

10 April 2024

REF: 26142

APPEAL AGAINST LINCOLNSHIRE ICB DECISION TO REFUSE AN APPLICATION FOR PREMISES APPROVAL FOR BEECHFIELD WEST MEDICAL CENTRE, 210 PENNYGATE, SPALDING, LINCS, PE11 1LT UNDER REGULATION 51

8th Floor
10 South Colonnade
Canary Wharf
London
E14 4PU

Tel: 0203 928 2000
Email: nhsr.appeals@nhs.net

1 Outcome

- 1.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of the Commissioner and remits the matter to it for redetermination based on the correct premises.
- 1.2 The Committee was mindful that in remitting the matter the Applicant would be further inconvenienced by the delay and it hoped that the Commissioner would expedite its consideration of the application given the avoidable errors which have already occurred.

A copy of this decision is being sent to:

Beechfield Medical Centre
PCSE, on behalf of Lincolnshire ICB

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1 The Application

By application dated 16 June 2023, Beechfield West Medical Centre (the Applicant) applied to Lincolnshire ICB ("the Commissioner") for premises approval for Beechfield West Medical Centre, 210 Pennygate, Spalding, Lincs, PE11 1LT under Regulation 51. The application stated:

- 1.1 "Intention to use site for dispensing, assembling and collection of medication dosset boxes (NOMAD trays), including a prescription collection point of other medications dispensed at the main site (PE11 1UN) from 20th July 2023."
- 1.2 In response to "Please confirm if these premises are already included in the relevant dispensing doctor list in relation to a different area for which you have outline or historic rights", the Applicant ticked "Yes".
- 1.3 In response to "I have included with this application copies of the requests from patients who live within the area described above to be dispensed to", the Applicant ticked "No".

2 The Decision

The Commissioner considered and decided to refuse the application. The decision letter dated 29 December 2023 states:

- 2.1 "Lincolnshire ICB has considered the above application and I am writing to confirm that it has been refused. Please see the enclosed report for full reasoning."

Decision report

- 2.2 "Online consent [sic] and premises approval was requested by Beechfield Medical Centre, Beechfield Gardens, Spalding, Lincolnshire, PE11 1UN under Regulation 51 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulation 2013 as amended.
- 2.3 The application stated that the intention for the proposed premises was to use the site for dispensing, assembling and collection of medication dosset boxes, including a prescription collection point of other medications dispensed at the main site (PE11 1LT).
- 2.4 The application was reviewed by the East Midlands Pharmaceutical Services Regulations Committee on 21 December 2023, the Committee determined that the application must be refused in respect of the regulations detailed below.
- 2.5 **Regulation 51(5) and 51(6b)**
- 2.6 (5) The NHSCB must refuse an application under paragraph (1) (but not regulation 54, 55 or 58) for premises approval if the premises in respect of which approval is sought are within 1.6 kilometres of pharmacy premises that are not distance selling premises.

2.7 (6) The NHSCB must refuse an application for outline consent to the extent that any part of the area specified in the application—

(b) is within 1.6 kilometres of pharmacy premises that are not distance selling premises.

2.8 *The committee determined to refuse the application under Regulation 51(5) (6b) as the premises in respect of which approval is sought are within 1.6 kilometres of pharmacy premises that are not distance selling premises.*

2.9 *There are 2 pharmacies within the 1.6km of the proposed premises. The table below provides confirmation of this from NHS UK and Google Maps*

Community Pharmacy Information (1.6km is the equivalent to 1 mile)		
Pharmacy Name and Address	Distance from proposed premises as per NHS UK	Distance from proposed premises as per Google Maps
Superdrug Pharmacy 29 Hall Place Spalding Lincolnshire PE11 1SG	0.3 miles Pharmacies near PE11 1UN - NHS (www.nhs.uk)	1.5km PE11 1UN, Beechfield Gardens, Spalding to Hall Place, Spalding PE11 1SG - Google Maps
Boots Pharmacy 11-14 Hall Place, Spalding Lincolnshire, PE11 1SA	0.3 miles Pharmacies near PE11 1UN - NHS (www.nhs.uk)	1.5km PE11 1UN, Beechfield Gardens, Spalding to Hall Pl, Spalding PE11 1SA - Google Maps"

3 The Appeal

In a letter dated 12 January 2024 addressed to NHS Resolution, the Applicant appealed against the Commissioner's decision. The grounds of appeal are:

3.1 "We write to appeal the recent refusal of the above application to use facilities at our branch site (Beechfield West, PE11 1LT) for the assembly of medication dossette boxes.

