both parties.

#### **4.0 The Applicant's Submission**

- 4.1 The Chair invited Mr Brian McCarthy, to speak first in support of the application.
- 4.2 Mr McCarthy opened by introducing himself and his companion, Mr James Semple, and thanking the PPC for giving him the opportunity to present his case. He pointed out that Mr Semple was his current boss and also had a stake in the proposed Pharmacy.
- 4.3 He said that he was born and brought up in Falkirk and I lived in Bantaskine, so knew the area as well as anyone. For the past ten years he had been the pharmacy manager at the Hallglen branch of TLG Pharmacy and that his bosses had always encouraged their managers to see pharmacy ownership as being the next step in their career progression and was grateful for the support that they had given him in making this application.
- 4.4 He stated that he did not intend to go into much detail about the services he intended to offer because the only services he would be contractually obliged to offer were those that form the core NHS pharmacy contract and any locally negotiated services. That said, he was enthusiastic about pharmacy and had always done much more than was required by the NHS contract - for example he had worked closely with the local nurses to provide experience of how pharmacy works, and would be happy to answer any questions about services after his presentation.
- 4.5 He was also not going to go into any great detail about the layout of the pharmacy, other than to say that it would focus on healthcare as opposed to retail, and would have a fully appointed consultation room.

His partners had huge experience in fitting out pharmacies and would be helping in this respect. The pharmacy would also have excellent disabled access, with an automatic door and disabled parking.

4.6 He indicated that he would go into great detail on the legal test because that was what really mattered.

#### 4.7 NEIGHBOURHOOD

Before explaining how he had defined his neighbourhood, he made some points about the concept of 'neighbourhood' in the Legal Test.

4.8 Over the past twenty years, PPC 'case law' had changed the way we thought about the neighbourhood. Many years ago, the rule of thumb was that if the PPC agreed with a neighbourhood- and there was no pharmacy in it- then the application was granted. The argument was that a neighbourhood without a pharmacy had a de facto *inadequate* service. This meant that applicants would draw lines on the map which excluded other pharmacies, and see if they could persuade the PPC that their defined neighbourhood was reasonable. In effect, a PPC was really an argument about neighbourhood boundaries but those days had gone.

4.9 He noted that the submission from Callandar Pharmacy accused him of defining a neighbourhood which was a *"convenience for the purpose of [my] application"*. This claim was also made by Boots - who claimed that his neighbourhood has been defined *'without reason'*.

4.10 Mr Grahame (Callander) went on to say that his neighbourhood was *"a mix of neighbourhoods patched together which are completely separate communities, from Tamfourhill in the west to Arnothill in the east..."*

4.11 Both were entirely wrong in their assertion that his neighbourhood was contrived for his convenience, but Mr Grahame could be right in saying that it was actually an amalgamation of two or three smaller neighbourhoods. It could be that he had defined a catchment area for the proposed pharmacy - which was a different thing than a neighbourhood. That would be for the PPC to decide.

4.12

- However this did not make any difference to the decision making process as, returning to how PPCs use *'the neighbourhood'* in the decision making process, and how this has changed over time, he explained: it was now recognised that defining a *'neighbourhood'* was merely a tool which gave a better understanding of the needs of a distinct population. It was also a useful tool in the Joint Consultation since it defined the area whose residents needed to be consulted about their existing pharmaceutical services and in this respect it was agreed in consultation with the NHS Board.
- PPCs now regularly refused applications in neighbourhoods they defined as having no existing pharmacy, and they also granted applications in neighbourhoods they defined as having an existing pharmacy.

- 4.13 The simple reason for this was that the 'neighbourhood' was simply a tool which identified a distinct population. The key decision the PPC must reach was actually:
- was there a significant population in the vicinity of the proposed premises who had poor access to a pharmacy (i.e. an inadequate pharmaceutical service) and would the granting of the application remove this inadequacy?
- 4.14 He said that you could have a neighbourhood without a pharmacy, but with easy access to a pharmacy in an adjacent neighbourhood. That was not an inadequate pharmaceutical service. You might also have a neighbourhood with, for example, a huge population and a single tiny pharmacy which was unable to cope with the needs of that population. In this example you could consider the pharmaceutical service to be 'inadequate'.
- 4.15 In addition, it must also be remembered that this 'significant population' did not only mean those people who live in the neighbourhood in which the pharmacy was located, but also the transient population who might be in the neighbourhood for any particular reason. He was sure all were aware of the famous decision of Lord Nimmo Smith in the Boots application in a retail park in Inverness.
- 4.16 In his case, the transient population must be considered for a very obvious reason - the Westburn Medical Centre - on which he would expand later.
- 4.17 Turning to his defined neighbourhood; the exact details of which were in the papers and on the map, so there was no need to repeat them. For simplicity, he had called it 'Bantaskine' and had defined his neighbourhood based on two major factors:
- Geography - the geographical features being the Camelon Road (which was a major thoroughfare), the canal, and the railway line.
  - He had also used his local knowledge to think about how Falkirk is divided by local people into distinct areas, and tried to define the area commonly known as 'Bantaskine'. For that reason he had excluded Tamfourhill from his neighbourhood, although he would consider it to be in his catchment area.
- 4.18 The boundary between what would be called 'the town centre' and his neighbourhood was less obvious than the other boundaries, but the line along Majors Loan seemed reasonable.
- 4.19 He referred to the CAR (Q1), and noted that a massive 88% of local residents agree with this definition.
- 4.20 He acknowledged that others could pick holes in this definition in that it could be argued:

- that Arnothill and Rosebank (the area to the south of the Camelon Road and north of Westburn Avenue) made up a separate neighbourhood. They had a different housing stock than the rest of what he had called 'Bantaskine'. But then, Bantaskine was very much a mixed neighbourhood, with a range of housing types.
- that Tamfourhill and Bantaskine make up a single neighbourhood. Housing types were similar, and in fact this was the catchment area for the Bantaskine Primary School.

4.21 But tinkering around the edges of the neighbourhood definition made absolutely no difference to his central premise that there was a significant population in close vicinity to his proposed premises. A significant percentage of this population, in particular the elderly; disabled; mothers with young children; and the chronically ill had poor access to a local pharmacy - that is they had an inadequate pharmaceutical service - and the opening of a pharmacy at the proposed premises would, for the vast majority of them, remove this inadequacy.

4.22 Moving to the **existing services** in the neighbourhood, he said that, however you defined the neighbourhood; it would be a stretch to include Camelon or the Town Centre. But even if one did, it would not negate the central premise of his argument. There was no pharmacy located in the neighbourhood.

4.23 He stated that it was impossible to say exactly where patients currently accessed pharmaceutical services, but he assumed that the majority would do so either at one of the two pharmacies in Camelon, or alternatively at one of the two pharmacies in the town centre. These four pharmacies were approximately **one mile** from his proposed premises. Of course, for many residents of the neighbourhood they were much more than a mile away and for a few they were closer than a mile.

4.24 The key question was - were services in the neighbourhood in which the proposed premises were located inadequate? He said that there were a couple of obvious points. The question was not whether services were inadequate for everyone. Some people living in the neighbourhood might find it very easy to access pharmaceutical services. If you lived in Bantaskine and worked in Boots you were certainly not going to have any problems accessing a pharmacy. The question one needed to answer was whether there was a significant section of the neighbourhood population - in effect, a sufficient number to justify and support a new NHS pharmacy- who currently had difficulty in accessing an NHS pharmacy. And, obviously, this section of the community would be made up mainly of those people who most NEEDED to access a pharmacy - the elderly; disabled; chronically sick; and mothers with young children. It was his contention that there were a significant number of people in the neighbourhood who had difficulty in accessing a community pharmacy.

- 4.25 In order to support this contention, he would refer to the results of the Joint Consultation, but before he did that he wanted to give the PPC some very general information about the population. These figures had been obtained by amalgamating data zones of the proposed neighbourhood from the Scottish National Statistics website.
- 4.26 He noted that this was not a wealthy population. but it was not a particularly deprived population. He thought it would be best described as 'average', although there were some notable exceptions:
- Average cars was 1.1 per household against a national average of 1
  - Percentage in bad health was 4.6 against a national average of 4.3
  - Percentage with very bad health was the national average of 1.3
  - Disability was 8.3% against a national average of 6.7%
  - Limitations due to illness was 22.9% against a national average of 9.6%
  - 24.5% of residents have no car - against a national average of 30.5%
  - The percentage over 65 is 27.7% against a national average of 16.8%
- 4.27 So, it was not particularly deprived but there was a significantly larger number of pensioners and people with limitations due to illness.
- 4.28 The size of the population was approximately 4000. (The actual figure arrived at using Data Zone statistics from the SNS website is 4056 but for the sake of argument I thought 4000 was reasonable)
- 4.29 He said that the important thing here was the size of the population. This was a large population and so relative comparisons with either Falkirk statistics, or National statistics were not particularly useful. All one was interested in for the purposes of this application were absolute numbers of, say, elderly; or disabled; or chronically ill; or two car families. So, he was not going to make a huge deal about the percentage differences of elderly, or people with limitations due to illness.
- 4.30 He explained this a little further and said that, in a neighbourhood with a population of 4000 and with 30% of the population being elderly there would be more elderly people than in a neighbourhood of 2000 people with 50% of the population being elderly. The percentage did not matter as it was the size of the population that had the greatest effect and the absolute number that mattered.
- 4.31 The important thing was that there were over 1000 pensioners; just under 1000 people with limitations due to illness; over 300 people with disabilities and just under 1000 without a car. Obviously there would be an overlap, but those were big numbers no matter how one looked



at it.

- 4.32 The joint consultation was, in his opinion, a useful addition to the PPC process. But it was only useful if enough people responded to it, and he was extremely pleased that the response in this application has been excellent. As he understood it, it was far in excess of the responses received for almost any other application across the country. The reason it was important to get a good response was that the opinions expressed in this sample could be extrapolated with statistical significance to the entire neighbourhood population. In other words, if a percentage of the sample said 'we have a good service' then this could assumed to be the same percentage for the entire population with a fair degree of certainty.
- 4.33 He said that he had done some research on this subject and I could tell the PPC that for a population of 4000, a sample size of 250 gave an accuracy which could be assumed to have an error of + or -10%. (it was actually less than this but he was erring on the side of caution). In other words, one could assume any of the percentages he used in his analysis were anything between 10% too high or 10% too low.
- 4.34 He said that Mr Grahame has made an accusation about how he had conducted the consultation. His accusation was false as he did his absolute best to canvas opinion, but he did not misrepresent the situation to anyone, and was very careful not to influence anyone. The success of this consultation was down to hard work on his part, but his only effort was in seeking opinions, not influencing opinion.
- 4.35 As previously stated, the nearest pharmacies were - on average - about a mile away. But this was not that important. He thought the PPC would agree that a mile was too far to expect an elderly person, or a disabled person, or someone with a chronic condition, to walk. So the question was, how they got there as they needed to get there somehow or other, regardless of how difficult it was.
- 4.36 According to the CAR 45.6% use their car, and 30% use the bus or walk. He acknowledged that the numbers were difficult to accurately analyse due to multiple answers. He supposed the result was unsurprising since 25% of the population had no car and did not have a choice. The fact that 45% used their car also did not tell us how easy it was to use a car to get to a pharmacy. Regarding this:
- If you drove to Camelon then parking was a serious problem. There were 36 businesses on Camelon main street, and the Sheriff Court. There were only 56 parking spaces on the street (on either side of the main road). There was no public car park. There was no waiting restriction which added to the problem since employees of the 36 businesses and the Sheriff Court could park in the street all day. It was also one of the major routes into Falkirk and so congestion was common. In other words, it was a nightmare to get parked in Camelon, as he was sure the members of the PPC saw when they visited.
  - Turning to the town centre where there were two pharmacies,

there were only 12 free parking spaces in Falkirk town centre. It was unreasonable to expect patients to pay parking charges to access an NHS pharmacy.

