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

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

11 July 2024

REF: SHA/26192

APPEAL AGAINST BRISTOL, NORTH SOMERSET AND SOUTH GLOUCESTERSHIRE ICB DECISION TO GRANT AN APPLICATION BY EASTON DAY NIGHT HEALTHCARE LTD FOR A RELOCATION THAT DOES NOT RESULT IN A SIGNIFICANT CHANGE TO PHARMACEUTICAL SERVICES PROVISION UNDER REGULATION 24 FROM CONISTON MEDICAL PRACTICE, THE PARADE, PATCHWAY, BRISTOL, BS34 5TF TO UNITS 5 – 7, THE PARADE, PATCHWAY, BRISTOL, BS34 5LP

1 Outcome

1.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of the Commissioner and redetermines the application.

1.2 The Committee determined that the application should be granted.

A copy of this decision is being sent to:

Healthcare Plus Consulting Ltd on behalf of Easton Day Night Healthcare Ltd
Jhoots Pharmacy
PCSE on behalf of Bristol, North Somerset and South Gloucestershire ICB

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1 The Application

By application dated 1 December 2023, Easton Day Night Healthcare Ltd ("the Applicant") applied to Bristol, North Somerset and South Gloucestershire ICB ("the Commissioner") for a relocation that does not result in a significant change to pharmaceutical services provision under Regulation 24 from Coniston Medical Practice, The Parade, Patchway, Bristol, BS34 5TF to Units 5 – 7, The Parade, Patchway, Bristol, BS34 5LP. In support of the application it was stated:

1.1 In response to why the application should not be refused pursuant to Regulation 31 the applicant stated:

1.1.1 "N/A – there is no NHS Pharmacy contract operating from the new proposed site or any adjacent site.

1.1.2 See supporting information."

1.2 "Healthcare Plus Consulting Ltd is instructed by Easton Day Night Healthcare Ltd to submit this supporting information for the above application on their behalf.

Background

1.3 Easton Day Night Healthcare Ltd own & operate the Coniston Pharmacy in Coniston Medical Practice; dispensing c. 5500 items per month. The Health Centre location generates limited footfall from those not accessing services from within the Health Centre.

1.4 Easton Day Night Healthcare Ltd have agreed terms to relocate a short distance to the nearby Parade of Shops on Coniston Road.

1.5 The most practical route from the current to proposed site is a short walk across the free car park (located outside the medical centre); along wide, flat terrain and a well-lit path. There are no obvious barriers in the area preventing people from moving around the area, with no requirement to cross any roads. It should be noted that this car park serves the Medical Centre, the Current site, and the shopping parade where the proposed site is located.

1.6 Please see map [at Appendix A] for the location of the existing and the proposed sites.

Regulation 31

1.7 This application should not be refused pursuant to Regulation 31 for the following reasons.

1.8 Regulation 31 states [quoted in full]

1.9 For an application to be refused pursuant to Regulation 31, both 31(2)(a) and (b) must apply.

1.10 The proposed unit is not currently providing pharmaceutical services, and is not adjacent to any premises providing pharmaceutical services. Therefore, NHS England is not required to refuse the application under the provisions of Regulation 31.

Regulation 24

1.11 **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"

1.12 We note 'patient groups that are **accustomed to accessing** pharmaceutical services' and '**not significantly** less accessible' **emphasis added** [by Applicant].

1.13 The proposed premises are located within a short distance of the existing premises c. 0.1 miles distant (www.nhs.uk).

1.14 We define the Patient Groups that use the pharmacy as below:

1.14.1 Patients that utilise the free collection & delivery service

1.14.2 Patients that originate from local GP surgeries requiring access to Pharmaceutical Services

1.14.3 Patients that require access to Pharmaceutical Services other than after a visit to a GP surgery

1.14.4 Patients whose mobility is impaired

Patients that utilise the free collection & delivery service

1.15 We note that the pharmacy is a steady business (5,263 Rx items dispensed in Jun 23) with 94% of Rx sent to the pharmacy by EPS with a significant number (c20%) delivered to patients.

1.16 Therefore, the number of patients accessing the existing premises is minimal, and these patients will see no change in their provision of pharmaceutical services. These patients are **not accustomed** to accessing pharmaceutical services at the premises and therefore they would not find that the new premises less accessible. The delivery arrangements and the advice given to this patient group would remain exactly the same in the new location. [emphasis added by Applicant]

1.17 We can also confirm that those other essential services that can be carried out through the delivery service (such as the collection of unwanted medication) will continue to be provided at the new premises, as will services such as telephoning for public health, signposting or self-care advice.

Patients that originate from the Local GP surgeries in the area requiring access to Pharmaceutical Services

1.18 The pharmacy currently sources 91% of its scripts from the co-located surgery, Coniston Medical Practice. Thus, we should focus on any impact the relocation would have on these patients.

1.19 Patients will notice little difference in accessing pharmaceutical services with the new location being c. 100 metres away and effectively on the other side of the free car park. Given the short distance between the 2 sites, the **maximum additional journey** for a patient would be an additional 1-minute walk.

1.20 Of the few patients that do not originate from Coniston medical practice, the vast majority will not find pharmaceutical services significantly less accessible. The nearest surgery (aside from Coniston Medical Practice) is 1.7 miles away, so these patients are likely to fall into Patient Group 1 anyway.

1.21 For patients of the surgeries highlighted above that do not have their medicines delivered, the proposed site **cannot be deemed significantly less accessible** than the current site – being approximately 100 metres away, and accessible by foot, car, and public transport as highlighted below.

