

6 October 2020

REF: SHA/23377

Arena Point  
Merrion Way  
Leeds  
LS2 8PA

**APPEAL AGAINST SOUTH WEST (SOUTH WEST NORTH) AREA TEAM, NHS COMMISSIONING BOARD ("NHS ENGLAND") DECISION TO GRANT AN APPLICATION BY BADHAM PHARMACY LIMITED FOR A RELOCATION THAT DOES NOT RESULT IN A SIGNIFICANT CHANGE TO PHARMACEUTICAL SERVICES PROVISION UNDER REGULATION 24 FROM THE PARK, MONTPELLIER, GL1 1LY TO QUAYSIDE HOUSE MEDICAL CENTRE, WESTGATE, GLOUCESTER, GL1 2TZ**

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## 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 refused.

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## 1 The Application

By application dated 6 August 2019, Badham Pharmacy Limited ("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 The Park Montpellier, GL1 1LY to Quayside House Medical Centre, Westgate Street, Gloucester, GL1 2TZ. In support of the application it was stated:

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

1.1.1 There are no other pharmacies on or adjacent to the proposed premises, therefore Regulation 31 does not apply in this instance.

1.2 The Applicant submits that the new Medical Centre in Quayside House Westgate Street Gloucester will not be significantly less accessible for the patient groups accustomed to accessing the existing premises, because Gloucester City Health Centre is moving to that location.

### Background

1.3 The Gloucester City Health Centre plans to relocate to new premises at Quayside House.

1.4 This realignment of Medical Services requires a realignment of Pharmaceutical Services, to ensure patients at the new location will have access to the same high quality Pharmaceutical services.

1.5 This application is therefore desirable, to ensure continuity of Pharmacy services.

1.6 The pharmacy at Quayside will continue to support the same patients who currently use the Gloucester City Health Centre.

1.7 The driver for this application is therefore the new medical centre which will open in 2021. This new centre will provide services for over 12,000 patients.

### Analysis of current prescription database

1.8 The pharmacy at the Gloucester City Health Centre dispensed an average of 9071 items over the three months April to June 2019.

- 1.9 An analysis of the prescriptions dispensed confirms that:
- 1.9.1 Nearly 35% of the prescriptions dispensed were delivered;
  - 1.9.2 The pharmacy supports one care home, which produces about 100 items per month;
  - 1.9.3 Only 0.75% of the prescriptions dispensed are for patients who are not registered with the Gloucester City Health Centre.
- 1.10 There were no walk in patients who request Medicine Use Reviews, Emergency Hormonal Contraception or Flu vaccinations or any other service.
- Accessibility of current premises in comparison to new location
- 1.11 Patients access the current premises by various means.
- 1.12 In terms of accessibility the Gloucester City Health Centre is relocating to Quayside House and therefore patients of this surgery will make their way to the new location by foot, by public transport, taxi or private car to see their GP.
- 1.13 An analysis has been undertaken using data from the PMR for the month of June 2019.
- 1.14 This data has been processed to confirm where patients live, using their postcode information on PMR.
- 1.15 The map supplied with this application confirms where patients live, and not unsurprisingly patients travel across Gloucester to visit their GP at the current location. [see Appendix A].
- Public Transport
- 1.16 The main bus station terminus is in Clarence Street, Gloucester, and patients using that facility currently have to walk 0.43 miles to the Gloucester City Health Centre in Montpellier.
- 1.17 The Applicant has walked the most direct route and this takes 8 minutes.
- 1.18 The new location at Quayside House is more accessible being 0.37 miles to walk, and this journey takes 7 minutes. The route is via the centre of Gloucester where only pedestrians are allowed.
- 1.19 There is a main bus stop in the adjacent road to the proposed new site, in Westgate Street. At this bus stop the following services can be access:
- 1.19.1 94u
  - 1.19.2 351
  - 1.19.3 353
  - 1.19.4 676
  - 1.19.5 781
- 1.20 Once patients are at the new location, for them to access the pharmacy in the centre, will be more accessible than at the current location because of the layout of the new premises where the pharmacy will be located by the main entrance to the Medical

Centre. Currently the pharmacy is located adjacent to the car park at the rear of the site.

#### Private Transport

- 1.21 Patients using their own private transport will have an improved accessibility at the new location.
- 1.22 The current location has no provision for patients to park. Patients only have the possibility of parking on the side of the roads close to the Gloucester City Health Centre, and then pay the required fee for them to park.
- 1.23 In contrast the new premises will have over 100 spaces available for patients to park including disabled spaces close to the main entrance of the surgery.
- 1.24 There is also some parking provision on the sides of the roads, which is chargeable. In addition there is a multi-storey car park in Longsmith Street which is adjacent to Shire Hall.
- 1.25 It is a fact that patients will have more choice of where to park at the new location.

In response to "Why do you consider that granting the application will not result in a significant change to the arrangements that are in place for the provision of local pharmaceutical services or pharmaceutical services (other than those provided by dispensing doctors) in any part of the HWB's area or any controlled locality within 1.6km of the new premises" the Applicant stated:

- 1.26 There are no LPS contracts within the locality of the existing or proposed sites and the PNA has not identified any need for such a contract.
- 1.27 The relocation of the pharmacy to Quayside House, Westgate Street will not result in a significant change to the arrangements in place for the provision of pharmaceutical services in any part of the Health and Wellbeing Board.
- 1.28 The current location and the Quayside House Medical Centre are both in the Westgate Ward of Gloucester. The pharmacy will be relocating with the Gloucester City Health Centre. The pharmacy will continue to support the same patients with the same service platform.

In response to "Why do you consider granting the application will not cause any significant detriment to the proper planning in respect of the provision of pharmaceutical services in the HWB's area" the Applicant stated:

- 1.29 The Applicant is not aware of any plans to which significant detriment would be caused by the granting of this application.
- 1.30 The Applicant confirmed that the Services to be provided at the new premises are the same as those that have been provided at the current premise (whether or not, in the case of enhanced serves by ticking "yes" on the application form.
- 1.31 The Applicant confirmed that there would be no interruption to service provision by ticking "No" on the application form.

## 2 The Decision

NHS England considered and decided to grant the application. The decision letter dated 18 June 2020 states:

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

Extract from the enclosed decision report

- 2.2 The following papers were circulated to the PSRC members:
- 2.2.1 A copy of the application;
  - 2.2.2 Consultation responses received from:
    - 2.2.2.1 Boots UK;
    - 2.2.2.2 Lloyds Pharmacy;
    - 2.2.2.3 Rowlands Pharmacy;
    - 2.2.2.4 Rushport Advisory LLP for Bell Walk Pharmacy;
    - 2.2.2.5 The Applicant sent a counter response – letter dated 22 November 2019.
- 2.3 The following supporting information was available:
- 2.3.1 Map showing the location of nearest pharmacies and GP surgeries and the current and proposed location of the pharmacy;
  - 2.3.2 Map showing distance between the sites with travel times for walking, driving and bus travel;
  - 2.3.3 Gloucestershire CCG comment on the proposed new medical centre development;
  - 2.3.4 GP prescribing origin data for FFR82 – 6 months (May – Oct 19);
  - 2.3.5 Dispensing data - pharmacies accessed for dispensing (May – Oct 19);
  - 2.3.6 Local Pharmacy dispensing, MUR and NMS totals;
  - 2.3.7 Opening hours of nearest pharmacies;
  - 2.3.8 Gloucester GP list sizes;
  - 2.3.9 Copy of Regulation 24;
  - 2.3.10 Guidance for Regulation 24;
  - 2.3.11 Copies of practice boundary maps for Gloucester City Health Centre (GCHC) and Gloucester Health Access Centre (GHAC);
  - 2.3.12 Links to the practice websites and NHS.UK profile pages.
- 2.4 Having reviewed the papers, the NHS England South West (North) PSRC members agreed that it was not necessary for all members to meet at the same time to determine the outcome of the application. Voting members did, however, meet to review the application, responses and professional advice together.
- 2.5 The PSRC considered it was not necessary to hold an oral hearing.

2.6 Declarations of interest: Pursuant to Schedule 2 Paragraph 26 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, it was established no members of the PSRC had a conflict of interest in relation to the application.

2.7 The PSRC Professional advisor, having reviewed the papers, provided the following comments:

2.7.1 Regulation 31 does not apply in my opinion.

Regulation 24(1)(a)

2.7.2 The PSRC Professional advisor does not think it is easy to say that the new premises are not significantly less accessible for the patient groups that use the pharmacy at the existing premises.

2.7.3 The proposed site is in a different part of the city centre of Gloucester; the 15min walk from one to the other is not insignificant.

2.7.4 The PSRC Professional advisor notes from the PNA that the population of Gloucester is relatively young compared to Gloucestershire as a whole.

2.7.5 The PSRC Professional advisor notes also from the PNA that the existing and new sites are both in deprived areas.

2.7.6 The PSRC Professional advisor notes however that the medical practice is moving from one area to the other and I assume this proposal has been assessed as not being detrimental to patients.

2.7.7 From the data submitted by the contractor it seems the patients that have used the pharmacy come from a wide catchment area, but it may be that the overwhelming majority of activity is from a very small catchment area near the existing site.

2.7.8 The location of the surgery is not relevant for repeat prescriptions, that form the majority of the pharmacy's activity.

2.7.9 The pharmacy's business model would seem to rely heavily on prescriptions from the practice, and therefore the catchment area of the GP practice would appear to be useful, if [PRSC] has this information? From the dispensing data, the catchment area of the GP practice is a good proxy for the catchment area of the majority of the pharmacy's activity.

Regulation 24(1)(b)

2.7.10 The PSRC Professional advisor agrees the arrangements for the provision of pharmaceutical services would not change significantly if approved.

2.7.11 The Applicant suggests that all the patients will move with the pharmacy if it relocates. This suggests that the Applicant thinks they will change their pharmacy if it does not relocate.

2.7.12 The PSRC Professional advisor would agree that the overwhelming majority of acute prescription activity would move if it were refused and would not move if it were approved.

2.7.13 The move should not affect repeat prescription activity.

Regulation 24(1)(c)

2.7.14 The application should not cause significant detriment to the proper planning of pharmaceutical services.

2.7.15 The pharmacy is moving from an area which will then have less provision, to an area that will then have better provision.

2.7.16 Both sites are served to some extent by other providers.

Regulation 24(1)(d)

2.7.17 The PSRC Professional advisor agrees that the services which the pharmacy undertakes to provide at the new premises will be the same as those provided at the old premises.

Regulation 24(1)(e)

2.7.18 The PSRC Professional advisor can't see that there will be an interruption in the provision of pharmaceutical services.

2.7.19 Personally, the PSRC Professional advisor would say that on balance it would recommend that the application be approved but does note that Rushport Advisory do make some pertinent points on behalf of Bell Walk Pharmacy that merit discussion at PSRC, which the PSRC Professional advisor has elaborated on above.

2.8 The Chair and Lay Member of the PSRC met virtually on 27th May 2020 to discuss the application. SH from The Primary Care Team also attended to take minutes.

