

28 November 2024

REF: SHA/26284

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**APPEAL AGAINST BUCKINGHAMSHIRE,
OXFORDSHIRE AND BERKSHIRE WEST ICB (THE
COMMISSIONER) DECISION TO REFUSE AN
APPLICATION BY LP SD ONE HUNDRED SEVEN
LIMITED FOR INCLUSION IN THE PHARMACEUTICAL
LIST OFFERING UNFORESEEN BENEFITS UNDER
REGULATION 18 AT KINGSLAND CENTRE, THE
BROADWAY, THATCHAM, RG19 3HN**

1 Outcome

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

A copy of this decision is being sent to:

LP SD One Hundred Seven Ltd
PCSE on behalf of Buckinghamshire, Oxfordshire and Berkshire West ICB
Healthcare Plus Consulting Ltd on behalf of Bolcer Limited
Halo Pharmacy

Advise / Resolve / Learn

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REGULATION 18 AT KINGSLAND CENTRE, THE
BROADWAY, THATCHAM, RG19 3HN**

1 The Application

By application dated 16 November 2023, LP SD One Hundred Seven Ltd (“the Applicant”) applied to Buckinghamshire, Oxfordshire and Berkshire ICB (“the Commissioner”) for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at Kingsland Centre, The Broadway, Thatcham, RG19 3HN. In support of the application it was stated:

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

Information in support of the application

- 1.1 “Since the last PNA the HWB published a review of the pharmacy provisions which considered whether there was a gap in provisions or not in April 2023 when Lloyds Pharmacy Ltd submitted notice of their intentions to close two contracts: <https://decisionmaking.westberks.gov.uk/documents/s112552/11.%20Pharmacy%20Closures.pdf>
- 1.2 Since the last PNA the number of closures stands as 3 and now with recent news that Boots-FE788 will be closing the contract on 17th January 2024 the number of closures will stand at 4. With no remaining contract offering 7 day a week service that cover the opening hours of the main two GP surgeries in Thatcham.
- 1.3 Currently if a patient within the area of Thatcham requires pharmacy service provisions on a Sunday they will have to travel and have the means of travelling over 3 miles away to access these services.
- 1.4 There are two contracts in the area that will remain operational in 2024 and that is Halo Pharmacy and Thatcham Pharmacy, both of which are independently operated. Only Thatcham Pharmacy offers a free delivery service 5 days a week with no restrictive parameters surrounding the service. Neither of the two contracts operate Sunday access.
- 1.5 The closure of the 3 pharmacies (excluding the boots closure that is in sight) saw a reduction in the overall availability of essential provision in the district. The closures have led to an increase in the average number of items dispensed in other pharmacies. Remaining contractors were able to accommodate an increase in capacity but since they have absorbed the pharmacy provision needs since the said closures, it is unlikely they have more capacity to cover the dispensing volume of the Boots that is closing (roughly 14,000 items per month) - specifically the corporate operators.”
- 1.6 Please explain how you intend to secure the unforeseen benefit(s).

- 1.7 “There has been huge worry seen in social media from the residents of Thatcham and Newbury voicing their concerns at the lack of pharmacy provisions. We have the support of local GP surgeries who believe there is a gap in the pharmacy provisions and this is currently acting as an antagonist against the run of the grain that is the world of pharmacy at the moment. We are being relied on more every day by GP surgeries to help reduce the pressures they face by being more accessible and also a source of care for patients that need to be seen more urgently than the earliest GP appointment that is available - with the closures this area is facing the pressures are only getting worse for the surgeries.
- 1.8 Patients in the area currently have no source of door step delivery for medication if they need or request it, other than turning to distant selling pharmacies. These pharmacies rely on the likes of Royal Mail and face difficulties delivering cold chain and controlled drug products. With the lack of reliability with the postal services, especially with Thatcham recently being labelled the most troubled sorting facility for mail in the UK, we would be negligent to essentially force patients to turn to this form of pharmacy provisions when the opportunity to give them a locally operated service is a choice.
- 1.9 We have approximately 201 parking spaces at The Kingsland Centre and a huge weekly footfall, giving us the biggest car parking facility available to customers and the residents of the local area. We have off road access and are situated in a dedicated centre which has been designed to have good public transport links.
- 1.10 Our delivery service will run 7 days a week as well as our Pharmacy opening provisions.
- 1.11 Not only will we be able to help improve the provisions in the area for patients but also by being more accessible with opening times and location will mean other service providers will have a means of providing seamless care to patients that require it out of hours e.g. on a Sunday.
- 1.12 There is also several large developments going ahead in Thatcham and the PNA also did not account for the increase in housing/population.”

2 The Decision

The Commissioner considered and decided to refuse the application. The decision letter dated 16 July 2024 states:

- 2.1 “NHS England 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.
- 2.2 You have a right of appeal to the Secretary of State against NHS England’s decision.
- 2.3 Should you choose to appeal then you should either complete the online form available on the NHS Resolution website or send a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this letter to nhsr.appeals@nhs.net or:
- 2.4 Primary Care Appeals, NHS Resolution, 8th Floor, 10 South Colonnade, Canary Wharf, London, E14 4PU.”

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

Decision report

- 2.5 **“Pharmaceutical Services Regulations Committees meeting in common for: Buckinghamshire, Oxfordshire and Berkshire West ICB, Hampshire & IoW ICB & Frimley ICB**

2.6 **Annex 6.1 & 6.2 to the minutes of the meeting held on Wednesday 26th June 2024.**

2.7 **Applications offering Unforeseen Benefits being considered together and in relation to each other:**

2.8 **Application 1: LP SD One Hundred Seven Limited**

2.8.1 ME3093- CAS-261308-H8K8C7

2.8.2 Kingsland Centre, The Broadway, Thatcham, RG19 3HN.

2.8.3 West Berkshire HWB.

2.8.4 Buckinghamshire, Oxfordshire and Berkshire West ICB.

2.9 **Application 2: Bolcer Ltd**

2.9.1 CAS-270183-Q5R4N4

2.9.2 Gaywood Drive Shops, Newbury, RG14 2PR. Map covering best estimate area depicted below, with proposed best estimate sites located within blue box.

2.9.3 West Berkshire HWB.

2.9.4 Buckinghamshire, Oxfordshire and Berkshire West ICB.

2.10 **Introduction and background**

2.11 Unforeseen benefits applications had been received as detailed above. The Committee was now required to consider the applications in accordance with Regulations 18 and 19 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.

2.12 Full details of the applicant's proposals had been notified to the various interested parties in accordance with the regulations.

2.13 It had been previously agreed and notified that the two applications would be considered together.

2.14 **Consideration by the Committee – Applications**

2.15 **Summary of application from LP SD One Hundred Seven Limited.**

2.16 The applicant proposed core opening of 40 hours per week and total proposed opening of 61.30 hours per week.

2.17 The hours proposed as indicated in section 3.1 of the application form are:

2.18 Proposed core opening hours

Monday to Friday	Saturday	Sunday	Total
09:00-17:00	None	None	40

2.19 Total Proposed opening hours:

Monday to Friday	Saturday	Sunday	Total
08:30-18:00	09:00 – 17:00	10:00 – 16:00	61.30

- 2.20 The applicant proposed to provide essential, enhanced, and advanced services, if commissioned.
- 2.21 The Applicant had not provided a floor plan.
- 2.22 At part 6 of the application form, the applicant describes the unforeseen benefit they are offering to secure as: *“Since the last PNA the number of closures stands as 3 and now with recent news that Boots FE788 will be closing the contract on the 17th of January 2024 the number of closures will stand at 4. With no remaining contract offering 7 day a week service that cover the opening hours of the two main two surgeries in Thatcham.”*
- 2.23 *“Currently if a patient within the area of Thatcham requires pharmacy service provisions on a Sunday they will have to travel and have the means of travelling over 3 miles away to access these services.”*
- 2.24 *“The closure of the 3 pharmacies (excluding the boots closure that is in sight) saw a reduction in the overall availability of essential provision in the district. The closures have led to an increase in the average number of items dispensed in other pharmacies. Remaining contractors were able to accommodate an increase in capacity but since they have absorbed the pharmacy provision needs since the said closures, it is unlikely that they have more capacity to cover the dispensing volume of the boots that is closing (roughly 14,000 items per month) specifically the corporate operators”.*
- 2.25 The Applicant also stated;
- 2.26 *“Our delivery service will run 7 days a week as well as our Pharmacy opening provisions.*
- 2.27 *Not only will we be able to improve the provisions in the area for patients but also by being more accessible with opening times and location between other services [sic] providers will have a means of providing seamless care to patients that require it out of hours E.G. on a Sunday.*
- 2.28 *There is also several large developments going ahead in Thatcham and the PNA also did not account for the increase in housing/population.”*
- 2.29 **Representations**
- 2.30 The Committee noted the applicant’s proposals were notified to various interested parties in accordance with the Regulations.
- 2.31 Representations have been received from:
- 2.32 Healthcare Plus Consulting on behalf of Bolcer Ltd stated *“My client agrees with the Applicant that a new pharmacy is required in the Newbury/Thatcham area, however, asserts that the application from Bolcer Ltd should be preferred.*
- 2.33 *It is of note that the Applicant’s proposed site is only 0.3 miles from existing pharmaceutical provision, with the next nearest pharmacy also being only 0.6 miles away. By contrast, the site proposed by my client is situated in a dense residential area and is 1.5 miles away from the nearest pharmacy. Clearly granting my client’s*

application would provide much greater access and choice to pharmaceutical provision for the localised population.

- 2.34 *We also note that the Applicant has only provided 40 core hours, whereas my client has provided 45.5 core hours. The Applicant appears to have offered a number of supplementary hours, however as the committee will be aware, supplementary hours can be withdrawn easily and thus no weighting should be placed on them."*
- 2.35 Halo Pharmacy stated
- 2.36 **"Patient Journeys**
- 2.37 *In terms of access, the Applicant cannot claim that their proposed pharmacy would be more accessible. Halo Pharmacy is only a 0.3-mile/ 5-minute walk from the proposed premises. A patient journey to the proposed location would essentially be the same as a patient journey to Halo Pharmacy. Indeed, the proposed site and Halo pharmacy are linked by a one-stop bus journey which is practically a door-door service. The proposed site is not more accessible when considering patient journeys.*
- 2.38 **Recent closures**
- 2.39 *The Lloyds pharmacy in Reading was situated over 10 miles away from the Applicants proposed site. It is highly unreasonable to suggest that this closure would have any effect on local residents.*
- 2.40 *The Lloyds pharmacy in Newbury was situated over 3 miles away in a neighbouring town. Again, it is unreasonable to suggest that this closure would have any consequential effect on local residents.*
- 2.41 *The Boots pharmacy in Thatcham Health centre is granted 0.3 miles from the proposed site. However, this pharmacy is directly opposite Halo pharmacy, and we are well placed and prepared to absorb these patients and provide adequate pharmaceutical access. Indeed, the migration of patients has already begun prior to the Boots closure, and we are unaware of any complaints regarding our service and any capacity issues. We are taking all necessary steps to even improve on the experience patients have ever had even before the closures.*
- 2.42 *In regard to recent closures, we conclude that the Lloyds in Sainsburys closures are not relevant to an application at the proposed location. The upcoming closure of the Boots will not leave a gap in access, with reasonable choice being upheld by Halo pharmacy.*
- 2.43 **Opening hours**
- 2.44 *The Applicant also references improvements in accessibility through the opening hours it proposes, with a particular emphasis on Sunday opening hours.*
- 2.45 *The Applicant raises the issue of Sunday opening pharmacies not being available for 3 miles, however we highlight that this has been the case in Thatcham for a while (many years) and certainly since the publishing of the last PNA in 2022, where no gaps in Sunday provision were identified.*
- 2.46 *The closing Boots is not open on a Sunday, and other closures are over 3 miles distant. As a local operator we are unaware of a need for Sunday opening, however, will happily oblige should NHS England commission us to do so. We already have plans to open for longer as soon as the Boots in Thatcham closes doors.*
- 2.47 *We note that despite placing emphasis on a need for additional opening hours, especially on a Sunday, the Applicant has submitted an application for the minimum 40 core pharmaceutical hours. The remaining 21 and a half hours are supplementary*

hours, which we highlight can be easily terminated with 3 months notification. It is clear that the Applicant has not committed to providing extended opening hours, despite what is written in the application.

