

4 July 2025

REF: SHA/26575

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**APPEAL AGAINST HUMBER AND NORTH YORKSHIRE
ICB DECISION TO REFUSE AN APPLICATION BY FILEY
MEDICAL SERVICES LTD FOR A RELOCATION THAT
DOES NOT RESULT IN A SIGNIFICANT CHANGE TO
PHARMACEUTICAL SERVICES PROVISION UNDER
REGULATION 24 FROM 15 SUNRISE DRIVE, FILEY,
YO14 9GE TO 23 BRIDLINGTON STREET, HUNMANBY,
YO14 0JR**

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 refused.

A copy of this decision is being sent to:

Filey Medical Services Ltd
Boots UK Ltd
PCSE on behalf of Humber and North Yorkshire ICB

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1 The Application

By application dated 25 September 2024, Filey Medical Services Ltd ("the Applicant") applied to Humber and North Yorkshire ICB ("the Commissioner") for a relocation that does not result in a significant change to pharmaceutical services provision under Regulation 24 from 15 Sunrise Drive, Filey, YO14 9GE to 23 Bridlington Street, Hunmanby, YO14 0JR. In support of the application it was stated:

- 1.1 In response to why the application should not be refused pursuant to Regulation 31 the Applicant stated:
 - 1.1.1 "The current pharmacy is an established pharmacy and will continue to serve the same patient group but with better access and more integrated services with the community. [sic]"
 - 1.1.2 The relocation will not have a significant change in the pharmaceutical provisions in the area therefore Regulation 24(1)b will be met.
 - 1.1.3 The proposed site [sic] will broaden the number of pharmaceutical services both NHS and Private being provided in the local area. Thus, ensuring Regulation 24(1)d are met.
 - 1.1.4 The new site will enhance the pharmaceutical services being provided in the local area and benefit all patient groups including holiday patients, patients in nearby villages, elderly and disabled patients.
 - 1.1.5 The current lease in the pharmacy has been terminated leaving the current location unattainable and at an increased risk of closure."
- 1.2 The Applicant confirmed that Regulation 24(3)(c) is not applicable as there has not been a relocation in the last 12 months.

In response to why the new premises are not significantly less accessible for the patient groups that are accustomed to accessing pharmaceutical services at the existing premises, the Applicant stated:

- 1.3 "The current pharmacy is 3.2km away from the nearest surgery Filey Surgery and 2.56km from Hunmanby Surgery. The defined patient group are not one that accesses the current premises readily.
- 1.4 In the current location, the defined patient group would have to travel by train bus or drive to the current location to access pharmaceutical services. This could take up to an hour by bus or train, or by driving 15 mins.
- 1.5 The Current location serves all areas by delivering medications to all defined patient groups including Bridlington, Hunmanby, Filey, Speeton, Driffield, Staxton Scarborough Lobberstone, Cayton and Seamer. [see map at Appendix A].
- 1.6 The new location will be 0.08km away from Hunmanby Surgery and 3.83km from Filey Surgery. This improves access of the Pharmacy to patient groups in Hunmanby as pharmacy will now be within walking distance. It is 0.08m [sic] from Hunmanby surgery. The proposed site will give better accessibility by all patient groups including GPs, disabled patient, elderly and holiday patients in the local village.
- 1.7 Other patient groups including holiday Patients can still access the services offered by the pharmacy as the delivery and current services will still be maintained.
- 1.8 The pharmacy currently has a defined patient group with majority of patients being elderly and preferring the free delivery options offered by the pharmacy.
- 1.9 The proposed new location will be advertised on social media campaigns, postage notes in patients bags, local media campaigns and through meetings with other patient groups including GP surgeries and local groups.
- 1.10 There is no evidence to support that granting this application would result in a significant change to the arrangement in place for the provision of pharmaceutical services. The same services will be provided from the new premises and will be provided in the same manner."
- 1.11 The Applicant is not aware of any plans in respect of the provision of pharmaceutical services to which significant detriment would be caused should this application be granted.
- 1.12 The Applicant confirmed that the services to be provided at the new premises would be the same as that that have been provided at the current premises by answering "Yes" on the application form.
- 1.13 The Applicant confirmed that there will be no interruption in services by ticking "No" on the application form and stating "The provision of pharmaceutical services will not be interrupted during the purpose [sic] relocation".

2 The Decision

The Commissioner considered and decided to refuse the application. The decision letter dated 3 March 2025 states:

- 2.1 "Humber & North Yorkshire 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."

Decision report

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

2.2 "Humber and North Yorkshire ICB has considered the above application, and I am writing to inform you that it has been **refused** for the following reasons:

2.2.1 **Regulation 24 - relocations that do not result in significant change to pharmaceutical services provisions has not been met.**

2.2.2 **Regulation 24(1)(a)** for the patient groups that are accustomed to accessing pharmaceutical services at the existing premises, is the location of the new premises significantly less accessible; and if so why?

2.2.2.1 The committee felt that the relocation constituted a significant change which would result in a population being without pharmacy services.

2.2.2.2 The proposed premises were 1.27 miles or 1.71 miles away from the current premises depending on the route taken which for some patient groups is significantly less accessible.

2.2.3 Regulation 31 – does not apply as there are no other pharmacies at the same or adjacent premises.

2.2.4 There was confirmation that the same Essential Services will be provided.

2.2.5 There was confirmation that there will be no interruption to services.

2.2.6 There was confirmation that the dispensing hours will remain unchanged.

2.2.7 No patient groups will be adversely affected by the proposed move.

2.2.7.1 This element of the application was not met. The committee were not assured that the applicant had considered the impact of the decision on those with protected characteristics under the **Equalities Act 2010** or fully identified or considered the impact on those patients who currently utilise the pharmacy in relation to how they will access the proposed premises.

2.3 As the application was refused, the applicant has appeal rights."

3 The Appeal

In an email dated 24 March 2025 addressed to NHS Resolution, the Applicant appealed against the Commissioner's decision. The grounds of appeal are:

3.1 "Please find attached our formal appeal regarding the recent decision to refuse our No Significant Change Relocation application for Filey Medical Services Ltd.

3.2 We have outlined our detailed arguments supporting the proposed relocation from 15 Sunrise Drive to 23 Bridlington Street, Hunmanby.

3.3 In the attached letter, we address the following key points:

- 3.3.1 Compliance with NHS Pharmaceutical and Local Pharmaceutical Services Regulations 2013, particularly Regulation 24.
- 3.3.2 Improved accessibility for our patient groups, including enhanced transport links and weekend service availability.
- 3.3.3 Considerations under the Equalities Act 2010 ensuring no adverse impact on vulnerable patients.
- 3.3.4 Alignment with NHS guidance and professional advisory insights regarding service continuity and accessibility.
- 3.3.5 Urgent practical issues concerning the termination of our current tenancy and the lack of alternative premises within an acceptable distance. I have attached a copy of the lease as evidence of the urgency.
- 3.4 We kindly request that you review the appeal in detail and advise on the next steps in the appeal process. Should you require any further information or supporting documentation, please do not hesitate to contact me directly.
- 3.5 Thank you for your time and consideration.”

