

REF: SHA/23362

Arena Point
Merrion Way
Leeds
LS2 8PA

APPEAL AGAINST NHS COMMISSIONING BOARD ("NHS ENGLAND") DECISION TO REFUSE AN APPLICATION BY O'BRIENS PHARMACIES LTD FOR A RELOCATION THAT DOES NOT RESULT IN A SIGNIFICANT CHANGE TO PHARMACEUTICAL SERVICES PROVISION UNDER REGULATION 24 FROM 119 RED BANK ROAD, BLACKPOOL, FY2 9HZ TO 2 BLACKPOOL ROAD, BISPHAM, FY2 0HR

Tel: 0203 928 2000
Fax: 0207 821 0029
Email: appeals@resolution.nhs.uk

1 Outcome

- 1.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of NHS England and redetermines the application.
- 1.2 The Committee determined that the application should be granted.

Advise / Resolve / Learn

NHS Resolution is the operating name of NHS Litigation Authority – we were established in 1995 as a Special Health Authority and are a not-for-profit part of the NHS. Our purpose is to provide expertise to the NHS on resolving concerns fairly, share learning for improvement and preserve resources for patient care. To find out how we use personal information, please read our privacy statement at <https://resolution.nhs.uk/privacy-cookies/primary-care-appeals/>



INVESTORS IN PEOPLE
We invest in people Silver



REF: SHA/23362

Arena Point
Merrion Way
Leeds
LS2 8PA

APPEAL AGAINST NHS COMMISSIONING BOARD ("NHS ENGLAND") DECISION TO REFUSE AN APPLICATION BY O'BRIENS PHARMACIES LTD FOR A RELOCATION THAT DOES NOT RESULT IN A SIGNIFICANT CHANGE TO PHARMACEUTICAL SERVICES PROVISION UNDER REGULATION 24 FROM 119 RED BANK ROAD, BLACKPOOL, FY2 9HZ TO 2 BLACKPOOL ROAD, BISPHAM, FY2 0HR

Tel: 0203 928 2000
Fax: 0207 821 0029
Email: appeals@resolution.nhs.uk

1 A summary of the application, decision, appeal and representations and observations are attached at Annex A.

2 Preliminary Observations and Site Visit

2.1 The Pharmacy Appeals Committee ("Committee") appointed by NHS Resolution, had before it the papers considered by NHS England, together with a plan of the area showing existing pharmacies and doctors' surgeries and the location of the proposed pharmacy.

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

2.3 An oral hearing was held in order to determine the application. This took place virtually using Microsoft Teams on 16th September, 2020.

2.4 The Committee comprised of Mrs L Reid (Chair), Mrs L Summers and Mr P Bratley. The Applicant was Ms O'Brien and was represented by Mr N Wardle. Mr Edwards was present representing Well Pharmacy and Mr Wood was also in attendance on behalf of Lancashire Local Pharmaceutical Committee.

2.5 Before the hearing started the Committee undertook a site visit. The following is a summary of the visit but further observations are included in section 5 below.

2.6 The Committee met outside of the Applicant's pharmacy at 119 Red Bank Road on a weekday on the morning of 8th September 2020. The pharmacy was situated amongst a row of various retail premises including a tanning shop, a couple of opticians, a carpet shop, a barber and a café. There was on street parking in the vicinity with time restrictions and double yellow lines immediately outside the pharmacy. There were no customers seen inside.

2.7 Opposite the Applicant's pharmacy is a large Sainsbury's supermarket with a large car park. Lloyds pharmacy is located inside the supermarket. The surrounding area contained residential housing. Although there were no official crossing places near the pharmacy itself, the Committee did not experience any difficulty crossing the road as the traffic was relatively quiet.

- 2.8 The Committee walked down Red Bank Road towards the proposed site of the pharmacy. The pavements were generally of a good standard with some signs of repairs. A small number of people on mobility scooters were observed on the pavements on both sides of the road travelling without any apparent difficulty.
- 2.9 There were a number of residential side roads and a large roundabout with a pelican crossing where the A587 crosses the Red Bank Road. On the other side of the roundabout, there was a parade of shops on the left with a small public car park. The retailers included a florist, convenience store, butchers and cafes. Adjacent to these shops on All Hallows Road was another group of retailers consisting of a charity shop, wellbeing centre, Tesco Express and Well Pharmacy. Situated behind this row was another public car park with a number of spaces available at the time of the visit.
- 2.10 Opposite All Hallows Road, on the corner of Ingthorpe Avenue and Blackpool Road was the proposed pharmacy site. There was no parking available immediately outside the property, however there was parking opposite on both sides. There was a bus stop within a few yards of the site on Red Bank Road. The Number 9 bus was observed travelling directly past the proposed site.
- 2.11 The Committee proceeded down Blackpool Road and walked through another residential area towards Moor Park Health and Leisure Centre. Most of the houses had driveways and there was parking available on both sides of the road. The roads were quiet and pavements were of a reasonable standard. The Committee then walked down Bristol Avenue to the health and leisure centre which contains Cohen's pharmacy and three GP surgeries. There was a large car park with some of the spaces allocated as short stay, however round the side of the building there were more spaces with longer time allowances.
- 2.12 The Committee then walked back to the current pharmacy site along the same route, on the other side of the road. On the return journey, it was noted that there was slightly further to walk to access the pedestrian crossing at the junction of Red Bank Road and the A587 and the traffic was heavier.
- 3** A summary of the above observations was provided to those in attendance at the oral hearing. Parties indicated that they agreed with the Committee's observations.

4 Oral Hearing Submissions

- 4.1 The Chair noted that based on the written submissions there was no dispute arising from Regulation 31 or Regulation 24(1)(b) to (e). Parties agreed that it was not necessary to address these regulations as part of the oral hearing and therefore submissions would be made only in relation to Regulation 24(1)(a).
- 4.2 **Mr Noel Wardle (representing the Applicant, Ms O'Brien)**
- 4.2.1 Mr Wardle opened his submissions by reminding all parties that the test to be satisfied under Regulation 24(1)(a) was whether the proposed premises are significantly less accessible for those patient groups who are accustomed to using the current premises. He referred to the relevant case law with respect to identifying patient groups and the broad principles.
- 4.2.2 Mr Wardle provided background to the Applicant's pharmacy business. The Applicant purchased a small group of pharmacies including the

present site on Red Bank Road and a pharmacy located in the Cleveley Health Centre, which is located near the coast, just under 3 miles away. The service provided on Red Bank Road was mainly collection and delivery with around 70% dispensed as monitored dosage systems (MDS). The Cleveley Pharmacy was too small to be able to handle the level of dispensing items so some of the regular repeats and MDS were moved to Red Bank Road to support the dispensing deliveries.

- 4.2.3 The written evidence provided the origin of dispensing items for the month of September 2019 and Mr Wardle confirmed that there had been no significant change to this activity when it was reviewed again in June 2020.
- 4.2.4 The Applicant undertook a survey between 27 February to 7 March 2020. Every patient who attended the pharmacy during that period completed the survey, therefore Mr Wardle submitted it was representative of the patients accessing the pharmacy. This is significant as to the test as to which patients are accustomed to accessing the services at the current location. During the survey period, only 1 patient had visited the pharmacy immediately after their GP surgery. Each GP surgery has a pharmacy attached and most prescriptions dispensed at the Applicant's pharmacy are repeat items rather than acute.
- 4.2.5 The pharmacy is located in a residential area and most patients surveyed had come from their home and within a 1 mile radius of the FY2 postcode area. Mr Wardle referred to the map on page 72 of the bundle which illustrated the FY2 postcode area and the current and proposed premises. He highlighted that the proposed location is more central to the postcode area and that a third of patients who live outside the postcode reside in the surrounding areas.
- 4.2.6 One third of the patients surveyed had accessed the pharmacy from their work location. Employment in the area mainly comprises of retail and leisure. There are some schools although these are not in the immediate vicinity of the current premises and are closer to the proposed location. Mr Wardle concluded that for patients accessing services from work, there is no shared starting point due to the locations being scattered across the area.
- 4.2.7 The pharmacy had very few walk-in patients and provides very few pharmaceutical services such as Medicine Usage Reviews. Mr Wardle referred to the question of flu vaccination services that had been raised by Well Pharmacy and explained that the Applicant had promoted two clinics on two separate days and that the patients were largely from Cleveley. The Cleveley pharmacy did not have a consulting room so patients were booked in for vaccinations at the Red Bank Road pharmacy. There were around 40 patients who attended the clinic but they had chosen to attend Red Bank Road.
- 4.2.8 Mr Wardle then moved on to address transport and access. All of the patients who completed the survey indicated that they had either walked or driven. None of those surveyed had travelled by bus or by tram. The Applicant had not noted anyone accessing the pharmacy using a mobility scooter either. The area is well lit with wide pavements which

are in good order. It took him about 8 minutes to walk between the two sites and there were crossing places along the route. He submitted that there were no physical or social barriers between the two locations. Both sites were clearly part of the Bispham area and this was evidenced by business signs near both sites using the name Bispham. There was also no evidence of anti-social behaviour that may prevent patients who access the current location from using the proposed pharmacy.

