

30 September 2024

REF: SHA/26247

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**APPEAL AGAINST COVENTRY AND WARWICKSHIRE
ICB DECISION TO REFUSE AN APPLICATION BY JT
HEALTH LTD FOR INCLUSION IN THE
PHARMACEUTICAL LIST OFFERING UNFORESEEN
BENEFITS UNDER REGULATION 18 AT 2 KINGSWAY,
RUGBY, CV22 5NU WITHIN THE PARADE OF STORES
ALONG KINGSWAY POST OFFICE**

1 Outcome

- 1.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of the Commissioner and redetermines the application.
- 1.2 The Committee determined that the application should be refused.

A copy of this decision is being sent to:
JT Health Ltd
PCSE on behalf of Coventry and Warwickshire ICB
L Rowland & Co Ltd

Advise / Resolve / Learn

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1 The Application

By application dated 8 December 2023, JT Health Ltd (“the Applicant”) applied to Coventry and Warwickshire ICB (“the Commissioner”) for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at 2 Kingsway, Rugby, CV22 5NU within the parade of stores along Kingsway Post Office. In support of the application it was stated:

In response to “in my/our view this application should not be refused pursuant to Regulation 31 for the following reasons” the Applicant left this box blank.

In response to “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's area” the Applicant stated:

- 1.1 “In accordance with the NHS (Pharmaceutical Services) Regulations 2013 JT Health Ltd (JTHL) would ask NHS England & NHS Improvement (“NHS England”) to take into account the following information when considering this application for inclusion in the pharmaceutical list.
- 1.2 JTHL believe that, should NHS England grant this application, it will secure improvements in terms of access to pharmaceutical services for the local population and the wider area.
- 1.3 Application to open a pharmacy within the vicinity of Kingsway post office, CV22 5NU.
- 1.4 Background
- 1.5 This application has been prompted by the closure of a Lloyds Pharmacy branch previously located within Sainsbury's at CV22 6HU.
- 1.6 This matter was unforeseen at the time of publication of the current Coventry and Warwickshire PNA. It is the Applicant's position that there is currently a gap in the provision of pharmaceutical services as a result of the closure of the pharmacy.
- 1.7 Granting this application offers an opportunity for the re-provision of pharmaceutical services for residents within this vicinity.
- 1.8 Until mid 2023, Lloyds Pharmacy operated a pharmacy from premises within the Sainsbury's store. This was a well-used pharmacy, dispensing approximately 14000 prescriptions a month to the local population.
- 1.9 The next nearest pharmacy being Bilton pharmacy at CV22 7LZ which is already dispensing almost 14000 items per month which is above the average for a pharmacy in England.
- 1.10 Reviews of local pharmacies on google and the NHS websites suggest they could already be struggling with keeping up with demand for pharmaceutical services.

- 1.11 The closure of the Lloyds pharmacy within Sainsburys will further increase the pressure on other local pharmacies.
- 1.12 There is clear evidence of the extent to which there is a demand for pharmaceutical services in the area based on the dispensing numbers of the pharmacy that closed and that of the surrounding pharmacies.
- 1.13 The average number of prescriptions dispensed per pharmacy per month in England to March 2021 (the latest data available) was 6,565, therefore the local area has a high demand spread across the locality for pharmaceutical services.
- 1.14 The Area
- 1.15 The proposed location for this pharmacy is within a predominantly residential area.
- 1.16 There is no pharmacy on the south side of Rugby with most pharmacies being within the city centre which are not the most accessible with patients having to pay for parking for each visit.
- 1.17 It is relevant that, when considering whether there are any gaps in the provision of pharmaceutical services, that patients will feel this much more acutely when they have had access to a pharmacy which has subsequently closed than if they have never had a pharmacy at all.
- 1.18 Within the Coventry and Warwickshire Pharmaceutical Needs Assessment, published in 2022, there is no specific mention of a gap in pharmaceutical services within the proposed area. To JTHL's knowledge, no supplementary statement has been published since the closure of the Lloyds pharmacy, so JTHL must assume that the authors of the PNA were not aware of plans to close this pharmacy when the document, and any subsequent supplementary statements, were drafted. Therefore this application is made to provide 'unforeseen benefits' to the local community in accordance with Regulation 18.
- 1.19 JTHL are required by NHS England to address two specific questions in this supporting information:
- 1.19.1 (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.
- 1.19.2 (ii) Please explain how you intend to secure the unforeseen benefit(s).
- 1.20 When considering these questions, it is worth noting the provisions of Regulation 18(2)(b) [quoted in full].
- 1.21 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.
- 1.22 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 JTHL's opinion there is clear evidence that it would.
- 1.23 JTHL have addressed both of the questions above by setting out in further details below:
- 1.24 Securing better access and choice

- 1.25 The matters of access and choice are inextricably linked. Whilst it may be the case that there is a choice of pharmacy provider within the Health & Wellbeing Board (HWB) area, this does not mean that the choice for residents is reasonable if they are not able to access these pharmacies when they need to.
- 1.26 Those without a car will be reliant on either walking a significant distance to a pharmacy or incurring costs to travel by public transport. Patients who are elderly or less mobile, particularly when suffering from acute illness, may find this journey challenging regardless of how they travel.
- 1.27 Clearly the residents of the area where the Applicant proposes to open the pharmacy do not have any choice of provider as there is no longer any pharmacy contractor. Patients currently have to travel out of the area to access existing services. They will need to make a specific journey to access a pharmacy and for some the distance and gradients involved will make the journey difficult.
- 1.28 If this application is approved, the Applicant intends to offer the local residents a full and comprehensive pharmaceutical service six days a week ensuring that local residents can, once more, access pharmaceutical services when they need them.
- 1.29 Patient groups sharing protected characteristics
- 1.30 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.
- 1.31 Granting the application will significantly improve the accessibility of pharmaceutical services for these people.
- 1.32 Summary
- 1.33 In the Applicant's view it can be clearly seen that the residents of south Rugby would benefit greatly from having a community pharmacy at the proposed site. This application clearly demonstrates benefits which were unforeseen and not identified when the PNA was published.
- 1.34 The resident population do not have a reasonable choice of provider or enjoy easy access to existing pharmacy contractors, especially for those who are on foot, are reliant on public transport, elderly, infirm or disabled. There is a gap in pharmaceutical services in this part of the town.
- 1.35 The Applicant firmly believes if this application is approved it will secure improvements in choice and better access to pharmaceutical services and thus provide significant benefits for the resident population.
- 1.36 Finally, the Applicant would wish to attend any oral hearing convened should this be necessary by NHS England to consider this application."

In response to "please explain how you intend to secure the unforeseen benefit(s)" the Applicant stated:

- 1.37 "Being at a location which will be easily and conveniently accessible for the local population and in close proximity to other shops and services.
- 1.38 Increasing the total capacity of pharmaceutical service provision to meet the needs of the growing residential population.
- 1.39 Offering a full range of pharmaceutical services to meet local health needs."

