

14 August 2024

REF: SHA/26208

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**APPEAL AGAINST HAMPSHIRE AND ISLE OF WIGHT
ICB DECISION TO GRANT AN APPLICATION BY MC
SHIRLEY LTD FOR A RELOCATION THAT DOES NOT
RESULT IN A SIGNIFICANT CHANGE TO
PHARMACEUTICAL SERVICES PROVISION UNDER
REGULATION 24 FROM 17 GROVE ROAD, SHIRLEY,
SOUTHAMPTON SO15 3HH TO 302 SHIRLEY ROAD,
SHIRLEY SO15 3HL**

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:

MC Shirley Limited
Temple Bright LLP on behalf of Arun Sharma Chemists Ltd
PCSE on behalf of Hampshire and Isle of Wight ICB

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SHIRLEY SO15 3HL**

1 The Application

By application dated 18 October 2023, MC Shirley Limited (“the Applicant”) applied to Hampshire and Isle of Wight ICB (“the Commissioner”) for a relocation that does not result in a significant change to pharmaceutical services provision under Regulation 24 from 17 Grove Road, Shirley, Southampton SO15 3HH to 302 Shirley Road, Shirley SO15 3HL. In support of the application, it was stated:

In response to why the application should not be refused pursuant to Regulation 31, the Applicant stated:

- 1.1 “N/A- there is no NHS pharmacy contract operating from the new proposed site or any adjacent site.”

Under the heading, ‘Information in support of all no significant change applications’, the Applicant stated:

- 1.2 “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.
- 1.3 The proposed site (ex cake shop) is located on a retail parade only c160 metres from the current site (see map below).
- 1.4 All patient groups are able to access the new location as easily, and some patients will experience improved accessibility to Pharmaceutical Services due to where these patients access medical services.
- 1.5 The distance between the current (red triangle on map) and new premises (black triangle on map) is short and only 0.1 miles (2 mins) by foot (Google maps) and access between the sites is straightforward with no major barriers to overcome.
- 1.6 [Map provided at Appendix A]
- 1.7 There is a reasonable choice of Pharmaceutical Services and providers of Pharmaceutical Services within this area and this will be maintained.

- 1.8 By relocating to the new premises there will be no detriment to arrangements in place. The same services and opening hours will be provided in the new location as in the current location, as such there will be no change to the arrangements.
- 1.9 Neither the PNA nor any recent/ current communication regarding pharmacy services, point to any proposed plans to alter the provision of Pharmaceutical Services in the area of the HWB. There is no evidence that by allowing this application any detriment would occur.
- 1.10 The Patient Groups as stated in the first paragraph can be defined as:
- 1.11 **Patients that utilise the free collection & delivery service:**
- 1.12 These patients will not be affected by the relocation as the service will continue and c30% of patients utilise this service, thus this patient group will not be disadvantaged by this relocation as this service will continue to operate and serve the same population.
- 1.13 **Patients that originate from GP surgeries requiring access to Pharmaceutical Services:**
- 1.14 Circa 71% of patient items dispensed at the current site originate from Shirley Health Partnership Practice. This practice is currently located opposite the current site and will shortly be relocating away onto the former Lidl site off Shirley Road. The proposed site will be more accessible to the new Practice site. The remaining 29% of items that are dispensed originate from surrounding GP Practices, which is what you would expect within an urban area (source: Pharmdata).
- 1.15 Patients who travel from other surgeries will not notice a significant change in their journey as the proposed site is only a short distance away.
- 1.16 The proposed location is only a 2 min walk (160metres) from the current site with no barriers to movement
- 1.17 **Patients that require access to Pharmaceutical Services other than after a visit to a GP surgery:**
- 1.18 The information provided for this patient group details the accessibility between the current site and proposed site. Given the short distance between the 2 sites, the maximum additional journey for a patient would be an additional 2-minute walk.
- 1.19 This additional 2-minute walk largely involves walking along Grove Road then onto Shirley Road without crossing any major roads, onto the parade of shops which patients will access as part of their daily lives.
- 1.20 The proposed site is more accessible by bus with a number of bus routes along Shirley Road, provided by Bluestar, First Bus and Xelabus.
- 1.21 The short journey between the 2 sites ensures that the proposed site is not significantly less accessible.
- 1.22 Consideration in relation to the Equality Act 2010 namely patients sharing a protected characteristic identifies no patients that would be negatively impacted as a result of this relocation given the short distance.
- 1.23 The same services currently provided will be provided at the proposed location. Access will be the same for patients as there is similar provision for parking and public transport routes.

- 1.24 The relocation is only a short distance away from the existing site so will not have any effect on patients who access the pharmacy at its current location (see detailed evidence in boxes above)."

2 The Decision

The Commissioner considered and decided to grant the application. The decision letter dated 15 April 2024 states:

- 2.1 "Hampshire and the Isle of Wight ICB has considered the above application and I am writing to confirm that it has been granted. Please see the enclosed report for the full reasoning."

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

Decision report

2.2 "THE APPLICATION

- 2.3 An application from MC Shirley Ltd for a relocation that does not result in a significant change to pharmaceutical services provision was received on 23rd October 2023. The Applicant was proposing to relocate from 17 Grove Road, Shirley, Southampton SO15 3HH to 302 Shirley Road, Shirley, Southampton SO15 3HL.

- 2.4 The Committee was now required to consider the application in accordance with Regulations 24 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.

2.5 CONSIDERATION

- 2.6 The Committee considered the following:

- 2.7 The NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.

- 2.8 The application form provided by the Applicant –

- 2.8.1 The Committee noted the reasons stated by the Applicant as to why the application should not be refused under Regulation 31.

- 2.8.2 The Applicant had indicated that the same services would be provided at the new premises and there would be no interruption to service provision.

- 2.8.3 The current contracted hours would continue to be provided at the new premises.

- 2.8.4 The Committee noted the "not applicable" responses provided by the Applicant as to why the application should not be refused pursuant to Regulation 24(3)(a)-(c).

- 2.9 Maps and a photograph of the current premises.

- 2.10 Information from a virtual site visit [copy provided to the Pharmacy Appeals Committee] of the Shirley area that had been undertaken by a Pharmacy Commissioning Hub representative. Members of the Committee were familiar with the area.

- 2.11 Representations made by Boots UK Ltd, Hampshire & Isle of Wight LPC and Temple Bright on behalf of Arun Sharma Chemists Ltd. Noting that Boots UK Ltd and Hampshire & Isle of Wight LPC both had no comments to the application. Temple Bright on behalf of Arun Sharma Chemists Ltd objected to the application.
- 2.12 All additional information, including location and distances of surrounding pharmacies and their opening times.
- 2.13 Department of Health – Regulations under the Health and Social Care Act 2012: Market Entry by means of Pharmaceutical Needs Assessments – Chapter 10.
- 2.14 The Committee noted the proposed location is in a non-controlled locality.
- 2.15 The Committee noted the address of the application was within a non-controlled locality and therefore it would not be required to consider the discontinuation of arrangements for the provision of pharmaceutical services by doctors to the affected patients under Regulation 50.
- 2.16 The Committee decided it was not necessary to hold an oral hearing before determining the application.
- 2.17 **Regulation 31 – Refusal: same or adjacent premises**
- 2.18 The Committee noted that it was required to refuse an excepted application, if the two conditions under paragraph 31(2) applied. These conditions are –
- 2.18.1 *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 the premises to which the application relates, or adjacent premises; and*
- 2.18.2 *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).*
- 2.19 The Committee noted the Applicant’s comments with regard to why the application should not be refused pursuant to Regulation 31. There is currently no other NHS pharmacy contractor included in the pharmaceutical list at or adjacent to the proposed premises.
- 2.20 The Committee concluded that it was not required to refuse the application for the purpose of Regulation 31.
- 2.21 Having established that it did not have to refuse the application under Regulation 31 the Committee moved on to consider Regulation 24.
- 2.22 It was noted that the proposed relocation did not involve a change of area of HWB and therefore regulation 24(2) did not apply.
- 2.23 The Committee considered the circumstances when it must refuse such an application as detailed in regulation 24(3) and concluded that none of these circumstances applied in this case.
- 2.24 Having established that the application did not need to be refused under regulation 24(3), the Committee proceeded to consider each of the 5 criteria under regulation 24(1).