In a supporting letter dated 24 March 2025 the Applicant stated:

- 3.6 "I am writing on behalf of Filey Medical Services Ltd. to formally appeal the decision by Humber and North Yorkshire ICB to refuse our application for a No Significant Change Relocation, proposing to move our operations from 15 Sunrise Drive to 23 Bridlington Street, Hunmanby, YO14 0JR.
- 3.7 We respectfully request a reconsideration of the decision on the following grounds:

Compliance with NHS Regulations (Pharmaceutical and Local Pharmaceutical Services Regulations 2013 – Regulation 24)
- 3.8 Our proposed relocation fully complies with Regulation 24, which prioritizes the overall accessibility and continuity of services over mere distance metrics. Specifically:
 - 3.8.1 Proximity: The new site is only 1.27 to 1.71 miles from our current location, ensuring that any distance-related concerns remain within acceptable limits.
 - 3.8.2 Service Continuity: The essential services provided will remain uninterrupted. The new premises will support full operational continuity, unlike our current site, which is situated within a private holiday camp and lacks weekend accessibility.
 - 3.8.3 Enhanced Accessibility: The relocation addresses current limitations by providing consistent, round-the-clock access to pharmaceutical services for the general public.
- 3.9 We believe that an undue focus on distance has obscured these critical service enhancements, which are in line with established NHS Resolution guidance and similar approved precedents.

Improved Accessibility for Patient Groups
- 3.10 Contrary to the concerns raised regarding patient access:

- 3.10.1 Transport Links: The new premises are strategically located closer to both train and bus stations, which will benefit patients who rely on public transport.
- 3.10.2 Targeted Patient Benefits: Many of our patients, including the elderly and disabled, will benefit from easier access to the pharmacy. Additionally, our ongoing commitment to home delivery services ensures that patients with mobility issues continue to receive timely care.
- 3.10.3 Reduced Burden: The primary patient group, who currently travels by car to the holiday camp, will not experience an undue burden given the minimal relocation distance.

Consideration Under the Equalities Act 2010

- 3.11 Our internal review confirms that:
 - 3.11.1 Accessibility Improvements: Vulnerable patients, particularly those with mobility challenges, will benefit from enhanced public transport links, improved parking, and better road access at the new location.
 - 3.11.2 Ongoing Commitment: We remain dedicated to engaging with local patient groups to address any further accessibility needs, ensuring that no protected group is adversely affected by the relocation.

Alignment with NHS Guidance and Professional Advisory Insights

- 3.12 Holistic Accessibility Assessment: NHS Resolution guidance clearly states that service continuity and overall accessibility should be the primary criteria for assessing relocations, rather than distance alone.
- 3.13 Precedent Cases: Similar relocation applications have been approved based on improvements in service provision and accessibility. Our proposal is in full alignment with these criteria.
- 3.14 Expert Endorsements: Pharmacy consultants affirm that relocations enhancing access to transport links and service continuity are favourably received when thoroughly documented.

Urgent Practical Considerations

- 3.15 Termination of Current Tenancy: Our tenancy at 15 Sunrise Drive will be terminated as of 30th April. This is beyond our control and leaves us with no option to continue operations at the current site.
- 3.16 Lack of Alternative Premises: Extensive searches have failed to identify any viable premises within a 1.7-mile radius. This shortage threatens to disrupt the provision of essential pharmaceutical services.
- 3.17 Public Interest and Service Continuity: Should the relocation be rejected, a significant gap in local pharmaceutical services will emerge, adversely impacting patient care and placing additional burdens on neighbouring healthcare facilities.

Conclusion

- 3.18 In light of the above, we respectfully request that the refusal of our relocation application be reconsidered. The proposed move not only meets regulatory requirements but also

enhances service accessibility and continuity for our patients, ensuring no disruption in essential care. We are prepared to provide any further evidence or clarification needed to support our appeal.

- 3.19 Thank you for your time and consideration. We kindly request confirmation of the next steps in the appeal process.”

4 Comments to the Commissioner

On reviewing the paperwork provided by PCSE, it was noted that the comments made by the Applicant in response to the representations on the application, had not been circulated or seen by parties.

In the interests of transparency and fairness, NHS Resolution sought to rely on the discretion afforded in paragraph 7 of Schedule 3 of the Regulations to vary the normal procedures and to circulate these comments to parties for them to make representations on them if they so wished.

4.1 THE APPLICANT

- 4.1.1 “Thank you for your email regarding the relocation application for Filey Medical Services Ltd to 23 Bridlington, Hunmanby, YO14 0JR. We acknowledge the concerns raised and appreciate the opportunity to respond.

Distance and Accessibility

- 4.1.2 While we recognise that the proposed relocation moves the pharmacy beyond a two-mile radius from its current site, we would like to emphasise that patient access remains a top priority. While a 47-minute walk is noted via Google Maps, the majority of the pharmacy’s patients base currently utilises delivery services, which will continue uninterrupted.
- 4.1.3 Additionally, transportation links between Filey and Hunmanby, including bus and train services, provide alternative means of access. Please see map below [no map included] which highlights the current pharmacy base and currently Patient groups of all ages and dexterity has to travel 47 mins by foot or 6 mins drive to access the pharmacy in its current location from either Filey or Hunmanby Surgeries. We believe the benefits of the relocation as closer proximity to Hunmanby Surgery, will outweigh the inconvenience for a small number of individuals.
- 4.1.4 We acknowledge that some patient group [sic] may currently access the pharmacy on foot (holiday makers) from their holiday homes. However, the site is only accessible by the holiday makers via a car and any pharmaceutical needs required at weekend, are currently being signposted to the Boots pharmacies in either Filey or Hunmanby.

Impact on Filey Bay Community

- 4.1.5 We recognize that Filey Bay is a distinct community with holiday lets (see attached email from site manager) [no attachment included with the letter]. However, patient data (attached) [no data attached] shows that a significant proportion of the pharmacy patient groups are not solely from the immediate Bay holiday park but rather from a broader catchment area, including Hunmanby and Filey.

- 4.1.6 Additionally, prescription delivery services ensure that essential medications will remain accessible to all existing patients. While it is true that some patients may visit the pharmacy for over-the-counter products or minor ailments, these can also be sourced from other local businesses within the holiday park or through the continuation of Pharmacy First services at the relocated site.

Demand and Service Provision in Hunmanby

- 4.1.7 Although there is a Boots pharmacy in Hunmanby, our relocation is intended to complement existing healthcare services rather than duplicate them. Our pharmacy will continue to provide its unique patient-centred services, ensuring that both current and new patients receive high quality pharmaceutical care.
- 4.1.8 Furthermore, aligning our premises closer to Hunmanby Surgery improves service integration, particularly for those patients already accessing medical services in that area.
- 4.1.9 This relocation is not simply about convenience but about optimising care delivery in line with evolving patient needs.

Conclusion

- 4.1.10 We respectfully submit that this relocation is justified, based on the continued service provision to existing patients, the improved alignment with local medical practices, and the ability to maintain pharmaceutical access through prescription deliveries. While we acknowledge Boots UK Ltd's concerns, we believe this move will enhance rather than diminish local healthcare services.
- 4.1.11 We trust that the local health board will give due consideration to our application, and we remain available for further discussion if required."

5 Summary of Representations

This is a summary of representations received on the appeal.

5.1 THE COMMISSIONER

- 5.1.1 "As the application was not refused on Regulation 31, this will not form part of the response to the appeal which will focus on Regulation 24(1)(a) and the Equalities Act 2010. Any additional representations from Humber & North Yorkshire (HNY) Integrated Care Board (ICB) will be made under the relevant section of the regulations or under a separate heading.
- 5.1.2 **In relation to Regulation 24(1), the matters to which consideration will be given are whether:**
- (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;**
- HNY ICB additional representation in response to the applicants' appeal letter in relation to Regulation 24(1)(a)**
- 5.1.3 Regulation 24(1)(a) for the patient groups that are accustomed to accessing pharmaceutical services at the existing premises, is the location of the new premises significantly less accessible; and if so, why?

