

14 August 2024

FILE REF:

SHA/26237

8th Floor
10 South Colonnade
Canary Wharf
London
E14 4PU

Tel: 0203 928 2000
Email: nhsr.appeals@nhs.net

DECISION MAKING BODY: NHS BIRMINGHAM AND
SOLIHULL INTEGRATED CARE
BOARD
("the Commissioner")

PHARMACIST: FIROZ HEALTHCARE LIMITED T/A DEAN
PHARMACY
("the Applicant")

PREMISES: 175 WEOLEY CASTLE ROAD
WEOLEY CASTLE
BIRMINGHAM
B29 5QH

**THE NATIONAL HEALTH SERVICE (PHARMACEUTICAL AND LOCAL PHARMACEUTICAL
SERVICES) REGULATIONS 2013 ["THE REGULATIONS"]**

**SCHEDULE 4 [Terms of Service of NHS Pharmacists]
PART 3 [Hours of Opening]**

Outcome

- 1.1 Based on the information provided, I am not satisfied that the pharmaceutical services provision that would result from the Applicant's proposed hours would maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises. I am satisfied that maintaining the current level of service is a realistically achievable outcome and therefore the Applicant cannot rely on paragraph 24(1)(b).
- 1.2 The action taken by the Commissioner to refuse the application is confirmed.

A copy of this decision is being sent to:

Firoz Healthcare Limited t/a Dean Pharmacy
NHS Birmingham and Solihull ICB

Advise / Resolve / Learn

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**SCHEDULE 4 [Terms of Service of NHS Pharmacists]
PART 3 [Hours of Opening]**

1 Introduction

- 1.1 The Applicant seeks to keep the total number of core opening hours the same while offering a different distribution of these hours during the week.
- 1.2 The Commissioner has refused the application. The Applicant seeks to appeal to NHS Resolution.

Rights of appeal

- 1.3 Where the Commissioner has determined an application under paragraph 26 of Schedule 4 of the Regulations and has granted it in part only or has taken an action that has the effect of refusing it, paragraph 26(9) provides a right of appeal to the Secretary of State for Health and Social Care ("the Secretary of State").
- 1.4 The Secretary of State has directed NHS Resolution to determine such appeals. As an authorised officer of NHS Resolution, I have considered the appeal and have determined it, in accordance with my delegated powers.

Opening hours

- 1.5 A pharmacy's opening hours may be categorised as:
 - 1.5.1 "core opening hours" (at the hours during which the pharmacy must be open by virtue of paragraph 23(1) of Schedule 4 of the Regulations), which may incorporate a direction of the Commissioner requiring fewer or greater than 40 hours and at set times and days; or

- 1.5.2 “supplementary” opening hours (other hours during which the pharmacy premises are open which are in addition to the core hours), pursuant to paragraph 23(3) of Schedule 4 of the Regulations.

Alteration of core opening hours

- 1.6 In accordance with paragraphs 1(7)(c) and 1(7)(d) of Schedule 2 of the Regulations, the pharmacy must provide, as part of an application for entry in the pharmaceutical list:
- 1.6.1 the proposed core opening hours in respect of the premises; and
- 1.6.2 the total proposed opening hours for the premises (having regard to both the proposed core opening hours and any supplementary opening hours).
- 1.7 The Commissioner maintains pharmaceutical lists that include the days on which and times at which, at those premises, the listed person is to provide those services during the core opening hours and any supplementary opening hours of the premises.
- 1.8 The days on which or times at which a pharmacy is obliged to provide pharmaceutical services at the premises may only be altered by the pharmacy on application under paragraph 26(1) of Schedule 4 of the Regulations, so long as the effect of that application is to reduce the total number of hours for which a pharmacy is obliged to provide, or keep the total number of hours the same.

Alteration of supplementary opening hours

- 1.9 Supplementary opening hours may be altered by the pharmacy giving notice to the Commissioner, in accordance with paragraph 23(6)(a) of Schedule 4 of the Regulations, without the need to make an application to the Commissioner.
- 1.10 There is no specific right of appeal to NHS Resolution in respect of notices given under paragraph 23(6)(a).

2. Application

In this case, the Applicant provided the following information in its application form dated 20 March 2024:

- 2.1 “This is an application to permanently change core opening hours.
- 2.2 Current opening hours for these premises:

Monday	09:00 to 13:00 16:30 to 19:00
Tuesday	09:00 to 13:00 16:30 to 19:00
Wednesday	09:00 to 13:00 16:30 to 19:00
Thursday	09:00 to 13:00 16:30 to 19:00
Friday	09:00 to 13:00 16:30 to 19:00
Saturday	09:00 to 16:30
Sunday	

- 2.3 Proposed core opening hours for these premises:

Monday	09:00 to 13:00 16:00 to 18:30
Tuesday	09:00 to 13:00 16:00 to 18:30
Wednesday	09:00 to 13:00 16:00 to 18:30
Thursday	09:00 to 13:00 16:00 to 18:30
Friday	09:00 to 13:00 16:00 to 18:30
Saturday	09:00 to 16:30
Sunday	

- 2.4 If this is a permanent change, please state below the date from which you would like the change to take effect:
- 2.5 At least 30 days after permission granted.
- 2.6 We tried to align our core hours with patient and business needs and submitted an application for closing early on Saturday at 2.00pm instead of 16:30. Giving us a saving of 2 ½ hours and we attached an accountant letter explaining the business imperative for meeting and improving services on other hours. This application was refused.
- 2.7 We are trying to propose to close at 18:30 instead of 19:00 Monday to Friday and proposing start of core hours at 16:00 instead of 16:30 to keep the same core hours. I believe this achieves the saving without impacting on patient need.
- 2.8 Please note our main source of prescription and referrals come from Millenium health centre and this closes at 18:15 Monday to Friday, the second healthcentre [sic] is Weoley park surgery this also closes at 6:30 pm. There is an urgent care centre at Katie road Selly oak, B29 6jg [sic]. This is roughly 2miles away and we do not see any prescriptions from the urgent centre. There is a pharmacy Medipharma literally yards away and open till [sic] 7.00pm.
- 2.9 We carried out an audit during weekdays for the last half an hour 18:30 to 19:00 from 12.02.2024 to 11.03.2024 we had no prescriptions for an acute ,In [sic] the 4 weeks we had 7 prescription collection which were already bagged and we received as [sic] yes from all those collecting prescriptions to the question “would you have been able to collect these prescriptions if the pharmacy closing time was 18:30 instead of 19:00. All Rx collections were accessed by people travelling by car.
- 2.10 There were no instances of advice, and no EHC sale or CPCS.” [sic] All our methadone patients currently collect by 18:00 as per client agreement for staff security and data CD register entries.
- 2.11 I would contend there is minimal to no demand from 18:30 to 19:00 when local surgeries are closed.
- 2.12 And any outside demand can be catered for by Medipharma which is 1.3miles closes 7pm [sic] and Pitman chemist 1.4miles from B29 5qh [sic] and closes at 9.00pm and these are reasonable distance for outside hour service. We also have an issue with workforce working late till 7.00om [sic] and this change will enable better coverage and improved service during other hours.
- 2.13 I do hope this find favour with the committee.”

3. The Decision

In a letter to the Applicant dated 30 May 2024 the Commissioner decided to refuse the application. The Commissioner stated:

- 3.1 “Further to your application to change the core opening hours at the above address, I am writing to confirm that it has been refused.
- 3.2 Committee agreed to refuse the application as it doesn’t meet paragraph 24(1)a or 24(1)b of the regulation. This pharmacy is the only pharmacy with Saturday core hours provision within a mile after 1pm.
- 3.3 In considering the two specific matters set out in paragraph 24(1), Schedule 4 of the 2013 regulations:
- 24.—(1) Subject to paragraph 26(2A), where NHS England issues a direction for setting any days or times for opening hours under this Part, or determines them without issuing a direction, it must in doing so seek to ensure that the days and times at which pharmacy premises are open for the provision of pharmaceutical services in the area in which the premises that are the subject of the direction are located are such as—
- (a) to maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises; or
- 3.4 Not met – The existing level of provision would not be maintained.
- (b) to maintain a sustainable level of adequate service provision for the people in that area or other likely users of the pharmacy premises, in circumstances where maintained.
- 3.5 Not met – A sustainable level of adequate service provision would not be maintained.
- 3.6 You have a right of appeal to the Secretary of State against the issuing of this direction. Should you choose to appeal then you should send a concise and reasoned statement of the grounds for your appeal within 30 days of receiving this notice to nhsr.appeals@nhs.net or:
- 3.7 Primary Care Appeals
NHS Resolution
8th Floor
10 South Colonnade
Canary Wharf
London
E14 4PU”

The Commissioner’s additional papers (circulated to the Applicant for information by NHS Resolution)

Pharmaceutical Application Report for Committee

- 3.8 “By virtue of paragraph 23(1), Schedule 4 of the 2013 regulations Firoz Healthcare Limited is required to ensure pharmaceutical services are provided at Dean Pharmacy for 40 hours each week.
- 3.9 The applicant is seeking to maintain the same total number of core opening hours, but to change the timing of them.
- 3.10 The application has been made under paragraph 26(1)(b), Schedule 4 of the 2013 regulations.
- 3.11 “Determination of pharmacy premises core opening hours instigated by the NHS pharmacist

26.—(1) An NHS pharmacist (P) may apply to the NHSCB for it to change the days on which or times at which P is obliged to provide pharmaceutical services during core opening hours at P's pharmacy premises in a way that—

- (a) reduces the total number of hours for which P is obliged to provide pharmaceutical services at those premises each week; or
- (b) keeps that total number of hours the same.

