

27 October 2023

REF: SHA/26067

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APPEAL AGAINST NHS ENGLAND (HAMPSHIRE AND ISLE OF WIGHT AREA TEAM) DECISION TO REFUSE AN APPLICATION BY AVICENNA RETAIL LIMITED FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT THE VILLAGE CENTRE, HARTLAND VILLAGE, FLEET, HAMPSHIRE (BEST ESTIMATE)

1 Outcome

- 1.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of NHS England and redetermines the application.
- 1.2 The Committee determined that the application should be refused.

A copy of this decision is being sent to:

Avicenna Retail Limited (represented by Temple Bright LLP)
NHS England
Rowlands Pharmacy
Lloyds Pharmacy

Advise / Resolve / Learn

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1 The Application

By application dated 23 June 2022, Avicenna Retail Limited (“the Applicant”) applied to NHS England for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at the best estimate location of The Village Centre, Hartland Village, Fleet, Hampshire. In support of the application it was stated:

- 1.1 The application is made for premises within the new Hartland Village development in Fleet, Hampshire.
- 1.2 The location of the development is shown on the google map image below [see Appendix A for Committee].
- 1.3 Outline planning permission for the development was granted in 2018. When complete, the development will include 1,500 new homes, a two-form entry primary school, local shopping centre and other community facilities such as a nursery, dentist, gym, vet, community hall, village green and bar/restaurant.
- 1.4 The site plan of the Hartland Village development is shown below [see Appendix A for Committee].
- 1.5 The developers have also produced a computer-generated image which shows the various aspects of the development and its location within the surrounding rural landscape.
- 1.6 Since outline planning consent was granted, the development has progressed in stages:
 - 1.6.1 Phase 1, comprising of 181 homes, received detailed planning permission in July 2018;
 - 1.6.2 Phase 2, comprising of 132 homes, received detailed planning permission in July 2020;
 - 1.6.3 Phase 3, comprising of 331 homes plus retail and commercial space and a community building, received planning consent on 29 April 2022.
- 1.7 The first homes were occupied in May 2020, with homes selling and being occupied as they become available.
- 1.8 The completion of Phase 3 of the development will represent almost the half-way point in the development (644 homes out of a total of 1,500) and is an important milestone because it includes the village centre, with its retail and other facilities.

- 1.9 As stated above, the development comprises of 1,500 homes. Upon completion of the development, it will house more than 5,000 new residents. Due to its self-contained nature surrounded by open countryside and woodland and the design of the development, Hartland Village will form a large and thriving community its own right.
- 1.10 This current and projected future resident population within the new housing development gives rise to a significant demand for pharmaceutical services in the local area. This demand – from an entirely new community – is not adequately met by the existing pharmacy network.
- 1.11 There are no pharmacies within two miles of the proposed site. In addition to the distance, the walk from the Hartland Village development to existing pharmacies requires pedestrians to walk along country roads which pass through woodland and have no streetlighting. These distances, together with the nature of the route, mean that there are no pharmacies which are within walking distance of a development which will contain over 5,000 residents upon completion, and around 2,000 residents in the near term.
- 1.12 The regulations require NHS England to have regard, in particular, to the benefits to patients of having a reasonable choice of pharmaceutical service provision. What is reasonable will depend on the individual circumstances. Relevant factors will include the size and nature of the reliant population; the ease with which that reliant population can access pharmaceutical services; the number of pharmacies which are reasonably accessible to the population and the range of services offered by those existing pharmacies.
- 1.13 In relation to the Hartland Village development, NHS England must therefore consider whether, by reason of the development, the existing pharmacy network continues to secure a reasonable choice of pharmaceutical service provision, both in terms of the number of pharmacies and their physical location.
- 1.14 The Applicant believes that the existing pharmacy network cannot secure a reasonable choice for the local population as it grows. The obligation upon NHS England to have regard, in particular, to the benefits to patients of having a reasonable choice of pharmaceutical services requires NHS England to grant this application.
- 1.15 Granting this application would secure improvements and better access to pharmaceutical services in the HWB's area. In particular, it would provide the reliant population with a reasonable choice of pharmaceutical service provision.
- 1.16 The proposed premises would be highly visible and accessible within the village centre and would secure the pharmaceutical needs of the growing population of this new, self-contained community.

2 The Decision

NHS England considered and decided to refuse the application. The decision letter dated 6 July 2023 states:

- 2.1 NHS England has considered the above application and are writing to confirm that it has been refused. Please see the enclosed report for the full reasoning.

NHS ENGLAND DECISION REPORT DATED 24 MAY 2023

- 2.2 An unforeseen benefits application had been received from the Applicant, on 11 July 2022. The Committee [of NHS England] was now required to consider the application in accordance with Regulations 18 and 19 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.

- 2.3 Full details of the Applicant's proposal had been notified to the various interested parties in accordance with the regulations. Comments had been received from the following Boots UK Ltd, Lloyds Pharmacy Ltd, WM Morrisons Supermarkets plc, L Rowlands & Co (Retail) Ltd, Superdrug Stores plc and Community Pharmacy South Central LPC. There were also follow up comments from the Applicant via Temple Bright LLP.

Consideration by the Committee [of NHS England]

- 2.4 The Committee [of NHS England] had before it:
- 2.4.1 The NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended;
 - 2.4.2 Department of Health guidelines on market entry by means of pharmaceutical needs assessment – Chapter 8 – Unforeseen Benefits;
 - 2.4.3 The Report and annexes prepared by Primary Care Support England (PCSE) and NHS England;
 - 2.4.4 The application form provided by the Applicant;
 - 2.4.5 The Committee [of NHS England] noted that the Applicant's fitness information was approved on 26 October 2023 [sic];
 - 2.4.6 It was noted that the Applicant's best estimate had been previously agreed;
 - 2.4.7 The Committee [of NHS England] noted that the Applicant was proposing to provide essential, enhanced and advanced services, if commissioned;
 - 2.4.8 The Applicant also proposed core opening of 40 hours per week and total proposed opening of 49 hours per week.
- 2.5 The Committee [of NHS England] considered the Applicant's statement as to the unforeseen benefits it is offering. The Applicant has stated that "Outline planning permission for the development was granted in 2018. When complete, the development will include 1,500 new homes, a two-form entry primary school, local shopping centre and other community facilities such as a nursery, dentist, gym, vet, community hall, village green and bar/restaurant.
- 2.6 The first homes were occupied in May 2020, with homes selling and being occupied as they become available. The completion of Phase 3 of the development will represent almost the half-way point in the development (644 homes out of a total of 1,500) and is an important milestone because it includes the village centre, with its retail and other facilities.
- 2.7 Upon completion of the development, it will house more than 5,000 new residents. Due to its self-contained nature surrounded by open countryside and woodland and the design of the development, Hartland Village will form a large and thriving community it is own right.
- 2.8 This current and projected future resident population within the new housing development gives rise to a significant demand for pharmaceutical services in the local area. This demand – from an entirely new community - is not adequately met by the existing pharmacy network."
- 2.9 The Applicant also stated "There are no pharmacies within two miles of the proposed site. In addition to the distance, the walk from the Hartland Village development to existing pharmacies requires pedestrians to walk along country roads which pass through woodland and have no streetlighting. These distances, together the nature of

