

5 May 2022

REF: SHA/24655

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**APPEAL AGAINST NHS ENGLAND – SOUTH EAST AREA TEAM, NHS COMMISSIONING BOARD ("NHS ENGLAND") DECISION TO REFUSE AN APPLICATION BY WAREMOSS LTD FOR A RELOCATION THAT DOES NOT RESULT IN A SIGNIFICANT CHANGE TO PHARMACEUTICAL SERVICES PROVISION UNDER REGULATION 24 FROM UCKFIELD COMMUNITY HOSPITAL, FRAMFIELD ROAD, UCKFIELD TO 152 – 154 HIGH STREET, UCKFIELD, EAST SUSSEX, TN22 1AT**

## 1 Outcome

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

A copy of this decision is being sent to:

Kamsons Pharmacy  
Boots UK Ltd  
Community Pharmacy Surrey & Sussex  
PCSE on behalf of NHS England

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### Advise / Resolve / Learn

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

2 The Committee members, consisting of Mrs Hewitt as Chair and Mr Smith and Mrs Griffith, each declared they had no conflicts of interest. The Chairman reminded those in attendance of the Virtual Appeal Hearings Protocol for Hearing Management which had been previously circulated, and asked them to acknowledge their understanding of it, which they did. She also confirmed that the relevant regulation to this appeal was Regulation 24 (1)(a).

3 **Site Visit:**

Site visits were conducted by Committee members individually on 10 March and 16 March 2022.

Site Visit Re. SHA 24655. Uckfield. 10 March 2022. Panel Member 1

3.1 Approached Uckfield from M23. A22 then B2102 –Bell Farm Road [some maps call this Bell Lane]

3.2 Parked in the free Tesco Car Park and went into the store. The Pharmacy was signposted to the left. It is adjacent to the entrance and does not require customers for the pharmacy to go into the main store. Tesco shoppers leaving the store would, however, pass the pharmacy after the checkouts. The pharmacy was counter service only. There was a small display of skin care products but otherwise medicinal products and dispensed prescriptions are provided by the staff. There are four till points and at the time of my visit [mid-day] there was a very small queue which was served quickly. The pharmacy appeared well staffed and confidently managed.

3.3 I then drove a short distance along Bell Farm Road, left at the traffic lights and again left into Luxford Field Car Park. This very large car park was busy [about 90% occupied]. Parking is free but limited to 3 hours; an additional longer stay car park [10 hours] is at the further edge. There are two vehicle access points, one at each end of the car park, on to High Street. There is a short pedestrian access path from the lower approach to the car park to Tesco.

3.4 Walking from the car via the upper access road to High Street took about 2 minutes and the application site was just opposite. There is a lights-controlled pedestrian crossing.

3.5 The application site is a double shop unit fitted out as a pharmacy [its previous use]. There are four parking bays outside [30 min. no return]. It is currently open to sell beauty/perfumery products and OTC medicines. It is no longer a pharmacy.

- 3.6 The High Street has a wide variety of shops including all the major banks, a WHS with Post Office, a Waitrose and the library. The High Street was not very busy and had a lot of charity shops.
- 3.7 Walking downhill on the High Street the Boots pharmacy is seen on the corner of Bell Farm Road. Although highly visible it is only readily accessible from High Street by one of two lights-controlled pedestrian crossings – either across High Street or across Bell Farm Road. It is a fairly large conventional Boots store. The dispensary is in the far left hand corner.
- 3.8 I continued down the High Street and turned left into Framfield Road [signposted Community Hospital]. The pavement on the left of this road was reasonable with dropped curbs on the two side roads; however the pavement on the right side was very narrow in parts and was further constricted by overgrown hedges and parked cars. I conjecture about the suitability of either pavement for a pedestrian pushing a child's buggy. After passing an allotment patch on the right, a lane leads up a rather steep incline to the Community Hospital. There is a car park which was almost full. There was no signage whatsoever outside the hospital of the presence of a community pharmacy within.
- 3.9 Entering the Hospital a corridor immediately to the left leads to the 'Bird-in-Eye' GP surgery which has its own reception desk and waiting area. Straight ahead from the main entrance is the hospital reception desk, above which is a standard white-on-blue hospital direction sign including amongst other venues 'pharmacy'. Following this, along a corridor, there is an inconspicuous 'green cross' pharmacy sign on the left where the pharmacy is to be found. It is very small. I waited for a customer to leave and went in. There was only room for one customer and no waiting area other than the corridor. Having explained the purpose of my visit the pharmacist was very helpful and invited me to look around. It was very cramped and constrained for storage of stock. The dispensary had no natural light and no air-conditioning [there was a/c in the customer area]. There were three people working there.
- 3.10 The distance measured by car between this pharmacy and the application site was just shy of 0.9 miles, although it seemed much longer. As mentioned, the approach to the hospital is uphill and also the High Street up to the application site has quite a challenging gradient.
- 3.11 Finally I visited The Meads Surgery and the attached Kamsons pharmacy. This is located off the B2102 – Bell Farm Road and is about 0.8 miles from the junction with High Street. There is absolutely no official signage on Bell Farm Road indicating the location of the Surgery or Pharmacy. The car park was almost full. Although a lot of housing can be seen to the North side of Bell Farm Road there is only access to this from near the A22 roundabout, Batchelor Way, or from Church Street at the upper end of the High Street. The road layout of this housing development is convoluted and I could not discern any access to it from the Meads/Kamson medical centre.

#### Site Visit to Uckfield 10 March 2022. Panel Member 2

- 3.12 I arrived at Uckfield Community Hospital at about 1pm on a clear, sunny day, 15°C. I came from the High Street and there are signs pointing to the direction of the hospital. The road on the approach is well laid out with plenty of parking, although it was relatively full with only some spaces available. There was a row of empty disabled bays (about 10) outside the door of the hospital. There were bike racks and a bus stop outside with the 248 and 249 going Monday, Wednesday and Friday. The hospital and its buildings are isolated from any other houses or buildings. However, there was what appeared to be building work further along the road behind a chain link fence but it is not clear what that will be for. The hospital buildings are surrounded by fields.
- 3.13 On entering the hospital, the Bird in Eye surgery is the first left but straight ahead are signs to the pharmacy. It was not clear whether this was the hospital pharmacy or

Kamsons but along the corridor you can see the pharmacy green cross and you arrive at what is marked as Kamsons on the left hand side. It is small and crowded with basic essentials (soap, toothpaste, band aids) and with the prescription service occupying the back of the room with a cubby hole opening. There is no consultation room or flyers advertising other services, other than those outside the door. There were no customers inside.

- 3.14 Walking to Uckfield High Street is possible on the B2102 Framfield Road. There are pavements mostly wide enough for a buggy, although it narrows in part so would not be accessible for someone vulnerable with a walking stick, due to the proximity of the road, or for a mobility scooter, and it is a long walk on foot. Even on a pleasant sunny day it takes 15 minutes and considerably more if you had mobility issues.
- 3.15 I drove five minutes to Boots on the B2102, Framfield Road, where there are now no road works, and parked on the High Street. There was plenty of free parking as well as disabled spaces on the left hand side going from opposite Waitrose towards Church Road as well as two car parks accessible from Church Road towards the top of the hill on the left hand side of the High Street: Walden District Council and Luxford Field car parks. Both were free but with a limit of three hours. If the High Street was busy the closest car park to Boots was Tesco.
- 3.16 Boots occupies a large corner site. There were well laid out rows inside and a large area at the rear left hand side for the prescription counter. It had various services on offer and much of the shop was a typical medium sized Boots with cosmetics, health supplements and life style choices. No customers were at the prescription counter when I was there but there were a handful of shoppers browsing the shelves who may have been waiting (or not) for a prescription.
- 3.17 I then crossed Framfield Road to reach the Tesco pharmacy which is diagonally opposite, inside Tesco, along the front wall behind the checkout. It advertised a wide range of services and looked to have a consultation room to the side. The products on sale were very limited, presumably as most non prescription items are stocked in the supermarket. It was busy and appeared to be predominantly for people picking up prescriptions or wanting advice.
- 3.18 From Tesco I turned left back onto Framfield Road and then left again to walk up High Street to the proposed Kamsons site. The pavements are wide with several people driving buggies/scooters as well as some people with children in buggies. The pavements are well maintained and there is no crowding as they can accommodate four people abreast. However, what appears to be a gentle incline at first, may be a struggle for those less able. It is relatively steep. Again, parking is free and there are many opportunities for car places and car parks. Kamsons is towards the less busy end of High Street but opposite it there appears to be developing business for the upwardly mobile, such as coffee shops with younger people gathering there. The Kamsons site is spaciouly laid out but there was no customers, just two assistants in the shop. When asked they said they stocked predominantly fragrances and a particular cosmetic brand.
- 3.19 I then returned to the car on the High Street and drove past Boots and then Tesco but although still the B2102 it is now called Bell Farm Road from the roundabout. It took a few minutes drive to the Meads surgery but there were no signs advertising it. Bell Farm Road, after the Fire Station on the right, is just trees and shrubs, unlike the left hand side which has McDonalds and garage and tyre places. There is no indication of where Kamsons and Meads surgery is until you reach it. You need to know what to look for. The Kamsons sign is the first thing you see as you turn. Its obvious purpose is to serve the medical centre and the pharmacy signs announced free blood pressure checks and free NHS health checks. The medical centre abuts it. There is a car park which was more than half full and behind that there was a green space, West Park Recreation Ground, with a housing development further behind. I could find no obvious access to that at the back as there appears to be fencing along the perimeter.

However, looking at the satellite photos it is obvious that there is a footpath running parallel to the road going back towards Uckfield. This footpath gives access to a large housing estate with myriad curved roads inside but no obvious entry roads. The Meads surgery and Kamson's pharmacy obviously serves this development. The footpath continues around and the High Street can be accessed from it via Bell Farm Road or Church Road at the top of the High Street.

- 3.20 I then returned to the High Street by car, turned right at Boots and drove along the B1022 Framfield Road which becomes Newtown, and at the roundabout Lewes Road, until I reached the Highland Inn, which is no longer officially in Uckfield. The Copper Beeches Nursing Home is just past this and although there were people walking along towards the Highland Inn from the direction of Uckfield High Street, there were no other facilities or shops nearby.

