

22 June 2021

**REF: SHA/24447**

Arena Point  
Merrion Way  
Leeds  
LS2 8PA

**APPEAL AGAINST NORTH WEST (CHESHIRE AND MERSEYSIDE) AREA TEAM, NHS COMMISSIONING BOARD ("NHS ENGLAND") DECISION TO REFUSE AN APPLICATION BY SHARIEF HEALTHCARE LIMITED FOR A RELOCATION THAT DOES NOT RESULT IN A SIGNIFICANT CHANGE TO PHARMACEUTICAL SERVICES PROVISION UNDER REGULATION 24 FROM 12A CRONTON LANE, WIDNES, WA8 5AJ TO THE NEW HEALTH CENTRE, FIR PARK, QUEENSBURY WAY, WIDNES, WA8 9DT**

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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.

A copy of this decision is being sent to:

Charles Russell Speechlys on behalf of Sharief Healthcare Ltd  
Boots UK Ltd  
Rushport Advisory LLP on behalf of AIM RX Ltd  
L Rowland & Co (Retail) Ltd  
PCSE on behalf of NHS England – North West (Cheshire & Merseyside)

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

2 Site Visit

The Committee comprised of Mrs L Reid (Chair), Mr P Bratley (Pharmacy member ) and Mrs L Summers (Lay member). The Committee undertook a site visit on the morning of 30<sup>th</sup> April 2021.

2.1 The Committee started at the proposed premises at Fir Park, Queensbury Way. The proposed premises were at an advanced stage of construction and located next to a number of retail premises with a large free car park. The established retail premises included a large Co-Operative, Subway, a veterinary surgery and a public house. The site was easily accessible off Queensbury Way main road.

2.2 The Committee proceeded to walk to the current premises through a residential estate adjacent to the site off Lanark Gardens. The area was clearly affluent with a mixture of old and new houses, large driveways and high value cars. The route was flat, the pavements were well maintained and there was good street lighting. There were no main crossings.

2.3 The Committee took their time observing the area and emerged from the residential estate onto Cronton Lane approximately 25 minutes later. Cronton Lane is very busy with a large roundabout connecting three main roads. The existing premises is located at the end of a small parade of retail premises off the main road, including a takeaway, sandwich shop and mini market. There is little parking outside and a high turnover of vehicles was noted. The parking and pedestrian area immediately outside is poorly maintained with large potholes and an uneven surface. The pharmacy is inconspicuous at the end of the row with poor signage and in a state of disrepair. The Committee observed that the premises would be difficult to access with a wheelchair, mobility scooter or pushchair. During the period observed, the main activity consisted of students and builders visiting the mini market or sandwich shop for refreshments.

2.4 The Committee walked down Cronton Lane towards Queensbury Way. The route went passed the Sixth Form College and then turned onto Queensbury Way which is well lit, with no crossing places and wide pavements. No buses were observed and the two bus stops on Queensbury Way indicated very limited services. To the West of Queensbury Way is mainly fields. Arriving back to Fir Park, the Committee observed students using the retail premises and taxis arriving and leaving as well.

- 2.5 One Committee member drove to Peel House Surgery and Bevan Group practice. They are both located in residential estates with a choice of other pharmacies nearby. Bevan Group practice is purpose built with an adjoining pharmacy. The area is densely populated with a moderate level of traffic. They were not within reasonable walking distance of the existing pharmacy premises.
- 3 A summary of the above observations was provided to those in attendance and comments invited from parties. Mr Wardle agreed with the Committee's observations. No further comments were received on the site visit.
- 4 Oral Hearing Submissions
- 4.1 The Applicant, Mr Sharief was present and represented by Mr Wardle. Mr Stratton of AIM RX Ltd was present and represented by Mr Daly. Ms Gatley from the Local Pharmaceutical Committee and Mrs Watson from Boots Pharmacy were also in attendance.
- 4.2 The Chair noted that from the representations received in writing before the hearing, there was no need to address Regulation 31 and the only matter under consideration was Regulation 24 (1)(a) as there was no dispute arising from other provisions. The Chair invited parties therefore to address the Committee on Regulation 24(1)(a) and in particular the representations in relation to the identification of patient groups. Parties indicated that they were content with this approach.
- 4.3 Mr Wardle (for the Applicant)
- 4.3.1 Mr Wardle provided the background to the original application for Upton Rocks pharmacy that was made 10 years ago after which the Applicant decided to open the current pharmacy on Cronton Lane with the intention to always move to the proposed site when possible. He acknowledged that this was under a different set of regulations but that there is some relevance as there are similar considerations to be taken into account.
- 4.3.2 Mr Wardle reminded the Committee of the judgment of Mr Justice Langstaff in the case of R (on the application of Community Pharmacies (UK) Limited v The National Health Service Litigation Authority [2016] EWHC 1595 (QB) on the guidance for the identification of patient groups. The Committee need to identify the patient groups in order to determine the question of accessibility, and they should keep focused on this wider objective. Four patient groups have been identified by the Applicant having regard to NHS Resolution's guidance. These are:
- Patients by which surgery they are registered with;
  - Patients accessing services by their starting point;
  - Patients by mode of transport;
  - Patients by services accessed.
- 4.3.3 Mr Wardle noted that none of the interested parties have disputed these groups nor identified any additional groups. He referred to NHS England's decision being based upon reference to a "vulnerable patient group" but they had provided no further detail and no interested party had used that term.
- 4.3.4 Following NHS England's decision, the Applicant looked again at the patient groups identified and, using the pharmacy's medication record system, confirmed where patients lived and which practice they were registered with. A survey was undertaken to provide a double check on these groups and any

attempt to challenge the results by interested parties is an attempt to distract from the objective of assessing accessibility and instead over-focusing on the minutiae of patient groups. Mr Wardle went on to address the patient groups identified.

- 4.3.5 He advised that the pharmacy dispenses around 4-5,000 items per month. However, a significant proportion of these are collection and delivery customers and therefore those patients are not accustomed to accessing the existing premises. The written submissions identify the number of items per GP surgery and according to the survey, only 1 in 10 patients attended the pharmacy immediately following a GP visit.
- 4.3.6 The Applicant has provided two maps that show where patients live. Interested parties have stated that patients are grouped around the existing premises but the maps do not show this as it is more spread out across the wider area. Some patients live to the North of the pharmacy however the residential housing only extends approximately 200 metres further to the North.
- 4.3.7 When considering patients accessing services, these are only small numbers compared to the items dispensed and there are only a couple of patients surveyed who have accessed the pharmacy following a visit to the shops.
- 4.3.8 Mr Wardle noted representations made by interested parties about patients who appear to be over the age of 60 but could not see the relevance of this. He pointed out that there is no evidence of a patient group with mobility problems and referred to the observations of the Committee during the site visit about the lack of disability access. None of the patients surveyed had used public transport. Two-thirds had driven to the pharmacy and one-third had walked.
- 4.3.9 Mr Wardle then addressed the Committee on the accessibility of the proposed premises. He stated that the shortest distance between the two sites is 0.8 miles or 1.1 miles using the longer route. The route between the two sites is residential, with flat terrain, and pavements and lighting in good order. There are no physical barriers such as main roads restricting access, hills or footbridges. There are no mental barriers as both areas cover a similar residential demographic. There is a new shopping parade at the proposed premises and no intimidating areas that may equate to a mental barrier. It is an affluent area with high car ownership and the new premises provides ample disabled parking. He noted and agreed with the Committee's observations about the state of the current site and pointed out that in contrast, the new building is preferable and more highly visible.
- 4.3.10 With regard to patients who access the pharmacy after visiting their GP, the Applicant had provided an indication of the comparative distances from the surgeries. For the majority of surgeries, the proposed premises are nearer. Where they are further away, the additional distance is relatively short and not significant in the context of the total journey.
- 4.3.11 With regard to patients who access the pharmacy from home and who live within the vicinity of the current site, it is only 0.8 miles and there are no physical barriers. 90% of homes own a car so the majority have the ability to drive. The two patients identified in the survey who had used the shops on Cronton Lane had driven there so they could equally drive to the new premises. He noted that in relation to services accessed, there is nothing specific to the question of accessibility that would be affected by the relocation.
- 4.3.12 Mr Wardle then considered method of transport and agreed with the Committee's observations about the walking route. Driving to the new site is accessible with no traffic issues or barriers and the new site is more accessible

by car as it has a large car park with lots of free spaces. There is also a bus route via Queensbury Way if required. He stated that there is no usefully defined patient group in terms of protected characteristics that would assist the Committee on the question of accessibility. He concluded that the patient groups have been sufficiently defined for the purpose of accessibility and invited the Committee to uphold the appeal.

- 4.3.13 Mr Daly asked Mr Wardle whether there are any restrictions to the delivery service and if any of those patients are housebound. Mr Sharief advised that the delivery service is open to everyone and so he did not know if or how many patients are housebound.
- 4.3.14 The Committee members asked a number of questions. Mr Wardle and Mr Sharief advised that the timescales for completion on the new building is early September and that there is extra space for a dental practice on the first floor. The pharmacy delivers to some care homes but none are within walking distance so the staff drive if they need to attend the premises. However, the timescales for deliveries include a late afternoon slot so any urgent requirements could be accommodated. Students may occasionally access the premises but they are not regular users.
- 4.3.15 The Committee asked about the maps that have been provided showing where patients using the pharmacy live. Mr Wardle confirmed that the numbers contained within the circles on the map represent the number of people within that area. He acknowledged that there are a number of circles representing double figures to the North whereas some to the South and West are smaller numbers. However, he does not believe that this necessarily leads to the conclusion that there are higher numbers of patients living within the vicinity of the existing premises. Mr Sharief confirmed that the postcode data is obtained from the pharmacy's medication record system which includes information for patients who use services other than just dispensing. The delivery service is provided by a dedicated driver and back up driver using a vehicle owned by the pharmacy. They operate two delivery schedules a day, the first in the morning and then the second in the afternoon around 3.30 – 4pm to cover any medications due or urgent requests. The delivery service is comprehensive and includes other services such as over the counter medications. The patients would usually pay the driver in cash.
- 4.3.16 Mr Sharief explained that the reason the pharmacy provided a service to a wide variety of GP practices over a large area is because they undertook a marketing campaign when they first opened.
- 4.3.17 With regard to patient walk-ins, Mr Sharief advised that almost everyone that they talked to were regular patients but do not always walk to the pharmacy. The pharmacy frontage was fixed about two years ago but has deteriorated quickly. He acknowledged that the premises are in need of investment but the intention has always been to move to the new location. He explained that the pharmacy has been loss making for a number of years. The patient list at Appleton Surgery has been closed for a few years now so when the pharmacy staff spoke with patients about the move, many of them expressed their intention to register with the surgery when they relocate.
- 4.3.18 In response to questions about the survey, Mr Wardle clarified that there were 5 questions asked; the patient's postcode, their starting point, what service they used, which surgery they were registered with and how they had travelled to the pharmacy that day. The patients were informed that the pharmacy was looking to relocate. Whilst he acknowledged that the survey was undertaken during a period of lockdown, the purpose of the survey was to double check the information that had already been collated. The survey did not highlight anything additional and therefore it is representative.

