NHS Resolution

7 February 2024

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REF: SHA/26117

APPEAL AGAINST NHS NORTH CENTRAL LONDON ICB DECISION TO REFUSE AN APPLICATION BY SHEAV CHEM LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 WITHIN THE COLINDALE GARDENS DEVELOPMENT (BEST ESTIMATE)

1 **Outcome**

1.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of the ICB and redetermines the application.

1.2 The Committee determined that the application should be refused.

A copy of this decision is being sent to:

Pharmacy Sales and Consultancy, on behalf of the Applicant
Primary Care Support England, on behalf of the ICB
Temple Bright LLP, on behalf of H.A.McParland Ltd

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1 The Application

By application dated 6 June 2023, Sheav Chem Ltd ("the Applicant") applied to NHS North Central London ICB ("the ICB") for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 within the Colindale Gardens development (best estimate). In support of the application it was stated:

1.1 "*Best estimate location - within The Colindale Gardens development as shown on the enclosed map.* [Appendix A for Committee]

1.2 We [Pharmacy Sales and Consultancy] act for Sheav Chem Limited. In accordance with the NHS (Pharmaceutical Services) Regulations 2013 we would ask the ICB to take into account the following information when considering this application for inclusion in the pharmaceutical list.

1.3 We believe that, should the ICB grant this application, it will secure improvements in terms of access to pharmaceutical services for the substantial local population and for the extensive number of visitors to the Colindale area.

1.4 **Background and Local Area**

1.5 This application has been prompted by the scale and nature of the ongoing development in the Colindale area, particularly in the area around the tube station.

1.6 The London Borough of Barnet summarise this development as follows: (https://www.barnet.gov.uk/regeneration/colindale)

1.7 **Key facts**

1.8 The regeneration and growth programme in Colindale will deliver:

1.8.1 10,170 new homes across various sites

1.8.2 Improvements to key junctions and roads within the area

1.8.3 Redevelopment of Colindale tube station, including the provision of step free access

1.8.4 New pedestrian/cycle bridge linking Montrose Park to the hospital site and tube station

1.8.5 Improved bus service links

1.8.6 More effective parking management with review and extension of the Controlled Parking Zone

1.8.7 Relocation of library and centre for independent living

1.8.8 New Neighbourhood Hub comprising, health, children and community facilities

1.8.9 New Youth Zone in Montrose Playing Field

1.8.10 Energy Centre

1.8.11 Primary, Secondary, Higher and Further Education schools and colleges

1.8.12 Health centre re-provision

1.8.13 Improvements to Colindale, Montrose, Rushgrove and Silkstream parks

1.8.14 Public realm improvements at Colindale Ave and Grahame Park Way

1.9 As can be seen from this summary, in addition to massive residential development, it is proposed that the scheme will include re-provision of existing health centres. It is proposed that a substantial new health centre will be provided within the Colindale Gardens development, as can be seen from the developer's website:

1.10 (https://www.redrow.co.uk/news-and-inspiration/news/london/redrow-launches-new-apartments-at-flagship-colindale-gardens-development-in-north)

1.11 An extract is [sic] this summary is provided below (emphasis added):

1.12 *The latest launch will be set within the wider development of more than 2,900 new homes, which once complete will be home to over 6,000 people. Residents of Gladness House will be well placed to take advantage of the wide range of amenities available on site. Colindale Gardens offers nine acres of public open space, including a central four-acre park, new shops, restaurants, a health centre and a new primary school.*

1.13 For the avoidance of doubt, the 2,900 homes referred to are just those within the Redrow development of Colindale Gardens, and do not include those being built in the area by other developers.

1.14 This is clearly an area of substantial residential growth, and many of the residential buildings are completed and occupied. Once fully completed it is expected that there will be over 15,000 additional residents in this area. The image below [Appendix B for Committee] (which is not fully up to date) shows the extent of development in the area. The tube station is visible at the top of the image, and the area shown as having been cleared is now built on and is the location for the proposed premises (marked with a red star).

1.15 It is clear that this is a very substantial development, where the need for the provision of primary care services has already been established through plans to open a new medical centre. In our client's opinion, it is very clear that there will be the need for the provision of pharmaceutical services given the expected demand.

1.16 Existing Pharmacy Provision

1.17 As can be seen from the map below [Appendix B for Committee] (where the proposed location is shown with a red star again), there is very limited pharmacy provision within this area:

1.18 As can be seen, there is currently only one pharmacy covering the entire area to the north-east of the railway line, all the way out to the M1 motorway. Given the fact this is the area where the regeneration is underway and the massive level of residential growth, it is our client's position that there is not reasonable choice in respect pharmaceutical services provision.

1.19 The pharmacies to the south west of the railway (the majority of which are located on Edgware Road – A5) are not reasonably accessible for residents of the proposed area. The bridge at Colindale Station is the only point in the area at which the railway can be crossed, so for many residents, their journey to access one of these pharmacies is lengthy and convoluted.

1.20 Whilst McParland Pharmacy is located on the same side of the railway as the proposed location, it serves its own residential population and is supported by shops and other amenities to the east of the area. The fact so many new shops and restaurants are being constructed at our client's proposed site supports the view that this new population will not be expected to access those amenities near to McParland Pharmacy.

1.21 Given the densely populated urban setting, the extent of new development and the geography of the area, existing provision in Colindale longer meets the needs of residents. [sic]

1.22 <u>Unforeseen Benefits</u>

1.23 Within the Barnet Pharmaceutical Needs Assessment, published in 2022, there is no specific mention of a gap in pharmaceutical services within the proposed area. Whilst the PNA discusses population growth in very broad terms, there is no specific analysis of pharmacy provision within the area to which this application relates.

1.24 Therefore this application is made to provide 'unforeseen benefits' to the local community in accordance with Regulation 18.

1.25 We are required by the ICB to address two specific questions in this supporting information:

1.25.1 (i) "*Please describe the unforeseen benefit(s) that you are offering to secure and how it will secure improvements or better access to pharmaceutical services, or pharmaceutical services of a specified type in the HWB area*".

1.25.2 (ii) *Please explain how you intend to secure the unforeseen benefit(s).*

1.26 When considering these questions, it is worth noting the provisions of Regulation 18(2)(b) as highlighted below:

1.27 *(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—*

1.28 *(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(b) (duty as to patient choice and duty as respects variation in provision of health services)),*

1.29 *(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(c) (duty as to reducing inequalities)), or*

1.30 *(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(a) (duty to promote innovation)),*

1.31 *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;*

1.32 The implication is the ICB does not have to find evidence in respect of all three of these matters. These are simply matters it is required to take into account when deciding the application.

1.33 In fact, even if it does not find that any of the three matters discussed in (18)(2)(b) apply, the overarching test is whether *granting the application would secure improvements, or better access, to pharmaceutical services in the area of the HWB*. In our opinion there is clear evidence that it would.

1.34 We have addressed both of the questions above by setting out in further details below:

1.35 <u>Securing better access and choice</u>

1.36 The matters of access and choice are inextricably linked. Whilst it may be the case that there is a choice of pharmacy provider within the Health & Wellbeing Board (HWB) area, this does not mean that the choice for residents is *reasonable* if they are not able to access these pharmacies when they need to.

1.37 As discussed earlier, taking into account the current and future number of residents in this area, and the locations of existing pharmacies, we believe residents do not currently have reasonable access to pharmaceutical services. That being the case they do not have reasonable choice.

1.38 Many residents of London do not own a car so will be reliant on either walking a significant distance to a pharmacy or incurring costs to travel by public transport if they wish to exercise choice. Patients who are elderly or less mobile, particularly when suffering from acute illness, may find this journey challenging regardless of how they travel.

1.39 By approving this application, it is clear that local residents will benefit by having a choice of contractor.

1.40 If this application is approved, the applicant will offer the local residents a full and comprehensive pharmaceutical service six days a week ensuring that local residents can, once more, access pharmaceutical services when they need them.

1.41 <u>Patient groups sharing protected characteristics</u>

1.42 For those people who are elderly, less abled or families with very young children (all of which can be classified as having protected characteristics) access to the existing pharmacies is likely to be more difficult than for those who are more able. This would particularly apply if these people are unable to drive or don't have access to a motor vehicle.

1.43 Granting the application will significantly improve the accessibility of pharmaceutical services for these people.

1.44 <u>Summary</u>

1.45 In our view it can be clearly seen that the residents of this rapidly growing development and patients attending the new medical centre would benefit greatly from having a

community pharmacy at this site. This application clearly demonstrates benefits which were unforeseen and not identified when the PNA was published.

1.46 The resident population do not have a reasonable choice of provider or enjoy easy access to existing pharmacy contractors, especially for those who are on foot, are reliant on public transport, elderly, infirm or disabled. There is a gap in pharmaceutical services in this part of the city.

1.47 We firmly believe if this application is approved it will secure improvements in choice and better access to pharmaceutical services and thus provide significant benefits for the resident population.

1.48 Finally, our client would wish to attend any oral hearing convened by the ICB to consider this application."

2 **The Decision**

The ICB considered and decided to refuse the application. The decision letter dated 24 October 2023 states:

2.1 "North Central London ICB has considered the above application and I am writing to confirm that it has been refused. Please see the enclosed report for the full reasoning."

The decision report states:

2.2 "**Additional information**

2.3 The PSRC have determined that there is enough information within the papers to decide the application without an oral hearing.

2.4 **Regulation 31**

2.5 There are no pharmacies in the immediate vicinity of this application so regulation 31 is not engaged.

2.6 **Regulation 32**

2.7 There are currently no LPS designations in this area therefore regulation 32 is not engaged.

2.8 **General comments**

2.9 For this application we will be assessing against the Barnet PNA published in 2022.

2.10 Within the comments below, there has also been mention of the 2018 PNA. Within this PNA the highest population increase was for Collindale within the Hendon area due to the regeneration work that was taking place between 2018 and 2021 (pages 35 to 37). Within the current 2022 PNA the population growth emphasis has been highlighted slightly differently and looks at the areas rather than the wards. The Colindale area is still within an area that has a population increase over the lifetime of the PNA.

2.11 Neither PNA lists the developments that it has included in its assessments, but has indicated the areas where the population will increase over the span of the PNA. It is difficult to be completely certain, but as the Colindale area has been a major development for many years and certainly when the 2018 PNA was written, the ICB can conclude that the development was considered when the PNA was developed.

2.12 The PNA in its final conclusions has stated that there are no gaps in the current of future necessary services. [sic]

2.13 **Applicant's comments**

2.14 [See paragraphs 1.2 - 1.48]

2.15 **Boots comments**

2.16 Whilst we accept that the application is based on benefits not foreseen when drafting the Pharmaceutical Needs Assessment (PNA), it is unclear from the information provided what elements of this application were 'unforeseen' during the preparation of the PNA.

2.17 The refence [sic] to new housing and a population increase, is highlighted with the Barnet Pharmaceutical Needs Assessment 2022 and still concludes that there is no gap. Should a gap arise as the developments take place, we suggest that the PNA should be updated to reflect change and need. Just because the requirement for a new pharmacy has not been included, does not mean that the locality and expected changes within it, were not considered when the document produced.

2.18 We believe that there are 8 pharmacies within 1 mile of the proposed offering patients' choice of providers and access to extended hours and services.

2.19 We do not believe that the applicant is offering to secure any innovation by way of services or delivery.

2.20 For these reasons we respectfully urge the ICB to refuse this application.

2.21 Please be aware that we may wish to make further representations at a later stage and attend any oral hearing that may be held in relation to the application.

2.22 **HA McParland Ltd comments**

2.23 **Pharmaceutical Needs Assessment**

2.24 The relevant Pharmaceutical Needs Assessment in respect of this application is the 2022 Barnet PNA. The application site is within the Hendon locality of the PNA.

2.25 The PNA has regard, at page 83, to the latest available estimate for the population of Barnet generally and the Hendon locality specifically. The PNA notes that the overall population is projected to grow by 14,500 (4%) over the lifetime of the PNA, which is the same as the average anticipated population increase for England. For Hendon, the PNA notes that, during the lifetime of the PNA, the population of the Hendon locality is likely to increase by approximately 5,000, or 3.4%.

2.26 The figures referred to by the applicant in terms of population growth both in Colindale specifically and in the HWB's area more generally are therefore already considered in the 2022 PNA. That population growth is similar to that expected for England as a whole.

2.27 The PNA considers the Hendon locality at section 6.2.3, from pages 80 to 86. The PNA considers local health needs, projected population growth, the location of existing pharmacies, the services provided by existing pharmacies and the opening hours of those pharmacies. The PNA concludes that no gaps in the provision of pharmaceutical services (either current or future) are identified.

2.28 The matters raised by the applicant in its application form are therefore not unforeseen in the context of the 2022 PNA.

2.29 **Regulation 18**

2.30 As NHS England will be aware, it must apply regulation 18 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 to its determination of this application.

2.31 In particular, NHS England must consider whether granting this application would secure improvements and better access to pharmaceutical services not contained within the relevant PNA. It must have regard, in particular, to whether granting the application would confer significant benefits having regard to the desirability of:

2.31.1 1) There being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB.

2.31.2 2) 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.

2.31.3 3) There being innovative approaches taken with regard to the delivery of pharmaceutical services.

2.32 To the extent that there is a burden of proof in terms of the regulatory test to be applied to NHS England's determination of this application, this rests with the applicant. Despite this, the applicant provides no real evidence in support of its application and does not address the relevant regulatory test in any meaningful way.

2.33 The application is made for the Colindale Gardens development. The development has been ongoing for many years and is now nearing completion. The development is located on a brownfield site within suburban north west London and close to Colindale's main shopping street on the Edgware Road. The development is therefore within an established suburban area which has a range of shops and other services to meet the needs of new residents.

2.34 The applicant refers to a new "health centre" to be constructed within the Colindale Gardens development. Whilst the original proposals included scope for a new health centre to be built (as a re-provision of an existing nearby surgery, not as a new GP surgery), my client understands that there are no firm plans for this to be constructed and doubts that it will materialise.

