

24 April 2024

FILE REF: SHA/26145

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

DECISION MAKING BODY: NHS Hertfordshire & West Essex
Integrated Care Board (“the
Commissioner”)

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

PHARMACIST: Novuspharma (UK) Ltd t/a Bancroft Pharmacy
(FVM52) (“the Applicant”)

PREMISES: 41 Bancroft, Hitchin, Hertfordshire
SG5 1LA

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

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

Outcome

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

A copy of this decision is being sent to:

Novuspharma (UK) Ltd t/a Bancroft Pharmacy
NHS Hertfordshire & West Essex Integrated Care Board

Advise / Resolve / Learn

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

1 Introduction

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

2. Consideration

Rights of appeal

- 2.1 Where the Commissioner has determined an application under paragraph 26 of Schedule 4 of the Regulations and has granted it in part only or has taken an action that has the effect of refusing it, paragraph 26(9) provides a right of appeal to the Secretary of State for Health and Social Care (“the Secretary of State”).
- 2.2 The Secretary of State has directed NHS Resolution to determine such appeals. As an authorised officer of NHS Resolution, I have considered the appeal and have determined it, in accordance with my delegated powers.

Opening hours

- 2.3 A pharmacy's opening hours may be categorised as:
- 2.3.1 “core opening hours” (at the hours during which the pharmacy must be open by virtue of paragraph 23(1) of Schedule 4 of the Regulations), which may incorporate a direction of the Commissioner requiring fewer or greater than 40 hours and at set times and days; or

- 2.3.2 “supplementary” opening hours (other hours during which the pharmacy premises are open which are in addition to the core hours), pursuant to paragraph 23(3) of Schedule 4 of the Regulations.

Alteration of core opening hours

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

Alteration of supplementary opening hours

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

The Applicant's proposals

- 2.9 The Applicant in its application indicates that it currently has core opening hours totalling 40 hours per week.
- 2.10 The Applicant wishes to:
- 2.10.1 open half an hour later in the morning Monday to Friday;
- 2.10.2 close one hour later for lunch on the above days; and
- 2.10.3 close altogether on Saturdays.

Assessment

- 2.11 In this case, the Applicant provided the following information in its application form and supporting information dated 29 August 2023:
- 2.11.1 “This is an application to permanently change core opening hours.
- 2.11.2 Current opening hours for these premises:

Monday	08:30 – 12.00
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	14.00 – 18.00
Tuesday	08:30 – 12.00
	14.00 – 18.00
Wednesday	08:30 – 12.00
	14.00 -18.00
Thursday	08:30 – 12.00
	14.00 – 18.00
Friday	08:30 – 12.00
	14.00- 18.00
Saturday	08:30 – 11.00
Sunday	Closed

2.11.3 Proposed core opening hours for these premises:

Monday	09.00 – 13.00
	14.00 – 18.00
Tuesday	09.00 – 13.00
	14.00 -18.00
Wednesday	09.00 – 13.00
	14.00 – 18.00
Thursday	09.00 – 13.00
	14.00 – 18.00
Friday	09.00 – 13.00
	14.00 – 18.00
Saturday	Closed
Sunday	Closed

2.11.4 If this is a permanent change, please state below the date from which you would like the change to take effect:

2.11.4.1 4/10/23

2.11.5 Reducing opening hours to Monday to Friday to increase financial viability of pharmacy, on Saturdays service users will be redirected to either Bells chemist which is 0.1miles away approximately 2 min walk or Nucross Pharmacy 0.2miles which is approximately 3 minutes according to google maps.”

2.12 In a letter to the Applicant dated 4 January 2024 the Commissioner stated:

2.12.1 “The Pharmaceutical Services Regulations Committee (hereafter referred to as “the Committee”) considers all pharmaceutical services applications on behalf of NHS Hertfordshire & West Essex ICB on behalf of all six ICBs in the East of England region, in accordance with the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 as amended (hereafter referred to as “the Regulations”).

2.12.2 The Committee considered this application under Schedule 4, Part 3, paragraph 24 and 26 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (as amended).

