19 December 2024

REF: SHA/26279

APPEAL AGAINST HUMBER AND NORTH YORKSHIRE ICB DECISION TO REFUSE AN APPLICATION BY WYNCORD LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT JENNY FIELD DRIVE PARADE OF SHOPS AND INSIDE OF THE CO-OPERATIVE, HARROGATE, HG3 2XQ (BEST ESTIMATE)

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

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

1 Outcome

1.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of the Commissioner and redetermines the application.

1.2 The Committee determined that the application should be granted.

A copy of this decision is being sent to:

Healthcare Plus Consulting Ltd (on behalf of Wyncord Ltd)
Humber and North Yorkshire ICB
Boots UK Ltd

8th Floor
10 South Colonnade
Canary Wharf
London
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1 The Application

By application dated 21 February 2024, Wyncord Ltd ("the Applicant") applied to Humber and North Yorkshire ICB ("the Commissioner") for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at Jenny Field parade of shops & inside of the Co-Operative, Harrogate, HG3 2XQ (best estimate). 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 "N/A.

1.2 Despite there being a pharmacy currently trading near the proposed site, the current pharmacy located at Jenny Field Drive, HG3 2XQ is due to close on the 23rd March 2024.

1.3 Should a new pharmacy contract ultimately be granted, there will no longer have been a pharmacy trading from Jenny Field Drive, HG3 2XQ.

1.4 Thus, there will be no pharmacy trading from or adjacent to the proposed premises, so Regulation 31 does not apply."

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:

"<u>Background</u>

1.5 This application is in respect of opening up a new pharmacy in order to provide better access for patients requiring access to pharmaceutical services in Jennyfields, Northwest Harrogate. Specifically, residents of the Saltergate Ward; the Killinghall Ward; the Northern section of the Harlow Moor Ward; and the surrounding areas.

1.6 We understand that once the Boots on Jenny Field Drive closes, no pharmacy will be situated in any of the Ward sections as highlighted above. We believe that the closure of the Boots located at: Jenny Field Drive, Harrogate, HG3 2XQ on 22nd March 2024 will leave a significant gap in pharmaceutical services for Northwest Harrogate. Hence this application is offering unforeseen benefits not captured within the PNA.

1.7 The best estimate of the proposed site we wish to open up a new pharmacy is located on Jenny Field Drive Shops, Harrogate, HG3 2XQ. This is a same location as the soon to be closed Boots.

1.8 It is notable that the soon to be closed Boots is part of the Pharmacy Access Scheme – a funding package given to community pharmacies in areas where there are fewer pharmacies with higher health needs. This alone is evidence of the need for a pharmacy at the proposed location, however we have set out distinct benefits of granting this application further on within this document.

Proposed Location

1.9 The proposed location is situated amongst a well utilised parade of shops adjacent to the Co-operative Supermarket, at the heart of the Saltergate Ward. There is ample parking and wide walkways to access local services. There is good access by foot, car, and public transport.

1.10 The map overleaf illustrates the location of the closing Boots/ Proposed site, and the location of alternative pharmaceutical provision. [provided for Committee at Appendix A.]

1.11 We can see that the proposed site, HG3 2XQ, fills a huge geographical gap in pharmaceutical provision. We also note that residents of Hampsthwaite village and Killinghall village are likely to access pharmaceutical provision at the proposed site. Both villages are situated within the Killinghall Ward.

1.12 As of the 2011 census, the Saltergate Ward housed 5902 residents, the Killinghall Ward housed 3306 residents and the Harlow Ward housed 5750 residents. As highlighted above residents of the Northern section of the Harlow Moor Ward are likely to access pharmaceutical services at the proposed site. Thus, it can be supposed that the proposed site will be utilised by at least 10,000 local residents.

Site Images

1.13 [provided to the Committee at Appendix A.]

1.14 Image depicting the parage, with wide walkways and parking available outside the proposed site.

1.15 Image depicting ample free parking.

Regulations

1.16 We are required by NHS England [sic] to address the overarching question in an unforeseen benefits application:

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

1.18 When considering the above question, the provisions of Regulation 18(2)(b) should be noted:

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

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

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

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

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

1.19 We note that points on reasonable choice; protected characteristics; and innovation are desirable, however, they are merely supporting considerations when determining whether in fact the overarching test in regulation 18(2)(b) has been met: an application should be granted should it provide *improvements or better access to pharmaceutical services, or pharmaceutical services of a specified type in the HWB's area*.

1.20 We have addressed these regulations overleaf.

Patient journeys

1.21 Above we identified approximately 10,000 residents of the Saltergate, Killinghall and Harlow Moor wards who would likely access pharmaceutical services at the proposed site. When considering securing better access, we must consider what a typical patient journey would look like. We also consider the reasonable choice within these journeys, alongside how those with protected characteristics find those journeys.

1.22 Using the proposed site, HG3 2XQ, as an arbitrary marker to represent these residents; we can see that the next nearest pharmacy, notwithstanding the Boots that is set to close, is the Pharmacy Plus Health – Kings Road (HG1 5HY), which is 1.1 miles away. It must be noted that distance in itself is a barrier to access. For residents currently residing near the proposed site, alternative pharmaceutical services are difficult to access by foot, car, and public transport.

By foot from Proposed Site to current nearest pharmacy (Pharmacy Plus Health – Kings Road, HG1 5HY)

1.23 As can be seen from the map on the following page [provided for Committee at Appendix A], this journey is 1.1 miles or 26 minutes, equating to a 52 minute round journey.

1.24 It is worth reiterating that distance in itself is a barrier to access, and this journey length is clearly excessive, especially when we compare this to the rest of North Yorkshire. As a rural county, 63% of North Yorkshire's population are still within a 20 minute walk of a pharmacy. Thus, for residents of the densely population [sic] Jennyfields area, a 26 minute walk to pharmaceutical services depicts dire access and is not representative of the reasonable choice needed within built up areas.

1.25 We cannot consider a 2.2 mile round walk to access pharmaceutical services as sufficient access, nor can we consider this as having a reasonable choice to pharmaceutical services. In fact, for residents near the proposed site, we would consider this as no pharmaceutical choice at all, much less than the threshold of 'reasonable choice'.

1.26 Additionally, such an extended journey will prove difficult for the elderly, disabled, or patients with young children. Groups with protected characteristics do not have sufficient access by foot.

1.27 It follows that other pharmaceutical provision is also not accessible by foot on account of the greater distances involved, and thus there is a lack of reasonable choice and access to pharmaceutical services for those travelling by foot.

1.28 Whilst we accept that it is unlikely that residents of the Killinghall Ward are accustomed to accessing pharmaceutical services by foot, we note that residents of the Saltergate and Harlow Moor Ward likely are. Per the PNA survey, 39% of people in North Yorkshire access pharmaceutical provision by foot. In the context of this scenario, we estimate that 35000 residents [sic] who are accustomed to accessing pharmaceutical services by foot will no longer by [sic] able to do so. Granting this application would restore reasonable choice by foot for those residents.

1.29 We note that residents in the Saltergate Ward living to the West of the proposed site will soon experience an even longer journey to access pharmaceutical services once the Boots closes. Some residents will have to endure a 3.6 mile or 1 hour 20 minute round journey to access alternative pharmaceutical provision. Again, this is even less accessible than the journey above. Granting this application would more than half this journey length and time – a significantly more accessible trip.

<u>By car from Proposed site to current nearest pharmacy (Pharmacy Plus Health – Kings Road, HG1 5HY)</u>

1.30 The journey by car to the next nearest pharmacy, HG1 5HY, can be a 12 minute one way journey during busy traffic hours.

1.31 Again, we cannot consider a 24 minute round drive to access pharmaceutical services as sufficient access, nor can we consider this as having a reasonable choice to pharmaceutical services.

1.32 We also note that car parking is an issue for those accessing the Pharmacy Plus Health site due to its location on a busy high street. Parking is limited at this site with only [sic] handful of spaces to service a number of shops, and thus patients could find it difficult to find a parking spot. Should patients be able to find parking, they would still have to navigate the kerb to access the shops; something that the elderly or those with impaired mobility may not be capable of doing. Clearly, this does not provide sufficient access and choice to pharmaceutical services for these groups who share protected characteristics.

1.33 As per the images above, parking at the proposed site is ample, free of charge, and with no obvious obstacles to navigate. Granting this application would restore reasonable choice and eliminate the current barriers to access by car.

<u>By public transport from Proposed Site to current nearest pharmacy (Pharmacy Plus Health – Kings Road, HG1 5HY)</u>

1.34 The journey by bus to Pharmacy Plus Health is not the best served by public transport. There is not a direct bus between to [sic] the two sites, meaning patients would have to obtain two buses.

1.35 Patients would obtain the No. 3 electrics bus from outside the proposed site and alight at Harrogate Bus Station bus stop in the town centre. Patients would then obtain the No. 2 bus to the Pharmacy Plus Health site. The total one-way journey time is 23 minutes; we would not consider this as constituting sufficient pharmaceutical access by bus on account of journey duration alone.

1.36 We note that both buses frequent every 20 minutes. It is entirely plausible that on a return journey from visiting Pharmacy Plus Health patients would have to wait 20 minutes for the No. 2 bus and then a further 20 minutes for the 3 electrics bus. In total, residents could be waiting 40 minutes for buses on their return journey. Clearly this

does not provide adequate access to pharmaceutical services, especially when we consider that the return journey by foot is also inaccessible.

1.37 Such poor choice of pharmaceutical access is felt especially by the elderly and disabled. These patient groups could face having to wait 40 minutes for a return bus in the cold on a winters day. When we consider that these patients may not be able to drive, or even may not feel comfortable driving in winter conditions; alongside their inability to walk the long 1.1 mile distance back home, it is obvious that alternative pharmaceutical provision is inadequate and such scenarios stem from a lack of reasonable choice.