2.35 In terms of existing service provision, the needs of those in the Colindale Gardens development are already met by existing pharmacies. The applicant refers to the provision of pharmaceutical services "within this area". It is not clear what the applicant means by reference to the "area", but the applicant also refers to "only one pharmacy covering the entire area to the north estate of the railway line…". As NHS England will be aware, there is no concept, within the regulations, of "neighbourhoods" and where the regulations refer to "areas" they refer to the Health and Wellbeing Board's area.

2.36 The true position in relation to Colindale Gardens is that this is a relatively compact residential development which is part of a wider community and where residents move freely to commute, work, shop and to access leisure facilities as part of their daily lives.

2.37 In terms of the existing pharmacy network, the nearest pharmacy to the Colindale Gardens development is my client's pharmacy at Health Parade, Grahame Park Way, NW9 5ZN.

2.38 My client's pharmacy is located only 350 metres from the Colindale Gardens development as shown on the map below [Appendix C for Committee]. This is a short walk along footpaths that are well-maintained and in good order.

2.39 My client's pharmacy is therefore easily and conveniently accessible from the Colindale Gardens development. It is located, itself, within a new build unit and is therefore modern and fully accessible for those with disabilities.

2.40 In terms of service provision, my client's pharmacy is open from 8am to 7.30pm Monday to Friday, 9am to 5pm on Saturday and 10am to 4pm on Sunday. Its opening hours therefore greatly exceed those proposed by the applicant.

2.41 My client's pharmacy offers a full range of pharmaceutical services. It dispenses a roughly average number of prescription items per month, with spare capacity to meet any increased demand from new residents moving into the Colindale Gardens development.

2.42 In relation to other pharmacies nearby, the applicant states that "their journey to access one of these pharmacies is lengthy and convoluted" due to the presence of the railway line. This statement is misconceived, because the Colindale Gardens development fronts onto Colindale Avenue, which is one of the roads which crosses the railway line. Anyone living in, or visiting, the Colindale Gardens development will therefore have a direct route to the main shopping areas along Edgware Road via Colindale Avenue.

2.43 The next nearest pharmacies to the proposed location are on Edgware Road. This is, of course, unsurprising because Edgware Road represents a "town centre" location where most shops and other main services are located.

2.44 The nearest Edgware Road pharmacy to the Colindale Gardens development is the pharmacy within the Asda superstore (which is also the nearest supermarket to Colindale Gardens together with the adjacent Morrisons supermarket).

2.45 It is 1.1 kilometres (or less than a 15-minute walk) from the Colindale Gardens development to the Asda store as shown on the map below. [Appendix C for Committee]

2.46 The route to Asda is easy and straightforward, involving a walk along Colindale Avenue before turning north up Edgware Road.

2.47 The Asda Pharmacy is open from 9am to 9pm Monday to Saturday and from 11am to 5pm on Sunday, again offering hours that greatly exceed those proposed by the applicant. Asda Pharmacy also provides a full range of commissioned pharmaceutical services and dispenses a slightly lower than average number of prescription items per month. It, therefore, also has sufficient capacity to meet any existing or projected future demand arising out of local housing developments.

2.48 A similar distance away from the Colindale Gardens development is ProCare Pharmacy, which is operated by the applicant. This is also located 1.1 kilometres away from the proposed location, or a 13-minute walk. There are two other pharmacies located near to ProCare Pharmacy – The Hyde Pharmacy and Alpha Pharmacy. Both are located within a parade of shops on Edgware Road and are both 1.2 kilometres from the Colindale Gardens development.

2.49 All three of those pharmacies (ProCare Pharmacy, The Hyde Pharmacy and Alpha Pharmacy) dispense a less than average number of prescription items per month, again suggesting plenty of spare capacity within the existing pharmacy network to meet the needs of any new residents.

2.50 With 5 pharmacies within 1.2 kilometres of the proposed location (by the shortest practicable route on foot), all of which are owned by different legal entities, and with the nearest pharmacy being only around 350 metres away from the proposed premises, it is therefore clear that the existing pharmacy network provides a reasonable choice of service provision.

2.51 In terms of access to existing pharmacies, the applicant provides no evidence of any person sharing a protected characteristic who requires access to pharmaceutical services finding access to existing pharmacies difficult. Indeed, having regard to the proximity of existing pharmacies to the proposed location and the nature of the local

area, it is submitted that the existing pharmacy network provides easy access to pharmaceutical services.

2.52 For those travelling by foot, the existing pharmacies are all a short distance away – ranging from 350 metres to 1.2km. Footpaths are in good order and well-lit (as would be expected from a suburban area). The terrain is level. Where pharmacies are located to the west of Edgware Road, Edgware Road is easily crossed with appropriate pedestrian crossing facilities such as traffic-light controlled pedestrian crossings. There are, therefore, no barriers to accessing existing pharmacies by foot for those who are starting their journey in the vicinity of the Colindale Gardens development.

2.53 In terms of access by public transport, bus routes 125, 204, 303, 632 and 642 all stop outside the Colindale Gardens development. Bus route 303 connects the proposed location with the Asda Pharmacy (with services approximately every 15 minutes) and bus routes 632 and 642 connect the proposed location with the other pharmacies on Edgware Road (ProCare Pharmacy, The Hyde Pharmacy and Alpha Pharmacy) with services running approximately every 5 minutes.

2.54 The existing pharmacy network is therefore easily accessible by public transport from Colindale Gardens.

2.55 For those travelling by car, Asda Pharmacy has a large multi-storey car park. There is also on-street and off-street parking in the vicinity of the three pharmacies on Edgware Road and on-street parking on the road adjacent to my client's pharmacy.

2.56 Whether patients are travelling by foot, public transport or car, it is therefore submitted that existing pharmacies are easily accessible.

2.57 **Conclusion**

2.58 In conclusion, it is submitted that this application fails to meet the relevant regulatory test. In particular:

2.58.1 1) Existing pharmacies within the HWB's area already secure a reasonable choice of pharmaceutical service provision. There are 5 pharmacies within 1.2km of the proposed location, all of which are owned by separate legal entities. Those pharmacies provide a full range of pharmaceutical services at times which exceed those proposed by the applicant. The available evidence suggests that those pharmacies have spare capacity to meet any additional demand for pharmaceutical services from people moving into the development.

2.58.2 2) There is no evidence of any patients who share a protected characteristic and who require access to pharmaceutical services finding access difficult. Existing pharmacies are, in fact, easy to access, whether by foot, public transport or car.

2.58.3 3) The applicant does not appear to offer any innovation in service delivery.

2.59 On behalf of my client, I therefore invite NHS England to conclude that this application would not secure improvements or better access to pharmaceutical services that are not contained within the relevant PNA and to refuse the application.

2.60 Should NHS England consider it necessary to hold an oral hearing prior to its determination of this application, my client would wish to have the opportunity to attend that hearing and to make oral representations.

2.61 **LPC comments**

2.62 The applicant is offering to provide unforeseen benefits on the basis that these could not be foreseen in the Barnet Pharmaceutical Needs Assessment {PNA) published in October 2022.

2.63 However, it should be remembered that the growth in housing and populations had been identified in both the 2015 and 2018 Barnet PNAs. By the time the 2022 PNA was being written, the development was moving towards its completion phases, of which Colindale Gardens is one. There was no longer any need to refer specifically to this development within the PNA as it was already well established and was reaching fruition. However, even though the final shape and scope of the development overall is so well known, the PNA does not identify a need for further essential necessary services or relevant advanced services in the Hendon locality, which includes Colindale Gardens. With the development being so well established, it is difficult to see how any significant benefits to the population could be viewed as unforeseen, particularly as there have been several applications for new pharmacies in this area already, all of which have been refused.

2.64 As part of the Colindale Gardens phase, the developer has built a series of ground-floor units, fronting Colindale Avenue, that *may* be used to re-provide premises for the nearby Grahame Park Health Centre. However, that move is by no means definite; the units are also being offered individually on a commercial basis as well as together, possibly to house a large supermarket. It has also been confirmed that there are alternative premises within the non-residential floorspace of the Grahame Park Estate redevelopment to accommodate a health care facility, into which the Health Centre could relocate.

2.65 There are already well-established pharmacies within reasonable proximity of Colindale Gardens. H.A.McParland Pharmacy, which relocated relatively recently from premises next door to the Grahame Park Health Centre to 2 Health Parade, Grahame Park Way NW9 5ZN is a level walk of around 250 metres from the Colindale Gardens commercial units located at Colindale Avenue, with only relatively quiet roads to cross via dropped kerbs.

2.66 McParland Pharmacy currently opens 8.00 am to 7.30 pm Monday to Friday, 9.00 am to 5 pm Saturdays and 10 am to 4 pm Sundays. Demand for pharmaceutical services over the weekend is generally significantly reduced.

2.67 At a distance of 0.8 miles away from McParland Chemist is the pharmacy within the Asda Store located at Edgware Road NW9 OAS. The busy Edgware Road may be crossed by traffic light-controlled pedestrian crossings. The Asda Store and the fairly new Morrisons Superstore next to it are likely to be destination shopping visits for those living in the area. The pharmacy in the Asda Store is a 100-hour pharmacy, which currently opens 78 hours each week from 9.00 am to 9.00 pm Monday to Saturday and 11.00 am to 5 pm Sundays.

2.68 Those living around Colindale tube station would find this a relatively easy journey. There is ample parking at the Asda and Morrison superstores for those driving. Bus routes 204, 303 and N5 run along Colindale Avenue connecting to Edgware Road, The Hyde, Hendon, Edgware (including the Community Hospital) and Kingsbury.

2.69 Both McParland and Asda pharmacies are open for longer hours than those being proposed by the applicant.

2.70 As well as the two pharmacies already referred to, essential services within the area are provided by further pharmacies along the south-western side of Edgware Road at number 189 (Alpha Pharmacy) and 213 (The Hyde Pharmacy and Post Office). There is a further pharmacy in Sheaveshill Avenue between Edgware Road and Colindeep Lane (Procare Pharmacy).

2.71 There are nine pharmacies within one mile of the Colindale Gardens commercial units located in Colindale Avenue. Between them, these pharmacies provide the full range of advanced services, including the New Medicine Service, flu and covid-19 vaccinations, the Community Pharmacy Consultation Service and the hypertension case-finding service. Appliance Use Reviews and the Stoma Customisation Service are carried out by the Dispensing Appliance Contractor located at 23 Heritage Avenue, Colindale NW9 SXY. The pharmacies between them provide the full range of commissioned Local Enhanced services including EHC, smoking cessation and supervised consumption. Most pharmacies have expressed a willingness to be commissioned to provide additional services.

2.72 The LPC is responding to this application purely from the perspective of the applicant's claim that there is insufficient reasonable choice of pharmacy in the area (the LPC believes there is) and that if granted, the new pharmacy would secure improvements or better access to pharmaceutical services (the LPC believes there is already reasonable access).

2.73 The applicant goes on to mention groups of people with a protective characteristic (elderly or being young with a family). The 2022 PNA lists the lowest percentage of over-65s in the Hendon locality, compared with the rest of the borough and while the percentage of under-18s is slightly higher in this locality, by far the greatest percentage of the locality's population is between the ages of 18 and 64 (equal or highest across the borough). The PNA does not refer to any difficulties for either age group in accessing pharmaceutical services in the Hendon locality.

2.74 To conclude, the LPC believes that residents and visitors to the Colindale Gardens development already benefit from a seven day a week pharmaceutical service offered over extended hours and with a reasonable choice of provider. The application doesn't appear to offer anything by way of innovative delivery of services, only replication of that which is already available. The application, if granted, is likely to lead to an over-delivery of Essential Services without conferring significant additional benefits to the population as demanded by the regulations. As such, the requirements do not appear to be satisfied.

2.75 **Applicant's response**

2.76 We continue to act for the applicant, Sheav Chem Limited, and wish to make the following brief comments in response:

2.77 Barnet, Enfield & Haringey LPC – letter dated 17th September.

2.78 The LPC argues that the local growth in population was discussed in both the 2015 and 2018 PNAs, and that this development is well known to local parties. It is important to remember that Regulation 18 requires the decision maker to determine whether the need identified was *included* in the *current* PNA. No party has suggested that the current (i.e. 2022) PNA makes any specific reference to this development, so the need our client proposes to meet is clearly *unforeseen* in the context of the 2022 PNA.

2.79 In respect of the proposed new health centre, it remains our client's understanding that the GPs at the Grahame Park Health Centre will be relocating to the premises identified. The ICB will have its own information in that respect.

2.80 Boots – letter dated 18th September.

2.81 Our client has no additional comments to make in response to the letter from Boots as these matters have already been addressed within the application.

2.82 Temple Bright for HA McParland Limited – letter dated 6th September.

2.83 We note the comments made about population growth but our client maintains its position that the growth in Hendon accounts for much of the population growth for the whole HWB area so there is significantly greater than average growth in the area that will be served by this pharmacy.

2.84 Whilst the Colindale Gardens development may be largely complete, there is substantial ongoing development throughout Hendon. Our client's proposed pharmacy, being located close to a tube station, will serve a much bigger population than that of Colindale Gardens alone.

2.85 Whilst it may be the case that HA McParland Pharmacy is located 350m away from our client's proposed location we maintain that this is a significant distance in the context of a densely populated part of London with a growing population and plans for new medical centre.

2.86 The comment about the journey to other pharmacies in the area being convoluted is not "misconceived". As can be seen in the image below [Appendix C for Committee] residents living in the substantial area highlighted are required to travel north west to Colindale Avenue to cross the railway. It is therefore accurate to say that their journey to any pharmacy to the south of the railway is convoluted.

2.87 We have no additional comments to make at this time, but should the ICB wish to convene an oral hearing to determine this application, our client would wish to attend.

2.88 **18.(1)(a)**

2.89 *The ICB 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**;***

2.90 The PSRC have determined that Regulation 18(1)(a) was satisfied in that the ICB 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.

2.91 **18.(1)(b)**

2.92 *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 ICB must have regard to the matters set out in paragraph (2).*

2.93 The relevant PNA for this Application is the PNA published by Barnet HWBB in 2022. This is the latest published PNA.

2.94 The PSRC considered the Barnet Pharmaceutical Needs Assessment 2022 ("the PNA") prepared by Barnet Health and Wellbeing Board, conscious that the document provides an analysis of the situation as it was assessed at the date of publication. The ICB 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. It is noted that the PNA was dated 2022 and that there has been one supplementary statement issued, in June 2023. This statement pulled together the

details of one consolidation of two pharmacies, however it was also noted that the HWBB noted that this consolidation did not create a gap that could be filled by a new application of any type.

