

5 March 2021

REF: SHA/23392

Arena Point
Merrion Way
Leeds
LS2 8PA

APPEAL AGAINST NHS COMMISSIONING BOARD ("NHS ENGLAND") DECISION TO GRANT AN APPLICATION BY PAYDENS LIMITED T/A WARRIOR PHARMACY, FOR A RELOCATION THAT DOES NOT RESULT IN A SIGNIFICANT CHANGE TO PHARMACEUTICAL SERVICES PROVISION UNDER REGULATION 24, FROM FALAISE INDOOR BOWLS CLUB, FALAISE ROAD, ST LEONARDS-ON-SEA, EAST SUSSEX, TN34 1EU TO NEW CARISBROOKE SURGERY SITE, 130 BEXHILL ROAD, ST LEONARDS-ON-SEA, HASTINGS, EAST SUSSEX

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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.

Advise / Resolve / Learn

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1 The Application

By application dated 13 January 2020, Paydens Ltd ("the Applicant") applied to NHS Commissioning Board ("NHS England") for a relocation that does not result in a significant change to pharmaceutical services provision under Regulation 24 from Falaise Indoor Bowls Club, Falaise Road, St Leonards on Sea, Hastings, East Sussex TN34 1EU to New Carisbrooke Surgery Site, 130 Bexhill Road, St Leonards on Sea, Hastings, East Sussex. 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: *"No other pharmacy at the same or adjacent premises"*.
- 1.2 The Applicant operates a pharmacy located at Falaise Indoor Bowls Club. The pharmacy has been co-located with Carisbrooke Surgery since 2003 and has operated from this site since it was forced to relocate with Carisbrooke Surgery after a fire which significantly damaged the old premises approximately 4 years ago. The new premises were provided in the form of temporary portacabins to serve the pharmacy and surgery until new premises could be built.
- 1.3 New premises are now under construction at Bexhill Road and the Carisbrooke Surgery will be relocating to the new surgery site. The Applicant wishes to relocate with the surgery as it is currently co-located with it and the pharmacy sits in isolation from the rest of the commercial and residential areas of the town and would otherwise be forced to close. In addition, the pharmacy will not be permitted to continue trading at their current location once the surgery relocates and cannot stay at its current premises in any event.
- 1.4 Whilst the distance involved in the relocation is relatively long (2 miles), the circumstances are such that no relevant patient group would find the relocated pharmacy significantly less accessible. In fact, the purpose of the relocation is to maintain accessibility for the relevant patient groups.

Test Under Regulation 24

- 1.5 In order to show that the Applicant's application meets all parts of the test under Regulation 24 the Applicant has provided:
 - 1.5.1 Information on patient groups;
 - 1.5.2 Evidence that, for these patient groups, the proposed location for the pharmacy will not be significantly less accessible; and

- 1.5.3 Evidence that the application meets all parts of the test under Regulation 24.
- 1.6 Latest available figures (August 2019) show that the pharmacy dispensed 9751 items. NHS prescription data shows that 71% of items originated from the Carisbrooke Practice with 22% from Warrior Square Surgery (which originally relocated to Cavendish House, Hastings after the fire). Other than the Community Dermatology Service which provided 2% of prescription items, no other GP surgery provided any more than 1% of items and the low level of items from other sources and the location of those surgeries means that these would not be material to the decision in this case.
- 1.7 The matters to be considered under Regulation 24 are as follows:
- 1.8 **For the patient groups that are accustomed to accessing pharmaceutical services at the existing premises, the location of the new premises is not significantly less accessible. The relevant patient groups for the purpose of this application can be defined using two criteria.**
- 1.8.1 Patients accessing pharmaceutical services at the same time as accessing GP services;
- 1.8.2 Patients who access pharmaceutical services other than after a visit to the GP surgery.
- 1.9 These categories are further subdivided below to form the relevant patient groups.
- 1.10 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 AS ACCESSING GP SERVICES

- 1.11 Patients from Carisbrooke Surgery attend after an appointment with the relevant GP. As those patients will be attending the new premises, access will not change. The pharmacy also delivers some items for patients registered with this surgery when they are not attending the surgery in person, but this is a very low number as almost all patients attend at the same time as their appointment with the surgery.
- 1.12 For Warrior Square Surgery the pharmacy has a legacy of patients who remained patients after the surgery relocated to Marlborough House. Those patients mainly receive their prescription medicines by way of delivery and those patients will not be affected by the move. For all other patients the journey between the current and proposed sites is considered below.
- 1.13 The Applicant's pharmacy also dispenses circa 250 items per month from the Community Dermatology Service at Bexhill Hospital. Dr Abtahi is the specialist for the clinic and he is a GP at Carisbrooke Surgery and the relevant patients form part of the Carisbrooke Surgery patients described above.

PATIENTS WHO ACCESS PHARMACEUTICAL SERVICES OTHER THAN AFTER A VISIT TO THE GP SURGERY

- 1.14 Almost all the patients who use the current pharmacy do so after visiting their GP practice. The location of the pharmacy means that it is not part of any retail area or on a residential street. Patients other than those who visit after a visit to their GP surgery do so on an *ad hoc* basis and there is no definable patient group that is "accustomed" to accessing the pharmacy in this way. It is therefore not a relevant group for the purposes of this application.

- 1.15 Given that patients will be accessing the new medical centre premises and will cease accessing the current site, access will not change for these patient groups.
- 1.16 As NHS England will also note, there is a large car park at the current site and this is well used by patients who access the pharmacy and medical centre. As patients would be using their car to access the new medical centre premises in any event, access for those with a car is not affected by this relocation.
- 1.17 Similarly there is a bus between the current and proposed site approximately every 15 minutes if there were any patients who wished to make a specific journey to the pharmacy without visiting the medical centre.
- 1.18 The pharmacy provides a full range of services to those who attend the current site, but has no supervised consumption patients or needle exchange despite being accredited for those services. This is because these prescriptions are not issued at the Carisbrooke Surgery and the surgery/pharmacy is relatively isolated from other services and facilities. Access is the same irrespective of the type of service that a patient is using, except for NMS where the follow up is by telephone and therefore not relevant in this case.
- 1.19 The above demonstrates that no patient group would find the new premises significantly less accessible. Whilst the distance involved in the relocation is relatively long, the nature of the pharmacy means that the demand for its services will be moving with the relocating surgery and relocating the pharmacy will therefore not cause any patient group to find the pharmacy significantly less accessible. Indeed in this case the opposite is true as if the pharmacy did not relocate then it would become significantly less accessible for the relevant patient groups.
- 1.20 In addition, NHS England will also consider the other matters required under Regulation 24:
- 1.20.1 **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**
- 1.20.2 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.
- 1.20.3 **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**
- 1.20.4 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.
- 1.20.5 **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**
- 1.20.6 The Applicant undertakes to provide the same services at the new premises as are provided at the existing premises.
- 1.20.7 **The provision of pharmaceutical services will not be interrupted (except for such period as the NHSCB may for good cause allow)**
- 1.20.8 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).

- 1.21 For the reasons given above the Applicant requests that NHS England approves this application.
- 1.22 The Applicant intends to provide the following services:
- 1.22.1 Essential services
 - 1.22.2 Clinical governance
 - 1.22.3 Appliances - Part IX of the Drug Tariff
 - 1.22.4 Advanced and Enhanced services:
 - 1.22.4.1MUR
 - 1.22.4.2NMS
 - 1.22.4.3CPCS
 - 1.22.4.4Flu vaccination
 - 1.22.4.5Needle & syringe exchange
 - 1.22.4.6Supervised methadone consumption
 - 1.22.4.7EHC
- 1.23 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.
- 1.24 The Applicant confirmed that there will be no interruption in the provision of services.
- 1.25 The Applicant's proposed core opening hours are:
- | | |
|------------|---------------------------------|
| Mon to Fri | 9.00 to 13.00
14.00 to 18.00 |
| Sat | - |
| Sun | - |
- 1.26 The Applicant's proposed total opening hours are:
- | | |
|------------|----------------|
| Mon to Fri | 08:30 to 18:30 |
| Sat | 09:00 to 13:00 |
| Sun | - |

2 The Decision

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

Covering letter

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

Decision Report

- 2.2 **NHS England South East (Kent, Surrey, Sussex) Pharmaceutical Services Regulations Committee**
- 2.3 **Annex 1** to the minutes of the meeting held on Wednesday 29 July 2020.
- 2.4 **Agenda Item 6.1**
- 2.5 **Paydens Ltd t/a Warrior Pharmacy – No Significant Change Relocation, Regulation 24**
 - 2.5.1 **CAS-2551232-S3W6X1/1**
 - 2.5.2 **From: Falaise Road Bowling Club, Falaise Road, St Leonards-on-Sea, East Sussex, TN34 1EU**
 - 2.5.3 **To: Carisbrooke Surgery Site, 130 Bexhill Road, St Leonards-on-Sea, East Sussex**
 - 2.5.4 **East Sussex HWB**

The Application

- 2.6 An application from Paydens Ltd, t/a Warrior Pharmacy for a relocation that does not result in a significant change to pharmaceutical services provision was received on 14 January 2020. The applicant was proposing to relocate from Falaise Road Bowling Club, Falaise Road, St Leonards-on-Sea, East Sussex, TN34 1EU to Carisbrooke Surgery Site, 130 Bexhill Road, St Leonards-on-Sea, East Sussex.
- 2.7 The Committee was now required to consider the application in accordance with Regulations 24 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.

Consideration

- 2.8 The Committee considered the following:
 - 2.8.1 The NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations as amended.
 - 2.8.2 The application form provided by the Applicant –
 - 2.8.2.1 The Committee noted the reasons stated by the Applicant as to why the application should not be refused under Regulation 31.
 - 2.8.2.2 The Applicant had stated that the same services would be provided at the new premises and there would be no interruption to service provision.
 - 2.8.2.3 The current contracted hours would continue to be provided at the new premises.
 - 2.8.2.4 The Committee noted the “not applicable” responses provided by the Applicant as to why the application should not be refused pursuant to Regulation 24 (3)(a)-(c).
 - 2.8.2.5 Maps, Google maps and a photograph of the current premises.

2.8.2.6 Representations made by Boots UK Ltd and PSC on behalf of Soudyrah Ltd - noting that there were objections to the application:

Boots UK Ltd:

2.8.2.6.1 The Applicant has not detailed how patients access the pharmacy in its current location, for example do they currently walk, travel by car or public transport?

2.8.2.6.2 Boots believe that for any patients who currently walk the proposed premises [sic] will find the proposed premises significantly less accessible particularly for those with mobility issues and for parents with pushchairs.'

PSC Ltd, on behalf of Soudyrah Ltd:

2.8.2.6.3 Soudyrah wished to object to the application on the basis that it did not meet the tests set out within Regulation 24 of the Regulations, notably Regulation 24(1)(a) regarding accessibility of the local patient groups to pharmacy services. Soudyrah was of the opinion that the Applicant had failed to adequately explain the implications of the proposed relocation for all patient groups attending the pharmacy in its current location. The Applicant also failed to provide supporting evidence for how patients travel to the current location, e.g. by car or public transport. Soudyrah also disputed the Applicant's claims regarding the percentage of patients that access the pharmacy to obtain acute prescription items as opposed to repeat prescriptions.

2.8.2.7 All additional information, including location, access and distances of surrounding pharmacies and their opening times.

2.8.2.8 Department of Health Guidance – Regulations under the Health and Social Care Act 2012: Market Entry by means of Pharmaceutical Needs Assessments – Chapter 10.

2.8.2.9 The proposed location is in a non-controlled locality.

2.8.2.10 The Committee noted the address of the application was within a non-controlled locality and therefore it would not be required to consider the discontinuation of arrangements for the provision of pharmaceutical services by doctors to the affected patients under Regulation 50.

2.8.2.11 The Committee decided it was not necessary to hold an oral hearing before determining the application.

Regulation 31 – Refusal: same or adjacent premises

2.8.3 The Committee noted that it was required to refuse an excepted application, if the two conditions under paragraph 31(2) applied. These conditions are –

2.8.3.1 *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 the premises to which the application relates, or adjacent premises;*

and

2.8.3.2 *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).*

- 2.9 The Committee noted the Applicant's comments with regard to why the application should not be refused pursuant to Regulation 31.
- 2.10 The Committee was satisfied that there was no other provider of pharmaceutical services at or adjacent to the proposed address and concluded that it was not required to refuse the application for the purpose of Regulation 31.
- 2.11 Having established that it did not have to refuse the application under Regulation 31 the Committee moved on to consider Regulation 24.
- 2.12 It was noted that the proposed relocation did not involve a change of area of HWB and therefore regulation 24(2) did not apply.
- 2.13 The Committee considered the circumstances when it must refuse such an application as detailed in regulation 24(3) and concluded that none of these circumstances applied in this case.
- 2.14 Having established that the application did not need to be refused under regulation 24(3), the Committee proceeded to consider each of the 5 criteria under regulation 24(1).

Regulation 24(1) – Relocation that do not result in significant change to pharmaceutical services provision (different premises in the area of the relevant HWB)

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

Regulation 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).

- 2.16 Regulation 24(1)(a) – This pharmacy moved to its current location as a temporary measure following a serious fire at its original premises at Warrior Square in St Leonards, Hastings. There were also several GP surgeries located at these premises, one of which, Carisbrooke Surgery, relocated to the same temporary premises as the pharmacy. The Surgery is now relocating to the proposed premises, which is a new purpose-built building. The planning application for the building includes approx. 53 car parking spaces. There are bus routes that pass the new building including local routes, but not a route that goes directly from the current site to the proposed site. The current location is not easily accessible apart from using personal transport. The current location is situated at the top of a steep hill. There are no significant residential buildings in the immediate vicinity of the current location. The existing largest single patient group that use the pharmacy are the patients registered with Carisbrooke Surgery who get their prescriptions dispensed by the pharmacy, which represents 72% of the pharmacy's dispensed items, followed by prescriptions prescribed by Warrior Square Pharmacy (22%). No other patient groups had been defined by the Applicant.
- 2.17 The Committee was satisfied that given the proximity of the proposed premises to the relocated Carisbrooke surgery and the fact that the existing premises was not easily accessible and that there is no population in the immediate vicinity, the location of the new premises is not significantly less accessible for the patient groups accustomed to accessing pharmaceutical services at the existing premises.
- 2.18 Regulation 24(1)(b) – The Committee discussed whether the addition of another pharmacy in the proposed location could potentially destabilise current pharmaceutical provision. However, there was no evidence provided to support this supposition, and none of the interested parties raised this as a concern.
- 2.19 The Committee was satisfied that the relocation would not result in a significant change to the arrangements for the provision of local pharmaceutical services or dispensing services within the Health & Wellbeing Board.
- 2.20 Regulation 24(1)(c) – The Committee considered the locations of the existing pharmacies as well as the proposed site and medical practices within the area and that there were no plans that would be affected. No information had been provided by interested parties suggesting there would be significant detriment to proper planning. The Committee was therefore satisfied that granting the application would not cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area.
- 2.21 Regulation 24(1)(d) - the Applicant had confirmed that the same services would be provided at the new premises as are currently being provided at the existing premises. The Committee was satisfied that the condition in Paragraph (d) had been met.
- 2.22 Regulation 24(1)(e) - the applicant confirmed that the provision of pharmaceutical services will not be interrupted (except for such period as the NHSCB may for good cause allow), The Committee was satisfied that the condition in paragraph (e) had been met.
- 2.23 The Committee was satisfied that the provisions of Regulation 24(2), and Regulations 24(3)(a)–(c) do not apply.
- 2.24 The Committee determined that conditions under Regulation 24(1)(a), (b), (c), (d) and (e) are satisfied.

Decision

- 2.25 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.
- 2.26 The Committee determined the application as follows –
- 2.26.1 the Committee was satisfied that the location of the new premises is not significantly less accessible for the patient groups;
 - 2.26.2 the Committee was satisfied that the relocation would not result in a significant change to pharmaceutical services or dispensing services;
 - 2.26.3 the Committee was satisfied that granting the application would not cause significant detriment to proper planning;
 - 2.26.4 the Committee was satisfied that the same services would be provided at the new premises;
 - 2.26.5 the Committee was satisfied that the provision of pharmaceutical services will not be interrupted.
- 2.27 The Committee determined to **grant** the application.

Rights of Appeal

- 2.28 The application is granted so the Applicant does not have right of appeal
- 2.29 The Committee decided that the parties that should have third party rights of appeal are:
- 2.29.1 Boots UK Ltd;
 - 2.29.2 PSC Ltd, on behalf of Soudyrah Ltd.

3 The Appeal

In a letter dated 16 September 2020 addressed to NHS Resolution, Pharmacy Sales and Consultancy (“PSC”) appealed on behalf of Soudyrah Limited (“the Appellant”) against NHS England’s decision. The grounds of appeal are:

- 3.1 The key ground for the Appellant’s appeal is that NHS England & NHS Improvement (“NHSE&I”) failed to properly consider the impact of the proposed relocation on each and every one of the relevant patient groups. In fact, it *could not* properly consider this matter as the information provided by the Applicant was inadequate for it to do so.
- 3.2 In failing to fully consider patient groups, NHSE&I reached the wrong conclusion in respect the accessibility of the proposed location for these patient groups.

The NHS England decision report

- 3.3 Whilst Primary Care Appeals (“PCA”) will determine this application afresh, rather than by reference to NHS England’s decision, the Appellant wishes to comment in a little more detail on why it believes the decision to approve this application was flawed.
- 3.4 Paragraph 2.18 of the decision report states the following (emphasis added):
- 3.4.1 *Regulation 24(1)(a) – This pharmacy moved to its current location as a temporary measure following a serious fire at its original premises at Warrior*

Square in St Leonards, Hastings. There were also several GP surgeries located at these premises, one of which, Carisbrooke Surgery, relocated to the same temporary premises as the pharmacy. The Surgery is now relocating to the proposed premises, which is a new purpose-built building. The planning application for the building includes approx. 53 car parking spaces. There are bus routes that pass the new building including local routes, but not a route that goes directly from the current site to the proposed site. The current location is not easily accessible apart from using personal transport. The current location is situated at the top of a steep hill. There are no significant residential buildings in the immediate vicinity of the current location. The existing largest single patient group that use the pharmacy are the patients registered with Carisbrooke Surgery who get their prescriptions dispensed by the pharmacy, which represents 72% of the pharmacy's dispensed items, followed by prescriptions prescribed by Warrior Square Pharmacy (22%). No other patient groups had been defined by the applicant.

3.4.2 *The Committee was satisfied that given the proximity of the proposed premises to the relocated Carisbrooke surgery and the fact that the existing premises was not easily accessible and that there is no population in the immediate vicinity, the location of the new premises is not significantly less accessible for the patient groups accustomed to accessing pharmaceutical services at the existing premises.*

3.5 Taking the highlighted comments in turn:

3.5.1 *There are bus routes that pass the new building including local routes, but not a route that goes directly from the current site to the proposed site. The current location is not easily accessible apart from using personal transport.*

3.5.1.1 It is clear that NHSE&I understood its obligations with regard to considering what forms of transport patients might use to access the site, yet it reached the conclusion that the current location is not easy to access except for patients using personal transport. In fact, there are bus stops within 100m of the existing location, so it is perfectly possible, and indeed likely, that some patients travel to this site using public transport at present.

3.5.2 Given that the Applicant provided no evidence whatsoever in respect of how patients travel to the existing site at present, NHSE&I were wrong to reach the conclusion that 'personal transport' was the only relevant means of travel. Furthermore, given that they also noted the lack of a direct service from the existing site to the proposed site, had they properly considered patients travelling by bus, they would have concluded that the proposed site is significantly less accessible.

3.5.3 *There are no significant residential buildings in the immediate vicinity of the current location*

3.5.3.1 *The accuracy of this statement depends on the interpretation of the phrase "immediate vicinity". Whilst it may be the case that there are no residential buildings within 200m of the existing location, there is a significant residential population within a 500m radius. Given the distance the Applicant proposes to relocate, this population cannot simply be ignored.

3.5.3.2 *NHSE&I failed to properly consider the impact of the proposed relocation on residents living close to the existing location. The Appellant addresses this matter in further detail below.

Background

- 3.6 The background to this application has been set out by the Applicant and was summarised by NHSE&I in its decision report. Whilst the Appellant accepts this background information is accurate, it is of limited relevance to the tests set out in Regulation 24.
- 3.7 In particular, the Appellant asks the PCA committee to pay little regard to the statement made by the Applicant that it “wishes to relocate with the surgery.....and would otherwise be forced to close”. It is neither relevant nor a foregone conclusion that the pharmacy would be forced to close if this application is refused.
- 3.8 The Appellant accepts that the applicant may not be able to remain at the existing site once the surgery has moved away but there are many other locations, all of which are significantly closer to the existing site, that would be perfectly suitable. In fact, the Appellant understands that the premises occupied by the Applicant previously, at Warrior Square Surgery, remain vacant following the refurbishment of that building after the fire.
- 3.9 The Applicant is not, in any way, absolved from its obligations to provide evidence to supports its assertions that the requirements of Regulation 24 have been met, regardless of the circumstances that have led it to make this application.
- 3.10 Whilst the existing location for the pharmacy (and co-located medical centre) was never intended to be permanent, the pharmacy has, nevertheless, traded from this site for 4 years. It is clear that patients have become accustomed to accessing the pharmacy at its current location over that time.