#### 4.4 Mr Daly (for Appleton Village Pharmacy, AIM RX Ltd)

- 4.4.1 Mr Daly addressed the Committee on representations made on behalf of the Applicant. He disputed that the regulations applicable 10 years ago broadly included similar considerations as there was no requirement then to identify patient groups who would be affected. Furthermore, the pharmacy had not opened at that point so there was no group of patients who were accustomed to accessing the premises. Mr Daly also disputed that no other patient group had been identified. He stated that this would be a very significant change that could impact upon people's lives. Mr Daly stated that the correct approach for this case should be to submit a Regulation 18 application, which the Applicant had also applied for. The Applicant is looking to move to a new location and co-locating with a surgery that only serves 10% of its patients. The key consideration under Regulation 24(1)(a) is accessibility and there is a need to consider the patient's starting point. The Applicant has provided information about the distances between the GP surgeries and the two premises, restricting their consideration to patients travelling from their surgery to the pharmacy. This is despite acknowledging that this is a small percentage of their patients. Mr Daly questioned the explanation provided for recording data for patients other than dispensing and suggested that this would represent a different process from other pharmacies.
- 4.4.2 Mr Daly referred to the maps that have been provided by the Applicant and highlighted that the data shows that the highest number of patients live around the current location. He also highlighted that the map does not identify which patients use the delivery service but it is more likely that this would represent the patients who live furthest away. The survey results show that 84% of the patients have travelled from home and 39% have walked. It is therefore highly likely that the patients who walked, live nearby.
- 4.4.3 Mr Daly went on to highlight a number of arguments made by the Applicant in oral and written submissions that were contradictory. He referred to the flu vaccination data and the significant increase in the numbers at around 160 compared to 45 for the previous season. In total, the applicant has surveyed 32 patients whereas you would expect a representative sample to be at least 200. The Applicant has argued that the observations undertaken on the number of patients entering the existing premises by Appleton Village Pharmacy was not representative because it was in the period just before Christmas. However, further observations have been undertaken on 7 May between 12.30 and 1.30 where 9 patients were seen entering the premises and another observation on 10 May where 6 patients were seen entering the premises.
- 4.4.4 The Applicant has been asked for a copy of the survey but has not provided it and whilst previously advising that patients were not asked about accessibility in the written submissions, have now referred to this question during oral submissions. Mr Daly also questioned the Applicant's statement that none of the patients who use the delivery service are accustomed to accessing the premises and patients can have over the counter medications delivered as well. He suggested that this does not take into account support for self-care, which is an essential service.
- 4.4.5 Mr Daly referred back to the patient groups and stated that, according to the Census data, it is likely that a proportion of patients who access the pharmacy, also live nearby and have protected characteristics such as a disability, mobility issues and/or elderly. The Applicant's contention is that this patient group does not exist. However, according to the Census data, 25% of the population have a little or a lot of mobility issues. According to the survey undertaken by the Applicant, 39% of patients walked to the pharmacy. Therefore, if it is accepted

that this patient group exists, consideration must be given to how a relocation would impact upon their accessibility.

- 4.4.6 Mr Stratton was asked if he had noticed any patient accessing the premises during his periods of observations that had mobility issues and he confirmed no.
- 4.4.7 For the patient group who live near the existing premises and are accustomed to accessing the pharmacy on foot, their options would be to walk to the new premises. This represents over a mile each way walking on Queensbury Way which has no shelter and is exposed to the elements. Mr Daly argued that distance in itself can be both a physical and a mental barrier and if the patient chose to drive rather than walk then this in itself suggests the walk is less accessible. The existing site has regular buses whereas the bus service from the existing to the proposed site operates every 1-2 hours. Whilst the Applicant has argued that 90% of the population owns a car, the survey has identified 39% who walk. He is not arguing that the proposed premises are less accessible for those who drive but this is ignoring 10% who do not own a car. However, if the Applicant is accepting that the patients may choose to drive, they are accepting that the premises are less accessible to those who would otherwise walk. Mr Daly concluded that it is for the Applicant to satisfy the Committee that the relocation is not significantly less accessible for all patient groups. He does not disagree with the points made by Mr Wardle regarding the Judgment but referred the Committee to the Judge's remarks that the original service provision is for all and whilst not needing to overly scrutinise the minutiae of patient groups, once a group has been identified as being relevant, then it needs to be considered.

#### 4.5 Closing submissions for the Applicant

- 4.5.1 Mr Wardle firstly confirmed that he does not disagree with Mr Daly's comments regarding the Judgment and he accepts that if the Committee decides that there is a patient group that finds the proposed premises significantly less accessible then the Applicant's case fails. However, he reiterated that the Judgment also stated that these considerations should not become overly engrossed with small groups where there is no or little information about them. Mr Daly's contention that there is a patient group who live near the current site, walk to the pharmacy and has limited mobility is not supported by their own observations. He concluded that there is no evidence of such a group existing.
- 4.5.2 Mr Wardle also rejected Mr Daly's conclusion that accepting the premise that patients can choose to drive equates to accepting that the new location is less accessible and questioned the basis of this assumption. Patients have a number of options open to them including a taxi service, which, at a cost of £3 in an affluent area, would be a viable alternative. Mr Wardle denied that their arguments have been contradictory and explained that the Applicant has referred to general discussions with patients where they have asked about accessibility as opposed to this being part of the survey. The suggestion that distance can be a physical barrier does not apply here, as the distance is not excessive, the terrain is level, there are no busy roads to cross and the pavements are well maintained.
- 4.5.3 Mr Daly then clarified that the additional patient group that should be considered refers to those patients who live in the area near the existing premises who currently walk there and who may or may not have mobility issues.
- 4.5.4 Mr Wardle concluded by highlighting that the Census data includes the general population and is not specific to patients who access pharmaceutical services at the current site. He repeated that there is no evidence of any patients

accustomed to accessing the pharmacy with mobility issues and for those who live in the area and currently walk they still have the option of walking, driving or taking a taxi. None of these factors equate to the proposed location being significantly less accessible.

## 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 had before it the responses to NHS Resolution’s own statutory consultations.
- 5.3 The Committee noted the comment from Charles Russell Speechlys on behalf of the Applicant in their letter of 25 January 2021 in which they state “please note correct postcode”. The Committee noted that the postcode previously stated “WA8 9BD” had been amended in this letter to be “WA8 9DT”.
- 5.4 The Committee noted that this was the first time that this new postcode had been used and that the application, the decision of NHS England and the appeal lodged had all been based on a postcode of WA8 9BD.
- 5.5 The Committee was mindful that an application made under Regulation 24 cannot be for a best estimate address and that the Regulations require there to be a specific location listed for the proposed premises. Whilst the postcode has changed, the Committee considered the full address as given in the application form for the new site which has been given as “the New Health Centre, Fir Park, Queensbury Way, Widnes”.
- 5.6 The Committee notes that representations from interested parties had been sought by Primary Care Appeals on this matter and that parties shared the view that the change of postcode is an administrative matter by the post office and does not change the location of where the proposed premises are intended to be. This was reaffirmed at the oral hearing.
- 5.7 The Committee was of the view that they do not consider that the postcode change should be interpreted as the original application being a best estimate.
- 5.8 The Committee was of the view that the site of the proposed relocation was to be the New Health Centre, Fir Park, Queensbury Way, Widnes and that this has not changed and remains the proposed location if the relocation is granted.
- 5.9 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (“the Regulations”).
- 5.10 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).*

- 5.11 The Committee noted that the Applicant had not provided any information in the application form on this point but 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 noted that no party, either on appeal or in subsequent representations, had sought to argue that Regulation 31 applied.
- 5.12 Based upon the information before it, the Committee determined that it was not required to refuse the application under the provisions of Regulation 31.
- 5.13 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).*
- 5.14 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 5.14.1 confirm NHS England's decision;
  - 5.14.2 quash NHS England's decision and redetermine the application;
  - 5.14.3 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.

- 5.15 The Committee considered the position in relation to each condition.
- 5.16 In relation to condition (a), the Committee considered the map submitted by NHS England which clearly shows the locations of the existing pharmacies as well as the proposed site and medical practices within the area.
- 5.17 The Committee considered the information before it with regard to the patient groups who are accustomed to accessing pharmaceutical services at the existing premises. It took into account both oral and written submissions made by all parties. 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.
- 5.18 In this case, the Applicant has identified the patient groups as:
- 5.18.1 Patients accessing pharmaceutical services following a visit to their GP Surgery;
  - 5.18.2 Patients accessing pharmaceutical services from home;
  - 5.18.3 Patients accessing pharmaceutical services by mode of transport; and
  - 5.18.4 Patients accessing particular pharmaceutical services.
- 5.19 The Committee noted that some of these groups overlapped. The Committee also noted that parties were generally in agreement of these main patient groups. However, Mr Daly, on behalf of AIM RX Ltd, has identified a subgroup of patients who live in the vicinity of the current premises and who access pharmaceutical services by foot, which will be considered below.
- 5.20 The Committee concludes that the patient groups who are accustomed to accessing pharmaceutical services from the existing premises are those set-out below.
- 5.21 The Committee was mindful of the need to consider any groups with protected characteristics for the purposes of the Equality Act 2010 and the Committee is therefore required to consider the elimination of discrimination and advancement of equality between a particular patient group and persons who do not share a protected characteristic.

*Patients accessing pharmaceutical services after visiting their GP*

- 5.22 The Committee considered the information provided by the Applicant on the origin of the dispensing items by GP surgery. Based upon the information provided by the Applicant, prescriptions originate from 11 named surgeries, plus several others where dispensing numbers equates to less than 2% of the total. Of these 11, only 4 are further away from the proposed premises.
- 5.23 Information provided by the Applicant's survey identified only 3 patients who had come from their GP surgery to the pharmacy. This was not disputed.
- 5.24 For the patient group accessing pharmaceutical services after visiting their GP, the Committee was satisfied that the proposed premises is not significantly less accessible on the basis of distance.

*Patients accessing pharmaceutical services from home*

- 5.25 The Committee next considered the patient group who access pharmaceutical services from their home.
- 5.26 The maps provided to the Committee identified patients by postcode based upon their details on the pharmacy's medication record system. The maps include an indication of the number of people within each postcode area. The Committee noted that the patients are spread over a wide geographical area based around both the existing and proposed premises. However, there is a cluster around the existing premises. The Applicant offers a free comprehensive delivery service for both dispensed and over the counter medicines and it is noted that the information provided does not differentiate between patients accessing the pharmacy in person and those utilising the collection and delivery service.
- 5.27 The Committee noted that the main considerations with regard to patients accessing pharmaceutical services from home related to their method of transport. The Committee concluded that the question of accessibility for this patient group relied upon how they travelled and so went on to consider this factor.

