

11 July 2024

REF: SHA/26190

**APPEAL AGAINST LEICESTER, LEICESTERSHIRE AND
RUTLAND ICB DECISION TO REFUSE AN
APPLICATION BY JT HEALTH LTD FOR INCLUSION IN
THE PHARMACEUTICAL LIST OFFERING
UNFORESEEN BENEFITS UNDER REGULATION 18
WITHIN 100M OF THE CROFT MEDICAL CENTRE, LE2
4PE**

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1 Outcome

- 1.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of the Commissioner and redetermines the application.
- 1.2 The Committee determined that the application should be refused.

A copy of this decision is being sent to:

JT Health Ltd

PCSE on behalf of Leicester, Leicestershire and Rutland ICB

Severn Chemist

Boots UK Limited

Pharmacy Sales & Consultancy on behalf of BMP Healthcare Limited

Advise / Resolve / Learn

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1 The Application

By application dated 11 July 2023, JT Health Ltd ("the Applicant") applied to Leicester, Leicestershire and Rutland ICB ("the Commissioner") for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 within 100m of The Croft Medical Centre, LE2 4PE. In support of the application it was stated:

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

1.1 "The existing pharmacy will be closing june [sic] 2023."

In response to "please describe the unforeseen benefit(s) that you are offering to secure and how it will secure improvements or better access to pharmaceutical services, or pharmaceutical services of a specified type in the HWB's area" the Applicant stated:

1.2 "In accordance with the NHS (Pharmaceutical Services) Regulations 2013 JT Health Ltd (JTHL) would ask NHS England & NHS Improvement ("NHS England") [sic] to take into account the following information when considering this application for inclusion in the pharmaceutical list.

1.3 JTHL believe that, should NHS England grant this application, it will secure improvements in terms of access to pharmaceutical services for the local population and the wider area.

1.4 Background

1.5 This application has been prompted by the closure of a Lloyds Pharmacy branch previously located within Sainsburys at LE2 4PE.

1.6 This matter was unforeseen at the time of publication of the current Leicestershire PNA. It is the Applicant's position that there is currently a gap in the provision of pharmaceutical services as a result of the closure of the pharmacy. Granting this application offers an opportunity for the re-provision of pharmaceutical services for residents within this vicinity.

1.7 Until mid 2023, Lloyds Pharmacy operated a pharmacy from premises within the Sainburys' store. This was a well-used pharmacy, dispensing approximately 7700 prescriptions a month to the local population, significantly more than the average pharmacy in England which dispenses approximately 6,600 items per month (source: General Pharmaceutical Services in England 2015/16 - 2020/21 | NHSBSA).

1.8 The Area

- 1.9 The proposed location for this pharmacy is within a predominantly residential area.
- 1.10 The Lloyds pharmacy branch that recently closed was the only pharmacy within the immediate area of the Croft Medical Centre which has a patient list of 8700 with over 1000 patients over 75.
- 1.11 There is clear evidence of the extent to which there is a demand for pharmaceutical services in the area based on the dispensing numbers of the pharmacy that closed. The average number of prescriptions dispensed per pharmacy per month in England was 6,565, so the pharmacy that closed, which was dispensing 7700 items per month, was significantly busier than the average pharmacy in the country.
- 1.12 It is relevant that, when considering whether there are any gaps in the provision of pharmaceutical services, that patients will feel this much more acutely when they have had access to a pharmacy which has subsequently closed than if they have never had a pharmacy at all.
- 1.13 Within the Leicestershire Pharmaceutical Needs Assessment, published in 2022, there is no specific mention of a gap in pharmaceutical services within the proposed area. To JTHL's knowledge, no supplementary statement has been published since the anticipated [sic] closure of the Lloyds pharmacy, so JTHL must assume that the authors of the PNA were not aware of plans to close this pharmacy when the document, and any subsequent supplementary statements, were drafted. Therefore this application is made to provide 'unforeseen benefits' to the local community in accordance with Regulation 18.
- 1.14 JTHL are required by NHS England to address two specific questions in this supporting information:
- 1.14.1 (i)"Please describe the unforeseen benefit(s) that you are offering to secure and how it will secure improvements or better access to pharmaceutical services, or pharmaceutical services of a specified type in the HWB area".
- 1.14.2 (ii)Please explain how you intend to secure the unforeseen benefit(s).
- 1.15 When considering these questions, it is worth noting the provisions of Regulation 18(2)(b) [quoted in full].
- 1.16 The implication is NHS England does not have to find evidence in respect of all three of these matters. These are simply matters it is required to take into account when deciding the application. In fact, even if it does not find that any of the three matters discussed in (18)(2)(b) apply, the overarching test is whether granting the application would secure improvements, or better access, to pharmaceutical services in the area of the HWB. In JTHL's opinion there is clear evidence that it would.
- 1.17 JTHL have addressed both of the questions above by setting out in further details below:
- 1.18 Securing better access and choice
- 1.19 The matters of access and choice are inextricably linked. Whilst it may be the case that there is a choice of pharmacy provider within the Health & Wellbeing Board (HWB) area, this does not mean that the choice for residents is reasonable if they are not able to access these pharmacies when they need to.
- 1.20 Those without a car will be reliant on either walking a significant distance to a pharmacy or incurring costs to travel by public transport. Patients who are elderly or less mobile, particularly when suffering from acute illness, may find this journey challenging regardless of how they travel.

- 1.21 The journey from the surgery to the nearest pharmacy would take 15 mins for a fit and able bodied person to walk to with the distance being 0.7 miles. For the elderly this journey would take significantly longer. By car the journey is also 0.8 miles away.
- 1.22 Clearly the residents of the area where the Applicant proposes to open the pharmacy do not have any choice of provider as there will no longer be any pharmacy contractor here.
- 1.23 Patients currently will have to travel out of the area to access existing services. They will need to make a specific journey to the town centre to access a pharmacy and for some the distance and gradients involved will make the journey difficult.
- 1.24 If this application is approved, the Applicant intends to offer the local residents a full and comprehensive pharmaceutical service six days a week ensuring that local residents can, once more, access pharmaceutical services when they need them.
- 1.25 Patient groups sharing protected characteristics
- 1.26 For those people who are elderly, less able or families with very young children (all of which can be classified as having protected characteristics) access to the existing pharmacies is likely to be more difficult than for those who are more able. This would particularly apply if these people are unable to drive or don't have access to a motor vehicle.
- 1.27 Granting the application will significantly improve the accessibility of pharmaceutical services for these people.
- 1.28 Summary
- 1.29 In the Applicant's view it can be clearly seen that the residents of the area and patients attending the medical centre would benefit greatly from having a community pharmacy reinstated at this site. This application clearly demonstrates benefits which were unforeseen and not identified when the PNA was published.
- 1.30 The resident population do not have a reasonable choice of provider or enjoy easy access to any existing pharmacy contractors, especially for those who are on foot, are reliant on public transport, elderly, infirm or disabled. There is a gap in pharmaceutical services in this part of the town.
- 1.31 The Applicant firmly believes if this application is approved it will secure improvements in choice and better access to pharmaceutical services and thus provide significant benefits for the resident population.
- 1.32 Finally, the Applicant would wish to attend any oral hearing convened by NHS England to consider this application."

In response to "please explain how you intend to secure the unforeseen benefit(s)" the Applicant repeated their response above from 1.3 to 1.32.

2 **The Decision**

The Commissioner considered and decided to refuse the application. The decision letter dated 25 March 2024 states:

[Any reference to 'Committee' in this section is not to be confused with the Pharmacy Appeals Committee of NHS Resolution]

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

PSRC decision report

- 2.2 “This unforeseen benefits application is proposed within the best estimate of within 100m of The Croft Medical Centre, LE2 4PE, this is not in a Controlled Locality or LPS designation thereby Regulations 32, 40 to 44 & 50, 65 & 66 are not relevant to this application and therefore have not been considered.
- 2.3 Fitness to practise was not applicable, as the applicant is already included on the pharmaceutical list in respect of other premises.
- 2.4 Relevant regulations
- Regulation 18 - Unforeseen benefits and additional matters and consequences
 - Regulation 31 - refusal same or adjacent premises
- 2.5 Regulation 18 [quoted in full]
- 2.6 The Committee noted there have been no applications from other persons offering to secure the same improvements or better access or any appeal relating to another application offering to secure the same improvements or better access is pending and needs to be considered with this application.
- 2.7 The applicant has cited the closure of Lloyds pharmacy within Sainsburys' stating that the closure in June left a gap in provision for the area. It is important to note when considering this application that there have been no supplementary updates or gaps in provision identified since the creation of the Leicester, Leicestershire and Rutland Pharmaceutical Needs Assessment (PNA) 2022.
- 2.8 A review of 12 months of Lloyds Sainsburys prescribing data has shown that the pharmacy dispensed on average 3800 prescription per month these have now been absorbed by the other 3 pharmacies within the area. The applicant has stated that patients will be inconvenienced because of closure of Lloyds, however as the prescriptions have been absorbed by the other contractors meaning the patients are already receiving their medicines from another pharmacy and there have been no complaints with regard to this then we can assume that the patients are not impacted.
- 2.9 The applicant has given a best estimate of 100m from LE2 4PE and has not secured a premises yet and therefore could not provide the committee with a floorplan. This could make searching for pharmacy provision difficult. A best estimate should not include 100m from but should be more precise.
- 2.10 Between the last two censuses (held in 2011 and 2021), the population of Oadby and Wigston increased by 2.8%, from around 56,200 in 2011 to around 57,700 in 2021.
- 2.11 The population here increased by a smaller percentage than the overall population of the East Midlands (7.7%), and by a smaller percentage than the overall population of England (up 6.6% since the 2011 Census).
- 2.12 In 2021, Oadby and Wigston was home to around 17.5 people per football pitch-sized piece of land, compared with 17.0 in 2011. This area was among the top 30% most densely populated English local authority areas at the last census.
- 2.13 Population growth was lower in Oadby and Wigston than across the East Midlands.
- 2.14 Glen Road in Oadby is in the East Midlands region of England. The postcode is within the Oadby Woodlands ward/electoral division, which is in the constituency of Harborough.
- 2.15 The 2011 census stated that there was only 6 people living in this area at the time, however there has been significant growth since this data was released, there has been

development of the cottage farm land on Glen road with a housing estate being built which included over 500 2, 3 and 4 bedroom properties, however this was completed in 2020 before the new PNA was created.