The Decision

The Commissioner considered and decided to refuse the application. The decision letter dated 5 June 2024 states:

- 2.1 “Coventry & Warwickshire 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

- 2.2 “Unforeseen Benefit Application.
- 2.3 JT Health Ltd.
- 2.4 Proposed Site: 2 Kingsway, Rugby, CV22 5NU, Within the parade of stores along Kingsway Post office.
- 2.5 Application submitted by JT Health Ltd in respect of an Unforeseen [sic] Benefit within a HWB area: Warwickshire Area.
- 2.6 The application is refused.
- 2.7 PSRC committee refused the application accepting the recommendations.
- 2.8 Regulation 18 (1) not Satisfied
- 2.9 Coventry & Warwickshire 2022-2025 does not specifically mention Kingsway Neighbourhood and there is no supplementary statement regarding any gap in provision.
- 2.10 Regulation 18 (2) (a) (i) Not satisfied
- 2.11 Granting the application would not cause significant detriment to the proper planning and provision of pharmaceutical services in the HWB area.
- 2.12 Residents living in and near Kingsway have to travel under 1 mile to the nearest GP Surgery (Central Surgery), which is located within 75 meters of Well and Asda Pharmacies.
- 2.13 There is a reasonable choice of pharmacies under 1 mile of Kingsway (6 pharmacies and good links with bus service).
- 2.14 Regulation 18 (2)(ii) Not Satisfied
- 2.15 The applicant identified some of the population with protected characteristics like elderly, less mobile and families with very young children, whose access likely to be more difficult than for those who are more mobile and have access to a car. Excellent bus service, dial a ride service within 75 meters. The applicant does not propose Sunday opening and the office of the west midlands has not received any complaints form [sic] residents living near the proposed location regarding any difficulties accessing pharmaceutical services.
- 2.16 Regulation 18 2 (b) (iii) Innovation – Not Satisfied
- 2.17 The application does not include any innovative services and proposing the same services that the other pharmacies already provide.
- 2.18 Applicant has the appeal rights”

3 The Appeal

In a letter dated 24 June 2024 (received 27 June 2024) addressed to NHS Resolution, the Applicant appealed against the Commissioner's decision. The grounds of appeal are:

- 3.1 "JT Health would like to appeal the decision by Coventry and Warwickshire ICB for the refusal of application MS2596.
- 3.2 It has been stated by CW ICB that the nearest surgery is Central surgery located at CV21 3SP. They have stated that the distance to the pharmacy is under 1 mile. Although this may be the case as the crow flies, the actual distance by car is 1.4 miles.
- 3.3 The ICB has stated "*the office of the west midlands has not received any complaints form [sic] residents living near the proposed location regarding any difficulties accessing pharmaceutical services.*"
- 3.4 Healthwatch Warwickshire are currently undertaking a survey to help understand the struggles patients are currently experiencing throughout Rugby. The fact this is being undertaken is due to the underlying reported issue of patients receiving inadequate pharmaceutical services in Rugby.
- 3.5 Pharmacies in Rugby are currently overstretched and this is having an impact across the region to [sic] due to the closure of established pharmacies. We would urge you to consider the results of the survey when considering this appeal. There are also a considerable number of complaints from google reviews for local pharmacies.
- 3.6 Complaints For Wells and Asda Pharmacy near Central Surgery:
 - 3.6.1 *Tried to pick up my prescription twice but based on the rate the queue was going down I simply couldn't wait over 30 mins for my prescription. One person dealing with the standing queue on his own (doing the best he can) but five others in the pharmacy. One could surely have helped get the queue down?*
 - 3.6.2 *This was a fantastic pharmacy at one time, now it is queue every time you need to go, went there this morning and about 20 people in the queue went back an hour later still a long queue. Went back early afternoon and still the same. There is one guy who serves and takes requests for medication as well as handing out medication. Why the heck can you not have two people serving one who takes prescription requests and another who hands out the medication. I am sure if you had more staff serving this would be a 5 star pharmacy and the best pharmacy in Rugby.*
 - 3.6.3 *When they deliver on time they are great, when they don't they are rubbish. I cannot reach anyone on the phone, its disgraceful they are a pharmacy after all.*
 - 3.6.4 *They don't answer the phone, are closed for lunch 1.30pm til 2pm then make you wait 30 minutes before being able to collect your prescription. Their website talks about 'exceptional customer service' but the reality is quite different. Very disappointing as it used to be a quality pharmacy.*
 - 3.6.5 *2 hour wait yesterday, 90 mins to get to counter, rest waiting for prescription to be dispensed. Third attempt over two days to even get into the shop. 7 members of staff. Just don't understand it. Old and infirm clamouring for seats. Almost felt sorry for staff, but what is going on?!!*
 - 3.6.6 *Slow, inefficient, long queues. I order my repeat medication via the NHS app. but when I go to collect, NOT ONCE HAS IT BEEN READY!!! On my last visit I queued for a hour before I even reached the counter. NOT GOOD ENOUGH!!!*

- 3.6.7 *If I could give Zero stars I would, you cant' contact them to order repeat prescription so how are housebound people supposed to order their medication as they no longer answer their phone. the Take over by Well pharmacy has been a complete disaster.*
- 3.6.8 *Mum ordered script last week as apparently that's what you have to do here, queued for 90 minutes today.....not in, script now out of date and she's got nothing left.*
- 3.6.9 *Awful service, disgusting waiting times, huge queue out of the place and across the street daily.*
- 3.6.10 *3 hours queuing to collect prescription today. Absolutely disgusting. This place is beyond a joke. No apologies, no information as to how long wait might be. Totally unacceptable service. Shouldn't be in business.*
- 3.6.11 *Terrible service. Huge queues, never open on time, long waits for medication. One staff member, [redacted], fffing at customers and then locking the front doors. Terrible at the moment.*
- 3.6.12 *Every time I go to get my prescription there's a big queue then they don't have it in stock so I have changed to an online pharmacy and have delivered.*
- 3.6.13 *The most rude place I have ever experienced, pharmacist is stuck up and arrogant. The waiting times are ridiculous, even when you do return hours later after their request, I can't wait to change my pharmacy, please avoid this place at all costs! You can tell from all staff this is a negative working environment which all deflects from the pharmacist.*
- 3.6.14 *Used to great , fast and efficient for prescriptions, not any more, i was standing in the queue of 5 people in front of me and a lady walked in went straight to Richard and got served straight the way, it was disgusting when others have been waiting 15 to 20 minutes. Not happy.*
- 3.6.15 *Shockingly rude staff!!*
- 3.6.16 *In store waiting times getting worse and 2 weeks ago I waited almost 45 mins ...I need to speak to head office.*
- 3.6.17 *Poor service have to wait long time.*
- 3.6.18 *Very disorganized [sic].*
- 3.6.19 *I went into the store today at 12:40 to find the Pharmacy closed 12:30 to 1:00. OK, one person in queue so I decide to wait as yesterday there was 10 people queueing so I didn't wait. I got served at 1:05pm BUT the prescription was not ready, the Pharmacist was in a consultation, and my 1 item would be an hour!! The prescription was issued 4 days ago, so it should have been made up. If you try and ring them to prod the make-up - and there are 2 numbers that I know - they do not answer. Probably not the staff's fault but there has been enough complaints for management to act. Avoid ths [sic]Pharmacy.*
- 3.6.20 *The worst pharmacy in Rugby. The staff is rude and unhelpful. Every time when I try to collect a medicine I have to visit Asda twice or I have to wait around 40 to 60 minutes for the staff to take one box off from the shelf and put it in a paper bag for me.*
- 3.6.21 *Avoid this pharmacy unless you have at least 40 to 60 minutes of free time to complete your weekly shopping as well!*

