

13 June 2024

FILE REF: SHA/26181

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

DECISION MAKING BODY: NHS Nottingham and Nottinghamshire
ICB (“the Commissioner”)

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

PHARMACIST: Beechdale Pharmacy
 (“the Applicant”)

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

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

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

Outcome

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

A copy of this decision is being sent to:

Beechdale Pharmacy (the Applicant)
East Midlands Primary Care Team for Nottingham and Nottinghamshire ICB

Advise / Resolve / Learn

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1 Introduction

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

Rights of appeal

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

Opening hours

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

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

Alteration of core opening hours

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

Alteration of supplementary opening hours

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

The Applicant's proposals

- 1.11 The Applicant in its letter of appeal indicates that it currently has core opening hours totalling 40 hours per week.
- 1.12 The Applicant wishes to:
- 1.12.1 Maintain the 40 core hours, Monday to Friday with a different redistribution of those hours. [See 2.3 below].

2. Application

In this case, the Applicant provided the following information in its application form and supporting information dated 16 January 2024:

- 2.1 “This is an application to permanently change core opening hours.
- 2.2 Current opening hours for these premises:

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

Sunday	Closed
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2.3 Proposed core opening hours for these premises:

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

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

2.5 Monday 22 April 2024.

2.6 Please provide information that demonstrates that your proposed core opening hours will:

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

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

2.7 We are applying to make this change to introduce a lunch break into our opening hours, whilst maintaining the start and finish times. To achieve this, we are asking to redistribute four of the core hours to the Thursday afternoon (2pm to 6pm). This will match our local surgery closing time of 6pm, and ensure that our current level of service provision is improved as we will be open until 6pm on a Thursday. Whereas currently, through our supplementary hours, we close at 5.30pm on a Thursday. We have also submitted a separate notification to open on a Saturday morning (9am – 1pm) as supplementary hours.

2.8 This decision to change our opening hours has not been made lightly and we have taken multiple factors into consideration. This change in our opening hours is not expected to impact on the needs of our customers, and I do believe that the change in core hours would maintain the existing level of service provision, for the reasons set out below:

2.8.1 we will maintain 40 core hours from Monday to Friday

2.8.2 we would extend our opening hours on a Thursday afternoon until 6pm, despite the redistribution of the core opening hours

2.8.3 overall we are increasing our total opening hours, as we have put in a separate application to increase supplementary hours on a Saturday to open 9am to 1pm, for which we are not currently open

- 2.9 All the above will allow us to offer pharmaceutical provision on a Saturday. Here are the opening hours of our nearest pharmacies:
- 2.10 Well Pharmacy NG8 1FG Mon – Fri 8.30am – 6.15pm Sat & Sun CLOSED
- 2.11 Our nearest pharmacy (Well Pharmacy NG8 1FG) is not open on a Saturday, and remains open through the lunch period (1pm to 2pm, Monday to Friday) when we are proposing to close.
- 2.12 Customers would be able to travel to this pharmacy by walking, or by public transport (bus) or by car. Well Pharmacy is 0.6 miles away. (Below routes taken from Google Maps). [see Appendix A page 1-2 – maps]
- 2.13 Vantage Pharmacy NG8 5HL Mon – Fri 8.30am – 7pm Sat & Sun CLOSED
- 2.14 Vantage Pharmacy is not open on a Saturday, and remains open through the lunch period, 1pm to 2pm Monday to Friday, when we are proposing to close. Customers would be able to travel to this pharmacy by walking, or by public transport (bus) or by car. This pharmacy is 1 mile away. (Below routes taken from Google Maps). [see Appendix A page 2-3– maps]
- 2.15 Ascent Pharmacy – Russell Drive NG8 2BE Mon – Fri 8.30am – 6.15pm Sat 9am – 1pm Sun CLOSED
- 2.16 Ascent Pharmacy remains open through the lunch period Monday to Friday (1pm to 2pm) when we are proposing to close. Customers would be able to travel to this pharmacy by walking, or by public transport (bus) or by car. This pharmacy is 1 mile away. (Below routes taken from Google Maps). [see Appendix A page 3-4 – maps]
- 2.17 We currently provide the following services/facilities to our customers in addition to the essential services; new medicines service, supervised consumption, needle exchange and syringe provision, seasonal flu vaccination, NHS blood pressure check service. We also ensure that rotas are planned in advance to ensure that service provision is maintained throughout our opening hours. In the near future we are also looking to increase our service offering by offering the Pharmacy First Service and Pharmacy Contraception Service. Services available at our pharmacy and local pharmacies:

SERVICE	BEECHDALE PHARMACY	WELL PHARMACY	VANTAGE PHARMACY	ASCENT PHARMACY
New Medicines Service	✓	✓	✓	✓
Supervised consumption	✓	✓	✓	✓
Needle & Syringe Exchange	✓	✓	✓	
Flu Vaccination	✓	✓	✓	
NHS Blood Pressure Check service	✓	✓	✓	✓
Covid-19 Lateral flow tests (eligible patients)	✓	✓	✓	✓
Covid-19 Lateral Flow Tests (to buy)	✓	✓	✓	✓
Disabled parking	✓	✓	✓	✓
Car parking	✓	✓	✓	✓
Cycle parking	✓	✓	✓	
Step free access	✓	✓	✓	✓
Wheelchair access	✓	✓	✓	✓
Consultation room	✓	✓	✓	✓

- 2.18 Please note that although we have requested to close at lunch time, we actually intend to increase our hours by opening on a Saturday morning from 9am to 1pm.
- 2.19 I would like to bring your attention to the main points that I have demonstrated above:

- 2.19.1 All of our local pharmacies would be opening during the time period 1pm-2pm when we are proposing to close. We would be redistributing our core hours from 1pm-2pm (Mon, Tue, Wed and Fri), to a Thursday afternoon (2pm to 6pm). We would not be reducing the core hours. So this would maintain the existing level of pharmaceutical provision.
- 2.19.2 I have shown that the range of services offered within the area will allow the scope of pharmaceutical provision to be maintained as the local pharmacies offer the same range of services for customers to access these services during the time period that we are proposing to close.
- 2.19.3 I have also shown how our customers would be able to access these services at the other pharmacies with ease during the proposed lunch break; either by bus, car, bicycle or by foot.
- 2.20 Our pharmacy currently employs one full time pharmacist, one full time checking technician, two full time dispensers and one part time trainee dispenser. Due to our current opening hours, staffing level and current funding model we cannot recruit more staff, and we have to operate on a model where the staff take staggered lunch breaks. The result of this is that we have a period between 12pm and 2.30pm each day where we cannot operate at full capacity or efficiency due to staff taking lunch breaks. This impacts on the pharmacist's ability to offer services immediately due to the reduced level of staffing during this time period, without having to defer customers to later in the day/week or indeed to other local service providers. Allowing us to close between 1pm to 2pm would essentially enable us to allow staff to take their lunch break between 1pm-2pm, guaranteeing the level and quality of pharmaceutical service provision through the remaining opening hours.
- 2.21 It is our sincere opinion that these changes would not have a detrimental effect on the level and/or scope of pharmaceutical provision within our area and hope that you will consider the information that we have provided. I would be happy to provide any further information if it is required."

3. **Decision of the Commissioner**

In a letter to the Applicant dated 21 February 2024 the Commissioner stated:

- 3.1 "Thank you for your application to make a permanent change to the core opening hours at NH Pharm Ltd t/a Beechdale Pharmacy, received on 17 January 2024.
- 3.2 The Pharmaceutical Services Regulations Committee (PSRC) met on 20 February 2024 and a decision was made to refuse the request to change the core opening hours at the above pharmacy from Monday 22 April 2024.
- 3.3 The committee felt the pharmacy had not demonstrated how the proposed core hours would:
 - 3.3.1 Either maintain as necessary the existing level of service provision for people in the area of the pharmacy, or other likely users of the pharmacy premises; or
 - 3.3.2 Maintain a sustainable level of adequate service provision for the people in the area of the pharmacy, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome.
- 3.4 You have the right of appeal to the Secretary of State against our decision. Should you choose to appeal, then you should send in writing a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this letter to: nhsr.appeals@nhs.net NHS Resolution, 8th Floor, 10 South Colonnade, Canary Wharf, London, E14 4P.

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

The Commissioner’s additional papers (Redacted and circulated to the Applicant for information by NHS Resolution)

3.6 “Beechdale Pharmacy have submitted an application to change their core hours at 441a Beechdale Road, Aspley, Nottingham, NG8 3LH.

3.7 The proposed effective date is 22 April 2024.

3.8 The applicant is seeking to change their core hours to introduce a lunch break into their opening hours, whilst maintaining the start and finish times. To achieve this, they are asking to redistribute 4 of the core hours to Thursday afternoon (14:00 to 18:00hrs).