- 5.1.4 The current location is on a holiday park and therefore services a discrete population. To support the relocation could potentially leave them with no access to pharmacy services. The applicant states delivery services will continue and for those patients who require over the counter (OTC) medications, these are available at other business in the holiday park or by attending the proposed location. However, patients access the pharmacy for advice, OTC medications and other services and so they will be affected by the relocation as what the other businesses do not provide is advice and guidance or other wider pharmacy services.
- 5.1.5 The proposed location is 1.27 miles or 1.71 miles away from the current premises depending on the route taken. To walk would take approximately 47 mins over varied terrain and a busy road. To drive would be around 6 minutes. There are public transport links available from the current location to the proposed location.
- 5.1.6 The applicant states that the primary patient group travels by car to the holiday park and therefore they will not find the proposed location any less accessible. They then go on to say that many of their patients, including the elderly and disabled, will benefit from easier access to the pharmacy. If these patients do not have a car or find it difficult to access public transport, then the proposed location will not be easy to access and to support the relocation could potentially leave them with no access to wider pharmacy services.
- 5.1.7 Within the application, the patient groups who are accustomed to accessing pharmaceutical services at the existing premises were not clearly defined and therefore it is difficult to assess if, for the patient groups that are accustomed to accessing pharmaceutical services at the existing premises, if the location of the new premises is significantly less accessible notwithstanding the distance between the current and proposed premises.
- 5.1.8 The applicant states, in the 'appeal combined redacted' document between pages 10 - 12, that the proposed premises will:
- "support full operational continuity, unlike our current site, which is situated within a private holiday camp and lacks weekend accessibility".*
- 5.1.9 The applications states [sic] that the proposed premises will *"give better accessibility by all patient groups including those at the nearby surgeries, GPs, disabled patients, elderly and holiday patients in the local village"*.
- 5.1.10 Other patient groups including holiday patients can still access the services offered by the pharmacy as the delivery and current services will still be maintained.
- 5.1.11 They go on to state the *"relocation addresses current limitations by providing consistent, round-the-clock access to pharmaceutical services for the general public"*.
- 5.1.12 It is difficult to see how patients will have better accessibility and have access to round the clock access to pharmaceutical services given the same hours of provision are being provided at the proposed location as the current location and therefore there will be no round the clock or weekend access to services.

HNY ICB additional representation in response to the applicants' appeal letter in relation to the Equalities Act 2010

- 5.1.13 The Pharmacy Services Regulations Committee (PSRC) were not assured that the applicant had considered the impact of the decision on those with protected characteristics under the Equalities Act 2010. They did not feel the application had clearly identified the patient groups or fully considered the impact on those patients who currently utilise the pharmacy in relation to how they will access the proposed premises.
- 5.1.14 The applicant suggests that "vulnerable patients, particularly those with mobility challenges, will benefit from enhanced public transport links, improved parking, and better road access at the new location". As above, if these patients do not have a car or find it difficult to access public transport, then the proposed location will not be easy to access and to support the relocation could potentially leave them with no access to wider pharmacy services.
- 5.1.15 The applicant states they "remain dedicated to engaging with local patient groups to address any further accessibility needs, ensuring that no protected group is adversely affected by the relocation". It may have been useful to undertake this work prior to putting in the application so that any insight from this engagement with these groups could have been included to support the application and the potential relocation.

(b) 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 HWB area, or

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

- 5.1.16 No

(c) (the decision maker) 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 HWB area;

- 5.1.17 HNY ICB is unable to determine if granting the application would not cause significant detriment to the proper planning in respect of the provision of pharmaceutical services in the area.

(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; and

- 5.1.18 There was confirmation that the same Essential Services will be provided.

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

- 5.1.19 There was confirmation that there will be no interruption to services & the dispensing hours will remain unchanged.

Other Urgent Practical Considerations

5.1.20 Although the lease challenge was included in the initial application, the process meant that the application was not heard at PSRC until February 2025.

5.1.21 Due to the time it will take to hear this appeal, the tenancy termination date will have passed. It would be helpful to know if any conversations have been had with the landlord in relation to the options the applicant is exploring and where they are in that process and whether the landlord is amenable to waiting for the outcome of this appeal prior to terminating the tenancy.”

5.2 BOOTS UK LTD

5.2.1 “Thank you for your letter dated 7th April 2025 informing us of the above appeal. We agree with the decision of the ICB and their reasoning for refusing the application.

5.2.2 We stand by our comments in our initial response to the application and attach these for your information with this appeal response.

5.2.3 We fail to see how the applicant or any deciding body can believe that a relocation of a distance requiring a 47 minute walk can be considered insignificant. This distance has been agreed by the applicant/appellant and we do not believe that this part of the application is being disputed?

5.2.4 The appellant states that the MAJORITY of the current pharmacy’s patient base currently utilises delivery services. However, this suggests that there are still patients who do not have their prescriptions delivered and choose to walk into the pharmacy. Whilst on a site visit, we witnessed at least 3 people access the pharmacy premises within a 15 minute time period. They may have been collecting a prescription, asking for advice, requiring a service or purchasing and over the counter medicine. Those requiring anything other than a prescription, do not appear to have been considered as part of this application. ALL patient groups must not find the new proposed location less accessible, and the applicant must have regard for these too. We do not accept that this significant journey, for any patient accustomed to accessing the current premises, is acceptable and that this alone does not meet the criteria within the regulations for a relocation not resulting in significant change.

5.2.5 The applicant acknowledges that holiday makers access the pharmacy on foot. They appear to suggest that all holiday makers access the Filey Bay site via car. They then suggest that an additional journey to a pharmacy is acceptable as patients are already signposted to alternative pharmacies at a weekend. We submit that this is not the case and there is no evidence to suggest that all holiday makers access the site by car.

5.2.6 We must also consider why the pharmacy contract was granted at this location in the first place. It would be reasonable to assume that it was due to its locality and to offer all pharmaceutical services to those living in and visiting Filey Bay. It is also of note that the pharmacy at Filey Bay currently receives payments as part of the Pharmacy Access Scheme (PHAS) (source PharmData).

5.2.7 The applicant appears to be suggesting that some patients are already doing this proposed journey of circa 47 minutes by foot or 6 minutes by car if they are currently accessing the Filey or Hunmanby surgeries and then the Filey Bay pharmacy? This is unlikely and even if some patients may choose to, many and probably the majority are not. With electronic prescriptions as well as patients on repeat medications not requiring a visit to their GP, they are likely

to be starting their journey to the pharmacy from home, holiday residence or elsewhere.

- 5.2.8 We fail to see the benefits to any patient should the pharmacy relocate to close proximity of the Hunmanby surgery. There is already a pharmacy in this location offering full pharmacy services and we also wish to point out, that this pharmacy opens from 9am to 5pm on a Saturday. Filey Bay pharmacy does not open on a weekend, so there is no argument in respect of better access to patients in the unlikely event that this relocation be approved. As previously mentioned, patients are signposted to the existing pharmacies in Filey or Hunmanby at weekends. The fact that the appellant believes that the relocating of the pharmacy to be closer to the surgery in Hunmanby outweighs the inconvenience for some patients, clearly suggests that some will find the new premises less accessible and inconvenient.
- 5.2.9 The appellant by their own admission, states that patients may visit the pharmacy for over-the-counter products or minor ailments (we believe them to mean Pharmacy First). They then go on to suggest that it would be acceptable for these patients to buy medicines from other local businesses within the holiday park. As we are all aware, that convenience stores can sell small packets of painkillers and some other basic medicines, but not pharmacy medicines and ones that may require advice from a pharmacist. Pharmacy First can be offered by the pharmacy at a different location but may still require the patient to access the pharmacy in person. We believe that it is unacceptable to not consider these patients as part of the application process or nay [sic]wishing to access other services. What about patients wishing to return unwanted medicines?
- 5.2.10 Hunmanby is already adequately served by our Boots Pharmacy, and we are unaware of any of our patients not receiving the care they need. It is questionable as to why the appellant is wishing to relocate to premises near the existing pharmacy? It could suggest that they are trying to impinge on our existing business, we do not accept that it will enhance local healthcare services.
- 5.2.11 We submit that this appeal should be dismissed, and the application be refused, due to the reasons as stated above.
- 5.2.12 We would be grateful if you would inform us of the outcome of this appeal in due course and we would attend any hearing that may be held in connection to this appeal.”