- 2.16 There are 3 pharmacies within 1 mile of the proposed postcode.
- 2.17 Regulation 31
- 2.18 East Midlands Primary Care Team on behalf of Leicester, Leicestershire & Rutland ICB, Pharmaceutical Services Regulations Committee (PSRC) first considered Regulations 31 of the NHS (Pharmaceutical & Local Pharmaceutical Services) Regulations 2013. The Committee agreed that it was not required to refuse the application under the provisions of Regulation 31 as the proposed pharmacy will not be adjacent or in close proximity to an existing pharmacy premises. There are no existing pharmacies operating from the proposed best estimate location and therefore, under this provision, regulation 31 would not cause the application to be refused.
- 2.19 The applicant proposes to provide the Essential Service and the following advanced and enhanced services.
 - 2.19.1 New Medicine Service
 - 2.19.2 Community Pharmacy Seasonal Influenza Vaccination
 - 2.19.3 Community Pharmacist Consultation Service (CPCS)
 - 2.19.4 Hypertension Case Finding Service
 - 2.19.5 Smoking Cessation
 - 2.19.6 Emergency Supply Service
- 2.20 The Committee further noted that the applicant has outlined services as above that they intend to provide, however do not have a floorplan as premises have not been secured.
- 2.21 The Committee noted the above points and determined to Refuse this application.
- 2.22 Appeal Rights
- 2.23 The applicant has a right of appeal.”

3 The Appeal

In a letter received on 9 April 2024 addressed to NHS Resolution, the Applicant appealed against the Commissioner’s decision. The grounds of appeal are:

- 3.1 “Following the decision by NHS England, as outlined in their letter dated March 25th, 2024, which denied the application (ME2665), we intend to lodge the following appeal:
- 3.2 The background of this application stems from the closure of numerous pharmacies across the nation, with more closures anticipated in the near future by various companies. Among these closures is Lloyd’s Pharmacy, which entered liquidation. The decision to close the Lloyd’s branch within Sainsbury’s at LE2 4PE was not due to a lack of demand but rather a corporate policy to close all pharmacies located within Sainsbury’s premises.
- 3.3 Our proposal aims to reintroduce a thriving pharmacy to the area, catering to the needs of local residents. The primary considerations under Regulation 18 are access and reasonable choice.
- 3.4 The decision report from NHS England is notably succinct and fails to delve into the merits of the application or the local stance on pharmaceutical service provision.
- 3.5 The appended map (Appendix 1) [Appendix A] delineates the proposed site’s location and surrounding pharmacies. Notably, Severn Chemist, located half a mile away,

marked by a brown dot on the map's outer perimeter, serves a quiet residential area. Its location is distinct from the proposed pharmacy site. Within a 1km radius, only one pharmacy exists, situated at the outermost edge of the radius. The next nearest pharmacies, Boots Chemist and Oadby Village Pharmacy, marked by pink dots, are clustered together in an area prone to high congestion.

- 3.6 A journey to the nearest pharmacy would entail a 14-minute walk or bus ride for residents. The closure of the Lloyds Pharmacy within Sainsbury's has left a palpable void in services, particularly impacting local residents who frequented the store for their everyday needs.
- 3.7 Residents have for many years had the benefit of the Lloyds Pharmacy within the Sainsburys store and utilised its services whilst going about their everyday business (for example shopping at the supermarket). The closure of this pharmacy without doubt has left a significant gap in services within the area and this application, if approved, will address that gap.
- 3.8 By approving this application, it is clear that local residents will benefit by having their choice of contractor restored.
- 3.9 Severn pharmacy is currently providing the maximum NMS consultations allowed. There is scope therefore for more patients to benefit from the NMS service with the re-establishment of a pharmacy at the proposed site. With the initiation of the pharmacy first service and Hypertension service the new pharmacy would make it more accessible and readily available without having to travel some distance as well as all other services currently commissioned.
- 3.10 Patients visiting The Croft Medical Centre for acute conditions requiring a prescription or further advice would need to travel another half a mile to have their prescriptions/advice fulfilled. This can prove very difficult for elderly patients, disabled and patients with children who are acutely unwell.
- 3.11 This following data is how Oadby and Wigston compares. There has been an increase of 13.0% in people aged 65 years and over, a decrease of 1.7% in people aged 15 to 64 years, and an increase of 9.3% in children aged under 15 years. (ONS from 2011 to 2021).
- 3.12 The current population as outlined in appendix 2 [Appendix A] has 20000 residents. There is a larger proportion of elderly patients than the national average. This is most prominent in patients aged 80 and over whereby there are 3.1% of patients over 80 compared to 2.5% for the national average and patients 80 to 84 being 3.1% of the population compared to 2.5% for the national average.

3.13

Age profile	Aged 55 to 59	6.8	6.7	%
Age profile	Aged 60 to 64	6.2	5.8	%
Age profile	Aged 65 to 69	5.1	4.9	%
Age profile	Aged 70 to 74	5.1	5	%
Age profile	Aged 75 to 79	3.8	3.6	%
Age profile	Aged 80 to 84	3.1	2.5	%
Age profile	Aged 85 and over	3.6	2.4	%

- 3.14 Many elderly patients who may be struggling may not necessarily know of the procedure to complain about pharmaceutical services. This could be amplified by the fact of the neighbourhood having a large proportion of patients whereby English is not their native speaking language.
- 3.15 The hours proposed for the pharmacy will help patients access pharmaceutical services throughout the hours of which Croft medical centre will be operational and beyond. The proposed hours entail opening five days a week at 07:30 which would be beneficial for the working population and also envisages to stay open 5 days a week up until 19:00 which will benefit all patients within the area and beyond as well as opening Saturday mornings. Patients leaving an appointment at 6.30pm would not be able to obtain their prescription medication easily on that day due to the other three Pharmacies closing at 6pm and 6.30pm.
- 3.16 If this application is approved, the Applicant intends to offer the local residents a full and comprehensive essential and commissioned pharmaceutical services six days a week ensuring that local residents can, once more, access pharmaceutical services when they need them most.
- 3.17 The housing implementation strategy 2023 for Oadby and Wigston states:
- 3.17.1 The final phase of a huge 500 home housing estate near a golf course in Oadby has been approved. A further 100 homes will be added to the development and two sports pitches built.
- 3.17.2 A planning application was submitted in two phases to officials at Oadby and Wigston Borough Council to build 500 homes on land at Cottage Farm, in Glen Road, Oadby. The first phase, approved in 2017, saw 150 new homes built, 45 of which were provided as affordable housing.
- 3.17.3 There is a target for 30% of new homes to be allocated for affordable housing. This amount to 335 homes for affordable housing as mentioned in the plan.
- 3.18 The PNA did not foresee the closure of the Lloyds Pharmacy and does not foresee the potential changes in patterns of movement and the accessibility concerns arising following the closure of the pharmacy in the area.
- 3.19 The average prescription volume in the report for the Lloyds pharmacy seems to be incorrect. According to Pharmdata for the 12-month period May 2022 – April 2023 the pharmacy dispensed an average of 7670 items/month compared to a national average of around 7,000 items/month. These figures very much support the Applicant's view that this pharmacy was a much needed facility in the area.
- 3.20 With regards to choice, the Applicant fundamentally disagrees with NHSE. It is clear that residents who were used to using the Lloyds Pharmacy store within the Sainsburys store as part of their everyday life no longer access to pharmaceutical services.
- 3.21 [Applicant repeats 3.18]
- 3.22 We have undertaken a short survey of patients from Croft Medical centre. Some of the responses have been:
- 3.22.1 "It was a shame the Sainsburys pharmacy closed" from a 61-75 year old working full time.
- 3.22.2 "Would like later and Saturday opening" from a retired female aged 61-75.
- 3.22.3 "Issues with getting to pharmacy with late appointment" from a patient with a young child.

- 3.22.4 “Would be more beneficial if the pharmacy is located near Croft Medical Centre” from a patient having mobility issues and retired.
- 3.22.5 47% of patients filling the questionnaire stated they do not find their current pharmacy to be convenient.
- 3.22.6 88% of patients stated a more local pharmacy would help to improve access to NHS services.
- 3.23 In Summary, there is a need to establish whether granting this application will secure improvements to the pharmaceutical services currently available to this population. In their application the Applicant sets out their proposals in respect of providing a full range of services from the proposed pharmacy. It is clear that the provision of a pharmacy will secure improvements to the way pharmaceutical services are provided in the area as well as the number of services provided.
- 3.24 Secondly, there is a need to consider whether granting the application would result in better access to pharmaceutical services for this reliant population. It is the Applicant's opinion that the ability of patients to access pharmaceutical services have been substantially diminished following the closure of the Lloyds pharmacy in the area.”

4 **Summary of Representations**

This is a summary of representations received on the appeal.

4.1 Boots UK Limited

- 4.1.1 “Thank you for your letter dated 18th April 2024 informing us of the above appeal.
- 4.1.2 We do not have any further comments to add, in addition to those submitted initially, a copy of which is enclosed.
- 4.1.3 Please be aware that Boots UK Ltd may wish to attend any Oral Hearing that may be required in connection with this application.”

In a letter dated 5 December 2023 to the Commissioner, Boots UK Limited stated:

- 4.1.4 “Thank you for your letter dated 2nd November 2023 informing us of the above application. Boots UK Limited have the following comments to make.
- 4.1.5 Whilst we accept that the application is based on benefits not foreseen when drafting the Pharmaceutical Needs Assessment (PNA), it is clear that this application is based on the closure of the Lloyds pharmacy within Sainsburys.
- 4.1.6 As the ICB will be aware, the closure of a pharmacy within an area does not automatically create a gap and should a gap have arisen as a consequence of such a closure, then the PNA should be updated to reflect this.
- 4.1.7 As far as we are aware, no updated PNA or Supplementary has been produced and we believe that this is the correct way of identifying any gaps that may have arisen. The Sainsburys closed [sic] ago now, so there has been plenty of time for the production of supplementary statements and the amendment of the PNA to have taken place if there was a requirement to do so.
- 4.1.8 We believe that there are 4 pharmacies within 1 mile of the proposed site (NHS.UK) offering patients’ choice of a Pharmacy and services 7 days a week.