Site Visit 16 March 2022 by Panel Member 3

- 3.21 I started my visit from Uckfield Community Hospital, TN22 5AW. It is on a relatively isolated location, on a single floor and includes a Small Injuries Unit. It is a good 15-20 minutes walk from the town centre.
- 3.22 The free car park was 80% full at 10.45am and included disabled bays.
- 3.23 The hospital was well lit and clean, with signposting for the Bird in Eye GP Surgery and the green cross for the Kamsons pharmacy.
- 3.24 The pharmacy hours are 9am-6pm Monday-Friday. It was empty at the time, well stocked and well lit. It had a dispensing counter with the pharmacist out of sight. There is no consulting room and no waiting space inside, although there were chairs in the nearby hospital corridor for those who may need to wait for their medication.
- 3.25 The Bird in Eye surgery has five GPs, one locum, one paramedic, and one Advance Nurse Practitioner with use of six consulting rooms. The receptionist said most patients [and staff] drive in, and use the EPS to collect their medication at the on-site Kamsons, the Kamsons at the Mead Surgery, the Buxted Surgery or Tesco. Boots is also used by some.
- 3.26 I then drove to the Mead Medical Centre in Bell Farm Road, TN22 1BA. Coming from the High Street, I initially overshot having missed the signpost which became visible late in my approach. The car park was free of charge, busy, and included disabled bays. It is served by five GP partners. The reception area was substantial, with plenty of seating, and two electronic self check in machines.
- 3.27 The Kamsons pharmacy is clearly visible on entering the Mead. Its opening hours are 8.30am-6.30pm Monday-Friday, 9am-1pm on Saturday. It had a wide door for direct access into the surgery reception, but this had been closed off due to the pandemic. Some patients were sitting inside Kamsons waiting for their medication, and a few were in a queue.
- 3.28 There is a wide and level footpath from the Mead, Bell Farm Road to the High Street. I spoke briefly to a lady who was walking along it on her way to catch a bus to the High Street. She said the walk to the High Street would be 7-8 minutes.
- 3.29 I then drove to the Tesco Superstore with their in house pharmacy, which was busy mid morning. The car park was fairly full at the time. Some shoppers, having done their big food shop by car, were taking the opportunity to walk the short distance to the High Street to complete other household duties.
- 3.30 The High Street is non descript, served by a combination of free 3 hour parking, free 30 minute parking, and a selection of disabled bays. There is also a free local authority car park in Civic Approach off the High Street. There is a dental surgery nearby in Bell

Farm Lane. Amongst other retail outlets are two banks, a post office located within a W.H Smith, and a small Waitrose. I counted 9 charity shops along its short length.

- 3.31 Boots is on a corner plot, and has a traditional layout with the dispensing counter at the back. It is served by a privately run car park, but there is also free parking nearby on the High Street.
- 3.32 The proposed site is further up at 152-154 High Street, with 30 minutes free parking outside. It stands opposite an imposing [empty] building which was the old post office. A large and airy premises which carried the Kamsons signage, it was stocked with perfume, health and beauty products, and OTC medication. It had an ample, recognisable, dispensing counter and a consulting room. It was empty at the time, save for 3 female members of staff. They told me that about 10 years ago the pharmacy service moved to the Mead Medical Centre. [Post hearing correction: move was 9 years ago on 10 June 2013]. For the following three years it has dispensed private prescriptions and monitored dose packs. One member of staff, trained as a Non Pharmacist Assistant [NPA] told me when it was a community pharmacy, it was staffed by two pharmacists, one of whom was dedicated to the preparation of monitored dose packs.
- 3.33 These reports were read out to those in attendance. They were invited to comment upon them or indicate if any of the observations appeared to be inaccurate.
- 3.34 No such comments or observations were made.

#### 4 Oral Hearing Submissions

- 4.1 The Appellant represented by Mr Mark Donaghy made the oral submissions. He started by correcting pharmacy opening times and duplicated pages in the hearing bundle. Mr Donaghy stated he would address us under three headings. Firstly, why Kamsons needs to move from its current location to the new site. Secondly why the proposed location is the only suitable location in Uckfield. Thirdly that the application and appeal meets the legal test.
- 4.2 Setting out the history, the High Street branch of Kamsons opened in 1979, and relocated to the Mead Medical Centre, Bell Farm Road in June 2013. The site remains as a Kamsons premises and currently sells health and beauty products and over the counter medicines. In answer to a Committee question, Mr Donaghy explained that it is also a pick up point for prescriptions prepared at the Mead Kamsons, at the rate of about 50 items per week.
- 4.3 The Uckfield Hospital branch opened in January 1994. According to the latest available figures, during December 2021, it dispensed 3,248 items generated from the on site GP surgery, Bird in Eye. As an early adopter of EPS, Kamsons dispensed some 33% of prescriptions generated by Bird in Eye, the remaining went to the Mead Kamsons 23% Tescos 25% and Boots 6%. [figures provided post hearing].
- 4.4 Its current size is 16.5sq meter. Without a consulting room and poor storage, it is now proving to be too small to provide community pharmacy services like hypertension management, hepatitis C & smoking cessation services, and free vaccinations. Neither can it provide locally commissioned services like NHS health checks, sexual health or substance misuse services. The lack of fresh air during the pandemic has compromised the health and safety of staff and patients, as social distancing is not possible. Mr Donaghy said that there is every possibility of a resurgence of COVID and a winter lockdown which is making the need to move even more necessary.
- 4.5 In answer to a Committee question, Mr Donaghy stated that he had not explored getting a more suitable location within the Uckfield Community Hospital Site during the past five years. He also accepted that there was a year on year fall in dispensing figures at

the current Kamsons site: latest figures available are: November 2018 3,800, November 2019 3,498, November 2020 3,171, November 2021 2909.

- 4.6 Mr Donaghy stated that the pharmacy would become economically unviable if the figure dropped to 2,500.
- 4.7 In terms of the second heading, Mr Donaghy stated that the retail outlets in the High Street are all currently occupied. Therefore the only location available is the Kamsons site at 152-154 High Street.
- 4.8 Legal test: the relocation proposal meets the legal test in Reg 24 1 (a). The patient groups that are accustomed to accessing pharmaceutical services at the existing premises have been identified by their method of travelling to the Framfield Road site. He accepted that the month long patient survey 23 March – 26 April 2021 showed 60 out of 147 car drivers would find the proposed new site significantly less accessible. And 19 out of 45 of walkers found the proposed new site significantly less accessible. The remaining categories: cycle, taxi and inpatients at the hospital are negligible.
- 4.9 The on going road works on Framfield Road may have skewed the results and also perhaps user loyalty to staff, although he stated the current staff would move across to the High Street if the appeal was to succeed.
- 4.10 In answer to a Committee question, Mr Donaghy accepted that if the current location was to become unviable and close, the 50% home delivery would compensate in terms of inconvenience caused. His main concern would be the loss of the face to face delivery of community pharmacy services like smoking cessation, hypertension, vaccinations etc. He accepted that in considering the size of the patient group accustomed to accessing services at the existing premises, it is safe to discount the 50% who have their medication delivered. Delivery remains an on-going commitment by Kamsons, and they have invested in new, solar powered delivery vans. In answer to a further Committee question, Mr Donaghy said that given the proximity of Boots and Tesco, it would be patient loyalty that would attract current users to the High Street location, as staff would move across.
- 4.11 Mr Donaghy again pointed out that the categories of patient groups were identified in the survey by mode of transport to the Uckfield Hospital site. When NHS England introduced two new categories i.e. parents with young children and those on the SW area housing development, the pharmacy manager over one week, had surveyed 120 users and provided evidence that of the 12 parents with children under 10, none would find the new location significantly less accessible. He also provided evidence from satellite maps to show that the new site would be either equidistant from the SW housing complex or closer for drivers, and that the bus connection from the SW to the High Street was also better. Overall the High Street was more attractive as a shopping location than the current medley of shops around the existing site.
- 4.12 In conclusion Mr Donaghy said he had provided additional evidence that those with young children and residents SW from the current site would have no access issues due to the relocation. Despite this NHS England have refused to change their decision which was delivered two months late with no apology. Kamsons were keen to deliver advance and enhanced services and reduce the risk to patients and staff from Covid. There is no alternative location to move to other than the identified new premises.
- 4.13 Figures for December 2021 provided by Kamsons post hearing: 9,177 prescriptions from Bird in Eye GP surgery, were dispensed by the following pharmacies:

	Items	Market Share (%)
<u>Kamsons Pharmacy</u> , Uckfield Hospital	3248	33.51
<u>Tesco Instore Pharmacy</u> , Uckfield	2425	25.02
<u>Kamsons Pharmacy</u> , Bell Farm Road	2192	22.61
<u>Boots</u> , Uckfield	565	5.83

NHS England:

4.14 Mr Themba Mhlanga started by acknowledging the value provided by community pharmacies throughout the pandemic, and that provisions have been made to allow them to stay open. In answer to the criticism that NHS England did not conduct a site visit prior to making its decision, Mr Mhlanga stated that the decision making panel is constituted of executives as well as lay members familiar with the locality. Mrs Tove Sorensen-Bentham was one such lay member and she stated that she had been to Uckfield Business Park as a shopper for some two visits per year, and had brought family members to the Uckfield Community Hospital twice per year. He said NHS England stood by its decision.

Boots were represented by Mrs Joanne Watson:

4.15 Mrs Watson stated that the applicant has defined patient groups by mode of transport used to access the surgery.

4.16 Whilst she accepted that this is one of the ways in which specific patient groups may be identified, consideration must also be given to when and why patients access the existing services and the type of services accessed.

4.17 Latest data we have shows that 96% of the items dispensed by the pharmacy originate from the Bird-in- eye Surgery with which it is located.

4.18 The applicant states that over 50% of the items dispensed are delivered to patients that do not come to the pharmacy.

4.19 This must therefore mean that 50% (or nearly 50%) are collected by a patient or their representative, possibly at the same time as visiting the surgery.

4.20 This also does not take into consideration, patients who may access the pharmacy for services other than dispensing services (which may include patients who normally have their items delivered).