Access on Foot

1.22 For those who will be accessing on foot, and for clarity those patients who are accustomed to accessing the existing premises (the Regulations don't allow for an assessment of future patients only those accustomed to accessing the existing premises):

1.22.1 The distance is short at 100 metres.

1.22.2 The route from the existing to proposed location is directly across the shared car park on a well-lit, wide pathway with flat terrain and no barriers to movement.

1.23 The route on foot from the current site to the proposed site is approximately a 1-minute walk, and the route is easy to navigate, as shown on google map (see Appendix A).

By Car

1.24 For patients accessing the proposed premises having visited surgeries, will not find the proposed premises significantly less accessible. The journey by car between the 2 sites is the same, as both the current and proposed premises utilise the same car park. The car park has 12 hours free parking.

1.25 Therefore, for this patient group, the journey by car cannot be considered significantly less accessible.

By Public Transport

1.26 There will be no change for patients using Public Transport to access pharmaceutical services, as the proposed premises utilises the same bus stop as the current premises.

1.27 Please find a map (see Appendix A), with the bus stop that facilitates both sites circled in red. It can be noted that the bus stop is in fact closer to the proposed premises than to the current premises.

Patients that require access to Pharmaceutical Services other than after a visit to a GP surgery

1.28 The applicant has considered where this patient group may start their journey. The consideration is equivalent to those patients who are accessing pharmaceutical services with a prescription but not coming directly from the surgery, so the comments at Patient Group 2 should also be considered.

1.29 The patients could be arriving at the pharmacy from home, work or in connection with a visit to other services within the locality, however the pharmacy is currently located within a health centre which means members of the resident population who do not access Coniston Medical Practice, may not even be aware of the location of the pharmacy at its current site.

1.30 The proposed site is located on a busy shopping parade where patients would be able to easily access the pharmacy whilst using other services within the parade. Moreover, the short distance of the relocation means that journeys by foot, car, and public transport will be unaffected in practical terms.

1.31 For patients that access pharmaceutical services other than after a visit to a GP surgery are likely to find that the proposed premises is not significantly less accessible and in fact likely to be more accessible.

Patients whose mobility is impaired

1.32 Having assessed the pharmacy's patients, there are none that are **accustomed** to accessing the current premises that have Equality Act 2010 Protected Characteristics. [emphasis added by Applicant] Age and gender are not on their own a barrier to access – what is relevant having examined current patients is whether there are any patients in any protected characteristic, that would have an issue accessing the new premises. We can confirm we are not aware of any.

1.33 Patients that have significant mobility impairment do not access the pharmacy at its current location, and instead use the comprehensive delivery service which my client provides to its patients, or alternatively rely on carers and family members to access the pharmacy on their behalf.

1.34 Typically, those patients with moderate mobility impairment accessing the pharmacy, will have access to the same **car parking facilities that they currently utilise, directly outside the proposed site.** [emphasis added by Applicant]

1.35 The above demonstrates that no patient group would find the new premises significantly less accessible.

In addition, the committee will also consider the other matters required under Regulation 24:

1.36 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 pharmaceutical services.

1.36.1 There is no evidence that granting the application would result in a significant change to the arrangements that are in place for the provision of pharmaceutical services. The same services will be provided from both sites.

1.37 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 HWB's area.

1.37.1 My client is not aware of any plans in respect of the provision of pharmaceutical services to which significant detriment would be caused should their application be granted. The area is already well served by a number of pharmacies.

1.38 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.

1.38.1 My client undertakes to provide the same services at the new premises as are provided at the existing premises.

1.39 The provision of pharmaceutical services will not be interrupted (except for such period as the NHSCB may for good cause allow)

1.39.1 My client confirms that the provision of pharmaceutical services will not be interrupted during the proposed relocation (except for such period as the NHSCB may for good cause allow).

Conclusion

1.40 In conclusion, it is clear that regardless of how patient groups are defined, and regardless of how these patients access the existing pharmacy; the proposed location will **not** be significantly less accessible; and will actually be more accessible to large number of patients, given the very short distance from the current site.

1.41 We invite NHS England to approve this application as all parts of Regulation 24 & 31 are met."

2 The Decision

The Commissioner considered and decided to grant the application. The decision letter dated 12 March 2024 states:

[Any reference to 'Committee' in this section is not to be confused with the Pharmacy Appeals Committee of NHS Resolution]

2.1 "NHS commissioning has considered the above application and we are writing to confirm that it has been granted. Please see the enclosed report for the full reasoning."

Extract from the South West Pharmaceutical Services Regulations Committee ("PSRC") Decision report of 1 March 2024

2.2 "The SW Committee noted:

2.3 The distance between the current pharmacy location and the proposed new location is approx. 0.1 miles.

2.4 The pharmacy was previously owned by Lloyds. Easton Day Night took ownership in August 2023.

2.5 This not a controlled locality.

Nature of the application

2.6 This is an application “for a relocation of pharmacy premises that does not result in significant change to pharmaceutical services provision” and is an excepted application and considered under Regulation 24 (1).

2.7 Regulation 24 (1) states: [quoted in full]

Public Involvement

2.8 The SW Committee noted full details of the applicant’s proposals were notified to various parties in accordance with the Regulations. Representations were received and reviewed from:

2.8.1 Boots acknowledge the application but offer no opinion on the outcome.

2.8.2 Community Pharmacy Avon is supportive of the relocation.

2.8.3 Jhoots Pharmacy note the distance is short but state the application has not provided sufficient information and has failed to meet the criteria of Regulation 24.