*Patients accessing pharmaceutical services by method of transport*

- 5.28 The Committee considered that this patient group will access the new premises on foot, by car or by public transport and it was necessary to consider the accessibility of the new premises in light of each method of transport for this patient group.
- 5.29 For some patients, where their 'starting point' would be at or around the present site, the Committee noted that the distance between the two sites is approximately 1 mile.
- 5.30 The Committee considered the Applicant's evidence on the method of transport used by patients accessing services at the existing premises. The Committee accepted that for those patients travelling by car, the proposed location is easy to access. The roads are well maintained, there is ample free parking at the proposed location and the traffic is reasonable. The Applicant has provided evidence that 90% of households own a car and it is an affluent area. In contrast, the existing location has limited parking and poorly maintained road surfaces. It is also noted that no parties were disputing that those who travel to the pharmacy by car would find it less accessible.
- 5.31 The Committee was satisfied that for the patient group who travel by car, regardless of their starting point, the proposed location would not be significantly less accessible than the existing premises.
- 5.32 The Committee went on to consider the patient group who travel by public transport. Based upon the information provided to the Committee, none of the patients who are accustomed to accessing the pharmacy at its current location use public transport. The Committee did not observe any buses during its site visit, although parties did state that there are bus routes along Cronton Lane that serve the existing and proposed premises. There are 2 bus stops on Queensbury Way which link the two sites, however the service was limited and one only ran every 1-2 hours. The Committee considered that, based upon the demography of the population, the lack of observed bus traffic and the limited service provided, there is no evidence that patients are using this form of public transport to access the existing premises. However, it is noted that taxi services are available and had been observed at both locations. The Applicant stated that the taxi fare was only £3 and so is a reasonable alternative should it be required which the Committee agreed was a realistic proposition in this affluent area, also having noted the taxis that had been seen during the site visit.
- 5.33 Finally, the Committee considered the patient group travelling by foot. The Committee was mindful that, according to the Applicant, 70% of the dispensed items and some of the over the counter medicines are delivered to patients who are therefore unaffected by the relocation. The survey undertaken by the Applicant has identified 39% of

patients who have attended the pharmacy during that period who had walked. However, in oral submissions, the Applicant also informed the Committee that during discussions with patients, those that walked indicated they would not always do so. The Committee considered that it could give little weight to the results of the survey as the period in which it was undertaken was very short and during a period of lockdown. It provides limited assistance to the Committee in terms of the size of this patient group and is disputed by other parties for similar reasons. However, what is not disputed is the fact that there is a patient group who live near to the existing premises and travel there by foot.

- 5.34 The Committee noted that age and disability were 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 this patient group and persons who do not share a protected characteristic. Mr Wardle does not accept that the patient group who live near the existing premises and are accustomed to accessing it on foot includes those with mobility issues. The Committee considered that although the census data suggests that there is a proportion of the population with mobility issues, there is no evidence provided by any party of this group of people accustomed to accessing services in the current location on foot. In fact, the Committee have observed during the site visit that the existing premises and area surrounding it is not easily accessible for anyone with mobility issues. No one with mobility issues or disabilities was observed by any party or the Committee during site visits. Having weighed all the factors pointing for and against there being a patient group with mobility issues that is accustomed to physically accessing pharmaceutical services at the existing premises on foot, the Committee was not satisfied that such a patient group existed. The Committee therefore did not need to consider whether this particular group would find the new location significantly less accessible.
- 5.35 The Committee then turned to consider the accessibility for the patient group who live in the vicinity of the existing site who currently walk. The Committee accepted that distance could be a barrier to accessibility, both physically and mentally. It also accepted the point made by Mr Daly about the main route via Queensbury Way being particularly exposed, with no available shelter along the route. The return journey from the existing premises to the new site equates to around 2 miles. For some of this patient group, this would be an additional 2 miles depending upon where they lived in respect of the existing premises. For those living towards the South or West of the existing site, the distance would be less. However, having walked from the current location using both routes, the Committee found it to be a very pedestrian friendly area, evidenced as well by the number of people observed walking along Queensbury Way during the visit. The terrain is flat, the pavements are wide and there is plenty of street lighting. Taking these factors into account, whilst the Committee accepted that some patients may find the walk unattractive, particularly during bad weather, it was of the view that the distance in itself was not a sufficient physical or mental barrier to the question of whether the proposed site is significantly less accessible.
- 5.36 The Committee were also mindful of the Applicant's comments about those patients who had walked to the pharmacy who had said that they do not always choose to walk. The Committee were of the view that, taking into account the information before it, it was reasonable to conclude even for those patients who walked to the existing premises and bearing in mind the high level of car ownership, this was not their only option and that there were identifiable overlaps between this group and those who travel by car.
- 5.37 The Committee concluded that, for the patient group living near the vicinity of the existing site who are accustomed to accessing pharmaceutical services on foot, the new site was not significantly less accessible.

*Other groups*

- 5.38 In relation to the student population, the Committee were satisfied that there were insufficient characteristics relating to this group such that they would be defined as a group in their own right. It was also noted that students were visible at both sites, and walking between the two, during the Committee's visit.

*Patients who currently use the collection and delivery service from the current site*

- 5.39 The Committee noted the Applicant's statement that 70% of patients have their prescription items delivered to their home. 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 and noted that some over the counter medicines are also delivered and the Applicant had confirmed that self care advice was available in those circumstances. There is no suggestion that the Applicant is providing the full range of essential services remotely and so patients requiring more than a delivery services are not therefore accustomed to accessing such services remotely.

*Overall assessment*

- 5.40 The Applicant has provided maps identifying where patients lived. There was some dispute as to how these patients have been identified as to whether it included all patients using services or just those who have items dispensed. Irrespective of this, it is not possible to identify from the maps whether those patients access the premises or have their items delivered.
- 5.41 The Applicant is of the view that the maps show a spread of patients between the two sites and the wider area. However, the Committee notes that there is a clear cluster around the existing site to the North and North East. There was no information before the Committee to identify the starting point of patients accessing services at the premises along with their method of transport.
- 5.42 The Committee noted that it had been invited to consider whether the survey was representative of the patients accustomed to accessing services at the current location. This was on the basis that the survey covered only a short period of time during lockdown. The Committee were mindful that there is no requirement for a survey to be undertaken, whether independently verified or not. The Committee noted that the Applicant had not submitted the questions that were asked of patients, although this information was provided during oral submissions, neither had they provided a detailed analysis of the responses. However, they are also not required to do so. Whilst the Committee concluded that the survey was of limited value in terms of numbers, it did not provide any contradictory information with regard to the patient groups that had already been identified.
- 5.43 The Committee accepts the premise that it is likely that the patients who were identified in the survey who walked to the pharmacy are highly likely to live nearby. However, it also notes the Applicant's reference to discussions with other patients who had walked who indicated that they would sometimes drive as well.
- 5.44 It is clear from the limited bus service available that this is not a particularly accessible method of transport but the Committee is satisfied from both observations and representations that buses are not a main method of transport used by the local population. It is also clear that the main method of transport for the local population is by car.
- 5.45 The main issues in dispute on the question of accessibility relate to how mobile the population using pharmaceutical services are and specifically any that walk. The Committee was given limited information on the extent of this and no evidence other than an inference from the census data and a common sense expectation that there

would be a proportion of the population with mobility issues or disabilities. Whilst it noted that NHS England had alluded to a patient group consisting of vulnerable characteristics, they had not elaborated on this and so is of no assistance to the considerations for the Committee. There is no evidence that there is a group with mobility issues who access pharmaceutical services at that site on foot.

- 5.46 Whilst the regulatory test does not require any party to provide information on how patient groups would find the proposed site more accessible, the Committee did observe however that there is good access for those with protected characteristics at the proposed site including wide, flat and well maintained pavements that would facilitate wheelchairs or walking aids, disabled parking and wide entrances.
- 5.47 In the circumstances, the Committee was satisfied that, for patient groups who are accustomed to accessing the present site, the proposed site is not significantly less accessible.
- 5.48 The Committee was therefore of the view that condition (a) is met.

*Regulation 24(1)(b)*

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

*Regulation 24(1)(c)*

- 5.50 The Committee noted the decision of NHS England in respect of condition (c) that the granting of the relocation would not lead to significant detriment to proper planning in respect of the pharmaceutical services in the area. The Committee noted that this had not been disputed by any party either on appeal or in subsequent representations. On the information provided the Committee was of the opinion that the granting of the application would not cause a significant detriment to the proper planning in respect of the provision of pharmaceutical services in the area of HWB1 and therefore concluded that condition (c) is met.

*Regulation 24(1)(d)*

- 5.51 The Committee noted that the applicant had given an undertaking, in their original application form, that the same services will be provided at the proposed site. On the information provided, the Committee determined that condition (d) is met.

*Regulation 24(1)(e)*

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

*Overall*

- 5.53 In those circumstances, given that the Committee had reached a different decision to NHS England on the basis of the information provided and consideration of the patient groups, the Committee determined that the decision of NHS England must be quashed.

- 5.54 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.
- 5.55 The Committee noted that representations on Regulation 24 had already been made by parties to NHS England, and these had been circulated and seen by all parties who made representations on the application, as part of the processing of the application by NHS England. The Committee further noted that when the appeal was circulated representations had been sought from parties on Regulation 24.
- 5.56 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.

***Mrs Lucy Reid***  
**Committee Chair**

**ANNEX A**

REF: SHA/24447

Arena Point  
Merrion Way  
Leeds  
LS2 8PA

**APPEAL AGAINST NORTH WEST (CHESHIRE AND MERSEYSIDE) AREA TEAM, NHS COMMISSIONING BOARD ("NHS ENGLAND") DECISION TO REFUSE AN APPLICATION BY SHARIEF HEALTHCARE LIMITED FOR A RELOCATION THAT DOES NOT RESULT IN A SIGNIFICANT CHANGE TO PHARMACEUTICAL SERVICES PROVISION UNDER REGULATION 24 FROM 12A CRONTON LANE, WIDNES, WA8 5AJ TO THE NEW HEALTH CENTRE, FIR PARK, QUEENSBURY WAY, WIDNES, WA8 9DT**

Tel: 0203 928 2000  
Fax: 0207 821 0029  
Email: [appeals@resolution.nhs.uk](mailto:appeals@resolution.nhs.uk)**1 The Application**

By application dated 10 July 2020, Sharief Healthcare 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 12a Cronton Lane, Widnes, WA8 5AJ to the New Health Centre, Fir Park, Queensbury Way, Widnes, WA8 9BD. In support of the application it was stated:

Applications in relation to premises that are in close proximity to other listed chemist premises:

- 1.1 The application form stated that this section should only be completed if the premises included in section 3 of the application form are adjacent to, or in close proximity to, another pharmacy or dispensing appliance contractor premises. The Applicant stated "not applicable".

Information in support of all no significant change applications:

- 1.2 Upton Rocks Pharmacy is currently located in a very small retail unit [sic] on Cronton Lane having opened approximately 10 years ago. When the NHS Litigation Authority granted the new contract application, this was originally for premises within the Upton Rocks District Centre which is on Queensbury Way in the vicinity of the site proposed in this relocation application.
- 1.3 At the time, the Upton Rocks District Centre had not been built and the Applicant secured premises on Cronton Lane and submitted a change of address application to the local PCT.
- 1.4 That change of address – from the Upton Rocks District Centre to 12A Cronton Lane – was granted by the PCT because the two premises were in the same neighbourhood and the change was minor in nature (which was essentially a question of distance and access).
- 1.5 The Upton Rocks District Centre has now been constructed and occupied by retail units (including a Subway and Morrison Store).
- 1.6 In addition, the Appleton Village Surgery will, next year, relocate to a new Medical Centre which is being built on Queensbury Way. The Applicant is therefore applying to relocate the pharmacy back to the location originally specified in the new contract application and into purpose-built premises.