- 4.37 Furthermore, he asked about the 1000 people without access to a car, or the many, many more who did not have access to a car during the day? (there were only 1.1 cars per household and in most families the person at work would have the car). He said that you could rule out walking. He did not think one should expect the elderly, or the disabled, to walk (on average) a mile to a pharmacy.
- 4.38 That left the bus. Here he noted that the buses from Bantaskine do not go to the bus station. They go to the Falkirk Asda, which left a difficult walk up a hill to get the Boots pharmacy and even further to get to the Callander pharmacy. For the elderly, etc... there was no bus stop close to the town centre pharmacies. He noted that Mr Grahame was incorrect in his claim that buses from Bantaskine went to the bus station. It was only on the return journey that a resident would use the bus station. There was also a cost attached to using the bus which was £2.70 return for adults and £1.70 for a child return so for a mother of 2 that would be £6 on bus travel.
- 4.39 He stated that, in a nutshell, was the difficulty that residents of the neighbourhood had in accessing a pharmacy and this was why this proposed pharmacy was so enthusiastically supported.
- 4.40 Turning to the CAR he said that Q6 contained the killer statistic as when asked if they had any issues or challenges accessing NHS pharmaceutical services, only 42% of those who expressed an opinion said that they had no issues. That left a massive 58% who have an issue or challenge in accessing NHS pharmaceutical services. Even taking into account a sample error of plus or minus 10% then this equated to a population of between 1920 and 2720 who had difficulty in accessing an NHS Pharmacy. He said that there was no point in having a CAR if one did not give due weight to the opinions of the public. It was essential that the views of local people were listened to.
- 4.41 This single statistic should be sufficient to grant this application. However he said there was more:
- the access issue was further addressed by the fact that in Q8 where a massive 65% of respondents said that they would change the way they currently accessed an NHS pharmacy services if the application was granted. The reason he said that was because he knew that the service provided by these other pharmacies was generally very good, and, from experience, that patients were extremely loyal to the pharmacy they used. These 65% of patients were not going to change pharmacy because they had a problem with the service they currently received - they were going to change because they had a huge problem getting to the pharmacy they currently used.
  - In Q4, which he felt had been misinterpreted, as the question was

intended to find out if there were any problems with the existing services, and 48% of respondents said that there were. He thought that from the comments that the problem was not the existing services per se, but in fact the location of the existing service. This simply underlined the fact that it was not the existing pharmacies that were a problem; it was getting to them. He did not believe for a second that half of the population thought that his colleagues were providing a poor service.

- 88% of those who expressed an opinion believe that a community pharmacy would have a positive benefit to the neighbourhood (Q3) and 87% when this question was worded very slightly differently in Q10.
- It was almost universally agreed that the location of the pharmacy was good (Q7).

4.42 Concluding his comments about CAR, bearing in mind the 10% error margin for these statistics, he thought it was still fair to say that the responses to the CAR overwhelmingly supported the case for this application being granted. He had gathered a huge amount of useful evidence to prove that, for a large percentage of this neighbourhood population, access to existing pharmaceutical services was not adequate and urged the PPC to acknowledge that this evidence was robust and compelling.

4.43 He went on to say that he had even more evidence to support his case, from the following reliable independent sources:

- He was very pleased to have the support of Mrs Findlay from the Residents' Association, and would not step on her toes by speaking for her, but he also drew attention to the letters from the district nurses at the Graeme Medical Centre and Meeks Road practices.
- Inez Crow from Meeks Road practice (on behalf of her team) stated that: *"many of the patients we see within the neighbourhood have great issues regarding accessing the current pharmacies ... getting to and from the pharmacies proves to be too difficult as their routes of travel are not easy; public transport not great, and many do not have access to a car"*.
- It was also interesting to note that even the nurses have great difficulty in accessing a pharmacy - for the same reasons as everyone else - and so *"gaining access ourselves proves difficult and a community pharmacy would prove invaluable when needing catheters, dressings and other medical equipment"*.
- Joyce Cameron on behalf of her team at the Graeme Medical Centre who stated: *"many of the residents we attend have mobility issues, both long and short term, which makes it very difficult to travel to... a community pharmacy. At present the services offered are not as accessible as they should be for people in this position. Elderly patients struggle using public transport and walking into the town centre is a/most certainly very difficult if not impossible"*.
- Again, it was not just patients who had problems: "Access to a

*pharmacy for us is important and when in this area it is... very difficult. .. Parking issues can be off-putting and travelling into the town centre to collect stock orders, dressings, catheters, or anything else we need for our patients ... adds a great deal of time to our day".*

- 4.44 That brought him on to a second element to this application which was the location of the Westburn Medical Practice. He said that in itself, it did not necessarily follow that simply because there was a GP surgery in a neighbourhood then there needed to be a closely located pharmacy. Many applications were made with this premise, and they failed, but in this particular situation there was a big difference. This was not some small branch surgery or rural surgery in a small village but a practice with 5000 patients on the list.
- 4.45 He noted that the owners of Callander Pharmacy, in their submission, claimed that the practice list was made of 'predominantly residents in the town centre'. He said that was not what he was told by the practice. Whilst there were indeed registered patients from the Town Centre, the bulk of the practice list resided in the neighbourhood he had defined.
- 4.46 They also claimed that *"the vast majority of prescriptions generated are repeat prescriptions [which] are managed by the existing pharmacy repeat management systems already in place. Very few patients actually go to the surgery themselves to pick up prescriptions other than those for minor acute conditions such as antibiotics"*. In other words, the only people who went to the surgery were people that were sick. He had the numbers for the split between 'repeat' and 'acute' prescriptions for the Westburn Medical Practice. In the past 18 months, the practice has generated between 7000 and 10000 prescriptions per month. Of these, 5-6000 were for repeat medications. So on every single month there had been around 2-3000 Acute Prescriptions.
- 4.47 He suspected that some of these 'acute prescriptions' were not actually prescriptions written at a face-to-face consultation such as an antibiotic. Some surgeries recorded repeats of things like pain-killers as 'acute'. However, figures he had obtained from the practice suggested that there were still a huge number of people who were given a prescription after a consultation every month; as one would expect from a practice with a list size of 5000.
- 4.48 He referred to the letter from the practice manager:  
*"Currently the patients of Westburn Medical Practice have no acceptable access to a pharmacy unless they drive. For patients who drive, it means they have to pay a parking charge... For patients who do not drive, they either have to take public transport or walk. This is not ideal when patients are prescribed acute medication as this means they are often unwell and need to access a pharmacy quickly..."*
- 4.49 He invited the PPC to consider the patient journey for a patient in

Bantaskine who was ill and had a GP appointment, remembering this was anything up to 1200 patients per month (based on a figure of 300 GP appointments a week, which was the practice norm). They walked to the surgery, which is located in the neighbourhood. They saw the GP. They then needed to get a bus to the Asda in Falkirk and walk up a hill to the town centre. They had their prescription dispensed, and then needed to wait in the Bus Station to get a bus home. This was not acceptable.

4.50 But there was another element to this and he again quoted the practice manager:

*"With our list size of 4940 patients I feel it is imperative that our patients have access to a neighbourhood pharmacy offering services and pharmacist centred consultations that can be accessed such as the Pharmacy First Service which has the potential of relieving some of the pressures on an already overstretched Primary Care practice".*

4.51 In a subsequent email she stated:

*"Out of these 302 encounters (referring to GP appointments during one week in September 2016) I reckon a quarter of these could be dealt with by a pharmacist".*

4.52 He stated that this was very important as a community pharmacy, and the Pharmacy First service, should be the accessible first port-of-call in a neighbourhood. Bantaskine had no pharmacy, and so undue pressure was being put on this GP practice as the first port-of-call. And that was because of access. This application was **all** about access.

4.53 He referred to the transient population and pointed out that the needs of the neighbourhood were not restricted to those people who lived in the neighbourhood. It also included those people who were, for whatever reason, **in** the neighbourhood. This 5000 practice population would include many people who were not resident in the neighbourhood, and their needs must also be considered; in particular when they visited the GP practice.

4.54 Before summing up, he indicated that he wanted to make a couple of comments about the letters of objection received from the Interested Parties.

4.56 The first was the old chestnut about this application being considered before, and refused. He was sure that the PPC were not bound by the decision of a previous hearing- especially one that took place over six years ago. This application should be decided on the facts put before you today.

4.57 Mr Grahame from Callander Pharmacy had made a number of points which he wanted to address:

- He mentioned the improvements that have been made to his

pharmacy. He commended him for that, but this application was not being made on the basis of the existing pharmacies being unsatisfactory. It was being made because access to his pharmacy - and others – was inadequate.

- Mr Grahame also claimed that the proposed premises were part of 'the town centre community'. The applicant did not think anyone in Bantaskine - and he included himself - would ever in a million years consider themselves as living in the town centre, and as a Falkirk boy born-and-bred he thought he was quite a good judge.
- Mr Grahame also made reference to the Comely Park Primary school, and claimed that since it had a catchment area which includes the town centre then the Bantaskine neighbourhood must be part of the town centre. He obviously was not aware of the Bantaskine Primary school, which had a catchment area which almost exactly mirroring the neighbourhood proposed. It was ironic that he had been accused of contriving a neighbourhood which conveniently excluded any pharmacies, because it seemed that it is in fact Mr Grahame who has used school catchment areas (which are not neighbourhoods) to contrive a completely nonsensical neighbourhood which conveniently included a couple of pharmacies! And to compound matters, he got the school catchment area wrong.
- Mr Grahame also claimed that a large proportion of the population in my proposed neighbourhood "actually live closer to existing pharmacies than to the proposed pharmacy". From a quick glance at the map, it could be seen that this was nonsense. Of course some patients on the western and eastern boundary lived closer to the existing pharmacies, but these numbers were negligible and this would be the case in almost any new contract application in an urban or semi-urban setting.
- Mr Grahame also stated that: *"it would be handy for every street corner to have a pharmacy on it, but it is neither feasible or necessary to do so. This is especially the case in an affluent area such as Arnothill"*. Firstly, the neighbourhood was not Arnothill. It was Bantaskine. Arnothill was a small enclave on the other side of Westburn Avenue, which he had included in the greater neighbourhood he called 'Bantaskine'. Secondly, Mr Grahame was absolutely correct in saying that it was not feasible to have a pharmacy on every street corner. No-one was suggesting so. Expecting a population to use the bus to reach a pharmacy (or their car if they have one) could often be justified when it was a small population and it was not cost efficient for the NHS to 'put a pharmacy on every corner' but this was not such a situation. This was a huge population of 4000 who did not have ready access to a community pharmacy, and it was in such situations that it was entirely justifiable to grant an application, for all of the reasons

and with regard to all the facts previously stated.

