

27 April 2022

REF: SHA/24691

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**APPEAL AGAINST NHS COMMISSIONING BOARD ("NHS ENGLAND") DECISION TO REFUSE AN APPLICATION BY AVALAKE LTD T/A WELLBEING PHARMACY FOR A RELOCATION THAT DOES NOT RESULT IN A SIGNIFICANT CHANGE TO PHARMACEUTICAL SERVICES PROVISION UNDER REGULATION 24 FROM 29 CHESTERFIELD DRIVE, IPSWICH, IP1 6DW TO THE NEW HEALTH CENTRE, OLD NORWICH ROAD, IPSWICH, IP1 6LD**

**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:

Gordons Partnership Solicitors representing Avalake Ltd T/A Wellbeing Pharmacy (the Applicant)  
NHS England

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**Advise / Resolve / Learn**

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## 1 The Application

By application dated 3 September 2021, Avalake Ltd T/A Wellbeing Pharmacy ("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 29 Chesterfield Drive, Ipswich, IP1 6DW to The New Health Centre, Old Norwich Road, Ipswich, IP1 6LD. In support of the application it was stated:

- 1.1 In response to why the application should not be refused pursuant to Regulation 31 the Applicant stated:
- 1.2 N/A. There are no pharmacies or dispensing appliance contractors in close proximity to the premises.
- 1.3 Information in support of all no significant change applications:
- 1.4 There will be no significant change to the patient list as the pharmacy mainly provide services to the patients which are registered to the next door surgery (Chesterfield Drive Surgery). The surgery is also moving to the premises near by the given postcode.
- 1.5 So the Applicant will be serving the same group of patients as serving them now.
- 1.6 As mentioned earlier, the Applicant will be moving to the new premises and the distance between the two sites are less than 1 mile so there will be very less significant effect on the provision of local services to the local community.
- 1.7 This application will not cause any detriment to the planning as the new premises will be in the new building of the surgery which is also relocating in order to merge and develop a new and bigger site for the patients.
- 1.8 In response to the question "Are the services to be provided at the new premises the same as those that have been provided at the current premises...?" the Applicant ticked the box marked 'Yes'.
- 1.9 In response to the question "Will there be any interruption to service provision?" the Applicant ticked the box marked 'No'.

## 2 The Decision

NHS England considered and decided to refuse the application. The decision letter dated 31 January 2022 states:

- 2.1 NHS England have considered the above application and is writing to confirm that it has been refused.
- 2.2 Please see attached report for the reason behind the decision.
- 2.3 [The Applicant has] a right of appeal to the Secretary of State against NHS England's decision. Should you choose to appeal then you should send a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this letter to... [provides address].

#### NHS England Decision Report

- 2.4 The Committee considered this application from [the Applicant] for a relocation within the Suffolk HWB area that does not result in significant change to pharmaceutical services provision and as such is an excepted application under regulation 24(1).
- 2.5 The Committee first considered Regulation 31. [Quoted in full].
- 2.6 For an application to be refused pursuant to Regulation 31, both 31(2)(a) and (b) must apply.
- 2.7 The Committee considered if there is any evidence or information to suggest that the application should be rejected under Regulation 31.
- 2.8 The Committee agreed that this application does meet the tests of Regulation 31. The proposed relocation site of the pharmacy is not at adjacent premises and there are no existing pharmacies operating from the proposed premises and therefore, under this provision, Regulation 31 does not cause the application to be refused.
- 2.9 The Committee moved on to consider the application under Regulation 24.