In a letter to PCSE dated 23 January 2025 Boots UK Ltd stated:

- 5.2.13 “Thank you for your letter dated 11th December 2024 regarding the above application. Boots UK LTD have the following comments to make.
- 5.2.14 The application is for a relocation of more than 2 miles, and we fail to see how this can be considered one of no significant change. The walk between the 2 sites would take a patient 47 minutes (google maps) or a drive of 6 minutes by car. The distance alone is a barrier to access as well as the busy road the A165 and over terrain not suitable for many patient groups including the elderly and those with mobility difficulties. It is very unlikely that any patient would travel from the current location in Filey Bay to Hunmanby to access the same pharmacy services.

- 5.2.15 Filey Bay appears to be a self-contained neighbourhood, consisting of many homes (approximately 500), some we believe to be holiday lets. It has a community hub and pub as well as the pharmacy and local shop and café. The NHS contract was clearly granted here initially to serve this contained community and by applying to relocate to a different location, we believe it will be leaving patients devoid of services. The applicant refers to the delivering of prescriptions to patients and believe that patients will not be compromised by moving such a distance, but as the deciding committee will be aware, not all patients will be accessing the pharmacy for prescriptions, many will visit the pharmacy for advice, services and over the counter medicines. Whilst on our site visit, we witnessed 3 patients accessing the premises and we must consider ALL patient groups.
- 5.2.16 The applicant suggests that all patients will not be inconvenienced as they are delivery patients, and they state that the holiday makers will still be able to access services offered by the pharmacy as the delivery and current services will be maintained. What about a patient who requires advice or an OTC line for maybe an insect bite or sunburn, or a mother with a poorly child who may require access to Pharmacy First? They also state that the pharmacy has a defined patient group with the MAJORITY being elderly and preferring the free delivery option. What about those who do not?
- 5.2.17 The applicant is suggesting that the new premises will be closer to Hunmanby Surgery and that current patients who access the local surgeries in Filey and Hunmanby have to travel by bus, train or car to its current premises, but fail to accept that patients who do currently access their premises by foot, would have a 47-minute walk to the new location?
- 5.2.18 There is currently a Boots pharmacy in Hunmanby offering services to the local patients and a further pharmacy here is not required.
- 5.2.19 For the reasons above, we urge the ICB to refuse the application and we look forward to the decision of the due course. We would be prepared to attend an oral hearing if deemed necessary."

6 **Observations on representations**

6.1 THE COMMISSIONER

- 6.1.1 "Thank you for your letter dated 12th May 2025.
- 6.1.2 Humber & North Yorkshire (HNY) Integrated Care Board (ICB) have nothing further to add and stand by the rationale previously provided to refuse the No Significant Change Relocation (NSCR) application under Regulations 24(1)(a) & (b) as the Pharmacy Services Regulations Committee (PSRC) were not assured that they had been met."

7 **Late observations on representations**

7.1 THE APPLICANT

"EXECUTIVE SUMMARY

- 7.1.1 This response rebuts the objections submitted by Boots UK Ltd and the Humber and North Yorkshire ICB concerning the proposed relocation of Filey Medical Services Ltd from 15 Sunrise Drive, Filey, to 23 Bridlington Street,

Hunmanby. It draws on verifiable prescription data, updated journey times, public support statements, and a detailed testimonial from long-standing patients, all demonstrating that the move does not constitute a significant change in accessibility under Regulation 24(1)(a), and in fact improves continuity, sustainability, and patient choice in the area.

ACCESSIBILITY FOR CURRENT PATIENT

7.1.2 GROUPS – Regulation 24(1)(a)

7.1.3 Objections Raised:

7.1.3.1 Boots and the ICB claim that a 47-minute walk and poor terrain reduce accessibility for patients at The Bay, Filey.

7.1.3.2 The ICB argues patient groups were not clearly identified.

7.1.4 Response with Evidence:

7.1.5 Real-time mapping confirms that the walking distance between The Bay, Filey and the new site is approximately 1.3 miles, taking 30 minutes, not 47–49 minutes as claimed.

7.1.6 The route is manageable and connected via public transport and main roads, which are especially accessible by car—a travel method used by the majority of our patients, per internal surveys and delivery patterns.

7.1.7 The prescription origin data (image 2) shows that 58% of our items come from Filey and Hunmanby Surgeries, where patients already travel away from The Bay to collect prescriptions. Thus, the relocation actually aligns the pharmacy closer to the healthcare centres they already attend.

PATIENT SUPPORT AND DELIVERY SERVICES

7.1.8 Response with Evidence:

7.1.9 The pharmacy maintains an extensive, efficient free delivery service, which will continue without disruption.

7.1.10 Public support has been collected and documented (see Patient Support Statement file). Patients confirm their confidence in service continuity, satisfaction with delivery, and support for the move.

7.1.11 A detailed letter of support from local residents Mr. and Mrs. [C] further confirms the importance of retaining an independent pharmacy.

7.1.12 They note:

“Boots had created a monopoly... Filey Medical Services Ltd has been outstanding, particularly during the pandemic... It would not be viable to provide services to holidaymakers on a seasonal basis.”

7.1.13 This highlights both the year-round demand and dependability of the applicant's services, and affirms that the current pharmacy location serves a transient population not requiring permanent pharmaceutical infrastructure.

RELATIONSHIP TO LOCAL HEALTHCARE PLANNING

7.1.14 Boots' Objection: The move may create redundancy due to proximity to another pharmacy.

7.1.15 Response:

7.1.16 Boots' argument conflates market presence with accessibility. The NHS regulations do not limit multiple providers in a locality if there is demonstrable benefit to patient care.

7.1.17 As noted in the [C] letter:

"Hunmanby is one of the largest villages in the country... To have an independent as well as a corporate pharmacy is not a bad thing."

7.1.18 Councillor Michelle Donohue-Moncrieff, in a public post, confirmed support for the move and reinforced the NHS' exclusive role in determining the appropriate number of pharmacies in an area.

EQUALITIES CONSIDERATIONS

7.1.19 ICB Concern: Limited evidence of prior engagement with protected groups.

7.1.20 Response:

7.1.21 The delivery service and customer base includes numerous elderly, housebound, and disabled patients – groups who are well-supported through delivery and ongoing contact.

7.1.22 The [C] letter affirms the importance of the pharmacy in delivering care when others failed to meet specific patient needs:

"Boots could only supply a single brand – which I had an adverse reaction to... Filey Medical Services continued to source the alternative medication we require."

7.1.23 Our proactive engagement with patients, including written and verbal support, ensures ongoing needs are heard and addressed. The appeal submission has since engaged local voices as part of this process.

