

23 May 2024

REF: SHA/26207

**APPEAL AGAINST HAMPSHIRE AND ISLE OF WIGHT ICB DECISION NOT TO GIVE THIRD PARTY APPEAL RIGHTS TO ARUN SHARMA CHEMISTS LTD IN RESPECT OF THE DECISION TO GRANT AN APPLICATION BY MC SHIRLEY LTD FOR A NO SIGNIFICANT CHANGE RELOCATION FROM 17 GROVE ROAD, SHIRLEY, SOUTHAMPTON, SO15 3HH TO 302 SHIRLEY ROAD, SHIRLEY, SOUTHAMPTON, SO15 3HL**

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## 1 Outcome

- 1.1 Arun Sharma Chemists Ltd is a person with third party appeal rights against the decision of the Commissioner set out in its letter dated 15 April 2024 (and notified to Arun Sharma Chemists Ltd by letter dated 15 April 2024).

A copy of this decision is being sent to:

MC Shirley Ltd  
Arun Sharma Chemists Ltd  
Boots UK Ltd  
PCSE on behalf of Hampshire and Isle of Wight ICB

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## 1 The Application

By application dated 18 October 2023, MC Shirley Ltd (“the Applicant”) applied to the Hampshire and Isle of Wight ICB (“the Commissioner”) for a no significant change relocation from 17 Grove Road, Shirley, Southampton, SO15 3HH to 302 Shirley Road, Shirley, Southampton, SO15 3HL

## 2 Process

The Commissioner gave notice of the notifiable application in accordance with the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (“the Regulations”) by cover letter dated 11 January 2024. This is a summary of representations made to the Commissioner by Temple Bright LLP on behalf of Arun Sharma Chemists Ltd in a letter dated 19 February 2024 (i.e. within 45 days as set out in the Regulations):

- 2.1 “I act for Arun Sharma Chemists Limited which is included in the Southampton HWB’s pharmaceutical list for premises trading as Pharmacy Direct, 355A Shirley Road, Southampton, SO15 3JD.
- 2.2 On behalf of my client I write further to your letter of 11<sup>th</sup> January 2024 and in order to submit representations to NHS England in respect of a no significant change relocation application by MC Shirley Limited from 17 Grove Road, Shirley, Southampton, SO15 3HH to 302 Shirley Road, Shirley, SO15 3HL.
- 2.3 As NHS England will be aware, this application must be considered having regard to the regulatory test contained within regulation 24 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013. The burden of proving that an application meets the relevant regulatory test rests with the applicant.
- 2.4 In relation to that regulatory test, regulation 24(1)(a) requires the applicant to demonstrate to NHS England that “(a) *for the patient groups that are accustomed to accessing pharmaceutical services at the existing premises, the location of the new premises is not significantly less accessible.*”
- 2.5 The starting point in assessing whether the proposed premises would be significantly less accessible is for the applicant to define the pharmacy’s patient groups. Whilst the applicant has made some attempt to define the pharmacy’s patient groups, it is clear that the applicant has not fully or properly defined these groups, meaning that NHS England cannot consider the question of accessibility.
- 2.6 Having regard to the information contained within the application form, my client comments as follows:

- 2.6.1 The applicant states that 71% of the pharmacy's dispensed items originate from the Shirley Health Partnership Practice which will shortly relocate. In relation to the remaining 29% of items, the applicant states that they originate "from surrounding GP practices". Given that the remaining items equate to between a quarter and a third of items dispensed by the pharmacy, the applicant should have provided additional information in relation to the source of those prescriptions so that NHS England could assess the applicant's assertion that "*patients who travel from other surgeries will not notice a significant change in their journey...*". However, the applicant provides no information about these patients and their GP surgeries.
- 2.6.2 The applicant then refers to a second patient group, being "patients that require access to pharmaceutical services other than after a visit to a GP surgery". However, no further information is given about this proposed patient group, which is so generic as to be meaningless. For example, the applicant provides no information about:
- 2.6.2.1 Where those patients have started their journeys on the basis that they have not travelled to the pharmacy directly from their GP surgery.
- 2.6.2.2 Which pharmaceutical services they require access to and whether this may have any impact on the question of accessibility.
- 2.6.2.3 How they have travelled to the pharmacy (ie their method of transport).
- 2.7 The applicant asserts in its application form that the majority of the pharmacy's prescriptions originate from the GP surgery which is currently opposite the pharmacy but will shortly relocate. Whilst this statement is correct, it does not help NHS England to understand why patients are choosing to use the applicant's pharmacy at its current location (particularly those patients who are not registered with the relocating GP surgery). The pharmacy is currently located in a largely residential area to the south west of Shirley Road. There are a number of other pharmacies in the local area, including other pharmacies on, or near to, Shirley Road. Notwithstanding the close proximity of other pharmacies to the applicant's existing premises, patients are choosing to access the applicant's pharmacy, yet the applicant provides no information as to why patients use its pharmacy rather than other pharmacies in the locality.
- 2.8 In the absence of sufficient information about the pharmacy's patient groups, NHS England cannot properly understand what patient groups access the pharmacy at its current location and why they choose to do so. Without that information, NHS England cannot be satisfied that the proposed premises would not be significantly less accessible.
- 2.9 For the reasons given above, on behalf of my client I therefore invite NHS England to refuse this application."

### 3 The Decision

The Commissioner considered and decided to grant the application by MC Shirley Ltd. The decision letter to Arun Sharma Chemists Ltd dated 15 April 2024 did not give them a right of appeal.

- 3.1 "Hampshire and the Isle of Wight ICB has considered the above application and I am writing to confirm that it has been granted. Please see the enclosed report for the full reasoning."

Decision report

- 3.2 **"THE APPLICATION**

- 3.3 An application from MC Shirley Ltd for a relocation that does not result in a significant change to pharmaceutical services provision was received on 23rd October 2023. The Applicant was proposing to relocate from 17 Grove Road, Shirley, Southampton SO15 3HH to 302 Shirley Road, Shirely, Southampton SO15 3HL.
- 3.4 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.
- 3.5 **CONSIDERATION**
- 3.6 The Committee considered the following:
- 3.7 The NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.
- 3.8 The application form provided by the Applicant –
- 3.8.1 The Committee noted the reasons stated by the Applicant as to why the application should not be refused under Regulation 31.
- 3.8.2 The Applicant had indicated that the same services would be provided at the new premises and there would be no interruption to service provision.
- 3.8.3 The current contracted hours would continue to be provided at the new premises.
- 3.8.4 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).
- 3.9 Maps and a photograph of the current premises.
- 3.10 Information from a virtual site visit of the Shirley area that had been undertaken by a Pharmacy Commissioning Hub representative. Members of the Committee were familiar with the area.
- 3.11 Representations made by Boots UK Ltd, Hampshire & Isle of Wight LPC and Temple Bright on behalf of Arun Sharma Chemists Ltd. Noting that Boots UK Ltd and Hampshire & Isle of Wight LPC both had no comments to the application. Temple Bright on behalf of Arun Sharma Chemists Ltd objected to the application.
- 3.12 All additional information, including location and distances of surrounding pharmacies and their opening times.
- 3.13 Department of Health – Regulations under the Health and Social Care Act 2012: Market Entry by means of Pharmaceutical Needs Assessments – Chapter 10.
- 3.14 The Committee noted the proposed location is in a non-controlled locality.
- 3.15 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.
- 3.16 The Committee decided it was not necessary to hold an oral hearing before determining the application.
- 3.17 **Regulation 31 – Refusal: same or adjacent premises**

