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*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: **13/02/2008**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

**AN APPLICATION BY MARY LAVERY
FOR JUDICIAL REVIEW**

WEATHERUP J

[1] This is an application for judicial review of a decision of the National Appeal Panel (the NAP) made in February 2007 rejecting the application of Bernard Brannigan to provide pharmaceutical services from premises at the Maureen Sheehan Healthy Living Centre (the Centre), 106 Albert Street, Belfast. Mr O'Sullivan appeared for the applicant and Mr McGleenan for the respondent.

The application for an additional pharmacy.

[2] Mr Brannigan applied to the Eastern Health and Social Services Board in 2005 to provide pharmaceutical services at the Centre. The Pharmacy Practice Committee (the PPC) of the Board granted Mr Brannigan's application in September 2005. The PPC decision was appealed by Fionnula Crilly and Medicare Pharmacy Group and in February 2007 the NAP allowed the appeal, thereby refusing the proposed pharmacy at the Centre.

[3] The applicant is a 55 year old married woman who resides in the Falls ward in Belfast, which is within the neighbourhood of the proposed pharmacy. She is disabled and in ill-health and is prescribed different medications. She uses Cullintree Pharmacy on the Grosvenor Road, which pharmacy is also within the neighbourhood and is also owned by Mr Brannigan. The nearest alternative pharmacy, which is equally distant from the applicant's home, is in Castle Street. The applicant's husband is also in ill-health. Both the applicant and her husband have limited mobility and rely on their son, who works nearby in Belfast city centre, to attend the pharmacist and collect their medication. When the applicant's son is not available the

pharmacy provides a collection and delivery service. The applicant supports the opening of a pharmacy at the Centre.

[4] Albert Street Community Centre Limited is a registered charity and a company limited by guarantee. The charity and North and West Belfast Health and Social Services Trust operate the Centre. The Centre includes a GP surgery with over 4,000 patients and provides district nurses, physiotherapists, dieticians, podiatrists, health visitors, occupational therapists, community psychiatric nurses, community addiction nurses, community nurses for learning disability, social workers for learning disability, speech and language therapists, psychologists, a counselling for trauma team and a consultant psychiatric clinic for learning disability. The Centre also operates the health, education and relaxation therapy project (HEART) which enters into "health compacts" with individuals and families who have health well-being issues. The Centre also runs counselling services, operates the health awareness boosted by interactive technology suite (HABIT) which runs a gym and an information technology system and runs various other therapies and courses on health related matters. The Centre also contains the Divis Healthy Living shop which is run by Mr Brannigan and has a health information point which is an interactive exhibition of health information.

[5] Healthy Living Centres developed from the White Paper issued in July 1999 by the Secretary of State for Health "Saving Lives - Our Healthier Nation". It was recognised that Healthy Living Centres would be particularly important in deprived areas. In March 2002 the Department of Health, Social Services and Public Safety in Northern Ireland published "Investing for Health". In considering the causes of poor health and health inequalities the paper noted that health is largely determined by social, economic, physical and cultural environment and "poverty is the greatest risk factor for health." In relation to pharmaceutical services the paper noted that "A core function of pharmacists at all levels is to prevent ill health and promote and protect public health. This encompasses a vast range of activity, from the provision of health promotion advice to advise self care for those presenting with minor or self limiting ailments, to medicine management programmes which encourage the safe and effective administration of medicines. Community pharmacies provide a unique forum for health development as they have the opportunity to target people who would otherwise have little or no contact with health promotion messages. The position of the community pharmacy with its visibility, accessibility and loyal customer patronage renders it an ideal health promotion centre of cross departmental initiatives."

[6] The Northern Ireland Neighbourhood Information Service has published information on Falls ward, Belfast. There are 582 wards in Northern Ireland and on a deprivation index Falls ward ranks second to Shankill ward as the most deprived wards in the Province. Out of seven

indicators of deprivation, Falls ranks in the five most deprived wards in terms of the indicators on income, unemployment, health and education. Ironically, Falls ranks least deprived in terms of proximity to services, apparently because of its position relative to Belfast city centre. The level of deprivation in the ward is reflected in above average levels of long term illness, health problems, disability, payments of incapacity benefit, mortality rates, unmarried mothers, lone parents with dependent children and unemployment.

