

18 July 2025

REF: SHA/26593

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

Tel: 020 3928 2000
Email: nhsr.appeals@nhs.net

**APPEAL AGAINST DEVON ICB DECISION TO REFUSE
AN APPLICATION BY LP SD EIGHT LTD FOR A
RELOCATION THAT DOES NOT RESULT IN A
SIGNIFICANT CHANGE TO PHARMACEUTICAL
SERVICES PROVISION UNDER REGULATION 24 FROM
SEATON HEALTH CENTRE, 148 HAREPATH ROAD,
SEATON, DEVON EX12 2DU TO WITHIN SPAR, 42-44
HAREPATH ROAD, SEATON, DEVON EX12 2RU**

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:

LP SD Eight Ltd t/a Jhoots Pharmacy
PCSE on behalf of Devon ICB

REF: SHA/26593

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

Tel: 020 3928 2000
Email: nhsr.appeals@nhs.net

**APPEAL AGAINST DEVON ICB DECISION TO REFUSE
AN APPLICATION BY LP SD EIGHT LTD FOR A
RELOCATION THAT DOES NOT RESULT IN A
SIGNIFICANT CHANGE TO PHARMACEUTICAL
SERVICES PROVISION UNDER REGULATION 24 FROM
SEATON HEALTH CENTRE, 148 HAREPATH ROAD,
SEATON, DEVON EX12 2DU TO WITHIN SPAR, 42-44
HAREPATH ROAD, SEATON, DEVON EX12 2RU**

1 The Application

By application dated 29 October 2024, LP SD Eight Ltd (“the Applicant”) applied to Devon ICB (“the Commissioner”) for a relocation that does not result in a significant change to pharmaceutical services provision under Regulation 24 from Seaton Health Centre, 148 Harepath Road, Seaton, Devon EX12 2DU to within Spar, 42-44 Harepath Road, Seaton, Devon EX12 2RU. In support of the application it was stated:

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

- 1.1 “This is an application for relocation to the pharmaceutical list under Regulation 24. There are no other pharmacies on or adjacent to the proposed premises therefore Regulation 31 is not engaged.”

Information in support of all no significant change applications

- 1.2 “We acquired this pharmacy from the Lloyds Pharmacy Group in 2024 who incorporated the pharmacy into LP SD Eight Ltd which we then took over and all the conditions that were associated. The landlord has sadly executed termination of the lease. We have used all reasonable efforts to resolve this but we have not been able to get a positive outcome from the landlord.
- 1.3 We therefore have no alternative but to continue to provide pharmaceutical services from an alternative unit in Seaton a short distance away (approximately 470 metres) within the SPAR supermarket. This is a popular Community retail service.
- 1.4 The SPAR unit location is highlighted in the map below and is only approximately 470 metres from our current registered address. The move will have no detrimental impact on any other pharmacies in Seaton as they are in a different location in the town centre.
- 1.5 The proposed unit within SPAR is centrally situated within Seaton. It has on-street parking outside and the premises are on the same bus route as the current premises and is on the same road. There is a stop approximately 50 metres from the SPAR. The move under Regulation 24 would not be any significant change for patient groups who are accustomed to accessing the current premises. We will [sic] remain not significantly

less accessible for patients of the Seaton and Colyton Medical Practice and also the Townsend Practice (only 50 metres away).

1.6 [Map provided]

1.7 **Access by Foot**

1.8 By foot, between the two premises the terrain is straightforward, along the same road and no other obstacle to access that is significantly different to that of the current premises.

1.9 **Car Parking**

1.10 There is car parking available in the outside [sic] and in the vicinity of the proposed unit.

1.11 **Bus Services**

1.12 Both premises are served by the essentially the same buses 9a/20/885 and the Seaton circular buses. Given the close proximity of the two premises there will not be any significant change to access for these groups.

1.13 **Patient Groups.**

1.14 These can be summarised into the following groups.

1.14.1 Those who have accessed pharmaceutical services following a visit to a surgery

1.14.2 Those who access pharmaceutical services not following a visit to the surgery i.e. to collect medication or to seek advice

1.14.3 Those who access delivery services

1.14.4 Those groups who may share a protected characteristic

1.15 **Those who have accessed pharmaceutical services following a visit to a surgery**

1.16 Jhoots Pharmacy in its current location saw approximately 98% of its patients primarily from the two main practices in Seaton. These being the Seaton and Colyton Surgery and Townsend Practice. This is unlikely to change following relocation. About 80 per cent was from the Seaton and Colton Medical Practice and 18% from the Townsend Practice. A move of approximately 470 metres into what remains centrally accessible location will not be significantly less accessible for patient groups. Irrespective of whether this group walk, drive or use other transportation to get to our pharmacy the additional distance is not significant and will not change how this group access services for those that are currently accustomed to do so.

1.17 Of the remaining proportion of the NHS dispensing – These groups would continue to access the new premises in the same manner as they are accustomed as the pharmacy will remain in an accessible area of Seaton.

1.18 For patients who access our services following a visit to other surgeries (approximately 2 per cent) this is made up from a range of practices outside Seaton. Mainly from surrounding villages and towns but also a few from visitors over a wider area. The new premises will not be significantly less accessible due to the short distance of the move

and the fact that the new premises is part of the SPAR premises which is accessed by the community and visitors.

1.19 Those who access pharmaceutical services not following a visit to the surgery i.e. to collect medication or to seek advice

1.20 A move of approximately 470 metres into what remains centrally [sic] accessible location will not be significantly less accessible for patient groups. Irrespective of whether this group walk, drive or use other transportation to get to our pharmacy the additional distance is not significant and will not change how this group access services for those that are currently accustomed to do so.

