

14 August 2024

REF: SHA/26212

APPEAL AGAINST SOMERSET ICB DECISION TO REFUSE AN APPLICATION BY MAGNA HEALTHCARE LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT MORSE ROAD SHOPS NORTON FITZWARREN, TAUNTON, TA2 6DG

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APPEAL AGAINST SOMERSET ICB DECISION TO GRANT AN APPLICATION BY VITASTOCK LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT MORSE ROAD SHOPS NORTON FITZWARREN, TAUNTON, TA2 6DG

1 Outcome

- 1.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, confirms the decision of the Commissioner to refuse the application of Magna Healthcare Ltd and grant the application of Vitastock Ltd.
- 1.2 The Committee noted that the Commissioner would now need to consider the issuing of a direction for the hours above 40 core hours which Vitastock Ltd had offered to provide.

A copy of this decision is being sent to:

Magna Healthcare Ltd
Healthcare Plus Consulting Ltd on behalf of Vitastock Ltd
PCSE on behalf of Somerset ICB

Advise / Resolve / Learn

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1 The Applications

By application dated 27 November 2023, Magna Healthcare Ltd applied to Somerset ICB (“the Commissioner”) for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at Morse Road shops, Norton Fitzwarren, Taunton, TA2 6DG. In support of the application it was stated:

1.1 In response to “Please provide the address or best estimate of the proposed premises” Magna Healthcare Ltd stated:

1.1.1 “The pharmacy will be located within the main commercial area of Norton Fitzwarren Village, [sic] near the Orchard Medical Centre. The area highlighted in red in the attached map [see Appendix A] provides the best location estimate. B3227 Road (between Rectory Road and the bus stop pas Kingdom Lane), Coopers Mill (between B3227 and where Coopers Mill shoots off into two), Station Road (between B3227 and Morse Road), Morse Road (between B3227 and Station Road).”

1.2 Opening hours

1.3 Proposed core opening hours

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
09:00 – 18:00	09:00 – 18:00	09:00 – 18:00	09:00 – 18:00	09:00 – 18:00	Closed	Closed	45.00

1.4 Total proposed opening hours

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
09:00 – 18:00	09:00 – 18:00	09:00 – 18:00	09:00 – 18:00	09:00 – 18:00	Closed	Closed	45.00

1.5 In response to why the application should not be refused under Regulation 31, Magna Healthcare Ltd did not complete this.

Information in support of the application

1.6 “The Boots pharmacy located in Coopers Mill is closing in February 2024. This will leave the village of over 3,000 residents with no pharmacy. The village enjoys a wide variety of shops and amenities, including a GP practice, a large COOP, and several other shops. The closure of the only pharmacy in the village will mean the residents will have to travel to Taunton to access pharmaceutical services.

1.7 The proposed pharmacy will ensure that residents can have access to a wide range of pharmaceutical services in a timely and reasonable manner. Patients using the Orchard Medical Centre can have their medications dispensed without the need of having to commute to Taunton. The proposed new pharmacy will open longer (till 6pm) than the current Boots pharmacy (5:30pm) to provide coverage during the surgery opening hours.”

By application dated 28 December 2023, Vitastock Ltd applied to the Commissioner for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at Morse Road shops, Norton Fitzwarren, Taunton, TA2 6DG. In support of the application it was stated:

1.8 In response to “Please provide the address or best estimate of the proposed premises” Vitastock Ltd stated:

1.8.1 “Morse Road shops, Norton Fitzwarren, Taunton, TA2 6DG (& neighbouring postcodes)

1.8.2 For clarity, commercial units either side of the red line in the map below [see Appendix B]. Please take the red line to represent an outline of the relevant roads.

1.8.3 Relevant roads are

1.8.3.1 Coopers Mill

1.8.3.2 B3227

1.8.3.3 Station Road

1.8.3.4 Morse Road”

1.9 Opening hours

1.10 Proposed core opening hours

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
09:00 – 13:30 14:30 – 19:00	09:00 – 13:30 14:30 – 19:00	09:00 – 13:30 14:30 – 19:00	09:00 – 13:30 14:30 – 19:00	09:00 – 13:30 14:30 – 19:00	10:00 – 13:00	Closed	48

1.11 Total proposed opening hours

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
09:00 – 13:30 14:30 – 19:00	09:00 – 13:30 14:30 – 19:00	09:00 – 13:30 14:30 – 19:00	09:00 – 13:30 14:30 – 19:00	09:00 – 13:30 14:30 – 19:00	09:00 – 10:00 10:00 – 13:00	Closed	49

1.12 In response to why the application should not be refused under Regulation 31, Vitastock Ltd stated:

1.12.1 "N/A

1.12.2 Despite there being a pharmacy currently trading near the proposed site, the current pharmacy located at 1 Coopers Mill, TA2 6NX is due to close on 15th February 2024.

1.12.3 Should a new pharmacy contract ultimately be granted, there will no longer be a pharmacy trading from 1 Coopers Mill.

1.12.4 Thus, there will be no pharmacy trading from or adjacent to the proposed premises, so Regulation 31 does not apply."

Information in support of the application

1.13 "The Boots Pharmacy, 1 Coopers Mill, TA2 6NX was open with no plans for closure at the time of the PNA being written. This application is therefore submitted under Regulation 18 as an unforeseen benefits application.

1.14 An increase in local pharmacy capacity and improved choice to meet the needs of the local population. Better access to pharmaceutical services given the closure of Boots Pharmacy."

"Norton Fitzwarren New Contract Supporting Information

Background

1.15 This application is in respect of opening up a new pharmacy in order to provide better access for patients requiring access to pharmaceutical services in Norton Fitzwarren and the surrounding areas.

1.16 The best estimate of the proposed site we wish to open a new pharmacy is located on Morse Road parade of Shops, TA2 6DG. This is located in the heart of Norton Fitzwarren and is the site of the soon to be closed Boots Pharmacy, which is set to close from the 15th February 2024. We believe that the closure of the Boots will leave a significant gap in pharmaceutical services. Hence this application is offering unforeseen benefits not captured within the PNA.

1.17 There has been much furore surrounding the proposed closure of the Boots, with residents strongly petitioning for the need of a pharmacy in the local area. At the time of writing, 191 local residents have signed a petition in an attempt to save the current Boots. Should the Boots not be saved, then there will be an obvious gap in pharmaceutical services that this application proposes to fill.

1.18 We invite the committee to read the petition in full at: [Petition · Prevent the Closure of Boots Pharmacy in Norton Fitzwarren Village - United Kingdom · Change.org](#)

1.19 There are many comments highlighting the need for a pharmacy near the proposed location. These will be referenced further along in the application.

Proposed Location

1.20 The proposed location is situated amongst a busy parade of shops, conveniently placed for all residents within Norton Fitzwarren; Cotford St Luke; and the surrounding areas.

1.21 The thriving parade is home to a Co-operative supermarket; a Fish & Chips shop; a Charity shop; and a Veterinary centre. [see photographs at Appendix B]. These are typical shops that would be found within the local community; all with ample free parking; wide walkways; and good disabled access to local services. It is well served

by bus with the 25, 28, and 613 services stopping directly outside the proposed premises. There is good access by foot, car, and public transport.

- 1.22 We also note that the local medical practice is also situated amongst these shops. Orchard Medical Centre is a branch practice of St James Medical Centre with a combined patient list size of 16,500.
- 1.23 For patients accessing GP services, a pharmacy in this location would prove convenient for local residents.
- 1.24 As of the 2021 Census, Norton Fitzwarren housed 4,063 residents, and the neighbouring Cotford St Luke housed 2,642 residents. Thus, it can be supposed that the proposed site will be utilised by at least 6500 local residents.
- 1.25 [Map and photographs provided within the papers can be found at Appendix B.]

Regulations

- 1.26 We are required by NHS England to address the overarching question in an Unforeseen Benefits application:
- 1.27 *“Please describe the unforeseen benefit(s) that you are offering to secure and how it will secure improvements or better access to pharmaceutical services, or pharmaceutical services of a specified type in the HWB area”.*
- 1.28 When considering the above question, the provisions of Regulation 18(2)(b) should be noted: [Regulation 18(2)(b) quoted in full]
- 1.29 We note that points on reasonable choice; protected characteristics; and innovation are desirable, however, they are merely supporting considerations when determining whether in fact the overarching test in regulation 18(2)(b) has been met: an application should be granted should it provide improvements or better access to pharmaceutical services, or pharmaceutical services of a specified type in the HWB’s area.
- 1.30 For the benefit of the committee, this application does not seek to rely on Regulation 18(2)(b)(iii).
- 1.31 We have addressed these regulations overleaf.

Patient Journeys

- 1.32 Above we identified at least 6500 residents who would likely access pharmaceutical services at the proposed site. When considering securing better access, we must consider what a typical patient journey would currently look like. We also consider the reasonable choice within these journeys, alongside how those with protected characteristics find those journeys.
- 1.33 When assessing current patient journeys, it is important to highlight the significance of the soon to be closed Boots (part of the best estimate proposed site) being adjacent to Orchard Medical Practice.
- 1.34 It is difficult to determine the exact patient list size of Orchard Medical Practice due to its nature as a branch practice; however, we can see from September 2023 script capture rates that 76% of total pharmacy items of the soon to be closed Boots originate from these surgeries. Due to the distances involved, it is safe to assume that the vast majority of these items originate from Orchard Medical Practice; indicating that a lot of patients are accessing pharmaceutical services in connection with a visit to the GP. The imminent closure of the Boots means that those accessing pharmaceutical services in connection with a visit to the GP will soon have two journeys to make: the

first to the GP practice, and the second to the pharmacy. This should be kept in mind for the scenarios below.

- 1.35 Using the proposed site, TA2 6DG, as an arbitrary marker to represent these residents; we can see that the next nearest pharmacy (Staplegrove Pharmacy, TA2 6BD) is at least 1.2 miles away. It must be noted that distance in itself is a barrier to access. For residents currently residing near the proposed site, current pharmaceutical services are difficult to access by foot, car, and public transport.

By Foot from Proposed site to current nearest pharmacy (Staplegrove Pharmacy, TA2 6BD)

- 1.36 As can be seen from the map [in the map at Appendix B], this journey is 1.2 miles or 27 minutes, equating to a 54-minute round-journey. It is worth reiterating that distance in itself is a barrier to access and this journey length is clearly excessive, especially considering that Norton Fitzwarren is a built-up area.

- 1.37 We cannot consider a 2.4-mile round walk to access pharmaceutical services as sufficient access, nor can we consider this as having a reasonable choice to pharmaceutical services. In fact, for residents near the proposed site we would consider this as no pharmaceutical choice at all, much less than the threshold of 'reasonable choice'. Additionally, such an extended journey will prove difficult for the elderly, disabled, or for parents with young children – all of whom are groups who share protected characteristics. This sentiment is echoed by residents in the Boots petition.

