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25 October 2024

REF: SHA/26264

APPEAL AGAINST NHS ENGLAND (BUCKINGHAMSHIRE, OXFORDSHIRE AND BERKSHIRE WEST ICB) DECISION TO GRANT AN APPLICATION BY CA-HEALTH LIMITED FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT 1 – 60 ST. MARY'S STREET, 1 – 55 ST. MARTIN'S STREET, 1 – 101 HIGH STREET, 1 – 9 CASTLE STREET AND 1 – 24 MARKET PLACE, WALLINGFORD (BEST ESTIMATE)

1 Outcome

1.1 The Pharmacy Appeals Committee ("the 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:

Temple Bright LLP (on behalf of CA-Health Limited)
Rushport Advisory LLP (on behalf of Cholsey Healthcare Limited)
PCSE (on behalf of the Commissioner)
Boots UK Ltd

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1 The Application

By application dated 29 August 2024, CA-Health Ltd ("the Applicant") applied to Buckinghamshire, Oxfordshire and Berkshire West ICB for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at 1 – 60 St Mary's Street, 1 – 55 St. Martin's Street, 1 – 101 High Street, 1 – 9 Castle Street and 1 – 24 Market Place, Wallingford (Best Estimate). In support of the application, it was stated:

In the Applicant's view this application should not be refused pursuant to Regulation 31 for the following reasons:

1.1 "Not applicable."

Supporting information

1.2 "Location:

1.3 Wallingford is a rural market town with a population of 11,600 according to the 2011 census. The river Thames spans to its north, northwest and southeast and it has a significant industrial estate to the west, resulting in a population that is very localised and relatively isolated from surrounding communities.

1.4 This proposal is to open a new pharmacy in the central shopping area of Wallingford in the vicinity of the former site of Lloyds pharmacy to restore the pharmaceutical services due to [sic] unexpected closure of Lloyds pharmacy.

1.5 This is a high street location consisting of Waitrose supermarket, newsagents, banks, charity shops and stationary [sic] shops, hairdresser, takeaways, restaurants, several patisserie and coffee shops i.e. Costa, Greggs and post office, in simple terms: a hub of activity frequented by the local population on a daily basis. This means that people don't necessarily have to leave the area as part of their daily lives.

1.6 Wallingford contains a mix of industrial units, housing (which is a mix of privately owned and housing association housing) making up a population of 11,600 according to the 2011 census. The current resident population is likely to be higher than the figure given in the 2011 census and continues to grow with remarkable ongoing housing developments in the area. These include the Highcroft Wallingford development (already reached second phase of development) comprising of 600 2 – 4 bedroom apartments and homes on [sic] North side and similarly, Wallingford Reach, another 300 housing development on the East side. The older established residential area has also seen multiple smaller scale new development.

1.7 The area contains a large number of residents who share a protected characteristic. In particular:

1.7.1 8232 people (3435 households) living in Wallingford took part in local Insight profile in 2021. Of those:

1.7.1.1 19.7% are aged 15 and under;

1.7.1.2 21.5% are aged 65 and above.

1.7.2 This indicates there is a large number of elderly residents in Wallingford, 4% above the national average.

1.8 The report shows that, in comparison to the rest of South Oxfordshire, Wallingford is the most deprived and has performed the worst in all categories such as vulnerable groups (disabled, mental health), in receipt of attendance allowance, Personal Independent Payment or universal credit. Prevalence of diseases like AF, asthma, cancer, cardiovascular, dementia, heart failure and osteoporosis are higher than the national average with depression being as much as 5% more prevalent here.

1.9 Additionally, 17.3% households [sic] do not have a car or van and 45% households have only one car. 15.5% are living with a limiting long-term condition. 11.8% live with severe back pain all the time / unable to walk quarter of a mile unaided. These individuals rely on the local healthcare service, including pharmacies, for the fulfilment of their healthcare needs.

1.10 Wallingford also contains a community hospital as well as a maternity / birthing centre, a large GP surgery and several care homes and nursing homes in the vicinity. Due to the demographics of Wallingford these are entirely dependent on the only pharmacy in Wallingford (Boots) for their pharmacy / healthcare needs.

1.11 There are 6 schools (primary and secondary) within Wallingford placing significant demand on pharmacy services:

1.11.1 St John's Primary School: 210

1.11.2 Wallingford School: 1309

1.11.3 St Nicholas Infant School: 194

1.11.4 Fir Tree Junior School: 260

1.11.5 Bright Well Primary School: 150

1.11.6 Crowmarsh Gifford Primary School: 210

1.12 In addition to the resident population, it is anticipated that several hundred people visit Wallingford from the industrial estate on a daily basis.

1.13 Finally, due to its historical relevance, Wallingford brings travellers / tourists to the area throughout the year, more so during the summer.

1.14 Please see attached satellite imagery of Wallingford. [provided at Appendix A for Committee.]

1.15 Another Pharmacy would confer significant benefits in term of:

Access

1.16 The reliant population has difficulties accessing pharmaceutical service provision as the Lloyds pharmacy on 20 Market Place, OX10 0AD recently closed unexpectedly therefore all Lloyd's patients had no choice but to transfer to Boots Pharmacy – the only pharmacy in this area now.

1.17 Consequently, Boots pharmacy has been overwhelmed with demand for pharmaceutical services and patients are suffering long waiting times, inability to have alternative choice of supplier/wholesaler when Boots haven't been able to fulfil prescription for items out of stock (OOS). On occasions, there has been a total absence of pharmaceutical service when Boots pharmacy has been unable to open doors due to shortage of staff either no locum pharmacist or no support staff. Social media reviews and customer complaint log validate above issues.

1.18 Since Boots is the only pharmacy in Wallingford, if they are not able to fulfil the supply within a timely manner, the patients have no choice but to travel to another town. This can prove to be difficult given the number of patients with no access to car, long term debilitating illness and the relatively isolated nature of this community.

1.19 It is impossible to travel to pharmacies outside of Wallingford by foot due to relatively remote rural open land terrain (55 min one way hike) to the next nearest pharmacy located 2.5 miles away (Rowlands Pharmacy on 1 Pound Lane which is located within a residential area of Cholsey to the South of Wallingford).

1.20 As well as being inaccessible by foot, Rowlands Pharmacy is difficult to access by bus, because even the most direct bus route (bus 136) consists of 20 minute walk from the last stop to Rowlands Pharmacy.

1.21 Unless a patient has access to a car at the time when they require access to pharmaceutical services, there is essentially no choice of service provision as they can only access the Boots Pharmacy in Wallingford. In support, 63% of the population either have no car or only one car, there will therefore be a significant proportion of residents who cannot use a car to access pharmacies, either because they do not own a car, or because the car is in use by another member of the household (for example to commute to work). Needless to say, a large proportion of residents will take objection to use of a car even if available as its perhaps counterintuitive to the environmentally greener conscious. Also, there is a high number of elderly residents in the area who may have issues with mobility affecting their ability to drive.

1.22 Granting the application would secure better access to pharmaceutical service provision. In particular, it would confer significant benefits on the reliant population in terms of access to pharmacies.

Reasonable choice

1.23 Boots being the only pharmacy serving a population in excess of 12,000 in Wallingford, with long waiting times, restricted choice of medicine supply due to contractual obligations to particular wholesaler and significant barriers to accessible pharmacies in other towns means that there is no reasonable choice for patients. The clear and obvious pressure on Boots pharmacy is best evidenced by the fact that patients are forced to wait for a very long time in order to receive their prescribed medication. Some patients wait for a very long time in order to receive their prescribed medication. Some patients wait even before the pharmacy doors open at 9am in bad weather in order to be seen the same day and long queues building towards the end of the day due to the fact that Boots pharmacy closes at 5.30pm.

1.24 The lack of reasonable choice is particularly relevant to this application given the size and nature of the reliant population (both resident and visiting) and the relative isolation of this community. Similarly, as mentioned above, existing pharmacies in surrounding villages do not secure a reasonable choice of pharmaceutical service provision for reason of access difficulties.

1.25 Granting the application would secure improvements in the provision of pharmaceutical services. It would confer significant benefits on the reliant population since it would give patients a reasonable choice.

1.26 Please find attached the Google reviews of the current one and only pharmacy (Boots) [provided at Appendix A for Committee]. From the reviews, it is apparent that since the closure of Lloyds Pharmacy, standards have dropped and customer dissatisfaction heightened at Boots Pharmacy.

Innovation in service delivery

1.27 As mentioned previously, patients cannot access essential pharmaceutical services due the [sic] pressure of demand on the only exiting [sic] pharmacy (which are not limited to the dispensing of medicines on prescription but also include, for example, support for self-care and healthy lifestyle advice. Pharmacy at proposed site will undertake all essential and advanced pharmaceutical services together with such public health and enhanced services.

1.28 As per NHS long term plan and RPS published principle 12 where all patient facing pharmacist should be independent prescribing pharmacists (IP). Therefore, the responsible pharmacist at the new pharmacy will be an IP providing all services listed above in addition to the ability to amend/correct prescriptions, prescribe alternatives for OOS, enact the seriously short protocols (SSP) and take off the burden from local GP surgeries.

1.29 The proposed pharmacy will provide services during extended hours from 9am to 6pm Monday to Friday. The provision of pharmaceutical services during these hours would confer significant benefits on the reliant population, e.g. Boots closes at 5.30pm Monday to Friday. Indeed, all pharmacies within a 6 mile radius close by 5.30pm. This significantly impairs access to pharmaceutical service provision, particularly for those who are in work during the week.

1.30 This application also has the absolute support of local groups including

1.30.1 House of Lords – Bill Bradshaw.

1.30.2 Mayor of Wallingford – Marcus Harris.

1.30.3 And 11 councillors namely Cllr Sue Hendrie, Cllr Steve Holder, Cllr Katharine Keats-Rohan, Cllr Steve Beatty and several others."

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

1.31 "Having regard to the reliant population, including the population with a protected characteristic, granting this application would bring improvements in, and better access to, the reliant population.

1.32 1) Access to pharmaceutical services. Currently the existing access to pharmaceutical service is very restricted and overwhelmed with demand. The only pharmacy, Boots Pharmacy, in the area is serving a population size that will typically be served by 3 pharmacies in any other town.

1.33 2) Choice. The unexpected closure of Lloyds pharmacy in the area has resulted in a lack of reasonable choice for local population. This application would secure better access to service provision by enabling the reliant population to restore choice in their own community.

1.34 3) Innovation in service delivery. A replacement of the Lloyds pharmacy will provide a range of enhanced, advanced and public health services at times that would meet the needs of those in Wallingford. Pharmacist prescribing services will safely expedite the

clinical services and reduce the burden on local GP surgeries or 111 services resulting in more comprehensive pharmaceutical service to patients. This would allow for a new outlet of service delivery to the reliant population and, for the first time, enable local patients and patients for surrounding villages (a radius of 6 miles) to access healthcare for extended hours beyond 17:30."

2 **The Decision**

[Any reference to 'Committee' in this section is not to be confused with the Pharmacy Appeals Committee of NHS Resolution]

The Commissioner considered and decided to grant the application. The decision letter dated 20 June 2024 states:

2.1 "Buckinghamshire, Oxfordshire and Berkshire West ICB has considered the above application and I am writing to confirm that it has been granted. Please see the enclosed report for the full reasoning."