- 3.6.22 *Update: I just came back to collect my last order from this pharmacy and the lady told me I have to wait 1 hour because they will have an afternoon break in 3 minutes...*
- 3.6.23 *I normally order my prescription about 10 days before I run out. Always used to be ready in collection. Now they tell me that even though my prescription has been sent to them I then have to ring them or queue for half an hour to tell me that now I have come to collect it it will be ready in an hour. This is the first time they have told me this and looked at me like I was an idiot because I didn't know. Why are they not being made ready as soon as they come through?*
- 3.6.24 *So I transferred to this pharmacy! If your [sic] considering it.... Don't! They never answer the phone. They never have staff. Long queue's like over half an hour. Then once you get there they say 3 hours although you rang a head which you had to ring for three days to get anyone to answer at all different times of the day. Rugby pharmacy is not the one!*
- 3.6.25 *This was such a negative review but can I say it's to no fault of the staff they work bloody hard they are understaffed with way too many customers as I know a lot of pharmacies have closed down. It's such a shame because they get the brunt of it all. When actually none of it is their fault! The company should be taking on more staff and putting in better strategies to keep their ques down and their staff happy. I think so many times I've been and they haven't even had their break or they are trying to close and the ques are just getting longer and longer.*
- 3.6.26 *Not open over lunch, despite their claimed hours.*
- 3.6.27 *Even closing before the time their sign (that they put on the counter) says they close.*
- 3.6.28 *Not worth the effort of getting into Asda...*
- 3.6.29 *I've been in this queue over half an hour. I'm still in Asda! There's FOUR people in front of me who've been here as long and longer. What a joke!!*
- 3.6.30 *Completely useless. I have 12 month's worth of repeat prescriptions with them, so no need to get authorisation from my GP every time. Sounds great, but you have to call the pharmacy two days before you need the new lot, and then collect two days later. Which would be fine, but they never answer the phone.*
- 3.6.31 *When they do finally do your prescription, they get it wrong, and leave items out, or get quantities wrong. Absolutely totally useless.*
- 3.6.32 *Dear [redacted]. Yes, I will be along on Sunday morning with the details you need and will happily meet with you then. Thanks, [redacted]. Cannot get an answer on the telephone so you need to attend store two or three times to order and then collect a prescription and wait in long queues and for over two hours for anything urgent. On one occasion I called 19 times, all went unanswered. When I raised concerns that the telephone didn't seem to work when I attended the counter I was told to take my business elsewhere if I prefer. My family are elderly and unwell and I know of other elderly people who have been treated similarly after hours of waiting. There needs to be a better system to prioritise the service and manage calls during busy periods and customers treated better. We are all busy however, business's do need customers to survive. Some recognition of that is sensible and would be welcomed please.*
- 3.6.33 *The worst experience every month. Long queues, totally unorganised service, only one person on the counter. Collecting a prescription, which was pre ordered still ensures a 45 minute wait. Once you've waited, they make you*

rejoin the queue just to collect it. There has to be a better way. Serious training is needed for this pharmacy. The manager on duty was less than helpful.

- 3.6.34 *I had my prescription approved on the Tuesday and had steroids added on the Thursday went to collect at about 13.40 on the Friday , was in queue for about 40mins to be told to come back 2 hrs later !! My son goes in at 17.00 to be told come back in 2hrs !! Tried to ring about 8 times but no reply !!! Go back at 20.00 queue again and then was told by a male assistant that it would be 30 mins by this time I was breathless and asked if I could just have my blue inhaler and his reply was no !! He was then rude to another customer when told to wait 30 mins or come back in the morning !! Thankfully you have a lovely lady called [redacted] who went and got my inhaler and a cup of water and checked on me , if I could give stars for [redacted] it would be 5 , I understand that everyone is struggling with staff but I'm sorry staff who are rude and not caring definitely shouldn't be working with the public.*
- 3.6.35 *Their system does not work!!! Phones are there to be answered and you have to go in twice .Once to ask for your prescription then again to collect it .Both times in a queue of 14 last count . The staff need support herenot fair on them to be left to deal with an incompetent system and irate [sic] customer!*
- 3.6.36 *1 star is too much. The service is hopeless. They don't answer the phone and you have to wait hours for them to dispense a prescription. I have had to go in person 3 times for a prescription, only to find pharmacist on my NHS app.*
- 3.6.37 *The worst pharmacy in Rugby, only go if you really have no other options. The waiting times are so long and the staff are tortoises under cover as pharmacist.... If it wasn't so annoying it would be funny just how bad this place is Just read all the other reviews 😊*
- 3.6.38 *Would put 0/5 if it was possible. Be quicker getting the drugs from the pharmaceutical companies direct than the idiots who run this place.*
- 3.6.39 *worst pharmacy possible you have to wait at least an hour for one item even if there is no queue.*
- 3.6.40 *Slowest service ever, 30min waiting to collect pre-ordered prescription (2 days before) to be told to come back in 1hr, JOKE, this was the last time when I used this pharmacy.*
- 3.6.41 *No way of calling ahead, so have to go in twice, 3 days apart. Staff don't seem to care.*
- 3.6.42 *They lie that they gave out the medication but that's not true. lack of culture is the norm in this place.*
- 3.6.43 *Ridiculous waiting times and need to return for prescribed medication twice and have to wait for hours.*
- 3.6.44 *Gotta be the worst run Pharmacy in the UK 🤔*
- 3.6.45 *Shameful level of service.*
- 3.6.46 *NEVER ANSWER THE PHONE!!!*
- 3.6.47 *Ridiculously slow service*
- 3.6.48 *Lazy staff.*