- 4.1.9 The applicant has not identified any specific patient groups that may wish to access a pharmacy at the proposed location that currently have expressed difficulty in accessing provision in the area. We are unaware of any patients submitting a complaint since the closure of the Lloyds or any other pharmacies, to NHS England with regards to accessibility or any concerns regarding services or opening hours.
- 4.1.10 We believe that patients have already access to providers and choice in the area and do not believe that the applicant is offering to secure any innovation by way of services or delivery.
- 4.1.11 For these reasons we respectfully urge the ICB to refuse this application.
- 4.1.12 Please be aware that we may wish to make further representations at a later stage and attend any oral hearing that may be held in relation to the application. We would therefore be most grateful if you could keep us informed of the progress of this application.”
- 4.2 Pharmacy Sales & Consultancy on behalf of BMP Healthcare Limited
 - 4.2.1 “We act on behalf of Mr Rahul Patel, BMP Healthcare Ltd and have been instructed by our client to comment on the appeal by J T Health Ltd following the decision by NHS England (NHSE) to refuse their application.
 - 4.2.2 A copy of their decision report dated 25th March 2024 is attached to this document.
 - 4.2.3 Also attached is a signed letter of authorisation from our client and a copy of our initial objection to the application dated 15th November 2023 [see below].
 - 4.2.4 By way of background Our client acquired the pharmacy located at 9 The Parade Oadby Leicester LE2 5BB from Lloyds Pharmacy on 01/06/2023 and is therefore an interested party.
 - 4.2.5 Having reviewed the decision report from NHSE it is clear they have properly considered the application from J T Health and concluded, correctly in our opinion, that the application does not meet the requirements of Regulation 18.
 - 4.2.6 In order for an application to be approved the applicant needs to address the following requirements: [Regulation 18(2)(b) quoted in full].
 - 4.2.7 This application appears to be based solely on the closure of the Lloyds Pharmacy, which was operating from the Sainsburys Supermarket Glen Road until it closed in June 2023.
 - 4.2.8 NHS Resolution will be fully aware that the closure of a pharmacy does not mean an application should automatically be approved to replace it. If the Health & Wellbeing Board (HWB) felt that this closure had led to a gap in services in the vicinity, it had the opportunity to issue a supplementary statement to the PNA inviting applications to fill the perceived gap.
 - 4.2.9 To our knowledge no such supplementary statement has been issued. Therefore, one assumes the HWB have considered the situation and decided no gap in services has been created as a result of this closure on the basis that the existing network is sufficient to meet patient demands.
 - 4.2.10 The Lloyds pharmacy was dispensing around 7,000 items/month prior to closure but opened in excess of 80 hours/week spread across 7 days’ trading. The extended hours/7 days trading would no doubt account for many of the items dispensed by Lloyds. Furthermore, the use of data in respect of how

many prescriptions the 'average' pharmacy dispenses is not evidence that existing pharmacies do not have the capacity to take on additional dispensing, or any other services for that matter.

4.2.11 The applicant has not produced any evidence that the existing contractors are struggling with any additional items that may have resulted from the closure of the Lloyds

4.2.12 As the Lloyds pharmacy was located within a supermarket it is highly likely that the majority of people who visited (and still visit) that store do so by motor vehicle. That would indicate a very mobile population who can easily travel around the area to access services from local contractors.

4.2.13 We have extracted some data from the 2021 census in relation to car ownership in the area

4.2.14 The data is as follows:

Number of cars or vans	ward2022:Oadby Brocks Hill		country:England	
	number	%	number	%
Total: All households	1,559	100.0	23,436,085	100.0
No cars or vans in household	149	9.6	5,516,098	23.5
1 car or van in household	663	42.5	9,674,645	41.3
2 cars or vans in household	562	36.0	6,106,970	26.1
3 or more cars or vans in household	185	11.9	2,138,372	9.1

4.2.15 Based on information above it is clear that car ownership in the ward is very high for all categories ranging from having 1 vehicle to those households with 3 or more. This data reinforces the argument that there is a very mobile population who are easily able to access the nearby contractors.

4.2.16 There are already four existing contractors within a mile radius of the application as follows:

4.2.17 Severn Chemist 44 Severn Road, LE2 4FY.

4.2.17.1 Opening hours 9.00-1.00 & 2.00-6.00 Monday-Friday. 9.00-1.00 Saturday.

4.2.18 Boots 35 The Parade LE2 5BB

4.2.18.1 Opening hours 9.00-6.00 Monday-Saturday. 10.00-4.00 Sunday.

4.2.19 Oadby Village Pharmacy 9 The Parade LE2 5BB

4.2.19.1 Opening hours 9.00--6.30 Monday-Friday.

4.2.20 Asda Pharmacy, Leicester Road LE2 4AH

4.2.20.1 Opening hours 9.00-8.00 Monday-Saturday. 10.00-4.00 Sunday.

4.2.21 (information taken from www.NHS.uk).

4.2.22 Those four pharmacies are operated by four different contractors namely Boots, Asda, an independent and our client, so clearly there is plenty of patient choice in the area.

- 4.2.23 The applicant is proposing opening hours of 54.5 hours/week with just three hours on a Saturday and none on Sundays. It claims that granting this application “offers the opportunity for the re-provision of pharmaceutical services for residents within this vicinity”.
- 4.2.24 Clearly the proposed opening hours do not offer anything beyond those offered by nearby contractors.
- 4.2.25 Our client’s pharmacy (Oadby Village) and Boots are in the main shopping area for Oadby town, so people are likely to visit that area as part of their everyday routines. They can attend to their health requirements when doing so. Since our client acquired the pharmacy from Lloyds last summer, he has made various improvements including the installation of a 24 hour collection point and improving customer services levels generally.
- 4.2.26 Obviously, Asda is also a local destination store so similar comments apply to that pharmacy. There is free parking at the Asda store and directly outside Severn Pharmacy plus on-street parking and public car parks close to Boots and Oadby village.
- 4.2.27 If people do not have access to a car and are reliant on public transport, there are numerous buses running along Glen Road. A summary of bus journeys to the above pharmacies is as follows:
- 4.2.28 Severn Pharmacy-Bus route 31 runs every 30 minutes as per the map below:
[Appendix B]
- 4.2.29 Boots/Oadby Village Pharmacy (located close together) Bus routes 31.31A both every 30 minutes and bus route X3 every 60 minutes. Please see below.
[Appendix B]
- 4.2.30 Asda Bus route 31A every 30 minutes. Bus route X3 every 60 minutes. See below: [Appendix B]
- 4.2.31 The above shows that the four nearest pharmacies are easily accessible via regular bus services.
- 4.2.32 In terms of walking, the applicant states it is a 14-minute walk to Severn Pharmacy but of course no one lives at Croft Medical Centre or the Sainsbury’s store. The applicant [sic] is for a best estimate location, so it is not 100% clear where he intends to open should the application be approved. For many local residents the walk will be less than stated by the applicant.
- 4.2.33 The applicant states:
- 4.2.34 “Patients visiting The Croft Medical Centre for acute conditions requiring a prescription or further advice would need to travel another half a mile to have their prescriptions/advice fulfilled. This can prove very difficult for elderly patients, disabled and patients with children who are acutely unwell”.
- 4.2.35 He has produced no evidence whatsoever of the above to prove that residents have difficulty accessing services and NHSE confirmed in their decision letter they had not had any complaints about services following the closure of the Lloyds Pharmacy in June 2023.

- 4.2.36 We have extracted some information from the 2021 census in relation to disability as follows:

Disability	ward2022:Oadby Brocks Hill		country:England	
	number	%	number	%
Total: All usual residents	4,272	100.0	56,490,048	100.0
Disabled under the Equality Act: Day-to-day activities limited a lot	271	6.3	4,140,357	7.3
Disabled under the Equality Act: Day-to-day activities limited a little	366	8.6	5,634,153	10.0
Not disabled under the Equality Act: Has long term physical or mental health condition but day-to-day activities are not limited	257	6.0	3,856,029	6.8
Not disabled under the Equality Act: No long term physical or mental health conditions	3,378	79.1	42,859,509	75.9

- 4.2.37 This data points to an area with less than average people with disability compared to the National Averages.

- 4.2.38 The applicant then says:

4.2.38.1The housing implementation strategy 2023 for Oadby and Wigston states:

4.2.38.2The final phase of a huge 500 home housing estate near a golf course in Oadby has been approved. A further 100 homes will be added to the development and two sports pitches built.

4.2.38.3A planning application was submitted in two phases to officials at Oadby and Wigston Borough Council to build 500 homes on land at Cottage Farm, in Glen Road, Oadby. The first phase, approved in 2017, saw 150 new homes built, 45 of which were provided as affordable housing.

4.2.38.4There is a target for 30% of new homes to be allocated for affordable housing. This amount to 335 homes for affordable housing as mentioned in the plan.

- 4.2.39 None of these new housing proposals are relevant to this application as they are all planned for future development. There is no guarantee they will ever be built and if/when they are the ICB has the option to consider whether they merit a new contract application within the appropriate PNA.

- 4.2.40 In their decision letter NHSE had clearly considered the question of new housing in the area as they state that over 500 properties had been built nearby but were completed before the 2022 PNA was issued, and they still concluded there was no gap in services.

- 4.2.41 In terms of the applicant's survey of Croft Medical Centre patients the following statements have been made:

4.2.41.1It was a shame the Sainsburys pharmacy closed" from a 61-75 year old working full time.

4.2.41.2"Would like later and Saturday opening" from a retired female aged 61-75.

4.2.41.3Issues with getting to pharmacy with late appointment" from a patient with a young child.

4.2.41.4 *“Would be more beneficial if the pharmacy is located near Croft Medical Centre” from a patient having mobility issues and retired.*

4.2.41.5 *47% of patients filling the questionnaire stated they do not find their current pharmacy to be convenient.*

4.2.41.6 *88% of patients stated a more local pharmacy would help to improve access to NHS services.*

4.2.42 The fact that it is a *“shame the pharmacy closed”*, *“would be more beneficial if the pharmacy is located near Croft Medical Centre”*, *“would like later and Saturday opening”* etc are not proof there is a gap in services. These are typical responses from people who are asked whether they would like to see a new pharmacy in the area. Convenience is not the legal test and both Boots and Asda offer late opening and weekend hours.

4.2.43 We have not seen a copy of the survey questions, but NHS Resolution will no doubt decide how much weight should be attributed to this patient survey when they come to make their decision.

4.2.44 In conclusion the applicant has not provided any evidence that there is a gap in services created by the closure of Lloyds. Residents continue to have a choice of 4 pharmacies, operated by different contractors within a mile of the proposed application, two of which trade 7 days a week. There is no evidence that people with protected characteristics have difficulty obtaining their medication and the applicant is offering no innovative services.

4.2.45 In view of the above we respectfully request that NHS Resolution refuse this application.

4.2.46 Should this application progress to an oral hearing our client and or ourselves would wish to have the opportunity to attend the hearing and present oral evidence.

4.2.47 May we request that all of this evidence, along with our initial application and supporting document is taken into account by the committee in making their decision in relation to this application.”