1.38 We also note that such a journey via multiple buses may prove burdensome and confusing the elderly, creating a barrier to access for these groups.

1.39 A pharmacy at the proposed site would mean pharmaceutical services are accessible by foot and thus residents do not need to suffer excessive waits for public transport. For those who do utilise public transport, residents are already accustomed to accessing pharmaceutical provision here. Thus, granting this application would restore reasonable choice and sufficient access to pharmaceutical provision.

Conclusion

1.40 In our view, the upcoming closure of the Boots in Jennyfields will leave a significant gap in pharmaceutical services for the Saltergate Ward; the Killinghall Ward; the northern section of Harlow Moor Ward; and the surrounding areas.

1.41 Local residents and those who are using the local amenities would benefit significantly from having a pharmacy located on the parade of shops located adjacent to the Co-operative.

1.42 Granting this application would secure better access to pharmaceutical services, especially when we consider the huge gap in geography that exists and access difficulties by foot, bus, and car. The elderly, disabled, and the wider population are likely to find the proposed pharmacy significantly more accessible than alternative choices. It would also introduce reasonable choice of a different pharmaceutical provider for those in the local area.

1.43 We would like to note that granting this application would not cause significant detriment to access of pharmaceutical services, as this application is seeking to fill a gap vacated by the Boots HG3 2XQ closure; and notwithstanding the fact that the nearest pharmacy to the proposed site is located 1.1 miles away.

1.44 On the evidence outlined above, we believe that a new pharmacy contract should be granted."

2 The Decision

The Commissioner considered and decided to refuse the application. The decision letter dated 7 August 2024 states:

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

2.1 "Humber and North Yorkshire ICB has considered the above application and I am writing to confirm that it has been refused. Please see enclosed report for the full reasoning.

2.2 You have a right of appeal to the Secretary of State against Humber and North Yorkshire ICB's decision. Should you wish to choose to appeal then you should either complete the online form available on the NHS Resolution website or send a concise

and reasoned statement of the grounds of your appeal within 30 days of the date of this letter to nhsr.appeals@nhs.net or:

2.3 Primary Care Appeals

NHS Resolution

8th Floor, 10 South Colonnade

Canary Wharf

London

E14 4PU"

DECISION REPORT DATED 6 AUGUST 2024

2.4 "NHS England [sic] has considered the above application, and I am writing to inform you that it has not been supported for the following reasons:

2.4.1 The Pharmaceutical Services Regulations Committee did not think there was sufficient information submitted to demonstrate any unforeseen benefits or innovate approaches as required by Regulation 18 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulation 2013.

2.5 Appeal rights are granted to:

2.5.1 The Applicant."

3 Preliminary matters

In an email dated 8 August 2024 addressed to NHS Resolution, Healthcare Plus Consulting Ltd on behalf of the Applicant wrote regarding the Commissioner's decision stating:

3.1 "We are looking to appeal the attached ICB decision, however PCSE are refusing to provide the meeting minutes/ a proper explanation for the decision.

3.2 Given that we are required to appeal on some grounds, we would be grateful if you could obtain these minutes."

4 Decision Minutes

NHS Resolution obtained the ratified minutes from the Commissioner dated 31 July 2024 (received 29 August 2024) and circulated a copy to the Applicant together with a copy of the decision report. NHS Resolution used its discretion under paragraph 7, Part 3, Schedule 3 of the Regulations, and allowed the Applicant to submit full grounds of appeal within 30 days. The report and minutes stated:

"DECISION REPORT

4.1 Name of applicant: Wyncord Ltd

4.2 Fitness to practise: Already in place.

4.3 Address/best estimate of proposed premises: Best estimate – Jenny Field Drive Parade of Shops & inside of the Co-Operative, Harrogate, HG3 2XQ.

4.4 Status of location: Non controlled locality.

4.5 Relevant regulations and guidance: Regulation 18 and 19 – unforeseen benefits: additional matters and consequences; Regulation 31 – refusal: same or adjacent premises; Regulation 32 – deferral arising out of LPS designations; Regulations 40 to 44 – applications in a controlled locality; Regulation 50 – gradualisation for doctors; Regulation 65 – core opening hours conditions; Regulation 66 – conditions relating to providing directed services; paragraph 31, schedule 2 – conditional grant of application where the address of the premises is unknown.

Additional information

4.6 This is an application (Appendices 1) for 'unforeseen benefits' (Best Estimate) and is to be considered under the provisions of Regulation 18.

4.7 The applicant proposes to open a pharmacy at premises located within Jenny Field Drive Parade of Shops & inside of the Co-operative Harrogate, HG3 2XQ. The applicant is currently unable to provide a floor plan of the proposed premises as they do not have one from the shopfitters. Once the outcome of this application is known, the premises will be secured (currently not in their possession as per application), they will be registered with the GPhC and comply with all relevant legal and ethical requirements for the operation of a retail pharmacy business.

4.8 Appendix 3 is a map showing the area of the best estimate.

4.9 The applicant is offering the following opening hours (taken from Appendix 2 – opening hours):

4.10 The proposed opening hours on your application are:

Monday	**Tuesday**	**Wednesday**	**Thursday**	**Friday**	**Saturday**	**Sunday**	**Total Hrs**
09:00 – 18:30	09:00 – 18:30	09:00 – 18:30	09:00 – 18:30	09:00 – 18:30	10:00 – 16:00	None	53.5

4.11 Please inset below the proposed 40 core hours for this application:

Monday	**Tuesday**	**Wednesday**	**Thursday**	**Friday**	**Saturday**	**Sunday**	**Total Hrs**
09:00 – 13:00; 14:00 – 18:00	09:00 – 13:00; 14:00 – 18:00	09:00 – 13:00; 14:00 – 18:00	09:00 – 13:00; 14:00 – 18:00	09:00 – 13:00; 14:00 – 18:00			40

4.12 The supplementary hours for this application are:

Monday	**Tuesday**	**Wednesday**	**Thursday**	**Friday**	**Saturday**	**Sunday**	**Total Hrs**
13:00 – 14:00;	13:00 – 14:00;	13:00 – 14:00;	13:00 – 14:00;	13:00 – 14:00;	10:00 – 16:00		13.5

18:00 – 18:30	18:00 – 18:30	18:00 – 18:30	18:00 – 18:30	18:00 – 18:30			

4.13 Proposed services to be provided by the applicant:

Service	**Accredited to provide (Y/N/NA)**	**Premises accredited (Y/N/NA)**
Supervised consumption	Y	N
Needles and syringe programme and harm reduction service	Y	N
Covid-19	Y	N
Smoking cessation advanced	Y	N
CPCS	Y	N
Flu vaccination	Y	N
Pharmacy Contraception Service	Y	N
Hypertension	Y	N
New Medicine Service (NMS)	Y	N
Minor Ailments	Y	N
Sexual Health	Y	N
Smoking cessation locally commissioned	Y	N
Palliative care	Y	N
Flu vaccination	Y	N

4.14 Unforeseen Benefits Offered by the applicant are described in Appendix 4 – supporting information.

4.15 *This application is in respect of opening up a new pharmacy in order to provide better access for patients requiring access to pharmaceutical services in Jennyfields, Northwest Harrogate. Specifically, residents of the Saltergate Ward; the Killinghall Ward; the Northern section of the Harlow Moor Ward; and the surrounding areas.*

4.16 *We understand that once the Boots on Jenny Field Drive closes, no pharmacy will be situated in any of the Ward sections as highlighted above. We believe that the closure of the Boots located at: Jenny Field Drive, Harrogate, HG3 2XQ on 22nd March 2024 will leave a significant gap in pharmaceutical services for Northwest Harrogate. Hence*

this application is offering unforeseen benefits not captured within the Pharmacy Needs Assessment (PNA).

4.17 *Granting this application would secure better access to pharmaceutical services, especially when we consider the huge gap in geography that exists and access difficulties by foot, bus, and car. The elderly, disabled, and the wider population are likely to find the proposed pharmacy significantly more accessible than alternative choices. It would also introduce reasonable choice of a different pharmaceutical provider for those in the local area.*

4.18 Please explain how you intend to secure the Unforeseen Benefits:

4.19 *The Boots Pharmacy, Jenny Field Drive, Harrogate, HG3 2XQ, was open with no plans for closure at the time of the PNA being written. This application is therefore submitted under Regulation 18 as an unforeseen benefits application. An increase in local pharmacy capacity and improved choice to meet the needs of the local population.*

4.20 *Better access and choice to pharmaceutical services given the closure of the above pharmacies.*

4.21 Initial additional matters considered. Was NHS England / the ICB satisfied that:

4.21.1 It would be desirable to consider, at the same time as this application, applications from other persons offering to secure the same improvements or better access? NO

4.21.2 Another application offering to secure the same improvements or better access has been submitted and it would be desirable to consider it at the same time as this application? NO

4.21.3 An appeal relating to another application offering [sic] secure the same improvements or better access is pending, and it would be desirable to await the outcome of that appeal before considering this application? NO

4.22 Applying the Regulations

4.23 Regulation 31 – same or adjacent premises

4.23.1 Regulation 31 does not apply as there is no pharmacy at the same or adjacent premises.

4.24 Regulation 32 – is the application to be deferred arising out of LPS designations?

4.24.1 This Regulation is not applicable to this application as there are no LPS designations.

4.25 Regulation 41 – is the relevant location in a reserved location?

4.25.1 This is not a controlled locality, therefore not reserved.

4.26 Regulation 44 – Prejudice test

4.26.1 N/a

4.27 Regulation 50 – discontinuation of arrangements for the provision of pharmaceutical services by doctors

4.27.1 N/a

4.28 Regulation 65 – core opening hours conditions

4.28.1 This regulation may only apply if the application is approved.

4.28.2 Has the applicant offered to provide more than 40 core hours? NO

4.28.3 n/a

4.29 Regulation 66 – condition relating to providing directed services.

4.29.1 This regulation is not applicable as Humber & North Yorkshire ICB does not intend to direct services to be provided.

