

13 February 2025

REF: SHA/26409

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**APPEAL AGAINST GREATER MANCHESTER ICB
DECISION TO GRANT AN APPLICATION BY WHITTLE
PHARMACIES LTD FOR A RELOCATION THAT DOES
NOT RESULT IN A SIGNIFICANT CHANGE TO
PHARMACEUTICAL SERVICES PROVISION UNDER
REGULATION 24 FROM 119 LEE LANE, HORWICH,
BOLTON, BL6 7AR TO HORWICH WELLBEING HUB,
VICTORIA ROAD, HORWICH, BL6 5PY**

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:

Whittle Pharmacies Ltd
PCSE on behalf of Greater Manchester ICB
Imaan Ltd

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1 The Application

By application dated 12 June 2024, Whittle Pharmacies Ltd (“the Applicant”) applied to Greater Manchester ICB (“the Commissioner”) for a relocation that does not result in a significant change to pharmaceutical services provision under Regulation 24 from 119 Lee Lane, Horwich, Bolton BL6 7AR to Horwich Wellbeing Hub, Victoria Road, Horwich BL6 5PY. In support of the application it was stated:

- 1.1 In response to why the application should not be refused pursuant to Regulation 31 the Applicant stated “N/A”.

Information in support of all no significant change applications

- 1.2 “Our pharmacy currently provides essential dispensing services to the three main GP practices in Horwich. Pike View Medical Centre, located 45 meters [sic] from the pharmacy, is responsible for approximately 70% of all prescriptions. Bolton Community Practice, located 300 meters [sic] from the pharmacy, accounts for 15%, and Kildonan House Medical Centre, located 1 km away, is responsible for 7% of all prescriptions. The remaining prescriptions come from various practices across Bolton.
- 1.3 Pike View Medical Centre and Bolton Community Practice, which together account for 85% of our prescriptions, are moving to the new premises. Kildonan House Medical Centre will be only 600 meters [sic] from the new premises, a route that takes approximately 7 minutes to walk at a steady pace.
- 1.4 The new premises are in a purpose-built health centre offering a variety of primary medical and community services. The adjacent leisure centre provides ample parking, including disabled parking. In contrast, parking at the current site is limited to street parking or parking areas about 500 meters [sic] away.
- 1.5 As mentioned, the primary medical service providers for 85% of our patients are relocating to the new premises. Kildonan House Medical Centre, which accounts for 7% of our prescriptions, will also be closer to the new premises. Although we receive prescriptions from various GP surgeries further afield, very few items come from any one particular surgery. Nearly all prescriptions are received electronically, and the pharmacy offers a free delivery service. This includes patients with repeat prescriptions collected from their surgery and those issued via EPS. Deliveries also include MDS

patients and any residents in care homes unable to access the pharmacy in person (although we do not currently serve any care homes). For these patients, the service will remain the same regardless of location.

- 1.6 Patients receiving essential services that do not require visiting the pharmacy, such as telehealth, signposting, or self-care advice, will continue to receive these services from the new premises.
- 1.7 Patients living near the current site who use it due to its proximity will not find the new site less accessible. The new site is an 8-minute walk on mainly flat, paved terrain, with a pedestrian crossing to access the new site. The 516 bus has stops adjacent to both the old and new sites, with a journey time of approximately 6 minutes. For patients using their own cars, the journey takes about 2 minutes, and ample parking is available at the new centre.
- 1.8 Please see attached map. [Appendix A]
- 1.9 Patients with protected characteristics, such as those distinguished by age or race, will find the new premises accessible, with facilities catering to their needs. The journey to the new premises will not significantly differ for those who currently access the existing pharmacy on foot or by wheelchair.
- 1.10 Therefore, based on the reasons outlined above, I do not consider the new premises to be significantly less accessible for the patient groups accustomed to accessing pharmaceutical services at the existing location.
- 1.11 I believe that granting this application will not result in a significant change to the current arrangements. The existing and proposed premises are within walking distance of each other, serving the same patient groups and providing essential dispensing services for patients accessing the two main medical practices that are also moving to the new premises. The existing services and opening hours will be maintained. Patient groups accessing pharmaceutical services in the area will still be able to access them in the same way. Therefore, there is no reason to suggest that this relocation will result in a significant change to the arrangements in place.
- 1.12 We have been unable to find any plans related to future pharmaceutical services in the area - whether from the local authority, the ICB or any other commissioner of pharmaceutical services - that would be affected in any way by granting this application."

