

31 July 2024

REF: SHA/26206

**APPEAL AGAINST WEST YORKSHIRE ICB DECISION
TO REFUSE AN APPLICATION BY WMM PHARMA LTD
FOR INCLUSION IN THE PHARMACEUTICAL LIST
OFFERING UNFORESEEN BENEFITS UNDER
REGULATION 18 FOR PREMISES WITHIN 150M RADIUS
OF LUPSET MEDICAL CENTRE, GEORGE-A-GREEN
COURT, WAKEFIELD, WF2 8FE**

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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:

PSC on behalf of WMM Pharma Ltd
Community Pharmacy West Yorkshire
Wakefield HWB
PCSE on behalf of West Yorkshire ICB

Advise / Resolve / Learn

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1 The Application

By application dated 29 November 2023, WMM Pharma Ltd (“the Applicant”) applied to West Yorkshire ICB (“the Commissioner”) for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 for premises within 150m radius of Lupset Medical Centre, George-a-Green Court, Wakefield, WF2 8FE. In support of the application it was stated:

1.1 In response to why this application should not be refused pursuant to Regulation 31, the Applicant stated:

1.1.1 “The Boots store currently located at Wakefield New Lupset Medical Centre, George-A-Green Court, Wakefield, West Wakefield, WF2 8FE is due to close on 8th March 2024 and once it does the next nearest contractor is Horbury Road Pharmacy. 186 Horbury Road WF2 8QB approx. 0.3 miles distant.

1.1.2 In view of the above Regulation 31 does not apply.”

Information in support of the application:

1.2 “In accordance with the NHS (Pharmaceutical Services) Regulations 2013 we would ask NHS England to take into account the following information when considering this application for inclusion on the pharmaceutical list.

1.3 Our clients, WMM Pharma Ltd, believe that should NHS England (“NHSE”) grant this application, as it will secure improvements in terms of both the access to pharmaceutical services for the local population and the range of services provided in the wider area.

Background

1.4 Our clients have become aware that the Boots Pharmacy located at New Lupset Medical Centre, George-A-Green Court, Wakefield, West Wakefield, WF2 8FE will be closing 8th March 2024. We believe Boots have submitted a formal closure notice to the ICB confirming that date.

1.5 We are unaware of the reasons for Boots deciding to close the pharmacy but there is a large resident population living in the immediate area of the proposed location who are heavily reliant on a pharmacy in the area to cater for their health needs and medication. The existing Boots pharmacy is located in an established GP surgery, namely New Lupset Medical centre and dispenses in the region of 11,500-12,000 NHS items/month which is well in excess of the national average.

General Information

1.6 The proposed location for this pharmacy is within 150m of the closing Boots store located at the new Lupset Medical centre (please see map 1 highlighting the best estimate area) [Page 1 of Appendix A for Committee] which is the south east edge of a very large, primarily Local Authority housing estate known as Lupset Estate.

- 1.7 In addition to the Boots store and Lupset Medical Centre there is a branch of Farmfoods virtually adjacent. A few yards distant are a petrol station, public houses, parade of shops with two pizza fast food units and a tattoo parlour. Slightly further away is another parade of shops on Whinney Moor Avenue with a bookmaker, beauty salon and ironing parlour.
- 1.8 Slightly further afield but still within the same housing estate there are the following facilities:
 - 1.8.1 Funeral Directors
 - 1.8.2 Post Office
 - 1.8.3 Fish & Chip shop
 - 1.8.4 Snapethorpe Primary School
 - 1.8.5 Evolve Academy
 - 1.8.6 Junior/Infant school
 - 1.8.7 Cricket Club
 - 1.8.8 Sainsbury Local
 - 1.8.9 Morrisons Local
 - 1.8.10 McDonalds restaurant
 - 1.8.11 Indian Tandoori
 - 1.8.12 Appliance store
 - 1.8.13 Places of Worship
 - 1.8.14 Fitness Centre
 - 1.8.15 Skate Park
 - 1.8.16 Recreational spaces
- 1.9 There is plenty of free and available parking in the area and these facilities cater for residents every day requirements without the need to travel out of the area.
- 1.10 The housing is densely populated and consists primarily of local authority/ex local authority and private semi-detached/terraced properties built mainly during 1950's and 1960's.

Existing Pharmacy Provision
- 1.11 The only pharmacy within the immediate area of the closing Boots store is Horbury Road Pharmacy 186 Horbury Road WF2 8BQ. That pharmacy is within 250m of the closing Boots store and dispenses around 10,500 items/month again above the national average.
- 1.12 Between the Boots store and Horbury Road pharmacy they are dispensing around 22,000 items/month.

- 1.13 The closing Boots pharmacy has been established in the area for some time and residents have become accustomed to accessing pharmaceutical services as part of their everyday lives. Being adjacent to Lupset Medical Centre means most of the items dispensed by the pharmacy (approx. 90%) originate that surgery [sic]. Patients who are attending Lupset Medical Centre are reliant on the Boots pharmacy as they have become accustomed to visiting their GP and utilising the Boots store to pick up their medication.
- 1.14 Whilst we fully accept Neighbourhoods no longer form part of the regulations it is clear from the map that the Lupset Housing Estate is virtually self-contained by the following boundaries (see map 2). [Page 2 of Appendix A for Committee].
- 1.14.1 M1 to the west;
- 1.14.2 A638 to the north;
- 1.14.3 A642 to the south.
- 1.15 The closing Boots and Horbury Road pharmacy are the only contractors within the above area. Once the Boots has sold that entire residential estate will be reliant on a single contractor.
- 1.16 The next nearest pharmacies are some distance away (in excess 1 mile by the most practical route in all cases) serving different communities as follows:
- 1.16.1 Boots Homestead Drive WF2 9PE. Approx 1.1 miles distant (24-minute walk) by the most practical route. The pharmacy is located to the north of the proposed location serving a different community.
- 1.16.2 Well Pharmacy Orchard Croft Medical Centre WF4 1BY approx. 1.5m to the south west serving a different population.
- 1.16.3 Pharmacy Plus Health, Trinity Medical Centre WF1 1PG. Approx 2 miles to the east close to the town centre and serving a different population.
- 1.16.4 Wakefield Pharmacy Fryers Way WF5 9TJ approx. 2 miles distant to the north.
- 1.17 Map 3 [Page 3 of Appendix A for Committee] showing these pharmacies is attached to this document.
- 1.18 There are of course other pharmacies further afield, but we don't believe any of those (or in fact the four mentioned above) are relevant to this application due to the distance from the proposed site. In addition, they clearly serve different populations in established settings.
- Existing Medical Provision
- 1.19 As previously mentioned Lupset Medical centre is adjacent to the closing Boots store and is a purpose built complex with its own car parking facilities.
- 1.20 The surgery writes approx. 25,000 items/month and the Boots pharmacy adjacent is dispensing approx. 40% of the items dispensed by the surgery (information from Pharmdata).
- 1.21 The next closest GP surgeries are as follows:
- 1.21.1 Homestead Surgery Homestead Drive WF2 9PE which is some distance to the north and has a Boots pharmacy adjacent.

1.21.2 Trinity Medical Centre, Thornhill Street WF1 1PG. Trinity pharmacy is co-located with these GP's.

Unforeseen Benefits

- 1.22 Within the Wakefield Pharmaceutical Needs Assessment (PNA), published in 2022, there is no specific mention of a gap in pharmaceutical services within the proposed area as of course the Boots store was trading at the time it was published.
- 1.23 In many ways that means that the conclusions reached within the PNA document are not relevant to this application as when the Boots branch at Lupset Medical Centre closes, the level of pharmaceutical provision within this specific location will have changed significantly.
- 1.24 We are required by NHS England to address two specific questions in this supporting information:
- (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".*
- (ii) Please explain how you intend to secure the unforeseen benefit(s)".*
- 1.25 When considering these questions, it is worth noting the provisions of Regulation 18(2)(b). [Quoted in full].
- 1.26 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.
- 1.27 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 our opinion there is clear evidence that it would.
- 1.28 We have addressed both of the questions above by setting out in further details below:
- Securing better access
- 1.29 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.
- 1.30 Obviously whilst the Boots store is trading, the residents have easy access to services.
- 1.31 However, following the closure of the branch in March 2024, residents will of course be denied those services. With the Lupset Surgery producing in excess of 25,000 items/month and only Horbury Pharmacy in the vicinity, we believe there is a significant gap in services and this application would indeed secure better access.
- 1.32 In addition to the Boots pharmacy at Lupset Medical Centre they are closing other branches in the Wakefield area further reducing customer choice. Our client strongly believes these closures will lead to a significant gap in services within the area.
- 1.33 Whilst there are existing contractors as described earlier in the surrounding areas, they are some distance away, and it is our view that those residents living in the Lupset Estate will not have reasonable choice of contractor once the Boots store closes. This is particularly true for those who do not have access to a motor vehicle.

- 1.34 The nearest pharmacies, with the exception of Horbury Pharmacy are all more than 20 minutes' walk from the proposed site and for some residents, journey times would be considerably longer than that.
- 1.35 Accessing other established contractors would add significant distance to that journey further restricting choice for many patients.
- 1.36 Residents have for many years had the benefit of the Boots adjacent to their GP surgery and utilised the pharmacy accordingly. The closure of this pharmacy will without doubt leave a significant gap in services within the area and this application, if approved, will address that gap.