3.9 The Committee are asked to review the current core hours that are available within a 1.1-mile radius of the pharmacy and the impact this permanent change would have on patients.

3.10 The pharmacy has not demonstrated that the same level of service will be maintained whilst closing at lunchtime. There is no evidence of the type of patient using the service or the pharmaceutical services which are provided to those patients.

3.11 The application does not demonstrate how the proposed core hours change would:

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

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

3.12 The Committee determined to **reject** the application on the basis that there is no demonstration that the same level of service would be maintained at the time they want to close Pharmaceutical Service Regulation Committee East Midlands Report dated 20 February 2024.

3.13 Matters to be considered when issuing directions in respect of pharmacy premises core opening hours

3.14 [Quotes The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, Schedule 4, Part 3 paragraph 24 in full]

3.15 Determination of pharmacy premises core opening hours instigated by the NHS pharmacist

3.16 [Quotes The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 2013, Schedule 4, Part 3 paragraph 26 in full]

3.17 Application Summary

3.18 When considering applications to either

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

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

- 3.19 The committee must also consider If the application demonstrates that the proposed core opening hours will:
- 3.19.1 either maintain as necessary the existing level of service provision for people in the area of the pharmacy, or other likely users of the pharmacy premises; or
- 3.19.2 maintain a sustainable level of adequate service provision for the people in the area of the pharmacy, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome.
- 3.20 Beechdale pharmacy have submitted an application to change their core hours at 441a Beechdale Road, Aspley, Nottingham, NG8 3LH.
- 3.21 The proposed effective date is **22 April 2024**.
- 3.22 The applicant is seeking to change their core hours to introduce a lunch break into their opening hours, whilst maintaining the start and finish times. To achieve this, they are asking you to redistribute four of the core hours to Thursday afternoon (2pm to 6pm).
- 3.23 [See paragraphs 2.2 and 2.3 above for current and proposed core opening hours].
- 3.24 Service provision at this pharmacy
- 3.24.1 Enhanced Services: Extended Care Tier 1 & 2
- 3.24.2 Advanced Services: CPCS, Hypertension
- 3.25 [See paragraphs 2.7 to 2.9 above regarding application details]
- 3.26 **Pharmaceutical Provision near the Pharmacy**
- 3.27 There are:
- 3.27.1 6 Pharmacies – within 1.1 mile of the pharmacy applying for the core hour change.
- 3.28 The table below provides details of pharmacy within a 1.1-mile radius of the pharmacy, the hours that they provide and the Advanced and Enhanced services they provide.

Nearest Pharmacies and Service Provision within 1.1 mile radius			
Pharmacy name	Distance in miles	Opening hours	Services
FXE35 Well 12 Harrow Road Wollaton Nottingham NH8 1FG	0.6	Core Hours Mon, Tues, Wed & Fri 09:00 – 13:00 14:00 – 18:00 Thurs 09:00 – 13:00 14:30 – 17:00 Sat and Sun Closed	Hypertension Smoking Cessation
FJN60 Vantage Pharmacy Melbourne Park Medical Centre Melbourne Road	1	Core Hours Mon, - Fri 09:00 – 13:00 14:00 – 18:00	Extended Care Tiers 1, 2 and 3 NMS Dec Hypertension CPCS

NG8 5HL			Smoking Cessation
FA858 Ascent Pharmacy 158 Russell Drive Wollaton Nottingham NG8 2BE	1	Core Hours Mon, Tues, Wed & Fri 08:30 – 12:00 14:30 – 18:15 Thurs 08:30 – 12:00 14:45 – 18:15 Saturday 09:00 – 13:00 Sunday Closed	CPCS
FFG62 Mary Potter Pharmacy Hyson Green Nottingham NG7 5HY	1.1	Core Hours Mon, - Fri 09:00 – 13:00 14:00 – 18:00 Sat and Sun Closed	Extended Care Tier 1 & 2 Hypertension
FFA16 Queens Pharmacy 403 Nuthall Road Aspley Nottingham Nottinghamshire NG8 5DB	1.1	Core Hours Mon, - Fri 08:30 – 21:00 Saturday 17:00 – 21:00 Sunday 10:00 – 16:00	Hypertension CPCS Smoking Cessation
FKW86 Hyson Green Pharmacy 50 Gregory Boulevard Hyson Green Nottingham NG7 5JD	1.1	Core Hours Mon, - Fri 09:00 – 21:00 Saturday 17:00 – 21:00 Sunday 10:00 – 21:00	Extended Care Tier 1 & 2 Hypertension CPCS

3.29 Discussion

3.30 The committee to review the current core hours that are available within a 1.1-mile radius of the pharmacy and the impact this permanent change would have on patients.