4.30 Paragraph 31 of Schedule 2 – conditional grant of applications where the address of the premises is unknown.

4.30.1 The applicant has provided a best estimate address.

4.30.2 If the application is granted and the proposed premises are no longer available, the successful applicant would have to notify of the precise location of its premises (in accordance with paragraph 31 of Schedule 2). It should be noted that 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.

4.31 Regulation 18(1) – does the need on which the applicant based its application satisfy the elements of Regulation 18(1)>

4.31.1 Additional matters to which the NHSCB must have regard:

4.31.1.1 A) NHS England is satisfied that granting the application would secure improvements or better access, to pharmaceutical services, in the area of the relevant HWB;

4.31.1.2 B) were the improvements/ better access that would be secured included in the relevant PNA?

4.31.2 The North Yorkshire Pharmacy Needs Assessment (PNA) can be found here: North Yorkshire PNA 2022 FINAL.pdf (nypartnerships.org.uk)

4.32 Information on service provision can be found on page 26 with specific information relation to the Harrogate area on the same page with conclusions in relation to pharmacy provision also been on page 26. This identified:

4.32.1 *"In the Harrogate district, there is adequate service provision during Monday to Sunday".*

4.32.2 *"In summary, there are no gaps in the provision of necessary services in North Yorkshire".*

4.33 Although the PNA acknowledged that there would be some developments expected to take place over the next three years that may impact on the need for an access to pharmacy services. The Boots closures were not known at the time of writing the current PNA.

4.33.1 *"Any pharmacy changes or closures that have a significant impact on access may be subject to a supplementary statement being issued by the Health and Wellbeing Board if this occurs before the next PNA is prepared."*

4.33.2 A supplementary statement was issued in December 2023 which was prior to the Boots Jennyfield Pharmacy closing which was March 2024. No subsequent statement has been issued.

Summary of Representations.

4.34 Boots (Appendix 5a) - do not support the application and wanted to be clear that the closure of a pharmacy does not automatically create a gap. They state that they are unaware of any update to the PNA or supplementary statement because of the closure. They feel this suggests that the closure has not resulted in a gap in pharmaceutical provision.

4.35 Community Pharmacy North Yorkshire (Appendix 5b) – highlighted that the contractor has more than 40core hours which suggests a poor understanding of the application process.

4.36 Well Pharmacy (Appendix 5c) - do not support the application and wanted to be clear that the closure of a pharmacy does not automatically create a gap. They state that they are unaware of any update to the PNA or supplementary statement because of the closure. They state there are 6 pharmacies within 1.5miles of the proposed location. No evidence has been submitted by the application on protected groups, nor have they described any access issues currently experienced by local residents. All services to be provided by this application are provided by current contractors in the area. Overall, there is no evidence within the application to support the need for an additional pharmacy in this area.

4.37 Yor Local medical Committee (Appendix 5d) – had no comments to make on the application.

Responses to Representation from the Applicant.

4.38 The applicant has provided a full response to the representation made (Appendix 5e).

4.39 In response to Boots, the applicant highlights that an Unforeseen Benefits application is in its nature unforeseen offering improvements or better access to pharmaceutical services not captured within the PNA.

4.40 The response to Well also highlighted that an Unforeseen Benefits application is in its nature unforeseen offering improvements or better access to pharmaceutical services not captured within the PNA. It also stated that deprivation within the area and the upcoming closure of a GP surgery which will put additional pressure on the health centre which is close to the proposed site which will provide pharmaceutical provision for those after a visit to the GP.

Regulation 18(2)(a) – is NHS England satisfied that granting the application would cause significant detriment to:

(i) Proper planning in respect of the provision of pharmaceutical services in the area; or

(ii) The arrangements it has in place for the provision of pharmaceutical services in the area.

4.41 Does the applicant offer to secure improvements or better access over and above those already provided within the area?

4.42 Following considering of Regulation 18(2)(a)(i) – (ii), Humber and North Yorkshire ICB does not feel granting the application would cause significant detriment to either (i) or (ii). It notes that the application does not offer to secure improvements or better access over and above those already provided within the area.

Regulation 18(2)(b) - whether notwithstanding that the improvements or better access were not included in the relevant PNA, NHS England 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;

(ii) people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area, are difficult for them to access;

(iii) 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 which were not foreseen when the relevant pharmaceutical needs assessment was published.

4.43 With regards to Regulation 18 (2)(b)(i) – (iii), The rationale behind the application is to replace the Boots provision.

4.44 This, or any other closure, is not included within the current PNA as the recent Boots closures had not been anticipated.

4.45 (i) there being a reasonable choice with regard to obtaining pharmaceutical services in the area.

4.46 The table and map below, illustrates there is choice of providers within 2 miles of the proposed premises, there are no providers within 1mile.

Other pharmaceutical provision within the area:

4.47 There are currently 8 other providers of pharmaceutical services within 2miles of the proposed premises.

Pharmacy	**Distance**	**Address**	**Weekday**	**Sat**	**Sun**
Kings Rd Pharmacy	1.2 miles	28 – 30 Kings Road, Harrogate, HG1 5JP	08:30 – 18:00	08:00 – 12:00	closed
Pharmacy+ Heath Kings Rd	1.2 miles	154 – 156 Kings Rd, Harrogate, HG1 5HY	09:00 – 18:00	09:00 – 13:00	closed
Well Pharmacy	1.3 miles	111 Cold Bath Rd, Harrogate, HG1 5HY	09:00 – 18:00	09:00 – 13:00	closed
Superdrug Pharmacy	1.3 miles	Unit 1, Nidderdale House, 4 – 6 Cambridge Rd, Harrogate, HG1 1NS	08:30 – 17:30	09:00 – 17:30	closed
Boots Pharmacy	1.3 miles	26 – 28 Cambridge Street, Harrogate, HG1 1RX	08:30 – 18:00	08:30 – 18:00	closed
Asda Pharmacy	1.4 miles	Bower Rd, Harrogate, HG1 5E	09:00 – 18:00	09:00 – 20:00	closed

Cohens Chemist	1.4 miles	52 – 54 King Edwards Drive, Harrogate, HG1 4HL	09:00 – 18:00	closed	closed
Cohens Chemist	1.6 miles	Mowbray Square Medical Centre, Harrogate, HG1 5AR	08:00 – 18:30	closed	closed

4.48 The map below [attached at Appendix B for Committee] shows the pharmacies above in relation to the proposed premises so PSRC can ascertain whether the geography of the area impacts on patient's ability to access pharmacy services within the area.

4.49 Red circle – depicts the location of the closed Boots and the proposed site, G3 2XQ. Blue market – depicts current pharmaceutical provision.

4.50 The Boots that closed provided 40core hours between Monday and Saturday with supplementary hours in the afternoons.

4.51 The applicant states they will provide 40 core hours between Monday to Friday with supplementary hours each weekday to enable them to open all day and on a Saturday. The supplementary hours can be removed providing the contractor provides the required 5weeks notice and so would potentially reduce access to pharmacy services.

4.52 In relation to pharmacy provision, there is no pharmacy provision within 1 mile of the proposed premises. Of those within 2miles, 3 provide half day opening on a Saturday and 3 provide all day opening.

(ii) people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area, are difficult for them to access.

4.53 Within the supplementary information, the applicant provides information on how patients will be able to access the proposed area using various modes of transport and how long this will take them but there is no information on how those people with shared protected characteristics will access pharmaceutical services that meet specific needs.

(iii) 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 which were not foreseen when the relevant pharmaceutical needs assessment was published.

4.54 The applicant does not provide any information on innovative approaches taken to deliver pharmaceutical services.

Regulation 18(2)(c) whether NHS England 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

and

Regulation 18(2)(d) whether NHS England 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.

4.55 N / A

Regulation 18(2)(e) whether NHS England 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.

4.56 N / A

Regulation 18(2)(f) whether the application needs to be deferred or refused by virtue of any provision of Part 5 to 7 Part 5 sets out three specific grounds for refusal or deferral of routine applications submitted under Parts 3 and 4 of the Regulations, which are not linked to fitness grounds:

4.57 1. Refusal: on the basis of language requirement

4.57.1 N / A

4.58 2. Refusal for same or adjacent premises

4.58.1 N / A

4.59 3. Deferrals arising out of LPS designations

4.59.1 N / A

4.60 Part 6 makes provision for refusal, deferral, and conditional inclusion in the pharmaceutical list on fitness to practice (FtP) grounds.

4.60.1 N / A - already included.

4.61 Part 7 deals with controlled locality areas or reserved locations and new pharmacies opening within them.

4.61.1 N / A - this is not a controlled location.

Recommendation

4.62 The recommendation to PSRC is that this application is not supported as the applicant has not demonstrated any unforeseen benefits as required by Regulation 18 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013:

4.62.1 18(1)(a) – there would not be any improvements or better access by granting this application.

4.62.2 18(1)(b) – there are no improvements or better access included in the current PNA.

4.62.3 18(2)(a)(i-ii) - granting the application would not cause significant detriment to either planning for pharmacy services or for pharmacy services already in place.

4.62.4 18(2)(b)(i) - there is reasonable choice in relation to obtaining pharmaceutical services in the area within 2 miles of the proposed premises. However, there are no providers within 1mile.

4.62.5 18(2)(b)(ii) – there was no information to evidence how people with protected characteristics would access services to meet specific needs.

