

1 March 2021

REF: SHA/24499

Arena Point
Merrion Way
Leeds
LS2 8PA

APPEAL AGAINST NHS COMMISSIONING BOARD ("NHS ENGLAND") DECISION TO REFUSE AN APPLICATION BY BESTWAY NATIONAL CHEMISTS LTD T/A WELL FOR A RELOCATION THAT DOES NOT RESULT IN A SIGNIFICANT CHANGE TO PHARMACEUTICAL SERVICES PROVISION UNDER REGULATION 24 FROM 876 LONDON ROAD, TRENT VALE, STOKE ON TRENT ST4 5NX TO 974/976 LONDON ROAD, TRENT VALE, STOKE ON TRENT ST4 5NX

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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 granted.

Advise / Resolve / Learn

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1 The Application

By application dated 7 July 2020, Bestway National Chemists 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 876 London Road, Trent Vale, Stoke On Trent ST4 5NX to 974/976 London Road, Trent Vale, Stoke On Trent ST4 5NX. In support of the application it was stated:

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

1.1.1 N/A

Information in support of all no significant change applications

1.2 The premises are not significantly less accessible as there are no physical or geographical barriers between the two sites to impede easy access. Please see Appendix 1 for a map of the locality.

1.3 The distance between the current location to the new premises, measured with a wheel is 364 metres.

1.4 The journey between the sites involves on leaving the health centre, turning left on London Road and progressing on the pavement, crossing Highgrove Road, Elphinstone Road and Walton Road. All crossings have drop kerbs. As you approach the junction with Stone Road use the dedicated pedestrian path which takes you past a cluster of four retail units. The proposed location is the last unit 974/976 London Road (formerly William Hill bookmakers).

1.5 The patient groups that currently access the pharmaceutical services in the current location are defined by the medical centre the patients are registered with. The largest patient group the Applicant currently serves are those patients registered with Trent Vale Medical Practice who make up 97% of the current prescription volume of the pharmacy.

1.6 Appendix 1 also shows a heat map of the home postcodes of the Applicant's patients, weighted by prescription items dispensed. The map shows that the relocation is within the area in which the Applicant's current patient population reside and access pharmaceutical services and thus the relocation should not significantly impact access.

1.7 The same level of access will exist for patients in the new location as the existing location. Trent Vale Health Centre has limited car-parking spaces for staff and patients, resulting in many patients parking on London Road. This option will still be available

for patients accessing pharmaceutical services at the new premises by private transport. Those patients using public transport will find bus stops on London Road, 40 metres (heading south-west) and 80 metres (heading north-east) from the proposed unit, there are also bus stops on Stone Road 100 metres (heading south) and 160 metres (heading north).

- 1.8 The pharmacy currently provides a non-contractual delivery service. Patients with mobility issues are prioritised for this service. The delivery service will continue at the new premises.
- 1.9 The current premises are very small (35 sq. metres) and do not have a consultation area. The new premises will be 108 sq. metres with adequate space for a consultation area. This will allow the Applicant's patients to benefit from a broader range of advanced and enhanced services, in addition to a greater selection of GSL and P-med medicines supporting self-care.
- 1.10 The proposed location will be compliant with the Equality Act 2010 requirements and will improve the availability of pharmaceutical services in the locality.

Please explain why you consider that granting the application will not result in a significant change to the arrangements that are in place for the provision of local pharmaceutical services or pharmaceutical services (other than those provided by dispensing doctors) in any part of the HWB's area or any controlled locality within 1.6 kilometres of the new premises.

- 1.11 There will be no change in the provision of pharmaceutical services in the area as the Applicant is currently located in Trent Vale Health Centre, London Road. However, there will be the potential for increased provision of Enhanced and Advanced services.
- 1.12 There are no LPS pharmacy contracts within the locality of the existing and proposed site. Furthermore, there are no plans to introduce any LPS contracts into the locality in the immediate future according to the most recent PNA.
- 1.13 The relocation will result in a significant improvement to the arrangements in place for the provision of pharmaceutical services in the NHS Commissioning Board area.
- 1.14 The same pharmaceutical services will still be available throughout the immediate locality without any reduction in service. Additional enhanced and advanced services will be made available within the same trading hours once the pharmacy has relocated.
- 1.15 The Applicant is proposing to relocate in December, 2020.

Please explain why you consider granting the application will not cause significant detriment to the proper planning in respect of the provision of pharmaceutical services in the HWB's area.

- 1.16 Granting the application will not cause significant detriment to the proper planning in respect of the provision of pharmaceutical services in the NHS CB's area as granting the application would provide an improvement on the quality of the pharmacies premises within the immediate area.
- 1.17 The PNA does not state that there any planned developments in this locality which could be affected by the granting of this application.

Are the services to be provided at the new premises the same as those that have been provided at the current premises (whether or not, in the case of enhanced services, NHS England chooses to commission them)?

- 1.18 Yes.

Will there be any interruption to service provision?

1.19 No.

2 The Decision

NHS England considered and decided to refuse the application. The decision letter dated 30 November 2020 states:

2.1 NHS England have considered the above application and is writing to confirm that it has been refused.

2.2 Please see attached report for the reason behind the decision.

Actions from PSRC Committee – 2 November 2020

2.3 Agenda item 5.1

2.4 The Committee have refused the following application for a no significant change relocation as follows:

2.4.1 Bestway National Chemists Limited CAS-3032215-L8N6T3

2.4.2 From: Trent Vale Health Centre, 876 London Road, Trent Vale, Stoke-on-Trent ST4 5NX

2.4.3 To: 974/976 London Road, Trent Vale, Stoke-on-Trent ST4 5NX

Decision:

2.5 The Committee refused the application as it does not meet the criteria of Regulation 24.1(a). The application did not make reference to specific protected characteristics and because of that the Committee cannot be satisfied that all patient groups would find the relocation to not be significantly less accessible. The Committee confirmed that the application meets regulations 24 (1) (b), (c), (d) and (e), Regulation 24 (3) and Regulation 31.

2.6 Regulation 24(1)

2.7 (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.