Choice of pharmaceutical service provider

- 1.37 The relevant consideration in the case of this application is whether residents of, and visitors to, the area identified in our application have reasonable access to existing pharmacies. If they do not, then it follows that they do not have reasonable choice.
- 1.38 Clearly the residents of the area where the applicant proposes to open the pharmacy currently have provision provided by the Boots store. Once the store has closed, they will have greatly reduced choice of provider as there will be only a single contractor within the vicinity. Patients will be forced to travel out of the area to access choice of provider.
- 1.39 By approving this application, it is clear that residents will benefit by having their choice of contractor restored.
- 1.40 If this application is approved, our clients intend to offer the local residents a full and comprehensive pharmaceutical service to replace those that have been offered by Boots for many years, ensuring that local residents can, once more, access pharmaceutical services when they need them.

Patient groups sharing protected characteristics

- 1.41 For those people who are elderly, less abled 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 mobile. This would particularly apply if these people are unable to drive or don't have access to a motor vehicle.
- 1.42 Following the closure of the Boots store residents of the Lupset estate will only have a single provider. If they are elderly, in poor health or have mobility issues, for example, the journey they face to access alternative pharmaceutical services would be much more difficult than first appears.
- 1.43 We firmly believe if this application is approved it will ensure that residents retain their choice and access to pharmaceutical services which they have enjoyed and become accustomed to for many years in the local area."

2 The Decision

The Commissioner considered and decided to refuse the application. The decision letter dated 18 April 2024 states:

- 2.1 "West Yorkshire 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."

Extract from the decision report

- 2.2 “The Pharmaceutical Services Regulations Committee (hereafter referred to as “the Committee”) considers all pharmaceutical services applications on behalf of NHS England & NHS Improvement (West Yorkshire ICB (Integrated Care Board)) in accordance with the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 as amended (hereafter referred to as “the Regulations”).
- 2.3 The Committee considered the above application, and I am writing to confirm that it has been refused.
- 2.4 The Committee noted that the area to which the application relates is a non-controlled locality and that the applicant’s proposal is to open a pharmacy within a 150 metre radius of New Lupset Medical Centre, George-A-Green Court, Wakefield, WF2 8FE to secure improvements in terms of both access to pharmacy services for the local population and the range of services, following the closure of Boots Pharmacy on the 8th of March 2024.
- 2.5 Regulation 31 does not apply as there is no pharmacy at the same or adjacent premises. The Committee were also mindful that if the application were granted, the successful applicant would - in due course – need to notify of the precise location of its premises (in accordance with paragraph 31 of Schedule 2) and that 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.
- 2.6 The Committee had regard to the nearest pharmacies with details of opening times and services offered at each pharmacy. The Committee were asked to consider the impact of the Boots closure in terms of remaining choice, and it was agreed there remains adequate choice within the area. Consideration to the local GP practices were also noted.
- 2.7 The applicant suggests that patients with protected characteristics may struggle to access services though provided no evidence to demonstrate that this is the case. The Committee considered protected characteristics and how cohorts of patients may struggle to access services however felt that given that the exact address of the premises is unknown they were unable to consider the physical accessibility of the premises and therefore could not conclude if premises would even be appropriate for these patients within this area.
- 2.8 It was agreed that the applicant has not provided any innovative approaches. Whilst the applicant offers Saturday morning hours, the Boots Pharmacy that closed did not provide these hours and there is already provision on Saturday at Horbury Road Pharmacy. It has not been demonstrated that there is any shortfall of provision on Saturdays.
- 2.9 Representations from Boots, CPWY (Community Pharmacy West Yorkshire) and the HWB were considered – it was noted that there were no strong representations to consider whether this application offers an unforeseen benefit. It was noted that the Boots Pharmacy closure was not foreseen and therefore the PNA has no supplementary statement to refer to, in respect of that closure. Counter-comments from the applicant were also noted.
- 2.10 There was a discussion surrounding the ability for remaining pharmacies to cope with an increase in demand however it was agreed that the Committee must not assume that all patients will move to the next nearest pharmacy, Horbury Road pharmacy, as some may find another pharmacy within the area, as there remains choice.
- 2.11 The Committee refused the application for an unforeseen benefit (best estimate) in accordance that it does not meet the criteria of Regulation 18. Granting this application would not secure improvements or better access.

2.12 Appeal rights are granted to the applicant.”

3 The Appeal

In a letter dated 14 May 2024 addressed to NHS Resolution, PSC on behalf of the Applicant appealed against the Commissioner's decision. The grounds of appeal are:

- 3.1 “We act on behalf of WMM Pharma Ltd and have been instructed by our client to appeal against the decision of West Yorkshire ICB to refuse this application.
- 3.2 A copy of their refusal letter dated 18th April 2024 is attached to this document.[see paragraphs 2.1 to 2.12 above].
- 3.3 Also attached is a signed letter of authorisation from our client.
- 3.4 West Yorkshire ICB refused the application on the basis of the following conclusions: [Quotes 2.6 to 2.11 above]
- 3.5 We address these points a little later in this document.
- 3.6 For ease we have attached a copy of the original supporting document [see section 1 above] which was submitted with the application which gives some background / history as to why this application was submitted.
- 3.7 Also attached is a copy of our e-mail dated 13th February 2024 [see 3.86 – 3.110 below], which was submitted in response to comments made by the three interested parties, namely Boots, the HWB and the LPC. No other local contractors responded to the application as far as we are aware. See later for further information in relation to that point.
- 3.8 We discuss these documents in more detail later in this submission.
- 3.9 May we please request that these two documents are taken into account and used in conjunction with this document by the committee as part of our evidence for this case?

Background / General Information

- 3.10 As the Committee will see from the supporting document, the main reason for our client instructing us to submit this application is that he was made aware that Boots, who owned and operated a pharmacy at New Lupset Medical Centre, George-A-Green Court, Wakefield, West Wakefield, WF2 8FE was due to be closing 8th March 2024.
- 3.11 That closure took place as anticipated so there is no longer a choice of pharmaceutical provision in the Lupset housing estate. We are fully aware that just because one pharmacy closes there is no automatic reason why permission should be granted to open one to replace it. However, in this instance our client feels the closure has led to a gap in pharmaceutical services in the immediate area, which is a deprived residential housing estate.
- 3.12 In addition to the closure of this branch there have been some further pharmacy closures in the Wakefield area over the last 12 months or so as follows:
 - 3.12.1 Lloyds Pharmacy, Sainsburys, Lower Trinity Walk, Marsh Way, Wakefield WF1 1QQ.
 - 3.12.2 Boots Pharmacy, 64a Windhill Road, Eastmoor, Wakefield WF1 4SD.
 - 3.12.3 Superdrug, 12 All Saint's Walk, The Ridings, Wakefield, WF1 1US.

3.12.4 Boots Pharmacy, 82-84 Upper Warrengate, Peterson Road, Wakefield, WF1 4JZ.

3.13 Whilst we appreciate that these closures are all to the east of the proposed site the fact that 5 pharmacies have closed within a distance of less than 3 miles must lead to additional pressure on the remaining contractors.

3.14 The Lupset residential area is one of the most deprived areas in Wakefield, a fact recognised by West Yorkshire HWB in their response to the application at the 14-day stage. It is well known that residents living in deprived areas tend to require pharmaceutical services more frequently than those living in affluent areas and the Lupset estate is no exception. We respond further to the letter from the HWB later in this report.

3.15 Below are some basic demographic statistics taken from the 2021 census:

Car Ownership

3.16 Below is a table showing car ownership for the Lupset area (LSOA Wakefield 026D) compared with both Ward and National statistics:

Number of cars or vans	Ward 2022: Wakefield West		LSOA 2021: E01011904: Wakefield 026D		Country: England	
	Number	%	Number	%	Number	%
Total: All households	6,927	100.0	563	100.0	23,436,085	100.0
No cars or vans	2,093	30.2	160	28.4	5,516,098	23.5
1 car or van	2,891	41.7	225	40.0	9,674,645	41.3
2 Cars or vans	1,525	22.0	139	24.7	6,106,970	26.1
3 or more cars or vans	418	6.0	39	6.9	2,138,372	9.1

3.17 The table above clearly shows that households with no cars/vans in both the proposed location (LSOA Wakefield 026D) and the ward as a whole (Wakefield West) are significantly lower than the national average.

3.18 That clearly means that to access a choice of services many people will be reliant on public transport or having to access them on foot. We describe the issues these people face later in this document.

Disability	LSOA 2021: E01011904: Wakefield 026D		Country: England	
	Number	%	Number	%
Total: All usual residents	1,695	100.0	56,490,048	100.0
Disabled under the Equality Act Day to day activities limited a lot	156	9.2	4,140,357	7.3

Disabled under the Equality Act Day to day activities limited a little	174	10.3	5,634,153	10.0
Not disabled under the Equality Act. Has long term physical or mental[sic]	85	5.0	3,856,029	6.8
Not disabled under the Equality Act. No long term physical or mental[sic]	1,280	75.5	42,859,509	75.9

3.19 In terms of disability, again the above table paints a picture of an area where more people live with day-to-day activities limited a lot and a little, than the national average.