- 2.48 We also note that the Applicant (LP SD ONE HUNDRED SEVEN LIMITED) is already a local operator, currently operating Thatcham Pharmacy, Unit 2 Burdwood Centre, Station Road, Thatcham, RG19 4YA. This pharmacy is 0.7 miles from the proposed site and does not currently open on a Sunday. We suggest that if the Applicant feels that there is a need for Sunday opening provision (a notion that we do not agree with), then an easier remedy would be for the Applicant to open on a Sunday through their current premises and provide all the benefits they have highlighted.
- 2.49 We maintain that there is currently sufficient access and reasonable choice of opening hours.
- 2.50 **Other matters**
- 2.51 The Applicant also highlights the provision of a delivery service. We note that delivery is not an NHS commissioned service, and much like supplementary opening hours, can be stopped at any time. As a local operator, we are also unaware of any complaints regarding delivery services.”
- 2.52 West Berkshire Health and Wellbeing Board (HWB) stated:
- 2.53 “There have been four pharmacies that have closed in Newbury and Thatcham since the Pharmaceutical Needs Assessment was carried out in 2022. Two years ago, the ratio of pharmacies per 10,000 population was 1.3 in West Berkshire, compared to 2.2 for England as a whole, but as a result of the closures across the district in the period since the PNA was completed, the ratio has fallen to just 1.0 per 10,000 population.
- 2.54 When the Health and Wellbeing Board considered the above closures, it did not consider that they had created a significant gap in the provision of pharmaceutical services in the Thatcham area that was sufficient to justify a review of the PNA or publication of a Supplementary Statement. This was because there were no additional households placed outside a 1 mile / 20 minute travel time to their nearest pharmacy as a result of the closures, and because the Local Pharmaceutical Committee had provided reassurance that there would be sufficient capacity at the remaining pharmacies to be able to process the displaced activity.
- 2.55 Notwithstanding this decision, the Board would welcome additional pharmacies in Gaywood Drive, Newbury, and within the Kingsland Centre in Thatcham town centre as a means of helping to increase capacity and choice for patients, and to improve the overall resilience of the pharmacy sector within West Berkshire. The additional pharmacies would also help to support the Pharmacy First Service, which will see greater numbers of referrals to pharmacies for a variety of conditions and minor illnesses.
- 2.56 ... the proposed pharmacy at the Kingsland Centre would enhance accessibility for patients living in Thatcham, since the location is well served by local walking, cycling and public bus networks. The Kingsland Centre has its own car park and there is plenty of on-street parking within the town centre, with level, step-free access from both directions. Furthermore, the location is close to a number of sheltered housing / retired living developments and so would be easily accessible by residents of these facilities.
- 2.57 The proposed pharmacy would be the only one in Thatcham to open seven days a week, which would be welcomed, since patients currently have to travel to Newbury to access a pharmacy that is open on Sundays. The application also indicates that the pharmacy will offer free home delivery, which would deliver significant benefits for patients who are less mobile and / or on low incomes.

- 2.58 *Although the pharmacy would be in Thatcham Central ward, which has low levels of deprivation, it would be used by all Thatcham residents, including those living in Thatcham North-East, which has significant pockets of deprivation (20% of LSOAs within this ward are in the third decile on the Index of Multiple Deprivation). We see a correlation between poorer health (and health behaviours such as smoking and substance misuse) and increased deprivation. We would therefore expect to see a greater demand on pharmacy services (including Advanced and Enhanced Services, such as smoking cessation and needle and syringe exchange services) serving more deprived areas.*
- 2.59 *It should also be noted that the West Berkshire Local Plan Review proposes to allocate 1,500 additional homes to the north-east of Thatcham and these residents would also be likely to use the proposed pharmacy at the Kingsland Centre.*
- 2.60 *In summary, the Board is supportive of both applications and believes that they will deliver significant additional benefits for patients. The Board does not foresee any significant negative effects as a result of the proposal."*
- 2.61 Boots UK Ltd had no comments to make on the application.
- 2.62 The Committee noted the applicant did not provide a response to the consultation responses, but West Berkshire HWB did provide a response.
- 2.63 The West Berkshire HWB stated that "We would like to add the additional comments:
- 2.64 Our previous comments remain unchanged, and our previous points around improved access still stand.
- 2.65 The Halo Pharmacy objection does not mention that there was previously a pharmacy in the Kingsland Centre, which closed between the PNA being undertaken and adopted.
- 2.66 Sunday opening hours would be a material consideration, since patients currently need to travel to Newbury to access a pharmacy on Sundays, which would be challenging for those without access to a car.
- 2.67 In summary, the Board's position remains unchanged, and supportive of both applications believing that they will deliver significant additional benefits for patients."
- 2.68 **Summary of Application from Bolcer Ltd.**
- 2.69 The applicant proposed core opening of 45.5 hours per week and total proposed opening of 50.5 hours per week.
- 2.70 The applicant had also indicated which hours they proposed to be the 40 core hours, and which hours were proposed as additional core hours (the additional core hours/directed hours were 18:00-18:30 Monday to Friday and 10:00-13:00 on Saturdays) 1.5 The hours proposed as indicated in section 3.1 of the application form are:
- 2.71 Proposed core opening hours:

Monday to Friday	Saturday	Sunday	Total
09:00-13:00; 14:00-18:30	10:00-13:00	None	45.5

2.72 Total proposed opening hours:

Monday to Friday	Saturday	Sunday	Total
09:00-18:30	10:00-13:00	None	40.5

2.73 The applicant proposed to provide essential, enhanced and advanced services, if commissioned.

2.74 The Applicant had not provided a floor plan, but would provide one when once the premises had been secured.

2.75 At part 6 of the application form, the applicant describes the unforeseen benefit they are offering to secure as:

2.76 *"We understand that there is currently no pharmacy situated in either ward. We believe that the recent closure of the following pharmacies have left/ will leave a significant gap in pharmaceutical services for Newbury and Thatcham:*

2.76.1 *Lloyds in Sainsburys, Hectors way, Newbury, RG14 5AB – Closed June/ July 2023*

2.76.2 *Superdrug, Northbrook Street, Newbury, RG14 1AE – Closed 16/09/2023*

2.76.3 *Boots, Thatcham Health Centre, Thatcham, RG18 3HD – Closing 17/02/2024*

2.77 The Applicant also stated *"In our view, the closure of the Lloyds in Sainsbury's and Superdrug in Newbury town centre, coupled with the upcoming closure of the Boots in Thatcham Medical Practice will leave a significant gap in pharmaceutical services for Newbury and Thatcham.*

2.78 *Local residents and those who are using the local amenities would benefit significantly from having a pharmacy located on the parade of shops on Gaywood Drive.*

2.79 *It is clear from the map above that there is a huge gap in geography where pharmaceutical services are required; a gap this application proposes to fill.*

2.80 ***By Foot from Proposed site to current nearest pharmacy (Boots, RG14 1DJ)***

2.81 *As can be seen from the map on the following page, this journey is 1.5 miles or 32 minutes, equating to a 1 hour 4-minute round-journey. It is worth reiterating that distance in itself is a barrier to access. This journey is far greater than the 1-mile PNA maximum distance and is clearly excessive, especially considering the sizeable 7000+ population in the Newbury Clay Hill ward who have to endure such a lengthy journey.*

2.82 *Such poor access by foot is especially relevant when we understand that 40.3% of residents access pharmaceutical services by foot in West Berkshire, per the PNA public engagement survey.*

2.83 *We cannot consider a 3-mile round walk to access pharmaceutical services as sufficient access, nor can we consider this as having a reasonable choice to pharmaceutical services. In fact, for residents near the proposed site, we would consider this as no pharmaceutical choice at all, much less than the threshold of 'reasonable choice'.*

2.84 *It follows that other pharmaceutical provision is also not accessible by foot on account of the greater distances involved. The Day Lewis pharmacy in Newbury town centre is*

1.6 miles away, and Halo pharmacy in Thatcham is 1.8 miles away. Thus, there is a lack of reasonable choice and access to pharmaceutical services for those travelling by foot.

- 2.85 We also note that car parking is an issue for those accessing the Boots due to its location in Newbury town centre. We understand that there is no car parking outside of the shop with the nearest parking situated in Camp Hopson car park. This car park is pay and display and thus may present a barrier to people who would like to access pharmaceutical services but may be deterred from doing so frequently due to parking charges.
- 2.86 As per the images above, street car parking at the proposed site is ample and free of charge and would introduce reasonable choice and eliminate the current barriers to access.
- 2.87 Granting this application would secure better access to pharmaceutical services, especially when we consider the huge gap in geography that exists and access difficulties by foot, bus, and car. The elderly, disabled, and the wider population are likely to find the proposed pharmacy significantly more accessible than their current choices. It would also introduce reasonable choice of a different pharmaceutical provider for those in the local area.
- 2.88 **Representations**
- 2.89 The Committee noted the applicant's proposals were notified to various interested parties in accordance with the Regulations.
- 2.90 Representations have been received from:
- 2.91 LP SD One Hundred Seven Limited stated
- 2.92 "1. A reasonable choice of pharmacy.
- 2.93 Although, the applicant has explained that there have been several closures in the area (Lloyds Pharmacy, (RG14 5AB), Superdrug Pharmacy (RG14 1AE), and Boots (RG18 3HD), there is still a reasonable choice of pharmacies available. The applicant has said that the distance of the next closest pharmacy is more than what is deemed acceptable, we highlight below that the distance between the proposed site and the two closest pharmacies is 1.1 mile, equating to 22 minutes give or take, a nonsignificant difference between what is stated in the PNA as acceptable.
- 2.94 (I want to also use this opportunity to flag that the PNA is extremely outdated considering the vast change in pharmaceutical provisions in the area since it was published).
- 2.95 The services offered by pharmacies in the area needs to be considered, whether they are less than, or more than, a mile away from the proposed site. Patients in the geographical area that the applicant is seeking to offer better access to, have the options to use the likes of distant selling pharmacies or even local patient facing pharmacies who offer the delivery service such as Thatcham Pharmacy - a free service to all with no inclusion or exclusion criteria for eligibility.
- 2.96 LP SD ONE HUNDRED SEVEN LIMITED has also applied for a new contract to be granted offering unforeseen benefits at a more suitable location with reference: CAS-261308-H8K8C7. This application which has already been supported by the Health and Well Being Board of West Berkshire, offering an additional choice of pharmacy to the residents of this area with a 7-day a week opening service, with over 200 parking spaces.