3 The Appeal

In a letter dated 21 December 2020 addressed to NHS Resolution, the Applicant, represented by Pharmacy Sales and Consultancy appealed against NHS England's decision. The grounds of appeal are:

3.1 Pharmacy Sales and Consultancy act for the Applicant and have enclosed a letter of authorisation confirming its instructions in this matter.

3.2 The Applicant has been notified by NHS England & NHS Improvement that the above application, made pursuant to Regulation 24 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 as amended ("The Regulations"), has been refused. The Applicant's Representative has enclosed a copy of the NHS England decision letter and report for information.

3.3 On behalf of the Applicant, the Applicant's Representative wishes to appeal this decision.

3.4 Ordinarily, and in accordance with NHS Resolution's guidelines, the Applicant's Representative would set out detailed grounds for the appeal by reference to the decision made by NHS England. However, in this case, NHS England have provided very little by way of explanation for their decision in the enclosed report. Whilst the Applicant's Representative has addressed the point raised by NHS England below, the Applicant's Representative is also reliant on the further guidance provided by NHS Resolution which states:

3.4.1 *NHS Resolution notes the difficulties for appellants if NHS England has not provided reasons for any aspect of the original decision. In such circumstances, NHS Resolution will accept as valid an appeal which sets out the appellant's reasons why a determination should have been made in their favour on that aspect (or does so by reference to earlier submissions).*

3.5 The key ground for the Applicant's appeal is that NHS England failed to fully consider the evidence submitted by the Applicant in respect of the accessibility of the proposed site to *all* patient groups. The decision letter criticises the Applicant's failure to make reference to "specific protected characteristics". Notwithstanding the fact that the Regulations place no obligation on the Applicant to refer to specific protected characteristics, the Applicant's Representative submits that there was sufficient information provided by the Applicant for the decision-making body to have reached a view on the accessibility of the proposed location for all patients, including those who share protected characteristics.

The NHS England Decision Report

3.6 Whilst the Primary Care Appeals Committee ("the Committee") will determine this application afresh, rather than by reference to NHS England's decision, the Applicant's Representative wishes to comment in a little more detail on why it believes the decision to refuse this application was flawed.

3.7 The 'decision report' provided by NHS England is actually a summary of actions from the Pharmacy Services Regulations Committee. Only one page of the report has been provided by NHS England, so it is not clear whether there was any more relevant information that has not been provided that may have given an insight into the rationale behind this refusal.

3.8 The key statement of relevance from the report is as follow:

3.8.1 *The Committee refused the application as it does not meet the criteria of Regulation 24.1(a). The application did not make reference to specific protected characteristics and because of that the Committee cannot be satisfied that all patient groups would find the relocation to not be significantly less accessible. The Committee confirmed that the application meets regulations 24 (1) (b), (c), (d) and (e), Regulation 24 (3) and Regulation 31.*

3.9 In respect of the NHS England's findings on Regulation 24(1)(b), (c), (d) & (e), Regulation 24(3) and Regulation 31, clearly the Applicant's Representative agrees with NHS England that the requirements of these regulations have been met. The Applicant's Representative does not intend to add much more information on these matters, as they are not contentious, although the Applicant's Representative discusses Regulation 24(1)(b) & (c) briefly later.

3.10 In respect of Regulation 24(1)(a), the Applicant's Representative has no information regarding NHS England's view on other patient groups that may be applicable, but the Applicant's Representative assumes, in the absence of any comments otherwise, that NHS England was satisfied that there were no issues with regard to other patient groups that are accustomed to accessing the existing premises.

- 3.11 In respect of patient groups that share protected characteristics, unlike Regulation 18, no mention is made in Regulation 24 of any obligation on the part of the NHS England committee to have specific regard to “people who share protected characteristics”. Whilst information on such people might form part of the body of evidence taken into account by NHS England when determining an application, the absence of this information is not grounds to automatically refuse the application.
- 3.12 So, whilst the Applicant’s Representative accept that, as part of the *overall* assessment of accessibility, the decision maker will have regard to people who share protected characteristics, where the decision maker is able to make reasonable assumptions based on the information provided, it may still approve the application even if specific evidence in respect of that patient group has not been provided.
- 3.13 The Applicant’s Representative provides further information in respect of patient groups and people who share protected characteristics later.

Background

- 3.14 The Applicant currently provides pharmaceutical services within premises shared with Trent Vale Medical Practice at 876 London Road, Trent Vale. The pharmacy has traded from these premises for a number of years, but the Applicant has sought to identify alternative premises for some time now due to space constraints within the existing building.
- 3.15 As explained by the Applicant in its application, the existing pharmacy premises extend to only 35m² including a dispensary, pharmacy counter and a very small waiting/retail area for patients. This has significant implications for the operational efficiency of the pharmacy.
- 3.16 Whilst prescription numbers have fallen during the Covid-19 pandemic, a matter the Applicant’s Representative discusses below, the pharmacy dispensed in the region of 9,000 items per month up to the start of lockdown in March 2020, significantly more than the England average of c.7,300 items per month. As a result of the operational challenges dispensing this many prescriptions in such a small space, whilst all possible measures are taken to manage risks in respect of dispensing errors, there is always the possibility, in highly space-constrained pharmacies, that errors and ‘near-misses’ can occur.
- 3.17 Furthermore, there is insufficient space to provide a consultation room, so the pharmacy is unable to offer many of the advanced and locally commissioned services expected by patients. This is a significant shortfall in service provision and is a relevant matter when considering the *current* access to pharmaceutical services given that the Applicant is unable to offer *any* advanced pharmaceutical services. The access for its patients to these services is non-existent.
- 3.18 The pandemic has brought additional challenges to the Applicant as the pharmacy premises are located wholly within the surgery premises; there is no separate external entrance. In common with most medical centres in recent months, access to the medical centre has been limited with patients having to wait outside the building until they are permitted to enter the surgery lobby.
- 3.19 As there is no alternative way into the pharmacy premises, patients wishing to access the pharmacy who are not attending the surgery are still required to join the queue to enter the building and frequently face waits of more than 10 minutes just to enter the pharmacy. Partly as a result of this, dispensing volumes have fallen notably, to 5,553 in August and 6,348 in September as patients choose to use alternative pharmacies due to the current access difficulties.
- 3.20 The Applicant has been unable to secure suitable alternative premises until recently due the lack of availability of retail properties within the area. However, it has now

acquired an ideal retail property which extends to 108m² and will address all the access issues described above.

