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7 June 2024

REF: SHA/26122

APPEAL AGAINST NHS SUSSEX ICB DECISION TO REFUSE AN APPLICATION BY SHOPWYKE HEALTHCARE LIMITED FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT ARUNDEL PHARMACY, 20 HIGH STREET, ARUNDEL, WEST SUSSEX, BN18 9AB

1 Outcome

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

1.2 The Committee determined that the application should be granted.

A copy of this decision is being sent to:

Shopwyke Healthcare Ltd
NHS Sussex ICB
Sussex LPC
Jhoots Pharmacy
Andrew Griffith MP

NHS Resolution

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1 A summary of the application, decision, appeal, representations and observations are attached at Annex A.

2 **Site Visit**

2.1 The Pharmacy Appeals Committee ("the Committee") members, comprising of Mr J Whitfield KC, Mr M Smith and Mrs S Hewitt, visited the location and surrounding area on three separate dates 18 and 23 April and 1 May. The application site ("the location") is number 20 High Street. The existing Jhoots Pharmacy by the GP surgery is on Canada Road about ¾ mile west of the location. Arundel is split into three areas with the old town on the hillside bordered by the river to the south and the A27 to the west. Over the river there is another older area and the bridge gives easy access between these two areas. The third area of the town is to the west of the A27. This is where Jhoots is located.

2.2 Generally we found the area around the location which is in the older part of Arundel on the High Street, to be busy with pedestrians and cars. There are plenty of free on-street parking places which are limited to one hour. There are also car-parks nearby with relatively modest charges (£2.50 for three hours, £5 for all day). Turnover was brisk on the street and in the car-parks and spaces were readily available. There was on-street parking for Blue Badge holders for up to three hours. There were also disabled parking bays available in the car-parks.

2.3 The southern end of the High Street is reasonably flat and there are a number of shops around the location including antiques shops, the post office, various cafes and restaurants, pubs, hair salons, a Morrisons and several other shops. There is a bus-stop and the No.9 bus provides hourly transport to the Sainsbury's store in Littlehampton. Just north of the location the High Street is steeply inclined. Just south of the location the road crosses the River Arun. There is a café and museum on the north bank and another pub and a Co-Operative store on the south bank.

2.4 The pharmacy itself is small with what appeared to be limited access, a slight stone step and left turn into the shop, but appeared neat, tidy and welcoming. It was bright, well fitted out and offers a comprehensive range of general sale and pharmacy only medicines as well as a selection of healthcare items and toiletries. Customers were seen to use the location by at least two of the members. There were people of all ages in and out of the shops. Many were tourists but there appeared to be local residents as well.

2.5 South of the river there is a large complex of flats/townhouses for elderly residents. There is access through a small alleyway to Fitzallen Road just south of the river which heads west and passes several large houses, a number of smaller homes and bungalows and some small industrial units before going under the A27. The road is flat but the pavements are in poor condition. There is a pathway up to the A27 but, to access the Jhoots Pharmacy it is better to walk under the A27 and then walk along the

west side of the road. However, the path up to the A27 is not immediately obvious and the A27 itself is busy and noisy. There are no pedestrian facilities to cross the roundabout however there are refuges in the middle of each junction.

2.6 Having crossed the Ford Road one can then either walk across a short (50m) area of grass or follow the curve of the roundabout to Canada Road which leads up to the GP surgery and Jhoots Pharmacy. This road is on a moderate incline. Houses at the bottom of the hill and along Torton Hill Road appear to be of a reasonable size and condition. Further up, Canada Road enters an area of social housing. Some houses appear well cared for, others are in a lesser condition.

2.7 The surgery and Jhoots Pharmacy are on the west side of the road and occupy a large plot with plenty of parking space however they are not really visible to the passer-by until one is adjacent to them. Access to the Jhoots Pharmacy/ surgery by car is somewhat convoluted and could be challenging to someone unfamiliar with the area. The pharmacy is right next to the surgery and, apart from the double doors, does not appear to have windows facing the car-park and it gives the appearance of being closed. The area around the pharmacy and surgery was very quiet with only two pedestrians seen on one day. Two of the Committee members saw no patients attending whether on foot or by car. One member saw one person leaving the pharmacy. A sign on the door advised that on 18 April 2024 there was a staff-shortage which may render prescriptions unavailable at the time of visiting. On 23 April 2024 the pharmacist was on a lunch break so no items could be dispensed in their absence. According to staff at the GP surgery there are 3 doctors and 2 nurses on site. They have a list of about 9000 patients. There are housing developments in the area, some larger than others. One has been slowed due to drainage concerns but another will lead to an influx of patients some of whom may be taken by the Arundel surgery and some by the Croft surgery.

2.8 The return to Arundel was by using the underpass and then a walk through a small enclave of townhouses (The Slipe) with cobbled paving and then back along Tarrant Street which has narrow and uneven pavements. There is a dermatology clinic on Tarrant Street as well as a number of art galleries, a pub and some more cafes. The areas to the south and the north of Tarrant Street and then north again beyond Maltravers Street appear densely populated with small townhouses and some larger residences higher up the hill.

2.9 From its own experience the Committee considered that it took around 15-25 minutes to walk from the location to the Jhoots Pharmacy. The route includes uneven, hilly and busy roads with areas of poor and uneven pavements. Whilst there were a few pedestrians west of the ‘old town’ none of the members saw anyone accessing the pharmacy or GP surgery via the routes walked and/or driven. Access to the Jhoots Pharmacy by car from the town centre is somewhat convoluted and could be challenging to someone unfamiliar with the area.

3 A summary of the above observations was provided to those in attendance. They were invited to comment upon them **OR** indicate if any of the observations appeared to be inaccurate.

3.1 No such comments or observations were made.

4 **Oral Hearing Submissions**

Mr Chisanga (the Applicant)

4.1 Mr Chisanga said that he worked as a locum at what is now the Jhoots Pharmacy by the GP surgery when it was run by Lloyds. He said he saw for himself the challenges that patients faced with sporadic opening times, limitations on stock and poor accessibility. He said that opening times and stock are matters that can be dealt with but access could not be improved. He said that residents to the east side of Arundel were more often elderly and, south of the river there were three or four large residential

areas with elderly couples and single residents. He had spoken to many of these who said they relied on taxis, neighbours or friends to transport them to the pharmacy. They felt uncomfortable asking favours and he said it was unfair that people had to pay for taxis; medication should be freely available to NHS patients. He said patients who needed medication should be afforded a choice where they can access a pharmacy and he intended to provide that in the town centre. He emphasised that he did not intend to replace the Jhoots Pharmacy. He said he wished to work with them to provide a service and he already referred patients to them and vice-versa.

4.2 Mr Chisanga said he understood the concern that there may not be enough business but he rejected this concern. He said that there were around 8000 prescriptions being issued by the GP surgery. Jhoots were dealing with 30% of these which meant 70% was going out of town not through choice but through necessity. He said they did not wish to travel and his aim was to bring them back into the town.

4.3 Mr Chisanga said that he had been innovative. He had opened the non-contract pharmacy and it had been running for 15 months. He had worked with Dr Hectal at the dermatology clinic and sought training to provide an enhanced dermatological service to patients. In addition his colleague was a mental health first aider who had advised and signposted patients regarding their mental health. Likewise he was promoting and signposting patients who had dental and oral health needs. This reduced A & E attendances. He said he was learning what patients and residents needed and wished to provide what they required. He said they ran and would continue to run a free delivery service.

4.4 Regarding the number of prescriptions Mr Chisanga said that the 8000 figure was from December 2023 due to the delay in NHS data. He had offered 40 core hours in his contract but was willing to adapt. By way of example he said he remained open over the bank holiday at which time NHS patients came in but he could not help them. He said they remained open until 6.30pm Mon-Fri and often had patients attending after 6pm when the Jhoots Pharmacy was closed. He cited an example of a young mother who attended with an NHS prescription at 6.15pm but again he could not help her. She did not have access to transport so could not go out of town for medication.

4.5 When asked about patients with protected characteristics Mr Chisanga referred to the elderly patients to the east of the town who did not drive and had limited mobility. He said he would provide to this group. He said that access to his current premises was not a problem and a wheelchair user and mums with buggies had been able to access his pharmacy.

4.6 Mr Chisanga was asked about the petitions and signatures in the bundle. He said he had tried to ensure it was relevant and it thus referred to visitors and residents who had wanted to access NHS services. The residents included people in the town as well as surrounding villages who came into town. Most were from the east or south of the town although there were some from the west. He said that Arundel had 3500 residents but the GP surgery had 6500 patients on its books. Mr Chisanga said that some residents struggled to access pharmaceutical services from the current location next to the surgery and he wished to provide an alternative. In addition there had been and continued to be difficulties with stock. If something was out of stock at Jhoots then patients would have to go to Littlehampton and the closure of Boots had put pressure on the remaining pharmacy. He said that he was experienced at managing stock levels and, as an independent, he was not tied to preferred suppliers. He could thus obtain medicines when others might not. He said that the larger chains tied themselves to contracted suppliers and this caused problems.

4.7 When discussing Mr Jhooty's concern that his pharmacy may be adversely affected by the application Mr Chisanga said that Lloyds had been dispensing over 7000 items but it was less than 5000 when Lloyds closed. At the time they closed they were issuing prescriptions to 50% of patients which meant 50% were going elsewhere. He described how as Lloyds moved toward closure they directed their patients to Lloyds Direct

(online service) so keeping the patient with Lloyds but not at the specific pharmacy. He said he had spoken to these people and it was they who were supporting his application. He said there was plenty of parking and good access to his premises. He said that even now the Jhoots Pharmacy did not offer 'Pharmacy First' services, they did not deliver medication or it was at best sporadic. Mr Chisanga said that he had worked at the Lloyds in 2022 and had now been a pharmacist for 6 years. He aimed to get 50% of the patients in town and that Jhoots should aim for the other 50%.

4.8 Mr Chisanga appeared somewhat dismayed by Ms Powell's comments on behalf of the Sussex LPC (see below). He said that the HWB had been notified of his application but they did not comment. When the application was refused he said that the Committee had not taken account of patient views. He said the HWB was obliged to involve patients and gather information but it did nothing. However, he had spoken to patients. He reiterated that the application if granted would benefit patients and it did not behove the HWB or the LPC to stay out of the case but then choose to make comments at this late stage. He said he had relied upon a fair assessment and that their approach was not fair. He observed that 58 pharmacies had closed in the south east, more than anywhere else in the UK and he was offering to provide services to patients. This would not cost the HWB or the NHS, indeed the NHS contract provided little income. He reiterated his focus was on patients and their wellbeing unlike any of the bodies that had done little but consider statistics. He said his passion was for the profession and for his patients not just making money.

Mr Stepney (in support of the application)

4.9 Mr Stepney said that he had lived in Arundel for 23 years albeit he had owned property there since 1988. He said that the main difficulty was access to pharmaceutical services by the elderly or those in retirement homes. He said he knew this because he had talked to people in the town. He was aware of residents who had been forced to take their custom out of town due to the difficulty and would welcome a pharmacy at the location and would bring their custom back into the town. He said a lot of residents in the retirement homes did not travel to the Jhoots Pharmacy due to its location and would welcome a pharmacy at the location. Mr Stepney added that over the years many visitors to the town had asked for the location of the pharmacy (Jhoots/Lloyds) but simply 'glazed over' when the route was described to them. He confirmed that the location was generally flat with good parking and, he frequently used the 1 hour free parking himself. He observed that the Applicant was welcomed to the business community 'with open arms', he was very much liked and had provided an excellent community pharmacy service to date. He said it would be a great shame if the town lost him.

Mr Jhooty on behalf of Jhoots Pharmacy (objecting)

4.10 Mr Jhooty said that he took over ownership of what was the Lloyds Pharmacy in October/November 2023. He said the situation now was the same as it had been in 2019 when these matters were first ventilated. He said the petition was the same and there had been no major developments with about 90 homes currently being built. He said there should be consistency of decision making and this was essentially the same application as that rejected in 2019. He said that ownership and premises was not a significant new factor. He said that the PNA had concluded there were no gaps in provision of pharmaceutical services and things were the same. His pharmacy opened on Saturdays, there had been no breaches in service levels, and residents and tourists were the same. He said that if residents or tourists did not realise there was an NHS pharmacy in Arundel (his pharmacy) then they could dial 111 and they would be directed to it. Mr Jhooty said that Lloyds had moved from the town centre to the GP surgery because there was insufficient custom or residents in the town. He said that tourists were in the main day-trippers and did not add significantly to this. He said that the Applicant's private pharmacy catered for OTC products and private prescriptions which was fine.