- 3.18 The Committee noted that it was required to refuse an excepted application, if the two conditions under paragraph 31(2) applied. These conditions are –
- 3.18.1 *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*
- 3.18.2 *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).*
- 3.19 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.
- 3.20 The Committee concluded that it was not required to refuse the application for the purpose of Regulation 31.
- 3.21 Having established that it did not have to refuse the application under Regulation 31 the Committee moved on to consider Regulation 24.
- 3.22 It was noted that the proposed relocation did not involve a change of area of HWB and therefore regulation 24(2) did not apply.
- 3.23 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.
- 3.24 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).
- 3.25 **Regulation 24(1) – Relocation that do not result in significant change to pharmaceutical services provision (different premises in the area of the relevant HWB)**
- 3.26 The Committee had regard to Regulation 24(1), which requires the following five conditions to be met:
- 3.27 [Regulation 24 quoted].
- 3.28 **Regulation 24(1)(a)**
- 3.29 The applicant has defined the patient groups accustomed to accessing pharmaceutical services at the existing premises in their application. Those being:
- 3.29.1 *Patients that utilise the free collection & delivery service.*
- 3.29.2 *Patients that originate from GP surgeries requiring access to Pharmaceutical Services.*
- 3.29.3 *Patients that require access to Pharmaceutical Services other than after a visit to a GP surgery.*
- 3.30 The Committee noted the close proximity of the current premises and the proposed premises/central shopping area. The distance between the two premises is 150 yards,

the average walking time is 2 minutes. The applicant described the route as being “straightforward with no major barriers to overcome”.

- 3.31 The Committee noted that the journey by foot is on flat, maintained and well-lit pavements. The Committee also noted that both premises can be accessed using the same bus route/bus stops.
- 3.32 The Committee noted that both the existing and proposed premises are central to the Shirley area and that therefore access from where people live or shop is not significantly different at either site.
- 3.33 The Committee was satisfied that given the close proximity of the proposed premises to the current premises and the central location of both 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.
- 3.34 **Regulation 24(1)(b)**
- 3.35 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.
- 3.36 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.
- 3.37 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.
- 3.38 **Regulation 24(1)(c)**
- 3.39 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.
- 3.40 **Regulation 24(1)(d)** – the Applicant had confirmed that the same services would be provided at the new premises as are currently being provided at the existing premises.
- 3.41 The Committee was satisfied that the condition in Paragraph (d) had been met.
- 3.42 **Regulation 24(1)(e)** - the Applicant confirmed that the provision of pharmaceutical services will not be interrupted (except for such period as the NHSCB may for good cause allow), The Committee was satisfied that the condition in paragraph (e) had been met.
- 3.43 The Committee was satisfied that the provisions of Regulation 24(3)(a)–(d) do not apply.
- 3.44 The Committee determined that conditions under Regulation 24(1)(a), (b), (c), (d) and (e) are satisfied.
- 3.45 **DECISION**

- 3.46 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.
- 3.47 The Committee determines the application as follows –
- 3.47.1 the Committee was satisfied that the location of the new premises is not significantly less accessible for the patient groups.
- 3.47.2 the Committee was satisfied that the relocation would not result in a significant change to pharmaceutical services or dispensing services.
- 3.47.3 the Committee was satisfied that granting the application would not cause significant detriment to proper planning.
- 3.47.4 the Committee was satisfied that the same services would be provided at the new premises.
- 3.47.5 the Committee was satisfied that the provision of pharmaceutical services will not be interrupted.
- 3.48 The Committee determined to **grant** the application.
- 3.49 **THIRD PARTY RIGHTS OF APPEAL**
- 3.50 The application is granted so the applicant does not have appeal rights.
- 3.51 The Committee decided that the parties that should have third party rights of appeal are:
- 3.51.1 Arun Sharma Chemists Ltd.”