*Regulation 24(1) (a) for the patient groups that are accustomed to accessing pharmaceutical services at the existing premises, the location of the new premises is not significantly less accessible;*

- 2.10 The Committee is required to determine whether the patient groups, accustomed to accessing pharmaceutical services at the existing site, would continue to routinely access pharmaceutical services from the applicant if the proposed relocation was granted. Further, whether it could be considered that the evidence indicates that the proposed pharmacy contractor would not be significantly less accessible.
- 2.11 The Committee noted the Applicant states the following in their assertions to this part of the Regulations: -
- 2.12 *"The proposed premises will be in the same building as the premises of a provider for primary medical services and it is a surgery. As currently, Wellbeing Pharmacy is serving several patients who are visiting the Chesterfield Drive Surgery and it is very convenient for the patients to use the services of both the GP and pharmacy at the same site. We aim to work in the same manner and adhere to this plan of working together with the surgery.*
- 2.13 *There will be no significant change to the patient list as the pharmacy mainly provide services to the patients which are registered to the next-door surgery (Chesterfield Drive Surgery). The surgery is also moving to the premises near by the given postcode. So, the wellbeing will be serving the same group of patients as serving them now.*
- 2.14 *Wellbeing Pharmacy will be moving to the new premises and the distance between the two sites are less than 1 mile so there will be very less significant effect on the provision of local services to the local community."*

- 2.15 The Committee also noted the following points the Applicant had made in support of their proposed No Significant Change Relocation:
- 2.16 *“Wellbeing Pharmacy provide the services of dispensing prescriptions to the patients of adjacent surgery, Cardinal Medical Centre, which is a recent merger of Chesterfield Drive, Debdon Road and Norwich Road Practices. As mentioned in the application the new proposed site will be within the newly constructed health centre. The new surgery will be serving the same patients who are registered with them now and simultaneously the pharmacy will keep dispensing prescriptions to the same patients being on the same new site.*
- 2.17 *Wellbeing Pharmacy do not provide any other services to the local community in this area apart from dispensing prescriptions. We have a very small range of OTC products, which is mostly to patients who come to collect their prescriptions or come to visit the surgery.*
- 2.18 *Wellbeing will continue to provide the same services as being currently provided in the pharmacy.*
- 2.19 *There may be detriment to proper planning in respect of the provision of pharmaceutical services in the area. If the application does not get approval, then our pharmacy will not be viable to operate as currently our pharmacy is serving patients from the next-door surgery which is relocating.*
- 2.20 *There will be no interruption in the pharmaceutical services during the transition of the relocation.*
- 2.21 *The new proposed site will operate in the same way as previous location and will continue to provide the same services. The new site will have the ample parking spaces for the patients and disabled parking spaces are also allocated at the new site.*
- 2.22 *Please note that Wellbeing Pharmacy will continue to provide the same good quality of services of pharmaceutical services as being provided now from the current branch.”*
- 2.23 The Committee noted that during September 2021, all but 99 items dispensed by the pharmacy were sent via EPS, suggesting that a majority of patients do not attend the surgery first.
- 2.24 The Committee agreed that there is insufficient evidence provided to suggest that patients can get to the proposed site as easily as the current location.
- 2.25 The Committee agreed that the distance between the current and the proposed location is around 1 mile, and according to Google Maps, would take 18 minutes to walk.
- 2.26 The Committee agreed that there was insufficient evidence provided to suggest that patients could get to the proposed site as easily as the current location. The distance between the current and the proposed location is around 1 mile, and according to Google Maps, would take 18 minutes to walk. The Committee were therefore not satisfied that the relocation would not be significantly less accessible.

*Regulation 24(1) (b) in the opinion of the NHSCB, granting the application would not result in a significant change to the arrangements that are in place for the provision of local pharmaceutical services or of pharmaceutical services other than those provided by a person on a dispensing doctor list—*

*(i) in any part of the area of HWB1, or*

*(ii) in a controlled locality in the area of a neighbouring HWB, where that controlled locality is within 1.6 kilometres of the premises to which the applicant is seeking to relocate;*

- 2.27 The Committee considered if there is any evidence or information to suggest that the move would lead to any significant changes in pharmaceutical arrangements.
- 2.28 The Committee agreed the proposed location would not cause significant change in the arrangements for the provision of pharmaceutical services due to the applicant providing the same services.
- 2.29 The Committee agreed that the application meets the tests of Regulation 24(1)(b).

