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REF: SHA/26269

APPEAL AGAINST NHS BATH AND NORTH EAST SOMERSET AND SWINDON AND WILTSHIRE ICB DECISION TO GRANT AN APPLICATION BY HG HANKS LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 INSIDE THE CO-OPERATIVE, HIGH STREET, SWINDON, SN1 3EG

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.

1.3 The Committee noted that the Commissioner would now need to consider the issuing of a direction for the hours above 40 core hours which the Applicant had offered to provide.

A copy of this decision is being sent to:

Healthcare Plus Consulting Ltd on behalf of HG Hanks Limited
Nisias Ltd
Boots UK Ltd
Community Pharmacy Swindon & Wiltshire
PCSE on behalf of Bath and North East Somerset and Swindon and Wiltshire ICB

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NHS Resolution

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

2 **Preliminary Considerations and Site Visit**

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

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

2.3 The Committee held a virtual hearing to determine the application. This took place on 10 December 2024. The Committee comprised of Mrs L Lee (chair), Mr M Beaman and Ms C Limm.

2.4 HG Hanks Ltd was represented by Nikhil Koria, accompanied by Priesh Patel and Sunil Patel, (directors of H G Hanks Ltd) and Cllr Narina Strinkovsky (witness). Nisias Ltd was represented by Alicia Osei-Yeboah (director of Nisias Ltd). Claire Brittain (Boots Pharmacy Limited) and Carolyn Beale (Community Pharmacy Swindon & Wiltshire) observed the hearing.

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

2.6 The Committee members made individual visits on separate weekdays. Each Committee member commenced their visit by parking in the car park of the Co-operative food store, Old Town. They arrived at 11.40 am, 11.15 am and 1 pm respectively.

2.7 The car park was of average size with few spare spaces on the first visit but quite a lot of spaces available on the second- and third-member's visit. One member parked in one of the two empty disabled bays available from a total of 6 disabled bays. The car park was camera operated and allowed a maximum free stay of 90 minutes. The store was large and was open seven days a week, Monday - Saturday 7 am to 9 pm and Sunday 10 am to 4 pm. The Committee members noted that as well as food and household items the store sold clothes, craft items, homeware and had a coffee shop and travel agency. It appeared to be well used.

2.8 The Committee members observed that there was a designated area for the pharmacy at the back of the store. It had some of the previous pharmacy fitments and was adjacent to the pedestrian entrance to the store on the High Street.

2.9 The front of the store also had disabled access and outside there was a traffic light-controlled crossing. This crossing enabled patients to access the Hermitage surgery on Dammas Lane. The Hermitage surgery did not appear to be signposted and was accessed through a wrought iron gate into a small car park which served flats in the adjacent building. The surgery appeared quite small with a small number of seats. It was open Monday - Thursday 8 am to 6 pm and on Fridays, 7 am to 6 pm.

2.10 There was a small pay and display car park across from the front of the Co-operative store, close to the Hermitage surgery which allowed parking for a maximum of 1 hour for £1.50.

2.11 Two Committee members took the same route walking up High Street which was a slight uphill gradient and had wide pavements and dipped kerbs.

2.12 The Committee members noted that there was some housing in the side streets off the High Street which appeared to be mainly small mews type houses or flats.

2.13 The journey on foot continued into Wood Street. The Committee members who were on foot noted there was a sign on the Boots Pharmacy which had closed on 10 February 2024, referring patients to Boots at 3 Brunel Plaza. They then turned right onto Victoria Road which was a relatively steep downhill walk and eventually reached the Victoria Road Pharmacy (operated by Nisias Ltd) on the left. The premises were in an old, terraced house with modern frontage and Pharmacy signage. The walk from the Co-op to the Victoria Road Pharmacy took 15-20 minutes. The route was virtually all double yellow lines and quite busy with traffic. There were a variety of shops and commercial premises along the route but, apart from a small Morrisons, little in the way of food stores or banks/ post office. There was fairly dense housing in the side streets on both sides of the Victoria Road.

2.14 The Committee member who was unable to walk the distance to the Victoria Road Pharmacy drove along the High Street and followed satellite navigation directions. Traffic was not busy, and the drive was only five minutes. There was a small amount of parking for patients in Cross Street and a small private car park. There were no disabled spaces free at the time of the visit and no other parking spaces on the road or side streets could be located.

2.15 The Committee members noted that the access to the Victoria Road Pharmacy had a newly constructed ramp which was quite steep and narrow with a bend and did not appear to be particularly suited for patients with disabilities. The interior was modern, fairly small with a couple of seats and a consultation room. Opening hours were not visible.

2.16 The Victoria Cross surgery was on the adjacent street (Cross Street). The premises were old and small and entered from a door at the back of the building. The surgery was open Monday to Friday 8.30 am to 6 pm.

2.17 There was a bus route numbers 11 and 12 which linked up the Co-operative site to the Victoria Road Pharmacy and which ran every 15 minutes Monday to Friday and less often on Saturdays and Sundays. The nearest bus stops were about 200 yards from the pharmacy.

2.18 One Committee member walked on to the Epicare Health Pharmacy which took an additional 10 minutes and was further downhill. Another member drove to the Epicare Health Pharmacy which was a further 5 minute drive from the Victoria Road Pharmacy. The Epicare Health Pharmacy had a small frontage and appeared to be fairly small inside with a couple of seats. Opening times were advertised and indicated that there

were extended opening hours on Mondays to Fridays by appointment. These were from 8.30 am to 9.00 am and 5.30 pm to 7pm.

2.19 The next nearest pharmacies were advertised as being Boots at Brunel Plaza (a 3 minute walk from the Epicare Health Pharmacy) and Jhoots at Victoria Road (a 7 minute walk from the Epicare Health Pharmacy).

2.20 Two members also drove around the Old Town and noted that the Old Town area was a distinct locality. They passed near to Avicenna and Jhoots' (Curie Avenue) pharmacies. These were not in walking distance of the site subject to the application.

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

3.1 Mrs Osei-Yeboah said that the opening times for the Victoria Road Pharmacy were displayed in the window.

3.2 Mr Koria asked for the timings for those on foot to be repeated but had no comments or observations.

4 **Oral Hearing Submissions**

4.1 The Chair indicated that there was no need to address the Committee on Regulation 31.

Mr Koria (representing H G Hanks Ltd)

4.2 Mr Koria made the following opening submissions:

4.3 '*As the Committee will be aware, the application put forward by my client centres very much around reasonable choice and access for those groups who share protected characteristics who live in Old Town.*

4.4 *Old Town has traditionally been served by two pharmacies – the Boots on Wood Street and the Rowlands in the Co-operative. Both pharmacies suddenly closed in the past two years, leaving residents of Old Town without a pharmacy. Both pharmacies were well-utilised with the Rowlands branch dispensing circa 6,000 items prior to closure, and the Boots branch dispensing circa 5,500 items prior to closure. Thus, it is apparent that there is a large demand for pharmaceutical provision within Old Town and it is a place that a number of residents are accustomed to accessing a pharmacy.*

4.5 *Old Town is a major shopping area which contains all amenities that residents could require in the course of their daily lives and is very much defined as being separated from the town centre by the steep hill on Victoria Road. My client's proposed location is co-located with the Co-operative supermarket which is substantial in size and has a number of free parking spaces. There are also dedicated disabled spaces. Other amenities that can be found in Old Town include multiple hairdressers; multiple barbers; Hermitage GP Practice; restaurants; takeaways; cafes; pubs; estate agents; a pet groomer; a hardware shop; flooring shops; a watch shop; shoe shops; a church; Swindon performing arts centre. We submit that local residents access all their day-to-day amenities within Old Town and do their weekly shop at the Co-operative Supermarket.*

4.6 *There has been much furore surrounding the closure of the Old Town Pharmacies with almost 600 signatures received on a petition to keep the Boots open. A number of emails were also received in support of this application which have been submitted*

previously. We also note the support of both the previous and incumbent MP for South Swindon for this application.

4.7 *The Committee will be aware that the Pharmaceutical Needs Assessment (PNA) is tailor made to the needs of the local population and is produced by the Health & Wellbeing Board. We understand that the PNA is a legal document, and the merits of any market entry application is to be adjudicated against the criteria within the relevant PNA. As highlighted previously, the Swindon PNA is clear in its goal for everyone to "live a healthy, safe and independent life and is supported by thriving and connected communities". The PNA is clear in the need for pharmacies to be present within Swindon communities to meet the goals of the HWB. We also highlight that the PNA is explicit on the benefits and improved access co- location with supermarkets provide.*

4.8 *We submit that the loss of all pharmaceutical provision in Old Town has left this community bereft of provision, and notably the Health & Wellbeing Board agree with the need for a pharmacy in Swindon, given their support of this application.*

4.9 *We highlight that pharmacies are no longer just dispensers but are being tasked with providing a number of minor ailments services through the Pharmacy First scheme and are playing an important role in accessing professional advice for people to lead healthier lives. However, given there is no longer a pharmacy located in Old Town, residents are unable to access alternative provision which could lead to worsening health outcomes. This could ultimately then lead to further GP or Hospital appointments. This is clearly a massive waste of primary care resource when any issue could have been dealt with earlier by a pharmacist. Given the co-location of the Proposed Site with the Co-operative supermarket within a busy commercial centre; the ample free parking; and the late evening core opening hours until 7.30, it is clear that a Pharmacy at the proposed site would significantly enhance the Pharmacy First offering for the area. Particularly for those who lead busy lives and find working hours restrictive.*

4.10 *We have previously highlighted the onerous journeys that patients now face in accessing pharmaceutical provision. We reiterate that journeys should be viewed in the context of the local elderly population and the poor vehicular access of local residents.*

4.11 *For clarity, the proposed site is located in the 024B LSOA. 28.9% of residents in the 024B Lower Layer Super Output Areas (LSOAs), and 42.9% of residents in the adjacent 019F LSOA do not have access to a car. This is significantly higher than the 19.3% that do not have vehicular access in Swindon as a whole. 22.8% of residents in the 024B LSOA are over the age of 65, compared to an average of 15.9% of residents in Swindon. The PNA also highlights the general ageing population within Swindon.*

4.12 *Following the closure of the Old Town pharmacies, journeys by foot are now in excess of the PNA target of 15 minutes. Additionally, journeys to Victoria Road Pharmacy and the Pharmacies in the town centre now involve navigating quite a steep hill. We submit that this hill constitutes a barrier for a number of residents. The journey by foot along this is hill is poorly lit and can feel daunting during winter months.*

4.13 *As detailed in written correspondence, the entrance to Victoria Road Pharmacy is not DDA accessible, and many residents will be unable to access these premises. Journeys by bus to Victoria Road Pharmacy are in themselves 5-minutes, but a number of residents must first travel to Old Town to obtain this bus, creating 45-minute round journeys.*

4.14 *We also highlight that bus charges in practice present a deterrent to accessing additional services such as Pharmacy First. Given residents already access all their day-to-day needs in Old Town, they may not be minded taking on the extra cost and*

travel burden if they perceive any ailment to be minor. As mentioned above, minor ailments can spiral quickly and cause further strain on the primary care network.

4.15 *[M] who wrote in support of the application noted that: "Getting the bus obviously costs money, which I do begrudge just to get a prescription". We submit that if residents are begrudgingly spending money to collect their prescription, we infer that they are unlikely to spend additional monies on a trip to access Pharmacy First services for a condition that the patient assumes will just pass.*

4.16 *Journeys by bus to the town centre also present the same cost barrier with [A] who also wrote in noting: "We do not have a car, so getting into the town centre is expensive and difficult."*

4.17 *We also note that the bus stop in the town centre is 0.3 miles away from any pharmaceutical provision. This is still an extensive journey for the elderly, disabled, or infirm who may not have been able to access Victoria Road Pharmacy due to the inaccessible ramp.*

4.18 *The bus stops in town also alight residents on the outskirts of the town centre where lighting is poor and residents may not feel comfortable accessing during the winter months. [L] who wrote in mentioned that the town centre: "hasn't always felt the safest place for a female to walk alone".*

4.19 *Journeys by car to Victoria Road Pharmacy and the town centre pharmacies are subject to parking charges, which again can be a deterrent especially to accessing services such as Pharmacy First. Again, car parking at the proposed location is ample and free of charge. Also, many residents in Old Town do not have access to a car.*

4.20 *We'd like the Committee to give consideration to the predicament elderly couples now face in Old Town. In some of these cases, one partner may be more reliant on the other for their care needs. Given the poor access to vehicles in Old Town, it is perhaps not unlikely that this couple will not have access to a vehicle. To access general provision quickly, either of the couple will leave their vulnerable partner unsupervised whilst they quickly access all the daily amenities they require within Old Town. This may be a half an hour round journey.*

4.21 *Following the closure of the Old Town pharmacies, these residents now face an additional 1.2-mile journey to access pharmaceutical provision – assuming they are able to navigate the entrance to Victoria Road Pharmacy. All of a sudden, a half an hour round journey, has become an hour journey which leaves their spouse unsupervised for an additional 30 minutes. When we consider that this may be a weekly occurrence, this significantly increases the risk of accidents at home whilst the cared for resident is unsupervised. We do not consider this additional journey solely to access pharmaceutical provision as conferring reasonable access or choice.*

4.22 *This also highlights why evening core hours proposed by my client are important and needed in the South Swindon area; so working family can look after vulnerable residents whilst their medication is being picked up.*

4.23 *Whilst we appreciate that Distance Selling Pharmacies (DSPs) can deliver medication, this still does not represent sufficient access for a number of residents. Firstly, there will be a number of residents who are unable to navigate the barrier that is the internet. Also, elderly residents can often have vastly changing medication and require a regular local pharmacist to aid the patient with any medication changes, and with adherence to prescribed medication. Also, we question the long-term viability of DSPs given they have similar overheads to community pharmacy and yet must provide free delivery. Free delivery over significant geographies often turns a pharmacy's profitability into the*

red under the current dispensing contract and is no better demonstrated by the 5 million pound losses suffered in 2023 by Pharmacy 2 U, the largest DSP in the UK. Given DSPs seem to be making large losses, it begs the question as to whether they really are a long-term solution to bricks-and-mortar pharmacies.

4.24 *Notably 20% of the items from the Old Town Pharmacies now sit with Distance Selling Pharmacies. We submit that this is approximately 2,000 items or, on average, 1,000 patients who no longer have any choice to pharmaceutical provision and are forced to utilise DSPs. Given the poor financial outlook for DSPs, we cannot consider these patients to have reasonable choice to provision and submit they in fact have no choice to pharmaceutical services. Again, we submit that these patients are unable to access face to face pharmacy advice due to the access barriers highlighted in the application.*

4.25 *We also note that delivery by other bricks-and-mortar pharmacies are not NHS commissioned and can be withdrawn at any time. Thus, these cannot be relied upon when determining reasonable choice and access to provision.*

4.26 *To summarise, a pharmacy situated within the Co-op in Old Town would significantly benefit the Old Town community who are elderly and have poor access to a vehicle. The Proposed Site will enable residents to access provision in connection with their weekly shop. We submit that this will improve uptake of important services such as Pharmacy First as residents do not need to make any additional journeys to access these services*.'

4.27 Mr Priesh Patel in his evidence confirmed his and his family's commitment to the area and to his pharmacies. His family operates four pharmacies in the area. They dispense 20,000 plus items a month. He also stated that they offer other services such as blood pressure checks. He said that the pharmacy could deliver prescriptions.

4.28 Cllr Strinkovsky said she was giving evidence as a resident and as a community champion not as a Councillor. She said that the High Street borders on two wards. It was an important community hub.

4.29 She lives locally and whilst it is a level walk to the Co-operative, it was downhill and more importantly an uphill return from the Victoria Road Pharmacy. Due to her medical condition, this was a particularly arduous journey, and she needed to make frequent trips to the pharmacy. She said she had to take medication to enable her to make the journey and some days she was too unwell to make the journey. She said that many of her constituents had complained to her about the problem of accessing the Victoria Road Pharmacy due to their disabilities because of the hill. If they accessed the pharmacy by bus, they either had to walk downhill from the bus stop and then uphill to make the return journey or vice versa. She said that those without medical conditions did not realise that walking down an incline could be just as difficult as walking uphill. She noted that the times described by the Committee members were the outward journeys and the return journeys would take far longer because of the steep hill.

