

31 October 2023

REF: SHA/26061

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APPEAL AGAINST NHS NORTH CENTRAL LONDON INTEGRATED CARE BOARD DECISION TO GRANT A COMBINED APPLICATION BY MEDICINE BOX (HOLBORN) LTD, FOR A CHANGE OF OWNERSHIP AND RELOCATION (TO 77 SOUTHAMPTON ROW, LONDON, WC1B 4ET) WITHIN A HWB AREA THAT DOES NOT RESULT IN SIGNIFICANT CHANGE TO PHARMACEUTICAL SERVICES PROVISION, IN RESPECT OF SUPERDRUG PHARMACY AT 232 HIGH HOLBORN, LONDON WC1V 7DA

1 Outcome

- 1.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, confirms the decision of NHS North Central London ICB.
- 1.2 The Committee determined that the application should be granted.

A copy of this decision is being sent to:

Temple Bright LLP on behalf of Holborn Pharmacy (Appellant)
NHS North Central London ICB
PSC on behalf of the Applicant

Advise / Resolve / Learn

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1 The Application

By application dated 15 November 2022, Medicine Box (Holborn) Ltd ("the Applicant") applied to NHS England (now NHS North Central London Integrated Care Board (ICB) with a combined application for a change of ownership and relocation to 77 Southampton Row, London WC1B 4ET. The proposed relocation is within a HWB area and it was claimed does not result in significant change to pharmaceutical services provision. The application concerns Superdrug Stores plc's pharmacy at 232 High Holborn, London WC1V 7DA. In support of the application it was stated:

- 1.1 In response to part 6 of the application form (reference to Regulation 31) the Applicant stated: *"There are no other pharmacies in the same or adjacent premises."*
- 1.2 In response to part 7 of the application form, the Applicant confirmed that the services it is undertaking to provide are the same as those that the current owner is providing. The Applicant also confirmed that there will be no interruption to service provision.

Background

- 1.3 The Applicant has recently reached agreement to acquire a pharmacy which is located at 232 High Holborn and is owned by Superdrug Stores PLC a requirement of the sale that (sic) the buyer finds alternative premises for the 'NHS contact' [sic] as Superdrug wish to retain the existing premises on a non-contract basis.
- 1.4 The Applicant has now identified suitable premises located a short distance away and has therefore instructed PSC (Pharmacy Sales & Consultancy) to submit this application for a combined change of ownership and no significant change relocation.

Local Area

- 1.5 The current location for the pharmacy is on High Holborn in central London, close to the junction of High Holborn and Southampton Row.
- 1.6 The pharmacy is located within a typical central London shopping area with supporting businesses in the immediate locality largely comprising restaurants and coffee shops in addition to a handful of national and independent retail businesses centred around Holborn Underground station.
- 1.7 Most of the buildings nearby are four or five storey properties and many have offices or apartments above the commercial premises on the ground floor.

- 1.8 In common with central London generally, this is not a location patients typically visit by car (other than by taxi) as parking in the wider area is very limited and expensive. The majority of people visiting the area do so because they live, work or shop nearby and those that travel here from further afield do so by public transport on the whole.
- 1.9 For those travelling by tube Holborn station is 30m away from the pharmacy at present. For those travelling by bus, there are several routes which pass near to the current site, and the nearest bus stop is approximately 70m away.
- 1.10 The Applicant discusses public transport in more detail later.
- 1.11 The proposed site is located approximately 400m to the north of the existing site, on Southampton Row.
- 1.12 The character of the area around the proposed location is very similar to the existing location comprising coffee shops, restaurants and a range of retail businesses, many of which are independently owned. Notably the only post office serving Holborn is located within a Ryman's stationery store only 100m from the proposed site. There are also several hotels and large office blocks nearby. In common with the existing location, most of the buildings are 4 or 5 stories high with offices and flats above the shops and restaurants.
- 1.13 As with the existing location, parking nearby is highly limited, so residents and visitors travel by public transport. Buses run along Southampton Row (between the existing and proposed sites) and there is a bus stop within 70m of the proposed site to the north.
- 1.14 This location is equidistant between Russell Square underground station to the north and Holborn to the south, each of which are 350-400m away, a walk of no more than 5 minutes.
- 1.15 The topography of the area is flat, as can be seen from the map below [map provided] where the current site is marked with a blue star and the proposed site is marked with a red star. It is clear that there are no barriers to movement for pedestrians by way of any hills or inclines.
- 1.16 There are dropped kerbs, wide pavements and street lighting throughout the area and all major roads benefit from light-controlled pedestrian crossings. Movement for pedestrians is very straightforward around the whole area.
- 1.17 The nature of the area can be seen in the aerial image below [image provided] where again the current site is marked with a blue star and the proposed site is marked with a red star.
- 1.18 The image below [route map provided] shows the journey between the existing and proposed sites and provides an estimated walk-time of 6 minutes. During a recent site survey the Applicant measured the walking time to be 5 minutes at an even pace, although this will depend on the time taken for traffic lights to change.
- 1.19 The journey would take no more than 2 minutes by taxi and 5 minutes by bus depending on the traffic conditions at any given time.
- 1.20 Whilst this journey is neither lengthy nor difficult, it is important to remember that Regulation 24 does not require the decision-making body to consider the distance or the journey *between* the sites. The accessibility test is whether the proposed site is significantly [emphasis added by the Applicant] less accessible for the patient groups that are accustomed to accessing the existing site.
- 1.21 When considering accessibility, it is important to bear in mind the following matters:

- 1.21.1 Residents and visitors to central London are highly mobile. Relatively few people live in close proximity to the existing site, the vast majority of patients either work or are shopping nearby and use the amenities across the wider area. They are accustomed to traveling around the area when going about their daily business.
- 1.21.2 The proposed site is within a shopping area which includes the only post office serving Holborn.
- 1.21.3 The proposed location is close to bus stops served by major routes and is also very easily accessible by public transport.
- 1.21.4 The geography and topography of the area is such that there are no barriers to movement regardless of how patients travel.

Part 8 of the application form

- 1.22 Regulation 24(1)(a) requires NHS England to consider whether:

“for the patient groups that are accustomed to accessing pharmaceutical services at the existing premises, the location of the new premises is not significantly less accessible”

- 1.23 The Applicant is required, therefore, to consider the patient groups who use the existing pharmacy and the impact of the relocation on each of them to ensure that the proposed location is not significantly less accessible.
- 1.24 NHS Resolution has produced a guidance note for use by its committees in respect of applications made under Regulation 24. This note gives specific consideration to the matter of patient groups and accessibility. In a recent judicial review of an application made under this regulation, Mr Justice Langstaff stated that he was broadly in agreement with the approach set out in this guidance note. Furthermore, he stated that patient groups should be defined in such a way that the decision maker can assess the impact of the proposed relocation on accessibility for those patient groups. For that reason, patient groups should not be defined arbitrarily but according to how and why people access pharmaceutical services.
- 1.25 Whilst the guidance note is not prescriptive in respect of patient groups, the following are provided as illustrations of matters that may be taken into account when defining them:
 - 1.25.1 local GP practices;
 - 1.25.2 methods of travel (on foot, by car, or public transport);
 - 1.25.3 types of pharmaceutical services accessed (dispensing/collection and delivery);
 - 1.25.4 the location of the patient group's geographic starting point of the journey to the pharmacy;
 - 1.25.5 demography;
 - 1.25.6 care homes; and/or
 - 1.25.7 areas of deprivation
- 1.26 Taking these factors into account the Applicant's proposed patient groups are as follows:

- 1.26.1 Patients who use the existing pharmacy location because it is close to home;
 - 1.26.2 Patients shopping in Holborn or using other nearby amenities;
 - 1.26.3 Patients registered with local surgeries;
 - 1.26.4 Patients who share protected characteristics.
- 1.27 The existing pharmacy has a very limited dispensing business. The pharmacy dispensed an average of 217 items per month for the 3 months to July 2022 (source: Pharmdata). This is approximately 3% of the item numbers dispensed by the average pharmacy in England. It is clear, therefore, that very few patients bring prescriptions to the pharmacy. Equally levels of provision for other pharmaceutical services are very low, with this business ranking amongst the lowest in the area for the provision of flu vaccinations.
- 1.28 It is clear, therefore that all patient groups are small. However the Applicant is required to consider all relevant patient groups, even where these are small. For each of these patient groups the Applicant has considered the implications of the proposed relocation. These comments apply whether people from these patient groups are attending a pharmacy to receive a prescription, access another pharmaceutical service or to purchase 'over the counter' medicines.

Patients who use the existing pharmacy location because it is close to home.

- 1.29 There is no collection or delivery service provided so the NHS prescription business at the current premises originates from 'walk-in' patients. Given the nature of the area, some of these are local residents from the flats above the commercial properties in the surrounding area.
- 1.30 Those patients who reside locally and wish to access the new premises will find that the journey is very straightforward. Some patients may find the proposed location is slightly closer to home and others slightly further away.
- 1.31 Regardless of their means of travel, patients accustomed to accessing the existing premises will not find the proposed location significantly less accessible due to the short distance between the two locations. Even for those who have further to travel, (an additional 400 metres), in the Applicant's opinion this maximum incremental distance does not make the new premises significantly [emphasis added by the Applicant] less accessible given the ease with which residents can move throughout the area, and do so as part of their daily lives.
- 1.32 For those local residents who travel around the area on foot, as discussed earlier the area is flat and benefits from wide pavements, controlled crossings and extensive street lighting. Residents of all major city centres, and those of London in particular, are accustomed to accessing many of the local amenities on foot so will not be troubled by the distance to the proposed location.
- 1.33 Very few people actually live in very close proximity to the existing site, they live in apartments around the wider area including near the proposed site and the areas in-between. So, as is always the case with a pharmacy relocation, some will find that the proposed location is slightly closer to home and others will find it is slightly further away.
- 1.34 The small number of people who do live near the existing location are required to travel away from their home to go to work, college or to access most of the amenities they need. That being the case, they will not be troubled by the distance they would have to travel to the proposed location as they move freely throughout the city during their daily lives.

- 1.35 For any patients accustomed to accessing the existing premises by public transport, the impact of the relocation will depend on whether they travel by bus or tube. For bus users, there are several routes passing through the area, with buses passing both the existing and proposed sites every few minutes. Many patients will simply alight the bus a couple of stops earlier or later depending on their direction of travel. The distance from the bus stop to the pharmacy will be the same and the cost of their journey will be no different.
- 1.36 Any patient who currently uses the underground to travel to the pharmacy will find that the distance from the nearest station to the pharmacy is slightly longer as a result of the relocation. However, they can still walk from the station to the proposed site in less than five minutes or if they do not wish to walk they can use one of the very frequent buses to travel from Holborn station to the proposed site. There is unlikely to be any additional cost as most people use travelcards which allow travel on buses as well as the tube. The journey will take only a few minutes.
- 1.37 Any patient who travels by taxi can access the proposed site in less than 2 minutes from the existing site.
- 1.38 So, in summary for this patient group, whilst the proposed location may be slightly further from home for some patients, it will be closer for others. It is in a highly accessible location, close to a range of amenities and even for those whose journey takes them past the existing location on the way to the proposed location, the journey is straightforward and will take no more than 5 minutes on foot for most people. This modest incremental distance does not render the proposed location significantly less accessible for *any* [Applicant's emphasis] patients, and it is clearly not significantly less accessible for this patient group for the reasons provided.

Patients shopping in Holborn or using other nearby amenities

- 1.39 This patient group includes patients who attend the current location because they are visiting the shops, hotels, cafes or restaurants nearby.
- 1.40 As discussed earlier, this area is the same as most parts of central London in that there is a wide range of shops and other amenities spread throughout the area. Many of these can be seen on the map below [provided] which shows the British Museum, Great Ormond Street Hospital, theatres, galleries, restaurants and several recreational open spaces.
- 1.41 Some of these amenities are closer to the existing site and some are closer to the proposed site. However, it is clear that visitors to the area move freely throughout Holborn to access these amenities.
- 1.42 As discussed previously, The (sic) only post office serving Holborn is located close to the proposed site, as are several of the hotels serving the area.
- 1.43 For the reasons discussed above, it is straightforward for visitors to move around the area whether they are on foot, travelling by public transport or by taxi. They will find that the proposed location is equally as accessible as the existing location whatever their means of travel.
- 1.44 The regulatory test is whether this patient group finds the proposed location significantly less accessible [emphasis added by the Applicant] and it is clear that it will not for the reasons the Applicant has provided.

Patients registered with local surgeries.

- 1.45 As the Applicant has explained previously, there is very little demand for NHS pharmaceutical services at the current location. Dispensing levels are particularly low.

- 1.46 The four nearest GP surgeries to the existing location are shown on the map below [provided]. These are the four surgeries that are the source for the greatest number of items dispensed by Superdrug. No other surgery accounts for more than 5% of the items dispensed.
- 1.47 As can be seen, one of these surgeries (St Phillips) is closer to the existing site (blue star), one (Covent Garden) is equidistant and the other two are closer to the proposed site (red star).
- 1.48 In July 2022 (the latest data available), items dispensed from these practices by the Superdrug pharmacy were as follows:

Medical Centre	Items dispensed by Superdrug	Percentage of all items dispensed by Superdrug
Covent Garden	41	18.5%
St Phillips	38	17.1%
Museum Practice	14	6.4%
Holborn Medical Practice	11	5.0%
Others	118	53.0%

- 1.49 For patients travelling from these medical centres to the proposed site, only those from St Phillips Medical Centre will have slightly further to travel. Their journey will increase from 700m to 1km by the shortest route. Any patient able to travel 700m to access the pharmacy at present will not be troubled by an additional walk of 300m (3 minutes) to access the proposed site.
- 1.50 For patients attending the other surgeries, the distance to the proposed location will be the same or less than the distance to the existing location.
- 1.51 Other surgeries are significantly further away in all directions so the distance from these surgeries to the existing and proposed sites is not materially different in the context of the overall journey.
- 1.52 For these reasons, and for those provided earlier in terms of the general accessibility of the proposed location, it is clear that for this patient group the proposed location cannot be considered to be significantly less accessible.

Patients who share protected characteristics

- 1.53 Every person shares at least one protected characteristic, i.e. they belong to a group that distinguishes them by age, race or any other characteristic. More commonly, however, in the context of Regulation 24, this relates to those who may be elderly, infirm or disabled i.e. matters that affect their mobility.
- 1.54 Given the proximity of the two locations, the level terrain, the wide pavements, tactile crossings for sight impaired patients and controlled crossings the area is easy to move around, even for those in wheelchairs or using mobility scooters.
- 1.55 Bearing in mind the proximity to the local amenities such as the post office, many patients with reduced mobility will find the proposed location to be more convenient as they can access pharmaceutical services here when using the other amenities nearby.