The local area

- 3.11 The existing location for the pharmacy is on the site of a recreation area situated to the east of St Leonards town centre, equidistant between St Leonards and Hastings. The area includes a number of amenities such as a bowls club, skate park, tennis courts, basketball courts and five-a side-football pitches as can be seen in the image provided. Furthermore, there is a car park adjacent to the site, also visible in the image.
- 3.12 The area surrounding this recreation area is predominantly residential (with the exception of the sea front to the south) as can be seen (image provided).
- 3.13 There is also an art gallery and museum and a leisure centre within 200m of the existing site, on the opposite side of Bohemia Road.
- 3.14 By contrast, the proposed location is located to the west of St Leonards town centre.
- 3.15 The two sites are shown on the map (provided).
- 3.16 The distance between the two sites, by the nearest practicable route is approximately two miles although, for reasons discussed later, this journey is not particularly straightforward. As can be seen from this map, the proposed site is essentially at the far western edge of St Leonards.
- 3.17 The nature of the proposed location can be seen (image provided) where the proposed site is marked with a red star.
- 3.18 The area is predominantly residential, with open land to the north and the sea front is again a short distance to the south. It is a little more industrial in nature than the existing site with some retail park units and light industrial premises nearby.
- 3.19 The proposed site, which is currently under construction, is shown in the image provided.

- 3.20 It is a substantial three storey building located on the A259 main road connecting St Leonards to Bexhill.
- 3.21 Whilst Regulation 24 does not require NHS England to have specific regard to the distance or journey between the sites, this information is useful, not least because it allows the decision maker to have regard to patients whose journey takes them past the existing location on the way to the proposed location.
- 3.22 In general terms, as will be apparent from the map and to anybody who knows this area, the most notable characteristic of this part of the south coast is the level of tourism as a result of the extensive expanse of beach all the way from Hastings past St Leonards, to Eastbourne, more than 10 miles away to the south west.
- 3.23 As a result, the area is highly seasonal in nature resulting in exceptionally high traffic levels over the summer months in particular.
- 3.24 The A259 is the main trunk road along this stretch of the coast and, as can be seen (map provided) (with the existing and proposed sites highlighted as above), this road essentially connects the two sites and there are no other direct routes in an east/west direction. The minimum distance of 2 miles assumes patients will travel largely along the A259.
- 3.25 As might be expected, this road is a typical 'promenade road' being lined with guest houses, takeaways, amusement arcades and other tourist attractions. As might also be expected as a result, it can become extremely congested at times.
- 3.26 In the peak of the summer season, it regularly takes more than 30 minutes to travel from Hastings to St Leonards using the A259. Even outside the summer months the journey is not quick. On a recent site visit, on the morning of Monday 7 September, the journey took 15 minutes, in part due to difficulties turning right into the traffic onto the A259 when travelling from the roads to the north.
- 3.27 In terms of public transport, whilst there are bus stops near both the existing and proposed locations so it is *possible* to travel between the sites by bus, the route requires travelling via Hastings or walking to a bus stop on a more direct route.
- 3.28 For anybody who might choose to walk this route, the estimated walking time, for a person with full mobility and fitness is 40 minutes in each direction.

Regulation 24

- 3.29 The Appellant has not reproduced the full text of Regulation 24 with this appeal letter. The PCA committee is very familiar with the relevant tests.
- 3.30 Furthermore, the Appellant can confirm that it does not challenge the findings of NHSE&I in respect of parts (1)(b),(c),(d) & (e) of Regulation 24 and accepts the Applicant's submissions on these matters.
- 3.31 The matter of contention, therefore, is in respect of Regulation (24(1)(a).
- 3.32 NHSE&I is required to consider, amongst other things, whether "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".
- 3.33 The PCA committee will be aware of the guidance notes provided by the former NHS Litigation Authority on Regulation 24.

Patient groups

- 3.34 The Applicant defined patient groups according to two criteria:
- 3.34.1 Patients accessing pharmaceutical services at the same time as accessing GP services;
 - 3.34.2 Patients accessing pharmaceutical services other than after a visit to the GP surgery.
- 3.35 Whilst the Appellant accepts that these two groups will cover all patients, it would ask PCA to be mindful of paragraph 8 of the guidance notes which states:
- 3.35.1 *“8. Applicants may identify a patient group in very broad terms. In case 17995 (18/08/15), the applicant referred to the main patient group as those accessing services at the existing premises (i.e. effectively grouping all of its current customers into one "group") and focused on the route a person would take on foot from the existing premises to the proposed premises. The Committee could only draw limited conclusions on the effect of the relocation on patient groups on the basis of the information provided”.*
- 3.36 Patient groups should not be drawn so broadly as to hinder the committee's ability to assess whether the regulatory tests have been met. It is important, therefore, to be confident that all relevant patient groups have been identified when considering these tests.
- 3.37 As no other party, including NHSE&I, suggested alternative patient groups, the Appellant starts with those suggested by the Applicant:
- Patients accessing pharmaceutical services at the same time as accessing GP services.*
- 3.37.1 The information provided by the Applicant at the time it prepared the application suggested that 71% of the items dispensed by its pharmacy originated from the Carisbrooke Practice with 22% from Warrior Square surgery, leaving 7% of items originating from a variety of sources.
 - 3.37.2 The latest data (June 2020) suggests that these percentages are essentially unchanged.
 - 3.37.3 In respect of patients attending Carisbrooke Surgery and continuing to attend Carisbrooke Surgery after it has relocated, the Appellant accepts that access will be unchanged if the pharmacy relocates to the new site also.
 - 3.37.4 However, given that the surgery is moving a significant distance, it is not clear that *all* patients currently registered with that surgery, will remain registered with them. It may be that some choose to register with an alternative surgery, such as Warrior Square. It cannot be taken for granted, therefore, that all patients accustomed to accessing the existing location because they attend Carisbrooke, will attend the new Carisbrooke site in the future. It is likely, therefore, that the composition of this patient group will change over time.
 - 3.37.5 In respect of patients of Warrior Square surgery, the Applicant suggests that its pharmacy has a “legacy of patients who remained patients after the surgery relocated to Marlborough House” (this being the temporary location of Warrior Square Surgery after the fire). Bearing in mind the fact that the Applicant's pharmacy is currently located approximately half a mile away from both Warrior Square Surgery and Marlborough House and there are other pharmacies significantly closer for patients attending Warrior Square, there must be a good reason why such a significant number of patients chose to remain with this pharmacy.

- 3.37.6 It would suggest the reason is simple. Warrior Pharmacy remains the most easily accessible for these patients either because they live nearby or because it is in a location they find easy to access.
- 3.37.7 The applicant has stated that “those patients *mainly* receive their prescriptions medicines by way of delivery”. It is not clear from this statement what proportion of these patients visit the pharmacy in person and how frequently they attend in person rather than receiving deliveries. It is also unclear if, and how, these patients access other services which cannot be provided by a delivery driver such as MURs. Only the Applicant can provide this information. Without it, it will be difficult for PCA to assess whether there is a significant number of patients who choose to access this location in person despite the fact they are not patients at Carisbrooke Surgery given that, according to the Applicant, it “sits in isolation from the rest of the commercial and residential areas of the town”.
- 3.37.8 The Applicant also tells us that it delivers a “very low number” of prescriptions to patients of Carisbrooke Surgery as “almost all patients attend at the same time as an appointment with the surgery”, yet tells us that Warrior Square patients “mainly receive their prescriptions medicines by way of delivery”.
- 3.37.9 This picture is somewhat confusing as no explanation is given as to why Carisbrooke patients would not wish to avail themselves of a delivery service for non-acute medication when this service appears to be so popular with patients at Warrior Square. Again, only the Applicant can provide this information, yet it elected not to do so at the time of making the application, preferring to offer broad statements instead.

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

- 3.37.10 The Applicant states: “almost all the patients who use the current pharmacy do so after visiting their GP practice”.
- 3.37.11 This statement is worth considering in more detail.
- 3.37.12 Looking at NHS dispensing data for May 2020, 45.5% of the items prescribed by Carisbrooke Surgery were dispensed by Warrior Pharmacy. This level had fallen slightly since March 2020 when it had been 48.8%. Whilst only the Applicant has the data to explain this, the Appellant would suggest that one possible reason for the drop might be the reduction in face-to-face appointments for Carisbrooke patients during lockdown.
- 3.37.13 If this is the case, it is interesting that over 44% of items being prescribed by Carisbrooke were still dispensed by the Applicant’s pharmacy despite being in the depths of a national lockdown. It is highly likely that the Applicant’s number of deliveries increased during this time, accounting for some of this dispensing, but it is also possible that some of these patients continued to attend the Applicant’s pharmacy because it was the most convenient for them to access despite not attending a face to face appointment at the adjacent surgery.
- 3.37.14 In any event, looking at the picture prior to lockdown, we are being asked to believe that almost half the items generated by Carisbrooke Surgery are prescribed and dispensed immediately after a patient visit to the surgery. These could be described as ‘acute’ items.
- 3.37.15 In the Appellant’s experience, no more than 20-30% of items prescribed by a surgery are acute, with the majority being repeat items where no visit to the surgery is necessary. The suggestion that the picture is very different at Carisbrooke is hard to accept unless the Applicant is able to provide evidence to support this assertion.

3.37.16 The Appellant would suggest that it suits the Applicant's case to paint a picture where patients only attend its pharmacy because they have visited the adjacent GP surgery because it can then argue that the service will effectively be unchanged once the surgery has relocated.

3.37.17 However, the Appellant's contention is that it is clear (unless the Applicant can provide unequivocal evidence otherwise), that there is likely to be a significant number of people who attend this pharmacy in person without having attended an appointment at Carisbrooke Surgery first.

3.37.18 This is important as it casts significant doubt over the Applicant's claims that "almost all the patients who use the current pharmacy do so after visiting their GP practice". It also challenges the conclusion reached by NHSE&I that "the existing premises was not easily accessible" as it is clear this is a location that patients are choosing to visit whether they have a GP appointment or not. In any event, this comment by NHSE&I that the location is hard to access makes little sense when it is considered that the collocated surgery serves a patient population of close to 8,000. It appears that a significant number of patients have remained happy to remain registered with this practice during the 4 years it has been located at the current site. They cannot find it particularly difficult to access on that basis.

3.37.19 The Applicant goes on to make the assertion that "Patients other than those who visit after a visit to their GP surgery do so on an *ad hoc* basis and there is no definable patient group that is 'accustomed' to accessing the pharmacy in this way. It is therefore not a relevant group for the purposes of this application".

3.37.20 The Appellant challenges this statement for two reasons:

3.37.20.1 Firstly, for the reasons stated above, the Appellant does not accept that this patient group is in any way *ad hoc*. The Appellant believes there are clearly definable patient groups who have good reason to attend the existing location on a regular basis.

3.37.20.2 Secondly, PCA has found historically that even if the members of the patient group change over time (meaning that *individual patients* may not become 'accustomed' to accessing a particular pharmacy), it is still a patient group, and it is reasonable to assume that this patient group has become accustomed to accessing that pharmacy.

3.37.21 An example would be patients attending a 'GP walk-in centre' who might need to attend a pharmacy after an acute appointment. Due to the nature of the centre, patients would not attend on a regular basis so the composition of this patient group will change from month to month. However, it would still be appropriate to take into account the accessibility of pharmaceutical services for these patients as a discreet patient group that was accustomed to accessing a particular pharmacy.

3.37.22 It is not appropriate, therefore, to simply dismiss everybody who has not visited Carisbrooke surgery as being "not a relevant group". In fact, the decision-making body has an obligation to consider these patients. Again, the guidance notes are helpful in this respect as they state:

3.37.22.1 *As a principle of public law, the Committee must consider all comments made by parties with regard to patient groups regardless of how they are described. The Committee should not prefer one party's identification of patient groups over another if this ignores comments on access for patient groups from other parties."*

3.37.23 Taking the above into account, the Appellant believes there are at least two additional patient groups that need to be considered in order for the PCA committee to reach its conclusion:

3.37.23.1 Patients who live, work or have other reason to be located on the eastern side of St Leonards;

3.37.23.2 Patients who share protected characteristics that may affect their mobility.

3.37.24 Taking each of these in turn:

Patients who live, work or have other reason to be located on the eastern side of St Leonards.

3.37.24.1 The Appellant has discussed the geography of the area above. The existing site for the pharmacy is located equidistant between St Leonards and Hastings. Whilst there may be very few houses within the immediate proximity of the pharmacy at present, there is a significant residential population living within a 500m radius to the north, east and west of the existing location. There are even some houses to the south of the existing site before reaching the sea.

3.37.24.2 Should these residents wish to access a pharmacy at present, their options other than the Applicant's pharmacy are to access either of the two pharmacies in the centre of St Leonards, namely Clarity Pharmacy or Boots or one of the three pharmacies in the centre of Hastings (Boots, Kamsons or Station Plaza) as shown on the map (provided).

3.37.24.3 These are all notable for being town centre pharmacies without any parking in the immediate proximity. Taking into account the busy nature of both of these town centres and the levels of traffic congestion discussed earlier, none of these pharmacies are easy to access by car, particularly in the summer months.

3.37.24.4 Given the adjacent car park at the existing location, it is not surprising that the Applicant's pharmacy is favoured by residents living on the eastern side of St Leonards who wish to access a pharmacy by car. In fact it is the most convenient location for many of these residents regardless of how they travel. Equally, people working in the area or those such as tourists who happen to be staying in the area between the two towns, will find the existing pharmacy location significantly more accessible than the alternatives.

3.37.24.5 Despite the suggestion by the applicant that the pharmacy is currently isolated, it is notable that the nearby leisure amenities, including the leisure centre and the museum art gallery, are well used (Covid-19 notwithstanding) by both residents and tourists alike. The pharmacy is not located 'in the middle of nowhere'. People living, working or staying in this area use all the amenities nearby, including the applicant's pharmacy.

3.37.24.6 We are required, therefore, to consider the effect of the proposed relocation on these people.

3.37.24.7 Whilst the Appellant accepts that significant number of people access the existing location by car (for the reasons discussed above), it cannot be assumed that these patients would not find the proposed location significantly less accessible simply because they are in their cars. As we have discussed earlier, the journey by car is far from

straightforward and is particularly challenging in the summer months given the distance and the nature of the journey from the eastern edge of St Leonards to the western edge.

3.37.24.8 Furthermore, whilst the Appellant notes the comment by NHS E&I that the “planning application for the building includes approx. 53 car parking spaces”, it is also notable that, not only is the site shared with the West St Leonards Community Centre, but an additional surgery, namely Silver Springs will also relocate to this site. This surgery is part of High Glade Medical Practice which serves a patient list of over 18,000.

3.37.24.9 Given the scale of the building, which will inevitably house a significant number of staff, it is not clear exactly how many spaces will actually be available for use by patients. What is clear, however, is that it is likely there will be fewer spaces per patient available at the proposed site than there are at the existing site, given the number of patients, staff and visitors to the community centre who are likely to be competing for these spaces.

3.37.24.10 Patients who do not have access to a car but live on the eastern side of St Leonards cannot reasonably be expected to walk given that this would entail a round trip of close to 1½ hours and around 4 miles.

3.37.24.11 Patients living in this area but using public transport would not only incur additional costs for travelling to the proposed location, but would also be faced with a bus journey that takes them through both Hastings town centre and St Leonards town centre on the way to the proposed location. It is entirely illogical that they would choose to take a bus journey passing five other pharmacies en-route simply to access the applicant’s proposed location. The journey will be illogical to the extent it would clearly make the proposed location significantly less accessible.

3.37.24.12 In summary, therefore, it is the Appellant’s position that, for this patient group, the proposed location is significantly less accessible.

Patients who share protected characteristics that may affect their mobility.

3.37.25 Where pharmacy contractors proposed to relocate a significant distance, it is particularly important to consider those patients who may have reduced mobility and may therefore face greater challenges in accessing an alternative location.

3.37.26 The Applicant has not provided any demographic information in respect of its patients, but the Appellant’s general observation would be that, like many seaside locations there is a significant elderly population in this area. It is a fact that the oldest patients tend to be those who typically have more limited mobility.

3.37.27 The most elderly patients are also likely to be those less able or willing to drive and it is entirely unreasonable to suggest that any patients with reduced mobility who live close to the existing site would consider walking to the proposed location. They will therefore be reliant on public transport.

3.37.28 Whilst the Appellant accepts that patients in this group who remain registered with Carisbrooke surgery may be willing to catch the bus to the new surgery site, and may choose to access the proposed pharmacy at the same time, the Appellant does not accept that they would choose to make this journey at any other time.

3.37.29 The proposed location is not an area where these people will travel as part of their day-to-day lives. In fact, they would be more likely to travel to alternative pharmacies in either Hastings or St Leonards town centre where they can access other shops at the same time. It is clear, in the Appellant's opinion, that any patient with reduced mobility (with the exception of a very small number living at the far western edge of St Leonards) would not choose to make the journey to the proposed location by public transport (or by any means) unless they were attending the medical centre.

3.37.30 For these reasons the Appellant suggests that this patient group would also find the proposed location significantly less accessible.

3.37.31 It is also important, when considering both patients groups above, to have regard to the changes taking place in general practice as a result of the current pandemic. There appears to be a consensus that the number of face to face consultations is likely to be reduced over the long-term as technology permits increasing numbers of patients to attend 'video consultations'. As a result, even fewer patients will be expected to attend the proposed site to see a GP, with many receiving prescriptions electronically following a remote consultation.

3.37.32 Most of these patients who no longer have to travel to the surgery will find that the relocation of the pharmacy from one edge of the town the other significantly reduces its accessibility to them give that they no longer have reason to visit that site.

Conclusion

3.38 In summary, and mindful that it is for the Applicant to demonstrate that the relevant tests are met, the Appellant believes there is no evidence to support the Applicant's case that the proposed location is not significantly less accessible than the existing one.

3.39 If PCA agree with the Appellant's conclusion then the application should be refused, regardless of whether or not the remaining tests in Regulation 24 have been met.

4 Summary of Representations

This is a summary of representations received on the appeal.

Boots UK Ltd

4.1 Boots support the appeal made by PSC on behalf of Soudyrah Ltd and their reasoning's.

4.2 Boots do not have any additional comment to make. Boots have enclosed a copy of its original representations to NHS England for consideration.

Boots copy letter to NHSE&I dated 2 April 2020

4.3 The Applicant has not detailed how patients access the pharmacy in its current location, for example do they currently walk, travel by car or public transport?

4.4 Boots believe that for any patients who currently walk the proposed premises will find the proposed premises significantly less accessible particularly for those with mobility issues and for parents with pushchairs.

Rushport Advisory LLP (on behalf of the Applicant)

4.5 This is a somewhat unusual case and it is worthwhile setting out some of the background to assist the Committee.

- 4.6 The relocation application was submitted on 13 January 2020, however there was considerable delay between submitting the application and receiving the decision of NHS England on 19 August 2020 – some 7 months after the application was submitted. The delays were due to;
- 4.6.1 The 45 day period was restarted on 10 March 2020 and PCSE informed the Applicant that this was because they had failed to provide the relevant documentation to interested parties in their initial notification.
- 4.6.2 The second notification period and subsequent action have been further delayed due to the restrictions on Market Entry due to the coronavirus pandemic.
- 4.7 Both of the above are entirely outside the control of the Applicant and as a result of the delays the Applicant had no option other than to apply for a temporary relocation to the new Carisbrooke Surgery site (the same site as is being applied for under this regulation 24 application) under regulation 29. This application was submitted on 28 July 2020 and approved by NHS England on 19 August 2020.
- 4.8 The Applicant had no option other than to relocate under the regulation 29 approval and did so on 5 October 2020. This was because the electricity supply to the pharmacy was being disconnected and the land had to be returned to the landlord as part of the redevelopment process.
- 4.9 The Applicant is now occupying the same premises as they are applying to permanently relocate to.