3.20 It is also noteworthy, that in the index of multiple deprivation, produced by the ministry of housing, communities and local government, in 2019, the post code area to which our client's application applies was ranked 2,384 out of 32,844 areas where 1 is the most deprived i.e. it is within the top 7.5% most deprived parts of the country.

3.21 In summary these statistics very much reflect the conclusions reached by the West Yorkshire HWB in the letter dated 2nd February submitted in relation to the application at the 14 day stage.

General Area

3.22 In addition to the New Lupset Medical Centre where the recently closed Boots was located the Lupset Estate has a wealth of facilities as follows

3.22.1 Farmfood Store

3.22.2 Funeral Directors

3.22.3 Post Office

3.22.4 Fish & Chip shop

3.22.5 Snapethorpe Primary School

3.22.6 Evolve Academy

3.22.7 Junior/Infant school

3.22.8 Cricket Club

3.22.9 Sainsbury Local

3.22.10 Morrisons

3.22.11 McDonalds restaurant

3.22.12 Indian Tandoori

3.22.13 Appliance store

3.22.14 Places of Worship

3.22.15 Fitness Centre

3.22.16 Skate Park

3.22.17 Recreational spaces

- 3.23 The proposed best estimate location for this application is “within 150m radius of the closing Boots store located at Wakefield New Lupset Medical Centre, George-A-Green Court, Wakefield, West Wakefield, WF2 8FE.”
- 3.24 This area incorporates a couple of retail parades (one on Horbury Road and the other on Whinney Moor Avenue), the health centre itself, a petrol station, public house etc so the area is well used by residents.
- 3.25 At the time of preparing this document our client has not yet secured a unit for the pharmacy (assuming the application is approved) but he has had some preliminary discussions with the landlords of the previous Boots store. He is of the opinion that any retail unit within the specified best estimate area will serve the patients of Lupset Medical centre, residents of the Lupset estate and those living nearby.
- 3.26 We accept that there is a pharmacy reasonably close to the old Boots store namely Horbury Road Pharmacy 186 Horbury Road WF2 8BQ. That pharmacy is within 250m of the closing Boots store and was dispensing around 10,500 items/month, which is above the national average, prior to the Boots closure.
- 3.27 The pharmacy is located on the busy Horbury Road and as a result it is difficult to park. It does have spaces for a couple of cars on the forecourt but if they are taken it is very difficult/dangerous to park close to the pharmacy on Horbury Road itself so people will need to park in side streets and then walk to the pharmacy. Below is a photo showing 3 cars on the forecourt which is its capacity. [See page 1 of Appendix B for Committee].
- 3.28 Horbury Road Pharmacy opens 9.00-1.00 and 2.00-5.45 Monday-Friday and 9.00-12.30 Saturday (NHS website) a total of 42.25 hours/week. Interestingly it closes at lunch time.
- 3.29 The photo above is of Horbury Pharmacy. [See page 2 of Appendix B for Committee].
- 3.30 Between the Boots store and Horbury Road pharmacy they were dispensing around 22,000 items/month.
- 3.31 The HWB acknowledged how busy these two pharmacies were prior to the Boots closure as they included the following table within their letter of 2nd February:

“In the six months between May and October 2023, the two pharmacies in Lupset both had high levels of dispensing activity (see table below).”

Pharmacy Code	Pharmacy Name	May	June	Jul	Aug	Sep	Oct
FER20	Horbury Road Pharmacy	11,717	10,408	10,786	10,817	10,948	11,734
FMN67	Boots Pharmacy	12,419	13,134	11,846	12,553	12,185	12,836
Total		24,136	23,542	22,632	23,370	23,133	24,570

- 3.32 We are not aware of the reasons why Boots chose to close their store but based on the above information it is clear the pharmacy was a busy branch, at least in terms of dispensing numbers. It was clearly well used and was established in the area for some time. Being adjacent to Lupset Medical Centre means most of the items dispensed by the pharmacy (approx. 90%) originated from that surgery (source Pharmdata).
- 3.33 Lupset Health centre itself is a very busy practice, housed in modern purpose-built premises with a good size patient car park. The practice has approx. 13,000 patients and regularly writes more than 25,000 prescriptions/month.
- 3.34 The above photo is of Lupset Medical centre. [See page 3 of Appendix B for Committee]. The Boots pharmacy was situated at the front of the building adjacent to the main entrance.
- 3.35 It is the only medical practice within the Lupset area, so most residents are registered with these GP's. Opening times for the surgery are 8.00am - 6.30pm Monday-Friday.
- 3.36 Should the application be approved our client is proposing to open 8.30-6.30 Monday-Friday and 9.00-1.00 Saturday, a total of 54 hours/week. These hours are designed to accommodate patients from the Lupset Practice and, as can be seen from earlier, they far exceed the current opening hours of Horbury Pharmacy, including opening during the lunchtime period.
- 3.37 Our client has been in touch with the local Drug Action Team for Wakefield who has confirmed to him that they are currently "really struggling placing clients and always looking to find different pharmacies".
- 3.38 Should this application be approved our client is happy to offer a comprehensive service to residents of Lupset, including supervised consumption and needle exchange, as that service is currently not available in the local area.
- 3.39 In terms of other competing pharmacies, they are all some distance away (in excess 1 mile by the most practical route in all cases) serving different communities as follows:
- 3.39.1 Boots Homestead Drive WF2 9PE. Approx 1.1 miles distant (24-minute walk) by the most practical route. The pharmacy is located to the north of the proposed location serving a different community. By public transport the journey takes about 15/20 minutes depending on which bus route is taken. All routes involve walking from the old Boots store to a bus stop taking 3-4 minutes and a 5-7-minute walk at the other end from the bus stop to Boots. Total journey time approx. 30 minutes assuming buses run to time.
- 3.39.2 By car the journey time is 6/7 minutes in normal driving conditions.
- 3.39.3 Pharmacy Plus Health, Trinity Medical Centre WF1 1PG. Approx 1.7 miles to the east of the proposed site and located within the town centre. (39 minute walk). There are also two other pharmacies in the town centre (following closures mentioned earlier) a similar distance away.
- 3.39.4 By public transport the journey takes about 20 minutes depending on which bus route is taken. All routes involve walking from the old Boots store to a bus stop taking 3-4 minutes and from bus stops on the fringe of the town centre to the centrally based pharmacies walking another 3-5 minutes. Total journey time approx. 30 minutes assuming buses run to time.
- 3.39.5 By car the journey time is 7/8 minutes in normal driving conditions.
- 3.39.6 Well Pharmacy, Orchard Croft Medical Centre, Cluntergate WF4 5BY. Approx 1.8 miles to the south west serving a different population (39 minutes' walk). By public transport the journey takes about 15 minutes depending on which

bus route is taken. All routes involve walking from the old Boots store to a bus stop taking 3-4 minutes and a 5-minute walk at the other end from the bus stop to Well Pharmacy. Total journey time approx. 25 minutes assuming buses run to time.

3.39.7 By car the journey time is 5/6 minutes in normal driving conditions.

- 3.40 As can be seen from the above none of these pharmacies are particularly accessible without a motor vehicle. The demographics shown earlier in this report confirm that car ownership is well below the national average so many residents will be relying on public transport or accessing these pharmacies on foot.
- 3.41 The three competitors above are all co-located with GP surgeries serving entirely different populations. Some people may feel uncomfortable visiting pharmacies located in GP surgeries where they are not patients of that practice.
- 3.42 We are unable to comment on which pharmacies the patients who previously used Boots for services are now visiting as that information is not in the public domain.
- 3.43 Bearing in mind the distance/difficulties access any of the above pharmacies from the proposed best estimate site, one would assume that a high number may now go to Horbury Road Pharmacy as it is the only pharmacy serving the Lupset estate.
- 3.44 The following information has been taken from Pharmdata and shows dispensing figures for the months of November, December 2023 & January 2024 (the latest available when preparing this document):

	Scripts Nov 23	Scripts Dec 23	Scripts Jan 24
Boots	10,655	3,226	1,291
Horbury Road	11,706	14,437	15,923

- 3.45 It would seem, particularly in December & January, that Boots items declined and a good percentage of them were picked up by Horbury Road Pharmacy. Assuming that trend continued, it is not inconceivable that Horbury Road Pharmacy could be dispensing approaching 18,000-20,000 items/month which is almost three times the national average.
- 3.46 Our client informs us that following the closure of Boots Horbury Road pharmacy has become very busy-especially at peak times when it is not uncommon to find people queuing outside the doors.
- 3.47 The closure of the Boots branch has led to a large densely populated and not particularly affluent area being left with just a single pharmacy and as a result residents are now forced to travel some distance to access alternative services and choice of provider. Low car ownership and higher levels of disability make these journeys potentially more difficult.