REGULATORY COMPLIANCE

7.1.24 Service continuity: Uninterrupted dispensing and clinical services (Reg. 24(1)(e)).

7.1.25 Service scope: No change in service provision (Reg. 24(1)(d)).

7.1.26 Planning impact: No conflict with existing healthcare plans. The proposed site strengthens service resilience, especially given tenancy pressures at the current site

LEGAL AND REGULATORY FRAMEWORK

7.1.27 Under Regulation 24 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, a “no significant change relocation” may be approved where:

(1)(a) The new premises are not significantly less accessible to patients accustomed to accessing services at the existing site;

(1)(b) There is no significant change to the arrangements for pharmaceutical services provision in the HWB area or neighbouring HWB controlled localities;

(1)(c) The relocation does not cause significant detriment to the proper planning of pharmaceutical services;

(1)(d) The services provided at the new site are the same as those currently provided; and

(1)(e) Provision will not be interrupted except as may be allowed for good cause.

7.1.28 This response will demonstrate how each condition is clearly satisfied in the current application.

ACCESSIBILITY – Regulation 24(1)(a)

7.1.29 ICB and Boots Objection : The proposed premises are “significantly less accessible,” especially to pedestrians, due to the longer distance and challenging terrain.

7.1.30 Response with Regulatory Precedent

7.1.31 Precedent: FHSAU Decision SHA/19923 (St Andrews Pharmacy, 2021): In this case, a relocation of 1.7 miles was deemed not significantly less accessible as delivery services were maintained and only a minority of patients were walk-in users.

7.1.32 In our case, the walking route is only 1.3 miles (30 mins), and public transport and parking availability improve accessibility for a large majority of users.

7.1.33 The overwhelming majority of patients receive prescriptions by delivery, and this system remains unaffected.

7.1.34 The source of 58% of prescriptions from Filey and Hunmanby Surgeries means the relocation moves services closer to the point of clinical need.

7.1.35 Conclusion: Accessibility is maintained or improved for the majority, and the move does not represent a “significant” reduction in access under the Regulations.

ARRANGEMENTS FOR SERVICE PROVISION

7.1.36 Regulation 24(1)(b)

7.1.37 Boots Objection: There is already a pharmacy in Hunmanby, so this move is unnecessary and potentially duplicative.

7.1.38 Response with Legal Reference

7.1.39 Precedent: Decision SHA/21455 (Suffolk, 2022): The existence of nearby pharmacies was not a valid reason for refusal where the relocation aligned with population need and service continuity.

7.1.40 The Regulations do not prohibit proximity, nor do they require a market-share analysis. The test is whether the existing service arrangements are significantly changed.

7.1.41 In this case, no service provision is lost or materially altered, and the relocation strengthens provision near GP surgeries while maintaining delivery to Filey Bay.

PROPER PLANNING – Regulation 24(1)(c)

7.1.42 ICB Position: They are unable to determine if relocation causes planning detriment.

7.1.43 Response

7.1.44 The move aligns pharmacy access with GP surgery locations and concentrates services near a permanent, growing population (Hunmanby).

7.1.45 Precedent: SHA/22241 (Cheshire, 2022): A move into an area with more established infrastructure was supported as consistent with “rational planning.”

7.1.46 The relocation supports sustainability as the current lease is ending, and the new premises enable better layout, compliance, and future development.

CONTINUITY OF SERVICES – Regulation 24(1)(d) & (e)

7.1.47 Services offered (Essential, Advanced) remain unchanged. There will be no service interruption, and patient communication has been handled proactively.

7.1.48 Boots’ claim that there will be service erosion is unsupported and speculative.

7.1.49 Filey bay currently offers NHS and private services including Covid vaccinations, ear syringing and travel vaccination which is not available in the local boots denying patients of pharmaceutical services

EQUALITIES ACT 2010 COMPLIANCE

7.1.50 ICB Concern: The impact on protected groups was not sufficiently considered.

7.1.51 Response with Case Reference

7.1.52 In Appeal SHA/20993, a relocation was upheld because the delivery model mitigated any disadvantage to vulnerable patients, even where engagement had been informal.

7.1.53 Our pharmacy actively supports elderly, disabled, and shielded patients through direct delivery, telephone contact, and clinical reviews.

7.1.54 Recent patient statements (see Patient Support Statement and [C] Letter) show inclusive support and satisfaction with the pharmacy’s services.

PATIENT & COMMUNITY SUPPORT

- 7.1.55 The appeal is not only compliant, but publicly supported:
- 7.1.56 The Patient Support Statement confirms confidence in continued delivery, access, and care quality.
- 7.1.57 The [C] Letter (long-standing local patients) raises critical issues:
 - 7.1.57.1 Boots' monopoly and withdrawal of alternative medication.
 - 7.1.57.2 Concerns about the viability of seasonal-only services at Filey Bay.
 - 7.1.57.3 The importance of independent provision to futureproof local access.

FINAL CONSIDERATION

- 7.1.58 This application aligns with:
 - 7.1.58.1 Regulatory compliance under the 2013 Regulations;
 - 7.1.58.2 Legal precedent supporting relocation where access and service continuity are preserved;
 - 7.1.58.3 Practical planning, especially considering lease expiration and operational needs;
 - 7.1.58.4 Patient-centred care principles enshrined in NHS values.

CONCLUSION

- 7.1.59 The relocation:
 - 7.1.59.1 Maintains and improves access for the overwhelming majority of patients.
 - 7.1.59.2 Enjoys substantial patient and community support, both formal and informal.
 - 7.1.59.3 Enhances alignment with local surgeries and population needs.
 - 7.1.59.4 Contributes to the sustainability and resilience of pharmaceutical provision in Hunmanby and the surrounding area.
- 7.1.60 We respectfully request that the appeal be upheld, and the relocation approved in accordance with Regulation 24 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013."

8 Comments on observations

In the interests of transparency and fairness, NHS Resolution sought to rely on the discretion afforded in paragraph 7 of Schedule 3 of the Regulations to vary the normal procedures and to circulate the late observations to parties for them to make comments on them if they so wished.

8.1 THE COMMISSIONER

- 8.1.1 “Thank you for your letter dated 4th June 2025 providing us with the opportunity to comment on the additional information submitted by the applicant.
- 8.1.2 This additional information is in response to the objections submitted by both ourselves and Boots UK Ltd who are of the opinion that under Regulation 24(1)(a), this no significant change relocation application does constitute a significant change for patients. The ICB also felt that the patient groups had not been clearly identified.
- 8.1.3 Any further additional representations from Humber & North Yorkshire (HNY) Integrated Care Board (ICB) will be made under the relevant section of the regulations or under a separate heading.
- 8.1.4 **In relation to Regulation 24(1), the matters to which consideration will be given are whether:**
- 8.1.5 **(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;**
- 8.1.6 **HNY ICB additional representation in response to the applicants' appeal letter in relation to Regulation 24(1)(a)**
- 8.1.7 Regulation 24(1)(a) for the patient groups that are accustomed to accessing pharmaceutical services at the existing premises, is the location of the new premises significantly less accessible; and if so, why?
- 8.1.8 Within the response the ICB sent on 14th May, it did acknowledge that the proposed location was between 1.27 and 1.71 miles away from the current premises depending on the route taken. The applicant has provided numerous routes that can be taken from the current to the proposed premises. Even taking the shorter routes provided by the applicant, this is still a 30 minute walk over varied terrain and a busy road for patients and therefore still a significant journey. On page 15 of the 'Filey Medical Services late obs document', there is reference to an appeal where the pharmacy was 1.7 miles away from the proposed location which was not deemed to be significant as delivery services were maintained and only a minority of patients were walk in users of pharmacy services. In this case, delivery [sic] services will be maintained but nowhere in the application or subsequent representations [sic] has the applicant said that walk-ins are a minority.
- 8.1.9 The prescription data submitted does show that 58% of the items come from the Filey & Hunmanby surgeries. What the data does not show is whether these prescriptions were collected, either by the patient or a representative, or if they were delivered. On page 16 of the 'Filey Medical Services late obs document', the applicant has stated that the overwhelming majority of patients receive prescriptions by delivery which contradicts the applicants view that the relocation moves services closer to the point of clinical need.
- 8.1.10 The applicant states on page 13 of the 'Filey Medical Services late obs document' that the NHS has an exclusive role in determining the appropriate number of pharmacies in an area which is not the case.

