

National Appeal Panel

Constituted under

**THE NATIONAL HEALTH SERVICE (PHARMACEUTICAL SERVICES)
(SCOTLAND) REGULATIONS 2009 (AS AMENDED)**

DECISION

of the

CHAIR

of

THE NATIONAL APPEAL PANEL

In the application relating to

Unit 4, Cradlehall Court, Inverness, IV2 5WD

Applicant: Mr Mohammed Ameen

Appellant: Boots UK Ltd

Health Board: NHS Highland ("the Board")

PPC Decision: 24 February 2020

Panel case number: NAP89 (2nd Appeal)

Decision of the Chair of The National Appeal Panel

1. Background

- 1.1. Mr Mohammed Ameen, 196 Nithsdale Road, Glasgow, G41 5EU (hereinafter referred to as “the Applicant”) submitted an application to the Board to be included in the pharmaceutical list of the Board to provide pharmaceutical services from and in respect of premises at Unit 4, Cradlehall Court, Inverness, IV2 5WD (“the Premises”). The application was dated 7 May 2019.
- 1.2. The application was considered by the Board at a hearing of its Pharmacy Practices Committee (“the PPC”) on 21 June 2019. The PPC decided that the provision of pharmaceutical services at the premises of the Applicant was desirable in that it was necessary in order to secure the adequacy of provision of pharmaceutical services into the future with the neighbourhood as defined by the PPC.
- 1.3. Appeals were lodged against the PPC’s decision by Boots UK Ltd, Tesco Ltd and the Area Pharmaceutical Committee of the Board.
- 1.4. On considering the various grounds of appeal I issued a decision on 12 November 2019 under NAP reference NAP89 (2019) and which decision is referred to for its terms. In my decision I rejected some grounds of appeal and allowing others I remitted the PPC’s decision back to the Board on the basis that there had been a failure by the Board both to properly narrate the facts and reasons upon which their determination of the application was based and that there had been a failure to explain the application by the Board of the provision of the Regulations to those facts.
- 1.5. Following upon my said decision the Board empanelled the members of the PPC who had attended the original hearing which met on 24 February 2020 to consider the various points raised by me in my decision of 12 November 2019 and subsequently issued its amended decision.

2. Grounds of Appeal

- 2.1. Boots UK Ltd (“the Appellant”) has appealed this amended decision on the following grounds:
 - 2.1.1. In the PPC’s revised decision relating to the current level of adequacy changed its view that the provision of pharmaceutical services was inadequate (originally they had determined that it was adequate) “by reason of 2000-5000 additional houses (building already at an advanced stage) would severely impact on the capacity for service delivery of the neighbouring pharmacies”. The PPC deemed it desirable to approve the application to allow for future demand placed on the surrounding pharmacies. The Appellant’s view is that it was not clear from the minutes what evidence was put forward or taken into consideration by the PPC when considering a figure of 2000-5000 additional houses, the location of the developments, timescales for delivery or how this would affect the adequacy of the current services.
 - 2.1.2. Having stated that the PPC had not fully considered the original appeal point 3 in connection with the demographic data and information provided and whilst it accepted that the PPC had corrected the data sources it referenced in the original minute the PPC did not go into the detail and had it done so it would have noted that the majority of the Applicant’s neighbourhood ranked amongst the least deprived areas and that in the circumstances the PPC had not fully addressed this particular issue.

3. Discussion

- 3.1. In my decision NAP89 in reference to ground of appeal 1, I took the view that the PPC's decision was not clear on the issue of adequacy and I enjoined them to consider the terms of Lord Drummond-Young's judgement in *Lloyds Pharmacy v the National Appeal Panel* (2004) which they appear to have done but in the course of doing so the PPC has concluded that there were 2000-5000 new houses being built in or around the neighbourhood. It considered that these houses were in an advanced stage of building and will, therefore, have an effect on the existing services in the relatively short term. It has concluded that the capacity of the existing services would be severely affected by the additional population which would require to make use of the existing services following upon the construction of the houses. This falls to be considered against the background of one of the principal grounds on which the Applicant submitted that the existing services were inadequate was that they were already stretched in order to provide for the existing population using the existing services. That reasoning would be sufficiently clear were it not for the fact as highlighted by the Appellant that it is not sufficiently clear where the PPC has determined the numbers in relation to new houses or the fact that they are at an advanced stage. As noted above the PPC states that there are 2000-5000 new houses to be built. The Applicant seems to suggest from his submissions that there are 4300 and the PPC seems to consider that there are circa 5000 in its original decision. I have considered the original papers and I am finding some difficulty as to where the PPC's numbers come from. In the circumstances this ground of appeal has some merit on the basis that the PPC has failed to properly explain its reasoning.
- 3.2. In respect of the ground of appeal in relation to consideration of the 2016 SIMD, I consider that the appeal restates a ground of appeal which I already rejected. The Appellant asserts that the data relied upon by the Applicant does not support his assertions in relation to the levels of deprivation in the neighbourhood. This repeats the statement made by the Appellant in their letter of appeal dated 18 July 2019. I rejected this ground of appeal as it related to what was said to be a false assertion by the Applicant rather than any issue with the decision of the PPC. The only aspect of what I referred to as ground of appeal 3 in my original decision which I upheld was to require the PPC to clarify the reference to the 2016 census. I did so on the basis that this appeared to be an error in the drafting of the PPC's decision which required to be clarified. This was a minor issue and it has been clarified by the PPC. I did not require the PPC to address the concerns raised by the Appellant in relation to the Applicant's interpretation of data related to the relevant levels of deprivation in the neighbourhood.

4. Decision

- 4.1. In the circumstances and in view of my comments at 3.1 above I remit the amended decision back to the Board on the basis that there has been a failure by the Board both to properly narrate the facts and reasons upon which their determination of the application was based. In the circumstances the Board will require to empanel all the members of the PPC once again in order that it may consider and if necessary revise its decision further. There is no requirement for either the Applicant or the Interested Parties to attend.

(sgd) J Michael D Graham
Chair
National Appeal Panel
9 June 2020