The local area

- 3.21 The pharmacy and medical centre are located within Trent Vale, a predominantly residential area situated 1½ miles to the south-west of Stoke town centre.
- 3.22 The Applicant's Representative has provided 'birds-eye-view' images as [Appendix 2 for Committee] to this appeal which clearly show the nature of the area and the key local features that are pertinent to this appeal.
- 3.23 Both the existing and proposed sites are located on London Road, a 'B' road which connects the more major A34 Stone Road to the south west and the suburbs of Trent Vale, Oakhill and Boothem with Stoke-on-Trent town centre to the north east.
- 3.24 London Road itself is on a slight gradient but not one that is significant enough to have any material impact on the ability of local residents to move around the area freely.
- 3.25 In fact, as might be inferred from the name Trent Vale, there are hills throughout the area and local residents are accustomed to the local topography when going about their daily lives. The image below provides an indication of the relatively shallow gradient on London Road. [See photograph in Appendix 2].
- 3.26 Pavements are wide, there are dropped kerbs for wheelchairs, mobility scooters and buggies and tactile pavements for visually impaired pedestrians throughout the area. The road is not particularly busy, so is easy to cross generally but there is also a light-controlled pedestrian crossing at the bottom end of London Road within 20m of the proposed premises. There is street lighting throughout the area.
- 3.27 The existing pharmacy premises and medical centre are situated at the brow of the 'hill' and occupy a relatively compact site accessible off London Road. 18 parking spaces are provided at the medical centre site plus two dedicated disabled spaces. However, the car park is shared between staff and patients with no designated 'patient-only' parking so, in more 'normal times' the car park is frequently full.
- 3.28 Even in quieter times staff cars are required to double park and park on hatched yellow lines to ensure patient spaces are not blocked as can be seen below. [See photograph in Appendix 2].
- 3.29 The area immediately surrounding the surgery building is dominated by St Joseph's College, a substantial co-educational Catholic grammar school with more than 1,000 pupils. This can be seen in the image below where the school grounds can be seen almost surrounding the surgery on the eastern side of London Road. [See photograph in Appendix 2].
- 3.30 As can also be seen from the satellite image above, whilst there are some houses on the western side of London Road, there is a significant amount of open green space behind these houses.
- 3.31 Heading further north along London Road, beyond St Joseph's College, is the discreet residential area of Oakhill which benefits from its own amenities, including a community pharmacy, also operated by the Applicant. This can clearly be seen below. [See photograph in Appendix 2].
- 3.32 Heading south from the existing site, down London Road, there are various retail premises dotted along the road between the existing and proposed sites. These include a launderette/dry cleaner, post office, mortgage broker, florist, veterinary surgery, car parts stores and two motorbike dealerships. Within the parade of shops

containing the proposed premises are four takeaways/restaurants. On the opposite side of London Road from this parade is a public house.

- 3.33 Notably, whilst there is a range of amenities here which clearly serve the local resident population, there are no convenience stores located within this part of London Road. The nearest food shops are located on the A34, Stone Road, beyond the proposed premises or in Oakhill to the north.
- 3.34 As discussed in the Applicant's application, the 'door to door' distance between the existing and proposed sites is 364m as measured with a surveyor's wheel. Whilst Regulation 24 does not require the decision-maker 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. This, therefore, illustrates the *maximum* additional distance any person may need to travel to access the proposed site.
- 3.35 In terms of access to the proposed premises, there is level access from the road and the pharmacy will be fully compliant with the requirements of the Equality Act 2010 and will benefit from a fully accredited consultation room.

Regulation 24

- 3.36 The Applicant's Representative has not reproduced the full text of Regulation 24 with this appeal letter. The Committee is very familiar with the relevant tests.
- 3.37 As discussed above, the matter of contention, in this case, is Regulation 24(1)(a).
- 3.38 NHS England was 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".
- 3.39 The Primary Care Appeals Committee will be aware of the guidance notes provided by the former NHS Litigation Authority on Regulation 24.

Patient groups

- 3.40 In discussing patient groups the Applicant sought to define these by reference to the medical centres these patients are registered with. Within the application it was noted that 97% of the prescriptions dispensed by the pharmacy at its current location originated from the co-located Trent Vale Medical Practice. This would form the largest of the Applicant's patient groups.
- 3.41 Information was also provided in respect of where patients live in relation to the existing and proposed premises. This patient group might be defined as patients who access the pharmacy at its current location because they live nearby.
- 3.42 The Applicant also went on within the application form to discuss patients who receive medication via the existing delivery service.
- 3.43 The Applicant is confident that the above patient groups accounts for the vast majority of the patients who attend the premises at the current site. However, in order to assist the Committee further in respect of the patient groups accessing the pharmacy at its current location, the Applicant's Representative has sought to break these patient groups down further as follows.
- 3.43.1 Patients receiving a delivery service.
- 3.43.2 Patients living within the vicinity of the pharmacy who use it because it is close to home.

3.43.3 Patients attending Trent Vale Medical Centre and subsequently seeking pharmaceutical services.

3.43.4 Patients attending a different medical centre and subsequently seeking pharmaceutical services.

3.43.5 Patients who use the shops or other amenities in the area.

3.43.6 Patients who share protected characteristics.

Patients receiving a delivery service or other 'non face-to-face services'

3.44 A proportion of the current pharmacy's prescriptions are handled via its long-standing delivery service which prioritises patients with mobility difficulties. This service includes patients whose repeat prescriptions are physically collected from their surgery and those whose prescriptions are issued via EPS.

3.45 For the avoidance of doubt these deliveries include patients whose medication is supplied in 'trays' as part of a DDS (domiciliary dosage system) and any resident in a care home who are unable to access the pharmacy in person.

3.46 For these people, the service will remain the same regardless of where they live. The collection/delivery service will remain unchanged as a result of this relocation.

3.47 It is clear, therefore, that for this patient group pharmaceutical services will remain as accessible as they are currently following the relocation.

3.48 The Applicant's Representative can also confirm that those other essential services that can be carried out through the delivery service (such as the collection of unwanted medication) will continue to be provided in the same manner after the relocation.