4.30 She said that when the two pharmacies closed, there was an outcry not just because of utilitarian issues but because of the impact on quality of life. The Committee had noted that there was a café in the Co-operative store, this was used as a meeting hub for senior citizen and church groups, who would pick up their shopping and access pharmaceutical services at the same time. Cllr Strinkovsky said that the Old Town area was a discreet area where people accessed all their needs and that the other pharmacies were in the town centre area, where there was a perception of crime and people felt less safe than in the Old Town area.

4.31 In conclusion Mr Koria said the PNA was very clear that people should be able to access pharmacies near supermarkets, banks, hairdressers, where they can access

all their daily needs. He said that the 10,000 plus items that had been lost in Old Town due to the closure of the two pharmacies, only 3,000 had gone to the Victoria Road Pharmacy and 2,000 had gone to distance selling. He said that this was very low and indicated that people did not feel they had a reasonable choice.

Mrs Osei-Yeboah (representing Nisias Ltd)

4.32 Mrs Osei-Yeboah made the following submissions, '*NISIAS LTD took over from Jhoots Pharmacy in October, 2023 and opened what is now Victoria Road Pharmacy.*

4.33 *May I highlight that there was no pharmacy at the proposed site and Boots in Wood Street closed during this period. This reflects the challenging nature of pharmacy with pharmacies struggling to survive.*

4.34 *Upon taking over Jhoots pharmacy were dispensing an average of 1,800-2,000 prescriptions. Since taking over, Victoria Road Pharmacy has an increased average prescription volume of 5,242.*

4.35 *Since our opening we have worked tirelessly to support the local community and build the pharmacy back up. The disabled access and internal electrical work is one of many improvements completed including new walk way. A new stair lift is part of the ongoing improvements on the pharmacy building.*

4.36 *Our pharmacy is open without a break Monday to Saturday. Victoria Road Pharmacy is used by patients of all ages with a high number of patients over the age of 65 who have no difficulty accessing our services.*

4.37 *Our patients report enjoying the regularity of the pharmacist and staff as we are not reliant on locum staff. Our 4+ star rating reflects our consistent and excellent care.*

4.38 *We are aware of the realities on the ground which include the underfunding of pharmacies across the UK. There is simply not enough NHS funding to go around. The public are not aware of the national pressures on pharmacies due to government funding.*

4.39 *Patients come to us from other pharmacies who cannot provide medications that are over the tariff price. We care about our patients and consistently provide medication that may be above tariff to ensure the patients prescribed medications are obtained. For example, the cost of Quetiapine is £10 to buy and the government pay £3.30. This is one of hundreds of medications which are poorly funded.*'

4.40 Mrs Osei-Yeboah submitted a graph which showed the number of items dispensed by the Victoria Road Pharmacy since Nisias Ltd had acquired it. This showed 2,000 items had been dispensed in November 2023, peaking at around 6,600 in March 2024, and falling back to around 5,400 in August 2024. She said that the figures had been plateauing since Boots closed. Although they had acquired some of the Boots patients, she said that the Old Town patients have been absorbed by the pharmacies that exist. They had gone to online pharmacies and used pharmacies close to their workplaces.

4.41 She said that the population was a younger population, and they preferred to access services online. She said that pharmacies generally were operating at a loss.

4.42 She went on to say that, in relation to the adequacy of existing services, there is no evidence to suggest a gap in services that necessitates a new pharmacy. Based on NHS data, there are nine existing contractors within a one-mile radius of the proposed site. This network is more than sufficient to meet patient demand while offering ample choice regarding providers, services, and opening hours.

4.43 She said that the existing Victoria Road Pharmacy already provides a comprehensive range of essential and specialised services, including:

4.43.1 Supervised consumption

4.43.2 Monitored Dosage Systems

4.43.3 CPCS (Community Pharmacist Consultation Service)

4.43.4 NHS Flu Vaccinations

4.43.5 Minor Ailment Service

4.43.6 Contraception Services

4.43.7 Travel Clinic (a particularly popular service)

4.43.8 Weight Management Programs

4.44 These offerings were aligned closely with patient needs and address any perceived service gaps.

4.45 She said that there were GP surgeries within 0.3 and 0.6 miles of the proposed site. Patients who visit these surgeries already have easy access to nearby pharmacies. The Victoria Road Pharmacy caters specifically to the needs of these patients and has implemented measures such as a delivery service for those unable to travel.

4.46 She said that the existing pharmacy infrastructure accommodates the needs of local residents. There was ample parking: Victoria GP Cross Surgery patients primarily park at the surgery, leaving local street parking on Cross Street for other users. Additionally, NCP parking offers 30 minutes free and affordable rates beyond that.

4.47 With regard to disability access, the Victoria Road Pharmacy has proactively improved accessibility by installing a stair lift and making other modifications to ensure inclusivity.

4.48 The area had a higher percentage of residents without long-term physical or mental health issues compared to the national average.

4.49 She said that local residents are mobile, as evidenced by their travel to GP surgeries and pharmacies. This indicates no pressing need for additional services. Further introducing another pharmacy risks over-saturating the market, which could undermine the sustainability of existing businesses that already provide exemplary services.

4.50 She said that in conclusion, the existing pharmacy network, including Victoria Road Pharmacy, is sufficient to meet patient demand while offering a wide range of services. There is no demonstrated need for a new pharmacy in this area, and its addition could have adverse effects on the balance and sustainability of current provisions.

4.51 In response to questions, she accepted the point made by Mr Patel that Quetiapine had now been added to the concession list and that pharmacists were now reimbursed £11.10 not £3.30, but said there were hundreds of medications where there was no concession at all.

4.52 When questioned about disability access, she said that the new ramp had been installed very recently as the building had been sold to a new landlord and the previous landlord would not consent. This had delayed the ramp being installed until September 2024.

4.53 It was put to Mrs Osei-Yeboah that the ramp was not compliant with disability legislation as the first section had a gradient of 1 in 4 and the second a gradient of 1 in 2 when it should be 1 in 12. She said that the ramp was more for buggies than wheelchairs and it was the intention to install a lift as the shop frontage was not wide enough to accommodate an accessible ramp.

4.54 When asked when the lift would be installed, she said that they had found someone to install and fit it and hoped it would be installed in the new year, but they did not yet have a date.

4.55 When asked why they did not capture more patients following the closure of the Old Town pharmacies she said that Boots patients had been directed to the other branch of Boots and those who liked Boots services would have gone there.

4.56 She did not accept there was any difficulty accessing services, she said most patients go to the pharmacy after seeing their GP and park at the surgery. They would still have to travel in and see their GP.

4.57 She was asked about the number of patients from the Hermitage surgery who used the Victoria Road Pharmacy, but she did not have that data. She did not have any data on how the patients of the pharmacy travelled there whether it was by public transport, by car or on foot.

4.58 She said there had been a 40% increase in people using the delivery service. She did not have the data as to where those patients lived or which surgery they used or the reason they chose delivery services, but she assumed it was for convenience. Some of the services such as supervised consumption, minor ailments etc could only be accessed in the pharmacy.

4.59 She said that they had invested in improving the pharmacy, adding better heating and lighting and making the pharmacy more welcoming from the outside.

4.60 In conclusion, she said that there was no evidence that there was difficulty in accessing services, she said she believed that 65% of the patients were over 60 and they often want to see someone they know and trust and that is what they got at the Victoria Road Pharmacy.

5 Consideration

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

Regulation 31

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

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

(2) This paragraph applies where -

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

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

(ii) adjacent premises; and

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

5.3 The Committee noted the Applicant had stated "*n/a. There is no pharmacy trading from or adjacent to the proposed premises, so Regulation 31 does not apply*" and that the Commissioner had concluded that it was satisfied that it was not required to refuse the application by virtue of Regulation 31. The Committee noted that this had not been disputed either on appeal or in subsequent representations. On the basis of the information before it, the Committee determined that it was not required to refuse the application under the provisions of Regulation 31.

Regulation 18

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

"(1) If—

(a) NHS England receives a routine application and is required to determine whether it is satisfied that granting the application, or granting it in respect of some only of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB; and

(b) the improvements or better access that would be secured were or was not included in the relevant pharmaceutical needs assessment in accordance with paragraph 4 of Schedule 1,

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

(2) Those matters are—

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

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

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

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

(i) there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB (taking into account also NHS England's duties under sections

13I and 13P of the 2006 Act (duty as to patient choice and duty as respects variation in provision of health services)),

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

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

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

(c) whether it is satisfied that it would be desirable to consider, at the same time as the applicant's application, applications from other persons offering to secure the improvements or better access that the applicant is offering to secure;

(d) whether it is satisfied that another application offering to secure the improvements or better access has been submitted to it, and it would be desirable to consider, at the same time as the applicant's application, that other application;

(e) whether it is satisfied that an appeal relating to another application offering to secure the improvements or better access is pending, and it would be desirable to await the outcome of that appeal before considering the applicant's application;

(f) whether the application needs to be deferred or refused by virtue of any provision of Part 5 to 7.

(g) whether it is satisfied that the application presupposes that a gap in pharmaceutical services provision has been or is to be created—

(i) by the removal of chemist premises from a pharmaceutical list as a consequence of the grant of a consolidation application, and

(ii) since the last revision of the relevant HWB's pharmaceutical needs assessment other than by way of a supplementary statement.

(3) NHS England need only consider whether it is satisfied in accordance with paragraphs (2)(c) to (e) if it has reached at least a preliminary view (although this may change) that it is satisfied in accordance with paragraph (2)(b)."

5.5 The Committee considered that Regulation 18(1)(a) was satisfied in that it was required to determine whether it was satisfied that granting the application, or granting it in respect of some only of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB.

5.6 The Committee went on to consider whether Regulation 18(1)(b) was satisfied, i.e. whether the improvements or better access that would be secured if the application was granted were or was included in the Pharmaceutical Needs Assessment ("the PNA") in accordance with paragraph 4 of Schedule 1 of the Regulations.

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

5.8 The Committee considered the PNA prepared by Swindon 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 1 October 2022 and that a supplementary statement had been issued in May 2024.

5.9 The Executive summary of the PNA concluded that:

"*After considering the current population of Swindon and the provision of pharmaceutical services, this PNA concludes that there is adequate pharmaceutical provision across Swindon, with the majority of statutory consultees agreeing with this statement."*

5.10 The PNA covers Swindon Borough which incorporates the town of Swindon and surrounding villages. For the PNA, Swindon was divided into geographical areas based on electoral ward boundaries, taking into account parish boundaries, major road, new housing development and socio-economic factors. The Old Town ward where the proposed pharmacy is to be located falls within the South PNA area.

5.11 Under "Statement of current pharmaceutical services" the PNA stated "*The South PNA area has five community pharmacies; none of the wards have high deprivation scores. This PNA area also has two dispensing practices, dispensing from three locations.*"

5.12 The PNA concluded that "*there is adequate pharmaceutical provision across Swindon, with the majority of statutory consultees agreeing with this statement."*

5.13 The Committee noted that a supplementary statement had been published in May 2024. The supplementary statement states *"Changes in service provision since the 2022 PNA are detailed in Tables 1 – 4 and depicted in the Appendix. Two pharmacies closed and one pharmacy opened during this period. The closure of a pharmacy does not automatically mean a gap in provision. It is recognised that patients will often use an alternative pharmacy in the local area."*

Table 4 Pharmacy closures

PNA area	Trading Name	Date of closure	Location	PNA Area	Opening Hours (including core and supplementary hours)

Central	Boots UK Ltd	February 2024	35 Wood Street, SN1 4AN	Central	Mon-Fri: 8.30am–5.30pm Sat: 9am-5pm Sun: closed
South*	Rowlands Pharmacy	July 2023	(inside Co-op) High Street, Old Town, SN1 3EG	Central	Mon-Fri: 8am-6:30pm Sat: 9am-1pm & 2pm-5pm Sun: closed

**This pharmacy lies very close to the Centra/South PNA area border. Previously listed in the 2018 and 2022 PNA as falling under the Central PNA area.*

5.14 In summary, the supplementary statement states "*… the supplementary statement is expected to become part of the 2022 PNA, which concluded that there is adequate pharmaceutical provision across Swindon and did not identify any additional needs for the provision of necessary, essential or advanced pharmaceutical services."*

5.15 The Committee noted that the Applicant seeks to provide unforeseen benefits to the those residing in and visiting the Old Town area of Swindon.

5.16 The Committee noted that the improvements or better access that the Applicant was claiming would be secured by its application were not included in the relevant pharmaceutical needs assessment in accordance with paragraph 4 of Schedule 1.

5.17 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)

5.18 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"

5.19 The Committee noted the Commissioner had stated in its decision that it "*…was satisfied that granting the application would not cause significant detriment to the proper planning or arrangements in place for provision of pharmaceutical services."* The Committee noted that this had not been disputed by any party, either on appeal or in subsequent representations.

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

5.21 The Committee was therefore not satisfied that significant detriment to the proper planning of pharmaceutical services would result from a grant of the application.

Regulation 18(2)(a)(ii)

5.22 The Committee had regard to

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

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

5.23 The Committee noted that the Commissioner in its decision had stated that it "*… was satisfied that granting the application would not cause significant detriment to the proper planning or arrangements in place for the provision of pharmaceutical services."*

5.24 The Committee noted that Mrs Osei-Yeboah in her representations had suggested that existing pharmacies could be put at risk by additional competition but had put forward no evidence to support that assertion.

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

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

Regulation 18(2)(b)

5.27 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)

5.28 The Committee reminded itself that it is the Applicant's responsibility to provide evidence regarding reasonable choice and access. The Committee noted that exercising a choice requires that choice to be reasonable, which is distinct from being obliged to use a service. While reasonable choice is not defined in the Regulations, the Committee considered that it is not limited to the number of pharmacies accessible to an individual. The closure of two pharmacies in the Old Town area did not automatically lead to a conclusion that there is no longer a reasonable choice. The Committee reminded itself that each application must be assessed on its relevant facts.

5.29 The Committee noted that there was significant support for the application, which had been granted by the Commissioner. Although the supplementary statement to the PNA

issued in May 2024 had not identified a gap in service provision following the pharmacy closures in the Old Town, the Swindon Health and Wellbeing Board (HWB) supported the application, highlighting that the proposed pharmacy location in Old Town falls under the "South" Pharmaceutical Needs Assessment geographical area. The HWB stated that this area has a high proportion of residents aged over 65 and is projected to experience a 5% population increase by 2026. The HWB states that the application is '*a necessary measure to ensure adequate pharmaceutical provision*' in the 'South' area and that granting this application would bring pharmaceutical services closer to patients who reside in the 'South' area.

5.30 The application was submitted following the closure of Rowlands Pharmacy at the Co-operative store but prior to the announced closure of Boots pharmacy in Old Town. The former MP for South Swindon, the Right Honourable Sir Robert Buckland KBE KC, expressed his support in a letter, describing how he was '*inundated*' with emails from local residents expressing concern about how they would access a pharmacy following the closure of Boots in the Old Town. He also highlighted that Old Town is situated at the top of a '*large and rather steep hill'*, and that this caused accessibility issues.

5.31 The Committee also noted the contents of the emails from Old Town residents, many of whom responded to an advertisement by the Applicant, these reflected support for the application. While some mentioned convenience, many emphasised the lack of reasonable choice, particularly for individuals without cars and those requiring regular access to pharmaceutical services.

5.32 The Committee acknowledged the evidence it received and in particular the evidence of Cllr Strinkovsky and from its own observations that the Old Town is a distinct area separate from Swindon's town centre. With its own shops, restaurants, a doctor's surgery, and the Co-operative store, Old Town serves as a local hub. The Committee from its own observations and the evidence it received noted that the steep hill which links the Old Town and the town centre creates a significant physical barrier.

5.33 The Committee noted that there had been significant investment in the pharmacy, nearest to Old Town, the Victoria Road Pharmacy and that it offered a range of services. However, although the distance between Old Town and the Victoria Road Pharmacy, is relatively short, the hilly terrain poses difficulties for some patients accessing the Victoria Road Pharmacy on foot from the Old Town. The Committee noted that while some patients could walk the 15-20 minute route from the Co-operative store to the Victoria Road Pharmacy, the return journey, given the steep incline, could take longer and be significantly more challenging, particularly for those with young children or those who were feeling unwell. The Committee also acknowledged that the journey could take longer if the patient started their journey from the residential areas to the south of the Co-operative store as suggested by the HWB response.