2.95 The applicant seeks to provide unforeseen benefits to secure improvements in terms of access to pharmaceutical services for the substantial local population and for the extensive number of visitors to the Colindale area. The improvements or better access that the Applicant was claiming would be secured by its application were included in the relevant pharmaceutical needs assessment in accordance with paragraph 4 of Schedule 1. However, the ICB agrees that this is not a clear statement of fact.

2.96 **Therefore, the application would not need to be assessed in accordance with the regulations under 18(2)**

2.97 (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 its area, or

2.98 There are 21 pharmacies within 2 kms of the application site, as the crow flies as per NHS UK website. Granting a new pharmacy application could cause detriment to proper planning or the arrangement in place for pharmaceutical services.

2.99 **The PSRC have determined that the granting of this application may result in the over provision of essential services in the area. This may cause detriment to proper planning of pharmaceutical services or the arrangements in place for the provision of pharmaceutical services in this area. At present there is no evidence that this will be significant.**

2.100 (ii) the arrangements it has in place for the provision of pharmaceutical services in its area;

2.101 The conclusions above relating to 18(2)(a)(i) applied equally to Regulation 18(2)(a)(ii).

2.102 **The PSRC have determined that the ICB was 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.**

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

2.104 (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(**b**) (duty as to patient choice and duty as respects variation in provision of health services)),

2.105 As detailed previously there are 21 pharmacies within a 2kms distance as the crow flies from the development site.

2.106 **The PSRC have determined that they are satisfied that residents of this part of Barnet have a reasonable choice of pharmacies. Therefore, if the application were granted this would not secure improvements and better access to pharmaceutical services.**

2.107 (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 ICB's duties under section 13G of the 2006 Act(**c**) (duty as to reducing inequalities)),

2.108 There is nothing specific within the application that relates to people who share a protected characteristic that shows they are having difficulty in accessing services.

2.109 **Therefore, the PSRC have determined that they are 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.**

2.110 (iii) there being innovative approaches taken with regard to the delivery of pharmaceutical services (taking into account also the ICB's duties under section 13K of the 2006 Act(**a**) (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;

2.111 **The PSRC have determined that they are not satisfied that there are innovative approaches with regard to pharmaceutical services within this application.**

2.112 Regulation 19 - Deferral

2.113 n/a as not deferred

2.114 **Decision**

2.115 The PSRC recommendation is that there is enough information within the papers to decide the application without an oral hearing.

2.116 There are no pharmacies within the immediate vicinity of the application, so regulation 31 is not engaged.

2.117 With regard to 18(1)(a) the ICB is satisfied that they were required to determine the application.

2.118 With regard to 18(1)(b) the ICB is not satisfied that the application would need to be assessed in accordance with the regulations under 18(2).

2.119 With regard to 18(2)(a)(i) & (ii) In the absence of any significant detriment as described in Regulation 18(2)(a), the ICB was not obliged to refuse the application and went on to consider Regulation 18(2)(b).

2.120 With regard to 18(2)(b)(i) the ICB is satisfied that residents of this part of Barnet have a reasonable choice of pharmacies.

2.121 With regard to 18(2)(b)(ii) that the ICB is 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.

2.122 With regard to 18(2)(b)(iii) the ICB is not satisfied that there are innovative approaches with regard to pharmaceutical services within this application.

2.123 The PSRC have determined that the applicant has not fulfilled the criteria as required in regulation 18(1) & 18 (2) and therefore the Pharmaceutical Services Regulations Committee have determined to refuse the application.

2.124 **Determination made by NHS North East London ICB on behalf of NHS North West London ICB.**"

3 The Appeal

In a letter dated 21 October 2023 addressed to NHS Resolution, Pharmacy Sales and Consultancy, on behalf of the Applicant, appealed against the ICB's decision. The grounds of appeal are:

3.1 "We act for Sheav Chem Limited and have enclosed a letter of authorisation confirming our instructions in this matter.

3.2 Our client has been notified by North Central London ICB ("The ICB") that the above application, made pursuant to Regulation 18 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("The Regulations"), has been refused. I have enclosed a copy of their decision letter and report for your information.

3.3 Our client wishes to appeal this decision and we set out the key grounds for appeal below by reference to the ICB decision report.

3.3.1 (i) **Regulation 18(1)(b) – page 17 of the report**

3.3.2 The ICB has misunderstood this part of Regulation 18. It claims that "the improvements or better access that the Applicant was claiming would be secured by its application were included in the relevant pharmaceutical needs assessment in accordance with paragraph 4 of Schedule1". It goes on to state that "the ICB agrees that this is not a clear statement of fact" yet then concludes that "the application would not need to be assessed in accordance with the regulations under 18(2)".

3.3.3 The ICB was wrong to reach this conclusion and having done so we contend that it failed to properly consider our client's application.

3.3.4 (ii) **Regulation 18(2)(a)(i) – page 18 of the report**

3.3.5 The Pharmaceutical Services Committee ("PSRC") of the ICB determined that "granting the application may result in the over provision of essential services in this area" yet provides no evidence, other than reference to the number of pharmacies within 2km of the application site that this will be the case. The burden of proof in respect of demonstrating that there would be significant detriment rests with the ICB in this case, but in our client's opinion it has failed to properly consider this matter.

3.3.6 (iii) **Regulation 18(2)(b) – page 18 of the report**

3.3.7 The committee [of the ICB] erred by focussing on the number of pharmacies within a 2km mile radius when reaching its conclusion in respect of choice. There is no evidence that the committee [of the ICB] considered the specific access issues raised in our client's application, which exist regardless of the number of pharmacies within this arbitrarily defined area.

3.4 We have provided further detail below in respect of our client's grounds for appeal as well as additional information to assist the Primary Care Appeals ("PCA") Committee in considering this matter.

3.5 **Background & Local Area**

3.6 As can be seen within our client's application, this application has been prompted by the extensive ongoing redevelopment of Colindale. Much of this redevelopment has

been completed and, as a result, the character of the area has changed beyond recognition in recent years.

3.7 The Colindale regeneration programme has largely delivered many of the improvements listed within the regeneration plan which proposed the following: [See 1.8.1-1.8.14]

3.8 Whilst not all of these improvements have been delivered yet (notably the health centre, which we discuss below), the regeneration programme continues at pace and, to our knowledge, the ambition remains to deliver the plan in its entirety.

3.9 Most importantly for this application, the majority of the new homes have now been completed and occupied, resulting in a very substantial increase in the Colindale population.

3.10 The population growth is evidenced by census data. At the time of the 2011 census, the population of Colindale ward was 17,098. By the time the 2021 census was carried out it has been necessary to divide Colindale into two separate wards (Colindale North and Colindale South) due to the population growth. The combined population at that time was 31,473 (an increase of 84%) with 19,413 of these residents in Colindale South where the proposed premises are located (source: Nomis).

3.11 Looking further at the 2021 census data, the map below [Appendix D for Committee] shows the boundaries of **Super Output Area Middle Layer ("SOAML") Barnet 042.**

3.12 The eastern and south-western boundaries of this Super Output Area largely align with the motorway and the railway line (with the exception of a few houses to the south of the line), so they reflect the area that will be served by our client's pharmacy.

3.13 The population of this area was 9,169 at the time of the 2021 census (source: Nomis). As development has continued within this area since 2021, the population will now be significantly higher.

3.14 There is no pharmacy within the boundaries shown. The proposed best estimate location is marked with a red star.

3.15 It is also noteworthy that the Super Output Area highlighted above measures approximately 1km from north to south at its deepest point, which provides an indication of the population density here. Whilst it is difficult to fully capture the scale of this development with photographs, the aerial image below [Appendix D for Committee] provides an indication of the nature of the apartment blocks in the Colindale Gardens development:

3.16 This image does not show the buildings at the front of the development, on Colindale Avenue (left of the image), as they were still being constructed when that image was created. The photographs below [Appendix D for Committee], taken in May 2023, show how this part of the development along Colindale Avenue has now been completed.

3.17 The physical geography of the area is very relevant in this case due to the barrier created by the railway to the south west. There are no railway crossings between Colindale tube station and the M1 motorway (a distance of more than 1km), so any residents living in Colindale Gardens who wish to access amenities to the south of the railway are required to walk first to the tube station. For those that live at the south eastern end of Colindale Gardens, this is a significant walk.

3.18 *The bridge over the railway is market* [sic] *with an arrow and the proposed location with a red star.*

3.19 We discuss access to other pharmacies later.

3.20 Demographic profile

3.21 We have considered the demographic profile of SOAML Barnet 042 (the boundaries of which were provided in the map earlier) using data from the 2021 census (source: Nomis).

3.22 This table [Appendix D for Committee] shows that the car ownership within this SOAML is very low. The number of households without any access to a car or van is approximately double the national average. Almost 50% of households do not have a car.

3.23 Whilst this may not be particularly surprising given the nature of the area it is still highly relevant to this application. A significant number of patients do not have the option of driving to a community pharmacy.

3.24 This table [Appendix D for Committee] shows that, again perhaps unsurprisingly, the percentage of residents within the SOAML who are considered disabled under the Equality Act is significantly lower than the national average. Given that many residents are young professionals this is to be expected.

3.25 However, it is important not to lose sight of the actual number of people who have a recognised disability. Very close to 1,000 people who live within the area highlighted have some form of disability which impacts on their day-to-day activities. That is a lot of people for whom travelling on foot to a community pharmacy may be challenging. This is a very relevant consideration when access to existing pharmaceutical services provision is considered.

3.26 **Existing provision of pharmaceutical services**

3.27 We have considered the location of existing pharmacies in relation to the proposed site. Of course, most patients will have travelled from home or elsewhere to the proposed site, so the journey from the site to the nearest pharmacy is an *additional* journey many will have to make if they require pharmaceutical services. However, considering these journeys is a useful starting point.

3.28 *McParlands, Unit 2 Health Parade, Grahame Park Way, Hendon Village, NW9 5ZN*

3.29 As has been noted in previous correspondence, this is the closest pharmacy to the site proposed within this application. We agree with the comment made by McParlands previously that the distance between the two sites is approximately 350m.

3.30 Whilst on the face of it this is not a long distance, it is relevant that residents living towards the south-east end of Colindale Gardens will have travelled up to 1km to reach the premises proposed by our client before embarking on the additional 350m to the McParland pharmacy. This additional 700m round trip would not be a journey these residents would otherwise need to make. Many of the amenities these residents require during their day-to-day lives, including the tube station, can be found within, or close to, the Colindale Gardens development. For the patients referred to previously who may have mobility difficulties this additional distance may be quite significant.

3.31 It is also noteworthy that making this journey on foot requires crossing a busy roundabout that leads to Graham Park Way but there are no light-controlled or zebra crossings on this journey approaching the roundabout from the west, where Colindale Gardens is located. This can be seen in the image below [Appendix D for Committee]:

3.32 *Asda Pharmacy, Edgeware Road, NW9 0AS*

3.33 Again, McParlands have provided a map within their submissions (which can be seen on page 12 of the ICB decision report) which shows the journey from the proposed site to Asda. It is clear from this map, however, that the distance to the pharmacy in this

case is significant. A walk of 1.1km for 15 minutes within a densely populated area of London would not be considered by most patients as a reasonable journey to make to access a community pharmacy. Furthermore, as we have discussed above, most residents of Colindale Gardens do not live on Colindale Avenue, the starting point of the journey shown by McParlands, so their return journey to this pharmacy will be *more than* 2.2km.

3.34 It is also noteworthy that this route shown requires crossing the busy Edgware Road using only a traffic island as shown in the image below. [Appendix D for Committee]

3.35 For patients who do not feel they could cross Edgware Road safely at this point, there is a light-controlled further south along the road but using this will extend the journey further.

3.36 *Procare Pharmacy, Hyde Pharmacy and Alpha Pharmacy*

3.37 As pointed out by McParlands in their submission, these three pharmacies are located relatively close together on or nearby Edgware Road.

3.38 Considering Procare first, we have looked at the journey from the middle of Colindale Gardens (a more realistic starting point) to Procare. The journey is shown on the map below [Appendix D for Committee] by the blue dotted line.

3.39 As there is only one crossing point over the railway in Colindale, as can be seen this journey requires walking up to the railway bridge then doubling back on the other side of the railway before heading south towards Procare. This journey is 1.5km and takes approximately 21 minutes to walk.

3.40 The other two pharmacies mentioned by McParlands, namely Hyde Pharmacy and Alpha Pharmacy, are located beyond Procare, on the south side of Edgware Road, so the journeys are longer. These journeys are beyond what would usually be considered reasonable by many residents living within an urban area.

3.41 In our opinion, the distance patients would have to walk, and the nature of the journeys to any of these pharmacies other than McParlands is beyond what would usually be considered *reasonable* to access a pharmacy within London. In fact, it is clear that the physical boundaries created by the railway and the M1 create a self-contained 'neighbourhood' (in the common usage rather than regulatory sense of the word), where patients would expect to have access to the amenities required when going about their daily lives.

3.42 Within this area McParlands is the only pharmacy.

3.43 The McParland pharmacy is located within SOAML Barnet 26 (immediately to the north of SOAML Barnet 42 discussed earlier), the boundaries of which are shown on the map below [Appendix D for Committee] where McParlands is marked with a blue star.

3.44 The population of SOAML Barnet 26 at the time of the 2021 census was 10,532.

3.45 Bearing in mind that the population of SOAML Barnet 42, in which the proposed premises are located was 9,169, the combined population of this area was close to 20,000 at the time of the census, yet there is only one pharmacy serving the area.

3.46 Given that there has been further residential development since the 2021 census, the current population will be even higher.

3.47 The 2022 Barnet PNA states that the HWB area has an average of 18.7 community pharmacies per 100,000 population". Yet is clear [sic] that the area highlighted within this application i.e. to the north of the railway, has 1 pharmacy for 20,000 people i.e. the equivalent of 5 pharmacies per 100,000 population.