2.9 Regulation 31 (same or adjacent premises) states: [quoted in full]

2.10 There are currently no other contractors currently providing pharmaceutical services from the premises to which the application relates, or from adjacent premises. The nearest pharmacy is 0.9 miles (Jhoots Pharmacy, Rodway Road). The SW Committee was satisfied it is not required to refuse the application by virtue of Regulation 31.

REGULATION 24(1) – Relocation

2.11 Reg 24(1)(a) – Patient Groups

2.12 The applicant defines the following patient groups:

2.12.1 Patients that utilise the free collection and delivery services.

2.12.2 Patients that originate from the local GP surgeries requiring access to Pharmaceutical Services.

2.12.3 Patients that require access to Pharmaceutical Services other than after a visit to a GP surgery.

2.12.4 Patients whose mobility is impaired.

2.13 The SW Committee noted the applicant offers explanation on why each patient group will not find the proposed premises significantly less accessible: the applicant describes how patients currently accessing the pharmacy on foot, by car and by public transport, along with how they will continue to do so in the same way at the new location, with minimal impact. The applicant concludes it is clear that the proposed location will not be significantly less accessible (as a separate unit) and will actually be more accessible to a large number of patients given the short distance involved.

2.14 The SW Committee discussed the consultation response from Jhoots Pharmacy, who raised queries around the data provided by the applicant. It was noted, however, they do not offer an opinion on whether the application should be approved or refused. Jhoots challenge the statement in the application that 20% of patients being delivered to is a significant number: they feel 80% accessing the premises is significant. Reflecting on this and revisiting the application, the SW Committee determined the

applicant made this comment in the section about the first patient group, i.e. patients that utilise the free collection and delivery service.

2.15 The applicant has clarified this patient group is 20% of its workload and the patient group make 'minimal' use of the premises, so will not find the new premises significantly less accessible.

2.16 The SW Committee noted the applicant has included a patient group of those whose mobility is impaired and agreed this is not specific enough. The SW Committee felt it appropriate to include a category for patients with protected characteristics, albeit noting no evidence has been provided to suggest that patients with impaired mobility or with other protected characteristics will find the new premises significantly less accessible than the current premises. Though Jhoots have questioned the time period over which the applicant assessed whether any current patients have impaired mobility, the SW Committee noted they have not provided any evidence that the new premises is significantly less accessible to this patient group.

2.17 The SW Committee noted the distance between the two sites is short, and both sites are serviced by the same car park. Photos taken from Google maps show the car park is large and spacious and there are parking spaces next to each site so patients can park near to the service they want to access.

2.18 Reg 24(1)(b)(i) and (ii) – (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

2.19 No evidence has been presented that suggests the relocation would result in a significant change to arrangements for the provision of local pharmaceutical services or of pharmaceutical services in any part of the HWB area.

2.20 The SW Committee was satisfied that granting the application would not result in a significant change to the arrangements in place for the provision of pharmaceutical services.

2.21 Reg 24(1)(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

2.22 No evidence has been presented that suggests the relocation would cause significant detriment to proper planning.

2.23 The SW Committee was satisfied that granting the application would not cause significant detriment to proper planning of pharmaceutical services.

2.24 Reg 24(1)(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

2.25 The applicant has confirmed that the same services will be available at the new premises that are available at the current premises.

2.26 The SW Committee was satisfied that the same services would be available at the proposed premises.

2.27 Reg 24(1)(e) the provision of pharmaceutical services will not be interrupted (except for such period as the NHSCB may for good cause allow

2.28 The applicant has confirmed that there will be no interruption to services.

2.29 The SW Committee was satisfied that there will be no interruption to services.

2.30 Reg 24(3)(a-d) an application pursuant to this regulation must be refused if the existing pharmacy premises from which the applicant is seeking to relocate

2.30.1 is in an approved retail area (24(3)(a)

2.30.2 is part of a one-stop primary care centre (24(3)(b)

2.30.3 has relocated in the last 12 months (24(3)(c)

2.30.4 this is not a distance selling premises 24(3)(d)

2.31 Regulation 24(3)(a-d) is not applicable in this case.

Decision

2.32 The SW Committee was satisfied that the application should be GRANTED because:

2.32.1 It is not necessary to refuse the application under Regulation 31

2.32.2 The new premises are not significantly less accessible for those accustomed to using the existing premises;

2.32.3 Granting the application would not result in a significant change to arrangements.

2.32.4 Granting the application would not result in significant detriment to proper planning in respect of the provision of pharmaceutical services;

2.32.5 The services to be provided will be the same; and

2.32.6 There will be no interruption of services

Appeal rights

2.33 No party is granted appeal rights as none made a reasonable attempt to express grounds for opposing the application adequately in their representation."

3 Preliminary Matter

3.1 Jhoots Pharmacy, in a letter dated 10 April 2024 appealed against the decision of the Commissioner to not give them third party rights of appeal.

3.2 The Secretary of State for Health and Social Care has directed NHS Resolution to exercise the function of determining whether certain persons have rights of appeal on his behalf.

3.3 NHS Resolution, in a decision dated 18 April 2024, determined that Jhoots Pharmacy is a person with third party rights of appeal against the decision of the Commissioner set out in its letter dated 12 March 2024 (and notified to Jhoots Pharmacy by letter dated 12 March 2024).

4 The Appeal

In a letter dated 10 April 2024 addressed to NHS Resolution, Jhoots Pharmacy ("the Appellant") appealed against the Commissioner's decision. The grounds of appeal are:

4.1 "In response to the decision by NHS England South West PSRC Committee (12th March 2024) to approve to above listed application I wish to appeal.