4.21 She suggested that there are further patient groups that should be considered, which may overlap with those defined by the appellant, these being

4.21.1 Patients who access the pharmacy for dispensing services at the same time as visiting the surgery (or hospital).

4.21.2 Patients who visit the pharmacy for other pharmaceutical services at the same time as visiting the surgery (or hospital).

- 4.21.3 Patients who collect prescriptions from the pharmacy without first visiting the GP (typically repeats or for other services).
- 4.21.4 Patients who have prescriptions originating from other locations/surgeries. Although this proportion is relatively small (around 800 items a year) there must be a reason why patients choose to use this pharmacy for their prescriptions.
- 4.21.5 Patients who currently routinely access the pharmacy at the same time as visiting their GP or the hospital will have an additional journey to make to access the proposed pharmacy.
- 4.21.6 Patients who routinely collect their prescription from the pharmacy (possibly repeats) choose to use this pharmacy for a reason and it is well known that convenience and location are key factors.
- 4.22 This is relevant when considering the purpose for visiting the pharmacy alongside the results of the transport survey carried out by the applicant:
  - 4.22.1 According to the survey results 60 out of 147 people who travelled by car said the proposed pharmacy would be significantly less accessible.
  - 4.22.2 19 out of 45 who travel to the pharmacy on foot said it would be significantly less accessible
  - 4.22.3 2 out of 5 patients already in the hospital said that they would find it significantly less accessible.
- 4.23 Therefore 81 out of 197 respondents (41%) said they would find the proposed site significantly less accessible.
- 4.24 If you include those that would find it less accessible, then the figure rises to 145 out of 197 (74%).
- 4.25 Also relevant is the journey between the two sites:
  - 4.25.1 The distance between the two sites is approximately a mile and takes 17 minutes to walk. Whilst some people would not have difficulty walking this distance, it is not insignificant. The pavements are narrow and uneven in places, and the route could be said to be undulating - so navigating on foot will not be easy for elderly, those who have mobility issues or who have children in pushchairs.
  - 4.25.2 For those that visit by car, parking is available at the surgery/hospital site. Mrs Watson acknowledged there is parking a short distance from the proposed site, however there is no dedicated parking immediately outside the pharmacy, and the roadside parking that is available is limited.
- 4.26 Furthermore, traffic issues for people getting into the town centre are well documented.
- 4.27 In summary Boots submit that NHS England were correct to conclude that they could not be satisfied that the location of the new premises is not significantly less accessible for patient groups accustomed to accessing pharmaceutical services at the existing premises.
- 4.28 In answer to Mrs Watson, Mr Donaghy stated he does not believe there are plans for Bird in Eye GP Surgery to move. No bus users were identified in the survey and that so far, parking charges have not been introduced at Uckfield Hospital. Mr Donaghy did not accept that relocation would leave a gap to the south of the town.

- 4.29 In answer to Mr Donaghy about how she as a pharmacist would feel about working in cramped conditions, Mrs Watson said she accepted his points, and suggested that better premises could have been explored on the current site. She said although Boots may benefit from the relocation, she said their objections are based on the patient point of view and because the Area Manager wanted to object to the potential clustering of pharmacies around the High Street.

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

- 5.4 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).*

- 5.5 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's site visit established [3.32 above] that the proposed location is currently being used for the sale of health and beauty products and OTC medicines. It noted that the wording of Regulation 31 referred to a person on the pharmaceutical list (in this case the Applicant) providing pharmaceutical services from the proposed premises. The Committee considered that the services provided from the proposed premises were not NHS pharmaceutical services. It also noted that the address of the proposed location was not an address listed on the pharmaceutical list from which NHS pharmaceutical services could be provided. The Committee therefore determined that it was not required to refuse the application under the provisions of Regulation 31.

- 5.6 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).*

- 5.7 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 5.7.1 confirm NHS England's decision;
  - 5.7.2 quash NHS England's decision and redetermine the application;
  - 5.7.3 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.
- 5.8 The Committee considered the position in relation to each condition.
- 5.9 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.
- 5.10 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.
- 5.11 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).

5.12 In this case, the Applicant has identified the patient groups as:

5.12.1 Those that travel to the pharmacy by car;

5.12.2 Those that travel to the pharmacy by foot;

5.12.3 Those that travel to the pharmacy by another method; and

5.12.4 Those that receive a delivery of their medication.

5.13 The Committee also noted NHS England's refusal on the grounds that:

*"...the area is a small town and the applicant proposes to move away from the south-east section of the town, adjacent to a GP surgery and within a community hospital, to the high street, where there are already several other pharmacies in situ. There is a large amount of housing to the south-west of the existing pharmacy, and people with small children or no transport may find it less accessible to go to the high street.*

*The Committee was not satisfied given the difference in locality of each premises, that the location of the new premises is not significantly less accessible for the patient groups accustomed to accessing pharmaceutical services at the existing premises".* Paragraphs 2.21/2.22, NHS England meeting notes 30 September 2021.

5.14 In rebuttal, Kamsons conducted a further survey of 120 patients during week starting 1 November 2021.

5.15 The results of this survey are:

5.15.1 Total patients visiting the pharmacy:120

5.15.2 Do you have children under 10? No: 118 Yes: 12,

5.15.3 The results from the 12 people with children under 10 were:

A – Significantly more accessible 0

B – More accessible 1

C – About the same 5

D – Less accessible 6

E – Significantly less accessible 0

5.16 The survey showed that parents with children aged under 10 are 10% of the people that visit the pharmacy and that no members of this patient group, who responded to the survey, said that they would find the proposed location significantly less accessible. However 6 out of the 12 said they would find it "less accessible".

5.17 Kamsons also prepared maps to establish that residents on the South West of the current site will find the proposed High Street location either closer or the same distance by car, more accessible by bus and with a better choice of shopping facilities on the High Street.

5.18 The Committee concludes that the patient groups who are accustomed to accessing pharmaceutical services from the existing premises are those set-out at 5.12, as

captured by the patient survey conducted over one month, 22 March – 26 April 2021. Kamsons in their application state:

- 5.19 Those that travel to the pharmacy by car
  - 5.19.1 147 persons
- 5.20 Those that travel to the pharmacy by foot
  - 5.20.1 45
- 5.21 Those that travel to the pharmacy by another method
  - 5.21.1 Bike: 0
  - 5.21.2 Taxi: 0
- 5.22 Patients already in hospital:
  - 5.22.1 5
- 5.23 The Committee considered that patient groups 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 these patient groups. The Committee noted the submission by Kamsons that due to its cramped location, the pharmacy is not currently able to provide essential or advanced services.

*Those that travel to the pharmacy by car*

- 5.24 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 1.53 km taking 4 minutes by car.
- 5.25 The Committee accept the Applicant's evidence that the proposed site would be either equidistant or closer from the South West housing complex, for those that access pharmaceutical services by car, taking 3 minutes to cover 0.8 miles. It was clear from the Committee's site visits that there is ample, free parking at the Uckfield Hospital site, and the area around the proposed site is also served by good parking facilities.

*Those that travel to the pharmacy by foot*

- 5.26 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 1.53 km taking 17 minutes by foot. The site visit proved this to be an unpractical option, particularly for those with mobility issues and pedestrians pushing a child's buggy. The pavements become narrow in parts, constricted by overgrown hedges and parked cars. The Committee also considered a patient group who may be accessing pharmacy services immediately after a visit to the co-located Bird in Eye GP practice. If they had walked to the surgery, they then would have an additional 15 minutes by foot, to and from the proposed location, making it significantly less accessible.
- 5.27 The Committee noted that the journey from the South West housing complex by foot to both the existing and proposed sites would take about 15 minutes to cover some 0.8 miles. The Committee's site visit established that it is not an easy route, particularly for those with mobility issues. The approach to the proposed site has a challenging gradient to navigate.

*Those that travel to the pharmacy by another method*

- 5.28 The Appellant's March/April 2021 survey shows that no one travelled by either bicycle, bus or taxi to the pharmacy in its current location. The earlier January 2021 survey indicated that one person travelled by bike and one by taxi.
- 5.29 Mindful that the survey is a snapshot in time, the Committee considered this further and identified that there could be some persons from the South West housing complex who may access services by bus. The timetables show they run to and from the High Street, every 40 minutes, taking about 8 minutes.
- 5.30 For some patients, where their 'starting point' would be at or around the present site, the Committee noted that the route is poorly served by buses, running two per hour, and none on Tuesday, Thursday or weekends, when the pharmacy is closed anyway. The Committee recognises that this option may well provide an additional means of accessibility for some patients. However there is no evidence that this was the case for current users of the pharmacy, either from the surveys or from any other information provided by the Applicant.

*Those who use the delivery service*

- 5.31 The Committee noted the Applicant's statement that "*the majority of prescriptions dispensed by the pharmacy are delivered rather than collected*". The Applicant went on to state that "*56% of people that use the pharmacy avail themselves of the pharmacy's free delivery service rather than visit the pharmacy*". 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.

*Overall assessment*

- 5.32 The Committee took into account all of the above patient groups in reaching its decision in respect of condition (a).
- 5.33 The Committee was of the view that there is insufficient evidence to support a conclusion that those housed in the South West of the current pharmacy location will not find the new location significantly less accessible. The same applies to parents with children below 10 years, the Applicant's survey over one week starting 1<sup>st</sup> November 2021, being too small to be reliable [see above 5.15.3 and 5.16].
- 5.34 Instead the Committee base their conclusion on the larger survey in which 81 out of 197 respondents, some 41%, stated that they would find the location of the new premises will be significantly less accessible. Kamsons were forthright in accepting this outcome. They observe in the papers, "I am of the opinion that the publicity given and the length of the survey has given everyone who uses the pharmacy the opportunity to have their view recorded." Whilst the Regulations do not define the proportion of patients in a "group" that need to find the change significantly less accessible, we conclude that numerically, the 41% who expressed this view, is sufficiently large to persuade us in this instance.
- 5.35 The Committee do not accept the Applicant's reasoning in amalgamating those who ticked the "less accessible" box with the "others" to create a "majority" number. Most respondents in the Committee's view, would believe "less accessible" and "significantly less accessible" to be a matter of degree and subjective opinion; we would have expected these two categories to have been amalgamated instead.
- 5.36 In the circumstances, the Committee was unable to be satisfied that, for patient groups who are accustomed to accessing the present site, the proposed site is not significantly less accessible.
- 5.37 The Committee was therefore of the view that condition (a) is not 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 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 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)*

- 5.40 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, 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*

- 5.42 Although the Committee has reached the same decision as NHS England, it has done so for different reasons as set out above. In those circumstances, 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 re-determine 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.