4.62.6 18(2)(b)(iii) – there was no evidence to support innovative approaches to the delivery of pharmaceutical services."

DECISION MINUTES

4.63 "[HP] presented a paper for unforeseen benefits (UB). The best estimate address has been provided by the contractor and is noted above. The applicant is currently unable to provide a floor plan of the proposed premises as they do not have one from the shopfitters. Once the outcome of this application is known, the premises will be secure (currently not in their possession as per application), they will be registered with the GPHC and comply with all relevant legal & ethical requirements for the operation of a retail pharmacy business. The Committee report includes a map showing the area of the best estimate.

4.64 The applicant has proposed the pharmacy will open for forty core hours (09:00 – 13:00 and 14:00 – 18:00 Monday to Friday) with a total of fifty-three point five opening hours overall (09:00 – 18:30 Monday to Friday and 10:00 – 16:00 on Saturday). [HP] highlighted that the supplementary hours could be removed providing the contractor provides the required 5 weeks notice and so would potentially reduce access to pharmacy services.

4.65 The rationale behind the application is to replace the Boots provision on Jenny Field Drive. The application feels that this will create a gap in pharmaceutical provision in the area.

4.66 Regulation 31, 32, 41, 44, 50, 65, 66 18(2)(c – f) are not applicable. In relation to Paragraph 31 of Schedule 2, if the application is granted and the proposed premises are no longer available, the successful applicant would have to notify of the precise location of its premises. It should be noted that 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.

4.67 The 2022 North Yorkshire Pharmacy [sic] Needs Assessment ("PNA") states "in the Harrogate district, there is adequate service provision during Monday to Sunday" and " in summary, there are no gaps in the provision of necessary services in North Yorkshire". A supplementary statement was issued in December 2023 which was prior to the Boots Jennyfield Pharmacy closing which was March 2024. No subsequent statement has been issued.

4.68 Representations were provided by Boots UK Ltd, Community Pharmacy North Yorkshire (CPNY), Bestway Group Limited trading as Well Pharmacy and Yor Medical Committee (LMC). YOR LMC made no substantive comments. Boots UK Ltd did not support the application and wanted to be clear that the closure of a pharmacy does not automatically create a gap. Boots UK Ltd state that they are unaware of any update to the PNA or supplementary statement because of the closure. They feel this suggests that the closure has not resulted in a gap in pharmaceutical provision.

4.69 CPNY highlighted that the contract has more than forty core hours which suggests a poor understanding of the application process. Well Pharmacy do not support the application and wanted to be clear that the closure of a pharmacy does not automatically create a gap. They state that they are unaware of any update to the PNA or supplementary statement because of the closure. They state there are six pharmacies within 1.5 miles of the proposed location. No evidence has been submitted by the application [sic] on protected groups, nor have they described any access issues currently experienced by local residents. All services to be provided by this application are provided by current contractors in the area. Overall, there is no evidence within the application to support the need for an additional pharmacy in the area.

4.70 With regards to Regulation 18(2)(b)(i) – (ii), there are currently eight other providers of pharmaceutical services within two miles of the proposed premises with the closest being Kings Road Pharmacy in Harrogate at 1.2 miles away. The opening hours of these eight pharmacies are included in the Committee paper.

4.71 Within the supplementary information, the applicant provides information on how patients will be able to access the proposed area using various modes of transport and how long this will take them, however, there is no information on how those people with shared protected characteristics will access pharmaceutical services that meet specific needs. The application does not provide any information on innovative approaches taken to deliver pharmaceutical services.

4.72 All regulations were considered as detailed in the paper upon PSRC making a decision. [HP] recommended that the PSRC do not support this application as the application has not demonstrated any unforeseen benefits as required by Regulation 18 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulation 2013.

4.73 The Committee considered the application. The Committee agreed that the applicant has not identified or provided evidence of a gap in any service, nor have they offered any innovative types of service delivery or service redesign that would be of benefit to patient groups.

4.74 The application was made based on a recent Boots closure. The Committee were reminded that pharmacy closures [sic] does not automatically equate to a gap of service provision. This, or any other closure, is not included within the current PNA as the recent Boots closure had not been anticipated. Further to this, patients who accessed the previous Boots pharmacy would now be accustomed to access pharmaceutical services elsewhere since the closure had occurred approximately five months prior to today's PSRC.

4.75 [HP] has recently worked alongside the HWB to consider whether supplementary statements are required for the H&NY Places. The HWB has had ample opportunity to review the recent closures and details provided by the H&NY ICB. The HWN has concluded that a supplementary statement is not required reiterating that there is no current gap in pharmaceutical provision identified. If this was the case, the outcome would trigger the revision of a new PNA.

4.76 The application does not provide any information on how those with shared protected characteristics will access pharmaceutical services that meet specific needs. The application also does not include detail on transport options (i.e. bus routes and coverage in the area, etc) or car ownership data.

4.77 There is a choice for the service users in this area in terms of coverage of other community pharmacies, with eight pharmacies being within 1.2 miles [sic] of the best estimate location. Whilst the distance does not appear ideal, the proposed location is in a rural area which means patients are accustomed to travelling further to visit their nearest pharmacy.

4.78 PSRC decision: Having considered all the information provided by the contractors and the regulations, the PSRC refused this application.

4.79 Right of appeal: Wyncord Ltd."

5 **Appeal**

In a letter dated 27 September 2024 addressed to NHS Resolution, Healthcare Plus Consulting Ltd on behalf of the Applicant wrote to appeal the Commissioner's decision stating:

5.1 **"**Thank you for your letter dated 29th August 2024 to my client. Wyncord Ltd have instructed us (Healthcare Plus Consulting Ltd) to act on their behalf for this appeal, please find an authorisation letter attached.

5.2 We would like to appeal the decision made in relation to the above unforeseen benefits application.

5.3 We submit that NHS England have failed to properly evaluate Regulation 18 and the fundamental question within the Regulation: does the application provide *'improvements or better access to pharmaceutical services, or pharmaceutical services of a specified type in the HWB's area.'*

5.4 We assert that this application does provide improvements or better access to pharmaceutical provision, as set out in my client's original application and the comments previously provided by my client. We re-attach this correspondence for re-consideration by NHS Resolution.

5.5 There are a number of issues with the decision report, which we wish to appeal:

5.6 It appears that NHS England have used the rationale of pharmacies within 2 miles of the proposed site as a reference for considering reasonable choice and sufficient access. No such criteria has been referenced in the North Yorkshire Pharmaceutical Needs Assessment (PNA). The PNA is largely silent on any defined distance that would represent reasonable choice to pharmaceutical provision, and thus we suppose that more sensible metrics can be found in different areas of the pharmaceutical regulations.

5.7 The Committee will be aware that when thinking about dispensing doctors and controlled localities, a reserved location loses its status as a reserved location when the population within one mile of the dispensing doctor exceeds 2,750 people. A loss of reserved location status often invites unforeseen benefits applications under regulation 18 and the argument of there no longer being reasonable choice to provision.

5.8 We submit that not all said applications will necessarily be granted; however, there is a clear population and distance criteria which would prompt an application under regulation 18.

5.9 In the context of this scenario, if we look at the immediate Jennyfields area, which is most closely given by the Harrogate 011 Mid-Layer Super Output Area (MSOA), we can see that there are 7,669 residents here within approximately a half mile radius, per 2021 Census data. Such population figures are much greater than that of the 2750 given by a reserved location, and within a much smaller area. Following the closure of the Boots in Jennyfields, there is no longer pharmaceutical provision within a mile of the proposed site – which is also explicitly accepted by NHS England. It is also worth noting that there are no dispensing doctors situated in the Jennyfields area.

5.10 We believe that the above criteria is a much more sensible barometer when considering whether there is reasonable choice to pharmaceutical provision and is derived from current pharmaceutical legislation. We submit that it would be sensible for NHS Resolution to evaluate this application in the context of the one-mile criteria opposed to the 2-miles used by NHS England.

5.11 We note that NHS England also determined the Jennyfields area to be a 'rural' community. We contend such assertions by NHS England and assert that the proposed site is not situated in a rural location and is very much an urban/ semi-rural site. Should the Jennyfields area have been rural, it would have been classified as a controlled locality. As can be seen on page 8, regulation 18(2)(f), Part 7, on the NHS England decision report, the proposed site is not situated in a controlled locality and thus is not rural.

5.12 Given it is patently clear that the proposed site is not located in a rural area, there is criteria that we can draw from the PNA: *"The majority of residents can access a pharmacy within a 20-minute walking distance" (PNA, pg.7).* We submit that this is no longer the case; the nearest pharmacy provision is situated a 26-minute walk from the proposed site following the closure of the Boots, as outlined in my client's original application. Many residents in the Jennyfields area living to the West of the proposed site now have a 45-minute one-way journey by foot to access pharmaceutical provision. In the context of the PNA, the non-rural nature of the area, and common sense, we submit that this is clearly not representative of reasonable choice to pharmaceutical provision. We also note that the elderly, infirm disabled, and mothers with young children would particularly find this journey to be unviable.

5.13 Journeys by foot are especially difficult to alternative pharmacies in Harrogate due to the steep nature of the surrounding terrain. This is particularly pertinent when we consider the poor mobility of residents near the proposed site, which is located in the Harrogate 011E Lower- Layer Super Output area (LSOA). Per the 2021 census, 21.4% of these residents have a disability under the 2010 Equality Act. This is far greater than the figures for Harrogate (16%) and England (17.3%). Of particular concern is the fact that 10.2% of residents in this LSOA have significant disabilities under the 2010 Equality Act with their day-to-day activities limited a lot. This is far greater than the figures for England (7.3%) and almost double the average figures for Harrogate (6.0%). Such poor mobility figures are compounded by the hilly nature of Harrogate, which makes travel by foot even more difficult.