- 4.2.9 For patients accessing the pharmacy from the Moor Park Health and Leisure Centre, the proposed location is closer for them, although there was only one patient surveyed who was travelling directly from there. Patients using Cleveley Health Centre already have a distance to travel and so they tend to have deliveries rather than walk-in for services, however the proposed location is a shorter distance for them. The other GP surgeries currently serviced by the pharmacy are spread further geographically and so those patients are already travelling a distance. For those patients, the proposed site would not be significantly further to travel.
- 4.2.10 Mr Wardle concluded by summarising that for those patients who accessed the vaccination clinics they had been booked in and for those requiring over the counter services there would be no additional barriers to travelling to the proposed location. The method of transport for patients currently accessing the pharmacy services was either by walking or driving and there is no reason to conclude that if a patient had walked to the existing site then they could not also walk to the proposed site for the reasons highlighted. The Applicant had indicated that patients with mobility scooters had not accessed services at the current site however there are no barriers for access to the proposed site as had been observed by the Committee on the site visit. Parking is a little easier at the proposed location and is certainly not more difficult. There is free parking diagonally opposite and he had noted there were around 10 spaces available when he visited. Although none of the patients surveyed had travelled by public transport, the options were better at the proposed premises as there is a bus stop nearby and an additional bus route that links Moor Park Health Centre with Cleveleys.
- 4.2.11 Mr Wardle stated that patients with protected characteristics or common demographics have already been included in the patient groups identified by the applicant and nothing would be added by defining them as discrete groups.
- 4.2.12 Mr Edwards from Well Pharmacy asked Mr Wardle a number of questions about the survey. The survey did not specifically ask whether patients would find the new location significantly less accessible than the current one. The postcodes captured in the survey were only the first part and in response to whether the Red Bank Road area served the FY2 9 area, this had not been checked. Mr Edwards referred to page 76 of the bundle and whether Mr Wardle would accept that the fact that there are 5 pharmacies serving the FY2 area means there is a higher population. Mr Wardle did not accept that premise.
- 4.2.13 Mr Edwards asked whether Mr Wardle accepted that the 700 metres between the current and proposed site is not a short distance if

someone has mobility issues. Mr Wardle did not accept this as he said that it would depend upon a range of other factors.

- 4.2.14 The Committee members asked questions of Mr Wardle and the Applicant. With regard to whether the area has many seasonal visitors, Ms O'Brien explained that Bispham does not see an influx as they tend to be located in the centre of town and would use those pharmacies. The exception to this were the caravan parks location in Fleetwood who would use the pharmacies local to that area.
- 4.2.15 The pharmacy covers a large geographical area which includes 3 nursing homes. These have not been identified as a separate patient group because the medications are delivered. The items dispensed from the GP surgeries with the lowest numbers are predominately from nursing homes.
- 4.2.16 Ms O'Brien was asked about patients who use Sainsbury's. She confirmed that she had not looked at the patients who use Lloyds pharmacy within Sainsbury's but explained that Lloyds had relocated and so it was possible that many of their patients are historical. She said that Lloyds provide a collection service, but they do not supply MDS medicines. She assumed that people using the Sainsbury's store would be from a large geographical area because it is the largest supermarket in the area. However, she could not confirm this.
- 4.2.17 When asked whether people use the retail premises at both sites, Ms O'Brien explained that they are two different types of shopping areas. The current pharmacy is surrounded by cafes, tanning shops for example whereas the shops near the proposed site provide different services. It is reasonable to assume that the same group of people would use both shopping areas and the post office is in between.

4.3 **Mr Edwards, Well Pharmacy.**

- 4.3.1 Mr Edwards stated that he broadly agreed with the observations of the Committee following their site visit. He said that there was slightly more onsite parking on Red Bank Road and that his pharmacist had referred to the number of bedsits behind Sainsbury's. He believed that those with protected characteristics would find the proposed site less accessible and those using Sainsbury's would be less likely to visit other retail sites. He referred the Committee to page 56, paragraph 3.2 which quoted the Applicant's statement in the application form that "Lloyds Pharmacy will support the ongoing needs of any population requiring access to pharmaceutical services within the Red Bank Road area". He said that this indicated that the Applicant recognised there was currently a patient group who would want to stay in the Red Bank Road area and who would not travel to the proposed location; he said this was his main argument.
- 4.3.2 Mr Edwards was then asked questions by the Committee. He stated that of the patients who use Well Pharmacy, 62% live in the FY2 0 postcode area and 10% in FY2 9 and suspected that the patients were choosing not to cross the road although he could not confirm that. He then clarified that this was percentage of dispensing items as opposed to percentage of patients from those postcodes. He did not have

information about the number of patients accessing Well Pharmacy by postcode or information about walk-in patients. In relation to protected characteristics, he agreed that 700 metres was not a huge distance for people who are mobile.

- 4.3.3 Following Committee questions, Mr Wardle asked whether patients who used Well Pharmacy would also shop in Sainsbury's. Mr Edwards replied that he believed they would as it is the main supermarket in the area.

4.4 Final Submissions from parties.

- 4.4.1 Mr Edwards submitted that the original decision by NHS England to refuse the application was the correct one on the basis that patients using the current pharmacy would use Sainsbury's rather than travel to the proposed site.
- 4.4.2 The Chair confirmed that Mr Wood from the Local Pharmaceutical Committee had no submissions to make.

4.5 Final Submissions on behalf of the Applicant.

- 4.5.1 Mr Wardle reminded parties of the purpose of defining patient groups under the regulations. He submitted that there was no dispute in relation to the patient groups identified as they had been accepted by all parties.
- 4.5.2 Mr Wardle submitted that Mr Edwards is misinterpreting the legislative test under the regulations which is about whether the proposed location is significantly less accessible to those currently accessing services at the pharmacy. Mr Edwards had accepted that the distance is not particularly far and whilst he referred to those with reduced mobility, he provided no evidence for this group. The Applicant's case is that there is no such patient group.
- 4.5.3 There were no physical barriers between the two sites. There were pedestrian crossing facilities along the route. A third of patients using the pharmacy were registered with Moor Park Health Centre and there was evidence that patients were crossing the road. There is no evidence or information about differences in affluence of the residents in the two areas to suggest that they would be reluctant to access the other location and it is incumbent upon Well Pharmacy to provide that evidence.
- 4.5.4 There were no mental barriers and anybody who lives in the vicinity of the area can travel.
- 4.5.5 Mr Wardle then addressed the statement made in the original application about patients being able to use Lloyds Pharmacy. This was not a suggestion that the proposed premises would be significantly less accessible. It was a statement of fact. Patients were free to choose which pharmacy they want to use. They may choose to use Lloyds Pharmacy, however this was not the regulatory test. Neither was the statement an admission that relocating would leave the area without access to a pharmacy.

4.5.6 He concluded by stating that there is very little in dispute by parties and invited the Committee to quash NHS England's decision and uphold the appeal.

5 Committee's Consideration

5.1 The Committee gave due consideration to the oral and written evidence provided by all parties.

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

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

5.4 The Committee noted that no party, either on appeal or in subsequent representations, had sought to argue that Regulation 31 applied. Based on the information before it, the Committee was not required to refuse the application under the provisions of Regulation 31.

5.5 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 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—

(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) *the NHSCB 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, the NHSCB chooses to commission them); and*
 - (e) *the provision of pharmaceutical services will not be interrupted (except for such period as the NHSCB may for good cause allow).*
- 5.6 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
 - 5.6.1 confirm NHS England's decision;
 - 5.6.2 quash NHS England's decision and redetermine the application;
 - 5.6.3 quash NHS England's decision and, if it considers that there should be a further notification to the parties to make representations, remit the matter to NHS England.
- 5.7 The Committee considered the position in relation to each condition.
- 5.8 In relation to condition (a), the Committee considered the information submitted by NHS England and the Applicant which clearly show the locations of the existing pharmacies as well as the proposed site and medical practices within the area.
- 5.9 The Committee considered the information before it with regard to the patient groups who are accustomed to accessing pharmaceutical services at the existing premises. The Committee considers that it must seek to identify the patient groups who would potentially be affected by the relocation based upon the information provided by the parties. This information is most commonly going to be provided by the Applicant but others may also be able to contribute to the information on which the Committee will proceed to determination.
- 5.10 In this case, the Applicant has identified the patient groups as:
 - 5.10.1 Patients accessing pharmaceutical services after visiting their GP;
 - 5.10.2 Patients who access pharmaceutical services from their home;
 - 5.10.3 Patients who access pharmaceutical services from their workplace;
 - 5.10.4 Patients who use collection and delivery.
- 5.11 The Committee noted that the Applicant had then gone on to further consider the method of transport used and the type of services accessed.
- 5.12 The Committee noted that the patient groups defined by the Applicant had not been disputed by any party.
- 5.13 NHS Resolution received no information which indicates that special consideration needs to be given to any group based on a 'protected

characteristic'. However, the Committee was mindful of the need to consider any groups with protected characteristics for the purposes of the Equality Act 2010 and the Committee is therefore required to consider the elimination of discrimination and advancement of equality between a particular patient group and persons who do not share a protected characteristic.

Patients accessing pharmaceutical services after visiting their GP

- 5.14 The Committee considered the information provided by the Applicant on the origin of the dispensing items by GP surgery. Based upon data provided from September 2019, the prescriptions dispensed originated from 9 GP surgeries. 49% were from the Crescent Surgery and the Cleveley Group Practice which are co-located in Cleveley Health Centre. 30% were from the North Shore Surgery and the Glenroyd Medical Centre which are co-located at Moor Park Health and Leisure Centre.
- 5.15 The Committee noted that 79% of the items dispensed originated from GP surgeries that were located closer to the proposed location than the current premises. The remaining items originated from GP practices from a wider geographical location and the Committee was satisfied that patients were already travelling some distance to use the current pharmacy.
- 5.16 The Committee noted that the Applicant's survey had only identified one patient who had accessed pharmaceutical services immediately after visiting the GP surgery. This was the North Shore Surgery which is closer to the proposed premises.
- 5.17 For the patient group that accesses pharmaceutical services after visiting their GP, the Committee was satisfied that the proposed premises would not be significantly less accessible than the existing premises on the basis of distance.