3.48 The danger of using averages across a wide area is that these fail to identify gaps in pharmaceutical service provision at a more local level. We would suggest that the very sparse provision of services in the area our client has highlighted, which is at approximately 25% of the level across Barnet as a whole, is very relevant when considering whether patients have reasonable choice in respect of access to pharmaceutical services.

3.49 **Grounds for appeal**

3.50 As discussed earlier, we wish to expand on our client's grounds for appeal as this information will be relevant to the PCA committee's deliberations.

3.51 (i) **Regulation 18(1)(b) – page 17 of the report**

3.52 In its decision report, the PSRC considers the contents of the Barnet PNA in light of the representations made by third parties.

3.53 There seems to be no dispute by the objectors to our client's application that the relevant PNA to use in this case is the one published in 2022.

3.54 The report refers to a supplementary statement that has been issued subsequent to the publication of the current PNA. We have enclosed a copy of that supplementary statement for the benefit of the PCA committee. The statement refers to the consolidation of two pharmacies in North Finchley in September 2022.

3.55 These pharmacies are located more than five miles away from the location proposed within this application. This is a very substantial distance in North London. It is not the intention of Regulation 26a that where a consolidation is approved in a completely different part of the HWB area, this will automatically prevent the consideration of an application for inclusion in the pharmaceutical list elsewhere within the same HWB. It would be nonsensical to conclude that this supplementary statement has any bearing on whether or not there is currently a gap in pharmaceutical services provision within Colindale.

3.56 The PSRC report goes on to state that "the improvements or better access that the applicant was claiming would be secured by its application were included in the relevant pharmaceutical needs assessment in accordance with paragraph 4 of Schedule 1". However it then goes on to contradict itself, stating "however, the ICB agrees that this is not a clear statement of fact". Regulation 18(1)(b) is very clear. The decision maker is required to consider whether "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".

3.57 Objectors have referred to the fact that previous PNAs have discussed the ongoing residential development in the area in broad terms but they acknowledge that the current PNA is silent on these developments, in respect of referring to specific sites.

3.58 No party has provided any extract from the current PNA which suggests that the impact of the ongoing development at Colindale Gardens has been assessed by the HWB and that they have reached the conclusion that there is no need for any additional pharmaceutical services provision.

3.59 In the absence of such a statement it is clear that the proposed improvements or better access **were not** included in the relevant PNA and that the ICB were therefore obliged to properly consider the matters set out in regulation 18(2). The ICB appear to have erroneously decided that they did not need to consider regulation 18(2) so their decision was clearly flawed.

3.60 (ii) **Regulation 18(2)(a)(i) – page 18 of the report**

3.61 The decision report states:

3.62 *There are 21 pharmacies within 2 kms of the application site, as the crow flies as per NHS UK website. Granting a new pharmacy application could cause detriment to proper planning or the arrangement in place for pharmaceutical services.*

3.63 *The PSRC have determined that the granting of this application may result in the over provision of essential services in the area. This may cause detriment to proper planning of pharmaceutical services or the arrangements in place for the provision of pharmaceutical services in this area. At present there is no evidence that this will be significant.*

3.64 There are a number of flaws in this statement. Firstly reference to the number of pharmacies within a certain distance 'as the crow flies' is rarely helpful as patients do not fly. As we have already described, the journeys to many of the pharmacies in the area are lengthy and convoluted so it is not the case that opening a pharmacy at the proposed location would impact up to 21 existing pharmacies.

3.65 The PSRC then go on to suggest that granting the application may result in over provision and that this may cause detriment to proper planning without explaining how this will come about, although they then acknowledge that there is no evidence any such detriment would be significant. Given that the test in Regulation 18(2)(a) refers to any detriment being **significant** it is clear that there are no grounds to refuse the application in accordance with 18(2)(a).

3.66 We do note that the PSRC correctly concluded within their report that they were not obliged to refuse the application in respect of 18(2)(a) but it appears to us that there was some muddled thinking that may have influenced their overall decision.

3.67 (iii) **Regulation 18(2)(b) – page 18 of the report**

3.68 Again the PSRC erred in using the arbitrary measure of a 2km radius 'as the crow flies' to determine whether "the residents of this part of Barnet have a reasonable choice of pharmacies".

3.69 As we have discussed above it is clear that within the area to the north of the railway and the west of the M1 there is only one pharmacy serving a population of approximately 20,000 people.

3.70 The regulations require the decision maker to consider the matter of choice because ensuring there is competition in the provision of services is often necessary to be confident that those services are being provided as effectively and efficiently as possible.

3.71 For the reasons we have described previously we do not accept that there is reasonable choice in the context of regulation 18(2)(b)(i).

3.72 **Additional evidence for the Committee's consideration in respect of this appeal**

3.73 **New medical centre to open at Colindale Gardens**

3.74 The PCA committee will note the comments in the bundle in respect of the proposals open a medical within the Colindale Gardens development. [sic]

3.75 The proposal has arisen because, as part of the wider area regeneration plan, the Grahame Park Health Centre, which is currently located at The Concourse, London NW9 5XT, is subject to a compulsory purchase order ("CPO").

3.76 We have attached a copy of the 'statement of reasons' provided by the London borough of Barnet Local Authority in respect of this CPO. Paragraph 3.13 of this document states (emphasis added):

3.77 *3.13* ***The Next Phase includes the demolition of existing/former community facilities, including*** *the community centre, the old library (recently reopened as a meanwhile community facility following the relocation of the Library into Stage A),* ***the health centre*** *and the former nursery/children's centre (closed in Autumn 2020). The Next Phase will provide a new Community Centre, and children's nursery.* ***There is also the opportunity for the health centre to be reprovided on site if required, though it is currently anticipated that this will relocate to a larger purpose-built facility on the former Peel Centre site (Colindale Gardens) to the south of the Scheme close to Colindale Tube Station****. The requirement to provide these facilities is included in the Principal Development Agreement (PDA) between CfGP and the Council. The PDA specifies in cash terms the contribution that CfGP is required to make to the provision of these facilities and provides a mechanism for uprating these contributions to reflect inflation up to the point at which they are built. These obligations have been included in the agreed Next Phase Section 106 agreement as part of the 2020 permission.*

3.78 Furthermore, our clients have been informed by the developers of the Colindale Gardens scheme that heads of terms have been agreed in respect to the lease for the relocated medical centre within premises that are already constructed on Colindale Avenue.

3.79 The map below [Appendix D for Committee] shows the current location for this medical centre (marked with a white cross on a red background) and the proposed location (marked with a purple pointer).

3.80 The practice currently located at Grahame Park surgery is the Everglade Medical Practice, which serves a patient list of approximately 7,500. Until recently there was also a branch surgery located within the building for Parkview Practice, located in Edgware, but this has now closed pending the demolition of the building.

3.81 As the new location for the medical centre will be within the heart of the massive Colindale area of regeneration, it is expected that the list size will increase substantially.

3.82 The relocation of this medical centre represents a very significant change in how and where primary care is provided within Colindale. There will clearly be great benefits to patients attending this new medical centre if they are able to access a pharmacy at the same location.

3.83 *Regulatory tests*

3.84 **Regulation 18(2)(a)**

3.85 We have discussed the matter of detriment already and highlighted that, whilst the comments from the ICB on this matter or somewhat confused, they did not consider that the application needed to be refused in accordance with 18(2)(a).

3.86 As this matter appears to be reasonably uncontentious, we propose to add no further comments at this stage. However, we reserve the right to comment later on this matter should any party seek to provide any evidence of detriment.

3.87 **Regulation 18(2)(b)(i) – Choice**

3.88 In forming its opinion on the matter of choice, the ICB concluded that there was a reasonable choice based on the following assumptions:

3.89 *As detailed previously there are 21 pharmacies within a 2kms distance as the crow flies from the development site.*

3.90 *The PSRC have determined that they are satisfied that residents of this part of Barnet have a reasonable choice of pharmacies. Therefore, if the application were granted this would not secure improvements and better access to pharmaceutical services.*

3.91 We have already commented on the reference to a 2km radius being a wholly inappropriate way to determine whether patients have reasonable choice.

3.92 The ICB makes reference to "this part of Barnet". We have provided evidence to show that the relevant area of Barnet for this application is the area to the north of the railway line and the west of the M1 motorway. Within this area there is just one pharmacy serving a population estimated to be in excess of 20,000. This equates to 5 pharmacies per 100,000 population compared to the average of 18.7 across Barnet.

3.93 Given that population will continue to rise as the regeneration programme moves on to Grahame Park, pressures on service provision will only increase.

3.94 The population in Colindale Gardens itself is very substantial, and residents living here will soon have access to a medical centre within the document. Taking all of the above into account, it is our client's opinion that there is not *reasonable choice with regard to obtaining pharmaceutical services in the area of the Relevant HWB.*

3.95 **Regulation 18(2)(b)(ii) – Patients with protected characteristics**

3.96 In its report, the committee [of the ICB] stated:

3.97 *"There is nothing specific within the application that relates to people who share a protected characteristic that shows they are having difficulty in accessing services.*

3.98 *Therefore, the PSRC have determined that they are 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".*

3.99 Whilst every patient shares a protected characteristic, those relevant to the decision maker are protected characteristics specifically relating to a patient's ability to access pharmaceutical services i.e. disability. Clearly patients who suffer a disability will be adversely affected where the journey they have to make to a pharmacy is lengthy or the nature of the route is challenging.

3.100 Within this appeal we have highlighted that looking at the very substantial population in close proximity to the proposed location, there are approximately 1,000 people whose day-to-day lives are limited through disability. For these people the journey to a community pharmacy, particularly if they do not have access to a car, can be significantly more difficult than it is for a person who does not have any disabilities.

3.101 We have highlighted that, in the case of the nearest pharmacy (McParlands), residents of the Colindale Gardens area who wish to travel there are required to cross a busy roundabout without any light-controlled crossings or zebra crossings. A patient in a wheelchair or using walking aids would be likely to find this crossing difficult.

3.102 Even for those patients who may be able to access McParlands, they are not reasonably be able to [sic] exercise any choice in respective where they access pharmaceutical services because alternative pharmacies are at least 1.1km away, and that assumes these patients are starting their journey on Colindale Avenue. For those living in the heart of the development the distance is significantly greater.

3.103 **Regulation 18(2)(b)(iii) – Innovation**

3.104 We are aware it is difficult to provide evidence of innovation (in such a way that this regulatory test is met) given the narrow definition of pharmaceutical services and the inability to offer these innovatively when commissioning and specification of services is inflexible.

3.105 That being the case out [sic] client is not advancing an argument of innovation.

3.106 However, we would also ask the committee [of NHS Resolution] to have regard to the clear benefit to be derived through providing an integrated primary care service to patients close to where their GPs are located.

3.107 **Conclusion**

3.108 We believe there is conclusive evidence in respect of the need for a pharmacy at the proposed location.

3.109 The proposed location has been subject to massive redevelopment and substantially increased the resident population.

3.110 A new medical centre is planned to open at the development which will serve not only the residential population of Colindale Gardens, but also residents of Grahame Park who are already patients with this practice.

3.111 The extent of existing pharmaceutical services provision in Colindale is very low taking into account the size of the area and its population.

3.112 Patients do not have reasonable choice in respect of access to pharmacies in the wider area.

3.113 We therefore urge Primary Care Appeals to overturn the decision of the ICB and grant this application accordingly.

3.114 Our clients would wish to attend an oral hearing should the committee decide to convene one."

4 Summary of Representations

This is a summary of representations received on the appeal.

4.1 TEMPLE BRIGHT LLP, ON BEHALF OF H A MCPARLAND LTD

4.1.1 "As NHS Resolution will be aware, to the extent that there is a burden of proof in respect of meeting the appropriate regulatory test, that burden of proof rests with the applicant. My client submits that the applicant has failed to discharge that burden of proof.

4.1.2 Taking each of the matters raised by the applicant in turn, my client comments as follows:

4.1.3 I anticipate that NHS England will respond directly to the applicant's criticisms of its decision. Since NHS Resolution's determination of this appeal is by way of re-consideration of the application rather than by way of a review of NHS England's decision, I do not anticipate that NHS Resolution will be assisted by a narrative from my client in relation to NHS England's decision.

4.1.4 The applicant refers, variously, to the "local area" and "Colindale". However, care should be taken when assessing the information provided by the applicant, since much of the development to which the applicant refers has no obvious relevance to the applicant's proposed location and has simply been

cut and pasted from the Barnet Borough Council website (Colindale | Barnet Council).

4.1.5 For example:

4.1.5.1 The construction of “10,170” new homes is not restricted to the Colindale Gardens Development (i.e. the location of the proposed pharmacy) but is spread across the whole of Colindale. The Colindale Gardens development itself comprises of only a minority percentage of those total new homes.

4.1.5.2 The “improvements to key junctions and roads” is noted and would, it is to be assumed, aid the flow of traffic and pedestrians.

4.1.5.3 The provision of improved bus service links is noted and would, it is to be assumed, improve local resident mobility and access to services.

4.1.5.4 Colindale Library has relocated to premises which are directly opposite my client’s pharmacy.

4.1.5.5 Montrose Playing Fields are located approximately a kilometre to the north west of the Colindale Gardens Development. The Montrose Playing Fields are located within approximately 300m of the Asda store (and pharmacy) and to the west of the railway line that the applicant considers to be a barrier to access.

4.1.5.6 The new High School (secondary school) is located approximately a kilometre to the north of the Colindale Gardens Development. The Further Education College is located opposite my client’s pharmacy (co-located with the library). The new primary school will not open until September 2026, but will be located on the northern edge of the Colindale Gardens Development near to the tube station and my client’s pharmacy.

4.1.5.7 The Health Centre re-provision remains uncertain, but I comment further on this below.

4.1.5.8 In relation to the parks referred to by the applicant, Colindale Park is located to the west of the railway line that the applicant asserts is a barrier for those in the Colindale Gardens Development; Montrose Park is 1km from the Colindale Gardens Development, again to the west of the railway line; Rushgrove Park is located around 1.5 kilometres from the Colindale Gardens development and is to the west of the railway line; Silkstream Park is located approximately 1 kilometre to the north west of the Colindale Gardens Development and is also to the west of the railway line.

4.1.6 It is accepted that most of the Colindale Gardens Development has been completed, work having started on the development in 2016. Despite the fact that the majority of new residents have moved into the new units (mostly apartments) within the development, my client is not aware of any complaints or concerns being raised by local residents in relation to the provision of pharmaceutical services.

