

2 September 2024

REF: SHA/26219

APPEAL AGAINST NORFOLK AND WAVENEY ICB DECISION TO REFUSE AN APPLICATION BY LOYAL PHARMACY LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 FROM THE JUNCTION WITH YARMOUTH ROAD/THE STREET HEADING NORTH ALONG THE STREET, ALONG NORTH STREET TO THE JUNCTION WITH PLANTATION ROAD, BLOFIELD, NORFOLK, NR13 (BEST ESTIMATE)

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APPEAL AGAINST NORFOLK AND WAVENEY ICB DECISION TO REFUSE AN APPLICATION BY BLOFIELD SURGERY HEALTHCARE LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT BLOFIELD SURGERY, PLANTATION ROAD, BLOFIELD, NORWICH, NR13 4PL

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1 Outcome

- 1.1 The Pharmacy Appeals Committee (“the Committee”), appointed by NHS Resolution, quashes the decision of the Commissioner and redetermines the applications.
- 1.2 The Committee determined that the application by Loyal Pharmacy Ltd should be refused under the provisions of Regulation 40(2).
- 1.3 The Committee determined that the applications by Blofield Surgery Healthcare Ltd dated 10 October 2023 (SHA/26220) and 28 November 2023 (SHA/26221) should be refused.

A copy of this decision is being sent to:

PSC on behalf of Loyal Pharmacy Ltd
Rushport Advisory LLP on behalf of Blofield Surgery Healthcare Ltd
Brundall Medical Centre
PCSE on behalf of Norfolk & Waveney ICB

Advise / Resolve / Learn

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- 1 A summary of the applications and decisions are attached at Annex A (SHA/26219) Annex B (SHA/26220) and Annex C (SHA/26221).

- 2 **The Appeals**

In a letter dated 24 May 2024 addressed to NHS Resolution, Pharmacy Sales and Consultancy ("PSC") on behalf of Loyal Pharmacy Ltd appealed against the Commissioner's decision. The grounds of appeal are:

- 2.1 "We act on behalf of Loyal Pharmacy Ltd and have been instructed by our client to appeal against the decision of Norfolk and Waveney ICB to refuse this application.
- 2.2 A copy of their refusal letter dated 29th April 2024 is attached to this document (see Annex A).
- 2.3 Also attached is a signed letter of authorisation from our client.
- 2.4 Norfolk and Waveney ICB refused the application on the basis of the following conclusions:
 - 2.4.1 The Committee refused the application, and the rationale for their decision is outlined below:
 - 2.4.2 There is no evidence that there is not already a reasonable choice with regard to obtaining pharmaceutical services in the area of Norfolk HWB.
 - 2.4.3 There is no evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services that meet their specific needs for such services; and

- 2.4.4 There is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services.
- 2.4.5 No information was provided to support a finding that pharmaceutical services are not currently provided at such times as needed and therefore the Committee was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits (in relation to opening hours) on persons.
- 2.4.6 For all the above reasons the view in accordance with Regulation 18(2)(b), granting this application would not confer significant benefits on persons in the area of the HWB which were not foreseen when the PNA was published.
- 2.5 We address these points a little later in this document.
- 2.6 For ease we have attached a copy of the original supporting document (see Annex A) and best estimate map (Appendix A) which was submitted with the application which gives some background / history as to why this application was submitted.
- 2.7 Also attached is a copy of our e-mail dated 16th January 2024 (Appendix B), which was submitted in response to comments made by the three interested parties, namely Well, Brundall Medical Practice and the LPC. No other local contractors responded to the application as far as we are aware. See later for further information in relation to that point.
- 2.8 May we also please request that the two documents are taken into account and used in conjunction with this document by the committee as part of our evidence for this case?

Competing Applications

- 2.9 Two additional applications to open a pharmacy in Blofield have also been submitted and NHS Norfolk and Waveney ICB have decided that they will consider all three applications together and in relation to each other.
- 2.10 The other two applications are both from Blofield Surgery Healthcare Ltd and the case reference numbers are as follows:
- 2.10.1 CAS 254183-T9G1S7
- 2.10.2 CAS-263181-B2X7X6
- 2.11 Attached is a copy of our letter dated 22nd February (Appendix F) outlining the background/timings of these applications in relation to the one submitted by our client.
- 2.12 We have addressed/commented on these applications later in this document.

Background / General Area

- 2.13 As the committee will see from the attached supporting document, there has been a history of applications to open a pharmacy in Blofield which to date have all been refused.
- 2.14 However, our client who lives in the village, has seen the continual expansion of housing/other facilities since the last application was refused in September 2018 and strongly believes the village is now of a size where pharmacy services are required to meet the needs of the ever-expanding population.

- 2.15 It is beyond dispute that the village has grown quite dramatically since the application was refused in September 2018 which is highlighted in the decision report from the ICB which states:

"The Committee noted that the number of people living within 1.6km of the relevant location identified in the application that was refused in 2018 was 3,615. The patient count undertaken 26th September 2023 was 5,588". Whilst the centre points for the 1.6km radius may have differed slightly (in 2018 it was 1 North Street and in 2023 it was NR13 4LE), that will not account for an increase of 1,973 or 54.6%.

The Committee agreed that such a substantial increase in the population of Blofield was a substantial and relevant change of circumstances and therefore there were no grounds to refuse this application by virtue of regulation 40."

- 2.16 The village is currently devoid of pharmaceutical services and our clients believe there is a significant gap in services warranting the granting of a new contract. Residents of the village are currently forced to travel an unacceptable distance to access pharmaceutical services.
- 2.17 We will not repeat the contents of the supporting document which was originally submitted with our application except to say that the residential house building we highlighted in that document continues within the village, so the population is growing all the time.
- 2.18 In addition to the dramatic increase in residents there are now also several new/planned facilities in the village including the completion of newly constructed sports facilities.
- 2.19 The extension of the Blofield Surgery is now almost complete.
- 2.20 In addition to the expansion of the GP surgery the construction of the new Blofield Primary school is now underway. The article below is an update from Norfolk County Council:

"Norfolk County Council, 30 January 2024

Work has just got underway to build a new primary school in Blofield. A ground-breaking ceremony, which traditionally marks the beginning of construction for new building projects, was attended by Norfolk County Council, which is funding and has commissioned the new school, senior school leaders, the two youngest and two oldest pupils at the school and governing body representatives along with the main contractor, Pentaco Construction LTD.

The new school will ensure the school serves its current catchment area and supports the growth the local area. The new primary school will provide an overall capacity of 420 places on a single site.

The Blofield Primary School expansion project includes a new two-storey building, with 14 classrooms, a kitchen, library, administration offices and a main hall with adjoining studio space.

Reception and Key Stage one classrooms will be based on the ground floor, with direct outside access and Key Stage two classrooms will be on the first floor. A large practical group room will also be situated on the first floor and fitted out to meet the school's curriculum need.

Cllr Penny Carpenter, cabinet member for children's services said: "As a council, we take great pride in our commitment to education, and the groundbreaking ceremony at Blofield Primary School is a testament to that dedication.

"We are excited about the positive changes this expansion will bring and the lasting benefits it will have on the education of our children. The expansion aligns with our commitment to investing in education and ensuring a bright future for the next generation."

Cllr Andrew Proctor, local member for Blofield and Brundall, said:

"The population of Blofield has grown considerably in recent years which brings added pressure on local infrastructure. Having this new school doubling the pupil capacity is in response to that growth and that's exactly the approach people in Blofield expect to see. I look forward to its opening."

Teresa Doggett, Headteacher at Blofield Primary School, said

"Our aim is to ensure that every child who attends Blofield Primary School has a happy and supportive education experience, while having fun learning. The new Blofield Primary School will ensure we can support the growth of required primary school spaces needed across the local area whilst helping the children to achieve the very high standards they are capable of."

Andrew Grady, Managing Director Pentaco Construction Ltd, said:

"We are delighted to be working together with Norfolk County Council Childrens Services, NPS and Blofield Primary School on this project and to be celebrating this key milestone in the build programme."

The school administration looks forward to unveiling the upgraded facilities to pupils, parents and the broader community upon project completion".

We understand that completion of the project is expected "during the 2024-25 academic year".

- 2.21 The school is aimed at accommodating up to 420 pupils (almost double the capacity of the existing school) which is due to the ever-increasing population of the village.
- 2.22 In terms of plans for the existing school it is stated that "Blofield Parish Council is hoping to convert the current village primary school site, in North Street, into a community hall with a playing field and a 57-space car park".
- 2.23 If this proposal proceeds that will be another new community facility located close to our client's proposed premises in the hub of the village.
- 2.24 The photos [see Appendix I] show the access road to the school and the local notice board confirming the above construction plan is on track.
- 2.25 The proposed best estimate location for this application is "from the junction with Yarmouth Road/The Street heading north along The Street, along North Street to the junction with Library Close".
- 2.26 As can be seen from previous evidence we have submitted our client has been in discussions with the owner and secured an option to acquire the retail unit currently trading as Diamonds & Curls, 2 The Street Blofield NR13 4AA, which is comfortably within our best estimate location as can be seen below:
- 2.27 Diamond & Curls is the end of terrace unit on the left hand side, the florist is next door, newsagents (cream building) and then post office/convenience store are visible to the far right hand side. There are further retail units opposite the ones shown in the photo on the other side of The Street.

- 2.28 Diamonds & Curls comprises a corner unit on the junction of The Street/Church Alley, located next to the florist and close to the majority of the other retail units in the centre of the village, including the convenience store/ post office, where most people do their local shopping.
- 2.29 There is also a local garage/MOT centre, financial adviser, solicitors' practice in the immediate vicinity and the library is a few metres further north. Slightly beyond the library is a fish & chip shop and a carpet specialist.
- 2.30 A little to the south of the proposed premises is a public house and the main village recreation centre which includes the community hall, local tennis and football clubs, Sea Scout hut and Blofield Pre School. Clearly this area is the "hub" of the village.
- 2.31 There is free and easy car parking available directly outside and in the immediate surrounding area to the proposed premises. The entrance to the shop is easy with a wide front door and is of sufficient size to accommodate a community pharmacy with a consultation room. Our client will be in a position to proceed with the refit of the unit very swiftly should his application be approved.
- 2.32 By way of background, our client already owns two community pharmacies in Rackheath, Norfolk and Worlingham, Suffolk so is an experienced operator in the East Anglia area. He has successfully run several community pharmacies for approx 40 years.
- 2.33 He also operates a specialist pharmaceutical manufacturing operation.
- 2.34 There is one GP practice in the village, namely Blofield Surgery, Plantation Road, NR13 4PL. The practice is a modern purpose-built property and is currently in the process of being extended. One assumes the premises are being extended to cope with the continual influx of new residents in the village. Surgery opening hours are 8.00am-6.30pm Monday-Friday. The practice is closed at weekends.
- 2.35 It is also the site for the two other applications under Regulation 18 (see later).
- 2.36 The practice is located at the far north on the outskirts of the village approximately 450m directly to the north of our client's proposed location. The GP surgery is a dispensing practice and approximately 80/85% of the items originating from the surgery are currently self-dispensed. The surgery regularly produces around 20-21,000 items/month (source Pharmdata).
- 2.37 The next nearest GP practice is in Brundall (27 The Dales NR13 5RP) and is in excess of a mile to the south of our client's proposed location. They too are a dispensing practice and whilst they produce roughly the same number of NHS items as the Blofield Surgery, only approximately 45% are self-dispensed. The opening hours mirror those of the Blofield Surgery.
- 2.38 Blofield surgery is next to the local school and as a result parking can be very congested at times.
- 2.39 Should the application be approved our client is proposing to open 8.30-6.30 Monday-Friday and 9.00-1.00 Saturday, a total of 54 hours/week. Core hours are 8.30-1.00 and 2.00-6.30 Monday-Friday and 9.00-1.00 Saturday. These hours are designed to ensure local residents can easily access services after seeing their GP Monday-Friday and on a Saturday morning should they be unable to access a pharmacy during the week.
- 2.40 In terms of other competing pharmacies, there are currently no pharmaceutical services in the village of Blofield, so people are forced to travel to do so. The nearest competing pharmacies are as follows:

- 2.41 Well Pharmacy 118/120 The Street Brundall NR13 5LP. Approx 1.4 miles distant (32-minute walk) by the most practical route. The pharmacy is located to the south of the proposed location in the village of Brundall which is an entirely separate community to Blofield. By public transport the journey takes about 8 minutes and the buses run on an hourly basis.
- 2.42 By car the journey time is 5 minutes in normal driving conditions.
- 2.43 Rackheath Pharmacy, 1 Bernard Close, Rackheath NR13 6QS Approx 4.3 miles to the North West of the proposed site and serving a completely different community (90 minute walk).
- 2.44 By public transport the journey takes a minimum of an hour and involves a very convoluted route as there is no direct bus connecting Blofield to Rackheath. The route involves two changes of buses. Realistically very few if any patients are likely to walk or utilise public transport to access a pharmacy in Rackheath.
- 2.45 By car the journey time is 14/15 minutes in normal driving conditions.
- 2.46 Below is the bus route from Blofield to Rackheath (see Appendix I).
- 2.47 Well Pharmacy, High Street Acle NR13 3DY, approx 4.5 miles to the east of the proposed site serving a different population (100 minutes' walk).
- 2.48 By public transport the journey takes a minimum of 45 minutes but there is no direct bus route connecting Blofield to Acle. Therefore, people either have to make their way to Brundall and catch a bus from there to Acle or alternatively catch a bus to Norwich and then another to Acle.
- 2.49 Below are two bus route maps from Blofield to Acle (see Appendix I).
- 2.50 The first shows the route into Norwich and back out and the second involves walking to Brundall and then getting a bus to Acle from there.
- 2.51 Realistically very few, if any, patients are likely to walk or utilise public transport to access a pharmacy in Acle.
- 2.52 By car the journey time is 8/9 minutes in normal driving conditions.
- 2.53 As can be seen from the above, none of these pharmacies are particularly accessible without a motor vehicle.
- 2.54 Information taken from the 2021 Census for the Blofield with South Walsham ward shows that 36.9% of residents have 1 car or van compared to a national average of 41.3%.
- 2.55 The relevant consideration for this application is whether residents have reasonable access to existing pharmacies. If they do not, then it follows that they do not have reasonable choice. The residents of Blofield do not have any choice of provider as there are no pharmaceutical services within the village. The Well pharmacy in Brundall is the only pharmacy within a 3-mile radius of the proposed application site.
- 2.56 It has been argued in this, and previous applications, that residents of Blofield do have reasonable access to services due to the Well Pharmacy in the adjoining village of Brundall. Our client disagrees as it is clear that unless residents have a car it is difficult to access that pharmacy.

- 2.57 The Well pharmacy itself is located towards the western side of Brundall and has limited parking and supporting trade. It feels a little dated both inside and out at the time of my visit was very sparsely stocked.
- 2.58 In addition, there has been recent issues with the operation of the pharmacy and Google reviews are far from complementary.
- 2.59 Attached to this document are a list of Google reviews, (see Appendix I) (anonymised for data protection purposes).
- 2.60 Also attached is an extract from a local newspaper article (see Appendix I). The original can be found by clicking on the following link: <https://www.edp24.co.uk/news/23831112.brundall-frustrated-frequent-closures-pharmacy>
- 2.61 As can be seen from the above it is clear there is a level of dissatisfaction from patients at the service offered from the Well branch. Despite this, many local residents are being forced to utilise the branch due to lack of choice caused by the difficulties in accessing the next nearest contractors which are all more than 3 miles distant.
- 2.62 The Well pharmacy trades 9.00am-1.00 & 2.00-6.30pm Monday to Friday and 9.00-12.00 noon Saturday (NHS Website). Our client is offering hours of 8.30-6.30 Monday-Friday and 9.00-1.00 Saturday so several hours beyond Well including being open during the lunch hour when Well are closed.
- 2.63 Norfolk County Council 2022 PNA
- 2.64 As with almost every PNA, the Norfolk County Council publication concluded there were no gaps in pharmaceutical services in the area.
- 2.65 There is no specific mention of a gap in pharmaceutical services within the Blofield area. Blofield is part of the Broadland area and the PNA states the following :
- “Broadland has a population of 131,931.*
- There are 20 community pharmacies in this locality and the estimated average number of community pharmacies per 100,000 population is 15.2, lower than Norfolk (17.2) and England (20.6) averages (Section 3.2, Table 21).*
- There has been a population growth of approximately 2,500 since the last PNA (2018). The population growth for the lifespan of this PNA (to 2025) is expected to be 3.8% to 136,967, which similar to the rate of growth for England.*
- New housing developments are planned for the locality during the period of this PNA; approximately 6,800 dwellings to house in excess of 16,000 people.*
- Generally, there is adequate pharmaceutical service provision across the whole locality to ensure continuity of provision of services.*
- Norfolk HWB will continue to monitor pharmaceutical service provision in specific areas within the locality where major housing developments and population growth are planned, to ensure there is capacity to meet potential increases in service demand.*
- No gaps in the provision of Necessary Services have been identified for Broadland locality.”*
- 2.66 As can be seen from these extracts, Broadlands has fewer pharmacies per head of population than both Norfolk and England as a whole.

- 2.67 There has been major population growth in the Broadland area and that is going to continue as new housing is built/completed.
- 2.68 To our knowledge, no supplementary statement has been published in relation to pharmacy services within this area. Therefore, this application is properly made to provide 'unforeseen benefits' to the local community in accordance with Regulation 18.

Interested Parties

- 2.69 Comments in relation to the application were made by the three interested parties, namely Well, the LPC and Brundall Medical Centre. No other local contractors responded to the application as far as we are aware.
- 2.70 We have attached a copy of our response (the email dated 16th January see Appendix B) in relation to the comments made by Well and the LPC to this document. To avoid repetition, we will not repeat those comments here.
- 2.71 At the time we chose not to respond to comments made by Brundall Medical Centre but wish to do so briefly at this stage.
- 2.72 The GP's are claiming that if a pharmacy application in Blofield is approved they will lose a number of their dispensing patients which could potentially damage their practice financially.
- 2.73 Brundall Medical Practice submitted further similar evidence against the two applications by Blofield Surgery Healthcare Ltd. Whilst the surgery produced letters of support and a petition from some of their patients as far as we are aware they did not produce any financial evidence to back up their claims that a pharmacy in Blofield would render their practice unviable.
- 2.74 The ICB addressed the matter within their decision letter as follows:

"The Committee moved on to consider Regulation 50 - Discontinuation of arrangements for the provision of pharmaceutical services by doctors.

The Committee agreed, as the applicant gave a best estimate it isn't possible at this stage to precisely identify the dispensing patients that would no longer be able to be dispensed to should the application be granted. The matter of gradualisation is therefore to be considered if the application is granted and in due course the applicant notifies the ICB of the premises at which the pharmacy will be located."

ICB Decision

- 2.75 As stated previously Norfolk and Waveney ICB stated several reasons for refusing the application. We believe these reasonings are flawed and wish to comment on their reasonings.
- 2.76 They state:

"The village of Blofield currently receives pharmaceutical services from the local GP practice which is located at the North end of the village. In November 2023, the practice dispensed 83.6% of the 20,627 items it prescribed.

There are also several pharmacies available to patients residing in the village. Well Pharmacy is in the next village Brundall and is approximately 1.2 miles from the proposed site, depending on the actual final site. It dispensed 4.8% of the items prescribed by the GP practice in November, with 2.2% dispensed by Rackheath Pharmacy in Rackheath to the north west of Blofield, 1.8% by Pharmacy2U in Leeds, and 1.5% by a Boots pharmacy in Norwich.

An overall total of 62 pharmacies or dispensing appliance contractors dispensed those items not dispensed by the practice in November 2023. Patient choice is facilitated by six other pharmacies that are located within a five-mile radius (in a straight line) and were included in the document entitled 'Nearest Pharmacies' that were circulated to the Committee prior to the meeting.

It was noted in the appeal decision on a previous application that approximately 1000 patients from Blofield practice (20% of patients) exercised choice and obtained their prescription items from Well. There was nothing to suggest that the patients who use the dispensing service were forced to do so and every reason to believe they chose this option given the high levels of satisfaction. In any event, dispensing is only one part of pharmaceutical services and there was nothing to prevent patients from accessing services additional to dispensing at Well or indeed elsewhere.

The overall provision of pharmaceutical services in Blofield (and Brundall) is through an established pharmacy and two dispensing practices. In addition, there are several pharmacies within a short distance. The level of choice available to patients is reasonable. No evidence has been provided to demonstrate that those living in Blofield are unable to access that choice."

- 2.77 We believe that this statement is misleading. The ICB seem to have assumed that people have seen their GP's and then physically travelled to the pharmacies to have their medication dispensed which is highly unlikely. Many scripts are likely to be repeat prescriptions where there is no need for people to physically visit the surgery. Also, it is likely that some of these prescriptions were delivered to the patients by the pharmacy in question - a service that could be withdrawn at any time.
- 2.78 In addition, some of the patients chose to use Distance Selling Pharmacies (DSP) which are irrelevant in relation to considering an application under Regulation 18 as they cannot offer full face to face services. In many ways the same argument applies to dispensing GP's as they do not offer a full range of pharmaceutical services either. Neither dispensing GP's nor the DSP should be taken into consideration in relation to this application.
- 2.79 We have provided evidence of dissatisfaction of the Well branch in Brundall. To say that there are 6 other pharmacies within a 5-mile radius (by straight line) is also very misleading as these pharmacies only offer choice if they are accessible to patients.
- 2.80 For example, we have outlined the difficulties facing patients in accessing the pharmacies in Rackheath and Acle earlier in this document. It is also clear these two pharmacies serve completely different neighbourhoods/ communities, and it is unreasonable to assume that Blofield residents regard these pharmacies as "choice" options.
- 2.81 The ICB then state

"The Committee noted the applicant provided no evidence with regard to the matter set out in Regulation 18(2)(b)(ii). Whilst it is accepted that there would be people with protected characteristics living in Blofield and that some may need pharmaceutical services as a result, there is no evidence that they have any difficulty accessing such services.

The Committee was therefore not satisfied that, having regard to the desirability of people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that are difficult for them to access, granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the Norfolk PNA was published."

- 2.82 It is clear for those people who are elderly, less able or families with very young children (all of which can be classified as having protected characteristics) access to

the existing pharmacies is likely to be more difficult than for those who are more mobile. This would particularly apply if these people are unable to drive or don't have access to a motor vehicle.

2.83 Information taken from the 2021 census states that 26.8% of people living in the Blofield/ South Walsham ward are aged 65 or above compared to a national average of 17.1% so it is clearly an area with a high number of elderly residents.

2.84 Even if it is argued the closest pharmacy in Brundall can be accessed by people with protected characteristics, it is clear from the evidence above that the next nearest contractors cannot easily be accessed by those who don't have access to a car. On that basis this patient group don't have a reasonable choice of provider. In addition, our client is offering opening hours beyond the Well pharmacy in Brundall.

2.85 The ICB then go on to say:

"The Committee noted the applicant provided no comments regarding innovative approaches in the delivery of pharmaceutical services, therefore should not be satisfied that, having regard to the desirability of there being innovative approaches taken with regard to the deliverability of pharmaceutical services, granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the Norfolk PNA was published."

2.86 The PCA committee has previously found that the 'innovation test' within the regulations is very difficult to meet and we believe only one application has ever been approved on that basis, so we believe that is a non-point.

2.87 Another inaccurate comment from the ICB is as follows:

"The Committee noted that the proposed hours do not provide any advantage over the opening hours already provided by the nearest pharmacies. The Committee noted that no information had been provided to support a finding that pharmaceutical services are not currently provided at such times as needed and therefore it is unlikely that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits in relation to opening hours on persons."

2.88 The Well pharmacy opens 9.00-1.00 and 2.00-6.30 Monday-Friday and 9.00am-Noon Saturday (taken from NHS website). Our client is offering to open hours beyond these as he is intending to open 8.30-6.30 Monday-Friday and 9.00-1.00 Saturday. Importantly the Saturday hours and opening from 8.30 in the morning are core hours so he will be committed to those in the long term should the application be approved.

Competing Applications

2.89 As stated above, the ICB have decided to consider our client's application along with two others from Blofield Surgery Healthcare Ltd together and in relation to each other. This approach presents certain issues.

2.90 The committee need to decide in the first instance whether a new pharmacy in Blofield should be approved. If they decide there is no gap in services and refuse all applications, then the issues fall away.

2.91 If, however, they conclude there is a gap in services then they have two options:

(a) Grant more than one application

(b) Grant one application which best meets the need in question

- 2.92 In respect of (a), judicial guidance has previously found that “care should be taken when granting more than one application where doing so would result in an over-provision of services in the relevant area given that such services are being paid from public funds”. There does not, therefore, appear to be any reason to grant more than one application in Blofield.
- 2.93 It is for the committee, therefore, to weigh up all the information before them to decide which application is preferred.
- 2.94 Committees may consider any differentiating factors they wish, but these often come down to three key areas:
- Services offered
- 2.95 It is rarely possible to differentiate between application in terms of the services offered, as the services that can actually be delivered by the contractor will depend not only on demand, but also on whether those services are actually commissioned.
- 2.96 On discussion with our client, he has confirmed that if his application is approved he is committed to providing any service that is commissioned locally by any commissioner.
- Core opening hours
- 2.97 The decision-making body can sometimes decide that, where it is difficult to distinguish between applications, the easiest approach is to go with the application offering the longest core hours.
- 2.98 Our clients proposed core hours are:
- 2.98.1 8.30-1.00 and 2.00-6.30 Monday-Friday
- 2.98.2 9.00-1.00 Saturday
- 2.98.3 Total 49 hours/week.
- 2.99 The initial application from Blofield Surgery Healthcare Ltd (CAS-254183-T9G1S7) offered a total of 40 core hours/week (9.00-5.00 Monday-Friday)
- 2.100 The second application from Blofield Surgery Healthcare Ltd (CAS-263181-B2X7X6) was amended to match the core hours proposed by our client i.e. 8.30-1.00 and 2.00-6.30 Monday-Friday and 9.00-1.00 Saturday total 49 hours/week. The addition of the Saturday hours in the second application is interesting bearing in mind the surgery is closed at the weekends.
- 2.101 Therefore, two out of the three applications are now identical in terms of the proposed core hours.
- Premises
- 2.102 As stated earlier in this document our client has secured premises via an option agreement at the retail unit currently trading as Diamonds & Curls, 2 The Street Blofield NR13 4AA. This unit is within the best estimate area.
- 2.103 Both applications from Blofield Surgery Healthcare Ltd state the premises to be Blofield Surgery Plantation Rd, Blofield, Norwich NR13 4PL.
- 2.104 Therefore, it appears that both applications are identical in terms of premises.

- 2.105 NHS Resolution may then need to consider other reasons to decide which application to grant.

Other

- 2.106 In this instance our client's premises are in the centre of the village along with the other retail shops in the village. People will naturally visit this part of the village as part of their everyday lives.
- 2.107 The application from Blofield Surgery Healthcare Ltd is located within the surgery at the extreme northern edge of the village. Residents will have no reason to go there except to see their GP. As we know pharmacies are used by patients for more than prescriptions, for example they may want advice, OTC medicines or other services. On the basis of convenience, we would argue our client's premises are better positioned.
- 2.108 In addition, we wish to emphasise that our client is an experienced community pharmacist, owning and operating several pharmacies over the years. The competing applicants do not have the operational experience of running a community pharmacy. As a resident of the village our client knows and understands many of the patients.
- 2.109 The ICB can be confident that, if our client's application is approved, it will be in a position to provide high quality pharmaceutical services from central location based on years of experience in community pharmacy throughout Norfolk and Suffolk.
- 2.110 May we request that all of this evidence, along with our initial application and supporting document is taken into account by the committee in making their decision in relation to this application."

In a letter dated 28 May 2024 addressed to NHS Resolution, Rushport Advisory LLP on behalf of Blofield Surgery Healthcare Ltd appealed against the Commissioner's decision. The grounds of appeal are:

- 2.111 "I act for Blofield Surgery Healthcare Limited in the above applications and have been instructed by my client to submit the following appeal against the decision of the ICB to refuse the 2 applications listed above.
- 2.112 Whilst my client is appealing both of the decisions to refuse their applications, PCA will note that the application with reference CAS-263181-B2X7X6 has longer opening hours than the first submitted application and would likely be preferred.
- 2.113 The ICB considered 3 applications Blofield, 2 of which were submitted by my client and another application from Loyal Pharmacy Limited.
- 2.114 The ICB considered all 3 applications are being considered together and in relation to one another and, assuming that Loyal Pharmacy Limited submits an appeal against the decision to refuse its application, then we would anticipate that the 3 applications would be considered together and in relation to one another at the appeal stage. For this reason, we make reference to the Loyal Pharmacy Ltd application within this letter of appeal although it is unclear if Loyal Pharmacy Limited will in fact submit an appeal.

Grounds for Appeal

- 2.115 The Committee will note the reasons provided by the ICB for refusing my client's applications. Essentially the ICB's rationale for refusing the applications is found at page 5 of the decision report and is copied below for reference.

"It was noted in the appeal decision on a previous application that approximately 1000 patients from Blofield practice (20% of patients) exercised choice and obtained their prescription items from Well. There was nothing to suggest that the patients who use the dispensing service were forced to do so

and every reason to believe they chose this option given the high levels of satisfaction. In any event, dispensing is only one part of pharmaceutical services and there is nothing to prevent patients from accessing services additional to dispensing at Well or indeed elsewhere.

The overall provision of pharmaceutical services in Blofield (and Brundall) is through an established pharmacy and two dispensing practices. In addition, there are several pharmacies within a short distance. The level of choice available to patients is reasonable. No evidence has been provided to demonstrate that those living in Blofield are unable to access that choice.

The Committee agreed that the test is whether or not those living in Blofield have reasonable choice with regard to obtaining pharmaceutical services in the area of Norfolk HWB, not in the village. At present, those who are eligible to be dispensed to by the GP practice choose to do so. Those who choose not to be dispensed to or who are not eligible to be dispensed to accessed 62 different pharmacy and dispensing appliance contractor premises in November 2023.

It has previously been established on appeal that in order to have reasonable choice, those living in the area of a pharmacy application must be able to exercise that choice.

No evidence has been provided to demonstrate that those living in Blofield are currently unable to exercise a choice in obtaining pharmaceutical services."

- 2.116 The ICB decided not to consider the report that was submitted by Rushport on behalf of Blofield Surgery Healthcare Limited, or the extensive support letters provided by local people. Had the ICB considered these submissions then they would not have made the findings that they did. Whilst we understand the reasons for not considering the submissions made, the simple fact is that they were not available until the response to consultation stage of the process.
- 2.117 In any event, Primary Care Appeals will no doubt consider the report (see Appendix J and Ji) and letters of support (see Appendix K) as part of this appeal process.