2.12.3 This application was considered under Regulation 26(1)(b)

2.12.4 The current 40 core hours are:

Current

40:00 5:00

	S1	C1	S2	C2	S3	C3
Mon		08:30 12:00	13:00 14:00	14:00 18:00		
Tues		08:30 12:00	13:00 14:00	14:00 18:00		
Weds		08:30 12:00	13:00 14:00	14:00 18:00		
Thurs		08:30 12:00	13:00 14:00	14:00 18:00		
Fri		08:30 12:00	13:00 14:00	14:00 18:00		
Sat		08:30 11:00				
Sun						

2.12.5 Total 40 core hours per week.

2.12.6 The applicant proposed 40 core hours as below:

Proposed

40:00 5.00

	S1	C1	S2	C2	S3	C3
Mon		09:00 13:00	13:00 14:00	14:00 18:00		
Tues		09:00 13:00	13:00 14:00	14:00 18:00		
Weds		09:00 13:00	13:00 14:00	14:00 18:00		
Thurs		09:00 13:00	13:00 14:00	14:00 18:00		
Fri		09:00 13:00	13:00 14:00	14:00 18:00		
Sat						

Sun						
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2.12.7 Total 40 core hours per week.

2.12.8 The current core and supplementary hours have been confirmed as correct in line with the pharmaceutical list and the current overall opening hours agree with the hours listed on NHS.UK.

2.12.9 The Committee noted the proposed change will remove the core hours on a Saturday and redistribute the hours during the week.

2.12.10 In accordance with the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 as amended, Schedule 4, Part 3, paragraph 26(2) the pharmacy...

“...must provide the NHSCB with such information as the NHSCB may reasonably request in respect of the matters that NHS England must seek to ensure pursuant to paragraph 24(1).”

2.12.11 The Committee considered Schedule 4, Part 3, paragraph 24(1) of the Regulations.

2.12.12 The Committee noted information has been provided and is as follows:

2.12.12.1 Reducing opening hours to Monday to Friday to increase financial viability of pharmacy, on Saturdays service users will be redirected to either Bells chemist which is 0.1miles away approximately 2 min walk or Nucross Pharmacy 0.2miles which is approximately 3 minutes according to google maps.

2.12.13 Further information was received on 20/10/23:

2.12.13.1 The current service provision is underutilized with minimal service provision provided on Saturday at Bancroft, current service provision can and will be maintained by Bells chemist or Nu cross chemist which are both located close by (see previous application), these should easily be able to maintain adequate service provision for the local population.

2.12.14 The Committee noted the nearest pharmacy and surgery opening hours by the most practicable route. Details were disseminated to all members and attendees prior to the meeting.

2.12.15 It was noted there are 5 pharmacies within a 1.3 mile radius, open similar hours. The committee noted 3 of these have opening times of 08.30 or 08.45 on weekdays, however these opening hours are supplementary hours which may be withdrawn at any time with the required notice. The 5 pharmacies are all open on Saturdays, however only 2 have core opening hours on a Saturday which cover the hours of 9am – 5.00pm between them.

2.12.16 The numbers of prescriptions dispensed by those nearest to the applicant during the month of June 2023 was shared with the Committee prior to the meeting.

- 2.12.17 The Committee noted that information as to what days of the week and what times the prescriptions were dispensed was not available, however it did show a good comparison against the other pharmacies in close proximity.
- 2.12.18 It is noted there are 4 surgeries within a 1.3 mile radius.
- 2.12.19 The Committee noted any needs, improvements or better access that are included in the latest PNA for the area within which the contractor's premises are located. No gaps have been identified in [sic] North Hertfordshire locality for the provision of Necessary Services.
- 2.12.20 The Committee noted that no temporary suspension of services have been reported from the applicant or nearest pharmacies since October 2022.

Decision

- 2.12.21 The Committee refused the application, and the rationale for their decision is outlined below:
 - 2.12.21.1 The applicant has not provided an assurance that the days and times at which pharmacy premises are open for the provision of pharmaceutical services in the area in which the premises that are the subject of the direction are located are such as —
 - 2.12.21.2 (a) to maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises; or
 - 2.12.21.3 (b) to maintain a sustainable level of adequate service provision for the people in that area or other likely users of the pharmacy premises, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome.
- 2.12.22 The Committee agreed that as the application has been refused, appeal rights are granted to the applicant, Novuspharma (UK) Ltd.
- 2.12.23 Therefore, you are expected to be open as follows: -
- 2.12.24 <Enter details here>
- 2.12.25 You have the right of appeal to the Secretary of State against our decision. Should you choose to appeal, then you should send in writing a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this letter to:
- 2.12.26 nhsr.appeals@nhs.net or

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

- 2.13 In an email to NHS Resolution dated 19 January 2024 the Applicant stated:
 - 2.13.1 "We wish to appeal the decisions made by The pharmaceutical services regulation committee on behalf of Hertfordshire and west [sic] Essex ICB, for

two pharmacies Bancroft pharmacy FMV52 and Queen square pharmacy FRT79 whom applied to permanently change their core hours which was subsequently refused. I will list concise and reasoned statement for each pharmacy. [The appeal as it relates to Queen Square pharmacy FRT79 - Our ref SHA/26146 was closed on 6 February 2024 as the appeal had been submitted out of time.]