2.9 The PSRC members noted the application is for a relocation of pharmacy premises under Regulation 24 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

2.10 Members were aware of specific factors to consider:

2.10.1 Are the opening times the same as at the current site?

2.10.2 Will the same services be provided?

2.10.3 Will there be any change or break in service provision as a result of the move?

2.10.4 Consultation responses from interested parties.

Regulation 24 criteria for relocations

2.11 The Committee noted that the Applicant is offering additional hours as part of the application. It was noted the pharmacy does not currently open on Saturdays. The application indicates the pharmacy would open 9am – 12noon on Saturdays at the new site if the application were to be approved. The Committee received confirmation from the Applicant the Saturday hours will be Supplementary, and the weekday morning times of 8.30am – 9am will remain as Supplementary hours.

2.12 It was noted the services to be provided at the new premises will be the same services that are provided at the current premises.

2.13 It was also noted that the Applicant has confirmed there will be no change or break in service as a result of this move, apart from the additional opening hours, already noted.

- 2.14 The members had received confirmation that the application had been checked against Regulations 31 and 32 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.
- 2.15 Under Regulation 31 –The PSRC was satisfied there are no other contractors currently providing pharmaceutical services from the premises to which the application relates, or from adjacent premises. The PSRC therefore did not have grounds to refuse the application by virtue of regulation 31.
- 2.16 Under Regulation 32 –The PSRC was satisfied the premises are not within an LPS designation. The PSRC therefore did not have grounds to refuse the application by virtue of regulation 32.
- 2.17 It was noted the area is not a controlled locality therefore the PSRC did not need to consider the prejudice to the proper provision of relevant NHS services in this case.
- 2.18 The application had been circulated to interested parties in accordance with the Regulations. It was noted there were four responses:
- 2.18.1 Boots UK Ltd acknowledged receipt of the application but offered no comment on the application;
- 2.18.2 Lloyds Pharmacy remarked on the limited information in the application on the journey involved for those accustomed to accessing the current location on foot;
- 2.18.3 Rowlands Pharmacy requested the Committee assess the application against Regulation 24 but offered nothing to contribute to the PSRC discussions;
- 2.18.4 Rushport Advisory LLP on behalf of Bell Walk Pharmacy suggest the application does not address the question of accessibility and the methods patients use to access the pharmacy, the location of patients starting points and the types of pharmaceutical services accessed. The response also highlights the area as amongst the 10% most deprived neighbourhoods in the country in relation to health deprivation and disability and suggests the distance involved between the two sites is not a walk that many patients would wish to undertake. Their conclusion is that the application fails to provide sufficient information for the purposes of Regulation 24 and the application must be refused as the new premises would be significantly less accessible.
- 2.19 The Applicant submitted a response to the consultation responses and addressed the points raised. The Applicant confirmed an analysis of prescription activity for October 2019 shows 40% of dispensed items were delivered to patients. Most of the remainder of patients accessed the pharmacy immediately after using the GP surgery services. A map was provided showing where patients that accessed the pharmacy in October 2019 live. The Applicant provided an analysis of over the counter sales items to demonstrate the limited amount of retail activity. Patient survey results were provided showing the breakdown of how patients accessed the pharmacy. The Applicant acknowledged some walking patients will have to walk further to the new site, and others will have less distance to walk. The Applicant also addresses information around the patient base and confirmed all patients accessing MUR's and EHC services were patients registered at the co-located practice. The Applicant also highlights the free, no criteria delivery service provided and confirms this will continue at the new site. The PSRC noted delivery services are provided voluntarily by contractors. Confirmation of the public transport availability around the city centre was also provided.
- 2.20 The Committee discussed the application and some general local information. It was noted the application relates to a relocation to a new medical centre being built in Westgate Street, Gloucester and will involve the relocation of the GP surgery currently

co-located with the pharmacy at Rikenel in Gloucester. There are also plans to relocate the Gloucester Health Access Centre in Barton Street, Gloucester to the new site.

- 2.21 The Committee were aware Al-Shafa Pharmacy, Barton Street, Gloucester ceased trading in February 2020: a change since publication of the Gloucestershire PNA. The nearby location of the pharmacy at 113 Barton Street, Gloucester was noted.
- 2.22 The Committee noted the timescale for the completion for the new medical centre build is between March and June 2021 but recognised this may change due to the current ongoing pandemic situation.
- 2.23 It was also noted there is a relocation application due for consideration by the PSRC relating to Bell Walk Pharmacy in Gloucester. It was agreed the outcome of this application will not affect the consideration and decision for the forthcoming Bell Walk Pharmacy application.
- 2.24 The Committee noted the wide distribution of patients accessing the pharmacy, with patients coming from Quedgeley, Hucclecote and Longford. This suggests people use the pharmacy, and possibly the GP surgery at Rikenel, whilst they are visiting the town centre for work or retail purposes.
- 2.25 The Committee looked at the prescribing origins for the Applicant for a 6-month period between May 2019 and October 2019. It was noted 96.7% of patients had used the pharmacy with prescriptions generated by Gloucester City Health Centre at the Rikenel site. This aligned with statements made by the Applicant and in their reply to consultation responses.
- 2.26 The Committee considered the distance involved in travelling from Rikenel to the new premises. Bearing in mind the high number of GCHC patients using the pharmacy, the Committee felt it was important to consider how patients currently travel to the existing site and the impact of them having to travel back to the site if they want to continue to use the GCHC surgery at its new location. It was noted the distance involved is between 0.7 and 1 mile, depending on the mode of transport/route taken. Google maps estimates the walking time to be 14 minutes and 5 minutes by car.
- 2.27 For those travelling by car to the surgery and pharmacy, it was agreed there would be improved access to parking on site at the new premises and there is also a large public car park located at the lower end of Westgate Street. Those on foot will experience varying levels of change, depending on where their journey originates. Some will find access easier if they live in the Westgate Street area of town, some will have further to walk than they currently do. However, the journey between the two sites is through a highly pedestrianised town centre, is flat and not difficult to negotiate.
- 2.28 There are two other pharmacies along the route in the town that could be accessed along that journey. The Lay Member of the PSRC had visited the two sites and noted there is a cut through along Parliament Street when walking which took around 13 minutes.
- 2.29 For those using the bus, the Committee agreed it was difficult to ascertain exactly where everyone gets off a bus, when travelling to such a large city centre. It was noted the Gloucester Bus station is nearer to the proposed new site than the current site. A large volume of Gloucester bus routes start and end here.
- 2.30 The Committee considered the residential housing immediately around Gloucester Park and noted it is likely these patients will be the most affected if travelling on foot to use the GP and the pharmacy. However, unless they decide to move practices, they will have to travel to the GP surgery in its new location. Patients are also able to use electronic repeat prescriptions, where appropriate, to reduce travel. Given the large geographical spread of patients, most of the GP and pharmacy users are likely to travel by car or public transport. The Applicant detailed the mode of transport within his

consultation response, derived from a patient survey, confirming 30% reported arriving on foot equate.

- 2.31 The Committee agreed the distance involved is, to a degree, less accessible for a small number of patients however, it is not a difficult journey and doesn't give cause for concern, bearing in mind the high numbers that use the pharmacy after using the GP surgery. For those not wishing to walk, access to bus routes from the area around the current site, which terminate in the Bus Centre, was noted.
- 2.32 It was noted Gloucestershire CCG will have undertaken a full consultation on the practice move and assessed the impact to patients and the benefits of moving to the proposed new site.
- 2.33 It was noted there are several pharmacies on the outskirts of the town centre: two are close to Gloucester Park, offering evening and weekend hours.
- 2.34 The Committee reviewed the comments from the Professional Advisor and noted the points raised had been covered in previous discussions, including the distance involved and accessibility.
- 2.35 The Chair and the Lay Member of the Committee were able to proceed with checking the application against all aspects of Regulation 24 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.
- 2.36 Under Regulation 24 (1) (a) – It was agreed there will be a degree of negative impact for a minority of patients. However, for the small number that may travel from the current area on foot, the journey is not unreasonable to negotiate. The city centre is covered by regular bus services from all directions. For those using a car, parking will be available at the new premises and there are public car parks nearby. On balance, it was agreed the new premises are not, therefore, significantly less accessible.
- 2.37 Under Regulation 24 (1) (b) – The Committee agreed there is no evidence to suggest there will be changes to the provision of local pharmaceutical services in the area as a result of the relocation. In fact, due to the high numbers of patients using the pharmacy after using the surgery, it is likely there will be a significant change to services in the area if the pharmacy does not move.
- 2.38 Under Regulation 24 (1) (c) –The Committee noted none of the consultation responses highlighted any concerns around proper planning in the area. It was agreed the relocation application from Bell Walk Pharmacy is not impacted in any way by this decision. The Committee agreed the relocation would not cause significant detriment to proper planning.
- 2.39 Under Regulation 24 (1) (d) – The Committee noted the Applicant has agreed the services to be provided at the new premises will be the same services provided at the current premises. The increase in opening hours is an improvement in access and is approved.
- 2.40 Under Regulation 24 (1) (e) – The Committee noted the Applicant has confirmed there will be no interruption to the provision of pharmaceutical services as a result of the move.

#### Determination

- 2.41 The PSRC agreed to grant the application on the grounds that it did pass the tests of Regulation 24 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013. The Committee wishes to be clear the approval does not extend to any other premises than those specified within the application.

2.42 The Committee agreed Boots UK Ltd and Rowlands Pharmacy did not provide substantial comment or reasoning within their consultation response and would therefore not be afforded appeal rights in this case.

2.43 Lloyds Pharmacy and Rushport Advisory LLP on behalf of Bell Walk Pharmacy are afforded appeal rights in this case.

### 3 The Appeal

In a letter dated 25 June 2020 addressed to NHS Resolution, Rushport Advisory LLP on behalf of Tuffley Healthcare Ltd, trading as Bell Walk Pharmacy (the Appellant), appealed against NHS England's decision. The grounds of appeal are:

- 3.1 The decision of NHS England is summarised in the attached undated decision report.
- 3.2 The report is produced following a meeting of the Pharmaceutical Services Regulations Committee ("PSRC") and this committee has the benefit of support from a professional advisor.
- 3.3 The professional advisor to the PSRC states in their report that;
  - 3.3.1 *I do not think it is easy to say that the new premises are not significantly less accessible for the patient groups that use the pharmacy at the existing premises;*
  - 3.3.2 *The proposed site is in a different part of the city centre of Gloucester; the 15min walk from one to the other is not insignificant;*
  - 3.3.3 *I note also from the PNA that the existing and new sites are both in deprived areas;*
  - 3.3.4 *The Applicant suggests that all the patients will move with the pharmacy if it relocates.*
- 3.4 The Appellant's representative note that the PSRC makes reference to a significant amount of information that was provided by the Applicant in response to the objections received from local contractors. The Appellant's representative state that they have not had the opportunity to comment on any of this additional information however they intend to do so once the information is provided as part of this appeal.
- 3.5 The Appellant's representative further note that the PSRC, like the Applicant has not defined any patient groups specifically. Indeed there is no mention of the phrase "patient groups" in the entirety of the decision, save for the advice from the professional advisor stating that it was not easy to say that the new premises are not significantly less accessible.
- 3.6 Where the PSRC has considered accessibility it has not done so in relation to any specific group, but more generally and no consideration at all is given to those who share a protected characteristic which may limit their ability to access services.
- 3.7 The Appellant's representative attached a copy of their letter of 26 September 2019 which should be taken as forming part of this appeal and which has not been addressed in any meaningful way by NHS England in its decision.