(2) Except where sub-paragraph (2A) applies, where P makes an application under sub-paragraph (1), as part of that application P must provide the NHSCB with such information as the NHSCB may reasonably request in respect of the matters that NHS England must seek to ensure pursuant to paragraph 24(1)."

3.12 The applicant provides the following services:

3.12.1 Essential services which does include the dispensing of appliances

3.12.2 Advanced services – Flu vaccination, NMS, smoking cessation, contraception, pharmacy first.

3.13 The applicant has provided the following information in support of their application [application quoted in full - 2.6 to 2.13].

3.14 Provision of Primary Medical Services in the area:

3.14.1 The local surgeries (1 mile radius) open and close as follows. (Info from NHS.UK)

3.15 There are 6 surgeries listed:

Practice name	Practice address	Opening hours	Distance from pharmacy
Millennium Medical Centre	121 Weoley Castle Road, Weoley Castle, Birmingham, West Midlands, B29 5QD	Monday-Friday 8:15am to 1pm; 2pm to 6:15pm Saturday 08:00am - 12:30pm	0.2 miles
Weoley Park Surgery	112 Weoley Park Road, Selly Oak, Birmingham, West Midlands, B29 5HA	Monday- Friday 08:0-18:30	0.6 miles
Shenley Green Surgery	22 Shenley Green, Selly Oak, Birmingham, West Midlands, B29 4HH	Monday, Tuesday, Thursday, Friday 8am-12pm 2pm-6:30pm Wednesday 8am-1pm	0.8 miles
Woodgate Valley Health Centre	61 Stevens Avenue, Woodgate, Birmingham, West Midlands, B32 3SD	Monday, Tuesday, Thursday, Friday 8:30am- 6:30pm Wednesday 8:30am-1pm	0.9 miles
College Green Medical Practice	Health & Wellbeing Centre, 1 Bristol Road South, Birmingham, West Midlands, B31 2GH	Monday-Friday 8:30am- 6:30pm	0.9 miles
Jiggins Lane Medical Centre	17 Jiggins Lane, Bartley Green, Birmingham, West Midlands, B32 3LE	Monday-Friday 8:30am- 12:30pm; 1:30pm- 6:30pm	1 mile

3.16 Other Prescribers (from NHS.UK)

Name	Address	Opening hours	Distance from pharmacy
Queen Elizabeth Hospital	Mindelsohn Way, Edgbaston, Birmingham, B15 2WB	24 hours	1.5 miles
City Hospital	Dudley Road, Dudley Road, Birmingham, West Midlands, B18 7QH	24 hours	3.9 miles

3.17 Pharmaceutical Services within 1 mile distance of the Pharmacy

3.18 *NB: Whilst those providers may have supplementary opening hours given that they can be reduced or changed with five weeks' notice core opening hours only are included below. There are 6 pharmacies within a mile.*

FCODE	Name	Address	ICB	Core Hours	Dispense Appliances	Advanced/Enhanced	Distance
FQ534	Castle chemist	104 Weoley Castle Road, Selly Oak, Birmingham, West Midlands, B29 5PT	BSOL	Monday-Friday 09:00-13:00; 14:00-17:30 Saturday 09:30-12:00	Yes	NMS, Flu, CPCS, Hypertension, Smoking cessation, contraception, Extended care 1,2	0.1 miles
FRF17	Kings pharmacy	118-120 WEOLEY CASTLE SQ, WEOLEY CASTLE, BIRMINGHAM, B29 5PT	BSOL	Monday-Friday 09:00-13:00; 14:00-17:30 Saturday 09:30-12:00	Yes	NMS, Flu, CPCS, Hypertension, Smoking cessation, contraception, Extended care 1,2	0.1 miles
FDG00	G R pharmacy	44-46 HILLWOOD ROAD, NORTHFIELD, BIRMINGHAM, B31 1DJ	BSOL	Monday-Friday 09:00-17:00	Yes	NMS, Flu, CPCS, Hypertension, Smoking cessation, contraception, Extended care 1,2	0.8 miles

FDX11	Aston Chemist Ltd	4 Shenley Green, Shenley Lane, Selly Oak, Birmingham, B29 4HH	BSOL	Monday, Tuesday, Thursday, Friday 09:00-13:00; 14:00-18:00 Wednesday and Saturday 09:00-13:00	Yes	NMS, Flu, CPCS, Hypertension, Smoking cessation, contraception, Extended care 1,2	0.8 miles
FCX95	Boots pharmacy	61 STEVENS AVENUE, WOODGATE VALLEY, BIRMINGHAM, B32 3SD	BSOL	Monday-Friday 09:00-14:00 15:00-18:00	Yes	NMS, Flu, CPCS, Hypertension, Extended care 1,2	0.9 miles
FJ513	Knights Jiggins lane pharmacy	17 JIGGINS LANE, BARTLEY GREEN, BIRMINGHAM, WEST MIDLANDS, B32 3LA	BSOL	Monday-Friday 09:00-17:00	Yes	NMS, Flu, CPCS, Hypertension, Smoking cessation [sic], contraception, Extended care 1,2	1 mile

3.19 Distance Selling Premises and Dispensing Appliance Contractors

3.20 There are 15 Distance Selling Pharmacies in the Birmingham and Solihull ICB area and nationally there are approximately 390 Distance Selling Pharmacies providing Essential Services across England without face-to-face contact on or in the vicinity of the premises.