the route, mean that there are no pharmacies which are within walking distance of a development which will contain over 5,000 residents upon completion, and around 2,000 residents in the near term.

- 2.10 The regulations require NHS England to have regard, in particular, to the benefits to patients of having a reasonable choice of pharmaceutical service provision. What is reasonable will depend on the individual circumstances. Relevant factors will include the size and nature of the reliant population; the ease with which that reliant population can access pharmaceutical services; the number of pharmacies which are reasonably accessible to the population and the range of services offered by those existing pharmacies.
- 2.11 In relation to the Hartland Village development, NHS England must therefore consider whether, by reason of the development, the existing pharmacy network continues to secure a reasonable choice of pharmaceutical service provision, both in terms of the number of pharmacies and their physical location. The Applicant believes that the existing pharmacy network cannot secure a reasonable choice for the local population as it grows. The obligation upon NHS England to have regard, in particular, to the benefits to patients of having a reasonable choice of pharmaceutical services requires NHS England to grant this application.”
- 2.12 The information submitted by the Applicant along with the application indicates that the Applicant proposes to provide pharmaceutical services to the residents of Harland Village, Fleet in Hampshire from the best estimate location. The Applicant had stated via Temple Bright LLP that “The PNA and its content are noted, but this application falls to be determined outside the scope of the current PNA pursuant to regulation 18.”
- 2.13 All additional information, including location, opening times and distances of surrounding pharmacies and GP Surgeries were noted and considered by the Committee [of NHS England].
- 2.14 The Committee [of NHS England] considered information from a site visit of the Fleet area that had been undertaken by an NHS England representative who was present at the meeting.
- 2.15 The Committee [of NHS England] considered the representations made by Boots UK Ltd, Lloyds Pharmacy Ltd, WM Morrisons Supermarkets plc, L Rowlands & Co (Retail) Ltd, Superdrug Stores plc and Community Pharmacy South Central LPC – and noted the comments made by the interested parties. The Committee [of NHS England] noted that WM Morrisons Supermarkets plc disputed the point raised by the applicant that there were no other pharmacies within 2 miles. WM Morrisons Supermarkets plc state there is a Morrisons Pharmacy 1.1 miles from Hartland Village. L Rowlands & Co Ltd, Lloyds Pharmacy Ltd, Boots UK Ltd, Community South Central Pharmacy LPC opposed the application.
- 2.16 The Applicant’s response to the representations received during the consultation period was also considered.

Regulation 31 – Refusal: same or adjacent premises

- 2.17 The Committee [of NHS England] first considered Regulation 31(2)(a)(i) and was of the view that Regulation 31(2)(a)(i) is not met as there is currently no person on the pharmaceutical list at the premises to which the application relates.
- 2.18 The Committee [of NHS England] went on to consider paragraph (a)(ii) of Regulation 31(2); whether there is a person on the pharmaceutical list providing pharmaceutical services from adjacent premises. There are no pharmaceutical services being provided from any premises in the immediate vicinity.

- 2.19 The Committee [of NHS England] was satisfied that there is no pharmacy providing pharmaceutical services at the same or adjacent premises. The application did not therefore need to be refused in accordance with Regulation 31.

Regulations 40,41 and 44

- 2.20 The Committee [of NHS England] noted that the proposed pharmacy location was not in a controlled locality, and therefore Part 7 of the Regulations (in particular Regulations 40, 41 and 44) did not have to be considered.

- 2.21 There are 3 dispensing patients living within 1.6km radius of the proposed best estimate address, therefore the Committee [of NHS England] noted that if the application was approved it would be required to consider the discontinuation of arrangements for the provision of pharmaceutical services by doctors to the affected patients under Regulation 50.

- 2.22 The Committee [of NHS England] agreed that if the application was approved, it was inclined that the service provided by the dispensing doctors to the affected patients should be discontinued, and that the discontinuation should be postponed in order to give the doctors reasonable notice of the discontinuation, as follows – for a period of one (1) month – Crondall New Surgery

Oral Hearing

- 2.23 The Committee [of NHS England] decided that it was not necessary to hold an oral hearing before determining the application.

Regulation 18 – Unforeseen benefits application

- 2.24 The Committee [of NHS England] noted that this was an application for “unforeseen benefits” and fell to be considered under the provisions of Regulation 18 which states:

(1) if –

(a) the NHSCB receives a routine application and is required to determine whether it is satisfied that granting the application, or granting it in respect of some only of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB; and

(b) the improvements or better access that would be secured were or was not included in the relevant pharmaceutical needs assessment in accordance with paragraph 4 of Schedule1,

in determining whether it is satisfied as mentioned in section 129(2a) of the 2006 Act (regulations as to pharmaceutical services), the NHSCB must have regard to the matters set out in paragraph (2).

- 2.25 The Committee [of NHS England] considered that Regulation 18(1)(a) was satisfied in that it was required to determine whether it was satisfied that granting the application, or granting it in respect of some only of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB.

- 2.26 The Committee [of NHS England] went on to consider whether Regulation 18(1)(b) was satisfied, i.e. whether the improvements or better access that would be secured if the application was granted were or was included in the Pharmaceutical Needs (the ‘PNA’) in accordance with paragraph 4 of Schedule 1 of the Regulations.