1.21 Delivery services

1.22 Those groups who access our services via the free delivery service will not experience any change to accessing our services.

1.23 Groups who may share a protected characteristic

1.24 We are not aware of any specific groups here but given the short distance and the fact that the pharmacy is along the same side of the same road, along the same bus route and using the same bus stops as the current premises the proposed premises will not be significantly less accessible for this group.

1.25 In summary given the short distance of the move that is within the same neighbourhood with no barriers between the two premises we submit that the relocation represents no significant change to the provision of pharmaceutical services as the proposed premises are not significantly less accessible for patient groups accustomed to accessing the current premises."

1.26 "The move is over a short distance and there are not any other pharmacies in the immediate vicinity of either premises. The application is for a relocation of premises and the same services will be provided at the new site as at the current premises."

1.27 "We are not aware of any proposed plans in the area of the Health and Wellbeing Board that this application would cause significant detriment should it be granted. The application is for a relocation for no significant change over a short distance therefore there will not be any impact."

In response to the question *Will there be any interruption to service provision?* the Applicant ticked yes.

1.28 "There has been an interruption in service due to us not being able to access our current unit but the relocation application will be unaffected."

2 The Decision

The Commissioner considered and decided to refuse the application. The decision letter dated 17 March 2025 states:

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

2.2 You have a right of appeal to the Secretary of State against [NHS England/name of ICB]'s decision. Should you choose to appeal then either complete the online form available on the NHS Resolution website or send a concise and reasoned statement

of the grounds for your appeal within 30 days of the date of this letter to nhsr.appeals@nhs.net or:

2.2.1 Primary Care Appeals NHS Resolution 8th Floor 10 South Colonnade Canary Wharf London E14 4PU”

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

2.3 “The SW Committee noted:

2.4 Seaton is a seaside town, fishing harbour and civil parish in East Devon on the south coast of England. The population of Seaton parish at the 2011 census was 8,413.

2.5 The distance between the current pharmacy location and the proposed new location is 0.3 miles. The SW Committee had a map showing the current and proposed site and the locations of other pharmacies in the area.

2.6 Lloyds previously owned the pharmacy. LP SD Eight Ltd took over in August 2023.

2.7 The applicant recently applied for an emergency relocation of the premises, under Regulation 29. The test for this regulation is that the circumstances requiring the temporary amendment to the pharmaceutical list must be out of the contractor’s control. The application was refused. The reason for the Regulation 29 application was that the Pharmacy has been evicted from the current premises and is unable to provide services. The contractor is pursuing this matter in law and has a court hearing coming soon.

2.8 A site visit was undertaken on 20th February and a report was produced for the SW Committee.

2.9 There are 3 pharmacies located within 2 miles of the current location. There is a 100-hour pharmacy less than a mile away (Tesco In-store Pharmacy) which has reduced to 78 hours under the change in Regulations for 100-hour pharmacies. Colyton Pharmacy is north of the current premises. The next nearest pharmacies are in Lyme Regis and Axminster over 5 miles away from Seaton. A report showing where prescriptions from Seaton and Colyton Medical Practice, and Townsend House Medical Practice are being dispensed (1 month) was available.

2.10 **PRELIMINARY ISSUES**

2.11 Controlled locality status

2.12 This is a non-controlled locality.

2.13 Nature of the application

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

2.15 Regulation 24 (1) states: [Quoted]

2.16 Public Involvement

- 2.17 The SW Committee noted full details of the applicant's proposals were notified to various parties in accordance with the Regulations.
- 2.18 Representation was received from Devon CPL who note:
- 2.19 *The distance is short, the new premises do not appear to be significantly less accessible, and the distribution of patients would be largely the same.*
- 2.20 *The provision of services, noting the premises are in the applicant's possession but no floor plan is provided.*
- 2.21 *The pharmacy has not been operating from the current premises since August 2024 and asks the Commissioner to take this into account.*
- 2.22 *The proposed premises are within a small convenience store and safety and space for a consultation room must be considered.*
- 2.23 Unsolicited responses were received from the following:
- 2.24 Seaton Town Council express concerns regarding the application. In the Council's view the relocation to SPAR is unsuitable for a pharmacy as access and parking is limited in comparison to the practice premises, which has a large car park and disabled spaces outside the door.
- 2.25 PPG Seaton and Colyton Medical Practice state:
- 2.26 *There are several concerning issues regarding this proposed move and I wish to express those concerns and raise objections to the move.*
- 2.26.1 *The current pharmacy is located at the Seaton and Colyton Medical Practice which has a very large, easily accessible car park with the allocated disabled spaces being located right outside the pharmacy building. The proposed SPAR premises is located on the main road with only ONE loading bay outside with NO access for public parking and NO disabled spaces. The road then has double yellow lines as it is very close to an extremely busy junction. Parking would be illegal but also cause major traffic problems. Before the SPAR there is a row of terraced houses in front of which is free on road parking. However these spaces are used by the residents or workers parking to take the short walk to work in the town. There are very rarely any spare spaces to park and therefore it would be extremely difficult to find parking to use the pharmacy. For this reason I do not believe the pharmacy would be the choice of many patients in the town and is an unwise decision by Jhoots to even consider. I do not feel they have sufficiently researched as to whether this would really be viable for them. The premises at the Seaton and Colyton Medical Practice is a far superior choice for a pharmacy with the ample parking and convenience provided.*
- 2.26.2 *Seaton has a large elderly population but also young parents with children. Where the current pharmacy is located it is ideally situated for all ages to freely access especially with the local primary school being right next door. For this reason again I do not believe the proposed pharmacy in the SPAR would be the choice of many patients.*
- 2.26.3 *The SPAR is only a small and quite cramped store. Any pharmacy provisions would be very limited and they would not be able to provide the services the bigger premises can offer at the Seaton and Colyton Medical Practice. They*

would certainly not be able to provide the wide services that the other two pharmacies in town are offering. Should a pharmacy still be located at the Seaton and Colyton Medical Practice these wider services could still be provided. With patients now being encouraged to use their pharmacies for certain services that were previously only available from a GP surgery it is a great concern that Jhoots being in a much smaller premises would not be able to offer these extra services. Again for this reason I do not believe patients would use Jhoots as their chosen pharmacy.