- 6.1 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 re-determines the application.
- 6.3 The Committee has determined that condition (a) is not satisfied.
- 6.4 The Committee has determined that conditions (b), (c), (d) and (e) are satisfied.
- 6.5 The application is refused.

**Committee Chair**

**Annex A**

8<sup>th</sup> Floor  
10 South Colonnade  
Canary Wharf  
London  
E14 4PU

**REF: SHA/24655**

Tel: 0203 928 2000  
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**APPEAL AGAINST NHS ENGLAND – SOUTH EAST AREA TEAM, NHS COMMISSIONING BOARD ("NHS ENGLAND") DECISION TO REFUSE AN APPLICATION BY WAREMOSS LTD FOR A RELOCATION THAT DOES NOT RESULT IN A SIGNIFICANT CHANGE TO PHARMACEUTICAL SERVICES PROVISION UNDER REGULATION 24 FROM UCKFIELD COMMUNITY HOSPITAL, FRAMFIELD ROAD, UCKFIELD TO 152 – 154 HIGH STREET, UCKFIELD, EAST SUSSEX, TN22 1AT**

## 1 The Application

By application dated 6 May 2021, Waremass Ltd (t/a Kamsons 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 Uckfield Community Hospital, Framfield Road, Uckfield to 152 – 154 High Street, Uckfield, East Sussex, TN22 1AT. 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 did not provide any information.
- 1.2 The Applicant stated, in response to “why you consider that granting the application will not result in a significant change to the arrangements that are in place for the provision of local pharmaceutical services or pharmaceutical services (other than those provided by dispensing doctors) in any part of the HWB’s area or any controlled locality within 1.6 kilometres of the new premises”:
  - 1.2.1 The relatively small distance between the two sites will not significantly change pharmaceutical services in East Sussex HWB area.
- 1.3 In response to “explain why you consider granting the application will not cause significant detriment to the proper planning in respect of the provision of pharmaceutical services in the HWB’s area” the Applicant stated:
  - 1.3.1 The range of services from the current premises is very limited because of its small size. The current premises are unknown to many as they are not visible from the road and there is no signage on the outside of the building. Should this relocation be approved, it will improve the planning and accessibility of pharmaceutical services.

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### Advise / Resolve / Learn

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- 1.4 The Applicant confirmed that the services to be provided at the new premises are the same as those that have been provided at the current premises by ticking “Yes” on the application form.
- 1.5 In response to will be any interruption to service provision, the Applicant confirmed that there would not be by ticking “no” on the application form.

In support of the application the Applicant stated:

- 1.6 The proposed premises are owned by Ware Moss Ltd and used to be a pharmacy until a number of years ago when they were voluntarily removed from the GPhC Register.

Reasons for applying

- 1.7 The reasons for this application are the tiny size of the current pharmacy, the lack of space to store stock and most importantly, for the health of safety of the pharmacist, other staff and patients.
- 1.8 The pharmacy is only 16.5 m<sup>2</sup>. The dispensary is only 7m<sup>2</sup>.
- 1.9 The door of the pharmacy opens onto a hospital corridor. There is no window and no fresh air coming into the pharmacy. The pharmacy is too small for the three staff to socially distance. It is too small to allow in more than one patient in at a time.
- 1.10 The consultation room that the pharmacy used was shared with the hospital ward. Use of it is currently suspended.
- 1.11 Allowing the pharmacy to relocate will allow the pharmacy team to work in a safer, more spacious pharmacy which will allow for greater distance between work colleagues. It will allow the pharmacy to stock more than just the bare minimum of stock. The relocated pharmacy will have its own large consultation room with integrated IT. The relocated pharmacy will be in a location more accessible to the public, with clear signage and many patients allowed inside.
- 1.12 A previous application was refused. More evidence has therefore been collected to support this application.

Identifying the patient groups

- 1.13 In one week in January (19th to 26th January 2021 inclusive) a simple survey was undertaken of patients using the pharmacy to ask them how they came to the pharmacy. The results are as follows:

Method of using the pharmacy	Number	Percentage
Patients who came into the pharmacy and travelled by car	106	49%
Patients who received a free delivery of their medication	99	45%
Patients who walked to the pharmacy	12	5%
Patients who cycled to the pharmacy	1	0.5%
Patients who got a taxi to the pharmacy	1	0.5%
Patients who were already in the hospital	0	0%
Total	219	

- 1.14 Views of each patient group

- 1.15 In order to support this application a second survey was undertaken for over a month from Monday 22<sup>nd</sup> March to Monday 26<sup>th</sup> April 2021 of patients coming into the Kamsons Pharmacy at Uckfield Community Hospital by Mr Matthew Hooper, the Pharmacist Manager and a provisionally registered pharmacist. Note that the pharmacy was closed on Good Friday 2<sup>nd</sup> April and Easter Monday 5<sup>th</sup> April 2021 and does not

open at weekends. Each person was asked to complete a simple tick-box survey in which they were asked how they came to the pharmacy today (or how they normally come if different) and “If the pharmacy were to move to the High Street, would you find it:

- 1.15.1 Significantly more accessible,
  - 1.15.2 More accessible,
  - 1.15.3 About as accessible as this location,
  - 1.15.4 Less accessible,
  - 1.15.5 Significantly less accessible.”
- 1.16 A copy of the survey is attached (see Appendix A).
- 1.17 This survey included the groups identified above. There was also the opportunity for the patient to state a new category, if they so wished, but no one did.
- 1.18 In the March/April 2021 survey, no one arrived at the pharmacy by bicycle, taxi or by public transport and only a negligible number stated they were already in the hospital.
- 1.19 As the previous unsuccessful application identified patient groups based upon how patients travelled to the pharmacy (and this was not challenged in the NHS E&I decision) then it was decided to keep these groups as the most appropriate identifiers of patient groups in this application.
- 1.20 By looking at the results and numbers of both surveys, for the purposes of this application, four patient groups are identified who use the pharmacy. The groups are those that travel to the pharmacy:
- 1.20.1 by car
  - 1.20.2 by foot
  - 1.20.3 by other method
  - 1.20.4 Receive a delivery of their medication
- 1.21 Raising Awareness of the survey
- 1.22 The Patient Participation Group for Bird in Eye Surgery promoted the surgery on its Facebook page and encouraged patients to call into the pharmacy to complete the survey.
- 1.23 Uckfield News website also ran a story about the pharmacy’s possible move and that the survey was available to complete in the pharmacy.
- <https://uckfieldnews.com/hospital-pharmacy-might-move-to-high-street/>
- 1.24 The Applicant is of the opinion that the publicity given and the length of the survey has given everyone who uses the pharmacy the opportunity to have their view recorded.
- 1.25 Results
- 1.26 The results of the survey for each group were as follows:

Patients that travel to the current pharmacy by car

Answer	Number	Total
Significantly more accessible	11	
More accessible	9	87
About as accessible as this location	21	
Less accessible	46	
Significantly less accessible	60	60
Total number:	147	147

- 1.27 There are a reasonable number of individuals who have stated that they may find the relocated pharmacy significantly less accessible. However the majority of people 87 out of 147 (ie 59%) answered in another category and hence for this patient group, that are accustomed to accessing pharmaceutical services at the existing premises, the location of the new premises is not significantly less accessible.
- 1.28 It was surprising that a reasonable number who travelled by car would be negative about the change. The survey was designed to be quick and simple in order to maximise uptake and reduce the time patients had to remain in the pharmacy to complete it whilst in a pandemic situation. Patients were not asked to elaborate on their answers nor were they discussed by the pharmacy team with the patient so that there could be no undue influence on the patients answering.
- 1.29 A reason for the negative responses is likely to be the significant delays to motorists at the bottom of Framfield Road. There are currently roadworks at the bottom of Framfield Road, occurring throughout the duration of this survey. These roadworks added fifteen minutes onto the usual 5 minute journey by car to the pharmacy from the office at the address below. Temporary traffic lights have been installed that appear to be timed out of synch with the existing traffic lights to maximise delays at peak times.
- 1.30 Details of these current roadworks can be viewed on the local news website at <https://uckfieldnews.com/uckfield-roadworks-cause-delays/> and include the following:
- “Councillor Diane Ward has asked if the Framfield Road junction lights and those for the roadworks could work in tandem to ease the queues. Often traffic heading into town is held near the police station and drivers see the lights go green but cannot move forward because of the yellow box junction. Any gaps in the queue ahead are often filled by traffic emerging from Framfield Road and Bridge Farm Road.*
- 1.31 Cllr Ward said at a meeting of the town council:
- “I am pretty sure I am not the only person to have got stuck in, or has complaints about the traffic lights. I am just wondering if there is any way that it can be linked slightly better with the traffic lights at the police station.”*
- 1.32 It is worth noting that these roadworks are only temporary and will have been completed by the time a decision is taken on this application.
- 1.33 As some motorists were negative about the change, I will now look at the parking facilities near to the relocated pharmacy.
- 1.34 Uckfield Hospital car park currently has free of charge parking facilities. However, parking charges are being considered as mentioned in the following article:  
<https://uckfieldnews.com/parking-charges-could-be-introduced-at-uckfield-community-hospital/>