3.49 Patients receiving essential services that do not involve visiting the pharmacy in person (such as telephoning for public health, signposting or self-care advice) will also continue to receive these services in exactly the same way from the new premises.

3.50 Finally, patients who receive essential services face-to-face will belong to one of the other patient groups that have been identified and are therefore dealt with below.

Patients living within the vicinity of the pharmacy who use it because it is close to home.

3.51 As discussed above, both the existing and proposed locations are situated within an essentially residential area.

3.52 It is also clear, from the 'heat map' provided by the Applicant with its application, that the largest numbers of prescriptions dispensed are for patients who live either between the existing and proposed locations or to the south of the proposed location.

3.53 This is not surprising when the distribution of housing in the area is taken into account. As can be seen from the 'birds-eye' images provided, the bulk of the houses in the area are to the south-west of the A34, Stone Road. This corresponds with the largest dispensing volumes as shown on the heat map. There is further housing along London Road, in between the existing and proposed sites and to the south east of the existing premises, essentially equidistant from the current site and the proposed site.

3.54 By contrast, the area closest to the existing site is more sparsely populated as a result of the large site occupied by St Joseph's College and the green space to the west of London Road.

- 3.55 Heading further north, whilst housing becomes more dense again in the Oakhill area, there is an additional pharmacy serving that community that is more accessible for those residents.
- 3.56 It is clear, therefore, that the distribution of dispensing shown in the heat map is exactly what would be expected looking at the distribution of the housing in the area. Most people who access the pharmacy from home at present live in the area between the existing and proposed site or to the south of the proposed site. That being the case, it is clear that the proposed location will be closer to home for more people than the existing site.
- 3.57 In any event, for the vast majority of people, given the proximity of the two sites, and the nature of the journey between them, the distance to the pharmacy will not be materially different.
- 3.58 It is likely that patients travel from their homes either by motor car, public transport or on foot.
- 3.59 For those who travel by the car, they will not find the proposed premises significantly less accessible than the current ones. As discussed earlier, whilst there is some patient parking available at the medical centre site, this is limited, and spaces are not always available.
- 3.60 Free unrestricted parking is available along most of the length of London Road, starting approximately 80m to the north of the proposed site and continuing up London Road almost as far as the Trent Vale Medical Centre. So, whilst it may be the case that, for those patients ordinarily able to park at the medical centre, the distance from a car parking space to the pharmacy at the new site will be slightly further, for many it will be broadly the same given that they are likely to be parking on London Road. Even for those who do have further to travel from their car, the incremental distance is likely to be no more than 100m so will not render the proposed premises *significantly* less accessible.
- 3.61 The car parking arrangements can be seen in the image below with plenty of spaces available on the right hand side of the road. [See photograph in Appendix 2].
- 3.62 For local residents who wish to walk to this proposed location, as described earlier, for those living in the large residential area to the south of Stone Road, the proposed location will be closer to home so their journey will be shorter and they will not be required to walk up the (albeit gentle) hill. Those residents living along London Road or in the residential areas to the south east of London Road are likely to find their journey to the proposed premises broadly the same distance as the journey to the existing premises.
- 3.63 For local residents travelling by public transport, as described in the Applicant's application, there are bus stops on either side of the road within 100m of the proposed site on London Road which are served by the same bus routes as the existing site. Depending on the direction of travel, patients will simply alight one stop sooner or one-stop later than they would have done previously.
- 3.64 The premises are also more accessible for residents using the bus services that travel along Stone Road as there are stops on these routes within 150m of the proposed site.
- 3.65 Even for patients whose journey takes them past the existing premises on the way to the proposed premises, the incremental distance they have to travel is a little over 350m. This is a journey that takes less than five minutes on foot and even less time if travelling by car or bus.
- 3.66 So, in summary for this patient group, it is clear that the proposed location will be more accessible for a greater number of people who live in the area in relation to where they

live. Whilst, as is the case with any relocation application, the proposed location may be slightly further away for some it is clear that, for this patient group as a whole the proposed location is not significantly less accessible.

Patients attending Trent Vale Medical Centre and subsequently seeking pharmaceutical services.

- 3.67 Trent Vale Medical Centre is, by far, the largest single source of prescriptions for the pharmacy at present with more than 95% of all prescriptions dispensed originating from this surgery. However, a relatively small proportion of these prescriptions are for patients attending the surgery for an acute prescription. Most are 'repeat' items where there is no reason to visit the surgery in advance. Patients receiving repeat prescriptions from this pharmacy are likely to belong to patient group 2 above.
- 3.68 The surgery is co-located with the existing premises so, for these patients, the proposed location is slightly further away at 364m. However, this is not a distance that would render the pharmacy significantly less accessible regardless of how patients travel for the reasons we have already described above.
- 3.69 Furthermore, it is important to remember that nobody actually starts their journey from the medical centre because they will have invariably travelled from home to the surgery in the first instance. That being the case their journey to the proposed site might well be on their way home. Even for those people who do have an additional journey to make, a walk of less than five minutes cannot be considered to be significant, particularly given that they would be physically able to get to the surgery in the first instance.
- 3.70 Those who travel to the surgery by car will not find the proposed location significantly less accessible for the reasons the Applicant's Representative has described above given that many will either park on London Road to access the surgery or, if they wish, could move their car from the surgery car park to within 100m of the proposed site then use the light-controlled crossing to access the proposed premises. This is not a significant distance.
- 3.71 Again, for patients who access the surgery by public transport, the proposed site is on the same bus route although, in practice, the sites are so close it is more likely bus users would walk to the pharmacy then pick up a bus for their return journey outside the pharmacy premises.

Patients attending a different medical centre and subsequently seeking pharmaceutical services.

- 3.72 As discussed earlier, very few prescriptions that originate from medical centres other than Trent Vale Medical Practice are dispensed at the Applicant's pharmacy. The handful that are dispensed for other practices are typically EPS items for delivery or repeat items for people who live nearby (and therefore belong to patient group 2) but who are not patients of Trent Vale Medical Practice. For this reason, the Applicant is not aware of any patients who travel immediately to its pharmacy following an appointment at a different medical centre.
- 3.73 However, the Applicant's Representative has considered the impact of the proposed relocation for any of these patients if they do exist.
- 3.74 The next nearest medical centre to the existing site is the Prima Care surgery located at Hanley Health Centre. This is located over a mile to the north of the existing site. It is clear that any patient able to travel more than a mile to the pharmacy at present will not have any difficulty travelling a maximum incremental distance of 364m regardless of how they travel.

