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12 February 2025

REF: SHA/26390

APPEAL AGAINST NORTH CENTRAL LONDON ICB DECISION TO REFUSE AN APPLICATION BY SHEAV CHEM LIMITED FOR A RELOCATION THAT DOES NOT RESULT IN A SIGNIFICANT CHANGE TO PHARMACEUTICAL SERVICES PROVISION UNDER REGULATION 24 FROM 11 SHEAVESHILL PARADE, SHEAVESHILL AVENUE, COLINDALE, LONDON, NW9 6RS TO UNIT 1, 156 COLINDALE AVENUE, COLINDALE, LONDON, NW9 5HE

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:

Sheav Chem Limited (the Applicant) represented by Pharmacy Sales & Consultancy
PCSE on behalf of North Central London ICB (the Commissioner)
Boots UK Ltd

REF: SHA/26390

NHS Resolution

APPEAL AGAINST NORTH CENTRAL LONDON ICB DECISION TO REFUSE AN APPLICATION BY SHEAV CHEM LIMITED FOR A RELOCATION THAT DOES NOT RESULT IN A SIGNIFICANT CHANGE TO PHARMACEUTICAL SERVICES PROVISION UNDER REGULATION 24 FROM 11 SHEAVESHILL PARADE, SHEAVESHILL AVENUE, COLINDALE, LONDON, NW9 6RS TO UNIT 1, 156 COLINDALE AVENUE, COLINDALE, LONDON, NW9 5HE

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1 **The Application**

By application dated 8 April 2024, Sheave Chem Limited ("the Applicant") applied to North Central London ICB ("the Commissioner") for a relocation that does not result in a significant change to pharmaceutical services provision under Regulation 24 from 11 Sheaveshill Parade, Sheaveshill Avenue, Colindale, London, NW9 6RS to Unit 1, 156 Colindale Avenue, Colindale, London, NW9 5HE. 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 other pharmacy in the same or adjacent premises."

Information in support of all no significant change applications:

1.2 **"Application by Sheav Chem Limited in respect of a relocation within a HWB area that does not result in significant change to pharmaceutical services provision – supporting information.**

1.3 *Current location*: **11 Sheaveshill Parade, Sheaveshill Avenue, Colindale, London, NW9 6RS**

1.4 *Proposed location:* **Unit 1, 156 Colindale Avenue, Colindale, London NW9 5HE**

1.5 **Background**

1.6 The applicant owns a pharmacy which provides pharmaceutical services from premises located on Sheaveshill Avenue, Colindale, London.

1.7 The proposed premises are located within the Colindale Gardens development which is a short distance from Colindale underground station. Our client has recently reached agreement with the Landlord of the proposed premises for a new lease.

1.8 In June 2023 our client submitted an application for inclusion in the pharmaceutical list, offering 'unforeseen benefits' at a best estimate location "within the Colindale Gardens development". This application was refused by the ICB in October 2023. Our client submitted an appeal against this refusal to NHS Resolution but the appeal was not successful. Our client was notified of the final refusal of the application in February this year.

1.9 Our client remains of the view that a pharmacy at this location will not only be beneficial to its existing patients, but will also be highly beneficial to the residents of Colindale Gardens and the surrounding area given the prominent and accessible location. It will also facilitate the provision of pharmaceutical services from larger premises which are better equipped for future services provision. It therefore seeks to relocate its existing pharmacy on Sheaveshill Avenue to the proposed location.

1.10 **Relevant matters from the Unforeseen Benefits application**

1.11 Clearly the legal tests for a 'no significant change relocation' submitted under Regulation 24 are very different to those for inclusion in the pharmaceutical list under Regulation 18.

1.12 However, there are some relevant overlapping considerations between the legal tests.

1.13 Our client formed the view, prior to submission of its Unforeseen Benefits ("UB") application, that the residents of the Colindale Gardens area did not have 'reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB'.

1.14 However, both the ICB and the Primary Care Appeals ("PCA") committee of NHS Resolution disagreed.

1.15 The PCA committee concluded that residents of the proposed area did have reasonable choice, due, not only to the presence of H.A.McParland's pharmacy, but also other pharmacies in the wider area.

1.16 We have attached a copy of the appeal decision letter and note the following comments within it (emphasis added):

1.17 *6.38 The Committee noted the Applicant's view that the journey to other pharmacies to the south-west of the railway line is lengthy and convoluted for many residents of Colindale Gardens, because of the need to cross the railway line via the bridge at Colindale tube station.* ***Having regard to the image of the bridge provided by H.A.McParland, the Committee noted that the pavements are level with railings to protect pedestrians plus the presence of a traffic light controlled crossing. The Committee was satisfied that the bridge in itself does not constitute a barrier to access****, although it accepted that the lack of other crossings over the railway line in the area would mean differing journey lengths, depending on a patient's starting point. The Committee went on to consider access to those pharmacies to the south/south-west of the railway line.*

1.18 *6.39* ***The Committee*** *noted the location of Asda Pharmacy on Edgware Road and* ***had regard to H.A.McParland's comments that it is a distance of 1.1km from the proposed site – "an easy and straightforward walk of less than 15 minutes along Colindale Avenue then north up Edgware Road". They also comment that ProCare Pharmacy is a similar distance of 1.1km, with the Hyde Pharmacy and Alpha Pharmacy at 1.2km****. The Applicant comments that the distance would be greater for patients living further to the south of the development and that walks of these distances "within a densely populated area of London would not be considered by most patients as a reasonable journey to make to access a community pharmacy".* ***The Committee did not consider that there is a particular distance alone over which a journey becomes unreasonable, and had regard to other relevant factors for those accessing services on foot****.* ***The Committee noted that there was no dispute regarding comments that the journeys are along level terrain with well-lit footpaths in good order.***

1.19 *6.44* ***Taking the above into account, the Committee was of the view that there is already reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB****, such that it was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits on persons.*

1.20 We also note the comments made to the ICB by H.A.McParland in response to our client's initial application as follows (emphasis added):

1.21 ***A similar distance away from the Colindale Gardens development is ProCare Pharmacy, which is operated by the applicant. This is also located 1.1 kilometres away from the proposed location, or a 13-minute walk****. There are two other pharmacies located near to ProCare Pharmacy – The Hyde Pharmacy and Alpha Pharmacy. Both are located within a parade of shops on Edgware Road and are both 1.2 kilometres from the Colindale Gardens development.* ***All three of those pharmacies (ProCare Pharmacy, The Hyde Pharmacy and Alpha Pharmacy) dispense a less than average number of prescription items per month, again suggesting plenty of spare capacity within the existing pharmacy network to meet the needs of any new residents.***

1.22 ***With 5 pharmacies within 1.2 kilometres of the proposed location (by the shortest practicable route on foot)****, all of which are owned by different legal entities, and with the nearest pharmacy being only around 350 metres away from the proposed premises,* ***it is therefore clear that the existing pharmacy network provides a reasonable choice of service provision.***

1.23 It is clear, therefore, that McParland's formed the view that the distance and journey between Colindale Gardens and our client's premises on Sheaveshill Avenue was such that residents of Colindale Gardens could access them without difficulty. They suggested that our client's pharmacy forms part of the "existing network" which ensures that the residents of Colindale Gardens have a reasonable choice of service provision.

1.24 Furthermore, in referring to the capacity of our client's pharmacy and of the other pharmacies on Edgware Road, it is clear that McParland's formed the view that residents could easily move between Colindale Gardens and the location of our client's current premises.

1.25 It is not unreasonable, therefore, to conclude that the consensus view amongst both the objectors and the decision makers in respect of the previous Regulation 18 application appears to be that it is straightforward for residents of Colindale to move between Colindale Gardens and the Sheaveshill Avenue / Edgware Road location. That being the case, it would be logical to assume that it would be accepted that patients attending our client's pharmacy at its current location would not have any significant difficulties accessing the pharmacy once it relocates to Colindale Gardens.

1.26 **Local Area**

1.27 We have included a map with this application which shows the existing and proposed locations for our client's pharmacy.

1.28 The current location is on Sheaveshill Avenue, 50m from the junction with Edgware Road.

1.29 Immediate supporting trade comprises largely independent shops and other businesses such as hairdressers, convenience stores, dry cleaners, a car tyre supplier / mechanic and a legal advice specialist.