1.37.1 *"This pharmacy is a life line to the person I care for, he has to sign for his prescription, he has no transport and can only walk small distances"*

1.37.2 *"My husband and I are in our eighties & use these pharmacy, [sic] we are reliant on it"*

1.37.3 *"I'm disabled and need this pharmacy..."*

- 1.38 Comments are centred around the elderly and disabled, and the obvious need for pharmaceutical provision at the proposed location. It is clear that those groups above who share protected characteristics will not have sufficient access by foot when the Boots, TA2 6NX, closes.

- 1.39 It should be noted that residents living to the west of the proposed site, toward Cotford St Luke, can experience an even longer round journey to access pharmaceutical services. Some residents will have to endure a 1-hour walk or 2-hour round-journey to access current pharmaceutical services by foot. Again, this is even less accessible than the journey above. Granting this application would half this journey, not perfect, but a significantly more accessible trip.

By Car from Proposed site to next nearest pharmacy (Staplegrove Pharmacy, TA2 6BD)

- 1.40 The journey by car to Staplegrove Pharmacy, TA2 6BD, is even more distant than the walk. This journey length is 1.5 miles and can be a 14-minute drive during the busy traffic hours. We would consider this journey length to not constitute sufficient access or reasonable choice to pharmaceutical services by car.

- 1.41 Patients who are accustomed to accessing pharmaceutical services at the proposed location in connection with a visit to the GP will soon have two car journeys to make: The first to Orchard Medical Centre, and the second to Staplegrove Pharmacy. This extended round-journey could potentially take up to an hour by car. This is clearly poor access and does not represent reasonable choice.

1.42 Further, such an extended journey by car is not helpful to the Somerset Joint Strategic Needs Assessment's focus on climate change and CO2 emissions. The PNA places emphasis on how pharmacies need to be a part of the transition to mitigate climate change. Clearly the journey by car for patients in Norton Fitzwarren to Staplegrove Pharmacy is not conducive toward this goal.

1.43 However, granting this application would considerably reduce car driving times and would make pharmaceutical provision accessible enough for residents of Norton Fitzwarren to walk to their local pharmacy.

By Public Transport from Proposed site to current nearest pharmacy (Staplegrove Pharmacy, TA2 6BD)

1.44 The journey by bus to Staplegrove pharmacy is not the best served by public transport. Patients would obtain the No.25 bus from outside the proposed premises. The journey is 11-minutes; however, the bus service is infrequent with buses only arriving every 2 hours at some points during the day. It is clear that such lengthy bus waiting times are not practicable and present a physical barrier to access pharmaceutical services and do not provide reasonable choice.

1.45 Such poor choice of pharmaceutical access is felt especially by the elderly and disabled. These patient groups could face having to wait two hours for a return bus in the shivering cold on a winters day. When we consider that these patients, who share protected characteristics, may not be able to drive, or even may not feel comfortable driving in winter conditions; alongside their inability to walk the long 1.2-mile distance back home, it is obvious that pharmaceutical access and choice will be inadequate once the Boots closes.

1.46 Such concerns are also voiced by comments within the Boots petition, with one resident stating:

1.46.1 *"There are many elderly and disabled people in the village who don't drive".*

1.47 Granting this application would restore access and reasonable choice to pharmaceutical services.

Opening Hours

1.48 When considering better access, we must also consider the current provision of opening hours, and the reasonable choice that patients have.

1.49 The applicant recognises that access to pharmaceutical services during late evening is especially important, particularly given new the Pharmacy First Service proposed by NHSE; the typical evening closure of GP practices; and the lack of daytime accessibility for those working 9-5 hours.

1.50 The applicant also shares the concerns raised within the Somerset PNA of reduction of access as operators reduce their evening supplementary hours, and the negative impact this has on patients.

1.51 Thus, the applicant has committed to late evening core hours until 7. We note that no pharmacy in Taunton or the surrounding areas has core opening hours until this time. Thus, granting this application will not only secure future evening opening for the residents of Norton Fitzwarren, but also for the 60,000+ residents of Taunton.

1.52 By granting this application, access and reasonable choice to pharmaceutical services on an evening in Taunton as a whole would be significantly better. It should also be noted that the applicant has also committed to Saturday morning core opening hours.

Conclusion

- 1.53 In our view, the closure of the Boots Pharmacy, TA2 6NX, will leave a significant gap in pharmaceutical services for Norton Fitzwarren and the surrounding areas.
- 1.54 Patients of Orchard Medical practice would benefit significantly from having a pharmacy located on the Morse Road parade of shops, as well as those who are accessing local amenities.
- 1.55 Granting this application would secure better access to pharmaceutical services, especially during evenings. The elderly, disabled, and the wider population are likely to find the proposed pharmacy significantly more accessible than their alternative choices. It would also restore reasonable choice of pharmaceutical provider for those in the local area.
- 1.56 We would like to note that granting this application would not cause significant detriment to access of pharmaceutical services, as this application is seeking to fill a gap vacated by the imminent Boots, (TA2 6NX) closure; and notwithstanding the fact that the nearest pharmacy to the proposed site is located 1.2 miles away.
- 1.57 On the evidence outlined above, we believe that a new pharmacy contract should be granted."

2 The Decision

The Commissioner considered and decided to grant the application by Vitastock Ltd and refuse the application by Magna Healthcare Ltd. The cover decision letter dated 7 May 2024 to Magna Healthcare Ltd states:

- 2.1 "Somerset 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."

The cover decision letter dated 7 May 2024 to Vitastock Ltd states:

- 2.2 "Somerset ICB has considered the above application and I am writing to confirm that it has been granted. Please see the enclosed report for the full reasoning."

It is noted that the South West Pharmaceutical Services Regulations Committee (PSRC) decision report, as referred to in both of the decision letters from the Commissioner was the same.

Extract from South West Pharmaceutical Services Regulations Committee (PSRC) Decision report, 10 April 2024

- 2.3 "The SW Committee noted:
 - 2.3.1 Norton Fitzwarren is a village, electoral ward, and civil parish in Somerset, England, situated 2 miles (3.2 km) north west of Taunton. The village has a population of 3,046 (2011 census).
 - 2.3.2 There are currently 11 pharmacies located within 5 miles of the proposed new pharmacy location. There are two 100-hour pharmacies in Bridgwater approximately 13 miles away, one of these has reduced to 72.5 hours under the recent change in regulations for 100 hour pharmacy opening hours. The SW Committee had a map showing the locations of pharmacies and a list of their current opening hours.
 - 2.3.3 There was a Boots Pharmacy at 1 Coopers Mill, Norton Fitzwarren, TA2 6NX until 16 February 2024, when they closed under the Market Exit process.
 - 2.3.4 The SW Committee noted there are two unforeseen benefits applications for the same area to consider together and in relation to each other. Both

applicants are aware this is how the SW Committee will consider these cases. The Magna Healthcare application was received first, in November 2023, and the Vitastock application was received in January 2024. It was agreed the SW Committee will need to consider both applications, to determine if one or more of the applications should be granted. If the SW Committee determines only one should be granted it will need to consider which one should be granted.

Preliminary Issues

- 2.4 Summary of application 1 (Magna Healthcare)
- 2.5 The applicant is proposing to open Monday to Friday 9am – 6pm, closed Saturday and Sunday. 45 Core Hours are proposed. The hours proposed are shown below from section 3 of the application form: (see 1.3 and 1.4 above).
- 2.6 The applicant proposes to provide Essential services, certain appliances, advanced services and enhanced services at section 4 of the application form.
- 2.7 The applicant is not currently in possession of a floor plan for the proposed premises but confirms the pharmacy will have a consultation room.
- 2.8 At part 6 of the application form, the applicant describes the unforeseen benefit they are offering to secure as: (see 1.6 – 1.7 above).

Public Involvement / Representations

- 2.9 The SW Committee noted full details of the applicant's proposals were notified to various parties in accordance with the Regulations. Representations have been received from:
 - 2.9.1 Boots UK Ltd acknowledge the application but offer no comment.
 - 2.9.2 Community Pharmacy Somerset note:
 - 2.9.2.1 Norton Fitzwarren has had a community pharmacy for a number of years and Community Pharmacy Somerset regret the impact that chronic under-funding of the sector is having on the sustainability of pharmacies nationwide.
 - 2.9.2.2 We observe that Staplegrove Pharmacy is a 30 minute walk from the centre of Norton Fitzwarren and there are other community pharmacies in Taunton accessible by car and public transport, but we also recognise that some patients will struggle to access alternatives.
 - 2.9.3 Somerset Healthwatch note:
 - 2.9.3.1 Thank you for your email, as Healthwatch Somerset we would like to support the application offering unforeseen benefits within the main commercial area of Norton Fitzwarren Village near the Orchard Medical Centre by Magna Healthcare Limited.
 - 2.9.3.2 I am also pleased to share the attached letters from the Parish Council in Norton Fitzwarren and the Patient Participation Group for Orchard Medical Centre.
 - 2.9.4 Morrisons note:
 - 2.9.4.1 The applicant has applied to provide provision of pharmaceutical services from the locality of Norton Fitzwarren. There are a number of pharmacies accessible by car or public transport that are capable of

providing adequate pharmaceutical care for the needs of the community.

2.9.4.2 I would ask the Committee to consider all matters relating to Regulation 18 and the conditions set in Regulations 31 [sic].

2.9.4.3 Unforeseen benefits applications must be responding to a need not detailed in the PNA for the HWB.

2.9.4.4 Regulation 18 provides several criteria as part of the determination process and we trust that those requirements will be applied to this application.

2.9.5 Healthcare Plus Consulting Ltd note (on behalf of Vitastock Ltd):

2.9.5.1 Thankyou for your letter dated 8th January 2024. I act for Vitastock Ltd and have been instructed by my client to object to the above application.

2.9.5.2 My client agrees with the Applicant that a new pharmacy is required in this general location, however, asserts that the application from Vitastock Ltd should be preferred for the following reasons:

2.9.5.3 The Magna Healthcare Ltd application can be described as speculative at best. The application fails to reference how access or choice of pharmaceutical services will be improved, as required by the regulations. The applicant merely provides a couple of paragraphs of supporting information whilst my client has provided 8 pages worth of explanation and reasoning.

2.9.5.4 The Applicants best estimate map is extremely broad, meaning patient journeys cannot be easily determined. It should be noted that the Applicant's best estimate map covers multiple bus stops. My client has a much more precise best estimate location, which could be described as a 'subsection' of the Applicant's best estimate. My client's best estimate is also served by a singular well defined bus stop so patient journeys can be more precisely determined.

2.9.5.5 We note that the Applicant offers a total of 45 weekly core opening hours, by proposing 9:00 – 18:00 Monday to Friday with no opening on the weekends. In contrast, my client proposes late evening core opening hours until 7pm Monday to Friday and Saturday morning core opening 10:00 – 13:00.

2.9.5.6 My client proposes to secure late evening provision for the whole of Taunton, in addition to Saturday morning opening provision. The Applicant does not secure late evening provision nor Saturday morning provision. Such provision is important when we consider that the neighbouring Orchard Medical Practice is not open during late evenings and on Saturdays. Thus, my client will be providing healthcare provision when the GP practice has closed; something that the Applicant will not be doing.