5.14 We submit that accessing pharmaceutical services by foot is out of the question for a number of local residents. These residents ultimately have to try and access pharmaceutical provision by car or via public transport.

5.15 Those accessing via car may have a few different options to pharmaceutical provision, however, as mentioned in previous correspondence, vehicular access is poor at my client's proposed site. Per 2021 census data, 33% of households in the 011E Harrogate LSOA do not have access to a car/van. This is much greater than the 14.8% no car/van percentage for Harrogate.

5.16 It is apparent that residents near my clients proposed site have poor mobility and poor vehicular access. Thus, these residents could be reliant on public transport to access pharmaceutical provision.

5.17 These residents could access pharmacies in Harrogate town centre via the No.3 bus, which frequents every 20 minutes. However, those residing near the proposed site may not be able to afford the associated costs with bus travel, given the Harrogate 011E LSOA is one of the most deprived areas in Harrogate. The Committee will be aware that deprived populations consequently have greater health needs – 7.6% of residents in this LSOA are economically inactive due to long term sickness. This is almost double the figures for England (4.1%) and almost triple the figures for Harrogate (2.6%).

5.18 This is compounded by the fact that 7.6% of residents in this LSOA consider that they have bad/very bad health. These figures are far greater than for Harrogate (3.9%) and England (5.2%) averages and would suggest that the local population require greater interaction with pharmaceutical services.

5.19 We can see that there is a deprived population, with poor health, poor mobility, that do not have access to a car and are being forced to access pharmaceutical provision by bus. However, repeated journeys by bus can be particularly punitive for this population with residents undoubtedly asking themselves whether they should access pharmaceutical provision by bus or utilise the money elsewhere. Having to choose between accessing health services or obtaining everyday essentials is clearly representative of no choice at all; much less than the threshold of 'reasonable choice'.

5.20 Further, we highlight that Jennyfields in itself is a discreet community, which has a number of local amenities including:

5.20.1 A large Co-operative Supermarket

5.20.2 A tanning salon

5.20.3 A Charity Shop

5.20.4 A pub

5.20.5 A Community Centre

5.20.6 A Doctors surgery

5.20.7 A Barbers

5.20.8 A Fish & Chips Shop

5.20.9 A Pizza shop

5.20.10 A Church

5.20.11 A Café

5.20.12 A Football Club

5.20.13 A Nursery

5.20.14 A Primary School

5.20.15 A Park/ Playground

5.21 These are all amenities that resident's access as part of their daily lives. We submit that there is a need for a new pharmacy within the community. With the advent of Pharmacy First, it is important to have pharmacies located within communities. Residents are more likely to access minor ailments services and general advice in connection with other amenities as part of their daily lives, leading to better health outcomes. This holds especially true for those residents who live near the proposed site who, as demonstrated above, have much greater health needs. Excessive distances or costs can deter people from accessing these services, and ultimately will place more strain on the primary care network as conditions worsen.

5.22 We submit that Regulation 18 has been met through the representation above and attached previous correspondence by my client. Thus, we invite NHS Resolution to grant my client's application."

LETTER TO THE COMMISSIONER DATED 10 JUNE 2024

5.23 "Thank you for your letter dated 3 June 2024. We welcome comments from all local parties and take each relevant representation in turn below:

<u>Boots</u>

5.24 Comments from Boots centre around the PNA and lack of identification as a need. We highlight that an unforeseen benefits application is in its very nature, unforeseen, offering improvements or better access to pharmaceutical services not captured within the PNA.

Well

5.25 Again, we highlight to Well that an unforeseen benefits application is in its very nature, unforeseen, offering improvements or better access to pharmaceutical services not captured within the PNA.

5.26 Well also highlight that there are 6 pharmacies within 1.5 miles of the proposed site. Whilst this may be the case, there are no pharmacies within a mile of the proposed site. The Committee will be aware that the proposed site is situated in the 011E Harrogate Lower Layer Super Output Area (LSOA). This location is one of the most deprived areas within Harrogate, and consequently has greater health needs. Per 2021 census data:

5.26.1 33% of households do not have access to a car/van (compared to 29.7% in 2011); this is significantly worse than the 21.6% average for England.

5.26.2 7.6% of the localised population have bad/very bad health (compared to 5.7% in 2011); this is significantly worse than the 5.4% average for England.

5.26.3 21.4% of the localised population have their day-to-day activities (compared to 16.6% in 2011); this is significantly worse than the 17.6% average for England.

5.27 It is clear that the proposed site will serve a highly deprived population. It is also notable that health metrics are clearly worsening in this area; and it is imperative that this application is granted to restore vital pharmaceutical provision.

5.28 The Committee will also be aware that Killinghall Medical Centre (HG3 2DG) is set to close in October 2024. The closure of this branch surgery is expected to place additional pressures on Jennyfield Health Centre (being the next nearest surgery). It is notable that the proposed site is only a 100 metre walk to Jennyfield Health Centre. Granting this application would ease pressures on Jennyfield Health Centre, as well as provide adequate pharmaceutical provision for those who utilise pharmaceutical services after a visit to the GP. It would also help those with urgent prescriptions obtain medication in a timely manner.

Conclusion

5.29 In conclusion, granting this application would secure better access and improvements to pharmaceutical services for residents of the Saltergate Ward; the Killinghall Ward; the Northern section of the Harlow Moor Ward; and the surrounding areas.

5.30 There is a need for another pharmacy in Jennyfields when we consider the poor access to alternative pharmaceutical provision, and the increasing health needs of the localised population.

5.31 The elderly, disabled, and the wider population are likely to find the proposed pharmacy significantly more accessible than their current choices, especially when we consider than the nearest pharmacy is over a mile away from the proposed site.

5.32 Jennyfields will also see a large increase in healthcare demand following the closure of Killinghall Medical Centre, and a pharmacy at the proposed location will restore vital pharmaceutical/healthcare access.

5.33 Hence, regulation 18 has been met and this application should be granted."

6 Summary of Representations

This is a summary of representations received on the appeal.

6.1 THE COMMISSIONER

6.1.1 “Thank you for your letter dated 11 October 2024.

6.1.2 This letter will respond to the Regulations and representations submitted. Any additional evidence from Humber & North Yorkshire (HNY) Integrated Care Board (ICB) will be made under the relevant section of the response.

6.1.3 At the time of the correspondence from the contractor to NHS Resolution on 8 August, the minutes from the Pharmacy Services Regulations Committee were [sic] this application was heard would have not been ratified so we unable to provide. However, we did provide these as soon as they had been ratified at the September [sic] when they were shared with PCSE.

Regulation 31

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

(2) This paragraph applies where:

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

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

(ii) adjacent premises; and

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

6.1.4 This regulation does not apply as there is no pharmacy at the same or adjacent premises of the best estimate location.

Regulation 18(2)(a) granting the application would cause significant detriment to:

(i) proper planning in respect of the provision of pharmaceutical services in the Health and Wellbeing Board area; or

(ii) the arrangements NHS England has in place for the provision of pharmaceutical services in the Health and Wellbeing Board area;

6.1.5 Following consideration of Regulation 18(2)(a) (i) – (ii), HNY ICB does not feel granting the application would cause significant detriment to either (i) or (ii). It notes that the application does not offer to secure improvements or better access over and above those already provided within the area.

Regulation 18(2)(b) notwithstanding that the improvements or better access were not included in the pharmaceutical needs assessment, granting the application would confer significant benefits on persons in the area (which were not foreseen when the pharmaceutical needs assessment was published), having regard to the desirability of:

(i) there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the Health and Wellbeing Board;

6.1.6 There are currently 8 other providers of pharmaceutical services within 2miles of the proposed premises, 7 of those within 1.5miles.

6.1.7 The applicant states they will provide 40 core hours between Monday to Friday with supplementary hours each weekday to enable them to open all day and on a Saturday. The supplementary hours can be removed providing the contractor provides the required 5weeks notice and so would potentially reduce access to pharmacy services.

6.1.8 Humber & North Yorkshire Integrated Care Board additional representation in response to the applicants' appeal letter in relation to Regulation 18(b)(i)

6.1.8.1 In relation to comments on page 4 of the response, there is no pharmacy provision within 1 mile of the proposed premises and therefore we had to go further to illustrate in the report where the nearest pharmacies were. Of those within 2miles, 3 provide opening after 6pm during the week, 3 provide half day and 3 provide full day opening on a Saturday with 3 providing opening hours on a Sunday.

6.1.9 (ii) people who share a protected characteristic (as listed in section 149(7) of the Equality Act 2010 - age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership, and pregnancy and maternity) having access to services that meet specific needs for pharmaceutical services that, in the area of the Health and Wellbeing Board, are difficult for them to access, or

6.1.9.1 Within the supplementary information, the applicant provides information on how patients will be able to access the proposed area using various modes of transport and how long this will take them but there is no information on how those people with wider shared protected characteristics will access pharmaceutical services that meet specific needs.

6.1.10 Humber & North Yorkshire Integrated Care Board additional representation in response to the applicants' appeal letter in relation to Regulation 18(b)(ii)

6.1.10.1 The additional information submitted within the appeal documentation focuses on access to vehicles and how patients would potentially travel to access community pharmacy service with some information on some protected characteristics but not how wider shared protected characteristics and how patients with these will access pharmaceutical services that meet specific needs.

