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**APPEAL AGAINST NHS COMMISSIONING BOARD,
MIDLANDS LOCAL AREA TEAM ("NHS ENGLAND")
DECISION TO REFUSE A COMBINED APPLICATION FOR A
CHANGE OF OWNERSHIP AND RELOCATION WITHIN A
HWB AREA THAT DOES NOT RESULT IN SIGNIFICANT
CHANGE TO PHARMACEUTICAL SERVICES PROVISION, IN
RESPECT OF SHAWBIRCH LTD FROM WEST MIDLANDS
CO-OPERATIVE CHEMISTS LTD, (t/a THE MIDCOUNTIES
CO-OPERATIVE PHARMACY) ANGLESEY STREET,
HEDNESFORD, WS12 1AS TO 100 MARKET STREET,
HEDNESFORD, STAFFORDSHIRE, WS12 1AG**

1 Outcome

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

Advise / Resolve / Learn

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APPEAL AGAINST NHS COMMISSIONING BOARD, MIDLANDS LOCAL AREA TEAM ("NHS ENGLAND") DECISION TO REFUSE A COMBINED APPLICATION FOR A CHANGE OF OWNERSHIP AND RELOCATION WITHIN A HWB AREA THAT DOES NOT RESULT IN SIGNIFICANT CHANGE TO PHARMACEUTICAL SERVICES PROVISION, IN RESPECT OF SHAWBIRCH LTD FROM WEST MIDLANDS CO-OPERATIVE CHEMISTS LTD, (t/a THE MIDCOUNTRIES CO-OPERATIVE PHARMACY) ANGLESEY STREET, HEDNESFORD, WS12 1AS TO 100 MARKET STREET, HEDNESFORD, STAFFORDSHIRE, WS12 1AG

1 The Application

By application dated 4 December 2019, Shawbirch Ltd ("the Applicant") applied to NHS Commissioning Board (NHS England") with a combined application for a change of ownership and relocation within a HWB area that does not result in significant change to pharmaceutical services provision, in respect of West Midlands Co-operative Pharmacy (t/a The Mid-counties Co-operative Pharmacy) at Anglesey Street, Hednesford, WS12 1AS to 100 Market Street, Hednesford, Staffordshire, WS12 1AG. In support of the application it was stated:

- 1.1 In response to why this application should not be refused pursuant to Regulation 31, the Applicant stated:
 - 1.1.1 n/a
- 1.2 The Applicant provided an undertaking to provide the same services as those that the current owner is providing by ticking "yes" in answer to question 7.1 on the application form.
- 1.3 The Applicant provided an undertaking that there would be no interruption to service provision by ticking "no" in answer to question 7.2 on the application form.
- 1.4 Section 8, 8.1 "Relocation of premises in an approved retail area" of the application form states "This section applies where the current premises were included in a pharmaceutical list as a result of an application to which Regulation 13(1)(a) of the NHS (Pharmaceutical Regulations) 2005, as amended, applied (approved retail areas)".
- 1.5 In response to 'If the new address is not in the same approved retail area please explain why you believe your application should not be refused in accordance with Regulation 23(4)(a)' the Applicant stated:
 - 1.5.1 The Midcounties Co-op is closing down their store where the current pharmaceutical services are being provided hence the reason for the sale of the business and assets to move the pharmacy out of the current store.
 - 1.5.2 This application is to provide the same pharmaceutical services from 100 Market Street as being provided by the Co-op Pharmacy from Anglesey Street (50 metres away) using the same staff and covering the same demographic.

- 1.5.3 There will be no change to the essential, enhanced and any advanced services currently being provided.
- 1.5.4 There is no significant change to both services provided and or the service user.
- 1.5.5 Therefore there is no reason for objection.
- 1.5.6 There will be no disruption in trade.
- 1.6 In response to why the Applicant considers that the new premises are not significantly less accessible for the patient groups that are accustomed to accessing pharmaceutical services at the existing premises, the Applicant stated:
 - 1.6.1 The new premises, 100 Market Street, is within 50 metres of the existing Co-operative Pharmacy.
 - 1.6.2 These premises are just as accessible as the old premises for all patient groups using the old premises.
- 1.7 In response to why the Applicant considers 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 1.6 km of the new premises, the Applicant stated:
 - 1.7.1 This application will not result in any significant changes to the arrangements that are already in place for the provision of local pharmaceutical services in any part of the HWB area because the move is only 50 metres away.
 - 1.7.2 Relocating the pharmacy from within the store and in its entirety (including staff and pharmacist) to the new premises.
- 1.8 In response to why the Applicant considers granting the application will not cause significant detriment to the proper planning in respect of the provision of pharmaceutical services in the HWB's area, they stated:
 - 1.8.1 Granting the application will not cause any detriment to the proper planning in respect of provision of pharmaceutical services in the HWB's area because the move is only 50 metres away with no change in staff.
- 1.9 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 premises by ticking "yes" on the application form.
- 1.10 The Applicant confirmed that there will be no interruption in services by ticking "yes" on the application form.