In a letter dated 15 November 2023 to the Commissioner, Pharmacy Sales & Consultancy on behalf of BMP Healthcare Limited stated:

4.2.48 “We act on behalf of Mr Rahul Patel of BMP Healthcare Ltd.

4.2.49 Our client acquired the pharmacy located at 9 The Parade Oadby Leicester LE2 5BB from Lloyds Pharmacy (on 01/06/2023) and has been notified of the above application. On behalf of our clients, we have been instructed to object to the application from JT Health Ltd.

4.2.50 A letter of Authorisation is attached to this document.

4.2.51 Under Regulation 18 the applicant is required to address the following :

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

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

- 4.2.52 The provisions of Regulation 18(2)(b) are as follows: [full Regulation quoted]
- 4.2.53 On behalf of our client, we wish to raise the following objections/observations in relation to the application from JT Health Ltd:
- 4.2.54 To our client's knowledge there have been no formal complaints about lack of pharmaceutical services in the area since the closure of the Lloyds Pharmacy within the Sainsburys store.
- 4.2.55 The applicant is claiming there is now a gap in services within the area following the closure but presents no evidence whatsoever to support this claim.
- 4.2.56 J T Health Ltd state that prior to closure, the Lloyds pharmacy was dispensing approx. 7,700 items/month compared to 6,600 items/month for "an average pharmacy". What they fail to state is that the Lloyds branch was open in excess of 80 hours/week spread across 7 days' trading. The extended hours/7 days trading would no doubt account for many of the items dispensed by Lloyds. Furthermore, the use of data in respect of how many prescriptions the 'average' pharmacy dispenses is not evidence that existing pharmacies do not have the capacity to take on additional dispensing.
- 4.2.57 The applicant is proposing opening hours of 54.5 hours/week with just three hours on a Saturday and none on Sundays. It claims that granting this application "offers the opportunity for the re-provision of pharmaceutical services for residents within this vicinity".
- 4.2.58 Clearly the application falls well short of achieving that (if there is indeed a "gap", which our client does not accept there is) on the basis there is no late-night provision during the week, no opening hours on Saturday afternoons or anytime on Sunday.
- 4.2.59 There are already four existing contractors within a mile radius of the application (information taken from www.NHS.uk). Those four pharmacies are operated by four different contractors namely Boots, Asda, an independent and our client, so clearly there is plenty of patient choice in the area.
- 4.2.60 The applicant states that the journey from the surgery to the nearest existing contractor will take pedestrians around 15 minutes to walk. To our knowledge no-one lives at the Croft Surgery-they will all reside in the residential areas surrounding the site. As all patients will have the means to travel to the surgery in the first instance, they will be able to travel to a pharmacy elsewhere, which may well be closer to their home.
- 4.2.61 JT Health have stated that people who have protected characteristics have difficulties accessing existing pharmacies but once again has provided no evidence to support this claim. Finally, they have not provided any evidence of innovative services.
- 4.2.62 In conclusion it is our client's strong view that this application does not meet the requirements of Regulation 18 and should therefore be refused.
- 4.2.63 Should this application progress to an oral hearing our client and or ourselves would wish to have the opportunity to attend the hearing and present oral evidence."

4.3 Severn Pharmacy

- 4.3.1 "We are writing in response to the appeal filed by JT Health Ltd regarding their application as stated above.

- 4.3.2 In addition to our objection letter dated 29th November 2023 that was submitted to NHS England (see attachment) [see below] in relation to the above application, we believe JT Health Ltd will not secure improvements or better access to pharmaceutical services in the area of the Health and Wellbeing Board, as required under Regulation 18(1). Our reasons for this belief are outlined as follows:
- 4.3.3 JT Health fails to provide detailed quantitative data or evidence to support that patients in the vicinity of the proposed site lack reasonable choice. They also have provided little or no evidence that patients with protected characteristics have difficulties accessing pharmaceutical services from the current pharmacies in the local area.
- 4.3.4 We believe that the current network of pharmacies, including Severn Pharmacy, provides adequate access and reasonable choice to the patients in the proposed area around The Croft Medical Centre. Please see Appendix A [Appendix C] which outlines the services, opening times and location of all the local pharmacies which provides evidence to support the fact that the current group of pharmacies in the local area do provide reasonable choice and access to pharmaceutical services.
- 4.3.5 In the original application, JT Health Ltd propose many pharmacy services, such as Smoking Cessation (Nicotine Replacement Therapy – NRT), which they will not be able to provide as it is currently a locally commissioned service under the Leicestershire Services Framework. Severn Pharmacy is under contract from 1st April 2024 to 31st March 2027 to provide this commissioned service and JT Health Ltd would only be able to provide this service on a private basis.
- 4.3.6 Finally, the appellant has provided no further evidence in their appeal letter that innovative approaches would be provided with regard to the delivery of pharmaceutical services under Regulation 18.
- 4.3.7 Should the matter proceed to an appeal hearing, Severn Pharmacy wishes to attend the oral hearing to make further representations.
- 4.3.8 We appreciate your attention to this matter and look forward to a fair and thorough consideration of our position.”

In a letter dated 29 November 2023 to the Commissioner, Severn Pharmacy stated:

- 4.3.9 “I trust this letter finds you well. I am writing as the owner of Severn Pharmacy in response to the pharmacy application submitted by JT Health Ltd as referenced above. I appreciate the opportunity to provide input and express my concerns regarding the application.
- 4.3.10 Severn Pharmacy opposes this application on the grounds that the applicant has provided no evidence in their application to support the criteria set out by Regulation 18 (2)(b) and my points as indicated below:
- 4.3.10.1 I believe that within the local area around The Croft Medical Centre there is reasonable choice for people to obtain pharmaceutical services. There is already good local access to pharmacy services which are currently provided by all the existing pharmacies in the area. In fact, upon the closure of the Lloyds Pharmacy in Sainsbury’s Supermarket their patients exercised their choice by obtaining pharmaceutical services from other pharmacies including Severn Pharmacy.

4.3.10.2 My google search indicates that from The Croft Medical Centre there are three local pharmacies within three to five minutes' drive away, two pharmacies are nine to ten minutes by bus and Severn Pharmacy is within 15 minutes' walk. They all provide a comprehensive set of pharmaceutical services. This is evidence that there is reasonable choice and access to pharmaceutical services in the area.

4.3.10.3 The Leicestershire Pharmaceutical Needs Assessment (PNA) 2022 also supports my view as it states:

4.3.10.4 'current access to pharmacy provision is largely good'

4.3.10.5 'No gaps have been identified in the provision of essential services during normal working hours or outside of normal working areas across the whole Health and Wellbeing Board area.'

4.3.10.6 'Furthermore, no gaps have been identified in essential services that if provided either now or in the future would secure improvements or better access to essential services across the whole Health and Wellbeing Board area.'

4.3.10.7 'No gaps have been identified in the provision of advanced services across the whole Health and Wellbeing Board area. No gaps have been identified in the provision of advanced services at present or in the future that would secure improvements or better access to advanced services across the whole HWB area.'

4.3.10.8 'Overall, the community-based pharmacies are meeting the current needs of the Leicestershire population for Essential and Advanced services.'

4.3.11 Therefore, I believe that the local people around The Croft Medical Centre do have reasonable choice and that the proposed pharmacy would not provide improvements or better access.

4.3.12 In terms of patient groups sharing protected characteristics, the applicant has not provided any specific evidence indicating that these patient groups are having difficulties in accessing pharmaceutical services.

4.3.13 Finally, the applicant has failed to mention any innovative approaches to the delivery of pharmaceutical services that would confer significant benefits to people in the local area which were not foreseen when the Leicestershire PNA was published.

4.3.14 Regulation 18 (2)(b) requires the applicant to furnish evidence that the new pharmacy will offer to secure improvements or better access of pharmaceutical services in the area. Unfortunately, the application submitted by JT Health Ltd lack [sic] the necessary details to demonstrate how these criteria will be met.

4.3.15 Therefore, I invite NHS England to refuse this application on the basis that the requirements of Regulations 18 (2)(b) are not met. Please note that I wish to attend an oral hearing, should NHS England consider the need for one prior to the determination of this application.

4.3.16 Should you require any further information or clarification, please do not hesitate to contact me."

4.4 The Commissioner

- 4.4.1 “Thank you for your letter dated 18 April 2024 the East Midlands Primary Care Team would like to make the following representations.
- 4.4.2 Relevant Regulations
- 4.4.3 Regulation 18(1) of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 as amended considers whether the granting of the application (or granting it in respect of some only of the services specified in it) would secure improvements, or better access, to pharmaceutical services (or pharmaceutical services of a specified type) in the area of the Health and Wellbeing Board, in whose pharmaceutical needs assessment the improvements or better access have not been included.
- 4.4.4 Regulation 31 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 states [Regulation quoted in full]
- 4.4.5 An application by JT Healthcare Ltd offering to secure unforeseen benefits within 100m of Croft Medical Centre LE2 4PE was reviewed at the Pharmaceutical Services Regulations Committee on 19 February 2024.
- 4.4.6 The committee made the decision to refuse the application as they felt that the granting of the application (or granting it in respect of some only of the services specified in it) would not secure improvements, or better access, to pharmaceutical services (or pharmaceutical services of a specified type) in the area of the Health and Wellbeing Board, in whose pharmaceutical needs assessment the improvements or better access have not been included.
- 4.4.7 When making this decision the committee reviewed the other existing pharmaceutical services within the area and as the unforeseen benefit was based on the closure of Lloyds in Sainsburys a review of the local Management information Spreadsheet (MIS) was undertaken. This spreadsheet lists all the financial information for all pharmacy contractors including prescription numbers. This allowed the team to see that the patients that had previously gone to Lloyds pharmacy had been distributed between the other pharmacies in the area.
- 4.4.8 The review showed that the closed Lloyds pharmacy dispensed on average 3800 prescription per month following the closure the other pharmacies showed an increase in their monthly figures and therefore this indicated that the patients had now been absorbed by the other 3 pharmacies within the area. Lloyds pharmacy closed on 13 June 2023.
- 4.4.9 The applicant has cited the closure of Lloyds pharmacy within Sainsburys’ stating that the closure in June left a gap in provision for the area. It is important to note when that there have been no supplementary updates or gaps in provision identified since the creation of the Leicester, Leicestershire and Rutland Pharmaceutical Needs Assessment (PNA) 2022 and to date there has been no correspondence from the HWB, other stakeholder group or any patient complaints to say that Pharmaceutical Services are lacking in this area.
- 4.4.10 The team are unable to share a copy of the information on the Management Information Spreadsheet as it contains commercially sensitive information for all pharmacies.
- 4.4.11 The applicants states that they aim is to reintroduce a thriving pharmacy to the area, catering to the needs of local residents. The primary considerations under Regulation 18 are access and reasonable choice.
- 4.4.12 The purpose of an unforeseen benefits application is that the pharmacy is providing services and choice over and above the normal rate the patient are

already attending other pharmacies so it doesn't necessarily follow that opening another pharmacy would add value to the area.