5.34 The Committee also considered the challenges posed by limited parking near the Victoria Road Pharmacy. Nisias Ltd suggested that most patients would access the pharmacy after a visit to the Victoria Cross surgery which was close by and had limited parking for its patients. The Committee was not provided with any data regarding the numbers of patients at the Victoria Road Pharmacy that were registered with the Victoria Cross surgery or how many patients would access the pharmacy after a visit to the surgery. The Victoria Road Pharmacy is in the centre of a densely packed residential area, with few additional services that would attract anyone other than the local residents. It seemed likely to the Committee that not all patients seeking pharmaceutical services would have first been to the Victoria Cross surgery, but many would be accessing the Victoria Road area for pharmacy services only, particularly those who lived, worked or accessed services in the Old Town area, as indicated by the email responses.

5.35 It was apparent from the Committee's own observations that even for those who were patients of the Victoria Cross surgery, parking would be difficult to locate in the area of the Victoria Road Pharmacy. Nisias Ltd suggested in its written submissions that there was parking at Regent Circus car park. The Committee noted that this was not a public car park and appeared to refer to pay and display parking within the cinema and shopping complex, closer to the town centre and would require patients to drive towards the town centre and then double back on foot to the pharmacy. There was no obvious signage in the vicinity of the pharmacy indicating that parking was available at Regent Circus. The Committee concluded that this suggested parking options would only be of limited benefit to patients seeking to access services at the Victoria Road Pharmacy.

5.36 For patients without cars, although there are bus services, the time required to access a bus stop, wait for the bus, and travel to the pharmacy would in the Committee's view exceed the ten minutes suggested, although the actual time to access the pharmacy by public transport would depend on the starting point within the Old Town area. As indicated in the oral evidence, the location of the bus stops would mean that there would be a walk from the bus stop down the incline and then a return journey up the incline.

5.37 Patients would have the option of travelling further into the town centre area or travelling to out of town areas. This would be an option for those with cars, as parking was available. The Committee noted that from the evidence of the HWB whilst Swindon as a whole had a higher than average level of car ownership, those in the Old Town did not.

5.38 The Committee noted that it had received unchallenged evidence that the nearest bus stop to a pharmacy in the town centre was 0.3 miles. A respondent spoke of it being '*unrealistic*' to get a bus to a pharmacy in town that '*doesn't require a lot of walking'.*

5.39 The Committee recognised that pharmaceutical services extend beyond dispensing medication. They play a vital role in supporting healthcare through initiatives such as "Pharmacy First", which encourages face to face interaction and other healthcare services.

5.40 The Committee noted that the ability to dispense over 10,000 prescriptions a month from the Old Town area had been lost following the closure of the two pharmacies. However, there was limited evidence available to the Committee to suggest that the current pharmacies could not cope with the increased level of demand.

5.41 The Committee noted that a significant number of patients appeared to have switched to using online dispensing, although it was not clear where these patients were accessing face to face services. From the evidence given by Nisais Ltd it appeared that in the region of 2,000 to 3,000 prescriptions may have transferred to the Victoria Road Pharmacy although there was only limited evidence that these prescriptions had transferred as a result of the closure of Boots in Old Town rather than as a result of the improved service delivered since Nisas Ltd had taken over the Victoria Road Pharmacy.

5.42 The Applicant argued that the lack of a significant increase in dispensing activity at the Victoria Road Pharmacy since the closures demonstrated a lack of patient interest in accessing that service. Whilst the Committee had limited evidence to confirm this, some of the responses did suggest that patients may not access pharmaceutical services at the point at which they were required for example those who were working who wrote that they could not spare the time in their lunch breaks to travel out of the Old Town area to access pharmaceutical services or those who previously would have sought advice.

5.43 The Committee also noted the concerns being expressed about the perception of crime in the town centre as expressed by Cllr Strinkovsky and the response that states, the '*town centre in recent times hasn't always felt the safest place for a female to walk alone - especially with a bag laden with medication*.'

5.44 The Committee considered that the closure of both pharmacies in the Old Town area significantly reduced the options available to patients, leaving them to either travel out of the Old Town area or access dispensing services online or by delivery from a pharmacy out of the area (a non-contracted service).

5.45 While a reduction in choice does not necessarily mean the choice is unreasonable, the Applicant provided sufficient evidence of the challenges faced by patients in the Old Town accessing pharmaceutical services. The Committee also acknowledged support from the HWB, which corroborated the difficulties experienced by patients.

5.46 The Committee concluded that patients living, working, and accessing other services in Old Town lack reasonable access to pharmaceutical services within their area, such that they did not have reasonable choice.

5.47 Therefore, the Committee was satisfied that, having regard to there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits by way of physical access on persons.

5.48 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.

5.49 In considering 18(2)(b)(ii), the Committee considered those who had reduced mobility either by virtue of age or those with a disability.

5.50 The Committee had identified the difficulties those who lived and worked in the Old Town had in accessing the Victoria Road Pharmacy and the town centre pharmacies such that there was not reasonable choice. Those difficulties would be exacerbated for those with reduced mobility as highlighted by the evidence of Cllr Strinkovsky and those of the respondents who had highlighted the problems they faced in accessing a pharmacy since the closure of both pharmacies in the Old Town. One person said that they relied on friends and neighbours to pick up prescriptions for them. The Committee noted that person did not explain how they could access face to face services.

5.51 An additional difficulty would be faced by wheelchair users who would not currently be able to access the Victoria Road Pharmacy until the anticipated disability lift is installed.

5.52 The Committee concluded that accessing pharmaceutical services, particularly those which could only be delivered face to face, may be difficult and in some cases impossible for those people with reduced mobility due to age or disability because of the accessibility issues highlighted above.

5.53 The Committee had regard to all the evidence but noted that there was little reference to services that meet specific needs. The comments on access were general in nature and might apply to any persons as explained by the assessment as to the lack of reasonable access above. The Committee considered that there was not a robust body of evidence that enabled it to be satisfied that a pharmacy at the proposed site would convey significant benefits pursuant to Regulation 18(2)(b)(ii).

5.54 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.

5.55 In considering Regulation 18(2)(b)(iii) the Committee had regard to the desirability of innovative approaches to the delivery of pharmaceutical services. In doing so, the Committee would consider whether there was something more over and above the usual delivery of pharmaceutical services that might be expected from all pharmacies, some 'added value' on offer at the location. The Committee was of the view that the Applicant did not seek to rely on innovation in this application. The Committee was not satisfied that, having regard to the desirability of there being innovative approaches taken with regard to the deliverability of pharmaceutical services, granting the application would confer significant benefits on persons.

Regulation 18(2)(b) generally

5.56 The Committee noted that the Applicant intended to open the pharmacy until 7:00 pm on weekday evenings. Whilst this undoubtedly would be convenient for those who were in work, the Committee was of the view that there was no information provided to support a finding that pharmaceutical services are not currently provided at such times as needed and therefore it was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits (in relation to opening hours) on persons.

5.57 The Committee had regard to Schedule 4, Part 3 of the Regulations which states:

Pharmacy opening hours: general

23.— *(1) Subject to paragraph 23A, an NHS pharmacist (P) must ensure that pharmaceutical services are provided at P's pharmacy premises—*

(a) for 40 hours each week; …

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

5.58 The Committee noted that, if the application was to be granted, a direction would need to be issued for the "additional" hours which were being offered by the Applicant.

5.59 The Committee has considered whether there are any other factors that would confer significant benefits on including patients who share protected characteristics. The Committee had regard to the need to eliminate discrimination and advance equality of opportunity and foster good relations between these patients and those who do not share their protected characteristics. The Committee identified no such additional factors.

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

Other considerations

5.61 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 there were no other applications or appeals to be considered at the same time as this application.

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

5.63 The Committee had regard to Regulation 18(2)(g) and found that the circumstances envisaged in that provision would not apply as no consolidation applications had been made in the area.

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

5.65 The Committee was satisfied that the information provided demonstrates that there is difficulty in accessing current pharmaceutical services such that a pharmacy at the proposed site would provide better access to pharmaceutical services.

5.66 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

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

5.67.1 confirm the Commissioner's decision;

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

5.67.3 quash the Commissioner's decision and, if it considers that there should be a further notification to the parties to make representations, remit the matter to the Commissioner.

5.68 In those circumstances where the Committee had received additional evidence and found that Regulation 18(2)(b)(i) had been met, the Committee determined that the decision of the Commissioner must be quashed.

5.69 The Committee went on to consider whether there should be a further notification to the parties detailed at paragraph 19 of Schedule 2 of the Regulations to allow them to make representations if they so wished (in which case it would be appropriate to remit the matter to the Commissioner) or whether it was preferable for the Committee to redetermine the application.

5.70 The Committee noted that representations on Regulation 18 had been sought from parties by the Commissioner and representations had already been made by parties to the Commissioner in response. These had been circulated and seen by all parties as part of the processing of the application by the Commissioner. The Committee further noted that when the appeal was circulated representations had been sought from parties on Regulation 18.

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

6 DECISION

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

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

6.3 The Committee has considered whether the granting of the application would cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area covered by the HWB, or the arrangements in place for the provision of pharmaceutical services in that area and is not satisfied that it would.

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

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

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

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

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

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

6.5 The Committee noted that the Commissioner would now need to consider the issuing of a direction for the hours above 40 core hours which the Applicant had offered to provide.

Committee Chair

8 January 2025

Annex A

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REF: SHA/26269

APPEAL AGAINST NHS BATH AND NORTH EAST SOMERSET, SWINDON AND WILTSHIRE ICB DECISION TO GRANT AN APPLICATION BY HG HANKS LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 INSIDE THE CO-OPERATIVE, HIGH STREET, SWINDON, SN1 3EG

1 The Application

By application dated 22 December 2023, HG Hanks Ltd ("the Applicant") applied to Bath and North East Somerset, Swindon and Wiltshire ICB ("the Commissioner") for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 inside the Co-operative, High Street, Swindon, SN1 3EG. In support of the application it was stated:

1.1 In response to "In my/our view this application should not be refused pursuant to Regulation 31 of the following reasons" the Applicant stated:

1.1.1 "n/a. There is no pharmacy trading from or adjacent to the proposed premises, so Regulation 31 does not apply."

Supporting information

"Swindon Old Town New Contract Supporting Information

Background

1.2 This application is in respect of opening up a new pharmacy to provide better access for patients requiring access to pharmaceutical services within the Old Town area in Swindon.

1.3 The proposed site we wish to open up a new pharmacy is located inside The Co-Operative store, SN1 3EG. This is located in the Old Town area of Swindon and is the site of the recently closed Rowlands Pharmacy. The applicant has already secured this site.

1.4 We understand that the nearby Boots pharmacy, SN1 4AN, is also set to close from the 9th February 2024. We believe that the closure of both the Boots and the Rowlands pharmacy will leave a significant gap in pharmaceutical services. Hence this application is offering unforeseen benefits not captured within the PNA.

1.5 There has been much furore surrounding the proposed closure of the Boots, with residents strongly petitioning for the need of a pharmacy in the local area. [see Article at Appendix A]. At the time of writing, 579 local residents have signed a petition in an attempt to save the current Boots on Wood Street, SN1 4AN. Should the Boots not be saved, then there will be an obvious gap in pharmaceutical services that this application proposes to fill.

1.6 We invite the committee to read the petition in full at: https://www.change.org/p/reverse-bootsdecision-to-close-old-town-swindon-pharmacy

1.7 There are many comments highlighting the need for a pharmacy near the proposed location. These will be referenced further along in the application.

Proposed Location

1.8 The proposed location is situated inside the busy Co-Operative supermarket, SN1 3EG, which serves the local community and has other local amenities co-located (See image 1 [at Appendix A]). There are wide walkways and good disabled access, as would be expected of any supermarket location. It is well served by the number 11/12 bus stopping directly outside (See image 2 [at Appendix A]). The location is also only a 2-minute walk to the busy high-street with numerous shops (See image 3 [at Appendix A]).

1.9 To reiterate, the applicant has already secured this site.

1.10 The Old Town area of Swindon, as defined in the PNA, covers a vast area and thus it is more prudent to analyse the LSOAs (Lower-layer Super Output area) surrounding the proposed location, to determine the local population that are likely to utilise the site.

1.11 We can see that 7500+ local residents are likely to access pharmaceutical services in the vicinity of the proposed location. Once the Boots closes, these patients will no longer have access to pharmaceutical provision nearby; and hence are likely to access provision at the proposed site should a new contract be granted.

1.12 For clarity, the proposed site and the soon to be closed Boots, are both located in the 024B LSOA.

The Applicant

1.13 My client is a local independent operator, currently operating 4 pharmacies in the Swindon area. He prides himself on his service to patients and understands at ground level that there is a real need for pharmaceutical services at the proposed location, hence this application for unforeseen benefits.

1.14 The applicants closest pharmacy to the site is Hawthorne Pharmacy, SN2 1AE, which is 1.8 miles from the proposed location. The current operation at Hawthorne Pharmacy is well liked by local residents, demonstrated by the strong 4.4 star google rating.

1.15 Should this application be granted, the applicant intends to implement his robust standard operating procedures to provide a good service to the local community.

Regulations

1.16 We are required by NHS England to address the overarching question in an Unforeseen Benefits application:

“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”.

1.17 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 taken 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;

1.18 We note that evidence is not required in respect of all three points; but rather that they are taken into consideration when evaluating the application.

1.19 Nevertheless, even if sufficient evidence cannot be found in respect of the 3 points in regulation 18(2)(b), an application should still 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.

Securing Better Access

1.21 Distance, especially for those with protected characteristics

1.22 First, we would like to note that distance in itself is a barrier to access. Above we identified approximately 7500 residents who would likely access pharmaceutical services at the proposed site. Using the proposed site, SN1 3EG, as an arbitrary marker to represent local residents. We can see that the next nearest pharmacy, notwithstanding the Boots that is set to close, is Victoria Road Pharmacy (SN1 3DF), 0.6 miles away.

1.23 For residents currently residing near the proposed site, pharmaceutical services will be difficult to access once the Boots (SN1 4AN) closes. Below we highlight the anticipated journeys that patients would have to make should this unforeseen benefits application not be granted.

1.24 By Foot from Proposed site (SN1 3EG) to nearest pharmacy (Victoria Road Pharmacy, SN1 3DF)

1.25 Using the walking pace of two miles per hour as stipulated within the PNA, this journey is 0.6 miles or 18 minutes - equating to a 36-minute round-journey. This journey length falls outside of the 15- minute PNA target for residential areas and is clearly excessive especially considering the inner-city location.

1.26 We cannot consider a 1.2-mile round walk to access pharmaceutical services as sufficient access, nor can we consider this as having a reasonable choice to pharmaceutical services.

1.27 Such a length journey will prove difficult for the elderly, disabled, or for parents with young children – all of whom are groups with protected characteristics. This sentiment is echoed by many residents in the Boots petition:

"My mother who is 101 on December 13th 2023 and needs it for her medications"

"This is a vital and a needed pharmacy to the elderly and the disabled"

"It is essential to keep a pharmacy in the centre of Old Town. There are fewer and fewer available and not everyone can drive or walk to another store".

"Old Town needs a chemist. The vulnerable/ elderly rely on this"

1.28 Comments are centred around the obvious need for pharmaceutical provision in this area once the Boots ultimately closes. Vulnerable patients are left worrying about how they will access pharmaceutical services especially for those who do not drive and have limited mobility.

1.29 Such mobility worries are understandable when we consider the significant gradient between the proposed site and Victoria Road Pharmacy. On a return journey from visiting the pharmacy, patients will have to navigate a steep hill between Victoria Road Pharmacy and Union Row Road, whilst walking along Victoria Road. This hill is continuous for a length of around 300 metres, with the gradient averaging 6.25% or 1 in 16.

1.30 For context, guidance states that a disabled access ramp should have a gradient of no more than 1 in 20 for a maximum ramp length of 10 metres. Given this hill is not only steeper but also significantly longer than such a ramp, it can be concluded that this is a clear barrier to access for those in a wheelchair/ mobility scooter/ or of impaired mobility.

1.31 Further, it should be noted that residents living to the South of the proposed site can experience an even longer round journey to access pharmaceutical services. Some residents will have to endure a 50-minute walk, a 1.7 -mile round-journey to access pharmaceutical services. Granting this application would reduce this journey to 20 minutes, not perfect, but a significantly more accessible trip.