- 1.56 As the Applicant has described earlier, the proposed location is highly accessible for users of public transport, being located a very short distance from bus stops. Holborn tube station is not considered an accessible station for disabled users so patients with reduced mobility do not access the current location via the underground. Those whose mobility difficulties are more significant do not visit the existing premises 'on foot' anyway as they are more likely to travel by taxi or bus.
- 1.57 Patients who share protected characteristics will therefore find the proposed premises at least as accessible as the existing premises.
- 1.58 In summary, therefore, on Regulation 24(1)(a), there is no patient group that would find the proposed location significantly less accessible.
- 1.59 Regulation 24(1)(b) requires NHSE&I to consider whether:
- "in the opinion of the NHSCB, granting the application would not result in a significant change to the arrangements that are in place for the provision of local pharmaceutical services or of pharmaceutical services other than those provided by a person on a dispensing doctor list—*
- (i) in any part of the area of HWB1, or*
- (ii) in a controlled locality in the area of a neighbouring HWB, where that controlled locality is within 1.6 kilometres of the premises to which the applicant is seeking to relocate;"*
- 1.60 In the Applicant's opinion it is clear that granting this application will not result in a significant change to the arrangements currently in place. The proposed relocation is such a short distance that it is unlikely to have a material effect on the provision of pharmaceutical services by other contractors on the area.
- 1.61 The existing and proposed premises are within a short distance of each other, and the existing services and opening hours will be maintained.
- 1.62 As the distance between the sites is short there is no reason to believe that dispensing patterns in the area will be affected in any significant way as a result of this relocation.
- 1.63 Patient groups accessing pharmaceutical services in the area will still be able to access them in the same way so there is no reason to suggest that this relocation it will result in a significant change to the arrangements in place.
- 1.64 Regulation 24(1)(c) requires NHSE&I to consider whether:
- the NHSCB is satisfied that granting the application would not cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area of HWB.*
- 1.65 The Applicant has been unable to find any plans relating to future pharmaceutical services in the area, whether belonging to the local authority, NHSE & I or any other commissioner of pharmaceutical services, that would be affected in any way by granting this application.

Conclusion

- 1.66 In conclusion, for the reasons the Applicant has provided above, none of the patient groups accustomed to accessing pharmaceutical services at the current pharmacy premises will find the proposed location significantly less accessible.

1.67 The Applicant therefore urges NHSE & I to grant this application accordingly and the Applicant, would wish to attend an oral hearing should one be convened.

1.68 The Applicant has confirmed that there will be no interruption in services provision.

1.69 The services to be provided at these premises are:

1.69.1 Essential services;

1.69.2 Appliances listed in Part IX of the Drug Tariff.

1.69.3 Advanced and Enhanced services:

1.69.3.1NMS;

1.69.3.2Flu Vaccinations;

1.69.3.3CPCS;

1.69.3.4Hypertension and Case Finding [sic].

1.70 The Applicant's core opening hours are:

1.70.1 Mon to Fri 09.00-14.00
14.30-17.30

1.70.2 Sat -

1.70.3 Sun -

1.71 The Applicant's total opening hours are:

1.71.1 Mon to Fri 07.30-19.00

1.71.2 Sat -

1.71.3 Sun -

2 The Decision

North Central London ICB considered and decided to grant the application. The decision letter dated 23 June 2023 states:

Covering letter

2.1 The ICB has considered the application and is writing to confirm that it has been granted. Please see the enclosed report for the full reasoning.

2.2 Enclosed is a template of the notice of commencement which the Applicant is required to submit to the ICB. Please note that if this is submitted before the end of the 30 day appeal period and a valid notice of appeal is then received by the Secretary of State, the notice of commencement will cease to have effect. This means that if the Applicant has opened its new premises then it will be required to close with immediate effect.

2.3 Please note that the Applicant must submit the notice of commencement no fewer than 30 days before the date it intends to start service provision. If it is received fewer than 30 days in advance it is not a valid notice of commencement and will not be accepted by the ICB unless the Applicant successfully asks to give a shorter notice period. Should the Applicant wish to ask to give a shorter notice period please complete the enclosed application form.

Decision report

CAS reference number	CAS-186930-H5V4L3
Name of applicant	Medicine Box (Holborn) Ltd
Fitness to practise	Cleared for inclusion.
Address of current Premises	232 High Holborn, London, WC1V 7DA
Address of proposed Premises	77 Southampton Row, London WC1B 4ET
Status of location	• Non-controlled locality
Relevant regulations and Guidance	Regulations 26(2) – combined change of ownership and relocations that do not result in significant change to pharmaceutical services provision. Regulation 31 – refusal: same or adjacent premises. Regulation 66 – conditions relating to providing directed services¹ DH market entry guidance chapter 13.

2.4 Interested parties notified of the application – Representation Submitted [listed in the decision letter].

2.5 Interested Parties notified of the application – Representations not submitted [listed in the decision letter]

Applicants' information

2.6 [As already referred to at points 1.3 to 1.67 above]

Boots Comments

2.7 Boots UK Limited trust that members of NHS England will ensure that the application meets all the criteria of a no significant change relocation, therefore Boots have no further comments to submit at this time. Boots have no comments to make on the Change of Ownership element of this application and look forward to the decision of NHS England in due course.

Holborn Pharmacy Comments

- 2.8 As NHS England will be aware, this application is submitted pursuant to regulation 26(2) of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013. As such NHS must determine whether the application satisfies the requirements of regulation 24 of the Regulations (regulation 26(2)(d)).
- 2.9 In particular, the Applicant must satisfy NHS England that “for the patient groups that are accustomed to accessing pharmaceutical services at the existing premises, the location of the new premises is not significantly less accessible”. The Applicant must also satisfy NHS England that the proposed relocation would not result in a significant change in arrangements for the provision of pharmaceutical services in the HWB’s area.
- 2.10 The burden of satisfying NHS England that the regulatory test is met rests with the applicant; that is, the Applicant need not demonstrate to NHS England, for example, that the proposed premises would be significantly less accessible for the pharmacy’s patient groups, but rather the applicant must satisfy NHS England that the proposed premises would not be significantly less accessible.
- 2.11 Taking each part of the relevant regulatory test in turn, Holborn Pharmacy comments as follows:
- Regulation 24(1)(a)
- Patients
- 2.12 The Applicant has made some effort to define the pharmacy’s patient groups but has failed to properly or fully define those groups for the purposes of NHS England’s determination of this application.
- 2.13 Having regard to the proposed patient groups defined in the application form, Holborn Pharmacy comments as follows:
- Patients who use the existing pharmacy location because it is close to home
- 2.14 In support of this proposed patient group, the Applicant refers to “some” of the “walk-in” patients being “local residents from the flats above the commercial properties in the surrounding area”.
- 2.15 This statement is extremely vague and fails to properly define this proposed patient group. For example, when the Applicant states that “some” of the “walk-in” patients are local residents, NHS England may be assisted by information from the pharmacy’s records which supports this statement including, for example what is meant by “local” and where these patients actually live; at the moment it appears that the Applicant has no evidence or information to support its assertion that there is any such patient group.
- 2.16 The Applicant then states that these patients “are local residents” who live “in the surrounding area”; again NHS England would no doubt have been assisted by being provided with information about where “in the surrounding area” these “local residents” live. This information ought to be easily available from Superdrug but has not been provided.
- 2.17 In the absence of the above information, NHS England will no doubt conclude that this proposed patient group has not been sufficiently defined and evidenced to enable NHS England to assess whether this patient group would find the proposed premises to be significantly less accessible.
- Patients shopping in Holborn or using other nearby amenities
- 2.18 The Applicant has provided some “background information” in its document entitled “Holborn relocation supporting – final”. In that document, the Applicant refers to “Holborn” as though it were a distinct and identifiable area.

- 2.19 As NHS England will be aware, there is no administrative definition of “Holborn” as an area, and its borders are not clearly defined. Reference to “Holborn” by the Applicant may, consequently, be unhelpful to NHS England in its assessment of this application as it is not clear what area is actually being referred to.
- 2.20 To the extent that there is any administrative definition of “Holborn”, there is a London borough ward of Holborn and Covent Garden. The ward boundary for that ward is shown in the map below [provided].
- 2.21 It can be seen from this map that the existing premises are within the Holborn and Covent Garden ward whereas the proposed premises are in the Bloomsbury ward. Whilst Holborn Pharmacy accepts that ward boundaries are drawn for administrative purposes, the map merely underlines that it is, perhaps, unhelpful of the Applicant to refer to “Holborn”.
- 2.22 Putting aside, for the moment, the issue of the definition of “Holborn”, the Applicant proposes a patient group which comprises of those who are “shopping in Holborn”. NHS England will no doubt require more specific information about this patient group and where they are shopping but, as a starting point, it is clear that the existing and proposed premises are very different in terms of their facilities for shoppers such that it is reasonable to assume that this patient group is using the shops and facilities in the vicinity of the existing premises rather than the proposed premises.
- 2.23 The Applicant states that “The pharmacy is located within a typical central London shopping area with supporting businesses in the immediate locality largely comprising restaurants and coffee shops in addition to a handful of national and independent retail businesses centred around Holborn underground station”.
- 2.24 In relation to the proposed premises, the Applicant states relevantly as follows: “the character of the area around the proposed location is very similar to the existing location comprising coffee shops, restaurants and a range of retail businesses, many of which are independently owned”.
- 2.25 These statements by the Applicant and its assessment of the areas in the immediate vicinity of the existing and proposed premises are not correct.
- 2.26 The existing premises are in an area which forms a retail hub centred around Holborn tube station. As well as the Superdrug store itself (which, of course, represents a destination shopping venue in its own right, a matter that the applicant fails to address or even acknowledge) there are a number of national retail chains in the immediate vicinity. These include:
- 2.26.1 A large Sainsburys supermarket;
 - 2.26.2 A Waitrose supermarket;
 - 2.26.3 Waterstones bookshop;
 - 2.26.4 A branch of Metrobank;
 - 2.26.5 A branch of Natwest.
- 2.27 The area in the immediate vicinity of the existing premises also contains a large number of coffee shops and takeaway restaurant chains to support the local office workers and commuters.
- 2.28 In contrast, the proposed premises are in an area which largely comprises of residential blocks with mostly small, independent retail units and is very different in character and feel.
- 2.29 In order to illustrate the different emphasis on land use between the existing and proposed premises, Holborn Pharmacy have included, below, a land use map taken from the Camden

- 2.30 It can be seen from the land use map about that the area of the existing premises (adjacent to Holborn tube station) is colour coded in blue as “indicative retail clusters and town centre uses”. This colour coding does not apply to the proposed premises which is in an area which has a greater concentration of “cultural/education/health uses”.
- 2.31 The Applicant states that “the only post office serving Holborn is located close to the proposed site, as are several of the hotels serving the area”.
- 2.32 In relation to reference to the post office, putting aside the issue of what the applicant means by “Holborn” this statement is incorrect in any event since there is a “Holborn Post Office” located on High Holborn approximately 300m west of the existing premises. There is another Post Office located eastwards along High Holborn on Greys Inn Road.
- 2.33 In terms of “hotels”, it is submitted that the hotels in the vicinity of the proposed location do not particularly “serve the area” as this is an unrealistic view of why people may choose to stay in a particular hotel.

Patients registered with local surgeries

- 2.34 The Applicant defines a patient group by reference to “patients registered with local surgeries”. The Applicant notes that the actual number of prescriptions dispensed by the pharmacy is small. However, NHS England must consider each patient group and assess accessibility for that patient group. No matter how small a patient group may be, if, for that patient group, the proposed premises would be significantly less accessible then the application must be refused.
- 2.35 In relation to this proposed patient group, it is of note that 35.6% of prescriptions originate from the two GP surgeries that are to the south of High Holborn with only 11.4% originating from surgeries to the north of High Holborn.
- 2.36 The Applicant then notes that a very large 53% of the total number of prescriptions originate from “other surgeries”.
- 2.37 The Applicant does not provide any explanation for this dispensing pattern. It is submitted that this is an unusual dispensing pattern, where most of the prescriptions dispensed by Superdrug pharmacy do not originate from the 4 nearest GP surgeries. In contrast, Holborn Pharmacy is located at 88 Southampton Row (which is near to the Applicant’s proposed site). 75% of the prescriptions that Holborn Pharmacy dispenses originate from the four nearest surgeries to its pharmacy.
- 2.38 The unusual dispensing pattern for Superdrug Pharmacy compared to other pharmacies in the wider area (such as Holborn Pharmacy) serves to underline the fact that those who access the Superdrug pharmacy are much more likely to do so either as a destination store (ie they are visiting Superdrug for some other reason and access the pharmacy whilst there) or because of its close proximity to other shops and services on High Holborn (including the fact that it is adjacent to High Holborn tube station).
- 2.39 Even where patients are registered with a “local” GP surgery, they are much more likely to be registered with a surgery to the south of High Holborn than a pharmacy [sic] to the north of High Holborn.

Patients who share protected characteristics

- 2.40 The Applicant defines a patient group by reference to those who “share protected characteristics” but then gives no information about those characteristics. In the absence of any information about the shared protected characteristics of this patient group, NHS England cannot properly consider accessibility for this patient group.

Additional proposed patient groups

- 2.41 For the reasons given above, Holborn Pharmacy believes that the Applicant has failed to properly define its patient groups. In relation to the groups proposed by the Applicant, these either do not contain sufficient information to allow NHS England to assess the question of accessibility for those patient groups or consist of more than one patient group which has been combined together to suit the Applicant's submissions.
- 2.42 Holborn Pharmacy considers that the following patient groups apply to NHS England's determination of this application.

Commuters who use Holborn tube station

- 2.43 It is highly relevant to NHS England's determination of this application that the existing premises are located adjacent to Holborn tube station.
- 2.44 As NHS England will be aware, Holborn tube station is served by two London Underground lines – the Piccadilly Line and the Central Line. Pre-pandemic, the tube station had an average of over 30 million annual entries and exits and was one of the busiest tube stations in London. For the last available year (2021), Holborn tube station recorded 11.25 million entries and exits.
- 2.45 The Applicant refers to the fact that the proposed premises are equidistant between Holborn tube station and Russell Square tube station. However, Russell Square is served only by the Piccadilly Line, and has an average of around a third of the number of entries and exits compared to Holborn.

Those using the shops and other services on High Holborn

- 2.46 The Applicant defines a patient group of "patients shopping in Holborn or using other nearby amenities". It is submitted that this proposed patient group is too wide and ill-defined to be of any assistance to NHS England.
- 2.47 Given the nature of High Holborn as a retail cluster/town centre area, Holborn Pharmacy considers that it is appropriate to define a patient group by reference, specifically, to those patients are shopping or accessing other facilities on High Holborn and who use the Superdrug pharmacy due to its proximity to those shops and other services.

Patients accessing non-dispensing NHS services

- 2.48 The Applicant only refers, in its application form, to the dispensing of NHS prescriptions. The Applicant makes no reference to other essential pharmaceutical services (including, for example, the return of unwanted medicines, support for self-care, signposting and health campaigns).
- 2.49 The Applicant also makes no mention of any advanced and locally commissioned enhanced services provided by Superdrug. For example, the pharmacy's NHS profile refers to the provision of the New Medicine Service and Seasonal Flu Vaccinations.

Are the proposed premises significantly less accessible?

- 2.50 Having regard to the defined patient groups, NHS England must then determine whether, for each and every one of those defined patient groups would the proposed premises be significantly less accessible.
- 2.51 In its application, the Applicant deals with accessibility by reference to physical access. Whilst this is an important factor, NHS England must consider social and mental barriers alongside physical factors.