Purpose of the Regulations

- 4.10 It is important for the decision maker to consider the intent and purpose of the Regulations which it is tasked with applying.
- 4.11 In *R (On the application of COMMUNITY PHARMACIES (UK) LIMITED)* [2016] EWHC 1595 (QB), Mr Justice Langstaff considered the purpose of the Regulations governing no significant change relocations and stated:
- 4.11.1 *35. ...Mr. Patel's [counsel for the NHS Litigation Authority as it then was] argument that an application for relocation is an "exceptional" one, whereas "routine" applications determine the broad needs of the community as a whole, is relevant here since what is in question is the degree of disturbance to existing arrangements, viewed by reference to accessibility for those who currently make use of the premises which are potentially to be moved.*
- 4.11.2 *37. Finally, it makes sense in the broader context of arranging the accessibility of pharmaceutical services so as to meet the assessed needs of those in the area that, once appropriate provision is established, a proposed change of location of any pharmacy whose services are part of that provision should be scrutinised to ensure it does not significantly diminish the accessibility of those services for those whose needs have been assessed. Accessibility will vary from area to area; it is rational to assess this by reference to particular groups, whose identity is always likely to depend upon particular local circumstances.*
- 4.12 The purpose of the Regulations is therefore to allow relocations which maintain appropriate provision without significantly diminishing provision for any particular group. There will be cases such as this one, where the Committee will be faced with a situation where not allowing a relocation would cause significant disadvantage for not just a small group, but for almost every patient accustomed to being able to access pharmaceutical services at their GP surgery.

The Effect of the Temporary Relocation

- 4.13 A temporary relocation essentially creates two entries in the pharmaceutical list.
- 4.13.1 The original listing and;
- 4.13.2 A new listing at the temporary premises.
- 4.14 However, this is unlikely to be material, as regulation 24(1)(a) – which is the material issue in this appeal does not refer to any “listing” and instead focuses on the actual premises and states as follows;
- 4.14.1 (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; [Applicant’s emphasis]
- 4.15 In this case, the “old” premises are no longer being accessed by any patients. They are closed. The only premises where patients are now accessing pharmaceutical premises are the “new” premises. This is the case notwithstanding that the Applicant is still seeking to relocate to different premises from those that are in the pharmaceutical list as the original listing.
- 4.16 This is therefore an unusual case as it is clear that for patients groups accessing pharmaceutical services at the existing premises, the new premises are not significantly less accessible and this is because they are the same premises physically, notwithstanding that they are different premises for the purposes of the entry in the pharmaceutical list.
- 4.17 It will be some time before the Committee meets to determine this appeal and in that time patients will be accustomed to accessing the new pharmacy location.
- 4.18 In the event that the Committee disagrees with this approach the applicant has gone on to consider the application as if the pharmacy had not yet relocated under regulation 29. However, we should be clear that as regulation 24 requires consideration of patient groups who are accustomed (rather than “were accustomed”) i.e. it is the present tense, it is difficult to see how the Committee could make a proper assessment by using patient groups that are not current to the application.

The Appeal from PSC on Behalf of Soudyrah Limited

- 4.19 The Applicant has addressed the points raised by PSC in roughly the same order as they appear in their letter of appeal of 16 September 2020.
- 4.20 The Applicant disagrees with the submission made by PSC about there being a lack of evidence provided by Paydens Limited. PSC were simply unaware of the information provided by the Applicant to NHS England in reply to the PSC letter of objection. This information is provided again here (and supplemented).
- 4.21 From page 2 of the PSC letter they highlight issues with the NHS England decision that they take issue with. In turn, PSC states;
- 4.21.1 *It is clear that NHSE&I understood its obligations with regard to considering what forms of transport patients might use to access the site, yet it reached the conclusion that the current location is not easy to accessible except for patients using personal transport.*
- 4.21.2 *In fact, there are bus stops within 100m of the existing location, so it is perfectly possible, and indeed likely, that some patients travel to this site using public transport at present.*
- 4.21.3 *Given that the applicant provided no evidence whatsoever in respect of how patients travel to the existing site at present, NHSE&I were wrong to reach the*

conclusion that 'personal transport' was the only relevant means of travel. Furthermore, given that they also noted the lack of a direct service from the existing site to the proposed site, had they properly considered patients travelling by bus, they would have concluded that the proposed site is significantly less accessible.

- 4.22 The Applicant did provide evidence of how patients access the pharmacy. Further, contrary to the comments made about bus routes, a patient could use public transport to travel from the current to the proposed premises with a short walk and this is discussed in more detail later in this submission.
- 4.23 However and more importantly, patients will not be starting their journey from the bus stop identified and focussed upon by PSC. Patients do not live at the current site nor is there housing in the immediate area. Whilst PSC has claimed that there is housing close by, their own images show that this is not the case and the Applicant deals further with this point later in this submission.
- 4.24 There are no significant residential buildings in the immediate vicinity of the current location
- 4.25 PSC challenges the findings of NHS England and claim that there "is a significant residential population within a 500m radius". This is not correct. Firstly, the use of a radius is of no help at all. The Applicant presumes that PSC used a radius rather than the real distance a person would travel because it is the only way they could include some housing.
- 4.26 In fact, whilst there are a very small number of houses along the sea front to the south, these start approximately 500 metres from the current pharmacy site. There are no houses within a 500 metre walk to the west (as there is no path to the west and a person would have to walk from Magdalen Road to Bohemia Road instead) and approximately 30 or 40 houses to the east within 500 metres. There are no houses within 500 metres to the north.
- 4.27 The image provided by PSC demonstrates the above point very well and it is perfectly clear that there is no housing around the current site.

Background

- 4.28 PSC accepts the background to the application is correct, but then states;
- 4.28.1 *We accept that the applicant may not be able to remain at the existing site once the surgery has moved away but there are many other locations, all of which significantly closer to the existing site, that would be perfectly suitable. In fact, we understand that the premises occupied by the applicant previously, at Warrior Square Surgery, remain vacant following the refurbishment of that building after the fire.*
- 4.28.2 *The applicant is not, in any way, absolved from its obligations to provide evidence to supports its assertions that the requirements of Regulation 24 have been met, regardless of the circumstances that have led it to make this application.*
- 4.29 It is incorrect to say that there are "many other locations, all of which significantly closer to the existing site, that would be perfectly suitable." This statement entirely misses the point of both the application and the Regulations. With the surgery having now relocated to new premises which are approximately 2 miles from the old site and with little trade at the pharmacy other than because of being co-located with the surgery, it would make no sense to relocate to "other location". In fact, if the pharmacy were to relocate to the premises suggested by PSC at Warrior Square Surgery (or indeed anywhere else), then almost every existing patient would find the relocated pharmacy

significantly less accessible. This is because the surgery that the majority of patients are registered with is Carisbrooke Surgery and not Warrior Square Surgery. To suggest that it would be “acceptable” (to the Appellant) for the Applicant to relocate to a completely different surgery premises, but not acceptable to relocate with the current surgery, shows the absurdity of the argument being made. No doubt the Appellant would prefer this outcome as they are the closest pharmacy to the relocated Carisbrooke Surgery, but it is not a credible suggestion.

- 4.30 Further, whilst PSC accepts (quite rightly) that distance is not of itself a determining factor in a relocation application, they then rely on distance alone to determine whether the relocation would be “acceptable” or not to them and completely ignore the thousands of patients who would be significantly inconvenienced by what they say is acceptable and who would find such a move entirely unacceptable.

The local area

- 4.31 PSC’s description of what they describe as the “local area” is not contentious. It is also telling that the description includes absolutely no housing until one gets to what PSC describes as “*The area surrounding this recreation area*”. It is correct that the area has “*a number of amenities such as a bowls club, skate park, tennis courts, basketball courts, museum and five-a side-football pitches*”, but it should be noted that the Applicant has no knowledge of even a single patient who has used the pharmacy as part of accessing these recreation facilities. In other words, there is no relevant patient group formed of those who go bowling or play football or who visit the museum or leisure centre etc. This should not be surprising as one would not commonly associate playing basketball or visiting a museum with a trip to a pharmacy.
- 4.32 The images provided by PSC helpfully show the isolated nature of the current location and the image on page 5 of their letter correctly identifies the new medical centre site. The Applicant does not accept their description of the “journey” notwithstanding the fact that it would not be relevant in any event as it is not a journey any patient would be making as nobody lives around the current site.
- 4.33 On page 6 of their appeal letter PSC rightly accepts that regulation 24 does not require specific regard to distance. PSC then discusses the high level of tourism in this area in the summer months. This is uncontentious, but not helpful to the decision making process.
- 4.34 Those who live in St Leonards and access the pharmacy at its current location will be aware that there are more cars on the roads in summer months, but they deal with this when accessing the current location or indeed any other location along the south coast. The increase in car traffic does not happen only if the Applicant’s pharmacy relocates or because they relocate – it happens now in any event and will not change.
- 4.35 All the residential areas are north of the current and proposed site and patients will drive or use public transport to access the pharmacy and use the routes that are known to them.
- 4.36 The Applicant’s pharmacy does not have a seasonal influx of tourists. This is unsurprising as tourists would be much more likely to go to high street or town centre pharmacies.
- 4.37 PSC then wrongly assumes that patients would travel 2 miles along the A259 to access the proposed location. In fact, almost every patient would not make such a journey as they do not live at the current location. There are many routes that patients can take between their homes and the pharmacy and these are discussed further below.

Patient Groups

- 4.38 In their letter of appeal PSC has mixed up the two criteria for defining patient groups with the actual patient groups.
- 4.39 Whilst there may be two criteria, the Applicant has defined a number of patient groups using those criteria and expand upon those in this reply to the appeal. In defining patient groups the Applicant has also had regard to the results of the patient survey that has been undertaken (provided).
- 4.40 When considering the results set out below it should be noted that not every patient answered every question and they would not be forced to disclose any information that they did not wish to. For that reason the percentages often do not add up to 100%. The results differ slightly from those submitted in the reply to consultation as there was a small error counting initial results.
- 4.41 Analysis of the survey suggest that the following patient groups are relevant;
- 4.41.1 Patients registered with Carisbrooke Surgery who attend the pharmacy after visiting the surgery;
- 4.41.2 Patients registered with Warrior Square Surgery who attend the pharmacy after visiting the surgery;
- 4.41.3 Patients who use public transport;
- 4.41.4 Patients who walk;
- 4.41.5 Patients who used motorised transport (car, motorbike);
- 4.41.6 Patients who share protected characteristics that may affect their mobility (either as a separate patient group or as part of the patient groups defined above).
- 4.42 There will be significant overlap in these groups. For example a patient is likely to be attending Carisbrooke Surgery and using a car (or at least one method of transport).
- 4.43 Out of 238 patients surveyed, 211 stated that this was their regular pharmacy (i.e. were accustomed to accessing the premises). These become the patients that are relevant for the patient groups.
- 4.44 **In respect of patient group 1 above Patients Registered with Carisbrooke Surgery who attend the pharmacy after visiting the surgery** - there should be no argument as the pharmacy is moving with the surgery. The Applicant's pharmacy also dispenses circa 250 items per month from the Community Dermatology Service at Bexhill Hospital. Dr Abtahi is the specialist for the clinic and he is a GP at Carisbrooke Surgery and the relevant patient form part of the Carisbrooke Surgery patients.
- 4.45 **In respect of patient group 2 - Patients registered with Warrior Square Surgery who attend the pharmacy after visiting the surgery**, the analysis shows the following;
- 4.45.1 There were 20 relevant patients (5% of sampled patients);
- 4.45.2 1 patient considered their mobility to impaired;
- 4.45.3 80% used a car or motorbike;
- 4.45.4 5% used public transport;
- 4.45.5 15% walked.

- 4.46 Out of these patients each one answered the following question;
- 4.46.1 *Carisbrooke Surgery will soon be moving to new premises 2 miles away at 130 Bexhill Road. We are asking for permission from the NHS to relocate this pharmacy to the new surgery site at the same time as the surgery moves. If we were to relocate with the surgery then please select an answer from the options below for how the move would affect your access to the pharmacy?*
- 4.47 1 patient (5%) indicated that it would make the pharmacy significantly less accessible for them;
- 4.48 19 patients (95%) indicated that the move would have no impact on accessibility.

Patient Group 3 – Patients Who Use Public Transport

- 4.49 It is similarly helpful to read the real views of patients who use public transport.
- 4.50 A total of 9 out of the 238 patients surveyed used public transport.
- 4.50.1 4 were visiting the surgery first;
- 4.50.2 4 came from home;
- 4.50.3 1 stated he was “visiting his mother in laws”;
- 4.50.4 4 out of the 9 stated that they had mobility issues that affected their ability to access services, but were still ok with using public transport.
- 4.51 When asked about the impact of the proposed move on accessibility to the pharmacy the answers were that:
- 4.51.1 2 patients said it would make the pharmacy significantly more accessible for them;
- 4.51.2 7 said it would have no impact on accessibility.
- 4.52 Again looking at the comments made by this group, 3 patients provided comments which were;
- 4.52.1 *I would greatly benefit from the Warrior pharmacy moving to the new premises;*
- 4.52.2 *My mother in law uses these always, very helpful;*
- 4.52.3 *Wouldn't go to any other pharmacy.*
- 4.53 Clearly not all the comments are relevant to the legal test, but they are still insightful.
- 4.54 There is a bus (route 99) that goes from the current site to the proposed site should any patient wish to make that journey (even though no patients live at the current site or its immediate surroundings so this is highly unlikely). It is not a difficult journey to make and there is no evidence that suggests otherwise.
- 4.55 The bus routes are shown on the attached map. Routes 99 serves the current and proposed site stopping almost outside each site. Route 98 serves the area to the north and north east.
- 4.56 The bus stop for buses 98 and 99 are located adjacent to the proposed location. Route 22 serves the area to the north and also Warrior Square. Routes 22, 98 and 99 all run along the sea front to provide access between the current and proposed site with a

short walk at the current site. All of these routes then link with the wider route network to provide access across Hastings, Bexhill, St Leonards and beyond as shown on the map provided.

- 4.57 Patients travelling from the west by public transport will invariably use the 98 or 99 bus route as this is the only route which links the two areas. Patients traveling from the west by public transport would therefore stop directly outside the proposed premises.
- 4.58 There is no part of St Leonards or Hastings or Bexhill that is not joined to the bus network that stops either directly outside or within 250 metres of the proposed site.
- 4.59 Each bus route operates approximately every 15 minutes and overlap with each other to create a frequent bus service across the area. The Applicant has omitted additional bus routes such as the 360 and 70 as whilst they serve the proposed site too, they are infrequent and do not add to the already adequate coverage.
- 4.60 In respect of bus users PSC states that “The journey will be illogical to the extent it would clearly make the proposed location significantly less accessible.” This submission has no bearing on the legal test and attempts to introduce a new criteria of “logic”. Patients may choose not to make a journey to a relocated pharmacy, but that does not mean that the pharmacy is “significantly less accessible”, instead it means that they find an alternate pharmacy more accessible. Logic and accessibility are entirely different concepts.
- 4.61 PSC cannot point to any deficiency in public transport because there is none and instead simply wonder if patients would consider the journey to be “illogical”. However, as many would be visiting the co-located GP practice and visiting the site for that purpose, it would clearly not be illogical for the majority even if that were part of the legal test.

Patient Group 4 - Patients Who Walk

4.62 Surrounding Highway Network

Filsham Road

- 4.63 Filsham Road is located on the eastern side of the development and is currently used to access the development site. Immediately adjacent to the site access there is an existing bus stop which has been moved north as part of the development to reduce conflicts between vehicles accessing the site and buses/patrons at the bus stop.
- 4.64 Filsham Road is a typical single carriageway two-way road with one lane in each direction and has a typical width of approximately 10m. The road is subject to a 30mph speed limit with footways and street lighting provided along both sides of the carriageway.
- 4.65 In the vicinity of the site, at the signalised junction there are numerous benefits for pedestrians including dropped kerbs and tactile paving and refuge islands.
- 4.66 Along both sides of Filsham Road there are footways connecting to the signalised junctions crossing.

Bexhill Road/ A529

- 4.67 Bexhill Road/A529 is located on the southern side of the proposed development and provides a highway connection between Pevensey and St Leonards-On-Sea. Along this section of highway there is an existing bus stop, there are council-led proposals to develop a bus lane along this section of highway.

- 4.68 Bexhill Road is a single carriageway road with two lanes in the eastbound direction and one lane in the westbound direction and has a typical width of approximately 10m. The road is subject to a 30mph speed limit with footways and street lighting provided along both sides of the carriageway.
- 4.69 In the vicinity of the site, at the signalised junction there are numerous benefits for pedestrians including dropped kerbs and tactile paving and refuge islands.
- 4.70 Along both sides of Bexhill Road there are footways connecting to the signalised junctions crossing.
- 4.71 The above roads provide access to the proposed site from all parts of the wider footpath network. The majority of patients who walk already live to the north and west of the current site (north and east of the proposed site). For many the journey would be shorter. There are no new gradients introduced as a result of the relocation. As with any sea-side town, the land rises from the sea and both the current and proposed site are almost exactly the same distance from the sea (as shown in the patient maps provided).
- 4.72 In terms of the general footpaths, these are kept in good condition with dropped kerbs, street lighting and tactile paving as well as a network of crossing points (light controlled and zebra crossing) throughout the area. No new impediment to access is introduced by the relocation and the premises themselves are of a far higher access standard.
- 4.73 The attached Design and Access Statement which formed part of the planning process provides further insight into the design and use of the new surgery/pharmacy space and how it has been designed to facilitate access for pedestrians as well as car, cycle and other users.
- 4.74 At this stage it is also worthwhile considering accessibility for patient group 4 – patients who walk – as this is also the focus of the appeal from PSC.
- 4.75 The map provided, shows the postcodes plotted for all patients who said they walked and provided a valid postcode. This comes to a total of 39 out of the relevant patients surveyed.
- 4.76 In answer to the same question as described above the following answers were received.

	Answer Choices	Responses
4.77	It would make the pharmacy significantly more accessible for me	7.69% 3
4.78	It would make the pharmacy more accessible for me	5.13% 2
4.79	It would have no impact on accessibility for me	82.05% 32
4.80	it would make the pharmacy less accessible for me	2.56% 1
4.81	It would make the pharmacy significantly less accessible for me	2.56% 1
	TOTAL	39

- 4.82 With respect to the patient that said that they would find the relocated pharmacy significantly less accessible the Applicant can also state that they;
- 4.82.1 Live nearly 1 mile to the north west of the current surgery premises;
- 4.82.2 Are registered with Carisbrooke Surgery;
- 4.82.3 Have no mobility issues;
- 4.82.4 Did not make any comments on the proposed relocation.

4.83 The patient also stated that they were visiting the GP surgery prior to accessing the pharmacy and the comment on accessibility is therefore difficult to understand by itself.

4.84 Looking again at all the patients who stated that they normally walk to the current premises, a number of them made comments on the proposed relocation and they were as follows;

4.85 **Question - Do you have any comments to make about our proposed relocation?**

Answers

4.85.1 *I cannot understand why the pharmacy would not continue to be alongside the surgery, it is convenient and would be a valuable service to lose;*

4.85.2 *The surgery and pharmacy work well together;*

4.85.3 *Great to have such knowledgeable and helpful team who clearly know and understand the needs of many of their patients/customers;*

4.85.4 *Want it to happen please;*

4.85.5 *As a non-driving mum with three children, it would be vital that this pharmacy moves with the doctors. I also trust and know the staff and would need them to be attached to my doctors.*

4.86 These answers and the fact that the vast majority of patients would find the proposed relocation to have little impact on them (from an accessibility perspective) show why the relocation should be permitted.

4.87 Therefore, looking at this patient group as a whole rather than on an individual patient basis, it is clear that the relocation does not make the pharmacy significantly less accessible for the group. Some of the patients who walk to the current location travel over 2 miles to get there (see map provided of patients who walk). Other patients travel shorter distances. Almost all who walk will be walking towards and away from the sea as part of the current journey and are accustomed to the gradients involved.

4.88 Far from “patients who walk” being a group that would find the relocation difficult for them, the same patients recognise that the pharmacy would relocate with the surgery that they will attend. The comment from the “non driving mum” puts this properly into perspective. A non-driving mum who walked to the pharmacy would be assumed by the Appellant to not want the relocation to take place. In fact, the same mum sees the relocation as “vital”. That is why the context of this relocation, with a pharmacy that has been co-located for many years and where the existing premises are isolated from other facilities is so important.