Supporting Information

- 2.118 My client has engaged extensively with the local community and has received many letters of support for their application. We have attached redacted copies of these letters so that Primary Care Appeals is aware of the strength of local feeling about not only this application but also the poor service level currently experienced by local people. The Committee will note that patients would prefer to have a new pharmacy co-located with the GP surgery.
- 2.119 Whilst the Committee will no doubt review the support letters, we ask that it notes that they provide clear evidence that patients are having difficulty accessing pharmaceutical services and that these patients range from those who have young children, to those who are disabled, elderly or who care for others. In addition, the letters provide details of the poor service that is currently available and how the regular closures of Well Pharmacy have led to patients being forced to travel many miles to access pharmaceutical services rather than take the risk of having their prescriptions sent to Well Pharmacy.
- 2.120 The new Blofield Surgery extension was completed recently and the new premises became operational on 22 May 2024 with space for a pharmacy that my client would occupy if there application is successful."

This is a summary of representations received on the appeals.

3.1 THE COMMISSIONER (Response to SHA/26219)

- 3.1.1 “Please note that from the 1 April 2023, community pharmacy contracting and commissioning has been delegated to Integrated Care Boards (ICBs). Hertfordshire and West Essex (HWE) ICB are hosting the function on behalf of the six East of England ICBs.
- 3.1.2 As requested in your letter, the Norfolk PNA can be found at [Pharmaceutical Needs Assessment \(PNA\) updated - Norfolk Insight](#) along with the published supplementary statements. This PNA was reviewed when assessing and determining this application.
- 3.1.3 The 2022-2025 Norfolk PNA does not identify any gaps in the provision of pharmaceutical services, either within normal working hours or outside of them. It does not articulate any current or future needs for, or current or future improvements or better access to, a particular pharmaceutical service or pharmaceutical services in general.
- 3.1.4 Having reviewed the grounds of appeal made by Pharmacy Sales & Consultancy on behalf of Loyal Pharmacy Ltd (the Appellant), HWE ICB remains of the opinion that this application should be refused.
- 3.1.5 The Appellant appears to be appealing on the following grounds:
- 3.1.5.1 There is not reasonable choice with regard to obtaining pharmaceutical services in Blofield.
- 3.1.5.2 That people sharing a protected characteristic have difficulty in accessing pharmaceutical services in Blofield.
- 3.1.5.3 That there is a current gap in the provision of pharmaceutical services in Blofield due to population increase and housing developments.
- 3.1.6 The Appellant has referred to the number of applications that have previously been submitted and determined for the village of Blofield. To confirm there have been two applications which have been refused by the Pharmaceutical Services Regulations Committee (PSRC), one application was received in 2017 and the other in 2021. Following the two determinations, one decision was appealed via Primary Care Appeals. The Primary Care Appeals Committee also refused the application,(SHA/19858, 6th September 2018 (Appendix L).
- 3.1.7 The Appellant refers to “*our client who lives in the village, has seen the continual expansion of housing/other facilities since the last application was refused in September 2018 and strongly believes the village is now of a size where pharmacy services are required to meet the needs of the ever-expanding population.*

It is beyond dispute that the village has grown quite dramatically since the application was refused in September 2018 which is highlighted in the decision report from the ICB which states:

“The Committee noted that the number of people living within 1.6km of the relevant location identified in the application that was refused in 2018 was 3,615. The patient count undertaken 26th September 2023 was 5,588”. Whilst the centre points for the 1.6km radius may have differed slightly (in 2018 it was 1 North Street and in 2023 it was NR13 4LE), that will not account for an increase of 1,973 or 54.6%.

The Committee agreed that such a substantial increase in the population of Blofield was a substantial and relevant change of circumstances and therefore there were no grounds to refuse this application by virtue of regulation 40.” (Page 2 of the Appeal).

- 3.1.8 NHS Resolution will note that the Appellant has taken the comments of PSRC out of context. The reference to population growth was made specifically in relation to Regulation 40 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 and the relevant changes of circumstances affecting the controlled locality. PSRC were, of course mindful of the other Regulations that must be applied to an unforeseen benefits application in order to grant or refuse an application.
- 3.1.9 Although PSRC recognised there has been an increase in population, it should be noted that according to the Office for National Statistics, the increase in population for the Broadland area is lower than the increase for the East of England (see graph at Appendix M)
- 3.1.10 Whilst there has been an increase in the overall population for the village of Blofield, this does not equate to the need for an additional pharmacy. It also does not mean that people cannot access pharmaceutical services. Norfolk and Waveney ICB’s complaints team have confirmed that they have not received any formal complaints with regards to the lack of pharmaceutical services within the Blofield area. The ICB is not aware of any residents who are going without their medicines because they cannot physically access a pharmacy or find a pharmacy that will deliver to them.
- 3.1.11 The Appellant states that:

“The village is currently devoid of pharmaceutical services and our clients believe there is a significant gap in services warranting the granting of a new contract. Residents of the village are currently forced to travel an unacceptable distance to access pharmaceutical services.” (Page 3 of the appeal letter).”

- 3.1.12 To declare that the village of Blofield is lacking in pharmaceutical services is misleading. Access to pharmaceutical services is different to accessing a physical community pharmacy and residents are currently exercising their choice of where to access pharmaceutical services. This may include accessing services from a GP dispensing practice, including Blofield Surgery. It is clear that this dispensing practice is fully utilised by its 8503 registered patients (data taken from NHS Digital April 2024) which is shown in the table below:

Month and Year	Number of items dispensed
February 2024	19,723
January 2024	17,480
December 2023	17,322
November 2023	17,244
October 2023	17,872

(NHSBSA Dispensing contractors data)

- 3.1.13 The Appellant notes that GP dispensing practices and Distance Selling Pharmacies (DSP) should not factor when considering access and choice of pharmaceutical services. This is incorrect. The test is whether there is reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB, which is different to physically accessing pharmaceutical services. Whilst the ICB recognises that DSPs are not the preference for all patients, some residents will choose to obtain their services from this type of contractor as not all essential and advanced services require face to face contact at the pharmacy premises.

- 3.1.14 The ICB also recognises that GP dispensing practices do not provide the same services as a community pharmacy. Eligible dispensing patients who choose to have their medication dispensed by their practice are not prohibited from accessing a community pharmacy as well as utilising their GP dispensing practice. Some patients may choose a combination of both. Indeed, some eligible dispensing patients may still nominate a pharmacy of their choice.
- 3.1.15 Patients are exercising their right to choose. No evidence has been provided to suggest eligible dispensing patients are utilising the GP dispensing practice because they have no other choice. They are choosing to utilise the services of the practice because they are happy with the services they receive. If they were unhappy with this arrangement, they could access pharmaceutical services via a community pharmacy of their choice.
- 3.1.16 If residents had difficulty in accessing alternative pharmaceutical services, the ICB would be aware via formal complaints either via the GP contracting teams if residents were unhappy with the GP dispensing service, or via the pharmacy contracting team if residents were unable to access pharmaceutical services.
- 3.1.17 During February 2024, Blofield Surgery prescribed 19,723 items which were dispensed by a total of 63 pharmacies. The table below identifies the top 10 dispensers for prescriptions, and only one of the nearest pharmacies (Appendix 1) are within the top 3 of the best estimates given with the Appellant's application. This clearly demonstrates that patients of Blofield Village exercise their right to choose where they receive pharmaceutical services from:

ODS Code	Contractor	Contractor address	Contractor address	Contractor address	Postcode	% of items
D82080	Blofield Surgery					83.3%
FFM40	Well	118 – 120 The Street	Brundall	Norwich	NR13 5LP	4%
FKK18	Boots	The Castle Mall Shopping Centre		Norwich	NR1 3DD	2.2%
FAV25	Rackheath Pharmacy	1 Bernard Close	Rackheath	Norwich	NR13 6QS	2.1%
FLM49	Pharmacy 2U (DSP)	Unit 4B	Victoria Road	Leeds	LS14 2LA	1.8%
FV898	Boots	3 Market Gates		Gt Yarmouth	NR30 2AX	1.4%
FQP37	Tesco	Tesco, Blue Boar Lane	Sprowston	Norwich	NR7 8AB	0.7%
FDR30	Well	High Street		Acle	NR13 3DY	0.7%
FL369	Woodside Pharmacy	Thorpewood Medical Centre	140 Woodside Road	Norwich	NR7 9QL	0.6%
FN849	Lloydsdirect (DSP)	17 Wadsworth Road	Perivale	Greenford	UB6 7JD	0.6%

- 3.1.18 The Appellant has stated that “*residents of the village are currently forced to travel an unacceptable distance to access pharmaceutical services*” (page 3 of the appeal letter).
- 3.1.19 Although the Norfolk PNA 2022 refers to the low number of community pharmacies, it does then state that when taking into account dispensing GP practices, there is a higher rate of pharmaceutical providers per 100,000 which is higher than the England average (page 102, 6.2.2.4 Improvement and better access: gaps in provision, Norfolk PNA). The HWB was therefore aware of a

lower number of community pharmacies but was not of the opinion that this meant there is a gap in the provision of a pharmaceutical service in particular, or pharmaceutical services in general.

- 3.1.20 Furthermore, the Norfolk PNA considered both population growth and new housing developments and still drew the conclusion that there are no gaps in the provision of necessary services for the Broadland locality (Norfolk PNA, 6.2.2.2, page 101).
- 3.1.21 It could therefore be regarded that the Appellant has not provided evidence that the residents of Blofield village are forced to make long journeys to receive pharmaceutical services. A map to show the pharmacies in relation to Blofield Surgery can be found in (see Appendix M).
- 3.1.22 The Appellant has provided information outlining ways in which patients may travel to the nearest pharmacies which includes by car and the use of public transport (Appeal letter, [pages 8-10] [see above]). Furthermore, the Appellant states that residents are “forced to travel” (Appeals letter, [page 3, 7 and 30] [see above]) to the nearest pharmacy which is 1.6 miles away and would take 34 minutes to walk or 4 minutes by car.
- 3.1.23 Access to pharmaceutical services is considered within the 2022-2025 Norfolk PNA and distance and travel times reviewed by car, on foot and via public transport. The HWB noted the following:
- 3.1.23.1 100% of residents are within a 15 minute drive of a pharmacy (off peak), and 100% of residents are within a 15 minute drive (at peak times).
- 3.1.23.2 86% of residents are within 30 minutes of a pharmacy when using public transport during the weekdays and weekends when travelling by public transport.
- 3.1.23.3 68.9% of residents are within a 20 minute walk of a pharmacy and 72% can access a community pharmacy by walking in less than 30 minutes.
- 3.1.24 In summary, the HWB are of the opinion that there is “good access to community pharmacies and dispensing GP practices in Norfolk” (Norfolk PNA, page 77).
- 3.1.25 The Appellant also references the 2021 census, and it has been stated that:
- “Information taken from the 2021 Census for the Blofield with South Walsham ward shows that 36.9% of residents have 1 car or van compared to a national average of 41.3%.”* (Appeal letter page 10).
- 3.1.26 The ICB has reviewed the Census 2021 and notes that 40.4% of residents have access to 1 car or a van per household and 34.8% have access to 2 cars or vans per household. Again, the Appellant has provided no evidence to demonstrate that patients cannot access pharmaceutical services due to reasonable choice or distance (access). The data obtained from the 2021 census (<https://www.ons.gov.uk/census/maps/choropleth/housing/number-of-cars-or-vans/number-of-cars-5a/1-car-or-van-in-household?oa=E00134687>) and the dispensing data taken from the NHS Business Services Authority (NHSBSA) demonstrates that as a vast majority of residents have access to one or more cars, not only are they able, but residents clearly do travel to a range of pharmacies. (see maps at Appendix M).

3.1.27 The Appellant refers to the current extension at Blofield Surgery and as stated within the appeal letter, is assuming the extension is being completed to “cope with the continual influx of new residents in the village” (appeal letter, [page 7] [see above]).

3.1.28 In contrast to this, Blofield’s surgery website does not allude to this assumption and states:

“We are pleased to announce that our extension project will start on 15th May 2023. It will take around 10 months to complete and will deliver a double storey extension creating more clinical space, a larger dispensary and refurbished reception area” (<https://www.blofieldsurgery.nhs.uk/2023/05/11/blofield-surgery-extension-works/>, 11th May 2023).

3.1.29 Blofield Surgery do not refer to making these structural changes to cope with the continual influx of new residents to the area. It is unclear what “creating more clinical space” means. For example, there could be the same number of rooms, just larger in size.

3.1.30 The Appellant refers to the location of the GP premises being in close proximity to the local primary school which could be very congested at times suggesting it may be difficult to access pharmaceutical services (appeal letter, [page 7] [see above]). As shown in the image (see Appendix M), whilst the GP practice may be in close proximity, there appears to be ample parking provision with no visible parking restrictions (as viewed on instantstreetview.com).

3.1.31 Furthermore, noting the high percentage of residents who are eligible to be dispensing patients and who choose to have their medication dispensed by the practice, it should be recognised that they may choose this option because the practice is near to where they live, take their children to school, work etc.

3.1.32 The Appellant refers to the hours the pharmacy will provide if the application is granted. For ease, the proposed hours are:

Proposed		49:00	5:00
	C1	S2	C2
Monday	8:30 – 13:00	13:00 – 14:00	14:00 – 18:30
Tuesday	8:30 – 13:00	13:00 – 14:00	14:00 – 18:30
Wednesday	8:30 – 13:00	13:00 – 14:00	14:00 – 18:30
Thursday	8:30 – 13:00	13:00 – 14:00	14:00 – 18:30
Friday	8:30 – 13:00	13:00 – 14:00	14:00 – 18:30
Saturday	9:00 – 13:00		
Sunday			

3.1.33 In comparison to the hours provided by current pharmaceutical providers, these proposed hours are very similar (Appendix M).

3.1.34 The Norfolk PNA does refer to the opening hours for pharmaceutical services in the Broadland area and states (Norfolk PNA, Page 101):

“The number of pharmacies is reflective of the rural nature of Broadland, where there are few major conurbations.

Of the 20 pharmacies:

- 4 pharmacies (20%) are open after 6.30 pm on weekdays
- 18 pharmacies (90%) are open on Saturdays

- *4 pharmacies (20%) are open on Sundays”*

3.1.35 Furthermore, the Norfolk PNA also states:

“There are pharmacies open beyond what may be regarded as normal hours in that they provide pharmaceutical services during supplementary hours in the evening during the week and are open on Saturday and Sunday.

Generally, there is adequate pharmaceutical service provision across the whole locality to ensure continuity of provision of services.”(Norfolk PNA, 6.2.2.2 , page 101).

3.1.36 The Appellant gives their views on the service provision and location of the Well Pharmacy at 118-120 The Street, Brundall, NR13 5LP.

3.1.37 Whilst the Appellant has provided evidence of what is stated as “level of dissatisfaction from patients at the service offered from the Well branch” (Appeal letter, page 10), It can be seen on Trust pilot (<https://uk.trustpilot.com/review/www.well.co.uk/location/brundall-the-street>) a mixture of both positive and negatives comments which have all received a reply from Well Pharmacy.

3.1.38 For the avoidance of doubt, PSRC considered all matters before it, and determined the application based on the regulations relevant to the application. The ICB has well established routes for dealing with complaints and actions to deal with contractual issues. Noting that, these comments are not complaints. The Appellant is suggesting that a new pharmacy is needed based on comments made about an existing pharmacy. This is not a reason within the regulations to approve a market entry application.

3.1.39 Although the Appellant relies on certain statements contained within the Norfolk 2022 PNA() [sic], the Appellant has again been selective. On page 11 of the Appeal letter [see above], the Appellant refers to population growth and housing but fails to refer to the “conclusion” of the PNA where it states that taking into consideration population growth and housing, there remains no gap in provision of pharmaceutical services:

“6.2.2.4 Improvements and better access: gaps in provision

Although there are a relatively low numbers of community pharmacies within Broadland, when the dispensing GP practices are added to the community pharmacies the rate of pharmaceutical providers per 100,000 population increases to 21.2, which is higher than the England average.” (Norfolk PNA, page 102

3.1.40 The Appellant notes that the proposed location for a new pharmacy would be in the premises currently trading as Diamonds & Curls. The Appellant notes that residents would attend the area for their local needs. It is unlikely that this area with a convenience store and post office would cater for the entirety of residents’ needs. It is likely that people will be travelling further afield for their weekly food shop, shopping in general, leisure, education and work purposes. There is no evidence to suggest that people who travel for these purposes cannot travel an acceptable distance to access pharmaceutical services. Indeed, these representations set out how patients are choosing to travel.

3.1.41 The Appellant refers to “Competing Applications” (appeal letter, page 15 [see above]). Whilst it is correct that a total of three unforeseen benefits applications were submitted, the PSRC was not 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. All three applications were refused because the requirements set out in regulation 18 were not met.

The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013

- 3.1.42 The Appellant is of the opinion that the reasonings given by PSRC to refuse the application are flawed, which is incorrect and will now be addressed.

Regulation 18(1)(a) and 18(1)(b)

- 3.1.43 The PSRC considered Regulation 18(1)(a) and were satisfied in that it was required to determine whether it was satisfied that granting the application or granting it in respect of some only of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB.

Reg 18(2)(a)(i)(ii)

- 3.1.44 PSRC concluded there is no evidence to suggest granting this application would cause significant detriment to the arrangements the ICB has in place for the provision of pharmaceutical services in that area.

Regulation 18(2)(b)(i)

- 3.1.45 PSRC acknowledged that the Norfolk PNA 2022-2025 does not identify any gaps in the provision of pharmaceutical services even with the predicted growth both in population and housing developments that were taken into account when the PNA was drafted and subsequently published (Norfolk PNA, 6.2.2.2 Necessary Services: gaps in Provision).

- 3.1.46 PSRC agreed that the test is whether or not those living in Blofield have reasonable choice with regard to obtaining pharmaceutical services in the area of Norfolk HWB, not in the village of Blofield. At present, those who are eligible to be dispensed to by the GP practice choose to do so. Those who choose not to be dispensed to or who are not eligible to be dispensed to accessed 63 different pharmacy and dispensing appliance contractor premises in February 2024. There is no evidence to suggest any residents are unable to obtain their medicines or access pharmaceutical services.

- 3.1.47 It has previously been established on appeal (SHA/19858) that in order to have reasonable choice, those living in the area must be able to exercise that choice. These representations outlining the significant number of different contractors residents are choosing to use, to access and obtain their pharmaceutical services clearly demonstrates that people have a choice.

- 3.1.48 The Appellant is of the opinion that PSRC's reasoning for Regulation 18(2)(b)(i) is misleading for the following reasons:

"We believe that this statement is misleading. The ICB seem to have assumed that people have seen their GP's and then physically travelled to the pharmacies to have their medication dispensed which is highly unlikely. Many scripts are likely to be repeat prescriptions where there is no need for people to physically visit the surgery. Also, it is likely that some of these prescriptions were delivered to the patients by the pharmacy in question - a service that could be withdrawn at any time." (Appeals letter, page 13).

Regulation 18(2)(b)(ii)

- 3.1.49 PSRC noted the Appellant provided no evidence with regard to the matter set out in Regulation 18(2)(b)(ii). Whilst it is accepted that there would be people with protected characteristics living in Blofield and that some may need pharmaceutical services as a result, there is no evidence that they have any difficulty accessing such services.
- 3.1.50 PSRC could not conclude that the elderly and those with young children as described by the Appellant, are facing difficulties in accessing pharmaceutical services in the area of the relevant HWB which were not foreseen when the Norfolk PNA was published.
- 3.1.51 The public was engaged via a questionnaire whilst the PNA was being drafted. The survey was promoted online and via a range of stakeholders including Norfolk County Council, Parish Councils, Healthwatch, Norfolk Residents' panel, GP practices and community pharmacies in Norfolk. Within the Norfolk PNA, section 4.4, Services for less-abled people states (page 86):

"There are different ways that contractors can make their community pharmacies accessible and, under the Equality Act 2010, 37 community pharmacies are required to make 'reasonable adjustments' to their services to ensure they are accessible by all groups, including less-abled persons. The low number of responses to the contractor questionnaire make any analysis regarding access for less-abled people difficult. As one measure of accessibility the questionnaire identifies 19 respondents (1%) who identified wheelchair or mobility scooter as their method of travel to a pharmacy. The questionnaire found 38% of respondents identified a difficulty travelling to a pharmacy; 3% reported lack of disabled access/facilities."

Regulation 18(2)(b)(iii)

- 3.1.52 Whilst the Appellant believes that this regulation is a "non-point" (Appeals letter, page 14 [see above]), PSRC must consider all relevant regulations when assessing unforeseen benefits applications. PSRC noted that the original application (and now on appeal) provided no innovative approaches in the delivery of pharmaceutical services and were not satisfied that the Appellant had met this regulation.

Regulation 31

- 3.1.53 PSRC noted that as the applicant had chosen to give a best estimate for the location of the proposed pharmacy premises it is was not possible to determine whether or not the application should be refused by virtue of Regulation 31.

Regulation 40(1)

- 3.1.54 PSRC noted that the Appellant had not disputed that the area of the proposed premises, where they are seeking listing of pharmacy premises, is within a controlled locality.

Regulation 40(2)

- 3.1.55 PSRC noted that as a previous application was refused on appeal on 6th September 2018 (SHA/19858), a 5-year bar was in place and therefore, any subsequent routine application for inclusion in a pharmaceutical list for premises within 1.6km of the proposed location in that previous application is to be refused by virtue of regulation 40(2) where it is received within the next five years. The only exception to this is where PSRC can be satisfied that since the date on which the five-year period started, there have been substantial and relevant changes of circumstances affecting the controlled locality.

- 3.1.56 PSRC considered the number of patients living within 1.6km from the previously refused application and the patient count at the time of this application which was 5,588 (Appendix M). PSRC considered this was relevant and concluded there were no grounds to refuse the application under Regulation 40.

Conclusion

- 3.1.57 In summary, we remain of the opinion that the application should be refused.
- 3.1.58 In the publication of the 2022 – 2025 Norfolk PNA, the HWB has remained of the opinion that there is no gap in the provision of pharmaceutical services in this part of its area, or indeed any part of Norfolk, that would require needs, improvements or better access to be identified.
- 3.1.59 We appreciate there may be some convenience in having a new pharmacy, however this is different to one conferring significant benefits. Our priority is ensuring patients can access pharmaceutical services.
- 3.1.60 The regulatory requirements to identify an unforeseen benefit not in the PNA accompanied by the significant benefit considerations is a high threshold. We respectfully suggest that this appeal is without any substantive new or compelling evidence. We petition NHS Resolution to refuse the application as granting it will not confer significant benefits that were not foreseen when the PNA was published."

3.2 THE COMMISSIONER (Response to SHA/26220 & 26221)

- 3.2.1 "Please note that from the 1 April 2023, community pharmacy contracting and commissioning has been delegated to Integrated Care Boards (ICBs). Hertfordshire and West Essex (HWE) ICB are hosting the function on behalf of the six East of England ICBs.
- 3.2.2 As requested in your letter, the Norfolk Pharmaceutical Needs Assessment (PNA) can be found at [Pharmaceutical Needs Assessment \(PNA\) updated - Norfolk Insight](#) along with the published supplementary statements. This PNA was reviewed when assessing and determining this application.
- 3.2.3 The 2022-2025 Norfolk PNA does not identify any gaps in the provision of pharmaceutical services, either within normal working hours or outside of them. It does not articulate any current or future needs for, or current or future improvements or better access to, a particular pharmaceutical service or pharmaceutical services in general.
- 3.2.4 The appeal has been submitted by Rushport Advisory on behalf of Blofield Healthcare Ltd. Rushport Advisory has stated "*Whilst my client is appealing both of the decisions to refuse their applications, PCA will note that the application with reference CAS-263181-B2X7X6 has longer opening hours than the first submitted application and would likely be preferred.*" (Appeal letter, page 1 [see above]).
- 3.2.5 For that reason, these representations are made in respect of both applications and subsequent appeals but will focus on application CAS-263181-B2X7X6 with regards to opening hours.
- 3.2.6 Having reviewed the grounds of appeal made by Rushport Advisory on behalf of Blofield Healthcare Ltd (the Appellant), HWE ICB remains of the opinion that this application should be refused.
- 3.2.7 The Appellant appears to be appealing on the following grounds:

- 3.2.7.1 That there is a current gap in the provision of pharmaceutical services within the area of Blofield due to population increase and the general expansion of Blofield.
- 3.2.7.2 That people sharing protected characteristics do have difficulties in accessing existing pharmaceutical services.
- 3.2.7.3 That residents do not have a choice of provider in the area.
- 3.2.8 The Appellant has referred to three unforeseen benefits applications being submitted and determined for the village of Blofield (the two applications from Blofield Healthcare Ltd (CAS-263181-B2X7X6 and CAS-254183-T9G1S7) and the application from Loyal Pharmacy Ltd (CAS-247546-G2N5Z8)).
- 3.2.9 Prior to these three applications, there have been two applications which have been refused by the Pharmaceutical Services Regulation Committee (PSRC), one application was received in 2017 and the other in 2021. Following the two determinations, one decision was appealed via NHS Resolution. NHS Resolution also refused the application. (SHA/19858, 6th September 2018 (see Appendix L)).
- 3.2.10 The Appellant refers to one of the previous applications (Appeal document, page 35, 2.2 [see above]) and states *"this was a speculative application and did not have the support of Blofield Surgery or indeed the local Parish Council"*. As NHS Resolution will be aware, the HWE ICB is required to assess each application against the NHS (Pharmaceutical and Local Pharmaceutical) Regulations 2013, as amended (the regulations). There are no criteria for applications to be granted based on the recommendations and support from local GP practices, Parish councils or other stakeholders.
- 3.2.11 The Appellant refers to the increase in population (Appeal document, page 35, 2.3 [see above]). When referring to the Norfolk PNA, the Norfolk Health and Wellbeing Board (HWPB) did consider the expected growth in population during the lifespan of the PNA. The Norfolk HWPB concluded that no gaps in pharmaceutical provision within the Broadland locality area were identified. (Norfolk PNA, 6.2.2.2, page 101).
- 3.2.12 Whilst PSRC recognised there has been an increase in population, it should be noted that according to the Office for National Statistics, the increase in population for the Broadland area is lower than the increase for the East of England: (see Appendix N)
- 3.2.13 Whilst there has been an increase in the overall population for the village of Blofield, this does not equate to the need for an additional pharmacy. It also does not mean that people cannot access pharmaceutical services. Norfolk and Waveney ICB's complaints team have confirmed that they have not received any formal complaints with regards to the lack of pharmaceutical services within the Blofield area. The ICB is not aware of any residents who are going without their medicines because they cannot physically access a pharmacy or find a pharmacy that will deliver to them.
- 3.2.14 In section 3 of the Appellant's supporting information (page 36 of the appeal document [page 5 of Appendix J]), it references the development of Blofield by way of:
- Expansion of the Blofield GP surgery
- 3.2.15 On its website, Blofield Surgery makes reference to the extension as *"a double storey extension creating more clinical space, a larger dispensary and refurbished reception area"*(

<https://www.blofieldsurgery.nhs.uk/2023/05/11/blofield-surgery-extension-works/> 11th May 2023).

- 3.2.16 The Appellant notes *“The decision to allow the surgery to expand its service and to physically increase its building size is both a commercial investment decision and a policy decision that reflects the growing demands of the local patient population. If the demands did not support the expansion it simply would not be occurring.”* (Appeal document, [page 34 of Appendix JJ]).
- 3.2.17 Having reviewed the extension and updates for patients published on the Blofield Surgery website, there is no reference to the extension incorporating a pharmacy to meet the needs of the patient population. There is also no mention of the planned works incorporating a pharmacy within the extension application which was submitted in 2008 ([20081164 | 1. Two Storey Extension & Single Storey Link Extension to Rear & 2. Alterations & Extension to Car Park | The Blofield Surgery Plantation Road Blofield \(southnorfolkandbroadland.gov.uk\)](#))
- 3.2.18 It is suggested therefore that the application to incorporate a pharmacy within the Blofield Surgery GP practice is not in response to patient need, concerns about choice or access but in response to an application from a different provider to open a pharmacy near the dispensing GP surgery.

Planning Approval for a larger Primary School

- 3.2.19 The Norfolk County Council website outlines plans to relocate and expand the existing Blofield Primary school. This school will also cater for children travelling from Brundall, a school which cannot be developed further. (<https://norfolk.citizenspace.com/childrens-services/blofieldexpansion/>) People travelling to Blofield from Brundall for schooling, are likely to access pharmaceutical services from the pharmacy in Brundall – or any other pharmacy of their choice within or outside of the HWB.
- 3.2.20 It also suggests that the journey/travel time from Brundall to Blofield (and vice versa) is not unreasonable. People can travel between the two villages for school, they can do so for other reasons too - work, leisure, pharmaceutical services etc.

Key Service Centres and Other Amenities

- 3.2.21 The Appellant makes comparisons between Blofield and Brundall, noting that they are both designated “Key Service Centres,” and similar in many ways e.g., similar convenience stores, health centres and places of worship. The appellant goes on to say *“Brundall has a pharmacy which also complements the service of the Health Centre and its dispensary, but in Blofield there is no pharmacy. Provision of a pharmacy in Blofield is a clear gap in services when compared to its nearest comparable neighbouring settlement.”* (Appeal document, 3.30 [page 12 of Appendix JJ]).
- 3.2.22 Whilst it might be helpful and convenient to have a pharmacy in every village and town, this is not the same as there being a need. Applications cannot be granted to mirror the facilities in the next village. The test is whether people can access pharmaceutical services within the HWB, not in a “Key Service Centre” area or “neighbouring settlement.”
- 3.2.23 As noted above in relation to schooling, whilst there has been development and population growth in Blofield, it is not likely to cater for the entirety of residents’ needs and therefore people will be travelling further afield for their shopping, leisure, education and work purposes. There is no evidence to

suggest that people who live in Blofield or who are moving into the area will not be able to access pharmaceutical services.