[7] Mr Brannigan qualified as a pharmacist in 1985 and managed the Divis Pharmacy in the Divis flats complex and then Cullingtree Pharmacy in the Old Albert Street Health Centre. In 2000 Cullingtree Pharmacy relocated to its present position at 305 Grosvenor Road. In 2002 Grosvenor Healthcare made an application for a new pharmacy on the Grosvenor Road and Mr Brannigan was an objector. In 2002 Mr Branigan applied for a pharmacy in the Centre and this was rejected. However he opened a Health Living shop in the Centre.

The statutory scheme.

[8] The provision of pharmaceutical services is governed by the Health and Personal Social Services (Northern Ireland) Order 1972 and the Pharmaceutical Services Regulations (Northern Ireland) 1997. Regulation 6 provides that each Board shall prepare a pharmaceutical list of the names of persons who undertake to provide pharmaceutical services. A person whose name is on the pharmaceutical list and who intends to open additional premises from which to provide pharmaceutical services is required to apply to the Board. Regulation 6(9) provides that:-

“An application ... shall be granted by the Board ... 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.”

[9] Regulation 6(9) provides that an application shall be granted by the Board “only if it is satisfied” of the specified matters. The component parts are –

(i) Neighbourhood. The issue concerns the adequacy of services “*in the neighbourhood in which the premises are located*”. The decision-maker must

first define the “neighbourhood” of the proposed pharmacy.

(ii) Adequacy. The proposed pharmacy must be necessary or desirable “*in order to secure adequate provision of services*” in that neighbourhood. Thus the test for the provision of services in the neighbourhood is “adequacy” and the object of the assessment is “to secure” adequate provision. The test of “adequacy” indicates that which is sufficient to satisfy the reasonable pharmaceutical requirements of the neighbourhood. This would involve changing requirements as pharmaceutical standards improve, the range of available services alters, the composition of the neighbourhood changes and the nature of the demand for pharmaceutical services varies.

(iii) Necessary or desirable. The provision of services at the proposed pharmacy must be “*necessary or desirable*” to secure adequate provision. Thus, the services that the proposed pharmacy would provide may render the pharmacy “necessary” in order to secure adequacy or alternatively, while it may not be necessary, it may be “desirable” in order to secure adequacy.

[10] In considering the overall effect of the Regulations I adopt the words of Russell LJ in R (Suri) v Yorkshire Regional Health Authority [1995] 30 BMLR 78 in relation to the equivalent English regulations - “In my judgment it is clear that the whole scheme created by the regulations is directed at protecting the interests of those who might wish to avail themselves of pharmaceutical services.”

The PPC decision.

[11] On granting the application the PPC determined the neighbourhood be the Falls electoral ward incorporating the Royal Hospitals site, the Ardmoulin residential area, the John Street/Hamill Street residential area and the Roden Street residential area. The PPC concluded that it was at least desirable to open the proposed pharmacy and the reasons were stated as follows:

“The neighbourhood is an area of historic deprivation and years of effort have made little

difference to that assessment. In this context the committee regarded the development of a Healthy Living Centre with a full range of services, including pharmaceutical services, to be an opportunity to make a significant impact on levels of health deprivation. It was considered that the wide range of representations received by the Board from community groups, North and West Belfast Trust, GP and dental surgeries, Belfast Regeneration Office, housing associations, residential homes, homeless organisations, political representatives, church representatives/workers and individual residents could be taken as evidence of the community's view of the current inadequacy of pharmaceutical services in the neighbourhood.

The committee felt that the distribution of pharmacies in and on the periphery of the neighbourhood was not ideal to provide an adequate pharmaceutical service. Members highlighted difficulties of access for children and the elderly in the Divis Street portion of the neighbourhood in particular.

In addition to the elderly young mothers and children the committee the long-term needs of particular client groups for example those served by the Morning Star hostel and Welcome Project which would benefit from a pharmaceutical service located in the Healthy Living Centre.

It was considered that the Board had a responsibility to work with inter agency regeneration initiatives involving eg the Department for Social Development, North and West Belfast HSS Trust and the NI Housing Executive to ensure that the needs of the community are met. Such initiatives aim to lessen deprivation and thereby also improve health outcomes. In this respect the Maureen Sheehan Healthy Living Centre was seen to be at the centre of the neighbourhood renewal programme and the establishment of a modern health promoting pharmaceutical service at this location was

considered to be not merely convenient but desirable for the population of the neighbourhood.

