

19 December 2023

**FILE REF:** SHA/26081

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**DECISION MAKING BODY:** NHS Nottingham and Nottinghamshire Integrated Care Board ("the Commissioner")

**PHARMACIST:** Beechdale Pharmacy  
("the Applicant")

**PREMISES:** 441 Beechdale Road  
Aspley  
Nottingham  
NG8 3LF

**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 the Commissioner to refuse the application is confirmed.

A copy of this decision is being sent to:

Beechdale Pharmacy  
NHS England – Midlands, Primary Care Support on behalf of NHS Nottingham and Nottinghamshire Integrated Care Board

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**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).

#### Beechdale Pharmacy proposals

- 2.9 The Applicant in its letter of appeal indicates that it currently has core opening hours totalling 40hours per week.
- 2.10 The Applicant wishes to:
- 2.10.1 Close between 1pm and 2pm Monday to Wednesday and Friday, when it is currently open, and
- 2.10.2 Open on a Thursday afternoon from 2pm to 6pm rather than currently being closed.

#### Assessment

- 2.11 In this case, the Applicant provided the following information in its application form dated 14 July 2023:
- 2.11.1 “This is an application to permanently change core opening hours.
- 2.11.2 Current opening hours for these premises:

|           |           |
|-----------|-----------|
| Monday    | 9am – 6pm |
| Tuesday   | 9am – 6pm |
| Wednesday | 9am – 6pm |
| Thursday  | 9am – 1pm |
| Friday    | 9am – 6pm |
| Saturday  | Closed    |
| Sunday    | Closed    |

2.11.3 Proposed core opening hours for these premises:

|           |                        |
|-----------|------------------------|
| Monday    | 9am – 1pm<br>2pm – 6pm |
| Tuesday   | 9am – 1pm<br>2pm – 6pm |
| Wednesday | 9am – 1pm<br>2pm – 6pm |
| Thursday  | 9am – 1pm<br>2pm – 6pm |
| Friday    | 9am – 1pm<br>2pm – 6pm |
| Saturday  | Closed                 |
| Sunday    | Closed                 |

2.11.4 If this is a permanent change, please state below the date from which you would like the change to take effect: Friday 6<sup>th</sup> October 2023

2.11.5 We are applying to make this change to introduce a lunch break into our opening hours, whilst maintaining the start and finish times. To do this we are asking to redistribute the core hours to the Thursday afternoon. This will match our local surgery closing time of 6pm, and ensure that our current level of service provision is improved as we will be open until 6pm on a Thursday. (Currently our supplementary hours are to close at 5:30pm on a Thursday). We are also submitting a separate application to open on a Saturday as supplementary hours.

2.11.6 We have done some analysis of our business and the customer footfall during 1pm – 2pm is minimal, so we are confident that this change will not have a detrimental impact on our customers.”

2.12 In a letter to the Applicant dated 17 August 2023 the Commissioner stated:

2.12.1 “Thank you for your application to make a permanent change to the core opening hours at Health Serve Pharmacy Limited, received on 14 July 2023.

2.12.2 The Pharmaceutical Services Regulations Committee (PSRC) met on 15 August 2023 and a decision was made to refuse the request to change the core opening hours at the above pharmacy from ASAP.

2.12.3 The Committee felt that the pharmacy had not provided the relevant information to demonstrate the changes to the needs of people in the area of the Health and Wellbeing Board, or other likely users of the premises, for pharmaceutical services.

2.12.4 You have the right of appeal to the Secretary of State against our decision. Should you choose to appeal, then you should send in writing a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this letter to: [nhsr.appeals@nhs.net](mailto:nhsr.appeals@nhs.net)

2.12.5 NHS Resolution, 8th Floor, 10 South Colonnade, Canary Wharf, London, E14 4PU.

2.12.6 If you have any questions, please do not hesitate to contact me.”

2.13 In an email to NHS Resolution dated 15 September 2023 the Applicant stated:

2.13.1 “I recently applied to change the core hours at the above pharmacy and unfortunately the decision has been made to reject the application on the grounds that I had not supplied sufficient information. I requested further details about the specific nature of information required but haven't had a response.