4.11 Mr Jhooty said that when Lloyds applied to relocate there was a concern regarding viability. The number of prescriptions had dropped to 1000 but it had increased to 1800 and was now around 2600. Patients had exercised their choice and gone elsewhere. He was trying to rebuild the customer base and that this was happening slowly. He said they too asked patients what they wanted and had continued to provide a delivery service. Some wished to walk and did walk to the current location. His staff were local residents and, whilst an MP might support the application, they did not know the pressures on local services. Mr Jhooty submitted that granting the application would not confer significant benefits. He said they intended to continue driving up patient numbers and added that they provided services such as minor ailments and advise to patients, taking blood-pressure readings.

4.12 Mr Jhooty said that regarding Lloyds, the concern had been that they would close. He said that he too was concerned he would have to close the Jhoots pharmacy if the application was granted. He did not like the thought of this and has had to close pharmacies elsewhere but he could not afford to fund a pharmacy if it did not pay for itself. He said the Asda pharmacy and others had closed but he had purchased the premises to build it up and provide a service. At present he said Jhoots serviced about 28-30% of the prescriptions from the GP surgery. It was suggested that the Applicant may get patients from the 70% who went elsewhere rather than his clients and, that patients in general were moving away from pharmacies located next to surgeries and were using town-centre pharmacies instead.

4.13 It was suggested that there was no evidence the Applicant would detract from his 30% of patients. Mr Jhooty said that he hoped to increase prescriptions to 4500 in the next 12 months but if he could not do this then he would have to close. He said that Lloyds had moved from the High Street to the GP location initially. He said that 2500 prescriptions was not enough to survive and, whilst he had sought to increase the service unlike Lloyds, if he could not, Arundel would be back to one pharmacy. Mr Jhooty said that the Government had said there were too many pharmacies hence the closures but these had been further afield. He agreed that when they were closing, Lloyds undertook a huge promotion to get their patients onto Lloyds Direct (online), but he had been tempting these patients back. He agreed there had been shortages of medicines caused by Brexit but that he too used multiple wholesale suppliers to minimise this problem.

4.14 Mr Jhooty said that he was not leasing the premises from the surgery but was leasing from a third party. He and his staff had met the GPs and surgery staff and they got on well. No concerns had been raised, He said everyone was aware that if the application was granted he may have to close his pharmacy and he had already written to the landlord and warned staff. He could not run the pharmacy at a loss. He said that residents had wanted a pharmacy by the GP surgery. Local pharmacies had closed but these did not affect Arundel. He said that Arundel could only support one pharmacy not two.

Ms Powell (Surrey and Sussex LPC)

4.15 Ms Powell said that the current level of prescriptions at Jhoots was substantially below the average even if it returned to the 7000 level per month. She said that two pharmacies were not warranted by the number of prescriptions. She did not consider it realistic that two pharmacies would each pick up 50% of the available patients. She said the petitions did not explain which pharmacy the signatories were using. She said that if Jhoots closed that would be a significant detriment to the provision of pharmaceutical services.

4.16 Ms Powell said that the closure of three pharmacies some distance from the location did not result in a gap to the provision of services. She said that the HWB were informed of closures but she was not aware of any Supplementary Statement being produced for the PNA consequent upon these closures. This she suggested evidenced a finding by the HWB of no gaps in provision despite these closures. She was not aware of any

Supplementary Statements being made consequent upon pharmacy closures in the LPC area.

Mr Mhlanga (NHS Sussex Integrated Care Board PSRC)

4.17 Mr Mhlanga said that the HWB were informed of every pharmacy closure and the HWB would decide on what to do. He said they had decided not to have a review or issue a supplementary statement concerning recent closures so there was no gap in provision.

5 Consideration

5.1 The Committee had before it the papers considered by the Commissioner, together with a plan of the area showing existing pharmacies and doctors' surgeries and the location of the proposed pharmacy.

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

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

Regulation 31

5.4 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).

5.5 The Committee noted that the Applicant had not provided any information in the application form on this point but the Committee noted that the wording of the application form only required the Applicant to include information in the relevant section if the proposed premises were adjacent to, or in close proximity to, another pharmacy or dispensing appliance contract premises. The Committee considered it reasonable to determine that the lack of information in the application form on this point when read with the wording of the application form allowed it to be reasonably satisfied that the Applicant considered that the proposed premises were not adjacent to, or in close proximity to, another pharmacy or dispensing appliance contractor premises. The Commissioner in its decision report considered Regulation 31, concluding that "*[the ICB] was satisfied that there is no NHS pharmacy providing pharmaceutical services at the same or adjacent premises*" which the Committee noted had not been disputed by any party.

5.6 Based on the information provided the Committee was not required to refuse the application under the provisions of Regulation 31.

Regulation 18

5.7 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)."

5.8 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

5.9 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 ("the PNA") in accordance with paragraph 4 of Schedule 1 of the Regulations.

5.10 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).

5.11 The Committee considered the PNA prepared by West Sussex 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 bore 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 appeared 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 September 2022 and that supplementary statements had been issued on September 2023.

5.12 The Committee noted the PNA reported that during its consultation it received numerous comments from the public about the current service provision in Arundel. Despite this public interest, the Committee noted that the PNA concluded that:

5.12.1 *"The PNA has not identified any gaps in current service provision of necessary services within the West Sussex area. The current coverage is adequate to provide the necessary services such as essential/dispensing services and advanced services.*

After reviewing the location and scale of proposed housing development it is anticipated that the current pharmaceutical providers will be sufficient to meet the local needs for the lifetime of the PNA (October 2022 to October 2025)."

5.13 The Committee noted that the Applicant seeks to provide unforeseen benefits to the patients of Arundel. The Committee noted that the improvements or better access that the Applicant was claiming would be secured by its application were not included in the relevant PNA in accordance with paragraph 4 of Schedule 1.

5.14 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)

5.15 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"

5.16 The Committee noted that the ICB, in its decision, stated that "*The Committee [of the ICB] was not aware of any plans that would be affected and concluded that granting the application would not have an adverse effect on any future plans… Therefore, the Committee [of the ICB] concluded that granting the application would not cause significant detriment in this regard*". The Committee noted that parties had not sought to dispute this during the appeal process.

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

5.18 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)

5.19 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"

5.20 The Committee noted that the ICB, in its decision, stated that it "*did not find any significant detriment to proper planning or to the arrangements in place for the provision of pharmaceutical services and therefore was not obliged to refuse the application under Regulation 18(2)(a)*".

5.21 Mr Jhooty submitted that granting this application could cause him to close the Jhoots Pharmacy. It was not entirely clear whether this was because he felt that the Applicant's pharmacy would take patients away from him or, whether it would prevent returning customers from coming back to him.

5.22 The Committee noted that Lloyds had captured perhaps 30% of the market but as they downgraded their service, either they switched patients to their own online provider (Lloyds Direct), or patients had voted with their feet and had gone elsewhere. Despite the pharmacy being under new ownership these patients had not returned or had only done so very slowly.

5.23 The Committee was of the view that the application was not aimed at patients who had attended Lloyds and/or who had left them to go elsewhere and/or who might be tempted back by Jhoots. The application was aimed at providing an NHS service to those who did not attend that location but who accessed pharmaceutical services out of town because the Lloyds/Jhoots location was not accessible to them.

5.24 Whilst the Committee understood Mr Jhooty's concerns, it was of the view that his pharmacy would stand or fall on its own merits. It could continue to entice back those patients who had gone elsewhere but now considered it accessible and/or to whom its predecessor Lloyds had provided a good service. There was no evidence from which the Committee could conclude that such patients **would** be detracted from returning (to Jhoots) by granting the application for a pharmacy in the town centre. In addition, there was no evidence from which to conclude that patients to whom Jhoots had provided a good service **would** switch from Jhoots to a town centre pharmacy.

5.25 The evidence before the Committee was that patients in the old town east of the A27 toward the castle and/or south of the river would be likely to access the new pharmacy but would remain unlikely to access the Jhoots Pharmacy which to date they did not use.

5.26 Finally, the Committee also noted that there is new housing being built in the area and that the GP surgery expected to expand its patient list with at least some of these new patients. Given the location of these new homes it is likely that Jhoots will pick up the provision of prescriptions for these new residents.

5.27 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.

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

Regulation 18(2)(b)

5.29 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)

Regulation 18(2)(b)(i) Choice

5.30 The Committee noted that the exercise of a choice requires that choice to be a reasonable one and it is different from 'being obliged'. At present some patients who are mobile and have access to a vehicle may choose to attend the Jhoots Pharmacy or may choose to go elsewhere. Others may feel obliged to go elsewhere. However, the evidence before the Committee both from Mr Chisanga and from numerous residents and visitors suggests that many do not have a choice. They are obliged to go to Jhoots or they go elsewhere and many do the latter not because they want to but because Jhoots is not readily accessible to them and they access pharmaceutical services either remotely or out of town when combined with journeys to, for example Littlehampton. There is the added difficulty that there have been four recent closures of pharmacies some nearer and some further afield restricting the options of those who access services outside Arundel.

5.31 Whilst the Committee noted Ms Powell's and Mr Mhlanga's point of view, that the lack of a Supplementary Statement meant the HWB had assessed these closures and determined there was no gap in the provision of services, the Committee did not consider this to be a safe assumption to make. It was not clear to the Committee that such an assessment had been undertaken by the HWB but, even if it had, the Committee had itself heard cogent evidence from a number of sources indicating that there was a gap in provision and that patients did not have a reasonable choice.

5.32 Mr Chisanga presented as a refreshing and dedicated applicant driven by patient need and local knowledge. That included a clear assessment of patient needs and requests backed up by testimony and comments from a multitude of sources. The Committee was of the view that whilst there may not have been a gap in provision at an earlier date, there was now and granting this application would fill that gap and provide patients with a reasonable choice.

5.33 The Committee was of the view that there is not already a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB, such that it was 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.

Regulation 18(2)(b)(ii) protected characteristics and access

5.34 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.

5.35 Mr Chisanga referred in particular to older and less mobile residents/patients in the town centre and south of the river. He submitted that such patients did not access pharmaceutical services at Jhoots because it was too far away and/or a difficult journey for them to make. He submitted they would be able to access NHS services at his premises. Some did so by private prescription or sought to do so and had signed the petition to that effect. Mr Stepney was firmly of the same view. The Committee regarded Mr Chisanga's evidence, Mr Stepney's evidence and the petition to be persuasive.

5.36 Whilst no specific services were relied upon by the Applicant the Committee was aware that older and less mobile patients are likely to experience the greatest challenges to their health and thus need to access pharmaceutical services in general. The Committee concluded that the current arrangement presented a barrier to services for the older members of the local population. The same may be said of eligible visitors from time to time. Be that as it may, the comments on access were general in nature and might apply to any persons as explained by the assessment as to the lack of reasonable access above. The Committee considered that there was not a robust body of evidence that enabled it to be satisfied that a pharmacy at the proposed site would convey significant benefits pursuant to Regulation 18(2)(b)(ii).

5.37 The Committee was not therefore 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.

Regulation 18(2)(b)(iii) innovation

5.38 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.

5.39 The Committee noted that the Applicant's staff have some expertise in matters of mental health and dental health, and that he has started to work with Dr Hectal who runs the private dermatology clinic on Tarrant Street. He said there was no local GP available to deal specifically with dermatology and, he sought to fill that gap. The Applicant regarded this collaborative approach as a positive step to delivering services to the local population. The Committee also regarded this approach as a positive one albeit, it did not amount to innovation within the terms of the Regulations.

5.40 The Committee was not satisfied that, having regard to the desirability of there being innovative approaches taken with regard to the deliverability of pharmaceutical services, granting the application would confer significant benefits on persons.

Regulation 18(2)(b) generally

5.41 The Committee was of the view that there was some limited information provided to support a finding that pharmaceutical services are not currently provided at such times as needed and therefore it was 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.

5.42 The Committee was of the view that in accordance with Regulation 18(2)(b) the granting of this application would confer significant benefits on persons in the area of the HWB which were not foreseen when the PNA was published.

Other considerations

5.43 Having determined that Regulation 18(2)(b) had been satisfied, the Committee needed to have regard to Regulation 18(2)(c) to (e) and found that there were no other applications or appeals to be considered at the same time as the current application.