2 The Decision

The Commissioner considered and decided to grant the application. The decision letter dated 30 October 2024 states:

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

Extract from decision report

- 2.2 **"Regulation 31 – Must the application be refused?"**
- 2.3 Horwich Health and Wellbeing Hub is situated on Victoria Road, Bolton. There is no other pharmacy within the same or adjacent premises.

- 2.4 The nearest pharmacy is Kildonan Pharmacy which is 0.3 miles away and approximately 8 minute-walk away (source: Google Maps/The NHS Site).
- 2.5 Therefore, there are no other pharmacies either in the same or adjacent premises:
- 2.6 [Photo and map provided at Appendix B]
- 2.7 Based on all available information, the PSRC concluded that the application **must not** be refused under Regulation 31.
- 2.8 **Regulation 24 – does the application satisfy the elements of Regulation 24?**
- 2.9 **Considerations:**
- 2.10 Regulation 24(1) – relocations within the same HWB's area – **regulation applies**
- 2.11 *Regulation 24(2) – relocations to a neighbouring HWB's area - N/A*
- 2.12 *Regulation 24(3)(a) – relocations involving a pharmacy that applied under the previous out of town retail area exemption - N/A*
- 2.13 *Regulation 24(3)(b) – relocations involving a pharmacy that applied under the previous one stop primary care centre exemption - N/A*
- 2.14 *Regulation 24(3)(c)- relocations involving a pharmacy that relocation within the 12 months prior to this application - N/A*
- 2.15 *Regulation 24(3)(d) – relocations involving a distance selling premises - N/A*
- 2.16 The applicant's pharmacy is currently located at 119 Lee Lane, Horwich, Bolton, BL6 7AR and proposes to relocate to Horwich Health and Wellbeing Hub, Victoria Road, Bolton, BL6 5P, 0.3 miles, 8-minute walk.
- 2.17 [Map provided at Appendix B]
- 2.18 Proximity of the current premises to the proposed premises:
- 2.19 [Map provided at Appendix B]
- 2.20 **Consideration 1 - Is the location of the new premises significantly less accessible than the current premises, and if so, why? Regulation 24(1)(a)**
- 2.21 The distance to the proposed location is 0.3 miles, 8-minute walk away.
- 2.22 [Map provided at Appendix B]
- 2.23 Route by car, 2 minutes away from the current location
- 2.24 [Map provided at Appendix B]
- 2.25 **Access by Public Transport**
- 2.26 The 516 bus has stops adjacent to both the old and new sites, with a journey time of approximately 6 minutes.

- 2.27 In addition, bus 125 leaves every 10 minutes from the current site and the journey time to the proposed site is 6 minutes.
- 2.28 [Map and photo provided at Appendix B]
- 2.29 Crossing nearby to the Hub
- 2.30 **Parking**
- 2.31 Parking provide [sic] on site including disabled parking. In contrast, parking at the current site is limited to street parking or parking areas about 500 meters [sic] away.
- 2.32 The applicant wants to relocate to Horwich Health and Wellbeing Hub, Victoria Road, Bolton, BL6 5PY.
- 2.33 The applicant states pharmacy “provides essential dispensing services to the three main GP practices in Horwich. Pike View Medical Centre, located 45 meters [sic] from the pharmacy, is responsible for approximately 70% of all prescriptions. Bolton Community Practice, located 300 meters [sic] from the pharmacy, accounts for 15%, and Kildonan House Medical Centre, located 1 km away, is responsible for 7% of all prescriptions. The remaining prescriptions come from various practices across Bolton.
- 2.34 Pike View Medical Centre and Bolton Community Practice, which together account for 85% of our prescriptions, are moving to the new premises. Kildonan House Medical Centre will be only 600 meters [sic] from the new premises, a route that takes approximately 7 minutes to walk at a steady pace”.
- 2.35 As of 23rd September 2024 Dr Malhotra & Partners (Pike View and Westhoughton Branch Surgery (pikeviewmedicalcentre.nhs.uk) and Bolton Community Practice CIC- The Market Surgery (Contact Us - Bolton Community Practice) have already relocated to the proposed location.
- 2.36 Dispensing information taken from June NHS BSA Dispensing contractors' data | NHSBSA

