NHS Resolution

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5 November 2025

**REF: SHA/26650**

**APPEAL AGAINST SHROPSHIRE, TELFORD AND WREKIN ICB DECISION TO REFUSE AN APPLICATION BY SOHAWON PROPERTY COMPANY LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST AT UNIT 2, SUTTON ROAD, ADMASTON, SHROPSHIRE, TF5 0AY UNDER REGULATION 25**

## 1 Outcome

1.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, confirms the decision of the Commissioner to refuse the application pursuant to Regulation 31.

A copy of this decision is being sent to:

Sohawon Property Company Ltd (represented by Rushport Advisory LLP)
Shropshire, Telford and Wrekin ICB
Community Pharmacy Shropshire
Boots UK Ltd

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## 2 The Application

By application dated 29 November 2024, Sohawon Property Company Ltd ("the Applicant") applied to Shropshire, Telford and Wrekin ICB ("the Commissioner") for inclusion in the pharmaceutical list at Unit 2, Sutton Road, Admaston, Shropshire, TF5 0AY under Regulation 25. In support of the application it was stated:

In response to "If you are undertaking to provide appliances, specify the appliances that you undertake to provide (or write 'none' if it is intended that the pharmacy will not provide appliances)" the Applicant stated

2.1 "Drug Tariff part IX*

2.2 *EXCEPT items that require measuring or fitting."

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

2.3 "Not applicable as no other pharmacy in same or adjacent premises.

2.4 We were previously granted approval for Unit 4 at the same address, however it subsequently transpired that the correct unit was Unit 2 rather than Unit 4. We cannot now proceed with opening under the previous approval and it will therefore lapse and we have reapplied using the correct unit number."

In response to why the application should not be refused pursuant to Regulation 25(2)(a) the Applicant stated:

2.5 "Application is not on the same site or in the same building as the premises of a provider of primary medical services with a patient list."

Further Information in Relation to Provision of Essential Services in Accordance With the Regulatory Requirements for Distance Selling Pharmacies

2.6 Please find below information to explain how the pharmacy procedures used within the premises will secure:

(a) the uninterrupted provision of essential services during the opening hours of the premises, to persons anywhere in England who request those services, and

(b) the safe and effective provision of essential services without face to face contact between any person receiving the services, whether on their own or someone else's behalf, and the applicant or the applicant's staff.

2.7 "NHS Premises Standards

2.8 The NHS has published premises standards that the Pharmacy will comply with, however, it should be noted that not all these standards apply directly to distance selling premises other than where a patient is accessing non-essential services.

2.9 The pharmacy will be a Healthy Living Pharmacy and comply with the change management and organisational development criteria, ensuring premises and facilities are fit for purpose and engaging with the community to deliver consistently high quality health and wellbeing services.

2.10 The pharmacy will be equipped with facilities to allow for both phone (or other live audio link) and live video communication with patients in a manner which maintains patient confidentiality.

GPhC Guidance

2.11 The Applicant will operate the pharmacy in accordance with current GPhC guidance for registered pharmacies providing pharmacy services at a distance, including on the internet.

PHARMACY SYSTEMS AND PROCEDURES

2.12 All Essential Services will be delivered in accordance with:

2.12.1 Company Standard Operating Procedures

2.12.2 NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013

2.12.3 NHS Act 2006

2.12.4 Human Medicines Regulations 2012

2.12.5 GPhC – Professional Standards and Guidance on Distance Selling Pharmacies

2.12.6 Relevant Data Protection laws

2.13 This will ensure that the Applicant provides safe, effective and uninterrupted provision of all essential services to persons anywhere in England who request those services during the opening hours of the premises. Essential Services will be provided without face to face contact between anyone receiving the

services, whether on their own or someone else's behalf, and the pharmacy staff.

2.14 The Applicant's wholly Internet/Delivery Pharmacy will operate from secure premises, with a controlled entry system, to which members of the public will not have access. Any patient that requests essential services to be provided at the premises will be informed that the pharmacy is not permitted to provide those services at the premises.

2.15 Access to information about the provision of NHS Essential Services will be achieved by using:

2.15.1 Telephone

2.15.2 Live Video Call

2.15.3 The website will enable patients or their carers to communicate remotely but directly allowing quick and easy access and provide clear unambiguous details of how safe, efficient, uninterrupted NHS Essential Services will be provided by the Pharmacist and qualified, knowledgeable, experienced support staff on duty throughout the opening hours of the pharmacy premises without having 'face to face' contact with the patient or their representative.

2.15.4 Email

2.15.5 Postal services

2.16 All NHS services will be delivered free of charge in accordance with the NHS Act 2006.

2.17 Essential Services may be delivered using:

2.17.1 Telephone, including text messaging where appropriate

2.17.2 Electronic Prescription Service (EPS)

2.17.3 Website

2.17.4 Email

2.17.5 Royal Mail postal service

2.17.6 Courier service

2.17.7 Specialist Waste Management Services

2.17.8 Live video services.

2.17.9 Specialist cold chain courier services will ensure the integrity of the cold chain and the maximum stability of thermo-liable drugs by packing, transporting and delivering in such a way that their integrity, quality and

effectiveness is always preserved. This will be a dedicated, fully monitored and temperature controlled delivery service.

2.18 Provision of NHS Essential Services

2.19 Dispensing Services

2.20 Prescriptions will be received by the EPS, post, or where practicable, with the patient's informed consent, collected from a surgery. Prescriptions will be clinically and legally assessed to determine if they can be dispensed.

2.21 In the event of any clinical or legal issues with the prescription, the pharmacist will follow Standing Operating Procedures to resolve these issues before dispensing items. This may involve contacting the prescriber as soon as possible to make sure the patient receives their medication without delay.

2.22 When appropriate prescription interventions take place, for example drug/drug interactions, suspected over/under prescribing, etc. the pharmacist on duty will telephone and discuss with the prescriber and patient prior to dispensing or delivering the medication.

2.23 Repeat Dispensing Services

2.24 The Terms of Service require pharmacy contractors to ensure that appropriate advice about the benefits of repeat dispensing is given to any patient who—

2.24.1 (i) has a long term, stable medical condition (that is, a medical condition that is unlikely to change in the short to medium term), and

2.24.2 (ii) requires regular medicine in respect of that medical condition, including, where appropriate, advice that encourages the patient to discuss repeat dispensing of that medicine with a prescriber at the provider of primary medical services whose patient list the patient is on.

2.25 Such advice will be provided by the Pharmacy using its permissible methods of non face-to-face contact with patients.

2.26 Dispensing of repeat NHS prescriptions including those dispensed in dosette boxes as may be required under the Equality Act 2010 will be carried out in partnership with patients, carers, pharmacists and prescribers. It will cover requirements additional to those for dispensing, assessing the patients' need for repeat supply. Any clinical issues identified will be addressed to the prescriber. Where considered necessary by a pharmacist, the patient may be contacted by telephone and given verbal advice in addition to information delivered with the repeat prescription.

2.27 Medicines will only be supplied where the pharmacist is satisfied that the patient is taking and is likely to continue to take the drug appropriately and is not suffering from any side effects which indicate the need or desirability to review the patient’s treatment.

2.28 Urgent Supply and Emergency Supply

2.29 Whilst the Distance Selling nature of the pharmacy is such that Urgent Supply or Emergency Supply is unlikely to occur as often as in a retail pharmacy, all staff will be aware of the procedures to be followed in the event of such a request.

2.30 The request may be received from a Prescriber (Urgent Supply) or from a Patient (Emergency Supply).

2.31 The following conditions must apply to the request made by a prescriber:

2.31.1 The Pharmacist must be satisfied that the request is from the appropriate authorised prescriber, see list above.

2.31.2 The Pharmacist is satisfied that a prescription cannot be supplied immediately due to an emergency.

2.31.3 The Prescriber agrees to provide a written prescription within 72 hours.

2.31.4 The medication is supplied in accordance with the prescriber's directions.

2.31.5 The medication is permitted to be supplied on an Emergency Supply basis.

2.31.5.1 An emergency supply cannot be provided for a Schedule 1, 2 or 3 CD except Phenobarbital for epilepsy by a UK registered prescriber.

2.31.6 EEA prescribers cannot request an emergency supply of any Schedule 1 - 5 CD.

2.32 Full records of the supply will be kept as per the relevant SOP.

2.33 The following conditions must apply to the request made by a patient:

2.33.1 Interview

2.33.1.1 The Pharmacist must interview the patient. The interview may not be by way of face to face contact and must be by other means, e.g., telephone, Skype.