6.1.10.2 In addition, there are alternative ways that patients can access pharmacy services such as telephone calls and video consultations. Patients can order their medications electronically and have them delivered should they need to. There are also Distance Selling Pharmacies available to patients. The PNA recognises that "Since the last PNA, there has been a significant increase of use of electronic prescriptions which enable patients to have their prescriptions (especially repeat prescriptions) sent electronically to a pharmacy of their choice, such as one close to their workplace or near their home. In addition, patients could choose to access medicines via a distance selling pharmacy, again utilising the electronic prescription service, thereby broadening possible choice of pharmacy service for the customer" and "Locally pharmacies in the area have developed a collection and delivery service to these patients to ensure that patients, especially those who are vulnerable or elderly, are not disadvantaged by this closure" (page 77 of the North Yorkshire PNA)

6.1.11 (iii) there being innovative approaches taken with regard to delivery of pharmaceutical services

6.1.11.1 There was no information within the application which related to innovative approaches being taken with the regard to the delivery of pharmaceutical services.

6.1.12 Humber & North Yorkshire Integrated Care Board additional representation in response to the applicants' appeal letter in relation to Regulation 18(b)(iii)

6.1.12.1 There was no further information within the appeal documentation that related to innovative approaches being taken with the regard to the delivery of pharmaceutical services.

6.1.13 Evidence (as requested on page 3 of your letter dated11th October 2024) Health & Wellbeing Board's up-to-date Pharmacy Needs Assessment (PNA)

6.1.13.1 Please see below, as requested, a link to the North Yorkshire PNA for 2022-2025. North Yorkshire PNA 2022 FINAL.pdf (nypartnerships.org.uk)

6.1.14 Information on service provision can be found on page 26 with specific information relation to the Harrogate area on the same page with conclusions in relation to pharmacy provision also been on page 26. This identified:

6.1.14.1 *"In the Harrogate district, there is adequate service provision during Monday to Sunday".*

6.1.14.2 *"In summary, there are no gaps in the provision of necessary services in North Yorkshire".*

6.1.15 Although the PNA acknowledged that there would be some developments expected to take place over the next three years that may impact on the need for an access to pharmacy services. The Boots closures were not known at the time of writing the current PNA.

6.1.16 *"Any pharmacy changes or closures that have a significant impact on access may be subject to a supplementary statement being issued by the Health and Wellbeing Board if this occurs before the next PNA is prepared."*

Supplementary statement to the PNA

6.1.17 There was a supplementary statement issued in December 2023 in relation to 2 permanent pharmacy closures in the North Yorkshire area. This was prior to the Boots Jennyfield Pharmacy closing in March 2024 and no subsequent statement was issued post the closure. North Yorkshire PNA Supplementary Statement2 November 2023.pdf (nypartnerships.org.uk)

6.1.18 In relation to the supplementary statement, as stated within Chapter 8 of the DHSC PNA information pack for local authority health and wellbeing boards, it states "Supplementary statements are statements of fact; they do not make any assessment of the impact the change may have on the need for pharmaceutical services. Effectively, they are an update of what the pharmaceutical needs assessment says about the availability of pharmaceutical services. They are not a vehicle for updating what the pharmaceutical needs assessment says about the need for pharmaceutical services".

6.1.19 No new PNA has been published since the application was made and so the North Yorkshire PNA for 2022-2025 is still current and should be used to determine the outcome of this appeal.

6.1.20 I look forward to hearing from you soon."

6.2 BOOTS UK LTD

6.2.1 "Thank you for your letter dated 11 October 2024 informing us of the above appeal.

6.2.2 We have no further comments to make in addition to those submitted to the ICB, a copy of which is enclosed for your information.

6.2.3 We would be grateful if you would inform us of the outcome of this appeal in dues [sic] course."

LETTER DATED 30 MAY 2024 ADDRESSED TO THE COMMISSIONER

6.2.4 "Thank you for your letter dated 18 April 2024 and the above application. Boots UK Limited have the following comments to make.

6.2.5 Whilst we accept that the application is based on benefits not foreseen when drafting the Pharmaceutical Needs Assessment (PNA), it is clear the application is purely bases [sic] on the recent closure of the Boots pharmacy.

6.2.6 As the ICB will be aware, the closure of a pharmacy within an area does not automatically create a gap and should a gap have arisen because of such a closure, then the PNA should be updated to reflect this. To our knowledge no changes have been made within the current PNA or any supplementary statements produced. We would therefore suggest that the closure of the pharmacy in the locality has not resulted in a gap to pharmaceutical services and that the Health and Wellbeing Board recognise that the existing network of pharmacies can cope should there be any increase in demand?

6.2.7 We would be most grateful if you could keep us informed of the progress of the application in due course."

7 **Observations**

7.1 HEALTHCARE PLUS CONSULTING LTD (on behalf of the Applicant)

7.1.1 "Thank you for your letter dated 15 November 2024. We note the responses made by interested parties on my client's appeal and respond accordingly here.

7.1.2 We note that there is little dispute that the localised population is deprived, with poor health, poor mobility, poor vehicular access, and poor economic outlook. Given these factors, we reiterate how is it reasonable that these residents now have a 2.4 mile round journey to access pharmaceutical provision following the closure of the Boots store?

7.1.3 Residents access all their day-to-day needs within Jennyfields, including doing their weekly shop at the large Co-operative store, and accessing all other amenities that have been highlighted previously we also note that Jennyfields has a fitness centre, which was not previously highlighted.

7.1.4 Again, we stress to the Committee the importance of having accessible pharmacies within communities, especially with the advent of Pharmacy First.

For Pharmacy First to be effective, we submit that we must try and be realistic about where patients will access these services and the distances, they will travel to access them. In this particular instance, given that the nearest pharmaceutical provision is 1.2 miles away, and that Jennyfields has a doctor's surgery behind the main commercial area; it is obvious that patients will seek treatment for minor ailments with the doctors opposed to doing so in a pharmacy setting.

7.1.5 This is clearly counter-productive and causes unnecessary strain on the doctor's surgery for issues that can be dealt with by Pharmacy. Additionally, residents may have disproportionally long waits for a doctor's appointment for the minor issues they may have.

7.1.6 Residents are also more likely to access Pharmacy First and other pharmaceutical services in connection with their weekly shop at the adjacent Co-operative supermarket.

7.1.7 It is also worth highlighting that the recently closed Boots Pharmacy was well-utilised dispensing c.7000 items per month prior to closure. The pharmacy closed before the Pharmacy First service was introduced.

7.1.8 We also note that NHS Humber and North Yorkshire provide further representation to which we reply below:

7.1.9 NHS England highlight that my client is only providing 40 core hours. Whilst this may be the case currently; it should be noted that my client proposed to open for 48.5 core hours in their original application. However, the ICB refused to direct these extra 8.5 core hours and thus my client listed these as supplementary hours as per the request from the ICB. My client is more than happy to provide these additional core hours during evenings and on Saturdays as per their original application, should the ICB now want to issue a direction for these hours.

7.1.10 NHS England also note that "*there is no pharmacy provision within 1 mile of the proposed premises and therefore we had to go further to illustrate in the report where the nearest pharmacies were*". Such a statement would suggest that NHS England would in normal circumstances treat the 1-mile distance to a pharmacy as purveying reasonable choice to provision. Given, that there were no pharmacies within a mile of the proposed site, NHS England used the strange criteria of 2-miles. Given it is clear that the 1-mile criteria should have been used instead; we submit that NHS England ultimately misdirected themselves when evaluating and ultimately refusing my clients application.

7.1.11 The fact that alternative pharmaceutical provision is so distant is even more relevant when we consider the population density of the areas surrounding the proposed site. Per 2021 census data, the population density of the Harrogate 011 Mid-layer SOA (chosen due to its approximate mapping representation of Jennyfields as a whole) is 3,334.3 residents per square kilometre. It is notable that this MSOA houses 7669 residents, per 2021 census data. Harrogate local authority on average has a population density of 124.4 residents per square kilometre, and England on average has a population density of 433.5 residents per square kilometre. Thus, the areas surrounding the proposed site have a 26 times more dense population than the average for Harrogate local authority – it is clear that the area surrounding the proposed site is urban in character and in need of pharmaceutical provision.

7.1.12 We note the findings on page 126 of the North Yorkshire PNA: "*Overall, there is good pharmaceutical service provision in most of North Yorkshire from Monday to Friday. The majority of residents can access a pharmacy within a 20-minute walking distance and there is adequate choice of pharmacy*."

7.1.13 We also note findings on page 28 of the PNA: "*In large areas of North Yorkshire, agriculture is the primary source of employment; some 85% of the county is considered to be "rural or super sparse*".

7.1.14 Taking both above statements from the PNA in conjunction we can draw the following conclusions:

7.1.14.1 As 85% of North Yorkshire is considered rural or super sparse, 15% at best can be considered urban.

7.1.14.2 There is no definition for the 'majority' of residents, but at worst this can be considered greater than 50%.

7.1.14.3 Hence, at least 50% of residents are within a 20-minute walk of a pharmacy.

7.1.14.4 A reasonable person would infer that the urban 15% of the population would be within this 50% of residents.

7.1.14.5 Thus, given the proposed site and the surrounding areas are clearly urban, pharmaceutical provision should be within a 20-minute walk.

7.1.14.6 However, following the closure of the Boots, pharmaceutical provision from the Proposed Site now requires the following walking times:

7.1.14.6.1 To Pharmacy Plus Health, Kings Road, HG1 5HY – 26 minutes

7.1.14.6.2 To Kings Road Pharmacy, Kings Road, HG1 5JP – 26 minutes

7.1.14.6.3 To Cohens King Edwards Drive, HG1 4HL – 29 minutes

7.1.14.7 For many residents who live in the urban Jennyfields area to the West of the proposed site, now have one-way walking journeys in excess of 30 minutes to reach the nearest pharmacy.

7.1.14.8 It is clear that many residents in the urban Jennyfields area are no longer within a 20-minute walk of a pharmacy. This is clearly in excess of what the PNA would consider as representative of reasonable choice to provision.