Patient Group 5 – Patients who use motorised transport (car, motorbike, taxi)

4.89 This is by far the largest group making up 162 out of 238 patients – 68%.

- 4.90 Despite the comments made by the Appellant about how difficult it may be to drive around St Leonards, the real patients do not share these views.
- 4.91 9 of the patients stated that the relocation would make the pharmacy significantly more accessible for them and all of the rest stated that it would have no impact on accessibility for them.
- 4.92 A total of 55 respondents in this category provided further comments as follows;
- 4.92.1 *Please keep the pharmacy with the surgery. They belong together. Thank you;*
- 4.92.2 *Shame - I like it here and my husband find it easy to park his van;*
- 4.92.3 *Happy about it and hopefully good news for the staff;*
- 4.92.4 *It is so fantastic to have the pharmacy next to the surgery;*
- 4.92.5 *It is significantly important that this pharmacy moves with Carisbrooke surgery;*
- 4.92.6 *Car parking?;*
- 4.92.7 *This pharmacy has an in-depth knowledge of the patients from Carisbrooke which is invaluable. Patients also have great trust and an ability to discuss ailments with confidence;*
- 4.92.8 *It would be a travesty to lose this relationship;*
- 4.92.9 *This is a first class pharmacy it would be a shame to see it go;*
- 4.92.10 *I think that it will be a tragedy if Warrior pharmacy don't move. I am practice nurse at surgery and invaluable for patients;*
- 4.92.11 *It would be so impractical and disappointing if this pharmacy was not part of the new building - symbiotic chemist and surgery is so necessary;*
- 4.92.12 *It's a no brainer to move with the surgery. Good luck;*
- 4.92.13 *This should stay with the surgery;*
- 4.92.14 *I feel to keep the pharmacy with the surgery will benefit my lack of mobility and confidence in my medication;*
- 4.92.15 *I have always used;*
- 4.92.16 *Can't wait, it will be really good;*
- 4.92.17 *Hopefully consideration has been given to parking spaces? For cycles and cars;*
- 4.92.18 *Otherwise I don't think we will be adversely affected;*
- 4.92.19 *The staff are very helpful and would be easier to get to*
- 4.92.20 *It would make life easier;*
- 4.92.21 *Very much in favour;*
- 4.92.22 *It would greatly increase accessibility to medical care;*

- 4.92.23 *Very much in favour of it!;*
- 4.92.24 *Great chemist, lovely staff. Don't want to lose them*
- 4.92.25 *Get my prescriptions here with my dad as very friendly, don't keep me waiting too long;*
- 4.92.26 *Highly recommend;*
- 4.92.27 *Hope parking is adequate and easy to access and not small and a waste of time;*
- 4.92.28 *Very helpful pharmacy. Nothing is too much trouble. Highly recommend;*
- 4.92.29 *Been using this pharmacy for a year, wouldn't go anywhere else now. Polite, friendly, helpful;*
- 4.92.30 *Amazing first class service by a bunch of lovely people. Thanks all;*
- 4.92.31 *Happy;*
- 4.92.32 *It would be a good mood (sic);*
- 4.92.33 *I think having the pharmacy with the surgery is very convenient and it should stay with Carisbrooke surgery;*
- 4.92.34 *I feel the pharmacy works very well being in the same building and should stay with Carisbrooke surgery;*
- 4.92.35 *Amazing service wouldn't want to go anywhere else;*
- 4.92.36 *Would be nice for them to move to the new location as I have used them for years and won't use anyone else. All friendly staff;*
- 4.92.37 *This is the BEST pharmacy in Hastings and St Leonards for speed, services and continuity;*
- 4.92.38 *Good services;*
- 4.92.39 *We only ever use Warrior pharmacy and have done for 10+ years. The staff are ever so friendly and all take time to help and understand us;*
- 4.92.40 *Lovely pharmacy, know all our needs;*
- 4.92.41 *Excellent service, very helpful. Pleasant members of staff;*
- 4.92.42 *I always find them very helpful;*
- 4.92.43 *The availability of a pharmacy on the same site, not only for the elderly with impaired mobility, also for other vulnerable patients attending a GP;*
- 4.92.44 *I could walk to the pharmacy and surgery. No need to drive. Better for me, better for the environment!;*
- 4.92.45 *The staff along with the doctors have a good working relationship with the customers and the move will aid and assist the public;*

- 4.92.46 *This pharmacy should be relocated with Carisbrooke as it provides the best service in town and the staff from the doctors and pharmacy work well together for their patients;*
- 4.92.47 *Warrior pharmacy needs to be with Carisbrooke Surgery;*
- 4.92.48 *Amazing service, amazing staff. Very reliable, accurate, caring and professional;*
- 4.92.49 *Would be a real loss if not relocated;*
- 4.92.50 *It would be a sensible option for this pharmacy to be relocated within the same premises as Carisbrooke as it was prior to the move to temporary accommodation;*
- 4.92.51 *I am not a regular user of this pharmacy but it was convenient when visiting Carisbrooke surgery;*
- 4.92.52 *Please let this pharmacy relocate;*
- 4.92.53 *Looking forward to the convenience of my regular pharmacy and doctors in a new modern location;*
- 4.92.54 *Very helpful pharmacy, would like to move with them;*
- 4.92.55 *Would never use a different pharmacy;*
- 4.92.56 *I'm going where they go;*
- 4.92.57 *Please keep this pharmacy with the surgery as I trust them and have known them for 20 years;*
- 4.92.58 *I hope there is good parking;*
- 4.92.59 *I always use this pharmacy because I have known the pharmacist and staff for many years and will continue to as I am always provided with a great and efficient service;*
- 4.93 Whilst the responses are overwhelmingly positive, it is notable that a small number query the availability of parking at the new medical centre premises.
- 4.94 The developers were only permitted planning permission for the development on the basis of adequate parking being provided. The Highways Agency negotiated the parking provision with the developers and approved it whilst also noting there is offsite unrestricted parking on the nearby roads. Any objection (and this appeal) made in relation to parking is unjustifiable when the council and Highways Agency has approved the development with full knowledge of the facts.
- 4.95 Planning approval (provided) for the development stated;
- 4.95.1 *f) Highway Safety and Parking*
- 4.95.2 *The 53 parking spaces and cycle spaces are considered to be acceptable for the parking generation that will be created by the development and operation of the medical centre. A condition will be attached for details of the cycle store to be submitted, and for that and the car parking spaces to be laid out in accordance with approved plans prior to use of the medical centre. Furthermore, the site is a highly sustainable location in terms of public*

transport, adjacent to two bus routes and within a 10 minute (approx.) walk of West St Leonards train station.

- 4.95.3 *Overall the onsite parking provision and availability of public transport services in the area is considered to be acceptable for the development. There is also a public car park located near to the seafront to the east, which does form part of an allocated site in the Hastings Local Plan which must include a new car park. On street parking is also available in the area, especially on Bulverhythe Road. For these reason, ESCC Highways have withdrawn any objection to the scheme.*
- 4.95.4 *Other conditions have been advised by ESCC Highways covering a transport management plan and layout for staff and visitors; a construction management plan to protect highways safety during construction; a requirement for a plan showing pedestrian accesses prior to occupation; details of the new level access with the highway; and a condition requiring development to be carried out in conjunction with the highways works being undertaken by ESCC. All of the conditions are considered to be reasonable, necessary and relevant and will be imposed on the decision notice. A further robust condition for submission and implementation of a Travel Plan is considered vital on this development, in order to encourage use of sustainable transport modes and reduce parking demands. Alongside this condition, the Travel Plan is also secured in a Unilateral Undertaking submitted to ESCC.*
- 4.95.5 *Subject to the submission and ongoing implementation of this Plan, the development is deemed acceptable in highway terms.*
- 4.95.6 *The development is considered to meet the aims of Hastings Local Plan policies T3 and DM4 with regards to sustainable transport and highways safety and access.*

Access Generally for Patient Groups

- 4.96 As can be seen from the maps provided, the current pharmacy attracts patients from all over St Leonards and beyond. Both the current and proposed sites lie at almost the same level above the sea, so the gradients being travelled by whatever means will not change.
- 4.97 Adequate car parking has been provided as part of the new medical centre with dedicated disabled parking. This was a requirement of the planning process.
- 4.98 Access by public transport is excellent as the bus stops in close proximity to the proposed premises also then link with bus routes that serve the whole of the town and the wider area. The 23/23B service is a regular service which covers all of St Leonards, travels between the current and proposed site and also links with the wider bus network (see bus route maps provided).
- 4.99 Whether a patient chooses to access the proposed site on foot will depend on their personal circumstances, but as the evidence clearly shows, there is little or no housing in the immediate area of the current premises and even those that currently walk wish for the pharmacy to relocate to the new medical centre site. St Leonards is a busy town with properly maintained pavements with dropped curbs and street lighting. There are no impediments to accessing the new site on foot as compared to the old site. Indeed, the new site has been designed to be compliant with the Equality Act and provide easy access for those whose mobility is compromised and this compares to the previous location which was little more than temporary accommodation which became a solution for much longer than it was ever intended to. The evidence shows that the group comprised of those who walk are very keen for the pharmacy to relocate and this is understandable given that they will likely to accessing the new surgery site and wish to retain the benefit of a co-located pharmacy to save an additional trip on foot.

Additional Points Made in the Appeal

- 4.100 At page 9 of the appeal PSC then states;
- 4.100.1 *“However, given that the surgery is moving a significant distance, it is not clear that all patients currently registered with that surgery, will remain registered with them. It may be that some choose to register with an alternative surgery, such as Warrior Square. It cannot be taken for granted, therefore, that all patients accustomed to accessing the existing location because they attend Carisbrooke, will attend the new Carisbrooke site in the future.”*
- 4.101 The Regulations only permit consideration of existing patient groups rather than speculation about what may occur in the future.
- 4.102 PSC then makes a further claim which is;
- 4.102.1 *It is not clear from this statement what proportion of these patients visit the pharmacy in person and how frequently they attend in person rather than receiving deliveries. It is also unclear if, and how, these patients access other services which cannot be provided by a delivery driver such as MURs. Only the applicant can provide this information. Without it, it will be difficult for PCA to assess whether there is a significant number of patients who choose to access this location in person despite the fact they are not patients at Carisbrooke Surgery given that, according to the applicant, it “sits in isolation from the rest of the commercial and residential areas of the town”.*
- 4.103 As the Committee will be aware, the proportion of patients within a group or how frequently they access the pharmacy is not relevant to whether they would find the relocated pharmacy significantly less accessible. This is simply an old and commonly displayed tactic of claiming that information is “missing” when it is not. To demonstrate this the Applicant can inform the Committee that 49% of prescriptions are delivered to patients overall and that number is steadily increasing with the ongoing COVID pandemic. For patients registered with Warrior Surgery considered by itself, the percentage is much higher at over 80%. No patients now access the pharmacy for NMS or MUR as they are being carried out by telephone. Whilst this answers the Appellant’s question it does nothing to assist with the issue of accessibility and that is covered by all the relevant information provided already.
- 4.104 In addition to the above it can be noted that there are no services that require separate consideration in terms of patient groups and nor has the Appellant suggested that there should be. The Applicant currently has no patients using needle exchange or supervised consumption services.
- 4.105 Patients accessing any service are already considered by both the GP practise they are registered with and the mode of transport used to access the pharmacy.
- 4.106 In relation to these groups the Committee has previously dealt with the suggestion that different consideration was required and has found that it is not. In SHA/23377 (October 2020) the Committee found;
- 4.106.1 *Patients accessing pharmaceutical services*
- 4.106.2 *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.

- 4.106.3 *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.*
- 4.106.4 *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.*
- 4.106.5 *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.*
- 4.107 PSC then states (page 10);
- 4.107.1 *The applicant states "almost all the patients who use the current pharmacy do so after visiting their GP practice".*
- 4.107.2 *This statement is worth considering in more detail.*
- 4.107.3 *Looking at NHS dispensing data for March 2020, 48.8% of the items prescribed by Carisbrooke Surgery were dispensed by Warrior Pharmacy. We are being asked to believe, therefore, that almost half the items generated by Carisbrooke Surgery are prescribed and dispensed immediately after a patient visit to the surgery. These could be described as 'acute' items.*
- 4.107.4 *In our experience, no more than 20-30% of items prescribed by a surgery are acute, with the majority being repeat items where no visit to the surgery is necessary. The suggestion that the picture is very different at Carisbrooke is hard to accept unless the applicant is able to provide evidence to support this assertion.*
- 4.108 Unfortunately the entire premise behind PSC's response is incorrect as the items dispensed include repeat items as well as acute items. Whilst it is correct that 20-30% of items dispensed are for acute medication, the reality is that many patients also visit the surgery because they are asked to attend for another reason such as a check-up, review of medication etc. and are only issued with a prescription after that review is carried out. This accounts for an additional 20% of patients attending the surgery in any month and this correlates with the figures presented. Describing all the dispensed items as "acutes" is simply wrong and ignores the reality of how a health centre pharmacy works. Indeed, if PSC's submission were correct then a health centre based pharmacy would only ever be able to dispense a maximum of 20% of the prescriptions issued by a medical practice, when the figure in reality can be over 90%, but is more commonly 50% to 60%.
- 4.109 This reply to the appeal has been drafted with the benefit of a detailed patient survey which has enabled the Applicant to consider actual percentages of patients rather than rely on the previously used terms such as "almost all" and so the evidence is now improved for the Committee. In any event the specific numbers of patients in any group is not relevant to the decision (so long as the group is considered large enough to be relevant).
- 4.110 PSC then suggests at page 10 that the Applicant is required in law to provide "unequivocal evidence" that would show their claims to be incorrect. Firstly, as a matter of law this is incorrect. The burden of proof falls on the party who asserts a fact and this remains the case even where the burden of proof in the case rests with one party

rather than another in accordance with the rule that “he who asserts must prove”. Secondly, and in any event, the survey results show the reality of why patients attend the pharmacy.

4.111 On page 11 of the appeal PSC then misunderstands the point being made about patients who attend in an *ad hoc* manner. The point being made is that there would be no such definable patient group, whereas PSC provides an example of a walk-in centre where such a group may be definable as those patients would all be travelling to the walk in centre first. Instead the Applicant would not to consider why a patient would travel to the pharmacy at its current location as there is no obvious reason to do so other than to register temporarily with the Carisbrooke Surgery. The surgery does provide this service and the Applicant confirms that they do see *ad hoc* patients as a result.

4.112 <https://www.carisbrookesurgery.co.uk/patient-info/register/>

4.112.1 **1 Temporary registration**

4.112.2 *If you are ill while away from home or if you are not registered with a doctor but need to see one you can receive emergency treatment from the local GP practice.*

4.112.3 *You can be registered as a temporary patient for up to three months. This will allow you to be on the local practice list and still remain a patient of your permanent GP. After three months you will have to re-register as a temporary patient or permanently register with that practice.*

4.112.4 *To register as a temporary patient simply contact the local practice you wish to use. Practices do not have to accept you as a temporary patient although they do have an obligation to offer emergency treatment. You cannot register as a temporary patient at a practice in the town or area where you are already registered.*

4.113 These patients would not find the relocated pharmacy significantly less accessible as they would also be attending the GP practice which has relocated and are already considered under patient group 1.

4.114 PSC then quotes from the PCA Guidance Note which says that as a principle of public law, the Committee must consider all comments with regard to patient groups regardless of how they are described. The Committee may be aware that this statement was commented on by Justice Langstaff in the Community Pharmacies judicial review where he stated in court (but not in the judgment) that this was incorrect and counsel for the NHSLA (as it then was) accepted the judge’s comments. In fact, Justice Langstaff stated that no such principle existed nor would it be correct given that it would lead to quite ridiculous attempts to define groups which the Committee would then find itself obliged to consider.

The Two Additional Patient Groups Defined by the Appellant

4.115 On page 12 of the appeal the Appellant defines two patient groups that they ask the Committee to consider. Given that the Appellant has defined these groups they must provide the evidence to support these definitions. Paydens Ltd should not be asked to prove a negative. Despite this it is easy to deal with both groups.

4.115.1 A. Patients who live, work or have other reason to be located on the eastern side of St Leonards.

4.116 It is not clear why patients who live to the east should be considered separately. However, PSC states (page 13);

4.116.1 *Given the adjacent car park at the existing location, it is not surprising that the applicant's pharmacy is favoured by residents living on the eastern side of St Leonards who wish to access a pharmacy by car.*

4.117 This is no more than pure speculation described as a fact and it is wrong. The maps provided show that patients come from all over the wider area and the Applicant is quite clear that this is because of the co-location with Carisbrooke Surgery. This compares to typical High Street pharmacies where there is considerably more use by patients who live close by – but that is not the case here. What the Applicant can say from dispensing volumes is that many more patients use the other pharmacies in the Hastings and St Leonards's town centres (which the current location is between) than use Paydens Pharmacy.

4.118 The remainder of PSC's comments on this point simply do not make sense. The Committee is not required (as PSC claims) to consider those who use the leisure centre or museum or art gallery as the Applicant has been very clear already in this letter that they cannot recall a single patient who has come to the pharmacy from any of those locations. Nor is the pharmacy used by tourists (other than those with temporary registration discussed above) and the Applicant is similarly clear that tourists would use the town centre pharmacies – in Hastings to the immediate east and St Leonards to the immediate west - which are much more prominent and well known.

4.119 PSC then states that;

4.119.1 *"Patients who do not have access to a car but live on the eastern side of St Leonards cannot reasonably be expected to walk given that this would entail a round trip of close to 1½ hours and around 4 miles."*

4.120 There is nothing objectionable about this statement and the Applicant has at no stage suggested that patients would walk for one and a half hours to anywhere. Further, there is no evidence to support the assertion that there are any patients who would be affected in this way. In fact, the evidence from the survey shows that patients who currently walk to the pharmacy overwhelmingly support the relocation of the pharmacy to the new site. To be clear, the Applicant, after extensive consultation with patients, is unaware of even a single patient who holds the view presented by PSC. This is simply a made-up attempt at a patient group which cannot be justified or proven to exist. What is also clear from the maps provided is that the current location sits in something of a no-man's land between Hastings town centre on the immediate east and St Leonards town centre to the west. PSC are trying to have the Committee believe that patients ignore the town centres to use Paydens Pharmacy when they have no other need to attend the medical centre. The suggestion is neither credible nor supported by the facts or the results of the patient survey. PSC has not provided any evidence to support the claim made.

4.121 In respect of car users, the Applicant has already addressed the car parking facilities at the new medical centre earlier in this appeal and do not intend to repeat those points again.

Patient Group 6 - Patients who share protected characteristics that may affect their mobility (either as a separate patient group or as part of the groups already defined)

4.122 The Applicant accepts that the Committee will give consideration to those patients who may have a condition that affects their mobility. As the Committee will note, the survey specifically asked the question whether any of the patients surveyed:

4.122.1 *Q4: Do you consider yourself to have impaired mobility that affects your ability to access places or services?*

- 4.123 A total of 29 patients who said that this was their regular pharmacy answered “yes” to this question. The Applicant confirms that this is representative of their patient population.
- 4.124 Of the 29 patients who answered yes, 27 stated that they travelled by car and 2 travelled by taxi.
- 4.125 3 of the 29 patients stated that the relocation would make the pharmacy significantly more accessible for them and 26 stated it would have no impact on accessibility – presumably because they used a car.
- 4.126 For a small group, these patients were vocal in wishing to provide comments on the proposed relocation. 11 of the 29 patients provide comments and they are shown below.
- 4.126.1 It would be so impractical and disappointing if this pharmacy was not part of the new building - symbiotic chemist and surgery is so necessary;*
- 4.126.2 This should stay with the surgery;*
- 4.126.3 I feel to keep the pharmacy with the surgery will benefit my lack of mobility and confidence in my medication;*
- 4.126.4 Hopefully consideration has been given to parking spaces? For cycles and cars. Otherwise I don't think we will be adversely affected;*
- 4.126.5 The staff are very helpful and would be easier to get to;*
- 4.126.6 It would make life easier;*
- 4.126.7 Hope parking is adequate and easy to access and not small and a waste of time;*
- 4.126.8 Would be nice for them to move to the new location as I have used them for years and won't use anyone else. All friendly staff;*
- 4.126.9 Lovely pharmacy, know all our needs;*
- 4.126.10The availability of a pharmacy on the same site, not only for the elderly with impaired mobility, also for other vulnerable patients attending a GP;*
- 4.126.11The staff along with the doctors have a good working relationship with the customers and the move will aid and assist the public.*
- 4.127 It is notable that one of the responses queries parking for cycles and cars. Parking for both cycles and cars is provided at the new site and has already been discussed above.
- 4.128 The Applicant has provided a map which shows where the patients who said they had reduced mobility live. Unsurprisingly the patients come from across a wide area which matches the catchment of the Carisbrooke Surgery. The comments show that, far from being concerned about the pharmacy relocating, this group of patients is particularly supportive of the proposed move and concerned about it not relocating. Again, this should not be surprising. If the application is approved then mobility impaired patients will continue to have a co-located pharmacy at the surgery that they attend, where they like the staff and wish to access pharmaceutical services. If the application were refused then the very patients that the objector claims to be concerned about would have to make an additional journey to find an alternate NHS pharmacy.