In a letter to NHS England dated 26 September 2019, Rushport Advisory, on behalf of Tuffley Healthcare Ltd. stated:

- 3.8 Thank you for your letter of 24 September 2019 enclosing a copy of the above application. Rushport Advisory act for Tuffley Healthcare Limited who trade as Bell

Walk Pharmacy and have been instructed to submit this objection to the application from Badhams Limited [The Applicant].

3.9 As NHS England will be aware, the application falls to be considered under regulation 24 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (the “Regulations”).

3.10 Relocations that do not result in significant change to pharmaceutical services provision:

*24.—(1) Section 129(2A) of the 2006 Act (regulations as to pharmaceutical services) does not apply to an application from a person already included in a pharmaceutical list to relocate to different premises in the area of the relevant HWB (HWB1) if—*

*(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 in the area 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 satisfied that granting the application would not cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area of HWB1;*

*(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).*

3.11 It is for the Applicant to satisfy all parts of the legal test and provide sufficient evidence to support its case.

3.12 Tuffley Healthcare Limited objects to this application and submits that it must be refused by NHS England for the following reasons.

3.13 The Applicant has failed to adequately to define the pharmacy's patient groups. In its application form, the applicant provides an “analysis of current prescription data base” but without defining any patient groups.

3.14 Whilst the Applicant has provided some information regarding the surgeries at which patients are registered, the Applicant fails to explain how patients currently access the pharmacy or the patient's starting point. Basic information regarding the source of the pharmacy's prescriptions is unlikely to assist NHS England in its determination of this application as it does not assist with the key question of accessibility.

3.15 Tuffley Healthcare Limited proposes that the pharmacy's patient groups should be defined as follows:

- 3.15.1 By reference to the patient's GP surgery;
- 3.15.2 Method of transport. The Applicant provides no information except to say that patients use "various means" to access the pharmacy and then to go on to discuss transport generally in Gloucester. This is not helpful to NHS England as it does not deal with how relevant patient groups access the current premises and how those same groups would access the proposed premises;
- 3.15.3 Types of pharmaceutical service accessed. The Applicant states that "we have no walk in patients who request Medicine Use Reviews, Emergency Hormonal Contraception or Flu vaccinations or any other service;"
- 3.15.4 It seems high unlikely (if not impossible) that this statement is correct and Tuffley Healthcare Limited do not accept that there is any pharmacy other than some distance selling contractors where no patient walks in to request a service. In any event, this appears to suggest what the Applicant believes patient groups should not be defined as instead of what they should be defined as. The Applicant appears to provide a significant range of services to the local community but has not considered these at all in defining its patient groups;
- 3.15.5 The location of patients' starting points. The Applicant provides a map showing individual postcodes, but this does not assist NHS England as it only records a single postcode once and does not provide any information about how many patients come from a particular area or how they access the pharmacy;
- 3.15.6 Those who access pharmaceutical services from the pharmacy as a result of its' out of town / residential location and the particular type of products which are sold by the pharmacy. The pharmacy is located in an area of significant housing and will no doubt be used by patients who live in this area;
- 3.15.7 Patients who share a protected characteristic, in particular by reference to characteristics that might limit mobility. The area around the current pharmacy is amongst the 10% most deprived neighbourhoods in the country in relation to health deprivation and disability.

Would the proposed premises be significantly less accessible?

- 3.16 Even without the required information in relation to patient groups it is evident that, for at least some of the pharmacy's patient groups, the proposed premises would be significantly less accessible.
- 3.17 The Applicant makes no mention of the distance of the proposed relocation. The most direct route between the current and proposed location is approximately 1.2km across the city and a pedestrian using this route would have to walk via the A4301. It is not a walk that many, if any, patients would wish to undertake.
- 3.18 The Applicant accepts that some of their patients use public transport to access the current pharmacy but only provide details of access from the "main bus station terminus". As patients would be unlikely to use this terminus when there are other bus stops much closer to the medical centre this information is unhelpful for NHS England. As an example, Park Road is served by bus routes 1 and 2 and these are not listed in the list of bus routes that the Applicant says serve the proposed premises. A Google search does not bring up any public transport options between the current and proposed site and suggests walking instead. This is of no assistance for those who use the bus.

Conclusion

- 3.19 In conclusion, on behalf of Tuffley Healthcare Limited, Rushport Advisory submit that the Applicant has failed to provide sufficient information regarding its patient groups for

the purposes of regulation 24 and it is clear that there are patient groups for whom the proposed premises would be significantly less accessible and therefore the application must be refused.

#### 4 Summary of Representations

This is a summary of representations received on the appeal.

##### 4.1 NHS ENGLAND

- 4.1.1 Thank you for your letter dated 21 July 2020 sent to Primary Care Support England inviting representation in response to the appeal received against the decision made by the NHS England South West (North), B&NES, Gloucestershire, Swindon & Wiltshire (BGSW) Pharmaceutical Services Regulations Committee (PSRC) in respect of the above-mentioned application.
- 4.1.2 NHS England South West (North) held a meeting on 27 May 2020. Having reviewed the application and consultation responses, it was decided that oral submissions would not be necessary.
- 4.1.3 The PSRC noted the requirement to determine the effect of the application with regard to certain matters set out in Regulation 24. Preliminary checks confirmed there were no grounds to refuse the application under Regulations 31 and 32.
- 4.1.4 It was noted the application relates to a relocation of a pharmacy to a new medical centre being built in Westgate Street, Gloucester and will involve the relocation of the GP surgery currently co-located with the pharmacy at Rikenel in Gloucester. There are also plans to relocate the Gloucester Health Access Centre in Barton Street, Gloucester to the new site.
- 4.1.5 The Committee looked at the prescribing origins for Badham Pharmacy for a 6-month period between May 2019 and October 2019. It was noted 96.7% of patients had used the pharmacy with prescriptions generated by Gloucester City Health Centre at the Rikenel site. This aligned with statements made by the applicant and in their reply to consultation responses.
- 4.1.6 The Committee considered the distance involved in travelling from Rikenel to the new premises. With the high number of patients in mind it was felt it was important to consider the impact of those patients having to travel back to the pharmacy at its current site. The Committee considered the residential housing immediately around Gloucester Park and noted it is likely these patients will be the most affected if travelling on foot to use the GP and the pharmacy. However, unless they decide to move practices, they will have to travel to the GP surgery in its new location.
- 4.1.7 It was agreed there will be a degree of negative impact for a minority of patients. However, for the small number that may travel from the current area on foot, the journey is not unreasonable to negotiate. The city centre is covered by regular bus services from all directions. For those using a car, parking will be available at the new premises and there are public car parks nearby. On balance, it was agreed the new premises are not, therefore, significantly less accessible.
- 4.1.8 The Committee could find no substantial basis upon which to decline the application and granted the application on the grounds that it did pass the tests of Regulation 24 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

- 4.1.9 The relevant Health and Wellbeing Board Pharmaceutical Needs Assessment and any supplementary statements can be found here: <https://www.gloucestershire.gov.uk/counciland-democracy/gloucestershire-health-and-wellbeing-board/pharmaceutical-needsassessment/>

#### 4.2 BADHAM PHARMACY LIMITED [THE APPLICANT]

##### Case History

- 4.2.1 The Applicant wishes to start by referring to recent case history in Gloucester which confirms that Lloyds Pharmacy had a "No Significant Change Relocation" approved at appeal for them to relocate their pharmacy from 2 Elmbridge Road Gloucester to the new Aspen Centre, in Horton Road Gloucester.
- 4.2.2 Lloyds Pharmacy applied for the relocation following the relocation of the GP surgery adjacent to their premises in Elmbridge Road.
- 4.2.3 The distance between the two sites is identical to the distance from Gloucester City Health Centre to Quayside House.
- 4.2.4 This case history confirms that there is support for a pharmacy to essentially follow their local surgery, if that surgery is relocating into a new health centre.
- 4.2.5 Case evidence confirms that this Appeal against the decision of the Pharmaceutical Services Regulations Committee must therefore fail.

##### Background to the no significant change application

- 4.2.6 The Rikenel was once a villa [sic] in Gloucester which has seen numerous unsympathetic extensions in the 1970's and 1980's to provide space for the Gloucester City Health Centre (GCHC). The layout of the building does not provide sufficient facilities for the Surgery, which is why the Surgery is relocating to a new, purpose built health centre close by at Quayside.
- 4.2.7 The current pharmacy premises are not in a prime location. The pharmacy does not have a front door or even a window on to Park Street. The Applicant has only been permitted to install two small signs on the outside of the building (photo provided – see Appendix B), so it is of little surprise that the pharmacy is almost totally reliant on the GCHC for the prescriptions they dispense. It is also for this reason that the OTC counter sales are so low and the uptake of non-essential dispensing services are equally very low.
- 4.2.8 The current premises do not present a typical shop front that patients would want to access for the Applicant's services or advice.
- 4.2.9 The current premises are not fit for purpose for the surgery or the pharmacy.
- 4.2.10 Once the GP's relocate to Quayside House, the lease will automatically be terminated by the landlords, as the intention is to redevelop the Rikenel site.
- 4.2.11 Therefore as soon as the GP's relocate, the Applicant will have to close the pharmacy, and the only means by which the Applicant can continue to provide pharmaceutical services is to relocate also.
- 4.2.12 There are no local amenities close to the current location of the pharmacy in the GCHC.

- 4.2.13 The new Quayside House development will accommodate both the Gloucester Health Access Centre and the GCHC GP practices.
- 4.2.14 The Applicant has attached a map of the City of Gloucester as provided by Stagecoach West. (see Appendix B). This map confirms that both premises are located within the City Centre. In addition the Applicant encloses (at Appendix B) a map of Wards in Gloucester; both the current premises and Quayside House are in the Westgate Ward.

The redevelopment of Quayside House and the local docks in the centre of Gloucester

- 4.2.15 A new primary care hub is being constructed which key priority for the local NHS is providing high quality, joined up services. (Please see press release of the 12 December 2018, and further news article dated 27 May 2020. – see Appendix B)
- 4.2.16 The Applicant has received from Gloucestershire County Council confirmation that despite Covid-19 pandemic the construction process for the Quayside House is on track, with occupation likely possible from Spring 2021. (see Appendix B)
- 4.2.17 In addition to the redevelopment of Quayside House, new student accommodation is being built on Ladybellegate Street, and a £55m project is under way at Baker Quay to provide 18,000 sq. feet of restaurant accommodation together with 72 apartments.
- 4.2.18 It is therefore very clear that various projects are progressing to redevelop this locality of Gloucester. To increase the residential accommodation available and to create a primary care hub. It is inconceivable to consider such a scheme without the inclusion of a community pharmacy supporting the other health professionals and providing services to the current and new residents of this area of Gloucester.
- 4.2.19 In fact relocating the pharmacy to Quayside House will make it more convenient and more accessible for residents and patients being part of the new primary care hub.

4.2.20 In terms of the application the Applicant wishes to make the following comments:

4.2.20.1 The Gloucester City Health Centre is to be redeveloped; the Applicant has no alternative but to relocate, the Applicant will not be able to offer Pharmaceutical Services from the current site once the GPs relocate.

4.2.20.2 It has been confirmed that nearly all of the Applicant's prescriptions are generated by the surgery, which co-occupies the Gloucester City Health Centre.

4.2.20.3 A relocation is therefore the only means by which the Applicant can continue to support the surgery and is clearly in the best interests of patient care.

