

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

17 Kingsknowe Road North, Edinburgh EH14 2BN

Applicants:	Wellbeing Pharmacies Limited
Appellants:	Wellbeing Pharmacies Limited
PPC Decision Issued:	21 March 2016
Panel Case Number:	NAP 53 (2016)

Decision of the Chairman of the National Appeal Panel

1. Background

- 1.1 This is an appeal against the decision of the Pharmacy Practices Committee of NHS Lothian ("the PPC") which was issued on 21 March 2016.
- 1.2 Wellbeing Pharmacies Limited (the "Applicants" or "Appellants") made application for inclusion in the pharmaceutical list of NHS Lothian ("the Board") to provide pharmaceutical services in respect of the premises at 17 Kingsknowe Road North, Longstone, Edinburgh EH14 2BN ("the Premises") said application dated 5 December 2015.
- 1.3 The PPC under delegated powers of the Board held a Hearing on 8 March 2016 and took evidence from the Applicant and interested parties and considered supporting documentation and following upon which it determined that the provision of pharmaceutical services at the Premises was neither necessary nor desirable in order to secure provision of pharmaceutical services in the neighbourhood in which the Premises are located and accordingly refused the application.

2. Grounds of Appeal

- 2.1 The Appellants submitted a letter of appeal to the Board dated 29 March 2016, the grounds of which may be summarised as follows:-
 - 2.1.1 That, generally, the PPC incorrectly recorded submissions thus rendering their conclusion unsafe, that it failed to take into account relevant considerations, that it failed to properly define "pharmaceutical services" and it failed to interpret the relevance of pharmaceutical services located outwith the defined neighbourhood.
 - 2.1.2 There was no evidence before the PPC from which it could reasonably have found that pharmacies outwith the neighbourhood were "easily accessible". The evidence was that access was at best mixed. No information was provided on bus timetables and there was a question in relation to the safety or otherwise of an underpass. As far as an effective bus service was concerned, it would act to bring patients into the neighbourhood as well as out from the neighbourhood.
 - 2.1.3 The PPC failed to take into consideration the needs of a substantial reliant population that worked, lived and visited the neighbourhood.
 - 2.1.4 The PPC had agreed that the existing pharmaceutical services in the neighbourhood were adequate whereas in fact there were no pharmaceutical services in the neighbourhood and their so finding was an error.
 - 2.1.5 The PPC placed weight on the existence of collection and delivery services and domiciliary visits when they were in fact not core pharmaceutical services for the purposes of the Regulations.
 - 2.1.6 The PPC had stated that there was demand for services within the neighbourhood and that the reliant population do require pharmaceutical services but have simplified that there is an adequate service in other neighbourhoods and thus thereby creating adequacy in the neighbourhood in which the Premises are located. Further, no explanation was provided as to how the pharmacies in other neighbourhoods secured adequacy in the latter neighbourhood. In addition, it is not enough for the PPC to find that pharmacies exist and that as a result they secure adequate pharmaceutical services without providing an intelligible explanation as to why that is so.
 - 2.1.7 The PPC ignored the fact, which was accepted by all parties, that the neighbourhood was not only substantial in size but also contained a mix of facilities which meant that people did not require to leave it in the course of their daily lives. On the contrary, the neighbourhood served as a destination for tens of thousands of people each week who would come into the neighbourhood to

access facilities located there including a Sainsbury supermarket, albeit the PPC had stated that the latter had “minimal impact on demand for local pharmacy services”.

- 2.1.8 In summary, the PPC had taken into account irrelevant considerations, failed to take into account relevant considerations, misdirected itself in the way it considered the relevance of pharmacies outwith the neighbourhood and made clear errors of fact.

3. Summary of the Evidence

- 3.1 The evidence of the Applicants may be summarised as follows:-

- 3.1.1 Mr Mark Hedley for the Applicants, referred to the report submitted by them and anticipated that interested parties would consider that the fact that there was a Sainsbury supermarket in neighbourhood was irrelevant and that the nearby pharmacies provided adequate pharmaceutical services in the neighbourhood.