3.21 There are 3 Dispensing Appliance Contractors in the Birmingham and Solihull ICB area.

3.22 Local Hours Plan

3.23 None in place.

3.24 Temporary Suspensions of Pharmaceutical Services

3.25 There have been no unplanned closures reported for any of the pharmacies referenced in this report within the last 6 months.

3.26 Local Pharmaceutical Committee Representations

3.27 No comments.

3.28 Pharmaceutical Needs Assessment

3.29 The following is taken from the Birmingham and Solihull Pharmaceutical Needs Assessment.

- 3.30 “3.2.3.4 Routine Sunday daytime access to community pharmacies:
The number, location and opening hours of community pharmacy providers open on Sundays vary within each locality. Fewer pharmacies (22%) are open on Sundays than any other day in BSOL, which typically mirrors availability of other healthcare providers open on a Sunday.
- 3.31 7.1.5.4. Recommendations: Whilst no gaps have been identified in the current provision of pharmaceutical services across BSOL or in the future (over the next three years) there are opportunities to enhance provision and support improvement of health of BSOL residents to include advanced services where there is an area of need.”
- 3.32 Matters for Committee to consider.
- 3.33 Paragraph 24, Schedule 4 of the 2013 regulations sets out the matters that the committee is to have regard to when determining this application. It is to be noted that the application only has to satisfy one of the matters in paragraph 23(1), Schedule 4, not both of them.
- 3.34 [Regulation 24(1) to (5) quoted in full]
- 3.35 Conclusions:
- 3.35.1 (For information only, alongside the application to amend core hours, the applicant has submitted a notification to amend supplementary opening hours.)
- 3.35.2 No pharmacy within a mile opens Saturday core hours after 1pm
- 3.36 Recommendations:
- 3.36.1 It is recommended that the application to amend Core Opening Hours is refused as this is the only pharmacy opened after 6pm within a mile.
- 3.37 In considering the two specific matters set out in paragraph 24(1), Schedule 4 of the 2013 regulations:
- 24.—(1) Subject to paragraph 26(2A), where NHS England issues a direction for setting any days or times for opening hours under this Part, or determines them without issuing a direction, it must in doing so seek to ensure that the days and times at which pharmacy premises are open for the provision of pharmaceutical services in the area in which the premises that are the subject of the direction are located are such as—
- (a) to maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises; or
- 3.38 Not met – The existing level of provision would not be maintained.
- (b) to maintain a sustainable level of adequate service provision for the people in that area or other likely users of the pharmacy premises, in circumstances where maintained.
- 3.39 Not met – A sustainable level of adequate service provision would not be maintained.
- 3.40 As no direction is currently in place as the Dean Pharmacy is included in the pharmaceutical list for the area of Birmingham HWB, paragraph 26(c)(ii), Schedule 4 of the 2013 regulations applies, namely that no direction is to be issued if the application is granted.
- 3.41 For the avoidance of doubt, if the committee agrees with the recommendation, then the amended core opening hours are to be included in the decision letter”.

- 3.42 “Dean Pharmacy- Change of core hours application (Birmingham and Solihull ICB) 175 Weoley Castle Road Weoley Castle Birmingham B29 5QH
- 3.43 They are applying to close early on Saturdays. It was refused in the September and March PSRC meeting.
- 3.44 Application: [application quoted in full – 2.1 to 2.13 above]
- 3.45 There are 6 surgeries and 6 pharmacies within a mile.
- 3.46 There have been no unplanned closures reported for any of the pharmacies referenced in this report within the last 6 months. No comments from LPC.
- 3.47 It is recommended that the application to amend Core Opening Hours is refused as this is the only pharmacy opened after 6pm within a mile.
- 3.48 In considering the two specific matters set out in paragraph 24(1), Schedule 4 of the 2013 regulations:
- 24.—(1) Subject to paragraph 26(2A), where NHS England issues a direction for setting any days or times for opening hours under this Part, or determines them without issuing a direction, it must in doing so seek to ensure that the days and times at which pharmacy premises are open for the provision of pharmaceutical services in the area in which the premises that are the subject of the direction are located are such as—
- (a) to maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises; or
- 3.49 Not met – The existing level of provision would not be maintained.
- (b) to maintain a sustainable level of adequate service provision for the people in that area or other likely users of the pharmacy premises, in circumstances where maintained.
- 3.50 Not met – A sustainable level of adequate service provision would not be maintained.
- 3.51 Committee Decision
- 3.52 The application was refused, regulation 24 (1) a and b not met.
- 3.53 The appeal rights to the applicant.”