3.75 Other surgeries are even further afield so it is clear that their journey to the proposed premises will not be materially different to their current journey. That being the case the proposed location is not significantly less accessible.

Patients who use the shops or other amenities in the area.

3.76 As described earlier, there are several shops, including a post office, located along London Road in between the existing and proposed sites. The existing site forms one end of the 'shopping area' and the proposed site forms the other. Other than a large auto-parts store located 100m from the proposed location, none of these shops has its own parking facilities, so shoppers park along the length of London Road. That being the case, depending on which shops they are accessing, the proposed location might be slightly closer or may be slightly further away. However, given the proximity of the two locations, the difference in distance will be minimal.

3.77 The nearest grocery shop for residents living in this area is actually on Stone Road, 250m from the proposed site and 600m from the existing site so residents who do their convenience shopping nearby will find the proposed location to be closer for them.

3.78 Furthermore, Stone Road is a much busier traffic route, and the proposed location will be visible from Stone Road so it will be more accessible for shoppers travelling around the wider area by car.

3.79 Equally, the other amenities, such as the vet, dry cleaner, public house and take-aways are all located either between the two sites or closer to the proposed site.

3.80 The only exception is the grammar school which is located just to the north of the existing site. However, given that secondary school aged children are not significant users of pharmaceutical services, this proposed relocation will not have any material effect on accessibility, not least because the vast majority of secondary school children would have no difficulties walking an additional distance of 364m should they require access to pharmaceutical services.

3.81 It is clear, therefore, that the proposed location would not be significantly less accessible for this patient group.

Patients who share protected characteristics.

3.82 The Applicant's Representative accepts that the Committee has an obligation to consider accessibility, in particular, for those with a 'protected characteristic' (i.e. age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex and sexual orientation).

3.83 The Applicant's Representative would also suggest that age and disability are the two protected characteristics that are most relevant, as these are most likely to relate to both demand for pharmaceutical services and their patients' ability to access them.

3.84 Whilst the Applicant's Representative accepts this data is now somewhat out of date, it has considered census information in respect of age and disability to establish whether there is a particular prevalence of elderly or disabled residents within the Lower Layer Super Output Area in which the existing and proposed sites are located.

3.85 The data below has been sourced from Nomis (using data from the Office for National Statistics) and relates to 1,770 residents living closest to the site.

3.86 The first table shows the age profile of local residents:

Age	Stoke on Trent		England	
	Number	%	Number	%

All usual residents	1,770	100.0	53,012,456	100.0
Age 0 – 4	134	7.6	3,318,449	6.3
Age 5 – 7	66	3.7	1,827,610	3.4
Age 8 – 9	38	2.1	1,145,022	2.2
Age 10 – 14	81	4.6	3,080,929	5.8
Age 15	16	0.9	650,826	1.2
Age 16 – 17	30	1.7	1,314,124	2.5
Age 18 – 19	41	2.3	1,375,315	2.6
Age 20 – 24	144	8.1	3,595,321	6.8
Age 25 – 29	154	8.7	3,650,881	6.9
Age 30 – 44	437	24.7	10,944,271	20.6
Age 45 – 59	336	19.0	10,276,902	19.4
Age 60 – 64	98	5.5	3,172,277	6.0
Age 65 – 74	120	6.8	4,552,283	8.6
Age 75 – 84	52	2.9	2,928,118	5.5
Age 85 – 89	19	1.1	776,311	1.5
Age 90 and over	4	0.2	403,817	0.8

3.87 This data is not exceptional in so much as the percentage of residents in each age band are not very significantly different from the national average, with the exception of residents over 65. Within this LLSOA, at the time of the last census, 11.0% of residents were over the age of 65 compared to the national average of 16.4%. It is notable, then, that the area has a lower than average number of elderly residents.

3.88 In respect of disability, the data is as follows:

Disability / health / care	Stoke on Trent		England	
	Number	%	Number	%
All categories: Long term health problem or disability	1,770	100	53,012,456	100
Day to day activities limited a lot	168	9.5	4,405,394	8.3
Day to day activities limited a little	147	8.3	4,947,192	9.3
Day to day activities not limited	1,455	82.2	43,659,870	82.4
Day to day activities a lot: Age 16 – 64	87	4.9	1,924,080	3.6
Day to day activities limited a little: Age 16 – 64	84	4.7	2,452,742	4.6
Day to day activities not limited: Age 16 - 64	1,069	60.4	29,952,269	56.5
Very good health	782	44.2	25,005,712	47.2
Good health	632	35.7	18,141,457	34.2
Fair health	240	13.6	6,954,092	13.1
Bad health	86	4.9	2,250,446	4.2
Very bad health	30	1.7	660,749	1.2
Provides no unpaid care	1,589	89.8	47,582,440	89.8
Provides 1 – 19 hours unpaid care a week	106	6.0	3,452,636	6.5
Provides 20 – 49 hours unpaid care a week	23	1.3	721,143	1.4
Provides 50 or more hours unpaid care a week	52	2.9	1,256,237	2.4

3.89 The profile of the area is not materially different to the national average albeit with slightly more people whose activities are limited a lot and slightly fewer that are limited a little.

3.90 The Applicant's Representative would suggest, therefore, that the demographic profile of the area is such that there are not notably higher levels of residents whose mobility is limited as a result of protected characteristics they share.

3.91 However, for those people who do share these protected characteristics, the Applicant's Representative has considered the impact of the proposed location on their access to pharmaceutical services.

