

National Appeal Panel

Constituted under

**THE NATIONAL HEALTH SERVICE (PHARMACEUTICAL SERVICES)
(SCOTLAND) REGULATIONS 2009 (AS AMENDED)
(the “Regulations”)**

**DECISION
of the
CHAIR
of**

THE NATIONAL APPEAL PANEL

In the application relating to

1-3 Scotstoun Grove, South Queensferry, EH30 9PH

Applicants and Appellants: Samson Ferry Ltd

Health Board: NHS Lothian “the Board”

PPC Decision issued : 7 December 2018

Panel case number : NAP 83 (2019)

Decision of the Chair of The National Appeal Panel

1. Background

- 1.1 This is an appeal against the decision of the Pharmacy Practices Committee (“PPC”) of NHS Lothian (“the Board”) following upon a hearing that took place on 23 November 2018.
- 1.2 Samson Ferry Ltd (“the Applicants” or “the Appellants”) made an application for inclusion in the pharmaceutical list of the Board to provide pharmaceutical services in respect of the premises at 1-3 Scotstoun Grove, South Queensferry, EH30 9PH (“the Premises”), said application dated 28 March 2018.
- 1.3 The PPC under delegated authority of the Board took evidence from the Applicant and Interested Parties at the said hearing and, further, considered supporting documentation and following upon which determined that the provision of pharmaceutical services at the premises was neither necessary nor desirable in order to secure adequate provision of pharmaceutical services in the neighbourhood in which the premises were located by persons whose names were included in the pharmaceutical list and accordingly refused the application.
- 1.4 The Applicants submitted a letter of appeal against the PPC’s decision dated 20th December 2018 and received by the Board on 21st December 2018.

2. Summary of Grounds of Appeal

- 2.1 The PPC failed to consider information contained in the Consultation Analysis Report (“CAR”) in a manner that was logical, reasonable or clear. The Appellants state specifically that the majority of the 581 respondents considered that there were gaps and deficiencies in the existing pharmaceutical services and that they were concerned with matters relating to the inadequacy of the existing provision. The PPC had wrongly or unfairly focused on those who expressed a desire for longer opening hours and ought not to have inferred motives of those who had responded. The PPC had erred in not giving proper regard to the CAR.
- 2.2 The Freedom of Information (“FOI”) request presented by the Applicants to the PPC detailing complaint numbers was not considered in a fair or logical manner in that the representative of Lloyds had stated that there were no complaints in regard to the two Lloyds pharmacies referred to in evidence (the Loan and Well pharmacies) whereas the FOI information confirmed that 32 and 10 complaints respectively had been received by the Health Board in a four year period in respect of the pharmacies. The Appellants aver that the PPC chose to give weight to the evidence of Mr Arnot the representative of Lloyds Loan pharmacy of zero complaints notwithstanding being presented with written evidence to the contrary. The PPC had failed to explain why it had been impossible for it to decide on the matter.
- 2.3 The PPC failed to consider probable housing developments as designating them speculative only. The Appellants state that house building on a large scale was currently underway at Ferrymuir and a development at South Scotstoun had been granted full permission and would commence in the first quarter of 2019. The largest site comprising 840 houses had a “minded to grant” status. The PPC stated in their decision that there were “uncertainties as to the number of new houses which would be completed and occupied in the medium term”. The PPC had, in the face of evidence to the contrary designated the developments as speculative or uncertain.
- 2.4 The PPC failed to give consideration to a submission from all four ward Councillors, the local MSP and MP.

- 2.5 The Appellants aver that with regard to the dosette box provision (MDS) the evidence adduced was not fairly considered by the PPC. Specifically the Appellants aver that they had conveyed information at the hearing from two senior local GPs, the Practice Manager and another contractor and pointed to comments in the CAR all of whom and which stated that new MDS patients were not being accepted at both Lloyds pharmacies (as also Well Pharmacy in Kirkliston). The representative of Lloyds denied that the two pharmacies owned by them within the neighbourhood were refusing to dispense a dosette box.
- 2.6 The Appellants aver that the PPC did not give adequate consideration to the local monopoly of Lloyds and its concomitant adverse effects on service delivery and drug procurement.
- 2.7 The Appellant objected to remarks of the Chairman of the PPC which they considered to be prejudicial and that a member of the PPC ought to have recused themselves on the grounds of a conflict of interest.