- 2.97 *A consensus of Berkshire showed that 10% of the population had no use of a vehicle and since this consensus was completed there has been a documented increase in road users which demonstrates that the population the applicant is seeking to accommodate have no issues or difficulties in accessing existing pharmacy contractors for services.*
- 2.98 *There is a slight concern that the applicant is submitting an application on the basis that there is now a vacant geographical gap in provision of services following the closures of pharmacies at the following postcodes, however the distance of the proposed site to the now closed sites is not different or improved, so it begs the question that what further benefit is there for the residents if they were already accessing services from these pharmacies regardless of distance?*
- 2.99 *2) How easy it is for people who live or work near the applicant's proposed pharmacy to travel to other existing pharmacies?*
- 2.100 *In our most humble opinion, the applicant comes across quite passionately regarding distances covered by patients in the current pharmacy provision, hence the "considerable" improvement that their application could bring to the surrounding community. Upon further looking into it, we firmly believe that as a matter of fact, the application sought does not have a significant positive impact on what is already being offered by the closest pharmacies, in terms of accessibility, i.e. bus routes, car parks or opening times.*
- 2.101 *The closest car park to the proposed location is a 24-min walk, as opposed to 7-min to Boots in Newbury town centre. Also, the proposed location has no designated parking spaces, and no designated spaces for those that may require a disabled parking bay.*
- 2.102 *As mentioned above, LP SD ONE HUNDRED SEVEN with its application reference number CAS-261308-H8K8C, seeks to considerably improve the opportunity for accessibility for patients in terms of distance and connectivity by bus, with buses running every 30min from Newbury town into Thatcham Broadway, with the bus-stop right outside our proposed location. As opposed to the applicant failing to improve the access for their patients, as they will still have to walk from their bus stop to the proposed location and back. So, again no significant improvement is sensed here.*
- 2.103 *3) Walking routes, bus services and access by car (including parking)*
- 2.104 *4) Whether people who are disabled, elderly, have young children or have other needs currently have problems using local pharmacies, and would benefit from the proposed pharmacy.*
- 2.105 *With regards to point 3 & 4: You will see that the distance from the proposed site (RG14 2PR) to the pharmacies which have closed, is no different to the distance from the proposed site to the next closest pharmacy: Day Lewis, Strawberry Hill, bringing a doubt over whether there is in fact any benefit to the local population, seeing as they are already being serviced by a pharmacy outside of the immediate locality, irrespective of distance, transport, public transport etc.*
- 2.106 *5) Whether opening another pharmacy would have any significant negative effects I believe, with the residential build up that exists in the immediate surrounding area to the proposed site, there is what I would call an acceptable level of traffic in the area for the residents to face. However, by introducing a new pharmacy that will lead to a huge increase in traffic that will no doubt raise issues with the residents and create a nuisance. A residential location will always bring the question of suitability, based on how easy it is for patients visiting the location to park and be seen with no time constrictions, as well as not disturbing the already congested and busy neighbourhood life, something we are quite sceptical about, and could potentially lead to local complaints in the long run as well as bringing an unnecessary amount of traffic around*

a primary school situated less than 300 meters away from the proposed site, bringing much more higher risks of road traffic incidents with young children.

2.107 *Accessibility is something very important to consider, the proposed site does not have adequate means of access for wheelchair users/patients with disabilities."*

2.108 Thames Valley LPC stated

2.109 *"There has been no Supplemental Statements issued against the current PNA published in 2022.*

2.110 *The LPC states that:*

2.110.1 there is already a reasonable choice with regard to obtaining pharmaceutical services;

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

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

2.111 *There at least 2 Pharmacies (Boots Northbrook and Thatcham Pharmacy within a 9 minute drive, or 20 minutes by a well served public transport system."*

2.112 West Berkshire HWB stated

2.113 *"There have been four pharmacies that have closed in Newbury and Thatcham since the Pharmaceutical Needs Assessment was carried out in 2022. Two years ago, the ratio of pharmacies per 10,000 population was 1.3 in West Berkshire, compared to 2.2 for England as a whole, but as a result of the closures across the district in the period since the PNA was completed, the ratio has fallen to just 1.0 per 10,000 population.*

2.114 *When the Health and Wellbeing Board considered the above closures, it did not consider that they had created a significant gap in the provision of pharmaceutical services in the Thatcham area that was sufficient to justify a review of the PNA or publication of a Supplementary Statement. This was because there were no additional households placed outside a 1 mile / 20 minute travel time to their nearest pharmacy as a result of the closures, and because the Local Pharmaceutical Committee had provided reassurance that there would be sufficient capacity at the remaining pharmacies to be able to process the displaced activity.*

2.115 *Notwithstanding this decision, the Board would welcome additional pharmacies in Gaywood Drive, Newbury, and within the Kingsland Centre in Thatcham town centre as a means of helping to increase capacity and choice for patients, and to improve the overall resilience of the pharmacy sector within West Berkshire. The additional pharmacies would also help to support the Pharmacy First Service, which will see greater numbers of referrals to pharmacies for a variety of conditions and minor illnesses.*

2.116 *The proposed pharmacy at Gaywood Drive would be the only one within the Newbury Clay Hill Ward to the north-east of the town centre, which has a population of 7,547 residents according to the 2021 Census. It would also serve parts of Thatcham West ward, as well as major new housing developments that are currently being built to the north of Newbury and on Lower Way, Thatcham.*

2.117 *Both Newbury Clay Hill and Thatcham West Wards have a higher proportion of families with very young children compared with the West Berkshire and England averages. These would be more likely to need pharmacy services than the wider population.*

- 2.118 *The Gaywood Drive site has good accessibility for a suburban location, with easy walking access from surrounding residential areas, as well as a bus routes and bus stops nearby, and plenty of on-street parking in the vicinity of the site.*
- 2.119 *The proposed pharmacy would have late evening and Saturday opening, which would be welcomed. Prior to closing in 2023, the Lloyds Pharmacy in Sainsbury's would have been the closest one to offer late evening opening for many residents of Newbury Clay Hill. Currently, residents have to travel to one of the pharmacies on the southern fringe of the town to be able to get to a pharmacy open after 6pm. Therefore, the Gaywood Drive pharmacy would enhance evening access.*
- 2.120 *In summary, the Board is supportive of both applications and believes that they will deliver significant additional benefits for patients. The Board does not foresee any significant negative effects as a result of the proposal."*
- 2.121 Boots UK Ltd had no comments to make on the application.
- 2.122 The Committee noted that Healthcare Plus Consulting [sic] on behalf of the applicant provided a response to the consultation responses.
- 2.123 The response stated that:
- 2.124 *It is undisputed that the late evening hours proposed by my client will improve evening access to pharmaceutical provision.*
- 2.125 *It is undisputed that parking charges form a barrier to access current nearest - pharmaceutical provision.*
- 2.126 *It is undisputed that pharmaceutical provision in Newbury and Thatcham is currently poor with an effective 10.3 pharmacies per 100,000 residents - half the average for England (20.6 / 100,000)*
- 2.127 *It is worth noting that my client's proposed site, within the Newbury clay hill ward, is situated within one of the most densely populated areas in the whole of West Berkshire and is far cry from what could be considered as 'rural'. Yet the nearest pharmacy is still over 30-minute walk away, far in excess of the 20 minute maximum stipulated. The map below of population densities within the West Berkshire highlights how the Newbury Clay Hill Ward is in fact the most densely populated area in the whole of West Berkshire. It is obvious that pharmaceutical provision is required at my clients proposed location.*
- 2.128 *The other Applicant states that 'there is still a reasonable choice of pharmacies available'. We interpret such a comment as contradictory; if another applicant believes there is already a reasonable choice of pharmaceutical vision, why have they submitted an unforeseen benefits application? It is clear that the committee must treat representation made by the other applicant with scepticism.*
- 2.129 *The other applicant states that the 'two closest pharmacies is 1.1 mile'. We highlight to the committee that this distances as the crow flies and not in fact the correct distance by the most practical route The journey is in fact 1.5 miles - well in excess of what could be considered reasonable.*
- 2.130 *The other Applicant highlights that only 10% of the population surrounding the proposed site has no access to a vehicle. We vehemently contest these claims and analyse the census data an LSOAs (Lower-Layer Super Output areas) that surrounds the proposed site. We can see that there are a large proportion of residents who reside near the proposed site who do not have access to a vehicle. These patients will see huge improvements in pharmaceutical accessibility should my client's application be granted.*

- 2.131 *The other Applicant also mentions that the site proposed by my client is not the same as that of recent pharmacy closures. We submit that that is true; we believe that a pharmacy other proposed location provides much better access to the wider population opposed to the pharmacy closure sites. Indeed, it is often that case that pharmacy is closed [sic] due to unviability at certain locations. My client has chosen the proposed site as it not only provides much better geographical access, but also provides better viability opposed to pharmacy closure sites.*
- 2.132 *The other Applicant raises concern with the parking provision at my client's proposed site. As ratified by the HWB, parking is plentiful at my client's proposed site and directly outside the proposed premises. There is not a need for dedicated disabled spaces as most spaces are accessible, as is usual for suburban areas. This is in stark contrast to the inner-town location proposed by the other Applicant where car parks are busy and dangerous. It is noteworthy that parking at my client site is free whereas the other app can site is subject to parking charges.*
- 2.133 **Further Consideration by the Committee**
- 2.134 The Committee also considered:
- 2.135 The NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.
- 2.136 Department of Health guidelines on market entry by means of pharmaceutical needs assessment – Chapter 8 – Unforeseen Benefits.
- 2.137 The Report which included:
- 2.137.1 maps of the location,
 - 2.137.2 opening times and distances to surrounding pharmacies and GP Practices,
 - 2.137.3 a site visit report [copy provided at Appendix B],
 - 2.137.4 West Berkshire PNA 2022-25 extracts and a link to the full PNA,
 - 2.137.5 public transport information,
 - 2.137.6 prescription information,
 - 2.137.7 a previous decision report for another unforeseen benefits application in Newbury and,
 - 2.137.8 the relevant Regulations (18, 19, 31, 51 and 65).
- 2.138 In relation to the applications, the Committee noted the Applicants Fitness to Practise Status:
- 2.139 **Application from LP SD One Hundred Seven Limited.**
- 2.140 The Committee noted that the applicant's fitness information had previously been considered and approved.
- 2.141 **Application from Bolcer Ltd.**
- 2.142 Fitness information was determined and approved on 26th June 2024.

