

9 July 2024

FILE REF:

SHA/26187

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

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

DECISION MAKING BODY: LEICESTER, LEICESTERSHIRE AND
RUTLAND ICB
("the Commissioner")

PHARMACIST: REFLECTION PHARMA LTD
("the Applicant")

PREMISES: 49 (UNIT 2), HALLAM FIELDS ROAD
BIRSTALL
LEICESTER
LEICESTERSHIRE
LE4 3LH

**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 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.
- 1.2 Therefore I substitute the decision of the Commissioner to reject the change of hours application with the decision to grant the change of hours application, without a direction.

A copy of this decision is being sent to:

PSC on behalf of Reflection Pharma Ltd
Leicester, Leicestershire and Rutland ICB

Advise / Resolve / Learn

NHS Resolution is the operating name of NHS Litigation Authority – we were established in 1995 as a Special Health Authority and are a not-for-profit part of the NHS. Our purpose is to provide expertise to the NHS on resolving concerns fairly, share learning for improvement and preserve resources for patient care. To find out how we use personal information, please read our privacy statement at <https://resolution.nhs.uk/privacy-cookies/primary-care-appeals/>



FILE REF: **SHA/26187**

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

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

DECISION MAKING BODY: **LEICESTER, LEICESTERSHIRE AND
RUTLAND ICB
("the Commissioner")**

PHARMACIST: **REFLECTION PHARMA LTD
("the Applicant")**

PREMISES: **49 (UNIT 2), HALLAM FIELDS ROAD
BIRSTALL
LEICESTER
LEICESTERSHIRE
LE4 3LH**

**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]**

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 Close an hour later Monday to Thursday at 6pm rather than 5pm; and
- 1.12.2 Close on a Saturday rather than opening from 10am to 2pm.

2. Application

In this case, the Applicant provided the following information in its application form and supporting information dated 22 January 2024:

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

Monday	9am – 1pm 2pm – 5pm
Tuesday	9am – 1pm

	2pm – 5pm
Wednesday	9am – 1pm 2pm – 5pm
Thursday	9am – 1pm 2pm – 5pm
Friday	9am – 1pm 2pm – 6pm
Saturday	10am – 2pm
Sunday	

2.3 Proposed core opening hours for these premises:

Monday	9am – 1pm 2pm – 6pm
Tuesday	9am – 1pm 2pm – 6pm
Wednesday	9am – 1pm 2pm – 6pm
Thursday	9am – 1pm 2pm – 6pm
Friday	9am – 1pm 2pm – 6pm
Saturday	
Sunday	

- 2.4 If this is a permanent change, please state below the date from which you would like the change to take effect: 1 March 2024
- 2.5 “I would like to propose these changes to core hours. The pharmacy provides services during 12pm to 1pm on the weekdays therefore does not close (supplementary hours).
- 2.6 We wish to remove core hours 10am to 2pm on Saturdays. Having currently ran with these Saturday core hours since 2018. Being in a new residential housing estate with a demography age of 30-40s, we have seen very limited patients access the pharmacy service during these opening hours. Many Saturdays we have had no patients walk through the door. This is also evident with very limited 111 referrals to the pharmacy.
- 2.7 Under these circumstances and pressures in funding it is not viable for the pharmacy as there is not a need in this modern housing estate. We have no service users (methadone or Subutex) as we have no contract for this. We also do not have a contract for palliative care service either. We do not also operate a weekend delivery service.
- 2.8 There are two pharmacies, Boots pharmacy that opens Saturday 10am to 5:30pm 0.6 miles from our location (3 minutes’ drive, 13 minutes’ walk). There is also a Pharmak pharmacy that opens 9am to 1pm on Saturday which is 0.5 miles from our location (10-minute walk, 4-minute drive). Both Boots and Pharmak have operational 111 service on Saturdays. There is also Birstall Pharmacy which is open 3pm to 9pm (This is 1.1 miles away from our location 4 min drive and a 22-minute walk).
- 2.9 Therefore, an adequate service provision will still be achieved in the area. The Supplementary hours will be Monday to Friday 9am to 6pm 45 hours after the core hour changes is approved. Our contract is 40 hours standard.”

3. The Decision

In a letter to the Applicant dated 4 March 2024 the Commissioner decided to refuse the application. The Commissioner stated:

- 3.1 “Thank you for your application to make a permanent change to the core opening hours at Reflection Pharma Ltd, received on 22 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 01 March 2024.
- 3.3 The Committee felt that the pharmacy had not provided the necessary 90 days for the committee to determine the application.
- 3.4 The committee felt the pharmacy had not met Regulation 26 (2) as the application does not provide assurance that the change in hours would:
 - 3.4.1 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
 - 3.4.2 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.
- 3.5 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 4PU.”

4. The Appeal

In a letter to NHS Resolution dated 2 April 2024 Pharmacy Sales & Consultancy (“PSC”) on behalf of the Applicant appealed against the Commissioner’s decision. The grounds of appeal are:

- 4.1 “We act for Reflection Pharma Limited and have enclosed an email of authorisation confirming our instructions in this matter.
 - 4.2 Our client has been notified by the East Midlands Primary Care Team that the above application has been refused. We have enclosed a copy of their decision letter for your information.
 - 4.3 Our client wishes to appeal this decision.
 - 4.4 As the decision letter does not set out detailed reasons for this refusal, and given that NHS Resolution will consider this matter afresh, we set out below evidence that we believe will satisfy Primary Care Appeals that our client’s application should be approved.
- Regulatory context
- 4.5 The introduction of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) (Amendment) Regulations 2023 in May 2023 brought in changes to the legal tests to be considered by the NHS Commissioning Board when a pharmacy contractor wishes to change core opening hours for an NHS Pharmacy.
 - 4.6 As is often the case when there is a change to the Regulations, decision makers have interpreted these new Regulations in different ways, with some ICBs approving applications for changes of core hours when other ICBs refused applications where identical circumstances apply.