FMV52

- 2.13.2 **Bancroft pharmacy** a vital and valuable resource used by the local population. Reducing opening hours to Monday to Friday to increase financial viability of pharmacy, on Saturdays service users will be redirected to either Bells chemist which is 0.1miles away approximately 2 min walk or Nucross Pharmacy 0.2miles which is approximately 3 minutes according to google maps.
- 2.13.3 We would like to note there are 5 pharmacies within a 1.3 mile radius, open similar hours. The 5 pharmacies are all open on Saturdays, however only 2 have core opening hours on a Saturday which cover the hours of 9am – 5.00pm between them. This will ensure maintenance of adequate pharmaceutical services for the local population on Saturdays.
- 2.13.4 The current service provision is underutilized with minimal service provision provided on Saturday at Bancroft, current service provision can and will be maintained by Bells chemist or Nu cross chemist which are both located close by, these should easily be able to maintain adequate service provision for the local population.
- 2.13.5 Bells Chemist is owned by the same parent company and is open 9.00 to 17.00 on Saturdays and is only located 0.1miles away and will maintain a sustainable level of adequate service provision for the local population on the weekend.
- 2.13.6 In the latest PNA for the area within which the premises are located. No [sic] gaps have been identified in the locality for the provision of Necessary Services.
- 2.13.7 If you require any further information concerning either of the pharmacies please do not hesitate to contact me.”
- 2.14 In a letter to NHS Resolution dated 4 March 2024 the Commissioner stated:
 - 2.14.1 “Please note that from the 01 April 2023, community pharmacy contracting and commissioning has been delegated to Integrated Care Boards (ICBs). Hertfordshire and West Essex (HWE) ICB are hosting the function on behalf of the six East of England ICBs.
 - 2.14.2 Please find below information we wish to be considered in relation to Novuspharma (UK) Limited in respect of Bancroft Pharmacy.
 - 2.14.3 **SHA/26145 - NOVUSPHARMA (UK) LTD T/A BANCROFT PHARMACY (FMV52) - APPLICATION TO PERMANENTLY CHANGE CORE OPENING HOURS AT 41 BANCROFT, HITCHIN, HERTFORDSHIRE SG5 1LA.**
 - 2.14.4 Having reviewed the grounds of the appeal and the information provided by Novuspharma (UK) Limited T/A Bancroft Pharmacy (‘Bancroft Pharmacy’), we remain of the opinion that this application should be refused.
 - 2.14.5 The grounds for the application which are reiterated in the subsequent appeal appear to be:

- 2.14.5.1 reducing core opening hours on a Saturday and redistributing the hours to Monday to Friday to increase financial viability of pharmacy,
- 2.14.5.2 that current provision is under-utilised with minimal service provision provided on a Saturday.
- 2.14.6 Having reviewed the notice of appeal, HWE ICB would like to make the following representations.
- 2.14.7 The Appellant states that *“Bancroft pharmacy a vital and valuable resource used by the local population. Reducing opening hours to Monday to Friday to increase financial viability of pharmacy, on Saturdays service users will be redirected to either Bells chemist which is 0.1miles away approximately 2 min walk or Nu cross Pharmacy 0.2miles which is approximately 3 minutes according to google maps (Page 1 of the appeal letter).*
- 2.14.8 The Appellant notes that the pharmacy is *“a vital and valuable resource”* of which there is no dispute. It is a vital resource for the local population and reducing hours will impact on patients who wish to access the service at the weekend on a Saturday, or between 08.30 and 09.00 on weekday mornings.
- 2.14.9 As the appellant submitted an application to make a permanent change to core hours, the Pharmaceutical Services Regulations Committee (PSRC) considered this application under paragraphs 24 and 26, Schedule 4 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended (*“the 2013 regulations”*).
- 26.—** (1) *An NHS pharmacist (P) may apply to the NHSCB for it to change the days on which or times at which P is obliged to provide pharmaceutical services during core opening hours at P's pharmacy premises in a way that—*
- (a) *reduces the total number of hours for which P is obliged to provide pharmaceutical services at those premises each week; or*
- (b) *keeps that total number of hours the same.*
- (2) *Except where sub-paragraph (2A) applies, where P makes an application under sub-paragraph (1), as part of that application P must provide the NHSCB with such information as the NHSCB may reasonably request in respect of the matters that NHS England must seek to ensure pursuant to paragraph 24(1).*
- 24.—** (1) *Subject to paragraph 26(2A), where NHS England issues a direction for setting any days or times for opening hours under this Part, or determines them without issuing a direction, it must in doing so seek to ensure that the days and times at which pharmacy premises are open for the provision of pharmaceutical services in the area in which the premises that are the subject of the direction are located are such as—*
- (a) *to maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises; or*
- (b) *to maintain a sustainable level of adequate service provision for the people in that area or other likely users of the pharmacy premises, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome.*
- 2.14.10 As well as applying to change the core opening hours of Bancroft Pharmacy the Appellant has notified the ICB of a change to the pharmacy's supplementary opening hours. The table below summarises the current and

proposed total opening hours for Bancroft Pharmacy and shows the split between core and supplementary opening hours.

