

18 December 2023

8th Floor
10 South Colonnade
Canary Wharf
London
E14 4PU

FILE REF: SHA/26076

DECISION MAKING BODY:

Buckinghamshire, Oxfordshire
and Berkshire ICB (“the
Commissioner”)

Tel: 0203 928 2000
Email: nhsr.appeals@nhs.net

PHARMACIST:

Click Solutions Ltd
 (“the Applicant”)

PREMISES:

Emmer Green Pharmacy
5 Cavendish Road
Caversham Park Village
Reading
Berkshire, RG4 8XW

**THE NATIONAL HEALTH SERVICE (PHARMACEUTICAL AND LOCAL PHARMACEUTICAL
SERVICES) REGULATIONS 2013 [“THE REGULATIONS”]**

**SCHEDULE 4 [Terms of Service of NHS Pharmacists]
PART 3 [Hours of Opening]**

Outcome

- 1.1 Based on the information provided, I am not satisfied that the pharmaceutical services provision that would result from the Applicant’s proposed hours would maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises. I am satisfied that maintaining the current level of service is a realistically achievable outcome and therefore the Applicant cannot rely on paragraph 24(1)(b).
- 1.2 The action taken by Buckinghamshire, Oxfordshire and Berkshire Integrated Care Board to refuse the application is confirmed.

A copy of this decision is being sent to:

Click Solutions Ltd
NHS England – South Region on behalf of the Integrated Care Boards in the South East Region
(Buckinghamshire, Oxfordshire and Berkshire West ICB)

Advise / Resolve / Learn

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Tel: 0203 928 2000
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FILE REF: **SHA/260706**

DECISION MAKING BODY:

**Buckinghamshire, Oxfordshire
and Berkshire ICB (“the
Commissioner”)**

PHARMACIST:

**Click Solutions Ltd
 (“the Applicant”)**

PREMISES:

**Emmer Green Pharmacy
5 Cavendish Road
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Reading
Berkshire
RG4 8XW**

**THE NATIONAL HEALTH SERVICE (PHARMACEUTICAL AND LOCAL PHARMACEUTICAL
SERVICES) REGULATIONS 2013 [“THE REGULATIONS”]**

**SCHEDULE 4 [Terms of Service of NHS Pharmacists]
PART 3 [Hours of Opening]**

1 Introduction

1.1 The Applicant has applied to the Commissioner to change the days and times at which it is obliged to provide pharmaceutical services at the above premises. The Applicant seeks to keep the total number of core opening hours the same while offering a different distribution of these hours during the week.

1.2 The Commissioner has refused the application. The Applicant seeks to appeal to NHS Resolution.

2. Consideration

Rights of appeal

2.1 Where the Commissioner has determined an application under paragraph 26 of Schedule 4 of the Regulations and has granted it in part only or has taken an action that has the effect of refusing it, paragraph 26(9) provides a right of appeal to the Secretary of State for Health and Social Care (“the Secretary of State”).

2.2 The Secretary of State has directed NHS Resolution to determine such appeals. As an authorised officer of NHS Resolution, I have considered the appeal and have determined it, in accordance with my delegated powers.

Opening hours

- 2.3 A pharmacy's opening hours may be categorised as:
- 2.3.1 "core opening hours" (at the hours during which the pharmacy must be open by virtue of paragraph 23(1) of Schedule 4 of the Regulations), which may incorporate a direction of the Commissioner requiring fewer or greater than 40 hours and at set times and days; or
 - 2.3.2 "supplementary" opening hours (other hours during which the pharmacy premises are open which are in addition to the core hours), pursuant to paragraph 23(3) of Schedule 4 of the Regulations

Alteration of core opening hours

- 2.4 In accordance with paragraphs 1(7)(c) and 1(7)(d) of Schedule 2 of the Regulations, the pharmacy must provide, as part of an application for entry in the pharmaceutical list:
- 2.4.1 the proposed core opening hours in respect of the premises; and
 - 2.4.2 the total proposed opening hours for the premises (having regard to both the proposed core opening hours and any supplementary opening hours).
- 2.5 The Commissioner maintains pharmaceutical lists that include the days on which and times at which, at those premises, the listed person is to provide those services during the core opening hours and any supplementary opening hours of the premises.
- 2.6 The days on which or times at which a pharmacy is obliged to provide pharmaceutical services at the premises may only be altered by the pharmacy on application under paragraph 26(1) of Schedule 4 of the Regulations, so long as the effect of that application is to reduce the total number of hours for which a pharmacy is obliged to provide, or keep the total number of hours the same.