2.9.5.7 We would like to add that much of the services listed by the Applicant are not in fact NHS commissioner, and rather ancillary services that pharmaceutical providers offer. My client also intends to provide such services, however, did not deem them relevant to the application form.

2.9.5.8 Therefore this application from Magna Healthcare Ltd should be refused and the application by Vitastock Ltd should be granted.

- 2.10 Comments were also received from:
- 2.10.1 The PPG covering St James Medical Centre and Orchard Medical Centre in Taunton, Norton Fitzwarren and Somerset. The PPG support the application.
- 2.10.2 Norton Fitzwarren Parish Council support the application.
- 2.11 In their response to the representations the applicant focuses on a comparison of the two applications being considered together.
- 2.12 The SW Committee noted, when comments are circulated to the applicant and interest parties the covering letter states:
- Please note that any new information that you submit at this stage will have little or no weight placed upon it unless it can be demonstrated that you are presenting it in response to representations submitted by another party that you believe are not true or are incorrect.*
- 2.13 Summary of application 2 (Vitastock)
- 2.14 The applicant is proposing to open Monday to Friday 9am – 1.30pm and 2.30pm – 7pm and 9am – 1pm Saturday, closed Sunday. 48 Core Hours are proposed and 1 hour Supplementary. The hours proposed are shown below from section 3 of the application form: (see 1.10 and 1.11 above).
- 2.15 The applicant proposes to provide Essential services, certain appliances, advanced services and enhanced services at section 4 of the application form.
- 2.16 The applicant is not currently in possession of a floor plan.
- 2.17 At part 6 of the application form, the applicant describes the unforeseen benefit they are offering to secure as: (see 1.15 – 1.57 above)
- Public Involvement / Representations
- 2.18 The SW Committee noted full details of the applicant's proposals were notified to various parties in accordance with the Regulations. Representations have been received from:
- 2.18.1 Boots UK Ltd acknowledge the application but offer no comment.
- 2.18.2 Community Pharmacy Somerset note:
- 2.18.2.1 Norton Fitzwarren has had a community pharmacy for a number of years and Community Pharmacy Somerset regret the impact that chronic under-funding of the sector is having on the sustainability of pharmacies nationwide.
- 2.18.2.2 We observe that Staplegrove Pharmacy is a 30 minute walk from the centre of Norton Fitzwarren and there are other community pharmacies in Taunton accessible by car and public transport, but we also recognise that some patients will struggle to access alternatives.
- 2.19 Magna Healthcare Ltd comment on the comparison of the two applications being considered together.
- 2.20 Comments were also received from:

- 2.20.1 The PPG covering St James Medical Centre and Orchard Medical Centre in Taunton, Norton Fitzwarren and Somerset. The PPG support the application.
- 2.20.2 Norton Fitzwarren Parish Council support the application.
- 2.21 In their response to the representations the applicant addresses some of the points raised in the consultation and concludes:
- 2.21.1 In conclusion, granting the application would secure better access and improvements to pharmaceutical services for Norton Fitzwarren and the surrounding areas, especially during late weekday evenings.
- 2.21.2 The lack of objection from local contractors and the support from Healthwatch, the Parish Council and the Patient Participation Group, demonstrates how granting this application will secure improvements and better access to pharmaceutical services. We have also set out extensive reasoning in our original application.
- 2.21.3 The elderly, disabled and the wider population are likely to find the proposed pharmacy significantly more accessible than their current choices. It would also introduce reasonable choice of a different pharmaceutical provider.
- 2.21.4 Vitastock Ltd's application should be preferred to that of Magna Healthcare Ltd due to the extensive reasoning set out and the greater core hours that Vitastock propose.
- 2.21.5 Regulation 18 has been met and this application should be granted.
- 2.22 The SW Committee noted when comments are circulated to the applicant and interest parties the covering letter states:
- Please note that any new information that you submit at this stage will have little or no weight placed upon it unless it can be demonstrated that you are presenting it in response to representations submitted by another party that you believe are not true or are incorrect.*
- 2.23 The SW Committee agreed that it is not necessary to hold an oral hearing to determine the applications.
- Regulation 31 (same or adjacent premises) [quoted in full]
- 2.24 There are no other contractors currently providing pharmaceutical services within the best estimates provided. The nearest pharmacy is 1.5 miles away – Staplegrove Pharmacy. The SW Committee was satisfied it is not required to refuse the applications by virtue of Regulation 31.
- Controlled Locality Issues
- 2.25 The application does not relate to a controlled locality.
- Unforeseen Benefits
- Reg 18(1)(b) – Improvements or better access not included in the Pharmaceutical Needs Assessment
- 2.26 The SW Committee noted Regulation 18 concerns 'Unforeseen Benefits' applications, which are applications where the improvements or better access that would be secured were or was not included in the relevant PNA. The current Somerset PNA can be found at: [Pharmaceutical Needs Assessment 2022-25 - Somerset Intelligence - The home of information and insight on and for Somerset - Run by a partnership of public sector](#)

[organisations](#). Norton Fitzwarren is included in the Taunton Central and Tone Vale area within the PNA. The SW Committee had a copy of the PCN area summary.

- 2.27 The SW Committee noted there has been no Supplementary statement to the PNA issued.

- 2.28 Having reviewed the PNA, the SW Committee was satisfied that as the improvements or better access which the applicants are proposing to secure were not identified in the PNA, an 'unforeseen benefits' application is the correct type of application.

Reg 18(2)(a) – Would granting the application cause significant detriment to the proper planning or arrangements in place for provision of pharmaceutical services in this area

- 2.29 The SW Committee noted the ICB has no particular plans regarding pharmaceutical services in the area, so there can be no detriment to such plans. Neither have any representations raised any suggestion there would be significant detriment to the arrangements already in place.

- 2.30 The SW Committee was satisfied that granting an application would not cause significant detriment to the proper planning or arrangements in place for provision of pharmaceutical services.

Regulation 18(2)(g) – Whether the application presupposes that a gap in pharmaceutical services provision has been or is to be created as a result of a consolidation application

- 2.31 As no consolidation applications have been made relating to this area the SW Committee determined it is not required to refuse the application under regulation 18(2)(g).

Reg 18(2)(b)(i) – Significant benefit: Reasonable choice with regard to obtaining pharmaceutical services

- 2.32 The SW Committee had a map showing the location of existing pharmacies in the area and maps showing travel routes to the nearest pharmacy (Staplegrove) and the nearest one open on Sundays (Morrisons, Taunton). They also had confirmation of the current opening hours of the nearest pharmacies within five miles of Norton Fitzwarren.

- 2.33 The SW Committee noted Staplegrove Pharmacy is not a significant distance away from Norton Fitzwarren. It was however, clear from the consultation responses, particularly from patients, that Norton Fitzwarren is considered separate from Taunton, and residents of Norton Fitzwarren have become used too [sic] accessing a pharmacy locally for many years. A site visit report was produced by a member of the SW CCHub with local knowledge and this demonstrated the separate nature of Norton Fitzwarren from Taunton.

- 2.34 The SW Committee noted there is a GP branch surgery located in Norton Fitzwarren and patients who are used to accessing pharmaceutical services locally now have to travel outside the village and will have to travel to Taunton if they chose not to use Staplegrove Pharmacy, which makes the availability of choice a challenge for some.

- 2.35 The SW Committee noted the Magna Healthcare Ltd application states the closure of the Boots Pharmacy in Coopers Mill will leave the village of over 3,000 residents with no pharmacy, meaning the residents will have to travel to Taunton. They propose to open for the same hours as the surgery opening hours through Core Hours.

- 2.36 The Vitastock Ltd application states the closure of the Boots Pharmacy will leave a significant gap in pharmaceutical services, hence the application is offering unforeseen benefits not captured within the PNA. They propose to open until 7pm on weekdays and Saturday morning through Core Hours.

- 2.37 Those in support of the application also note the loss of the Boots Pharmacy and highlight the possible travel problems that may be faced by the ageing population and parents of young children who need urgent advice and assistance when they are unable to see their GP locally.
- 2.38 The SW Committee noted the nearest pharmacy (Staplegrove) is not that far way, but agreed it is not walkable at 1.5 miles and there are some significant main roads to navigate. It is not particularly easily accessible due to the nature of the terrain involved.
- 2.39 The SW Committee had a copy of timetables showing travel by bus between Norton Fitzwarren and Taunton. It was noted the timetables are variable with some long wait times between service times.
- 2.40 The SW Committee agreed the body of evidence provided by those in support of a pharmacy in terms of need and demand for pharmaceutical services in Norton Fitzwarren is strong and noted the population in the area has increased in recent years. From the activity data available it was also noted the Boots Pharmacy was well used, dispensing around 5,500 – 6,000 items per month and also provided advanced services. The SW Committee was of the view that patients in Norton Fitzwarren and the surrounding rural area had found the Boots, before it closed, a valuable and beneficial resource and chose to use it routinely.
- 2.41 The SW Committee agreed there is evidence that having a pharmacy in Norton Fitzwarren provides much by way of choice of readily accessible pharmaceutical services without having to travel to Taunton town centre.
- 2.42 The SW Committee was of the view that because of the accessibility and distance of the existing pharmacies by foot, car or by bus that granting the application would confer a significant benefit by way of access to, or choice of, pharmaceutical services.

Reg 18(2)(b)(ii) – Significant Benefit: Patients with a protected characteristic

- 2.43 No information has been provided by any party on this matter.
- 2.44 The SW Committee agreed that granting the application would not confer significant benefits on people sharing a protected characteristic.

Reg 18(2)(b)(iii) – Significant Benefit: Innovative approaches to delivery of pharmaceutical services

- 2.45 No information has been provided by any party on this matter.
- 2.46 The SW Committee agreed that granting the application would not lead to significant benefits by virtue of innovation.

Additional Matters

- 2.47 The SW Committee, having determined granting an application was necessary, considered if one or both applications should be granted. The SW Committee was of the view that only one pharmacy would be needed in Norton Fitzwarren. The SW Committee therefore determined only one application should be granted to avoid the risk of both opening if both applications were granted.
- 2.48 The SW Committee noted Vitastock Ltd offer longer opening hours. They have offered opening hours until 7pm weekdays versus 6pm by Magna Healthcare Ltd. Additionally, Vitastock Ltd are offering to be open Saturday mornings whereas Magna Healthcare Ltd have proposed no weekend opening hours. It was noted little evidence is presented to demonstrate a need after 5.30pm weekdays when the Boots that was in the area used to close and the PNA does not identify any need for provision after 5.30pm on weekdays. It was noted neither party offers any evidence of the need for Saturday

opening hours, but it is the case that the Boots Pharmacy was traditionally open on Saturday mornings.