2.33.2 Records

2.33.2.1 An entry must be made in the POM register on the day of supply and record all the relevant details. The label for the dispensed medicine must contain the words "Emergency Supply".

2.33.3 Faxed Prescriptions

2.33.3.1 A 'faxed prescription' or other forms of scanned prescriptions do not fall within the definition of a legally valid prescription because it is not written in indelible ink, and has not been signed

by an appropriate practitioner. A faxed / scanned prescription can confirm that at the time of receipt a valid prescription is in existence, but no medicines should be supplied until the original prescription is received.

2.33.3.2 The pharmacist should not dispense against faxed prescriptions and instead should use the Emergency Supply procedures.

2.34 Delivery of Urgent Supplies

2.35 Given the nature of a request of this type, the Pharmacy will prioritise delivery of the medication to the patient. For local deliveries the driver should be specially informed of the fact that the items are “URGENT” and for any items delivered by courier the courier will be informed that items must be delivered ASAP by the quickest route possible. The Pharmacy will not charge additional fees to the patient even if these are incurred in the delivery process. Other than noting the urgent nature of the delivery, normal delivery procedures will apply.

2.36 Disposal of Unwanted Medicines

2.37 Patients will have a number of options for disposal of unwanted medicines.

2.38 A specialist waste management company will provide safe and secure disposal of unwanted medicines by collection of unwanted medicines from patients and residential homes.

2.39 Patients wishing to return unwanted medicines to the pharmacy may do so by courier, which will be provided and paid for by the pharmacy.

2.40 Patients in locality may contact pharmacy by phone or email to arrange collection of unwanted medicines from their home or work by pharmacy staff.

2.41 Appropriate packaging will be sent to patients in advance and details of the service and how to book a collection will be available on the Pharmacy website.

2.42 Upon return to the pharmacy unwanted medicines will be sorted and placed in disposal units ready for waste management services to collect. The disposal service will be advertised on the website and any marketing leaflets.

2.43 Promotion of Healthy Lifestyles

2.44 Identification of patients for promotion of healthy lifestyles can take two forms, namely, passive or active.

2.45 Active patients will be those who have chosen to access the Lifestyle Questionnaires via the website or returned them by post and who are then identified from the results as patients to whom further information should be sent, or who should be called to follow up on the results and offer additional support and information.

2.46 Passive patients are those where the identification happens as part of another interaction with the patient, but where the patient does not appear to be actively

seeking additional assistance. For example, the dispensing of a prescription which identifies the patient as having high blood pressure.

2.47 All patients who have prescriptions dispensed or purchase medicines from the pharmacy will be asked to fill in the Lifestyle Questionnaire which will ask for details such as existing medical conditions, height, weight and also lifestyle questions such as whether a patient is a smoker and how much exercise they normally have on a weekly basis.

2.48 Leaflets will be delivered to patients with their medication. Those identified (Active or Passive) as having medical conditions such as diabetes, coronary heart disease, COPD, Asthma, high blood pressure, smokers, overweight individuals, etc. or being at risk from them or other conditions will also receive targeted campaigns to increase the patient's knowledge and understanding of health issues relevant to them. The website will also be used to promote healthy lifestyles.

2.49 Health Campaigns

2.50 The Pharmacy will take part in national health campaigns to promote health messages to our patients across England. This will be achieved by sending out leaflets with prescriptions during specific targeted campaign periods and providing additional advice and learning resources via the website.

2.51 Patients will be directed to the learning resources via email, text and other non face-to-face communication so that they are aware of the campaign.

2.52 Patients should also be assessed for participation in at least one clinical audit and whichever of the following that the ICB specifies—

2.53 (i) a clinical audit carried out in a manner which is compatible with the ICB's arrangements for the receiving and processing of data from the audit, or

2.54 (ii) a policy based audit (to support the development of the commissioning policies of the NHSCB) carried out in a manner which is compatible with the ICB's arrangements for the receiving and processing of data from the audit.

2.55 Signposting and Support for Self-Care

2.56 Patient will be signposted to health and social care providers and/or any other assistance available whenever necessary. To assess whether patients require advice to minimise inappropriate use or health or social care services the pharmacist will use the same "Active and Passive" assessment tool already set out above.

2.57 Where it appears to the pharmacist, after reviewing the assessment and having regard to the need to minimise inappropriate use of health and social care services and of support services, that a person using the pharmacy would benefit from advice to help manage their medical condition then advice will be provided via non face to face methods of communication and this will include advice on both treatment options, non prescription medicines and lifestyle advice.

2.58 If a patient;

2.58.1 (a) requires advice, treatment or support that the pharmacy cannot provide; but

2.58.2 (b) another provider, of which the pharmacy is aware, of health or social care services or of support services is likely to be able to provide that advice, treatment or support,

2.59 The pharmacy will provide contact details of that provider to that person and will, in appropriate cases, refer that person to that provider.

2.60 Referral for Certain Appliances

2.61 Where, on presentation of a prescription form or repeatable prescription, the pharmacy is unable to provide an appliance or stoma appliance customisation because the provision of the appliance or customisation is not within the pharmacy's normal course of business, the pharmacist will—

2.62 (a) if the patient consents, refer the prescription form or repeatable prescription to another NHS pharmacist or to an NHS appliance contractor; and

2.63 (b) if the patient does not consent to a referral, provide the patient with contact details of at least 2 people who are NHS pharmacists or NHS appliance contractors who are able to provide the appliance or stoma appliance customisation (as the case may be), if these details are known to the pharmacist.

2.64 In appropriate cases, the pharmacist will keep and maintain a record of any information given or referral made to facilitate auditing and follow up care.

2.65 Support for People with Disabilities

2.66 This service will be provided in accordance with the Equality Act 2010. The Applicant will make reasonable pharmaceutical adjustment to ensure that those who qualify for help under the Act are provided with the right compliance aids.

2.67 The Applicant will conduct an initial assessment with the patient, care or representative to assess the support required to improve medication compliance. Such assessments will be carried out without patients having to access the pharmacy premises, so that no face-to-face contact at the premises will take place.

2.68 Compliance aid systems such as blister packs/dosette boxes will be provided in compliance with both service levels 1 & 2 respectively.

2.69 Clinical Governance

2.70 Note: Clinical Governance is not an 'essential service' and is therefore dealt with briefly in this submission.

2.71 The Applicant will be involved in and comply with all the components of clinical governance including, but not limited to, compliance with standard operating

procedures, patient safety incident and near miss reporting, demonstrating evidence of Pharmacist and Pharmacy Technician CPD, conducting clinical audits, workforce survey and drug recalls.

2.72 'How to Make a Complaint or compliment' will be displayed and downloadable from the pharmacy website or upon request by telephone or post a copy will be posted.

2.73 All staff will be qualified or undergoing nationally accredited training. They will be competent to deliver the highest standards of Clinical Governance. All staff will receive individual and collective training, development and education provided in-house or from accredited external providers.

2.74 All staff will have an annual appraisal, receive and provide feedback.

2.75 Information Governance

2.76 The pharmacy will be registered and comply with Data Protection Act and the General Data Protection Regulations (GDPR) . It will also comply with the Access to Health Records Act 1990. All patient data will be kept private and confidential in accordance with NHS and legal obligations on data security, protection and confidentiality.

2.77 The pharmacy will receive support from the PMR provide [sic] to ensure that continuous access to the Electronic Prescription System is maintained.

2.78 Two members of staff will have the ability to login to the PMS system on all days (where there are 2 or more staff members working) and the NHS mail system will be checked every day for both general emails and also for any referrals under the Discharge Medicines Service.

2.79 Discharge Medicines Service (“DMS”)

2.80 When NHS patients are discharged from hospital or there is, for other reasons, a transfer of care of them between different providers of NHS services, community pharmacies may be asked to perform a three stage service in respect of the patient, principally linked to changes in medication. The second and third stages of this service are linked to the first prescription presented post-discharge or post transfer. Issues of concern may be raised by the pharmacy contractor not only with the patient or their carer but also with their general practitioner.

2.81 Under the DMS the pharmacy must provide assistance and support to, and in respect of, an NHS patient.

2.82 (a) recently discharged from hospital who is referred to the pharmacy for advice, assistance and support in respect of the patient’s medication regimen by the staff of the hospital in which the patient stayed; or

2.83 (b) who is otherwise referred to the pharmacy for advice, assistance and support in respect of the patient’s medication regimen by the staff of an NHS trust or NHS foundation trust as part of arrangements linked to the transfer of care between different providers of NHS services.