Patients who access pharmaceutical services from their home.

- 5.18 The Committee next considered the patient group who access pharmaceutical services from their home. The Applicant's survey identified that two thirds of the patients who attended the pharmacy had travelled from home and two thirds of those patients lived within the postcode area FY2.
- 5.19 The maps provided to the Committee outlined the postcode area for FY2. The Committee noted that of the patients surveyed by the Applicant who had indicated that they had travelled from home, they were within a 1 mile radius of the FY2 postcode. The Committee also noted that the proposed premises were more central to the FY2 postcode area than the existing premises.
- 5.20 The Committee noted that the distance between the two sites was 700 metres and had observed no physical barriers when walking the route. It had taken approximately 10 minutes to walk. The route was flat, well-lit with wide pavements moderately well maintained.
- 5.21 For patients who may have driven to the pharmacy, the Committee had noted during the site visit that there were parking facilities at both sites. Whilst there was parking outside the current site, spaces were limited. The parking at the proposed site was on the other side of the road and there were clear crossing places that did not present any physical barriers.

- 5.22 The Committee considered that patients accessing pharmaceutical services at the current location travelling from home whether by foot or car would not find the proposed location significantly less accessible.

Patients who access pharmaceutical services from their workplace

- 5.23 The Committee next considered the patient group who access pharmaceutical services from their workplace. One third of the patients surveyed by the Applicant had indicated that they had travelled from their workplace. The Committee accepted the Applicant's evidence that the starting point for this patient group would be varied across the area due to the nature of the employment available being mainly in the retail or leisure industry. For this reason, the Committee considered that similar principles applied to this patient group as those accessing services from home. Those patients coming from the workplace were used to travelling to the existing premises and the proposed location was only 700 metres.
- 5.24 For the reasons outlined above, the Committee considered that for patients who access pharmaceutical services from their workplace, the proposed location would not be significantly less accessible.

Patients who use collection and delivery services

- 5.25 The Committee then considered patients who use the collection and delivery services. The Committee noted the Applicant's statement that 90% of patients have their prescription delivered to them and that this group included nursing homes. 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.

Other groups

- 5.26 The Committee went on to consider whether there were other patient groups who access pharmaceutical services at the existing pharmacy premises. Mr Edwards had submitted that the distance of 700 metres between the two sites was significant for patients with mobility problems. The Applicant did not accept this and also stated that she was not aware of any patients accessing the pharmacy using mobility scooters. The Committee did not have in evidence any demographic information to suggest that there was a significant number of people in the area with mobility problems. However, the Committee was mindful of the need to consider groups with protected characteristics, including age and physical impairments. Whilst the Committee does not seek to challenge the Applicant's statement with regard to patients accustomed to accessing services at the existing premises, it did note on the site visit a number of people using mobility scooters in the area.
- 5.27 The Committee did not observe those individuals encountering any difficulties traversing the route. The pavements were wide on both sides of Red Bank Road between the two sites, there was no incline and the surfaces were well maintained. As previously mentioned, there were clear crossing places and the Committee also noted dropped kerbs at the crossing sites around the proposed location. There was no evidence to suggest that patients with general mobility problems would be walking from the existing premises as a starting point to the

proposed site in order to consider whether the 700 metres would be a physical barrier to such a group. The Applicant had submitted that no such patient group existed.

- 5.28 The Committee considered that, on the basis of the information before it, patients with mobility problems would not find the proposed site significantly less accessible.

Method of Transport

- 5.29 The Committee considered the Applicant's evidence on the method of transport used by patients accessing services at the existing premises. The Committee has already considered travel by both foot and car. The Committee accepted that for those patients travelling by car from their home address, their place of work or any location other than the current location of the pharmacy the proposed location would be easy to access and would not be significantly less accessible. The roads in the area were not difficult to use or unduly congested and parking at the proposed location was not difficult.

- 5.30 According to the survey undertaken by the Applicant, none of the patients had used public transport. However, the existing and proposed premises are serviced by the number 3 bus. The bus stop is 160 metres from the existing premises. The proposed premises are serviced by the bus routes 9 and 12. The number 9 route runs between Cleveley Health Centre and Moor Park Health and Leisure Centre. The bus stop is within a few metres from the proposed site.

- 5.31 The Committee concluded that considering methods of transport, the proposed location is not significantly less accessible than the existing premises.

Type of services accessed

- 5.32 The Applicant submitted that the majority of its patients access dispensing services and 90% of the dispensing services provided are delivered. There are very few walk-in patients and of the patients surveyed, two thirds were for prescription items. The remaining one third was over the counter.

- 5.33 The pharmacy had provided two vaccination clinics that had been largely patients of Cleveley pharmacy. The clinics were bookable appointments and as there is no consultation room at Cleveley pharmacy, the patients who attended the existing premises had done so by choice. The Applicant confirmed that the proposed location would provide a consultation room as well.

- 5.34 The Committee noted during the site visit that there were no patients seen inside the existing premises. The Applicant is not seeking to change any of its existing services as part of the relocation. The Committee concluded that patients accustomed to accessing the existing location for the services provided would not find the proposed premises significantly less accessible.

Overall assessment

- 5.35 The Committee noted that it had been invited to consider whether the survey was representative of the patients accustomed to accessing services at the Applicant's pharmacy. This was on the basis that the survey had not been

independently verified and the Applicant had provided no justification for why the survey was representative.

- 5.36 The Committee were mindful that there is no requirement for a survey to be undertaken, whether independently verified or not. The Committee noted that the Applicant had not submitted the questions that were asked of patients, neither had they provided a detailed analysis of the responses. However, they were also not required to do so. The Committee considered the number of respondents and period of time during which the survey had been undertaken, however noted that the statistical results had not been challenged.
- 5.37 The Committee concluded that the survey provided some indication of the patient groups accessing services at the pharmacy, which were not disputed by any party. Furthermore, the Committee considered that there was no evidence before it that contradicted the results of the survey.
- 5.38 The Committee was also invited to consider by Well Pharmacy that the proposed premises would be serving a different population to the existing pharmacy. The Committee noted that Well Pharmacy provided no evidence to support this submission. Mr Edwards accepted that patients accessing services at his pharmacy, a short distance away from the proposed site, are likely to also use Sainsbury's opposite the existing site. Mr Wardle had referred to the fact that businesses at both locations used the name "Bispham" on their signage, which was also observed by the Committee during the site visit.
- 5.39 The Committee did not accept the proposal that the two sites served different populations for these reasons.
- 5.40 The Committee considered the argument presented by Well Pharmacy that the Applicant had identified in their application that the proposed location was less accessible by their comment that Loyds pharmacy would support the ongoing needs of the population in the Red Bank Road area. The Committee accepted the explanation provided by the Applicant in response, that this was a statement of fact illustrating that patients will have a choice should they not want to use pharmaceutical services at the proposed location. This was not evidence that the proposed location would be significantly less accessible.
- 5.41 Finally, the Committee considered the rationale used by NHS England in its decision to ensure that it had taken into account all parties representations in this determination. The Committee noted in particular that NHS England's view was as follows:
- 5.41.1 The two sites did service different patient groups;
- 5.41.2 The Applicant has not identified all the patient groups accustomed to accessing the pharmaceutical services at the existing premises or provided information on how they would find the proposed site less accessible;
- 5.41.3 The Applicant had acknowledged and identified patients within the Red Bank Road area who would find the proposed premises significantly less accessible;
- 5.42 In relation to the first point, it is not clear whether NHS England are referring to different patient groups or the point advanced by Well Pharmacy that the

proposed location is within a different district area. However, the Committee had considered the relevant patient groups and did not accept that the two sites serve a different population. Therefore, the Committee rejected this view.

- 5.43 The second conclusion was considered by the Committee. The Committee noted in particular that the patient groups had not been disputed or additional patient groups proposed by any of the interested parties and due consideration had been given to the broad patient groups during deliberations in accordance with the guidance. The Committee also noted that the regulatory test does not require the Applicant to provide information on how patient groups would find the proposed site less accessible but instead that the proposed site is not significantly less accessible.
- 5.44 The Committee did not accept the statement made by NHS England that the Applicant had acknowledged and identified patients within the Red Bank Road area who would find the proposed premises significantly less accessible. The Committee was of the view that NHS England had misinterpreted the comment made by the Applicant in the application form that patients in the Red Bank Road area would continue to have their needs supported by Lloyds pharmacy. For the reasons stated above, the Committee accepted the explanation provided by the Applicant that this was a statement about patient choice as opposed to accessibility.
- 5.45 The Committee was therefore of the view that condition (a) is met.

Regulation 24(1)(b)

- 5.46 The Committee noted the decision of NHS England in respect of condition (b), that the granting of this application would not result in a significant change to the arrangements that are in place, and that this had not been disputed by any party. On the information provided the Committee was of the opinion that the granting of the application would not result in a significant change to the arrangements in place for the provision of local pharmaceutical services or of pharmaceutical services in any part of the HWB1 or in a controlled locality of a neighbouring HWB, where that controlled locality is within 1.6 kilometres of the premises to which the applicant is seeking to relocate. The Committee concluded that condition (b) is met.

Regulation 24(1)(c)

- 5.47 The Committee noted the decision of NHS England 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)

- 5.48 The Committee noted that the Applicant had given an undertaking, in their original application form that the same services will be provided at the proposed

site. On the information provided, the Committee determined that condition (d) is met.

