

17 December 2024

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REF: SHA/26197

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**APPEAL AGAINST BUCKINGHAMSHIRE,
OXFORDSHIRE AND BERKSHIRE WEST ICB DECISION
TO GRANT AN APPLICATION BY CA-HEALTH LTD FOR
INCLUSION IN THE PHARMACEUTICAL LIST
OFFERING UNFORESEEN BENEFITS UNDER
REGULATION 18 AT BEST ESTIMATE ADDRESSES 1-
154 BARTHOLOMEW STREET (INCLUDING KENNET
SHOPPING CENTRE), 5-19 MARKET STREET, 1-29
MARKET PLACE, 1-41 CHEAP STREET, NEWBURY,
BERKSHIRE**

1 Outcome

- 1.1 The Pharmacy Appeals Committee (“the Committee”), appointed by NHS Resolution, quashes the decision of the Commissioner and redetermines the application.
- 1.2 The Committee determined that the application should be granted.
- 1.3 The Committee noted that the Commissioner’s decision regarding the discontinuation of services provided by the dispensing doctors to the affected patients having not been appealed against, should stand.

A copy of this decision is being sent to:
Temple Bright LLP, on behalf of CA-Health Ltd
Pharmacy Sales and Consultancy, on behalf of Day Lewis PLC
PCSE on behalf of Buckinghamshire, Oxfordshire and Berkshire West ICB
Boots UK Ltd
Thames Valley LPC

Advise / Resolve / Learn

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1 A summary of the application, decision, appeal and representations and observations are attached at Annex A.

2 **Preliminary Considerations and Site Visit**

2.1 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.

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

2.3 The Committee held a virtual hearing to determine the application. This took place on 19 November 2024. The Committee comprised of Mrs L Lee (chair), Mr M Smith and Ms L Summers.

2.4 CA-Health Ltd was represented by Temple Bright LLP, accompanied by Chaudry Abbas and Sadia Abbas, (directors of CA-Health Ltd). Day Lewis was represented by Pharmacy Sales & Consultancy accompanied by Alan Greer (Regional Manager), Fatima Mobasshir (Regional Pharmacy Manager) and Danielle Brennan (Regional Support Manager). David Dean (Thames Valley LPC), Claire Brittain (Boots), Amanda Borland and Katie Perkins (Senior Commissioning Managers) observed the hearing.

2.5 Before the hearing, the Committee members had individually undertaken site visits and prepared reports of their visits.

2.6 Committee Member one:

Visit undertaken 11 September 2024

I parked in the Kennet Centre Car park, RG14 5BN at mid-day. This had plenty of free spaces including disabled spaces on the ground floor.

I looked around the Kennet Shopping Centre. This was really quiet and there were many empty shop units advertised for rental only up to January 2025 guaranteed.

A stallholder informed me that the whole centre was seeking planning permission to redevelop as apartments and the planning process had been going on for several years.

Amongst the shops still trading were: Subway, F Hinds, Card Factory, Shoe Zone and Timpsons.

Some other shops appeared to be 'pop-ups' selling low value or house clearance and second-hand goods. In the middle was a large stall with untidy piles of assorted merchandise. The whole centre was run-down, tired and depressing with very little footfall. The public toilets were in disrepair.

I then walked around the streets surrounding Kennet Centre clockwise. Bartholomew Street had some new flat developments to my left. There were also some empty retail units including a [closed] Laura Ashley and others. I passed the Parish Church on my left and turned right into Market Place passing the Town Council office.

The beginning of Market Place was pleasant, pedestrianised and with benches and trees. Pizza Express and Zizzi were there. Some of the shop units were empty and mostly been cafés of some kind. The Corn Exchange was on my left and appeared to have some entertainment uses.

Continuing into Cheap Street and then Market Street the ambience became more and more dilapidated until it curved round rightwards and re-joined Bartholomew Street.

I then walked north along Bartholomew Street, which is pedestrianised at the northern end, across Bridge Street and towards Northbrook Street. Gail's Bakery at the corner with Northbrook Street was the first busy retail unit.

Northbrook Street is pedestrianised.

Boots Pharmacy was on my right. It has level access.

Boots is a large shop. It appears to comprise two very substantial retail units. The Pharmacy and Medicines section is on the left. There were three customers receiving attention and I saw at least four pharmacy staff. The dispensary was large.

On the first floor, served by stairs and a lift, is a 'NHS First – our future health' area for vaccinations and consultations in privacy. Boots Opticians is also on this floor.

Continuing north along Northbrook Street passing HSBC, The White Company, Tesco Metro and a couple of other units, M&S is the first shop in the Parkway shopping centre.

This centre is busy and has a very wide variety of shops as well as M&S these include Next, HMV, H&M, Barclays and Waterstones in total about 50 units. There is parking for 500 cars [24 disabled spaces] and EV charging, accessed from Park Way. There is also a car park on the other side of Northbrook Street in Pembroke Road. Parking charges are similar in all car parks £1.70 for 1 hour, £3.00 for 2 hours and £4.20 for 3 hours. All the Parkway Centre shops and Boots open from 9.00am to 5.30pm.

Continuing north, the road becomes more uphill, and bears left on to the Old Bath Road. At a mini roundabout I turned left into Strawberry Hill. The Surgery and Day Lewis Pharmacy are identified by a conspicuous sign at the roundabout and on the premises. It is just about a 10 minute walk from Boots.

The Day Lewis Pharmacy has a separate entrance from the Surgery, down three steps but there is a shallow ramp to the left, albeit needing 2 x 90 degree turns. The door is automatic with an accessible push button. There is adequate parking shared with the Surgery. The pharmacy is compact but well laid out. Adjacent a big office building, Bond House, has been converted to flats.

Continuing down Strawberry Hill, then West Street brought me back to Northbrook Street and thence to the car park.

I was eager to find the site of a Boots that had closed in 2020 at 82-83 Bartholomew Street. I eventually found it about 300-400m south, on the left just before the bridge

over the railway. It is now an Eastern European Food shop. It is an elderly [Victorian] building with rather convoluted access.

I then drove about 1.5 miles to the Boots on the Retail Park. Plentiful parking and a variety of other shops including an M&S Food next door. The shop was quiet but there were a large number of prescriptions awaiting collection. Weekday opening 9am – 8pm Sundays 10am - 4pm. From the Boots it was 0.3 miles by road to Tesco, again very easy parking. A footpath with light-controlled pedestrian crossing is shorter, again there were a large number of dispensed prescriptions awaiting collection. Opening 9am – 9pm weekdays, Sunday 10am - 4pm. Tesco and Boots both have disabled parking close to the entrance and access within both stores is level.

Because of its comparatively remote location, consistent prescription numbers and distinctiveness from the Newbury town centre, I did not include the Wash Common Pharmacy and Surgery in my visit.

2.7 Committee Member two:

Visit undertaken on 12 September 2024 between 12.30 and 15.00.

Parked in the multi-storey car park of the Kennet Shopping Centre. 3 or 4 floors, plenty of spaces. Walked down the stairs into the Kennet Centre.

The Kennet Centre is a 1960's style shopping centre. Appeared neglected and unloved. Many shops empty. Saw only 2 shops with any customers – the Costa coffee shop (which fronts on to Bartholomew Street but also has a side entrance from the Kennet Centre) and a café, which was primarily serving older people and a few workmen (I was there at lunchtime). There were temporary stalls in the central area of the shopping centre selling clothes; there were no customers.

Exited the Kennet Centre onto Bartholomew Street. Found it difficult to follow the numbering system on this street and couldn't obviously locate the former (now closed) Boots which had been at number 82-83.

Bartholomew Street runs north-south and extends to the south of the main shopping area. At its southern end it isn't pedestrianised – there is street parking, limited for 1 hour, and there were plenty of spaces. The southern end had several empty shops, a pub, hairdressers, takeaways etc. The pavements were in reasonable condition and there were pelican crossings.

As you walk north back up Bartholomew Street (back towards the Kennet Centre), you cross the junction with Market Street.

Market Street runs west-east. Just after its junction with Bartholomew Street, there was a small courtyard of independent shops (Inch's Yard) but there were no other shops along this street. On its northern side, there is just the rear wall and vehicle exit road of the Kennet Centre car park, a service road, and then the side wall of the large Vue cinema. On its southern side, there was a gym and some apartments. Market Street wasn't pedestrianised but there was no parking. There were 2 bus stops (both with shelters) along it, serving a number of different bus routes. (One of these bus stops is marked on Newbury Town Council's Town Centre Map as the Bus Station, but it is just an ordinary bus stop). There were no people at all walking along Market Street or at the bus stops when I was there. The Vue cinema is at the end of Market Street where it joins Cheap Street.

Turning north up Cheap Street, there was a little more activity. There was a Walkabout bar, opposite the Vue cinema, a Post Office, and other shops (some now closed and boarded up). Up to the junction with Bear Lane, Cheap Street wasn't pedestrianised but there is no parking. At the junction with Bear Lane, there was another entrance to the Kennet Centre and bus stops outside. After the junction with Bear Lane, the road

opened out into a pedestrianised area and is now Market Place. It now had a more "town centre" feel.

Market Place had a theatre (Corn Exchange), banks, pubs, cafes with outdoor seating, and outdoor food stalls and vans. It was more upmarket and there were more people around. Mansion House Street runs across the top of Market Place and turning left along Mansion House Street takes you back to Bartholomew Street. (The building at the corner of Mansion House Street and Bartholomew Street – which is boarded up – bears the number 154 which is specifically referenced in the Applicant's best-estimate address).

Bartholomew Street runs north-south and marks the western edge of the shopping area. At its southern end is Bartholomew Street, it then becomes Bridge Street for the (very short) stretch where it crosses the river and, after the river, it becomes Northbrook Street. After the pedestrianised area, and at the northern end of the road, it appears to become The Broadway.

In the pedestrianised stretch south of the river, there were flats (opposite the Kennet Centre), and shop units – some empty, including a now vacant Laura Ashley. After crossing the river, and the road becoming Northbrook Street, it was much busier and also better kept, with hanging baskets, seating facilities, cycle racks, and more up-market shops.

Northbrook Street was pedestrianised and the paving was in reasonable condition. Saw people with walking frames, parents pushing pushchairs, people on mobility scooters – all using the area without apparent difficulty. Boots is on the right as you come over the bridge. There were other shops, restaurants, banks, Post Office etc. There were a small number of empty units.

Went into Boots. The pharmacy was at the rear of the store. It was a spacious area, with seating. There were 3 people there – all were being attended to and there was no queue.

Continuing north along Northbrook Street, the Parkway Centre was on the right. It appeared relatively new. It was an outdoor pedestrianised area, with an (artificial) grassed area in the centre. All the shop units were occupied and open.

After the walkway to the Parkway Centre, Northbrook Street was no longer pedestrianised and this appeared to mark the end of the main shopping area. There were no more shops; it was now mainly offices, flats, and the Job Centre Plus office. Saw only 1 or 2 people along this stretch of road. It no longer felt, to me, like the "town centre". The road became markedly steeper (uphill) and, whilst not an absolute barrier, it would leave people breathless if they were unwell or had mobility difficulties.

The Strawberry Hill Medical Centre (with the Day Lewis pharmacy behind it) was at the top of the road, at its junction with London Road. It took me 9 minutes to walk here from Boots. There was a Day Lewis sign below the blue NHS signage board of the Medical Centre. The entrance to the Medical Centre was at the back (in the car park) but was clearly signed from the main road. As you walk along the access pavement round to the back of the Medical Centre, you can see the green cross of the Day Lewis pharmacy although this is not easily visible from the road.

The Day Lewis pharmacy was situated in the car park – it did not have any frontage on to a main road. There was a private (?) access road to the car park off Strawberry Hill (with a sign to parking for surgery patients and a separate Day Lewis sign). The car park was large and was largely empty (of both cars and people) when I was there.

Did not go into the Day Lewis pharmacy but it appeared to be fairly small and I saw no patients there.

From the Medical Centre / Day Lewis, walked south down Strawberry Hill, which bends left (and becomes West Street) to rejoin Bartholomew Street. There were houses, flats and offices along Strawberry Hill / West Street (including Bond House). Saw 1 person going into Bond House but otherwise there were no other people, and very few cars, along this route.

From the Kennet Centre, drove to the Boots pharmacy in the Newbury Retail Park on the A339. It was 1.6 miles. The Retail Park had Curry's, M&S Food, Lidl, TK Maxx etc. Could see only 1 empty unit. There was a large car park which was about half-full. Went into Boots – the pharmacy was at the rear of the store. There were 2 customers, both being attended to, and no queue.

From the Retail Park, drove the very short distance to the Tesco store which was just on the other side of the A339 from the Retail Park. It was a large Tesco Extra, with a petrol station. It had a large car park which was busy but still had plenty of spaces. Went into Tesco - the pharmacy was at the rear of the store. There were 3 customers; it appeared that 2 were being attended to and 1 was waiting to be served.

2.8 Committee Member three:

Visit undertaken on 18 September 2024 between 14.30 and 18.00.

The Kennet Shopping Centre (the Centre) car park was mostly empty. All the disabled bays on the first floor were unoccupied.

Parking was free for those with a blue badge. The charges were similar to other car parks in the town centre being £1.70 for up to an hour, £3.00 for up to 2 hours etc. There was a flat rate evening charge of £2.50 Monday to Sunday between 18.00 to 8.00. However, disabled parking was not free in all the car parks around the town centre (Bear Lane). However, plenty of disabled spaces were available in all of the parking areas.

The Centre car park did not have a Shopmobility Centre, but there was one at the Northbrook multi storey car park behind WH Smith on Northbrook Street. Anyone can loan a wheelchair or Mobility scooter on a flat rate of £10 per day. On producing two forms of ID, and paying an annual fee of £12, the daily fee is £4, and it is possible to loan a scooter or wheelchair for longer periods of time on payment of a pro rata fee and leaving a deposit of £100. The Shopmobility Centre is open Monday to Saturday 10.00 to 15.00. There are 22 disabled bays in the Northbrook car park and disabled spaces were available. Using a mobility aid, the journey from Northbrook car park to Boots was a matter of minutes.

The third member used mobility aids and noted that throughout the centre of Newbury, the roads and pavements were easy to access. The pedestrianised areas exclude cars between 10.00 and 17.00 by means of raised bollards but are accessible to vehicles outside of these times. Most of the central paved area was flat without kerb stones and where there were kerbs, there were sufficient dropped pavements. The roads and pavements were well maintained throughout and thus easily accessible.

The Centre had many empty shops and most of the major brands had moved out of the Centre. There was a nursery which was still operating, a Costa and temporary shops and stands, nail bars and charity shops. Peacocks was relocating. There was also a Vue cinema located in the Centre. There were few shoppers on the two occasions when the member visited, it appeared that it was mostly used as a cut through. The member was informed by store managers and others that there were plans to redevelop the Centre and to replace it with a new shopping centre with residential accommodation above. This was known locally as the Eagle Quarter scheme. The planning application was still under consideration by West Berkshire Council. The member was unable to locate any notice or indication that a development was under consideration.

On exiting the Centre and travelling along Bartholomew Street to Bridge Street and onto Northbrook Street, there was a noticeable change in the type of shops and the number of shoppers beginning at Bridge Street and onto Northbrook Street. Northbrook Street was relatively busy with shoppers waking and seated in the pedestrianised central area, and in the shops and cafes. There were all the main High Street shops you would expect to see, together with some high-end local shops. There was also a local department store. It was also noticeable that there were a large number of banks, Santander, Nationwide, Halifax and the Newbury Building Society.

Boots on Northbrook Street is an easily accessible two storey, triple fronted shop. There were a number of shoppers in the cosmetic areas and four people accessing pharmaceutical services being attended to and no queue. The aisles were wide enough to accommodate mobility equipment.

Travelling back along Bartholomew Street, it was again noticeable that there was little activity. The nail bars, hairdressers and barbers had few customers. Near to an entrance to the Centre, there was a new development of 57 flats for 'older living' marketed by Chancellors and operated by Eden retirement living. However, none of the units were occupied and judging by the condition of the signage and the windows, it had been completed for some time. The agents' office had been moved off site to another location. Market Street had no activity, so cut back through the Centre to Cheap Street and Market Place. There was one person at a bus stop on Cheap Street and a large Post Office, but no customers could be seen at the Post Office. There was an empty block of residential flats across the road from the Post Office.

Market Place and around the Corn Exchange seemed to be used as a cut through and although not quite as desolate as the Centre was not as busy as Northbrook Street. Stopping for a cup of coffee, the member was the only customer in the restaurant on Market Place.

After 17.00, drove along Market Street and left onto Bartholomew Street. It appeared some commuters from the railway station were on foot and accessing nail bars and barbers on Bartholomew Street but mostly they were walking past the shops that were open in the direction of Northbrook Street.

At the roundabout came back onto Bartholomew Street and drove the whole length of the pedestrianised area. Commuters were exiting the station, and traffic could only flow in one direction, going over the bridge on Bridge Street. This was controlled by traffic lights. Progress was slow but it appeared that some cars were parking in the Northbrook Street area.

Then travelled to the Day Lewis pharmacy. This was clearly signed and was at the rear of the Strawberry Hill Medical Centre. The Day Lewis pharmacy was closing at the time of arrival at 17.30 and what appeared to be six members of staff were exiting the building. The entrance had a disabled slope and steps to the door. Externally it appeared to be a small unit but could not be inspected internally. The pharmacy was adjacent to the Strawberry Hill Medical Centre and its car park. There were no signs preventing pharmacy customers from parking in the medical centre car park.

Then drove to the branch of Boots at the retail park. There were empty parent and child and disabled parking spaces outside. It was a large glass fronted retail unit. The signage indicated it was open until 20.00 but did not go inside.

- 3 A summary of the above observations was provided to those in attendance. They were invited to comment upon them **OR** indicate if any of the observations appeared to be inaccurate.

- 3.1 No such comments or observations were made.

Oral Hearing Submissions

- 4.1 The Chair indicated that there was no need to address the Committee on Regulation 31.
- 4.2 The Chair noted that the letter from the Commissioner dated 28 March 2024 had granted an application for a best estimate area wider than that applied for or discussed at the Pharmaceutical Services Regulations Committee meeting on 6 March 2024. The Chair indicated that this Committee intended to consider only the area applied for, namely 1-154 Bartholomew Street (including Kennet Shopping Centre), 5-19 Market Street, 1-29 Market Place, 1-41 Cheap Street, Newbury, Berkshire. The Chair invited submissions from those in attendance if the approach appeared incorrect. No such submissions were received.

Temple Bright LLP (representing CA-Health Ltd)

- 4.3 Mr Wardle made the following observations:
- 4.4 CA-Health Ltd (CAHL) sought to offer significant benefit and a reasonable choice to the southern end of Newbury town centre. Until recently the town centre had four pharmacies but Lloyds Pharmacy situated in Sainsburys and Superdrug Pharmacy had closed. CAHL had provided evidence in support, google reviews, survey responses and letters in support including from the Health and Wellbeing Board.
- 4.5 He reminded the Committee that their site visits were snapshots of the situation at the time they visited but this had to be offset against the comments made in response to the survey, this showed a very different situation, with a significant number of people describing long queues.
- 4.6 He set out the factual background to this application:
 - 4.6.1 This was an application for premises in Newbury town centre The application was supported by HWB due to long queues at remaining Boots pharmacy in town centre as noted by Healthwatch Berkshire.
 - 4.6.2 The application had been granted by the Commissioner on the basis that the residents of Newbury do not have a reasonable choice of service provision.
- 4.7 He said there were several important factual bases in support of application:
 - 4.7.1 Population size:
 - 4.7.2 44,000 (mid 2020 estimate)
 - 4.7.3 Additional 4,000 homes under construction and the town is clearly growing, and services have to expand to meet those growing needs whereas, in fact, services are contracting.
 - 4.7.4 The plans to develop the Kennet Centre would see an increase in the town centre population.
 - 4.7.5 Wider catchment area:
 - 4.7.6 Newbury is a market town serving surrounding villages.
 - 4.7.7 By way of example: GP surgery lists indicate the following:
 - 4.7.8 Strawberry Hill Medical Centre – 22,288

- 4.7.9 Eastfield House, 15,331
- 4.7.10 Falkland Surgery (Wash Common), 14,146
- 4.7.11 Total of 51,765 (greater than the population of the town).
- 4.7.12 Closure of the Superdrug Pharmacy in the town centre and the Lloyds Pharmacy in the Sainsburys store at the southern edge of the town centre.
- 4.7.13 Access issues:
- 4.7.14 Boots
 - 4.7.14.1 Only pharmacy in Newbury town centre
 - 4.7.14.2 In pedestrianised area and cannot access directly by car or public transport
- 4.7.15 Day Lewis
 - 4.7.15.1 Outside of town centre (clear from several review responses that they don't consider Day Lewis to be a "town centre" pharmacy)
 - 4.7.15.2 Incline - a 9 to 10 minute walk.
 - 4.7.15.3 Within GP surgery (85% of its prescriptions originate from the Strawberry Hill Medical Centre – suggesting predominantly GP surgery patients, not "town centre visitors")
 - 4.7.15.4 Poor signage (no signage until application made-an example of the benefit of reasonable choice). Even now signage only visible if travelling from one direction
 - 4.7.15.5 Limited car parking for surgery patients only
- 4.7.16 Other pharmacies
 - 4.7.16.1 All located to the far south of Newbury
 - 4.7.16.2 within out of town shopping centre
 - 4.7.16.3 in GP surgery
 - 4.7.16.4 None are accessible by foot for those in the town centre
- 4.7.17 Service issues with Boots. He said the intention of the application was not to denigrate the service of other providers but to demonstrate the lack of capacity in the system.
- 4.7.18 Survey and google review evidence
- 4.7.19 Evidence of long waiting times, phones not being answered etc.
- 4.7.20 Unscheduled closures due to staffing issues
- 4.7.21 Very busy – dispensed 16,000 items in the last available month
- 4.7.22 Service issues with Day Lewis

4.7.23 Survey and google review evidence

4.7.24 Evidence of long waiting times

- 4.8 He said that this was evidence of a lack of capacity, he was not suggesting it was a service issue. These factors have effects of increasing overall demand for pharmaceutical services, placing pressure in existing service provision, making access to existing pharmacy network difficult. He said that this was summarised by a lack of reasonable choice: both geographic and services.
- 4.9 He referred to the BBC news article on 3rd September. This stated that West Berkshire has the least number of pharmacies per 100,000 population in the country, with pharmacy numbers falling from 12.4 to 9.9 pharmacies per 100,000 people between 2022 and 2024. This compares to a national average of 22 pharmacies per 100,000.
- 4.9.1 There was significant evidence of local issues. Newbury HWB had said in its letter of 19 December 2023, "However, patients have since reported issues with long queues at the remaining pharmacies, as confirmed by Healthwatch West Berkshire. Therefore, the Board would welcome an additional pharmacy within Newbury Town Centre as means of further helping to increase capacity and choice for patients and to improve the overall resilience of the pharmacy sector within West Berkshire".
- 4.9.2 Newbury Town Council, had sent an email asking for the provision of a new pharmacy to be expedited. He referred the Committee to Google reviews and referred to new Google reviews not seen by the Committee, which suggested the situation had not improved. The situation had slightly improved around 3 to 4 months ago but has slipped back again over the last 3 months.
- 4.9.3 He then referred to the survey results. This was a questionnaire distributed to a local councillor and the Mayor, to a local newspaper and to local charities. It was an online survey and received 238 responses. The responses indicated a lack of choice and difficulty/delay in accessing services. The majority of responses had no issues with opening times but clearly some difficulties particularly with Day Lewis being closed on Saturday and only open 9am-5pm. The survey indicated that most people drive or walk to a pharmacy. Almost every response confirms a new pharmacy in Newbury would provide a significant benefit (page 193 and onwards re comments).
- 4.9.4 A letter in support had been received from the Bangladesh Welfare Centre. He also referred to the complaints PALS had received, including one from the local MP.
- 4.9.5 With regard to Regulation 18, he said that significant benefits in terms of choice and access difficulties was demonstrated by the existing pharmacy access difficulties as summarised.
- 4.9.6 Whether there is a reasonable choice must be a function of several factors: overall demand, location of pharmacies; barriers to accessing pharmacies. He said that what is a reasonable choice of service provision for 2,500 people might not be a reasonable choice for 5,000 people, or 10,000 people. Only pharmacies that are reasonably accessible can secure a choice.
- 4.9.7 There was evidence of pressure on existing service - how busy the service was and the waiting times. The evidence suggests a lack of reasonable choice which has arisen following closure of Lloyds Pharmacy and Superdrug Pharmacy in the town. The closures were some time ago now, and the situation has not improved, the only way of securing a reasonable choice is therefore to grant an additional pharmacy application.