- 2.27 The Committee [of NHS England] noted that the Health and Wellbeing Board ('HWB') had commissioned an assessment of the current capacity of pharmacies in the areas of known housing growth within Hart and had reached the conclusion that "There is good provision of pharmacy cover in Hart matching current and future planned population growth. There are no identified needs for improvement and better access" [Page 29 – 32, Hampshire PNA, (Sup. 2) 2022].
- 2.28 The Committee [of NHS England] also noted that, having considered the entire Hampshire locality including the area of Fleet, the HWB had reached the conclusion that "The conclusion of this PNA is that the number, geographical distribution, opening hours and choice of pharmaceutical services currently meet the needs of Hampshire's population and will meet future needs within the lifetime of this document" [Page 51, Hampshire PNA, 2022].
- 2.29 The Committee [of NHS England] noted that the HWB had considered access (distance, travelling times and opening hours') to assess how current service provisions will meet the needs of the population within the lifetime of the PNA.
- 2.30 The Committee [of NHS England] noted that the improvements or better access that the Applicant was claiming would be secured by its application were not included in the relevant pharmaceutical needs' assessment in accordance with paragraph 4 of Schedule 1.
- 2.31 The Committee [of NHS England] was satisfied that the unforeseen benefits claimed in the application were not identified in the PNA.
- 2.32 In order to be satisfied in accordance with Regulation 18(1), the Committee [of NHS England] went on to consider those matters set out at Regulation 18(2).
- 2.33 Regulation 18(2)(a)(i) - whether or not granting the application would cause significant detriment to the proper planning in respect of the provision of pharmaceutical services.
- 2.34 The Committee [of NHS England] was not aware of any plans that would be affected and concluded that granting the application would not have an adverse effect on any future plans. None of the submissions included any comment or evidence in regard to this matter. Therefore, the Committee [of NHS England] concluded that granting the application would not cause significant detriment in this regard.
- 2.35 Regulation 18(2)(a)(ii) - whether or not granting the application would cause significant detriment to the arrangements in place for the provision of pharmaceutical services.
- 2.36 None of the submissions included any evidence on this question and the Committee [of NHS England] found no proof to support the suggestion that if the application was to be granted, it would cause significant detriment to the arrangements in place for pharmaceutical services in the area.
- 2.37 The Committee [of NHS England] did not find any significant detriment to proper planning or to the arrangements in place for the provision of pharmaceutical services and therefore was not obliged to refuse the application under Regulation 18(2)(a).
- 2.38 Regulation 18(2)(b)(i) – whether notwithstanding that the improvements or better access were not included in the relevant PNA, it is satisfied that, having regard in particular to the desirability of – there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB – granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant PNA was published.
- 2.39 In order to determine if patients in the area already had a reasonable choice, the Committee [of NHS England] considered access (distance, travelling times and opening hours) as an important factor in determining the extent to which the current

pharmaceutical service provision meets the needs of the population in the Fleet, Hampshire area.

- 2.40 The Committee [of NHS England] noted that the evolving development is situated in between Fleet and Farnborough with an easy motorway link from the M3. The village is a 6 minute drive from Fleet and an 8 minute drive from Farnborough. There are ten pharmacies within 2 miles Hartland Village by road, some of which could be accessed within 5 minutes' drive. The Committee [of NHS England] considered that the distances to the nearby pharmacies were not unreasonable in the context of a fairly rural area.
- 2.41 The Weekday opening hours of the 10 pharmacies range from 07:00 to 22:30, Saturday opening hours range from 07:00 to 22.30. Sunday opening hours range from 10:00 to 17:00.
- 2.42 The Committee [of NHS England] noted that the Applicant had offered to open from 09:00 to 18:00 on Monday to Friday, Saturday opening of 09:00 to 13:00 and closed on Sundays. However, there were already pharmacies in the area providing the same weekday hours and longer hours on Saturdays as indicated above.
- 2.43 Hartland Village offers limited services, so it is likely that residents will have to travel outside the village to access various services.
- 2.44 The Committee [of NHS England] noted that a number of the representations had included details regarding the reasonable choice for obtaining pharmaceutical services in the area of the evolving development.
- 2.45 The Committee [of NHS England] also noted that there had been no particular change since the PNA was published when the HWB had considered that there were no gaps in access to pharmaceutical services.
- 2.46 Having considered the factors above, the Committee [of NHS England] was satisfied that residents of Hartland Village, Fleet, already have reasonable choice with regard to obtaining pharmaceutical services.
- 2.47 Regulation 18(2)(b)(ii) - whether notwithstanding that the improvements or better access were not included in the relevant PNA, it is satisfied that, having regard in particular to the desirability of – people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access - granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant PNA was published.
- 2.48 The Committee [of NHS England] reminded itself that it was required to address itself to people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that are difficult for them to access. The Committee [of NHS England] was also aware of its duties under the Equality Act 2010 which include considering the elimination of discrimination and advancement of equality between patients who share protected characteristics and those within such characteristics.
- 2.49 The Committee [of NHS England] received no evidence that identified a group of patients in the Hartland Village, Fleet area, sharing a protected characteristic with difficulty accessing services that meet a specific need. The Committee [of NHS England] therefore concluded that the application did not satisfy the test in this part of the Regulation.
- 2.50 The Committee [of NHS England] therefore concluded that the application did not satisfy the test in this part of the Regulation.

- 2.51 Regulation 18(2)(b)(iii) - whether notwithstanding that the improvements or better access were not included in the relevant PNA, it is satisfied that, having regard in particular to the desirability of – there being innovative approaches taken with regard to the delivery of pharmaceutical services - granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant PNA was published.
- 2.52 The Committee [of NHS England] agreed that the applicant had not provided evidence that an innovative approach would be taken with regard to the delivery of pharmaceutical services.
- 2.53 Therefore, the Committee [of NHS England] concluded that there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services.

Other Considerations

- 2.54 Regulation 18(2)(c)-(f) - The Committee [of NHS England] had previously determined that there was no need to defer the application under Regulation 18(2)(c) to (f).

Decision

- 2.55 The Committee [of NHS England] concluded that it was not required to refuse the application under the provisions of Regulation 31.
- 2.56 The Committee [of NHS England] had considered whether the granting of the application would cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area covered by the HWB, or the arrangements in place for the provision of pharmaceutical services in that area and is not satisfied that it would.
- 2.57 The Committee [of NHS England] determined that the application should be Refused on the following basis:
- 2.58 In considering whether the granting of the application would confer significant benefits, the Committee [of NHS England] determined that –
- 2.58.1 there is already a reasonable choice with regard to obtaining pharmaceutical services;
- 2.58.2 there is no evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services; and
- 2.58.3 there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services.
- 2.59 Having taken these matters into account, the Committee [of NHS England] is not satisfied that granting the application would confer significant benefits as outlined above that would secure improvements or better access to pharmaceutical services.