Alteration of supplementary opening hours

- 2.7 Supplementary opening hours may be altered by the pharmacy giving notice to the Commissioner, in accordance with paragraph 23(6)(a) of Schedule 4 of the Regulations, without the need to make an application to the Commissioner.
- 2.8 There is no specific right of appeal to NHS Resolution in respect of notices given under paragraph 23(6)(a).

Click Solutions Ltd proposals

- 2.9 The Applicant in its letter of appeal indicates that it currently has core opening hours totalling 40 hours per week.
- 2.10 The Applicant wishes to:
- 2.10.1 Open from 9am to 1pm and then 2pm to 6pm rather than opening from 8:30am to 12:30pm and 3:30pm to 6:30pm Monday to Friday, and
 - 2.10.2 Close on a Saturday rather than opening from 9am to 12:00noon and 3pm to 5pm.

Assessment

- 2.11 In this case, the Applicant provided the following information in its application form dated 13 June 2023.

2.11.1 “This is an application to permanently change core opening hours.

2.11.2 Current opening hours for these premises:

Monday	08:30 – 12:30 15:30 – 18:30
Tuesday	08:30 – 12:30 15:30 – 18:30
Wednesday	08:30 – 12:30 15:30 – 18:30
Thursday	08:30 – 12:30 15:30 – 18:30
Friday	08:30 – 12:30 15:30 – 18:30
Saturday	09:00 – 12:00 15:00 – 17:00
Sunday	

2.11.3 Proposed core opening hours for these premises:

Monday	09:00 – 13:00 14:00 – 18:00
Tuesday	09:00 – 13:00 14:00 – 18:00
Wednesday	09:00 – 13:00 14:00 – 18:00
Thursday	09:00 – 13:00 14:00 – 18:00
Friday	09:00 – 13:00 14:00 – 18:00
Saturday	
Sunday	

2.11.4 If this is a permanent change, please state below the date from which you would like the change to take effect: “Once permission granted, we will comply in line with NHS requirements.”

2.11.5 With ETP and peoples changing habits there is no longer and business between 8:30 and 9:00am and the 6:00pm to 6:30pm. [sic]

2.11.6 We feel that core hours during the day are more important.

2.11.7 Also the local surgery do not open on Saturday. [sic]

2.11.8 Also Saturdays are also very quiet for the service provision. [sic] With all NNS and Manpower issue it no longer viable to open longer that the demand for the services. [sic]”

2.12 In a letter to the Applicant dated 7 August 2023 the Commissioner stated:

2.12.1 “I write with reference to your application to permanently change the Core hours for Emmer Green Pharmacy, 5 Cavendish Road, Caversham Park Village, Reading, Berkshire RG4 8XW received on 26 June 2023.

2.12.2 Buckinghamshire, Oxfordshire and Berkshire West Integrated Care Board (ICB), has considered the above application and I am writing to confirm that it has been refused.

REASON FOR THE DECISION

2.12.3 Your application has been refused on the grounds that you have not met the requirements set out in paragraph 26, Schedule 4 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

- The Committee noted that the Applicant had not demonstrated that the proposed change to core opening hours would maintain as necessary the existing level of service for people in the area of the pharmacy premises or other likely users of them and
- The Committee noted that the Applicant had not demonstrated that the proposed core opening hours would maintain a sustainable level of adequate service provision for the people in the area of the pharmacy premises or other likely users of them, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome.

2.12.4 With reference to your notification to permanently change the Supplementary hours for Emmer Green Pharmacy, 5 Cavendish Road, Caversham Park Village, Reading, Berkshire RG4 8XW received on 26 June 2023.

2.12.5 Following the refusal of the core hours application, please could you confirm if you wish to proceed with the change to supplementary hours or withdraw the notification.

RIGHT OF APPEAL

2.12.6 You have a right of appeal to the Secretary of State against the decision of NHS England - South East Region. Should you choose to appeal then you should send a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this letter to:

2.12.7 NHS Resolution, 8th Floor, 10 South Colonnade, Canary Wharf, London, E14 4PU or email: nhsr.appeals@nhs.net."

2.13 In a letter to NHS Resolution dated 4 September 2023 the Applicant stated:

2.13.1 "Further to NHS England's letter dated 7.8.2023 refusing our application to amend the above Pharmacy's core opening hours, we wish to appeal against this decision.

