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REF: SHA/26195

APPEAL AGAINST NOTTINGHAM AND NOTTINGHAMSHIRE ICB DECISION TO REFUSE AN APPLICATION BY GETGLO AESTHETICS UK LIMITED FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT THE RETAIL SHOPS CLOSELY SITUATED NEAR TO ASPLEY MEDICAL CENTRE, ASPLEY LANE, NOTTINGHAM, NG8 5RU

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:

Getglo Aesthetics UK Limited
Community Pharmacy Nottinghamshire
PCSE on behalf of NHS Nottingham and Nottinghamshire Integrated Care Board

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1 The Application

By application dated 14 October 2023, Getglo Aesthetics UK Limited ("the Applicant") applied to Nottingham And Nottinghamshire ICB ("the Commissioner") for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at the retail shops closely situated near to Aspley Medical Centre, Aspley Lane, Nottingham, NG8 5RU. In support of the application it was stated:

1.1 "The current Boots pharmacy at 539-541 Aspley Ln, Nottingham NG8 5RW, which is the proposed site (best estimate for address), will be stopping trading on or close to 6th October 2023. The current Boots pharmacy have applied for a consolidation application. Under the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, it is clear that this application prevents new applications to this site unless where this creates a gap in provision. Currently the site is dispensing an average of 8500 items per month which was increasing and set to increase further with other recent pharmacy closures. With over 90% of the prescription items coming from the Aspley Lane medical centre which is less than 0.1miles away. With national average of prescriptions being 2.5 items per prescription, this shows that locally approximately 3400 patients are accessing this pharmacy on a monthly basis.

1.2 Current pharmacy situation nationally:

1.3 Between July 2017 and July 2023, the number of operating pharmacies in England fell by 914 from 11,723 to 10,809.

1.4 Deprived communities, where the need is greatest, have seen the biggest decline.

1.5 More than one in ten pharmacies have been lost in the poorest 20% of areas in the last six years. Deprived communities, where the need is greatest, have seen the biggest decline. More than one in ten pharmacies have been lost in the poorest 20% of areas in the last six years. The loss of pharmacies has increased the burden on those that remain, which must pick up the workload. The increased burden is being felt most acutely in England's poorest neighbourhoods where people are more likely to depend on their services. in deprived areas there are higher levels of ill health. There will be a lot more walk ins going into the pharmacy asking for advice, more people going in to collect their medicines, and more people struggling with their medicines too. Pharmacies in the most deprived 20% of areas are now serving a 13% more people than a decade ago, compared to just 3% more in the least deprived.

1.6 Analysis of the local residents using the current service at Boots Asley [sic] Lane.

1.7 Office for national statistics for the local area show :

1.8 General health: The General health of the local population is worse than the national average

1.9 Locally, Very good health 39.6% compared to 48.5% nationally locally Good health 30.0% compared to 33.7% nationally. where as [sic] locally Bad health is 9.0% compared 4.0% nationally and locally Very bad health 3.9% compared to 1.2% nationally.

1.10 Household deprivation: the locality has a greater house hold deprivation compared to the national average

1.11 The ONS uses dimensions of deprivation which are used to classify households indicators based on four selected household characteristics.

1.12 Education

1.13 A household is classified as deprived in the education dimension if no one has at least level 2 education and no one aged 16 to 18 years is a full-time student.

1.14 Employment

1.15 A household is classified as deprived in the employment dimension if any member, not a full-time student, is either unemployed or economically inactive due to longterm sickness or disability.

1.16 Health

1.17 A household is classified as deprived in the health dimension if any person in the household has general health that is bad or very bad or is identified as disabled.

1.18 People who have assessed their day-to-day activities as limited by long-term physical or mental health conditions or illnesses are considered disabled. This definition of a disabled person meets the harmonised standard for measuring disability and is in line with the Equality Act (2010).

1.19 Housing

1.20 A household is classified as deprived in the housing dimension if the household's accommodation is either overcrowded, in a shared dwelling, or has no central heating.

1.21 With regards to the local population compared to the national average:

1.22 Household is not deprived in any dimension Locally 29.8% compared to 48.4% nationally

1.23 Household is deprived in two dimensions locally 26.4% compared 14.2% nationally

1.24 Household is deprived in three dimensions locally 10.4% compared to 3.7% nationally

1.25 Household is deprived in four dimensions locally 0.4% compared to 0.2% nationally.

1.26 There is a greater level of disability in the local area compared to nationally:

1.27 Disabled under the Equality Act Locally 28.7% compared to 17.3% nationally.

1.28 When considering the above data it would be conclusive to say that with the existing health and wealth inequalities there is a greater need for health services at the proposed site. Closing the current pharmacy will mean there is not a reasonable choice

for pharmacy access. Our application will provide reasonable choice and will secure better access in the HWBs area.