- 4.7 In a number of cases, where applications have been refused by individual ICBs, applicants have lodged appeals against these decisions and the application has been determined by NHS Resolution. At the time of submitting this application there have been several appeal decisions published by NHS Resolution relating to applications in accordance with paragraph 26 of Schedule 4 to the Regulations (determination of pharmacy premises core opening hours instigated by the NHS pharmacist).
- 4.8 This is helpful for applicants as the approach taken by NHS Resolution effectively provides applicants with a 'template' as to how future appeals are likely to be determined.
- 4.9 Primary Care Appeals will be familiar with recently approved appeals relating to applications to permanently change core hours. In preparing this appeal we have considered the recent approval by NHS Resolution for a change of core hours in Ormskirk (SHA/26102) and we have summarised the approach taken by NHS Resolution below.
- 4.10 The approach taken by the Head of Appeals at NHS Resolution in this case was to effectively consider two matters:
- Is it necessary to maintain the existing level of service provision?
- 4.11 This is dealt with in paragraphs 2.31 to 2.43 in the Ormskirk decision.
- 4.12 The approach taken was to first establish what the current level of service provision by the applicant is. The Ormskirk decision report makes it clear that, when considering the current service levels, the decision maker should take into account not only at what times of day those services are provided, but also *"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"*.
- 4.13 The implication here is that it is for the applicant and other relevant parties to provide the decision maker with sufficient information to allow it to assess the current level of provision.
- 4.14 Primary Care Appeals then went on to consider (2.36 onwards), the matter of whether *"it is necessary to maintain the existing level of service provision"*.
- 4.15 In 2.43 the report states *"From the information provided, it is clear that there are some people using the pharmacy at the times the Applicant wishes to close, albeit low in numbers and therefore I consider it is necessary to maintain the existing level of service provision"*.
- 4.16 Essentially what NHS Resolution is saying here is that, if there is evidence that there is *any* demand for pharmaceutical services at the pharmacy during the hours it proposes to close in the future, even if this demand is very low, then it is *necessary* to maintain service provision to these patients during those hours.
- 4.17 The implication of this is that if evidence was provided that there was absolutely no demand for pharmaceutical services whatsoever during the hours it is proposed to close, then it could be concluded that it is not necessary to maintain the existing level of service provision and the application could be approved.
- 4.18 If there is evidence of some demand then the decision maker should go on to consider other matters.
- If the applicant's pharmacy changed its core hours, are these 'necessary services' available to patients from other pharmacies during the times the pharmacy previously opened?

- 4.19 This is dealt with in paragraphs 2.44 to 2.56 of the Ormskirk decision.
- 4.20 Paragraph 2.44 notes that the applicant had provided information showing that other pharmacies in the area have opening hours which cover those during which the applicant proposes to close.
- 4.21 Paragraph 2.45 states *"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)."*
- 4.22 The decision report then goes on to consider whether the information provided by the applicant satisfied NHS Resolution that this is the case i.e. are the other pharmacies providing equivalent services when the applicant proposes to close and are those pharmacies accessible to the patients?
- 4.23 In paragraph 2.49, NHS Resolution noted that the focus should be on core hours provided by these alternative pharmacies. In that particular case, even though these [sic] was an alternative pharmacy (Morrisons) only 450m away, because some of the opening hours that covered the period during which the applicant proposed to close were supplementary hours, these could not be relied upon.
- 4.24 Importantly, in paragraph 2.50 NHS Resolution noted that even though the nearest alternative pharmacies with extended core opening hours were located more than 4 miles away, it was reasonable to assume that patients would be able to travel to these pharmacies based on the information provided by the applicant.
- 4.25 In paragraph 2.54 the report took note of the services that were being provided by the applicant during the hours it proposed to close and was satisfied that these services were available from the alternative pharmacies discussed above.
- 4.26 In 2.56 the decision maker concluded *"Based on the information provided, I am therefore satisfied that the existing level of service provision would be maintained by virtue of the existence of other local pharmacies."*
- 4.27 The application was therefore approved.
- Our client's application
- 4.28 Taking into account the decision above, we have provided information below that will enable Primary Care Appeals to consider our client's application fully.
- A. What is the current level of service provision at our pharmacy during the hours we purpose to close?
- 4.29 The proposal is for our client to remove its core hours on a Saturday morning (from 10am to 2pm) and add these to the weekday core hours from Monday to Thursday, closing at 6pm instead of 5pm. Given that the pharmacy is within a new residential area where many residents are out at work during the day, guaranteed opening hours until 6pm will ensure that many residents who require pharmaceutical services after they finish work can access them from our client's pharmacy.
- 4.30 In order to determine the current demand for services on a Saturday morning, when our client proposes to close, our client carried out a survey of patient visits to the pharmacy on Saturdays from 1st November 2023 to 31st December 2023. We have included a summary of the survey outcome with this appeal (see Appendix A).
- 4.31 As can be seen in this summary, the demand for services during this time was negligible, with a total of 11 patients attending during the entire two-month period to

purchase OTC medicines and only two patients attending to collect prescriptions. Our client also noted in this summary that only 4 NHS 111 referrals for Minor Illnesses and 9 referrals for Emergency Supply on Saturdays were received for the entire year.

4.32 In terms of services offered at other times of the year, our client has provided seasonal vaccination services during the 'flu season', albeit the numbers provided were relatively low.

4.33 Nevertheless, taking into account the approach taken by NHS Resolution, our client accepts that there has been some limited demand for pharmaceutical services on Saturdays. It is the case, therefore, that these services can be deemed as necessary during the hours it proposes to close.

B. Are the services our client provides on Saturday mornings provided by other pharmacies that are reasonably accessible to patients?

4.34 We have started by considering the opening hours of other pharmacies in Birstall on Saturdays. These are set out below.

4.35 Pharmak Pharmacy - 7 Kingsgate Avenue, Birstall, LE4 3HD.

4.35.1 Open 9-1pm on Saturday. We understand these are core hours as the pharmacy closes on Thursday afternoons so Saturday morning hours must be core, otherwise the pharmacy would not have 40 core hours.

4.36 Well – Greengate Medical Centre, 1 Greengate Lane, Birstall, LE4 3JF.

4.36.1.1 Closed on Saturdays, so not relevant.

4.37 Boots – 123 Sibson Road, Birstall, LE4 4ND.

4.37.1 Open 10am to 5.30pm on Saturdays. We do not know whether these are core hours as that information is not in the public domain, but the ICB will be able to provide NHS Resolution with this information.

4.38 Birstall Pharmacy - 4 Whiles Lane, Birstall, LE4 4EE.

4.38.1 Open 3pm to 9pm on Saturdays. There are core hours as this is a 100 hour pharmacy.

4.39 It is clear, therefore, that even if the Boots hours are not core, there are pharmaceutical services provided on Saturdays within a mile of our client's pharmacy.