- 2.25 **Regulation 24(1) – Relocation that do not result in significant change to pharmaceutical services provision (different premises in the area of the relevant HWB)**
- 2.26 The Committee had regard to Regulation 24(1), which requires the following five conditions to be met:
- 2.27 [Regulation 24 quoted].
- 2.28 **Regulation 24(1)(a)**
- 2.29 The applicant has defined the patient groups accustomed to accessing pharmaceutical services at the existing premises in their application. Those being:
- 2.29.1 *Patients that utilise the free collection & delivery service.*
- 2.29.2 *Patients that originate from GP surgeries requiring access to Pharmaceutical Services.*
- 2.29.3 *Patients that require access to Pharmaceutical Services other than after a visit to a GP surgery.*
- 2.30 The Committee noted the close proximity of the current premises and the proposed premises/central shopping area. The distance between the two premises is 150 yards, the average walking time is 2 minutes. The applicant described the route as being “straightforward with no major barriers to overcome”.
- 2.31 The Committee noted that the journey by foot is on flat, maintained and well-lit pavements. The Committee also noted that both premises can be accessed using the same bus route/bus stops.
- 2.32 The Committee noted that both the existing and proposed premises are central to the Shirley area and that therefore access from where people live or shop is not significantly different at either site.
- 2.33 The Committee was satisfied that given the close proximity of the proposed premises to the current premises and the central location of both premises, that the location of the new premises is not significantly less accessible for the patient groups accustomed to accessing pharmaceutical services at the existing premises.
- 2.34 **Regulation 24(1)(b)**
- 2.35 The Committee had no evidence or information to suggest that granting the application would result in a significant change to arrangements for the provision of local pharmaceutical services or pharmaceutical services other than those provided by a dispensing doctor.
- 2.36 The Committee was satisfied that the relocation would not result in a significant change to the arrangements for the provision of local pharmaceutical services or of pharmaceutical services other than those provided by a person on a dispensing doctor list in any part of the HWB.
- 2.37 Having due regard to regulation 24(1)b (ii), the Committee was aware that the location of the proposed premises was not within 1.6 kilometres of a controlled locality in a neighbouring HWB.
- 2.38 **Regulation 24(1)(c)**

- 2.39 The Committee had no reason to think there would be significant detriment to proper planning and there was no information from any other party arguing significant detriment to proper planning. The Committee considered the locations of existing pharmacies as well as the proposed site and medical practices within the area and was satisfied that granting the application would not cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area.
- 2.40 **Regulation 24(1)(d)** – the Applicant had confirmed that the same services would be provided at the new premises as are currently being provided at the existing premises.
- 2.41 The Committee was satisfied that the condition in Paragraph (d) had been met.
- 2.42 **Regulation 24(1)(e)** - the Applicant confirmed that the provision of pharmaceutical services will not be interrupted (except for such period as the NHSCB may for good cause allow). The Committee was satisfied that the condition in paragraph (e) had been met.
- 2.43 The Committee was satisfied that the provisions of Regulation 24(3)(a)–(d) do not apply.
- 2.44 The Committee determined that conditions under Regulation 24(1)(a), (b), (c), (d) and (e) are satisfied.
- 2.45 **DECISION**
- 2.46 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.
- 2.47 The Committee determines the application as follows –
- 2.47.1 the Committee was satisfied that the location of the new premises is not significantly less accessible for the patient groups.
 - 2.47.2 the Committee was satisfied that the relocation would not result in a significant change to pharmaceutical services or dispensing services.
 - 2.47.3 the Committee was satisfied that granting the application would not cause significant detriment to proper planning.
 - 2.47.4 the Committee was satisfied that the same services would be provided at the new premises.
 - 2.47.5 the Committee was satisfied that the provision of pharmaceutical services will not be interrupted.
- 2.48 The Committee determined to **grant** the application.
- 2.49 **THIRD PARTY RIGHTS OF APPEAL**
- 2.50 The application is granted so the applicant does not have appeal rights.
- 2.51 The Committee decided that the parties that should have third party rights of appeal are:
- 2.51.1 Arun Sharma Chemists Ltd.”

- 3.1 Temple Bright LLP on behalf of Arun Sharma Chemists Ltd, in a letter dated 13 May 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 23 May 2024, determined that Arun Sharma Chemists Ltd is a person with third party rights of appeal against the decision of the Commissioner set out in its letter dated 15 April 2024 (and notified to Arun Sharma Chemists Ltd by letter dated 15 April 2024).

4 **The Appeal**

In a letter dated 13 May 2024 addressed to NHS Resolution, Temple Bright LLP on behalf of Arun Sharma Chemists Ltd appealed against the decision of the Commissioner. The grounds of appeal are:

- 4.1 “We act for Arun Sharma Chemists Limited which is included in the Southampton HWB’s pharmaceutical list for premises trading as Pharmacy Direct, 355A Shirley Road, Southampton, SO15 3JD. On behalf of our client we write to:
 - 4.1.1 Appeal a decision of NHS England [sic] not to grant our client third party rights of appeal
 - 4.1.2 Appeal a decision of NHS England [sic] to grant a no significant change relocation application by MC Shirley Limited to 302 Shirley Road, Shirley, SO15 3HL.
- 4.2 The decision was notified to our client by PCSE by letter dated 15th April 2024.
- 4.3 Taking each appeal in turn:
 - Appeal against a decision of NHS England [sic] not to grant our client third party rights of appeal**
 - 4.4 Our client is included in the pharmaceutical list for premises trading as Pharmacy Direct, 355A Shirley Road, Southampton, SO15 3JD.
 - 4.5 By letter dated 11th January 2024, our client was notified of a no significant change relocation application by MC Shirley Limited from 17 Grove Road, Shirley, Southampton, SO15 3HH to 302 Shirley Road, Shirley, SO15 3HL.
 - 4.6 NHS England’s [sic] letter stated that our client was being notified of the application as an “interested party” to the application.
 - 4.7 As NHS Resolution will be aware, a no significant change relocation application is a “notifiable application” for the purposes of paragraph 18 of schedule 2 to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (“the Regulations”).
 - 4.8 By reason of paragraph 19 of schedule 2 to the Regulations, NHS England [sic] was required to notify our client of the application as a “person included in a pharmaceutical list for the area of the relevant HWB...whose interests might, in the opinion of the NHSCB, be significantly affected if the application were granted.” It is of note that our client’s pharmacy is located within 300 metres of the site proposed by the applicant in its no significant change relocation application.