- 4.4.13 The applicant has stated that patients will be inconvenienced because of closure of Lloyds, however as the prescriptions have been absorbed by the other contractors meaning the patients are already receiving their medicines from another pharmacy and to date there has been no correspondence from the HWB, other stakeholder group or any patient complaints to say that Pharmaceutical Services are lacking in this area. then we can assume that the patients are not impacted.
- 4.4.14 The contractor has stated that a journey to the nearest pharmacy would entail a 14-minute walk or bus ride for residents. The closure of the Lloyds Pharmacy within Sainsbury's has left a palpable void in services, particularly impacting local residents who frequented the store for their everyday needs.
- 4.4.15 The patients have been absorbed within the other pharmacies in the area so are already making the journey to the pharmacies close by and according to the 2021 census 83% of households within the area have 1 or more cars so would be able to drive to the pharmacy. All of the pharmacies within a 1 mile radius provide a prescription delivery service. Patients also have the option to have their medicines dispensed by a distance selling pharmacy who will delivery [sic] their medicines directly to their door.
- 4.4.16 The applicant has also stated that Patients visiting The Croft Medical Centre for acute conditions requiring a prescription or further advice would need to travel another half a mile to have their prescriptions/advice fulfilled. This can prove very difficult for elderly patients, disabled and patients with children who are acutely unwell.
- 4.4.17 Looking at the dispensing activity on Shape for Croft Medical centre there are already 46% of patient [sic] receiving their medication from the 3 pharmacies within a 1 mile radius. A list is included in the useful document section of this report [Appendix D].
- 4.4.18 The applicant has stated that the hours proposed for the pharmacy will help patients access pharmaceutical services throughout the hours of which Croft medical centre will be operational and beyond. The proposed hours entail opening five days a week at 07:30 which would be beneficial for the working population and also envisages to stay open 5 days a week up until 19:00 which will benefit all patients within the area and beyond as well as opening Saturday mornings. Patients leaving an appointment at 6.30pm would not be able to obtain their prescription medication easily on that day due to the other three Pharmacies closing at 6pm and 6.30pm.
- 4.4.19 JT Health Ltd is offering to provide 54.30 hours per week but have not clarified which hours will be the core 40 hours and which hours will be supplementary. If the hours in the morning from 7:30 and the late opening are supplementary hours these can be withdraw with 5 weeks [sic] notice. The pharmacy will be opening the following hours.

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
07:30-12:30	07:30-12:30	07:30-12:30 13:30-19:00	07:30-12:30	07:30-12:30	09:00-12:00	Closed	54.30
13:30-19:00	13:30-19:00		13:30-19:00	13:30-19:00			

- 4.4.20 There are 3 pharmacies within 1 mile radius of the proposed postcode LE2 4PE, the closest pharmacy is 0.5 miles away. 2 of those pharmacies have core opening hours from 09:00 to 18:00 and core opening hours on a Saturday.

Below is a table showing the details of the pharmacy, the distance from LE2 4PE, the pharmacies opening hours and the enhanced, advanced and other services that they currently provide.

Nearest Pharmacies and Service Provision within 1 mile radius:			
Pharmacy Name	Distance from LE2 4PE	Opening Hours	Services
FQC09 Severn Pharmacy 44 Severn Road Oadby Leicester Leicestershire LE2 4FY	0.5 Miles	<u>Core Hours</u> Monday to Friday 09:00 to 13:00 and 14:00 to 18:00 Saturday 09:00 to 13:00	<u>Enhanced Services</u> Extended Care 1 and 2 paused at the moment awaiting sign off of PGDs <u>Advanced Services</u> Pharmacy First NMS Contraception Service Smoking Cessation Blood pressure Service Appliance Use Review Flu vaccination service <u>Additional Services</u> Prescription Delivery Service
FPO45 Boots 5 The Parade, Oadby, Leicester, LE2 5BB	0.8 Miles	<u>Core Hours</u> Monday to Friday 09:15 to 14:00 and 15:00 to 17:00 Saturday 09:15 to 14:00 and 15:00 to 16:30 <u>Supplementary Hours</u> Monday to Friday 09:00-09:15 14:00 to 15:00 17:00-18:00 Saturday 09:00-09:15 14:00-	<u>Enhanced Services</u> The pharmacy does not provide any enhanced services <u>Advanced Services</u> Pharmacy First NMS Contraception Service Flu vaccination service Lateral Flow Service <u>Additional Services</u> Prescription Delivery Service
FVL75 Oadby Village Pharmacy 9 The Parade, Oadby, Leicester, LE2 5BB	0.8 Miles	<u>Core Hours</u> Monday to Friday 09:00-13:00 & 14:30-18:30 Saturday and Sunday Closed	<u>Enhanced Services</u> Extended Care Tier1, 2 <u>Advanced Services</u> Pharmacy First NMS
		<u>Supplementary Hours</u> Monday to Friday 13:00-14:30 <u>Total Hours</u> Monday to Friday 09:00-18:30 Saturday and Sunday Closed	Flu vaccination service <u>Additional Services</u> Prescription Delivery Service

4.4.21 In conclusion there have been no supplementary statements within the PNA for this area and no complaints have been received since the closure of the Lloyds pharmacy, 46% of patients are already using the other pharmacies within a 1 mile radius.

4.4.22 With regard to patients getting to the pharmacies, able patients could walk the distance and for those who are disabled or have children there are bus services

and 83% of households do have 1 or more cars within the household. The pharmacies within a 1 mile radius provide prescription delivery services and patients also have the option of receiving their medicines from a distance selling pharmacy.

4.4.23 I would like to take this opportunity to respond to any further representations provided by JT Health.”

4.4.24 [The Commissioner provided further attachments with their representations, see Appendix D]

5 Observations

This is a summary of observations received on the appeal.

5.1 The Applicant

5.1.1 “In response to some of the comments made:

5.1.2 a) *‘The purpose of an unforeseen benefits application is that the pharmacy is providing services and choice over and above the normal rate the patient are already attending other pharmacies so it doesn’t necessarily follow that opening another pharmacy would add value to the area.’*

5.1.3 *‘JT Health Ltd is offering to provide 54.5 hours per week but have not clarified which hours will be the core 40 hours and which hours will be supplementary. If the hours in the morning from 7:30 and the late opening are supplementary hours these can be withdraw with 5 weeks notice.’*

5.1.4 As we have already clarified during the initial application process, we will be extending our core hours to 54.5 per week. According to your definition, this change will enhance accessibility by better aligning with surgery hours, thus improving both choice and access for patients.

5.1.5 Currently, the surgery operates from 8:00am to 12:30pm and from 1:30pm to 6:30pm, Monday through Friday. However, none of the three local pharmacies provide full coverage during these hours. As a result, patients leaving the surgery at 6:30pm are unable to fill their prescriptions, and there is no access to pharmacy services from 8:00am to 9:00am. This adjustment in our hours aims to address these gaps and ensure better service availability for our patients.

5.1.6 b) *‘Patients also have the option to have their medicines dispensed by a distance selling pharmacy who will deliver their medicines directly to their door.’*

5.1.7 Regarding distance selling pharmacies, they are not permitted to provide face-to-face consultations. Consequently, they cannot offer all seven pathways currently available through Pharmacy First, nor can they provide other in-person consultations. This limitation is particularly problematic for individuals who are acutely unwell and in immediate need of medication, as they would not benefit from the services of a distance selling pharmacy.

5.1.8 c) *‘to date there has been no correspondence from the HWB, other stakeholder group or any patient complaints to say that Pharmaceutical Services are lacking in this area. then we can assume that the patients are not impacted.’*

5.1.9 It has been noted that no formal complaints have been received from patients. However, in our experience, formal complaints are rare because patients are often (a) unaware of their right to complain, and (b) uncertain about the procedure even if they wish to do so.

- 5.1.10 On examination of Google reviews, which are more accessible for patients, you will find complaints for all three pharmacies over the past year. These reviews highlight the impact of additional demands on service levels following the closure of Lloyds Pharmacy. Some of the comments made are listed here:
- 5.1.11 'Probably the most unhelpful Boots I've ever had the misfortune to visit. I realise there are self-checkouts however I was looking for advice. I was ignored. The assistant knew I was there and avoided eye contact. She walked straight past me. Another assistant watched her do this and told me she'd be back. She didn't come back, and another assistant came to help. This store is cold and uncaring. The staff really couldn't give a flying one!!'
- 5.1.12 'No ear drops or nose sprays in stock staff are so unhelpful they will not even ring the GP to advise what they do actually have in stock. This is also whilst receiving 8 messages to say my prescription is ready to collect. But as always system error.'
- 5.1.13 '5 times I have tried to get a nose spray from boots the delays have meant I have 5 times had to take antibiotics just like the below review states so looks like I'm not the only customer boots has failed in it [sic] duty of care. After making a complaint the store manager called at 9:21 and again at 9:23am he couldn't advise why no member of staff would call my GP he did not apologise for the store closing early without my GP being informed on 3rd April. This needs to be addressed on Leicestershire live as boots has failed on so many levels to provide adequate services to customers.'
- 5.1.14 'This store has very very bad service hardly have any stock. The shelves are as empty at the customer service.'
- 5.1.15 'Time to close down let a better store open with good service'
- 5.1.16 'Miserable staff and slow service. Dread going here but sometimes have no choice'
- 5.1.17 'Shocking customer service, terrible wait times, avoid. Only one pharmacist so during busy periods you could be standing around for 15 minutes.'
- 5.1.18 'This store never answers their phone.'
- 5.1.19 '[sic] Customer service is terrible, the rudeness of the staff and pharmacists is a joke. Pick and choose who they want to serve.'
- 5.1.20 'Waited 15 minutes to be served today walked out in the end as did the lady in front of me we couldn't wait any longer this shop is so understaffed it's riddiculas[sic]'
- 5.1.21 'Service and help severely lacking. They were only able to 'suddenly find' my meds after I asked for the script to be removed from the spine and copied so that I could source the medication elsewhere. This was not a just 'delivered batch' as stated as I had been waiting either in store or just outside doors for over half an hour whilst I did a telephone search for stockist. Get your act together Boots, I'm changing my pharmacy because of this.'
- 5.1.22 'Bit rubbish that they actually lock up before their advertised closing time. Pretty sure that's a breach of your NHS contract and commitment.'
- 5.1.23 'Went into Oadby Branch this morning. Is Oadby boots closing down? Appalling empty shelves from basic needs to make up. What is happening?'