4.1.7 In relation to the Colindale ward changes, it is somewhat misleading to suggest that the former Colindale ward was split in half in 2022 and that the combined Colindale North and South wards represent the same area as the former Colindale ward. In fact, when the Colindale ward was split, the ward boundaries of Burnt Oak and Edgware (immediately the north) were also changed so that

the areas contained within Colindale North and South wards represent a larger area, in total, than the area of the former Colindale ward.

4.1.8 In relation to the MSOA Barnet 042, NHS Resolution will note that the administrative boundaries of this MSOA are significantly larger than the Colindale Gardens Development.

4.1.9 In relation to the population size, it is noted that this was 9,169 in 2021. It is not accepted that the population would be "significantly higher" now because the Colindale Gardens Development has been ongoing since 2016. The applicant provides no evidence to support this statement.

4.1.10 It is correct that there "is no pharmacy within the boundaries shown", although this is somewhat misleading since my client's pharmacy is on the very edge of the MSOA boundary. I have annotated the applicant's map, below [Appendix E for Committee], to show the location of my client's pharmacy (the red dot).

4.1.11 In relation to "population density", it submitted that this is not unusual for London.

4.1.12 It is correct that the Colindale Gardens Development mostly comprises of apartments. As the applicant correctly states, these tend to be occupied by young professionals (individuals, couples or flat shares) rather than families or older residents.

4.1.13 It is not accepted that the railway line represents a "barrier" to accessing services, because it is artificial to assume that residents would wish to cross the railway line between the M1 and Colindale tube station to make a journey but are unable to do so. By way of example:

4.1.13.1 It is unnecessary for any person in the Colindale Gardens Development to cross the railway line in order to access pharmaceutical services, because my client's pharmacy is located on the same side of the railway line as the Development.

4.1.13.2 For those using Colindale tube station, those in the Colindale Gardens Development would walk in a north westerly direction from their home to the tube station – they would have no need to cross the railway line.

4.1.13.3 The main shopping area in Colindale is located around the junction of Colindale Avenue and the A5/Edgware Road. The natural route for any person in the Colindale Gardens Development to get to central Colindale would be to walk north to Colindale Avenue and then west along Colindale Avenue to the A5/Edgware Road. This would be the same irrespective of where a person lives in the Development. Taking, as a starting point, the location marked by the red star on the applicant's map, below is a google route map image [Appendix E for Committee] showing the route to central Colindale. As can be seen, there is no significant detour required in order to travel to central Colindale from the proposed location by reason of the railway line. It can be seen that the distance is just under 1km.

4.1.14 The applicant refers to a "bridge" over the railway line, but there is no bridge as such because the railway line is in a cutting so that, at road level, the route is flat. This is shown in the google streetview image below. [Appendix E for Committee]

4.1.15 It is correct that the number of households owning a car or van is lower than national averages. However, the figure (47.9%) of households that do not own a car or van is not dissimilar to London as a whole (42.1%). Given the nature

of the Colindale Gardens Development and its residents and the close proximity of the Development to public transport, it is not surprising that car ownership is lower than the England and Wales average, but this does not lead to a conclusion that residents have reduced mobility.

4.1.16 The applicant states that “A significant number of patients do not have the option of driving to a phamacy” [sic]. However, with a pharmacy located within 350m of the Development it is not clear why any patient would need to drive to a pharmacy in any event.

4.1.17 For those who wish to use public transport, bus routes 204 and 303 connect the Development to central Colindale with buses approximately every 5 minutes. Bus route 303 goes directly past the Asda pharmacy (and runs every 15 minutes) and bus route 204 has a stop approximately 300m from Asda Pharmacy.

4.1.18 In relation to census data regarding the number of residents who have a disability that limits their day-to-day activities, the difficulty the applicant has is that there is no information about the nature of the disability, the extent and nature of the limitation upon their day-to-day activities or their need for pharmaceutical services. By way of example, there may be disabilities that limit day-to-day activities but do not directly affect the patient’s physical mobility (hearing loss, for example). It is also likely to be the case that those whose mobility is affected have mobility aids, for example a private vehicle or carer support.

4.1.19 The applicant then provides information about hypothetical journeys that patients may make, although the applicant does not appear to have any real life evidence of these journeys, or that patients have any difficulty making these journeys.

4.1.20 The applicant refers to journeys to a pharmacy which take the patient via the applicant’s proposed pharmacy. It is not at all clear why any patient who requries [sic] access to pharmaceutical services would first need to travel to the applicant’s proposed location rather than simply travelling directly to the pharmacy.

4.1.21 As noted by the applicant, my client’s pharmacy is located wihtin [sic] 350 metres of the Colindale Gardens development. Whilst residents will have differing journey lengths depending upon their starting point, none of the distances referred to by the applicant can properly be considered excessive, particularly for the mostly young, professional population living in the Development. For the hypothetical patient living to the south of the Colindale Gardens Development, the applicant notes that it would be a 1km journey to their proposed site (and, presumably, a 2km round trip). It is submitted that any patient who can make that journey (without the benefit of private or public transport) could walk an additional 350m to my client’s pharmacy.

4.1.22 Put another way, a reduction in journey distance from 1.35km to 1km should this application be granted would not confer a significant [sic] benefit. Additionally, it is of note that the applicant seeks to assert that residents of the Development would obtain a significant benefit from having a pharmacy that may be 1km away from them, but patients cannot reasonably be expected to travel 1km to Asda Pharmacy or 350m to my client’s pharmacy.

4.1.23 In relation to the roundabout junction, it is artifical [sic] to assume that patients would cross at the actual roundabout, because there are pedestrian crossing facilities on Colindale Avenue, Aerodrome Road and Grahame Park Way which would be used depending upon the patient’s starting point.

4.1.24 No evidence is provided by the applicant that residents of the Development currently experience any difficulties [sic] accessing pharmacies, whether my client's pharmacy, Asda Pharmacy or any other local pharmacy.

4.1.25 The applicant states that "A walk of 1.1km for 15 minutes within a densely populated area of London would not be considered by most patients as a reasonable journey to make to access a community pharmacy". Not only is there no evidence to support this statement and, it is to be assumed, the same could be said of people moving into the southern end of the Development and the distance from their homes to the proposed location, but this is not the relevant regulatory test to be applied to this application. For the avoidance of doubt, patients are not required to make a "return journey" of more than 2.2km to access a pharmacy, since they can access my client's pharmacy which is much closer for the majority of residents in the Development. Patients may chose [sic] to access the Asda Pharmacy (for example, whilst accessing the other shops and services on the A5/Edgware Road) or another pharmacy (for example near to their place of work). For those accessing Asda Pharmacy, as stated above, patients can travel by bus should they wish to do so.

4.1.26 Patients do not need to use the traffic island to cross the Edgware Road because there is a traffic light controlled crossing point at the junction of Colindale Avenue and Edgware Road as shown in the google streetview image below. [Appendix E for Committee]

4.1.27 There is also another traffic light controlled crossing point at the junction of Grove Park and Edgware Road between the Asda Pharmacy and the junction of Colindale Avenue and Edgware Road.

4.1.28 It is not clear why the applicant considers that pedestrians travelling from the Colindale Gardens Development, who would pass both of these crossings on the way to Asda, would need to use the traffic island referred to in the letter of appeal.

4.1.29 In relation to the three other pharmacies referred to in the letter of appeal, as the applicant correctly notes, distances will vary depending on a person's starting point. By way of example, patients who are registered with the Colindale Medical Practice may choose to access one of the pharmacies on Edgware Road as they are only around 400m from the GP surgery.

4.1.30 The applicant appears to attempt to introduce the concept of "neighbourhood" into its letter of appeal, but this no longer forms part of the relevant regulatory framework. It is also an artificial assertion by the applicant, because this is not a self-contained community.

4.1.31 Whilst it is not entirely clear, the applicant appears to assert that my client's pharmacy is the sole pharmacy providing pharmaceutical services to a population of 20,000, but this is incorrect because patients are exercising a choice to access pharmaceutical services from a wide number of pharmacies, both locally and further away.

4.1.32 By way of example, there is one GP surgery in the "neighbourhood" referred to by the applicant: The Everglade Medical Practice. My client's pharmacy is the closest pharmacy to the Everglade Medical Practice (approximately 600m away), yet dispenses only a third of items prescribed by the Practice.

4.1.33 Of the remainder:

4.1.33.1 12% are dispensed by Jade Pharmacy in Burnt Oak even though it is 1.8km from the Practice (a distance that the applicant asserts no-one in this part of London would choose to travel).

4.1.33.2 Another 12% are dispensed by Pharmco Pharmacy which is 1.9km to the north of the Medical Practice.

4.1.33.3 6% of items from the Practice are dispensed by the Asda Pharmacy on Edgware Road

4.1.33.4 3% of items are dispensed by the Boots Pharmacy in Edgware, even though that is 3.5km from the Medical Practice.

4.1.34 It is therefore clear that the local population does not consider that it has only 1 pharmacy to provide pharmaceutical services to it and that there is, in fact, a reasonable [sic] choice of pharmaceutical service provision in the HWB's area.

4.1.35 In terms of the "sparse provision of services in the area our client has highlighted", this is more a function of the fact that this is a largely residential area and pharmacies are, naturally, more likely to be located in central locations, such as shopping areas.

4.1.36 In relation to the PNA, the relevant Pharmaceutical Needs Assessment in respect of this application is the 2022 Barnet PNA. The application site is within the Hendon locality of the PNA.

4.1.37 The PNA has regard, at page 83, to the latest available estimate for the population of Barnet generally and the Hendon locality specifically. The PNA notes that the overall population is projected to grow by 14,500 (4%) over the lifetime of the PNA, which is the same as the average anticipated population increase for England. For Hendon, the PNA notes that, during the lifetime of the PNA, the population of the Hendon locality is likely to increase by approximately 5,000, or 3.4%.

4.1.38 The figures referred to by the applicant in terms of population growth both in Colindale specifically and in the HWB's area more generally are therefore already considered in the 2022 PNA. That population growth is similar to that expected for England as a whole.

4.1.39 The PNA considers the Hendon locality at section 6.2.3, from pages 80 to 86. The PNA considers local health needs, projected population growth, the location of existing pharmacies, the services provided by existing pharmacies and the opening hours of those pharmacies. The PNA concludes that no gaps in the provision of pharmaceutical services (either current or future) are identified.

4.1.40 The matters raised by the applicant in its application form are therefore not unforeseen in the context of the 2022 PNA.

4.1.41 In relation to the distance to existing pharmacies, it appears from its decision that NHS England was seeking to provide a broad outline of pharmaceutical service provision in the local area by reference to pharmacies within a given radius. It is, of course, the position that straight line measurements may not accurately represent the distance to be travelled by road or footpath. However, the distances in this case are short (starting from 350m to a pharmacy) and the applicant has provided no evidence that those who share a protected characteristic and who require access to pharmaceutical services currently find access difficult.

4.1.42 In terms of whether patients have a reasonable choice of service provision, it is clear from the available evidence that there is a reasonable choice of service provision and that patients are exercising a choice. Since the question of whether patients have a reasonable choice is by reference to the HWB's area, it is artificial of the applicant to create a "neighbourhood" and to assert that

there is only one pharmacy within that “neighbourhood” so that there is no reasonable choice. This entirely disregards the realistic position that patients can and do access a wide range of pharmacies as they go about their daily lives and misapplies the relevant regulatory test.

4.1.43 By way of a further example to support the above, my client’s pharmacy dispenses an average of around 7,500 items per month, which is broadly in line with the average in England for a pharmacy. It is asserted that the dispensing volumes for my client’s pharmacy would be far higher were it have a “captive audience” of 20,000 patients with no choice but to use its pharmacy.

4.1.44 The applicant refers to the possible relocation of the Everglade Medical Practice. Even if that were to go ahead (and there is no documentary evidence provided with the letter of appeal), it would merely bring the Medical Practice closer to a pharmacy (my client’s pharmacy) than it is at its current site (as detailed above). It would not result in any increase in demand for pharmaceutical service provision.

4.1.45 The applicant states that it believes that the “list size will increase substantially” due to housing developments, but most of that development has already taken place, and it will have been completed by the time the Medical Practice relocates (if it ever does). The more likely position is that new residents of the Colindale Gardens Development have already registered with a GP and it is therefore not at all clear why the Everglade Medical Practice’s patient list size would increase significantly in the future.

4.1.46 The applicant states that “there will clearly be great benefits to patients attending this new medical centre if they are able to access a pharmacy at the same location”, but the applicant does not propose to open within the new medical centre according to the maps that it has supplied in its letter of appeal.

4.1.47 In conclusion, on behalf of my client I invite NHS Resolution to find that the applicant has failed to demonstrate that granting its application would meet the relevevant [sic] regulatory test. I therefore invite NHS Resolution to dismiss the appeal and to refuse the application.”

4.2 THE ICB

4.2.1 “This application has been assessed against the Oct 2022 Barnet PNA, the Health & Well Being Board has issued a supplementary statement, and this was included as a statement of fact, it was not related to this application. The regulations require that the ICB states which PNA has been used and to detail any changes that may have been made by virtue of a supplementary statement.

4.2.2 The ICB did note that the PNA was not clear but ultimately made an assessment that it was of the opinion that the development that this application was in had been included in the PNA as the development had been in planning for a number of years and was also in development when the 2018 PNA was written. A direct comparison of the two PNAs was not possible as the PNA had moved to reviewing areas rather than wards. The 2022 PNA concluded that there were no gaps in the current or future services. Having made this determination, the ICB did not have to make any further assessment, however it chose to add some further information for context.

4.2.3 As the ICB was of the opinion that the development was included in the PNA, therefore has not made an assessment of the application as the improvements or better access that would be secured was already included in the PNA.

4.2.4 The ICB has noted that there are 21 pharmacies within 2 kms as the crow flies and has specifically noted this as this measurement is a proxy of the volume of pharmacies in the area and used as a guide. If the application had needed to be determined more fully the ICB would have reviewed walking, public transport and driving distances as these may be different to as the crow flies."