- 1.35 When car parking charges are introduced at the Hospital, then this will significantly impact on those who currently visit the current pharmacy site by car.
- 1.36 In the last few years, a new large railway station car park with 171 spaces has been built opposite the bottom of Framfield Road which has 20 minutes free parking but is designed for rail commuters to pay and park all day. This car park is a couple of minutes' walk away from Boots, as is the Bell Walk car park with 81 spaces and 2 hours of free parking. Opposite Boots is the Waitrose car park offering 118 free spaces for 90 minutes of parking. These car parks are under a 5 minute walk away from the proposed new pharmacy site.
- 1.37 However, the main High Street car park is owned by Wealden District Council who provide free of charge parking. The large Luxford Field car park is situated across the road from the proposed relocated site. It took 93 seconds to walk from this car park, along Library Way, to cross at the Puffin Crossing which takes you almost to the door of the proposed site. This is a straightforward and easy walk with large flat pavements.
- 1.38 Details of the Luxford Field car park are at:  
<https://www.wealden.gov.uk/carparks/luxford-field-uckfield/>  
and state that the car park has the following 3 hour parking spaces:
- 1.38.1 120 short stay spaces,
  - 1.38.2 11 Disabled 3 hour spaces
  - 1.38.3 6 Parent and Child spaces
- 1.39 This is in addition to the following 10 hour parking spaces:
- 1.39.1 175 mid-stay parking spaces
  - 1.39.2 2 mid-stay disabled spaces
- 1.40 There is therefore plentiful, easily-accessible parking 93 seconds walk from the proposed relocated site.
- 1.41 In addition to all of the 314 free parking spaces situated at Luxford Field car park, a simple and short 93 seconds walk away from the proposed site, there are also on-street parking bays outside the door of the proposed pharmacy site.
- 1.42 Outside the proposed pharmacy site is one disabled bay and three bays with 30 minutes free parking. There are also another two sets of 30 minute parking bays opposite- one of six bays and then one of three bays a little down the road. Around the corner from the proposed pharmacy, under a minute's walk away in Grange Road, are a further ten spaces.
- 1.43 In summary:
- 1.43.1 The proposed new site is a four minute drive away from the current site, according to Google Maps.
  - 1.43.2 There are one disabled bay and three other parking bays outside the proposed new pharmacy site.
  - 1.43.3 Within 95 seconds walk from the pharmacy, there are 337 free of charge parking spaces.

- 1.43.4 Within 5 minutes walk from the proposed new site there are 536 free of charge parking spaces.
- 1.43.5 The current temporary road works are likely to have negatively skewed the survey results from those who travel to the pharmacy by car
- 1.43.6 Even so, the majority of this patient group surveyed do not consider that they would find the proposed new location significantly less accessible.

Patients that travel to the current pharmacy by walking

1.44 Survey Results

Answer	Number	Total
Significantly more accessible	3	
More accessible	1	26
About as accessible as this location	5	
Less accessible	17	
Significantly less accessible	19	19
Total number:	45	45

- 1.45 It can therefore be seen that the largest single group of people stated that the relocated pharmacy would be significantly less accessible (19 out of 45), However the majority of people 26 out of 45 (ie 58%) answered in another category and hence for this patient group, that are accustomed to accessing pharmaceutical services at the existing premises, the location of the new premises is not significantly less accessible.
- 1.46 It is not surprising that there are not many people who currently walk to the pharmacy. The pharmacy is currently situated in a not very accessible location. Uckfield Community Hospital is at the top end of Framfield Road. As one comes from the hospital onto Framfield Road and looks right then one can see:
  - 1.46.1 A national speed limit sign
  - 1.46.2 A deer crossing warning sign
  - 1.46.3 The back of the "Welcome to Uckfield" sign
- 1.47 It can therefore be seen that the current site is on the edge of the town. The current and proposed new site are both in Uckfield (ie not in different localities) but the new site is in a far more centralised location that is far more accessible to each patient group, however they travel.
- 1.48 As with any relocation, there will be some people that find it more and some that find it less accessible. However, there are no supporting shops near to the hospital. The people that have walked to the hospital, yet state the proposed site is less accessible, will still need to walk into the town in order to buy a loaf of bread or any other daily needs. The town centre is the natural place that the population will go to in order to do any shopping or to access other health services such an optometrist or a dentist.
- 1.49 The "Other" category

People that access the current pharmacy by bicycle

- 1.50 For the one month duration of this survey in March/April 2021, no one stated that they had arrived by bicycle.

- 1.51 By adding the results of the survey undertaken for one week in January 2021 (that identified one cyclist) to the results of the survey just completed at the end of March 2021, the total number of people in each category are:

	March/April results	2021 January results	2021 Total
Car	147	106	253
Walked	45	12	57
Bicycle	0	1	1
Taxi	0	1	1
Already in the hospital	5	0	5
Other	0	0	0
Total of people that visited the pharmacy	197	120	317

- 1.52 Limitations:

Note that the March/April figures include three respondents who stated that they both walked and arrived by car to the pharmacy. Patients using the delivery service have not been included above. Some of the March/April respondents may be the same as the January respondents so there may be some unintentional double-counting. Patients responding to the March/April survey, which was predominantly to determine their view on accessibility, were not asked if they had also responded to the January survey, which was predominantly to identify their mode of transport to the pharmacy.

- 1.53 It can therefore be seen that people that arrive by bicycle to the pharmacy constitute under 0.5% of patients that come into the pharmacy. It can be assumed that for someone to cycle rather than walk, the person would live more than a five minute walk away and hence would live nearer the town centre than to the Community Hospital and would find the new location more accessible.
- 1.54 In the Luxford Field car park, some new cycle racking has been installed which is a 93 second walk away from the proposed new premises.

People that access the current pharmacy by taxi

- 1.55 As with those that cycle to the pharmacy, no one stated that they arrived by taxi during the March survey. As can be seen above, the one person in January that arrived by taxi makes up less than 0.5% of people that attend the pharmacy. As the current and proposed site are only a four minute drive apart (as measured by Google Maps) in normal circumstances (ie without the current road works) then the proposed site is just as easily accessible by taxi and has parking nearer to the door of the pharmacy than the current site.

People who visit the current pharmacy that were already in the hospital

- 1.56 Survey Results

Answer	Number	Total
Significantly more accessible	0	
More accessible	2	3
About as accessible as this location		
Less accessible	1	
Significantly less accessible	2	2
Total number:	5	5

- 1.57 In the January survey, no one identified as being already in the hospital. In the March/April survey, five people did. As with the patient groups that arrived by taxi and that cycled to the pharmacy the numbers are so low as to be insignificant. However, two people said that the relocated pharmacy would be significantly less accessible and three people did not.
- 1.58 Of course, people who are already in the hospital for another reason will still have had to travel to get there and are likely to have stated that they travelled by car or walked there.
- 1.59 These low numbers are understandable. The medical practice within Uckfield Community Hospital was an early adopter of the electronic prescription service and almost every patient is nominated to electronically receive their prescription at a pharmacy of their choice.
- 1.60 Even once lockdown ends, patients will be cautious and medical practices will continue to use remote initial assessment of patients and send prescriptions electronically to patients' choice of pharmacy near to where they live or shop and not near to where a surgery is located.
- 1.61 Even for patients that may come into the hospital, many do not know or do not find the pharmacy. It does not immediately look like a community pharmacy and looks to many like a normal hospital pharmacy. As anyone who has ever tried to take a FP10 prescription to a hospital pharmacy will know, most pharmacies located in hospitals do not have NHS contracts and will refuse to dispense prescriptions from General Practitioners. As the Hospital premises are operated by NHS Property Services, there is no external pharmacy signage and very minimal internal pharmacy signage.
- 1.62 This picture (Appendix B) is taken past the second set of doors into the hospital. The pharmacy is situated at the end of the corridor by the double doors and has a green cross outside. Note the signage for Bird in Eye surgery and that the generic hospital signage for the pharmacy does not signify that it is a Kamsons Pharmacy or even a community pharmacy. There is no signage outside of the hospital that signifies that a pharmacy is inside. Sussex Community NHS Foundation Trust has its own pharmacy that supplies the other departments on site.
- 1.63 As can be seen, anyone entering the site would feel that that they are walking towards a ward and not to a community pharmacy.

#### Patients that arrive by public transport

- 1.64 No patients identified as arriving by public transport to the pharmacy. This may appear unusual when compared to other applications and when there is a bus stop situated at the Uckfield Hospital site. However, when one looks at the bus times then it is clear why no one, in either survey, identified as arriving by bus. There are only twelve buses per week that arrive at the pharmacy and none on a Tuesday or Thursday (nor on a weekend when the pharmacy is closed anyway).

#### Free Delivery service

- 1.65 One patient group not surveyed in March/April were those who receive a free delivery of their medicines. This is, by far, the largest group of patients that receive services from the pharmacy. Previous NHS Resolution decisions have determined this as a group who are not "accustomed to accessing pharmaceutical services at the existing premises". They may still access services e.g. by telephone with the pharmacist.
- 1.66 This group will see no change in their service whether their prescription is delivered from one part of Uckfield or another.

1.67 It must be made clear that Kamsons Pharmacy has offered a totally free of charge local delivery service, on request, for over 40 years in Uckfield. There is no intention to withdraw the service. The commitment to the service can be seen by the recent purchase of electric delivery vehicles powered by solar panels on the roof of our nearby warehouse.

1.68 More details are at:

<https://uckfieldnews.com/kamsons-goes-green-after-move-to-new-head-office-in-uckfield/>

1.69 The majority of prescriptions dispensed by the pharmacy are delivered rather than collected. Each delivery is electronically recorded on the Pro-Delivery App and by analysing the data, the details are as follows

	March/April results	2021	January results	2021	Total
Total of people that visited the pharmacy	197		120		317
Number of people receiving a free prescription delivery	305		99		404
Grand Total	502		219		721

1.70 The figures show that 56% of people that use the pharmacy avail themselves of the pharmacy's free delivery service rather than visit the pharmacy. The majority of patients will therefore notice no difference if the pharmacy were to move.

#### Summary

1.71 The reasons for this application are the tiny size of the current pharmacy, the suspension of the access to its consultation room, lack of space to store stock and most importantly, for the health of safety of the pharmacist, other staff and patients.

1.72 Allowing the pharmacy to relocate will allow the pharmacy team to work in a safer, more spacious pharmacy which will allow for greater distance between work colleagues. It will allow the pharmacy to stock more than just the bare minimum of stock. The relocated pharmacy will have its own large consultation room with integrated IT. The relocated pharmacy will be in a location more accessible to the public, with clear signage and more patients allowed inside.