		Current opening hours			Proposed opening hours	
Day	Core	Supplementary	Core	Core	Supplementary	Core
Mon	08.30-12.00	13.00-14.00	14.00-18.00	09.00-13.00	13.00-14.00	14.00-18.00
Tues	08.30-12.00	13.00-14.00	14.00-18.00	09.00-13.00	13.00-14.00	14.00-18.00
Weds	08.30-12.00	13.00-14.00	14.00-18.00	09.00-13.00	13.00-14.00	14.00-18.00
Thurs	08.30-12.00	13.00-14.00	14.00-18.00	09.00-13.00	13.00-14.00	14.00-18.00
Fri	08.30-12.00	13.00-14.00	14.00-18.00	09.00-13.00	13.00-14.00	14.00-18.00
Sat	08.30-11.00			Closed		
Sun	Closed			Closed		

2.14.11 The overall effect, therefore, of the application and notification is that the Appellant is seeking to:

2.14.11.1 open the pharmacy 30 minutes later on Mondays to Fridays,

2.14.11.2 close the pharmacy on Saturday mornings.

2.14.12 NHS England's template application form asks that [sic] the applicant to provide such information so as to demonstrate that the proposed core opening hours will either:

2.14.12.1 maintain as necessary the existing level of service provision for people in the area of the pharmacy, or other likely users of the pharmacy premises; or

2.14.12.2 maintain a sustainable level of adequate service provision for the people in the area of the pharmacy, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome.

2.14.13 In response, the Appellant stated the following.

2.14.13.1 *"Reducing opening hours to Monday to Friday to increase financial viability of pharmacy, on Saturdays service users will be redirected*

to either Bells chemist which is 0.1miles away approximately 2 min walk or Nucross Pharmacy 0.2miles which is approximately 3 minutes according to google maps.”

2.14.14 The ICB notes that on appeal the Appellant has expanded upon this by stating that Bancroft Pharmacy is a vital and valuable resource used by the local population and goes on to state the following.

2.14.14.1 *“We would like to note there are 5 pharmacies within a 1.3 mile radius, open similar hours. The 5 pharmacies are all open on Saturdays, however only 2 have core opening hours on a Saturday which cover the hours of 9am – 5.00pm between them. This will ensure maintenance of adequate pharmaceutical services for the local population on Saturdays.*

2.14.14.2 *The current service provision is underutilized with minimal service provision provided on Saturday at Bancroft, current service provision can and will be maintained by Bells chemist or Nucross chemist which are both located close by, these should easily be able to maintain adequate service provision for the local population.*

2.14.14.3 *Bells Chemist is owned by the same parent company and is open 9.00 to 17.00 on Saturdays and is only located 0.1miles away and will maintain a sustainable level of adequate service provision for the local population on the weekend.*

2.14.14.4 *In the latest PNA for the area within which the premises are located. No gaps have been identified in the locality for the provision of Necessary Services.”*

2.14.15 The PSRC has reviewed this additional information and would like to submit the following representations. It maintains that the decision to refuse the application was correct.

Paragraph 24(1)(a), Schedule 4

2.14.16 It is first necessary to identify the existing level of service provision for people in the area of Bancroft pharmacy or other likely users of the pharmacy.

2.14.17 The Appellant is proposing to maintain the total number of core opening hours provided by reducing core opening hours on a Saturday and re-distributing them throughout the week, Monday to Friday so as to increase the financial viability of the pharmacy. The existing level of service provision would therefore not be maintained because the proposed change will see the pharmacy close on Saturdays and open 30 minutes later Monday to Friday.

2.14.18 It is therefore necessary to identify whether there are other providers of pharmaceutical services in the area, when they are open and whether when taken into account they would maintain the existing level of service provision. Within the application the Appellant mentioned Bells Chemist and Nu Cross Pharmacy stating that they are at a distance of 0.1 miles and 0.2 miles respectively from Bancroft Pharmacy. In its letter of appeal it went on to state that there are five pharmacies within a 1.3 mile radius of Bancroft and that they are open similar hours.