- 4.9 NHS England's [sic] letter of 11th January 2024 invited our client to submit representations in respect of the application by 25th February 2024. On behalf of our client, we submitted representations to NHS England [sic] by letter dated 19th February 2024. That letter was sent by email to PCSE on the same day. We attach a copy of our letter of 19th February 2024. The letter is 2 pages long and addresses the regulatory test which NHS England [sic] was required to apply to its determination of the no significant change relocation application.
- 4.10 By a letter and email from PCSE of 26th February 2024, PCSE sent to our client a 14-day circulation letter, together with correspondence received by PCSE from Boots, our client (the attached letter of 19th February 2024) and the LPC. A copy of that correspondence is attached to this letter of appeal.
- 4.11 The letter from PCSE dated 26th February 2024 stated that it was enclosing "written representations that we have received regarding the above application". Our client had no further comment to make and no response was sent to PCSE to the 26th February 2024 letter.
- 4.12 On 15th April 2024, our client received notification of a decision in respect of the relocation application, stating that the application had been granted. A copy of the 15th April 2024 letter and decision report is attached to this appeal. It is to be assumed that our client was notified of NHS England's [sic] decision to grant the application as our client is a person entitled to be so notified pursuant to paragraph 28(3)(v).
- 4.13 The decision report stated as follows in relation to third party appeal rights:

4. THIRD PARTY RIGHTS OF APPEAL

4.1 The application is granted so the applicant does not have appeal rights.

4.2 The Committee decided that the parties that should have third party rights of appeal are: Arun Sharma Chemists Ltd.

- 4.14 However, despite the decision report stating that our client was to be given third party rights of appeal, the letter of 15th April 2024 did not provide any information to our client about third party rights of appeal. It is not clear whether the 15th April 2024 letter omitted information about our client's third party rights of appeal in error. However, to the extent that NHS England's [sic] letter of 15th April 2024 intentionally did not provide for our client to be given third party rights of appeal, our client considers that it should have been granted third party rights of appeal against the decision to grant the relocation application since it falls within the scope of paragraph 30 of schedule 2 to the Regulations. In particular:

4.14.1 NHS England [sic] was required to notify our client of the application and subsequent decision and, indeed, our client was notified of the application and subsequent decision.

4.14.2 Our client made representations to NHS England [sic] in writing about the application.

4.14.3 Given the content of those representations, NHS England [sic] should have been satisfied that our client's representations:

4.14.3.1 Made a reasonable attempt to express our client's grounds for opposing the application adequately

4.14.3.2 Raised grounds for opposing the application which did not relate to the legality or reasonableness of the PNA and were not vexatious or frivolous.

- 4.15 To the extent that NHS England's [sic] letter of 15th April 2024 (which makes no mention of third party appeal rights) was not sent in error, NHS England [sic] gave no reasons why our client was not afforded third party rights of appeal, and we believe that the decision not to grant our client third party rights of appeal (if such a decision was, in fact, made deliberately) was unlawful.
- 4.16 In accordance with paragraph 30(6) of schedule 2 to the Regulations, on behalf of our client we therefore seek to appeal the decision of NHS England [sic] not to grant our client third party rights of appeal.

Appeal against the decision of NHS England [sic] to grant the relocation application

- 4.17 Subject to NHS Resolution upholding the above appeal and granting our client third party rights of appeal against the decision by NHS England [sic] to grant the relocation application, our client's ground of appeal in relation to the relocation grant is that NHS England [sic] failed to give any, or any proper, reasons for its decision.
- 4.18 In support of this appeal, our client relies upon its written representations to NHS England [sic] dated 19th February 2024 and asserts that for the reasons given in our client's representations of 19th February 2024, the application fails to satisfy the requirements of regulation 24.
- 4.19 In its decision report, NHS England [sic] stated "*The Committee was satisfied that given the close proximity of the proposed premises to the current premises and the central location of both premises, that the location of the new premises is not significantly less accessible for the patient groups accustomed to accessing pharmaceutical services at the existing premises.*" Since NHS England [sic] does not appear to have defined any "patient groups", it is not clear how NHS England [sic] could have reached the conclusions that it did.
- 4.20 Since our client was not provided with any response from the applicant to its representations of 19th February 2024 and since NHS England's [sic] decision failed to give any reasons why our client's representations were not accepted and why the application was granted, our client has no further substantive comments to make on the merits of the application itself at this stage beyond those contained within our letter of 19th February 2024.
- 4.22 In conclusion, therefore, for the reasons given in our letter of 19th February 2024 and on behalf of our client we consider that NHS England [sic] should have refused this application. We therefore invite NHS Resolution to uphold our client's appeals and to refuse this application."

Letter from Temple Bright LLP on behalf of Arun Sharma Chemists Ltd dated 19 February 2024 addressed to the Commissioner

- 4.23 "As NHS England [sic] will be aware, this application must be considered having regard to the regulatory test contained within regulation 24 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013. The burden of proving that an application meets the relevant regulatory test rests with the applicant.
- 4.24 In relation to that regulatory test, regulation 24(1)(a) requires the applicant to demonstrate to NHS England [sic] that "*(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.*"
- 4.25 The starting point in assessing whether the proposed premises would be significantly less accessible is for the applicant to define the pharmacy's patient groups. Whilst the applicant has made some attempt to define the pharmacy's patient groups, it is clear

that the applicant has not fully or properly defined these groups, meaning that NHS England [sic] cannot consider the question of accessibility.

4.26 Having regard to the information contained within the application form, my client comments as follows:

4.26.1 The applicant states that 71% of the pharmacy's dispensed items originate from the Shirley Health Partnership Practice which will shortly relocate. In relation to the remaining 29% of items, the applicant states that they originate "from surrounding GP practices". Given that the remaining items equate to between a quarter and a third of items dispensed by the pharmacy, the applicant should have provided additional information in relation to the source of those prescriptions so that NHS England [sic] could assess the applicant's assertion that "*patients who travel from other surgeries will not notice a significant change in their journey...*". However, the applicant provides no information about these patients and their GP surgeries.

4.26.2 The applicant then refers to a second patient group, being "patients that require access to pharmaceutical services other than after a visit to a GP surgery". However, no further information is given about this proposed patient group, which is so generic as to be meaningless. For example, the applicant provides no information about:

4.26.2.1 Where those patients have started their journeys on the basis that they have not travelled to the pharmacy directly from their GP surgery.

4.26.2.2 Which pharmaceutical services they require access to and whether this may have any impact on the question of accessibility.

4.26.2.3 How they have travelled to the pharmacy (ie their method of transport).

4.26.3 The applicant asserts in its application form that the majority of the pharmacy's prescriptions originate from the GP surgery which is currently opposite the pharmacy but will shortly relocate. Whilst this statement is correct, it does not help NHS England [sic] to understand why patients are choosing to use the applicant's pharmacy at its current location (particularly those patients who are not registered with the relocating GP surgery). The pharmacy is currently located in a largely residential area to the south west of Shirley Road. There are a number of other pharmacies in the local area, including other pharmacies on, or near to, Shirley Road. Notwithstanding the close proximity of other pharmacies to the applicant's existing premises, patients are choosing to access the applicant's pharmacy, yet the applicant provides no information as to why patients use its pharmacy rather than other pharmacies in the locality.

4.26.4 In the absence of sufficient information about the pharmacy's patient groups, NHS England [sic] cannot properly understand what patient groups access the pharmacy at its current location and why they choose to do so. Without that information, NHS England [sic] cannot be satisfied that the proposed premises would not be significantly less accessible.

4.26.5 For the reasons given above, on behalf of my client I therefore invite NHS England to refuse this application."

5 After reviewing the paperwork provided by the Commissioner, NHS Resolution applied its discretion under Schedule 3, Part 3, paragraph 7 and allowed all parties, including the Appellant, to make representations on the Commissioner's site visit report.

6 **Summary of representations**

This is a summary of representations received on the appeal.

6.1 TEMPLE BRIGHT LLP ON BEHALF OF ARUN SHARMA CHEMISTS LTD

6.1.1 “In relation to the site visit report, my client comments as follows:

6.1.1.1 It is noted that the site visit report is a “virtual” site visit report – that is, the author of the report did not attend the site in-person. It is therefore unlikely that the report will be of any probative value to NHS Resolution in its determination of this appeal.