1.30 The pharmacy and supporting businesses can be seen in the image below.

1.31 [See photograph in Appendix A - page 1]

1.32 There are further shops on Edgware Road itself, but these are also typically smaller independent businesses. The 'destination shops' of the area, such as Asda, Morrisons and B&M stores, are approximately half a mile further north-west along Edgeware Road.

1.33 Heading north-east along Sheaveshill Avenue towards the proposed location, the area is almost exclusively residential in nature, comprising traditional post-war semi-detached houses which are well kept. Colindale Primary School is located within this area, as is Colindale Medical Centre (which we discuss later), but there are very few other amenities until Colindale Avenue is reached, where most of the recent residential development can be found.

1.34 The nature of the area can be seen in the image below where the current location is marked as Procare Pharmacy Colindale at the bottom left and the view looks towards the Colindale Gardens development.

1.35 [See photograph in Appendix A - page 1]

1.36 The topography of the area is very flat, as can be seen from the topographic map below, where the existing site is marked with a blue star and the proposed location with a red star.

1.37 As this map shows, the whole of Colindale is essentially at the same elevation i.e. there are no noticeable gradients throughout the whole area to the north-east of Edgware Road.

1.38 [See photograph in Appendix A - page 2]

1.39 There are dropped kerbs, wide pavements, traffic islands and street lighting throughout the area.

1.40 The proposed site is within the new Colindale Gardens development on Colindale Avenue.

1.41 This is a modern, densely populated development of apartments a very short distance from Colindale tube station. Whilst there are a few shops and restaurants within Colindale Gardens itself, other supporting amenities are relatively limited as local residents are typically mobile so likely to access many of their daily needs further afield, often on their way to or from their place of work.

1.42 Once again the terrain is flat, pavements are wide and light-controlled pedestrian crossings are provided at major junctions so movement around the area is straightforward.

1.43 Many local residents frequently use the Colindale tube station and, as discussed in the appeal referred to earlier, it is agreed that the railway crossing does not form a barrier to movement around the area for pedestrians or vehicles alike.

1.44 *The journey between the two sites*

1.45 Whilst Regulation 24 does not require the ICB to have specific regard to the distance or journey between the sites, this information is useful, not least because it allows the

decision maker to have regard to patients whose journey takes them past the existing location on the way to the proposed location. This, therefore, illustrates the maximum additional distance any person may need to travel to access the proposed site.

1.46 It is noteworthy in this case that many of the patients who travel from home to our client's pharmacy live in the residential area between Edgware Road and Colindale Avenue. Those patients who live to the south-west of Edgware Road are more likely to use one of the two pharmacies located on the south-western side of Edgware Road itself.

1.47 People living within the residential area between the existing and proposed sites would clearly not walk to the existing pharmacy location first before walking to Colindale Gardens, so their journey would be shorter than that described below.

1.48 Pedestrians

1.49 For those on foot, the journey from the existing premises to the proposed premises is a straightforward one as follows:

1.50 Coming out of the pharmacy turn right then walk for 400m in a north easterly direction to the junction with Colindeep Lane. The Colindale Medical Centre is located at this junction.

1.51 Cross Colindeep Lane using a traffic island with dropped kerbs and tactile pavements then continue 235m in a northerly direction to Colindale Park where a pedestrian footpath runs parallel to the railway line. Walk for 250m through the park to the junction with Colindale Avenue opposite the tube station. Turn right then walk for 175m, crossing the railway bridge, to the proposed location on the right.

1.52 The total distance is 1.1km (two thirds of a mile) and takes approximately 15 minutes to walk as shown by the blue dotted line on the map below:

1.53 [See map in Appendix A - page 3]

1.54 Public transport

1.55 For patients whose journey starts near Edgware Road, and who are accustomed to using public transport, the journey by bus from the existing to the proposed site is very straightforward.

1.56 Bus route 204 travels from Edgware Road directly to Colindale Gardens as shown on the route map below, where again the existing site is marked with a blue star and the proposed site with a red star.

1.57 [See map in Appendix A - page 4]

1.58 There is a stop near the junction of Edgware Road and Hay Lane (approximately 300m to the north-west of Sheaveshill Avenue) and bus users can disembark using a stop within 100m of the proposed location, so the journey is very straightforward. Buses on this route run between 8 minutes and 13 minutes apart depending on the time of day.

1.59 For patients who are not starting their journey near the existing site, the entire area is very well served by the bus network. There are at least 6 routes that pass the proposed site, with buses arriving every 2-5 minutes, so access by public transport is very good.

1.60 Of course, many public transport users in London are reliant on the tube. Colindale tube station serves the whole of Colindale, so for patients who access the current pharmacy premises and are regular London Underground users will find the proposed location to be much more accessible from the tube station.

1.61 Motorists

1.62 London residents tend to be far less reliant on travelling by car than in other parts of the country. However, for those who do wish to drive, the journey between the two locations by car is less than a mile so would take less than 5 minutes, even when the traffic is heavy.

1.63 Whilst this journey is neither lengthy nor difficult, it is important to remember that Regulation 24 does not require the decision-making body to consider the distance or the journey *between* the sites. The accessibility test is whether the proposed site is significantly less accessible for the patient groups that are accustomed to accessing the existing site.

1.64 **Part 8 of the application form**

1.65 **Regulation 24(1)(a)** requires the ICB to consider whether:

1.66 *"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"*

1.67 We are required, therefore, to consider the patient groups who use the existing pharmacy and the impact of the relocation on each of them to ensure that the proposed location is not significantly less accessible.

1.68 NHS Resolution has produced a guidance note for use by its committees in respect of applications made under Regulation 24. This note gives specific consideration to the matter of patient groups and accessibility. In a recent judicial review of an application made under this regulation, Mr Justice Langstaff stated that he was broadly in agreement with the approach set out in this guidance note. Furthermore, he stated that patient groups should be defined in such a way that the decision maker can assess the impact of the proposed relocation on accessibility for those patient groups. For that reason, patient groups should not be defined arbitrarily but according to how and why people access pharmaceutical services.

1.69 Whilst the guidance note is not prescriptive in respect of patient groups, the following are provided as illustrations of matters that may be taken into account when defining them:

1.69.1 local GP practices;

1.69.2 methods of travel (on foot, by car, or public transport);

1.69.3 types of pharmaceutical services accessed (dispensing/collection and delivery);

1.69.4 the location of the patient group's geographic starting point of the journey to the pharmacy;

1.69.5 demography;

1.69.6 care homes; and/or

1.69.7 areas of deprivation

1.70 Taking these factors into account our client's proposed patient groups are as follows:

1.70.1 Patients receiving a delivery service.

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

1.70.3 Patients attending medical centres in the area and subsequently seeking pharmaceutical services.

1.70.4 Patients who wish to access advanced or locally commissioned services from the pharmacy.

1.70.5 Patients who share protected characteristics.

1.71 For each of the patient groups we have considered the implications of the proposed relocation.

1.72 **1. Patients receiving a delivery service**

1.73 A proportion of the pharmacy's prescriptions are handled via a delivery service. This service includes patients whose repeat prescriptions are physically collected from local surgeries (now relatively few) and those whose prescriptions are issued via EPS.

1.74 For the avoidance of doubt these deliveries include patients whose medication is supplied in 'trays' as part of a DDS (domiciliary dosage system) and any resident in a care home who are unable to access the pharmacy in person.

1.75 For these people, the service will remain the same regardless of where they live. The collection/delivery service will remain unchanged as a result of this relocation.

1.76 It is clear, therefore, that for this patient group pharmaceutical services will remain as accessible as they are currently following the relocation.

1.77 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 in the same manner after the relocation.

1.78 Patients receiving essential services that do not involve visiting the pharmacy in person (such as telephoning for public health, signposting or self-care advice) will also continue to receive these services in exactly the same way from the new premises.

1.79 Finally, patients who receive essential services face-to-face will belong to one of the other patient groups that have been identified and are therefore dealt with below.

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

1.81 Both the existing and proposed locations are within predominantly residential areas within the boundaries of the Colindale South electoral ward as shown on the map below. Again the existing site is marked with a blue star and the proposed site with a red star.