- 4.9.8 He said that there were access difficulties by the elderly and disabled. There was no immediate parking or bus stops.
- 4.9.9 He then considered conferring significant benefits. One benefit would be an increase in choice. If capacity was increased, most issues seem to relate to pressure on existing service provision, so granting application will create additional service provision to reduce this pressure.
- 4.9.10 He said it would also improve geographical spread and access. The proposed location is outside pedestrianised area, at the southern end of the town centre, close to car parks and Newbury train station. It would be visible and not within a GP surgery. He said that the PNA was published before the pharmacy closures and therefore it had not been foreseen.
- 4.9.11 In response to questions:
- 4.9.12 The directors of CA-Health Ltd said they had drawn up the questions for the survey, but to avoid criticism of trying to influence respondents, had asked others to circulate it. CA-Health Ltd had collated the responses. It had been run over an approximately 8 week period beginning in June of 2024. They confirmed they had provided the entirety of the responses.
- 4.9.13 Mr Wardle said he had undertaken his site visit on 22 August 2024.
- 4.9.14 Mr Wardle agreed that there tended to be a lower number of pharmacies in areas where the population was affluent and relatively healthy but said that in Newbury there were insufficient pharmacies since the closures of Superdrug and Lloyds Pharmacy.
- 4.9.15 In response to a question about the original figure put forward of 115,000, Mr Wardle said this related to the wider catchment area rather than Newbury itself. He said there had been no increase in capacity but there was now a lack of capacity problem.
- 4.9.16 Mr Wardle said that Wash Common was dispensing 16,000 prescriptions but their patients reported similar problems with queues and delays.
- 4.9.17 Mr Wardle said that 238 responses out of a population of 44,000 taken together with the other evidence could be regarded as good evidence of the lack of capacity.
- 4.9.18 Closing Submissions:
- 4.9.19 A significant amount of evidence had been put forward that there was not a reasonable choice after the closure of two pharmacies in the town centre. This evidence had come from very many sources. In contrast there was no evidence from Boots or Day Lewis to support their contention that the queues and delays were things of the past, although he acknowledged that his client had the burden of proof.
- 4.9.20 The two pharmacies had dispensed 10,000 items which was more than the average for a pharmacy of 7,000. The number of pharmacies in West Berkshire as a whole was far below the national average.
- 4.9.21 It was not just reliance on the survey results but the triangulation of all the evidence. It was clear this problem had not been resolved.
- 4.9.22 Patients could not vote with their feet if they were unhappy, they had no choice.

Pharmacy Sales & Consultancy (representing Day Lewis)

- 4.10 Mr Harrall stated, 'The application you are considering today was submitted in response to the closure of the Lloyds Pharmacy in Sainsbury's (which, as you have seen is to the east of the dual carriageway), and Superdrug, which was located around 150m north of Boots on Northbrook Street. The applicant has been very clear that it is these closures that have prompted the application. To be clear, neither of these closed pharmacies were located within the applicant's best estimate area. To my knowledge there has never been a pharmacy within that best estimate area. Whilst the closure of one or more pharmacies may have some relevance, when considering an application for a new pharmacy (in that it gives us an idea of the historic demand for pharmaceutical services in an area), it doesn't diminish in any way the need for the applicant to prove that the tests set out in Reg 18 are met. It is my clients' position that they are not.
- 4.10.1 In the period running up to its closure, the Superdrug pharmacy dispensed an average of around 5,000 items per month. Lloyds also dispensed around 5,000 items per month prior to its closure. So both pharmacies were dispensing significantly less than the national average of around 7,000 items per month. We have been given no information in respect of the demand for any pharmaceutical services other than dispensing, that might have been provided by Lloyds or Superdrug, so we can make no assumptions in terms of that demand.
- 4.10.2 The opening hours for Lloyds and Superdrug were spread across extended hours, 7 days a week (at both sites), and the pharmaceutical services were being provided at what I would describe as 'destination stores'. What I mean by that is that both Sainsburys and Superdrug will have had patient catchments well beyond the resident population of Newbury town centre. Patients will have travelled from across the town, and surrounding villages, to access them.
- 4.10.3 So, to the extent the Applicant claims it will be meeting demand by 'replacing' pharmaceutical services that have been lost, it's worth bearing in mind the following:
- 4.10.3.1CA Health are not proposing 7 day, or extended hours opening (in fact the core hours are only Monday to Friday, 9am to 6pm);
- 4.10.3.2They do not have a national brand that is likely to attract destination shoppers from far and wide and;
- 4.10.3.3Their proposed location for the pharmacy (which we will come back to) does not encompass the locations of either pharmacy that closed. For those reasons we say this application is not replacing those closed pharmacies.
- 4.10.4 So if we start from the position that it's not sufficient to rely on the fact other pharmacies have closed as evidence that a new pharmacy is needed, let's consider the other information the applicant has submitted.
- 4.10.5 Best estimate area: Going back to the best estimate area, to me the area defined seems unusually large for a best estimate area, but the ICB accepted it, so that's the area you are required to consider today. Much has been made in the application (both by the applicant and the HWB / ICB that Boots is difficult to access due to the fact it is within the pedestrianised area i.e. the area that's closed to traffic from 10am to 5pm.
- 4.10.6 However, it may not have escaped your notice that the pedestrianised area is significantly larger than the area referred to by the applicant. If we look at Bartholemew Street, the section from the northern end (just before the river), all the way down the western side of the shopping area i.e. down to the junction with Market Street is also in the pedestrianised zone. That's all within the applicant's best estimate area. Also, if you look at Market Place (north of Bear Lane), that's also part of the pedestrianised area and is also within the applicant's best estimate area.

- 4.10.7 *Now the Applicant has asked you to accept that one of the key challenges with the accessibility of pharmaceutical services is the fact cars cannot drive to Boots. It has been said that this causes particular difficulties for patients with reduced mobility because they may not be able to access the Boots pharmacy. But if you accept that argument, then you also have to accept that a very significant part of the Applicant's best estimate area is in exactly the same position. It is within the pedestrianised zone. If you grant this application today then the Applicant is permitted to open a pharmacy anywhere within that best estimate area, and that includes properties within the pedestrianised part of the town centre.*
- 4.10.8 *We've also heard that the best estimate area includes the Kennet shopping centre itself, and whilst that clearly has its own car park, it's obvious that patients cannot park immediately outside the actual retail units because they are within an indoor shopping centre. Now I can absolutely see how the pedestrianisation of the town centre is likely to have caused some difficulties for patients who are completely reliant on their cars to access pharmaceutical services from Boots. It is surprising to me that there has not been greater provision made for blue badge holders. But of course the application in front of you does not solve that problem. As identified you can use the Mobility service in the Northbrook Car Park.*
- 4.10.9 *The Applicant has also suggested that patients with reduced mobility might have difficulty accessing Boots by public transport because they would have to walk 300m from a bus stop. But, again this is where the applicant's argument is not helped by its large best estimate area. For example there are no bus stops on Cheap St on the leg south of the shopping centre and it's 250m from the nearest bus stop to the southern end of Cheap St. Equally there are no bus stops on the southern section of Bartholemew St, below the shopping centre, so again patients may need to travel more than 250m from a bus stop to the pharmacy depending on where it opens. So approving this application would not necessarily ensure that patients had access to pharmaceutical services closer to one of the town centre bus stops.*
- 4.10.10 *Now of course you may decide that patients with mobility difficulties - including those in wheelchairs or using mobility scooters - can actually access the pedestrianised area without any problems. The area is flat, well paved and of course is traffic free most of the time. However, in that case you will also have to conclude that the Boots pharmacy is equally accessible for those patients. The Applicant can't have it both ways. It can't argue that pedestrianisation causes a significant barrier to access then ask you to grant an application where a large part of the area identified is also pedestrianised.*
- 4.10.11 *Additional points: I'd now like to move on some of the other points made by the Applicant in support of its case. Sticking with the point about accessibility within the best estimate area, I just wanted to make sure we are all clear about the parking arrangements within that area.*
- 4.10.12 *CA Health seems to suggest that there are no parking restrictions in the area it has highlighted in red. Let's just go through that based on the site visits we have all done.*
- 4.10.12.1 *Market Street. \that's the road running east / west at the bottom of the shopping centre. The entire road has double yellow lines on both sides, so there absolutely are parking restrictions on that road.*
- 4.10.12.2 *The northern part of Cheap St. Again there are double yellow lines on both sides of the road. There's no parking.*
- 4.10.12.3 *We've already talked about the northern part of Bartholemew St and Market Place, which are both pedestrianised so there is no parking there.*

- 4.10.12.4 If we look at the southern parts of Cheap Street and Bartholemew St then there are some on-street parking bays and they appear to be free for 30 mins in some parts.
- 4.10.13 But of course most of the best estimate area does not have these on-street parking bays, so you can't be confident that the pharmacy would have on street parking nearby.
- 4.10.14 There is, of course, parking at the Kennet Shopping centre, which is the closest car park to the Applicant's area but that's not free. The minimum charge is £1.70 for one hour. That's more than other car parks in the town centre such as Northbrook multi-storey (which is 150m from Boots) and costs £1.50 for an hour.
- 4.10.15 But of course focusing on the car parking arrangements in the town centre misses the very obvious point that a patient who is travelling by car and who specifically wants to access the pharmacy is not likely to go to the town centre at all. Why would they want to contend with congestion and most likely have to pay for a car parking space. The reality, of course, is that they are far more likely to go to Boots at the retail park or to the Tesco Extra store. Yes, these are 'out of town' but they are in locations specifically designed for cars to access and they are less than 5 minutes' drive away from the town centre area. Both of these locations benefit from large free car parks with extensive provision for disabled drivers.
- 4.10.16 So I would suggest the only reason people who are travelling by car to the town centre will be accessing pharmaceutical services is because they have another reason to be there. They will not have driven there solely to go to a pharmacy. They are most likely to be shopping. And if they're shopping I would suggest it's more likely that their journey will take them to the Northbrook Street area north of the river where the biggest brands are found. The shops to the south of the river tend to be smaller independent businesses that are likely to attract significantly less footfall. In terms of the Kennet Shopping centre, I think the most polite way of describing this is 'tired'. It's very clear that the main shopping areas have moved north of the river, not least due to the development of the new Parkway Shopping Centre.
- 4.10.17 In terms of buses, as you may have seen, the main bus terminus is at the Wharf. All bus routes go there. The distance on foot from here to Boots is 350m heading along Wharf St (parallel with the river) then north on Bridge Street. This distance from the bus terminus to the applicant's sites could be anything up to 1km if the pharmacy opens at the southern end of Bartholomew St. Of course, there are other bus stops in the south of the town, of course, but not all stops serve all routes and the distance could still be over 250m to the applicant's location from any bus stop. So despite comments made in the bundle, it's not at all clear to me that accessibility by public transport will be significantly improved if this application is granted. And while we're talking about buses, there are routes that pass my client's pharmacy at Strawberry Hill Medical centre and there are also buses that head south out of Newbury with stops near retail park. There are several routes that go to the Tesco Extra store and there are stops on Monks Lane, a few metres from Wash Common Pharmacy.
- 4.10.18 Medical centres: Also, whilst considering access, I just wanted to touch briefly on the locations of medical centres. Within the town itself there are two GP surgeries, Strawberry Hill and Eastfield House. In terms of patients attending Strawberry Hill medical centre, I don't think there's any question over the fact my client's pharmacy is accessible for those patients. There would be no reason for a patient attending that health centre to travel to the applicant's proposed location.
- 4.10.19 In terms of Eastfield House, this is to the south of the town centre, on the opposite side of the railway line. If a patient is attending this medical centre, and wants to walk to a pharmacy, at present the nearest pharmacy would be Boots (1km away). To get to the Applicant's best estimate area, the shortest distance would be 450m (if the location was at the very bottom end of Bartholemew Street – and by the way that route involves cutting through a narrow overgrown footpath with a significant slope – off Station Road),

or 850m if the pharmacy opened on Market Place. Or possibly somewhere in between. So yes, the applicant's more location might be a little bit closer but I would question how many people are walking from this surgery directly to a pharmacy anyway. It's much easier to jump into your car and head south to the edge of town pharmacies.

4.10.20 The only other medical centre on the map is Falkland Surgery, and that's next to Wash Common Pharmacy. So in my view this application does very little to change the accessibility of pharmaceutical services for people attending medical centres.

4.10.21 Feedback from patients and their representatives: I'd now just like to touch on the support received for the application from various parties.

4.10.22 HWB If we look at the letter from the HWB. In that letter they concede that the closure of the two pharmacies in the town did not result in a geographical gap because no patients would have to travel more than one mile or 20 minutes on foot to access a pharmacy. Their key reason for supporting the application therefore, was the reports of queues at the remaining pharmacies. We will come back to the question on service levels a little later. They also made reference to the pedestrianised area and to the location of the bus stops, but as I have already explained, granting this application will not necessarily address either of those perceived problems. The HWB also pointed out that the Applicant had disregarded my client's pharmacy, and that there was good provision of extended hours pharmaceutical services in the town.

4.10.23 Others comments were also received (unsolicited): There is a short email from the town council offering support, but no information is provided in respect of why they support the application.

4.10.24 There is a letter from the Newbury Jamme Masjid and Bangladesh Welfare Centre offering general opinions on the levels of provision. These comments are made in broad terms without any reference to the relevant test in regulation 18. There are no comments from patients themselves explaining what problems there are experiencing. Customer survey - Then we have the customer survey. Now it's difficult without fully understanding the methodology for how the survey was conducted and who was targeted to be very clear about the extent to which the survey can be relied on. However, it is fair to say, looking at the qualitative rather than the quantitative information provided that there was clearly a degree of unhappiness with the provision of pharmaceutical services at the time the survey was carried out. And to be honest I'm not really surprised. The fact two pharmacies closed in quick succession will have placed an additional burden on the remaining pharmacies for a period of time. It takes time to make adjustments, particularly against the backdrop of more widespread pressures on the sector such as medicines shortages. But that was a few months ago now.

4.10.25 I can't speak for Boots; it may be that you will have some specific questions for them regarding any measures they have put into place, but I can speak for Day Lewis, and I can tell you that service levels now are significantly better than they were six months ago. This was explained briefly in our letter on 18th June and you have seen the email from the Practice Manager at Strawberry Hill Medical Centre However, I'd like to ask one of my colleagues from Day Lewis to briefly explain to you the measures that have been put in place to improve relationships with local surgeries, stabilise the staffing situation, and address growing prescription volumes'.

4.10.26 Ms Brennan said that both Day Lewis and Boots had recruited additional staff and both were fully staffed. Both have invested in new technology to drive down delivery costs and have developed repeat prescription hubs, whereby the prescriptions are dispensed electronically. She said that she did not accept that the premises were small or that the size of the premises affected service levels.

4.10.27 Mr Harrall continued, 'I'd also like to direct you to the comment made by the ICB in their decision report in para 2.51 where they say... "The Committee noted the points made

in the application and supporting documentation about the poor service provided by the Boots Pharmacy & Day Lewis Pharmacy and this being a reason for having an alternative choice of pharmacy. The Committee reminded itself that poor performance should be dealt with separately and directly with the pharmacy in accordance with the Pharmaceutical Regulations.”

- 4.10.28 *And that's right. If the commissioner has a concern with the service being provided with one or more pharmacy contractors, it has powers to address those. I don't know whether any formal steps were taken by the ICB in respect of Boots, but to my knowledge they have not made any formal approaches to my client. So I find it odd that, despite the fact they recognised that granting an application for inclusion in the pharmaceutical list was not an appropriate response to concerns about service levels, they went ahead and granted the application anyway.*
- 4.10.29 *So, mindful of the fact it is for the Applicant to prove its case, not for my clients to prove theirs, I will conclude by summarising my clients' position on whether this application meets the relevant tests in Regulation 18 taking into account everything you have read in the bundle and heard today.*
- 4.10.30 *Considering 18(1)(a): Will the application secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB. There are a couple of points I would like to make here: Firstly in terms of opening hours: In order to secure improvements or better access, an applicant must be contractually obliged to provide the services it proposes to deliver. The applicant has proposed no core hours beyond 9 to 6 Monday to Friday so regardless of what services it says it will provide, the provision of pharmaceutical services at its location would not be secured outside these times.*
- 4.10.31 *I find it particularly strange that, bearing in mind the fact the applicant has made much about being located within the town centre, that there are no Saturday core hours whatsoever. Invariably Saturday would be the busiest day for shoppers yet there is no guarantee the pharmacy would be open on the Saturday because all the Applicant has proposed is supplementary hours on a Saturday morning which are easily changed. It is noteworthy that the Applicant's own survey showed that more than 1/4 of respondents said they were not satisfied with the current opening hours of pharmacies (p.185), but this application does little to change the situation.*
- 4.10.32 *We accept that the core hours offer an additional half an hour from 5.30pm to 6.00pm on weekdays, of course both Tesco and Boots in the retail park are open beyond 6 PM for anybody who needs pharmaceutical services in the evening.*
- 4.10.33 *Secondly, in terms of physical access, as we have discussed, the very large best-estimate area means that, if you were to grant this application, there is nothing to stop the applicant opening his pharmacy within the pedestrianised area, or at another location with no parking, or at a location which is more than 250 metres from a bus stop.*
- 4.10.34 *So if you are swayed by the view of the HWB and the ICB that there is currently an issue with physical accessibility in the town centre, granting this application will not address that issue. It will not secure better access. The final location of the pharmacy is not within your control.*
- 4.10.35 *Moving on to 18(2)(a), the matter of detriment, whilst this is not the core of my clients' argument, we do ask the committee to be mindful of the potential destabilisation of the existing pharmacy network in the area if a new application is granted in the midst of a uniquely financially challenging time for the sector.*
- 4.10.36 *Looking at 18(2)(b)(i) Whether there is a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB We have seen from representations that*

- 4.10.36.1 *There are 5 pharmacies within Newbury, and these are owned by several different contractors. Whether you consider my client's pharmacy to be within the town centre or at the edge of the town centre, it is still a short distance away for anybody visiting the main shopping area of Newbury. It is accessible on foot, by car and by public transport. So there is still a choice of pharmacy provider the town centre.*
- 4.10.36.2 *Newbury is an area with high car ownership. This will be particularly the case in the new developments in the outskirts of the town. The vast majority of people can therefore drive to a pharmacy and if they do, they can easily access Boots or Tesco which open extended hours and have extensive free car parking, including for blue badge holders.*
- 4.10.36.3 *The HWB considered the closure of the Lloyds and Superdrug pharmacies at the time they closed and decided not to issue a supplementary statement stating there was a gap because their criteria of access within one mile, or a 20 minute walk, were still met.*
- 4.10.36.4 *The area is well connected by public transport. All bus routes to the town go to the main bus terminus at the Wharf and this is closer to Boots than it is to most of the applicant's best estimate area.*
- 4.10.36.5 *Newbury is also an area where patients have significantly lower than average levels of disability or ill health, so many will have no problems at all walking to one of the existing pharmacies should they wish to do that. In fact we have seen from the Applicant's own survey that more than 40% of people walk to a pharmacy at present. Given the size of the town, and the fact that the vast majority of the population do not live within the town centre itself, it seems clear that many patients are happy to walk significant distances to access a pharmacy.*
- 4.10.36.6 *Much has been made by the Applicant about the service levels at Boots and Day Lewis, but as I have discussed already, there have been significant improvements at my client's pharmacy, and we have seen no recent evidence from the applicant to demonstrate otherwise.*
- 4.10.36.7 *As we have also discussed, there are mechanisms in place for the ICB to address concerns about performance if it has them, and the ICB accept this. Granting an application for inclusion in the pharmaceutical list is not the right way to address performance issues. We are not aware that the ICB has raised any formal concerns with any contractor. It certainly has not raised any with my client.*
- 4.10.36.8 *Finally on choice, it is often found by committees in your position that just one pharmacy can provide reasonable choice in the context of regulation 18(2)(b)(i). In this case patients have the choice of two pharmacies in the town centre and three others a short distance away. It is clear in our opinion that for these reasons patients do have reasonable choice already.*
- 4.10.37 *Moving on to 18(2)(b)(ii) Whether people who share a protected characteristic have access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access. The Applicant has provided very little evidence in this respect. There was a question asked within the Applicant's survey around whether patients have any special health needs but this point has not been elaborated on. We have no information that suggests any of these patients have specific needs for pharmaceutical services that are difficult for them to access.*
- 4.10.38 *Within our client's appeal letter we provided data to show that "the number of residents whose day to day activities are limited by disability is 14.3% compared to the national average of 17.3%", so the level of disabled residents in the town is not exceptional. In any event, as we have discussed, you cannot be confident the granting this application will do anything to improve access for patients with a disability.*
- 4.10.39 *Finally, on to 18(2)(b)(iii), we note that the Applicant is not making a case for providing innovative services, so we have nothing more to say on that matter.*

4.10.40 *Conclusion: So finally, in conclusion my client's position is that this application does not meet the tests set out in Regulation 18.*

4.10.41 *More generally, and taking a step back from the regulations, it is important to recognise that the world has changed dramatically in respect of pharmacy services provision since the funding cuts of 2016, the massive real terms decline in pharmacy funding and the COVID pandemic.*

4.10.42 *After the pandemic there was a very notable shift away from accessing pharmacies on high streets and town centres to community locations. Patients chose to nominate those pharmacies that were the most convenient to access from their homes. As a result of this and, and the funding reductions, as has been very well publicised, there have been more pharmacy closures than ever before. That's just a fact of life at the moment. In their letter of support for the application, the HWB stated that "Board does not foresee any significant negative effects as a result of the proposal.". We disagree with this statement. When the sector is under massive pressure it is not always in the best interest of patients to simply allow more pharmacies to open if this might just push the problem to other pharmacies that will subsequently close. Pharmacy contractors are crying out for a period of stability and their ability to invest in the future is threatened when there is the constant threat of new competition. For these reasons, and given that we say the regulatory tests have not been met, my client urges you to refuse this application.*

4.10.43 In response to questions, Mr Harrall stated:

4.10.43.1 There had been a relationship building between patient groups, the GP managers and reception staff, and meetings with patient participation groups to get feedback and to follow up. There had been positive responses.