The committee was satisfied therefore that the provision of pharmaceutical services at the premises named in the application is at least desirable in order to secure adequate provision of pharmaceutical service in the neighbourhood in which the premises are located.”

The NAP decision.

[12] On appeal the NAP adopted the PPC neighbourhood. However the NAP concluded that the application was neither necessary nor desirable in order to secure the provision of adequate services in the neighbourhood. The reasons were stated to be that –

(a) The panel took into account that in addition to the applicant’s pharmacy at 305/307 Grosvenor Road which was within the proposed neighbourhood. There were four pharmacies which, although outside the proposed neighbourhood, were approximately 1km from the proposed site. The panel also took into account that there were three other pharmacies at a rather greater distance. The panel did take into account that access to these pharmacies on foot did involve crossing busy thoroughfares but considered that the presence of controlled pedestrian crossings facilitated this to an acceptable degree.

(b) The panel also took into account all these pharmacies provided a collection and delivery service for those willing to avail of it.

(c) Taking these factors into account the applicant has not satisfied the panel that the provision of pharmaceutical services at the premises named in the application was necessary or desirable in order to secure adequate provision of pharmaceutical services in the neighbourhood in which the premises were proposed to be located.”

The grounds for judicial review.

[13] The applicant's grounds for judicial review were as follows:

- (1) Failing to take account of relevant circumstances, namely the impact of a high deprivation neighbourhood and all the incidence of deprivation specified by the applicant.
- (2) According manifesting inadequate weight to the incidence of high deprivation in the neighbourhood.
- (3) Reaching a decision that was unreasonable, irrational and arbitrary.
- (4) Taking into account irrelevant considerations, being first of all that there were existing pharmacies outside the neighbourhood and secondly that all pharmacies within and without the neighbourhood provided a collection and delivery service.
- (5) Failing to give adequate reasons.
- (6) Taking into account changes in the neighbourhood since 2002, rather than all historic data.

Taking account of high deprivation.

[14] Colm Quinn filed an affidavit on behalf of the NAP. He is a non practising pharmacy contractor employed by the Board as a prescribing advisor and was appointed by the Board as a voting member of the NAP. In relation to the applicant's first ground, failing to take account of relevant circumstances, Mr Quinn's states that the high deprivation issue was raised at the hearing before the NAP and that all the factors referred to by the applicant were taken into account by the NAP in reaching its decision. I have no reason not to accept Mr Quinn's averment in this regard.

Relevance of pharmacies outside the neighbourhood.

[15] I move to the applicant's fourth ground, namely taking into account two irrelevant considerations, being pharmacies outside the neighbourhood and the collection and delivery services. Mr Quinn accepted that the NAP had considered the location of pharmacies outside the neighbourhood and explained that it was in response to complaints about access difficulties to existing pharmacies. Further Mr Quinn accepted that the NAP took account of the collection and delivery services and explained that this issue had been

raised by Mr Brannigan and such services were typical features of community pharmacy practices.

[16] First, is the NAP entitled to take into account the existence of pharmacies outside the neighbourhood? In the decision the NAP referred to four pharmacies which were outside the neighbourhood, but which were approximately one kilometre from the proposed site and also took into account three other pharmacies at a greater distance. In considering the adequacy of services in the neighbourhood the Regulations do not exclude movements into the neighbourhood and movements out of the neighbourhood. Thus adequacy will be assessed by reference to the needs of those who are in the neighbourhood, whether they be residents, workers or visitors. Equally those in the neighbourhood, whether as residents, workers or visitors, may have their pharmaceutical needs satisfied not only by pharmacies within that neighbourhood but also by pharmacies outside the neighbourhood. Accordingly, the NAP is entitled to take into account the pharmacies outside the neighbourhood to the extent that they impact on the provision of services within the neighbourhood.

[17] The same approach has been adopted in England and Wales. In R (Moore) v Humberside Family Health Services Authority [1995] 30 BMLR 68 Potts J considered a neighbourhood known as Holme, which was part of the wider area covered by the Humberside Authority, where pharmaceutical services were provided by two local doctors who opposed the establishment of a new pharmacy in the neighbourhood. While the English regulations are not identical Potts J considered that the English equivalent of Regulation 6(9):-

“... required the authority to consider whether there was adequate provision of pharmaceutical services in Holme by pharmacists on the list for Humberside. While the fact that there was no dispensing pharmacist in Holme was a relevant matter and one which the authority was required to take into account ... it could not be decisive. On a true construction of (the regulation) the authority was still required to consider the adequacy of provision in Holme by listed pharmacies outside.”