1.82 [See map in Appendix A - page 5]

1.83 As would be expected within this part of London, the area is densely populated.

1.84 As discussed earlier the regulations do not require the decision maker to consider the journey **between** the sites. It is important to be mindful, therefore, of how people in this patient group go about their daily lives.

1.85 In terms of shopping, as we have described earlier, the facilities close to both the existing and proposed locations are fairly limited. People are therefore likely to access the shops further afield when going about their daily lives. The nearest supermarkets to the existing location are the Asda and Morrisons superstores on Edgware Road, approximately equidistant between the existing and proposed pharmacy sites. There are other lager [sic] destination shops in that area.

1.86 People who live near the existing location are required to travel away from their home to go to work, school, college or to access most of the amenities they need as these are fairly few and far between close to home. That being the case, they will not be troubled by the distance they would have to travel to the proposed location as they move freely throughout Colindale and beyond during their daily lives.

1.87 The most densely populated part of the area is the Colindale Gardens development itself, so many of the residents of Colindale South will find the proposed location to be closer to home than the existing location. Many others live in the residential area between the two sites so will find that the distance to the pharmacy may be slightly greater or may be slightly less, depending on exactly where they live.

1.88 It is important to remember that the Regulations require the decision maker to consider the effect of the proposed relocation on patient groups, not individual patients. So whilst there will be some people who live very close to the existing premises that will clearly have further to travel, this is not the case for the patient group overall.

1.89 For those who do travel on foot from the residential area around the existing premises towards the proposed premises, there are no significant barriers to movement. The route is level, benefits from wide pavements (which are in good condition), dropped kerbs and street lighting throughout as described earlier.

1.90 As we have discussed earlier, for those travelling by car, the journey is straightforward and would take 4-5 minutes depending on the traffic. Patients attending the proposed site can park at various locations within Colindale Gardens.

1.91 For public transport users, as we have also discussed earlier, the proposed site is highly accessible by bus and is very close to the tube station.

1.92 So, in summary for this patient group, whilst the proposed location may be slightly further from home for some patients, it is in an accessible location, close to the many of the amenities residents use on a daily basis. Even for those whose journey takes them past the existing location on the way to the proposed location, the journey is straightforward and will take no more than 15 minutes on foot for most people.

1.93 This modest distance does not render the proposed location significantly less accessible than the existing location, regardless of a patient's means of travel.

1.94 **3. Patients attending medical centres in the area and subsequently seeking pharmaceutical services.**

1.95 We have considered the dispensing breakdown for our client's pharmacy for the latest month for which there is data publicly available (November 2023). This shows that

43.9% of the items dispensed originated from Colindale Medical Centre. This is by far the largest source of prescriptions for our client's pharmacy.

1.96 As discussed earlier, this surgery is located in-between the existing and proposed sites.

1.97 The distance to the existing site is 400m and the distance to the proposed site is 700m. So whilst the journey to the proposed site will be slightly further for those people attending the medical centre it is not significantly so. Any patient able to travel 400m at present is unlikely to find that an additional 300m renders the pharmacy inaccessible to them. There is no bus route along Sheaveshill Avenue, so patients either walk or drive from the medical centre to the pharmacy. Regardless of their means of travel they will not find the proposed location significantly less accessible.

1.98 No other medical centre accounts for more than 15% of the items dispensed by our client's pharmacy.

1.99 Some of the other medical centres are closer to the proposed site and others are further away but given the accessibility of the proposed site, as discussed above, we submit that patients attending one of these other medical centres will not find the proposed location significantly less accessible.

1.100 **4. Patients who wish to access advanced or locally commissioned services from the pharmacy**

1.101 Patients accessing the pharmacy for the New Medicines Service (NMS) will fall into one of the other patient groups already described as they will already be receiving dispensing services from the pharmacy.

1.102 For patients wishing to access the other services offered at the current premises, the proximity of the proposed premises is such that they will be able to access the services in exactly the same manner. The pharmacy will be open for the same hours and the new premises will be close to the existing premises.

1.103 Regardless of where patients in this group come from and how they access the pharmacy there is no reason to believe they will find the proposed location significantly less accessible for the reasons we have described in relation to other patient groups.

1.104 **5. Patients who share protected characteristics**

1.105 Every person shares at least one protected characteristic, i.e. they belong to a group that distinguishes them by age, race or any other characteristic. More commonly, however, this relates to those who may be elderly, infirm or disabled as these are characteristics that impact on accessibility.

1.106 As we have described earlier, the proposed location is highly accessible for users of public transport, being located a very short distance from bus stops and the tube station, and with the benefit of light controlled pedestrian crossings where necessary. Buses running throughout the area are accessible to wheelchair users.

1.107 For those who currently access the existing pharmacy 'on foot', by wheelchair or mobility scooter, either from their homes or elsewhere, the journey to the new premises benefits from wide pavements, controlled crossings, dropped kerbs and tactile pavements so these patients are able to move around the area without undue difficulty. Those whose mobility difficulties are more significant do not visit the existing premises 'on foot' anyway as they are more likely to travel by car / public transport or to use the delivery service.

1.108 In summary, therefore, on Regulation 24(1)(a), there is no patient group that would find the proposed location significantly less accessible.

1.109 **Regulation 24(1)(b)** requires the ICB to consider whether:

1.110 *"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—*

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

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

1.111 In our opinion it is clear that granting this application will not result in a significant change to the arrangements currently in place. The proposed relocation is such a short distance that it is unlikely to have a material effect on the provision of pharmaceutical services by other contractors on the area.

1.112 The existing and proposed premises are within a short distance of each other, and the existing services and opening hours will be maintained.

1.113 As the distance between the sites is short there is no reason to believe that dispensing patterns in the area will be affected in any significant way as a result of this relocation.

1.114 Patient groups accessing pharmaceutical services in the area will still be able to access them in the same way so there is no reason to suggest that this relocation it will result in a significant change to the arrangements in place.

1.115 **Regulation 24(1)(c)** requires the ICB to consider whether:

1.116 *"the NHSCB is satisfied that granting the application would not cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area of HWB".*

1.117 We have been unable to find any plans relating to future pharmaceutical services in the area, whether belonging to the local authority, NHS England or any other commissioner of pharmaceutical services, that would be affected in any way by granting this application.

1.118 **Conclusion**

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

1.120 We therefore urge the ICB to grant this application accordingly and we, and our clients, would wish to attend an oral hearing should one be convened."

1.121 [See copy of SHA/26117 in Appendix A - pages 6 – 64 with comments in response to observations from that case from page 41 to 52].

2 The Decision

The Commissioner considered and decided to refuse the application. The decision letter dated 21 October 2024 states:

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

2.2 You have a right of appeal to the Secretary of State against North Central London ICB's decision. Should you choose to appeal then either complete the online form available on the NHS Resolution website or send a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this letter to nhsr.appeals@nhs.net or:

2.3 Primary Care Appeals, NHS Resolution, 8th Floor, 10 South Colonnade, Canary Wharf, London, E14 4PU."

London Pharmaceutical Services Regulations Committee Report 16 October 2024

2.4 "Part 2, London Area *agenda item number 4A* – decision report on an application for inclusion in a pharmaceutical list: no significant change relocation application within a HWB's area.

2.5 Barnet HWBB.

2.6 CAS reference number: CAS-301971-Q1M0J1.

2.7 Name of applicant: Sheav Chem Ltd.

2.8 Fitness to practise: Not applicable, already included in respect of other premises.

2.9 Address of current premises: 11 Sheaveshill Parade, Sheaveshill Avenue, Colindale, London NW9 6RS.

2.10 Address of Proposed premises: Unit 1, 156 Colindale Avenue, Colindale, London NW9 5HE.

2.11 Status of location: Non-controlled locality.

2.12 Relevant regulations and guidance: Regulations 24 – relocations that do not result in significant change to pharmaceutical services provision.

2.13 Regulation 31 – refusal: same or adjacent premises.

2.14 Regulation 66 – conditions relating to providing directed services.

2.15 DH market entry guidance chapter 10.

2.16 Consider impact of decision on those with protected characteristics under the Equalities Act 2010 and is this in accordance with NHS England's Public Sector Equality Duty Consider impact of decision on NHS England's duty on health inequality: None Identified.