2.26.4 Obviously SPAR as a company would benefit financially from this move but they will only be thinking of the advantage to themselves and not of the practicalities of such a move. I do not see this as any advantage or benefit to the patients and in the long run I do not feel it would actually benefit Jhoots – it is not a viable proposition. With the pharmacy location where it is currently a far superior service can be offered.

2.26.5 Should this proposed move be open to public opinion I do not believe that the majority of the Seaton population would choose to use the premises and I strongly believe that this proposal should be rejected in favour of keeping the building at the Seaton and Colyton Medical Practice for the use of a pharmacy.

2.27 Seaton and Colyton Medical Practice state:

2.28 We wish to lodge an objection to the relocation application by Jhoots Pharmacy from Seaton & Colyton Medical Practice to within the Spar shop in Harepath Road for the following reasons:

2.28.1 The proposed location of the Spar shop is less accessible for patients since it only has an unloading bay for lorries outside. On one side of the loading bay there are double yellow lines all the way down the road to the town and it is very close to one of the main junctions making access very limited. The other side of the loading bay has some on street parking, but these spaces are always occupied by residents, who don't have any off-street parking, and those working at the Doctors' surgery opposite. The current location has a large customer car park including two disabled parking bays right outside the Pharmacy door.

2.28.2 We believe that the proposed location at the Spar is unlikely to be able to offer the same pharmaceutical services as the premises is much smaller and space for a consultation room will be limited. The current location right next to the Medical Practice is very spacious and the Pharmacy has a separate consulting room for Pharmacy First and other health services.

2.28.3 This will cause significant change as the cohort of patients will be different since the current location serves the 9,000 patients at Seaton & Colyton Medical Practice and the new location at the Spar shop is opposite a totally different GP surgery (Townsend House).

2.29 Townsend House Medical Practice state:

2.30 We believe that Spar is wholly unsuitable for a pharmacy, especially as the access and parking is so limited. Customers of Spar already park on yellow lines outside the store or use our car park whilst they visit the shop as there are no parking spaces available at the store. The surgery premises in which the pharmacy was previously located are purpose-built with a large dedicated car parking area and disabled spaces right outside the door of the retail unit.

- 2.31 *Our surgery, Townsend House, has a car parking area which is already restricted to patient use only with staff having to park on the roads nearby. We regularly experience customers of Spar parking on our land and taking up spaces which need to be used by our vulnerable patients and believe that, should this application be approved, this issue would only be exacerbated.*
- 2.32 *Please consider this objection as part of the relocation application.*
- 2.33 The applicant responded to the notification responses and state:
- 2.34 *As part of the relocation under Regulation 24 we are required to provide the same pharmaceutical services at the current premises. We will have a consultation room and will be able to deliver the same pharmaceutical services. The Pharmacy will be registered with the General Pharmaceutical Society and therefore will comply with all statutory premises and service obligations.*
- 2.35 *The proposed site is in the heart of the residential community and situated as part of retail premises in a good location.*
- 2.36 *The other Pharmacies in Seaton (Interested Parties) have not lodged any response or objection to the move.*
- 2.37 *We believe that we have fulfilled the criteria of Regulation 24 and respectfully ask for the application to be approved so we can continue the provision of pharmaceutical services.*
- 2.38 Regulation 31 (same or adjacent premises) states: [Quoted]
- 2.39 There are no other contractors currently providing pharmaceutical services from the premises to which the application relates, or from adjacent premises. The nearest pharmacy is 0.2 miles away (Seaton Pharmacy). **The SW Committee was satisfied it is not required to refuse the application by virtue of Regulation 31.**
- 2.40 **REGULATION 24(1) – Relocation**
- 2.41 Reg 24(1)(a) – Patient Groups
- 2.42 The applicant defines the following patient groups:
- 2.42.1 Those who have accessed pharmaceutical services following a visit to a surgery
- 2.42.2 Those who access pharmaceutical services not following a visit to the surgery i.e. to collect medication or to seek advice
- 2.42.3 Those who access delivery services
- 2.42.4 Those groups who may share a protected characteristic
- 2.43 **The SW Committee did not identify additional patient groups to consider in relation to this application.**
- 2.44 In the supporting information the applicant offers an explanation on why each of the patient groups will not find the relocated pharmacy significantly less accessible after the proposed move.