6.1.1.2 The location of the GP surgery is wrongly shown on the map at page 8 of the report. The surgery has relocated to the same premises as my client’s pharmacy (tagged on the map as “nearest pharmacy – Pharmacy Direct”), not to the Lidl store (tagged on the map as “GP relocation site”).”

6.2 HEALTHCARE PLUS CONSULTING LTD ON BEHALF OF THE APPLICANT

6.2.1 “MC Shirley Ltd have instructed us, Healthcare Plus Consulting Ltd, to act on their behalf for this appeal, we have previously sent an authorisation letter.

6.2.2 Preliminary Matter

6.2.3 We note that Arun Sharma Chemists Ltd have appealed the grant of my client’s relocation application on the grounds that NHS England “*failed to give any, or any proper, reasons for its decision*”.

6.2.4 We point the Committee to the decision report by NHS England [sic] which, contrary to the Appellants grounds of appeal, provides ample reasons for its decision.

6.2.5 NHS England [sic] accepted the patient groups as proposed by my client stating that:

6.2.6 “*The applicant has defined the patient groups accustomed to accessing pharmaceutical services at the existing premises in their application. Those being:*

6.2.6.1 *Patients that utilise the free collection & delivery service.*

6.2.6.2 *Patients that originate from GP surgeries requiring access to Pharmaceutical Services.*

6.2.6.3 *Patients that require access to Pharmaceutical Services other than after a visit to a GP surgery.” (Point 2.19 in NHS England decision report)*

6.2.7 By correspondence dated 19th February 2024, the Appellant also accepted these patient groups but was concerned about detail within these groups stating that:

6.2.8 “*Whilst the applicant has made some attempt to define the pharmacy’s patient groups, it is clear that the applicant has not fully or properly defined these groups*”

6.2.9 Although my client did not necessarily agree with the Appellant on this matter, we expanded on these patient groups as per the Appellants request, by way of correspondence dated 5th March 2024.

- 6.2.10 From correspondence by my client; correspondence from the Appellant; and the NHS decision report, it is clear that the defined patient groups had been accepted by all three parties. Hence, NHS England [sic] did consider sufficient patient groups when coming to its decision.
- 6.2.11 With these patient groups in mind NHS England [sic] observed that:
- 6.2.12 *"The Committee noted the close proximity of the current premises and the proposed premises/central shopping area. The distance between the two premises is 150 yards, the average walking time is 2 minutes." (Point 2.20 in NHS England decision report)*
- 6.2.13 *"The Committee noted that the journey by foot is on flat, maintained and well-lit pavements. The Committee also noted that both premises can be accessed using the same bus route/bus stops." (Point 2.21 in NHS England decision report)*
- 6.2.14 *"The Committee noted that both the existing and proposed premises are central to the Shirley area and that therefore access from where people live or shop is not significantly different at either site." (Point 2.22 in NHS England decision report)*
- 6.2.15 With these patient groups in mind, observations, and previous correspondence, NHS England [sic] concluded that:
- 6.2.16 *"The Committee was satisfied that given the close proximity of the proposed premises to the current premises and the central location of both premises, that the location of the new premises is not significantly less accessible for the patient groups accustomed to accessing pharmaceutical services at the existing premises." (Point 2.23 in NHS England decision report)*
- 6.2.17 Hence, NHS England [sic] concluded that regulation 24(1)(a) has been met. NHS England [sic] went on to consider the other facets of Regulation 24 in turn and concluded that these were also satisfied by my client. It is of note that only regulation 24(1)(a) was in dispute by the Appellant.
- 6.2.18 We conclude that it is clear that NHS England [sic] did provide sufficient reasoning when deciding to grant my clients application; contrary to the stated appeal grounds by the Appellant that NHS England [sic] *"failed to give any, or any proper, reasons for its decision"*. We also highlight to NHS resolution that the Appellant has not provided any further correspondence/ new information in relation to their appeal. If the Appellant has not provided any further information in regard to their appeal; how is my client able to adequately respond to any objections?
- 6.2.19 To summarise, the Appellant has not given proper grounds for appeal and has provided no further information in regard to their appeal. We submit that this appeal is vexatious/ frivolous, especially when we consider that the relocation distance is a mere 0.1 miles.
- 6.2.20 We strongly believe that the appeal by the Appellant constitutes a misconceived appeal and should be dismissed in accordance with The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, Schedule 3, Part 1, Paragraphs 2(a) and 2(b).
- 6.2.21 **Appeal Comments**
- 6.2.22 Should NHS Resolution decide to hear the appeal, my client reattaches all previous correspondence for consideration in the absence of being able to respond to adequate/ defined appeal grounds by the Appellant.

- 6.2.23 We also attach previous correspondence from the Appellant as well as the NHS decision report.
- 6.2.24 We reiterate to the committee that this is a relocation of 160 metres/ no more than a 2-minute walk with:
- 6.2.24.1 One road crossing
 - 6.2.24.2 Across flat terrain
 - 6.2.24.3 Across well-lit footpath
 - 6.2.24.4 Patients would utilise the same bus-stop (which is closer to the proposed site)
 - 6.2.24.5 No stepped access
- 6.2.25 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.
- 6.2.26 Regulation 24 has been met through previous representation by my client and thus we invite NHS Resolution to grant my client's application."

Letter from Healthcare Plus Consulting on behalf of the Applicant dated 5 March 2024 addressed to the Commissioner

- 6.2.27 "We note the following:
- 6.2.27.1 The Local Pharmaceutical Committee have no objections to the relocation.
 - 6.2.27.2 The experienced regulatory team at Boots have no objections to the relocation.
 - 6.2.27.3 Regulation 31 is undisputed by all contractors.
 - 6.2.27.4 Arun Sharma Chemists Ltd require additional clarification on Regulation 24.
- 6.2.28 Taking each representation in turn:
- 6.2.29 Community Pharmacy South Central (LPC)
- 6.2.30 My client would like to express his disappointment at the lack of support for this relocation by the LPC. It is unusual to see a lack of support by an LPC for relocations of such a short distance.
- 6.2.31 We note that Arun Sharma, who is director and 80% shareholder of the main Objector: Arun Sharma Chemists Ltd, is also Vice Chair of the LPC.
- 6.2.32 We sincerely hope that the LPC's views have not been skewed by this clear conflict of interest.
- 6.2.33 Arun Sharma Chemists Ltd
- 6.2.34 We note that the Objector criticises the patient groups that we have used in our application and proceeds to claim that these are insufficient. Whilst we understand that the Objector has significant standing within the LPC, we note

that it is not up to the Objector to determine what does and does not constitute a sufficient patient group.