- 3.1.2 The Applicants considered the neighbourhood to be:-

to the north, the open land between the roundabout adjacent to Longstone Crescent and running behind from the roundabout easterly to the River Leith behind Longstone Inn;

to the east and moving southwest from the River Leith running to its intersection with the area lying north of Lanark Road;

to the south, the railway line running southwesterly to its intersection with Hailes Quarry Park; and

to the west, from Hailes Quarry Park running in a northerly direction to the roundabout referred to.

It was his understanding that all parties had acknowledged the same or similar definition of the neighbourhood. It was stated within the neighbourhood there was a resident population of 3,000 with potentially up to 4,338 and there were identified concentrations of people with prior health needs within the neighbourhood highlighted in the SIMD Census information.

- 3.1.3 Mr Hedley posited that the tens of thousands of visitors to Sainsbury's and some of the 3,000 residents would require access to pharmaceutical services in the neighbourhood and that the PPC would require to assess demand rather than to establish supply of needs. The resident population required to travel elsewhere to access eMAS services, smoking cessation and other services.
- 3.1.4 It was acknowledged that the NAP in their decision in 2009 considered that the pharmacies outside the neighbourhood were providing adequate service within the neighbourhood even though not physically located within the neighbourhood. He wanted the PPC to know that it granted a similar application in 2008/2009 albeit it was overturned by the NAP. The demand and need for pharmacies since then had risen dramatically. Future demand was set to increase with new housing and regular shoppers entering the neighbourhood. There were documented difficulties associated with accessing other pharmacies and referred to in his paper submission. This and car ownership, bus services, inability to walk outside the neighbourhood to access pharmaceutical services did not deliver adequacy now or in the future. His proposed pharmacy would be one that was modern and fully equipped.
- 3.1.5 In response to questions from the interested parties and members of the PPC, Mr Hedley acknowledged that Sainsbury's sell a range of general sales list products although these did not constitute a pharmacy service, but he did accept that the other pharmacies providing the services to the neighbourhood were providing core services, as also did he accept that any resident accessing GP services

would travel by foot, public transport or car. He considered a distance of 400 metres as being not unreasonable to travel to a pharmacy. Mr Hedley also acknowledged that the Pharmacy Care Services Plan did not recognise the need for a pharmacy in Longstone. He confirmed that as there were a number of highly valued pharmacies within his business there was no question that there was a risk to financial viability in connection with the Premises. He anticipated that customers shopping in Scotmid would walk the 330 metres to his proposed pharmacy in order to access pharmacy services as there was no other option in the defined neighbourhood.

3.1.6 The Applicant stated that the proposed pharmacy would be an integral part of the Scotmid store and that the needs of the population were detailed in the Report which formed part of the Applicant's Application. In response to a question regarding the changes to the neighbourhood since the last application was made, Mr Hedley stated that in the original application the defined neighbourhood had followed the parish boundary and had included the rest of the Kingsknowe area. Now that there was a Sainsbury's store in the neighbourhood and three proposed residential developments, two of which had received Planning Permission, this had altered the neighbourhood and there was no additional roads planned to service the proposed developments.

3.2 The evidence of Mr Alan Cameron of Carrick Knowe Pharmacy may be summarised as follows:-

3.2.1 Mr Cameron had stated that the application was identical to the one made in 2008 which was subsequently refused by the National Appeal Panel in September 2009. The then applicant made much of the opening of a Sainsbury's Supermarket on the edge of the defined neighbourhood but this had not influenced the final decision. The neighbourhood in 2009 formed a small mainly residential area called Longstone. Whilst there was no pharmacy within that neighbourhood, he did not consider that important as an urban area which lacked a pharmacy in any single neighbourhood does not necessarily mean that the population of that neighbourhood does not have satisfactory or adequate access to pharmaceutical services.