1.73 The groups of patients that use the pharmacy are, in order of most to least:

1.73.1 Those that use the pharmacy's free delivery service,

1.73.2 Those that travel to the pharmacy by car,

1.73.3 Those that walk there, and

1.73.4 others ie those that only stated they were in the hospital anyway and did not give a mode of transport or those that might come by bicycle or taxi.

1.74 Even though some individuals may consider that the new location may be significantly less accessible, the majority of every identified patient group did not.

1.75 The new location has 337 free of charge parking spaces within 95 seconds walk away. It has a cycle rack the same distance away. There is a bus stop opposite, with two buses per hour in normal circumstances.

1.76 Kamsons respectfully request that this application is approved.

## 2 The Decision

NHS England considered and decided to refuse the application. The decision letter dated 14 October 2021 states:

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

Extract from NHS England South East (Kent, Surrey, Sussex) Pharmaceutical Services Regulations Committee minutes dated 30 September 2021.

### The Application

2.2 An application from Waremooss Ltd for a relocation that does not result in a significant change to pharmaceutical services provision was received on 19<sup>th</sup> May 2021. The Applicant was proposing to relocate from Kamsons Pharmacy Uckfield community hospital, Framfield Road, Uckfield, East Sussex, TN22 5AW to Kamsons Health & Beauty, 152-154 Highstreet, Uckfield, East Sussex, TN22 1AT.

2.3 The Committee was now required to consider the application in accordance with Regulations 24 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.

### Consideration

2.4 The Committee considered the following:

2.4.1 The NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.

2.4.2 The application form provided by the Applicant

2.4.2.1 The Committee noted the reasons stated by the Applicant as to why the application should not be refused under Regulation 31.

2.4.2.2 The Applicant had indicated that the same services would be provided at the new premises and there would be no interruption to service provision.

2.4.2.3 The current contracted hours would continue to be provided at the new premises.

2.4.2.4 The Committee noted the "not applicable" responses provided by the Applicant as to why the application should not be refused pursuant to Regulation 24 (3)(a)-(c).

2.4.3 Maps and a photograph of the current premises.

2.5 Representations made by Boots UK Ltd and Surrey & Sussex LPC. Boots UK Ltd, made the following comments "*We believe the route between the two locations may be significantly less accessible for some patient groups, particularly those who are elderly and less mobile*"

- 2.6 The Applicant rebutted the comments by referencing the audit of patients accessing the pharmacy submitted with the application.
- 2.7 All additional information, including location and distances of surrounding pharmacies and their opening times.
- 2.8 Department of Health – Regulations under the Health and Social Care Act 2012: Market Entry by means of Pharmaceutical Needs Assessments – Chapter 10.
- 2.9 The Committee noted the address of the application was within a non-controlled locality and therefore it would not be required to consider the discontinuation of arrangements for the provision of pharmaceutical services by doctors to the affected patients under Regulation 50.
- 2.10 The Committee decided it was not necessary to hold an oral hearing before determining the application.
- Regulation 31 – Refusal: same or adjacent premises
- 2.11 The Committee noted that it was required to refuse an excepted application, if the two conditions under paragraph 31(2) applied. These conditions are –
- 2.11.1 A person on the pharmaceutical list (which may or may not be the Applicant) is providing or has undertaken to provide pharmaceutical services (“the existing services”) from the premises to which the application relates, or adjacent premises; and
- 2.11.2 The NHSCB is satisfied that it is reasonable to treat the services that the Applicant proposes to provide as part of the same service as the existing services (and so the premises to which the application relates and the existing listed chemist premises should be treated as the same site).
- 2.12 The Committee noted the Applicant’s comments with regard to why the application should not be refused pursuant to Regulation 31. There is currently no other NHS pharmacy contractor included in the pharmaceutical list at or adjacent to the proposed premises.
- 2.13 The Committee concluded that it was not required to refuse the application for the purpose of Regulation 31.
- 2.14 Having established that it did not have to refuse the application under Regulation 31 the Committee moved on to consider Regulation 24.
- 2.15 It was noted that the proposed relocation did not involve a change of area of HWB and therefore regulation 24(2) did not apply.
- 2.16 The Committee considered the circumstances when it must refuse such an application as detailed in regulation 24(3) and concluded that none of these circumstances applied in this case.
- 2.17 Having established that the application did not need to be refused under regulation 24(3), the Committee proceeded to consider each of the 5 criteria under regulation 24(1).
- 2.18 Regulation 24(1) – Relocation that do not result in significant change to pharmaceutical services provision (different premises in the area of the relevant HWB)
- 2.19 The Committee had regard to Regulation 24(1), which requires the following five conditions to be met:

*Regulation 24.-(1) Section 129(2A) of the 2006 Act (regulations as to pharmaceutical services) does not apply to an application from a person already included in a pharmaceutical list to relocate to different premises in the area of the relevant HWB (HWB1) if-*

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

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

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

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

*(c) the NHSCB is satisfied that granting the application would not cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area of HWB1;*

*(d) the services the applicant undertakes to provide at the new premises are the same as the services the applicant has been providing at the existing premises (whether or not, in the case of enhanced services, the NHSCB chooses to commission them); and*

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

#### Regulation 24(1)(a)

- 2.20 The Applicant had defined the patient groups accustomed to accessing pharmaceutical services at the existing premises in their response to representations. Those being by reference to the method of transport they use walking/cycling/taxi/car, patients who received a free delivery of their medication, and those already in the hospital.
- 2.21 The Applicant had submitted an audit of the defined patient groups, undertaken between 22<sup>nd</sup> March and 26<sup>th</sup> April 2021. The committee noted the scale of accessibility ranged from “significantly more accessible” to “significantly less accessible”, with the majority of patients in each group (72% travelling by car, 57% walking and 60% already in hospital) considering the proposed location to be either “less accessible” or “significant less accessible”.
- 2.22 The Committee noted the proximity of the current premises and the proposed premises/central shopping area. The distance between the two premises is 1.53km, the average walking time is 17 minutes and 6 minutes by car. For those travelling by car there is adequate parking including disabled parking on the street outside the proposed premises.
- 2.23 The Committee noted that the area is a small town and the Applicant proposes to move away from the south-east section of the town, adjacent to a GP surgery and within a community hospital, to the high street, where there are already several other pharmacies in situ. There is a large amount of housing to the south-west of the existing pharmacy, and the Committee considered that people with small children or no transport would find it less accessible to go to the high street.

- 2.24 The Committee was not satisfied given the difference in locality of each premises, that the location of the new premises is not significantly less accessible for the patient groups accustomed to accessing pharmaceutical services at the existing premises.

Regulation 24(1)(b)

- 2.25 The Committee had no evidence or information to suggest that granting the application would result in a significant change to arrangements for the provision of local pharmaceutical services or pharmaceutical services other than those provided by a dispensing doctor.
- 2.26 The Committee was satisfied that the relocation would not result in a significant change to the arrangements for the provision of local pharmaceutical services or of pharmaceutical services other than those provided by a person on a dispensing doctor list in any part of the HWB.
- 2.27 Having due regard to regulation 24(1)(b)(ii), the Committee was aware that the location of the proposed premises was not within 1.6 kilometres of a controlled locality in a neighbouring HWB.

Regulation 24(1)(c)

- 2.28 The Committee had no reason to think there would be significant detriment to proper planning and there was no information from any other party arguing significant detriment to proper planning. The Committee considered the locations of existing pharmacies as well as the proposed site and medical practices within the area and was satisfied that granting the application would not cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area.

Regulation 24(1)(d)

- 2.29 The Applicant had confirmed that the same services would be provided at the new premises as are currently being provided at the existing premises. The Committee was satisfied that the condition in paragraph (d) had been met.

Regulation 24(1)(e)

- 2.30 The Applicant confirmed that the provision of pharmaceutical services will not be interrupted (except for such period as the NHSCB may for good cause allow), The Committee was satisfied that the condition in paragraph (e) had been met.
- 2.31 The Committee determined that conditions under Regulation 24(1)(a) were not satisfied.
- 2.32 The Committee determined that conditions under Regulation 24(1) (b), (c), (d) and (e) are satisfied.

Decision

- 2.33 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.
- 2.34 The Committee determines the application as follows:
- 2.34.1 The Committee was not satisfied that the location of the new premises is not significantly less accessible for the patient groups.
- 2.34.2 The Committee was satisfied that the relocation would not result in a significant change to pharmaceutical services or dispensing services.

- 2.34.3 The Committee was satisfied that granting the application would not cause significant detriment to proper planning.
  - 2.34.4 The Committee was satisfied that the same services would be provided at the new premises.
  - 2.34.5 The Committee was satisfied that the provision of pharmaceutical services will not be interrupted.
- 2.35 The Committee determined to refuse the application.

#### Third Party Rights of Appeal

- 2.36 The application is refused so the Applicant has the right to appeal.
- 2.37 The Committee decided not to grant third party right of appeal to the decision of NHS England and NHS Improvement to any of the parties that responded during the consultation period, because no ground of objection had been raised.

### 3 The Appeal

In a letter dated 9 November 2021 addressed to NHS Resolution, Ware Moss Limited t/a Kamsons Pharmacy (“the Applicant”) appealed against NHS England’s decision. The grounds of appeal are:

- 3.1 The NHS England Pharmaceutical Services Regulations Committee appear to have not made a site visit and hence, understandably, have made an incorrect decision.
- 3.2 The first error in the decision papers is in paragraph [2.2] that the application was received on 19<sup>th</sup> May 2021. The Applicant has, however, enclosed a letter from NHS England stating that they received the application on 6<sup>th</sup> May 2021. The decision was issued on 14<sup>th</sup> October 2021, i.e. over the statutory four months required under Schedule 2 Part 4 paragraph 27(b)(i).
- 3.3 The main reason for this appeal, though, is that the Applicant considers that NHS England have wrongly determined that the application does not meet the Requirement of Regulation 24(1)(a).
- 3.4 The NHS England Pharmaceutical Services Regulations Committee have accepted that this application meets each of the relevant Regulations except for 24(1)(a). The Applicant will therefore assume that NHS Resolution will concur that the other Regulations are met and will concentrate on explaining why they consider this application meets the requirements of Regulation 24(1)(a).
- 3.5 Substantial evidence in the form of patient survey results were submitted with the application to show that for the patient groups, that are accustomed to accessing pharmaceutical services at the existing premises, the majority in each group said they would not find the location of the new premises to be significantly less accessible.
- 3.6 Unfortunately, in paragraph [2.21] of its decision, NHS England decided to include additional patients who did not respond that the new location would be “significantly less accessible” and included them also in its total. The legal test is not whether some patients or patient groups might find the new location less accessible or slightly inconvenient. The legal test in Regulation 24(1)(a) is whether these patient groups would find the new location significantly less accessible.
- 3.7 In every patient group stated, the majority stated that they would not find the new location significantly less accessible.