2.17 Interested parties notified of the application – Representation Submitted

2.17.1 Boots Appeal rights given if granted

2.17.2 Barnet HWB No appeal rights as not a pharmacy

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

2.19 **Regulation 31**

2.20 The proposed pharmacy is not on the same site or adjacent to any other pharmacy, therefore this regulation is not engaged

2.21 **Regulation 32**

2.22 There are currently no LPS designations in this area therefore regulation 32 is not engaged

2.23 **Info from Applicant**

2.24 [See 1.6 to 1.120 above].

2.25 **Boots UK Ltd Comments**

2.26 We are aware that the applicant had submitted an application offering unforeseen benefits previously which was refused. They are now proposing to relocate to the same location. Whilst the applicant believes that patients would benefit from a pharmacy in Colindale, clearly this is not the view of the ICB. If the applicant believes that the relocation, one of which appears to be to a property that is 1.1 km from the existing pharmacy, is not of significant change, we question as to why they did not apply for this in the first place?

2.27 The further information that has been submitted alongside this application consists of comments from the appeal decision with regard to the previous unforeseen benefit application. Whilst some comments may appear to be relevant, at no point are patient groups and those who access the current pharmacy identified within this information.

2.28 We submit that a distance of 1.1km would be considered significant for many patient groups including the elderly and those less abled. The existing pharmacy network has been deemed adequate for this area, but Regulation 24 specifically relates to the patients accustomed to accessing the pharmacy at the current location and whether they will be able to easily access a new location. The criteria for regulation 24 is very different to that of Regulation 18 and we submit that this application does not meet it. There is no reference to specific patient groups and how the proposed relocation would affect them, therefore we have to question as to whether they were considered as part of the application.

2.29 For the reasons above, Boots UK LTD believe that the application does not meet the relevant criteria and should be refused.

2.30 **Barnet HWBB**

2.31 The official response from Barnet Health and Wellbeing Board is that on balance there is no objection to this application.

2.32 We have some minor concerns about competition with other pharmacies close to the site, and impact on their sustainability.

2.33 However, these are outweighed by the current and future population growth in this particular area of the borough, and subsequent demand on provision.

2.34 **Applicants' response**

2.35 Barnet Health and Wellbeing Board – undated

2.36 We note that the HWB does not object to our client's application.

2.37 There is a comment from the HWB that they "have some minor concerns about competition with other pharmacies close to the site". Notwithstanding the fact that this is not a matter the Regulations require the ICB to consider, we would point out that the current location for the pharmacy is close to two other contractors. That being the case this relocation will result in a more even distribution of pharmacies across the area, as well as addressing the point made by the HWB in terms of meeting the needs of the growing population.

2.38 Boots – Letter dated 9th July

2.39 Boots state "*Whilst the applicant believes that patients would benefit from a pharmacy in Colindale, clearly this is not the view of the ICB. If the applicant believes that the relocation, one of which appears to be to a property that is 1.1 km from the existing pharmacy, is not of significant change, we question as to why they did not apply for this in the first place",*

2.40 As the ICB will be aware, the legal tests for a relocation and an application for inclusion in the pharmaceutical list are very different, but there are some overlapping considerations.

2.41 It was our client's original view that there was a case for a new pharmacy to open at the proposed location. The ICB formed a different view and felt that patients at that location already has reasonable choice in respect of access to pharmaceutical services, including from our client's existing location.

2.42 It is reasonable to assume, therefore, that if patients at the proposed location can reasonably access our client's current premises, then the reverse will apply i.e. patients attending the existing premises can access the proposed location.

2.43 Boots state, when referring to the previous appeal decision that "at no point are patient groups and those who access the current pharmacy identified within this information". Our client has dealt extensively with the matter of patient groups in the supporting information (pages 9 to 13) and we have nothing further to add on that point.

2.44 In respect of the distance of 1.1km, this has been dealt with in our client's application. It is relevant that patients do not start their journey at our client's current location. As has been discussed previously, many of the patients attending our client's pharmacy at present live to the north of the current location, closer to Colindale Gardens. In any event, the ICB and appeal committee clearly concluded previously that 1.1km was not an unreasonable distance to travel taking into account the local geography and transport options.

2.45 Boots state that Regulation 24 requires the decision maker to consider whether patients "will easily be able to access a new location". Of course this is not the legal test, which requires the ICB to consider if the proposed location is **significantly less accessible.** This is a very different consideration. We maintain that patient groups accustomed to accessing the existing premises will not find the proposed location significantly less accessible.

2.46 We have no additional comments to make at this time but should the ICB wish to convene an oral hearing to determine this application, our client would wish to attend.

2.47 **Regulation 24(1) criteria**

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

2.49 We are mindful that this is an application received after an unforeseen benefits application was refused. It is noted that the tests for an unforeseen benefits application and a no significant change relocation are different. The tests for a no significant change relocation revolve around the patients that are currently using the pharmacy and if they find the location of the new premises significantly less accessible.

2.50 The distance between the two sites depends on the route taken, the shortest route involves a walk through the park, which may not be suitable in winter months if this is dark and isolated.

2.51 There is one of the other routes that seems more appropriate although this is a marginally longer route.

2.52 We also need to acknowledge that patients that use the pharmacy would need to reach the pharmacy first and not all of those patients would need to walk this whole route. Although there will be others that have a longer distance to travel.

2.53 There are public transport options between these two sites for those who cannot walk this distance. Also for those who drive the distance is short, but anyone driving would still need to find somewhere to park.

2.54 However, we are mindful that the determination is not based on the distance between the two sites but whether the patients that use the pharmacy find the pharmacy significantly less accessible.

2.55 The unforeseen benefits application that was previously refused had a different test and that was if there was sufficient choice of pharmacies in the area and the determination of that was based on there being a number of pharmacies available for patients to use. This determination is just about the patients that currently use this pharmacy.

2.56 The applicant has provided information about how patients would access the proposed site, but this is of some distance, being approx. 1km and there will be patients who currently use this pharmacy who live some distance the other side of the pharmacy and this would then make this an even longer journey. The applicant has not provided information about the current patient distribution that use the pharmacy, i.e. the volume of patients that may have a shorter distance to travel verses those that have a longer distance. Although the determination is not based on individual patients, when the distance is of this nature, it would help to understand the volumes of patients and where they travel from. If the vast majority had a longer route to travel then this may be significantly less accessible as opposed to the majority who had a shorter route making the pharmacy not significantly less accessible.

2.57 **The PSRC have determined that more information is needed to be able to determine if this new site significantly less accessible. Therefore, for the time being we would determine that this regulations is not engaged**

2.58 (b) in the opinion of the ICB, 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—

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

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

2.59 The PSRC have determined that the move would not result in a change to the arrangements that are in place for the provision of local pharmaceutical services or pharmaceutical services

2.60 *(c) the ICB 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;*

2.61 The PSRC have determined that granting this application would not cause detriment to proper planning.

2.62 *(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 ICB chooses to commission them); and*

2.63 The applicant will provide the same services at the new location as at the existing location. The hours of the pharmacy will also be the same for the new premises as for the current one.

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

2.65 There will be no interruption of services except for any period that the ICB Agrees.

2.66 **Regulation 24(3) criteria**

2.67 If any of the below criteria apply, details are below:

2.67.1 A - Was the pharmacy listed as a result of an application 13(1)(a) of the 2005 regulations – Approved Retail Area? No

2.67.2 B - Was the pharmacy listed as a result of an application 13(1)(c) of the 2005 regulations – One Stop Primary Care Centre? No

2.67.3 C - Has the pharmacy relocated in the last 12 months? No

2.67.4 D - Is the pharmacy a Distance Selling Pharmacy? No

2.68 A – is the relocation within the approved area? If not must be refused.

2.69 B – are other services moving with the pharmacy? If not must be refused.

2.70 C – relocated within the last 12 months and is unable to satisfy the ICB that the relocation is necessary. If unable to satisfy must be refused.