DECISION REPORT DATED 22 MAY 2024

2.2 "Introduction and background

2.3 An unforeseen benefits application had been received from CA Health Ltd, on 14 February 2024 from the best estimate address of 1-60 St Mary's Street, 1 - 55 St Martin's Street, 1 - 101 High Street, 1 - 9 Castle Street and 1-24 Market Place, Wallingford.

2.4 The Committee was now required to consider the application in accordance with Regulations 18 and 19 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.

2.5 Full details of the applicant's proposal had been notified to the various interested parties in accordance with the regulations. Comments had been received from the following parties Boots UK Ltd, Cholsey Healthcare Ltd, L. Rowlands & Co (Retail) Ltd and Thames Valley LPC. There were also follow up comments from the applicant.

2.6 Consideration by the Committee

2.7 The Committee had before it:

2.7.1 The NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.

2.7.2 Department of Health guidelines on market entry by means of pharmaceutical needs assessment – Chapter 8 – Unforeseen Benefits.

2.7.3 The Report which included:

2.7.3.1 the application form and information provided by the Applicant,

2.7.3.2 letters from interested parties and a response to those comments from the Applicant,

2.7.3.3 maps of the location,

2.7.3.4 opening times and distances to surrounding pharmacies and GP Practices,

2.7.3.5 a site visit report,

2.7.3.6 Oxfordshire PNA extracts and a link to the full PNA,

2.7.3.7 demographic information including population density,

2.7.3.8 public transport information,

2.7.3.9 prescription information,

2.7.3.10 copies of a number of concerns raised by residents,

2.7.3.11 the relevant Regulations (18, 19, 31, 50).

2.8 In relation to the application, the Committee noted the following:

2.8.1 the applicant's fitness information was approved on 20 December 2023

2.8.2 The Committee noted that the applicant was proposing to provide essential, enhanced and advanced services, if commissioned.

2.8.3 The applicant also proposed core opening of 40 hours per week and total proposed opening of 43 hours per week.

2.9 The Committee considered the applicant's statement as to the unforeseen benefits it is offering. The Applicant has stated that *"This proposal is to open a new pharmacy in the central shopping area of Wallingford in the vicinity of the former site of the Lloyds pharmacy to restore the pharmaceutical services due to the unexpected closure of Lloyds pharmacy."*

2.10 The Committee considered information from a virtual site visit of the Wallingford area that had been undertaken by a Pharmacy Commissioning Hub representative. Wallingford is a small market town on River Thames in South Oxfordshire and lies 12 miles north of Reading, 13 miles south of Oxford.

2.11 The Committee considered the representations made by Boots UK Ltd, Cholsey Healthcare Ltd, L. Rowlands & Co (Retail) Ltd, Oxfordshire HWB and Thames Valley LPC – and noted the comments made by the interested parties. The Committee noted that Boots UK Ltd and Cholsey Healthcare Ltd opposed the application.

2.12 The Committee also noted that unsolicited comments were received from the Mayor of Wallingford and a member of the public, which were both in favour of a second pharmacy opening in Wallingford. There had also been a number of concerns raised directly with the ICB by members of the public.

2.13 The applicant's response to the representations received during the consultation period was also considered.

<u>Regulation 31 – Refusal: same or adjacent premises</u>

2.14 The Committee first considered Regulation 31(2)(a)(i) and was of the view that Regulation 31(2)(a)(i) is not met as there is currently no person on the pharmaceutical list at the premises to which the application relates.

2.15 The Committee went on to consider paragraph (a)(ii) of Regulation 31(2); whether there is a person on the pharmaceutical list providing pharmaceutical services from adjacent premises.

2.16 The Committee was satisfied that there is no pharmacy providing pharmaceutical services within the area of the best estimate. The application did not therefore need to be refused in accordance with Regulation 31.

Regulations 40,41 and 44

2.17 The Committee noted that the proposed pharmacy location was not in a controlled locality, and therefore Part 7 of the Regulations (in particular Regulations 40, 41 and 44) did not have to be considered.

Regulations 50

2.18 There are 167 dispensing patients living within 1.6km radius of the proposed best estimate address, therefore the Committee noted that if the application was approved it would be required to consider the discontinuation of arrangements for the provision of pharmaceutical services by doctors to the affected patients under Regulation 50.

2.19 The Committee agreed that if the application is approved, it was inclined that the service provided by the dispensing doctors to the affected patients should be discontinued, and that the discontinuation should be postponed in order to give the doctors reasonable notice of the discontinuation, as follows –

2.19.1 Wallingford Medical Practice for a period of three (3) months – (150 patients)

2.19.2 Sonning Common Health Centre for a period of one (1) month – (6 patients)

2.19.3 Goring & Woodcote Medical Practice for a period of one (1) month – (5 patients)

2.19.4 Nettlebed Surgery for a period of one (1) month – (3 patients)

2.19.5 Watery Lane Surgery for a period of one (1) month – (3 patients)

Oral Hearing

2.20 The Committee decided that it was not necessary to hold an oral hearing before determining the application.

Regulation 18 – Unforeseen benefits application

2.21 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) the NHSCB 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 Schedule1,

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

2.22 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.

2.23 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 (the 'PNA') in accordance with paragraph 4 of Schedule 1 of the Regulations.

2.24 The Committee had regard to the Oxfordshire PNA 2022-2025 (issue date 1 April 2022) (the 'PNA') and noted that supplementary statements had been issued but were not in relation to the Wallingford area.

2.25 The Committee also noted that, having considered the entire Oxfordshire locality including the area of Wallingford, the HWB had reached the conclusion that "To summarise, in terms of general access no parts of Oxfordshire are considered to have gap status, although there is a need for service improvement and extra choice in Oxford City centre." [Page 11, Oxfordshire PNA, 2022-25].

2.26 The Committee noted that the HWB had considered access (distance, travelling times and opening hours') to assess how current service provisions will meet the needs of the population within the lifetime of the PNA.

2.27 The Committee noted that the Applicant had stated in their response to the Representations received from circulation of second representations:

"In relation to the PNA, my client's application is submitted pursuant to regulation 18 since it would secure improvements and better access that are not contained within the relevant PNA. It is therefore accepted that the PNA does not identify a gap in service provision in the HWB's area, but the authors of the PNA do not appear to be aware of the significant issues in service provision in Wallingford since the Lloyds Pharmacy closed. For that reason, the significant benefits that would be secured by the granting of my client's application are unforeseen within the context of the PNA."

2.28 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 pharmaceutical needs' assessment in accordance with paragraph 4 of Schedule 1.

2.29 The Committee was satisfied that the unforeseen benefits claimed in the application were not identified in the PNA.

2.30 In order to be satisfied in accordance with Regulation 18(1), the Committee went on to consider those matters set out at Regulation 18(2).

Regulation 18(2)(a)(i) - *whether or not granting the application would cause significant detriment to the proper planning in respect of the provision of pharmaceutical services.*

2.31 The Committee was not aware of any plans that would be affected and concluded that granting the application would not have an adverse effect on any future plans. None of the submissions included any comment or evidence in regard to this matter. Therefore, the Committee concluded that granting the application would not cause significant detriment in this regard.

Regulation 18(2)(a)(ii) - *whether or not granting the application would cause significant detriment to the arrangements in place for the provision of pharmaceutical services.*

2.32 None of the submissions included any evidence on this question and the Committee found no proof to support the suggestion that if the application was to be granted, it would cause significant detriment to the arrangements in place for pharmaceutical services in the area.

2.33 The Committee did not find any significant detriment to proper planning or to the arrangements in place for the provision of pharmaceutical services and therefore was not obliged to refuse the application under Regulation18(2)(a).

Regulation 18(2)(b)(i) – *whether notwithstanding that the improvements or better access were not included in the relevant PNA, it is satisfied that, having regard in particular to the desirability of – there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB – granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant PNA was published.*

2.34 On this point the Applicant has said,

2.35 *"1. Access*

The reliant population has difficulties accessing pharmaceutical service provision as the Lloyds pharmacy on 20 Market Place, OX10 0AD recently closed unexpectedly therefore all Lloyds patients had no choice but to transfer to Boots pharmacy - the only pharmacy in this area now).

Consequently, Boots pharmacy has been overwhelmed with demand for pharmaceutical services and patients are suffering long waiting times, inability to have alternative choice of supplier/wholesaler when boots haven't been able to fulfil prescription for items out of stock (OOS). On occasions, there has been a total absence of pharmaceutical service when Boots pharmacy has been unable to open doors due to shortage of staff either no locum pharmacist or no support staff. Social media reviews and customer complaint log validate above issues."

2.36 The Applicant also stated,

2.37 *"2. Reasonable Choice.*

Boots being the only pharmacy serving a population in excess of 12,000 in Wallingford, with long waiting times, restricted choice of medicine supply due to contractual obligations to particular wholesaler and significant barriers to accessible pharmacies in other towns means that there is no reasonable choice for patients. The clear and obvious pressure on Boots pharmacy is best evidenced by the fact that patients are forced to wait a very long time in order to receive their prescribed medication. Some patients wait even before the pharmacy doors open at 9:00am in bad weather in order to be seen the same day and long queues building towards the end of the day due to the fact that boots pharmacy closes at 5:30pm.

The lack of reasonable choice is particularly relevant to this application given the size and nature of the reliant population (both resident and visiting) and the relative isolation of this community. Similarly, as mentioned above, existing pharmacies in surrounding villages do not secure a reasonable choice of pharmaceutical service provision for reasons of access difficulties."

2.38 The Committee noted the Boots UK Ltd representations that stated, *"The Lloyds pharmacy has now been closed for several months. As the ICB will be aware, the closure of a pharmacy within an area does not automatically create a gap and should a gap have arisen as a consequence of such a closure, then the PNA should be updated to reflect this."*

2.39 The Committee noted the L. Rowlands & Co (Retail) Ltd representation that stated, *"We therefore really question the gap that the application is seeking to fill. Despite the closure of the Lloyds Pharmacy, there are numerous pharmacies within a short radius, including our own, with various opening hours and broad service provision, providing".*

2.40 The Committee noted the Oxfordshire HWB representations that stated, *"Our PNA has not identified a gap in services in the Wallingford area as all residents are within the 20 min travel time criteria to the single town centre provider and have option to travel to nearby villages for alternative services if preferred. We note Wallingford's population is growing and the need for local pharmaceutical services in this area will be reviewed again in our 2025 PNA, but at this time we do not identify a gap in services here."*

2.41 The Committee noted the Thames Valley LPC representations that stated, "*The LPC does not believe the applicant has demonstrated this. There is no evidence that the pharmacy will provide additional services that are not available elsewhere."*

2.42 The Committee noted the Rushport Advisory LLP on behalf of Cholsey Healthcare Ltd representations that stated,

2.43 *"Given the rural nature of the surrounding areas it may well be sensible to include the population of surrounding villages when considering this application. However, it is then important to also consider the pharmaceutical services provided by pharmacies that are located outside of Wallingford such as Cholsey Healthcare Limited's pharmacy in Cholsey (2.6 miles from Wallingford) and Benson Pharmacy, High Street, Benson which is 2.1 miles north of Wallingford."*

Whilst we would agree that patients are unlikely to travel to alternate pharmacies on foot, they can travel to them using cars and via public transport. For example, the Applicant states that the nearest alternate pharmacy is Rowlands in Cholsey and comments that access by bus is not practical. However, the Applicant has simply ignored Benson Pharmacy which is located 2.1 miles from Wallingford and which is accessible via an almost door to door bus service (136) or the X40 service which does require an additional walk to Benson Pharmacy.