4. **The Appeal**

In an email to NHS Resolution dated 18 June 2024 and letter dated 28 June 2024, received 29 June 2024, the Applicant appealed against the Commissioner’s decision. The grounds of appeal are:

Email of 18 June 2024:

- 4.1 “I am applying to be granted an Appeal against the NHSE decision to refuse 30 min change in core hours at the end of the day Monday to Friday resulting in a total of change of 2.5hrs which would mean that we close in line with our two main surgeries.
- 4.2 Both Millennium Healthcentre and Weoley Park Surgery provide last appointment till 6:15pm and close at 6:30pm.

- 4.3 We are currently open till 19:00 hrs Monday to Friday which is not necessary and is not used and so wish to be allowed to close at 6:30pm.
- 4.4 In the reply NHSE refers to Saturday opening and closing which we have left unaltered and leaves me puzzled it does not give me confidence that our reasonable request was properly considered.
- 4.5 I would therefore ask that the appeal unit consider my very reasonable application.
- 4.6 I am conducting an in house audit for the last 30 min for different types of use so that I can supplement my original reasoning with additional information for the appeals committee.
- 4.7 Please find attached [appendix A] the original application to change the core hours submitted to nhse [sic] in march 2024 and the corresponding change in supplementary hours.
- 4.8 Please also find a copy [appendix A] of NHSE decision to refuse the application dated 30.05.2024.
- 4.9 Please acknowledge the appeal and let me know if you need any further information so that I can be of assistance”.

Letter of 28 June 2024:

- 4.10 “I am appealing on the grounds that NHS england [sic] failed to give an appropriate reason for the refusal, we are not proposing to change our hours on Saturday.
- 4.11 We are proposing to reduce our opening by 30min each weekday and close at 6.30pm Monday to Friday. we believe that we are offering good opening hours by being open till 6.30pm and on Saturday till 4.30pm and this is adequate & sustainable to meet the needs of the local population.
- 4.12 The Core hours that had been offered originally were based on the healthcare [sic] being three doors away and the pharmacy being quite busy. This changed when the Health Centre moved to its new site of 121 Weoley Castle road when two other pharmacies are nearer than our site and the pharmaceutical need and demand changes when there is a geographical change and then widespread use of electronic prescriptions increased the drift as it resulted in change [sic] in how patients access services.
- 4.13 This has meant a reduced demand and we had made some workforce adjustments to address the viability of the service .I attach [appendix B] a letter from my accountant which is for the earlier application for reduced hours on Saturday but is still relevant to illustrate the financial imperative to adjust so that we maintain a good level of service when we are open and that is a major driver for the change in hours.
- 4.14 Consequently there needs to be some flexibility to allow adjustments to reflect that and to hold a contract so rigidly is both unnecessary and unreasonable.
- 4.15 Our prescriptions overwhelmingly come from two sources Millenium medical Center [sic],121 Weoley Castle Road and Weoley Park Surgery. 112 Weoley Park Rd. The former is 150meters from the pharmacy and closes at 6.15pm. Weoley Park Surgery is 1Km from the pharmacy and closes at 6.30pm with last appointment at 6.15pm. (I can provide further proof if this info is contested).
- 4.16 Staff conducted an in house daily tally for the survey [appendix B] in support of our claim for change in hours from 30.05.24 to 28.06.24 on all weekdays listing the type of patient contact and service accessed. The survey this is representative of typical usage and is attached with this appeal which shows there is zero acute prescription

dispensing or referrals post 6.30pm. There is no advanced service and a small need for prescription collection and dispensing of regular repeats. These are for prescriptions generated on other days i.e. delayed dispensing. When the new opening times are published these would be collected or delivered before 6.30pm.