Regulation 24(1)(e)

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

Overall

5.50 In those circumstances given that the Committee had reached a different conclusion to NHS England, the Committee determined that the decision of NHS England must be quashed.

5.51 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 NHS England) or whether it was preferable for the Committee to redetermine the application.

5.52 The Committee noted that representations on Regulation 24 had already been made by parties to NHS England, 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 NHS England. The Committee further noted that when the appeal was circulated representations had been sought from parties on Regulation 24.

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

6 Decision

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

6.2 The Committee quashes the decision of NHS England and redetermines the application.

6.3 The Committee has determined that conditions (a), (b), (c), (d) and (e) of Regulation 24 are satisfied.

6.4 The application is granted.

Mrs Lucy Reid
Committee Chair

Dated this 15th day of October 2020

A copy of this decision is being sent to:

Charles Russell Speechlys LLP on behalf of the Applicant

NHS England
Well Pharmacy
Lancashire LPC
Cohens Chemist

ANNEX A

REF: SHA/23362

Arena Point
Merrion Way
Leeds
LS2 8PA

Tel: 0203 928 2000
Fax: 0207 821 0029
Email: appeals@resolution.nhs.uk

APPEAL AGAINST NHS COMMISSIONING BOARD ("NHS ENGLAND") DECISION TO REFUSE AN APPLICATION BY O'BRIENS PHARMACIES LTD FOR A RELOCATION THAT DOES NOT RESULT IN A SIGNIFICANT CHANGE TO PHARMACEUTICAL SERVICES PROVISION UNDER REGULATION 24 FROM 119 RED BANK ROAD, BLACKPOOL, FY2 9HZ TO 2 BLACKPOOL ROAD, BISPHAM, FY2 0HR

1 The Application

By application dated 30 October 2019, O'Briens Pharmacies Ltd ("the Applicant") applied to NHS Commissioning Board (NHS England") for a relocation that does not result in a significant change to pharmaceutical services provision under Regulation 24 from 119 Red Bank Road, Blackpool, FY2 9HZ to 2 Blackpool Road, Bispham, FY2 0HR. 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 Not applicable. There are no premises in close proximity to the proposed premises.

Information in support of no significant change application

- 1.2 As NHS England will be aware, *"the purpose of identifying the groups is to make a broad assessment of the question of accessibility"* (B (on the application of Community Pharmacies (UK) Limited v The National Health Service Litigation Authority [2016] EWHC 1595 (QB)).
- 1.3 In terms of this "broad assessment of the question of accessibility", the distance between the existing and proposed premises is relatively short, at approximately 700 metres. There are no barriers between the existing and proposed locations. The terrain is flat, pavements are in good order and well-maintained and roads are easily crossed. The two premises are in the same area of Blackpool - Bispham, and would serve essentially the same population.
- 1.4 There is also a pharmacy in Sainsburys supermarket directly across the road from the Applicant's current pharmacy which will support the ongoing needs of any of the population requiring access to pharmaceutical services within Red Bank Road area.
- 1.5 In relation to the pharmacy's patient groups, these can be defined as follows:

Collection and delivery patients
- 1.6 In terms of the provision of dispensing services, very few patients come to the pharmacy with a prescription to be dispensed. The Applicant estimates that approximately 90% of its dispensing patients use the pharmacy's delivery

service, where either the prescription is received electronically from the surgery via EPS or the paper prescription is collected from the surgery, the medication is dispensed in the pharmacy and is then delivered to the patient's home.

- 1.7 Since collection and delivery patients are not accustomed to accessing pharmaceutical services at the pharmacy, they therefore fall outside the scope of regulation 24. In any event, since the collection and delivery service will continue following the proposed relocation, those patients would be entirely unaffected by the relocation.

GP Surgeries

- 1.8 Notwithstanding the fact that most dispensing patients have their medication delivered, the Applicant has undertaken a review of the surgeries from which its prescriptions originated, and compared the distance from that surgery to the proposed site with the existing site. The table below gives information for prescriptions dispensed during March 2019 (applying a de minimis of 2%).

Surgery	Percentage of items	Distance to existing premises	Distance to proposed premises
Keslo Avenue Health Centre, FY5 3LF	53%	3.2km	2.9km
Moor Park Health Centre, FY2 0JG	36%	1.3km	0.7km
St Pauls Medical Centre, FY1 2HH	6%	2.6km	3.3km
Thornton Medical Centre, FY5 2TZ	2%	4.9km	4.1km

- 1.9 As can be seen from the table above, for the few patients who require access to pharmaceutical services after a visit to their GP, 91% would find the proposed premises closer than the existing premises. For the remaining 6%, the proposed premises would only be 700m further away, which is not material in the context of a journey which is already 2.6km and, therefore, is most likely to have been made by car.

Local of patients' homes

- 1.10 Its patients cover a large area from Blackpool North shore to Cleveleys and Thornton. The reason for the size of the geographical area is due to the age and service requirements of these patients. As it has previously stated, it provides monitored dosette boxes and delivery service free of charge to the majority of its patients so the exact location of its pharmacy is irrelevant to them in comparison to the service it provides.

Method of transport

- 1.11 As the vast majority of the Applicants patients are deliveries the remainder of patients using its services have vehicle access and drive from the Health Centre within Moor Park or Cleveleys Health Centre.
- 1.12 The parking at its current premises is restricted with double yellow lines outside the premises. The proposed new site has parking opposite in the main village car park and also down Ingthorpe Avenue to the side of the proposed site which is free parking and easily accessible.
- 1.13 Patients using public transport, coming from Moor Park Health Centre, currently have to walk to the pharmacy as there are no direct bus routes from the health centre passing its pharmacy.
- 1.14 Patients coming from Cleveleys Health Centre, use the tram along the promenade or the bus service, both currently stop at the top of Red Bank Road. They are then required to walk down Red Bank Road to access its services.
- 1.15 The proposed new site has a number 9 bus service which departs from Moor Park Health Centre regularly direct to Cleveleys which also passes directly by its proposed new unit.

Type of service accessed

- 1.16 Information regarding dispensing services is provided above in relation to GP surgeries. As stated above, approximately 90% of prescription items are supplied via its collection and delivery service, which will continue unchanged.
- 1.17 Due to the volume of deliveries the Applicant provides it has very little direct patient contact. This has had a knock on effect with regards to the services it is able to provide to these patients. By relocating nearer to the village and by having improved public transport links and accessible parking it would expect to see a significant increase in patients potentially collecting their medicines. This would enable the Applicant to build on the new services the NHS are requiring from pharmacy to provide and support the local population in a much rounder healthcare opportunity.

Protected characteristics

- 1.18 As the majority of its patients currently receive its services via a Dosette box due to age or physical disability it would aspire to have a more accessible unit for them to obtain further health support due to transport links.
- 1.19 In conclusion, for the patient groups accustomed to accessing pharmaceutical services at the existing premises, the proposed premises would not be significantly less accessible.

Starting point of journey

- 1.20 Patients who currently use its services by attending the pharmacy are proportionally low. This is less than 10% of its overall business. These patients are predominantly from Moor Park Health Centre with prescriptions for dispensing. By viewing MUR and NMS data it is clear its footfall is exceptionally low, reason being it has so few 'walk in patients'.

- 1.21 Although the parade appears busy it is mainly cafes. Sainsburys pharmacy is across the road from the Applicant within the supermarket so any potential move would not result in a less accessible service to patients who wish to come up Red Bank Road.
- 1.22 In conclusion, for the patient groups accustomed to accessing pharmaceutical services at the existing premises, the proposed premises would not be significantly less accessible.
- 1.23 The existing pharmacy and the proposed relocation site are a relatively short distance apart and, for the reasons given above, both sites are easily accessible to the reliant population and will continue to serve the Bispham area of Blackpool.
- 1.24 There are no changes to either the core or supplementary hours operated by the pharmacy.
- 1.25 Service provision will not alter on relocation.
- 1.26 Granting the application would therefore not result in a significant change in arrangements in place for the provision of pharmaceutical services in the HWB's area.
- 1.27 The Applicant is not aware of any plans to which significant detriment would be caused by the granting of this application.

2 The Decision

NHS England considered and decided to refuse the application. The decision letter dated 19 February 2020 states:

- 2.1 NHS England has considered the above application and is writing to confirm that it has been refused. Please see the enclosed report for the full reasoning.