5 Observations

5.1 THE APPLICANT

5.1.1 "We continue to act for the applicant, Sheav Chem Limited, and wish to make the following final observations on behalf of our client.

Letter on behalf of the ICB dated 22nd December

5.1.2 It is stated that the ICB formed the view that the Colindale Gardens development had been taken into account when the 2022 PNA was drafted. Whether or not something is *included* in the relevant PNA is not a matter of opinion, it is a matter of fact. The information is either included in the PNA or it is not.

5.1.3 As discussed within our client's appeal there is no mention of this development within the current PNA and therefore it is not *included* in the PNA in the context of Regulation 18(1)(b) regardless of whether or not the authors of the PNA were aware of the development. It is not for the decision makers to guess what the authors of this document had in their minds when it was drafted. Instead they are required to have regard to what is actually stated within the PNA.

5.1.4 The letter goes on to confirm that the ICB felt it did not need to consider the application "more fully" based on its erroneous assumption that the need our client's application proposes to meet was already included in the PNA. That being the case their decision should be quashed and very little weight should be applied to their other findings on the basis they have admitted failing to properly consider many elements of the legal tests.

Letter from Temple Bright, on behalf of H A McParland Limited ("McParlands"), dated 20th December

5.1.5 As our client is limited at this stage to rebuttal of comments made by this objector, in order to assist the Primary Care Appeals committee we have copied the contents of the letter from Temple Bright (excluding the images) below in italics, and responded to these points where appropriate in blue.

5.1.6 *Taking each of the matters raised by the applicant in turn, my client comments as follows:*

5.1.7 *I anticipate that NHS England will respond directly to the applicant's criticisms of its decision. Since NHS Resolution's determination of this appeal is by way of reconsideration of the application rather than by way of a review of NHS England's decision, I do not anticipate that NHS Resolution will be assisted by a narrative from my client in relation to NHS England's decision.*

5.1.8 We have responded above to the further comments made by the ICB / NHS England so have nothing further to add on this point.

5.1.9 *The applicant refers, variously, to the "local area" and "Colindale". However, care should be taken when assessing the information provided by the applicant, since much of the development to which the applicant refers has no obvious relevance to the applicant's proposed location and has simply been*

cut and pasted from the Barnet Borough Council website (Colindale | Barnet Council).

5.1.10 This information was provided as background and context to illustrate the scale of the local regeneration programme and the extent to which this has fundamentally changed Colindale. We accept that much of this information is not directly related to the Colindale Gardens development, however McParlands form the mistaken view that our client's application is intended to secure improvements, or better access, to pharmaceutical services **only** for the residents of Colindale Gardens. It is clear that should the application be granted residents of the whole of Colindale will benefit from the improved access and choice provided by a pharmacy at the proposed location.

5.1.11 *For example:*

5.1.12 *• The construction of "10,170" new homes is not restricted to the Colindale Gardens Development (i.e. the location of the proposed pharmacy) but is spread across the whole of Colindale. The Colindale Gardens development itself comprises of only a minority percentage of those total new homes.*

5.1.13 The Colindale Gardens development comprises more than 4,000 new homes in its own right. So whilst this may strictly speaking be a 'minority percentage' of the 10,170 new homes built in Colindale, it is clear that Colindale Gardens is a very significant development.

5.1.14 *• The "improvements to key junctions and roads" is noted and would, it is to be assumed, aid the flow of traffic and pedestrians.*

5.1.15 These improvements would also assumed to be necessary to accommodate the substantial population growth in the area to ensure the flow of traffic and pedestrians is not inhibited as the number of residents increase i.e. is has been a necessary measure. [sic]

5.1.16 *• The provision of improved bus service links is noted and would, it is to be assumed, improve local resident mobility and access to services.*

5.1.17 *• Colindale Library has relocated to premises which are directly opposite my client's pharmacy.*

5.1.18 *• Montrose Playing Fields are located approximately a kilometre to the north west of the Colindale Gardens Development. The Montrose Playing Fields are located within approximately 300m of the Asda store (and pharmacy) and to the west of the railway line that the applicant considers to be a barrier to access.*

5.1.19 *• The new High School (secondary school) is located approximately a kilometre to the north of the Colindale Gardens Development. The Further Education College is located opposite my client's pharmacy (co-located with the library). The new primary school will not open until September 2026, but will be located on the northern edge of the Colindale Gardens Development near to the tube station and my client's pharmacy.*

5.1.20 *• The Health Centre re-provision remains uncertain, but I comment further on this below.*

5.1.21 *• In relation to the parks referred to by the applicant, Colindale Park is located to the west of the railway line that the applicant asserts is a barrier for those in the Colindale Gardens Development; Montrose Park is 1km from the Colindale Gardens Development, again to the west of the railway line; Rushgrove Park is located around 1.5 kilometres from the Colindale Gardens development and*

is to the west of the railway line; Silkstream Park is located approximately 1 kilometre to the north west of the Colindale Gardens Development and is also to the west of the railway line.

5.1.22 *It is accepted that most of the Colindale Gardens Development has been completed, work having started on the development in 2016. Despite the fact that the majority of new residents have moved into the new units (mostly apartments) within the development, my client is not aware of any complaints or concerns being raised by local residents in relation to the provision of pharmaceutical services.*

5.1.23 It is not clear why McParlands would be made aware of dissatisfaction with the current level of pharmaceutical services provision. Our client has made no claims that McParlands are providing a substandard service so there is no reason to think patients would have reason to complain to them. This is a different matter to whether patients believe there is a shortfall in the overall level of service provision across the area.

5.1.24 An analogy would be someone complaining to their nearest Sainsbury's supermarket that there is not a branch of Tesco close to their home.

5.1.25 *In relation to the Colindale ward changes, it is somewhat misleading to suggest that the former Colindale ward was split in half in 2022 and that the combined Colindale North and South wards represent the same area as the former Colindale ward. In fact, when the Colindale ward was split, the ward boundaries of Burnt Oak and Edgware (immediately the north) were also changed so that the areas contained within Colindale North and South wards represent a larger area, in total, than the area of the former Colindale ward.*

5.1.26 It is correct that the boundaries of the two new wards do not correlate exactly with the old ward. However, the differences are very small and it is not at all clear that the total area is larger. The image below [Appendix F for Committee] shows the 2021 ward boundaries (for Colindale North and South) outlined in black / grey superimposed over the 2011 Colindale ward boundary (the area highlighted in yellow). It can be seen that the areas are almost the same.

5.1.27 *In relation to the MSOA Barnet 042, NHS Resolution will note that the administrative boundaries of this MSOA are significantly larger than the Colindale Gardens Development.*

5.1.28 This is correct, although as we have stated above our client does not propose to only provide pharmaceutical services to the residents of Colindale Gardens so the population of the wider area is entirely relevant.

5.1.29 *In relation to the population size, it is noted that this was 9,169 in 2021. It is not accepted that the population would be "significantly higher" now because the Colindale Gardens Development has been ongoing since 2016. The applicant provides no evidence to support this statement.*

5.1.30 A planning application for Phase 3 of the Colindale Gardens Development, comprising an additional 1,200 homes (further to the 2,900 homes for which permission had already been granted) was submitted in December 2019 but not granted until May 2021 (ref Barnet Planning 19/6512/OUT). We have included a copy of this planning approval with this appeal. As the 2021 census was carried out in March 2021 it is clear that these homes had not been constructed at the time of the last census. It is these additional 1,200 homes that have been built and occupied most recently which account for this significant further population growth since the census.

5.1.31 *It is correct that there "is no pharmacy within the boundaries shown", although this is somewhat misleading since my client's pharmacy is on the very edge of the MSOA boundary. I have annotated the applicant's map, below, to show the location of my client's pharmacy (the red dot).*

5.1.32 The information our client provided was entirely accurate and not at all misleading. The map of the Colindale North ward provided in the appeal letter clearly showed that McParlands is close to the ward boundary.

5.1.33 *In relation to "population density", it submitted that this is not unusual for London.*

5.1.34 Helpfully the 2021 census data can be used to calculate population density, in residents per square kilometre (source Nomis), and this is shown in the table below [Appendix F for Committee] which compares the Colindale South ward (where the application site is located) with Barnet and London.

5.1.35 It can be clearly seen that the population density in this ward is very much "unusual for London". The area is more than twice as densely populated as London as a whole (at 12,683 residents per km2 compared to 5,598 per km2 in London) and it is almost three times more densely populated than Barnet as a whole.

5.1.36 *It is correct that the Colindale Gardens Development mostly comprises of apartments. As the applicant correctly states, these tend to be occupied by young professionals (individuals, couples or flat shares) rather than families or older residents.*

5.1.37 Our client's position is that young professionals have as much right as older residents to have reasonable access to pharmaceutical services. Many services, such as the new contraception service, are aimed specifically at this age group and are most effective when the service is easily accessible. Equally public health services and support for self-care are examples of other important services for these residents.

5.1.38 *It is not accepted that the railway line represents a "barrier" to accessing services, because it is artificial to assume that residents would wish to cross the railway line between the M1 and Colindale tube station to make a journey but are unable to do so.*

5.1.39 *By way of example:*

5.1.40 • *It is unnecessary for any person in the Colindale Gardens Development to cross the railway line in order to access pharmaceutical services, because my client's pharmacy is located on the same side of the railway line as the Development.*

5.1.41 • *For those using Colindale tube station, those in the Colindale Gardens Development would walk in a north westerly direction from their home to the tube station – they would have no need to cross the railway line.*

5.1.42 • *The main shopping area in Colindale is located around the junction of Colindale Avenue and the A5/Edgware Road. The natural route for any person in the Colindale Gardens Development to get to central Colindale would be to walk north to Colindale Avenue and then west along Colindale Avenue to the A5/Edgware Road. This would be the same irrespective of where a person lives in the Development. Taking, as a starting point, the location marked by the red star on the applicant's map, below is a google route map image showing the route to central Colindale. As can be seen, there is no significant detour required in order to travel to central Colindale from the proposed*

location by reason of the railway line. It can be seen that the distance is just under 1km.

5.1.43 Within their objection letter to our client's application, McParlands argued that "the existing pharmacy network provides a reasonable choice of service provision" by making reference to, amongst others, the three pharmacies on or close to Edgware Road (Procare Pharmacy, The Hyde Pharmacy and Alpha Pharmacy). These pharmacies are on the opposite side of the railway line from Colindale Gardens and the distance to them is increased significantly due to the lack of railway crossings. It is noteworthy that McParlands now argue that patients have no reason to travel to the area on the opposite side of the railway so appear to accept that these pharmacies are not reasonably accessible. That being the case they do not offer reasonable choice.

5.1.44 *The applicant refers to a "bridge" over the railway line, but there is no bridge as such because the railway line is in a cutting so that, at road level, the route is flat. This is shown in the google streetview image below.*

5.1.45 We are unsure what point is being made here. *Dictionary.com* defines a bridge as follows:

5.1.46 "a structure spanning and providing passage over a river, chasm, road, or the like."

5.1.47 It is not clear what else a structure which supports a road crossing over a railway line might be if it is not a 'bridge'. The image of the bridge below may help. [Appendix F for Committee]

5.1.48 *It is correct that the number of households owning a car or van is lower than national averages. However, the figure (47.9%) of households that do not own a car or van is not dissimilar to London as a whole (42.1%). Given the nature of the Colindale Gardens Development and its residents and the close proximity of the Development to public transport, it is not surprising that car ownership is lower than the England and Wales average, but this does not lead to a conclusion that residents have reduced mobility.*

5.1.49 We accept that car ownership is generally lower in London than elsewhere but it remains the case that it is even lower in Colindale as shown in the figures above. It is a fact that almost half of local residents do not have the option of driving to a pharmacy.

5.1.50 *The applicant states that "A significant number of patients do not have the option of driving to a pharmacy". However, with a pharmacy located within 350m of the Development it is not clear why any patient would need to drive to a pharmacy in any event.*

5.1.51 Patients who wish to exercise choice, if they do not wish to use McParlands for any reason, may find it difficult to do so if they do not have access to a private vehicle.

5.1.52 *For those who wish to use public transport, bus routes 204 and 303 connect the Development to central Colindale with buses approximately every 5 minutes. Bus route 303 goes directly past the Asda pharmacy (and runs every 15 minutes) and bus route 204 has a stop approximately 300m from Asda Pharmacy.*

5.1.53 *In relation to census data regarding the number of residents who have a disability that limits their day-to-day activities, the difficulty the applicant has is that there is no information about the nature of the disability, the extent and nature of the limitation upon their day-to-day activities or their need for*

pharmaceutical services. By way of example, there may be disabilities that limit day-to-day activities but do not directly affect the patient's physical mobility (hearing loss, for example). It is also likely to be the case that those whose mobility is affected have mobility aids, for example a private vehicle or carer support.

5.1.54 Whilst it is clearly impossible to know precisely what disabilities residents may have and how this affects them, it is reasonable to assume the picture is not significantly different to the national picture. We have attached a research document from the UK government regarding disability statistics which states the following (emphasis added): "An estimated 16.0 million people in the UK had a disability in 2021/22. This represents 24% of the total population. The prevalence of disability rises with age: around 11% of children were disabled, compared with 23% of working age adults and 45% of adults over State Pension age. **Mobility is the most frequently reported impairment type (47%), followed by stamina, breathing or fatigue (35%), and mental health (32%)."**

5.1.55 Whilst it is the case that one person may report more than one type of disability (hence the percentages above add up to more than 100%) it is clear that a large proportion of disabled people have impaired mobility or issues relating to stamina or fatigue. It is not unreasonable to assume, therefore, that the majority of the residents with a recognised disability would walking [sic] to a pharmacy more difficult that people without any form of disability.

5.1.56 *The applicant then provides information about hypothetical journeys that patients may make, although the applicant does not appear to have any real life evidence of these journeys, or that patients have any difficulty making these journeys.*

5.1.57 *The applicant refers to journeys to a pharmacy which take the patient via the applicant's proposed pharmacy. It is not at all clear why any patient who requries [sic] access to pharmaceutical services would first need to travel to the applicant's proposed location rather than simply travelling directly to the pharmacy.*

5.1.58 Residents of Colindale Gardens in particular will find that their journey to any pharmacy takes them past, or close to, the location proposed by our client.