2.84 The service allows and requires the pharmacy to help not only the patient directly, but also (within the bounds of confidentiality) their carers and also provide them with assistance and support.

2.85 The service is designed in 3 Stages, where each Stage builds on the last to provide additional support if required to the patient or, where appropriate their carer.

2.86 The pharmacist must use their clinical judgement when considering their actions and recommendations in respect of the service and consider the duty of confidentiality to the patient when involving a carer in discussions about the patient and their medication regimen.

2.87 If the DMS referral requesting that the pharmacy provides the DMS includes circumstances in which the pharmacy is not to provide, or is to cease to provide the DMS service, then the Pharmacy is not to, or is to cease to, provide the DMS in those circumstances (for example, X's or Y's admission or readmission to hospital).

2.88 Pandemic Treatment Protocol ("PTP")

2.89 The pharmacy will provide medicines properly requested under any PTP arrangements.

2.90 The RP should (and if requested to do so by the person being supplied must)

2.90.1 Provide an estimate of the time the drug will be ready and delivered.

2.90.2 If the drug is not ready by the time then provide a revised estimate of when the drug will be ready and continue to update the patient on this time should the estimate change.

2.90.3 Contact the patient to confirm dispatch of the medication.

2.91 In addition to the normal requirements, the dispensing label on the packaging of the product supplied must also contain the additional wording shown below;

2.91.1 THIS PRODUCT IS BEING SUPPLIED IN ACCORDANCE WITH THE [INSERT NAME] PANDEMIC TREATMENT PROTOCOL

2.92 And insert the name of the relevant protocol.

2.93 Refusal to Supply under PTP

2.94 The pharmacy may refuse to provide an order for a drug that is or is purportedly in accordance with PTP where—

2.94.1 (a) The RP reasonably believes it is not a genuine order for the person who requests ,or on whose behalf is requested, the provision of the drug;

2.94.2 (b) providing it would be contrary to the RP's clinical judgement;

2.94.3 (c) The RP or other persons are subjected to or threatened with violence by the person who requests the provision of the drug, or by any person accompanying (see footnote re “accompanying”) that person; or

2.94.4 (d) the person who requests the provision of the drug, or any persona accompanying (see footnote re “accompanying”) that person, commits or threatens to commit a criminal offence.

2.95 The pharmacy must refuse to provide, pursuant to a PTP, an order for a drug that is or is purportedly in accordance with the PTP where P is not satisfied that it is in accordance with the PTP.

2.96 Any refusal to supply must be noted on the patient and / or pharmacy record system.

2.97 Delivering Medicines

2.98 The Responsible Pharmacist (RP) has overall responsibility for ensuring the delivery of medicines to intended patients. Medicines must be delivered safely and with appropriate instructions.

2.99 The RP must take adequate measures to ensure that the delivery mechanism used is secure and that medicines are delivered to the intended user promptly, safely, and in a condition appropriate for use. If the delivery to patients is local, this will be undertaken by the delivery driver except fridge lines which must be sent by courier. All other nationwide deliveries (other than fridge lines) will be delivered by Royal Mail special delivery or courier and signed for by the patient, their notified carer or other patient authorised representative. Fridge Lines will be delivered by courier (see further below).

2.100 Medicines will be packed, transported and delivered in such a way that their integrity, quality and effectiveness are preserved. The delivery mechanism used will provide a verifiable audit trail for medicine from the initial request through to its final delivery, or its return to the pharmacy in the event of a delivery failure. Packaging must maintain patient privacy and confidentiality.

2.101 Choice of packaging will depend on the nature of the items being delivered and the appropriate level of protection must be used to ensure that the item can withstand the normal rigours of the delivery process.

2.102 All packaging must have the tamper proof seals provided in the pharmacy attached to the packaging so that any tampering with the packaging will be evident.

2.103 Medicine for local delivery which is (A) not fragile and (B) is to be delivered by the delivery driver can be packaged in the using the normal pharmacy bags supplied for standard prescription items.

2.104 Medicines classified as non-flammable or non-toxic must be securely closed and placed in a leak-proof container such as a sealed polythene bag (for liquids) or a siftproof container (for solids). Must be tightly packed in strong outer packaging and must be secured or cushioned to prevent any damage.

2.105 This means that for postal / courier items, either:

2.106 At the very least - padded envelopes even for non-fragile items as this will help to ensure the integrity of the manufacturers packaging.

2.107 For most items - bubble wrap and where necessary, polystyrene filler, placed within a cardboard box. Cardboard boxes must be the re-enforced type.

2.108 Large or any fragile medicines should be packed into cardboard boxes with bubble packaging and filling material to protect from damage.

2.109 The patient, carer or notified, authorised patient representative must always sign and date a receipt to prove safe receipt of the medicines. A patient who is not at home when delivery is attempted will be informed using a non-delivery notice and an alternative delivery date will be arranged.

2.110 A list of the approved cold chain couriers will be maintained within the Pharmacy. Coldchain items will be stored in styrofoam filled cardboard boxes prior to being passed to the courier and marked with the “FRAGILE” and “FRIDGE LINE” stickers. Additional packing will not be required as the courier company will transport the boxes in vans with cold chain sections that protect the integrity of the box and are fully monitored. Some thermolabile products can be damaged by excessive cold as well as heat. Items such as ice packs can cause freezing in medicines which is damaging to them and will therefore not be used in direct contact with any medicine. The courier service will be a dedicated, fully monitored and temperature controlled delivery service. Any breach of the cold chain will be automatically notified to the driver who will then follow the failed delivery procedure and notify the pharmacy accordingly so that re-delivery can be arranged. Where the cold chain breach notice is issued items will not be re-used.

2.111 Controlled Drugs

2.112 Delivery of Controlled Drugs

2.113 There is provision within controlled drugs legislation to cover occasions when a controlled drug (CD) may temporarily be in the possession of a third party, e.g. a delivery person or postal carrier, while it is being transferred from one authorised person to another authorised person who is entitled to be in possession of the drug. Delivery of CD will be carried out by couriers with pharma grade specialist facilities to meet specific quality and validation requirements for healthcare products. This includes Home Office licensed controlled drug stores.

2.114 Return and Destruction of CONTROLLED DRUGS

2.115 Appropriate packaging will be sent to patients in advance with instructions for packaging any returned medicines and this will be provided and paid for by the pharmacy. The Superintendent Pharmacist will specify the appropriate method of collection depending on the items being returned and the distance from the pharmacy. Patients may also be signposted to alternate pharmacies if they prefer to return medicines to a different pharmacy. Any ‘returned’ Controlled Drugs must not be re-used or entered into the CD register. The Applicant will

denature and render them irretrievable as soon as possible in order to avoid storage problems and an increased security risk.

2.116 Destruction must be witnessed by another member of staff. If not immediately destroyed, they should be segregated from main stock, clearly marked 'Patient Returns' to minimise the risk of errors and inadvertent supply and stored securely in a CD Cabinet waiting to be denatured. A record of destruction will be recorded in a separate CD Destruction Register designated for this purpose and will be available in the pharmacy for inspection.

2.117 Cover for Breaks / Working Time Directive

2.118 Any breaks in working time taken by the RP will be covered by a second pharmacist who will then assume the responsibility of the RP.

2.119 Contingency Planning

2.120 The Applicant will have accounts direct to pharmacy manufacturers and many full-line and short-line pharmaceutical wholesalers to try and increase the availability of stock and reduce Owings. A Contingency Plan will be in place to ameliorate the effects of any disruption to provision of pharmaceutical services such as medicines shortage, postal strike, EPS systems failure, etc.

2.121 Verification of Declarations of Prescription Exemptions

2.122 The reverse of the prescription should be fully completed (other than age exempt patients) in black ink.

2.123 Where evidence of exemption is required or provided by the patient it can be sent to the pharmacy for verification via the delivery driver and then returned to the patient. The PMR system should be updated to reflect that necessary check has been carried out and a note of when the next check is required should be entered onto the system. The Regulations require a patient to produce ‘satisfactory evidence’ to confirm exemption. Where appropriate (i.e. for deliveries made other than by the pharmacy’s delivery driver), the patient may scan copies of the evidence to the pharmacy (or use the postal / courier service, but see NOTE below) and the pharmacy can record that the evidence provided was not in the original format. It is for the pharmacist in charge to determine if the evidence is satisfactory or not and, if not, then cross the ‘Evidence not Seen’ box.

2.124 The type of exemption and date of expiry will be recorded in their Patient Medication Record. If they are not exempted prescription charge payments will be made using a secure on-line payment method.