2.71 D – is a DSP. this should comply with regulation 25(2). If not should be refused.

2.72 **Decision**

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

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

2.75 Regulation 24(1)a – the new premises are significantly less accessible for patients as more information is needed to determine this.

2.76 Regulation 24(1)b – this move would not result in a change to the arrangements that are in place for the provision of local pharmaceutical services or pharmaceutical services

2.77 Regulation 24(1)c - this application would not cause detriment to proper planning.

2.78 Regulation 24(1)d – the same services and hours are planned for the new premises.

2.79 Regulation 24(1)e – there will be no interruption of services The PSRC have determined that the application does not fit the criteria for regulation 24 due to a lack of information and has been refused.

2.80 Determination made by London Region PSRC on behalf of NHS West London ICB."

3 The Appeal

In a letter dated 18 November 2024 addressed to NHS Resolution, the Applicant, represented by Pharmacy Sales and Consultancy appealed against the Commissioner's decision. The grounds of appeal are:

3.1 "We act for Sheav Chem Limited and have enclosed a letter of authorisation confirming our instructions in this matter.

3.2 Our client has been notified by the North Central London ICB ("The ICB") that the above application, made pursuant to Regulation 24 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("The Regulations"), has been refused. I have enclosed a copy of their decision letter and report for your information.

3.3 Our client wishes to appeal this decision and we set out the key grounds for appeal below by reference to the ICB decision report.

3.3.1 The ICB failed to take into account its own findings in respect of an earlier application submitted under Regulation 18 at the same location. Whilst we accept that different regulatory tests apply, there are overlapping considerations that the ICB has failed to have regard to.

3.3.2 The ICB cite one of their concerns as the potentially unsuitability of a route which involves "a walk through the park". We submit that the very small park referred to does not form a barrier to movement for pedestrians. In fact, parties who made representations in respect of the Regulation 18 application specifically identified this route as one which provided access to the existing pharmacy network.

3.3.3 The ICB acknowledged the accessibility of the proposed site by public transport, yet focussed unduly on pedestrian access to the site.

3.3.4 The ICB felt that the lack of information in respect of the "the current patient distribution that use the pharmacy" was such that it could not be satisfied that the regulatory test had been met. We provide additional evidence in respect of that matter within this appeal letter.

3.4 We have provided further detail below in respect of our client's grounds for appeal as well as additional information to assist the Primary Care Appeals Committee in considering this matter.

3.5 **Background**

3.6 The background to this application was set out in the supporting document to our client's application so we will not provide that in detail here to avoid repetition. We have enclosed a copy of that supporting document which addresses this matter in detail.

3.7 However, the background is summarised below:

3.7.1 The proposed site is within a substantial new residential development known as Colindale Gardens. The construction of this development has significantly changed the character of Colindale with this area becoming the most densely populated part of Colindale.

3.7.2 The proposed site is very close to Colindale Gardens London Underground station. This is the only tube station serving the Colindale population.

3.7.3 Our client previously submitted an application to open a new pharmacy (in accordance with Regulation 18) at the proposed site. This application was considered and refused by Primary Care Appeals ("PCA"). The case reference was SHA/26117. We have enclosed a copy of that appeal as we believe it is relevant to this application.

3.7.4 The key reason for that refusal was the conclusion by the ICB and NHS Resolution that existing pharmacies, including the one our client proposes to relocate, are located near to the proposed site. It is our client's position that if it was considered reasonable for residents of Colindale Gardens to access our client's pharmacy at its current location, this is a very relevant consideration when it comes to determining whether the proposed site at Colindale Gardens is accessible for patient groups accustomed to accessing our client's current premises.

3.8 **The journey between the current and proposed sites**

3.9 Whilst it was correctly acknowledged by the ICB that the journey between the sites does not form part of the regulatory test, nevertheless it was clearly a matter the ICB had regard to when considering the application. This is apparent from the following comment on page 19 of the decision report as follows:

3.10 *" The distance between the two sites depends on the route taken, the shortest route involves a walk through the park, which may not be suitable in winter months if this is dark and isolated. There is one of the other routes that seems more appropriate although this is a marginally longer route".*

3.11 Dealing with the 'park' first, we have provided images of this below:

3.12 [See street map and photographs - Appendix B - page 1 and 2]

3.13 As can [be] seen above, Colindale Park is a very small area of green space, located between modern apartment buildings to the west and the railway line to the north-east. From north to south, the park is 220m long and from each to west it is a maximum of 90m wide.

3.14 It is better described as a recreation area rather than a park. There is a selection of play equipment, and an 'outdoor gym' but otherwise the space us used predominantly by dog walkers and residents seeking a little 'fresh air'.

3.15 The footpath through the park is flat and well illuminated as can be seen in the third image.

3.16 Importantly, this is an area which is now characterised by expensive apartments occupied by young professionals and families. It is not a 'ghetto' where people are afraid to walk around after dark. In fact, the presence of a well-used Co-Op convenience store where the park meets Colindale Avenue, the busy tube station and numerous food establishments result in this being a 'bustling' area well used by residents until late in the evening.

3.17 This park does not , therefore, form a barrier to movement for Colindale residents. In fact it its very well used by residents moving around the area.

3.18 Again, notwithstanding the fact Regulation 24 does not require the decision maker to consider the route between the sites, the ICB also stated "there is one of the other routes that seems more appropriate although this is a marginally longer route".

3.19 As might be expected in an urban area, there are many routes that can be taken to travel between two points. However, even if we consider the route using the most major roads (as shown on the map below), the distance is no more than 1.4km along well paved, level illuminated footpaths.

3.20 [See street map - Appendix B - page 3]

3.21 This route would take no more than 20 minutes to walk. There are many other shorter routes through the residential road network.

3.22 Whilst not directly relevant to this application, a 20 minute walk-time is a measure regularly used in PNAs when considering the accessibility of pharmaceutical services.

3.23 **Accessibility of the proposed site**

3.24 Whilst this matter was dealt with in our client's application, we have expanded on some of the points raised below in the context of the ICB's decision report.

3.25 We have considered accessibility generally in respect of people who travel by public transport, by car and on foot.

3.26 It is important to be mindful, of course, that just because a patient uses one means of travel to access the pharmacy at its current site, this does not mean that patient could not use a different means of travel to access the pharmacy at the proposed location. So whilst a patient who lives 50m from the current premises would clearly walk to the pharmacy at present, if they also have access to a car or they are regular users of the bus network, they will not find the proposed premises difficult to access even if they choose not to walk to them.

3.27 *Public transport*

3.28 In its decision report, the ICB stated “There are public transport options between these two sites for those who cannot walk this distance”.

3.29 It is clear, therefore, that the ICB accepted that the area (including the proposed site) is well served by public transport. It is not clear, however, why the ICB then concluded that the proposed is significantly less accessible for patient groups if it is acknowledged that residents are unlikely to have any difficulties accessing the proposed premises using public transport.

3.30 London has arguably the best public transport network within the UK. Many residents of the city have no need to own a car because they can use the extensive bus, train and underground system to go about their daily lives. Costs for using public transport in London are very reasonable and the vast majority of people who use it regularly will use ‘travel cards’ to keep the costs of their journeys to a minimum.

3.31 The proposed site at Colindale Gardens is exceptionally well served by buses. The screen-shot below shows departures from the Colindale Station bus stop, which is located less than 100m from the proposed premises.

3.32 [See Bus departure times - Appendix B - page 4]

3.33 As this shows, there are 16 buses using this stop between 9.10am and 10.03am. Clearly this is just a snapshot taken at the time of preparing this appeal, but this picture is repeated throughout the day until late into the evening.

3.34 Within our client’s application, a map was provided to show one of these routes, namely 204, which travels close to our client’s current location. That map is reproduced below for ease. The current site is marked with a blue star and the proposed site with a red star.

3.35 [See street map - Appendix B - page 5]

3.36 It is noteworthy that buses run along this route every 15 minutes or so. The journey time from Edgware Road, near to our client’s current premises, to Colindale station, is approximately 10 minutes.

3.37 It is also highly relevant that the proposed premises are located less than 200 metres from Colindale tube station. As this is the only station serving the whole of Colindale, it is used by residents across the area including those living near the current location.