Practice name	Sum Number of EPS Items	Sum Number of Items	From current location	From proposed location
Dr Malhotra & Partners (Pivke [sic] View Medical Practice)	8984	9187	0.3	0
Bolton Community Practice	2098	2138	0.3	0
Kildonan House	1032	1035	0.6	0.3
Spring House Surgery	200	201	2.6 mile	3.5 miles

- 2.37 Based on all available information, the PRSC agreed that proposed premises are not significantly less accessible to persons currently accustomed to accessing services from the current site.
- 2.38 The PSRC was therefore of the view that the application **meets** condition (a).
- 2.39 ***Consideration 2 - In the opinion of the NHS commissioning body, would granting the application 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—***
- 2.40 ***(i) in any part of the area of HWB1, or***
- 2.41 ***(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?***
- 2.42 ***Regulation 24(1)(b)***
- 2.43 The relocation is within 0.3 miles and is within the same locality in the Bolton HWB area. There are currently no other pharmacies either in, or adjacent to, the proposed new premises.
- 2.44 Due to the short distance between the current and proposed premises, the PSRC was satisfied that the relocation **would not** result in a significant change to the arrangements that are in place for provision of local pharmaceutical services. It further noted that there is no controlled locality within 1.6km of the premises to which the applicant is seeking to relocate, nor is the site itself within a controlled locality.
- 2.45 The PSRC was therefore of the view that the application **met** condition (b).
- 2.46 ***Consideration 3 – Is the NHS commissioning body 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? Regulation 24(1)(c)***
- 2.47 Based on all available information, the PSRC was of the opinion that granting the application **would not** cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the Bolton HWB area.
- 2.48 The PSRC was therefore of the view that the application **met** condition (c).
- 2.49 ***Consideration 4 – Are the services the applicant undertakes to provide at the new premises the same as the services the applicant has been providing at the existing premises (whether or not, in the case of enhanced services, the NHS commissioning body chooses to commission them)? Regulation 24(1)(d)***
- 2.50 The applicant had declared in the application that the same services (including opening hours) would be provided from the proposed new premises, as are presently provided at the current premises. Specifically:
- 2.50.1 Hypertension Case Finding Service

- 2.50.2 Pharmacy First
- 2.50.3 Vaccinations
- 2.50.4 New Medicine Service
- 2.50.5 Contraception
- 2.50.6 Smoking Cessation
- 2.50.7 Supervised Methadone and Needle Exchange
- 2.50.8 Emergency Contraception
- 2.51 The opening hours will remain the same and are as stated below:
- 2.52 Total opening hours: Monday to Friday inclusive, 09:00-18:00, Saturday 09:00-13:00, Sunday closed (49 hours).
- 2.53 Based on the above information, the PSRC had sufficient assurances that the applicant was undertaking to provide the same services (and opening hours) from the proposed premises, as it provides from the current premises.
- 2.54 Taking into consideration all available information, the PSRC **was** satisfied that the application met condition (d).
- 2.55 **Consideration 5 – Will the provision of pharmaceutical services be interrupted (except for such period as the NHSCB may for good cause allow)? Regulation 24(1)(e)**
- 2.56 The applicant has declared that there will be no interruption in services if the relocation is granted.
- 2.57 The PSRC was therefore of the view that condition (e) **had** been met.
- 2.58 The PSRC additionally considered whether any parts of Regulation 24(2) and 24(3) applied in this case. Based on all available information, the PSRC **was** satisfied that they did not.
- 2.59 **Interested Parties:**
- 2.60 The following representations were received from the interested parties from a 2km radius of the application.
- 2.61 **CPGM (GM LPC):**
- 2.62 *Community Pharmacy Greater Manchester (CPGM) application subgroup has reviewed this application and sees no reason to oppose it.*
- 2.63 *Community Pharmacy Greater Manchester would like to receive any further correspondence regarding this application and wish to be kept informed of its progress.*
- 2.64 **Kildonan Healthcare Ltd operating the pharmacy in Kildonan House Surgery.:**