Blofield GP Dispensing Surgery

- 3.2.24 The Appellant provides a synopsis of Blofield surgery (Appeal document, 3.16, [page 8 of Appendix J]) and how the dispensary is “clearly a highly regarded service at the surgery.” (Appeal document, 3.24, [page 10 of Appendix J]). Having looked at data sources, this dispensing practice is fully utilised by its 8503 registered patients (data taken from NHS Digital April 2024) which is shown in the table below:

Month and Year	Number of items dispensed
February 2024	19,723
January 2024	17,480
December 2023	17,322
November 2023	17,244
October 2023	17,872

(NHSBSA Dispensing contractors data)

- 3.2.25 During February 2024, Blofield Surgery prescribed 19,723 items which were dispensed by a total of 63 pharmacies. The table below identifies the top 10 dispensers for prescriptions, and only one of the nearest pharmacies (Appendix N) are within the top 3 of the proposed location of the Appellant’s application. This demonstrates that people do have a choice and are exercising it:

ODS Code	Contractor	Contractor address	Contractor address	Contractor address	Postcode	% of items
D82080	Blofield Surgery					83.3%
FFM40	Well	118 – 120 The Street	Brundall	Norwich	NR13 5LP	4%
FKK18	Boots	The Castle Mall Shopping Centre		Norwich	NR1 3DD	2.2%
FAV25	Rackheath Pharmacy	1 Bernard Close	Rackheath	Norwich	NR13 6QS	2.1%
FLM49	Pharmacy 2U (DSP)	Unit 4B	Victoria Road	Leeds	LS14 2LA	1.8%
FV898	Boots	3 Market Gates		Gt Yarmouth	NR30 2AX	1.4%
FQP37	Tesco	Tesco, Blue Boar Lane	Sprowston	Norwich	NR7 8AB	0.7%
FDR30	Well	High Street		Acle	NR13 3DY	0.7%
FL369	Woodside Pharmacy	Thorpewood Medical Centre	140 Woodside Road	Norwich	NR7 9QL	0.6%
FN849	Lloydsdirect (DSP)	17 Wadsworth Road	Perivale	Greenford	UB6 7JD	0.6%

- 3.2.26 A map to show the pharmacies in relation to Blofield Surgery can be found in Appendix N.

- 3.2.27 The Appellant states that “Clearly providing a pharmacy at Blofield will provide the entire surgery population with access to the fully suite of pharmaceutical services, as well as providing those that live far from any pharmacy opportunity

to continue to make use of the dispensary services as well" (Appeal document, 3.24, [page 10 of Appendix J]).

- 3.2.28 It should be noted that as shown in the dispensing data above, patients do have access to a range of pharmaceutical providers and are exercising their right to choose where they receive pharmaceutical services from.
- 3.2.29 The data shows that some residents prefer to use one of the many distance selling pharmacies (DSP) available nationally. In this case, two DSPs are within the top 10. Whilst the ICB recognises that DSPs are not the preference for all patients, some residents will choose to obtain their services from this type of contractor as not all essential and advanced services require face to face contact at the pharmacy premises.
- 3.2.30 The ICB also recognises that GP dispensing practices do not provide the same services as a community pharmacy. Eligible dispensing patients who choose to have their medication dispensed by their practice are not prohibited from accessing a community pharmacy as well as utilising their GP dispensing practice. Some patients may choose a combination of both. Indeed, some eligible dispensing patients may still nominate a pharmacy of their choice and not access the dispensing services at the GP practice.
- 3.2.31 The Appellant refers to "*sub optimal provision of a surgery dispensary.*" (Appeal document, 7.30, [page 37 of Appendix J]). As referenced above, a dispensing GP practice does not offer the same services as a community pharmacy however there is no evidence to suggest that dispensing patients are not having their pharmaceutical needs met. As the Appellant notes on page 41 [page 10 of Appendix J] the service is "*highly regarded.*" The ICB is not aware of any complaints from patients regarding the dispensing service they receive or that they are in anyway impacted negatively by being a dispensing patient.
- 3.2.32 The Appellant refers to the Norfolk PNA and the lower number of community pharmacies and then states "*The PNA relies on dispensing surgeries to bring the number of pharmacies in line with the England average. What is surprising is that the PNA does not make a clear statement that the full range of pharmaceutical services are not available in the dispensing surgeries*" (appeal document [page 10 of Appendix J]).
- 3.2.33 Taking the latter comment first, this is incorrect. In the Norfolk PNA it states:
- "Dispensing GP practices therefore make a valuable contribution to dispensing services although they do not offer the full range of pharmaceutical services offered at community pharmacies."* (Norfolk PNA, page 23)
- 3.2.34 As noted above, GP dispensing practices offer a valuable service to patients and it is referenced in the PNA that when considering dispensing GP practices, "*there is a higher rate of pharmaceutical providers per 100,000 - higher than the England average.*" (Page 102, 6.2.2.4 Improvement and better access: gaps in provision, Norfolk PNA).
- 3.2.35 The HWB was therefore aware of a lower number of community pharmacies and the differentiation in services offered between a dispensing GP practice and a community pharmacy but was not of the opinion that this meant there is a gap in the provision of a pharmaceutical service in particular, or pharmaceutical services in general.
- 3.2.36 The Appellant gives an overview of the surrounding area of Brundall and the Brundall Medical Partnership (Appeal document, [pages 11 - 12 of Appendix J], section 3.27-3.30). The Appellant is indicating that despite both villages

being similar, Brundall has a pharmacy and Blofield does not. The Appellant states “Provision of a pharmacy in Blofield is a clear gap in services when compared to its nearest comparable neighbouring settlement”.

3.2.37 When considering applications for Unforeseen Benefits, the test is whether or not those living in Blofield have reasonable choice with regard to obtaining pharmaceutical services in the area of Norfolk HWB, not in the village of Blofield. At present, those who are eligible to be dispensed to by the GP practice choose to do so. Those who choose not to be dispensed to or who are not eligible to be dispensed to, accessed 63 different pharmacy and dispensing appliance contractor premises in February 2024. There is no evidence to suggest any residents are unable to obtain their medicines or cannot access pharmaceutical services.

3.2.38 A comparison on dispensing data for both Brundall and Blofield GP practices is provided later in these representations. This data demonstrates further that people have access and choice to a range of pharmaceutical service providers. As referenced above, people registered with Blofield GP dispensing practice, accessed 63 different providers. For Brundall, 88 different pharmacies are utilised.

Pharmacy Closures

3.2.39 The Appellant refers to the PNA supplementary statement in May 2023 noting the closure of Lloyds Stores in Sainsbury’s across Norwich:

“The closest to Blofield is Sainsbury’s / Lloyds at Thorpe St Andrews. The Supplementary Statement notes these closures but does not comment on whether these closures leave a gap in service.” (Appeal document, page 49)

3.2.40 As NHS Resolution will be aware, supplementary statements are statements of fact; they do not make any assessment of the impact the change may have on the need for pharmaceutical services. If the HWB thought that a closure would be relevant to the granting of an application concluded that the closure would not prohibit patients accessing pharmaceutical services within the HWB.

3.2.41 It is also likely that patients who live in Norwich or those who frequently visit Norwich who used the Lloyds pharmacy would access one of the remaining 50 pharmacies in Norwich. This is the most likely outcome as the pharmacy has been closed for approximately 18 months and the ICB has not received complaints from patients unable to access pharmaceutical services.

3.2.42 The pharmacy referenced by the Appellant was 4.1 miles from Blofield. If residents of Blofield were accessing this pharmacy, it shows they could travel and as outlined above could continue to travel to Norwich to visit one of the 50 pharmacies if that is their choice or could travel to a nearer pharmacy of their choosing.

Opening Hours

3.2.43 Within the first application submitted by the Appellant on 29 September 2023 (CAS-254183-T9G1S7), the hours proposed were:

Proposed			40:00	13:00
	S1	C1	C2	S3
Monday	8:30 – 9:00	9:00 – 13:00	13:00 – 17:00	17:00 – 18:30
Tuesday	8:30 – 9:00	9:00 – 13:00	13:00 – 17:00	17:00 – 18:30
Wednesday	8:30 – 9:00	9:00 – 13:00	13:00 – 17:00	17:00 – 18:30
Thursday	8:30 – 9:00	9:00 – 13:00	13:00 – 17:00	17:00 – 18:30

Friday	8:30 – 9:00	9:00 – 13:00	13:00 – 17:00	17:00 – 18:30
Saturday	9:00 – 12:00			
Sunday				

3.2.44 The hours submitted on the application from Loyal Pharmacy Ltd on 03 September 2023 were:

Proposed		49:00	5:00
	C1	S2	C2
Monday	8:30 – 13:00	13:00 – 14:00	14:00 – 18:30
Tuesday	8:30 – 13:00	13:00 – 14:00	14:00 – 18:30
Wednesday	8:30 – 13:00	13:00 – 14:00	14:00 – 18:30
Thursday	8:30 – 13:00	13:00 – 14:00	14:00 – 18:30
Friday	8:30 – 13:00	13:00 – 14:00	14:00 – 18:30
Saturday	9:00 – 13:00		
Sunday			

3.2.45 The Appellant then submitted a second application (CAS-263181-B2X7X6) on 5 December 2023 with an increase to both core and supplementary hours:

Proposed		49:00	5:00
	C1	S2	C2
Monday	8:30 – 13:00	13:00 – 14:00	14:00 – 18:30
Tuesday	8:30 – 13:00	13:00 – 14:00	14:00 – 18:30
Wednesday	8:30 – 13:00	13:00 – 14:00	14:00 – 18:30
Thursday	8:30 – 13:00	13:00 – 14:00	14:00 – 18:30
Friday	8:30 – 13:00	13:00 – 14:00	14:00 – 18:30
Saturday	9:00 – 13:00		
Sunday			

3.2.46 This second application was submitted following circulation to interested parties of the unforeseen benefits application from Loyal Pharmacy Ltd.

3.2.47 The hours proposed by Loyal Pharmacy Ltd exceeded those in the first application from the Appellant (CAS-254183-T9G1S7). The Appellant has made a second application not in response to patient need, but in response to the Loyal Pharmacy Ltd application and possibly (respectfully) to protect its dispensing patient list and associated dispensing income.

3.2.48 It should be noted that the hours proposed by the Appellant within their second application, are very similar to the hours provided by current pharmaceutical providers in the area. (Included as part of Appendix N).

3.2.49 There are three other pharmacies that do provide similar opening hours on a Saturday morning with the nearest pharmacy being Well Pharmacy in Brundall.

3.2.50 The Norfolk PNA does refer to the opening hours for pharmaceutical services in the Broadland area and states:

“The number of pharmacies is reflective of the rural nature of Broadland, where there are few major conurbations” (Norfolk PNA, 6.2.1.1, page 98).

3.2.51 Furthermore, the Norfolk PNA also states:

“There are pharmacies open beyond what may be regarded as normal hours in that they provide pharmaceutical services during supplementary hours in the

evening during the week and are open on Saturday and Sunday.” (Norfolk PNA, 6.2.1.2, page 99)

Services

- 3.2.52 The Appellant is proposing to offer a range of Advanced and either locally or nationally commissioned services (Appeal document, [page 12 of Appendix J], 3.36). It should be noted that some of the services detailed by the Appellant are no longer commissioned, are commissioned by the local authority and are provided by other local pharmaceutical providers.
- 3.2.53 It should be noted that being willing to provide a range of services, is not the same as there being a need for these services. Particularly as these services are provided by the nearby community pharmacies. The services the Appellant is willing to provide, compared with those offered by other local pharmacies is included at Appendix N. This demonstrates that these services are already available for local people should they need to access them.

Travel

- 3.2.54 The Appellant refers to the journeys and travel times for residents to obtain pharmaceutical services, the most notable reference is where the Appellant states:

“patients being forced to travel many miles to access pharmaceutical services” (Page 3, appeal document [see above]).

- 3.2.55 Access to pharmaceutical services is considered within the 2022-2025 Norfolk PNA with regards to distance and travel times which was considered by car, on foot and via public transport. The HWB noted the following information contained within the Norfolk PNA:

3.2.55.1 100% of residents are within a 15 minute drive of a pharmacy (off peak), and 100% of residents are within a 15 minute drive (at peak times).

3.2.55.2 86% of residents are within 30 minutes of a pharmacy when using public transport during the weekdays and weekends when travelling by public transport.

3.2.55.3 68.9% of residents are within a 20 minute walk of a pharmacy and 72% can access a community pharmacy by walking in less than 30 minutes.

- 3.2.56 The Norfolk HWB was aware of the travel times for residents and deemed them to be acceptable and reasonable. The HWB are of the opinion that there is “good access to community pharmacies and dispensing GP practices in Norfolk” with regards to travel (Norfolk PNA, page 77).

- 3.2.57 The Appellant refers to and includes pictures of the route for those residents who may choose to walk to the nearest pharmacy from the GP surgery (Appeal document, [page 21 of Appendix J]). The nearest pharmacy is Well Pharmacy at 118-120 The Street, Brundall, NR13 5LP:

“For those residents that seek to use Well Pharmacy to access the full pharmaceutical services, the walk which is considered to be shortest is along Yarmouth Road, which does not have a footpath” (Appeal document, page 52).

- 3.2.58 Google maps [see Appendix N] shows there are 2 routes that pedestrians can take which are both equal in distance and time as shown above. The second route is accessible with paths and street lighting.
- 3.2.59 The illustration that is used by the Appellant gives the starting route from the GP surgery. Some residents will not attend the GP surgery prior to accessing a pharmacy. Many patients will be on repeat medicines and will have no need to travel to the surgery.
- 3.2.60 The Appellant refers to Rackheath Pharmacy and states that it “*is not accessible to patients from Blofield and the wider parish*” (Appeal document, 6.17, [page 24 of Appendix J]). This is incorrect. Data from the NHS BSA shows that in February 2024, 2.1% of prescriptions that were issued by Blofield Surgery were dispensed at Rackheath Pharmacy. Some residents of Blofield Village are therefore exercising their choice of pharmaceutical service provider and choosing Rackheath Pharmacy to meet their needs. It is recognised it is a small number of patients and other residents may of course choose to access another provider of choice – whether that be a GP dispensing practice (if they are eligible), a distance selling pharmacy, or one of the 63 other pharmacies people are using.

Healthcare in Blofield

- 3.2.61 The Appellant provides a summary which includes statistics for both Blofield Surgery and Brundall Medical Partnership (Appeal Document, 6.18 to 6.23, [starting at page 24 of Appendix J]). The combined patient list size for both surgeries is 16,523 (data taken from NHS Digital, April 2024) and the dispensing data shows that residents are accessing pharmaceutical services from predominantly each of the local GP dispensing practices and Well Pharmacy in Brundall.
- 3.2.62 The Appellant compares the number of items dispensed between the two GP practices and the Well Pharmacy against the England average, noting that “*the two surgeries and sole pharmacy are doing the work of 5 modern pharmacies.*” ([Page 25 of Appendix J], appeal document). This is not an accurate “like for like” comparison and numbers of items dispensed, compared with the England average is not the test to determine if a new pharmacy is needed.
- 3.2.63 Noting the above, when looking at the dispensing data for Blofield Surgery 2.5 years ago, the figures are not dissimilar. The number of items dispensed by the practice has increased but the numbers going to other pharmaceutical providers are quite static. As the numbers are stable, it demonstrates that those pharmaceutical providers have not experienced a significant increase in workload as a result of population growth and there is therefore no need for an additional pharmacy: [see tables at Appendix N]

Brundall Medical Partnership (Dispensing GP Practice)

- 3.2.64 A similar situation can be seen at Brundall Medical Partnership. Data for the Brundall Medical Partnership shows that during February 2024, there were a total of 19,496 prescriptions dispensed across 88 pharmacies. The table below shows the top 10 dispensers of medication for Brundall Medical Partnership:

ODS Code	Contractor	Contractor address	Contractor address	Contractor address	Postcode	% of items
D82032	Brundall Medical Partnership	The Dales		Norwich	NR13 5RP	45%
FFM40	Well	118 – 120 The Street	Brundall	Norwich	NR13 5LP	33.4%

FLM49	Pharmacy 2U (DSP)	Unit 4B	Victoria Road	Leeds	LS14 2LA	3.4%
FMQ39	Wellbeing Pharmacy	Station Road	Hoveton	Norwich	NR12 8UR	2.8%
FJ308	Universal Pharmacy	Turbine Way, Euro Tech Innovation Business Park	Swaffham	Norfolk	PE37 7XD	2.0%
FAV25	Rackheath Pharmacy	1 Bernard Close	Rackheath	Norwich	NR13 6QS	1.7%
FN849	Lloydsdirect (DSP)	17 Wadsworth Road	Perivale	Greenford	UB6 7JD	1.5%
FE181	Boots	Riverside Retail Park	Albion Way	Norwich	NR1 1WR	1.3%
FQP37	Tesco	Tesco, Blue Boar Lane	Sprowston	Norwich	NR7 8AB	1.2%
FVQ71	Hunt's Pharmacy	205 Plumstead Road		Norwich	NR1 4AB	1%

(NHSBSA dispensing contractors data for D82032, Brundall Medical Partnership, February 2024)

3.2.65 When reviewing the dispensing data for Brundall Medical Partnership 2.5 years ago, it is evident that there have consistently been a similar number of prescriptions issued and dispensed by various pharmaceutical providers: [see table at Appendix N]

3.2.66 Further comparison shows that for February 2024, when looking at the dispensing data for Blofield Surgery and Brundall Medical Partnership, it could be concluded that residents of Blofield do not find it difficult to access pharmaceutical services when observing the top 3 dispensers as illustrated in the table below:

Items prescribed by Blofield Surgery		Items prescribed by Brundall Medical Partnership	
Dispensed by	% of total dispensed items	Dispensed by	Percentage
Blofield Surgery	83.3%	Brundall Med. Centre	45%
Well, Brundall	4%	Well, Brundall	33.4%
Boots	2.2%	Pharmacy 2U (DSP), Leeds	3.4%

3.2.67 Noting that many patients are eligible dispensing patients, the percentages above suggest there is capacity at existing local pharmacies. Noting that Well Pharmacy is the nearest pharmacy, there is not a significant number of items dispensed that would suggest the need for a new pharmacy. If a resident did not want to access Well Pharmacy, they can continue to choose one of the 63 or 88 contractors they are currently choosing to access pharmaceutical services.

The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013

3.2.68 The Appellant refers to the statutory test that the application is to be assessed under (Appeal document, ([page 24 of Appendix J], 4.2) and states:

“The first test is whether an application for the improvements for people living and resorting to Blofield has been considered under the Pharmaceutical Needs Assessment for Norfolk 2022 (the “PNA”).

3.2.69 This statement is incorrect. The regulations state:

(a) [F1NHS 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,

3.2.70 Blofield is within the Broadland locality and therefore, when the application was assessed, it was assessed against references to the Broadland locality within the Norfolk PNA. The assessment concluded with the following statements:

3.2.70.1 No gaps in the provision of Necessary Services have been identified for Broadland locality (page 101, 6.2.2.2).

3.2.70.2 No gaps have been identified that if provided either now or in the future would secure improvements or better access to Advanced Services across the Broadland locality (page 102, 6.2.2.4).

Regulation 18(1)(a) and 18(1)(b)

3.2.71 PSRC agreed that the improvements or better access that the applicant is claiming would be secured by its application, were not included in the relevant PNA in accordance with paragraph 4 of schedule 1.

3.2.72 PSRC further agreed that in order to be satisfied in accordance with Regulation 18(1), regard is to be had to those matters set out at Regulation 18(2).

Regulation 18(2)(a)(i) & (ii)

3.2.73 PSRC noted that there is no plan for the provision of pharmaceutical services in the area. Granting the application would therefore not cause significant detriment to the proper planning in respect of the provision of pharmaceutical services in the area of Norfolk HWB.

3.2.74 PSRC noted there was no evidence to suggest granting this application would cause significant detriment to the arrangements the ICB has in place for the provision of pharmaceutical services in that area.

3.2.75 In the absence of any significant detriment as described in Regulation 18(2)(a), the Committee was not obliged to refuse the application and went on to consider Regulation 18(2)(b).

3.2.76 Having reviewed the supporting statement from the Appellant (Appeal document, 4.4 and 4.5, [page 14 of Appendix J]), it is clear that both PSRC and the Appellant have drawn the same conclusion.

Regulation 18(2)(b)(i)

3.2.77 Whilst PSRC noted that no evidence was submitted in the original application to support this regulation, it did note that additional information was supplied after the 45 day representation period. PSRC agreed to place no weight on the report that was submitted outside of the required timeframe when making its original decision.

3.2.78 PSRC acknowledged that the Norfolk PNA 2022 does not identify any gaps in the provision of pharmaceutical services even with the predicted growth both

in population and housing developments. PSRC agreed that the test is whether or not those living in Blofield have reasonable choice with regard to obtaining pharmaceutical services in the area of Norfolk HWB, not in the village. At present, those who are eligible to be dispensed to by the GP practice choose to do so. Those who chose not to be dispensed to or who are not eligible to be dispensed to accessed 63 different pharmacies and dispensing appliance contractor premises in February 2024.

- 3.2.79 It has previously been established on appeal (SHA/19858) that in order to have reasonable choice, those living in the area of a pharmacy application must be able to exercise that choice. These representations outlining the significant number of contractors residents are choosing to use to access and obtain their pharmaceutical services clearly demonstrates that people have a choice.

Regulation 18(2)(b)(ii)

- 3.2.80 PSRC noted the applicant provided no evidence with regard to the matter set out in Regulation 18(2)(b)(ii). Whilst it is accepted that there would be people with protected characteristics living in Blofield and that some may need pharmaceutical services as a result, there is no evidence that they have any difficulty accessing such services. The Appellant makes reference to the following cohort of patients that share protected characteristics:

3.2.80.1 Children (Appeals document, [page 38 of Appendix J], 7.35)

3.2.80.2 Elderly (Appeals document, [page 38 of Appendix J], 7.35)

3.2.80.3 Dispensing patients (Appeals document, [page 16 of Appendix J], 5.2)

3.2.80.4 Non dispensing patients (Appeals document, [page 16 of Appendix J], 5.2)

3.2.80.5 Disabled (Appeal letter, page 3 [see above]).

3.2.80.6 Carers (Appeal letter, page 3 [see above]).

- 3.2.81 The ICB recognises that there would likely be people in Blofield with protected characteristics however the references made by the Appellant are generic:

“these patients range from those who have young children, to those who are disabled, elderly or who care for others.” (Appeal letter, page 3 [see above]).

- 3.2.82 This approach is universal and evidence to demonstrate the specific pharmaceutical services they need and the specific difficulty they have in those needs being met, is limited. In section 4.6 of the appeal document, the Appellant refers to an application being able to offer a “proposal to support the needs of people who share a protected characteristic” ([page 15 of Appendix J], 4.6). This is not correct, the Regulation states that the test is to meet the specific needs of the people in the HWB rather than support their needs:

18 (2)(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 [F1NHS England's] duties under section 13G of the 2006 Act M3 (duty as to reducing inequalities)), (National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, Part 3, Regulation 18)

- 3.2.83 In section 4.7 of the appeal document [see Appendix K], the Appellant has submitted a range of emails and letters from registered patients of the GP surgery and residents in the village. Although the views of patients are vital, these patients have not approached the GP surgery with their comments, they have clearly responded to a question that was posed to them which appears to be “*would you like a pharmacy within the GP practice?*” It is noted that the majority of emails and letters were dated January/February 2024 so likely that the question was posed in line with when the Appellant submitted their unforeseen benefit applications – not when plans were drawn up for the surgery, not when building work commenced, not following the publication of the PNA in 2022. It raises a query as to the legitimate health need.
- 3.2.84 It is unclear if this was the only question asked, or whether there were other questions, how many people were asked, how many people responded, if any responses were discarded etc. It is also unclear if those submitting letters and emails were aware of how they were going to be used. As no information has been provided on this, NHS Resolution should consider what weight to place on this information.
- 3.2.85 It is also likely that any resident anywhere if asked “would you like a new pharmacy next to your GP practice?” or “would you like a new dental surgery next to your GP practice?” – most people are likely to respond positively. It is likely that if patients had been asked if they would like a new community pharmacy to open anywhere in Blofield they would have responded positively.
- 3.2.86 Whilst it may be preferable for everyone to have a community pharmacy close to where they live or near their GP practice, this is not the same as identifying a legitimate health need and it would be inappropriate to grant an application for a new pharmacy on that basis. Applications must be granted only when they meet the regulatory requirements.

Contractor Performance

- 3.2.87 The Appellant refers to the “poor service that is currently available and how the regular closures of Well Pharmacy have led to patients being forced to travel many miles to access pharmaceutical services rather than take the risk of having their prescriptions sent to Well Pharmacy.” (Appeal letter, page 3 [see above]).
- 3.2.88 The ICB has well established routes for dealing with contractual issues, many that sit outside PSRC. The Appellant is suggesting that a new pharmacy is needed based on possible contractual issues with an existing pharmacy. This is not a reason within the regulations to approve a market entry application.
- 3.2.89 Noting the above, the ICB acknowledges that if there are ongoing problems with a contractor it may affect an individual's decision whether to make the journey to that pharmacy. The ICB is also aware that as commissioner of pharmaceutical services, it is our role to act on matters brought to our attention e.g., temporary suspensions of service.
- 3.2.90 The ICB can confirm that there were temporary suspensions of service at the Well Pharmacy. As such the issues were addressed by the commissioner with the contractor via a range of meetings and agreed actions. In the last six months there have been two temporary suspensions of service.

Regulation 18(2)(b)(iii)

- 3.2.91 PSRC noted that the original application provided no innovative approaches in the delivery of pharmaceutical services and were not satisfied that the Appellant had met this regulation.

Regulation 31

- 3.2.92 PSRC noted that there are no existing services being provided by anyone on the pharmaceutical list from the proposed premises or at adjacent premises, therefore Regulation 31 does not cause the application to be refused.

Regulation 40(1)

- 3.2.93 PSRC noted that the applicant had not disputed that the area of the proposed premises, where they are seeking listing of pharmacy premises, is within a controlled locality.

Regulation 40(2)

- 3.2.94 PSRC noted that noted that Regulation 40(2) does not apply as the proposed premises is not in an area in relation to which outline consent has been granted within the 5-year period as set out in Regulations, and the 5-year bar that was in place in the area of Blofield relating to proposed pharmacy premises expired on 6th September 2023.

Regulation 40— (3)

- 3.2.95 The Committee noted that this Regulation is not applicable as the applicant provided an exact address.

Regulation 41 – Is the relevant location in a reserved location.

- 3.2.96 PSRC agreed that as the patient numbers exceeded the reserved location threshold of 2,750, neither application were for a reserved location (See Appendix N).

Conclusion

- 3.2.97 In summary, we remain of the opinion that the applications should be refused.
- 3.2.98 In the publication of the 2022 – 2025 Norfolk PNA, the HWB has remained of the opinion that there is no gap in the provision of pharmaceutical services in this part of its area, or indeed any part of Norfolk, that would require needs, improvements or better access to be identified.
- 3.2.99 We appreciate there may be some convenience in having a new pharmacy, however this is different to one conferring significant benefits. Our priority is ensuring patients can access pharmaceutical services.
- 3.2.100 The regulatory requirements to identify an unforeseen benefit not in the PNA accompanied by the significant benefit considerations is a high threshold. We respectfully suggest that this appeal is without any substantive new or compelling evidence. We petition NHS Resolution to refuse the application as granting it will not confer significant benefits that were not foreseen when the PNA was published.”

3.3 RUSHPORT ADVISORY LLP ON BEHALF OF BLOFIELD SURGERY HEALTHCARE LTD

- 3.3.1 “I act for Blofield Surgery Healthcare Ltd and have been instructed to submit this reply to the appeal submitted by Loyal Pharmacy Limited (“Loyal Pharmacy”).

- 3.3.2 Whilst my client agrees with Loyal Pharmacy that a pharmacy is required in Blofield, we submit that the applications from my client should be preferred for the reasons given below and that the application from Loyal Pharmacy must be refused due to the 5 year rule which is relevant in the Loyal Pharmacy application but does not apply to my client's applications.
- 3.3.3 In the letter of appeal and supporting information that I submitted on behalf of my client in respect of their applications I did not address the Loyal Pharmacy Limited application or the issue of competing applications as it was not clear that Loyal Pharmacy Ltd would appeal.

5 YEAR RULE SUBMISSION

- 3.3.4 In relation to the application from Loyal Pharmacy Limited, this should be refused as it was submitted during the 5 year rule period.
- 3.3.5 The 5 year rule is set out in para 40 of Part 7 of the Regulations and states; [quoted in full]
- 3.3.6 This is an important regulation that protects controlled localities from successive applications within 5 years of a previous refusal. In order for the rule not to apply, the Applicant must show "there has been a substantial and relevant change of circumstances affecting the controlled locality". 5 years is a strict time limit and cannot be varied by even 1 day.
- 3.3.7 A previous application ref SHA/19858 was refused on 6 September 2018 and it is accepted by all parties that Blofield is a reserved location.
- 3.3.8 The 5 year rule therefore applied until 6 September 2023 and this is also accepted and stated by Loyal Pharmacy in the supporting information that they submitted with their original application.
- 3.3.9 Loyal Pharmacy submitted their application on 23 August 2023 and they are therefore required to demonstrate why the 5 year rule should not apply. The same requirement does not apply to my client as their application was properly made after the 5 year rule expired.
- 3.3.10 It is worth noting and considering the wording of the Regulations. There must be;
- "a substantial and relevant change of circumstances affecting the controlled locality."
- 3.3.11 The burden on Loyal Pharmacy is to show;
- 3.3.11.1 What circumstances they rely on. According to Collins dictionary circumstances can be defined as "an incident or occurrence, especially a chance one". The Applicant must be clear about what circumstances they are relying on.
- 3.3.11.2 The circumstances must have changed. This change must be clear.
- 3.3.11.3 The change must be substantial.
- 3.3.11.4 The change must be relevant.
- 3.3.11.5 The changes must be shown to have affected the controlled locality.

- 3.3.12 Looking at the application from PSC stated on behalf of Loyal Pharmacy in their supporting information that;

“We understand that the refusal of this application triggered another “5 year ban” meaning NHSE can refuse to consider/process an application under Regulation 40(2) unless the applicant can prove that there has been “a substantial and relevant change of circumstances affecting the controlled locality”.

- 3.3.13 There is therefore no doubt that the Applicant was aware of the rule.

- 3.3.14 PSC on behalf of Loyal Pharmacy then says;

“Our clients have been carefully monitoring the area over the last 3 years and believe the continual increase in new housing within the area means the village is now of sufficient size to warrant an application under Regulation 18, unforeseen benefits.

There is some mention of planned housing developments in the aforementioned case, but it appears that many of the developments were no more than planned or at best in their early stages when the decision was made. Since the application from IPHARM4U Ltd was rejected, our client believes between 400 and 500 dwellings have been constructed and occupied. This equates to somewhere in the region of an additional 1,200 residents living in the village.”

- 3.3.15 It must be noted that this is not the same as showing a “a substantial and relevant change of circumstances” as required by the regulations. 400 to 500 houses, ie 80 to 100 homes per year over 5 years, being completed is not the same as a substantial and relevant change of circumstances. The Applicant accepts that the developments were known about during the previous application that was refused.

- 3.3.16 The position adopted by Loyal Pharmacy is clear. They decided that Blofield was “sufficient size to warrant an application under Regulation 18” and for that reason applied prior to the end of the 5 year rule. Respectfully this is the wrong approach in law. Blofield was of sufficient size to warrant an application under regulation 18 five years ago and possibly before that time. The previous applications were not refused because Blofield was too small and the previous appeal decision makes no reference to Blofield being too small. The previous applications were refused due to insufficient evidence being provided to support the Applicant’s case at that time.