Wakefield 2022 PNA

- 3.48 As with almost every PNA the Wakefield council publication concluded there were no gaps in pharmaceutical services in the area. At the time the PNA was published the Boots store in Lupset was included in the list of contractors.
- 3.49 Following the closure of other pharmacies mentioned earlier in this report, two supplementary statements have since been published as follows:

- 3.49.1 2nd August 2023-Statement issued following the closure of the Lloyds branch FET05 J Sainsburys Lower Trinity Walk, Marsh Way, Wakefield WF1 1QQ.
- 3.49.2 6th September 2023 - Statement issued following the closure of the FJX61 Boots Pharmacy, 64a Windhill Road, Eastmoor, Wakefield WF1 4SD.
- 3.50 Neither of these statements identified a current need based on the recent closures. To our knowledge no supplementary statement has been issued since the closure of the Boots store in Lupset.
- 3.51 It is our belief that the PNA is largely irrelevant to this application because a total of 5 pharmacies have closed in the Wakefield area since it was published. Despite the issue of the above supplementary statements, it is both our client's and our view that the 2022 PNA no longer reflects a true and accurate picture of pharmaceutical services in the Wakefield area.

Interested Parties

- 3.52 Comments in relation to the application were made by the three interested parties, namely Boots, HWB and the LPC. No other local contractors responded to the application as far as we are aware. This includes Horbury Road Pharmacy who are the nearest contractor to the best estimate location.
- 3.53 In our experience it is very unusual for only one local contractor to object to an application under Regulation 18 so there is a school of thought that competing pharmacies felt the application should/would be granted.
- 3.54 We have attached a copy of our response [see 3.86 to 3.110 below] in relation to the comments made by these three parties to this document. We will not repeat our thoughts on the Boots and LPC comments, but we do wish to expand further on the letter from the HWB as they have produced a thorough response that merits further consideration.
- 3.55 Some extracts taken from the letter 2nd February from West Yorkshire HWB are as follows:

"Lupset is one of the most deprived neighbourhoods in Wakefield District, in which 1 in 4 children live in poverty. The neighbourhood is home to around 13,250 people, whose health is generally poorer than average. In the 2023 Adult Population Health Survey, 60% of residents in Lupset stated that they had a health condition or illness lasting, or expected to last, 12 months or more. This indicates that there is likely to be a high demand for pharmaceutical dispensing services within the locality."

- 3.56 Around 25% of adults are smokers (Wakefield average 18.8%), 42% of adults are obese (Wakefield average 41%) and 20% are diagnosed as having depression (Wakefield average 14.5%). This poorer level of health indicates the importance of having a good level of choice and provision of pharmaceutical services within the area.

"This indicates that there is likely to be a high demand for pharmaceutical dispensing services within the locality".

"This poorer level of health indicates the importance of having a good level of choice and provision of pharmaceutical services within the area."

"The neighbourhood of Lupset is one that has significant health needs and a large population that can only benefit from greater provision of pharmaceutical services".

"However, the closing pharmacy does currently dispense a greater than average amount of prescriptions each month and will create significant extra demand upon local

pharmacies in the area, especially Horbury Road pharmacy. We are unable to say how well these pharmacies are able to deal with this additional demand”.

“If this application were to be approved, it would provide greater choice for the residents of Lupset”

- 3.57 The above statements clearly paint a picture of a deprived area. It recognises that “there is likely to be a high demand for pharmaceutical services in the area” and emphasises it is very important for residents to have a choice of provider.
- 3.58 Although the HWB don't say it, these statements seem to support the need for an additional pharmacy in the Lupset area especially in relation to the matter of choice. Clearly one pharmacy serving a residential area housing around 13,000 people who are not in the best of health and have limited access to motor vehicles is inadequate.
- 3.59 The demographic statistics provided earlier in this report further highlight the health issues in the area and low car ownership clearly restricts the distance people can travel to access the existing pharmacy contractors. On the basis of the comments from the HWB and lack of other objections from local contractors we were surprised to learn that the ICB refused the application.

ICB Decision

- 3.60 As stated previously West Yorkshire ICB stated several reasons for refusing the application.
- 3.61 We believe these reasonings are flawed and have responded to each of their statements below:
- 3.62 *“The Committee had regard to the nearest pharmacies with details of opening times and services offered at each pharmacy. The Committee were asked to consider the impact of the Boots closure in terms of remaining choice, and it was agreed there remains adequate choice within the area. Consideration to the local GP practices were also noted.”*
- 3.63 We totally disagree that there is “choice” in the Lupset area following the closure of Boots for the reasons stated above. The HWB have recognised this fact in their letter of 2nd February. One accessible pharmacy serving a community of 13,000 patients, many of whom do not have a car does not constitute reasonable choice.
- 3.64 As far as opening hours are concerned, our client is offering hours far in excess of those provided by Horbury Road Pharmacy and they virtually match the opening hours of Lupset Health centre.
- 3.65 *“The applicant suggests that patients with protected characteristics may struggle to access services though provided no evidence to demonstrate that this is the case. The Committee considered protected characteristics and how cohorts of patients may struggle to access services however felt that given that the exact address of the premises is unknown they were unable to consider the physical accessibility of the premises and therefore could not conclude if premises would even be appropriate for these patients within this area.”*
- 3.66 As stated previously the area is deprived with low car ownership and higher than average levels of disability. Again, the HWB recognised these facts.
- 3.67 Whilst our client has not yet secured premises he owns and operates other pharmacies (including one in Wakefield) so is an experienced operator who fully understands the needs of his patients. He would ensure any premises he secures would be fit for purpose in terms of access for all.

- 3.68 *"It was agreed that the applicant has not provided any innovative approaches. Whilst the applicant offers Saturday morning hours, the Boots Pharmacy that closed did not provide these hours and there is already provision on Saturday at Horbury Road Pharmacy. It has not been demonstrated there is any shortfall of provision on Saturdays."*
- 3.69 The PCA committee has previously found that the 'innovation test' within the regulations is very difficult to meet and we believe only one application has ever been approved on that basis, so we believe that is a non-point.
- 3.70 Saturday opening hours was not intended to be a point of innovation, our client simply felt the local community would benefit from choice in the area on a Saturday.
- 3.71 *"Representations from Boots, CPWY (Community Pharmacy West Yorkshire) and the HWB were considered – it was noted that there were no strong representations to consider whether this application offers an unforeseen benefit. It was noted that the Boots Pharmacy closure was not foreseen and therefore the PNA has no supplementary statement to refer to, in respect of that closure. Counter-comments from the applicant were also noted."*
- 3.72 We have addressed the representations from Boots and CPWY in our e-mail dated 13th February which is attached to this document so will not repeat our comments here. We do however draw the committee's attention to the letter from HWB which we have commented on in some detail within this document as they have made some very valid points which appear to support the application.
- 3.73 We have also addressed the point of supplementary statements within this document.
- 3.74 *"There was a discussion surrounding the ability for remaining pharmacies to cope with and increase in demand however it was agreed that the Committee must not assume that all patients will move to the next nearest pharmacy, Horbury Road pharmacy, as some may find another pharmacy within the area, as there remains choice."*
- 3.75 *"The Committee refused the application for an unforeseen benefit (best estimate) in accordance that it does not meet the criteria of Regulation 18. Granting this application would not secure improvements or better access."*
- 3.76 As explained earlier we strongly believe there is lack of choice in Lupset. It is difficult to know how the ex-Boots patients have reacted as the closure happened recently and that information is not in the public domain. However, from what we can see it does appear that many patients are now using Horbury Road pharmacy probably as the next nearest ones are a long distance away and serving completely different communities. That potentially makes this a very busy pharmacy dispensing almost three times the national average script numbers.
- 3.77 Our client's application is intended to regain the status quo in the area by offering a choice of provider, with longer hours and more services which we strongly believe offers improvements and better access for patients.
- 3.78 Our client has spoken to some local residents of Lupset to gauge their response to the Boots closure and these responses are attached as Appendix 4 [see Pages 4 – 17 of Appendix B for Committee]. They have been anonymised for data protection purposes. As the Committee will see there is general dissatisfaction following the closure of Boots and a high level of support for a second pharmacy in the area.
- 3.79 In addition, there is strong support from Hilary Mitchell, Councillor for Wakefield West Ward who has recognised the loss of pharmaceutical services in the Lupset area. Her letter is attached [see below at 3.111 – 3.114].

- 3.80 In summary there has been a dramatic loss of pharmaceutical services in the Wakefield area over the last 12 months or so with a total of 4 pharmacies closing. At the time of writing this document there has been no new contract application approved to replace this loss of services.
- 3.81 Probably the most significant loss is the closure of the Boots store in Lupset, which was a busy branch located within a modern health centre building dispensing 10,000/11,000 items/month which is far in excess of the national average. The closure of Boots in Lupset has left a clear gap in pharmaceutical services in the area which this application is designed to meet.
- 3.82 In addition, Lupset is one of the most deprived areas in the country. The closure of the Boots store has meant that only one pharmacy (Horbury Pharmacy) serves a community of around 13,000 residents so there is clearly a lack of choice in the area. Car ownership is very low which heavily restricts the ability of residents to access pharmacies in the surrounding neighbourhoods.
- 3.83 In terms of disability, Lupset is an area where more people live with day-to-day activities limited a lot and a little, than the national average so those with protected characteristics struggle to access services.
- 3.84 Our client, who is an experienced pharmacy owner and already operates another pharmacy in Wakefield, is committed to offer the community a fully functional modern pharmacy 5.5 days/week with opening hours beyond those offered by the other local contractor, should this application be approved.
- 3.85 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.”