2 The Decision

NHS England considered and decided to refuse the application. The decision letter dated 25 November 2020 states:

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

Extract from the Decision Report

- 2.2 Decision:

- 2.3 Refuse the application under Regulation 26(2)(d) as it does not meet the regulation for 24(1)(a) The applicant did not provide details of any patient groups whom are accustomed to accessing pharmaceutical services at the existing premises, therefore it cannot be concluded that the location of the new premises is not significantly less accessible.
- 2.4 It is recognised that regulation 24(1) (b), (c), (d), (e) were met; regulation 31 has been met; regulation 26(2) (a),(b),(c) and (e) are met.

3 The Appeal

In a letter dated 4 December 2020 addressed to NHS Resolution, Rushport Advisory LLP on behalf of the Applicant appealed against NHS England decision. The grounds of appeal are:

Background

- 3.1 West Midlands Co-operative Chemists Limited (“Co-op”) has agreed terms to sell their pharmacy in Anglesey Street to the Applicant. As part of the agreement, the Applicant is required to relocate the pharmacy and has secured nearby premises.
- 3.2 This supporting information describes;
- 3.2.1 What the relevant patient groups are; and
- 3.2.2 That for these patient groups the proposed location will not be significantly less accessible and
- 3.2.3 That the application meets all parts of the test under Regulation 24.

Preliminary Point

- 3.3 It is noted that section 2 of the application form completed by the Applicant states that the pharmacy was included in the pharmaceutical list as a result of an application under regulation 13(1)(a) of the 2005 Regulations (approved retail areas).
- 3.4 Having checked with the Applicant it is apparent that this box was ticked YES by mistake when it should have been ticked NO.
- 3.5 In accordance with the undertaking to notify NHSCB of any material change to the application prior to its determination Rushport Advisory LLP therefore ask the Committee to note this error. The pharmacy has never been part of any “approved retail area” and was not approved under regulation 13(1)(a) of the 2005 Regulations.
- 3.6 This has already been notified to NHS England on 4 September 2020 by email and appears to have been accepted at that point.

NHS England Decision

- 3.7 The Committee will note that the NHS England decision to refuse this application states as follows;

Refuse the application under Regulation 26(2)(d) as it does not meet the regulation for 24(1)(a) The applicant did not provide details of any patient groups whom are accustomed to accessing pharmaceutical services at the existing premises, therefore it cannot be concluded that the location of the new premises is not significantly less accessible.

It is recognised that regulation 24 (1) (b), (c), (d), (e) were met; regulation 31 has been met; regulation 26(2) (a),(b),(c) and (e) are met.

- 3.8 As there appears to be no disagreement between the parties that all parts of the relevant Regulations are met save for regulation 24(1)(a) the Applicant is focussing this appeal on addressing the requirement of regulation 24(1)(a).
- 3.9 At the time of making their initial application the Applicant believed that, as the move was over such a short distance, there was no need to consider patient groups in any detail. The Applicant apologises to NHS England for this omission and has addressed the issue of relevant patient groups in this appeal.

Details of the Proposed Relocation

- 3.10 The Applicant wishes to relocate to new premises and have found appropriate premises on Market Street less than 50 metres away from the current premises.
- 3.11 The distance is very short and takes less than 1 minute to walk, with both premises being located within the town centre area.
- 3.12 The route (which is shown at Appendix A) is flat and easy to access for anyone who accesses the current premises.