- 3.3.17 To the extent that the ICB accepted that 400 to 500 houses being built in 5 years was a “substantial and relevant change of circumstances”, we say that they have misdirected themselves in both fact and law.

- 3.3.18 To provide some context, the Committee is invited to consider what would have happened had the Blofield Surgery decided to cease dispensing to its dispensing patients or the nearest alternate pharmacy, Well in Brundall, had given notice to close. Either of these would clearly be a substantial and relevant change of circumstances. This must be contrasted with the position adopted by Loyal Pharmacy which is to simply describe a gradual evolution of Blofield into what it is today. The guidance to the Regulations provides a similar example of what might be considered relevant as shown below.

55. The only exception to this is where the PCT is satisfied that since the date on which the five year period stated, there has been a substantial and relevant change of circumstances affecting the *controlled locality* (Regulation 40(2)).

Example

A village within a *controlled locality* contains a pharmacy. The PCT receives a *routine application* to open another pharmacy which it refuses as there is no identified need within its PNA. The pharmacy in the village closed 12 months later and a *routine application* is immediately submitted as an unforeseen benefit. The PCT could approve the application as the closure of the pharmacy could be deemed to be a substantial and relevant change of circumstances affecting the *controlled locality*.

- 3.3.19 It may be possible for housing developments to constitute a substantial and relevant change of circumstances but the building of 80 to 100 homes per year that were known about at the time of a previous refusal cannot credibly be said to meet that threshold. By definition, if something was known about 5 years ago then it cannot also be a change in circumstances.
- 3.3.20 We further invite the Committee to look in detail at the evidence provided by Loyal Pharmacy in their application and also now in their letter of appeal. Apart from acknowledging that they must show a substantial and relevant change of circumstances, they make no other mention of this at all in their supporting information or letter of appeal. At no point do they even suggest that there was any particular substantial and relevant change of circumstances (other than gradual population growth or possibly a new school), nor do they say when such a change of circumstances occurred.
- 3.3.21 Loyal Pharmacy does mention other changes in Blofield such as the new school being built, but to the extent this is a change in circumstances it is not credible to suggest that planning approval for a school would be a substantial and relevant change of circumstances to the extent that it would displace the 5 year rule.
- 3.3.22 Given the timing of the Loyal Pharmacy application and the fact that the Applicant claims to have been monitoring the area closely over 3 years, the change in circumstances appear to have occurred sometime leading up to August 2023 and just a few weeks before the 5 year rule would have ended, but the Applicant fails to say what this change was – because there was no such change. It may of course be possible for multiple events over time to constitute a substantial and relevant change in circumstances, but again, Loyal Pharmacy does not claim that this is the case here.
- 3.3.23 Blofield Parish has a population of circa 4,300 persons. Blofield Surgery has a patient list of circa 8,330. It is simply not credible for Loyal Pharmacy to claim that the building of 400 to 500 homes over a 5 year period or work starting on the new primary school constitute a substantial and relevant change of circumstances in the manner anticipated by the Regulations.
- 3.3.24 What then becomes clear is that Loyal Pharmacy was attempting to “game the system” by ignoring the 5 year rule and trying to make their application before anyone else did. Their approach is an attempt to drive a coach and horses through a rule that must be given its proper weight and importance.
- 3.3.25 In contrast to Loyal Pharmacy Limited, my client properly abided by the 5 year rule.
- 3.3.26 For the reasons highlighted above the Loyal Pharmacy Limited application must be refused.

Competing Applications

- 3.3.27 In the event that the Committee is persuaded by Loyal Pharmacy that a substantial and relevant change of circumstances has occurred we address the issue of which application should be preferred, assuming that the Committee chooses to approve one (there being no reason for more than one application to be granted).
- 3.3.28 My client agrees that there is nothing material to choose between the applications in terms of service provision.
- 3.3.29 My client would also agree that the Committee would likely choose between the two applications that offer identical opening hours in terms of both core and supplementary hours, so that there is nothing to choose between the Applicant's in respect of opening hours.

Premises

- 3.3.30 PSC states that their client has "secured premises via an option agreement at the retail unit currently trading as Diamonds & Curls, 2 The Street Blofield NR13 4AA".
- 3.3.31 A valid and properly executed "option agreement" has not been provided by Loyal Pharmacy. PSC chose to address the issue of competing applications within their client's appeal even though they would not have been aware of whether my client intended to appeal or not. This appeal was their opportunity to provide sufficient documentary evidence to prove their case, but they have not done so.
- 3.3.32 In contrast we attach a copy of an executed lease agreement between my client and the owners of the Blofield Surgery (the two are different legal entities) [see Appendix O]. My client has therefore secured premises and provided documentary evidence to support their case.
- 3.3.33 In addition, Loyal Pharmacy ignores the fact that my client's application is for specific premises (over which they now have a lease), whereas the application from Loyal Pharmacy is for a best estimate and the address can be changed irrespective of whether or not they have an "option agreement". My client therefore offers certainty of being able to open the pharmacy and Loyal Pharmacy does not.

"Other"

- 3.3.34 PSC then discusses what it says are other factors that should benefit their client. We respectfully disagree with their submissions.
- 3.3.35 Blofield Surgery is located 450 metres from the premises proposed by Loyal Pharmacy (shown at the map at Appendix O).
- 3.3.36 Blofield Surgery is located very close to Blofield Primary School and Loyal Pharmacy has highlighted the importance of the school and its extension within their letter of appeal. The primary school is relocating to a site beside the newly expanded Blofield Surgery.
- 3.3.37 In their appeal letter PSC refer to plans for the existing primary school location to be converted to a community hall and state

"If this proposal proceeds that will be another new community facility located close to our client's proposed premises in the hub of the village."

- 3.3.38 The existing school premises is 115 metres from Blofield Surgery compared to 335 metres to Loyal Pharmacy Ltd's proposed site and it therefore appears

that PSC accepts that my client's premises are also in the "hub of the village" and "close" to the premises identified by Loyal Pharmacy.

- 3.3.39 Further the Committee will note that PSC in the letter of appeal states in relation to their client's proposed premises that;

"There is also a local garage/MOT centre, financial adviser, solicitors' practice in the immediate vicinity and the library is a few metres further north. Slightly beyond the library is a fish & chip shop and a carpet specialist."

- 3.3.40 The fish and chip shop referred to as "slightly beyond" the library that is a "few metres further north" is closer to my client's premises than that proposed by Loyal Pharmacy.

- 3.3.41 The Committee will also note the many references within the letters of support to a preference to have any pharmacy located at the same site as the GP surgery and patients clearly believe that the surgery premises would be the most convenient location for any pharmacy. This is a point that many of those who provided letters have raised including the Parish Council.

- 3.3.42 Part of the reason for preferring a pharmacy to be located at the Surgery site is the convenience of having co-located primary care services. Another reason is the significant parking provision that has been made available at the newly extended surgery premises.

- 3.3.43 To the extent that the location of premises is a factor then my client's premises should be preferred for the reasons given above and is clearly the preferred choice for the local community

- 3.3.44 We look forward to hearing from you in due course."

3.4 PSC ON BEHALF OF LOYAL PHARMACY LTD

- 3.4.1 "Thank you for your e-mail dated 7th June attaching copies of the appeals against the decision of the ICB to refuse the 2 applications listed above.

- 3.4.2 We continue to act on behalf of Loyal Pharmacy Ltd and have been instructed by our client to comment on these appeals as follows:

- 3.4.3 In many ways the appeal by Rushport on behalf of their clients Blofield Surgery Healthcare Limited (BSHL) is similar to the one submitted by ourselves on behalf of our client. Both applicants clearly feel a pharmacy is now required to meet the needs of the residents of Blofield and the surrounding areas.

- 3.4.4 Both applicants have recognised that there have been extensive new housing developments in the village over the last few years resulting in a rapid increase in population which automatically increases the demands for pharmaceutical services. Further residential developments within the village are ongoing and the new, much larger primary school, aimed at accommodating the increase demand for spaces is currently under construction.

- 3.4.5 Both parties recognise there is a lack of choice in the area due to the existing pharmacies being some distance away and very difficult to access, especially for those who don't have access to a motor vehicle. Public transport is limited and accessing the existing pharmacies on foot is not practically possible for most residents.

- 3.4.6 It has also been recognised that the nearest competing pharmacy in Brundall, a branch of Well, has had operational difficulties and there is much dissatisfaction amongst the local residents over the service they receive from

that pharmacy. Both parties also agree that Blofield and Brundall are separate communities each with their own set of facilities including shops and a GP surgery. The prime difference is one village has pharmaceutical services and the other doesn't.

3.4.7 In view of the similarities between the application by Loyal Pharmacy Ltd and the two applications by BHSL we, unusually, do not intend to make detailed comment on the opposing applications.

3.4.8 We do however wish to make a few salient points for the committee to consider when they come to decide whether an application should be granted within the village or not. If the decision is to grant a new contract under Regulation 18, one would assume the committee will only grant permission to one party. Therefore, they will need to decide which of the three applications should be approved.

3.4.9 On page 1 of the covering letter dated 28th May, Rushport state:

"Whilst my client is appealing both of the decisions to refuse their applications, PCA will note that the application with reference CAS-263181-B2X7X6 has longer opening hours than the first submitted application and would likely be preferred"

3.4.10 We believe CAS-263181-B2X7X6 was submitted in response to the application from our client as the proposed hours/core hours were amended to be identical to those submitted by our client.

3.4.11 On page 3 of the covering letter dated 28th May, Rushport state:

"The Committee will note that patients would prefer to have a new pharmacy co-located with the GP surgery"

3.4.12 There is no evidence to support this statement. We note that many of the people who responded to the survey campaign by BHSL are patients of the surgery so maybe that is a natural assumption. We are equally sure that local residents would be just as happy to attend a pharmacy in the centre of the village where the majority of the facilities are based.

3.4.13 We wish to comment on a few points within the supporting report prepared on behalf of BSHL dated March 2024 which includes the following statements:

3.4.14 Point 3.7 Page 6

"The heart of Blofield would be at the junction of The Street and Garden Row. Here there is Blofields Premier supermarket. This is an extremely well stocked supermarket with a range of fresh, frozen, chilled and ambient food. It provides an off licence and an in store costa coffee offer. It provides national lottery and pay pal and phone top up services. Baskets are available for shoppers to use when making large purchases. The premises also sells solid fuel. The premises are open 7am to 9pm Monday to Saturday and 7am to 10pm on Sunday".

3.4.15 Point 3.8

Blofield Post Office is inside the Premier supermarket. It provides all the normal post office counter services including posting and collecting letters and parcels, money exchange for euros, pay bills, cash and cheque deposits and bank withdrawals and post office card account withdrawals. Business account banking is also available. Also provided is money transfer, driver licence and

passport forms etc. With the closure of many banks a lot of the face to face services have now been provided by the post office.

As such it is no longer necessary to have a separate bank in settlement such as Blofield. The supermarket has on street parking and disabled access.

3.4.16 Point 3.9

Almost beside the supermarket is Mitchells Newsagents and second convenience shop within Blofield. It provides newspapers, magazines, tobacco and cigarettes, stationery and gift cards. Beside the newsagents is Blofield Florists Etcetera and a hairdressers.

Opposite is a solicitor business, hairdressers, a car repairs and servicing garage to the rear. At Doctors Road is a financial services business. Along Garden Road is a funeral directors, and at Globe Lane is a Podiatrists.

3.4.17 Point 3.10

Along The Street is the Kings Head bar and restaurant. Further north is Blofield Library and at the junction of North Street and Plantation Road is Blofield Primary School, Blofield Fish and Chip Shop and a Carpets and Curtains household furnishing shop.

3.4.18 Point 3.11

Along Yarmouth Road is Blofield United Football Club, Blofield Tennis Club, playground and Margaret Harker Hall which is a community space used for a variety of recreational activities.

Beside this is Blofield Sea Scouts.

3.4.19 All these facilities are right in the heart of Blofield and very close to the premises our client has secured should his application be approved. Our client's proposed premises are the hairdressers [underlined] within point 3.9.

3.4.20 All these facilities are closer to our client's proposed property than Blofield surgery which is located on the extreme north tip of the village, so clearly the application from Loyal Pharmacy Ltd is in a far more convenient location for most residents.

3.4.21 4.1 Page 14

"The statutory tests are set out under "The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013" (the "Regulations"). In particular the application should be assessed under Regulation 18. NOTE THAT UNLIKE THE COMPETING APPLICATION FROM LOYAL PHARMACY LIMITED, THE ICB IS NOT REQUIRED TO CONSIDER WHETHER THE 5 YEAR RULE APPLIES IN RELATION TO THIS APPLICATION"

3.4.22 This point has clearly been considered by PSRC in their decision report in relation to our client's application as follows:

Regulation 40— (2)

The Committee noted that a previous application for pharmacy premises in Blofield was refused on appeal on 6 September 2018 (SHA/19858). This triggered a '5-year bar' meaning that any subsequent routine application for

inclusion in a pharmaceutical list for premises within 1.6km of the proposed location in that previous application is to be refused by virtue of regulation 40(2) where it is received within the next five years. The only exception to that is where the Committee is satisfied that since the date on which the five-year period started, there has been a substantial and relevant change of circumstances affecting the controlled locality.

This application was received by Primary Care Support England (PCSE) on 23 August 2023, ie it was received within the five-year period.

The applicant addressed this point in their application as per the embedded document below:

Doc1.docx

Representations on this matter were only received from Rushport Advisory, acting on behalf of Blofield Surgery Healthcare Limited.

“In relation to the application from Loyal Pharmacy, this should be refused as it was submitted during the 5 year rule period.

A previous application ref SHA/19858 was refused on 6 September 2018 and it is accepted by all parties that Blofield is a reserved location.

The 5 year rule therefore applies until 6 September 2023 and Loyal Pharmacy made their application on 23 August 2023 and it should therefore be refused.”

The Committee noted that the number of people living within 1.6km of the relevant location identified in the application that was refused in 2018 was 3,615. The patient count undertaken 26th September 2023 was 5,588. Whilst the centre points for the 1.6km radius may have differed slightly (in 2018 it was 1 North Street and in 2023 it was NR13 4LE), that will not account for an increase of 1,973 or 54.6%.

The Committee agreed that such a substantial increase in the population of Blofield was a substantial and relevant change of circumstances and therefore there were no grounds to refuse this application by virtue of regulation 40.

Parish Council Letter dated 26th January.

- 3.4.23 The Parish council clearly feel a pharmacy in the village would be beneficial, but they state:

“There are also no other locations for a centrally located/accessible pharmacy”

- 3.4.24 Clearly that comment is incorrect as our client has secured an option (which he will exercise if his application is successful) on a unit right in the heart of the village.

- 3.4.25 There is also mention of a planning application 2023/3727 which we believe is in relation to proposals for the existing school site on North Street once it relocates to its new location. That application includes a proposal for a car park. If granted, there would be no reason why people could not utilise that facility and walk to our clients proposed premises if his contract application is approved.

Patient Survey

- 3.4.26 There are several letters/e-mails from patients supporting the idea of a pharmacy within Blofield Surgery. We assume the vast majority of the responses have come from patients of the surgery so it would be natural for them to say they would find a pharmacy within the building convenient.
- 3.4.27 Our view is that many who responded probably live in Blofield itself, so would no doubt find a centrally located pharmacy they can walk to just as, if not more convenient, whilst they are going about their daily needs. For those who have driven from the surrounding areas it would be straightforward to drive to the centre of the village where the other facilities are located. Parking is free and available on the main road and surrounding streets.
- 3.4.28 Interestingly there is mention of some people attending the pharmacy in Rackheath (although they state it is not easy/convenient to access) which is owned and operated by our client so I am sure those people would welcome a pharmacy in the village run by an established contractor they are already familiar with.
- 3.4.29 One letter mentions that Rackheath pharmacy is closing. For clarity, after discussing the matter with our client he has confirmed categorically there are no plans to close Rackheath Pharmacy.
- 3.4.30 We will leave it to the committee to decide how much weight they decide to place on this survey.

Conclusion

- 3.4.31 It is clear from evidence submitted, that both BSHL and Loyal Pharmacy Ltd believe there should be pharmaceutical services within the village of Blofield to meet the demand created by the extensive recent residential development and the difficulties accessing the existing contractors. In addition, both parties have highlighted the issues associated with the Well pharmacy in Brundall.
- 3.4.32 The two applications are identical in terms of opening hours, premises, services etc so if NHS Resolution accept that a pharmacy is now needed in the village, they will presumably need to decide which of the applications to approve. We accept of course they may decide to refuse all three applications.
- 3.4.33 We believe our client's location, which is far more central within the village and closer to most of the community facilities, would be preferable. Our client is intending to offer a full range of over-the-counter products as well as dispensing and other NHS services.
- 3.4.34 In addition, our client's application was submitted several months before the applications from BSHL and he has owned/run community pharmacies successfully for many years so has an established track record.
- 3.4.35 Blofield surgery is on the northern edge of the village and there would be no reason to go to that area except to attend an appointment at the surgery. As we all know the majority of prescriptions are now repeats, so patients don't necessarily need to attend the surgery for their medication.
- 3.4.36 For these reasons our client's application should be preferred."

4

Observations

4.1 THE COMMISSIONER

- 4.1.1 “We would like to make one comment in relation to the reps made by Rushport in relation to the 5 year rule and Loyal Pharmacy being required to demonstrate “burden of proof” in relation to a substantial change.
- 4.1.2 The ICB believes Rushport Advisory is quoting the approach that NHS Resolution took with regards to the prejudice test and DH guidance which states the “burden of proof is on the party alleging that prejudice will occur” so this is out of context.
- 4.1.3 As part of their application, Loyal Pharmacy Ltd was required by paragraph 7, Schedule 2 to include in their application details that explain its belief that regulation 18(1)(b) is satisfied in relation to its application. There is no requirement within that provision for Loyal Pharmacy Ltd to also include details that explain its belief that any other regulations are satisfied, for example regulation 40. The ICB is not aware of any other provision that supports Rushport's view.
- 4.1.4 The Pharmaceutical Services Regulation Committee were aware that the proposed premises are in a controlled locality, that applications in the village had been refused in the past and therefore as the application is a routine application it was required to consider regulation 40 which it did. Based on the information in front of the PSRC, it was satisfied that there had been a substantial and relevant change of circumstances affecting the controlled locality.
- 4.1.5 We have no further comments to make on the reps.”
- 4.2 RUSHPORT ADVISORY LLP ON BEHALF OF BLOFIELD SURGERY HEALTHCARE LTD
 - 4.2.1 “This response focuses on the comments from the ICB as both Applicants are in agreement about the need for a pharmacy.
 - 4.2.2 It is both clear, and disappointing, that the ICB has adopted an adversarial response to the applications submitted. It is of course the role of the ICB to consider and weigh the available evidence and make a decision based on that evidence. The evidence may include the ICB's own knowledge of an area. However, in this case the ICB has adopted the role of an objector rather than a dispassionate decision maker, and there are many examples of this.
 - 4.2.3 The ICB, whilst accepting a rise in population in Blofield, then uses percentages for Broadland locality rather than Blofield in a manner that suggests the population increases in Blofield are not relevant. The Broadland locality covers a considerable area with little or no relevance to Blofield.
 - 4.2.4 The ICB refers to their complaints team not having received any “formal complaints”. Again, this shows an attitude of seeking to refuse applications rather than properly consider the evidence. There are dozens of complaints with specific issues raised within the papers. The ICB simply ignores or disparages the evidence.
 - 4.2.5 The ICB then states that patients are exercising their “right to choose” because the Blofield Medical Practice has prescriptions dispensed by 60+ pharmacies. Respectfully, this is again the wrong approach. Patients have to obtain dispensing services somewhere. The evidence that the ICB claims to show reasonable choice in fact does no such thing. The evidence of a lack of reasonable choice is dismissed by the ICB for reasons that are unclear.
 - 4.2.6 The ICB states that if patients “had difficulty accessing alternative pharmaceutical services then the ICB would be aware via formal complaints

via the GP contracting teams or the pharmacy prescribing team". Again this response is concerning. The ICB is simply dismissing the complaints that they have had sight of only because they did not come via their own contracting teams. Further in their letter they refer to the voluminous letters from patients and say that "these comments are not complaints". This practice of claiming that negative comments were not the same as complaints was something that we last saw many years ago and we had hoped that it had stopped, but this appears not to be the case. The practice appears to have been used in historical times of PCT's to avoid disclosing complaints and PCTs faced considerable criticism from what was then the NHSLA for this approach during Oral Hearings at which I was present.

- 4.2.7 Primary Care Appeals will note that the comments above come from the ICB response to the Loyal Pharmacy Limited application. The ICB response to my client's applications is broadly similar. The ICB does ask a specific question of my client which is whether any patients "comments" were "discarded" and why the letters were received. No "comments" were discarded. The question is unfortunate. Patients were informed of my client's application and asked for their comments. The response is clear and there are many complaints within the comments.
- 4.2.8 Somewhat surprisingly the ICB appears not to be aware that the GP practice extension with more clinical room was needed due to increased demand for services. Given that the ICB (or people within the ICB) were involved in this process it beggars belief that the requirement for additional capacity is something that the ICB is not aware of. The ICB also states that it is "unclear what creating more clinical space means". We would have thought that the ICB would understand exactly what the term means.
- 4.2.9 Later in their response the ICB acknowledges that there have been both historic and ongoing issues with the nearest pharmacy (Well, Brundall) failing to open. The letters from patients also confirm this to be the case and it is clearly an ongoing issue.
- 4.2.10 I have chosen not to address points made by the ICB that appear to be simply argumentative or deal generally with the correct legal test as Primary Care Appeals is aware of this. However, I note at the end of the ICB letter that they refer to the burden of proof as a "high threshold". This may be the most clear mistake made by the ICB. The burden for an Applicant is to establish on the balance of probabilities, based on the available evidence, that the application meets the relevant legal test. My client has done this as we ask that their appeal to be allowed.
- 4.2.11 Finally we note that Loyal Pharmacy has not provided any evidence of the supposed "option agreement" that would need to be a formal legal document, properly executed and meet all the requirements of such an agreement."

4.3 RUSHPORT ADVISORY LLP ON BEHALF OF BLOFIELD SURGERY HEALTHCARE LTD

- 4.3.1 "I act for Blofield Surgery Healthcare Limited in the above applications and have now had an opportunity to discuss the ICB response to my client's appeals with my client. I therefore provide this letter to be considered in addition to my email reply of 12 July 2024.
- 4.3.2 I have attached the Full Business Case ("FBC") (see Appendix P) that the ICB (then known as the CCG) approved for the redevelopment and extension of Blofield Surgery. My client has provided this as it directly rebuts two key assertions made by the ICB in their reply to our appeals.

- 4.3.3 Firstly, the FBC highlights that the surgery development was required because the surgery was operating at full capacity and would have had to close its list to future patients without more clinical space being made available. The ICB (that signed off this FBC under their previous title) has access to this document and yet has claimed in their response that;
- 4.3.3.1 Blofield Surgery do not refer to making these structural changes to cope with the continual influx of new residents to the area. It is unclear what “creating more clinical space” means. For example, there could be the same number of rooms, just larger in size.
- 4.3.4 In contrast, the ICB (or CCG as it was then known) states in their “Decision and Review of Outcome” letter (appendices to FBC page 15 of 54) ;
- 4.3.4.1 Brief Summary of scheme:
- 4.3.4.2 The project will extend the current building to provide 360m² (GIA) additional space. The extension will provide an additional 6 clinical areas including 3 Consulting Rooms (2 of which are Training rooms), 1 multifunctional clinical and counselling space (to be used for community pharmacy and social prescribing as well), 2 treatment rooms as well as a health education/MDT room to enable the Practice to expand the range of services they are able to offer.
- 4.3.5 Secondly, the ICB claims that they were not required to refuse the Loyal Pharmacy Limited application because;
- 4.3.5.1 The Committee agreed that such a substantial increase in the population of Blofield was a substantial and relevant change of circumstances and therefore there were no grounds to refuse this application by virtue of regulation 40.
- 4.3.6 However, the FBC clearly shows that the change in population was something that the ICB was fully aware of and was planning for in 2018 (FBC dated 13 December 2018). What this means is that whilst there has been large and steady growth in housing and population and whilst a pharmacy is clearly needed, the population change cannot be considered a “substantial and relevant change of circumstances” as required by the Regulations, because it was already known about.
- 4.3.7 My client has highlighted some sections in the attached FBC and has provided a list of those highlighted sections as per below.
- 4.3.8 Pages:5, 6, 8, 9, 12, 13, 16, 17, 19
- 4.3.9 Letters/emails from appendix H
- 4.3.9.1 LMC letter
- 4.3.9.2 County council letter
- 4.3.9.3 Letter addressed Hemblington Hall Road
- 4.3.9.4 UEA
- 4.3.9.5 Blofield parish council
- 4.3.10 And sections: 2.1, 2.2, 2.3, 2.6, 2.7

- 4.3.11 I trust this will be of assistance to the Committee and we look forward to hearing from you in due course.”

4.4 PSC ON BEHALF OF LOYAL PHARMACY LTD

- 4.4.1 “We act on behalf of Loyal Pharmacy Ltd and refer to your e-mail of 12th July requesting final observations on comments from Rushport Advisory on behalf of Blofield Surgery Healthcare Ltd (BSHL) and Hertfordshire & West Essex ICB (HWE) in relation to SHA/26219.

Rushport Advisory-Letter dated 13th June 2024

- 4.4.2 Rushport on behalf of BSHL are stating that the application from our client should be refused because it was submitted during the 5 year rule period.

- 4.4.3 Our clients instructed us to submit the application within the 5 year “ban” as they were convinced that the changes within Blofield since the previous decision was made in September 2018 were substantial. As we have stated previously our client lives in the village and had first-hand experience of the continual building works over that 5 year period.

- 4.4.4 There was nothing to stop BSHL submitting a similar application if they wished to do so.

- 4.4.5 BSHL had raised this query at an earlier stage of the process. The NHS England decision report confirms that the PSRC clearly considered Regulation 40 and concluded that our client’s application was valid. They could have easily refused the application at that stage of the process (as they had done on a previous occasion) but obviously concluded the changes in the area were “substantial and relevant”.

- 4.4.6 For ease of reference, we have extracted the relevant paragraphs as follows:

“Representations on this matter were only received from Rushport Advisory, acting on behalf of Blofield Surgery Healthcare Limited.

“In relation to the application from Loyal Pharmacy, this should be refused as it was submitted during the 5 year rule period. A previous application ref SHA/19858 was refused on 6 September 2018 and it is accepted by all parties that Blofield is a reserved location. The 5 year rule therefore applies until 6 September 2023 and Loyal Pharmacy made their application on 23 August 2023 and it should therefore be refused.”

The Committee noted that the number of people living within 1.6km of the relevant location identified in the application that was refused in 2018 was 3,615. The patient count undertaken 26th September 2023 was 5,588. Whilst the centre points for the 1.6km radius may have differed slightly (in 2018 it was 1 North Street and in 2023 it was NR13 4LE), that will not account for an increase of 1,973 or 54.6%.

The Committee agreed that such a substantial increase in the population of Blofield was a substantial and relevant change of circumstances and therefore there were no grounds to refuse this application by virtue of regulation 40”.

- 4.4.7 Rushport are continuing to argue that an increase of 400-500 dwellings over a 5 year period within the village is not a substantial change in circumstances.

- 4.4.8 We believe these figures must be considered in the context of the location for our client’s application. In a city or large town that number of dwellings may not

be regarded as a significant increase. However, in a semi-rural village an increase in the population of 54% must be considered substantial.

- 4.4.9 It is not relevant that only an average of 80-100 properties/annum were built during that 5- year period. It is the cumulative figure over the 5 year period that is the relevant figure to consider in relation to Regulation 40.
- 4.4.10 As stated in our original documentation, at the time of the previous application by IPHARM4U Ltd being refused in September 2018, many of these housing developments were planned but not actually constructed. Primary Care Appeals committees have repeatedly determined, when considering other applications, that future plans for residential development should be disregarded as it is not certain that these houses will be built. Only when the properties are built and occupied does that provide evidence of population growth. The properties referred to in this case were in fact subsequently constructed and occupied. It is clear, therefore, that the change referred to by our client, and accepted by the ICB, has taken place since the previous application was refused. This amounts to a substantial and relevant change.
- 4.4.11 The matter of fact is that based on the increase in the number of patients within a 1.6km radius of the best estimate location, our initial estimation of the expansion was in fact very conservative, and the change is far more profound than we originally anticipated.
- 4.4.12 Finally, we did not expand greatly on this point within our previous submissions because we didn't feel the need to do so. The point had clearly been considered by the ICB and they had concluded the application was valid. If they had felt that the changes in the area were not substantial, they would have simply refused to process the application at the first stage.
- 4.4.13 In terms of property, we reconfirm that our client does have a signed Option agreement to take a lease on the unit that is currently trading as Diamond & Curls, 2 The Street, Blofield NR13 4AA and a copy of that agreement is attached to this document (see Appendix Q).
- 4.4.14 Rushport state:
- "In addition, Loyal Pharmacy ignores the fact that my client's application is for specific premises (over which they now have a lease), whereas the application from Loyal Pharmacy is for a best estimate and the address can be changed irrespective of whether or not they have an "option agreement". My client therefore offers certainty of being able to open the pharmacy and Loyal Pharmacy does not".*
- 4.4.15 The Diamond and Curls unit is clearly within our best estimate area, so it meets the requirements under the regulations and therefore the above statement is incorrect. If our client's application is granted it will clearly be in a position to open the pharmacy.
- 4.4.16 In terms of the question of competing applications we agree there is very little difference between the applications from BSHL and Loyal Pharmacy Ltd.
- 4.4.17 We maintain that our client's location is more central and in the heart of the village where most of the facilities are located. It is on the local bus routes and there is plenty of free parking available. Our client's application was submitted before both of those from BSHL and he has successfully run a chain of community pharmacies in the Norfolk and Suffolk areas over a number of years. Being a resident of the village he has extensive local knowledge.

- 4.4.18 We expanded further on these points and the patient survey carried out by BSHL in our letter of 27th June so will not repeat those comments here.

HWE (ICB) Letter dated 5th July 2024

- 4.4.19 The ICB state there were no gaps identified within the Norfolk PNA which we fully appreciate and is the reason for our client submitting an application under Regulation 18.

- 4.4.20 HWE then state:

“NHS Resolution will note that the Appellant has taken the comments of PSRC out of context. The reference to population growth was made specifically in relation to Regulation 40 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 and the relevant changes of circumstances affecting the controlled locality. PSRC were, of course mindful of the other Regulations that must be applied to an unforeseen benefits application in order to grant or refuse an application.