- 5.1.24 'Lucky escape, my regular pharmacy boots didn't have a particular medication in stock, advised my [sic] to call here, the girl on the phone couldn't be bothered to check so told me come in with my script, managed to get it from Asda pharmacy, quite a poor show when she cant even be bothered to check.'
- 5.1.25 'Appalling service, 30 minutes for one item? With no one else in the shop waiting for a prescription!'
- 5.1.26 'A pharmacy that is not open on Saturdays - come on!!!'
- 5.1.27 'Takes ages to get a prescription and under staffed. just [sic] go to boots pharmacy instead which is a few shops away and has items better priced.'
- 5.1.28 A short survey was conducted on 3rd April 2024 at Croft Medical Centre (attached) [Appendix E]. On the day there were 17 patients who undertook the survey. This survey data provides a snapshot of the issues patients face regarding pharmacy services.
- 5.1.29 The Applicant acknowledges that there is no gap identified within the Pharmaceutical Needs Assessment (PNA) or subsequent supplementary statements. Therefore, this application is submitted under Regulation 18. This regulation specifically requires the commissioner to consider the merits of an application where an unforeseen benefit has not been included in the PNA. Many such applications have been approved under Regulation 18.
- 5.1.30 Furthermore, the absence of a supplementary statement does not imply that there is no gap in pharmaceutical services, as evidenced by previous applications.
- 5.1.31 The current PNA was last updated in 2022 and did not account for the closure of Lloyds Pharmacy or the new housing development in Oadby.
- 5.1.32 The new housing development will on completion add an additional 600 homes in total. With an average occupancy of three persons per home, this will result in an additional 1800 people in the area who will require pharmaceutical services.
- 5.1.33 This planning application was originally submitted in two phases to officials at Oadby and Wigston Borough Council to build 500 homes on land at Cottage Farm, in Glen Road, Oadby. The first phase, approved in 2017, saw 150 new homes built, 45 of which were provided as affordable housing.
- 5.1.34 The second phase was also split into two parts, with the first approved in 2021 to build 250 homes. The final 100 homes, plus car parking and two sports pitches will now also be added to the estate.
- 5.1.35 According to planning documents, 30 per cent of the newest homes will be sold as affordable.
- 5.1.36 From the PNA The LLR ICB response suggests that the expertise and experience of community pharmacies should be harnessed to aid in reducing health inequalities and that the impact of new housing and population growth should be continually assessed to ensure pharmacy provision remains able to meet the current, and future, needs of Leicester's residents.
- 5.1.37 'In the original application, JT Health Ltd propose many pharmacy services, such as Smoking Cessation (Nicotine Replacement Therapy – NRT), which they will not be able to provide as it is currently a locally commissioned service under the Leicestershire Services Framework. Severn Pharmacy is under contract from 1st April 2024 to 31st March 2027 to provide this commissioned

service and JT Health Ltd would only be able to provide this service on a private basis.'

- 5.1.38 We have extensive experience in providing commissioned Smoking Cessation Services as well as privately. We have adequate skills to provide this service and will do so should the need arise.
- 5.1.39 *Regarding population travelling by vehicle to access Pharmaceutical services and being mobile. Where is the data to substantiate this.*
- 5.1.40 It is merely an inference made from car ownership data. It does not reflect how people prefer to travel to use local services which is more likely to be on foot due to parking and congestion. There are still nearly 10% of residents without a car as per the data provided, their needs are not irrelevant. In addition, any homes with only one car in the household which is used for commuting purposes would leave residents with no access to private transport increasing the difficulty in accessing pharmaceutical services.
- 5.1.41 *'The fact that it is a "shame the pharmacy closed", "would be more beneficial if the pharmacy is located near Croft Medical Centre", "would like later and Saturday opening" etc are not proof there is a gap in services. These are typical responses from people who are asked whether they would like to see a new pharmacy in the area'*
- 5.1.42 We would disagree with above statement as the replies received are proof there is a gap in pharmaceutical services. Especially patients who share a protected characteristic i.e. age, disability, etc:
- 5.1.42.1 "Would like later and Saturday opening" from a retired female aged 61-75."
- 5.1.42.2 "Issues with getting to pharmacy with late appointment" from a patient with a young child.
- 5.1.42.3 "Would be more beneficial if the pharmacy is located near Croft Medical Centre" from a patient having mobility issues and retired."
- 5.1.42.4 "47% of patients filling the questionnaire stated they do not find their current pharmacy to be convenient."
- 5.1.42.5 "88% of patients stated a more local pharmacy would help to improve access to NHS services"
- 5.1.43 Analysis of pharmdata for dispensed prescriptions pre closure for Lloyds Pharmacy had 35-40% item share from Croft medical centre. This demonstrates patients are having to go elsewhere when their first choice would be a pharmacy within the vicinity of the medical centre. Patients who used the Lloyds Pharmacy in the past are now forced to use pharmacies which may not be their primary choice of pharmaceutical provider hence demonstrating a lack of choice."

6 Consideration

- 6.1 The Committee had before it the papers considered by the Commissioner, together with a plan of the area showing existing pharmacies and doctors' surgeries and the location of the proposed pharmacy.
- 6.2 It also had before it the responses to NHS Resolution's own statutory consultations.

- 6.3 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.
- 6.4 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations").

Regulation 31

- 6.5 The Committee first considered Regulation 31 of the Regulations which states:

(1) A routine or excepted application, other than a consolidation application, must be refused where paragraph (2) applies.

(2) This paragraph applies where -

(a) a person on the pharmaceutical list (which may or may not be the applicant) is providing or has undertaken to provide pharmaceutical services ("the existing services") from -

(i) the premises to which the application relates, or

(ii) adjacent premises; and

(b) NHS England is satisfied that it is reasonable to treat the services that the applicant proposes to provide as part of the same service as the existing services (and so the premises to which the application relates and the existing listed chemist premises should be treated as the same site).

- 6.6 The Committee noted that the Applicant had stated in the application form that "*The existing pharmacy will be closing june [sic] 2023*". The Committee further noted that the Commissioner stated in their decision letter that "*the Committee agreed that it was not required to refuse the application under the provisions of Regulation 31 as the proposed pharmacy will not be adjacent or in close proximity to an existing pharmacy premises. There are no existing pharmacies operating from the proposed best estimate location and therefore, under this provision, regulation 31 would not cause the application to be refused*". The Committee noted that this information had not been disputed.
- 6.7 The Committee was therefore of the view that it was not required to refuse the application under the provisions of Regulation 31.
- 6.8 The Committee noted that, if the application were granted, the successful applicant would - in due course - have to notify the Commissioner of the precise location of its premises (in accordance with paragraph 31 of Schedule 2). Such a notification would be invalid (and the applicant would not be able to commence provision of services) if the location then provided would (had it been known now) have led to the application being refused under Regulation 31.

Regulation 18

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

"(1) If—

(a) NHS England receives a routine application and is required to determine whether it is satisfied that granting the application, or granting it in respect of some only of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or

pharmaceutical services of a specified type, in the area of the relevant HWB; and

- (b) the improvements or better access that would be secured were or was not included in the relevant pharmaceutical needs assessment in accordance with paragraph 4 of Schedule 1,*

in determining whether it is satisfied as mentioned in section 129(2A) of the 2006 Act (regulations as to pharmaceutical services), NHS England must have regard to the matters set out in paragraph (2).

- (2) Those matters are—*

- (a) whether it is satisfied that granting the application would cause significant detriment to—*

- (i) proper planning in respect of the provision of pharmaceutical services in the area of the relevant HWB, or*

- (ii) the arrangements NHS England has in place for the provision of pharmaceutical services in that area;*

- (b) whether, notwithstanding that the improvements or better access were not included in the relevant pharmaceutical needs assessment, it is satisfied that, having regard in particular to the desirability of—*

- (i) there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB (taking into account also NHS England's duties under sections 13I and 13P of the 2006 Act (duty as to patient choice and duty as respects variation in provision of health services)),*

- (ii) people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access (taking into account also NHS England's duties under section 13G of the 2006 Act (duty as to reducing inequalities)), or*

- (iii) there being innovative approaches taken with regard to the delivery of pharmaceutical services (taking into account also NHS England's duties under section 13K of the 2006 Act (duty to promote innovation)),*

granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant pharmaceutical needs assessment was published;

- (c) whether it is satisfied that it would be desirable to consider, at the same time as the applicant's application, applications from other persons offering to secure the improvements or better access that the applicant is offering to secure;*

- (d) whether it is satisfied that another application offering to secure the improvements or better access has been submitted to it, and it would be desirable to consider, at the same time as the applicant's application, that other application;*

- (e) *whether it is satisfied that an appeal relating to another application offering to secure the improvements or better access is pending, and it would be desirable to await the outcome of that appeal before considering the applicant's application;*
 - (f) *whether the application needs to be deferred or refused by virtue of any provision of Part 5 to 7.*
 - (g) *whether it is satisfied that the application presupposes that a gap in pharmaceutical services provision has been or is to be created—*
 - (i) *by the removal of chemist premises from a pharmaceutical list as a consequence of the grant of a consolidation application, and*
 - (ii) *since the last revision of the relevant HWB's pharmaceutical needs assessment other than by way of a supplementary statement.*
- (3) *NHS England need only consider whether it is satisfied in accordance with paragraphs (2)(c) to (e) if it has reached at least a preliminary view (although this may change) that it is satisfied in accordance with paragraph (2)(b)."*
- 6.10 The Committee considered that Regulation 18(1)(a) was satisfied in that it was required to determine whether it was satisfied that granting the application, or granting it in respect of some only of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB.
- 6.11 The Committee went on to consider whether Regulation 18(1)(b) was satisfied, i.e. whether the improvements or better access that would be secured if the application was granted were or was included in the Pharmaceutical Needs Assessment ("the PNA") in accordance with paragraph 4 of Schedule 1 of the Regulations.
- 6.12 Paragraph 4 of Schedule 1 requires the PNA to include: "*a statement of the pharmaceutical services that the HWB had identified (if it has) as services that are not provided in the area of the HWB but which the HWB is satisfied (a) **would** if they were provided....secure improvements or better access, to pharmaceutical services... (b) **would** if in specified future circumstances they were provided...secure future improvements or better access to pharmaceutical services...*" (emphasis added).
- 6.13 The Committee considered the PNA prepared by Leicestershire Health and Wellbeing Board, conscious that the document provides an analysis of the situation as it was assessed at the date of publication. The Committee bears in mind that, under regulation 6(2), the body responsible for the PNA must make a revised assessment as soon as reasonably practicable (after identifying changes that have occurred that are relevant to the granting of applications) unless to do so appears to be a disproportionate response to those changes. Where it appears disproportionate, the responsible body may, but is not obliged to, issue a Supplementary Statement under Regulation 6(3). Such a statement then forms part of the PNA. The Committee noted that the PNA was published in 2022 and that no supplementary statements had been issued.
- 6.14 The Committee had regard to the conclusions and recommendations section which states:
 - 6.14.1 *"Whilst current access to pharmacy provision is largely good, with the projected increases in population that are anticipated in Leicestershire, areas of growth should be kept under review to ensure that the provision remains adequate to meet the future needs of the populations in these areas. The large amount of housing development in the county should also be kept under review and taken*

into consideration as this may present particular geographical areas of need for further pharmaceutical services."