- Mr Grahame also stated that his pregnant wife was able to walk every day from his shop to the Falkirk Community Hospital. Of course she could – she was pregnant, not ill, nor elderly, nor disabled.
- Mr Grahame also questioned the viability of the proposed pharmacy. Well, as the CAR showed that 65% of local people would use the new pharmacy He had absolutely no concerns in that respect. This application, if granted, would undoubtedly secure an NHS pharmaceutical service and there was no possibility it would not be viable. Of course, the PPC may consider the viability of existing services in adjacent neighbourhoods were this pharmacy to open. Although not strictly part of the Legal Test, it was only natural that a PPC should look at the 'bigger picture' when considering an application.
- He had every sympathy with any impact on Mr Grahame's own personal finances that a new entrant may have, but the simple fact was that it was inconceivable that the existing pharmacies in the town centre, located as they were close to two other practices, would be rendered unviable. The purpose of the regulations was not to protect the investment of existing pharmacy contractors; it was to ensure that as far as was possible all patients have access to an adequate pharmaceutical service.

4.58 In conclusion, Mr McCarthy said that:

- The neighbourhood was Bantaskine.
- Existing pharmacies were located a mile from the proposed premises.
- In many circumstances this might be considered a reasonable distance to travel but in this specific circumstance the lack of parking at Camelon and the Town Centre, and the lack of a **direct** bus route to the town centre pharmacies, made it unacceptably difficult for many residents of Bantaskine to access a pharmacy.
- The population is of a relatively large size - approximately 4000.
- A significant proportion of this population - in particular those people who most needed to access a pharmacy – had sufficient difficulty in accessing the existing pharmacies for the pharmaceutical service in the neighbourhood in which the proposed premises are located to be considered inadequate.
- This application was supported by the local residents' association, the local district nurses, the local GP practice, and overwhelmingly by the respondents to the consultation exercise.
- There was a large GP practice in the neighbourhood, and with over 1000 appointments a month it was unreasonable to expect such a large number of people with acute illness to make a further difficult journey to have a prescription dispensed.
- Further, the GP surgery was being used as a 'first port-of-call' for

patients with minor conditions that should be treated in an NHS pharmacy.

- The evidence of inadequacy was clearly demonstrated by the CAR, the sample size of which was sufficient to give a 10% margin of accuracy in interpreting the results.

4.59 Finally he said that the application passed the Legal Test, and he respectfully asked the PPC to grant it.

*This concluded the presentation from Mr McCarthy*

## **5.0 The Chair invited questions from the Interested Parties in turn to Mr McCarthy.**

### **5.1 Mr Arnott (Lloyds Pharmacies) Questions to Mr McCarthy**

5.1.1 Mr Arnott asked what core services were not offered by the current pharmacies and Mr McCarthy replied that all core services were offered.

5.1.2 Mr Arnott asked if Mr McCarthy agreed that there were four pharmacies within a mile to which he received the reply that they he did not as all were over a mile. Mr Arnott noted that he disagreed as if one used Google Maps then the four were within a mile distant.

5.1.3 When asked if he would describe the neighbourhood as rural, Mr McCarthy said that he would not.

5.1.4 Mr Arnott asked if the majority of the area could be described as affluent and Mr McCarthy replied that this was absolutely not a description he would use.

5.1.5 Mr Arnott asked if Mr McCarthy lived in Bantaskine and when informed that this was the case, asked if he considered himself to be affluent.

*The Chair intervened to say that this line of questioning was inappropriate.*

5.1.6 Mr Arnott listed a number of streets within the general area and asked Mr McCarthy to say which neighbourhood they would describe themselves coming from. Mr McCarthy described most as coming from Bantaskine and emphasised that Summerford was one small part of Bantaskine as was Arnohill and that Woodlands was not a recognised district.

5.1.7 Mr Arnott asked if Arnohill and Woodlands were affluent areas. Mr McCarthy replied that the former was moderately affluent the latter less so.

5.1.8 Mr Arnott noted that Mr Semple would be a partner in Westburn Pharmacy and asked if Mr McCarthy was aware of Mr Semple's comments during the previous pharmacy application for the area. Mr McCarthy replied that these were irrelevant as this was a fresh application. Mr Arnott indicated that he would like to quote what he said. Mr McCarthy said that Mr Semple had no influence over this application process. Mr Arnott noted the comments.



- 5.1.9 Mr Arnott asked how many young mothers and critically ill people lived in the neighbourhood Mr McCarthy had defined. Mr McCarthy replied that he did not have exact figures to hand.
- 5.1.10 Mr Arnott asked for confirmation that car ownership was higher than the national average. Mr McCarthy said it was very slightly over at 1.1 cars per household
- 5.1.11 Mr Arnott asked if Glenfuir Court was in the neighbourhood. Mr McCarthy replied that it clearly was since the neighbourhood was clearly defined in the application.
- 5.1.12 Mr Arnott asked if Mr McCarthy was aware that its residents were closer to one of the existing pharmacies. Mr McCarthy indicated that he was and had said so in his opening statement.
- 5.1.13 Mr Arnott asked how far a disabled person should be expected to walk to access pharmaceutical services. Mr McCarthy said that this was a difficult question to answer as people all had different disabilities with different limitations. Mr Arnott pointed out that Mr McCarthy had said that it was unacceptable to expect people to walk far and asked how feasible it was for someone who lived at the far end of Bantaskine Gardens to walk to the proposed pharmacy as it was up a steep incline. Mr McCarthy replied that he certainly would not expect someone with mobility problems to walk a mile and that inevitably some people in his proposed neighbourhood would go to other pharmacies.
- 5.1.14 Mr Arnott asked if Mr McCarthy intended to do deliveries, to which he replied that he did and that all the other pharmacies also provided delivery services.
- 5.1.15 Turning to the consultation, Mr Arnott asked if Mr McCarthy had received complaints about the way he had had canvassed. Mr McCarthy replied that all the correspondence received was contained within CAR. Mr Arnott reiterated his question about a complaint about the way he had door knocked. Mr McCarthy replied that this was in the CAR and that it had little or no bearing on the PPC. Any complaints which were received were dealt with by the Health Board and himself as the applicant. He could not control what someone would say during the consultation.
- 5.1.16 Referring to car use, Mr Arnott asked if Mr McCarthy had said that no-one would have use of a car during the day. Mr McCarthy replied that he had said that most of the cars would not be available during the day as it was likely that they would be driven to work. When asked, Mr McCarthy acknowledged that these people would likely access pharmaceutical services near their place of work.
- 5.1.17 Mr Arnott asked if pensioners paid for bus fares. Mr McCarthy said they did not which was why he had not given them as an example.
- 5.1.18 Referring to comments he had made about Mr Grahame's business viability,

Mr Arnott asked what Mr McCarthy knew about Mr Grahame's finances. Mr McCarthy said that he knew nothing as they did not concern him. Mr Arnott pointed out that the Committee were obliged to consider the viability of existing pharmacies.

*Mr Arnott addressed the Chair and said that he thought there was too much discussion going on between Mr McCarthy and Mr Semple before any questions were answered. The Chair said that the rules allowed for people to be accompanied and the purpose of this was to assist and any supportive discussions had to be given the time to take place.*

## **5.2. Mr Grahame (Callander Pharmacy) Questions to Mr McCarthy**

5.2.1 Mr Grahame noted that Mr McCarthy had said that the neighbourhood he had given in his response to the consultation was wrong and asked if Mr McCarthy would agree that one way of defining it would be to use the school catchment area which clearly put the proposed pharmacy in the town centre area. Mr McCarthy disagreed and said that his neighbourhood did not include the town centre and that school catchment areas were irrelevant for PPC purposes.

5.2.2 Mr Grahame pointed out that the Falkirk Central District Community Council boundaries also included the proposed pharmacy with the town centre. Mr McCarthy said that his neighbourhood was clear and defined and did not include either the town centre or Comely Park.

5.2.3 Mr Grahame then noted that the applicant had stated that the bus services were inadequate and asked how long it would take to go past the proposed pharmacy and into the town centre. When Mr McCarthy said it would be around 8 to 10 minutes, Mr Grahame said that it was in fact 3 minutes which was clearly stated on the timetable so why would patients choose to get off at the pharmacy when they could carry on to the town centre and do all their shopping. Mr McCarthy restated that he did not agree with the 3 minute time.

5.2.4 Referring to Mr McCarthy's statement that he did not consider his community affluent, Mr Grahame said that he had property details and read out a selection which described properties around Maggie's Wood as "prime", "central", "town centre", "prestigious address". All these clearly showed a town centre location which was in a prime residential area. Mr McCarthy noted his comments and said that estate agents had written these details and it was their job to make properties seem attractive in order to sell them. In addition he had chosen a very small area.

5.2.5 Mr Grahame said he had more properties and mentioned Gartcows Drive among them. Mr McCarthy that there were 4000 people in the neighbourhood and not all of them were living in quarter of a million pound houses. There were areas of some deprivation and social housing. Mr Grahame disagreed and said that this was the most affluent area in Falkirk.

*The Chair interceded and asked Mr Grahame to confine himself to asking questions and not engage in a debate.*

5.2.6 Mr Grahame asked where the current gaps in service were. Mr McCarthy said that, as mentioned in his presentation, there were no gaps. His case had been based upon the difficulties in accessing these services.

5.2.7 Referring to parking, he noted that Mr McCarthy had referred to only 12 spaces being available. Mr McCarthy replied that this was 12 free spaces. Mr Grahame asked if Mr McCarthy was aware that parking is free after 3pm and that the Council had just announced that one of the car parks would be free all day. Mr McCarthy was unaware of this.

5.2.8 Mr Grahame referred to the mileages which showed 4 pharmacies within a mile. Ms Moir asked if Mr McCarthy agreed Tesco was within a mile. Mr McCarthy said he had used the mileages given by the Health Board and indicated that if everyone did their own mileages, they would all be different.