Rights of appeal

- 2.60 The application is refused so the Applicant has the right to appeal.
- 2.61 The Committee [of NHS England] decided not to grant third party rights of appeal to the decision to any of the parties that responded during the consultation period because the application had been refused.

In a letter dated 4 August 2023 addressed to NHS Resolution, the Applicant's representative appealed against NHS England's decision. The grounds of appeal are:

- 3.1 On behalf of the Applicant [I] write to appeal a decision of NHS England to refuse the Applicant's application offering unforeseen circumstances at best estimate the village centre, Hartland Village, Fleet, Hampshire. The decision was notified to the Applicant by letter dated 6 July 2023.
- 3.2 The Applicant's ground of appeal is that NHS England failed to give any, or any proper, reasons for its decision to refuse this application. In particular, NHS England appears to have made findings of fact which were contrary to those put forward by the Applicant in support of its application and without explaining how and why NHS England reached those findings.

Background

- 3.3 By way of background, the application is made for premises within the new Hartland Village development in Fleet, Hampshire.
- 3.4 When completed, the Hartland Village development will include:
 - 3.4.1 1500 new homes, 300 of which will be affordable homes;
 - 3.4.2 Early years/nursery of 120 children;
 - 3.4.3 Two form entry primary school;
 - 3.4.4 6500 sq. ft of community space (including a new community hall, to be located in the village centre);
 - 3.4.5 28 acres of open space;
 - 3.4.6 18500 sq. ft of commercial space (which is expected to include shops, a dentist, vets and bar/restaurant); and
 - 3.4.7 70 acre woodland park.
- 3.5 The location of the development is shown on the google map image below [see Appendix A for Committee].
- 3.6 Outline planning permission was granted in 2018. The site plan of the Hartland Village development is shown below [see Appendix A for Committee]:
- 3.7 The developers have also produced a computer-generated image which shows the various aspects of the development and its location within the surrounding rural landscape: [see Appendix A for Committee.]
- 3.8 It can be seen from the above image and the Google maps satellite image on the previous page of this letter that Hartland Village is just that: a self-contained "village" set within a rural and heavily wooded landscape which is separate and distinct from the neighbouring urban areas.
- 3.9 Since planning consent was granted for Hartland Village, the development has progressed in stages:
 - 3.9.1 Phase 1, comprising of 181 homes has been completed and all homes have been sold and occupied. 36 affordable homes, managed by Silva Homes, were handed over by the developers over one year ago.

- 3.9.2 Phase 2, comprising of 132 homes, is nearing completion with homes currently being sold and occupied. According to the developers, over 60% of homes in phase 2 have been sold.
- 3.9.3 Reserved matters planning consent for Phase 3 (which comprises of 331 units, retail and commercial space and a community building with associated landscaping) was granted on 29 April 2022. Construction work for phase 3 is now underway. The proposed pharmacy unit is in Phase 3.
- 3.10 The first homes were occupied in May 2020, with homes selling and being occupied as they become available.
- 3.11 The completion of Phase 3 of the development will represent almost the half-way point in the development (644 homes out of a total of 1500) and is an important milestone because it includes the village centre, with its retail and other facilities.
- 3.12 As stated above, the development comprises of 1500 homes. Upon completion of the development, it will house more than 5000 new residents. Due to its self-contained nature surrounded by open countryside and woodland and the design of the development, Hartland Village will form a large and thriving community in its own right.

Regulation 18

- 3.13 Granting this application would secure improvement in, and better access to, pharmaceutical service provision.
- 3.14 In particular, it would confer significant benefits in terms of securing a reasonable choice of pharmaceutical service provision and would overcome access difficulties which currently exist for new residents moving into Hartland Village who need to get to a pharmacy.
- 3.15 It is a matter of common sense that whether an area has a “reasonable choice” involves consideration of the size and nature of the reliant population and the provision of services to that population.
- 3.16 By way of an example, a single pharmacy may secure a reasonable choice of service provision in a village but would not secure a reasonable choice for a larger town or city. Similarly, as a town grows, NHS Resolution must assess the impact of that growth on the provision of pharmaceutical services; that provision must grow to meet the increased demand for pharmaceutical services at locations that are reasonable accessible for that new population in order to maintain a reasonable choice.
- 3.17 It is submitted that at some point during the process of housing developments, a tipping point may be reached whereby the existing pharmacy network fails to secure a reasonable choice and a new pharmacy is required. That tipping point has been reached in the proposed locality having regard to the Hartland Village development.
- 3.18 The existing pharmacy network is not geographically well-placed to meet the needs of those who will be present in the new development by reason of distance and other access difficulties. This geographical gap in service provision is, perhaps, best demonstrated by a map which shows the existing pharmacy network in the area.
- 3.19 As can be seen from the map below, there is an obvious gap in the vicinity of the Hartland Village development (which is in the centre of the map).
- 3.20 As can be seen from the above map, the existing pharmacies are not well-placed to serve the needs of new residents moving into Hartland Village by reason of both distance and the barriers that exist.