- 2.52 In terms of physical access, it is submitted that the proposed premises would be significantly less accessible.
- 2.53 There are several aspects to access which are relevant to NHS England's assessment of this application which apply across all of the patient groups.
- 2.54 As a starting point, the existing premises are located in a highly visible location on High Holborn. As stated above, the existing premises are located adjacent to Holborn tube station and adjacent to, or within 100 metres of, national retail chains, banks and other shops and services. This is in stark contrast to the proposed premises, which are in a very different location. This change in the nature and character of the two areas represents a mental barrier in the sense that those who are using High Holborn are much less likely to find themselves in the vicinity of the proposed premises.
- 2.55 In terms of physical access, the Applicant states that NHS England should not simply measure the distance between the existing and proposed premises. However, in the context of this application, for several of the defined patient groups this distance and the nature of the journey is highly relevant because those journeys by patient groups will start at, or in the Vicinity of, the existing premises. By way of example, the patient group defined as those using the Holborn tube station will start their journey at Holborn tube station; similarly the patient group defined as those using the shops and other service on High Holborn will start their journey on High Holborn.
- 2.56 In that context, the journey from the existing premises to the proposed premises is significant.
- 2.57 The distance between the existing and proposed premises is approximately 500 metres. Whilst in a town or rural area this distance may not be significant, in the context of a Central London location, it is submitted that this is a significant distance.
- 2.58 In addition to the distance, pedestrians have to cross two very busy roads: High Holborn itself and Theobalds Road.
- 2.59 The Applicant refers to the proposed premises being equidistant from Holborn and Russell Square tube stations. However, those who access the existing premises who are travelling by tube are most likely to be using Holborn tube station. As stated above, the existing premises are adjacent to Holborn tube station whereas the proposed premises are over 400 metres from Holborn tube station.
- 2.60 The Applicant refers to those travelling by bus, but the existing premises are served by 3 bus routes which do not pass the proposed premises (bus routes 1, 243 and 521). For patients using those buses to travel to this area, they would have to change bus in order to travel to the proposed location.
- 2.61 Having regard to the defined patient groups and the above general comments in relation to accessibility, Holborn Pharmacy comments further as follows in relation to accessibility by reference to the specific patient groups.

Patients who use the existing pharmacy location because it is close to home

- 2.62 As stated above, this patient group has not been sufficiently defined by the application. However, given that there are other pharmacies within the wider area, it is to be assumed that this patient group is restricted to those who live within very close proximity of the existing premises. For the reasons given above, it is submitted that this patient group would find the proposed premises significantly less accessible.

Patients registered with local surgeries

- 2.63 It is highly relevant to note that most of the prescriptions which originate from "local surgeries" are from surgeries which are located to the south of the existing premises (Covent

Garden and St Phillips). The distance from those surgeries to the existing premises is 550 metres and 700 metres respectively. In contrast, the distance from those surgeries to the proposed premises is 950 metres and 1.1km respectively.

- 2.64 As can clearly be seen, the patient group which is formed of those registered with these two practices (who make up the great majority of “local” surgeries) would find themselves having to travel almost twice as far to access the proposed premises as the existing premises.
- 2.65 For those registered with surgeries that are not “local”, NHS England must consider why those patients are choosing to use Superdrug. It is submitted that the reason they choose Superdrug is either because it is a destination venue in itself (i.e. because they are using Superdrug for some other purpose and use the pharmacy whilst there) or because of its close proximity to Holborn tube station and the other shops and services on High Holborn. These patients would also find themselves having to make a significant journey to and from the proposed site from their starting point on High Holborn. For this patient group, therefore, the proposed premises would be significantly less accessible.
- 2.66 Those using the shops and other services on High Holborn and commuters who use Holborn tube station. These two patient groups contain those who find themselves in the immediate vicinity of the existing premises either due to their use of Holborn tube station or the fact that they are shopping or accessing other services on High Holborn. For these patients, the proposed premises would be significantly less accessible.
- 2.67 Due to the difference in the nature of the two areas, those within these patient groups are unlikely to find themselves in the vicinity of the proposed premises, and would have to make a special journey in order to travel to Southampton Row. That journey, by definition, starts and ends at High Holborn in the vicinity of the existing premises.
- 2.68 Instead of passing Superdrug and using its pharmacy, this patient group must travel a return journey of approximately 1 kilometre, taking 20 minutes or so to do so. The patient group must travel to an area that they are much less likely to be familiar with (which brings with it a mental barrier) and must cross two busy main roads to do so.
- 2.69 For these patient groups, therefore, the proposed premises would be significantly less accessible.

Regulation 24(1)(b)

- 2.70 In determining this application, NHS England must also consider whether granting this application would result in a significant change to the arrangements in place for the provision of pharmaceutical services in the HWB’s area.
- 2.71 The existing premises are located on High Holborn. High Holborn is a very busy, main thoroughfare in central London. Superdrug is the only NHS pharmacy on High Holborn until, travelling eastwards, there is a Boots pharmacy 800 metres away and past Chancery Lane tube.
- 2.72 The Applicant is proposing to relocate to Southampton Row where there are already two independent pharmacies. Indeed, the proposed premises are within 50m of both of those pharmacies.
- 2.73 By leaving its existing, highly visible, location on High Holborn and moving into Southampton Row in very close proximity to two existing pharmacies, granting this application would result in a significant change in arrangements for the provision of pharmaceutical services in the HWB’s area.

In conclusion

- 2.74 In conclusion, Holborn Pharmacy invite NHS England to conclude that this application does not meet the regulatory test contained within regulation 24 and to refuse it.

- 2.75 Should NHS England consider that it would be assisted by an oral hearing in order to determine this application, Holborn Pharmacy would wish to have the chance to attend that hearing and to make oral representations.

Camden & Islington LPC Comments

- 2.76 This application is submitted pursuant to regulation 26(2) of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013. As such NHS must determine whether the application satisfies the requirements of regulation 24 of the Regulations (regulation 26(2)(d)).
- 2.77 In particular, the Applicant must satisfy NHS England that for the patient groups that are accustomed to accessing pharmaceutical services at the existing premises, the location of the new premises is not significantly less accessible. The Applicant must also satisfy NHS England that the proposed relocation would not result in a significant change in arrangements for the provision of pharmaceutical services in the HWB's area.
- 2.78 The burden of satisfying NHS England that the regulatory test is met rests with the Applicant. NHSE must be satisfied that this application meets the regulatory tests in order to grant it. In other words, be satisfied that the proposed premises would not be significantly less accessible.
- 2.79 Should an oral hearing be convened in order to determine this application, the LPC would wish to have the chance to attend that hearing and to make oral representations as appropriate.

Applicant's additional comments

- 2.80 Letter from Camden & Islington LPC – dated 14th April
- 2.81 The Applicant notes that the LPC does not object to the Applicant's application, it simply reminds the commissioner of the legal tests it is required to consider.
- 2.82 The Applicant's application addressed these matters in full and it discusses these matters further below in response to the comments from Temple Bright on behalf of Mr Patel. The Applicant therefore has no additional comments to make in respect of this letter.

Letter from Temple Bright acting for Mr Pradip Patel – dated 20th March 2023.

- 2.83 Mr Wardle, acting on behalf of Pradip Patel t/a Holborn Pharmacy ("HP"), starts his letter by reminding the commissioner of the legal tests to be considered, and its obligations when required to address in its determination of the Applicant's application
- 2.84 The Applicant responds to the further comments made by HP using the same headings provided in its letter.

Regulation 24(1)(a)

Patient groups

- 2.85 It is Holborn Pharmacy's view that the Applicant...has failed to properly or fully define [patient groups]. The Applicant disagrees. It is for the Applicant to define those patient groups it feels are most appropriate for the application and it has done so. Other parties are able to suggest their own patient groups and the Applicant notes Holborn Pharmacy has done so. The Applicant addresses those groups later.
- 2.86 Suggestions by Holborn Pharmacy that patient groups have not been properly defined is simply an attempt to undermine the information provided by the Applicant. These claims are

without merit and are contradictory to the guidance provided by the Primary Care Appeals committee of NHS Resolution.

Patients who use the existing pharmacy location because it is close to home

- 2.87 This is not a vague statement. It refers to the fact that some patients attend the pharmacy at present because they live nearby. That is not vague.
- 2.88 Holborn Pharmacy goes on to further seek to distract the commissioner by suggesting that it would be helpful to know where patients live using data obtained from patient records. Of course, such information is of no help whatsoever. Patient medication records provide patient addresses, but do not define patients as those who are 'local' or otherwise and the Applicant does not seek to make a distinction.
- 2.89 The Applicant's position is that there is a patient group that comprises those people who choose to attend the pharmacy at present because it is close to where they live. What patients consider to be 'close to home' is a matter for them. The size of this patient group and the home address of those people within it does not matter. The decision for the commissioner is simply whether those people who attend the pharmacy because they live nearby will find the proposed location significantly less accessible.
- 2.90 If NHS England do not believe there is a patient group that meets this definition, then it may ignore this group. That has no bearing on the outcome of this application.
- 2.91 However, if the commissioner accepts that it is reasonable to assume that some people use this pharmacy because they live nearby (mindful that there are residential premises within close proximity) then it will be able to form a view whether the proposed premises are significantly less accessible based on the evidence the Applicant has provided.

Patients shopping in Holborn or using other nearby amenities

- 2.92 Holborn Pharmacy appears to suggest that reference to Holborn may be unhelpful to NHS England. The Applicant is certain that NHS England will have no difficulty whatsoever understanding where Holborn is, but to assist the Applicant provides below the Encyclopaedia Britannica entry for Holborn below.
- 2.92.1 *Holborn, neighbourhood and former metropolitan borough (until 1965) of London. Now part of the borough of Camden, it lies northwest of the City of London and south of the Islington neighbourhood of Clerkenwell. Gray's Inn and Lincoln's Inn, two of the four Inns of Court, are central features of the district. The houses of Sir John Soane's Museum overlook Lincoln's Inn Fields from the north, and the Royal College of Surgeons is on the south side. Also notable are Staple Inn and Barnard's Inn, two of the former Inns of Chancery. In 1851 the Hospital for Sick Children was founded by Dr. Charles West, and it was greatly expanded in the 20th century. In 1874 the original Holborn Viaduct Station entered into service. It was closed in 1990 and replaced by a nearby subterranean station known as Thameslink City.*
- 2.93 The Hospital for Sick Children referred to above, now known as Great Ormond Street Hospital, is located 200m to the north east of the proposed location as can be seen on the map below [provided] where the proposed location is marked with a red star.
- 2.94 It appears fairly clear, therefore, that the proposed location is within the area commonly recognised as Holborn (as, of course, is Holborn tube station).
- 2.95 The Applicant agrees with Holborn Pharmacy that the administrative ward boundaries have no relevance to how people go about their daily lives.
- 2.96 Holborn Pharmacy goes on again to seek to muddy the water by suggesting that the Applicant should provide information on exactly where people who fall within this patient group do their shopping. This is irrelevant. Some people visit the current location because

they are shopping, and they form the patient group our client discusses in its application. Where exactly they shop has no bearing on NHS England's deliberations.

- 2.97 The Applicant notes the comments made by Holborn Pharmacy about the character of the area around the existing and proposed locations and the Applicant disagrees with this assessment. The Applicant provided, within the supporting document to the application, an aerial image of the area in which both sites are located, and it is apparent from this image that there is no perceivable change in character between the sites.
- 2.98 Holborn Pharmacy refers to the existing premises being within an area which forms a retail hub centred around Holborn tube station. Putting aside the fact that Holborn Pharmacy objects earlier to references to 'areas' that are not clearly defined, the Applicant would suggest that the term 'retail hub' implies a destination shopping area. This is simply not the case.
- 2.99 Looking at the 'retailers' listed by HP:
- 2.99.1 A "*large Sainsburys supermarket*". This is in fact a 'Sainsbury's Local' convenience_store;
- 2.99.2 A "*Waitrose supermarket*". This is a 'Little Waitrose' i.e. also a convenience store;
- 2.99.3 *Waterstone bookshop*. This has opened relatively recently after a significant time when the premises were empty. It remains to be seen whether this business will_survive;
- 2.99.4 A *branch of Metrobank*. Not a retail business;
- 2.99.5 A *branch of Natwest*. Not a retail business.
- 2.100 The Applicant would also challenge the view that Superdrug itself is a 'destination store'. The Applicant would suggest is a shop people visit when in the area rather than a place they make a special trip to visit in general.
- 2.101 It is clear, therefore, that the area is not a retail hub at all; it is as described in the Applicant's application, a mixed area of largely independent shops, cafes, takeaways and restaurants (albeit with some national brands), as is the proposed location. It is simply not the case that the two locations are very different in character and feel.
- 2.102 The Applicant notes the land use map provided by Holborn Pharmacy but would suggest this is of little help to the Committee. It is a matter of fact that there are retail premises in and around both the existing and proposed areas as can be seen in the images below [provided]. The Applicant does note, however, that the document is described as the Holborn Vision and Urban Strategy, despite the fact Holborn Pharmacy has commented earlier in its letter that Holborn is not a recognised area. The Applicant also notes that both the existing and proposed sites are within the map shown so are clearly considered to be part of Holborn.
- 2.103 The also note Holborn Pharmacy's comments about post offices, but also note that the post office it refers to as being 300m is no closer than the post office referred to in the Applicant's application.

Patients registered with local surgeries

- 2.104 Holborn Pharmacy makes the comment that "matter how small a patient group may be, if, for that patient group, the proposed premises would be significantly less accessible then the application must be refused". Whilst this is the case within the guidance, it is also noteworthy that in the case of R (on the application of Community Pharmacies (UK) Limited v The National Health Service Litigation Authority [2016] EWHC 1595 (QB), that the Honourable Mr Justice Langstaff stated:

- 2.105 “So long as the NHSCB, or on appeal the FHSAU, bears in mind that the purpose of identifying the groups is to make a broad assessment of the question of accessibility, and that therefore **to identify too many groups which are too small in number to assist with that process would risk over-focussing and losing sight of the whole broad picture**, and provided the Board or Committee takes a practical and pragmatic view of the groupings that might assist it to a conclusion, by reference to which it may analyse the available evidence, it will not go far wrong” [emphasis added].
- 2.106 The question for NHS England, therefore, is whether any patient groups it may wish to consider are “too small”. For this reason the low dispensing numbers at present are entirely relevant.
- 2.107 Holborn Pharmacy quotes the percentages of prescriptions dispensed from each of the surgeries, but NHS England will be mindful that the actual number of items dispensed from any surgery by this pharmacy is exceptionally small. The table provided in the Applicant’s application showed the maximum number of prescriptions dispensed from any single surgery in an entire month was 41. Recent months have shown a decline and the table below [provided] shows data from the most recent month available (Dec 22). It can be seen that no surgery contributed more than 33 items *in the whole month*, and the second biggest source of prescriptions only contributed 16 items.
- 2.108 In this context, trying to provide meaningful interpretations of this data when the numbers involved are so small is impossible, save to say that very few people visit for dispensing services at all (undermining the suggestion that this is a destination store), and those that do travel from a wide area, so are clearly mobile.
- 2.109 The pharmacy dispensed a total of 264 items in the whole of December 2022, so is within the bottom 1% of all pharmacies in England for dispensing numbers. Taking into account the judicial guidance it would be unhelpful to seek to create numerous tiny patient groups based on GP surgery locations. The Applicant maintains that for this patient group, which comprises of patients attending GP surgeries over a wide area, the proposed location is not significantly less accessible.