"The Applicant's comments about reasonable choice are similarly flawed. The Applicant uses a population if 12,000 and states that Boots is the "only pharmacy serving a population in excess of 12,000 in Wallingford", but as we have shown above, that is simply not true, both in terms of the real population figures and the number of pharmacies that patients can reasonable [sic] *access.*

In fact, Wallingford has a good choice of pharmacies within the HWB that can be accessed either on foot or by car and public transport."

2.44 In order to determine if patients in the area already had a reasonable choice, the Committee considered access (distance, travelling times and opening hours) as an important factor in determining the extent to which the current pharmaceutical service provision meets the needs of the population in the Wallingford area.

2.45 The Committee noted that the market town of Wallingford town is a contained town where residents daily needs are met by the services available in the town and they would not need to leave the area for their daily needs.

2.46 The Committee noted that Wallingford is a natural centre for the villages surrounding the town especially on market days.

2.47 There is currently one pharmacy (Boots Pharmacy) in Wallingford, following the closure of Lloyds Pharmacy in 2021.

2.48 The Committee had regard to the current service provision in the immediate area of Wallingford and noted that there are two pharmacies within 2.5 miles of Wallingford in Cholsey and Benson. The Committee noted that these are two villages that residents of Wallingford would not normally visit on a day-to-day basis for other services.

2.49 The opening hours of the Boots Pharmacy in Wallingford ranges from 09:00-17:30 Monday to Friday, from 09:00 to 17:30 on Saturdays and from 10:00-16:00 Sundays.

2.50 The Committee noted that the Applicant had offered to open from 09:00-13:00; 14:00-18:00 on Monday to Friday, 09:00 to 12:00 on Saturdays and closed on Sundays. The applicant is proposing to open later than Boots Pharmacy Monday to Friday. Boots Pharmacy is open longer hours on Saturday afternoon and on Sundays.

2.51 The Committee noted the comments from the applicant and local residents about the poor service provided by Boots pharmacy and this being a reason for having an alternative choice of pharmacy.

2.52 The Committee noted that there had been a number of concerns raised in advance of the determination by members of the public directly to Buckinghamshire, Oxfordshire and Berkshire West ICB about the lack of pharmaceutical provision and the level of service provision at Boots Pharmacy, Market Place.

2.53 The Committee noted the details of an online survey of local residents detailing the difficulties accessing pharmaceutical services and the comments by the Applicant that local residents do not consider they have a choice to access other pharmacies. Details of a number of online reviews expressing dissatisfaction with the service being provided by Boots were also provided.

2.54 The Committee noted the support for the application from local Councillors and from local residents based on their experience of accessing pharmaceutical services in Wallingford.

2.55 The Committee considered that performance issues should not be a reason to completely discount the existence of a pharmacy when considering whether there is a reasonable choice but that continued ongoing problems and complaints will affect an individual's decision whether to make the journey to that pharmacy particularly on foot, which would therefore impede access to a choice of pharmacies.

2.56 Having considered the factors above, the Committee was not satisfied that residents of Wallingford already have reasonable choice with regard to obtaining pharmaceutical services.

Regulation 18(2)(b)(ii) - *whether notwithstanding that the improvements or better access were not included in the relevant PNA, it is satisfied that, having regard in particular to the desirability of – 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 - granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant PNA was published.*

2.57 The Committee reminded itself that it was required to address itself to people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that are difficult for them to access. The Committee was also aware of its duties under the Equality Act 2010 which include considering the elimination of discrimination and advancement of equality between patients who share protected characteristics and those within such characteristics.

2.58 The Applicant stated that:

2.59 *"The area contains a large number of residents who share a relevant protected characteristic. In particular:*

> *8232 people (3435 households) living in Wallingford took part in local insight profile in 2021. Of those:*
>
> > *19.7% are aged 15 and under;*

21.5% are aged65 and above. This indicates there is a large number of elderly residents

in Wallingford, 4% above the national average.

The report shows that, in comparison to the rest of South Oxfordshire, Wallingford is the most deprived and has performed the worst in all categories such as vulnerable groups (disabled, mental health), in receipt of attendance allowance, personal independent payments or Universal Credit. Prevalence of diseases like AF, asthma, cancer, cardiovascular, dementia, heart failure and osteoporosis are higher than the national average with depression being as much as 5% more prevalent here.

Additionally, 17.3% households do not have a car or a van and 45% of households have only have one car. 15.5% are living with limited long-term conditions, 11.8% live with severe back pain all the time / unable to walk quarter of a mile unaided. These individuals rely on the local healthcare services, including pharmacies, for the fulfilment of their healthcare needs".

2.60 The Committee noted that whilst these statements had been included by the Applicant there was no evidence provided that identified a group of patients in the Wallingford area, sharing a protected characteristic with difficulty accessing services that meet a specific need.

2.61 The Committee noted the Boots UK Ltd representation that stated, "*The applicant has not provided any evidence of any specific patient groups that may wish to access a pharmacy at the proposed location that currently have expressed difficulty in accessing provision in the area."*

2.62 The Committee noted the L. Rowlands & Co (Retail) Ltd representation that stated, "*We are not aware, via official channels, that patients are finding it difficult to access services, including people sharing a protected characteristic. We also disagree with some of the figures provided by the applicant in relation to population and deprivation."*

2.63 The representations from Thames Valley LPC did not include comments relating to groups of patients having difficulty accessing pharmaceutical services.

2.64 The representations from Oxfordshire HWB did not include comments relating to groups of patients having difficulty accessing pharmaceutical services.

2.65 The representations from Rushport Advisory LLP on behalf of Cholsey Healthcare Ltd did not include comments relating to groups of patients having difficulty accessing pharmaceutical services.

2.66 The Committee therefore concluded that the application did not satisfy the test in this part of the Regulation.

Regulation 18(2)(b)(iii) - *whether notwithstanding that the improvements or better access were not included in the relevant PNA, it is satisfied that, having regard in particular to the desirability of – there being innovative approaches taken with regard to the delivery 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 relevant PNA was published.*

2.67 The Committee agreed that the applicant had not provided evidence that an innovative approach would be taken with regard to the delivery of pharmaceutical services.

2.68 Therefore, the Committee concluded that there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services.

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

Other Considerations

2.70 Regulation 18(2)(c)-(f) - The Committee had previously determined that there was no need to defer the application under Regulation 18(2)(c) to (f).

Decision

2.71 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.

2.72 The Committee had 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 was not satisfied that it would.

2.73 The Committee determined that the application should be granted on the following basis:

2.73.1 In considering whether the granting of the application would confer significant benefits, the Committee determined that –

2.73.1.1 there is not a reasonable choice with regard to obtaining pharmaceutical services;

2.73.1.2 there is no evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services; and

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

2.74 Having taken these matters into account, the Committee is satisfied that granting the application would confer significant benefits as outlined above that would secure improvements or better access to pharmaceutical services.

Rights of appeal

2.75 The application is granted so the applicant does not have appeal rights.

2.76 The Committee decided that the parties that should have third party rights of appeal are:

2.76.1 Boots UK Ltd and Cholsey Healthcare Ltd."

3 The Appeal

In a letter dated 24 June 2024 addressed to NHS Resolution, Rushport Advisory LLP, on behalf of Cholsey Healthcare Limited, appealed against the Commissioner's decision. The grounds of appeal are:

3.1 "Thank you for your letter of 7 December 2023. I act for Cholsey Healthcare Limited in the above application and have been instructed by my client to submit this appeal against the decision on [sic] the ICB to approve the above application.

Preliminary Issue

3.2 My client has appeal rights due to the fact that their change of ownership application was approved by the ICB at the time CA-Health Limited submitted their application under regulation 18. Whilst the ICB initially failed t [sic] notify my client of the CA-Health Ltd application, they subsequently issued a formal notification to my client by email of 18 January 2024 (letter attached).

The Appeal

3.3 We note that the ICB has, in granting this application, placed weight on evidence that my client has not been provided with or invited to comment on. For example,

3.3.1 *7.32 The Committee noted that there had been a number of concerns raised in advance of the determination by members of the public directly to Buckinghamshire, Oxfordshire and Berkshire West ICB about the lack of pharmaceutical provision and the level of service provision at Boots Pharmacy, Market Place.*

3.3.2 *7.33 The Committee noted the details of an online survey of local residents detailing the difficulties accessing pharmaceutical services and the comments by the Applicant that local residents do not consider they have a choice to access other pharmacies. Details of a number of online reviews expressing dissatisfaction with the service being provided by Boots were also provided.*

3.3.3 *7.34 The Committee noted the support for the application from local Councillors and from local residents based on their experience of accessing pharmaceutical services in Wallingford.*

3.3.4 *7.35 The Committee considered that performance issues should not be a reason to completely discount the existence of a pharmacy when considering whether there is a reasonable choice but that continued ongoing problems and complaints will affect an individual's decision whether to make the journey to that pharmacy particularly on foot, which would therefore impede access to a choice of pharmacies.*

3.3.5 *7.36 Having considered the factors above, the Committee was not satisfied that residents of Wallingford already have reasonable choice with regard to obtaining pharmaceutical services.*

3.4 With respect to the evidence that was provided and the reply from our client, the ICB appears to have discounted the accessibility of pharmacies located just outside of Wallingford and focused solely on the existence of Boots in Wallingford and justify this as follows;

3.4.1 *7.28 The Committee had regard to the current service provision in the immediate area of Wallingford and noted that there are two pharmacies within 2.5 miles of Wallingford in Cholsey and Benson. The Committee noted that these are two villages that residents of Wallingford would not normally visit on a day-to-day basis for other services.*

3.5 Clearly the ICB has erred in law in their approach to determining this application as the question that should have been asked is whether the existing Boots pharmacy in Wallingford and the other pharmacies located close to Wallingford provided "reasonable choice" for patients, which we say they do.

3.6 We trust that we will be provided with copies of the evidence upon which the ICB relied to approve this application and we will then comment on it in due course. Until then we rely on the content of our original letter of objection dated 8 January 2024 (attached).

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

LETTER DATED 8 JANUARY 2024

3.8 “Thank you for your letter of 7 December 2023. I act for Cholsey Healthcare Limited in the above application and have been instructed by my client to submit the following objection to the above application.

Preliminary Issue

3.9 Cholsey Healthcare Limited have had a change of ownership application approved for the Rowlands Pharmacy in Cholsey and will take over the pharmacy from 1 February 2024. Schedule 2, Part 3 of the Regulations sets out who the ICB should notify about any application that is receives and states;

3.10 Notification procedure for notifiable applications

19.—(1) As soon as is practicable (having regard to its functions under Part 2), the NHSCB must give notice of a notifiable application to—

C any person—

(i) included in a pharmaceutical list for the area of the relevant HWB, or

(ii) who is entitled to be included in that pharmaceutical list because of the grant of a routine or excepted application but who is not (yet) included,

whose interests might, in the opinion of the NHSCB, be significantly affected if the application were granted;

3.11 As Cholsey Healthcare Limited were entitled to be included in the relevant pharmaceutical list because of the grant of an excepted application (change of ownership) and their interests clearly would be significantly affected if the application were granted (this must be the case as the ICB notified Rowlands for this reason); we request that the ICB formally acknowledges that Cholsey Healthcare Limited is an Interested Party and that the application should have been circulated to Cholsey Healthcare Limited as well as Rowlands Pharmacy.