5.1.59 *As noted by the applicant, my client's pharmacy is located wihtin [sic] 350 metres of the Colindale Gardens development. Whilst residents will have differing journey lengths depending upon their starting point, none of the distances referred to by the applicant can properly be considered excessive, particularly for the mostly young, professional population living in the Development. For the hypothetical patient living to the south of the Colindale Gardens Development, the applicant notes that it would be a 1km journey to their proposed site (and, presumably, a 2km round trip). It is submitted that any patient who can make that journey (without the benefit of private or public transport) could walk an additional 350m to my client's pharmacy.*

5.1.60 Clearly a smaller proportion of residents will live at the southern tip of the development so the number of people travelling 1km to the proposed location will be relatively small. For many people, particularly those living centrally within Colindale Gardens, a pharmacy at the proposed location will be materially closer to their home than McParlands.

5.1.61 *Put another way, a reduction in journey distance from 1.35km to 1km should this application be granted would not confer a signficant [sic] benefit. Additionally, it is of note that the applicant seeks to assert that residents of the Development would obtain a significant benefit from having a pharmacy that*

may be 1km away from them, but patients cannot reasonably be expected to travel 1km to Asda Pharmacy or 350m to my client's pharmacy.

5.1.62 *In relation to the roundabout junction, it is artifical [sic] to assume that patients would cross at the actual roundabout, because there are pedestrian crossing facilities on Colindale Avenue, Aerodrome Road and Grahame Park Way which would be used depending upon the patient's starting point.*

5.1.63 There are no zebra or light controlled crossings on the Colindale Gardens side of the roundabout highlighted. A person travelling to McParlands from Colindale Avenue who wanted to use zebra crossings would need to walk a further 290m west along Aerodrome Road to find a zebra crossing then 290m east again. There are no lightcontrolled crossings. This can be seen in the image below [Appendix F for Committee] where the route to McParlands from the Colindale Gardens direction along Colindale Avenue using the zebra crossings is shown by the green arrows.

5.1.64 *No evidence is provided by the applicant that residents of the Development currently experience any difficutlies [sic] accessing pharmacies, whether my client's pharmacy, Asda Pharmacy or any other local pharmacy.*

5.1.65 *The applicant states that "A walk of 1.1km for 15 minutes within a densely populated area of London would not be considered by most patients as a reasonable journey to make to access a community pharmacy". Not only is there no evidence to support this statement and, it is to be assumed, the same could be said of people moving into the southern end of the Development and the distance from their homes to the proposed location, but this is not the relevant regulatory test to be applied to this application. For the avoidance of doubt, patients are not required to make a "return journey" of more than 2.2km to access a pharmacy, since they can access my client's pharmacy which is much closer for the majority of residents in the Development. Patients may chose to access the Asda Pharmacy (for example, whilst accessing the other shops and services on the A5/Edgware Road) or another pharmacy (for example near to their place of work). For those accessing Asda Pharmacy, as stated above, patients can travel by bus should they wish to do so.*

5.1.66 *Patients do not need to use the traffic island to cross the Edgware Road because there is a traffic light controlled crossing point at the junction of Colindale Avenue and Edgware Road as shown in the google streetview image below.*

5.1.67 *There is also another traffic light controlled crossing point at the junction of Grove Park and Edgware Road between the Asda Pharmacy and the junction of Colindale Avenue and Edgware Road.*

5.1.68 *It is not clear why the applicant considers that pedestrians travelling from the Colindale Gardens Development, who would pass both of these crossings on the way to Asda, would need to use the traffic island referred to in the letter of appeal.*

5.1.69 Within their objection letter to our client's application McParlands illustrated the shortest route between Colindale Gardens and Asda. The point made in our client's appeal was that if a patient wants to use the route illustrated then they will be required to cross Edgware Road using the traffic island. If they wish to use either of the lightcontrolled crossings referred to then they will take a different route, joining Edgware Road further south, which will make the journey longer.

5.1.70 *In relation to the three other pharmacies referred to in the letter of appeal, as the applicant correctly notes, distances will vary depending on a person's*

starting point. By way of example, patients who are registered with the Colindale Medical Practice may choose to access one of the pharmacies on Edgware Road as they are only around 400m from the GP surgery.

5.1.71 *The applicant appears to attempt to introduce the concept of "neighbourhood" into its letter of appeal, but this no longer forms part of the relevant regulatory framework. It is also an artificial assertion by the applicant, because this is not a self-contained community.*

5.1.72 It was clear from appeal letter that the term neighbourhood was being used in the common language sense rather than regulatory sense. We disagree with the assertion that there is not a self-contained community at the proposed location.

5.1.73 *Whilst it is not entirely clear, the applicant appears to assert that my client's pharmacy is the sole pharmacy providing pharmaceutical services to a population of 20,000, but this is incorrect because patients are exercising a choice to access pharmaceutical services from a wide number of pharmacies, both locally and further away.*

5.1.74 The assertion made was that there was one pharmacy located **within** in an area with a population of 20,000. Whilst this may not necessarily mean that all patients within that area access pharmaceutical services from that pharmacy, it is a statement of fact that demonstrates the relative lack of provision.

5.1.75 *By way of example, there is one GP surgery in the "neighbourhood" referred to by the applicant: The Everglade Medical Practice. My client's pharmacy is the closest pharmacy to the Everglade Medical Practice (approximately 600m away), yet dispenses only a third of items prescribed by the Practice.*

5.1.76 *Of the remainder:*

5.1.77 *• 12% are dispensed by Jade Pharmacy in Burnt Oak even though it is 1.8km from the Practice (a distance that the applicant asserts no-one in this part of London would choose to travel).*

5.1.78 *• Another 12% are dispensed by Pharmco Pharmacy which is 1.9km to the north of the Medical Practice.*

5.1.79 *• 6% of items from the Practice are dispensed by the Asda Pharmacy on Edgware Road*

5.1.80 *• 3% of items are dispensed by the Boots Pharmacy in Edgware, even though that is 3.5km from the Medical Practice.*

5.1.81 *It is therefore clear that the local population does not consider that it has only 1 pharmacy to provide pharmaceutical services to it and that there is, in fact, a reaosnable [sic] choice of pharmaceutical service provision in the HWB's area.*

5.1.82 *In terms of the "sparse provision of services in the area our client has highlighted", this is more a function of the fact that this is a largely residential area and pharmacies are, naturally, more likely to be located in central locations, such as shopping areas.*

5.1.83 We disagree with this assertion. Not only does the area in and around Colindale Gardens have a wide range of amenities serving the local community, the majority of *community* pharmacies are located where people live rather than necessarily in shopping areas.

5.1.84 *In relation to the PNA, the relevant Pharmaceutical Needs Assessment in respect of this application is the 2022 Barnet PNA. The application site is within the Hendon locality of the PNA.*

5.1.85 *The PNA has regard, at page 83, to the latest available estimate for the population of Barnet generally and the Hendon locality specifically. The PNA notes that the overall population is projected to grow by 14,500 (4%) over the lifetime of the PNA, which is the same as the average anticipated population increase for England. For Hendon, the PNA notes that, during the lifetime of the PNA, the population of the Hendon locality is likely to increase by approximately 5,000, or 3.4%.*

5.1.86 *The figures referred to by the applicant in terms of population growth both in Colindale specifically and in the HWB's area more generally are therefore already considered in the 2022 PNA. That population growth is similar to that expected for England as a whole.*

5.1.87 *The PNA considers the Hendon locality at section 6.2.3, from pages 80 to 86. The PNA considers local health needs, projected population growth, the location of existing pharmacies, the services provided by existing pharmacies and the opening hours of those pharmacies. The PNA concludes that no gaps in the provision of pharmaceutical services (either current or future) are identified.*

5.1.88 As we have discussed in previous submissions, the population growth within Colindale as a percentage far outstrips the rate of population growth in Hendon overall that is referred to within the PNA. We contend that the PNA did not specifically consider the effect of the substantial housing development within Colindale Gardens in particular, but also the Colindale area generally, which accounts for the vast majority of the residential growth for the whole of Hendon.

5.1.89 *The matters raised by the applicant in its application form are therefore not unforeseen in the context of the 2022 PNA.*

5.1.90 We disagree and have addressed this point in response to the ICB's comments.

5.1.91 *In relation to the distance to existing pharmacies, it appears from its decision that NHS England was seeking to provide a broad outline of pharmaceutical service provision in the local area by reference to pharmacies within a given radius. It is, of course, the position that straight line measurements may not accurately represent the distance to be travelled by road or footpath. However, the distances in this case are short (starting from 350m to a pharmacy) and the applicant has provided no evidence that those who share a protected characteristic and who require access to pharmaceutical services currently find access difficult.*

5.1.92 *In terms of whether patients have a reasonable choice of service provision, it is clear from the available evidence that there is a reasonable choice of service provision and that patients are exercising a choice. Since the question of whether patients have a reasonable choice is by reference to the HWB's area, it is artificial of the applicant to create a "neighbourhood" and to assert that there is only one pharmacy within that "neighbourhood" so that there is no reasonable choice. This entirely disregards the realistic position that patients can and do access a wide range of pharmacies as they go about their daily lives and misapplies the relevant regulatory test.*

5.1.93 The matter of choice was addressed within our client's appeal, and we have nothing further to add on that matter.

5.1.94 *By way of a further example to support the above, my client's pharmacy dispenses an average of around 7,500 items per month, which is broadly in line with the average in England for a pharmacy. It is asserted that the dispensing volumes for my client's pharmacy would be far higher were it have a "captive audience" of 20,000 patients with no choice but to use its pharmacy.*

5.1.95 As we have no information about how McParlands choose to operate their pharmacy we cannot comment on why their dispensing levels might be lower than expected given the size of the relevant population. However, it is also important to be mindful that the dispensing of prescriptions is only one type of pharmaceutical service. The accessibility of pharmaceutical services provision must be considered in the context of all the services a community pharmacy can offer, many of which may be opportunistic, relying on residents who might access the pharmacy to buy OTC products, for example, but then receiving other services such as public health advice or immunisations on a 'walk-in' basis.

5.1.96 *The applicant refers to the possible relocation of the Everglade Medical Practice. Even if that were to go ahead (and there is no documentary evidence provided with the letter of appeal), it would merely bring the Medical Practice closer to a pharmacy (my client's pharmacy) than it is at its current site (as detailed above). It would not result in any increase in demand for pharmaceutical service provision.*

5.1.97 It remains the case that plans are well advanced for the relocation of this medical centre to Colindale Gardens. A pharmacy within the development would ensure that patients attending the medical centre have easy access to pharmaceutical services following an appointment. However, it is also important to note that the need for pharmaceutical services provision at this location is clear, regardless of the medical centre opening.

5.1.98 *The applicant states that it believes that the "list size will increase substantially" due to housing developments, but most of that development has already taken place, and it will have been completed by the time the Medical Practice relocates (if it ever does). The more likely position is that new residents of the Colindale Gardens Development have already registered with a GP and it is therefore not at all clear why the Everglade Medical Practice's patient list size would increase significantly in the future.*

5.1.99 As already discussed by McParlands, the Everglade Medical Practice is currently located some distance away from Colindale Gardens. Our client's assertion is that it is inevitable that a significant number of residents of this development, who may currently be registered with GPs elsewhere, will choose to register with this practice once its premises are located within the development.

5.1.100 *The applicant states that "there will clearly be great benefits to patients attending this new medical centre if they are able to access a pharmacy at the same location", but the applicant does not propose to open within the new medical centre according to the maps that it has supplied in its letter of appeal.*

5.1.101 This application is for a best estimate of location which includes premises very close to the proposed medical centre.

5.1.102 *In conclusion, on behalf of my client I invite NHS Resolution to find that the applicant has failed to demonstrate that granting its application would meet the relevevant [sic] regulatory test. I therefore invite NHS Resolution to dismiss the appeal and to refuse the application.*

5.1.103 Clearly, we disagree and assert that our client has provided evidence that the relevant regulatory tests have been met. We look forward to hearing the outcome of this appeal in due course."

6 Consideration

6.1 The Pharmacy Appeals Committee ("the Committee"), appointed by NHS Resolution, had before it the papers considered by the ICB 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 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations").

Regulation 31

6.5 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).

6.6 The Committee noted that the Applicant had stated in the application form that "*There is no other pharmacy in close proximity*". The ICB determined that Regulation 31 is not engaged as there are no other pharmacies in the immediate vicinity. In the absence of dispute from other parties on this matter, the Committee was satisfied that it was not required to refuse the application under the provisions of Regulation 31.

6.7 The Committee noted that, if the application were granted, the successful applicant would - in due course - have to notify the ICB 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

6.8 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)."

6.9 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.

6.10 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 Pharmaceutical Needs Assessment (PNA) in accordance with paragraph 4 of Schedule 1 of the Regulations.

6.11 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).

6.12 The Committee considered the relevant PNA prepared by Barnet Health and Wellbeing Board, 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 2022 and that a supplementary statement had been issued June 2023.

6.13 The Committee noted mention of the 2018 PNA within the decision report and comments, but there were no arguments to suggest that this PNA should be considered rather than the 2022 PNA. The Committee has therefore had regard only to the 2022 PNA, being the PNA in force at the time of application.

6.14 The Committee noted that Barnet had been divided into three localities and the Colindale South Ward, as referred to by the Applicant, is within the Hendon Locality.

6.15 The Committee had regard to section 6.2.3.2 of the PNA at page 80 which concerns services in Hendon and states:

6.15.1 ***"6.2.3.2 Necessary Services: gaps in provision***

6.15.2 There is a projected growth in population in the locality over the lifetime of the PNA, which is the largest of any locality in Barnet, although it should not make a material difference in terms of overall access to services; the ratio of community pharmacies per 100,000 population would drop to 17.6 with this population growth.

6.15.3 Projected population changes:

Locality	***2022***	***2025***	***Change***
Hendon	*148,437*	*153,558*	*5,121 (3.4%)*

6.15.4 There are pharmacies open beyond what may be regarded as normal hours in that they provide pharmaceutical services during supplementary hours in the evening during the week and are open on Saturday and Sunday. There are a significant number of community pharmacies within easy reach in neighbouring localities and HWBs.