- 2.45 The applicant addresses the different methods used by patients [sic] to get to the pharmacy and states the terrain is straightforward, along the same road with no obstacles. They state there is parking available outside and in the vicinity of the proposed premises, and the same bus service is used for both premises.
- 2.46 The applicant gives some background on the reasons for relocating the pharmacy and notes the proposed premises is a short distance of approximately 470 metres and is centrally located within Seaton. They conclude:
- 2.47 *In summary given the short distance of the move that is within the same neighbourhood with no barriers between the two premises we submit that the relocation represents no significant change to the provision of pharmaceutical services as the proposed premises are not significantly less accessible for patient groups accustomed to accessing the current premises.*
- 2.48 The SW Committee discussed the suitability of the proposed premises, noting some of the comments received and the observations in the site visit report. The SW Committee noted the GPhC are responsible for registering the premises (at which point plans would be clear) and this is not part of the test the SW Committee must apply. The SW Committee was aware it is now a contractual requirement for the pharmacy to have a suitable consultation room, which would also be part of the GPhC registration process.
- 2.49 The SW Committee noted there is concern raised regarding availability of parking for patients who drive to the current site, where there is ample free parking. During the site visit the distance to two car parks near to the proposed site was walked: one a long stay, one a short stay, with associated charges. There is a one-way street so, that means the drive to the short stay car park is longer than it would otherwise be. Once parked, it was noted there is a walkable rear exit from the car park, providing a more direct route to the proposed premises on foot. It was noted the distance, whilst shorter than the distance to get there by car, is still an extra walk compared to parking at the current location. The photos from the site visit show the rear exit from the short stay car park will not be appealing in the dark winter months and could present difficulties for people pushing buggies or using wheelchairs, due to the railings in place.
- 2.50 The SW Committee agreed people currently used to going to the pharmacy (after a visit to the surgery or going direct to the pharmacy) and parking free of charge will experience a significant difference: it was noted that at the time of the visit, while there is street parking in the vicinity of the proposed location, there were no free spaces to park in. The SW Committee did not consider the loading bay outside the proposed location to be a viable parking option.
- 2.51 The SW Committee noted the move will take the pharmacy closer to the town, nearer to other pharmacies, changing the geographical spread of the pharmacies. It was also noted the proposed location is moving the pharmacy away from the north where there is significant housing.
- 2.52 The SW Committee had detail of where patients using the practice are accessing dispensing services. It shows some patients are already going to pharmacies to the South, but others are going to Colyton in the north since the pharmacy hasn't been open. The SW Committee noted patients have had to adjust to the current situation at short notice, but the forced situation is not a consideration for determining the application against the criteria for Regulation 24. The SW Committee determined the change of geographical spread of pharmacies which will result from this move is not desirable.

- 2.53 **Given the concerns around parking and walking distances, the SW Committee was satisfied that for the patient groups that are accustomed to accessing pharmaceutical services at the existing premises, the location of the new premises IS significantly less accessible.**
- 2.54 Reg 24(1)(b)(i) and (ii) – (b) in the opinion of the NHSCB, granting the application would not result in a significant change to the arrangements that are in place for the provision of local pharmaceutical services or of pharmaceutical services other than those provided by a person on a dispensing doctor list
- 2.55 In considering this, the SW Committee reflected on the increased clustering of pharmaceutical services around the centre of Seaton. The current location was considered to provide a better geographical distribution. It was also noted, the proposed location moves further away from the large proportion of the Seaton population to the north of the town centre.
- 2.56 **The SW Committee was satisfied that granting the application would result in a significant change to the arrangements in place for the provision of pharmaceutical services.**
- 2.57 Reg 24(1)(c) the NHSCB is satisfied that granting the application would not cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area of HWB1.
- 2.58 No evidence has been presented that suggests the relocation would cause significant detriment to proper planning.
- 2.59 ***The SW Committee was satisfied that granting the application would not cause significant detriment to proper planning of pharmaceutical services.***
- 2.60 Reg 24(1)(d) the services the applicant undertakes to provide at the new premises are the same as the services the applicant has been providing at the existing premises (whether or not, in the case of enhanced services, the NHSCB chooses to commission them); and
- 2.61 The applicant has confirmed that the same services will be available at the new premises that are available at the current premises.
- 2.62 ***The SW Committee was satisfied that the same services would be available at the proposed premises.***
- 2.63 Reg 24(1)(e) the provision of pharmaceutical services will not be interrupted (except for such period as the NHSCB may for good cause allow)
- 2.64 The applicant has confirmed that there will be no interruption to services.
- 2.65 ***The SW Committee was satisfied that there will be no interruption to services.***
- 2.66 Reg 24(3)(a-d) an application pursuant to this regulation must be refused if the existing pharmacy premises from which the applicant is seeking to relocate
- 2.66.1 is in an approved retail area (24(3)(a))
- 2.66.2 is part of a one-stop primary care centre (24(3)(b))
- 2.66.3 has relocated in the last 12 months (24(3)(c))

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

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

2.68 **Decision**

2.69 ***The SW Committee was satisfied that the application should be refused because the new premises are significantly less accessible for those accustomed to using the existing premises and granting the application would result in a significant change to the arrangements in place for the provision of pharmaceutical services."***

3 The Appeal

In an email dated 16 April 2025 addressed to NHS Resolution, the Applicant appealed against the Commissioner's decision. The grounds of appeal are:

3.1 "I would wish to appeal on the following grounds:

3.2 The Decision Committee appears to have placed significant weight on what they have termed 'unsolicited representations'. These are not interested parties in the context of the Pharmaceutical Services Regulations. We note that no other pharmacies as interested parties made any representations against the relocation application.

3.3 The Decision report confirms that Community Pharmacy Devon (as an Interested Party) agrees that "the distance is short, the new premises do not appear to be significantly less accessible, and the distribution of patients would be largely the same".

3.4 The Decision Committee appear to have some concerns regarding car parking. As listed in the application the proposed site is within the SPAR supermarket. There appears to be no concerns about the fact that users may currently drive to access the SPAR store or access the Abbotts Hardware store next door (38 Harepath Road). The proposed SPAR unit is actually in a good location in Seaton centrally positioned so that it can be accessed by foot.

3.5 It is opposite the Townsend Surgery so these patients would have an easier journey to access the pharmacy. The Harepath Road, (between the Seaton and Colyton Surgery current location and proposed site) has mainly unrestricted street parking along its length. Notwithstanding this, given the short distance between the two locations we do not believe this is a factor that makes the proposed site significantly less accessible.