The matters to be considered under Regulation 24

- 3.13 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
- 3.14 The Applicant has considered different patient groups defined by reference to GP Surgeries, where patients live and the type of transport they use to access the pharmacy. More information on each is provided below. It is important to note that the patient journey is no different whether they are bringing in a prescription, buying medicines, receiving advice, or using any other pharmaceutical service and the routes / journeys apply to access to all types of pharmaceutical services and for all patients.
- 3.15 There is no service that the Applicant provides which requires a separate patient group to be identified.
- 3.16 No NMS, CPCS, MUR or Flu vaccinations are currently being provided by Co-op even though the pharmacy is accredited to provide them.
- 3.17 The pharmacy dispenses approximately 7,000 items per month on average.
- 3.18 Due to its town centre location the existing pharmacy receives prescriptions from a number of surgeries as shown below (latest available figures at November 2020). Surgeries that contribute less than 1% of the total prescription items received have not been separately listed as they are all located a significant distance from the existing pharmacy and patients would not walk from the surgery to the pharmacy. For patients that use other means of transport to access the pharmacy, their journey is considered further below.

Surgery	Total Monthly items	% of total
Hednesford Valley Health Centre	3452	51
Moss Street Surgery (EN_M83139) Moss Street Surgery	1024	15
Red Lion Surgery (EN_M83130 Cannock Chase Hospital)	416	6
The Colliery Practice (EN_M83638) Hednesford Street Surgery	379	6
Chadsmoor Medical Practice (EN_M383637) Chadsmoor Medical Practice	376	6
Dr I Rasib & Partners (EN_M83616) GP Suite	284	4

Heath Hayes Health Centre (EN_M83129) Heath Hayes Health Centre	281	4
Rawnsley Surgery (EN_M83919) The Surgery	214	3
Alderwood Medical Practice (EN_M83107) Alderwood Medical Practice)	161	2

- 3.19 In order to consider whether a relocated pharmacy will be “significantly less accessible” or not for any patient group it is necessary to compare access arrangements to those that would exist after the proposed move.

Patients accessing pharmaceutical services at the same time (or directly after) accessing GP services

- 3.20 All patients who access pharmaceutical services directly after visiting their GP will see virtually no change in access to the proposed premises. The same journeys would be undertaken, same bus routes used, same walking distances travelled. The only change would be a maximum of 50 metres more or less depending on the direction of travel.

Hednesford Valley Health Centre

- 3.21 This health centre is located at the junction of Market Street and Station Road and is approximately 200 metres from the existing pharmacy. The relocation will bring the pharmacy 100 metres closer to the health centre. The relocation is along the same route that a patient would walk if they were leaving the health centre to walk to the pharmacy. The overall journey is therefore slightly shorter along the same route.

Moss Street Surgery

- 3.22 This surgery on Moss Street is located approximately 0.9 miles south west of the current and proposed pharmacy location. The additional journey on foot is 50 metres along the same road that a patient would already be walking along to access the current pharmacy. For completeness it should be noted that whilst this is the most direct route, it is not a route that most patients would take as it involves using back roads. Instead the majority of patients would walk along the main Cannock Road until it meets Market Street. The relocation will therefore make the pharmacy slightly easier to access and reduce the distance on foot for those who are not aware of the back roads.

Additional Surgeries

- 3.23 Each of the other surgeries listed in the table above is over 1 mile from the current site, with Alderwood Medical Practice being 2.9 miles from the current location. Patients do not walk from these surgeries to the current pharmacy and instead access the pharmacy as part of shopping and accessing services in the town centre (considered below).

Patients who access pharmaceutical services other than after a visit to the GP surgery

Patients using the town centre and its services

- 3.24 Both the current and proposed premises are within the town centre, 50 metres apart, and patients will therefore experience virtually no change in access to the proposed premises.
- 3.25 The same journeys would be undertaken, same bus routes used, same walking distances travelled. The only change would be a few metres more or less depending on the direction of travel. The journey between the two sites is shown in the picture [see Appendix A] and has normal pavements with dropped curbs, street lighting etc as would be expected within a town centre environment.

Local Residents

- 3.26 The town is typical in that the residential housing starts at the edge of the retail core. In the same way as described above, there is virtually no change in journey for any of these patients due to the close proximity of the current and proposed sites.
- 3.27 The Hednesford Hills to the east mean that most housing is located to the west and south of the current location.
- 3.28 Access to both the current and the proposed sites is almost entirely via the main Cannock Road which leads on to Market Street. As a result of the road layout access will be very slightly improved for approximately 90% of the local resident population who access the town centre via Cannock Road coming from the west and Market Street from the south east. For the very small number of patients who live in the wedge of land between the railway line and the parkland to the east, the additional journey on foot is less than 50 metres as per the photograph already provided.
- 3.29 All local residents who chose to walk to the current pharmacy would use the same routes that they currently use and the only small difference would be the final 50 metres of the journey, which for most would no longer be required.