3.2.2 He stated that adequate pharmaceutical services are currently provided to the neighbourhood by eight pharmacies located within 1.5 miles of the proposed Premises, the nearest being the Well Pharmacy which lies 0.69 miles at its closest point. There was another pharmacy on Calder Road which is only 0.5 mile from the defined neighbourhood boundary, being a six minute walk, not involving any underpasses or requiring to cross any main roads. Carrick Knowe Pharmacy is 1.1 miles to the north of the proposed Premises and other pharmacies lie at 0.3 – 1.5 miles from the Premises. In 2009 a market research operation conducted 100 case study interviews with local residents, the results indicating that the majority of patients living in Longstone used two pharmacies more conveniently located next to the GP surgery at Sighthill and Queen's Park Medical Centres.

3.2.3 The Applicant's suggestion that the population of the defined neighbourhood was around 3000 was at the lower end of the size of a population which an average pharmacy would service and although there was a small housing development planned in the defined neighbourhood, it would only increase the population by 100 – 200 people. These new residents would have no more travel to access pharmaceutical services than the existing residents. The SIMD figures demonstrated that the population was average – not particularly wealthy but not particularly deprived either. It was his opinion that everyone would have access to a car. All of this indicated that the defined neighbourhood did not require enhanced pharmaceutical services on account of extreme deprivation, poor mobility any other factor which would mark out the neighbourhood as being particularly exceptional.

3.2.4 All existing pharmacies provide a high standard of service and offer a free prescription collection and delivery service and all are accessible in that 42% of

residents use a car to access a pharmacy, 30% use public transport, and 25% walk. The bus service runs every 12 minutes. The Applicant had made reference to anecdotal claims that residents were scared to use an underpass, but Mr Cameron had stated that hundreds if not thousands of people used this route every day and that since 2009 there had been CCTV installed and lighting improved. In any event, there was an alternative – in the opposite direction which would take the patient a pharmacy at Slateford Road where there was no underpass.

3.2.5 He stated that it was likely that there would be two types of population in the neighbourhood apart from the residents, i.e. people who work in the neighbourhood and those who come into the neighbourhood to shop at Sainsbury's. There was a negligible number of people who come into the area to access other small businesses. The number coming into the neighbourhood to work is likely to be small and they would be able to access pharmaceutical services elsewhere and the number of staff working in Sainsbury's would be working a shift pattern and likely to work there part time and therefore they would probably access pharmaceutical services in their own neighbourhoods. Accordingly, the opening of the Sainsbury's supermarket had no bearing on the merits of the application as it is on the periphery of the neighbourhood and it was unlikely that staff and customers of Sainsbury's would choose to use a small pharmacy in the Scotmid nearly half a mile from Sainsbury's in the middle of a residential area. He regarded that the purpose of the pharmacy regulations was to ensure that everyone had adequate access to a pharmacy and his position was that there was such access outwith the neighbourhood.

3.2.6 Mr Hedley in questioning Mr Cameron referred him to the documentation supporting the application and in particular the reference to the underpass (item 7. 3.1) that *"the local community have raised the matter of the Calder underpasses, through ... public forums There is a general perception that the underpasses are not safe for public use ..."* Mr Cameron had responded by referring to section 3.3 of the Report which stated that following the upgrade to underpass number 7: *"residents have noted they considered this underpass safer to use"*. Mr Cameron confirmed that none of the pharmacy services which he currently provided were at full capacity.

3.3 The evidence of Tom Arnott of Lloyds Pharmacy may be summarised as follows:-

3.3.1 Mr Arnott stated that there were numerous examples from PPC and NAP hearings that adequate pharmaceutical services can be provided to a neighbourhood from pharmacies outwith that neighbourhood and that this was the case in Longstone. He referred to distances of the other pharmacies circling the neighbourhood and had noted that the Applicant did not intend to open on Saturday afternoons and that therefore this would assume that the Applicant considers current pharmaceutical services as adequate on Saturday afternoons. Mr Arnott added that the Sainsbury's supermarket meant that there was no need for a pharmacy in Longstone especially as the proposed pharmacy would not be open on the supermarket's busiest periods.