3. Evidence of Parties

- 3.1 The evidence of the parties may be summarised as follows:
- 3.1.1 On behalf of the Applicants **Mr William Samson** defined his neighbourhood as Dalmeny, South Queensferry and Newton, that this area was a natural enclave surrounded by the Forth estuary and agricultural land and relatively isolated compared to the rest of Lothian. He advised that South Queensferry had a population of 9026 residents in 2011 and that the local development plan had indicated an additional total of 2207 new houses. 300 new houses had already been built and the remainder were still due to be built. There was one medical practice in South Queensferry with a patient list of 12527, an increase in the past four years of 15.3%. The SIMD figures indicated that South Queensferry had a mixed population with one datazone in the third decile and with an additional 25% of social housing, the trend towards mixed level deprivation was set to continue. The GP practice issued 144,648 prescription items which he averred was enough to support four pharmacies. The villages of Newton, Dalmeny and Kirkliston were situated nearby all of which had undergone a large housing expansion in the past four or five years.
- 3.1.2 He averred that there were inadequacies in the current provision of pharmaceutical services arising from population growth as a result of which the ratio of population to pharmacy would become well above the national average; new building developments in the surrounding areas; limited drug availability due to Lloyds being tied exclusively to one wholesaler causing delays in supplies; inadequate opening hours provided by both Lloyds pharmacies.
- 3.1.3 Mr Samson had stated that following upon the responses drawn from the CAR the population was deeply dissatisfied with the current provision. There were 581 respondees to the consultation process with approximately 75% stating that the current provision was inadequate (less than 20% felt that the current provision was adequate), 80% were positive about the location of the premises, there were comments demonstrating drug availability issues and less than one in ten patients were registered with one of the two Lloyds pharmacies in South Queensferry for the Minor Ailments Service (MAS) and which was lower than the Edinburgh average.
- 3.1.4 The Applicants were committed to improving the current services by providing longer opening hours, better access to MAS and Chronic Medication Service (CMS), Emergency Hormonal Contraception and others. The premises were large with ample capacity to meet the demands of an expanding population which would include the dispensing of dosette boxes for all patients free of charge and introducing a wider

range of wholesale drug supplies to ease the problem of drug availability. Mr Samson would become an independent pharmacist prescriber by November 2019 and thus able to take some weight off GPs' workloads. The location of the premises was good in that it was served by a local bus service which operated five or six bus services per hour and that there was ample parking in the area for car users. The shopping area in Scotstoun Grove includes two convenience stores, food takeaway store, cash machines and a Public House. He referred to Lothian's Pharmaceutical Care Services Plan 2018 which had highlighted a poor level of MAS registration in South Queensferry and that up to 40% of GP consultations were taken up by non-urgent or minor conditions most of which could be dealt with by a pharmacy.

- 3.1.5 In response to questions from the Interested Parties and the members of the PPC Mr Samson acknowledged that all core pharmaceutical services were being provided by the existing Lloyds Pharmacies in South Queensferry but that the MAS uptake was low and dosette box service requests were being refused by Lloyds pharmacies and the GP Practice had confirmed that a pharmacy in Queensferry Road in Edinburgh was taking up the overspill of South Queensferry dosette box service patients (this was denied by Mr Arnott who was representing Lloyds Pharmacy). In response to a further question by Mr Arnott, Mr Samson had said that he had submitted a Freedom of Information Request to the Health Board which had confirmed that 32 complaints had been received by NHS Lothian over a four year period regarding the Loan Pharmacy representing 800% above the national average and that 10 complaints in the same period had been received about the Well Pharmacy which was 250% above the national average. Mr Samson stated that the Well pharmacy in Rosebery Avenue requires a unique journey whereas the Premises are in a better location in the centre of two shops, a takeaway food store and other facilities which were being used by the community every day.
- 3.1.6 Mr Arnott suggested that the minimum number of items per month required in order to stay viable was 3000 and that if Lloyds in Rosebery Avenue pharmacy were to lose 1500 items per month its business would become unviable. Mr Samson had disagreed stating that a pharmacy would require to do anything from 1500 to 2000 items to remain viable.
- 3.1.7 In response to a question by Mr Nathwani, of the Lloyds Well pharmacy Mr Samson stated that new build had already started in Scotstoun and of the seven proposed sites only one site was speculative. Mr Samson acknowledged that there was an increasing problem in obtaining drugs and that was made more difficult by the pharmacy using only one wholesale supplier although he accepted that every pharmacy required to outsource on occasion. Mr Samson stated that although 50% of the population in South Queensferry was eligible to participate in MAS there was a low uptake because of long waiting times at the Lloyds Loan Pharmacy and that whilst footfall at Lloyds Rosebery Avenue was low he was of the view that it was there to preserve Lloyds monopoly. Mr Nathwani had suggested that only 3.4% of the population had responded to the CAR to express their views about the current service but Mr Samson had advised that the Health Board had informed him that the response rate was unusually high and was in fact a Scottish record as only 100 or 200 responses are typically received.
- 3.2.1 **Mr Tom Arnott of Lloyds Pharmacy** had defined the neighbourhood as South Queensferry in its entirety excluding Newton and Dalmeny. He advised that Newton was 2.5 miles from South Queensferry and also 2.5 miles from Winchburgh which had