- 3.92 Firstly, in respect of patients who travel around the area by foot, by wheelchair or mobility scooter, as the Applicant's Representative has highlighted already, the majority of housing in the area is located closer to the proposed site than the existing site. There are wide pavements, dropped kerbs and tactile pavements so these patients are able to move around the area without undue difficulty.
- 3.93 Whilst it might be the case that London Road is on a slight gradient, more people live towards the bottom of the 'hill' than the top so the proposed relocation would make the journey slightly easier for them. Even those patients who are travelling to the medical centre will have invariably travelled from home and, for many, the proposed location will be on their way back.
- 3.94 For less abled patients travelling by public transport, the distances between bus stops and the existing and proposed premises are virtually identical. These patients will have no further to travel as a result of the relocation.
- 3.95 For car users with disabilities, whilst there is no dedicated disabled parking at the proposed premises, there are single yellow lines on London Road within 30m of the premises and patients with blue badges are permitted to park for up to 3 hours in accordance with government guidelines. They may choose to park here if they are not able to travel the 80m or so from the unrestricted parking areas further up London Road.
- 3.96 Furthermore, unlike at the existing surgery premises, where there are steps and a ramp, as shown in the image below, access to the existing premises is via a wide flat paved area outside the parade.
- 3.97 [See photographs in Appendix 2 which show:] Surgery entrance showing steps and ramp and Proposed premises with level access from wide pavement.
- 3.98 Finally, as discussed earlier, the Applicant provides an existing delivery service with priority for patients with reduced mobility, so anybody unable to access the existing premises for any reason will be able to receive deliveries.
- 3.99 In summary for this patient group overall, therefore, the proposed premises will not be significantly less accessible.
- 3.100 Regulation 24(1)(b) requires NHS England to consider whether:
- 3.100.1 *"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 local pharmaceutical services or of pharmaceutical services other than those provided by a person on a dispensing doctor list—*
- 3.100.1.1 *(i) in any part of the area of HWB1, or*
- 3.100.1.2 *(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;"*
- 3.101 In the Applicant's Representative's opinion it is clear that granting this application will not result in a significant change to the arrangements currently in place. The proposed relocation is a short distance and is unlikely to have a material effect on the provision of pharmaceutical services by other contractors on the area, not least because the next nearest two pharmacies are also owned by the Applicant.
- 3.102 The existing and proposed premises are within a short distance of each other and the existing services and opening hours will be maintained.

- 3.103 As the distance between the sites is short there is no reason to believe that dispensing patterns in the area will be affected in any way as a result of this relocation.
- 3.104 Patients groups accessing pharmaceutical services in the area will still be able to access them in the same way so there is no reason to suggest that this relocation it will result in a significant change to the arrangements in place.
- 3.105 Regulation 24(1)(c) requires NHS England to consider whether:
- 3.105.1 *“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 HWB”.*
- 3.106 The Applicant’s Representative has been unable to find any plans relating to future pharmaceutical services in the area, whether belonging to the local authority, NHS England or any other commissioner of pharmaceutical services that would be affected in any way by granting this application.

Conclusion

- 3.107 In summary, whilst the Applicant’s Representative disagrees that NHS England were unable to approve the application based on the information supplied by the Applicant, the Applicant’s Representative hopes the additional information it has provided within this appeal is sufficient to satisfy the Committee that the tests within Regulation 24 have been met.
- 3.108 No objections were submitted in response to the Applicant’s application and NHS England appear to have been satisfied in respect of all aspects of Regulation 24 with the sole exception of the impact on patients sharing protected characteristics.
- 3.109 The Applicant’s Representative therefore invite the Committee to approve the Applicant’s application, taking into account the additional information submitted within this appeal.
- 3.110 Should the Committee wish to hold an oral hearing to consider this application, the Applicant and its representatives would wish to attend.
- 3.111 [Enclosures: Appendix 2 with photographs. Letter of authority and copy of NHS England’s decision letter].

4 **Summary of Representations**

No representations were received by NHS Resolution on the appeal.

5 **Consideration**

- 5.1 The Pharmacy Appeals Committee (“Committee”) appointed by NHS Resolution had before it the papers considered by NHS England, together with a plan of the area showing existing pharmacies and doctors’ surgeries and the location of the proposed pharmacy.
- 5.2 It also noted there were no responses to NHS Resolution’s own statutory consultations.
- 5.3 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.
- 5.4 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (“the Regulations”).

- 5.5 The Committee first considered Regulation 31 of the regulations which states:
- (1) A routine or excepted application, other than a consolidation application, must be refused where paragraph (2) applies.*
- (2) This paragraph applies where -*
- (a) a person on the pharmaceutical list (which may or may not be the applicant) is providing or has undertaken to provide pharmaceutical services ("the existing services") from -*
- (i) the premises to which the application relates, or*
- (ii) adjacent premises; and*
- (b) the NHSCB is satisfied that it is reasonable to treat the services that the applicant proposes to provide as part of the same service as the existing services (and so the premises to which the application relates and the existing listed chemist premises should be treated as the same site).*
- 5.6 The Committee noted that the Applicant had not provided any information in the application form on this point beyond the inclusion of "n/a" in the relevant box. The Committee noted that the wording of the application form only required the Applicant to include information in the relevant section if the proposed premises were adjacent to, or in close proximity to, another pharmacy or dispensing appliance contractor premises. The Committee considered it reasonable to determine that the lack of information in the application form on this point when read with the wording of the application form allowed it to be reasonably satisfied that the Applicant considered that the proposed premises were not adjacent to, or in close proximity to, another pharmacy or dispensing appliance contractor premises. The Committee further noted that NHS England had not refused the application on the basis of Regulation 31. Based on the information before it, the Committee therefore determined that it was not required to refuse the application under the provisions of Regulation 31.
- 5.7 The Committee had regard to Regulation 24(1) which requires the following five conditions to be met:
- (a) for the patient groups that are accustomed to accessing pharmaceutical services at the existing premises, the location of the new premises is not significantly less accessible;*
- (b) in the opinion of the NHSCB, granting the application would not result in a significant change to the arrangements that are in place for the provision of local pharmaceutical services or of pharmaceutical services other than those provided by a person on a dispensing doctor list—*
- (i) in any part of the area of HWB1, or*
- (ii) in a controlled locality of a neighbouring HWB, where that controlled locality is within 1.6 kilometres of the premises to which the applicant is seeking to relocate;*
- (c) the NHSCB is not of the opinion that granting the application would cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area of HWB1;*
- (d) the services the applicant undertakes to provide at the new premises are the same as the services the applicant has been providing at the existing premises (whether or not, in the case of enhanced services, the NHSCB chooses to commission them); and*