1.32 It follows that surrounding pharmaceutical provision in the area 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.

1.33 By Car from Proposed site (SN1 3EG) to nearest pharmacy (Victoria Road pharmacy, SN1 3DF)

1.34 The journey by car to Victoria Road pharmacy, SN1 3DF is currently a 5-minute drive from the proposed site.

1.35 However, it must be noted that residents who live near the proposed site do not have the same access to a car as others may do in surrounding areas. Per the 2011 Census, 28.0% of households in Swindon 024B Lower-Layer Super Output Area (LSOA) did not have access to a car or van.

1.36 Surrounding LSOAs also have similar poor access to a car/ van, as can be seen from the table below.

LSOA	Population	No car/van %
Swindon 021D	1553	15.4%
Swindon 024B	1904	28.0%
Swindon 019D	1592	26.2%
Swindon 019F	998	37.2%
Swindon 017D	1559	27.5%

1.37 When we compare these figures to the 15.4% no car/van figure for the whole Old Town and Lawn Ward, we can see that access to a car/van is relatively poor for these residents, thus making this mode of transport unreliable as an accessibility measure.

1.38 We also note that car parking is an issue for patients of Victoria Road Pharmacy. Nearby car parks are pay and display and thus may present a barrier to people who would like to access pharmaceutical services but may be deterred from doing so frequently due to parking charges.

1.39 As can be seen in the images previously, this is an issue that the proposed site solves. Car parking at the proposed site is ample, free of charge, and directly outside the premises.

1.40 By Public Transport from Proposed site (SN1 3EG) to nearest pharmacy (Victoria Road pharmacy, SN1 3DF)

1.41 The journey by bus to Victoria Road pharmacy is in itself is a 4-minute journey; however, patients living to the South of the proposed site will still have to walk a distance to be able to access public transport services. When we account for walking time, bus waiting time and round journeys, journey time alone to a local pharmacy could exceed 45 minutes should this application not be granted.

1.42 Clearly this does not provide adequate access to pharmaceutical services and presents barriers to access especially to groups such as the elderly, disabled, and parents with young children.

Services

1.43 The applicant, as an independent local operator, understands the vision of the HWB for the role community pharmacy needs to play in ensuring residents can lead a healthier, safer, and independent life. Thus, has committed to providing all locally commissioned services; namely:

1.43.1 Smoking Cessation

1.43.2 Supervised Consumption

1.43.3 Needle & Syringe Exchange

1.43.4 NHS Health Checks

1.43.5 Palliative Care

1.43.6 Minor Ailments

1.43.7 Emergency Supply

1.43.8 COVID-19 vaccinations

1.44 We note from Appendix 6 within the PNA that only one pharmacy within central areas provides Smoking Cessation, and one other pharmacy provides NHS Health Checks. Both these services are vital to ensuring residents lead healthier lives and thus granting of this application will secure significantly better access to a host of vital community services in the locality.

Opening Hours

1.45 When considering better access, we must also consider the current provision of opening hours, and the reasonable choice that patients have on each day of the week.

1.46 The applicant recognises that access to pharmaceutical services during late evening is especially important, particularly given new the Pharmacy First Service [sic] proposed by NHSE; the typical evening closure of GP practices; and the lack of daytime accessibility for those working 9-5 hours. Thus, the applicant has committed to late evening weekday core hours.

1.47 Current late evening provision, per the PNA definition, across Swindon is pretty poor as demonstrated by the map [at Appendix A].

1.48 Current late evening provision across Swindon for all weekdays is represented by the blue markers.

1.49 The proposed site offering all weekday late evening opening is represented by the green marker.

1.50 There are only 7 all-weekday late evening pharmacies in the whole of Swindon, and none to serve the southern part of Swindon. Granting this application would grant the southern half of Swindon significantly better access and choice to pharmaceutical services on a weekday evening. This is especially significant for those who may be at work during 9-5 hours, needing to access pharmaceutical services; and elderly patients who are reliant on working family members assisting them in accessing pharmaceutical services.

1.51 It should be noted that the applicant has also committed to all-day Saturday opening hours.

Reasonable Choice

1.52 For local residents who have become accustomed to accessing pharmaceutical services in the Old Town shopping area, choice of pharmaceutical provider will be poor once the Boots closes on 9th February 2024. As a reminder of the closures:

1.52.1 Rowlands, SN1 3EG (July closure - Proposed site)

1.52.2 Boots, SN1 4AN (Closing on 9th February)

1.53 Choice for these residents will in fact vanish as highlighted by comments from local residents on the Boots petition:

"We have already lost 2 chemists in Old Town and some people will find it very difficult to get to a pharmacist in the centre of town".

"It is the only chemist left in Old Town! It will make life harder for local people".

"There is no other pharmacy in Old Town"

1.54 Once the Boots closes, patients will likely access Victoria Road Pharmacy. Notwithstanding the excessive and difficult journey that residents will now face, it is difficult to envisage how such a small pharmacy will be able to deal with the pharmaceutical demand from two closures.

1.55 The absence of choice of pharmaceutical services is clearly below the threshold of 'reasonable choice', however, reasonable choice for the 7500+ local residents will be restored should this application be granted.

Conclusion

1.56 In our view, the upcoming closure of the Boots Pharmacy (SN1 4AN) alongside the recent closure of the Rowlands Pharmacy (SN1 3EG) will leave a significant gap in pharmaceutical services for Swindon 021D, 024B, 019D, 019F, 017D LSOAs and the surrounding areas.

1.57 Granting this application would secure better access to pharmaceutical services. The elderly, disabled, and the wider population are likely to find the proposed pharmacy significantly more accessible in distance, opening hours, and through extra services that are to be provided in the local area. It would also introduce reasonable choice of pharmaceutical provider for those in the locality.

1.58 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 (SN1 4AN) and Rowlands (SN1 3EG) closures; and notwithstanding the fact that the nearest pharmacy to the proposed site is located 0.6 miles away.

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

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

1.60.1 "The Boots Pharmacy, 35 Wood Street, SN1 4AN and the Rowlands Pharmacy (inside Co-op), High Street, SN1 3EG were 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.

1.60.2 An increase in local pharmacy capacity and improved choice to meet the needs of the local population.

1.60.3 Better access to pharmaceutical services given the closure of Boots & Rowlands pharmacies."

2 The Decision

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

The Commissioner considered and decided to grant the application. The decision letter dated 10 July 2024 states:

2.1 "Bath and North East Somerset, Swindon and Wiltshire ICB has considered the above application and I am writing to confirm that it has been granted.

2.2 Please see the enclosed report for the full reasoning."

Extract from the South West Pharmaceutical Services Regulations Committee (PSRC) Decision report

2.3 "The SW Committee noted:

2.4 Two types of application have been received for the same premises, therefore, these two applications are being considered together and in relation to each other. Both parties were informed of this approach.

Preliminary issues

Background

2.5 Swindon is a town in Wiltshire, England. At the time of the 2021 Census the population of the built-up area was 183,638, making it the largest settlement in the county. Located in South West England, Swindon lies on the M4 corridor, 71 miles (114km) to the west of London and 36 miles (57 km) to the east of Bristol. The Cotswolds lie just to the town's north and the North Wessex Downs to its south.

2.6 There are currently 18 pharmacies located within 2 miles of the proposed new pharmacy location (per the NHS website). Swindon Pharmacy at Hawthorn Medical Centre, May Close (2.2 miles travel distance) is a 100-hour pharmacy: it reduced to 77 hours per week under the recent change in regulations for 100- hour pharmacy opening hours.

2.7 There was a Rowlands pharmacy at the Co-op store until July 2023; they closed under the Market Exit process. They were open 09:00 – 13:30, 13:50 – 17:30 Monday to Friday and 09:00 – 13:00, 14:00 – 17:00 Saturdays. There was also a Boots Pharmacy at 35 Wood Street until February 2024. The Boots was open 09:00 – 17:30 Monday to Friday and 09:00 – 13:00, 14:00 – 17:30 Saturdays and would have been 0.2 miles by foot or 0.4 miles by car from the Co-op.

2.8 The Committee had before it an identified future improvements or better access application (Regulation 20) and an unforseen [sic] benefits application (Regulation 18) for the same area to consider together and in relation to each other. Both applicants are aware that this is how the SW Committee will consider these cases. The [SFF] application was received first in November 2023 and the H.G. Hanks application was received December 2023.

2.9 Summary of application 1 – [SFF] - Identified future improvements or better access [not included in this decision]

2.10 Summary of application 2 – H.G. Hanks Ltd (Unforeseen benefits)

2.11 The applicant is proposing to open Monday to Friday 9am – 1pm ,2:15pm -7.30pm and 9am – 12pm, 1pm to 5pm Saturday, closed Sunday. 49.25 Core Hours are proposed and 4 Supplementary. The hours proposed are shown below from section 3 of the application form:

2.12 Proposed core opening hours

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
0900–1300 1415– 1930	0900–1300 1415–1930	0900–1300 1415–1930	0900–1300 1415–1930	0900–1300 1415–1930	0900–1200	Closed	49.25

Total Proposed opening hours

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
0900–1300 1415– 1930	0900–1300 1415–1930	0900–1300 1415–1930	0900–1300 1415–1930	0900–1300 1415–1930	0900–1200 1300-1700	Closed	53.25

2.13 The applicant proposes to provide Essential services (but no appliances), advanced services and enhanced services at section 4 of the application form:

2.13.1 Hypertension Service

2.13.2 NMS

2.13.3 Flu vaccination

2.13.4 CPCS

2.13.5 Contraception Service

2.13.6 Smoking cessation

2.13.7 a minor ailments services not commissioned by the ICB

2.14 The applicant has not shared a floor plan but does confirm that the premises will have a consultation room. They indicate on the application that the proposed premises is in their possession. No evidence of this is provided.

2.15 At part 6 of the application form, the applicant refers to the supporting information where they describe the unforeseen benefit they are offering to secure. They highlight the pharmacy that had been in the Co-op store had closed and a nearby Boots is closing and the PNA would not have been aware of that when written.

2.16 The applicant claims the closure of the Rowlands (in the Co-op store) and the nearby Boots leaves as significant gap in provision.

2.17 They refer to the strength of feeling from local residents petitioning for the Boots to remain. They discuss the accessibility [sic] of the proposed location and note the bus stop directly outside. They also note the short distance to the various shops and facillities [sic] on the nearby high street. They suggest that around 7,500 residents are likely to access pharmaceutical services in the vicinity of the proposed location.

Public Involvement / Representations

2.18 The SW committee noted full details of the applicant's proposals were notified to various parties in accordance with the Regulations.

2.19 Representations have been received from:

2.20 Boots UK Ltd state:

2.20.1 A closure of a pharmacy does not automatically create a gap and should a gap have arisen as a consequence of a closure then the PNA should be updated.

2.20.2 They state there are 7 pharmacies within a mile of the proposed site. Their pharmacy at Brunel Plaza is open 7 days a week and offers many services including a prescription delivery service.

2.20.3 They also point out that not all patient journeys start at the application site, there are many patients on repeat medications and there are patients who will access a pharmacy that is in a more convenient location for such as near to work.

2.21 Jhoots Pharmacy states

2.21.1 The application has been made prior to the closure of the Boots yet suggests a gap is caused by it.

2.21.2 The applicant relies on an 'arbitrary marker' to represent local residents, yet we note the distance to the nearest pharmacy (applicants own data) is only 0.6 mile. This pharmacy, Victoria Road is situated adjacent to the GP surgery.

2.21.3 The application appears to be driven by the closure of Boots Pharmacy, not the closure of Rowlands. The distance from Boots to the next nearest Pharmacy (Victoria Road) is only 0.4 mile.

2.21.4 The applicant refers to statistical data from the 2011 census, but it is not contextualised. There is no evidence how this relates to Regulation 18. The applicant says, "it must be noted that residents who live near the proposed site do not have the same access to a car as others may do in surrounding areas". The NHS will appreciate it is common for those residing in more central areas for people to have lower car ownership. The applicant provides no evidence with regard to those groups who may share a protected characteristic.

2.21.5 The applicant says they recognise the importance of access to services during late evening. There is no supporting evidence to suggest this is needed at this location, but the applicant fails to offer any core hours Saturday afternoon (despite saying they are committed to all day Saturday opening hours) and hours on Sunday.

2.21.6 Healthcare Plus makes a similar statement about open opening hours and the Pharmacy First Scheme as it did recently apply on behalf of another client in Southmead, Bristol, pending the potential closure of a Boots pharmacy in that area. Victoria Road Pharmacy and other pharmacies in Swindon can provide the Pharmacy First Scheme.

2.22 PSC on behalf of Nisias Ltd t/a Victoria Pharmacy states

2.22.1 This application appears to be based primarily on the closure of the Rowlands store which was originally operating from within the Co-op and the subsequent closure of the nearby Boots store in February 2024.

2.22.2 The ICB will be fully aware that the closure of a pharmacy/pharmacies does not mean an application should automatically be approved to replace it. If the HWB felt that this closure had led to a gap in services in the vicinity, they had the opportunity to issue a supplementary statement to the PNA inviting applications to fill the perceived gap.

2.22.3 To our knowledge no such supplementary statement has been issued. Therefore, one assumes the HWB have looked at the situation and decided no gap in services has been created as a result of these closures on the basis that the existing network is sufficient to meet patient demands.

2.22.4 Based on information taken from the NHS website there are nine existing contractors located within a mile radius of the proposed site. That number

would seem to be more than sufficient to cope with any perceived additional demand for services in the area. It also offers plenty of patient choice in terms of provider, opening hours and services.

2.22.5 Both of those closed pharmacies were dispensing less than the national average items/month and with so many competitors within easy access of these closures there is no evidence to suggest the competing pharmacies cannot absorb these additional items.

2.22.6 On page 2 of the supporting document, it states that the area is well served by number 11/12 bus service and there is plenty of car parking at the proposed site suggesting that people travel to the area by motor vehicle. That would indicate they are mobile and able to access other nearby competitors.

2.22.7 The applicant also seems to put a lot of faith in a local petition. That petition was aimed at preventing the closure of the Boots store. It does not mean these people cannot travel to surrounding pharmacies and, based on the item numbers above, it was not as well supported as the applicant seems to imply. We believe the ICB should put very limited weight on this aspect of the application when making their decision.

2.22.8 The applicant states that he intends to open extended hours in the week but has produced no evidence that there is a demand for services during these extended hours. He then adds that “it should be noted the applicant has committed to all day Saturday opening hours”. However, the core hours on a Saturday are 9.00-12.00 with the remainder being supplementary hours which can, of course, be reduced simply by giving the required notice.

2.22.9 Noted that the applicant does not mention GP surgeries and there is one 0.3 and another 0.6 miles away and suggests distances from the intended site indicate that local residents currently travel to see their GP and in doing so can easily access pharmacies situated close to the surgeries at the same time. That would indicate a mobile population.

2.23 L Rowland & Company (Retail) Ltd state

2.23.1 This is a Routine Unforeseen Benefits application and should one be required we would be willing to attend any oral hearing should the ICB deem it necessary to hold one.

2.24 Community Pharmacy Swindon & Wiltshire

2.24.1 The pharmacy would be within the South PNA area (Old Town, Wroughton & Wichelstowe, Chiseldon & Lawn); none of the wards have high deprivation scores.

2.24.2 The closure of a pharmacy does not automatically indicate a gap.

2.24.3 There is a good public transport network within Old Town as mentioned by the applicant below, and the bus stops on Victoria hill.

2.24.4 Highlights the gradient of Victoria Road (1 in 16)

2.24.5 The Boots at Wood St does not currently open late weekday evenings, and no supplementary statement has been made since the closure of the pharmacy in the Co-op.

2.24.6 The proposed benefits and improvements to service must be considered with regard to: reasonable choice; people with protected characteristics; and innovative approaches.

2.25 Swindon HWB states

2.25.1 Since the last PNA was published one pharmacy has closed and another about to and support the application of the proposed pharmacy location borders Eastcott Ward (in the 'Central' PNA geographical area) which is one of the two most deprived areas in Swindon

2.25.2 The South PNA area is an area of low population density (larger, more rural area) but with a high proportion of people aged over 65 in the population.

2.25.3 Recent population estimates (mid-2020) for Old Town Ward were 10,780 residents, projected to increase around 5% by 2026.