3.31 The pharmacy has not demonstrated that the same level of service will be maintained whilst closing at lunchtime. There is no evidence of the type of patient using the service or the pharmaceutical services which are provided to those patients.

3.32 Conclusions and recommendations

3.33 The application does not demonstrate how the proposed core hours change would.

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

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

3.34 Therefore, the recommendation would be to reject this application.”

4. Appeal

In a letter to NHS Resolution dated 15 March 2024, Rushport Advisory LLP representing the Applicant stated:

- 4.1 “I act for NH Pharm Limited and have been instructed to submit this appeal against the decision of the ICB to refuse the above requested change of core hours.
- 4.2 My client's initial application and supporting information sets out their rationale for requesting this change in hours and we do not repeat that information here.
- 4.3 NHS Resolution (“the Committee”) will note references to the opening hours of other pharmacies within this appeal. As my client is unable to confirm the core opening hours of any other pharmacy we ask that NHS Resolution has exercised its discretion under Paragraph 7, Schedule 3 of the Regulations, and ask the Commissioner to clarify the opening hours of these pharmacies to the extent that it believes it is necessary to do so.
- 4.4 As per the application my client submitted, they intend to maintain their total core hours of 40, but redistribute these to allow a 1 hour lunch break Monday to Friday. The change would provide for longer core hours opening on Thursday when the pharmacy only has core hours until 1pm. My client also proposed to add additional supplementary hours on Saturday although we appreciate that the Committee will not be considering that proposal.
- 4.5 Paragraph 24(1) applies and states as follows:
 - 4.5.1 *24 (1) Subject to paragraph 26(2A), where NHS England issues a direction for setting any days or times for opening hours under this Part, or determines them without issuing a direction, it must in doing so seek to ensure that the days and times at which pharmacy premises are open for the provision of pharmaceutical services in the area in which the premises that are the subject of the direction are located are such as –*
 - 4.5.2 *(a) to maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises; or*
 - 4.5.3 *(b) to maintain a sustainable level of adequate service provision for the people in that area or other likely users of the pharmacy premises, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome.*
- 4.6 Paragraph 24(2) states:
 - 4.6.1 *(2) In considering the matters mentioned in sub-paragraph (1), the NHSCB –*
 - 4.6.2 *(a) must treat any local pharmaceutical services being provided in its area as if they were pharmaceutical services being so provided, and*
 - 4.6.3 *(b) may have regard to any pharmaceutical services that are being provided in its area during supplementary opening hours.*
- 4.7 My client has provided details of the services it provides along with its initial application. The Committee will note that not all of these are “pharmaceutical services” and some can therefore be ignored for the purposes of this appeal.
- 4.8 The services listed are as follows and my client has provided details of other nearby pharmacies that provide the same services. [See table as at 2.17 in application section above]
- 4.9 In relation to Needle and Syringe Exchange my client confirms that they have not provided this service to any patient during the hours of 1pm to 2pm Monday to Friday

at any time in the last 4 weeks from the date of this letter and that this is representative of the service provision times.