2.13.2 Emmer Green Pharmacy is situated in a distinct part of Caversham, Reading within a small parade of local shops, including Budgens, Domino Pizza, Village Wines and a Barber shop. These serve the immediate local community but would not be considered as a primary shopping destination for residents in this area for their immediate daily needs. The current numbers of prescription items and P medicine and/or OTC sales do not justify the current core hours of the Pharmacy, and we have no evidence that the existing demand for these hours (8.30am-9.00am and 6.00pm-6.30pm) will change in the future. We strongly refute that the current weekday core hours best meet the needs of those whom the Pharmacy serves, hence our application to amend them to more appropriate timings. The Pharmacy is barely utilised between 8.30am-9.00am and 6.00pm-6.30pm but is consistently accessed and peaks between 12.00noon and 2.00pm during the lunchtime period. The data below provides further insight.

Week 1				
	Morning 8:30am – 9am		Evening – 6:00pm – 6:30pm	
Date	No of people	Spend	No of people	spend
Monday 31 July 2023	1	£22.03	2	£11.18
Tuesday 1 August 2023	2	£30.64	1	£9.65
Wednesday 2 August 2023	1	£0.00	1	£14.28
Thursday 3 August 2023	1	£0.00	0	£0.00
Friday 4 August 2023	2	£13.47	3	£19.85
Saturday 5 August 2023	0	£0.00	0	£0.00
Total	7	£66.14	7	£54.96

Week Total – People 14
 Week Total Spend £121.10
 Week 1 Average daily – people 2.33
 Week 1 Average daily – spend £20.18

Week 2				
	Morning 8:30am – 9am		Evening – 6:00pm – 6:30pm	
Date	No of people	Spend	No of people	spend
Monday 7 August 2023	3	£6.81	4	£40.10
Tuesday 8 August 2023	4	£11.65	3	£23.76
Wednesday 9 August 2023	1	£11.68	1	£34.87
Thursday 10 August 2023	2	£4.78	2	£13.99
Friday 11 August 2023	3	£8.34	3	£38.60
Saturday 12 August 2023	0	£0.00	0	£0.00
Total	13	£43.26	13	£151.32

Week Total – People 26
 Week Total Spend £194.58
 Week 2 Average daily – people 4.33
 Week 2 Average daily – spend £32.43

Week 3				
	Morning 8:30am – 9am		Evening – 6:00pm – 6:30pm	
Date	No of people	Spend	No of people	spend
Monday 14 August 2023	2	£0.00	2	£10.65
Tuesday 15 August 2023	1	£17.58	3	£33.88
Wednesday 16 August 2023	3	£3.44	0	£0.00
Thursday 17 August 2023	2	£29.07	2	£45.06
Friday 18 August 2023	3	£34.86	3	£26.18
Saturday 19 August 2023	0	£0.00	0	£0.00
Total	11	£84.95	10	£115.77

Week Total – People 21
 Week Total Spend £200.72
 Week 3 Average daily – people 3.50
 Week 3 Average daily – spend £33.45

Week 4				
	Morning 8:30am – 9am		Evening – 6:00pm – 6:30pm	
Date	No of people	Spend	No of people	spend
Monday 21 August 2023	3	£11.20	4	£28.97
Tuesday 22 August 2023	2	£69.73	2	£15.64
Wednesday 23 August 2023	1	£31.21	1	£3.80
Thursday 24 August 2023	2	£32.78	0	£0.00
Friday 25 August 2023	4	£34.77	2	£5.09
Saturday 26 August 2023	0	£0.00	0	£0.00
Total	12	£179.69	9	£53.50

Week Total – People	21
Week Total Spend	£233.19
Week 4 Average daily – people	£3.50
Week 4 Average daily – spend	£38.87

Week 5				
	Morning 8:30am – 9am		Evening – 6:00pm – 6:30pm	
Date	No of people	Spend	No of people	spend
Monday 28 August 2023	1	£56.05	2	£40.80
Tuesday 29 August 2023	1	£0.00	0	£0.00
Wednesday 30 August 2023				
Thursday 31 August 2023				
Friday 1 September 2023				
Saturday 2 September 2023				
Total				

Week Total – People
 Week Total Spend
 Week 5 Average daily – people
 Week 5 Average daily – spend

Summary over 5 weeks	
Total People	84
Daily average	3.23
Total Spend	£846.4
Daily average	£32.56

2.13.3 Our Digital submission data over the same period (August 2023) below gives a reflection of the number of Prescriptions dispensed and this in comparison to the data above further highlights the minimal demand during the time period of 8.30am-9.00a and 6.00-6.30pm.