3.12 The correct procedure should therefore be for the application to be recirculated to all interested parties individually.

The Application

3.13 As the ICB will be aware, this application is submitted under regulation 18 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (the “Regulations”).

3.14 In summary, regulation 18 requires the application to be refused unless the Applicant can prove that granting the application will secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB; whilst having regard in particular to a number of issues including;

3.14.1 1. there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB and

3.14.2 2. the desirability of 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

3.15 As the ICB will note, the Applicant has failed to deal with these key issues in any meaningful way. In fact, the Applicant is clear that they are simply seeking to replace the pharmacy that was previously operated by Boots.

3.16 In terms of access, the Applicant cannot claim that their proposed pharmacy would be more accessible as it would be located so close to the current Boots pharmacy. A patient journey to Boots would be essentially the same as a patient journey to the Applicant's proposed pharmacy.

3.17 Instead, the Applicant seeks to argue that Boots is unable to meet the demand from patients and that there is a 30 minute gap in service provision between 5.30pm and 6pm from Monday to Friday.

3.18 Whilst the Applicant makes comments about Boots service, the ICB will note that the letter of support from Wallingford Town Council refers to an isolated and now resolved issue with online prescriptions.

3.19 Looking specifically at the detail provided by the Applicant we comment as follows.

3.20 The Applicant states that the population of Wallingford is 11600 according to the 2011 census. The Applicant appears to have taken this information from a Wikipedia page about Wallingford rather than from the census itself.

3.21 Using the 2011 census, the population of Wallingford Parish was 7,542.

3.22 If the population of Winterbrook (directly south) is included then this population figure increases to 7,918

3.23 To reach a population of 11,600 the Applicant has had to include areas which lie outside of Wallingford and Winterbrook and possibly other areas too.

3.24 Given the rural nature of the surrounding areas it may well be sensible to include the population of surrounding villages when considering this application. However, it is then important to also consider the pharmaceutical services provided by pharmacies that are located outside of Wallingford such as Cholsey Healthcare Limited's pharmacy in Cholsey (2.6 miles from Wallingford) and Benson Pharmacy, High Street, Benson which is 2.1 miles north of Wallingford.

3.25 For out of hours, late night, 7 days provision, there is also Tesco Pharmacy at North Morton which is 5 miles from Wallingford.

3.26 The Applicant states that Boots is the "only pharmacy in this area now" but this is clearly incorrect as the Applicant's "area" is significantly larger than just Wallingford.

3.27 Whilst we would agree that patients are unlikely to travel to alternate pharmacies on foot, they can travel to them using cars and via public transport.

3.28 For example, the Applicant states that the nearest alternate pharmacy is Rowlands in Cholsey and comments that access by bus is not practical. However, the Applicant has simply ignored Benson Pharmacy which is located 2.1 miles from Wallingford and which is accessible via an almost door to door bus service (136) or the X40 service which does require an additional walk to Benson Pharmacy.

3.29 It is not clear why the Applicant has simply ignored accessible pharmacies located outside of Wallingford when they include people who live outside Wallingford in their relevant population.

3.30 The Applicant then quotes some census statistics, but it is unclear where they have sourced these from other than a 2021 Insight Profile. Using the actual census statistics the following information is found for the area highlighted below.

3.31 Wallingford and Winterbrook 2011 Census Data

3.31.1 All usual residents 7,918;

3.31.2 84.5% say their day to day activities are not limited compared to 82.4% nationally;

3.31.3 4% class their health as bad or very bad compared to 5.4% nationally;

3.31.4 17.3% have no access to a car or van compared to 25.8% nationally.

3.32 The census therefore paints a picture of a more healthy than average population with better access to a car.

3.33 Whilst the new developments referred to by the Applicant, such as Highcroft, will increase the population, these are houses cost from £450,000 for a 2 bedroom terraced house. It seems likely that those purchasing these homes would be able to afford a car and are likely to be working.

Reasonable Choice

3.34 The Applicant's comments about reasonable choice are similarly flawed. The Applicant uses a population if 12,000 and states that Boots is the "only pharmacy serving a population in excess of 12,000 in Wallingford", but as we have shown above, that is simply not true, both in terms of the real population figures and the number of pharmacies that patients can reasonable [sic] access.

3.35 In fact, Wallingford has a good choice of pharmacies within the HWB that can be accessed either on foot or by car and public transport.

Innovation in Service Delivery

3.36 As the ICB will note, none of the information listed in this section of the Applicant's evidence is in any way innovative. We also note that the Applicant incorrectly states that all pharmacies within a 6 mile radius close at 5.30pm when Tesco North Moreton is within a 5 mile radius and is open 7 days per week including 8pm closing Monday to Friday.

3.37 Given the above we ask the ICB to refuse this application.

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

4 Summary of Representations

NHS Resolution saw fit to circulate a copy of the Commissioner's site visit report and a copy of the missing information referred to in the appeal, to all parties including the Appellant. The Appellant was given an opportunity to provide representations on this information only [this was provided to the Committee at Appendices B and C, respectively]. This is a summary of representations received on the appeal.

4.1 CHOLSEY HEALTHCARE LTD (represented by Rushport Advisory LLP)

4.1.1 "Thank you for your letter of 2 August 2024. I act for Cholsey Healthcare Limited in the above application and have been instructed by my client to submit this reply to the representations from Temple Bright that you have shared with us.

4.1.2 Firstly, I apologise for referring to the pharmacy that closed in Wallingford as a Boots pharmacy when it was in fact a Lloyds pharmacy as was extensively mentioned elsewhere in correspondence from other parties.

4.1.3 With respect to distances to other pharmacies, these are dependent on the route travelled and starting location as shown below. [provided for the Committee at Appendix D.]

Population

4.1.4 With respect to the issue of the population of Wallingford, Temple Bright states that the figure of 11,600 was taken from a report generated by South Oxfordshire County council. Had the Applicant properly considered this report they would have seen at page 8 of the report the following note.

4.1.4.1 Note

4.1.4.2 Data for towns in this leaflet is a sum of ward level data:

4.1.4.3 Didcot: Didcot All Saints, Didcot Ladygrove, Didcot Northbourne, Didcot Park

4.1.4.4 Henley: Henley South and Henley North

4.1.4.5 Thame: Thame South and Thame North Wallingford: Wallingford North and Cholsey and Wallingford South

4.1.5 The same document (page 8) clarifies that Wallingford Parish (which is a larger area that Wallingford itself) had a population of 7,542 in 2011.

4.1.6 Therefore, it is clear that the Applicant has included a very wide area when considering population but without also considering the pharmacies located in the same area. This simply makes no sense as it ignores the choice of pharmacies available to the population in the same area that they live in.

Reasonable Choice

4.1.7 It is well established that those who live in rural areas tend to travel longer distances to access services and tend to have high levels of car ownership as a result. This is the case in Wallingford. However, it must be remembered that patients only need to travel these distances to access alternate pharmacies to the Boots already located within Wallingford.

4.1.8 Clearly Boots had issues following the closure of Lloyds and we note that the most recent commentary on this is from a letter dated February 2024. The only other commentary is from minutes of council meeting from early 2023.

4.1.9 Whilst we cannot speak for Boots, we note that out of a total of 165 reviews the pharmacy has many more 5 or 4 star reviews than poor reviews as shown below.

4.1.10 Temple Bright refers to “increasing patient choice” as a reason from granting this application. As the Committee will be aware, this is not the correct legal test. We have previously provided details of pharmacies within the general are of Wallingford that already provide a reasonable choice.

Opening Hours

4.1.11 With respect to closing times, Boots is obligated to meet its contractual hours and this is a matter for the ICB to deal with directly with Boots. It is not correct that an additional pharmacy should be permitted to open because a contractor did not open their full hours on particular days.

Roundabouts

4.1.12 Temple Bright states;

4.1.12.1 Additionally, it is of note that there are multiple new housing developments taking place in Wallingford which have often led to road closures due to road works, etc. The 3 main roundabouts that allow entry into/out of Wallingford are already above capacity (as noted by the local council) and upon the completion of the housing developments, the population will significantly increase leading to increased road traffic.

4.1.13 It is unclear what point Temple Bright is making with respect to roundabouts.

4.1.14 Using the 2011 census, the population of Wallingford Parish was 7,542 and not 11,600 as claimed by the Applicant.

4.1.15 If the population of Winterbrook (directly south) is included then this population figure increases to 7,918.

4.1.16 All these patients would be within easy walking distance of Boots and unaffected by using roundabouts.

4.1.17 Clearly many patients make the choice to travel to Wallingford by car and access Boots. Some choose to access alternate pharmacies. If the Applicant opened a new pharmacy then the same roundabouts would not to be used [sic] by those who chose to access the Applicant's pharmacy.

4.1.18 We note that Temple Bright provides no proper reference to the issue of roundabouts and nor does it appear in the letter from Councillor Keats-Rohan.

4.1.19 To put the issue more simply, if road traffic is an issue for those who access Boots then it would the same problem for those who accessed the Applicant's proposed premises. This point further demonstrates that the Applicant would not be providing better access to services.

Statistics

4.1.20 Temple Bright provides some statistics and say,

4.1.20.1 "Furthermore, the following should be noted (to avoid confusion caused by variation in data published by the various authorities, I have used the online ONS 2011 census statistics)"

4.1.21 We provide below statistics for Wallingford using the up to date 2022 census data. The data is for the Wallingford Ward as shown below and this area includes Winterbrook and gives a population of 8,457. This is higher than the figure of 7,918 used in our letter of 8 January 2024 as we did not have the up to date census figures at that time.

4.1.22 The updated figures show an increase in population over 10 years of 539 people.

4.1.22.1 16% have no cars or vans in the household (lower than average)

4.1.22.2 Bad or very bad health is only 4.1%, i.e. 346 people (lower than average)

4.1.22.3 Disabled under the Equality Act: Day-to-day activities limited a lot 521 people, 6.2% (lower than average)

4.1.23 It is difficult for the Applicant to even make a case based on convenience given that they are proposing to open in virtually the same location as the existing Boots and similarly notable that the Applicant cannot rely on support from patients and instead relies on a small number of Google reviews to support their case.

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

4.2 CA-HEALTH LIMITED (represented by Temple Bright LLP)

4.2.1 "I act for CA-Health Limited. On behalf of my client I write further to your letter of 2nd August 2024 and in order to respond to a purported appeal by Cholsey Healthcare Limited against a decision of the ICB to grant the above application.

Preliminary legal matter

4.2.2 As a preliminary legal matter, NHS Resolution is asked to consider whether the appeal has been validly brought.

4.2.3 As NHS Resolution will be aware, schedule 2 to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations") applied to the determination of my client's application by the ICB.