*Regulation 24(1)(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;*

- 2.30 The Committee considered if there is any evidence or information to suggest that the relocation would lead to any significant changes to proper planning in respect of the provision of pharmaceutical arrangements.
- 2.31 The Committee noted that the application form suggests the relocation will not cause any detriment to the planning in respect of the provision of pharmaceutical arrangements, and the applicant's letter contradicts this statement saying,
- 2.32 *"There may be detriment to proper planning in respect of the provision of pharmaceutical services in the area."*
- 2.33 The Committee noted the Applicant goes on to say,
- 2.34 *"If the application does not get approval than our pharmacy will not be viable to operate as currently our pharmacy is serving patients from the next-door surgery which is relocating."*
- 2.35 The Committee agreed that there is insufficient evidence provided to substantiate this claim.
- 2.36 The Committee however agreed that if the application was granted, and the pharmacy was to relocate, the ability of NHS England and NHS Improvement to plan for the provision of services may not be significantly affected.
- 2.37 The Committee therefore concluded that the proposal would not cause significant detriment to the proper planning of pharmaceutical services.

*Regulation 24(1) (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*

- 2.38 The Committee noted this has been assured by the Applicant. The Committee had no reasons to doubt this.

*Regulation 24(1) (e) the provision of pharmaceutical services will not be interrupted (except for such period as the NHSCB may for good cause allow).*

- 2.39 The Committee noted this has been assured by the Applicant. The Committee had no reasons to doubt this.
- 2.40 There were third party representation responses received for this application from Morrisons Supermarkets PLC, Suffolk County Council (HWB) and Suffolk LPC.
- 2.41 The Committee noted all representations did not contain cause for objection, and mainly asked NHS England and NHS Improvement to consider the appropriate regulations.

## Decision

- 2.42 The Committee refused the application for the following reason:
- 2.43 The Committee agreed that there was insufficient evidence provided to suggest that patients could get to the proposed site as easily as the current location. The distance between the current and the proposed location is around 1 mile, and according to Google Maps, would take 18 minutes to walk. The Committee were therefore not satisfied that the relocation would not be significantly less accessible.
- 2.44 The Committee agreed that the Applicant is given the right of appeal.

## 3 The Appeal

In a letter dated 1 March 2022 addressed to NHS Resolution, Avalake Ltd T/A Wellbeing Pharmacy (the Applicant) represented by Gordons Partnership Solicitors appealed against NHS England's decision. The grounds of appeal are:

- 3.1 [The Applicant's Representative is] instructed by the Applicant to appeal against the refusal of its application for a relocation from 29 Chesterfield Drive, Ipswich, IP1 6DW to the New Health Centre, Old Norwich Road, Ipswich, IP1 6LD. The application is made under Regulation 24 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations").
- 3.2 The Committee convened by NHS England refused the application for the following reason:
- 3.3 "The Committee agreed that there was insufficient evidence provided to suggest that patients could get to the proposed site as easily as the current location. The distance between the current and the proposed location is around 1 mile, and according to Google Maps, would take 18 minutes to walk. The Committee were therefore not satisfied that the relocation would not be significantly less accessible."
- 3.4 The Committee also found that:
- 3.4.1 The proposed relocation site of the pharmacy "was not at adjacent premises and there were no existing pharmacies operating from the proposed premises and therefore Regulation 31 does not cause the application to be refused".
- 3.4.2 Pursuant to Regulation 24(1)(d) the services the application Applicant undertakes to provide at the new premises are the same as the services the applicant has been providing at the existing premises.
- 3.4.3 Pursuant to Regulation 24 (1) (e) the provision of pharmaceutical services will not be interrupted.
- 3.5 The Applicant makes no submissions pursuant to Regulation 24(1)(b) and (c) in relation to significant change to the arrangements that are in place for the provision of pharmaceutical services or significant detriment to proper planning in respect of the provision of pharmaceutical services.
- 3.6 Accordingly, the above matters are not addressed in this appeal.
- 3.7 In relation to Regulation 24(1)(a), it is the Applicant's case that NHS England misdirected itself in concluding that the test in regulation 24(1)(a) was not satisfied. The Applicant's case is that for the patient groups accustomed to accessing pharmaceutical services at the existing premises, the location of the new premises is not significantly less accessible.

