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19 February 2025

**REF: SHA/26293**

**APPEAL AGAINST NHS SUFFOLK AND NORTH EAST ESSEX ICB DECISION TO REFUSE AN APPLICATION BY SUPREMUS THERAPEUTICS LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT SUDBURY COMMUNITY HEALTH CENTRE, CHURCH FIELD ROAD, SUDBURY, SUFFOLK, CO10 2DZ**

## 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. The question of the discontinuation of dispensing services to patients who will no longer be eligible to obtain medication from their doctor will be remitted back to the Commissioner to determine.

A copy of this decision is being sent to:

Temple Bright LLP, on behalf of the Applicant
PCSE, on behalf of the Commissioner

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

2 **Site Visit**

2.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution which comprised of Mrs Sheila Hewitt, Mr Michael Smith, Ms C. Limm, have declared that they have no conflicts of interest relating to this case. Committee members undertook the site visit separately on 2 January,15/16 January, and 20/21 January 2025

2.2 One Committee member parked in the North Street Car Park at 11.00 on Thursday 2 January, currently free for 3 hours but Pay and Display has been installed and charging will be introduced shortly. One member walked into the town centre from Walnut Tree Lane on 15 January passing the Hardwicke House Group Practice. There was a car park across the road from the surgery and parking for patients behind it.

2.3 Both members walked to Boots in Market Hill [5 minutes]. This branch of Boots comprises two substantial shop units in the heart of Sudbury. Nearby are two banks, the Post Office and the Parish Church. The central area of Market Hill has free car parking in a herringbone pattern for about 60 cars but this is not useable on Thursdays and Saturdays because of the Market. The Boots store has three entrances, one at pavement level, one with a single step and ramp and one with three steps. The entry door with level access and nearest the dispensary is automatic. The pharmacy counter is on the right hand side towards the rear and is large with at least 3 'customer bays'. At the time of one visit, a Thursday morning, just one customer was waiting. The shop itself was busy. On a second member's visit on a Wednesday afternoon at about 4pm there were 3 patients being served by 3 members of staff and there were 2 patients waiting. Two other pharmacy staff were also visible.

2.4 The Committee members then walked east to North Street [2 minutes] Superdrug at No. 8 on the left next door to W H Smith and other popular shops. The shop is fairly large with the dispensary at the far end. On the first Committee member's visit there were three staff members and nobody waiting. On the second visit there was only one customer being served at the pharmacy and no one was waiting. Access was easy and the shop quiet. A conspicuous sign advertised NHS services.

2.5 Committee members continued up North Street, a short walk, to North Street Pharmacy at No. 80 on the right, a modestly sized shop with level access. Amongst services advertised was prescription delivery. On the first visit there were three customers queuing and three staff visible. Parking, free for 1 hour [no return within 2 hours] was plentiful. North Street is a one way street north to south and appeared to be a quieter shopping area than Market Hill.

2.6 Committee members drove along East Street to the Sudbury Community Health Centre [SCHC] noting that the pedestrian pavements were not continuous and had some obstructions. There were also many parked cars. The journey was 1.2 miles.

2.7 The SCHC is an attractive modern building housing many community medical services as well as the Siam Medical Practice. The GP reception team are separate from the community reception team. There is a spacious and clean waiting area. The designated pharmacy area [currently unused] is accessible from just inside the main entrance. There was no external entrance for the pharmacy. The Siam Practice can remain open when the rest of the SCHC is closed. Parking is plentiful and has easy access. There was a bus stop outside the front entrance of the health centre with a timetable for the No 700 bus which went to Tesco and to the town centre.

2.8 Although the SCHC was close to some housing it appeared almost surrounded by open land, near to a number of large out of town retail and commercial outlets. It did not appear to be a location to which many people would travel on foot.

2.9 From SCHC Committee members returned towards Sudbury and turned right at the roundabout on to the A134 to Tesco. The Tesco pharmacy is on the rear left of the store. On the first Committee member's visit two customers were waiting and three members of pharmacy staff were present. On the second visit (a Thursday morning at about 10.00 am) there were no customers at the pharmacy. It appeared that the pharmacy could only be accessed through the store which was very busy with quite long queues at the checkouts on the first visit but was fairly quiet at the second.

2.10 The A134 road, the only direct route from SCHC to Tesco, had no pavement or cycle lane and had a raised grassy bank on both sides for much of its length. There are several small roads with fairly dense housing off both sides of the busy main road.

2.11 There was ample free parking at Tesco and on the second Committee member's visit the No 700 bus was seen at the bus stop at the store.

2.12 Committee members then returned to the SCHC and from there did the journey by car to Boots at Great Cornard, which is a conurbation to the East of Sudbury and is noted in the papers as dispensing prescriptions from Siam Surgery.

2.13 The route involved a number of roundabouts and passed industrial and commercial units. There was no continuous footpath. The Boots pharmacy was one of a small parade of somewhat nondescript shop units in a residential area. It was next door to a Morrison's 'Daily' which housed a post office. A kebab shop was on the other side and a fish and chip shop the other side of Morrison's. The pharmacy was not busy at the time of the first visit but this was just before 1 pm. The shops in general were attracting a steady stream of customers and limited nearby parking was available. At the time of the second visit there was one person at the pharmacy counter and three people waiting.

2.14 On Monday 20 January 2025 the third Committee member, parked in the middle of Market Hill, and identified the Boots. A large ground floor unit, with a substantial cosmetic section, take away sandwich/drinks section, pharmacy dispensing section, and a consulting room. It was busy at 1pm, but with no queues as it appeared to be well staffed.

2.15 Walked to North Street and located Superdrug at 8 North Street. Attractive road with variety of shops including a Boots Optician and a number of charity shops. It is about a one minute walk to North Street Pharmacy at No. 80, which is on the ground floor under what appears to be 1st floor accommodation. Street parking was heavy. There is a car park off North Street, the Girling Street car park with lots of spaces. I helped a lady to pay for one hour at £1 using her credit card. It was a complex process but needed a systematic approach as is usual for such machines.

2.16 Drove to the Applegate Centre, Great Cornard, where the compact Boots was located under modern residential units. It had a pharmacy counter and a consultation room. The parade of shops included Morrisons and Post Office, and a fish and chip shop mainly to serve that local residents of Applegate Mews, a modern, well maintained development of flats, semis and detached properties. At the time of the visit just after schools come out at 3.30pm, 3 sets of parents with small children were in the Boots.

2.17 Off street parking was available.

2.18 Drove to SCHC which has a free, large car park with two EV charging portals. On the ground floor is the Siam GP Surgery, which employs about 40 staff. There was a pleasant, well lit waiting room, rooms for nurses, nurse practitioners, physios and GPs. Also on a separate section of the ground floor are the outpatients clinics for the West Suffolk Hospital, where consultants from the hospital see their patients. It includes an X-ray department and a section for blood tests. Another section of the ground floor has an audiology outpatients clinic, OT, physiotherapy, and podiatry clinics. On the first floor, accessible by lift or stairs are paediatric facilities including midwifery, health visitors, OT and speech therapy.

2.19 A list of local pharmacies was displayed at Surgery Reception as follows:

2.19.1 Boots Market Hill: M-F 8.30am-6pm, Saturday 8.30am-5.30pm, Sunday 10-4pm

2.19.2 Boots Poplar Rd, Great Cornard: M-F 9am-5.30pm, Sat 9-1pm Sunday closed

2.19.3 North Street Pharmacy, 80 North St: M-F 9-6pm, Sat 9-5.30pm Sunday closed

2.19.4 Superdrug, 8 North St: M-F 8.30-5.30pm, Sat 09-5.30pm, Sunday closed

2.19.5 Tesco, Springlands Way: Monday 8-10.30pm, Tues-Fri 6.30-10.30am, Sat 6.30-10pm, Sunday 10-4pm

2.19.6 Note: on visiting Tesco later, hours displayed at the store were Mon-Sat 9am-9pm, Sunday 10am-4pm

2.20 The general impression was that Sudbury is a very old town which has had a lot more housing built at various times since the 1930s with a recent surge of development. The SCHC is somewhat ‘out on a limb’ to the north east of the town centre and was built on a spacious green field site. The current pharmacy provision is three pharmacies in close proximity to each other in the town centre and one in the Tesco supermarket a little over a mile to the north. The parade of shops where the Boots pharmacy in Great Cornard was situated, did not appear to be a shopping destination but to serve the needs of the local residents. Of the three GP practices in Sudbury, two are to the South of Market Hill / North Street, within 5 minutes walk of Market Hill [Hardwicke House and Meadow Lane] and the third is at SCHC as previously described.

2.21 No comments or observations were made about the site visit.

## 3 Oral Hearing Submissions

3.1 The Chair welcomed the Applicant, Mr Zahid Shah, Company Director of K2 Pharmacy Supremus Therapeutics Ltd. He was represented by Mr Noel Wardle of Temple Bright LLP. There were no other attendees.

3.2 Mr Wardle:

3.3 This application is made on the basis of difficulties accessing pharmacies from the SCHC, benefits of co-location in the context of Sudbury and the closure of pharmacies

in Sudbury resulting in no reasonable choice. This is demonstrated by pressure on remaining pharmacies evidenced by letters, survey responses, etc. This application is supported by the SCHC and the town council. No other pharmacies are taking part in this appeal.

3.4 The population size is 92,700 for Babergh, and Sudbury has a population of 23,912 (2021). Babergh population is older than average (26.5% over 65 compared to 19% nationally), obesity levels are higher than average and car ownership is broadly average (20% no car).

3.5 An additional 1,150 homes are under construction at the Chilton Woods Development to the west of the SCHC. The town is clearly growing, making greater demands, whereas services are contracting.