4.2.4 Paragraph 18 of schedule 2 to the Regulations provides that my client's application is a "notifiable application". A list of the parties to whom the ICB was required to give notice of my client's application is contained within paragraph 19 to schedule 2 to the Regulations; this included:

4.2.5 *19(1)(c) any person—*

(i) included in a pharmaceutical list for the area of the relevant HWB, or

(ii) who is entitled to be included in that pharmaceutical list because of the grant of a routine or excepted application but who is not (yet) included, whose interests might, in the opinion of the NHSCB, be significantly affected if the application were granted;

4.2.6 Paragraph 19(4) provides that:

4.2.7 "*(4) Those notified under sub-paragraphs (1) to (3) may make representations in writing about the application that is the subject of the notifications to NHS England, provided they do so within 45 days of the date on which notice of the application was given to them…"*

4.2.8 Upon determination of an application, the ICB must notify the parties referred to in paragraph 28 to schedule 2 to the Regulations of its decision. That notification includes (paragraph 28(1)(d)):

4.2.9 *(d) any person—*

(i) included in a pharmaceutical list for the area of the relevant HWB, or

(ii) who is entitled to be included in that pharmaceutical list because of the grant of a routine or excepted application but who is not (yet) included, whose interests might, in the opinion of the NHSCB, be significantly affected by the decision;

4.2.10 Paragraph 30 of schedule 2 to the Regulations details those persons who have "third party rights of appeal". For the purposes of this matter, paragraph 30 relevantly provides that a person has third party rights of appeal if the ICB was required to notify them of the decision and the person made representations in writing about the application under paragraph 19(4).

4.2.11 The appellant's representative asserts that the appellant has third party rights of appeal "due to the fact that their change of ownership application was approved by the ICB at the time CA-Health Limited submitted their application under regulation 18". It is further stated that "Whilst the ICB initially failed to notify my client of the CA-Health Limited application, they subsequently issued a formal notification to my client by email of 18 January 2024 (letter attached)".

4.2.12 The appellant's representative attaches to the letter of appeal a letter from NHS England to my client (CA-Health Limited) which is dated 7th December 2023. The appellant's representative has not provided a copy of the notification to it of my client's application, nor of the email which was purportedly sent on 18th January 2024.

4.2.13 Even if, which is not accepted, the appellant was notified (by email) of my client's application on 18th January 2024, the representations submitted by the appellant to NHS England are dated 8th January 2024 – that is, before the purported email notification on 18th January 2024.

4.2.14 The fact that the appellant was not formally notified of the application by the ICB appears to be accepted in the appellant's representative's letter to the ICB dated 8th January 2024. In that letter, the appellant's representative states that the application "should have been circulated to Cholsey Healthcare Limited as well as Rowlands Pharmacy" and that "The correct procedure should therefore be for the application to be recirculated to all interested parties individually".

4.2.15 The purported appeal by the appellant against the decision by the ICB to grant my client's application is therefore flawed, and it would be unlawful for NHS Resolution to proceed with this matter for following reasons:

4.2.15.11) Whilst it is accepted that the appellant may have been required to have been notified of the application by the ICB by reason of paragraph 18 of schedule 2 to the Regulations, there is no evidence that the appellant was notified of the application in accordance with that paragraph.

4.2.15.22) The appellant's representative provides a copy of a letter of notification dated 7th December 2023, but this is addressed to my client, not Cholsey Healthcare Limited.

4.2.15.33) The appellant's representative appears to state that its client was notified of the application by email dated 18th January 2024. A copy of this email is not provided but, in any event, the appellant's representations to the ICB are dated 8th January 2024, so appear to have been submitted before the 18th of January 2024 email.

4.2.15.44) The representations submitted by the appellant on 8th January 2024 therefore appear to be unsolicited comments.

4.2.15.55) Since the appellant's representations to the ICB were not submitted pursuant to paragraph 19(4) of schedule 2 to the Regulations (that is, they were not submitted in response to a notification sent pursuant to paragraphs 19(1) to 19(3) of schedule 2), the appellant cannot have third party rights of appeal pursuant to paragraph 30 of schedule 2.

4.2.16 If, as the appellant's representative appears to be asserting (although the position is not entirely clear), the appellant believes that it was required by the ICB to have been notified of the application but was not, this is a matter that should have been addressed with the ICB at the material time since this is not a matter over which NHS Resolution has any jurisdiction: NHS Resolution can only determine an appeal that has been validly brought.

4.2.17 It is incumbent upon NHS Resolution to determine, as a preliminary matter, whether an appeal is "valid" (paragraph 2, schedule 3 to the Regulations). Whether or not the ICB, in its decision, purported to give third party rights of appeal is not the determining factor in this regard. This appears to be accepted by the appellant's representative, since its letter of appeal seeks to address the purported validity of the appeal as a "preliminary matter" in its letter of appeal (that is, the appellant does not simply rely on the fact that the appellant was given third party rights of appeal in the ICB's determination).

4.2.18 Since, for the reasons given above, the appellant's submissions to the ICB were not made in response to a relevant notification by the ICB, the purported appeal cannot have been lawfully brought and NHS Resolution has no jurisdiction over this matter. For the avoidance of doubt, NHS Resolution similarly has no jurisdiction to remit this application back to the ICB because that would amount to the determination of an appeal that has not been lawfully brought.

4.2.19 On behalf of my client, I therefore invite NHS Resolution to conclude that the appellant's purported appeal has not been validly brought and to close this matter without further determination.

Substantive appeal

4.2.20 Notwithstanding my client's primary submission that the purported appeal is invalid, my client addresses the matters raised in the substantive appeal below for the sake of completeness.

4.2.21 The appellant's representative asserts that the ICB erred in law since it "appears to have discounted the accessibility of pharmacies located just outside of Wallingford solely on the existence of Boots in Wallingford…".

4.2.22 This assertion is clearly incorrect having regard to the extract from the ICB's determination which is rehearsed in the letter of appeal, where the ICB clearly has specific regard to pharmacies in surrounding villages, making reference to the fact that "there are two pharmacies within 2.5 miles of Wallingford in Cholsey and Benson. The Committee noted that these are two villages that residents of Wallingford would not normally visit on a day-to-day basis for other services."

4.2.23 The ICB therefore identified the nearest pharmacies outside of Wallingford, determined that those pharmacies are located in villages that residents of Wallingford "would not normally visit on a day-to-day basis" and, consequently, that those pharmacies did not secure a reasonable choice of pharmaceutical services for those living in Wallingford. There is no "error of law" in the ICB's decision-making process, reasoning or its application of the relevant regulations.

4.2.24 My client agrees with the decision of the ICB to grant its application. My client's application would secure improvements in, and better access to, pharmaceutical services in the HWB's area and, in particular, for Wallingford; my client's application would confer significant benefits in terms of patients having a reasonable choice of service provision.

4.2.25 My client's application is fully evidenced, both in its application form and in its letter to NHS England dated 8th February 2024. [NB: this letter was not provided to NHS Resolution.] My client has no further submissions to make in relation to its application at this stage, but wishes to have the opportunity to respond to any substantive submissions made by the appellant (should this appeal proceed notwithstanding the above), since the appellant's letter of appeal is brief and does not address the substantive application.

4.2.26 I look forward to hearing from you."

4.3 THE COMMISSIONER

4.3.1 "Thank you for your letter of the 2 August 2024 advising us that the decision by Buckinghamshire, Oxfordshire and Berkshire West Integrated Care Board (BOB ICB) Pharmaceutical Services Regulations Committee (PSRC) to approve the application has been appealed.

4.3.2 In response to the letter of appeal, the PSRC would like to make the following comments.

4.3.3 This application was notified to interested parties for 45 for a second time because two interested parties were missed off the original list. The letter of objection from Rushport on behalf of Cholsey Healthcare Ltd was also accepted as their representation due to the timing of the change of ownership.

4.3.4 We note that the copy of observations from the Applicant shared along with the appeal is the response to the first set of comments from interested parties (dated 8 February 2024). The response to the representations received after the second 45-day period was dated 30 April 2024.

4.3.5 The Appellant notes that the ICB has, in granting this application, placed weight on evidence that they have not been provided with or invited to comment on.

4.3.6 The examples given are:

4.3.6.1 *7.32 The Committee noted that there had been a number of concerns raised in advance of the determination by members of the public directly to Buckinghamshire, Oxfordshire and Berkshire West ICB about the lack of pharmaceutical provision and the level of service provision at Boots Pharmacy, Market Place.*

4.3.6.1.1 We can confirm that this was verbal acknowledgement of the fact that concerns about the provision of pharmaceutical services in Wallingford had been raised with the ICB over a period of time.

4.3.6.2 *7.33 The Committee noted the details of an online survey of local residents detailing the difficulties accessing pharmaceutical services and the comments by the Applicant that local residents do not consider they have a choice to access other pharmacies. Details of a number of online reviews expressing dissatisfaction with the service being provided by Boots were also provided.*

4.3.6.2.1 This information was included in the Applicant's second 45-day response in response to comments made by interested parties.

4.3.6.3 *7.34 The Committee noted the support for the application from local Councillors and from local residents based on their experience of accessing pharmaceutical services in Wallingford.*

4.3.6.3.1 This information was included in the Applicant's second 45-day response in response to comments made by interested parties.

4.3.7 We can also confirm that the PSRC did consider the choice of pharmacies in the area of the Health and Wellbeing Board and specifically in the villages outside Wallingford. It concluded that because those pharmacies are situated in discreet villages which the residents of Wallingford would not visit on a day-to-day basis, they did not provide reasonable choice.

4.3.8 The Buckinghamshire, Oxfordshire and Berkshire West ICB PSRC respectfully requests that the decision to approve the application is confirmed."

4.4 BOOTS UK LTD

4.4.1 "Thank you for your letter dated 2 August 2024 informing us of the above appeal.

4.4.2 We support the comments made by Rushport Advisory LLP on behalf of Cholsey Healthcare Ltd.

4.4.3 We have no further comments to make but have attached our original representations for your reference.

4.4.4 We would be grateful if you would inform us of the outcome of this appeal."

LETTER DATED 19 JANUARY 2024

4.4.5 "Thank you for your letter dated 7 December 2023 informing us of the above application. Boots UK Limited have the following comments to make.

4.4.6 Whilst we accept that the application is based on benefits not foreseen when drafting the Pharmaceutical Needs Assessment (PNA), it is clear that this application is based on the closure of the Lloyds.

4.4.7 The Lloyds pharmacy has now been closed for several months. As the ICB will be aware, the closure of a pharmacy within an area does not automatically create a gap and should a gap have arisen as a consequence of such a closure, then the PNA should be updated to reflect this.

4.4.8 The applicant has not provided any evidence of any specific patient groups that may wish to access a pharmacy at the proposed location that currently have expressed difficulty in accessing provision in the area. We are unaware of any patients submitting a complaint since the closure of the Lloyds or any other pharmacies in this locality to NHS England with regards to accessibility or any concerns regarding services or opening hours.

4.4.9 We therefore respectfully urge the ICB to refuse this application. Please be aware that we may wish to make further representations at a later stage and attend any oral hearing that may be held in relation to this application. We would therefore be most grateful if you could keep us informed of the progress of this application."