- 3.8 The grounds for this appeal are set out below. The Applicant's Representative should be grateful if the Pharmacy Appeals Committee would have regards to the fact that although the distance between the two premises is moderate rather than short, this application for a relocation is distinguished by the fact that the pharmacy will be moving to be adjacent to the relocating surgery which is the main source of its prescriptions. The pharmacy works in close co-operation with the surgery. The distance between the two sites is 0.8 miles which according to Google maps takes 16 minutes to walk.
- 3.9 The route from the existing premises to the proposed premises is straightforward.
- 3.10 [See copy of map provided]
- 3.11 A pedestrian will travel along level, well paved roads with street lighting. The route indicated blue above has a tarmacked pedestrian cut-through and is a route predominately along a residential street. The crossing over Norwich Road is pedestrian controlled. The site is not yet built so the route into the health centre is not yet identified but it will be laid out with access that will assist those with a disability.
- 3.12 The new site is particularly convenient for those using public transport as there is a bus stop adjacent to the site.
- 3.13 As can be seen from the map below, the pharmacy is moving within an area confined by two railway lines to the south and southwest, and to the southeast. There is also a major road to the west but movement within the area of the relocation is not limited by any geographic boundaries.
- 3.14 [See copy of map provided]

#### Patient groups

- 3.15 The Applicant has considered the effect on patient groups that are accustomed to accessing pharmaceutical services at the existing premises.
- 3.16 Patients receiving prescriptions from the Cardinal Medical Practice.
- 3.16.1 The biggest group of patients are those who receive prescriptions from the Cardinal Medical Practice. 94.7% of the prescriptions dispensed at the pharmacy are from the Cardinal Medical Practice. This is a merged group which currently has locations at Chesterfield Drive, (which is the closest surgery to the pharmacy), Debden Road and Norwich Road. Cardinal Medical Practice is planning to move to a new site which will house all three practices and already has approval to do so.
- 3.16.2 The group of patients that have prescriptions prescribed by the Cardinal Medical Practice can be further subdivided into those who have their prescriptions delivered to them and those who attend the pharmacy to collect prescription.
- 3.16.3 The group of patients whose prescriptions are delivered overlap with group 2 below and the issues are discussed below. Of the patients who visit the pharmacy, the majority either walk or drive to collect their prescription.
- 3.16.3.1 For those that walk, the relocation will generally not be a significant change. The pharmacy is currently immediately adjacent to the surgery and will be in the same position in the new location. The route between the two sites is set out above. (See below also at patient groups 4 and 5 for a discussion of the impact on patients who visit the pharmacy.)

3.16.3.2 For those who drive, parking will be available at the new site. By far the most popular transport option to the pharmacy is by car. Questionnaires were offered to patients between 15 February and 24 February about their transport to the pharmacy. These were available to all patients visiting the pharmacy and a copy of the questionnaire used is attached. The results are displayed in the attached spreadsheet. It can be seen that of the 19 questionnaires completed 13 of the respondents drove to the pharmacy.

3.16.3.3 Public transport. It is not the Applicant's experience that many of the patients visiting the pharmacy use public transport as the pharmacy is not on a bus route at its current location. The proposed location has a bus stop immediately adjacent to it, so the new location is likely to be more convenient for those using public transport. Buses 9 and 10 which run around the existing site and up to the proposed site run every 10 minutes. Please see the attached bus route map.

### 3.17 Delivery group

3.17.1 The second biggest patient group for the Applicant are patients who have their prescriptions either collected from the relevant surgery or have electronic prescriptions, and the prescriptions are dispensed in the pharmacy and then delivered to the patient. There were approximately 1300 deliveries for January 2022 which amounts to 50 - 55 deliveries per day. It is estimated that between 25 to 30% of prescription are delivered. For these patients, there will be no change to the service that they receive. This is for two reasons; one is that the patients already receive all essential services from the pharmacy remotely and secondly, patients to whom the pharmacy delivers, are largely those who live further away from the pharmacy and the move will be an insignificant part of their total journey should they wish to visit the pharmacy for any reason in the future.