- 4.129 The survey results are important evidence with regard to this group. The Applicant would remind the Committee that in respect of this or any other group it is not about finding 1 or 2 patients within a group that might prefer if the pharmacy were to stay in its current location. The Committee is not asked to (and must not) consider individual patients, but instead consider each relevant group as whole. In respect of this particular group (and all others) there is no evidence that the group would find the pharmacy significantly less accessible and ample evidence that the group supports the proposed relocation.
- 4.130 Finally PSC urges the Committee to “have regard to the changes taking place in general practice as a result of the current pandemic” and claim that fewer patients will access the proposed site to see a GP. This may have the effect of reducing the size of the relevant patient groups, but as it is speculation about future patient groups, or their size, it cannot form part of the consideration in this application, which deals only with current patient groups. Similarly, PSC mix up having a “reason to visit that site” with whether it is significantly less accessible or not. A location does not become less accessible just because a person does not have a reason to access it.
- 4.131 In addition, the Committee will also consider the other matters required under Regulation 24:
- 4.131.1 **1. 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**
- 4.132 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.
- 4.132.1 **2. 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**
- 4.133 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.
- 4.133.1 **3. 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**
- 4.134 The Applicant undertakes to provide the same services at the new premises as are provided at the existing premises.
- 4.134.1 **4. The provision of pharmaceutical services will not be interrupted (except for such period as the NHSCB may for good cause allow)**
- 4.135 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).

The Law and the Correct Test

- 4.136 The Appellant focuses their case solely on regulation 24(1)(a). Whilst the Committee will be well versed in considering relocation applications, the Applicant would still take this opportunity to make a few points about the legal test that must be applied.
- 4.137 In *R (On the application of Community Pharmacies (UK) Ltd* [2016] EWHC 1595 (QB) Mr Justice Langstaff rejected the idea that the Committee should take an overall

approach to accessibility (para 35) and instead stated that accessibility must be considered “group by group”.

- 4.138 However, when considering accessibility for each patient group, this will require an overall approach to the group to be taken, otherwise the assessment would become about individual patients.
- 4.139 The Applicant accepts that there will be patients who will say that the proposed relocation will make the pharmacy less accessible, or even significantly less accessible for them as individuals. Indeed, even the survey carried out by the Applicant provided one such response.
- 4.140 There may be an individual who drives who finds themselves unable to navigate the road system in west St Leonards. There may be an individual who walks to the pharmacy now who would find the relocated pharmacy impossible to get to. However, this does not mean that the application must be refused. Instead the Committee must consider whether the relevant patient group that these patients fall in to would, overall, find the relocated pharmacy significantly less accessible.
- 4.141 As Mr Justice Langstaff said at para 33 of his judgment;
- 4.141.1 *So long as the NHSCB, or on appeal the FHSAU, bears in mind that the purpose of identifying the groups is to make a broad assessment of the question of accessibility, and that therefore to identify too many groups which are too small in number to assist with that process would risk over-focussing and losing sight of the whole broad picture, and provided the Board or Committee takes a practical and pragmatic view of the groupings that might assist it to a conclusion, by reference to which it may analyse the available evidence, it will not go far wrong.*
- 4.142 This paragraph also notes the requirement to analyse the “available evidence”. There is no evidence that supports the Appellant’s position and the appeal only speculates whilst attempting to dress up speculation as fact. The submissions made in the appeal are shown to be incorrect when the evidence is analysed. The Committee, as an expert tribunal, may of course use their expertise to draw reasonable inferences, but should not reject evidence without good cause.

Conclusion

- 4.143 This is a somewhat unusual case. The patient groups who access the current premises are by now accustomed to accessing it in its new location as a result of the relocation under regulation 29.
- 4.144 It is not possible for the Applicant to return to their previous premises and they were forced to leave. There are no other premises that would be suitable for the pharmacy to relocate to or that would meet the legal test under regulation 24(1)(a).
- 4.145 It cannot be the purpose of the Regulations for a pharmacy to have no premises that would be permissible to relocate to. The legal test must be met, but that legal test must be considered along with the aim and intent of the Regulations in mind.
- 4.146 Ultimately the Committee is tasked with putting itself in the position of the relevant patients (as a group rather than individually) and asking whether that group would (in relation to reg 24(1)(a)) find the relocated premises significantly less accessible. In this case the patients have expressed strong views on this subject with only one patient that was surveyed stating that the relocation would make the pharmacy significantly less accessible and over 99% stating it would make the premises more accessible or have no impact on access for them.

- 4.147 Thank you for your letter of 12 June 2020 inviting comments on the representations received from Boots and Soudyrah Limited.

PSC on behalf of Soudyrah Limited

- 4.148 In the section entitled “Background” PSC speculates that there are numerous other premises that the Applicant could relocate to which are significantly closer than the existing site. Whilst there may be premises closer to the existing site, every one of them would mean that after the surgery moves the pharmacy would become significantly less accessible for patients. The Applicant is clear that if this relocation does not go ahead they see no prospect of relocating elsewhere as they would lose so many patients that the pharmacy would not be viable. It is bizarre to suggest that the pharmacy should relocate to a place where it would be considered inaccessible by patients whilst at the same time arguing that the objection is to protect accessibility for patients.
- 4.149 As NHS England will be aware, the Regulations are entirely silent about the potential distance of any relocation. Instead the focus (quite rightly) is on the accessibility of the pharmacy for the patient groups that are currently accustomed to accessing it at its current location.
- 4.150 The purpose of identifying patient groups is to make a broad assessment of the question of accessibility. In this case it is clear that accessibility would be maintained by granting the application and will be reduced to zero if the application is not approved as the pharmacy will close.

Patient Groups

- 4.151 PSC states that the Applicant has defined two patient groups. This is incorrect. The two points listed in the objection are merely the method in which patient groups can be defined. The Applicant has then gone on to define the relevant patient groups based on various factors such as methods of transport, surgery registration etc. which are then discussed further.
- 4.152 PSC then states;
- 4.152.1 *“However, given that the surgery is moving a significant distance, it is not clear that all patients currently registered with that surgery, will remain registered with them. It may be that some choose to register with an alternative surgery, such as Warrior Square. It cannot be taken for granted, therefore, that all patients accustomed to accessing the existing location because they attend Carisbrooke, will attend the new Carisbrooke site in the future.”*
- 4.153 The Regulations only permit consideration of existing patient groups. PSC is speculating that there may be a change in where patients register once Carisbrooke Surgery relocates. This may or may not occur, but is not relevant to the definition of the current patient groups.
- 4.154 PSC then claim that insufficient information is available to enable NHS England to make a decision in respect of patients registered with Warrior Square Surgery.
- 4.155 In the time since the application was submitted, the Applicant has carried out a detailed survey of over 200 patients to ascertain their views on the proposed relocation and factors relating to access and usage of the pharmacy. The survey was carried out because the Applicant recognised that evidence based on the belief and experience of the pharmacy staff might be challenged. The survey was answered by walk-in patients, in other words it excludes delivery patients as they are not relevant to the legal test. The survey provides direct evidence of the matters which are relevant to the Regulations.

- 4.156 Please note that the attached summary relates to all survey responses whereas the Applicant has been able to break these down further below.
- 4.157 In respect of Warrior Square Surgery the survey found that (approximate numbers);
- 4.157.1 33% visited the pharmacy after visiting the surgery;
 - 4.157.2 52% came from home;
 - 4.157.3 15% came from work;
 - 4.157.4 61% used a car to access the pharmacy;
 - 4.157.5 10% used public transport;
 - 4.157.6 19% walked;
 - 4.157.7 10% used motorbike or taxi.
- 4.158 All these patients were then asked the following question;
- 4.158.1 *“Carisbrooke Surgery will soon be moving to new premises 2 miles away at 130 Bexhill Road. We are asking for permission from the NHS to relocate this pharmacy to the new surgery site at the same time as the surgery moves. If we were to relocate with the surgery then please select an answer from the options below for how the move would affect your access to the pharmacy”*
- 4.159 Approximately 95% of patients stated that it would have no impact on accessibility for them and 5% said it would make the pharmacy significantly more accessible for them.
- 4.160 7 patients who are registered with Warrior Square Surgery provided comments to support their answer which said;
- 4.160.1 *It's a no brainer to move with the surgery. Good luck;*
 - 4.160.2 *I have always used;*
 - 4.160.3 *Amazing first class service by a bunch of lovely people. Thanks all;*
 - 4.160.4 *I think having the pharmacy with the surgery is very convenient and it should stay with Carisbrooke surgery;*
 - 4.160.5 *I am not a regular user of this pharmacy but it was convenient when visiting Carisbrooke surgery;*
 - 4.160.6 *Would never use a different pharmacy;*
 - 4.160.7 *Wouldn't go to any other pharmacy.*
- 4.161 Not all comments are relevant to the legal test, but what is clear is that patients would travel to the pharmacy because of the high standard of service and they do not believe that the relocation would make it significantly less accessible.
- 4.162 PSC then states;
- 4.162.1 *The applicant states “almost all the patients who use the current pharmacy do so after visiting their GP practice”.*
 - 4.162.2 *This statement is worth considering in more detail.*

- 4.162.3 *Looking at NHS dispensing data for March 2020, 48.8% of the items prescribed by Carisbrooke Surgery were dispensed by Warrior Pharmacy. We are being asked to believe, therefore, that almost half the items generated by Carisbrooke Surgery are prescribed and dispensed immediately after a patient visit to the surgery. These could be described as 'acute' items.*
- 4.162.4 *In our experience, no more than 20-30% of items prescribed by a surgery are acute, with the majority being repeat items where no visit to the surgery is necessary. The suggestion that the picture is very different at Carisbrooke is hard to accept unless the applicant is able to provide evidence to support this assertion.*
- 4.162.5 Unfortunately the entire premise behind PSC's response is incorrect as the items dispensed include repeat items as well as acute items. Whilst it is correct that 20-30% of items dispensed are for acute medication, the reality is that many patients also visit the surgery because they are asked to attend for another reason such as a check-up, review of medication etc. and are only issued with a prescription after that review is carried out. This accounts for an additional 20% of patients attending the surgery in any month and this correlates with the figures presented. Describing all the dispensed items as "acutes" is simply wrong.
- 4.162.6 PSC then provides a picture which illustrates very well why the Applicant states that their pharmacy is not in a residential or retail area and are in a distinct area which is separate from the residential area. Perhaps it is simpler to state that the vast majority of people have no cause to access this area other than to access the medical centre or pharmacy.
- 4.162.7 PSC then states;
- 4.162.7.1 *It is entirely reasonable to assume, therefore, that there are patients who attend Warrior Pharmacy because it is close to their home, regardless of whether or not they are registered with Carisbrooke Surgery or have an appointment at the surgery.*
- 4.163 The Applicant would not dispute that there will be a very small number of patients that fall into this category (i.e. patients who walk, come from home and who are not visiting the surgery). In fact analysis of the patient survey shows that it accounts for approximately 1% of patients who were surveyed and that the majority of these stated that they would not find the relocated pharmacy to be in any way less accessible. There will always be some patients who find a pharmacy relocation will make the pharmacy less accessible for them. In this case there was 1 patient who stated that the relocation pharmacy would be significantly less accessible for them. The other patients all stated that the relocation would have "no impact" on accessibility for them.
- 4.164 The reason why the Applicant states that this is not a relevant group is that Justice Langstaff stated in *R (On the application of COMMUNITY PHARMACIES (UK) LIMITED)* [2016] EWHC 1595 (QB)
- 4.164.1 *"So long as the NHSCB, or on appeal the FHSAU, bears in mind that the purpose of identifying the groups is to make a broad assessment of the question of accessibility, and that therefore to identify too many groups which are too small in number to assist with that process would risk over-focussing and losing sight of the whole broad picture, and provided the Board or Committee takes a practical and pragmatic view of the groupings that might assist it to a conclusion, by reference to which it may analyse the available evidence, it will not go far wrong."*
- 4.165 The Applicant maintains that the evidence shows that there is no **relevant patient group** that would find the relocated pharmacy to be significantly less accessible. Even

within the patient group that PSC describes the majority would not find the relocated pharmacy to be significantly less accessible if it were considered to be relevant.

Access by Car or Bus

- 4.166 It is not immediately clear from the representations if PSC's client believes that access by car to the proposed site is difficult or not. The survey (provided) responses show that it is by far the most popular method of access and the Applicant would assume that people who live in St Leonards are accustomed to the traffic there. In any event, the Applicant was able to break down the survey results to show that of those who use either public transport or a car, 93.25% stated that the relocation would have no impact on accessibility for them and 6.75% stated that it would make the pharmacy significantly more accessible for them. No car or bus user has stated that it would make the pharmacy less accessible for them.

Boots

- 4.167 Boots ask some questions about methods of access and patients with mobility issues which are all answered by reference to the survey results (provided) and which show that Boots speculation is incorrect.

Patient Comments

- 4.168 The Applicant has also attached all the patient comments received from patients who chose to add a comment when filling in the pharmacy survey.

NHS England

- 4.169 The Pharmaceutical Services Regulations Committee (PSRC) has reviewed the documentation relating to this application and subsequent correspondence and has the following representations to make.
- 4.170 In the minutes of the PSRC meeting held in July 2020, paragraph 2.18 sets out the advantages and disadvantages of current and proposed sites. Paragraph 2.18 explicitly reviews the pharmacy's history; and the rationale for its relocation with the Carisbrooke Surgery, the 72% of pharmacy patients registered there, plus the next single biggest patient group equates to 22%.
- 4.171 The appeal states that the effect on 'each and every' one of the relevant patient groups' was not reviewed. The Committee considered the patient groups cited by the Applicant and these two groups alone comprise 94% of dispensing services.
- 4.172 The Committee also noted the local terrain, facilities at the premises, transport, parking, access and the immediate residential profile. It weighed all this in the context of the given patient groups which access the pharmacy in its present location.
- 4.173 It is the Applicant who should identify and justify the groups, as happened here. The Applicant did not list each and every patient group as the appeal wishes. Nonetheless the Committee still did assess the many and diverse factors that would affect a given user of the pharmacy's services in coming to its decision.
- 4.174 The Pharmaceutical Services Regulations Committee (PSRC) would refer NHS Resolution to the Committee Report and minutes of the PSRC meeting as previously submitted to NHS Resolution, and as highlighted above.

5 Observations on representations

PSC (on behalf of the Appellant)

- 5.1 The Appellant wishes to make the following final observations in response to comments raised by third parties.

Boots – letter dated 14 October

- 5.2 The Appellant notes that Boots agree with the Appellant's comments and support the appeal accordingly. The Appellant therefore have no additional comments to make.

NHS England – letter dated 20 October

- 5.3 The decision-making body makes no new comments in response to the Appellant's appeal. The letter simply describes the matters NHS England took into account when it decided to approve the application.

- 5.4 As the Primary Care Appeals Committee ("the Committee") will consider the matter afresh, the Appellant has no further comments to make in respect of the approach taken by NHS England at this time.

Rushport, on behalf of Paydens Limited – letter dated 16 October

- 5.5 The Appellant addresses the matters raised by the Applicant in the same order they are presented in the response by Rushport.

Background

- 5.6 The Applicant starts by setting out some of the background to their application and the current position in respect of the Applicant's pharmacy. Whilst some of the points raised might not be matters which appear to be within the remit of the Committee when determining this application, it is important that the recent history in respect of this application is properly scrutinised. This has a bearing on the credibility of the Applicant's case and could have far reaching implications for future applications if the Committee allows itself to be persuaded that the Applicant has acted reasonably and in good faith.

- 5.7 The application was first submitted on 13 January. At that time, the plans for the new medical centre were clearly well advanced and the site was under development. It is reasonable to assume that the applicant would have had a good idea, at that time, when the new site might be expected to open. The temporary relocation took place on 5 October, less than 9 months after the application was first submitted to NHS England.

- 5.8 The Applicant and its advisors are clearly very experienced in matters of Pharmacy Market Entry Regulations and would have been aware that, allowing for the possibility of an appeal and an oral hearing, 9 months was unlikely to be a long enough period for the application to be finally determined. So, whilst the Appellant accepts that there may have been some delays to the approval process, for the reasons set out by the Applicant, it is not the case that it was these delays which forced the Applicant into a particular course of action.

- 5.9 If it was always the case that the Applicant would not be able to remain at the Falaise Indoor Bowls Club site beyond 5 October then it is surprising, if not negligent, that the application was not submitted until January this year. The Appellant urges the Committee to be sparing with its sympathy for the Applicant in these circumstances.

- 5.10 If the Appellant discards negligence on the part of the Applicant as the reason for the approach it has taken, this opens two other possibilities:

- 5.10.1 (i) In the knowledge that a relocation of this distance would always be challenging, the intention of proceeding by way of a temporary relocation in October was pre-determined, and a blatant attempt to circumvent the proper process.

- 5.10.2 (ii) The Applicant had the opportunity to remain at the current site beyond 5 October and took this into account when submitting the application in January.
- 5.11 In respect of the second of these points, other than a statement that the electricity was going to be cut off, the Appellant has seen no evidence from the Applicant that it had “no choice” but to vacate the property on this date. The Appellant does not know if any attempt was made to negotiate an additional period of occupation with the landowners regardless of the intentions of the co-located medical practice. Equally the Appellant does not know if the Applicant sought any legal protection to remain in occupation at that site when it became apparent that its relocation application had been delayed.
- 5.12 If the Applicant did not make every possible effort to remain at the current site pending the outcome of this application, then the Appellant must assume this is because it suited it commercially to pursue the course of action it took.
- 5.13 In respect of the first of the points above, the Appellant would suggest that the Committee must be very careful not to set a dangerous precedent in its decision in this case.
- 5.14 Rushport state that its client had “no option but to apply for a temporary relocation to the new Carisbrooke Surgery site” but, of course, it did. Putting aside the question of whether there was an option to remain in occupation for a longer period of time, the Applicant was free to apply for a temporary relocation to **any** site able to accommodate a community pharmacy.
- 5.15 It is clear that the Applicant applied for a temporary relocation to the new surgery premises, rather than any other site, because this suited it commercially. It also did so in the knowledge this would put the PCA Committee in a very difficult position when it came to determining this appeal.
- 5.16 Regulation 29 deals with “**Temporary arrangements during emergencies or because of circumstances beyond the control of NHS chemists**”.
- 5.17 The purpose of Regulation 29 is clear. It exists to allow pharmacy contractors to continue to provide pharmaceutical services where circumstances beyond their control prevent them from continuing to provide services from their existing premises in the short term. Examples quoted in Regulation 29 are in cases of “fire or flooding”. In contrast, Regulation 29(7) states “planned refurbishment is not a *reason beyond the control* of C for the purposes of paragraph (1)(b)”.
- 5.18 In this case there was no emergency; the proposal to relocate the medical centre to the new site had been known the Applicant for very many months. The circumstances were therefore more akin to a ‘planned refurbishment’ than an emergency situation.
- 5.19 Furthermore, Regulation 29 deals with ‘temporary arrangements’ and assumes that the Applicant will return to its previous premises in due course. In this case, the Applicant had no intention of returning to the previous premises.
- 5.20 For these reasons, the Appellant believes NHS England was wrong to grant the temporary relocation in these circumstances.
- 5.21 Whilst the Appellant accepts that the decision in respect of the temporary relocation is not appealable, and therefore outside the specific remit of the Committee, it has placed the Committee in a very difficult position.
- 5.22 The Regulations make provision for parties to appeal against decisions made by the NHSCB in respect of routine and excepted applications because it is acknowledged that such decisions must be subject to scrutiny by an independent committee.

- 5.23 The argument being advanced by the Applicant is that, because it is now occupying the proposed premises by virtue of having previously been granted a temporary relocation, the Committee should consider the impact of the proposed relocation on patient groups by reference to the existing 'temporary' premises rather than those occupied previously and named in the application.
- 5.24 To accept this argument would be perverse as the Committee could not reach any other conclusion than to find that the proposed premises are equally accessible to the patient groups already attending them. The ability for the Committee to scrutinise the decision made by NHS England would effectively be lost because of a separate decision made by NHS England which is not itself subject to appeal.
- 5.25 If the Committee does accept this argument, it would 'drive a coach and horses' through Regulation 24 and result in a position where NHS England could effectively grant any relocation application, regardless of the circumstances, simply by first permitting a 'temporary relocation'. This would be entirely contrary to natural justice and would remove the ability of the PCA Committee, or any other party, to challenge relocations granted in those circumstances.
- 5.26 The Applicant wishes the Committee to consider the patient groups by reference to the "existing premises" and distinguishes between the premises 'listings' [on the pharmaceutical list] and those actually occupied by the Applicant.
- 5.27 If that approach is taken, this Committee may wish to consider whether this application is even valid. Paragraph 1 of Schedule 2 to the Regulations sets out the information that must be provided in respect of routine or excepted applications, and this includes, in 1(4), *the name and address of the Applicant (A)*.
- 5.28 The Applicant's address is not currently the one provided on the application form. It occupies alternative premises. If it wishes the 'new' premises to be the applicable ones for the purpose of this application, then the application must automatically fail, as it does not list the correct address for the Applicant's premises.
- 5.29 In summary on this matter, the Appellant urges the Committee not to be swayed by the argument that the temporary relocation leaves it with no option but to approve this application.
- 5.30 It should either:
- 5.30.1 a) Ignore the current location of the pharmacy and put itself in a position where that temporary relocation had not taken place or;
- 5.30.2 b) Refuse the application without further consideration on the basis the applicant no longer occupies the premises named in the application.
- 5.31 Borrowing a phrase frequently used by Mr Daly, "the Applicant cannot have it both ways".