Letter of support from GCHC

- 4.2.21 The Applicant has received a letter of support from the Practice Manager at GCHC, which states that if the relocation of the pharmacy did not occur "there could be an adverse effect on our patients", and that "for the reasons of continuity of care for our patients I ask you to consider this when awarding the relocation".

4.2.22 It is self-evident that with 98% of the Applicant patients being registered with the GCHC, and with the surgery relocating, the only means of maintaining that continuity is for the pharmacy to relocate with the surgery, as requested by the Practice Manager.

#### Current situation

4.2.23 Patients have enjoyed the benefits of a co-located pharmacy within the surgery at the current location, they will have an expectation that this arrangement will continue at the new site.

#### Patient Groups

4.2.24 The Applicant has used data stored by the PMR system to export and analyse the patient groups of the pharmacy in July 2020. In addition the Applicant used data from the delivery service reports.

4.2.25 This data was also compared to the previous data collection period in October 2019.

4.2.26 In October 2019 the Applicant dispensed 9351 items to 1275 patients.

4.2.27 In July 2020 the number of items had fallen to 9248 but to 1281 patients.

4.2.28 In addition a new patient consultation exercise has provided further insight such that the following patient groups have been identified. Patients were offered questionnaire forms to complete during July 2020. The Applicant believes the data received is representative sample of their patient base (55 in October, 81 in July, total number is 136).

4.2.29 The Applicant defines the patient groups of the pharmacy as:

4.2.29.1 Patients who access the pharmaceutical services remotely;

4.2.29.2 Patients who access the pharmaceutical services after a visit to their GP;

4.2.29.3 Patients who access pharmaceutical services from home;

4.2.29.4 By Service accessed;

4.2.29.5 By method of transport;

#### Patient who access pharmaceutical services remotely:

4.2.30 In October 2019 the Applicant made 709 deliveries to 328 patients, and these represented 3683 prescription items. In July 2020 the Applicant made 1036 deliveries to 411 patients, and this represented 5282 items.

#### Percentage of patients delivered to:

4.2.31 In October 2019 328 of 1275 patients = 26% patients delivered to.

4.2.32 In July 2020 411 of 1281 patients= 32% patients delivered to.

4.2.33 The percentage of deliveries has risen from nearly 40% of the Applicant's prescription volume to nearly 60%.

- 4.2.34 More and more patients are now enjoying using this free, no criteria service that the Applicant provides. The Applicant expects the percentage of patients who use this service will continue to rise. When the Applicant acquired the pharmacy 10 years ago, the pharmacy provider at that time offered no delivery service and the Applicant has seen steady growth since then.
- 4.2.35 60% of the prescription medication the Applicant now delivers and these patients do not now need to visit the pharmacy for their medication and therefore the location of the pharmacy to them is of no relevance to this patient group.
- 4.2.36 32% of patients access services remotely. These patients have their prescriptions sent electronically or their prescription is collected from their GP surgery and the Applicant deliver the medication to the patient's home. These patients are not accustomed to accessing pharmaceutical services at the premises so they can be disregarded in the assessment in respect of Regulation 24.

Patients who access pharmaceutical services after a visit to their GP

- 4.2.37 In October 2019, 850 (90%) of the Applicant's patients not receiving their medication by the free delivery service were registered with the GCHC.
- 4.2.38 An examination of the patient data on the PMR for July 2020 confirms that 855 (98%) of patients who currently use the pharmacy are registered with GCHC.
- 4.2.39 The Applicant therefore assume that all of these patients will use the pharmacy after visiting their GP would continue to do the same should the pharmacy relocate with the surgery.
- 4.2.40 There are very few patients who are not registered with the GCHC and who do not have their medication delivered, and the numbers are too few to form a "patient group".
- 4.2.41 However, for the sake of completeness the Applicant has listed below these patients by reference to their GP surgery and an indication of distances to the existing premises and the proposed premises.
- 4.2.42 As can be seen from the table, some patients will have a little further to travel; some patients will have no distance to travel as they are registered with a surgery also relocating to the Quayside House site.
- 4.2.43 The total number of patents accessing our pharmacy, who are not registered with the GCHC, was 15 patients, out of a patient pool of 1,281 patients who had prescriptions dispensed in July 2020.
- 4.2.44 The Applicant's PMR data does not indicate whether these patients walk to the current location of the pharmacy, or use public or private transport. Bearing in mind the distances involved it would seem a reasonable assumption to make those patients do not walk. If they are travelling by car the new site offers them significant advantages with parking and accessibility.

Surgery	Number of Patients	Distance by car to current premises	Distance by car to Quayside
Aspen	6	1.22 miles	1.62 miles
Herstmonceux	1	162.86 miles [sic]	163.17 miles [sic]
Cam and Uley	1	15.21 miles	15.16 miles
University Medical Centre	1	9.15 miles	9.61 miles

London Road	1	1.22 miles	1.62 miles
Glevum	1	2.76 miles	3.87 miles

4.2.45 For the remaining four surgeries, whilst the Applicant's PMR data does not indicate whether these four patients walk or drive to the GCHC. The Applicant has made the assumption they currently walk because of the short distances involved. [One] will see that patients who use the Health Access Centre will be able to access the pharmacy in the same building, so for them the distance to walk would be zero!

4.2.46 Distance between Surgeries by walking:

Surgeries	Number of patients	Distance between surgery and current premises	Distance between surgery and Quayside
Rosebank	1	1.04 miles	1.39 miles
Bartongate	1	0.4 miles	0.79 miles
Gloucester Health Access Centre	1	0.36 miles	0*

\*Gloucester Health Access Centre is due to relocate to the Quayside House development.

Patients who access pharmaceutical services from home

4.2.47 The survey shows that 43% of patients had come directly from the surgery after seeing their GP, therefore just over half (57%) had come from home.

4.2.48 Patients who walked and came directly to the GCHC and who came from home came from the following postcodes:

GL1 2JS, GL1 4FZ, GL1 4AZ, GL1 5HG, GL1 4ET, GL2 5BJ, GL1 2AX, GL1 5PX, GL1 4JX, GL1 1HX, GL1 5TA, GL1 1RE, GL1 1HY, GL1 1HT, GL1 1RE, GL4 6TA, GL1 1RE, GL1 5AT, GL1 2PA, GL1 1HX, GL1 5JU, GL1 1UN, GL1 1RP, GL1 1QY, GL4 6RW.

4.2.49 These postcodes have been plotted on a map (see Appendix B)

4.2.50 Patients were asked to confirm the services they accessed at the pharmacy in the questionnaire form

Services Accessed	Numbers of patients accessing service
Collecting a prescription	65
Bringing in a prescription	14
Counter Advice	6
Flu vaccinations	5
Sharp waste returns	4
Blood pressure check	1
Stop smoking	1
Total responses	96

4.2.51 Clearly [one] can see that because the number of responses exceeds the number of questionnaire forms, some patients have indicated that they received more than one service when they were at the pharmacy.

Retail Sales

4.2.52 The Applicant retail sales continue to reflect the low footfall in the pharmacy. In July 2020, the Applicant took £239.63, including VAT of sales in the whole month!

#### New medicine service

4.2.53 6 interventions were conducted in 4 months.

#### Medicine Use Review

4.2.54 14 MUR's have been conducted in 4 months.

4.2.55 The Applicant has not provided any supervised consumption services.

#### Method of transport

4.2.56 A consultation exercise was conducted in October 2019, and refreshed in July 2020. The survey recorded the method of transport of patients who visited the pharmacy, and the results are detailed in the following table.

Patient method of travel to GCHC	October 2019	July 2020
Walk	30 1%	36 1%
Car	52 1%	45 1%
Bus	12 1%	6 1%
Mobility scooter	3 1%	6 1%
Cycle	3 1%	6 1%
Motorbike	0 1%	1%

4.2.57 The Applicant would suggest that the use of public transport has fallen temporarily since last October, because of concerns of the risk of Covid-19 infections on public transport, the improved weather and that it is summer when more people might naturally walk. These reasons would explain the fall in numbers of The Applicant's patients on public transport in July 2020.

#### Demographic data

4.2.58 The Applicant does not believe there are any factors that would assist the determination of this appeal.

#### Accessibility of the proposed premises

4.2.59 There are no physical, social or mental barriers that would make access to the proposed premises significantly more difficult than to the existing premises. Both premises are located within the same council ward.

4.2.60 Having defined the patient groups it is now appropriate to consider whether the new site will be significantly less accessible for the patients who use the pharmacy.

4.2.61 In this consideration, it is important to reiterate that 32% of the patients do not visit the pharmacy at all, as the Applicant delivers their medication.

4.2.62 Of the remaining 68% of the patients, nearly half have just come from their GP at the GCHC.

4.2.63 The terrain is flat between the two sites with no physical barriers, no busy roads to cross.

4.2.64 There are different routes between the two sites which patients may wish to choose, the shortest route is just under 0.7 miles.

4.2.65 The Applicant shall now return to the patient groups.

Patients who access pharmaceutical services remotely

4.2.66 The free prescription collection and delivery service will continue, this patient group is entirely unaffected by the relocation.

Patients who access pharmaceutical services after visiting their GP

4.2.67 The analysis that has already been provided confirms that only 15 patients are not registered with the GP's at the GCHC and, due to the small number, these patients are not considered to form a "patient group" who are "accustomed to accessing pharmaceutical services at the existing premises".

4.2.68 In any event, of the 15 patients, due to the distances between their GP and the GCHC, it would appear that only four patients would probably walk, and of these four patients, three have slightly further to walk, one has no distance to walk at all.

4.2.69 For the vast majority of patients who visit the pharmacy after a visit to their GP surgery the proposed premises would not be significantly less accessible since the Applicant will relocate with the GCHC GPs, from where 98% of the pharmacy's prescriptions originate.

Patients who access pharmaceutical services from home

4.2.70 The consultation exercise has confirmed how patients access the GCHC; these groups will now be analysed. Patients using public transport will find the new premises easier to access due to improved transport links.

Current provision

4.2.71 The main bus station in Gloucester is in Clarence Street. The distance from the main bus station to the current location of our pharmacy is 0.43 miles.

4.2.72 The Gold 63 service provides a service from Stroud, and the nearest bus stop is in Trier Way, this is a 5 minute walk to the GCHC.

4.2.73 The Gold 10 services provides a service from Cheltenham and the nearest bus stop is in Brunswick Street, a 4 minute walk to the GCHC.

New provision

4.2.74 The main bus station is 0.37 miles from Quayside House.

4.2.75 In addition in Westgate Street, the adjacent road to Quayside Road, the following services are available 94U, 351, 353, 676, and the 781 service.

4.2.76 These services provide connections to Cheltenham, Maisemeore, Apperley, Sandhurst, Newent, Higham and Cinderford.

4.2.77 Patients using public transport will have a great choice of connections much more easily accessible. The main bus station is closer, and the route to walk is via the pedestrian centre of Gloucester.

4.2.78 Patients using private transport will find the new premises much easier to access with significantly improved parking facilities.

#### Current facilities

4.2.79 In Park Road and Montpellier there are spaces for on road parking, but with a maximum stay of two hours. The charges are £1.50 the first hour and £3 for two hours.

4.2.80 The Applicant has detailed the current parking provision in the roads adjacent to the GCHC:

4.2.80.1 In Park Road there are 35 car spaces.

4.2.80.2 In Montpellier there are 24 car spaces.

#### New Location

4.2.81 At Quayside House a new 500 public space car park will be provided, which will include charging points for electric cars. In addition there are car parks adjacent to Quayside House at the Historic Dock car park which provides 170 spaces. The charge to park here is £1.40 for the first hour or up to three hours £2.50.