Although PSRC recognised there has been an increase in population, it should be noted that according to the Office for National Statistics, the increase in population for the Broadland area is lower than the increase for the East of England”

- 4.4.21 Interestingly the ICB do not challenge the question of Regulation 40 and have accepted that there has been “relevant changes of circumstances affecting the controlled locality”.
- 4.4.22 In terms of population growth in Blofield being lower than that in the East of England we are not sure that is relevant. Our client’s application is specific to Blofield and the local surrounding areas. Blofield is currently devoid of pharmaceutical services as there is no pharmacy in the village.
- 4.4.23 Whilst we fully respect that some patients may use dispensing GP services or Distance Selling Pharmacies, because neither of those bodies can offer patients a full range of pharmaceutical services, in our opinion they are not relevant when considering applications under Regulation 18.
- 4.4.24 We continue to maintain that patients do not have reasonable choice of contractor. There is only one existing contractor within a 3 mile radius of our best estimate location. We have explained in great detail within previous submissions why their choice of contractor are limited especially for those who do not have access to a motor vehicle or have share protected characteristics.
- 4.4.25 In terms of the ICB not receiving any formal complaints in relation to services within the area it is our experience that it is very unusual for formal complaints to be lodged. Based on many years of experience in Market Entry applications it is our view that most patients are either not aware they can make a formal complaint or have no idea how to go about it even if they wish to do so.
- 4.4.26 Both BSHL and ourselves have presented plenty of evidence within previous submissions from customers about issues with the service from the Well branch in Brundall over the last couple of years.
- 4.4.27 The ICB has produced some evidence in relation to services from the Well branch in Brundall and there are “both positive and negative reviews”. On clicking the Trust Pilot link, it showed that 33% of respondents gave the pharmacy 1 star-that is one in three people.

4.4.28 It is misleading to say that our client's application is based on the poor performance of the Well branch. That is not the case-it is merely one part of the overall jigsaw, and it cannot be denied that service from that branch has not been to the satisfaction of many patients.

4.4.29 The fact that 63 different pharmacies dispensed scripts originating from Blofield Surgery shows people can easily access pharmacies is misleading. The ICB seem to have assumed that people have seen their GP's and then physically travelled to the pharmacies to have their medication dispensed which is highly unlikely. Many scripts are likely to be repeat prescriptions where there is no need for people to physically visit the surgery. Also, it is likely that some of these prescriptions were delivered to the patients by the pharmacy in question - a service that could be withdrawn at any time.

4.4.30 The ICB state

"Access to pharmaceutical services is considered within the 2022-2025 Norfolk PNA and distance and travel times reviewed by car, on foot and via public transport. The HWB noted the following:

- *100% of residents are within a 15 minute drive of a pharmacy (off peak), and 100% of residents are within a 15 minute drive (at peak times).*
- *86% of residents are within 30 minutes of a pharmacy when using public transport during the weekdays and weekends when travelling by public transport.*
- *68.9% of residents are within a 20 minute walk of a pharmacy and 72% can access a community pharmacy by walking in less than 30 minutes."*

4.4.31 These are just general statistics taken from the HWB area as a whole and do not reflect the position faced by the residents of Blofield. For example, the nearest pharmacy is approx. 32- minute walk and in our letter of appeal dated 24th May we have produced evidence that bus journeys to the closest pharmacies are far in excess of 30 minutes.

4.4.32 In terms of opening hours, we wish to point out that one important difference is that our client is proposing core hours on a Saturday morning whereas none of the pharmacies listed by HWE offer those. That guarantees that should our client's application be accepted residents will be able to access services 5.5 days/week. There is nothing to stop the other contractors listed applying to reduce their supplementary hours on a Saturday morning.

4.4.33 May we request that these comments are taken into account by the committee in making their decision in relation to this application?"

4.5 BRUNDALL MEDICAL CENTRE

4.5.1 "Our objections to the opening of either Blofield Pharmacy or Loyal Pharmacy remain unchanged and are a very significant concern to us because of the impact on our sustainability. As we have explained in our detailed letter as an interested party our dispensing ability is majorly dependent on the population in Blofield where the geographic limitations imposed by the river and the marshland are not restrictive factors unlike in Brundall. Loss of this large cohort of dispensing population will therefore make it very difficult for Brundall Medical Practice to survive as a Dispensing Practice and without the income stream from dispensing the practice will not be able to retain staff and provide the core medical services that the 8,000 patients registered receive."

5 Consideration

- 5.1 The Pharmacy Appeals Committee ("the Committee"), appointed by NHS Resolution, had before it the papers considered by the Commissioner, together with a plan of the area showing existing pharmacies and doctors' surgeries and the location of the proposed pharmacy.
- 5.2 It also had before it the responses to NHS Resolution's own statutory consultations.
- 5.3 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.
- 5.4 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations").
- 5.5 Blofield is in a controlled locality and the applications were based on securing improvements or better access to pharmaceutical services in that controlled locality.
- 5.6 The Committee considered that the correct course was to first consider if the applications must be refused pursuant to Regulation 31. The Committee will then consider if the applications must be refused pursuant to Regulation 40. If the Committee is not so required to refuse the applications, it will consider the issue of reserved location pursuant to Regulation 41. The Committee will then consider the applications under Regulation 18. If the Committee has determined that the Applicants are seeking the listing of pharmacy premises which are in a part of a controlled locality that is not in a reserved location, it will consider the issue of prejudice under Regulation 44 last. The reason for this staged approach and in particular for dealing with prejudice last is that if the applications do not meet the requirements of Regulation 18 the Committee is required to refuse it and prejudice cannot arise. The potential for prejudice only arises if the Committee has concluded that the applications meet the requirements of Regulation 18 and may be granted. It is then for the party asserting prejudice to satisfy the Committee that this provides a reason to refuse an otherwise valid application. Depending on the determinations of the Committee in respect of the above as well as taking into consideration of whether the Commissioner has considered Regulation 50(1), the Committee will then consider Regulation 50(1) Discontinuance of arrangements for the provision of pharmaceutical services by doctors.

Regulation 31

- 5.7 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).

- 5.8 The Committee noted that both Applicants had argued that their applications should not be refused under the provisions of Regulation 31 as there is currently no pharmacy in the village of Blofield, therefore the proposed premises would not be adjacent to or in close proximity to another pharmacy or dispensing appliance contractor premises. The Committee noted the conclusions of the Commissioner in this respect and further that this had not been disputed either on appeal or in subsequent representations. On the basis of the information before it, the Committee was not required to refuse any of the applications under the provisions of Regulation 31.
- 5.9 The Committee noted that, if any of the applications 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 40

- 5.10 In those circumstances, the applications (which are made under Regulation 18 of the Regulations) must be assessed against the provisions of Part 7 of the Regulations and, in particular Regulation 40 which reads:

(1) This paragraph applies to all routine applications—

(a) for inclusion in a pharmaceutical list as an NHS pharmacist; or

(b) from an NHS pharmacist included in such a list—

(i) to relocate to different pharmacy premises in the area of the relevant HWB, or

(ii) to open, within the area of the relevant HWB, additional pharmacy premises from which to provide pharmaceutical services,

where the applicant is seeking the listing of pharmacy premises which are in a controlled locality.

(2) If NHS England receives an application (A1) to which paragraph (1) applies, it must refuse A1 (without needing to make any notification of that application under Part 3 of Schedule 2), where the applicant is seeking the listing of premises at a location which is—

(a) in an area in relation to which outline consent has been granted under these Regulations, the 2012 Regulations or under the 2005 Regulations within the 5 year period—

(i) starting on the date on which the proceedings relating to the grant of outline consent reached their final outcome, and

(ii) ending on the date on which A1 is made; or

(b) within 1.6 kilometres of the location of proposed pharmacy premises (other than proposed distance selling premises), in respect of which—

(i) a routine application under these Regulations or the 2012 Regulations, or

(ii) an application to which regulation 22(1) or (3) of the 2005 Regulations (relevant procedures for applications) applied,

was refused within the 5 year period starting on the date on which the proceedings relating to the refusal reached their final outcome and ending on the date on which A1 is made,

unless NHS England is satisfied that since the date on which the 5 year period started, there has been a substantial and relevant change of circumstances affecting the controlled locality.

(3) For the purposes of paragraphs (1) and (2), if no particular premises are proposed for listing in A1, the applicant is to be treated as seeking the listing of pharmacy premises at the location which is the best estimate that NHS England is able to make of where the proposed listed pharmacy premises would be, having regard to the best estimate given by the applicant under paragraph 1(7)(a)(ii) of Schedule 2.

(4) Paragraph (2)(b) does not apply where NHS England is satisfied that there are reasonable grounds for believing the person making the refused application was motivated (wholly or partly) by a desire for that application to be refused.

(5) The refusal of an application pursuant to paragraph (2)(b), or regulation 40(2)(b) of the 2012 Regulations (applications for new pharmacy premises in controlled localities: refusals because of preliminary matters), is to be ignored for the purposes of the calculation of a 5 year period pursuant to paragraph (2)(b).

- 5.11 The Committee noted that there was no information to suggest that any of the applications were in respect of a location where outline consent had been granted, however the Committee did note the comments from Rushport Advisory that there had been a refusal for a previous application in the last 5 years.
- 5.12 The Committee noted that a previous case (SHA/19858) had been finally determined on 6 September 2018 when the decision was issued to parties following an oral hearing.
- 5.13 The Committee noted that the application from Loyal Pharmacy Ltd was dated 22 August 2023 and, from the decision letter of the Commissioner, it was confirmed that the application was received on 23 August 2023.
- 5.14 The Committee noted that there is no dispute between the parties that the application from Loyal Pharmacy Ltd falls within the “relevant period” as set out in Regulation 40 and further, that when the application was circulated by the Commissioner only representations from Rushport Advisory LLP were received on this point.
- 5.15 The Committee noted that Rushport Advisory LLP had sought to argue that the application from Loyal Pharmacy Ltd should be refused as they had not provided any information with regard to a “substantial and relevant change of circumstances affecting the controlled locality”.
- 5.16 The Committee noted that PSC had addressed the question of the “5 year rule” in their initial application and that an application had been made due to the significant increase in population in the intervening years since the decision of 6 September 2018.
- 5.17 The Commissioner and PSC were of the view that there had been a substantial change of circumstances. In its decision letter the Commissioner had stated:
- 5.17.1 *“The Committee noted that the number of people living within 1.6km of the relevant location identified in the application that was refused in 2018 was 3,615. The patient count undertaken 26th September 2023 was 5,588. Whilst the centre points for the 1.6km radius may have differed slightly (in 2018 it was 1 North Street and in 2023 it was NR13 4LE), that will not account for an increase of 1,973 or 54.6%.”*
- 5.18 The Committee noted that the Commissioner had gone on to conclude:

5.18.1 *“The Committee agreed that such a substantial increase in the population of Blofield was a substantial and relevant change of circumstances and therefore there were no grounds to refuse this application by virtue of regulation 40.”*

- 5.19 The Committee noted the statements from PSC and the references to the growing population which it states the Commissioner had considered when determining the original application. The Committee accepted the growth but was of the view that this was gradual as opposed to circumstances where there had been no or limited growth followed by sudden growth within a short period of time.
- 5.20 The Committee further noted the statements from PSC with regard to other developments in the area and whilst planning permission had been granted and the surgery was currently being extended, this had not yet been completed. Further the plans for the expansion of the school, again, whilst in progress, had also not been completed. The Committee was of the view that future expansion of facilities or developments was not something to which it could have regard.
- 5.21 The Committee also noted the statements quoted by PCS from the PNA for the general area of Broadland, in which Blofield is situated that *“There has been population growth since the last PNA (2018). The population growth for the lifespan of this PNA (to 2025) is expected to be 3.8% to 136,987 which is similar to the rate of growth for England.”* The Committee did not believe it could consider Broadland in its entirety in its consideration of the population growth.
- 5.22 The Committee was mindful of the wording of the Regulation that it has to be satisfied that there has been a substantial and relevant change of circumstances affecting the controlled locality.
- 5.23 Whilst the Committee accepted that there had been an increase in population the Committee was mindful that there was a lack of information from the Applicant as to why this was substantial, in the context of the area, or what the relevant change of circumstances were that affected the controlled locality.
- 5.24 Based on the information before it, the Committee was of the view that the application from Loyal Pharmacy Ltd was made within the relevant period, as set out in Regulation 40 and further that it had not been provided with information as to why the application should be considered before the end of the relevant period.
- 5.25 The Committee was not satisfied that since the date on which the 5 year period started, there has been a substantial and relevant change of circumstances affecting the controlled locality. The Committee therefore did not proceed to consider the application from Loyal Pharmacy Ltd any further.
- 5.26 The Committee noted that the applications from Blofield Surgery Healthcare Ltd were dated 10 October 2023 and 28 November 2023 respectively and were therefore made after 6 September 2023 and after the relevant 5 year period. Based on the information before it, which had not been disputed, the Committee was of the view that it was not required to refuse the applications from Blofield Surgery Healthcare Ltd under the provisions of Regulation 40.
- 5.27 The Committee went on to consider the applications from Blofield Surgery Healthcare Ltd pursuant to Regulation 41.

Regulation 41

- 5.28 Regulation 41 reads:

(1) *This paragraph applies to any routine application—*

(a) for inclusion in a pharmaceutical list as an NHS pharmacist; or

(b) from an NHS pharmacist included in such a list—

- (i) to relocate to different pharmacy premises in the area of the relevant HWB, or*
- (ii) to open, within the area of the relevant HWB, additional pharmacy premises from which to provide pharmaceutical services,*

where the applicant is seeking the listing of pharmacy premises which are in a controlled locality and NHS England is required to notify the application under Part 3 of Schedule 2.

(2) If paragraph (1) applies to an application (referred to in this regulation and regulation 42 as “A1”), subject to paragraph (5), NHS England must determine whether or not the “relevant location”, that is—

- (a) the location of the premises for which the applicant is seeking the listing; or*
- (b) if no particular premises are proposed for listing in A1, the location which is the best estimate that NHS England is able to make of where the proposed pharmacy premises would be, having regard to the best estimate given by the applicant under paragraph 1(7)(a)(ii) of Schedule 2,*

is, on basis of the circumstances that pertained on the day on which A1 was received by NHS England, in a reserved location.

(3) Subject to regulation 43(2), the area within a 1.6 kilometre radius of a relevant location is a “reserved location” if—

- (a) the number of individuals residing in that area who are on a patient list (which may be an aggregate number of patients on more than one patient list) is less than 2,750; and*
- (b) NHS England is not satisfied that if pharmaceutical services were provided at the relevant location, the use of those services would be similar to, or greater than, the use that might be expected if the number of individuals residing in that area who are on a patient list were 2,750 or more.*

(4) Before making a determination under paragraph (2) (referred to in this regulation and regulation 42 as “D1”), NHS England must—

- (a) notify the persons notified under Part 3 of Schedule 2 about A1 that NHS England is required to make D1 (and it may make this notification at the same time as it notifies those persons about A1); and*
- (b) invite them, within a specified period of not less than 30 days, to make representations to NHS England with regard to D1 (and the period specified must end no earlier than the date by which the person notified needs to make any representations that they have with regard to A1).*

(5) NHS England must not make a determination under paragraph (2) in respect of A1 in circumstances where an earlier application which was in respect of the relevant premises and to which paragraph (1), regulation 44 of the 2012 Regulations (prejudice test in respect of routine applications for new pharmacy premises in a part of a controlled locality that is not a reserved location) or regulation 18ZA of the 2005 Regulations (refusal: premises which are in a controlled locality but not a reserved location) applied was refused—

- (a) for the reasons relating to prejudice in—*

(i) regulation 44(3),

(ii) regulation 44(3) of the 2012 Regulations, or

(iii) regulation 18ZA(2) of the 2005 Regulations; and

(b) within the 5 year period starting on the date on which the proceedings relating to the refusal reached their final outcome and ending on the date on which A1 is made,

unless NHS England is satisfied that since the date on which the 5 year period started, there has been a substantial and relevant change of circumstances affecting the controlled locality.

(6) For the purposes of paragraph (5), the “relevant premises” are—

(a) the premises which are proposed for listing; or

(b) if no particular premises are proposed for listing in A1, premises at the location which is the best estimate that NHS England is able to make of where the proposed listed pharmacy premises would be, having regard to the best estimate given by the applicant under paragraph 1(7)(a)(ii) of Schedule 2.

- 5.29 The Committee considered the issue of reserved location for premises described in the application.
- 5.30 The Committee noted that the Commissioner had stated that the number of individuals residing in that area who are on a patient list (in respect of NR13 4PL – Blofield Surgery) was 3,952 and therefore the site of the proposed premises are not in a reserved location.
- 5.31 Whilst the Committee was mindful that it was not considering the application from Loyal Pharmacy Ltd, it noted that the Commissioner had used a postcode of NR13 4LE. The Commissioner had stated that the number of individuals residing in that area who are on a patient list within 1.6km of NR13 4LE was 5,588. The Committee had no information before it as to why this number was so much greater, however the Committee was of the view that the position was still the same in that the premises are not in a reserved location.
- 5.32 The Committee noted that neither Loyal Pharmacy Ltd or Blofield Surgery Healthcare Ltd, nor any party in subsequent representations had challenged the Commissioner’s position regarding reserved location and therefore determined that the relevant locations were not in a reserved location.
- 5.33 The Committee was aware that, given its view on reserved location, it may then need to deal with prejudice. However, the Committee considered that prejudice could only arise if the applications meet the requirements of Regulation 18 and may therefore be granted. It therefore next considered whether the applications met the requirements of Regulation 18.

Regulation 18

- 5.34 The Committee noted that these were applications 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)."*

- 5.35 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 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.
- 5.36 The Committee went on to consider whether Regulation 18(1)(b) was satisfied, i.e. whether the improvements or better access that would be secured if the applications were granted were or was included in the Pharmaceutical Needs Assessment ("the PNA") in accordance with paragraph 4 of Schedule 1 of the Regulations.
- 5.37 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).
- 5.38 The Committee considered the PNA prepared by the PNA Steering Group on behalf of Norfolk HWB by Norfolk County Council with support from Soar Beyond Ltd, 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 and that five supplementary statements had since been issued.
- 5.39 The Committee noted that the supplementary statements (issued in November 2022, February 2023, May 2023, November 2023 and March 2024) covered any changes to the pharmaceutical list which included new pharmacies opening, existing pharmacies closing or relocating as well as changes to core and supplementary hours for those

pharmacies already on the pharmaceutical list. The Committee noted that none of the supplementary statements were for the area of the proposed premises in Blofield.

- 5.40 The Committee noted the conclusions in the Executive Summary that:

“Provision of current pharmaceutical services and Locally Commissioned Services are well distributed, serving all the main population centres. There is excellent access to a range of services, commissioned from pharmaceutical service providers. As part of this assessment no gaps have been identified in provision either now or in the next three years for pharmaceutical services deemed necessary by the Norfolk HWB.”

- 5.41 The PNA was split into different localities based on the district and borough council geographies within Norfolk and pharmaceutical services and provision would then be considered for each locality. The Committee noted that whilst Blofield is not specifically mentioned in the PNA, apart from to list Blofield Surgery as a dispensing practice in Appendix A, Blofield falls to be considered under the Broadland locality which is considered at 6.2.2 of the PNA.

- 5.42 The PNA had concluded for the Broadland locality under “Necessary Services: gaps in provision” that *“no gaps in the provision of Necessary Services have been identified for Broadland locality”* and further *“No gaps have been identified if provide either now or in the future would secure improvements or better access to Advance Services across the Broadland locality.”*

- 5.43 The Committee also noted the conclusions of the PNA at Section 7 “Necessary Services: normal working hours” which stated:

“There is no current gap in the provision of Necessary Services during normal working hours across Norfolk to meet the needs of the population.”

- 5.44 And further, for “outside normal working hours” that:

“There are no current gap in the provision of Necessary Services during outside working hours across Norfolk to meet the needs of the population.”

- 5.45 The PNA concluded that *“Based on current information no current gaps have been identified in respect of securing improvements or better access to Locally Commissioned services either now or in specific future circumstances across Norfolk to meet the needs of the population.”*

- 5.46 The Committee noted that both of the applications submitted by Blofield Surgery Healthcare Ltd (“hereon in referred to as the Applicant”) were seeking to provide unforeseen benefits to the patients of the Blofield Surgery as well as to the residents of Blofield and the surrounding area.

- 5.47 The Committee noted that the improvements or better access that the Applicant was claiming would be secured by the applications were not included in the relevant PNA in accordance with paragraph 4 of Schedule 1.

- 5.48 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)

- 5.49 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"*

- 5.50 The Committee noted that the Commissioner, in all of the decision letters, had determined that there is no plan for the provision of pharmaceutical services in the area. The Commissioner had therefore concluded that granting an application would not cause significant detriment to the proper planning in respect of the provision of pharmaceutical services in the area of Norfolk HWB. The Committee noted that no party had sought to dispute this, either on appeal or in subsequent representations.
- 5.51 On the basis of the information available, the Committee was not satisfied that, if an application was to be granted and a pharmacy was to open, the ability of the Commissioner thereafter to plan for the provision of services would be affected in a significant way.
- 5.52 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)

- 5.53 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"*

- 5.54 The Committee noted that the Commissioner had concluded, in all of the decision letters, that there was no evidence to suggest granting an application would cause significant detriment to the arrangements the ICB has in place for the provision of pharmaceutical services in the area. The Committee again noted that no party had sought to dispute this, either on appeal or in subsequent representations.
- 5.55 The Committee was therefore not satisfied that significant detriment to the arrangements currently in place for the provision of pharmaceutical services would result from a grant of the application.
- 5.56 In the absence of any significant detriment as described in Regulation 18(2)(a), the Committee was not obliged to refuse the application and went on to consider Regulation 18(2)(b).

Regulation 18(2)(b)

- 5.57 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)

- 5.58 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.
- 5.59 The Committee noted the information provided with regard to the developments in the area, some of which are already built and occupied and others which are currently under construction as well as the growing population for Blofield. The Committee further noted that the GP surgery in Blofield has had approval to expand its surgery premises, which is ongoing and that a new primary school is due to be built in the village. The Committee noted the various facilities and amenities, which included two convenience shops and a newsagents as well as various sports clubs in the village but was mindful that, whilst there was a good variety for a village the size of Blofield, the facilities on offer were not large or various enough to sustain the population on a daily basis without the need for them to leave the area to supplement the facilities that were available to them.
- 5.60 The Committee noted the comments from the Applicant that as there is no pharmacy in Blofield there is no reasonable choice of pharmaceutical services for those living in the village or the surrounding hamlets. There was no dispute between the parties that there was currently a good dispensing service from both the medical practice in Blofield as well as the medical practice in Brundall, however 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 the nearest pharmacy, Well, is in Brundall which is 1.7 miles away and is located in the vicinity of the medical practice. The Committee noted the further undisputed comments from the Commissioner that there are 6 other pharmacies located within 5 miles of Blofield. The Applicant was of the view that whilst there may be pharmaceutical services in the wider area this does not mean that the choice of pharmaceutical services for those in Blofield is reasonable.
- 5.61 The Committee noted the photographs and maps provided by the Applicant with regard to the area and the routes that pedestrians would have to take to access pharmaceutical services in Brundall or further afield. Given the information provided, the Committee was of the view that whilst there were some that may make the journey on foot to Brundall, 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 pharmacies by private and public transport.
- 5.62 The Committee noted the information provided with regard to the bus services, in the area which link Blofield to Brundall and then continue on into Norwich town centre, where there are pharmacies located. The Committee noted that the journey was not excessive to Brundall and that the bus stop was located outside the Blofield Medical Practice. The Committee noted that the service runs on an hourly basis but was mindful that this was within a rural setting. The Committee noted that to access pharmaceutical

services other than in Brundall requires either a long journey or a more convoluted journey including changing buses. The Committee was mindful that those who did use public transport would be aware of the services and times. The Committee found it difficult to assess the extent to which patients were using public transport but was of the view that there was nothing provided to demonstrate that for those who were reliant on public transport that they were currently having difficulties accessing the existing pharmaceutical provision in the area of the HWB.

- 5.63 For those who had access to private transport, the Committee noted the information provided with regard to the level of car ownership in the area. The Committee noted the comments from the Applicant that 9% of households have no car, however this means that over 90% of households do have access to private transport. Of the 90%, the Applicant's own data showed 40% two car ownership and 13.3% three car ownership. The Committee noted the comments about the availability of car parking in the vicinity of the proposed site but, apart from the time it would take to travel to the nearest pharmacies, the Committee noted there was very little information provided with regard to accessing these pharmacies by car. The Committee was mindful of the high car ownership within the area and concluded that for those who did have access to private transport there was nothing provided by the Applicant to demonstrate that those who did have access to private transport were currently having difficulties in accessing the existing pharmaceutical provision in the area of the HWB.
- 5.64 The Committee noted the information as provided by the Applicant with regard to the unplanned closures of Well in Brundall as well as the comments about various complaints with regard to service provision at the pharmacy. The Committee also noted the support from the residents of Blofield including the Parish Council. The Committee was mindful that whilst the continued increase in developments in the area would lead to an increase in demand for pharmaceutical services there was nothing provided to demonstrate that the existing provision in the area would be unable to cope with any increase in demand. The Committee noted that over 80% of the prescriptions were dispensed by both medical practices and Well pharmacy in Brundall as well as patients exercising choice by obtaining their medication from over 62 different contractors.
- 5.65 The Committee was of the view that general performance issues should not be the only reason that a new pharmacy is granted. It is the ICB's role as commissioner of pharmaceutical services to act on reports of negative service and unplanned temporary suspension of services. The Committee considered that performance issues should not be a reason to completely discount the existence of a pharmacy when considering whether there is reasonable choice, but that continued ongoing problems and complaints will affect an individual's decision whether to make the journey to that pharmacy. The Committee noted that the Applicant was relying on comments from those who were registered with the medical practice in Blofield but was unsure how these views and comments had been sought. The Committee placed limited weight on this information as those who were registered at the Blofield surgery would, if an application to open a pharmacy was not granted, still be able to have their prescriptions dispensed as they are currently.
- 5.66 Taking all of the above into consideration, the Committee was of the view that there is already reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB, such that it was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining pharmaceutical services, granting an application would confer significant benefits by way of physical access on persons.
- 5.67 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 limited information provided by the Applicant by way of general statements for the area of Blofield. There was some reference to those who due to age, illness/disability share a protected characteristic, however it had not been expanded upon as to why it was considered that these groups were having difficulty in accessing pharmaceutical services in the area. The Committee was mindful that pharmaceutical services, especially other essential services apart from the dispensing of prescriptions, which can be delivered or can be dispensed by the medical practice, may be difficult to access for people with protected characteristics based on age and disability and whilst the Committee accepted that there were always people in an area who share a protected characteristic, there was no information provided as to why those with a protected characteristic were currently experiencing any difficulties in accessing pharmaceutical services. 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 an application would confer significant benefits on persons.

- 5.68 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 of the applications had sought to rely on innovative approaches to the delivery of pharmaceutical services. 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 an application would confer significant benefits on persons.

Regulation 18(2)(b) generally

- 5.69 The Committee noted that in the initial application the Applicant (SHA/26220) was proposing to open for 53 hours a week of which 40 would be core hours. The Committee noted that there would be provision of pharmaceutical services from 8:30am to 6:30pm Monday to Friday with core hours being from 9am to 5pm. The Committee noted that the Applicant was proposing to open on a Saturday from 9am to 12 noon with all of these hours being supplementary. The Committee noted that the Applicant was not proposing any hours, either core or supplementary on a Saturday afternoon or a Sunday.
- 5.70 The Committee noted that in the second application from the Applicant (SHA/26221) it was proposing to open for 54 hours of which 49 would be core hours. The Applicant had amended their hours so that whilst there would still be provision from 8:30am to 6:30pm Monday to Friday, core hours would now be from 8:30am to 1pm and 2pm to 6:30pm Monday to Friday with the hours on a Saturday morning from 9am to 1pm also being core hours.
- 5.71 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); ...

- 5.72 The Committee noted that, if the second application from the Applicant was to be granted, a direction would need to be issued for the “additional” hours which were being offered by this Applicant.
- 5.73 The Committee noted the comments that the hours being offered by the Applicant were not that different from those already being offered by existing pharmacies in the area. The Committee was of the view that there was no information provided to support a finding that pharmaceutical services are not currently provided at such times as needed and therefore it was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits (in relation to opening hours) on persons.
- 5.74 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.
- 5.75 The Committee was of the view that in accordance with Regulation 18(2)(b) the granting of an application would not confer significant benefits on persons in the area of the HWB which were not foreseen when the PNA was published.

Regulation 44 – Prejudice

- 5.76 The Committee has already indicated that if none of the applications meet the requirements of Regulation 18 then the Committee is required to refuse them and prejudice cannot arise. The potential for prejudice only arises if the Committee has concluded that an application meets the requirements of Regulation 18 and may be granted. As indicated above, the Committee has determined that the applications do not meet the requirements of Regulation 18 and therefore the Committee considered that consideration of prejudice was not required.

Other considerations

- 5.77 Having determined that Regulation 18(2)(b) had not been satisfied, the Committee did not need to have regard to Regulation 18(2)(c) to (e).
- 5.78 No deferral or refusal under Regulation 18(2)(f) was required in this case.
- 5.79 The Committee had regard to Regulation 18(2)(g) and found that it was not applicable.
- 5.80 The Committee considered whether there were any further factors to be taken into account and concluded that there were not.
- 5.81 The Committee was not satisfied that the information provided demonstrates that there is difficulty in accessing current pharmaceutical services such that a pharmacy at the proposed site would provide better access to pharmaceutical services.
- 5.82 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 5.82.1 confirm the Commissioner’s decision;
- 5.82.2 quash the Commissioner’s decision and redetermine the application;

- 5.82.3 quash the Commissioner's decision and, if it considers that there should be a further notification to the parties to make representations, remit the matter to the Commissioner.
- 5.83 In those circumstances, given that the Committee has reached a different decision to that of the Commissioner in respect of the application from Loyal Pharmacy Ltd, the Committee determined that the decision of the Commissioner must be quashed.
- 5.84 The Committee went on to consider whether there should be a further notification to the parties detailed at paragraph 19 of Schedule 2 of the Regulations to allow them to make representations if they so wished (in which case it would be appropriate to remit the matter to the Commissioner) or whether it was preferable for the Committee to redetermine the application.
- 5.85 The Committee noted that representations on Regulation 18 had been sought from parties by the Commissioner and representations had already been made by parties to the Commissioner in response. These had been circulated and seen by all parties as part of the processing of the application by the Commissioner. The Committee further noted that when the appeal was circulated representations had been sought from parties on Regulation 18.
- 5.86 The Committee concluded that further notification under paragraph 19 of Schedule 2 would not be helpful in this case.