Car Users

- 3.30 Car users would use the same car parks as they currently do and see no significant change in access. The main Anglesey Street car park is located 50 metres from the proposed pharmacy location and is behind the existing pharmacy location. The walking route between the car park and the proposed location is the same as is shown above.
- 3.31 However, there is also an exit from the car park directly on to Market Street so that 50 metres is the maximum rather than minimum distance from the entrance / exit to the car park to the proposed location with the minimum distance being approximately 30 metres.
- 3.32 In addition, there is free on street parking for 40 minutes directly on Market Street approximately 10 to 20 metres from the front door of the proposed pharmacy location.
- 3.33 Irrespective of which car park patients currently use, there will be no significant change in access after the relocation takes place.

Bus Users

- 3.34 There is no bus stop on Anglesey Street where the current pharmacy is located.
- 3.35 Bus users would use the same bus stops to access the current and proposed premises and experience no significant change. The main bus stops and routes are at Cannock Road and Victoria Street. The pharmacy will be slightly closer to both of these main bus stops which are used by people who access the town centre.
- 3.36 Access for bus users will therefore be very slightly improved.

Protected Characteristics

- 3.37 Those with reduced mobility but who are still able to access and walk around the current site and shops will have no difficulty accessing the proposed site instead as it is so close by. Similarly those who use public transport or their own car to access the town centre will experience no material difference in access, although it should be very slightly improved due to closer parking and closer bus stops. Patients who are severely limited in mobility do not access the pharmacy personally and instead rely on carers and / or relatives. In the event that they were required to attend the pharmacy or wished to, the proposed location [sic]

3.38 The above demonstrates that no patient group would find the new premises significantly less accessible.

3.39 In addition, the Committee will also consider the other matters required under Regulation 24, although the Applicant notes that the previous NHS England [sic] accepted that all the remaining parts of regulation 24 were met.

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 pharmaceutical services

3.40 There is no evidence that granting the application would result in a significant change to the arrangements that are in place for the provision of pharmaceutical services. The same services will be provided from both sites.

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 HWB's area

3.41 The Applicant is not aware of any plans in respect of the provision of pharmaceutical services to which significant detriment would be caused should their application be granted.

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

3.42 The Applicant undertakes to provide the same services at the new premises as are provided at the existing premises.

The provision of pharmaceutical services will not be interrupted (except for such period as the NHSCB may for good cause allow)

3.43 The Applicant confirms that the provision of pharmaceutical services will not be interrupted during the proposed relocation (except for such period as the NHSCB may for good cause allow).

3.44 For the reasons given above the Applicant requests that the Committee approves this application.

4 **Summary of Representations**

No representations were received by NHS Resolution in response to the circulation of the appeal.

5 **Consideration**

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

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

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

5.4 The Committee first considered Regulation 31 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 which states:

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

(2) *This paragraph applies where -*

(a) a person on the pharmaceutical list (which may or may not be the applicant) is providing or has undertaken to provide pharmaceutical services ("the existing services") from -

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

(ii) adjacent premises; and

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

5.5 The Committee noted that the Applicant had not provided any information in the application form on this point beyond the inclusion of "n/a" in the relevant box. The Committee noted that the wording of the application form only required the Applicant to include information in the relevant section if the proposed premises were adjacent to, or in close proximity to, another pharmacy or dispensing appliance contractor premises. The Committee considered it reasonable to determine that the lack of information in the application form on this point when read with the wording of the application form allowed it to be reasonably satisfied that the Applicant considered that the proposed premises were not adjacent to, or in close proximity to, another pharmacy or dispensing appliance contractor premises. The Committee further noted that NHS England had not refused the application on the basis of Regulation 31. Based on the information before it, the Committee therefore determined that it was not required to refuse the application under the provisions of Regulation 31.

5.6 The Committee noted the following regulation in respect of Regulation 26(2) (Change of ownership and no significant change relocation of premises applications).