4.40 There are available from 9am (when Pharmak opens) to 9pm (when Birstall Pharmacy closes).

4.41 These pharmacies listed are only those with a Birstall address. Each is within a mile of our client's pharmacy. We are mindful that in the Ormskirk appeal provided, NHS Resolution took the view that pharmacies more than 4 miles away were reasonably accessible. A 4-mile radius in this case would incorporate the entire northern half of Leicester, where there are very many pharmacies, a significant proportion of which will have core hours on Saturdays.

4.42 We have then gone on to consider the services provided by these alternative pharmacies. As discussed earlier, the services our client provides on Saturdays largely comprise the sale of OTC medicines and the dispensing of prescriptions. Each of the pharmacies discussed above also provides these services, as part of their essential pharmacy services provision.

- 4.43 We also provide a table below which shows the other services pharmacies in Birstall currently offer (whether or not there is a demand for these on Saturdays).

	Reflection Pharmacy	Boots Pharmacy	Birstall Pharmacy	Pharmak Pharmacy
Repeat Prescriptions	Yes	Yes	Yes	Yes
Prescriptions	Yes	Yes	Yes	Yes
NMS	Yes	Yes	Yes	Yes
BP Service	Yes	Yes	Yes	Yes
Vaccinations	Yes	Yes	Yes	Yes
Pharmacy First Service	Yes	Yes	Yes	Yes
Urgent 111 service/ emergency supply	Yes	Yes	Yes	Yes

- 4.44 It is clear from this table that there is no service that could be accessed from our client's pharmacy that is not accessible from other pharmacies in Birstall.

- 4.45 Next we have considered the accessibility of these alternative pharmacies. To do this we have considered the mobility of local residents and the locations of these alternative pharmacies.

Demographic profile

- 4.46 Our client's pharmacy is located within a large new residential development (built within the last 5-7 years). In common with many similar developments around the country, residents are typically healthy and mobile and car ownership is high.

- 4.47 This is borne out by data from the 2021 census for the Birstall Wanlip ward, the boundaries of which are shown (on the map at Appendix A) where the pharmacy location is marked with a red star.

- 4.48 Demographic information relating to mobility is as follows:

4.48.1 Households without a car or a van is 9.1% compared to the national average of 23.5%.

4.48.2 The percentage of residents whose day today lives are limited a lot by disability is 5.0% compared to the national average of 7.3%.

- 4.49 It is clear, therefore, that this is a mobile population. Furthermore there are very few amenities close to the pharmacy at present, so residents currently have to travel either to the centre of Birstall (close to Boots and Birstall Pharmacy), or towards Leicester to access many of their daily needs. As these residents are accustomed to moving freely around the area, they will have no difficulties accessing alternative pharmacies on a Saturday. Even if households only have one car and one household member uses this for work, the car will typically be available on a Saturday.

- 4.50 In terms of the distances to alternative pharmacies for residents who cannot or who choose not to drive, the following maps (at Appendix A) show the walking distances and times from our client's location to these alternative pharmacies:

- 4.51 For any residents who prefer to use public transport, there are numerous bus services that travel long Loughborough Road (the main road heading north / south through the maps shown (at Appendix A)), with the nearest stop being 300m from our client's pharmacy location. This includes route 22A which travels to both Boots and Birstall Pharmacy, with buses every 30 minutes, including Saturdays. There are many more bus routes that travel into Leicester where there are numerous pharmacies with Saturday core hours.

Conclusion

- 4.52 In conclusion, and referring back to the legal tests and the approach taken by NHS Resolution, it is clear that whilst there is only a limited demand for services at our pharmacy on Saturdays, there is some demand so the services could be deemed as necessary.
- 4.53 However, it is also clear that, using the view taken in the Ormskirk appeal, there are several alternative pharmacies with Saturday core hours that provide exactly the same services as our pharmacy and which are very easily accessible to patients who have been accustomed to accessing our pharmacy.
- 4.54 That being the case the existing level of service provision would be maintained by virtue of the existence of other local pharmacies.
- 4.55 We therefore ask the Primary Care Appeals to approve this application accordingly."

5. Representations

In a letter to NHS Resolution dated 24 April 2024 the Commissioner stated:

- 5.1 "Thank you for your letter dated 03 April 2024; The East Midlands Primary Care Team on behalf of Leicester, Leicestershire and Rutland Integrated Care Board would like to make the following representations.
- 5.2 Where a contractor wishes to change the core opening hours of a 40 hour pharmacy, either to reduce the total number of them or to change the times they are provided they are required to apply under paragraph 26(1), Schedule 4 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.
- 5.3 As part of such applications, the Integrated Care Board (ICB) may request information in relation to the matters set out in paragraph 24(1), Schedule 4. To expedite the application process NHS England has determined that the contractor is to provide this information as part of applications to change core opening hours. The ICB will then need to decide whether the days and times the contractor's premises would be open, if the application was granted, would maintain:
 - 5.3.1 as necessary, the existing level of service provision for the people in the area, or other likely users of the contractor's premises, or
 - 5.3.2 a sustainable level of adequate service provision for the people in the 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 (paragraph 26(2), Schedule 4).
- 5.4 When considering an application from a contractor who wishes to change the days or times they are obliged to provide pharmaceutical services during core opening hours, the ICB first needs to establish the current level of pharmaceutical service provision in the area in which the contractor's premises are located for it to be able to decide if the two tests have then been met in the application. This will include identifying:
 - 5.4.1 the location of pharmacy premises in the area noting that such premises may be in the area of a neighbouring health and wellbeing board,
 - 5.4.2 the provision of pharmaceutical services to those in the area of the contractor's premises, both by contractors located in that area, and by contractors who are not, for example distance selling premises, pharmacies elsewhere in the country, and dispensing appliance contractors,
 - 5.4.3 any local hours plans that may be in place for the area,

- 5.4.4 the level of temporary suspensions in the provision of pharmaceutical services in the area, and
- 5.4.5 the findings of the pharmaceutical needs assessment for the area in which the contractor's premises are located, noting that pharmacy opening times may have changed since it was published.
- 5.5 Once the location of other providers of pharmaceutical services has been identified, the ICB then needs to identify when their core opening hours are and what advanced and enhanced services they provide. Whilst those providers may have supplementary opening hours the ICB is of the opinion that no weight will be placed on them as they can be changed with five weeks' notice.
- 5.6 Once the existing level of service provision has been established, the ICB will be in a position to assess whether the core opening hours set out in the contractor's application will maintain the existing level of service provision for the people in the area of the contractor's premises or other likely users of those premises. It will also take into account any information provided by the applicant on this point. Where it is satisfied that the proposed core opening hours will maintain the existing level of service provision in the area, it may grant the application.
- 5.7 Reflection Pharma Ltd submitted a change of core hours application for their pharmacy premises at 49 (Unit 2), Hallam Fields Road, Birstall, Leicester, Leicestershire, LE4 3LH on 22 January 2024.
- 5.8 Reflection Pharmacy currently has the following core and supplementary opening hours.