### 3.18 Other surgeries

3.18.1 No other surgery provides more than 1.2% of the prescriptions dispensed by the pharmacy.

3.18.2 Please see attached chart. (When viewing the chart it should be noted that Chesterfield Drive, Norwich Rd and Deben Road surgeries merged in July 2021. When the contracts were merged, they were merged into the Deben road contract and so all prescriptions from that date appear to have been generated by Deben Road although they may have been generated from Chesterfield Drive. The three items listed for Chesterfield Drive appear to be an anomaly.)

### 3.19 Patients visiting the pharmacy from their homes

3.19.1 This group of patients will overlap with patients registered at surgeries. Some patients, for example, those collecting repeat prescriptions, will travel from their home directly to the pharmacy.

3.19.2 A screen shot of the home address of patients who have had prescriptions dispensed by the pharmacy is attached. It can be seen for many of the patients the new location of the pharmacy is either more accessible or neutral. This includes patients who already live to the north of the pharmacy and patients who live at a distance from the pharmacy where they already drive or use public transport. There will be a small number who live close to the existing location of the pharmacy, and it is accepted that their journey time may be slightly longer, but it is the Applicant's case that this is not a significant proportion of the overall patient population.

- 3.19.3 Of the individuals who responded to questionnaires, more commented about the need to collocate the pharmacy with the surgery than any difficulty with accessibility. One patient commented on their need to be able to walk to the pharmacy but this individual lives at a location that is closer to the proposed site than the existing site.
- 3.20 Patient groups attending the pharmacy while involved in day to day living activities such as shopping.
- 3.20.1 The pharmacy will be moving closer to the Asda supermarket where many of the local population will go to do a weekly shop. There is also a Lidl supermarket at Shakespeare Rd and Highfield Rd which is equidistant between the two sites. There are no shopping outlets close to the existing location of the pharmacy. It can be seen from the survey referred to above that all the respondents who went to the pharmacy whilst shopping did so by car. For this population therefore the relocation of the pharmacy will not be significantly less accessible and in fact, should be more accessible because of the availability of parking and the proximity of retail outlets.
- 3.21 Patient groups who are using essential services other than dispensing prescriptions.
- 3.21.1 The pharmacy sees very few patients visiting the pharmacy for services other than collecting dispensed medication. As mentioned above the pharmacy conducted a small survey between 15 February and 24 February. Of the 19 questionnaires completed only 2 patients were attending the pharmacy without having a prescription to collect. The regular responsible pharmacist considered that this would accord with his estimate that about 90% of patients will attend to pick up dispensed medication. For this reason, the pharmacy has only a small range of OTC products.
- 3.22 The pharmacy has no substance misuse patients.
- 3.23 In summary:
- 3.24 The proposed relocation is to a new site where both the medical centre and the pharmacy will occupy purpose-built premises. The location has the benefit of a long lease, and it is envisioned that a move of both the medical practice and the pharmacy will provide exemplary primary care services including pharmaceutical services for many years to come. Future plans by the surgery include out of hours provision which will make it particularly important that the pharmacy remains co-located with the surgery.
- 3.25 In all the circumstances, it appears the pharmacy will not be less accessible for the significant majority of the patients that use it. The Applicant's Representative ask the Pharmacy Appeals Committee to allow the Applicant's appeal and grant the application to relocate to the site on Old Norwich Road.
- 3.26 [Supporting information available for Committee – Appendix A]