Patients who share protected characteristics

- 2.110 The Applicants application referred to relevant protected characteristics being those affecting mobility such as [old] age and disability. In that context the Applicant provided information about the local terrain and lack of barriers to movement.
- 2.111 Holborn Pharmacy appears to have missed the Applicant’s comments in respect of this patient group.

Additional proposed patient groups

- 2.112 The Applicant wholly disagrees with Holborn Pharmacy’s suggestion that the Applicant has failed to define patient groups properly. NHS England will be in a position to determine whether, for the patient groups the Applicant has defined, the proposed location is significantly less accessible. In respect of the additional patient groups defined by Holborn Pharmacy, the Applicant responds below. The Applicant would note that, whilst it is for the Applicant to provide evidence that the proposed premises are not significantly less accessible for the patient groups it defines, where another party seeks to define its own patient groups, it should provide evidence in respect of accessibility for those patient groups. Holborn Pharmacy has failed to do so to any meaningful extent.

Commuters who use Holborn tube station

- 2.113 Holborn Pharmacy provides statistics about footfall at Holborn and Russel Square tube stations, but fails to explain how this data is relevant. Given the exceptionally low dispensing numbers at Superdrug, it is clear that only a tiny percentage of the 11 million or so entries and exits to the station are linked to a visit to Superdrug.

- 2.114 In any event, the Applicant has discussed how easy it is for public transport users to access the proposed premises by bus if they do not wish to make the short walk to get there. Holborn Pharmacy has failed to explain why this patient group would find the proposed premises significantly less accessible.

Those using the shops and other services on High Holborn

- 2.115 Given Holborn Pharmacy's criticism of the Applicant's patient groups, it is surprising that Holborn Pharmacy defines a group based on those people using services on one specific road. It could equally have suggested a patient group of those using shops and other services on Southampton Row, but it does not suit its argument to do so.
- 2.116 Holborn Pharmacy's case that this is a specific patient group because High Holborn is a retail cluster/town centre area is not supported by evidence or by the reality 'on the ground'.

Patients accessing non-dispensing NHS services

- 2.117 Whilst the pharmacy does nominally provide non-dispensing NHS services, the uptake of these, as with dispensing services, is minimal. For example, the pharmacy provided 9 NHS flu vaccinations in the whole 2022/23 season and has never provided any CPCS consultations.
- 2.118 In any event, the handful of patients who do attend for non-dispensing services (who are so few the Applicant would suggest they do not form a meaningful patient group), will not find the proposed premises significantly less accessible for the reasons provided previously and below.

Are the proposed premises significantly less accessible?

- 2.119 Holborn Pharmacy suggests that NHS England is required to consider social and mental barriers in addition to physical barriers. Whilst the Applicant does not dispute this as a principle, these barriers do not exist in this case.
- 2.120 In respect of physical access, Holborn Pharmacy comments on the visibility of the existing premises. Whilst they may be visible, so are the proposed premises. Reference to there being a "stark contrast" between the areas is exaggeration to the point of being misleading. The proposed premises are not in some sort of ghetto, or area populated by a distinct community that may make it unwelcoming to people who wish to visit the pharmacy. The proposed location is close to high-end hotels, Bloomsbury Square and expensive offices. There is no mental barrier whatsoever for patients who wish to travel the short distance along Southampton Row to get there.
- 2.121 Holborn Pharmacy goes on to discuss how the distance is relevant because people within two of the patient group *it* [emphasis added by the Author] has defined will start their journey near the existing site. Even if the ICB accepts the artificially constructed patient groups HP has defined for the purpose of trying to prove its argument, it will still not find that the distance to the proposed location makes it significantly less accessible.
- 2.122 Firstly quoting the distance between the two sites at "approximately 500m" is misleading. It is 400m, as evidenced in the Applicant's application, not 'approximately 500m'. No matter what the setting, this is not a significant distance. Previous regulations set the bar lower for approving relocations below 500m and no distinction was made between urban and rural settings as they recognised this as a short distance.
- 2.123 Whilst there are two roads to cross, there are light controlled crossings, dropped kerbs and tactile pavements. No evidence has been provided to support the assertion these are difficult roads to cross.
- 2.124 As the Applicant has discussed previously, patients arriving at Holborn tube station can make the short walk to the proposed location or use a bus if they prefer. Where patients

currently travel by bus, even for the few who might need to change buses, these travel along Southampton Row every minute or two, so does this not make the premises **significantly** [emphasis added by the Author] less accessible.

- 2.125 In response to the further comments on accessibility, no matter which patient group Holborn Pharmacy refers to, the fact remains that the proposed premises are not significantly less accessible. Even where patients' journeys take them past the existing premises, the incremental distance of 400m does not make the proposed premises **significantly** [emphasis added by the author] less accessible. Patients who live nearby do not live their lives in a bubble with a radius of 100m. They travel for work, shopping and leisure purposes and, like most affluent Central London residents are highly mobile. They will have no difficulty travelling to the proposed location when going about their daily lives.
- 2.126 For patients travelling from surgeries to the south, noting that numbers are exceptionally small, if they can travel to the existing location, it is clear that they are mobile and will have no difficulty travelling to the proposed location. Once again Holborn Pharmacy exaggerates by suggesting they will have to travel twice as far when clearly this is not the case when simple maths is applied.
- 2.127 Whichever surgery they travel from (if indeed they do travel directly from the surgery mindful that most prescriptions are for repeat items), they travel to get to Superdrug at present and will be able to easily travel to the proposed location.
- 2.128 In respect of the two further groups defined by Holborn Pharmacy the Applicant submits that these have been artificially created to support the arguments made by Holborn Pharmacy and are not borne out by reality. Furthermore Holborn Pharmacy persists in rounding up distances by referring to "approximately 1km" instead of 800m. A cynical observer may think that Holborn Pharmacy feels the need to exaggerate distances because it is aware that the two sites are, in fact, very close.

Regulation 24(1)(b)

- 2.129 Given the proximity of Holborn Pharmacy to both the existing and proposed locations, it seems odd that they have failed to notice the Boots Pharmacy branch located just 50m away from Superdrug, at 129-133 Kingsway, which is highly visible from High Holborn, being within few metres of the junction of High Holborn and Southampton Row. Suggesting that the relocation of the Superdrug pharmacy will leave some sort of gap is not credible, not least when the Superdrug pharmacy is so little used.
- 2.130 Holborn Pharmacy has provided no evidence whatsoever to explain why the relocation to premises close to other independent pharmacies will result in a significant change in arrangements.
- 2.131 The Applicant has no additional comments to make at this time, but should the commissioner wish to convene an oral hearing to determine this application, our client would wish to attend.

Regulation 31

- 2.132 The proposed pharmacy is not on the same site or adjacent to any other pharmacy, therefore this regulation is not engaged.
- 2.133 **Regulation 26(2) (a)** *the applicant (X) is undertaking to provide the pharmaceutical services that another person (Y)-*
- 2.133.1 *(i) is providing at listed chemist premises ("Y's premises"), whether in the area of HWB1 or a neighbouring HWB, or*
- 2.133.2 *(ii) has provided at Y's premises but Y is no longer able to provide pharmaceutical services at those premises for reasons that NHS England accepts are good cause;*

2.133.3 *(b) X is proposing to carry on, in place of Y, the business in the course of which Y is providing, or has provided, pharmaceutical services at Y's premises;*

2.133.4 *(c) X is undertaking to provide the same pharmaceutical services as Y is providing or has provided at Y's premises, but at different premises ("X's premises");*

2.134 If this application had only been a change of ownership, then the criteria for a change of ownership has been met and this would have been granted.

Regulation 26(2) (d)&(e)

2.135 In order to consider this regulation, the regulations for a no significant change (regulation 24(1)) are used. Please see below.

Regulation 24(1) criteria

2.136 *a) for the patient groups that are accustomed to accessing pharmaceutical services at the existing premises, the location of the new premises is not significantly less accessible;*

2.137 The current site is a Superdrug Pharmacy in High Holborn, the proposed site is a premises in Southampton Row. Whilst the premises in Southampton Row is not by the tube station this is still within the shopping area that patients would frequent.

2.138 The distance between the two sites is approx. 600 metres, by foot, including the additional distance to cross by the pedestrian crossing. A straight line distance is probably much shorter.

2.139 This would be the maximum additional distance a patient may need to travel to get to the new site.

2.140 Neither site is one that is typically accessed by car due to limited parking available. Patients visit the pharmacy by foot, public transport or taxi. The new location is equally accessible by these routes.

2.141 The patient groups suggested by the Applicant given the specific circumstances described, appear to be sufficient as the other patient groups suggested by Holborn Pharmacy would appear to be very small in nature and not statically useful.

2.142 In terms of a pharmacy in Central London, where patients move freely around, the proposed premises do not appear to be significantly less accessible.

2.143 **The ICB have determined that the majority of patients would not find this new site significantly less accessible.**

2.144 *(b) in the opinion of the NHSCB, granting the application would not result in a significant change to the arrangements that are in place for the provision of local pharmaceutical services or of pharmaceutical services other than those provided by a person on a dispensing doctor list—*

2.144.1 *(i) in any part of the area of HWB1, or*

2.144.2 *(ii) in a controlled locality in the area of a neighbouring HWB, where that controlled locality is within 1.6 kilometres of the premises to which the applicant is seeking to relocate;*

2.145 It is the opinion of the ICB that the move would not result in a change to the arrangements that are in place for the provision of local pharmaceutical services or pharmaceutical services.

- 2.146 *(c) the NHSCB is satisfied that granting the application would not cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area of HWB1;*
- 2.147 It is the opinion of the ICB that granting this application would not cause detriment to proper planning.
- 2.148 *(d) the services the applicant undertakes to provide at the new premises are the same as the services the applicant has been providing at the existing premises (whether or not, in the case of enhanced services, the NHSCB chooses to commission them); and*
- 2.149 The Applicant will provide the same services at the new location as at the existing location. The hours of the pharmacy will also be the same for the new premises as for the current one.
- 2.150 *(e) the provision of pharmaceutical services will not be interrupted (except for such period as the NHSCB may for good cause allow).*
- 2.151 There will be no interruption of services except for any period that the ICB agrees.
- 2.152 Regulation 24(3) criteria
- 2.153 If any of the below criteria apply, details are below:
- 2.154 A - Was the pharmacy listed as a result of an application 13(1)(a) of the 2005 regulations – Approved Retail Area? No.
- 2.155 B - Was the pharmacy listed as a result of an application 13(1)(c) of the 2005 regulations – One Stop Primary Care Centre? No.
- 2.156 C - Has the pharmacy relocated in the last 12 months? No.
- 2.157 D - Is the pharmacy a Distance Selling Pharmacy? No.
- 2.158 A – is the relocation within the approved area? If not must be refused.
- 2.159 B – are other services moving with the pharmacy? If not must be refused.
- 2.160 C – relocated within the last 12 months and is unable to satisfy NHS England that the relocation is necessary. If unable to satisfy must be refused.
- 2.161 D-Is the pharmacy a Distance Selling Pharmacy? No.
- 2.162 A – is the relocation within the approved area? If not must be refused.
- 2.163 B – are other services moving with the pharmacy? If not must be refused.
- 2.164 C – relocated within the last 12 months and is unable to satisfy NHS England that the relocation is necessary. If unable to satisfy must be refused.
- 2.165 D – is a DSP. this should comply with regulation 25(2). If not should be refused.

Regulation 26(3)

- 2.166 *This is not a distance selling pharmacy; therefore, the application is not required to be considered under this regulation.*

Regulation 26(4)

2.167 *This is not a distance selling pharmacy; therefore, the application is not required to be considered under this regulation.*

2.168 *Consider impact of decision on those with protected characteristics under the Equalities Act 2010 and is this in accordance with NHS England's Public Sector Equality Duty Consider impact of decision on NHS England's duty on health inequality.*

2.169 The Applicant has described the usage of the pharmacy by patients with protected characteristics. It would not seem that patients would be disadvantaged.

Decision

2.170 The ICB have determined that there is enough information within the papers to decide the application without an oral hearing.

2.171 There are no pharmacies within close proximity of the proposed site, therefore regulation 31 does not apply.

2.172 **Regulation 26(2)**

2.173 **Regulation 26(2) (a), (b) & (c)** – this part of the regulation has been met, if this was just a change of ownership this would have been granted.

2.174 **Regulation 26(2) (d)** – this part of the regulation has been met, if this was a no significant relocation it would have been granted.

2.175 **Regulation 26(2) (e)** – there will be no interruption of services.

2.176 **Regulation 26(3)** – this is not a distance selling pharmacy, so this regulation is not relevant.

2.177 **Regulation 26(4)** – this is not a distance selling pharmacy, so this regulation is not relevant.

2.178 The ICB have determined that the application fits the criteria for regulation 26(2) and has been granted.

3 The Appeal

In a letter dated 20 July 2023 addressed to NHS Resolution, Temple Bright LLP appealed on behalf of Holborn Pharmacy ("the Appellant") against the ICB's decision. The grounds of appeal are:

3.1 Temple Bright LLP act for Holborn Pharmacy, 88 Southampton Row, Holborn, London, WC1B 4BB.

3.2 On behalf of the Appellant Temple Bright write to appeal a decision of NHS England to grant an application by Medicine Box (Holborn) Limited for a combined change of ownership and no significant change relocation application from Superdrug Pharmacy, 232 High Holborn, London, WC1V 7DA to 77 Southampton Row, London, WC1B 4ET. The decision was notified to the Appellant by letter dated 23rd June 2023.

3.3 The Appellant's ground of appeal is that the ICB misapplied the legal test which applies to the determination of this application. In particular, the ICB determined that "the majority of patients would not find this new site significantly less accessible", whereas the correct legal test required the ICB to determine whether any of the pharmacy's patient groups would find the proposed premises significantly less accessible.