*At this point the Chair asked the other Interested Parties not to interrupt and to stop passing notes to each other during the questioning.*

5.2.9 Mr Grahame said that he was interested in the quote from the nurse as his pharmacy provided all their stock orders and delivered them so there was no need to collect anything from pharmacies.

*The Chair reminded Mr Grahame to ask questions pertaining to the oral presentation.*

5.2.10 Mr Grahame asked how large the proposed premises were and was told 500m<sup>2</sup> which Mr McCarthy believed to be large enough.

5.2.11 Mr Grahame asked what percentage share Mr Semple had in the proposed pharmacy as during a previous application six years ago he had clearly stated that there was adequate provision. Mr McCarthy said that Mr Semple was not the applicant and that it was his application, his joint consultation and he would make the decisions about the running of the pharmacy. He had made it clear from the start that Mr Semple was a partner so that all parties had the same information.

*The Chair asked Mr Grahame to stick to asking questions. Mr Grahame said he had no further questions.*

### **5.3 Mrs Cowle (Boots the Chemist Ltd) Questions to Mr McCarthy**

5.3.1 Mrs Cowle referred to the CAR response and noted that 193 had provided a postcode and there were 78 different postcodes which implied a very large area. She also noted that a lot of people and just put in FK1 and asked Mr McCarthy to acknowledge that it was rare for people just to put in their first 3 letters. Mr McCarthy replied that the analysis of that information in the CAR had been carried out by the Health Board and he could not comment.

- 5.3.2 Mrs Cowle pointed out that 13 postcodes were from outwith the neighbourhood which was about 15% of the responses. Mr McCarthy failed to see the relevance of this. Mrs Cowle asked if this 15% were taken off the total responses, how would that impact on the 10% margin for error in the statistics. After consultation, Mr McCarthy said that reducing the sample size by this amount would not make any difference to the accuracy of the overall statistical analysis.
- 5.3.3 Mrs Cowle asked how he knew that the response rate to the CAR had been exceptional. Mr McCarthy replied that the joint consultation process was relatively new so there had not been that many. He had found out response rates when discussing the content of the consultation with the Health Board and had asked what they would class as a good response. And for Forth Valley this was a good response.
- 5.3.4 Mrs Cowle asked if he had looked at Lanarkshire response rates to which Mr McCarthy replied that he had not.
- 5.3.5 Mrs Cowle asked why Mr McCarthy had said that people should be less than one mile from a pharmacy. Mr McCarthy said that he had said that it depended upon individual circumstances and what a reasonable distance would differ.
- 5.3.6 Mrs Cowle then asked how many people lived within a mile of the proposed pharmacy. Mr McCarthy said he did not have the exact figure and that it did not matter. With a population of about 4000 people, there would be a range of distances and it would be impossible to pinpoint exact numbers – either for his proposed pharmacies or for the existing pharmacies.
- 5.3.7 Mrs Cowle asked how it was irrelevant when his application was based on access. Mr McCarthy said that, as stated, it was not the distance of travel but the circumstances in the neighbourhood which caused the issue.
- 5.3.8 Mrs Cowle asked Mr McCarthy to say how he had arrived at the figure of 1000 acute prescriptions being dispensed. He replied that in every month there were between 2-3000 acute prescriptions but many were not given via consultation, being repeats.
- 5.3.9 Mrs Cowle asked if there was a bus route to the proposed pharmacy for these 2-3000. Mr McCarthy replied, that as stated a lot were on repeat but he hoped that as access to the proposed pharmacy from the GP practice was easier then people would be encouraged to use it.
- 5.3.10 Mrs Cowle asked when the need for Pharmacy First was at its greatest and Mr McCarthy said that he did not know.
- 5.3.11 Mrs Cowle asked what Out of Hours service the proposed pharmacy would offer. Mr McCarthy replied that he would open late on a Thursday but did not see the relevance of this at the PPC as his proposed hours were clearly stated in his application.

5.3.12 When asked if he was comfortable that the Out of Hours service level was adequate and there were no gaps to be filled, Mr McCarthy said that if the application were approved, he would be willing to look at Out of Hours initiatives. He was passionate about pharmacy and if there were things he could do as a pharmacist and as a business, he would look at these.

#### **5.4 Ms Moir (Tesco Pharmacy) Questions to Mr McCarthy**

5.4.1 Ms Moir stated that she would cover her points in her presentation and only had one question which was, given that the Westburn Practice had migrated from the town centre, what proportion of its patients were from the proposed neighbourhood. Mr McCarthy replied that he had no exact figures as his knowledge of the practice was based on discussions with the nurse and one of the GPs. However the practice had recently closed its doors to new patients but was aiming to open up in September with a target of 6000 patients and he assumed that the majority of these new patients would be from his proposed neighbourhood.

#### **5.5 Mrs Findlay (Residents' Association) Questions to Mr McCarthy**

5.5.1 Mrs Findlay pointed out that the map used was very old and was he aware that there were 43 new social units in Blinkbonny Road and another 47 in Windsor Road. Mr McCarthy said that he was

5.5.2 Mrs Findlay asked if Mr McCarthy would be providing services in addition to prescriptions to the community. Mr McCarthy replied that he would provide all the core pharmacy services and would be available to consult with patients.

**6.0 *Having established that there were no further questions from the Interested Parties the Chair invited questions from Committee members in turn.***

#### **6.1 Ms McGhee (Lay Member) Questions to Mr McCarthy**

6.1.1 Ms McGhee noted that during her visit, the proposed site was very difficult to access with a wheelchair and asked if he had permission to alter this. Mr McCarthy replied that he considered this to be very important and had already discussed it with the landlord, who was also in charge of the car park. He had an e mail confirming that this would be one of the first things to be tackled.

6.1.2 Ms McGhee asked where deliveries would be received and was told that there was space behind the shop for these.

#### **6.2 Mr Hill (Non-Contractor Pharmacist) Questions to Mr McCarthy**

6.2.1 Mr Hill asked what exactly was planned to make access easier. Mr McCarthy confirmed that the kerb would be dropped and there would be a disabled parking space plus room for prams and that this had all been

agreed with the landlord.

- 6.2.2 Mr Hill asked why Tamfourhill was not included in the figures for the neighbourhood but was on the map. Mr McCarthy replied that this more for ease of describing the boundary and he expected it would be part of the catchment area because it was within the natural boundary.

### **6.3 Ms Mason (Lay Member) Questions to Mr McCarthy**

- 6.3.1 Ms Mason asked if he would be increasing the number of disabled spaces and improving the road surfaces. Mr McCarthy replied that he would and said that he had discussed access and upkeep of the surfaces outside the shop. He noted that it was a condition in the lease that there would be clutter free access.

- 6.3.2 Ms Mason noted that 1500 questionnaires had been issued and 250 returns which did not sound a lot and asked if he had had any comments since. Mr McCarthy said that the personal feedback he had received had been positive as had the joint consultation. There was a general feeling of optimism about the new premises.

- 6.3.3 Ms Mason asked if he would be providing a methadone service and whether he had considered the proximity of the primary school and people living nearby. Mr McCarthy said he would run this service in a similar fashion to what he currently did in that he would bear the needs of all in mind and monitor the provision of the service and how it was received by patients and the community.

### **6.4 Mr Hutchison (Contractor Pharmacist) Questions to Mr McCarthy**

- 6.4.1 Mr Hutchison had no questions.

### **6.5 Ms McGuire (Lay Member) Questions to Mr McCarthy**

- 6.5.1 When asked about the opening hours and staffing, Mr McCarthy replied that staffing would be predominately himself as the pharmacist with no less than a dispensing assistant who would look after the front shop. He would monitor the situation and staff accordingly, using his current bosses for advice. He would source locum and other staff cover as required and did not foresee any problems.

- 6.5.2 Ms McGuire said that she had noticed a lot of young children in the area and asked what he would do about supervising methadone clients outside the premises. Mr McCarthy replied that they would be taking their prescription in the consultation room and would not leave the premises with it. In addition he would set times when the patients came in for supervision and keep the situation under review to safeguard the public and patients.

- 6.5.3 Ms McGuire asked about the side of the building which was quite secluded. Mr McCarthy replied that he was concerned to protect anyone using the pharmacy and would try CCTV and work with other local businesses and

schools to ensure a safe environment.

## **6.6 Mr Shimmins (Contractor Member) Questions to Mr McCarthy**

6.6.1 Mr Shimmins asked if the 4000 population included Tamfourhill and was told that it did not.

6.6.2 Mr Shimmins noted that Mr McCarthy had said that a significant percentage of the population had poor access to pharmacies and asked if he could put a precise figure on that. Mr McCarthy said this was difficult but imagined it would be between 1920 and 2720 people.

6.6.3 Mr Shimmins asked if the new pharmacy would relieve this inadequacy totally. Mr McCarthy replied, ideally yes but from the CAR and speaking to locals, the feeling was that it would be beneficial to have a pharmacy in the neighbourhood. His main point was that 58% of respondents to the consultation had a problem and this was what he wanted to solve.

*Having ascertained that there were no further questions for Mr McCarthy there was an adjournment at 1120 hours and the hearing reconvened at 1130 hours.*

## **7.0 The Chair invited Mr Arnott to begin the presentations from the Interested Parties**

### **7.1 Mr Tom Arnott (Lloyds Pharmacy)**

7.2 Mr Arnott thanked the Committee for an opportunity to present and read from a prepared statement:

7.3 Mr Arnott said that the Applicant's reason for making this application, seemed to be that the Pharmaceutical Services provided by current Contractors was inadequate, only because there were no Pharmacy Premises in his definition of the neighbourhood.

7.4 There were, as the Panel were aware, numerous examples from Pharmacy Practice Committee Hearings and numerous National Appeal Panel Hearings, that adequate Pharmaceutical Services can be provided to a neighbourhood from Pharmacies situated out with that neighbourhood and this was the case in Bantaskine

7.5 Indeed, the Panel could see, from the advice and guidance for those attending the PPC, they must consider what were the existing pharmaceutical services in the neighbourhood, or in any adjoining neighbourhood.

7.6 There had been previous applications by Health Matters ( Scotland ) Ltd for a Pharmacy Contract at 9 Maggie Woods Loan. This was refused as the pharmaceutical service provided by existing Contractors was deemed adequate.