- 1.7 Not only will the proposed premises be easily and conveniently accessible for the local community, but the premises will be significantly larger than the existing premises and so will provide improved access, both in terms of physical access and also the services that can be provided from the much larger unit.

#### Patient Groups

- 1.8 As NHS England will be aware, “the purpose of identifying the groups is to make a broad assessment of the question of accessibility” (R (on the application of Community Pharmacies (UK) Limited v The National Health Service Litigation Authority [2016] EWHC 1595 (QB)). Having regard to the above, the pharmacy’s patient groups can be defined as follows.

#### GP surgeries

- 1.9 As a starting point, NHS England should be aware that approximately 70% of the prescriptions the Applicant dispenses are for patients who use the pharmacy’s collection and delivery service. In May 2020, out of a total of 820 patients, 580 had their medicines delivered.
- 1.10 These patients are not, therefore “accustomed to accessing pharmaceutical services at the listed premises” and fall outside the scope of regulation 24. In any event, the Applicant will continue to provide delivery services for these patients from the proposed site and therefore there will be no change for patients that receive their prescribed medication in this way.
- 1.11 In relation to the GP surgeries from which prescriptions are received, the Applicant sets out below a table giving this information for the most recent month available (May 2020)

Name & Postcode of GP surgery	Total of Patients	Percentage of the pharmacy’s total prescriptions originating from the surgery
Upton Rocks Primary Care	158	19.27%
Bevan Group Practice	156	19.02%
Appleton Village Surgery	88	10.73%
Peel House Medical Plaza	77	9.39%
Hough Green Health Park	50	6.01%
Castlefields	48	5.85%
Beeches Medical Centre	42	5.12%
Newton Surgery	40	4.88%
Oaks Place Surgery	19	2.32%
Manor Farm Primary Care Resource Centre	24	2.93%
Nutgrove Villa Surgery	9	1.10%
Rainhill Village Surgery	10	1.22%
Parkhouse Medical Centre	9	1.10%

#### Mode of transport

- 1.12 From enquiries made with the Applicant’s patients, 2/3 of patients travel to the pharmacy by car, with the remainder walking. No patients use public transport to access the pharmacy.

#### Services accessed

- 1.13 In terms of services, the majority of patients come into the pharmacy in order to access dispensing services or to purchase an OTC item.

- 1.14 In addition to dispensing services and OTC sales, the pharmacy provides some enhanced and advanced services. Below is a list of those services, and the number of patients, on average, who access each service per month.

Enhanced/Advanced and Other Services provided	Average number of patients who access services per month
Medicine Use Reviews	12
New Medicine Service	1
Community Pharmacy Consultation Service	2
Flu Vaccination Service	45 for the whole season (seasonal months only)
Emergency Hormonal Contraception	1 patient every few months
Blood Pressure Testing	3
Diabetes Testing	1
Minor Ailments	7-8

#### Patient starting point

- 1.15 The majority of patients access the pharmacy from their home, almost of all whom live in the WA8 postcode area. The Applicant has included, at Appendix A, a map which shows where its dispensing patients live.
- 1.16 As can be seen from the maps at Appendix A, the Applicant's patients live throughout the local area, including around both the existing and proposed sites and further afield.
- 1.17 The remaining patients access the pharmacy from their GP surgery

#### Accessibility

- 1.18 For the patient groups defined above, there are many common factors in terms of accessibility. In particular:
- 1.18.1 the existing and proposed premises are located in a relatively affluent area comprising of owner-occupied detached and semi-detached housing where people are generally in good health and highly mobile. According to UK census data, 84% of households are owner-occupied.
- 1.18.2 the route between the two locations is through mainly residential streets, with no busy or main roads to cross and no barriers between the two locations.
- 1.18.3 the terrain is level.
- 1.18.4 Pavements are well-maintained with adequate street lighting.
- 1.18.5 More efficient layout for the pharmacy with a much larger working space for the dispensary and the counter area which means the Applicant can offer more P and GSL options to its patients. The consultation room within the new premises will also be much larger for patients, which will include a treatment bed/couch for patients. The pharmacy will be located within the GP surgery therefore queries will be dealt with more efficiently, and the pharmacy will build an improved working relationship with the surgery, improving patient service.
- 1.19 In terms of the defined patient groups, the Applicant comments on accessibility as follows.

#### GP Surgery

- 1.20 In relation to access from local GP surgeries, the Applicant sets out below a table which shows the distance from local GP surgeries to existing premises compared to the proposed premises:

Name & Postcode of GP surgery	Total of Patients	Percentage of the pharmacy's total prescriptions originating from the surgery	Distance from the surgery to existing premises (miles)	Distanced from surgery to proposed premises (miles)
Upton Rocks Primary Care	158	19.27%	1.8	0.9
Bevan Group Practice	156	19.02%	1.0	1.3
Appleton Village Surgery (new location)	88	10.73%	1.0	0
Peel House Medical Plaza	77	9.39%	1.5	1.7
Hough Green Health Park	50	6.01%	2	1.3
Castlefields	48	5.85%	6.5 (by road – no walking route)	5.9 (by road – no walking route)
Beeches Medical Centre	42	5.12%	2.7	1.8
Newton Surgery	40	4.88%	2.1	2.1
Oaks Place Surgery	19	2.32%	2.1	2.1
Manor Farm Primary Care Resource Centre	24	2.93%	4.4	4.5
Nutgrove Villa Surgery	9	1.10%	4.9	5.0
Rainhill Village Surgery	10	1.22%	2.3	3.1
Parkhouse Medical Centre	9	1.10%	4.2	4.8

#### Mode of transport

- 1.21 The local area has a high level of car ownership, with 87% of homes in the 2011 census having at least one car or van. For those who are travelling by car, the existing premises has very limited parking. The proposed site, by contrast, has a large and free car park which will make travelling to the proposed site by car significantly easier.
- 1.22 For those travelling by foot, the proposed premises will be easily accessible. The terrain is flat, with pavements in good order and adequate street lighting. The route from the existing to the proposed location is straightforward, with no barriers to access at the proposed site compared to the existing site. There are adequate crossing facilities for all roads in the local area. For patients who are on foot, the walk is therefore easy and straightforward to the proposed premises compared to the existing premises no matter from where patients start their journey within the local area.

#### Services Accessed

- 1.23 In terms of service provision, the pharmacy provides a wide range of NHS pharmaceutical services. However, there are no particular factors which apply to patients accessing those particular services which would affect accessibility to the proposed premises compared to the existing premises for the reasons given above.

#### Patient starting point

- 1.24 In respect of patient starting points, the Applicant has already set out above the distance from GP surgeries to the existing premises compared to the proposed premises. It can be seen from the above table that most patients would have either a shorter journey or a similar length of journey to the proposed site compared to the existing site. The maximum additional distance from any of the pharmacy's surgeries to the proposed site compared to the existing site is 0.6 miles, but this is for patients of the Parkhouse Medical Centre for whom the journey is already 4.2 miles and so will either be delivery patients or will have driven.
- 1.25 As can be seen from the above maps of patient homes, whilst some patients would have further to travel from their homes to the proposed premises compared the existing premises, for many patients the difference in journey would be neutral, and for some patients the proposed premises would be closer than the existing premises.
- 1.26 It can therefore be seen that whether patients are travelling by car or on foot, whichever service they are accessing and wherever they started their journey, the proposed premises would not be significantly less accessible for the pharmacy's patient groups compared to the existing premises.
- 1.27 In conclusion, it is therefore clear that, for the patient groups accustomed to accessing pharmaceutical services at the existing premises, the proposed premises would not be significantly less accessible.
- 1.28 Since the proposed premises continue to serve the same local population and are located in a conveniently accessible local position, granting this application would not result in a significant change in arrangements in place for the provision of pharmaceutical services in the health and wellbeing board's area.
- 1.29 The Applicant is not aware of any plans to which significant detriment would be caused by the granting of this application.
- 1.30 The Applicant confirmed that the services be provided at the new premises are 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) by ticking "Yes" on the application form.
- 1.31 In response to "will there be any interruption to service provision" the Applicant ticked "no" on the application form.

## 2 The Decision

NHS England considered and decided to refuse the application. The decision letter dated 29 October 2020 states:

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

Extract from the PSRC decision report of 20 October 2020

- 2.2 The Committee discussed the attached report and determined that:

- 2.3 For criterion (a) based on the information provided, it has determined that the patient groups accustomed to accessing pharmaceutical services in this location would find the new location significantly less accessible therefore Regulation 24 1 (a) is not met.
- 2.4 As such, if the application is approved, NHS committee can be assured that, granting the application would not result in a significant change to the arrangements that are in place for the provision of local pharmaceutical services or of pharmaceutical services other than those provided by a person on a dispensing doctor list— Therefore Regulation 24 1 (b) is met.
- 2.5 If the application is approved, the ability of NHS England thereafter to plan for the provision of services would not be affected in a significant way. It cannot therefore be determined that significant detriment to the proper planning of pharmaceutical services would result from the grant of the application. Therefore Regulation 24 1(c) is met.
- 2.6 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. Therefore Regulation 24 1(d) is met.
- 2.7 The provision of pharmaceutical services will not be interrupted (except for such period as the NHSCB may for good cause allow).
- 2.8 The Applicant has given assurances that there will be no interruption of service. Therefore Regulation 24 1 (e) is met.
- 2.9 There is no requirement to refuse this application under the provision of Regulation 31.
- 2.10 Whilst the Applicant has provided satisfactory information around how they meet all of the required regulations, the Committee is not satisfied that all criteria specified in the regulations, specifically Regulation 24 1 (a), have been met.
- 2.11 The Committee discussed this application at length taking into consideration all aspects of the documentation provided by the Applicant as part of the application and in response to the 45 day consultation responses. The responses from the interested parties provided were discussed and debated at length in context of the application and the response from the Applicant as part of the 14 day recirculation.
- 2.12 The Committee were not satisfied that the Applicant had clearly defined all patient groups currently used to pharmaceutical services from the pharmacy in the current provision and that the comments from the interested parties with regard to potential patient groups with shared protected characteristics were relevant to the consideration of this application. The Applicant has not made comment to any patient groups who may share protected characteristic and as such the Committee determined that they did not have assurance that such groups would not find the propose [sic] location significantly less accessible than the current location.
- 2.13 accessing the pharmacy. [sic] The Committee did acknowledge that the distance between the sites was a mile and the re [sic] did not appear to be aby [sic] significant physical barriers that would make the journey between the sites an access issue for the majority of patients however evidence was lacking for some potentially vulnerable patient groups.
- 2.14 Decision: This application is refused.
- 2.15 Third party rights of appeal: Applicant.

### 3 The Appeal

In a letter dated 25 November 2020 addressed to NHS Resolution, Charles Russell Speechlys on behalf of the Applicant appealed against NHS England's decision. The grounds of appeal are:

3.1 Charles Russell Speechlys act for Sharief Healthcare Limited (the Applicant). On behalf of the Applicant, the Applicant's Representative writes to appeal a decision of NHS England to refuse the Applicant's application for a no significant change relocation in respect of the above premises. The decision was notified to the Applicant by letter dated 29 October 2020.