2.125 Exemptions may be sent to the pharmacy by post and the pharmacy will pay for postage and return the exemption to the patient free of charge. Scanned email copies of exemptions are also acceptable. The nature of any exemption will be recorded on the PMR system with a copy attached to the patient’s file.

2.126 Payment for prescription charges will be received via the secure payment portal on the website and when payment is received the prescription will be marked as paid.

2.127 Pharmacy Profile

2.128 The pharmacy profile will be properly maintained in the NHS Digital Directory of Services

2.129 Central Alerting System

2.130 The pharmacy will maintain access to the MHRA Central Alerting System using the premises specific NHS mail email address which will be checked on a daily basis.

2.131 Registration of the Premises with the GPhC

2.132 It is not lawful to operate a Pharmacy without registering the premises and Superintendent Pharmacist with the GPhC. The Applicant will apply to register the premises with the GPhC following the grant of an NHS Contract application. The GPhC will send an inspector to inspect the premises for approval before commencement of any Pharmacy services. The GPhC has a team of inspectors who undertake the routine monitoring and inspection of premises.

2.133 Practice Leaflet

2.134 Nothing in the Applicant's practice leaflet, or publicity material in respect of the listed chemist premises, in material published on behalf of the Applicant publicising services provided at or from the listed chemist premises or in any communication (written or oral) from the Applicant or the Applicant's staff to any person seeking the provision of essential services will represent, either expressly or impliedly, that—

2.134.1 (i)the essential services provided at or from the premises are only available to persons in particular areas of England, or

2.134.2 (ii)the Applicant is likely to refuse, for reasons other than those provided for in the Applicant's terms of service, to provide drugs or appliances ordered on prescription forms or repeatable prescription forms which are presented by particular categories of patients (for example, because the availability of essential services from the Applicant is limited to other categories of patients).

2.135 Advanced or Enhanced Services

2.136 The pharmacy will only offer services that can be delivered remotely and do not require patients to attend the premises."

## 3 The Decision

The Commissioner considered and decided to refuse the application. The decision letter dated 23 June 2025 states:

3.1 "Shropshire and Telford and Wrekin 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.

3.2 You have a right of appeal to the Secretary of State against Shropshire and Telford and Wrekin ICB's decision. Should you choose to appeal then you should 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 Primary Care Appeals, NHS Resolution, 8th Floor 10 South Colonnade, Canary Wharf, London, E14 4PU"

DECISION REPORT

3.3 "Distance Selling Premises – excepted application

3.4 Sohawon Property Company Ltd

3.5 CAS-341965-B6R9K8

3.6 Unit 2, Sutton Road, Admaston, Shropshire, TF5 0AY

3.7 Decision:

3.8 Regulation 31 – refusal: same or adjacent premises

3.8.1 (1) A routine or excepted application, other than a consolidation application, must be refused where paragraph (2) applies.

3.9 Regulation 31(2)(a)(i)

3.9.1 There is no person on the pharmaceutical list providing or has undertaken to provide pharmaceutical services at the same premises, therefore this Regulation does not apply.

3.10 Regulation 31(2)(a)(ii)

3.10.1 There is a person on the pharmaceutical list who has undertaken to provide pharmaceutical services from an [sic] premises at Unit 4, Sutton Road, Admaston, Shropshire, TF5 0AY.

3.10.2 This regulation applies and therefore committee need to consider Regulation 31(2)(b)

3.11 Regulation 31(2)(b)

3.11.1 As Sohawon Property Company Ltd are included on the pharmaceutical list at the adjacent premises, it is reasonable to treat the services that the applicant proposes to provide as part of the same service as the existing services, given that the applicant and the existing contractor are one and the same.

3.11.2 This regulation applies and therefore the Committee determined that this application must be refused.

3.12 The Committee then went on to Consider Regulation 25

3.13 Regulation 25 – Distance Selling Premises Applications

3.14 Regulation 25(2)(a) – The NHSCB must refuse an application to which paragraph 1 applies-

3.15 If the premises in respect of which the application is made are on the same site or in the same building as the premises of a provider of primary medical services with a patient list.

3.16 The applicant confirmed that the proposed premises are not on the same site or in the same building as the premises of a provider of primary medical services with a patient list.

3.17 This is confirmed with information available on the NHS.UK website where the nearest general practice is located 0.4 miles away.

3.18 Therefore, the Committee concluded that it is not required to refuse the application under Regulation 25(2)(a).

3.19 Regulation 25(2)(b)(i) – The uninterrupted provision of essential services, during the opening hours of the premises, to persons anywhere in England who request those services.

3.20 The Committee was not satisfied that pharmacy procedures meet the standard required to satisfy the regulatory requirements of the uninterrupted provision of essential services to anyone in England who request such services. No additional information has been provided to satisfy us that the SOPs now meet the requirements of this Regulation.

3.21 Regulation 25(2)(b)(ii) – The safe and effective provision of essential services without face to face contact between any person receiving the services, whether on their own or on someone else's behalf, and the applicant or the applicant's staff.

3.22 The Committee was not satisfied that the pharmacy procedures meet the standard required to satisfy the regulatory requirements of the provision of essential services without face to face contact. no additional information has been provided to satisfy us that the SOPs now meet the requirements of this Regulation.

3.23 The Committee refused the application.

3.24 The Committee determined that the applicant has been granted appeal rights.

3.25 <u>Specific conditions – Distance Selling Premises</u>

3.26 As the application is in respect of distance selling premises, by virtue of Regulation 64(3) of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended, if the applicant is subsequently included in the pharmaceutical list for the area of Telford and Wrekin Health and Wellbeing board in respect of the premises included in the application, that inclusion will be subject to the following conditions:

3.27 The applicant must not offer to provide pharmaceutical services to persons who are present at (which includes in the vicinity of) the proposed premises.

3.28 The means by which the applicant provides pharmaceutical services must be such that any person receiving those services does so otherwise than at the proposed premises.

3.29 The proposed premises must not be on the same site or in the same building as the premises of a provider of primary medical services with a patient list.

3.30 The pharmacy procedures for the premises must be such as to secure:

3.30.1 the uninterrupted provision of essential services, during the opening hours of the premises, to persons anywhere in England who request those services,

and

3.30.2 the safe and effective provision of essential services without face-to-face contact between any person receiving the services, whether on their own or on someone else's behalf, and the applicant or the applicant's staff; and

3.31 Nothing in the applicant's practice leaflet, in the applicant's publicity material in respect of the proposed premises, in material published on behalf of the applicant publicising services provided at or from the proposed premises or in any communication (written or oral) from the applicant or the applicant's staff to any person seeking the provision of essential services from the applicant must represent, either expressly or impliedly, that:

3.31.1 the essential services provided at or from the premises are only available to persons in particular areas of England, or

3.31.2 the applicant is likely to refuse, for reasons other than those provided for in the applicant's terms of service, to provide drugs or appliances ordered on prescription forms or repeatable prescription forms which are presented by particular categories of patients (e.g. because the availability of essential services from the applicant is limited to other categories of patients)"

## 4 The Appeal

In a letter dated 26 June 2025, Sohawon Property Company Ltd, via its representative Rushport Advisory LLP, appealed against the Commissioner's decision. The grounds of appeal are:

4.1 "I act for Sohawon Property Company Limited and have been instructed by my client to submit this appeal against the attached decision of the Commissioner to refuse the above application.

4.2 As the Committee will note, the Commissioner has refused the application as it considered that regulation 31 applied. Regulation 31 does not apply for the reasons stated below.

4.3 Background

4.4 The background is relevant in this application.

4.5 On 22 March 2023 my client submitted an application under regulation 25 for premises at **Unit 4**, Sutton Road, Admaston, Shropshire, TF5 0AY (note Unit 4 and not Unit 2). [emphasis added by Rushport Advisory LLP]

4.6 The application was approved by the Commissioner and the letter approving the application was received on 18 September 2023.

4.7 Subsequent to this my client submitted their notice of commencement ("NoC" attached) on 16 October 2024 and did so for Unit 4 as per the application approval without realising that the unit they had a lease for and had registered with the GPhC was in fact Unit 2. See below for the GPhC register confirmation of address.

| Pharmacy name | Owner's name | Address | Registration number | Status |
|---|---|---|---|---|
| Admaston Pharmacy Online | Sohawon Property Company Ltd | Unit 2, Sutton Road, Admaston, Telford, Shropshire, TF5 0AY | 9012571 | Registered |

4.8 The Commissioner accepted the NoC and my client commenced trading on 18 November 2024. On 20 November 2024 the Commissioner realised that the GPhC address and pharmaceutical list address did not match. By that time my client has received a total of 7 prescription items from the premises that they had registered with the GPhC as a pharmacy, namely Unit 2 but had (with patients consent) had those dispensed at a different pharmacy that was on the pharmaceutical list (see attached letter entitled "EMAILS WITH COMMISSIONER).The Commissioner contacted my client and my client immediately confirmed that no NHS were being provided.