3.6 The Decision report paragraph 23 says "The SW Committee noted the move will take the pharmacy closer to the town, nearer to other pharmacies, changing the geographical spread of the pharmacies. It was also noted the proposed location is moving the pharmacy away from the north where there is significant housing". I do not see how this statement is relevant to the determination of our application. The fact that the pharmacy may be moving slightly closer to the town does not mean the premises are significantly less accessible. The Committee says that the move will be changing the geographical spread of the pharmacies. Any move though would create a change in geographical spread. The pharmacy move however, does not leapfrog any other contractors. The Committee says the application will move the pharmacy away from the north where there is significant housing. We stated in the application the distance between the two premises is approximately 470 metres. This has not been disputed. It is not a significant distance along the same road. There is housing along its length. The move will not take the pharmacy away from the north to the extent it would be significantly less accessible, and we will remain to the north of the town centre and

some 380 metres north of Seaton Pharmacy (the next nearest contractor) Community Pharmacy Devon has also agreed the premises are not significantly less accessible.

- 3.7 The decision report says that the Committee were presented with photos from a site visit. These photos have not been made available to us for comment, and it has not been stated when and what time any site visit was conducted and by whom.
- 3.8 With regard to Regulation 24(1)(b)(i) and (ii)-(b) The SW Committee determined it “was satisfied that granting the application would result in a significant change to the arrangements in place for the provision of pharmaceutical services”. They have set out their reason in paragraph 26 of the decision report that the current premises “provide a better geographical distribution”. This in my opinion is not a viable reason to refuse the application. The change to arrangements is not significant because the relocation, if granted would not lead to a significant change in the general availability of pharmaceutical services in the areas of the existing or proposed premises. The proposed move is only approximately 470 metres along the same (Harepath) Road. The distance from the proposed premises to the next nearest pharmacy (Seaton Pharmacy) in the town centre is approximately 380 metres.
- 3.9 Seaton Pharmacy is in the main town centre whereas the proposed site for our application will remain in the residential area to the north of the town centre. The move will, therefore, not represent any significant change to the current arrangements in place.
- 3.10 [Map provided]
- 3.11 There was (up until 02/05/2005) a pharmacy (Fossway Chemist) at 38 Harepath Road (now a hardware store). This had an ODS Code of FGN65. This is next door to the proposed premises. It would appear this pharmacy may have relocated in 2005 to the Seaton & Colyton Surgery (ODS Code effective 03/05/2005) and became Lloyds Pharmacy Ltd before later transferring to LP Eight Ltd and then t/a Jhoots Pharmacy. A return to a similar site would not cause any significant change as it is only a short distance of less than 500 metres. The fact there was a pharmacy at 38 Harepath Road would have meant patients and visitors would have accessed it, whether by foot, car or public transport.
- 3.12 [Images provided]
- 3.13 **Please see below the original evidence provided to the Committee in support of our application and to be considered alongside this appeal:**
- 3.14 [See paragraphs 1.2 to 1.25 above]”

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 [see paragraphs 6.1.7 – 6.1.13 below] and the Commissioner’s site visit report [provided], had not been circulated to 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 and the site visit report to parties for them to make representations on them if they so wished.

5 **Summary of Representations**

This is a summary of representations received on the appeal.

5.1 The Commissioner

- 5.1.1 “The South West Pharmaceutical Services Regulations Committee (SW Committee) wishes to make the following comments on the appeal.
- 5.1.2 The SW Committee notes the applicant refers to a pharmacy previously being located near to the site they want to relocate to. The SW Committee notes the relocation took place 20 years ago and would respectfully point out that the Regulations have changed since then, in due consideration of how a relocation affects patients: distance is only one factor. The tests to be applied to the historic case were different and, therefore the SW Committee would respectfully suggest this fact is not relevant to this current application to relocate. In any event the relocation to the current site was presumably thought to be a benefit to patients and there is no evidence of significant change such that the benefit seen at the time has subsequently “disappeared”. As Primary Care Appeals will be aware, for many patients attending the pharmacy the starting point is not the current pharmacy location and more likely to be home or perhaps work.
- 5.1.3 At the current site there is free parking provision in a car park located with the pharmacy and surgery. The parking on the street, outside the proposed site is significantly more restricted. The SW Committee considered the views raised in the notification responses, which included concerns around parking and walking distances. The responses indicated that local people use this area as free parking when going in to town for work or to shop. The site visit report confirmed all roadside parking was occupied at the time of the visit.
- 5.1.4 The SW Committee was satisfied for a significant number of patients the location of the new premises is significantly less accessible. This was further evidenced by the fact some patients have chosen to head north to the Colyton Pharmacy, rather than South towards the other pharmacies available in town.
- 5.1.5 The SW Committee agreed the geographical spread of pharmacies is important when considering changes to the arrangements that are in place for the provision of local pharmaceutical services, and noting the significant housing in the north of Seaton agreed the move further to the south is a significant change.
- 5.1.6 The SW Committee looks forward to receiving the Primary Care Appeals’ decision in due course.”

6 Observations on representations

6.1 The Applicant

- 6.1.1 “The Commissioner in their response “*The SW Committee notes the applicant refers to a pharmacy previously being located near to the site they want to relocate to. The SW Committee notes the relocation took place 20 years ago and would respectfully point out that the Regulations have changed since then*”. Our response to this is as part of the NHS decision report the Committee appear to criticise the location of our proposed pharmacy. The purpose of highlighting the previous relocation to the surgery from the unit next to our proposed unit was to demonstrate that patients had previously been accustomed to accessing services from this location, and of which some

patients would have done so by car. I accept that it was approximately 20 years ago, but it would have been under a regulatory framework and not too dissimilar from the current Regulations. It does therefore provide some context even though the current application is considered under the 2013 Regulations.