1.29 When considering the consolidation application with the boots at Bracebridge drive Address

1.30 BOOTS PHARMACY (FVD01) BILBOROUGH MEDICAL CENTRE, 48 BRACEBRIDGE DRIVE, BILBOROUGH, NOTTINGHAMSHIRE. NG8 4PN.

1.31 It should be noted that this pharmacy already dispenses an average of 9700 items per month. This is an extremely busy pharmacy with already long waiting times for the patient, sometimes reaching one hour waits. With the consolidation it is expected that the patient list from the Aspley Lane site will be reffered to this site [sic]. This will expect waiting times to be increased further due to the uptake of a further patient list and patients having to travel a further 1.8miles from the current site. In our view this will not be considered as reasonable choice therefore we strongly believe that granting our application at the proposed site will provide a reasonable choice and will provide secured improvements and better access to pharmaceutical services.

1.32 We will meet all contractual obligations with respect to (including but not limited to):

1.33 We are/will be accredited and able to offer the following Pharmaceutical Services:

1.34 Essential Services

1.35 Clinical Governance (SOPs, Incidents reports, Participation of Pharmacy staff in CPD, Clinical audits, Assessing patient satisfaction and Staff induction & training)

1.36 Dispensing Medicines

1.37 Repeat Dispensing/eRD

1.38 Dispensing Appliances

1.39 Discharge Medicines Service

1.40 Public Health

1.41 Healthy Living Pharmacy

1.42 Self Care

1.43 Signposting

1.44 Disposal or unwanted meds

1.45 Our Briefings: National Pharmacy Services

1.46 Advanced Services

1.47 Pharmacy Contraception Service

1.48 Appliance Use Reviews

1.49 CPCS

1.50 Flu Vaccination Service

1.51 Hypertension Case-Finding

1.52 NMS

1.53 Smoking Cessation Service

1.54 Stoma Appliance Customisation

1.55 National Enhanced Services

1.56 COVID-19 Vaccination Service

1.57 Should this application be granted, it will serve a great purpose to the local community as well as a fantastic opportunity to help address local health issues for a better future for the population of this area."

2 Representations on the application

Representations made to the Commissioner on the application included the following comments from Well pharmacy by letter dated 14 December 2023:

2.1 "There are currently five pharmacies within a 1.6km radius of the proposed location (NG8 5RU).

2.2 Our pharmacy at Broxtowe Lane, NG8 5ND is located 0.8km from the proposed location and is easily accessible by car whish [sic] is a 2 minute drive, or a 10 minute walk on foot. Access is also available via direct bus service which takes just 5 minutes from the proposed location.

2.3 Boots Pharmacy which was located at the proposed location closed on 7th October, and since that date, prescription numbers and demand for services at our Broxtowe Lane branch have increased. This suggests that patients can access our branch just as easily.

2.4 The application has not demonstrated any unforeseen benefit in their application and therefore the application should be refused."

3 The Decision

The Commissioner considered and decided to refuse the application. The decision letter dated 26 March 2024 states:

3.1 "Nottingham and Nottinghamshire ICB 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."

Decision report

3.2 "Getglo Aesthetics UK Ltd has made an unforeseen benefit to secure improvements or better access to pharmaceutical services at the proposed location, the retail shops closely situated near to the Aspley Medical Centre on Aspley Lane, NG8 5RU, within Nottinghamshire Health and Wellbeing Board.

3.3 [See paragraph 1.1 above]

3.4 The committee noted that no consolidation application has been made at this current time.

3.5 [See paragraphs 1.2 – 1.57 above]

3.6 Pharmaceutical Needs Assessment (PNA)

3.7 The PNA has not been provided within the application, however, on checking the PNA, there is no gap in pharmaceutical service provision.

3.8 Relevant regulations

3.8.1 Regulation 18– Unforeseen benefits and additional matters and consequences

3.8.2 Regulation 31 – refusal same or adjacent premises

3.8.3 Regulation 65 Core hours conditions

3.8.4 Regulation 66 Conditions relating to providing directed services.

3.9 [Regulation 18 quoted]

3.10 The Committee noted that;

3.11 Regulation 18(2) (b) (i) is not satisfied as the applicant has not [sic] provided sufficient information to outline how introducing an operator into the area that already provides pharmaceutical services proffers an improvement in patient choice.