- 2.143 The Committee considered information from a site visit of the Newbury & Thatcham area that had been undertaken by Pharmacy Commissioning Hub representatives who were present at the meeting.
- 2.144 Newbury is a market town in West Berkshire situated in the valley of the River Kennet, it is 26 miles south of Oxford and 20 miles west of Reading. Thatcham is a market town situated to the east of Newbury which now only have one field separating the two town boundaries.
- 2.145 The A339 runs vertically through the centre of Newbury, to the North of Newbury town centre the A4 runs to the east through Thatcham, this is the main link road between the two towns.
- 2.146 The Committee noted the decision made by Buckinghamshire, Oxfordshire and Berkshire West ICB on 6th March 2024 to approve an application offering to provide unforeseen benefits for the Central/South Newbury area. The Committee noted that this decision is now under appeal with NHS Resolution.
- 2.147 **Regulation 31 – Refusal: same or adjacent premises**
- 2.148 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.
- 2.149 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.
- 2.150 The Committee was satisfied that there is no pharmacy providing pharmaceutical services within the area of the best estimate address/proposed premises of either application. The applications did not therefore need to be refused in accordance with Regulation 31.
- 2.151 **Regulations 40,41 and 44**
- 2.152 The Committee noted that the best estimate address/proposed premises location for both the applications 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.
- 2.153 **Regulation 50**
- 2.154 There are 33 dispensing patients living within 1.6km radius of the proposed best estimate address of application 1, LP SD One Hundred Seven Limited and 5.2 6 dispensing patients living within 1.6km radius of the proposed best estimate address of application 2, Bolcer Ltd.
- 2.155 Therefore, the Committee noted that if either of the applications were 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.
- 2.156 The Committee agreed that if either of 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 –
- 2.157 **Application from LP SD One Hundred Seven Limited: 33 Dispensing patients**
- 2.157.1 Chapel Row Surgery for a period of one (1) month – (33 patients)

- 2.158 **Application from Bolcer Ltd: 6 patients**
- 2.158.1 East Lane Surgery Chieveley for a period of one (1) month – (6 patients)
- 2.159 Oral Hearing
- 2.160 Having reviewed the content of each application and the consultation responses for each one, the Committee was satisfied it was not necessary to hold an oral hearing to determine the applications.
- 2.161 Regulation 18 – Unforeseen benefits application
- 2.162 The Committee noted that this was an application for “unforeseen benefits” and fell to be considered under the provisions of Regulation 18 which states:
- 2.163 (1) if –
- 2.164 (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 Schedule 1, 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).
- 2.165 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.
- 2.166 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.
- 2.167 The Committee had regard to the West Berkshire PNA 2022-2025 (issue date 1st October 2022) (the ‘PNA’) and noted that no supplementary statements had been issued.
- 2.168 The Committee also noted that, having considered the entire West Berkshire locality including the area of Newbury & Thatcham, the HWB had reached the conclusion that “The results of the PNA concluded that there are no current gaps in the provision of essential services during normal working hours in their lifetime of this PNA.” And “The results of the PNA concluded that there are no current gaps in the provision of essential services during normal working hours in their lifetime of this PNA.” [Page 120, West Berkshire PNA, 2022-25].
- 2.169 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.
- 2.170 The Committee noted that the improvements or better access that the Applicants were claiming would be secured by their application were not included in the relevant pharmaceutical needs’ assessment in accordance with paragraph 4 of Schedule 1.

- 2.171 The Committee was satisfied that the improvements or better access which the applicants were proposing to secure were not identified in the PNA, and an 'unforeseen benefits' application is the correct type of application.
- 2.172 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).
- 2.173 **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.*
- 2.174 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. Neither of the submissions included any comment or evidence in regard to this matter. Therefore, the Committee concluded that granting an application would not cause significant detriment in this regard.
- 2.175 **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.*
- 2.176 Neither of the submissions included any evidence on this question and the Committee found no proof to support the suggestion that if an application was to be granted, it would cause significant detriment to the arrangements in place for pharmaceutical services in the area.
- 2.177 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 an application under Regulation 18(2)(a).
- 2.178 **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.*
- 2.179 The Committee noted that in the area of Newbury & Thatcham, there have been a number new housing developments and population growth. Following the closure of four pharmacies over the past 2 years there is a now significant decrease of pharmaceutical service provision in the area.
- 2.180 In order to determine whether 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 Newbury & Thatcham area.
- 2.181 The Committee considered the location and distance of the pharmacies in the Newbury & Thatcham Area from the proposed locations as detailed in the site visit report and noted there was no pharmaceutical provision in the North East area of Newbury (in the area of Bolcer Ltd's proposed location).
- 2.182 In particular the Committee noted the location of the two nearest pharmacies to the proposed locations are:

Application from LP SD One Hundred Seven Limited	Distance from Applicant (Distances given are in a straight line)
Halo Pharmacy	0.2 miles

3-5 Crown Mead, Bath Road, Thatcham, RG18 3JW	
Thatcham Pharmacy Burdwood Centre, Station Road, Thatcham, RG19 4YA	0.5 miles

Application from Bolcer Limited	Distance from Applicant (Distances given are in a straight line)
Day Lewis Pharmacy Access house, Strawberry Hill Road, Newbury, RG14 1GE	1.1 miles
Boots the Chemists 4-5 Northbrook Street, Newbury, RG14 1DJ	1.1 miles

- 2.183 The Committee noted the details around the nature of the journey to the nearest pharmacies, road layouts and parking.
- 2.184 The Committee was provided with information on local bus service routes through Newbury and Thatcham showing services run approximately every hour Monday to Saturday for the 1a & 1c bus service.
- 2.185 On balance, having considered the factors above, the Committee was not satisfied that following the closure of the four pharmacies that residents of the Newbury & Thatcham area have reasonable choice with regard to obtaining pharmaceutical services.
- 2.186 The Committee went on to consider the merits of each of the two applications in relation to choice, based on the proposed locations.
- 2.187 The Committee considered the proposed location of the application from LP SD One Hundred Seven Limited and noted that the proposed location was situated in the main shopping area of Thatcham, with plenty of parking but mainly paid parking except for approx. 23 spaces.
- 2.188 The Committee considered the location of the proposed premises in relation to other pharmacies within the Newbury & Thatcham area. The Committee noted that although the proposed location was in the main shopping area of Thatcham it was geographically close to the nearest pharmacy, which was a 6 min 0.3 mile walk from the proposed location and that the second nearest pharmacy was 0.5 miles away and therefore, may not provide the best location to secure better access for the wider population of Newbury and Thatcham.
- 2.189 The Committee considered the proposed location of the application from Bolcer Ltd and noted that the proposed location was situated in a parade of shops with free parking and people already accessed this location for some daily needs.
- 2.190 The Committee considered the location of the proposed premises in relation to other pharmacies within the Newbury & Thatcham area. The Committee noted that the 2 nearest pharmacies to the proposed location were a 33 & 35 minute (1.5 & 1.6 mile) walk.

- 2.191 The Committee noted that the proposed location was nearest to the two new housing developments of Taylor Wimpey/Shaw Valley and David Wilson Homes/Donnington Heights, both of which are nearing completion.
- 2.192 The Committee considered the location of the proposed premises in relation to the Newbury and Thatcham area as a whole and noted that the proposed location was accessible for the residents of the new housing developments, those who live in the north east of the area and the wider population of Newbury and Thatcham.
- 2.193 The Committee noted there are several practices dispensing to patients within 1.6km of the proposed location of both applications.
- 2.194 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.
- 2.195 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.
- 2.196 The Committee noted that whilst Bolcer Ltd had included statements in their application regarding people who share a protected characteristic there was no evidence provided that identified a group of patients in the Newbury & Thatcham area, sharing a protected characteristic with difficulty accessing services that meet a specific need.
- 2.197 The Committee felt that none of the applications had addressed the matter of patients with protected characteristics in any detail or suggested any group has difficult accessing services.
- 2.198 The Committee concluded that based on the information provided, granting an application would not confer significant benefits on people sharing a protected characteristic.
- 2.199 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.
- 2.200 The applicants have not offered any information or evidence to demonstrate that their application brings any innovative approaches in the delivery of pharmaceutical services.
- 2.201 Therefore, the Committee concluded that there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services.
- 2.202 In the absence of any suggestion by the applicants that there would be such benefits, the Committee was satisfied that granting the application would not lead to any significant benefits by virtue of innovation.
- 2.203 Other Considerations

- 2.204 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).
- 2.205 Overall Decision
- 2.206 The Committee concluded that it was not required to refuse the applications under the provisions of Regulation 31.
- 2.207 The Committee had considered whether the granting of an application would cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area covered by the HWB, or the arrangements in place for the provision of pharmaceutical services in that area and was not satisfied that it would not.
- 2.208 The Committee determined an application should be granted under the requirement of Regulation 18(2)(b)(i), there is not already a reasonable choice with regard to obtaining pharmaceutical services.
- 2.209 The Committee was of the view it was only necessary to grant one of the applications and so proceeded to consider which application should be granted.
- 2.210 The Committee compared the applications.
- 2.211 It was agreed that application from LP SD One Hundred Seven Limited was situated too close to two other existing pharmacies (Halo Pharmacy & Thatcham Pharmacy) to provide improved access for the residents of Newbury and Thatcham.
- 2.212 The Committee noted that the residents in the area of the Bolcer Ltd's proposed location currently have to travel a greater distance than other areas of Newbury & Thatcham in order to access to [sic] pharmaceutical services. The Committee felt that this proposed location offered the best accessibility for the wider population of Newbury and Thatcham, and in particular the residents of the north east of the area.
- 2.213 It was noted that application [sic] from Bolcer Ltd has declared more core opening hours (including core opening hours on a Saturday) than the application from LP SD One Hundred Seven Limited and proposes the additional hours over the standard 40 core hours will be Directed (not supplementary), which the Committee noted is currently subject to a 3-year commitment under a Direction arrangement.
- 2.214 The Committee noted that although the application from LP SD One Hundred Seven Limited provided more opening hours on Saturdays and Sundays, they were supplementary hours which could be removed with 5 weeks' notice.
- 2.215 The Committee agreed that application from Bolcer Ltd is the preferred application. The Application from Bolcer is therefore granted and the application from LP SD One Hundred Seven Limited, is refused.
- 2.216 **Core opening hours conditions.**
- 2.217 Bolcer Ltd undertakes to provide pharmaceutical services at the proposed pharmacy premises for more than 40 core opening hours per week.
- 2.218 The applicant and Buckinghamshire, Oxfordshire and Berkshire West ICB have agreed that pharmaceutical services are to be provided at the proposed pharmacy premises during those additional opening hours that exceed the 40 core opening hours at set times and on set days, and
- 2.219 The application was granted having regard to that undertaking and that agreement.

- 2.220 Bolcer Ltd has confirmed that the 40 core opening hours are 09:00-13:00; 14:00-18:00 Monday to Friday.
- 2.221 The applicant and Buckinghamshire, Oxfordshire and Berkshire West ICB have agreed that the additional opening hours are 18:00-18:30 Monday to Friday and 10:00-13:00 on Saturdays.
- 2.222 **Rights of appeal – Application from LP SD One Hundred Seven Limited, CAS-261308-H8K8C**
- 2.223 The application is refused so the applicant, LP SD One Hundred Seven Limited, has the right to appeal.
- 2.224 The Committee decided not to grant third party rights of appeal to the LP SD One Hundred Seven Limited decision to any of the parties that responded during the consultation period because the application had been refused.
- 2.225 **Rights of appeal, Application from Bolcer Ltd: CAS-270183-Q5R4N4**
- 2.226 The application is granted so the applicant, Bolcer Ltd, does not have appeal rights.
- 2.227 LP SD One Hundred Seven Limited had made a reasonable attempt to express their grounds for opposing the application adequately in their representations.
- 2.228 The Committee decided that the parties that should have third party rights of appeal are LP SD One Hundred Seven Limited.”