- 2.65 *We do not currently have any significant comments regarding this application except that this proposed relocation would naturally reduce the provision of pharmaceutical services in and around the current site.*
- 2.66 *We would appreciate it if NHS England could keep us updated of any developments on this application at the above address.*
- 2.67 **Boots UK Ltd**
- 2.68 *We note that there is a further relocation by Imaan Ltd CAS-309516-B5J6J9 to the same location. The ICB will be aware that no two contracts can operate out of the same location and Regulation 31 would need to be considered, so if one application were to be approved, the other should be refused.*
- 2.69 *Boots UK LTD have no further comments to make with regards to this application and look forward to the decision of the ICB in due course.*
- 2.70 **Rushport Advisory on behalf of Imaan ltd t/a Heatons Pharmacy**
- 2.71 **Re: No significant change relocation to Horwich Wellbeing Hub, Victoria Rd, Horwich, BL6 5PY by Whittle Pharmacies Ltd. CAS-312509-C8F4W5**
- 2.72 Thank you for your letter of 17 July 2024. I act for Imaan Limited t/a/ Heatons Pharmacy, 228 Chorley New Road and have been instructed by my client to submit the following objection to the application from Whittle Pharmacies Limited.
- 2.73 As the ICB will note, the application from Whittle Pharmacies Limited is to the same location as my client has already applied to relocate. In many ways the applications are similar in nature as they are over similar distances and involve similar methods of travel for patients.
- 2.74 The application must be considered against the requirements of regulation 24. Regulation 24 requires the Applicant to provide sufficient information to establish, amongst other things, that the relocation will not make the pharmacy significantly less accessible for their relevant patient groups.
- 2.75 Whilst Whittle Pharmacies is correct that Pike View Medical Centre and Bolton Community Practice, together account for circa 85% of their prescription business, this simply confirms that patients who attend these practices and then seek to access a pharmacy are a relevant “patient group” for the purposes of the application as it is for my client’s relocation application.
- 2.76 Whilst journeys and travelling times may well be similar in both applications (albeit from different starting points), Whittle Pharmacies Limited has provided very little information about exactly which patients groups they are asking the ICB to consider as part of the legal test and without this information the ICB would not be able to approve the application. Similarly, Lee Lane is a significant shopping area which patients are likely to have travelled to in order to access the shops and facilities located there and the Applicant has not dealt with this patient group in their application. Without sufficient detail being provided, the application should be refused.
- 2.77 **Representations received from circulation of first representations**
- 2.78 **Whittle Pharmacies Ltd t/a Hootons Pharmacy reply**

- 2.79 After reviewing all the representations, we would like to make the following additional comments:
- 2.80 **“**1) Comments by Mr. Connor Daly on behalf of Heatons Pharmacy Ltd: ** Mr. Daly has suggested that our application fails to address the patient groups that will be impacted by the minor relocation. He also mentioned that Lee Lane is a significant shopping area, implying that patients would likely travel there to access shops.**
- 2.81 *It's unclear why Mr. Daly would make these comments, possibly to divert attention from a lack of information on a key patient group: the elderly and those with impaired mobility/protected characteristics who currently obtain prescriptions from Kildonan House Medical Centre in his own application.*
- 2.82 *Please refer to my letter dated 17th August, 2024 for further comments on this.*
- 2.83 *Our application dated 12th June 2024, thoroughly covers all patient groups affected by the relocation. To clarify, I have restated the information provided in our original application regarding patient groups.*
- 2.84 *The original application considered the following patient groups:*
- 2.85 **1. Patients Accessing Pharmaceutical Services in Conjunction with GP Services**
- 2.86 **a.** *Pike View Medical Centre and Bolton Community Practice, which together account for 85% of our prescriptions, are relocating to the new premises.*
- 2.87 **b.** *Kildonan House Medical Centre will be only 600 meters [sic] from the new premises, a distance that takes approximately 7 minutes to walk at a steady pace.*
- 2.88 **c.** *The new premises are located in a purpose-built health centre offering a variety of primary medical and community services. The adjacent leisure centre Whittle Pharmacies Ltd is registered in England under registration number 3903928 and with registered office at 230 Preston Road, Whittle-le- Woods, Chorley PR6 7HW provides ample parking, including disabled spaces. In contrast, parking at the current site is limited to street parking or areas about 500 meters [sic] away.*
- 2.89 **d.** *The primary medical service providers for 85% of our patients are moving to the new premises. Kildonan House Medical Centre, which accounts for 7% of our prescriptions, will also be closer to the new premises.*
- 2.90 **e.** *Although we receive prescriptions from various GP surgeries further afield, very few items come from any one particular surgery. Nearly all prescriptions are received electronically, and we offer a free delivery service, including for patients with repeat prescriptions collected from their surgery or issued via EPS.*
- 2.91 *Deliveries also include MDS patients and any residents in care homes unable to access the pharmacy in person (though we do not currently serve any care homes). The service for these patients will remain unchanged regardless of location.*
- 2.92 **f.** *Essential services not requiring a visit to the pharmacy, such as tele-health, signposting, or self-care advice, will continue to be provided from the new premises.*
- 2.93 **2. Patients Living Near the Existing Pharmacy**