2.25.4 Over the period 2022-2025, 7,200 new homes were planned for delivery in Swindon, of which 21% were planned for the South PNA area (approximately 1,500 homes).

2.25.5 The SHAPE Atlas tool indicates that much of the residential areas within Old Town Ward and Wroughton and Wichelstowe Ward (two of the three wards in the South PNA area) would be within 30 minutes travel time on a bus to the new pharmacy location.

2.25.6 The SHAPE Atlas tool indicates that much of the residential areas in the South PNA area would be within 15 minutes driving time by car.

2.25.7 The SHAPE atlas indicates that a significant proportion of the residential area in Old Town Ward and Eastcott Ward would be within 15 minutes walking distance of this new pharmacy.

2.25.8 For those living in the South PNA area who have greater distances to travel, access would be improved by a free home delivery service and longer opening hours than the previous pharmacy which closed.

2.25.9 The proposed pharmacy has given details of the following advanced and enhanced services that they intend to provide: Supervised consumption, Monitored Dosage System, CPCS, NHS Flu Vaccinations, Minor Ailment Service, Contraception Service, Travel Clinic and Weight Management.

2.26 The applicant submitted comments following the circulation of the 45-day responses. In their response the applicant:

2.26.1 Welcomes the support of the HWB and confirm there will be a home delivery service.

2.26.2 Points out the nearest pharmacy would be 0.6 miles and this would not be indicative of a "clustering".

2.26.3 While the closing Boots did not open in the evenings the Rowlands that closed was open to 6.30pm. This application would secure better access and improvements to pharmaceutical provision during late evenings.

2.26.4 The 7 pharmacies in a mile quoted by Boots is as the crow flies and not the situation in reality.

2.26.5 Boots also take issue with the arbitrary marker that has been used in the application. Whilst we agree that not all residents will start their journey here, it is impractical to assess patient journeys from every single household. The arbitrary marker is very sensible in that it is at a location where residents area accustomed to accessing local amenities as part of their daily lives. The arbitrary marker is also very fair in terms of location; alternative markers to the South of the Proposed Site would produce more onerous journeys, as detailed in the original application.

2.26.6 Note the difficulty of the Journey to Victoria Road Pharmacy.

2.26.7 Common sense would dictate that the less people that have access to a car means less people that have sufficient access to pharmaceutical provision. In the context of Regulation 18, a pharmacy at the proposed site would improve access and choice to pharmaceutical provision as the shorter distances will make pharmaceutical provision accessible by foot for those who do not have access to a car. The shorter distances will also make pharmaceutical provision more accessible for the elderly, disabled, and for parents with young children, all of whom are groups who share protected characteristics.

2.26.8 Maintains that the hours proposed will secure improvements and better access to pharmaceutical provision during late evenings and on Saturdays.

2.26.9 Highlight that combined both(closing) pharmacies dispensed over 10,000 items/month: well above the national average. Pharmaceutical provision is not just limited to dispensing prescriptions but also providing face to face services for those in need. This is especially important with the launch of Pharmacy First, and the NHS strategy for greater services to be conducted within pharmacies to ease pressures on the primary care network. As highlighted previously, the journey to Victoria Road Pharmacy is too onerous for the vulnerable to receive these vital services. Granting this application would restore the critical access to pharmaceutical services for residents in Old Town and the surrounding areas.

2.26.10 The majority of visits to a pharmacy come in the form of collecting repeat medication and accessing pharmaceutical services as part of people's daily lives. It is common knowledge that a visit to the GP surgery is not required every time historic medication is required, thanks to EPS.

2.26.11 Includes a letter of support from the local MP.

2.27 The SW Committee noted the health and wellbeing board's support of the application.

2.28 The SW Committee noted 580 local residents have written protesting the closure of the local Boots Pharmacy. This demonstrates the local residents desire for increased pharmaceutical services within the community.

2.29 The SW Committee decided that it was not necessary to hold an oral hearing to determine the application.

Regulation 31 (same or adjacent premises)

[quoted in full]

2.30 There are no other contractors currently providing pharmaceutical services at or adjacent to the proposed location. The nearest pharmacy is 0.6 miles away – Victoria

Road Pharmacy. The SW Committee was satisfied it was not required to refuse the application by virtue of Regulation 31.

Controlled Locality Issues

2.31 The application does not relate to a controlled locality.

Unforeseen Benefits

Reg 18(1)(b) – Improvements or better access not included in the Pharmaceutical Needs Assessment

2.32 Regulation 18 concerns 'Unforeseen Benefits' applications, which are applications where the improvements or better access that would be secured were or was not included in the relevant PNA. The Swindon PNA can be found at https://www.swindonjsna.co.uk/wp-content/uploads/2022/10/Swindon-PNA-2022_FINAL.pdf.

2.33 The proposed location is included in the 'South' Pharmaceutical Needs Assessment (PNA) geographical area, in Old Town. A summary is included at paragraph 23 above.

2.34 It was noted no supplementary statements to the PNA have been issued.

2.35 The SW Committee was satisfied that as the improvements or better access which the applicants are proposing to secure were not identified in the PNA, therefore, an 'unforeseen benefits' application is the correct type of application.

Reg 18(2)(a) – Would granting the application cause significant detriment to the proper planning or arrangements in place for provision of pharmaceutical services in this area

2.36 The ICB has no plans regarding pharmaceutical services in the area, so there can be no detriment to such plans. There is no evidence presented by respondees that there would be significant detriment to proper planning.

2.37 The SW Committee noted while the applicant mentions the financial impact and details the new operating model, there is no supporting evidence from any interested party detailing the potential impact on existing providers that shows detriment to the arrangements already in place.

2.38 The SW Committee was satisfied that granting the application would not cause significant detriment to the proper planning or arrangements in place for provision of pharmaceutical services.

Regulation 18(2)(g) – Whether the application presupposes that a gap in pharmaceutical services provision has been or is to be created as a result of a consolidation application

2.39 As no consolidation applications have been made relating to this area the SW Committee was not required to refuse the application under regulation 18(2)(g).

Reg 18(2)(b)(i) – Significant benefit: Reasonable choice with regard to obtaining pharmaceutical services

2.40 The SW Committee noted the map showing the location of existing pharmacies in the area and maps showing travel routes to the nearest pharmacy on foot, by car and bus.

2.41 The SW Committee noted the information provided on the opening hours of the nearest pharmacies to the proposed new pharmacy site within 2 miles (as per NHS website).

2.42 The applicant states the closure of the pharmacies will remove choice from local residents leaving Victoria Road pharmacy as the most likely option. They highlight the difficult journey to Victoria Road Pharmacy.

2.43 Some data is provided with regard to LSOAs and the proportion with access to a car. They also highlight car parking as an issue for patients of Victoria Road Pharmacy. Nearby car parks are pay and display and thus may present a barrier to people who would like to access pharmaceutical services but may be deterred from doing so frequently due to parking charges. They also state there is ample free parking at the proposed site.

2.44 The applicant states the journey by bus to Victoria Road pharmacy is itself a 4 – minute journey, however, patients living to the South of the proposed site will still have to walk a distance to be able to access public transport services. They highlight "when we account for walking time, bus waiting time and round journey's, journey time alone to a local pharmacy could exceed 45 minutes should this application not be granted". They state this does not provide adequate access to pharmaceutical services and presents barriers to access especially to groups such as the elderly, disabled, and parents with young children.

2.45 The SW Committee noted that access to Victoria Road Pharmacy is hindered by a steep hill, making the pharmacy difficult to access especially to groups such as the elderly, disabled, and parents with young children travelling on foot.

2.46 They state that walking to Victoria Road Pharmacy from the proposed location is a 36 minute round trip.

2.47 The SW Committee noted that Old Town is a discreet community within Swindon. Granting this application would support the population of this geography. The demographics are very varied for this area with both an older population who have been there for some time and a higher proportion of young adults on the "first rung of the housing ladder".

2.48 The Boots pharmacy that exited dispensed around 4,000 items a month and the Rowlands 6,000.

2.49 The SW Committee considered that there is a steep hill between the proposed location and the nearest remaining pharmacy. For those in Old Town there is now no choice but to travel to a different community in Swindon to access pharmaceutical services, when not that long ago there was a choice of two in Old Town. The activity information for the two pharmacies that have exited show that patients were choosing to use those services in Old Town.

2.50 The SW Committee was of the view that because of the limited accessibility and distance of the existing pharmacies by foot, car or by bus, granting the application would confer a significant benefit by way of access to, or choice of, pharmaceutical services.

Reg 18(2)(b)(ii) – Significant Benefit: Patients with a protected characteristic

2.51 The applicant suggests that the distance involved are a barrier particularly for those with disabilities. The Committee was of the view that there was little actual evidence of people who share a protected characteristic having difficulty accessing services that

meet their specific needs for pharmaceutical services that are difficult for them to access.

2.52 The SW Committee was of the view that granting the application would not confer significant benefits on people sharing a protected characteristic.

Reg 18(2)(b)(iii) – Significant Benefit: Innovative approaches to delivery of pharmaceutical services

2.53 No information has been provided by any party on this matter.

2.54 The SW Committee determined that granting the application would not lead to significant benefits by virtue of innovation.

Decision

2.55 The SW Committee determined the application SHOULD BE GRANTED as conferring a significant benefit, because:

2.55.1 It is not necessary to refuse the application under Regulation 31.

2.55.2 The improvements or better access which the applicants are proposing to secure were not identified in the PNA,

2.55.3 Granting the application would not cause significant detriment to the proper planning or arrangements in place for provision of pharmaceutical services,

2.55.4 The application does not presuppose that a gap in pharmaceutical services provision has been or is to be created as a result of a consolidation application,

2.55.5 There is not already a reasonable choice with regard to obtaining pharmaceutical services,

2.55.6 There is no evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services,

2.55.7 There is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services

Overall Decision

2.56 Noting that the [SFF] application for Identified future improvements or better access had been rejected, the SW Committee is of the opinion that the H.G. Hanks Ltd application for Unforeseen Benefits should be granted as it would secure improvements or better access to pharmaceutical services.

2.57 Regulation 65 – conditions relating to opening hours

2.58 A direction will be required for the additional Core hours: it was noted the SW Committee expects Core Hours to include weekday evening after 18:30 and Saturday.

Regulation 66 – conditions relating to providing directed services

2.59 H G Hanks Ltd has given an undertaking to provide a number of directed services. Therefore, it is a condition of the granting of the application that the contractor must provide those services if commissioned, and not withhold agreement to a service specification for those services unreasonably.

Appeal Rights

2.60 Boots UK Ltd Jhoots Pharmacy and Nisias Ltd are granted appeal rights. L Rowland & Co (Retail) Ltd are not granted appeal rights as they have not made a reasonable attempt to express their grounds for opposing the application adequately in their representations.

2.61 The SW Committee determined that [SFF] should NOT be granted third party appeal rights as they have not submitted representations regarding the HG Hanks application. [SFF] has appeal rights against the refusal of their application."

3 The Appeal

In a letter dated 29 July 2024 addressed to NHS Resolution, Pharmacy Sales and Consultancy on behalf of Nisias Ltd ("the Appellant") appealed against the Commissioner's decision. The grounds of appeal are:

3.1 "We act on behalf of Nisias Ltd who wish to appeal against the decision of Bath and North East Somerset, Swindon and Wiltshire ICB (ICB) to approve this application.

3.2 A letter of authorisation from our clients is attached to this document.

3.3 Also attached is a copy of the decision letter from South West Pharmaceutical Services Regulations Committee (PSRC). [see above at section 2].

3.4 We believe that the reasons for approving this application are flawed and appeal against the decision, on behalf of our client for the following reasons:

3.5 The ICB state within the decision report:

59 The SW Committee was of the view that because of the limited accessibility and distance of the existing pharmacies by foot, car or by bus, granting the application would confer a significant benefit by way of access to, or choice of, pharmaceutical services.

3.6 Yet despite the above they then state:

60. The applicant suggests that the distance involved are a barrier particularly for those with disabilities. The Committee was of the view that there was little actual evidence of people who share a protected characteristic having difficulty accessing services that meet their specific needs for pharmaceutical services that are difficult for them to access.

61 The SW Committee was of the view that granting the application would not confer significant benefits on people sharing a protected characteristic.

63 The SW Committee determined that granting the application would not lead to significant benefits by virtue of innovation.

3.7 Clearly the ICB have decided that people with protected characteristics do not have difficulties accessing existing pharmacies despite the applicant's claim that the distance to the next nearest pharmacy (our client's) is a "barrier". Nor has the applicant made a case for innovation.

3.8 The ICB have contradicted themselves by saying people with protected characteristics do not have difficulties accessing the existing services but then decide that distance does prevent patients (presumably without protected characteristics) accessing

services for those on foot, utilising public transport or travelling by car. That conclusion seems totally illogical.

3.9 We would ask NHS Resolution to take into account our previous comments within our initial objection letter dated 20th March, a copy of which is attached for ease of reference. [see below].

3.10 In addition to the points within that letter we would ask the committee to consider the following additional information:

3.10.1 The applicant is proposing to close at lunch times between 1.00-2.15 pm whereas our client is open from 9.00am - 6.00pm including through the lunch break.

3.10.2 Our client opens from 9.00 – noon on Saturdays which match the proposed core hours of the applicant. The hours the applicant is proposing beyond those are supplementary and can be reduced by giving the appropriate notice to NHSE.

3.10.3 The applicant has produced no evidence that they have secured the property where they are intending to open.

3.10.4 The applicant makes much of the petition that was set up to protest against the closure of the Boots store. As far as we are aware no such petition was set up when the Rowlands pharmacy closed within the Co-Op which is the intended premises should the application be approved. In addition, the petition was against the closure of Boots, not in support of a new contract application They are entirely different matters. In our opinion very little weight should be placed on this petition when making a decision in relation to this application.

3.10.5 It is immaterial that the applicant successfully runs other community pharmacies in the area.

3.10.6 The applicant states that it could take 45 minutes to catch a bus from his intended site to our client's pharmacy. The screenshot [Appendix B] shows the journey in fact takes less than 10 minutes including to/from the appropriate bus stops at either end.

3.10.7 As can be seen from this screenshot [see Appendix B] the buses run every 15 minutes so we would refute the suggestion that patients have difficulties reaching our client's pharmacy by public transport.

3.10.8 We have extracted some data from the 2021 census and note the following for the Eastcott Ward in which the proposed location is situated:

3.10.8.1 Only 9% of residents are over the age of 65 compared to a national figure of 17.1%.

3.10.8.2 In terms of disability in the area we have extracted the table below which shows there are fewer people with limited day to day activities compared to the national average and a higher percentage have no long term physical or mental health issues.

Disability	Ward 2022: Eastcott		Country: England	
	Number	%	Number	%
Total: all usual residents	12,024	100.0	56,490,048	100.0

Disabled under the Equality Act: Day to day activities limited a lot	539	4.5	4,140,357	7.3
Disabled under the Equality Act: Day to day activities limited a little	1,018	8.5	5,634,153	10.0
Not disabled under the Equality Act: Has long term physical or mental condition but day to day activities are not limited	761	6.3	3,586,029	6.8
Not disabled under the Equality Act: No long term physical or mental health conditions	9,706	80.7	42,859,509	75.9

3.11 We concede that car ownership is lower than the national average. However, that may be due to the area being very close (about 1km) to Swindon town centre where there are excellent public transport facilities, including a train station. Many major towns/cities have lower than average car ownership figures as residents don't necessarily need cars to travel around.

3.12 Furthermore, data from the 2019 English indices of deprivation shows that the area is ranked 24,688 out of 32,844 so in the top 25% least deprived areas of the country.

3.13 Overall, these demographics paint a picture of a relatively young, healthy population who are mobile and are therefore able to access pharmacies in the surrounding areas.

3.14 We do not believe residents have difficulty accessing our client's pharmacy and would like to make the panel aware of the following

3.14.1 Our client only acquired this pharmacy in November 2023 and after settling in have started to make some improvements

3.14.2 Within the last few weeks our clients have undertaken some building works on the entrance of their pharmacy, making the premises more accessible to the public and adding a ramp to accommodate pushchair/wheelchair users. [see Appendix B]

3.14.3 For those that do have access to a motor vehicle the journey between the proposed site and our client's pharmacy only takes 3 minutes under normal driving conditions. [see Appendix B]

3.14.4 There is free car parking for up to an hour along Cross Street which is to the side of our client's pharmacy and directly to the rear of the pharmacy is Regent Circus car park.