6 DECISION

- 6.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of the Commissioner and redetermines the applications.
- 6.2 The Committee determined that the application by Loyal Pharmacy Ltd should be refused under the provisions of Regulation 40(2).
- 6.3 The applications by Blofield Surgery Healthcare Ltd dated 10 October 2023 (SHA/26220) and Blofield Surgery Healthcare Ltd dated 28 November 2023 (SHA/26221) should be refused.
- 6.4 The Committee concluded that it was not required to refuse any of the applications under the provisions of Regulation 31.
- 6.5 The Committee concluded that Blofield is in a controlled locality and that the site of the applications are not in a reserved location.
- 6.6 The Committee has considered whether the granting of the application would cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area covered by the HWB, or the arrangements in place for the provision of pharmaceutical services in that area and is not satisfied that it would;
- 6.7 The applications should be refused on the following basis:
- 6.7.1 In considering whether the granting of an application would confer significant benefits, the Committee determined that –
- 6.7.1.1 there is already a reasonable choice with regard to obtaining pharmaceutical services;
- 6.7.1.2 there is no evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services; and

- 6.7.1.3 there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services;
- 6.7.2 Having taken these matters into account, the Committee is not satisfied that granting an application would confer significant benefits as outlined above that would secure improvements or better access to pharmaceutical services.
- 6.8 Having determined that the applications should be refused, it was unnecessary for the Committee to make a decision upon whether granting an application would prejudice the proper provision of relevant NHS services in the area of (a) the relevant HWB; or (b) a neighbouring HWB of the relevant HWB.

Case Manager
Primary Care Appeals

Annex A

REF: SHA/26219

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**APPEAL AGAINST NORFOLK AND WAVENEY ICB
DECISION TO REFUSE AN APPLICATION BY LOYAL
PHARMACY LTD FOR INCLUSION IN THE
PHARMACEUTICAL LIST OFFERING UNFORESEEN
BENEFITS UNDER REGULATION 18 FROM THE
JUNCTION WITH YARMOUTH ROAD/THE STREET
HEADING NORTH ALONG THE STREET, ALONG
NORTH STREET TO THE JUNCTION WITH
PLANTATION ROAD, BLOFIELD, NORFOLK, NR13
(BEST ESTIMATE)**

1 The Application

By application dated 22 August 2023, Loyal Pharmacy Ltd applied to Norfolk and Waveney ICB ("the Commissioner") for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 in the village of Blofield. From the junction with Yarmouth Road/The Street heading north along The Street, along North Street to the junction with Library Close. In support of the application it was stated:

1.1 In response to "Please provide the address or best estimate of the proposed premises" Loyal Pharmacy Ltd stated:

1.1.1 "There are no other pharmacies in the village of Blofield so this application should not be refused under Regulation 31."

1.2 Opening hours

1.3 Proposed core opening hours

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
08:30 – 1.00 and 2.00 – 6:30pm	08:30 – 1.00 and 2.00 – 6:30pm	08:30 – 1.00 and 2.00 – 6:30pm	08:30 – 1.00 and 2.00 – 6:30pm	08:30 – 1.00 and 2.00 – 6:30pm	9:00am – 1:00pm	Closed	49 hours

1.4 Total proposed opening hours

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
8:30am – 6:30pm	8:30am – 6:30pm	8:30am – 6:30pm	8:30am – 6:30pm	8:30am – 6:30pm	9:00am – 1:00pm	Closed	54 Hours

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- 1.5 “In accordance with the NHS (Pharmaceutical Services) Regulations 2013 we would ask NHS England to take into account the following information when considering this application for inclusion on the pharmaceutical list.
- 1.6 We believe that, should NHS England (“NHSE”) grant this application it will secure improvements in terms of both the access to pharmaceutical services for the local population and the range of services provided in the wider area.

Background

- 1.7 NHSE will be aware that over the years there have been several applications to open a pharmacy in the village of Blofield, all of which have been refused to date.
- 1.8 We believe the latest application that was submitted, taken to appeal and subsequently refused was by IPHARM4U Ltd (case ref SHA/19858) in September 2018. We understand that the refusal of this application triggered another “5 year ban” meaning NHSE can refuse to consider/process an application under Regulation 40(2) unless the applicant can prove that there has been “a substantial and relevant change of circumstances affecting the controlled locality”.
- 1.9 This 5 year ban expires on 6th September 2023.
- 1.10 Our clients have been carefully monitoring the area over the last 3 years and believe the continual increase in new housing within the area means the village is now of sufficient size to warrant an application under Regulation 18, unforeseen benefits.
- 1.11 There is some mention of planned housing developments in the aforementioned case, but it appears that many of the developments were no more than planned or at best in their early stages when the decision was made. Since the application from IPHARM4U Ltd was rejected, our client believes between 400 and 500 dwellings have been constructed and occupied. This equates to somewhere in the region of an additional 1,200 residents living in the village.
- 1.12 The population of Blofield is very difficult to assess with complete accuracy but below is a screen shot (see Appendix A) which states as of March 2021 the figure was 4,807. That figure will have increased significantly over the two and a half years due to the continuation of new housing being built/completed/occupied.
- 1.13 It is clear from the number of applications that have been submitted within the village over the last few years that many people believe there is a demand for pharmaceutical services within the area. The village is currently devoid of pharmaceutical services and our clients believe there is a significant gap in services warranting the granting of a new contract, as residents of the village are currently forced to travel an unacceptable distance to access pharmaceutical services.

General Information

- 1.14 The proposed location for this pharmacy is from the Junction of Yarmouth Road/The Street heading north along The Street/North Street to the junction of Plantation Road.
- 1.15 If granted, the pharmacy would be very much in the centre of the village, close to all local amenities and accessible to all.
- 1.16 Please see the attached map (at Appendix A) which highlights the best estimate location for this application.
- 1.17 Blofield is now a good-sized village that has expanded rapidly over recent years and has a list of amenities including:

- 1.17.1 Post Office/Convenience store
- 1.17.2 Newsagent
- 1.17.3 GP surgery (currently being extended)
- 1.17.4 Scouts
- 1.17.5 Public House
- 1.17.6 Primary School (due to be relocated and extended soon-see later)
- 1.17.7 Library
- 1.17.8 Churches
- 1.17.9 Recreation Area
- 1.17.10 Village Hall
- 1.17.11 Florist
- 1.17.12 Two hairdressers
- 1.17.13 Fish and chip shop
- 1.17.14 Carpet/upholstery shop
- 1.17.15 Solicitors' offices
- 1.17.16 MOT garage
- 1.17.17 Community Centre
- 1.17.18 Golf Club
- 1.17.19 Car Sales Forecourt
- 1.17.20 New floodlight sports complex (see photo at Appendix A)
- 1.18 As can be seen from the above, Blofield has more than the number of facilities one would expect for a village of its size but whilst it is well catered for in many respects, it does lack pharmaceutical services.
- 1.19 We are aware that the area was previously classified as a controlled locality but not a reserved location and we would expect that still to be case for this application as the population has increased since that determination was made.
- 1.20 There is, and has been over the last few years, extensive new residential development throughout the parish of Blofield and the expansion in population will naturally lead to a further demand for comprehensive face to face pharmaceutical services in the area.
- 1.21 Since the last application was refused in 2018. Our client has informed us that the following housing developments have been built and occupied:
 - 1.21.1 Saxon Fields (built by Kier Construction). In excess of 200 dwellings all built and occupied.
 - 1.21.2 Newstead Gardens (Badger Homes) 30 dwellings built and occupied.

- 1.21.3 Wyngate (Norfolk Homes) 164 dwellings built and occupied.
- 1.21.4 Hopkins Homes Yarmouth Road (approx. 150 homes) almost all built and completed.
- 1.22 These three developments total approx. 450 dwellings and range between 1 bed apartments and 5 bed houses so we would estimate they would have added around 1,200 people to the population of Blofield over the last 5 years.
- 1.23 In addition to the completed housing developments stated above, Norfolk Homes have started a new development off Yarmouth Road (see Appendix A) adjacent to the newly built floodlit sports complex. The initial phase comprises 60 dwellings.
- 1.24 Finally, another development of 9 properties is underway opposite the Hopkins Homes development further east along Yarmouth Road.
- 1.25 Above (at Appendix A) is the Fairways development.
- 1.26 Another significant change within Blofield since the application by IPHarm4U was refused is in relation to the GP surgery located on Plantation Road. The GP's have planning permission approved to significantly extend the size of the surgery and provide additional parking spaces for their patients. Construction of the new access road and extension has already started.
- 1.27 The above photo (see Appendix A) shows the GP extension (between the trees) and the new access road to the right hand side.
- 1.28 The reason for the expansion is that the existing premises are insufficient to cope with the number of people now living in the village requiring GP services.
- 1.29 The surgery is consistently generating 17-18,000 items/month which we estimate to be an increase of somewhere around 15% since the last application under Regulation 18 was refused.
- 1.30 In addition to the GP surgery being extended, the new access road that is currently under construction will also be the access route to the new school in Blofield. At the present time the school has space for 220 pupils but that has proved woefully inadequate since the new housing has been completed. The head teacher has been quoted as saying they are having to refuse local pupils through lack of space and facilities.
- 1.31 There are advanced plans to almost double the size of the school to accommodate up to 420 pupils which again is a reflection on the increasing population and changes that are taking place within the village. We have found the latest news article from Norfolk County Council as follows:

"Update

On 16 June 2023, Sara Tough, in her role as LA Decision-Maker, made the school organisation determination outlined below, following the statutory public notice period, to increase the number of pupils at Blofield Primary School, from 210 pupils to 420 pupils and move into a new school building at Plantation Road, Blofield, NR13 4PL. These changes will come into effect from 1 September 2024. This approval is conditional on planning permission approval by 31 December 2023.

It is proposed to increase the number of pupils at Blofield Primary School, from 210 pupils to 420 pupils and move into a new school building (see image on Consultation

Document below), Plantation Road, Blofield, NR13 4PL. These changes would come into effect from 1 September 2024.

Our proposal is in response to the new homes being built in the area. The County Council has a statutory duty (Section 14, Education Act 1996) to plan and secure sufficient school places for their area to meet the needs of its children and families and therefore it is obliged to plan for the expansion of its school capacity.

In the Blofield/Brundall area, it is expected there will be 531 new homes, of which 400 are still to be built. This increase in new homes and new families, means we are expecting more primary school aged children. The current schools in Blofield and Brundall cannot accommodate these extra children.

The new school will ensure the school serves its current catchment and supports with the growth across Blofield and Brundall. Brundall school does not have any capacity to expand further due to its shape and site size. It is proposed to build a new primary school in Blofield which will provide 60 pupil places per year group, with an overall capacity of 420 places on a single site to the eastern side of Plantation Road.

Norfolk County Council considered the option of expanding the current Blofield Primary School, but this is not possible due to the shape, site size and layout.”

- 1.32 This article reinforces our arguments for a new pharmacy contract to be approved.

Existing Pharmacy Provision

- 1.33 There are no existing pharmacy contractors in the village of Blofield, or in fact, in the immediate surrounding villages. The nearest contractor is based in Brundall over a mile from the centre of Blofield and there are no other pharmacies within a 3-mile radius *, so it is clear from that there is a gap in services within the village. *(information taken from www.NHS.uk)
- 1.34 The Well branch is located on one of the main roads running through the village of Brundall.
- 1.35 Brundall itself has also expanded rapidly over the years so the population here is also increasing putting pressure on the pharmacy.
- 1.36 For those people who do not have access to a motor vehicle it is clear they will have difficulty accessing existing pharmaceutical services, as it is not practical to expect someone to walk along rural roads where in many places there are no pavements. For those who rely on public transport there are bus services that run through the village but are infrequent which is far from ideal when a patient is feeling unwell.

Existing Medical Provision

- 1.37 Unlike pharmacy provision, there is a GP surgery in the village of Blofield located on Plantation Road.
- 1.38 The premises are a modern purpose-built unit with extensive patient car parking. As mentioned above this surgery is currently being extended and further car parking is to be added as part of that project
- 1.39 The surgery is a dispensing practice prescribing around 17,000/18,000 items per month (source Pharmdata) of which roughly 85-90% are self-dispensed. Of the remaining prescriptions, the pharmacy dispensing the most items originating from the surgery is the branch of the Well group located in Brundall.
- 1.40 Whilst we fully appreciate dispensing doctors offer a valuable service, it is not the same as a comprehensive pharmaceutical service where patients can not only have their

prescriptions dispensed but enjoy a range of services unique to a pharmacy, including the purchase of 'Pharmacy only' medicines which cannot be supplied from dispensing doctor premises.

Unforeseen Benefits

- 1.41 Within the Norfolk HWB Pharmaceutical Needs Assessment, published in 2022 it states:

"Provision of current pharmaceutical services and Locally Commissioned Services are well distributed, serving all the main population centres. There is excellent access to a range of services commissioned from pharmaceutical service providers. As part of this assessment no gaps have been identified in provision either now or in the next three years for pharmaceutical services deemed necessary by the Norfolk HWB."

- 1.42 There is no specific mention of a gap in pharmaceutical services within the Blofield area. Blofield is part of the Broadland area and the PNA states the following:

"Broadland has a population of 131,931.

There are 20 community pharmacies in this locality and the estimated average number of community pharmacies per 100,000 population is 15.2, lower than Norfolk (17.2) and England (20.6) averages (Section 3.2, Table 21).

There has been a population growth of approximately 2,500 since the last PNA (2018). The population growth for the lifespan of this PNA (to 2025) is expected to be 3.8% to 136,967, which similar to the rate of growth for England.

New housing developments are planned for the locality during the period of this PNA; approximately 6,800 dwellings to house in excess of 16,000 people.

Generally, there is adequate pharmaceutical service provision across the whole locality to ensure continuity of provision of services.

Norfolk HWB will continue to monitor pharmaceutical service provision in specific areas within the locality where major housing developments and population growth are planned, to ensure there is capacity to meet potential increases in service demand.

No gaps in the provision of Necessary Services have been identified for Broadland locality."

- 1.43 As can be seen from these extracts Broadlands has less pharmacies/head of population than both Norfolk and England as a whole.

- 1.44 There has been major population growth in the Broadland area and that is going to continue as new housing is built/completed.

- 1.45 To our knowledge, no supplementary statement has been published in relation to pharmacy services within this area. Therefore, this application is properly made to provide 'unforeseen benefits' to the local community in accordance with Regulation 18.

- 1.46 We are required by NHS England to address two specific questions in this supporting information:

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

(ii) Please explain how you intend to secure the unforeseen benefit(s).

- 1.47 When considering these questions, it is worth noting the provisions of Regulation 18(2)(b) as highlighted below:

“(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 the NHSCB's duties under sections 13I and 13P of the 2006 Act(b) (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 the NHSCB's duties under section 13G of the 2006 Act(c) (duty as to reducing inequalities)),
or

(iii) there being innovative approaches taken with regard to the delivery of pharmaceutical services (taking into account also the NHSCB's duties under section 13K of the 2006 Act(a) (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;”

- 1.48 The implication is NHS England does not have to find evidence in respect of all three of these matters. These are simply matters it is required to take into account when deciding the application.

- 1.49 In fact, even if it does not find that any of the three matters discussed in (18)(2)(b) apply, the overarching test is whether granting the application would secure improvements, or better access, to pharmaceutical services in the area of the HWB. In our opinion there is clear evidence that it would.

- 1.50 We have addressed both of the questions above by setting out in further details below:

Securing better access

- 1.51 The matters of access and choice are inextricably linked. Whilst it may be the case that there is a choice of pharmacy provider within the Health & Wellbeing Board (HWB) area this does not mean that the choice for residents is reasonable if they are not able to access these pharmacies when they need to. In the case of Blofield there are no existing pharmacies within the village and only one within a radius of more than 3 miles, so it is very clear that residents of the village do not have reasonable choice of contractor. This is particularly true for those who do not have access to a motor vehicle.

- 1.52 Excluding the Well pharmacy in Brundall the next nearest pharmacies are more than 3 miles from the village and therefore involves a round trip of in excess of 6 miles to access pharmaceutical services. Clearly for those without access to a motor vehicle that is unacceptable. For those reliant on public transport, it is also quite a long journey involving walking to/from bus stops as well as the bus journey itself to access services. In addition, there is of course a cost involved.

Choice of pharmaceutical service provider

- 1.53 The relevant consideration in the case of this application is whether residents of, and visitors to, the area identified in our application have reasonable access to existing pharmacies. If they do not, then it follows that they do not have reasonable choice.
- 1.54 The residents of the area where the applicant proposes to open the pharmacy do not have any choice of provider as there are no pharmaceutical services within the village. The Well pharmacy in Brundall is the only pharmacy within a 3-mile radius of the proposed application site. This is one pharmacy covering an area of over 28 square miles. Clearly patients currently have to travel out of the area to access existing services.
- 1.55 By approving this application, it is clear that local residents will benefit by having a choice of contractor.
- 1.56 At the present time the residents living in this area have the benefit of access to amenities they require during their daily lives, including access to a GP surgery, but no easy means of then having their medication dispensed by a pharmacist or enjoying the health benefits and services a community pharmacy offers.
- 1.57 If this application is approved, our clients intend to offer the local residents a full and comprehensive pharmaceutical service 5.5 days a week ensuring that local residents can access pharmaceutical services when they need them.

Patient groups sharing protected characteristics

- 1.58 For those people who are elderly, less abled or families with very young children (all of which can be classified as having protected characteristics) access to the existing pharmacies is likely to be more difficult than for those who are more able. This would particularly apply if these people are unable to drive or don't have access to a motor vehicle.
- 1.59 The closest existing pharmacy to the application is not easy for patients to access. If they are, for example elderly, in poor health, have mobility issues etc then getting on a bus which runs infrequently, having to walk to/from bus stops to access a pharmacy is far from ideal.
- 1.60 In view of the distance to existing pharmacies walking to them is not a realistic option.
- 1.61 We firmly believe if this application is approved it will secure improvement of choice and better access to pharmaceutical services and thus significant benefits for the resident population."

2 The Decision

The Commissioner considered and decided to refuse the application. The decision letter dated 29 April 2024 states:

- 2.1 "Norfolk and Waveney 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."

PSRC decision report – CAS-247546-G2N5Z8

- 2.2 "Application for inclusion in a pharmaceutical list: routine application offering to secure unforeseen benefits - Loyal Pharmacy Ltd
- 2.3 The Pharmaceutical Services Regulations Committee (hereafter referred to as "the Committee") considers all pharmaceutical services applications for the 6 Integrated Care Boards (ICB) within the East of England footprint. NHS Hertfordshire & West Essex ICB (HWE ICB) hosts the meeting on behalf of the 6 ICBs, in accordance with

the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 as amended (hereafter referred to as “the Regulations”).

- 2.4 The Committee determined this routine application offering unforeseen benefits in the area of Norfolk Health and Wellbeing Board (HWB) under Regulation 18 of the Regulations.
- 2.5 The application was submitted by Pharmacy Sales & Consultancy who are acting on behalf of Loyal Pharmacy Ltd.
- 2.6 The Committee first considered Regulation 31 – Refusal: same or adjacent premises.
- 2.7 The Committee noted that as the applicant had chosen to give a best estimate for the location of the proposed pharmacy premises it is was not possible to determine whether or not the application should be refused by virtue of Regulation 31. The Committee noted that there are no pharmacies within the best estimate.
- 2.8 The applicant provided the following statement in relation to Regulation 31:
- 2.8.1 *“There are no other pharmacies in the village of Blofield so this application should not be refused under Regulation 31”*
- 2.9 The Committee noted that the applicant provided a map within the application, highlighting the area covered by the best estimate.
- 2.10 The Committee noted that if the application was granted, the successful applicant would – in due course - notify the ICB of the precise location of its premises (in accordance with paragraph 31 of Schedule 2). Such a notification would be invalid (and the applicant would not be able to commence provision of services) if the location then provided would (had it been known now) have led to the application being refused under Regulation 31.
- 2.11 As it is not yet known where the premises would be located there were no grounds for the Committee to refuse the application on the basis of Regulation 31.
- 2.12 Regulation 32 – Deferrals arising out of LPS designations The Committee agreed this Regulation does not apply as there are no LPS designations in the area.
- 2.13 The Committee next considered Regulation 40 - refusals because of preliminary matters.
- Regulation 40— (1)
- 2.14 The Committee noted that the applicant had not disputed that the area of the proposed premises, where they are seeking listing of pharmacy premises, is within a controlled locality.
- Regulation 40— (2)
- 2.15 The Committee noted that a previous application for pharmacy premises in Blofield was refused on appeal on 6 September 2018 (SHA/19858). This triggered a ‘5-year bar’ meaning that any subsequent routine application for inclusion in a pharmaceutical list for premises within 1.6km of the proposed location in that previous application is to be refused by virtue of regulation 40(2) where it is received within the next five years. The only exception to that is where the Committee is satisfied that since the date on which the five-year period started, there has been a substantial and relevant change of circumstances affecting the controlled locality.

- 2.16 This application was received by Primary Care Support England (PCSE) on 23 August 2023, ie it was received within the five-year period.
- 2.17 The applicant addressed this point in their application as per the embedded document below: (see Application at Section 1 above).
- 2.18 Representations on this matter were only received from Rushport Advisory, acting on behalf of Blofield Surgery Healthcare Limited.
- 2.18.1 *“In relation to the application from Loyal Pharmacy, this should be refused as it was submitted during the 5 year rule period.*
- 2.18.2 *A previous application ref SHA/19858 was refused on 6 September 2018 and it is accepted by all parties that Blofield is a reserved location.*
- 2.18.3 *The 5 year rule therefore applies until 6 September 2023 and Loyal Pharmacy made their application on 23 August 2023 and it should therefore be refused.”*
- 2.19 The Committee noted that the number of people living within 1.6km of the relevant location identified in the application that was refused in 2018 was 3,615. The patient count undertaken 26th September 2023 was 5,588. Whilst the centre points for the 1.6km radius may have differed slightly (in 2018 it was 1 North Street and in 2023 it was NR13 4LE), that will not account for an increase of 1,973 or 54.6%.
- 2.20 The Committee agreed that such a substantial increase in the population of Blofield was a substantial and relevant change of circumstances and therefore there were no grounds to refuse this application by virtue of regulation 40.
- Regulation 41 – Is the relevant location in a reserved location?
- 2.21 The Committee considered the issue of reserved location for the best estimate described in the application.
- 2.22 PCSE provided patient numbers of those residing within a 1.6-kilometre radius of NR13 4LE.
- 2.23 Those patient numbers were 5,588. As the patient numbers exceeded the reserved location threshold of 2,750, the Committee agreed this is not within a reserved location.
- 2.24 The Committee moved on to consider Regulation 18.
- Regulation 18(1)
- 2.25 The Committee considered Regulation 18(1)(a) to determine whether it was satisfied that granting the application or granting it in respect of some 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.
- 2.26 The Committee considered Regulation 18(1)(b) to determine whether the improvements or better access that would be secured if the application was granted were or was not included in the relevant pharmaceutical needs assessment (PNA) in accordance with paragraph 4 of Schedule 1 of the Regulations.
- 2.27 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).

- 2.28 The Committee noted that the Applicant states:
- 2.28.1 *“As can be seen from these extracts [from the PNA] Broadlands has less pharmacies/head of population than both Norfolk and England as a whole. There has been major population growth in the Broadland area and that is going to continue as new housing is built/completed.*
- To our knowledge, no supplementary statement has been published in relation to pharmacy services within this area. Therefore, this application is properly made to provide ‘unforeseen benefits’ to the local community in accordance with Regulation 18.”*
- 2.29 The Committee noted that on page 9 of the 2022 Norfolk PNA, the HWB has stated:
- 2.29.1 *“Provision of current pharmaceutical services and Locally Commissioned Services are well distributed, serving all the main population centres. There is excellent access to a range of services commissioned from pharmaceutical service providers. As part of this assessment no gaps have been identified in provision either now or in the next three years for pharmaceutical services deemed necessary by the Norfolk HWB.”*
- 2.30 The Committee noted that the village of Blofield is situated under the locality named as Broadland within the PNA. Under the section entitled ‘Broadland’ (6.2.2), the PNA states:
- 2.30.1 *“No gaps in the provision of Necessary Services have been identified for Broadland locality.”*
- “No gaps have been identified that if provided either now or in the future would secure improvements or better access to Advanced Services across the Broadland locality.”*
- 2.31 The Committee were of the view that the improvements or better access that the applicant is claiming would be secured by its application, were not included in the relevant PNA in accordance with paragraph 4 of schedule 1.
- 2.32 The Committee noted that in order to be satisfied in accordance with Regulation 18(1), regard has to be had to those matters set out at Regulation 18(2).
- Regulation 18(2)(a)(i) & (ii)
- 2.33 The Committee considered 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 the [ICB] has in place for the provision of pharmaceutical services in that area;
- 2.34 The Committee noted that there is no plan for the provision of pharmaceutical services in the area. Granting the application would therefore not cause significant detriment to the proper planning in respect of the provision of pharmaceutical services in the area of Norfolk HWB.
- 2.35 The Committee noted there is no evidence to suggest granting this application would cause significant detriment to the arrangements the ICB has in place for the provision of pharmaceutical services in that area.

- 2.36 In the absence of any significant detriment as described in Regulation 18(2)(a), the Committee was not obliged to refuse the application and went on to consider Regulation 18(2)(b).

Regulation 18(2)(b)(i)

- 2.37 The Committee considered whether, notwithstanding that the improvements or better access were not included in the Norfolk PNA, 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 the [ICB'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))

granting the application would confer significant benefits on persons in the area of Norfolk HWB that were not foreseen when the PNA was published.

- 2.38 The Committee noted the assertions made by the applicant: (as set out at Section 1 above).
- 2.39 The Committee noted that no current or future gaps in the provision of pharmaceutical services have been identified in the current PNA.
- 2.40 The village of Blofield currently receives pharmaceutical services from the local GP practice which is located at the North end of the village. In November 2023, the practice dispensed 83.6% of the 20,627 items it prescribed.
- 2.41 There are also several pharmacies available to patients residing in the village. Well Pharmacy is in the next village Brundall and is approximately 1.2 miles from the proposed site, depending on the actual final site. It dispensed 4.8% of the items prescribed by the GP practice in November, with 2.2% dispensed by Rackheath Pharmacy in Rackheath to the north west of Blofield, 1.8% by Pharmacy2U in Leeds, and 1.5% by a Boots pharmacy in Norwich.
- 2.42 An overall total of 62 pharmacies or dispensing appliance contractors dispensed those items not dispensed by the practice in November 2023. Patient choice is facilitated by six other pharmacies that are located within a five-mile radius (in a straight line) and were included in the document entitled 'Nearest Pharmacies' that were circulated to the Committee prior to the meeting.
- 2.43 It was noted in the appeal decision on a previous application that approximately 1000 patients from Blofield practice (20% of patients) exercised choice and obtained their prescription items from Well. There was nothing to suggest that the patients who use the dispensing service were forced to do so and every reason to believe they chose this option given the high levels of satisfaction. In any event, dispensing is only one part of pharmaceutical services and there was nothing to prevent patients from accessing services additional to dispensing at Well or indeed elsewhere.
- 2.44 The overall provision of pharmaceutical services in Blofield (and Brundall) is through an established pharmacy and two dispensing practices. In addition, there are several pharmacies within a short distance. The level of choice available to patients is reasonable.
- 2.45 No evidence has been provided to demonstrate that those living in Blofield are unable to access that choice.
- 2.46 In their application the applicant has stated (see Section 1 above).

- 2.47 The Committee noted that the test is whether or not those living in Blofield have reasonable choice with regard to obtaining pharmaceutical services in the area of Norfolk HWB, not in the village. At present, those who are eligible to be dispensed to by the GP practice choose to do so. Those who choose not to be dispensed to or who are not eligible to be dispensed to, accessed 62 different pharmacy and dispensing appliance contractor premises in November 2023.
- 2.48 The applicant has stated that those living in the area do not have any choice of provider as there are none in the village. However, as noted above, that is not the test.
- 2.49 It has previously been established on appeal that in order to have reasonable choice, those living in the area of a pharmacy application must be able to exercise that choice.
- 2.50 No evidence has been provided to demonstrate that those living in Blofield are currently unable to exercise a choice in obtaining pharmaceutical services.
- 2.51 SG from Norfolk ICB noted that the ICB has not received any formal complaints from patients unable to obtain pharmaceutical services. SG noted there was one concern raised by a patient of a dispensing practice that they may no longer be a dispensing patient if a pharmacy was to open.
- 2.52 The Committee was of the view that there is already reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB, such that it cannot be satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the Norfolk PNA was published.

Regulation 18(2)(b)(ii)

- 2.53 The Committee considered whether, notwithstanding that the improvements or better access were not included in the Norfolk PNA, it is satisfied that, having regard in particular to the desirability of—

(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 the NHSCB's duties under section 13G of the 2006 Act (duty as to reducing inequalities))

granting the application would confer significant benefits on persons in the area of Norfolk HWB that were not foreseen when the PNA was published.

- 2.54 The Committee noted that the applicant asserts:

“For those people who are elderly, less abled or families with very young children (all of which can be classified as having protected characteristics) access to the existing pharmacies is likely to be more difficult than for those who are more able. This would particularly apply if these people are unable to drive or don't have access to a motor vehicle.

The closest existing pharmacy to the application is not easy for patients to access. If they are, for example elderly, in poor health, have mobility issues etc then getting on a bus which runs infrequently, having to walk to/from bus stops to access a pharmacy is far from ideal. In view of the distance to existing pharmacies walking to them is not a realistic option.

We firmly believe if this application is approved it will secure improvement of choice and better access to pharmaceutical services and thus significant benefits for the resident population.”

2.55 The Committee noted the applicant provided no evidence with regard to the matter set out in Regulation 18(2)(b)(ii). Whilst it is accepted that there would be people with protected characteristics living in Blofield and that some may need pharmaceutical services as a result, there is no evidence that they have any difficulty accessing such services.

2.56 The Committee was therefore not satisfied that, having regard to the desirability of people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that are difficult for them to access, granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the Norfolk PNA was published.

Regulation 18(2)(b)(iii)

2.57 The Committee considered whether, notwithstanding that the improvements or better access were not included in the Norfolk PNA, it is satisfied that, having regard in particular to the desirability of—

(iii) there being innovative approaches taken with regard to the delivery of pharmaceutical services (taking into account also the NHSCB'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 Norfolk HWB that were not foreseen when the PNA was published.

2.58 The Committee noted the applicant provided no comments regarding innovative approaches in the delivery of pharmaceutical services, therefore should not be satisfied that, having regard to the desirability of there being innovative approaches taken with regard to the deliverability of pharmaceutical services, granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the Norfolk PNA was published.

Representations

2.59 The Committee noted that representations were made from three interested parties. These representations were summarised as follows.

2.60 Brundall Medical Partnership

2.60.1 Made significant objections to the application.

2.60.2 Stating harmful impact on being able to continue as a dispensing practice if application granted.

2.60.3 Provided straightforward diagrammatic representation of overlap of the practice areas with Blofield.

2.60.4 Would suffer a minimum loss of at least one third to one half of dispensing patients.

2.60.5 Plans also for Hoveton and Wroxham Medical Practice to apply for an extension of their practice boundary towards Rackheath which would further affect its ability to dispense to patients living in that area.