3 **The Appeal**

In a letter dated 15 August 2024 addressed to NHS Resolution, the Applicant appealed against the Commissioner’s decision. The grounds of appeal are:

- 3.1 “I am writing to formally appeal the decision made by the NHS Committee during the meeting that took place on Wednesday 26th June 2024 to award a new pharmaceutical contract to Bolcer Limited offering Unforeseen Benefits, while rejecting the application of LP SD One Hundred Seven Limited also offering Unforeseen Benefits. After careful consideration of the reasons provided in the Committee’s decision letter, I believe there are several points that warrant a reconsideration of this decision. I respectfully request that the decision be quashed, with a view to either redetermining and awarding the contract to both applicants, LP SD One Hundred Seven Limited and Bolcer Limited, or to LP SD One Hundred Seven Limited alone after taking careful consideration of the following points.
- 3.2 Proximity to Existing Pharmacies
- 3.3 The Committee’s decision to reject the application from LP SD One Hundred Seven Limited was partly based on its proximity to two existing pharmacies—Halo Pharmacy and Thatcham Pharmacy. While proximity is an important consideration, it should not be the sole factor in determining whether the application from Bolcer Limited should be favoured over the application from LP SD One Hundred Seven Limited. The area served by LP SD One Hundred Seven Limited may still have unmet needs that could be better addressed by a pharmacy that offers additional and unique services. Furthermore, the mere proximity of pharmacies does not necessarily mean that all residents have equitable access to pharmaceutical services, especially in areas with high population density or specific demographic needs such as Newbury.
- 3.4 Since the NHS committee provided a decision on these applications, it has also been circulated that an application has been submitted by Halo Pharmacy Limited (Owner of Halo Pharmacy, 3-5 Crown Mead, Bath Road, RG18 3JW) to open a distant selling contract within Thatcham to allow for redistribution of their own workload, essentially

creating a hub and spoke model for the simple reason being that they are unable to manage the demand they are presented with for both dispensing and service provision, especially given the closure of Boots, Thatcham Medical Practice.

- 3.5 We would also like to highlight the comments made by the West Berkshire Health and Well Being Board who said:
- 3.6 *“Although the pharmacy would be in Thatcham Central ward, which has low levels of deprivation, it would be used by all Thatcham residents, including those living in Thatcham North-East, which has significant pockets of deprivation (20% of LSOAs within this ward are in the third decile on the Index of Multiple Deprivation). We see a correlation between poorer health (and health behaviours such as smoking and substance misuse) and increased deprivation. We would therefore expect to see a greater demand on pharmacy services (including Advanced and Enhanced Services, such as smoking cessation and needle and syringe exchange services) serving more deprived areas.*
- 3.7 *It should also be noted that the West Berkshire Local Plan Review proposes to allocate 1,500 additional homes to the north-east of Thatcham and these residents would also be likely to use the proposed pharmacy at the Kingsland Centre.”*
- 3.8 The comments provided as above should not be taken lightly or overlooked. The Health and Wellbeing board, who have the responsibility to ensure sufficient health and wellbeing provisions are in place for the communities they oversee have themselves made it very clear that “**all** Thatcham residents” would use the pharmacy proposed to be opened by LP SD One Hundred Seven Limited at the Kingsland Centre.
- 3.9 Accessibility for Residents
- 3.10 The decision letter highlights that Bolcer Limited's proposed location offers better accessibility for residents, particularly those in the **northeast** of Newbury and Thatcham. While this may be the opinion of the NHS Committee, it is important to recognize once again the most valued and important insight provided by the West Berkshire Health and Well Being board who specifically made a point of stipulating that those residents situated in the northeast ward would be able to use and benefit from the location proposed by LP SD One Hundred Seven Limited. The application from LP SD One Hundred Seven Limited will significantly enhance access for a different subset of the population, particularly those who are closer to the town centre but still experience barriers to accessing pharmaceutical services. The Committee should consider whether the broader community would benefit from the added convenience and service variety that LP SD One Hundred Seven Limited would bring, particularly for vulnerable populations such as the elderly, those with mobility issues, or those without access to private transportation.
- 3.11 Opening Hours and Service Commitment
- 3.12 The Committee noted that Bolcer Limited declared more core opening hours, including on Saturdays, as a key factor in its decision. However, it is important to consider the quality and range of services provided during these hours, not just the quantity. LP SD One Hundred Seven Limited proposed additional hours on weekends, which could be crucial for residents who are unable to visit a pharmacy during traditional weekday hours. The flexibility of supplementary hours, though subject to change with notice, allows the pharmacy to adapt to the community's needs, which could ultimately result in better service something that LP SD One Hundred Seven Limited champions daily. Additionally, the fact that these hours can be adjusted should not detract from their potential benefit to the community. Though having said that, we wish for it to be noted that LP SD One Hundred Seven Limited wishes for the committee to reconsider this comparison knowing that we will agree to formally honour the following core hours: Monday to Friday: 8:30am-6:30pm Saturday: 10am-2pm Sunday: 10am-4pm With

Supplementary hours: Saturday: 9am-10am, 2pm-5pm. Total opening hours: Monday to Friday: 8:30am-6:30pm Saturday: 9am-5pm Sunday: 10am-4pm.

- 3.13 With this commitment to the NHS commissioner, they are now presented with no concern over LP SD One Hundred Seven Limited exercising the right to reduce our service provision. This change and commitment should be something that also allows for a redetermination in favour of the application submitted by LP SD One Hundred Seven Limited, and begs to ask the question that if the committee redetermine in favour of both contracts then is there sufficient resources within the NHS to support the contractor payments for both applicants or would the unforeseen benefit be met in full by the one applicant- LP SD One Hundred Seven Limited.
- 3.14 Community Impact and Service Diversity
- 3.15 LP SD One Hundred Seven Limited is committed to offering a wide range of pharmaceutical services that go beyond the basic dispensing of medications. This includes health consultations, medication reviews, and specialized services that could address specific health challenges within the community. The presence of a pharmacy that prioritizes [sic] such services could have a substantial positive impact on public health outcomes.
- 3.16 Residents of Newbury and Thatcham currently face limited access to reliable pharmaceutical services especially during the out of hours period as a result of contractors closing for full days without acceptable notice such as Tesco on 6th August 2024 who were closed 9am-9pm (this is merely one recent and relevant example and one that may or may not have been reported to NHS England, but either way demonstrates the lack of reliability that the population of Newbury have when it comes to Pharmaceutical Services and also demonstrates the lack of out of hours access options the residents of Thatcham have should they require care outside of the hours offered by contractors within Thatcham. This again supports the statement offered by the Health and Well Being board, evidencing that all residents of Thatcham and Newbury would gain unforeseen benefits from the extended hours service provided by LP SD One Hundred Seven Limited. (Please see image below which is a screenshot of a WhatsApp group which involves local pharmacy contractors and clinical team members from local GP surgeries across Thatcham and Newbury).
- 3.17 [Screenshot – See page 1 Appendix A for Committee].
- 3.18 Additionally, the proposed location within a shopping centre is particularly advantageous, as it attracts a diverse range of individuals, including those who are old, young, able, and disabled, for various reasons beyond healthcare. The centre draws people who need to visit charity shops, coffee shops, grocery shopping and more, and even includes two opticians, which already demonstrates an existing demand for healthcare services and a large service user base.
- 3.19 In contrast, Bolcer Limited's proposed location on Gaywood Drive lacks this level of foot traffic. The area primarily draws visitors who are specifically seeking a fish and chips [sic] shop, a Chinese takeaway, or a convenience store, providing fewer incidental opportunities for exposure to pharmacy services. Therefore, the Committee should consider the broader, more inclusive benefits that LP SD One Hundred Seven Limited's central location would provide, which might not be fully realized [sic] through Bolcer Limited's application.
- 3.20 Bolcer Limited is proposing a new contract in a location that has never had a Pharmacy located in before. There is a reason for this, and that is there is no benefit to be had. Patients/residents have not complained about difficulties accessing services, nor has the council highlighted any issues. Residents were able to use the services provided to them by the now closed contracts because they were able to transport themselves there without difficulty, whether it was by public transport or personal vehicles. Bolcer Limited has not detailed any evidence which demonstrates clearly that residents are

faced with difficulties in accessing pharmaceutical provisions, and this only supports the fact there is no benefit to be had by granting this application in comparison to that over the application submitted by LP SD One Hundred Seven Limited.

- 3.21 Conclusion and Request for Reconsideration
- 3.22 Considering the above points, I respectfully request that the NHS Appeals Committee re-evaluate the decision to reject the application from LP SD One Hundred Seven Limited. Awarding the contract to both applicants, or alternatively if deemed a better distribution of NHS resources, then to LP SD One Hundred Seven Limited alone, would result in a more comprehensive and accessible pharmaceutical services for the residents of Newbury and Thatcham. This approach would better meet the diverse needs of the community, ensuring equitable access to the services they require.
- 3.23 As contractors already providing NHS services, we fully understand the immense pressures faced from an operational perspective specifically the hardships faced with regards to consistent waves of claw backs and poor remuneration. If the Committee decides to grant the contract to both applicants rather than just LP SD One Hundred Seven Limited, we want to remind them that Bolcer Limited will inevitably struggle to achieve sufficient business at its proposed location to maintain viability and it would be a significant loss for all parties involved if the residents of Thatcham and Newbury were let down again by yet another contractor closing due to a lack of financial viability.
- 3.24 I would be grateful for the opportunity to provide further evidence or clarification if required, and I hope that the Committee will consider this appeal with the attention and care that it deserves.
- 3.25 To bring together the appeal put before you I want to raise the following key points:
- 3.26 The commissioner said: "It was agreed that [sic] application from LP SD One Hundred Seven Limited was situated too close to two other existing pharmacies (Halo Pharmacy & Thatcham Pharmacy) to provide improved access for the residents of Newbury and Thatcham." - Does the committee not believe that the 2500 new homes that have now had planning permission granted over 170 hectares on the doorstep of Burdwood does not equate to needing improved access? In most cases this could usually warrant a new GP surgery let alone a new Pharmacy within the centre of the town. In addition to this, does the distance required to travel for residents of Thatcham to go to Newbury for out of hours access on weekends especially, not present a problem with access, and given the demographics of the population I would like to think the committee are able to approach this with common sense and see that there is an unforeseen benefit to be had by granting the application by LP SD One Hundred Seven Limited.
- 3.27 Does the committee believe that the two contractors Halo Pharmacy and Thatcham Pharmacy will have endless capacity to take on the demand that they will be faced with after new developments are completed? Halo Pharmacy are already at capacity and unable to cope, Thatcham Pharmacy is already taking on the demand which is a result of the insufficiencies at Halo Pharmacy (depicted with Thatcham Pharmacy now being the most nominated Pharmacy in Thatcham), but ultimately will hit capacity in terms of space and inevitably Thatcham will be needing another contractor that is central in location and providing these additional out of hours service.
- 3.28 Are the committee ignorant to the improved access that will be provided to all residents in Thatcham as a minimum by granting the application submitted by LP SD One Hundred Seven Limited? The source of improved access is literally detailed in the fact the application submitted by LP SD One Hundred Seven Limited is offering 7 day a week accessibility, and now with the commitment of core hours as written above, offers the access without risk of reduction especially on the weekends when public transport services are usually restricted.

- 3.29 Finally, we wish to ask the committee if it is sensible to grant a contract only to Bolcer Ltd who has yet to secure a premises. The committee are faced with the opportunity to grant a contract to a provider who has access to the proposed site and who genuinely wants to provide the community with what is needed and given that Bolcer Ltd have no guarantee of securing a suitable premises in the already well occupied Gaywood Drive shops then the committee risks losing the opportunity to allow LP SD One Hundred Seven Limited to provide what would be a first for the residents of Thatcham and Newbury.
- 3.30 If an oral hearing is arranged, then LP SD One Hundred Seven Limited would wish to attend and be represented.
- 3.31 Thank you for your time and consideration.”

4 Summary of Representations

This is a summary of representations received on the appeal.