#### 4 **Summary of Representations**

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

#### 5 **Consideration**

- 5.1 The Pharmacy Appeals Committee ("Committee") appointed by NHS Resolution had before it the papers considered by NHS England, 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 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.
- 5.4 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations").
- 5.5 The Committee first considered Regulation 31 of the Regulations which states:
- (1) A routine or excepted application, other than a consolidation application, must be refused where paragraph (2) applies.*
- (2) This paragraph applies where -*
- (a) a person on the pharmaceutical list (which may or may not be the applicant) is providing or has undertaken to provide pharmaceutical services ("the existing services") from -*
- (i) the premises to which the application relates, or*
- (ii) adjacent premises; and*
- (b) the NHSCB is satisfied that it is reasonable to treat the services that the applicant proposes to provide as part of the same service as the existing services (and so the premises to which the application relates and the existing listed chemist premises should be treated as the same site).*
- 5.6 The Committee noted that the Applicant had stated "*there are no pharmacies or dispensing appliance contractors in close proximity to the premises*" and that NHS England, in its decision had determined that it was not required to refuse the application under the provisions of Regulation 31. In the absence of any dispute from other parties on the matter, the Committee was satisfied that it was not required to refuse the application under the provisions of Regulation 31.
- 5.7 The Committee had regard to Regulation 24(1) which requires the following five conditions to be met:
- (a) for the patient groups that are accustomed to accessing pharmaceutical services at the existing premises, the location of the new premises is not significantly less accessible;*
- (b) in the opinion of the NHSCB, granting the application would not result in a significant change to the arrangements that are in place for the provision of local pharmaceutical services or of pharmaceutical services other than those provided by a person on a dispensing doctor list—*
- (i) in any part of the area of HWB1, or*
- (ii) in a controlled locality of a neighbouring HWB, where that controlled locality is within 1.6 kilometres of the premises to which the applicant is seeking to relocate;*
- (c) the NHSCB is not of the opinion that granting the application would cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area of HWB1;*
- (d) the services the applicant undertakes to provide at the new premises are the same as the services the applicant has been providing at the existing premises*

*(whether or not, in the case of enhanced services, the NHSCB chooses to commission them); and*

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

- 5.8 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 5.8.1 confirm NHS England's decision;
  - 5.8.2 quash NHS England's decision and redetermine the application;
  - 5.8.3 quash NHS England's decision and, if it considers that there should be a further notification to the parties to make representations, remit the matter to NHS England.
- 5.9 The Committee considered the position in relation to each condition.
- 5.10 In relation to condition (a), the Committee considered the map submitted by NHS England which clearly show the locations of the existing pharmacies as well as the proposed site and medical practices within the area.
- 5.11 The Committee considered the information before it with regard to the patient groups who are accustomed to accessing pharmaceutical services at the existing premises. The Committee considers that it must seek to identify the patient groups who would potentially be affected by the relocation based upon the information provided by the parties. This information is most commonly going to be provided by the Applicant but others may also be able to contribute to the information on which the Committee will proceed to determination.
- 5.12 In this case, the Applicant has identified the patient groups as:
- 5.12.1 Patients receiving prescriptions from the Cardinal Medical Practice;
  - 5.12.2 Delivery group;
  - 5.12.3 Other surgeries;
  - 5.12.4 Patients visiting the pharmacy from their homes;
  - 5.12.5 Patient groups attending the pharmacy while involved in day to day living activities such as shopping; and
  - 5.12.6 Patient groups who are using essential services other than dispensing prescriptions.
- 5.13 The Committee considered whether the information provided showed that there were patients accustomed to accessing pharmaceutical services at the existing premises for whom the new premises would be less accessible because of reasons related to a protected characteristic under the Equality Act 2010 (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation), The Committee identified that patients with protected characteristics may be accustomed to accessing pharmaceutical services at the existing site. Therefore in considering condition (a), the Committee took into account these patients and had regard to the need to eliminate discrimination and advance equality of opportunity and foster good relations between these patients and those who do not share their protected characteristic(s).

