

# 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**

**Unit 2, Block O, 34 Elmfoot Grove, Oatlands, Glasgow, G5 0LR**

**Applicant and Appellant: Houlihan Pharmacy Ltd**

**Health Board: NHS Greater Glasgow & Clyde (“the Board”)**

**PPC Decision issued: 18 September 2019**

**Panel case number: NAP 91 (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 Greater Glasgow & Clyde (“the Board”)
- 1.2. Houlihan Pharmacy Limited (“the Applicant” or “the Appellant”) 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 2, Block O, 34 Elmfoot Grove, Oatlands, Glasgow, G5 0LR (“the Premises”), said Application dated 7 May 2019.
- 1.3. The PPC, under delegated authority of the Board, took evidence from the Applicant and Interested Parties at a Hearing which took place on 28<sup>th</sup> August 2019 as well as considering supporting documentation, and following upon which, it determined that the provision of pharmaceutical services at the Premises was neither necessary nor desirable and accordingly refused the Application.
- 1.4. The Appellant submitted a letter of appeal against the PPC’s decision which was received by the Board on 3 October 2019.

### **2. Summary of Grounds of Appeal**

- 2.1. Incorporated in the PPC’s Decision was reference to the opinion of Lord Nimmo Smith in relation to a judicial review of a decision of the NAP in the petition of Boots the Chemist in which his Lordship opined that the definition of the neighbourhood required to be “a neighbourhood for all purposes”. The Appellant states that the PPC did not see the neighbourhood in the current circumstances as a neighbourhood for all purposes as there was evidence that the residents regularly left the area to shop, visit GPs, go to school and access a wide range of services outside the neighbourhood. The Appellant avers that there was a difference between the neighbourhood and the catchment area and that the PPC had erroneously expanded the neighbourhood to include two pharmacies outwith the Applicant’s defined neighbourhood.

### **3. PPC Decision**

- 3.1. The PPC indicated that they had noted that the Applicant’s proposed neighbourhood contained housing, a bowling club, a small convenience store, a cashpoint, a restaurant/takeaway and a small children’s play park within the main residential area. In addition, there were some allotments and a community hub. The PPC did not see this as a “neighbourhood for all purposes” as there was evidence that residents regularly left the area to shop, visit GPs, attend school and access a wide range of services. The PPC was of a view it was a place where people lived and travelled from to access services needed for day to day living.
- 3.2. The PPC were of the view that the larger area, as suggested by the representative of Boots UK Limited was more appropriate and in its opinion, was more of a “neighbourhood for all purposes” containing schools, shops, community facilities, religious buildings, and GP practices, and was also defined by clear geographical boundaries.
- 3.3. The PPC concluded that the existing pharmaceutical services within the enlarged neighbourhood were adequate and that there was capacity to meet not only existing demand, but an increase in demand in the future.

#### **4. Discussion**

- 4.1. In terms of the Regulations, the grounds of appeal are limited to areas where the PPC has erred in law in its application of the provision of the Regulations, that there has been a procedural defect in the way that the Application has been considered or that there has been a failure by the PPC to properly narrate the facts and reasons upon which its determination of the Application was based, or that there has been a failure to explain the application by the PPC of the provisions of the Regulations to those facts.
- 4.2 The principal aspect of the PPC's decision is whether or not it has exercised its judgement fairly and that it does not otherwise offend against the grounds of appeal set out in Schedule 3 paragraphs 2(A) and 2(B) of the Regulations.
- 4.3 There is no "one size fits all" definition of Neighbourhood for the purposes of the Regulations. The type of locality is relevant, the population, the number of medical practices, whether the area is rural or urban. A neighbourhood could be a whole village, a retail park or a few streets. In the current circumstances, the PPC has considered the neighbourhood to be a wider area than that suggested by the Applicant, in that it was covered by the Gorbals Locality Plan and the Glasgow Housing Strategy and that it contained schools, shops, community facilities etc. It was also defined by clear geographical boundaries. The PPC could have accepted the Applicant's definition in the knowledge that the residents in that neighbourhood typically travelled out of it in order to access aspects of day to day living. There was evidence to suggest that this did not cause hardship to the residents of the Applicant's defined neighbourhood, standing the responses contained in the CAR. As stated, the PPC is an expert tribunal. It has determined its definition of the neighbourhood to be a wider area and has given adequate reasons for doing so.

#### **5 Disposal**

- 5.2 For the reasons set out above, I have concluded that the Letter of Appeal set out by the Appellant discloses no reasonable grounds.
- 5.3 In the circumstances I require to dismiss the Appeal

**(sgd.) J Michael D Graham**  
**Interim Chair**  
**7 January 2020**