2.60.6 Would not be able to survive the financial crush and would have to hand back the GMS contract.

2.60.7 Magnitude of 8,000 patients that would need to be redistributed and the distress this would cause.

2.60.8 If granted would destroy the viability of a GMS dispensing practice to survive.

2.61 Bestway National Chemists Ltd (Well Pharmacy)

2.61.1 Residents living in the Blofield area are in very good/good health and car ownership in the area is high with a high percentage of households having access to one or more cars.

2.61.2 There are a range of existing pharmacies in the surrounding area within a reasonable distance of the proposed location. A full range of opening hours is provided by these pharmacies.

2.61.3 Due to the high level of car ownership, the journey by car to the surrounding area would be part of normal living. Bus routes are also available from below Blofield to the surrounding area.

2.61.4 To our knowledge, the current Norfolk PNA (2022) has not been updated to reflect this growth [response from PNA statements and applicant assertions of growth in the area], and there have been no supplementary statements issued to reflect this. This indicates that there is adequate pharmaceutical provision across the locality.

2.61.5 Granting this application would have a negative impact on our pharmacy located in Brundall.

2.62 Community Pharmacy Norfolk (previously Local Pharmaceutical Committee)

2.62.1 We note that the most recent PNA does not identify any gaps in pharmaceutical provision in this area, and that both Applications cite "Unforeseen benefits".

2.62.2 Consider if either Applicant has provided sufficient evidence that granting of one of the Applications is required, and how these benefits are considered "Unforeseen", given that in the production of the PNA development in the area was acknowledged?

2.62.3 Clearly with any long-term planned series of developments there will often be a "tipping point" of actual vs. planned development which may mean a review of need is required, but we are not aware this has yet been identified here within the PNA?

Response to Representations

2.63 The Committee noted the following response from Pharmacy Sales and Consultancy who continues to act on behalf of Loyal Pharmacy Ltd (see Appendix B).

Regulation 18(2)(b) generally

2.64 The Committee noted the Applicant's proposed 49 core opening hours and five supplementary opening hours.

2.65 The opening hours of those pharmacies that are closest to Blofield can be found in the document entitled 'Nearest Pharmacies' which was circulated to Committee members prior to the meeting.

2.66 The Committee noted that the proposed hours do not provide any advantage over the opening hours already provided by the nearest pharmacies. The Committee noted that no information had been provided to support a finding that pharmaceutical services are not currently provided at such times as needed and therefore it is unlikely that, having regard to the desirability of there being a reasonable choice with regard to obtaining

services, granting the application would confer significant benefits in relation to opening hours on persons.

- 2.67 The Committee moved on to consider Regulation 50 - Discontinuation of arrangements for the provision of pharmaceutical services by doctors.
- 2.68 The Committee agreed, as the applicant gave a best estimate it isn't possible at this stage to precisely identify the dispensing patients that would no longer be able to be dispensed to should the application be granted. The matter of gradualisation is therefore to be considered if the application is granted and in due course the applicant notifies the ICB of the premises at which the pharmacy will be located.
- 2.69 The Committee next considered Regulation 65 – core opening hours conditions.
- 2.70 The applicant is offering more than 40 core opening hours and therefore regulation 65(4) applies.

Opening Hours		49:00	5:00
	C1	S2	C2
Monday	8:30 – 13:00	13:00 – 14:00	14:00 – 18:30
Tuesday	8:30 – 13:00	13:00 – 14:00	14:00 – 18:30
Wednesday	8:30 – 13:00	13:00 – 14:00	14:00 – 18:30
Thursday	8:30 – 13:00	13:00 – 14:00	14:00 – 18:30
Friday	8:30 – 13:00	13:00 – 14:00	14:00 – 18:30
Saturday	9:00 – 13:00		
Sunday			

- 2.71 It has been agreed with the applicant that additional core opening hours would be as follows:
- 2.71.1 Monday to Friday: 08:30-09:00 and 18:00-18:30
- 2.71.2 Saturday: 09:00-13:00
- 2.72 The Committee noted that if the application was granted and in due course the applicant and premises are included in the relevant pharmaceutical list, a direction will be issued specifying the number of core opening hours undertaken and the set times and set days of those core opening hours.
- 2.73 The Committee considered Regulation 66 – directed services conditions.
- 2.74 The applicant has undertaken to provide the following directed services:
- 2.74.1 NMS
- 2.74.2 NHS flu vaccination
- 2.74.3 CPCS (now replaced by Pharmacy First)
- 2.74.4 Hypertension service
- 2.74.5 Covid vaccination
- 2.75 Regulation 66(4) therefore applies if the application was to be granted, and the inclusion of the applicant and the pharmacy premises in the pharmaceutical list for the area of Norfolk HNB would be subject to the condition set out in regulation 66(5).
- 2.76 The condition is that, at the pharmacy premises, the applicant must:

2.76.1 Provide the directed services mentioned in the application and

2.76.2 Not withhold agreement to a service specification for those services unreasonably if the ICB commissions the services from the applicant within three years of the date of either the grant of the application or, if later, the listing in relation to the applicant of the pharmacy premises, unless thereafter the ICB ceases to commission the services (if it has commissioned them).

2.77 The Committee noted that the first four services are advanced services, and the fifth is an enhanced service. If the application is granted, the Committee noted it must consider whether or not to specify a date by which the condition to provide these services is to take effect.

Decision

2.78 Blofield is in a controlled locality and the best estimate is not in a reserved location.

2.79 The Committee considered whether the granting of the application would cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area covered by the HWB and was not satisfied that it would.

2.80 The Committee considered whether the granting of the application would cause significant detriment to the arrangements in place for the provision of pharmaceutical services in that area and was not satisfied that it would.

2.81 The Committee refused the application, and the rationale for their decision is outlined below:

2.81.1 There is no evidence that there is not already a reasonable choice with regard to obtaining pharmaceutical services in the area of Norfolk HWB.

2.81.2 There is no evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services that meet their specific needs for such services; and

2.81.3 There is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services.

2.82 No information was provided to support a finding that pharmaceutical services are not currently provided at such times as needed and therefore the Committee was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits (in relation to opening hours) on persons.

2.83 For all the above reasons the view in accordance with Regulation 18(2)(b), granting this application would not confer significant benefits on persons in the area of the HWB which were not foreseen when the PNA was published.

Regulation 44 – Prejudice test

2.84 The Committee noted that prejudice could only arise if the application meets the requirements of Regulation 18. As the Committee refused the application, it is unnecessary to consider the prejudice test.

2.85 The Committee agreed that as the application has been refused, appeal rights are granted to the applicant, Loyal Pharmacy Ltd.”

Annex B

REF: SHA/26220

**APPEAL AGAINST NORFOLK AND WAVENEY ICB
DECISION TO REFUSE AN APPLICATION BY BLOFIELD
SURGERY HEALTHCARE LTD FOR INCLUSION IN THE
PHARMACEUTICAL LIST OFFERING UNFORESEEN
BENEFITS UNDER REGULATION 18 AT BLOFIELD
SURGERY, PLANTATION ROAD, BLOFIELD, NORWICH,
NR13 4PL**

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

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

1 The Application

By application dated 10 October 2023, Blofield Surgery Healthcare Ltd applied to Norfolk and Waveney ICB (“the Commissioner”) for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at Blofield Surgery, Plantation Road, Blofield, Norwich, NR13 4PL. In support of the application it was stated:

1.62 In response to why this application should not be refused pursuant to regulation 31, Blofield Surgery Healthcare Ltd stated:

1.62.1 “No other pharmacy in same or adjacent premises so not applicable.”

1.63 Opening hours

1.64 Proposed core opening hours

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
9am – 5pm	9am – 5pm	9am – 5pm	9am – 5pm	9am – 5pm			40

1.65 Total proposed opening hours

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
08:30 – 18:30	08:30 – 18:30	08:30 – 18:30	08:30 – 18:30	08:30 – 18:30	09:00 – 12:00		53

1.66 “As the ICB will be aware, an application to open a pharmacy in Blofield was last considered and refused over 5 years ago.

1.67 Since that time there has been significant growth in population, services available locally and demand for a pharmacy from patients of the surgery and we believe it is now important to be able to provide pharmaceutical services to the community alongside primary medical care from the surgery.

Advise / Resolve / Learn

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- 1.68 We have provided a breakdown of housing developments within our catchment area with this application (see Appendix C).
- 1.69 The closest pharmacy to our current site is Well Pharmacy in Brundall which is 1.7 miles from our premises. The next nearest is over 4 miles away in Rackheath. Lloyds Pharmacy in Sainsburys Thorpe St Andrew recently closed down.
- 1.70 Please see attached breakdown of housing developments with Blofield Surgery catchment area since 2015 to date. Please note whilst a large proportion of these sites have completed building, not all houses have been built. However all have planning permission approved and/or builders on site. All of the developments have made a start, ie we can expect the houses to be built over time.
- 1.71 Using the conservative average of 2.2 people per household equates to an extra 5684 potential patients moving/moved into our catchment area.
- 1.72 Looking at patient numbers registered with the practice, there were circa 6,000 in 2015 and we now have 8,331 registered patients.
- 1.73 Using the figures from above we could continue to expect an additional (4,547-2321) 2,226 patients register as the developments that are in progress are completed.
- 1.74 This would give us an end result population of 10,557 over the coming years.
- 1.75 This would be an almost 75% increase in patient population for our surgery since 2015.

Service Delivery Changes

- 1.76 In response to the patient figures illustrated above, and as part of the wider changing landscape in the NHS – the surgery is constantly evolving it's staffing to cope with demand.
- 1.77 Significant changes over the last 5 years include:
- 1.77.1 Expansion of workforce under the Primary Care Networks. By working collaboratively with local surgeries, we now have a wider variety of multidisciplinary staff working in the practice including Physiotherapists, Mental Health Nurses, Mental Health recovery workers, health and wellbeing practitioners, clinical pharmacists, pharmacy technicians, social prescribers and specialised EMDR therapists
 - 1.77.2 Our administrative team has expanded to employ care co-ordinators who help to run vaccination services and chronic disease management.
 - 1.77.3 Increase in team numbers - extra Advanced Nurse Practitioners to manage on the day demand.
 - 1.77.4 Employed ANPs purely to cover care home demand. We have had a large bedded residential home built on the boundary of our catchment area and residents are registered with our surgery.
 - 1.77.5 Extra reception and dispensing staff.
 - 1.77.6 Increase in GP numbers and GP sessions. In 2019 our GP team structure was:
 - 1.77.6.1 Total 30 clinical sessions/week.
 - 1.77.6.2 Full time = 8 sessions/week.

- 1.77.6.3 Full time WTE 3.75 GPs.
- 1.77.6.4 Patient list per GP equivalent to 1,784 patients.
- 1.77.7 Now:
 - 1.77.7.1 Total 33 clinical sessions/week.
 - 1.77.7.2 Full time WTE 4.125 GPs.
 - 1.77.7.3 Patient list per GP equivalent 2,019 patients.
- 1.78 Looking at projected figures for 2025 – to work with the equivalent doctor: patient ratio we would need equivalent of 5.5 Full time GPs.

Future Aspirations, once the extension is built.
- 1.79 To become a training practice, delivering training to medical students and qualified doctors who have chosen to become a GP.
- 1.80 To provide out of hours working – either for our sole practice or covering our local area.

Local developments – Retail & Services
- 1.81 Over the last 5 years there have been other local retail developments. There is a new floodlit astroturf football facility just on the outskirts of Blofield on the Yarmouth Road, close to the junction with the A47, opposite the McDonalds.
- 1.82 There is planning permission in for a retail development opposite this facility, on the Yarmouth Road at the western edge of Blofield. This has several retail units identified within it, and one of the units has been suggested to be a pharmacy.
- 1.83 There is a new Co-Op food store at the western end of The Street in Brundall (there are now two Co-Op supermarkets along that one road).
- 1.84 It is submitted that the demand for pharmaceutical services is now at a level where a new pharmacy is needed and we are constantly receiving requests from patients for pharmacy based services. To give some idea of how busy we are, the practice currently dispenses over 17,000 prescription items per month and we feel that the addition of a pharmacy is now vital to support increasing demand.”
- 1.85 “Blofield Surgery Healthcare Ltd intend to secure the unforeseen benefit(s) by opening a pharmacy at the proposed location.”

2 The Decision

The Commissioner considered and decided to refuse the application. The decision letter dated 29 April 2024 states:

- 2.1 “The Pharmaceutical Services Regulations Committee (hereafter referred to as “the Committee”) considers all pharmaceutical services applications for the 6 Integrated Care Boards (ICB) within the East of England footprint. NHS Hertfordshire & West Essex ICB (HWE ICB) hosts the meeting on behalf of the 6 ICBs, in accordance with the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 as amended (hereafter referred to as “the Regulations”).
- 2.2 The Committee considered this routine application offering unforeseen benefits in the area of Norfolk HWB under Regulation 18 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended (“the Regulations”).

- 2.3 The application was submitted by Rushport Advisory LLP who are acting on behalf of Blofield Surgery Healthcare Ltd.
- 2.4 The Committee first considered Regulation 31 – Refusal: same or adjacent premises.
- 2.5 The Committee noted that there are no existing services being provided by anyone on the pharmaceutical list from the proposed premises or at adjacent premises.
- 2.6 The applicant provided the following statement in relation to Regulation 31:
- “No other pharmacy in same or adjacent premises so not applicable.”*
- 2.7 The Committee agreed that this condition is not met as there are no existing services being provided by anyone on the pharmaceutical list from the proposed premises or at adjacent premises. Under this provision, Regulation 31 does not cause the application to be refused.
- Regulation 32 – Deferrals arising out of LPS designations.
- 2.8 The Committee agreed this Regulation does not apply as there are no LPS designations in the area.
- 2.9 The Committee next considered Regulation 40 - refusals because of preliminary matters.
- Regulation 40— (1)
- 2.10 The Committee noted that the applicant had not disputed that the area of the proposed premises, where they are seeking listing of pharmacy premises, is within a controlled locality.
- Regulation 40— (2)
- 2.11 The Committee noted that Regulation 40(2) does not apply as the proposed premises is not in an area in relation to which outline consent has been granted within the 5-year period as set out in Regulations, and the 5-year bar that was in place in the area of Blofield relating to proposed pharmacy premises expired on 6th September 2023.
- Regulation 40— (3)
- 2.12 The Committee noted that this Regulation is not applicable as the applicant has provided an exact address.
- Regulation 41 – Is the relevant location in a reserved location.
- 2.13 The Committee considered the issue of reserved location for the address provided in the application.
- 2.14 PCSE provided patient numbers of those residing within a 1.6-kilometre radius of NR13 4PL.
- 2.15 Those patient numbers were 3,952. As the patient numbers exceeded the reserved location threshold of 2,750, the Committee agreed this is not within a reserved location.
- 2.16 The Committee moved on to consider Regulation 18.
- 2.17 The Committee noted the applicant’s supporting evidence within section 6 of the application form when making its considerations (as set out at section 1 above).

- 2.18 The Committee noted that the applicant's agent has provided in its response to representations, a 43-page document.
- 2.19 The Committee noted the 43-page document was dated January 2023 which it recognised was probably an error. The Committee noted that whilst the purpose of the 14-day period is to allow the applicant to respond to any representations made on its application, it is not an opportunity for the applicant to introduce completely new information in support of its application. This is made clear in the covering letter which is sent by PCSE on representations:

"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."

- 2.20 The Committee considered whether or not the report had been provided in order to respond to the representations made by interested parties or whether it was new information. The Committee agreed to place no weight on the 43-page report in its considerations as a document was submitted separately, titled "Reply to Consultation Comments" which specifically addressed comments made by third parties during the 45-day representation period. The 43-page report contained new information and third parties were not given a chance to make their representations on it.

Regulation 18(1)

- 2.21 The Committee considered Regulation 18(1)(a) to determine whether it is satisfied that granting the application or granting it in respect of some 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.
- 2.22 The Committee considered Regulation 18(1)(b) to determine whether the improvements or better access that would be secured if the application was granted were or was not included in the relevant pharmaceutical needs assessment (PNA) in accordance with paragraph 4 of Schedule 1 of the Regulations.
- 2.23 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 by PSRC).
- 2.24 The Committee noted that the Applicant stated within the application form: (see section 1 above).
- 2.25 The Committee noted that on page 9 of the 2022 Norfolk PNA, the HWB has stated:

"Provision of current pharmaceutical services and Locally Commissioned Services are well distributed, serving all the main population centres. There is excellent access to a range of services commissioned from pharmaceutical service providers. As part of this assessment no gaps have been identified in provision either now or in the next three years for pharmaceutical services deemed necessary by the Norfolk HWB."

- 2.26 The Committee noted that the village of Blofield is situated under the locality named as Broadland within the PNA. Under the section entitled 'Broadland' (6.2.2), the PNA states:

"No gaps in the provision of Necessary Services have been identified for Broadland locality."

“No gaps have been identified that if provided either now or in the future would secure improvements or better access to Advanced Services across the Broadland locality.”

- 2.27 The Committee was of the view, that the improvements or better access that the applicant is claiming would be secured by its application were not included in the relevant PNA in accordance with paragraph 4 of schedule 1.
- 2.28 The Committee agreed that in order to be satisfied in accordance with Regulation 18(1), regard has to be had to those matters set out at Regulation 18(2).
- Regulation 18(2)(a)(i) & (ii)
- 2.29 The Committee considered whether it was 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 the [ICB] has in place for the provision of pharmaceutical services in that area;
- 2.30 The Committee noted that there is no plan for the provision of pharmaceutical services in the area. Granting the application would therefore not cause significant detriment to the proper planning in respect of the provision of pharmaceutical services in the area of Norfolk HWB.
- 2.31 The Committee noted there was no evidence to suggest granting this application would cause significant detriment to the arrangements the ICB has in place for the provision of pharmaceutical services in that area.
- 2.32 In the absence of any significant detriment as described in Regulation 18(2)(a), the Committee was not obliged to refuse the application and went on to consider Regulation 18(2)(b).
- Regulation 18(2)(b)(i)
- 2.33 The Committee considered whether, notwithstanding that the improvements or better access were not included in the Norfolk PNA, it was 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 the [ICB'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))*
- granting the application would confer significant benefits on persons in the area of Norfolk HWB that were not foreseen when the PNA was published.*
- 2.34 The Committee noted that the application itself did not cover in detail any evidence to support this regulation, however the applicant did provide an extensive detailed report, after the 45-day representative period.
- 2.35 The Committee agreed to place no weight on the Blofield Report as submitted by Rushport Advisory LLP after the 45-day representation period when making its decision.
- 2.36 The Committee noted that in the current PNA there is no mention of additional need in this area of Norfolk.

- 2.37 The village of Blofield currently receives pharmaceutical services from the local GP practice which is located at the North end of the village. There are also several pharmacies available to patients residing in the village. Well Pharmacy is in the next village (Brundall) and is 1.7 miles from the proposed site. Patient choice is facilitated by six other pharmacies that are located within a five-mile radius and are included in the document entitled 'Nearest Pharmacies', embedded below [requested embedded document – not provided].
- 2.38 The Committee noted that no current or future gaps in the provision of pharmaceutical services have been identified in the current PNA.
- 2.39 The village of Blofield currently receives pharmaceutical services from the local GP practice which is located at the North end of the village. In November 2023, the practice dispensed 83.6% of the 20,627 items it prescribed.
- 2.40 There are also several pharmacies available to patients residing in the village. Well Pharmacy is in the next village Brundall and is approximately 1.2 miles from the proposed site, depending on the actual final site. It dispensed 4.8% of the items prescribed by the GP practice in November, with 2.2% dispensed by Rackheath Pharmacy in Rackheath to the north west of Blofield, 1.8% by Pharmacy2U in Leeds, and 1.5% by a Boots pharmacy in Norwich.
- 2.41 An overall total of 62 pharmacies or dispensing appliance contractors dispensed those items not dispensed by the practice in November 2023. Patient choice is facilitated by six other pharmacies that are located within a five-mile radius (in a straight line) and are included in the document entitled 'Nearest Pharmacies' above.
- 2.42 It was noted in the appeal decision on a previous application that approximately 1000 patients from Blofield practice (20% of patients) exercised choice and obtained their prescription items from Well. There was nothing to suggest that the patients who use the dispensing service were forced to do so and every reason to believe they chose this option given the high levels of satisfaction. In any event, dispensing is only one part of pharmaceutical services and there is nothing to prevent patients from accessing services additional to dispensing at Well or indeed elsewhere.
- 2.43 The overall provision of pharmaceutical services in Blofield (and Brundall) is through an established pharmacy and two dispensing practices. In addition, there are several pharmacies within a short distance. The level of choice available to patients is reasonable.
- 2.44 No evidence has been provided to demonstrate that those living in Blofield are unable to access that choice.
- 2.45 The Committee agreed that the test is whether or not those living in Blofield have reasonable choice with regard to obtaining pharmaceutical services in the area of Norfolk HWB, not in the village. At present, those who are eligible to be dispensed to by the GP practice choose to do so. Those who choose not to be dispensed to or who are not eligible to be dispensed to accessed 62 different pharmacy and dispensing appliance contractor premises in November 2023.
- 2.46 It has previously been established on appeal that in order to have reasonable choice, those living in the area of a pharmacy application must be able to exercise that choice.
- 2.47 No evidence has been provided to demonstrate that those living in Blofield are currently unable to exercise a choice in obtaining pharmaceutical services.
- 2.48 Based on the information provided in the Committee Report, the Committee was of the view that there is already reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB, such that it cannot be satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining

services, granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the Norfolk PNA was published.

Regulation 18(2)(b)(ii)

- 2.49 The Committee considered whether, notwithstanding that the improvements or better access were not included in the Norfolk PNA, it is satisfied that, having regard in particular to the desirability of—

(i) 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 the NHSCB's duties under section 13G of the 2006 Act (duty as to reducing inequalities))

granting the application would confer significant benefits on persons in the area of Norfolk HWB that were not foreseen when the PNA was published.

- 2.50 The Committee noted the applicant provided no evidence to meet the criteria of Regulation 18(2)(b)(ii). Whilst it is accepted that there would be people with protected characteristics living in Blofield and that some may need pharmaceutical services as a result, there was no evidence that they had any difficulty accessing such services.
- 2.51 The Committee agreed it was not satisfied that, having regard to the desirability of people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that are difficult for them to access, granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant pharmaceutical needs assessment was published.
- 2.52 The Committee agreed it was not satisfied that, having regard to the desirability of people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that are difficult for them to access, granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the Norfolk PNA was published.

Regulation 18(2)(b)(iii)

- 2.53 The Committee considered whether, notwithstanding that the improvements or better access were not included in the Norfolk PNA, it was satisfied that, having regard in particular to the desirability of—

(i) there being innovative approaches taken with regard to the delivery of pharmaceutical services (taking into account also the NHSCB'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 Norfolk HWB that were not foreseen when the PNA was published.

- 2.54 The Committee noted the applicant provided no comments regarding innovative approaches in the delivery of pharmaceutical services, therefore was not satisfied that, having regard to the desirability of there being innovative approaches taken with regard to the deliverability of pharmaceutical services, granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the Norfolk PNA was published.

Representations

- 2.55 The Committee noted that representations were made from:

- 2.56 Pharmacy Sales & Consultancy on behalf of Loyal Pharmacy Ltd
- 2.56.1 The core hours proposed by BSH Ltd are stated as 9.00-5.00pm Monday-Friday with none on either a Saturday or Sunday. Total 40 hours/week.
- 2.56.2 The application by Loyal Pharmacy Ltd states that core hours are 8.30-1.00 and 2.00-6.30 Monday-Friday, 9.00-1.00 Saturday and none on Sunday. Total 49 hours/week
- 2.56.3 As the ICB will be aware the core hours, rather than total opening hours are key in that they are the hours the pharmacy will be committed to open going forwards should the application be approved. Our client's core hours are significantly longer than BSH Ltd and importantly include 4 hours on a Saturday.
- 2.56.4 Our client has been in detailed discussions with the owner of one of the retail units located within our best estimate location. At the time of writing, he has agreed basic Heads of Terms to acquire the building on a freehold basis. An option agreement to acquire the property, should the application for a new licence be approved, is currently with the owner of the property.
- 2.57 Brundall Medical Partnership
- 2.57.1 Made significant objections to the application.
- 2.57.2 Stating harmful impact on being able to continue as a dispensing practice if application granted.
- 2.57.3 Provided straightforward diagrammatic representation of overlap of the practice areas with Blofield, plus another map showing the overlap again with 'Marsh Land/Nature Reserve' marked, where no new housing can be built.
- 2.57.4 Would suffer a minimum loss of at least one third to one half of dispensing patients.
- 2.57.5 Plans also for Hoveton and Wroxham Medical Practice to apply for an extension of their practice boundary towards Rackheath which would further affect our ability to dispense to patients living in that area.
- 2.57.6 Would not be able to survive the financial crush and would have to hand back the GMS contract.
- 2.57.7 Magnitude of 8,000 patients that would need to be redistributed and the distress this would cause.
- 2.57.8 If granted would destroy the viability of a GMS dispensing practice to survive.
- 2.58 Bestway National Chemists Ltd (Well Pharmacy)
- 2.58.1 Residents living in the Blofield area are in very good/good health and car ownership in the area is high with a high percentage of households having access to one or more cars.
- 2.58.2 There are a range of existing pharmacies in the surrounding area within a reasonable distance of the proposed location. A full range of opening hours is provided by these pharmacies.

- 2.58.3 Due to the high level of car ownership, the journey by car to the surrounding area would be part of normal living. Bus routes are also available from below Blofield to the surrounding area.
- 2.58.4 To our knowledge, the current Norfolk PNA (2022) has not been updated to reflect this growth [response from PNA statements and applicant assertions of growth in the area], and there have been no supplementary statements issued to reflect this. This indicates that there is adequate pharmaceutical provision across the locality.
- 2.58.5 Granting this application would have a negative impact on our pharmacy located in Brundall.
- 2.59 Community Pharmacy Norfolk (previously Local Pharmaceutical Committee)
- 2.59.1 We note that the most recent PNA does not identify any gaps in pharmaceutical provision in this area, and that both Applications cite “Unforeseen benefits”.
- 2.59.2 Consider if either Applicant has provided sufficient evidence that granting of one of the Applications is required, and how these benefits are considered “Unforeseen”, given that in the production of the PNA development in the area was acknowledged?
- 2.59.3 Clearly with any long-term planned series of developments there will often be a “tipping point” of actual vs. planned development which may mean a review of need is required, but we are not aware this has yet been identified here within the PNA?

Response to Representations

- 2.60 The Committee noted that Rushport Advisory LLP of behalf of Blofield Surgery Healthcare Ltd provided an extensive response to comments made by interested parties during the 45- day process. The Committee was referred to the e-mail embedded within the committee report entitled ‘Applicant 14-day response 16.01.24’ which contained various attachments. The Committee noted the counter comments which are embedded below (see Appendix D):

Regulation 18(2)(b) generally

- 2.61 The Committee noted the Applicant’s proposed 40 core opening hours and thirteen supplementary opening hours.

Opening Hours			40:00	13:00
	S1	C1	C2	S3
Monday	8:30 – 9:00	9:00 – 13:00	13:00 – 17:00	17:00 – 18:30
Tuesday	8:30 – 9:00	9:00 – 13:00	13:00 – 17:00	17:00 – 18:30
Wednesday	8:30 – 9:00	9:00 – 13:00	13:00 – 17:00	17:00 – 18:30
Thursday	8:30 – 9:00	9:00 – 13:00	13:00 – 17:00	17:00 – 18:30
Friday	8:30 – 9:00	9:00 – 13:00	13:00 – 17:00	17:00 – 18:30
Saturday	9:00 – 12:00			
Sunday				

- 2.62 The opening hours of those pharmacies that are closest to Blofield can be found in the document entitled ‘Nearest Pharmacies’ which was shared with the Committee in advance of the meeting.
- 2.63 The Committee noted that the proposed hours do not provide any advantage over the opening hours already provided by the nearest pharmacies.

- 2.64 One pharmacy in the vicinity (under 20 minutes by car) is based within a large supermarket and is currently offering opening hours significantly longer than those proposed by the Applicant. It is open 08:00 until 20:00 hours, Monday to Saturday and is open on Sundays.
- 2.65 In addition to these local facilities patients have the option to use Distance Selling pharmacies who will deliver their medication to their residence.
- 2.66 The Committee noted that the applicant in its response to the representations made by Well Pharmacy states:
- 2.66.1 “Well Pharmacy makes comments about the accessibility of pharmacies by car or bus, however these comments fail to reflect the reality of the position on the ground. Further we note significant local concern is being expressed about the repeated closures of the Well Pharmacy in Brundall (see attached press article).”
- 2.67 The Committee noted that Well Pharmacy in Brundall, have submitted a total of 10 notifications of temporary suspensions between 30th January 2023 to present day with the last notification received for a closure on 29th December 2023. All offer the same category of reason, this being “Locum could not be found” and amount to a loss of 39 hours in total over that time period.
- 2.68 It was also noted that Well Pharmacy have received a breach notice for not notifying the ICB of a temporary suspension in the provision of pharmaceutical services on Friday 14 July 2023, Friday 29 September 2023 and Monday 2 October 2023 and another breach for not implementing their Business Continuity Plans when they enacted a temporary suspension in the provision of pharmaceutical services on 3 other dates at the end of 2023.
- 2.69 The Committee agreed that even though some information had been found to support a finding that pharmaceutical services are occasionally not currently provided at such times as needed, it is still unlikely that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits in relation to opening hours on persons.
- 2.70 The Committee considered whether there are any other factors that would confer significant benefits including on patients who share protected characteristics based on the information provided by the applicant. The Committee were minded of 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.
- 2.71 The Committee moved onto consider Regulation 50.
- Regulation 50 - Discontinuation of arrangements for the provision of pharmaceutical services by doctors
- 2.72 The Committee noted that if the application was granted, it was to consider Regulation 50, Discontinuation of arrangements for the provision of pharmaceutical services by doctors, as the location is within a controlled locality.
- 2.73 The Committee noted the information in the document entitled ‘Request for dispensing px and nos – NR13 4PL’ embedded below (see Appendix E):
- 2.74 This shows a list of GP Practices who have registered patients that reside within 1.6km of the post code used, NR13 4PL.
- 2.75 The figures show there are 5 practices that do have dispensing patients that reside within 1.6km of NR13 4PL.

2.76 Those 5 are:

Code	Practice	Registered No.	Dispensing List within 1.6km	% Dispensing to Full Patient List
D82009	Staithe Surgery	7,455	1	0.01%
D82025	Hoveton & Wroxham Medical Centre	9,999	3	0.03%
D82104	Acle Medical Centre	9,581	33	0.34%
D82032	Brundall Medical Centre	7,943	420	5.29%
D82080	Blofield Surgery	8,341	2861	34.3%

2.77 The Committee agreed that the following formula would be used when considering gradualisation, if the application was granted:

2.77.1 1% to 20% one month gradualisation will apply.