2.14.19 The PSRC has noted that the opening hours for Bells Chemist and Nu Cross Pharmacy are as follows.

Bells Chemist

Current

40:00 13:00

	S1	C1	S2	C2	S3	C3
Mon		9:00 13:00	13:00 14:00	14:00 18:00		
Tues		9:00 13:00	13:00 14:00	14:00 18:00		
Weds		9:00 13:00	13:00 14:00	14:00 18:00		
Thurs		9:00 13:00	13:00 14:00	14:00 18:00		
Fri		9:00 13:00	13:00 14:00	14:00 18:00		
Sat	09:00 13:00		13:00 14:00		14:00 17:00	
Sun						

Nu Cross Pharmacy

Current

14:00 15:30

	S1	C1	S2	C2	S3	C3
Mon	08:30 9:00	9:00 13:00	13:00 14:00	14:00 18:00		
Tues	08:30 09:00	9:00 13:00	13:00 14:00	14:00 18:00		
Weds	08:30 09:00	9:00 13:00	13:00 14:00	14:00 18:00		
Thurs	08:30 09:00	9:00 13:00	13:00 14:00	14:00 18:00		
Fri	08:30 09:00	09:00 13:00	13:00 14:00	14:00 18:00		
Sat	09:00 17:00					
Sun						

2.14.20 When assessing the existing level of service provision by these other pharmacies, the PSRC has only taken into account the core opening hours on Saturdays and between 08.30 and 09.00 Monday to Friday.

2.14.21 In its application, the Appellant relied on the Saturday opening hours of Bell Chemist and Nu Cross Dispensing Chemist. The PSRC can confirm that Bell Chemist has a total of 7 supplementary opening hours on a Saturday and Nu

Cross Dispensing Chemist has a total of 8 supplementary opening hours on a Saturday. As these are supplementary opening hours that can be withdrawn at any time, given the required notice period, they cannot be relied upon.

2.14.22 The Appellant, in neither its application nor its appeal, has provided no information on the existing level of service provision during the times it is seeking to close Bancroft pharmacy on weekday mornings.

2.14.23 In its appeal the Appellant has made reference to five pharmacies within a 1.3 mile radius and states that they have similar opening hours to Bancroft Pharmacy. The ICB can confirm that this is correct. The map at annex A shows the location of all six pharmacies. Whilst these other pharmacies provide pharmaceutical services across similar times under the contracted 40 core hours, as the Appellant has stated, only 2 of the 5 pharmacies have core hours on Saturday. The Appellant opens at 08:30 on a Saturday however the remaining two pharmacies with core hours on a Saturday do not open until 10:00 (CareRX) and 09:00 (Boots). This difference in opening times on a Saturday does not ensure pharmaceutical services are maintained for the local population.

CareRX

Current

40:00 19:30

	S1	C1	S2	C2	S3	C3
Mon	08:45 9:30	09:30 14:00	14:00 16:30	16:30 19:00		
Tues	08:45 9:30	09:30 14:00	14:00 16:30	16:30 19:00		
Weds	08:45 9:30	09:30 14:00	14:00 16:30	16:30 19:00		
Thurs	08:45 9:30	09:30 14:00	14:00 16:30	16:30 19:00		
Fri	08:45 9:30	09:30 14:00	14:00 16:30	16:30 19:00		
Sat	08:45 10:00	10:00 12:00	12:00 14:00	14:00 17:00		
Sun						

Boots

Current

14:30 22:30

	S1	C1	S2	C2	S3	C3
Mon	08:30 9:00	09:00 13:00	13:00 14:00	14:00 16:45	16:45 18:00	
Tues	08:30 9:00	09:00 13:00	13:00 14:00	14:00 16:45	16:45 18:00	
Weds	08:30 9:00	09:00 13:00	13:00 14:00	14:00 16:45	16:45 18:00	

Thurs	08:30 9:00	09:00 13:00	13:00 14:00	14:00 16:45	16:45 18:00	
Fri	08:30 9:00	09:00 13:00	13:00 14:00	14:00 16:45	16:45 18:00	
Sat	08:30 9:00	09:00 13:00	13:00 14:00	14:00 16:45	16:45 18:00	
Sun	10:00 12:00		12:00 13:00		13:00 16:00	

2.14.24 The Appellant has not provided any evidence to demonstrate that the users of Bancroft Pharmacy who currently access services from 08:30 on Mondays to Fridays would not be affected should the change in hours be granted. Similarly, no reliable evidence has been provided to demonstrate that those people who usually access pharmaceutical services on a Saturday morning.

2.14.25 Again, recognising the expanding role of community pharmacy, it is important to maintain necessary cover at the weekend, to ease pressure on urgent care services, for example.