4.9 As the Commissioner was unable to amend the address details, my client had no choice other than to submit a second application, this time, correctly, for Unit 2. It is this application that the Commissioner has refused and is the subject of this appeal.

4.10 Refusal and Appeal Grounds

4.11 The Commissioner's grounds for refusing the application are stated as;

4.11.1 *Regulation 31(2)(a)(ii) There is a person on the pharmaceutical list who has undertaken to provide pharmaceutical services from an adjacent premises at Unit 4, Sutton Road, Admaston, Shropshire, TF5 0AY.*

4.11.2 *This regulation applies and therefore committee need to consider Regulation 31(2)(b)*

4.11.3 *Regulation 31(2)(b) As Sohawon Property Company Ltd are included on the pharmaceutical list at the adjacent premises, it is reasonable to treat the services that the applicant proposes to provide as part of the same service as the existing services, given that the applicant and the existing contractor are one and the same.*

4.11.4 *This regulation applies and therefore the Committee determined that this application must be refused*.

4.12 The Commissioner was wrong to refuse the application for the following reasons;

4.12.1 There is no pharmacy trading at Unit 4, nor has there ever been.

4.12.2 Unit 4 is not owned or controlled or used in any way by my client.

4.12.3 There are no "existing services" at Unit 4 as no services are, or have ever, been provided from Unit 4.

4.13 As a result 31(2)(b) cannot apply.

4.14 The Commissioner states that "*there is a person on the pharmaceutical list who has undertaken to provide pharmaceutical services from an adjacent premises at Unit 4, Sutton Road, Admaston, Shropshire, TF5 0AY*". It is unclear why the Commissioner has not removed this entry from the pharmaceutical list given that they are aware that it was erroneously added. A valid Notice of Commencement must contain the GPhC premises registration number for the premises that NHS services will be provided from and as my client did not provide that (as the wrong premises had been applied for) the Notice of Commencement was invalid and the current entry for Unit 4 should have been removed by the Commissioner.

4.15 In any event, for the reasons given above, namely that no services either can or ever have been provided from Unit 4 it is not reasonable to treat the services that the applicant proposes to provide as part of the same service as the existing services as there are no existing services.

4.16 My client entirely accepts that it is their fault and their mistake that has led to this new application having to be submitted but is also disappointed that the Commissioner has refused its application when the facts were fully known.

4.17 As the application is now at appeal, my client has instructed me to submit the attached SOPs that have been approved by my client for use at the proposed pharmacy and we trust that these provide the Committee with sufficient detail to allow the appeal.

4.18 We look forward to hearing from you in due course."

## 5 Summary of Representations

This is a summary of representations received on the appeal.

5.1 THE COMISSIONER

5.1.1 “Please see representations below in response to SHA/26650 and as referenced within, email attachments named:

5.1.1.1 Query for Sohawon Property Company Ltd – DSP – TF5 0AY

5.1.1.2 URGENT FOR ESCALATION - Sohawon Property Company Ltd – DSP – TF5 0AY – CAS-341965-B6R9 [provided for Committee at Appendix A]

Background Information

5.1.2 Sohawon Property Company Ltd submitted a DSP application on 22.3.2023 to PCSE and gave an address of Unit 4, Sutton Road, Admaston, Shropshire, TF5 0AY. The application was granted by the Pharmaceutical Services Regulations Committee on behalf of Shropshire, Telford and Wrekin ICB and the applicant duly submitted a notice of commencement giving the same address.

5.1.3 It is noted that there had been some confusion on 27 September 2024 in relation to the premises Unit number as identified by PCSE and confirmed by the applicant that the correct premises was Unit 4 as detailed below:

5.1.4 EMAIL DATED 27 SEPTEMBER 2024 FROM SOHAWON PROPERTY COMPANY LTD TO PCSE – 14:57

5.1.4.1 Hi [PCSE]

5.1.4.2 Thank you for providing me with the correct form, duly completed. It was my mistake yesterday. You are indeed correct, it is supposed to be Unit 4.

5.1.4.3 Kind regards, [Sohawon Property Company Ltd)

5.1.5 EMAIL DATED 27 SEPTEMBER 2024 FROM PCSE TO SOHAWON PROPERTY COMPANY LTD – 10:02

5.1.5.1 Good morning [Sohawon Property Company Ltd]

5.1.5.2 Many thanks for the attached form (Short Notice Request Form), unfortunately this is not the correct one. Please complete the attached notice of commencement form and resubmit.

5.1.5.3 The form you submitted is only required when giving less than 30 days notice. I also note that you have stated the address as Unit 2, however the application is Unit 4. Any explanation?

5.1.5.4 Kind regards, [PCSE]

5.1.6 The notice of commencement was received by PCSE on 16th October 2024 and was confirmed as a valid notice with a commencement date of 18th November 2024.

5.1.7 The agent, on behalf of the appellant, states that the notice of commencement was invalid because it contained the GPhC number for a different premises. Paragraphs 34(3A), (3C) and (4), Schedule 2 set out what makes a notice of commencement invalid and these all relate to the timing of submission of the notice and the amount of time between submission and the commencement of service provision. Assuming there is no issue with any of those requirements, the notice of commencement was valid.

5.1.8 The agent is perhaps claiming that the notice of commencement may not have been "in the correct form". Paragraph 34(3), Schedule 2 states that for a notice of commencement to be "in the correct form" it must include the information required under paragraph 29, Schedule 2 and be in the same format as the version sent with the decision letter.

5.1.9 In accordance of paragraph 29, Schedule 2, one of the pieces of information that must be included in the notice of commencement is the registration of the pharmacy premises with the GPhC. At the time PCSE noted when checking the notice of commencement that the GPhC premises registration number that had been given was for the premises at Unit 2. This was queried with Sohawon Property Company Ltd who confirmed that this was a mistake, and it was supposed to be Unit 4. It was therefore safe to assume that as Sohawon Property Company Ltd had given the address as Unit 4 on the notice of commencement it would resolve its error with the GPhC.

5.1.10 The applicant and their premises were included in the Telford and Wrekin Health and Wellbeing Board pharmaceutical list on Monday 18th November 2024 and as confirmed by the circulation of the Memo of Inclusion issued on behalf of PCSE to the applicant and all relevant parties.

5.1.11 On behalf of the ICB, the Office of the West Midlands when including the contractor and pharmacy premises details onto the relevant pharmaceutical list, identified various discrepancies and duly queried these with the contractor:

5.1.12 The contractor then confirmed that an error had been made on the application form, and the address should have been Unit 2, Sutton Road, Admaston, Telford, Shropshire, TF5 0AY.

5.1.13 Please note that this is a different submission than as made by the applicant to the PCSE on 27 September 2024 as detailed above.

5.1.14 The contractor was informed that it was not possible to amend the address of the pharmacy premises. The application form included the address of Unit 4, Sutton Road, Admaston, Shropshire, TF5 0AY, which was granted by the Pharmaceutical Services Regulations Committee.

5.1.15 The notice of commencement was submitted listing the same address.

5.1.16 Therefore, Sohawon Property Company Ltd and their premises were included in the relevant pharmaceutical list on Monday 18 November 2024.

5.1.17 The only premises that Sohawon Property Company Ltd can provide pharmaceutical services from is Unit 4, Sutton Road, Admaston, Shropshire, TF5 0AY. The company was informed that it cannot provide pharmaceutical services at Unit 2, Sutton Road, Admaston, Shropshire, TF5 0AY and therefore cannot submit any prescriptions for payment, nor can it sign up to provide, or provide, any advanced services.

5.1.18 It was a recommendation that the company seek independent advice regarding this matter.

5.1.19 Full details are included in the email attachment named Re: Query for Sohawon Property Company Ltd – DSP – TF5 0AY.

In relation to Regulation 31

5.1.20 To date, Sohawon Property Company Ltd t/a Admaston Pharmacy Online at Unit 4, Sutton Road, Admaston, Telford, Shropshire, TF5 0AY have not submitted notification to withdraw its premises from the relevant pharmaceutical list by the Market Exit process and therefore remain included.