- 4.10 In relation to COVID lateral flow test to eligible patients, my client has not provided this service on any occasion.
- 4.11 My client accepts that at present a small number of patients make use of the pharmacy during the hours of 1pm to 2pm Monday to Friday (except Thursday). Having made enquiries with patients who use the pharmacy during this time it is clear that those patients who accessed the pharmacy at these times did not do so for any specific reason relating to opening times, but simply did so because they knew the pharmacy was open.
- 4.12 We appreciate from previous appeal decisions that the Committee is likely to conclude that these opening times are “necessary” despite the above evidence. We submit that necessity should be a high bar to reach and a decision that hours are necessary should only be made when there is clear evidence of the need for the relevant pharmaceutical services at specific times, for example a Sunday afternoon when there is no other pharmacy open for miles around rather than simply determining that hours are necessary because there is some use of the pharmacy during the relevant hours. However, in this case a determination of the necessity of hours is unlikely to be determinative for the reasons provided below relating to accessibility of alternate providers of the same services.
- 4.13 In considering whether, despite the changes to hours, there is maintenance of the existing level of service provision, the Committee may consider the opening hours and services provided by other pharmacies in the area.
- 4.14 The Regulations at 24(2)(b) state that the Committee may take supplementary opening hours into consideration. We are aware from previous appeal decision that the Committee [sic] has not taken supplementary opening hours into consideration despite the Regulations stating that they may be so considered. We are likewise aware that the rationale for this has been that such hours may be changed by giving notice to the ICB.
- 4.15 We respectfully suggest that this is not the correct approach for the Committee [sic] to take and that the correct approach should be to consider the reality of what is occurring on the ground rather than speculating about something that may happen. The Committee takes supplementary hours of existing pharmacies into consideration when considering applications made by potential new contractors under regulation 18 as they represent the reality of existing service provision despite the fact that they could be changed and it is inconsistent not to apply the same logic in applications to reduce core hours, especially given that the Committee is expressly permitted to take supplementary hours into account.
- 4.16 Prior to considering the availability of other pharmacies in the area of my client's pharmacy we provide the following information about the general area and patients who use my client's pharmacy.
- 4.17 By far the most common way for patients to access my client's pharmacy is by car. Beechdale Road is a main thoroughfare leading to the A6514 and the pharmacy therefore attracts car users due to its main road location.
- 4.18 The housing around this area is unremarkable. Pictures of Beechdale Road and Enthorpe Street are shown below as these are the two main roads closest to the existing pharmacy location.
- 4.19 There is a bus stop outside the current pharmacy and bus routes are discussed further below however it is rare for the pharmacy to see patients coming in to the pharmacy who have arrived by bus. [See Appendix A page 5-6 – photographs Beechdale Road and Enthorpe Street]

- 4.20 As can be seen from the pictures, the residential road network can be considered normal, with footpaths, street lighting, dropped curbs and no physical barriers to movement due to crossing points at main road junctions.
- 4.21 These style and type of road network continues as one moves out from the immediate environs of the pharmacy and towards alternate pharmacies.
- 4.22 By far the most common way for patients to access my client's pharmacy is by car. Beechdale Road is a main thoroughfare leading to the A6514.
- 4.23 **Well Pharmacy – South from Applicant's Pharmacy (Beechdale Pharmacy)**
- 4.24 Well Pharmacy is less than 1 mile from my clients pharmacy and is accessible by walking (19 minutes) public transport (12 minutes total journey including walking time) and by car (8 minute). [See Appendix A page 7]
- 4.25 Well Pharmacy is open from 1pm to 2pm each weekday and provides the same services as my clients pharmacy except for Needle and Syringe Exchange.
- 4.26 **Well Pharmacies, Boots Pharmacies and Vantage Pharmacy - North from Applicant's Pharmacy**
- 4.27 All 4 of these pharmacies are located to the north and west of my client's pharmacy. For many of the houses due north of my client's pharmacy these alternate pharmacies will be closer and more central to the northern residential area that circles around Ambleside Academy and the similarly laid out circular roads around Well Pharmacy (to the west) that also contain dense housing areas.
- 4.28 **Ascent Pharmacy – Russell Drive** [See Appendix A page 8]
- 4.29 All of the pharmacies listed above open throughout [sic] the period of 1pm to 2pm Monday to Friday. All will provide services that cover all services provided by my client during those times.
- 4.30 **Ascent Pharmacy Russell Drive** [See Appendix A page 9]
- 4.31 Ascent Pharmacy is located to the west of my client's pharmacy. Whilst there is little overlap in patients using Ascent Pharmacy and my client's pharmacy due to its location it is likewise open between 1pm to 2pm Monday to Friday.
- 4.32 As well as the detail provided above, my client provided additional detail within their initial application about travel via different methods of transport and we ask the Committee [sic] to also refer to that information should it be considered necessary to do so. However, my client is not aware of patients who cycle to their current premises.
- 4.33 As stated above, my client is unable to confirm whether all the pharmacies listed above have core or supplementary hours between 1pm to 2pm Monday to Friday. However, for the reasons already given, we submit it would be wrong for the Committee [sci] to ignore supplementary hours (if some are indeed supplementary hours) given that they are in fact being offered.
- 4.34 Whilst supplementary hours may be withdrawn by giving notice, speculating about whether or not this may happen is not a helpful or factual basis upon which to base decision. If such methodology were applied then it would also be argued that some or all of these pharmacies could submit closure notices and that all of their hours are therefore not secure. Clearly this would not make sense, but considering the reality on the ground when making a decision does make sense and is consistent with how NHS Resolution approaches other applications.
- 4.35 **Journeys From Elsewhere**