8.1.11 The applicant has collected and documented patient / public support and submitted this as additional information. This does not give patients the opportunity not to support the proposed location due to the wording used in the paperwork and therefore it does not provide a representative view of the proposed relocation. [sic]

8.1.12 Identification of Patient Groups

8.1.13 On page 13 of the 'Filey Medical Services late obs document' there are some equalities considerations but this still does not clearly identify or define the patient groups who are accustomed to accessing pharmaceutical services at the existing premises and therefore it is still difficult to assess if, for the patient groups that are accustomed to accessing pharmaceutical services at the existing premises, if the location of the new premises is significantly less accessible notwithstanding the distance between the current and proposed premises.

8.1.14 The only information is on page 18 of the 'Filey Medical Services late obs document' which identifies a small, specific group of patients which does not cover all of the patient groups accessing the pharmacy.

8.1.15 HNY ICB additional representation in response to the applicants' appeal letter in relation to the Equalities Act 2010

8.1.16 The Pharmacy Services Regulations Committee (PSRC) were not assured that the applicant had considered the impact of the decision on those with protected characteristics under the Equalities Act 2010. They did not feel the application had clearly identified the patient groups or fully considered the impact on those patients who currently utilise the pharmacy in relation to how they will access the proposed premises.”

9 Further comments

A further, unsolicited response was received from the Applicant.

9.1 “I am writing in response to the additional representations submitted by Humber and North Yorkshire ICB and Boots UK Ltd in connection with our application for a no significant change relocation under Regulation 24(1)(a). We are grateful for the opportunity to provide clarification on the matters raised and to support a fair and accurate assessment of the impact on patient access and service provision.

Clarification of Prescription Origin and Permanent Patient Base

9.2 As acknowledged by the ICB, 58% of prescriptions originate from GP surgeries based in Filey and Hunmanby. This data demonstrates that the core patient base is concentrated in the town centres—particularly in Hunmanby, where the proposed new site is located.

9.3 The existing pharmacy is situated within a seasonal holiday park, which is operational only part of the year and does not support permanent residential occupancy. This is confirmed in writing by the park's site management, who have explicitly stated via email that there are no permanent residents at the park. Therefore, the relocation reflects a strategic decision to align pharmacy services with the year-round needs of the permanent community rather than a transient, seasonal population.

Service Delivery Model and Accessibility

- 9.4 Our pharmacy operates a predominantly delivery-based model that is inclusive of all patient groups. This ensures continued access to medication and pharmaceutical advice for those who may be elderly, disabled, housebound, or lacking personal transport—effectively removing physical and geographic access barriers.
- 9.5 Walk-in patients represent a smaller proportion of service users, and nearly all attend by car, not on foot. As such, any references to walking times or terrain differences are largely immaterial. The proposed site at 23 Bridlington Street is easily accessible by vehicle, located close to residential areas, and offers nearby parking, making it a logistically appropriate alternative that does not compromise patient access.

Request for Site Visit by the ICB or Appeals Team

- 9.6 In light of the concerns raised around terrain and distance, we formally request a site visit by representatives of the ICB and/or the Appeals Team. This visit would allow stakeholders to:
- 9.6.1 Observe the physical terrain and surrounding infrastructure;
- 9.6.2 Compare the accessibility of both sites for vehicular and delivery access;
- 9.6.3 Understand the strategic relocation in the context of actual patient distribution and travel patterns.
- 9.7 We are confident that an in-person assessment will support the conclusion that the proposed relocation will not result in significant disadvantage to any patient group.

Equalities Considerations and Inclusive Access

- 9.8 While we are preparing additional evidence to further define our patient groups under the Equalities Act 2010, it is important to highlight that our delivery service is comprehensive and inclusive. It is available to all patient groups, not just those with mobility or access limitations. This proactive delivery model ensures continuity of access across the entire patient population and addresses many of the concerns raised regarding distance and terrain.

Public Support and Representativeness

- 9.9 The ICB has queried the representativeness of public support data. We note that the patient engagement was open, voluntary, and made available to all. While we welcome any further engagement recommended by the Committee, the current evidence nonetheless reflects genuine support for a move that better serves the permanent community.

Lease Termination and Risk to Continuity of Service

- 9.10 It is also critical to note that the lease at the current premises on Sunrise Drive has been terminated, with notice served. Continued operation from that site is no longer viable, which presents a serious risk to continuity of pharmaceutical service provision unless relocation is approved.
- 9.11 Given the seasonal nature of the site and the lack of permanent residents (as confirmed by the site management), the impact on the local community from losing that specific location is minimal. However, failure to relocate to the proposed premises risks creating a service gap in Hunmanby and surrounding areas, where the bulk of our patients reside and where prescriptions originate.

Conclusion

- 9.12 In summary, this application does not result in a significant reduction in access for existing patient groups. Instead, it represents a pragmatic and necessary relocation that ensures the ongoing availability of services to a stable and permanent patient base.
- 9.13 The relocation aligns with the actual pattern of demand, ensures compliance with Equalities legislation through inclusive delivery, and responds to the practical limitations of lease termination and seasonal location use.
- 9.14 We remain fully committed to maintaining high standards of patient access and welcome any further engagement. We respectfully request that the application be approved and that a site visit be arranged to assist the Committee in its final determination.”

10 Consideration

- 10.1 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.
- 10.2 It also had before it the responses to NHS Resolution’s own statutory consultations as well as further unsolicited comments from the Applicant.
- 10.3 The Committee noted the request from the Applicant for a site visit to be carried out. The Committee determined that, on the basis of the information before it, it was not necessary for a site visit to be carried out or for an Oral Hearing to be held.
- 10.4 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (“the Regulations”).
- 10.5 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).*
- 10.6 The Committee noted the response from the Applicant with regard to the question of Regulation 31, but noted that the Applicant had not provided any relevant information in the application form on this point. The Committee however noted 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. 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.

- 10.7 The Committee noted the conclusion of the Commissioner that "*Regulation 31 does not apply as there are no other pharmacies at the same or adjacent premises*" and that this had not been disputed either on appeal or in subsequent correspondence.
- 10.8 Based on the information before it, the Committee was not required to refuse the application under the provisions of Regulation 31.
- 10.9 The Committee had regard to Regulation 24(1) which requires the following five conditions to be met:
- (a) *for the patient groups that are accustomed to accessing pharmaceutical services at the existing premises, the location of the new premises is not significantly less accessible;*
 - (b) *in the opinion of NHS England, granting the application would not result in a significant change to the arrangements that are in place for the provision of local pharmaceutical services or of pharmaceutical services other than those provided by a person on a dispensing doctor list—*
 - (i) *in any part of the area of HWB1, or*
 - (ii) *in a controlled locality of a neighbouring HWB, where that controlled locality is within 1.6 kilometres of the premises to which the applicant is seeking to relocate;*
 - (c) *NHS England is not of the opinion that granting the application would cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area of HWB1;*
 - (d) *the services the applicant undertakes to provide at the new premises are the same as the services the applicant has been providing at the existing premises (whether or not, in the case of enhanced services, NHS England chooses to commission them); and*
 - (e) *the provision of pharmaceutical services will not be interrupted (except for such period as NHS England may for good cause allow).*
- 10.10 The Committee considered the position in relation to each condition.
- 10.11 In relation to condition (a), the Committee considered the map submitted by the Commissioner which clearly shows the locations of the existing pharmacies as well as the proposed site and the medical practice within the area.
- 10.12 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.