2.13.2 I would like to appeal the decision to reject our application to change the core hours. I would also like to clarify that you have applied this decision to the correct case? I have attached the letter that I received and it references a company called "Health Serve Pharmacy Limited", which is not our company.

2.13.3 I have applied to make a minor change to our core hours, and have also put in a request to amend our supplementary opening hours to increase our opening hours over the week to open on a Saturday morning. This decision has not been made lightly and we have taken multiple factors into consideration. This change in our opening hours is not expected to impact on the needs of our customers, and I do believe that the change in core hours would maintain the existing level of service provision, for the reasons set out below:

2.13.3.1 We will maintain 40 core hours from Monday to Friday.

2.13.3.2 We will still be open until 6pm on Thursday afternoons despite the redistribution of core opening hours

2.13.3.3 Overall we are increasing our total opening hours, as we have put in a separate application to increase supplementary hours on a Saturday morning (9am - 1pm), for which we are not currently open

2.13.3.4 All of the above will allow us to offer our pharmaceutical services on a Saturday (our nearest Pharmacy, Well Pharmacy NG8 1FG does not open on a Saturday)

2.13.3.5 Our two nearest pharmacies are open through the lunch period, so this will maintain patient access to pharmaceutical services during the lunch period, 1pm-2pm, when we are proposing to close to the public through the weekdays:

2.13.3.6 Well Pharmacy NG8 1FG is open from 8.30am - 6.15pm

2.13.3.7 Boots Pharmacy NG8 5RW is open from 9am - 6pm

2.13.3.8 We are looking to increase our service offering, and allowing this change in our opening hours will increase patient access to pharmacy services. We currently offer supervised consumption, needle exchange service, flu vaccinations and will also be offering covid vaccinations in line with the NHS agenda. We ensure that staff rotas are planned in advance to ensure that service provision is maintained throughout the week.

2.13.3.9 We have analysed our prescription item figures and sales figures and have found the footfall in the pharmacy to be minimal during the hours of 1pm - 2pm and so are confident that the impact to our customers will be negligible.

- 2.13.4 Beechdale Pharmacy undertakes a number of services to support the local community, which is now driven by the new NHS government agenda, and we hope to continue to serve our community for many more years to come. I make this request sincerely and hope that you will consider the additional information I have provided. Please don't hesitate to get in touch if you require any further information regarding this application.”
- 2.14 In a letter to NHS Resolution dated 4 October 2023 the Commissioner stated:
- 2.14.1 “Thank you for your letter dated 21 September 2023; East Midlands Primary Care Team on behalf of Nottingham and Nottinghamshire ICB would like to make the following representations.
- 2.14.2 Schedule 4, Part 4, Regulation 26 (1) of the National Health Service (pharmaceutical and Local Pharmaceutical Services) Regulations 2013 as amended states that an NHS pharmacist may apply to the Commissioner for it to change the days on which or times at which the pharmacy is obliged to provide pharmaceutical services at the pharmacy premises in a way that;
- a) Reduces the total number of hours for which the pharmacy is obliged to provide pharmaceutical services at those premises each week (but not those required under any 100 hours conditions); or
- b) Keeps the total number of hours the same.
- 2.14.3 Schedule 4, Part 4, Regulation 26 (2) states that where a pharmacy makes an application under sub-paragraph (1), as part of that application the pharmacy must provide the commissioner with such information as the commissioner may reasonably request in respect of any changes to the needs of the people in its area, or other likely of the pharmacy, for pharmaceutical services that are material to the application.
- 2.14.4 Beechdale Pharmacy submitted an application on 14 July 2023 to change both their core and supplementary hours. A copy of the application is attached with this letter.
- 2.14.5 The change to supplementary hours was dependent on the approval of the core hours.
- 2.14.6 The core application was reviewed at the Pharmaceutical Services Regulations Committee on 18 August 2023. Though the pharmacy had stated within the application that they had undertaken some analysis to justify the change in hours this was not supplied with the application and therefore the committee did not feel that the pharmacy had demonstrated changes to the needs of the people in its area, or other likely users of the pharmacy, for pharmaceutical services that are material to the application. The committee based on previous decision rejected the application.
- 2.14.7 I would like to take this opportunity to respond to any further representations provided by Beechdale Pharmacy, 441 Beechdale Road, Aspley, Nottingham NG8 3LF (FJA27).”
- 2.15 I note that in an email to NHS Resolution dated 10 November 2023 the Applicant stated:
- 2.15.1 “Thank you for your letter and representations which were sent on 27<sup>th</sup> October 2023. I am writing in response to the representations made by [LD], Primary Care Contracts Officer for the East Midlands Primary Care Team.