Enclosure: PSC letter to the Commissioner in response to representations on the application:

- 3.86 “Thank you for your letter dated 5th February 2024 enclosing third party comments in respect of the above application. We continue to act for the applicant, WMM Pharma Limited, and wish to make the following brief comments in response:
- 3.87 CPWY– letter dated 29th December
- 3.88 We note that CPWY (the LPC) do not object to the application.
- 3.89 The LPC note that there have been several pharmacy closures in the area recently and that the Boots store at Wakefield New Lupset Medical Centre is due to close on 8th March.
- 3.90 As the LPC do not make any additional observations we have no further comments to make on their representations at this time.
- 3.91 Wakefield Health and Wellbeing Board – letter dated 2nd February 2024
- 3.92 We note that the Health and Wellbeing Board (HWB) have sought to assess the likely impact of the closure of the Boots branch at the Lupset Medical Centre. This appears to be an entirely reasonable approach.
- 3.93 The HWB have provided a demographic profile for the area and have identified significant levels of deprivation and relatively poor health outcomes for residents. The HWB states *“This indicates that there is likely to be a high demand for pharmaceutical dispensing services within the locality.”*
- 3.94 The map provided by the HWB on page 2 of their letter illustrates the fact that there are currently two pharmacies serving the population of Lupset, but one of these will be

closing shortly. They also note that some of the pharmacies shown on their map are not 'direct alternatives' on the basis they are dispensing appliance contractors or distance selling pharmacies.

- 3.95 Our client accepts that the closing Boots pharmacy does not open on Saturday mornings, but we would point out that our client's application does offer Saturday opening hours so should this application be approved residents will benefit from a choice of pharmacies that can be accessed on a Saturday. This is an *improvement* on the current situation.
- 3.96 The dispensing data provided by the HWB is accurate and clearly shows that the loss of the Boots pharmacy will result in a substantial additional workload for Horbury Road Pharmacy. It is noteworthy that the number of items that could end up being dispensed by Horbury Road following the closure of Boots will be more than three times the national average for England making it an exceptionally busy pharmacy.
- 3.97 There is already evidence that a significant number of patients have transferred their nominations to this pharmacy (in the knowledge that Boots are closing) but the pharmacy is struggling to cope, and we understand patients have complained of long waiting times and an inability to get through to the pharmacy by phone. The situation will clearly be compounded when the Boots branch actually closes in March.
- 3.98 In respect of the proposed location for our client's pharmacy we note that the area provided is relatively close to Horbury Road Pharmacy. Should the application be granted, our client's intention is to secure the best possible premises in respect of both patient access and the suitability of premises for the provision of a comprehensive range of pharmaceutical services.
- 3.99 The HWB are correct to note that the granting of this application would secure additional choice for residents of the area. The reason Regulation 18(2)(b)(i) specifically requires the decision maker to consider choice is that it is recognised that a lack of choice can have adverse impacts on service levels for patients due to the lack of competition for existing pharmacy providers.
- 3.100 This can be particularly relevant where dispensing numbers are exceptionally high, and pharmacies are in deprived areas with higher-than-average demand for pharmaceutical services.
- 3.101 We ask the ICB to consider whether reinstating a position where patients have a choice of service provider will ensure that service levels are not diminished.
- 3.102 Boots – letter dated 1st February
- 3.103 We accept the comment made by Boots that the 'closure and pending closure' of several of their pharmacies is clearly one of the key reasons why our client's application has been submitted. The effect of these closures has been a substantial cumulative reduction in the provision of pharmaceutical services in Wakefield.
- 3.104 We are slightly baffled by the following comment made by Boots:
- 3.105 *"It is of note, that the Boots pharmacy at Lupset Health centre is not due to close until 8th March 2024, so we fail to see how a decision can be made as to whether a gap would be left in this location beforehand".*
- 3.106 Boots do not deny that this pharmacy is closing so it is perfectly reasonable for decision makers to take this fact into account. The ICB will be more than capable of considering what impact that closure may have on pharmaceutical services provision.
- 3.107 The matter of supplementary statements in this case is clearly not relevant. We would not expect the HWB to issue a supplementary statement until the pharmacy has closed.

- 3.108 In any event, a supplementary statement is likely to be nothing more than a statement of fact that a pharmacy has closed. The HWB are unlikely to give detailed consideration to the impact of this closure. In fact, the HWB's comments in response to this application are likely to be more helpful to the ICB than any future supplementary statement.
- 3.109 Boots criticise the failure of our client to identify where patients who might access the proposed location may come from. In this respect the ICB will find the HWB comments to be helpful on the basis they clearly identify the population of Lupset and the fact that, in common with other deprived areas, patients are likely to be less mobile than in more affluent areas.
- 3.110 We have no additional comments to make at this time, but should the ICB wish to convene an oral hearing to determine this application, our client would wish to attend."

Enclosure Letter from Hilary Mitchell, Wakefield West Ward:

- 3.111 "I am an elected member of Wakefield MDC, representing Wakefield West ward in which the Lupset Health Centre is sited. I understand that there has been an application from [WM] (currently owner of Netherton and Middlestown pharmacies) to re-open the former Boots chemist inside the Lupset Health Centre.
- 3.112 Pharmaceutical services in Wakefield have been drastically cut back over the past 12-18 months. Lloyds Chemist in the Town Centre left a couple of years ago, since then Lloyds in Trinity Walk closed, Superdrug in the Ridings Shopping Centre closed, then Boots closed the pharmacies in Warrengate and Eastmoor, and finally Boots closed the pharmacy in the Lupset Health Centre. The only pharmacy left in the town centre is Boots in The Ridings Shopping Centre.
- 3.113 The most damaging closure has been the Lupset Health Centre pharmacy. The Health Centre is heavily used, many of its patients are elderly or children. It is a forty five minute walk from the Lupset estate to Wakefield town centre if you are fit and well. Car ownership is low in Lupset, and buses are unreliable. Parking in the town centre is expensive and not always easy to find. There is a small pharmacy on Horbury Road, but it cannot cope with the influx of new patients. Despite extra staff, going to Boots in the Ridings Shopping Centre, even if you have a text telling you your prescription is ready, invariably means a queue of fifteen - twenty minutes.
- 3.114 As a councillor, I have received numerous complaints about the lack of pharmacy provision in general in Wakefield. Re-opening the pharmacy in the Lupset Health Centre will relieve a lot of pressure and be most welcome. I hope you will support [Mr M's] application."
- 3.115 Enclosures: 14 completed questionnaires from patients. [See pages 4 – 17 of Appendix B for Committee].

4 **Summary of Representations**

This is a summary of representations received on the appeal.

4.1 THE COMMISSIONER

- 4.1.1 "Thank you for sharing representations received in response to this appeal. We would like to take this opportunity to make observations [sic] on the grounds for this appeal.
- 4.1.2 West Yorkshire ICB refused the application offering an unforeseen benefit on the grounds that the applicant had not met the requirements set out in Regulation 18 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.

- 4.1.3 As per the minutes of the PSRC held 27 March 2024, the committee considered the application in full, alongside all representations before its determination (refusal) - as outlined in the decision letter.
- 4.1.4 Having noted the additional information provided within this appeal, it is worth commenting that the applicant believes their application offers 'choice'.
- 4.1.5 I wish to highlight concerns in respect of some of the detail provided as part of the appeal and start with some of the comments made by Hilary Mitchell, Councillor for Wakefield West Ward. I would dispute that 'The only pharmacy left in the town centre is Boots in The Ridings Shopping Centre'. According to Google maps, the distance from this pharmacy and the next 2 nearest sit at a very short distance of 0.2 miles (5-minute walk). These being Union Square – Pharmacy Plus Health and Trinity – Pharmacy Plus Health and can be seen on Appendix I – map (copy provided 15/5/24 as part of providing all relevant material for this appeal). [See Map and Key for Committee]. In addition, Kingfisher Pharmacy sits at 0.3 miles (8-minute walk) from the Boots that is referred to. All of which, you would argue, are in or on the periphery of the town centre. In fact, the supporting information provided refers to Pharmacy Plus Health as a 'competing pharmacy', amongst two others and citing these as 'located within the town centre'.
- 4.1.6 In addition, 'buses are unreliable' appears to be a sweeping statement and provides no firm evidence to support this.
- 4.1.7 I would also highlight, dispensing figures available at that time, were reviewed as part of the determination of this application. It is noted in the appeal letter, and its' supporting information, that the dispensing figures have increased – as to be expected. However, whilst the dispensing figures have increased to 15,910 as at January 2024 (source: NHSBSA data) this is not suggestive that another pharmacy is required. There is no detail that patients are not receiving pharmaceutical services. It is appreciated that, for some patients, it may be more of an inconvenience to access pharmaceutical services elsewhere however West Yorkshire ICB believe there is still adequate provision.
- 4.1.8 There is also the question surrounding reference (Page 8) made to 'the three competitors above are all co-located with GP surgeries' and how 'some people may feel uncomfortable visiting pharmacies located in GP surgeries'. On what basis are these the three competing pharmacies? This implies there are no other pharmacies from which to choose to access pharmaceutical services other than ones that are co-located with a GP surgery.
- 4.1.9 The applicant is of the opinion that the current Wakefield PNA no longer reflects a true and accurate picture. This is noted however also highlights that of the four supplementary statements published these are based on fact following a closure and do not identify a need.
- 4.1.10 Based on the original application and information provided at the time West Yorkshire ICB is still satisfied that the correct decision was reached in relation to this application and would therefore ask that the appeal be dismissed."
- 4.2 COMMUNITY PHARMACY WEST YORKSHIRE ("THE LPC")
 - 4.2.1 "Thank you for your letter dated 21st May 2024 concerning the above application.
 - 4.2.2 Community Pharmacy West Yorkshire members still feel that their comments made in their letter to [SM] on 29th December 2023 are valid. These were as follows.