Response to the Appellant's appeal

- 5.32 The Applicant goes on to comment on the matters raised in the Appellant's appeal and provide further information for the Committee's consideration.
- 5.33 The Appellant notes that additional information had been supplied to the NHSCB which the Appellant had not seen prior to drafting its appeal. It is not clear what information had been seen by NHS England when it made its decision but that is now largely irrelevant.
- 5.34 However, it would have been useful to have seen further information in respect of the patient survey carried out, specifically in respect of timing and methodology. The

Applicant has not shared any of this information with the Appellant, so the Appellant is unable to comment. Similarly the committee will be uncertain about how much weight they are able to place on the findings of the survey in the absence of more information. The Appellant discusses this matter further below.

- 5.35 The Appellant notes the comments made about the proximity of residential buildings to the 'existing site'. The Applicant objects to the Appellant's reference to the use of a 500m radius. To assist the Committee, therefore, the Appellant has provided images which show a 500m journey on foot in various directions from the Bowls Club site. As can be seen, a 500m walk from the bowls club reaches:
- 5.35.1 The junction of St Margarets Road and Magdalan Road;
 - 5.35.2 Beyond the junction of Cornwallis Gardens and Linton Road;
 - 5.35.3 The junction of Dorset Place and St Michaels Place;
 - 5.35.4 Bohemia Road, near the Police Station;
- 5.36 The Appellant has marked these locations on the satellite image provided as red stars with the 'existing' location marked with a blue star.
- 5.37 Contrary to the comments made by the Applicant, a journey of around 500m would take a pedestrian from one of several residential areas to the Bowls Club site. In any event, 500m was merely an illustrative distance. The Committee will be mindful that the 'proposed site' is 2 miles away (3,200m), so whether is resident lives 500m, 750m or even 1,000m away from the 'existing site', it is very clear that the 'proposed site' is very significantly further away.
- 5.38 The Applicant goes on, when discussing the background, to challenge the suggestion that there are many other locations the pharmacy could have moved which would have provided suitable alternative premises. It goes on to state that moving to "Warrior Square Surgery (or indeed anywhere else)" would result in "almost every existing patient" finding the "relocated pharmacy significantly less accessible". This is in complete contradiction to comments made later in the response which suggest patients freely move great distances around St Leonards without any hindrance whatsoever.
- 5.39 It is the argument made by the Applicant that a location far closer to the 'existing' pharmacy premises would be significantly less accessible than one 2 miles away which is absurd.
- 5.40 When discussing the local area, the Applicant comments on the Appellant's suggestion that patients might access the existing location at the same time as using some of the local recreational facilities. However, Rushport miss the point that the provision of these leisure amenities is an indication that patients living on the eastern side of St Leonards have access to facilities which meet a range of their needs without them having to travel further afield.
- 5.41 In current times, when people are being asked to avoid unnecessary journeys, they are likely to access important amenities such as shops, healthcare provision and places they can exercise as close to home as possible and avoid travelling excessive distances when they do not need to. Under previous regulations, the area to the east of St Leonards town centre would have clearly been regarded as a distinct neighbourhood and, whilst that term has no meaning within the current Regulations, consideration of where neighbourhoods may be (taking into account the common usage of the word) may help the committee to form a view of how far it may be reasonable to people to travel.
- 5.42 No matter how the Applicant may seek to use a range of arguments and data to support its arguments, it is important not to lose sight of the fact that it is seeking to relocate its

pharmacy a distance of 2 miles. There is a very good reason that applications to relocate pharmacies this distance are invariably refused, and that is because common sense tells us that, for a significant number of people, and invariably for at least one patient group, a relocation of this distance will result in the pharmacy becoming significantly less accessible.

- 5.43 In respect of the impact of traffic during the tourist season, the Applicant dismisses this on the basis it believes local residents are used to contending with the traffic when they access the current location. However, once again the applicant conveniently ignores the fact that the proposed location is at the far western edge of the town whilst the existing location is at the far eastern edge. Residents living on the eastern side of the town are not accustomed to having to contend with the congestion on the A259 to cross to the western side of the town to access a pharmacy at present because they have no need to.
- 5.44 The map provided by the Applicant on page 57 of its response (Map 1 - which shows the location of all patients it surveyed) is helpful in that it shows very few patients live to the west of the proposed site; almost all live to the east. Whilst there are some who live between the two sites (for whom the journey to the proposed site may not be materially different to the current journey), a large number live to the east of the existing site. It is these patients who will have to contend with the A259 traffic in the future who do not need to at present. This barrier to movement cannot be simply dismissed on the basis people are used to busy traffic in the summer. In addition, for those patients living in these areas who do not have access to a motor vehicle, the distance they need to walk to access the new site is in excess of 2 miles.
- 5.45 Whilst the Applicant claims that tourists are unlikely to use its pharmacy in the current location (although it is not clear how it is able to distinguish between tourists and non-tourists), it fails to mention the fact that whole length Falaise Road, on which its pharmacy was located, is a 'coach park', due to its proximity to Hastings Pier. Given that many visitors to the area are dropped off and collected at this location, it would be surprising if none of them (bearing in mind many will be elderly) ever found the need to access a pharmacy whilst away from home.

Patient groups

- 5.46 The Applicant goes on to provide further information in respect of the patient groups accustomed to accessing the pharmacy at the current location and the survey carried out by the Applicant.
- 5.47 As stated earlier, the Appellant has no information about how and when this patient survey was carried out. The Appellant has no information in respect of:
- 5.47.1 How long the survey ran for;
- 5.47.2 Where it was carried out;
- 5.47.3 When it was carried out (bearing in mind the potential for tourists to visit the pharmacy);
- 5.47.4 In what context the questions were asked e.g. were patients told that the pharmacy may have to close if it was not permitted to relocate?
- 5.48 The Appellant does know that the surgery list size for Carisbrooke Surgery is in the region of 7,800, so the 238 patients surveyed account for approximately 3% of all patients registered with the co-located medical practice. Given that the Applicant surveyed patients attending other surgeries as well, it is clear that the sample size was relatively small.

- 5.49 The Appellant notes that the Applicant has based its patient groups on the 211 out of 238 patients surveyed who stated this was their regular pharmacy. As stated within the Appellant's appeal, the Appellant does not accept that individual patients who are not accustomed to accessing the pharmacy should be disregarded as they may belong to a broader group which is accustomed, such as tourists. As the Appellant has stated previously, whilst the individual patients within a group such as tourists may change from day to day, this does not mean the needs of that patient group can be ignored.
- 5.50 The question the Applicant should have considered is why 11% of the patients (27 out of the 238 surveyed) attending the pharmacy chose to go there instead of their regular pharmacy. That may have given an insight into whether these patients should be considered a patient group in their own right.
- 5.51 In respect of patient group 1, the Appellant accepts the principle that patients attending the co-located surgery would not be disadvantaged by this relocation with the caveat that there may be some patients who were previously in this group who chose not to remain patients with this practice because the surgery was no longer accessible. These would now form part of another patient group.
- 5.52 In respect of patient group 2, it is notable that Warrior Square Surgery is located in between the existing and proposed locations, so it is not necessarily surprising that patients who already travel from the surgery would not necessarily find the proposed location less accessible. The Appellant notes that one patient did indicate that the proposed location would be significantly less accessible but the Appellant does not know if that was the patient who considered their mobility to be impaired, the patient who used public transport or someone else.
- 5.53 In respect of patient group 3, and this would apply to the answers to the survey in general, the Appellant questions whether the 7 respondents who stated that the relocation would have no impact on accessibility were in a position to make that judgement.
- 5.54 In the absence of any more information from the Applicant, the Appellant assume that the survey was presented to patients turning up at the pharmacy who were asked to provide their answers without having any time to carry out any research.
- 5.55 The Appellant would also suggest that these people are unlikely to be qualified to judge whether the new site is significantly less accessible in the context of the relevant legal test. Whilst it may appear to be helpful to ask patients to comment on whether a location is or is not *significantly less accessible*, they cannot be expected to give an answer which takes into account the myriad a factors the Committee must consider.
- 5.56 It would be quite remarkable if all nine of the patients who had travelled to the pharmacy by public transport had an encyclopaedic knowledge of the St Leonards bus timetables to the extent they could actually answer this question objectively. The three comments provided by the Applicant show a degree of loyalty to the pharmacy which, whilst admirable, has no relevance to the legal test. It merely indicates that these are patients whose answers may well be influenced when presented with the suggestion that the pharmacy might close if they gave the 'wrong answer'.
- 5.57 Whilst it is the case, unsurprisingly, that there is a network of buses that serves the area, by the Applicant's own admission, there are unlikely to be many patients who travel from the existing to the proposed sites by bus so it is hard to draw any clear conclusions from the information provided. However, it would be reasonable to assume that some of the people travelling by public transport would face increased journey times to the proposed location and potentially increased costs. For some of these people this might make the proposed location significantly less accessible.
- 5.58 Equally, there are likely to be some patients who can walk at present but will have to use public transport in the future incurring costs they do not currently have to meet.

- 5.59 In respect of the matter of logic, there was no attempt to introduce a new criterion but this was raised simply to point out that just because a journey is possible does not mean it is reasonable. There comes a point where a journey is so complex or lengthy that it renders the proposed destination significantly less accessible, particularly where the destination is not a location the traveller would ordinarily have any reason to visit.
- 5.60 The Applicant's own information shows that a significant number of people access the existing pharmacy who are not registered with Carisbrooke surgery. These people have absolutely no reason to visit a pharmacy at the proposed location, particularly if they have to catch public transport to do so.
- 5.61 In respect of patient group 4 the Applicant makes much of the nature of the road network and footpaths around the new site but says very little about the distance pedestrians may have to travel to the proposed location.
- 5.62 The Applicant's map 3 (patients who walked) seems to be missing from the document provided although it may be that this is actually Map 4 which does not appear to have a title. If that is the case, it is very apparent, and not at all surprising, that most of the people who walk start their journey from a point significantly closer to the 'existing' site than the 'proposed' site. The map does not provide a scale but it must be remembered that the distance between the 'new site' and 'old site' is 2 miles so, bearing in mind those people are likely to make a return journey, the incremental distance to attend the new site will be significant.
- 5.63 Despite the survey comments provided by the Applicant, it simply cannot be the case that the proposed relocation will have no impact on accessibility for 82% of respondents in this group. The distance is further for most and significantly further for some so it is, by definition, less accessible. The Appellant would therefore ask the Committee to treat these comments with caution for the same reasons as discussed above. Without detailed knowledge of the methodology used the Appellant does not believe the Committee can, or should, place much weight on these statements.
- 5.64 The comments provided by patients are a measure of the value of the pharmacy to them which will, at the very least, have influenced the answers they provided.
- 5.65 In respect of patient group 5, again the Appellant has been provided with numerous comments from patients, but not one which states that they would actually find the location more or equally accessible. Again, for the reasons discussed already, the answers to the survey questions, where apparently not a single one of the 162 patients stated that the proposed location would be less accessible should be treated with caution.
- 5.66 It is simply not credible that, where a pharmacy relocates from one edge of a town to another, not a single person travelling by car would find that location less accessible.
- 5.67 In respect of parking, the applicant relies on the planning approval as evidence that parking will be adequate. The tests applied by the planners are clearly not the same tests applied when considering access ability in the context of a 'no significant change relocation' application. In fact, it is increasingly common for planners to limit parking spaces to encourage users of a facility to travel by more sustainable means.
- 5.68 The fact several respondents have commented on parking suggests they have good reason to be concerned despite the fact there is a large car park provided adjacent to the current site. The reason for their concerns is that parking at the current site is often difficult despite the size of the car park and the new premises will have a greater numbers of patients attending and a greater number of staff working on site.
- 5.69 No information has been provided in respect of how many of the 53 parking spaces will be actually available to patients. Instead, the Applicant simply hides behind the

planning approval and feels no need to address the comments raised in the Appellant's appeal.

5.70 Finally, when summarising accessibility in general, the Applicant states that *"The evidence shows that the group comprised of those who walk are very keen for the pharmacy to relocate and this is understandable given that they will likely to accessing the new surgery site and wish to retain the benefit of a co-located pharmacy to save an additional trip on foot"*.

5.71 Bearing in mind the Applicant's suggestion that some pedestrians walk more than 2 miles each direction to access the pharmacy at present, a journey which takes them past several pharmacies, it makes no sense to suggest they would be unable to make the journey to an alternative pharmacy after an appointment at the medical centre.

Additional points

5.72 The Applicant criticises the Appellant's speculation about what may happen to patient behaviour "in the future" yet bases most of its arguments on the responses to its patient survey which clearly required people to predict how accessible they might find the new location at some stage in the future.

5.73 The Appellant goes on to discuss the number of deliveries provided by their client and helpfully remind the Committee that the ongoing COVID pandemic has changed patient behaviour to the extent that patients are not currently accessing the pharmacy for NMS or MURs. Of course, the committee will also be aware that many more GP consultations are now being carried out remotely and, as a result, patients are not attending their GP surgery in person. With that in mind, many of the Applicant's arguments about the patient accessibility benefits of having the pharmacy co-located with their doctors fall away because many patients who do have GP appointments no longer have any need to attend the surgery site. It is widely accepted that many GP consultations will continue to happen remotely even after the current pandemic has ended.

5.74 This consideration is equally important when going on to consider the further comments made by the Applicant regarding whether patients attend the surgery for acute appointments or for another reason. It is telling that, despite already being in occupation at the proposed site, the Applicant has provided no new information in respect of how many patients are actually attending the surgery site at all.

5.75 The Applicant goes on to discuss the matter of ad hoc patients again, suggesting that this relates only to patients who register on a temporary basis with the Carisbrooke medical surgery. The Applicant repeatedly dismisses the notion that the pharmacy might be attended by tourists visiting Hastings and St Leonards (whether they see a doctor or not) but the reality on the ground is that this is the only pharmacy serving the eastern side of St Leonards, it is the nearest pharmacy to the coach park and the pier, and is the nearest pharmacy to the leisure amenities discussed within the Appellant's appeal. It is inconceivable that there would be no occasions where tourists who required access to pharmaceutical services would find the need to visit the Applicant's 'current' location.

5.76 The Applicant states that patients travel from all areas of Hastings and that no special consideration should be given to people who have reason to be on the east side of the town. The Applicant's map 1 (people surveyed) shows that almost all patients live to the east of the proposed site and many live to the east of the existing site as well. It is self-evident that many people would need to cross the town who do not currently need to do so and therefore have to contend with the additional distance, traffic congestion and potential additional public transport costs this entails. For this reason, it is entirely reasonable to have regard to the needs of these people.

5.77 The Applicant also states that it "...has at no stage suggested that patients would walk for one and a half hours to anywhere" yet in map 4 they have provided (which the

Appellant thinks shows patients who walk despite the fact the map label appears to have been displaced) shows patients walking from the area close to the 'proposed' site to the 'existing' site, a distance that they accept is 2 miles. A 4 mile round trip will take between 75 to 90 minutes for a patient with average mobility and walking at a typical pace.

- 5.78 In respect of patient group 6, the comments made by the Applicant mirror those made in respect of other patient groups. i.e. they rely on the responses to the survey to support their view that a relocation of 2 miles would not make the pharmacy significantly less accessible for people who have impaired mobility. The Committee will form its own view whether this is a reasonable assessment but, as the Appellant has discussed before, most of the comments made relate to patients having a positive view of the service provided by the pharmacy rather than its accessibility.

Other matters under regulation 24

- 5.79 The Applicant briefly addresses the other matters committee will need to consider in respect of regulation 24.
- 5.80 Whilst the Appellant does not take any issue with its points 2, 3 and 4, it would ask the committee to give proper consideration to point 1 i.e. "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."
- 5.81 As the Appellant has stated previously, until the grant of the 'temporary relocation', the applicant's pharmacy was the only one serving the entire eastern side of St Leonards.
- 5.82 The nearest pharmacies to the east are in the centre of Hastings and the nearest pharmacies to the west are in the centre of St Leonards. The loss of this pharmacy from the area leaves a significant gap in provision in the area between the two towns. This loss will be felt by those living in the area and visiting it either for work or for other purposes such as tourism.
- 5.83 In the Appellant's opinion, the gap is such that granting this application **would** result in a significant change to the arrangements that are in place for the provision of pharmaceutical services.
- 5.84 Finally, the Applicant points to the findings of Mr Justice Langstaff and notes the requirements to analyse the available evidence. It suggests there is "no evidence to support the Appellant's position". The 'elephant in the room', of course is that the evidence is plain to see. The Applicant proposes to relocate its pharmacy a distance of 2 miles from one side of the town to the other. Even if no other information was provided by way of evidence, is clear that this is a distance far beyond that which can reasonably be expected to meet the legal test set out in regulation 24(1)(a), no matter how the Applicant tries to dress up the arguments.

Conclusion

- 5.85 In conclusion, one of the very few areas the Appellant agrees with the Applicant is that this is unusual case.
- 5.86 It is unusual because NHS England has permitted a temporary relocation which the Appellant says it should not have permitted. In doing so it has opened the door for the Applicant to suggest the Committee can simply ignore the usual considerations of Regulation 24(1)(a) given that the pharmacy is not actually moving anywhere.
- 5.87 The Appellant urges the Committee not to be influenced by this argument because doing so would have the effect of removing any opportunity for a similar application to be challenged in the future, no matter how far that pharmacy had relocated. It would

open the door for NHS England to approve relocations of any distance without any form of scrutiny being applied or any reasonable prospect of that decision being appealed.

- 5.88 The Applicant states that it is not possible for it to return to its previous premises but that is not a matter the Committee needs to be concerned with. It can only determine the application in front of it.
- 5.89 The Applicant has found itself in this position because it failed to act quickly enough, despite have plenty of notice of the planned redevelopment, and it has sought to manipulate the situation to suit its commercial position rather than with proper regard to the Regulations.
- 5.90 If this application is refused, as the Appellant says it should be, the Applicant will be free to submit a subsequent application to another site and that application will have to be considered on its own merits. It is not reasonable that the Committee should be expected to speculate whether there is any other location suitable for the Applicant to relocate to, so that should not form part of the committee's deliberations in this case.
- 5.91 For the reasons the Appellant has provided, the Appellant does not believe the tests in regulation 24 have been met and therefore this application should be refused.
- 5.92 The Appellant has no further comments to raise at this time and look forward to hearing the outcome of this application in due course.

6 Further Comments

The Committee noted the following letter from Rushport Advisory LLP on behalf of the Applicant.

- 6.1 The Applicant is aware that they have not been asked to reply to the submissions made, but wishes to reply to the accusations that it (or indeed Rushport) have acted "negligently" and that the Applicant has failed to act "reasonably and in good faith" and has acted in a "pre-determined, and blatant attempt to circumvent proper process."
- 6.2 Accusations of impropriety are very serious. Decisions of Primary Care Appeals are published online and such defamatory remarks then become a matter of record. As a matter of record both Paydens Limited and Rushport Advisory LLP deny these accusations in their entirety and ask that the accusations are withdrawn.
- 6.3 To be clear, the **only** reason the Applicant applied for a temporary relocation was because of the delays in the normal application process meaning that they would not receive a final decision before the doctors relocated and their portacabin premises were no longer available. When the regulation 24 application was submitted in January 2020 nobody was talking about Coronavirus. There were no discussions about submitting a temporary relocation until after NHS England issued a statement on 25 March 2020 to say that they were no longer processing pharmacy applications as a result of the COVID pandemic.
- 6.4 Despite the lockdown that was imposed and pharmacies and the NHS being under significant strain, the Applicant contacted Primary Care Support England on 29 April 2020 and again on 6 May 2020 to request that NHSE be asked to make an exception and process the relocation application as it was becoming increasingly urgent. The application was eventually re-circulated to parties on 12 May 2020 with a new consultation period started. By that time over 5 months had passed since submitting the initial application and whilst the Applicant would have expected to already have the NHS England decision and be in an appeal process (should there have been one) the application had not advanced at all and it was becoming obvious that the application would not be considered in time.