- 3.21 The nearest pharmacy to the proposed site is the Morrisons Pharmacy. This is located 2.5km from the proposed site (the village centre), or at least a 32-minute walk. This is a considerable distance for any patient (a 5km round-trip) but be impossible for many (those with reduced mobility, those who are unwell or those travelling children).
- 3.22 The route from the proposed location to the nearest pharmacy is shown on the google map image below:
- 3.23 As NHS Resolution will note from the route map below, not only is the journey length considerable, but it runs through the Hartland Country Park – a heavily wooded area. This route would therefore be entirely unsuitable for more vulnerable patients, particularly during the hours of darkness and during inclement weather. However, more importantly, the route along the road has no pedestrian footpath, meaning that pedestrians either have to walk at the roadside or walk along footpaths which run through the wooded area away from the roadside.
- 3.24 The next-nearest pharmacies are all located in Fleet, which is to the west of the Hartland Village development, the nearest being the Superdrug and Boots pharmacies in Fleet town centre. Both of these pharmacies are even further away – involving a walk of at least 3.6km each way from the proposed site as shown on the map below.
- 3.25 Not only is this an impractical distance for any patient to walk (even a fit and active person), but the route also includes a walk through wooded areas along footpaths which have no streetlighting. See, by way of example, a google streetview image below.
- 3.26 The alternative to using these footpaths would be to walk along Norris Hill Way, but this has no streetlighting and no pavements.
- 3.27 For those who are unable to walk, it appears that there is currently no bus service linking Hartland Village to the nearest pharmacies. The LPC, in its representations to NHS England, referred to a “hopper bus” serving Hartland Village. However, no timetable or further information was given, for example in relation to when the “hopper bus” operates or where the bus stops are, either in Hartland Village or in relation to existing pharmacies.
- 3.28 Whilst existing pharmacies may be accessed by car (subject to the usual difficulties of parking and traffic congestion), this presupposes that every person who requires access to pharmaceutical services will also have a car, which is not the case. It also ignores the potential inconvenience (and, indeed, difficulty) presented even for those who have a car in having to travel some distance when they are unwell or with small children. In any event, requiring every one of the approximately 5000 people who will live in Hartland Village to get into their car and drive to a pharmacy outside their local community is unsustainable.
- 3.29 Having regard to the above matters, granting this application would secure improvements in, and better access to, pharmaceutical services. These improvements and better access to pharmaceutical services were not foreseen within the relevant PNA, which does not refer to the Hartland Village development at all, nor does it consider accessibility save by reference to a broad brush approach of “journey times”.
- 3.30 In particular, for those who share a protected characteristic and who require access to pharmaceutical services, the existing pharmacies are difficult to access as described above. Granting this application would confer significant benefits in terms of physical access, since it would be at a location which is easily accessible for those living in, or moving into, Hartland Village. The proposed pharmacy would be in the “village centre”, which will contain a range of shops and other amenities.
- 3.31 Granting this application would also secure a reasonable choice of service provision. In particular, with a development of the size, scale and nature of Hartland Village, the

existing pharmacy network no longer secures a reasonable choice for the reliant population. Granting the application would therefore confer significant benefits in terms of providing a reasonable choice of pharmaceutical services for the new and rapidly expanding population who are moving into the new housing development, work in the new development (including those who work from home) and/or will use the associated services and facilities.

Conclusion

- 3.32 In conclusion, on behalf of the Applicant it is submitted that granting the application would confer significant benefits on the local population, in particular with regard to the desirability that patients have a reasonable choice of service provision and overcoming the access difficulties which currently exist.
- 3.33 The location of the proposed pharmacy is within an area which is seeing rapid development both in terms of housing and additional services; these developments create a demand for pharmaceutical services which the existing pharmacy network cannot meet for the reasons given above.
- 3.34 The proposed pharmacy would secure improvements and better access to pharmaceutical services in particular for those living in Hartland Village.
- 3.35 On behalf of the Applicant, it therefore invites NHS Resolution to uphold the Appeal and grant the Applicant's application.
- 3.36 [Appendix A provided for the Committee.]

4 Summary of Representations

This is a summary of representations received on the appeal.

4.1 ROWLANDS PHARMACY

- 4.1.1 Thank you for the opportunity to comment on the appeal. If NHS Resolution decide to convene an oral hearing, Rowlands are willing to attend under the provisions of Paragraph 8 of Schedule 3 of the Regulations.
- 4.1.2 Rowlands would like to reiterate its comments previously and that regarding the new updated published PNA on 1 October 2022 by the Hampshire Health and Wellbeing Board which was very detailed and stated, "The conclusion of this PNA is that the number, geographical distribution, opening hours and choice of pharmaceutical services currently meets the needs of Hampshire's population and will meet future need within the lifetime of this document." Rowlands agree with the decision by NHS England to refuse the application which was notified on 23 March 2023.
- 4.1.3 Rowlands respectfully request that NHS Resolution inform it of the outcome in due course.

LETTER TO NHS ENGLAND, DATED 12 DECEMBER 2022

- 4.1.4 Thank you for informing Rowlands of the above application.
- 4.1.5 Rowlands notes this is a Routine Unforeseen Benefits application and should one be required would be willing to attend any oral hearing should NHS England deem it necessary to hold one.
- 4.1.6 By their very nature, unforeseen benefits applications must be responding to a need not detailed in the PNA for the HWB. However, with most PNA being very

detailed and considering issues such as new housing and retail developments Rowlands respectfully request NHS England to consider whether the 'unforeseen need' is actually relevant. Regulation 18 provides several criteria, which must be considered as part of the determination process and Rowlands trust that those requirements will be applied to this application.

- 4.1.7 Rowlands therefore really question the gap that the application is seeking to fill. There are numerous pharmacies within a short radius, including Rowlands own, with various opening hours and service provision. If there it is identified there are any gaps in services, this could be picked up by the contractors already in place to support any increase to the local population if these were to be commissioned by the NHS. Rowlands are not aware, via official channels, that patients are finding it difficult to access services.
- 4.1.8 The Hampshire Health and Wellbeing Board PNA, published 1 October 2022, states "The conclusion of this PNA is that the number, geographical distribution, opening hours and choice of pharmaceutical services currently meet the needs of Hampshire's population and will meet future need within the lifetime of this document." Rowlands believes this application should be refused.
- 4.1.9 Due to the rural attitude of the Hartland Village development, the affluent population and the size and prices of the houses which are advertised for sale, this suggests the majority of residents with [sic] have access to one or more vehicles. The estate is advertised as having a frequent shuttle bus to the local town.
- 4.1.10 The proposed development will include some amenities but the residents would still have to travel outside the development to access GP services, larger retail food outlets and other shopping facilities in their day-to-day living.
- 4.1.11 Fleet Rowlands Pharmacy delivers to patients and there is the capacity to extend this service to support a local increase in population if required. Rowlands always prioritise those patients who are vulnerable or cannot access their medicines in another way.
- 4.1.12 Rowlands respectfully ask the Market Entry [sic] keeps up informed of the determination of the above application.

4.2 LLOYDS PHARMACY

- 4.2.1 The map provided with the appeal documents misses off Lloyds Pharmacy at: Fleet Medical Centre, Church Road, Fleet, GU51 4PE.
- 4.2.2 Thank you for the letter dated 10 August 2023 advising of the appeal with regards to the above application. Lloyds would like to submit the following response.
- 4.2.3 The Applicant states in the appeal "that at some point during the process of housing developments, a tipping point may be reached whereby the existing pharmacy network fails to secure a reasonable choice and a new pharmacy is required. That tipping point has been reached in the proposed locality having regard to the Hartland Village development." There is no evidence provided to substantiate this or that the population is having difficulty accessing pharmaceutical services to meet their needs.
- 4.2.4 NHS Resolution must have regards [sic] to whether the application will confer significant benefits on the population with regards to those groups who share protected characteristics and have regards [sic] to reasonable choice within the area of the Health and Wellbeing Board and whether the application

proposes to provide innovative services. The application does not, provide evidence the current population has difficulty accessing existing pharmaceutical services in the wider area. Lloyds submit therefore the application does not meet the requirement of Regulation and should be refused.