4.2.82 In addition there is the multi storey car park in Longsmith Street which provides 323 spaces at £1.40 for first hour and £2.30 for two hours. On the opposite side of the road is the Blackfriars car park which provides 28 spaces at £2 for the first hour and £5 for the second hour. The majority of the current car parks in the centre of Gloucester are closer to Quayside House and with the addition of the new car park at Quayside; patients will have a choice of over 1,000 car spaces in addition to some on street parking. The new location will be much more accessible to patients travelling to the pharmacy using private transport.

#### Patients travelling on foot or using a mobility scooter

4.2.83 An examination of the walk in patients group confirms that:

4.2.83.1 -68% of walk in respondents, the vast majority who walked to the pharmacy, were not walking directly from and returning directly to home after their visit to the GCHC.

4.2.84 Respondents including the following information to the question:

4.2.84.1 Where are you going to once you have left the pharmacy?

4.2.84.2 Tesco, Town, Walking, Work, Gloucester Quays, and the Park.

4.2.84.3 Where have you travelled from today? Respondents made the following comments;

4.2.84.3.1 Town, Work, and Gloucester.

4.2.85 Nearly 70% of the walk in patients therefore, are combining a visit to the GCHC with another location before or after they come to the Health Centre. They will not be affected by the relocation; indeed some respondents will find the pharmacy more convenient at Quayside.

- 4.2.85.1 Of the nine respondents who walked from home to the surgery to return home, no patient made any adverse comments about the proposed relocation.
- 4.2.86 In fact the following comments were made in the open box section by this patient group:
- 4.2.86.1 Always use this pharmacy, attached to the Surgery;
- 4.2.86.2 Always use this pharmacy; it is attached to the Surgery;
- 4.2.86.3 I hope this pharmacy does move with the Surgery;
- 4.2.86.4 -Ideal location from home (bottom of Westgate St);
- 4.2.87 Clearly this patient group seeks to support the relocation.
- 4.2.88 All patients were invited to respond to the following question on the consultation form:
- 4.2.89 "Did you come directly from your doctor's surgery?"
- 4.2.90 Five of the nine submissions by patients who had walked from home, and were walking directly home, confirmed that these patients had just seen their GP, so clearly these patients will have to access GP services at the new medical centre when the GP's relocate.
- 4.2.91 The majority of patients who travel on foot have a linked visit, travelling into town, or returning to work. The relocation will be of benefit to them. The majority of this patient group has just seen their GP, so in fact the Applicant's relocation would be of great benefit to them.
- 4.2.92 No patient in any group has offered any objection to the relocation; indeed many supportive comments have been made.
- 4.2.93 Whilst, of course, it is not feasible to plot the walking route of every patient to the proposed site compared to the existing site (and doing so would render meaningless the concept of patient groups), the map above shows that the proposed premises are not significantly further from patient homes compared to the existing premises. Whilst some patients may have further to travel, others will have a similar or shorter distance.
- 4.2.94 Even for those who start their journey at, or in the vicinity of, the existing premises (and who, consequently, would have the furthest to travel), the proposed premises are not significantly less accessible by foot.
- 4.2.95 The Applicant has identified three possible routes for patients to walk or use a mobility scooter from the vicinity of the existing premises to the proposed premises.
- 4.2.96 Route A
- 4.2.96.1 From Montpellier to Brunswick Square, crossing over Brunswick Road using the traffic calming platform, and then via Southgate Street to the Barbican Road and then to the location of Quayside House. [The Applicant] walked this route and this journey took 10 mins.
- 4.2.97 Route B

4.2.97.1 From Montpellier to Brunswick Road, crossing over Brunswick Road with the pedestrian controlled crossing, then Parliament Street to the Barbican Road and then to the location of Quayside House. [The Applicant] walked this route and the journey took 7 mins.

#### 4.2.98 Route C

4.2.98.1 From Montpellier to Brunswick Street, crossing over Brunswick Street via the pedestrian controlled crossing, then via the pedestrian area of Eastgate and Southgate, then to Quay Street. [The Applicant] walked this route and the journey took 12 mins.

4.2.99 All three routes have no barriers to pedestrians or patients using mobility scooters.

4.2.100 Pavements are wide, well lit, with dropped curbs.

#### Services accessed

4.2.101 The Applicant has already looked at accessibility for patients who are using dispensing services, which make up the vast majority of the pharmacy's patients. In respect of the majority of other service provided, these are linked to dispensing services, so that the same considerations will apply (e.g. MURs and NMS). Those patients will overwhelmingly be patients of the GCHC and will be relocating to the new surgery (and the proposed site) and would therefore not find the proposed premises to be significantly less accessible.

4.2.102 In relation to other services, for the reasons already given in terms of access by reference to forms of transport, the proposed premises would not be significantly less accessible.

4.2.103 There are no additional factors which would apply to patients accessing a particular service which would make the proposed premises significantly less accessible.

4.2.104 The Applicant consider it is very important to give patients the opportunity to make comments on all relocation applications. Patient feedback is vital to the decision makers. Patients have a right to make their comments heard.

4.2.105 Please find responses made by patient in the open box section of the questionnaire conducted in July 2020.

4.2.105.1 I wish to take the opportunity in mentioning the service we have been receiving, it is always exemplary, the service is always prompt from all of the staff, they are a credit to the NHS and patients, thanking you sincerely.

4.2.105.2 Staff are great, friendly, if the surgery is moving, so should the pharmacy.

4.2.105.3 Very convenient being next to the Surgery.

4.2.105.4 Love this pharmacy; please move with the Surgery, you do a fantastic job.

4.2.105.5 Love this pharmacy.

4.2.105.6 Great Service.

- 4.2.105.7 Very helpful staff, my prescriptions are always dealt with competently.
- 4.2.105.8 Yes I would love to stay with this practice.
- 4.2.105.9 My pharmacy is amazing, so friendly and helpful, thank you.
- 4.2.105.10 Can't thank staff enough for their help and advice.
- 4.2.105.11 Hope this pharmacy is moving otherwise I will have to travel across town.
- 4.2.105.12 This pharmacy I choose to use, staff are very good.
- 4.2.105.13 Yes I love to go to you as I get out and you be there to help me out, you do a top job.
- 4.2.105.14 Staff always looking after me.
- 4.2.105.15 Pharmacy attached to Surgery a great service; so many people use it and find it a lifeline.
- 4.2.105.16 Always use this pharmacy even though I have moved.
- 4.2.105.17 Always use this pharmacy.
- 4.2.105.18 Convenient pharmacy next to Surgery.
- 4.2.105.19 Staff have gone through a lot this year with the fire, they deserve a medal, keep smiling -Friendly staff.
- 4.2.105.20 The Pharmacy should be kept with the Surgery.
- 4.2.105.21 Always use this pharmacy, attached to the Surgery.
- 4.2.105.22 Always use this pharmacy; it is attached to the Surgery.
- 4.2.105.23 I hope this pharmacy does move with the Surgery.
- 4.2.105.24 Ideal location from home (bottom of Westgate St).
- 4.2.106 In response to the points raised by the Appellant's representative, the Applicant make the following points.
- 4.2.107 The Applicant considers that the Pharmaceutical Services Regulations Committee (PSRC) have conducted a very thorough examination of the facts when considering both the relocation application to Quayside House and the application by Tuffley Health Care to relocate their pharmacy to Southgate Street Gloucester GL1 2DP.
- 4.2.108 It was for this reason that the Applicant didn't appeal the Tuffley Health Care application as the PSRC have considered all of the evidence in both applications, and reached a robust decision.
- 4.2.109 The appeal by the Appellant's representative relies heavily on selected bullets points that were fully considered by the PSRC in considerations and their determination.

- 4.2.110 The appeal by RA has no substance, they have not provided any new evidence to suggest the decision was not resistance to challenge, but merely copied out selected points that the Committee had already reviewed in detail.
- 4.2.111 RA has sought to omit the following points raised by the Professional Advisor to the Committee, which for the sake of completeness; the Applicant will now refer to:
- 4.2.111.1 Note however that the medical practice is moving from one area to the other and the Applicant assume this proposal has been assessed as not being detrimental to patients;
  - 4.2.111.2 The pharmacy business model seems to rely heavily on prescriptions from the practice and therefore the catchment area of the GP practice would appear to be useful, if we have this information? From the dispensing data the catchments area of the GP practice is a good proxy for the catchment area of the majority of the pharmacy's activity;
  - 4.2.111.3 The Applicant agrees that the arrangements for the provision of pharmaceutical services would not change significantly if approved;
  - 4.2.111.4 The Applicant would agree that the overwhelming majority of acute prescription activity would move if it were refused and would not move if it were granted.

#### Summary

- 4.2.112 In summary:
- 4.2.112.1 The patient consultation exercise has confirmed that patients are supportive of the relocation;
  - 4.2.112.2 98% of the patients are GCHC registered patients, and the Applicant are relocating with the GCHC;
  - 4.2.112.3 32% the Applicant deliver to;
  - 4.2.112.4 For patients using public transport there is a great choice of services adjacent to the new site;
  - 4.2.112.5 For patients using private transport, the new location offers a much improved choice of parking options;
  - 4.2.112.6 For patients walking the new site is easily accessible by various routes, which are all flat with no barriers;
  - 4.2.112.7 The new location will enable the Applicant to provide a more accessible service to the patients of Gloucester from improved premises;
  - 4.2.112.8 The terrain between the two sites is flat, with no barriers to those patients that might choose to walk;
  - 4.2.112.9 The Applicant has to relocate, as the Rikenel is to be redeveloped;
  - 4.2.112.10 The Practice Manager is in support of the relocation, in the best interests of her patients;

4.2.112.11 The PSRC have already stated in their determination that the journey between the two sites is "not a difficult journey and doesn't give cause for concern";

4.2.112.12 Recent case history supports a relocation of a similar nature to this application.

4.2.113 The Applicant therefore invite NHS Resolution to dismiss this Appeal, and the judgement of the PSRC stands so that the Applicant can continue to support their patients in the new surgery.

#### 4.3 LLOYDS PHARMACY

4.3.1 Thank you for your letter dated 21 July 2020 advising of the appeal with regards to the decision of NHS England that refused the above application. Lloyds Pharmacy would like to take this opportunity and submit the following response.

4.3.2 It is noted that the decision report by NHS England included an assessment from the PSRC Professional Adviser.

4.3.3 Responding to Regulation 24(1)(a) they stated:

4.3.3.1 *"I do not think it is easy to say that the new premises are not significantly less accessible for the patient groups that use the pharmacy at the existing premises.*

4.3.3.2 *The proposed site is in a different part of the city centre of Gloucester; the 15min walk from one to the other is not insignificant"*

4.3.4 Lloyds Pharmacy also enclose a copy of their letter to NHS England (31 October 2019) as part of the consultation that they would be grateful for the Committee to take into consideration.

4.3.5 In the event an oral hearing is required Lloyds Pharmacy would wish to reserve the right to attend.

In a letter dated 31 October 2019 to NHS England, Lloyds Pharmacy stated:

4.3.6 Thank you for your letter dated 24 September 2019 advising of the above application. Lloyds Pharmacy would like to submit the following response.