- 2.94 *a. Patients living near the current site who use it due to its proximity will not find the new site less accessible. The new site is an 8-minute walk on mainly flat, paved terrain, with a pedestrian crossing to access the new location.*
- 2.95 *b. The 516 and 125 buses have stops adjacent to both the old and new sites, with a journey time of approximately 6 minutes.*
- 2.96 *c. For patients using their own cars, the journey takes about 2 minutes, and ample parking is available at the new centre.*
- 2.97 **3. Patients with Impaired Mobility/Protected Characteristics**
- 2.98 *a. Patients with protected characteristics, such as those distinguished by age or race, will find the new premises accessible, with facilities catering to their needs.*
- 2.99 *b. The journey to the new premises will not significantly differ for those who currently access the existing pharmacy on foot or by wheelchair.*
- 2.100 *Regarding Mr. Daly's comment about Lee Lane being a significant shopping area, its relevance to the legal test for Regulation 24 is unclear. He has not addressed how shoppers accessing his client's current premises will be affected by their move, as Chorley New Road, the main road in Horwich, remains the primary shopping hub for the area.*
- 2.101 *The new premises will also be situated on Lee Lane, only a short distance away, so this relocation would not result in a significant change to the arrangements for providing pharmaceutical services at both sites.*
- 2.102 *Please note that the services we commit to providing at the new premises are the same as those currently provided at the existing location. Therefore, I believe we have provided sufficient evidence to demonstrate that relocating to the new premises will not make pharmaceutical services significantly less accessible for the patient groups accustomed to accessing them at the existing location."*
- 2.103 **2) Comments by Boots UK Limited: Boots UK Limited stated that the ICB would be aware that no two contracts can operate from the same location, and Regulation 31**
- 2.104 *Whittle Pharmacies Ltd is registered in England under registration number 3903928 and with registered office at 230 Preston Road, Whittle-le- Woods, Chorley PR6 7HW **would need to be considered. Hence, if one application were approved, the other should be refused.***
- 2.105 *I have addressed this comment in my letter dated 17th August 2024. For the purposes of this application, I reiterate the following:*
- 2.106 *The DHSC guidance outlines the intent of Regulation 31: "The purpose of this regulation is to prevent a contractor from applying for multiple inclusions in a pharmaceutical list at the same address with no benefit to patients." Therefore, the comment by Boots does not apply, and the other application should not be refused under Regulation 31. This is because:*
- 2.107 *a) There are currently no "existing services" at the proposed site; it's a brand-new health centre. Therefore, there are no other pharmaceutical services being provided from the proposed site and no "existing listed chemist premises."*