Regulatory test

- 3.4 As NHS Resolution will be aware, this application falls to be determined pursuant to regulation 24 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 by reason of regulation 26(2)(d).
- 3.5 In particular, NHS Resolution must be satisfied that “for the patient groups that are accustomed to accessing pharmaceutical services at the existing premises, the location of the new premises is not significantly less accessible” (regulation 24(1)(a)).
- 3.6 NHS Resolution must also consider whether “granting this application would not result in a significant change to the arrangements that are in place for the provision of local pharmaceutical services...in any part of the area of [the Health and Wellbeing Board]” (regulation 24(1)(b)).
- 3.7 The Appellant submitted detailed representations to the ICB in respect of the relevant regulatory test by letter dated 20th March 2023. A copy of that letter is attached to this letter of appeal. Whilst the ICB rehearsed the contents of that letter in its decision report, it gave no reasons why the matters raised in that letter were discounted.
- 3.8 In applying the relevant regulatory test, NHS Resolution is invited to have regard to the judgment of Mr Justice Langstaff in R (on the application of Community Pharmacies (UK) Ltd) v National Health Service Litigation Authority [2016] EWHC 1595 (QB). As NHS Resolution will be aware, this application for judicial review related to a relocation application from a Superdrug store within a shopping centre to premises which were located outside the city centre and approximately 600 metres away.
- 3.9 In his judgment, Mr Justice Langstaff noted, at paragraph 32:
 - 3.9.1 “If, then, in context, the purpose of grouping is to facilitate a decision as to the accessibility of the new premises, the starting point is considering what makes a relocated pharmacy less easy to go to physically, mentally or socially, and “groups” must have their identities determined with that in mind.”
- 3.10 He further stated, at paragraph 46, as follows:
 - 3.10.1 “I reject, too, the argument that “accessibility” is necessarily limited to a matter of geography. There are some cases in which that might be so: but the concept is a broad one, and the starting point is to consider what makes a relocated pharmacy less easy to go to physically, mentally or socially for an identified patient group.”
- 3.11 Finally, at paragraph 49, Mr Justice Langstaff stated as follows:
 - 3.11.1 “The accent in these submissions, rightly in my view, takes into account the decision which the legislation assumes to have been made previously that a specific provision, at the locations and by the means offered, is appropriate for the particular area. Needs within the area will vary, from group to group. The overall provision has been designed to satisfy all. Some material groups may particularly be accommodated at one location, others at others, within the same area. Relocating thus may affect the provision for a particular group within the area covered by the initial scheme. The danger of requiring “broad” assessments to be made by weighing accessibility across all groups is that material minority groups may be significantly affected but the proposed relocation none the less proceed: if this approach is applied across the board it is not difficult to see that whereas the provision for the majority of those seeking access to pharmacies in an area may be maintained, for substantial minorities it may cease to be. The services are provided for all: the approach runs the risk of significantly disadvantaging some for whom original provision was made. There seems little point in the statute asking that the assessment be made by breaking down those who used the pharmacy’s services into separately identified and separately assessed patient groups if what is really intended is one assessment of accessibility, which runs the groups back together as one in order to make it. I reject this ground.”

Factual background

- 3.12 The pharmacy which is the subject of this relocation application is located on 232 High Holborn and is operated by Superdrug Stores plc, trading as “Superdrug”.
- 3.13 As NHS Resolution will be aware, Superdrug is a national retail chain offering beauty and healthcare products and services. It operates over 830 stores across UK and Ireland and has 195 registered pharmacy premises in Great Britain.
- 3.14 It is therefore submitted that Superdrug is a destination retail venue in its own right, attracting shoppers who access the store (and pharmacy) because it is a Superdrug.
- 3.15 High Holborn, the A40, is a major London thoroughfare linking the City of London with the West End. Accordingly, in the immediate vicinity of the Superdrug store there are a range of shops and other services centred around Holborn tube station. These include:
- 3.15.1 A large Sainsburys supermarket (the Applicant describes this as a “Sainsburys Local”, but it is a large retail unit which has a far greater range of products than might be expected from a “normal” Sainsburys Local)
 - 3.15.2 A Little Waitrose;
 - 3.15.3 A Waterstones bookshop;
 - 3.15.4 A branch of Metrobank (which is also the head office of Metrobank);
 - 3.15.5 A branch of Natwest.
- 3.16 In addition, within approximately 100 metres of the Superdrug store there are a range of national cafes and restaurant chains which are designed to meet the needs of local workers, including:
- 3.16.1 Franco Manca pizza restaurant;
 - 3.16.2 McDonalds;
 - 3.16.3 Wasabi Sushi & Bento;
 - 3.16.4 Caffè Nero;
 - 3.16.5 Pizza Express;
 - 3.16.6 2 Pret A Manger stores;
 - 3.16.7 Itsu;
 - 3.16.8 Coco di Mama.
- 3.17 The existing location is therefore a significant retail and food hub.
- 3.18 The existing location is less than 50 metres from Holborn tube station, which is on the Central and Piccadilly lines. Ignoring the years affected by the pandemic, Holborn tube station has an average of approximately 30 million annual entry and exits according to information from TFL.
- 3.19 It is difficult to capture the “bustle” of the area of the existing premises in images. However, below is a google streetview image looking east towards the Superdrug store.
- 3.20 Below is an image [provided] looking west towards the Superdrug store:

- 3.21 Finally, below is a google streetview image [provided] which shows the Superdrug store in the context of its immediate surroundings, including the tube station just beyond it.
- 3.22 In contrast, the proposed location (Southampton Row) is very different in character. Below is a google streetview image [provided] looking north along Southampton Row towards the proposed premises.
- 3.23 And below is a further image [provided] looking south towards the proposed premises.
- 3.24 As can be seen from the above images, the proposed location has far less retail land use and very few food and café venues compared to the existing location. The nearest tube station (Russell Square) has a third of the number of entry and exits compared to Holborn.
- 3.25 This change in land use is exemplified by a land use map [provided] taken from the Camden “Holborn Vision and Urban Strategy” [275e1627-122b-d320-fe5d-f16fdb299880 \(camden.gov.uk\)](https://www.camden.gov.uk/media/275e1627-122b-d320-fe5d-f16fdb299880/camden.gov.uk)
- 3.26 It can be seen from the land use map about that the area of the existing premises (adjacent to Holborn tube station) is colour coded in blue as “indicative retail clusters and town centre uses”. This colour coding does not apply to the proposed premises which is in an area which has a greater concentration of “cultural/education/health uses” (although the proposed premises themselves are not colour coded at all).

Patient groups

- 3.27 Having regard to the above, it is submitted on behalf of the Applicant (sic) that the application fails to meet the relevant regulatory test.
- 3.28 In its application form, the Applicant sought to define the pharmacy’s patient groups. The Appellant’s letter of 20th March 2023 [provided] set out why, in the Appellant’s opinion, those proposed patient groups were either ill-defined or excluded some obvious patient groups. In relation to the former, the Appellant does not intend to repeat the matters contained within the letter of 20th March 2023, and the Appellant considers that those matters still stand.
- 3.29 In relation to the additional patient groups that were not defined by the Applicant, the Appellant submits that there are three additional patient groups to those that the Applicant sought to define. These are as follows:
- 3.29.1 Commuters who use Holborn tube station;
- 3.29.2 Those using the shops and other services on High Holborn;
- 3.29.3 Patients accessing non-dispensing NHS services.
- 3.30 Information regarding the first two additional patient groups is given above and has regard to the particular location of the existing premises.
- 3.31 In relation to the final proposed patient group (patients accessing non-dispensing NHS services), in its response to the Appellant’s representations, the Applicant is quoted (in NHS England’s decision report) as stating as follows:
- 3.31.1 “Whilst the pharmacy does nominally provide non-dispensing NHS services, the uptake of these, as with dispensing services, is minimal. For example, the pharmacy provided 9 NHS flu vaccinations in the whole of 2022/23 season and has never provided any CPCS consultations.”
- 3.32 Whilst it is incorrect to state that the Superdrug store has never provided any CPCS consultations (it has provided the service historically) it is accepted there is no patient group which comprises of those accessing the CPCS service currently. However, the pharmacy

does provide a small number of NMS consultations (historically an average of 2 per month and, more recently, an average of 1 per month).

- 3.33 More relevantly, though, Superdrug has a large retail offering. It is therefore likely that the pharmacy sells a range of over the counter medicinal products and, as part of that service, may provide advice to patients as part of “support for self-care”, an essential pharmaceutical service.
- 3.34 This is a reasonable inference to draw from the location of the Superdrug pharmacy and the nature of the store and its retail offering, yet the Applicant provides no information regarding this essential service.
- 3.35 The Applicant also provides no information regarding other essential services such as signposting or the return of unwanted medicine which, again, NHS Resolution may consider to be particularly relevant to the Superdrug pharmacy.
- 3.36 NHS Resolution will, of course, appreciate that the burden of proving that the regulatory test is met falls upon the Applicant. If NHS Resolution considers that the Applicant has not provided sufficient information to support its application then the application must be refused.

Access and significant change in local provision

- 3.37 The Appellant set out, in detail, why the proposed premises would be significantly less accessible for the pharmacy's patient groups in terms of physical access in the attached letter [provided]; again the Appellant does not intend to repeat those comments in this appeal.
- 3.38 However, it is also submitted that the proposed premises would be “less easy to go to ... mentally...” (having regard to the judgment of Mr Justice Langstaff set out above).
- 3.39 As stated above, the two locations are very different in character, with very different building uses and patterns of movement. The existing premises are of a busy “town centre” character, with commuters, workers and shoppers using the shops and other services that run along High Holborn, including using the tube station.
- 3.40 Much of that pedestrian traffic is east/west along High Holborn and is exemplified by the significant numbers of pedestrians in that area, including the crowds of people that gather to cross the junction of High Holborn and Southampton Row waiting for the green man.
- 3.41 In contrast, the proposed premises are in a much quieter location, with far fewer pedestrians and much less general “busyness”.
- 3.42 As well as the physical access issues which are summarised in the attached letter, there are also mental barriers that exist between the existing and proposed premises, meaning that those patient groups who use the Superdrug pharmacy on High Holborn are far less likely to travel along Southampton Row as part of their daily lives (or at all).
- 3.43 As a result, it is submitted that for at least some of the patient groups accustomed to accessing the existing premises, the proposed premises would be significantly less accessible whether as a result of physical or mental factors.

Regulation 24(1)(b)

- 3.44 In determining this application, NHS Resolution must also consider whether granting this application would result in a significant change to the arrangements in place for the provision of pharmaceutical services in the HWB's area.
- 3.45 As stated above, the existing premises are located on High Holborn. High Holborn is a very busy, main thoroughfare in central London. Superdrug is the only NHS pharmacy on High

Holborn until, travelling eastwards, there is a Boots pharmacy 800 metres away and past Chancery Lane tube.

3.46 The Applicant is proposing to relocate to Southampton Row where there are already two independent pharmacies. Indeed, the proposed premises are within 50m of both of those pharmacies.

3.47 By leaving its existing, highly visible, location on High Holborn and moving into Southampton Row in very close proximity to two existing pharmacies, granting this application would result in a significant change in arrangements for the provision of pharmaceutical services in the HWB's area.

In conclusion

3.48 In conclusion and on behalf of the Appellant, Temple Bright invites NHS Resolution to uphold this appeal and to conclude that this application does not meet the regulatory test contained within regulation 24 and to refuse it.

Copy letter to the ICB dated 20 March 2023

3.49 [As already referred to at points 2.9 to 2.76 above]

4 **Summary of Representations**

This is a summary of representations received on the appeal.

NHS North Central London ICB

4.1 Please find below the ICB's response to the above appeal.

4.2 This should be read in conjunction with the decision report already provided.

4.3 The current site is a Superdrug Pharmacy in High Holborn, the proposed site is a premises in Southampton Row. Whilst the premises in Southampton Row is not located by Holborn tube station this is still within the shopping area that patients would frequent. The shopping area is larger than just High Holborn as the shops are varied in nature. The proposed premises is located by one of the post office locations in the area.

4.4 Southampton Row is also on the route towards Great Ormond St Hospital and joins Russell Square. This is an area where patients and others that use the area frequently travel around.

4.5 There appears to be a difference in the distances that the Applicant and Appellant have provided. The walking route on Google maps, appears to suggest that there is a slightly longer route due to the pedestrian crossings (600m). However, this depends on which side of the road you are traveling from and the need to cross the road at the destination.

4.6 Travelling one side of the road from Holborn is longer than the other. The shorter route is 400m.

4.7 As this is Central London and patients do not typically use a car to travel due to the lack of parking, patients would walk, take a bus, tube or taxi to reach destinations. There are buses that run between High Holborn along Southampton Row to the proposed premises. Using any of these methods the two sites are reasonably close to each other. Those that start their journey South of the current premises would have a longer journey but those who start North will have a shorter journey.

4.8 This application is a change of ownership and relocation, the Applicant has stated that the current pharmacy owners Superdrug intend to keep the premises, but wish to remove the NHS contact [sic] element from the premises. As the premises are remaining for patients

that wish to purchase some products (GSL) the premises will still be there and patients will be able to purchase these as normal.

- 4.9 The ICB has determined that patients would not find this new site significantly less accessible than the current site.

PSC on behalf of the Applicant

- 4.10 PSC act for Medicine Box (Holborn) Limited and have previously provided a letter of authorisation from the Applicant accordingly.
- 4.11 PSC are in receipt of NHS Resolution's letter dated 27 July, enclosing an appeal by [Holborn Pharmacy] against the decision by the ICB to approve the above application, which was made pursuant to Regulation 24 [sic] of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("The Regulations").
- 4.12 The Applicant has instructed PSC to submit representations on its behalf in response to this appeal.
- 4.13 The Applicant wishes to respond specifically to the points raised in the appeal by the Appellant's representative and to also provide additional and updated information for the Committee [of NHS Resolution] benefit.
- 4.14 The Applicant responds to the points made by the Appellant in the same order they are made in the appeal letter.

Ground of appeal

- 4.15 The Applicant notes the Appellant's assertion that the ICB misapplied the legal test in this case. The Applicant disagrees. It is clear from the detailed committee [of the ICB] report provided that the ICB carefully considered all the evidence provided by parties in this case and gave specific regard to the patient groups proposed by the parties involved. Having done so they found that the legal test set out in Regulation 24(1)(a) had been met.
- 4.16 Whilst the Applicant accepts that the wording used on page 29 of the decision report, which refers to "the majority of patients" does not fully align with the wording in the regulations, it is clear that the correct legal test was applied and was found to have been met.

Regulatory test

- 4.17 The Appellant correctly points out that the application is to be determined pursuant to regulation 24 and accurately quotes selected elements of that regulation.
- 4.18 The Appellant goes on to refer to the submissions it has made in its letter of 20th March 2023 and attaches a copy of that letter. The Applicant submitted a detailed response to those representations in a letter dated 12th May 2023 and also addressed some of these matters in the supporting document submitted with the Applicant's application. The Applicant has attached a copy of both these documents for the Committee [of NHS Resolution] benefit to avoid repetition.
- 4.19 The Appellant then invites the NHS Resolution Committee to have regard to the judgment of Mr Justice Langstaff in R (on the application of Community Pharmacies (UK) Ltd) v National Health Service Litigation Authority [2016] EWHC 1595 (QB).
- 4.20 The Committee [of NHS Resolution] will be aware that the circumstances of that case were very different to those that apply in respect of this application. In that case the existing location for the pharmacy was within a covered shopping centre (Intu) located within the heart of Derby city centre and the proposed location was within a medical centre located in an almost exclusively residential area outside the boundaries of the city centre. It was also relevant that the journey to the proposed location in that case involved passing a hostel

which was likely to attract people with drug or alcohol problems. It was suggested that this might cause particular difficulties for women wishing to access advice relating to emergency hormonal contraception.