August 2023		
	Forms	Items
EPS Prescriptions	2,287	3,868
Paper Prescriptions	146	176
Total	2,433	4,044

2.13.4 Additionally, we provide an in-depth graphical illustration (see Appendix A) that outlines our "Time of Day Sales Analysis." This comprehensive data visualisation covers the specified period and conclusively identifies the busiest times of day for our operations. The information captured in this analysis offers valuable insight that is crucial for optimising staffing levels, resource allocation, and overall operational efficiency.

2.13.5 Based on all the above, we submit that our proposed core hours for weekdays would more accurately serve the local community than the current core hours, and better meet the needs of those accessing the Pharmacy during the week.

2.13.6 Regarding Saturdays, the local surgeries are closed, and we do not download any prescriptions. The number of dispensed prescription items, P medicines and OTC sales are very low and reflect the current lack of demand for pharmaceutical services. The Pharmacy is not well utilised.

2.13.7 The Electronic Transfer of Prescription (ETP) service and repeat (batch) dispensing has altered the access habits of those patients requiring regular

and routine prescription medication (See data above). NHS Pharmacies are not emergency service providers, and we hardly have GP CPCS and 111 referrals before 9.00am and after 6pm on weekdays and for Saturdays. This also provide assurance that to grant our application to amend the core hours will not disadvantage the users of our Pharmacy.

2.13.8 You will note, however, that we still intend to provide supplementary opening hours for a full day until 5pm on Saturdays (rather than just 9am-1pm) to allow the current local pharmaceutical service provision to continue, but we do not believe these hours are needed as a core requirement based on the data above.

2.13.9 Should pharmaceutical services be required outside our proposed core hours, there are 2 NHS Pharmacies within one mile from the proposed location and a further 2 NHS Pharmacies within 1.6 miles of the proposed post code area, according to the NHS Choices website. These Pharmacies already provide a full range of pharmaceutical services over extended hours during the week and weekends, including Saturdays and are easily accessible for the residents and patients of Emmer Green.

2.13.10 In summary;

Adequate Provision of Services Based on Evidence:

2.13.11 The foot traffic and user volume during the hours of 8.30am-9.00am and 6.00pm-6.30pm over a span of 5 weeks indicate very minimal demand during these hours and will not significantly impact the availability of pharmaceutical services for most of our users.

Efficient Allocation of Resources:

2.13.12 The reason for the alteration in our core working hours is to allow us to better allocate our resources during peak times, thereby offering an enhanced quality of service during the hours of high demand.

Staff recruitment and retention:

2.13.13 It is worth noting that one of the operational challenges of the pharmacy lies with recruitment and retention. This was a concern of the former business operations (Lloyds Pharmacy) and it is an emerging concern for us. Our structured core hours proposal holds the potential to mitigate this challenge substantially and ultimately will give us an opportunity to attract qualified and deserving professionals to better serve the community.

Adherence to Paragraph 26, Schedule 4:

2.13.14 It is our contention that we have met the requirements set out in paragraph 26, Schedule 4 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013. We believe that our application is in alignment with both the necessity of maintaining an existing level of service for the people in our area and the pursuit of a sustainable level of adequate service. Our evidence suggests that the proposed change in hours will neither diminish the quality of service nor hinder access for our patrons.

2.13.15 We hope this information and data provides the required evidence that the current core hours are unnecessary to maintain the existing level of service for people in the area of the pharmacy premises, or other likely users of them. Moreover, to grant our application to amend the core hours of Emmer Green Pharmacy will not detrimentally affect services provided by our Pharmacy and

will, in fact, both maintain a sustainable level of adequate service provision and better meet the needs of those accessing these pharmaceutical services.”