- 3.6.49 *Not my chemist, I pick up my partner's prescription every month because he's disabled, my main criticism is the mainly you can't ring them, the nonchalant behaviour of the staff and the long wait amongst other things...*
- 3.6.50 *Each time I collect my prescription, I need visit the pharmacy twice. The queues are ridiculously long and phones are not answered due to the staff being put under unnecessary pressure from a computer system that clearly isn't working and insufficient staffing levels on the counter. It's unfair that these customer facing staff then have to deal with the added pressure of irate customers when this is not their fault. I have rated their service two stars purely for the politeness of their staff who are trying their best under challenging circumstances.*
- 3.6.51 *They were convenient but forgot to complete orders & it made me do double trips, not easy being disabled & reliant on taxis.*
- 3.7 There have also been a considerable amount of complaints from other pharmacies in Rugby.
- 3.8 The location of the proposed pharmacy is situated in a parade of shops which is used regularly by local residents. The location is easily accessible as opposed to existing pharmacies located towards the centre of Rugby. It would still be almost 1 mile to travel to the nearest pharmacy by car.
- 3.9 The struggles of pharmacies across Rugby is well documented. Pharmacies located further away from the proposed site are currently having to absorb the extra workload in order to cater for those patients living within the vicinity of the proposed site. The granting of this pharmacy would therefore allow it to serve a large area where no pharmacies are currently located. This in effect would help alleviate the pressures on the surrounding pharmacies and allow them to provide a more efficacious service to the patients within their respective localities.
- 3.10 Rugby's MP Mark Pawset [sic] has been very vocal with regards to addressing the current issues faced by patients.
- 3.11 Mark Pawsey MP has stated the lack of pharmacy capacity in Rugby, particularly in the town centre, is becoming 'untenable'.
- 3.12 He is calling on Coventry and Warwickshire Integrated Care Board and the Health and Wellbeing Board to take urgent steps to bring forward a review of the pharmacy coverage in Rugby, to enable new providers to come forward and meet the demand.
- 3.13 Mr Pawsey also stated after a meeting with the Association of independent multiple pharmacies, "Ensuring access to pharmacies is vital for the healthcare of residents in Rugby, and the recent closure of pharmacies such as Lloyds in Sainsburys and Rowlands Pharmacies has put increasing pressures on primary healthcare in Rugby".
- 3.14 Mark Pawsey stated in parliament:
- 3.14.1 *"Residents having to queue for over an hour to get a prescription, I'm aware of offers to open a new pharmacy, but they have unbelievably been turned down by our health and well being board who unbelievably say there is sufficient provision in our area.*
- 3.14.2 *Response from government "I'm very sorry to hear about the situation and it sounds a very serious situation indeed.... And clearly because of initiatives such as Pharmacy First it is doubly important".*
- 3.15 Mr Pawsey has also had correspondence from patients as mentioned in an article on Warwickshireworld on 21st Mar 2024.

- 3.16 <https://www.warwickshireworld.com/business/fed-up-rugby-patients-call-for-urgent-improvements-to-pharmacy-services-4563874>
- 3.17 As mentioned in the article,
- 3.18 "Customers have to queue down the street in all weathers to be told prescriptions are not ready".
- 3.19 Fed-up patients are calling for urgent improvements to pharmacy services in Rugby.
- 3.20 They say there has been a 'frightening decline' in pharmacies in the town with boots moving services to Junction One and the closure of Rowlands Pharmacy in Corporation Street and Lloyds Pharmacy ending its commercial arrangements with Sainsbury's.
- 3.21 Pt 1, who lives in Rugby, said: "I am a disabled person who relies on medication to keep me functioning and, without being dramatic, alive.
- 3.22 "I have been concerned at the plummeting availability of drugs for some time but also the frightening decline in pharmacies. I do not drive and I'm unable to use public transport. I could not get to Boots in Leicester Road without extreme difficulty."
- 3.23 She said her struggles have worsened over the last three months.
- 3.24 "It has become impossible to get my prescription filled and then collected," Pt 1 added. "I use Knights pharmacy in Sheep Street, which recently became Wells. The shop has been closing early, opening late and customers now have to queue for up to an hour and a half in all weathers to be told that their prescriptions are not ready and to come back in an hour or another day.
- 3.25 "When you return you have to queue for another hour or more, often to be told all or some of your prescription is not available."
- 3.26 Pt 1 said the prescription delivery service is 'unpredictable' and her phone calls go unanswered.
- 3.27 She said: "Last Wednesday a man collapsed in the queue and an ambulance had to be called and he was taken to hospital.
- 3.28 "The majority of customers are ill, disabled and older people and it is becoming untenable to deliver a service and for people to get their medication.
- 3.29 "The development of housing complexes everywhere in Rugby and surrounding area is putting a huge strain on all infrastructure - doctors, dentists and council services. But the situation with pharmacies is frightening."
- 3.30 Pt.2 wrote to Rugby MP Mark Pawsey on behalf of her elderly mother who lives in the town.
- 3.31 She said: "I find the pharmacy situation both intolerable and unacceptable in view of the fact that not all the residents own a computer and therefore cannot order their medication online and neither are they able to drive to a pharmacy located outside the town centre.
- 3.32 "The situation has worsened since the announcement of Boots' imminent closure."
- 3.33 Pt 2 said she sympathised with pharmacy staff and that more facilities should be available.

- 3.34 "Staff are working under severe stress with queues of people waiting for their prescriptions spilling out onto the street," she added.
- 3.35 "My sister waited one and a half hours last Tuesday morning only to discover that our mother's medication, which had been ordered on March 6, was not ready and she was told that it would be delivered to our mother's home on Wednesday afternoon." The medication didn't arrive and Pt 2 went back the following day and waited for an hour for it to be processed.
- 3.36 A spokesman for Well Pharmacy said: "We apologise for any issues our patients are facing at our Well Pharmacy in Rugby."
- 3.37 Conclusion
- 3.38 In conclusion we feel we have demonstrated the need for a pharmacy to be established at our proposed site. The proposed site is expected to alleviate the current burdens on the NHS within the vicinity and to help ease the pressure other local pharmacies."

After reviewing the paperwork provided by the Commissioner, NHS Resolution applied its discretion under Schedule 3, Part 3, paragraph 7 and allowed all parties, including the Appellant, to make representations on the Commissioner's site visit report and representations made on the application [appendix A].

4 **Summary of Representations**

This is a summary of representations received on the appeal.

4.1 L. Rowland & Co (Retail) Limited

- 4.1.1 "Thank-you for the opportunity to comment on the above appeals. If the NHR decide to convene an oral hearing, we are willing to attend under the provisions of Paragraph 8 of schedule 3 of the regulations.
- 4.1.2 Please refer to our original comments and in addition we would like to also comment that:
 - 4.1.2.1 Rugby is an affluent Town with a highly mobile population with high levels of car ownership. This means that the local population is used to travelling out with the [sic] immediate area for day-to-day needs. It is notable that the current population surrounding the proposed site are accustomed to travelling elsewhere within Rugby to access healthcare provision; given the proposed site is 1.1miles away from Sainsbury's.
 - 4.1.2.2 Whilst we submit that Google reviews are unverified and not a suitable barometer for determining whether a new pharmacy licence should be granted; we note that, the Applicant has conveniently left out all positive Google Reviews received for local pharmacies and has presented a biased picture.
 - 4.1.2.3 We would also like to point out that the closure of Rowlands Pharmacy, Central Surgery, Corporation Street was as part of an NHS approved consolidation, and by definition does not create a gap in pharmaceutical provision.
- 4.1.3 We respectfully request that NHR inform us of the outcome in due course."