	Core opening hours	Supplementary opening hours	Core opening hours	Total hours
Monday	09.00-13.00	13.00-14.00	14.00-17.00	09.00-17.00
Tuesday	09.00-13.00	13.00-14.00	14.00-17.00	09.00-17.00
Wednesday	09.00-13.00	13.00-14.00	14.00-17.00	09.00-17.00
Thursday	09.00-13.00	13.00-14.00	14.00-17.00	09.00-17.00
Friday	09.00-13.00	13.00-14.00	14.00-18.00	09.00-18.00
Saturday	10.00-14.00			10.00-14.00
Sunday				Closed

- 5.9 Should this application be granted, the pharmacy's opening hours would be as follows:

	Core opening hours	Supplementary opening hours	Core opening hours	Total hours
Monday	09.00-13.00	13.00-14.00	14.00-18.00	09.00-18.00
Tuesday	09.00-13.00	13.00-14.00	14.00-18.00	09.00-18.00
Wednesday	09.00-13.00	13.00-14.00	14.00-18.00	09.00-18.00
Thursday	09.00-13.00	13.00-14.00	14.00-18.00	09.00-18.00
Friday	09.00-13.00	13.00-14.00	14.00-18.00	09.00-18.00
Saturday				Closed
Sunday				Closed

- 5.10 The application was reviewed at the Pharmaceutical Services Regulations Committee on 20 February 2024, and the committee refused the application as they felt the application did not demonstrate that the change in hours would either;
- 5.10.1 maintain as necessary the existing level of service provision for people in the area of the pharmacy, or other likely users of the pharmacy premises; or

- 5.10.2 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.
- 5.11 The information provided in the original application and in the subsequent letter of appeal shows that although the numbers are low there are some patients using the pharmacy at the times the applicant wishes to close therefore the ICB remains of the opinion that it is necessary for the existing level of service provision to be maintained. The ICB notes that the applicant is of the opinion that there is demand for pharmaceutical services on Saturdays. As the applicant is seeking to close on Saturdays, the ICB is satisfied that the existing level of service provision would not be maintained by the applicant's proposed core opening hours.
- 5.12 With regard to the proposed core opening hours of 17.00-18.00 on Mondays to Thursdays, the applicant has stated that *"Given the pharmacy is within a new residential area where many residents are out at work during the day, guaranteed opening hours until 6pm will ensure that many residents who require pharmaceutical services after they finish work can access them from our client's pharmacy."* As the pharmacy is not currently open at this time, and residents are travelling to their place of work, the ICB is satisfied that those who travel to work and require access to pharmaceutical services after 17.00 Monday to Thursday will currently be accessing them either near to their place of work, or on their commute home. As the pharmacy does not currently open at those times, those proposed hours cannot be said to maintain the existing level of service provision as that existing level of provision is being provided by other pharmacies.
- 5.13 Reflection Pharmacy receives additional funding under the Pharmacy Access Scheme. The aim of the scheme is to ensure that a baseline level of access to pharmaceutical services in England is protected. Under the scheme, payments are made to eligible pharmacies in areas where there are fewer pharmacies, and has been designed to capture pharmacies that are most important for patient access, specifically those pharmacies where patient and public access would be materially affected should they close. It takes into account isolation and need levels.
- 5.14 Reflection Pharmacy currently provides the following advanced services;
- 5.14.1 hypertension case-finding service
- 5.14.2 New medicines service
- 5.14.3 Pharmacy First service
- 5.15 The ICB notes that there is wheelchair access to Reflection Pharmacy and parking outside the pharmacy, included designated disabled parking spaces.
- 5.16 The applicant has provided information on the number of patients to which it has provided some of the advanced services. However, it is to be noted that the Pharmacy First service figures have not been provided. As with any new service, levels of activity are low but then increase as the service is embedded and public awareness of it increases. The applicant has noted that residents leave the area for work on Mondays to Thursdays, however as the Pharmacy First service is particularly aimed at taking pressure of other areas of the health service in particular urgent and emergency care services, it is therefore important that the service is available to residents at the weekend and therefore the ICB is of the opinion that it is imperative that the pharmacy's opening hours on Saturdays are maintained. In addition, it is to be noted that the applicant provided the flu vaccination service in 2023-2024 vaccinating 139 patients on a Saturday during the 2023-2024 flu season.

- 5.17 The ICB has next considered whether the existing level of service provision would be maintained by other pharmacies in the area.

Pharmaceutical provision within the area of LE4 3LH

- 5.18 In their appeal the applicant has provided details of other pharmacies in the area stating that there are other pharmaceutical services provided on a Saturday within 1 mile of the pharmacy available from 09:00 to 21:00. However the pharmacies listed would not cover all of the gap that the change would create should the application be granted.
- 5.19 Out of the four pharmacies mentioned by the applicant three are open on a Saturday, however only two have core opening hours. The other has supplementary opening hours which can be changed with five weeks' notice. It is to be noted that none of the pharmacies cover the full 10:00 to 14:00 that would be lost by this proposed change in hours;
- 5.19.1 FJK53 Pharmak Pharmacy which is the closest pharmacy to Reflection pharmacy is open from 09:00 to 13:00 core opening hours on a Saturday. It is not open between 13.00 and 14.00 when Reflection Pharmacy is open.
- 5.19.2 FLG55 Boots Pharmacy does cover all of the gap, however as the hours provided at this pharmacy on a Saturday are supplementary opening hours then these can be changed by Boots following five weeks' notice. The ICB is therefore of the opinion that these hours should be discounted.
- 5.19.3 FKT09 Birstall Pharmacy has core opening hours on a Saturday between 15.00 and 21.00. However, as can be seen these are not at the same time as Reflection Pharmacy's core opening hours of 10.00 to 14.00.
- 5.20 Should Reflection Pharmacy's application be granted, this would leave a gap in the provision of pharmaceutical services in the area between 13.00 and 14.00 on Saturdays. If residents are unable to access Pharmak Pharmacy, then there would be a gap in service provision between 10.00 and 14.00 on Saturdays.
- 5.21 The applicant provides a table to demonstrate the services that the other pharmacies in the area provide, however this does not address the hour gap where pharmaceutical services would not be provided to patients if the application to change core opening hours was granted.
- 5.22 Also taking into account that all the pharmacies in the area are part of the pharmacy access scheme of which the main aim is to ensure a baseline level of patient access to NHS community pharmaceutical services in England is protected then losing the services on a Saturday would be in direct contradiction of the principles of this scheme.
- 5.23 The table below shows the two pharmacies mentioned by the applicant that have core opening hours on a Saturday. The table includes information on the core, supplementary and total opening hours and the advanced services that they provide. The ICB can confirm that none of them provide any enhanced services.