its own pharmacy. He disagreed with the Applicants view that the services provided by the current pharmacies were inadequate on the basis that there had been some house building in South Queensferry and that there was a monopoly of one provider. He advised that he had contacted Edinburgh Council Planning Department who confirmed that neither the Builyeon Development nor the Springfield Development had yet been granted full planning permission and that it would be many years before all building work would be completed. The Pharmaceutical Care Plan had not highlighted any need for another pharmacy in South Queensferry and that the majority of residents in South Queensferry lived nearer the existing pharmacies than the premises. He did not consider that the opening times proposed by the Applicants were necessary and the employment of two pharmacists would be financially unviable. He reminded the PPC that if it deemed that the existing services were inadequate, but considered the Applicant's business unlikely to be viable, the application should be refused. In addition, if it was likely that the granting of the application were to affect the viability of an existing pharmacy, the application would require to be refused. This would be the case in respect of the Lloyd's pharmacy at Rosebery Avenue as the volume of prescription dispensing was low. It was Mr Arnott's view that the 581 responses submitted constituted 5.8% of the total population of the neighbourhood, 298 of whom had made a comment regarding gaps or deficiencies in the existing service which had related in the main to Lloyds Loan pharmacy and that most of those who had responded had mentioned convenience. He stated that current providers do not provide dosette box service and that there was no waiting list for this service in either pharmacy. He advised that there had been no growth in prescription numbers in the past two years.

- 3.2.2 In response to questions from the Applicants concerning the increase in prescription numbers from South Queensferry Medical Practice, Mr Arnott confirmed that the number of items dispensed had risen and that 93% uptake was still high. He confirmed that in four years only, just over 300 houses had been built, and with regard to dosette box service provision, his view was that if the GP practice thought there was a problem, that they were misinformed. In response to a question regarding staff counts and excessive waiting times in Lloyd's Loan pharmacy, Mr Arnott stated that there had been no staff reductions in the past 9 years, and that the perception of understaffing would very much depend on the time of day when the patient visited the pharmacy in that some times of the day are busier than others and that there had never been waiting times of one hour. The GP's comments about waiting times had never been communicated to him and he was of the view that there was a good relationship between the staff at the medical centre and the pharmacy.
- 3.2.3 In response to questions from members of the PPC, Mr Arnott stated that there was no capping of the dosette box service and neither of the Lloyds pharmacies would reach capacity for this and that staffing levels would increase if prescription numbers rose.
- 3.3.1 **Mr Nathwani of Well Pharmacy** in Rosebery Avenue held the view that the neighbourhood was bounded by the Firth of Forth to the North, the railway line to the East, A90 to the South and M90 to the West. These boundaries formed physical and geographical boundaries and it was possible to walk through the neighbourhood without impediment. He considered that the population in the neighbourhood was generally mobile, healthy and affluent and that car ownership was high. A significant number of houses were owner occupied and, whilst a proportion of the proposed new houses would be affordable housing, it was difficult to ascertain the health of potential residents at this stage. He stated that the location of the existing pharmacies - both

the Rosebery (Well) and the Loan pharmacies - suited the needs of the local population, one being near to the medical centre and one near to the shops with ample parking. South Queensferry had better access to services than many parts of Scotland and social deprivation is lower than average. The Applicants based their views on inadequacy on a rapidly expanding population which may or not increase to 4500 over ten years and the monopoly of one provider but there was nothing in the Regulations which stated that one provider cannot open more than one pharmacy in one neighbourhood. He stated that the Applicants' position was also based on a dissatisfied population but only 6% of the South Queensferry population responded to the Survey suggesting that 94% of the population either considered the existing provision to be adequate or did not feel strongly enough to reply to the consultation.