4.10.43.2 Staff levels were complete by September 2023, but before then they had been reliant on locums. There had only been three complaints last year and one of those related to medication shortage.

4.10.43.3 The Google reviews are responded to by the Croydon team with input from local staff. With regard to the most recent reviews (not seen by the Committee), the response was that these were in the process of being followed up.

4.10.43.4 The signage had been put up as a result of the application being made because Day Lewis were not aware this was a problem until they read about it in the application.

4.10.43.5 Those who accessed Lloyds had tended to move to Tesco as it was a similar location and those who accessed Superdrug tended to stay in the shopping area and go to Boots. Most of their patients accessed the Day Lewis pharmacy after a visit to the Strawberry Hill surgery.

4.10.43.6 The 9,000 dispensing figure did not include the new hub as it was still being rolled out. A date had not yet been set for the roll-out. The plan was orders received before 5 pm would be dispensed on the next working day.

4.10.43.7 With regard to parking at Day Lewis only one space was allowed for the pharmacist but there were no spaces for the pharmacy staff. There were two other spaces allocated for patients but in practice as there was no way of knowing who had actually attended the GP surgery first, patients tended to park in the spaces for GP patients and this wasn't a problem.

4.10.43.8 Day Lewis had a pharmacy contract at that site since 1 September 2006.

4.10.43.9 There had been a period of adjustment, but they were confident that they and Boots could manage the capacity and there was reasonable choice.

4.10.43.10 It was agreed that there had been a Boots pharmacy in the best estimate area that had closed in 2020.

4.10.43.11 It was agreed that the list size at Strawberry Hill was almost 20,000 but it was not clear where the other patients at Strawberry Hill collected their prescriptions from.

4.10.44 Closing submissions from Mr Harrall:

4.10.44.1 He noted that Mr Wardle had not addressed his concerns about the very wide best estimate and that the benefits CA-Health Ltd purported to offer would vary depending on where the pharmacy would eventually be located.

4.10.44.2 Mr Wardle had not addressed the point that one pharmacy could be sufficient to give reasonable choice.

4.10.44.3 It could not be argued that the pharmacy was both difficult to find and overwhelmed with patients.

4.10.44.4 There was no acknowledgment that past problems had been dealt with and was now no longer an issue.

5 Consideration

Regulation 31

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

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

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

(2) This paragraph applies where -

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

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

(ii) adjacent premises; and

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

5.3 The Committee noted in response to "In my/our view this application should not be refused pursuant to Regulation 31 for the following reasons" the Applicant had stated: "Not applicable". The Committee further noted the Commissioner determined that "there is no pharmacy providing pharmaceutical services within the area of the best estimate. The application did not therefore need to be refused in accordance with Regulation 31". The Committee having regard to the above and noting no challenge on appeal was not required to refuse the application under the provisions of Regulation 31.

5.4 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

- 5.5 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)."*

- 5.6 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
- 5.7 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.
- 5.8 Paragraph 4 of Schedule 1 requires the PNA to include: "a statement of the pharmaceutical services that the HWB had identified (if it has) as services that are not provided in the area of the HWB but which the HWB is satisfied (a) **would** if they were provided....secure improvements or better access, to pharmaceutical services... (b) **would** if in specified future circumstances they were provided...secure future improvements or better access to pharmaceutical services..." (emphasis added).
- 5.9 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.

- 5.10 The Committee had regard to the “Statements on service provision” section of the PNA which states:

5.10.1 *“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.”*

- 5.11 The Committee had regard to chapter 8 titled “Conclusions” which states:

5.11.1 *“Areas that are more densely populated in West Berkshire are well served in terms of pharmacy accessibility.”*

5.11.2 *“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.”*

5.11.3 *“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.”*

5.11.4 *“The results of the PNA conclude that there are no current gaps in the provision of advanced services for the lifetime of this PNA.”*

5.11.5 *“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.”*

5.11.6 *“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.”*

5.11.7 *“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.”*

- 5.12 The Committee noted that the Applicant seeks to provide unforeseen benefits to the patients of Newbury. 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.

- 5.13 In order to be satisfied in accordance with Regulation 18(1), regard is to be had to those matters set out at 18(2). The Committee's consideration of the issues is set out below.

Regulation 18(2)(a)(i)

5.14 The Committee had regard to

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

(i) proper planning in respect of the provision of pharmaceutical services in the area of the relevant HWB"

5.15 The Committee noted the Commissioner's comment in its decision report 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. None of the submissions included any comment or evidence in regard to this matter. Therefore, the Committee concluded that granting the application would not cause significant detriment in this regard". The Committee noted that there was no dispute on the matter from other parties. 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.

5.16 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)

5.17 The Committee had regard to

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

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

5.18 The Committee noted the Commissioner's comment in the decision that "None of the submissions included any evidence on this question and the Committee found no proof to support the suggestion that if the application was to be granted, it would cause significant detriment to the arrangements in place for pharmaceutical services in the area."

5.19 The Committee noted that Pharmacy Sales and Consultancy on behalf of the Appellant had suggested that local pharmacies could be affected by additional competition but had put forward no evidence to support that assertion.

5.20 The Committee was therefore not satisfied that significant detriment to the arrangements currently in place for the provision of pharmaceutical services would result from a grant of the application.

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

Regulation 18(2)(b)

5.22 The Committee had regard to

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

(i) there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB (taking into

account also NHS England's duties under sections 13I and 13P of the 2006 Act (duty as to patient choice and duty as respects variation in provision of health services)),

- (ii) people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access (taking into account also NHS England's duties under section 13G of the 2006 Act (duty as to reducing inequalities)), or*
- (iii) there being innovative approaches taken with regard to the delivery of pharmaceutical services (taking into account also NHS England's duties under section 13K of the 2006 Act (duty to promote innovation)),*

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

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

- 5.23 The Committee accepted the submission that one pharmacy in a locality could be sufficient to provide reasonable choice but noted that each application had to be decided on its facts.
- 5.24 The Committee noted that it had been suggested by the Applicant that the town centre area was only served by Boots as Day Lewis should be regarded as outside the town centre area. The Committee did not find it helpful to make such a distinction but noted that the Day Lewis was outside the area and it seemed likely would be visited by those in the town centre for shopping and leisure activities. The main shopping area appeared to end before the incline to the Day Lewis began and was distinct in character being surrounded by offices and some residential areas. However, the Committee determined that its separation from the main shopping area was not of itself sufficient to prevent reasonable choice.
- 5.25 The Committee noted that at the time the PNA was published, the town centre area of Newbury had two additional pharmacies, Lloyds at Sainsburys and Superdrug. Whilst each pharmacy had dispensed less than the national average of 7,000 prescriptions a month, the combined total of approximately 10,000 prescriptions a month was a significant loss of capacity. It noted that both Boots and Day Lewis had recruited additional staff, and they had also invested in new technology, although it was not clear to the Committee on the evidence provided, when this would come on stream or what impact it would have on capacity in the area.
- 5.26 The Committee had not itself observed queues or a lack of capacity on its site inspections but accepted that these inspections had been mid-week afternoon visits and could only provide a snapshot of the available capacity at the time of the inspection.
- 5.27 The Committee noted that the letter from the HWB, referred to the long queues described by Healthwatch Berkshire and supported the granting of the application.
- 5.28 The Committee also gave consideration to a survey of pharmacy users carried out by the Applicant. This survey had put forward open questions and had not been handed directly to the participants by those making the application. There was criticism by some of the parties that this was not a wholly independent survey. This was correct in that it had been designed and the results collated by the Applicant, but the Committee could not see how it could be said that the Applicant had been in a position to put pressure on the respondents given the manner in which the survey was conducted and collated.
- 5.29 The survey was not without its limitations in that it was not clear if all of the respondents used pharmacies in the town centre or were referring to difficulties in accessing

pharmacy services elsewhere, as it was stated that the Wash Common Pharmacy was also experiencing difficulties with long queues. The Committee also noted that those who responded were more likely to self-select if they were unhappy with the service. However, the Committee noted that it had been provided with all 238 responses, which was borne out by one or two more positive responses regarding pharmaceutical services. The comments provided were sufficient to support a significant concern as to the capacity to provide pharmaceutical services in the area. Although some of the comments referred to the general desirability of having an additional pharmacy in the town, a significant number referred to the need to cut waiting times and increase capacity.

- 5.30 The Committee had received evidence that new staff had been in place at Day Lewis and Boots and trained by the end of 2023. The survey had not been carried out until June 2024 when it remained open for a period of eight weeks. This evidence supported the view that the problems with capacity were ongoing and unresolved by the measures put in place.
- 5.31 The Committee also noted that it remained the case that 85% of Day Lewis prescriptions were written by the Strawberry Hill Medical Centre. This suggested that any measures put in place would have little impact on the gap in capacity caused by the closure of Lloyds and Superdrug, as their closure had not caused an increase in dispensing figures for Day Lewis.
- 5.32 The Committee also noted that there was other evidence to support the lack of capacity at Boots such as Google reviews and letters supporting the application from other sources, which completed the picture that there was a lack of capacity in the town centre area following the closure of two pharmacies.
- 5.33 Therefore, the Committee was satisfied that, having regard to there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits by way of physical access on persons.
- 5.34 In considering Regulation 18(2)(b)(ii) the Committee reminded itself that it was required to address itself to people who share a protected characteristic under the Equality Act 2010 (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation) having access to services that meet specific needs for pharmaceutical services that, in the relevant area, are difficult for them to access. In considering 18(2)(b)(ii), the Committee noted that it had only received submissions in respect of those who had a physical disability. The evidence put forward was very limited and was not broadly supported by the respondents to the survey.
- 5.35 The Committee noted that given the wide area over which the application ranged, it was impossible to say with any certainty what the accessibility would be for those accessing pharmaceutical services that meet specific needs at a new site.
- 5.36 The Committee had noted that at the time of its site inspection, Boots was accessible using the Northbrook car park which also had a mobility centre. It had also noted the numerous other car parks behind the Northbrook shopping area, close to Boots, which may ultimately provide closer and more easily accessible parking. There was also the accessibility of the out-of-town Boots and Tesco Pharmacy which had easily accessible disabled spaces, directly in front of the pharmacies. Day Lewis also appeared to have some parking outside the pharmacy, although it was suggested this was for the use of surgery patients only, there was no such signage or barriers to prevent parking by pharmacy patients.
- 5.37 With regard to the availability of bus services close to any pharmacy, it was not possible to say on the evidence whether this would be more accessible to those with a disability, than the Wharf bus stops, which are relatively close to Boots.

- 5.38 Having closely considered access generally for those with a disability and as noted at 5.34 the limited information regarding services that meet specific needs, the Committee was not satisfied that, having regard to the desirability of people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that are difficult for them to access, granting the application would confer significant benefits on persons.
- 5.39 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.
- 5.40 The Committee noted that the Applicant had not submitted any evidence that it was intending to offer any benefit by way of an innovative approach to the delivery of pharmacy services.
- 5.41 The Committee was not satisfied that, having regard to the desirability of there being innovative approaches taken with regard to the deliverability of pharmaceutical services, granting the application would confer significant benefits on persons.

Regulation 18(2)(b) generally

- 5.42 The Committee was of the view that there was no information provided to support a finding that pharmaceutical services are not currently provided at such times as needed and therefore it was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits (in relation to opening hours) on persons.
- 5.43 The Committee has considered whether there are any other factors that would confer significant benefits on including patients who share protected characteristics. The Committee had regard to the need to eliminate discrimination and advance equality of opportunity and foster good relations between these patients and those who do not share their protected characteristics.
- 5.44 The Committee was of the view that in accordance with Regulation 18(2)(b) the granting of this application would confer significant benefits on persons in the area of the HWB which were not foreseen when the PNA was published.

Other considerations

- 5.45 Having determined that Regulation 18(2)(b) had been satisfied, the Committee needed to have regard to Regulation 18(2)(c) to (e) and found that it was not aware of any other applications or appeals relating to the provision of pharmaceutical services in Newbury and that in any event it would not be desirable to consider any such appeals or applications before reaching a decision on the current application.
- 5.46 No deferral or refusal under Regulation 18(2)(f) was required in this case.
- 5.47 The Committee had regard to Regulation 18(2)(g) and found that the circumstances envisaged in that provision would not apply as no consolidation applications had been made in that area.
- 5.48 The Committee considered whether there were any further factors to be taken into account and concluded that there were not.
- 5.49 The Committee was satisfied that the information provided demonstrates that there is difficulty in accessing current pharmaceutical services such that a pharmacy at the proposed site would provide better access to pharmaceutical services.

- 5.50 The Committee had regard to Regulation 19(6) which states:
- (6) If NHS England is satisfied as mentioned in regulation 18(2)(b), it may grant the application notwithstanding that the improvements or better access were or was not included in the relevant pharmaceutical needs assessment.*
- 5.51 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 5.51.1 confirm the Commissioner's decision;
- 5.51.2 quash the Commissioner's decision and redetermine the application;
- 5.51.3 quash the Commissioner's decision and, if it considers that there should be a further notification to the parties to make representations, remit the matter to the Commissioner.
- 5.52 In these circumstances, whereby the letter dated 28 March 2024 confirming the application had been granted for a best estimate area wider than that applied for or discussed at the Pharmaceutical Services Regulations Committee meeting on 6 March 2024, the Committee determined that the decision of the Commissioner must be quashed and replaced with a decision which accurately reflected the best estimate applied for.
- 5.53 The Committee went on to consider whether there should be a further notification to the parties detailed at paragraph 19 of Schedule 2 of the Regulations to allow them to make representations if they so wished (in which case it would be appropriate to remit the matter to the Commissioner) or whether it was preferable for the Committee to redetermine the application.
- 5.54 The Committee noted that representations on Regulation 18 had been sought from parties by the Commissioner and representations had already been made by parties to the Commissioner in response. These had been circulated and seen by all parties as part of the processing of the application by the Commissioner. The Committee further noted that when the appeal was circulated representations had been sought from parties on Regulation 18.
- 5.55 The Committee concluded that further notification under paragraph 19 of Schedule 2 would not be helpful in this case.
- 5.56 The Committee had regard to Regulation 50(1) which states:
- Discontinuation of arrangements for the provision of pharmaceutical services by doctors***
- In circumstances where NHS England has arrangements (whether they were made under these Regulations or were made under or continued by virtue of the 2012 Regulations) with a dispensing doctor (D) to provide pharmaceutical services to a person (P), if...*
- D must terminate the provision of pharmaceutical services to P, subject to any postponement of the discontinuation by NHS England in accordance with paragraphs (2) to (6).*
- 5.57 Regulation 50(3) states:
- This paragraph applies where—*

- (a) *NHS England grants a routine or excepted application, the result of which is the inclusion in a pharmaceutical list of pharmacy premises that are not already listed in relation to an NHS pharmacist; .*
- (b) *the pharmacy premises to which that application relates are not distance selling premises but— .*
 - (i) *are in a controlled locality, or*
 - (ii) *are within 1.6 kilometres of a part of a controlled locality in which patients of a dispensing doctor reside and those patients are being provided with pharmaceutical services by that dispensing doctor; and*
- (c) *granting the routine or excepted application, in the opinion of NHS England, results in a significant change to the arrangements that are in place for the provision of pharmaceutical services (including by a person on a dispensing doctor list) or local pharmaceutical services in any part of a controlled locality.*

5.58 Pursuant to paragraph 9(4)(a) of Schedule 3 to the Regulations, the Committee may:

5.58.1 confirm the Commissioner's decision;

5.58.2 substitute for that decision, any decision that the Commissioner could have taken when it took that decision

5.58.3 quash the Commissioner's decision and remit the matter to the Commissioner for it to redetermine the decision, subject to such directions as the Secretary of State considers appropriate.

5.59 The Committee noted that the Commissioner had considered that if the application was approved, 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 –

5.59.1 J82054 Kintbury & Woolton Hill Surgery - for a period of one (1) months – (3 patients)

5.59.2 K81050 East Lane Surgery Chieveley - for a period of one (1) months – (5 patients)

5.59.3 K81103 Chapel Row Surgery - for a period of one (1) months – (3 patients)

5.60 The Committee noted that no party had appealed against the Commissioner's decision or dispute any aspect of it. On this basis, the Committee confirmed the above discontinuation of services.

6 DECISION

6.1 The Pharmacy Appeals Committee ("the Committee"), appointed by NHS Resolution, quashes the decision of the Commissioner, for the reasons given above, and redetermines the application.

6.2 The Committee concluded that it was not required to refuse any of the applications under the provisions of Regulation 31.

6.3 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;

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

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

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

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

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

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

The Committee noted that the Commissioner's decision regarding the discontinuation of services provided by the dispensing doctors to the affected patients having not been appealed against, should stand.

Committee Chair

Annex A

REF: SHA/26197



APPEAL AGAINST BUCKINGHAMSHIRE, OXFORDSHIRE AND BERKSHIRE WEST ICB DECISION TO GRANT AN APPLICATION BY CA-HEALTH LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT BEST ESTIMATE ADDRESSES 1-154 BARTHOLOMEW STREET (INCLUDING KENNET SHOPPING CENTRE), 5-19 MARKET STREET, 1-29 MARKET PLACE, 1-41 CHEAP STREET, NEWBURY, BERKSHIRE

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1 The Application

By application dated 7 October 2023, CA-Health Ltd, ("the Applicant") applied to Buckinghamshire, Oxfordshire and Berkshire West ICB ("the Commissioner") for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at 1 -154 Bartholomew Street (including Kennet shopping centre), 5 -19 Market Street, 1 - 29 Market Place, 1 - 41 Cheap Street, Newbury, Berkshire. 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 stated:

1.1 "Not applicable."

In response to "please describe the unforeseen benefit(s) that you are offering to secure and how it will secure improvements or better access to pharmaceutical services, or pharmaceutical services of a specified type in the HWB's area" the Applicant stated:

"Location:

- 1.2 Newbury is an urban market town with a population of 113,400 according to the 2021 census (<https://www.ons.gov.uk/visualisations/customprofiles/build>). The current resident population is likely to be higher than this figure as it continues to grow with remarkable ongoing housing developments, namely Willow Grange (200 new homes), The Chase (1500 new homes), Dennington heights (222 new homes) and Shaw Valley (179 new homes), New Warren Farm (1089 new homes) & Sandleford Park West (500 new homes), Knights Grove homes, Larkfield homes, totalling in the region of 4000 new homes. The older established residential area has also seen multiple smaller scale new developments. The town is divided vertically due to main carriage way (A339) and horizontally via river Kennet. Majority of the Northeast region is an industrial estate whilst the Southeast is concentrated with supermarkets and retail parks.