- 6.2.35 We as a consultancy practice, have successfully used these patient groups on many occasions for numerous clients so cannot see what the issue is.
- 6.2.36 At the very least, the Objector could have provided insight into what patients groups they believe should be defined. It is apparent that this is not the case, and thus it can be determined that such comments ultimately lack substance and are vexatious in nature.
- 6.2.37 In relation to each patient group:
- 6.2.38 Patients that utilise the collection & delivery service
- 6.2.39 The Objector has no comments on this patient group.
- 6.2.40 Patients that originate from the Local GP surgeries in the area requiring access to Pharmaceutical Services
- 6.2.41 The Objector states that my client should have provided additional information in relation to the source of the 29% of items that originate from surgeries other than Shirley Health Partnership practice.
- 6.2.42 Again, it is not up to the Objector to determine what information my client should/ should not provide; however, we have provided further information below.
- 6.2.43 C.13% of items originate from Cheviot Road Surgery.
- 6.2.44 Those patients accessing pharmaceutical provision in relation to a visit to Cheviot Road Surgery will not find the proposed site significantly less accessible.
- 6.2.45 By Foot
- 6.2.46 This journey is only an additional 160 metres, with no barriers to movement and thus cannot be determined to be significantly less accessible.
- 6.2.47 By Public Transport
- 6.2.48 The Proposed site is actually more accessible for patients accessing pharmaceutical services by bus given it's sitting directly opposite Grove Road bus stop. The proposed and current site both utilize this same bus stop. Patients would utilise the No.18 or No.7 bus.
- 6.2.49 By Car
- 6.2.50 The proposed site is not significantly less accessible for patients accessing pharmaceutical services by car given the proposed site has parking directly outside.
- 6.2.51 C.5% of items originate from Atherley House Surgery.
- 6.2.52 Those patients accessing pharmaceutical provision in relation to a visit to Atherley House Surgery will not find the proposed site significantly less accessible.
- 6.2.53 By Foot

- 6.2.54 The proposed site is actually more accessible for patients accessing pharmaceutical services by foot given that the proposed site is closer to Atherley House Surgery.
- 6.2.55 By Public Transport
- 6.2.56 The Proposed site is actually more accessible for patients accessing pharmaceutical services by bus given it's sitting directly opposite Grove Road bus stop. The proposed and current site both utilize this same bus stop. Patients would utilise the No. 4/7/17/18 buses.
- 6.2.57 By Car
- 6.2.58 The proposed site is not significantly less accessible for patients accessing pharmaceutical services by car given the proposed site has parking directly outside.
- 6.2.59 We reiterate that patients accessing pharmaceutical services after a visit to the local GP surgery will notice little difference in accessing pharmaceutical services with the new location being c. 160 metres away and closer to many local amenities on the high street. Given the short distance between the 2 sites, the maximum additional journey for a patient would be an additional 2-minute walk. These journeys cannot be deemed significantly less accessible.
- 6.2.60 Please see the original application for further information.
- 6.2.61 Patients that require access to Pharmaceutical Services other than after a visit to a GP surgery
- 6.2.62 The Objector again makes passing comments criticising this patient group. Yet again, such comments lack substance.
- 6.2.63 We highlight that the proposed location is situated on a busy high street which contains many amenities that the local population are accustomed to accessing as part of their daily lives. Currently, patients have to take a diversion from these amenities to access pharmaceutical provision at the current site. 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. We also note that the major bus routes are situated on this high street, outside the proposed location.
- 6.2.64 The shopping parade is home to a variety of independent units, which include a Café, Hairdressers, Convenience Store, Take-Aways and Restaurants to name a few.
- 6.2.65 The proposed site is served by wide well-lit walkways and does not contain stepped access.
- 6.2.66 We reiterate that patients accessing pharmaceutical services other than after a visit to the local GP surgery will notice little difference in accessing pharmaceutical services with the new location being c.160 metres away and closer to many local amenities on the high street. Given the short distance between the 2 sites, the maximum additional journey for a patient would be an additional 2-minute walk. These journeys cannot be deemed significantly less accessible.
- 6.2.67 Please see the original application for further information.
- 6.2.68 Other matters

- 6.2.69 The Objector takes issue with the proximity of other pharmacies on Shirley Road. As the committee will be aware, there is no provision in the regulations for proximity to other pharmacies aside from Regulation 31. The proposed site is not currently/ adjacent to another pharmacy and thus there is no reason to refuse this application under Regulation 31. Thus, comments by the objector on proximity to other pharmacies are irrelevant.
- 6.2.70 The Objector asks “why patients use (my client’s) pharmacy rather than other pharmacies in the locality”. The simple answer to this is that the service provided by my client is well liked by residents and thus they choose to access pharmaceutical services managed by MC Shirley Ltd. Given the proposed site is only c.160 metres away and not significantly less accessible, my client anticipates that all patients will migrate to the proposed site.
- 6.2.71 Conclusion
- 6.2.72 In conclusion, we highlight that the new premises are not significantly less accessible for any patient group.
- 6.2.73 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.
- 6.2.74 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, and the proposed location being situated on a thriving high street.
- 6.2.75 Hence, regulation 24 & 31 have been met in full and this application should be granted.”

6.3 THE COMMISSIONER

- 6.3.1 “We note that the letter informing Arun Sharma Chemists Ltd of the decision as an interested party did not include the right of appeal. However, the Hampshire and Isle of Wight Pharmaceutical Services Regulations Committee (PSRC) had given the right to appeal to Arun Sharma Chemists Ltd and this was stated in the decision report. We note that this matter was appealed, and the decision made by NHS Resolution was to grant the right of appeal.
- 6.3.2 We have followed up this matter with Primary Care Support England (PCSE).
- 6.3.3 The Hampshire and Isle of Wight PSRC have no other comments to make in response to the appeal and respectfully asks that the decision to grant the application is confirmed.”

7 Observations on representations

7.1 TEMPLE BRIGHT LLP ON BEHALF OF ARUN SHARMA CHEMISTS LTD

- 7.1.1 “Taking the matters raised by the applicant’s representative in turn, my client comments as follows.
- 7.1.2 **Preliminary matter**
- 7.1.3 Since NHS Resolution must consider the matters contained within paragraph 2 of Schedule 3 to the Regulations as preliminary matters (ie before the appeal is notified to interested parties), it appears clear that NHS Resolution has already determined that my client has raised valid and reasonable grounds of appeal.

7.1.4 Appeal comments

- 7.1.5 My client has not previously seen the letter from the applicant's representative dated 5th March 2024 and therefore comments on it as follows.
- 7.1.6 In relation to the applicant's proposed patient groups, as a starting point it is for the applicant to satisfy NHS England [sic] (or NHS Resolution on appeal) that the application meets the relevant regulatory test; it is not for my client to prove that it does not meet the relevant regulatory test.
- 7.1.7 It is therefore incumbent upon the applicant to provide sufficient information about its patient groups to allow an assessment of accessibility, and my client maintains that the applicant has failed to discharge that burden.
- 7.1.8 In relation to the patient groups set out in the letter of 5th March 2024:
- 7.1.8.1 The applicant has provided some further information about the GP surgeries from which its prescriptions originate, but there is still a significant gap in this information.
- 7.1.8.2 According to the latest information from NHS Business Services, the pharmacy dispenses approximately 5,000 items a month. Of those, the applicant has provided information about The Shirley Health Partnership, Cheviot Road Surgery and Atherley House Surgery. Those surgeries accounted for 4,120 of the pharmacy's items for the last available month, meaning that no information is provided for approximately 20% (or 1 in 5) of the pharmacy's prescriptions.
- 7.1.8.3 The applicant notes that the proposed premises are "on a busy high street" compared to the existing location which is in a quieter, residential area. The applicant states that patients "have to take a diversion from those amenities to access pharmaceutical services at the current site". However, this submission relies upon knowing the patient's starting point and their journey to the pharmacy.
- 7.1.8.4 The applicant has not provided any information to support this assertion and does not appear to know that patients "take a diversion" to access the pharmacy at its current location. For example, it appears equally possible that patients access the pharmacy at its existing location because it is away from the hustle and bustle of the "busy high street". That is why my client submitted (in representations to NHS England) [sic] that there was insufficient information provided by the applicant in relation to the starting point and method of travel of those using the pharmacy other than after a visit to their GP surgery.
- 7.1.8.5 The applicant has failed to address this gap in information, despite having been given ample opportunity to do so.
- 7.1.9 Additionally, the applicant fails to provide information about other services that are provided, and the patient groups that are accustomed to accessing those other services. For example, the pharmacy provides the Pharmacy First service, NMS and flu vaccinations and yet does not mention these patients at all.
- 7.1.10 The applicant appears to rely solely on the distance between the existing and proposed premises in support of this application and asserts, in effect, that this should be enough to satisfy NHS Resolution that the regulatory test is met. However, the regulatory test requires NHS Resolution to assess the impact of the proposed relocation on the pharmacy's patient groups. The applicant is therefore required to provide sufficient information in support of its application

regarding its patient groups to enable the question of accessibility to be determined. Notwithstanding this, the applicant makes only a cursory effort to define its patient groups (despite having been given the opportunity to provide additional information on at least 2 occasions).