3.6 The SCHC, completed in 2014, contains the Siam GP Surgery, midwifery, paediatric occupational therapy and speech and language therapy, audiology, phlebotomy, Out of Hours doctors, physiotherapy, podiatry and X-ray. The Siam Surgery was previously located on North Street in Sudbury. Their premises were small and unsuitable with no room to expand. From discussions with the practice manager, the relocation to SCHC was controversial as patients were concerned about access to the new site; no other suitable locations were available at the time. The patient list was 8,882 in 2015. Now it is 11,543 much of this increase has been since 2020. There are 4 GPs and 6 non-medical prescribers. An additional GP has been recruited recently. The surgery prescribes an average of approximately 24,000 items per month and it is a non-dispensing surgery. SCHC therefore creates a significant focus in relation to the demand for pharmaceutical services, and NHS Resolution should consider access to pharmaceutical services from the SCHC as a starting point. Of note is the closure of Lloyds Pharmacy in the Sainsbury's store at the eastern edge of the town centre and merger of two of the town centre pharmacies.

3.7 **Regulation 18 – access**

3.8 The three existing pharmacies are difficult to access from the SCHC, these being Boots/GMG Pharmacy/Superdrug clustered in the town centre within 300m of each other. By foot it is 1.9km, or at least a 25 minute walk, with an incline the whole length of the B1115, particularly affecting those who live to the north of the town centre. There are two roundabouts to navigate and the busy A134 to cross, with no pedestrian crossing facilities. The A131 ring road around town centre acts as a barrier to the whole of the town centre, with limited crossing points and visibility often poor due to bends and junctions. Pavements are narrow in places, with street lights and overhanging vegetation.

3.9 By car: 20% of the local population have no car or van. The roads are busy and congested, particularly around the town centre. Car park charges have been introduced in all the main car parks in town (£1 for up to two hours). Market Place car parking is still free, but with a very limited number of spaces and none available on market days, Thursday and Saturday.

3.10 Tesco: the bus service to SCHC is very limited. Tesco is almost inaccessible by foot as there is no pavement on the A134 and the track through the woods adjacent to A134 is entirely unsuitable for pedestrians, particularly those with reduced mobility. It has no tarmac, no lighting, and is through woods with heavy undergrowth. The route through housing is long and complicated and when you get to Tesco you have to cross several roads to get into the store. By car, there are busy road junctions. Bus routes 700 and 750 also serve Tesco store.

3.11 Boots in Great Cornard

3.12 By foot, the small parade of shops serves the local residents in Applegate Mews and is not an area anyone would visit as a destination. Distance is1.9km, hilly terrain, and

a difficult and complicated route, including through an industrial area. The pavements switch from one side of the road to the other, so pedestrians have to cross and re-cross roads. There are no pedestrian crossing facilities at A134/Newton Road/Shawlands Avenue roundabouts. By car, there are busy main roads and junctions, and very limited car parking, so one has to find a space on residential side roads. By bus this Boots is only connected to SCHC by bus route 750 as above.

3.13 Further evidence that existing pharmacies are difficult to access comes from comments from local residents.

3.13.1 Page 64: Person who works in one of the pharmacies in town: "The bus journey from the health centre to town is very unreliable and has a long and tedious route around villages before reaching its destination. I have for a while been concerned about the elderly people with mobility problems, those in ill health and parents with pushchairs & prams etc. The route is dangerous with only a path part of the way (obscured by trees and bushes that overhang) and an incredibly busy road."

3.13.2 Page 67: Dr Ahmed "Elderly patients or those suffering with their mental health in particular find it very difficult to travel either to the town centre or to the supermarket to get their prescriptions."

3.13.3 Page 72: Local resident "COPD, emphysema, Prostrate problems, mobility issues, old age. Parking is a major problem in Sudbury town centre and finding a finding a parking space close to them is near impossible."

3.13.4 Page 75: "However, if you go to Siam Surgery to see a GP and come away needing a prescription, then you either have to drive to town (where parking is not hugely available, the more so if you are old and frail and can't walk far) or walk there or drive to Tesco and join their queues. Since I, and my husband, would invariably walk to the surgery we would then have the same choice, but to walk to town after walking to the surgery is a wee bit of a task at our age even though we are nominally hale and hearty."

3.13.5 Page 76: "My daughter has been receiving multiple prescriptions this year…As most people who work, I don't go into the town centre often and find it extremely difficult to park etc if I have to do so."

3.13.6 Page 77: "I am 18 and do not drive so I have to rely on m [sic] Mum to take me to get my prescriptions. My mum works, so this can cause issues on when I can get my prescription…My mum is going to retire in the new year or so, and won't have a car then, so I will have to walk to collect my prescription. With my back condition of Spondylolisthesis, this will be very difficult and painful for me…I would be unable to walk into town to collect my prescription, as it is too far and down a big hill which I would then have to walk back up. if [sic] it was raining, or icy placements, I could easily fall and aggravate my Spondylolisthesis."

3.13.7 Page 80: "My health problems are related to liver and insulin resistance. Sciatica. Also pre cancer dermatological issues. I work and find it difficult to get to our very busy pharmacies in town."

3.13.8 Page 80: "I am partially disabled with heart condition, pacemaker and Parkinson's. Cannot easily walk around town to find a pharmacy that is not too busy or has the medication in stock."

3.13.9 Page 81: "Although fairly active myself, my partner is registered disabled and finds getting into town very challenging."

3.13.10 Page 86: “A Centre pharmacy would suit those who have their own transport or get a lift as it is in an area with a very poor bus service. Even when there is a bus to get you there, there isn't one back. Taxis are on school runs so it's not even easy to use them and booking a time would be difficult. My situation is that I don't drive and don't have anyone I can ask to give me a lift every time I go to the Centre. I have to study a virtually useless bus timetable and plan my appointment times. This means, for me and potentially others in a similar situation, that if I had to wait for my prescription to be filled, I would invariably miss the only bus that would have taken me home. Walking could be an option if a person doesn't feel too bad but from where I live, there is no pavement or path alongside the road and access to the Centre is by high rise walk, above the ground, no lighting and loads of trees and bushes. Scary, especially when it's a bit darker.”

3.13.11 Page 88: “At the moment I drive into town often searching for a free parking space. As I home a severely disabled husband this means leaving him alone, as I am his main carer you can appreciate what a worry this is.”

3.13.12 Page 112: “I live in one of the local villages, Great Waldingfield and I'm a patient at Siam Surgery. I don't drive, so rely on public transport and taxis. I have severe eosinophilic asthma which significantly affects my daily living. If I have an appointment at Siam, I have to rely on a bus from the village which only runs 3 times a day. If I then need to get a prescription from town or Tesco, I have to wait over an hour for the next bus as I'd have difficulty walking that far when 'well', but when I'm having an exacerbation I can often barely make it to the bus stop outside the health centre! I then have to wait a further hour for the bus home, or pay a fortune in taxis if I don't want to wait around. A pharmacy inside the surgery would change all of that. I could get a bus one way and taxi back, or vice versa, and be done within an hour instead of spending a full morning or afternoon going to and fro.”

3.14 **Regulation 18 – choice**

3.15 Pharmacies in Sudbury have been dispensing significantly higher numbers of items than national averages, suggesting a lack of capacity (data from September 2024):

3.15.1 Tesco – 9,000

3.15.2 Boots (Great Cornard) – 11,100

3.15.3 North Street Pharmacy – 15,900

3.15.4 Superdrug – 3600

3.15.5 Boots (town centre) – 24,000

3.15.6 Total – 63,600 items over 5 pharmacies = 12,720 items per pharmacy, compared to national average of around 7,000.

3.16 Service issues with long waiting times, and phones going unanswered, provide evidence that there may be a lack of capacity within the system and that patients may be experiencing a lack of reasonable choice.

3.17 It is accepted that NHSE has the power, within the terms of service and regulations, to deal with specific failures to provide essential services in accordance with the terms of service. It is not being suggested that every time a pharmacy contractor fails to meet its terms of service obligations a new pharmacy contract should be granted. In this case, the issues being experienced are evidence of a lack of capacity in the system – a lack of reasonable choice. It is not a matter of terms of service sanctions, but of increasing capacity.

3.18 Whether there is a reasonable choice must be a function of several factors: overall demand, location of pharmacies, and barriers to accessing pharmacies e.g. a reasonable choice of service provision for 2,500 people might not be a reasonable choice for 5,000 or 10,000 people. Only pharmacies that are reasonably accessible can secure a choice. There is evidence of pressure on existing services.

3.19 The lack of reasonable choice has been exacerbated by the closure of Lloyds in the Sainsbury's store (meaning patients who want to use a pharmacy as part of a shop have no choice but to use Tesco now, something local residents have commented on) and the merger of two pharmacies in the town centre. The closures were some time ago, and situation is not improving. The only way of securing a reasonable choice is to grant an additional pharmacy application. It will confer significant benefits by way of choice, increased capacity, and improved geographical spread. Access is better at the proposed location within the health centre, its large car park with disabled parking and the convenience of a co-located pharmacy. Additional service provision will be by opening all day on Saturday and on Sunday afternoon.

## 4 Consideration

4.1 The Committee 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.

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

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

4.4 The proposed location is in a controlled locality and the application was based on securing improvements or better access to pharmaceutical services in that controlled locality.

4.5 The Committee considered that the correct course was to first consider if the application must be refused pursuant to Regulation 31. The Committee will then consider if the application must be refused pursuant to Regulation 40. If the Committee is not so required to refuse the application, it will consider the issue of reserved location pursuant to Regulation 41. The Committee will then consider the application under Regulation 18. If the Committee has determined that the Applicant is seeking the listing of pharmacy premises which are in a part of a controlled locality that is not in a reserved location, it will consider the issue of prejudice under Regulation 44 last. The reason for this staged approach and in particular for dealing with prejudice last is that if the application does not meet the requirements of Regulation 18 the Committee is required to refuse it and prejudice cannot arise. The potential for prejudice only arises if the Committee has concluded that the application meets the requirements of Regulation 18 and may be granted. Depending on the determinations of the Committee in respect of the above as well as taking into consideration of whether the Commissioner has considered Regulation 50(1), the Committee will then consider Regulation 50(1): Discontinuance of arrangements for the provision of pharmaceutical services by doctors.

### Regulation 31

4.6 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).*

4.7 The Committee was of the view that Regulation 31 is not relevant because there are no pharmaceutical services provided at the proposed premises or in adjacent premises.

4.8 The Committee was not required to refuse the application under the provisions of Regulation 31. The precise location of the proposed location has already been provided.