4.1 HALO PHARMACY

- 4.1.1 “OUR COMMENTS and OBJECTION TO THE APPEAL MADE BY LP SD One Hundred Seven Limited in relation to the granting/refusal of Unforeseen [sic] benefits applications.
- 4.1.1.1 Ref: CAS-261308 – H8K8C7
- 4.1.1.2 Ref: CAS – 270183-Q5R4N4
- 4.1.2 I am writing to further buttress our objection to the application by LP SD One hundred Seven Limited (Ref: CAS-261308 – H8K8C7) for inclusion in the pharmaceutical list as may be suggested in their letter dated 15th August 2024 which was an appeal against the decision to grant an unforeseen benefit application to Bolcer Limited at Gaywood Drive shops (Ref: CAS – 270183-Q5R4N4) and/or a request for the redetermination of their application.
- 4.1.3 Firstly, we would like to suggest that you kindly refer again to the comments we made earlier regarding this application as attached and similar objections made by other parties to the application.
- 4.1.4 We believe that the details provided in their appeal letter are **misleading, unfounded** and **denigrating** to other service providers and still fall very short of meeting the requirements of Regulation 18(1).
- 4.1.5 The appellant has acknowledged that the application at Kingland Centre is very close to two other Pharmacies - Halo Pharmacy (0.3 miles away) and Thatcham Pharmacy (0.5miles away).
- 4.1.6 The appellant is the owner and operator of Thatcham Pharmacy which is 0.5miles away from the location he has applied to open another pharmacy. If there are unmet needs, additional or unique services required in the area, why is the appellant unable to provide them from their current location? The appellant has not described what these unique and additional services are either....or rather what is unique about them.
- 4.1.7 Opening a new location less than half a mile away does **NOT** confer:
- 4.1.7.1 Any further **choice** to patients in Thatcham or Newbury – as it will be operated by the same person/business.

- 4.1.7.2 Any further **access** to people who share a protected characteristic in Thatcham or Newbury.
- 4.1.7.3 Any **innovative** approach to delivering pharmacy services in Thatcham or Newbury.
- 4.1.8 If this was the condition for inclusion in the Pharmaceutical list, then there would be need to open several new Pharmacies across the country.
- 4.1.9 The appellant has also said:
- 4.1.10 *"Since the NHS committee provided a decision on these applications, it has also been circulated that an application has been submitted by Halo Pharmacy Limited (Owner of Halo Pharmacy, 3-5 Crown Mead, Bath Road, RG18 3JW) to open a distant selling contract within Thatcham to allow for redistribution of their own workload, essentially creating a hub and spoke model for the simple reason being that they are unable to manage the demand they are presented with for both dispensing and service provision, especially given the closure of Boots, Thatcham Medical Practice"*
- 4.1.11 **This is very misleading.** The application for inclusion in the Pharmaceutical list made by Halo Pharmacy Limited was made in November 2023, for a location in Newbury (**not Thatcham**) for a DSP to provide Essential and Advanced services to patients in across England.
- 4.1.12 The appellant refers to the comments by the West Berkshire Health and Wellbeing Board that:
- 4.1.13 *"Although the pharmacy would be in Thatcham Central ward, which has low levels of deprivation, it would be used by all Thatcham residents, including those living in Thatcham North-East, which has significant pockets of deprivation (20% of LSOAs within this ward are in the third decile on the Index of Multiple Deprivation). We see a correlation between poorer health (and health behaviours such as smoking and substance misuse) and increased deprivation. We would therefore expect to see a greater demand on pharmacy services (including Advanced and Enhanced Services, such as smoking cessation and needle and syringe exchange services) serving more deprived areas.*
- 4.1.14 *It should also be noted that the West Berkshire Local Plan Review proposes to allocate 1,500 additional homes to the north-east of Thatcham and these residents would also be likely to use the proposed pharmacy at the Kingsland Centre."*
- 4.1.15 These comments only reflect the position of the HWB and are not peculiar [sic] to the application by LP SD One hundred Seven Limited. They do not indicate that the applicant has been able to prove that the requirements of Regulation 18 have been met.
- 4.1.16 The appellant comments that:
- 4.1.17 *..we wish for it to be noted that LP SD One Hundred Seven Limited wishes for the committee to reconsider this comparison knowing that we will agree to formally honour the following core hours: Monday to Friday: 8:30am-6:30pm Saturday: 10am-2pm Sunday: 10am-4pm*
- 4.1.18 If a commitment to open on a Sunday was the condition for inclusion in the Pharmaceutical list, then we would have Pharmacies in every corner of the country. Two Pharmacies already open on Sundays in the area, a third one does not confer any particular advantage.

- 4.1.19 The appellant comments that:
- 4.1.20 *Residents of Newbury and Thatcham currently face limited access to reliable pharmaceutical services especially during the out of hours period as a result of contractors closing for full days without acceptable notice such as Tesco on 6th August 2024 who were closed 9am-9pm*
- 4.1.21 This is again misleading and denigrating. The message in question was posted in a closed group to make surgeries aware of an unintended closure so that patients are not referred to the Pharmacy within that period. The appellant has failed to point out that the contractor later posted (shortly afterwards) that the a Pharmacist had arrived in the branch and then trading as normal.
- 4.1.22 The appellant comments:
- 4.1.23 *Bolcer Limited is proposing a new contract in a location that has never had a Pharmacy located in before. There is a reason for this, and that is there is no benefit to be had. Patients/residents have not complained about difficulties accessing services, nor has the council highlighted any issues. Residents were able to use the services provided to them by the now closed contracts because they were able to transport themselves there without difficulty, whether it was by public transport or personal vehicles.*
- 4.1.24 This again is misleading. There is no evidence that residents would prefer to travel all the longer way to access pharmaceutical services. Why would there be benefits in an application that seeks to be located where there are already two Pharmacies and then there would be no benefits in an application that is located where there is no other Pharmacy within a mile.
- 4.1.25 *As contractors already providing NHS services, we fully understand the immense pressures faced from an operational perspective specifically the hardships faced with regards to consistent waves of claw backs and poor remuneration.*
- 4.1.26 *If the Committee decides to grant the contract to both applicants rather than just LP SD One Hundred Seven Limited, we want to remind them that Bolcer Limited will inevitably struggle to achieve sufficient business at its proposed location to maintain viability and It would be a significant loss for all parties involved if the residents of Thatcham and Newbury were let down again by yet another contractor closing due to a lack of financial viability.*
- 4.1.27 This again is denigrating, unfounded and rich.
- 4.1.28 The last Pharmacy that was in the same shopping centre that the appellant has applied to was closed down by the operator for non-viability reasons which caused the patients a lot of grief and difficulties. The appellant has obviously not done enough to find this out for themselves.
- 4.1.29 The appellant comments:
- 4.1.30 *Does the committee not believe that the 2500 new homes that have now had planning permission granted over 170 hectares on the doorstep of Burdwood does not equate to needing improved access? In most cases this could usually warrant a new GP surgery let alone a new Pharmacy within the centre of the town.*
- 4.1.31 If an application for inclusion in the Pharmaceutical list was granted for every planning permission that was approved even when such developments have not begun, then we would have Pharmacies scattered all over the area without

proper consideration. The development in question is not yet started and could very well not materialise.

4.1.32 The appellant comments:

4.1.33 *Does the committee believe that the two contractors Halo Pharmacy and Thatcham Pharmacy will have endless capacity to take on the demand that they will be faced with after new developments are completed? Halo Pharmacy are already at capacity and unable to cope, Thatcham Pharmacy is already taking on the demand which is a result of the insufficiencies at Halo Pharmacy (depicted with Thatcham Pharmacy now being the most nominated Pharmacy in Thatcham), but ultimately will hit capacity in terms of space and inevitably.*

4.1.34 Again, this is very misleading and denigrating. There is no proof or evidence whatsoever to support this claim – that there are insufficiencies in Halo Pharmacy or that Halo Pharmacy is unable to cope with providing the Pharmaceutical services required by the patients in Thatcham.

4.1.35 We strongly oppose the any [sic] decision to redetermine the application offering unforeseen benefits at Kingsland Centre, The Broadway, Thatcham. RG19 3HN by LP SD One Hundred Seven Limited.

4.1.36 We would be prepared to attend any verbal hearings to this regard.”

Copy Letter sent by Halo Pharmacy to the Commissioner dated 10 April 2024

4.1.37 “Thank you for your letter dated 13th March 2024 which we had earlier received on the 27th December 2023. I am the owner of Halo Pharmacy, 3 -5 Crownmead, Thatcham, RG18 3JW, and submit the following **objection** to the above application.

4.1.38 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”).

4.1.39 Regulation 18 requires the Applicant to prove that granting the application will secure improvements, or better access to pharmaceutical services, or pharmaceutical services of a specified type in the HWB area; whilst having regard **in particular to the desirability** of

4.1.39.1there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB and

4.1.39.2people 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 and

4.1.39.3there being innovative approaches taken with regard to the delivery of pharmaceutical services.

4.1.40 As the ICB will note, the Applicant has failed to deal with these key issues in any meaningful way and makes a number of generalised, sweeping statements.

4.1.41 **Patient Journeys**

4.1.42 In terms of access, the Applicant cannot claim that their proposed pharmacy would be more accessible. Halo Pharmacy is only a 0.3-mile/ 5-minute walk from the proposed premises. A patient journey to the proposed location would essentially be the same as a patient journey to Halo Pharmacy. Indeed, the

proposed site and Halo pharmacy are linked by a one-stop bus journey which is practically a door-door service. The proposed site is not more accessible when considering patient journeys.

4.1.43 Recent closures

4.1.44 The Applicant references recent and upcoming store closures in the area and provides a link to these closures. For clarity, we highlight these as below:

4.1.44.1 Lloyds Pharmacy in Sainsburys, Bath Road, Reading, RG31 7SA

4.1.44.2 Lloyds Pharmacy in Sainsburys, Hectors Way, Newbury, RG14 5AB

4.1.44.3 Boots, Thatcham Health Centre, Bath Road, Thatcham, RG18 3HD

4.1.45 Taking each closure in turn:

4.1.46 The Lloyds pharmacy in Reading was situated over 10 miles away from the Applicants proposed site. It is highly unreasonable to suggest that this closure would have any effect on local residents.

4.1.47 The Lloyds pharmacy in Newbury was situated over 3 miles away in a neighbouring town. Again, it is unreasonable to suggest that this closure would have any consequential effect on local residents.

4.1.48 The Boots pharmacy in Thatcham Health centre is granted 0.3 miles from the proposed site. However, this pharmacy is directly opposite Halo pharmacy, and we are well placed and prepared to absorb these patients and provide adequate pharmaceutical access. Indeed, the migration of patients has already begun prior to the Boots closure, and we are unaware of any complaints regarding our service and any capacity issues. We are taking all necessary steps to even improve on the experience patients have ever had even before the closures.

4.1.49 In regard to recent closures, we conclude that the Lloyds in Sainsburys closures are not relevant to an application at the proposed location. The upcoming closure of the Boots will not leave a gap in access, with reasonable choice being upheld by Halo pharmacy.

4.1.50 Opening hours

4.1.51 The Applicant also references improvements in accessibility through the opening hours it proposes, with a particular emphasis on Sunday opening hours.

4.1.52 The Applicant raises the issue of Sunday opening pharmacies not being available for 3 miles, however we highlight that this has been the case in Thatcham for a while (many years) and certainly since the publishing of the last PNA in 2022, where no gaps in Sunday provision were identified.

4.1.53 The closing Boots is not open on a Sunday, and other closures are over 3 miles distant. As a local operator we are unaware of a need for Sunday opening, however, will happily oblige should NHS England commission us to do so. We already have plans to open for longer as soon as the Boots in Thatcham closes doors.