- 4.21 The Appellant has identified no parallels between the Applicant's application and the Derby case other than the fact the application involves the relocation of a pharmacy currently located within a Superdrug store.
- 4.22 The Appellant supplies various quotes from that judgement. The first two of these (from paras. 32 and 46) [paras 3.9 and 3.10 above] relate to the finding that consideration of accessibility is not limited to physical or geographical matters but may also take into account mental or social barriers.
- 4.23 By focusing on this point, the implication appears to be that the Appellant is aware that the proximity of the proposed sites to the existing site is such that there are no barriers relating to geography that make the proposed site difficult to access physically. The argument the Appellant appears to make, therefore, is that there may be mental or social barriers that are applicable in this case. The Applicant has therefore considered what Mr Justice Langstaff may have had in mind in respect of mental or social factors by considering two scenarios.
- 4.23.1 There are clearly parts of the United Kingdom, such as Northern Ireland, where a person's religious background will have a significant bearing on how they go about their daily lives. Whilst a shop, school or even a community pharmacy might be close to where they live, if it is within an area predominantly populated by a different religious community, that is likely to act as a social barrier to them accessing these amenities.
- 4.23.2 In the case of the Derby application raised by the Appellant, one of the concerns raised was that young women who were accustomed to accessing the Superdrug store for contraception advice may have to pass a hostel whose residents might be on the street outside and whose behaviour might be intimidating to the women passing this location. This could form a mental barrier to movement.
- 4.24 In both these examples there is a credible case that mental or social barriers to travel might exist and the Applicant would have some sympathy with the Appellant's arguments if similar factors applied.
- 4.25 However, when considering this application, the Appellant's case that there are social or mental barriers to travel are flimsy to say the least. The argument appears to centre on the Appellant's view that [sic] pharmacy's current location is slightly more 'bustling' and that the character of the supporting shops might be slightly different. The Applicant would suggest that these factors, even if they exist, fall a long way short of constituting a mental or social barrier to movement.
- 4.26 The comments in the third paragraph highlighted by the Appellant (para. 49) [our para 3.11 above] were in response to the notion patient groups could be 'lumped together' into a single group or a smaller number of larger groups. Mr Justice Langstaff made the point that this risked disadvantaging "material minority groups".
- 4.27 However, it is also important to remember that, in para 33 of the judgement, Justice Langstaff stated:
- 4.27.1 *"So long as the NHSCB, or on appeal the FHSAU, bears in mind that the purpose of identifying the groups is to make a broad assessment of the question of accessibility, and that therefore to identify too many groups which are too small in number to assist with that process would risk over-focussing and losing sight of the whole broad picture, and provided the Board or Committee takes a practical and pragmatic view of the groupings that might assist it to a conclusion, by reference to which it may analyse the available evidence, it will not go far wrong".*

- 4.28 It is clear, therefore, that decision makers are required to consider which patient groups in any particular case are 'material' and should take care not to be distracted by patient groups that are so small that the broad picture is lost.

Factual background

- 4.29 The Appellant repeats its previous assertion that because Superdrug is a national chain it is a destination retail venue in its own right. The Applicant has challenged that assertion previously and continue to do so; being part of a national chain does not equate to being a destination retail venue.
- 4.30 A destination retail shop is one that people make a specific journey to visit when they would have no other reason to travel to that location. An example would be a large supermarket or a big retail warehouse type store. There is no evidence whatsoever that shoppers travel specifically to High Holborn because there is a Superdrug pharmacy there.
- 4.31 In fact, the evidence that the Applicant has supplied previously in respect of dispensing or other services shows that the demand for pharmacy services at this location is minimal. This does not fit with the description of it being a 'destination venue'.
- 4.32 Whilst High Holborn, the A40, maybe a major thoroughfare linking the City of London with the West End, Southampton Row is also a significant A road (A 4200) heading north through the city from Covent Garden towards Camden Town and beyond. It is not a quiet 'side street'.
- 4.33 The Applicant has previously commented on the amenities highlighted by the Appellant which are located near High Holborn station, so have little to add to its previous comments. The Applicant does note the comments made by the Appellant that the Sainsbury's supermarket is a "large retail unit". The term 'large' in this context is somewhat subjective to suit the Appellant's argument. Compared to any normal Sainsbury's supermarket or in fact any major retail premises found in central London, the premises are not large.
- 4.34 The Applicant provides an image below [provided] to help the Committee [of NHS Resolution] form its own view on this point (note the premises are single storey).
- 4.35 In any event, none of the businesses listed would be regarded as 'destination amenities'.
- 4.36 By the same token, amenities and restaurants within 100m of the proposed location include:
- 4.36.1 Rymans stationers;
 - 4.36.2 Spink Auction House;
 - 4.36.3 City Sightseeing London ticket office;
 - 4.36.4 Two large hotels (Double Tree by Hilton and the Bedford);
 - 4.36.5 Bloomsbury Square Gardens;
 - 4.36.6 Café Nero;
 - 4.36.7 Costa Coffee;
 - 4.36.8 Various independent restaurants;
 - 4.36.9 Pizza Hut;
 - 4.36.10 Taco Bell;

4.36.11 Greggs;

4.36.12 KFC.

- 4.37 It is clear, therefore, that the proposed location is not the 'quiet backwater' portrayed by the Appellant. The simple fact is that entire Holborn area is typical of central London. There is a wide variety of retail, food and other venues spread throughout the area, all of which or accessed by those people who live, work, visit and shop in the area when going about their daily lives. It is simply not the case that there is any material difference in character between the existing and proposed location.
- 4.38 Furthermore, as the Applicant has previously discussed, the two locations are very close together with no physical barriers between them. Whilst the Appellant has sought to construct an artificial mental or social barrier between the two locations, it is clear that no such barrier exists. That being the case there is no credible argument that the proposed location is **significantly** less accessible than the existing location.
- 4.39 The Appellant makes much of the extent to which Holborn tube station is used by commuters and visitors. It is also noteworthy that this station has no 'step free' access for wheelchair users or other disabled passengers, so the least mobile members of society are likely to favour other stations with disabled access and will therefore be more likely to use the shops and other amenities around those other stations.
- 4.40 The Applicant notes the images provided by the Appellant and it appears that these images have been carefully selected to avoid showing the actual premises the Applicant proposes to occupy.
- 4.41 The image below [provided] (showing the Applicant's premises on the left-hand-side which was previously trading as 'Timo's Pizza'), looks somewhat different to the images selected by the Appellant. It is clear that there is a wide range of retail and food venues nearby.
- 4.42 The image below [provided] is taken from further south along Southampton Row with the proposed premises marked with a red star.
- 4.43 The Applicant has commented on the land use map previously and maintains its position that the Committee [of NHS Resolution] will find this to be of very little use when determining this application. None of the areas highlighted on this map are 'single use' i.e. solely for retail or cultural use. The area contains a wide variety of amenities and people travel throughout to access these. These areas do not exist in silos. In any event this does not constitute evidence that there are any barriers to the accessibility of the proposed location.
- 4.44 The facts of the matter are very straightforward. The proposed location is very close to the existing location (400m - a walk of approximately 5 minutes), it is situated in an area which is well used by shoppers, workers and tourists alike and there are no physical, social or mental barriers which make it difficult for people to travel around the area.

Patient groups

- 4.45 The Applicant has previously commented on the Appellant's challenges to the Applicant's patient groups, so these matters will not be repeated here. The Applicant's previous comments still stand.
- 4.46 In respect of the Appellant's proposed additional patient groups the Applicant does not accept that these are 'material patient groups' for the purpose of an application submitted and regulation 24.
- 4.47 The first group defined by the Appellant is "Commuters who use Holborn tube station". In using the term 'commuters' the Appellant appears to limit this group to people who travel from home to a place of work. It is not clear why a distinction is made between people using the tube station to travel to and from work and those travelling from another reason.

- 4.48 Regardless of the Appellant's intention when using the term commuter, it is clear that people arriving at Holborn tube station have travelled from elsewhere. As they won't generally live at the tube station from which they have travelled, they will have undertaken a journey of some sort to get to that tube station. As the Applicant has discussed previously Holborn tube station is not accessible for disabled patients, so people arriving here are clearly able to negotiate the steps and escalators required to reach the station exit i.e. these people are physically mobile.
- 4.49 Given the proximity of the proposed location and the ease with which that journey can be made, either on foot or by bus, there is no evidence that this patient group, if indeed it exists, would find the proposed location to be significantly less accessible.
- 4.50 In any event, it is the Applicant's position that this is simply a sub-set of the other patient groups defined. Patients will travel to the Superdrug store at present for a variety of reasons e.g. they may be working or shopping in the area or may be tourists who are using the hotels or other amenities nearby. These people may travel by, tube, bus, taxi, car or on foot to get there.
- 4.51 To define a patient group so narrowly as "commuters who use Holborn tube station" risks, using the words of Mr Justice Langstaff "identify[ing] too many groups which are too small in number to assist with that process [and]..... risk over-focussing and losing sight of the whole broad picture".
- 4.52 It is submitted, therefore, that this is not a patient group for the purposes of an application made under Regulation 24 and even if the Committee [of NHS Resolution] finds differently, patients within this group will not find the proposed location significantly less accessible.
- 4.53 The second group provided by the Appellant is "those using the shops under the services on High Holborn". Once again this is an incredibly narrowly defined patient group and relies on the Appellant's incorrect assertion that High Holborn is a discrete destination shopping area.
- 4.54 For this patient group to make any sense, the Committee [of NHS Resolution] would have to be satisfied that there are people who travel specifically to High Holborn to use the shops or other services there and they would have no reason to travel to the location where the Applicant proposes to relocate. For the reasons the Applicant has provided previously, High Holborn is not such an area.
- 4.55 Once again, even if the Committee [of NHS Resolution] was minded to accept this patient group, the proximity of the proposed location is such that it will not be significantly less accessible for this group for the reasons the Applicant has provided previously. The vast majority of people in this group who would be going about their business in the area around High Holborn station would have no difficulties whatsoever travelling to the proposed location, a walk or bus journey of no more than 5 minutes.
- 4.56 The Appellant then goes on to discuss its third additional patient group "patients accessing non-dispensing NHS services".
- 4.57 In respect of the NMS service, using the Appellant's own data it is clear that the demand for the service is negligible. As this forms a sub-set of the Appellant's proposed patient group, the Applicant would suggest that this sub-set is so small that the impact of the proposed relocation on this handful of patients will not materially effect the Committee [of NHS Resolution] decision in this case. In any event, and for the reasons described above on more than one occasion, this handful of patients will not find the proposed location significantly less accessible.
- 4.58 The Appellant then goes on to consider the retail offering of the Superdrug store and suggests that there are likely to be patients who receive 'support for self-care', an essential pharmaceutical service. The Applicant does not dispute the Appellant's inference in this case. The Appellant then goes on to make a similar point about other essential services

such as signposting and the return of unwanted medicines. Again it is not unreasonable to assume that there will be some patients who receive these services.

- 4.59 The Appellant reminds the Committee [of NHS Resolution] that the burden of proving the regulatory test is met falls upon the Applicant and suggests that the NHS Resolution Committee might consider that the Applicant has provided insufficient information to support its application.
- 4.60 The Committee [of NHS Resolution] (or at least the pharmacist a member of the Committee) will be aware that it is not common practise for pharmacy contractors to keep records of interventions in respect of signposting, support for self-care or the return of unwanted medicine. In fact, mindful of patient confidentiality and GDPR it would be inappropriate to require patients seeking these services to provide any personal information. Contractors are obliged to provide these services and patients are entitled to receive them without the need to disclose their personal details.
- 4.61 No pharmacy contractor would therefore have a comprehensive record of who has received these services, so it would be impossible to provide any specific analysis in relation to these patients. The Applicant therefore invites the Committee [of NHS Resolution] to consider the approach advocated by Mr Justice Langstaff i.e. “to make a broad assessment of the question of accessibility”.
- 4.62 It is well understood that the demographic targeted by Superdrug is typically younger women. An interview between the company's IT director and internetretailing.net in December 2022 quoted *“Superdrug's beauty community broadly reflects its target customers of women aged between 18 and 30”*. Even customers who fall outside this demographic still tend to be younger than customers of their main rival, Boots.
- 4.63 So it is reasonable to assume that these patients that are seeking advice or other services are likely to be relatively young and more likely than average to be in good health. That may explain the exceptionally low demand for the dispensing service. The Applicant would suggest that this demographic is among the least likely to be troubled by a journey of approximately 400m across easy terrain to access the proposed location to receive these pharmaceutical services.
- 4.64 The Applicant invites the committee [of NHS Resolution] to conclude, therefore, that on the balance of probabilities patients attending the Superdrug pharmacy who receive non-dispensing NHS services will not find the proposed location significantly less accessible.

Access and significant change in local provision

- 4.65 The Applicant has already addressed the Appellant's comments in respect of the proposed premises being “less easy to go to mentally”. There is simply no credibility to the claim that “the two locations are very different in character”. This will be apparent to the Committee [of NHS Resolution] from the images the Applicant has supplied as well as the maps and the list of amenities located within close proximity of the proposed premises.
- 4.66 It is inevitable that there will be an increase in pedestrian traffic when people are waiting to cross major road junctions but this is not unique to the junction of High Holborn and Southampton Row.
- 4.67 Even if it is the case that there is more “busyness” (to use the Appellant's word) at certain points on High Holborn, Southampton Row is far from quiet, as can be seen in the image below [provided]. This is an area used by many people when going about their daily lives.
- 4.68 The relevant test in regulation 24 is accessibility and not ‘busyness’. The Appellant has not provided any evidence to support its assertion that the proposed location is **significantly** less accessible for the patient groups accustomed to accessing the existing premises.

- 4.69 The Applicant does not accept that either the physical or the mental barriers referred to by the Appellant exist.

Regulation 24(1)(b)

- 4.70 The Applicant has addressed this matter clearly in its letter of 12 May. The Appellant's suggestion is that the relocation of the Superdrug NHS contact [sic] will result in a significant change in arrangements for the provision of pharmaceutical services by virtue of leaving a gap on High Holborn.
- 4.71 There is a Boots pharmacy within 50 metres of the junction of Southampton Row and High Holborn, as can be seen in the image below [provided] looking towards this junction (with an entrance to Holborn tube station shown on the right hand side). This pharmacy is less than 100 metres from the existing Superdrug premises.
- 4.72 The Appellant chooses its words carefully in stating that Superdrug is the only NHS pharmacy on High Holborn until, travelling eastwards, there is a Boots pharmacy 800 metres away and past Chancery Lane. Whilst this might, strictly speaking, be the case the Committee [of NHS Resolution] will find it unhelpful, to say the least, that the appellant has ignored the presence of a pharmacy located so close to the Superdrug store and within sight of High Holborn.
- 4.73 As the Committee [of NHS Resolution] is aware, the fact the Applicant proposes to relocate to premises closer to two other pharmacies is not a matter it is required to consider. There are currently pharmaceutical services provided both near Holborn tube station and near the Applicant's proposed premises. Following the proposed location this will still be the case.
- 4.74 There will not be a significant change to the arrangements in place for the provision of pharmaceutical services in the HWB's area.