7.1.15 We submit that the PNA, as a legal document, forms guidance in respect of market entry applications. It is not for anybody to question the reasonableness of the PNA, but rather for decisions to be made that align with the PNA.

7.1.16 We submit that deductions from the PNA highlight that those residents in urban areas should not be more than a 20-minute walk from a pharmacy. Thus, against this criterion, there is no longer reasonable choice to pharmaceutical provision for the c.8000 residents who live in the Jennyfields area, so we invite NHS Resolution to grant this application.

7.1.17 NHS England also appear to place undue weight on the choice that Distance Selling Pharmacies (DSPs) provide to residents.

7.1.18 We note that DSPs are not helpful in obtaining urgent medication, and this often causes issues to patients when GPs send urgent EPS scripts to DSPs. Those who have worked in a Pharmacy will know the panic and stress a patient endures in trying to get an urgent script 'back' that has been sent to a DSP. This stress, panic, and time endured trying to obtain the script obviously is not reasonable for someone who is sick and in need of urgent medication.

7.1.19 The internet can often be a barrier, especially to elderly patients who are unable to use technology. These patients can also get confused and sometimes require direct contact with a pharmacist every week to ensure that they are adhering to prescribed medication and understanding any changes in their medication. DSPs cannot provide this face-to-face contact for essential services. The Committee will be aware that DSPs must endeavour to provide any advanced/ enhanced service remotely and should only do face-to-face consultations should the Pharmacist decide there is a real need for a face-to-face consultation. It is worth noting that DSPs cannot provide the Acute Otitis Media Pharmacy First service at all.

7.1.20 In any case, the nearest DSP to the proposed site (Harrogate Pharmacy, HG1 1TX) is located 1.3 miles away – more distant from the Proposed Site than alternative bricks-and-mortar pharmacies.

7.1.21 Additionally, DSPs have similar overheads to community pharmacy, but also must provide free delivery. Given that free delivery services often cause financial struggles for community pharmacies, it calls into question the long-term viability of DSPs. This is no better demonstrated by the 5-million-pound loss incurred by Pharmacy 2 U (The UK's largest DSP) in the year ending 2023 [provided to Committee at Appendix C]. Clearly, such losses are unsustainable and thus we cannot view DSPs as providing reasonable choice/ alternatives to bricks-and-mortar pharmacies.

7.1.22 We submit that it is clear that DSPs do not provide reasonable choice to provision. NHS England also place weight upon delivery services provided by alternative bricks-and mortar pharmacies. As NHS Resolution will be aware, this is not an NHS commissioned service and thus can be withdrawn at any time. Hence, delivery services cannot be relied upon to provide reasonable choice to provision.

Conclusion

7.1.23 We conclude that there is a need for a pharmacy in the urban Jennyfields area, especially when we assess access and choice against the criteria given in the PNA.

7.1.24 We also note that there is a localised deprived population in the Jennyfields area, with poor health, poor mobility, poor vehicular access, and poor economic outlook who would benefit significantly from a pharmacy at the proposed site.

7.1.25 Also, those residents who utilise the local amenities would be able to access pharmaceutical provision in the course of their daily lives; significantly bettering health outcomes especially through services such as Pharmacy First.

7.1.26 We submit that granting this application will secure improvements and better access to pharmaceutical provision and thus meets the criteria for Regulation 18.

7.1.27 We invite the Committee to grant the application."

7.2 THE COMMISSIONER

7.2.1 “Thank you for your letter dated 15 November 2024 which we received on 19 November 2024.

7.2.2 On further consideration of the representations from the community pharmacies and the dispensing practices, Humber & North Yorkshire (HNY) Integrated Care Board (ICB) feels granting the application could cause significant detriment to the arrangements NHS England has in place for the provision of pharmaceutical services in the Health and Wellbeing Board area (Regulation 18(2)(a)(ii).

7.2.3 Other than this, HNY ICB has nothing further to add.

7.2.4 I look forward to hearing from you soon.”

8 **Consideration**

8.1 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.

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

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

8.4 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (“the Regulations”).

Regulation 31

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

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

(2) This paragraph applies where -

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

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

(ii) adjacent premises; and

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

8.6 The Committee noted that the Applicant had stated “n/a” on the application form on this point and expanded that there was, at the time of submitting the application, a pharmacy located inside the Co-Operative store however this has now closed meaning that Regulation 31 does not apply. The Commissioner, in its decision letter stated that: “*Regulation 31 does not apply as there is no pharmacy at the same or adjacent premises*” and the Committee noted that no party had sought to dispute this during the appeal process. Based on the information provided, the Committee therefore

determined that it was not required to refuse the application under the provisions of Regulation 31.

8.7 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

8.8 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)."

8.9 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.

8.10 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.

8.11 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).

8.12 The Committee considered the PNA prepared by North Yorkshire County Council on behalf of North Yorkshire 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 a supplementary statement had been issued in December 2023. The Committee further noted that there has not been a supplementary statement published since December 2023 and therefore the closure of the Boots pharmacy (March 2024) has not been captured by the HWB.

8.13 The Committee noted the Commissioner, in its decision report, stated that page 27 of the PNA commented that "*In the Harrogate district, there is adequate service provision during Monday to Sunday*" and that "*In summary, there are no gaps in the provision of necessary services in North Yorkshire*". The Committee noted that, whilst these statements are indeed on page 27 of the PNA, the statements fall under the heading 'Recommendations from the previous PNA 2018 – 2021" and was therefore of the view that the findings are not applied to the North Yorkshire PNA as currently stands.

8.14 The Committee did, however, note that the PNA summarises (on page 126) that "*Overall, there is good pharmaceutical service provision in most of North Yorkshire from Monday to Friday. The majority of residents can access a pharmacy within a 20-minute walking distance and there is adequate choice of pharmacy*". The Committee similarly noted that the PNA summarises that "*Most of the patients who live in the rural areas can access a community pharmacy within a 20-minute drive if necessary*". Whilst the Jennyfield area of Harrogate is not a controlled locality, and therefore is not classified as 'rural' in this sense, the Committee acknowledged that the HWB appeared to consider a 20 minute journey, whether by foot or by private transport, to be a reasonable journey for patients to make to access pharmaceutical provision.

8.15 The Committee noted that the PNA states that the closed Boots pharmacy that was located in the Jennyfield area was part of the 'Pharmacy Access Scheme' which *"was to give patients access to NHS community pharmacy services in areas where there are fewer pharmacies with higher health needs, so that no area need to be left without access to NHS community services… is based on both the dispensing volume of the pharmacy, and distance from the next nearest pharmacy*". It is noted that out of the 14 other pharmacies eligible for this scheme in the HWB area – excluding the now closed Boots – there is only one other pharmacy to qualify for the Pharmacy Access Scheme, Pateley Bridge Pharmacy (25 High Street, Pateley Bridge, Harrogate), within the Harrogate area. This suggests to the Committee, given the criteria detailed in order to obtain the extra funding allowed by the Pharmacy Access Scheme, that the Commissioner determined that the patients living near the Jennyfield area had "*higher health needs*" and that the area of Jennyfield itself was an "*area[s] where there are fewer pharmacies*".

8.16 The Committee noted that the Applicant seeks to provide unforeseen benefits to the patients within the area surrounding Jenny Field Drive, Harrogate. 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.

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

Regulation 18(2)(a)(i)

8.18 The Committee had regard to

> *"(a) whether it is satisfied that granting the application would cause significant detriment to—*
>
> *(i) proper planning in respect of the provision of pharmaceutical services in the area of the relevant HWB"*

8.19 The Committee noted that no party had sought to argue that Regulation 18(2)(a)(i) required it to refuse the application. Therefore, 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.

8.20 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)

8.21 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"*

8.22 The Committee noted that the Commissioner did not state that Regulation 18(2)(a)(ii) required it to refuse the application when it made its decision, nor did it make this claim during the representations received at appeal. However, the Commissioner stated in the appeal process that "*on further consideration of the representations from the community pharmacies and dispensing practices, Humber & North Yorkshire (HNY) Integrated Care Board (ICB) feels granting the application could cause significant detriment to the arrangements NHS England has in place for the provision of pharmaceutical services in the Health and Wellbeing Board area*". No information, other than this statement, was provided.

8.23 The Committee considered the information that had been provided to it during the appeal process, which included copies of all responses received during the initial application and subsequent consultations. The Committee was unable to see any such representation made, either during the Commissioner's consultation or at the appeal stage, that made reference to significant detriment being a possibility if the application was granted. Indeed, the Committee was unable to see any representation, either addressed to the Commissioner or to NHS Resolution, from a dispensing practice and, when referring to the list of dispensing practices in the North Yorkshire HWB area as contained in the PNA, the closest one to the proposed site is Church Avenue Medical Group (The Surgery, 54 Church Avenue, Harrogate, HG1 4HG). The Committee noted that Church Avenue Medical Group is listed on the map provided by the Commissioner however the surgery has two closer pharmacies to it (Well, 111 Cold Bath Road, HG2 0NJ and Cohen's Chemist, 52 – 23 King Edwards Drive, HG1 4HL). The Committee therefore were not able to envisage how an additional pharmacy, located further away than the two already nearby to Church Avenue Medical Group, could cause significant detrimental effects to the dispensing arrangements in place.

8.24 Further, Regulation 18(2)(a)(ii) requires the decision maker to consider whether it is satisfied that granting the application **would** cause significant detriment in relation to the arrangements in place for the provision of pharmaceutical services in the area (my emphasis). The use of the word "would" led the Committee to consider that the

statement needed to reflect a high level of certainty that the application would cause significant detriment to planning of pharmaceutical services within the area rather than it merely being possible that it would or a suggestion that it would do so, or that it would potentially do so.