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

- 5.8 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 5.8.1 confirm NHS England's decision;
 - 5.8.2 quash NHS England's decision and redetermine the application;
 - 5.8.3 quash NHS England's decision and, if it considers that there should be a further notification to the parties to make representations, remit the matter to NHS England.
- 5.9 The Committee considered the position in relation to each condition.
- 5.10 In relation to condition (a), the Committee considered the map submitted by NHS England which clearly show the locations of the existing pharmacies as well as the proposed site and medical practices within the area.
- 5.11 The Committee considered the information before it with regard to the patient groups who are accustomed to accessing pharmaceutical services at the existing premises. The Committee considers that it must seek to identify the patient groups who would potentially be affected by the relocation based upon the information provided by the parties. This information is most commonly going to be provided by the Applicant but others may also be able to contribute to the information on which the Committee will proceed to determination.
- 5.12 In this case, the Applicant has identified the patient groups as:
- 5.12.1 Patients receiving a delivery service;
 - 5.12.2 Patients living within the vicinity of the pharmacy who use it because it is close to home;
 - 5.12.3 Patients attending Trent Vale Medical Centre and subsequently seeking pharmaceutical services;
 - 5.12.4 Patients attending a different medical centre and subsequently seeking pharmaceutical services;
 - 5.12.5 Patients who use the shops or other amenities in the area;
 - 5.12.6 Patients who share protected characteristics.
- 5.13 The Committee concludes that the patient groups who are accustomed to accessing pharmaceutical services from the existing premises are those set-out below.

Patients receiving a delivery service

- 5.14 The Committee noted the Applicant has stated "*A proportion of the current pharmacy's prescriptions are handled via its long-standing delivery service which prioritises patients with mobility difficulties. This service includes patients whose repeat prescriptions are physically collected from their surgery and those whose prescriptions are issued via EPS.*" 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, is particularly mindful that the provision of essential services is not limited to the dispensing of prescriptions

Patients living within the vicinity of the pharmacy who use it because it is close to home

- 5.15 The Committee noted the Applicant has provided a heat map which illustrates items dispensed by postcode between January 2020 and July 2020. This gives the Committee an indication of where the Applicant's patients live in relation to the current and proposed premises. The Applicant has stated that "*both the existing and proposed locations are situated within an essentially residential area.*" The Committee noted that the distance between where the Applicant's current premises are located and proposed premises is described as 364 metres, which has not been disputed.
- 5.16 The Committee considered that this patient group will access the proposed premises on foot, by car or by public transport and it was necessary to consider the accessibility of the proposed premises in light of each method of transport for this patient group.
- 5.17 The Applicant states that for those patients wishing to walk to the proposed location, "*for those living in the large residential area to the south of Stone Road, the proposed location will be closer to home so their journey will be shorter and they will not be required to walk up the (albeit gentle) hill. Those residents living along London Road or in the residential areas to the south east of London Road are likely to find their journey to the proposed premises broadly the same distance as the journey to the existing premises.*" The Committee noted the Applicant states: "*London Road itself is on a slight gradient but not one that is significant enough to have any material impact on the ability of local residents to move around the area freely*" and "*Pavements are wide, there are dropped kerbs for wheelchairs, mobility scooters and buggies and tactile pavements for visually impaired pedestrians throughout the area. The road is not particularly busy, so is easy to cross generally but there is also a light- controlled pedestrian crossing at the bottom end of London Road within 20m of the proposed premises. There is street lighting throughout the area.*" The Applicant has also provided photographs in support of its statements. The Committee noted that this has not been disputed by parties. The Committee was of the view therefore that for this patient group, for those willing and able to walk, the proposed premises are not significantly less accessible.
- 5.18 For those patients unwilling or unable to walk, the Committee went on to consider access by private transport. The Applicant states that there is limited parking at the current site which is used by patients of the medical practice as well as patients attending the pharmacy but spaces are not always available. The Applicant continues that there is free unrestricted parking along the length of London Road which patients can use. The Applicant has provided a photograph showing the parking arrangements for the proposed premises. The Applicant states "*So, whilst it may be the case that, for those patients ordinarily able to park at the medical centre, the distance from a car parking space to the pharmacy at the new site will be slightly further, for many it will be broadly the same given that they are likely to be parking on London Road. Even for those who do have further to travel from their car, the incremental distance is likely to be no more than 100m so will not render the proposed premises significantly less accessible.*" The Committee noted that this has not been disputed by parties. The Committee was of the view therefore that for this patient group, who use private transport, the proposed premises are not significantly less accessible.
- 5.19 The Committee considered access by public transport for those unwilling or unable to walk. The Applicant states "*there are bus stops on either side of the road within 100m of the proposed site on London Road which are served by the same bus routes as the existing site. Depending on the direction of travel, patients will simply alight one stop sooner or one-stop later than they would have done previously.*" The Committee noted that this has not been disputed by parties. The Committee was of the view therefore that for this patient group, who use public transport, the proposed premises are not significantly less accessible.

Patients attending Trent Vale Medical Centre and subsequently seeking pharmaceutical services

- 5.20 The Committee considered that the definition of this patient group as those registered with these GP practices does not easily allow an assessment of the impact of the relocation on the accessibility of the new premises by this patient group.
- 5.21 The Committee is mindful that there are two sub-groups with this patient group:
- 5.21.1 A patient group that accesses pharmaceutical services at the same time as accessing services from the GP practice; and
- 5.21.2 A patient group that accesses pharmaceutical services otherwise than in connection with accessing services from the GP practice.
- 5.22 However the proposed location is 364 metres from the GP practice. Therefore the Committee was of the view it could in fact consider this group as a whole. The Committee was mindful of its consideration above in relation to patients living within the vicinity of the pharmacy who use it because it is close to home given the location of the GP practice and the location of where patients live. Indeed the Applicant states "*Patients receiving repeat prescriptions from this pharmacy are likely to belong to patient group 2 above.*" The Committee noted that this had not been disputed by parties. The Committee was of the view, taking into account its consideration of the patient group living within the vicinity of the pharmacy who use it because it is close to home, as above, that for patients attending Trent Vale Medical Centre and subsequently seeking pharmaceutical services who either walk, use private transport or use public transport, the proposed premises are not significantly less accessible.