- 1.3 The Northeast, Southeast and East houses the Newbury town centre. The high street consists of express supermarket, newsagents, banks, charity and stationary shops, hairdresser, takeaways, restaurants, post office, several patisserie and coffee shops, in simple terms: a hub of activity frequented by the local population on a daily basis, naturally becoming a centre for all the commercial, economic and social activities.
- 1.4 There is absolute lack of availability and choice of pharmaceutical service on the high street especially exacerbated by planned closure of nearby "Lloyds pharmacy" in Sainsbury and also unexpected closure of "Superdrug pharmacy", leaving the "Boots Chemist" as the sole provider of pharmaceutical services.
- 1.5 There has been an increase of 33.8% in people aged >65 years in West Berkshire between 2011 till 2021 and the area contains a large number of residents who share a relevant protected characteristic. In particular:
- 1.6 113,400 people (47,100 households) living in Newbury. Of those: 17.9% are aged 15 and under (0.6% above than national average) 19.3% are aged 65 and above (1% above the national average)
- 1.7 This would have resulted in an increase in demand for pharmaceutical services but the recent closures have resulted in greater pressure on the only locally available Boots Pharmacy with customers often complaining about long wait times, lack of product availability, not having the capacity to respond to phone call queries to name a few.
- 1.8 The report shows that 44.2% of the population is deprived in one or more dimension, 14.8% of the population are considered disabled, 12.8% households do not have a car or van and 38.5% households have only one car. These individuals in particular rely on the local healthcare service, including pharmacies, for the fulfilment of their healthcare needs. Thus, town centre location is most convenient for this population as it is well served by train and bus links. Due to recent closure of 2 community pharmacies within this area, the local population is reliant on the only pharmacy (Boots) on the high street for the provision of their pharmaceutical needs which has placed Boots under immense pressure.
- 1.9 Newbury has a community hospital as well as a large GP medical centre and multiple private doctors and several care homes / nursing homes in the vicinity of the proposed location. There are 13 schools (primary and secondary) with a student population of around 8000. In addition to the resident population, it is anticipated that several hundred people visit Newbury from the industrial estate on a daily basis. Having another pharmacy in this area will offer the local and visiting population more freedom of choice and possibly greater range of services to meet their needs.
- 1.10 Please see attached satellite imagery of Newbury [not provided].
- 1.11 Another Pharmacy would confer significant benefits in terms of:
Access
- 1.12 The reliant population has difficulties accessing pharmaceutical service provision as both the Lloyds pharmacy on Hectors Way, RG14 5AB and Superdrug on 81-82 Northbrook Street, RG14 1AE recently closed therefore customers / patients had no choice but to transfer to Boots pharmacy - the only pharmacy on the 0.8mile long high street now.
- 1.13 Consequently, Boots pharmacy has been overwhelmed with demand for pharmaceutical services and patients are suffering long waiting times, inability to have alternative choice of supplier/wholesaler when Boots haven't been able to fulfil prescription for items out of stock (OOS). On occasions, there has been a total absence of pharmaceutical service when Boots pharmacy has been unable to open their doors

due to shortage of staff (either no locum pharmacist or no support staff). Social media reviews and customer complaint log validate above issues.

- 1.14 Since Boots is the only pharmacy in the town centre, if they are not able to fulfil the prescription within a timely manner, the patients have no choice but to travel to Newbury retail park, 2 miles away, accessible only via car or otherwise a 35 minute walk. This can prove difficult given the number of patients with no access to car (51.3% of the population either have no car or only one car which may be in use by another member of the household e.g. commute to work). Needless to say, a large proportion of residents will take objection to use of [sic] car even if available as its perhaps counterintuitive to the environmentally greener conscious. Also, there is a high number of elderly residents in the area who may have issues with mobility and long term debilitating illnesses, affecting their ability to drive.
- 1.15 Granting the application would secure better access to pharmaceutical service provision. In particular, it would confer significant benefits on the reliant population in terms of easy access to pharmacy in a timely manner.

Reasonable choice

- 1.16 Boots Chemist being the only pharmacy serving the Newbury city centre population, potentially in excess of 113000, with long waiting times, restricted choice of medicine supply due to contractual obligations to particular wholesaler and significant barriers to access pharmacies in other locations means that there are not enough reasonable choices for patients. The clear and obvious pressure on Boots pharmacy is best evidenced by the fact that patients are forced to wait for a very long time in order to receive their prescribed medication. Some patients wait even before the pharmacy doors open at 9:30am in bad weather in order to be seen the same day and long queues building towards the end of the day due [sic] the fact that Boots pharmacy closes at 5.30pm. Noteworthy there [sic] 2 large schools for special needs children in nearby vicinity which may require urgent and specialist services that Boots may not be able to respond to.
- 1.17 The lack of reasonable choice is particularly relevant to this application given the size and nature of the reliant population (both resident and visiting). Similarly, as mentioned above, existing pharmacies in surrounding locations do not secure a reasonable choice of pharmaceutical service provision for reason of access difficulties.
- 1.18 Granting the application would secure improvements in the provision of pharmaceutical services. It would confer significant benefits on the reliant population since it would give patients a reasonable choice.
- 1.19 Please find attached the Google reviews of the current one and only Pharmacy (Boots). [Appendix A – not provided with application but provided later in representations to the Commissioner]. From the reviews, it is apparent that since the closure of Lloyds Pharmacy and Superdrug, standards have dropped and customer dissatisfaction heightened at Boots Pharmacy (note: Future health is separate department to pharmacy).

Innovation in service delivery

- 1.20 As mentioned previously, patients cannot access essential pharmaceutical services due [sic] the pressure of demand on the only exiting [sic] pharmacy (which are not limited to the dispensing of medicines on prescription but also include, for example, support for self-care and healthy lifestyle advice). Pharmacy at [sic] proposed site will undertake all essential and advanced pharmaceutical services together with such public health and enhanced services.
- 1.21 As per NHS long term plan and RPS published principle 12 where all patient facing pharmacist [sic] should be independent prescribing pharmacists (IP). Therefore, the

responsible pharmacist at the new pharmacy will be an IP providing all services listed above in addition to the ability to amend/correct prescriptions, prescribe alternatives for OOS, enact the seriously short protocols (SSP) and take off the burden from local GP surgeries.

- 1.22 The proposed pharmacy will provide services during extended hours from 9am to 6pm Monday to Friday. The provision of pharmaceutical services during these hours would confer significant benefits on the reliant population, e.g. Boots on high street closes at 5:30pm Monday to Friday. This significantly impairs access to pharmaceutical service provision, particularly for those who are in work during the week.
- 1.23 Newbury's neighbourhood development plan steering group meeting attended by various members of the council and public (20.4.22) has highlighted the need for increased access for NHS healthcare services as a means to improve community facilities.
- 1.24 More recently, the lack of choice of available pharmacies and therefore, medication is so severe in Newbury that it has been televised by ITV Meridian on 18/08/23. U [sic] reported that patients are typically waiting in long queues both inside and outside of the reduced number of pharmacies available in Newbury. They interviewed a patient suffering from cancer who spoke about how his wife waited 1.5hours only to find out that his pain relief medication was out of stock. As a result, he suffered from 'excruciating pain over a weekend' due to lack of availability of the drugs needed to manage his symptoms. Another patient in need of regular medicines also complained about the unreasonably long wait times and how the recent closures of pharmacies in Newbury area has made the situation 'go from bad to worse'.
<https://www.itv.com/news/meridian/2023-08-18/cancer-patient-left-in-excruciating-pain-as-chemists-run-out-of-medication>

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

- 1.25 "Having regard to the reliant population, including the population with a protected characteristic, granting this application would bring improvements in, and better access to, the reliant population.
- 1.26 Access to pharmaceutical services. Currently the existing access to pharmaceutical service is very restricted and overwhelmed with demand. The only pharmacy, Boots pharmacy, in the area is serving a population size that will typically be served by numerous high street pharmacies in any other town.
- 1.27 Choice. The unexpected closure of Lloyds pharmacy and Superdrug in the area has resulted in a lack of reasonable choice for local population. This application would secure better access to service provision by enabling the reliant population to restore choice on the high street.
- 1.28 Innovation in service delivery. A replacement pharmacy for Superdrug & Lloyds pharmacy will provide a range of enhanced, advanced and public health services at times that would meet the needs of those in Newbury. Pharmacist prescribing services will safely expedite the clinical services and reduce the burden on local GP surgeries or 111 services resulting in more comprehensive pharmaceutical service to patients."

2 The Decision

Buckinghamshire, Oxfordshire and Berkshire West ICB ("the Commissioner") considered and decided to grant the application. The decision letter dated 28 March 2024 states:

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

- 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.”

PSRC decision report

“Introduction and background

- 2.2 An unforeseen benefits application had been received from CA-Health Ltd, on 31st August 2024 [sic] within the best estimate address of 1-154 Bartholomew Street (including Kennet Shopping Centre), 5-19 Market Street, 1-29 Marketplace, 1-41 Cheap Street, Newbury, Berkshire. The Committee was now required to consider the application in accordance with Regulations 18 and 19 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.
- 2.3 Full details of the applicant’s proposal had been notified to the various interested parties in accordance with the regulations. Comments had been received from the following parties Boots UK Ltd, Day Lewis Plc, West Berkshire HWB, Community Pharmacy Thames Valley (LPC). There was also an unsolicited comment from Newbury Town Council. There were also follow up comments from Temple Bright LLP on behalf of the applicant.

Consideration by the Committee

- 2.4 The Committee had before it:
- 2.4.1 The NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.
 - 2.4.2 Department of Health guidelines on market entry by means of pharmaceutical needs assessment – Chapter 8 – Unforeseen Benefits.
 - 2.4.3 The Report which included:
 - 2.4.3.1 the application form and information provided by the Applicant.
 - 2.4.3.2 letters from interested parties, comments from other parties and a response to those comments from the Applicant,
 - 2.4.3.3 maps of the location,
 - 2.4.3.4 opening times and distances to surrounding pharmacies and GP Practices,
 - 2.4.3.5 a site visit report,
 - 2.4.3.6 West Berkshire PNA 2022 extracts and a link to the full PNA,
 - 2.4.3.7 demographic information including population density,
 - 2.4.3.8 public transport information,
 - 2.4.3.9 prescription information,
 - 2.4.3.10 the relevant Regulations (18, 19, 31, 50).
- 2.5 In relation to the application, the Committee noted the following:
- 2.5.1 The applicant’s fitness information was approved on 21st January 2024

- 2.5.2 The Committee noted that the applicant was proposing to provide essential, enhanced and advanced services, if commissioned.
- 2.5.3 The applicant also proposed core opening of 40 hours per week and total proposed opening of 44 hours per week.
- 2.6 The Committee considered the applicant's statement as to the unforeseen benefits it is offering. The Applicant has stated that *"There is absolute lack of availability and choice of pharmaceutical service on the high street especially exacerbated by planned closure of nearby "Lloyds pharmacy" in Sainsbury and also unexpected closure of "Superdrug pharmacy", leaving the "Boots Chemist" as the sole provider of pharmaceutical services.*
- 2.7 *The reliant population has difficulties accessing pharmaceutical service provision as both the Lloyds pharmacy on Hectors Way, RG14 5AB and Superdrug on 81-82 Northbrook Street, RG14 1AE recently closed therefore customers / patients had no choice but to transfer to Boots pharmacy - the only pharmacy on the 0.8mile [sic] long high street now.*
- 2.8 *Consequently, Boots pharmacy has been overwhelmed with demand for pharmaceutical services and patients are suffering long waiting times, inability to have alternative choice of supplier/wholesaler when Boots haven't been able to fulfil prescription for items out of stock (OOS). On occasions, there has been a total absence of pharmaceutical service when Boots pharmacy has been unable to open their doors due to shortage of staff (either no locum pharmacist or no support staff). Social media reviews and customer complaint log validate above issues.*
- 2.9 *Lack of reasonable choice is particularly relevant to this application given the size and nature of the reliant population (both resident and visiting). Similarly, as mentioned above, existing pharmacies in surrounding locations do not secure a reasonable choice of pharmaceutical service provision for reason of access difficulties."*
- 2.10 The Committee considered information from a site visit of the Newbury area that had been undertaken by a Pharmacy Commissioning Hub representative. Newbury is a market town within rural area West Berkshire, to the west is the North Wessex Downs. The A339 runs through the centre of Newbury with the town centre located to the West of the A339.
- 2.11 The Committee considered the representations made by Boots UK Ltd, Day Lewis Plc, West Berkshire HWB, Community Pharmacy Thames Valley (LPC).
- 2.12 The Committee noted that Boots UK Ltd, Day Lewis Plc opposed the application. West Berkshire HWB was in favour of the application being approved.
- 2.13 The Committee also considered the comment from Newbury Town Council and noted it was in support of the application.
- 2.14 The applicant's response to the representations received during the consultation period was also considered.

Regulation 31 – Refusal: same or adjacent premises

- 2.15 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.
- 2.16 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.

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

Regulations 40,41 and 44

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

Regulations 50

- 2.19 There are 11 dispensing patients living within 1.6km radius of the proposed best estimate address, therefore the Committee noted that if the application was approved it would be required to consider the discontinuation of arrangements for the provision of pharmaceutical services by doctors to the affected patients under Regulation 50.
- 2.20 The Committee agreed that if the application is approved, it was inclined that the service provided by the dispensing doctors to the affected patients should be discontinued, and that the discontinuation should be postponed in order to give the doctors reasonable notice of the discontinuation, as follows –
J82054 Kintbury & Woolton Hill Surgery - for a period of one (1) months – (3 patients)
K81050 East Lane Surgery Chieveley - for a period of one (1) months – (5 patients)
K81103 Chapel Row Surgery - for a period of one (1) months – (3 patients)

Oral Hearing

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

Regulation 18 – Unforeseen benefits application

- 2.22 The Committee noted that this was an application for “unforeseen benefits” and fell to be considered under the provisions of Regulation 18 [quoted in full].
- 2.23 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.
- 2.24 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.
- 2.25 The Committee had regard to the West Berkshire PNA 2022-2025 (issue date 1st October 2022) (the ‘PNA’) and noted there were no supplementary statements.
- 2.26 The Committee also noted that, having considered the entire West Berkshire locality including the area of Newbury, the HWB had reached the conclusion that *“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. 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.”* [Page 120, West Berkshire PNA, 2022-25].
- 2.27 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.

- 2.28 The Committee noted that the Applicant does not mention the PNA within their application.
- 2.29 The Committee noted that the improvements or better access that the Applicant was claiming would be secured by its application were not included in the relevant pharmaceutical needs' assessment in accordance with paragraph 4 of Schedule 1.
- 2.30 The Committee was satisfied that the unforeseen benefits claimed in the application were not identified in the PNA.
- 2.31 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).
- 2.32 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.
- 2.33 The Committee was not aware of any plans that would be affected and concluded that granting the application would not have an adverse effect on any future plans. None of the submissions included any comment or evidence in regard to this matter. Therefore, the Committee concluded that granting the application would not cause significant detriment in this regard.
- 2.34 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.
- 2.35 None of the submissions included any evidence on this question and the Committee found no proof to support the suggestion that if the application was to be granted, it would cause significant detriment to the arrangements in place for pharmaceutical services in the area.
- 2.36 The Committee did not find any significant detriment to proper planning or to the arrangements in place for the provision of pharmaceutical services and therefore was not obliged to refuse the application under Regulation 18(2)(a).
- 2.37 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.
- 2.37.1 On this point the Applicant has said: *“There is absolute lack of availability and choice of pharmaceutical service on the high street especially exacerbated by planned closure of nearby “Lloyds pharmacy” in Sainsbury and also unexpected closure of “Superdrug pharmacy”, leaving the “Boots Chemist” as the sole provider of pharmaceutical services.*
- 2.37.2 *“The lack of reasonable choice is particularly relevant to this application given the size and nature of the reliant population (both resident and visiting). Similarly, as mentioned above, existing pharmacies in surrounding locations do not secure a reasonable choice of pharmaceutical service provision for reason of access difficulties.*
- 2.37.3 Within the Representations received from circulation of first representations the Applicant has stated; *“There is clear and compelling evidence that the one remaining pharmacy in the town centre (following the closure of Lloyds and Superdrug pharmacies) is under significant pressure and cannot cope with current demand. Additional housing in Newbury, which will increase the “catchment” population of local pharmacies by many thousands, will only exacerbate these clear and obvious pressures.*

the one remaining pharmacy in Newbury town centre is unable to cope with the increased demand caused by the closure of the two other town centre pharmacies. This is evidenced by the attached news article, but also by google reviews which frequently cite issues such as long waiting times in accessing pharmaceutical services from the Boots store. Please see attached relevant google reviews which highlight these issues.

- 2.37.4 *The Boots pharmacy dispenses an average of around 14,500 items per month, which is twice the average for a pharmacy in England. Whilst some pharmacies may be able to cope with this demand for dispensing services, it is clear from the available evidence that Boots cannot, and that there is a lack of reasonable choice of pharmaceutical services for the reliant population as a result.*
- 2.37.5 *There are also access issues with the Boots pharmacy, which is located within the pedestrianised zone of Newbury town centre. This means that patients are not able to park at, or near to, the Boots store. Patients must, instead, park (or get off the bus) up to 300m away from the Boots store and walk, which is inconvenient for many patients and impossible for some.*
- 2.37.6 *Contrary to the assertion by Day Lewis, my client's application would secure significant benefits over the current situation: firstly, granting my client's application would increase patient choice by increasing pharmacy capacity in Newbury town centre. This would have an immediate beneficial effect for patients by doubling dispensing capacity, thereby reducing pressure on the existing pharmacy network, and Boots pharmacy in particular."*
- 2.37.7 *The Committee noted the Day Lewis Plc representation that stated, "There are several pharmacies in Newbury that are spread evenly throughout the town, so residents of these new developments will have a choice of pharmacies close to home.
The applicant acknowledges that there is already pharmaceutical services provision within the town centre that is provided by Boots, so its application will not meaningfully improve the accessibility of pharmaceutical services. However, it fails to mention our pharmacy on Strawberry Hill at the northern end of the town centre, less than 10 minutes' walk away from Boots."*
- 2.38 *The Committee noted the Boots UK Ltd representations that stated, "Whilst we accept that the application is based on benefits not foreseen when drafting the Pharmaceutical Needs Assessment (PNA), it is clear that this application is based on the closures of a Lloyds pharmacy within Sainsburys & Superdrug.*
- 2.39 *As the ICB will be aware, the closure(s) of a pharmacy within an area does not automatically create a gap and should a gap have arisen as a consequence of such a closure(s), then the PNA should be updated to reflect this."*
- 2.40 *The representations from Community Pharmacy Thames Valley (LPC) did not include comments relating to choice.*
 - 2.40.1 *The representations noted the West Berkshire HWB representation that stated, "When the Pharmaceutical Needs Assessment (PNA) was approved in October 2022, there were seven pharmacies in Newbury. Since then, we have lost two pharmacies – Lloyds in Sainsbury's Superstore, Hectors Way and Superdrug, 81/82 Northbrook Street. There have also been reductions in operating hours at some of the other remaining pharmacies. The Health and Wellbeing Board did not consider that the above closures / changes had created a gap in the provision of pharmaceutical services that was sufficient to justify a review of the PNA or publication of a Supplementary Statement, since 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 it was judged that there was sufficient capacity at the remaining pharmacies to be able to*

process the displaced activity. However, patients have since reported issues with long queues at the remaining pharmacies, as confirmed by Healthwatch West Berkshire. Therefore, the Board would welcome an additional pharmacy within Newbury Town Centre as means of further helping to increase capacity and choice for patients and to improve the overall resilience of the pharmacy sector within West Berkshire. The proposed pharmacy would enhance accessibility for patients. The existing Boots pharmacy at 4-5 Northbrook Street is located within the pedestrianised area of the town centre, so it is difficult for residents who have mobility issues to park nearby while the access restrictions are in force (10am to 5pm). Buses are also excluded from the pedestrianised area, and the nearest bus stop is around 300m away. The proposed location for the new pharmacy would be close to existing car parks and areas of on-street parking, and it would also be closer to local bus routes. In summary, the Board is supportive of the application and believes that it will deliver significant additional benefits for patients. The Board does not foresee any significant negative effects as a result of the proposal”.

- 2.41 West Berkshire HWB also provided further additional comments in the Representations received from circulation of first representations, which stated. *“Existing pharmacies are not ‘spread evenly throughout the town’ – three of the pharmacies (Boots, Tesco and Wash Common Pharmacy) are on the town’s southern fringe, at the top of a large hill, and are not within easy walking distance for much of the town’s population.”*
- 2.42 In order to determine if patients in the area already had a reasonable choice, the Committee considered access (distance, travelling times and opening hours) as an important factor in determining the extent to which the current pharmaceutical service provision meets the needs of the population in the Newbury area.
- 2.43 The Committee had regard to the current service provision in the immediate area of Newbury and noted that there are 5 pharmacies within 1.5-mile radius of the best estimate address. This includes 1 independent and 4 multiple pharmacies.
- 2.44 The Committee noted that Lloyds Pharmacy, Hectors Way and Superdrug Pharmacy, Northbrook Street permanently closed in April & September 2023 and both pharmacies were based within Newbury town centre.
- 2.45 The Committee noted that Boots Pharmacy on Northbrook Street is situated within a pedestrianised area, with the Bus Stop being 300m away. The Committee also noted that the applicants best estimate address wasn’t within the pedestrianised area making it easier to access for people with mobility issues as it will be closer to the carparks. It would also be easier for those using the bus.
- 2.46 The Committee noted that Newbury Town Centre is elongated with just the Boots Pharmacy located within the centre.
- 2.47 The Committee also noted that although Day Lewis Pharmacy is within 0.4 miles of the Best Estimate address it is located away from the main shopping area and it’s not obvious to find or easy to access by members of the public using the main shopping area.
- 2.48 The Committee noted that whilst West Berkshire HWB had not issued a supplementary statement at the time Lloyds Pharmacy and Superdrug Pharmacy permanently closed, it had since received reports of issues with the current levels of service provision. Subsequently the HWB had concluded that the application would deliver significant additional benefits for patients.
- 2.49 The Committee noted that the ICB has received several MP enquires regarding the level of pharmaceutical provision within Newbury.