- 7.7 Nothing had changed with regard to population. There had been little new building undertaken. Indeed the biggest change was probably that Callander Pharmacy and the Lloyds Pharmacy in Camelon, both situated within 1 mile of the Applicant's proposed premises, had relocated to larger premises since the previous application and been fitted out to a very high standard to ensure they could easily cope with any growing demands in the neighbourhoods they serviced. Also the Callander Pharmacy has been re-fitted to what he believed was approximately 6 times its previous size.
- 7.8 The Panel would have noted that situated at the Applicant's proposed site, there was J M Hair, McColls Convenience Store, a Domino Pizza, The Magpie Pub and and Sinbads Takeaway - hardly the hub of a neighbourhood and demonstrated that the residents of the Applicant's proposed neighbourhood, on a regular basis, travelled outwith the neighbourhood to access services such as supermarkets and banks. The majority of the residents in the Applicant's proposed area could be described as affluent. He noted that the Wikipedia entry for Woodlands described Woodlands as a large, prosperous ward area of Central Falkirk.
- 7.9 He said that Falkirk had a population of 35,764 that were currently adequately serviced by the 7 existing Pharmacy Contractors. Many of those living in the western part of the Applicant's proposed neighbourhood were nearer the 2 existing Pharmacies in Camelon than the Applicant's proposed site. Those living in the eastern part of Woodlands were probably nearer the existing Boots Pharmacy in Falkirk High Street than the Applicant's proposed site. The Boots Pharmacy was only 0.7 miles from the Applicant's proposed site, this made 4 Pharmacies within 1 mile. He also noted that the Applicant's proposed opening hours were less than most current Contractors.
- 7.10 He found it difficult to believe that someone living in Queens Drive (Arnohill) considered themselves a neighbour of someone living in Learmouth Street or Bantaskine Drive. Similarly he doubted if someone living in Summerford Road considered themselves a neighbour of someone living in Heugh St (Woodlands). The Applicant was simply trying to define a neighbourhood as large as possible to justify his Application.
- 7.11 He stated that, although delivery was not a Core Service, all Contractors offered this service for anyone who was housebound, and he could not see how, if someone was housebound, and required delivery, the granting of this Contract would help them, as a Pharmacy at Maggie Woods Loan is no more accessible for a resident of say Blinkbonny Road than existing Pharmacies. All existing Pharmacies offered all Core Services and the Lloyds Pharmacies were fully engaged with CMS eMAS and AMS.
- 7.12 Convenience was not a reason for granting a pharmacy contract and indeed



- the Applicant had shown no inadequacies in current service provision.
- 7.13 The Panel had to take account of whether the granting of an Application would adversely impact on the security and sustainable provision of existing NHS primary medical and pharmaceutical services in the area concerned.
- 7.14 Mr Arnott further noted that James Semple of Invercoast Ltd had stated he has no objection to this application. He presumed that Mr Semple has changed his mind, as on the 29 March 2010 he wrote an objection to the Application from Health Matters Scotland Ltd, and quoted *"Falkirk is well served by a number of NHS Community Pharmacies , regardless of how one breaks the Falkirk in to smaller neighbourhoods , there is no part of Falkirk which is not within easy reach of an NHS Community Pharmacy, and accordingly there cannot be any neighbourhood within the town of Falkirk in which Pharmaceutical Service is inadequate. The Application fails the Legal Test and should be refused."*
- 7.15 He noted that perhaps Mr Semple was simply supporting a colleague in this case or had a financial interest
- 7.16 The Panel would note that the Area Pharmaceutical Committee did not support the Application as they considered the service provided by existing Contractors to be adequate.
- 7.17 He said that the Panel must take account as to whether the granting of an Application would adversely impact on the security and sustainable provision of existing NHS primary medical and pharmaceutical services in the area concerned.
- 7.18 The Applicant, in support of his application, had carried out a Consultation Exercise. From a Population of approx. 5,500, this included Tamfourhill, otherwise he was happy to accept a population of 4000.
- 7.19 He noted that the Applicant had had 253 Responses - 4.6% of the Residents and, of these respondents, only 109 (2.0%) thought there were gaps/deficiencies in the existing provision of NHS Pharmaceutical Services (Question 4)
- 7.20 On the Question 5 - 'How do you currently access NHS Pharmaceutical Service?' - of the 245 who responded, 114 travelled by car and a further 58 used a car at some point, further proof that the vast majority of the residents of the Applicant's proposed neighbourhood were mobile and had no difficulty accessing Services, including Pharmaceutical Services.
- 7.21 He said that if it was part of the New Regulations, the Applicant "must establish the level of Public Support of the residents in the neighbourhood to which the application relates" then it could not be said that the Applicant had not tried to gain Public Support. He had however failed miserably to gain the support of the residents simply because there was little public support for the application. This was because existing Contractors already provided an adequate Pharmaceutical Care Service to

the applicant's proposed neighbourhood as has been agreed at previous PPC and NAP Hearings. Nothing had changed.

- 7.22 Despite all the Applicants efforts, he had received 253 Responses from the residents of his proposed neighbourhood and not all of those supported the Application. Although many mention convenience, the Applicant had shown no inadequacies in current Pharmaceutical Provision. There were already 4 Pharmacies within a mile of his proposed location.
- 7.23 There was little or no Public support for this application. The residents had no difficulties in accessing Pharmaceutical Services and indeed on a regular basis travelled outwith the neighbourhood to meet their daily needs. This Application was all about convenience not adequacy or need
- 7.24 He declared that the Panel had to consider what were the existing pharmaceutical services in the neighbourhood or in any adjoining Neighbourhood. There were 4 pharmacies within a mile of the proposed site.
- 7.25 He stated that, having examined the NHS Forth Valley 'Pharmaceutical Care Services Plan', he could see no reference to there being a need for a Pharmacy in the Applicant's proposed neighbourhood and indeed there had been no complaints to the Health Board regarding existing service provision.
- 7.26 He, therefore, asked the Panel to refuse this application as it was neither necessary nor desirable in order to secure the adequate provision of Pharmaceutical Services in the neighbourhood in which the premises were located.

*This concluded the presentation from Mr Arnott*

## **8.0 Questions from Mr McCarthy (the Applicant) to Mr Arnott**

- 8.1 Referring to Mr Arnott's statement that a neighbourhood need not have a pharmacy, Mr McCarthy asked if he agreed that he himself had also said this. Mr Arnott agreed.
- 8.2 Mr McCarthy asked if apart from population there had been a change in circumstances in the neighbourhood. Mr Arnott replied that the only change was the move of the GP practice but that had happened five years previously.
- 8.3 Mr McCarthy asked if Mr Arnott had any statistics that applied to the areas he had mentioned. Mr Arnott replied he had the applicant's statistics and those from the CAR but did not have anything further.
- 8.4 Mr McCarthy asked what Mr Arnott would say the neighbourhood was. Mr Arnott said that, looking at the map, all the individual areas named could be neighbourhoods. When pressed Mr Arnott said that the neighbourhood

defined by the Applicant would come under Woodlands as it was on that side of the street.

- 8.5 Referring to security of existing services, Mr McCarthy asked Mr Arnott to point to which part of the Regulations contained this. Mr Arnott replied that it was in the guidance to the PPC which said that it had to take account of affect on existing services.
- 8.6 Mr McCarthy asked if he agreed that Q4 in the CAR was about the quality and not access. Mr Arnott said that he did but only 109 said there was a gap and, out of 4000, this was not significant. He further said that he was not going to play games with statistics and despite Mr McCarthy going and knocking on doors with his questionnaire, only 109 said there was a gap.
- 8.7 Mr McCarthy asked if Mr Arnott understood the concept of population samples and if he knew how Gallup conducted polls. Mr Arnott replied that he had no idea what Gallup did with their polls but did understand that statistics could be used in any way people wished them to be used.

*Having established that Mr McCarthy had no further questions, the other interested parties were given the opportunity to ask questions of Mr Arnott*

#### **9.0 Other Interested Parties Questions to Mr Arnott**

- 9.1 None of the interested parties had any questions for Mr Arnott.  
*The Chair then invited questions from Committee members in turn.*

#### **10.0 Questions from the Committee to Mr Arnott**

- 10.1 Mr Shimmins asked if the Camelon pharmacy served a significant outside population or if they came mainly from Camelon. Mr Arnott replied that they mainly came from Camelon but there would be a significant number from the Applicant's proposed neighbourhood and this was probably the same for all the pharmacies in the area.
- 10.2 The Chair confirmed that there were no further questions for Mr Arnott and invited the next Interested Party, Mr Grahame, to make his statement.

#### **11.0 Mr Grahame(Callander Pharmacy)**

- 11.1 Mr Grahame opened by stating that he probably had the most to lose if this application was granted.
- 11.2 He reported that he was involved in the previous decision 6 years ago; one which Mr Semple had objected to at the time. There had been no major changes in the area since then. At that hearing, he said that he had 40% capacity and when he reached maximum, he would relocate and employ more staff. He reported that he had done so and in 2014 purchased new premises at huge cost. He had increased the area by 6 times and had the same space available upstairs should this be needed in future. At present

he was nowhere near capacity.

- 11.3 Mr Grahame then referred to the neighbourhood, referring to the Falkirk Central Community Council map which quite clearly showed all the pharmacies. He said it was important to look at the boundaries as ignoring them could impact on the decision.
- 11.4 He said that when discussing neighbourhood, it was imperative to look at the town centre, as what was now Westburn Practice had relocated from there. The high rise flats were also classed as town centre and this had to be considered when deciding the neighbourhood
- 11.5 Mr Grahame said that the distances derived from Google Maps had already been referred to which showed pharmacies less than a mile distant from the proposed premises
- 11.6 Mr Grahame then said that there were no problems with access. He said that there was ample parking in the town centre in the vicinity of his and other existing pharmacies. He specifically cited: the supermarket, which had free parking; behind his shop there was a car park with 100 spaces (which would be charge free from 1030 hours) plus 7 disabled spaces ; a multi story opposite which also had mobility aids which could be borrowed for free. He pointed out that he had recently had the First Minister photographed in his shop with someone on a mobility scooter to illustrate how good access was.
- 11.7 Furthermore he said that a significant number of residents had a private vehicle. The Applicant's premises were in an affluent area of Falkirk which did not need a pharmacy as people naturally moved from there to the town centre which was easy to get to.
- 11.8 He pointed out that the opening of a new pharmacy would have a significant impact on existing pharmacies as the applicant would have to cast his net beyond his neighbourhood to get sufficient custom. Referring to his own situation: he was deferring employing extra staff until a decision was made; he had considerable financial commitments following the renovation of his premises and a split from his business partner. So any drop in income would affect him very badly.
- 11.9 He then referred to the way the Applicant had brushed off the question about complaints in the way the consultation was conducted and quoted from a letter which had been sent in by one of his patients : *" I am a patient at Westburn Medical Centre and recently received by post a large envelope apparently sent by yourselves containing several documents including a questionnaire relating to a proposed new pharmacy located several hundred yards from the surgery in a nearby narrow side street Though I found the matter rather confusing I duly completed and posted the form back to you in the supplied envelope. On the form I indicated that I was satisfied with my current arrangement with a pharmacy which could be contacted by email for repeat prescriptions and which delivered them to my door. A few days later a man called at my home, carrying a satchel of (presumably) leaflets and asked if I had heard about the new pharmacy. I assured*

*him I had already completed and returned the official form.*

*Afterwards, reflecting on the sequence, I became uncomfortable with the thought that I had been manipulated and the attempt had been made to put some pressure upon me. I came to the conclusion that there is no "new pharmacy" and that someone is simply proposing that one should be started - presumably for financial reasons. If you have received the form I posted and it gives an impression that I am in favour please ignore it I realise I am presuming a lot and have no idea or information but I have no wish to be involved in such a proposal, especially when I am aware of numerous available pharmacies in this area."*

Mr Grahame said that this was an illustration of how people could unwittingly be persuaded to fill out the questionnaire without fully understanding what they were doing and suggested that the questionnaires should be ignored.