- 2.14 In a letter to NHS Resolution dated 13 October 2023 the Commissioner stated:
- 2.14.1 “Thank you for your letter of the 13 September 2023 advising us of the appeal against the decision made to refuse the above application.
- 2.14.2 The application included very little supporting information and the Pharmaceutical Services Regulations Committee (PSRC) for Berkshire, Oxfordshire and Buckinghamshire (BOB) did not consider that information had been provided to satisfy the test set out in Schedule 4 Paragraph 24 (1).
- 2.14.3 We note that as part of the appeal, the Applicant has provided additional information relating to activity between 8.30am-9.00am and 6.00pm-6.30pm on weekdays. However, there is no additional information relating to the removal of core hours on Saturday afternoons. The fact that the applicant intends to retain supplementary hours on a Saturday afternoon indicates that there is insufficient evidence for the change.
- 2.14.4 We respectfully ask that the decision to refuse this application is confirmed.”
- 2.15 In a covering email to NHS Resolution dated 31 October 2023 the Applicant stated:
- 2.15.1 “Find our respond to your point that we had not submitted any evidence as to why we wish to change the core hours and supplement. [sic] It is purely to better serve the population in their needs and making the pharmacy commercially viable with all the recruitment issues.
- 2.15.2 Hope you look at this favourably as we feel this is in best interest of our patients and business as a whole.
- 2.15.3 We were first standardising the core hours, as we were of the impression that the core hours need to be 40 in total and rest supplementary, so we left the hours as 9 to 5pm . If the appeal authority feels is necessary to apply again with a fresh application with reduce supplementary hours on Saturday, We will be very willing to submit Application with reduced hours on Saturday afternoon when we have very little need of the service in any case. [sic]
- 2.15.4 The need for Saturday afternoon is very little or none at times as we thought that we must apply to change our core hours fist [sic] to what will be serve the community at large and then apply to reduce supplementary at latter day if need be.”
- 2.16 In a letter to NHS Resolution dated 30 October 2023, but sent under a covering email of 31 October 2023, the Applicant stated:
- 2.16.1 “We appreciate your letter dated October 18, 2023. We would like to offer additional insights for your consideration.
- 2.16.2 It is important to clarify that the changes we are proposing are twofold, involving adjustments for both weekdays (Mondays to Fridays) and Saturdays. We kindly request that these adjustments be evaluated independently, recognising their unique implications and merits.
- Weekdays (Mondays-Fridays) – 8.30 to 9.00am and 6.00 to 6.30pm
- 2.16.3 Change Benefits: The proposed alterations in our pharmacy's core hours offer significant advantages, benefiting both our establishment and the local community we serve. Since taking over the pharmacy in June 2023 from Lloyds

group, it became evident that changes were imperative, both to enhance community service and to ensure business sustainability. Please refer to the enclosed graphs (see Appendix B) illustrating monthly transaction activity from June to October 2023.

- 2.16.4 The current core hours, specifically 8:30 am to 9:00 am and 6:00 pm to 6:30 pm, do not align with the existing prescription and P medicine/OTC sales volume. These hours witness minimal utilization, whereas our pharmacy experiences consistent and heightened activity between 12noon and 2 pm, which coincides with the peak period.
- 2.16.5 [Graphs provided as shown in Appendix B]
- 2.16.6 The data presented [below] provides a comprehensive overview of the number of individuals accessing the pharmacy during the aforementioned time frames. [Tables as at 2.13.2 above]
- 2.16.7 Community Impact: As evidenced by the data and graphs provided, it is evident that the proposed change in hours would substantially benefit the local community. Enhanced accessibility between 12 noon and 2 pm would significantly improve patient convenience. Many of our patients have already expressed a preference for this time frame, as reflected in the data.
- 2.16.8 Staffing and Resources: Our carefully structured proposal for revised core hours would empowers us to allocate our resources more effectively and efficiently during peak demand periods. This strategic resource allocation aims to elevate service quality during these periods of heightened activity. The appended graphs detailing Hourly Sale of Items from June to October 2023 illustrate where demand is at its peak. Allocating staff and resources in alignment with this demand will enhance operational efficiency.
- 2.16.9 [Graphs provided as shown in Appendix B]
- 2.16.10 Business Viability: Addressing a key challenge faced by the previous owner, Lloyds Pharmacy, is vital. We are committed to ensuring the financial viability of our pharmacy business by eliminating unnecessary excesses and fine-tuning revenue and cost-saving measures. This approach serves the best interests of all stakeholders, including our valued patients, ensuring sustainable service to the community.
- 2.16.11 Compliance: Rest assured that all regulatory requirements will be meticulously observed throughout this transition. The proposed change in hours is designed to enhance our services without compromising compliance with established standards.
- 2.16.12 Experience: We would also like to highlight our extensive experience in managing numerous pharmacies. This track record gives confidence that adjustments to our operational hours will result in optimal pharmacy services and ensure that our hours are optimally tailored to the needs of our patients.

Saturdays

- 2.16.13 We wish to emphasize once more that the local medical surgeries are closed on Saturdays, resulting in the absence of new prescriptions on that day. Consequently, our dispensing activities are notably reduced. Often, prescriptions on Fridays tip over into Saturday and that accounts for the activity on Saturdays. Saturdays witness lower utilisation in comparison to weekdays, specifically Mondays to Fridays. This underscores the rationale behind our proposed adjustments to core hours, as they are designed to better align with

the patterns of demand and ensure resource allocation in an efficient and responsive manner.