4.3.7 Limited information is provided with regard to the journey that would be undertaken for those who are accustomed to accessing pharmaceutical services by foot whether following a visit to their GP or whether collecting medication at a different time. Lloyds Pharmacy would ask NHS England to consider all matters relating to Regulation 24 as part of the determination of the application, for those patient groups who are accustomed to accessing the current premises in the context of the proposed site.

4.3.8 Lloyds Pharmacy would be grateful if you would keep them informed of progress and of the decision in due course.

#### 4.4 L ROWLAND & CO (RETAIL) LTD

4.4.1 In their initial letter to the application L Rowland & Co (Retail) Ltd asked that the relevant parts of regulation 24 were given due consideration. However, a number of concerns arise out of the decision report which lead L Rowland & Co (Retail) Ltd to conclude that the appeal by Tuffley Healthcare Ltd is justified.

In particular L Rowland & Co (Retail) Ltd are concerned that the following comments do not indicate that regulation 24 has been properly thought-through:

4.4.1.1 *"40% of items are delivered to patients"*. Clearly 60% of items are, therefore, not delivered and it would be extremely unusual if all of those were acute prescriptions. This would indicate a substantial number of people attend the pharmacy to collect their repeat prescriptions. L Rowland & Co (Retail) Ltd therefore fundamentally disagree with the assertion that *"Most of the remainder of patients accessed the pharmacy immediately after using the GP surgery services"*. This indicates that insufficient thought has been given to the patient groups receiving services from the pharmacy in its current location.

4.4.1.2 *"The Committee noted the wide distribution of patients accessing the pharmacy, with patients coming from Quedgeley, Hucclecote and Longford. This suggests people use the pharmacy, and possibly the GP surgery at Rikenel, whilst they are visiting the town centre for work or retail purposes"*. The relocation will take the pharmacy from one side of Gloucester to the opposite side therefore granting this application seems to be at odds with this statement; surely that makes the pharmacy significantly less accessible?

4.4.1.3 *"It was noted 96.7% of patients had used the pharmacy with prescriptions generated by Gloucester City Health Centre at the Rikenel site"*. This may well be correct. However, as outlined above it takes no account of repeat medication that is dispensed for patients who are stable on their medication and do not see their doctor prior to each dispensing.

4.4.1.4 *"Google maps estimates the walking time to be 14 minutes..."* This would seem to be a significant walk to access a pharmacy in a city centre and, as is noted in the report, some patients may be further away than this.

4.4.1.5 *"The Committee considered the residential housing immediately around Gloucester Park and noted it is likely these patients will be the most affected if travelling on foot to use the GP and the pharmacy. However, unless they decide to move practices, they will have to travel to the GP surgery in its new location"*. Again this assumes that the only reason to visit the pharmacy is to have medicines dispensed following a consultation in the GP practice. This is patently untrue.

4.4.2 L Rowland & Co (Retail) Ltd believe that there are a number of inconsistencies with the way in which this relocation application has been handled and the way that the determination has therefore been made. As stated above L Rowland & Co (Retail) Ltd support this appeal.

4.4.3 L Rowland & Co (Retail) Ltd respectfully request that NHSR inform them of the outcome in due course.

In a letter addressed to NHS England dated 29 October 2019, L Rowland & Co (Retail) Ltd stated:

4.4.4 L Rowland & Co (Retail) Ltd note this is an excepted application and should one be required would be willing to attend an oral hearing if NHS England deem it necessary.

4.4.5 L Rowland & Co (Retail) Ltd wishes to make the following comments:

- 4.4.6 L Rowland & Co (Retail) Ltd would like to be assured that NHS England when determining the application will ensure that the relocation satisfies the requirements of regulation 24(1) namely:
- 4.4.6.1 For patients accustomed to accessing pharmaceutical services at the existing premises, the location of the new premises is not significantly less accessible;
  - 4.4.6.2 Granting the application would not result in significant change to the arrangements that are in place for the provision of local pharmaceutical services;
  - 4.4.6.3 Granting the application would not result in a significant detriment to proper planning in respect of the provision of pharmaceutical services in the area;
  - 4.4.6.4 The services to be provided at the new premises are the same as the services the applicant has been providing at the existing premises;
  - 4.4.6.5 The provision of pharmaceutical services will not be interrupted (except for such period as NHS England may for good cause allow).
- 4.4.7 In addition, the Applicant must explain why NHS England should not refuse the application by virtue of regulation 31 (refusal for same or adjacent premises).
- 4.4.8 L Rowland & Co (Retail) Ltd would wish to be assured that NHS England has sufficient governance procedures in place to ensure that the criteria for the excepted application are fulfilled.

## 5 Observations on representations

### 5.1 RUSHPORT ADVISORY LLP ON BEHALF OF TUFFLEY HEALTHCARE LTD [THE APPELLANT]

#### Badham Pharmacy ("The Applicant")

- 5.1.1 The Applicant starts with what they describe as a "case history" but the case they quote is not relevant to this application and is for a different area. Each case must be considered on its individual merits.
- 5.1.2 The Applicant describes the background to the application. In this section they state the following:  
  
*"There are no local amenities close to the current location of the pharmacy in the GCHC."*
- 5.1.3 The Appellant's representative agree with this statement. There are no local amenities that can be considered to be close and the proposed site is certainly not close. The Appellant's representative deals with this in more detail later.
- 5.1.4 The Applicant states that they have no alternative other than to relocate. This may well be true, but they have a significant number of options available for premises that they can relocate to which do not appear to have been explored in any way by the Applicant.

#### Patient Groups

- 5.1.5 It is only at this point that the Applicant has started to consider patient groups. The Appellant's representative note that the Applicant relies on the results of

two surveys to support their application and has provided a copy of the questions asked as part of their reply to this appeal. Unfortunately the Applicant has then failed to provide the actual survey results other than to cherry pick from parts that they say support their application. It is not clear why the Applicant has chosen to do this, but it is for the Applicant to satisfy the Committee that there will be no relevant patient group that would find the relocated pharmacy significantly less accessible and they have chosen to withhold evidence that is clearly important in this case rather than provide it to be considered.

- 5.1.6 The Applicant lists a minimal number of patient groups and attempts to argue that patients do not access the pharmacy for anything much other than having a prescription dispensed. However, a screenshot of their NHS entry (which is maintained by the Applicant) shows that they provide 29 different services (see attached screenshot at Appendix C). This information was updated by the Applicant on 28 November 2019 and is therefore taken as accurate.
- 5.1.7 According to the Applicant, patients can book consultations and also walk in without an appointment for a wide range of services from EHC to Minor Ailments, two types of Stop Smoking services, health checks and vaccinations (both flu and non-flu).
- 5.1.8 The Applicant states at page 7 of their letter that over half (57%) of the patients that visit the pharmacy do so other than after visiting the attached surgery. However, the Applicant then focuses only on those who are registered with the GP practices that are relocating and have a requirement to visit their GP prior to visiting the surgery.
- 5.1.9 Similarly the Appellant's representative state that it knows from page 8 of the Applicants' letter that approximately 20% of patients visiting the pharmacy are neither collecting nor bringing in a prescription. Again, this shows that far from being a pharmacy that only dispenses prescriptions to patients from the co-located surgery, it is also being used by the local community.
- 5.1.10 The information provided by the Applicant raises more questions than it answers and cannot satisfy the Committee that the requirements of regulation 24(1)(a) are met.
- 5.1.11 With respect to Demographic Data, the only comment made by the Applicant is:
  - 5.1.11.1 *"I do not believe there are any factors that would assist the determination of this appeal."*
- 5.1.12 The Appellant's representative states that Tuffley Healthcare Ltd disagrees.
- 5.1.13 The current pharmacy location falls in Gloucester 004B LSOA, which is ranked 360 out of 32,844 LSOAs in England; where 1 is the most deprived LSOA. This is amongst the 10% most deprived neighbourhoods in the country. Within individual indices of multiple deprivation the area is on the 10% most deprived for:
  - 5.1.13.1 Health deprivation and disability;
  - 5.1.13.2 Income;
  - 5.1.13.3 Employment;
  - 5.1.13.4 Crime;

5.1.13.5 Living Environment Deprivation;

5.1.13.6 Income deprivation affecting older people.

- 5.1.14 In other words, the local population suffers from health deprivation, higher than average disability, low income and high unemployment.
- 5.1.15 Looking specifically at the ward profile it is notable that over 20% of residents consider that their day to day activities are limited either a little or a lot. In addition, almost 50% of households (49.4% to be precise) have no car or van availability. These are significant percentages which the applicant not only does not mention, but also claims would not “assist the determination of this appeal”.
- 5.1.16 These factors are certainly relevant when considering the next part of the applicant’s submissions about how a patient who lives around the current site would access the proposed site.
- 5.1.17 For example, the Applicant suggests there are no physical or social barriers. Had they considered the demographic data they would have seen that this is incorrect. Patients would face both physical and social barriers. The Applicant claims there are no busy roads, yet they also claim that both the current and proposed premises are in the town centre.
- 5.1.18 Perhaps most telling is that the Applicant cannot describe the route that a user of public transport would take. This is because there is no such route. Searching Google for public transport options simply suggests that patients would walk instead. The Applicant ignores this and instead discusses the public transport options for the main bus station or the proposed site. Patients who live in the deprived area around the current site would not find this helpful at all.
- 5.1.19 The Applicant’s postcode map on page 7 confirms that the pharmacy is used by the local community, but only plots individual postcodes once, so there is no way to know how many people who live locally use the pharmacy because it is conveniently located for them.
- 5.1.20 The Appellant’s representative states that Tuffley Healthcare Ltd accepts that for patients who access their GP and require pharmaceutical services immediately afterwards the proposed relocation would not make the pharmacy significantly less accessible. However, for all other patients, especially those who live in the deprived area around the existing site and would have a journey of at least 0.7 miles (likely on foot) and who may well have mobility difficulties due to age or disability, the pharmacy would become significantly less accessible.
- 5.1.21 The Applicant states the following in relation to the appeal submitted:
- 5.1.21.1 *“The appeal by RA has no substance, they have not provided any new evidence to suggest the decision was not resistance to challenge, but merely copied out selected points that the Committee had already reviewed in detail.”*
- 5.1.22 The Appellant’s representative states that Tuffley Healthcare Ltd does not accept this criticism as being fair. As the Committee will note, the Applicant provided almost no detail in their application or response to consultation comments. Even at this stage has not provided the complete survey results for analysis or considered the demographics of an area which ranks as one of the most deprived in the country. It is the Applicant that must demonstrate that their application fulfils the regulatory criteria and they have not done so.

## 5.2 BADHAM PHARMACY LTD (THE APPLICANT)

5.2.1 Thank you for the e-mail and copies of representations from interested parties in relation to this appeal.

5.2.2 The Applicant will now respond to the points raised

### Lloyds Pharmacy

5.2.3 The Pharmaceutical Services Regulations Committee (PSRC), have already confirmed in the committee notes of the 27 May 2020, that there are different routes available to patients [sic], by which they can access the Pharmacy at the proposed new location.

5.2.4 The distance between the two sites is identical to the distance that was between Lloyds Pharmacy at Elmbridge Road Gloucester, and the Aspen Centre in Horton Road Gloucester, to which Lloyds were granted relocation at appeal.