- 2.50 The Committee noted that from the information provided by the applicant and West Berkshire HWB, and also the MP enquires it has received directly, the public is struggling with the availability of pharmaceutical service provision in Newbury.
- 2.51 The Committee noted the points made in the application and supporting documentation about the poor service provided by the Boots Pharmacy & Day Lewis Pharmacy and this being a reason for having an alternative choice of pharmacy. The Committee reminded itself that poor performance should be dealt with separately and directly with the pharmacy in accordance with the Pharmaceutical Regulations.
- 2.52 Having considered the factors above, the Committee was not satisfied that residents of Newbury already have reasonable choice with regard to obtaining pharmaceutical services.
- 2.53 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.
- 2.54 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.
- 2.55 The Applicant stated that *“Having regard to the reliant population, including the population with a protected characteristic, granting this application would bring improvements in, and better access to, the reliant population.”*
- 2.56 The Committee noted that whilst the Applicant mentions people with protected characteristics in their application, there was no evidence provided that identified a group of patients in the Newbury area, sharing a protected characteristic with difficulty accessing services that meet a specific need.
- 2.57 The Committee therefore concluded that the application did not satisfy the test in this part of the Regulation.
- 2.58 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.
- 2.59 The Committee agreed that the applicant had not provided evidence that an innovative approach would be taken with regard to the delivery of pharmaceutical services.
- 2.60 Therefore, the Committee concluded that there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services.
- 2.61 The Committee was of the view that in accordance with Regulation 18(2)(b) the granting of this application would confer significant benefits on persons in the relevant area of the HWB which were not foreseen when the PNA was published.

Other Considerations

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

Decision

- 2.63 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.
- 2.64 The Committee had considered whether the granting of the application would cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area covered by the HWB, or the arrangements in place for the provision of pharmaceutical services in that area and was not satisfied that it would.
- 2.65 The Committee determined that the application should be granted on the following basis:
- 2.65.1 In considering whether the granting of the application would confer significant benefits, the Committee determined that –
- 2.65.1.1 there is not already a reasonable choice with regard to obtaining pharmaceutical services;
- 2.65.1.2 there is no evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services; and
- 2.65.1.3 there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services.
- 2.66 Having taken these matters into account, the Committee is satisfied that granting the application would confer significant benefits as outlined above that would secure improvements or better access to pharmaceutical services.

Rights of appeal

- 2.67 The application is granted so the applicant does not have appeal rights.
- 2.68 The Committee decided that the parties that should have third party rights of appeal are: Boots UK Ltd & Day Lewis PLC.”

3 The Appeal

In a letter dated 26 April 2024 addressed to NHS Resolution, Pharmacy Sales & Consultancy, on behalf of Day Lewis PLC (“the Appellant”) appealed against the Commissioner’s decision. The grounds of appeal are:

- 3.1 “We act for Day Lewis PLC and have attached a letter of authorisation from our client according.
- 3.2 Our client has been notified by NHS England, in a letter dated 28th March, that the above application has been approved. A copy of their letter and decision report is attached with this appeal letter.
- 3.3 Our client wishes to appeal against the decision of the Berkshire West ICB to approve this application as it believes their reasonings for approval are flawed.

Grounds for appeal

- 3.4 Our client’s key grounds for appeal are as follows.

- 3.4.1 The ICB placed undue weight on the information submitted about Boots' service levels despite commenting that "poor performance should be dealt with separately".
 - 3.4.2 The ICB also placed undue weight on some of comments made by the Health and Wellbeing Board ("HWB") without also noting the inaccuracies within the application that were also flagged up by the HWB.
 - 3.4.3 The ICB focused excessively on the shopping area of the town centre without fully considering the wider network of pharmacies in Newbury.
 - 3.4.4 The ICB failed to fully consider the demographic profile of the town and how this affects the accessibility of pharmaceutical services for residents.
- 3.5 We expand on each of these matters later within this appeal letter.

Missing information

- 3.6 As a preliminary matter, our client noted, within its letter of objection, that there was information referred to by the applicant that did not appear to have been circulated. This included a satellite image and Google reviews. The applicant also referred to a TV broadcast and provided a website link but this did not work. Should this missing information be provided in response to our client's appeal we would wish to have the opportunity to comment on this in due course.
- 3.7 Furthermore, and separately, we note that the decision report refers to various additional submissions (for example one made by the town council) that our client has not seen either. Again, we wish to reserve the right to submit comments on any of the information that was used by the ICB to make its decision but which we have not seen.

The application

- 3.8 For ease of reference, we attach a copy of our client's original objection to this application [appendix B] in order to avoid duplication. We wish to make the following further comments in respect of the application.
- 3.9 The applicant begins by stating that the population of Newbury is in excess of 110,000 people. In its representations to the ICB, the HWB pointed out that the true population of Newbury is actually c. 44,000. This significant inaccuracy must call into question the reliability of any of the demographic data provided by the applicant.
- 3.10 In respect of new housing developments within the town, our client accepts that there has been ongoing residential development across the Newbury area as a whole, but none of this is located close to the town centre. Whilst the applicant appears to argue that this somehow adds additional pressure on to the town centre pharmacies, there is no evidence that this is the case given that these developments are some distance away.
- 3.11 The applicant has not provided information on exactly where each of these developments is located, so the Primary Care Appeals ("PCA") committee will not be able to assess how each of them specifically impacts on service provision within the town centre. However, having recently visited Newbury, we can confirm that there is no ongoing residential development within the town centre itself.
- 3.12 We note that the applicant describes the town as being divided vertically by the dual carriage way and horizontally by the river. Whilst this might be accurate in broad terms when looking on a map, neither of these features constitute barriers to movement when visiting the town centre. For example the town centre straddles the river but it is very straightforward to cross using the bridge shown in the image below [appendix B].

- 3.13 Shoppers visiting the town centre would not distinguish between the northern and southern sides of the river in terms of how they go about their shopping. They see the 'high street' as a single continuous shopping area.
- 3.14 The comment by the applicant that "there is an absolute lack of availability and choice of pharmaceutical service on the high street" is plainly untrue. Boots pharmacy is located on Northbrook Street (referred to by the applicant as the high street) a short distance away from the applicant's proposed location. Whether there is reasonable choice in respect to pharmaceutical services provision will be a matter for the PCA committee to determine but it is clearly wrong to say that there is an absolute lack of availability.
- 3.15 The applicant goes on to state demographic information relating to West Berkshire but also repeats its comment about there being 113,000 people in Newbury which has been shown to be inaccurate. It also goes on later to discuss deprivation. We provide more relevant demographic data later within this document.
- 3.16 The applicant then discusses complaints about Boots pharmacy, but our client is yet to see any evidence of these complaints.
- 3.17 The applicant states that there is "a large GP medical centre..... in the vicinity of the proposed location". For the avoidance of doubt, the nearest medical centre to the town centre is Strawberry Hill Medical Centre where our client's pharmacy is located. If that medical centre is 'in the vicinity' of the applicant's best estimate area, then so is the Day Lewis pharmacy.
- 3.18 The next nearest medical centre is to the south of the town on the opposite side of the railway line. There is no other GP surgery in the vicinity of the applicant's proposed location.

Access

- 3.19 The applicant persists with its comments that the Boots pharmacy is the only one within the town centre. As our client noted within its initial letter objection this is not the case.
- 3.20 As can be seen in the image below [appendix B], whilst it is true that the Day Lewis pharmacy is located towards the north of the town centre, it is still very much within the town, a very short distance from other amenities such as shops, bars restaurants and hotels.
- 3.21 The distance on foot from Boots on Northbrook Street is 650m, a walk of 8-9 minutes.
- 3.22 The Day Lewis pharmacy is therefore easily accessible for any patient who does not wish to use Boots. The comment by the applicant that patients who do not wish to use this Boots branch "have no choice but to travel to Newbury retail park 2 miles away" is plainly wrong.

Reasonable choice

- 3.23 We have already referred to both the overstatement of the population and the inaccuracy in respect of the location of town centre pharmacies.
- 3.24 Boots are better placed than our clients to respond to claims about their service levels but we discuss this matter further below when considering the contents of the ICB's decision report.

The Pharmaceutical Services Regulations Committee ("PSRC") Report [2.1 to 2.68 above]

- 3.25 We wish to comment on the minutes of the PSRC meeting held on the 6th of March 2024 to consider this application. We respond to some of the comments in that report (shown below in blue) [italics] using the same numbering.
- 3.26 *2.4 The Committee noted that Boots UK Ltd, Day Lewis Plc opposed the application. West Berkshire HWB was in favour of the application being approved.*
- 3.27 It is important to carefully note the comments made by the HWB in its letter of 19th December.
- 3.28 *“When the Pharmaceutical Needs Assessment (PNA) was approved in October 2022, there were seven pharmacies in Newbury. Since then, we have lost two pharmacies – Lloyds in Sainsbury’s Superstore, Hectors Way and Superdrug, 81/82 Northbrook Street. There have also been reductions in operating hours at some of the other remaining pharmacies.*
- 3.29 *The Health and Wellbeing Board did not consider that the above closures / changes had created a gap in the provision of pharmaceutical services that was sufficient to justify a review of the PNA or publication of a Supplementary Statement, since 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 it was judged that there was sufficient capacity at the remaining pharmacies to be able to process the displaced activity. However, patients have since reported issues with long queues at the remaining pharmacies, as confirmed by Healthwatch West Berkshire. Therefore, the Board would welcome an additional pharmacy within Newbury Town Centre as means of further helping to increase capacity and choice for patients and to improve the overall resilience of the pharmacy sector within West Berkshire.”*
- 3.30 It is clear that the HWB did not feel that the closure of the Lloyds and Superdrug pharmacies left a gap in the provision of pharmaceutical services from a geographical perspective. The decision to support the application, therefore, was based on feedback received regarding *“long queues at the remaining pharmacies, as confirmed by Healthwatch West Berkshire”*. We have not seen these comments so it is difficult for us to respond to them specifically. However, it is not clear which pharmacies are being referred to. We do not know if these refer to Boots, all town centre pharmacies or all pharmacies in Newbury.
- 3.31 In the absence of much more specific information regarding concerns about service levels, it will be difficult for the PCA committee to form a view on whether these are so significant that a new pharmacy in the town is required. We discuss the contradictory position taken by the ICB on this matter later in this appeal letter.
- 3.32 The HWB then went on to consider the accessibility of the Boots pharmacy. They flagged up concerns about the difficulties that may be faced by patients who were unable to park near Boots and the distance from the nearest bus stop.
- 3.33 The mistake made by the HWB, in respect of accessibility, was to focus on the Boots pharmacy without considering the other pharmacies in the town. For example, Strawberry Hill Medical Centre where our client’s pharmacy is located, benefits from a dedicated patient car park with designated disabled spaces. In fact, four of the five pharmacies in Newbury (with Boots being the exception), benefit from free patient parking, including spaces for disabled drivers or passengers, on-site.
- 3.34 In terms of bus users, there are bus stops within 100m of the Day Lewis pharmacy and within 100m of Washcommon [sic] Pharmacy to the south of the town.
- 3.35 It is also important to note that the applicant has identified a best estimate area for its application which mostly comprises a large indoor shopping centre as shown on the images below (map view and satellite view) [appendix B]:

- 3.36 It would be illogical therefore, to cite lack of car parking immediately outside and distance to bus stops as reasons this application would improve accessibility when the pharmacy could be located in the middle of a covered shopping mall.
- 3.37 *7.18 Within the Representations received from circulation of first representations the Applicant has stated; "There is clear and compelling evidence that the one remaining pharmacy in the town centre (following the closure of Lloyds and Superdrug pharmacies) is under significant pressure and cannot cope with current demand. Additional housing in Newbury, which will increase the "catchment" population of local pharmacies by many thousands, will only exacerbate these clear and obvious pressures.*
- 3.38 *the [sic] one remaining pharmacy in Newbury town centre is unable to cope with the increased demand caused by the closure of the two other town centre pharmacies. This is evidenced by the attached news article, but also by google reviews which frequently cite issues such as long waiting times in accessing pharmaceutical services from the Boots store. Please see attached relevant google reviews which highlight these issues.*
- 3.39 *The Boots pharmacy dispenses an average of around 14,500 items per month, which is twice the average for a pharmacy in England. Whilst some pharmacies may be able to cope with this demand for dispensing services, it is clear from the available evidence that Boots cannot, and that there is a lack of reasonable choice of pharmaceutical services for the reliant population as a result.*
- 3.40 *There are also access issues with the Boots pharmacy, which is located within the pedestrianised zone of Newbury town centre. This means that patients are not able to park at, or near to, the Boots store. Patients must, instead, park (or get off the bus) up to 300m away from the Boots store and walk, which is inconvenient for many patients and impossible for some.*
- 3.41 *Contrary to the assertion by Day Lewis, my client's application would secure significant benefits over the current situation: firstly, granting my client's application would increase patient choice by increasing pharmacy capacity in Newbury town centre. This would have an immediate beneficial effect for patients by doubling dispensing capacity, thereby reducing pressure on the existing pharmacy network, and Boots pharmacy in particular."*
- 3.42 As stated previously, we have not seen any of the articles or Google reviews referred to by the applicant so are unable to comment on these at this time.
- 3.43 We have already commented on the accessibility of other pharmacies, including that owned by our client, for patients who are not able to get to Boots.
- 3.44 Whilst it is accurate to say that the opening an additional pharmacy would increase capacity, that does not form part of the regulatory tests.
- 3.45 *7.23 West Berkshire HWB also provided further additional comments in the Representations received from circulation of first representations, which stated. "Existing pharmacies are not 'spread evenly throughout the town' – three of the pharmacies (Boots, Tesco and Wash Common Pharmacy) are on the town's southern fringe, at the top of a large hill, and are not within easy walking distance for much of the town's population."*
- 3.46 We accept that these three pharmacies are located in the southern part of the town.
- 3.47 The Boots and Tesco pharmacies are located relatively close together, but Washcommon [sic] Pharmacy is located some distance away to the west. The point being made by our client was that patients have access to pharmacies away from the town centre in different parts of the town. Very few people live in the town centre itself

so for many people one of these other pharmacies will be close to where they live or where they go about their daily lives.

- 3.48 As noted by the PSRC, there are 5 pharmacies within a 1.5 mile radius of the best estimate address.
- 3.49 *7.29 The Committee also noted that although Day Lewis Pharmacy is within 0.4 miles of the Best Estimate address it is located away from the main shopping area and it's not obvious to find or easy to access by members of the public using the main shopping area."*
- 3.50 We wholly disagree with the contention that Day Lewis Pharmacy is "not obvious to find or easy to access". As we have shown earlier, the pharmacy is located towards the northern edge of the town centre only 8-9 minutes' walk away from the Boots pharmacy. There are no barriers that prevent people travelling to this pharmacy. It benefits from its own patient car park and is very close to bus stops. It is also particularly convenient for patients of Strawberry Hill Medical Centre or for any residents living in the northern part of Newbury town.
- 3.51 The ICB erred by starting from the position of patients who find themselves in "main shopping area" of the town centre. Most of these patients have travelled there from somewhere else so it is entirely reasonable to consider the accessibility of other pharmacies elsewhere within the town.
- 3.52 A patient who specifically required pharmaceutical services but did not wish to use Boots would not find themselves in the town centre to begin with. The vast majority of those who find themselves in the town centre for another reason will be able to access pharmaceutical services from Boots and will be perfectly happy with this. If they wished to exercise choice because they had some reason to be dissatisfied with Boots they can either walk, drive or catch the bus to Day Lewis pharmacy or travel to one of the other pharmacies serving the town on their way home.
- 3.53 *7.31 The Committee noted that the ICB has received several MP enquires regarding the level of pharmaceutical provision within Newbury."*
- 3.54 We have no further information about these 'enquiries' so it is difficult for us to comment on them. However whilst the ICB was, of course, entitled to take into account representations received, it is important to consider these in the context of the relevant regulations. Responding to broad concerns raised simply by granting a new application is not often the correct approach in law.
- 3.55 *7.33 The Committee noted the points made in the application and supporting documentation about the poor service provided by the Boots Pharmacy & Day Lewis Pharmacy and this being a reason for having an alternative choice of pharmacy. The Committee reminded itself that poor performance should be dealt with separately and directly with the pharmacy in accordance with the Pharmaceutical Regulations."*
- 3.56 This point is particularly important. The ICB acknowledges that where concerns are raised about the performance of any pharmacy there are mechanisms in place for it to deal with those concerns. Importantly any contractor who receives feedback from the ICB in relation to potential shortfalls in its service levels must be granted the opportunity to address those concerns.
- 3.57 It is interesting, therefore, that the ICB placed a significant amount of weight on comments made by the applicant and other parties in respect of the service levels being provided by Boots and Day Lewis. The implication is that its decision was significantly influenced by these comments.
- 3.58 It is contradictory for the ICB to acknowledge that performance is not a matter it should give regard to when considering whether patients have reasonable choice in respective

pharmaceutical services yet this appears to be the key reason it is granted the application.

- 3.59 We note that the ICB then went on to consider Regulations 18(2)(b)(ii) & (iii) and found that these tests were not satisfied. We therefore have no further comments to make on these parts of the regulations.

Other information relating to this appeal

- 3.60 There are a couple of other matters we wish to bring to the committee's attention that will assist its consideration of this application.

Demographic information

- 3.61 We have reviewed data from the Ministry of Housing, Communities & Local Government in respect of the English Indices of Deprivation published in 2019. This is the most recent data published. We have reproduced this data in the table below [appendix B]. This relates to postcode area RG14 5EN, the centre of the applicant's best area:

- 3.62 This data is ranked where 1 is the most deprived area of the country and 32,844 is the least deprived area.

- 3.63 Notable features of this data are:

3.63.1 The area is not within the 50% most deprived areas of the country overall (index of multiple deprivation).

3.63.2 The health and disability rank is particularly notable. The area is within the 30% least deprived areas of the country in this respect.

3.63.3 Factors that bring down the overall deprivation ranking are 'education and skills' and 'living environment', neither of which have any relevance to the requirement for, and accessibility of, pharmaceutical services.

- 3.64 We also note the following key data from the 2021 census for the Middle Layer Super Output Area (MSOA) West Berkshire 19, which covers the town centre area:

3.64.1 The number of households with access to no car or van is 22.0% compared to the national average of 23.5%.

3.64.2 The number of residents whose day to day activities are limited by disability is 14.3% compared to the national average of 17.3%

- 3.65 If the area is expanded to West Berkshire, the area the applicant appears to claim would be served by its pharmacy (given the comment that more than 110,000 residents use Newbury town centre), the data is as follows:

3.65.1 The number of households with access to no car or van is 12.1% compared to the national average of 23.5%.

3.65.2 The number of residents whose day to day activities are limited by disability is 14.7% compared to the national average of 17.3%.

- 3.66 In short, therefore, this is an area with significantly higher than average levels of car ownership and significantly lower than average levels of disability. It is important to be mindful of this when considering the ability of residents to exercise reasonable choice in terms of using alternative pharmacies.

Demand

- 3.67 Finally, it is relevant to note that the Superdrug pharmacy that closed was dispensing approximately 4,500 prescription items per month and the Lloyds pharmacy in Sainsbury's was dispensing 5,000 items per month. Both of these were significantly quieter in terms of dispensing numbers than the national average despite offering extended trading hours.
- 3.68 It is notable that the Tesco Pharmacy increased from 6,964 items in February 2023 (before Lloyds closed) to more than 10,000 items by August 2023.
- 3.69 It appears, therefore, that many of the patients who were using the pharmacy in Sainsbury's have simply transferred to Tesco. This is not a surprise given that this is effectively a 'like for like' switch.

Conclusion

- 3.70 In conclusion we remind the PCA committee that, regardless of the approval of this application by the ICB, as with any application for inclusion in the pharmaceutical list the burden of proof rests with the applicant.
- 3.71 We submit that the applicant has failed to provide evidence that granting the application is necessary to 'secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB'.
- 3.72 The PCA committee's decision is likely to hinge on whether it believes that there is reasonable choice in respect of access to pharmaceutical services within Newbury, and, if there is not, whether this application would secure reasonable choice.
- 3.73 We have provided evidence which shows that there are two pharmacies within Newbury town centre. One of these, Boots, is very easily accessible for residents shopping within the town centre. The other, Day Lewis, is very easily accessible for patients who do not wish to use Boots.
- 3.74 We have seen negligible evidence to support the applicant's view that the service levels at the two town centre pharmacies are so poor that it is necessary to grant this application and provide a third pharmacy within the town centre.
- 3.75 The ICB themselves have acknowledged that if there are shortfalls in the service provided by any of the Newbury pharmacies these should be dealt with as a separate matter. Many of the arguments used to support the case for a new pharmacy appear to hinge on shortfalls in service provision. In our opinion it is a responsibility of the ICB to raise its concerns about service levels directly with the contractors involved and seek improvements appropriately. It is not an appropriate remedy (if one is needed) to grant a new application.
- 3.76 Even if the PCA committee was minded to consider that there might be a case for a new pharmacy, it should ask itself whether the best estimate area identified by the applicant would serve patient needs any better than the existing locations. A pharmacy within an indoor shopping mall will be no more accessible than the existing pharmacies.
- 3.77 Newbury is a relatively affluent and healthy town where residents have high levels of mobility. Should they be dissatisfied with service provision at either of the existing town centre pharmacies they are able to exercise choice by using one of the other three pharmacies that serve the town.
- 3.78 This application does not meet the requirements of Regulation 18 and we therefore urge the PCA committee to refuse it accordingly.

3.79 Should Primary Care Appeals decide to convene an oral hearing to consider this matter our client would wish to attend.”