Regulation 26(2)

Section 129(2A) of the 2006 Act does not apply to an application from a person who is not included in a pharmaceutical list for the area of a HWB (HWB1) for inclusion in that list, or from a person included in a pharmaceutical list for inclusion in that list also in respect of other premises than those already listed in relation to that person, if -

(a) the applicant (X) is undertaking to provide the pharmaceutical services that another person (Y) -

(i) is providing at listed chemist premises ("Y's premises"), whether in the area of HWB 1 or a neighbouring HWB, or

(ii) has provided at Y's premises but Y is no longer able to provide pharmaceutical services at those premises for reasons that the NHSCB accepts are good cause;

(b) X is proposing to carry on, in place of Y, the business in the course of which Y is providing, or has provided, pharmaceutical services at Y's premises;

(c) X is undertaking to provide the same pharmaceutical services as Y is providing or has provided at Y's premises, but at different premises ("X's premises");

(d) had Y applied to move to X's premises, that application would have been granted under regulation 24; and

(e) in a case where pharmaceutical services-

- (i) *are being provided at Y's premises, the provision of pharmaceutical services will not be interrupted (except for such period as the NHSCB may for good cause allow) by the move of the business from Y's premises to X's premises, or*
- (ii) *are not being provided at Y's premises, the provision of pharmaceutical services will commence at X's premises within the period that the NHSCB considers is an acceptable period for the interruption of the provision of pharmaceutical services by the business that X is taking over.*

Regulation 26(3)

An application pursuant to paragraph (1) must be refused if it relates to distance selling premises, unless the application, if made pursuant to regulation 25(1), would not be refused pursuant to regulation 25(2).

Regulation 26(4)

An application pursuant to paragraph (2) must be refused if the existing pharmacy premises from which the applicant is seeking to relocate are distance selling premises, unless the premises to which the applicant is seeking to relocate are also distance selling premises (and this is in addition to the requirement that arises by virtue of paragraph (2)(d) that the application if made to regulation 25(1), would not be refused pursuant to regulation 25(2)).

- 5.7 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
 - 5.7.1 confirm NHS England's decision;
 - 5.7.2 quash NHS England's decision and redetermine the application;
 - 5.7.3 if it considers that there should be a further notification to the parties to make representations, quash NHS England's decision and remit the matter to NHS England.
- 5.8 The Committee considered the position in relation to each criterion.
- 5.9 The Committee noted that the above regulations are specific in the criteria the applicant must satisfy, if their proposed change of ownership and no significant change relocation of premises is to succeed.
- 5.10 The Committee noted that the existing pharmacy premises are not distance selling premises and therefore was of the view that the application of Regulation 26(3) and (4) did not require it to refuse the application.
- 5.11 The Committee noted that the Applicant had completed Section 8 on the application form and in particular 8.1 which states "Relocation of premises in an approved retail area". The Committee was mindful that this section is to be completed if the original pharmacy had been granted under Regulation 13(1)(a) of the NHS (Pharmaceutical Services) Regulations 2005. The Committee noted that NHS England had made no comment on this, however the Applicant's representative, on appeal, had confirmed that this section had been completed in error and the original pharmacy had not been granted under Regulation 13(1)(a) of the 2005 Regulations as an "approved retail area". The Committee therefore was of the view that the application and subsequent appeal did not need to be considered under Regulation 24(3)(a) of the Regulations.
- 5.12 The Committee considered the position in relation to each paragraph noting that there was no dispute that paragraphs 26(2)(a), (b), (c) and (e) were satisfied and applied to the circumstances of this application.

- 5.13 The focus of the appeal was on paragraph 26(2)(d) and whether, if the Applicant had applied to move to the new premises, that application would have been granted pursuant to Regulation 24.
- 5.14 The Committee went on to consider Regulation 26(2)(d) as part of its consideration of Regulation 24.
- 5.15 The Committee considered if the Applicant's proposal to move from the existing pharmacy premises at the West Midlands Co-op, Anglesey Street, Hednesford, WS12 1AS to 100 Market Street, Hednesford, Staffordshire, WS12 1AG should be granted under Regulation 24.
- 5.16 The Committee had regard to Regulation 24 which requires consideration of the following five criteria:
- (a) *for the patient groups that are accustomed to accessing pharmaceutical services at the existing premises, the location of the new premises is not significantly less accessible;*
 - (b) *in the opinion of the NHSCB, granting the application would not result in a significant change to the arrangements that are in place for the provision of local pharmaceutical services or of pharmaceutical services other than those provided by a person on a dispensing doctor list—*
 - (i) *in any part of the area of HWB1, or*
 - (ii) *in a controlled locality of a neighbouring HWB, where that controlled locality is within 1.6 kilometres of the premises to which the applicant is seeking to relocate;*
 - (c) *the NHSCB is not of the opinion that granting the application would cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area of HWB1;*
 - (d) *the services the applicant undertakes to provide at the new premises are the same as the services the applicant has been providing at the existing premises (whether or not, in the case of enhanced services, the NHSCB chooses to commission them); and*
 - (e) *the provision of pharmaceutical services will not be interrupted (except for such period as the NHSCB may for good cause allow).*
- 5.17 In relation to criterion (a) of Regulation 24 above, the Committee considered the map submitted by NHS England, which clearly shows the locations of the existing pharmacies as well as the proposed site and medical practices within the area.
- 5.18 The Committee considered the information before it with regard to the patient groups who are accustomed to accessing pharmaceutical services at the existing premises. The Committee considers that it must seek to identify the patient groups who would potentially be affected by the relocation based upon the information provided by the parties. This information is most commonly going to be provided by the Applicant but others may also be able to contribute to the information on which the Committee will proceed to determination.
- 5.19 In this case, the Applicant has identified the patient groups as:
- 5.19.1 Patients who access pharmaceutical services at the same time (or directly after) accessing GP services;
 - 5.19.2 Patients who access pharmaceutical services other than after a visit to the GP.