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

5.45 The Committee had regard to Regulation 18(2)(g) and found that it did not apply.

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

5.47 The Committee was 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.

5.48 The Committee had regard to Regulation 19(6) which states:

(6) If the NHSCB is satisfied as mentioned in regulation 18(2)(b), it may grant the application not withstanding that the improvements or better access were or was not included in the relevant pharmaceutical needs assessment.

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

5.49.1 confirm the Commissioner's decision;

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

5.49.3 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.

5.50 In those circumstances and for the reasons stated above the Committee determined that the decision of the Commissioner must be quashed.

5.51 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.

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

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

6 DECISION

6.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of the Commissioner, for the reasons given above, and redetermines the application.

6.2 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;

6.3 The Committee determined that the application should be granted on the following basis:

6.3.1 In considering whether the granting of the application would confer significant benefits, the Committee determined that –

6.3.1.1 there is not already a reasonable choice with regard to obtaining pharmaceutical services;

6.3.1.2 there is insufficient evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services; and

6.3.1.3 there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services;

6.3.2 Having taken these matters into account, the Committee is satisfied that granting the application would confer significant benefits as outlined above that would secure improvements or better access to pharmaceutical services.

Committee Chair
20 May 2024

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REF: SHA/26122

APPEAL AGAINST NHS ENGLAND (SUSSEX INTEGRATED CARE BOARD) DECISION TO REFUSE AN APPLICATION BY SHOPWYKE HEALTHCARE LIMITED FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT ARUNDEL PHARMACY, 20 HIGH STREET, ARUNDEL, WEST SUSSEX, BN18 9AB

1 **The Application**

By application dated 17 May 2023, Shopwyke Healthcare Ltd ("the Applicant") applied to NHS England for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at Arundel Pharmacy, 20 High Street, Arundel, West Sussex, BN18 9AB. In support of the application it was stated:

In my/our view this application should not be refused pursuant to Regulation 31 for the following reasons:

1.1 The Applicant left this section of the application form blank.

Information in support of the application

1.2 "Accessibility

1.3 The majority of residents in Arundel are elderly with mobility issues and require pharmaceutical services regularly. The current pharmacy (Lloyds Pharmacy) providing NHS services in the town is not easily accessible by all its service users as getting there usually involves crossing the very busy A27 or the equally busy Ford Road, and neither have pedestrian crossings making the journey very dangerous.

1.4 The current NHS Pharmaceutical Service provider (Lloyds Pharmacy) in Arundel is difficult to access for a lot of residents in Arundel. Residents have come into Arundel Pharmacy expressing their discontentment with the current and only NHS service provider in the town. A number of Arundel residents/patients have spoken of how they have to take a taxi to and from the town, where they live to the Lloyds Pharmacy by Arundel Surgery just to pick up their prescriptions as most of them do not drive. This is an unfair and costly way to access NHS pharmaceutical services especially when one is a pensioner, which is most residents in Arundel.

1.5 Central location

1.6 Arundel currently has one listed NHS listed pharmaceutical service provider (Lloyds Pharmacy), and its current location is unfortunately not easily accessible for all the residents of Arundel especially the elderly residents and the many thousands of domestic tourists and visitors to the town. It is disproportionately located in one end of Arundel, making it poorly accessible. The poor accessibility discourages patients from visiting regularly, reducing the uptake or use of all the essential services pharmacies can offer, which would assist in alleviating pressures from other healthcare providers.

1.7 Residents and neighbouring businesses have also told of the numerous requests from visitors to the town, of the most common question "Where is the nearest pharmacy in Arundel?" Explaining where the Lloyds Pharmacy is located in Arundel is usually complex, and this usually results in patients going away without receiving the care they would have needed at the time. Difficulty in accessing an NHS service contributes to health inequalities and poor health outcomes faced by many. And Arundel has a significant population of elderly people living across the town and poor accessibility to an NHS pharmacy risks health inequalities and poor health outcomes.

1.8 Pharmaceutical services should be fairly accessible to all and that is not the case in Arundel because some residents have to pay for transport to access these services. Having a pharmacy in town is vital and access should not be problematic to service users, as such difficulties lead to poor health outcomes and health inequalities.

1.9 Arundel Pharmacy is accessible and its central location will benefit both the local residents and UK domestic visitors needing NHS pharmaceutical services. Poor accessibility and service provision of the current NHS pharmacy is frustrating for the residents hence the demand for an additional pharmacy.

1.10 Most patients using the Lloyds Pharmacy often have to take short drives or take a taxi to get the pharmacy as walking there is often dangerous due to the lack of pedestrian crossings on the very busy A27 and Ford Roads. As the majority of patients in Arundel are elderly, some are not able to drive any more and have to either take a taxi or pay for the prescribed medicines to be delivered.

1.11 Local residents have expressed exasperation at the current poor service provision in Arundel. This together with the recent announcement of Lloyds pharmacy services withdrawal from Sainsbury's supermarkets is causing an increase in demand for current services. This volatility is creating uncertainty and anxiety for patients. The 2017 campaign gathered more than 3000 signatures for a second pharmacy in Arundel. Support for this cause continues as shown by our current in-pharmacy petition signed by anyone who needs or would use NHS pharmaceutical services, including those whose prescription requests we are unable to currently fulfil. Both the MP, Andrew Griffith, and the Mayor have over the last few months received numerous letters of discontentment about the current service provision by the Lloyds Pharmacy in Arundel.

1.12 The current Pharmaceutical Needs Assessment has unforeseen the benefit of a second pharmacy in Arundel, one that is centrally located in the town for easy access for all. It is understandable how the PNA would overlook this important needs as it looks at the overall need of the county, West Sussex, instead of looking at individual areas and towns of the county like Arundel.

1.13 Having spoken to some residents about the PNA, the majority of them haven't even heard of the PNA or have any knowledge of what is it [sic]. Given the opportunity to voice their views and experiences of accessing pharmaceutical services in Arundel, they would.

1.14 Below are some selected responses to the questions in the Draft PNA Consultation that were not included in the actual PNA Consultation Report, nevertheless reported in the Consultation, Appendix I. And the fact that, in every question below, responses from the residents of Arundel have been quoted further highlights a long-standing need

for a pharmacy in the town, otherwise responses from other parts of West Sussex would have been quoted.

1.15 The West Sussex Pharmaceutical Needs Assessment 2022 Appendix I Consultation Report:

1.15.1 1.4.3.1 Question 3 – Relating to Arundel the PNA states they cant see any gaps, but if you ask any resident in Arundel the pharmacy is not providing a viable service at all due to staff issues and supply issues and this not as just as a refill of the pandemic. It has got to the point where opening hours have been significantly reduced, patients are queuing for at least an hour to be attended to and the queues extend outside the premises into the car park where there is no seating or shade.

1.15.2 1.4.4.1 Question 4 – Relating to Arundel. Arundel needs 2 pharmacies as the number of visitors cant be expected to walk from town to the nearest pharmacy to receive help. We need a chemist in Arundel town centre, not three quarters of a mile away up a steep hill. I know the guidance is that in rural areas, a pharmacy within 6 miles and 20 minutes travel time is considered acceptable, but frankly that guideline is impractical in this day and age and doesn't work, especially in Arundel. Hence because of this you found no gaps when it came to access to a pharmacy.

1.15.3 1.4.5.1 Question 5 – Relating to Arundel. The PNA should make provision for a larger, more efficient, and permanently staffed in the historic town centre. Visitors cannot believe it when they are told that there is no pharmacy in the town centre and that they have to find their way to the existing poor facility, which involves pedestrians having to negotiate the busy A27 trunk road, Arundel having no proper by-pass. As a result, they go elsewhere. A town centre pharmacy would considerably strengthen the range of facilities the town has to offer and would encourage visitors from the surrounding villages to come shopping in Arundel, as the town centre pharmacies (there used to be two) did in the past, thereby contributing to the local economy.

1.15.4 1.4.6 Question 6 – Any further comments about the content of the draft PNA. 1.4.6.1. Further comments relating to Arundel Pharmacy provision is very poor! Please include provision for a town centre pharmacy in Arundel in the PNA. Like most town centres, the economy of the town has been affected by out of town and internet shopping and by the Covid pandemic. Your decision to approve a new, efficient town centre pharmacy would be a great encouragement to those working to salvage the economic fortunes of our ancient town.

1.16 I do not think that by telephoning a relatively small sample of people in the very large area that West Sussex covers, you are getting a true and accurate picture of how things actually are in specific areas. If for example if you telephoned every resident in Arundel, and other areas too, you would get a very different result from that being illustrated in the PNA via phone calls. Telephone surveys are a good way of getting a steer as to what is going on. This should be backed by a customer experience test over a wide variety of outlets as a mystery shopped. That is when you get close to reality. There is not much evidence of joined up strategic thinking across Sussex.

1.17 Whilst the draft PNA does identify the difficulty of people living in rural areas, it doesn't suggest any way of helping people who find it difficult to access a pharmacy for repeat prescriptions. The scarcity of public transport really wasn't stressed as a barrier to people accessing the medication they have been prescribed. While the report indicates an increase in pressure on community pharmacies, it does not acknowledge of propose any potential solutions.

1.18 The West Sussex Health & Wellbeing Board in 2019 summary report highlights the upward increase in road accidents yet the only way some residents can access Arundel pharmaceutical services is via the very busy A27 and Ford Roads. Additionally, part of the NHS long term plan is to help lower pollution and improve access to community services. Arundel pharmacy is one more additional service provider filling in a huge gap following the proposed closure of at least 11 pharmacies in Sussex including the Lloyds in Sainsburys in Bognor Regis, Lloyds in Sainsburys in Chichester and the Lloyds in Sainsburys in Rustington. The HWB notes in their 2018 summary report that there is a projected population increase of approximately 8+% between 2015-2025. It also listed the existence of 160 pharmacies as part of the human and organisational assets. This number of pharmacies has since decreased and will decrease further following Lloyds Pharmacy Limited announcement and is inversely proportional to the population increase.

1.19 Arundel Pharmacy is a newly opened pharmacy in Arundel, West Sussex, registered with the General Pharmaceutical Council. We are located in the town centre at 20 High Street, Arundel, West Sussex, BN18 9AB. This location is central and easily accessible to all Arundel residents and residents of neighbouring towns, filling in an important gap.

1.20 Arundel Pharmacy has and continues to provide domestic and international tourists also with improved access to healthcare without the need for cumbersome directions or difficulties accessing the premises which usually leads to patients not being able to access their healthcare needs in a timely manner.

Improved Accessibility

1.21 Pharmaceutical Services, NHS or otherwise, should be readily available and accessible to all service users and this is what Arundel Pharmacy is offering, improved accessibility to pharmaceutical services. Allowing the dispensing of NHS prescriptions at Arundel Pharmacy works in tandem with the Health and Wellbeing Board's (HWB) strategy and NHS long term plans strategy to improving access to healthcare for all and would significantly enhance and support the current strategies. Being able to provide an accessible service in Arundel has been positively welcomed by the residents and the many visitors who are all benefiting from our services.

Central Location

1.22 Arundel Pharmacy is located centrally in the town, and we are within walking distance for all residents, without the need to drive to get to a pharmacy, and this is helping the towns mission to creating a greener town. Our central location also means that both domestic and international tourists and visitors no longer need to drive into neighbouring towns to access pharmaceutical services any more as we are close to most tourist destinations in the town.

1.23 As we are centrally located and within walking distance, patients wont have to drive to the pharmacy, this (walking) is and will continue to be beneficial to both their health and the environment as less short car journeys are and will continue to be made. The ability for patients to walk to Arundel Pharmacy and receiving exceptional care is and will continue to give patients confidence to access Essential Services available in Community Pharmacy, this will also reduce the reliance on GP's for most ailments.

Better Access

1.24 The ability for us to offer NHS services and dispense NHS prescriptions will be a key improvement for both the local residents, neighbouring villages (Walberton, Madehurst, Warningcamp, Wepham, Burpham, South Stoke, Crossbush and many more) whose nearest town in Arundel and the thousands of visitors to the town. This improvement in accessibility will eliminate the health inequality that stems from poor accessibility to healthcare facilities and will help to ensure better access to healthcare for all.

1.25 Being able to offer NHS services at Arundel Pharmacy will also relieve Lloyds Pharmacy in Arundel as they have been overwhelmed with the workload, so much so that patients and all residents have also observed this.

1.26 The West Sussex Health & Wellbeing Board in 2019 summary report highlights the upward increase in road accidents yet the only way some residents can access pharmaceutical services is via the very busy A27 and Ford Roads. Arundel Pharmacy is and will continue to help reduce this risk as patients wont have to attempt crossing the busy A27 and or Ford roads just to get to the pharmacy. Additionally, part of the NHS long term plan is to help lower pollution and improve access to community services, and this is what Arundel Pharmacy is offering.