- 2.108 *b) The two applications to relocate to the centre are not linked and are not from the same contractor (there are no business links/shared directors or Superintendent, and they are entirely independent entities). Therefore, the services provided by both applicants should not be treated as part of the same service as the “existing service” (even if there were an existing service, this would not apply since the contractors are different).*
- 2.109 *c) Should more than one NSCR application be granted for the same proposed site, it would be up to the building owner/landlord to decide which contractor to award the space to. When the NOC is submitted by that contractor, the other successful application would simply lapse. It is highly unlikely that the landlord would want two pharmacies on-site, so only one would ultimately open. While the commissioner may permit a pharmacy to operate from a particular site, its ability to do so depends on securing the premises. There are no guarantees in that respect, but this issue is separate from regulatory considerations; therefore, both applications should be considered solely based on whether they meet the regulatory tests.*
- 2.110 *d) I cannot find any regulation that supports a “first past the post” scenario regarding multiple NSCR applications for one site. The other application should not be advantaged merely by being submitted sooner.*
- 2.111 *Please keep us updated on the progress of this application.”*
- 2.112 **The PSRC considered the impact of the decision on those with protected characteristics under the Equalities Act 2010 been considered?**
- 2.113 **Is this in accordance with NHS England/the ICB's Public Sector Equality Duty?**
- 2.114 **Has the impact of the decision on NHS England/the ICB's duty on health inequality been considered?**
- 2.115 **Have other statutory duties of NHS England/the ICB been considered in making the decision?**
- 2.116 The PSRC noted the access to both buildings current and proposed premises. Neither premises have a raised step entrance. However, the proposed premises does have the car park provision on site, with allocated disabled spaces.
- 2.117 Additionally, it was noted that from 01/01/2021 for all face-to-face community pharmacies (and 01/04/2021 for all distance selling premises), the system of clinical governance within the Terms of Service was expanded to include the promotion of healthy living. The Healthy Living Pharmacy (HLP) framework is aimed at achieving consistent provision of a broad range of health promotion interventions through community pharmacies to meet local need, improving the health and wellbeing of the local population and helping to reduce health inequalities. NHS Greater Manchester is committed to support its community pharmacies in achieving and maintaining compliance with this framework.
- 2.118 Based on all available information, the PSRC concluded that a refusal under Regulation 31 would not be appropriate and that the application meets all applicable regulatory tests under Regulation 24.
- 2.119 The application was therefore **granted**.

2.120 Appeal Rights were given to all interested parties listed below, as there an objection received by Rushport Advisory on behalf of Imaan Ltd.”

3 The Appeal

In an email dated 28 November 2024 addressed to NHS Resolution, Imaan Ltd t/a Heatons Pharmacy appealed against the Commissioner’s decision. The grounds of appeal are:

- 3.1 “Thank you for your email notifying us of the status of the above application;
- 3.2 You will be aware a previous relocation application for us, Imaan Limited has already been accepted for the site in question. Consequently, we have signed a multi-decade lease agreement with the site landlord and a notice of commencement has been issued.
- 3.3 Whilst I appreciate the application by Whittle Pharmacies meets the regulatory considerations. Given a NOC has already been submitted, the above application should lapse given two pharmacies cannot operate from the same site.”

4 Summary of Representations

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

5 Consideration

- 5.1 The Pharmacy Appeals Committee (“Committee”) appointed by NHS Resolution had before it the 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.
- 5.2 It also had before it the responses to NHS Resolution’s own statutory consultations.
- 5.3 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.
- 5.4 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (“the Regulations”).
- 5.5 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).

- 5.6 The Committee noted that the Applicant had not provided any information in the application form on this point but the Committee noted that the wording of the application form only required the Applicant to include information in the relevant section if the proposed premises were adjacent to, or in close proximity to, another pharmacy or dispensing appliance contractor premises. The Committee considered it reasonable to determine that the lack of information in the application form on this point when read with the wording of the application form allowed it to be reasonably satisfied that the Applicant considered that the proposed premises were not adjacent to, or in close proximity to, another pharmacy or dispensing appliance contractor premises. In its decision letter, the Commissioner stated that *“there is no other pharmacy within the same or adjacent premises”*.
- 5.7 By email dated 28 November 2024, Imaan Ltd appealed the decision and contends that *“a previous relocation application ... has already been accepted for the site in question. Consequently, we have signed a multi-decade lease agreement with the site landlord and a notice of commencement has been issued.”* And further that *“two pharmacies cannot operate from the same site”*.
- 5.8 In its cover email dated 4 December 2024 containing the paperwork relevant to this application, PCSE on behalf of the Commissioner referred to the application by Imaan Ltd; a relocation from 228 Chorley New Road, Horwich, Bolton, BL6 5NP to Horwich Health and Wellbeing Hub, Victoria Road, Bolton, BL6 5PY which was granted by the Commissioner on 12 September 2024. PCSE stated that no valid notice of commencement had been received.
- 5.9 The Committee had regard to the wording of Regulation 31(2)(a), and whether a person on the pharmaceutical list is providing or has undertaken to provide pharmaceutical services from the premises to which the application relates.
- 5.10 The Committee noted that no representations were received by any party in response to the appeal. Therefore the Committee proceeded with caution. If it accepts that a notice of commencement had been submitted by Imaan Ltd for the proposed premises to which this application relates, it considers a notice of commencement is an undertaking to provide pharmaceutical services and therefore proceeded to consider Regulation 31(2)(b).
- 5.11 The Committee was mindful of the Judgment ‘R (on the application of Pharmacy Care Plus Ltd) v Family Health Services Appeals Unit [2013] EWHC 824 (Admin)’. The Committee considered that this Judgment constituted judicial guidance on wording that is similar to the current Regulation 31(2)(b).
- 5.12 The Committee noted the instant application was submitted by Whittle Pharmacy Ltd. Further, the Appellant, who may have submitted a notice of commencement to provide services from the proposed premises, is Imaan Ltd. The Committee noted in its comments to the Commissioner, the Applicant states that *“the two applications to relocate to the centre are not linked and are not from the same contractor (there are no business links/shared directors or Superintendent, and they are entirely independent entities). Therefore, the services provided by both applicants should not be treated as part of the same service as the “existing service” (even if there were an existing service, this would not apply since the contractors are different).”* The Committee noted that this had not been disputed on appeal, nor had any party sought to argue that Regulation 31(2)(b) would require it to refuse the application.