[18] A similar position has been taken in Scotland in Sainsburys Supermarkets Ltd v The National Appeal Panel [2002] ScotCS 304 where Lord Carloway stated at paragraph 21:-

“In conjunction with this consideration of adequacy, it was also legitimate for the panel to have regard to the provision of pharmaceutical services in the neighbourhood not only by

pharmacies located in the neighbourhood but also those upon its fringes. It is the adequacy of provision to persons in the neighbourhood which has to be looked at and that provision will not necessarily come exclusively from pharmacies actually within the neighbourhood boundaries.”

Relevance of collection and delivery services.

[19] The second matter taken into consideration that the applicant contends is irrelevant is the fact that existing pharmacies, including pharmacies outside the neighbourhood, provide a collection and delivery service. Again the Regulations require assessment of the adequacy of the provision of pharmaceutical services in the neighbourhood. All that constitutes pharmaceutical services must be taken into account and a collection and delivery service is a part of the provision of pharmaceutical services. This assessment cannot be limited to a consideration of those services that are available to those who visit a pharmacy. If some pharmaceutical services are legitimately provided by means other than over the counter of the pharmacy then that should be taken into account. As the existence of pharmacies outside the neighbourhood may be taken into account to the extent that they provide services within the neighbourhood that will equally involve taking into account not only those in the neighbourhood visiting a pharmacy but the pharmacy providing a collection and delivery service to those within the neighbourhood.

The adequacy of reasons.

[20] In relation to the applicant’s fifth ground, the adequacy of the reasons for the NAP’s decision, Mr Quinn drew attention to the applicant framing this ground in terms that the NAP had failed to give reasons for rejecting the views of the PPC. Mr Quinn commented that the NAP’s task was not to review the decisions of the PPC but to determine each appeal afresh and that in any event the written decision of the NAP contained adequate reasons.

[21] Paragraph 20 of schedule 4 of the Regulations requires the NAP to give written notification of the decision “... together with reasons therefor to the Board...” and the Board then must give notice to the pharmacist and certain others “... of that decision together with the reasons therefor.” Accordingly the Regulations impose a duty on the NAP to provide reasons for the decision. Mr Quinn is correct to assert that this is not a duty to give reasons for rejecting the views of the PPC but a duty to give reasons for the NAP decision. The issue concerns the adequacy of the reasons given by the NAP for its decision.

[22] The adequacy of reasons was discussed by Lord Brown in South Bucks DC v. Porter [2003] 2 AC 58 at paragraph 36. While the case was dealing with an issue of planning permission the remarks are capable of more general application.

“The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal important controversial issues", disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision.”

[23] At the heart of this application for judicial review is the NAP's rejection of the case made to the PPC and the NAP for the desirability of a pharmacy in the Centre on the basis that existing services in the neighbourhood are inadequate, taking account of the high levels of deprivation in the area, the development of the Healthy Living Centre containing multiple complementary services, the Government drive to address healthy living issues in deprived areas, the demand for a pharmacy in the Centre from many organisations addressing issues of social need and the opening of additional facilities in the neighbourhood at Cullingtree Fold, Morning Star Hostel and the Welcome Project.

[24] The PPC accepted the desirability of the proposed pharmacy in the Centre for reasons that included the Healthy Living Centre providing an opportunity to make a significant impact on levels of health deprivation, the evidence of the community's views of current inadequacy based on the wide range of representations received from organisations, the shortcomings in the distribution of pharmacies in and on the periphery of the neighbourhood, the vulnerable groups that would benefit the Board's responsibility to work with other agencies such as the Department and the Trust and the Housing Executive to lessen deprivation and improve health outcomes, the position of the Maureen Sheehan Healthy Living Centre at the centre of the neighbourhood renewal programme.

[25] By contrast the NAP's reasons for rejecting the application referred first of all to the Brannigan pharmacy, the four pharmacies outside the neighbourhood which were one kilometre from the proposed site and the three other pharmacies that were further away and to a collection and delivery service from all those pharmacies.