- 3.8 The choice of patient groups was originally made in an application (ME543) for the same relocation to NHS England on 23<sup>rd</sup> October 2020 and refused on 4<sup>th</sup> March 2021 when they accepted the choice of patient groups, but requested additional evidence as the patient survey had occurred during the pandemic.
- 3.9 Additional surveys were undertaken, the survey was advertised by the local medical practice's patient participation group and put on their Facebook site which generated a lot of interest from patients to come into the pharmacy and complete the survey. The results of this survey comprised the bulk of the reapplication to NHS England on 6<sup>th</sup> May which this Appeal relates to.
- 3.10 This time, NHS England in its determination, having previously accepted the patient groups being identified by mode of transport, now said in paragraph [2.23] of its decision that "There is a large amount of housing to the south-west of the existing pharmacy, and the Committee considered that people with small children or no transport would find it less accessible to go to the high street." This comment appears to have no basis and to have had undue influence on the decision.
- 3.11 The Applicant will break down the response to this into three parts:
- 3.11.1 People with no transport
  - 3.11.2 People with small children
  - 3.11.3 People in housing to the south west of the existing pharmacy
- 3.12 With regards to people with no transport:
- 3.12.1 Kamsons Pharmacy has offered a free prescription delivery service to patients for over forty years in Uckfield and has no intention of stopping. Such a responsive delivery service allows quick access to medication for those without transport. The Applicant has recently invested in new electric vans and charging points in Uckfield, so demonstrating their commitment to continuing this service established for over four decades.
  - 3.12.2 The current pharmacy does not have the space to have a consultation room so cannot offer face-to-face services to any patient wanting privacy. The current pharmacy is unable to offer many services because of the lack of a room and the lack of space.
  - 3.12.3 The application showed that only 4 out of 22 people who walk to the pharmacy stated that the new location would be significantly less accessible.
  - 3.12.4 There is next to no public transport at the existing location yet the new location is on a bus route and far easier to access.
  - 3.12.5 The current location is at the edge of the town whereas the new one is centrally located and easily accessible.
  - 3.12.6 There are no other shopping facilities anywhere near to the pharmacy. Anyone with, or without transport, would need to access the High Street area to undertake any shopping needs.
- 3.13 With regards to "people with small children", at the risk of annoying patients by doing a third survey, the pharmacist manager, asked those who visited in the week commencing Monday 1<sup>st</sup> November 2021, "Do you have any children under 10?". If so, we then asked them to complete a short survey.
- 3.14 The results of this survey are:

Total Patients visiting the pharmacy				120
Do you have children under 10?	No	118	Yes	12

- 3.15 In response to the question:  
 “If the pharmacy moved to the High Street would you find it:  
 A – Significantly more accessible  
 B – More accessible  
 C – About the same  
 D – Less accessible  
 E – Significantly less accessible”
- 3.16 The results from the 12 people with children under 10 were:  
 A – Significantly more accessible 0  
 B – More accessible 1  
 C – About the same 5  
 D – Less accessible 6  
 E – Significantly less accessible 0
- 3.17 The survey shows that parents with young children (aged under 10) are 10% of the people that visit the pharmacy and that no members of this patient group, who responded to the survey, said that they would find the proposed location significantly less accessible.
- 3.18 With regards to housing to the south west of the pharmacy, the residents of these houses would generally not have easy access to the existing site. The pharmacy is currently situated at the very far end of Framfield Road at the end of the town. The hospital is situated next to the “Welcome to Uckfield” sign, as shown in the original application. Those residents of houses to the southwest of the pharmacy would need to travel along the main road, the B2102 (NewTown/High Street) in order to access Framfield Road and then to travel along to the very end of this road, weaving in and out of the many parked cars, and then walk around the hospital to find the pharmacy. They would not access this location by bus as, in effect, there are not any. It is for this reason that so many people use the free delivery service offered by Kamsons.
- 3.19 These residents would travel into town to access day to day shopping needs. As they would already be travelling along the B2102, they would find it easier and more convenient to park in one of the many large car parks next to the proposed relocated pharmacy or to get off a bus in the High Street next to the relocated pharmacy, rather to then have a walk up Framfield road to the current location.
- 3.20 Also in paragraph [2.23] of the NHS decision it states, “*The Committee noted that the area is a small town and the applicant proposes to move away from the south-east section of the town, adjacent to a GP surgery and within a community hospital, to the high street, where there are already several other pharmacies in situ...*”
- 3.21 This is wrong. There are not several other pharmacies in the High Street. There is just one – Boots the Chemist, which is situated at the opposite end of the High Street to

where this application is proposing to move Kamsons Pharmacy to. The other two pharmacies in the town are Kamsons Pharmacy at The Meads Medical Centre in Bell Farm Road and Tesco Supermarket in Bell Farm Road – neither of these pharmacies are in the High Street.

- 3.22 The current premises are not adjacent to a GP Surgery. As the pictures enclosed with the application show (Appendix B), the GP surgery is at the front of the hospital building whereas the pharmacy is currently hidden down an internal hospital corridor, next to a ward and with no external windows or doors. Many patients of the GP surgery do not even know there is community pharmacy in the hospital because of its poor signage and difficult to find location and that many people do not wish to wander around hospital corridors looking for a pharmacy that is too small to safely fit more than one patient at a time or provide any services.
- 3.23 This application is to move a pharmacy which is only 16.5m<sup>2</sup>, too small for more than one patient to visit nor able to provide any privacy or services and is situated at the end of a hospital corridor with no access to fresh air. The new location is not significantly less accessible for every patient group surveyed, is accessible by public transport and has plentiful parking. Even though some individuals may consider that the new location may be significantly less accessible, the majority of every identified patient group did not.
- 3.24 NHS England have refused this application without holding an oral hearing or making a site visit. The Applicant respectfully requests that the decision of NHS England is quashed, an oral hearing is held and this application is approved.

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

This is a summary of representations received on the appeal.

##### 4.1 NHS ENGLAND

- 4.1.1 The committee considered the application afresh on the 30<sup>th</sup> of September and therefore the decision report is different to the report issued in response to the application submitted in October 2020.
- 4.1.2 NHS England do acknowledge that the appeal is centred on regulation 24(1)(a) and the response provided is therefore focussed on this only.
- 4.1.3 The application was refused as the Committee was not satisfied that the location of the new premises is not significantly less accessible for the patient groups. The Applicant had defined the patient groups accustomed to accessing pharmaceutical services at the existing premises in their response to representations being by reference to the method of transport they use walking/cycling/taxi/car, patients who received a free delivery of their medication, and those already in the hospital.
- 4.1.4 For all questions patients would find the change less accessible and some significantly less accessible.
- 4.1.5 The regulation does not define the proportion of patients in a 'group' that need to find a change significant.
- 4.1.6 For the groups travelling both by car and walking there are more patients who would find the change significantly less accessible than less accessible, and the total is overwhelmingly more than the number that were neutral or would find the new site more accessible.

- 4.1.7 Even more so, the majority of those already in hospital would find the proposed site less accessible as it will not be within a hospital where they would need it most.
- 4.1.8 To include the proportion of those patients that indicated that they would find the proposed site less accessible in the totals of those that said the new site would be accessible would defeat the intended objective of the earlier group [sic] – that it is to express their view that the proposed site is less accessible.
- 4.1.9 Taking the area as a whole, there are already three other pharmacies on the North side of the River Uck not far away from one another or to the proposed site.
- 4.1.10 It does not seem unreasonable to include the group of patients that live to the South West of the site and indeed through the survey, some have responded to say they would find the new site less accessible as well.
- 4.1.11 It is worth noting that members of the Committee are familiar with the town and the area and therefore a site visit was not deemed necessary.
- 4.1.12 The NHS E&I South East PSRC respectfully requests that the decision made to refuse the application is confirmed.

#### 4.2 BOOTS UK LTD

- 4.2.1 Boots UK Ltd agree with the decision made by NHS England and their reasoning.
- 4.2.2 Boots UK Ltd believe that there is a significant proportion of patients who access the pharmacy in the current location who would find the proposed premises significantly less accessible.
- 4.2.3 In the supporting information provided by the Applicant dated 4<sup>th</sup> May 2021 under the title “Patients that travel to the current pharmacy by walking” it documents that 19 out of 45 people surveyed stated that the relocated pharmacy would be significantly less accessible.
- 4.2.4 The Applicant states in their appeal letter that the current premises are “hidden down an internal hospital corridor” and that “many patients of the GP surgery do not even know there is a community pharmacy in the hospital because of its poor signage and difficult to find location”. However, this seems to contradict the information provided regarding the survey that was advertised by the local medical practice’s patient participation group on their Facebook for which the appellant stated “generated a lot of interest from patients to come in to the pharmacy and complete the survey.”
- 4.2.5 It would therefore appear that there is no difficulty in patients finding the pharmacy in its current location.
- 4.2.6 The closest surgery to the pharmacies current location is the Bird in Eye Surgery who are also located at Uckfield Community Hospital and appear to account for over 90% of the number of items the pharmacy dispenses.
- 4.2.7 The Applicant has not provided any information in their appeal on where their items are generated or where patient journeys start from, just by which mode of transport they use to access their pharmacy. Some patients may come from the housing developments to the south west of the current location, and these patients would have a significant additional journey to make to access the proposed location. This would be significant to some patient groups such as those who are elderly or less mobile, or for those who travel by car, those

households who only have access to 1 car which may be used by another family member during the daytime.