2.16.14 [Graphs provided as shown in Appendix B]

2.16.15 It is also worth to note that the utilisation of the pharmacy on Saturdays were mainly 9.00 am to 2.00 pm. Please see the graphs below [as shown in Appendix B].

2.16.16 Regarding Saturdays however, we plan to maintain supplementary opening hours until 5.00 pm extending beyond our proposed core hours of 9.00 am to 1.00pm. in any event, there are two more pharmacies within 1.6 miles that are accessible for the residents and patients of Emmer Green.

2.16.17 In summary, we believe the points above in addition to our earlier submission meet the adherence to paragraph 26, schedule 4 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 and merit the necessity of the proposed changes in our core hours, which aim to provide improved service to our community, enhance operational efficiency, and secure the financial sustainability of our pharmacy.”

2.17 I note the following:

2.17.1 The Applicant's core opening hours total 40 hours and the Applicant proposes to redistribute those 40 core opening hours pursuant to paragraph 26 of Schedule 4. The Applicant seeks to provide services as per its proposed changes in the table at 2.11.3 above.

2.18 The Applicant proposes to:

2.18.1 Open from 9am to 1pm and then 2pm to 6pm rather than opening from 8:30am to 12:30pm and 3:30pm to 6:30pm Monday to Friday, and

2.18.2 Close on a Saturday rather than opening from 9am to 12:00noon and 3pm to 5pm.

2.19 The Regulations, which came into force on 1 April 2013, have been amended a number of times. Certain amendments, relating to pharmacy premises opening hours, came into force with effect from 25 May 2023.

2.20 The application to change the hours was made by the Applicant on 13 June 2023 and a decision was made by the Commissioner on 7 August 2023. The decision was appealed to NHS Resolution by letter of 4 September 2023. I am of the view that the application and subsequent appeal should be considered against the Regulations as amended with effect from 25 May 2023.

2.21 The Applicant has sought to change the days and times at which it is obliged to provide pharmaceutical services under paragraph 26 of Schedule 4, Part 3, “Hours of opening”.

2.22 Paragraph 26(1) states:

“26.— (1) An NHS pharmacist (P) may apply to the NHSCB for it to change the days on which or times at which P is obliged to provide pharmaceutical services during core opening hours at P's pharmacy premises in a way that—

(a) reduces the total number of hours for which P is obliged to provide pharmaceutical services at those premises each week ...; or

(b) keeps that total number of hours the same.”

- 2.23 I have first considered paragraph 26(2) of Schedule 4 of the Regulations, which reads as follows:

"Except where sub-paragraph (2A) applies, where P makes an application under sub-paragraph (1), as part of that application P must provide the NHSCB with such information as the NHSCB may reasonably request in respect of the matters that NHS England must seek to ensure pursuant to paragraph 24(1).

- 2.24 Paragraph 24(1) reads as follows:

"24 (1) Subject to paragraph 26(2A), where NHS England issues a direction for setting any days or times for opening hours under this Part, or determines them without issuing a direction, it must in doing so seek to ensure that the days and times as which pharmacy premises are open for the provision of pharmaceutical services in the area in which the premises that are the subject of the direction are located are such as –

- (a) to maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises; or*
- (b) to maintain a sustainable level of adequate service provision for the people in that area or other likely users of the pharmacy premises, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome.*

- 2.25 Paragraph 24(2) states:

(2) In considering the matters mentioned in sub-paragraph (1), the NHSCB –

- (a) must treat any local pharmaceutical services being provided in its area as if they were pharmaceutical services being so provided, and*
- (b) may have regard to any pharmaceutical services that are being provided in its area during supplementary opening hours.*

- 2.26 I will start by considering the application of paragraph 24(1)(a) and whether the proposed hours are such as to maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises. I will then consider the application of 24(1)(b) if that is required.

- 2.27 To properly assess the application against paragraph 24(1)(a), I need to determine the existing level of service provision. I then need to consider whether it is necessary to maintain the existing level of service provision. If it is necessary to maintain the existing level of service provision, I need to consider whether, despite the proposed change of hours, the existing level of service provision to people in the area or other likely users would be maintained, e.g. by nearby pharmacies being open and providing the same level of service provision.