Pharmacy Name	Distance in Miles	Opening hours	Services	Image link
FJK53 Pharmak Pharmacy, 7 Kings Gate Avenue, Birstall, Leicester, LE4 Eligible for the pharmacy access scheme	0.3	Core opening hours Monday, Tuesday, Wednesday and Friday 009.00 to 13.00 and 14.00 to 18.00 Thursday 09.00 to 13.00	Advanced Services Hypertension case-finding Service Flu Vaccination Service New Medicine Service Flu vaccinations in 2023-2024	6 Kingsgate Ave - Google maps

		Saturday 09.00 – 13.00	Pharmacy First Accessibility Signing service Step-free access Text relay Wheelchair access Parking There are a few parking spaces on the road.	
FKT09 Birstall Pharmacy, 4 Whites Lane, Birstall, Leicester, LE4 4EE Eligible for the pharmacy access scheme Within a health centre	0.9	Core Opening Hours Monday to Friday 09:00-21:00 Saturday 15:00-21:00 Sunday 09:00-18:00	Advanced Services Hypertension case-finding Service Pharmacy First New Medicines Service Contraception Service Smoking Service COVID-19 Lateral Flow Flu for 2023-2024 Pharmacy First Parking The pharmacy is co-located with Birstall Medical Centre. There is limited parking at the which will also be used by those attending the medical centre.	4 Whites Ln - Google maps

- 5.24 [At Appendix B] is a map of all the pharmacies in the area including the local GP practices. It is taken from SHAPE Place atlas.
- 5.25 The applicant states that the population is mobile however, according to the Office for National Statistics the 2021 census confirms that of the 5,579 households in Birstall 684 households, or 12%, do not have a car.
- 5.26 [At Appendix B] are the walking routes from Reflection Pharmacy to the two pharmacies with core opening hours.
- 5.27 Reflection Pharmacy to Pharmak Chemist
- 5.28 The route from Reflection pharmacy to Pharmak according to google maps is a nine minute walk and for the most part is quite flat, however Kingsgate avenue has a hill which for people with mobility issues, who are not fit, and those with small children and/or a pram/buggy would be troublesome. In addition, it will be a longer walk for those who live north of Reflection Pharmacy. [At Appendix B] is a satellite map of the walk and a picture of Kingsgate Reflection Pharmacy to Pharmak Chemist - Google Maps Also included below are the bus stops along the route. For residents living on the Hallam Fields Estate it is a 9 minute walk to the nearest bus stop.
- 5.29 From Reflection Pharmacy to Birstall Pharmacy
- 5.30 The route from Reflection pharmacy to Birstall Pharmacy according to google maps is a 24 Minute walk and for the most part is quite flat, however the route does include walking along the main A6. This distance could be troublesome for patients with mobility issues to walk. Below is a map of the walk [Reflection Pharmacy to Birstall Pharmacy - Google maps](#) Also included below are the bus stops along the route. For residents living on the Hallam Fields Estate it is a 9 minute walk to the nearest bus stop.

5.31 Taking the above into account, the ICB remains of the opinion that the existing level of service provision would not be maintained by other pharmacies in the area.

5.32 The ICB has noted that the applicant is not relying upon paragraph 24(1)(b), Schedule 4.

Conclusion

5.33 It is clear from the above information that there is demand for pharmaceutical services at Reflection Pharmacy between 10.00 and 14.00 on Saturdays, albeit the level of demand is lower than the applicant would like. Indeed, the applicant has stated that it is necessary to maintain the existing level of service provision.

5.34 Although there are four other pharmacies in the area, only two have core opening hours on a Saturday, however they do not match the current core opening hours of Reflection Pharmacy. The applicant has not provided sufficient evidence that those using Reflection Pharmacy would be able to access those other pharmacies beyond statements that the population is healthy and mobile, and for those households with only one car or van that vehicle would typically be available on Saturdays because the person who uses it for work doesn't work on that day. Whilst the walking route between Reflection Pharmacy and the next nearest pharmacy is relatively short at Neither [sic] has the applicant provided information on how people travel to Reflection Pharmacy on Saturdays. It is therefore not possible to form a robust opinion as to whether residents would actually be able to access other pharmacies on that day. In any case, none of the four nearest pharmacies have core opening hours that completely match those of Reflection Pharmacy.

5.35 The applicant has failed to provide any evidence that pharmaceutical services are required between 17.00 and 18.00 Monday to Thursday, whereas it has provided evidence of demand between 10.00 and 14.00 on Saturdays.

5.36 The premise of the pharmacy access scheme is to protect pharmaceutical services for patients and this change in core opening hours would be in complete contradiction to this service criteria.

5.37 The advanced services are such that patients may be referred to the pharmacy on Saturdays by NHS111 or another urgent and emergency care service. In addition, patients are now more likely to need to access a pharmacy closer to their home due to services such as Pharmacy First as they will not be travelling to a GP out of hours hub or other urgent and emergency care centre for care; they will be referred to a pharmacy instead for a range of services that has grown and continues to grow as NHS England rolls out more clinical services. The volume of such referrals is expected to grow as services become embedded.

5.38 The tally provided by the pharmacy included those Saturdays over the Christmas period which can be slower than the average week for most pharmacies.

5.39 Though there is transport available within Birstall the bus stops for those residents who may use Reflection Pharmacy are very limited and should the patients live near Reflection Pharmacy then they would need to walk at least 9 minutes to get to the nearest bus stop.