3.38 It is very clear, therefore, that the accessibility of the proposed site by public transport is excellent. Regardless of how people currently travel to our client’s pharmacy, we submit that all residents of the Colindale area, no matter which patient group they belong to, would find the proposed premises very easy to access by public transport.

3.39 *Car*

3.40 As is typically the case in London, car ownership in the area is relatively low. As discussed above this is partly due to the excellent transport links, such that many residents feel no need to own a car.

3.41 Census data from 2021 for the Colindale South ward, in which both the existing and proposed premises are situated shows that 42.7% of households did not have access to a car or van (compared to the national average of 23.5%). The boundaries of this

ward are shown below. Again the current location is marked with a blue star, and the proposed location with a red star.

3.42 [See street map - Appendix B - page 6]

3.43 However, it is still the case that more than 50% of households **do** have access to a car or van. For those who do wish to drive to the proposed location there is clearly an extensive road network that allows them to do so and, depending on traffic, the proposed site can be accessed by car in 5 minutes from the existing site.

3.44 Clearly most patients will not be travelling from the existing site but this provides an indication of the proximity of the locations.

3.45 The ICB also stated, within their decision report:

3.46 “Also for those who drive the distance is short, but anyone driving would still need to find somewhere to park”.

3.47 We have provided a map with this appeal which shows the areas where car parking is provided near the proposed location. As can be seen there is an extensive area of parking provided.

3.48 Pay and display parking spaces are available throughout Colindale Gardens, as can be seen on the map, and in the images below. As more of Colindale Gardens is built, the extent of parking increases as well.

3.49 [See photographs - Appendix B - page 7]

3.50 The nearest spaces to the proposed site are on Sanday Drive, approximately 100m from the proposed site.

3.51 There is also pay and display parking provided on Grahame Park Way, as shown on the map and below:

3.52 [See photographs - Appendix B - page 7]

3.53 Some of the parking on Grahame Park Way is free for 30 minutes. These spaces are 250m away from the proposed site.

3.54 For those patients who do choose to drive, they will have no difficulty parking at the proposed location.

3.55 *Pedestrians*

3.56 We have provided information earlier, and within our client’s application, in respect of pedestrian routes around the area. Information has been submitted in respect of the distances between the sites and the topography of the area.

3.57 It is also relevant to note disability data in respect of the Colindale South ward. 2021 census data in respect of disability (source: Nomis) is provided below.

3.58 [See table - Appendix B - page 8]

3.59 This data shows that the number of people classified as disabled under the Equality Act within this area is significantly lower than national average. Looking at those

residents whose disability is limited either a little or a lot, only 10.6% of the population is classified as disabled compared to the national average of 17.3%.

3.60 It is reasonable to assume that those households where one or more residents are disabled are more likely to have access to a car or to regularly use public transport to access the facilities needed for their daily lives.

3.61 **Other demographic data**

3.62 We have also considered the extent to which the current location could be considered as deprived as this will assists the PCA committee to have a better understanding of the profile and needs of local residents.

3.63 Data from the Index of Multiple Deprivation, produced by the Ministry of Housing, Communities and Local Government in 2019, shows the following picture for Lower Super Output Area Barnet 030A in which the premises are located:

3.63.1 The overall ranking is 21,282 out of 32,884, where 1 is the most deprived area in England. i.e. the current location is in the 40% least deprived areas in England

3.63.2 The area is ranked 32,596 in respect of Health and Disability deprivation i.e. it is in the 1% **least deprived** areas of the whole country on this measure.

3.63.3 It is ranked 19,924 on the income measure, i.e. incomes are within the top 40% nationally.

3.64 It is very clear, therefore, about this is not a deprived area in any way, but most notably on the health and disability measure. This is highly relevant when considering the extent to which residents have a need to access pharmaceutical services and their ability to travel to reach them.

3.65 **Patient distribution**

3.66 The conclusion reached by the ICB when considering our client's application was that it felt unable to form a view on the extent to which patients might be affected by the relocation without an understanding of patient distribution.

3.67 In our opinion the ICB conclusion was flawed because it did not consider individual patient groups.

3.68 However, our client acknowledges that there is some relevance to patient distribution data when it comes to considering its patient group 2 - *patients who use the existing pharmacy location because it is close to home*. We have therefore worked with our client to consider where the patients in this group are travelling from.

3.69 In order to analyse this data, our client extracted postcode information from its Patient Medication Record (PMR) system for all patients who are considered to be 'current'. This will include, at the very least, all patients who have had a prescription dispensed at the pharmacy within the last year.

3.70 We acknowledge that this only captures patients receiving a dispensing service and not necessarily other pharmaceutical services, but given the nature of the area we do not believe that the distribution of patients attending to receive pharmaceutical services overall will differ greatly from those attending to receive dispensing services.

3.71 The postcode data was then filtered to remove those patients who receive their medication by delivery, as they belong to a different patient group and will be unaffected by the proposed relocation as they do not attend in person.

3.72 When the post code data was mapped, it was apparent that this covered a much larger area than might be reasonably considered to be the 'catchment area' for the pharmacy. There may be several reasons for this, such as people visiting relatives or in the area for work, but it is clear that patients who live many miles away, who access pharmaceutical services at our client's premises for some reason, will not be troubled by a relocation of just over 1km. In any event, many of these patients may have only attended the pharmacy once, so it cannot be said that they are "accustomed" to accessing pharmaceutical services from our client's pharmacy.

3.73 We have therefore limited further analysis to patients within the NW9 and HA8 postcode areas. This covers a radius of 2-3 miles from the existing and proposed sites and excludes the area to the east of the M1 motorway. This seems to be a reasonable way of defining patients who use the pharmacy because it is close to home.

3.74 These postcodes were plotted on a map, and two versions of this map have been included with this appeal. The first, titled "patient map" shows all postcodes of patients who have received 'non-delivery' dispensing in the NW9 and HA8 postcode area.

3.75 As this map is difficult to interpret clearly from a visual perspective, due to the number of points plotted, we have included a second map, titled "patient map zoomed" which shows the central part of this map as an illustration. On this second map, it can also be seen that a green line has been drawn from west to east, half way between the existing and proposed sites. Patients living to the south of this line live closer to the existing premises and those to the north of this line live closer to the proposed premises.

3.76 We have then counted the total number of patients living to the north and to the south of this line in the NW9 and HA8 postcode areas (on the overall map not just the 'zoomed' map).

3.77 The outcome of this analysis was that there are 134 patients living to the south of the line and 130 patients living to the north of the line. This is broadly as expected looking at the map where, 'to the eye' it appears that patients are fairly evenly distributed around the area.

3.78 Whilst we accept that this analysis is not perfect, in that we cannot assess each of these patients individually in respect of their health needs and how they travel to the pharmacy at present, it does provide a relatively clear representation of how patients who 'access the pharmacy because it is close to home' are distributed.

3.79 In our opinion this answers the question posed by the ICB when they stated *"….. it would help to understand the volumes of patients and where they travel from. If the vast majority had a longer route to travel then this may be significantly less accessible as opposed to the majority who had a shorter route making the pharmacy not significantly less accessible."*

3.80 [See maps - Appendix B - page 9 – 11]

3.81 Referring back to the legal test, it is our client's position that, taking this patient group overall it cannot be said that the proposed location is **significantly less accessible**. As would be expected, the proposed location would be closer for some patients and further for others, but the overall impact will be broadly neutral.

3.82 **Conclusion**

3.83 In conclusion, in our opinion, all the requirements of Regulations 24 have been met in this case.

3.83.1 Our client defined its patient groups in its application and explained why each of these groups would not find the proposed location significantly less accessible.

3.83.2 We have provided additional information to show that the proposed location is highly accessible by public transport, by car and on foot.

3.83.3 We have demonstrated that the demographic profile is such that it is reasonable to assume patients are able to travel to the proposed location without undue difficulties.

3.83.4 We have also shown that, in respect of those patients who live closest to the pharmacy, they are evenly distributed in respect of the current and proposed locations and, as such, this patient group will not find the proposed location to be significantly less accessible.

3.84 We believe there is enough evidence within our client's application and appeal for the Primary Care Appeals committee to grant the application based on the written evidence. However, should the committee wish to convene a hearing our client would wish to attend.