5 Observations

No observations were received by NHS Resolution in response to the representations received on appeal.

6 Consideration

6.1 The Pharmacy Appeals Committee ("the Committee"), appointed by NHS Resolution, had before it the papers considered by NHS England, together with a plan of the area showing existing pharmacies and doctors' surgeries and the location of the proposed pharmacy.

6.2 It also had before it the responses to NHS Resolution's own statutory consultations.

6.3 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.

6.4 Since 1 April 2023, Integrated Care Boards have taken on delegated responsibility for the commissioning of pharmaceutical services. NHS England made the decision which is the subject of this appeal. NHS Resolution will issue this decision to NHS England and it is for NHS England to inform the relevant Integrated Care Board.

6.5 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations").

Regulation 31

6.6 The Committee first considered Regulation 31 of the Regulations which states:

(1) A routine or excepted application, other than a consolidation application, must be refused where paragraph (2) applies.

(2) This paragraph applies where -

(a) a person on the pharmaceutical list (which may or may not be the applicant) is providing or has undertaken to provide pharmaceutical services ("the existing services") from -

(i) the premises to which the application relates, or

(ii) adjacent premises; and

(b) the NHSCB is satisfied that it is reasonable to treat the services that the applicant proposes to provide as part of the same service as the existing services (and so the premises to which the application relates and the existing listed chemist premises should be treated as the same site).

6.7 The Committee noted that the Applicant, in its application form, stated "not applicable" when asked if the proposed premises were in close proximity to other listed premises. NHS England, in its decision report, stated that "The Committee [of NHS England] was satisfied that there is no pharmacy providing pharmaceutical services at the same or adjacent premises". On the information available before it, which had not been disputed

by any party, the Committee determined that it was not required to refuse the application under the provisions of Regulation 31.

- 6.8 The Committee noted that, if the application were granted, the successful Applicant would - in due course - have to notify NHS England of the precise location of its premises (in accordance with paragraph 31 of Schedule 2). Such a notification would be invalid (and the applicant would not be able to commence provision of services) if the location then provided would (had it been known now) have led to the application being refused under Regulation 31.

Regulation 18

- 6.9 The Committee noted that this was an application for “unforeseen benefits” and fell to be considered under the provisions of Regulation 18 which states:

“(1) If—

- (a) the NHSCB receives a routine application and is required to determine whether it is satisfied that granting the application, or granting it in respect of some only of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB; and*
- (b) the improvements or better access that would be secured were or was not included in the relevant pharmaceutical needs assessment in accordance with paragraph 4 of Schedule 1,*

in determining whether it is satisfied as mentioned in section 129(2A) of the 2006 Act (regulations as to pharmaceutical services), the NHSCB must have regard to the matters set out in paragraph (2).

(2) Those matters are—

- (a) whether it is satisfied that granting the application would cause significant detriment to—*
 - (i) proper planning in respect of the provision of pharmaceutical services in the area of the relevant HWB, or*
 - (ii) the arrangements the NHSCB has in place for the provision of pharmaceutical services in that area;*
- (b) whether, notwithstanding that the improvements or better access were not included in the relevant pharmaceutical needs assessment, it is satisfied that, having regard in particular to the desirability of—*
 - (i) there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB (taking into account also the NHSCB’s duties under sections 13I and 13P of the 2006 Act (duty as to patient choice and duty as respects variation in provision of health services)),*
 - (ii) people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access (taking into account also the NHSCB’s duties under*

*section 13G of the 2006 Act (duty as to reducing inequalities)),
or*

- (iii) there being innovative approaches taken with regard to the delivery of pharmaceutical services (taking into account also the NHSCB's duties under section 13K of the 2006 Act (duty to promote innovation)),*

granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant pharmaceutical needs assessment was published;

- (c) whether it is satisfied that it would be desirable to consider, at the same time as the applicant's application, applications from other persons offering to secure the improvements or better access that the applicant is offering to secure;*
- (d) whether it is satisfied that another application offering to secure the improvements or better access has been submitted to it, and it would be desirable to consider, at the same time as the applicant's application, that other application;*
- (e) whether it is satisfied that an appeal relating to another application offering to secure the improvements or better access is pending, and it would be desirable to await the outcome of that appeal before considering the applicant's application;*
- (f) whether the application needs to be deferred or refused by virtue of any provision of Part 5 to 7.*
- (g) whether it is satisfied that the application presupposes that a gap in pharmaceutical services provision has been or is to be created—*
- (i) by the removal of chemist premises from a pharmaceutical list as a consequence of the grant of a consolidation application, and*
- (ii) since the last revision of the relevant HWB's pharmaceutical needs assessment other than by way of a supplementary statement.*
- (3) The NHSCB need only consider whether it is satisfied in accordance with paragraphs (2)(c) to (e) if it has reached at least a preliminary view (although this may change) that it is satisfied in accordance with paragraph (2)(b)."*

- 6.10 The Committee considered that Regulation 18(1)(a) was satisfied in that it was required to determine whether it was satisfied that granting the application, or granting it in respect of some only of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB.
- 6.11 The Committee went on to consider whether Regulation 18(1)(b) was satisfied, i.e. whether the improvements or better access that would be secured if the application was granted were or was included in the PNA in accordance with paragraph 4 of Schedule 1 of the Regulations.
- 6.12 Paragraph 4 of Schedule 1 requires the PNA to include: "a statement of the pharmaceutical services that the HWB had identified (if it has) as services that are not provided in the area of the HWB but which the HWB is satisfied (a) **would** if they were provided....secure improvements or better access, to pharmaceutical services... (b)

would if in specified future circumstances they were provided...secure future improvements or better access to pharmaceutical services..." (emphasis added).