1.27 Patients who do not drive, or cant afford a taxi, those who cant afford the £60 delivery charge at Lloyds or those who just wish to walk to the pharmacy will all benefit from using our services.

Free Delivery Service

1.28 As the majority of residents in Arundel are elderly, we also intend to offer a FREE delivery service of prescribed medicines to those who are housebound, disabled and the elderly who may be unable to pick the medicines in person. This service will be a key improvement as the Lloyds Pharmacy currently charges £60 per annum to deliver prescriptions. I understand that the delivery service is not funded by the NHS, however its importance was highlighted during the COVID-19 pandemic delivery service for patients who were shielding, and it was immensely beneficial to all.

Improved Stock Availability

1.29 The current Pharmaceutical Needs Assessment has unforeseen the benefit and need of a second pharmacy in Arundel, one that is centrally located in the town centre for easy access for all service users. The opening of Arundel Pharmacy has provided the community with a convenient and reliable pharmaceutical service provider. Arundel Pharmacy is already meeting the healthcare and pharmaceutical needs of the residents, but in order to comprehensively support our patients, we would need to be able to fulfil and dispense NHS prescriptions. It is on this basis that Arundel Pharmacy is applying for inclusion on to the NHS Pharmaceutical dispensing list.

1.30 Arundel Pharmacy is one more additional pharmacy filling an important gap following the announcement of the closure of at least 11 pharmacies in Sussex including the Lloyds Pharmacy in Sainsburys Chichester, the Lloyds in Sainsburys Bognor Regis and the Lloyds in Sainsburys Rustington. The HWB notes in their 2018 summary report that there is a projected increase of approximately 8+% between 2015-2025. It also listed the existence of 160 pharmacies as part of the human and organisational assets. This number of pharmacies has since decreased, and will decrease further and is inversely proportional to the population increase.

1.31 Arundel Pharmacy has had the full support of Mr Tony Hunt, the Mayor of Arundel and the entire Arundel Town Council, Andrew Griffith MP for Arundel and the South Downs, Sharon Blaikie chair of the Arundel Chamber of Commerce and all its members.

1.32 Arundel Pharmacy has also received full support from Mr [MP] Postmaster at Arundel Post Office, Mr [JB] of Pallant of Arundel, Mr [MV] owner of Arundel Butchers, all very respected and long-standing business owners of the town who have over the years had numerous people asking them where the pharmacy is, with Mr [MV] quoting “I suspect most people give up and wait until they get home!”

1.33 Since opening Arundel Pharmacy on the 27th January, we have been running an “in pharmacy” petition and have gathered a significant amount of names and signatures from both residents and visitors (226 residents & 28 visitors in 5 weeks) to the town

who would have used NHS Pharmaceutical Services in our pharmacy at the time of visiting Arundel Pharmacy.

1.34 Copies of the above letters of support and the names/signatures have been submitted alongside this application via email."

2 **The Decision**

Sussex ICB considered and decided to refuse the application. The decision letter dated 10 November 2023 states:

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

DECISION REPORT DATED 2 NOVEMBER 2023

"Introduction and background

2.2 An unforeseen benefits application had been received from Shopwyke Healthcare Ltd on 11th April 2023 at Arundel Pharmacy, 20 Highstreet, Arundel, West Sussex, BN18 9AB (currently a private pharmacy). The Committee was now required to consider the application in accordance with Regulations 18 and 19 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.

2.3 Full details of the Applicant's proposal had been notified to the various interested parties in accordance with the regulations. Comments had been received from the following parties: Lloyds Pharmacy Ltd and West Sussex LPC. There were also follow up comments from the Applicant.

Consideration by the Committee

2.4 The Committee had before it:

2.4.1 The NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.

2.4.2 Department of Health guidelines on market entry by means of pharmaceutical needs assessment – Chapter 8 – Unforeseen Benefits.

2.4.3 The Committee Report which included:

2.4.3.1 The application form and information provided by the Applicant, including supporting statements from local residents, the MP and the Mayor;

2.4.3.2 Letters from interested parties and a response to those comments from the Applicant;

2.4.3.3 Maps of the location;

2.4.3.4 Opening times and distances to surrounding pharmacies and GP practices;

2.4.3.5 A site visit report;

2.4.3.6 West Sussex PNA extracts and a link to the full PNA;

2.4.3.7 Demographic information including population density;

2.4.3.8 Public transport information'

2.4.3.9 Prescription information;

2.4.3.10 Previous appeal decision report (SHA/21046); and

2.4.3.11 The relevant Regulations (18, 19, 31, 40, 41 and 44).

2.5 In relation to the application, the Committee noted the following:

2.5.1 The Applicant's fitness information was approved on 2nd November 2023

2.5.2 That the Applicant was proposing to provide essential, enhanced and advanced services, if commissioned

2.5.3 That the Applicant proposed core opening of 40 hours per week and total proposed opening of 54.30 hours per week.

2.6 The Committee considered information from a site visit of the Arundel area that had been undertaken by a Commissioning Hub representative who was present at the meeting. Arundel is a small town north of Littlehampton in West Sussex. The town is divided by the A27 with the majority of the population resident in the west side of the town. The GP practice and a pharmacy on the NHS pharmaceutical list (previously Lloyds) are situated on this side of the town. The town centre is on the east side of the A27 and this includes some residential areas as well as shops and a popular tourist attraction (Arundel Castle). Arundel Pharmacy, which is a private pharmacy and is the address for this application, is on the west side on High Street which is on a hill. Crossing the A27 is challenging if travelling by foot.

2.7 The Committee noted the decision made by NHS Resolution dated 10th June 2019 (SHA/21046) to refuse an application offering to provide unforeseen benefits for the Arundel area.

Regulation 31 – Refusal: same or adjacent premises

2.8 The Committee first considered Regulation 31(2)(a)(i) and was of the view that Regulation 31(2)(a)(i) is not met as there is currently no person on the pharmaceutical list at the premises to which the application relates.

2.9 The Committee went on to consider paragraph (a)(ii) of Regulation 31(2); whether there is a person on the pharmaceutical list providing pharmaceutical services from the adjacent premises.

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

Regulation 40, 41 and 44

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

2.12 There are no dispensing patients within 1.6km radius of the proposed best estimate, therefore the Committee noted that if the application was approved it would not be required to consider the discontinuation of arrangements for the provision of pharmaceutical services by doctors to the affected patients under Regulation 50.

Oral Hearing

2.13 The Committee decided that it was not necessary to hold an oral hearing before determining the application.

Regulation 18 – Unforeseen benefits application

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

2.14.1 [Regulation 18 quoted in full.]

2.15 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.

2.16 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 (the 'PNA') in accordance with paragraph 4 of Schedule 1 of the Regulations.

2.17 The Committee has regard to the West Sussex PNA (issue date 1st October 2022) (the 'PNA') and noted that no relevant supplementary statements had been issued.

2.18 The Committee also noted that, having considered the entire West Sussex locality including the area of Arundel, the HWB had reached the overall conclusion that:

2.18.1 "The PNA has not identified any gaps in current service provision of necessary services within the West Sussex area. The current coverage is adequate to provide the necessary services such as essential/dispensing services and advanced services.

2.18.2 For the lifetime of this PNA (October 2022 to October 2025) after reviewing the location and scale of proposed housing development it is anticipated that the current pharmaceutical providers will be sufficient to meet the local needs."

2.18.3 [Page 134, West Sussex PNA 2022]

2.19 The Committee noted that the HWB had considered access (distance, travelling times and opening hours) to assess how current service provisions will meet the needs of the population within the lifetime of the PNA. The PNA included a consultation report that states that all feedback was reviewed and considered.

2.20 The Committee noted that the Applicant stated: "The current Pharmaceutical Needs Assessment has unforeseen the benefit of a second pharmacy in Arundel, one that is centrally located in the town centre for easy access for all. It is understandable how the PNA would overlook this important need as it looks at the overall need of the county, West Sussex, instead of looking at individual areas and towns of the county such as Arundel."

2.21 The Committee noted that the improvements or better access that the Applicant was claiming would be secured by its application were not included in the relevant pharmaceutical needs assessment in accordance with paragraph 4 of Schedule 1.

2.22 The Committee was satisfied that the unforeseen benefits claimed in the application were not identified in the PNA.

2.23 In order to be satisfied in accordance with Regulation 18(1), the Committee went on to consider those matters set out at Regulation 18(2).

2.24 Regulation 18(2)(a)(i) – whether or not granting the application would cause significant detriment to the proper planning in respect of the provision of pharmaceutical services.

2.25 The Committee was not aware of any plans that would be affected and concluded that granting the application would not have an adverse effect on any future plans. None of the submissions included any comment or evidence in regard to this matter. Therefore, the Committee concluded that granting the application would not cause significant detriment in this regard.

2.26 Regulation 18(2)(a)(ii) – whether or not granting the application would cause significant detriment to the arrangements in place for the provision of pharmaceutical services.

2.27 None of the submissions included any evidence on this question and the Committee found no evidence that if the application was to be granted, it would cause significant detriment to the arrangements in place for pharmaceutical services in the area.

2.28 The Committee did not find any significant detriment to proper planning or to the arrangements in place for the provision of pharmaceutical services and therefore was not obliged to refuse the application under Regulation 18(2)(a).

2.29 Regulation 18(2)(b)(i) – whether notwithstanding that the improvements or better access were not included in the relevant PNA, it is satisfied that, having regard in particular to the desirability of – there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB – granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant PNA was published.

2.30 On this point the Applicant has said:

2.30.1 “Arundel currently have one NHS listed pharmaceutical service provider (Lloyds Pharmacy), and its current location is unfortunately not easily accessible for all the residents of Arundel especially the elderly resident and the many thousands of domestic tourists and visitors to the town. It is disproportionately located in one end of Arundel, making it poorly accessible.”

2.30.2 “Our central location also means that both domestic and international tourists and visitors no longer need to drive into neighbouring towns to access pharmaceutical services anymore as we are close to most tourist destinations in the town.”

2.31 In order to determine if patients in the area already had a reasonable choice, the Committee considered access (distance, travelling times and opening hours) as an important factor in determining the extent to which the current pharmaceutical service provision meets the needs of the population in the Arundel area.

2.32 The Committee noted the information provided in the site report and summarised in point 2.3 above.

2.33 The Committee had regard to the current service provision in the immediate area of Arundel and noted that there are currently seven pharmacies within a 3.5 mile radius of the proposed address. This includes a mix of independent and multiple pharmacies. The Committee noted that the Boots Pharmacy at 80 – 82 High Street, Littlehampton (which is very close to the Kamson’s Pharmacy at 84 High Street) is due to permanently close of 27th January 2024.

2.34 Taking account that the Boots Pharmacy is closing, the opening hours of the remaining six pharmacies range from 08:30 to 21:00 on Monday to Friday, from 09:00 to 21:00 on Saturday and from 10:00 – 16:00 on Sunday.

2.35 The Committee noted that the Applicant had offered to open from 09:00 to 18:30 on Monday to Friday, Saturday opening of 09:00 to 16:00 and to close on Sundays. There are already pharmacies in the area providing longer hours Monday to Saturdays and open on a Sunday as indicated above.

2.36 The Committee noted that the proposed core hours are 09:00 – 17:00 Monday to Friday. The Applicant also proposes supplementary opening hours of Monday to Friday 17:00 – 18:30 and Saturday 09:00 – 16:00. The Committee noted that these hours can be removed by giving 5 weeks notice and therefore the core hours were the only hours that should be taking [sic] into consideration.

2.37 The Committee noted that as well as only proposing supplementary hours on a Saturday, the Applicant was not proposing to open on Sundays. Part of the case that the Applicant is making is that the pharmacy would provide choice for visitors. It is likely that there are more visitors over the weekend when the pharmacy would not be open. There was no evidence provided to indicate the type and extent of needs for pharmaceutical services by the tourists visiting the town.

2.38 The Committee acknowledged that some patients registered with Arundel Health Centre live outside the town. However, as an example, the June 2023 prescription data for Arundel Health Centre indicates that the majority of prescriptions were dispensed as follows:

2.38.1 Lloyds Pharmacy, Arundel – 50%

2.38.2 Lloyds Direct (online pharmacy) – 10%

2.38.3 Tesco Instore, Littlehampton – 6.8%

2.38.4 Glyn Norris, Littlehampton – 6.8%

2.38.5 Pharmacy2U – 5.2%

2.38.6 Five Village Pharmacy, Bamham – 4.8%

2.38.7 Boots, Worthing – 1.7%

2.38.8 Corden Pharmacy, Pullborough – 1.6%

2.38.9 Kamsons Pharmacy, Littlehampton – 1.4%

2.39 The Committee agreed that the information above demonstrated that the patients who are registered with Arundel Health Centre, most of whom live in the town, are already exercising reasonable choice of which pharmacy they choose to use.