5.1.21 Under the provision of reg 74(3) and at the time of the determination of the application currently at appeal, a period of 6 months of non-provision of pharmaceutical services had not been reached in order for the ICB to consider mandatory removal as appropriate.

5.1.22 At the time of the determination of the application currently at appeal, the contractor remains included in the relevant pharmaceutical list in respect of Unit 4 and therefore the PSRC had no option other than to refuse the application by virtue of Regulation 31 as provided in the decision report supplied previously.

5.1.23 Refusal: same or adjacent premises

5.1.24 Regulation 31

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

5.1.25 Regulation 31(2)(a) applies because there is a person on the pharmaceutical list who has undertaken to provide pharmaceutical services from adjacent premises, Unit 4 – Sohawon Property Company Ltd. Regulation 31(2)(b) applies as the applicant and the existing contractor are one and the same.

In relation to Regulation 25

5.1.26 The Pharmaceutical Services Regulations Committee (PSRC) note the additional information provided within the Rushport email 100725 supplied, which include Sohawon Property Company – DSP – SOPs. The additional information provided to NHS Resolution in relation to the provision of Essential Services, is new information that was not available to PSRC at the time a decision was made. If that information was available, the PSRC may have come to a different conclusion.

5.1.27 It is accepted that it was not a requirement of the Regulations at the time of determination to provide information in relation to provision of Advanced and Enhanced Services.

Additional information

5.1.28 Primary Care Appeals – please note the agent acting on behalf of the appellant did contact the Office of the West Midlands directly and in relation to this matter after the PSRC determination was made. Full details are included in email attachments named Re: URGENT FOR ESCALATION – Sohawon Property Company Ltd – DSP – FT5 0AY – CAS-341965-B6R9."

5.2 BOOTS UK LTD

5.2.1 "Thank you for your letter 24th July [sic] informing us of the above appeal.

5.2.2 Boots UK Ltd have no further comments to make and we respectfully ask that NHS Resolution inform us of the decision in due course."

5.3 COMMUNITY PHARMACY SHROPSHIRE

5.3.1 "Thank you for your emailed letter of 24th July 2025 regarding the above appeal; the LPC has makes [sic] the following observations:

5.3.2 The applicant had made an error on the original application, about which they contacted the LPC once this had been discovered.

5.3.3 The LPC took advice from Community Pharmacy England (CPE) who confirmed that there was no process to amend the address at which they were contracted to provide NHS Pharmaceutical Services.

5.3.4 The applicant confirmed to the LPC that no provision of NHS Pharmaceutical Services had been made at the contracted address (Unit 4), nor at the GPhC registered address (Unit 2), and further that all prescriptions received had been returned to the Spine, and patients informed.

5.3.5 The LPC notes from local knowledge that Unit 4 Sutton Road is currently occupied by Admaston News, and no evidence of Pharmaceutical Services being provided at the premises.

5.3.6 The LPC notes that the ODS code for Admaston Pharmacy is still active; we are unaware whether a notice to close this site has been received by the ICB, or whether this has been suggested to the appellant being as the premises has been unable to provide pharmaceutical services throughout the period of it being active.

5.3.7 The LPC notes the email from the applicant's advisors and the provision of amended SOPs relating to the provision of services and how these reflect whether the services may service to demonstrate meeting of the relevant legal tests outlined in Regulation 25(2)(b)(ii), however makes no comment on this.

5.3.8 Please keep us informed of all further developments in relation to this appeal."

## 6 Summary of Observations

This is summary of observations received.

### 6.1 RUSHPORT ADVISORY LLP ON BEHALF OF THE APPLICANT

6.1.1 "I act for Sohawon Property Company Limited and have been instructed by my client to submit these final comments in relation to comments provided by interested parties.

6.1.2 I am genuinely surprised that the ICB is maintain that [sic] regulation 31 applies in this case, when even a most basic examination of the facts shows that is not correct.

6.1.3 It is an undisputed fact that the ICB accepted a Notice of Commencement that contained a GPhC premises number for a different premises and was therefore not valid. My client was also at fault and accepts this.

6.1.4 It is an undisputed fact that there is no pharmacy trading at Unit 4, nor has there ever been. Unit 2 is the premises that my client wishes to open in

6.1.5 The ICB states;

6.1.5.1 It was therefore safe to assume that as Sohawon Property Company Ltd had given the address as Unit 4 on the notice of commencement it would resolve its error with the GPhC.

6.1.6 Clearly it was not safe for the ICB to make such an assumption.

6.1.7 The ICB states;

6.1.7.1 “To date, Sohawon Property Company Ltd t/a Admaston Pharmacy Online at Unit 4, Sutton Road, Admaston, Telford, Shropshire, TF5 0AY have not submitted notification to withdraw it’s premises from the relevant pharmaceutical list by the Market Exit process and therefore remain included.”

6.1.8 With respect, my client cannot withdraw premises from the pharmaceutical list that do not exist and were added incorrectly. There is nothing to withdraw. The premises should never have been added to the pharmaceutical list and the pharmacy does not exist, not can it [sic] exist in the future as the time for submitting a correct notice of commencement in relation to that premises has passed. Until today it has never been suggested that my client should submit a withdrawal notice for premises that do not exist. The ICB incorrectly added Unit 4 to the pharmaceutical list and can remove the entry as requested on multiple occasions by my client.

6.1.9 The ICB states,

6.1.9.1 Under the provisions of reg 74(3) and at the time of the determination of the application currently at appeal, a period of 6 months of non-provision of pharmaceutical services had not been reached in order for the ICB to consider mandatory removal as appropriate.

6.1.10 Despite the careful use of language from the ICB it is a fact that the erroneous entry on the pharmaceutical list was made in November 2024. The ICB’s most recent email is dated August 2025. Therefore more than 6 months have elapsed without the provision of pharmaceutical services from the pharmacy that does not exist and the ICB has not removed the incorrect entry despite requests to do so.

6.1.11 The ICB states;

6.1.11.1 Regulation 31(2)(b) applies as the applicant and the existing contractor are one and the same.

6.1.12 The ICB, rather than admit a mistake, simply ignores the requirement for services to be being provided at an existing pharmacy for regulation 31(2)(b) to apply.

6.1.13 It is a fact not in dispute that there are no pharmaceutical services being provided from Unit 2 [sic] and therefore regulation 31(2)(b) cannot apply.

6.1.14 This is the only opportunity my client will have to provide NHS services due to the removal of the regulation 25 exemption. My client has their premises at Unit 2 already fitted out and GPhC registered and simply wishes to provide NHS services to patients. It would be callous in the extreme to use an historical error as a reason to refuse my client's current application.

6.1.15 We look forward to hearing from you in due course."

## 7 Consideration

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

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

***Regulation 31***

7.5 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).*

7.6 The Committee noted that in response to "In my/our view this application should not be refused pursuant to Regulation 31 for the following reasons" the Applicant had stated:

7.6.1 "*Not applicable as no other pharmacy in same or adjacent premises.*

*We were previously granted approval for Unit 4 at the same address, however it subsequently transpired that the correct unit was Unit 2 rather than Unit 4. We cannot now proceed with opening under the previous approval and it will therefore lapse and we have reapplied using the correct unit number."*

7.7 The Committee noted that the Commissioner had refused the application under Regulation 31 as it determined that Regulation 31(2)(b) applied. The Commissioner, in its decision letter, stated:

7.7.1 *"There is a person on the pharmaceutical list who has undertaken to provide pharmaceutical services from an* [sic] *premises at Unit 4, Sutton Road, Admaston, Shropshire, TF5 0AY.*

*This regulation applies and therefore* [sic] *committee need to consider Regulation 31(2)(b). …*

7.7.2 *As Sohawon Property Company Ltd are included on the pharmaceutical list at the adjacent premises, it is reasonable to treat the services that the applicant proposes to provide as part of the same service as the existing services, given that the applicant and the existing contractor are one and the same.*

*This regulation applies and therefore the Committee determined that this application must be refused."*

7.8 The Committee noted the Applicant's arguments that there are no pharmaceutical services being provided from Unit 4, Sutton Road, Admaston, Shropshire, TF5 0AY. Community Pharmacy Shropshire comments that this premises is currently occupied by Admaston News.

7.9 The Committee also noted that the previous application as referred to by the Applicant was for the operation of a distance selling pharmacy at Unit 4, Sutton Road, Admaston, Shropshire, TF5 0AY and that the Applicant submitted a notice of commencement for these premises (i.e. Unit 4) on 16 October 2024 with a commencement date being confirmed for 18 November 2024. The validity of the notice of commencement is considered later in this determination. There is agreement from all parties that the pharmacy which provided the notice of commencement is owned and operated by Sohawon Property Company Ltd which is the same Applicant as in the instant application.