3.2 The Applicant's grounds of appeal are that NHS England's failed to have proper regard to the information provided in the Applicant's application, made reference to "potential" patient groups in its determination without defining the pharmacy's patient groups and, consequently, misapplied the regulatory test.

Regulation 24(1)(a)

3.3 As NHS Resolution will be aware, this application falls to be determined pursuant to regulation 24 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013. Regulation 24 provides as follows:

3.4 [quoted Regulation 24 in full]

3.5 NHS Resolution has produced guidance on its approach to a Regulation 24 application. The Applicant's Representative believes that the most relevant extracts of the guidance for the purposes of this submission are:

*"Specific patient groups*

*9. Patient groups might be identified in relation to:*

*a. local GP practices*

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

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

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

*e. demography*

*f. care homes; and/or*

*g. areas of deprivation.*

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

*...*

*Considering patient groups together*

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

- 3.6 In relation to defining patient groups, [NHS Resolution] is invited to consider the judgment of Mr Justice Langstaff in the case of R (on the application of Community Pharmacies (UK) Limited v The National Health Service Litigation Authority [2016] EWHC 1595 (QB).
- 3.7 Mr Justice Langstaff provided guidance on the application of Regulation 24 and, in particular, on the interpretation of “patient groups” for the purposes of Regulation 24.
- 3.8 He stated relevantly:

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

*32. If, then, in context, the purpose of grouping is to facilitate a decision as to the accessibility of the new premises, the starting point is considering what makes a relocated pharmacy less easy to go to physically, mentally or socially, and “groups” must have their identities determined with that in mind...*

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

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

...

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

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

#### Background

- 3.10 By way of background, Upton Rocks Pharmacy is currently located in a very small retail unit on Cronton Lane having opened approximately 10 years ago. When the NHS Litigation Authority granted the new contract application, this was originally for premises within the Upton Rocks District Centre in the vicinity of the site proposed in the Applicant's relocation application.
- 3.11 At the time of the original grant, the Upton Rocks District Centre had not been built and the Applicant secured premises on Cronton Lane and submitted a change of address application to the local PCT. That change of address – from the Upton Rocks District Centre to 12A Cronton Lane – was granted by the PCT because the two premises were in the same neighbourhood and the change was minor in nature (which was, essentially, a question of distance and access).
- 3.12 The Upton Rocks District Centre has now been constructed and occupied by retail units, including a Subway, Morrisons store charity shop and off licence. A family pub and restaurant has also been constructed adjacent to the retail parade.
- 3.13 In addition, the Appleton Village Surgery will, next year, relocate to a new medical centre which is being built on Queensbury Way. The Applicant has therefore applied to relocate the pharmacy back to the location originally specified in the new contract application and into purpose-built premises.
- 3.14 The Applicant believes that not only will the proposed premises be easily and conveniently accessible for the pharmacy's current patient groups, but the premises will be significantly larger than the existing premises and so will provide improved access, both in terms of physical access and also the services that can be provided from the much larger unit.

#### Patient groups

- 3.15 The Applicant has used information from a number of sources in order to identify the patient groups that are accustomed to accessing pharmaceutical services at the existing premises.
- 3.16 The pharmacy conducted a survey of its walk-in patients from 9 to 13 November 2020. The survey was carried out by pharmacy staff asking all patients coming into the pharmacy a short questionnaire. The pharmacy has relatively few walk-in patients: during the 5 days of the survey, only 34 patients came into the pharmacy. Of those, 32 completed the survey. The survey results are therefore a representative sample of the pharmacy's walk-in patients.
- 3.17 The Applicant has also obtained published data from the Business Services Authority in relation to the surgeries from which the pharmacy's prescriptions originated in the most recent month published (August 2020), together with the pharmacy's PMR and the Applicant's local knowledge.
- 3.18 Whilst there will inevitably be a significant overlap in any definition of the pharmacy's patient groups, because patients will form part of more than one group, these can be defined as follows:

#### Patients who access pharmaceutical services remotely

- 3.19 Approximately 70% of the pharmacy's patients access services remotely. For those patients, the prescriptions are collected from the patients' GP surgeries or sent electronically, the medicine is assembled in the pharmacy, and the medication is delivered to the patient. Those patients do not access pharmaceutical services at the premises and so can be disregarded in relation to the assessment of regulation 24.

Patients by reference to their GP surgery

- 3.20 Patients who access pharmaceutical services from the existing premises after a visit to their GP will require access to dispensing services. They are unlikely to access other pharmaceutical services at that point or at least, if they do, that will not be their primary purpose for visiting the pharmacy.
- 3.21 The Applicant has obtained details of all prescriptions dispensed by the pharmacy by reference to the GP surgery at which that patient is registered.
- 3.22 In August 2020 (the last month for which such data is publicly available), the pharmacy dispensed 4,382 items.
- 3.23 The prescriptions originated from the following practices (applying a de minimis of 2%):

Name of surgery	Percentage of items (%)
Bevan Group Practice, WA8 6TR	18
Upton Rocks Primary Care, WA8 7NU	16
Appleton Village Surgery, WA8 6DZ	10
Peel House Medical Plaza, WA8 6TN	10
Castlefields Health Centre, WA7 2ST	8
Newtown Surgery/Oaks Place Surgery WA8 7GD	7
The Beeches Medical Centre, WA8 8QS	6
Hough Green Health Park, WA8 4NJ	6
Manor Farm Resource Centre, L63 0UB	5
Cornerways Medical Centre, L63 3TN	2
Cedar Cross Medical Centre, L35 3SX	2

- 3.24 According to the pharmacy's survey, only 3 (9% of the total number surveyed) of the pharmacy's walk-in patients come to the pharmacy immediately after a visit to their GP. One had come from the Bevan Group Practice, one from Peel House and one from Upton Rocks. The remainder access the pharmacy at other times.

Patients who access pharmaceutical services from home

- 3.25 The survey showed that 84% of the pharmacy's walk-in patients had come to the pharmacy from their homes.
- 3.26 In terms of the pharmacy's total dispensing patients (including those who use the collection and delivery service), almost all live in the WA8 postcode as shown on the maps (at Appendix A).

Patients who access pharmaceutical services from elsewhere

- 3.27 Of the remaining 2 patients, both accessed the pharmacy from local shops. Both of those patients had driven to the pharmacy. One of those patients lives 1.9km from the pharmacy and the other lives 1.8km away.

Services accessed

- 3.28 Almost all of the pharmacy's walk-in patients during the survey period came to the pharmacy to collect a prescription. One attended to access the flu vaccination and minor ailments services. Most MURs and the NMS are currently being provided remotely so that few patients are visiting the pharmacy to access those services.

#### Method of transport

- 3.29 According to the survey, all of the patients either walk or drive to the pharmacy, with 61% driving and 39% walking. No patients use public transport to access the pharmacy.

#### Demographic data

- 3.30 The Applicant does not believe that there are any demographic or other factors which would assist [NHS Resolution] in its primary purpose, being to consider the accessibility of the proposed premises. The Applicant asked patients who participated in the survey whether they suffer from any disability that limits their movement. Only one person stated that they did, but that person had sent a carer to collect their medication and usually uses the pharmacy's collection and delivery service.
- 3.31 There is, consequently, no patient group which comprises of those who share a protected characteristic which would be relevant to the question of accessibility.

#### Accessibility to the proposed premises

- 3.32 Having defined above the pharmacy's patient groups, [NHS Resolution] must then consider whether, for those patient groups, the proposed premises would be significantly less accessible. There will, of course, be significant overlaps in relation to accessibility for each patient group and there are some general principles in relation to access which will be applicable to each patient group. Whilst the distance between the existing and proposed premises is a mile, this distance, of itself, does not lead to a conclusion that the proposed premises would be significantly less accessible for the following reasons:

3.32.1 The existing and proposed premises are located in a relatively affluent area comprising of owner-occupied detached and semi-detached housing where people are generally in good health and highly mobile. According to UK census data, 84% of households are owner-occupied.

3.32.2 The route between the two locations is through mainly residential streets, with no busy roads or main roads to cross and no barriers between the two locations.

3.32.3 The terrain is level.

3.32.4 Pavements are well-maintained and in good order, with adequate street lighting.

3.32.5 Car ownership is high, and car parking at the proposed premises is significantly better than at the existing premises.

3.32.6 The proposed pharmacy will have a more efficient layout with a much larger working space for the dispensary and the counter area, which means the Applicant will be able to offer more P and GSL options to its patients. The consultation room at the new premises will also be much larger for patients, which will include a treatment bed/couch.

- 3.33 Taking each identified patient group in turn, the Applicant's Representative comments on accessibility as follows:

Patients who access pharmaceutical services remotely

- 3.34 The pharmacy's patients who access dispensing services remotely do not visit the pharmacy either to hand in a prescription or to receive their medication.
- 3.35 A prescription collection and medication delivery service will continue following the proposed relocation, so that this patient group will be entirely unaffected by the relocation, and will certainly not find the proposed premises to be significantly less accessible.

Patients who access pharmaceutical services after a visit to their GP

- 3.36 For the patient group by reference to their GP surgery, there is no material difference in distance of travel to the proposed premises compared to the existing premises.
- 3.37 The Applicant's Representative has set out in the table below the comparative distances.

Name of Surgery	Distance to existing premises (metres)	Distance to proposed premises (metres)
Bevan Group Practice, WA8 6TR	1,700	1,900
Upton Rocks Primary Care, WA8 7NU	2,900	1,400
Appleton Village Surgery, WA8 6DZ	1,600	0
Peel House Medical Plaza, WA8 6TN	2,500	2,500
Castlefields Health Centre, WA7 2ST	9,800	9,600
Newtown Surgery/Oaks Place Surgery WA8 7GD	3,400	3,200
The Beeches Medical Centre, WA8 8QS	4,400	2,800
Hough Green Health Park, WA8 4NJ	3,200	1,900
Manor Farm Resource Centre, L63 0UB	7,100	7,300
Cornerways Medical Centre, L63 3TN	10,000	10,200
Cedar Cross Medical Centre, L35 3SX	6,500	7,700

- 3.38 At Appendix B is a map which shows the location of the main GP surgeries at which the pharmacy's patients are registered.
- 3.39 For those patients accessing pharmaceutical services from any surgery and by whatever means of transport, the proposed premises would not be significantly less accessible: the great majority of surgeries at which the Applicant's patients are registered are closer to the proposed site than they are the existing site. Where the proposed premises are further away, the maximum additional distance is only 200m, which is insignificant in the context of the overall journey distance.
- 3.40 Of those patients who, during the survey period, had come from their GP practice to the pharmacy, those patients had come from Bevan House (which is only 200m further from the proposed premises than the existing premises), Upton Rocks (which is 1.5km

closer to the proposed premises compared to the existing premises) and Peel House (which is the same distance from the proposed premises as it is from the existing premises).

- 3.41 Perhaps unsurprisingly, all 3 of the patients who had come to the pharmacy directly from their GP surgery had driven and would, consequently, not find the proposed premises significantly less accessible.