3.14.5 Shortly after taking over the pharmacy our client realised there is a demand for services on Saturday mornings so have started opening between 9.00 and noon (see the screen shot [at Appendix B] taken from their website).

3.15 Taking all of the above into account we do not believe there is a gap in services within the area. There are several pharmacies within easy reach of the proposed application site and the reasoning for the ICB approving the application at the initial stage is flawed We respectively suggest that this application should be refused at the appeal stage.

3.16 Finally, should the application progress to an oral hearing either our client, and/or their representatives would wish to attend."

In a letter of 20 March 2024 addressed to PCSE, PSC stated:

3.17 "We act on behalf of Nisias Ltd t/a Victoria Pharmacy, 171 Victoria Road SN1 3DF.

3.18 An authorisation letter from our client is attached to this document.

3.19 We refer to your e-mail dated 10th March sent to our client informing them of this application.

3.20 In addition our client also received an e-mail on 9th March informing them that this application was to be considered together and in relation to an application submitted by [SFF] (CAS-260694-F9Y0M0) .

3.21 We are also instructed to object to that application and have responded separately.

3.22 On behalf of our client, we wish to object to the application from H G Hanks Ltd as follows:

3.23 This application appears to be based primarily on the closure of the Rowlands store which was originally operating from within the Co-op and the subsequent closure of the nearby Boots store in February 2024.

3.24 The ICB will be fully aware that the closure of a pharmacy/pharmacies does not mean an application should automatically be approved to replace it. If the HWB felt that this closure had led to a gap in services in the vicinity, they had the opportunity to issue a supplementary statement to the PNA inviting applications to fill the perceived gap.

3.25 To our knowledge no such supplementary statement has been issued. Therefore, one assumes the HWB have looked at the situation and decided no gap in services has been created as a result of these closures on the basis that the existing network is sufficient to meet patient demands.

3.26 Based on information taken from the NHS website there are nine existing contractors located within a mile radius of the proposed site. That number would seem to be more than sufficient to cope with any perceived additional demand for services in the area. It also offers plenty of patient choice in terms of provider, opening hours and services.

3.27 We believe the Rowlands store closed in July/August 2023 and the Boots store in February 2024. Based on information taken from Pharmdata the Rowlands Pharmacy was dispensing around 6,000 items/month and the Boots store around 4,000 items/month prior to the Rowlands closure.

3.28 Both of those pharmacies were dispensing less than the national average items/month and with so many competitors within easy access of these closures there is no evidence to suggest the competing pharmacies cannot absorb these additional items.

3.29 On page 2 of the supporting document, it states that the area is well served by number 11/12 bus service and there is plenty of car parking at the proposed site suggesting that people travel to the area by motor vehicle. That would indicate they are mobile and able to access other nearby competitors.

3.30 The applicant also seems to put a lot of faith in a local petition. That petition was aimed at preventing the closure of the Boots store. It does not mean these people cannot travel to surrounding pharmacies and, based on the item numbers above, it was not as well supported as the applicant seems to imply.

3.31 We believe the ICB should put very limited weight on this aspect of the application when making their decision.

3.32 The applicant states that he intends to open extended hours in the week but has produced no evidence that there is a demand for services during these extended hours.

He then adds that “it should be noted the applicant has committed to all day Saturday opening hours” However, the core hours on a Saturday are 9.00-12.00 with the remainder being supplementary hours which can, of course, be reduced simply by giving the required notice.

3.33 It is interesting to note that the applicant has made no mention of GP surgeries within the area. Based on the NHS website the nearest two practices are:

3.33.1 Victoria Cross Practice 168/169 Victoria Rd SN1 3BU – 0.3 miles from the proposed site

3.33.2 The Lawn Medical Centre Guildford Road SN3 1JL – 0.6 miles from the proposed site

3.34 The distances from the intended site indicate that local residents currently travel to see their GP and in doing so can easily access pharmacies situated close to the surgeries at the same time. That would indicate a mobile population.

3.35 Taking the above into account we do not believe there is a gap in services within the area and respectfully urge the ICB to refuse the application as it does not meet the criteria of Regulation 18.

3.36 Finally, should this application progress to an oral hearing our client or their appointed representatives would wish to retain the right to attend.”

4 Summary of Representations

This is a summary of representations received on the appeal.

4.1 THE COMMISSIONER

4.1.1 “Thank you for your letter, received 15th August 2024, addressed to Mr Speight at Primary Care Support England (PCSE) enclosing a copy of the appeal as detailed above. The South West Pharmaceutical Services Regulations Committee (SW Committee) wishes to make the following comments on the appeal.

4.1.2 The SW Committee would respectfully suggest that, following the closure of two pharmacies in the area, one at the proposed site which closed in July 2023 and one at 35 Wood Street in February 2024, choice in the locality has materially reduced. The activity at the pharmacies that have closed is evidence that patients chose to use and valued services in that area.

4.1.3 The SW Committee noted the application is in an area referred to as Swindon Old Town, which is a discreet community with a varied demographic: focused on elderly and young families. With the two closures mentioned, the SW Committee noted there is now no community pharmacy serving this local community. This leaves no reasonable choice of provider for residents of Swindon Old Town, meaning they have to travel to a different community in Swindon to access pharmaceutical services. Noting the range of services now being offered by community pharmacies, access to services from within the local community was considered to be a significant benefit, increasing the likelihood of engagement, reducing demand on other health partners.

4.1.4 The SW Committee notes the appellant suggests there is contradiction in the appeal decision relating to difficulties in accessing existing services. The SW Committee would like to clarify that it concluded there was little evidence

supplied in respect of Reg 18(2)(b)(ii), therefore, the application is not approved under that Regulation, as no evidence was presented for consideration. The assessment undertaken by the SW Committee did, however, demonstrate limitations relating to access for all patients, so the application is approved under Reg 18(2)(b)(i) significant benefit and reasonable choice.

4.1.5 The SW Committee respectfully requests that the decision to approve the application is upheld."

4.2 HEALTHCARE PLUS CONSULTING LTD ON BEHALF OF THE APPLICANT

4.2.1 "Thank you for your letter dated 14th August 2024. We provide responses to the appeal received against the grant of my client's Unforeseen Benefits application.

Appeal Comments

4.2.2 We submit these appeal comments in addition to our client's original application and further comments that were previously submitted to NHS England. We reattach these previous comments [see 4.2.86 below] and the original application [see above at section 1] for re-consideration by NHS Resolution. We highlight to NHS Resolution that the following is still undisputed throughout all representation:

4.2.2.1 It is undisputed that the hill on Victoria Road constitutes a barrier to access to current nearest pharmaceutical provision.

4.2.2.2 It is undisputed that the late evening hours proposed by my client will improve evening access for the whole of South Swindon.

4.2.2.3 It is undisputed that vehicular access is poor for those that reside near the proposed site.

4.2.2.4 Pharmaceutical provision in Swindon is generally poor with an average of only 17 pharmacies per 100,000 people, compared to an average of 21 pharmacies per 100,000 people in England. Note these figures are taken from the PNA prior to the recent pharmacy closures in the town.

Swindon Pharmaceutical Needs Assessment (PNA)

4.2.3 NHS Resolution will be aware that the PNA for the local area is drawn up every 3 years and is tailor-made to the specific health needs of the local population. Hence, PNA's form vital insight into localised health needs; and thus, it is prudent to assess the merits of any application for inclusion in the pharmaceutical list against the guidance written within the PNA. In this instance it is the Swindon PNA that is of relevance.

4.2.4 There are a number of conclusions within the Swindon PNA that are of importance in the context of my client's application. We highlight that the Health & Wellbeing Board, who are the authors of the PNA, and best-informed on local health needs are supportive of this application. We trust that the Committee will give due consideration to the following points made within the Swindon PNA.

4.2.4.1 “For community pharmacy services, this reinforces a continued shift from the traditional role of dispensing to one of providing a much broader range of clinical, health and wellbeing services.” (Point 2.5, pg.10)

4.2.4.2 “Pharmacies are crucial to redesigning and reducing pressure on healthcare services, such as local emergency pathways, that are crucial in supporting the local population.” (Point 2.6, pg.10)

4.2.4.3 “Pharmacies are well placed to enable a healthier nation through maximising behaviour change to encourage healthy choices such as stopping smoking, improving diet and nutrition, increasing physical activity, losing weight and reducing alcohol consumption.” (Point 2.8, pg.11)

4.2.4.4 “The vision for Health and Wellbeing in Swindon is that: “Everyone in Swindon lives a healthy, safe and independent life and is supported by thriving and connected communities”.” (Point 4.4, pg.18)

4.2.4.5 “Swindon HWB recognises the benefits associated with integrated service delivery and hence better healthcare provision when community pharmacies are co-located with GP practices, walk in centres and other community health and social care providers. Equally it also recognises that patients should have the choice of accessing community pharmacies in town centres and out of town supermarkets.” (Point 11.5, pg.45)

4.2.4.6 “People chose which pharmacy to use based on many different factors. Many of these are practical e.g. parking, opening hours, general location and near to other services such as GP or supermarket.” (Point 8.3, pg.37)

4.2.5 We note that the Swindon PNA is clear in its vision for pharmacies to play an important role within communities, especially in providing wider health & wellbeing services. There is currently no pharmacy situated within the Old Town community and thus this may discourage residents from accessing pharmaceutical provision. This in turn ultimately causes poorer health outcomes and increased strain on the primary care network.

4.2.6 The location proposed by my client is situated c.120 metres from Hermitage Surgery, collocated with the Co-operative supermarket, and in a bustling retail location. It is clear that a pharmacy at the proposed location would provide better access and choice to pharmaceutical provision. A pharmacy situated at this location would also encourage the local population to seek help on wider health needs within their community.

4.2.7 The Committee will be aware that pharmacies are no longer just tasked with the dispensing of medication and are now community hubs for a whole host of important NHS Services such as Pharmacy First, Flu Vaccines, Contraception Services, Hypertension services, Smoking cessation services, etc… Thus, it is important that pharmacies are accessible to all, and that people do not find journeys too onerous. Overly difficult/ expensive journeys discourage patients from accessing these services, which is why it is important for pharmaceutical provision to be located amongst amenities that resident’s access as part of their daily lives.

4.2.8 We highlight those services proposed by my client, such as smoking cessation, will have a profound positive impact on the local community. The PNA also notes that:

4.2.8.1 “Smoking attributable mortality is higher in Swindon compared to the South West and England. Reducing the prevalence of smoking in the population represents a huge opportunity for public health, as smoking is the single biggest preventable cause of early death and illness.” (Point 5.17, pg.22)

4.2.9 Clearly there is a need for pharmacies within communities to help tackle these smoking issues. This is even more acute when we recognise that the PNA is vocal about the lack of smoking cessation provision in central areas, stating:

4.2.9.1 “Smoking remains the leading cause of health inequalities and preventable illness. To increase access of support to smokers who wish to quit, smoking cessation services should be available in all areas of Swindon and all pharmacies should be encouraged to participate in the provision of this service. Currently, only one pharmacy in the Central PNA area is providing this service.” (Point 11.13, pg.47)

4.2.10 It is clear that granting my client’s application would improve smoking cessation services in Central areas.

4.2.11 The PNA also highlights the ageing population within Swindon stating that:

4.2.11.1“Overall, the population aged 65 years, or more is projected to grow by 17,800 persons (from 2018) by 2031, which accounts for 89% of the total population growth. This is expected to have important implications for the health of those ageing, including increased need for medication and prevention advice, falls/hip fractures, healthy life expectancy/quality of life in old age, and patient choice to die at home. With an ageing population there is expected to be an increase in the number of vulnerable older people, including those with visual, hearing and cognitive impairment, individuals living alone, individuals living in council and non-council care homes and individuals in fuel poverty.” (Point 5.6, pg.20)

4.2.12 We highlight that there will be an “increased need for medication and prevention advice”, however patients are only able to obtain this advice if there are accessible and convenient pharmacies. The co-location of my client’s proposed site with the Co-operative and closeness to the Hermitage Surgery will encourage elderly patients to seek prevention advice alongside a whole host of NHS commissioned services.

2021 Census Data

4.2.13 The Appellant has quoted census data from the Eastcott Ward in support of their appeal. We are unsure as to why data from this ward has been quoted, as the proposed site is situated in the Old Town Ward NOT the Eastcott Ward.

4.2.14 However, we note that 32.2% of households in the Eastcott Ward do not have access to a car/van, compared to the 19.3% average for Swindon.

4.2.15 Whilst those that are disabled under the equality act are less than the national average; the fact remains that 13% of residents in this ward have some form of disability.

4.2.16 This also holds true for those over the age of 65. Whilst the number of residents in the Eastcott Ward over the age of 65 is less than the national average; the fact remains that 9.5% of residents in this ward are still elderly.

4.2.17 We also highlight to the Committee that modelling suggests that Long Term Conditions (e.g. asthma, coronary heart disease, most cancers, Chronic Obstructive Pulmonary Disease (COPD), Chronic Kidney Disease (CKD), dementia, diabetes, epilepsy, stroke) is present among 32.2% of the Swindon population, with a prevalence among people aged 65 years or more of 69.3%. (Point 5.19, pg.22, Swindon PNA)

4.2.18 As highlighted in previous correspondence, it is much more prudent to look at the statistics for the Lower-Layer Super Output Areas (LSOAs) to understand the needs of the localised population.

4.2.19 My client's proposed location is situated in the Swindon 024B LSOA. Residents within this LSOA have poor access to a car/van with 28.9% of households having no access to a car/van compared to 23.5% of households in England and 19.3% of households in Swindon. Adjacent LSOAs also have similarly poor access to a car/van with 25% of households in the Swindon 019D LSOA having no access to a car/van and a staggering 42.9% of households in the Swindon 019F LSOA having no access to a car/van.

4.2.20 It is clear that car ownership is poor in the areas surrounding the proposed site. We acknowledge that this may be asymptomatic of the more central location of Old Town, however this does not detract from the fact that ultimately less people have access to a car.

4.2.21 Common sense would dictate that the less people that have access to a car means less people that have sufficient access to pharmaceutical provision.

4.2.22 We also note that residents of the Swindon 024B LSOA (the LSOA which the proposed site is situated) are more elderly than Swindon and England averages. 22.8% of residents of the Swindon 024B LSOA are aged over 65, this is in comparison to 18.3% of residents for England and 15.9% of residents in Swindon. It is clear that there is a greater elderly population near the proposed site, who consequently have greater health needs. When we consider the high proportion of elderly residents; it can be supposed that many elderly residents may own cars but may not utilise them due to confidence issues when driving.

4.2.23 Indeed, there may also be residents who drive but may not feel comfortable doing so during emergencies or during the winter months. Hence, those that utilise a car within the localised area is likely to be much less than the 71.1% of residents reported by census data.

4.2.24 This lack of vehicular access and the elderly population can very much be seen from testimony provided by local residents through emails received in support of my client's application:

"There are many older people in the area that rely on this service who don't have transport and don't use online facilities."

"It's also difficult for the elderly that may not drive and also young parents with children in pushchairs."

"Being retired and a non driver it would be helpful to have one in walking distance and Victoria Hill can be a challenge."

"Since the previous one closed it has been increasingly difficult for my wife and myself as pensioners to access the services we require."

"We do not have a car, so getting into the town centre is expensive and difficult."

4.2.25 Many more emails of patient experiences and support for my client's application have been appended to this document and we urge the Committee to read these in full.

Accessibility

Physical Accessibility

4.2.26 From census data and patient testimony above it is clear that there are a number of residents who must access pharmaceutical provision by foot or by bus.

4.2.27 As highlighted in previous correspondence and is undisputed by all parties, the hill on Victoria road constitutes a barrier to access for those patients in a wheelchair/ mobility scooter/ or of impaired mobility.

4.2.28 This hill is continuous for a length of around 300 metres, with the gradient averaging 6.25% or 1 in 16. For context, guidance states that a disabled access ramp should have a gradient of no more than 1 in 20 for a maximum ramp length of 10 metres. It is notable that the hill on Victoria Road is not only longer, but also steeper than such a ramp.