- 2.49 The SW Committee noted Magna Healthcare Ltd has provided information on progress with obtaining premises and assert the only potential premises within the best estimate provided by Vitastock Ltd in their application is the former Boots Pharmacy premises on which Magna Healthcare Ltd claim to have a preliminary arrangement with the landlord. Vitastock Ltd does not appear to have presented any information regarding premises and the SW Committee recognised there is no obligation to do so at this stage. Magna Healthcare Ltd say they have premises secured and provide a copy letter, but the SW Committee was of the view this is not in any way a legally binding agreement and there is no way of being assured who the landlord will end up going into an agreement with.
- 2.50 The SW Committee agreed the range of services now available from community pharmacy, and the need to utilise them to support the wider healthcare system particularly at weekends means Saturday opening hours are extremely important. It was noted Taunton does not have an MIU or UTC, therefore, a pharmacy open on Saturdays is a significant benefit and it is noted Vitastock Ltd are offering to provide Saturday hours as Core Hours.
- 2.51 The SW Committee noted, whilst both applicants offer to provide advanced and commissioned services, the application from Vitastock Ltd is preferable due to the opening hours offered. The application by Vitastock Ltd is APPROVED and the application from Magna Healthcare Ltd is REFUSED.

Regulation 65 – conditions relating to opening hours

- 2.52 Vitastock Ltd have proposed more than 40 Core hours so a direction will be required for the additional 8 core hours. The SW Committee is clear the Core Hours on a Saturday between 10am – 1pm are included within the 40 Core Hours distribution and the additional 8 Core Hours will be Directed throughout the weekday opening hours.

Regulation 66 – conditions relating to providing directed services

- 2.53 The applicant has given an undertaking to provide a number of directed services. Therefore, it should be a condition of the granting of the application that the contractor(s) must provide those services if commissioned, and not withhold agreement to a service specification for those services unreasonably.

Appeal Rights

- 2.54 Magna Healthcare Limited has appeal rights both against the decision to approve the Vitastock Ltd application and to refuse their application.
- 2.55 WM Morrisons Supermarkets Ltd has appeal rights against the decision to approve an application as they provided reasoning for opposing an application being granted.”

3 The Appeal

In a letter dated 20 May 2024 addressed to NHS Resolution, Magna Healthcare Ltd appealed against the Commissioner’s decision. The grounds of appeal are:

- 3.1 “I have been notified of the Somerset ICB’s decision to refuse the pharmacy application by Magna Healthcare Limited and approve the application by Vitastock Ltd for Norton Fitzwarren village in Somerset. I would like to appeal the decision as I believe the application by Magna Healthcare Limited should be approved and that by Vitastock Ltd should be reused. Below, I have set out the grounds for my appeal.

- 3.2 While I agree with the ICB in their assessment for the need of a pharmacy, they have not taken into consideration the possibility of a pharmacy actually opening given there only being one suitable premise for the proposed pharmacy.
- 3.3 During the application process, I provided a letter from [Mr C], the landlord of the only suitable unit in the village. This unit was built by [Mr C] when he first started the pharmacy in the village, which later operated as Boots pharmacy. The letter confirmed the agreement between Magna Healthcare Limited and the Landlord for the lease of the unit on a long term basis. The ICB did not see this as a legally binding document and therefore has put no weight in their decision making. I was still finalising the lease at that time so could not provide a legal document. However, I am now in a position to confirm that I have agreed a 10 years lease with the landlord for the unit that was occupied by Boots. I believe this is a fundamental factor in deciding whether Norton Fitzwarren gets a pharmacy or not.
- 3.4 I have liaised with the local stakeholders from the outset in submitting my application. My application therefore meets the need of the village and keeps up with the proper use of the limited commercial premises available in the village. The Vitastock application, on the other hand is an opportunistic application which is not reflective of the local need. They have not engagement with local stakeholders and are solely relying on marginal longer opening (which no one has called for) to manoeuvre the process in their favour. Vitastock was in a position to do so as their application came long after my application was in consultation. The opening hours offered by Magna Healthcare Limited is already in excess of what the village was offered by Boots pharmacy before it closed.
- 3.5 I request the appeal committee to look at the two applications in totality because I believe only my application has the chance of seeing the light of the day. I therefore, request for the application by Magna Healthcare Limited to be approved and that by Vitastock Ltd to be rejected.”

4 Summary of Representations

This is a summary of representations received on the appeal.

4.1 THE COMMISSIONER

- 4.1.1 “Thank you for your letter, received 4th June 2024, addressed to Mr Speight at Primary Care Support England (PCSE) enclosing a copy of the appeals as detailed above. The South West Pharmaceutical Services Regulations Committee (SW Committee) wishes to make the following comments on the appeals.
- 4.1.2 The SW Committee first considered the two applications to determine if one or both could be granted. Having decided that both could be granted the SW Committee was of the view that only one should be granted as there is no need for two pharmacies in this area.
- 4.1.3 Having decided that only one of the applications should be granted the SW Committee had to choose between the two applications. In doing this, the SW Committee noted there is little to choose between the two applications regarding services offered.
- 4.1.4 The SW Committee considered access to premises and noted that Magna Healthcare Limited had a letter of intent from the owner of the ex Boots premises. This did not appear to be a legally enforceable agreement and so the SW Committee was cautious in how much weight to place on this factor. Both applicants describe a similar expected location, though the Magna Healthcare application does include additional areas to the west and east of the B3227.

- 4.1.5 The SW Committee did, however, identify a difference in the opening hours. In the absence of any other significant differences, it determined the Vitastock application should be granted in preference to the Magna Healthcare application. The SW Committee is of the view that extended access to pharmaceutical services, especially when more services such as Pharmacy First are being introduced, is of benefit to patients and the wider healthcare community. The SW Committee looks forward to receiving the Primary Care Appeals' decision in due course."

4.2 HEALTHCARE PLUS CONSULTING LTD ON BEHALF OF VITASTOCK LTD

- 4.2.1 "Thank you for your letter dated 4th June 2024.
- 4.2.2 We are instructed by our client (Vitastock Ltd) to act on their behalf for the Appeals process. We maintain that the decision by NHS England to grant my client's application should be upheld.
- 4.2.3 We note that no local contractor has appealed this decision. It is clear that there are no plausible arguments to reject this application under regulation 18. Regulation 18 has been met through my client's original application dated 28th December 2023, and further comments dated 14th February 2024 and 25th March 2024. We reattach this representation for reconsideration by NHS Resolution.
- 4.2.4 We note that the other Applicant, Magna Healthcare Limited, has appealed the decision of NHS England [sic] against the grant of my client's application. We address the Appeal by Magna Healthcare overleaf. Comments below should be taken in addition to attached previous representation.

Magna Healthcare Limited Appeal

- 4.2.5 We highlight to the Committee that at no point during the extensive representation provided, does Magna Healthcare address the overarching question in an unforeseen benefits application:

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

- 4.2.6 We submit that Magna Healthcare has not detailed how they will secure improvements or better access to pharmaceutical provision in their application. On this basis, the Committee will be mindful that they are unable to grant Magna Healthcare's application due to a lack of detail.
- 4.2.7 My client set out extensively in their original application how improvements or better access would be secured through the eight pages of supporting information that they originally submitted.
- 4.2.8 Contrary to assertions by Magna Healthcare, my client has also involved local stakeholders throughout the process. My client has offered opening hours that are both beneficial to the community, but also conducive to working within the new pharmacy model. Opening until 7p.m. on weekdays will afford better pharmaceutical access to those who work, for evening emergencies when the GP practice is closed, and will also allow the pharmacy team more time to dispense the next day's repeat prescriptions for collection. This then frees up the pharmacy teams time during the day to deliver important NHS Services such as Pharmacy First, Flu vaccines, Contraception services, NMS, Hypertension services, etc... which relieves pressure on the primary care network. Those who work in a pharmacy will be aware of how dispensing can pre-occupy the Pharmacist and prevent other services from being delivered.

- 4.2.9 The operating model proposed by my client will enable all services to be delivered effectively.
- 4.2.10 We also highlight that Saturday morning opening hours provide vital access for patients who are unable to access pharmaceutical provision throughout the week and my client agrees with the South West Committee in that these hours are: “extremely important”.
- 4.2.11 We submit that our client provides much better access through the opening hours they are undertaking to provide than that of Magna Healthcare and thus their application should be preferred to that of Magna Healthcare.

Conclusion

- 4.2.12 We conclude that NHS Resolution should uphold the grant of the pharmacy licence to Vitastock Limited.”

Letter from Healthcare Plus Consulting Ltd of 25th March 2024 to the Commissioner:

- 4.2.13 “Thank you for your letter dated 14th March 2024. We welcome comments from all local parties and note the following:

4.2.13.1 We note that no local pharmaceutical contractors have chosen to provide representation. We can only assume that this is because they have no objections to the application.

4.2.13.2 The application by Vitastock Ltd offers more core hours and thus should be preferred.

- 4.2.14 Taking each relevant representation in turn below:

Somerset Healthwatch

- 4.2.15 We welcome the support from Somerset Healthwatch for this application. As an independent and impartial authority on local health needs, Somerset Healthwatch are one of the best-informed authorities as to whether pharmaceutical provision is required.

- 4.2.16 Hence, it is pleasing to hear that they to believe that granting this application would secure better access and improvements to pharmaceutical provision.

- 4.2.17 We also welcome the support from the Parish Council and Patient Participation Group. We note that the Patient Participation Group highlight in particular the need for healthcare provision particularly when patients are unable to see their GP. The late evening and Saturday opening hours proposed by my client will aid this concern and provide healthcare coverage when the GP surgery is closed.

Local Pharmaceutical Committee (LPC)

- 4.2.18 It is pleasing to hear that the LPC also recognise that alternative pharmaceutical provision may be difficult to access for some residents of Norton Fitzwarren.

- 4.2.19 Granting this application would secure improvements and better access to pharmaceutical provision for residents of Norton Fitzwarren.

Magna Healthcare Ltd

- 4.2.20 We are both disappointed and shocked by the comments made by [Mr Y] of Magna Healthcare Ltd. Instead of focussing on the merits of both applications and the benefits for the residents of Norton Fitzwarren, [Mr Y] launches a frankly vile personal attack on several parties, including ourselves as a consultancy firm. Such attacks also include the spreading of misinformation and mistruths. Unfortunately, this has left my client and their associates very much distressed.
- 4.2.21 We urge [Mr Y] to reacquaint himself with the GPHC standards required for pharmaceutical professionals, especially the following sections:
- 4.2.21.1 Standard 6: behave in a professional manner
- 4.2.21.2 Standard 7: respect and maintain the person's confidentiality and privacy
- 4.2.22 We sincerely hope that [Mr Y], upon reflection, conducts himself in the manner that would be expected of a pharmaceutical professional in any future correspondence.
- 4.2.23 Addressing some of the points made by [Mr Y] directly:
- 4.2.24 The Director's interests outside of Vitastock Ltd are neither ours nor anybody else's concern. Indeed, this is not relevant to the application.
- 4.2.25 [Mr A], superintendent for Vitastock Ltd, has no affiliation with Healthcare Plus Consulting other than that of a client. This is contrary to the 'factual' assertions made by [Mr Y]. [Mr A], like [Mr Y], is a resident of the Bristol area and currently operates two pharmacies. [Mr A] has lived and worked in the South West for his entire life. Hence, it is unusual that [Mr Y] paints the picture of being a more local operator.
- 4.2.26 We would like to take this opportunity to clarify that Vitastock Ltd meets all requirements required to operate a pharmaceutical business, as is policed by the extensive NHS & GPHC requirements. [Mr Y] states that "they have used the information in my application to make their own application look better, by offering some extra opening". [Mr Y] also states in relation to opening hours that "they always will because they have benefit of the sight of the previous application". Again, this is categorically untrue. As the committee will be aware, only local contractors included within the pharmaceutical list (which my client is not) would have had sight of the Magna Healthcare application. My client did not have sight of the Magna Healthcare application when submitting theirs, and hours were based on providing the best access to residents of Norton Fitzwarren whilst still maintaining financial viability. My client actually views the hours proposed as a minimum level and, should their contract be granted, would look to provide further opening hours, where beneficial, to local residents.
- 4.2.27 It is noteworthy that Magna Healthcare Ltd, as a pharmaceutical operator, achieved profitability levels estimated at half a million pounds for the year ended January 2023. My client does not wish to obtain such astronomical profitability levels and prefers to provide better access to residents of Norton Fitzwarren, hence the given opening hours.
- 4.2.28 Much like [Mr Y], my client has had several positive dialogues with potential units within the best estimate and can see no barriers to opening up a pharmacy. Nevertheless, we highlight to the committee that no weighting should be placed upon this per the regulations.