- 10.13 In this case, the Committee noted that the Applicant had not specifically identified patient groups and had instead considered whether the relocation constituted a significant change for each of these groups. There was reference to some patient groups made within the information provided by the Applicant.
- 10.14 The Committee noted that the Commissioner, in its decision, had not identified the patient groups but had considered accessibility as a whole as well as considering the distance and the route on foot between the current site and the proposed site.
- 10.15 From the information before it, the Committee determined that the patient groups who currently use pharmaceutical services at the proposed site may be defined as:
- 10.15.1 Patients that utilise the free collection and delivery service;
- 10.15.2 Patients registered with local surgeries; and
- 10.15.3 Patients who use the existing pharmacy location whilst they are on holiday.
- 10.16 The Committee concludes that the patient groups who are accustomed to accessing pharmaceutical services from the existing premises are those set-out below.

Patients that utilise the free collection and delivery service

- 10.17 The Committee noted the Applicant's statement that the majority of patients use the collection and delivery service. The Committee was of the view that this was a broad view regarding those who use this service without any supporting information, and that this was not helpful. 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.
- 10.18 The Committee noted the comments with regard to other essential services that are carried out, however 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 received essential services that do not involve attending the pharmacy in person, the Committee was of the view that they were not accustomed to accessing pharmaceutical services at the premises, irrespective of the reason, then they were not subject to the test under condition (a).

Patients registered with local surgeries

- 10.19 The Committee considered the patient group who are registered with local surgeries and may access services otherwise than in connection with a visit to the GP surgery, e.g. where registered patients are in possession of a repeat prescription or require essential services other than the dispensing of a prescription.
- 10.20 The Committee considered that application of the test in condition (a) to this patient group required it to consider issues raised in the application and appeal that could impact on the accessibility of the new premises. This includes a consideration of the other potential patient groups or sub-groups, which whilst not indicated in the application or appeal had been referred to in passing by the Applicant.

- 10.21 The Committee first considered accessibility for the elderly and those with physical impairments or any others. The Committee noted that this patient group (i.e. the elderly and those with physical impairments) may access pharmaceutical services. The Committee noted that no specific information had been provided by the Applicant with regard to this group. 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).
- 10.22 The Committee considered that the definition of this patient group as those registered with these GP surgeries does not easily allow an assessment of the impact of the relocation on the accessibility of the new premises by this patient group.
- 10.23 The Committee considered that for the purposes of condition (a), it is necessary to break down this patient group into two distinct groups:
- 10.23.1 A patient group that accesses pharmaceutical services at the same time as accessing services from the GP surgeries; and
- 10.23.2 A patient group that accesses pharmaceutical services otherwise than in connection with accessing services from the GP surgeries.
- 10.24 The Committee considered that the patient group that accesses pharmaceutical services at the same time as accessing services from the GP surgeries will access the new premises on foot, by car or by public transport and it was necessary to consider the accessibility of the new premises in light of each method of transport for this patient group.
- 10.25 The Committee noted that the Applicant was proposing to move to the vicinity of Hunmanby Surgery. The Applicant states that *"58% of our items come from Filey and Hunmanby Surgeries"* and further that *"the relocation moves services closer to the point of clinical need"*.
- 10.26 The Committee noted, in the information from the Applicant, that the 58% could be broken down further and that 18% of items dispensed originate from Hunmanby Surgery.
- 10.27 The Committee noted that the Applicant was proposing to move to Hunmanby. From the undisputed information provided by the Applicant as well as the map provided by the Commissioner, the proposed site was approximately a 0.08km walk from the Hunmanby Surgery.
- 10.28 The Committee noted that the Applicant had stated that *"Walk-in patients represent a smaller proportion of service users, and nearly all attend by car, not on foot. As such, any references to walking times or terrain differences are largely immaterial"*. The fact that the Applicant had stated *'nearly all'* suggested that there were some patients accessing the current pharmacy on foot. Whilst it was noted that the proposed site was *"within walking distance"* of the medical practice, there was nothing provided as to what the journey involved, if any roads needed to be crossed, what the terrain of the area was like or if there were any barriers to movement within Hunmanby itself.
- 10.29 Whilst the Committee accepted that the distance between the proposed site and Hunmanby Surgery was relatively short and the Applicant had asserted that it was within walking distance, given the lack of information the Committee was not satisfied that the proposed premises would not be significantly less accessible to the patient group who access services after a visit to the Hunmanby surgery.

- 10.30 The Committee was mindful that there are other GP surgeries in the area, in particular Filey Surgery which the Applicant stated *"58% of our items come from Filey and Hunmanby Surgeries"*. In supporting information from the Applicant, the Committee noted that approximately 40% of items dispensed originated from Filey Surgery.
- 10.31 The Committee noted that, apart from the undisputed statements from the Applicant that *"the current pharmacy is 3.2km from the nearest surgery Filey Surgery"* and *"the new location will be ... 3.83km from Filey Surgery"* it had no information before it as to where Filey Surgery is located as it is not shown on the map provided by the Commissioner.
- 10.32 The Committee noted that based on the information from the Applicant with regard to distance, the relocation would result in the proposed site being further away from the Filey Surgery, which was in direct conflict to the statement from the Applicant that *"the relocation moves services closer to the point of clinical need"*. The Committee had no information before it as to why the Applicant considered that the relocation would result in the proposed site being closer to Filey Surgery.
- 10.33 The Committee went on to consider access to the proposed site for those who required access to pharmaceutical services following a visit to Filey Surgery.
- 10.34 The Committee noted the comments with regard to access on foot, however it was mindful that the limited information provided was with regard to access between the existing and proposed site which was not relevant to the consideration for this patient group, if they commenced their journey after attending the Filey Surgery. Nevertheless, given the undisputed distance between the proposed site and Filey Surgery, the Committee was of the view that it was unlikely that any patient would choose to access services on foot following a visit to Filey Surgery. The Committee therefore considered access for these patients by private and public transport.
- 10.35 The Committee noted the comments from the Applicant that *"in the current location, the defined patient group would have to travel by train, bus or drive to the current location to access pharmaceutical services. This could take up to an hour by bus or train, or by driving 15 mins"*.
- 10.36 The Committee had no information before it as to how those patients would access the proposed site by public transport.
- 10.37 The Committee noted the comments from the Applicant that people access the existing pharmacy by car however there was no information provided with regard to car ownership in the area. The Committee considered that there would be some in the area who would have access to a car, however the Committee had no information before it as to how many of those who attended the Filey Surgery would be able to access the proposed site by private transport.
- 10.38 The Committee was of the view that for the patient group that requires access to pharmaceutical services after a visit to either Hunmanby Surgery or Filey Surgery the proposed site would be significantly less accessible.
- 10.39 The Committee noted, from the breakdown of "Prescription Sources" that there were other medical practices in the area however no information was provided as to where these were located or how those patients accessed pharmaceutical provision at the existing site. In the absence of any information, the Committee was unable to be satisfied that the proposed premises would not be significantly less accessible for these patients.