3.85 We look forward to hearing the outcome of this appeal in due course."

3.86 Enclosures:

3.86.1 Copy of the Commissioner's decision dated 21 October 2024 (see paragraph 2 above).

3.86.2 Copy of SHA/26117 (see Appendix A pages 6 to 64).

3.86.3 Copy of maps – (see Appendix B pages 9 to 11).]

4 Summary of Representations

This is a summary of representations received on the appeal.

4.1 BOOTS UK LTD

4.1.1 "Thank you for your letter dated 22nd December 2024 informing us of the above appeal.

4.1.2 Boots UK Ltd agree with the decision of NHS England to refuse this application and we include our original comments submitted as part of this appeal. We have no further comments to make and respectfully ask that NHS Resolution inform us of the decision in due course."

Boots letter to the Commissioner dated 9 July 2024

4.1.3 "Thank you for your letter dated 28th May 2024 regarding the above application and the circulation of comments.

4.1.4 Boots UK LTD have the following comments….."

4.1.5 [See paragraphs 2.26 to 2.29 above].

4.2 THE COMMISSIONER

4.2.1 "I am writing in response to the above appeal. We note that you have the decision report and do not intend to resend this document, but that is a summary of the decision already made.

4.2.2 We have noted the applicants' comments and wish to make the following further comments.

4.2.3 The applicant has clarified some of the issues that were raised in the decision report.

4.2.4 The decision report stated the following: *"The distance between the two sites depends on the route taken, the shortest route involves a walk through the park, which may not be suitable in winter months if this is dark and isolated. There is one of the other routes that seems more appropriate although this is a marginally longer route."* The applicant has provided further information regarding the park which has clarified the issues, and this may be more suitable than first envisaged.

4.2.5 PSRC determined that it felt that the applicant had not provided sufficient information about one of the patient groups. This was the patient group that accessed services as the pharmacy was near their home. It was unclear where these patients' journeys started before they accessed the pharmacy or how far they would need to travel to the proposed premises. PSRC felt that this information would help in the assessment to determine if the new premises were significantly less accessible or not.

4.2.6 From the information provided at appeal from the applicant there appears to be a number of patients that proport to travel from their home that would have a much longer journey to the proposed premises and some that would have a much shorter journey. However, the assessment that needs to be made is for the whole patient group. It would appear that the split is fairly even between those that would have to travel further and those that would not. It is not clear if those that would have to travel further if they would be accessing the pharmacy by foot, car or public transport. There appears to be a reasonable accessibility to public transport and access by car. But for those that choose to walk or are unable to utilise any other method to access the pharmacy, depending on the route taken this would be at least 1km or more and would take at least 15 - 20 minutes to walk.

4.2.7 It is therefore felt that the proposed site is significantly less accessible for patients."

5 Observations on representations

5.1 PHARMACY SALES AND CONSULTANCY REPRESENTING THE APPLICANT

5.1.1 "Thank you for your letter dated 2nd January 2025 enclosing third party comments in respect of this appeal.

5.1.2 We continue to act for the applicant, Sheav Chem Limited, and wish to make the following final brief observations in response.

5.1.3 Letter from Boots dated 16th December

5.1.4 We note that Boots do not make any new comments, they have simply provided a copy of their original letter of objection to our client's application.

5.1.5 As no new information has been provided by Boots we have no further comments to make at this stage. We refer the Appeals Committee to the response we provided to Boots' objections in our letter to the ICB dated 22nd July 2024.

5.1.6 North Central London ICB, letter dated 20 December 2024

5.1.7 We note that the ICB has made several new comments, so we respond to these in the same order in which they are made in their letter dated 20th December.

5.1.8 Firstly the ICB have acknowledged the comments made in our client's appeal about the 'park'. They appear to have accepted that "this may be more suitable then first envisaged". The ICB appear now to accept that the 'park' does not constitute a barrier for patients who wish to walk from Sheaveshill Avenue to the proposed site.

5.1.9 The ICB go on to consider the patient group of patients who access pharmaceutical services 'near their home'. They correctly comment that the assessment needs to be made for the whole patient group rather than for individual patients. Having considered the maps we provided, the ICB accepts that "it would appear that the split is fairly even between those that would have to travel further and those that would not".

5.1.10 In other words, the ICB accepts that, for this patient group, in broad terms an equal number of patients have further to travel to the proposed location to those who have a shorter distance to travel.

5.1.11 The ICB go on to consider how patients may travel to the proposed site and it is here that their approach is flawed.

5.1.12 The ICB accepts that the proposed location has "reasonable accessibility to public transport and access by car". However, the ICB go on to state "but for those that choose to walk or are unable to utilise any other method to access the pharmacy, depending on the route taken this would be at least 1km or more and would take at least 15 - 20 minutes to walk."

5.1.13 Firstly the ICB forgets its earlier comment that it must consider the whole patient group. So, whilst it may be the case that some individual patients could face a longer walk, other individual patients could have a much shorter walk. The ICB falls into the trap of focussing on individuals rather than patient groups. In fact the final comment in its letter that "it is therefore felt that the proposed site is significantly less accessible for **patients**" is evidence that it has failed to consider whole **patient groups**.

5.1.14 Secondly, the ICB makes the assumption that a walk of 15-20 minutes renders the proposed location significantly less accessible without explaining why that it the case. A '20 minute walk distance' is a commonly used measure in

pharmaceutical needs assessments to determine what length of walk might be considered reasonable for patients to access pharmaceutical services.

5.1.15 Thirdly, even though one patient may choose to walk to a pharmacy at present, this does not preclude them from using another means of transport in the future.

5.1.16 The area is not deprived, so, should they wish to do so, patients may make use of the excellent public transport network in this part of London to access pharmaceutical services from the proposed location. That being the case, it cannot be said that the proposed premises are **significantly** less accessible.

5.1.17 We have no further comments to make at this time, but look forward to hearing the outcome of this appeal in due course."

6 Consideration

6.1 The Pharmacy Appeals Committee ("Committee") appointed by NHS Resolution 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.

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

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

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

6.5 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).

6.6 The Applicant, in its application states "*There is no other pharmacy in the same or adjacent premises*." In its decision report, the Commissioner states "*The proposed pharmacy is not on the same site or adjacent to any other pharmacy, therefore this regulation is not engaged*."

6.7 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.

6.8 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).

6.9 The Committee considered the position in relation to each condition.

6.10 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 site and medical practices within the area. This map has not been disputed by parties.

6.11 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.

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

6.12.1 Patients receiving a delivery service;

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

6.12.3 Patients attending medical centres in the area and subsequently seeking pharmaceutical services;

6.12.4 Patients who wish to access advanced or locally commissioned services from the pharmacy; and

6.12.5 Patients who share protected characteristics.

6.13 The Committee concludes that the patient groups who are accustomed to accessing pharmaceutical services from the existing premises are those set-out below.

Patients receiving a delivery service

6.14 The Applicant states that *"A proportion of the pharmacy's prescriptions are handled via a delivery service.*" The Applicant describes these patients in detail at paragraphs 1.73 to 1.74 above. These patients do not access the pharmacy in person. The Applicant concludes "*For these people, the service will remain the same regardless of where they live. The collection/delivery service will remain unchanged as a result of this relocation*."

6.15 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.

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

6.17 The Applicant describes the area in which the current and proposed site is located as a densely populated area. "*The facilities close to both the existing and proposed locations are fairly limited. People are therefore likely to access the shops further afield when going about their daily lives*." The Applicant also states that "*So whilst there will be some people who live very close to the existing premises that will clearly have further to travel, this is not the case for the patient group overall*."

6.18 The Applicant, in its appeal, has provided extensive supporting information with maps and analysis of patients who have received 'non delivery' dispensing. The analysis concludes "*that there are 134 patients living to the south of the line and 130 patients living to the north of the line. This is broadly as expected looking at the map where, 'to the eye' it appears that patients are fairly evenly distributed around the area*." The Applicant concedes that it can "*accept that this analysis is not perfect, in that we cannot assess each of these patients individually in respect of their health needs and how they travel to the pharmacy at present, it does provide a relatively clear representation of how patients who 'access the pharmacy because it is close to home' are distributed*." The Committee was mindful that this information had not been disputed or challenged by parties to the appeal.