- 5.20 The Committee concludes that the patient groups who are accustomed to accessing pharmaceutical services from the existing premises are those set-out below.

Patients who access pharmaceutical services at the same time (or directly after) accessing GP services

- 5.21 The Committee noted that the Applicant had further split this group into 3 distinct groups:

5.21.1 Patients registered with Hednesford Surgery;

5.21.2 Patients registered with Moss Street Surgery;

5.21.3 Patients registered with other surgeries in the area.

Patients registered with Hednesford Surgery

- 5.22 The Committee noted from the information provided by the Applicant that approximately 51% of prescriptions originate from this surgery.

- 5.23 The Committee noted the unchallenged comments from the Applicant that due to the location of both the existing and proposed site of the pharmacy and how close the two sites are to each other that there would be no material difference for any patient irrespective of how they travel to the Hednesford Surgery and then go on to visit the pharmacy.

- 5.24 The Committee first considered access for those patients who walked to the pharmacy after visiting Hednesford Surgery. The Committee noted the unchallenged comments from the Applicant that the move of the pharmacy would mean that the site of the proposed pharmacy is 100 metres closer to the Hednesford Surgery as the same route would be undertaken by patients and they reach the proposed site before they reach the existing site. The Committee also noted the comments from the Applicant that the area has normal pavements with dropped kerbs and street lighting.

- 5.25 For those patients who use their own transport, the Applicant stated that they would use the same car park and are able to exit this car park directly on to Market Street and therefore are able to be closer to the proposed pharmacy. In addition, there is on street parking on Market Street approximately 10-20 metres from the proposed site. The Committee was of the view that for those patients who use private transport the proposed site was not significantly less accessible.

- 5.26 For those who do not have access to their own transport but use public transport the Committee noted the undisputed comments from the Applicant that the bus stops that patients would use to access the existing pharmacy are the same as the bus stops that would be used to access the proposed site. The Committee noted that there is no difference in access for those that use the bus as a short walk from the bus stop to the pharmacy would still be required.

- 5.27 The Committee was of the view that for those patients who access the pharmacy at the same time as accessing the Hednesford Surgery there would be no change in how they would then proceed to access pharmaceutical services given the location of the proposed site in relation to the existing site.

Patients registered with Moss Street Surgery

- 5.28 The Committee noted that approximately 15% of the total number of prescriptions originated from Moss Street Surgery.

- 5.29 Again the Committee noted the unchallenged comments from the Applicant with regard to the general overall access for those patients who are registered with the Moss Street Surgery due to the geographical nature of the area.
- 5.30 For those who access the pharmacy by foot the Committee noted the comments from the Applicant that it would involve following the same route however these patients would have a slightly longer distance of approximately 50 metres to travel. The Committee noted that this was again on well lit, well maintained, level footpaths and that there were no barriers to movement in the area. The Committee was of the view that for those who accessed pharmaceutical services on foot the proposed pharmacy was not significantly less accessible.
- 5.31 For those who chose to access pharmaceutical services by private transport after a visit to this GP, the Committee noted that there would be no change for this patient group. The Committee noted that the same car parks would be used which would then require a short walk from the car park to the proposed site. The Committee noted that if patients chose to exit the car park via Market Street they would have a slightly shorter walk to the proposed site. Further, the Committee noted that the Applicant had stated that there was on street parking approximately 10-20 metres from the proposed site on Market Street itself. The Committee was of the view that for those who accessed pharmaceutical services by private transport the proposed site would not be significantly less accessible.
- 5.32 For those who were unable to walk and did not have access to private transport, the Committee went on to consider access by public transport. The Committee noted the comments from the Applicant that there are no bus stops on Anglesey Street. The Committee further noted that the same bus stops are used to access the proposed site that are used to access the existing site and that both sites are a short walk from the bus stops at the junction of Cannock Road and Victoria Street, however the distance to the proposed site was slightly less.
- 5.33 Based on the information before it, the Committee was of the view that for those patients who access the pharmacy at the same time as accessing the Moss Street Surgery the proposed site was not significantly less accessible.