- 2.15.2 I have enclosed a copy of the research we have carried out which was referred to in our initial application, on 14<sup>th</sup> July 2023, to change core and supplementary hours. [Appendix A].
- 2.15.3 As the initial research was carried out in July, I have further extended the timeline for which we have analysed the number of till transactions and dispensing activities, from 1<sup>st</sup> June 2023 to 31<sup>st</sup> October 2023. Dispensing activities go on throughout the day and there are peaks and troughs to the dispensing flow on any given day. The attached report clearly shows a reduction in dispensing activity during the time period 13:00 - 14:00, for these months. There is also a clear reduction in total till transactions during this same time period of 13:00 - 14:00, as seen on the till report.
- 2.15.4 Therefore we are confident that changing our core hours as previously requested will not be detrimental to our customers due to minimal footfall in the pharmacy during this time period.
- 2.15.5 Please note that although we have requested to close at lunch time, we actually intend to increase our opening hours by also opening on a Saturday from 9am to 1pm. None of the pharmacies in our local vicinity (Well / Jhoots Pharmacy/ Vantage Pharmacy) close for lunch, and therefore our requested closure should not impact on the local population.
- 2.15.6 Similarly none of the local pharmacies currently open on a Saturday and with the recent closure of Boots Pharmacy on Aspley Lane, (Nottingham NG8 5RW), this creates a need for a pharmaceutical provision on Saturdays, ensuring patient access to healthcare.
- 2.15.7 If the change to our opening hours is granted, we will ensure that our team is accredited to meet all contractual obligations, including but not limited to the following services:
- 2.15.7.1 Essential Services: dispensing medicines/appliances, repeat Dispensing/eRD, participation in healthy living pharmacy campaigns and promoting self care, disposal of unwanted/returned medicines, promotion of antimicrobial stewardship
  - 2.15.7.2 Advanced services: NMS, LFD test kit supply service, seasonal influenza vaccination, CPCS, Hypertension Case Finding Service
  - 2.15.7.3 National and Local enhanced services such and supervised consumption and extended care services
  - 2.15.7.4 Covid-19 vaccination service
  - 2.15.7.5 All Clinical Governance and Regulatory requirements
- 2.15.8 Please advise if there is any further information we can provide to aid your decision in this matter.”
- 2.16 I note the following:
- 2.16.1 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 above.
- 2.17 The Applicant proposes to:

- 2.17.1 Close between 1pm and 2pm Monday to Wednesday and Friday rather than open, and
- 2.17.2 Open on a Thursday afternoon between 2pm and 6pm when they were previously closed.
- 2.18 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.
- 2.19 The application to change the hours was made by the Applicant on 14 July 2023 and a decision was made by the Commissioner on 17 August 2023. The decision was appealed to NHS Resolution by email of 15 September 2023. I note that the Commissioner, in their decision letter made no reference to the relevant provisions of the Regulations and mistakenly referred to the pharmacy needing to demonstrate changes to the needs of the people in its area, or other likely users of the pharmacy. I further note that in their representations the Commissioner again misquoted the Regulations and made incorrect references. Given the date of the application, 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 and I have proceeded on that basis.
- 2.20 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".
- 2.21 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."*
- 2.22 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).*
- 2.23 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.*

2.24 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.*

- 2.25 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.
- 2.26 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.
- 2.27 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.
- 2.28 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.
- 2.29 The existing level of service provision has been outlined by the Applicant, in its own core hours provision, and by an indication of the hours that pharmacies in the local area are open.
- 2.30 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.
- 2.31 However, the Applicant is applying to change the days and times that services are provided. Taking Monday as an example, the level of service provision at the Applicant's premises on a Monday 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.
- 2.32 To determine whether it is necessary to maintain the existing level of service provision, I have had regard to the comments by the Applicant of those using the pharmacy. 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.