#### 4 **The Appeal**

In a letter dated 13 May 2024 addressed to NHS Resolution Temple Bright LLP on behalf of Arun Sharma Chemists Ltd appealed against the decision of the Commissioner not to give them third party rights of appeal. The grounds of appeal are:

- 4.1 “We act for Arun Sharma Chemists Limited which is included in the Southampton HWB’s pharmaceutical list for premises trading as Pharmacy Direct, 355A Shirley Road, Southampton, SO15 3JD. On behalf of our client we write to:
- 4.1.1 Appeal a decision of NHS England [sic] not to grant our client third party rights of appeal
- 4.1.2 Appeal a decision of NHS England [sic] to grant a no significant change relocation application by MC Shirley Limited to 302 Shirley Road, Shirley, SO15 3HL.
- 4.2 The decision was notified to our client by PCSE by letter dated 15<sup>th</sup> April 2024.
- 4.3 Taking each appeal in turn:
- Appeal against a decision of NHS England [sic] not to grant our client third party rights of appeal**
- 4.4 Our client is included in the pharmaceutical list for premises trading as Pharmacy Direct, 355A Shirley Road, Southampton, SO15 3JD.

- 4.5 By letter dated 11<sup>th</sup> January 2024, our client was notified of a no significant change relocation application by MC Shirley Limited from 17 Grove Road, Shirley, Southampton, SO15 3HH to 302 Shirley Road, Shirley, SO15 3HL.
- 4.6 NHS England's [sic] letter stated that our client was being notified of the application as an "interested party" to the application.
- 4.7 As NHS Resolution will be aware, a no significant change relocation application is a "notifiable application" for the purposes of paragraph 18 of schedule 2 to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations").
- 4.8 By reason of paragraph 19 of schedule 2 to the Regulations, NHS England was required to notify our client of the application as a "person included in a pharmaceutical list for the area of the relevant HWB...whose interests might, in the opinion of the NHSCB, be significantly affected if the application were granted." It is of note that our client's pharmacy is located within 300 metres of the site proposed by the applicant in its no significant change relocation application.
- 4.9 NHS England's [sic] letter of 11<sup>th</sup> January 2024 invited our client to submit representations in respect of the application by 25<sup>th</sup> February 2024. On behalf of our client, we submitted representations to NHS England by letter dated 19<sup>th</sup> February 2024. That letter was sent by email to PCSE on the same day. We attach a copy of our letter of 19<sup>th</sup> February 2024. The letter is 2 pages long and addresses the regulatory test which NHS England [sic] was required to apply to its determination of the no significant change relocation application.
- 4.10 By a letter and email from PCSE of 26<sup>th</sup> February 2024, PCSE sent to our client a 14-day circulation letter, together with correspondence received by PCSE from Boots, our client (the attached letter of 19<sup>th</sup> February 2024) and the LPC. A copy of that correspondence is attached to this letter of appeal.
- 4.11 The letter from PCSE dated 26<sup>th</sup> February 2024 stated that it was enclosing "written representations that we have received regarding the above application". Our client had no further comment to make and no response was sent to PCSE to the 26<sup>th</sup> February 2024 letter.
- 4.12 On 15<sup>th</sup> April 2024, our client received notification of a decision in respect of the relocation application, stating that the application had been granted. A copy of the 15<sup>th</sup> April 2024 letter and decision report is attached to this appeal. It is to be assumed that our client was notified of NHS England's [sic] decision to grant the application as our client is a person entitled to be so notified pursuant to paragraph 28(3)(v).
- 4.13 The decision report stated as follows in relation to third party appeal rights:
- 4.14 **4. THIRD PARTY RIGHTS OF APPEAL**
- 4.1 The application is granted so the applicant does not have appeal rights.*
- 4.2 The Committee decided that the parties that should have third party rights of appeal are: Arun Sharma Chemists Ltd.*
- 4.15 However, despite the decision report stating that our client was to be given third party rights of appeal, the letter of 15<sup>th</sup> April 2024 did not provide any information to our client about third party rights of appeal. It is not clear whether the 15<sup>th</sup> April 2024 letter omitted information about our client's third party rights of appeal in error. However, to the extent that NHS England's [sic] letter of 15<sup>th</sup> April 2024 intentionally did not provide for our client to be given third party rights of appeal, our client considers that it should have been granted third party rights of appeal against the decision to grant the relocation



application since it falls within the scope of paragraph 30 of schedule 2 to the Regulations. In particular:

- 4.15.1 NHS England [sic] was required to notify our client of the application and subsequent decision and, indeed, our client was notified of the application and subsequent decision.
- 4.15.2 Our client made representations to NHS England [sic] in writing about the application
- 4.15.3 Given the content of those representations, NHS England [sic] should have been satisfied that our client's representations:
  - 4.15.3.1 Made a reasonable attempt to express our client's grounds for opposing the application adequately
  - 4.15.3.2 Raised grounds for opposing the application which did not relate to the legality or reasonableness of the PNA and were not vexatious or frivolous.
- 4.16 To the extent that NHS England's [sic] letter of 15<sup>th</sup> April 2024 (which makes no mention of third party appeal rights) was not sent in error, NHS England [sic] gave no reasons why our client was not afforded third party rights of appeal, and we believe that the decision not to grant our client third party rights of appeal (if such a decision was, in fact, made deliberately) was unlawful.
- 4.17 In accordance with paragraph 30(6) of schedule 2 to the Regulations, on behalf of our client we therefore seek to appeal the decision of NHS England [sic] not to grant our client third party rights of appeal.

**Appeal against the decision of NHS England [sic] to grant the relocation application**

- 4.18 Subject to NHS Resolution upholding the above appeal and granting our client third party rights of appeal against the decision by NHS England [sic] to grant the relocation application, our client's ground of appeal in relation to the relocation grant is that NHS England [sic] failed to give any, or any proper, reasons for its decision.
- 4.19 In support of this appeal, our client relies upon its written representations to NHS England [sic] dated 19<sup>th</sup> February 2024 and asserts that for the reasons given in our client's representations of 19<sup>th</sup> February 2024, the application fails to satisfy the requirements of regulation 24.
- 4.20 In its decision report, NHS England [sic] stated "*The Committee was satisfied that given the close proximity of the proposed premises to the current premises and the central location of both 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.*" Since NHS England [sic] does not appear to have defined any "patient groups", it is not clear how NHS England [sic] could have reached the conclusions that it did.
- 4.21 Since our client was not provided with any response from the applicant to its representations of 19<sup>th</sup> February 2024 and since NHS England's [sic] decision failed to give any reasons why our client's representations were not accepted and why the application was granted, our client has no further substantive comments to make on the merits of the application itself at this stage beyond those contained within our letter of 19<sup>th</sup> February 2024.
- 4.22 In conclusion, therefore, for the reasons given in our letter of 19<sup>th</sup> February 2024 and on behalf of client we consider that NHS England [sic] should have refused this

application. We therefore invite NHS Resolution to uphold our client's appeals and to refuse this application."

## 5 Consideration

5.1 The Secretary of State for Health and Social Care has directed NHS Resolution to exercise the function of determining whether certain persons have rights of appeal on their behalf. I, as an authorised officer of NHS Resolution, have determined this appeal.

5.2 I have had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations"), and in particular paragraphs 30(3) and (6) of Schedule 2 which state (so far as is relevant):

(3) *P1 is a person to whom this sub-paragraph applies if—*

(a) *P1 was a person whom the NHSCB was required to notify about the decision on the application by virtue of P1 being a person whose interests might, in the opinion of the NHSCB, be significantly affected by the decision, and also being—*

(i) *included in a pharmaceutical list ...*

(b) *in the case of a notifiable application, P1 made representations in writing about the application under paragraph 19(4); and*

(c) *in the case of a notifiable application but subject to sub-paragraph (6), the NHSCB is satisfied, having regard to those representations in writing and any oral representations made in accordance with paragraph 25, that P1—*