- 4.36 As the Committee [sic] is aware, it is unlikely that patients would start a journey from the current pharmacy site unless they live immediately beside it. We have therefore considered access from the surrounding areas.
- 4.37 Beechdale and its surrounding areas are edge of city centre urban areas. As such they benefit from street lighting, dropped curbs and wide pavements (as shown in pictures above). Other than slight inclines and declines that might be expected in any area, there are no difficulties moving around the area on foot.
- 4.38 Major junctions have either light controlled or zebra crossing points to enable those in the area to travel safely. There are no road safety issues or transport issues that we can find.
- 4.39 As described above, Beechdale Road is a main road that links the wider area to Nottingham City Centre. My client's pharmacy lies just off the main road with parking directly outside and is therefore used mainly by those who travel by car. The picture below shows the pharmacy which is behind the parked van. [See Appendix A page 10 – photograph]
- 4.40 Other than "one-off" customers, most my client's patients live in the areas to the north / northwest of Beechdale Road, the housing areas around Aspley Lane / Ambleside.
- 4.41 Beechdale Road itself extends northwest from my client's premises as shown below. A small number live to the south, in the area between Beechdale Pharmacy and Well Pharmacy as shown below, but the number is small due to the train line being an effective barrier further west. [See Appendix A page 11-12 – maps]
- 4.42 The pharmacy is served by 2 bus routes, the 28 and L4 and using these bus routes access to the wider area is straightforward.
- 4.43 The L4 route is used by those who live in the housing off Beechdale Road. The service continues up Beechdale Road and then west where it passes close to Botts Pharmacy on Aspley Lane and passes Well Pharmacy at Broxtowe Lane. Both of these are open between 1pm to 2pm Monday to Friday.
- 4.44 For the sake of completeness, the Committee will likely note from the picture above that there are two further pharmacies located just northeast of the Ambleside area, namely Cinderhill Pharmacy and Queens Pharmacy. Queens Pharmacy is open 7 days per week including 1pm to 2pm Monday to Friday and appears to be a 100 hour contract pharmacy.
- 4.45 Cinderhill Pharmacy is open Monday to Saturday and is open from 1pm to 2pm Monday to Friday.
- 4.46 **L4 Bus Route Stops (not all shown)** [See Appendix A page 13 –map]
- 4.47 The 28 bus route travels from my client's pharmacy in an east / west direction and passes Well Pharmacy, Bracebridge Drive, which is open 7 days per week and may be a 100 hour contract pharmacy and is open between 1pm to 2pm Monday to Friday.
- 4.48 The 28 also travels south towards the Well Pharmacy on Harrow Road (see second figure below).
- 4.49 **28 BUS ROUTE – STOPS (not all shown)** [See Appendix A page 14 –map]
- 4.50 **BUS STOPS FOR NO.28 TRAVELLING SOUTH TO WELL PHARMACY** [See Appendix A page 14 –map]
- 4.51 Patients who live further north and south travel by car rather than bus as the bus routes are not direct to the pharmacy other than from the number 28 service shown above.

4.52 Patient Characteristics

- 4.53 My client has a number of Blue Badge holders who use the pharmacy and travel by car. Parking of a similar nature is available at all of the pharmacies discussed above. However, it should be remembered that there are no patients who use the pharmacy between 1pm and 2pm Monday to Friday who do so because they have to use it at that time. Rather they happen to do so because they are aware that the pharmacy is open.
- 4.54 There are no other patient characteristics that my client considers relevant to access and that would also be relevant to the amended opening hours of the pharmacy. To the extent that any pharmacy has regular patients, the amended opening hours would be perfectly adequate for their needs and indeed my client's desire to open on Saturday as supplementary hours will be a benefit.
- 4.55 Given the above evidence about local pharmacies, including where they are located, their access, the services provided and the times they are open, we submit that the level of service provision would be maintained for people in the local area or other likely users of the pharmacy and the application should be approved under paragraph 24(1)(a).
- 4.56 We look forward to hearing from you in due course."

5. Representations

No representations were received from the Commissioner in response to the appeal.