4.2.8 In summary, Boots UK Ltd do not believe that the appeal satisfies the criteria set out in Regulation 24 and Boots UK Ltd request NHS Resolution dismiss this appeal.

4.2.9 Please be aware that Boots UK Ltd may wish to attend any Oral Hearing that may be required in connection with this application.

## 5 Observations on representations

### 5.1 KAMSONS PHARMACY (THE APPLICANT)

5.1.1 In response NHS England's letter, the Applicant would like to make the following points.

5.1.2 Regulation 24(1)(a) is very carefully worded and it does not say that the new premises should be *more accessible*, or even *as accessible* as the existing premises. It does not even say that the new premises *must not be less accessible* than the existing premises. The wording of Regulation 24(1)(a) states that "*for the patient groups that are accustomed to accessing pharmaceutical services at the existing location, the location of the new premises is not significantly less accessible.*" [emphasis added]

5.1.3 Throughout this application, the Applicant has not hidden the fact that there are some patients that have stated that they would find the new location *less accessible* and that there have been a few that have stated that it would be *significantly less accessible*. [emphasis added]

5.1.4 NHS England is correct that the Regulation does not define the proportion of patients in a "group" that need to find a change significantly less accessible. However, by common sense, whether a majority of patients in a patient group do or don't find a change of location significantly less accessible is the fairest indicator whether this legal test is met. Including patients who may have responded otherwise (e.g. to say a move would be just less accessible) may meet the needs of Boots and NHS England to justify their decision, but is not in keeping with the wording of Regulation 24(1)(a). [emphasis added]

5.1.5 NHS England then states "*the majority of those already in the hospital would find the proposed site less accessible as it will not be within a hospital where they would need it most.*" It is important to remember that this comment is based on extremely low numbers of 5 people who stated they came to the pharmacy having already been in the hospital. Only two of the five said they would find the new site significantly less accessible whilst two of the five said they would find the new site more accessible. It is important to emphasise that very few patients attended the pharmacy after being in the hospital due to the massive decrease in face-to-face appointments occurring. It must also be mentioned that this is currently solely a community pharmacy that just happens to be situated within a hospital corridor and is not a hospital pharmacy.

5.1.6 NHS England's letter then mentions the North side of the River Uck as if this were a significant geographical feature. It actually just emphasises that NHS England may not have even visited the town before and the lack of NHS England site visit that occurred. As someone who has worked in Uckfield for over 15 years, the River Uck is not a barrier to accessing any part of the town, has roads going over it and is rarely mentioned by those that live or work here. In fact, the Boots is just a few metres from the River Uck but no-one travelling on the B2102, going over the Uck, would normally realise.

- 5.1.7 There is then an attempt to justify the mention of the “*large amount of housing to the south west of the existing pharmacy*” in the NHS England decision to refuse the application by saying it is “*not unreasonable to include the group of patients that live to the South West of the site*” and then to say “*some have responded to say they would find the new site less accessible as well*”.
- 5.1.8 The Applicant has agreed throughout that some respondents to the survey have said that they regard the new site will be less accessible. However, the Applicant does not understand how NHS England has inferred that these people live to the south west of the current site. However, as it is also mentioned in the NHS decision and by Boots in their response, the Applicant will look at the estates built in the last decade to the south west of Uckfield Hospital.
- 5.1.9 There are three new-build estates in the area - Harland estate to the east of the Highlands Inn, New Barn estate to the west of the Highlands Inn and Ridgewood Place, to the south of the Highlands Inn which has some occupancy but is currently being built (see Appendix C). This estate is expected to grow but it is important to note that the legal test which NHS England agree is the matter of contention, is for patient groups already accustomed to accessing pharmaceutical services at the existing premises.
- 5.1.10 A suitable point to consider is the Highlands Inn, which has some new housing on either side, to look at how patients living south west of the existing pharmacy, would travel to the pharmacy and the proposed site, by different forms of transport.
- 5.1.11 Walking - the walk is 0.8mile and takes 15 minutes along main roads to the new site. (see Appendix C) The walk is pleasant and takes the person into town and pass a number of shops that they would use for day to day shopping such as Waitrose and the Post Office within WH Smith.
- 5.1.12 The walk to the existing site is steeper and although a similar distance takes longer (16 minutes) by walking along back streets. If walking along main roads, it is 1 mile and takes 19 minutes.
- 5.1.13 Train - The train station in Uckfield is the end of the Uckfield – London Bridge line. No one would be able to travel from the Highlands Inn by train to either location.
- 5.1.14 Bus - there are buses that run every 30 to 40 minutes from the Highlands Inn to outside the new site. There are none that go to the existing site from here.
- 5.1.15 Appendix C shows that the catching a bus from the Highlands Inn to the new site would take 8 minutes, including the short walk to and from the bus stop, Appendix C also shows a bus to the existing site would take 13 minutes including the longer walk to Uckfield Hospital.
- 5.1.16 Car - Appendix C shows that driving from the Highlands Inn to the new site takes 3 minutes and is 0.8 miles away. Note that the original application showed the plentiful on-street parking outside the new site and in the large car park very close by.
- 5.1.17 Appendix C shows that driving from The Highlands Inn to the existing site takes 4 minutes by main roads and is 1 mile long. Alternatively it is 3 minutes and 0.8miles if you know the route and wish to take the back roads. Note that parking can sometimes be hard to find at Uckfield Hospital.

- 5.1.18 Cycle - To cycle to the new site takes 4 minutes and is 0.8miles (Appendix C). To cycle to the existing site takes 6 minutes and is 1 mile away via main roads or is 0.8miles and takes 5 minutes via back streets. (Appendix C)
- 5.1.19 In summary, from a central main point to the south west of Uckfield Hospital, it is quicker to cycle, walk or catch a bus and the same length of time to drive to the proposed site in Uckfield High Street than to the existing site, up Framfield Road. Of course, additional time would then be necessary to actually find the existing pharmacy down a hospital corridor. Even as the crow-flies, both sites are equidistant from the Highlands Inn.
- 5.1.20 In response to the letter from Boots, they have emphasised that a minority of patients, who currently access the pharmacy on foot, would find the new location significantly less accessible. As mentioned above, if only a minority of patients in a patient group find a change of location significantly less accessible, then it would indicate that the legal test is met for the patient group that accesses the pharmacy by walking.
- 5.1.21 Boots then repeats some of the issues that demonstrate the unsuitability of the current site. Because current patients that may use the pharmacy responded to the article on the local news website and on the Patient Participation Group's Facebook page by coming into the pharmacy to complete the survey, it does not mean that the pharmacy is easy to find for anyone who has never found it before.
- 5.1.22 In the next paragraph, Boots then state about patients who may come from the south west of the existing site. These concerns are answered above and it is clear that the new site is quicker and easier to access. Boots' comments that "these patients would have a significant additional journey to make to access the proposed location" are unsubstantiated and simply incorrect.
- 5.1.23 Boots also enquires about where prescriptions are generated. This information is publicly available from the NHSBSA to Boots and anyone else who wishes to see it. The most recent data available is for September 2021 available and the results show that the prescriptions dispensed are:

Surgery	Number of prescriptions dispensed at Kamsons Pharmacy in Uckfield Hospital	Percentage of prescriptions generated by this practice and dispensed by Kamsons Pharmacy in Uckfield Hospital
Bird in Eye Surgery, Uckfield	2,950	29.86%
The Meads Surgery, Uckfield	47	0.33%
Buxted Medical Centre	36	0.1%
Other	98	-

- 5.1.24 The pharmacy dispensed 3131 items in September 2021 of which 2,950 came from Bird in Eye Surgery i.e. 94% of prescriptions dispensed by the pharmacy. It is important to remember that over 50% of these prescriptions are delivered to patients who do not come into the pharmacy. The pharmacy is only dispensing less than 30% of the prescription items produced by Bird in Eye Surgery. A pharmacy co-located with a GP surgery would normally dispense around 70% of the items produced. Tesco situated in Bell Farm Road in the town, dispensed 2,509 items from this surgery in this month.
- 5.1.25 The low numbers of prescriptions dispensed by Kamsons Pharmacy at the current site are because the current pharmacy is hidden at the end of a hospital corridor, this community hospital is situated at the end of a car park, and the

hospital is situated at the very far end of the town where no one would choose to normally go. To make it even more unsuitable, the pharmacy has no fresh air, no outside windows, no consultation room and no space for more than one patient.

- 5.1.26 The new location is much larger, already has a consultation room and is centrally located in the town where everyone has to go in order to buy bread, milk and any other daily supplies. The new location has more plentiful and easy-to access parking, cycle racks and bus routes. It is quicker to walk, drive, cycle or catch a bus to the new, rather than the old site. The majority of patients in every patient group said that they would not find the new location significantly less accessible.
- 5.1.27 When this pharmacy opened, dispensing was the main part of what was expected from a pharmacy. With the advent of the Healthy Living Pharmacy concept, a far wider range of services are now expected whether it be vaccinations, contraception or blood pressure monitoring. Without a consultation room, even a basic level of over-the-counter advice and patient counselling is severely limited. In order to provide a suitable modern pharmacy service, larger premises are necessary. There are no other suitable properties available to move into. The proposed location is the most suitable nearest site.
- 5.1.28 Of course, NHS Resolution have to primarily decide this case on the basis of the Pharmaceutical Services Regulations but the Applicant would respectfully request that they take into account Health and Safety requirements too. From the outset, the Applicant has made clear that the current premises are not suitable for patients nor staff. Not only are the premises too small (16.5m<sup>2</sup>), they are inadequately ventilated as they are situated in the middle of a hospital corridor with no access to fresh air. Because NHS England refused the application to move, the Applicant has had to continue operating out of unsuitable premises in the middle of a pandemic. As the Applicant writes this today, the dispenser is currently off work with Covid. In the current unventilated, small and inadequate premises further Covid infection of staff members is likely to occur and both staff and patients are currently at increased risk of Covid transmission when in the current pharmacy.
- 5.1.29 The Applicant respectfully asks, for the wellbeing of their staff and patients, that this pharmacy is promptly granted permission to move to larger and safer premises.

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