Conclusion

- 4.75 In conclusion, the ICB were correct to grant the Applicant's application, as the tests set out in Regulation 24 have been clearly met.
- 4.76 The Applicant therefore urges the NHS Resolution Committee to approve this application for the reasons provided above and the Applicant can confirm that it would wish to attend an oral hearing if one is convened.
- 4.77 Application for a combined change of ownership and relocation within a HWB area that does not result in significant change to pharmaceutical services provision – supporting information. [As already referred to at points 1.3 to 1.67 above].

Applicant's letter to the DMB dated 12 May 2023

- 4.78 [As already referred to at points 2.144 to 2.195 above].

5 Observations

- 5.1 The following observations were received by NHS Resolution in response to the representations received on appeal.

Temple Bright LLP on behalf of Holborn Pharmacy (Appellant)

- 5.2 The Appellant writes further to NHS Resolution's letter of 30 August 2023 and in order to respond to representations received by NHS Resolution in relation to the Appellant's appeal. Taking each letter in turn, the Applicant comments as follows:

Medicine Box (Holborn) Limited (Applicant)

- 5.3 The Appellant is mindful of the contents of NHS Resolution's letter of 30 August 2023 requesting that any response to representations should be limited to rebuttal of the information already provided. To that end, the Appellant will attempt to avoid repeating matters already contained within previous correspondence provided by the Appellant, both to the ICB and in the Appellant's letter of appeal.
- 5.4 Reference in the letter of appeal to the judgment in the Community Pharmacies (UK) Ltd judicial review case was made in relation to the relevant regulatory test to be applied to the determination of this appeal. It is not asserted that the factual matrix in that case was identical to this relocation application, although there are many similarities, including the fact that there is homeless accommodation run by the Single Homeless Project for "male ex-offenders over 18 years of age" at 109 Southampton Row which, as in the Community Pharmacies (UK) judgment, may act as a deterrent (or mental barrier) for some patients, particularly young women who, according to the Appellant, are the Superdrug pharmacy's main patient base.
- 5.5 For the reasons set out in the Appellant's letter of appeal, the Appellant does assert that there are physical barriers between the existing and proposed premises. However, there are also mental and social barriers, which are equally as important in the determination of a no significant change relocation application.
- 5.6 The judgment in Community Pharmacies (UK) did not seek to define or limit what may be considered physical, social or mental barriers. Each application will turn on its own facts. It is accepted that the two examples provided by the Appellant may be relevant, but so may other factors, as arise in the circumstances of this relocation application.
- 5.7 The Appellant does not assert that the existing location is "slightly more "bustling"" or "that the character of the supporting shops might be slightly different". It will be clear to NHS Resolution from a proper reading of the Appellant's appeal (rather than the incorrect paraphrasing in [sic] Applicant's letter) that the proposed and existing locations are materially different in character. The Appellant does not seek to repeat the reasons for this assertion in this letter as they are fully detailed in the Appellant's representations to the ICB and in the Appellant's letter of appeal. The Appellant accepts that the purpose of defining the pharmacy's patient groups is to allow the decision-maker to make an overall assessment of accessibility. However, for the reasons previously given, the Appellant asserts that the proposed premises would be significantly less accessible for at least some of the pharmacy's patient groups.
- 5.8 In relation to Superdrug being a "destination venue" in its own right, it is clear that the Applicant is hampered by a lack of information from Superdrug in relation to its patient groups due to the fact that this is a combined change of ownership and no significant change relocation. However, the available information suggests that the Appellant's assertion is correct. For example, just over half of the prescriptions dispensed by the pharmacy do not originate from the 4 nearest GP surgeries to the proposed premises.
- 5.9 This very clearly indicates that patients are using the Superdrug pharmacy because it is a "destination venue", or because they are present in Superdrug and require access to pharmaceutical services. By contrast, 75% of the prescriptions dispensed by the Appellant's pharmacy (which is located in close proximity to the Applicant's proposed site) originate from the nearest 4 GP surgeries to its pharmacy.
- 5.10 It is irrelevant whether "demand for pharmacy services at this location is minimal" – the question for NHS Resolution to consider is why those who do access pharmacy services from the Superdrug Store do so. The Appellant asserts (and it is reasonable to conclude) that this is for one of several reasons: the fact that patients are shopping at Superdrug; its location on High Holborn, a main London thoroughfare; its close proximity to Holborn tube station; its close proximity to other shops and services on High Holborn. It is evident that none of those factors apply to the proposed location, making the proposed location significantly less accessible.

- 5.11 The Appellant does not assert that Southampton Row is a “quiet side street”, but, as previously described, Southampton Row is a very different road from High Holborn.
- 5.12 The image of the Sainsburys Store is noted, and it can be seen that there are a large number of people walking and waiting to cross the road.
- 5.13 The Appellant does not assert that the proposed location is a “quiet backwater” and, once again, the Applicant’s incorrect paraphrasing of the Appellant’s appeal is unhelpful. However, the Appellant does assert that the proposed premises are in a location which is materially different from the existing premises. That is objectively clear from the information provided in the Appellant’s letter of appeal, including information about local tube station use, the google streetview images and the planning land use map.
- 5.14 In relation to step free tube access, the nearest tube station to the proposed premises (Russell Square) is not step free so the relevance of this is not understood.
- 5.15 The google street-view images were used to show the proposed location in the context of its wider general area to assist NHS Resolution. The images provided by the Applicant do not assist the Applicant because they simply underline the very real difference in character between the two locations. A couple of take-away coffee chains (Costa and Caffè Nero) and a couple of sandwich/fast food outlets are in no way similar to the retail offering on High Holborn.
- 5.16 In relation to commuters using Holborn tube station, the point being made is that those who commute will pass the Superdrug store as part of every commute journey; they will not pass the proposed location and are unlikely to even know it is there. Whilst not wishing to give evidence, by way of example the author of this letter worked for many years in this area of Central London. Whilst he passed the Superdrug store dozens (and probably hundreds) of times, he never once walked up Southampton Row. It is accepted and appreciated that the experience of one individual does not amount to a “patient group”, but it is asserted that the proposed and existing premises are in materially different locations. This represents a mental barrier, because those accustomed to using High Holborn for whatever reason are much less likely to also be accustomed to using Southampton Row because they would have no reason to.
- 5.17 It is denied that those using Holborn tube station is a “narrow” patient group. NHS Resolution only has to have regard to the tube station figures to realise that this is likely to be a significant patient group for Superdrug. Of course, the Applicant provides no real information about Superdrug’s patient groups because it does not have access to this information. The Applicant is therefore unable to explain:
- 5.17.1 Where the pharmacy’s patients come from before visiting Superdrug;
 - 5.17.2 Where they are going to after visiting Superdrug;
 - 5.17.3 How they have travelled to the Superdrug store (for example, have they travelled by tube using Holborn tube station);
 - 5.17.4 Why they have chosen to use Superdrug to access a pharmacy service;
 - 5.17.5 Which service they are accessing;
 - 5.17.6 Whether they would choose to use the pharmacy were it to relocate to Southampton Row and, if not, why not.
- 5.18 In this absence of this information, it is very difficult for NHS Resolution to properly assess this application and NHS Resolution might simply conclude that it has too little information to be able to be satisfied that the relevant regulatory test would be met.

- 5.19 In relation to those using the shops and services on High Holborn, this is not an “incredibly narrow defined patient group”. It is commonplace where a pharmacy is located within a “high street” retail area to consider that patients may access the pharmacy whilst using other shops and services in that “high street” retail area. Of course, again, NHS Resolution is in difficulties because the Applicant simply does not have access to this information.
- 5.20 Whilst, physically, at least some of the pharmacy’s patient groups may be able to get to the proposed location, the fact is that they are unlikely to chose to do so because of the mental barriers that exist.
- 5.21 In relation to the NMS service, those patients are likely to access the service after a visit to their GP. The Appellant’s letter to the ICB explains that, for many of those patients, the proposed location is much further away from their GP surgery compared to the existing location.
- 5.22 Regarding record-keeping for non-dispensing essential services, it is accepted that records may only be kept where there is something clinically significant to record.
- 5.23 However, NHS Resolution might expect an Applicant who is seeking to relocate its pharmacy to have at least some information about patients who access such services.
- 5.24 The Applicant appears to have no information which is clearly going to inhibit NHS Resolution’s ability to apply the appropriate legal test to this application.
- 5.25 The Appellant will not repeat the comments already made regarding the “busyness” of the two locations.
- 5.26 It is correct that there is a Boots Pharmacy near to the Superdrug store. Of course, despite this fact, patients are still choosing to access the Superdrug pharmacy. NHS Resolution might wonder why patients choose to do so, but the Applicant appears to have no information to assist NHS Resolution with this question.

ICB

- 5.27 The ICB states that the proposed premises are “still within the shopping area that patients would frequent”. There does not appear to be any evidence provided to the ICB to have supported this finding and it is denied by the Appellant.
- 5.28 In relation to the Post Office, it is correct that there is a Post Office near to the proposed premises. However, there is also a (much larger) main Post Office on High Holborn located approximately 300m from the Superdrug store.
- 5.29 The ICB states that the proposed premises “is an area where patients and others that use the area frequently travel around”. Again, there does not appear to be any evidence provided to support this finding of fact and it is denied by the Appellant.
- 5.30 In relation to Superdrug keeping the premises open, since it will no longer be permitted to provide NHS pharmaceutical services, the availability of over-the-counter products from the continuing store is irrelevant to the determination of this application.
- 5.31 In its concluding statement, again the ICB incorrectly states the relevant regulatory test, referring to “patients” generally rather than “patient groups”.

Boots UK Ltd

- 5.32 The Appellant has no comments to make on the contents of this letter.
- 5.33 For the reasons given above and those given in the Appellants letter of appeal, the Appellant invites NHS Resolution to uphold this appeal and to refuse the application.

Consideration

- 6.1 The Pharmacy Appeals Committee (“Committee”) appointed by NHS Resolution, had before it the papers considered by NHS North Central London ICB.
- 6.2 It also had before it the responses to NHS Resolution’s own statutory consultations.
- 6.3 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.
- 6.4 The Committee noted the Applicant’s comment by way of background to its application: “The Applicant has recently reached agreement to acquire a pharmacy which is located at 232 High Holborn and is owned by Superdrug Stores PLC a requirement of the sale that the buyer finds alternative premises for the ‘NHS contact’ [sic] as Superdrug wish to retain the existing premises on a non-contract basis.”
- 6.5 The Committee noted the Appellant’s comment that the ICB misapplied the legal test which applies to the determination of this application. In particular, the ICB determined that “the majority of patients would not find this new site significantly less accessible”, whereas the correct legal test required the ICB to determine whether any of the pharmacy’s patient groups would find the proposed premises significantly less accessible. The Committee takes no view of the ICB’s choice of wording and was mindful that it would be considering the Application afresh.
- 6.6 The Committee first considered Regulation 31 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 which states:
- (1) A routine or excepted application, other than a consolidation application, must be refused where paragraph (2) applies.*
- (2) This paragraph applies where -*
- (a) a person on the pharmaceutical list (which may or may not be the applicant) is providing or has undertaken to provide pharmaceutical services (“the existing services”) from -*
- (i) the premises to which the application relates, or*
- (ii) adjacent premises; and*
- (b) the NHSCB is satisfied that it is reasonable to treat the services that the applicant proposes to provide as part of the same service as the existing services (and so the premises to which the application relates and the existing listed chemist premises should be treated as the same site).*
- 6.7 The Committee noted that in response to Part 6 of the application form (reference to Regulation 31) the Applicant had stated: “*There are no other pharmacies in the same or adjacent premises.*” The Committee also noted the ICB’s decision letter which states: “*The proposed pharmacy is not on the same site or adjacent to any other pharmacy, therefore this regulation is not engaged.*” The Committee with no information to indicate otherwise, and having noted that the above statements had not been disputed on appeal, was not required to refuse the application under the provisions of Regulation 31.
- 6.8 The Committee noted the following regulation in respect of Regulation 26(2) (Change of ownership and no significant change relocation of premises applications).

Regulation 26(2)

Section 129(2A) of the 2006 Act does not apply to an application from a person who is not included in a pharmaceutical list for the area of a HWB (HWB1) for inclusion in that list, or from a person included in a pharmaceutical list for inclusion in that list also in respect of other premises than those already listed in relation to that person, if -

- (a) the applicant (X) is undertaking to provide the pharmaceutical services that another person (Y) -
 - (i) is providing at listed chemist premises ("Y's premises"), whether in the area of HWB 1 or a neighbouring HWB, or*
 - (ii) has provided at Y's premises but Y is no longer able to provide pharmaceutical services at those premises for reasons that the NHSCB accepts are good cause;**
- (b) X is proposing to carry on, in place of Y, the business in the course of which Y is providing, or has provided, pharmaceutical services at Y's premises;*
- (c) X is undertaking to provide the same pharmaceutical services as Y is providing or has provided at Y's premises, but at different premises ("X's premises");*
- (d) had Y applied to move to X's premises, that application would have been granted under regulation 24; and*
- (e) in a case where pharmaceutical services-
 - (i) are being provided at Y's premises, the provision of pharmaceutical services will not be interrupted (except for such period as the NHSCB may for good cause allow) by the move of the business from Y's premises to X's premises, or*
 - (ii) are not being provided at Y's premises, the provision of pharmaceutical services will commence at X's premises within the period that the NHSCB considers is an acceptable period for the interruption of the provision of pharmaceutical services by the business that X is taking over.**

Regulation 26(3)

An application pursuant to paragraph (1) must be refused if it relates to distance selling premises, unless the application, if made pursuant to regulation 25(1), would not be refused pursuant to regulation 25(2).

Regulation 26(4)

An application pursuant to paragraph (2) must be refused if the existing pharmacy premises from which the applicant is seeking to relocate are distance selling premises, unless the premises to which the applicant is seeking to relocate are also distance selling premises (and this is in addition to the requirement that arises by virtue of paragraph (2)(d) that the application if made to regulation 25(1), would not be refused pursuant to regulation 25(2)).