- 4.2.29 [Mr Y]also directly attacks our consulting firm, Healthcare Plus Consulting. By way of background, Healthcare Plus Consulting is a respected consultant within the pharmaceutical sector and have worked alongside clients such as Lloyds Pharmacy and Rowlands. We are a Numark approved partner, an AIM member, and always endeavour to do the best for our clients. We assure the committee that each application we submit on behalf of clients is carefully constructed on its own merits. Contrary to [Mr Y]'s assertions, pieces of work conducted for clients are fundamentally individual.
- 4.2.30 [Mr Y]states that "the consultant has not done basic due diligence and has tried to provide false information". This is in relation to our assertion that granting my client's application would secure late evening provision for the whole of Taunton; and is yet another example of [Mr Y]spreading misinformation. Whilst we understand that there are pharmacies providing late evening opening in Taunton, these pharmacies sustain this opening through supplementary provision which can be withdrawn at any time. My client proposes late evening core hours which cannot be withdrawn and thus will secure late evening provision for the whole of Taunton.
- 4.2.31 This is particularly acute when we note how [Mr Y]highlights the late supplementary opening of Asda and Morrisons. As the committee will be aware, pharmacy operations within supermarkets are currently fragile as demonstrated by the closure of 237 Lloyds pharmacies in Sainsbury's. Thus, it is even more imperative that my client's application is granted to secure late evening provision for the whole of Taunton through the core hours they have proposed. We also note that H202 cream and Nitrofurantoin are available under the Somerset Minor Ailments Scheme and certainly do exist; so are unsure as to [Mr Y]'s comments on these services.
- 4.2.32 It is regretful that so much dialogue has been spent dissecting [Mr Y]'s mistruths opposed to concentrating on the benefits to residents of Norton Fitzwarren, however, I'm sure the committee will empathise with the need for us to protect our name and our clients.
- 4.2.33 Nevertheless, we maintain that our client's application should be preferred to that of Magna Healthcare Ltd.

Conclusion

- 4.2.34 In conclusion, granting this application would secure better access and improvements to pharmaceutical services for Norton Fitzwarren and the surrounding areas, especially during late weekday evenings.
- 4.2.35 The lack of objection from local contractors and the support from Healthwatch, the Parish Council, and the Patient Participation Group, demonstrates how granting this application will secure improvements and better access to pharmaceutical services. We have also set out extensive reasoning in our original application.
- 4.2.36 The elderly, disabled, and the wider population are likely to find the proposed pharmacy significantly more accessible than their current choices. It would also introduce reasonable choice of a different pharmaceutical provider.
- 4.2.37 Vitastock Ltd's application should be preferred to that of Magna Healthcare Ltd due to the extensive reasoning set out and the greater core hours that Vitastock propose.
- 4.2.38 Regulation 18 has been met and this application should be granted."

Letter from Healthcare Plus Consulting Ltd of 14th February 2024 to the Commissioner:

- 4.2.39 “Thank you for your letter dated 8th January 2024. I act for Vitastock Ltd and have been instructed by my client to object to the above application.
- 4.2.40 My client agrees with the Applicant that a new pharmacy is required in this general location, however, asserts that the application from Vitastock Ltd should be preferred for the following reasons:
- 4.2.41 The Magna Healthcare application can be described as speculative at best. The application fails to reference how access or choice to pharmaceutical services will be improved, as required by the regulations. The Applicant merely provides a couple of paragraphs of supporting information whilst my client has provided 8 pages worth of explanation and reasoning.
- 4.2.42 The Applicants best estimate map is extremely broad, meaning patient journeys cannot be easily determined. It should be noted that the Applicant’s best estimate map covers multiple bus stops. My client has a much more precise best estimate location, which could be described as a ‘subsection’ of the Applicant’s best estimate.
- 4.2.43 My client’s best estimate is also served by a singular well-defined bus stop so patient journeys can be more precisely determined.
- 4.2.44 We note that the Applicant offers a total of 45 weekly core opening hours, by proposing: 09:00 – 18:00 Monday to Friday with no opening on the weekends. In contrast, my client proposes late evening core opening hours till 7 p.m. Monday to Friday, and Saturday Morning core opening 10:00 – 13:00.
- 4.2.45 My client proposes to secure late evening provision for the whole of Taunton, in addition to Saturday morning opening provision. The Applicant does not secure late evening provision nor Saturday morning provision. Such provision is important when we consider that the neighbouring Orchard Medical Practice is not open during late evenings and on Saturdays. Thus, my client will be providing healthcare provision when the GP practice has closed; something that the Applicant will not be doing.
- 4.2.46 We would like to add that much of the services listed by the Applicant are not in fact NHS commissioned, and rather ancillary services that pharmaceutical providers offer. My client also intends to provide such services, however, did not deem them relevant to the application form.
- 4.2.47 Therefore, this application from Magna Healthcare Ltd should be refused, and the application by Vitastock Ltd should be granted.”

The supporting information as provided with the application form by Vitastock Ltd at section 1 above was also included.

5 Observations

5.1 MAGNA HEALTHCARE LTD

- 5.1.1 “Thank you for the opportunity to make final observations in response to the above applications.
- 5.1.2 I would like the appeal committee to have considerations to all the arguments I put forward during the consideration of the application by Somerset ICB and my appeal letter dated 20th May 2024. For avoidance of duplication, I will keep my submission brief.
- 5.1.3 In its response to the appeal (letter dated 2nd July 2024) the South West Pharmaceutical Committee notes that there is little to choose between the two

applications and that the agreement I had with the landlord for the premise (the only one available in Vitastocks best estimate) is not legally enforceable. As I referred to in my appeal letter, I have now signed a 10 years lease for the old Boots unit. This effectively rules out any chance of Vitastock securing the premise. I have attached the signed copy of the lease for your reference and can also confirm that the lease is in process of being registered with the land registry. I have taken this necessary step in committing to a 10 year lease because I believe my application is a genuine effort to meet the need of the village and I am putting every effort to make this happen. As part of the surrender of the lease by Boots, working along with the landlord I managed to get Boots to leave the fitting and fixtures intact. As the lease is already signed and the pharmacy is fitted, if the appeal committee was to grant my application I will be able to get the pharmacy operational within the minimum notice of commencement period (30 days).

- 5.1.4 As noted by the pharmaceutical committee in its decision report paragraph 47 there is no need for the pharmacy to be open beyond the hours offered by Magna Healthcare Limited. The only available unit in Vitastock's best estimate is now under the possession of Magna Healthcare Limited. It is therefore manifest that the only way the village can have the pharmacy, that it desperately needs, is by approving my application.
- 5.1.5 The crux of my argument during the application and my appeal has been the inability of Vitastock to secure premises for the pharmacy. Mr Korja in his response has very conveniently ignored to address this issue. This is because Mr Korja is well aware of the fact that there is no premises available to Vitastock. They have provided no evidence to suggest anything different. In my submission to ICB (letter dated 8th March 2024), I have listed every possible commercial units in the village centre which are all currently occupied.
- 5.1.6 I have also been asked by [Mr C],(Landlord; Sithane Ltd) to share a second letter he has written explaining the background of the village and the pharmacy. I have attached this letter for your reference.
- 5.1.7 In regards to [Mr K]'s comment about my professional manner, I would like to reiterate that all the information I have provided during the course of the application is true and I have referenced them where necessary. The only error in my representation is with reference to the two PGD services in Somerset (hydrogen peroxide and nitrofurantoin) which I got wrong. [Mr K] is a consultant with many years' experience in pharmacy consultancy but makes laughable argument that they could have had no idea of the opening hours I was offering in my application. Once the application is in consultation it is in the public domain, often in local news. Anyone with reasonable grounds can seek that information from ICB via freedom of information request. [Mr K] questions my professional conduct for highlighting facts about his company and client (all publicly available information) but finds it professional for his son [Mr N K] to ring me on my personal mobile number and harass me to drop my appeal.

Conclusion;

- 5.1.8 Magna Healthcare Limited has signed a 10 year lease for the only available unit in Vitastocks best estimate area. Magna Healthcare Limited's possession of the old Boots unit means Vitastock has no realistic chance of securing premises to open the pharmacy. Vitastock has failed to provide any evidence to contradict this position.
- 5.1.9 The hours offered by Magna Healthcare Limited exceeds the pharmaceutical provision that was available in the village before the closure of the Boots pharmacy. There has been no suggestion from any stakeholder to demand more opening hours than that offered by Magna Healthcare Limited.

5.1.10 I have invested a lot of time and effort in putting together this application to meet the need of the village. I therefore, request the appeal committee to approve the application by Magna Healthcare Limited and reject that by Vitastock.”

In a letter to the Commissioner dated 8 March 2024, Magna Healthcare Ltd stated:

5.1.11 “As you are considering the two applications together I have put my representation to the Vitastock application and my observations on the consultation of my own application together in this response.

5.1.12 Thank you for the opportunity to comment on the representations received in response to my above application. Materially, the only opposition to my application is from Vitastock Ltd, who themselves have put counter application.

5.1.13 The Vitastock letter of 14th February has raised four points of objection to my application. I will first address those points here.

5.1.14 Vitastock describes my application as ‘speculative at best’. Unlike Vitastock application mine is based on sound knowledge of the village and its pharmacy need. I have worked with local stake holders in putting together this application.

5.1.15 A lot of local consulting and financial planning has gone into ensuring that the village gets a pharmacy that is financially sustainable.

5.1.16 I am acutely aware of the resource it takes for the applicant and more importantly for your committee to deal with contract applications and therefore I have never made a speculative application. So far I have applied for 5 pharmacy contracts and I can proudly say that 4 of them are now well used community pharmacies. The fifth application was approved by NHS area team but was rejected by NHS Resolution. I have always put application in which I have been able to convince the pharmaceutical committee or the appeal committee of the merit of my applications.