#### Patients who access pharmaceutical services from home

- 3.42 The survey conducted by the Applicant indicated that most of the pharmacy's patients accessed the pharmacy from home.
- 3.43 As can be seen from the above maps of patient homes, whilst some patients would have further to travel from their homes to the proposed premises compared to the existing premises, for other patients the difference in journey would be neutral, and for some patients the proposed premises would be closer than the existing premises.
- 3.44 It is also important to bear in mind that none of the pharmacy's walk-in patients stated that they suffered from a disability which limited their movement, and there are high levels of car ownership in the local area.
- 3.45 Given the nature of the local area summarised above the proposed premises would not be significantly less accessible from patient homes compared to the existing premises.

#### Patients who access pharmaceutical services from elsewhere

- 3.46 In relation to the 2 patients who accessed the pharmacy from the local shops, as stated above one of those patients lives 1.9km from the existing premises and the other lives 1.8 km away. Both had driven. The journey distance to the proposed premises would be 2.1km and 550m respectively. It is therefore clear that neither patient would have found the proposed premises to be significantly less accessible compared to the existing premises.

#### Services accessed

- 3.47 The Applicant's Representative has already set out above how, for those patients who access dispensing services, the proposed premises would not be significantly less accessible.
- 3.48 In relation to the patient who had come to the pharmacy for a flu vaccination/minor ailments service, that patient had come from home and had driven so would not have found the proposed premises to be significantly less accessible.
- 3.49 The same considerations will apply to accessibility for patients who access non-dispensing services as are set out above. Irrespective of which service patients access, the proposed premises would not be significantly less accessible.

#### Method of transport

- 3.50 For those patients travelling by foot, the proposed premises would not be significantly less accessible compared to the existing premises for the reasons given above.
- 3.51 For those patients who currently drive, there are parking difficulties at the existing premises. Of the patients who had driven to the pharmacy during the survey period, 70% stated that they had encountered difficulty parking as there is limited off-street parking at the proposed site, and on-street parking is prohibited in the immediate vicinity due to double-yellow lines.

- 3.52 In contrast, at the proposed site there is a large (at least 90 bays), free car park immediately opposite the proposed premises which has parent and child and disabled bays.
- 3.53 For those travelling by car, the proposed premises would therefore be more easily accessible compared to the existing premises.
- 3.54 As stated above, no patients access the pharmacy by public transport, although, for the avoidance of doubt, bus services are available on Queensbury Way, including route 26 which links the existing and proposed locations.

#### Demographic data

- 3.55 The Applicant does not believe that there are any patient groups accustomed to accessing pharmaceutical services from the existing premises that could be defined by reference to demographic characteristics for whom the proposed premises would be significantly less accessible for the reasons given above.

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

- 3.56 In relation to the other matters contained within Regulation 24, granting the application would not result in a significant change to the arrangements that are in place for the provision of pharmaceutical services in the HWB's area, because the move is to premises which are a relatively short distance from the existing premises and the pharmacy will remain in the same local area, serving the same patient groups.
- 3.57 Similarly granting the Applicant's application would not cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the HWB's area. The Applicant is not aware of any plans in relation to the provision of pharmaceutical services in the HWB's area to which significant detriment could be caused.
- 3.58 Finally, the Applicant confirms that the same services will be provided at the proposed premises as are provided at the existing premises, and the provision of services will be uninterrupted (save for any such period as NHS England may, for good cause, allow).
- 3.59 For the reasons given above, on behalf of the Applicant, the Applicant's Representative invites [NHS Resolution] to conclude that this application satisfies the requirements of Regulation 24 and to grant it.

## 4 **Summary of Representations**

This is a summary of representations received on the appeal.

### 4.1 **BOOTS UK LTD**

- 4.1.1 Boots UK Limited wish to make the following comments.
- 4.1.2 Boots acknowledge that the original application to open at Upton Rocks was granted over 10 years ago and that a change of address application was submitted following the initial grant. However, the previous application would have been determined under different regulations and before patients began accessing the pharmacy.
- 4.1.3 To support their appeal, the Applicant carried out a survey of patients visiting the pharmacy in November this year. Even though the survey was carried out over a relatively short period of time, the Applicant states that the results are a representative sample of the pharmacy's walk-in patients. According to this survey 39% of patients walked to the pharmacy.

- 4.1.4 The Applicant goes on to say that for patients travelling by foot the proposed premises would not be significantly less accessible. The route between the two sites is described in the appeal letter as being through mainly residential streets with no busy roads to cross and with level terrain. However, little or no mention is made of the distance from the location of the existing pharmacy to the proposed site, which at approximately a mile and 20 minutes' walk, is not insignificant.
- 4.1.5 Whilst Boots accept the starting point for a patient's journey will not necessarily be the existing pharmacy, the map provided with the original application shows patients living around and to the north of the existing premises. Boots believe it is reasonable to assume that patients living closer to the pharmacy are more likely to be those who currently access the existing pharmacy on foot.
- 4.1.6 For these reasons Boots believe that further information regarding those patients who access the existing pharmacy on foot may be required before NHS Resolution can be satisfied that these patients will not find the proposed site significantly less accessible.
- 4.1.7 Boots have no further comments to make at this time but may wish to make further representations at a later stage and attend any oral hearing that may be held in relation to this application.

#### 4.2 RUSHPORT ADVISORY LLP ON BEHALF OF AIM RX LTD T/A APPLETON VILLAGE PHARMACY

- 4.2.1 Rushport Advisory LLP acts for AIM RX Ltd trading as Appleton Village Pharmacy in the above appeal and have been instructed by Appleton Village Pharmacy to submit this reply to the appeal submitted by Charles Russell Speechly ("CRS") on behalf of Sharief Limited (the Applicant) against the decision of NHS England to refuse the above application.
- 4.2.2 The Applicant has provided some history about applications in the area. However, all these applications were made over 10 years ago and under different Regulations. The NHS no longer considers neighbourhoods as it is clear that whilst a move may be within the same neighbourhood, a proposed move would still leave the pharmacy significantly less accessible for many patients / patient groups even if it is within the same neighbourhood. That is the case here.
- 4.2.3 As the Committee will be aware, when determining this application it must, as part of Regulation 24, consider the patient groups accustomed to accessing pharmaceutical services from the existing site of the pharmacy and then consider whether these groups will find the new site significantly less accessible.
- 4.2.4 The pharmacy dispenses prescriptions from between 40 and 50 different GP practices every month, but now wishes to move to a development where it would no longer be seen as accessible to most of those patients. The Appleton Village Surgery (which the Applicant wishes to relocate with) is not even the largest surgery served by the pharmacy and the April 2020 figures show that both Bevan Group Practice and Upton Rocks Primary Care provided significantly more items to the pharmacy than Appleton Village Surgery. Appleton Village Pharmacy's Representative has looked at the most recent figures for September 2020 and this continues to be the case.
- 4.2.5 The Upton Rocks District Centre and the shopping parade on Cronton Lane (where the pharmacy is now) will both continue to exist and serve its own users. The Applicant has not provided information, with reference to the specific patient groups identified, i.e. where the starting point for any patient's journey

was. The Applicant claims to have provided this by providing a google map with what appears to be patient postcodes plotted, but this is not necessarily the starting point of the journey. It is for the Applicant to explain if this map genuinely shows where patients started their journey or is just a map of postcodes for where patients live. The map is of some assistance as it shows that many more people use the pharmacy who live close to its current site – i.e. they rely on the pharmacy being accessible on foot. However, the Applicant has not even considered the journey between their current and proposed site even though they say that one third of their current patients walk to the pharmacy.

4.2.6 From the Applicant's information, many of those who live around the current pharmacy site will walk to the pharmacy at its current location where it forms part of the local shopping parade. Patients who are elderly or suffer from any form of disability would rely on the pharmacy at its current location. Now the pharmacy proposes to move slightly over 1 mile away from their current parade of shops where it would be inaccessible for the same patients who rely on it at its current location.

4.2.7 The Applicant lists the services they provide and again, these are likely to be used by patients who live locally and close to the pharmacy, but the Applicant has provided no information about this.

4.2.8 The Applicant says;

*The pharmacy conducted a survey of its walk-in patients from 9 to 13 November 2020. The survey was carried out by pharmacy staff asking all patients coming into the pharmacy a short questionnaire. The pharmacy has relatively few walk-in patients: during the 5 days of the survey, only 34 patients came into the pharmacy. Of those, 32 completed the survey. The survey results are therefore a representative sample of the pharmacy's walk-in patients.*

4.2.9 32 patients cannot be considered representative for a pharmacy that dispenses nearly 5,000 prescription items each month. The pharmacy is likely to have over 2,000 patients who use it for dispensing of prescriptions in any month. The pharmacy will also have patients who use it for other services such as accessing support for self-care.

4.2.10 The Applicant has not provided a copy of the survey and it is unclear if patients were asked whether the proposed move would make the pharmacy significantly less accessible for them or not. Appleton Village Pharmacy's Representative asks the Applicant to provide this evidence.

4.2.11 Further, Appleton Village Pharmacy disputes the evidence that has been provided. Appleton Village Pharmacy visited the current pharmacy on two separate days for 1 hour on each occasion. Appleton Village Pharmacy observed the pharmacy from outside and noted the following;

4.2.12 On Tuesday 15 December between 13:30 and 14:30 the pharmacy had 12 separate customers. 9 of these appeared to be over 60. All appeared to arrive on foot i.e. they did not park close to the pharmacy. However Appleton Village Pharmacy cannot rule out the possibility that they parked further away and walked or used the local bus service.

4.2.13 On Thursday 17 December between 10:50 and 11:50 they had 7 customers. 3 of whom appeared to be over 60.

4.2.14 Appleton Village Pharmacy therefore observed more patients in a single hour entering the pharmacy than the Applicant claims to have in a whole day.