2.40 The Committee noted the points made in the application and supporting documentation about the poor service provided by the Lloyds Pharmacy and this being a reason for having an alternative choice of pharmacy. The Committee reminded itself that poor performance should be dealt with separately and directly with the pharmacy in accordance with the Pharmaceutical Regulations. The former Lloyds Pharmacy has now changed ownership and is no longer a Lloyds Pharmacy.

2.41 The Committee had regard to the previous Appeal decision (SHA/21046) on the matter of choice as follows:

2.41.1 “5.44 The Committee looked at choice within the HWB and considered this was reasonable. As indicated above, a pharmacy was available within 20 minutes by car or on foot, there was a bus service available and in a town of this size, the pharmacy provided reasonable choice. The Committee accepted that the

campaigners would like a second pharmacy on the High Street but this desire was not sufficient to support a claim that there was not a reasonable choice within the meaning of the Regulations. The evidence did not suggest a significant benefit would be obtained but that there would be greater convenience for some."

2.41.2 "5.46 The Committee was of the view that there was 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."

2.42 The Committee noted that there had been no changes since NHS Resolution made their determination, expect for the future permanent closure of Boots Pharmacy at 80 – 82 High Street, Littlehampton.

2.43 Having considered the factors above, the Committee was satisfied that residents of Arundel already have reasonable choice with regard to obtaining pharmaceutical services.

2.44 Regulation 18(2)(b)(ii) – whether notwithstanding that the improvements or better access were not included in the relevant PNA, it is satisfied that, having regard to particular to the desirability of – people who a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access – granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant PNA was published.

2.45 The Committee reminded itself that it was required to address itself to people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that are difficult for them to access. The Committee was also aware of its duties under the Equality Act 2010 which include considering the elimination of discrimination and advancement of equality between patients who share protected characteristics and those within such characteristics.

2.46 The Applicant stated that "the majority of residents Arundel are elderly with mobility issues and require pharmaceutical services regularly" and also, that "Arundel has a significant population of elderly people living across the town and poor accessibility to an NHS Pharmacy risks health inequalities and poor health outcomes".

2.47 The Committee noted that the West Sussex PNA states:

2.47.1 "In West Sussex, 23% of the population is aged 65 or over, compared with 19% nationally." – Page 27, West Sussex PNA 2022

2.47.2 "Arun has a relatively old age structure, with 29% of the population aged 65 years or over (compared with 19% in England)." – Page 162, West Sussex PNA 2022

2.48 The Committee agreed that whilst it was clear that there is an elderly population, the Applicant did not any [sic] provide information about how elderly patients access services, or any specific needs for pharmaceutical services that were difficult for them to access.

2.49 The Committee noted a map included in the Committee report depicting the population within Arundel, which shows that the majority of residents live on the side of the A27 where the existing pharmacy and GP practice are sited. The site of the pharmacy and GP practice has good direct parking facilities and is on level terrain. The proposed site for the proposed pharmacy is on a steep high street with on road parking.

2.50 The Committee received no evidence within the application that identified any other groups of patients in the Arundel area, sharing a protected characteristics with difficulty accessing services that meet a specific need.

2.51 The Committee had regard to the previous Appeal decision (SHA/21046) on the matter of access as follows:

2.51.1 "5.50 The Committee noted that access in the town itself for those with limited mobility was not straightforward, there were narrow paths, busy traffic and the High Street was very steep and although the actual location of the Applicant's pharmacy was not known, he indicated that it would be on the High Street. The Committee noted that those self-identify as house-bound would have prescriptions delivered free of charge by Lloyds. It is also noted that although Arundel had higher than average of the population aged over 65 it also had a relatively high number of residents who said they had good or very good health."

2.51.2 "5.53 The Committee had noted its own observations of the journey to the pharmacy and the different means of accessing the pharmacy. It also noted the limitations of a pharmacy on the High Street for those with a disability. The High Street was very steep and whilst there was some on road parking, this was limited and the nearest car parks were not located conveniently for those with a disability."

2.52 The Committee noted that in line with the comment made by Lloyds in their representations, there had no been significant changes since NHS Resolution had made their determination. The new owner of the pharmacy near the GP practice has confirmed that they intend to provide a free delivery service.

2.53 The Committee therefore concluded that the application did not satisfy the test in this part of the Regulation.

2.54 Regulation 18(2)(b)(iii) – whether notwithstanding that the improvement or better access were not included in the relevant PNA, it is satisfied that, having regard in particular to the desirability of – there being innovative approaches taken with regard to the delivery of pharmaceutical services – granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant PNA was published.

2.55 The Committee agreed that the Applicant had not provided evidence that an innovative approach would be taken with regard to the delivery of pharmaceutical services.

2.56 Therefore, the Committee concluded that there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services.

2.57 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 relevant area of the HWB which were not foreseen when the PNA was published.

Other considerations

2.58 Regulations 18(2)(c) – (f) – The Committee had previously determined that there was no need to defer the application under Regulation 18(2)(c) to (f).

Decision

2.59 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.

2.60 The Committee had considered whether the granting of the application would cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area covered by the HWB, or the arrangements in place for the provision of pharmaceutical services in that area and is not satisfied that it would.

2.61 The Committee determined that the application should be refused on the following basis:

2.62 In considering whether the granting of the application would confer significant benefits, the Committee determined that –

2.62.1 There is already a reasonable choice with regard to obtaining pharmaceutical services;

2.62.2 There is no evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services; and

2.62.3 There is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services.

2.63 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 improvement or better access to pharmaceutical services.

Rights of appeal

2.64 The application is refused so the Applicant has the right to appeal.

2.65 The Committee decided not to grant third party rights of appeal to the decision to any of the parties that responded during the consultation period because the application had been refused."

3 The Appeal

In a letter dated 4 December 2023 addressed to NHS Resolution, Shopwyke Healthcare Limited appealed against Sussex ICB's decision. The grounds of appeal are (emphasis added throughout by the Applicant):

3.1 "I am appealing for the decision to be reconsidered and for the application to be re-assessed on merit. The methodological approach taken by Sussex ICB to arrive at this decision does not reflect the law and the regulations as set out in the National Health Service (Pharmaceutical and Local Pharmacy Services) Amendment Regulations 2012 Regulation 18 – Unforeseen benefits. The Committee report has also relied upon incorrect information to influence the decision for refusal. For instance, key interested parties i.e. the patients and The Arundel Surgery whom this application affects were **NOT** notified or consulted **as required by law**. The ICB Committee failed to adhere to these regulations, consequently I find that the application has not been objectively processed. The catalogue of process failures begun with the initial refusal (17/04/23) of the application shortly after submission (30/03/23) citing Regulation 40(2) without a decision report. When this was queried, the application was reopened without any further clarification.

3.2 Such has been the Committee's short sightedness and commitment to refusing this application and the many representations made on behalf of and by the residents as part of the application. It is our view that at best, these representations have been overlooked and, at worst, wilfully ignored. We (the Applicant and the residents of Arundel) are not satisfied that the application has been assessed on its own merits, in its entirety and free of prejudice and bias for instance, of the 20 interested parties that were notified, **none** represented patients. The Committee also ignored follow-up comments from myself "the Applicant" which challenged comments from the LPC and

Lloyds Pharmacy, yet they used such comments to arrive at this decision. The Committee has given template unjustified reasons as grounds for refusal, we address each consistent reason in tandem with the decision report.

3.3 1.2 – We note that from the 45 day notice information circulated, the ICB states "In addition, the law requires us to involve patients in our decision. We may do this by sending copies of pharmacy applications to city/district councillors, town/parish councils, patient representative groups, or residents." Patients were not consulted regarding the application. We know this because patients have told us they were not consulted and they were not listed as part of the notified interested parties. In addition, despite us submitting letters of support for the application from Andrew Griffiths MP, Mayor Tony Hunt, numerous emails by residents to the pharmacy team, and fellow business owners and a **high quality in-pharmacy petition (357 total signatures; 274 residents, 83 visitors). All in-house signatures were by people who would have used NHS services at the time of signing the petition.** However, the ICB has chosen not to consider this as evidence. Therefore, the Committee has failed to meets its obligations as required by law in involving patients. The report deliberately neglected to mention that, of the notified 20 "interested" parties, **only 2 responded to object**. Although NONE of these represented patients, this is a statistically significant response from a healthcare service provision point that underscore the unforeseen benefit application. It is also worth that many of the other interested parties are pharmacies **(many who support us)** to which the ICB has suggested patients have access to.

3.4 2.3 The Committee considered information from a site visit of Arundel that had been undertaken by a Commissioning Hub representative who was also present at the meeting. We are not convinced that a site visit was carried out and if it was, it was NOT conducted properly! The report stated that Arundel Pharmacy is on a hill, which is factually incorrect and misleading. Those with wheelchairs, mobility aids, pushchairs, injured, elderly, young and expectant service users have found and continue to find Arundel Pharmacy easily accessible. We are centrally located in the town with access to two car parks and free one hour on street parking. It is also worth noting that, the majority of our patients actually walk to us.

3.5 The suggested site visit did acknowledge the challenges that exist with crossing the A27 to access the only choice available for NHS pharmaceutical services in Arundel and yet the Committee refused to consider this as a significant unforeseen benefit of Arundel Pharmacy's central location.

3.6 It is inconceivable that the Committee finds it acceptable that the elderly and people who are unwell and/or do not have access to vehicles should be expected to travel more than 3.5 miles out of town or have to risk endangering their lives by crossing the busy A27 to access basic pharmacy services. The "yet to be named" (previously Lloyds) NHS pharmacy and proposed reasonable choice for Arundel and neighbouring villages is only accessible by A27 or convoluted underpass, how is this acceptable in a town that has a significantly higher than average elderly population?

3.7 Especially, when some towns have been found to have up to three pharmacies within 5 minutes walking distance or located adjacently. Public transport isn't always reliable and it is not sustainable financially or environmentally. For example buses towards the Littlehampton area from Arundel run on the hour when they run while others have had pay for taxis. Some residents have pay £40 for a taxi round trip to Bamham from Arundel of which they are unhappy doing. A taxi from the Arundel town centre to the yet to be named pharmacy costs many elderly and those with limited mobility a minimum of approx. £6 – 9 each way.

3.8 Despite the change of ownership of the Lloyds pharmacy in Arundel, a resident sums this up "The existing pharmacy can not be relied on to be open during published hours, and they do not even pick up the phone so you can ask whether they are open or not; plus, this is only dispensing pharmacy in town, so, by definition there cannot be a choice of any kind, let alone a reasonable one'.

3.9 It is the basis of our application that the current options are not choices that patients have but rather it is the lack of options that is forcing patients to seek out a service to meet their needs. It is therefore, unscrupulous for the Committee to deduce this as (i) patients having sufficient choice and (ii) lacking evidence to demonstrate Pharmacy services access difficulties by people with a protective characteristic. Had the site visit been completed properly, this would have informed the commissioning hub representative's understanding by providing context. Based on the site visit inconsistencies we reserve the right to question whether and if at all a site visit was conducted.

3.10 2.4 The Committee noted an application whose decision had already been decided many years ago. This was irrelevant and wrong as the regulation 18 does ONLY allows [sic] live applications/appeals to be considered. This is evident that the Committee was committed to finding any reasons to refuse the application. I was reassured by [BL] of the pharmacy team via email that my application would be assessed on its own merit.

3.11 4.1 - 4.2 The ICB Committee initially refused this application after only a few weeks of submission without a decision report and cited regulation 40 i.e. the pharmacy was located within a controlled locality. This was shortly retracted without an explanation (decision report) but an excuse regarding the computers and map reading errors. I believe other outside factors influenced this decision as Sussex ICB and the Commissioner must be fully aware that there isn't a single dispensing doctors in Arundel.

3.12 5.1 The Committee decided that it was not necessary to hold an oral hearing before determining the application. The decision not to hold an oral hearing was made to avoid the reality of this situation. The Committee **should** have held an oral hearing and in fact they should hold an oral hearing so they can hear the views of the resident of Arundel whom they represent.