**Regulation 40**

4.9 In those circumstances, the application (which is made under Regulation 18 of the Regulations) must be assessed against the provisions of Part 7 of the Regulations and, in particular Regulation 40 which reads:

*(1) This paragraph applies to all routine applications—*

*(a) for inclusion in a pharmaceutical list as an NHS pharmacist; or*

*(b) from an NHS pharmacist included in such a list—*

*(i) to relocate to different pharmacy premises in the area of the relevant HWB, or*

*(ii) to open, within the area of the relevant HWB, additional pharmacy premises from which to provide pharmaceutical services,*

*where the applicant is seeking the listing of pharmacy premises which are in a controlled locality.*

*(2) If NHS England receives an application (A1) to which paragraph (1) applies, it must refuse A1 (without needing to make any notification of that application under Part 3 of Schedule 2), where the applicant is seeking the listing of premises at a location which is—*

*(a) in an area in relation to which outline consent has been granted under these Regulations, the 2012 Regulations or under the 2005 Regulations within the 5 year period—*

*(i) starting on the date on which the proceedings relating to the grant of outline consent reached their final outcome, and*

*(ii) ending on the date on which A1 is made; or*

*(b) within 1.6 kilometres of the location of proposed pharmacy premises (other than proposed distance selling premises), in respect of which—*

*(i) a routine application under these Regulations or the 2012 Regulations, or*

*(ii) an application to which regulation 22(1) or (3) of the 2005 Regulations (relevant procedures for applications) applied,*

*was refused within the 5 year period starting on the date on which the proceedings relating to the refusal reached their final outcome and ending on the date on which A1 is made,*

*unless NHS England is satisfied that since the date on which the 5 year period started, there has been a substantial and relevant change of circumstances affecting the controlled locality.*

*(3) For the purposes of paragraphs (1) and (2), if no particular premises are proposed for listing in A1, the applicant is to be treated as seeking the listing of pharmacy premises at the location which is the best estimate that NHS England is able to make of where the proposed listed pharmacy premises would be, having regard to the best estimate given by the applicant under paragraph 1(7)(a)(ii) of Schedule 2.*

*(4) Paragraph (2)(b) does not apply where NHS England is satisfied that there are reasonable grounds for believing the person making the refused application was motivated (wholly or partly) by a desire for that application to be refused.*

*(5) The refusal of an application pursuant to paragraph (2)(b), or regulation 40(2)(b) of the 2012 Regulations (applications for new pharmacy premises in controlled localities: refusals because of preliminary matters), is to be ignored for the purposes of the calculation of a 5 year period pursuant to paragraph (2)(b).*

4.10 The Committee noted that there was no information to suggest that the instant application was in respect of a location where outline consent had been granted or there had been a refusal for a previous application within the last 5 years.

**Regulation 41**

4.11 Based on its conclusion above, the Committee went on to consider the application in light of the remainder of Part 7 of the Regulations and, in particular, regulation 41 which reads:

*(1) This paragraph applies to any routine application—*

*(a) for inclusion in a pharmaceutical list as an NHS pharmacist; or*

*(b) from an NHS pharmacist included in such a list—*

*(i) to relocate to different pharmacy premises in the area of the relevant HWB, or*

*(ii) to open, within the area of the relevant HWB, additional pharmacy premises from which to provide pharmaceutical services,*

*where the applicant is seeking the listing of pharmacy premises which are in a controlled locality and NHS England is required to notify the application under Part 3 of Schedule 2.*

*(2) If paragraph (1) applies to an application (referred to in this regulation and regulation 42 as "A1"), subject to paragraph (5), NHS England must determine whether or not the "relevant location", that is—*

*(a) the location of the premises for which the applicant is seeking the listing; or*

*(b) if no particular premises are proposed for listing in A1, the location which is the best estimate that NHS England is able to make of where the proposed pharmacy premises would be, having regard to the best estimate given by the applicant under paragraph 1(7)(a)(ii) of Schedule 2,*

*is, on basis of the circumstances that pertained on the day on which A1 was received by NHS England, in a reserved location.*

*(3) Subject to regulation 43(2), the area within a 1.6 kilometre radius of a relevant location is a "reserved location" if—*

*(a) the number of individuals residing in that area who are on a patient list (which may be an aggregate number of patients on more than one patient list) is less than 2,750; and*

*(b) NHS England is not satisfied that if pharmaceutical services were provided at the relevant location, the use of those services would be similar to, or greater than, the use that might be expected if the number of individuals residing in that area who are on a patient list were 2,750 or more.*

*(4) Before making a determination under paragraph (2) (referred to in this regulation and regulation 42 as "D1"), NHS England must—*

*(a) notify the persons notified under Part 3 of Schedule 2 about A1 that NHS England is required to make D1 (and it may make this notification at the same time as it notifies those persons about A1); and*

*(b) invite them, within a specified period of not less than 30 days, to make representations to NHS England with regard to D1 (and the period specified must end no earlier than the date by which the person notified needs to make any representations that they have with regard to A1).*

*(5) NHS England must not make a determination under paragraph (2) in respect of A1 in circumstances where an earlier application which was in respect of the relevant premises and to which paragraph (1), regulation 44 of the 2012 Regulations (prejudice test in respect of routine applications for new pharmacy premises in a part of a controlled locality that is not a reserved location) or regulation 18ZA of the 2005 Regulations (refusal: premises which are in a controlled locality but not a reserved location) applied was refused—*

*(a) for the reasons relating to prejudice in—*

*(i) regulation 44(3),*

*(ii) regulation 44(3) of the 2012 Regulations, or*

*(iii) regulation 18ZA(2) of the 2005 Regulations; and*

*(b) within the 5 year period starting on the date on which the proceedings relating to the refusal reached their final outcome and ending on the date on which A1 is made,*

*unless NHS England is satisfied that since the date on which the 5 year period started, there has been a substantial and relevant change of circumstances affecting the controlled locality.*

*(6) For the purposes of paragraph (5), the "relevant premises" are—*

*(a) the premises which are proposed for listing; or*

*(b) if no particular premises are proposed for listing in A1, premises at the location which is the best estimate that NHS England is able to make of where the proposed listed pharmacy premises would be, having regard to the best estimate given by the applicant under paragraph 1(7)(a)(ii) of Schedule 2.*

4.12 The Committee considered the issue of reserved location for premises described in the application.

4.13 The Committee noted that according to the Commissioner's decision, the number of people on a patient list residing within a 1.6km radius of the postcode of the proposed premises is 11,859. The Committee noted that the Commissioner had determined that the proposed premises are not in a reserved location and that there had been no dispute on the matter by any party. The Committee was therefore satisfied that the proposed premises are not in a reserved location.

4.14 The Committee was aware that, given its view on reserved location, it may then need to deal with prejudice. However, the Committee considered that prejudice could only arise if the application meets the requirements of Regulation 18 and may therefore be granted. It therefore next considered whether the application met the requirements of Regulation 18.

**Regulation 18**

4.15 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)."*

4.16 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.

4.17 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.

4.18 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).

4.19 The Committee considered the PNA prepared by the Suffolk 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 11 October 2022 and that a supplementary statement had been issued in February 2023; however following a review it was withdrawn and no gaps in services were identified.

4.20 The Committee noted that the Applicant seeks to provide unforeseen benefits to the patients of Sudbury.

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

4.22 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)***

4.23 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"*

4.24 The Committee noted that the Commissioner had determined that there would be no significant detriment. No subsequent submissions have been made in relation to this point.

4.25 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.

4.26 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)***

4.27 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"*

4.28 The Committee noted that the Commissioner had determined that there would be no significant detriment. No subsequent submissions have been made on this point.

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

4.30 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)***

4.31 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)***

4.32 The Committee had observed that the Sudbury Health Care Centre [SCHC] is housed in a purpose built 2 storey facility with ample parking space. It opened in 2014, encompassing a range of community health care services, with some 14 departments including the outpatients unit for the West Suffolk Hospital, a GP surgery and space for a pharmacy. The Siam Surgery moved to the SCHC in early 2015 and has been able

to expand capacity and increase its patient list. The Siam GP partners support the application, as does the Town Council and a large number of local residents and patients of the Siam surgery.

4.33 A comprehensive and persuasive case has been made to support the application to demonstrate the significant benefits which will flow from the opening of a pharmacy within the SCHC, as was initially intended. Indeed the pharmacy premises have not been put to alternative use in the interim, and it appears to be used as a temporary store room.

4.34 After their GP appointments, or appointments with one of the other prescribing health care professionals at the SCHC, it was submitted that patients who then required dispensing services would need to travel to existing pharmacies to collect their medication. These being one of the three in close proximity to each other in the town centre, the Boots in the Applegate shopping parade at Great Cornard or within the Tesco superstore. The submissions, supported by an ample body of emails, demonstrate that they are all difficult to access by foot. Whilst car ownership is broadly average, for those who do drive, traffic and road layouts are challenging. Destination parking provides further barriers to access by car. The bus routes and journey times can be lengthy and are not always available when the SCHC is open, particularly in the evenings and at weekends. There are no buses to Boots at Great Cornard direct from the SCHC. The Committee accepts that, of course, some patients will not go direct to a pharmacy but will have prescriptions sent to a pharmacy near their work or home. Distance Selling Pharmacies are also an option although not one that will appeal to everyone. However the Committee was satisfied that a large number of patients would need to access a pharmacy direct from the SCHC.

4.35 It was submitted that the further development of some 1,500 new homes in Clifton Wood, west of the SCHC indicates that the town will grow in the direction of the health centre.

4.36 The Committee noted that with the closure of Lloyds in Sainburys in July 2023 and the consolidation of two town centre pharmacies into North Street Pharmacy in February 2021, resulted in the loss of two 100 hour contracts. With increased residents in new housing, it was submitted and the Committee accepts that the existing pharmacies are struggling to meet demand. The capacity and performance issues are vividly set out in the emails quoted by the Applicant. The HWB and the other pharmacy contractors in Sudbury have remained silent on this matter.