4.2 The decision by NHS England has not granted us as an interested party a right of appeal. I wish to appeal against this as a preliminary matter Regulation 63(5). Jhoots Pharmacy submitted a letter of representation (attached) date 19th January 2024. This is acknowledged in the PSRC decision report and the PSRC discuss it. We challenged the evidence provided in the application on a number of grounds and we concluded by saying Regulation 24 was not met and therefore the application could not be approved. We dispute the suggestion that Jhoots Pharmacy had not provided a meaningful representation in response to the application, and we submit this can be seen in the attached letter date 19th January 2024. Jhoots Pharmacy should have a right to exercise an appeal and we would ask Primary Care Appeals (PCA) to grant this.

4.3 Should PCA grant our right to appeal our appeal is as follows:

4.4 While it is accepted the move is over a short distance, the application and the consideration within the PSRC decision report has failed to clearly deal with the matters below that are relevant to the application and Regulation 24.

4.5 The application, Healthcare Plus supporting document (appendix 1) quite clearly states in section 1 "We note that the pharmacy is a steady business (5,263 Rx items dispensed in Jun 23) with 94% of Rx sent to the pharmacy by EPS with a significant number (c20%) delivered to patients".

4.6 The fact 94% of Rx are sent electronically to the pharmacy but only c20% are delivered, means the number of patients accessing the premises to receive pharmaceutical services cannot be minimal as some 80% will be accessing the premises to receive a service. NHS England decision report (paragraph 10) says the applicant sought to clarify this information (which was not circulated to interested parties) that it related to workload, but this categorisation is itself unclear.

4.7 The applicant fails to make it clear whether the data they refer to is based upon prescription items or patients. The data provided by the applicant refers to Rx. It is assumed this means Repeat prescriptions although the applicant does not define this specifically. If this is relating to repeat prescriptions, there is no reference to patient groups with acute prescriptions?

4.8 Within the applicant supporting document section 4 'Patients whose mobility is impaired', the applicant says, "Having assessed the pharmacy's patients, there are none that are accustomed to accessing the current premises that have Equality Act 2010 Protected Characteristics". No details are provided as to what 'assessment', and how any such 'assessment' was undertaken. It is therefore difficult for the Committee to put into context the summary of their statement and make a decision under part of the Regulatory test based on the evidence provided.

4.9 NHS England in the decision report section 11 "noted the applicant has included a patient group of those whose mobility is impaired and agreed (our emphasis) this is not specific enough". The SW Committee so go on to say they "felt it appropriate to include a category for patients with protected characteristics, albeit noting no evidence has been provided to suggest that patients with impaired mobility or with other protected characteristics will find the new premises significantly less accessible than the current premises". Having accepted that the applicant was not specific enough with evidence, the Committee then include a category for patients with protected characteristics and conclude there is no evidence despite the fact this had not been addressed by the applicant.

4.10 The applicant in section 3 of their supporting document says the proposed location is situated on a busy shopping parade. No evidence is provided at all to explain or substantiate this further.

4.11 We submit the applicant has failed to meet the criteria of Regulation 24 in the Regulations and we ask for the application to be reconsidered and this appeal upheld."

5 Summary of Representations

This is a summary of representations received on the appeal.

5.1 THE COMMISSIONER

5.1.1 "Thank you for your letter, received 23rd April 2024, addressed to Mr Speight at Primary Care Support England (PCSE) enclosing a copy of the appeal as detailed above. The South West Pharmaceutical Services Regulations Committee (SW Committee) wishes to make the following comments on the appeal.

5.1.2 The SW Committee noted the distance between the two sites is very short (0.1 miles) and both sites are serviced by the same car park. The SW Committee noted the car park is large and spacious and there are parking spaces next to each site so patients can park near to the service they want to access.

5.1.3 No evidence was provided by any party to demonstrate patients accessing the pharmacy at its current site will find the proposed premises significantly less accessible.

5.1.4 In their consultation response, it was noted Jhoots had challenged some of the data provided by the applicant and made broad statements about what they perceive to be significant but had not supported this by providing evidence that the new premises is significantly less accessible. The decision by Primary Care Appeals to accept the Jhoots submission as a reasonable attempt to oppose the application and grant them appeal rights is noted by the SW Committee.

5.1.5 The SW Committee respectfully requests that the decision to approve the application is upheld."

5.2 HEALTHCARE PLUS (ON BEHALF OF THE APPLICANT)

5.2.1 "Thank you for your letter dated 22nd April 2024. Please find our representations on the above appeal below.

5.2.2 Firstly, my client would like to note his disappointment in Jhoots appealing this decision despite not having appeal rights. He believes that such an appeal is frivolous seeing as the majority of the appeal points raised by Jhoots have been covered by my client in their correspondence dated 1st December 2023 and 2nd February 2024. We have appended this correspondence for the committee's ease, and consider representation made is in addition to this previous correspondence.

5.2.3 In accordance with Schedule 2 Paragraph 30 of the regulations Jhoots should not have been granted appeal rights.

5.2.4 We reiterate to the committee that this is a relocation of 100 metres/less than a minutes' walk with:

5.2.4.1 No road crossings

5.2.4.2 No car-park crossings

5.2.4.3 Across wide, flat terrain

5.2.4.4 Across well-lit footpaths

5.2.4.5 Patients would utilize [sic] the same shared car-park

5.2.4.6 Patients would utilise the same bus-stop (which is closer to the proposed site)

5.2.4.7 No stepped access

5.2.5 It is clear that this is not a difficult journey for patients to make and thus cannot be deemed a significantly less accessible journey. Emphasis on significantly.