3.80 After reviewing the paperwork provided by the Commissioner, NHS Resolution used its discretion under Schedule 3, Part 3, paragraph 7 and allowed all parties, including the Appellant to make representations on information relied on by the Commissioner that was not circulated to all parties.

4 **Summary of Representations**

This is a summary of representations received on the appeal and on the additional information referred to in 3.80 above.

4.1 Temple Bright LLP on behalf of the Applicant

4.1.1 “Thank you for the letter dated 23 May 2024, and allowing us the opportunity to respond to objections raised by PSC.

4.1.2 From the outset, I wish to highlight that PSC has objected against ICB’s approval decision based on 4 key grounds, all 4 reasons seem to criticise the committee members for their thorough and in-depth review of the available data – none of the objections relate to NHS regulations 2013, therefore the PSC’s grounds of appeal are flawed.

4.1.3 I wish to also comment that majority of the appeal letter by PSC is a rewrite of the same objections that were raised previously by Day Lewis in their objection letter dated 21/12/23 and it does not add anything new. I believe our response letter dated 23/01/24 has already addressed all these objections satisfactorily and the ICB reached a balanced decision after reviewing all the available evidence.

4.1.4 For ease of reference, I have attached a copy of our response letter dated 23/01/24 [appendix C] in order to avoid duplication. I wish to make the following additional comments in respect of the PSC appeal to highlight that there is absolute lack of choice of pharmaceutical services in Newbury town centre:

4.1.5 1. In PSC’s email dated 26.4.24 (to NHS Resolutions), PSC claim to have attached a copy of ‘the letter from the commissioner refusing the application’. This is inaccurate as our application was approved from the offset.

4.1.6 2. Day Lewis are stating once again that the link to the national TV broadcast highlighting the dire pharmaceutical provision situation in Newbury does not work. However, they are the only ones who have experienced this issue. All other parties including the ICB have successfully been able to view this piece of evidence in support of the need of an additional pharmacy. We have provided a copy of the ITV article with our letter of 25/01/24 (attached) [appendix C].

4.1.7 3. The comment regarding the population size has already been addressed in my previous correspondence (please see attached) [appendix C]. As stated, the population data was obtained from the ONS platform and for transparency the weblink was also provided within the application. Subsequently, updated demographics were attached to response letter dated 23/01/24 which are consistent with PSC’s findings on 26/04/24. Therefore, it is incorrect of PSC to suggest that ICB reached a wrong decision based on inaccurate data when PSC’s demographics matches ours – the material fact remains that Boots pharmacy is the only pharmacy remaining in Newbury town centre.

- 4.1.8 4. PSC claims that the 'Day Lewis pharmacy on Strawberry Hill is still very much within the town centre'. However, Day Lewis is neither within, nor on the northern edge of, Newbury town centre as can be seen from the map below. It is actually 1km away from the best estimate location provided in the application. Furthermore, please see attached [appendix C] photographs of Day Lewis pharmacy hidden within Strawberry hill medical centre – it demonstrates Day Lewis pharmacy does not face the street, and there is no external signage whatsoever which would suggest to passers-by that there is even a pharmacy located at this site. This not only makes the Day Lewis pharmacy difficult to find, but unless you are a patient of the GP surgery you are unlikely to know that it exists at all. This can be verified by the independent survey (discussed in detail later) which clearly shows many of the local residents are either unaware of the Day Lewis pharmacy or do not consider it to be part of the town centre.
- 4.1.9 It should also be noted that the Boots pharmacy in the town centre is in a pedestrianised area and can only be accessed by foot. A common complaint about Boots from service users is the unavailability of stock. If the patient was then to walk to the nearest pharmacy (Day Lewis) to fulfil their prescription, it would take at least 10 mins for a fit and healthy individual. As the name suggests, Strawberry Hill is on an inclined road which makes the journey on foot non-viable for many including the elderly and disabled. This difficulty is also true for anyone arriving on bus even if dropped off 100m away. Please attached photos [appendix C] to illustrate the incline for patients on foot and the hidden location of Day Lewis.
- 4.1.10 The Day Lewis Pharmacy is very small and already struggles with long queues (usually going outside the pharmacy which can be unpleasant especially on a rainy day). Furthermore, Day Lewis have shorter opening hours than Boots (Mon-Fri) and does not open on weekends and bank holidays meaning that it is not a suitable alternative to Boots for many.
- 4.1.11 Given that Day Lewis is located away from the main shopping area and it's neither obvious to find nor easy to access by the public visiting the main shopping area, it cannot be considered as securing an alternative choice of pharmaceutical service provision for those present in the town centre.
- 4.1.12 5. Existing pharmacies are not 'spread evenly throughout the town' – three of the pharmacies (Boots, Tesco and Wash Common Pharmacy) are on the town's southern fringe, at the top of a large hill, and are not within easy walking distance for much of the town's population.
- 4.1.13 PSC states that "We accept that these three pharmacies are located in the southern part of the town. The Boots and Tesco pharmacies are located relatively close together, but Washcommon [sic] Pharmacy is located some distance away to the west. The point being made by our client was that patients have access to pharmacies away from the town centre in different parts of the town. Very few people live in the town centre itself so for many people one of these other pharmacies will be close to where they live or where they go about their daily lives".
- 4.1.14 Again, the argument is flawed on the basis that not every person in Newbury owns a car, nor is Washcommon [sic] Pharmacy conveniently accessible from all parts of Newbury on public transport.
- 4.1.15 Also, many of the new housing developments are spread out in the opposite direction to Washcommon [sic] and, most importantly, highway planning (and new bus routes) for Newbury town and its vicinity encourages population movements towards the town. As an example, it will take > 1hour for someone to travel from new developments of Donnington heights or Shaw Valley to

Washcommon [sic] pharmacy by bus with a number of bus changes. Similarly, travelling from the new development of Racecourse Newbury (David Wilson development) to Washcommon [sic] pharmacy will take 45 minutes with at least 2 bus changes. Of course, this assumes buses are changed immediately without any waiting or delays. In general, buses run every 30 minutes during peak times and then on an hourly basis at other times.

- 4.1.16 In the independent survey (details below) [appendix C], this issue has been highlighted by service users with comments like “there are 3 pharmacies in the South of the Town, over a mile from the centre, but up a big hill, so not convenient for those who live and work in the centre or North of Newbury (where I am) who cannot reach these three pharmacies without a car, or in their lunch hours. Pharmacies in the adjacent town of Thatcham have also closed, putting more pressure on those in Newbury. The provision is totally inadequate for a combined population of about 80,000 people (not to mention those in surrounding villages who shop in Newbury and Thatcham)”.
- 4.1.17 6. Furthermore, PSC states that “The mistake made by the HWB, in respect of accessibility there are bus stops within 100m of the Day Lewis pharmacy”.
- 4.1.18 The closest bus stop as mentioned before is on a significant incline to Strawberry Hill Surgery. Moreover, the buses stopping here are No.3 (and its variants) and No. 4 (and its variants). These bus journeys originate from Hungerford and Lambourn respectively i.e these are commuter journeys and people will not be using the buses to travel to Day Lewis for their pharmacy services. Furthermore, both bus routes finish at Newbury Wharf and Newbury station respectively via routes that are not close to any of the other 4 pharmacies in Newbury.
- 4.1.19 It is noted that PSC has shaded the entirety of the best estimate locations as the Kennet Centre when, in fact, the Kennet Centre is a small shopping centre within the best estimate location. However, more importantly Kennet Centre is within the town centre, unlike Day Lewis and access to the Kennet Centre is not pedestrianised and still accessible via car unlike Boots pharmacy. Separately, the Kennet Centre has multiple exits in all directions of the town thus making it accessible from all parts of the town centre.
- 4.1.20 7. PSC states that “in respect of new housing developments within the town, our client accepts that there has been ongoing residential development across the Newbury area as a whole, but none of this is located close to the town centre” and “having recently visited Newbury, we can confirm that there is no ongoing residential development within the town centre itself”. These are all incorrect statements.
- 4.1.21 In fact, the Weaver’s Yard development is in [sic] town centre, consisting of 232 homes and is nearing completion. In addition, a planning application (23/02094/FULMAJ) for >400 new homes to be built in town centre is currently underway. Furthermore, housing developments are taking place to the north, south and east of the town and within a 1.5mile radius of the proposed location. In total, 4,000 new homes are under construction. The new developments also include plans for care/nursing homes. I have previously provided the names of each housing scheme in the application and further provided a map in my Jan 2024 response showing the exact locations of these developments.
- 4.1.22 It is of note that planning permission for all these developments dictates that infrastructure of public transport, walking and cycling networks link these developments to the town centre. This will increase the population influx by many thousands to the town centre. The town centre will continue to act as the social hub, bringing the entire community together therefore, it is incorrect for

PSC to suggest the “Primary Care Appeals (“PCA”) committee will not be able to assess how each of them specifically impacts on service provision within the town centre”. Provision of pharmaceutical services is already stretched and the significant increase in population will only exacerbate the problem.

- 4.1.23 Furthermore, PSC’s claim that “the applicant appears to argue that this somehow adds additional pressure on to the town centre pharmacies, there is no evidence that this is the case given that these developments are some distance away” is false on 2 accounts; firstly the town centre has had significant developments (some of which are ongoing) so it is incorrect to state that “they are some distance away” and secondly, as discussed above – the impact of an increase in population and the closure of pharmacies has placed unprecedented pressure on the one remaining pharmacy (Boots) in the town centre.
- 4.1.24 PSC further claims that “very few people live in the town centre itself” and so an alternate pharmacy can be accessed “where they go about their daily lives”. Once again, both statements are incorrect. The rising population in the town centre is already discussed and it should be noted that the town centre acts as the central hub and naturally the local population will come here to “go about their daily lives”.
- 4.1.25 These claims by PSC demonstrate that they have a poor understanding of the geographical area as all of this information regarding the housing developments can be easily accessed on the internet. Google reviews (free and easy to access) show the negative impact of the increasing population and pharmacy closures on provision of pharmacy services.
- 4.1.26 8. Similarly, PSC has made great effort in explaining that the river or the main road running through Newbury has no impact in connectivity of the East or West of the [sic] Newbury (even though the application does not make any such assertions) and later on it contradicts itself by explaining that patients had preferred to go to Tesco pharmacy since the closure of Lloyds pharmacy even though Day Lewis is shorter distance away on foot or driving relative to Tesco pharmacy. Perhaps Day Lewis is not as accessible or convenient or well-signposted or reputable or in the town centre as PSC has implied?
- 4.1.27 9. PSC incorrectly suggests that Strawberry Hill Medical Centre is the closest medical centre to my proposed location and “if that medical centre is ‘in the vicinity’ of the applicant’s best estimate area, then so is the Day Lewis pharmacy” and that ‘there is no other GP surgery in the vicinity of the applicant’s proposed location’. Once again, these statements are simply untrue. The nearest medical centre, which will be 0.2 miles away from the best estimate location, is actually Eastfield House Surgery which according to the CQC 2018 report serves a significant population of over 13,000 patients (around a third of the local population). This once again demonstrates that PSC have a poor understanding of the area and their incorrect assumptions based on their poor geographical knowledge should be disregarded.
- 4.1.28 10. PSC argue that Day Lewis is the alternative option for patients to Boots pharmacy in town (even though it is neither located in the town centre as demonstrated by the map and patient views). It is also important to note that Day Lewis’s opening hours (09:00-17:30) do not cover the opening hours of its adjacent Strawberry Hill Medical Centre that operates between 08:00-18:30 with extended hour appointments available two evenings a week and frequently on Saturday mornings. Patients who visit the doctors at the surgery would usually be in need of medication to manage an acute ailment. The late opening and earlier closure of the Day Lewis Pharmacy means that many patients will be left with no choice but to visit another pharmacy as a delay in starting the treatment could be detrimental to their health. Therefore, patients

may be compelled to travel to “Newbury retail park 2 miles away” which offers longer opening hours. For this reason, patients visiting other GP surgeries would not normally consider Day Lewis as a suitable pharmacy option.

- 4.1.29 11. Boots pharmacy is within a pedestrianised area where cars and buses are not permitted. PSC have incorrectly suggested that patients would have the same access problems at my client’s best estimate address. I would like to re-iterate that my best estimate address is not within the pedestrianised area which means easier access especially for those with mobility issues as they will be closer to the car parks and bus stops.
- 4.1.30 12. PSC mentions that the PNA hasn’t identified any unmet need and also states that “It is clear that the HWB did not feel that the closure of the Lloyds and Superdrug pharmacies left a gap in the provision of pharmaceutical services from a geographical perspective”, this analysis is redundant considering we have submitted a routine application offering unforeseen benefits, naturally meaning that the PNA has failed to identify the need.
- 4.1.31 13. We have also conducted an online survey of local residents and have received over 200 responses so far. Attached [appendix C] is a summary of those responses, which detail the ongoing issues being experienced by patients. It undoubtedly highlights the absolute lack of choice of pharmaceutical services.
- 4.1.32 In brief:
 - 4.1.32.1- >99% people feel they do not have reasonable choice of pharmacies in Newbury.
 - 4.1.32.2- Most people have difficulty and / or delay in obtaining pharmacy services they need
 - 4.1.32.3- >99% agree that an additional pharmacy in the Newbury town centre would provide a significant benefit to the local community.
- 4.1.33 Common themes emerging from the survey include;
 - 4.1.33.1 Whilst the current pharmacies are offering services such as flu jabs / BP checks, it is mostly impossible for patients to access these services as the pharmacies struggle to cope with basic dispensing workload.
 - 4.1.33.2 Patients in need of OTC advice are deterred by the outrageous waiting times and as a result have continued suffering
 - 4.1.33.3 Even though Boots outsource their repeat dispensing to offsite location, it has not improved their capacity.
- 4.1.34 PSC have made significant efforts to downplay the matter regarding the “long queues” however, it should not be taken lightly. The currently dire situation is clearly having a negative impact on the local population’s health with some opting to avoid seeking OTC advice / health checks. All of these factors have a negative impact on GP workload thus, not aligned with governments long term healthcare plans. PSC continues to claim that “patients have reasonable choice in respective pharmaceutical services” when clearly these services are not available to all in a timely manner. Patients have made several complaints regarding their lack of choice to the local MP (Laura Farris) who endorses the opening of a new pharmacy in the town centre to tackle these issues.
- 4.1.35 PSC refer to the PNA which was written at a time when there were 7 pharmacies in Newbury. Upon the closure of 2 of these pharmacies (both in

the town centre), it was assumed that the remaining pharmacies would be able to process the displaced activity. However, it is now becoming evident that this has not been the case especially Boots (the only remaining pharmacy in the town centre). Furthermore, the Health and Wellbeing Board are acknowledging that the above closures have resulted in patient complaining about long queues and therefore, "would welcome an additional pharmacy within Newbury Town Centre as means of further helping to increase capacity and choice for patients and to improve the overall resilience of the pharmacy sector within West Berkshire".

- 4.1.36 It should also be noted that PSC repeatedly claim that they have not seen the google reviews however, we have submitted them on a number of occasions. Needless to say, they can be easily accessed on the internet. It is unclear why Day Lewis are so out-of-touch of the outcry for better access and improvements to pharmaceutical services by the local population they serve.

- 4.1.37 14. The ICB fairly considered the comments in respect of the service levels being provided by Boots and Day Lewis. ICB correctly recognised that prolonged public dissatisfaction with Boots and Day Lewis stems from both pharmacies dispensing prescription item numbers that are above the national average for any pharmacy by many multiples. Whilst Boots and Day Lewis point to formal NHS England powers to resolve the issues, patients continue to suffer. This suffering has only been exacerbated by the closure of 2 pharmacies and is set to get worse with the rapid growth of the population in and around Newbury town centre. Given the monopoly position Boots has as the only pharmacy in the town centre, they clearly have no incentive to improve and this is the reason why these issues remain unresolved.

- 4.1.38 We have already addressed the comments by Day Lewis regarding the socio-economic demographics of the local population in our previous correspondence. However, we would like to reiterate that whilst Newbury does not fall into the category of most deprived areas of England, it does not mean that there are no areas of higher deprivation, nor does it mean that there are no patients who have specific health needs or disabilities. The fact that there is such obvious demand for pharmaceutical services and pressure on the single pharmacy in Newbury town centre is evidence that patients do require access to pharmaceutical services despite their relative affluence and are experiencing difficulties accessing those services.

- 4.1.39 In conclusion, my application is for "unforeseen benefits" (Regulation 18) to secure improvements or better access, to pharmaceutical services within Newbury town centre. There is clear and compelling evidence that the one remaining pharmacy in the town centre (following the closure of Superdrug and Lloyds) is under significant pressure and cannot cope with the current demand and therefore, will not be able to provide a satisfactory level of service to the growing population. Contrary to the assertion by PSC, it is evident that an additional pharmacy in the town centre would secure significant benefits over the current situation; by improving patient choice by increasing the pharmacy capacity in Newbury town centre. This would have an immediate beneficial effect for patients by doubling dispensing capacity, thereby reducing pressure on the existing pharmacy network, and Boots pharmacy in particular.

- 4.1.40 PSC have repeatedly accused the ICB of making the incorrect decision by "undue weight" to factors such as "poor performance" by current pharmacies. I would like to remind PSC that the ICB considered evidence submitted by all parties including the Health and Wellbeing Board "who are supportive of the application and believes that it will deliver significant additional benefits for patients. The Board does not foresee any significant negative effects as a result of the proposal". They believe that "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". Additionally, the local council and the local residents are also in favour of an additional pharmacy in the Newbury town centre.

- 4.1.41 PSC's entire argument is based on their false perception of being part of the town centre when in fact, this is simply not the case for reasons already discussed. Their representations contain many incorrect statements and they have demonstrated poor understanding of the geographical area, the overwhelming demand of the local population for improved pharmaceutical services and how the changing demographics will negatively impact an already stretched service. Therefore, I urge the committee to disregard their appeal and reinstate the ICBs original decision by approving my application.

In a letter dated 23 January 2024 to the Commissioner, Temple Bright LLP on behalf of CA-Health Limited stated:

- 4.1.42 "Taking each letter in turn, my client comments as follows:

- 4.1.43 Day Lewis plc

Day Lewis state that the link provided to the ITV news article was not correct. I have therefore reproduced the link here -

<https://www.itv.com/news/meridian/2023-08-18/cancer-patient-left-in-excruciating-pain-as-chemists-run-out-of-medication> - and have also attached [appendix C] the relevant article for ease of reference.

- 4.1.44 In relation to the housing developments, it is correct that these are not in Newbury town centre. However, they are taking place to the north, south and east of the town and within a 1.5 mile radius of the proposed location. In total, 4,000 new homes are under construction. The new developments also include plans for care/nursing homes.

- 4.1.45 I have provided, below, a map of Newbury [appendix C] which shows the location of the housing developments.

- 4.1.46 The difficulty caused by these developments is the increased pressure that it will place on pharmaceutical services, including pharmaceutical services in the town centre.

- 4.1.47 There is clear and compelling evidence that the one remaining pharmacy in the town centre (following the closure of Lloyds and Superdrug pharmacies) is under significant pressure and cannot cope with current demand. Additional housing in Newbury, which will increase the "catchment" population of local pharmacies by many thousands, will only exacerbate these clear and obvious pressures.

- 4.1.48 Day Lewis is incorrect to state that there is already (sufficient) pharmaceutical service provision in Newbury town centre, or that granting my client's application would not secure significant benefits.

- 4.1.49 As stated above and as detailed in my client's application, the one remaining pharmacy in Newbury town centre is unable to cope with the increased demand caused by the closure of the two other town centre pharmacies. This is evidenced by the attached news article, but also by google reviews which frequently cite issues such as long waiting times in accessing pharmaceutical services from the Boots store. Please see attached relevant google reviews which highlight these issues [appendix C].

- 4.1.50 The Boots pharmacy dispenses an average of around 14,500 items per month, which is twice the average for a pharmacy in England. Whilst some pharmacies may be able to cope with this demand for dispensing services, it is clear from

the available evidence that Boots cannot, and that there is a lack of reasonable choice of pharmaceutical services for the reliant population as a result.

- 4.1.51 There are also access issues with the Boots pharmacy, which is located within the pedestrianised zone of Newbury town centre. This means that patients are not able to park at, or near to, the Boots store. Patients must, instead, park (or get off the bus) up to 300m away from the Boots store and walk, which is inconvenient for many patients and impossible for some.
- 4.1.52 Contrary to the assertion by Day Lewis, my client's application would secure significant benefits over the current situation: firstly, granting my client's application would increase patient choice by increasing pharmacy capacity in Newbury town centre. This would have an immediate beneficial effect for patients by doubling dispensing capacity, thereby reducing pressure on the existing pharmacy network, and Boots pharmacy in particular.
- 4.1.53 Secondly, my client's proposed location is not within the pedestrianised zone of Newbury town centre. Those travelling by car would therefore be able to stop outside (or very near to) my client's proposed premises. This is shown in the map below [appendix C].
- 4.1.54 My client's proposed location would also be significantly closer to the Newbury town centre car parks and bus stops, potentially reducing patient walking journeys to a few dozen metres.
- 4.1.55 In relation to the Day Lewis pharmacy on Strawberry Hill, this is neither within, nor on the northern edge of, Newbury town centre as can be seen from the map below [appendix C]. The Day Lewis pharmacy is over a kilometre from the best estimate location provided by my client.
- 4.1.56 Additionally, the Day Lewis pharmacy is hidden within the Strawberry Hill Medical Centre. The Day Lewis pharmacy does not face the street, and there is no external signage whatsoever which would suggest to passersby that there is even a pharmacy located at that site. This not only makes the Day Lewis pharmacy difficult to find, but unless you are a patient of the GP surgery you are unlikely to know that it exists at all. Indeed, my client understands that staff at Boots do not even bother trying to direct people to the Day Lewis pharmacy because it is so difficult to find.
- 4.1.57 Finally, there also appear to be concerns regarding the provision of services by Day Lewis including long queues and waiting times, and telephone calls going unanswered. I attach [appendix C] an extract of some google reviews which set out these difficulties. It is of note that Day Lewis does not assert that there are no complaints regarding the service that it provides. This, again, suggests that Day Lewis pharmacy is unable to cope with the demand for pharmaceutical services, underlining the lack of reasonable choice that exists in Newbury.
- 4.1.58 Whilst it is accepted that Newbury, as a whole, is a relatively affluent town, that does not mean that there are no areas of higher deprivation, nor does it mean that there are no patients who have specific health needs or disabilities. The fact that there is such obvious demand for pharmaceutical services and pressure on the remaining pharmacies in Newbury is evidence that patients do require access to pharmaceutical services despite their "relative affluence" and are experiencing difficulties accessing those services.
- 4.1.59 I have attached [appendix C] an area profile for Newbury which shows that:
 - 4.1.59.1 11.8% of residents have only "fair health", with 4.1% suffering bad or very bad health.