3.3.2 He advised the PPC that they must take into account whether the granting of the Application would adversely impact on the security and sustainable provision of existing pharmaceutical services in the area as also must they take into account the fact that the NHS Lothian Pharmaceutical Care Services Plan makes no mention of the need for a pharmacy in the proposed neighbourhood.

3.3.3 Mr Arnott confirmed that he reviewed the decision of the NAP Hearing in September 2009 and that since then little had changed other than that the application is being made by the Applicant under a different trading name. He also noted that the Applicant has failed to gain the support of the residents in the area which may be due to the fact that there is already adequate pharmaceutical services provided to the proposed neighbourhood. There had been a 0.6% response rate to the survey of which 2% said there were no deficiencies in the existing provision, 2.19% said that another pharmacy in the area would have a no

impact, 70% gave negative views on the application, 56% gave negative views on the location of the premises. He agreed with the Applicant's definition of neighbourhood.

3.4 The evidence of Mr Shaun Marnell of McKinnon Pharmacy may be summarised as follows:-

3.4.1 Mr Marnell stated that he considered his pharmacy's neighbourhood to include almost 50% of the Applicant's defined neighbourhood. He noted that the Applicant referred to proposed developments of student accommodation on Lanark Road and the Castle Rock development, both of which were outwith the defined neighbourhood. Planning permission had been granted for Ingles Green Road but works had not yet commenced. There been no complaints to the Board regarding a lack of pharmaceutical provision in the area. McKinnon Pharmacy is 400 metres from the boundary to the proposed neighbourhood and 8 pharmacies all of which are within easy reach of Longstone and all of which are easily accessible by foot, public transport or car. He agreed with the Applicant's definition of neighbourhood. He confirmed that there was not a post office in Longstone but that there was one near the McKinnon Pharmacy.

3.5 The evidence of Mr Nisith Nathwani of Well Pharmacy may be summarised as follows:-

3.5.1 Mr Nathwani defined the neighbourhood as that determined by the NAP in 2009 since when little had changed within the neighbourhood and his opinion was that the Application seemed to be that pharmaceutical services provided by current contractors is inadequate on the basis of there being no pharmacy premises in the defined neighbourhood which was not a cogent reason for granting the application. There were 8 pharmacies within 2 km of the Applicant's proposed site and all 8 pharmacies offered the core services to residents within the neighbourhood. There were no health care services located within the neighbourhood and all GP practices were adequately

3.5.2 He observed that the Applicant had referred in his submission to the fact that underpasses used by pedestrians were dangerous but the same underpasses required to be accessed by patients walking from and to Sighthill and Queen's Park Medical Centres. He noted that the Applicant stated in his submission that the population of the neighbourhood was 3005 but this had included Craiglockhart, but the residents of Craiglockhart were more likely to use the pharmacy located in Craiglockhart than the proposed Premises which would result in bringing the population down to 2000, well below the national average population figure per pharmacy.

3.5.3 The Applicant had stated that having a delivery service provided by existing pharmacies indicated an unmet demand. This was incorrect. For example, Lloyds Pharmacy delivers across Edinburgh including Gyle, Gogar and Corstorphine, but that did not mean that pharmacy services in those areas were inadequate. He stated that the Applicant stressed the opening of Sainsbury's had changed the composition of the neighbourhood and that he referred to Planning Guidance which stated that an easy walking distance was 0.2 miles. However, Sainsbury's is 0.4 miles away from the proposed Premises. Further, the public consultation responses did not indicate support for the proposed pharmacy and that the Applicant had shown no inadequacy of pharmaceutical services to the defined neighbourhood. He indicated surprise that there would be two pharmacists on duty at the proposed Premises on Monday to Friday.