Patients registered with other surgeries in the area

- 5.34 The Committee noted the undisputed comments from the Applicant that the other surgeries in the area are all located over 1 mile away from the site of the existing pharmacy. The Applicant had gone on to state that these patients do not access the pharmacy at the same time as accessing GP services but instead access pharmaceutical services whilst accessing other services from the town centre.
- 5.35 The Committee noted the comments from the Applicant with regard to the distances between these surgeries and the proposed site and that it was unlikely that those that accessed these surgeries would then walk to the pharmacy. Given the distances involved and the information before it, the Committee was of the view that how these patients accessed the pharmacy following a visit to their GP practice would not alter irrespective of whether the pharmacy was located at the current or proposed sites.
- 5.36 The Committee was mindful that for those that did choose to walk, the area was well lit with normal footpaths and dropped kerbs and that the distance of the move would not affect access for those on foot. For those who were unable to access the pharmacy by foot and had access to private transport the Committee noted the location of the car parks in relation to the existing and proposed sites as well as the additional parking on Market Street approximately 10-20 metres from the proposed site. The Committee noted that not all patients would have access to private transport and some would rely on public transport. The Committee noted that there are no bus stops on Anglesey Street where the existing site is located and that the bus stops used were the same as the bus stops that would be used to access the proposed site. The Committee further

noted that visiting the existing site would require a short walk and that this would still be required for those who used public transport and then access the proposed site, however the distance was slightly shorter.

- 5.37 Based on the information before it, the Committee was satisfied that the proposed site was not significantly less accessible for patients who access pharmaceutical services at the same time, or directly after, accessing GP services in the area.

Patients who access pharmaceutical services other than after a visit to the GP.

- 5.38 The Committee noted that the Applicant had split this group down further.

Patients using the town centre and its services

- 5.39 The Committee noted the location of the proposed and existing sites and the route between the two which the Applicant had described as along flat normal footpaths that were well lit and with dropped kerbs. The Committee noted the photographs supplied by the Applicant which showed the location of both the existing and proposed sites. The Committee also noted that the distance between the two sites was approximately 50 metres.

- 5.40 The Committee was of the view that for those patients who were already in the town centre and needed to access pharmaceutical services there would be no change in how they would access the proposed site. The Committee was of the view that the proposed site was not significantly less accessible for those who needed to access pharmaceutical services whilst in the town centre.

Local Residents

- 5.41 The Committee noted the information from the Applicant with regard to the housing distribution in the area and how those in the area would access the existing site which included by foot, private and public transport.

- 5.42 The Committee was of the view that for those residents who chose to access the existing site by foot the journey to the proposed site was over a short distance along well maintained, lit footpaths with dropped kerbs and that there were no barriers to access between the existing and proposed sites. For those who used public transport, the Committee noted the comments from the Applicant with regard to the location of the bus stops and that the same bus stops would be used to access the proposed site as are currently used to access the existing site irrespective of where the patients starting point was. The Committee was of the view that there would be no material difference to accessing the proposed premises compared to the existing premises. The Applicant had also stated that for those using private transport they would find the proposed premises as easy to access due to the location of the car park and that there was an exit from the car park directly onto Market Street where the proposed pharmacy was located. In addition, the Applicant had stated that there is some on street parking on Market Street approximately 10-20 metres from the proposed site. The Committee noted that none of this information had been disputed. The Committee was of the view that for those already present in the local area, information suggested that those who could walk would be able to do so, those who used public transport could still access both sites via bus and those who drove would still have access to parking either in the town centre car parks or on the street outside the pharmacy and as such concluded that for those already in the local area the proposed site is not significantly less accessible.