3.3.2 In response to a question from Mr Samson on behalf of the Applicants, Mr Nathwani stated there were no capacity issues as the pharmacy was getting quieter but there were no problems in the pharmacy and it had received approximately 2% of prescriptions issued by South Queensferry Medical Practice and was able to take on extra patients. Further, it had not turned down any dosette box service patients and disputed the GP's assertion that they had.

3.4.1 **Anne Mitchell, representing Queensferry & District Community Council**, advised that Dalmeny had always been regarded as part of the South Queensferry District, and that Community Council meetings were often held there and the current population of the District is around 10,000. This may rise to between 12,000-14,500 once the additional housing was built. She acknowledged that whilst permission had been granted for the Builyeon Road development for 850-900 houses, there was an issue with the landowner. There was a primary school to be built which would be completed by 2020 and will have reached capacity by 2023. She advised that she had met with the GP practice in August 2018 and they had told her that there were problems with patients obtaining dosette boxes from the Lloyd's Pharmacies. She disagreed that the area was an affluent one and, whilst this may have been the case 15 years ago, there have always been pockets of poverty and would regard it as being in a mid-range area. She was aware that the high school had reported more children with social problems and that the food bank established in the district was also being accessed by low wage earners. She reported that benefits agency staff who used to visit the district twice a week to help residents complete forms, have now increased their visits and there was a drop-in centre at the foodbank for which there was increased demand. She highlighted problems with bus services to the Gyle for non-car owners for the out of hours service and confirmed that the steep incline from the Loan pharmacy to either Rosebery Avenue or Scotstoun Grove would deter some patients from attending them. She had advised that residents had expressed the view that there had been recent improvements to the services provided by the Lloyds Loan pharmacy.

4 PPC Decision

4.1 The PPC reported that it was required to take into account all relevant factors concerning issues of the neighbourhood, adequacy of existing pharmaceutical services, whether the provision of pharmaceutical services at the premises was necessary or desirable to secure adequate provision of pharmaceutical services in the neighbourhood in which the premises were located. They considered the oral submissions put to them and took account of all written representations and supporting documents and also considered the CAR, number of prescriptions dispensed, pharmacy profiles and others.

4.2 As far as the neighbourhood was concerned, the PPC did not accept the Applicants' inclusion of Newton Village as part of the neighbourhood and determined that the neighbourhood should

be defined as Firth of Forth to the North, M90 to the Southern and Western Boundaries; the neighbourhood including the built up area of South Queensferry and Dalmeny Village to the East.

- 4.3 As far as adequacy was concerned, the PPC summarised the responses in the CAR. Many of the respondees who were in favour of the Application highlighted the proposed provision of extended Sunday opening hours, existing long waiting times, staffing levels and drug availability at the existing pharmacies. Other concerns expressed related to accessibility for patients who did not have their own transport. Other respondents who did not think there were deficiencies in the existing services stated that one pharmacy was near the medical centre and the other was near shops and the dentist and that over the counter medication could be obtained from supermarkets. The PPC were of the view that it was not unexpected that respondents would be attracted to the proposal of an additional pharmacy with longer opening hours but that this did not necessarily mean that existing services were inadequate, and as for accessibility, the PPC noted that the close proximity of the Applicants' proposed premises to the existing and not heavily-used Well Pharmacy highlighted the question of viability. The PPC acknowledged that the strong majority view of respondents to the CAR was that the arrival of a new pharmacy would be positive but the comments expressed were in relation to convenience or accessibility rather than adequacy. There were no gaps in the provision of existing services. The PPC had noted that they had been presented with conflicting evidence regarding both the number and severity of complaints to the health board regarding the existing pharmacies in the neighbourhood over the past four years, but stated that no specific detail as to the nature of these had been presented. The PPC also noted that there was no identified need in the Lothian Pharmaceutical Care Plan for an additional pharmacy in South Queensferry and that any increase in prescriptions being dispensed were capable of being accommodated by the existing pharmacies for the foreseeable future.
- 4.4 The PPC agreed unanimously from the information available to it that the existing pharmaceutical services in the neighbourhood were adequate and that accordingly the provision of pharmaceutical services at the premises was neither necessary nor desirable in order to secure adequate provision of pharmaceutical services in the neighbourhood in which the premises were located by persons whose names were included in the pharmaceutical list and in the circumstances refused the Application.