2.14.26 The remaining 3 pharmacies referenced by the Appellant have supplementary hours which can be withdrawn at any time with the required notice period and should not be considered.

2.14.27 Whilst the 5 pharmacies are within a 1.3-mile radius, the Appellant assumes that this may be within an acceptable walking distance for relatively mobile service users, but this may not be the case for those who have mobility issues. Other factors to consider are the ways in which patients may travel to obtain pharmaceutical services, on foot, by car or public transport. For some patients, it is recognised that the distance to travel could be less, for others it could be further.

2.14.28 As no evidence has been provided to demonstrate where patients who usually attend Bancroft Pharmacy between 08.30 and 09.00 on weekdays or on a Saturday would travel to, the travel options available and the services they could access on arrival, it cannot be determined that existing level of service provision would be maintained by the proposed core opening hours and it has to be considered that the opening hours currently provided by Bancroft Pharmacy are necessary.

2.14.29 It is acknowledged that the provision of pharmaceutical services is more than the dispensing of prescriptions or the provision of over the counter sales. It encompasses a range of essential services in line with its Terms of Service, advice and advanced services. The Appellant has provided no evidence as to what services are provided at the times it is seeking to now close. It is therefore not possible for the PSRC to determine whether or not the existing level of service provision would be maintained by these other providers for people in the area or other likely users of Bancroft Pharmacy. Consequently it is the view of the PSRC that the proposed core opening hours do not satisfy paragraph 24(1)(a), Schedule 4.

Paragraph 24(1)(b), Schedule 4

2.14.30 As the PSRC remains of the opinion that:

- 2.14.30.1 it is necessary to maintain the existing level of service provision, the Appellant's proposed opening hours would not achieve that, and there is no evidence that other providers of pharmaceutical services would maintain the existing level of service provision

the PSRC now considers paragraph 24(1)(b), Schedule 4 with regard to the Appellant's representations.

- 2.14.31 In respect of this matter the only representation from the Appellant is that it is seeking to distribute the pharmacy's core opening hours to Monday to Friday in order to increase the financial viability of the pharmacy, and that the current service provision is underutilised with minimal service provision provided on Saturday. The PSRC is not persuaded by the Appellant's representations that there are any circumstances where maintaining a sustainable level of adequate service provision for people in the area or other likely users of the pharmacy is either unnecessary or not a realistically achievable outcome. When originally considering the application the PSRC noted that there had been no notifications of temporary suspensions at the pharmacy premises by the Appellant.
- 2.14.32 In reviewing whether it is realistically achievable for Bancroft Pharmacy to continue with their existing opening hours, the Appellant refers to financial viability. Whilst the PSRC can sympathise with the financial pressures that the pharmacy may be under, no evidence has been provided to demonstrate the pharmacy is in financial crisis. The proposal is to re-distribute hours so it is assumed that staffing costs will be very similar. It is also noted that there have been no temporary suspensions of service, so it does not appear that the Bancroft Pharmacy has been unable to secure staff each week. It can be concluded therefore that it is realistically achievable for Bancroft Pharmacy to remain open.
- 2.14.33 Consequently the PSRC is of the view that the proposed core opening hours do not satisfy paragraph 24(1)(b), Schedule 4 and remains of the opinion that the application should be refused.

General observations

- 2.14.34 Based on the information provided by the Appellant, there is no evidence to show that the current pharmaceutical provision is under-utilised. This appears to be a general comment and should carry minimal weight.
- 2.14.35 NHS Resolution will note our previous comments in relation to the reliance by the Appellant on the supplementary opening hours provided by Nu Cross Chemist and Bells Chemist. As outlined supplementary opening hours can be withdrawn at any time, giving the required notice period. Indeed, Bell Chemist has, since this application was submitted, given the required notice period to amend their supplementary opening hours on a Saturday and have reduced provision by 1 hour, closing between 13:00-14:00 on a Saturday. The reduction came into effect on 1 January 2024.
- 2.14.36 The Appellant notes that the Pharmaceutical Needs Assessment (PNA) for the area does not identify any gaps in the locality in terms of provision of Necessary Services. This reflected the position at point of publication in August 2022 and would have been based on the core and supplementary opening hours as set out at that point in time, to sustain the necessary level of adequate service provision. It is of course recognised that the Health and Wellbeing Board will have arrangements in place to assess any future changes that are pertinent to the granting of a future applications to the PNA.

2.14.37 The PSRC is of the opinion that no weight should be placed upon the findings of the PNA which is now 18 months old and does not reflect the current opening hours of pharmacies within Hertfordshire, nor the number of pharmacies that have closed since the PNA was published. In addition, the test that the application is to be considered against is whether the proposed opening hours for the pharmacy would maintain as necessary the existing level of service provision, not whether or not the PNA identified any current or future needs, improvements or better access.