- 6.13 The Committee considered the PNA prepared by Hampshire County Council, conscious that the document provides an analysis of the situation as it was assessed at the date of publication. The Committee bears in mind that, under regulation 6(2), the body responsible for the PNA must make a revised assessment as soon as reasonably practicable (after identifying changes that have occurred that are relevant to the granting of applications) unless to do so appears to be a disproportionate response to those changes. Where it appears disproportionate, the responsible body may, but is not obliged to, issue a Supplementary Statement under regulation 6(3). Such a statement then forms part of the PNA. The Committee noted that the PNA was dated 6 October 2022 and that supplementary statements had been issued in June 2023 and July 2023.
- 6.14 The Committee noted that, whilst no mention of the Hartland Village specifically is made in the PNA, the PNA states:
- "There is good provision of pharmacy cover in Hart matching current need and future planned population growth. There are no identified needs for improvement and better access."*
- 6.15 The Committee further noted that the PNA, in relation to the wider area of Hampshire and the Fleet area, states:
- "Fleet is the main urban area, with an additional urban area in the north of the district around Yately. These areas hold 68% of the district population... Deprivation is lower than in England and in Hampshire as a whole. Overall, Hart district has a high level of affluence..."*
- 6.16 The Committee noted that the Applicant seeks to provide unforeseen benefits to the residents of the Hartland Village development. The Committee noted that the improvements or better access that the Applicant was claiming would be secured by its application were not included in the relevant pharmaceutical needs assessment in accordance with paragraph 4 of Schedule 1.
- 6.17 In order to be satisfied in accordance with Regulation 18(1), regard is to be had to those matters set out at 18(2). The Committee's consideration of the issues is set out below.

Regulation 18(2)(a)(i)

- 6.18 The Committee had regard to
- "(a) whether it is satisfied that granting the application would cause significant detriment to—*
- (i) proper planning in respect of the provision of pharmaceutical services in the area of the relevant HWB"*
- 6.19 The Committee noted that NHS England, in its decision, stated it "was not aware of any plans that would be affected and concluded that granting the application would not have an adverse effect on any future plans... the Committee [of NHS England] concluded that granting the application would not cause significant detriment in this regard." The Committee noted that parties had not sought to argue or provide any information which would produce a finding that significant detriment would be caused if the application was granted.
- 6.20 On the basis of the information available, the Committee was not satisfied that, if the application were to be granted and the pharmacy to open, the ability of the NHS

England thereafter to plan for the provision of services would be affected in a significant way.

- 6.21 The Committee was therefore not satisfied that significant detriment to the proper planning of pharmaceutical services would result from a grant of the application.

Regulation 18(2)(a)(ii)

- 6.22 The Committee had regard to

"(a) whether it is satisfied that granting the application would cause significant detriment to— ...

(ii) the arrangements the NHSCB has in place for the provision of pharmaceutical services in that area"

- 6.23 The Committee noted that NHS England, in its decision, stated "The Committee [of NHS England] did not find any significant detriment to proper planning or to the arrangements in place for the provision of pharmaceutical services and therefore was not obliged to refuse the application under Regulation 18(2)(a)." The Committee noted parties had not sought to argue or produce any information which provide a finding that significant detriment would be caused if the application was granted.

- 6.24 The Committee was therefore not satisfied that significant detriment to the arrangements currently in place for the provision of pharmaceutical services would result from a grant of the application.

- 6.25 In the absence of any significant detriment as described in Regulation 18(2)(a), the Committee was not obliged to refuse the application and went on to consider Regulation 18(2)(b).

Regulation 18(2)(b)

- 6.26 The Committee had regard to

"(b) whether, notwithstanding that the improvements or better access were not included in the relevant pharmaceutical needs assessment, it is satisfied that, having regard in particular to the desirability of—

(i) there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB (taking into account also the NHSCB's duties under sections 13I and 13P of the 2006 Act (duty as to patient choice and duty as respects variation in provision of health services)),

(ii) people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access (taking into account also the NHSCB's duties under section 13G of the 2006 Act (duty as to reducing inequalities)), or

(iii) there being innovative approaches taken with regard to the delivery of pharmaceutical services (taking into account also the NHSCB's duties under section 13K of the 2006 Act (duty to promote innovation)),

granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant pharmaceutical needs assessment was published"

Regulation 18(2)(b)(i) to (iii)

- 6.27 The Committee noted the Applicant's best estimate for its proposed site is within the development of Hartland Village in Hampshire; maps provided on appeal show that the development is neighbouring to the town of Fleet.
- 6.28 The Committee noted that the development was for a total of 1,500 homes together with a range of shops, services, employment units and schools. The Applicant stated that due to the self-contained nature of the development that Hartland Village will eventually form a "large and thriving community" with approximately 5,000 residents once complete. The Committee acknowledged the potential for a sizeable population on completion including persons that are resident, working or visiting.
- 6.29 The Committee noted the Applicant's claim that, on completion, Hartland Village will be a "self-contained community". The proposed pharmacy will be in Phase 3 of the development, which comprises of retail and commercial space along with a community building, and that planning permission had been granted for this phase on 29 April 2022. The Committee had to, however, consider the position on the ground as it currently stands and noted that save for a limited number of properties built and occupied or sold to buyers no information had been provided with regard to the present state of other aspects of the development. The Committee noted the comment by NHS England in its decision that stated the current provision of facilities in the Hartland Village development is limited, and due to a lack of information to the contrary, the Committee was minded to agree. The Committee was mindful, therefore, that those already living in the vicinity of the proposed site would likely seek their requirements for services elsewhere.
- 6.30 The Committee noted comments by the Applicant that "there are no pharmacies within two miles of the proposed site" and the appendices that showed pictures of walking routes that patients would have to undertake to access pharmaceutical services by foot. The Committee also had regard to the map provided by NHS England, as well as the statement by Lloyds Pharmacy that the map omitted its pharmacy in Fleet as well as Fleet Medical Centre.
- 6.31 The Applicant, in its appeal, referred to walking access to existing pharmacies, with photographs showing google images of routes that it asserts are to the closest pharmacy at Morrisons which the Applicant states would take an able bodied person approximately 32 minutes to walk the 5km round trip. On examination of the map, the Committee considered that Lloyds Pharmacy might be closer. Be that as it may, the Committee noted that the images provided show an uneven terrain, unlit and without footpaths. The Committee was mindful that the time it takes to walk to the nearest pharmacies is significant but that distance does not in itself indicate that there is a difficulty in respect of there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB. However, the Committee was of the view that pharmacies are unlikely to be readily accessible from the proposed site on foot.
- 6.32 The Committee went on to consider ease of access to pharmaceutical services by private and public transport for those who chose not to walk in order to access pharmaceutical services.
- 6.33 With regard to those who use private transport, the Committee had not been provided with private vehicle ownership levels but noted the statement in the PNA that *"Deprivation is lower than in England and in Hampshire as a whole. Overall, Hart district has a high level of affluence"*. The Applicant refers to difficulties of parking and traffic congestion that would occur with patients using private vehicles to access pharmaceutical services but in the absence of any further information, the Committee was not persuaded that there was difficulty in patient access to existing pharmacies unfeasible.