- 5.13 The Appellant contends that the application “*should lapse given two pharmacies cannot operate from the same site*” however the Committee was mindful of its consideration above that the Applicant and Appellant are different entities. Further, the Committee did not need to take into account any information regarding tenure and leases at the proposed premises in relation to any other provider. It is the application by Whittle Pharmacy Ltd that is being considered in this determination in line with the Regulations.
- 5.14 Based on the information provided, the Committee determined that it was not required to refuse the application under the provisions of Regulation 31.
- 5.15 The Committee had regard to Regulation 24(1) 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).*
- 5.16 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 5.16.1 confirm the Commissioner’s decision;
 - 5.16.2 quash the Commissioner’s decision and redetermine the application;
 - 5.16.3 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.

Regulation 24(1)(a)

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

- 5.18 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.
- 5.19 In this case, the Applicant has identified the patient groups as:
- 5.19.1 Patients of Pike View Medical Centre and Bolton Community Practice;
 - 5.19.2 Patients of Kildonan House Medical Centre;
 - 5.19.3 Patients of other GP surgeries located further afield;
 - 5.19.4 Patients living in close proximity to the existing premises;
 - 5.19.5 Patients with protected characteristics; and
 - 5.19.6 Patients utilising collection and delivery services including MDS patients.
- 5.20 The Committee also noted that the Appellant, through its representative, in comments to the Commissioner highlighted those patients who attend Lee Lane to access the shops and facilities located there. Given the existing premises is located at Lee Lane, the Committee considered this group would overlap with its consideration of those patients living in close proximity to the existing premises.
- 5.21 The Committee concludes that the patient groups who are accustomed to accessing pharmaceutical services from the existing premises are those set-out below.

Patients of Pike View Medical Centre and Bolton Community Practice

- 5.22 The Committee noted the Applicant's comments in its application, that 85% of its prescriptions generate from these GP practices and further that they are both moving to a purpose-built health centre at the proposed site. The Commissioner in its decision letter confirmed that *"as of 23 September 2024, Pike and Bolton have relocated to the proposed location."*
- 5.23 The Committee was therefore satisfied that for this patient group who access services at the same time as visiting either of these GP practices, the proposed premises would not be significantly less accessible as the proposed premises is located within the same health centre.

Patients of Kildonan House Medical Centre

- 5.24 The Applicant states that 7% of its prescriptions generate from Kildonan House Medical Centre.
- 5.25 The Committee noted the comments from the Applicant that Kildonan House will be 600 metres from the proposed premises (1km away at present), a route that takes approximately 7 minutes to walk at a steady pace. Further the Committee noted from the map provided by the Commissioner, that the journey from Kildonan House to the existing premises could involve passing the proposed premises, and therefore the journey on foot would be no different to that which patients are already making.