6. Consideration

6.1 I note the following:

- 6.1.1 The Applicant's core opening hours total 40 hours and the Applicant proposes to redistribute those 40 core opening hours pursuant to paragraph 26 of Schedule 4. The Applicant seeks to provide services as per its proposed changes in the table at 2.3 above.

6.2 The Applicant proposes to:

- 6.2.1 Close from 1pm to 2pm for a lunch break on Monday, Tuesday, Wednesday and Friday. Currently open between 1pm and 2pm.
- 6.2.2 Open from 2pm to 6pm on Thursday. Currently providing supplementary hours from 1pm to 5.30pm.
- 6.2.3 The effect of the above is maintaining the start and finishing times on Monday, Tuesday, Wednesday and Friday and replacing supplementary hours to 5.30pm extending the finishing time from 5.30pm to 6pm with core hours on Thursday.

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

6.4 Paragraph 26(1) states:

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

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

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

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

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

- 6.6 Paragraph 24(1) reads as follows:

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

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

- 6.7 Paragraph 24(2) states:

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

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

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

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

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

- 6.11 I therefore need to be provided with sufficient information to understand a range of matters, starting with the existing level of service provision. The references to days and times in paragraph 24(1) leads me to consider that the reference to "level" of service provision in paragraph 24(1)(a) is mainly focused on the days and times

services are provided. I would point out that "level" of service provision could also refer to other characteristics of the service, such as types and range of services provided, geographical access to services provided, other aspects of physical access aside from location, and the quality of services provided.

- 6.12 The existing level of service provision has been outlined by the Applicant, in its own core hours provision, and by an indication of the hours that pharmacies in the local area are open. (i.e. both core and supplementary opening hours).
- 6.13 I have next considered whether it is necessary to maintain the existing level of service provision. It could be argued that as the Applicant is not looking to reduce the number of hours each week that services are provided, then from a pure "number of hours of service provision each week" perspective, the existing level of service provision is maintained such that consideration of whether it is necessary to maintain the level of service provision is not needed.
- 6.14 However, the Applicant is applying to change the times that services are provided. For example, the level of service provision at the Applicant's premises is not being maintained as the Applicant is proposing to close between 1pm and 2pm on Monday, Tuesday, Wednesday and Friday. I consider it appropriate to determine if it is necessary to maintain the existing level of service provision and then, if deemed necessary, consider if the opening hours of other pharmacies mean that level is maintained.
- 6.15 To determine whether it is necessary to maintain the existing level of service provision, I have had regard to the comments by the Applicant of those using the pharmacy. If I am satisfied that there is reliable evidence indicating no users of the pharmacy on/at the relevant days/times that the pharmacy wishes to close, this might support an argument that maintaining the existing level of service provision is not necessary.
- 6.16 The Applicant states that *"at present a small number of patients make use of the pharmacy during the hours of 1pm to 2pm Monday to Friday (except Thursday). Having made enquiries with patients who use the pharmacy during this time it is clear that those patients who accessed the pharmacy at these times did not do so for any specific reason relating to opening times, but simply did so because they knew the pharmacy was open."* I am mindful that it is difficult to put this information into context as we do not know how many patients the Applicant sees each day so it is unclear as to what the Applicant considers to be a small number of patients. However, based on the information, it is clear that there are a number of patients who knew the pharmacy was open at these times and so chose to use the pharmacy during 1pm to 2pm on Monday, Tuesday, Wednesday and Friday.
- 6.17 I consider, in relation to paragraph 24(1)(a), that it reasonable to take the position that unless I am provided with evidence to the contrary, I should consider that it is necessary to maintain the existing level of service provision.
- 6.18 I now need to consider if, despite the changes to hours, there is maintenance of the existing level of service provision. I have information from both parties as to the level of service provision with regard to other pharmacies in the area.
- 6.19 If I consider that the characteristics of other pharmacies, e.g. where they are located, their access, the services provided and the times they are open, means that the level of service provision is maintained for people in the local area or other likely users of the pharmacy, then I am able to grant the application under paragraph 24(1)(a).
- 6.20 I note the Applicant has provided information regarding the three nearest pharmacies, including maps, photographs, walking, car and bus routes as well as total opening hours which include supplementary opening hours, specifically between 1pm to 2pm, Monday, Tuesday, Wednesday and Friday, the times the Applicant is looking to be closed. These pharmacies are Well which is 0.6 miles away, and Vantage and Ascent

both of which are 1 mile away. I note there is no dispute from the Commissioner regarding these three pharmacies in terms of distance or services provided.