- 4.17 We appreciate dispensing is not the only service pharmacies offer and contend that opening till 6.30pm provides adequate and sustainable service so we noted there is no EHC or palliative care dispensing. Telephone queries mainly related to opening queries and orders of the prescription.
- 4.18 There are many other pharmacies within 1KM in the area but are closed from 6.30pm to 7.00pm so are not included. It is worth noting that in describing the Pharmaceutical need of the local population Current [sic] Birmingham and Solihull PNA considers essential services only as being necessary for the provision of pharmaceutical services and it considers those services within the postcode B29,B30 to be adequate with good choice.
- 4.19 The only healthcare open after 6.30pm is a South Birmingham Urgent Care Center [sic], 15 Katie Rd, Selly Oak, Birmingham B29 6JG which is 2km from Dean pharmacy and is open till 8pm. It is no longer a walk in Centre, and this is another change. You need a referral from GP to access its services and we do not receive any prescriptions or referrals from that center [sic]. There is an adjacent pharmacy, Medipharma, which is open till 7pm during weekdays and till 6.00pm on Saturdays.
- 4.20 I would respectfully submit that any service beyond 6.30pm is out of hours and consequently it is reasonable to include services beyond the 1km which people would normally access. Pitman Pharmacy, 622 Bristol Road, B31 2JR is a 100hr Contract Pharmacy which is open till 9.00pm Monday to Saturday. Bristol Road is a main arterial Road for Birmingham and has good transport links, Pitman Pharmacy has good parking at the front and is situated 1.6miles mostly flat from Dean Pharmacy.
- 4.21 I contend with evidence gathered by the survey that there is low usage, and the panel may consider that opening to be necessary but nature of access is such closing at 6.30pm instead of 7pm will have no detrimental effect. the new hours would maintain, as necessary, the existing level of pharmaceutical service provision and would maintain a sustainable level of adequate service provision for the people in that area or other likely users of the pharmacy premises, in circumstances where maintaining the existing level of service provision is unnecessary for the reasons given above: the pharmacy is little used from 6.30pm to 7.00pm and that use could easily be accommodated during the proposed, amended opening times and by other pharmacies locally that are available to patients who may require access to pharmaceutical services.
- 4.22 I therefore invite the resolution committee to grant the appeal."

5. Representations

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

6. Consideration

6.1 I note the following:

6.1.1 The Applicant's core opening hours total 40 hours and the Applicant proposes to redistribute those 40 core opening hours pursuant to paragraph 26 of Schedule 4.

6.2 The Applicant proposes to:

6.2.1 Reopen at 4pm instead of 4.30pm Monday to Friday;

- 6.2.2 Close at 6.30pm instead of 7pm Monday to Friday
- 6.3 In the PSRC meeting minutes of 8 May 2024, I note it states that *“they are applying to close early on Saturdays”* which the Applicant has commented on in their appeal. From the information presented to me, it appears that this was an oversight from the Commissioner and that the proposed hours outlined above are correct.
- 6.4 The Regulations, which came into force on 1 April 2013, have been amended a number of times. Certain amendments, relating to pharmacy premises opening hours, came into force with effect from 25 May 2023.
- 6.5 Paragraph 26(1) states:
- “26.— (1) An NHS pharmacist (P) may apply to NHS England for it to change the days on which or times at which P is obliged to provide pharmaceutical services during core opening hours at P’s pharmacy premises in a way that—*
- (a) reduces the total number of hours for which P is obliged to provide pharmaceutical services at those premises each week ...; or*
- (b) keeps that total number of hours the same.”*
- 6.6 I have first considered paragraph 26(2) of Schedule 4 of the Regulations, which reads as follows:
- “Except where sub-paragraph (2A) applies, where P makes an application under sub-paragraph (1), as part of that application P must provide NHS England with such information as NHS England may reasonably request in respect of the matters that NHS England must seek to ensure pursuant to paragraph 24(1).*
- 6.7 Paragraph 24(1) reads as follows:
- “24 (1) Subject to paragraph 26(2A), where NHS England issues a direction for setting any days or times for opening hours under this Part, or determines them without issuing a direction, it must in doing so seek to ensure that the days and times at which pharmacy premises are open for the provision of pharmaceutical services in the area in which the premises that are the subject of the direction are located are such as –*
- (a) to maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises; or*
- (b) to maintain a sustainable level of adequate service provision for the people in that area or other likely users of the pharmacy premises, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome.*
- 6.8 Paragraph 24(2) states:
- (2) In considering the matters mentioned in sub-paragraph (1), NHS England –*
- (a) must treat any local pharmaceutical services being provided in its area as if they were pharmaceutical services being so provided, and*
- (b) may have regard to any pharmaceutical services that are being provided in its area during supplementary opening hours.*
- 6.9 I will start by considering the application of paragraph 24(1)(a) and whether the proposed hours are such as to maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises. I will then consider the application of 24(1)(b) if that is required.