3.12 Regulation 18 (2) (b) (ii) is not satisfied as the applicant has not [sic] identified any protected characteristic in their application that the proposed pharmacy will improve or better access to pharmaceutical services for this group of individuals.

3.13 Regulation 18 (2) (b) (iii) is required to consider whether the applicant is proposing new or innovative approaches for the delivery of pharmaceutical services in the area, the Committee noted that the applicant does not identify any specific innovative approaches and has provided no evidence that the application should be granted on this basis

3.14 Regulation 31

3.15 East Midlands Primary Care Team on behalf of Nottingham & Nottinghamshire 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.

3.16 The applicant proposes to provide the Essential Service and the following advanced and enhanced services.

3.17 [See list at paragraphs 1.47 – 1.56 above]

3.18 The consultation room will fulfil the following criteria - Clearly designated as a room for confidential conversations, for example a sign is attached to the door to the room saying Consultation room; distinct from the general public areas of the pharmacy premises; and a room where both the person receiving the service and the person providing it can be seated together and communicate confidentially.

3.19 The Committee further noted that the applicant has outlined services as above that they intend to provide, however, as the applicant are not yet in possession of the premises, they do not have premises accreditation to provide these services.

3.20 Regulation 65

3.21 The committee noted the applicant is proposing to open 40 core hours.

3.22 Regulation 66

3.23 The committee noted that Regulation 66 does not apply to this application and would not cause the application to be refused.

3.24 Conclusion

3.25 The Committee noted the applicant has based the application on a gap they feel in the provision caused by Boots Pharmacy closing in NG8 5RW, however this is not reflected within the PNA and the patients have been absorbed within the other pharmacies in the area so the impact to patients is minimal.

3.26 The applicant has also advised that the other boots pharmacy located NG8 4PN have an outstanding consolidation application, however there is no such active application received.

3.27 The applicant can only give a best estimate of proposed site near to Aspley Medical Centre as they have not yet secured a property.

3.28 The application states that a number of services will be provided, however no floorplan has been provided as the property has not been secured.

3.29 The applicant has not evidenced that individuals sharing a protected characteristic are currently having difficulty in accessing pharmaceutical services.

3.30 The Committee noted the above points and determined to **Refuse** this application on the basis that not all of the required regulations have been met which the PNA supports."

4 **The Appeal**

By email dated 13 April 2024 addressed to NHS Resolution, the Applicant appealed against the Commissioner's decision. The grounds of appeal are:

4.1 "We appeal the decision made by the NHS Nottingham and Nottinghamshire Integrated Care Board.

4.2 We have applied under the unforeseen benefits. We believe there has been an inappropriate assessment by the commissioning board [sic].

4.3 The closure of the Boots at the proposed site was unforeseen, serving a large population with a deprived community with already existing health inequalities.

4.4 There has been to date no supplementary statement and we believe this has created a gap in pharmaceutical provision to a unreasonable choice.

4.5 The current existing local pharmacies are already stretched and working to burn out levels, where staff are feeling immense pressures concluding to increased waiting times for patients who are already having to travel further to find a pharmacy, away from the surgery they visit.

4.6 We believe this is an unreasonable choice for patients and re-establishing a service will give better access and reasonable patient choice."

Undated letter from Nottingham City Council, provided by the Applicant together with its appeal

4.7 “We are councillors for the Aspley Ward which covers the council estate opposite the above premises on Aspley Lane, As you are no doubt aware, the pharmacy has recently ceased trading. There has been some local concern about this. The area it serves has one of the highest morbidity rates in a city with high morbidity problems. It has a high number of people on out of work benefits much of which can be accounted for by poor health conditions. It is the ward with the highest level of deprivation in the city.

4.8 It also has a relatively low level of car ownership which means many rely on local facilities including pharmacies.

4.9 The pharmacy serves the densely populated southern end of the ward. More important still, it is within a stone’s throw of the principal medical centre serving the ward, the Aspley Medical Centre with 8000 patients.

4.10 We consider that its loss will be felt by the southern part of the ward and will simply be the loss of another much-needed facility adding to the difficulties of life on the estate.

4.11 We are therefore highly supportive of [the Applicant’s] initiative to reopen the pharmacy and to maintain a much-appreciated local facility.”

Letter from [AN], Member of Parliament, dated 19 April 2024, provided by the Applicant together with its appeal

4.12 “I am writing in support [the Applicant’s] application to open a pharmacy at the former Boots site at 539-541 Aspley Lane, Nottingham, NG8 5RW. While this premises falls outside my Nottingham North constituency, the previous pharmacy served many of my constituents.