3.6 The evidence of Mr Charles Shanks of SHC Pharmacy may be summarised as follows:-

3.6.1 Mr Shanks was of the view that the local area was "saturated" with pharmacies which were not operating at full capacity and considered that the application failed to satisfy the legal test that it was either necessary or desirable as the neighbourhood which was adequately serviced by the existing pharmacies. He confirmed the Applicant's definition of the neighbourhood.

- 3.7 The evidence of Mr Gordon Stuart of Craiglockhart Pharmacy may be summarised as follows:-
- 3.7.1 Mr Stuart confirmed the Applicant's definition of the neighbourhood and supported others' views that the residents of Longstone already had a wide choice of pharmacies to access. He felt that the Applicant had not shown proof of a gap in pharmaceutical services in the defined neighbourhood nor any evidence to suggest complaints regarding current provision of services. Access did not appear to be a difficulty in that the area was serviced by the number 34 bus which operated every 12 minutes and that the area enjoyed good transport links and local services, including the post office, dentist and pharmacies. The area was not deprived and only 16% of the local population was of pensionable age. Those of pensionable age were more in need of pharmaceutical services.
- 3.8 The evidence of Mr Bill Goodburn of Colinton Pharmacy may be summarised as follows:-
- 3.8.1 Mr Goodburn confirmed the Applicant's definition of neighbourhood and that the current provision of pharmaceutical services was adequate.
- 3.9 The evidence of Mr Steuart Campbell of Longstone Community Council can be summarised as follows:-
- 3.9.1 Mr Campbell tabled a map of the boundary of Longstone Community Council and stated that the Community Council area covered Slateford, Redhall, Dovecot and Kingsknowe areas. He stated that local residents have always commented on the fact that there was not a local pharmacy and that the Applicant had consulted with the Community Council on the Application. He was unsure why there would be objections from the pharmacies in the local area. He acknowledged that a 4% response rate to the local consultation was low but typical. He was unaware that more than 50% of the responses to the local consultation were against the opening of the proposed pharmacy. In response to another question, he stated that he did not know how many people mentioned that they needed a pharmacy in the neighbourhood as the number was not logged but that he was aware of occasional comments. He also confirmed that he himself lived outside the Kingsknowe area and that Longstone Community Council represented a larger area than that in the defined neighbourhood.

4. The PPC's Decision

- 4.1 Prior to the departure of the Applicants and interested parties, the Chair had asked them if they considered that they had a full and fair hearing, all of which agreed that they had and that there was nothing further that they wished to add. The committee indicated that they were required to and did take account of all relevant factors concerning the issues of neighbourhood and adequacy of existing pharmaceutical services in the neighbourhood and whether the provision of services at the Premises named in the application was necessary or desirable to secure adequate provision of pharmaceutical services in the neighbourhood in which the Premises were located.
- 4.2 In addition to the oral submissions put before them, the PPC took account of all written representations and supporting documents submitted by the Applicants and the interested parties and those who were entitled to make representations including emails or letters from the Area Pharmacy Committee, Carrick Knowe Pharmacy, Lloyds Pharmacy, McKinnon Pharmacy, SHC Pharmacy, Well Pharmacy, Craiglockhart Pharmacy, and the vice chair of Longstone Community Council. The PPC also considered the location of the nearest existing pharmaceutical services, the location of the nearest existing medical services, the maps of the area surrounding the proposed Premises detailing the location of the nearest pharmacies and GP surgeries, deprivation categories and population density, information regarding the number of prescriptions dispensed by the pharmacies nearest to the proposed Premises, information regarding the number of prescriptions dispensed that were issued from the GP surgeries closest to the Premises and the Consultation Analysis Report (the "CAR"). It was noted that prior to the meeting, the PPC had undertaken a site visit noting the location of the proposed premises, the pharmacies nearest these Premises and the nearest GP surgeries as well

as the neighbourhood defined by the Applicant.