11.10 This concluded Mr Grahame's presentation.

## **12.0 Questions from Mr McCarthy (the Applicant) to Mr Grahame**

12.1 Mr McCarthy asked if his application was in process when Mr Grahame completed his demerger. Mr Grahame replied that the demerger had been completed the previous month.

12.2 Mr McCarthy asked Mr Grahame to imagine that he was not a contractor in Falkirk and that this application was granted whether if someone offered him the keys to an empty shop in the High Street, he would take it. Mr Grahame said that he would.

12.3 Mr McCarthy asked if this implied that it would be viable. Mr Grahame indicated that he did not understand this line of questioning. However, he had huge premises, which he had bought. No-one had handed him the business. He had worked hard to build it up. He was well aware of his own financial position and knew that another pharmacy would affect his viability.

12.4 When asked why he had gone ahead with the demerger and refit when he knew there was an application in the pipeline, Mr Grahame said that he could not put everything on hold for that.

12.4 This concluded the questioning from the applicant to Mr Grahame so the Chair invited questions from the interested parties.

## **13.0 Questions from the Other Interested Parties to Mr Grahame**

13.1 None of the interested parties had any questions for Mr Arnott.

*The Chair then invited questions from Committee members in turn.*

## **14.0 Questions from the Committee to Mr Grahame**

### **14.1 Mr Hill (Non-Contractor Member) Questions to Mr Grahame**

**14.1.1** Mr Hill noted that Mr Grahame said that he currently served the high rise flats and asked how many there were. Mr Grahame said that there were 8-10 blocks and he imagined that Mr McCarthy would be seeking custom from them.

**14.2 Ms Mason (Lay Member) Questions to Mr Grahame**

**14.2.1** Ms Mason asked when the GP practice moved and was told that it was about 5 years ago and after the last PPC for the area.

**14.2.2** Ms Mason noted that had been a lot of changes to pharmacy services and more on the way and asked how he was planning for the future. Mr Grahame replied that he was doing his best to future proof which was why he had extended his premises.

**14.3 Ms McGuire (Lay Member) Questions to Mr Grahame**

**14.3.1** Ms McGuire noted that he had doubted that some of the elderly had known what they were doing when they filled in the form and asked if he had proof of this. Mr Grahame referred to the e mail he had quoted and also in conversation with his patients he knew that some had filled it in thinking that he had made the application.

**14.4 Mr Shimmins (Contractor Pharmacist) Questions to Mr Grahame**

**14.4.1** Mr Shimmins asked if he did MAS and home delivery and Mr Grahame confirmed that he did, as did the other existing pharmacies.

*Having established that there were no further questions for Mr Grahame, the Chair invited the next Interested Party, Ms Cowle to address the committee.*

**15.0 Ms Cowle (Boots UK Ltd)**

**15.1** Ms Cowle thanked the Committee for allowing her to present.

**15.2** She opened by stating that The issue in this case was whether the application was necessary or desirable to secure the adequate provision of pharmaceutical services in the neighbourhood in which the premises were located by persons whose names were included in the pharmaceutical list.

**15.3** She said that when having regard to pharmacy provision, she understood that the panel should also have regard to pharmaceutical services provided to the neighbourhood from pharmacies located outside of it.

**15.4** She stated that Boots' case was that the existing pharmacy provision met the needs of the local population and persons within the neighbourhood.

**15.5** Concerning the neighbourhood, Mrs Cowle said that Boots had stated in their written representations that the neighbourhood of the proposed pharmacy provided by the applicant appeared to have been defined without reason and, if they had understood the boundaries correctly, with the aim of

defining a neighbourhood with no pharmacy within the boundaries.

- 15.6 She said that both the proposed site and the Boots pharmacy were within Ward 7 – Falkirk South (as shown on the map provided prior to the meeting). Both sites were also within the Falkirk Central Community Council area and she submitted that this would make it difficult to define as a separate neighbourhood. She suggested Falkirk Central Community area as the neighbourhood.
- 15.7 Furthermore they were not aware of any significant, substantial housing developments taking place in the neighbourhood that would give cause to an increase in demand for services that could not be met by the existing pharmacies.
- 15.8 Turning to access to the existing pharmacies, Mrs Cowle said the existing pharmacies were accessible by car, by public transport and on foot for those who choose to do so.
- 15.9 The walk to the Boots pharmacy on the High Street, was approximately 0.7 miles distant (widely recognised Google maps). The walk was direct and along maintained pavements. There were no significant barriers to access en route. The walk to Graeme Pharmacy, Main Street, Camelon, was only slightly longer is both time and distance (0.8mile).
- 15.10 She noted that levels of car ownership in Falkirk on the whole was higher than the national average and census data showed that this increased at a rate above the national average between the last two census. Patients wishing to access services by car would find ample parking at the Howgate Centre, where there were low cost parking options as well as dedicated disabled and mother and baby spaces which were free after 3 pm.
- 15.11 Additionally, Falkirk was, on the whole, well served by public transport. Several bus services ran to the town centre from the east side of the town, most notably the 3/3a and 4/4a which were shown in red on the Falkirk Area Network map (also provided prior to the meeting).The number 4 service ran along Westburn Avenue, with bus stops within a short distance of the proposed site. The number 3 services ran very regularly to the south of the neighbourhood, along Windsor Road. Anyone living within the neighbourhood would only have a short walk to access bus services.
- 15.12 She noted that Community Transport was available to residents of Falkirk – the Council website states that the ‘Dial-a-journey’ website was available to *‘Anyone who is permanently resident in the Falkirk Council area and who is unable to use traditional public transport can use Dial-a-Journey.’*
- 15.13 Mrs Cowle then addressed the current service provision and said that Boots Pharmacy was located in the main retail area of Falkirk High Street.
- 15.14 She stated that the opening hours of Boots pharmacy were 8.30am – 6pm Monday to Saturday and from 11am until 5pm on Sunday. The pharmacy also opened on bank holidays from 9am – 6pm. The opening hours of the

proposed pharmacy were from 9am until 6pm Monday, Tuesday, Wednesday and Friday, from 9am until 8pm Thursday and from 9am until 1pm on Saturday.

- 15.15 So, if successful, residents of the neighbourhood requiring services on Saturday afternoons and Sundays would be expected to access services elsewhere, most likely at Boots. If a patient could access services at times when they were more likely to need a pharmacy in an emergency and when public transport was likely to be less frequent, then it was reasonable to expect that they could access these services during normal opening hours. The proposed pharmacy would not, therefore, offer improved access by way of opening hours.
- 15.16 She noted that Boots provided a range of services to meet local needs and prided themselves on local engagement. They had information available regarding their services. She noted the applicant had stated that they were not disputing the services or the quality of services provided by the existing pharmacies. However, she pointed out that Boots provided:
- free prescription collection and delivery services
  - Boots Medisure domiciliary compliance aids even though provision of compliance aids was not part of the National Contract nor was it a Locally Negotiated Service. Despite this and recognising individual needs of their patients, Boots' pharmacy team had a number of patients who currently received compliance aids directly from the store. They also provided advice on demand to all carers and families of these patients. She highlighted that they appreciated that NHS Forth Valley were working with Health and Social Care Partners to reduce the volume of compliance aids in the community, as recommended by the RPS. However they had no intention of withdrawing the service and endeavoured to meet the needs of any patient in crisis.
  - medication to residential and care home patients in and around the Falkirk area from the store weekly or as arranged. This included their experienced Care Service Pharmacists providing visits and advice.
  - all of the locally negotiated services available in Forth Valley
- 15.17 Mrs Cowle emphasised that any services not currently commissioned, could be commissioned from the existing pharmacy should a need be identified. They would be pleased to discuss any such needs. They had indeed met with the Health Board to seek these opportunities; to date no gap had been identified.
- 15.18 Mrs Cowle then turned to the adequacy of the existing service and submitted that the existing pharmacy provision provided an adequate level of services to the neighbourhood since:
- The proposed pharmacy did not offer opening hours beyond those already available, and would in fact only open part of the day on a Saturday and not at all on a Sunday.



- Boots were just one of the many community pharmacies supporting this area all of whom delivered national and local services as described.
- Any services not currently commissioned could be commissioned from the existing pharmacies should a need be identified. All would be pleased to discuss any such needs and opportunities.

15.19 Referring to the CAR, Mrs Cowle trusted the panel would afford whatever weight it considered appropriate to the contents of the CAR report. However, she made the following observations:

- Despite the many ways the public could access the survey only 253 people responded during the consultation, which included distribution of 1500 questionnaires.
- A significant number of respondents submitted comments that indicate that they did not support the application. Examples were:
  - Page 9 – not a good location, other chemists closer to shops.
  - Page 10 – No benefit to neighbourhood (23 v 183)
- Many of the comments received in support of the application would suggest that some patients may find the proposed site more convenient. However, there was little to suggest that patients experienced significant difficulties when wishing to access services. Examples were:
  - Page 16 – not a good location/not required/not ideal – car parking issues/busy road area
- Furthermore, the comments submitted did not suggest an inadequacy within the existing services and several comments indicated that the area was currently adequately served by the existing pharmacies. Examples were:
  - Page 9 – Service little use, get passing trade, area adequately served by existing pharmacies.
  - Page 10 – already enough/sufficient pharmacies/easy access/no gaps in services/ large choice of pharmacies locally.
  - Page 12 – 3 pharmacies recently moved to brand new premises, all provide NHS services to high standard.
- Comments also suggested that the proposed pharmacy may also affect the existing pharmacy provision in the area. She recognised that this was not part of the legal test but had to be considered as it could dilute the quality of service. Examples were:
  - Page 17 – Worry it may dilute the quality of existing

services

- Page 20 – Would be detrimental /no benefit to area

15.20 She noted that the applicant had quoted national statistics which showed an increase in the elderly population. This was a national problem and all community pharmacies were developing services to cope with this.