3.2 The application was made in June 2023, on the grounds that no additional dispensary activity would be generated by the practice as this activity is currently conducted at our main site (Beechfield Gardens, PE11 1UN). The purpose of the application was to move this function from one site to the other in order to create more space within the main site to create space to expand our call handling capacity, reducing telephone wait times and increasing access to our patients.

3.3 We would like to appeal on the following grounds:

3.3.1 Errors within the report

3.3.2 Detrimental consequences to capacity

3.4 **Appeal 1**

3.5 The report issued by the contracting team details the incorrect address for the site in question. The application was submitted for use of space at the branch site (Beechfield West, 210 Pennygate, Spalding, PE11 1LT), however the report names the premises

as our main site (Beechfield Gardens, Spalding, PE11 1UN), where we already have a dispensary.

- 3.6 Reason for refusal states that the site is within 1.6km of pharmacy premises that are not distance selling premises under Regulation 51 (5) (6b) however this has been measured on the incorrect location. The correct location (PE11 1LT) is 1.7km from the nearest pharmacy, and 2.5km from the main site (PE11 1UN), therefore not infringing on the stated regulation.

3.7 **Appeal 2**

- 3.8 The impact of this application being refused puts significant obstacles in the way of practice development in terms of moving towards a modern practice model. The purpose of the acquisition of the branch site in 2022 was to create much needed space for expansion and development of new and existing processes. The application to move our weekly medication box assembly to the branch site was submitted with a view to expanding our care navigation team who currently handle all of our calls and are spread around the practice. Our aim was to use the current space utilised for the making up of dosette boxes at the main site to amalgamate the care navigation team and incorporate a duty clinician to this team to enable smooth signposting and better patient outcomes. The room at the branch site has been specifically designed for the purpose of dosette box creation and has been approved by the ICB and local Infection Prevention and Control team to be suitable for such. During these visits, alterations were required to bring the area to standard for such use and these were made at significant financial cost to the practice.

- 3.9 Our main site already has a well established dispensary and is fully compliant with all regulations for its activity. The medication for the use in dosette boxes would be transported securely by our in-house medication delivery driver from the main site to the branch for the sole purpose of use within patient specific dosette boxes. No additional dispensing activity will take place at the branch site, and no current dispensing boundaries will be affected. We have no plans to handing out any dispensed medication to patients on site. This was a potential option for future however not something we now intend to do. All dosette boxes are delivered direct to patients homes via our in-house delivery service and this will continue should the application be granted to create these boxes at the branch site.

- 3.10 We are grateful for your [sic] consideration of this appeal and welcome any questions or requests for additional information should this be required. We are also happy to facilitate visits to both sites and demonstrations of the services and plans in person."

4 **Summary of Representations**

No representations were received by NHS Resolution in response to the appeal.

5 **Consideration**

- 5.1 The Pharmacy Appeals Committee ("Committee") appointed by NHS Resolution, had before it the appeal from the Applicant and the papers considered by NHS England. There were no responses to NHS Resolution's own statutory consultations. On the basis of this information, the Committee considered it was not necessary to hold an oral hearing.
- 5.2 The Committee noted the application had been made in accordance with Regulation 51(1) (Outline consent and premises approval: applications by doctors) of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations").
- 5.3 Regulation 51 reads:

- "(1) *A person or partnership with a patient list, or a person who performs services on behalf of a provider of primary medical services, who wishes to be granted the right to provide pharmaceutical services to patients on their own list or the provider's list (if the patients apply under regulation 48(1) on the basis of Condition 2 or 3) may apply in writing to the NHSCB for—*
- (a) consent ("outline consent") to the provision of pharmaceutical services to patients who request those services and who reside in the area specified in the application;*
 - (b) approval of any medical practice premises from which D wishes to dispense ("premises approval").*
- (2) Where D has outline consent that has taken effect and wishes to apply for premises approval in relation to—*
- (a) additional medical practice premises from which to provide pharmaceutical services to patients who reside in the area for which D has an outline consent; or*
 - (b) medical practice premises from which D wishes to relocate to provide pharmaceutical services to patients who reside in the area for which D has an outline consent, but the move to new medical practice premises is not a relocation of the type provided for in regulation 55(2),*
- the premises approval application need not have a related outline consent application, but in all other cases a premises approval application under paragraph (1)(b) must have a related outline consent application.*
- (3) An application for premises approval must include details of the address of the premises and whether those premises are already listed in relation to a different area.*
- (4) Except in so far as these Regulations provide to the contrary, the NHSCB is to determine applications for outline consent and premises approval in such manner (including with regard to procedures) as it sees fit.*
- (5) The NHSCB must refuse an application under paragraph (1) (but not regulation 54, 55 or 58) for premises approval if the premises in respect of which approval is sought are within 1.6 kilometres of pharmacy premises that are not distance selling premises.*
- (6) The NHSCB must refuse an application for outline consent to the extent that any part of the area specified in the application—*
- (a) is not, or is not part of, a controlled locality; or*
 - (b) is within 1.6 kilometres of pharmacy premises that are not distance selling premises.*
- (7) Where the NHSCB is minded to refuse an application for outline consent pursuant to paragraph (6)(a), it may defer that decision in order to make a determination under regulation 36(2).*
- (8) Subject to paragraph (9), the NHSCB must refuse an application under paragraph (1) (but not regulation 54, 55 or 58) if granting it would, in its opinion, prejudice the proper provision of relevant NHS services in the area of—*