- 5.26 The Applicant states that the *“adjacent leisure centre provides ample parking, including disabled parking. In contrast, parking at the current site is limited to street parking or parking areas about 500 meters [sic] away.”* Further the Commissioner in its decision report refers to parking on site including disabled parking, which the Committee noted had not been disputed. The Committee noted that there was no information provided to demonstrate that there were any barriers to accessing the proposed premises by car.
- 5.27 For those without access to private transport, and who are unable to access the proposed premises on foot, the Committee noted that no information has been provided regarding bus services specifically between Kildonan House Medical Centre and the proposed premises. However the Commissioner referred to bus services 516 and 125 which operate on the route between the existing premises and the proposed premises. Although the Committee did not have specific information as to whether those buses then journey to Kildonan House Medical Centre, the Committee was mindful of its consideration above regarding access on foot.
- 5.28 Therefore the Committee was of the view that for this patient group the proposed premises would not be significantly less accessible.

Patients of other GP surgeries located further afield

- 5.29 In its application, the Applicant states that *“Although we receive prescriptions from various GP surgeries further afield, very few items come from any one particular surgery. Nearly all prescriptions are received electronically, and the pharmacy offers a free delivery service.”*
- 5.30 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.

Patients living in close proximity to the existing premises / Patients attending Lee Lane to access the shops and facilities

- 5.31 The Committee noted in its application, the Applicant states that *“patients living near the current site who use it due to its proximity will not find the new site less accessible.”*
- 5.32 For patients, where their 'starting point' would be at or around the existing premises, the Committee noted that the distance between the two sites is approximately 0.3 miles. The Applicant states that *“the new site is an 8-minute walk on mainly flat, paved terrain, with a pedestrian crossing to access the new site.”*
- 5.33 For those who are able, the Committee determined that the nature of the journey between the existing and the proposed premises is unlikely to indicate that the new premises are significantly less accessible. However, the Committee considered that there may be patients within this group who share a protected characteristic, as identified by the Applicant as a patient group in its own right who may have difficulty accessing the proposed site on foot due to the distance involved. Therefore the Committee went on to consider access by other means.
- 5.34 The Applicant stated that *“the 516 bus has stops adjacent to both the old and new sites, with a journey time of approximately 6 minutes”* which the Committee noted has not been disputed by any party. In addition, the Commissioner refers to *“bus 125 [which]*

leaves every 10 minutes from the current site and the journey time to the proposed site is 6 minutes.”

- 5.35 For patients using their own cars, the Applicant states that *“the journey takes about 2 minutes, and ample parking is available at the new centre”* which the Committee noted had not been disputed by any party. The Committee noted that there was no information provided to demonstrate that there were any barriers to accessing the proposed premises by car.
- 5.36 Therefore the Committee was of the view that for this patient group the proposed premises would not be significantly less accessible.

Patients with protected characteristics

- 5.37 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).
- 5.38 The Applicant had identified patients with protected characteristics, *“such as those distinguished by age or race”*, and concluded that they will find the proposed premises accessible. The Applicant stated that the journey will not significantly differ for those who currently access the existing pharmacy on foot or by wheelchair. No further information had been provided in this regard.
- 5.39 The Committee identified that patients with protected characteristics of age and race may be accustomed to accessing pharmaceutical services at the existing premises. 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).

Patients utilising collection and delivery services including MDS patients

- 5.40 The Applicant states that *“nearly all prescriptions are received electronically, and the pharmacy offers a free delivery service. This includes patients with repeat prescriptions collected from their surgery and those issued via EPS. Deliveries also include MDS patients and any residents in care homes unable to access the pharmacy in person (although we do not currently serve any care homes). For these patients, the service will remain the same regardless of location. Patients receiving essential services that do not require visiting the pharmacy, such as telehealth, signposting, or self-care advice, will continue to receive these services from the new premises.”*
- 5.41 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.

Overall assessment

- 5.42 For the reasons given above, the Committee was able to be satisfied that, for patient groups who are accustomed to accessing the existing premises, the proposed premises is not significantly less accessible.

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

Regulation 24(1)(b)

5.44 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)

5.45 The Committee noted the decision of the Commissioner in respect of condition (c) that the granting the application would not cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the Bolton HWB 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)

5.46 The Committee noted that the Applicant had given an undertaking, in its application form, that the same services will be provided at the proposed premises. On the information provided, the Committee determined that condition (d) is met.

Regulation 24(1)(e)

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

Overall

5.48 Although the Committee has reached the same conclusion to that of the Commissioner, the Committee determined that the decision of the Commissioner must be quashed given its extensive consideration of Regulation 31.

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

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

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

6 Decision

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

**Technical Case Manager
Primary Care Appeals**