15.21 In conclusion, Ms Cowle reminded the panel that they were determining whether an additional pharmacy was necessary or desirable and asked the panel to refuse on the basis that it was neither necessary nor desirable to secure the adequacy of pharmaceutical services

*This concluded the presentation from Ms Cowle and the Chair invited questions from the Applicant.*

#### **16.0 Questions from Mr McCarthy (the Applicant) to Ms Cowle**

16.1 The Applicant had no questions so the Chair invited questions from the other Interested Parties.

#### **17.0 Questions from Other Interested Parties to Ms Cowle**

17.1 The other Interested Parties had no questions. The Chair then invited questions from the Committee members.

#### **18.0 Questions from the Committee to Ms Cowle**

18.1 Committee Members had no questions.

*The Chair then invited the next Interested Party, Ms Moir to present*

#### **19.0 Ms Moir (Tesco Pharmacy)**

19.1 Ms Moir thanked the Panel for the opportunity to present and stated that as most of the points had already been made she would keep her comments brief.

19.2 She said that in her 12 years as a Pharmacy manager there had never been any complaints about Tesco pharmacy being inaccessible. The area was flat; there was disabled access; Tesco offered an assisted shopping service and wheelchairs and mobility scooters were available for use within the store.

19.3 She referred to the methadone service which was a large part of community pharmacy and Tesco had 60 patients. All such patients were seen behind closed doors. She reported that they had developed close relationships with the addiction services in Falkirk and would continue to offer them support. She believed that this could be a problem in the new pharmacy as it was next to the hospital where that addiction and rehabilitation services were delivered.

- 19.4 She stressed that all the Interested Parties present were all involved over and above the contract and operated Pharmacy First.
- 19.5 She noted that Tesco were open the longest of all the pharmacies, offering an 8 am to 8 pm service. They had full Out of Hours provision. She therefore stated that there was not a need for another pharmacy offering less hours than current contractors.
- 19.6 Ms Moir also said that they provided a prescription collection service to all the GPs and did the stock orders for Westburn Practice. No-one had complained about the services offered.
- 19.7 She concluded by asking that the application be rejected as the pharmaceutical services currently provided were more than adequate.
- 19.8 This concluded Ms Moir's submission and the Chair invited questions from the Applicant.

## **20.0 Questions from Mr McCarthy (the Applicant) to Ms Moir**

- 20.1 Mr McCarthy asked about Tesco opening till 8pm as the Lead GP in Westburn had expressed concern about opening late as it would encourage patients to go to the surgery rather than a pharmacy for advice. Ms Moir was unaware that this was a problem. She stated that if a GP was open late they would normally phone the prescription through for the patient to collect and Tesco would pick up the prescription the next day.
- 20.2 When asked if Tesco delivered, Ms Moir said that they did not as there was no demand for it but would keep the situation under review.
- 20.3 Mr McCarthy asked if she thought it reasonable for a young mother, late at night to have to make arrangements to get to Tesco to collect a prescription. Ms Moir replied that it had never been a problem but as a professional pharmacist, she would not leave someone without essential medicine.
- 20.4 Mr McCarthy had no further questions for Ms Moir so the Chair invited questions from the other Interested Parties.

## **21.0 Questions from the Other Interested Parties to Ms Moir**

- 21.1 The other Interested Parties had no questions.  
*The Chair then invited questions from the Committee members.*

## **22.0 Questions from the Committee to Ms Moir**

### **22.1 Ms McGhee (Lay Member) Questions to Ms Moir**

- 22.1.1 Ms McGhee asked if there was a pharmacist on the premises all the time and Ms Moir confirmed that there were always two to cover the hours.

## **22.2 Mr Hill (Non-Contractor Pharmacist) Questions to Ms Moir**

**22.2.1** Mr Hill asked about late opening of GP practices as from the papers it appeared that they all closed at 6pm. Ms Moir said that the majority did so but one had recently started opening late on a Monday and Westburn were discussing the possibility of a late night. She indicated that Tesco expected to cover that.

## **22.3 Ms Mason (Lay Member) Questions to Ms Moir**

**22.3.1** Ms Mason asked if the Out of Hours dispensing was done from Larbert. Ms Moir said that the existing pharmacies participated in a rota to provide Out of Hours cover so it was not all done from Larbert.

*The Chair noted that the Committee had no further questions for Ms Moir so invited the next Interested Party, Ms Findlay, to present.*

## **23.0 Ms Findlay (Residents' Association Representative)**

**23.1** Ms Findlay thanked the Committee for allowing her to speak.

**23.2** Ms Findlay said that she had little to add to what had already been said other than to state the their Association felt the community would benefit from an additional pharmacy as they were all getting elderly and they were happy to support the application. Personally she felt it would be an asset to have a pharmacy in the community.

**23.3** This concluded the presentation from the Residents' Association

## **24.0 Questions from Mr McCarthy (the Applicant) to Ms Findlay**

**24.1** Mr McCarthy asked how the Association found their dealings with him during the consultation. Ms Findlay stated that there had been no problems and no-one had felt bullied. She noted that he had given out packs and, when asked, members of the Association had gone through the forms with residents.

**24.2** Mr McCarthy asked if, in her opinion, the elderly in the community found it difficult to access a pharmacy. Ms Findlay said that they did. She said a lot of them were very proud and did not ask for help. It was only when they were told that they could get medicines delivered that they asked. She suggested that the pharmacies should come to one of their meetings to explain what was on offer.

**24.3** When asked if access would be better, Ms Findlay said it would and was aware that work was to be done on the roads and kerbs around the premises.

**24.4** Mr McCarthy asked if Ms Findlay agreed with the definition of the neighbourhood. She confirmed that she did and indicated that the cut off

would be the canal when it became Camelon.

*As the applicant had no further questions for Ms Findlay, the Chair invited questions from the other interested parties.*

## **25.0 Questions from the Other Interested Parties to Ms Findlay**

### **25.1 Mr Arnott (Lloyds Pharmacy) Questions to Ms Findlay**

25.1.1 Mr Arnott said that he had walked and driven around the area and asked if residents in either Glenochil Road or Bantaskine Street would find it quite a hilly walk to get to the premises in Maggie Wood's Loan. Ms Findlay said that it was and you would not want to walk down a hill to walk back up.

### **25.2 Mr Grahame (Callander Pharmacy) Questions to Ms Findlay**

25.2.1 Referring to the lack of knowledge of pharmacy services, Mr Grahame asked if she would be willing to have a current contractor attend one of the Resident's Association meetings. Ms Findlay said that this would be welcomed.

### **25.3 Ms Cowle (Boots UK Ltd) Questions to Ms Findlay**

25.3.1 Mrs Cowle asked if the Residents' Association had received any specific complaints about access to pharmacy services. Ms Findlay replied that there had been no formal complaints but they sometimes found it difficult and relied on relatives. All were very interested in the new pharmacy and looked forward to having one close by.

*Having established that the other interested parties had no further questions, the Chair invited questions from the Committee to Ms Findlay*

## **26.0 Questions from the Committee to Ms Findlay**

### **26.1 Ms McGhee (Lay Member) Questions to Ms Findlay**

26.1.1 Ms McGhee asked if the Residents' Association wanted the pharmacy to assist in drawing more people into the area or attracting new businesses to the shopping area. Ms Findlay said that this was not the reason although they would like to see more shops filled.

### **26.2 Ms Mason (Lay Member) Questions to Ms Findlay**

26.2.1 Ms Mason asked Ms Findlay how people in the Bantaskine area got to Camelon or did they tend towards Falkirk most of the time. Ms Findlay said that there was no direct bus to Camelon so people would tend to go to Falkirk if they wanted to do anything. Many of them would get deliveries or a relative would collect on their behalf.

## **27.0 Summing Up**

27.1 After the Chair had confirmed that there were no further questions or comments from those present and participating in the hearing, the various parties were asked in reverse order to sum up the arguments.

**27.2 Ms Findlay (Residents' Association)**

27.2.1 Ms Findlay indicated that she had nothing to add and had said all that was needed.

**27.3 Ms Moir (Tesco Pharmacy)**

27.3.1 Ms Moir said that everything had been covered in her statement and her submission to the consultation.

**27.4 Ms Cowle (Boots UK Ltd)**

27.4.1 Mrs Cowle respectfully reminded the panel that the Regulations required the decision taker to determine whether the application was either necessary or desirable to secure the adequacy of pharmaceutical services. The applicant had provided no evidence to suggest that the existing pharmacies were unable to meet any current or future needs of the neighbourhood.

27.4.2 National statistics had been highlighted showing a growing population of elderly with multiple conditions. This was a national problem regarding supporting a patient at home and services had been developed for this reason including telephone conversations and a delivery service.

27.4.3 The CAR could be interpreted any way one liked but there were only 253 responses from a population of 4000 and 1500 questionnaires issued. This did not indicate massive support for a new pharmacy nor did it show that the current service into the neighbourhood was inadequate.

27.4.4 In summary she submitted that the existing pharmacy provision was adequate and that the proposed pharmacy was neither necessary nor desirable to secure the provision of pharmaceutical services in the neighbourhood in question. She asked the panel to refuse on the grounds that it was neither necessary nor desirable.

**27.5 Mr Grahame (Callander Pharmacy)**

27.5.1 Mr Grahame asked that the application be rejected as being neither necessary nor desirable as the neighbourhood was fully serviced by existing pharmacies. Another pharmacy would have a major implication for his own business and the responses to the consultation had not shown a huge general need.

**27.6 Mr Arnott (Lloyds Pharmacy)**

27.6.1 Mr Arnott said convenience was not a reason to grant a contract and the applicant had failed to show any inadequacy. The Panel had to consider the existing pharmacies with 4 being within one mile of the proposed premises.

In addition the Forth Valley Pharmaceutical Care Plan made no reference to the need for an additional pharmacy.

27.6.2 Mr Arnott referred back to Mr Semple's comments on the previous application for Falkirk which were "...*there is no part of Falkirk which is not within easy reach of an NHS Community Pharmacy, and accordingly there cannot be any neighbourhood within the town of Falkirk in which Pharmaceutical Service is inadequate. The Application fails the Legal Test and should be refused.*"

27.6.3 In conclusion, Mr Arnott said that the application failed the legal test and should be refused as it was neither necessary nor desirable in order to secure pharmaceutical services in the neighbourhood.

## **27.7 Mr McCarthy (the Applicant)**

27.7.1 Mr McCarthy stressed that during the whole application process he had at no point put pressure on any of the residents, and, if required could provide copies of letters sent to individuals. The complaint referred to by Mr Grahame was a one off.

27.7.2 He did not claim that the application was all about poor access although the CAR had shown a large number who did have a problem accessing a pharmacy and these people could not be ignored. The granting of the application would address this issue. He noted that 65% of respondents said they would use the pharmacy.

27.7.3 Regarding the accuracy of the CAR and sampling, he believed that the response was large enough to give a sample of how the entire population thought and that was what all polling organisations, such as Gallup, did.

27.7.4 Concerning the methadone service where the Interested Parties had claimed that the neighbourhood was both extremely wealthy but had a huge methadone problem did not add up. He pointed out that he would only be treating for the defined neighbourhood and expected the numbers to be low.