6.15.5 The travel times to community pharmacies within the locality are relatively short i.e. 100% of the population can reach a community pharmacy within a 10-minute drive (99.9% within 25 minutes walking) demonstrating good access to pharmaceutical services.

6.15.6 Generally, there is good provision of ***Necessary Services*** *across the whole locality to ensure the continuity of provision to any potential new developments.*

6.15.7 Barnet HWB will continue to monitor pharmaceutical service provision to ensure there is capacity to meet potential increases in service demand.

6.15.8 ***No gaps in the provision of Necessary Services have been identified for Hendon locality.*****"**

6.16 The Committee also had regard to the conclusion at 6.2.3.4 at page 82 which states:

6.16.1 "***There is reasonable provision and access to each of the relevant services within Hendon. The HWB would like to see improved coverage by more of the existing network of community pharmacies signing up to services supported by commissioners and providers to secure improvements or better access."***

6.17 The Committee considered the comments from the parties as to 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.

6.18 The ICB states in the decision report that "*Neither PNA lists the developments that it has included in its assessments, but has indicated the areas where the population will increase over the span of the PNA, It is difficult to be completely certain, but as the Colindale area has been a major development for many years and certainly when the 2018 PNA was written, the ICB can conclude that the development was considered*

when the PNA was developed." The ICB considered that "*The improvements or better access that the Applicant was claiming would be secured by its application were included in the relevant pharmaceutical needs assessment in accordance with paragraph 4 of Schedule1. However, the ICB agrees that this is not a clear statement of fact.*" The ICB finally concluded that the application would therefore not need to be assessed in accordance with Regulation 18(2).

6.19 H.A.McParland Ltd comments that the PNA had regard to the latest population estimates for Barnet and the Hendon locality specifically and the estimated population growth. It contends that the figures referred to by the Applicant have therefore already been considered in the PNA.

6.20 The Committee noted the Applicant's comments in response, including that "… *there is no mention of this development within the current PNA and therefore it is not included in the PNA in the context of Regulation 18(1)(b) regardless of whether or not the authors of the PNA were aware of the development. It is not for the decision makers to guess what the authors of this document had in their minds when it was drafted. Instead they are required to have regard to what is actually stated within the PNA.*"

6.21 Paragraph 4 relates to a statement in the PNA relating to securing improvement or better access, either currently or in specific future circumstances. The Committee was of the view that whilst there were general references to ongoing developments and population growth in the Hendon locality, there was nothing in the wording of the PNA that specifically referred to securing improvements or better access for patients in the Colindale area.

6.22 The Committee noted that the Applicant seeks to provide unforeseen benefits to the patients of the Colindale area. The Committee considered 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.

6.23 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)

6.24 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"

6.25 In its decision report the ICB commented that there are 21 pharmacies within 2km of the proposed site as the crow flies and determined that the granting of this application may result in the over provision of essential services in the area. The ICB concluded however that there was no evidence that any detriment would be significant. On appeal the Applicant notes that the ICB has provided no evidence of any detriment and has failed to properly consider the matter. The Committee noted that there were no comments from other parties. The Committee was of the view that the number of pharmacies within a particular radius alone does not provide a sufficient basis by which to conclude that granting the application would cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area.

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

6.27 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)

6.28 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"

6.29 The ICB considered in the decision report that the issues it considered regarding Regulation 18(2)(a)(i) above applied equally to this Regulation, but that it was not satisfied that significant detriment would result. The Committee noted that there were no comments from other parties on the matter.

6.30 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.

6.31 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).

6.32 **Regulation 18(2)(b)**

6.33 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)

6.34 The Committee noted that the proposed pharmacy is to be located within the Colindale Gardens development in the Hendon locality of Barnet, as indicated by the shaded

area on a map submitted with the application. The Committee also had regard to the map provided by the ICB showing the location of the proposed site, together with the locations of existing pharmacies and GP surgeries in the local area. The Committee noted that this had not been disputed by parties.

6.35 The Committee noted that background to the ongoing developments in the Colindale area had been provided by the Applicant. The Applicant has quoted some key facts from the Barnet Council website indicating that there would be 10,170 new homes across various sites, improvements to key roads and junctions, redevelopment of Colindale tube station, improved bus service links amongst other improvements. The Committee noted the Applicant's comment that the majority of the new homes have now been completed and occupied, resulting in a substantial increase to the population in Colindale. The Committee had regard to the 2021 Census figures provided by the Applicant, noting the comment that Colindale had been separated into two wards due to the population growth. The Committee noted that the proposed site is located within the Colindale South ward which had a population of 9,169 at the time of the Census, which the Applicant states will have increased since due to the ongoing development. The Committee noted H.A.McParland's comments that the development at Colindale Gardens has been happening for many years and is now nearing completion, also that it sits within an established suburban area with a range of shops and services to meet the need of residents. The Committee was mindful that even if there is an increase in population, this does not automatically lead to the requirement to grant an application and went on to consider access to the existing pharmacies.

6.36 The Committee had regard to the location of existing pharmacies as shown on the map provided by the ICB and noted that the nearest pharmacy to the proposed site is H.A.McParland on Grahame Park Way. The Committee noted comments that this pharmacy is approximately 350 metres from the Applicant's proposed site. The Applicant comments that the distance could be up to 1km greater depending on where a patient lives in the Colindale Gardens development, although they also acknowledge that a smaller proportion of residents will live at the southern tip of the development, so that the number of patients travelling an extra 1km would be relatively small. The Committee did not consider the distance involved to be excessive for those who are willing and able to walk and was mindful in any case that distance of itself does not necessarily lead to the conclusion that a pharmacy is difficult to access.

6.37 H.A.McParland comments that the journey to its pharmacy is along footpaths which are in good order and that it involves "*only relatively quiet roads to cross via dropped kerbs*". The Committee noted the Applicant's comment that the journey to H.A.McParland involves crossing a busy roundabout with no light-controlled or zebra crossings. Having regard to the Google image of the roundabout supplied by the Applicant, the Committee noted that there is a pedestrian island to aid crossing the roundabout at Aerodrome Road, with zebra crossings and a pedestrian island by which to cross Grahame Park Way. The Committee also noted H.A.McParland's comment that there are pedestrian crossing facilities on Colindale Avenue, Aerodrome Road and Grahame Park Way which could be used depending on a patient's starting point. The Committee noted the Applicant's comments in response that there is a zebra crossing on Aerodrome Road but that this would lengthen the journey for those wishing to use it. The Committee was mindful that this would also depend on a patient's starting point. The Committee saw no information by which to consider access by bus or private transport to H.A.McParland pharmacy, although was mindful that due to the short distance involved patients were most likely to walk in order to access this pharmacy.

6.38 The Committee noted the Applicant's view that the journey to other pharmacies to the south-west of the railway line is lengthy and convoluted for many residents of Colindale Gardens, because of the need to cross the railway line via the bridge at Colindale tube station. Having regard to the image of the bridge provided by H.A.McParland, the Committee noted that the pavements are level with railings to protect pedestrians plus the presence of a traffic light controlled crossing. The Committee was satisfied that the bridge in itself does not constitute a barrier to access, although it accepted that the lack

of other crossings over the railway line in the area would mean differing journey lengths, depending on a patient's starting point. The Committee went on to consider access to those pharmacies to the south/south-west of the railway line.

6.39 The Committee noted the location of Asda Pharmacy on Edgware Road and had regard to H.A.McParland's comments that it is a distance of 1.1km from the proposed site – "*an easy and straightforward walk of less than 15 minutes along Colindale Avenue then north up Edgware Road"*. They also comment that ProCare Pharmacy is a similar distance of 1.1km, with the Hyde Pharmacy and Alpha Pharmacy at 1.2km. The Applicant comments that the distance would be greater for patients living further to the south of the development and that walks of these distances "*within a densely populated area of London would not be considered by most patients as a reasonable journey to make to access a community pharmacy*". The Committee did not consider that there is a particular distance alone over which a journey becomes unreasonable, and had regard to other relevant factors for those accessing services on foot. The Committee noted that there was no dispute regarding comments that the journeys are along level terrain with well-lit footpaths in good order.

6.40 The Committee noted that there is disagreement as to whether there are suitable convenient crossing points on Edgware Road in order to access Asda Pharmacy, with the Applicant pointing out that in order to use a traffic light controlled crossing on the route provided by H.A.McParland [Appendix C], patients would need to walk south down Edgware Road to access the crossing, thereby lengthening their journey. Otherwise they would need to use just a traffic island in order to cross. In response H.A.McParland provide an image of a traffic light controlled crossing at the junction of Colindale Avenue and Edgware Road. The Committee noted that using this crossing would involve walking a slightly different route to that shown on the map they had originally provided i.e. straight along Colindale Avenue to Edgware Road, but that the distance involved did not look substantially different.

6.41 The Committee went on to consider access by public transport. The Committee noted that according to H.A.McParland there are several bus routes connecting Colindale Gardens with the surrounding area. The Committee noted that bus route 303 stops at Asda with services running approximately every 15 minutes, and route 204 stops 300 metres away. Routes 632 and 642 connect the proposed location to the pharmacies further south on Edgware Road with services running approximately every 5 minutes. The Committee noted that there was no dispute in this regard. The Committee also noted that improved bus service links were to be incorporated as part of the regeneration and growth programme in Colindale, according to the Barnet Council website.

6.42 The Committee noted the figures regarding car ownership provided by the Applicant which indicated that nearly half of residents in the Barnet Super Output Area, which includes the proposed site, do not own a car. The Committee considered that this did not seem unusual given the location and it was reasonable to conclude that many residents would be accustomed to either walking or using public transport. For those with access to a car, the Committee noted comments that there is on-street parking outside H.A.McParland, a large multi-storey car park at Asda and on or off-street parking nearby Procare, The Hyde and Alpha Pharmacies. The Committee noted that there was no dispute on this matter.

6.43 The Committee noted comments that existing pharmacies are located close to shops and other amenities, for example Asda Pharmacy within Asda supermarket and adjacent to Morrisons Supermarket, being the closest supermarkets to Colindale Gardens. The Committee also noted that Edgware Road is considered a "town centre" location with the area's main shops and other services. The Committee noted the Applicant's comments that H.A.McParland's Pharmacy serves its own residential population and that the fact that shops and restaurants are planned as part of the development supports its view that patients at Colindale Gardens will not be expected to access amenities near H.A.McParland's. The Committee saw no information to

persuade it that the amenities available at Colindale Gardens would be such that residents would not need to leave the development on a regular basis in order to access a wider range of amenities, whilst at leisure or commuting for work.

6.44 Taking the above into account, 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.

6.45 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. The Committee noted that in the application the Applicant had mentioned the elderly, less-abled and families with young children. On appeal, the Applicant has also highlighted those with a disability, providing 2021 Census statistics indicating that nearly 1,000 people in the Barnet Super Output Middle Layer (which includes the Colindale Gardens development) have a disability which limits their daily life a little or a lot. The Applicant comments that those with a disability will be adversely affected where a journey is lengthy or the route is challenging. The Committee noted H.A.McParland's response that no information has been provided regarding the nature of the disabilities, and that there are disabilities that do not affect a person's mobility e.g. hearing loss. The Applicant has provided a copy of a report regarding disability in the UK, however the Committee was mindful that this contains no specific information by which to consider disability in the area of the proposed location.

6.46 The Committee considered that the issues of general needs and difficulties have already been addressed above in the context of access and choice. The Committee was of the view that the Applicant had not identified any specific services which those with a protected characteristic are having difficulty accessing. 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.

6.47 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 no information had been provided to suggest that any innovative approaches would be taken with regard to the delivery of pharmaceutical services. The Committee was therefore 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

6.48 The Committee noted the Applicant's proposed core opening hours which are 9am – 1pm and 2pm – 6pm Monday to Friday and 9am – 12noon on Saturday. The total proposed hours including supplementary hours are 9am – 7pm Monday to Friday and 9am – 3pm on Saturday. The Committee also had regard to the opening hours of H.A.McParland and Asda pharmacies. The Committee noted that the proposed hours do not provide any advantage over the opening hours already provided by the two nearest pharmacies. The Committee was of the view that no information had been 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.

6.49 The Committee noted the Applicant's comments regarding a potential new health centre in the development in order to re-house the Everglade Medical Practice which is currently based at The Concourse, Grahame Park Estate at point B on the map provided by the ICB. The Barnet Council website identifies "health centre re-provision" as part of the regeneration and growth programme in Colindale. The Committee noted parties' comments that there are no firm plans for a new health centre on the Colindale Gardens development. The Committee also noted H.A.McParland's comment that, if the health centre were to be re-located to Colindale Gardens, it would be closer to H.A.McParland pharmacy. In response the Applicant states that Grahame Park Health Centre is subject to a Compulsory Purchase Order ("CPO") as part of the wider regeneration plan and has provided a copy of the Barnet Local Authority 'statement of reasons' regarding the CPO which indicates that it is anticipated that the health centre will relocate to Colindale Gardens. The Applicant further comments that it has been informed by the developers of the Colindale Gardens scheme that heads of terms have been agreed in respect of the lease of premises for the health centre. The Committee noted that no documentary proof had been provided to confirm this. The Committee was mindful that it had already determined that there is a reasonable choice with regard to obtaining pharmaceutical services and whilst there is an element of convenience to a pharmacy located nearby a GP surgery, it is not a determining factor, particularly where there is uncertainty as to the re-location of the health centre.

6.50 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.

6.51 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

6.52 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).

6.53 No deferral or refusal under Regulation 18(2)(f) was required in this case.

6.54 The Committee had regard to Regulation 18(2)(g) and found no reason that required it to refuse the application under this regulation.

6.55 The Committee considered whether there were any further factors to be taken into account and concluded that there were not.

6.56 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.

6.57 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:

6.57.1 confirm the Commissioner's decision;

6.57.2 quash the Commissioner's decision and redetermine the application;

6.57.3 quash the Commissioner's decision and, if it considers that there should be a further notification to the parties to make representations, remit the matter to the Commissioner.

6.58 Given that it had reached a different conclusion with regard to Regulation 18(1)(b) and in view of a general lack of reasoning in the ICB's decision, the Committee determined that the decision of the ICB must be quashed.

6.59 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 the Commissioner) or whether it was preferable for the Committee to redetermine the application.

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

6.61 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 the ICB, 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