Report

CAS-2346437-J9J1R8 – O'Briens Pharmacies Ltd - Application for inclusion in the pharmaceutical list – no significant change relocation excepted application within a HWB's area

- 2.2 The premises are currently located at 199 Red Bank Road, Blackpool, FY2 9HZ and the Applicant has applied to relocate to 2 Blackpool Road, Bispham, FY2 0HR.
- 2.3 SC informed the committee that no patient engagement had been undertaken by the Applicant, although this is not a requirement of the Regulations.
- 2.4 There are 10 pharmacies within 1.6 miles of the proposed premises. The distance between to the two sites is 0.4 miles and both are located close to shops and access available at street level.
- 2.5 Within the 45 day consultation period representations were received from CPL, Cohens, Lloyds and Well:

- 2.6 CPL commented that the application would have no significant effects on the provision of services.
- 2.7 Cohens Chemist suggested that patients cannot be assumed to be travelling by car and many local patients are likely to travel by foot. They also noted that they do not see how parking is improved at proposed site.
- 2.8 Lloyds Pharmacy noted limited patient information regarding collection and delivery prescriptions taking up 90% of dispensing but broadly agree with patient groups defined. They stated they feel the proposed site is less accessible and ask NHS England to refuse the application as fails to meet full requirements.
- 2.9 Well Pharmacy suggested the relocation would mean the pharmacy would have different patient groups to those identified at the current location.
- 2.10 The current site is located across road from Sainsbury's store where Lloyds Pharmacy is based. SC displayed the map of the current and proposed sites, including other pharmacy contractors and GP surgeries. The relocation would see the pharmacy moving closer to the site of the Well Pharmacy and away from the site of the Lloyds Pharmacy.
- 2.11 All 3 pharmacies offer exactly the same services apart from one, provided by the Applicant, which will remain should the relocation be granted.
- 2.12 The Committee proceeded to determine the application in line with the relevant regulations: Regulation 31 and Regulation 24.
- 2.13 In consideration of Regulation 31:
- 2.14 Within the application the Applicant has stated that "*Regulation 31 is not applicable. There is are no premises in close proximity to the proposed premises*".
- 2.15 Based on the information provided to the Committee, Committee members were satisfied that the Applicant is not applying to provide pharmaceutical services from the same premises, or adjacent premises, whereby it is reasonable to treat the services that the Applicant proposes to provide as part of the same service as existing services premises.
- 2.16 As such Committee members determined the application met the requirements of Regulation 31.
- 2.17 In consideration of Regulation 24(1)(a): Information from the Applicant:
- 2.17.1 The distance between the premises is 700 metres.
- 2.17.2 Patient Groups are referenced as collection and delivery patients (90%), GP Surgeries and Walk in patients.
- 2.17.3 The two locations are within the same area of Blackpool/Bispham and would serve the same population.

- 2.17.4 Lloyds Pharmacy within Sainburys will support the ongoing needs of any population requiring access to pharmaceutical services within the Red Bank Road area.
- 2.17.5 Methods of transport including public transport and parking facilities at both sites.
- 2.18 Information from the interested parties:
- 2.18.1 CPL cannot see any significant detriment in respect of the provision of pharmaceutical services in the HWB area. They feel the new premise will be more accessible for patients.
- 2.18.2 Cohens Chemist – Have mentioned “walk in patients” – does the committee feel that these would be a patient group accustomed to using the pharmacy or adhoc users which would be relevant to this part of the regulation?
- 2.18.3 Patients who access the pharmacy for advice or purchase OTC products – It cannot find any reference by the Applicant, however the Applicant has reiterated the volume of patients use their delivery service. Again, would these patients be a patient group accustomed to using the pharmacy or adhoc users which would be relevant to this part of the regulation.
- 2.18.4 Well pharmacy – broadly agreed with the identified patient groups.
- 2.18.5 Feel that different population would be served due to the distance and that people with protected characteristics would find the walk between the two sites a barrier.
- 2.19 Based on the information provided the Committee's view was that:
- 2.19.1 the two sites did service different patient groups
- 2.19.2 the Applicant has not identified all the patient groups accustomed to accessing the pharmaceutical services at the existing premises or provided information on how they would find the proposed site less accessible.
- 2.19.3 the Applicant had acknowledged and identified patients within the Red Bank Road area who would find the proposed premises significantly less accessible.
- 2.20 Therefore, the Committee were not satisfied that 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. The Committee determined that the application did not meet the requirements of Regulation 24(1)(a).
- 2.21 In consideration of Regulation 24(1)(b): Under section 8, question 2, the Applicant has stated that *“the existing and proposed premises are a relatively short distance apart and will continue to serve the Bispham and Blackpool Area. There will be no change in opening hours and service provision will not alter on relocation. The applicant doesn't believe that granting the application*

will result in a significant change to the arrangements in place for the provision of pharmaceutical services in the HWB area.”

- 2.22 The distance between the two premises is 700 metres. On review of the 3 pharmacies within area of the two locations in relation to services shows:
- 2.22.1 Both Lloyds Pharmacy in Sainsbury's and Well Pharmacy have opening hours greater than the Applicant during the week. With Lloyds opening on a Saturday and Sunday and Well Pharmacy opening on a Saturday. The Applicant is currently closed at the weekend.
- 2.22.2 The only service commissioned by NHS England that is only delivered by the Applicant is Appliance Use Reviews. The 3 pharmacies all deliver the other services commissioned by NHS England (MUR, NMS, CPCS and Flu).
- 2.23 Based on the information provided the Committee was satisfied that 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. The Committee determined that the application met the requirements of Regulation 24(1)(b).
- 2.24 In consideration of Regulation 24(1)(c): Under section 8 of the application, the Applicant has stated that *“we are not aware of any plans to which significant detriment would be caused by the granting of this application”*.
- 2.25 NHS England and NHS Improvement (NHSE/I) North West Region (Lancashire and South Cumbria) acknowledge that they do not have a specific plan outlining service provision in the HWB area. However, NHSE/I do reference the HWB Pharmaceutical Needs Assessment (PNA). The HWB have a statutory responsibility to publish and keep up to date a statement of the needs of pharmaceutical services of the population in its area. NHSE/I note that this application will not change the number of pharmacies within the area of the HWB. The distance between the two premises is 700m.
- 2.26 The Committee was satisfied that the application would not cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area of the Lancashire HWB. The Committee determined that the application met the requirements of Regulation 24(1)(c).
- 2.27 In consideration of Regulation 24(1)(d): Under application section 8: The Applicant has stated that the same services will be provided at the new site. NHSE/I Pharmacy Team commented that the full range of services provided by the Applicant are listed on page 4 of the application. The Services relevant to NHSE/I are: MURs, NMS, AUR, Flu and NUMSAS. The core and supplementary hours will remain the same.
- 2.28 The Committee was satisfied that 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). The Committee determined that the application met the requirements of Regulation 24(1)(d).

- 2.29 In consider of Regulation 24(1)(e) – The Applicant has stated that there will not be any interruption in service.
- 2.30 Based on the statement by the Applicant within the application, the Committee was satisfied that the provision of pharmaceutical services will not be interrupted (except for such period as the NHSCB may for good cause allow). The Committee determined that the application met the requirements of Regulation 24(1)(e).
- 2.31 In summary the Committee was satisfied that the application met Regulation 31, however the Committee determined that the application was refused under Regulation 24(1)(a), the application is not granted.
- 2.32 Appeal rights are granted to the Applicant.

3 The Appeal

In a letter dated 20 March 2020 addressed to NHS Resolution, Charles Russell Speechlys LLP on behalf of the Applicant appealed against NHS England’s decision. The grounds of appeal are:

- 3.1 NHS England misinterpreted comments made by the Applicant regarding access to the local pharmacy network and, consequently, made an error of fact in its determination of this application.
- 3.2 In particular, in its application form the Applicant stated that “*Lloyds Pharmacy will support the ongoing needs of any population requiring access to pharmaceutical services within the Red Bank Road area*”. This was a reference to the local pharmacy network, not acceptance that any of the pharmacy’s patient groups would find the proposed premises to be significantly less accessible. It was, therefore, an irrelevant matter for the purposes of NHS England’s application of regulation 24 and NHS England should not have placed any weight upon it.

Regulation 24(1)(a)

- 3.3 As NHS Resolution will be aware, this application falls to be determined pursuant to regulation 24 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013. Regulation 24 provides as follows:
- 3.4 [Regulation 24 quoted]
- 3.5 NHS Resolution has produced guidance on its approach to a regulation 24 application. The Applicant believes that the most relevant extracts of the guidance for the purposes of this submission are:

“Specific patient groups

9. Patient groups might be identified in relation to:

a. local GP practices

b. methods of travel (on foot, by car, or public transport)

c. types of pharmaceutical services accessed (dispensing/collection and delivery)

d. the location of the patient group's starting point of the journey to the pharmacy.

e. demography

f. care homes; and/or

g. areas of deprivation.

10. Patient groups will likely overlap. This can be an issue where the applicant identifies patient groups in one way and parties providing representations identifying patient groups in other ways...

...

Considering patient groups together

28. The overlap in the membership of patient groups means that consideration of each patient group individually may result in a large amount of duplication. Previous determinations have sought to reduce this duplication while ensuring that all comments relating to patient groups are taken into account."

3.6 In relation to defining patient groups, NHS Resolution is invited to consider the judgment of Mr Justice Langstaff in the case of R (on the application of Community Pharmacies (UK) Limited v The National Health Service Litigation Authority [2016] EWHC 1595 (QB)

3.7 Mr Justice Langstaff provided guidance on the application of regulation 24 and, in particular, on the interpretation of "patient groups" for the purposes of regulation 24.

3.8 He stated relevantly:

"31. Adopting the approach I have set out, the word "patient groups" does not refer to groups acting as such: going to a pharmacist for a prescription is not in itself a group activity. Regulation 24(1)(a) is concerned with the question of accessibility. As was pointed out at one stage for the Claimant, a group defined by their being red-haired would not be a relevant group for the purposes of defining access, since colour of hair has nothing relevant to offer in relation to that question. So, too, is this true of the issue of the nature of their clinical conditions, which are in general irrelevant to accessibility – the only exception might be those conditions which may of their very nature have a real relevance in relation to assessing the accessibility of premises. Those, for instance, who suffer from a COPD, or spinal disc herniation, or palsy may be affected by distance, incline, unevenness of ground, or the need to negotiate stairs rather than gentle slopes; but to group those who require analgesia, or anti-depressants, or steroids, or are in dental pain as separate groups would make no sense where the purposes of grouping is to aid an assessment of accessibility.

32. If, then, in context, the purpose of grouping is to facilitate a decision as to the accessibility of the new premises, the starting point is considering what

makes a relocated pharmacy less easy to go to physically, mentally or socially, and “groups” must have their identities determined with that in mind...