- 4.1.59.2 16% of residents (5,400 people approximately) have a disability within the meaning of the Equality Act.
- 4.1.59.3 20.2% of households do not own a car or van.
- 4.1.60 There are 13 schools (primary and secondary) with a student population of around 8000 in Newbury. In addition to the resident population, it is anticipated that several hundred people visit Newbury from the industrial estate on a daily basis. It is also of note that there are 2 large special needs schools in the vicinity of our proposed location.
- 4.1.61 In relation to other pharmacies in Newbury, these are all a very significant distance away from the town centre and would not be considered reasonable alternatives for those who are present in the town centre and require access to pharmaceutical services.
- 4.1.62 The distances by road from a mid-way point of my client's best estimate location and existing pharmacies are as follows:
- 4.1.62.1 Boots, Newbury Retail Park – 2.1km
- 4.1.62.2 Tesco's Pharmacy – 2km.
- 4.1.62.3 Wash Common Pharmacy – 2.8km
- 4.1.63 Whilst those who have access to a car may be able to drive to these pharmacies, this does not overcome the inconvenience of having to do so. The fact that these other pharmacies do not secure a reasonable choice is evidenced by the complaints about Day Lewis Pharmacy and Boots Pharmacy – in essence, were patients able to exercise a reasonable choice of pharmacies, there would be no need to complain about pharmacy services in Newbury because patients could simply "vote with their feet".
- 4.1.64 For the reasons given above and those given in my client's application form, my client therefore believes that it has satisfied the burden of demonstrating that its application meets the requirements of regulation 18.
- 4.1.65 Health and Wellbeing Board
My client notes that the HWB is supportive of its application and "would welcome an additional pharmacy within Newbury Town Centre as means of further helping to increase capacity and choice for patients and to improve the overall resilience of the pharmacy sector within West Berkshire."
- 4.1.66 The HWB further comments that:
- 4.1.66.1 *"patients have since reported issues with long queues at the remaining pharmacies, as confirmed by Healthwatch West Berkshire."*
- 4.1.66.2 *"The proposed pharmacy would enhance accessibility for patients. The existing Boots pharmacy at 4-5 Northbrook Street is located within the pedestrianised area of the town centre, so it is difficult for residents who have mobility issues to park nearby while the access restrictions are in force (10am to 5pm). Buses are also excluded from the pedestrianised area, and the nearest bus stop is around 300m away. The proposed location for the new pharmacy would be close to existing car parks and areas of on-street parking, and it would also be closer to local bus routes."*
- 4.1.67 My client therefore agrees with the comments from the HWB.
- 4.1.68 LPC
For the reasons given above and those given in my client's application form, my client believes that it has provided sufficient information to demonstrate

that its application would meet the requirements of regulation 18 and should be granted. It is of note that the LPC does not seek to dispute any of the information provided by my client in support of its application.

4.1.69 Boots

Boots correctly states that my client's application is made on the basis of the closure of the Lloyds and Superdrug pharmacies in Newbury. My client accepts that, as a general principle, the closure of a pharmacy does not "automatically create a gap" in service provision. However, NHS England must consider each application on a case-by-case basis and on its own merits. It is clear that the closure of two pharmacies in Newbury town centre within a short period of time has created a gap in service provision.

4.1.70 The gap in service provision created by the closure of Lloyds and Superdrug pharmacies is acknowledged by the HWB which, whilst first assessing that no gap would be created by the closures, has now acknowledged that there is evidence of issues with the remaining pharmacies and is supportive of my client's application.

4.1.71 In terms of the pharmacy closures, in fact Superdrug pharmacy closed only 3 months ago, such that the consequences of this closure are only now becoming apparent for patients and to the HWB.

4.1.72 In terms of the hours proposed by my client, these will, of course, be kept under review should this application be granted. However, my client's application would increase the overall provision of pharmaceutical services in Newbury (the total capacity) and would add 44 hours of pharmacy service provision into the local area. The increased hours offered by Boots pharmacy is noted, but these additional hours are clearly not sufficient to meet demand for service provision.

4.1.73 In terms of commissioned services, my client intends to provide a full range of advanced services. Even if these services are already provided by Boots, my client's application would add capacity to advanced service delivery. My client will also provide a dosette box/MDS dispensing service. It understands that neither Day Lewis nor Boots offer this service as general company policy.

4.1.74 In relation to Day Lewis pharmacy in the Strawberry Hill Medical Centre, I have explained, above, why this pharmacy does not provide a reasonable alternative for those in Newbury town centre.

4.1.75 Boots state that they are unaware of anyone submitting a complaint regarding service provision, but the available evidence (from the HWB, the google reviews and the ITV news report) suggests that this cannot be correct.

4.1.76 In relation to the Boots delivery service, Boots fail to mention that they charge for this service.

4.1.77 In conclusion, for the reasons given above and those given in my client's application form, on behalf of the applicant I invite NHS England to conclude that my client's application would secure improvements in, and better access to, pharmaceutical service provision and to grant the application.

4.1.78 My client's application has the support of the HWB. It also has the support of local community groups and representatives. I attach a letter received from the Chairman of the Newbury Jamme Masjid and Bangladesh Welfare Centre and a letter from the CEO of Newbury Town Council."

4.2 Boots UK Limited

- 4.2.1 “Thank you for your letter dated 23rd May 2024 informing us of the above appeal.
- 4.2.2 We have no further comments to make other than we would ask the Committee to be mindful that when any pharmacy closures occur, there will always be a period of adjustment, whilst the remaining provision adapts to an increase in demand.
- 4.2.3 We would be grateful if you would inform us of the outcome of this appeal.”
- 4.3 Pharmacy Sales & Consultancy on behalf of the Appellant
 - 4.3.1 “Thank you for your letter dated 23rd May inviting our client to submit additional representations on this matter in respect of information we had not seen prior to submission of our client’s appeal.
 - 4.3.2 We continue to act for the appellant, Day Lewis PLC, and wish to make the following comments on the information provided.
 - 4.3.3 Letter from Temple Bright (on behalf of the applicant) dated 23rd January
Our client has addressed some of the points raised by the applicant’s representative in its appeal, so our additional comments are limited to those matters we have not commented on previously.
 - 4.3.4 We have now been able to watch the TV news article provided and note that it relates almost wholly to concerns about pharmaceutical services in Thatcham. Whilst one of the patients interviewed briefly discusses Newbury, and refers to queuing for “45 minutes to an hour just to get through the door”, it is not clear which pharmacy is being referred to and when this patient visited the pharmacy she discusses. This evidence’ which appears to relate to one patient’s experience at an unnamed pharmacy should therefore be treated with caution.
 - 4.3.5 In respect of housing developments, the applicant’s representative states “The difficulty caused by these developments is the increased pressure that it will place on pharmaceutical services, including pharmaceutical services in the town centre.”
 - 4.3.6 Use of the future tense shows that this is purely speculation so will be of little help to the Primary Care Appeals (“PCA”) committee. There is no information about when these houses will be built and the extent to which residents of these houses will require access to pharmaceutical services.
 - 4.3.7 The applicant persists in referring to there being “one remaining pharmacy in the town centre”. As we have stated previously, that is not correct, there are two. In fact the tv news article provided by the applicant states that the number of pharmacies in the town centre “is about to go down to two” [following the Superdrug closure]. It is clear that the reporter recognised the fact there remain two pharmacies in the town centre.
 - 4.3.8 We note that the applicant has provided “relevant Google reviews” highlighting issues at both Boots and Day Lewis, but has omitted the positive reviews which result in the overall Google ranking for Boots, the pharmacy most criticised by the applicant, being 3.9 out of 5. We have provided a small sample of these reviews for balance [appendix D].
 - 4.3.9 The applicant goes on to state that granting its application would ensure that pharmaceutical services are easier to access for patients travelling by car as it is “not within the pedestrianised zone of Newbury town centre”. This argument is flawed for several reasons:

- 4.3.9.1 Other pharmacies in Newbury are easily accessible by car and are not in the pedestrianised zone either. These include a supermarket pharmacy and a retail park pharmacy, both of which have large, free car parks.
- 4.3.9.2 The applicant's best estimate area is very large, so the committee cannot be confident that premises will be secured near to car parking. Roads covering the vast majority of the best estimate area (Market Street, Market Place, Cheap Street and the northern part of Bartholemew Street), have double yellow lines preventing parking. This is apparent from the ICB visit report. It is simply not correct to state that the area highlighted red in the applicant's map (labelled B – my proposed street) has no parking restrictions. There are significant restrictions throughout most of the area.
- 4.3.9.3 The best estimate area includes the indoor Kennet Shopping Centre which, by virtue of being indoors is, of course, pedestrianised.
- 4.3.10 The applicant refers to the Day Lewis Pharmacy being hidden. Whilst it is true that the pharmacy does not face the street, there is a fascia, as can be seen in the image below: [appendix D]
- 4.3.11 Furthermore, our client has been in discussion with the practice about placing additional signage at the entrance to the surgery site highlighting the pharmacy's location and expects this signage to be in place within a matter of days. We will provide evidence of this once the signs have been erected.
- 4.3.12 The Comment that "staff at Boots do not even bother trying to direct people to the Day Lewis pharmacy because it is so difficult to find" should be treated with caution. Not only would be difficult to find a patient who did not have access to a smartphone with mapping software that would pinpoint the pharmacy precisely, but Strawberry Hill Medical Centre is very well known in the town so the vast majority of people would know exactly where to go if they were told that the pharmacy is co-located with the surgery.
- 4.3.13 In respect of the demographic information provided by the appellant, our client has provided more detailed information within its appeal. The applicant provides information in respect of residents who are in fair health or bad / very bad health and the number who are disabled without providing any evidence in respect of the relevant legal test in Regulation 18(2)(b)(ii) i.e. *people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access (taking into account also the NHSCB's duties under section 13G of the 2006 Act(c) (duty as to reducing inequalities))*,
- 4.3.14 For example, no information is provided on where these patients live and how they currently access pharmaceutical services. The applicant's proposed location is within the town centre where relatively few people live. There is no reason to believe, therefore, that those residents who are disabled or suffer from poor health will find it any easier to travel to the applicant's proposed location than any existing pharmacy.
- 4.3.15 The applicant goes on to discuss the location of other pharmacies outside the town centre. However, the majority of people travel into the town centre from elsewhere. For many the other pharmacies listed will actually be closer to where they live or otherwise in places they visit (such as retail parks) when going about their daily lives. It refers to people "voting with their feet". In fact our client provided evidence within its appeal that patients have exercised choice given the significant increase in dispensing numbers at Tesco Pharmacy.

- 4.3.16 It is not accurate to state that Day Lewis has a company policy not to provide dosettes / MDS. There are occasions in certain branches when it is necessary to restrict the number of new MDS patients being taken on where space is restricted or service levels might be adversely affected. However, [sic] in this case our client has confirmed that its Newbury pharmacy is taking on new MDS patients.
- 4.3.17 ICB site visit report
We have no material comments on this report other than to point out that the only pharmacy the ICB representative appears to have visited is Boots. It is not clear how the PSRC was able to reach a conclusion on the accessibility of other pharmacies when the ICB representative did not visit them.
- 4.3.18 MP Enquires
We note that the comments provided amount to a total of only 5 over a period of 7 months and that final comment is not a complaint, but rather an enquiry about why an unrelated application had been refused. Whilst it is not appropriate for our client to comment on concerns raised about customer service at Boots, on behalf of our client we can confirm that any service issues identified and raised with our client are passed to senior managers within the business who seek to address these with the branch concerned.
- 4.3.19 As with any pharmacy it is inevitable that there are periods within the week when the pharmacy is busier than usual and waiting times might increase slightly. These busy periods coincide with peak times at the co-located medical centre, so patients have often waited to see their GP prior to visiting the pharmacy. Unfortunately patients are then frustrated if their prescription is not available immediately, despite the fact our client has no control over waiting times at the surgery.
- 4.3.20 We would also point out that a new pharmacy manager was appointed by Day Lewis for this pharmacy recently who has both improved efficiently and developed an excellent relationship with the co-located medical practice who are very happy with the service levels being provided. We attach an email [sic] that has been sent to our client by the Practice Manager of Strawberry Hill Medical Centre confirming that there have been significant improvements recently.
- 4.3.21 The prescription collection service has been vastly improved recently, so patients are informed that they will receive a text when their items are ready for collection. This has significantly reduced queues. Furthermore there had been issues with the phone system historically, but these were resolved by the company's IT department some time ago and our client is not aware of any issues at present.
- 4.3.22 West Berkshire HWB comments
We have already commented on the Meridian Broadcast, so have nothing more to add on that.
- 4.3.23 We note that the new developments will (future tense) be served by public transport, walking and cycling networks, but there is no information provided to suggest that these new developments will not also provide connections to existing pharmacies in Newbury. Other developments, such as Market Street, are not yet constructed and are relatively small. It is premature to conclude that patients living here will have difficulties accessing pharmaceutical services that would be addressed by granting this application.
- 4.3.24 We note the comment about Boots, Tesco and Washcommon [sic] Pharmacy being at the town's southern fringe but, as can be seen from the map below

[appendix D], the largest residential area of Newbury is to the south of the town so residents living here are likely to find these pharmacies to be at least as close to their home as the town centre. Furthermore, Boots is located in a retail park and the Tesco Extra store where the pharmacy is located is the largest supermarket in the town so these are places accessed by residents from across Newbury on a daily basis.

4.3.25 The council refer to pockets of deprivation and residents without access to a car, but do not explain where these areas are. It is not clear, therefore, that the applicant's proposed location will actually be any closer to these residents than the existing pharmacies.

4.3.26 We have no further comments to make at this time but look forward to receiving responses to our client's appeal in due course."

5 Observations

5.1 Pharmacy Sales & Consultancy on behalf of the Appellant

5.1.1 "Thank you for your letter dated 25th June providing third party comments in respect of the above appeal.

5.1.2 We wish to make the following final observations on behalf of our client, Day Lewis PLC.

5.1.3 Letter from Boots dated - 18th June

5.1.4 As Boots has not made any material additional comments we have nothing further to add.

5.1.5 Representations by the applicant - undated

5.1.6 As there is no letter heading on these representations, I assume these new comments are made by the applicant rather than his representative, [Temple Bright LLP]. Our response is drafted assuming this to be the case even though on at least one occasion the representations refer to 'my client'.

5.1.7 As not all paragraphs of the applicant's response are numbered, for the Primary Care Appeals committee's ease we have copied the applicant's representations below (shown in italics) and respond to its comments in blue where appropriate.

5.1.8 *From the outset, I wish to highlight that PSC has objected against ICB's approval decision based on 4 key grounds, all 4 reasons seem to criticise the committee members for their thorough and in-depth review of the available data – none of the objections relate to NHS regulations 2013, therefore the PSC's grounds of appeal are flawed.*

5.1.9 The Primary Care Appeals committee ("The Committee") will consider this matter afresh, regardless of the approach taken by the ICB when they made their decision. For clarity it is not PSC's appeal, but Day Lewis's appeal and our client disputes the assertion that the grounds of appeal are flawed.

5.1.10 *I wish to also comment that majority of the appeal letter by PSC is a rewrite of the same objections that were raised previously by Day Lewis in their objection letter dated 21/12/23 and it does not add anything new. I believe our response letter dated 23/01/24 has already addressed all these objections satisfactorily and the ICB reached a balanced decision after reviewing all the available evidence.*

- 5.1.11 The Committee will consider all evidence supplied when it determines this application regardless of whether there is duplication of any comments.
- 5.1.12 *For ease of reference, I have attached a copy of our response letter dated 23/01/24 in order to avoid duplication. I wish to make the following additional comments in respect of the PSC appeal to highlight that there is absolute lack of choice of pharmaceutical services in Newbury town centre:*
- 5.1.13 *1. In PSC's email dated 26.4.24 (to NHS Resolutions), PSC claim to have attached a copy of 'the letter from the commissioner refusing the application'. This is inaccurate as our application was approved from the offset.*
- 5.1.14 We acknowledge that the comment erroneously referred to a previous refusal when it should have said approval.
- 5.1.15 *2. Day Lewis are stating once again that the link to the national TV broadcast highlighting the dire pharmaceutical provision situation in Newbury does not work. However, they are the only ones who have experienced this issue. All other parties including the ICB have successfully been able to view this piece of evidence in support of the need of an additional pharmacy. We have provided a copy of the ITV article with our letter of 25/01/24 (attached).*
- 5.1.16 We subsequently confirmed in our letter of 18th June that we have been able to watch this TV broadcast and commented on the contents accordingly.
- 5.1.17 *3. The comment regarding the population size has already been addressed in my previous correspondence (please see attached). As stated, the population data was obtained from the ONS platform and for transparency the weblink was also provided within the application. Subsequently, updated demographics were attached to response letter dated 23/01/24 which are consistent with PSC's findings on 26/04/24. Therefore, it is incorrect of PSC to suggest that ICB reached a wrong decision based on inaccurate data when PSC's demographics matches ours – the material fact remains that Boots pharmacy is the only pharmacy remaining in Newbury town centre.*
- 5.1.18 The Committee will review the demographic information provided and will form its own view.
- 5.1.19 *4. PSC claims that the 'Day Lewis pharmacy on Strawberry Hill is still very much within the town centre'. However, Day Lewis is neither within, nor on the northern edge of, Newbury town centre as can be seen from the map below. It is actually 1km away from the best estimate location provided in the application.*
- 5.1.20 Various maps have been provided in representations so it is not clear which map the applicant refers to.
- 5.1.21 It is clear that the parties disagree on the matter of whether or not our client's pharmacy is at the edge of the town centre, but we provide a satellite image below [appendix E] (showing our client's pharmacy at the top left) which shows a wide range of town centre amenities nearby. It will be for the Committee to assess the accessibility of our client's pharmacy in relation to the town centre.
- 5.1.22 Even if Day Lewis is 1km from the applicant's site, this does not mean it is not within, or accessible from, the town centre. The applicant's site is at the southern end of the town centre and our client's site is at the northern end.
- 5.1.23 *Furthermore, please see attached photographs of Day Lewis pharmacy hidden within Strawberry hill medical centre – it demonstrates Day Lewis pharmacy does not face the street, and there is no external signage whatsoever which*

would suggest to passers-by that there is even a pharmacy located at this site. This not only makes the Day Lewis pharmacy difficult to find, but unless you are a patient of the GP surgery you are unlikely to know that it exists at all. This can be verified by the independent survey (discussed in detail later) which clearly shows many of the local residents are either unaware of the Day Lewis pharmacy or do not consider it to be part of the town centre.