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

4.38 In considering Regulation 18(2)(b)(ii) the Committee reminded itself that it was required to address itself to people who share a protected characteristic under the Equality Act 2010 (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation) having access to services that meet specific needs for pharmaceutical services that, in the relevant area, are difficult for them to access. The Applicant has referred to the local population being older than the national average and with consequent higher health needs and poor mobility. In considering 18(2)(b)(ii), the Committee referred to the patients email evidence submitted. It concluded that there are some people who share such a protected characteristic, and that they find the existing pharmacy services do not meet their specific needs because of mobility issues and their inability to wait in lengthy queues. In this regard there was reference to specific conditions and required medications.

4.39 The Committee was therefore 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 such persons.

4.40 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.

4.41 The Applicant has listed his plans to introduce a "robot dispenser" to improve accuracy of processing prescriptions and reduce staff involvement. He also wants to introduce artificial intelligence to assist with ailment enquiries, video conferencing with the pharmacist, and information systems for prescription pick ups. All these to encourage patients to adopt a "digital approach" in line with progress within the NHS.

4.42 The Committee is persuaded that some of these approaches may be seen to be innovative but several are already being used in the delivery of pharmaceutical services. On balance, 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***

4.43 The Committee noted the application offers 40 core hours and 26 supplementary hours including Sunday afternoon to mirror the Out of Hours GP service located in the SCHC. However a Sunday service is currently offered at Tesco. 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.

4.44 The Committee has considered whether there are any other factors that would confer significant benefits on persons 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.

4.45 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.

**Regulation 44 - Prejudice**

4.46 Having considered the matter of reserved location and, having considered the application under Regulation 18, the Committee next considered the question of prejudice under Regulation 44.

4.47 The Committee noted that consideration of prejudice pursuant to Regulation 44 was relevant where the Applicant is seeking the listing of pharmacy premises which are in a part of a controlled locality that is not in a reserved location. The Committee has determined that, in this case, the Applicant is seeking the listing of premises which are in a part of a controlled locality that is not in a reserved location. The potential for prejudice only arises if the Committee has concluded that the application meets the requirements of Regulation 18 and may be granted. It is then for the party asserting prejudice to satisfy the Committee that this provides a reason to refuse an otherwise valid application.

4.48 Regulation 44 states:

*44(1) This paragraph applies to all routine applications—*

*(a) for inclusion in a pharmaceutical list as an NHS pharmacist; or*

*(b) from an NHS pharmacist included in such a list—*

*(i) to relocate to different pharmacy premises in the area of the relevant HWB, or*

*(ii) to open, within the area of the relevant HWB, additional pharmacy premises from which to provide pharmaceutical services.*

*(2) As regards any application to which paragraph (1) applies, NHS England must have regard to whether or not the applicant is seeking the listing of pharmacy premises which are in a part of a controlled locality that is not a reserved location.*

*(3) If the applicant is seeking the listing of pharmacy premises which are in a part of a controlled locality that is not in a reserved location, NHS England must refuse the application if granting it would, in the opinion of NHS England, prejudice the proper provision of relevant NHS services in the area of—*

*(a) the relevant HWB; or*

*(b) a neighbouring HWB of the relevant HWB.*

*(4) For the purposes of paragraphs (2) and (3), if no particular premises are proposed for listing in the application, the applicant is to be treated as seeking the listing of pharmacy premises which are in a controlled locality if the best estimate that NHS England is able to make of where the proposed pharmacy premises would be is at a location which is in a controlled locality, having regard to the best estimate given by the applicant under paragraph 1(7)(a)(ii) of Schedule 2.*

4.49 The Committee has determined that the Applicant is seeking the listing of pharmacy premises which are in a part of a controlled locality that is not in a reserved location. The Committee therefore went on to consider if granting the application would prejudice the proper provision of relevant NHS services in the area of the relevant HWB or a neighbouring HWB of the relevant HWB.

4.50 The Committee was aware of guidance issued by the Department of Health and Social Care regarding the provision of pharmaceutical services in controlled areas (Chapter 14) which states:

*"The Regulations do not provide any definition of the concept of prejudice. In general, it means that nothing must be done which would compromise the ability of people in any controlled locality to access pharmaceutical services, LPS, dispensing services or primary medical services....*

*A mere reduction in the total level of service provided by a particular pharmacist or GP Practice is not of itself "prejudice". Prejudice arises where the service that people can rightly expect to be provided by the NHS has in some respect to cease or otherwise be curtailed or withdrawn without proper substitution in the area. In practice, the existence of prejudice involves, to a greater or lesser extent, making a judgment about events that will occur in the future. Inevitably, therefore, it can often be extremely difficult to judge whether or not there will be prejudice.*

*The burden of proof is on the party alleging that prejudice will occur. Each case will, therefore, turn very much on its own particular facts. In considering questions of prejudice, it is important that decision-takers focus only on those services which have to be provided within the terms of service of NHS primary medical and pharmaceutical services provision. The fact that non-NHS services or NHS services provided above the standard level set by the terms of service may be curtailed should not be regarded as relevant".*

4.51 The Committee noted that no party had sought to argue that the granting of this application would cause prejudice to the proper provision of relevant NHS services.

4.52 Given that this has not been challenged and that there was no information to the contrary, the Committee concluded that the granting of this application would not cause prejudice to the proper provision of relevant NHS Services.

***Other considerations***

4.53 Having determined that Regulation 18(2)(b) had been satisfied, the Committee needed to have regard to Regulation 18(2)(c) to (e) and found that these did not apply. There are no applications from other parties in this case.

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

4.55 The Committee had regard to Regulation 18(2)(g) and found that it does not apply.

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

4.57 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.

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

4.58.1 confirm the Commissioner's decision;

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

4.58.3 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.

4.59 In those circumstances the Committee determined that the decision of the Commissioner be quashed and the application redetermined. This is because in the Committee's view the Commissioner did not give sufficient weight to the volume of information provided by patients regarding poor access and supply issues relating to the current pharmacy provision in the relevant area. Furthermore, the evidence from some of these responses indicates that there is a group of persons who share a protected characteristic who face difficulty in accessing pharmaceutical services that meet their specific needs.

4.60 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.

4.61 The Committee noted that representations on Regulation 18 had been sought from parties by the Commissioner. 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.

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

4.63 The Committee had regard to Regulation 50(1) which states:

***Discontinuation of arrangements for the provision of pharmaceutical services by doctors***

*In circumstances where the NHSCB has arrangements (whether they were made under these Regulations or were made under or continued by virtue of the 2012 Regulations) with a dispensing doctor (D) to provide pharmaceutical services to a person (P), if…*

*D must terminate the provision of pharmaceutical services to P, subject to any postponement of the discontinuation by the NHSCB in accordance with paragraphs (2) to (6).*

Regulation 50(3) states:

*This paragraph applies where—*

*(a) the NHSCB grants a routine or excepted application, the result of which is the inclusion in a pharmaceutical list of pharmacy premises that are not already listed in relation to an NHS pharmacist;*

*(b) the pharmacy premises to which that application relates are not distance selling premises but—*

*(i) are in a controlled locality, or*

*(ii) are within 1.6 kilometres of a part of a controlled locality in which patients of a dispensing doctor reside and those patients are being provided with pharmaceutical services by that dispensing doctor; and*

*(c) granting the routine or excepted application, in the opinion of the NHSCB, results in a significant change to the arrangements that are in place for the provision of pharmaceutical services (including by a person on a dispensing doctor list) or local pharmaceutical services in any part of a controlled locality.*

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

4.64.1 confirm the Commissioner's decision;

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

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

4.65 The Committee noted that the Commissioner had not considered gradualisation under Regulation 50, when it took its decision not to grant the application. No parties had made any representations to the Committee concerning Regulation 50. The Committee determined to remit the question of the discontinuation of the provision of the dispensing services to patients who will no longer be eligible to obtain medication from their doctor to the Commissioner for it to determine.

## 5 DECISION

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

5.2 The Committee concluded that Sudbury is in a controlled locality and that the site of the application is not in a reserved location

5.3 The Committee concluded that granting the application would not prejudice the proper provision of relevant NHS services in the area of (a) the relevant HWB; or (b) a neighbouring HWB of the relevant HWB.

5.4 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;

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

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

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

5.5.1.2 there is evidence of some people sharing a protected characteristic having difficulty in accessing pharmaceutical services; and

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

5.5.2 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.

5.6 The Committee determined that the application is granted but that the question of the discontinuation of the provision of dispensing services to patients who will no longer be eligible to obtain medication from their doctor is remitted back to the Commissioner to determine.

**Committee Chair**

Annex A

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**REF: SHA/26293**

**APPEAL AGAINST NHS SUFFOLK AND NORTH EAST ESSEX ICB DECISION TO REFUSE AN APPLICATION BY SUPREMUS THERAPEUTICS LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT SUDBURY COMMUNITY HEALTH CENTRE, CHURCH FIELD ROAD, SUDBURY, SUFFOLK, CO10 2DZ**

## 1 The Application

By application dated 5 December 2023, Supremus Therapeutics Ltd ("the Applicant") applied to Suffolk and North East Essex ICB ("the Commissioner") for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at Sudbury Community Health Centre, Church Field Road, Sudbury, Suffolk, CO10 2DZ. In support of the application it was stated:

1.1 In response to why the application should not be refused pursuant to Regulation 31 the Applicant stated:

1.1.1 "No other pharmacy in same or adjacent premises so not applicable"

Information in support of the application

1.2 "We are applying for inclusion in the pharmaceutical list for premises within the Sudbury Community Health Centre, Church Field Rd, Sudbury, CO10 2DZ.

1.3 We have included, below, a google maps image which shows the proposed location in the context of the town of Sudbury.

1.4 **Background information**

1.5 **Sudbury town**

1.6 Sudbury is a market town for the wider area situated in Babergh District.

1.7 The population of Babergh is 92,700, a figure which has increased by 25.3% since 1981. 67.7% (39,400) are in employment in Babergh.

1.8 Babergh has 26.5% of its population over the age of 65 in comparison with 19% nationally. Population forecasts suggest that this proportion is set to increase to 36% between 2021 and 2042, equating to an additional 36,718 people aged 65+ over the time period. In addition, the 80+ population is expected to increase by 74% over the same time period, equating to an additional 11,800 people. By 2042, 1 in 10 people are forecast to be aged 80 or over in Suffolk. This will undoubtedly have an impact on health and care services. For example: The rate of permanent admissions to residential and nursing homes in Suffolk for those aged 65+ has statistically significantly increased (from 520 per 100,000 in 2016-17 to 864 per 100,000 in 2019-20) and is currently statistically significantly higher than England (584 per 100,000 in 2019-20).