5.2.6 We reiterate that my client is unaware of any patients with significant mobility impairment accessing pharmaceutical services at the current premises. These patients utilise the delivery service provided by my client.

5.2.7 Patients with moderate mobility impairment, who access the pharmacy, will have the same car parking and bus facilities that they current utilise – directly outside the proposed site. The proposed site also does not have stepped access.

5.2.8 As an owner operator my client is very close to his patients and has consulted patients on the proposed move in the past few weeks. None have raised any issues regarding accessibility. We note that it is difficult to undertake a formal assessment for patients who share protected characteristics due to the sensitivity of the topic and respect for individuals' privacy that must be maintained. Such a formal assessment may in fact discriminate against these groups.

5.2.9 Hopefully the above provides greater clarity for the committee. Again, we conclude that this journey is not significantly less accessible, and thus Regulation 24 has been met."

The letter of 1 December 2023 as referred to at 5.2.2 is as set out above in Section 1 "Application".

The letter of 2 February 2024 from Healthcare Plus Consulting to PCSE in response to the representations received stated:

5.2.10 "Thank you for your letter dated 25th January 2024. We welcome comments from local contractors and have set out our thoughts below.

5.2.10.1 We highlight that Avon Local Pharmaceutical Committee with all their local expertise is supportive of the application.

5.2.10.2 Again, the experienced regulatory team at Boots have no objections to the relocation

5.2.11 We note the following:

5.2.11.1 Regulation 31 is undisputed by all contractors.

5.2.11.2 Jhoots require additional clarification on Regulation 24.

5.2.12 Please find comments below on the patient groups as stated in the original application.

5.2.13 Please use these comments in addition to the text in the original application.

Patients that utilise the collection & delivery service

5.2.14 We would like to omit the statement “Therefore, the number of patients accessing the existing premises is minimal”. I can only apologize for this.

5.2.15 We maintain that the 20% of patients who utilise the collection & delivery service are not accustomed to accessing pharmaceutical services at the proposed premises and therefore they would not find that the new premises are less accessible.

5.2.16 Please see the original application for further information.

Patients that originate from the Local GP surgeries in the area requiring access to Pharmaceutical Services

5.2.17 We note that the majority of patients in fact originate from the co-located surgery, Coniston medical practice. 91% of scripts originate from this surgery.

5.2.18 We reiterate that these patients will notice little difference in accessing pharmaceutical services with the new location being c. 100 metres away and effectively on the other side of the free car park, which will be shared by the surgery and the new retail stores. Given the short distance between the 2 sites, the maximum additional journey for a patient would be an additional 1-minute walk.

5.2.19 We maintain that for the few patients originating from other GP practices, majority likely fall into Patient Group 1.

5.2.20 For patients originating from Coniston medical practice the proposed site cannot be deemed significantly less accessible, as demonstrated by the journeys by foot, car, and public transport highlighted in the application. This appears to be undisputed by any of the representations.

5.2.21 Please see the original application for further information.

Patients that require access to Pharmaceutical Services other than after a visit to a GP surgery

5.2.22 We maintain that the proposed location is situated on a busy shopping parade, and that the proposed location will in fact be more accessible for patients arriving from home, work, or in connection with a visit to other services in the locality.

5.2.23 The shopping parade is home to a variety of independent units, which include Newsagent, Bakery, Launderette, Take-Aways and Charity shop

5.2.24 We hope this provides clarification.

5.2.25 Please see the original application for further information.

Patients whose mobility is impaired

5.2.26 We maintain that those patients who share protected characteristics under the Equality Act 2010, there are none that are accustomed to accessing the current premises (noting that Age and gender are not on their own a barrier to access), that my client is aware of.

5.2.27 As an owner operator my client is very close to his patients and understands those with significant mobility impairment use the delivery service. We note that it is difficult to undertake such an assessment outside of talking to patients, as proposed by Jhoots, due to the sensitivity of the topic and respect for individuals' privacy that must be maintained.

5.2.28 Such a formal assessment may in fact discriminate against these groups.

5.2.29 On the off chance that my client is unaware of any patients with impaired mobility, the proposed site is c.100 metres away via flat terrain. The proposed site does not have stepped access. Thus, the proposed site is not significantly less accessible for these patients (if they exist). My client maintains that he is unaware of anyone who fits this criteria.

5.2.30 Of the patients that my client is aware, they are served by the delivery service which my client provides to their patients, or alternatively rely on carers and family members to access the pharmacy on their behalf.

5.2.31 We hope this provides clarification.

5.2.32 Please see the original application for further information.

5.2.33 Again, in conclusion, we highlight that the new premises are not significantly less accessible for any patient group.

5.2.34 We note that the other matters required under Regulation 24 have also been met as per the original application. This is undisputed by any contractor.

5.2.35 Again, we conclude that the proposed location will not be significantly less accessible; and will actually be more accessible to large number of patients, given the very short distance from the current site.

5.2.36 Hence, regulation 24 & 31 have been met in full and this application should be granted."

6 Observations on representations

6.1 THE APPELLANT

6.1.1 "Thank you for providing the responses.

6.1.2 Healthcare Plus say they are disappointed with the appeal as Jhoots does not have appeal rights. They refer to Schedule 2 Paragraph 30. Healthcare Plus must realise that a legitimate right of appeal was granted by Primary Care Appeals (PCA) in appeal reference SHA/26191. PCA determined in paragraph's 5.9 and 5.10 that

5.9 I am of the view that Jhoots Pharmacy is a person to whom sub-paragraph 30(3) (a), (b) and (c) applies and that it should have been given third party rights in accordance with the Regulations.