- 5.1.24 In our most recent representation we referred to additional signage being installed. This is now in position as can be seen in the images below: [appendix E].
- 5.1.25 *It should also be noted that the Boots pharmacy in the town centre is in a pedestrianised area and can only be accessed by foot. A common complaint about Boots from service users is the unavailability of stock. If the patient was then to walk to the nearest pharmacy (Day Lewis) to fulfil their prescription, it would take at least 10 mins for a fit and healthy individual. As the name suggests, Strawberry Hill is on an inclined road which makes the journey on foot non-viable for many including the elderly and disabled. This difficulty is also true for anyone arriving on bus even if dropped off 100m away. Please attached photos to illustrate the incline for patients on foot and the hidden location of Day Lewis.*
- 5.1.26 The applicant's mistaken assumption is that patients start their journey in the town centre. They are likely to have travelled to the town centre from home, so other pharmacies, including Day Lewis, may well be on their way back home.
- 5.1.27 The applicant has carried out a patient survey but does not appear to have gathered any data to show where patients who are accessing pharmaceutical services actually travel from, so there is no evidence that its proposed location will be any more accessible than existing pharmacies.
- 5.1.28 In terms of Strawberry Hill, it is relevant that patients walking from the town centre to Day Lewis would not walk via Strawberry Hill anyway. They would walk via Oxford Street which has a much shallower incline as shown below [appendix E].
- 5.1.29 *The Day Lewis Pharmacy is very small and already struggles with long queues (usually going outside the pharmacy which can be unpleasant especially on a rainy day). Furthermore, Day Lewis have shorter opening hours than Boots (Mon-Fri) and does not open on weekends and bank holidays meaning that it is not a suitable alternative to Boots for many.*
- 5.1.30 We provided evidence in our recent submission that service levels at our client's pharmacy have improved significantly recently. In respect of opening hours, several pharmacies in Newbury, including Boots, open for seven days a week so patients who require access at the weekends have a choice of pharmacies they can use.
- 5.1.31 *Given that Day Lewis is located away from the main shopping area and it's neither obvious to find nor easy to access by the public visiting the main shopping area, it cannot be considered as securing an alternative choice of pharmaceutical service provision for those present in the town centre.*
- 5.1.32 We dispute this assertion for the reasons we have already provided.
- 5.1.33 *5. Existing pharmacies are not 'spread evenly throughout the town' – three of the pharmacies (Boots, Tesco and Wash Common Pharmacy) are on the town's southern fringe, at the top of a large hill, and are not within easy walking distance for much of the town's population.*

- 5.1.34 This point was addressed in our recent representations where we pointed out that many of the residential areas are located to the south of the town.
- 5.1.35 *PSC states that “We accept that these three pharmacies are located in the southern part of the town. The Boots and Tesco pharmacies are located relatively close together, but Washcommon [sic] Pharmacy is located some distance away to the west. The point being made by our client was that patients have access to pharmacies away from the town centre in different parts of the town. Very few people live in the town centre itself so for many people one of these other pharmacies will be close to where they live or where they go about their daily lives”.*
- 5.1.36 *Again, the argument is flawed on the basis that not every person in Newbury owns a car, nor is Washcommon [sic] Pharmacy conveniently accessible from all parts of Newbury on public transport.*
- 5.1.37 Whilst it is clear that not every single person in Newbury owns a car, it is for the applicant to provide evidence that such patients do not have reasonable choice in respect of access to pharmaceutical services that they can access on foot, by public transport or by other means (such as taxis if necessary). In our opinion it has failed to do so.
- 5.1.38 *Also, many of the new housing developments are spread out in the opposite direction to Washcommon [sic] and, most importantly, highway planning (and new bus routes) for Newbury town and its vicinity encourages population movements towards the town. As an example, it will take > 1hour for someone to travel from new developments of Donnington heights or Shaw Valley to Washcommon [sic] pharmacy by bus with a number of bus changes. Similarly, travelling from the new development of Racecourse Newbury (David Wilson development) to Washcommon [sic] pharmacy will take 45 minutes with at least 2 bus changes. Of course, this assumes buses are changed immediately without any waiting or delays. In general, buses run every 30 minutes during peak times and then on an hourly basis at other times.*
- 5.1.39 Washcommon [sic] is only one of the alternative pharmacies patients will have access to as we have discussed previously.
- 5.1.40 *In the independent survey (details below), this issue has been highlighted by service users with comments like “there are 3 pharmacies in the South of the Town, over a mile from the centre, but up a big hill, so not convenient for those who live and work in the centre or North of Newbury (where I am) who cannot reach these three pharmacies without a car, or in their lunch hours. Pharmacies in the adjacent town of Thatcham have also closed, putting more pressure on those in Newbury. The provision is totally inadequate for a combined population of about 80,000 people (not to mention those in surrounding villages who shop in Newbury and Thatcham)”.*
- 5.1.41 As far as we can see this was not an independent survey, but was carried out by the applicant. The Committee will form its own views on whether the survey was entirely objective.
- 5.1.42 *6. Furthermore, PSC states that “The mistake made by the HWB, in respect of accessibility there are bus stops within 100m of the Day Lewis pharmacy”. The closest bus stop as mentioned before is on a significant incline to Strawberry Hill Surgery. Moreover, the buses stopping here are No.3 (and its variants) and No. 4 (and its variants). These bus journeys originate from Hungerford and Lambourn respectively i.e these are commuter journeys and people will not be using the buses to travel to Day Lewis for their pharmacy services. Furthermore, both bus routes finish at Newbury Wharf and Newbury*

station respectively via routes that are not close to any of the other 4 pharmacies in Newbury.

- 5.1.43 The bus stops are not on Strawberry Hill as can be seen in the image below [appendix E]. They are on Oxford Street, which is not steep.
- 5.1.44 *It is noted that PSC has shaded the entirety of the best estimate locations as the Kennet Centre when, in fact, the Kennet Centre is a small shopping centre within the best estimate location. However, more importantly Kennet Centre is within the town centre, unlike Day Lewis and access to the Kennet Centre is not pedestrianised and still accessible via car unlike Boots pharmacy. Separately, the Kennet Centre has multiple exits in all directions of the town thus making it accessible from all parts of the town centre.*
- 5.1.45 We provide an image of the Kennet Centre below [appendix E]. The Committee will form its own view whether the shopping centre itself is pedestrianised.
- 5.1.46 *7. PSC states that “in respect of new housing developments within the town, our client accepts that there has been ongoing residential development across the Newbury area as a whole, but none of this is located close to the town centre” and “having recently visited Newbury, we can confirm that there is no ongoing residential development within the town centre itself”. These are all incorrect statements.*
- 5.1.47 *In fact, the Weaver’s Yard development is in town centre, consisting of 232 homes and is nearing completion. In addition, a planning application (23/02094/FULMAJ) for >400 new homes to be built in town centre is currently underway. Furthermore, housing developments are taking place to the north, south and east of the town and within a 1.5mile radius of the proposed location.*
- 5.1.48 We commented further on new residential developments in our most recent representation. The Weaver’s Yard development is not material in respect of the overall impact it will have on resident numbers.
- 5.1.49 *In total, 4,000 new homes are under construction. The new developments also include plans for care/nursing homes. I have previously provided the names of each housing scheme in the application and further provided a map in my Jan 2024 response showing the exact locations of these developments.*
- 5.1.50 *It is of note that planning permission for all these developments dictates that infrastructure of public transport, walking and cycling networks link these developments to the town centre. This will increase the population influx by many thousands to the town centre. The town centre will continue to act as the social hub, bringing the entire community together therefore, it is incorrect for PSC to suggest the “Primary Care Appeals (PCA)” committee will not be able to assess how each of them specifically impacts on service provision within the town centre”. Provision of pharmaceutical services is already stretched and the significant increase in population will only exacerbate the problem.*
- 5.1.51 We have commented previously on future housing, so have nothing more to add.
- 5.1.52 *Furthermore, PSC’s claim that “the applicant appears to argue that this somehow adds additional pressure on to the town centre pharmacies, there is no evidence that this is the case given that these developments are some distance away” is false on 2 accounts; firstly the town centre has had significant developments (some of which are ongoing) so it is incorrect to state that “they are some distance away” and secondly, as discussed above – the impact of an increase in population and the closure of pharmacies has placed*

unprecedented pressure on the one remaining pharmacy (Boots) in the town centre.

- 5.1.53 As discussed previously, the applicant has provided no evidence to show that residents of these new developments have specific issues accessing pharmaceutical services. Levels of car ownership in these developments appear to be very high. Furthermore, as these new developments have no significant shopping amenities, residents are required to travel elsewhere to access shops.
- 5.1.54 *PSC further claims that “very few people live in the town centre itself” and so an alternate pharmacy can be accessed “where they go about their daily lives”. Once again, both statements are incorrect. The rising population in the town centre is already discussed and it should be noted that the town centre acts as the central hub and naturally the local population will come here to “go about their daily lives”.*
- 5.1.55 There are two pharmacies in the town centre, as we have highlighted several times, and others in the Newbury Retail Park and the Tesco Express store, the most significant shopping areas away from the town centre. These are locations where residents go about their daily lives and the latter two pharmacies open 7 days a week.
- 5.1.56 *These claims by PSC demonstrate that they have a poor understanding of the geographical area as all of this information regarding the housing developments can be easily accessed on the internet. Google reviews (free and easy to access) show the negative impact of the increasing population and pharmacy closures on provision of pharmacy services.*
- 5.1.57 It is for the applicant to provide evidence to support its case, not for interested parties or, importantly, the Committee, to go “on the internet” to verify the claims made.
- 5.1.58 *8. Similarly, PSC has made great effort in explaining that the river or the main road running through Newbury has no impact in connectivity of the East or West of the Newbury (even though the application does not make any such assertions) and later on it contradicts itself by explaining that patients had preferred to go to Tesco pharmacy since the closure of Lloyds pharmacy even though Day Lewis is shorter distance away on foot or driving relative to Tesco pharmacy. Perhaps Day Lewis is not as accessible or convenient or well signposted or reputable or in the town centre as PSC has implied?*
- 5.1.59 The comment made was in relation to patients who wished to collect their prescription or access other pharmaceutical services whilst doing their supermarket shopping. For those accustomed to accessing Lloyds Pharmacy in Sainsbury’s previously, Tesco is the natural alternative.
- 5.1.60 *9. PSC incorrectly suggests that Strawberry Hill Medical Centre is the closest medical centre to my proposed location and “if that medical centre is ‘in the vicinity’ of the applicant’s best estimate area, then so is the Day Lewis pharmacy” and that ‘there is no other GP surgery in the vicinity of the applicant’s proposed location’. Once again, these statements are simply untrue. The nearest medical centre, which will be 0.2 miles away from the best estimate location, is actually Eastfield House Surgery which according to the CQC 2018 report serves a significant population of over 13,000 patients (around a third of the local population). This once again demonstrates that PSC have a poor understanding of the area and their incorrect assumptions based on their poor geographical knowledge should be disregarded.*

- 5.1.61 The applicant is wrong. Eastfield House Surgery is 0.5 miles on foot from the centre of the best estimate area, on the opposite side of the railway line as can be seen below [appendix E].
- 5.1.62 Perhaps the applicant's "understanding of the geographical area" is not as good as it thinks.
- 5.1.63 *10. PSC argue that Day Lewis is the alternative option for patients to Boots pharmacy in town (even though it is neither located in the town centre as demonstrated by the map and patient views). It is also important to note that Day Lewis's opening hours (09:00-17:30) do not cover the opening hours of its adjacent Strawberry Hill Medical Centre that operates between 08:00-18:30 with extended hour appointments available two evenings a week and frequently on Saturday mornings. Patients who visit the doctors at the surgery would usually be in need of medication to manage an acute ailment. The late opening and earlier closure of the Day Lewis Pharmacy means that many patients will be left with no choice but to visit another pharmacy as a delay in starting the treatment could be detrimental to their health. Therefore, patients may be compelled to travel to "Newbury retail park 2 miles away" which offers longer opening hours. For this reason, patients visiting other GP surgeries would not normally consider Day Lewis as a suitable pharmacy option.*
- 5.1.64 Boots is significantly closer to Strawberry Hill Medical Centre than the applicant's proposed site, so it is unclear why the applicant's location provides a better option for patients attending the surgery when Day Lewis is closed.
- 5.1.65 *11. Boots pharmacy is within a pedestrianised area where cars and buses are not permitted. PSC have incorrectly suggested that patients would have the same access problems at my client's best estimate address. I would like to reiterate that my best estimate address is not within the pedestrianised area which means easier access especially for those with mobility issues as they will be closer to the car parks and bus stops.*
- 5.1.66 We have addressed this matter previously. The applicant's best estimate includes many roads with double yellow lines and an indoor shopping centre which is clearly pedestrianised.
- 5.1.67 *12. PSC mentions that the PNA hasn't identified any unmet need and also states that "It is clear that the HWB did not feel that the closure of the Lloyds and Superdrug pharmacies left a gap in the provision of pharmaceutical services from a geographical perspective", this analysis is redundant considering we have submitted a routine application offering unforeseen benefits, naturally meaning that the PNA has failed to identify the need.*
- 5.1.68 *13. We have also conducted an online survey of local residents and have received over 200 responses so far. Attached is a summary of those responses, which detail the ongoing issues being experienced by patients. It undoubtedly highlights the absolute lack of choice of pharmaceutical services. In brief:*
- 5.1.68.1- *>99% people feel they do not have reasonable choice of pharmacies in Newbury.*
- 5.1.68.2- *Most people have difficulty and / or delay in obtaining pharmacy services they need*
- 5.1.68.3- *>99% agree that an additional pharmacy in the Newbury town centre would provide a significant benefit to the local community.*

- 5.1.69 It is clear from this statement that the survey was not 'independent' as suggested the applicant earlier. No information has been provided in respect of how patients were invited to access the survey and who was targeted to do so.
- 5.1.70 *Common themes emerging from the survey include;*
- 5.1.70.1 *Whilst the current pharmacies are offering services such as flu jabs / BP checks, it is mostly impossible for patients to access these services as the pharmacies struggle to cope with basic dispensing workload.*
- 5.1.70.2 *Patients in need of OTC advice are deterred by the outrageous waiting times and as a result have continued suffering.*
- 5.1.70.3 *Even though Boots outsource their repeat dispensing to offsite location, it has not improved their capacity.*
- 5.1.71 The committee will form its own view on the evidence submitted by the applicant in this respect.
- 5.1.72 *PSC have made significant efforts to downplay the matter regarding the "long queues" however, it should not be taken lightly. The currently dire situation is clearly having a negative impact on the local population's health with some opting to avoid seeking OTC advice / health checks. All of these factors have a negative impact on GP workload thus, not aligned with governments long term healthcare plans. PSC continues to claim that "patients have reasonable choice in respective pharmaceutical services" when clearly these services are not available to all in a timely manner. Patients have made several complaints regarding their lack of choice to the local MP (Laura Farris) who endorses the opening of a new pharmacy in the town centre to tackle these issues.*
- 5.1.73 We have commented on these matters previously, so have nothing further to add.
- 5.1.74 *PSC refer to the PNA which was written at a time when there were 7 pharmacies in Newbury. Upon the closure of 2 of these pharmacies (both in the town centre), it was assumed that the remaining pharmacies would be able to process the displaced activity. However, it is now becoming evident that this has not been the case especially Boots (the only remaining pharmacy in the town centre). Furthermore, the Health and Wellbeing Board are acknowledging that the above closures have resulted in patient complaining about long queues and therefore, "would welcome an additional pharmacy within Newbury Town Centre as means of further helping to increase capacity and choice for patients and to improve the overall resilience of the pharmacy sector within West Berkshire"*
- 5.1.75 The HWB had the opportunity to issue a supplementary statement or revise the PNA to identify a need if they felt this was necessary to secure pharmaceutical services provision.
- 5.1.76 *It should also be noted that PSC repeatedly claim that they have not seen the google reviews however, we have submitted them on a number of occasions. Needless to say, they can be easily accessed on the internet. It is unclear why Day Lewis are so out-of-touch of the outcry for better access and improvements to pharmaceutical services by the local population they serve.*
- 5.1.77 We addressed the Google reviews in our most recent representation.
- 5.1.78 *14. The ICB fairly considered the comments in respect of the service levels being provided by Boots and Day Lewis. ICB correctly recognised that*

prolonged public dissatisfaction with Boots and Day Lewis stems from both pharmacies dispensing prescription item numbers that are above the national average for any pharmacy by many multiples. Whilst Boots and Day Lewis point to formal NHS England powers to resolve the issues, patients continue to suffer. This suffering has only been exacerbated by the closure of 2 pharmacies and is set to get worse with the rapid growth of the population in and around Newbury town centre. Given the monopoly position Boots has as the only pharmacy in the town centre, they clearly have no incentive to improve and this is the reason why these issues remain unresolved.

- 5.1.79 We have commented on these matters previously so I have nothing further to add.
- 5.1.80 *We have already addressed the comments by Day Lewis regarding the socioeconomic demographics of the local population in our previous correspondence. However, we would like to reiterate that whilst Newbury does not fall into the category of most deprived areas of England, it does not mean that there are no areas of higher deprivation, nor does it mean that there are no patients who have specific health needs or disabilities. The fact that there is such obvious demand for pharmaceutical services and pressure on the single pharmacy in Newbury town centre is evidence that patients do require access to pharmaceutical services despite their relative affluence and are experiencing difficulties accessing those services.*
- 5.1.81 The applicant refers to areas of deprivation but has provided no information in respect of where these areas might be. Without that information the Committee will be unable to assess whether granting the application would provide significant benefits for these residents.
- 5.1.82 *In conclusion, my application is for “unforeseen benefits” (Regulation 18) to secure improvements or better access, to pharmaceutical services within Newbury town centre. There is clear and compelling evidence that the one remaining pharmacy in the town centre (following the closure of Superdrug and Lloyds) is under significant pressure and cannot cope with the current demand and therefore, will not be able to provide a satisfactory level of service to the growing population. Contrary to the assertion by PSC, it is evident that an additional pharmacy in the town centre would secure significant benefits over the current situation; by improving patient choice by increasing the pharmacy capacity in Newbury town centre. This would have an immediate beneficial effect for patients by doubling dispensing capacity, thereby reducing pressure on the existing pharmacy network, and Boots pharmacy in particular.*
- 5.1.83 *PSC have repeatedly accused the ICB of making the incorrect decision by “undue weight” to factors such as “poor performance” by current pharmacies. I would like to remind PSC that the ICB considered evidence submitted by all parties including the Health and Wellbeing Board “who are supportive of the application and believes that it will deliver significant additional benefits for patients. The Board does not foresee any significant negative effects as a result of the proposal”. They believe that “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”. Additionally, the local council and the local residents are also in favour of an additional pharmacy in the Newbury town centre.*
- 5.1.84 *PSC’s entire argument is based on their false perception of being part of the town centre when in fact, this is simply not the case for reasons already discussed. Their representations contain many incorrect statements and they have demonstrated poor understanding of the geographical area, the overwhelming demand of the local population for improved pharmaceutical services and how the changing demographics will negatively impact an already*

stretched service. Therefore, I urge the committee to disregard their appeal and reinstate the ICBs original decision by approving my application.

5.1.85 We have addressed all of these matters previously. The Committee will consider the application afresh regardless of the decision made by the ICB.

5.1.86 We have no additional comments to make at this time and look forward to hearing the outcome of this application in due course.

5.1.87 Our client would wish to attend an oral hearing if one is convened.”

5.2 Temple Bright LLP on behalf of the Applicant

5.2.1 “Thank you for the letter dated 25 June 2024 and allowing us another opportunity to respond to additional representation submitted by PSC on 18 June 2024.

5.2.2 We understood the latest submission by PSC to be a progress report on the improvement that Day Lewis is attempting to implement, otherwise the rest of the body is simply a variation of points covered in previous exchanges. I believe our application, past representations dated 23 Jan 2024, & 07 Jun 2024, the supporting letters from councillors / Mayor / charities, social media reviews and most importantly the public survey has already comprehensively addressed all of the points raised by PSC in this appeal. Thus, our additional comments are limited to those matters we have not commented on previously.

5.2.3 1. PSC continues to insist Day Lewis is a suitable alternative [sic] to Boots Pharmacy as they are both “in the town centre’. However, we have already demonstrated through the public survey that the public do not consider Day Lewis as an alternative option at all.

5.2.4 2. The best estimate area has been accepted by the ICB and therefore, it is incorrect for PSC to claim that it is very “large”. It meets the criteria for opening a new pharmacy. Additionally, please see attached images of on-street parking [appendix F].

5.2.5 3. With regards to google reviews “for Boots, the pharmacy most criticised by the applicant, being 3.9 out of 5”, it must be noted that this rating does not exclusively represent the pharmacy department but also includes the positive feedback about Our Future Health department (vaccination centre, phlebotomy and operates independently of pharmacy), photography and general store (beauty, fragrance etc.) all of which are separate to the pharmacy department.

5.2.6 4. When google reviews are considered for the Boots Pharmacy alone, they are overwhelmingly negative. It should also be noted that whilst PSC push for Day Lewis to be considered as an alternative option to Boots, they score an even lower rating of 2.6 according to google reviews.

5.2.7 5. PSC correctly mention that patients can go onto “smartphones with mapping software” but despite this, it is clear that they chose not to opt for Day Lewis “given the significant increase in dispensing numbers at Tesco Pharmacy” (as self-confessed by PSC in previous representation).

5.2.8 6. We have already provided an independent survey focusing exclusively on the provision of pharmaceutical services in the area and the public outcry at the lack of choice and availability has been discussed already. We have also already discussed why those “who are disabled or suffer from poor health” may find accessing Day Lewis on a hill challenging.

- 5.2.9 7. PSC persist that in addition to Day Lewis and Boots, patients have other pharmacies nearer to their residence. However, it should be noted that the 3 remaining pharmacies are all located in the South of the town and therefore, there is not even spread of pharmaceutical services across the area. PSC admit that “the majority of people travel into the town centre” and we have previously discussed at length how the town centre acts as a central hub and why having an additional pharmacy will offer more choice for the local population.
- 5.2.10 8. It is clear that the changes such as signage on the main road are being introduced in light of evidence attached with our application (as Day Lewis has been in operation for many years and they have not thought of doing this before). Additionally, Day Lewis are now “taking on new MDS patients” but have failed to provide any details i.e. how many new patients they will accept, whether this will make any material difference to the current situation etc.
- 5.2.11 9. It is noteworthy that [sic] size of the Day Lewis shop remains the limiting factor to result in any meaningful increases in the MDS service and instead it may inadvertently cause further delays and unsatisfactory customers.
- 5.2.12 10. PSC have attempted to shift blame of long waiting times at Day Lewis to the attached medical centre. However, as demonstrated in our survey and google reviews, patients have specifically talked about long waiting times and queues going out through the doors in the pharmacy itself. Furthermore, they claim that “any service issues identified and raised with our client are passed to senior managers within the business who seek to address these”. However, as already discussed, the issues have been ongoing for a long time and no improvements were noted by the patients. PSC claim that the appointment of a new pharmacy manager who has “developed an excellent relationship with the co-located medical practice who are very happy with the service levels being provided”. It should be noted that it was the patients/customers who have been complaining and demanding an additional pharmacy due to lack of choice and availability (Day Lewis’ previously poor relationship with the medical centre was not the concern here). Furthermore, it is now evident that the main users of the Day Lewis are those who visit the attached medical centre. Their location (on a hill, not near the main shopping area of the town centre) and reduced opening times (not open on weekends) may be contributing factors.
- 5.2.13 In conclusion, patient complaints about the pharmacy provision have been an ongoing issue for a long time. Day Lewis have only now attempted to implement a couple of minor improvements in an attempt to persuade the committee to reject our application. There is no evidence to suggest that any of the “improvements” will make a significant impact or will remain in place if our application is rejected. However, it is noteworthy to see that merely submitting an application for an additional pharmacy has brought about the gap analysis / performance review. This is evidence of a lack of reasonable choice of services provision in the area.
- 5.2.14 Therefore, we humbly urge the committee to listen to the overwhelming demand of the local population for a new pharmacy in the town centre which will create a reasonable choice of service provision (and, with it, healthy competition between the providers) thus leading to overall improvements in pharmaceutical provision.”