- 6.15 The Committee also had regard to section 16 of the PNA, titled 'conclusions' which states:

6.15.1 *"Overall, the community-based pharmacies are meeting the current needs of the Leicestershire population for Essential and Advanced services. The consistency and quality of the advanced services should be continually reviewed, and uptake should be increased wherever possible. The provision of Community Based Services across Leicestershire is also reasonable, but more needs to be done to ensure that services across the county are consistent and being used."*

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

- 6.17 In order to be satisfied in accordance with Regulation 18(1), regard is to be had to those matters set out at 18(2). The Committee's consideration of the issues is set out below.

Regulation 18(2)(a)(i)

- 6.18 The Committee had regard to

"(a) whether it is satisfied that granting the application would cause significant detriment to—

(i) proper planning in respect of the provision of pharmaceutical services in the area of the relevant HWB"

- 6.19 The Committee noted that the Commissioner in their decision report quoted 18(2)(a)(i) but had not provided a determination in respect of it. The Committee noted that no party had sought to argue, either on appeal or in subsequent representations, that the granting of the application would cause significant detriment to the arrangements currently in place for the provision of pharmaceutical services in regard to proper planning.

- 6.20 On the basis of the information available, the Committee was not satisfied that, if the application were to be granted and the pharmacy to open, the ability of the Commissioner thereafter to plan for the provision of services would be affected in a significant way.

- 6.21 The Committee was therefore not satisfied that significant detriment to the proper planning of pharmaceutical services would result from a grant of the application.

Regulation 18(2)(a)(ii)

- 6.22 The Committee had regard to

"(a) whether it is satisfied that granting the application would cause significant detriment to— ...

(ii) the arrangements NHS England has in place for the provision of pharmaceutical services in that area"

- 6.23 The Committee noted that the Commissioner in their decision report quoted 18(2)(a)(ii) but had not provided a determination in respect of it. The Committee noted that no party had sought to argue, either on appeal or in subsequent representations, that the

granting of the application would cause significant detriment to the arrangements currently in place for the provision of pharmaceutical services in regard to the arrangements the Commissioner has in place.

- 6.24 The Committee was therefore not satisfied that significant detriment to the arrangements currently in place for the provision of pharmaceutical services would result from a grant of the application.
- 6.25 In the absence of any significant detriment as described in Regulation 18(2)(a), the Committee was not obliged to refuse the application and went on to consider Regulation 18(2)(b).

Regulation 18(2)(b)

- 6.26 The Committee had regard to

"(b) whether, notwithstanding that the improvements or better access were not included in the relevant pharmaceutical needs assessment, it is satisfied that, having regard in particular to the desirability of—

(i) there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB (taking into account also NHS England's duties under sections 13I and 13P of the 2006 Act (duty as to patient choice and duty as respects variation in provision of health services)),

(ii) people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access (taking into account also NHS England's duties under section 13G of the 2006 Act (duty as to reducing inequalities)), or

(iii) there being innovative approaches taken with regard to the delivery of pharmaceutical services (taking into account also NHS England's duties under section 13K of the 2006 Act (duty to promote innovation)),

granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant pharmaceutical needs assessment was published"

Regulation 18(2)(b)(i) to (iii)

- 6.27 The Committee had regard to the proposed location of the pharmacy as identified by the maps provided by the Commissioner and Applicant, which had not been disputed by parties. The Committee noted the Applicant's best estimate address is to be located in Oadby, close to The Croft Medical Centre, which is in the Oadby and Wigston district of Leicestershire.
- 6.28 The Committee had regard to the information supplied by the Applicant from the 2021 Census on the population. The Committee noted Oadby and Wigston has 20,000 residents and that there has been an increase of 13.0% in people aged 65 years and over, a decrease of 1.7% in people aged 15 to 64 years, and an increase of 9.3% in children aged under 15 years. It is therefore reasonable to assume that residents are living longer and that more children are being born in this area. The Committee noted the Commissioner's comment regarding the same data that "population growth was lower in Oadby and Wigston than across the East Midlands".
- 6.29 The Committee noted the Applicant's comment that the application has been "prompted by the closure of a Lloyds Pharmacy" and "clearly the residents of the area where the Applicant proposes to open the pharmacy do not have any choice of provider as there

will no longer be any pharmacy contractor here". The Committee was mindful that the closure of one pharmacy does not automatically lead to a gap in service provision and that its consideration of reasonable choice was with regard to 'the area of the relevant HWB'.

- 6.30 The Committee noted the comments from parties on housing development in Oadby, particularly on the land at Cottage Farm, Glen Road for 500 homes. Phase one consisted of 150 homes being built, the second phase was split into two parts with the first approved in 2021 for 250 homes and the second now approved for 100 homes. The Committee noted from the dates provided and from comments from the Commissioner that the development was approved before the 2022 PNA. The Committee noted that the number of houses being built/already built was not an insignificant number. The Committee was mindful that even if there is an associated increase in population, this does not automatically lead to the requirement to grant an application.
- 6.31 The Committee had regard to the nearest existing pharmaceutical provision to the proposed site, as shown on the Commissioner's map. It noted the nearest four pharmacies are Severn Pharmacy to the North East of the proposed location, and Boots, Oadby Village and ASDA Pharmacy to the North West. From the information provided, it is noted there is some ambiguity whether there are three or four pharmacies within a mile of the proposed location. From looking at the map, the Committee observed that the fourth nearest pharmacy is Asda Pharmacy and found it reasonable to assume this was the pharmacy in question. The Committee noted the distance from Asda Pharmacy to Boots and noted it was not significant. The Committee assumed the ambiguity may be as a result of how the distance was measured and was mindful in any event that distance of itself does not necessarily lead to the conclusion that the existing pharmacies are difficult to access.
- 6.32 The Committee noted the Commissioner's comments that "patients also have the option to have their medicines dispensed by a distance selling pharmacy who will delivery [sic] their medicines directly to their door". The Committee noted the Applicant's response that "they are not permitted to provide face-to-face consultations. Consequently, they cannot offer all seven pathways currently available through Pharmacy First, nor can they provide other in-person consultations". The Committee accepted that distance selling pharmacies will provide a type of access to pharmaceutical services and consequently will provide some element of choice in obtaining pharmaceutical services to some persons in the HWB area. The Committee considered that the existence of distance selling pharmacies was a factor to be considered, but only alongside physical access to and availability of pharmaceutical services in the HWB area and recognised the reservations expressed by the Applicant relating to reliance on such services.
- 6.33 The Committee went on to consider access on foot. The Committee noted the Applicant's view that those without a car will be reliant on walking a significant distance to a pharmacy and further a journey from The Croft Medical Centre to the nearest pharmacy would be 0.7 miles and take 15 minutes for a fit and able bodied person to walk. The Committee acknowledged the comments from Pharmacy Sales & Consultancy and itself was mindful of the best estimate address provided by the Applicant. In any event, the Committee did not consider the range of distances involved to be excessive for those who are willing and able to walk in the context of this application. The Committee was mindful of the Applicant's comment that "for some the distance and gradients involved will make the journey difficult" however, the Committee noted no further information had been provided and saw no evidence to suggest that there are any barriers for those on foot such as a lack of pedestrian crossings, poorly maintained pavements, severe gradients or inadequate street lighting. The Committee would next consider alternative means of accessing the nearest existing pharmacies for those unable or unwilling to make the journey on foot.

- 6.34 The Committee noted the Applicant had provided little information on access by public transport. The Committee had regard to the information provided by Pharmacy Sales & Consultancy on bus services to the four nearest pharmacies. The Committee noted route 31 serves Severn Pharmacy, Boots and Oadby Village Pharmacy with buses every 30 minutes and the journey time ranging between 11 to 16 minutes. Route 31A runs every 30 minutes and serves Asda Pharmacy with a journey time of 9 minutes. Further, route X3 runs every 60 minutes and serves Boots, Oadby Village Pharmacy and Asda Pharmacy. The Committee noted that there was no dispute in this regard. The Committee noted from the maps provided that residents would undertake a short walk to get to the bus stops. The Committee noted the comment from the Applicant that patients will incur costs to travel by public transport. However, no further information had been provided. The Committee had no information to show that bus fares are so expensive so as to inhibit their use by persons in the area to access existing pharmaceutical services. The Committee was also aware that some individuals would be eligible for travel concessions. Therefore, the Committee was of the view that for those reliant on public transport there was nothing provided by the Applicant to demonstrate that they were currently having difficulties in accessing the existing pharmaceutical provision. The Committee next considered access to the existing pharmacies for those with access to a car.
- 6.35 The Committee noted the figures on car ownership provided by Pharmacy Sales & Consultancy and the Commissioner which indicate at least 83% of households have access to a car. In terms of parking, the Committee noted the undisputed comments that there is free parking at the Asda store and curb-side parking at Severn Pharmacy, plus public car parks close to Boots and Oadby Village. The Committee noted the response from the Applicant that "it is merely an inference made from car ownership data. It does not reflect how people prefer to travel to use local services which is more likely to be on foot due to parking and congestion. There are still nearly 10% of residents without a car as per the data provided, their needs are not irrelevant. In addition, any homes with only one car in the household which is used for commuting purposes would leave residents with no access to private transport increasing the difficulty in accessing pharmaceutical services". The Committee noted no evidence had been provided to support the Applicant's view that patients have difficulty parking or that the area is congested. Therefore, in the absence of any further information, the Committee was not persuaded that patients were having difficulty in accessing existing pharmaceutical provision by car.
- 6.36 The Committee noted further comments that Oadby Village Pharmacy and Boots are located in the main shopping area of Oadby town and that Asda Pharmacy is located in Asda Supermarket. The Committee agreed that residents will be accustomed to visiting these locations as part of their everyday lives.
- 6.37 The Committee had regard to the survey conducted by the Applicant for patients from The Croft Medical Centre. The Committee noted the style of questions and was mindful that the responses were from a targeted group and that not all residents will be a patient of The Croft Medical Centre. The survey was limited in terms of quality, the quantity of responses and the timeframe in which it was open. Having a survey open for one day does not provide a true reflection of the current situation. Furthermore, the Committee noted the Applicant has only provided some of the survey results, so it leads it to question the results the Applicant has not provided. The Committee was inclined to place limited weight on a survey where only a partial amount of the responses are provided. Even though the Committee appreciated the convenience of a pharmacy closer to the medical centre, it found no compelling evidence from the survey to support the application.
- 6.38 The Committee had regard to the dispensing figures provided by the parties for the former Lloyds Pharmacy and noted the difference in figures. The Commissioner advised that the pharmacy dispensed on average 3,800 prescriptions a month whereas, the Applicant believed it was on average 7,670 a month. The Committee also noted the comment from Pharmacy Sales & Consultancy that the pharmacy was open