27.7.5 He referred to the late night surgery and indicated that he had discussed this with the GP practice, which was 3 minutes from his premises, and agreed opening times with them. He hoped that all could agree that the practice manager and the lead GP would know what the needs of the population were.

27.7.6 He stressed that Mr Semple did not know about the application until he had invited him to be a partner.

27.7.7 Finally he said that he had identified a problem with access which made the service inadequate and granting the application would address this inadequacy. He urged the PPC to agree to the application.

## **28.0 Retiral of Parties**

- 28.1 The Chair thanked all for their submissions. He then invited each of the parties present that had participated in the hearing to individually and separately confirm that a fair hearing had been received and that there was nothing further to be added. Having been advised that all parties were satisfied, the Chair advised that the Committee would consider the application and representations prior to making a determination, and that a written decision with reasons would be prepared and submitted to the Health Board within 10 working days. All parties would be notified of the decision within a further five working days. The letter would also contain details of how to make an appeal against the Committee's decision and the time limits involved.
- 28.2 The Chair advised the Applicant and Interested Parties that it was in their interest to remain in the building until the Committee had completed its private deliberations. This was in case the open session was reconvened should the Committee require further factual or legal advice in which case, the hearing would be reconvened and the parties would be invited to come back to hear the advice and to question and comment on that advice. All parties present acknowledged an understanding of that possible situation. The Applicant, Interested Parties and Ms Murray left the hearing.
- 28.3 The hearing adjourned at 1240 hours for a short break before deliberations began.
- 28.4 The Committee reconvened at 1255 hours to deliberate on the written and verbal submissions.

## **29.0 Supplementary Information**

- 29.1 Following consideration of the oral evidence, the Committee noted:
- 29.2
- i. That they had separately and independently undertaken site visits of Bantaskine and the surrounding area noting the location of the proposed premises, the pharmacies, general medical practices and the facilities and amenities within.
  - ii. A map showing the location of the proposed Pharmacy in relation to existing Pharmacies and GP surgeries within Bantaskine and the surrounding area.
  - iii. Community Council Map
  - iv. 2011 Census Profile for Falkirk
  - v. Falkirk Council Ward Profile – Ward 7
  - vi. Council Information/Local Development Papers
  - vii. Bus timetable for services 3,4,4A,4B
  - viii. PPC Information Paper including GP practice list sizes/prescribed items, dispensing statistics of the Community Pharmacies in the area and complaint information
  - ix. Report on Pharmaceutical Services provided by existing pharmaceutical contractors to the neighbourhood
  - x. Local GP Practices & Community Pharmacy Opening Times & Distances



- xi. Local GP Practices Information
- xii. Falkirk CHP Area Community Pharmacy List
- xiii. NHS Forth Valley Pharmaceutical Care Services Plan 2013
- xiv. The application and supporting documentation including the Consultation Analysis Report provided by the Applicant.

### **30.0 Summary of Consultation Analysis Report (CAR)**

#### **30.1 Introduction**

30.2 NHS Forth Valley undertook a joint consultation exercise with Westburn Pharmacy regarding the application for a new pharmacy in 13 Maggie Wood's Loan, Falkirk FK1 5HR.

30.3 The purpose of the consultation was to help in the assessment of the adequacy of the current provision of pharmaceutical services within the neighbourhood of the proposed premises.

#### **30.4 Method of Engagement to Undertake Consultation**

30.5 The consultation was conducted by placing advertisements in the Falkirk Herald (29 September 2016 & 12 January 2017); displaying details of the potential application on the Forth Valley public website ([www.nhsforthvalley.com/get-involved/public-consultations](http://www.nhsforthvalley.com/get-involved/public-consultations)); displaying details on the Applicant's website ([www.westburnpharmacy.co.uk](http://www.westburnpharmacy.co.uk)); making available the electronic questionnaire on the NHS Forth Valley public website and having paper copies available from the Health Board. It was agreed general written comments would also be accepted in response to the joint consultation. The Applicant also undertook a door to door mail drop to distribute 1500 copies of the questionnaire, with a cover letter, copy of the advertisement in the Falkirk Herald; a pre-addressed (not stamped) envelope for return of completed questionnaires. The Applicant also undertook to speak to as many residents as possible.

30.6 The Consultation Period lasted for 90 working days and ran from 29 September 2016 until 9 February 2017.

#### **30.7 Summary of Questions and Analysis of Responses**

30.8 Questions covered: the neighbourhood; anticipated users of the service; benefits of the proposed community pharmacy; perceived gaps/deficiencies in existing services; issues/challenges accessing existing services; proposed location; current methods used to access pharmacy services; effect of proposed pharmacy on accessing services.

30.9 In total 253 responses were received. All submissions were made and received within the required timescale, thus all were included in the Consultation Analysis Report. A further 30 questionnaires and one letter were received after the cut-off date and were not included in the figures analysed.

- 30.10 From the responses 230 were identified as individual responses, 13 responded on behalf of a group/families and four from organisations. Six respondents did not provide any indication.
- 30.11 214 respondents supported the proposed application.
- 30.12 From the addresses and post codes provided, respondents were identified from the following areas:
- 64 with the Applicant's proposed area
  - 13 outwith the proposed area
  - 1 part in, part out of the proposed area

### **31.0 Discussion**

- 31.1 The Committee in considering the evidence submitted during the period of consultation, presented during the hearing and recalling observations from site visits, first had to decide the question of the neighbourhood in which the premises, to which the application related, were located.

### **31.2 Neighbourhood**

- 31.3 In discussing the neighbourhood the committee noted the following points:
- That Tamfourhill was described as being in the catchment area but not the neighbourhood and was not included in the statistics
  - The Applicant had made access his main argument for inadequacy
  - Where the population currently accessed services and that they did this by public transport, car, bicycle or foot.
  - The proposed neighbourhood had a school and some small shops plus a mix of social and private housing. However there were no banks or post offices.
  - The possible boundaries which included the canal, railway lines, major roads.
  - The nature of the population within the proposed neighbourhood
  - The large GP practice within the neighbourhood but with a significant number of patients from elsewhere
- 31.4 The Committee agreed that the neighbourhood should be as described by the Applicant, which was also agreed by the APC. It was therefore defined by the following boundaries:
- North** – Camelon Road from Rosebank roundabout to West Bridge Street
- East** – Cockburn Street/Majors Loan and Drossie Road
- South** – Edinburgh/Glasgow railway line and Union Canal including Gartcows Road, Majors Loan, Bantaskine Street, Summerford Road and Greenbank Road
- West** – Glenfuir Road from Rosebank roundabout along the canal up to and including Carradale Avenue, Cumbrae Drive and Kilbrennan Drive

**31.5 Adequacy of existing provision of pharmaceutical services and necessity or desirability**

- 31.6 Having reached a conclusion as to neighbourhood, the Committee was then required to consider the adequacy of pharmaceutical services within or to that neighbourhood and, if the committee deemed them inadequate, whether the granting of the application was necessary or desirable in order to secure adequate provision of pharmaceutical services in the neighbourhood.
- 31.7 The Committee noted that, although there were no pharmacies within the defined neighbourhood, there were 4 pharmacies within approximately one mile of the proposed pharmacy. These were Lloyds, and Graeme Pharmacies in Camelon and Callander and Boots in High Street, Falkirk and a further three within approximately 1.5 miles.
- 31.8 This application was not supported by the Area Pharmaceutical Committee and there was no inadequacy of pharmacy services apparent in the Pharmaceutical Care Services Plan.
- 31.9 There had been no formal complaints made to the Health Board about pharmaceutical services in/to this neighbourhood so could not be used to demonstrate any inadequacy.
- 31.10 The Committee looked for evidence of inadequacy in the existing pharmacy provision from the joint Consultation Analysis Report. They noted from Question 4 about gaps and deficiencies that one third mentioned that there was no pharmacy nearby and only 3 used the word inconvenient to describe the existing services. This did not indicate that there was overwhelming support for an additional pharmacy. In Question 5 about accessing current services 114 used a car, 80 walked, and a further 80 used bus, cycle or taxi, with only two saying that it was too far to walk. In Question 6, 95 people had no issues or problems accessing the services. In Question 8 those who would use a new pharmacy gave reasons primarily of convenience rather than adequacy of the existing service.
- 31.11 Mr Grahame from Callander Pharmacy had capacity to grow, Lloyds had just moved to larger premises and none of the others had indicated that they were close to capacity. Current dispensing figures showed a reasonably stable amount each month. All were confident that they could meet the needs of an ageing population. In addition, from the District Council information, the population was not forecast to grow significantly.
- 31.12 The Applicant himself acknowledged that the existing pharmaceutical services, including delivery services and repeat prescription service to the neighbourhood, were adequate.
- 31.13 The population would normally go into the town centre to conduct the day to day business of living and could access pharmaceutical services when there.

31.14 Whilst the contribution from the Residents' Association was appreciated the committee considered the argument to have been based on convenience rather than inadequacy and no mention had been made of public transport being inadequate.

31.15 The Chair checked that the Lay Members had sufficient information on which to base a decision. Upon receiving assurance that they did, Mr Hill, Mr Shimmins, Mr Hutchison and Mrs Gordon then withdrew from the hearing at 1400 hours in accordance with the procedure to allow the vote to be taken.

## **32.0 Decision**

32.1 Mr Hill, Mr Shimmins, Mr Hutchison and Mrs Gordon returned to the meeting at 1415 hours and were advised that because:

- There were 4 pharmacies within a mile and more outwith this distance
- The CAR did not provide evidence of inadequacy or gaps in service and it was felt that if the service had been deficient then there would have been a greater response to the CAR
- The majority of responses were on the basis of convenience rather than deficiency
- Access did not appear to be a problem with the majority accessing services by car. They had noted in the site visits that the majority of houses in the neighbourhood had at least one car and access to existing pharmacy services was not an issue
- The existing contractors all had capacity to grow
- The application was not supported the APC
- The Pharmacy Care Service Plan did not mention any inadequacy in pharmacy provision
- The proposed opening hours were shorter than those of existing providers and did not offer a Saturday afternoon.
- The Applicant had offered no evidence which demonstrated inadequacy of the existing service and had stated that the services were adequate in his submission.

32.2 It was, therefore, the unanimous decision of the Committee for the reasons set out above that the provision of pharmaceutical services at the proposed premises was neither necessary nor desirable in order to secure adequate provision of pharmaceutical services within the neighbourhood in which the premises were located by persons whose names were included in the pharmaceutical list, and accordingly the application was rejected. This decision was made subject to the right of appeal as specified in Paragraph 4.1, Regulations 2009, as amended.

32.3 **The meeting closed at 1425 hours**

**Signed:** .....

**John Ford**  
**Chair – Pharmacy Practices Committee**

**Date:** .....