4.1.54 We note that despite placing emphasis on a need for additional opening hours, especially on a Sunday, the Applicant has submitted an application for the minimum 40 core pharmaceutical hours. The remaining 21 and a half hours are supplementary hours, which we highlight can be easily terminated with 3

months notification. It is clear that the Applicant has not committed to providing extended opening hours, despite what is written in the application.

4.1.55 We also note that the Applicant (LP SD ONE HUNDRED SEVEN LIMITED) is already a local operator, currently operating Thatcham Pharmacy, Unit 2 Burdwood Centre, Station Road, Thatcham, RG19 4YA. This pharmacy is 0.7 miles from the proposed site and does not currently open on a Sunday. We suggest that if the Applicant feels that there is a need for Sunday opening provision (a notion that we do not agree with), then an easier remedy would be for the Applicant to open on a Sunday through their current premises and provide all the benefits they have highlighted.

4.1.56 We maintain that there is currently sufficient access and reasonable choice of opening hours.

4.1.57 **Other matters**

4.1.58 The Applicant also highlights the provision of a delivery service. We note that delivery is not an NHS commissioned service, and much like supplementary opening hours, can be stopped at any time. As a local operator, we are also unaware of any complaints regarding delivery services.

4.1.59 **Conclusion**

4.1.60 We conclude that the Applicant has failed to address and demonstrate that regulation 18 has been met in any meaningful way and **thus this application should be refused.**

4.1.61 We look forward to hearing from you in due course.”

4.2 HEALTHCARE PLUS CONSULTING LTD (ON BEHALF OF BOLCER LTD)

4.2.1 “Thank you for your letter dated 3rd September 2024 to my client. Bolcer Ltd have instructed us (Healthcare Plus Consulting Ltd) to act on their behalf for this appeal, please find authorisation letter attached.

4.2.2 We would like to provide additional comments on the above appeal.

4.2.3 As previously highlighted, the Proposed Site is near to current pharmaceutical provision and thus does not really improve access. This has been covered in previous correspondence which has been attached for re-consideration. It is particularly notable the Applicant’s proposed site is subject to parking charges, a barrier to accessing pharmaceutical provision.

4.2.4 The Applicant offers to change their opening hours, including asking NHS Resolution to consider different core hours. We submit that NHS Resolution does not have the capacity to issue a direction for core hours, and these must instead be agreed with NHS England. Thus, it is not possible to change opening hours at this stage in the application process.

4.2.5 Should the Applicant wish to amend their core hours, they should withdraw their application and resubmit a new application with their new proposed core hours. This will enable the Applicant to agree a direction with NHS England; and will also uphold a fair and equitable application process.

4.2.6 As per our previous correspondence, the location proposed by the Applicant does not provide improvements in pharmaceutical access due to proximity of existing pharmacies, including the Applicant’s very own pharmacy.

4.2.7 We submit that this application does not offer significant improvements or access to pharmaceutical provision and urge the Committee to uphold the decision of NHS England and refuse this application.”

4.2.8 [Enclosures:

4.2.8.1 Signed Letter of authority.

4.2.8.2 Pharmaceutical Services Regulations Committees meeting in common for: Buckinghamshire, Oxfordshire and Berkshire West ICB, Hampshire & IoW ICB & Frimley ICB decision report [See paragraphs 2.7 – 2.230 above]

Healthcare Plus Consulting Ltd letter to the Commissioner dated 16 April 2024

4.2.9 “Thank you for your letter dated 13th March 2024. I act for Bolcer Ltd and have been instructed by my client to object to the above application.

4.2.10 My client agrees with the Applicant that a new pharmacy is required in the Newbury/Thatcham area, however, asserts that the application from Bolcer Ltd should be preferred.

4.2.11 It is of note that the Applicant’s proposed site is only 0.3 miles from existing pharmaceutical provision, with the next nearest pharmacy also being only 0.6 miles away. By contrast, the site proposed by my client is situated in a dense residential area and is 1.5 miles away from the nearest pharmacy. Clearly granting my client’s application would provide much greater access and choice to pharmaceutical provision for the localised population.

4.2.12 We also note that the Applicant has only provided 40 core hours, whereas my client has provided 45.5 core hours. The Applicant appears to have offered a number of supplementary hours, however as the committee will be aware, supplementary hours can be withdrawn easily and thus no weighting should be placed on them.”

5 Observations

5.1 THE APPLICANT

5.1.1 “We are excited about the opportunity to open another branch in the Thatcham area to expand our services and better serve the local community. This new site will enable us to offer additional services, including Pharmacy First Provision and enhanced new services, which will support the NHS more effectively. A larger premises will allow us to meet the growing needs of the community, and both sites will work collaboratively to ensure the Thatcham and surrounding areas receive the highest quality pharmacy care.

5.1.2 However, we want to highlight the space limitations at Thatcham Pharmacy in the Burdwood Centre, which may significantly impact the range of services we can provide. These constraints could force us to make difficult decisions about the services offered at this location.

5.1.3 Similarly, Halo Pharmacy is limited by space, although a double fronted property, they are seeking to win a DSP contract to enable them to move dispensing offsite, due to the lack of space and feasibility of growing or managing existing workload within their current site- equipped with insufficient consultation space.

5.1.4 Halo Pharmacy, in our view, represents a vision anchored in the past. Its active opposition to the creation of a state-of-the-art wellbeing hub and pharmacy at

the Kingsland Centre goes against our vision for the future and prosperity of Thatcham. This opposition also contradicts the favourable recommendations of various entities that have reviewed the case and, most importantly, disregards the needs of the people of Thatcham.

- 5.1.5 West Berkshire currently has some of the lowest pharmacy provisions in the country. Between 2022 and 2024, the number of pharmacies per 100,000 people in West Berkshire declined significantly, from 12.4 to 9.9. Establishing a new, centrally located hub at the Kingsland Centre, in the heart of Thatcham Town, offers a vital opportunity to improve pharmacy provision and expand services. This central location is well-connected by bus routes, making it easily accessible and beneficial for the entire community.
- 5.1.6 The proposed premises at the Kingsland Centre will feature two bespoke consultation rooms, a retail area three times larger than the current site, and the most advanced dispensary facilities. These consultation rooms will be at the heart of delivering high-quality services. In addition to the services, we already provide, the uniqueness of the new offerings will truly set us apart, which appears to be a point of intrigue for Halo Pharmacy.
- 5.1.7 With two consultation rooms, we will be the only pharmacy in the area capable of offering high-quality services at double the capacity. These will include both NHS-funded and private services such as travel clinics, phlebotomy, physiotherapy, audiology, and private prescribing. Operating seven days a week, we will far surpass any other community pharmacy in Thatcham and the surrounding areas.
- 5.1.8 Our reputation for excellence ensures that people are willing to travel significant distances to access our professional services. With 80 five-star reviews for a pharmacy only a year old and overwhelmingly positive feedback on social media, the local community has demonstrated strong support and enthusiasm for the new site.
- 5.1.9 Regarding the supporting letter from MP Lee Dillon:
- 5.1.10 Mr Guillermo Saborido is the Pharmacist and operations manager at LP SD ONE HUNDRED SEVEN LTD.
- 5.1.11 MP Lee Dillon also confused his letter of appeal by mentioning Bolcer Ltd. The letter was intended to offer appeals against the decision to reject the application submitted by LP SD ONE HUNDRED SEVEN LTD, and to overturn this and award the decision to grant the contract.
- 5.1.12 To be clear this was a genuine error from MP Lee Dillon, and this is further supported by the fact Mr. Saborido is not involved with Bolcer Ltd in any way other than appealing against the decision for their contract to be issued.
- 5.1.13 Regarding comments from Healthcare Plus:
- 5.1.14 They mention "Pharmacy First cannot be delivered without accessible pharmacies!"- We contest this as Pharmacy First offers service to a handful of conditions which DSPs can provide with exception to one condition. Which in our opinion can be service in full by local Pharmacies. Additionally, there are suitable alternative means of transport which can take residents from the proposed location of Bolcer Ltd to current providers such as Halo Pharmacy within 14 minutes, Day Lewis (Strawberry Hill) in 19 minutes, and Boots (Northbrook Street) between 11-19 minutes.
- 5.1.15 Healthcare Plus [sic] mention on average 19-28% of people do not have access to a vehicle, however there are sufficient public transport routes which

allow for access to pharmacy provisions, and this will no doubt be updated accordingly in the next PNA due 2025.

5.1.16 Regarding the point that Healthcare Plus [sic] mention regarding the current PNA stating: “*the **maximum** distance for residents in West Berkshire to access pharmaceutical services, should be no more than 1 mile. This distance equates to about a 20-minute walk.*” (Point 7.11, pg.58), when considering sufficient distribution and choice to pharmaceutical provision.” We want to bring to NHS resolutions attention that there are developments sanctioned for hundreds of houses to be erected in Thatcham over the next year which has been given no consideration when deciding against the application submitted for a new contract by LP SD ONE HUNDRED SEVEN LTD. An example of one such development is the circa 250 houses being built on Bowling Green Road in Thatcham. Meaning population from this development will have a 2.1mile journey (41-minute walk, 30-minute public transport journey) to the nearest Pharmacy (Thatcham Pharmacy). Compared to a 1.3-mile journey from the proposed site at the Kingsland Centre.

5.1.17 Healthcare Plus [sic] also say: “We submit that it is not for anybody to question the legality of the PNA, but rather for the NHS to make decisions in line with the conclusions of the PNA.”- we do not question the legality of the PNA, but we do question the validity of it and contest that the contents of it is not updated nor has there been an acceptable supplementary statement issued.”

6 Unsolicited comments

6.1 LEE DILLION MP

6.1.1 “I previously emailed you with correspondence that I had received from my constituent, [Mr S], regarding his appeal against the decision to reject a new pharmaceutical contract to LP SD One Hundred Seven Limited, within that email there was a typo on the company name. I am therefore resending my email to show this correction and reiterate my full support for this appeal.

6.1.2 I note that at the time of my first email you were 2 weeks into the 15 week appeal process and therefore I wanted to write to you as the Member of Parliament for Newbury expressing my support of this application.

6.1.3 You may not be aware that a recent study from the National Pharmacy Association shows that West Berkshire has just one pharmacy per 7,200 residents, the worst rate in the country. The national average is one pharmacy per 4,600 residents. This major lack of pharmacy provisions in West Berkshire is causing profound pressure on other NHS services within the county and having a negative impact on residents. This is why I stand behind [Mr S’s] application to award a new pharmaceutical contract to LP SD One Hundred Seven Limited.”

7 Consideration

7.1 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.