2.77.2 21% to 40% two months gradualisation will apply.

2.77.3 41% to 60% three months gradualisation will apply.

2.78 This approach is in line with previous decisions on gradualisation.

Regulation 65 – core opening hours conditions

2.79 The Committee agreed that Regulation 65(4) does not apply if the application is granted as the Applicant stated they wish to undertake to provide pharmaceutical services at the proposed pharmacy premises for a specified number of core opening hours each week which is not more than 40.

Regulation 66 – directed services conditions.

2.80 The Committee considered Regulation 66 – directed services conditions.

2.81 The applicant has undertaken to provide the following directed services:

2.81.1 NMS

2.81.2 CPCS and GP CPCS (now replaced by Pharmacy First)

2.81.3 EHC

2.81.4 Smoking Cessation

2.81.5 Chlamydia Screening

2.81.6 Flu Vaccinations

2.81.7 Hypertension Case Finding

2.81.8 Services under PGDs

2.81.9 Palliative Care

2.81.10 Needle and Syringe Exchange

2.81.11 Supply of Gluten Free Foods

2.81.12 Supervised Self Administration

- 2.82 Regulation 66(4) therefore applies if the application was granted, and the inclusion of the applicant and the pharmacy premises in the pharmaceutical list for the area of Norfolk HWB would be subject to the condition set out in regulation 66(5).
- 2.83 The condition is that, at the pharmacy premises, the applicant must:
- 2.83.1 Provide the directed services mentioned in the application and
 - 2.83.2 Not withhold agreement to a service specification for those services unreasonably if the ICB commissions the services from the applicant within three years of the date of either the grant of the application or, if later, the listing in relation to the applicant of the pharmacy premises, unless thereafter the ICB ceases to commission the services (if it has commissioned them).
- 2.84 The Committee noted that some services are advanced services, and some are enhanced services. If the application was granted, the Committee would be required to consider whether or not to specify a date by which the condition to provide these services is to take effect.

Decision

- 2.85 Blofield is in a controlled locality and the premises is not in a reserved location.
- 2.86 The Committee considered whether the granting of the application would cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area covered by the HWB and was not satisfied that it would.
- 2.87 The Committee considered whether the granting of the application would cause significant detriment to the arrangements in place for the provision of pharmaceutical services in that area and was not satisfied that it would.
- 2.88 The Committee refused the application, and the rationale for their decision is outlined below:
- 2.88.1 There is no evidence that there is not already a reasonable choice with regard to obtaining pharmaceutical services in the area of Norfolk HWB.
 - 2.88.2 There is no evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services that meet their specific needs for such services; and
 - 2.88.3 There is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services.
- 2.89 No information was provided to support a finding that pharmaceutical services are not currently provided at such times as needed and therefore the Committee was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits (in relation to opening hours) on persons.
- 2.90 For all the above reasons the view in accordance with Regulation 18(2)(b), granting this application would not confer significant benefits on persons in the area of the HWB which were not foreseen when the PNA was published.
- 2.91 The Committee was not satisfied that granting the application would confer significant benefits as outlined above or would secure improvements or better access to pharmaceutical services.

Regulation 44 – Prejudice test

- 2.92 The Committee noted that prejudice could only arise if the application meets the requirements of Regulation 18. As the Committee refused the application, it is unnecessary to consider the prejudice test.
- 2.93 The Committee agreed that as the application has been refused, appeal rights are granted to the applicant, Blofield Surgery Healthcare Ltd.”

Annex C

REF: SHA/26221

**APPEAL AGAINST NORFOLK AND WAVENEY ICB
DECISION TO REFUSE AN APPLICATION BY BLOFIELD
SURGERY HEALTHCARE LTD FOR INCLUSION IN THE
PHARMACEUTICAL LIST OFFERING UNFORESEEN
BENEFITS UNDER REGULATION 18 AT BLOFIELD
SURGERY, PLANTATION ROAD, BLOFIELD, NORWICH,
NR13 4PL**

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

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

1 The Application

By application dated 28 November 2023, Blofield Surgery Healthcare Ltd applied to Norfolk and Waveney ICB ("the Commissioner") for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at Blofield Surgery, Plantation Road, Blofield, Norwich, NR13 4PL . In support of the application it was stated:

1.86 In response to why this application should not be refused pursuant to regulation 31, Blofield Surgery Healthcare Ltd stated:

1.86.1 "No other pharmacy in same or adjacent premises so not applicable."

1.87 Opening hours

1.88 Proposed core opening hours

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
8:30am to 1pm And 2pm to 6:30pm	8:30am to 1pm And 2pm to 6:30pm	8:30am to 1pm And 2pm to 6:30pm	8:30am to 1pm And 2pm to 6:30pm	8:30am to 1pm And 2pm to 6:30pm	9am to 1pm		49

1.89 Total proposed opening hours

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
8:30 – 18:30	8:30 – 18:30	8:30 – 18:30	8:30 – 18:30	8:30 – 18:30	9:00 – 13:00		54

1.90 "As the ICB will be aware, and application to open a pharmacy in Blofield was last considered and refused over 5 years ago.

1.91 Since that time there has been significant growth in population, services available locally and demand for a pharmacy from patients of the surgery and we believe it is

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now important to be able to provide pharmaceutical services to the community alongside primary medical care from the surgery.

- 1.92 We have provided a breakdown of housing developments within our catchment area with this application (see Appendix C).
- 1.93 The closest pharmacy to our current site is Well Pharmacy in Brundall which is 1.7 miles from our premises. The next nearest is over 4 miles away in Rackheath. Lloyds Pharmacy in Sainsburys Thorpe St Andrew recently closed down.
- 1.94 Please see attached breakdown of housing developments with Blofield Surgery catchment area since 2015 to date. Please note whilst a large proportion of these sites have completed building, not all houses have been built. However all have planning permission approved and/or builders on site. All of the developments have made a start, ie we can expect the houses to be built over time.
- 1.95 Using the conservative average of 2.2 people per household equates to an extra 5684 potential patients moving/moved into our catchment area.
- 1.96 Looking at patient numbers registered with the practice, there were circa 6,000 in 2015 and we now have 8,331 registered patients.
- 1.97 Using the figures from above we could continue to expect an additional (4,547-2321) 2,226 patients register as the developments that are in progress are completed.
- 1.98 This would give us an end result population of 10,557 over the coming years.
- 1.99 This would be an almost 75% increase in patient population for our surgery since 2015.

Service Delivery Changes

- 1.100 In response to the patient figures illustrated above, and as part of the wider changing landscape in the NHS – the surgery is constantly evolving it's staffing to cope with demand.
- 1.101 Significant changes over the last 5 years include:
 - 1.101.1 Expansion of workforce under the Primary Care Networks. By working collaboratively with local surgeries, we now have a wider variety of multidisciplinary staff working in the practice including Physiotherapists, Mental Health Nurses, Mental Health recovery workers, health and wellbeing practitioners, clinical pharmacists, pharmacy technicians, social prescribers and specialised EMDR therapists
 - 1.101.2 Our administrative team has expanded to employ care co-ordinators who help to run vaccination services and chronic disease management.
 - 1.101.3 Increase in team numbers - extra Advanced Nurse Practitioners to manage on the day demand.
 - 1.101.4 Employed ANPs purely to cover care home demand. We have had a large bedded residential home built on the boundary of our catchment area and residents are registered with our surgery.
 - 1.101.5 Extra reception and dispensing staff.
 - 1.101.6 Increase in GP numbers and GP sessions. In 2019 our GP team structure was:
 - 1.101.6.1 Total 30 clinical sessions/week.

- 1.101.6.2 Full time = 8 sessions/week.
- 1.101.6.3 Full time WTE 3.75 GPs.
- 1.101.6.4 Patient list per GP equivalent to 1,784 patients.
- 1.101.7 Now:
 - 1.101.7.1 Total 33 clinical sessions/week.
 - 1.101.7.2 Full time WTE 4.125 GPs.
 - 1.101.7.3 Patient list per GP equivalent 2,019 patients.
- 1.102 Looking at projected figures for 2025 – to work with the equivalent doctor: patient ratio we would need equivalent of 5.5 Full time GPs.

Future Aspirations, once the extension is built.
- 1.103 To become a training practice, delivering training to medical students and qualified doctors who have chosen to become a GP.
- 1.104 To provide out of hours working – either for our sole practice or covering our local area.

Local developments – Retail & Services
- 1.105 Over the last 5 years there have been other local retail developments. There is a new floodlit astroturf football facility just on the outskirts of Blofield on the Yarmouth Road, close to the junction with the A47, opposite the McDonalds.
- 1.106 There is planning permission in for a retail development opposite this facility, on the Yarmouth Road at the western edge of Blofield. This has several retail units identified within it, and one of the units has been suggested to be a pharmacy.
- 1.107 There is a new Co-Op food store at the western end of The Street in Brundall (there are now two Co-Op supermarkets along that one road).
- 1.108 It is submitted that the demand for pharmaceutical services is now at a level where a new pharmacy is needed and we are constantly receiving requests from patients for pharmacy based services. To give some idea of how busy we are, the practice currently dispenses over 17,000 prescription items per month and we feel that the addition of a pharmacy is now vital to support increasing demand.”
- 1.109 “Blofield Surgery Healthcare Ltd intend to secure the unforeseen benefit(s) by opening a pharmacy at the proposed location.”

2 The Decision

The Commissioner considered and decided to refuse the application. The decision letter dated 29 April 2024 states:

- 2.1 “The Pharmaceutical Services Regulations Committee (hereafter referred to as “the Committee”) considers all pharmaceutical services applications for the 6 Integrated Care Boards (ICB) within the East of England footprint. NHS Hertfordshire & West Essex ICB (HWE ICB) hosts the meeting on behalf of the 6 ICBs, in accordance with the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 as amended (hereafter referred to as “the Regulations”).

- 2.2 The Committee considered this routine application offering unforeseen benefits in the area of Norfolk Health and Wellbeing Board (HWB) under Regulation 18 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended ("the Regulations").
- 2.3 The application was submitted by Rushport Advisory LLP who are acting on behalf of Blofield Surgery Healthcare Ltd.
- 2.4 The Committee first considered Regulation 31 – Refusal: same or adjacent premises.
- 2.5 The Committee noted that there are no existing services being provided by anyone on the pharmaceutical list from the proposed premises or at adjacent premises.
- 2.6 The applicant provided the following statement in relation to Regulation 31:
- "No other pharmacy in same or adjacent premises so not applicable."*
- 2.7 The Committee agreed that this condition is not met as there are no existing services being provided by anyone on the pharmaceutical list from the proposed premises or at adjacent premises. Under this provision, Regulation 31 does not cause the application to be refused.
- Regulation 32 – Deferrals arising out of LPS designations.
- 2.8 The Committee agreed this Regulation does not apply as there are no LPS designations in the area.
- 2.9 The Committee next considered Regulation 40 - refusals because of preliminary matters.
- Regulation 40— (1)
- 2.10 The Committee noted that the applicant has not disputed that the area of the proposed premises, where they are seeking listing of pharmacy premises, is within a controlled locality.
- Regulation 40— (2)
- 2.11 The Committee noted that Regulation 40(2) does not apply as the proposed premises is not in an area in relation to which outline consent has been granted within the 5-year period as set out in Regulations, and the 5-year bar that was in place in the area of Blofield relating to proposed pharmacy premises expired on 6th September 2023.
- Regulation 40— (3)
- 2.12 The Committee noted that this Regulation is not applicable as the applicant provided an exact address.
- Regulation 41 – Is the relevant location in a reserved location.
- 2.13 The Committee considered the issue of reserved location for the address provided in the application.
- 2.14 PCSE provided patient numbers of those residing within a 1.6-kilometre radius of NR13 4PL.
- 2.15 Those patient numbers were 3,952. As the patient numbers exceeded the reserved location threshold of 2,750, the Committee agreed this is not within a reserved location.

- 2.16 The Committee moved on to consider Regulation 18.
- 2.17 The Committee noted the applicant's supporting evidence within section 6 of the application form when making its considerations.
- 2.18 The Committee noted that the applicant's agent has provided in its response to representations, a 43-page document.
- 2.19 The Committee noted the 43-page document was dated January 2023 which it recognised was probably an error. The Committee noted that whilst the purpose of the 14-day period is to allow the applicant to respond to any representations made on its application, it is not an opportunity for the applicant to introduce completely new information in support of its application. This is made clear in the covering letter which is sent by PCSE on representations:

"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."

- 2.20 The Committee considered whether or not the report had been provided in order to respond to the representations made by interested parties or whether it was new information. The Committee agreed to place no weight on the 43-page report in its considerations as a document was submitted separately, titled "Reply to Consultation Comments" which specifically addressed comments made by third parties during the 45-day representation period. The 43-page report contained new information and third parties were not given a chance to make their representations on it.

Regulation 18(1)

- 2.21 The Committee considered Regulation 18(1)(a) to determine whether it is satisfied that granting the application or granting it in respect of some 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.
- 2.22 The Committee considered Regulation 18(1)(b) to determine whether the improvements or better access that would be secured if the application was granted were or was not included in the relevant pharmaceutical needs assessment (PNA) in accordance with paragraph 4 of Schedule 1 of the Regulations.
- 2.23 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).
- 2.24 The Committee noted that the Applicant states within the application form (see section 1 above):
- 2.25 The Committee noted that on page 9 of the 2022 Norfolk PNA, the HWB has stated:

"Provision of current pharmaceutical services and Locally Commissioned Services are well distributed, serving all the main population centres. There is excellent access to a range of services commissioned from pharmaceutical service providers. As part of this assessment no gaps have been identified in provision either now or in the next three years for pharmaceutical services deemed necessary by the Norfolk HWB."

- 2.26 The Committee noted that the village of Blofield is situated under the locality named as Broadland within the PNA. Under the section entitled 'Broadland' (6.2.2), the PNA states:

"No gaps in the provision of Necessary Services have been identified for Broadland locality."

"No gaps have been identified that if provided either now or in the future would secure improvements or better access to Advanced Services across the Broadland locality."

- 2.27 The Committee was of the view that the improvements or better access that the applicant is claiming would be secured by its application, were not included in the relevant PNA in accordance with paragraph 4 of schedule 1.

- 2.28 The Committee agreed that in order to be satisfied in accordance with Regulation 18(1), regard is to be had to those matters set out at Regulation 18(2).

Regulation 18(2)(a)(i) & (ii)

- 2.29 The Committee considered 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 the [ICB] has in place for the provision of pharmaceutical services in that area;

- 2.30 The Committee noted that there is no plan for the provision of pharmaceutical services in the area. Granting the application would therefore not cause significant detriment to the proper planning in respect of the provision of pharmaceutical services in the area of Norfolk HWB.

- 2.31 The Committee noted there is no evidence to suggest granting this application would cause significant detriment to the arrangements the ICB has in place for the provision of pharmaceutical services in that area.

- 2.32 In the absence of any significant detriment as described in Regulation 18(2)(a), the Committee was not obliged to refuse the application and went on to consider Regulation 18(2)(b).

Regulation 18(2)(b)(i)

- 2.33 The Committee considered whether, notwithstanding that the improvements or better access were not included in the Norfolk PNA, 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 the [ICB'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))

granting the application would confer significant benefits on persons in the area of Norfolk HWB that were not foreseen when the PNA was published.

- 2.34 The Committee noted that the application itself does not cover in detail any evidence to support this regulation, however the applicant did provide an extensive detailed report, after the 45-day representative period.

- 2.35 The Committee agreed to place no weight on the Blofield Report as submitted by Rushport Advisory LLP after the 45-day representation period when making its decision.
- 2.36 The Committee noted that in the current PNA there is no mention of additional need in this area of Norfolk.
- 2.37 The village of Blofield currently receives pharmaceutical services from the local GP practice which is located at the North end of the village. There are also several pharmacies available to patients residing in the village. Well Pharmacy is in the next village (Brundall) and is 1.7 miles from the proposed site. Patient choice is facilitated by six other pharmacies that are located within a five-mile radius and are included in the document entitled 'Nearest Pharmacies', embedded below [requested embedded document – not provided].
- 2.38 The Committee noted that no current or future gaps in the provision of pharmaceutical services have been identified in the current PNA.
- 2.39 The village of Blofield currently receives pharmaceutical services from the local GP practice which is located at the North end of the village. In November 2023, the practice dispensed 83.6% of the 20,627 items it prescribed.
- 2.40 There are also several pharmacies available to patients residing in the village. Well Pharmacy is in the next village Brundall and is approximately 1.2 miles from the proposed site, depending on the actual final site. It dispensed 4.8% of the items prescribed by the GP practice in November, with 2.2% dispensed by Rackheath Pharmacy in Rackheath to the north west of Blofield, 1.8% by Pharmacy2U in Leeds, and 1.5% by a Boots pharmacy in Norwich.
- 2.41 An overall total of 62 pharmacies or dispensing appliance contractors dispensed those items not dispensed by the practice in November 2023. Patient choice is facilitated by six other pharmacies that are located within a five-mile radius (in a straight line) and are included in the document entitled 'Nearest Pharmacies' above.
- 2.42 It was noted in the appeal decision on a previous application that approximately 1000 patients from Blofield practice (20% of patients) exercised choice and obtained their prescription items from Well. There was nothing to suggest that the patients who use the dispensing service were forced to do so and every reason to believe they chose this option given the high levels of satisfaction. In any event, dispensing is only one part of pharmaceutical services and there is nothing to prevent patients from accessing services additional to dispensing at Well or indeed elsewhere.
- 2.43 The overall provision of pharmaceutical services in Blofield (and Brundall) is through an established pharmacy and two dispensing practices. In addition, there are several pharmacies within a short distance. The level of choice available to patients is reasonable.
- 2.44 No evidence has been provided to demonstrate that those living in Blofield are unable to access that choice.
- 2.45 The Committee agreed that the test is whether or not those living in Blofield have reasonable choice with regard to obtaining pharmaceutical services in the area of Norfolk HWB, not in the village. At present, those who are eligible to be dispensed to by the GP practice choose to do so. Those who choose not to be dispensed to or who are not eligible to be dispensed to accessed 62 different pharmacy and dispensing appliance contractor premises in November 2023.
- 2.46 It has previously been established on appeal that in order to have reasonable choice, those living in the area of a pharmacy application must be able to exercise that choice.

- 2.47 No evidence has been provided to demonstrate that those living in Blofield are currently unable to exercise a choice in obtaining pharmaceutical services.
- 2.48 Based on the information provided in the Committee Report, the Committee was of the view that there is already reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB, such that it cannot be satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the Norfolk PNA was published.

Regulation 18(2)(b)(ii)

- 2.49 The Committee considered whether, notwithstanding that the improvements or better access were not included in the Norfolk PNA, it is satisfied that, having regard in particular to the desirability of—

(i) 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 the NHSCB's duties under section 13G of the 2006 Act (duty as to reducing inequalities))

granting the application would confer significant benefits on persons in the area of Norfolk HWB that were not foreseen when the PNA was published.

- 2.50 The Committee noted the applicant provided no evidence to meet the criteria of Regulation 18(2)(b)(ii). Whilst it is accepted that there would be people with protected characteristics living in Blofield and that some may need pharmaceutical services as a result, there was no evidence that they had any difficulty accessing such services.
- 2.51 The Committee agreed it was not satisfied that, having regard to the desirability of people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that are difficult for them to access, granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant pharmaceutical needs assessment was published.
- 2.52 The Committee noted the applicant provided no evidence with regard to the matter set out in Regulation 18(2)(b)(ii). Whilst it is accepted that there would be people with protected characteristics living in Blofield and that some may need pharmaceutical services as a result, there was no evidence that they have any difficulty accessing such services.
- 2.53 Regulation 18(2)(b)(iii)
- 2.54 The Committee considered whether, notwithstanding that the improvements or better access were not included in the Norfolk PNA, it was satisfied that, having regard in particular to the desirability of—
- (i) there being innovative approaches taken with regard to the delivery of pharmaceutical services (taking into account also the NHSCB'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 Norfolk HWB that were not foreseen when the PNA was published.*
- 2.55 The Committee noted the applicant provided no comments regarding innovative approaches in the delivery of pharmaceutical services, therefore was not satisfied that, having regard to the desirability of there being innovative approaches taken with regard to the deliverability of pharmaceutical services, granting the application would confer

significant benefits on persons in the area of the relevant HWB which were not foreseen when the Norfolk PNA was published.

Representations

- 2.56 The Committee noted that representations were made from:
- 2.57 Pharmacy Sales & Consultancy on behalf of Loyal Pharmacy Ltd (see Appendix F).
- 2.58 Brundall Medical Partnership
 - 2.58.1 Made significant objections to the application.
 - 2.58.2 Stating harmful impact on being able to continue as a dispensing practice if application granted.
 - 2.58.3 Vital to explain the geographical impact on the exponential rise in the housing in and around Blofield in comparison to Brundall as you will see from the attachment 1 a large proportion of land in Brundall is marshland and comes with the Mid-Yare National Nature Reserve. These are two crucial limiting factors for the growth of housing and population in Brundall. Therefore, Brundall Medical Practice is very dependent on the rise in population in and around Blofield to maintain and increase our dispensing patient numbers for our own viability. Hence, losing this population as potential dispensing patients would be a massive detriment to our sustainability for the reasons outlined above as there is no potential for increased housing on this side of the river in Brundall.
 - 2.58.4 Provided map showing the overlap again with 'Marsh Land/Nature Reserve' marked, where no new housing can be built.
 - 2.58.5 Would suffer a minimum loss of at least one third to one half of dispensing patients.
 - 2.58.6 Plans also for Hoveton and Wroxham Medical Practice to apply for an extension of their practice boundary towards Rackheath which would further affect our ability to dispense to patients living in that area.
 - 2.58.7 Would not be able to survive the financial crush and would have to hand back the GMS contract.
 - 2.58.8 Magnitude of 8,000 patients that would need to be redistributed and the distress this would cause.
 - 2.58.9 If granted would destroy the viability of a GMS dispensing practice to survive.
 - 2.58.10 Set of supporting letters from patients of Brundall Medical Practice submitted.
 - 2.58.11 A petition signed by our patients both in support of our objection to a Community Pharmacy in Blofield. A total of 333 have signed this petition. [held back due to information governance].
- 2.59 Bestway National Chemists Ltd (Well Pharmacy)
 - 2.59.1 Residents living in the Blofield area are in very good/good health and car ownership in the area is high with a high percentage of households having access to one or more cars.

- 2.59.2 There are a range of existing pharmacies in the surrounding area within a reasonable distance of the proposed location. A full range of opening hours is provided by these pharmacies.
 - 2.59.3 Due to the high level of car ownership, the journey by car to the surrounding area would be part of normal living. Bus routes are also available from Blofield to the surrounding area.
 - 2.59.4 The Norfolk PNA 2022 states that: "No gaps in the provision of Necessary Services have been identified for Broadland locality."
 - 2.59.5 The Norfolk PNA 2022 states that: "No gaps have been identified that if provided either now or in the future would secure improvements or better access to Advanced Services across the Broadland locality."
 - 2.59.6 The applicant has not identified any specific patient groups that may want to access a pharmacy at the proposed location that have expressed difficulty in accessing services in the area.
 - 2.59.7 The applicant has not demonstrated any unforeseen benefit in their application and therefore the application should be refused.
- 2.60 Community Pharmacy Norfolk (previously Local Pharmaceutical Committee)
- 2.60.1 We note that the most recent PNA does not identify any gaps in pharmaceutical provision in this area, and that both Applications cite "Unforeseen benefits".
 - 2.60.2 Consider if either Applicant has provided sufficient evidence that granting of one of the Applications is required, and how these benefits are considered "Unforeseen", given that in the production of the PNA development in the area was acknowledged?
 - 2.60.3 Clearly with any long-term planned series of developments there will often be a "tipping point" of actual vs. planned development which may mean a review of need is required, but we are not aware this has yet been identified here within the PNA?

Response to Representations

- 2.61 The Committee noted that Rushport Advisory LLP of behalf of Blofield Surgery Healthcare Ltd provided an extensive response to comments made by interested parties during the 45- day process. The Committee referred to the e-mail embedded within the committee report entitled 'RE Blofield Surgery Healthcare Ltd - UB' which contained various attachments.
 - 2.62 The Committee noted the counter comments which are embedded below: (see Appendix G).
- Regulation 18(2)(b) generally
- 2.63 The Committee noted the Applicant's proposed 49 core opening hours and five supplementary opening hours.
 - 2.64 The opening hours of those pharmacies that are closest to Blofield can be found in the document entitled 'Nearest Pharmacies' and were shared with the Committee prior to the meeting.
 - 2.65 The Committee agreed that no information had been provided to support a finding that pharmaceutical services are not currently provided at such times as needed and

therefore it is unlikely that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits in relation to opening hours on persons.

2.66 The Committee did note that letters of support were provided but it was not evident how representative this was of the local population. It was recognised that most people if asked if they would like a new pharmacy, a new GP practice, a new dental surgery they would say yes. The Committee noted this was not the same as people not being able to access or obtain pharmaceutical services.

2.67 The Committee considered whether there were any other factors that would confer significant benefits including on patients who share protected characteristics based on the information provided by the applicant. The Committee were minded of 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.

2.68 The Committee moved onto consider Regulation 50.

Regulation 50 - Discontinuation of arrangements for the provision of pharmaceutical services by doctors

2.69 The Committee noted that if the application was granted, then it is required to consider Regulation 50, Discontinuation of arrangements for the provision of pharmaceutical services by doctors, as the location is within a controlled locality.

2.70 The Committee noted the information in the document entitled 'Request for dispensing px and nos – NR13 4PL' embedded below (see Appendix H):

2.71 This shows a list of GP Practices who have registered patients that reside within 1.6km of the post code used, NR13 4PL.

2.72 The figures show there are 5 practices that do have dispensing patients that reside within 1.6km of NR13 4PL.

2.73 Those 5 are:

Code	Practice	Registered No.	Dispensing List within 1.6km	% Dispensing to Full Patient List
D82009	Staithe Surgery	7,455	1	0.01%
D82025	Hoveton & Wroxham Medical Centre	9,999	3	0.03%
D82104	Acle Medical Centre	9,581	33	0.34%
D82032	Brundall Medical Centre	7,943	420	5.29%
D82080	Blofield Surgery	8,341	2,861	34.3%

2.74 The Committee agreed that the following formula would be used when considering gradualisation, if the application was granted:

2.74.1 1% to 20% one month gradualisation will apply.

2.74.2 21% to 40% two months gradualisation will apply.

2.74.3 41% to 60% three months gradualisation will apply.

2.75 This approach is in line with previous decisions on gradualisation.

2.76 The Committee next considered Regulation 65.

Regulation 65 – core opening hours conditions

- 2.77 The Committee noted that the applicant is offering more than 40 core opening hours and therefore regulation 65(4) applies.

Opening Hours		49:00	5:00
	C1	S2	C2
Monday	8:30 – 13:00	13:00 – 14:00	14:00 – 18:30
Tuesday	8:30 – 13:00	13:00 – 14:00	14:00 – 18:30
Wednesday	8:30 – 13:00	13:00 – 14:00	14:00 – 18:30
Thursday	8:30 – 13:00	13:00 – 14:00	14:00 – 18:30
Friday	8:30 – 13:00	13:00 – 14:00	14:00 – 18:30
Saturday	9:00 – 13:00		
Sunday			

- 2.78 It has been agreed with the applicant that additional core opening hours are as follows:

2.78.1 Monday to Friday: 08:30-09:00 and 18:00-18:30

2.78.2 Saturday: 09:00-13:00

- 2.79 The Committee had regard to the applicant's undertaking to provide pharmaceutical services for 49 core opening hours per week and noted that if the application is granted, and in due course the applicant and premises are included in the relevant pharmaceutical list, a direction will be issued specifying the number of core opening hours undertaken and the set times and set days of those core opening hours.

Regulation 66 – directed services conditions.

- 2.80 The Committee considered Regulation 66 – directed services conditions.

- 2.81 The applicant has undertaken to provide the following directed services:

2.81.1 NMS

2.81.2 CPCS and GP CPCS (now replaced by Pharmacy First)

2.81.3 EHC

2.81.4 Smoking Cessation

2.81.5 Chlamydia Screening

2.81.6 Flu Vaccinations

2.81.7 Hypertension Case Finding

2.81.8 Services under PGDs

2.81.9 Palliative Care

2.81.10 Needle and Syringe Exchange

2.81.11 Supply of Gluten Free Foods

2.81.12 Supervised Self Administration

- 2.82 Regulation 66(4) therefore applies if the application was to be granted, and the inclusion of the applicant and the pharmacy premises in the pharmaceutical list for the area of Norfolk HWB would be subject to the condition set out in regulation 66(5).
- 2.83 The condition is that, at the pharmacy premises, the applicant must:
- 2.83.1 Provide the directed services mentioned in the application and
- 2.83.2 Not withhold agreement to a service specification for those services unreasonably if the ICB commissions the services from the applicant within three years of the date of either the grant of the application or, if later, the listing in relation to the applicant of the pharmacy premises, unless thereafter the ICB ceases to commission the services (if it has commissioned them).
- 2.84 The Committee noted that some services are advanced services, and some are enhanced services. If the application was granted, the Committee would be required to consider whether or not to specify a date by which the condition to provide these services is to take effect.
- Decision
- 2.85 Blofield is in a controlled locality and the premises is not in a reserved location. The Committee considered whether the granting of the application would cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area covered by the HWB and was not satisfied that it would.
- 2.86 The Committee considered whether the granting of the application would cause significant detriment to the arrangements in place for the provision of pharmaceutical services in that area and was not satisfied that it would.
- 2.87 The Committee refused the application, and the rationale for their decision is outlined below:
- 2.87.1 There is no evidence that there is not already a reasonable choice with regard to obtaining pharmaceutical services in the area of Norfolk HWB.
- 2.87.2 There is no evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services that meet their specific needs for such services; and
- 2.87.3 There is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services.
- 2.88 No information was provided to support a finding that pharmaceutical services are not currently provided at such times as needed and therefore the Committee was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits (in relation to opening hours) on persons.
- 2.89 In accordance with Regulation 18(2)(b), the Committee determined that the granting of this application would not confer significant benefits on persons in the area of the HWB which were not foreseen when the PNA was published.
- 2.90 The Committee was not satisfied that granting the application would confer significant benefits as outlined above or would secure improvements or better access to pharmaceutical services.

Regulation 44 – Prejudice test

- 2.91 The Committee noted that prejudice could only arise if the application meets the requirements of Regulation 18. As the Committee refused the application, it is unnecessary to consider the prejudice test.
- 2.92 The Committee agreed that as the application has been refused, appeal rights are granted to the applicant, Blofield Surgery Healthcare Ltd.