1.9 The proportion of adults that are overweight or obese is statistically significantly higher in Babergh (69.1%) than England (62.8%).

1.10 In addition to the already increased local resident population, there are further housing developments planned or ongoing in the local area. Most notably, the Chilton Woods Development project (which is located just to the west of the proposed location) encompasses 1,150 dwellings, complete with a village centre and primary school. As we speak, the development has already initiated its first phase.

1.11 The site has been allocated for development in Babergh District Council's Core Strategy. Outline planning permission for the entire site was granted in 2018, and Taylor Wimpey has acquired part of the site. Our overall proposal includes 1,150 new homes, a quarter of which will be designated as 'affordable' as well as a range of community facilities including a village centre, community hall, sports pitches and large areas of green space, including community woodland. The outline planning approval requires a Design Code for the site, and we have developed this in consultation with the local community. The Design Code is currently going through independent review and will be submitted to Babergh District Council in early February. This consultation covers the first of the Reserved Matters planning applications for residential development, and comprises 200 homes, of which 85 will be affordable, as well as areas of green space.

1.12 **Sudbury Community Health Centre**

1.13 The location of the proposed pharmacy is within the Sudbury Community Health Centre. The SCHC was completed in 2014, with building plans containing space for a community pharmacy within the health centre to meet patient needs. However, a pharmacy never opened within the SCHC, and this has left a gap in service provision.

1.14 The SCHC is open from 8am to 8pm on Monday and from 8am to 6.30pm from Tuesday to Thursday.

1.15 The SCHC houses the Siam GP Surgery. When Siam Surgery moved to SCHC at the start of 2015 it had 8,882 patients. A patient breakdown is shown in the table below.

| Age Range | Male | Female | Total |
|---|---|---|---|
| 0 – 65 | 3622 | 3548 | 7170 |
| 66 – 75 | 448 | 532 | 980 |
| 76+ | 310 | 422 | 732 |
| Total | 4380 | 4502 | 8882 |

1.16 The Surgery now has 11,543 registered patients.

| Age Range | Male | Female | Total |
|---|---|---|---|
| 0 – 65 | 4535 | 4672 | 9207 |
| 66 – 75 | 598 | 613 | 1211 |
| 76+ | 457 | 668 | 1125 |
| Total | 5590 | 5953 | 11543 |

1.17 Much of this increase in patients has occurred since 2020, as shown in the patient list information below:

1.18 14th Sept 2015 – 9,097

1.19 14th Sept 2016 – 9,388

1.20 14th Sept 2017 – 9,674

1.21 14th Sept 2018 – 9,980

1.22 14th Sept 2019 – 10,146

1.23 14th Sept 2020 – 10,203

1.24 14th Sept 2021 – 10,587

1.25 14th Sept 2022 – 11,058

1.26 14th Sept 2023 – 11,543

1.27 The pharmacy has 4 GPs and 6 non-medical prescribers in various roles. The surgery is currently recruiting for a further GP to join the team.

1.28 Doctors at the surgery prescribe an average of approximately 24,000 items per month.

1.29 **Provision of pharmaceutical services in Sudbury**

1.30 As already stated, there is no pharmacy within the SCHC, and no pharmacy which is reasonably accessible from the SCHC site for patients.

1.31 The google map image below shows the location of existing pharmacies relative to the SCHC (the SCHC is marked with the red dot):

1.32 As can be seen from the above map, it is a considerable distance from each of these pharmacies to the SCHC and, in fact, there are no pharmacies within a mile (by road) of the proposed location.

1.33 Taking each pharmacy in turn, the distances are as follows:

1.33.1 Tesco Pharmacy. This is located 1 mile from the SCHC

1.33.2 GMG Pharmacy. This is located 1.1 miles from the SCHC

1.33.3 Superdrug Pharmacy. This is located 1.1 miles from the SCHC.

1.33.4 Boots Pharmacy Great Cornrad. This is located 1.2 miles from the SCHC.

1.33.5 Boots Pharmacy Town. This is located 1.1 miles from SCHC

1.34 According to NHSBSA, the average number of items dispensed by a pharmacy in the UK is 6966 per month (22/23), that average for pharmacies in Sudbury is almost double (12680). This clearly shows that the pharmacies in Sudbury are dealing with twice the workload in comparison with an average national Pharmacy.

1.35 **Regulation 18 consideration**

1.36 NHS England is required to consider whether granting this application would secure improvements in, or better access to, pharmaceutical services within the Health and Wellbeing Board's Area.

1.37 In particular, NHS England must have particular regard to the desirability of:

1.37.1 There being a reasonable choice with regard to obtaining pharmaceutical services in the area of the HWB

1.37.2 People who share a protected characteristic having access to services that meet specific needs that, in the HWB's area, are difficult for them to access

1.37.3 Any innovative approaches taken with regard to the delivery of pharmaceutical services

1.38 Granting this application would secure improvements in, and better access to, pharmaceutical services having regard to the relevant regulatory test.

1.39 The Sudbury Community Health Centre (SCHC) is a building that has 14 other healthcare departments, without a pharmacy the building is incomplete especially when there is a massive premises in-built for the sole purpose of having a pharmacy in the health centre. The lack of a pharmacy in SCHC takes away from the synergy with which healthcare can be accessed by the people of Sudbury. Patients always benefit more when receiving a multifaceted healthcare in one place. One of the primary objectives of community health centres is to provide comprehensive care to their patients. This includes not only diagnosing and treating medical conditions but also ensuring patients receive the necessary medications. Having a pharmacy on-site simplifies this process. When patients can receive medical consultation and pick up their prescriptions in one place, it reduces the need to travel to multiple locations.

1.40 There is evidence to suggest that when prescriptions are filled immediately after a medical visit, patients are more likely to take their medications as prescribed. Having a pharmacy onsite allows for better collaboration between the healthcare providers and pharmacists. Pharmacists can provide valuable input regarding medication management, potential drug interactions, and patient education not to mention the ever-growing number of healthcare services provided by pharmacist [sic]. They can counsel patients on proper medication use, potential side effects, and answer any questions the patients might have. In cases where immediate medication is needed (e.g., after minor procedures or to treat acute conditions), having an on-site pharmacy ensures that patients receive timely care.

1.41 Patients currently find it difficult to access existing pharmacies, and do not have a reasonable choice of pharmaceutical services (and, in particular, the choice to access a pharmacy from premises which are near to their GP surgery).

1.42 In terms of physical access, and difficulties accessing existing pharmacies, there are a number of relevant factors.

1.43 The starting point, of course, is to have regard to the fact that Siam Surgery within the SCHC has a current patient list of over 11,500. The patient list continues to expand rapidly, and will increase further as new local housing developments are completed. Since many patients require access to pharmaceutical services immediately after a visit to their GP, this large patient base creates a focus for demand for pharmaceutical services at the proposed location.

1.44 It is also relevant to note the relatively high proportion of older residents in Sudbury compared to English averages, and the greater propensity of older people (and, of course, those in poor health) to access GP services. These factors combine to make it more likely that those who are present in the vicinity of the SCHC and who require

access to pharmaceutical services will be older and in poorer health and, consequently, will be less mobile than “average”.

1.45 We have already set out, above, the distance from the proposed premises (and the health centre itself) to existing pharmacies. It can be seen that these distances are significant and, of themselves, represent a barrier to access. Put another way, it is inherently unlikely that a patient who is present at the SCHC with a prescription to be dispensed would choose to (or even be able to) make a journey by foot of a mile or more in order to access pharmacy.

1.46 In addition to the distance, the route to existing pharmacies presents additional barriers.

1.47 The B1115/Waldingfield Road is the main route from Sudbury Community Health Centre to the Sudbury town for pharmacy access. This route consists of a narrow but a very busy road that with [sic] a small pavement on only one side of the road. When coming from SCHC into Sudbury town, the terrain is a slope. This narrowness of the pavement makes it challenging for two people to cross paths with a gap in between. This challenge is more severe for anyone with a buggy, a wheelchair, or a mobility scooter. The narrowness of the pavement and obstructions because of poles on the pavement in a few places makes this route very unsuitable for disabled patients and parents with children.

1.48 I have provided, below, some photographs showing these barriers and narrow pavements.

1.49 The route from SCHC to Tesco Pharmacy is A134/Springlands way which does not have a pavement at all making the access extremely difficult if you do not have a car. A google streetview image of the A134 is shown below:

1.50 In relation to access by private transport, the lack of parking in town makes it less desirable for anyone with a car to want to drive to town due to the difficulty of parking.

1.51 Finally, in relation to public transport, there are limited public transport links between the surgery and Sudbury town centre.

1.52 **Bus 700:** 8 buses in a day. This puts a severe strain on patients has [sic] they will have appointment times. First bus from SCHC is to Sudbury town is at 9:18am which means patients that attend for their appointments at 8am will have to wait for over an hour for the first bus. The last bus from SCHC to Sudbury town is at 17:18pm. The surgery operates until 8pm on Mondays and opened [sic] till 18:30pm on other weeks days. This means that patients that attend their appointments after 5pm will not have the luxury to use this service.

1.53 This image shows the bus 700 timetable.

1.54 **Bus 750:**

1.55 As the map shows below, in order to take a bus (750) from SCHC, you have to walk to the Sudbury Homebase Bus Stop which is a 14 minutes walk through two roundabouts on very busy roads. First bus from SCHC to Sudbury town comes at 9:56am which means patients that attend for their appointments at 8am will have to wait for over an hour and a half for the first bus. The last 750 bus from SCHC to Sudbury town is at 17:28pm. The surgery operates until 8pm on Mondays and opened till 18:30pm on other weeks days [sic]. This means that patients that attend their appointments after 5pm will not have the luxury to use this service.

1.56 This image highlights the walk from SCHC to the Homebase Bus stop in grey.

1.57 This image shows the full journey with time it takes for bus 750.

1.58 In addition to physical access difficulties, there is also evidence that patients have a lack of reasonable choice of service provision, and that the available choice is actually reducing despite growing patient demands.