5.40 There are people living in the area without a car.

5.41 There would be a gap between 13:00 and 14:00 on a Saturday if this application is granted.

5.42 NHS England's "Delivery plan for recovering access to primary care" puts pharmacy contractors at the forefront as one of the pillars of primary care so it is more important than ever that pharmaceutical services provision is maintained.

- 5.43 The applicant has neither claimed, nor provided any evidence, that maintaining the existing level of service provision is not a realistically achievable outcome.”

6. Observations

In a letter to NHS Resolution dated 17 May 2024 PSC on behalf of the Applicant stated:

- 6.1 “Thank you for your letter dated 8th May enclosing comments from East Midlands Primary Care Contracting Team, acting on behalf of the ICB in respect of this appeal.
- 6.2 We continue to act for the applicant, Reflection Pharma Limited, and wish to make the following final observations on behalf of our client. We respond to the comments made by the ICB in the same order as their letter of 24th April.
- 6.3 The ICB letter starts by reminding Primary Care Appeals (“PCA”) of the relevant regulations and the matters it will be required to consider. We have no further comments to make on the regulations.
- 6.4 The ICB go on to show the current and proposed core and supplementary hours relating to our client’s application. This information is correct.
- 6.5 The letter then discusses the fact that there is some demand for services during the times our client proposes to close, so these services are therefore deemed to be necessary. We do not dispute this assertion.
- 6.6 In discussing our client’s proposal to extend its weekday core hours to 6pm, the ICB dismisses the benefits of later opening hours by stating (emphasis added):
- “As the pharmacy is not currently open at this time, and residents are travelling to their place of work, the ICB is satisfied that those who travel to work and require access to pharmaceutical services after 17.00 Monday to Thursday will currently be accessing them either near to their place of work, or on their commute home. As the pharmacy does not currently open at those times, those proposed hours cannot be said to maintain the existing level of service provision as that existing level of provision is being provided by other pharmacies.”*
- 6.7 Whilst the ICB is entitled to reach the conclusion that patients who are ‘commuting’ may be able to access pharmaceutical services elsewhere, this position is contradictory to the one it takes later in its representations. We discuss this further below.
- 6.8 The ICB letter then makes the following statement:
- “Reflection Pharmacy receives additional funding under the Pharmacy Access Scheme”.*
- 6.9 This is not correct. Our client’s pharmacy did not meet the distance criteria for inclusion in the scheme. I have attached a copy of a letter from NHS Business Services confirming this.
- 6.10 I can confirm that our client did not appeal against the decision to exclude it from the Scheme on the basis the distance to the nearest alternative pharmacy is 0.5 miles by the nearest practicable route. As PCA will be aware, the distance criteria for the pharmacy access scheme required that the nearest alternative pharmacy was more than 1 mile away (or 0.8 miles in deprived areas). This distance between our client’s pharmacy and Pharmak is shown on the map provided on page 8 of the ICB’s letter as 0.5 miles [see Appendix B].
- 6.11 Comments made by the ICB, therefore, in respect of the pharmacy access scheme are not relevant to our client’s application.

- 6.12 The ICB then goes on to discuss the services provided by our client, which are not disputed. However, having already determined that the services our client provides are necessary during the hours it proposes to close, the actual number of consultations carried out for any particular service is not relevant. The key question, as we go on to discuss, is whether these services are also provided by other contractors that are reasonably accessible on a Saturday.

Pharmaceutical provision within the area of LE4 3LH

- 6.13 We note that the full core hours of 10.00-14.00 provided by our client's pharmacy on a Saturday are not totally covered by core hours of the other pharmacies in Birstall.

- 6.14 Whilst this is strictly speaking correct, it is particularly relevant that core hours provision in Birstall, should our client's application be approved would be provided by:

6.14.1 Pharmak: 09:00-13:00

6.14.2 Birstall Pharmacy: 15:00-21:00.

- 6.15 So it is true that if Boots decided to amend their supplementary hours so their pharmacy was no longer open between 13:00-14:00, then there would be no core hours provision in Birstall during those hours.

- 6.16 However, it is already the case that there is no core hours provision between 1400 and 1500 in Birstall, so the situation will not change significantly.

- 6.17 Should our client's application be granted, any patient in Birstall, who wished to access pharmaceutical services after 13:00 would have two options:

6.17.1 Wait until 15:00 until Birstall Pharmacy opens or;

6.17.2 Travel out of Birstall to one of the numerous other pharmacies open in Leicester on a Saturday afternoon.

- 6.18 In respect of point 2 above, there are '100 hour pharmacies' in the north of the city within a short drive of our client's existing location as shown on the maps below:

- 6.19 Omnicare Late Night Pharmacy, Unit 10 Belgrave Comm Ctr, 160 Belgrave Road Leicester, LE4 5AU [see Appendix C].

6.19.1 Core hours 07:00-20:00 on Saturdays

6.19.2 Drive time, 11 minutes.

6.19.3 This pharmacy provides all the services currently provided by our client.

6.19.4 This pharmacy is also accessible via bus route 127. Total journey time 21 minutes (includes 9 minutes walking) as shown [at Appendix C].

- 6.20 Asda, Barkby Thorpe Lane, Thurmaston, Leicester, LE4 8GN [see Appendix C]

6.20.1 Core hours 0900-1230 & 1300-1630 & 1700-2100 on Saturday.

6.20.2 Drive time 9 minutes. Not on a direct bus-route

6.20.3 This pharmacy provides all the services currently provided by our client.

- 6.21 Whilst it may be the case, that should our client's application be granted there will be one more hour on a Saturday where there a no pharmacy core hours, [sic] for any patient unable to wait for that extra hour for Birstall Pharmacy to open, there is

alternative provision that can be accessed in less than 10 minutes by car (mindful that this is an area with high car ownership) or just over 20 minutes by public transport.

6.22 The ICB then makes the statement:

“Also taking into account that all the pharmacies in the area are part of the pharmacy access scheme of which the main aim is to ensure a baseline level of patient access to NHS community pharmaceutical services in England is protected then losing the services on a Saturday would be in direct contradiction of the principles of this scheme”.

6.23 Once again, this is inaccurate. None of the pharmacies in Birstall are eligible for the Pharmacy Access Scheme. This has been verified on the DHSS website: https://assets.publishing.service.gov.uk/media/62c2ad99d3bf7f2ffee7314e/Pharmacies_eligible_for_the_2022_Pharmacy_Access_Scheme_Updated_June_22.ods

6.24 All pharmacies in Birstall are located less than one mile from another pharmacy so the Pharmacy Access Scheme does not apply.