5.1.17 Vitastock Ltd on the other hand is one of the 25 (twenty five!) companies that [Mr N K] has registered with company house within the last few months. I am aware some of these company have applied for pharmacy contract in South West and other areas. Therefore Vitastock and its associate companies are all created for nothing but to put speculative pharmacy applications. I have provided the list of all the company for the committee’s reference. These are publicly available information on companies house website.

5.1.18 25 companies incorporated since December 2023 for speculative pharmacy applications.

Company name	Registration Number	Incorporation Date
Prime Scripts Ltd	15332031	06/12/2023
Cure Connect Ltd	15534164	07/12/2023
Apex Meds Ltd	15534261	07/12/2023
Brodeloe Ltd	15339433	09/12/2023
Foschell Ltd	15351973	11/12/2023
Vitastock Ltd	15343483	11/12/2023
Medsynth Ltd	15343384	11/12/2023
Itasil Ltd	15378079	31/12/2023
Cirlter Ltd	15378164	31/12/2023
Bolcer Ltd	15378206	31/12/2023
Wyncord Ltd	15454670	30/01/2024
Folberry Ltd	15454650	30/01/2024
Alticare Ltd	15454660	30/01/2024

Poultacre Ltd	15454696	30/01/2024
Marra Healthcare Ltd	15454719	22/02/2024
Nutriberry Ltd	15514716	22/02/2024
Cloadby Ltd	15514793	22/02/2024
Olivemead Ltd	15515191	23/02/2024
Englecare Ltd	15515273	23/02/2024
Holm Healthcare Ltd	15518737	24/02/2024
Tharra Health Ltd	15543768	06/03/2024
Sarracare Ltd	15543803	06/03/2024
Aproste Ltd	15543842	06/03/2024
Kimiver Ltd	15544130	06/03/2024
Saytron Ltd	15544139	06/03/2024

- 5.1.19 [TA], who is the named superintendent pharmacist on the application is a full time employee of Bupa Dental Care but is part of the same consulting group (Healthcare Plus Consulting) which puts these speculative applications. <https://www.linkedin.com/in/tanzil-ahmed/?originalSubdomain=uk>
- 5.1.20 His suitability to perform a superintendent pharmacist role while undertaking a full time employment with of a non-pharmacy company, is for the GPhC to decide. They currently have another application in Bristol that your committee is considering (BS10 5DW). The consulting company have also tried to bamboozle my other application at Bourneville, Weston-Super-Mare by putting a counter application. While the company and the associates have right to apply for pharmacy contract wherever and whenever they want, it is rather rich for them to call my application speculative at best.
- 5.1.21 As argued above my application is based on the need of the village and is in consultation with the local stake holders. The application by Vitastock and the associated companies are opportunistic of which there are many going around.
- 5.1.22 All their applications are all based on the same format often copying the same reasons line by line. Typically, their arguments goes along that a Boots pharmacy has closed, there is change.org petition and that they are offering more opening hours than the other applicant! Well they always will because they have the benefit of sight of the previous application. What they do not realise is this is not some tick box process that some smart consultant can manipulate.
- 5.1.23 Vitastock does not operate any pharmacy anywhere and their inexperience reflects in their application. They have taken no consideration of the financial constraints that would be faced by a pharmacy operating in rural locality like Fitz Warren Village.
- 5.1.24 Vitastock refers to my best estimate as 'extremely broad', clearly, they have not visited the site or have any understanding of the village environment. The furthest point in my best estimate is a 300 yards from Orchard medical centre.
- 5.1.25 For a village (or in any other setting) this is perfectly reasonable distance. The main reason for giving this broader best estimate was to give myself a real chance to secure a premise. The committee will be well aware of many cases where approved applications fail to open due to lack of appropriate premise.
- 5.1.26 I have been in close contact with [Mr C] who owns the building currently leased to Boots. [Mr C] is a retired pharmacist who was the one to start the pharmacy in Norton Fitzwarren that he later sold to Boots. He owns the building and knows the village very well. I have leaned on his experience and understanding of the village to put together my application. My application has not only taken

into consideration the need of the village but also the financial viability of the proposed pharmacy. I would like to think it's a fairly balanced application which will meet the need of the village (and not waste resource) and be viable at the same time. While we have in principal [sic] agreed exclusive lease of the Boots unit there is a real chance that Boots continue to hold the lease and do not vacate. I have attached a signed letter from [Mr C] confirming that we are the only party he would lease his unit to if this was to become available. My best estimate has another vacant unit which can be turned into a pharmacy. This unit is located on the B227 road (170 yards from Orchard Medical Centre), used to be a McColl's convenience store but is now vacant. We are in discussion with the agent to secure this unit as a backup plan. The Vitastock application has no realistic chance of securing a premise.

5.1.27 As things stand, there is no premise that Vitastock can open a pharmacy in.

5.1.28 The best estimate provided by Vitastock has 7 units in total.

5.1.28.1 Boots Unit (not available, if it was to become available then there is an exclusive agreement between the landlord and Magna Healthcare Limited)

5.1.28.2 Co-op store (not available)

5.1.28.3 Barnardo's charity shop (Not available)

5.1.28.4 Star Fish and Chip Shop (Not available)

5.1.28.5 USA Fried Chicken and takeaway (not available)

5.1.28.6 Tone veterinary centre (not available)

5.1.28.7 Orchard Medical centre (not available)

5.1.29 The only available unit is the Old McColl's building which is outside Vitastock best estimate.

5.1.30 Therefore there is no realistic chance of Vitastock finding a suitable premise.

5.1.31 As I have argued above theirs is a speculative application without any understanding of the village. Yes, my best estimate is slightly broader than that of Vitastock but that is for a reason as there is no unit available within the Vitastock best estimate. I have two potential units one of which is vacant and available, other being the Boots unit might become vacant. Vitastock on the other hand will have nowhere to operate the pharmacy from even if their application is approved.

5.1.32 Vitastock argues their extra half an hour opening in the evening 'secure late evening provision for whole of the Taunton'. There are already pharmacy open till 8pm in Taunton so I do not get the merit of this argument.

5.1.32.1 Asda Pharmacy TA1 2AN (Mon-Sat 9am to 8pm, Sun 10am to 4pm)

5.1.32.2 Morrison Pharmacy TA1 1DX (Mon-Fri 9 am to 7pm, Sat: 9am to 5pm, Sun 10am to 4pm)

5.1.33 Clearly the consultant has not done basic due diligence and has tried to provided false information to make their application look superior.

- 5.1.34 Vitastock and the associate company has no experience of opening and running a pharmacy and therefore has done their best to show their application is better just by offering marginal extra opening, which is neither here nor there. I would like to request the committee to have considerations of these opportunistic applications which aim to undermine the effort contractors like me are put to offer pharmacy that is well thought and planned to meet the local needs. I would also like to the committee to take into consideration the fact that I operate ten pharmacy contracts in the South West where most of my pharmacies, if not all, are open well beyond their contracted core hours. Keynsham Pharmacy (BS31 1DX) opens till 8pm 7 days a week (4pm on Sunday) despite being a 40 hour contract likewise we recently got your approval to extend our opening times at Wells City Pharmacy (BA5 1XJ) which now opens 2 more hours every day than the contracted core hours. North Worle Pharmacy (BS22 6BT) opens full day on Saturday, till 5.30pm while its core hour is only up to 12 noon. I am stating these facts about our pharmacies to demonstrate the seriousness we put in serving the community we operate within. We have always reviewed the opening hours in consideration with the local need and where needed we have asked your permission to increase or decrease the opening times. While there might be a desire for more opening hours in Norton Fitzwarren, I do not believe there is a need for any longer opening hour than that I have offered. The committee will be mindful that the Boots pharmacy was only open till 5.30 pm Monday to Friday. There have been no demand or request for the pharmacy to be open any longer than that. My offering of 6pm is with the view to serve any late patients coming out of the Orchard Medical Practice which is open till 6pm.
- 5.1.35 Vitastock agrees that I am offering more services than they are and they would match our offering if their application was approved.
- 5.1.36 Next, I will comment on the Vitastock application, without repeating the above arguments.
- 5.1.37 I agree with them in their assessment that there is a need for a pharmacy in Norton Fitzwarren. However, I would like to add that their application is an opportunistic application like the many they have been putting in different ICB area all over the country. They have used the information in my application to make their own application look better, by offering some extra opening. These hours are neither necessary in a village environment nor sustainable from a business point of view.
- 5.1.38 Their best estimate of the location has no suitable premise available. Only I have a realistic chance of securing premise. Within my best estimate there is one vacant unit available now and the possibility of Boots unit becoming vacant in future. I have agreed an exclusive arrangement with the owner of the Boots premises if this was to become vacant, therefore Vitastock have no realistic chance of securing premise. Please see the attached letter from the [Mr C] (owner of the Boots freehold).
- 5.1.39 My journey as a pharmacy contractor began in 2014/15 when this respected committee approved my pharmacy contract in the village of Chew Magna, BANES BS40 8SH. Then, like now, we had an opportunistic applicant who tried to undermine my application by offering Saturday core hours. The committee took view that such locations have limited passing trade and therefore it would be prudent to allow my application which had better chance of meeting the need without facing undue financial pressure because of extended opening hours. I am glad to report that Chew Pharmacy is the thriving heart of the Chew Valley community and we are managing because of the sensible opening hours which keeps our costs low.

- 5.1.40 Vitastock are not securing late evening provision for the whole of the Taunton (60,000+ residents), as they claim in their support information. If they knew the area, they would have known there are late night seven day pharmacies in Taunton. They only had to google search before making such outlandish claim. I guess one can make such mistake when dealing with tens, if not hundreds of rushed contract applications. In their application they have made several mistakes which is a tell tell [sic] sign of the fact this application has been put together by someone who knows very little about day to day pharmacy operation. They have offered to provide services like Impetigo-H202 Cream, well there is no such cream! They refer to UTI- Nitrofurantoin service when nitrofurantoin is just of the drug that can be prescribed under the PGD.
- 5.1.41 To conclude, I would like to request the committee to be mindful of the fact that the Vitastock team has no realistic opportunity of securing premises within their best estimate. [Mr N K], has been submitting multiple pharmacy contract applications through the many company that has been registered in the last few months. Neither [Mr K] nor [Mr T Ahmed] works in a pharmacy. For them these are business opportunities that they want to exploit. They have no link to the area nor do they have any understanding of the area they are proposing to serve. I have consulted with local stakeholders and engaged with them to understand the need of the village. My application meets the gap left by closure of the Boots pharmacy in the village without putting undue financial pressure on the business by offering what might be desirable but unnecessary opening hours. I operate two other pharmacies in similar village locations, therefore I have good understanding of the needs and the challenges faced by locations that receive limited passing trade. Accordingly, I request the committee to approve my application and reject that of Vitastock, which has no prospect of securing a premise.”