- 7.1.11 My client asserts that there are clear and obvious gaps in the information that has been provided by the applicant in relation to its patient groups. On that basis, NHS Resolution cannot be satisfied that the application meets the requirements of regulation 24 and is invited to uphold my client's appeal and refuse this application."

7.2 HEALTHCARE PLUS CONSULTING ON BEHALF OF THE APPLICANT

- 7.2.1 "As highlighted by the Appellant, Shirley Health Partnership relocated to new premises on the 6th June 2024. Given that the month of June has now come to a close, we are able to better analyse the impact of this relocation in the context of this application – previously there was not enough data to do so.

- 7.2.2 By extracting June data from my client's PMR system, we are able to assess the impact of this relocation on patients, especially those patients who belong to patient group 2 and access pharmaceutical provision after a visit to the GP.

- 7.2.3 We highlight to the Committee that Shirley Health Partnership was previously located opposite my client's current premises at Shirley Health Centre, Grove Road, Shirley, Southampton, SO15 3UA. The Practice is now located 0.3 miles away at 355 Shirley Road, Shirley, Southampton, SO15 3JD.

- 7.2.4 Overleaf we provide a map of my client's current site; the old location of Shirley Health Partnership; the new location of Shirley Health Partnership; and my client's proposed site.

- 7.2.5 [Map provided at Appendix B]

- 7.2.6 Post-relocation, c.61% of my client's items originate from Shirley Health Partnership – a drop of 10%. Despite the greater distance that patients now have to travel to access pharmaceutical provision at my client's current site, the percentage of patients utilising pharmaceutical provision in connection with a visit to Shirley Health Partnership still remains strong. As highlighted in our correspondence dated 5th March 2024, patients prefer the service provided by my client and evidently will travel to receive this service. A number of patients are currently travelling 0.3 miles to access pharmaceutical services at my client's current site after a visit to Shirley Health Partnership. It is clear that patients are prepared to travel to pharmaceutical premises operated by my client and it can be concluded that these patients are mobile.

- 7.2.7 We highlight that the proposed site is in fact closer to Shirley Health Partnership than the current site at a distance of 0.2 miles.

- 7.2.8 Looking at this new patient journey, we can see that patients who utilise pharmaceutical provision at my client's current site after a visit to Shirley Health Partnership will not find the proposed site significantly less accessible:

7.2.9 **By Foot**

- 7.2.10 The proposed site is actually **more accessible** for patients accessing pharmaceutical services by foot given that the proposed site is closer to the new Shirley Health Partnership location.

7.2.11 **By Public Transport**

7.2.12 The Proposed site is actually **more accessible** for patients accessing pharmaceutical services by bus given it's sitting directly opposite Grove Road bus stop. The proposed and current site both utilize this same bus stop. Patients would utilise the No. 4/7/17/18/19 buses.

7.2.13 **By Car**

7.2.14 The proposed site is not significantly less accessible for patients accessing pharmaceutical services by car given the proposed site has parking directly outside.

7.2.15 We have previously highlighted how the proposed premises are not significantly less accessible for patients accessing pharmaceutical provision after a visit to Cheviot Road Surgery (1.6 miles from current site) and Atherley House Surgery (0.4 miles from current site) in correspondence dated 5th March 2024. We highlight to the Committee that now c.18% of patients originate from Cheviot Road Surgery (compared to c.13% pre relocation of the GP). The percentage of patients originating from Atherley House surgery remains c.5%. For completeness, we also look at the journeys from a couple more surgeries below.

7.2.16 C.5% of items originate from Hill Lane Surgery (0.7 miles from current site)

7.2.17 Those patients accessing pharmaceutical provision in relation to a visit to Hill Lane Surgery will not find the proposed site significantly less accessible.

7.2.18 **By Foot**

7.2.19 The proposed site is actually **more accessible** for patients accessing pharmaceutical services by foot given that the proposed site is closer to Hill Lane Surgery.

7.2.20 **By Public Transport**

7.2.21 There are no direct transport links between the two sites. In any case, the proposed site is actually **more accessible** for patients accessing pharmaceutical services by bus given it's sitting directly opposite Grove Road bus stop. The proposed and current site both utilize this same bus stop.

7.2.22 **By Car**

7.2.23 The proposed site is not significantly less accessible for patients accessing pharmaceutical services by car given the proposed site has parking directly outside.

7.2.24 C.4% of items originate from Victor Street Surgery (0.7 miles from current site)

7.2.25 Those patients accessing pharmaceutical provision in relation to a visit to Hill Lane Surgery will not find the proposed site significantly less accessible.

7.2.26 **By Foot**

7.2.27 The proposed site is not significantly less accessible for patients accessing pharmaceutical services by foot given that the proposed site is approximately the same distance to Victor Street Surgery.

7.2.28 **By Public Transport**

- 7.2.29 The Proposed site is actually **more accessible** for patients accessing pharmaceutical services by bus given it's sitting directly opposite Grove Road bus stop. The proposed and current site both utilize this same bus stop. Patients would utilise the No. 4/17/18/19 buses.
- 7.2.30 **By Car**
- 7.2.31 The proposed site is not significantly less accessible for patients accessing pharmaceutical services by car given the proposed site has parking directly outside.
- 7.2.32 From the correspondence above, and previous correspondence it is clear that the proposed site is not significantly less accessible for patients after visiting a GP.
- 7.2.33 For completeness, we also revisit **Patient Group 3: Patients that require access to Pharmaceutical Services other than after a visit to a GP Surgery**
- 7.2.34 We reiterate that this patient group would have a maximum 2-minute additional walk to access pharmaceutical provision at the proposed site, along flat, maintained and well-lit pavements with no major road crossings.
- 7.2.35 Those living in the residential area to the west of the current & proposed site would likely have to make the full additional 160 metre/ 2-minute walk. However, we submit that this is a journey that these residents are accustomed to making anyway when accessing other services as part of their daily lives. The current site is likely to only be accessed for the sole purpose of obtaining pharmaceutical provision; whereas the proposed site is located on a busy high street where these residents are accustomed to accessing their day-to-day needs. In any case, a journey of 160 metres/ 2-minutes cannot be deemed **significantly** less accessible.
- 7.2.36 The high street is home to Restaurants, hairdressers, a Mini Market, a Premier Convenience Store, a Tesco express, and a McDonald's. A pharmacy located on this high street is actually more accessible for local residents wanting to access pharmaceutical provision as part of their daily lives.
- 7.2.37 We also reiterate that the proposed site is **more accessible** for patients accessing pharmaceutical services by bus given it's sitting directly opposite Grove Road bus stop. The proposed and current site both utilize this same bus stop.
- 7.2.38 The Proposed site is also **more accessible** for those who shop in the local area, with the proposed site being located on the high street, opposed to the current location which is just behind the high street.
- 7.2.39 In any case, it is clear that the proposed site cannot be deemed **significantly** less accessible for members of Patient Group 3.
- 7.2.40 We also would like to highlight to the Committee 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.
- 7.2.41 Patients with moderate mobility impairment, who access the pharmacy by bus will find the proposed site **more accessible** due to its siting adjacent to Grove Road bus stop.