33. So long as the NHSCB, or on appeal the FHSAU, bears in mind that the purpose of identifying the groups is to make a broad assessment of the question of accessibility, and that therefore to identify too many groups which are too small in number to assist with that process would risk over-focussing and losing sight of the whole broad picture, and provided the Board or Committee takes a practical and pragmatic view of the groupings that might assist it to a conclusion, by reference to which it may analyse the available evidence, it will not go far wrong.

34. The guidance offered by the Department of Health itself, illustrated by a number of cases decided by the committees, suggests that “patient group” reflects the requirement for HWBs when developing their pharmaceutical needs assessments to “have regard to the demography of the area and different needs of people in their area who share a protected characteristic, for example, a large travellers’ site, a large sheltered housing complex...[and] those other characteristics such as age, sex and disability that form the basis of the public sector equality duty under the Equality Act 2010”. I regret I do not consider this guidance helpful, because the concept of protected characteristics – of which it must be remembered there are nine in the Equality Act, most if not all of which have very little to say about the accessibility of one location when compared to another – is not obviously related to accessibility, even if the Act is a starting point for deciding issues of equal treatment.

...

40 ...I would merely observe that in subsequent cases the FHSAU may wish to consider whether to identify the relevant patient groups at a preliminary stage, so that all interested parties to an appeal can then focus their energies on assessing whether any group would find the proposed location not only less accessible but significantly so.”

- 3.9 Having regard to the above, for the patient groups that are accustomed to accessing pharmaceutical services at the existing premises the proposed premises would not be significantly less accessible.

Patient groups

- 3.10 The Applicant has used information from a number of sources in order to identify the patient groups that are accustomed to accessing pharmaceutical services at the existing premises.
- 3.11 The pharmacy conducted a survey of its walk-in patients from 27th February to 9th March 2020. The survey was carried out by pharmacy staff asking all patients coming into the pharmacy a short questionnaire. The pharmacy has relatively few walk-in patients, but 51 completed the survey, and the Applicant believes that the results are a representative sample of the pharmacy’s patients.
- 3.12 The Applicant has also obtained published data from the Business Services Authority in relation to the surgeries from which the pharmacy’s prescriptions originated in the most recent month published (September 2019), together with the pharmacy’s PMR and the Applicant’s local knowledge.

- 3.13 Whilst there will inevitably be a significant overlap in any definition of the pharmacy's patient groups, because patients will form part of more than one group, these can be defined as follows:

Patients who access pharmaceutical services remotely

- 3.14 Approximately 90% of the pharmacy's patients access services remotely. For those patients, the prescriptions are collected from the patients' GP surgeries or sent electronically, the medicine is assembled in the pharmacy, and the medication is delivered to the patient. Those patients do not access pharmaceutical services at the premises and so can be disregarded in relation to the assessment of regulation 24.

Patients who access pharmaceutical services after a visit to their GP

- 3.15 Patients who access pharmaceutical services from the existing premises after a visit to their GP will require access to dispensing services. They are unlikely to access other pharmaceutical services at that point or at least, if they do, that will not be their primary purpose for visiting the pharmacy.
- 3.16 The Applicant has obtained details of all prescriptions dispensed by the pharmacy by reference to the GP surgery at which that patient is registered.
- 3.17 In September 2019 (the last month for which such data is publicly available), the pharmacy dispensed 5,981 items. The prescriptions originated from the following practices (applying a de minimis of 1%):

Name of surgery	Percentage of items (%)
The Crescent Surgery, FY5 3LF	26
Cleveleys Group Practice, FY5 3LF	23
North Shore Surgery, FY2 0JG	20
Glenroyd Medical Centre, FY2 0JG	10
St Pauls Medical Centre, FY1 2HH	6
Waterloo Medical Centre, FY4 3AD	5
Stonyhill Medical Practice, FY4 1TJ	2
The Village Practice, FY5 2TZ	2
Highfield Surgery, FY4 1TJ	2

- 3.18 According to the pharmacy's survey, only 2% of the pharmacy's walk-in patients come to the pharmacy immediately after a visit to their GP. Both had come from the North Shore Surgery. The remainder access the pharmacy at other times.

Patients who access pharmaceutical services from home

3.19 The survey showed that over three quarters of the pharmacy's walk-in patients had come to the pharmacy from their homes. Two thirds of those patients lived in the FY2 postcode, which is shown on the map below (the map on the left shows the FY2 postcode area highlighted in red, the map on the right shows the existing and proposed premises):

3.20 [Map provided to the Committee at Appendix A.]

3.21 As can be seen, the existing and proposed premises are both within the FY2 postcode area, with the proposed premises, in fact, being more central to that area than the existing premises. The remainder lived in other "FY" postcodes, which are the areas to the north, east and south.

Patients who access pharmaceutical services from elsewhere

3.22 Almost one third of patients accessed the pharmacy from their place of work. There is no significant, large local employer (for example in terms of an office block, warehouse or industrial area) in close proximity to the existing premises. Workers are therefore employed in the local retail and leisure industries which are spread throughout the area.

3.23 One person during the survey period was accessing the pharmacy from a local school and one from the local area.

Services accessed

3.24 Most of the pharmacy's patients use the pharmacy in order to access dispensing services, and 90% of those access the pharmacy remotely. As a result, there are very few walk-in patients. Of those who do walk into the pharmacy, dispensing services comprised over two thirds of the pharmacy's patients during the survey period. The remainder purchased OTC items.

3.25 The pharmacy does not currently provide any non-essential pharmaceutical services.

Method of transport

3.26 According to the survey, all of the patients either walk or drive to the pharmacy. No patients use public transport to access the pharmacy.

Demographic data

3.27 The Applicant does not believe that there are any demographic or other factors which would assist NHS Resolution in its primary purpose, being to consider the accessibility of the proposed premises.

Accessibility to the proposed premises

3.28 Having defined above the pharmacy's patient groups, NHS Resolution must then consider whether, for those patient groups, the proposed premises would be significantly less accessible. There will, of course, be significant overlaps in relation to accessibility for each patient group and there are some general principles in relation to access which will be applicable to each patient group. These include:

3.28.1 The distance between the existing and proposed premises is relative short given the suburban context of the local area – approximately 700 metres.

3.28.2 The terrain is flat.

3.28.3 Street lighting and pavements are both good.

3.28.4 There are appropriate pedestrian crossing facilities, with either zebra or pelican crossings along the route.

3.28.5 There are no physical, social or mental barriers between the existing and proposed locations: both premises are within the Bispham area, with identical housing types comprising mostly of semi-detached privately-owned housing.

3.29 Taking each identified patient group in turn, it comments as follows:

Patients who access pharmaceutical services remotely

3.30 The pharmacy's patients who access dispensing services remotely do not visit the pharmacy either to hand in a prescription or to receive their medication.

3.31 A prescription collection and medication delivery service will continue following the proposed relocation, so that this patient group will be entirely unaffected by the relocation, and will certainly not find the proposed premises to be significantly less accessible.

Patients who access pharmaceutical services after a visit to their GP

3.32 For the patient group which consists of those accessing the pharmacy immediately after a visit to their GP, there is no material difference in distance of travel for the proposed premises compared to the existing premises.

3.33 It has set out in the table below the comparative distances.

Name of surgery	Distance to existing premises (m)	Distance to the proposed premises (m)
The Crescent Surgery, FY5 3LF	3,200	2,900
Cleveleys Group Practice, FY5 3LF	3,200	2,900
North Shore Surgery, FY2 0JG	1,300	650
Glenroyd Medical Centre, FY2 0JG	1,300	650
St Pauls Medical Centre, FY1 2HH	2,600	3,300
Waterloo Medical Centre, FY4 3AD	6,300	6,500
Stonyhill Medical Practice, FY4 1TJ	8,100	8,700

The Village Practice, FY5 2TZ	4,900	4,100
Highfield Surgery, FY4 1TJ	8,100	8,700

3.34 Since the only walk-in patients during the survey period had come from North Shore Surgery, which is closer to the proposed site than the existing premises, it is self-evident that the proposed premises would not be significantly less accessible for that patient group.

3.35 Indeed, for those patients accessing pharmaceutical services from any surgery and by whatever means of transport, the proposed premises would not be significantly less accessible: four-fifths of the pharmacy's patients have their GP surgery closer to the proposed premises compared to the existing premises. The maximum additional distance of travel would be 700 metres, which is not significant, particularly because those surgeries are already over 2.5km from the existing premises, so their patients are likely either to be collection and delivery patients or to have driven to the pharmacy.

Patients who access pharmaceutical services from home

3.36 The survey conducted by the Applicant indicated that many of the pharmacy's patients accessed the pharmacy from home. As stated, the majority of patients live in Bispham (FY2). Those that live outside the FY2 postcode will already have travelled at least a kilometre to the existing premises and would clearly not have any difficulty modifying their journey so that they travel to the proposed site (whether by car or on foot) rather than the existing premises.

3.37 Given the short distance between the existing and proposed premises and the local terrain the proposed premises will not be significantly less accessible from patient homes compared to the existing premises.

Patients who access pharmaceutical services from elsewhere

3.38 In relation to those who access the pharmacy from work, as stated above there is no central place of employment, with most workers being employed in the retail, leisure and service industries which are spread throughout the local area. It is likely that some of those workers would find the proposed premises closer to their place of work, and some further away, but even for those who are working in the vicinity of the existing premises, the distance to the proposed premises (700m) is not a significant barrier to access. The same is true for any person accessing the pharmacy whilst generally present in the local area.

3.39 For the single person who was accessing the pharmacy from a school, all local schools are closer to the proposed premises than they are the existing premises.