- 6.5 During this time the completion of the medical centre premises was brought forward by the developers from December 2020 to October 2020 as they were ahead of schedule.
- 6.6 On one point the Applicant agrees with the Appellant, the Applicant then had two options available and these were both discussed (rather than one as the Applicant said in its reply to the appeal);
- 6.6.1 Apply for a temporary relocation.
- 6.6.2 Apply to temporarily close their premises while the relocation application was still ongoing.
- 6.7 These options were considered during an ongoing worldwide pandemic when pharmacies were remaining open to serve patients.
- 6.8 The Applicant decided to proceed with the application for temporary relocation in the hope that they could keep continuity of service provision and despite the financial risk involved. If the temporary relocation had been refused the Applicant would have applied to temporarily close their premises.
- 6.9 Nothing about this process was a “pre-determined, and blatant attempt to circumvent proper process.”. Nothing could be further from the truth.
- 6.10 The Applicant has spent a considerable amount of money to fit out new premises that they do not even have final approval to remain in and have done so because taking this action maintained service provision.
- 6.11 As the Committee will be aware, applications do not set “precedent” as claimed by Primary Care Support England and each application is determined based on its own particular facts and merits.
- 6.12 It is a fact that, by the time this application is determined on appeal, patients will be attending the pharmacy at its new location. Notwithstanding that, the Applicant has provided a significant amount of evidence to show why the application should be approved even if the temporary relocation had not taken place and with specific reference to the patients/patient groups who were accustomed to accessing the previous location. Almost all of the Applicant’s reply to the appeal was written on this basis.
- 6.13 The lacuna in the Regulations is not of the Applicant’s making and that is why the Applicant has provided the evidence that they have as if the lacuna did not exist.
- 6.14 This letter is not intended as a response to each of the points made by the Appellant as that would not be appropriate even though there are many issues that the Applicant has with the content of the letter.

7 Further submissions

- 7.1 By way of a letter dated 8 January 2021, the Pharmacy Appeals Committee (“Committee”) appointed by NHS Resolution wrote to the parties providing them with opportunity to provide comments on the following:
- 7.2 On considering the representations and observations of the parties on this appeal, NHS Resolution note references to NHS England granting the Applicant’s application for temporary relocation pursuant to Regulation 29 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013. Whilst the Regulation 29 application is not the subject of this appeal, the parties have commented on the effect of the granted Regulation 29 application on the Regulation 24 application that is the subject of this appeal.

7.3 Regulation 29(5) states:

“(5) For the period specified under paragraph (3), but subject to paragraph (6) and regulation 118, P2 instead of P1 are to be treated as listed in relation to C for the purposes of these Regulations (albeit that the premises actually listed in relation to C are P1).”

7.4 Regulation 118 states:

“Where, during an emergency requiring the flexible provision of pharmaceutical services, or a period specified under regulation 29(3), 61(6) or 111(2), arrangements for the provision of pharmaceutical services or local pharmaceutical services are overridden by temporary arrangements—

(a) any proceedings with regard to the overridden arrangements are unaffected by that overriding (although they may need to be stayed during the emergency or the specified period for other reasons); and

(b) if as a result of those proceedings the overridden arrangements require amendment before the end of the temporary arrangements, when the emergency or the specified period ends, the reversion to overridden arrangements is to be to the original overridden arrangements as amended as a result of those proceedings.”

7.5 NHS Resolution notes that no parties to this appeal have commented on the above provisions but that these provisions may be relevant to the parties' comments on the effect of the granted Regulation 29 application on the Regulation 24 application. NHS Resolution are therefore providing you with the opportunity to provide comments in respect of the above provisions. Please provide comments within 10 days of the date of this letter. NHS Resolution will consider if any comments received should be circulated to the parties for observations.

Rushport Advisory (on behalf of the Applicant)

7.6 By way of a letter dated 8 January 2021, the Applicant provided the following additional comments:

7.7 Thank you for your letter of 8 January 2021. Rushport act for Paydens Limited in the above application and provide the following response.

7.8 Regulation 118(a) makes it clear that the application under regulation 24 (ie these “proceedings”) can still proceed and are unaffected notwithstanding that there is a temporary arrangement in place. Whilst regulation 118(a) notes that a stay in proceedings may be required, that is not relevant in this case as the Applicant is unable to return to their previous premises and a stay would serve no purpose.

7.9 Regulation 118(b) makes it clear that the original address of the premises (ie the overridden arrangements) can be amended before the end of the temporary arrangement – and that is what the Applicant is seeking in this case. Regulation 118(b) states that it would be the “overridden arrangements”, ie the previous address of the pharmacy before its temporary relocation, that would be amended if the application is approved.

7.10 Regulation 118 therefore supports the position that the Applicant is putting forward – namely that the regulation 24 application must still be considered and that, if approved, the original address of the pharmacy can be amended on the pharmaceutical list notwithstanding the fact that temporary arrangements are in place.

7.11 It should be noted that regulation 118 does not address the key issue in regulation 24(1)(a) which remains, ie that the Committee must consider the patient groups “that

are accustomed to accessing pharmaceutical services at the existing premises” and whether this is the current (temporary) or previous and now closed premises.

- 7.12 As regulation 24(1)(a) specifically refers to the “existing premises” and that these are the premises that patients are “accustomed to accessing”, this should mean the premises which currently exist rather than premises which patients previously accessed but are no longer existing premises or being accessed.
- 7.13 The Applicant again wishes to point out that it is not the Applicant’s fault that this lacuna in the Regulations exists, but it is something that the parties must deal with rather than complain about. Regulation 118 does not address this issue at all.
- 7.14 This is not the first time that the Committee will have had to deal with what may appear to be unintended consequences of the wording of the Regulations. When the 2012 Regulations were introduced an amendment was deemed necessary to regulation 31 to give it the force which it was arguably intended to have. Up until the point that the amendment was made, Primary Care Appeals had no option other than to apply the law as it was written rather than as it might have been intended. The Committee members will no doubt recall that this was the case and that the application of regulation 31 changed considerably after the amendment was made.
- 7.15 However, it is wrong to assume that this apparent lacuna is a mistake. As a result of a temporary arrangement there may be some changes in use of a pharmacy by patients and it is wrong to simply ignore reality. The wording of regulation 24 allows the Committee to consider the current position (ie reality) rather than having to assess circumstances which might have been relevant in the past but are no longer relevant.
- 7.16 The Applicant has provided evidence to deal with either interpretation in any event and looks forward to hearing from NHS Resolution in due course.

PSC (on behalf of the Appellant)

- 7.17 By way of a letter dated 12 January 2021, the Appellant provided the following comments:
- 7.18 Thank you for NHS Resolution’s letter dated 8th January 2021 regarding our view on the implications of Regulations 29 and 118 in respect of the above application and the Appellant’s previous comments on this matter.
- 7.19 The Appellant notes the extracts NHS Resolution has provided from the Regulations and comment on them as follows:
- 7.20 Regulation 29(5) states:
- “(5) For the period specified under paragraph (3), but subject to paragraph (6) and regulation 118, P2 instead of P1 are to be treated as listed in relation to C for the purposes of these Regulations (albeit that the premises actually listed in relation to C are P1).”*
- 7.21 The implication of 29(5) would appear to be that, when considering any matter pertaining to Regulations, the decision maker should put itself in a position where it treats the ‘temporary’ location as being the premises currently listed in respect of the Applicant. The Applicant may, therefore, use this to justify its argument that the patient groups to be considered are those who are accustomed to accessing the current ‘temporary’ location i.e., P2.
- 7.22 The Appellant would suggest this is not the intention of Regulation 29(5).
- 7.23 Clearly the market entry arrangements form only part of the Regulations. Many of the arrangements set out in the Regulations pertain to matters affecting the day-to-day

operations of pharmacy contractors such as their Terms of Service. It is understandable, therefore, that provision needs to be made for the Regulations to apply to temporary premises in the same way they apply to all other premises.

7.24 However, it is important to be mindful that Regulation 29 refers to 'temporary arrangements' and has been drafted (subject to Regulation 118) on the basis the contractor will return to P1 in due course. In this case the Applicant has no intention of returning to P1 as it claims to be unable to do so. That being the case, the arrangements were not temporary, and the provisions set out in Regulation 29 should be interpreted accordingly.

7.25 The Appellant is also of the view, as set out previously, that if the Primary Care Appeals Committee does accept the current premises (P2) as being the listed in relation to the contractor, the application should automatically fail as the Applicant has not listed its correct address within the application, as required by Part 1 of Schedule 2 to the Regulations.

7.26 Regulation 118 states:

"Where, during an emergency requiring the flexible provision of pharmaceutical services, or a period specified under regulation 29(3), 61(6) or 111(2), arrangements for the provision of pharmaceutical services or local pharmaceutical services are overridden by temporary arrangements—

(a) any proceedings with regard to the overridden arrangements are unaffected by that overriding (although they may need to be stayed during the emergency or the specified period for other reasons); and

(b) if as a result of those proceedings the overridden arrangements require amendment before the end of the temporary arrangements, when the emergency or the specified period ends, the reversion to overridden arrangements is to be to the original overridden arrangements as amended as a result of those proceedings."

7.27 118(a) makes provision for proceedings relating to the 'overridden arrangements' to continue during the period within which there are temporary arrangements. Again, reference is made to arrangements being temporary which is not applicable in this case.

7.28 Importantly 118(a) acknowledges that proceedings "may need to be stayed during the emergency or the specified period for other reasons". This is an acknowledgement within the Regulations that there are circumstances where it is inappropriate to continue with proceedings during the period of the temporary listing.

7.29 For the reasons set out in the Appellant's letter dated 6th November 2020, the Appellant believes it would be unjust to follow the approach suggested by the Applicant and to treat its patient groups as being those accustomed to accessing P2 whilst determining the application by reference to P1. In short:

7.29.1 If the Applicant is to be treated as listed at the temporary location - P2 - there is no relocation. In that case the decision-making body cannot be satisfied that the requirements of Regulation 24 have been met because an application to relocate a pharmacy that is not relocating cannot be valid. Regulation 24 refers specifically to an application "to relocate to different premises" so if the premises are the same, Regulation 24 is not applicable.

7.29.2 If the Applicant is to be treated as listed at the original premises – P1 – then the relevant patient groups must be those who were accustomed to accessing P1. To do otherwise would be irrational.

- 7.30 Given these potential contradictions, the Committee may decide that it is appropriate for these proceedings to be stayed until such time that the Applicant is no longer listed at P2 and the usual approach to determining the application can be followed.
- 7.31 In the Appellant's opinion, it is clear that the circumstances that have arisen in this case were not envisaged when the Regulations were drafted. Notwithstanding the fact that Regulation 29 application is not the subject of this appeal, the Appellant believe NHS England and NHS Improvement were wrong to grant a temporary relocation to P2 in this case.
- 7.32 Regulation 29(3) refers to services being provided "at other premises nearby" but P2 is not 'nearby' according to any reasonable definition of the word. This approval to premises that are not 'nearby' has therefore resulted in a situation where the Committee has been placed in a difficult situation. The Appellant therefore invites the Primary Care Appeals Committee to find that one of the following applies:
- 7.32.1 The application is invalid as the premises listed in the application are not the current premises and there is no relocation.
- 7.32.2 The application should be stayed until the temporary listing is no longer applicable.
- 7.32.3 The application should be determined by reference to P1 – the original premises – and the applicable patient groups should be those accustomed to accessing P1.
- 7.33 The Appellant looks forward to hearing the outcome of this application in due course.

NHS England

- 7.34 By way of a letter dated 18 January 2021, the NHS England provided the following comments:
- 7.35 Thank you to NHS Resolution for raising the possible effect of Regulation 118 on the granted Regulation 29 application on the Regulation 24 application.

From the Paydens Limited application and the accompanying information received, the Pharmaceutical Services Regulation Committee (PSRC) appreciated the pharmacy's previous locations' history of a fire destroying its premises and the subsequent temporary relocation; and examined the application for a Regulation 24 relocation with its supporting evidence in light of this. This information was set out clearly; assessed against the criteria in Regulation 29 and were determined subsequently; and granted by the PSRC in July 2020.

The PSRC was mindful also of the anticipated loss of the temporary site at the Falaise Indoor Bowls Clubs due to relocation of the (then) co-located Carrisbrooke surgery itself, which would lead to a permanent stop to power supply to the all parties at that location.

At its meeting in July 2020 PSRC noted that the Applicant stated that the application for No Significant Change of Relocation had been delayed due to various factors and requested an amendment to the pharmacy list of no longer than six months. The Committee determined that the conditions under Regulation 29(1), (2), and (3) were met.

There appears to be no reason to revisit that determination.

Rushport Advisory (on behalf of the Applicant)

- 7.36 By way of a letter dated 21 January 2021, the Rushport Advisory provided the following comments:
- 7.37 The Applicant thanks NHS Resolution for its letter of 20 January 2021. Rushport act for Paydens Limited in the above application and provide the following final response to the representations received.
- 7.38 With respect to the representations from NHS England the Applicant has no comments to make. The comment from PSC raises a point which is important.
- 7.39 As PSC states;

Regulation 29(5) states:

“(5) For the period specified under paragraph (3), but subject to paragraph (6) and regulation 118, P2 instead of P1 are to be treated as listed in relation to C for the purposes of these Regulations (albeit that the premises actually listed in relation to C are P1).”

The implication of 29(5) would appear to be that, when considering any matter pertaining to Regulations, the decision maker should put itself in a position where it treats the ‘temporary’ location as being the premises currently listed in respect of the applicant. The applicant may, therefore, use this to justify its argument that the patient groups to be considered are those who are accustomed to accessing the current ‘temporary’ location i.e., P2.

- 7.40 PSC then argues that whilst this is the wording of the Regulations and that it would be the patient groups accustomed to accessing the temporary premises that must be considered by the Committee, that the Committee should not proceed in this way as it was not the “intention” of the Regulations.
- 7.41 PSC’s argument is not valid.
- 7.42 Regulation 29(5) is clear that it is the temporary premises that must be “treated” as listed when considering “the Regulations”, which clearly includes regulation 24. The regulation could have limited this but does not.
- 7.43 As the Applicant said in its letter of 8 January 2021;

However, it is wrong to assume that this apparent lacuna is a mistake. As a result of a temporary arrangement there may be some changes in use of a pharmacy by patients and it is wrong to simply ignore reality. The wording of regulation 24 allows the Committee to consider the current position (ie reality) rather than having to assess circumstances which might have been relevant in the past but are no longer relevant.

- 7.44 The Applicant submits that there is no “mistake” in the Regulations and instead they take a pragmatic and sensible approach by considering the actual premises being used by the contractor. Note the word “treated” in regulation 29(5) even though P2 are not actually the listed premises.
- 7.45 What the Applicant failed to note in its letter of 8 January 2021 was that there is a specific obligation because of the wording of regulation 29(5) which requires the Committee to consider the temporary premises as the relevant premises when applying regulation 24 (as has been correctly pointed out by PSC even though they do not wish the Committee to proceed this way).
- 7.46 In addition PSC states;

However, it is important to be mindful that Regulation 29 refers to 'temporary arrangements' and has been drafted (subject to Regulation 118) on the basis the contractor will return to P1 in due course. In this case the applicant has no intention of returning to P1 as it claims to be unable to do so. That being the case, the arrangements were not temporary, and the provisions set out in Regulation 29 should be interpreted accordingly.

7.47 This argument is without merit as the Applicant applied for “temporary” arrangements which it now seeks to make permanent. Once the temporary arrangements are made permanent the temporary arrangements will cease. The Regulations do not require an Applicant to return to premises that they previously occupied. This is common sense as premises might be unusable for years or forever.

7.48 PSC then states;

The Appellant is also of the view, as set out previously, that if the Primary Care Appeals Committee does accept the current premises (P2) as being the listed in relation to the contractor, the application should automatically fail as the Applicant has not listed its correct address within the application, as required by Part 1 of Schedule 2 to the Regulations.

7.49 Again, this argument is without merit. The requirement of Part of Schedule 2 is that;

1.—(1) The information mentioned below in this paragraph must be included in all routine and excepted applications.

...

(4) The name and address of the applicant (A).

7.50 As there is both the original and temporary listing it could be argued that either “address” is sufficient, but as the application is to change the original listing then that address must be stated on the application form. Further, the issue of timing is relevant as when the application was made there was only one “address” for the premises and this was correctly given. No other address could have been provided. The temporary relocation created a second address. Regulation 118(a) then makes it clear that this overriding does not affect the original application proceedings. If PSC’s suggested approach was correct it would rob regulation 118(a) of any meaning.

7.51 PSC then discusses the mention of a “stay” in proceedings in regulation 118(a) and finishes by saying;

Given these potential contradictions, the Committee may decide that it is appropriate for these proceedings to be stayed until such time that the Applicant is no longer listed at P2 and the usual approach to determining the application can be followed.

7.52 There are no “contradictions” in this case. A stay may be appropriate where there were ongoing proceedings relating to the original premises and as a result of an emergency such as a fire it would be impossible for the contractor to carry out work in the premises until they were put back into useable condition. An example of this might be where a particular service had to be performed in a consultation area and NHS England had noted that the contractor had no such area but was claiming payment for the service and NHS England then issued a remedial notice requiring such an area to be installed. In such a case a stay would be required as the contractor could not create such an area whilst premises were unusable.

7.53 As PSC is aware, the Applicant is unable to return to their original premises. Suggesting a stay in proceedings is simply a way to try to force the pharmacy to close when the

period for temporary arrangements expires. There is no “need” (to use the language of the Regulations) for a stay.

- 7.54 Further, if PSC’s interpretation were correct then if a pharmacy were forced to relocate premises under a temporary relocation due to circumstances where their original premises became permanently unusable (as is the case here) then that pharmacy would subsequently be forced to close for good as they could never return to those original premises. It is submitted that that could never be the intent of the Regulations as it could result in the only pharmacy in an area being forced to close permanently.
- 7.55 PSC then make further points about regulation 29, but this is not the subject of this appeal and the Applicant therefore addresses them only briefly.
- 7.56 The word “nearby” will always need to be interpreted in context and contains no distance rule. As an example, a person who lives 5 miles away from Heathrow airport would likely view it as “nearby”. Nearby is defined as “not far away” and the Applicant submits that the regulation 29 application was properly approved in the context of this case.
- 7.57 PSC then invites the Committee to find that one of three possible scenarios applies and the Applicant addresses why each one is wrong in law below.
- **The application is invalid as the premises listed in the application are not the current premises and there is no relocation.**
- 7.58 When the application was made there was only one “address” for the premises and this was correctly given. The temporary relocation created a second address. Regulation 118(a) then makes it clear that this overriding does not affect the original application proceedings.
- **The application should be stayed until the temporary listing is no longer applicable.**
- 7.59 As discussed above, whilst there are circumstances where a stay might be needed, this is not one of those cases.
- **The application should be determined by reference to P1 – the original premises – and the applicable patient groups should be those accustomed to accessing P1.**
- 7.60 Regulation 29(5) states that P2 rather than P1 is to be treated as listed in relation to my client’s application. In any event, the Applicant has provided evidence that shows that the application meets the relevant criteria irrespective of whether P1 or P2 are considered as the relevant premises.

8 Consideration

- 8.1 The Committee 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.
- 8.2 It also had before it the responses to NHS Resolution’s own statutory consultations.
- 8.3 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.
- 8.4 By way of background, the Committee noted that, the Applicant had applied to NHS England under Regulation 29 - *Temporary arrangements during emergencies or because of circumstances beyond the control of NHS chemists’* for a temporary

relocation to the new Carrisbrooke GP Surgery site (the same site as this current Regulation 24 application). The Regulation 29 application was granted by NHS England on 19 August 2020. The Applicant's pharmacy then relocated to the Carrisbrooke site on 5 October 2020.

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

8.6 The Committee first considered Regulation 31 of the Regulations which states:

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

(2) This paragraph applies where –

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

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

(ii) adjacent premises; and

(b) 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).

8.7 The Committee noted that in part 6 of its application form, the Applicant had stated: "No other pharmacy at same or adjacent premises". The Committee further noted NHS England's decision letter includes: "The Committee was satisfied that there was no other provider of pharmaceutical services at or adjacent to the proposed address and concluded that it was not required to refuse the application for the purpose of Regulation 31." The Committee having noted the above information and that it had not been disputed on appeal, was not required to refuse the application under the provisions of Regulation 31.

8.8 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).*

- 8.9 The Committee began by considering the condition set out in Regulation 24(1)(a).
- 8.10 The Committee noted that this Regulation 24 application is unusual on its facts. In addition to the usual consideration with regard to the effect of the relocation on the patient groups under Regulation 24(1)(a), the Committee noted that comments had been raised with regard to which premises should be considered as the “existing premises” under Regulation 24(1)(a). The Committee considered this first.
- 8.11 In this case, as has been stated by the Applicant and not contradicted by any other party, the Applicant has two listings on the pharmaceutical list; the original listing at Bowls Club and the temporary listing at Bexhill. The Applicant submitted that it is the temporarily listed premises that are the “existing premises” for the purpose of the Regulation 24 application on the basis that these are the premises from which the Applicant is currently providing pharmaceutical services. This is important as it has a bearing on the consideration of Regulation 24(1)(a) in respect of the effect of the relocation on the patient groups accustomed to using the pharmaceutical services.
- 8.12 The Committee noted there is no definition of “existing premises” in the Regulations.
- 8.13 The Committee noted provisions of Regulation 29(5) of the Regulations, which states:

“For the period specified under paragraph (3), but subject to paragraph (6) and regulation 118, P2 instead of P1 are to be treated as listed in relation to C for the purposes of these Regulations (albeit that the premises actually listed in relation to C are P1).”