in excess of 80 hours a week. The Committee noted the Commissioner's comment that following the closure, the other pharmacies in the area have absorbed the prescriptions and to date there has been no correspondence from the HWB, other stakeholder group or any patient complaints to say that pharmaceutical services are lacking in this area. The Committee appreciated that the data provided a picture of how busy the pharmacy was and its opening hours, however it was mindful that pharmaceutical services are wider than the dispensing of prescriptions.

- 6.39 The Committee noted the Applicant's reference to Google reviews which, in the Applicant's opinion, "highlight the impact of additional demands on service levels following the closure of Lloyds". It is unclear which pharmacy the reviews are in relation to, however, it seems they are focussed on one pharmacy in particular. The reviews appear to relate to waiting times, stock levels and general performance issues which should not be a reason to completely discount the existence of a pharmacy when considering whether there is reasonable choice although waiting and stock shortages will affect an individual's decision whether to make the journey to that pharmacy. It is the Commissioner's duty to act on reports of negative service and it is noted the Commissioner has not advised that they have received any negative reports.
- 6.40 Taking all of the above into account, the Committee was of the view that there is already reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB, such that it was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits on persons.
- 6.41 In considering Regulation 18(2)(b)(ii) the Committee reminded itself that it was required to address itself to people who share a protected characteristic under the Equality Act 2010 (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation) having access to services that meet specific needs for pharmaceutical services that, in the relevant area, are difficult for them to access.
- 6.42 The Committee noted the Applicant highlights those who are elderly, less-abled and families with young children may find the journey challenging and access difficult to the existing pharmaceutical services. The Committee also noted the three responses to the Applicant's survey from those who share a protected characteristic. Even though they are from patients with a protected characteristic, two of the responses do not show that they are having difficulty accessing pharmaceutical services, and the third; the comment from the patient with a young child, gives no explanation as to the reasons why they had issues accessing a pharmacy or if it was an isolated incident. Therefore, the Committee placed limited weight on this.
- 6.43 The 2021 Census data provided by the Applicant indicates that there is a higher population of elderly people in the Oadby & Wigston area than the national average and an increase in people aged over 65 and under 15. The Committee noted Pharmacy Sales & Consultancy's response that the same data also shows that there is less people with a disability than the national average. The Committee concluded that there was nothing provided by the Applicant to demonstrate that those who share a protected characteristic by reason of age are currently experiencing difficulties in accessing pharmaceutical services.
- 6.44 The Committee noted the comment from the Applicant that elderly patients may not know how to complain which could be amplified if English is not their native language but found no evidence to support this or that patients are having difficulty with the complaints procedure by reason of their ethnicity.
- 6.45 The Committee was of the view that there are always people in an area who share a protected characteristic and whilst a pharmacy at the proposed site might be a benefit to some people, there was no information provided by the Applicant as to how those with a protected characteristic were currently experiencing any difficulties in accessing

pharmaceutical services specific to their needs. The Committee was therefore not satisfied that, having regard to the desirability of people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that are difficult for them to access, granting the application would confer significant benefits on persons.

- 6.46 In considering Regulation 18(2)(b)(iii) the Committee had regard to the desirability of innovative approaches to the delivery of pharmaceutical services. In doing so, the Committee would consider whether there was something more over and above the usual delivery of pharmaceutical services that might be expected from all pharmacies, some 'added value' on offer at the location. The Committee noted that no information had been provided to suggest that any innovative approaches would be taken with regard to the delivery of pharmaceutical services. The Committee was not satisfied that, having regard to the desirability of there being innovative approaches taken with regard to the deliverability of pharmaceutical services, granting the application would confer significant benefits on persons.

Regulation 18(2)(b) generally

- 6.47 The Committee noted the Applicant's proposed hours which are, 7.30am – 12.30pm and 1.30pm – 7pm Monday to Friday and 9am – 12pm on Saturday. The Committee noted the Commissioner's comments that the Applicant is proposing to open 54.5 hours a week but that they have not confirmed which will be the 40 core hours. The Committee noted the Applicant's comment that the proposed hours are in line with opening hours of The Croft Medical Centre and that they are extending their core hours to 54.5 a week.

- 6.48 The Committee had regard to Schedule 4, Part 3 of the Regulations which states:

"Pharmacy opening hours: general

23.—(1) An NHS pharmacist (P) must ensure that pharmaceutical services are provided at P's pharmacy premises—

(a) for 40 hours each week; ...

(d) if a Primary Care Trust, or on appeal the Secretary of State, has (under previous Regulations) directed that pharmaceutical services are to be provided at the premises for more than 40 hours per week, and at set times and on set days, at the times and on the days so set, subject to any variation in respect of a rest break in accordance with subparagraph (7)(bd); ..."

- 6.49 The Committee noted that, if the application were to be granted, a direction would need to be issued for the fourteen and a half "additional" hours.

- 6.50 The Committee also had regard to the opening hours of Severn Pharmacy, Boots and Oadby Village Pharmacy and noted that between them, the core hour provision is 9am – 6.30pm Monday to Friday and 9am – 2pm Saturday. The Committee noted that the additional hours proposed by the Applicant between 7.30am – 9am and 6.30pm – 7pm Monday to Friday but concluded that no information had been provided in relation to the demand for services at these times and the Applicant had not proposed to open on a Sunday. Furthermore, the core hours had not been confirmed by the Applicant and therefore, these specific hours may be supplementary and that in accordance with paragraph 23(6)(a) of Schedule 4, Part 3 of the Regulations, they can be altered by giving notice, without the need to make an application. The Committee also noted that Asda Pharmacy is open until 8pm Monday – Saturday and 10am – 4pm on a Sunday which provides patients with late night and Sunday access but it is unclear which of these hours are core hours and which are supplementary.

- 6.51 The Committee was mindful that the Commissioner has the authority to bring about changes to the opening hours of existing pharmacies where it feels there is a need to do so.
- 6.52 The Committee was of the view that there was no information provided to support a finding that pharmaceutical services are not currently provided at such times as needed and therefore it was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits (in relation to opening hours) on persons.
- 6.53 The Committee noted the Applicant proposes to offer advanced and enhanced services as listed by the Commissioner at 2.19 above. The Committee had no information to show that existing pharmacies, where they are not already doing so, are unable or unwilling to provide those same services. The Committee noted the comment from Severn Pharmacy in relation to the Smoking Cessation service they offer and noted that if the application were to be granted, this would be a matter for the Commissioner to consider.
- 6.54 The Committee has considered whether there are any other factors that would confer significant benefits including on patients who share protected characteristics. The Committee had regard to the need to eliminate discrimination and advance equality of opportunity and foster good relations between these patients and those who do not share their protected characteristics.
- 6.55 The Committee was of the view that in accordance with Regulation 18(2)(b) the granting of this application would not confer significant benefits on persons in the area of the HWB which were not foreseen when the PNA was published.

7 Other considerations

- 7.1 Having determined that Regulation 18(2)(b) had not been satisfied, the Committee did not need to have regard to Regulation 18(2)(c) to (e).
- 7.2 No deferral or refusal under Regulation 18(2)(f) was required in this case.
- 7.3 The Committee had regard to Regulation 18(2)(g) and found no reason that required it to refuse the application under this regulation.
- 7.4 The Committee considered whether there were any further factors to be taken into account and concluded that there were not.
- 7.5 The Committee was not satisfied that the information provided demonstrates that there is difficulty in accessing current pharmaceutical services such that a pharmacy at the proposed site would provide better access to pharmaceutical services.
- 7.6 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
 - 7.6.1 confirm the Commissioner's decision;
 - 7.6.2 quash the Commissioner's decision and redetermine the application;
 - 7.6.3 quash the Commissioner's decision and, if it considers that there should be a further notification to the parties to make representations, remit the matter to the Commissioner.
- 7.7 Given that limited reasoning had been provided in the determination by the Commissioner, the Committee determined that the decision must be quashed.

- 7.8 The Committee went on to consider whether there should be a further notification to the parties detailed at paragraph 19 of Schedule 2 of the Regulations to allow them to make representations if they so wished (in which case it would be appropriate to remit the matter to the Commissioner) or whether it was preferable for the Committee to redetermine the application.
- 7.9 The Committee noted that representations on Regulation 18 had been sought from parties by the Commissioner and representations had already been made by parties to the Commissioner in response. These had been circulated and seen by all parties as part of the processing of the application by the Commissioner. The Committee further noted that when the appeal was circulated representations had been sought from parties on Regulation 18.
- 7.10 The Committee concluded that further notification under paragraph 19 of Schedule 2 would not be helpful in this case.

8 **DECISION**

- 8.1 The Committee quashes the decision of the Commissioner, for the reasons given above, and redetermines the application.
- 8.2 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.
- 8.3 The Committee has considered whether the granting of the application would cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area covered by the HWB, or the arrangements in place for the provision of pharmaceutical services in that area and is not satisfied that it would;
- 8.4 The Committee determined that the application should be refused on the following basis:
 - 8.4.1 In considering whether the granting of the application would confer significant benefits, the Committee determined that –
 - 8.4.1.1 there is already a reasonable choice with regard to obtaining pharmaceutical services;
 - 8.4.1.2 there is no evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services; and
 - 8.4.1.3 there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services;
- 8.5 Having taken these matters into account, the Committee is not satisfied that granting the application would confer significant benefits as outlined above that would secure improvements or better access to pharmaceutical services.