6.25 The ICB provides a table setting out the hours and services for Pharmak and Birstall Pharmacy which confirms that these pharmacies provide all the services provided by our client. They also have wheelchair access and parking. The comment made that Birstall Medical Centre has “limited parking which will also be used by those attending the medical centre” will not apply on Saturdays when the medical centre is closed.

6.26 The ICB provide car ownership data which suggests that 12% of the population do not have access to a car. Respectfully we would suggest that the car ownership data we provided in our client’s appeal for the Birstall Wanlip ward (9.1% of households with no car compared to the national average of 23.5%) is more relevant. Data provided for the whole of Birstall will include houses much closer to other pharmacies such as Birstall Pharmacy whereas our data reflects the area closest to our client’s pharmacy.

6.27 In any event, it is clear that car ownership in this area is high.

6.28 The ICB then discuss the walking route to Pharmak. They correctly show the shortest route on foot (for those who start their journey at our client’s pharmacy), which is approximately 0.5 miles.

6.29 Bizarrely, however, the ICB discuss the gradient of Kingsgate Avenue, despite the fact that the route they provide does not require patients to walk along Kingsgate Avenue (other than a stretch of 65m at the bottom of the road).

6.30 As can be seen in the image [at Appendix C], pedestrians approaching Pharmak from the north (where our client’s pharmacy is located) would approach via Ambergate Drive (which is flat) and Pharmak is almost on the corner of Kingsgate and Ambergate as can be seen below.

6.31 The gradient at the bottom of Kingsgate Avenue is shallow and anybody walking to Pharmak would have to walk only 65m from the junction with Ambergate Drive.

6.32 Google maps shows a 3m difference in elevation as can be seen [at Appendix C]. This equates to a gradient of around 1 in 20, so is not steep:

6.33 We note the comments about the walk to Birstall Pharmacy and agree with the walk time shown. It is also the case, however, that there are wide pavements and street lighting along the stretch of the A6 pedestrians would use. As an alternative, pedestrians could choose a route that avoided walking alongside the A6 as shown [at Appendix C]:

Conclusion

- 6.34 In summary our client disputes the ICB assertion that it has not provided evidence that patients who currently pharmaceutical services from its pharmacy on Saturdays will be able to access these same services from other pharmacies that are highly accessible.
- 6.35 Contrary to the position taken by the ICB, there is no obligation on the applicant to provide details of how people travel to its pharmacy on Saturdays. It is self-evident that these patients will travel on foot, by private vehicle or using public transport. In each case we have provided evidence which shows that other pharmacies can be accessed on Saturdays.
- 6.36 The ICB disputes the suggestion that there are any benefits in our client opening between 5pm and 6pm on weekdays given its view that many residents will be commuting from further afield. This supports our client's view that the residents of the area within which its pharmacy is located are highly mobile. This applies even more at the weekends when cars are more likely to be at home. It is inconsistent of the ICB to argue that during the weekday residents are highly mobile yet at the weekend they are unable to travel very short distances to alternative pharmacies.
- 6.37 We also dispute the assertion that, for the current level of pharmaceutical services to be maintained, the pharmacies in Birstall must have core hours that precisely match those offered by our client's pharmacy. Notwithstanding the fact that pharmaceutical services are provided in Birstall later on a Saturday afternoon, we have provided evidence that other pharmacies that have core hours when our client's pharmacy will be closed are reasonably accessible taking into account to the high levels of car ownership in Birstall.
- 6.38 The ICB persists in referring to the pharmacy access scheme as part of its supporting evidence despite the fact that not one of the pharmacies in Birstall are eligible for this scheme. The reason they are not eligible is that there are several other pharmacies within a relatively short distance. [see Appendix C]
- 6.39 The ICB refers to "NHS England's Delivery Plan" but fails to mention that pharmacy funding is in crisis and that hundreds of pharmacies have closed over the last year as a result of the unsustainable financial pressures on the sector. It is entirely reasonable that our client seeks to manage these financial pressures by seeking to amend its core hours in accordance with the regulations.
- 6.40 We look forward to hearing the outcome of this appeal in due course."

7. Consideration

- 7.1 I note the following:
- 7.1.1 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.
- 7.2 The Applicant proposes to:
- 7.2.1 Close an hour later at 6pm Monday to Thursday rather than at 5pm; and
- 7.2.2 Close on a Saturday rather than opening from 10am to 2pm.
- 7.3 The Regulations, which came into force on 1 April 2013, have been amended a number of times. Certain amendments, relating to pharmacy premises opening hours, came into force with effect from 25 May 2023.
- 7.4 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.”

7.5 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).

7.6 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.

7.7 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.

7.8 I note the references and comparisons from the Applicant's representative to a previous decision for a different company in a different location. I am mindful that each case is considered on its own merits based on the information and circumstances pertaining to that case. I have therefore proceeded to consider the instant application before me based on the information relevant to this application.

7.9 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.

7.10 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.

- 7.11 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.
- 7.12 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.
- 7.13 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.
- 7.14 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.
- 7.15 However, the Applicant is applying to change the days and times that services are provided. Taking Saturday as an example, the level of service provision at the Applicant's premises on a Saturday is not being maintained. I consider it appropriate to determine if it is necessary to maintain the existing level of service provision and then, if deemed necessary, consider if the opening hours of other pharmacies mean that level is maintained.
- 7.16 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.
- 7.17 I note the comment from the Applicant "*that there has been some limited demand for pharmaceutical services on Saturdays. It is the case, therefore, that these services can be deemed as necessary during the hours it proposes to close*". Given that the Applicant has accepted that there is some demand, albeit this is limited, and that there are people using the pharmacy at the times that it wishes to close, I am of the view that it is necessary to maintain the existing level of service provision.
- 7.18 I now need to consider if, despite the changes to hours, there is maintenance of the existing level of service provision as set out in paragraph. The Applicant cannot maintain this as it is changing its hours.
- 7.19 I note the information from the Applicant with regard to other pharmacies in the area that between them have opening hours during the times that the Applicant is proposing to close, namely Pharmak Pharmacy, Boots Pharmacy, Birstall Pharmacy, Omnicare Late Night Pharmacy and the pharmacy at Asda.
- 7.20 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).