- 8.14 The temporary relocation pursuant to Regulation 29 is not the subject of this appeal but Regulation 29 contains wording relevant to the consideration of this issue.
- 8.15 The Committee noted that Regulation 29(5) enables the temporary premises to be regarded as the premises listed in respect of a pharmacy for the duration of the period of the temporary relocation. The Committee noted the parties’ comments with regard to the meaning of Regulation 29(5).
- 8.16 The Committee considered whether the effect of Regulation 29(5) is that for the purposes of the Regulation 24 application, the references to “existing premises” should therefore be read as references to the temporary premises.
- 8.17 The Committee noted that Regulation 29(5) is expressly subject to Regulation 118, which states:

“Where, during an emergency requiring the flexible provision of pharmaceutical services, or a period specified under regulation 29(3), 61(6) or 111(2), arrangements for the provision of pharmaceutical services or local pharmaceutical services are overridden by temporary arrangements—

(a) any proceedings with regard to the overridden arrangements are unaffected by that overriding (although they may need to be stayed during the emergency or the specified period for other reasons); and

(b) if as a result of those proceedings the overridden arrangements require amendment before the end of the temporary arrangements,

when the emergency or the specified period ends, the reversion to overridden arrangements is to be to the original overridden arrangements as amended as a result of those proceedings.”

- 8.18 The Committee noted the parties' comments in this regard.
- 8.19 The Committee considered that the meaning of "proceedings" in this context includes a Regulation 24 application.
- 8.20 In the Committee's view, Regulation 118(a) means that a Regulation 24 application is unaffected by the fact that the Applicant has temporary premises treated as its listed premises. If a Regulation 24 application is unaffected by temporary listed premises, the temporary relocation has no bearing on the consideration of the Regulation 24 application.
- 8.21 The Regulation 24 application, subject to this appeal, is in relation to the relocation of the Applicant's pharmacy from the premises at Bowls Club to the premises at Bexhill. As the temporary relocation has no bearing on the consideration of the Regulation 24 application, the Committee concluded that the reference to "existing premises" for the purpose of Regulation 24(1)(a) must be read as references to the premises intended to be considered the existing premises pursuant to the Regulation 24 application i.e. the premises at Bowls Club. The Committee therefore considered that for the purpose of its consideration of this appeal, "existing premises" in Regulation 24(1)(a) is to be read as the Bowls Club premises.
- 8.22 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 8.22.1 confirm NHS England's decision;
 - 8.22.2 quash NHS England's decision and redetermine the application;
 - 8.22.3 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.
- 8.23 The Committee considered the position in relation to each condition.
- 8.24 The Committee considered the information before it with regard to the patient groups accustomed to accessing pharmaceutical services at the Bowls Club 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.
- 8.25 In this case, the Applicant initially identified the patient groups as:
- 8.25.1 Patients accessing pharmaceutical services at the same time as accessing GP services.
 - 8.25.2 Patients who access pharmaceutical services other than after a visit to the GP surgery.
- 8.26 When providing representations in response to the appeal, the Applicant specifies the following specific groups and in defining these groups the Applicant states that it also had regard to the results of the patient survey that it undertook:
- 8.26.1 Patients registered with Carisbrooke Surgery who attend the pharmacy after visiting the surgery;

- 8.26.2 Patients registered with Warrior Square Surgery who attend the pharmacy after visiting the surgery;
 - 8.26.3 Patients who use public transport;
 - 8.26.4 Patients who walk;
 - 8.26.5 Patients who used motorised transport (car, motorbike); and
 - 8.26.6 Patients who share protected characteristics that may affect their mobility (either as a separate patient group or as part of the patient groups defined above).
- 8.27 The Committee noted from maps provided to it on appeal, indicate that the Bowls Club site is located at the eastern side of St Leonards on Sea near to the A21. The proposed site is located at the western side of St Leonards on Sea near to junction of Filsham Road with the A 259 Bexhill Road. The maps suggest that both sites are at the same geographical level in the town. This may be supported by the straight course of the railway line between both sites.
- 8.28 The Committee noted the parties' comments on the location and location of residential areas in the vicinity of the Bowls Club site. The photographs provided with the appeal letter show the Bowls Club site located as part of a green area bordered by the sea on the one side with residential properties a certain distance away on other sides. The Committee noted that there did not appear to be any residential properties in the immediate vicinity of the Bowls Club site. In fact the nearest residential areas appeared to be in excess of 300m away (as the crow flies) which, as the Applicant indicates, would be further if actually travelling to the Bowls Club site journey due to the road layout. The Committee noted the parties' differing comments on the distance travelled between the residential areas and the Bowls Club site. The Committee considered it relevant that there were no residential areas in the immediate vicinity of the Bowls Club site as this impacts on the consideration of assessing the accessibility of the proposed site by those accustomed to using the Bowls Club site.
- 8.29 The Committee noted that the Applicant relied heavily on the survey carried out by it on persons accessing the Bowls Club site in its categorisation of patients groups and those persons' comments on accessibility of the proposed site. The Committee noted that the Appellant had made a number of comments on the appropriate weight that should be placed on the survey. The Committee considered that the survey results must be considered when considering patient groups but it was also conscious that the manner in which a survey is undertaken could affect the results of that survey and whether it is representative of the users of the pharmacy. For example, many factors could impact on how representative the survey is including when the survey was carried out (days, times of day, which month), how persons were selected to be asked questions (all persons entering the premises, randomly selected, persons with particular characteristics), what information was given to those persons asked questions, e.g. information about the consequences of not relocating and availability of other pharmacies, etc. The Committee does not intend to set out how a survey should be conducted or what methodology should be undertaken. The Committee also points out that there is no evidence of selective choice of persons questioned in the current case but it is mindful that survey methodology can impact results and it should therefore attribute appropriate weight to survey results.
- 8.30 The Committee noted that of 238 persons surveyed, 27 (11%) indicated that this was not their regular pharmacy. The Applicant indicates that this means they are not accustomed to accessing the Bowls Club site. While that may be true of individual patients, it does not follow that these persons are not indicative of a patient group. The Appellant points out that there is no reference to why these persons are actually accessing the pharmacy which might actually provide more information as to patient groups. This links to the Appellant's comments on other patient groups, including

potentially tourists of which there is a big influx into the area during the summer months. The Committee notes the Applicant's comments that it cannot recall ever seeing a tourist in the pharmacy but there are clearly a significant group of persons who use the pharmacy on an ad-hoc basis and the Committee cannot rule out that they may constitute a patient group of some kind. With that in mind, their method of transport is considered alongside other patient groups later.

- 8.31 The Committee also noted that there was mixed use of absolute numbers and percentages used throughout the responses. The Committee noted that the percentages were sometimes unclear, e.g. in respect of patient group 2, the Applicant states there were 20 relevant patients and in brackets "5% of sample patients". But 5% of 238 would equal 11.9 patients. Or put another way, 20 represents 8.4% of 238. But why state a percentage of 238 and not 211. 20 represents 9.4% of 211 almost double the 5% indicated.
- 8.32 The Committee also noted that the survey will have been carried out during the national COVID 19 pandemic. It is unclear what effect factors linked to the pandemic, such as social distancing, travelling restrictions and potential shielding of more vulnerable persons, have had on the survey results and whether they are representative of "normal" times.
- 8.33 The Committee went on to consider the effect of the pandemic on its consideration of accessibility of premises for the purposes of a Regulation 24 application. It is not known how long measures such as restricted travel and minimising face to face contact will continue and whether pre-pandemic activity will in any case resume unchanged once those measures are lifted. The Committee noted various comments by the parties on the effects of the pandemic, such as potentially reduced visits to GPs and increased delivery of dispensed medicines. The Committee had regard to these comments but also noted that they may not represent "normal activity" going forward.
- 8.34 The Committee felt it relevant to comment on the patients' comments provided (seemingly verbatim) by the Applicant in response to the survey. It is clear that many of the comments show satisfaction both with the pharmacy, its customer service and the merit of having a pharmacy co-located with a GP practice. Patients' views are of course important in assessing the views of service users in respect of pharmacy provision but the Committee considered that a majority of these comments were of limited relevance to the test set out in Regulation 24(1)(a) which focused on accessibility rather than appreciation of a specific pharmacy. The Committee noted that a specific question on accessibility of the proposed site had been put to the surveyed patients and the results provided. It attributed the appropriate weight to those results as indicated above.
- 8.35 The Committee was also mindful of the references to the small absolute numbers of persons who did make comments about the proposed site being less accessible and implications that these should be disregarded as they did not reflect the views of the patient group as a whole. The Committee again reminded itself that it was difficult to know just how representative the survey was of patient groups of the pharmacy and also of numbers of those using the pharmacy and that small absolute numbers (e.g. one patient said this or one patient said that) may appear to be assessing accessibility at a level of granularity that is not appropriate but if it was appropriate to scale up the surveyed sample to the level of actual users, then those numbers might be more relevant.
- 8.36 The Applicant's survey suggested a wide distribution of patients in the St Leonards on Sea area and even beyond in respect of use of the Bowls Club site. This perhaps reflects the nature of the pharmacy locations and the layout of the residential areas in St Leonards on Sea. The Committee noted that some patients appeared to be closer to the Bowls Club site but that there are some patients for whom the Bowls Club site and proposed site are equidistant and others who are closer to the proposed site.

- 8.37 The Committee noted that comments have been made by the parties about availability or non-availability of other premises that could be used by the Applicant. This links to comments made on why the Applicant temporarily relocated to the proposed site (which is not a matter for the Committee to have regard for the purpose of this appeal) but are also relevant to accessibility of the proposed site. For example, the Applicant states that if the pharmacy relocated to anywhere other than the proposed site “then almost every existing patient would find the relocated pharmacy significantly less accessible”. The Committee reminded itself that it is not considering the availability or suitability of any other premises but that it must concentrate on the test specified in Regulation 24(1)(a) that focuses on whether the proposed site is significantly less accessible and not whether other sites would be significantly less accessible.
- 8.38 The Committee considered the possible impact of the proposed relocation on patients who are a part of the six patient groups identified by the Applicant (and repeated earlier in this determination). The Committee noted that the Appellant proposes other patient groups (which the Applicant disputes). The Committee considered first the six patient groups listed below and then considered if it was necessary to consider others. The Committee does not rehearse all the comments made by the parties which are set out earlier in this determination. It is recognised that there will be overlap with these patients groups. With reference again to the survey results, the Committee noted that it was not known what percentages of those in each group also fall within another group (and if so which).

Patients registered with Carrisbrooke Surgery who attend the pharmacy after visiting the surgery

- 8.39 The Committee concluded that for those patients who attend the proposed site having attended Carrisbrooke GP surgery (which would be co-located at the proposed site), then by whatever means those patients have arrived at the proposed site, they will not find the proposed site significantly less accessible.

Patients registered with Warrior Square Surgery who attend the pharmacy after visiting the surgery

- 8.40 The Committee noted the Applicant’s initial comment that these patients mainly receive their prescription medicines by way of delivery. Those patients who do receive a delivery are in the Committee’s view unaffected by the relocation. The Committee also noted that a number of persons surveyed fell within this group.
- 8.41 The Committee noted that Warrior Square Surgery is located between the two sites but closer to the Bowls Club site than the Applicant’s proposed site. For the purpose of accessibility, the Committee considered that this patient group should be considered to start their journey from Warrior Square Surgery and the presumption would be that that the Bowls Club site would be easier to access as it is closer but that this did not necessarily mean the proposed site was significantly less accessible. It would depend on travel from the Warrior Square Surgery to the proposed site and should therefore be part of the Committee’s consideration below of the modes of transport likely to be used.

Patients who use public transport

- 8.42 The Committee noted the large number of comments made about the network of bus services in the area and as shown on the Applicant’s route map provided with their representations.
- 8.43 The Committee considered that the distribution of the patients that are likely to be accustomed to accessing Bowls Club site meant that, unless a patient was accessing GP services after a visit to Warrior Street Surgery, there will be some who find accessibility to be no different, some for whom accessing the proposed site will be better and some for which it will be worse. The Committee noted the survey results but

also noted that accessibility should take account not just of geographical distance but also of costs of travelling. If patient groups needed to spend more to access the proposed site, this could make it less accessible but it is difficult to state with any certainty that this is the case here.

- 8.44 The Committee noted comments about the need for walking to bus stops and also about bus journeys between the two sites. The Committee agreed with the Applicant that due to the lack of residential areas in the immediate vicinity of the Bowls Club site it was unlikely that anyone would be starting their journey from the Bowls Club site to the proposed site. The Committee also noted the Applicant's comment that just because a bus that goes from your point of origin to the proposed site also passes other pharmacies (such as those in St Leonard centre) this does not mean the proposed site is significantly less accessible. It may mean that patients get off the bus earlier to use the other pharmacy so as to avoid a longer journey but simply sitting on a bus for an additional 10 minutes may not of itself mean it's significantly less accessible.
- 8.45 Taking all factors into account, the Committee was of the view that the information on the availability of public transport and the fact that it was unlikely that persons would be starting their journeys from the Bowls Club site (or a site that was not within reasonable walking distance of a bus stop) meant that it could not be satisfied that the proposed site is significantly less accessible for this patient group.

Patients who walk

- 8.46 The Committee noted reference by the Applicant to features of the area such as footpaths, signalised crossings and dropped curbs which it was claimed would assist those on foot. The Committee was mindful that patients will be commencing their journey to the proposed site from various locations in St Leonards area. While it may not be from the Bowls Club site, starting points are likely distributed across the area.
- 8.47 The Committee accepted that for some patients the proposed site could be closer, for others it would be further away. The Applicant supports this saying "Some of the patients who walk to the current location travel over 2 miles to get there (see map provided of patients who walk). Other patients travel shorter distances."
- 8.48 The Committee noted that the Appellant places particular reliance on this patient group and emphasises the distance between the pharmacies and the length of time of making a round trip. The Applicant states "Far from "patients who walk" being a group that would find the relocation difficult for them, the same patients recognise that the pharmacy would relocate with the surgery that they will attend.". The Committee did not disagree that for those who attend the proposed site following a visit to the co-located GP practice, the proposed site would not be significantly less accessible. There will be clearly be overlap with other groups, particularly the first patient group and the Committee considered that if a person was walking to the GP surgery anyway, the proposed site would not be significantly less accessible.
- 8.49 The Committee noted that the Applicant's comments in relation to those who walk appeared to link them to the fact that the proposed site would be co-located with GP practices. The Applicant states that "even those that currently walk wish for the pharmacy to relocate to the new medical centre site" and "The evidence shows that the group comprised of those who walk are very keen for the pharmacy to relocate and this is understandable given that they will likely to accessing the new surgery site and wish to retain the benefit of a co-located pharmacy to save an additional trip on foot."
- 8.50 While it may be the case that those who walk value having a co-located GP practice and pharmacy the Committee's concern was for those who would not be attending the co-located GP practice. It is not clear if the survey asked this question to the person within this patient group. For example, for the 32 persons who answered "no impact on accessibility" how many of these were saying this because they are likely to access the

pharmacy in conjunction with a GP visit. There is a question around whether it is appropriate to have a patient group who walk to the pharmacy not in conjunction with a GP visit or whether this is too granular but the Committee noted that for the public transport group less than half were indicated to have “visited the surgery first”.

- 8.51 The Committee considered that for certain residential areas located around the Bowls Club site (not immediately adjacent but within 300m (as the crow flies) or 500m (travel distance) of the Bowls Club site), the distance to the proposed site could be up to approximately 1.5 miles. The Committee considered that this is not an insignificant distance to access the pharmacy if the person was not already walking to that area anyway. The Committee’s view was that it is reasonable to consider that a round trip of 2-3 miles to the proposed site from a person’s point of origin and back again was enough to consider the proposed location significantly less accessible.
- 8.52 The Committee considered that it was reasonable to consider that there exists a patient group that walks to the pharmacy not in conjunction with a GP visit and that for this patient group, who are accustomed to walking to the Bowls Club site, then a walk to the proposed site would involve walking for a distance that makes the proposed site significantly less accessible.

Patients who used motorised transport (car, motorbike)

- 8.53 The Committee noted that for patients with access to their own transport (this being the mode of transport used by the majority of patients) the proposed pharmacy is in the Applicant’s view potentially no less accessible than the existing site from wherever patients commence their journey. Reference was made to the provision of approximately 53 parking spaces at the proposed site and that this was assessed as adequate by planning authorities.
- 8.54 The Committee considered that it was not necessarily relevant that certain authorities considered parking to be adequate. As the Appellant pointed out, they were not assessing parking in relation to pharmacy only and not in the context of a Regulation 24 application. The Committee noted comments from the Appellant that it is highly unlikely that there will be 53 parking spaces available for use by those accessing the pharmacy. As there are two co-located GP practices with a combined list of some 26,000 the Committee considered it reasonable to expect the availability of spaces to be significantly less than 53. However, potential parking exists and there is said to be availability of unrestricted parking on nearby roads.
- 8.55 The Appellant made comments about congestion in the summer with an influx of tourists. The Committee recognised that this was certainly likely in summer and could result in longer journey times by cars (and buses) using the main roads.
- 8.56 The Committee considered that there were likely to be multiple points from which a car journey to the pharmacy could start such that it was not necessarily the case that the main roads through the area would be used. It may also be the case that if the visit to the pharmacy was not in conjunction with a visit to the collocated GP practice, then some would consider the journey to the proposed site not worth it.
- 8.57 The Committee considered that this could mean that for some persons in this patient group, this would make the proposed site less accessible at certain times of the year. The Committee considered however that it was difficult to say with any certainty that this leads to the conclusion that there is a patient group that drives that would find the proposed site significantly less accessible.

Patients who have their medication delivered

- 8.58 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. Further, although they may have their medication delivered it maybe that they drop in their prescription to be delivered later. The Committee gave consideration to such patients when considering the other patient groups listed above as they were likely to fall into those groups.

Patients who share protected characteristics that may affect their mobility (either as a separate patient group or as part of the patient groups defined above)

- 8.59 The Committee was mindful of the need to consider any groups with protected characteristics for the purposes of the Equality Act 2010 and the Committee is therefore required to consider the elimination of discrimination and advancement of equality between a particular patient group and persons who do not share a protected characteristic.
- 8.60 The Committee noted that the Appellant made the point that the nature and location of the area means it is popular with the elderly. These patients may be less inclined to drive and so be reliant on public transport.
- 8.61 The Committee considered that if there was a patient group of elderly persons who used public transport, they would be covered by the comments above on the public transport patient group and so the Committee was not convinced that the proposed site would be significantly less accessible.
- 8.62 The Committee noted the Applicant's survey results that the majority of those who indicated that they had a condition that affected mobility, used cars and those who didn't, used taxis. It is not entirely clear how this fits with the Applicant's reference in the public transport group to 4 of 9 stating that they had mobility issues that affected their ability to access services, but were still okay with using public transport. There may or may not be some overlap here. Notwithstanding this, the Committee considered that given the high use of cars and its comments above on public transport, it was not convinced that the proposed site would be significantly less accessible.

Overall assessment

- 8.63 In the circumstances, the Committee was not able to be satisfied that, for all patient groups who are accustomed to accessing the Bowls Club site, the proposed site is not significantly less accessible. The Committee was therefore of the view that condition (a) is not met.

Regulation 24(1)(b)

- 8.64 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. The Committee also noted that the Appellant had not raised this in its appeal but has raised this in its observations. In light of this, the Committee attributed the appropriate weight to the Appellant's comments on this point. The Committee noted the Appellant's comments that granting the application would result in the removal of the only pharmacy serving eastern St Leonards and as a result this leaves a significant gap in provision in the area between the two towns. The Committee noted that, as it had already indicated, there is no residential area in the immediate vicinity of the Bowls Club site. Coupled with the existence of pharmacies located in Hastings and St Leonards as well as further north of the Bowls club site, 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 (b) is met.

Regulation 24(1)(c)

- 8.65 The Committee noted the Applicant's comment that it 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.
- 8.66 The Committee further noted NHS England's comment that it had considered the locations of the existing pharmacies as well as the proposed site and medical practices within the area and that there were no plans that would be affected.
- 8.67 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)

- 8.68 The Committee noted that the Applicant had given an undertaking, in its 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)

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

Overall

- 8.70 The Committee having reached its decision for differing reasons, determined that the decision of NHS England must be quashed.
- 8.71 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.
- 8.72 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.
- 8.73 The Committee concluded that further notification under paragraph 19 of Schedule 2 would not be helpful in this case.

9 Decision

- 9.1 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.
- 9.2 The Committee quashes the decision of NHS England and redetermines the application.
- 9.3 The Committee has determined that condition (a) is not met whereas conditions (b), (c), (d) and (e) are satisfied.

9.4 The application is refused.

Case Manager
Primary Care Appeals

A copy of this decision is being sent to:

Pharmacy, Sales and Consultancy (PSC) appealed on behalf of Soudyrah Limited (Appellant)
Rushport Advisory LLP – on behalf of Paydens Ltd (Applicant)
NHS England
Boots UK Ltd