1.59 Since the pandemic, the pharmacies in Sudbury have been under immense pressure due a [sic] severe increase in workload. Lack of GP appointments has resulted in patients resorting to their local pharmacies in numbers unseen before. Workload created from Covid19 coupled with vaccinations has put a tremendous burden on pharmacies since some pharmacies in Sudbury have added vaccination centres to their ever-stretched workload. This has resulted in other pharmaceutical services suffering as a result. “Long queues”, “over-whelmed”, “at maximum capacity”, “having to make several visits for usual medications”, “lack of normal and disabled parking”, “difficulty accessing” etc are some of the common comments from the local patients when describing the local pharmaceutical services.

1.60 Parade Pharmacy has merged with North Street pharmacy in May 2022, meaning the loss of 100 pharmaceutical service hours a week in the town.

1.61 The lack of reasonable choice of service provision and difficulties with access services has also been exacerbated by the recent closure of the Lloyds Pharmacy within the Sainsburys store. A large number of patients have been affected by this closure many of whom have taken to online community platforms to voice their concerns. Lloyd’s pharmacy delivered several vital health services such as Type 2 diabetes screening, supervised consumption of medicine, needle and syringe exchange. The proportion of adults that are overweight or obese is statistically significantly higher in Babergh (69.1%) than England (62.8%). In 2019-20, 2.8 per 1,000 adults were in treatment in specialist drug misuse services (lower than the England rate of 4.5 per 1,000 adults). 53.4% of opiate and/or crack cocaine users were not in treatment in Suffolk. The closure and as a result the loss of these important services will have a significant impact on local health.

1.62 **Securing improvements and better access**

1.63 Granting this application would secure improvements and better access to service provision.

1.64 Firstly, it would overcome the access difficulties which are currently experienced by patients of the SCHC.

1.65 As stated above, there is a purpose-built, empty pharmacy unit within the SCHC which is our proposed location, meaning that we would be able to open from modern, fully disability accessible premises without delay.

1.66 The SCHC itself has a large, free car park, meaning that any patients that have travelled to the SCHC can easily access the proposed pharmacy without having to make any additional journey by car to another pharmacy with all the difficulties that that entails.

1.67 For patients who are on foot, the co-located pharmacy would clearly offer significant benefits over the current service provision, which involves long distances over unsuitable terrain.

1.68 We would also secure a reasonable choice of service provision, both by increasing the overall provision of pharmaceutical services in the town but also by giving patients the choice to access a pharmacy at their health centre rather than having to travel to other areas in order to access a pharmacy.

1.69 K2 Pharmacy is committed to transforming pharmacy and medicine delivery through innovative technologies and enhanced patient services. By harnessing the power of

new technology, we aim to improve patient outcomes, optimize medication management, and better connect with the wider NHS.

1.70 **1. Pharmacy Automation and Robotics:** We will employ state-of-the-art pharmacy automation systems, including robotic dispensing machines, to enhance accuracy and efficiency in medication management. These systems will assist in counting, packaging, and verifying medications, reducing human errors and streamlining prescription filling and inventory management.

1.71 **2. Automated Prescription Collection:** Our pharmacy will introduce automated prescription collection systems, providing patients with 24/7 convenience and freeing up pharmacists' time. This technology ensures precise medication dispensing using barcode scanning, aligning with the UK Scan4Safety initiative. Additionally, it will serve as a click-and-collect facility for essential over-the-counter emergency medicines, available even when the pharmacy is closed.

1.72 **3. Delivery of Healthcare Products (GSL) via Large Delivery Platforms:** To cater to a wider population, we will trial the delivery of healthcare products using platforms like Deliveroo. Embracing smart technology, this approach allows patients greater access to healthcare services at their preferred location and time.

1.73 **4. Remote Access:** K2 Pharmacy will introduce a video portal on its website and app, enabling patients to have face-to-face consultations with pharmacists remotely. This improves access to healthcare services, especially considering the increase in patients seeking advice regarding ailments and medicines.

1.74 **5. Locally Commissioned Services:**

1.75 a. **Sexual Health Services:** We will offer Sexual Health services, including emergency contraception privately and via PGD, as well as Chlamydia screening and treatment services, beneficial for secondary school children and the general local population.

1.76 b. **Elderly Care Home Services:** Our pharmacy will provide specialized services for the elderly residing in care homes, such as Palliative Care, Blister packs, original pack dispensing, and appropriate MAR charts. For enhanced medication compliance, we will trial the YOURmeds blister pack, a smart blister pack that includes reminders and alarms to prompt medication intake, especially beneficial for patients with conditions like arthritis or dementia.

1.77 c. **Smoking Cessation Service:** K2 Pharmacy will extend smoking cessation services, offering NRT vouchers and Varenicline supply through the appropriate PGD to assist the wider community in quitting smoking.

1.78 **6. Digital Tools Powered by AI:** We will implement digital tools driven by artificial intelligence (AI) to enable patient interaction and address queries related to pharmacy services. This will enhance support for healthcare staff and optimize their time for other essential tasks.

1.79 K2 Pharmacy is committed to spearheading the digitization of healthcare services, and as part of our mission, we will actively encourage and enforce the adoption of digital initiatives within our community. By embracing cutting-edge technologies and digital tools, we aim to enhance patient experiences, streamline healthcare processes, and improve overall health outcomes. Through our user-friendly website, app, and video portal, we will empower patients to participate in remote consultations, access essential pharmacy services, and stay informed about their health and medications conveniently. Furthermore, within the pharmacy premises, our knowledgeable staff will provide personalized education to patients, offering guidance on medication management, potential side effects, and the importance of adherence. By incorporating digital innovations and offering tailored, face-to-face interactions, K2 Pharmacy strives to

create a well-connected and informed patient community that embraces the potential of digital healthcare while taking charge of their own well-being.

1.80 **Local support**

1.81 Finally, our application has significant local support. Patients of Siam Surgery were asked to provide their opinion on the current pharmaceutical services and whether they feel the need for a reasonable choice when it comes to obtaining their pharmaceutical services. Siam Surgery's Facebook page was used to engage with patients. We are attaching some quotes from those emails in support which have been received and which confirm the matters summarised above in support of this application.

1.82 **Conclusion**

1.83 In conclusion, our application for inclusion in the pharmaceutical list for premises within the Sudbury Community Health Centre represents a critical step towards securing improvements and better access to pharmaceutical services for the growing and diverse population of Sudbury. The need for a pharmacy within the SCHC is evident, as the purpose-built pharmacy space within the health centre remains unutilized, leaving a gap in service provision that affects the overall healthcare synergy.

1.84 Sudbury's demographic changes, particularly the increasing proportion of older residents, coupled with the surge in housing developments in the area, demand a pharmaceutical service that is conveniently located, easily accessible, and well-equipped to meet the evolving healthcare needs of the community. Existing pharmacies in the region are struggling to meet the heightened demand, leading to long queues, overburdened services, and a lack of reasonable choice for patients.

1.85 Granting our application would provide immediate relief to patients by offering modern, disability-accessible premises within the SCHC, complete with a free car park. It would also address the challenges of physical access, particularly for those who are less mobile, with unsuitable terrains and long distances to the existing pharmacies. This enhanced access to pharmaceutical services would improve patient adherence to medications, allow for better collaboration between healthcare providers and pharmacists, and streamline the overall healthcare experience.

1.86 Furthermore, K2 Pharmacy is committed to pioneering innovative technologies and services, from pharmacy automation and robotics to the delivery of healthcare products via large platforms, making healthcare more accessible and efficient for the community. These advancements, combined with a range of locally commissioned services, will empower patients to take control of their health while benefitting from professional guidance.

1.87 The overwhelming local support for our application underscores the pressing need for a pharmacy within the SCHC and the potential for our innovative services to positively impact the community. By embracing cutting-edge technology and offering personalized healthcare, K2 Pharmacy aims to create a well-connected and informed patient community that takes charge of their own well-being.

1.88 In light of these considerations, we respectfully request the approval of our application, confident that it will lead to improved access, enhanced healthcare services, and better overall health outcomes for the Sudbury community."

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

1.89 "Our pharmacy will confer significant benefits in terms of:

1.89.1 Giving patients a reasonable choice of pharmaceutical services provision, including the choice to access a pharmacy in close proximity to their GP practice

1.89.2 Overcome the difficulties which currently exist for those patients who share a protected characteristic and who require access to pharmaceutical services, particularly for those who require access to pharmaceutical services immediately after a visit to their GP

1.89.3 Providing innovation in service delivery as detailed in the attached supporting information document."

Supporting information provided with the application is at Appendix A.

2 **The Decision**

The Commissioner considered and decided to refuse the application. The decision letter dated 2 August 2024 states:

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

Decision report

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

2.2 "The Committee noted that within the representations, G M Graham Ltd refer to historic failed applications for unforeseen benefits at Suffolk Community Health Centre.

2.3 The Committee noted the P&O team have reviewed files and sought confirmation from NHS Resolution regarding any historic appeals. NHS Resolution have confirmed they have not had any appeals regarding unforeseen benefits applications at this site. An email from NHS Resolution was shared with attendees as part of the committee report circulated prior to the meeting.

2.4 The Committee was asked to determine this routine application offering unforeseen benefits in the area of the Suffolk HWB under Regulation 18. The Committee noted there is no other person on the pharmaceutical list providing pharmaceutical services in the same or adjacent premises.

2.5 The Committee noted the nearest pharmacies which were circulated to attendees prior to the meeting.

2.6 The Committee agreed that it is not required to refuse the application under the provisions of Regulation 31 as this Regulation does not apply as the applicant has provided the address of the proposed premises. The Committee noted that Regulation 31 [sic] does not apply as the proposed listed pharmacy premises are not an LPS designated premises.

2.7 The Committee considered Regulation 40 of the Regulations.

2.8 The Committee noted that the applicant has not disputed that the area of the proposed premises, where they are seeking listing of pharmacy premises, is within a controlled locality.

2.9 The Committee noted that the P&O team have reviewed available records and can confirm no previous applications for unforeseen benefits within the postcode area of CO10 2DZ have been received or determined at PSRC. The Committee considered Regulation 41 of the Regulations.