7.2.42 Patients with moderate mobility impairment, who access the pharmacy by car will find the proposed site **more accessible** with dedicated car parking directly outside the proposed premises. Patients currently utilise street parking outside the current site.

7.2.43 **Conclusion**

7.2.44 It is clear that the journey between the current and proposed site is not a difficult one for patients to make and thus cannot be deemed a **significantly** less accessible journey. Emphasis on significantly.

7.2.45 Regulation 24 has been met through all representations by my client and thus we invite NHS Resolution to grant my client's application."

8 **Consideration**

8.1 The Pharmacy Appeals Committee ("Committee") appointed by NHS Resolution had before it the papers considered by the Commissioner.

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

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

8.4 As a preliminary point, the Committee noted the Applicant's contention that the appeal constitutes a misconceived appeal.

8.5 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations"), in particular Schedule 3, Part 1, paragraph 2 which states:

Misconceived appeals

2. If the Secretary of State, after considering a valid notice of appeal under regulation 45, 63 or 77, or paragraph 30, 32(5) or 36 of Schedule 2 against a decision, is of the opinion that the notice—

(a) contains no valid grounds of appeal (for example, because it amounts to a challenge to the legality or reasonableness of a HWB's or Primary Care Trust's pharmaceutical needs assessment, or to the fairness of the process by which the HWB or a Primary Care Trust undertook that assessment); or

(b) contains no reasonable grounds for appeal (for example, where it is vexatious or frivolous),

the Secretary of State may determine the appeal by dismissing it (without proceeding to notify the appeal under Part 2).

8.6 The Committee considered the Appellant's grounds for appeal and noted that it provides various reasons as to why it does not agree with the decision of the Commissioner (for example, no defined patient groups, not taking its representations into account). Therefore, the Committee was of the view that the appeal is a valid notice of appeal.

8.7 The Committee next 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).

8.8 In its decision report, the Commissioner stated that *"There is currently no other NHS pharmacy contractor included in the pharmaceutical list at or adjacent to the proposed premises."* The Committee noted that this had not been disputed either on appeal or in subsequent representations, and therefore was not required to refuse the application under the provisions of Regulation 31.

8.9 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).*

Regulation 24(1)(a)

8.10 In relation to condition (a), the Committee considered the map submitted by the Commissioner which shows the locations of the existing pharmacies as well as the proposed premises and medical practices within the area. The Committee noted comments that Shirley Health Partnership, which was previously located at the Shirley Health Centre, Grove Road, Shirley (opposite the Applicant's existing premises) has relocated to 355 Shirley Road, Shirley, Southampton, SO15 3JD.

- 8.11 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.
- 8.12 In this case, the Applicant has identified the patient groups as:
- 8.12.1 Patients that utilise the free collection & delivery service;
 - 8.12.2 Patients that originate from GP surgeries requiring access to Pharmaceutical Services;
 - 8.12.3 Patients that require access to Pharmaceutical Services other than after a visit to a GP surgery; and
 - 8.12.4 Patients whose mobility is impaired.
- 8.13 The Committee noted the Appellant had suggested that there might be other patient grounds such as those accessing advanced services. The Committee considered that these patients would fall within the Applicant's defined patient groups. 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

- 8.14 The Applicant states that c30% of patients utilise this service. 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.
- 8.15 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 GP surgeries requiring access to Pharmaceutical Services

- 8.16 The Committee noted the Applicant had broken this group down further by referring to the following GP surgeries:
- 8.16.1 Shirley Health Partnership;
 - 8.16.2 Cheviot Road Surgery;
 - 8.16.3 Atherley House Surgery;
 - 8.16.4 Hill Lane Surgery; and
 - 8.16.5 Victor Street Surgery.

- 8.17 The Committee first considered the patient group that originates from Shirley Health Partnership. The Applicant states that since the surgery's relocation, 61% of its items originate from Shirley Health Partnership.
- 8.18 The Committee noted undisputed comments that those accessing the pharmacy after a visit to Shirley Health Partnership do so either on foot, by car or by public transport.
- 8.19 For those who access on foot, the Committee noted comments that the distance to the proposed premises is in fact closer than the existing premises at 0.2 miles as opposed to 0.3 miles. The Committee noted comments that the pavements in the area were flat, maintained and well-lit, which had not been disputed by the Appellant.
- 8.20 For those patients who have limited mobility, or who are unable or choose not to walk, the Committee went on to consider ease of access to the proposed premises by public and private transport.
- 8.21 The Committee noted undisputed comments that *"the proposed and current site both utilize this same bus stop"* that being located directly opposite Grove Road. Further the Committee noted from the maps provided, that the bus stop appears to be closer to the proposed premises than it is the existing premises.
- 8.22 The Committee noted in its site visit report, the Commissioner refers to there being parking along the road outside the parade of shops for approximately 3 cars and further that disabled badge holders are able to park alongside this road. The site visit report also refers to Marlborough Road North Car Park, which is open 24 hours and has free parking for up to two hours. The Committee noted that whilst the Appellant contends that the site visit report is a "virtual" site visit, and therefore it is unlikely that the report will be of any probative value, the Appellant does not dispute the findings of the report.
- 8.23 Based on the information before it, the Committee was satisfied that for those that access pharmaceutical services after a visit to Shirley Health Partnership, the proposed premises would not be significantly less accessible.
- 8.24 The Committee next considered the patient group that originates from Cheviot Road Surgery. The Applicant states that since the surgery's relocation, *"18% of patients originate from Cheviot Road Surgery (compared to c.13% pre relocation of the GP)"* which the Committee considers it to mean items dispensed, as opposed to patients.
- 8.25 Again, the Committee noted undisputed comments that those accessing the pharmacy after a visit to Cheviot Road Surgery do so either on foot, by car or by public transport.
- 8.26 The Committee noted the Applicant's comments that the journey for those on foot is an additional 160 metres, with no barriers to movement and therefore cannot be considered significantly less accessible. Based on the map provided and the distance that Cheviot Road Surgery is located from the existing premises, the Committee considered that it is unlikely that all patients would be able or choose to walk from this surgery to either the existing or proposed premises. However if patients were already making this sizeable journey on foot, the Committee considered that an additional 160 metres along flat terrain, with no barriers, would not render the proposed premises significantly less accessible.
- 8.27 The Committee noted undisputed comments that *"the proposed and current site both utilize this same bus stop"* that being directly located opposite Grove Road. Further that patients would use the no. 18 or no. 7 buses. The Committee noted that this had not been disputed by the Appellant.
- 8.28 Again, the Committee noted in its site visit report, the Commissioner refers to there being parking along the road outside the parade of shops for approximately 3 cars and further that disabled badge holders are able to park alongside this road. The site visit

report also refers to Marlborough Road North Car Park, which is open 24 hours and has free parking for up to two hours.