- (a) the relevant HWB; or
 - (b) a neighbouring HWB of the relevant HWB.
- (9) *If the NHSCB determines that an application for outline consent would, if it had been made for a smaller area within the area specified in the application, not prejudice the proper provision of relevant NHS services in the area of—*
- (a) the relevant HWB; or
 - (b) a neighbouring HWB of the relevant HWB,
- it may grant the application in respect of that smaller area.*
- (10) *The NHSCB must refuse an application (A1) under paragraph (1)—*
- (a) *for outline consent to the extent that any part of the area specified in A1 is the same as the area or any part of the area specified in an application for outline consent which was refused within the 5 year period starting on the date on which the proceedings relating to the refusal reached their final outcome and ending on the date on which A1 is made; or*
 - (b) *for premises approval (but not under regulation 54, 55 or 58) if the premises specified in A1 were specified in an application for premises approval, or relate to an application for outline consent where any part of the area specified in that application is the same as the area or any part of the area specified in an earlier application for outline consent, which was refused—*
 - (i) *under this regulation,*
 - (ii) *under regulation 51 of the 2012 Regulations (outline consent and premises approval: applications by doctors), or*
 - (iii) *by virtue of regulation 18(2) of the 2005 Regulations (refusal: outline consent and premises approval where patients are in a controlled locality),*

within the 5 year period starting on the date on which the proceedings relating to the refusal reached their final outcome and ending on the date on which A1 is made,

unless the NHSCB is satisfied that there has been a substantial and relevant change of circumstances affecting the controlled locality to which the application relates since those proceedings reached their final outcome."

Person/partnership with patient list/ person performing on behalf of a provider

5.4 The Committee noted the Applicant is a partnership with a patient list.

Outline Consent

5.5 The Committee noted that the Applicant had indicated on the application form that outline consent has already taken effect in relation to these premises.

Premises Approval

- 5.6 The premises relevant to the application are those at Beechfield West Medical Centre, 210 Pennygate, Spalding, Lincs, PE11 1LT. They are not currently listed in relation to another area of outline consent as per Regulation 51(3).

Proximity to 'non-distance selling' pharmacy premises

- 5.7 The Committee noted that the Commissioner had refused the application on the basis that there are two pharmacies within 1.6km of the proposed premises.
- 5.8 On appeal, the Applicant states that the decision was flawed as the Commissioner named its premises at Beechfield Gardens, Spalding PE11 1UN (where it already has a dispensary) as the proposed premises, rather than the premises named in the application at Beechfield West Medical Centre, PE11 1LT.
- 5.9 Having regard to the decision letter, the Committee noted that it refers to the premises at Beechfield Gardens, PE11 1UN and the table shows the distances from those premises to pharmacies within 1.6km. The Committee noted the Applicant's comment that the correct premises are 1.7km from the nearest pharmacy.
- 5.10 The Committee noted that the Commissioner had not responded to the appeal and as a consequence, had not disputed the Applicant's claim as set out at 5.9.

Previous applications for Premises Approval

- 5.11 The Committee was not informed that the premises specified in the application for premises approval had been refused approval within the last 5 years. As such it was not obliged to refuse this application pursuant to Regulation 51(10)(b).

Powers of the Committee

- 5.12 The Committee may:
- 5.12.1 confirm the decision of the Commissioner;
 - 5.12.2 quash the decision of the Commissioner and redetermine the application; or
 - 5.12.3 quash the decision of the Commissioner and remit the matter to it for it to redetermine the application, subject to such directions as it considers appropriate.
- 5.13 The Committee considered whether it was appropriate to quash the decision of the Commissioner and redetermine the application using the correct premises but concluded that this would result in it becoming the first stage decision maker.

6 Decision

- 6.1 Given the Commissioner had used the incorrect premises in considering the application, the Committee quashes the decision of the Commissioner and remits the matter to it for redetermination based on the correct premises.
- 6.2 The Committee was mindful that in remitting the matter the Applicant would be further inconvenienced by the delay and it hoped that the Commissioner would expedite its consideration of the application given the avoidable errors which have already occurred.