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

*Patients receiving prescriptions from the Cardinal Medical Practice / following a visit to the Cardinal Medical Practice prior to visiting the pharmacy*

- 5.15 The Committee noted that the Applicant is proposing to move to premises at the new health centre which is where the Cardinal Medical Practice also intends to relocate.
- 5.16 The Committee is of the view that if the Cardinal Medical Practice moves to the proposed site, then the Committee was satisfied that the proposed premises would not be significantly less accessible to the patient group who accesses services after a visit to this GP surgery, as the proposed premises are on the same site as the health centre. However, currently the Cardinal Medical Practice is located on three sites. The Committee has not been provided with the date when the Cardinal Medical Practice will relocate so there is a possibility that the pharmacy could move to the proposed site before the Medical Practice and therefore the Committee is of the view that it needs to consider access for patients who visit the pharmacy following a visit to the Cardinal Medical Practice based on the current location of the GP practices and the proposed site of the pharmacy.
- 5.17 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.
- 5.18 The Applicant has stated *"The route from the existing premises to the proposed premises is straightforward."*
- 5.19 The Committee noted the distance between the existing and proposed sites is described by the Applicant as 0.8 mile and by NHS England as 1 mile. The Committee is mindful that distance alone would not necessarily make the proposed site significantly less accessible and other factors would need to be taken into consideration such as using private or public transportation for those who did not wish to access pharmaceutical services on foot.
- 5.20 For those on foot, the Applicant states: *"a pedestrian will travel along level, well paved roads with street lighting. The route indicated blue above has a tarmacked pedestrian cut-through and is a route predominately along a residential street. The crossing over Norwich Road is pedestrian controlled. The site is not yet built so the route into the health centre is not yet identified but it will be laid out with access that will assist those with a disability."* The Committee noted that the Applicant has provided a map showing the most direct route between the proposed premises and where the Cardinal Medical Practice is currently based at Chesterfield Drive. For those patients coming from Deben Road Surgery and Norwich Road Surgery, they would continue along Norwich Road.
- 5.21 For those using car or private transportation, the Applicant has stated that *"By far the most popular transport option to the pharmacy is by car."* The Committee was of the view that no information has been provided to indicate that patients are not able to access the proposed premises from the current premises if using a car.
- 5.22 For those using public transportation, the Applicant has stated *"Buses 9 and 10 which run around the existing site and up to the proposed site run every 10 minutes."* The Applicant has provided a map of the bus routes which show the bus routes in the area, including between the proposed premises and current premises.
- 5.23 The Committee noted that parties have not disputed the information provided by the Applicant in its appeal. In considering all the points above, the Committee was satisfied that for those patients who would be accustomed to accessing pharmaceutical services at the proposed premises after attending Cardinal Medical Practice based at its three

sites, regardless of how they travel from the proposed premises, the location of the new premises is not significantly less accessible.

#### *Delivery Group*

- 5.24 The Committee noted the Applicant's statement that "*The second biggest patient group for the Applicant are patients who have their prescriptions either collected from relevant surgery or have electronic prescriptions, and the prescriptions are dispensed in the pharmacy and then delivered to the patient.*" 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.

#### *Other Surgeries*

- 5.25 The Applicant, in its appeal states: "*No other surgery provides more than 1.2% of the prescriptions dispensed by the pharmacy.*" The Applicant also provided a table showing the source of prescriptions which encompass 20 GP surgeries in total.
- 5.26 The Committee was mindful of its consideration above at paragraph 5.19 and in relation to public transport at paragraph 5.22 as well as the Applicant's comments in relation to access on foot and the number of patients that use cars referred to at paragraph 5.20 and 5.21 respectively.
- 5.27 The Committee noted that parties have not disputed the information provided by the Applicant in its appeal. In considering all the points above, the Committee was satisfied that, for the patient group that would be accustomed to accessing pharmaceutical services at the proposed premises after attending other surgeries in the area, regardless of how they travel, the location of the new premises is not significantly less accessible.