Conclusion

2.14.38 In summary, we remain of the opinion that the application should be refused.”

2.15 The Applicant did not provide any observations on the above representations.

2.16 I note the following:

2.16.1 The Applicant's core opening hours total 40 hours and the Applicant proposes to redistribute those 40 core opening hours pursuant to paragraph 26 of Schedule 4. The Applicant seeks to provide services as per its proposed changes in the table at 2.11 above.

2.17 The Applicant proposes to:

2.17.1 Monday to Friday - Open half an hour later in the mornings;

2.17.2 Monday to Friday - Close later for lunch; and

2.17.3 Saturdays – No longer open for core hours during the morning.

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

2.19 The application to change the hours was made by the Applicant on 29 August 2023 and a decision was made by the Commissioner on 4 January 2024. The decision was appealed to NHS Resolution by email of 19 January 2024.

2.20 I am of the view that the application and subsequent appeal should be considered against the Regulations as amended with effect from 25 May 2023.

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

“Hours of opening”.

Paragraph 26(1) states:

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

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

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

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

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

2.23 Paragraph 24(1) reads as follows:

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

(a) to maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises; or

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

2.24 Paragraph 24(2) states:

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

(a) must treat any local pharmaceutical services being provided in its area as if they were pharmaceutical services being so provided, and

(b) may have regard to any pharmaceutical services that are being provided in its area during supplementary opening hours.

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

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

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

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

- 2.29 The existing level of service provision has been outlined by the Applicant, in its own core hours provision, and by an indication of the hours that pharmacies in the local area are open.
- 2.30 I have next considered whether it is necessary to maintain the existing level of service provision. It could be argued that as the Applicant is not looking to reduce the number of hours each week that services are provided, then from a pure "number of hours of service provision each week" perspective, the existing level of service provision is maintained such that consideration of whether it is necessary to maintain the level of service provision is not needed.
- 2.31 However, the Applicant is applying to change the days and times that services are provided. Taking Saturday as an example, the level of service provision at the Applicant's premises on a Saturday is not being maintained. I consider it appropriate to determine if it is necessary to maintain the existing level of service provision and then, if deemed necessary, consider if the opening hours of other pharmacies mean that level is maintained.
- 2.32 To determine whether it is necessary to maintain the existing level of service provision, I have had regard to the comments by the Applicant of those using the pharmacy. If I am satisfied that there is reliable evidence indicating no users of the pharmacy on/at the relevant days/times that the pharmacy wishes to close, this might support an argument that maintaining the existing level of service provision is not necessary.
- 2.33 I note that the Applicant has made no reference to patients using its pharmacy during the week on days and times that the Applicant wishes to close. I consider that it is relevant to have this information as to why persons are using the pharmacy at these times.
- 2.34 In its application and again on appeal, the Applicant states that *"...on Saturdays service users will be redirected to either Bells chemist which is 0.1miles away approximately 2 min walk or Nucross Pharmacy 0.2miles which is approximately 3 minutes according to google maps."*
- 2.35 The Applicant has not made any reference to those accessing services on a weekday between 8.30am to 9.00am. From the Applicant's reference to 'service users', there are people using the pharmacy at the times the Applicant wishes to close on Saturdays. However it is difficult to draw conclusions about the necessity of maintaining the existing level of service provision if there is no information on what specific services, if any, are being provided at those times. The Applicant's comments do not refer to the number that attended the pharmacy during the week or on Saturdays and do not differentiate between those who were coming to collect a prescription, for example, and those that were coming to seek advice or access a further pharmaceutical service or a non-pharmaceutical service.
- 2.36 Without this information it is difficult to make an assessment of whether it is necessary to maintain the existing level of service provision and this in turn makes it difficult to apply paragraph 24(1)(a). I consider it reasonable to take the position that unless I am provided with evidence to the contrary, I should consider that it is necessary to maintain the existing level of service provision.
- 2.37 Having determined that it is reasonable to assume that maintaining the existing level of service provision is necessary, I now need to consider if, despite the changes to hours, there is maintenance of the existing level of service provision. The Applicant cannot maintain this as it is changing its hours but I note the undisputed information from the Applicant with regard to other pharmacies in the area that, between them, have opening hours during the times that the Applicant is proposing to close. Insofar as Saturdays are concerned, the Applicant has stated *"We would like to note there are 5 pharmacies within a 1.3 mile radius, open similar hours. The 5 pharmacies are all open on Saturdays, however only 2 have core opening hours on a Saturday which*

cover the hours of 9am – 5.00pm between them. This will ensure maintenance of adequate pharmaceutical services for the local population on Saturdays.” The Applicant has further stated on appeal “The current service provision is underutilized with minimal service provision provided on Saturday at Bancroft, current service provision can and will be maintained by Bells chemist or Nu cross chemist which are both located close by, these should easily be able to maintain adequate service provision for the local population.” “Bells Chemist is owned by the same parent company and is open 9.00 to 17.00 on Saturdays and is only located 0.1miles away and will maintain a sustainable level of adequate service provision for the local population on the weekend.”

