

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

14 Dorlin Road, Cardowan, Stepps, G33 6AP

Applicant and Appellant: Carlin Healthcare Ltd

Health Board : NHS Lanarkshire “the Board”

PPC Decision issued : 20 November 2019

Panel case number : NAP 96 (2019)

Decision of the Chair of The National Appeal Panel

1. Background

- 1.1. Carlin Healthcare Ltd (“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 14 Dorlin Road, Cardowan, Stepps, G33 6AP (“the Premises”) . The application was dated 16 September 2019.
- 1.2. The application was considered by the Board at a hearing of its Pharmacy Practices Committee (“the PPC”) on 4 November 2019 at which it was the decision of the PPC that the existing pharmaceutical services being provided to the neighbourhood were deemed to be adequate and that it was neither necessary nor desirable to grant the application in order to secure adequate provision of pharmaceutical services within the neighbourhood.

2. Ground of Appeal

- 2.1. The Appellant lodged an appeal which was received by the Board on 9th December 2019..
- 2.2. The appellant avers that Mr Eduardo Ceresa of Stepps Pharmacy was accompanied by Mr Ronald Badger at the hearing , the latter acting in the capacity of Mr Ceresa’s assistant. Ms Danielle McTaggart, the representative of the Appellant, avers further that the Chair advised that only one person would be permitted to speak on behalf of each party. In contravention of this, Mr Badger played an active role at the hearing and was, in effect, treated as an “Interested Party” in his own right, despite his only connection to the application being his potential purchase of the existing Stepps Pharmacy, all in contravention of the existing Regulations. Ms McTaggart states that his contribution would have had a material effect on the decision of the PPC, thus rendering it unsound.

3. Discussion & Decision

- 3.1. Under the National Health Service (Pharmaceutical Services) (Scotland) Regulations 2009, as amended, (“the Regulations”), the available grounds of appeal against a decision of the Board are limited to circumstances in which there has been:
 - 3.1.1. an error in law by the Board in its application of the Regulations;
 - 3.1.2. a procedural defect in the way the application has been considered by the Board;
 - 3.1.3. a failure by the Board to properly narrate the facts and reasons upon which their determination of the application was based (“Schedule 3 para 5 (2B)(b)"); or,
 - 3.1.4. a failure to explain the application by the Board of the provisions of these Regulations to those facts (“Schedule 3 para 5 (2B)(c)").
- 3.2. I am required to consider the notice of appeal and:
 - 3.2.1. to dismiss the appeal if I consider that it discloses no reasonable ground of appeal or is otherwise frivolous or vexatious;
 - 3.2.2. remit the decision back to the Board for reconsideration if I consider that any of the circumstances set out at points 3.1.2 to 3.1.4 have occurred; or
 - 3.2.3. in any other case, convene the National Appeal Panel to determine the appeal.

- 3.3. The Appellant's ground of appeal is comparatively narrow: that the Chair had permitted Mr Badger to give evidence at the hearing in contravention of both the Chair's strictures at the outset of the hearing and of the Regulations. There had been a history to this application, in that there had been a previous application for a pharmacy licence in 2018 which the then PPC had refused on the basis that the then provision of pharmaceutical services was considered to be adequate and that it was neither necessary nor desirable to grant the application. No appeal was lodged at that time. Since then, Mr Ceresa on behalf of Stepps Pharmacy, had purchased a site at 183 Cumbernauld Road, Stepps and had intimated a minor relocation of the premises of Stepps Pharmacy from 140 Cumbernauld Road, Stepps to 183 Cumbernauld Road. Mr Ceresa had alleged in letters to the Board (and by written statement incorporated in the Minutes) that a private sale had commenced in February/March 2019 but in the same month a fresh application had been lodged by the applicant in respect of the premises at Dorlin Road which he had stated caused difficulties in his purchase of 183 Cumbernauld Road. This was disputed by the Applicant .
- 3.4. I do not propose to enter into much of the detail of the evidence of the various parties, but I do note that Ms McTaggart not only conducted an exceptionally thorough examination of Mr Ceresa during the course of the hearing and equally responded to his questions to her with impressive clarity. In the section of "Additional questions to the Applicant ' at para. 7.4 it is noted that the Applicant stated that she appreciated any investment in healthcare and clinics and "looked forward to hearing what clinics Mr Badger would be offering which she hoped would be compatible with the clinics she would offer, and looked forward to working together.". For clarity, Mr Ceresa had indicated his intention to retire and it was expected that Mr Badger, a qualified pharmacist, would be acquiring his practice, but that Mr Ceresa would remain the landlord of the premises..
- 3.5. We here come to the issue of the Applicant's ground of appeal. The first contribution from Mr Badger appears at paragraph 8.8.48 of the Minutes of the Hearing where he - during the course of examination by the Chair of Mr Ceresa - had interjected to say that he was a pharmacist and his wife was a pharmacist, and would work in the branch with the dispensing staff. This contribution was on the assumption that Mr Badger would be taking over the running of the pharmacy from Mr Ceresa. The next contributions from Mr Badger are ,as the Applicant has stated, contained in paragraphs 8.8.48 to 8.8.50 (one comment unprompted and referred to and one in response to a question from the Chair) and 8.9.7 to 8.9.53 These latter contributions from Mr Badger were in response to questions directed to him by the Applicant and these are the contributions on which the Applicant is in essence founding the appeal. That it was Mr Badger's intention to take over the running of Stepps Pharmacy from Mr Ceresa it seems to me to be perfectly reasonable that the Applicant should direct questions to him in the circumstances. Indeed, the Applicant's representative had already signalled her intention to do so. Is the Appellant's complaint that the Chair failed to intervene at this point? If so, I do not think that it would have been reasonable for him to do so. The future of the conduct of the new pharmacy was relevant to the application. The Chair, properly exercised a discretion to allow the questioning to proceed, since to halt it would in my view, and in the circumstances of the application, be inequitable. In any event, and this cannot be stressed enough, these questions were directed to Mr Badger by the Applicant. It seems to me to be invidious for the Applicant to then found on these exchanges as a ground of appeal . In the the circumstances the appeal fails .

4. Disposal

- 4.1. For the reasons set out above, I dismiss the ground of appeal on the basis that it discloses no reasonable grounds and has no prospects of success.

(sgd) J Michael D Graham
Interim Chair

13th March 2020