4.2.29 We highlight that the distance to Victoria Road Pharmacy (the nearest pharmacy) is 18 minutes for able-bodied persons by foot using the 2 miles per hour walking pace utilised in the PNA. This exceeds the 15-minute walking target stipulated within the PNA. (Point 9.2, pg.43, Swindon PNA)

4.2.30 We also note that Victoria Road Pharmacy until recently had stepped access and have installed ramps to their entrance, supposedly making their pharmacy more accessible. Please find before and after photos [see Appendix C].

4.2.31 Whilst it is pleasing that Victoria Road Pharmacy recognise the need for disabled access ramps; the manner in which these have been installed is concerning. We submit that the recent installation falls well short of the Disability Discrimination Act (DDA) guidelines, and actually believe that the works have made the pharmacy even less accessible.

4.2.32 As part of our site visit, we took rough measurements of the access ramps in question and found the following:

4.2.32.1 The grey ramp is approximately 110cm in Length, 100cm in width, and 26cm in height. This means that the gradient of the grey ramp is approximately 1:4.

4.2.32.2 The brown ramp is approximately 110cm in Length, 80cm in width, and 50cm in height. This means that the gradient of the grey ramp is approximately 1:2.

4.2.32.3 The landing in between the ramps is approximately 80cm in length

4.2.32.4 There are no handrails for the ramp

4.2.32.5 The ramp does not have raised kerbs

4.2.32.6 There is a sharp concrete block adjacent to the grey ramp

4.2.33 We highlight to the Committee that DDA specifications are incorporated into the Equality Act 2010 and non-compliance is ultimately in breach of law. Looking further at DDA ramp requirements:

4.2.33.1 Maximum gradient of a ramp should not exceed 1:12 for ramps up to 2 metres in length

4.2.33.2 Landings should be a minimum 1.5 metres in length

4.2.33.3 The minimum width of a ramp is 1.2 metres

4.2.33.4 Handrails are required on the side of the ramp

4.2.33.5 The ramp should have raised kerbs at least 100mm high

4.2.34 From the requirements above it is clear that the ramps installed by Victoria Road Pharmacy fail to meet DDA requirements:

4.2.34.1 Both ramps are far too steep

4.2.34.2 The landing is almost half the required length

4.2.34.3 Both ramps are below the minimum specified width

4.2.34.4 There are no handrails

4.2.34.5 There are no raised kerbs at least 100mm high

4.2.35 It is patently clear that the ramps in question fail numerous DDA requirements and ultimately render Victoria Road Pharmacy inaccessible. It is disappointing that Victoria Road Pharmacy were unable to meet these requirements when constructing these ramps, however, we submit that this is likely due to the impossibility of the situation. Given that Victoria Road Pharmacy is raised significantly above pavement level and has limited land to the front of the unit, we submit that it is likely that compliant disabled access will never be possible at this site.

4.2.36 We also submit that the changes have made it more dangerous for able-bodied persons to access the premises. The steps are now narrow in width and persons could quite easily lose footing and injure themselves on the protruding edge of the concrete slab.

4.2.37 By way of contrast, the disabled access ramp at the Co-operative is DDA compliant, and situated right outside the proposed pharmacy as can be seen in the images below. [see Appendix C]

4.2.38 It is apparent that the entrance to Victoria Road Pharmacy will never be able to provide sufficient access to those groups who share protected characteristics and access in its current form could also be dangerous for able-bodied persons. This is notwithstanding the barrier to access that the hill on Victoria Road presents. It is evident that Victoria Road Pharmacy does not provide reasonable choice to pharmaceutical provision.

4.2.39 The difficulty in journeys to alternative pharmaceutical provision is evidenced in emails received by local residents in support of my client's application:

"I suffer with back pain and have to pick up a prescription from the Victoria road pharmacy today, and I am dreading it!"

"Desperately showing my support for a new pharmacy in Old Town. I have mobility issues and have struggled being transferred twice in recent times due to closures. Please make my life easier."

"Being retired and a non driver it would be helpful to have one in walking distance and Victoria Hill can be a challenge."

4.2.40 It is evident that Victoria Road Pharmacy is difficult to access for those groups who have mobility issues. It is concerning to hear that patients "dread" a trip to the pharmacy and are "desperate" for a new pharmacy in Old Town; given the difficulties they face in navigating the hill on Victoria Road.

Parking Accessibility

4.2.41 As previously highlighted, Victoria Road Pharmacy has extremely limited parking for patients. There are only 3 road parking spaces that could be utilised to access Victoria Road Pharmacy. This is evidently insufficient for any pharmacy, especially in this case when we consider just how inaccessible the hill on Victoria Road is. This is in stark contrast to the parking available at my client's proposed site, which is plentiful and contains dedicated disabled spaces.

4.2.42 Although Regent Circus car park is nearby, this car park is not free, and the parking charges constitute a barrier to accessing pharmaceutical provision for a number of residents.

Accessibility by bus

4.2.43 Whilst we submit that the 11/12 bus runs every 15 minutes from the proposed site to Victoria Road Pharmacy, we reiterate that there will be a number of patients who still have a significant walk to access this bus. When we account for walking time, bus waiting time and round journey's, journey time alone to a local pharmacy could exceed 45 minutes for some residents.

4.2.44 We also highlight that bus charges can present a barrier to accessing pharmaceutical services and deter people from seeking pharmaceutical advice or services in addition to dispensing. A pharmacy at the proposed site will situate a pharmacy within a supermarket and adjacent to a whole host of local amenities that patients who utilise the bus are already likely to access, hence there is no extra cost associated with accessing pharmaceutical provision.

4.2.45 In any case, as demonstrated above, the entrance to Victoria Road Pharmacy is not DDA compliant and not accessible.

Alternative Pharmaceutical provision

4.2.46 We also highlight to the Committee that alternative nearby pharmaceutical provision does not provide reasonable choice or access for residents living near the proposed site:

4.2.47 Epicare Health Pharmacy (SN1 5PL)

4.2.48 This pharmacy is a 1.8-mile or 54-minute round journey by foot, and also requires patients to navigate the hill on Victoria Road. This does not represent reasonable choice/ access to pharmaceutical provision by foot.

4.2.49 Patients who utilise the bus to access this pharmacy are still required to walk 0.3 miles to access the pharmacy after alighting from the bus. This may prove difficult for the elderly or for those groups who share protected characteristics. As always, bus travel can present a cost barrier to access.

4.2.50 As a consequence of the town-centre location of this pharmacy, on-street parking is either double-yellow or limited to residents and thus patients would likely utilise paid car parks such as that on Granville Street. Again, this is a cost barrier to accessing pharmaceutical provision.

4.2.51 Boots (SN1 1LF)

4.2.52 This pharmacy is a 2-mile or 60-minute round journey by foot, and also requires patients to navigate the hill on Victoria Road. This does not represent reasonable choice/ access to pharmaceutical provision by foot.

4.2.53 Patients who utilise the bus to access this pharmacy are still required to walk 0.3 miles to access the pharmacy after alighting from the bus. This may prove difficult for the elderly or for those groups who share protected characteristics. As always, bus travel can present a cost barrier to access.

4.2.54 As a consequence of the town-centre location of this pharmacy, on-street parking is either double-yellow or limited to residents and thus patients would likely utilise paid car parks. Again, this is a cost barrier to accessing pharmaceutical provision.

4.2.55 Swindon Health Centre Pharmacy (SN1 2DQ)

4.2.56 This pharmacy is a 2-mile or 60-minute round journey by foot, and also requires patients to navigate the hill on Victoria Road. This does not represent reasonable choice/ access to pharmaceutical provision by foot.

4.2.57 Patients who utilise the bus to access this pharmacy are still required to walk 0.3 miles to access the pharmacy after alighting from the bus. This may prove difficult for the elderly or for those groups who share protected characteristics. As always, bus travel can present a cost barrier to access.

4.2.58 As a consequence of the town-centre location of this pharmacy, on-street parking is either double-yellow or limited to residents and thus patients would likely utilise paid car parks. Again, this is a cost barrier to accessing pharmaceutical provision.

Other matters raised by the Appellant

4.2.59 The Appellant appears to criticise the petition against the closure of the Boots and claims this is not relevant. We respectfully disagree with the Appellant and submit that the petition against the closure of the Boots speaks to the real-world issues and access difficulties of local residents. Indeed, the appeals Committee have recently upheld the relevance of a petition against the closure of a Boots store for a new contract application - Point 6.42, pg.33, SHA/26212 & SHA/26213. We trust that the Committee will remain consistent in their evaluation of the relevance of the petition against the closure of the Boots in Old Town, Swindon.

4.2.60 The Appellant also appears to question whether or not my client has secured the proposed premises. We are unsure as to the need to provide this documentation given that we are the only Applicant for this site, however, for the benefit of the Committee we attach a redacted version of my client's agreement with the Landlord below [see Appendix D].

Location

4.2.61 We reiterate that the Proposed Location is co-located with the well-used Co-operative Supermarket in Old Town. The supermarket is surrounded by numerous alternative shops and restaurants and is very much a place residents visit in the course of their daily lives.

4.2.62 We again note that the Proposed site is located c.120 metres from the Hermitage Surgery. Patients who were previously accustomed to accessing pharmaceutical provision in connection with a visit to the surgery now have two journeys to make: the first to the GP practice, and then a further 0.6 miles to access Victoria Road Pharmacy. We submit that this 'double journey' is not representative of reasonable choice or access to pharmaceutical provision. This holds especially true for residents with limited mobility and those with acute prescriptions from the GP requiring urgent access to pharmaceutical provision.

4.2.63 The HWB are explicit in their vision for Health and Wellbeing in Swindon stating: "Everyone in Swindon lives a healthy, safe and independent life and is supported by thriving and connected communities" (Point 4.4, pg.18).

4.2.64 A stated goal within the PNA is for residents to experience 'safe lives'. From their site visit the Committee will be aware that the journey from the proposed site to pharmacies toward the town-centre (including Victoria Road Pharmacy) is dimly lit and can be intimidating during darker hours/ the winter months. This is raised by Laura who is unable to drive due to her epilepsy and thus is forced to walk to access pharmaceutical provision: "town centre in recent times hasn't always felt the safest place for a female to walk alone - especially with a bag laden with medication."

4.2.65 A pharmacy at the proposed site would enable patients to feel safer when accessing pharmaceutical provision and would contribute to a thriving and connected Old Town community.

Further Experiences from those groups that share Protected Characteristics

4.2.66 We would like to draw the Committee to further lived experiences of some local residents who have written in support of the application:

4.2.67 [N] states:

"My son is a type 1 diabetic and my partner has chronic asthma, a local pharmacist is such a help."

4.2.68 As demonstrated above, alternative pharmaceutical provision is situated in the town-centre which must be accessed via the hill on Victoria Road. We do not believe that traversing this hill with asthma constitutes sufficient access to pharmaceutical provision.

4.2.69 [S] highlights:

"My household is made up of myself, on HRT, my husband, has renal failure and diabetes, my father, has cancer, my mother, on statins, and my two young children.

As you can imagine we have a vast array of medication that is required (in fact we could probably open our own pharmacy) and to have a pharmacy local to our GP Surgery is essential (we are registered with Hermitage Surgery)."

4.2.70 [S] highlights the importance of having a pharmacy located close to a GP surgery for her family who have greater health needs, the importance of which is explicitly mentioned within the PNA.

4.2.71 [C] who works at Chatsworth House in Old Town providing specialist NHS mental health and psychological services to those with learning disabilities highlights that a pharmacy in Old Town:

"will make a huge difference to us when we need to give out an FP10 in an emergency. It would make things so much easier if we could recommend a local pharmacy for the service users to attend to collect the medication."

4.2.72 It is notable that Chatsworth House is located in Old Town, 0.2 miles from the proposed site, and atop the hill on Victoria Road. Given that these patients are especially vulnerable, it is imperative that they have a pharmacy located nearby and alongside other services in the community that they usually access. As highlighted previously, the journey to pharmacies down Victoria Road is dimly lit and perhaps not the safest route in dark and inclement weather. Whereas, granting this application would restore pharmaceutical provision to Old Town and allow these patients to access a pharmacy in high-footfall area, and in an area that they are accustomed/ familiar with accessing a pharmacy.

4.2.73 [A] highlights:

"I live off Croft Road. Since the closure of the Boots Pharmacy in Old Town my nearest pharmacy is at the bottom of Victoria Hill or the Boots in the centre of Swindon.

I am in my mid 60s and do not drive due to health problems, and my main form of transport is an electric tricycle. I have to take various medications all the time. While getting into the centre of Swindon is hard work and inconvenient at the best of times, when I am ill it is impossible.

When ill I have to rely on the goodwill of neighbours and friends to collect prescriptions, and it is important to them to have free parking nearby to the Pharmacy. A pharmacy in the Old Town Co-op fulfils that brief, while the next two nearest pharmacies cannot."

4.2.74 [A], who is reliant on the use of an electric tricycle to access pharmaceutical provision expresses her difficulty in now accessing pharmaceutical provision. Certainly, [A] is unable to access Victoria Road Pharmacy with her tricycle given the DDA compliance issues at this pharmacy. This means that [A] currently has to endure over a 2-mile journey to access pharmaceutical provision in the town centre. Surely this cannot be representative of reasonable choice and access to a pharmacy, especially during inclement weather?

4.2.75 [A] also highlights the issue with parking at alternative pharmacies in the area for when friends & family pick up her prescription on her behalf. This could lead [A] to feelings of guilt/ inadequacy as she asks people for favours, and they suffer parking charges as a result.

4.2.76 This is far from the 'independent' lifestyles that the Swindon Health & Wellbeing Board determine that pharmacy provision should provide. Granting this application would significantly improve [A]'s situation.

4.2.77 It is apparent that groups with protected characteristics would benefit significantly from the granting of my client's application.

4.2.78 We highlight to NHS Resolution that the attached emails [see Appendix D] contain further examples of residents who share protected characteristics struggling to access pharmaceutical provision.

4.2.79 We also highlight the fact that many afflicted elderly residents are not able to write in via email and thus NHS Resolution must account for these residents when making any determination.

4.2.80 In this context, we believe that NHS Resolution should place weight upon emails from representatives who ultimately provide these elderly residents with a voice:

4.2.80.1 Old Town Residents Association email

4.2.80.2 Cllr Nadine Watts email

4.2.81 The emails from the above bodies have also been attached to this appeal.

Conclusion

4.2.82 In conclusion, upholding this application grant would secure better access and improvements to pharmaceutical services for Old Town and the surrounding areas, especially during late weekday evenings and on Saturday's.

4.2.83 It is apparent that alternative pharmaceutical provision is inaccessible and a pharmacy at the proposed location would improve pharmaceutical access in the course of people's day to day lives within the Old Town community. The elderly, disabled, and the wider population are likely to find the proposed pharmacy significantly more accessible than their current choices and it would remove the barriers to access of Victoria Road hill, paid parking, and bus fares.

4.2.84 Numerous residents, the MP, and the Health & Wellbeing Board are supportive of the application.

4.2.85 Hence, regulation 18 has been met and the grant of this application should be upheld."

In a letter to the Commissioner dated 6 May 2024 Healthcare Plus Consulting Ltd on behalf of the Applicant stated:

4.2.86 "Thank you for your letter dated 28th February 2024. We welcome comments from all local parties and note the following:

4.2.86.1 The other applicant, [Mr F], has chosen not to provide representation. We can only assume that this is because he has no objections to the application.

4.2.86.2 It is undisputed that parking charges form a barrier to access current nearest pharmaceutical provision.

4.2.86.3 It is undisputed that the hill on Victoria Road constitutes a barrier to access to current nearest pharmaceutical provision.

4.2.86.4 It is undisputed that the late evening hours proposed by my client will improve evening access for the whole of South Swindon.

4.2.87 Taking each relevant representation in turn overleaf:

Swindon Health and Wellbeing Board (HWB)

4.2.88 We welcome the support from the Swindon HWB for this application. As authors of the Pharmaceutical Needs Assessment (PNA), the HWB are the best-informed authority as to whether pharmaceutical provision is required.

4.2.89 Hence, it is pleasing to hear that they to believe that granting this application would secure better access and improvements to pharmaceutical provision, especially with the longer opening hours proposed.

4.2.90 We can confirm that my client will be operating a free home delivery service.

Local Pharmaceutical Committee (LPC)

4.2.91 The LPC focus heavily on the PNA and lack of identified need within this document. 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. Thus, comments by the LPC surrounding the PNA are widely irrelevant.

4.2.92 We also point the LPC to the comments made by the HWB, authors of the PNA, who are supportive of this application despite not explicitly identifying a need in the PNA.