- 4.2.15 The Applicant says that “70% of patients access services remotely”. However, this appears to only include delivery of prescriptions as patients would not access purchasing medicines or receiving advice remotely. In any event, it is the patients that do access the pharmacy that must be considered.
- 4.2.16 It is notable that a very low percentage of patients access the pharmacy after visiting their GP practice. Therefore, even if these patients do travel by car, this is a very small number in relation to the overall number that access the pharmacy.
- 4.2.17 The Applicant acknowledges this and states that 84% of patients relevant to the legal test access the pharmacy from home. However, the Applicant has not provided a map of those patients. Instead, they have provided a map for all patients, even the ones that they have already stated would not be relevant to the legal test. It would have been much more helpful if the Applicant had provided a map showing those patients who are relevant to the legal test and we have no way of knowing which ones make up the 70% that are not relevant for the purposes of regulation 24(1)(a).
- 4.2.18 The Applicant then says that 2 patients accessed the pharmacy as part of visiting local shops. However, as the Applicant only surveyed 32 patients, this represents a further 6% of the total patients. On a different day or with a larger sample, this percentage could have been much higher, but even at this level it represents 6% of all patients who combine shopping with accessing the pharmacy and are likely to do this on foot.
- 4.2.19 In terms of “Services Accessed” the Applicant seems to claim that no patients buy medicines following advice from the pharmacist and that this is “representative”. Appleton Village Pharmacy does not accept this as correct. When Appleton Village Pharmacy visited the pharmacy they noted that it stocks a wide range of medicines similar to any high street pharmacy. It is not credible to claim that the pharmacy has these medicines for sale but does not then sell any. The Applicant claims that their survey is “representative” when it clearly is not.
- 4.2.20 The map on page 6 of the appeal letter is a zoomed in version of the map on page 5. It shows a much higher concentration of patients using the pharmacy who live where it currently is located rather than where it is planning to relocate to. It is highly likely that these are also the patients who walk to the pharmacy.
- 4.2.21 Even though there is no other pharmacy between where the pharmacy is currently located and where the Applicant wishes to move to, the map shows that patients are very unlikely to walk from the area around the proposed location to the current location of the pharmacy. This is unsurprising as the journey would be over 1 mile each way and the pharmacy would not be considered accessible on foot.
- 4.2.22 Had the Applicant provided a relevant map it would no doubt have shown that those patients who access the pharmacy from home live close to the existing pharmacy location. Even the map that has been provided appears to confirm this.
- 4.2.23 The Applicant’s Representative then says that;

*Our client does not believe that there are any demographic or other factors which would assist [NHS Resolution] in its primary purpose, being to consider the accessibility of the proposed premises.*

4.2.24 However the demographic data is very relevant to this application as it contradicts the Applicant's claims. If one considers the smallest output area around the current pharmacy site it shows the following statistics;

Health and provision of unpaid Care		E00062526 Output Area	
Persons	Count	%	
All usual residents	356	100	
Day to day activities limited a lot	48	13.5	
Day to day activities limited a little	10	11.2	
Day to day activities not limited	268	75.3	
Day to day activities limited a lot: Age 16 to 64	10	2.8	
Day to day activities limited a little: Age 16 to 64	8	2.2	
Day to day activities not limited: Age 16 to 64	175	48.9	
Very good health	156	43.8	
Good health	117	32.9	
Fair health	66	18.5	
Bad health	15	4.2	
Very bad health	2	0.6	

4.2.25 Those with day to day activities limited a little or a lot (nearly 25% or 1 in 4) are likely to be those who could access the current pharmacy in its existing location on foot or with some mobility aid, but who would find a journey on foot of 1 mile impossible.

4.2.26 22.7% of patients have either fair or bad health. This must be relevant when considering access, but is not considered by the Applicant.

4.2.27 10% of these households also have no access to a car.

4.2.28 Looking at the wider area shows the following statistics

Health and provision of unpaid Care		Halton 001B Lower-layer SOA	
Persons	Count	%	
All usual residents	2,028	100	
Day to day activities limited a lot	176	8.7	
Day to day activities limited a little	212	10.5	
Day to day activities not limited	1,640	80.9	
Day to day activities limited a lot: Age 16 to 64	44	2.2	
Day to day activities limited a little: Age 16 to 64	80	3.9	
Day to day activities not limited: Age 16 to 64	1,134	55.9	
Very good health	1,033	50.9	
Good health	651	32.1	
Fair health	247	12.2	
Bad health	76	3.7	
Very bad health	21	1.0	

4.2.29 Here the number of people whose activities are limited a little or a lot is lower, but still significant (19.2%). In other words, the area where the pharmacy is currently located has a proportionately higher number of people who find their activity limited. Removing the pharmacy from this area will mean it is significantly less accessible for those patients.

4.2.30 In this wider area 15.9% have fair or bad health compared to 22.7% in the immediate area of the current pharmacy and 8.7% have no access to a car.

- 4.2.31 In the section entitled “Accessibility to the proposed premises” the Applicant describes local patients as being “generally in good health and highly mobile” but the demographic data from the census does not show this and it is not clear where the Applicant’s Representative has obtained data from to support this statement which is presented as a fact. For the smallest area 24.7% have day to day activities limited a little or a lot, whereas the English average is 17.6.
- 4.2.32 The percentage of 65 and over in the area around the application site is 35.1% compared to 16.4% for England as an average.
- 4.2.33 People who use a car may not be worried whether the pharmacy moves or not, but the large percentage that walk to the current pharmacy will lose an essential local service if this relocation is permitted. Car ownership is higher than the English average but the Applicant states that “most of the pharmacy’s patients accessed the pharmacy from home.” And these are presumably the patients that walked to the pharmacy.
- 4.2.34 The Applicant then discusses further the two patients from their survey that said they accessed the pharmacy after visiting local shops and says that both of these had driven and lived over 1 mile away. This means the Applicant is claiming that no local people use their pharmacy as part of using the local shops. This would make them unlike any other high street pharmacy in England and shows why a survey of 32 patients is unreliable and has provided inaccurate data which is then relied upon by the Applicant.
- 4.2.35 Under “Method of Transport” the only thing the Applicant says is in relation to patients who currently walk from their homes to the pharmacy is that
- For those patients travelling by foot, the proposed premises would not be significantly less accessible compared to the existing premises for the reasons given above.*
- 4.2.36 However there are no reasons “given above” that deal properly or at all with the patients who live close to the existing pharmacy and access it on foot, ie the majority of the relevant patients, other than claiming that none have limited mobility (which is clearly not correct given the census data) and none use the local shops (which is obviously wrong too as the Applicant’s data shows).
- 4.2.37 Appleton Village Pharmacy’s Representative asks that Primary Care Appeals refuses this application and upholds the decision of NHS England.

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

- 4.3.1 Thank-you for the opportunity to comment on the above appeal. If NHS Resolution decides to convene an oral hearing L Rowland & Co (Retail) Ltd are willing to attend under the provisions of Paragraph 8 of schedule 3 of the regulations.
- 4.3.2 L Rowland & Co (Retail) Ltd have no further comments to make at this stage.
- L Rowland & Co (Retail) Ltd letter to NHS England regarding the application
- 4.3.3 L Rowland & Co (Retail) Ltd note this is an excepted application and should one be required L Rowland & Co (Retail) Ltd would be willing to attend an oral hearing if NHS England deem it necessary.
- 4.3.4 L Rowland & Co (Retail) Ltd wishes to make the following comments:

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

## 5 Observations on representations

### 5.1 CHARLES RUSSELL SPEECHLYS REPRESENTING SHARIEF HEALTHCARE LIMITED (THE APPLICANT)

- 5.1.1 Sharief Healthcare Limited - Application for a no significant change relocation from 12A Cronton Lane, Widnes, WA8 5AJ to the New Health Centre, Fir Park, Queensbury Way, Widnes, WA8 9DT (please note correct postcode).
- 5.1.2 The Applicant's Representative writes further to [NHS Resolution's] letter of 15 January 2021 and in order to respond to correspondence submitted by interested parties in relation to the Applicant's appeal. Taking each letter in turn, the Applicant comments as follows:

#### Rowlands Pharmacy

- 5.1.3 The Applicant has no comments to make on this letter.

#### Boots

- 5.1.4 The Applicant agrees that its original application for inclusion in the pharmaceutical list was granted over 10 years ago and was subject to a different regulatory regime. This information was provided by way of background and context.
- 5.1.5 The distance between the existing and proposed premises given in the letter from Boots is correct, but is an artificial means of assessing whether the proposed premises would be significantly less accessible to the pharmacy's patient groups than the existing premises. For example:
- 5.1.6 Patient groups do not start their journey at the existing premises. Patient group starting points are detailed in the letter of appeal. So, for example, a patient

who starts their journey to the pharmacy from a GP surgery is not going to travel via the existing premises to access the proposed premises.

- 5.1.7 Many patients drive to the pharmacy and there is a bus service running throughout the area (which is not disputed by any interested party).
- 5.1.8 For those who walk, the distance, of itself, is not a barrier to access, particularly having regard to the flat terrain, good paving, adequate street lighting, etc.
- 5.1.9 Whilst it is true that some patients live to the north of the existing premises, many patients also live to the south.
- 5.1.10 By way of information, please see below a google satellite image which shows the housing and open land in the proposed area. [Appendix C]. The existing premises are marked and the proposed premises are close to "The Observatory". It can be seen from this map that there is very little housing to the north of the existing premises as there is open farmland north of the Upton Rocks Pharmacy. Most housing is located between the existing and proposed site.
- 5.1.11 In any event, NHS Resolution must determine this application having regard to "patient groups", rather than the route taken by any individual patient. For the patient group as a whole which comprises of those who access the pharmacy from their homes, the difference in location is neutral or, at least, not significantly less accessible. It is of note that Boots do not suggest any additional, or different, patient groups to those defined by the Applicant.

#### AIM RX [T/A APPLETON VILLAGE PHARMACY]

- 5.1.12 It is not accepted that removal of the reference to "neighbourhoods" in the 2013 Regulations was made for the reasons given by Appleton Village Pharmacy's Representative, but this would appear to be irrelevant to NHS Resolution's determination of this application in any event.
- 5.1.13 The statement by Appleton Village Pharmacy's Representative that the proposed location "would no longer be seen as accessible to most of those patients" is subjective, not backed by any evidence and disputed.
- 5.1.14 Appleton Village Pharmacy's Representative states that both the Bevan Group Practice and Upton Rocks Primary Care provided "significantly" more items to the pharmacy than Appleton Village Surgery. Whilst it is not accepted that these two surgeries provided "significantly" more items (the breakdown of items is provided in the Applicant's letter of appeal), it is of note that:
- 5.1.15 For patients of the Bevan Group Practice, the proposed pharmacy location is only 200m further away than the existing premises, with a journey distance of 1.9km and 1.7km respectively.
- 5.1.16 For patients of the Upton Rocks Pharmacy, the proposed pharmacy location is 1.5km closer than the existing premises, with a journey distance of 1.4km and 2.9km respectively.
- 5.1.17 The distances from each surgery to the existing and proposed premises are included in the letter of appeal, but it is clear that for almost all patients, the proposed pharmacy location is closer to their surgery site compared to the existing premises, or not materially further away. Appleton Group Practice will relocate to its new health centre site (which is the location of the proposed pharmacy) by July 2021 allowing for Covid-19 contingencies.