(i) *made a reasonable attempt to express P1's grounds for opposing the application adequately in P1's representations, and*

(ii) *has grounds for opposing the application, which—*

(aa) *do not amount to a challenge to the legality or reasonableness of a pharmaceutical needs assessment, or to the fairness of the process by which a HWB or Primary Care Trust undertook that assessment, and*

(bb) *are not vexatious or frivolous.*

(6) *A person to whom sub-paragraph (3)(a) and (b) applies (P2) who is not notified by the NHSCB that they are person with third party appeal rights may appeal to the Secretary of State against the determination (D1) by the NHSCB that it is not satisfied as mentioned in sub-paragraph (3)(c), provided that P2—*

(a) *notifies the Secretary of State within 30 days of the date on which that person was notified of the NHSCB's decision under paragraph 28 (D2) that P2 wishes to appeal against D1 and D2; and*

(b) *includes within that notification concise and reasoned statements of P2's grounds of appeal against both D1 and D2,*

*and if the appeal against D1 is successful, P2 is a person with third party appeal rights in relation to D2 for the purposes of this Schedule."*

5.3 I first considered whether Arun Sharma Chemists Ltd was a person to whom sub-paragraph 30(3)(a) applied.

- 5.4 It is not disputed that Arun Sharma Chemists Ltd is included on the pharmaceutical list for premises at 355A Shirley Road, Southampton, SO15 3JD and I have not been provided with any information to the contrary. I am, therefore, of the view that Arun Sharma Chemists Ltd has met the requirements of sub-paragraph 30(3)(a).
- 5.5 The original application from MC Shirley Ltd is a notifiable application under the provisions of paragraph 18 of Schedule 2 and that the Commissioner gave notice of the application to Arun Sharma Chemists Ltd on 11 January 2024. Further, I note the comments from Arun Sharma Chemists Ltd that they made representations to the Commissioner in a letter dated 19 February 2024 in accordance with paragraph 19(4) of Schedule 2.
- 5.6 I therefore am of the view that Arun Sharma Chemists Ltd is a person to whom sub-paragraphs 30(3)(a) and (b) apply.
- 5.7 Despite the decision report stating that third party appeal rights should be given to Arun Sharma Chemists Ltd, the decision letter dated 15 April 2024 did not give third party rights of appeal to Arun Sharma Chemists Ltd.
- 5.8 I note that paragraph 30(3)(c)(i) of the Regulations states that a party should have “made a reasonable attempt to express P1’s grounds for opposing the application adequately...” I am of the view that:
- 5.8.1 Arun Sharma Chemists Ltd made a reasonable attempt to express their grounds for opposing the application, and
- 5.8.2 that these grounds
- 5.8.2.1 did not amount to a challenge to the legality or reasonableness of the a PNA nor to the fairness of the process by with a HWB or PCT undertook the assessment, and
- 5.8.2.2 are not vexatious or frivolous.
- 5.9 Further it would appear as though the Commissioner was also of this view, however this was unfortunately omitted from the version of the decision letter sent to Arun Sharma Chemists Ltd.
- 5.10 I am of the view that Arun Sharma Chemists Ltd is a person to whom sub-paragraph 30(3) (a), (b) and (c) applies and that it should have been given third party rights in accordance with the Regulations.
- 5.11 I note the wording of paragraph 30(6) and that, to exercise those rights properly, the appeal should include a concise and reasoned statement of the grounds of appeal against both the decision not to be given third party rights of appeal and against the substantive decision of the Commissioner to grant the application. I am of the view that Arun Sharma Chemists Ltd has complied with both of the above.

## **6 Decision**

- 6.1 Arun Sharma Chemists Ltd is a person with third party appeal rights against the decision of the Commissioner set out in its letter dated 15 April 2024 (and notified to Arun Sharma Chemists Ltd by letter dated 15 April 2024).
- 6.2 The appeal will proceed in accordance with the provisions of Part 2 of Schedule 3 to the Regulations.