8.25 The Committee considered that the use of the word "could" in the Commissioner's comments indicated that the application, if granted, might cause significant detriment but that this was not certain. The use of the word "could" means that it was merely a suggestion. The Committee considered that this wording did not reasonably convince it that the Commissioner was satisfied that the granting of the application **would** cause significant detriment to the arrangements that are in place for the provision of pharmaceutical services in the HWB area.

8.26 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.

Regulation 18(2)(b)

8.27 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)

8.28 The Committee noted the application was prompted by the closure of Boots pharmacy which was located within the proposed best estimate address. The Applicant contends that, now that the Boots pharmacy has closed, the northwest area of Harrogate (including the Saltergate, Killinghall, the northern section of the Harlow Moor ward and surrounding areas) have been left without pharmaceutical services. The Committee was mindful that the closure of one pharmacy does not automatically mean that there is a need for a pharmacy to open in its place.

8.29 The Applicant contends that Boots was dispensing an average of 7000 items per month prior to its closure and that this number would have been set to increase after the implementation of the Pharmacy First service. The Committee noted the Applicant's claim that the nearest doctors surgery to the best estimate address (Jennyfield Health Centre) is approximately a 100m walk away. Whilst accepting that it would be

convenient to have a pharmacy located close to the existing primary medical service, the Committee was mindful that the relevant test in Regulation 18(2)(b)(i) is with regard to there being a reasonable choice with regard to obtaining pharmaceutical services in the area and proceeded to consider access to existing pharmacies.

8.30 The Committee had regard to the location of existing pharmacies and GP surgeries as provided on the maps by the Commissioner, which had not been disputed by any party. The Committee noted that the closest pharmacies to the best estimate area are Kings Road Pharmacy (28 – 30 Kings Road, HG1 5JP) and Pharmacy+ Health (154 – 156 Kings Road, HG1 5HY) which are both said to be located 1.2 miles away. There are a further six pharmacies within a 2 mile radius from the best estimate address.

8.31 The Committee noted that the Applicant referred to journeys on foot being problematic due to the "*steep nature of the surrounding terrain*". This was not disputed by any party. Further, the Applicant states that the journey to access one of the nearest pharmacies, Pharmacy+ Health, would take approximately 26 minutes by foot. The Committee noted the statement in the PNA that "*the majority of residents can access a pharmacy within a 20 minute walking distance*" and that this, undisputed, 26 minute journey would clearly exceed this.

8.32 The Committee noted the data from the 2021 Census as provided by the Applicant. The Committee noted that 21.4% of residents in the Harrogate 011E LSOA (the area where the best estimate address is located) identify as having a disability under the 2010 Equality Act compared to 16% in the wider Harrogate area and 17.3% in the whole of England. Further, the 2021 Census provided information to show that 10.2% of residents in the Harrogate 011E LSOA have significant disabilities as per the 2010 Equality Act that limited day-to-day activities a lot. The Committee was of the view that the distance to existing pharmacies, combined with the hilly terrain, would mean that it is likely that accessing pharmaceutical services on foot would be out of reach for most, let alone those with a disability which affected their mobility. The Committee considered that the residents of the area would likely not choose to travel to existing pharmacies by foot as this would make for a substantial walk, regardless of route taken. The Committee therefore accepted the view that the existing provision would likely not be accessed on foot by users.

8.33 The Committee went on to consider ease of access to pharmaceutical services by private and public transport.

8.34 The Committee noted that, per 2021 Census data, 33% of households in the 011E Harrogate LSOA do not have access to a car or van, compared to 14.8% of similar no car/van households in the wider Harrogate area. The Committee noted that this had not been disputed and accepted that there is a low level of car ownership in the area, and that this would support the theory that for those in the Jennyfield area, there will be a high reliance on the local facilities. The Applicant contends that parking at Pharmacy+ Health is an issue due to its location on a busy high street. However, there was no information provided to show that patients, who do have access to a vehicle, were currently experiencing any difficulties accessing the existing pharmaceutical provision further afield.

8.35 Whilst the Committee has not been provided with any evidence to demonstrate the frequency of public transport (i.e. bus timetables), the Committee noted the undisputed claim of the Applicant that there is not a direct bus service between the proposed site and the closest pharmacy at Pharmacy+ Health, Kings Road, HG1 5HY. The Committee noted the Applicant's statement that patients accessing existing pharmacies via public transport would need to first catch the Number 3 bus (from outside the best estimate address) and then catch a further bus – the Number 2 – from Harrogate Bus Station. The Committee has not been provided with details of how long these bus journeys take in isolation however noted the comment from the Applicant that "*the total one way journey time is 23 minutes*" and that this would, once again, exceed the PNA's 20 minute suggested journey time. The Committee noted the

Applicant's undisputed statement that the buses frequent every 20 minutes and that, in theory, patients could face a 40 minute wait for buses on their return journey.

8.36 The Committee further noted that the PNA under the heading 'Summary of findings' (page 126 – 128) stated that:

8.36.1 "*Concerns were expressed in the residents survey about proposed cuts to bus routes affecting access to pharmacies, while these do not identify gaps in the provision of pharmaceutical services the HWB should bear in mind if this may impact residents in the future.*"

8.37 The Committee was of the view that whilst the 'proposed cuts to bus routes' is not relevant in regard to this application and might not be applicable to Harrogate, it does highlight that public transport in the area of the HWB was, at the time of the residents survey, a potential barrier in terms of accessing pharmaceutical services. However the Committee was mindful that there are existing pharmacies located in the town centre which is accessible via the Number 3 bus.

8.38 The Committee considered, from the list of amenities provided by the Applicant, that the area of around Jenny Field Drive would be a fairly contained community and that, aside from accessing pharmaceutical provision, residents would not necessarily leave the area as part of their daily lives if they didn't need to do so for work.

8.39 Based on its findings above, the Committee considered this a finely balanced matter and primarily due to access on foot, the level of car ownership and Jennyfield being a relatively self contained area, was of the view that there is not reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB, such that it was satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits on persons.

8.40 In considering Regulation 18(2)(b)(ii) the Committee reminded itself that it was required to address itself to people who share a protected characteristic under the Equality Act 2010 (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation) having access to services that meet specific needs for pharmaceutical services that, in the relevant area, are difficult for them to access. The Applicant contends that "*Per the 2021 census, 21.4% of these residents have a disability under the 2010 Equality Act. This is far greater than the figures for Harrogate (16%) and England (17.3%)… 10.2% of residents in this LSOA have significant disabilities under the 2010 Equality Act with their day-to-day activities limited a lot. This is far greater than the figures for England (7.3% and almost double the average figures for Harrogate (6.0%)*". Whilst the Committee appreciated the information that demonstrated the level of those in the area that share a protected characteristic, the Committee noted that no evidence was provided to demonstrate that these individuals are currently experiencing difficulties accessing services specific to their needs.

8.41 The Committee was therefore not satisfied that, having regard to the desirability of people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that are difficult for them to access, granting the application would confer significant benefits on persons.

8.42 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.

8.43 The Applicant was not proposing any innovative approach to the delivery of pharmaceutical services as part of its application. Therefore, the Committee was not

satisfied that, having regard to the desirability of there being innovative approaches taken with regard to the deliverability of pharmaceutical services, granting the application would confer significant benefits on persons.

Regulation 18(2)(b) generally

8.44 The Committee noted that the Applicant initially proposed to open for 48.5 core hours a week however, during the application process this was amended to 40 core hours and 13.5 supplementary hours, totalling 53.5 hours of opening per week. The core hours as applied for are 09:00 – 13:00 and 14:00 – 18:00 Monday to Friday.

8.45 The Committee noted the Applicant's comment that "*it should be noted that [the Applicant] proposed to open for 48.5 hours in their original application. However, the [Commissioner] refused to direct these extra 8.5 hours and thus my client listed these as supplementary hours as per the request from the ICB. My client is more than happy to provide these additional core hours during evenings and on Saturday's as per their original application, should the ICB now want to issue a direction for these hours*".

8.46 The Committee noted the table in the Commissioner's decision report that detailed the current opening times provided by existing pharmacies in the area. The Committee noted that four of the eight nearby pharmacies open at 09:00 on Monday – Friday and that the closest pharmacy, Kings Road Pharmacy (28 – 30 Kings Road, HG1 5JP) opens at 08:30. The Committee further noted that all but one of the existing providers (Superdrug, Unit 1, Nidderdale House, HG1 1NS) closes before the Appellant's proposed closing time of 18:00. The Committee also noted that one existing pharmacy (Cohens Chemist, Mowbray Square Medical Centre, HG1 5AR) closes at 18:30.

8.47 On balance, 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.

8.48 The Committee has considered whether there are any other factors that would confer significant benefits including on patients who share protected characteristics. The Committee had regard to the need to eliminate discrimination and advance equality of opportunity and foster good relations between these patients and those who do not share their protected characteristics.

8.49 The Committee noted the Applicant's statement that "*Killinghall Medical Centre (HG3 2DG) is set to close in October 2024. The closure of this branch surgery is expected to place additional pressures on Jennyfield Health Centre (being the next nearest surgery)"*. The Committee has not been updated as to whether this planned closure went ahead.

8.50 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

8.51 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 these were not applicable.

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

8.53 The Committee had regard to Regulation 18(2)(g) and found no reason that would require it to refuse the application.

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

8.55 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.

8.56 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 not withstanding that the improvements or better access were or was not included in the relevant pharmaceutical needs assessment.

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

8.57.1 confirm the Commissioner's decision;

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

8.57.3 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.

8.58 As the Committee has reached a different decision to that of the Commissioner, the Committee determined that the decision of the Commissioner must be quashed.

8.59 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.

8.60 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.

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

9 DECISION

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

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

9.3 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;

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

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

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

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

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

9.4.2 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.

Case Manager
Primary Care Appeals