- 2.33 I note the “Scripts Counts Detailed Report” as provided to me by the Applicant (at Appendix A). This lists each prescription dispensed by date and time order for the period 1 June 2023 to 31 October 2023. In addition the Applicant has provided a document titled “Day Comparison - Quantity” showing the number of those attending the pharmacy each day split by hour.
- 2.34 From the “Day Comparison – Quantity” information as provided by the Applicant ten of the “busiest hours” are shown as between 1pm and 1:59pm, a time at which the pharmacy is proposing to close. It is noted that three of these days are Thursday’s when the pharmacy’s core hours finish at 1pm, however I am mindful that the proposed new core hours do not include any opening between 1pm and 2pm on a Thursday when the pharmacy is still considered to be “busy” during the lunchtime period.
- 2.35 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 provided only shows the “Dispensed date” and “Dispensed time” for the period 1 June to 31 October 2023. Further, the “Day Comparison - Quantity” only shows the number attending, though it is split between hourly periods. However, neither of these sets of information provided differentiates 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.
- 2.36 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.
- 2.37 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 but I note the undisputed information from the Applicant with regard to other pharmacies in the area that offer hours over the lunchtime period that the Applicant is proposing to close, namely Boots and Well.
- 2.38 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).
- 2.39 The Applicant has provided no information regarding access to these pharmacies for those who currently access its own pharmacy and how they might travel to find alternative pharmaceutical services. Further, apart from stating that they have opening times from 9am to 6pm (Boots) and 8:30am to 6:15pm (Well) the Applicant has provided no information as to the services that these pharmacies offer and if the level of service provision will be maintained for people in the local area.
- 2.40 I note that there is some contradictory information too as in their subsequent representations, the Applicant has stated that the Boots pharmacy (NG8 5RW) which they sought to rely on for lunchtime opening has since closed. I do note the references to Jhoots Pharmacy and Vantage Pharmacy as not closing for lunch, however I am unsure if this is between Monday to Friday or if this is with regard to the hours offered on a Saturday.

- 2.41 I am therefore unable to be satisfied that the existing level of service provision would be maintained by virtue of the existence of other local pharmacies.
- 2.42 I have decided that it is necessary to maintain the current service provision but, due to the cumulative effect of:
- 2.42.1 the information regarding the “busiest hours” of the pharmacy not assuring me that the need for pharmaceutical provision at the times that the pharmacy is proposing to close is “minimal”;
  - 2.42.2 a lack of information about the services being provided during the hours the Applicant is proposing to close; and
  - 2.42.3 that pharmacies of unspecified distance are the only option during a part of the hours proposed to be closed
- I am not satisfied that there will be maintenance of the existing level of service provision, whether by virtue of other pharmacies in the area or by the Applicant swapping hours to earlier in the morning.
- 2.43 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”.*
- 2.44 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.
- 2.45 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 put forward in respect of this criteria.
- 2.46 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).
- 2.47 I note the Applicant’s comments at 2.15.7 that “if the change to our opening hours is granted we will ensure that our team is accredited to meet all contractual obligations, including but not limited to the following services ...” I am mindful that irrespective of whether or not the change to the opening hours is granted, the pharmacy should be accredited to meet all contractual obligations including all Essential Services as well as those advanced services and any national and local enhanced services which have been commissioned and the Applicant has agreed to provide.
- 2.48 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.

- 2.49 The Applicant has stated throughout the application and appeal that they are seeking to increase the opening hours of the pharmacy by virtue of offering supplementary hours on a Saturday morning. I am mindful that 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. Further, I am mindful that there is no right of appeal in respect of notices given under paragraph 23(6)(a) and therefore I take no view on the potential provision of supplementary hours as this is not a relevant consideration when considering a change to core opening hours.

**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 the Commissioner to refuse the application is confirmed.

**Head of Appeals  
NHS Resolution**