2.10 The Committee considered the issue of reserved location for the post code of CO10 2DZ. Primary Care Support England (PCSE) provided patient numbers of those people residing within a 1.6-km radius of CO10 2DZ. There are 11,859 people.

2.11 As the patient numbers exceeded the reserved location threshold of 2,750, the Committee concluded this is not within a reserved location and noted it must consider Regulation 44, the prejudice test.

2.12 The Committee considered Regulation 50 of the Regulations.

2.13 The Committee noted, the applicant has provided an exact address and the post code of CP10 2DZ. The matter of gradualisation was therefore to be considered if the application was granted.

2.14 The Committee noted that Regulation 65 of the Regulations does not apply as the applicant is proposing to provide no more than 40 core hours.

2.15 The Committee noted that Regulation 66 of the Regulations does not apply as the applicant will not be providing directed services.

2.16 The Committee noted the applicant's full supporting document entitled "UB Application Form" which formed part of the application and shared with attendees prior to the meeting.

2.17 The Committee was asked to consider Regulation 18 and determine if granting the application under 18(1)(a), would secure better access to pharmaceutical services for the population of the HWB. The Committee noted the applicant proposed that they would provide pharmaceutical services during the opening hours shown below:

| | Opening Hours | | | | | | | | | | 40:00 | 26:00 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | S1 | | C1 | | S2 | | C2 | | S3 | | C3 | |
| Monday | 8:00 | 9:00 | 9:00 | 13:00 | | | 13:00 | 17:00 | 17:00 | 20:00 | | |
| Tuesday | 8:00 | 9:00 | 9:00 | 13:00 | | | 13:00 | 17:00 | 17:00 | 18:30 | | |
| Wednesday | 8:00 | 9:00 | 9:00 | 13:00 | | | 13:00 | 17:00 | 17:00 | 18:30 | | |
| Thursday | 8:00 | 9:00 | 9:00 | 13:00 | | | 13:00 | 17:00 | 17:00 | 18:30 | | |
| Friday | 8:00 | 9:00 | 9:00 | 13:00 | | | 13:00 | 17:00 | 17:00 | 18:30 | | |
| Saturday | 9:00 | 13:00 | | | | | | | 13:00 | 17:00 | | |
| Sunday | | | | | | | | | 14:00 | 18:00 | | |

2.18 The Committee noted that the applicant proposed 40 core hours as part of their application and 26 supplementary hours and that the supplementary hours can be withdrawn by the contractor in line with the Regulations.

2.19 The Committee noted that the applicant had provided a list of proposed Advanced Services within their supporting application that they would provide if this application was granted.

2.20 The Committee noted that there are five pharmacies located nearby. Tesco In Store Pharmacy has Saturday opening hours of 09:00 to 21:00 and Sunday opening hours

of 10:00 – 16:00. Additionally, there are another two pharmacies with Saturday opening hours, with one being open from 09:00 – 17:30.

2.21 The Committee noted that the applicant states: *"in making this application we are offering to secure improvements or better access that were not included in the HWB's Pharmaceutical Needs Assessment".*

2.22 The Committee noted that the 2022 Suffolk Pharmaceutical Needs Assessment (PNA) concludes *"provision of current pharmaceutical services and locally commissioned services are well distributed, serving all main population centres. There is excellent access to a range of services commissioned from pharmaceutical service providers. As part of this assessment no gaps have been identified in provision either now or in the future for pharmaceutical services deemed necessary by the Suffolk HWB".*

2.23 The Committee noted that the applicant stated:

2.24 "*Our pharmacy will confer significant benefits in terms of:*

2.25 *1) Giving patients a reasonable choice of pharmaceutical services provision, including the choice of access to a pharmacy in close proximity to their GP practice.*

2.26 *2) Overcome the difficulties which currently exist for those patients who share a protected characteristic and who require access to pharmaceutical services, particularly for those who require access to pharmaceutical services immediately after a visit to their GP.*

2.27 *3) Providing innovation in service delivery as detailed in the supporting statement information document."*

2.28 The Committee noted that Suffolk Community Heath Centre, CO10 2DZ falls within the Babergh locality as outlined in the PNA. The 2022 Suffolk PNA states that *"no gaps have been identified that it provided either now or in the future, would secure improvements or better access to Advanced Services across Babergh locality."*

2.29 The Committee noted that Siam Surgery is located within Suffolk Community Health Centre and has opening hours of Monday 08.00 – 20.00, Tuesday to Friday 08.00 – 18.30 and Saturday from 13.00 – 17.00. Opening hours for Saturday are for pre-booked appointments only.

2.30 The Committee noted that the applicant had included examples of local support within the application stating: *"Our application has significant local support. Patients of Siam Surgery were asked to provide their opinion on the current pharmaceutical services and whether they feel the need for a reasonable choice when it comes to obtaining their pharmaceutical services. Siam Surgery's Facebook page was used to engage with patients. We are attaching some quotes from those emails in support which have been received and which confirms the matters summarised in support of this application".*

2.31 The Committee noted that those patients registered at Siam Surgery chose to collect their prescriptions from the five pharmacies located within Sudbury town centre.

2.32 The Committee noted the data showing the top 20 dispensing locations for prescriptions issues [sic] by Siam Surgery (February 2024), which was included as part of the Committee Report and circulated to all attendees prior to the meeting. Siam Surgery is located within the Suffolk Community Health Centre, CO10 2DZ.

2.33 The Committee concluded that there is reasonable patient choice available. The data demonstrates that patients use a variety of pharmacies within the town of Sudbury and surrounding areas, which may be nearer to their home or work for example. The Committee concluded it was clear that patients are able to access pharmaceutical

services within the area of Suffolk HWB, noting that some patients are also choosing to access Distance Selling Premises (online services).

2.34 The P&O team reviewed contracting files and confirmed that the ICB have not received any patient complaints outlining that patients have difficulty in accessing pharmaceutical services within the area of Suffolk HWB. There is therefore no evidence to suggest that patients cannot access pharmaceutical services.

2.35 Regulation 18(2)(a) and (ii) - The Committee noted there is no evidence to suggest granting this application would cause significant detriment to the proper planning in respect of the provision of pharmaceutical services in the area of Suffolk HWB or the arrangements in place for the provision of pharmaceutical services in that area.

2.36 Regulation 18(2)(b)(i) - The Committee noted that there is no evidence to suggest granting this application would impact the reasonable choice of pharmaceutical services within the Suffolk HWB area. The SHAPE Atlas data contained within the Committee Report demonstrates that patients do already have, and are using, a range of pharmacies, selecting one that best meets their needs.

2.37 Regulation 18(2)(b)(ii) - The Committee noted the applicant stated the following within their application:

2.38 *The SCHC itself has a large, free car park, meaning that any patients that have travelled to the SCHC can easily access the proposed pharmacy without having to make any additional journey by car to another pharmacy with all the difficulties that that entails. For patients who are on foot, the co-located pharmacy would clearly offer significant benefits over the current service provision, which involves long distances over unsuitable terrain. We would also secure a reasonable choice of service provision, both by increasing the overall provision of pharmaceutical services in the town but also by giving patients the choice to access a pharmacy at their health centre rather than having to travel to other areas in order to access a pharmacy.*

2.39 The Committee noted that there is already a reasonable choice with regard to obtaining pharmaceutical services in the area of Suffolk HWB, which meets the needs of the population as demonstrated by the data included in the committee report.

2.40 The Committee noted that Siam Surgery relocated from North Street, Sudbury some years ago and as part of this process patients would have been consulted regarding this relocation. The cohort of patients who accessed Siam Surgery, North Street continue to receive their GP medical care at Siam Surgery, Suffolk Community Health Centre. This would demonstrate that patients are able to easily access their GP Practice and pharmaceutical services by travelling by car or foot within the compact town of Sudbury. The Committee also noted that many patients will be on repeat medicines and will not need to attend the GP practice first. This group of patients will likely choose a pharmacy nearer where they live or work. Particularly with the introduction of Pharmacy First, patients will not attend the GP practice first.

2.41 The Committee noted that the Applicant states that patients have struggled to access pharmaceutical services due to the closure of Lloyds Pharmacies located within Sainsburys Supermarket. These pharmacies, including a 100-hour pharmacy in Sudbury exited the market in June/July 2023. The Committee noted that it has been at least a year since the closure and patients are obtaining their medicines and pharmaceutical services from the surrounding pharmacies (as evidenced by the data included in these minutes). The Committee also thought that if the closure of Lloyds had created a gap, that the applicant would be proposing core hours in excess of 9-5pm (noting that the proposed supplementary hours can be removed following the required notification). As referenced previously, the P&O team have not received any complaints in the past year from patients outlining that they cannot access pharmaceutical services or obtain their medicines since the closure.

2.42 Additionally, the Committee was aware that in February 2021 it granted a no significant change relocation (NSCR) application from GM Graham Pharmacies Ltd, North Street, Sudbury. In determining the decision, the Committee were required to consider any current or future gaps that may have been created as a result. The Committee was content that no gap would be created as the application was granted.

