

3 July 2024

**REF: SHA/26224**

**APPEAL AGAINST LEICESTER, LEICESTERSHIRE & RUTLAND INTEGRATED CARE BOARD (ICB) DECISION TO REFUSE PD & CO PHARMA LTD APPLICATION OFFERING TO MEET AN IDENTIFIED FUTURE NEED AT THE THORPEBURY DEVELOPMENT AKA THE NORTH EAST LEICESTER SUSTAINABLE URBAN EXTENSION, BARKBY THORPE, LEICESTERSHIRE**

8<sup>th</sup> Floor  
10 South Colonnade  
Canary Wharf  
London  
E14 4PU

Tel: 0203 928 2000  
Email: [nhsr.appeals@nhs.net](mailto:nhsr.appeals@nhs.net)

## 1 Outcome

- 1.1 In accordance with paragraph 2 of Schedule 3 the Committee dismisses the appeal as it is of the view that it contains no reasonable grounds of appeal.

A copy of this decision is being sent to:

PD & CO Pharma Ltd - Applicant  
PCSE on behalf of Leicester, Leicestershire & Rutland ICB

## Advise / Resolve / Learn

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



REF: SHA/26224

8<sup>th</sup> Floor  
10 South Colonnade  
Canary Wharf  
London  
E14 4PU

Tel: 0203 928 2000  
Email: [nhsr.appeals@nhs.net](mailto:nhsr.appeals@nhs.net)

**APPEAL AGAINST LEICESTER, LEICESTERSHIRE & RUTLAND INTEGRATED CARE BOARD (ICB) DECISION TO REFUSE PD & CO PHARMA LTD APPLICATION OFFERING TO MEET AN IDENTIFIED FUTURE NEED AT THE THORPEBURY DEVELOPMENT AKA THE NORTH EAST LEICESTER SUSTAINABLE URBAN EXTENSION, BARKBY THORPE, LEICESTERSHIRE**

**1 The Decision**

The ICB considered and decided to refuse the application. The decision letter dated 9 May 2024 stated:

Covering letter

- 1.1 “Leicester, Leicestershire and Rutland 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.
- 1.2 You have a right of appeal to the Secretary of State against Leicester, Leicestershire and Rutland ICB’s decision. Should you choose to appeal then either complete the online form available on the NHS Resolution website or send a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this letter to [nhsr.appeals@nhs.net](mailto:nhsr.appeals@nhs.net) or:

Primary Care Appeals  
NHS Resolution  
8th Floor  
10 South Colonnade  
Canary Wharf  
London  
E14 4PU”

Decision report

- 1.3 **“Application offering to secure future needs – PD & CO Pharma Ltd, District Centre, Thorpebury in Limes, Leicester, LE7 3QP CAS-218598-W6Z8B7**
- 1.4 PD & CO Pharma Ltd have made an application offering to meet a future need for pharmaceutical services at the proposed location, with the District Centre of Thorpebury in Limes, Leicester, LE7 3QP being identified as a best estimate of the proposed premises.

Application summary by Applicant

- 1.5 The applicant is applying to secure a future need within the Thorpebury Development (additionally referred to as the ‘North East Leicester Sustainable Urban Extension), comprised of 4,500 new houses, 13 hectares of land for employment use, a new district centre with a supermarket and community facilities, two local centres with shops and services, new primary schools, provision for a secondary school, sports facilities, open spaces, play areas, allotments and site for travellers and travelling show people.

## Pharmaceutical Needs Assessment (PNA)

- 1.6 The PNA published in October 2022 does not identify a gap or future need. Since the publication of the PNA Leicestershire Health and Wellbeing Board in conjunction with the Local Authority have not issued any supplementary statements.

## Provision

- 1.7 Over 91% of the population live within a five-minute drive time of a pharmacy or dispensing GP practice and 0.3% of the population are over a fifteen minute drive away.
- 1.8 There are two pharmacies within a 1-mile radius with both pharmacies having core opening hours from 09:00-18:00/18:30. There are a further seven pharmacies within a 2-mile radius with the closest being 1.2 miles from the best estimate (three have core opening hours 09:00-21:00 and four have core opening hours 09:00-at least 18:00). There is also the provision for registration with a Distance Selling Pharmacy to dispense and deliver medication.