- 6.34 The Committee was not persuaded that the Applicant had demonstrated that those who did choose to access services by private transportation were experiencing any difficulties in accessing the existing pharmaceutical provision.
- 6.35 The Committee next considered the availability of public transport for those without access to their own vehicle. The Committee noted the reference to a “hopper bus” from the Hartland Village development and the comment by Rowlands that indicates that the development is advertised as having a frequent shuttle bus to the local town. Whilst the Committee was not provided with any further information in relation to the frequency, cost or route of this service, there seemed to be no dispute that people residing locally to the proposed site could use it if desired to access the nearby town where they would be able to access pharmaceutical services, or that patients were currently experiencing any difficulties.
- 6.36 The Applicant, in its appeal, indicated that a ‘tipping point’ has been reached in the local area and that the existing pharmaceutical network would not be adequate to serve the residents of the new development. These statements were disputed by both Rowlands and Lloyds. The Committee noted that it had not been provided with any information to show that existing pharmacies in the area are or will be unable to cope with any increased demand for services.
- 6.37 The Committee was of the view that there is already reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB, such that it was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits on persons.
- 6.38 In considering Regulation 18(2)(b)(ii) the Committee reminded itself that it was required to address itself to people who share a protected characteristic under the Equality Act 2010 (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation) having access to services that meet specific needs for pharmaceutical services that, in the relevant area, are difficult for them to access. In considering Regulation 18(2)(b)(ii), the Committee note that the Applicant had not identified any patient groups with protected characteristics that may mean that accessing pharmaceutical services may be difficult.
- 6.39 The Committee was therefore not satisfied that, having regard to the desirability of people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that are difficult for them to access, granting the application would confer significant benefits on persons.
- 6.40 In considering Regulation 18(2)(b)(iii) the Committee had regard to the desirability of innovative approaches to the delivery of pharmaceutical services. In doing so, the Committee would consider whether there was something more over and above the usual delivery of pharmaceutical services that might be expected from all pharmacies, some ‘added value’ on offer at the location. The Committee noted that the application was not based on innovation.
- 6.41 The Committee was not satisfied that, having regard to the desirability of there being innovative approaches taken with regard to the deliverability of pharmaceutical services, granting the application would confer significant benefits on persons.

Regulation 18(2)(b) generally

- 6.42 The Applicant is proposing to provide 49 hours per week, 40 of which would be core hours. The Committee noted that NHS England, in its decision, highlights that the ten alternative pharmacies in the locality have opening hours ranging from 7am to 10.30pm Monday to Saturday and Sunday hours range from 10am to 5pm.

- 6.43 The Committee notes that the PNA states “The conclusion of the PNA is that the number, geographical distribution, **opening hours** and choice of pharmaceutical services currently meets the needs of Hampshire’s population and will meet future needs within the lifetime of this document” [emphasis added by NHS Resolution].
- 6.44 The Committee was of the view that there was no information provided to support a finding that pharmaceutical services are not currently provided at such times as needed and therefore it was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits (in relation to opening hours) on persons.
- 6.45 The Committee has considered whether there are any other factors that would confer significant benefits including on patients who share protected characteristics. The Committee had regard to the need to eliminate discrimination and advance equality of opportunity and foster good relations between these patients and those who do not share their protected characteristics.
- 6.46 The Committee was of the view that in accordance with Regulation 18(2)(b) the granting of this application would not confer significant benefits on persons in the area of the HWB which were not foreseen when the PNA was published.

Other considerations

- 6.47 Having determined that Regulation 18(2)(b) had not been satisfied, the Committee did not need to have regard to Regulation 18(2)(c) to (e).
- 6.48 No deferral or refusal under Regulation 18(2)(f) was required in this case.
- 6.49 The Committee had regard to Regulation 18(2)(g) and found that it is not applicable in this case.
- 6.50 The Committee considered whether there were any further factors to be taken into account and concluded that there were not.
- 6.51 The Committee was not satisfied that the information provided demonstrates that there is difficulty in accessing current pharmaceutical services such that a pharmacy at the proposed site would provide better access to pharmaceutical services.
- 6.52 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 6.52.1 confirm NHS England’s decision;
 - 6.52.2 quash NHS England’s decision and redetermine the application;
 - 6.52.3 quash NHS England’s decision and, if it considers that there should be a further notification to the parties to make representations, remit the matter to NHS England.
- 6.53 The Committee, having reached its decision for different reasoning to NHS England, determined that the decision of NHS England must be quashed.
- 6.54 The Committee went on to consider whether there should be a further notification to the parties detailed at paragraph 19 of Schedule 2 of the Regulations to allow them to make representations if they so wished (in which case it would be appropriate to remit the matter to NHS England) or whether it was preferable for the Committee to redetermine the application.
- 6.55 The Committee noted that representations on Regulation 18 had been sought from parties by NHS England and representations had already been made by parties to NHS

England in response. These had been circulated and seen by all parties as part of the processing of the application by NHS England. The Committee further noted that when the appeal was circulated representations had been sought from parties on Regulation 18.

- 6.56 The Committee concluded that further notification under paragraph 19 of Schedule 2 would not be helpful in this case.

7 DECISION

- 7.1 The Pharmacy Appeals Committee (“Committee”), appointed by NHS Resolution, quashes the decision of NHS England, for the reasons given above, and redetermines the application.
- 7.2 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.
- 7.3 The Committee has considered whether the granting of the application would cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area covered by the HWB, or the arrangements in place for the provision of pharmaceutical services in that area and is not satisfied that it would;
- 7.4 The Committee determined that the application should be refused on the following basis:
- 7.4.1 In considering whether the granting of the application would confer significant benefits, the Committee determined that –
- 7.4.1.1 there is already a reasonable choice with regard to obtaining pharmaceutical services;
- 7.4.1.2 there is no evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services; and
- 7.4.1.3 there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services;
- 7.4.2 Having taken these matters into account, the Committee is not satisfied that granting the application would confer significant benefits as outlined above that would secure improvements or better access to pharmaceutical services.

Case Manager
Primary Care Appeals