In a letter dated 28 March 2024 to the Commissioner, L. Rowland & Co (Retail) Limited stated:

- 4.1.4 “Thank you for informing L Rowland & Co (Retail) Ltd of the above application.
- 4.1.5 We note this is a Routine Unforeseen Benefits application and should one be required we would be willing to attend any oral hearing should the ICB deem it necessary to hold one.
- 4.1.6 By their very nature, unforeseen benefits applications must be responding to a need not detailed in the PNA for the HWB. However, with most PNA [sic] being very detailed we respectfully request the ICB to consider whether the ‘unforeseen need’ is relevant. In response to the Lloyds closure, we are aware that other contractors have already been supporting the local patients and are willing to pick up any commissioned services that are required. Regulation 18 provides several criteria, which must be considered as part of the determination process, and we trust that those requirements will be applied to this application.
- 4.1.7 We are not aware, via official channels, that patients are finding it difficult to access services, including people sharing a protected characteristic. Google reviews as you are aware are not verified so must be disregarded as evidence.
- 4.1.8 The applicant has not provided any evidence of anything which could be considered innovative approaches being taken with regards to the delivery of pharmaceutical services.
- 4.1.9 We respectfully ask that PCSE keeps us informed of the determination of the above application.”
- 4.2 The Applicant
 - 4.2.1 “A site visit revealed that the location serves as a hub for various shops, a care home, and schools, including Harris Church of England Academy, Rokeby Primary School, and Oakfield Primary Academy, all within the local vicinity. There is more than sufficient parking available directly in front of the shopping parade and across the road.
 - 4.2.2 Bus routes 63 and 64 run every hour during weekdays, every two hours on Saturdays, and every three hours on Sundays along A426 Dunchurch Road. If a bus is missed, the one-way journey to the nearest pharmacy can take nearly two hours, followed by an additional walk to the pharmacy in the town centre.
 - 4.2.3 The main Dunchurch Road, which runs from the shopping parade to the town centre, has a steep incline leading to the nearest pharmacy. Walking to Asda Pharmacy takes 19 minutes (0.8 miles), and to Wells Pharmacy takes 33 minutes (1.4 miles), not including the waiting time patients often experience at both pharmacies, as indicated by Google reviews.
 - 4.2.4 Warwickshire Council offers a ring and ride service, but it must be booked in advance. This service is not ideal for patients with mobility issues who need urgent prescriptions, Pharmacy First services, or same-day face-to-face consultations. Additionally, it is subject to availability and costs £6 for a round trip.
 - 4.2.5 We are also awaiting the results of a survey conducted by Healthwatch Warwickshire (<https://www.healthwatchwarwickshire.co.uk/>) regarding pharmacy services in Warwickshire. Healthwatch Warwickshire will present the findings to the pharmacy steering group and integrated care board. Although the report was initially expected by the end of July, we were informed that the release date was postponed to August 9th, and after further inquiries today, it has been delayed to August 23rd or later. We hope you will consider the

findings of this report when assessing the shortage of pharmacy services in the area."

5 Late Observations

5.1 The Applicant

5.1.1 "We have received details regarding a report about Pharmacy services in Rugby. We wanted to include tis [sic] in the findings in our final submission" 23/8/24", however as previously stated the report produced by Warwickshire Healthwatch had been delayed. Comments from Rowlands Pharmacy stated their [sic] had been no complaints regarding Pharmacy services, however the report states otherwise including: waiting times , accesses, medication availability, etc. I hope you will still consider the findings of this report for which I have attached a link below:

5.1.2 <https://www.healthwatchwarwickshire.co.uk/news/2024-04-19/what-your-experience-pharmacy-warwickshire>".

6 Consideration

6.1 The Pharmacy Appeals Committee ("the Committee"), appointed by NHS Resolution, had before it the papers considered by the Commissioner, together with a plan of the area showing existing pharmacies and doctors' surgeries and the location of the proposed pharmacy.

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

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

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

Regulation 31

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

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

(2) This paragraph applies where -

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

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

(ii) adjacent premises; and

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

6.6 The Committee noted that the Applicant had not provided any information in the application form on this point but the Committee noted that the wording of the application form only required the Applicant to include information in the relevant

section if the proposed premises were adjacent to, or in close proximity to, another pharmacy or dispensing appliance contractor premises. The Committee considered it reasonable to determine that the lack of information in the application form on this point when read with the wording of the application form allowed it to be reasonably satisfied that the Applicant considered that the proposed premises were not adjacent to, or in close proximity to, another pharmacy or dispensing appliance contractor premises. The Committee further noted the Commissioner's decision stated "*Regulation 31: Not applicable*". On the information available, the Committee therefore determined that it was not required to refuse the application under the provisions of Regulation 31.

Regulation 18

6.7 The Committee noted that this was an application for "unforeseen benefits" and fell to be considered under the provisions of Regulation 18 which states:

"(1) If—

- (a) *NHS England receives a routine application and is required to determine whether it is satisfied that granting the application, or granting it in respect of some only of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB; and*
- (b) *the improvements or better access that would be secured were or was not included in the relevant pharmaceutical needs assessment in accordance with paragraph 4 of Schedule 1,*

in determining whether it is satisfied as mentioned in section 129(2A) of the 2006 Act (regulations as to pharmaceutical services), NHS England must have regard to the matters set out in paragraph (2).

(2) Those matters are—

- (a) *whether it is satisfied that granting the application would cause significant detriment to—*
 - (i) *proper planning in respect of the provision of pharmaceutical services in the area of the relevant HWB, or*
 - (ii) *the arrangements NHS England has in place for the provision of pharmaceutical services in that area;*
- (b) *whether, notwithstanding that the improvements or better access were not included in the relevant pharmaceutical needs assessment, it is satisfied that, having regard in particular to the desirability of—*
 - (i) *there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB (taking into account also NHS England's duties under sections 13I and 13P of the 2006 Act (duty as to patient choice and duty as respects variation in provision of health services)),*
 - (ii) *people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access (taking into account also NHS England's duties under section 13G of the 2006 Act (duty as to reducing inequalities)),*
or

- (iii) *there being innovative approaches taken with regard to the delivery of pharmaceutical services (taking into account also NHS England's duties under section 13K of the 2006 Act (duty to promote innovation)),*

granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant pharmaceutical needs assessment was published;

- (c) *whether it is satisfied that it would be desirable to consider, at the same time as the applicant's application, applications from other persons offering to secure the improvements or better access that the applicant is offering to secure;*
 - (d) *whether it is satisfied that another application offering to secure the improvements or better access has been submitted to it, and it would be desirable to consider, at the same time as the applicant's application, that other application;*
 - (e) *whether it is satisfied that an appeal relating to another application offering to secure the improvements or better access is pending, and it would be desirable to await the outcome of that appeal before considering the applicant's application;*
 - (f) *whether the application needs to be deferred or refused by virtue of any provision of Part 5 to 7.*
 - (g) *whether it is satisfied that the application presupposes that a gap in pharmaceutical services provision has been or is to be created—*
 - (i) *by the removal of chemist premises from a pharmaceutical list as a consequence of the grant of a consolidation application, and*
 - (ii) *since the last revision of the relevant HWB's pharmaceutical needs assessment other than by way of a supplementary statement.*
- (3) *NHS England need only consider whether it is satisfied in accordance with paragraphs (2)(c) to (e) if it has reached at least a preliminary view (although this may change) that it is satisfied in accordance with paragraph (2)(b)."*

- 6.8 The Committee considered that Regulation 18(1)(a) was satisfied in that it was required to determine whether it was satisfied that granting the application, or granting it in respect of some only of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB.
- 6.9 The Committee went on to consider whether Regulation 18(1)(b) was satisfied, i.e. whether the improvements or better access that would be secured if the application was granted were or was included in the Pharmaceutical Needs Assessment ("the PNA") in accordance with paragraph 4 of Schedule 1 of the Regulations.
- 6.10 Paragraph 4 of Schedule 1 requires the PNA to include: "a *statement of the pharmaceutical services that the HWB had identified (if it has) as services that are not provided in the area of the HWB but which the HWB is satisfied (a) **would** if they were provided....secure improvements or better access, to pharmaceutical services... (b) **would** if in specified future circumstances they were provided...secure future improvements or better access to pharmaceutical services...*" (emphasis added).