- 5.43 The Committee noted that the Applicant had a separate sub group of those with "Protected Characteristic". The Committee noted that the move was over a relatively short distance (50m) within a town centre location. The Committee was of the view that for those who shared a protected characteristic the proposed site was not significantly less accessible due to the flat, well lit pavements with dropped kerbs for

those who used walking aids or mobility scooters. Further the Committee noted the undisputed comments that the bus stops, which were the same irrespective of whether patients were accessing the existing or proposed site, were actually closer to the proposed site and therefore access would be slightly improved.

- 5.44 The Committee was satisfied that for this patient group who access pharmaceutical services whilst present in the local area, the proposed premises would not be significantly less accessible.

Overall assessment

- 5.45 In the circumstances, the Committee was able to be satisfied that, for patient groups who are accustomed to accessing the present site, the proposed site is not significantly less accessible.

- 5.46 The Committee was therefore of the view that condition (a) is met.

Regulation 24(1)(b)

- 5.47 The Committee noted the decision of NHS England in respect of condition (b) had stated that it was “met” but that this had not been expanded upon and no further information had been provided to demonstrate that the granting of this application would not lead to significant changes to the current or future provision of pharmaceutical services in the area and that this had not been disputed by any party. The Committee noted that this had not been disputed on appeal and 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 HWB. The Committee concluded that condition (b) is met.

Regulation 24(1)(c)

- 5.48 The Committee noted the decision of NHS England in respect of condition (c) had stated that this was “met” but no further reasoning had been provided to confirm that the granting of the relocation would not lead to significant detriment to the current or future provision of pharmaceutical services in the area. The Committee noted that this had not been disputed on appeal and 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) and Regulation 26(2)(c)

- 5.49 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. The Committee noted that NHS England, in its decision stated that this condition was met and this had not been disputed by any party. The Committee also noted that this was relevant to the matter set out in 26(2)(c) of the Regulations. On the information provided, the Committee determined that condition 24(1)(d) is met.

Regulation 24(e) and Regulation 26(2)(e)

- 5.50 In relation to condition (e), the Committee noted the Applicant had confirmed in their application, and subsequent representations, that there will be no interruption to service provision. The Committee noted that NHS England, in its decision had stated that this condition was met and that this had not been disputed. The Committee also noted that this was relevant to the matter set out in 26(2)(e) of the Regulations. On the information provided the Committee determined that condition 24(1)(e) is met.

Regulation 26(2)(d)

- 5.51 The Committee, taking into account its consideration above, was satisfied in accordance with 26(2)(d) that if the Applicant had applied to move from The Mid-Counties Co-op, Anglesey Street, Hednesford, WS12 1AS to 100 Market Street, Hednesford, Staffordshire, WS12 1AG, that application would have been granted under Regulation 24(1)(a).

Overall

- 5.52 In those circumstances given the absence of reasons in the decision of NHS England together with reaching a different conclusion to that of NHS England, the Committee determined that the decision of NHS England must be quashed.
- 5.53 The Committee went on to consider whether there should be a further notification to the parties detailed at paragraph 19 of Schedule 2 of the Regulations to allow them to make representations if they so wished (in which case it would be appropriate to remit the matter to NHS England) or whether it was preferable for the Committee to redetermine the application.
- 5.54 The Committee noted that representations on Regulation 24 had already been made by parties to NHS England, and these had been circulated and seen by all parties who made representations on the application, as part of the processing of the application by NHS England. The Committee further noted that when the appeal was circulated representations had been sought from parties on Regulation 24.
- 5.55 The Committee concluded that further notification under paragraph 19 of Schedule 2 would not be helpful in this case.

6 Decision

- 6.1 The Committee quashes the decision of NHS England and redetermines the application.
- 6.2 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.
- 6.3 The Committee has determined that it should be granted on the following basis:
- 6.3.1 the Applicant is proposing to continue in place of the existing contractor, the business in the course of which that contractor is providing pharmaceutical services but at different premises.
- 6.3.2 the Committee was satisfied they can provide the same pharmaceutical services as those that the existing contractor is providing;
- 6.3.3 the Committee was satisfied in accordance with 26(2)(d) that if the Applicant had applied to move from The Mid-Counties Co-op, Anglesey Street, Hednesford, WS12 1AS to 100 Market Street, Hednesford, Staffordshire, WS12 1AG, that application would have been granted under Regulation 24(1).
- 6.3.4 that the provision of pharmaceutical services will not be interrupted (except for such period as NHS England may for good cause allow).
- 6.4 The application is granted.

A copy of this decision is being sent to:

Rushport Advisory LLP on behalf of Shawbirch Ltd

PCSE on behalf of NHS England – Midlands (West Midlands) Area Team