- 6.10 To properly assess the application against paragraph 24(1)(a), I need to determine the existing level of service provision. I then need to consider whether it is necessary to maintain the existing level of service provision. If it is necessary to maintain the existing level of service provision, I need to consider whether, despite the proposed change of hours, the existing level of service provision to people in the area or other likely users would be maintained, e.g. by nearby pharmacies being open and providing the same level of service provision.
- 6.11 If I consider it unnecessary to maintain the existing level of service provision or that it is necessary to maintain the existing level of service provision but doing so is not a realistically achievable outcome, then I need to consider paragraph 24(1)(b) and determine whether the proposed change of hours are such that a sustainable level of adequate service provision would be maintained.
- 6.12 I therefore need to be provided with sufficient information to understand a range of matters, starting with the existing level of service provision. The references to days and times in paragraph 24(1) leads me to consider that the reference to "level" of service provision in paragraph 24(1)(a) is mainly focused on the days and times services are provided. I would point out that "level" of service provision could also refer to other characteristics of the service, such as types and range of services provided, geographical access to services provided, other aspects of physical access aside from location, and the quality of services provided.
- 6.13 The existing level of service provision has been outlined by the Applicant, in its own core hours provision, and by an indication of the hours that pharmacies in the local area are open.
- 6.14 I have next considered whether it is necessary to maintain the existing level of service provision. It could be argued that as the Applicant is not looking to reduce the number of hours each week that services are provided, then from a pure "number of hours of service provision each week" perspective, the existing level of service provision is maintained such that consideration of whether it is necessary to maintain the level of service provision is not needed.
- 6.15 However, the Applicant is applying to change the days and times that services are provided. Taking Monday as an example, the level of service provision at the Applicant's premises on a Monday is not being maintained. I consider it appropriate to determine if it is necessary to maintain the existing level of service provision and then, if deemed necessary, consider if the opening hours of other pharmacies mean that level is maintained.
- 6.16 To determine whether it is necessary to maintain the existing level of service provision, I have had regard to the comments by the Applicant of those using the pharmacy. If I am satisfied that there is reliable evidence indicating no users of the pharmacy on/at the relevant days/times that the pharmacy wishes to close, this might support an argument that maintaining the existing level of service provision is not necessary.
- 6.17 The Applicant states that the relocation of the Health Centre to 121 Weoley Castle Road has caused a pharmaceutical need and demand change as other pharmacies are now located closer to the Health Centre than the Applicant. In support of this, the Applicant provided an activity tracker for the period 30 May 2024 to 28 June 2024. The tracker shows the number of people that attended the pharmacy and the service they accessed. Even though the numbers are small, it is clear that there are people using the pharmacy at the times the Applicant wishes to close and therefore I consider it is necessary to maintain the existing level of service provision.
- 6.18 I now need to consider if, despite the changes to hours, there is maintenance of the existing level of service provision. The Applicant cannot maintain this as it is changing its hours but I note the information from the Applicant with regard to other pharmacies

in the area namely, Medipharma and Pitman Pharmacy have opening hours during the times that the Applicant is proposing to close.

- 6.19 If I consider that the characteristics of other pharmacies, e.g. where they are located, their access, the services provided and the times they are open, means that the level of service provision is maintained for people in the local area or other likely users of the pharmacy, then I am able to grant the application under paragraph 24(1)(a).
- 6.20 It is worth noting that characteristics of the persons using the pharmacy might be relevant here as well as from where they start their journey to the pharmacy. I do not consider that every single individual need should be considered at length in this regard but it would be helpful to have this information to be certain that the existing level of service provision would be maintained via local pharmacies.
- 6.21 The Applicant stated that *"there are many other pharmacies within 1KM in the area but are closed from 6.30pm to 7.00pm so are not included"* and this was confirmed by the information provided in the Commissioner's internal paperwork.
- 6.22 From the evidence provided, I note that the distance to Medipharma is unclear. In the application, the Applicant states that it is *"literally yards away"* from the urgent care centre at Katie Road which is *"roughly 2miles away"*. The Applicant then goes on to state that *"any outside demand can be catered for by Medipharma which is 1.3miles"*. In the appeal the Applicant names the centre as South Birmingham Urgent Care Centre and states that it is *"2km from Dean pharmacy"*. I have no option but to consider a distance of between 1.3 to 2 miles as the ambiguity has not been explained. Separately, both the closing times of 7pm and 8pm have been outlined for this pharmacy. As the Applicant closes at 7pm, this is not as significant however neither the Applicant nor the Commissioner has confirmed the core opening hours for this pharmacy.
- 6.23 According to the Applicant's appeal, Pitman Pharmacy is a *"100hr Contract Pharmacy which is open till [sic] 9.00pm Monday to Saturday"* and is 1.6miles away from the Applicant's pharmacy on *"mostly flat"* ground. It is located on Bristol Road which is *"a main arterial Road for Birmingham and has good transport links"*. The Applicant also states that *"Pitman Pharmacy has good parking at the front"*. In the application, the Applicant states that *"Pitman chemist 1.4miles from B29 5qh [sic] and closes at 9.00pm"*. Much like the ambiguous information referred to above, this is not helpful. I am assuming that Pitman Chemist and Pitman Pharmacy are the same pharmacy but this has not been confirmed. With regard to the distance, I again have no option but to consider a distance between 1.4 to 1.6 miles.
- 6.24 With regard to the activity tracker provided with their appeal, the Applicant stated that *"rougly [sic] 20% walked to the pharmacy"*. However no further information was provided to explain how the other 80% of patients travelled to the Applicant's pharmacy, for example whether that be by car or on public transport. I note that a separate activity tracker was provided with the application and the Applicant stated that *"all Rx collections were accessed by people travelling by car"* but no further information was provided to show how the patients accessing the other services travelled. I am mindful that due to the distance involved to alternative pharmacies, it is unlikely that patients will undertake the journey on foot, other than those that are fit and able.
- 6.25 Whilst the existing level of service provision may be maintained for those with access to a car, due to a lack of more detailed information I am unable to conclude the same for those who need to access a pharmacy on foot or by public transport.
- 6.26 I am mindful that the provision of pharmaceutical services is greater than the dispensing of prescriptions and that maintaining a level of service provision includes all services that the pharmacy may offer, including additional enhanced and advanced services that may be commissioned. The Commissioner commented on the essential and advanced services the Applicant offers but I have not been provided with any evidence to show that the alternative pharmacies also provide these services.