- 2.28 If I consider it unnecessary to maintain the existing level of service provision or that it is necessary to maintain the existing level of service provision but doing so is not a realistically achievable outcome, then I need to consider paragraph 24(1)(b) and determine whether the proposed change of hours are such that a sustainable level of adequate service provision would be maintained.

- 2.29 I therefore need to be provided with sufficient information to understand a range of matters, starting with the existing level of service provision. The references to days and times in paragraph 24(1) leads me to consider that the reference to "level" of service provision in paragraph 24(1)(a) is mainly focused on the days and times services are provided. I would point out that "level" of service provision could also refer to other characteristics of the service, such as types and range of services provided,

geographical access to services provided, other aspects of physical access aside from location, and the quality of services provided.

- 2.30 The existing level of service provision has been outlined by the Applicant, in its own core hours provision, however, I have no indication of the level of service provision in the surrounding area in addition to that offered by the Applicant as I have no information regarding other pharmacies in the local area except for a statement that there are two pharmacies within one mile and a further two pharmacies within 1.6 miles that are accessible.
- 2.31 I have next considered whether it is necessary to maintain the existing level of service provision. It could be argued that as the Applicant is not looking to reduce the number of hours each week that services are provided, then from a pure "number of hours of service provision each week" perspective, the existing level of service provision is maintained such that consideration of whether it is necessary to maintain the level of service provision is not needed.
- 2.32 However, the Applicant is applying to change the days and times that services are provided. Taking Saturday as an example, the level of service provision at the Applicant's premises on a Saturday is not being maintained. I consider it appropriate to determine if it is necessary to maintain the existing level of service provision and then, if deemed necessary, consider if the opening hours of other pharmacies mean that level is maintained.
- 2.33 To determine whether it is necessary to maintain the existing level of service provision, I have had regard to the comments by the Applicant. If I am satisfied that there is reliable evidence indicating no users of the pharmacy on/at the relevant days/times that the pharmacy wishes to close, this might support an argument that maintaining the existing level of service provision is not necessary.
- 2.34 The Applicant has provided information, in the form of graphs, showing the hourly transaction counts for the months of June, July, August, September and October 2023 as well as the value of daily sales for the same months.
- 2.35 In addition for a five week period during July to August 2023 the Applicant has provided information demonstrating the number of people and the amount that they spent during the period 8:30am to 9am and 6pm to 6:30pm, times which the pharmacy is currently open but which the Applicant wishes to close. This information is not expanded upon and there is no information provided with regard to other uses of the pharmacy apart from the amount spent. I am mindful that the provision of pharmaceutical services is greater than the provision of over the counter medicines.
- 2.36 It is clear that there are people using the pharmacy at the times the Applicant wishes to close. I consider that it is relevant to have information as to why persons are using the pharmacy at these times. It is difficult to draw conclusions about the necessity of maintaining the existing level of service provision if there is no information on what specific services, if any, are being provided at those times. The information only shows the number that attended the pharmacy and the amount that they spent and does not differentiate between those who were coming to collect a prescription, for example, and those that were coming to seek advice or access a further pharmaceutical service or a non-pharmaceutical service.
- 2.37 Without this information it is difficult to make an assessment of whether it is necessary to maintain the existing level of service provision and this in turn makes it difficult to apply paragraph 24(1)(a). I consider it reasonable to take the position that unless I am provided with evidence to the contrary, I should consider that it is necessary to maintain the existing level of service provision.
- 2.38 Having determined that it is reasonable to assume that maintaining the existing level of service provision is necessary, I now need to consider if, despite the changes to

hours, there is maintenance of the existing level of service provision. The Applicant cannot maintain this as it is changing its hours. The Applicant has provided limited information with regard to other pharmacies in the area, stating that there are two pharmacies within 1 mile and two within 1.6 miles. There is no information provided as to the location of these pharmacies and if they can be accessed by those who currently access the Applicant's pharmacy. Further, there is no information regarding the opening hours of these pharmacies and how these compare to the times that the Applicant's pharmacy is proposing to close. There is also no information as to the services that these pharmacies offer which would maintain the existing level of service provision as provided currently by the Applicant.