4.13 It is vital that a pharmacy service is continued in this area as the local population relied on the service. I hope that you will fully consider [the Applicant’s] application.”

5 Summary of Representations

This is a summary of representations received on the appeal.

5.1 COMMUNITY PHARMACY NOTTINGHAMSHIRE

5.1.1 “Community Pharmacy Nottinghamshire stand by the points raised in original response (copy attached).

5.1.2 The applicant still references the closure of the Boots Pharmacy previously at the proposed site and states that there has been no supplementary statement issued with regards [sic] to the PNA and creating a gap in services – this confirms that Nottinghamshire City Health and Wellbeing Board believe that there is no gap in provision even after the closure of the previous pharmacy, therefore the application should be refused.”

Community Pharmacy Nottinghamshire letter dated 13 December 2023 addressed to the Commissioner

5.1.3 “The applicant states that they are accredited but they do not currently have a premises, so it is impossible for them or their premises to be accredited so the applicant needs to clarify.

5.1.4 The applicant has not ticked yes to pharmacy premises having a consultation room although it could be implied from their description, however that description as it stands does not provide sufficient detail to meet the regulatory requirement for consultation rooms.

5.1.5 The applicant refers to the Boots at 539-541 Aspley Lane consolidation – and goes on to state that this prevents a new application unless it creates a gap. No such gap has been determined and in terms of the regulations if it were then the consolidation application would not be allowed, so the applicants statement needs clarifying.

5.1.6 The assumptions giving rise to the figures quoted in bullet 6 by the applicant need validating before being used to substantiate the assertions the applicant is making.

5.1.7 Much of the subsequent percentages and figures in this bullet 6 seem to have been cut and paste from another document and are as such not very clear as to their relevance to the regulations to support the application.

5.1.8 The list on page 8 has clearly been cut and paste from another document – what does “Our Briefings: National Pharmacy Services” mean? So do not describe how unforeseen benefits will be met or demonstrate the regulations will be met.

5.1.9 Therefore the LPC requests that the application is refused because it fails to meet the requirements of the regulations for an unforeseen benefits application.”

6 Observations

No observations were received by NHS Resolution in response to the representations received on appeal.

7 Consideration

7.1 The Committee had before it the papers considered by the Commissioner, which included the representations on the application made by statutory interested parties, together with a plan of the area showing existing pharmacies and doctors’ surgeries and the location of the proposed pharmacy.

7.2 It also had before it the responses to NHS Resolution’s own statutory consultations.

7.3 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.

7.4 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (“the Regulations”).

Regulation 31

7.5 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).

7.6 The Committee noted that the Applicant had not provided any information in the application form on this point but the Committee noted that the wording of the application form only required the Applicant to include information in the relevant section if the proposed premises were adjacent to, or in close proximity to, another pharmacy or dispensing appliance contractor premises. The Committee considered it reasonable to determine that the lack of information in the application form on this point when read with the wording of the application form allowed it to be reasonably satisfied that the Applicant considered that the proposed premises were not adjacent to, or in close proximity to, another pharmacy or dispensing appliance contractor premises. The Commissioner in its decision letter determined that "*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.*" Based on the information provided, the Committee therefore determined that it was not required to refuse the application under the provisions of Regulation 31.

7.7 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

7.8 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)."

7.9 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.

7.10 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.

7.11 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).

7.12 The Committee considered the PNA prepared by Nottingham City Council on behalf of the Nottingham City 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 dated 1 October 2022. Further it had not been alerted to any supplementary statements.

7.13 The Committee noted the PNA conclusion, which states:

7.14 *"The main conclusion of this pharmaceutical needs assessment is that there are no gaps in the current provision of pharmaceutical services as the providers, both within and outside of the Health and Wellbeing board's area, are meeting the residents' current needs for such services.*

7.15 *The pharmaceutical needs assessment also looks at changes which are anticipated within the lifetime of the document, for example the predicted population growth. Given the current population demographics, housing projections and the distribution of service providers across the Health and Wellbeing Board's area, the document concludes that the current provision will be sufficient to meet the future needs of the residents during the three year lifetime of this pharmaceutical needs assessment.*

7.16 *The Health and Wellbeing Board has not identified any changes to services that would secure improvements, or better access to the provision of pharmaceutical services either now or expected within the lifetime of the pharmaceutical needs assessment (1 October 2022 to 30 September 2025)."*

7.17 The Committee noted that the Applicant seeks to provide unforeseen benefits to the patients within the area surrounding Aspley Lane, Nottingham. 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.

7.18 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)

7.19 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"*

7.20 The Committee noted that no party had sought to argue that Regulation 18(2)(a)(i) required it to refuse the application. Therefore 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.