5 Discussion and Reasons for Decision.

- 5.1 Each Health Board has a duty to make arrangements as to its area for the supply of proper prescription drugs and medicines for persons within that area and ordered by a medical practitioner in pursuance of its functions under the health service. The board require to be satisfied that it is necessary or desirable to grant an application in order to secure in the neighbourhood in which the premises are located the adequate provision by persons included on the list of services as specified in the application.
- 5.2 In terms of Paragraph 3(1) of Schedule 3 of the Regulations, the PPC shall have regard to the pharmaceutical services already provided in the neighbourhood of the premises, the pharmaceutical services to be provided at those premises and any information available to the PPC which, in its opinion, is relevant to the consideration of the application, the CAR, the Pharmaceutical Services Plan and the likely long term sustainability of the pharmaceutical services to be provided by the Applicants.
- 5.3 The Grounds of appeal are limited to areas where the PPC has erred in law in its application of the provisions of the Regulations, that there has been a procedural defect when the application has been considered, that there has been failure by the PPC to properly narrate the facts and reasons upon which the determination of the application was based, or there has been a failure to explain the application by the PPC of the provisions of the Regulations to those facts.

5.4 My function is to determine whether or not the PPC has exercised its judgement fairly and given adequate reasons for it and that it does not otherwise offend against the grounds of appeal set out in Schedule 3, paragraphs 5(2A) and (2B). The PPC comprises pharmacists and lay members who may be expected to understand the issues involved on the evidence before it. It is an expert tribunal. Equally, it must be understood that the PPC's decision must be intelligible and it must be adequate. It must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the principal issues and its reasoning does not give rise to any substantial doubt that it had erred in law.

5.5 I propose to deal with the various grounds of appeal as follows.

5.5.1 **Ground of Appeal 1:** *That the Committee failed to consider information contained in the CAR in a manner that was logical, reasonable or clear.*

5.5.1.1 There is provision in the Regulations in terms of Schedule 3, Paragraph 3(e) that the PPC (on behalf of the Board) shall have regard to any responses received in the 60 days following the consultation effected by the Applicants and the Board. The CAR following upon the Consultation is not to be regarded as determinative but it is nevertheless an important adminicle of evidence which requires to be considered by the PPC. It is clear that the PPC has effected a summary of the CAR and an explanation of how the CAR was taken into account in reaching its decision. It is a specific mandatory requirement which goes beyond the more general requirement that the PPC provide adequate reasons for its decision. The Applicants reported that they had been informed that the total responses were the highest ever received by the Health Board.

5.5.1.2 The PPC reported that in relation to Question 2 in the CAR, 425 had responded that there were gaps / deficiencies, 113 had stated that there were none and 41 did not know. The PPC stated that of those who indicated that there were gaps / deficiencies, the comments provided related to extending Sunday opening hours, long waiting times and staffing levels at the existing pharmacies as well as drugs not being available. The PPC had noted and emphasised that the qualitative analysis of responses in the CAR by those who had identified deficiencies made clear that these respondents were attracted to the extended hours on weekday evenings and at weekends proposed in the Application and were concerned by the quality of service - waiting times and customer care - by Loan Pharmacy next to the Medical Centre. The PPC also noted that concerns were expressed about accessibility for patients who did not have their own transport. The PPC concluded as a result that it was not unexpected that respondents would be attracted to the proposal of an additional pharmacy with longer opening hours but that this did not necessarily mean that existing services were inadequate, and as for accessibility, the PPC noted the close proximity of the Premises to the existing Well Pharmacy which was not heavily used.

5.5.1.3 The Appellants aver in their appeal that there were comments from respondents about opening hours but the majority were concerned with matters relating to inadequacy of pharmaceutical provision. They state that the PPC had erred in focussing only on those who expressed a desire for longer opening hours and ignored the concerns raised as to inadequacy of pharmaceutical provision and had wrongly stressed the issue of opening hours. On an examination of the CAR, it is clear that the overall themes related not only to opening hours including Sunday opening (which, in any event, may be withdrawn by the pharmacist at any time) but also that the

Lloyds pharmacy at The Loan was overstretched as a result of a growing population, often lacking products, overworked staff and long waits for prescriptions. There were comments too concerning accessibility problems, particularly for older / disabled people. Further, in terms of paragraph 4.2.1.3 there were extensive comments on the existing provision of pharmaceutical services including poor customer care, understaffing, excessive waiting times, insufficient stocks, errors and omissions in dispensing and inadequate service for a growing population. Only 10% of the respondents disagreed.