## Relevant regulations

- 1.9 Regulation 15 - Future Needs: Additional Matters to which the Commissioner must have regard.
- 1.10 Regulation 16 – Consequences of additional matters
- 1.11 Regulation 31 – refusal: same or adjacent premises
- 1.12 Regulation 32 – deferral arising out of LPS designations
- 1.13 Schedule 2, Part 5 Regulation 31 – conditional grant of applications where the address of the premises is unknown
- 1.14 Regulation 41 – Applications for new pharmacy premises in a controlled locality; reserved locations
- 1.15 Regulation 44 – Prejudice test in respect of routine applications for new pharmacy premises in a part of a controlled locality that is not a reserved location

## Regulation 15

- 1.16 Though the application meets Regulation 15(1a) it fails to meet regulation 15(1b) as the future need is not included in the relevant Pharmaceutical Needs Assessment in accordance with paragraph 2(b) of Schedule 1.

## Regulation 31

- 1.17 The application should not be refused on this regulation as no person on the pharmaceutical list is providing or has undertaken to provide pharmaceutical services from:

1.17.1 Premises to which the application relates or

1.17.2 Adjacent premises

## Regulation 32

- 1.18 This regulation is not relevant to this application as the pharmacy is not a LPS contracted pharmacy.

#### Schedule 2, Part 5 Regulation 31

- 1.19 The best estimate taken for this application would be the District Centre, if the application was granted the pharmacy would need to provide an address within six months.

#### Regulation 41

- 1.20 This regulation is not relevant to this application as the best estimate is not in a reserved locality.

#### Regulation 44

- 1.21 This regulation is not relevant as the best estimate is not in a controlled locality.

#### Conclusion

- 1.22 The application was [sic] Committee noted the above points and determined to **refuse** this application pursuant to regulation 15(1b) as the future need is not included in the relevant pharmaceutical needs assessment in accordance with paragraph 2(b) of Schedule 1 and on the basis that.[sic]

1.22.1 The PNA published October 2022 does not identify a gap or a future need. Since the publication of the PNA the Health and Wellbeing Board in conjunction with the local authority have not issued any supplementary statements.

1.22.2 There are a large number of pharmacies with a good geographical spread and a mix of core opening hours within 2 miles of the best estimate [sic]

#### Appeal Rights

- 1.23 The applicant has a right of appeal."

## 2 The Appeal

In a letter dated 2 June 2024 addressed to NHS Resolution, PD & CO Pharma Ltd ("the Applicant") appealed against the ICB's decision. The grounds of appeal are:

- 2.1 "I am writing to formally appeal against the recent decision made by the PCSE market entry committee regarding my application, which was denied on the grounds of submitting the incorrect form.
- 2.2 The Committee determined to refuse this application pursuant to regulation 15(1b) as the future need is not included in the relevant pharmaceutical needs assessment in accordance with paragraph 2(b) of Schedule 1 and on the basis that.[sic]
- 2.2.1 The PNA published October 2022 does not identify a gap or a future need. Since the publication of the PNA the Health and Wellbeing Board in conjunction with the local authority have not issued any supplementary statements.
- 2.3 On 26<sup>th</sup> March 2023 (ME2584), I submitted an application under the "Future Need" category. However, I have since been informed that my application was rejected because it should have been submitted under the "Unforeseen Benefit" category.
- 2.4 I acknowledge the oversight in selecting the wrong category and submitting the incorrect form. This was an unintended error, and I deeply regret any inconvenience it may have caused. In light of this, I respectfully request that the NHS consider my appeal and allow my application to be processed under the correct category.

- 2.5 I have resubmitted the correct "Unforeseen Benefit" application as of 13<sup>th</sup> May 2024 (ME3443).
- 2.6 The matter at hand is of significant importance to me. The approval of this application is essential to serve the public of Thorpebury and the surrounding areas by meeting their pharmaceutical needs and providing easy access to medical care. This application is crucial for ensuring that the local community has reliable access to necessary medications and medical services, which will greatly benefit public health and well-being.
- 2.7 The timely approval of this application will significantly impact my ability to effectively support the health and medical needs of the community. Given my circumstances, I believe that the information and documentation provided are comprehensive and align with the criteria required for the application process.
- 2.8 I am committed to complying with all necessary procedures and would greatly appreciate the opportunity to rectify this situation promptly. I kindly request your understanding and reconsideration of my application.
- 2.9 To support my appeal, I have attached the following documents:
- 2.9.1 The originally submitted "Future Need" form.
- 2.9.2 The correctly completed "Unforeseen Benefit" form.
- 2.10 Thank you for your time and attention to this matter. I look forward to your positive response."