Services accessed

3.40 It has already set out above how, for those patients who access dispensing services, the proposed premises would not be significantly less accessible.

- 3.41 In relation to patients who come into the pharmacy in order to obtain advice or to purchase OTC items, all were travelling either from home or work, so that the comments above apply equally to this patient group.
- 3.42 The same considerations will apply to accessibility for patients who access non-dispensing services as are set out above. Irrespective of which service patients access, the proposed premises would not be significantly less accessible.

Method of transport

- 3.43 For those patients travelling by foot, the proposed premises would not be significantly less accessible compared to the existing premises for the reasons given above. The local terrain is flat and easy to walk around, and the maximum additional distance that a patient may have to walk would be 700m with adequate crossing facilities for local roads.
- 3.44 For those patients who currently drive, there is a free car park diagonally opposite the proposed premises, and free on street car parking on all local roads. In contrast, the existing premises have double-yellow lines immediately outside, and the nearest car park is further away. Access to the proposed premises by car is therefore somewhat easier than the existing premises.
- 3.45 Whilst no patients came to the pharmacy during the survey period by public transport, even if there are a small number of patients who travel by bus, the existing and proposed premises are both served by bus route 3. The nearest bus stops are closer to the proposed premises than the existing premises. The proposed premises are also served by routes 9 and 12, so that the proposed premises are more accessible by bus than the existing premises. That is particularly important since bus route 9 departs from Moor Park Health Centre and runs directly to Cleveleys, so would connect the pharmacy by direct bus to GP surgeries in those areas from which patients already come.

Demographic data

- 3.46 The Applicant does not believe that there are any patient groups accustomed to accessing pharmaceutical services from the existing premises that could be defined by reference to demographic characteristics for whom the proposed premises would be significantly less accessible for the reasons given above.
- 3.47 For patients with reduced mobility, the proposed premises will be fully accessible, including with a ramp to the front entrance.

Regulation 24(1)(b) to (e)

- 3.48 In relation to the other matters contained within regulation 24, granting the application would not result in a significant change to the arrangements that are in place for the provision of pharmaceutical services in the HWB's area, because the move is to premises which are a relatively short distance from the existing premises and the pharmacy will remain in the Bispham area, serving the same patient groups.
- 3.49 Similarly granting the Applicant's application would not cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the HWB's area. The Applicant is not aware of any plans in relation

to the provision of pharmaceutical services in the HWB's area to which significant detriment could be caused.

- 3.50 Finally, the Applicant confirms that the same services will be provided at the proposed premises as are provided at the existing premises, and the provision of services will be uninterrupted (save for any such period as NHS England may, for good cause, allow).
- 3.51 For the reasons given above, on behalf of the Applicant, Charles Russell Speechlys LLP invite NHS Resolution to conclude that this application satisfies the requirements of regulation 24 and to grant it.

4 Summary of Representations

This is a summary of representations received on the appeal.

4.1 COHENS

- 4.1.1 Although there was some initial confusion around the type of application made, this was corrected and the application was refused after consideration of the correct regulations.
- 4.1.2 The application was considered under regulation 24. Cohens feels that patient groups that are used to visiting the pharmacy at its current location will find the new location significantly less accessible and will have no alternative but to start using Lloyds in Sainsburys. It does feel the walk between the two sites is significant and patients will struggle particularly if the [sic] live to the west of the existing site where the journey will be further than the existing 700 metres between the existing and proposed sites.
- 4.1.3 Cohens therefore asks Primary Care Appeals to refuse this appeal.

4.2 COMMUNITY PHARMACY LANCASHIRE

- 4.2.1 Community Pharmacy Lancashire includes a copy of its original letter and support for the pharmacy relocating from old less accessible premises, to better accessed premises offering benefits (for its patients/customer base).
- 4.2.2 It doesn't present any additional info since all its points were raised in its original letter at which time two Officers from Community Pharmacy Lancashire attended the current and proposed sites.

Letter dated 28 December 2019 addressed to NHS England

- 4.2.3 Community Pharmacy Lancashire have had the opportunity to consider the application and two Officers made a visit to the area on 10 December 2019. It would like to make the following comments:

- 4.2.3.1 The Pharmacy at its current location is in a parade of varied shops on a road leading back from the promenade. It is directly opposite a Sainsburys store where there is a Lloyds in-store pharmacy open 79 hours a week and car-parking. The pharmacy in its current location does not have any dedicated

parking and double yellow lines outside. It cannot see that the area would be deprived of pharmaceutical presence by letting the pharmacy move.

4.2.3.2 The Pharmacy is moving approximately half a mile from almost on the promenade to what appears to be the heart of Bispham village, here there are more shops: small supermarkets, bakers and in its proposed location the pharmacy would be diagonally opposite a free car-park. Which at the time it visited (mid-morning in December) had free spaces. The Applicant also mentions free on street parking to the side of the proposed site. These proposed premises offer level access to the pavement.

4.2.3.3 The Applicant does not mention that approximately 100yds away from this proposed location is a large double fronted "Well Pharmacy." However this is also true of its current site albeit across the road from Lloyds (in Sainsburys).

4.2.3.4 The proposed site would offer better accessibility to the residents of Bispham village and better more accessible car-parking and it cannot see that by moving it would disadvantage the local patients in its current position due to the Lloyds Pharmacy across the road. The application mentions a significant collection and delivery service and it sees no reason why that would change.

4.2.3.5 The application mentions the "local Doctors" it does not note any significant difference in mileage between the current and proposed sites in relation to the Doctors and on visiting these sites they all had a Pharmacy included or next door to the premises.

4.2.4 In summary, it can see no significant detriment in respect of the provision of pharmaceutical services in the Health and Wellbeing Area or why it would restrict access to the current patient groups. The Pharmacy is relocating from old less accessible premises, to better accessed premises offering benefits (for its patients/customer base).

4.2.5 It would ask that if the relocation is granted a note or supplement is added to the PNA (Pharmacy Needs Assessment) to prevent the pharmacy's current (old) location becoming vulnerable to a new application.

4.3 NHS ENGLAND

4.3.1 In relation to Regulation 31, the Pharmaceutical Services Regulation Committee (PSRC) members acknowledge that, based on the information provided to the Committee, they were satisfied that the Applicant is not applying to provide pharmaceutical services from the same premises, or adjacent premises, whereby it is reasonable to treat the services that the Applicant proposes to provide as part of the same service as existing services premises. As such Committee members determined the application met the requirements of Regulation 31.

- 4.3.2 In relation to Regulation 24(1)(a), based on the information provided, the Committee members were of the view that:
- 4.3.2.1 the two sites did service different patient groups.
 - 4.3.2.2 the Applicant had not identified all the patient groups accustomed to accessing the pharmaceutical services at the existing premises or provided information on how they would find the proposed site less accessible.
 - 4.3.2.3 The Applicant had acknowledged and identified patients within the Red Bank Road area who would find the proposed premises significantly less accessible.
- 4.3.3 Therefore, the Committee was not satisfied that 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. The Committee determined that the application did not meet the requirements of Regulation 24 (1) (a).
- 4.3.4 NHSE/I would like to clarify bullet point one, above – there was evidence to support the view that the two sites did service different patient groups, based on their location i.e., different district centres, and including the 700m distance. Additionally, the Applicant indicated that it supports patients with protected characteristics, but no evidence that new premises may not be not significantly less accessible. No evidence was provided to support how the 10% of patients to whom deliveries are not made would find the new premises not significantly less accessible.
- 4.3.5 In consideration of Regulation 24(1)(b): Under section 8, question 2, the Applicant stated that *the existing and proposed premises are a relatively short distance apart and will continue to serve the Bispham and Blackpool Area. There will be no change in opening hours and service provision will not alter on relocation. The Applicant doesn't believe that granting the application will result in a significant change to the arrangements in place for the provision of pharmaceutical services in the HWB area.*
- 4.3.6 The distance between the two premises is 700 metres. A review of the 3 pharmacies within area of the two locations in relation to services shows:
- 4.3.7 Both Lloyds Pharmacy in Sainsbury's and Well Pharmacy have opening hours greater than the Applicant during the week, with Lloyds opening on a Saturday and Sunday and Well Pharmacy opening on a Saturday. The Applicant is currently closed at the weekend.
- 4.3.8 The only service commissioned by NHSE/I that is only delivered by the Applicant is Appliance Use Reviews. The 3 pharmacies all deliver the other services commissioned by NHS England and Improvement (MUR, NMS, CPCS and Flu).
- 4.3.9 Based on the information provided, the Committee was satisfied that 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. The Committee determined that the application met the requirements of Regulation 24(1)(b).

- 4.3.10 In consideration of Regulation 24(1)(c): Under section 8 of the application, the Applicant has stated that "*we are not aware of any plans to which significant detriment would be caused by the granting of this application*".
- 4.3.11 NHSE/I North West Region (Lancashire and South Cumbria) acknowledge that they do not have a specific plan outlining service provision in the HWB area. However, NHSE/I do reference the HWB Pharmaceutical Needs Assessment (PNA). The HWB have a statutory responsibility to publish and keep up to date a statement of the needs of pharmaceutical services of the population in its area. NHSE/I note that this application will not change the number of pharmacies within the area of the HWB. The distance between the two premises is 700m.
- 4.3.12 The Committee was satisfied that the application would not cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area of the Lancashire HWB. The Committee determined that the application met the requirements of Regulation 24(1)(c).
- 4.3.13 In consideration of Regulation 24(1)(d): Under application section 8: The Applicant has stated that the same services will be provided at the new site.
- 4.3.14 NHSE/I commented that the full range of services provided by the Applicant are listed on page 4 of the application. The services relevant to NHSE/I are: MURs, NMS, AUR, Flu and NUMSAS. The core and supplementary hours will remain the same.
- 4.3.15 The Committee was satisfied that 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). The Committee determined that the application met the requirements of Regulation 24(1)(d).
- 4.3.16 In consider of Regulation 24(1)(e) – The Applicant has stated that there will not be any interruption in service.
- 4.3.17 Based on the statement by the Applicant within the application. The Committee was satisfied that the provision of pharmaceutical services will not be interrupted (except for such period as the NHSCB may for good cause allow). The Committee determined that the application met the requirements of Regulation 24(1)(e).
- 4.3.18 In summary the Committee was satisfied that the application met Regulation 31, however the Committee determined that the application was refused under Regulation 24(1)(a), the application was not granted.