6.19 The Committee noted Boots' view regarding the distance between the existing premises and the proposed premises of 1.1 km is a barrier. The Committee considered that the distance involved would vary depending on a patient's starting point, and that

it was unlikely that many starting a journey from home would do so from the immediate vicinity of either sites. The Committee was of the view that a move to the proposed site would bring the pharmacy closer to home for some residents and further away for others. This along with the undisputed data analysis provided by the Applicant led the Committee to conclude that the overall effect is likely to be neutral.

6.20 For those who chose to access the existing pharmacy on foot, the Applicant stated that "*there are no significant barriers to movement. The route is level, benefits from wide pavements (which are in good condition), dropped kerbs and street lighting throughout*." The Applicant continues "*Even for those whose journey takes them past the existing location on the way to the proposed location, the journey is straightforward and will take no more than 15 minutes on foot for most people*."

6.21 The Commissioner raised concerns in its decision with regard to Colindale Park which patients may potentially have to walk through in order to access pharmaceutical services at the proposed premises. In its appeal, the Applicant responded that Colindale Park is "*220m long and from each to west it is a maximum of 90m wide*." The Applicant explained "*the footpath through the park is flat and well illuminated*" and "*the presence of a well-used Co-Op convenience store where the park meets Colindale Avenue, the busy tube station and numerous food establishments result in this being a 'bustling' area well used by residents until late in the evening*." The Commissioner, in its representations states "*The applicant has provided further information regarding the park which has clarified the issues, and this may be more suitable than first envisaged*."

6.22 The Committee noted parties have not disputed the information provided on appeal with regard to the topography of the area.

6.23 For those travelling by car, the Applicant states "*for those who do wish to drive, the journey between the two locations by car is less than a mile so would take less than 5 minutes, even when the traffic is heavy*." The Commissioner in its decision noted that "*for those who drive the distance is short, but anyone driving would still need to find somewhere to park*." The Applicant addressed this on appeal providing a map showing the parking including pay and display throughout Colindale Gardens with the closest parking at 100 metres from the proposed premises. The Committee noted parties have not disputed the information provided on appeal with regard to car parking spaces.

6.24 For those who choose to use public transport, the Applicant stated *"the proposed site at Colindale Gardens is exceptionally well served by buses. … the Colindale Station bus stop, which is located less than 100m from the proposed premises."* The Applicant provided bus departure times and maps of one particular bus route, and the Committee noted "*that buses run along this route every 15 minutes or so.*" The Applicant further states that *"the proposed premises are located less than 200 metres from Colindale tube station. As this is the only station serving the whole of Colindale, it is used by residents across the area including those living near the current location*." The Committee noted parties have not disputed the information provided on appeal with regard to public transport.

6.25 The Commissioner, in its representations, stated "*There appears to be a reasonable accessibility to public transport and access by car*. *But for those that choose to walk or are unable to utilise any other method to access the pharmacy, depending on the route taken this would be at least 1km or more and would take at least 15 - 20 minutes to walk.*" The Committee was of the view that a kilometre walk in a densely populated, busy and affluent area with "*wide pavements (which are in good condition), dropped kerbs and street lighting throughout*" was acceptable for those who chose to walk.

6.26 In considering all the points above, the Committee was satisfied that for those patients accustomed to accessing pharmaceutical services who use the existing pharmacy location because it is close to home, regardless of how they travel to the proposed premises, the location of the new premises is not significantly less accessible.

Patients attending medical centres in the area and subsequently seeking pharmaceutical services

6.27 The Committee noted the Applicant stated "*that 43.9% of the items dispensed originated from Colindale Medical Centre. This is by far the largest source of prescriptions for our client's pharmacy*." The Applicant further stated *"this surgery is located in-between the existing and proposed sites."* The Applicant continued to state that "*The distance to the existing site is 400m and the distance to the proposed site is 700m. So whilst the journey to the proposed site will be slightly further for those people attending the medical centre it is not significantly so. Any patient able to travel 400m at present is unlikely to find that an additional 300m renders the pharmacy inaccessible to them. There is no bus route along Sheaveshill Avenue, so patients either walk or drive from the medical centre to the pharmacy. Regardless of their means of travel they will not find the proposed location significantly less accessible*."

6.28 The Committee is mindful of it's consideration above for those patients who access pharmaceutical services on foot or by car. The Committee noted parties have not disputed the information provided on appeal with regard to the topography of the area or car parking.

6.29 Patients attending Colindale Medical Centre are not able to catch a bus directly from the medical centre to the existing pharmacy as there is not a bus stop on Sheaveshill Avenue where the existing pharmacy is situated. The nearest bus stop being described as "*near to*" the current premises. Conversely patients using public transport are able to catch the bus service 204 which runs regularly and stops within 100 metres of the proposed pharmacy. The Committee noted parties have not disputed the information provided on appeal with regard to public transport.

6.30 The Applicant, with regard to the other medical centres, stated that "*No other medical centre accounts for more than 15% of the items dispensed by our client's pharmacy. Some of the other medical centres are closer to the proposed site and others are further away but given the accessibility of the proposed site, as discussed above, we submit that patients attending one of these other medical centres will not find the proposed location significantly less accessible*." The Committee was also mindful of the Commissioner's representations which state "there appears to be a reasonable accessibility to public transport and access by car." The Committee reviewed the map and key provided by the Commissioner, which has not been disputed by parties. The Committee was of the view that some of the medical centres are closer to the proposed site and others further away and was mindful of the terrain, car parking and bus stops within the vicinity of the proposed site as considered above.

6.31 In considering all the points above, the Committee was satisfied that for those patients accustomed to accessing the existing pharmacy location because they have attended medical centres in the area and subsequently seeking pharmaceutical services, regardless of how they travel to the proposed premises, the location of the new premises is not significantly less accessible.

Patients who wish to access advanced or locally commissioned services from the pharmacy

6.32 The Applicant stated that "*Patients accessing the pharmacy for the New Medicines Service (NMS) will fall into one of the other patient groups already described as they will already be receiving dispensing services from the pharmacy*. *For patients wishing to access the other services offered at the current premises, the proximity of the proposed premises is such that they will be able to access the services in exactly the same manner. The pharmacy will be open for the same hours and the new premises will be close to the existing premises.*" The Committee noted there was no dispute with regard to this patient group. The Committee had already considered patients who access the current pharmacy either on foot, by car or using public transport in relation to the other patient groups as above.

6.33 In considering all the points above, the Committee was satisfied that for those patients accustomed to accessing advanced or locally commissioned services from the existing pharmacy, regardless of how they travel to the proposed premises, the location of the new premises is not significantly less accessible.

Patients who share protected characteristics

6.34 The Applicant stated that "*Every person shares at least one protected characteristic, i.e. they belong to a group that distinguishes them by age, race or any other characteristic. More commonly, however, this relates to those who may be elderly, infirm or disabled as these are characteristics that impact on accessibility*." The Applicant continues "*For those who currently access the existing pharmacy 'on foot', by wheelchair or mobility scooter, either from their homes or elsewhere, the journey to the new premises benefits from wide pavements, controlled crossings, dropped kerbs and tactile pavements so these patients are able to move around the area without undue difficulty. Those whose mobility difficulties are more significant do not visit the existing premises 'on foot' anyway as they are more likely to travel by car / public transport or to use the delivery service*."

6.35 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.

6.36 The Committee noted the comments made earlier in this determination about the terrain, well lit pavements and dropped curbs to support its finding that there are no barriers to access. The Committee was of the view that for those who access pharmaceutical services on foot or for those with limited mobility, there were no particular difficulties.

6.37 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).

6.38 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.

Overall assessment

6.39 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)

6.40 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)

6.41 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)

6.42 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)

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

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

6.44.1 confirm the Commissioner's decision;

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

6.44.3 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.

6.45 As the Committee has come to a different conclusion to the Commissioner, the Committee determined that the decision of the Commissioner must be quashed.

6.46 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.

6.47 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.

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

7 Decision

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

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

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

7.4 The application is granted.

Case Manager
Primary Care Appeals