- 4.2.2.1 Members noted that this was an application for “unforeseen benefits” and fell to be considered under the provisions of Regulation 18 of the National Health Service (Pharmaceutical Services) Regulation 2013.
- 4.2.2.2 Community Pharmacy West Yorkshire members would like to make the following observations:
- 4.2.2.3 Wakefield PNA (2022-2025) was published in September 2022. Since then, the population of Wakefield has grown significantly and is predicted to continue doing so with local housing projects such as City Fields development.
- 4.2.2.4 Two supplementary statements have been issued by Wakefield HWB recently within the WF1 postcode as a result of the two recent closures. SS01 issue date 2nd August 2023 as a result of the closure of FET05 Lloyds Pharmacy, Sainsburys, Lower Trinity Walk, Marsh Way, Wakefield WF1 1QQ a 100hrs Pharmacy. The second being SS03 issue date 6th October 2023 and relates to the closure of FJX61 Boots Pharmacy, 64a Windhill Road, Eastmoor, Wakefield WF1 4SD.
- 4.2.2.5 Two other Pharmacy closures have also taken affect in the city centre WF1 postcode within the last 12 months. Superdrug, 12 All Saint’s Walk, The Ridings, Wakefield, WF1 1US and Boots Pharmacy, 82-84 Upper Warrengate, Peterson Road, Wakefield, WF1 4JZ.
- 4.2.2.6 The Boots store currently located at Wakefield New Lupset Medical Centre, George-A-Green Court, Wakefield, West Wakefield, WF2 8FE is due to close on 8th March 2024.
- 4.2.2.7 The application does not have a floor plan, as they are yet to secure a premises, however they have stated it will contain a consultation room to meet the terms of service. They have expressed their intent to provide advanced pharmacy services.
- 4.2.3 Members wish these comments to be taken in to consideration by the Authority and wish to be notified of the decision.”

4.3 WAKEFIELD HEALTH AND WELLBEING BOARD

- 4.3.1 “The decision by the West Yorkshire Pharmaceutical Services Regulation Committee to refuse the above application has been appealed to NHS Resolution. Wakefield Health and Wellbeing Board would like to submit the below representations, in addition to those submitted as part of the original consultation on the application.

Reasonable Choice

- 4.3.2 The main points of the appeal relate to the fact that the Applicant disagrees with the Committee’s conclusion that “there remains adequate choice within the area” of Lupset, and the Applicant makes some valid points around the positioning of the alternative pharmacies and the travel times involved should people wish to use an alternative to the remaining Horbury Road Pharmacy.
- 4.3.3 The question of adequate choice is different for different types of people, and as we covered in our original representations there are large sections of the Lupset community who are less mobile either due to lack of access to a car (30% with no access to a car), reduced mobility due to health conditions (21% have a disability that limit their daily activities to some extent), or limited funds to pay for transport. Lupset is one of the most deprived neighbourhoods within the district and consequently what is considered a viable option or choice is

different compared to a more affluent community who have more means, funds and time to consider alternatives further afield. The Health and Wellbeing Board does consider that the granting of this application would create more reasonable choice for the people of Lupset.

Provision of enhanced services

- 4.3.4 Within the appeal documentation, the applicant refers to the provision of supervised consumption and a needle exchange service. The Health and Wellbeing Board would welcome the addition of a pharmacy willing to provide these services, as well as other enhanced services such as Emergency Hormonal Contraception (EHC). Lupset has the highest rate of teenage pregnancy within the district, with 2.2% of births to teenage mothers (0.8% district average). Lupset also has a higher-than-average rate of drug treatment service users, therefore the demand for these services is higher.
- 4.3.5 Pharmacies also play an important role as a community asset, being a place where residents can seek advice and guidance, or providing a space where people can develop networks of trust and support. They play a pivotal role in prevention and public health, being a place that members of community often visit and where making every contact count can improve and protect health. In order to fulfil this vital role, it is important that pharmacies are not over worked from a dispensing activity perspective and are sufficiently supported by commissioning organisations.

The Wakefield Pharmaceutical Needs Assessment

- 4.3.6 The Health and Wellbeing Board wishes to clarify its position in relation to comments in the appeal documentation in relation to the Pharmaceutical Needs Assessment (PNA).
- 4.3.7 The Applicant refers to two supplementary statements that have been issued following closures of two other pharmacies within the Wakefield City area, stating that "Neither of these statements identified a current need based on recent closures". The statutory guidance is quite clear that a supplementary statement can only be a statement of fact, outlining the details around the pharmacy that has closed, the hours it was open and the services it provided. A supplementary statement should not make any assessment of the impact the change may have on the need for pharmaceutical services. By issuing these two statements the Health and Wellbeing Board has provided an update about the availability of services within those areas i.e. a change in provision but not an update about the need for pharmaceutical services.
- 4.3.8 The Health and Wellbeing Board have not issued a supplementary statement in relation to the closure of the Boots Pharmacy in Lupset. After each closure notice, a working group decides what course of action is required. An important assessment to make is: if the closing pharmacy had not been there at the time of writing the PNA, would a gap have been identified? On this occasion it was considered that as there is an alternative pharmacy within 250m of the closing pharmacy, it is unlikely any gap would have been determined at the time of writing the PNA.
- 4.3.9 The appeal also states that they believe the PNA is largely irrelevant to this application and no longer reflects an accurate picture of pharmaceutical services in Wakefield. As part of the PNA publication, there is a detailed map showing the current provision of services across the district. This is kept up to date anytime a change occurs: [PNA Distribution of Services - Wakefield District JSNA \(wakefieldjsna.co.uk\)](https://www.wakefieldjsna.co.uk) The PNA is an assessment of the need for pharmaceutical services across Wakefield and remains a relevant reflection of this need."

In a letter (undated) to PCSE Wakefield Health and Wellbeing Board stated:

- 4.3.10 “The West Yorkshire ICB has received the following unforeseen benefits application (ref: CAS-261784-V4M7C0):
- 4.3.11 Application by WMM Ltd (the applicant) to open a pharmacy within 150m radius of the closing Boots store located at Wakefield New Lupset Medical Centre, George-A-Green Court, Wakefield, West Wakefield, WF2 8FE.
- 4.3.12 Please consider the contents of this document as the representations from the Wakefield Health and Wellbeing Board.
- 4.3.13 The application makes repeated references to the upcoming closure of the Boots Pharmacy located within Lupset Medical Centre. As a result we will try to outline our assessment of that closure as part of these representations.

The Lupset Community

- 4.3.14 Lupset is one of the most deprived neighbourhoods in Wakefield District, in which 1 in 4 children live in poverty. The neighbourhood is home to around 13,250 people, whose health is generally poorer than average. In the 2023 Adult Population Health Survey, 60% of residents in Lupset stated that they had a health condition or illness lasting, or expected to last, 12 months or more. This indicates that there is likely to be a high demand for pharmaceutical dispensing services within the locality.
- 4.3.15 The chart below shows the population structure of the Lupset Neighbourhood, where it can be seen that there is a larger than average population of children (0-19) living in Lupset. There is an estimated 20% of the population from an ethnic minority background, indicating a diverse area with lots of different health and language needs.
- 4.3.16 [See graph on page 1 of Appendix C for Committee].
- 4.3.17 The Wakefield JSNA neighbourhood profile for Lupset shows that residents of Lupset generally have poorer health outcomes and higher prevalence of risk factors. Around 25% of adults are smokers (Wakefield average 18.8%), 42% of adults are obese (Wakefield average 41%) and 20% are diagnosed as having depression (Wakefield average 14.5%). This poorer level of health indicates the importance of having a good level of choice and provision of pharmaceutical services within the area.

Current Provision

- 4.3.18 As explained in the application, Lupset currently has two community pharmacies (see map below), however the Boots store is due to close at the end of March.
- 4.3.19 As can be seen on the map, [See map on page 2 of Appendix C for Committee] the two pharmacies in Lupset are close together with a walking time between the two of approximately 5 minutes. Outside of the two pharmacies in Lupset, the nearest alternatives are the Boots branch in Flanshaw, the two pharmacies in Horbury, or several pharmacies in the city centre. The two pharmacies to the northwest of Lupset are a distance selling pharmacy and a dispensing appliance contractor, so are not considered direct alternatives.
- 4.3.20 In terms of opening times, the closing Boots branch and the remaining Horbury Road pharmacy offer very similar opening times, with the Horbury Road pharmacy also offering Saturday opening times which the Boots branch does

not. Therefore, we do not expect to see a reduction in the availability of pharmaceutical services in the area.