6.9 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:

6.9.1 confirm the Commissioner's decision;

6.9.2 quash the Commissioner's decision and redetermine the application;

- 6.9.3 if it considers that there should be a further notification to the parties to make representations, quash the Commissioner's decision and remit the matter to the Commissioner.
- 6.10 The Committee considered the position in relation to each criterion.
- 6.11 The Committee noted that the Regulations are specific in the criteria an applicant must satisfy if its proposed change of ownership and no significant change relocation of premises is to succeed.
- 6.12 The Committee noted that the existing pharmacy premises are not distance selling premises and therefore was of the view that the application of Regulation 26(3) and (4) did not require it to refuse the application.
- 6.13 The Committee considered the position in relation to each paragraph noting that there was no dispute that paragraphs 26(2)(a), (b), (c) and (e) were satisfied and applied to the circumstances of this application.
- 6.14 The focus of the appeal was on paragraph 26(2)(d) and whether, if the Applicant had applied to move to the new premises, that application would have been granted pursuant to Regulation 24.
- 6.15 The Committee went on to consider Regulation 26(2)(d) as part of its consideration of Regulation 24.
- 6.16 The Committee considered if the Applicant's proposal to move from the existing premises at Superdrug, 232 High Holborn, London WC1V 7DA should be granted under Regulation 24.
- 6.17 The Committee had regard to Regulation 24 which requires consideration of the following five criteria:
- (a) *for the patient groups that are accustomed to accessing pharmaceutical services at the existing premises, the location of the new premises is not significantly less accessible;*
 - (b) *in the opinion of the NHSCB, granting the application would not result in a significant change to the arrangements that are in place for the provision of local pharmaceutical services or of pharmaceutical services other than those provided by a person on a dispensing doctor list—*
 - (i) *in any part of the area of HWB1, or*
 - (ii) *in a controlled locality of a neighbouring HWB, where that controlled locality is within 1.6 kilometres of the premises to which the applicant is seeking to relocate;*
 - (c) *the NHSCB is not of the opinion that granting the application would cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area of HWB1;*
 - (d) *the services the applicant undertakes to provide at the new premises are the same as the services the applicant has been providing at the existing premises (whether or not, in the case of enhanced services, the NHSCB chooses to commission them); and*
 - (e) *the provision of pharmaceutical services will not be interrupted (except for such period as the NHSCB may for good cause allow).*

- 6.18 In relation to criterion (a) of Regulation 24 above, the Committee considered the map submitted by the ICB, which clearly shows the locations of the existing pharmacies as well as the proposed site and medical practices within the area.
- 6.19 The Committee considered the information before it with regard to the patient groups who are accustomed to accessing pharmaceutical services at the existing premises. The Committee considers that it must seek to identify the patient groups who would potentially be affected by the relocation based upon the information provided by the parties. This information is most commonly going to be provided by the Applicant but others may also be able to contribute to the information on which the Committee will proceed to determination.
- 6.20 In this case, the Applicant has identified the patient groups as:
- 6.20.1 Patients who use the existing pharmacy location because it is close to home;
 - 6.20.2 Patients shopping in Holborn or using other nearby amenities;
 - 6.20.3 Patients registered with local surgeries;
 - 6.20.4 Patients who share protected characteristics.
- 6.21 On appeal, the Appellant suggested three additional patient groups:
- 6.21.1 Commuters who use Holborn tube station;
 - 6.21.2 Those using the shops and other services on High Holborn;
 - 6.21.3 Patients accessing non-dispensing NHS services.
- 6.22 The Committee considered the Appellant's additional patient groups in turn:
- Commuters who use Holborn tube station
- 6.23 The Committee noted the Appellant's comment that it is highly relevant to the determination of this application that the existing premises are located adjacent to Holborn tube station. In response, the Applicant stated that patients will travel to the Superdrug store at present for a variety of reasons e.g. they may be working or shopping in the area or may be tourists who are using the hotels or other amenities nearby. These people may travel by tube, bus, taxi, car or on foot to get there.
- 6.24 The Committee considered that whilst their principal activity is commuting, once they arrive at that destination and subsequently seek to obtain services at the existing premises, they become 'Patients shopping in Holborn or using other nearby facilities'.
- 6.25 Therefore the Committee did not accept the validity of the Appellant's patient group.
- Those using the shops and other services on High Holborn
- 6.26 The Committee noted the Appellant's comment that High Holborn is a retail cluster/town centre area. As such it is appropriate to define a patient group by reference, specifically, to those patients who are shopping or accessing other facilities on High Holborn and who use the Superdrug pharmacy due to its proximity to those shops and other services. The Committee noted the Applicant's reply that the Appellant's assertion relies on the belief that High Holborn is a discrete shopping destination. The Applicant argues that High Holborn is not such an area.
- 6.27 The Committee was not persuaded by the Appellant's inference that High Holborn is a discrete area for shops and services. The Committee was of the view that the Appellant's

proposed patient group were likely to already be included in the Applicant's patient group 'Patients shopping in Holborn or using other nearby amenities'.

- 6.28 Therefore the Committee did not accept the validity of the Appellant's patient group.

Patients accessing non-dispensing NHS services

- 6.29 According to the Appellant, the Applicant has made no reference to other essential pharmaceutical services (including, for example, the return of unwanted medicines, support for self-care, signposting and health campaigns).

- 6.30 The Committee was of the view that the Appellant's proposed patient group was likely to encompass essentially the same persons in one of the Applicant's -defined patient groups.

- 6.31 Therefore the Committee did not accept the validity of the Appellant's patient group.

- 6.32 The Committee concludes that the patient groups who are accustomed to accessing pharmaceutical services from the existing premises are those set-out below namely those defined by the Applicant.

- 6.33 NHS Resolution received no information which indicates that special consideration needs to be given to any group based on a 'protected characteristic'. However, the Committee was mindful of the need to consider any groups with protected characteristics for the purposes of the Equality Act 2010 and the Committee is therefore required to consider the elimination of discrimination and advancement of equality between patient groups and persons who do not fall within these groups.

Patients who use the existing pharmacy location because it is close to home

- 6.34 The Committee noted there was much disagreement between the parties as to the London Boroughs where the existing and proposed premises are located. The Appellant argued that the existing premises are located within the Holborn and Covent Garden ward, whereas the proposed premises are in the Bloomsbury ward. The Committee was of the view that it is not the administrative area in which the existing and proposed pharmacies are located, which is the key consideration. Rather, whether the Applicant's proposed premises is significantly less accessible for those persons accustomed to accessing it at its existing premises.

- 6.35 The Committee noted the Appellant's comment that the existing premises are located in a highly visible location on High Holborn. The existing premises are located adjacent to Holborn tube station and adjacent to, or within 100 metres of, national retail chains, banks and other shops and services. This claimed the Appellant, is in stark contrast to the proposed premises, which are in a very different location. The Appellant also claimed that this change in the nature and character of the two areas represents a mental barrier in the sense that those who are using High Holborn are much less likely to find themselves in the vicinity of the proposed premises. According to the Applicant, the proposed location is not the 'quiet backwater' portrayed by the Appellant. There is a wide variety of retail, food and other venues spread throughout the area, all of which are accessed by those people who live, work, visit or shop in the area when going about their daily lives. The Committee, having noted the photographs provided by the parties, concluded that the locations of the existing and proposed premises are not markedly different from one another. The Committee thought it unlikely that patients would be dissuaded from accessing the proposed pharmacy for any reasons related to the nature of the area.

- 6.36 The Committee went on to further consider ease of access of the Applicant's patient group to the proposed site.

- 6.37 The Committee noted the Applicant's comment that most of the buildings nearby the existing premises are four or five storey properties and many have offices or apartments (Committee's emphasis) above the commercial premises on the ground floor.

- 6.38 The Committee considered that the Applicant's information did not provide specific locations to show where these patients commence the journey to the proposed site. However, the information including the Appellant's aerial view showing both the existing and proposed sites, was enough to suggest they reside within a reasonably compact inner city area. This view also accorded with the Applicant's comment that very few people actually live in close proximity to the existing premises, they live in apartments around the wider area including near the proposed premises and the areas in-between. The Committee expects that in the event that the application is granted, some patients will commence their journey from closer to the Applicant's proposed premises, others from further away, and the remainder equidistant from the existing and proposed premises.
- 6.39 The Committee was able to make an assessment of whether the proposed site is significantly less accessible for patients taking into account the distance and nature of the terrain between the existing premises (which patients are already accessing) and the proposed premises. The Committee noted the Applicant's comment that the proposed premises is approximately 400m to 600m away from the existing premises depending on the route taken. Further, the topography of the area is flat, there are no barriers to movement for pedestrians by way of any hills or inclines. The Committee noted that there are dropped kerbs, wide pavements and street lighting throughout the area. All major roads are said to benefit from light-controlled pedestrian crossings. Overall, the Committee was satisfied that patients who are accessing the existing pharmacy on foot would not find the proposed site significantly less accessible. The Committee next considered alternative means of travelling to the proposed for those unable or unwilling to make the journey on foot.
- 6.40 The Committee accepted the ICB's comment that as this is Central London, patients do not typically use a car to travel due to the lack of parking. The Committee considered that the roads are also likely to be busy, making use of a car to travel around even less viable. The Committee had though, no reason to believe that for those patients who do decide to access the proposed premises by car or taxi, then travelling to, or parking near to the proposed pharmacy premises is not anymore difficult than at present, thus rendering the proposed premises significantly less accessible.
- 6.41 The Committee noted the Applicant's comment that there are several bus routes which pass near to the existing premises, and the nearest stop being approximately 70m away. The Applicant claimed that the journey by bus to the proposed premises from the existing premises takes five minutes (depending on traffic conditions). Further, according to the Applicant, many patients will simply alight the bus a couple of stops earlier or later depending on their direction of travel. The Appellant commented that the existing premises are served by 3 bus routes which do not pass the proposed premises (bus routes 1, 243 and 521). The Appellant claimed that for patients using those buses to travel to this area, they would have to change buses (the Applicant conceded that this may be the case for a few) in order to travel to the proposed location. Having noted the comments made by the parties regarding bus services in the area, the Committee was satisfied that there are sufficient services and that changing services does not automatically make the proposed premises significantly less accessible. The comments did not indicate that for those using the bus, accessing the proposed site is so much more difficult as to render the Applicant's proposed site significantly less accessible.
- 6.42 The Committee noted the Applicant's claim that its proposed premises are equidistant from Holborn and Russell Square tube stations. The nearest tube station according to the Appellant, is Russell Square served by the Piccadilly line. The Appellant argued that those patients who access the existing premises using the tube are most likely to alight at Holborn, not least because it is only 30m away from the Applicant's existing premises. The Committee noted Holborn tube station is served by two London Underground lines – the Piccadilly Line and the Central Line. The Committee was of the view that patients changing services does not automatically make the proposed premises significantly less accessible. Further, if they continued to use the tube and alight at Holborn they would not find the proposed premises significantly less accessible taking into account its view regarding accessibility in particular on foot, by bus or by car/taxi.

Patients shopping in Holborn or using other nearby amenities

- 6.43 The Committee has already considered the nature of the area in which the Applicant's existing and proposed premises are located. This included acceptance of the Applicant's assertion that the existing premises is located within a typical central London shopping area with supporting businesses in the immediate locality largely comprising restaurants and coffee shops in addition to a handful of national and independent retail businesses centred around Holborn tube station. In the Committee's view, there appeared to be little material difference in character between the locations of the Applicant's existing and proposed premises.
- 6.44 For the reasons given above, the Committee has already concluded that patients would not find the proposed site significantly less accessible taking into account its view regarding accessibility in particular on foot, by bus or by car/taxi.

Patients registered with local surgeries

- 6.45 The Committee noted the Applicant's comment that there is very little demand for NHS pharmaceutical services at the existing premises. Dispensing levels are particularly low. The existing premises has a very limited dispensing business. The pharmacy dispensed an average of 217 items per month for the 3 months to July 2022 (source: Pharmdata). According to the Applicant, this is approximately 3% of the item numbers dispensed by the average pharmacy in England.
- 6.46 The Committee noted the Applicant's further comment that the four nearest GP surgeries to the existing premises (Covent Garden, St Phillips, Museum Practice, Holborn Medical Practice), are the source for the greatest number of items dispensed. No other surgery accounts for more than 5% of the items dispensed.
- 6.47 The Committee noted the Appellant's argument that it is highly relevant to note that most of the prescriptions which originate from "local surgeries" are from surgeries which are located to the south of the existing premises (Covent Garden and St Phillips). The distance from those surgeries to the existing premises is 550 metres and 700 metres respectively. In contrast, the distance from those surgeries to the proposed premises is 950 metres and 1.1km respectively.
- 6.48 The Committee has already concluded that patients would not find the proposed premises significantly less accessible taking into account its view regarding accessibility in particular on foot, by bus or by car/taxi.

Patients who share protected characteristics

- 6.49 The Committee noted the Applicant's comment that given the proximity of the two locations, the level terrain, the wide pavements, tactile crossings for sight impaired patients and controlled crossings the area is easy to move around, even for those in wheelchairs or using mobility scooters.
- 6.50 The Committee noted the Applicant's comment that Holborn tube station is not considered an accessible station for disabled users so patients with reduced mobility do not access the existing premises via the underground. Those whose mobility difficulties are more significant do not visit the existing premises 'on foot' anyway as they are more likely to travel by taxi or bus.
- 6.51 The Committee has already concluded that patients would not find the proposed premises significantly less accessible taking into account its view regarding accessibility in particular on foot, by bus or by taxi.

Overall assessment

6.52 In the circumstances, the Committee was satisfied that, for patient groups who are accustomed to accessing the present site, the proposed site is not significantly less accessible.

6.53 The Committee was therefore of the view that condition (a) is met.

Regulation 24(1)(b)

6.54 The Appellant claimed that the Applicant is proposing to relocate to premises on Southampton Row where there are already two independent pharmacies. According to the Appellant, the proposed premises are within 50m of both of those pharmacies. There would also be a gap left at the location of the existing premises. As a result, the granting of this application would result in a significant change in arrangements for the provision of pharmaceutical services in the HWB's area. The Committee noted the Applicant had replied that there would still be pharmaceutical services provided near to its existing premises.

6.55 The Committee noted the decision of the ICB in respect of condition (b), that the granting of this application would not lead to significant changes to the current or future provision of pharmaceutical services in the area.

6.56 On the information provided the Committee was of the opinion that the granting of the application would not result in a significant change to the arrangements in place for the provision of local pharmaceutical services or of pharmaceutical services in any part of the HWB. The Committee concluded that condition (b) is met.

Regulation 24(1)(c)

6.57 The Committee noted the Applicant's comment that it has been unable to find any plans relating to future pharmaceutical services in the area, whether belonging to the local authority, NHS England or any other commissioner of pharmaceutical services, that would be affected in any way by granting this application.

6.58 The Committee noted the decision of the ICB in respect of condition (c) that the granting of the relocation would not lead to significant detriment to the current or future provision of pharmaceutical services in the area.

6.59 On the information provided the Committee was of the opinion that the granting of the application would not cause a significant detriment to the proper planning in respect of the provision of pharmaceutical services in the area of HWB1 and therefore concluded that condition (c) is met.

Regulation 24(1)(d)

6.60 The Committee noted the Applicant's comment that in response to part 7 of the application form, the Applicant confirmed that the services it is undertaking to provide are the same as those that the current owner is providing. The Applicant also confirmed that there will be no interruption to service provision. On the information provided, the Committee determined that condition (d) is met.

Regulation 24(1)(e)

6.61 In relation to condition (e), the Committee noted the Applicant had confirmed in its application, and subsequent representations, that there will be no interruption to service provision. On the information provided the Committee determined that condition (e) is met.

7 Decision

7.1 The Committee confirms the decision of the ICB.

- 7.2 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.
- 7.3 The Committee has determined that it should be granted on the following basis:
- 7.3.1 the Applicant is proposing to continue in place of the existing contractor, the business in the course of which that contractor is providing pharmaceutical services but at different premises.
 - 7.3.2 it is satisfied that the Applicant can provide the same pharmaceutical services as those that the existing contractor is providing;
 - 7.3.3 it was satisfied in accordance with 26(2)(d) that if the Applicant had applied to move to 77 Southampton Row, London WC1B 4ET that application would have been granted under Regulation 24(1).
 - 7.3.4 that the provision of pharmaceutical services will not be interrupted (except for such period as the ICB may for good cause allow).
- 7.4 The application is granted.

Case Manager
Primary Care Appeals