5.2.5 Lloyds Pharmacy did not consider this distance was significant in their application, and this view was supported by NHS Resolution at appeal, when the appeal was overturned.

5.2.6 The Applicant has already submitted evidence to confirm that the new medical centre at Quayside can be accessed by foot in 7 minutes by Route B.

5.2.7 The selective reference to PSRC advice is therefore not a fair representation of the time it could take patients to access the Pharmacy at the new location. It is in fact half of that time.

### Rowlands Pharmacy

#### Pont One [sic]

5.2.8 In the submission made on the 19 August, the Applicant has confirmed that they now deliver nearly 60% of the prescription items they dispense. This has risen dramatically from nearly 40% last year. The data Rowlands refer to is clearly now out of date.

5.2.9 Of the remaining prescription items the Applicant does dispense, nearly half (43%) are from patients who have just been to surgery.

5.2.10 Detailed analysis has already been submitted in regard of patients who access pharmaceutical services from home.

5.2.11 This analysis has reviewed accessibility at the current location and the proposed location for patients using public transport, private transport, and mobility scooter, cycling and walking.

5.2.12 This analysis has further reviewed patient's journey cycles, where they started their journey and where their destination was.

5.2.13 Routes available to patients walking between the two sites have been identified and examined.

5.2.14 Patient consultation feedback has been disclosed in full.

5.2.15 All of this comprehensive data confirms that sufficient thought has been given to patient groups receiving services from the pharmacy at its current location.

5.2.16 The conclusion is that the relocation is a "no significant change relocation".

Point Two

5.2.17 The Applicant does not accept the comments referring to patients who come from Quedgeley, Hucclecote and Longford, in terms of these patients accessibly to the new location. [sic]

5.2.18 It would seem reasonable to assume that because of the distances involved these patients will use public or private transport, (please see distance involved between these local centres and the pharmacy at the Rikenel).

5.2.18.1 The distance from the centre of Quedgeley is 3.4 miles;

5.2.18.2 The distance from the centre of Hucclecote is 3.0 miles;

5.2.18.3 The distance from the centre of Longford is 2.5 miles.

5.2.19 There is in fact much improved access to public transport at the new site, and will be much improved access to new and existing car parks adjacent to Quayside House.

5.2.20 These patients will therefore find the new pharmacy significantly more accessible.

Point Three

5.2.21 The Applicant has addressed this point already.

Point Four

5.2.22 Rowlands Pharmacy has sought to ignore the fact that patients have a choice of routes between the current and proposed site. The 14 minutes referred to by the PSRC is the longest route via the centre of Gloucester. The walking time is therefore not 14 minutes as stated; it is considerable less via any of the more direct routes.

Point Five

5.2.23 The pharmacy at the Rikenel will close when the GP's relocate. The Applicant does not have the option to remain on site, they have to relocate. The evidence confirms that the relocation application will ensure patients continue to have access to high quality pharmacy services that are easy accessible.

Pharmaceutical Services Regulations Committee

5.2.24 The PSRC have concluded that based on their local knowledge of Gloucester:

5.2.24.1 *"The Journey is not unreasonable to negotiate"*

5.2.24.2 *"The City Centre is covered by regular bus services from all directions"*

5.2.24.3 *"For those using a car, parking is available at the new premises and there are public car parks nearby"*

5.2.24.4 *"The new premises are not, therefore significantly less accessible"*

Conclusion

5.2.25 The evidence confirms that this appeal ought to fail, to ensure patients continue to have ease of access to Pharmaceutical Services following the relocation of the Gloucester City Health Centre.

## 6 Consideration

6.1 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.

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

6.3 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.

6.4 The Committee noted that the Applicant has provided information with regard to the history and previous relocations of pharmacies that have moved when a surgery moved. The Committee, whilst noting this information, is of the view that all applications should be considered on their own merits based on the information which is before them at the time the application is considered.

6.5 The Committee noted the comments from the Applicant regarding the application by Tuffley Healthcare Ltd and that it had not appealed the decision regarding Tuffley Healthcare Ltd. The Committee was of the view that this is not relevant as this is for a different application and not something which is before the Committee at this time. The Committee therefore proceeded to consider the information that was before it that was relevant to the instant application and subsequent appeal.

6.6 The Committee considered whether it should consider the application based on the fact that the Gloucester City Health Centre and the Applicant's pharmacy would be relocated to the proposed premises at the same time. The Committee considered that the correct approach was to consider the position as if the application was granted, that the Applicant's pharmacy would be located at the proposed premises and the Health Centre at its existing site, because it did not necessarily follow that both would be relocate together.

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

6.8 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).*

- 6.9 The Committee noted its application, the Applicant states “*There are no other pharmacies on or adjacent to the proposed premises, therefore Regulation 31 does not apply in this instance.*” In its decision, NHS England, based on its findings, states “*The PSRC therefore did not have grounds to refuse the application by virtue of regulation 31.*” The Committee noted that this view had not been disputed by any party either on appeal or in subsequent representations. Therefore the Committee was not required to refuse the application under the provisions of Regulation 31.
- 6.10 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).*
- 6.11 The Committee considered the position in relation to each condition.
- 6.12 In relation to condition (a), the Committee considered the map submitted by NHS England which clearly show the locations of the existing pharmacies as well as the proposed site and medical practices within the area.
- 6.13 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.
- 6.14 In this case, the Applicant has identified the patient groups as:
- 6.14.1 Patients who access the pharmaceutical services remotely;
  - 6.14.2 Patients who access the pharmaceutical services after a visit to their GP;
  - 6.14.3 Patients who access pharmaceutical services from home;

- 6.14.4 By service accessed; and
- 6.14.5 By method of transport.
- 6.15 The Committee also noted that the Appellant, in its appeal, had identified the following patient groups, which had not been disputed by parties:
  - 6.15.1 By reference to the patient's GP surgery;
  - 6.15.2 Method of transport;
  - 6.15.3 Types of pharmaceutical service accessed; and
  - 6.15.4 The location of patients' starting points.
  - 6.15.5 Those who access pharmaceutical services from the pharmacy as a result of its' out of town / residential location and the particular type of products which are sold by the pharmacy.
  - 6.15.6 Patients who share a protected characteristic, in particular by reference to characteristics that might limit mobility.
- 6.16 The Committee notes there are some overlaps between the patient groups as defined by the parties. The Committee concludes that the patient groups who are accustomed to accessing pharmaceutical services from the existing premises are those set-out below.

*Patients registered with Gloucester City Health Centre*

- 6.17 The Applicant states that 98% of its prescriptions come from patients registered with the Gloucester City Health Centre.
- 6.18 The Committee considered that the definition of this patient group as those registered with this GP practice does not easily allow an assessment of the impact of the relocation on the accessibility of the new premises by this patient group.
- 6.19 The Committee considered that for the purposes of condition (a), it is necessary to break down this patient group into two distinct groups:
  - 6.19.1 A patient group that accesses pharmaceutical services at the same time as accessing services from the GP practices; and
  - 6.19.2 A patient group that accesses pharmaceutical services otherwise than in connection with accessing services from the GP practices.
- 6.20 The Committee considered that application of the test in condition (a) to this patient group required it to consider issues raised in the application and appeal that could impact on the accessibility of the new premises. This includes a consideration of the other potential patient groups or sub-groups indicated in the application or appeal as set out below.
- 6.21 The Committee considered that this patient group will access the new premises on foot, by car or by public transport and it was necessary to consider the accessibility of the new premises in light of each method of transport for this patient group.

*The patient group that accesses pharmaceutical services following a visit to the Gloucester City Health Centre*

- 6.22 The Committee firstly considered the patient group that accesses pharmaceutical services following a visit to the Gloucester City Health Centre. The Committee considered that if and when the Gloucester City Health Centre does move to the proposed premises then patients wishing to access pharmaceutical services following a visit to the Health Centre would not find the proposed premises significantly less accessible as they would already be at the proposed location.
- 6.23 The Committee noted the leaflet provided by the Applicant in its representations (Appendix B) entitled "Multimillion pound new Gloucester GP surgery and multi-story car park takes shape" which states "*The project has been split into two phases: phase one will cost £16 million to build the GP surgeries and pharmacy and will be finished by early 2021.*" The Committee is therefore mindful that at this point in time, the Gloucester City Health Centre is currently located at point B on NHS England's map as it has not yet relocated to where the Applicant proposes to be relocated themselves, further the Committee has not been supplied with an exact date when the Gloucester City Health Centre will move. Therefore the Committee was of the view that it should consider access for this patient group from the surgery's current site to the proposed site.
- 6.24 The Committee considered that this patient group will access the new premises on foot, by car or by public transport and it was necessary to consider the accessibility of the new premises in light of each method of transport for this patient group.
- 6.25 The Committee noted the Applicant had provided information to demonstrate how patients can access the current premises and the proposed premises, which the Committee considered to be relevant at this point in time, given the Gloucester City Health Centre is still based at the current premises. The Applicant states in its representations that "*the terrain is flat between the two sites with no physical barriers, no busy roads to cross.*" The Applicant further states that there are three routes between the two sites and that 0.7 miles is the shortest. Parties consider the walk to be significant. The Committee noted no information has been provided to support a finding that the town centre roads are busy and also that parties had not disputed the terrain and that there are no physical barriers. The Committee is of the view therefore that for this patient group, for those willing and able to walk to the existing site, where the Gloucester City Health Centre is still based, the proposed premises are not significantly less accessible.
- 6.26 For those patients with mobility issues, or those patients unwilling or unable to walk, the Committee went on to consider access by private transport. The Committee noted that this included patients with cars, mobility scooters, bicycles and motorbikes. The Applicant describes there being little parking at the existing premises but that there are 500 parking spaces for patients at the proposed premises which comes as part of the new development at the proposed site. Parties have not disputed the existing parking arrangements or the proposed parking as described by the Applicant. The Committee is of the view that whilst there is much less parking at the existing site, where the Gloucester City Health Centre is still based, there is parking, which this patient group currently use and so for this patient group, who use private transport, the proposed premises are not significantly less accessible.
- 6.27 The Committee considered access by public transport for those unwilling or unable to walk. The Applicant, in its application, refers to several bus services. The Applicant provides more information in its representations, describing the main bus station as 0.43 miles from the current premises, where the Gloucester City Health Centre is still based. The Applicant refers to 5 bus services and says it provides connections to Cheltenham, Maisemeore, Apperley, Sandhurst, Newent, Higham and Cinderford. The Committee noted that NHS England, in its decision state "*The city centre is covered by regular bus services from all directions.*" The Committee noted the Appellant, in its observations states a search on Google did not find any public transport options which simply suggests that patients would walk instead. The Committee considered the information provided by both parties and was of the view that there is no information to

indicate that patients are able to access a bus from the Gloucester City Health Centre, where it is currently situated, to the proposed premises of the pharmacy. The Committee was not satisfied that those who cannot walk are able to use public transport to travel between the two sites. The Committee is of the view that for this patient group, who use public transport, requiring to get between the proposed premises and where the Gloucester City Health Centre is still currently based, the proposed premises are significantly less accessible.