- 6.1.2 The SW Committee say in the final paragraph on page 1 they “*was satisfied for a significant number of patients the location of the new premises is significantly less accessible*” the SW Committee considers individual patients here rather than to a specific patient group.
- 6.1.3 On page 2 the Commissioner states “*The SW Committee agreed the geographical spread of pharmacies is important when considering changes to the arrangements that are in place for the provision of local pharmaceutical services, and noting the significant housing in the north of Seaton agreed the move further to the south is a significant change*”. Regulation 24 does not refer to consideration of ‘geographical spread’ as part of a determination under this application. The pharmacy is only moving approximately 470 metres. This is not significant. It does not significantly change the position of the pharmacy from what the SW Committee refers to as ‘housing in the north’. From the proposed site to the next nearest pharmacy, the distance is approximately 380 metres. On the one hand the Committee is implying a move of 470 metres is too far but on the other hand is implying a distance of 380 metres to the next nearest pharmacy creates a cluster. There is no suggestion or evidence by any interested parties or the Commissioner that the relocation will impact on the viability of the other pharmacies in Seaton and therefore the same number of pharmacies will remain and thus the current arrangements will not have any significant change.
- 6.1.4 Regulation 24(1)(c) has not been disputed.
- 6.1.5 I know the Committee will have requested the papers from the SW Committee but I include a copy of our response to the Committee as part of the 14-day response.
- 6.1.6 We believe that we have fulfilled the criteria of Regulation 24 and respectfully ask for our appeal to be upheld and the application to be approved.”

Letter dated 24 January 2025 addressed to the Commissioner

- 6.1.7 “Thank you for providing representations on our application for relocation in Seaton. We note the unsolicited comments by the Council and Medical Practices/PPG and we would wish to respond as follows.
- 6.1.8 NHS England will be aware that there was previously a pharmacy (Fossway Chemist) at 38 Harepath Road (now a hardware store). This is next door to the proposed premises. It would appear this pharmacy may have relocated in 2005 to the Seaton & Colyton Surgery and became Lloyds Pharmacy Ltd before later transferring to LP Eight Ltd and then t/a Jhoots Pharmacy. There should therefore be no reason why the return to a similar site would therefore cause any significant change as it is only a short distance of less than 500 metres. The fact there was a pharmacy at 38 Harepath Road would have meant patients and visitors would have accessed it, whether by foot, car or public transport.
- 6.1.9 Jhoots Pharmacy has tried and continues to try and resolve the premises matter with the Seaton and Colyton Surgery but they refuse to do so. We will

continue to progress the matter further. The tone of the response from the letters is that they seek an opportunity to have their own pharmacy.

- 6.1.10 As part of the relocation under Regulation 24 we are required to provide the same pharmaceutical services at the current premises. We will have a consultation room and will be able to deliver the same pharmaceutical services. The Pharmacy will be registered with the General Pharmaceutical Society and therefore will comply with all statutory premises and service obligations.
- 6.1.11 The proposed site is in the heart of the residential community and situated as part of retail premises in a good location.
- 6.1.12 The other Pharmacies in Seaton (Interested Parties) have not lodged any response or objection to the move.
- 6.1.13 We believe that we have fulfilled the criteria of Regulation 24 and respectfully ask for the application to be approved so we can continue the provision of pharmaceutical services."

7 Consideration

- 7.1 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.
- 7.2 It also had before it the responses to NHS Resolution's own statutory consultations.
- 7.3 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.
- 7.4 The Committee noted the Commissioner's comments that the Applicant recently applied for an emergency relocation of the premises, under Regulation 29 as "*the Pharmacy has been evicted from the current premises and is unable to provide services*". That application was refused by the Commissioner. The Commissioner states that the Applicant is pursuing this matter in law and has a court hearing coming soon. The Committee noted that although the Applicant is not currently providing services from the current site, it remains on a pharmaceutical list. Regulation 24 indicates that a relocation application can be made by a person included in a pharmaceutical list. The Committee therefore proceeded to consider the appeal before it.
- 7.5 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations").
- 7.6 The Committee first considered Regulation 31 of the Regulations which states:
 - (1) *A routine or excepted application, other than a consolidation application, must be refused where paragraph (2) applies.*
 - (2) *This paragraph applies where -*
 - (a) *a person on the pharmaceutical list (which may or may not be the applicant) is providing or has undertaken to provide pharmaceutical services ("the existing services") from -*

(i) the premises to which the application relates, or

(ii) adjacent premises; and

(b) NHS England is satisfied that it is reasonable to treat the services that the applicant proposes to provide as part of the same service as the existing services (and so the premises to which the application relates and the existing listed chemist premises should be treated as the same site).

7.7 In its application form, the Applicant stated that *“there are no other pharmacies on or adjacent to the proposed premises therefore Regulation 31 is not engaged”*. The Commissioner concluded that it was not required to refuse the application by virtue of Regulation 31, which the Committee noted had not been disputed on appeal or in subsequent representations.

7.8 Based on the information provided, the Committee was not required to refuse the application under the provisions of Regulation 31.

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

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

(b) *in the opinion of NHS England, granting the application would not result in a significant change to the arrangements that are in place for the provision of local pharmaceutical services or of pharmaceutical services other than those provided by a person on a dispensing doctor list—*

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

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

(c) *NHS England is not of the opinion that granting the application would cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area of HWB1;*

(d) *the services the applicant undertakes to provide at the new premises are the same as the services the applicant has been providing at the existing premises (whether or not, in the case of enhanced services, NHS England chooses to commission them); and*

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

Regulation 24(1)(a)

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

7.11 The Committee considered the information before it with regard to the patient groups who are accustomed to accessing pharmaceutical services at the existing premises.