- 6.11 The Committee considered the PNA prepared by Coventry City Council and Warwickshire City Council, 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 1 October 2022 and that no supplementary statements had been issued.
- 6.12 The Committee noted from the PSRC report that the proposed site is located in Rugby, Warwickshire.
- 6.13 The Committee had regard to the conclusion section in relation to Warwickshire which states:
- 6.13.1 *"There is good access for community pharmacies in Warwickshire, with 86 of the 106 pharmacies in the county being open on a Saturday and almost the entirety of the county being within a 15-minute drive of a pharmacy."*
- 6.13.2 *"Whilst the PNA concludes that there is an adequate provision of pharmaceutical services in Warwickshire to serve the needs of the population, there is an opportunity to encourage community pharmacies to be part of service pathways."*
- 6.13.3 *"Local commissioning organisations should therefore continue to consider pharmacies among potential providers when they are looking at the unmet pharmaceutical needs and health needs of the local population, including when considering options for delivering integrated care."*
- 6.14 The Committee noted that the Applicant seeks to provide unforeseen benefits to the patients of Rugby. The Committee noted that the improvements or better access that the Applicant was claiming would be secured by its application were not included in the relevant PNA in accordance with paragraph 4 of Schedule 1.
- 6.15 In order to be satisfied in accordance with Regulation 18(1), regard is to be had to those matters set out at 18(2). The Committee's consideration of the issues is set out below.

Regulation 18(2)(a)(i)

- 6.16 The Committee had regard to
- "(a) whether it is satisfied that granting the application would cause significant detriment to—
- (i) proper planning in respect of the provision of pharmaceutical services in the area of the relevant HWB"
- 6.17 The Committee noted the Commissioner in their decision report stated "*Regulation 18(2)(a)(i) Not satisfied. Granting the application would not cause significant detriment to the proper planning and provision of pharmaceutical services in the HWB area*". This had not been disputed on appeal.
- 6.18 The Committee was therefore not satisfied that significant detriment to the proper planning of pharmaceutical services would result from a grant of the application.

Regulation 18(2)(a)(ii)

6.19 The Committee had regard to

"(a) whether it is satisfied that granting the application would cause significant detriment to— ...

(ii) the arrangements NHS England has in place for the provision of pharmaceutical services in that area"

6.20 The Committee noted the Commissioner had not made a determination in respect of this. However no party had sought to argue that the granting of the application would cause significant detriment to the arrangements currently in place for the provision of pharmaceutical services.

6.21 Therefore on the basis of the information before it, the Committee was not satisfied that significant detriment to the arrangements currently in place for the provision of pharmaceutical services would result from a grant of the application.

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

Regulation 18(2)(b)

6.23 The Committee had regard to

"(b) whether, notwithstanding that the improvements or better access were not included in the relevant pharmaceutical needs assessment, it is satisfied that, having regard in particular to the desirability of—

(i) there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB (taking into account also NHS England's duties under sections 13I and 13P of the 2006 Act (duty as to patient choice and duty as respects variation in provision of health services)),

(ii) people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access (taking into account also NHS England's duties under section 13G of the 2006 Act (duty as to reducing inequalities)), or

(iii) there being innovative approaches taken with regard to the delivery of pharmaceutical services (taking into account also NHS England's duties under section 13K of the 2006 Act (duty to promote innovation)),

granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant pharmaceutical needs assessment was published"

Regulation 18(2)(b)(i) to (iii)

6.24 The Committee had regard to the proposed location of the pharmacy, as identified by the map and site visit report provided by the Commissioner, which is south of Rugby town centre at "Kingsway parade".

6.25 From the site visit report, the Committee noted *"the parade comprises of 6 shops including a nail salon, Chinese takeaway, betting shop and cafe. The proposed location is a large Costcutter convenience store with a post office. There are no vacant units in the parade or within the Costcutter store".* Further *"outside the parade are 14 car park spaces"* and *"local buses do not stop on the parade but within 75 metres are the*

numbers 63 and 64 buses". The Committee noted the Applicant's comment that *"there is no pharmacy on the south side of Rugby with most pharmacies being within the city centre"* and *"being at a location which will be easily and conveniently accessible for the local population and in close proximity to other shops and services"*. The Committee concluded that the range of facilities in the area were limited and residents would need to travel outside of the area to access a wider range of facilities and services, particularly as the parade is located outside of the town centre.

- 6.26 The Committee noted the Applicant's comments that the application *"has been prompted by the closure of a Lloyds Pharmacy branch previously located within Sainsbury's at CV22 6HU"* which *"will further increase the pressure on other local pharmacies"*. The Committee was mindful that the closure of one pharmacy does not automatically lead to a gap in service provision and that its consideration of reasonable choice was with regard to 'the area of the relevant HWB'. The Committee observed that the location of the proposed site is not at the same site as the former Lloyds Pharmacy. As Lloyds Pharmacy was co-located with Sainsbury's and Sainsbury's is a local destination point, the Committee reasonably observed that it is likely that patients across Rugby would have accessed Lloyds Pharmacy at the same time as doing their food shopping. The Committee was therefore mindful that the shops located at the parade, as outlined at 6.25 above are not a "like for like" swap.
- 6.27 The Committee had regard to the Applicant's view that increasing pharmaceutical service provision in the area will meet the needs of the growing residential population. However no further information has been provided to support the needs and growth of the population and the Committee was mindful that even if there is an associated increase in population, this does not automatically lead to the requirement to grant an application. The Committee went on to consider access to the existing pharmacies.
- 6.28 From the Commissioner's decision report, the Committee noted that there are six pharmacies within a mile of the proposed location. In the Applicant's view, the nearest pharmacy to the proposed location is Bilton Pharmacy however from the Commissioner's map and site visit report, Well and Asda Pharmacy located in the town centre appear to be closer in distance. The Committee noted the Commissioner's comment that Well and Asda Pharmacy are 0.7 miles from the proposed location and are located within 75 metres of each other. The Committee also noted the Applicant's response that *"they have stated that the distance to the pharmacy is under 1 mile. Although this may be the case as the crow flies, the actual distance by car is 1.4 miles"*. In their appeal, the Applicant has stated the distance to Asda Pharmacy is 0.8 miles and Well is 1.4 miles away. The Committee noted from the Commissioner's map that there are two Well pharmacies in Rugby and considered it reasonable to assume that the Applicant was referring to Well on Drover Close whereas the Commissioner was referring to Well on Sheep Street. To support this finding, the Committee noted the distance indicator on the map that Well on Sheep Street is likely to be between 0.7 and 0.8 miles from the proposed location and Well on Drover Close is likely to be double that. The Committee did not consider the distance involved to be excessive for those who are willing and able to walk to the nearest pharmacies and was mindful that distance of itself does not necessarily lead to the conclusion that a pharmacy is difficult to access.
- 6.29 From the site visit report, the Committee noted that the road from the proposed location to the town centre is *"downhill for part of the way and then flat pavements"* and *"the walk would take approximately 15 minutes to the town centre and 20 minutes back to the parade"*. The Committee considered it reasonable to assume that the road referred to is Dunchurch Road. The Committee noted the Applicant's comment that Dunchurch Road *"has a steep incline leading to the nearest pharmacy"* and *"walking to Asda Pharmacy takes 19 minutes"*. It was unclear to the Committee why the facts provided by the Commissioner and the Applicant differ however it is clear that there must be some form of gradient from the proposed location, whether it is ascending or descending, to the nearest pharmaceutical provision. The Committee noted that the Applicant has not provided any specific evidence to show that patients are struggling