3.13 6.1-6.8 The Committee rightly noted that this was an application for "unforeseen benefits" and yet failed to consider the application and adhere to the obligations set out in Regulation 18. The Committee insists that the application is based on information not included in the PNA. If this information was included in the PNA, then I would have based my application on the PNA, i.e. I would have not applied under the unforeseen benefits route.

3.14 6.9 The Committee rightly noted that the information in my application were not identified in the PNA and yet refuse to accept this information as unforeseen benefits in my application.

3.15 6.19-6.20 The Committee's regard to current service provisions provided is contrived to support the decision to refuse the application. Arundel has been experiencing issues with accessibility to reliable pharmaceutical services for more than 7 years. As a result residents have been forced to have to drive out of town for access to these services. Given the choice, most residents want a local reliable & accessible pharmacy and 3.5 miles out of town is not easily accessible when you are elderly, frail, unwell, don't drive or have mobility impairments. Not only is it unbelievable that the committee would interpret this as having reasonable choice, is also manipulative.

3.16 6.23 The assumption that I would reduce the supplementary hours offered is unnecessary. As an independent, business owner I have a vested interest in keeping the business open. This is in contrast to the current and previous pharmacy provisions in Arundel by the then Lloyds pharmacy and the new owners, as its been closed **without** notification on **numerous** occasions subsequently breaching its NHS contractual obligations. The as yet to be named pharmacy has now closed on Saturdays since assuming ownership on 16th October 2023 and has in fact REDUCED its opening times, they are only operating Monday to Friday and CLOSED on Saturdays. Additionally the Committee highlights pharmacies being open between

08:00 and 21:00, this is a very misleading argument as only one pharmacy closes at 21:00 and that's because it is located in a supermarket.

3.17 6.24 Opening on a Sunday is not a requirement for unforeseen benefit applications or any applications for that matter. Therefore, I do not understand why this expectation arose as part of the decision making especially when this is not imposed or even required of current and existing contractors.

3.18 6.25 - 6.26 The use of the June, 2023 statistics to justify the argument for choice availability is misleading and a illusion of choice as discussed in 6.20. The alternative provisions listed do not represent adequate or sustainable solutions for the residents of Arundel and surrounding villages. It is dismaying that the committee perceives that people travelling out of town for their prescriptions is exercising choice. How can the Committee advocate for improved access by people with a shared characteristics whilst arguing for service availability 3.5 miles out of town? In addition to these opposing reasons, how is expecting patients to travel out of town more accessible than the centrally located Arundel Pharmacy that is within walking distance?

3.19 6.27 The Committee have dismissed the points made about the poor service provided by the then Lloyds Pharmacy. My application was received on the 11th of April, 2023 and Lloyds left on the 15th of October, 2023. Relevant departments had 6 months to act on this and years prior, and they chose not to. The committee also notes that the Lloyds pharmacy has changed hands, interestingly, the new owners have adopted the poor service provisions of pharmaceutical services in Arundel. They have closed every Saturday since they took over and on some weekdays without notice or proper reasons, much to the frustration of their service users and the Arundel Health Centre. And during the so called “takeover” between Lloyds pharmacy and the new owners, they LOST 2,000 prescriptions. Evidence of this was sent to Sussex ICB and ignored, and yet they are being advocated for by this organisation. To my understanding, this is a huge data breach that the committee has chosen to ignore, why?

3.20 Dr [RR] of The Arundel Surgery has already been to Arundel Pharmacy expressing the The Arundel Surgery's dismay with the pharmacy adjacent to them. She even pledged her support for our application, so why weren't they consulted because from this, it is evident that the GP's clearly support this application, as any other directive would be unjustifiable.

3.21 6.28 The Committee also had and used a previous appeal decision report (SHA-21046) by someone else to assess my application, which I found strange and wrong seeing that I had confirmation from [BL] via email that my application will be assessed on its own merit and won't be determined by external factors. Also, Appendix A – Shopwyke Healthcare Ltd - application timeline as provided by [BM] states “Application to PSRC to consider whether Regulation 40 applied. If it did apply, then the application would have had to be refused at that point because a previous application had been refused within the last 5 years. Based on a previous appeal decision that confirms that the area is not controlled (i.e., rural), PSRC decided that Regulation 40 did not apply, and that the application should be processed and considered”.

3.22 6.29 - 6.30 The Pharmaceutical landscape has changed since 2019. In addition to the demands created by the pandemic, a reported 237 Lloyd pharmacies have closed with further scheduled closures reported by other chains. However, the committee states that no changes have occurred since NHS resolution made their decision except the closure of Boots in Littlehampton. It is evident that there's a lot more at play in this decision than the reasons given. Given the widespread media coverage on the challenges being faced by the pharmacy profession, while sitting on a decision-making board and still arrive at such a decision is incomprehensible. Again, how could the committee satisfy themselves that residents of Arundel already have reasonable choice, without proper consideration of patients experiences? The views of the residents of Arundel have been represented by the letters from Mayor Tony Hunt, Andrew Griffiths MP, the petition results and the numerous support and personal letters

from the residents themselves. All of which have been ignored by the Committee, considering the fact that they failed to adhere to their legal obligation to inform the residents of Arundel/patients regarding my application. Again this is evident that the Committee have not acted in the best interest of the very people they are representing.

3.23 6.32 - 6.35 Age is a protected characteristic and the Committee has not addressed this group of people who by the way are the majority in Arundel, as mentioned many times in my application form. There are a great many elderly people in this town who have to walk to the pharmacy, a journey which involves crossing an extremely busy main A-road with no central islands at the main crossing point - only a hatched area where people wait in the middle of the road with articulated lorries thundering behind them. The only (slightly safer) alternative route involves a long detour through an underpass, and then two further road crossings. How you decide this does not represent difficulty simply beggars belief; The Committee noted in 6.34 that the West Sussex PNA stated: "In West Sussex, 23% of the population is aged 65 years or over, compared with 19% nationally." (Page 27. West Sussex PNA 2022) "Arun has a relatively old age structure, with 29% of the population aged 65 years or over compared with 19% in England)." (Page 162. West Sussex)

3.24 The above is evident that Arundel does have an elderly population, who due to their Age are a protected characteristic, and as described many times have difficulties and struggle to access current NHS pharmaceutical services easily. All this information was provided and is in the application and IF ONLY the ICB Committee had read my application they would have come across this information. To ignore this fact and state that there is no "evidence" of this is wrong and a disservice to the very people whom the NHS are meant to be representing.

3.25 6.38 This argument relates to a previous application whose location was not known and currently serves no bearing on Arundel Pharmacy (Shopwyke Healthcare Ltd.) which is located at 20 High Street, Arundel, BN18 9AB. This is an irrelevant argument as this reference does not apply to my application. It appears the committee has gone out of scope to evidence arguments using irrelevant information sources.

3.26 6.39 If innovation constitutes a free delivery service, we offered this as part of the application in April. However, the committee has chosen to ignore this fact whilst appraising this as a benefit to be offered by the as yet to be named new pharmacy 6 months later. This reason is biased as well as problematic because it nullifies the reason given about innovative approaches. The location of Arundel Pharmacy at 20 High Street was carefully and innovatively chosen as we wanted to be located on a level terrain part of the town centre for easy access.

3.27 6.44 - 7.5 As reasoned above this decision is disingenuous. The existence of an alternative pharmacy in town would immediately double the choice of pharmaceutical provision – that in itself is a significant benefit; the existence of a second pharmacy, by definition results in better access to pharmaceutical services. To state otherwise is a denial of fact.

3.28 Overall, I have found the entire application process via PCSE and my personal experience with the pharmacy team, PCSE and Sussex ICB to be poor. The application itself does NOT specify to the applicant what the very evidence that the committee are looking for actually are. Because if it did, one would know exactly what is needed to be submitted. The application justifications for Unforeseen Benefits has two parts to it and none of them mention the evidence.

3.28.1 (I) 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's area.

3.28.2 (II) 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's area.

3.29 The pharmacy team provided information regarding my application to a member of the public without my consent. Information that I myself had been enquiring about with no responses. I had to hear from local residents via hearsay about a date when the application was being considered. System failures and other unknown (to me) factors lead to my application being refused. This is wrong and I would urge NHS Resolution to re-consider my application fairly.

3.30 In conclusion, we are writing to the appeals committee to objectively review the decision made by the ICB on the grounds that the whole process has failed to assess the application on merit, in line with the regulations set and as required by law to involve patients in the decision making process. We are not satisfied that the reasons given are objective and representative of patient needs. There is a shared consensus that the decision is not free of prejudice and influence by unknown external factors to us. It is hoped that NHS Resolution will review this decision and re assess the application on it's merit and grant the application.

3.31 The attached supporting evidence to this appeal are documents that were initially submitted with the application that I believe were not considered and regarded by Sussex ICB and the committee. [Appendix A provided to NHS Resolution Committee]

3.32 I also attach a letter by Andrew Griffith MP on behalf of the residents of Arundel. [included in Appendix A provided to NHS Resolution Committee.]

3.33 Thank you."

4 Summary of Representations

Alongside the appeal, NHS Resolution saw fit to circulate a copy of the site visit undertaken by Sussex ICB. The Applicant was given an opportunity to provide representations on the site visit report only [a copy of the site visit report was provided to the NHS Resolution Committee at Appendix B]. This is a summary of representations received on the appeal and site visit.

4.1 SHOPWYKE HEALTHCARE LIMITED (the Applicant)

4.1.1 "Thank you for availing the site map and exercising your discretion in allowing us the opportunity to respond. I would like to draw the attention of the Appeals team to Sections 2.3, 6.36 and 6.38 of the decision report in responding to the site visit report and map references.

4.1.2 I would also like to clarify that by the date and time of the site visit, Arundel Pharmacy's location was already established and trading as a private pharmacy, contrary to the site visit report that described it as a "proposed" location. Additionally, the rurality status had been established as not controlled on 4th May 2023 by Sussex ICB (please see attached email documentation evidence).

4.1.3 2.3 First and foremost, it appears that the Committee's short sighted description of Arundel as a "small town north of Littlehampton in West Sussex" sets the agenda of the meeting and consequently the rest of the decision report. The Committee also stated that the town is divided by the A27 with the majority of the population resident in the west side of the town. The site visit report did not indicate which side of the town had the majority of the population, therefore in the absence of factual information this is just an assumption. Even if this assumption were true, this application is for an additional pharmacy in Arundel and subsequently, improving accessibility regardless of the population density. A case in point being, the current NHS pharmacy isn't open on

Saturdays and closes at 5.30pm on weekdays, Arundel Pharmacy is open on Saturdays until 4pm and weekdays until 6.30pm.

4.1.4 Secondly, a play with words by the Committee has attempted to imply that the high street location of the pharmacy which is on a hill is challenging if travelling by foot. This is contrary and at par with the site visit report. The site visit highlights three very critical pieces of information that have been completely ignored namely;

4.1.5 1) The site visit states the proposed location (established) as being in the town centre and goes on to describe the journey to the nearest pharmacy and GP surgery as "The route takes you from Arundel town centre along a relatively flat road with a pavement on one side" yet the Committee's report states that the pharmacy is on High Street which is on a hill. It is also worth noting that an NHS pharmacy once existed for many years on this very High Street, before Lloyds relocated to be closer to the surgery at a time (2008) when pharmacies being situated adjacent to a GP surgery was desirable. As electronic prescriptions service (EPS) had not yet been introduced, all prescriptions were printed out on NHS FP10 green forms and had to be collected physically from a GP surgery and taken to a pharmacy. With the roll out of EPS, this arrangement is no longer essential.

4.1.6 2) The report also highlights the difficulties associated with the journey to the nearest NHS pharmacy: narrow pavements, no crossing points or traffic lights and a few reservation points. Why should one half of a town be subjected to such a torturous and a tragedy waiting to happen by crossing the busy A27 just to collect their medication?

4.1.7 3) Additionally "the report notes that the road then leads up a hill initially" to access the current pharmacy services by the GP's surgery so therefore, it appears that wherever the location of the pharmacy there is a hill East and West side to be negotiated. If the issue is about hills why is negotiating a hill on one side acceptable but not on the other side?

4.1.8 Finally, it appears that the only issue that was identified and reported in this site visit report was under the "Journey to nearest pharmacy & GP practice" which states "The route takes you from Arundel town centre along a relatively flat road with a pavement on one side, you then have to walk around the large A27 roundabout, the pavements are narrow here and there are no crossing points, traffic lights just a few central reservation points to stand in between the flow of traffic. The road then leads up a hill initially with dense undergrowth before opening into residential housing." This highlighted one of our main arguments regarding the difficulties and dangers of trying to access the other pharmacy by the GP surgery. A case that was clearly explained in our initial application.