*The patient group that accesses pharmaceutical services otherwise than in connection with a visit to the Gloucester City Health Centre*

- 6.28 The Committee next considered the patient group registered at the Gloucester City Health Centre accessing services otherwise than in connection with a visit to the GP surgery, e.g. where registered patients are in possession of a repeat prescription or require essential services other than the dispensing of a prescription. The Committee also considered that the 15 patients registered with other practices as referenced by the Applicant in its representations could be considered within this patient group too.
- 6.29 The Committee considered those patients on foot. The Applicant has provided a map which pinpoints where people walk from in order to access the existing premises. The Applicant also describes the terrain between the existing premises and proposed premises as flat with no barriers, wide pavements and well lit. Parties consider the walk to be significant. The Committee noted that the distance to the proposed premises would vary depending on the starting point as shown on the Applicant's map and therefore for some people the distance would be shorter and for others it would be longer. The Committee was mindful that parties have not disputed the terrain as described by the Applicant. The Committee is of the view therefore that for this patient group, those willing and able to walk, the proposed premises are not significantly less accessible.
- 6.30 For those patients unwilling or unable to walk, the Committee went on to consider access by private transport. The Applicant describes there being little parking at the existing premises but that there are 500 parking spaces for patients at the proposed premises which comes as part of a development. Parties have not disputed the proposed parking as described by the Applicant. The Committee is of the view that for this patient group, who use private transport, the proposed premises are not significantly less accessible.
- 6.31 The Committee considered access by public transport. The Committee noted that NHS England, in its decision state "*The city centre is covered by regular bus services from all directions.*" The Applicant provides more information in its representations, describing the main bus station as 0.37 miles from the proposed premises and 0.43 miles from the current premises, where the Gloucester City Health Centre is still based. The Applicant refers to 5 bus services and says it provides connections to Cheltenham, Maisemeore, Apperley, Sandhurst, Newent, Higham and Cinderford. The Committee considered the information provided by both parties and is of the view that there is no information to indicate bus service regularity or whether these bus routes go via every area as pinpointed by the Applicant, the maps do not show where Cheltenham, Maisemeore, Apperley, Sandhurst, Newent, Higham and Cinderford are in relation to the proposed premises. Therefore the Committee is not satisfied that there are bus services which cover all the areas where the Applicant's patients start their journey from. The Committee is of the view that for this patient group, who use public transport, requiring to access the proposed premises otherwise than in connection with a visit to the Gloucester City Health Centre, where it is still based, the proposed premises are significantly less accessible.

*Patients travelling to the proposed premises from home or another starting location point*

- 6.32 The Committee was of the view that the patient group identified by the Appellant defined by "location of patients' starting point" and the Applicant's patient group

identified as “patients accessing pharmaceutical services from home” could be considered together, as the considerations for both these groups was the same.

- 6.33 For those patients on foot no matter where their starting point may be, either from home, from a location close to the current premises or from a location close to the new premises, the Applicant has described the terrain as flat with no barriers, wide pavements and well lit. Parties consider the walk to be significant. The Committee noted that the distance to the proposed premises would vary depending on the starting point as shown on the Applicant’s map which shows locations from patients’ homes and therefore for some people the distance would be shorter and for others it would be longer to the proposed premises. The Committee was mindful that parties have not disputed the terrain or that there are no physical barriers as described by the Applicant. The Committee is of the view therefore that for this patient group, those willing and able to walk, the proposed premises was not significantly less accessible.
- 6.34 The Applicant describes there being little parking at the existing premises but that there are 500 parking spaces for patients at the proposed premises which comes as part of a development. Parties have not disputed the parking facilities as described by the Applicant at the proposed premises. The Committee is of the view that for this patient group, who use private transport, the proposed premises was not significantly less accessible.
- 6.35 The Committee considered access by public transport. The Committee noted that NHS England, in its decision state “*The city centre is covered by regular bus services from all directions.*” The Applicant provides more information in its representations, describing the main bus station as 0.37 miles from the proposed premises. The Applicant refers to 5 bus services and says it provides connections to Cheltenham, Maisemeore, Apperley, Sandhurst, Newent, Higham and Cinderford. The Committee noted the Appellant, in its observations states that it has searched on “*google for public transport options simply suggests that patients would walk instead.*” The Committee considered the information provided by both parties and is of the view that there is no information to indicate bus service regularity or whether these bus routes go via every area as pinpointed by the Applicant, the maps do not show where Cheltenham, Maisemeore, Apperley, Sandhurst, Newent, Higham and Cinderford are in relation to the current or proposed premises. Therefore the Committee is not satisfied that there are bus services which cover all the areas where the Applicant’s patients start their journey from. The Committee is of the view that for this patient group, who use public transport, requiring to access the proposed premises from home or another starting location point, the proposed premises are significantly less accessible.

#### *Patients accessing pharmaceutical services*

- 6.36 The Committee noted that both the Applicant and Appellant have identified a patient group defined as those patients accessing pharmaceutical services. The Applicant, in its application states that there were no walk in patients who had requested “*Medicine Use Reviews, Emergency Hormonal Contraception or Flu vaccinations or any other service.*” The Appellant, in its appeals states that it “*seems highly unlikely ..... where no patient walks in to request a service.*” In its representations, the Applicant states that there were 6 NMS and 14 MURs performed over a four month period and further states that retail sales in July 2020 were low. In its observations the Appellant provides a screen shot of the Applicant’s NHS webpage showing the applicant offers 29 services.
- 6.37 The Committee considered the information provided by parties and was of the view that patients falling into a patient group of accessing pharmaceutical services must start their visit either from home or an alternative starting point.
- 6.38 The Committee considered that it had already considered all methods of transport for patients who start their visit either from home or an alternative starting point in

paragraphs 6.32 to 6.34 above and this would be true of the patient group wishing to access pharmaceutical services.

- 6.39 The Committee concluded therefore that for those willing and able to walk and those patients using private transportation, the proposed premises are not significantly less accessible.
- 6.40 However with regard to those patients using public transportation, the Committee concluded that for this patient group, the proposed premises are significantly less accessible.

*Patients accessing the pharmacy by method of transport*

- 6.41 The Committee noted that both the Applicant and Appellant had identified a patient group defined by method of transport.
- 6.42 The Committee considered that it had already considered all methods of transport for patients who start their visit either from home or an alternative starting point in paragraphs 6.32 to 6.34 above and this would be true of a consideration of this patient group wishing to access the pharmacy by transport method.
- 6.43 The Committee concluded therefore that for those willing and able to walk and for those patients using private transportation, the proposed premises are not significantly less accessible.
- 6.44 However with regard to those patients using public transportation, the Committee concluded that for this patient group, the proposed premises are significantly less accessible.

*Patients accessing the pharmacy in terms of its location and products sold*

- 6.45 The Appellant has identified a patient group which it describes as patients accessing the pharmacy in terms of its location and products sold. The Appellant states in its appeal that "*the pharmacy is located in an area of significant housing and will no doubt be used by patients who live in this area.*"
- 6.46 The Committee is of the view that such patients living in this area have been considered by way of other patient groups identified, particularly those patient groups with a starting point from home as considered in paragraphs 6.32 to 6.34 above and this would be true of this patient group accessing the pharmacy in terms of its location.
- 6.47 The Committee concluded therefore that for those willing and able to walk and for those patients using private transportation, the proposed premises are not significantly less accessible.
- 6.48 However with regard to those patients using public transportation, the Committee concluded that for this patient group, the proposed premises are significantly less accessible.

*Patients with protected characteristics*

- 6.49 The Committee noted that in its appeal, the Appellant had made reference to people with protected characteristics and in particular "*by reference to characteristics that might limit mobility. The area around the current pharmacy is amongst the 10% most deprived neighbourhoods in the country in relation to health deprivation and disability.*"
- 6.50 The Committee considered accessibility for patients with limited mobility and noted that this patient group may access pharmaceutical services. The Committee noted that for the purposes of the Equality Act 2010 the Committee is therefore required to consider

the elimination of discrimination and advancement of equality between this patient group and persons who do not share a protected characteristic.

- 6.51 The Committee was of the view that whilst the Appellant had not provided specific information with regard to a particular protected characteristic, there was the reference to the levels of health deprivation and disability for patients in the area and that a distance of, at least 0.7 miles could be considered significant in terms of access on foot and the findings regarding bus services. Given it is not known what proportion of these would access the proposed site by car, the Committee was of the view that the proposed premises are significantly less accessible.

*Patients who currently access the current site remotely*

- 6.52 The Committee noted the Applicant's statement that 32% of patients have their prescription delivered to their home representing 60% of prescription items. The Committee noted that the figures provided were for one month, July 2020, and whilst this demonstrated an increase in figures from July 2019 the Committee was mindful that numbers were likely raised because of the current Covid-19 situation, with patients less able to visit GPs and the use of home deliveries generally increasing. The Committee was of the view that if patients were not accustomed to accessing pharmaceutical services at the premises, then they were not subject to the test under condition (a). The Committee, however, was particularly mindful that the provision of essential services is not limited to the dispensing of prescriptions.

*Overall assessment re Regulation 24(1)(a)*

- 6.53 The Committee was left in some difficulty because, while it had limited data regarding some patient groups, the Committee was not able to assess access for the patient groups in full detail such as those who were unable or unwilling to walk and were reliant upon using public transportation.
- 6.54 The Committee was mindful that it had to determine not just that the proposed premises would be less accessible but 'significantly' less accessible. However it is for the Applicant to satisfy the Committee that the pharmacy proposed at the new location will not be significantly less accessible. The Applicant had provided limited information in respect of existing users use of public transportation.
- 6.55 The Committee was able to draw limited conclusions (set out above) regarding access for the identified patient group but only in certain circumstances.
- 6.56 In the circumstances, the Committee was unable to be satisfied that, for patient groups who are accustomed to accessing the present site, the proposed site is not significantly less accessible.
- 6.57 The Committee was therefore of the view that condition (a) is not met.

*Regulation 24(1)(b)*

- 6.58 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 further states that "due to the high numbers of patients using the pharmacy after using the surgery, it is likely there will be a significant change to services in the area if the pharmacy does not move." The Committee noted that this had not been disputed by any party. On the information provided the Committee was of the opinion that the granting of the application would not result in a significant change to the arrangements in place for the provision of local pharmaceutical services or of pharmaceutical services in any part of the area of HWB1 or in a controlled locality of a neighbouring HWB, where that controlled locality is within 1.6 kilometres of the premises to which the applicant is seeking to relocate. The Committee concluded that condition (b) is met.

*Regulation 24(1)(c)*

- 6.59 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)*

- 6.60 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)*

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

*Overall*

- 6.62 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 6.62.1 confirm NHS England's decision;
  - 6.62.2 quash NHS England's decision and redetermine the application;
  - 6.62.3 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.
- 6.63 In the circumstances outlined above, as the Committee had reached a different conclusion to that of NHS England, the Committee determined that the decision of NHS England must be quashed.
- 6.64 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.
- 6.65 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.
- 6.66 The Committee concluded that further notification under paragraph 19 of Schedule 2 would not be helpful in this case.

**7 Decision**

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

- 7.2 The Committee quashes the decision of NHS England and redetermines the application.
- 7.3 The Committee has determined that conditions (b), (c), (d) and (e) are satisfied.
- 7.4 The Committee has determined that condition (a) is not satisfied.
- 7.5 The application is refused.

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

A copy of this decision is being sent to:

Badham Pharmacy Limited (the Applicant)  
Rushport Advisory LLP on behalf of Tuffley Healthcare Ltd (the Appellant)  
Lloyds Pharmacy  
L Rowland & Co (Retail) Ltd  
PSCE on behalf of NHS England - South West (South West North)