- 6.21 The Applicant contends that supplementary hours should be taken into account, noting that *“from previous appeal decision that the Committee [sic] has not taken supplementary hours into consideration despite the Regulations stating that they may be considered.”* And further that *“the correct approach should be to consider the reality of what is occurring on the ground rather than speculating about something that may happen.”* The Regulations indicate that I may take supplementary opening hours into consideration. However I am mindful that supplementary hours may be altered by the pharmacy by giving notice to the Commissioner in accordance with paragraph 23(6)(a) of Schedule 4 without the need to make an application to the Commissioner. On this basis, I have not placed weight on the provision of pharmaceutical services outside of the core hours offered by other pharmacies in the area.
- 6.22 The Commissioner in its decision at 3.28 details the core opening hours for a further three pharmacies, Mary Potter Pharmacy, Queens Pharmacy and Hyson Green Pharmacy, all of which are noted to be 1.1 mile away from the Applicant's pharmacy. I note two of these pharmacies, Queens Pharmacy and Hyson Green Pharmacy do provide core opening hours at the times the Applicant is proposing to be closed, i.e. from 1pm to 2pm on Monday to Friday.
- 6.23 There will be people who drive to the Applicant's pharmacy and those who walk, others may use public transport. The Applicant has provided much information in this regard for the three nearest pharmacies but not for those pharmacies with core opening hours between 1pm and 2 pm Monday to Friday. I consider that I have not been provided with information regarding access to Queens Pharmacy and Hysons Green Pharmacy, both of which have core hours for those pharmaceutical service users who currently access the Applicant's pharmacy and how they might travel to find alternative pharmaceutical services for the days and times at which the Applicant now wishes to close.
- 6.24 It is worth noting that characteristics of the persons using the pharmacy might be relevant here as well as from where they start their journey to the pharmacy. I do not consider that every single individual need should be considered at length in this regard but it would be helpful to have this information to be certain that the existing level of service provision would be maintained via local pharmacies.
- 6.25 I am therefore struggling to be satisfied that the existing level of service provision would be maintained by virtue of the existence of other local pharmacies.
- 6.26 I have decided that it is necessary to maintain the current service provision but, due to a lack of information about physical access to the existing pharmacy services being provided specifically during the core hours the Applicant is proposing to close, I am not satisfied that there will be maintenance of the existing level of service provision, whether by virtue of other pharmacies in the area or by the Applicant changing its hours.
- 6.27 I therefore next consider if I need to have regard to paragraph 24(1)(b) which states that I must seek to ensure that the changed hours are such as to:
- “maintain a sustainable level of adequate service provision for the people in that area or other likely users of the pharmacy premises, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome”.*
- 6.28 I have already determined that it is necessary to maintain the existing level of service provision so reference in paragraph 24(1)(b) to *“in circumstances where maintaining the existing level of service provision is ... unnecessary”* is not relevant.
- 6.29 On the point of whether maintaining the existing level of service provision is not a realistically achievable outcome, the Applicant at 2.20 above refers to the current

situation where the staff take staggered lunch breaks. *“The result of this is that we have a period between 12pm and 2.30pm each day where we cannot operate at full capacity or efficiency due to staff taking lunch breaks.” ... “Allowing us to close between 1pm to 2pm would essentially enable us to allow staff to take their lunch break between 1pm-2pm, guaranteeing the level and quality of pharmaceutical service provision through the remaining opening hours.”* I consider that no evidence has been put forward to support this summation.

- 6.30 The wording of paragraph 24(1)(b) is such that maintaining existing service levels must not be realistically achievable before considering a sustainable level of adequate provision. I consider that this sets a fairly high bar as to the level of difficulty that the Applicant must find themselves in. I do not consider that sufficient evidence has been provided to indicate that the economic and practical viability of the current opening hours has been compromised for example.
- 6.31 I therefore consider that maintaining the existing level of service is a realistically achievable outcome and therefore the Applicant cannot rely on paragraph 24(1)(b).
- 6.32 I am mindful that the provision of pharmaceutical services is greater than the dispensing of prescriptions and that maintaining a level of service provision includes all services that the pharmacy may offer, including additional enhanced and advanced services that may be commissioned. I am of the view that I have not been provided with sufficient information to demonstrate how the proposed change of hours would maintain, as necessary, the existing levels of service provision.

7. Determination

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

**Head of Appeals
NHS Resolution**