4.3.21 In terms of enhanced, advanced, and locally commissioned services, the remaining Horbury Road pharmacy offers the same services as the closing Boots branch, so there is no expected loss of service in the area.

4.3.22 In the six months between May and October 2023, the two pharmacies in Lupset both had high levels of dispensing activity (see table below).

Pharmacy Code	Pharmacy Name	May	Jun	Jul	Aug	Sep	Oct
FER20	Horbury Road Pharmacy	11,717	10,408	10,786	10,817	10,948	11,734
FMN67	Boots Pharmacy	12,419	13,134	11,846	12,553	12,185	12,836
	Total	24,136	23,542	22,632	23,370	23,133	24,570

Access

4.3.23 The proposed site for the new pharmacy is “within 150m radius of the closing Boots store located at Wakefield New Lupset Medical Centre, George-A-Green Court, WF2 8FE”. A more precise location would be beneficial to the application. The outer edge of this radius could put the new pharmacy almost next to the existing Horbury Road Pharmacy.

4.3.24 **Walking times from the closing Boots pharmacy (centre of proposed site for application):** [See map on page 3 of Appendix C for Committee].

4.3.25 **Public Transport travel times from the closing Boots pharmacy (centre of proposed site for application):** [See map on page 4 of Appendix C for Committee].

4.3.26 As the maps show, the proposed site provides a good level of access for residents who wish to walk to the pharmacy or access it via public transport, however the proximity to an already existing pharmacy does not suggest that it creates improvements in access, rather the addition of greater choice.

Summary

4.3.27 The neighbourhood of Lupset is one that has significant health needs and a large population that can only benefit from greater provision of pharmaceutical services.

4.3.28 The closing Boots pharmacy is not expected to create any loss in provision of specific pharmacy services or opening times, due to the services and opening hours offered by the Horbury Road pharmacy.

4.3.29 Had the Boots pharmacy not been open at the time of writing the PNA, it is unlikely that the PNA would have identified a gap in provision, due to the availability of existing pharmacies within the local area. However, the closing pharmacy does currently dispense a greater than average amount of prescriptions each month and will create significant extra demand upon local

pharmacies in the area, especially Horbury Road pharmacy. We are unable to say how well these pharmacies are able to deal with this additional demand.

4.3.30 The application could benefit from a more precise identified location.

4.3.31 If this application were to be approved, it would provide greater choice for the residents of Lupset.”

5 Observations

5.1 PHARMACY SALES & CONSULTANCY REPRESENTING WWM PHARMA LTD

5.1.1 “We continue to act on behalf of WMM Pharma Ltd and refer to your e-mail dated 25th June attaching representations from the interested parties.

5.1.2 On behalf of our client, we wish to respond as follows:

5.1.3 NHS West Yorkshire ICB Letter dated 29th May

5.1.4 The ICB states that “*the applicant believes their application offers choice*” which is of course correct. Presumably the ICB do not agree, however it is our strongest view that the closure of the Boots store has led to a single pharmacy in the area serving a population of approx. 13,000 people. All other pharmacies are at least a mile distant and with low car ownership many residents are struggling to access those services.

5.1.5 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.

5.1.6 In addition to the Boots pharmacy at Lupset Medical Centre closing, four other pharmacies have closed in the Wakefield area over the last 12 months or so further reducing patient choice.

5.1.7 The ICB have commented on the letter from Hilary Mitchell, Councillor for West Wakefield Ward dated 8th May (originally attached as Appendix 5 to our letter of appeal). [See paragraphs 3.111 to 3.114 above].

5.1.8 Neither we nor our client had any input into this letter. We would probably agree that the three pharmacies mentioned by the ICB in addition to the Boots store would be classified as being in the town centre. However, our argument is that these are some distance from our client’s application and are not easily accessible, especially for those without a motor vehicle.

5.1.9 The ICB have commented on prescription numbers for Horbury Pharmacy which is the closest pharmacy to the proposed site. This pharmacy was dispensing in the region of 10,500 items/month prior to the closure of the Boots pharmacy at Lupset Medical Centre.

5.1.10 Below is a graph taken from Pharmdata showing the latest dispensing pattern for Horbury Pharmacy: [See graph on page 1 of Appendix D for Committee].

5.1.11 As can be seen the increase in scripts since the Boots closure is significant. The dispensing numbers for February and March 2024 were 15,242 and 18,362 respectively. The increase in script numbers looks to be dramatic and ongoing.

- 5.1.12 The March figure shows an approx. 75% increase on the dispensing figures for the pharmacy prior to the Boots closure. That is significant and approx. 2.5 times the national average. There is little doubt a second pharmacy in the area would offer choice.
- 5.1.13 The comment from the ICB in relation to “competing pharmacies” may have been a misinterpretation. We were simply pointing out that with the exception of Horbury Pharmacy the next nearest contractors are all some distance away, within GP surgeries and serving different populations so do not really offer Lupset residents’ alternative choice.
- 5.1.14 In terms of the PNA, it was published in 2022 and at that time took into account the five pharmacy contractors which have subsequently closed so in our view it no longer reflects a true picture. The Supplementary statements did not identify a need, but our view is that there is now a gap in services within the Lupset area hence the application was made under Regulation 18.
- 5.1.15 Community Pharmacy West Yorkshire Letter dated 13th June
- 5.1.16 The LPC have chosen just to reiterate/repeat their original comments. They neither support or oppose the application and therefore we have no further comment to make except that our client confirms the pharmacy will include a suitable, fit for purpose consultation room should his application be successful.
- 5.1.17 Wakefield Health & Wellbeing Board-letter June 2024
- 5.1.18 The HWB have made three additional points we would like to address.
- 5.1.19 *Reasonable Choice*
- 5.1.20 Clearly the HWB have carefully considered the question of choice. They have taken into account that Lupset is a deprived area with low car ownership, there are residents with reduced mobility, limited funds for transport etc and concluded the granting of this application **would create more reasonable choice for the people of Lupset.**
- 5.1.21 Our client agrees with their conclusion.
- 5.1.22 *Provision of Additional Services*
- 5.1.23 The HWB state they would welcome services such as supervised consumption, needle exchange, EHC etc in the Lupset area of Wakefield. As stated in our appeal our client has spoken with the Local Drug Addict Team (DAT) with a view to offering appropriate services should his application be approved.
- 5.1.24 Our client has an existing pharmacy in the Wakefield area and offers these services from that branch. He already has an excellent ongoing relationship/track record with the local DAT team. He has confirmed he would happily set up a meeting with them to discuss their exact requirements should the application be approved, and would be very keen to work closely with the DAT.
- 5.1.25 Interestingly the HWB also state “*it is important pharmacies are not overworked from a dispensing activity perspective*”. As can be seen from earlier in this document Horbury Road Pharmacy dispensed in excess of 18,000 items in March so it would seem reasonable to conclude the HWB would be supportive of a second pharmacy in the area potentially spreading the dispensing work load and offering the services mentioned above.

5.1.26 *Wakefield PNA*

5.1.27 The HWB have correctly confirmed that there have been Supplementary Statements issued following various pharmacy closures in the Wakefield area. Therefore, our client is correct in submitting an application under Regulation 18.

5.1.28 May we request that these observations are taken into account by the committee when making their decision in relation to this application.”

6 **Consideration**

6.1 The Pharmacy Appeals Committee (“the Committee”), appointed by NHS Resolution, 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 Applicant, in its application stated “*Horbury Road Pharmacy. 186 Horbury Road WF2 8QB approx. 0.3 miles distant. Regulation 31 does not apply*”. The Committee noted this was not disputed by parties on appeal or in subsequent representations. The Committee was of the view that this criteria was not met as the Applicant was not providing pharmaceutical services in adjacent premises and the application is on the basis of a best estimate location.

6.7 The Committee was therefore 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 Wakefield 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 29 September 2022 and that supplementary statements had been issued on 2 August 2023, 7 October 2023 and 15 November 2023.