5.2 HEALTHCARE PLUS CONSULTING LTD ON BEHALF OF VITASTOCK LTD

- 5.2.1 “Thank you for your letter dated 8th July 2024. We make our final observations on behalf of our client (Vitastock Ltd) below.
- 5.2.2 We agree with comments from the NHS South West PSRC that the opening hours proposed by my client offer much better access to pharmaceutical provision than that of Magna Healthcare. Access is particularly better during weekday evenings and Saturdays. In the context of the new services pharmacy model and the rollout of Pharmacy First, it is important that pharmacies are open these hours to give patients access to these vital services. As highlighted previously, these hours also allow providers to better deliver these services.
- 5.2.3 We note that the NHS South West PSRC and Magna Healthcare Limited have mentioned considerations with regard to premises. My client has previously submitted through prior correspondence that they were in dialogue with a number of units regarding suitable premises for a Pharmacy. My client is now delighted to confirm that they have secured the site of Unit 4, Norton Mills Retail Centre, Norton Fitzwarren, Taunton, TA2 6DG. By way of evidence, we attach the exclusivity agreement / agreement to lease. Elements of this agreement have been redacted for confidentiality reasons, however, should the committee request, we can provide an unredacted version.
- 5.2.4 We believe the attached agreement is clear evidence to demonstrate that Vitastock Ltd has the ability to open a Pharmacy.
- 5.2.5 My client proposes to take over the lease from Empire Burger and Pizzas by way of a premium and has agreed a multiple 5-figure sum. This has been structured in the following way:
- 5.2.5.1 ¼ payable as a non-refundable deposit (this has been paid)

5.2.5.2 ½ automatically payable upon grant of the NHS Pharmacy Licence to my client

5.2.5.3 ¼ payable upon completion of the lease assignment

5.2.6 By structure of the premium payments above, it is clear that my client is committed to opening a Pharmacy.

Conclusion

5.2.7 We submit that my client offers superior access to the application of Magna Healthcare, by way of access through the evening and Saturday core opening hours that they propose.

5.2.8 My client has also demonstrated the clear ability and intention to open a Pharmacy; already parting with a substantial sum of money.

5.2.9 We conclude that NHS Resolution should uphold the grant of the pharmacy licence to my client, Vitastock Ltd."

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 pharmacies.

6.2 It also had before it the responses to NHS Resolution's own statutory consultations.

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

6.4 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations").

Regulation 31

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

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

(2) This paragraph applies where -

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

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

(ii) adjacent premises; and

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

6.6 The Committee noted that Magna Healthcare Ltd had not provided any information in the application form on this point but the Committee noted that the wording of the

application form only required the Applicant to include information in the relevant section if the proposed premises were adjacent to, or in close proximity to, another pharmacy or dispensing appliance contractor premises. The Committee considered it reasonable to determine that the lack of information in the application form on this point when read with the wording of the application form allowed it to be reasonably satisfied that the Applicant considered that the proposed premises were not adjacent to, or in close proximity to, another pharmacy or dispensing appliance contractor premises.

- 6.7 The Committee noted that Vitastock Ltd had stated that Regulation 31 was “n/a” as *“despite there being a pharmacy currently trading near the proposed site, the current pharmacy ... is due to close on 15 February 2024.”*
- 6.8 The Committee noted that the Commissioner had considered Regulation 31 and had concluded that there are no other contractors providing pharmaceutical services within the best estimates provided. The Committee noted that this had not been disputed either on appeal or in subsequent representations. Based on the information before it, the Committee therefore determined that it was not required to refuse either of the applications under the provisions of Regulation 31.
- 6.9 The Committee noted that, if an application were granted, the successful applicant(s) 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(s) 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

- 6.10 The Committee noted that the applications were 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)."*

- 6.11 The Committee considered that Regulation 18(1)(a) was satisfied in that it was required to determine whether it was satisfied that granting an 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.
- 6.12 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 an 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.
- 6.13 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).
- 6.14 The Committee considered the PNA prepared by Somerset 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 2022 - 2025 and that no supplementary statements had been issued.
- 6.15 The Committee noted that Norton Fitzwarren is within the Taunton Central and Tone Vale Primary Care Network area and as such falls to be considered under Annexe 8 of the PNA. When the PNA was published there was a Boots Pharmacy operating from 1 Coopers Mill, Norton Fitzwarren, Taunton and the services offered by this pharmacy are shown in Annexe 8.
- 6.16 The Committee noted the conclusion of Annexe 8 for Taunton Central and Tone Vale Primary Care Network area, which are also included in the PNA in section 9 "Locality Summaries" and in particular 9.8 "Taunton and tone Vale Primary Care Network Area".
- 6.17 The Committee noted that "*the health needs of Taunton Central and Tone Vale vary little from the county average and do not suggest pharmaceutical needs fundamentally different for the area. The maps of travel times suggest that there is adequate access of the large majority of the population, which is concentrated in Taunton itself.*"
- 6.18 Annexe 8 had gone on to state "*On the basis of the information we have, we therefore conclude there is no current gap in the provision of necessary services in the Taunton Central and Tone Vale PCN areas, assuming that the pharmacy in Monkton Heathfield opens as intended.*"
- 6.19 Annexe 8 went on to conclude that there were no gaps in the provision of services in Taunton Central and Tone Vale.
- 6.20 The Committee noted in the Executive Summary of the PNA it was stated:
- "We cannot expect everyone in Somerset to have very local access to every pharmaceutical services, but our initial findings are that distribution and opening times are generally appropriate, and services are commissioner in ways that largely cover the county."*

- 6.21 The Committee noted the overall conclusions of the PNA in section 10 which had concluded that there were no gaps in provision in the period of the PNA.
- 6.22 The Committee noted that both Magna Healthcare Ltd and Vitastock Ltd are seeking to provide unforeseen benefits to the patients of Norton Fitzwarren and surrounding areas.
- 6.23 The Committee noted that the improvements or better access that the Applicants were claiming would be secured by their application were not included in the relevant PNA in accordance with paragraph 4 of Schedule 1.
- 6.24 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)

- 6.25 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"

- 6.26 The Committee noted that the Commissioner had stated in its decision that "...the ICB has no particular plans regarding pharmaceutical services in the area, so there can be no detriment to such plans." and had concluded that it "...was satisfied that granting an application would not cause significant detriment to the proper planning or arrangements in place of provision of pharmaceutical services." The Committee noted that this had not been disputed by any party either on appeal or in subsequent representations.
- 6.27 On the basis of the information available, the Committee was not satisfied that, if an application was 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.
- 6.28 The Committee was therefore not satisfied that significant detriment to the proper planning of pharmaceutical services would result from a grant of an application.

Regulation 18(2)(a)(ii)

- 6.29 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"

- 6.30 The Committee noted that the Commissioner had stated in its decision that ".....was satisfied that granting an application would not cause significant detriment to the proper planning or arrangements in place of provision of pharmaceutical services. The Committee noted that no party had sought to argue, either on appeal or in subsequent representations, that the granting of either of the applications would cause significant detriment to the arrangements currently in place for the provision of pharmaceutical services.

- 6.31 On the basis of the information before it, 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 an application.
- 6.32 In the absence of any significant detriment as described in Regulation 18(2)(a), the Committee was not obliged to refuse the applications and went on to consider Regulation 18(2)(b).

Regulation 18(2)(b)

- 6.33 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)

- 6.34 The Committee had regard to the location of the existing pharmacies and GP surgeries as provided on the maps by the Commissioner, which had not been disputed by any party.
- 6.35 The Committee noted the comments from both Applicants, which had been confirmed by the Commissioner that the Boots pharmacy which was located in Norton Fitzwarren ceased trading in February 2024 and that there is now no pharmaceutical provision in Norton Fitzwarren and it was the closure of the Boots pharmacy which had prompted the applications.
- 6.36 The Committee was mindful that the closure of a pharmacy does not automatically mean that a new pharmacy contract should be granted. The Committee went on to consider the applications before it in accordance with the Regulations.
- 6.37 The Committee noted the comments from both of the Applicants that as there is no pharmacy in Norton Fitzwarren there is no reasonable choice for those living in the area. The Committee was mindful that consideration needs to be given as to whether there is a reasonable choice in obtaining pharmaceutical services within the area of the relevant HWB. The Committee noted that there is no dispute that there are 11 pharmacies within 5 miles of the Norton Fitzwarren, some of which are located in Taunton, with the closest being located in the village of Staplegrove which is 1.5 miles

from Norton Fitzwarren. The Committee further noted the existence of two 100 hour pharmacies, which were located approximately 13 miles away in Bridgewater.

- 6.38 The Committee noted the apparent contradiction by Vitastock Ltd with regard to access. Vitastock at 1.21 above had stated that *“there is good access by foot, car and public transport”* however, the Committee took this to mean access within Norton Fitzwarren to the amenities and facilities that were in the centre of the village, where they were seeking to be located as, at 1.35 above, Vitastock had concluded *“for residents residing near the proposed site, current pharmaceutical services are difficult to access by foot, car and public transport,”* With this in mind, the Committee went on to consider the issues of choice and access.
- 6.39 The Committee noted the comments from the Commissioner with regard to the distance to the nearest pharmacy at Staplegrove which was located some 1.5 miles away. The Commissioner also referred to the journey on foot involving “significant main roads to navigate” and it not being particularly easily accessible due to the nature of the terrain involved. The Committee was of the view that whilst there may be some who may access services on foot, there may be others who were either unable or unwilling to do so. The Committee was of the view that difficulties of access on foot did not of itself indicate that there was not reasonable choice in obtaining pharmaceutical services. For those who chose not to access services on foot, or who are unable to access services on foot, for whatever reason, the Committee went on to consider the ease and level of access to the nearest pharmacies by private and public transport.
- 6.40 The Committee noted the comments from parties with regard to public transport and access to the nearest pharmacies. The Committee noted the comments from Vitastock Ltd, which had been supported by the Commissioner, that access to the closest pharmacy in Staplegrove, which whilst only a comparatively short bus ride away, was not practical due to the infrequency of the buses during the day. The Committee also noted the undisputed comments from the Commissioner with regard to the infrequency of the buses to Taunton which are variable and that there are long wait times between the services. The Committee found it difficult to fully assess the extent to which patients were using public transport, but considered that the comments provided indicated that access to existing pharmaceutical services was not easy. The Committee gave weight to these views that there were some in the area who could not access the nearest pharmaceutical provision by public transport negating reasonable choice.
- 6.41 For those who had access to private transport, the Committee noted that there was no information provided with regard to actual car ownership. Vitastock Ltd had asserted that access to the nearest pharmacies was difficult due to the location of the pharmacy in Staplegrove and the discreet community that it serves. Whilst the Applicants comments had not been disputed, the Committee was not persuaded that those who did have access to their own transport were currently experiencing any difficulties in accessing the existing pharmacies.
- 6.42 The Committee noted the support for a pharmacy from the community in the form of Somerset Healthwatch, which had provided comments from both the Parish Council and the Patient Participation Group of the local medical practice. The Committee also noted the link to the petition as provided by Vitastock Ltd, though the Committee accepted that this was with regard to trying to prevent the closure of the Boots pharmacy, rather than a petition to open a new pharmacy. The Committee noted the comments in the petition with regard to access for those who had been accustomed to using the Boots in Norton Fitzwarren and was mindful that the same arguments as to why they wished for the Boots not to close would apply as to why they wished for a new pharmacy to open.
- 6.43 In addition, the Committee noted the information provided by the Commissioner regarding the use of the previous pharmacy which dispensed between 5,500 and 6,000 items a month. The Committee was mindful that this is indicative that the previous pharmacy in the village was well used.