- 5.1.18 It is of note that Appleton Village Pharmacy's Representative does not suggest that the proposed premises are significantly less accessible from any of the GP surgeries from which prescriptions are currently received.
- 5.1.19 The statement that the Upton Rocks District Centre and the shopping parade will continue to "serve its own users" is meaningless and unsupported by evidence. It appears to suggest that people who use the Upton Rocks District Centre or the shops on Cronton Lane are entirely loyal to those shops and do not use any others in the local or wider area, or do not travel throughout the area as part of their daily lives. This is inherently unlikely to be correct, not least because the parade on Cronton Lane is very small (comprising of only 5 units, one of which is the Applicant's pharmacy), and is not supported by any evidence.
- 5.1.20 It is incorrect to state that the Applicant has not detailed "where the starting point for any patient's journey was". Patients grouped by starting point are specifically referenced and identified in the letter of appeal, with information about those starting points provided, for example in relation to GP surgery and homes (with a map of patient homes provided).
- 5.1.21 For the avoidance of doubt, the maps provided in the letter of appeal are maps showing where the pharmacy's dispensing patients live. Appleton Village Pharmacy's Representative appears to accept that the maps show the patients' starting points, since it states "it shows that many more people use the pharmacy who live closer to the current site." In fact, an objective view of the map shows that patients live throughout the local area.
- 5.1.22 The statement that patients "rely on the pharmacy being accessible by foot" is speculative, made without evidence and is denied. The majority of the pharmacy's patients (almost two thirds) travel to the pharmacy by car as shown by the survey results.
- 5.1.23 It is incorrect to state that "the Applicant has not even considered the journey between their current and proposed site". NHS Resolution is referred to page 7 of the letter of appeal which specifically refers to this.
- 5.1.24 There is no evidence to support the sweeping and generalised statement that "patients who are elderly or who suffer from any form of disability would rely on the pharmacy at its current location", which is denied.
- 5.1.25 Appleton Village Pharmacy's Representative states that the services provided by the pharmacy "are likely to be used by patients who live locally and close to the pharmacy" is not supported by any evidence and is denied. Patients live throughout the local area as shown by the maps included in the letter of appeal. The majority of housing is located to the south of the existing premises, since there is open farmland to the north.
- 5.1.26 The survey results are representative because, as stated in the letter of appeal, the pharmacy has relatively few walk-in patients. Appleton Village Pharmacy's Representative refers to the pharmacy dispensing "nearly 5,000 prescription items per month", but these are items, not prescriptions. As NHS Resolution will be aware, it is common for more than one item to be included in a prescription and for patients to have more than one prescription form.
- 5.1.27 For the last month for which data is available (September 2020), the pharmacy dispensed 2,375 prescription forms. That equates to 548 prescription forms per week, on average. It is important not to confuse prescription forms with individual patients, because some patients may have multiple forms. As stated in the letter of appeal, around 70% of the pharmacy's patients access services remotely. Those patients are more likely to have multiple items and multiple

prescription forms (for example MDS tray patients). So the great majority of those 548 prescription forms are for patients who receive services remotely (and, consequently, fall outside the scope of regulation 24). This leaves very few walk-in patients, hence the number of survey forms completed.

- 5.1.28 In relation to the (unsupported) statement from Appleton Village Pharmacy's Representative regarding two periods of observation of those coming into the pharmacy, the Applicant makes the following comments:
- 5.1.29 The apparent observation outside the pharmacy appears to have taken place in the week before Christmas – the busiest period of the year for any pharmacy. A period of observation during that week would not be representative of the remaining 51 weeks of the year.
- 5.1.30 Not all those who come onto the premises are “customers”. For example, pharmacy staff come and go (including the delivery driver), deliveries are made to the pharmacy, people come into the pharmacy who do not access any pharmaceutical services whatsoever, for example asking for directions or other local information, etc.
- 5.1.31 It is not clear why it is relevant that some people observed were over 60.
- 5.1.32 In terms of people walking to the pharmacy, there is very limited on-street parking immediately outside the premises. Patients who drive to the pharmacy therefore currently have to park on side streets and walk to the pharmacy from there, so it is not surprising that they were observed to walk to the premises. See photograph below. [Appendix C]
- 5.1.33 Whilst Appleton Village Pharmacy's Representative appears to challenge whether the survey was representative of the pharmacy's patient groups, Appleton Village Pharmacy's Representative does not appear to challenge the defined patient groups themselves. As Appleton Village Pharmacy's Representative are keen to point out in respect of Regulation 24 appeals, the number of people in a patient group is not relevant to the determination of a no significant change relocation. It therefore does not matter whether 34 people or 340 people were surveyed, as long as the information obtained by the survey is representative of the pharmacy's patient groups, which it is, and about which there appears to be no dispute.
- 5.1.34 The survey included patients who came in to access non-dispensing services. No patients came into the pharmacy to access support for self-care during the survey period. Patients were not asked about accessibility as NHS Resolution must make a broad assessment of accessibility by reference to patient groups.
- 5.1.35 In relation to the pharmacy's delivery patients, these patients do not come to the pharmacy at all, and certainly do not come to the pharmacy to purchase medicines (not that that purchase of medicinal products is a pharmaceutical service in any event). They certainly can (and do) receive advice remotely.
- 5.1.36 The statement that “on a different day or with a larger sample, this percentage could have been much higher” is purely speculative and, of course, the opposite could also be true. There is no evidence that these patients accessed the pharmacy “on foot”. For the avoidance of doubt, those patients who stated that they had come to the pharmacy from “local shops” had all driven, not walked.
- 5.1.37 Appleton Village Pharmacy's Representative again refers to the purchase of OTC medicines, but this is not an essential pharmaceutical service and is, therefore, irrelevant to the determination of my client's application.

- 5.1.38 The Applicant has already commented, above, on the statement regarding patient homes and method of travel. It is not clear, from the map of patient homes provided with the letter of appeal, how Appleton Village Pharmacy's Representative has concluded that "patients are very unlikely to walk from the area around the proposed location of the pharmacy". The map does not show method of travel.
- 5.1.39 Appleton Village Pharmacy's Representative appears to confuse local demographic data for a very small output area with the pharmacy's patient groups. The two are not the same. It is the demographic data for those patient groups who are accustomed to accessing pharmaceutical services at the existing premises that are relevant. The Applicant, with the knowledge it has of its patient groups, has indicated that there are no patient groups that can usefully be defined by reference to protected characteristics which would assist NHS Resolution with its overall assessment of accessibility.
- 5.1.40 Appleton Village Pharmacy's Representative also makes statements in relation to that demographic data for which there is no evidence and which are denied. For example, Appleton Village Pharmacy's Representative state that "those with day to day activities limited a little or a lot are likely to be those who could access the current pharmacy in its existing location on foot or with some mobility aid, but who would find a journey on foot of 1 mile impossible." In fact, the opposite is more likely to be true of these patients – they are more likely either to be patients who use the pharmacy's comprehensive collection and delivery service or who drive to the pharmacy.
- 5.1.41 Appleton Village Pharmacy's Representative notes that, according to the census data, "22.7% of patients have either fair or bad health" and that "10% of these households also have no access to a car". As NHS Resolution will be aware, the census data does not allow cross-comparison of data fields. It is therefore impossible to say, as Appleton Village Pharmacy's Representative appears to do, whether the 10% of households who have no car are also part of the group with fair or bad health. In any event, it can be seen that car ownership is far higher than the UK average (which was 26% in 2011).
- 5.1.42 Appleton Village Pharmacy's Representative then refers to 2011 census data for the "wider area" (which is not defined). Again Appleton Village Pharmacy's Representative is confusing local population figures with the pharmacy's patient groups.
- 5.1.43 The statement from Appleton Village Pharmacy's Representative that "most of the pharmacy's patients accessed the pharmacy from home. And these are presumably the patients that walked to the pharmacy" is clearly incorrect. As already stated (and repeated in the Appleton Village Pharmacy's Representative letter), 84% of the pharmacy's patients accessed the pharmacy from home, and 2/3 of patients drive to the pharmacy. It is therefore clear from this data that the majority of the pharmacy's patients who start their journey from home also drive.
- 5.1.44 The statement by Appleton Village Pharmacy's Representative that "This would make them unlike any other high street pharmacy in England" is entirely without evidence. Is Appleton Village Pharmacy's Representative really suggesting that there are no other high street pharmacies in England that have very few walk-in patients?
- 5.1.45 In relation to patients accessing the pharmacy by foot, there are reasons given in the letter of appeal why the proposed premises would not be significantly less accessible. For the avoidance of doubt, these include:

- 5.1.46 The route between the two locations is through mainly residential streets, with no busy roads or main roads to cross and no barriers between the two locations.
- 5.1.47 The terrain is level.
- 5.1.48 Pavements are well-maintained and in good order, with adequate street lighting.
- 5.1.49 It is not accepted that “the majority of the relevant patients” “live close to the existing pharmacy” and “access it on foot”. These suggestions by Appleton Village Pharmacy’s Representative are entirely unsupported by any evidence and are contrary to the survey findings.
- 5.1.50 For the reasons given above and those given in the Applicant’s letter of appeal, the Applicant’s Representative invites NHS Resolution to uphold this appeal and to grant the application.

## 6 Additional Comments

NHS Resolution requested clarification from the Applicant regarding the change of postcode.

### 6.1 CHARLES RUSSELL SPEECHLYS LLP REPRESENTING SHARIEF HEALTHCARE LTD (THE APPLICANT)

- 6.1.1 The Applicant’s Representative writes further to [NHS Resolution’s] letter of 29 January 2021 and in order to respond to its query regarding the updated postcode.
- 6.1.2 By way of background, the address of the proposed premises was originally described in the application form as “the New Health Centre, Fir Park, Queensbury Way, Widnes, WA8 9BD. When the application was submitted, construction of the “New Health Centre” had not commenced, and the site was open land. The Applicant’s Representative has set out below a Google image which shows the “WA8 9BD) postcode. [See Photograph Appendix D]
- 6.1.3 NHS Resolution will note that the map also shows “Queensbury Way”. Whilst “Fir Park” is not marked on the above map, this is the road which runs south from Lanark Gardens towards the shopping units and car park. Please see Google streetview image below which is taken looking from Lanark Gardens down Fir Park towards the shops. [See Photograph Appendix D]
- 6.1.4 NHS Resolution will note the area of grassland to the left of the streetview image, which is at the junction of Fir Park and Lanark Gardens. That is the site of the new Health Centre specified in the application form and is shown on the Halton Borough Council plan below. [See Appendix D]
- 6.1.5 On 4 January 2021, the Applicant received the attached email from Halton Borough Council. That email itself included an email from the Royal Mail confirming the postcode for the new Health Centre, which is given as WA8 9DT.
- 6.1.6 For the avoidance of doubt, the updated postcode relates to exactly the same location and the same premises as those specified in the relocation application form and subsequent correspondence.
- 6.1.7 Since the updated postcode was provided for the first time on 4 January 2021, it was only referred to for the first time in the Applicant’s Representative letter of 25 January 2021. However, the Applicant’s Representative trust that NHS

Resolution will be satisfied that no party would have been unsure of the location of the proposed site, nor would representations be any different using the new postcode, nor have the identified premises changed from those previously specified.

6.1.8 [Enclosure – copy emails from Royal Mail confirming postcode allocation]

**7 Response to additional comments**

NHS Resolution invited comments from parties in relation to the additional comments on the postcode.

**7.1 RUSHPORT ADVISORY LLP ON BEHALF OF AIM RX LTD T/A APPLETON VILLAGE PHARMACY**

7.1.1 Rushport act for AIM RX Ltd trading as Appleton Village Pharmacy in the above appeal and have been instructed by Appleton Village Pharmacy to submit this reply to the comments submitted by Charles Russell Speechly (“CRS”) on behalf of Sharief Limited by way of letter dated 2 February 2021 in respect of the address and / or postcode of the application site.

7.1.2 It is common practice for Royal Mail to allocate new postcodes at a late stage in a development and the final two letters of a postcode typically reference particular streets. Where a new street or development is created it is common for this to give rise to a new postcode.

7.1.3 Whilst the Applicant must specify the address of the proposed location in any Regulation 24 application and must provide the specific address, Appleton Village Pharmacy accepts that the address provided was correct at the time of making the application and that the introduction of a new postcode is simply an administrative action undertaken by Royal Mail.

7.1.4 Appleton Village Pharmacy therefore does not seek to argue that the application should be refused on the basis of an incorrect address being provided by the Applicant. Appleton Village Pharmacy does however believe that the application fails the legal test under Regulation 24 and should be refused for the reasons it has already provided.

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