- 5.5.1.4 Insofar as the responses to Question 3 was concerned, 84% considered that a new pharmacy would have a positive impact on the community as against 8.2% who considered that it would not and 7.5% did not know. I do not propose to go into further detail on the CAR but it seems clear to me that the PPC did not address the issue of apparent current inadequacies. The PPC have set aside the complaints regarding inadequate current provision and “concluded that it was not unexpected that respondents would be attracted to the proposal of an additional pharmacy with longer opening hours but this did not necessarily mean that existing services were inadequate”. The PPC has ignored the evidence in the CAR in relation to inadequacy of provision preferring to infer convenience where there is little evidence to that effect. In commenting on responses to Question 3 in connection with the impact a community pharmacy would have on the neighbourhood, the PPC noted that 484 answered positive, 47 answered negative and 43 did not know. The PPC restricted its comments on the positive responses as referring to “good location, longer opening times, shorter waiting times and more choice” whereas their comments on the negative responses (47 respondents) included that two pharmacies were enough, that another one might jeopardise existing businesses and that additional access for methadone supervision for patients would create more problems in the area. In fact, the positive responses were more extensive than those adumbrated by the PPC in that they included improved accessibility, particularly for the elderly, better quality of service, more choice for patients in terms of products and availability, better access to medicines than the existing pharmacies were unable to obtain, that the “monopoly” was not good for service levels, and meeting pharmacy needs of a growing population.
- 5.5.1.5 In the circumstances I conclude that insofar as this ground is concerned the PPC has failed to narrate the facts or reasons upon which their determination of the Application was based

- 5.5.2 **Ground of Appeal 2:** *The FOI Request presented to the PPC was not considered in a fair or logical manner.* Specifically, the Appellants state that they provided the Committee with a copy of the NHS FOI request which confirmed that 32 and 10 complaints had been reported to the Board over a 4 year period in respect of the Loan and Well pharmacies respectively. In addition, the Appellants aver that Mr Arnott of Lloyds stated that there were no complaints with regard to the two Lloyds pharmacies and thereafter sought to blame NHS Lothian for giving him faulty information, thereafter disparaging the complaints and suggesting they were trivial. There is no evidence in the Minutes that he made the remarks as stated. Nonetheless, the PPC stated that it had been presented with conflicting evidence in relation to the number and severity of the complaints to the Board but that no specific detail as to the nature of these complaints had been presented. There was no detail, as reported in the Minutes, as to the substance of any complaints and whether or not any evidence was “conflicting”. The PPC was entitled to place such weight on the

limited evidence as it deemed appropriate in the circumstances. This ground of appeal as it stands has no prospect of success.