7.10 The Committee had regard to the wording of Regulation 31 and parties' arguments as to whether a person on the pharmaceutical list (which may or may not be the applicant) is providing or has undertaken to provide pharmaceutical services. The Committee specifically noted the Applicant's statements in its observations, in particular that "*there are no pharmaceutical services being provided from Unit 2* [sic] *and therefore regulation 31(2)(b) cannot apply*."

7.11 The Committee considered the relevant parts of Regulation 31(2)(a). The first part refers to "*a person on the pharmaceutical list*". There is no dispute that the Applicant is on the pharmaceutical list at Unit 4.

7.12 The next part is that the person "*is providing or has undertaken to provide pharmaceutical services (the 'existing services') from the premises to which the application relates…*". The Committee considered that "*is providing*" is clearly a reference to there being existing service provision at the proposed location. It is not in dispute that the Applicant is not providing existing services from the premises at Unit 4, due to not occupying the premises.

7.13 The Committee went on to consider the "*or has undertaken to provide*" wording. The Committee considered that the additional wording "*or has undertaken to provide*" is reference to an alternative contrasting situation to "*is providing*". If this was to have the same meaning, there would have been no reason to include such wording. The Committee considered it was reasonable to take the view that "*or has undertaken to provide*" refers to either an extant grant or a provider having submitted a valid notice of commencement. The Committee considered that the inclusion of this language would expressly preclude the Applicant's suggestion that Regulation 31(2)(b) requires services to be being provided, as *'existing services*' is defined by reference to Regulation 31(2)(a). On this basis the Committee concluded that if there was an undertaking to provide services by the Applicant then Regulation 31(2)(b) can apply.

7.14 The Committee noted the parties' comments in this regard. It noted that the Applicant's representative queried the validity of the notice of commencement due to the GPhC registration number being in respect of different premises, namely Unit 2.

7.15 The Committee noted paragraph 34 of Schedule 2 states:

"*(3) A notice of commencement is in the correct form if it—*

*(a) includes the information required under paragraph 29; and*

*(b) is in the same format as the version of the notice sent by with the notice of decision under paragraph 28."*

7.16 Paragraph 29 states:

*"NHS England must send with a notice of decision under paragraph 28 in respect of the grant of an application a template of a notice of commencement, for the applicant to send to it under paragraph 34, in which the applicant is to provide the following information (some of which NHS England may have included in the template that it sends)–*

*(a) the address of the premises to which the application relates;*

*(b) the services that are to be provided from those premises;*

*(c) the date of the grant of the application;*

*(d) a declaration with regard to when the applicant intends to commence the provision of those services at those premises;*

*(e) in the case of pharmacy premises, the registration number for those premises with the General Pharmaceutical Council; and*

*(f) a signature on behalf of the applicant and the date of the notice."*

7.17 The Committee noted the Applicant's representative's comment that "*it was not safe for the ICB to make such an assumption*" that the GPhC registration number being listed for an alternative premises was an error that the Applicant would rectify with the GPhC. The Committee inferred that the Applicant's representative was suggesting that the Commissioner should have read the error as one which had potential implications. The Committee was of the view that it was not unreasonable for the Commissioner to proceed in the way it did having clarified with the Applicant on multiple occasions the correct listing of the premises as Unit 4. The Committee noted that each example of the Commissioner questioning the Applicant on this matter was returned with an apology for the error and confirmation that the correct address was indeed Unit 4. The Committee further noted that the Applicant had undertaken an entire application with the Commissioner whilst quoting Unit 4 as the premises that it wished to provide services from. The Committee was of the view that it is for the Applicant to check forms for accurate information and, whilst the Commissioner may do this as part of its procedures, the onus is on the Applicant to provide accurate information in its responses to any queries.

7.18 The Committee further noted that given the repeated assurances of the premises being Unit 4, the fact that throughout the entire process of application the proposed premises had been indicated to be Unit 4 and the significant mistake that such a series of correspondence would represent, that it was not unreasonable to assume that it was the GPhC registration that would be remedied. The Committee found it difficult to understand how the Applicant failed to identify the error given the repeated confirmations of the premises address.

7.19 The Committee further noted that the paragraph 34 of Schedule 2 states:

*"[(3A) A notice of commencement is invalid unless it is given to NHS England no fewer than 30 days prior to the date on which the provision of services is to commence, unless prior to the notified date NHS England has agreed with P a shorter period of prior notice.*

*…*

*(3C) A notice of commencement is invalid if that date included in it (on or after 25 May 2023), whether when the notice is given or after a change in accordance with sub-paragraph 3(B), as the date on which the provision of services is to commence is more than 60 days after the end of the period within which the notice, if it is to be valid, must be sent, as determined in accordance with sub-paragraph (4).]*

*(4) A notice of commencement is invalid unless it is sent to NHS England within–*

*(a) if, prior to NHS England determining the application–*

*(i) P undertook to commence the provision of the services in respect of which the application was made within a period of less than 6 months, and*

*(ii) that undertaking was not withdrawn,*

*that period;*

*(b) 12 months of–*

*(i) unless paragraph (a) applies, the date on which P was sent the notice of NHS England's decision under paragraph 28 granting the application,*

*(ii) if the grant was appealed by a person with third party appeal rights, the date on which that appeal is determined by the Secretary of State.*

*(iii) if, in the course of granting the application, a decision is taken to impose a condition in accordance with regulation 35 and that condition is appealed by P, the date on which that appeal is determined by the First-tier Tribunal (unless regulation 35(8) applies),*

*(iv) if the grant of the application was subject to a condition imposed by virtue of paragraph 31 of the address of the premises, or*

*(aa) P validly notified to NHS England under a condition imposed by virtue of paragraph 31 of the address of the premises, or*

*(bb) if P appeals successfully against a decision of NHS England that a notification under a condition imposed by virtue of paragraph 31 is invalid, that appeal is determined by the Secretary of State,*

*(v) if P, pursuant to paragraph 32–*

*(aa) notifies NHS England of a new address,*

*(bb) NHS England does not accept the validity of the notification, and*

*(cc) P appeals successfully against that decision,*

*the date on which that appeal is determined by the Secretary of States, or*

*(vi) if the grant of the application was subject to a condition imposed by virtue of paragraph 33, the date on which the condition is imposed by virtue of that paragraph becomes spent or is removed on appeal, or*

*whichever is the latest; or*

*(c) such longer period–*

*(i) not exceeding a further 3 months as NHS England may allow, or*

*(ii) if–*

*(aa) the grant is appealed by a person with third party appeal rights,*

*(bb) a decision to accept a notification pursuant to paragraph 32 is appealed by a third party,*

*(cc) P appeals successfully against a notice under paragraph 35, or*

*(dd) if P appeals successfully against a decision not to allow a longer period under sub-paragraph (i)*

*as the Secretary of State may allow when the appeal is determined.*

*and so once a valid notice of commencement can no longer be sent in relation to an application (having regard also to paragraph 10(2) of Schedule 3), the grant of that application lapses."*

7.20 The Committee noted that the GPhC registration number included in the notice of commencement referred to Unit 2 rather than Unit 4. While Schedule 2, paragraph 29(e) requires the inclusion of the registration number for the premises to which the application relates, the Committee considered that this requirement was met in form, and that the error was administrative rather than substantive. The Committee was satisfied that the Applicant had consistently identified Unit 4 as the intended premises throughout the application process, and that the Commissioner had verified this through repeated correspondence. The Committee further noted that the Regulations do not expressly state that a mismatch in the registration number renders a notice invalid, and that paragraph 34(3) defines a valid notice by reference to inclusion of the required information, not its accuracy. In light of the Applicant's repeated confirmations, and the Commissioner's acceptance of the notice, the Committee concluded that the notice of commencement was validly accepted and that the undertaking to provide services at Unit 4 was properly established.

7.21 The Committee next returned to the language of Regulation 31, in particular the requirement in Regulation 31(2)(b):

"[…]*is satisfied that it is reasonable to treat the services that the applicant proposed 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)*"

7.22 The Committee noted that Regulation 31(2)(b) contains three distinct elements: the Commissioner's satisfaction, the reasonableness of the assessment, and the capacity for the proposed services to be treated as part of the same service. The Committee recognised that this was not an objective test of

reasonableness, but rather a subjective one, requiring the Committee to place itself in the position of the Commissioner and assess whether it would be satisfied on the facts.