5.10 I note the wording of paragraph 30(6) and that, to exercise those rights properly, the appeal should include a concise and reasoned statement of the grounds of appeal against both the decision not to be

given third party rights of appeal and against the substantive decision of the Commissioner to grant the application. I am of the view that Jhoots Pharmacy has complied with both of the above.

6.1.3 The ICB was therefore wrong to have not provided a right of appeal as we provided a compliant response to the application. Jhoots therefore; exercised a legitimate right to appeal. The appeal is not frivolous as Primary Care Appeals has determined the Appeal is to be considered.

6.1.4 Healthcare Plus enclose a copy of their letter 2nd February 2024 that was sent to the ICB via PCSE. I would wish to clarify this was not made available to us prior to ICB determination which supports the validity of our appeal.

6.1.5 We look forward to your decision at your earliest convenience."

7 Consideration

7.1 The Committee had before it the papers considered by the Commissioner, together with a plan of the area showing existing pharmacies and doctors' surgeries and the location of the proposed pharmacy.

7.2 It also had before it the responses to NHS Resolution's own statutory consultations.

7.3 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.

7.4 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations").

7.5 The Committee noted the comments from the Applicant's representative with regard to the Appellant's right of appeal. The Committee was mindful that this had already been considered (SHA/26191) and that a final decision in respect of third party rights of appeal had been issued on 18 April 2024. The Committee took no view on the comments of the Applicant's representative that were made in respect of the third party rights of appeal as this was not a relevant consideration before it in respect of the appeal against the Commissioner's decision to grant an application for a relocation that did not result in a significant change to pharmaceutical services provision under Regulation 24.

7.6 The Committee first considered Regulation 31 of the Regulations 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) NHS England 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).

7.7 The Committee noted that the Applicant had stated, in their application form, "N/A – there is no NHS Pharmacy contract operating from the new proposed site or any adjacent site". In its decision, the Commissioner had concluded that there are no other contractors currently providing pharmaceutical services and therefore it was satisfied that it was not required to refuse the application by virtue of Regulation 31. The Committee noted that this had not been disputed on appeal or in subsequent representations. The Committee therefore determined that it was not required to refuse the application under the provisions of Regulation 31.

7.8 The Committee had regard to Regulation 24(1) which requires the following five conditions to be met:

(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 NHS England, 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) NHS England 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, NHS England chooses to commission them); and

(e) the provision of pharmaceutical services will not be interrupted (except for such period as NHS England may for good cause allow).

7.9 The Committee noted the comments from the Commissioner that the Appellant had not provided evidence that the new premises is significantly less accessible. The Committee was mindful that it is not on the Appellant to demonstrate that the new premises are significantly less accessible but on the Applicant to demonstrate that they are not. The Committee considered the position in relation to each condition and the information that it had before it as submitted by all parties during the course of the statutory consultations.

7.10 In relation to condition (a), the Committee considered the map submitted by the Commissioner which clearly shows the locations of the existing pharmacies as well as the proposed site and medical practices within the area.

7.11 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.

7.12 In this case, the Applicant has identified the patient groups as:

7.12.1 Patients that utilise the free collection and delivery service;

7.12.2 Patients that originate from local GP surgeries requiring access to Pharmaceutical Services;

7.12.3 Patients that require access to Pharmaceutical Services other than after a visit to a GP surgery; and

7.12.4 Patients whose mobility is impaired.

7.13 The Committee also noted that the Commissioner was of the view that the patient group "Patients whose mobility is impaired" was not specific enough so included a further patient group defined as "patients with protected characteristics". The Committee was of the view that those with protected characteristics would be part of all of the patient groups identified by the Applicant and that there is therefore an overlap between this group and the patient groups identified by the Applicant. The Committee concludes that the patient groups who are accustomed to accessing pharmaceutical services from the existing premises are those set out below.

Patients that utilise the free collection and delivery service

7.14 The Committee noted the comments from the Applicant that "*(5,263 Rx items dispensed in Jun 23) with 94% of Rx sent to the pharmacy by EPS with a significant number (c20%) delivered to patients*". In the context of the application and this statement the Committee has taken this to mean repeat prescriptions.

7.15 The Committee noted that this information had been raised on appeal by the Appellant and that the Applicant has sought to clarify this in their subsequent representations.

7.16 The Committee noted the information and accepted that 94% of repeat prescriptions were sent by EPS however the Committee had no information regarding the prescriptions that were not repeat prescriptions. Further, the Committee was mindful that whilst 20% of prescriptions are delivered to patients (irrespective of whether this is for the repeat prescriptions or prescriptions in general) they concluded that 80% of prescriptions are collected by patients attending the pharmacy. The Committee was of the view that some patients, whilst making use of the collection service or the repeat dispensing service, might still attend the pharmacy to collect their prescriptions or to attend for other essential services, however those who did attend the pharmacy would be included in one of the other patient groups referred to by the Applicant and considered below.

7.17 The Committee was of the view that if patients were not accustomed to accessing pharmaceutical services at the premises, then they were not subject to the test under condition (a). The Committee, however, was particularly mindful that the provision of essential services is not limited to the dispensing of prescriptions.