#### *Patients visiting the pharmacy from their homes*

- 5.28 The Applicant in its appeal provided a map showing the home address of patients who have had prescriptions dispensed by the pharmacy. The Applicant states "*It can be seen for many of the patients the new location of the pharmacy is either more accessible or neutral. This includes patients who already live to the north of the pharmacy and patients who live at a distance from the pharmacy where they already drive or use public transport. There will be a small number who live close to the existing location of the pharmacy, and it is accepted that their journey time may be slightly longer, but it is the Applicant's case that this is not a significant proportion of the overall patient population.*"
- 5.29 The Committee was mindful of its consideration above at paragraph 5.19 and in relation to public transport at paragraph 5.22 as well as the Applicant's comments in relation to access on foot and the number of patients that use cars referred to at paragraph 5.20 and 5.21 respectively.
- 5.30 The Committee noted that parties have not disputed the information provided by the Applicant in its appeal. In considering all the points above, the Committee was satisfied that for the patient group that would be accustomed to accessing pharmaceutical services at the proposed premises from a starting point of their own homes, regardless of how they travel, the location of the new premises is not significantly less accessible.

#### *Patient groups attending the pharmacy while involved in day to day living activities such as shopping*

- 5.31 The Applicant in its appeal states "*The pharmacy will be moving closer to the Asda supermarket where many of the local population will go to do a weekly shop. There is*

*also a Lidl supermarket is at Shakespeare Rd and Highfield Rd which is equidistant between the two sites. There are no shopping outlets close to the existing location of the pharmacy.”*

- 5.32 The Committee was mindful of its consideration above at paragraph 5.19 and in relation to public transport at paragraph 5.22 as well as the Applicant’s comments in relation to access on foot and the number of patients that use cars referred to at paragraph 5.20 and 5.21 respectively.
- 5.33 The Committee noted that parties have not disputed the information provided by the Applicant in its appeal. In considering all the points above, the Committee was satisfied that for those patients who would be accustomed to accessing pharmaceutical services at the proposed premises while involved in day to day living activities such as shopping, regardless of how they travel, the location of the new premises is not significantly less accessible.

*Patient groups who are using essential services other than dispensing prescriptions*

- 5.34 The Applicant in its appeal states “The pharmacy sees very few patients visiting the pharmacy for services other than collecting dispensed medication. .... *The regular responsible pharmacist considered that this would accord with his estimate that about 90% of patients will attend to pick up dispensed medication.”*
- 5.35 The Committee was mindful of its consideration above at paragraph 5.19 and in relation to public transport at paragraph 5.22 as well as the Applicant’s comments in relation to access on foot and the number of patients that use cars referred to at paragraph 5.20 and 5.21 respectively.
- 5.36 The Committee noted that parties have not disputed the information provided by the Applicant in its appeal. In considering all the points above, the Committee was satisfied that for those patients who would be accustomed to accessing pharmaceutical services at the proposed premises who are using essential services other than dispensing prescriptions, regardless of how they travel, the location of the new premises is not significantly less accessible.

*Overall assessment*

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

*Regulation 24(1)(b)*

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

*Regulation 24(1)(c)*

- 5.39 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 NHS England’s reference to the Applicant’s comments that “*If the application does not get approval then our pharmacy will not be viable to operate as currently our pharmacy is serving patients from the next-door surgery which is relocating*”. The Committee noted that Regulation 24(1)(c) relates to significant detriment to proper planning as a result

of granting the application, not as a result of refusing the application. The Committee therefore disregarded the comments from the Applicant in this regard. The Committee noted that NHS England's position that granting of the relocation would not lead to significant detriment to proper planning in respect of the pharmaceutical services in the area 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)*

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

*Regulation 24(1)(e)*

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

*Overall*

5.42 In those circumstances as the Committee has been provided with additional information which had not been made available when NHS England made its initial decision, the Committee determined that the decision of NHS England must be quashed.

5.43 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.

5.44 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.

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

**6 Decision**

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

6.2 The Committee quashes the decision of NHS England and redetermines the application.

6.3 The Committee has determined that conditions (a), (b), (c), (d) and (e) are satisfied.

6.4 The application is granted.

**Case Manager  
Primary Care Appeals**