- 2.38 I note the ICB’s representations refer to four pharmacies in the area; Bells Chemist, Nu Cross Pharmacy, Care RX and Boots. Only two of these, Boots and Care RX, have core opening hours on Saturday. Although both have core opening hours into the early evening and thus beyond the Applicant’s existing core hours on Saturday, both open later in the morning compared to the Applicant.
- 2.39 The Regulations indicate that I may take supplementary opening hours into consideration. However I am mindful that supplementary hours may be altered by the pharmacy by giving notice to the Commissioner in accordance with paragraph 23(6)(a) of Schedule 4 without the need to make an application to the Commissioner. On this basis, I have not placed weight on the provision of pharmaceutical services outside of the core hours offered by other pharmacies in the area.
- 2.40 I note that during weekdays, the Applicant wishes to open at 9.00am rather than 8.30am, and close at 13.00pm rather than 12.00pm as present. The latter has the effect of reducing the times over lunchtimes when the Applicant is closed by one hour.
- 2.41 If I consider that the characteristics of other pharmacies, e.g. where they are located, their access, the services provided and the times they are open, means that the level of service provision is maintained for people in the local area or other likely users of the pharmacy, then I am able to grant the application under paragraph 24(1)(a).
- 2.42 The Applicant has provided very limited information regarding access to those pharmacies for those who currently access its own pharmacy and how they might travel to find alternative pharmaceutical services.
- 2.43 It is worth noting that characteristics of the persons using the pharmacy might be relevant here as well as from where they start their journey to the pharmacy. I do not consider that every single individual need should be considered at length in this regard but it would be helpful to have this information to be certain that the existing level of service provision would be maintained via local pharmacies.
- 2.44 At point 2.34 I have already noted the Applicant’s reference to distance to Bells Chemist and Nu cross Pharmacy. However, neither of these pharmacies provide core opening hours on Saturdays. With regard to Care RX and Boots there is no information regarding the distance and the nature of the journeys for those persons on foot.
- 2.45 The Applicant has not provided the frequency of, or the route taken by, public transport. Nor has the Applicant commented similarly in respect of the availability of car parking during the times it proposes to close its pharmacy during the week or on Saturdays.
- 2.46 I am therefore struggling to be satisfied that the existing level of service provision would be maintained by virtue of the existence of other local pharmacies.
- 2.47 I have decided that it is necessary to maintain the current service provision but, due to the cumulative effect of:
 - 2.47.1 a lack of information about the services being provided during the hours the Applicant is proposing to close;

2.47.2 and the lack of information regarding access to alternative pharmacies,

I am not satisfied that there will be maintenance of the existing level of service provision, whether by virtue of other pharmacies in the area or by the Applicant swapping hours to longer opening over lunchtimes during the week.

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

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

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

2.50 I note that the Applicant has referred in its application and on appeal to *“Reducing opening hours to Monday to Friday to increase financial viability of pharmacy”*. I consider that the Applicant is effectively relying on the second part of paragraph 24(1)(b), that maintaining the existing level of service provision is not a realistically achievable outcome. I consider that I need to determine if it is or is not a realistically achievable outcome and if I determine that it is, then I need to consider if the amended hours are such as to maintain a sustainable level of service provision.

2.51 On the point of whether maintaining the existing level of service provision is not a realistically achievable outcome, I consider that no evidence has been put forward to indicate that the Applicant's existing opening hours are compromising the economic viability of its operations.

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

2.53 I am mindful that the provision of pharmaceutical services is greater than the dispensing of prescriptions and that maintaining a level of service provision includes all services that the pharmacy may offer, including additional enhanced and advanced services that may be commissioned. I note the Applicant's comment on appeal relates only to Saturdays *“The current service provision is underutilized with minimal service provision provided on Saturday at Bancroft....”* I am of the view that I have not been provided with sufficient information to demonstrate how the proposed change of hours would maintain, as necessary, the existing levels of service provision during the week or on Saturdays.

3. Determination

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

3.2 The action taken by the Commissioner to refuse the application is confirmed.

Head of Appeals
NHS Resolution