4.1.9 I also find it rather odd that the Committee's representative made an effort to go into the then Lloyds Pharmacy and the GP surgery, if this is routine why did they not come into Arundel Pharmacy? I would also be interested to know the GP's position on this matter considering the fact that one of the GP partners has pledged their support for Arundel Pharmacy to be added onto the NHS pharmaceutical list.

4.1.10 The site visit report acknowledged that the town was busy at the time of their visit and that the castle obviously attracts a number of tourists into the town which in fact it does and yet the Committee questioned the need for pharmaceutical services by the tourists visiting the town.

4.1.11 As a practicing pharmacist in a tourist town, I often encounter patients who either forget their prescribed medicines or do not bring enough tablets and

require an emergency prescription, be it from their GP, from NHS 111 or other emergency services.

4.1.12 Secondly, I often have tourists visiting Arundel who suddenly suffer an acute illness and require their NHS prescribed medicines dispensed, and due to our central location, they find us easily accessible compared to the other pharmacy.

4.1.13 When I inform them that I am unable to help with NHS services, they are often in disbelief and frustrated. The evidence of this can be seen in the comments section of our in-pharmacy petition as most of the individuals who signed the petition indicated whether or not they were visitors to Arundel.

4.1.14 6.36 The decision report states that "The Committee noted a map included in the Committee report depicting the population within Arundel, which shows that the majority of residents live on the side of the A27 where the existing NHS pharmacy and GP are sited". It would be helpful if the map that the Committee used to arrive at this conclusion was availed. From the information that I have available to be, any assumptions of population distribution from the site map images would be a guesstimate at best. In the absence of factual population figures this assumption is unsupported. No where on the maps and site visit report does it show or depict the population within Arundel, if anything the map shows an evenly [sic] distribution of built up areas of the East and West sides of Arundel. The Committee have not provided any evidence to support this claim.

4.1.15 6.38 The Committee had regard to the previous Appeal decision (SHA/21046) on the matter of access. They highlighted comments outside the current and relevant site visit report and outside legislation.

4.1.16 The Committee used the previous Appeal decision (SHA/21046) outside the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 i.e. – Regulation 18(2)(c), (d), (e) relate to the use of other applications and or appeals and do not make mention of using a previous appeal decision, whose decision had already been made. For instance, an appeal would have had to be pending to be considered as per the legislation i.e. "whether it is satisfied that an appeal relating to another application offering to secure the improvement or better access is **pending**, and it would be desirable to await the outcome of that appeal before considering the applicants application;".

4.1.17 Having considered the site visit report, it is evident that the Commissioning Hub representative did not find nor mention any issues with Arundel Pharmacy or our location in the town of Arundel. In fact, the report clearly acknowledges our central location in the town centre. The report highlighted the fact that the town centre had access to two pay and display car parks, one hour of free on street parking and in my experience an hour is enough for a trip to a well run, effective and efficient pharmacy which Arundel Pharmacy is. Also, due to our central location, the majority of our customers and patients at Arundel Pharmacy actually walk to us. This is ideal for their health and the environment at large and makes the argument of parking irrelevant.

4.1.18 In summary, the site report revealed what has been the main reason for our unforeseen benefit application. If anything, the site visit report lays bare the selective interpretation of the report employed by the Committee and a relative disregard of critical information. I am applying to be an additional pharmacy in Arundel providing the benefit of improved accessibility to mitigate the highlighted challenges associated with accessing current pharmaceutical services. Our central location is sustainable, economical, environmentally

friendly, and is accessible to all including those with protected characteristics i.e. the elderly."

4.2 NHS FRIMLEY ICB

4.2.1 "Thank you for your letter dated 19 January 2024 inviting representations in response to the appeal by Shopwyke Healthcare Limited against the decision made by NHS Sussex Integrated Care Board PSRC to refuse an application for inclusion on the pharmaceutical list offering unforeseen benefits at Arundel Pharmacy, 20 High Street, Arundel, West Sussex, BN18 9AB.

4.2.2 The PSRC would like to make representations on the following points raised as part of the appeal.

Initial refusal of the application under regulation 40(2)

4.2.3 Regulation 40(2) relates to refusal of applications for new premises in controlled localities, on preliminary matters. An application must be refused is there has been a routine application refused in the last 5 years. There was an unfortunate error in that the map showed that the area was controlled. However, it became clear when looking at the previous appeal decision (SHA/21046) that at the time the town of Arundel had been determined as not controlled. When the error was identified, the applicant was advised of the error and informed that the processing of the unforeseen benefit application would proceed.

Interested parties

4.2.4 The list of interested parties (as set out in Regulation 52) notified of this application is included in the application report presented to the PSRC. The report also indicates which of the interested parties submitted a response. Pursuant to regulation 52(1)(e) the local Healthwatch Group was included in the list of interested parties as representing patient, consumer groups in the Health and Wellbeing Board area. Healthwatch did not make any representation.

Reference to NHS Resolution decision SHA/21046

4.2.5 The PSRC referred to the previous appeal decision (SHA/21046) as a useful reference and for context. The Committee noted that there had been no changes since NHS Resolution had made their determination in 2019, except for the future permanent closure of Boots Pharmacy at 80 – 82 High Street, Littlehampton.

Site visit

4.2.6 We can confirm that a site visit was conducted and that the report was referred to at the time of making the decision.

Performance concerns with the existing contractor

4.2.7 The appeal makes reference to performance concerns with the existing contractor in Arundel. Contractual performance issues are dealt with through contract monitoring processes and associated performance related sanction where necessary – not through adjudication of market entry application.

4.2.8 The NHS Sussex Integrated Care Board PSRC respectfully requests that the decision made to refuse the application is confirmed."

4.3 COMMUNITY PHARMACY SURREY & SUSSEX

4.3.1 “Thank you for your letter dated 19 January 2024 along with the accompanying enclosures, advising Sussex Local Pharmaceutical Committee of the above appeal.

4.3.2 We note that apart from providing additional letters and details of a petition we cannot discern that the appellant has raised new points or provided additional evidence to support their application under the regulations. We note that the responses from residents, visitors, business owners and others do not include robust evidence from patients who share a protected characteristic that they do not have access to services to meet any specific needs. The petition does not illicit information on whether patients with a protected characteristic have difficulty accessing the current pharmaceutical services.

4.3.3 We have no other significant comments to make. I hope this response is helpful for NHS Resolution to consider when coming to a decision about this application.

4.3.4 We would wish to ensure that we continue to be included in the circulation list for any relevant correspondence and to attend any oral hearing. I would be grateful if you would inform me of the decision in due course, so that I can keep the Committee updated.”

5 **Unsolicited Comments**

5.1 ANDREW GRIFFITH MP

5.1.1 “I am writing regarding the Sussex Integrated Care Board’s rejection of the application for an NHS Dispensing License for The Arundel Pharmacy (Shopwycke Healthcare Ltd).

5.1.2 It is my understanding that you are writing to interested parties again as part of the Appeal process. I wish to register myself as an Interested Party, as the representative Member of Parliament for Arundel.

5.1.3 I have previously submitted a letter to the Appeal dated 23 November 2023 and would welcome you [sic] confirmation that my letter will be a document used in the consideration of the Appeal. I resubmit the letter for your records.

5.1.4 It is my great concern that the process is taking too long, and that the delay is impacting the sustainability of the Arundel Pharmacy. The pharmacy was opened on the wide understanding that there is a clear need for an in-town NHS pharmacist. I urge you once again to please do all you can to come to a decision as quickly as possible. I would be grateful to be kept informed of the process, and if there is an opportunity to speak to your directly as part of the review then I would like to be able to do this.”

LETTER DATED 23 NOVEMBER 2023

5.1.5 “I am writing regarding the Sussex Integrated Care Board’s rejection of the application for an NHS Dispensing Licence for The Arundel Pharmacy (Shopwycke Healthcare Ltd).

5.1.6 You should be aware that this decision has caused immense local ill-will. The NHS is there to serve local residents and yet in this case it feels that both the failings in the process followed and the outcome decision itself have let people down.

5.1.7 Although my main focus as Member of Parliament is the provision of a much needed second pharmacy (and the first which would be located in the town centre) in general rather than the interests of any particular applicant, I

associate myself fully with all the comments made in the Appeal sent to you by the applicant Martin Chisanga.

5.1.8 There appear [sic] to be major breaches of process: it is my understanding that it is a legal requirement of the decision making committee to include patients, but this has not been done adequately at any stage of the process. Individual representations in support of the application were made by some patients, the Arundel Town Council, and myself. In those letters, we have all made the case that there are significant local needs and benefits to having a second pharmacy, located in the centre of Arundel in the high street, and we have all highlighted the difficulties that many face in accessing the existing pharmacy which is located on the other side of the A27 dual carriageway. No one, at any stages of the process, was given the opportunity to present the facts because there was not an oral hearing, and to the best of my knowledge, no site visit was made. Conversely, I am not aware of anyone who has publicly expressed a view against the application; certainly not anyone in an elected office.

5.1.9 Decisions of this nature should be evidence-led. Unlike it seems the committees, I conducted my own local survey to gauge the views of residents which revealed strong support for a second pharmacy. There were a significant number of respondents – 288 in total – 284 (98.1%) of whom agreed there is a need for a second pharmacy. Of those, 89.6% said they were very likely to use a new pharmacy. Almost 23% said they would use the pharmacy on a weekly basis, and 38% would use it every would use it every two or three weeks. 97% said they would use it for the dispensing of their prescription medicines with 140 respondents saying their household needs to collect more the 12 NHS prescriptions a year. A majority indicated that they would also use a second pharmacy for health checks and flu jabs. Another important factor to note that 58% of respondents were aged over 65. My survey did not account for residents in neighbouring villages who also primarily depend upon Arundel's shops, including those who live in Slindon, Madehurst, Houghton, and Ford. This would I am sure reveal even further demand.

5.1.10 At a time when both the NHS in general and the Arundel (GP) surgery are under pressure, the NHS are missing out on a valuable provision of first line health checks and assessments and support which takes pressure off the local GPs. Indeed, it is a Government expectation that NHS pharmacies be given greater powers to free up resources at doctors' surgeries – Pharmacy First Plan – https://www.england.nhs.uk/2023/11/pharmacy-reforms-to-bring-new-services-to-the-high-street/

5.1.11 It is therefore my explicit request that the application is reviewed promptly through the Appeal process and that you use any route available to you to deliver a positive outcome.

5.1.12 Please do everything you can to support the Appeal made to you."

6 **Observations**

6.1 SHOPWYKE HEALTHCARE LIMITED (the Applicant)

6.1.1 "Thank you for the letter dated 27th February, 2024.

6.1.2 I believe I have provided all the evidence and key information, honestly and to the best of my knowledge and responding to the comments made by the LPC and NHS Sussex ICB would lead to repetitions.

6.1.3 I do not have any further comments or observations to make following the representations received in response to your notification under the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

6.1.4 I trust the Appeals Team will determine my application fairly taking into consideration all the petitions, letter's from the residents, long standing local business owners, Dr. Justine Hextall, The Mayor & The MP as this is the only voice of the residents of Arundel and surrounding villages.

6.1.5 Finally, I would like to express my gratitude to the Appeals Team for the opportunity to appeal. I would also like to respectfully ask for a decision to be made favourably as the long term benefits of providing NHS services to my local community by Arundel Pharmacy will immensely improve health outcomes of the local community and beyond.

6.1.6 I look forward to hearing from you soon."

7 **Further representations**

7.1 JHOOTS PHARMACY

7.1.1 "Thank you for your letter dated 22 March 2024 inviting representations from us as an interested party in the above case ref SHA/26122 in Arundel. I would wish to take the opportunity and submit the following in response for consideration.

7.1.2 Since the application by Shopwyke was submitted the Lloyds Pharmacy at the Health Centre transferred ownership and trades as Jhoots Pharmacy, hence we are an interested party.

7.1.3 The Appeals Committee will be aware there was a previous application on similar grounds that was considered in 2019. This was case reference SHA/21046. The only difference being that Lloyds Pharmacy Ltd is no longer the provider in the town. Much of the evidence presented by Shopwyke Healthcare Ltd is very similar to that considered as part of SHA/21046.