to physically access pharmacies due to the route involved. The Committee also saw no evidence to suggest that there are any other barriers for those on foot such as a lack of pedestrian crossings, poorly maintained pavements or inadequate street lighting. However the Committee was mindful that some patients may be discouraged to access the existing pharmacies on foot due to the gradient involved but this would depend on their starting point. The Committee went on to consider the alternative means of accessing the nearest existing pharmacies for those unable or unwilling to make the journey on foot.

- 6.30 Looking at bus services in the area, the Committee noted the findings from the site visit report that bus numbers 63 and 64 pass along A426, Dunchurch Road which, according to the Commissioner, is the *“direct road to Rugby Town Centre”*. The Committee noted that both buses stop outside or on the opposite side of the road to Central Surgery *“with patients able to cross the road by a traffic lights”*. Further, the Committee noted that *“Central Surgery is within 50-75 metres”* of Well on Sheep Street and Asda Pharmacy. In terms of service frequency, the Committee noted that *“the 63 and 64 buses stop every hour Monday to Friday, every 2 hours on a Saturday and every three hours on a Sunday”*. The Committee noted the comments from the Applicant that *“if a bus is missed, the one-way journey to the nearest pharmacy can take nearly two hours, followed by an additional walk to the pharmacy in the town centre”* and *“those without a car will...[incur] costs to travel by public transport”*. However the Committee was of the view that patients would factor bus times into their plans and for patients generally reliant on public transport, the Applicant had not provided any evidence to show that they were currently having difficulties in accessing the existing pharmaceutical provision. The Committee had no information to show that bus fares are so expensive so as to inhibit their use by persons in the area to access existing pharmaceutical services. The Committee was also aware that some individuals would be eligible for travel concessions. In addition, the Committee noted that if the application were to be granted, patients would use the same buses to access the Applicant's pharmacy and noted that once the bus passes the proposed site, it continues into the town centre and stops near the GP Surgery and two other pharmacies so it is unlikely that patients would disembark at the proposed site when they can access a wider range of facilities and services in the town centre.
- 6.31 From the site visit report, the Committee noted that Warwickshire Council provide a *“dial a ride service”* for people with mobility issues and without transport. The service runs from 7am to 7pm Monday to Friday. The Committee noted the Applicant's comment in response that *“it must be booked in advance”* and *“this service is not ideal for patients with mobility issues who need urgent prescriptions, Pharmacy First services, or same-day face-to-face consultations. Additionally, it is subject to availability and costs £6 for a round trip”*. The Committee appreciated that this provides a further means for patients to access pharmaceutical services however without further information such as the route map, frequency of the service or frequency of use, the Committee found it difficult to assess its impact. The Committee noted the Applicant's comment regarding the cost of the service but the Applicant had not provided any information to show that the fare is so expensive that it is stopping persons from using the service to access pharmaceutical services. The Committee next considered access for those with a private vehicle.
- 6.32 The Committee noted that Rowlands Pharmacy, in their representations had stated that *“Rugby is an affluent Town with a highly mobile population with high levels of car ownership”*. This had not been disputed by parties. The Committee noted the comment from the Applicant that *“it would still be almost 1 mile to travel to the nearest pharmacy by car”*. The Committee also had regard to its earlier observation that Asda Pharmacy and Well on Sheep Street are between 0.7 and 0.8 miles away from the proposed location and these pharmacies *“surround a large car park just off the town centre pedestrian streets”* as stated in the site visit report, which had not been disputed. The Committee considered the distance involved to be more than reasonable for those with access to a car and further, the Applicant had not provided any evidence to show that patients have difficulty parking or that the area is congested. The Committee did

acknowledge the Applicant's comment that *"most pharmacies... are not the most accessible with patients having to pay for parking for each visit"* but no further information had been provided to show that the cost of parking was a barrier for patients accessing the existing pharmaceutical service provision.

- 6.33 The Committee noted that the majority of the existing pharmacies identified on the Commissioner's map are within Rugby town centre and are nearby to an Asda supermarket or a shopping centre. Further, in the site visit report, the Commissioner stated that *"Rugby Town Centre has a large number of leisure and financial services [sic]"* which had not been disputed. As stated earlier, the Committee determined that residents will be accustomed to accessing the town centre on a regular basis to access a range of amenities.
- 6.34 The Committee noted the comment from the Applicant that *"there have...been a considerable amount of complaints from other pharmacies in Rugby"* and *"reviews of local pharmacies on google and the NHS websites suggest they could already be struggling with keeping up with demand for pharmaceutical services"*. The Committee had regard to the selection of Google reviews provided by the Applicant in their appeal for Well on Sheep Street and Asda Pharmacy. It is unclear what time period the reviews had been left over and which reviews are for Asda Pharmacy and which are for Well. The reviews appear to relate to waiting times and general performance issues which should not be a reason to completely discount the existence of a pharmacy when considering whether there is reasonable choice although waiting times will affect an individual's decision whether to make the journey to that pharmacy. It is the Commissioner's duty to act on reports of negative service. The Committee noted the Commissioner had confirmed that *"the office of the west midlands has not received any complaints form [sic] residents living near the proposed location regarding any difficulties accessing pharmaceutical services"*. The Committee also noted the comment from Rowlands Pharmacy that *"the Applicant has conveniently left out all positive Google reviews received for local pharmacies and has presented a biased picture"*.
- 6.35 The Committee had regard to the information provided by the Applicant on comments the then local MP Mark Pawsey had made across several channels in relation to the pharmaceutical provision in Rugby in general. The Committee paid particular attention to the comments from the two patients in the Warwickshireworld article. The Committee noted the reference to *"the closure of Rowlands Pharmacy in Corporation Street"* however the Committee acknowledged the representations made by Rowlands Pharmacy on the appeal that this *"was as part of an NHS approved consolidation, and by definition does not create a gap in..."*. Patient one states that they *"could not get to Boots in Leicester Road without extreme difficulty"* however the Committee noted that this pharmacy is not on the map provided by the Commissioner and no further information had been provided to confirm its location. Patient two states *"the situation has worsened since the announcement of Boots' imminent closure"* but this closure has not been commented on by any of the parties so it is unclear whether this has happened or not and which Boots premises the comment relates to. The Committee noted the comments in relation to Well on Sheep Street which relate to performance and wait times and noted the response from the spokesperson for Well that they have since recruited new staff and are offering additional training.
- 6.36 The Committee noted the comment from the Applicant that *"we are also awaiting the results of a survey conducted by Healthwatch Warwickshire (<https://www.healthwatchwarwickshire.co.uk>) regarding pharmacy services in Warwickshire"* and that the release date for the survey results were postponed to 23 August 2024 or later. Notwithstanding the fact, that the Applicant did not provide a copy of the results within the required time period, the Committee considered the report findings quite broad and not specific to the location of the application.
- 6.37 The Committee had regard to the dispensing figures provided by the Applicant for the former Lloyds Pharmacy until mid-2023. It noted the pharmacy dispensed