[26] In general the reasons for a decision must address the fundamental issues. A restatement of the statutory test will not amount to adequate reasons. Nor will a recitation that all relevant matters have been taken into account, followed by a statement approving or rejecting an application or appeal. There must be some statement that demonstrates the reasoning of the decision maker. In the present case there is no discussion of the issues referred to above that formed the basis of the case for the desirability of a pharmacy in the Centre. There is merely a statement of the conclusion that the statutory test has not been satisfied. The NAP's reasons for the decision do not address the core issues on the application and the appeal, namely the arguments for the desirability of a pharmacy in a Healthy Living Centre in an area of high deprivation. The application for the additional pharmacy raised fundamental issues as to the nature of the provision of pharmaceutical services and the regulation of such services in the public interest. The NAP decision does not address those fundamental issues. The NAP's reasons are inadequate.

[27] The respondent contends that the applicant has sustained no substantial prejudice and has no proper interest in advancing a challenge to the adequacy of the reasons for the NAP decision. The statutory duty does not extend to the provision of reasons to the applicant. However the applicant has a sufficient interest in the decision to refuse a new pharmacy at the Centre to be permitted to bring this application for judicial review. She has that interest as a resident of the neighbourhood affected by a decision made under a statutory scheme relating to the provision of public services in the public interest. While issues about additional pharmacies often arise in a commercial setting involving competing pharmacists, there nevertheless remains the

essence of the regulatory scheme to provide adequate pharmaceutical services for those who wish to avail of such services. The applicant's interest extends to requiring that adequate reasons be provided for a decision either to grant or to refuse an additional pharmacy. Accordingly I reject the respondent's objection to the applicant's reliance on the absence of adequate reasons for the NAP decision. The NAP decision will be quashed.

The applicant's remaining grounds.

[28] In relation to the second ground, according manifestly inadequate weight to high deprivation, Mr Quinn avers that the NAP gave due consideration to the factors identified. He then adds that "the NAP considered the relevance of these matters in the context of the statutory framework." Mr O'Sullivan for the applicant objected that this sentence implied that some or all of the factors identified in relation to high deprivation in the neighbourhood were not considered relevant to the NAP's task. I do not read Mr Quinn as stating that the factors relied on to support the application for the proposed pharmacy were irrelevant, but rather that the factors were assessed against the statutory requirements.

[29] In relation to the applicant's third ground, the decision being unreasonable, irrational and arbitrary, Mr Quinn refers to Mr Brannigan having opposed the application by another pharmacist for premises at Grosvenor Road in 2002. Mr Brannigan had justified his current application by stating that there had been significant demographic change in the area since 2002. This comment gave rise to the applicant's sixth ground, namely that the NAP had had regard to changes in the neighbourhood since 2002 rather than all historic data. However I consider that Mr Quinn was responding to the contrast that the NAP drew between Mr Brannigan's position in 2002 when he considered services to be adequate and his position in 2005 when he considered services to be inadequate. In making that point I do not accept that the NAP limited its consideration of the statutory requirements to changes in the area in the previous three years.

[30] The weight accorded to a relevant consideration is primarily a matter for the decision maker, although the Court may intervene in cases of manifestly excessive or manifestly inadequate weight. Where leave has been granted on the ground of manifestly inadequate weight a respondent would be expected to address that ground, whether by reliance on any stated reasons for the decision or other available documents or by reliance on an affidavit filed in response to the grant of leave. Similarly, where leave has been granted on the ground of the irrationality of a decision, a respondent would be expected to address that ground in the same manner. One consequence of a failure to provide adequate reasons for a decision, where there is a duty to do so and where a ground on which leave has been granted is not adequately

addressed in the papers or in replying affidavits, may be to permit the Court to draw adverse inferences against a respondent who has not met the ground on which leave has been granted.

[31] As there has been a finding of inadequate reasons and in view of the Order that is to be made, it is not considered necessary or appropriate to state a conclusion on the applicants third and fourth grounds relating to inadequate weight and irrationality.

[32] The decision of the NAP will be quashed on the ground of inadequate reasons. A part of the rationale for the requirement to give reasons is to demonstrate the consideration of the fundamental issues calling for decision. Another part of the rationale is to promote confidence in the decision making process. The appeal will be reconsidered by the NAP. This is not a direction to state the reasons for the decision of February 2007, but a direction for the reconsideration of the appeal and the issue of a further decision together with reasons.