- 4.3 In considering the **neighbourhood** the PPC noted that the definition submitted by the Applicants and other interested parties as well as the comments received during the public consultation and took into account a number of factors including those who were resident there, that it had natural and man made boundaries, the location of schools, shops and distances which residents are required to travel to access services. In the circumstances it defined the neighbourhood as follows:

On the east by Longstone Road at its junction with Murrayburn Road through Inglis Green Road, to where it crosses the railway line together with the houses and other buildings on either side thereof ;

On the south, the railway line where it passes under Inglis Green Road to Kingsknowe Station;

On the west, from Kingsknowe Station in a line north across the quarry and public park to the roundabout at Murrayburn Road and Longstone Road.

The neighbourhood is triangular in shape and as such had no northern boundary.

The PPC noted that this definition was acceptable to the Applicants and all interested parties, apart from Longstone Community Council who represented a larger geographical area.

- 4.4 As to **adequacy**, the PPC was noted as having taken into account the evidence provided by the Applicants and interested parties and everything submitted to it from all sources. It considered the existing services within the neighbourhood and that there were eight pharmacies located outwith the area but all located within 1.5 miles and easily accessible. These pharmacies provided a full range of contracted services and a range of non-contracted services to the neighbourhood as defined. The PPC reported that they were of a unanimous view that the existing services were adequate as being easily accessible by foot via safe pedestrian routes, by effective local bus services and by individuals using their own cars. These pharmacies provided a full range of contracted services enhanced by a range of non-contracted services and liaised well with local GP practices. They also provided a full delivery service and domiciliary visits. All existing pharmacies had capacity to meet future increasing demand. The PPC noted that it did not accept the Applicants argument that the opening of Sainsbury's supermarket in the defined neighbourhood would significantly increase demand for local pharmacy services and took the view that the location of the supermarket had minimal impact on demand for local pharmacy services. In the circumstances, the PPC agreed unanimously from information available that the existing pharmaceutical services in the neighbourhood were adequate and that the provision of pharmaceutical services at the Premises was neither necessary nor desirable in order to secure adequate provision of pharmaceutical services within the neighbourhood within which the Premises were located by persons whose names are included in the pharmaceutical list and, as so, refused the application.

5. Discussion, Decision and Reasons for Decision

- 5.1 The Regulations require to be considered in light of the objects of the scheme set out under the National Health Service (Scotland) Act 1978 and, in particular, Section 27, in that it shall be the duty of every Health Board to make arrangements as to its area for the supply to persons in that area of proper and sufficient drugs and medicines which are ordered for those persons by a medical practitioner in pursuance of his functions in the Health Service. An Application made in any case should be granted by the Board after procedures set out in Schedule 3 of the Regulations are followed, if the Board is 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 the services specified in the Application. This is further extended by Regulation 5 (10) of the Regulations in that an Application shall be granted by the Board: (a) only if it is satisfied that the provision of Pharmaceutical Services at the premises named in the Application is necessary or desirable in order to secure adequate provision of pharmaceutical services in the neighbourhood in which the premises are

located by persons whose names are included in the pharmaceutical list and: (b) if the boundaries of the neighbourhood within which the Applicants intend to provide pharmaceutical services falls within any part of a controlled locality, only if it is satisfied that the granting of such an application, in its opinion, would not prejudice the provision of NHS funded services in the controlled locality. For the purposes of clarification in terms of paragraph 1a of Schedule 3 of the regulations, a controlled locality is an area within a Health Board which is remote or rural in character and which is served by a dispensing doctor. This latter provision does not apply in the current circumstances.