7.1.4 In SHA/21046 paragraph 5.44 The Committee looked at choice within the HWB and considered this was reasonable. As indicated above, a pharmacy was available within 20 minutes by car or on foot, there was a bus service available and in a town of this size, the pharmacy provided reasonable choice. The Committee accepted that the campaigners would like a second pharmacy on the High Street but this desire was not sufficient to support a claim that there was not a reasonable choice within the meaning of the Regulations. The evidence did not suggest a significant benefit would be obtained but that there would be greater convenience for some.

7.1.5 5.29 The Committee considered that if granting the application caused the closure of the pharmacy on Green Lane Close, it would cause significant detriment to the arrangements in place for provision of pharmaceutical services in that area. However, as indicated above, the Committee felt that although the pharmacy was vulnerable to closure if a second pharmacy were to open in Arundel, it could not say that on the balance of probabilities this would happen.

7.1.6 I would now add to this, that the number of prescription items dispensed by our pharmacy in Arundel is less than at the time of the previous consideration. The pharmacy only dispenses 2,000 – 2,500 items a month, therefore a 2nd pharmacy in the town would cause the closure of the current premises i.e. significant detriment to the provision of pharmaceutical services.

7.1.7 In paragraph 1.2 of the appeal the appellant refers to their evidence of letters of support and a petition. Similar evidence was provided and considered in the Appeal Consideration in 2019. This is not a change in circumstances. We also note the petition appears to have been undertaken at the applicant's premises.

7.1.8 The applicant refers to their pharmacy in town on the High Street, but we would highlight they took the decision themselves to open a non-NHS pharmacy at this location.

7.1.9 In terms of accessibility there has been no changes or significant developments in the town since the Appeal Decision in 2019 which was following an oral hearing and the panel conducted a site visit. We would ask the Committee to have regard to the site visit and conclusions of SHA/21046 as part of the review of this fresh application. It is our opinion that Regulation 18 is not met."

8 **Further observations**

8.1 SHOPWYKE HEALTHCARE LIMITED

8.1.1 "Thank you for your email. We welcome the opportunity to respond to Jhoots representation. Jhoots has put forward representations that we summarise as below and address in turn;

1. They have drawn attention to their low prescription items (2000-2500 per month), and they are essentially attributing this as a reason as to why Arundel Pharmacy should not be granted the application.

8.1.2 During the previous application in 2019, it was noted that Lloyds Pharmacy at the Arundel Surgery was dispensing approximately 7000 items. Jhoots, by their own admission, are only dispensing 2000 – 2500 items. The most recent NHS data for prescription items dispensed by Jhoots in Arundel is 2520 items. This works out to be 28.6% of the 8,806 prescription items prescribed by The Arundel Surgery.

8.1.3 This means 71.4% and possibly more of the prescription items being prescribed by the Arundel Surgery are being dispensed elsewhere by other pharmacies. I have personally spoken to numerous patients who are part of this 71.4%, and they have spoken of Arundel Pharmacy being a reasonable, suitable, and welcome choice. In addition, the pharmacies' items dispensing distribution of the 71.4% Glynn Norris, Kamsons, and Tesco pharmacy in Littlehampton have all vocally expressed the impact of the increased pressures and demands on services by patients from Arundel.

8.1.4 Given the number of prescription items Jhoots are currently dispensing, it places them in a very precarious position. Most pharmacy proprietors rely on a minimum threshold for guidance of the sustainability and viability of a given pharmacy. Therefore, it would be in the best interest of the patients and the entire town to have an already functioning and established 2nd NHS dispensing pharmacy in the town.

8.1.5 The campaign for a second pharmacy has always been about necessity. Jhoots is currently only delivering 28% of Arundel Surgery's prescribed items despite being right next door to the surgery that sees approximately 6500 patients. The pharmacy has stopped deliveries citing driver shortages, and as of the 18/04/2024, they had a sign on their door citing extended waiting times for prescription patients due to being short stagged, they do not have a permanent pharmacist and patients have expressed their frustration at the inability to reach them on the phone. This evidence clearly demonstrates that they are struggling.

2. Jhoots cite and claim the committee's considerations 5.29 as potentially contributing to Green Lane Pharmacy's susceptibility to closure.

8.1.6 Jhoots has already lost a significant number of their NHS patients. At present, Arundel Pharmacy does not offer any NHS services and, therefore, have not contributed to their significant loss of NHS prescription items. We strongly refute any liability of Jhoots' under-performance issues. Business performance issues are the responsibility of sole organisations, and we will not be drawn into it.

8.1.7 Additionally, during the take over from Lloyds, Jhoots lost 2000 prescriptions (evidence attached and was shared to the public by the Arundel surgery), not only did this cause significant disruption to the provision of pharmaceutical services in Arundel, The Arundel surgery had to close their reception and diverted the reception staff to rectifying this major data breach and re-issue the lost prescriptions. Residents, many of whom had already been left frustrated for too long, expressed the loss in confidence in the only operating NHS Pharmacy in Arundel and felt there had no choice but to switch pharmacies. This is evidenced by the decline in prescription numbers.

8.1.8 If Jhoots was deemed a fit for purpose choice, it would be delivering a minimum of at least double of its current performance. A lack of competition has encouraged and perpetuated continued contractual breaches of opening times, resulting in patients being left with no choice but to go elsewhere. Having an alternative pharmacy within the town is far more beneficial for both pharmacies and patients for very obvious reasons.

8.1.9 Most importantly the West Sussex NHS ICB Committee determined that granting our application would not cause any significant detriment to the provision of pharmaceutical services in Arundel, and this therefore disqualifies Jhoots statement that a 2nd pharmacy in the town would cause the closure of the current premises.

3. Jhoots claim that there's a reasonable pharmaceutical service provision based on the ICB's decision and that there's no evidence to suggest that there would be significant benefits in granting Arundel Pharmacy's application benefit other than that of convenience.

8.1.10 This application is about accessibility to the available choice, which currently is NOT accessible to all, and most importantly, we have an elderly population in Arundel. Most of whom do not drive anymore and have to take a taxi costing a minimum of £6 each way.

8.1.11 Jhoots state, "the evidence" did not suggest a significant benefit would be obtained if the application was granted. I would like to ask what evidence they are referring to. If anything, Arundel Pharmacy has demonstrated that significant benefits would be obtained if the application was granted. This is available in the numerous letters, emails, and petition comments from patients who are directly affected by the decision.

8.1.12 Furthermore, I (Martin Chisanga) have had numerous conversations with hundreds of people, most of whom signed our petition, i.e., Arundel residents, residents from nearby villages whose main town is Arundel, and domestic tourists who have all expressed how they would positively benefit from our pharmacy being able to dispense NHS prescriptions.

8.1.13 Below is a number of significant benefits that would be obtained should we be granted the application.

8.1.14 i) Improved accessibility for many elderly (protected characteristic) residents, especially those living in retirement properties as Arundel pharmacy is only a short walk for them rather than a taxi costing a minimum of £6 each way.

8.1.15 ii) Domestic tourists who have come away without their necessary medication and are not familiar with the area. The fact is, with the Electronic Prescription Service (EPS), patients should be able to access prescription services from anywhere in the UK, including Arundel, which welcomes domestic tourists.

8.1.16 iii) We are a reliable choice for the town and neighbouring villages because we are open when we are meant to be open and as an independent pharmacist and business owner, I am invested in providing a reliable, effective and safe caring service.

8.1.17 iv) The pharmacy in Green Lane, whether it be under the current on previous ownership, has driven people out of Arundel not because they have alternative choices but because the residents are frustrated by the current provision.

4. Jhoots stated that the only difference between our application and that made in 2019 was that Lloyds is not the NHS Provider in Arundel.

8.1.18 We would like to draw the attention of Jhoots and the Appeals Committee to the following significant differences since the previous application in 2019.

8.1.19 (i) The first significant difference is that we have a premises in the centre of town, the previous applicant did not. Having a functioning pharmacy premises has allowed us to demonstrate that we are a reasonable choice for the towns majority of residents, and if we were granted the application, the majority of these residents have said they will have us, Arundel Pharmacy as their first and preferred choice due to our reasonable location and commitment to providing an effective service.

8.1.20 (ii) The current application has been made by a local pharmacist, who has local knowledge of Arundel and the surrounding areas. The previous applicant was based 40 miles away. Arundel Pharmacy has been in operation for 15 months now, and it has become an asset to the town, and we (Martin Chisanga & my wife Debbie) have become part of the local community, we regularly engage in events in the town, support local charities, are active member of the Arundel Chamber of Commerce. Debbie has an extensive healthcare background, too, within the NHS Mental Health sector and Dentistry. She is also Arundel Pharmacy's mental health first aider, and this places us in a unique position as a community pharmacy. This innovative approach allows us to support, signpost, and link our patients to wider services.

8.1.21 (iii) Our Pharmacy operates between 9am to 6.30pm Monday to Friday (to coincide with the Arundel Surgery's opening hours), and 9am to 4pm on Saturdays, the previous applicant was only proposing to open between 9am and 5pm, Monday to Friday and closed on Saturdays. And since Jhoots took over from Lloyds, they have been operating Monday to Fridays and ad hoc Saturdays.

8.1.22 (iv). FOUR pharmacies nearby (Lloyds Sainsburys in Bognor Regis, Chichester, Rustington, and a Boots Pharmacy in Littlehampton) have all closed permanently since the previous applicant causing increased pressures on the remaining community pharmacies in the area. (v). We have had the COVID-19 pandemic, which has resulted in an increase in people using pharmacies nationwide, as the pharmacies are considered to be an essential frontline healthcare service in our communities.

8.1.23 (vi). The government has launched new community pharmacy services such as the Pharmacy First, one which both the government and the NHS have invested heavily in, and one which the Jhoots pharmacy in Arundel does NOT even offer. If the application is granted, Arundel Pharmacy will offer this service

as we have and continue to have enquiries about this service, indicating a demand for the service.

8.1.24 (vii). The application, i.e., unforeseen benefits provided by Shopwyke Healthcare Limited, may have similar grounds; however, the evidence that we have gathered and provided is very different from the previous applicant.

8.1.25 (viii). There are many significant differences between the applications that Jhoots would be aware of had they thoroughly familiarised themselves with the details of the application. And in addition, the fact that 5 years since the previous application, the need for an accessible and reliable pharmacy in the town is still an important issue for the many residents of Arundel proves that a second pharmacy is more than just a desire, but rather a necessity.

5). Jhoots refers to the decision for Arundel Pharmacy to open a non-NHS pharmacy as self-inflicted.

8.1.26 During the previous application in 2019, the previous applicant did not have a premises, and this was clearly an issue as he was questioned where exactly he would open his pharmacy. This decision and initiative was carefully thought through, and the exact location had to be on a flat terrain part of the High Street and easily accessible which number 20 High Street, Arundel is. This has also allowed us to become an integral part of this community, and Arundel Pharmacy has become a community hub.

8.1.27 In Summary despite being by the Arundel Surgery and a choice in town, it appears that Jhoots is neither considered a first nor reasonable choice for the majority of locals as evidenced by their low number of items dispensed i.e., they are only dispensing 28.6% of the overall prescription items from Arundel Surgery. Therefore, it is in the interest of patients for both pharmacies to work together and retain patients who have been forced and not chosen to utilise pharmaceutical services out of town.

8.1.28 We conclude that Jhoots Pharmacy has no basis whatsoever for objecting to the application other than from a competition perspective. They have provided subpar reasons for objecting by making inferences and drawing similarities between our current application and the previous application. I would also like to highlight that businesses, including pharmacies, should be allowed to compete in a fair manner, and if anything, Jhoots does have the advantage of being adjacent to The Arundel Surgery.

8.1.29 We welcome the opportunity for a collaborative working approach with Jhoots. This would provide the patients with an authentic choice of pharmaceutical services with a focus on healthcare accessibility, equity, and service reliability."

8.1.30 "Following on from my previous email responding to the representation from Jhoots Pharmacy in Arundel. I have had a local resident, Mrs [PB] visit us at Arundel Pharmacy. She has told of how unsustainable getting their prescription medicines from Jhoots Pharmacy by the Arundel Surgery has become for both her and her husband, and the many other residents in their retirement building.

8.1.31 Again our building, Arundel Pharmacy, is within a short walking distance to at least 4 retirement buildings in Arundel for a lot of the residents.

8.1.32 She has provided us with a handwritten note, please find attached to this email highlighting their most recent visit to the Jhoots Pharmacy in Arundel. She has given us consent to share her note with NHS Resolution and the Appeals Committee, and she has said if anyone wishes to discuss this further, she has provided her contact details on the note attached.

8.1.33 The note also evidences the fact that Jhoots no longer provides the delivery service, a service we intend to provide should our application be granted."

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