7.18 With regard to other essential services that are carried out, the Committee was of the view that any patient who received essential services at the pharmacy would fall into a patient group as described below. For any patient who receives essential services that does not involve attending the pharmacy in person, the Committee was of the view that they were not accustomed to accessing pharmaceutical services at the pharmacy premises, irrespective of the reason, then they were not subject to the test under condition (a).

Patients that originate from local GP surgeries requiring access to Pharmaceutical Services

7.19 The Committee noted that the pharmacy was currently collocated with the Coniston Medical Practice and was proposing to move to the parade of shops nearby. The

Applicant states that currently 91% of prescriptions are from the Coniston Medical Practice, which has not been disputed by parties.

7.20 The Committee noted that for those patients who attended the pharmacy following a visit to the Coniston Medical Practice the proposed site would not be as convenient, however the Committee was mindful that this was not a relevant consideration under the Regulations. The Committee went on to consider how those patients currently accessing the existing premises would now access the pharmacy at the proposed site following, a visit to the Coniston Road Medical Practice, and whether the location of the new premises is not significantly less accessible.

7.21 The Committee noted the undisputed comments from the Applicant that those accessing the pharmacy after a visit to Coniston Medical Practice do so either on foot, by car or by public transport.

7.22 For those who access on foot, the Committee noted that the distance between the current and proposed site was approximately 100 metres and that the pavements in the area were flat, well-lit and well maintained, which had not been disputed by the Appellant. The Committee noted that the proposed site was located in a parade of shops which was separated from the current site by the town car park. Given the relatively short journey between the two sites, the Committee was of the view that irrespective of where a patient who accessed services on foot commenced their journey the proposed move would not be significantly less accessible.

7.23 The Committee considered that it was reasonable to be satisfied that for those patients fit and able enough to do so who access the existing site on foot after a visit to Coniston Medical Practice, the proposed premises were not significantly less accessible.

7.24 The Committee went on to consider ease of access to the proposed site for those patients who have limited mobility, or who are unable or chose not to walk and went on to consider access by public and private transport. The Committee noted the comments from the Applicant with regard to those who have access to private transport and that the car park that is currently used for the existing site, as well as the medical practice, is the same car park that would be used for the proposed site. The Committee also noted the undisputed comments from the Applicant that this car park provides 12 hours of free parking. Again, whilst the Committee accepted that it might not be as convenient for patients as they would have to make an additional journey, on foot, after leaving the medical practice, the Committee was satisfied that for those who did access the existing pharmacy by car the proposed premises were not significantly less accessible.

7.25 The Committee went on to consider access by public transport. The Committee noted the undisputed comments from the Applicant that the bus stop that serves the existing pharmacy is the same bus stop that would serve the proposed site. Further, the Committee noted, from the maps provided, that the bus stop is actually closer to the proposed site. The Committee was of the view that for those who accessed pharmaceutical services at the existing site after a visit to Coniston Medical Practice by bus then they would pass the proposed site on their way to the bus stop. The Committee considered that it was reasonable to be satisfied that for patients accessing the existing site by public transport, after a visit to Coniston Medical Practice, the proposed premises were not significantly less accessible.

7.26 Whilst the Applicant had not referred specifically to any other medical practice in the area, the Committee noted that 9% of prescriptions dispensed by the Applicant originated from other medical practices in the area. From the map provided by the Commissioner, the Committee was of the view that it was unlikely that those accessing pharmaceutical services after a visit to their GP, except for if they were registered at Coniston Medical Practice, would be accessing services by foot but would be accessing services either by car or public transport.

7.27 For those who might access on foot, the Committee was of the view, given the topography of the area as well as the distance between the existing and proposed site, that irrespective of which medical practice they started their journey at, the proposed premises were not significantly less accessible.

7.28 The Committee was of the view that the majority of those who accessed services following a visit to their GP would be accessing the pharmacy by either car or public transport. For those accessing by car, the Committee noted the undisputed comments from the Applicant with regard to the location of the car park in the town centre and that this offered 12 hours of free parking. The Committee considered that it was reasonable to be satisfied that for patients accessing the existing site by private transport after a visit to their GP, the proposed premises were not significantly less accessible.

7.29 The Committee had very little information regarding the bus services in the area, however the bus stop currently used to access the existing site is the same as that which will be used to access the proposed site. The Committee was mindful, given the location of the bus stop, that any journey using the bus to access pharmaceutical provision at the existing site would also require a walk. The Committee noted that the walk from the bus stop to the proposed pharmacy is of a shorter distance, along well-lit and well-maintained pavements. Given the above undisputed information the Committee was satisfied that for patients accessing the existing site by public transport after a visit to another medical practice, the proposed premises were not significantly less accessible.

Patients that require access to Pharmaceutical Services other than after a visit to a GP surgery

7.30 The Committee noted that whilst there was a high proportion of patients who used the collection and delivery service or accessed the pharmacy after a visit to their GP surgery there would also be a number of patients who access the pharmacy otherwise than after a visit to their GP surgery. The Committee considered that for these patients there will be different starting points for their journey to the pharmacy. The Committee noted, from the map provided by the Commissioner and the information from the Applicant, that there was no specific place or area from which these patients may start their journey. As such, the Committee felt that it was appropriate to assess accessibility for these patients by their method of transport.

7.31 The Committee noted that whilst the Applicant had not identified patient groups by method of transport, they had considered access by foot, car and bus in their various submissions.