7.23 The Committee further noted that the comparison had to be made with the "existing services", which, as it had already determined, included services that had been undertaken to be provided, even if not yet delivered. The Committee noted the Applicant's statement that as no services have been or could be provided from Unit 4 then it would not be reasonable to treat them as the same as the ones which it proposes to provide. However, the Committee found that the Applicant had undertaken to provide services at Unit 4 and currently held the right pursuant to the Regulations to do so. The Committee concluded that the legal and regulatory position required it to compare the services proposed at Unit 2 with those undertaken to be provided at Unit 4, whether or not services are currently being provided.

7.24 The Committee considered that ordinarily to consider if services were the same it would compare ownership, staff, SOPs, and all other factually significant aspects. In doing so, the Committee noted that central to the Applicant's application was the fact that the services proposed at Unit 2 are identical to those undertaken to be provided at Unit 4, save for the location. The Committee therefore concluded that the services would be, factually, part of the same service.

7.25 The Committee considered that the reasonableness element of the test would not assist the Applicant in this instance, as the services are not merely capable of being treated as the same, they were always intended to be the same. It would be unreasonable to treat them otherwise on the basis of the factual information agreed between the parties. The Committee found that the Applicant's intention to open or not was irrelevant in light of the objective facts and that any discretion afforded to it could not be exercised in a manner that contradicted those facts. The Committee acknowledged that the position might be different if the listing at Unit 4 had been withdrawn or was in the process of being withdrawn. However, the appeal before the Committee was not in relation to any decision relating to withdrawal. Instead it was in relation to the current application and, in the absence of such a change, the Committee determined that the services must be treated as part of the same service.

7.26 The Committee noted the Applicant's comment in relation to withdrawing the premises from the pharmaceutical list and that it had not been suggested that this was a process available to them. The Committee noted that the Commissioner had confirmed on 24 September 2025 that the Applicant had not submitted notification to withdraw the premises at Unit 4, Sutton Road, Admaston, Shropshire, TF5 0AY. The Committee considered that the Commissioner could not mandate that the Applicant do so, as such a process is by its very nature, voluntary. The Committee noted that the Applicant had not explained why the Commissioner would have been under any obligation to advise it to withdraw.

7.27 The Committee considered whether removal should have been automatic, noting that Regulation 74 states:

*"(3) If NHS England determines that C has not, during the preceding 6 months, provided pharmaceutical services at chemist premises ("the particular premises") listed in a particular pharmaceutical list–*

*(a) if there are other chemist premises listed in that pharmaceutical list in relation to C, NHS England must remove the listing of the particular premises from that list; or*

*(b) if there are no other chemist premises listed in that pharmaceutical list in relation to C, NHS England must remove C from that list."*

7.28 The Committee considers that the application of Regulation 74 is a matter for the Commissioner. The Committee also noted that at the time of the decision of the Commissioner, insufficient time had passed for it to act on Regulation 74. Whether the Commissioner should since have exercised its powers under Regulation 74(3) was outside the scope of this appeal and therefore not considered by the Committee. The Committee noted that there is no other process under the Regulations which would have allowed the Commissioner to simply remove the Applicant's listing in the circumstances described, nor had either party indicated that such a thing existed. The Committee thus concluded that once the premises was listed the onus was on the Applicant to seek withdrawal, as the Commissioner had no powers under which it could do so.

7.29 The Applicant has stated that it could not seek withdrawal for services "*that do not exist and were added incorrectly*". The Committee considered that from a factual standpoint this statement was incorrect. The premises at Unit 4 are currently listed, and for the purpose of the Regulations a pharmacy exists if it is on the relevant list. The parties both agreed that this is the case in relation to Unit 4 and the Committee considered that the listing was not rendered automatically invalid due to any of the mistakes made by the Applicant.

7.30 The Committee thus reviewed Regulation 67, regarding the process of voluntary withdrawal from the pharmaceutical list, the process which the Applicant would have been required to follow. The Committee noted that the Regulation asked whether the NHS chemist wished to withdraw either the pharmacy listing itself or the listing of a particular premises in relation to them. The Committee observed that Regulation 67 did not require an assessment of the physical reality of service provision but instead focused solely on the status of the listing. In light of the regulatory framework and the Applicant's current listing status, the Committee concluded that there was no apparent barrier to the Applicant making an application under Regulation 67. The Committee considered it was also reasonable to look at the intent of Regulation 31. The Committee noted that the Department of Health guidance clearly indicates the intent of Regulation 31:

*"The purpose of this regulation is to prevent a contractor from applying for multiple inclusions in a pharmaceutical list at the same address with no benefit to patients."*

7.31 The Committee considered that without the current premises listing being withdrawn then there was a potential for the purpose of Regulation 31 to be circumvented. The Committee determined that the Commissioner did not have

the authority to initiate such a withdrawal on the Applicant's behalf and that the Applicant had the ability to make an application under Regulation 67 at any time. The Committee noted that, at the time of the determination, the initial listing at Unit 4 had not been withdrawn. Furthermore, the Committee observed that the Applicant had not indicated any intention to pursue withdrawal, either presently or in the future. The Committee therefore concluded that, were it to grant the current application, the listing at Unit 4 would remain in place, resulting in a duplication of listings.

7.32 The Committee noted the Applicant's statements that it was impossible for Unit 4 to provide services. However, the Committee was mindful of the fact that if the Applicant was able to take ownership of Unit 4 then it would, as per the Regulations, be able to provide services from that location due to its listing by the Commissioner. The Committee considered that having two adjacent locations listed in relation to the same Applicant, for the same services, would result in "*multiple inclusions in a pharmaceutical list at the same address with no benefit to patients".*

7.33 The Committee noted that, although the Applicant acknowledged fault, it also sought to attribute some level of blame to the Commissioner, particularly in regard to the listing. The Committee noted that the Applicant had not provided any explanation for how it had repeatedly misidentified the unit number throughout the application process, despite correctly identifying it in its GPhC registration. This was not a peripheral detail but a central element of the application, relevant to multiple aspects of the Commissioner's assessment. The Commissioner had made repeated efforts to confirm the correct address, yet the Applicant continued to provide inaccurate information. The Committee found it difficult to understand how such a fundamental mistake could have occurred, given that the correct address should have been readily available to the Applicant. The consequences of such an error were, in the Committee's view, both foreseeable and avoidable.

7.34 The Committee also considered the regulatory obligations placed upon the Applicant. The Regulations clearly required the Applicant to engage with the provisions of Regulation 31, and the application process itself demanded that the Applicant reflect on the implications of any existing listing. The Committee found that the Applicant was aware of its listing in relation to Unit 4 and had received no indication that this listing would be removed. In those circumstances, the Committee considered that the Applicant ought to have recognised the need to withdraw or amend the listing before submitting a new application. It was unclear to the Committee why, once the error had been identified, the Applicant did not take steps to withdraw the listing as a matter of principle.

7.35 The Committee further considered the manner in which the parties had engaged with one another. It appeared to the Committee that the situation might have been resolved more efficiently had there been greater cooperation. The Applicant could have sought guidance from the Commissioner prior to submitting the new application, and the Commissioner, while under no obligation to do so, might have suggested withdrawal once the error became apparent. The Committee accepted that the Commissioner was not required to take such steps, and any failure to do so did not amount to a procedural or

regulatory shortcoming. Nonetheless, the Committee was of the view that the matter could have been avoided entirely had both parties communicated more effectively.

7.36 Nevertheless, having reached the current situation, the Committee noted that the Regulations do not allow the Commissioner to remove listings due to errors, or to amend them. It is unclear under what basis the Applicant was suggesting that "*The ICB incorrectly added Unit 4 to the pharmaceutical list and can remove the entry as requested on multiple occasions by my client*." The Committee considered that once the listing was made then the only way to effect removal was through the routes specified under the Regulations.

7.37 The Committee considered that the most effective and swift way to do so would have been via Regulation 63. However, the Committee noted that this required initiation from the Applicant, which it had not been provided any information to evidence occurring. Therefore, the Committee concluded that the listing remains, and that nothing stated by either party would allow for the Committee to ignore or change that fact.

7.38 The Committee therefore had no option but to consider that, as per the Regulations, there was indeed a person on the pharmaceutical list that has undertaken to provide pharmaceutical services from an adjacent premises in respect of Regulation 31(2)(a)(ii).

7.39 The Committee determined that it was required to refuse the application under the provisions of Regulation 31.

## 8 Decision

8.1 The Committee confirms the decision of the Commissioner to refuse the application pursuant to Regulation 31.

**Case Manager**
**Primary Care Appeals**