- 7.21 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. On this basis, I have not placed weight on the provision of pharmaceutical services on a Saturday at Boots Pharmacy.
- 7.22 The Applicant has provided information regarding access to those pharmacies for those who currently access its own pharmacy and how they might travel to find alternative pharmaceutical services. I have assumed there are a mix of people who drive to the Applicant's pharmacy and those who walk as well as use public transport. The Applicant has described the pharmacies in the area indicating how far away the pharmacies are and whether there is parking available.
- 7.23 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. If they live close by, walk a few minutes to the pharmacy and walk back home, then even an additional 10 minute walk to the next nearest pharmacy might be considered as not maintaining the level of service provision to users of 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.
- 7.24 The Applicant states that Pharmak Pharmacy, which has core hours from 9am to 1pm on a Saturday is a 10 minute walk or a 4 minute drive away. The Commissioner whilst accepting that most of the route is quite flat does state that "Kingsgate Avenue has a hill" although the severity and length or the gradient is unspecified. The Applicant agrees that Kingsgate Avenue is a hill but is of the view that this would not impede access as those wishing to access Pharmak Pharmacy who would otherwise attend their pharmacy would be approaching from Ambergate Drive and the gradient at this end of the road is relatively shallow. From the information before me I am of the view that there is nothing provided to demonstrate that those who currently access the Applicant's pharmacy by foot would not be able to access Pharmak Pharmacy on foot during the times at which the Applicant is proposing to close.
- 7.25 Further, there is information provided by the Applicant to demonstrate that those who access pharmaceutical services by public transport would still be able to access pharmaceutical services at the alternative pharmacies due to the bus services throughout the area which operate on a Saturday at regular intervals (Route 22A to Birstall Pharmacy which is every 30 minutes). I also note that Omnicare Late Night pharmacy is accessible by bus (route 127). I am mindful of the comments from the Commissioner that for those who wish to access pharmaceutical services by public transport there are limited bus stops in the area and that this would also involve a walk, however I am not persuaded that this would mean that they would not be able to access the alternative pharmacies in the area.
- 7.26 The Applicant provides details of car ownership in the area as does the Commissioner. Whilst I note that parties do not agree the actual figures, which could be due to where the information was taken from and the area that it covers, I am mindful that car ownership in the area is high, especially when compared to the national average.
- 7.27 Whilst not identical to the Applicant's current core hours on a Saturday, I note the nearest pharmacy, Pharmak Pharmacy, has core hours from 9am to 1pm.
- 7.28 I further note that Birstall Pharmacy is open from 3pm to 9pm on a Saturday. Given that Birstall pharmacy is not open during the period that the Applicant is currently open (10am to 2pm) I have not placed weight on the provision of pharmaceutical services on a Saturday at Birstall Pharmacy.

- 7.29 This leaves a period between 1pm and 2pm during which there would be no access within reasonable walking distance should the application be approved, however there is no suggestion that a significant proportion of patients walk in order to access the Applicant's pharmacy in any case.
- 7.30 Further, the Applicant has provided information regarding other 100 hour pharmacies which are located slightly further away but which have core hours on a Saturday (Omincare Late Night Pharmacy from 1am to 8pm and Asda from 9am to 12:20pm; 1pm to 4pm and 5pm to 9pm). I note that these are located further afield but can be reached within an 11 minute drive (Omincare) and a 9 minute drive (Asda). I further note the information provided by the Applicant with regard to access to Omincare pharmacy by public transport. I note that this information has not been disputed by the Commissioner.
- 7.31 The Commissioner makes reference to the Pharmacy Access Scheme and whilst the Commissioner claims that all pharmacies are part of the scheme, the Applicant disputes this. The Applicant has confirmed that whilst they applied, they were not eligible for this due to the distances to the nearest pharmacies and has provided a copy of the decision letter from NHS BSA to this effect. I take no view on the decision of the NHS BSA, as this is not part of this appeal, however I note the information contained in the decision letter which confirms the distances between the Applicant and other pharmacies in the area.
- 7.32 In terms of services accessed, I note that the Applicant has provided a table showing that all of the pharmacies within the area offer the same services and that this has been confirmed by the Commissioner in their representations.
- 7.33 I am mindful that the provision of pharmaceutical services is greater than the dispensing of prescriptions and maintaining a level of service provision includes all services that the pharmacy may offer, including additional enhanced and advanced services that they may commission.
- 7.34 I am therefore satisfied that patients would be able to access the same services from the alternative providers if the Applicant's proposal to change its core hours were to be approved.
- 7.35 Based on the information provided, I am therefore satisfied that the existing level of service provision would be maintained by virtue of the existence of other local pharmacies.
- 7.36 Under paragraph 26(10) *"the Secretary of State may, when determining an appeal, either confirm the action taken by the NHSCB or take any action that the NHSCB could have taken under sub-paragraph (4)"*.
- 7.37 Paragraph 26(4) states:
- (4) *When it determines the application, the NHSCB must –*
- (a) *issue a direction (which replaces any existing direction) which meets the requirements of sub-paragraphs [F391(4)(A),] (5) and (5) and which has the effect of either granting the application under this paragraph or granting it only in part;*
 - (b) *confirm any existing direction in respect of the times at which P must provide pharmaceutical services at the pharmacy premises, provided that the existing direction (whether issued under regulation 65, this Part, the 2012 Regulations, the 2005 Regulations or the 1992 Regulations) would meet the requirements of sub paragraph (5) and (6); or*
 - (c) *either –*

- (i) *revoke, without replacing it, any existing direction in respect of the times at which P must provide pharmaceutical services at the pharmacy premises (whether issued under regulation 65, this Part, the 2012 Regulations, the 2005 Regulations or the 1992 Regulations), where this has the effect of granting the application under this paragraph or granting it only in part, or*
- (ii) *in a case where there is no existing direction, issue no direction.*

- 7.38 With regard to paragraph 26(4)(a) I note that a direction is not in place for the Applicant to provide 40 core hours as it was, and remains, a condition on inclusion for the Applicant to provide those hours.
- 7.39 For the above reasons, I am not confirming any existing direction in line with paragraph 26(4)(b).
- 7.40 Further, there is no direction to revoke in line with paragraph 26(4)(c).
- 7.41 The only option left to me is therefore to substitute the decision of the Commissioner to reject the change of hours application with the decision to grant the change of hours application, without a direction.

8. Determination

- 8.1 Based on the information provided, I am 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.
- 8.2 Therefore I substitute the decision of the Commissioner to reject the change of hours application with the decision to grant the change of hours application, without a direction.

**Head of Appeals
NHS Resolution**