5 **Observations**

5.1 CHOLSEY HEALTHCARE LIMITED (represented by Rushport Advisory LLP)

5.1.1 “Thank you for your letter of 6 September 2024. I act for Cholsey Healthcare Limited in the above application and have been instructed by my client to submit these final comments on representations received on the above appeal.

Applicant’s Comments

5.1.2 The Applicant argues that my client’s appeal should be dismissed as my client did not have third part [sic] appeal rights. This argument is misconceived.

5.1.3 The Applicant’s representative sets out the legal test for Third Part [sic] Appeal Rights and we therefore do not repeat the test here.

5.1.4 In summary, to have third party appeal rights the person must have been

5.1.4.1 Notified about the application because (in this case) they were entitled to be included in that pharmaceutical list because of the grant of a routine or excepted application but were not yet included.

And

5.1.4.2 The person made representations in writing about the application under paragraph 19(4).

5.1.5 Initially PCSE did not notify my client about this application, but my client became aware of the application prior to the Commissioner making its determination and prior to the 45 day notification period expiring and on 8 January 2024 I contacted the Commissioner on behalf of my client to ensure that a formal notification was received.

5.1.6 At the same time I also sent my client’s objection letter to the Commissioner via PCSE to ensure that the objection was on file. A copy of this email is attached with these final comments.

5.1.7 PCSE contacted the Commissioner to ensure that my client was to be considered as an Interested Party on 9 January 2024. A copy of this email is attached.

5.1.8 On 18 January PCSE confirmed that my client was to be considered as an Interested Party (copy email attached). Also on 18 January I requested a notification letter to ensure that my client had been formally notified of the application (copy email attached) and on the same day the formal notification was received from PCSE (copy attached). [provided for Committee at Appendix E.]

5.1.9 PCSE simply sent a copy of the letter that was sent out to other parties and incorrectly had the Applicant’s name and address on it. This is clearly an error, but it does not in any way take away from the fact that PCSE was notifying my client about the application. This is obvious from the fact that PCSE was replying to my email that requested formal notification of the application and the letter is a PDF entitled “45 Day notification IP letter 07.12.2023”. A typo or error on a notification letter does not invalidate the entire notification process and PCSE was aware that my client already had a copy of the application and other relevant documentation in any event.

5.1.10 As my client was both notified of the application and made representations in writing, their appeal is valid.

5.1.11 The Applicant seeks to argue that because the date of the representations preceded the notification letter that this makes the representation invalid in some way. As the Committee will note, the Regulations are silent on any requirement for the date of the representation letter to be after the date of the notification letter or for the representations to only be valid if they were submitted after the date of notification.

5.1.12 My client's appeal is therefore valid and we note the comments of the Commissioner in their letter which also confirms that my client was notified as an Interested Party and that there were 2 separate notification processes.

5.1.13 We note that the Applicant does not dispute the evidence provided in our letter of appeal save for their claim that the Commissioner did consider pharmacies located outside of Wallingford. This claim is disputed, as whilst the Commissioner may have mentioned the existence of pharmacies outside of Wallingford they clearly did not consider them in any meaningful way as is shown in the Commissioner's comments.

Commissioner's Comments

5.1.14 We note that the Commissioner confirms my client's status as an Interested Party that was notified of the decision.

5.1.15 The Commissioner then confirms that they made their decision based on evidence that had not been shared with my client and that we have still not seen.

5.1.16 In respect of pharmacies located outside of Wallingford the Commissioner states;

5.1.16.1 We can also confirm that the PSRC did consider the choice of pharmacies in the area of the Health and Wellbeing Board and specifically in the villages outside Wallingford. It concluded that because those pharmacies are situated in discreet villages which the residents of Wallingford would not visit on a day-to-day basis, they did not provide reasonable choice.

5.1.17 Respectfully, the Commissioner has entirely missed the point that we have made.

5.1.18 Whilst residents of Wallingford may have no need to visit alternate villages on a day-to-day basis, this has nothing to do with whether there is a reasonable choice of obtaining pharmaceutical services in the area of the HWB. Similarly, it is clear from the massively exaggerated population statistics provided by the Applicant, that many, or most, or the patients that they considered to be reliant on pharmaceutical services did in fact live outside of Wallingford and in villages that had their own pharmacy.

5.1.19 The Commissioner now accepts that they discounted pharmacies near to Wallingford simply because Wallingford was considered to be "discreet". Had the Commissioner properly considered access to pharmacies located outside of Wallingford they would have found that, for such a rural area, there is a more than reasonable choice of easily accessible pharmacies and those pharmacies include my client's pharmacy, Boots and Benson's Pharmacy. There is simply no evidence of any difficulty accessing either the pharmacy in Wallingford or other nearby pharmacies.

5.1.20 The map provided with your letter helpfully shows the location of the existing Boots Pharmacy (labelled number 1), my client's pharmacy (labelled number 2) and Benson Pharmacy (labelled number 3). If one were trying to ensure a

good choice of pharmacies for an area then it is likely that these locations would be considered as ideal in order to provide east access to a choice of pharmacies for those who live in, visit, or work in the area shown on the map. Of course there are additional pharmacies in the HWB not shown on the map, but with 3 pharmacies in such a small area consideration of other pharmacies is unlikely to be required.

5.1.21 We continue to ask that the appeal be allowed and the application refused."

5.2 CA-HEALTH LIMITED (represented by Temple Bright LLP)

5.2.1 "I continue to act for CA-Health Limited. On behalf of my client I write further to your letter of 6 September 2024 and in order to respond to correspondence received by NHS Resolution in relation to the above appeal.

5.2.2 Taking each letter in turn, my client responds as follows:

Rushport Advisory LLP

5.2.3 It is correct that the distance between two point will depend upon the route being taken. The route contained within the appellant's letter of 2 August 2024 is not the recommended route on google maps because it is a single track lane through farmland along its entire length – see google street view image below: [provided for Committee at Appendix F.]

5.2.4 In any event, whichever of the two routes may be taken, it is clear that, at a distance of at least 5 miles, the Tesco pharmacy is a considerable distance away and is entirely inaccessible by foot (the journey would take 1 hour 52 minutes each way on foot according to google maps).

5.2.5 The appellants representative queries the population size of Wallingford, suggesting that my client has mistakenly included other locations. However, the Wikipedia entry for Wallingford also gives a population of 11,600 (Wallingford, Oxfordshire – Wikipedia) as does the Wallingford Town Council website (Wallingford Town Council | Wallingford Town Council). My client therefore maintains that this is an accurate figure for the population of the town, and that the population is increasing due to housing development in Wallingford.

5.2.6 In relation to the Boots Pharmacy reviews, all of the reviews over the past 6 months have rated the pharmacy as 1 star. Over the last year, 10 out of 13 reviewers have given the Boots Pharmacy 1 star. The last four review comments were:

5.2.7 "*Poor service always waiting, pharmacist late every single morning without fail meaning they are unable to open on time, have been waiting to get a prescription this morning and have it's half past nine and still not open when it says open at nine. I have waited in the past outside well past opening hours along with elderly people which is very unfair. The girls who are stocking the shelves seem to just ignore you when standing at the till to be served. It's honestly the worst Boots I have ever been to*". (this review was left 1 week ago)

5.2.8 "*Huge queues at 9.30am. meant to be open by 9am. Not sure why the whole shop can't open due to the Pharmacist being late which judging by other reviews and comments by others, is a very common occurrence.*"

5.2.9 *"Shut – again. On a Saturday afternoon. I don't know have the cheek to oppose another pharmacy opening in Wallingford when they aren't even open when they should be, due to the pharmacists not being available."*

5.2.10 *"terrible service. Long waiting times, staff ask too many questions. Never items in stock. Avoid if you can.*"

5.2.11 The Appellant's representative refers to the number of 5 star reviews, but a 5 star review from 11 months ago stated:

5.2.11.1 *"Still going to give 5 stars, but boots are so busy since Lloyds chemist shut. It seems they are understaffed. I completely disagree with the comments staying that the staff need people skills. I think these comments are just out of frustration. Probably more people at the prescription counter wouldn't be a bad idea, but this is managements responsibility. This would clear the queue for prescriptions much faster. Or maybe question is the management needs an overhaul."*

5.2.12 Even though this reviewer gave the Boots pharmacy 5 stars, it is clearly not a "5 star" comment.

5.2.13 Another review who gave a 4 star review a year ago states, in the comments "*I work for Boots lol"*. The great majority of 4/5 star reviews were given over 2 years, so before the Lloyds Pharmacy closed. In contrast, the survey data provided by my client ran between 7 February and 30 April 2024 and therefore paints a much more recent picture of service provision in the town.

5.2.14 In relation to "increasing patient choice" – the regulations require NHS Resolution to have regard, in particular, to the benefits of patients having a reasonable choice of pharmaceutical service provision and whether granting the application would confer significant benefits in that regard. It is therefore not accepted that "increasing patient choice" is irrelevant to the regulatory test – there is currently a lack of reasonable choice, and granting my client's application would confer significant benefits for the population of Wallingford (and surrounding areas) by increasing patient choice. It is of note that this was accepted by the ICB.

5.2.15 Whilst the failure of Boots to open for its contractual hours may be a matter for NHS England/the ICB, that would depend on whether the pharmacy was in breach of its terms of service obligations and what action NHS England/the ICB chooses to take in relation to any such breach. However, the patients of Wallingford are not concerned with the finer points of the application of terms of service obligations and regulatory enforcement, but with the practical consequences of unexpected closures on their access to a pharmacy. Where the Boots pharmacy does not open for its contractual hours (and there is ample evidence of repeated failures to do so), patients are left without any alternative pharmacy in Wallingford. This is a clear consequence of a lack of reasonable choice in the area.

5.2.16 The use of roundabouts and road congestion/closures is relevant if patients are required to use private transport in order to access pharmacies outside of Wallingford. It is an additional barrier, in addition to distances to other pharmacies.

5.2.17 The census data is noted, but applying those statistics provided by the appellant to a population of 11,600 would mean that (appreciating, of course, car ownership is measured by household):

5.2.17.1 Approximately 1,850 residents have no car or van at all. It is of note that a further 42.8% of households (approximately 5,000 residents have only 1 car or van and may, therefore, not have access to a car or van when they need to get to a pharmacy.

5.2.17.2 476 people have bad or very bad health. A further 1,311 people have only “fair” health.

5.2.17.3 719 people have their day-to-day activities limited a lot due to a disability. A further 1,148 people have their day-to-day activities limited a little due to a disability.

5.2.18 Whilst the appellant’s representative seeks to put forward a case by comparing census data to national statistics, the actual numbers of people who are behind these bare percentages in Wallingford run into the many hundreds or even thousands, which is a significant number of people.

5.2.19 My client does not seek to “make a case based on convenience”. My client’s application is made on the basis of a lack of reasonable choice of service provision.

ICB

5.2.20 The ICB refers to a second notification of my client’s application. My client believes that this second notification was made only to the LPC and Benson Pharmacy – not Cholsey Healthcare Limited.

5.2.21 The ICB states that “the letter of objection from Rushport on behalf of Cholsey Healthcare Limited was also accepted as their representation due to the timing of the change of ownership”. For the reasons given in my clients letter of 23 August 2024, this is not sufficient to afford Cholsey Healthcare Limited third party rights of appeal and simply underlines the fact that Cholsey Healthcare Limited’s letter to NHS England [sic] was in the category of “unsolicited comments” at the time that it was sent.