7.21 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)

7.22 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"*

7.23 The Committee noted that no party had sought to argue that Regulation 18(2)(a)(ii) required it to refuse the application. 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.

7.24 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)

7.25 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)

7.26 The Committee noted the application was prompted by the closure of Boots pharmacy which was located within the proposed best estimate address. The Applicant contends that the Boots pharmacy "*was serving a large population with a deprived community with already existing health inequalities*" and further "*believe this is an unreasonable choice for patients, and re-establishing a service will give better access and reasonable patient choice*." The Committee was mindful that the closure of one pharmacy does not automatically mean that there is a need for a pharmacy to open in its place.

7.27 The Applicant contends that Boots was dispensing an average of 8500 items per month which was set to increase further with other recent pharmacy closures. The Applicant states that 90% of these prescriptions were coming from the Aspley Lane Medical Centre, which is less than 0.1 miles away, equating to approximately 3400 patients accessing the pharmacy on a monthly basis. Whilst accepting that it would be convenient to have a pharmacy located close to existing primary medical services, the Committee was mindful that the relevant test in Regulation 18(2)(b)(i) is with regard to there being a reasonable choice with regard to obtaining pharmaceutical services in the area and would need to consider access to the existing pharmacies. Further the Commissioner had stated that Boots' patients have been absorbed within the other pharmacies in the area so the impact of its closure to patients is minimal.

7.28 The Committee noted the Applicants reference to Boots pharmacy, located at 48 Bracebridge Drive, which is said to be 1.8miles away. The Applicant contends that this is an extremely busy pharmacy with already long waiting times, sometimes reaching one hour waits, and dispensing an average of 9700 items per month.

7.29 However the Committee noted on the map provided by the Commissioner, which has not been disputed by the Applicant, the existence of other pharmacies which appear to be located nearer to the proposed best estimate address.

7.30 Further, in its comments to the Commissioner, which were circulated to all parties, Well pharmacy states that there are currently five pharmacies within 1.6km of the proposed site. Well pharmacy also states that its site at Broxtowe Lane which is located 0.8 miles away, is a 10 minute walk on foot and is easily accessible by car which is a 2 minute drive. This has not been disputed by the Applicant.

7.31 The Committee noted that the local Council support the application, contending that the area "*has one of the highest morbidity rates in a city with high morbidity problems. It has a high number of people on out of work benefits much of which can be accounted for by poor health conditions. It is the ward with the highest level of deprivation in the city.*"

7.32 However the Committee noted that no information had been provided to demonstrate that for those who are willing and able, patients were having difficulty accessing existing pharmaceutical provision on foot.

7.33 The Council states that there is a relatively low level of car ownership which means that many will rely on local facilities. However the Committee noted that no information had been provided to clarify what was meant be relatively low, or how this compared to the national average. There was no information provided to show that patients, who do have access to a vehicle, were currently experiencing any difficulties accessing the existing pharmaceutical provision.

7.34 The Committee noted in comments to the Commissioner, Well pharmacy states that there is a direct bus service which takes just 5 minutes from the proposed location to

its site at Broxtowe Lane. This was not disputed by the Applicant. The Committee noted the Council's comments regarding deprivation in the area, however it had not been provided with any 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. Therefore, the Committee was of the view that for those reliant on public transport there was no information provided to show that patients were currently experiencing any difficulties in accessing the existing pharmaceutical provision.

7.35 Based on the information provided, 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.

7.36 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. The Applicant contends that *"there is a greater level of disability in the local area compared to nationally: Disabled under the Equality Act Locally 28.7% compared to 17.3% nationally."* The Committee noted however that the information regarding those who share a protected characteristic and the pharmaceutical services they needed was limited. 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.

7.37 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.

7.38 The Applicant was not proposing any innovative approaches to the delivery of pharmaceutical services as part of its application. Therefore 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

7.39 The Applicant is proposing to provide core hours, Monday to Friday, from 9am – 5pm. However 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.

7.40 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.

7.41 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.

Other considerations

7.42 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).

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

7.44 The Committee had regard to Regulation 18(2)(g) and found no reason that would require it to refuse the application.

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

7.46 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.

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

7.47.1 confirm the Commissioner's decision;

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

7.47.3 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.

7.48 As the Commissioner did not make a finding on Regulations 18(2)(a)(i) or 18(2)(a)(ii), the Committee determined that the decision of the Commissioner must be quashed.

7.49 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.

7.50 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.

7.51 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;

8.4.2 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.

Technical Case Manager
Primary Care Appeals