6.27 I am therefore struggling to be satisfied that the existing level of service provision would be maintained by virtue of the existence of other local pharmacies.

6.28 I have decided that it is necessary to maintain the current service provision but, due to the cumulative effect of:

6.28.1 the tracker not providing information to show how patients accessed the pharmacy;

6.28.2 a lack of information about the services provided at the alternative pharmacies; and

6.28.3 a lack of information regarding the journey to alternative pharmacies for those without access to private transport.

I am not satisfied that there will be maintenance of the existing level of service provision by virtue of other pharmacies in the area between 6.30pm and 7pm Monday to Friday.

6.29 I therefore next consider if I need to have regard to paragraph 24(1)(b) which states that I must seek to ensure that the changed hours are such as to:

“maintain a sustainable level of adequate service provision for the people in that area or other likely users of the pharmacy premises, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome”.

6.30 I have already determined that it is necessary to maintain the existing level of service provision so reference in paragraph 24(1)(b) to *“in circumstances where maintaining the existing level of service provision is ... unnecessary”* is not relevant.

6.31 I note that the Applicant has stated that the *“financial imperative to adjust...”* is a *“...major driver for the change in hours”* and further, *“we also have an issue with workforce working late till 7.00om [sic]”*. I consider that the Applicant is effectively relying on the second part of paragraph 24(1)(b), that maintaining the existing level of service provision is not a realistically achievable outcome. I consider that I need to determine if it is or is not a realistically achievable outcome and if I determine that it is, then I need to consider if the amended hours are such as to maintain a sustainable level of service provision.

6.32 On the point of whether maintaining the existing level of service provision is not a realistically achievable outcome, I note that the Applicant has provided a letter from their Accountant. The Applicant acknowledges that the letter was originally provided to support a previous application to reduce their core hour provision on a Saturday that was refused by the Commissioner but is of the opinion that it is still relevant to this application. I appreciate the comments from the Accountant may have some relevance in terms of the benefits a reduction in hours may bring however, as the letter is focussed on the financial benefits a closure from 2pm to 4.30pm on a Saturday and that this application relates to a closure from 6.30pm to 7pm Monday to Friday, I am struggling to place any weight on it. For example I note that the Applicant would save £120 for each hour the pharmacy is closed on a Saturday but I have not been provided with any evidence to show that it would be a similar saving Monday to Friday. In relation to the workforce issue, there has been no explanation as to what the issues are. I also note that the Applicant has not provided any suggestion that the pharmacy has been closed due to a workforce problem which might suggest maintaining service provision at the relevant hours is not realistically achievable. To demonstrate that keeping the pharmacy open for its existing core hours is not realistically achievable, the Applicant must be able to demonstrate the correlation between the hours being complained of and the purported issues. I do not consider that the information before me evidences this.

- 6.33 The wording of paragraph 24(1)(b) is such that maintaining existing service levels must not be realistically achievable before considering a sustainable level of adequate provision. I consider that this sets a fairly high bar as to the level of difficulty that the Applicant must find themselves in. I do not consider that sufficient evidence has been provided to indicate that the economic and practical viability of the current opening hours has been compromised. I therefore consider that maintaining the existing level of service is a realistically achievable outcome and therefore the Applicant cannot rely on paragraph 24(1)(b).
- 6.34 I am of the view that I have not been provided with sufficient information to demonstrate how the proposed change of hours would maintain, as necessary, the existing levels of service provision.
- 6.35 I note the Applicant submitted a notification to decrease their supplementary hours on 20 March 2024 and provided a copy with their appeal. As set out in the Regulations, this is not something I can take into consideration so I have not taken a view on this.

7. Determination

- 7.1 Based on the information provided, I am not satisfied that the pharmaceutical services provision that would result from the Applicant's proposed hours would maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises. I am satisfied that maintaining the current level of service is a realistically achievable outcome and therefore the Applicant cannot rely on paragraph 24(1)(b).
- 7.2 The action taken by the Commissioner to refuse the application is confirmed.

**Head of Appeals
NHS Resolution**