- 6.44 The Committee further noted the information from Vitastock Ltd with regard to the sizeable population, taken from the 2021 census and that this also included those who live in Cotford St Luke who would also benefit from the provision of pharmaceutical services in Norton Fitzwarren.
- 6.45 Taking the distance on foot and above public transport issues into account, the sizeable population as well as the local facilities which would serve every day needs, the Committee was, on balance, of the view that there is not already reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB, such that it was satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting an application would confer significant benefits on persons.
- 6.46 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. In considering 18(2)(b)(ii) the Committee noted the conclusion of the Commissioner that no information had been provided by either Applicant to support their applications in respect of those who share protected characteristics. The Committee identified that pharmaceutical services, especially other essential services apart from the dispensing of prescriptions, which can be delivered, may be difficult to access of people with protected characteristics based on age and disability. The Committee was of the view that there would always be those in an area who share a protected characteristic by virtue of age and illness/disability and whilst a pharmacy at the proposed site might be a benefit to some people there was very limited information provided as to how those with a protected characteristic were currently experiencing difficulties in accessing pharmaceutical services specific to their needs. However, for the reasons set out above with regard to access to the existing local pharmacies, the Committee was of the view that a pharmacy at the proposed site would be of benefit. The Committee noted that the information regarding those who share a protected characteristic and the pharmaceutical services they needed was extremely limited.
- 6.47 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 either of the applications would confer significant benefits on persons.
- 6.48 In considering Regulation 18(2)(b)(iii) the Committee had regard to the desirability of innovative approaches to the delivery of pharmaceutical services. In doing so, the Committee would consider whether there was something more over and above the usual delivery of pharmaceutical services that might be expected from all pharmacies, some 'added value' on offer at the location. The Committee noted that neither Applicant had proposed any innovation either in their original application forms, on appeal or in subsequent representations. 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 either of the applications would confer significant benefits on persons.

Regulation 18(2)(b) generally

- 6.49 The Committee noted that Magna Healthcare Ltd was proposing to open for 45 hours a week of which it proposed that all of these would be core hours with the 5 hours above 40 being directed. The core hours were arranged so that there would be provision from 9am to 6pm Monday to Friday. The Committee noted that there was no information as to which of these hours would be the "directed" hours. The Committee noted that Magna Healthcare Ltd was not proposing to offer any hours, either core or supplementary, on a Saturday or Sunday.

6.50 The Committee noted that Vitastock Ltd was proposing to open for 49 hours a week of which 48 would be core hours with the 8 hours above 40 being directed. The core hours were arranged so that there would be provision from 9am to 1:30pm and 2:30pm to 7pm Monday to Friday as well as 10am to 1pm on a Saturday. Vitastock Ltd were proposing to open at 9am on a Saturday with the first hour being supplementary, however they were not proposing to offer any hours on a Saturday afternoon or a Sunday.

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

Pharmacy opening hours: general

23.— *(1) Subject to paragraph 23A, an NHS pharmacist (P) must ensure that pharmaceutical services are provided at P's pharmacy premises—*

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

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

6.52 The Committee noted that, if either of the applications were to be granted, a direction would need to be issued for the “additional” hours which were being offered by both of the Applicants.

6.53 The Committee noted the undisputed comments from parties that as well as pharmacies in the area who are already providing the same hours during the week, there are two 100 hours within 13 miles of the proposed site which, even though they had reduced their hours as permitted under the Regulations, were still offering longer hours than either of the Applicants. The Committee noted the comments from both of the Applicants with regard to the later opening on an evening to match the surgery opening hours as well as to be able to provide access to medical professionals and the Pharmacy First scheme at times when the branch surgery located in Norton Fitzwarren was closed. The Committee was of the view however 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 either of the applications would confer significant benefits (in relation to opening hours) on persons.

6.54 The Committee has considered whether there are any other factors that would confer significant benefits including on patients who share protected characteristics. The Committee had regard to the need to eliminate discrimination and advance equality of opportunity and foster good relations between these patients and those who do not share their protected characteristics.

6.55 The Committee was of the view that in accordance with Regulation 18(2)(b) the granting of an application would confer significant benefits on persons in the area of the HWB which were not foreseen when the PNA was published.

Other considerations

6.56 Having determined that Regulation 18(2)(b) had been satisfied, the Committee needed to have regard to Regulation 18(2)(c) to (e) and determined that it was not aware of any other applications or appeals relating to applications offering to secure the improvements or better access that the Applicants were offering to secure and that

there was no need to consider applications from other persons offering to secure such improvements or better access.

- 6.57 No deferral or refusal under Regulation 18(2)(f) was required in this case.
- 6.58 The Committee had regard to Regulation 18(2)(g) and found that it was not applicable.
- 6.59 The Committee considered whether there were any further factors to be taken into account and concluded that there were not.
- 6.60 The Committee was 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.
- 6.61 The Committee considered that both applications would provide better access, therefore the Committee considered that it had three options:
- 6.61.1 grant both applications;
- 6.61.2 grant one application and refuse the other; or
- 6.61.3 refuse both applications.
- 6.62 The Committee discounted the third option as unreasonable given that it had decided that there is difficulty in accessing current pharmaceutical services such that a pharmacy at the proposed location would provide better access to pharmaceutical services.
- 6.63 The Committee therefore considered which of the remaining options was preferable.
- 6.64 The Committee had regard to comments in R (on the application of Rushport Advisory LLP) v NHS LA [2016] EWHC 907 (Admin) ("Rushport case") which stated at paragraph 43:
- "the decision maker must be very careful not to decide that [the public benefit test] is met in a case where there is a real possibility of services under both grants coming on stream, leading to over- provision at the expense of the public purse (since providers are entitled to charge the NHS for the services)"*
- 6.65 The Committee noted that in the Rushport case, the issue was the potential grant of an application where an extant grant was in place. The Committee, however, considered that it could be inferred from the extract above that in a situation where more than one application secures improvements or better access, more than one grant should be avoided. In that regard the Committee noted Kerr J's observation in the Rushport case that *"successive applications determined sequentially in respect of the same services are awkward, and are best avoided if they can be..."* Again the Committee considered that this was supportive of the view that where two applications seek to deliver the same benefits, they will be considered together (as is the case here) and granted only to the extent necessary to deliver the benefits identified. Where one application is superior to the other on relevant grounds, that application should be granted, and if the effect of granting that application is to occupy the field so that the less favoured application no longer meets the public benefit test, then the less favoured application should be refused even if considered in isolation it would have satisfied that test.
- 6.66 On the basis of the information provided, the Committee considered that only one pharmacy was required to open to provide better access to pharmaceutical services in Norton Fitzwarren. The Committee noted that neither party had suggested that both applications should be granted. The Committee therefore proceeded to consider which application should be granted.

Comparing the two applications

- 6.67 The Committee noted the comments from Vitastock Ltd with regard to the volume of information provided by them over the information provided by Magna Healthcare Ltd. The Committee was mindful that the majority of the information provided by Vitastock Ltd was supporting their view that an application should be granted rather than which application should be preferred and as such the Committee had already considered this in coming to the conclusion that an application should be granted.
- 6.68 The Committee therefore went on to consider both of the applications before it in terms of location and premises, services to be provided as well as the opening hours that each Applicant was proposing to offer.
- 6.69 The Committee noted that both of the applications were for “best estimate” and that the areas considered by both of the Applicants were relatively broad and overlapped, as could be seen from the maps provided. The Committee noted that both Applicants were seeking to be located in Norton Fitzwarren and was of the view that there was nothing to choose between the applications as to which would be best placed in terms of location. The Committee noted that both of the Applicants had provided leases.
- 6.70 The Committee was of the view that both Applicants were equally advanced in negotiations with their respective landlords and the claims that there was only one suitable unit in the area proved not to be the case given that they both were in negotiations for different premises.
- 6.71 The Committee noted the services, from the original application forms, that both of the Applicants were proposing to offer as well as the statements from both that they would offer any services as and when commissioned by the Commissioner. Based on the information before it, the Committee determined that there was nothing to differentiate between the two applications based on the services offered and, as set out above, neither of the Applicants were offering any innovative approaches to the delivery of pharmaceutical services.
- 6.72 The Committee next considered the hours as offered by each of the Applicants. Whilst the Committee had concluded that neither application would confer significant benefits in terms of hours, it did note that there was a difference in the hours offered.
- 6.73 The Committee noted that Magna Healthcare were offering 45 core hours which would be 9am to 6pm Monday to Friday with no hours, either core or supplementary on a Saturday or Sunday. Vitastock Ltd were offering 48 core hours which would be provided 9am to 1:30pm and 2:30pm to 7pm Monday to Friday as well as on a Saturday from 10am to 1pm.
- 6.74 On balance, the Committee was of the view that the additional hours provided by Vitastock Ltd were marginally better and would provide access to pharmaceutical services on a weekend as well as later on an evening when the branch surgery was closed.
- 6.75 The Committee was mindful of the desirability of only granting one application and on the basis of the advantages outlined above, it preferred the application of Vitastock Ltd.

Other considerations

- 6.76 The Committee had regard to Regulation 19(6) which states:
- (6) *If NHS England is satisfied as mentioned in regulation 18(2)(b), it may grant the application notwithstanding that the improvements or better access were or was not included in the relevant pharmaceutical needs assessment.*
- 6.77 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:

- 6.77.1 confirm the Commissioner's decision;
- 6.77.2 quash the Commissioner's decision and redetermine the applications;
- 6.77.3 quash the Commissioner's decisions and, if it considers that there should be a further notification to the parties to make representations, remit the matter to the Commissioner.

7 DECISION

- 7.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, confirms the decision of the Commissioner.
- 7.2 The Committee concluded that it was not required to refuse either of the applications under the provisions of Regulation 31.
- 7.3 The Committee has considered whether the granting of an 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 an application should be granted on the following basis:
 - 7.4.1 In considering whether the granting of an application would confer significant benefits, the Committee determined that –
 - 7.4.1.1 there is not 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 satisfied that granting an application would confer significant benefits as outlined above that would secure improvements or better access to pharmaceutical services.
 - 7.4.3 The core opening hours provided by Vitastock Ltd outweigh those from the Magna Healthcare Ltd application. As such, Vitastock Ltd's application is to be preferred.
- 7.5 The Committee noted that the Commissioner would now need to consider the issuing of a direction for the hours above 40 core hours which Vitastock Ltd had offered to provide.

**Case Manager
Primary Care Appeals**