- 10.40 Whilst the Committee noted the comments from the Applicant that the majority of patients make use of the collection and delivery service, it also noted references in the application and subsequent correspondence to those in the area who may require pharmaceutical services otherwise than in connection with accessing services from the GP surgeries.
- 10.41 The Committee was of the view that this patient group will again access the new premises on foot, by car or by public transport and it was necessary to consider the accessibility of the new premises in light of each method of transport for this patient group.
- 10.42 The Committee noted the comments from parties with regard to the distance to the proposed site and the statement from the Applicant that *"the new site is only 1.27 to 1.71 miles from our current location, ensuring that any distance related concerns remain within acceptable limits"*. The Committee noted that there was no dispute between parties with regard to the distance as it was dependent on the route taken, however there was some dispute between parties as to the length of time it would take to walk. The Committee was of the view that as a minimum the walk would take 30 minutes depending on the route taken. The Committee noted the conclusion of the Commissioner that the route involved "varied terrain" and a "busy road". Whilst it had been provided with maps showing the route to be taken, these had been taken from Google and even though they confirmed the distance and walking times, they did not show the terrain of the area or if there were any barriers to movement.
- 10.43 The Committee was of the view, given the information before it, the proposed site would be significantly less accessible for those who currently accessed the existing services on foot.
- 10.44 The Committee noted the limited information provided by the Applicant with regard to access by car that the proposed site was a 6 minute drive from the existing site and that this had not been disputed by parties. The Committee had no information before it with regard to car ownership in the area and further had no information as to car parking in Hunmanby itself and whether this was located within the vicinity of the proposed site or, if not, how patients would then access the proposed site on arrival in Hunmanby.
- 10.45 The Committee noted that there was very little information provided with regard to public transport in the area. The Committee noted the comments from the Applicant that *"transportation links between Filey and Hunmanby, including bus and train services, provide alternative means of access"* and the comments from the Commissioner that *"there are public transport links available from the current location to the proposed location"*, however the Committee noted that no further information with regard to these transport links, including the routes, timings, frequency or costs for example, had been provided.
- 10.46 Based on the information before it, the Committee was of the view that for those who use the pharmacy other than after a visit to their GP surgery the proposed relocation would be significantly less accessible.
- 10.47 The Committee noted the patient support as provided by the Applicant, however it placed no weight on this information given the relatively small sample of responses. The Committee accepted the Applicant's comments that the survey was *"open, voluntary and made available to all"*, but it was of the view that the survey appeared to be based with leading questions and the overall responses do not provide a sufficiently robust body of evidence.

- 10.48 The Committee also noted the comments from the public which the Applicant relied upon, however the Committee noted that this was from one person who used the pharmacy. Again, the Committee was of the view that no weight could be placed on this as this was the experience of one patient. The Committee further noted the post from the Councillor but was again of the view that whilst this showed support, no weight could be attributed to this as it was unclear how this had been obtained and the Committee further noted the inaccuracies in the comments with regard to the Regulations.

Patients who use the existing pharmacy location whilst they are on holiday

- 10.49 The Committee was of the view that for some patients their “starting point” would be at or around the present site as they were staying at the holiday park which was located in close proximity to the existing site.
- 10.50 The Committee noted the comments from parties with regard to the distance to the proposed site and the statement from the Applicant that *“the new site is only 1.27 to 1.71 miles from our current location, ensuring that any distance related concerns remain within acceptable limits”*. The Committee noted that there was no dispute between parties with regard to the distance as it was dependent on the route taken, however there was some dispute between parties as to the length of time it would take to walk. The Committee was of the view that as a minimum the walk would take 30 minutes depending on the route taken. The Committee noted the conclusion of the Commissioner that the route involved “varied terrain” and a “busy road”. Whilst it had been provided with maps showing the route to be taken, these had been taken from Google and even though they confirmed the distance and walking times, they did not show the terrain of the area or if there were any barriers to movement.
- 10.51 The Committee was of the view, given the information before it, as well as the distance and the comments regarding the route that the proposed site would be significantly less accessible for those who currently accessed the existing services on foot.
- 10.52 The Committee noted the comments from the Applicant that for those that were on holiday in the area they would have access to private transport and therefore would be able to access the proposed site. Whilst those that arrived on holiday may have travelled by car, the Committee noted that little information had been provided with regard to how they would access the proposed site, except for confirmation that it was a 6 minute drive away. The Committee had no information before it with regard to car parking in Hunmanby itself and whether this was located within the vicinity of the proposed site or, if not, how patients would then access the proposed site on arrival in Hunmanby.
- 10.53 The Committee noted that there was very little information provided with regard to public transport in the area. The Committee noted the comments from the Applicant that *“transportation links between Filey and Hunmanby, including bus and train services, provide alternative means of access”* and the comments from the Commissioner that *“there are public transport links available from the current location to the proposed location”*, however the Committee noted that no further information with regard to these transport links, including the routes or costs for example, had been provided.
- 10.54 Based on the information before it, the Committee was of the view that for those who use the existing pharmacy location whilst on holiday, the proposed relocation would be significantly less accessible.

Overall assessment

- 10.55 The Committee noted the various previous cases quoted by the Applicant as “case precedent”. The Committee was mindful that each application is considered on its own merits on the facts before it in relation to that particular application and location and, it placed no weight on these when considering the case before it.
- 10.56 The Committee took into account all of the above patient groups in reaching its decision in respect of condition (a).
- 10.57 The Committee was left in some difficulty because, while it had some information about patient groups, the information available to the Committee clearly referenced the existence of other groups whose access the Committee was not able to assess.
- 10.58 The Committee was able to draw limited conclusions (set out above) regarding access for the identified patient groups but only in particular circumstances (i.e. that the patient would be at the proposed site in any event).
- 10.59 For the reasons given above, the Committee was unable to be satisfied that, for patient groups who are accustomed to accessing the present site, the proposed site is not significantly less accessible.
- 10.60 The Committee was therefore of the view that condition (a) is not met.

Regulation 24(1)(b)

- 10.61 The Committee noted that the Commissioner had not made a decision in respect of condition (b). The Committee noted however that there was nothing provided either on appeal or in subsequent representations from parties that the granting of this application would result in a significant change to the arrangements that are in place. Given the lack of information to the contrary 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)

- 10.62 The Committee noted that the Commissioner had not made a decision in respect of condition (c). The Committee noted the comments from the Applicant with regard to Regulation 24(1)(c) that the “*relocation supports sustainability as the current lease is ending and the new premises enable better layout, compliance and future development*” however, the Committee was mindful of the wording of condition (c) as to whether the granting of the relocation would lead to significant detriment to proper planning in respect of the pharmaceutical services in the area.
- 10.63 The Committee noted that there was no information provided to demonstrate that the relocation would lead to significant detriment to proper planning in respect of pharmaceutical services. On the basis of the information before it, 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)

- 10.64 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)

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

Overall

- 10.66 The Committee noted the comments from the Applicant with regard to the expiry of the lease, however this was not a relevant consideration within the criteria as set out in the Regulations. The Committee therefore placed no weight on this information.
- 10.67 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 10.67.1 confirm the Commissioner's decision;
 - 10.67.2 quash the Commissioner's decision and redetermine the application;
 - 10.67.3 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.
- 10.68 In those circumstances, given that the Commissioner had not considered all aspects of Regulation 24 and that the Committee had additional information before it which was not available to the Commissioner, the Committee determined that the decision of the Commissioner must be quashed.
- 10.69 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.
- 10.70 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.
- 10.71 The Committee concluded that further notification under paragraph 19 of Schedule 2 would not be helpful in this case.

11 Decision

- 11.1 The Committee quashes the decision of the Commissioner and redetermines the application.
- 11.2 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.
- 11.3 The Committee has determined that conditions (a) is not satisfied.

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

11.5 The application is refused.

Case Manager
Primary Care Appeals