- 5.5.3 **Ground of Appeal 3.** *The Appellants aver that the PPC failed to consider probable housing developments and instead designated them as speculative.* The PPC had noted at Paragraph 31 of their decision that there were long term plans for building in the neighbourhood, that 389 houses had already been built to date but there were uncertainties as to the number of new houses that would be completed and occupied in the medium term. Within the papers submitted by the Applicants and in their evidence to the PPC they indicated that over the next 5-10 years that the population was set to increase as a result of new house building, in that several major residential developments were planned for the neighbourhood. The approximate number of new homes to be built was estimated at 2089, the majority of which were substantial family homes, and this indicated an increase of 4429 new residents. Reference was made to developments at Dalmeny Park, Springfield, Builyeon Road, South Scotstoun, Ferrymuir, Ferrymuir Gait and Dalmeny Village. There was evidence from Mr Arnott that he had contacted Edinburgh Council Planning Department who had confirmed to him that neither the Builyeon development nor Springfield development had yet been granted full planning permission and that, in his opinion, it would be many years before all building would be completed. If correct, that would amount to a reduction of 990 of the 2089 houses to be built. When asked by the Applicants during the course of the hearing as to probable housing developments in South Queensferry, Mr Arnott had stated that in four years only 300 houses had been built. Ms Mitchell's evidence was that permission had already been granted for 850-900 houses in Builyeon Road but there was a current issue with the landowner and, further, that the Springfield area was still to be considered. She also stated that permission was being sought for 44 flats for the over 60s, thus raising the level of deprivation. The PPC had not considered the evidence on new house building with any detail, merely commenting in terms already referred to in paragraph 31 of their Decision. It was not clear to what extent they had considered any projected increase in population in respect of the proposed house building which was not in contention. Perhaps it might have been better if the Applicant had presented more detail themselves in their submissions. Nevertheless, my view is that such evidence as there was has not been adequately considered by the PPC. There was no mention of viability which would have been a relevant factor had it been. For example, there may have been a discussion on viability as against temporary overprovision but this area was not fully explored by the PPC as it ought to have been. Accordingly, insofar as this ground is concerned, the PPC has failed to narrate the facts or reasons upon which their determination of the Application was based.
- 5.5.4 **Ground of Appeal 4 -** *The Applicants aver that the PPC failed to give consideration to submissions from all four Ward Councillors, the MSP and MP.* In the preamble to the PPC's Decision, the PPC are noted as stating at paragraph 2 that in addition to the oral submissions put before them, it took account of all written representations and supporting documents submitted by the Applicants, although, unusually, qualified the written representations to letters received from the Interested Parties. On the face of it, would appear to have excluded the letters referred to by the Applicants in this ground of appeal. If the PPC had considered the letters, it would have been more prudent had they not qualified the written representations. These letters speak to relevant issues before the PPC and ought to have been considered and referred to. Accordingly, insofar as this ground is concerned the PPC has failed to narrate the facts or reasons upon which their determination of the Application was based
- 5.5.5 **Ground of Appeal 5 -** *the Appellants considered that the evidence regarding dosette box provision (MDS) was not fairly judged.* As the provision of dosette boxes is not in

my remit, not being a core service, I am unable to adjudicate on the PPC's consideration of it. This ground has no prospects of success.

5.5.6 **Ground of Appeal 6** *The Appellants took issue with the local monopoly by Lloyds and its adverse effect on service delivery .My view is that that matter has been dealt with above . A perceived monopoly is a matter not addressed by the Regulations and I am unable to adjudicate on the PPC's treatment of it. In the circumstances this ground has no prospects of success*

5.5.7 **Ground of Appeal 7**, *The Appellants aver there were several procedural defects. Specifically, alleged remarks by the Chair which are not incorporated in the Minutes and upon which I am not able to comment, and also an alleged conflict of interest by a member of the PPC, Mr Embrey, who, it was stated, is affiliated with the Right Medicine Pharmacy in Winchburgh which is 4.6 miles from the Premises. If the Applicants considered that there was a conflict of interest, the time to raise the matter would have been at the commencement of the hearing. In addition, whilst ,unusually, there was no comment minuted that all parties considered that they had had a full and fair hearing; nevertheless, if the Applicants had felt aggrieved at the presence of Mr Embrey, they had another opportunity to do so and to explain their reasons during the course of their summary. In the circumstances this ground has no prospects of success*

6 Disposal

6.1 For the reasons set out above, I have concluded that the decision of the PPC failed to properly narrate the facts and reasons upon which its decision was based. I am, therefore required by paragraph 5(5)(b) of Schedule 3 of the Regulations to remit the decision back to the Board for reconsideration, and I shall do so.

6.2 In the particular circumstances of this Application, the Board will require to empanel a fresh PPC absent any of the members who were empanelled at the hearing held on 23 November 2018. There is no requirement to conduct a new Consultation Analysis. The existing Report will suffice .

6.3 As a suggestion only, it would perhaps be appropriate for all the Interested Parties to submit their evidence to the Board in written form at least two weeks prior to the proposed hearing, together with any further written evidence that they propose to rely on. When all submissions are received it is suggested that the Board circulate these to all other parties, including PPC members . Whether it will be necessary to present that evidence orally at the hearing will be a matter for the Chair who will require to be master of the procedure thereafter.

6.4 I would encourage the fresh PPC to be empanelled that when issuing its decision to address each issue which it considers significant individually and to set out the facts which it considers relevant, its reasoning and its conclusion as to each such issue individually. This will make it easier for all parties to consider and understand the decision.

sgd. J M D Graham
Chair
28 March 2019