approximately 14,000 items a month. The Committee noted that this was a significant amount and also the Applicant's comment that *"the average number of prescriptions dispensed per pharmacy per month in England to March 2021 (the latest data available) was 6,565, therefore the local area has a high demand spread across the locality for pharmaceutical services"*. The Committee had already considered current service provision at 6.34 and 6.35 and was of the view that the Applicant had not sufficiently demonstrated that the current pharmacies in the area have difficulties with absorbing the additional prescriptions.

- 6.38 Therefore Committee was of the view that there is already reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB, such that it was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits on persons.
- 6.39 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.
- 6.40 The Committee noted that the Applicant highlights those who are elderly, less-abled and families with young children may find the journey challenging and access difficult to the existing pharmaceutical services but have not given an explanation as to why they are of this view or provided evidence to support this. The Committee did note the small number of comments that are either from patients with protected characteristics or reference them however the Committee was of the view that the Applicant had not identified any specific services which those with a protected characteristic are having difficulty accessing. The Committee considered that the issues of general needs and difficulties have already been addressed above in the context of access and choice. The Committee was therefore not satisfied that, having regard to the desirability of people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that are difficult for them to access, granting the application would confer significant benefits on persons.
- 6.41 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 no information had been provided to suggest that any innovative approaches would be taken with regard to the delivery of pharmaceutical services. The Committee was therefore not satisfied that, having regard to the desirability of there being innovative approaches taken with regard to the deliverability of pharmaceutical services, granting the application would confer significant benefits on persons.

Regulation 18(2)(b) generally

- 6.42 The Committee noted the Applicant's proposed core hours which are, 8.30am to 1pm and 2pm to 6pm Monday to Friday and 9am to 12pm on Saturday. From the Commissioner's site visit report, the Committee noted that Well on Sheep Street and Asda Pharmacy have core opening hours on a Saturday morning with Asda Pharmacy's core opening hours including Saturday afternoon/evening and Sunday which are times that the Applicant is not proposing to open.
- 6.43 The Committee noted that the Applicant's core hours total 45.5 hours a week.
- 6.44 The Committee had regard to Schedule 4, Part 3 of the Regulations which states:

“Pharmacy opening hours: general

23.—(1) *An NHS pharmacist (P) must ensure that pharmaceutical services are provided at P’s pharmacy premises—*

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

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

- 6.45 The Committee noted that, if the application were to be granted, a direction would need to be issued for the fourteen and a half “additional” hours.
- 6.46 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. The Committee was also mindful that the Commissioner has the authority to bring about changes to the opening hours of existing pharmacies where it feels there is a need to do so.
- 6.47 The Committee has considered whether there are any other factors that would confer significant benefits including on patients who share protected characteristics. The Committee had regard to the need to eliminate discrimination and advance equality of opportunity and foster good relations between these patients and those who do not share their protected characteristics.
- 6.48 The Committee was of the view that in accordance with Regulation 18(2)(b) the granting of this application would not confer significant benefits on persons in the area of the HWB which were not foreseen when the PNA was published.

Other considerations

- 6.49 Having determined that Regulation 18(2)(b) had not been satisfied, the Committee did not need to have regard to Regulation 18(2)(c) to (e).
- 6.50 No deferral or refusal under Regulation 18(2)(f) was required in this case.
- 6.51 The Committee had regard to Regulation 18(2)(g) and found no reason that required it to refuse the application under this regulation.
- 6.52 The Committee considered whether there were any further factors to be taken into account and concluded that there were not.
- 6.53 The Committee was not satisfied that the information provided demonstrates that there is difficulty in accessing current pharmaceutical services such that a pharmacy at the proposed site would provide better access to pharmaceutical services.
- 6.54 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 6.54.1 confirm the Commissioner’s decision;
 - 6.54.2 quash the Commissioner’s decision and redetermine the application;
 - 6.54.3 quash the Commissioner’s decision and, if it considers that there should be a further notification to the parties to make representations, remit the matter to the Commissioner.

- 6.55 Given that some of the Regulations were not considered and that limited reasoning for its decision was provided by the Commissioner, the Committee determined that the decision of the Commissioner must be quashed.
- 6.56 The Committee went on to consider whether there should be a further notification to the parties detailed at paragraph 19 of Schedule 2 of the Regulations to allow them to make representations if they so wished (in which case it would be appropriate to remit the matter to the Commissioner) or whether it was preferable for the Committee to redetermine the application.
- 6.57 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 not been circulated to all parties as part of the processing of the application by the Commissioner. The Committee noted that Schedule 3, Part 3, paragraph 7 had been relied upon and that all parties, including the Applicant, had been given the opportunity at the appeal stage to make representations on them if they wished. The Committee further noted that when the appeal was circulated representations had been sought from parties on Regulation 18.
- 6.58 The Committee concluded that further notification under paragraph 19 of Schedule 2 would not be helpful in this case.

7 DECISION

- 7.1 The Committee appointed by NHS Resolution, quashes the decision of the Commissioner, for the reasons given above, and redetermines the application.
- 7.2 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.
- 7.3 The Committee has considered whether the granting of the application would cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area covered by the HWB, or the arrangements in place for the provision of pharmaceutical services in that area and is not satisfied that it would;
- 7.4 The Committee determined that the application should be refused on the following basis:
- 7.4.1 In considering whether the granting of the application would confer significant benefits, the Committee determined that –
- 7.4.1.1 there is already a reasonable choice with regard to obtaining pharmaceutical services;
- 7.4.1.2 there is no evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services; and
- 7.4.1.3 there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services;
- 7.4.2 Having taken these matters into account, the Committee is not satisfied that granting the application would confer significant benefits as outlined above that would secure improvements or better access to pharmaceutical services.