6.14 The Committee noted the PNA Executive summary on page 5 states:

6.14.1 *"The PNA has found that the provision of pharmaceutical services in the Wakefield Metropolitan District area meets the current and future needs. The district is well provisioned in number and accessibility of community pharmacies, both within the district boundary and within reasonable travel distance outside the district boundary.*

6.14.2 *Given the population growth and increased long term health condition demand, the Wakefield Metropolitan District area must remain vigilant to the demand on community pharmacy. Supplementary statements to the PNA will be made if the provision of pharmaceutical services changes."*

6.15 The "Main findings" on page 6 of the PNA were:

6.15.1 *"The PNA concludes:*

6.15.1.1 *There are no current gaps in the provision of necessary pharmaceutical services in the area of the Health and Wellbeing Board.*

6.15.1.2 *There are no gaps in the need for necessary services in specified future circumstances in the area of the Health and Wellbeing Board.*

6.15.1.3 *There are no current gaps in the provision of other relevant services in the area of the Health and Wellbeing Board.*

6.15.1.4 *There is a reasonable and adequate choice of pharmacies and pharmaceutical services in all areas of Wakefield.*

6.15.1.5 *The PNA has not identified any future needs which could not be met by pharmacies already currently on the pharmaceutical list which would form part of its commissioning intentions.*

6.15.1.6 *There are no gaps in provision that would, if provided either now or in future specified circumstances, secure improvements or better access to essential, advanced, or enhanced services."*

6.16 The Committee noted that each of the three supplementary statements, written in response to earlier closures of pharmacies, concludes:

6.16.1 *"The Wakefield Health and Wellbeing Board deemed that a revised PNA would be a disproportionate response to the changes outline in this Supplementary Statement."*

6.17 The Committee noted that the Applicant seeks to provide unforeseen benefits to the patients of Lupset. 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.

- 6.18 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)

- 6.19 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"

- 6.20 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.

- 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 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.

- 6.24 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)

- 6.25 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)

- 6.26 The Committee noted the application was prompted by the expected closure of Boots pharmacy which was located within the proposed best estimate address. Boots pharmacy subsequently closed in March 2024. The Applicant states *"We are unaware of the reasons for Boots deciding to close the pharmacy but there is a large resident population living in the immediate area of the proposed location who are heavily reliant on a pharmacy in the area to cater for their health needs and medication. The existing Boots pharmacy is located in an established GP surgery....."* 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.
- 6.27 The Applicant, in its application, states that the Boots pharmacy *"dispenses in the region of 11,500-12,000 NHS items/month which is well in excess of the national average."* The Applicant also states that Horbury Road Pharmacy *"is within 250m of the closing Boots store and dispenses around 10,500 items/month again above the national average."* And *"Once the Boots has sold that entire residential estate will be reliant on a single contractor."* The Applicant has provided some tables showing the items issued by Lupset Medical Practice and the numbers of prescriptions dispensed by the closing Boots pharmacy and Horbury Road Pharmacy. Whilst accepting that since the Boots pharmacy has been winding down since January 2024 Horbury Park Pharmacy has seen an increase in items it dispenses with circa 18,000 by March 2024, the Committee was mindful that not all of the items dispensed at the former Boots pharmacy have transferred to Horbury Road Pharmacy indicating that the remainder have been absorbed within other pharmacies in the area. The Committee however has not been provided with dispensing figures for the other pharmacies in the local area so it cannot deduce which pharmacies have also seen an increase in dispensing figures since the closure of Boots. Whilst the capacity of existing providers to meet demand was a relevant factor, 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.
- 6.28 The Applicant, in its application states that *"Once the Boots has sold, that entire residential estate will be reliant on a single contractor"* [Horbury Road Pharmacy] and that this pharmacy is within 250 metres of the closing Boots pharmacy. *"The pharmacy is located on the busy Horbury Road and as a result it is difficult to park. It does have spaces for a couple of cars on the forecourt but if they are taken it is very difficult/dangerous to park close to the pharmacy on Horbury Road itself so people will need to park in side streets and then walk to the pharmacy."* The Committee noted what the Applicant had said with regard to its proposed location, which would be 150 metres radius of the closing Boots pharmacy *"There is plenty of free and available parking in the area and these facilities cater for residents every day requirements without the need to travel out of the area."* The Committee was of the view therefore that patients currently choosing to use pharmaceutical services at Horbury Road Pharmacy would also be able to avail themselves of the free and available parking to which the Applicant has itself referred to even if not directly outside the existing pharmacy.

- 6.29 The Applicant has also described the distances and time taken to walk to the next four of the nearest pharmacies, Boots on Homestead Drive, Well Pharmacy, Pharmacy Plus Health and Wakefield Pharmacy, which it is noted are between 1.1 to 2 miles away. The Applicant has described bus services to the four pharmacies and the walk required either side of the bus journey in order to access the next four nearest pharmacies. The Applicant acknowledges there are pharmacies further away but the Applicant considered these to be irrelevant *"to this application due to the distance from the proposed site. In addition, they clearly serve different populations in established settings."* The Applicant is of the view that none of the four pharmacies are particularly accessible without access to a motor vehicle. The Committee noted the supporting letter from the local councillor stating that buses are unreliable. The Commissioner is of the view that these comments regarding the buses *"appears to be a sweeping statement."* There are also references to the deprivation in the area but no information was provided to show the cost of using public transport. The Committee was of the view that for those reliant on public transport there was no substantiating information provided to show that patients were currently experiencing any difficulties in accessing the existing pharmaceutical provision.
- 6.30 The Committee noted that no information had been provided, other than distance alone, to demonstrate that for those who are willing and able, that patients were having difficulty accessing existing pharmaceutical provision on foot.
- 6.31 The Applicant states that there is a relatively low level of car ownership which means that many will rely more on local facilities. However the Committee was of the view 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.
- 6.32 In its representations, *"The Health and Wellbeing Board does consider that the granting of this application would create more reasonable choice for the people of Lupset."* The Committee noted the HWB also stated that it had not issued a supplementary statement in relation to the closure of the Boots Pharmacy in Lupset. The HWB stated that *"on this occasion it was considered that as there is an alternative pharmacy within 250m of the closing pharmacy, it is unlikely any gap would have been determined at the time of writing the PNA."* In its earlier representation to the Commissioner, the HWB stated *"As the maps show, the proposed site provides a good level of access for residents who wish to walk to the pharmacy or access it via public transport, however the proximity to an already existing pharmacy does not suggest that it creates improvements in access, rather the addition of greater choice."* Summarising that *"If this application were to be approved, it would provide greater choice for the residents of Lupset."*
- 6.33 The Committee considered that 'greater' choice is not the consideration as referred to in the Regulations rather it is a consideration of reasonable choice. Based upon 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.
- 6.34 In considering Regulation 18(2)(b)(ii) the Committee reminded itself that it was required to address itself to people who share a protected characteristic under the Equality Act 2010 (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation) having access to services that meet specific needs for pharmaceutical services that, in the relevant area, are difficult for them to access. The Applicant, in its application, states with regard to residents that *"If they are elderly, in poor health or have mobility issues, for example, the journey they face to access alternative pharmaceutical services would be much more difficult than first appears."* In its appeal, the Applicant provided a table with demographic figures for Wakefield compared to England noting *"In terms of disability,*

again the above table paints a picture of an area where more people live with day-to-day activities limited a lot and a little, than the national average". 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.

- 6.35 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.
- 6.36 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

- 6.37 The Applicant is proposing to provide core hours, Monday to Friday, from 8.45 am to 12.45 pm and 2.45 pm to 6.15 pm and Saturday from 9 am to 11.30 am. 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.
- 6.38 The Applicant stated, "*we understand patients have complained of long waiting times and an inability to get through to the [Horbury Road] pharmacy by phone.*" The Councillor in its letter of support noted "*I have received numerous complaints about the lack of pharmacy provision in general in Wakefield.*" In support of these statements, the Applicant said it had "*spoken to some local residents of Lupset to gauge their response to the Boots closure and these responses.*" which it asserted supported a finding that "*there is general dissatisfaction following the closure of Boots and a high level of support for a second pharmacy in the area.*" The Applicant had provided 14 completed questionnaires in this regard. The Committee noted that the Applicant had, in its appeal stated, "*The closure of the Boots store has meant that only one pharmacy (Horbury [Road] Pharmacy) serves a community of around 13,000 residents.*". The Committee, whilst respectful of the views of the 14 residents asked to complete the questionnaire, considered that the views of 0.1% of the 13,000 residents to which the Applicant has referred to, could not be considered a representative finding of dissatisfaction.
- 6.39 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.
- 6.40 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

- 6.41 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).

- 6.42 No deferral or refusal under Regulation 18(2)(f) was required in this case.
- 6.43 The Committee had regard to Regulation 18(2)(g) and found no reason that would require it to refuse the application.
- 6.44 The Committee considered whether there were any further factors to be taken into account and concluded that there were not.
- 6.45 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.
- 6.46 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 6.46.1 confirm the Commissioner's decision;
 - 6.46.2 quash the Commissioner's decision and redetermine the application;
 - 6.46.3 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.
- 6.47 As the Commissioner did not make a finding specifically on Regulations 18(2)(a)(i) or 18(2)(a)(ii), the Committee determined that the decision of the Commissioner must be quashed.
- 6.48 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.
- 6.49 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.
- 6.50 The Committee concluded that further notification under paragraph 19 of Schedule 2 would not be helpful in this case.

7 DECISION

- 7.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of the Commissioner, for the reasons given above, and redetermines the application.
- 7.2 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.
- 7.3 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;
- 7.4 The Committee determined that the application should be refused on the following basis:

- 7.4.1 In considering whether the granting of the application would confer significant benefits, the Committee determined that –
 - 7.4.1.1 there is already a reasonable choice with regard to obtaining pharmaceutical services;
 - 7.4.1.2 there is no evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services; and
 - 7.4.1.3 there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services;
- 7.4.2 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.

Case Manager
Primary Care Appeals