The Committee considers that it must seek to identify the patient groups who would potentially be affected by the relocation based upon the information provided by the parties. This information is most commonly going to be provided by the Applicant, but others may also be able to contribute to the information on which the Committee will proceed to determination.

- 7.12 In this case, the Applicant has identified the patient groups as:
- 7.12.1 Those who have accessed pharmaceutical services following a visit to a surgery;
 - 7.12.2 Those who access pharmaceutical services not following a visit to the surgery i.e. to collect medication or to seek advice;
 - 7.12.3 Those who access delivery services; and
 - 7.12.4 Those groups who may share a protected characteristic.
- 7.13 The Committee concludes that the patient groups who are accustomed to accessing pharmaceutical services from the existing premises are those set-out below.

Patients who have accessed pharmaceutical services following a visit to a surgery

- 7.14 The Applicant states that in its current location, it saw approximately 98% of its patients primarily from the two main practices in Seaton, these being the Seaton and Colyton Surgery and Townsend Practice. The Applicant contends that *“this is unlikely to change following relocation”* and further that *“irrespective of whether this group walk, drive or use other transportation to get to our pharmacy the additional distance is not significant and will not change how this group access services for those that are currently accustomed to do so.”*
- 7.15 The Committee noted that the current site is located within the same building as Seaton and Colyton Medical Practice, and the proposed site is located across the road from Townsend Practice.
- 7.16 The Committee noted that for those accessing pharmaceutical services following a visit to Townsend Practice, the proposed site was not significantly less accessible due to their close proximity.
- 7.17 For those accessing the pharmacy after a visit to Seaton and Colyton Medical Practice, the Applicant states that the proposed site is located approximately 470 metres away *“into what remains [a] centrally accessible location”*.
- 7.18 The Applicant states that *“by foot, between the two premises the terrain is straightforward, along the same road and no other obstacle to access that is significantly different to that of the current premises.”* The Commissioner in its site visit report found that *“The proposed location is 0.3 miles South of the current location on Harepath Road. This took 6 minutes to walk at a modest pace. There is a slight incline down towards the proposed location. Both sites are on the same side of the road with a pavement all the way. The route passes down through residential areas.”*
- 7.19 For those who are able, the Committee determined that the nature of the journey between the current and the proposed sites is unlikely to indicate that the proposed site is 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.

- 7.20 The Committee went on to consider ease of access to the proposed site for those patients who have limited mobility, or who are unable or chose not to walk and went on to consider access by public and private transport.
- 7.21 The Committee noted the Applicant's comment that *"both premises are served by the essentially the same buses 9a/20/885 and the Seaton circular buses."* The Commissioner in its site visit report noted that *"there is a bus stop immediately by the surgery where the pharmacy is currently located served by the 9A, 20, 391, 885, 897A, X30 services. There is a bus stop reasonably close to the proposed premises just North of Court Lane, served by the 9A, 20, 392, 393, 885 and X30 services"* which has not been disputed. The Committee therefore determined that the proposed site was not significantly less accessible for those accessing the current site by bus.
- 7.22 For those accessing the current site by car, the Applicant states that *"there is car parking available in the outside [sic] and in the vicinity of the proposed unit."* Further, the Applicant contends that a pharmacy was previously located at 38 Harepath Road, which would have meant patients and visitors would have accessed it, whether by foot, car or public transport. However, the Committee noted that this was 20 years ago and was of the view that circumstances may have changed.
- 7.23 The Commissioner in its site visit report, which has not been disputed, stated that *"there is a 'loading only bay' immediately to front of the proposed site... there is on street parking leading up to the proposed site. There is no on street parking on Harepath Road beyond the proposed site as you continue South on Harepath Road."* Further *"there is also street parking in Court Lane which runs perpendicular to Harepath Road and in Meadow road which is perpendicular to Court lane and behind and parallel to Harepath road. At the time of the visit there were no free spaces in Court Lane, Meadow Road or Harepath Road in the vicinity of the proposed site."* The Committee also noted comments in the decision report that suggested that the on street parking was also used as free parking when going into town for work or to shop.
- 7.24 The Commissioner highlighted that *"there is a long stay car park off the Underfleet 0.4 miles from the proposed location a ... 7 minute walk. ... There is also a short stay car park off Beer Road, travelling ... on foot it is 0.2 miles (5 minutes). There is a pedestrian only entrance/exit at the rear of the car park that exits on Queens Street just south of its junction with Harepath Road."* However, in the decision report, the Commissioner went on to conclude that the rear exit from the car park *"will not be appealing in the dark winter months and could present difficulties for people pushing buggies or using wheelchairs, due to the railings in place."*
- 7.25 The Committee was of the view that parking at the proposed site was significantly more limited than the current site. Given all roadside parking was occupied at the time of the Commissioner's site visit, and that the pay and display car parks are a 5-7 minute walk to the proposed site and therefore not reasonable options particularly for those with mobility issues, the Committee determined that the proposed site is significantly less accessible for those accessing the current site by car after a visit to Seaton and Colyton Medical Practice.
- 7.26 The Applicant states that *"of the remaining proportion of the NHS dispensing – these groups would continue to access the new premises in the same manner as they are accustomed as the pharmacy will remain in an accessible area of Seaton."* However, the Committee was mindful of its findings above in relation to parking at the proposed site and was of the view that for those patients accessing the current site from surgeries

further afield, they will encounter the same difficulties with parking as the patient group originating from Seaton and Colyton Medical Practice.