4.2.93 The LPC also mention the "reduction of clustering pharmacies", however we note that the regulations do not make mention of this and are centred around improvements and better access in pharmaceutical provision. Thus, no weighting should be placed on these comments. We also note that the next nearest pharmacy is 0.6 miles away – this can hardly be described as a 'clustering' of pharmacies.

4.2.94 The LPC also mention that the recently closed Boots did not open in the evenings. This is true, however the recently closed Rowlands Pharmacy, SN1 3EG, was open till 6.30 p.m. Granting this application would secure better access and improvements to pharmaceutical provision during late evenings.

Boots

4.2.95 Comments from Boots, much like that from the LPC, centre around the PNA and lack of identification of a need. Again, 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.

4.2.96 We would point Boots towards the comments made by the HWB, authors of the PNA, who are supportive of this application despite not explicitly identifying a need.

4.2.97 We also note that Boots claim that there are 7 contractors under a mile from the proposed site. This distance is as the crow flies and not the situation in reality. There is only one pharmacy within a mile of the proposed site when we take into account practicable routes - Victoria Road Pharmacy.

4.2.98 Boots also take issue with the arbitrary marker that has been used in my client's application. Whilst we agree that not all residents will start their journey here, it is impractical to assess patient journeys from every single household. The arbitrary marker is very sensible in that it is at a location where residents area accustomed to accessing local amenities as part of their daily lives. The arbitrary marker is also very fair in terms of location; alternative markers to the South of the Proposed Site would produce more onerous journeys, as detailed in my client's original application.

Jhoots

4.2.99 Jhoots raise concern with the date of the application. These comments are irrelevant, as both the Rowlands and the Boots are now closed and were closed well before the end of the circulation of my client's application.

4.2.100 Jhoots also raise issue with the arbitrary marker used by my client. Much like our response to Boots, whilst we agree that not all residents will start their journey here, it is impractical to assess patient journeys from every single household. The arbitrary marker is very sensible in that it is at a location where residents are accustomed to accessing local amenities as part of their daily lives. The arbitrary marker is also very fair in terms of location; alternative markers to the South of the Proposed Site would produce more onerous journeys, as detailed in my client's original application.

4.2.101 Jhoots also highlight that Victoria Road pharmacy is only 0.6 miles away. My client has already highlighted the difficulty of the journey to Victoria Road pharmacy.

4.2.102 For Jhoots' clarity, this application is driven by the gap in provision left by both the Boots and Rowlands closures. This has been mentioned numerous times in my client's application.

4.2.103 Jhoots highlight that "it is common for those residing in more central areas for people to have lower car ownership". Whilst we submit that such a statement appears fair, this does not detract from the fact that ultimately less people have access to a car. Common sense would dictate that the less people that have access to a car means less people that have sufficient access to pharmaceutical provision. In the context of Regulation 18, a pharmacy at the proposed site would improve access and choice to pharmaceutical provision as the shorter distances will make pharmaceutical provision accessible by foot for those who do not have access to a car. The shorter distances will also make

pharmaceutical provision more accessible for the elderly, disabled, and for parents with young children, all of whom are groups who share protected characteristics.

4.2.104 We note that Jhoots choose to criticize the late evening and Saturday opening proposed by my client, however, their nearest pharmacy (SN1 4GB) provides neither provision and is only open for the minimum 40 hours per week Monday to Friday (Source: NHS Website). We maintain that the hours my client has proposed will secure improvements and better access to pharmaceutical provision during late evenings and on Saturdays.

4.2.105 Jhoots mention another application that we have produced for a different client. As a consultancy practice it is unsurprising that we assist multiple clients. Each application is individual and submitted on their own merits; it is strange that Jhoots appear to take issue with this.

Nisias Ltd t/a Victoria Road Pharmacy

4.2.106 Nisias Ltd own and operate the nearest pharmacy to the proposed site: Victoria Road Pharmacy, SN1 3DF.

4.2.107 We have already highlighted the difficulty in accessing this Pharmacy within our client's original application. It is telling that Victoria Road Pharmacy do not deny that the hill on Victoria Road and paid parking both form barriers to accessing pharmaceutical provision at their site.

4.2.108 Much like comments from the LPC and Boots, Victoria Road Pharmacy highlight the explicit lack of identified need within the PNA. Again, 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.

4.2.109 We would point Victoria Road Pharmacy towards the comments made by the HWB, authors of the PNA, who are supportive of this application despite not explicitly identifying a need. We also note that Victoria Road Pharmacy claim that there are 9 contractors under a mile from the proposed site. This distance is as the crow flies and not the situation in reality.

4.2.110 There is only one pharmacy within a mile of the proposed site when we take into account practicable routes - Victoria Road Pharmacy. We have already highlighted the inaccessibility of the journeys to Victoria Road Pharmacy.

4.2.111 Whilst we submit that the closed Rowlands and Boots were below-average dispensers in their own right. We highlight that combined both pharmacies dispensed over 10,000 items/month: well above the national average. As the committee will be aware, pharmaceutical provision is not just limited to dispensing prescriptions but also providing face to face services for those in need. This is especially important with the launch of Pharmacy First, and the NHS strategy for greater services to be conducted within pharmacies to ease pressures on the primary care network. As highlighted previously, the journey to Victoria Road Pharmacy is too onerous for the vulnerable to receive these vital services. Granting this application would restore the critical access to pharmaceutical services for residents in Old Town and the surrounding areas.

4.2.112 Victoria Road Pharmacy claim that the petition provided is not supportive of the application. Such comments are nonsensical. If they had taken time to read the petition, they would see numerous comments surrounding the difficulty in

accessing alternative pharmaceutical provision. Indeed, we have been speaking with the local MP, Rt Hon Robert Buckland, who has been inundated with messages from constituents regarding access to alternative pharmaceutical provision. We attach a letter from Mr Buckland.

4.2.113 Victoria Road Pharmacy highlight that the lack of an adjacent surgery to the proposed site indicates a mobile population. Such an observation is incorrect. The majority of visits to a pharmacy come in the form of collecting repeat medication and accessing pharmaceutical services as part of people's daily lives. It is common knowledge that a visit to the GP surgery is not required every time historic medication is required, thanks to EPS. The recently closed Rowlands had a 97% EPS uptake, and the Boots had a 96% EPS uptake. With the advent of Pharmacy First, we would argue it is actually more advantageous to have pharmacies within communities opposed to adjacent to GP surgeries. Residents are more likely to access minor ailments services in connection with other amenities as part of their daily lives, leading to better health outcomes.

Conclusion

4.2.114 In conclusion, granting this application would secure better access and improvements to pharmaceutical services for Old Town and the surrounding areas, especially during late weekday evenings and on Saturday's.

4.2.115 The support of the HWB and MP, demonstrates how granting this application will secure improvements and better access to pharmaceutical services. We have also set out extensive reasoning in our original application.

4.2.116 The elderly, disabled, and the wider population are likely to find the proposed pharmacy significantly more accessible than their current choices. It would also introduce reasonable choice of a different pharmaceutical provider and remove the barriers to access of Victoria Road hill and paid parking.

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

4.3 BOOTS UK LTD

4.3.1 "Thank you for your letter dated 14th August 2024 informing us of the above appeal.

4.3.2 We have no further comments to make in addition to those we submitted to the NHS ICB but we would be grateful if you would inform us of the outcome of this appeal."

In a letter to the Commissioner of 8 February 2024 Boots UK Ltd stated:

4.3.3 "Thank you for your letters dated 9th and 10th January 2024 informing us of the above applications. Boots UK Limited have the following comments to make.

4.3.4 As the ICB will be aware, the closure of a pharmacy within an area does not automatically create a gap and should a gap have arisen as a consequence of a closure(s), then the PNA should be updated to reflect this. We believe there are 7 pharmacies within 1 mile of the application site (NHS.UK data) providing access to pharmaceutical provision. Our pharmacy at Brunel Plaza is open 7 days a week and offers many services including a prescription delivery service.

4.3.5 We ask that the committee be mindful that not all patient journeys will start at the application site, there are many patients who are on repeat medication, and

there are patients who will access a pharmacy which is in a more convenient location for them, for example one that is closer to where they work.

4.3.6 We do not have any further comments to make, but would be grateful if you would keep us informed of the progress of these applications."

4.4 COMMUNITY PHARMACY SWINDON AND WILTSHIRE

4.4.1 "Thank you for your correspondence informing us that the decision of the Commissioner, on the above application, has been appealed to NHS Resolution.

4.4.2 We note the comments from Mr P on behalf of Victoria Road Pharmacy and would agree that it appears that the ICB have contradicted themselves by saying people with protected characteristics do not have difficulties accessing the existing services but then decide that distance does prevent patients (presumably without protected characteristics) accessing services for those on foot, utilising public transport or travelling by car. We would also note that accessibility to the pharmacy has been improved since the application by providing a ramp for those who have difficulty accessing via steps, and the pharmacy does now open for supplementary hours on a Saturday.

4.4.3 Swindon and Wiltshire LPC comments remain the same as in February 24 when originally considering the application. Those of particular relevance to this appeal are duplicated below.

4.4.4 The application is being made under Unforeseen Benefits, **the current PNA states 'adequate provision'.** [emphasis added by Community Pharmacy]

4.4.5 The PNA did not assess whether or not there was a need, however made a general conclusion that the provision of pharmaceutical services in the locality was adequate. There has been no supplementary evidence to support that there is a lack of provision in the area.

4.4.6 Also to note:-

4.4.6.1 The pharmacy would be within the South PNA area (Old Town, Wroughton & Wichelstowe, Chiseldon & Lawn); none of the wards have high deprivation scores.

4.4.6.2 The closure of a pharmacy does not automatically indicate a gap

4.4.6.3 There is a good public transport network within Old Town as mentioned by the applicant, and the bus stops on Victoria hill."

5 **Observations**

5.1 PHARMACY SALES & CONSULTANCY ON BEHALF OF THE APPELLANT

5.1.1 "We continue to act on behalf of Nisias Ltd and acknowledge safe receipt of your e-mail dated 17th September attaching correspondence from various interested parties and requesting final comments.

5.1.2 On behalf of our clients, we wish to respond as follows

Letter dated 2nd September from Healthcare Plus on behalf of the applicant.

5.1.3 In their opening paragraphs Healthcare Plus state

It is undisputed that the hill on Victoria Road constitutes a barrier to access to current nearest pharmaceutical provision.

It is undisputed that the late evening hours proposed by my client will improve evening access for the whole of South Swindon

5.1.4 We in fact dispute both of those claims. We do not accept that Victoria Hill constitutes a barrier preventing people from accessing our client's pharmacy. Our clients have patients who reside close to the applicant's site and utilise their pharmacy so they can clearly negotiate that stretch of road. Cars and buses negotiate the road without issue, and it is accessible for most pedestrians

5.1.5 For patients who require it, our clients have now established a delivery service which is currently running at approx. 160/month. It is free of charge and not limited to elderly or housebound patients.

5.1.6 In terms of late hours improving access, the applicant has produced no evidence whatsoever that there is a demand for services at those times. If patients do require late night provision, there is a Tesco pharmacy located at Ocotal Way SN1 2EH about a mile from the application. People will be used to accessing the supermarket for their daily needs and the pharmacy opens until 8.00pm Monday – Saturday which is beyond the hours proposed by the applicant

5.1.7 We reiterate no gap was identified within the Swindon PNA and no supplementary statement has subsequently been issued following the closures of the two pharmacies.

5.1.8 We had previously mistakenly provided statistical data for the Eastcott Ward and not the Old Town Ward-apologies for that error on our part.

5.1.9 However, on examining data related to the Old Town Ward we note that only 14.5% of residents are over the age of 65 compared to a national figure of 17.1%.

5.1.10 In addition, we have extracted the following data. In terms of disability in the area we have extracted the table below which shows there are fewer people with limited day to day activities compared to the national average and a higher percentage have no long term physical or mental health issues

Disability	Ward 2022: Old Town (Swindon)		Country: England	
	Number	%	Number	%
Total: all usual residents	11,160	100.0	56,490,048	100.0
Disabled under the Equality Act: Day to day activities limited a lot	570	5.1	4,140,357	7.3
Disabled under the Equality Act: Day to day activities limited a little	953	8.5	5,634,153	10.0
Not disabled under the Equality Act: Has long term physical or mental condition but day to day activities are not limited	825	7.4	3,586,029	6.8
Not disabled under the Equality Act: No long term physical or mental health conditions	8,813	79.0	42,859,509	75.9

5.1.11 Our client strongly disputes the claim by [Healthcare Plus Consulting Ltd] regarding the alterations they have carried out to their pharmacy when he states

"….and actually believe that the works have made the pharmacy even less accessible".

"We also submit that the changes have made it more dangerous for able-bodied persons to access the premises. The steps are now narrow in width and persons could quite easily lose footing and injure themselves on the protruding edge of the concrete slab."

5.1.12 He has absolutely no evidence to substantiate that claim and since the works have been completed our clients have not received any comments from their patients that access to the pharmacy is more difficult than it was previously.

5.1.13 In addition to improvement to the steps, hand rails will be in place very shortly for those that require them and there are plans to add other features to make the pharmacy more appealing/aesthetic.

5.1.14 These improvements are not being installed because of the application by H G Hanks – they were planned by our client as one of several improvements to the overall layout/appearance of the property.

5.1.15 The screen shot above [see Appendix E] is taken from Pharmdata and shows the performance of our client's pharmacy since they acquired it. As you can see the item numbers are increasing significantly, as are retail sales, so there is little evidence of people having difficulty accessing our client's pharmacy.

5.1.16 In terms of parking options at our client's pharmacy, we have outlined those in our previous submission and confirm there is some free parking nearby plus plenty of pay and display car parks.

5.1.17 In addition, we reject the claims by Healthcare Plus in relation to people utilising public transport, and this point has also been covered within the same submission.

5.1.18 The applicant has addressed the question of alternative provision within the area and conveniently only listed 3 other contractors. Based on information taken from the NHS website there are nine existing contractors located within a mile radius of the proposed site.

5.1.19 That number would seem to be more than sufficient to cope with any perceived additional demand for services in the area. It also offers plenty of patient choice in terms of provider, opening hours and services.

5.1.20 In terms of the petition the applicant is utilising to support their application we maintain very limited weight should be placed upon it as it was original designed to protest against the closure of a Boots store not the opening of a new pharmacy contract.

5.1.21 In our experience under normal circumstances the applicant would produce a copy of the questionnaire they prepared to support their case for the committee to review as part of their evidence. Obviously, they have not done so here because presumably it doesn't exist.

5.1.22 The applicant has attached many comments from the public in support of their case.

5.1.23 Many of them are very vague basically saying it would be far more convenient/helpful/handy/easier to have a pharmacy in the Old Town. As we all know convenience does not form part of the regulatory test. Having read through every single response not one person who responded have said they cannot get to another pharmacy. Therefore, as per the petition, we believe only limited weight should be placed on these comments when deciding the outcome of this application.

Letter Dated 12th September from South West Collaborative Commissioning Hub (SWCCB)

5.1.24 The SWCCB state that the closures of the Rowlands and Boots pharmacies has led to the Old Town district not having any pharmaceutical services and therefore local residents no longer have reasonable choice of provider. However, they have failed to note that there are nine existing contractors operated by many different entities within a 1-mile radius of the application.

5.1.25 In our view that is clear evidence of choice of provider.

5.1.26 The SWCCB also state "*The SW Committee would like to clarify that it concluded there was little evidence supplied in respect of Reg 18(2)(b)(ii),therefore, the application is not approved under that Regulation, as no evidence was presented for consideration*".

5.1.27 We would agree that the applicant has not produced any real evidence to support approval of the application under this part of the Regulations.

LPC Letter dated 28th August

5.1.28 We fully agree with the comments the LPC have made in relation to this application

Boots Letter dated 14th August

5.1.29 They have made no further comments and wish to be kept informed of progress.

5.1.30 In summary in our view this application should be refused as the applicant has not produced any evidence that residents don't have a reasonable choice of pharmaceutical services, there is no evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services and there is no evidence that the applicant will provide innovative services.

5.1.31 May we request that these comments along with our previous submissions are taken into account when the committee make their decision on this application.

5.1.32 Finally, should the application progress to an oral hearing either our client, and/or their representatives would wish to attend."

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