Patients attending a different medical centre and subsequently seeking pharmaceutical services

- 5.23 The Committee noted the Applicant states "*very few prescriptions that originate from medical centres other than Trent Vale Medical Practice are dispensed at the Applicant's pharmacy.*" The Applicant continues "*The handful that are dispensed for other practices are typically EPS items for delivery or repeat items for people who live nearby (and therefore belong to patient group 2) but who are not patients of Trent Vale Medical Practice. For this reason, the Applicant is not aware of any patients who travel immediately to its pharmacy following an appointment at a different medical centre.*" The Applicant states that the next nearest pharmacy is "*located over a mile to the north of the existing site. It is clear that any patient able to travel more than a mile to the pharmacy at present will not have any difficulty travelling a maximum incremental distance of 364m regardless of how they travel. Other surgeries are even further afield so it is clear that their journey to the proposed premises will not be materially different to their current journey.*" The Committee noted that this has not been disputed by parties. The Committee was of the view that for patients attending a different medical centre and subsequently seeking pharmaceutical services, who either walk, use private transport or use public transport, the proposed premises are not significantly less accessible.

Patients who use the shops or other amenities in the area

- 5.24 The Applicant states that "*there are several shops, including a post office, located along London Road in between the existing and proposed sites. The existing site forms one end of the 'shopping area' and the proposed site forms the other. Other than a large auto-parts store located 100m from the proposed location, none of these shops has its own parking facilities, so shoppers park along the length of London Road. That being the case, depending on which shops they are accessing, the proposed location might be slightly closer or may be slightly further away. However, given the proximity of the two locations, the difference in distance will be minimal.*" The Committee noted that this has not been disputed by parties. Taking into account its consideration of the patient group living within the vicinity of the pharmacy who use it because it is close to home, as above, that for patients who use the shops or other amenities in the area who

either walk, use private transport or use public transport, the proposed premises are not significantly less accessible.

Patients who share protected characteristics

- 5.25 The Committee noted NHS England's only comment in its decision stated "*The application did not make reference to specific protected characteristics and because of that the Committee cannot be satisfied that all patient groups would find the relocation to not be significantly less accessible.*"
- 5.26 The Committee is 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.
- 5.27 The Applicant, in its appeal provided data regarding age and disability noting the profiles for the area are not significantly different to the national average. The Applicant states: "*Firstly, in respect of patients who travel around the area by foot, by wheelchair or mobility scooter, as the Applicant's Representative has highlighted already, the majority of housing in the area is located closer to the proposed site than the existing site. There are wide pavements, dropped kerbs and tactile pavements so these patients are able to move around the area without undue difficulty.*"
- 5.28 *Whilst it might be the case that London Road is on a slight gradient, more people live towards the bottom of the 'hill' than the top so the proposed relocation would make the journey slightly easier for them. Even those patients who are travelling to the medical centre will have invariably travelled from home and, for many, the proposed location will be on their way back.*
- 5.29 *For less abled patients travelling by public transport, the distances between bus stops and the existing and proposed premises are virtually identical. These patients will have no further to travel as a result of the relocation.*
- 5.30 *For car users with disabilities, whilst there is no dedicated disabled parking at the proposed premises, there are single yellow lines on London Road within 30m of the premises and patients with blue badges are permitted to park for up to 3 hours in accordance with government guidelines. They may choose to park here if they are not able to travel the 80m or so from the unrestricted parking areas further up London Road.*
- 5.31 *Furthermore, unlike at the existing surgery premises, where there are steps and a ramp, as shown in the image below, access to the existing premises is via a wide flat paved area outside the parade."*
- 5.32 The Committee noted that this information had not been disputed by parties. The Committee was of the view that for patients who share protected characteristics, who either walk, use private transport or use public transport, the proposed premises are not significantly less accessible.

Overall assessment

- 5.33 The Committee had considered all the patient groups, noting that these groups and the information provided by the Applicant had not been disputed.
- 5.34 The Committee was satisfied, based on the information provided that, for patient groups who are accustomed to accessing the present site, the proposed site is not significantly less accessible.
- 5.35 The Committee concluded that condition (a) is met.

Regulation 24(1)(b)

5.36 The Committee noted the decision of NHS England in respect of condition (b), that the granting of this application would not result in a significant change to the arrangements that are in place, and that this had not been disputed by any party. On the information provided the Committee was of the opinion that the granting of the application would not result in a significant change to the arrangements in place for the provision of local pharmaceutical services or of pharmaceutical services in any part of the 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.

5.37 The Committee concluded that condition (b) is met.

Regulation 24(1)(c)

5.38 The Committee noted the decision of NHS England in respect of condition (c) that the granting of the relocation would not lead to significant detriment to proper planning in respect of the pharmaceutical services in the area. The Committee noted that this had not been disputed by any party. 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.

5.39 The Committee concluded that condition (c) is met.

Regulation 24(1)(d)

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

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

Regulation 24(1)(e)

5.42 In relation to condition (e), the Committee noted the Applicant had confirmed in their application that there will be no interruption to service provision.

5.43 On the information provided the Committee determined that condition (e) is met.

Overall

5.44 Given the decision of NHS England is being overturned on appeal, the Committee determined that the decision of NHS England must be quashed.

5.45 The Committee went on to consider whether there should be a further notification to the parties detailed at paragraph 19 of Schedule 2 of the Regulations to allow them to make representations if they so wished (in which case it would be appropriate to remit the matter to NHS England) or whether it was preferable for the Committee to redetermine the application.

5.46 The Committee noted that representations on Regulation 24 had already been sought from parties to NHS England, noting that none had been made, as part of the processing of the application by NHS England. The Committee further noted that when the appeal was circulated representations had been sought from parties on Regulation 24.

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

6 Decision

- 6.1 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31
- 6.2 The Committee quashes the decision of NHS England and redetermines the application.
- 6.3 The Committee has determined that conditions (a), (b), (c), (d) and (e) are satisfied.
- 6.4 The application is granted.

**Case Manager
Primary Care Appeals**

A copy of this decision is being sent to:

Pharmacy Sales and Consultancy, representing Bestway National Chemist Ltd t/a Well
NHS England