Boots

5.2.22 It is of note that Boots do not appear to make any representations to NHS Resolution in respect of this application. It is of particular note the Boots do not attempt to persuade NHS Resolution that the matters raised by my client in support of its application (that is, the lack of choice of service provision and the evidence of difficulties with the only remaining pharmacy in Wallingford) are incorrect. In fact, my client is aware that the situation with the Boots pharmacy has worsened with the store manager having recently left and temporary staff are being used to support the branch from Didcot.

5.2.23 I look forward to hearing from you in due course.”

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”).

Preliminary matter

6.5 As a preliminary matter, the Committee noted the Applicant's contention that the appeal has not been validly brought due to the Appellant not being entitled to third party rights of appeal due to either, a lack of notification by the Commissioner, in accordance with paragraph 19 of Schedule 2 of the Regulations or a failure to make representations in accordance with paragraph 19(4).

6.6 With regard to appeal rights, Paragraph 30, Schedule 2, Part 3 states:

"Third party rights of appeal to the Secretary of State where an application is granted

30.—*(1) A person with third party rights (as provided for in this paragraph) may appeal to the Secretary of State against a decision of the NHSCB to grant a notifiable application, or an application to which regulation 26(1), 27 or 28 applies, provided that the person notifies the Secretary of State with a valid notice of appeal within 30 days of the date on which that person was notified of the NHSCB's decision under paragraph 28.*

(2) For the purposes of this Schedule, a person (P1) is a person with third party rights if—

(a) P1 is a person to whom sub-paragraph (3) applies; or

(b) P1 was entitled to receive notification of the decision to grant the application by virtue of paragraph 28(5).

(3) P1 is a person to whom this sub-paragraph applies if—

(a)P1 was a person whom the NHSCB was required to notify about the decision on the application by virtue of P1 being a person whose interests might, in the opinion of the NHSCB, be significantly affected by the decision, and also being—

(i) included in a pharmaceutical list,

(ii) entitled to be included in a pharmaceutical list because of the grant of a routine or excepted application but who is not (yet) included,

(iii) an LPS chemist, or

(iv) either-

(aa) a provider of primary medical services, or

(bb) another person on the dispensing doctor list for the area of the relevant HWB if there is one (P1 being a performer but not a provider of primary medical services),

but only if the application is in respect of premises in a controlled locality and it was granted partly on the basis that, having regard to regulation 44(3), in the opinion of the NHSCB granting the application would not prejudice the proper provision of relevant NHS services in the area of the relevant HWB or of a neighbouring HWB of the relevant HWB;

(b) in the case of a notifiable application, P1 made representations in writing about the application under paragraph 19(4); and

(c) in the case of a notifiable application but subject to sub-paragraph (6), the NHSCB is satisfied, having regard to those representations in writing and any oral representations made in accordance with paragraph 25, that P1—

(i) made a reasonable attempt to express P1's grounds for opposing the application adequately in P1's representations, and

(ii) has grounds for opposing the application, which—

(aa) do not amount to a challenge to the legality or reasonableness of a pharmaceutical needs assessment, or to the fairness of the process by which a HWB or Primary Care Trust undertook that assessment, and

(bb) are not vexatious or frivolous.

(4) If the NHSCB considers that a person notified under paragraph 28 is a person with third party appeal rights, it must notify that person of that fact when it notifies that person of the determination."

6.7 The Committee first considered if the Appellant was a person whom the Commissioner was required to give notice of the decision on the application, by virtue of being a person whose interests might be significantly affected by the decision and who was included in sub-paragraphs (i) to (iv).

6.8 The Committee noted that the Appellant was granted a change of ownership application effective from 1 February 2024 for the Rowlands premises at Cholsey. However, the date of the grant of change of ownership was not stated by any of the parties, therefore the Committee was unable to establish if the Appellant was, at the time of the application, entitled to be in a pharmaceutical list. Nevertheless, as this has not been contested by the Applicant, and was accepted to be the case by the Commissioner, the Committee accepted that this criteria was met by the Appellant.

6.9 The Committee next considered if paragraph 30(3)(b) had been complied with. In order for this to have been the case the Appellant must have made representations in writing, under paragraph 19(4).

6.10 This paragraph states:

"*Those notified under sub-paragraphs (1) to (3) may make representations in writing about the application that is the subject of the notification to NHS England, provided they do so within 45 days of the date on which notice of the application was given to them, or within 30 days in the case of applications pursuant to regulation 26A*."

6.11 The Committee already considered that the Appellant was entitled to be included in the pharmaceutical list due to the grant of the change of ownership, and should have been notified by the Commissioner, as per paragraph 19(1)(c), and that the emails from the Commissioner confirmed this to be the case. However, the Committee noted that there is a dispute with regard to whether the Appellant was actually notified of the application. The Applicant asserts that the Appellant did not receive notification of the application as the letter from PCSE dated 7 December 2023 is addressed to the Applicant and not the Appellant either directly or via a distribution list.

6.12 The Committee noted that an officer of NHS Resolution queried the contents of this letter with PCSE requesting copies of the notification sent to interested parties as the one provided was indeed only addressed to Mr Abbas of CA-Health Limited. The Committee noted that, in an email dated 26 July 2024, PCSE stated:

6.12.1 "*The letter supplied with the documents* [dated 7 December 2023 and addressed to Mr Abbas] *was the letter sent circulating the application.* ***It was the only letter sent****."* [emphasis added by NHS Resolution.]

6.13 The Committee noted that the letter was recirculated to the Appellant, as confirmed by the Commissioner in its representations above (4.3). This recirculation took place on 18 January 2024. The Committee noted that the requirements for the contents of the notification is contained in paragraph 21 of Schedule 2 of the Regulations. This does not state that it must be addressed to the person and the Committee considered that the information provided to the Appellant was sufficient to deem it a notification for the purposes of paragraph 19. Therefore, the Committee considered that the Appellant was notified of the application on 18 January 2024, for the purposes of paragraph 19(4).

6.14 The Committee noted the comments from Temple Bright LLP that the representations submitted to the Commissioner by the Appellant were in effect "unsolicited comments" due to the date on the representations being 8 January 2024, prior to the second notification of the application. The Committee further noted that the decision report circulated by the Commissioner classified the representations from the Appellant as in time and in response to the notification, despite the date on the letter and that the Applicant did not dispute the nature of these comments until this appeal.

6.15 The Committee noted that the Appellant has stated that "*the Regulations are silent on any requirement for the date of the representation letter to be after the date of the notification letter or for the representations to only be valid if they were submitted after the date of notification.*".

6.16 The Committee noted that paragraph 19(4) states that those notified of an application may make representations "*provided they do so within 45 days of the date on which the notice of the application was given to them*". As the Committee noted, this date was 18 January 2024.

6.17 The Committee did not consider that the Applicant was correct in its statement that representations must be made following notification in order to have been submitted pursuant to paragraph 19(4). This is because the Regulations explicitly use the language of "*within 45 days*", and then provides for a specific triggering event, i.e. the notice of the application being given to the Appellant. The Committee concluded that whilst this would usually be read as there being a chain of chronological events which the Regulations contemplate being followed and a time period during which representations should be made, it does not expressly state that one event must follow the other. The Committee noted that there is nothing expressly stated to denote that the 45 day period must be prospective, which means that, technically, it is possible to interpret the wording as also including the 45 days prior to the notification. Neither party has made representations as to the proper interpretation of the words "within" in the context of paragraph 19(4) or for the purpose of paragraph 30(3)(b).

6.18 The Committee considered that the Regulations appear to be based on an assumption that the receipt of notification of an application by a party is the date that party first becomes aware of the application. With that assumption in mind, paragraph 19(4) is likely to be read as providing a cut-off date after which any representations received are considered out of time.

6.19 The Committee reviewed the communications between the Appellant and the Commissioner and noted that the Commissioner was directed to the Appellant's previously submitted comments on the application only 15 minutes prior to the notification being issued, on 18 January 2024. The Committee was mindful of the wording of paragraph 19(4), which stated "may make representations", the word "make" providing for a wide interpretation of what constitutes the act of submitting representations. As such, the Committee considered that making reference to its previously submitted comments was part of the Appellant's "making" of its representations. Thus, whilst the first date the comments were made was 8 January,

there was a continuation of communication which persisted up until the receipt of the notification of the application.

6.20 Consequently, the Committee considered that the issue of whether the comments made by the Appellant constituted representations centred around a 15 minute period of time on 18 January 2024. The Committee also noted that the email chains containing both the comments and the notification of application were one and the same. This inextricably linked the two documents into a single continuance of communication between the two parties.

6.21 The Committee was mindful of the fact that the Appellant's comments were circulated to the parties as if they were representations, were referred to by the Commissioner as such, and were treated by all the parties as being so. The Committee also noted that paragraph 30(4) of Schedule 2 was met as the Appellant was awarded appeal rights in the Commissioner's decision letter dated 20 June 2024.

6.22 The Committee considered that the purpose of paragraph 30(3)(b) was to ensure that a party could not suddenly raise a wholly new objection to an application where they had not already done so as part of the application process. This provides a level of certainty and stability to the application process and a level of surety in the outcome for any applicant. The Committee considered that, due to the treatment by the Commissioner of the comments as representations, the Applicant had not been left in the position where this could be said to be wholly unexpected. As such, it had not suffered the same prejudice as if an appeal with no prior representations were made, or where it was based on unsolicited comments. As the Appellant was also listed as having a right to an appeal in the decision, the Applicant could have expected them to subsequently do so.

6.23 The Committee also considered that these specific circumstances could not have been envisaged by the Regulations. As indicated above, the Regulations appear to be based on an assumption that the notification to a party triggers that party's knowledge of the application. It is clear that the Appellant should have been notified as part of the first circulation of the application, and neither party has disputed this. In ordinary circumstances, bearing in mind the assumption on which the Regulations appear to be based, the Committee considered that it should not have been possible for a party to make representations prior to being notified, as they could not have the necessary information in order to do so. As such, the Committee considered that this present situation does not easily align with the wording or purpose of paragraphs 19 and 30 of Schedule 2 of the Regulations.

6.24 The Committee noted that the Commissioner at all times accepted that the representations were valid, and that there was no suggestion that they had been improperly made. The Committee considered it reasonable to assume that, had the Appellant been made aware of any purported deficiencies in its representations, it would have simply submitted an identical document.

6.25 In consideration of all of the above points, the Committee concluded that these very novel and specific circumstances warranted careful consideration of the validity of the representations. The Committee considered that to strip the Appellant of its statutory appeal rights, due to a 15 minute early submission of comments, which was not expressly excluded by the Regulations, that it had had no opportunity to remedy, and where it had no indication of any deficiency, would be a disproportionate outcome. It also noted that this was in circumstances where the comments were treated as representations during the application, and that, due to this, the Applicant's application process had not been impacted by an unexpected appeal or wholly new representations. As such, the Committee determined that the Appellant has valid appeal rights for the purposes of paragraph 30, of Schedule 2 of the Regulations.

Regulation 31

6.26 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).