- 5.2 In terms of paragraph 3 (i) of Schedule 3, the PPC shall have regard to the pharmaceutical services already provided in the neighbourhood of the premises, the pharmaceutical services to be provided in the neighbourhood at those premises, any information available to the PPC which, in its opinion, is relevant to the consideration of the Application, the CAR, the Pharmaceutical Care 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 in the way the Application has been considered, that there has been a failure by the PPC to properly narrate the facts or reasons upon which their determination of the Application is 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 The principal point of the PPC's decision is whether or not it 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, paragraph 5 (2A) and (2B). It is relevant to note that 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. Such adverse inference will not readily be drawn.
- 5.5 The PPC was entitled to consider the existing services within the neighbourhood. The "services" is the subject here and it is not to be strictly interpreted as being the pharmaceutical services proper being located within the neighbourhood. Services issued from outwith the neighbourhood can be enjoyed within it. In any event, the wording of Regulation 5 (10) states that an application shall be granted if the Board "is satisfied that the provision of pharmaceutical services at the Premises noted in the Application is necessary or desirable in order to secure adequate provision of pharmaceutical services in the neighbourhood in which the Premises are located by persons whose names are included in the pharmaceutical list". Accordingly the provision of pharmaceutical services from outwith the neighbourhood may be sufficiently adequate to service the neighbourhood in which the Premises are located.
- 5.6 There was evidence before the PPC from which it could be reasonably established that pharmacies outwith the neighbourhood were easily accessible. Reference by the Appellants that bus frequency (every 12 minutes) could not be regarded from the evidence evinced from the interested parties that access was "at best mixed". There was sufficient evidence that pharmacies outwith the neighbourhood were easily accessible and if the Applicants had wished to lodge a contrary timetable or other evidence, they were free to do so. In any event the Applicants' representative did not question any of the interested parties on the issue of the bus timetable or their frequency. Further, in his supporting paper dated December 2015, the Appellant makes reference to a regular bus service (number 34) and indicates that the planned journey is not so simple but this is not an issue that he raised with any of the interested parties during his questioning of them.
- 5.7 The Applicant had made reference in the paper accompanying his application to the safety of the underpasses and in which he indicated that they had a history of violence. There was one appendix which he submitted referencing a robbery of a mobile telephone on 24th October 2013: whilst this was a frightening experience for the victim, there does

not appear to have been any injury. There was also reference to Appendix 6 of a newspaper report of the Local Council Report dated May 2009 indicating improvements to the underpasses. The PPC had effected a site visit and whilst the Appellant had stated that no reasonable PPC could consider the foot access way to be easy or safe and had thereby ignored the evidence before it, there is no indication in the Appellant's letter of appeal as to what that evidence was. The PPC was entitled, on the evidence, their site visit and their expertise to conclude as they have on the issue.

- 5.8 The Appellants state that the PPC's statement that "the location of Sainsbury's supermarket had a minimal impact on demand for local pharmaceutical services" and had considered that to be an error that the PPC had made and contrary to the Applicant's argument that 40,000 people accessing the neighbourhood each week as part of a trip to Sainsbury's was highly relevant. There was sufficient evidence from the interested parties for the PPC to take that view. The Premises were situated some 0.4 km from the Supermarket ;some of the evidence referred to shift workers within the supermarket, and there was no cogent evidence from Applicants that either shoppers or workers at the supermarket would be motivated to make a detour in order to access pharmaceutical services at the Premises. The fact of the existence of a supermarket 0.4 km away was not sufficient to justify the granting of the application.
- 5.9 The Appellants are correct in stating that a collection and delivery service are not core requirements. Having stated that however there is, in my view, no suggestion in the PPC's decision that they placed overmuch weight on it in the context of the other more cogent reasons set out by it. The PPC's mention of it can not be regarded as fatal to its decision.

6. CONCLUSION

- 6.1 For the reasons set out above, I conclude that the grounds of appeal set out by the Appellants disclose no reasonable grounds of appeal and accordingly dismiss the appeal in terms of para. 5(5)(a)(i) of Sch. 3 of the Regulations. In doing so, I am cognisant that the test set out in para. 5(5)(a)(i) of Sch. 3 of the Regulations is not a high bar for the Appellant to cross. However, I consider this appeal to be fundamentally flawed in both its approach and its content.

(sgd) J. Michael D. Graham
Interim Chair
National Appeal Panel
29th June 2016