4.4 WELL

- 4.4.1 Well have no comments to make on the application with regards to Regulation 31.
- 4.4.2 With regard to Regulation 24(1)(a), Well would make a number of comments and observations as laid out below:
- 4.4.3 Well contend that NHS England correctly interpreted the comment made by the Applicant that, *“There is also a pharmacy in Sainsbury’s supermarket directly across the road from our current premises which will support the ongoing needs of any of the population requiring access to pharmaceutical services within the Red Bank Road area”* as identifying a sub-population who access pharmaceutical services from the area and would find the proposed premises less accessible and thus NHS England were correct to refuse the application.
- 4.4.4 In the appeal, reference is made to a survey conducted by the Applicant. Well have a number of observations to make.
- 4.4.5 A copy of the survey itself nor anonymised responses are included, thus Well cannot assess or challenge the methodology or interpretation of results and contend no weight should be given to the results of the survey referred to in the appeal.
- 4.4.6 The survey does not seem to have been conducted by an independent market research company or had the results independently verified by NHS England and thus again it would question whether any weight should be attributed to the survey results.
- 4.4.7 The survey is reported to have been conducted between 27th February, 2020 to 9th March, 2020: this is a maximum of six working days and there is no information given as to why this timeframe was chosen, or whether it was statistically representative. This lack of detail leads Well to question what weight, if any, can be given to the survey.
- 4.4.8 The survey collected 51 responses but there is no detail on how many patients did not complete the survey. Only stating that the Applicant, *“believes”* the results are representative. Thus, it cannot comment further on whether the responses are representative as the detail is not provided.
- 4.4.9 In their appeal, the Applicant states that, *“approximately 90%”* of patients access services remotely; that *“over ¾ of patients come from their homes”*; that, *“almost 1/3 accessed the pharmacy from work”*; *“most of the pharmacy’s patients use the pharmacy to access dispensing services”*. These are examples of vague and unspecific statements that it cannot adequately scrutinise. Again, Well contend little weight should be attached to the survey or its results.
- 4.4.10 In their appeal, the Applicant has a section related to ‘Patients who access Pharmaceutical services from Home’. They stated that 2/3 of patients lived in the FY2 postcode and provided a map. Below is a map showing the dimensions of FY2 (Figure 1). Well notes that the proposed relocation is from FY2 9HZ to FY2 0HR. Well includes a map showing the postal area FY2 9 and FY2 0 (Figure 2). Well contends that patients living in FY2 9 and accessing pharmaceutical services

from home are likely to use pharmacies in FY2 9. That it is these patients that will find the relocation to FY2 0 less accessible and it was this patient group the Applicant referred to in its statement, “*There is also a pharmacy in Sainsbury’s supermarket directly across the road from our current premises which will support the ongoing needs of any of the population requiring access to pharmaceutical services within the Red Bank Road area*”. However, because anonymised data has not been provided, nor has the survey been verified independently, then Well cannot assess this theory. For this reason, Well contends little or no weight should be given to the survey or conclusions drawn from it.

- 4.4.11 Well notes the appeal states that of the 51 patients who walked into the pharmacy, over 2/3 accessed dispensing services and the remainder purchased OTC products. Well notes that pharmacy fulfilled the Quality Payments criteria in February, 2019 with 100 points. Furthermore, 61 patients received influenza vaccinations. Without more detail on patients accessing all pharmaceutical services, it finds it difficult to assess whether the sample is representative. Furthermore, when the Applicant states they, “*believe*” the sample to be representative, there is no justification provided for them believing so. Again, the survey would carry some weight if it were designed and carried out independently, or at least be independently verified.
- 4.4.12 The Applicant states a relocation of 700m will not impact accessibility. Well would point out that Bispham is an urban area and travel times would be longer than in a rural area.
- 4.4.13 Well have no comments to make on the appeal with regards to Regulation 24(1)(b) to (e).
- 4.4.14 [The Committee had regard to Well’s supporting information at Appendix B.]

5 Observations on representations

5.1 CHARLES RUSSELL SPEECHLYS ON BEHALF OF THE APPLICANT

- 5.1.1 Taking each letter in turn, the Applicant comments as follows:

Well
- 5.1.2 Almost the entirety of Well’s letter appears to be directed towards the Applicant’s survey, although this is only part of the information provided by the Applicant in support of its application. For example, Well do not appear to dispute any of the proposed patient groups, suggest alternative groups or make any positive assertion in respect of access.
- 5.1.3 This approach by Well is flawed, since it risks falling into the trap identified by Mr Justice Langstaff in R (on the application of Community Pharmacies (UK) Limited v The National Health Service Litigation Authority [2016] EWHC 1595 (QB) of overfocussing on the question of patient groups and losing sight of the purpose of regulation 24, which is to undertake an assessment of accessibility.

- 5.1.4 The survey information is provided to support the patient groups identified in the application. There is no requirement for the survey to be conducted by an “*independent market research company*”, nor for the completed survey forms themselves to be submitted, although these can be provided if NHS Resolution wishes to see them. In the absence of any dispute from Well regarding the identified patient groups (and there does not appear to be any dispute), it is unclear why Well are of the view that the survey results should be given little weight.
- 5.1.5 In terms of the timing of the survey, a week was considered to be an appropriate length of time to gain a representative sample of responses. It is important to bear in mind, of course, that gathering survey data does require staffing and management time and some inconvenience to patients, so unless Well believe that the period selected or the length of time that the survey was undertaken was inappropriate (explaining why), or Well consider that a different result may have been obtained had a longer survey period or a different survey time been selected (and there does not appear to be such a suggestion) it is unclear on what basis Well criticises the survey that was undertaken. No patients were unwilling to take part in the survey.
- 5.1.6 In terms of the survey results, criticism appears to be made of the use of the word “believes”. If it assists, the Applicant asserts that the survey results are representative of the pharmacy’s patients.
- 5.1.7 The wording used to report the pharmacy’s patient groups is not “vague” as suggested, but has been provided in a way which is sufficiently detailed to enable a broad assessment of the pharmacy’s patient groups to be made. So, for example, in relation to patients accessing the service remotely, this will clearly change from day-to-day, week-to-week and month-to-month. Stating in support of an application that in week 1, 91% of patients accessed the pharmacy remotely; in week 2, 88% accessed services remotely; in week 3, 90% accessed services remotely, etc., etc. is to go into such detail that NHS Resolution would risk losing sight of the purpose of regulation 24, which is to assess accessibility. For this reason, figures are stated as averages or are rounded to the nearest easily understandable proportion.
- 5.1.8 In relation to postcode areas, the Applicant has no doubt that NHS Resolution will appreciate that the suggestion that patients in a particular postcode (for example, FY2 9) “*are likely to use pharmacies in FY2 9*” is plainly wrong. Most postcode areas do not, of course, contain a pharmacy. Even if a pharmacy is located in the same postcode area as the patient’s home, the patient may or may not choose to use that pharmacy. This assertion by Well is entirely unsupported by any evidence.
- 5.1.9 In terms of access from the “FY2 9” postcode, the Applicant has already explained in detail in its letter of appeal why the proposed premises would not be significantly less accessible. Well do not appear to dispute this evidence and do not appear to make any positive assertion in relation to accessibility at all.
- 5.1.10 In terms of travel times, Well state that “*Bispham is an urban area and travel times would be longer than in rural areas*”. It is not clear on what

basis this statement is made or for what purpose. It is doubtful whether travel time by foot would vary significantly between rural and urban areas. In terms of public transport, travel times in urban areas are likely to be significantly shorter due to the greater availability of public transport. By car, travel times may or may not be longer in urban areas than in rural areas, but this depends on factors such as congestion, and Well do not assert that there are significant traffic problems in this area (for the avoidance of doubt, there are none). According to Google maps, the drive time between the two sites is 2 minutes.

Cohens

- 5.1.11 The Applicant has no additional comments to make in respect of this letter. It has already explained, in its letter of appeal, why the proposed premises would not be significantly less accessible. Whilst there will always be some patients in respect of any relocation who would have further to travel to the proposed site compared to the existing location, the opposite is also true, and the overall effect is neutral having regard to the information provided in the letter of appeal.

LPC

- 5.1.12 The Applicant notes the continued support of the LPC to this relocation application, and notes that the information given in the LPC's letter to NHS England was prepared with the benefit of a site visit by two LPC members.

NHS England

- 5.1.13 NHS England has briefly set out why its Committee reached the decision that it did based on the information available to it at the time. However, as NHS Resolution will be aware, it must re-determine this application, rather than review NHS England's decision. NHS Resolution has the benefit of additional information which was not available to NHS England, and which is sufficient to satisfy NHS Resolution that regulation 24 is met.
- 5.1.14 On behalf of the Applicant, Charles Russell Speechlys invites NHS Resolution to uphold this appeal and grant the Applicant's application