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

6.28 The Committee was not required to refuse the application under the provisions of Regulation 31.

6.29 The Committee noted that, if the application were granted, the successful applicant 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 would not be able to commence provision of services) if the location then provided would (had it been known now) have led to the application being refused under Regulation 31.

Regulation 18

6.30 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)."

6.31 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.

6.32 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.

6.33 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).

6.34 The Committee considered the PNA prepared by Oxfordshire County 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 April 2022 and that a supplementary statement had been issued in June 2023.

6.35 The Committee noted the PNA states the following in its Executive Summary:

"*Recommendations relating to possible needs and gaps:*

I) it should be noted that the PNA has not identified any gaps in general access in the present situation in Oxfordshire and in the expected situation in Oxfordshire to 2025, that is during the lifetime of the current PNA."

6.36 The Committee noted that there is a documented development of 534 planned homes expected in the Wallingford area in 2019 – 2025 and that a further development of 532 homes is planned for 2025 – 2031, albeit the latter is outside the lifespan of the PNA.

6.37 The Committee noted that the supplementary statement issued in June 2023 highlighted the closures of Lloyds pharmacies throughout the HWB area. It was noted that the closure of the store in Wallingford was not listed.

6.38 The Committee noted the comments from the HWB, provided to the Commissioner, acknowledged "*Wallingford's population is growing and the needs for local pharmaceutical services in this area will be reviewed again in our 2025 PNA, but at this time we do not identify a gap in services".*

6.39 The Committee noted that the Applicant seeks to provide unforeseen benefits to the patients of Wallingford. 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.

6.40 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)

6.41 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"*

6.42 The Committee noted the Commissioner's decision report states that it "*was not aware of any plans that would be affected and concluded that granting the application would not have an adverse effect on any future plans*". The Committee noted that there was no dispute on this matter from other parties.

6.43 On the basis of the information available, the Committee was not satisfied that, if the application were to be granted and the pharmacy to open, the ability of the Commissioner thereafter to plan for the provision of services would be affected in a significant way.

6.44 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)

6.45 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"*

6.46 The Committee noted the Commissioner's decision report states that "*none of the submissions included any evidence on [this question] and the [Commissioner] found no proof to support the suggestion that if the application was to be granted, it would cause significant detriment to the arrangements in place for pharmaceutical services in the area*". The Committee noted that there was no dispute on this matter from other parties.

6.47 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.

6.48 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.

Regulation 18(2)(b)

6.49 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)

6.50 The Committee noted that the application was prompted by the closure of one of the two pharmacies, the Lloyds Pharmacy, in Wallingford. The Applicant contends that patients do not currently have reasonable choice when accessing pharmaceutical services within Wallingford and that, to access another provider, they would have to travel outside of the area. The Committee was mindful that the closure of one pharmacy does not automatically mean that there is a need for a pharmacy to open in its place and that the question of reasonable choice requires considered in the area of the relevant HWB.

6.51 The Committee noted that the Applicant acknowledges that the current PNA does not highlight additional pharmaceutical provision required within Wallingford, however commented that "*the authors of the PNA do not appear to be aware of the significant issues in service provision in Wallingford since the Lloyds Pharmacy closed… the significant benefits that would be secured by the granting of my client's application are unforeseen within the context of the PNA*". Whilst supplementary statements have been issued by the HWB following the closure of Lloyds Pharmacy branches throughout the wider area, the Committee noted that no such statement has been published in relation to the Wallingford closure.

6.52 The Committee had regard to the location of existing pharmacies and GP surgeries as provided on the maps by the Commissioner, which had not been disputed by any party. The Committee noted that the closest pharmacy to the best estimate area is the Boots at Market Place, Wallingford.

6.53 The Committee noted the statement in the Commissioner's site visit report that Wallingford is "*relatively flat and is compact and self contained"* by virtue of the local amenities provided within the town. Whilst the Committee is able to see the merits of the argument by the Applicant that the High Street location is a *"hub of activity"* which means that residents do not necessarily leave the area as part of their daily lives, however the services provided would be unlikely to sustain the population for more

than a short period. Furthermore there will be some residents who will leave the area on a daily basis for work.

6.54 The Committee noted that the nearby Wallingford Medical Practice currently dispenses medication to some patients living in Wallingford. The Committee noted that there are currently 167 dispensing patients living within 1.6km of the best estimate address and that, if the application was granted, the Commissioner would need to consider discontinuation of this arrangement by virtue of Regulation 50.

6.55 The Committee noted the comments from the Appellant's representative that the Commissioner had erred in its decision making due to not considering access to pharmacies outside of the immediate area of Wallingford. The Committee further noted the comments from the Commissioner that agreed the pharmacies outside of Wallingford had not been considered due to these being in "*discreet villages*".

6.56 In order to consider the question of reasonable choice, the Committee went on to consider access to existing pharmacies. The Committee noted from the Commissioner's site visit report that the closest pharmacy, Boots, which ranges from 50m to 322m away from the best estimate addresses listed in the application; 100m from 1 – 60 St Mary's Street, 50m from 1 – 55 St Martin's Street, 322m from 1 – 101 High Street, 160m from 1 – 9 Castle Street and 54m from 1 – 24 Market Place. The Committee has not been provided with any evidence to demonstrate that patients are currently struggling to access the nearest provision by foot, and the Commissioner's site visit report highlights and evidences that "*the roads and paving in Wallingford are flat and even surfaced with good street lighting*". The Committee noted the Applicant's comments that the walk to the Appellant's pharmacy, would take place over *"relatively remote rural open land terrain (55 mine one way hike)*" and is approximately 2.5 miles away. This is supported by the satellite image provided in the application and by the Appellant in its representations which shows the area of Wallingford surrounded by open fields. The Committee noted the disputed route to access the Appellant's pharmacy however was of the view that this still made for a substantial walk, whatever the route taken, and one that patients would be very unlikely to take. The Committee therefore accepted the view that the alternative pharmacies outside of Wallingford would likely not be travelled to on foot by users.

6.57 The Committee went on to consider ease of access to pharmaceutical services by private and public transport for those who choose not to, or are unable to, access pharmaceutical services on foot.

6.58 The Committee noted the information from parties that car ownership in the area of Wallingford is very high with only 17.3%, compared to 25.8% nationally, of households not having access to at least one car or van. The Committee further noted the information in the Commissioner's site visit report that "*Wallingford has approximately 530 town centre car parking spaces (excluding on-street) with an additional 280 spaces at the Riverside car park (available in summer only)*". This was not disputed by any party.

6.59 For those with access to private transport, the Committee was not provided with any information to demonstrate that they are experiencing difficulties accessing pharmaceutical provision when driving to or parking at existing pharmacies.

6.60 The Committee noted the Applicant's comment that access to the former Rowlands Pharmacy in Cholsey, now operated by the Appellant, would require a "*20 minute walk*" from the last bus stop on the 136 bus route. However, the Committee noted the comments from the Appellant about how patients would access Bensons Pharmacy, located in nearby Benson, that is served by both the 136 and the X40 bus route. Whilst this pharmacy is located approximately 2.1 miles away from Wallingford, the Appellant indicated that this is "*accessible via an almost door to door bus service*". The Committee noted, from the information within the Commissioner's site visit report, that the X40 bus service runs half hourly. Although the Committee was not provided with

information to demonstrate the length of the bus trip from Wallingford to Bensons Pharmacy, in part due to the failure of the Commissioner to consider all alternative providers, the Committee was provided with a link to the bus service as part of the Commissioner's site visit report. The Committee was able to see that a bus journey from Wallingford that started at 09:20 would arrive at 09:30, and that the last X40 service to reach Benson from Wallingford is at 23:15 (arriving in Benson at 23:22). The Committee was therefore of the view that the X40 service to Benson would be a feasible option for those wishing to access pharmaceutical services via public transport. The Committee noted that no information had been provided to demonstrate that patients are currently experiencing difficulty accessing pharmaceutical services by public transport. The Committee was therefore of the view that for those reliant on public transport there was nothing provided by any party to demonstrate that they were currently having difficulties in accessing the existing pharmaceutical provision in the area of the HWB.

6.61 The Committee noted the comments in the reviews shared by the Applicant which referred to poor service, late opening/early closing and the availability of items at the Boots store. The Committee was of the view that waiting times and general performance should not be the only reason that a new pharmacy is granted. It is the Commissioner's role to act on reports of negative service. The Committee considered that performance issues should not be a reason to completely discount the existence of a pharmacy when considering whether there is a reasonable choice, but that continued ongoing problems and complaints will affect an individuals decision to make the journey to that pharmacy. Whilst the reviews highlight that individuals may have a less than satisfactory patient experience when using Boots, the Committee did not receive any information to demonstrate that they were having difficulties accessing services elsewhere. The Committee was mindful that the availability of medication is an issue that is unfortunately affecting all pharmaceutical providers currently, and this is not isolated to the Wallingford Boots store.

6.62 Based on its findings above, 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 services, granting the application would confer significant benefits on persons.

6.63 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. Whilst the Committee noted that information had been provided by the Applicant about the existence of those in the Wallingford area that share a protected characteristic, no evidence was provided to demonstrate that these individuals are currently experiencing difficulties accessing existing pharmaceutical provision. 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.

6.64 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 the Applicant claims that the mere existence of a new pharmacy provider, in place of the closed Lloyds Pharmacy, would be innovative in itself. The Committee is not of the view that this is innovative in itself. Therefore, the Committee was not satisfied that, having regard to the desirability of there being innovative approaches taken with regard to the

deliverability of pharmaceutical services, granting the application would confer significant benefits on persons.

Regulation 18(2)(b) generally

6.65 The Committee noted that the Applicant is proposing to open for 43 hours a week of which 40 would be core hours. The Committee noted the Applicant's proposed core hours which are 9am – 1pm and 2pm – 6pm Monday to Friday. The total proposed hours, including supplementary hours, are 9am – 1pm, and 2pm – 6pm Monday to Friday, and 9am to 12pm on Saturday. The Committee noted the Applicant's statement that existing providers close at 5.30pm on weekdays and the additional half hour that it is proposing to provide will benefit the population. The Committee had not been provided with any information to indicate that there are any difficulties for people in accessing pharmaceutical provision in the period of 5.30pm to 6.00pm. 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.

6.66 The Committee noted the Applicant's reference to both current and future planned housing developments in the Wallingford area. The Committee noted that these developments are referenced by the HWB in its PNA and therefore were not unforeseen at the time of publication, or in the lifespan of the current PNA.

6.67 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.

6.68 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

6.69 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).

6.70 No deferral or refusal under Regulation 18(2)(f) was required in this case.

6.71 The Committee had regard to Regulation 18(2)(g) and found that it was not applicable.

6.72 The Committee considered whether there were any further factors to be taken into account and concluded that there were not.

6.73 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.

6.74 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:

6.74.1 confirm the Commissioner's decision;

6.74.2 quash the Commissioner's decision and redetermine the application;

6.74.3 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.

6.75 In those circumstance, given that the Committee has reached a different decision to that of the Commissioner, the Committee determined that the decision of the Commissioner must be quashed.

6.76 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.

6.77 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.

6.78 The Committee concluded that further notification under paragraph 19 of Schedule 2 would not be helpful in this case.

7 DECISION

7.1 The Pharmacy Appeals Committee ("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.

Case Manager
Primary Care Appeals