- 2.39 If I consider that the characteristics of other pharmacies, e.g. where they are located, their access, the services provided and the times they are open, means that the level of service provision is maintained for people in the local area or other likely users of the pharmacy, then I am able to grant the application under paragraph 24(1)(a).
- 2.40 I have however no information about these pharmacies and have no information about the characteristics of the persons currently using the Applicant's pharmacy and how the alternative pharmacies might be considered as maintaining the level of service provision to the users of the pharmacy. I do not consider that every individual needs should be considered, but it would be helpful to have this information to be certain that the existing level of service provision would be maintained via local pharmacies.
- 2.41 The Applicant has commented that there is a greater use of the pharmacy between 12noon and 2pm, however it is noted that following the change of hours the pharmacy will still be closed between 1pm and 2pm. There is no information provided by the Applicant as to why the change of hours will maintain as necessary the demand for pharmaceutical services, especially given the Applicant's comments regarding demand during the lunchtime period.
- 2.42 Further, there is confusion between the application form and the information provided by the Applicant with regard to the use of the pharmacy on a Saturday. The Applicant is proposing no core hours on a Saturday however they state that the hours of 9am to 1pm need to be maintained.
- 2.43 I am mindful that the Applicant has offered supplementary hours on a Saturday however the provision of these and any subsequent changes that the Applicant may choose to make to supplementary hours are not something to which I can have regard. Supplementary hours may be altered by the pharmacy by giving notice to the Commissioner in accordance with paragraph 23(6)(a) of Schedule 4 without the need to make an application to the Commissioner and as such I take no view on the supplementary hours either currently offered or proposed to be offered in the future.
- 2.44 Given the lack of information regarding other pharmacies in the area, apart from the distances given, I am therefore not satisfied that the existing level of service provision would be maintained by virtue of the existence of other local pharmacies.
- 2.45 I have decided that it is necessary to maintain the current service provision but, due to the cumulative effect of:
 - 2.45.1 a lack of information about the services being provided during the hours the Applicant is proposing to close; and
 - 2.45.2 a lack of information, except for distance, regarding other pharmacies in the area being alternative options during the hours proposed to be closed

I am not satisfied that there will be maintenance of the existing level of service provision, by virtue of other pharmacies in the area or by the Applicant swapping hours to open during the lunchtime period.

- 2.46 I therefore next consider if I need to have regard to paragraph 24(1)(b) which states that I must seek to ensure that the changed hours are such as to:

“maintain a sustainable level of adequate service provision for the people in that area or other likely users of the pharmacy premises, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome”.

- 2.47 I have already determined that it is necessary to maintain the existing level of service provision so reference in paragraph 24(1)(b) to *“in circumstances where maintaining the existing level of service provision is ... unnecessary”* is not relevant.

- 2.48 I note that the Applicant has made a passing comment that *“...one of the operational challenges of the pharmacy lies with recruitment and retention. This was a concern of the former business operations and it is an emerging concern for us”*. I consider that the Applicant is effectively relying on the second part of paragraph 24(1)(b), that maintaining the existing level of service provision is not a realistically achievable outcome. I consider that I need to determine if it is or is not a realistically achievable outcome and if I determine that it is, then I need to consider if the amended hours are such as to maintain a sustainable level of service provision.

- 2.49 On the point of whether maintaining the existing level of service provision is not a realistically achievable outcome, I consider that no evidence has been provided to support the Applicant's statement with regard to recruitment and retention. There is no explanation as to why this is an emerging concern. I also note that the Applicant has not provided any suggestion that the pharmacy has been closed due to a failure to secure viable pharmacist cover which might suggest maintaining service provision at the relevant hours is not realistically achievable. The Applicant has not presented any evidence that suggests that they are experiencing any problems with recruitment.

- 2.50 The wording of paragraph 24(1)(b) is such that maintaining existing service levels must not be realistically achievable before considering a sustainable level of adequate provision. I consider that this sets a fairly high bar as to the level of difficulty that the Applicant must find themselves in. I do not consider that sufficient evidence has been provided to indicate that the economic and practical viability of the current opening hours has been compromised. I therefore consider that maintaining the existing level of service is a realistically achievable outcome and therefore the Applicant cannot rely on paragraph 24(1)(b).

- 2.51 I am mindful that the provision of pharmaceutical services is greater than the dispensing of prescriptions and that maintaining a level of service provision includes all services that the pharmacy may offer, including additional enhanced and advanced services that may be commissioned. I am of the view that I have not been provided with sufficient information to demonstrate how the proposed change of hours would maintain, as necessary, the existing levels of service provision.

3. Determination

- 3.1 Based on the information provided, I am not satisfied that the pharmaceutical services provision that would result from the Applicant's proposed hours would maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises. I am satisfied that maintaining the current level of service is a realistically achievable outcome and therefore the Applicant cannot rely on paragraph 24(1)(b).
- 3.2 The action taken by Buckinghamshire, Oxfordshire and Berkshire ICB to refuse the application is confirmed.