7.2 It also had before it the responses to NHS Resolution’s own statutory consultations.

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

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

Regulation 31

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

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

(2) This paragraph applies where -

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

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

(ii) adjacent premises; and

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

- 7.6 The Committee noted that the Applicant had not provided any information in the application form on this point but the Committee noted that the wording of the application form only required the Applicant to include information in the relevant section if the proposed premises were adjacent to, or in close proximity to, another pharmacy or dispensing appliance contractor premises. The Committee considered it reasonable to determine that the lack of information in the application form on this point when read with the wording of the application form allowed it to be reasonably satisfied that the Applicant considered that the proposed premises were not adjacent to, or in close proximity to, another pharmacy or dispensing appliance contractor premises.
- 7.7 The Commissioner, in its decision report, "*was satisfied that there is no pharmacy providing pharmaceutical services within the area of the best estimate address/proposed premises of either application. The applications did not therefore need to be refused in accordance with Regulation 31.*" The Committee noted that this had not been disputed on appeal or in subsequent representations and therefore determined that it was not required to refuse the application under the provisions of Regulation 31.
- 7.8 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

- 7.9 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)."*
- 7.10 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 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.
- 7.11 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.
- 7.12 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).
- 7.13 The Committee considered the PNA prepared by West Berkshire Health and Wellbeing Board, conscious that the document provides an analysis of the situation as it was assessed at the date of publication. The Committee bears in mind that, under Regulation 6(2), the body responsible for the PNA must make a revised assessment as soon as reasonably practicable (after identifying changes that have occurred that are relevant to the granting of applications) unless to do so appears to be a disproportionate response to those changes. Where it appears disproportionate, the responsible body may, but is not obliged to, issue a Supplementary Statement under Regulation 6(3). Such a statement then forms part of the PNA. The Committee noted that the PNA was dated 2022 - 2025 and that no supplementary statements had been issued.
- 7.14 The Committee had regard to the "Statements on service provision" section of the PNA which states:
 - 7.14.1 *"This PNA has concluded that there is good access to essential, advanced and other NHS pharmaceutical services for the residents of West Berkshire with no gaps in the current and future provision of these services identified. Additionally, no services were identified that would secure improvements or*

better access to pharmaceutical services if provided, either now or in the future."

- 7.15 The Committee had regard to chapter 8 titled "Conclusions" which states:
- 7.15.1 *"Areas that are more densely populated in West Berkshire are well served in terms of pharmacy accessibility."*
 - 7.15.2 *"The results of the PNA conclude that there are no current gaps in the provision of essential services during normal working hours in the lifetime of this PNA."*
 - 7.15.3 *"The results of the PNA conclude that there are no current gaps in the provision of essential services outside normal working hours in the lifetime of this PNA."*
 - 7.15.4 *"The results of the PNA conclude that there are no current gaps in the provision of advanced services for the lifetime of this PNA."*
 - 7.15.5 *"The results of the PNA conclude that there are no current gaps in the provision of other NHS services in the lifetime of this PNA."*
 - 7.15.6 *"This PNA has considered the proposed new housing developments in West Berkshire. The highest number of proposed new dwelling developments that are expected to be completed in the lifetime of this PNA are within Newbury Speen, Newbury Central and Newbury Greenham wards; the largest of these being Market Street development in Newbury Central ward, the Oxford Road development in Newbury Speen ward and the Pincents Hill development in Tilehurst Birch Copse ward. All these proposed developments are within areas with good pharmacy provision."*
 - 7.15.7 *"The results of the PNA conclude that there are no gaps in essential services that if provided, either now or in the future, would secure improvements or better access to essential services in the lifetime of this PNA."*
- 7.16 The Committee noted that the Applicant seeks to provide unforeseen benefits to the patients of Thatcham. 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.
- 7.17 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)

- 7.18 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"*
- 7.19 The Commissioner, in its decision report, stated 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. Neither of the submissions included any comment or evidence in regard to this matter. Therefore, the Committee concluded that granting an application would not cause significant detriment in this regard." The Committee noted that this had not been disputed on appeal or in subsequent representations.

7.20 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.

7.21 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)

7.22 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"

7.23 The Commissioner in its decision report, stated that it *"found no proof to support the suggestion that if an application was to be granted, it would cause significant detriment to the arrangements in place for pharmaceutical services in the area"* which had not been disputed by any party.

7.24 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.

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

Regulation 18(2)(b)

7.26 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)

- 7.27 The Committee noted that the application was prompted by the closure of three pharmacies (and the planned closure of a fourth) in the area of the Health and Wellbeing Board.
- 7.28 The Applicant contends that the remaining contractors, although able to absorb the pharmacy provision of the three closures mentioned above, are unlikely to have capacity to accommodate the closure of the fourth pharmacy. However Halo Pharmacy states that it is well placed and prepared to absorb any additional patients. Further Halo Pharmacy highlights that one of the closures was located over 10 miles away from the proposed site and a second was located over 3 miles away and therefore would not have any effect on local residents. The Committee was mindful that pharmacy closures did not automatically mean that there is a need for a pharmacy to open in their place.
- 7.29 The Committee had regard to the location of the existing pharmacies and GP surgeries as provided on the map by the Commissioner, which had not been disputed by any party.
- 7.30 The nearest pharmacies are said to be located 0.3 miles and 0.5 miles away from the proposed site. Further in its site visit report, the Commissioner described the area as flat, with wide paving, dropped kerbs and good street lighting. The Committee noted that no information had been provided to demonstrate that for those who are willing and able, were having any difficulties accessing the existing pharmacy provision on foot.
- 7.31 The Commissioner in its site visit report noted that there are 14 car parking spaces at the parade of shops housing Halo Pharmacy, the nearest pharmacy. Although all spaces were full at the time of the visit, the Commissioner noticed a fairly fast turnover of cars. No further information had been provided by any of the parties in relation to parking at other pharmacies in the area.
- 7.32 The Committee noted the Applicant's comment to the Commissioner that "*A consensus of Berkshire showed that 10% of the population had no use of a vehicle and since this consensus was completed there has been a documented increase in road users.*" Although this comment appears to be in relation to a competing application, the Committee was mindful that the proposed site is located within Berkshire, and therefore the findings would also apply to this application. Based on the lack of information available, the Committee was of the view that patients, who have access to a vehicle, were not currently experiencing any difficulties accessing the exiting pharmaceutical provision.
- 7.33 The Committee noted in its decision report, the Commissioner refers to bus routes between Newbury and Thatcham running approximately every hour Monday to Saturday. However, its site visit report, makes reference to two buses an hour, Monday to Saturday and one bus an hour on Sundays, which the Committee considered to be a reasonable service throughout the week. Further the Committee noted in comments to the Commissioner, Halo Pharmacy states that "*the proposed site and Halo pharmacy are linked by a one-stop bus journey which is practically a door-door service.*" This was not disputed by the Applicant. The Committee noted the HWB's comments regarding deprivation in the area, however it had not been provided with any information to show that bus fares are so expensive so as to inhibit their use by persons in the area to access existing pharmaceutical services. Therefore, the Committee was of the view that for those reliant on public transport there was no information provided to show that patients were currently experiencing any difficulties in accessing the existing pharmaceutical provision.
- 7.34 The Applicant contends that "*if a patient within the area of Thatcham requires pharmacy service provisions on a Sunday they will have to travel and have the means of travelling*

over 3 miles away to access these services.” The Committee had regard to the opening hours proposed by the Applicant. In its application form, the Applicant proposed to provide 61 ½ hours a week, 40 of which would be core hours (9am – 5pm Monday to Friday). In its appeal, the Applicant has offered to amend its core opening hours, including provision on both Saturdays and Sundays.

- 7.35 The Committee noted that the Regulations are silent on whether an applicant can change the proposed opening hours in its application at any stage of the application process. However the Committee considered that by allowing parties to increase hours at the appeal stage, could risk bypassing the original decision-making process of the Commissioner. The materially changed application would effectively be determined by the Committee as a first stage determination. The Committee considered that this was not envisaged by the Regulations. Although the Committee has the discretion to reconsider an application, care should be taken to ensure this is a reconsideration of an existing application and not a first stage determination on what could be argued is a new application. The Committee considered that it may well be appropriate, where an application has been materially changed in respect of opening hours, to remit the matter to the Commissioner for fresh consideration or to discount the change in hours made at the appeal stage. The Committee considered that this could be appropriate where the number or spread of opening hours was particularly relevant to the context of the appeal.
- 7.36 The Committee considered that the amended core opening hours did not alter the fact that there was no information provided to support a finding that pharmaceutical services were not currently provided at such times as needed. Therefore the Committee discounted the change of hours. The Committee was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits (in relation to opening hours) on persons.
- 7.37 The Applicant refers to planned developments in the area and further that *“Halo Pharmacy are already at capacity and unable to cope, Thatcham Pharmacy is already taking on the demand which is a result of the insufficiencies at Halo Pharmacy (depicted with Thatcham Pharmacy now being the most nominated Pharmacy in Thatcham), but ultimately will hit capacity in terms of space and inevitably Thatcham will be needing another contractor that is central in location and providing these additional out of hours service.”* However Halo Pharmacy argues that *“there is no proof or evidence whatsoever to support this claim”* and further that *“the development in question is not yet started and could very well not materialise”*. The Committee was provided with no information to indicate that the existing pharmacies are struggling to cope with the level of demand for pharmaceutical services either now, or in the future.
- 7.38 The Committee noted in comments on the application, the HWB states that it *“would welcome additional pharmacies ... within the Kingsland Centre in Thatcham town centre as a means of helping to increase capacity and choice for patients, and to improve the overall resilience of the pharmacy sector within West Berkshire.”* However the Committee was mindful that it must have regard to access to current pharmaceutical services and consider whether services provided from the proposed site would be a significant benefit in the area of the relevant HWB. Further the Applicant states that *“There has been huge worry seen in social media from the residents of Thatcham and Newbury voicing their concerns at the lack of pharmacy provisions. We have the support of local GP surgeries who believe there is a gap in the pharmacy provisions and this is currently acting as an antagonist against the run of the grain that is the world of pharmacy at the moment.”* However, the Applicant did not substantiate these claims.
- 7.39 Based on its conclusions 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.

- 7.40 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. The Committee was mindful that there are always people in an area who share a protected characteristic, however no information had been provided to indicate the existence of any groups with a protected characteristic who were currently experiencing any difficulties in accessing pharmaceutical services specific to their needs. 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.
- 7.41 In considering Regulation 18(2)(b)(iii) the Committee had regard to the desirability of innovative approaches to the delivery of pharmaceutical services. In doing so, the Committee would consider whether there was something more over and above the usual delivery of pharmaceutical services that might be expected from all pharmacies, some 'added value' on offer at the location. The Committee noted that no information had been provided in this regard and was therefore not satisfied that, having regard to the desirability of there being innovative approaches taken with regard to the deliverability of pharmaceutical services, granting the application would confer significant benefits on persons.

Regulation 18(2)(b) generally

- 7.42 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.
- 7.43 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

- 7.44 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).
- 7.45 No deferral or refusal under Regulation 18(2)(f) was required in this case.
- 7.46 The Committee had regard to Regulation 18(2)(g) and found that it was not applicable.
- 7.47 The Committee considered whether there were any further factors to be taken into account and concluded that there were not.
- 7.48 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.
- 7.49 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 7.49.1 confirm the Commissioner's decision;
 - 7.49.2 quash the Commissioner's decision and redetermine the application;

- 7.49.3 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.
- 7.50 Although the Committee has reached the same conclusion to that of the Commissioner, it has done so for different reasons. In those circumstances, the Committee determined that the decision of the Commissioner must be quashed.
- 7.51 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.
- 7.52 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.
- 7.53 The Committee concluded that further notification under paragraph 19 of Schedule 2 would not be helpful in this case.

8 DECISION

- 8.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of the Commissioner for the reasons given above, and redetermines the application.
- 8.2 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.
- 8.3 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;
- 8.4 The Committee determined that the application should be refused on the following basis:
- 8.4.1 In considering whether the granting of the application would confer significant benefits, the Committee determined that –
- 8.4.1.1 there is already a reasonable choice with regard to obtaining pharmaceutical services;
- 8.4.1.2 there is no evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services; and
- 8.4.1.3 there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services;
- 8.4.2 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.

**Technical Case Manager
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