7.32 For those patients who accessed the existing pharmacy on foot, irrespective of their starting point, the Committee was of the view that, as always, in assessing accessibility for a patient group that comprises people starting their journeys to the pharmacy from different locations, for some of them within this group the distance to the proposed site would be shorter whilst for others it would be longer. The Committee noted the information regarding the general topography and terrain in the area, which had not been disputed, and further noted the distance between the existing and proposed site. The Committee remained of the view that the area was flat with no barriers and well-lit pavements. The Committee was of the view that for this patient group, those that were willing and able to walk and chose to do so, the proposed premises were not significantly less accessible.

7.33 The Committee noted that there was no information from the Applicant with regard to car ownership in the area, however the Applicant had confirmed that the car park which was used by those accessing the existing site would still be used by those who travelled by car to access the proposed site. The Committee further noted the comments that the car park offered 12 hours of free car parking, which had not been

disputed on appeal. The Committee noted that there was no information provided to demonstrate that there were any barriers to accessing the proposed site by car.

7.34 The Committee considered the information before it with regard to those who use public transport to access pharmaceutical services. The Committee noted that there was no information regarding the buses operating in the area in general, however the Applicant had stated that the bus stop that was used to access the existing site was the same bus stop that would be used to access the proposed site, albeit that it would actually involve a shorter walk to the pharmacy as the proposed site was located closer to the bus stop.

7.35 The Committee was satisfied that for those that accessed pharmaceutical services otherwise than after a visit to their GP and accessed these services by either car or public transport, the proposed site was not significantly less accessible.

Patients whose mobility is impaired

7.36 The Committee considered that it had to have regard to how this patient group access the existing site and therefore the accessibility of the proposed site. The Committee was of the view that for those whose mobility is limited due to the protected characteristics they share, that the accessibility of the proposed site would depend on how they access the existing site. The Committee considered that this patient group will access the new premises on foot, by car or by public transport and that it was necessary to consider the accessibility of the proposed site in light of each method of transport for this patient group.

7.37 The Committee was of the view that if they accessed the existing site by car then the proposed site would not be significantly less accessible. If they accessed the existing site by public transport then the proposed site would not be significantly less accessible for the reasons given above.

7.38 The Committee noted the comments made earlier in this determination about the terrain, maintained and well-lit pavements and the lack of barriers to access. The Committee was of the view that there were no particular difficulties for those who access pharmaceutical services on foot or by wheelchair.

7.39 For the reasons stated earlier the Committee was of the view that for this patient group the proposed premises would not be significantly less accessible.

Other groups

7.40 The Committee noted that the Commissioner had expanded the Applicant's patient group of "those whose mobility is impaired" to also include all those who share protected characteristics but had then gone on to state "*albeit noting no evidence had been provided to suggest patients with impaired mobility or with other protected characteristics will find the new premises significantly less accessible than the current premises."*

7.41 The Committee considered whether the information provided showed that there were patients accustomed to accessing pharmaceutical services at the existing premises for whom the new premises would be less accessible because of reasons related to a protected characteristic under the Equality Act 2010 (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation). The Committee identified that the relocation may impact patients with protected characteristics, however it was of the view that there was no specific information relating to a patient group who shared a specific protected characteristic, but that these patients were included within the patient groups identified by the Applicant. Therefore in considering condition (a), the Committee took into account these patients and had regard to the need to eliminate

discrimination and advance equality of opportunity and foster good relations between these patients and those who do not share their protected characteristic(s).

Overall assessment

7.42 In the circumstances, the Committee was able to be satisfied that, for patient groups who are accustomed to accessing the present site, the proposed site is not significantly less accessible. The Committee was therefore of the view that condition (a) is met.

Regulation 24(1)(b)

7.43 The Committee noted the decision of the Commissioner in respect of condition (b), that the granting of this application would not result in a significant change to the arrangements that are in place, and that this had not been disputed by any party. 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 area of HWB1 or 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. The Committee concluded that condition (b) is met.

Regulation 24(1)(c)

7.44 The Committee noted the decision of the Commissioner in respect of condition (c) that the granting of the relocation would not lead to significant detriment to proper planning in respect of the pharmaceutical services in the area. The Committee noted that this had not been disputed by any party either on appeal or in subsequent representations. 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)

7.45 The Committee noted that the applicant had given an undertaking, in their original application form, that the same services will be provided at the proposed site. On the information provided, the Committee determined that condition (d) is met.

Regulation 24(1)(e)

7.46 In relation to condition (e), the Committee noted the applicant had confirmed in their 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.

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

7.47.1 confirm the Commissioner's decision;

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

7.47.3 quash the Commissioner's decision and, if it considers that there should be a further notification to the parties to make representations, remit the matter to the Commissioner.

Overall

7.48 Although the Committee has come to the same conclusions as the Commissioner, it has done so for different reasons. As such, the Committee determined that the decision of the Commissioner must be quashed.

7.49 The Committee went on to consider whether there should be a further notification to the parties detailed at paragraph 19 of Schedule 2 of the Regulations to allow them to make representations if they so wished (in which case it would be appropriate to remit the matter to the Commissioner) or whether it was preferable for the Committee to redetermine the application.

7.50 The Committee noted that representations on Regulation 24 had already been made by parties to the Commissioner, and these had been circulated and seen by all parties who made representations on the application, as part of the processing of the application by the Commissioner. The Committee further noted that when the appeal was circulated representations had been sought from parties on Regulation 24.

7.51 The Committee concluded that further notification under paragraph 19 of Schedule 2 would not be helpful in this case.

8 Decision

8.1 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.

8.2 The Committee quashes the decision of the Commissioner and redetermines the application.

8.3 The Committee has determined that conditions (a), (b), (c), (d) and (e) are satisfied.

8.4 The application is granted.

Case Manager
Primary Care Appeals