### 3 Consideration

- 3.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, had regard to Regulation 15 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations").
- 3.2 The application (which was to be determined in accordance with the procedures in Schedule 2) was submitted by the Applicant based on addressing future need for pharmaceutical services.
- 3.3 Regulation 15(1) which reads as follows:
- "(1) If—*
- (a) NHS England receives a routine application and is required to determine whether granting it, or granting it in respect of some only of the services specified in it, would meet a future need for pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB; and*
- (b) the future need has been included in the relevant pharmaceutical needs assessment in accordance with paragraph 2(b) 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)."*
- 3.4 The Committee noted that paragraph 2(b) of Schedule 1 states:

## **“2. Necessary services: gaps in provision**

*A statement of the pharmaceutical services that the HWB has identified (if it has) as services that are not provided in the area of the HWB but which the HWB is satisfied—*

*(b) will, in specified future circumstances, need to be provided (whether or not they are located in the area of the HWB) in order to meet a future need for pharmaceutical services, or pharmaceutical services of a specified type, in its area.*

- 3.5 The Committee noted Schedule 3, Part 1 paragraph 2 of the Regulations states:

### *Misconceived Appeals*

*2. If the Secretary of State, after considering a valid notice of appeal under regulation 45, 63 or 77 or paragraph 30, 32(5) of 36 of Schedule 2 against a decision, is of the opinion that the notice –*

*a) contains no valid grounds of appeal (for example, because it amounts to a challenge to the legality or reasonableness of a HWB's or PCT's pharmaceutical needs assessment, or to the fairness of the process by which the HWB or a PCT undertook that assessment); or*

*(b) contains no reasonable grounds of appeal (for example, where it is vexatious or frivolous),*

*the Secretary of State may determine the appeal by dismissing it (without proceeding to notify the appeal under Part 2).*

- 3.6 The Committee considered the appeal in accordance with paragraph 2 of Schedule 3, misconceived appeals, as quoted above.
- 3.7 The Committee noted that Regulation 15 is specific in the criteria an applicant must satisfy, if the future need application is to succeed.
- 3.8 The Committee noted the Applicant's application form dated 25 October 2023, clearly indicated that it is intended to meet an identified future need under Regulation 15.
- 3.9 The Committee noted the ICB's decision letter shows that it had considered the application in accordance with Regulation 15. The ICB determined to refuse this application on grounds that there is no future need identified in the PNA published in October 2022. Further, since the publication, the Health and Wellbeing Board in conjunction with the local authority have not issued any supplementary statements.
- 3.10 The Committee noted the Applicant's appeal letter includes *“I am writing to formally appeal against the recent decision made by the PCSE market entry committee regarding my application, which was denied on the grounds of submitting the incorrect form.”* and *“I acknowledge the oversight in selecting the wrong category and submitting the incorrect form. This was an unintended error, and I deeply regret any inconvenience it may have caused. In light of this, I respectfully request that the NHS consider my appeal and allow my application to be processed under the correct category. I have resubmitted the correct “Unforeseen Benefit” application as of 13th May 2024 (ME3443).”* The Applicant has not sought to challenge the ICB's decision that its application should be refused as there are no future needs identified in the PNA.
- 3.11 The Committee noted that the Applicant has openly acknowledged its own error in submitting the wrong application form to the ICB in relation to its proposed pharmacy. Further, it is not necessary for the Applicant to seek the Committee's permission for a revised application to be processed and considered. The Committee noted that the Applicant has now submitted an application to the ICB in accordance with Regulation

18 (Unforeseen benefits). This is now a matter for the ICB to process in accordance with the Regulations.

- 3.12 From the information before it, the Committee concluded that the Applicant has not provided grounds of appeal sufficient as to challenge the view that the application should be refused under the provisions of Regulation 15.

#### **4 Decision**

- 4.1 In accordance with paragraph 2 of Schedule 3 the Committee dismisses the appeal as it is of the view that it contains no reasonable grounds of appeal.

**Case Manager**  
**Primary Care Appeals**