Patients who access pharmaceutical services not following a visit to the surgery i.e. to collect medication or to seek advice

- 7.27 The Applicant states that *“a move of approximately 470 metres into what remains centrally accessible location will not be significantly less accessible for patient groups. Irrespective of whether this group walk, drive or use other transportation to get to our pharmacy the additional distance is not significant and will not change how this group access services for those that are currently accustomed to do so.”*
- 7.28 For patients where their ‘starting point’ would be at or around the current site, the Committee noted its findings above in relation to those patients accessing pharmaceutical services following a visit to Seaton and Colyton Medical Practice and was of the view that they would equally apply here.
- 7.29 Based on the information provided, the Committee concluded that for those who are willing and able, the proposed site was not significantly less accessible on foot. Similarly, for those using public transport. However, for those accessing the current site by car, the Committee determined that the proposed site would be significantly less accessible for the reasons highlighted above.

Patients who may share a protected characteristic

- 7.30 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).
- 7.31 The Applicant claims that the short distance, the pharmacy being on the same side of the road and using the same bus route and stops as the current site, the proposed site will not be significantly less accessible for this patient group.
- 7.32 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).
- 7.33 In this regard, the Committee had already determined that for those patients with mobility issues, the proposed premises would be significantly less accessible.

Patients who access delivery services

- 7.34 The Applicant states that *“those groups who access our services via the free delivery service will not experience any change to accessing our services.”* 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

7.35 For the reasons given above, the Committee was unable to be satisfied that, for patient groups who are accustomed to accessing the current site, the proposed site is not significantly less accessible.

7.36 The Committee was therefore of the view that condition (a) is not met.

Regulation 24(1)(b)

7.37 The Committee noted the decision of the Commissioner in respect of condition (b), that the granting of this application would result in a significant change to the arrangements that are in place.

7.38 In its decision letter, the Commissioner refers to *“the increased clustering of pharmaceutical services around the centre of Seaton”* and further that *“the current location was considered to provide a better geographical distribution. It was also noted, the proposed location moves further away from the large proportion of the Seaton population to the north of the town centre.”*

7.39 On appeal, the Applicant contends that *“the change to arrangements is not significant because the relocation, if granted would not lead to a significant change in the general availability of pharmaceutical services in the areas of the existing or proposed premises. The proposed move is only approximately 470 metres along the same (Harepath) Road. The distance from the proposed premises to the next nearest pharmacy (Seaton Pharmacy) in the town centre is approximately 380 metres.*

7.40 *Seaton Pharmacy is in the main town centre whereas the proposed site for our application will remain in the residential area to the north of the town centre. The move will, therefore, not represent any significant change to the current arrangements in place.”*

7.41 The Applicant, in its observations, further states that *“On the one hand the Committee is implying a move of 470 metres is too far but on the other hand is implying a distance of 380 metres to the next nearest pharmacy creates a cluster. There is no suggestion or evidence by any interested parties or the Commissioner that the relocation will impact on the viability of the other pharmacies in Seaton and therefore the same number of pharmacies will remain and thus the current arrangements will not have any significant change.”*

7.42 The Committee was not persuaded by the Commissioner’s arguments given the proposed site was still located outside the town centre within a residential area. On the information provided the Committee was of the opinion that the granting of the application would not result in a significant change to the arrangements in place for the provision of local pharmaceutical services or of pharmaceutical services in any part of the area of HWB1 or in a controlled locality of a neighbouring HWB, where that controlled locality is within 1.6 kilometres of the premises to which the applicant is seeking to relocate. The Committee concluded that condition (b) is met.

Regulation 24(1)(c)

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

the provision of pharmaceutical services in the area of HWB1 and therefore concluded that condition (c) is met.

Regulation 24(1)(d)

- 7.44 The Committee noted that the Applicant had given an undertaking, in their application form, that the same services will be provided at the proposed site.
- 7.45 In unsolicited comments to the Commissioner, Seaton and Colyton Medical Practice contends that the Applicant is *“unlikely to be able to offer the same pharmaceutical services as the premises is much smaller and space for a consultation room will be limited.”* The Committee noted that no further information had been provided to support this assertion.
- 7.46 The Applicant in its appeal states that *“We will have a consultation room and will be able to deliver the same pharmaceutical services. The Pharmacy will be registered with the General Pharmaceutical Society and therefore will comply with all statutory premises and service obligations.”*
- 7.47 The Committee noted the Commissioner’s comment that *“it is now a contractual requirement for the pharmacy to have a suitable consultation room, which would also be part of the GPhC registration process”* and therefore concluded that based on the information before it, the same services would be available at the proposed site.
- 7.48 The Committee determined that condition (d) is met.

Regulation 24(1)(e)

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

Overall

- 7.50 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 7.50.1 confirm the Commissioner’s decision;
 - 7.50.2 quash the Commissioner’s decision and redetermine the application;
 - 7.50.3 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.
- 7.51 As the Committee has reached a different finding in relation to Regulation 24(1)(b), the Committee determined that the decision of the Commissioner must be quashed.
- 7.52 The Committee went on to consider whether there should be a further notification to the parties detailed at paragraph 19 of Schedule 2 of the Regulations to allow them to make representations if they so wished (in which case it would be appropriate to remit the matter to the Commissioner) or whether it was preferable for the Committee to redetermine the application.
- 7.53 The Committee noted that representations on Regulation 24 had already been made by parties to the Commissioner, and these had been circulated and seen by all parties who made representations on the application, as part of the processing of the

application by the Commissioner. The Committee further noted that when the appeal was circulated representations had been sought from parties on Regulation 24.

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

8 Decision

- 8.1 The Committee quashes the decision of the Commissioner and redetermines the application.
- 8.2 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.
- 8.3 The Committee has determined that condition (a) is not satisfied.
- 8.4 The Committee has determined that conditions (b), (c), (d) and (e) are satisfied.
- 8.5 The application is refused.

Technical Case Manager
Primary Care Appeals