- 8.29 Based on the information before it, the Committee was satisfied that for those that access pharmaceutical services after a visit to Cheviot Road Surgery, the proposed premises would not be significantly less accessible.
- 8.30 The Committee next considered the patient group that originates from Atherley House Surgery. The Applicant states that the percentage of patients originating from Atherley House Surgery remains at 5%, which the Committee considers it to mean items dispensed as opposed to patients.
- 8.31 Again, the Committee noted undisputed comments that those accessing the pharmacy after a visit to Atherley House Surgery do so either on foot, by car or by public transport.
- 8.32 The Applicant states that *"the proposed site is actually more accessible for patients accessing pharmaceutical services by foot given that the proposed site is closer to Atherley House Surgery."* Further, looking at the map provided by the Commissioner, the Committee considered it likely that patients would have to walk past the proposed premises, to access the existing premises.
- 8.33 The Committee noted undisputed comments that *"the proposed and current site both utilize this same bus stop"* that being directly opposite Grove Road. Further the Committee noted from the maps provided, that the bus stop appears to be closer to the proposed premises than it is the existing premises.
- 8.34 The Committee noted in its site visit report, the Commissioner refers to there being parking along the road outside the parade of shops for approximately 3 cars and further that disabled badge holders are able to park alongside this road. The site visit report also refers to Marlborough Road North Car Park, which is open 24 hours and has free parking for up to two hours.
- 8.35 Based on the information before it, the Committee was satisfied that for those that access pharmaceutical services after a visit to Atherley House Surgery, the proposed premises would not be significantly less accessible.
- 8.36 The Committee next considered the patient group that originates from Hill Lane Surgery. The Applicant states that 5% of items originate from Hill Lane Surgery.
- 8.37 Again, the Committee noted undisputed comments that those accessing the pharmacy after a visit to Hill Lane Surgery do so either on foot, by car or by public transport.
- 8.38 The Applicant states that *"the proposed site is actually **more accessible** for patients accessing pharmaceutical services by foot given that the proposed site is closer to Hill Lane Surgery."*
- 8.39 Although the Committee does not know the distance involved to the proposed premises from Hill Lane Surgery, from looking at the map provided by the Commissioner, the Committee considered it likely that patients would have to walk past the proposed premises, to access the existing premises. However the Committee was mindful that there will be many patients who are unable or who do not choose to make the journey on foot.
- 8.40 The Applicant states that there are no direct transport links between Hill Lane Surgery and the existing premises, and in any case *"the proposed site is actually **more accessible** for patients accessing pharmaceutical services by bus given it's sitting directly opposite Grove Road bus stop. The proposed and current site both utilize this same bus stop."* This had not been disputed by the Appellant.

- 8.41 The Committee noted in its site visit report, the Commissioner refers to there being parking along the road outside the parade of shops for approximately 3 cars and further that disabled badge holders are able to park alongside this road. The site visit report also refers to Marlborough Road North Car Park, which is open 24 hours and has free parking for up to two hours.
- 8.42 Based on the information before it, the Committee was satisfied that for those that access pharmaceutical services after a visit to Hill Lane Surgery, the proposed premises would not be significantly less accessible.
- 8.43 The Committee next considered the patient group that originates from Victor Street Surgery. The Applicant states that 4% of items originate from this surgery.
- 8.44 Again, the Committee noted undisputed comments that those accessing the pharmacy after a visit to Victor Street Surgery do so either on foot, by car or by public transport.
- 8.45 For those accessing the existing premises on foot, the Applicant states that the proposed site is approximately the same distance to Victor Street Surgery. Based on the map provided, and the distance that Victor Street Surgery is located from the existing premises, the Committee considered that it is unlikely that all patients would be able to or choose to walk from this surgery to either the existing or proposed premises.
- 8.46 The Committee noted undisputed comments that *“the proposed and current site both utilize this same bus stop”* that being directly opposite Grove Road. Further the Committee noted from the maps provided, that the bus stop appears to be closer to the proposed premises than it is the existing premises.
- 8.47 The Committee noted in its site visit report, the Commissioner refers to there being parking along the road outside the parade of shops for approximately 3 cars and further that disabled badge holders are able to park alongside this road. The site visit report also refers to Marlborough Road North Car Park, which is open 24 hours and has free parking for up to two hours.
- 8.48 Based on the information before it, the Committee was satisfied that for those that access pharmaceutical services after a visit to Victor Street Surgery, the proposed premises would not be significantly less accessible.

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

- 8.49 The Committee noted in its decision report, the Commissioner states that *“both the existing and proposed premises are central to the Shirley area and that therefore access from where people live or shop is not significantly different at either site.”*
- 8.50 The Appellant contends that the Applicant has not provided any information in relation to where the patients have started their journeys, which services they require access to or how they have travelled to the pharmacy.
- 8.51 The Applicant states that *“the current site is likely to only be accessed for the sole purpose of obtaining pharmaceutical provision; whereas the proposed site is located on a busy high street where these residents are accustomed to accessing their day-to-day needs. In any case, a journey of 160 metres/ 2-minutes cannot be deemed **significantly** less accessible.”*
- 8.52 Although the Applicant has not provided specific information as to where this patient group may start their journey, the Committee felt that it was appropriate to assess accessibility for these patients by their method of transport.

- 8.53 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 its various submissions.
- 8.54 For those patients who accessed the existing premises on foot, irrespective of their starting point, the Committee was of the view that, as always, in journeys to the pharmacy from different locations, for some of them within this group the distance to the proposed premises would be shorter whilst for others it would be longer. The Committee noted the distance between the two sites is approximately 160 metres, which would take 2 minutes to walk. The Committee remained of the view that the area was flat, with maintained and well-lit pavements.
- 8.55 The Committee noted in its site visit report, the Commissioner refers to there being parking along the road outside the parade of shops for approximately 3 cars and further that disabled badge holders are able to park alongside this road. The site visit report also refers to Marlborough Road North Car Park, which is open 24 hours and has free parking for up to two hours. The Committee noted that there was no information provided to demonstrate that there were any barriers to accessing the proposed premises by car.
- 8.56 The Committee noted the Applicant's comments that for those accessing the existing premises by bus, that patients would utilise the same bus stop in order to access the proposed premises, and that it would actually involve a shorter walk to the pharmacy as the proposed premises was located closer to the bus stop. In its site visit report, the Commissioner referred to the area as being a "*city setting with a good regular bus network throughout*" which had not been disputed by the Appellant.
- 8.57 The Committee was of the view that for those that access pharmaceutical services otherwise than after a visit to their GP, the proposed premises was not significantly less accessible.

Patients whose mobility is impaired

- 8.58 The Committee considered that it had to have regard to how this patient group access the existing premises and therefore the accessibility of the proposed premises. 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 premises would depend on how they access the existing premises. 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 premises in light of each method of transport for this patient group.
- 8.59 The Committee noted the comments made earlier in this determination about the flat 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.
- 8.60 The Committee was of the view that if they accessed the existing premises by car then the proposed premises would not be significantly less accessible. If they accessed the existing premises by public transport then the proposed premises would not be significantly less accessible for the reasons given above.
- 8.61 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

- 8.62 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 the 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

8.63 Based on the information provided, the Committee was able to be satisfied that, for patient groups who are accustomed to accessing the existing premises, the proposed premises is not significantly less accessible.

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

Regulation 24(1)(b)

8.65 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)

8.66 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)

8.67 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 premises. On the information provided, the Committee determined that condition (d) is met.

Regulation 24(1)(e)

8.68 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.

Overall

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

- 8.69.1 confirm the Commissioner's decision;
 - 8.69.2 quash the Commissioner's decision and redetermine the application;
 - 8.69.3 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.
- 8.70 Although the Committee has reached the same conclusion to that of the Commissioner, it had done so for different reasons (i.e. it has considered access for each specific patient group). In these circumstances the Committee determined that the decision of the Commissioner must be quashed.
- 8.71 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.
- 8.72 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.
- 8.73 The Committee concluded that further notification under paragraph 19 of Schedule 2 would not be helpful in this case.

9 **Decision**

- 9.1 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.
- 9.2 The Committee quashes the decision of the Commissioner and redetermines the application.
- 9.3 The Committee has determined that conditions (a), (b), (c), (d) and (e) are satisfied.
- 9.4 The application is granted.

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Primary Care Appeals