2.43 Regulation 18(2)(b)(iii) - The Committee noted the applicant provided the following statement within their application to support this Regulation under innovation:

2.44 *K2 Pharmacy is committed to transforming pharmacy and medicine delivery through innovative technologies and enhanced patient services. By harnessing the power of new technology, we aim to improve patient outcomes, optimize medication management, and better connect with the wider NHS.*

2.45 *1. Pharmacy Automation and Robotics: We will employ state-of-the-art pharmacy automation systems, including robotic dispensing machines, to enhance accuracy and efficiency in medication management. These systems will assist in counting, packaging, and verifying medications, reducing human errors and streamlining prescription filling and inventory management.*

2.46 *2. Automated Prescription Collection: Our pharmacy will introduce automated prescription collection systems, providing patients with 24/7 convenience and freeing up pharmacists' time. This technology ensures precise medication dispensing using barcode scanning, aligning with the UK Scan4Safety initiative. Additionally, it will serve as a click-and-collect facility for essential over-the-counter emergency medicines, available even when the pharmacy is closed.*

2.47 *3. Delivery of Healthcare Products (GSL) via Large Delivery Platforms: To cater to a wider population, we will trial the delivery of healthcare products using platforms like Deliveroo. Embracing smart technology, this approach allows patients greater access to healthcare services at their preferred location and time.*

2.48 *4. Remote Access: K2 Pharmacy will introduce a video portal on its website and app, enabling patients to have face-to-face consultations with pharmacists remotely. This improves access to healthcare services, especially considering the increase in patients seeking advice regarding ailments and medicines.*

2.49 *5. Locally Commissioned Services:*

2.50 *a. Sexual Health Services: We will offer Sexual Health services, including emergency contraception privately and via PGD, as well as Chlamydia screening and treatment services, beneficial for secondary school children and the general local population.*

2.51 *b. Elderly Care Home Services: Our pharmacy will provide specialized services for the elderly residing in care homes, such as Palliative Care, Blister packs, original pack dispensing, and appropriate MAR charts. For enhanced medication compliance, we will trial the YOURmeds blister pack, a smart blister pack that includes reminders and alarms to prompt medication intake, especially beneficial for patients with conditions like arthritis or dementia.*

2.52 *c. Smoking Cessation Service: K2 Pharmacy will extend smoking cessation services, offering NRT vouchers and Varenicline supply through the appropriate PGD to assist the wider community in quitting smoking.*

2.53 *6. Digital Tools Powered by AI: We will implement digital tools driven by artificial intelligence (AI) to enable patient interaction and address queries related to pharmacy services. This will enhance support for healthcare staff and optimize their time for other essential tasks. K2 Pharmacy is committed to spearheading the digitization of healthcare services, and as part of our mission, we will actively encourage and enforce the adoption of digital initiatives within our community. By embracing cutting-edge*

*technologies and digital tools, we aim to enhance patient experiences, streamline healthcare processes, and improve overall health outcomes. Through our user-friendly website, app, and video portal, we will empower patients to participate in remote consultations, access essential pharmacy services, and stay informed about their health and medications conveniently. Furthermore, within the pharmacy premises, our knowledgeable staff will provide personalized education to patients, offering guidance on medication management, potential side effects, and the importance of adherence. By incorporating digital innovations and offering tailored, face-to-face interactions, K2 Pharmacy strives to create a well-connected and informed patient community that embraces the potential of digital healthcare while taking charge of their own well-being.*

2.54 The Committee agreed that innovative services suggested by the applicant were not innovative. Pharmacies located within close proximity to the proposed location currently provide prescription delivery services. Additionally, locally commissioned services are provided to patients via pharmacies throughout the Suffolk HWB. Remote access and remote consultations are used by many health providers and are not innovative. The Committee noted that some of the services listed were not pharmaceutical service and whilst could be commissioned by the local authority or provided privately, were not relevant to the determination of this application.

2.55 The Committee noted that the applicant stated within their application "*patients currently find it difficult to access existing pharmacies, and do not have a reasonable choice of pharmaceutical services (and, in particular, the choice to access a pharmacy from premises which are near to their GP surgery).*"

2.56 The Committee reminded itself that the test is not that patients can access pharmaceutical services next door to their GP practice, or in close proximity to their GP practice or even within a compact town. The test is in relation to the HWB. The data supplied confirms that patients are able to access pharmaceutical services within the HWB.

2.57 The Committee noted the statements made by the applicant in relation to the relatively high proportion of older residents in Sudbury compared to England averages, and the greater propensity of older people (and of course, those in poor health) who access GP Services.

2.58 Whilst the Committee noted that older people could be viewed as sharing a protected characteristic, it concluded that no evidence had been provided, clearly defining those protected groups that cannot access pharmaceutical services or a specific pharmaceutical service. The Committee was not aware of anyone in Suffolk HWB unable to obtain pharmaceutical services and their medication.

2.59 The Committee noted the information below taken from the 2022 Suffolk PNA, which references Babergh residents and identifies higher numbers within the 30-49 and 50-64 age bands: [Table at Appendix B]

2.60 This data shows that the HWB were aware of the patient demographic, including age profiles when considering the PNA and did not identify any gaps in the provision of pharmaceutical services.

2.61 The Committee noted the patient age profile for registered patients at Siam Surgery. From this data it is evident that of the 11,0902 registered patients there are more within the 30-34, 35-39, 55-59 and 60-64 year old groups:

2.62 Data Source – SHAPE Atlas March 2024 [Table at Appendix B]

2.63 **Consider impact of decision on those with protected characteristics under the Equalities Act 2010 and is this in accordance with NHS England/the ICB's Public Sector Equality Duty**

2.64 The Committee considered if granting or refusing this application would affect those with protected characteristics and the impact on the ICB's Public Sector Equality Duty

2.65 The Committee noted the applicant did not clearly define what the protected groups might be and that no evidence had been provided to suggest that granting this application would impact those with protected characteristics.

2.66 **Decision:**

2.67 The Committee agreed this application is refused under Regulation 18 (1) on the following basis:

2.67.1 There is already a reasonable choice with regard to obtaining pharmaceutical services in the area of Suffolk HWB.

2.67.2 There is no evidence of people sharing protected characteristics having difficulty accessing pharmaceutical services in the area of Suffolk HWB.

2.67.3 There is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services in the area of Suffolk HWB. The granting of this application would not offer significant benefits to people within the area of Suffolk HWB.

2.68 The PSRC noted that a consolidation application had been submitted by GM Graham Pharmacies Ltd on 15 October 2021 in relation to:

2.68.1 North Street Pharmacy, 80/81 North Street, Sudbury, CO10 1RF (remaining site) and

2.68.2 Parade Pharmacy, 6 North Street Parade, Sudbury, CO10 1GL (closing site).

2.69 The application was granted by NHS England on 6 May 2022 and took effect on 8 May 2022.

2.70 Within its application Supremus Therapeutics Ltd referenced this consolidation and that it had resulted in the loss of 100 core opening hours a week in the town.

2.71 The PSRC referred to the Suffolk PNA which was published in 2022. It noted that when the PNA was drafted Parade Pharmacy was open and is referenced in the PNA. A draft version of the PNA was consulted upon between 19 April to 18 June 2022 and in the final version reference is made to the closure of North Street Pharmacy due to a consolidation, for example figure 25. It is believed this is an error as it was Parade Pharmacy that closed.

2.72 Reference is made on page 88 to the loss of four pharmacies due to the granting of four consolidation applications as they would not create a gap that could be met by a routine application offering to meet a current or future need for, or secure improvements or better access to, pharmaceutical services. It noted the 2022 PNA states that no gaps in the provision of pharmaceutical services have been identified.

2.73 The PSRC was therefore satisfied that whilst also referring to the closure of the Lloyds pharmacy in Sainsburys, the applicant presupposes that the closure of Parade Pharmacy, 6 North Street Parade, Sudbury CO10 1GL as a result of a consolidation application created a gap in the provision of pharmaceutical services. The PSRC was therefore satisfied that the application is to be refused by virtue of regulation 19(5).

2.74 **Regulation 44 – Prejudice test**

2.75 The Committee noted the post code is not within a reserved location and it must therefore consider Regulation 44, the prejudice test. However, the Committee noted that prejudice could only arise if the application meets the requirements of Regulation 18.

2.76 The Committee agreed that as this application is refused it is unnecessary to consider the prejudice test.

2.77 As the Committee agreed this application is refused the applicant has the right of appeal."

Supporting information provided with the decision is at Appendix B.

## 3 The Appeal

In a letter dated 30 August 2024 addressed to NHS Resolution, Temple Bright LLP, on behalf of the Applicant, appealed against the Commissioner's decision. The grounds of appeal are:

3.1 "I act for Supremus Therapeutics Limited. On behalf of my client I write to appeal a decision of NHS England/NHS Hertfordshire & West Essex ICB to refuse my client's application for inclusion in the pharmaceutical list offering unforeseen benefits for premises at the Sudbury Community Health Centre, Church Field Road, Sudbury, CO10 2DZ. The decision was notified to client my client [sic] by letter dated 2nd August 2024.

3.2 **Ground of appeal**

3.3 My client's ground of appeal is that the ICB failed properly to consider the barriers to accessing existing pharmacies in Sudbury. The ICB repeatedly refers, in its decision report, to pharmacies in Sudbury, but there is no evidence that the ICB properly had regard to whether those pharmacies are difficult to access.

3.4 My client had provided a significant amount of evidence, both in its application form and in subsequent correspondence, which demonstrated that existing pharmacies in Sudbury are difficult to access and do not secure a reasonable choice of service provision. The ICB's decision report does not reflect the wealth of evidence provided by my client. As such, my client believes that the ICB failed to have proper regard to the matters raised by my client in support of its application and that its decision is, consequently, flawed.

3.5 **Background**

3.6 By way of background, my client's application has been submitted for inclusion in the pharmaceutical list for premises within the Sudbury Community Health Centre. The Sudbury Community Health Centre is located towards the northern edge of Sudbury, as shown in the google maps image below.

3.7 Sudbury is a market town in southwest Suffolk. According to 2021 census data, the town has a population of approximately 24,000. Suffolk's population is older than the average population in England, with approximately 23% of residents aged 65 and over compared to 18.3% for England as a whole.

3.8 In addition to the population at the time of the 2021 census, there are numerous housing developments in the local area as summarised in my client's application form.

3.9 The location of the proposed premises is within the Sudbury Community Health Centre building. The SCHC was completed in 2014, with building plans containing space for a community pharmacy. However, a pharmacy never opened within the SCHC.

3.10 The SCHC houses the Siam GP surgery, which is open from 8am to 8pm on Monday, from 8am to 6.30pm from Tuesday to Friday and from 1pm to 5pm on Saturday. As of August 2024, Siam Surgery has a patient list of 12,150, up from 10,847 in February 2022. GPs at the surgery prescribe in excess of 26,000 items per month.

3.11 As a result of the size of its patient list and the number of prescription items prescribed, it is clear that the SCHC acts as a significant focus of demand for pharmaceutical services in the immediate vicinity of the location proposed in my client's application.

3.12 I have set out, below, the practice boundary of Siam Surgery. This includes not only the town of Sudbury, but surrounding villages such as Great Waldingfield and Acton, which do not have their own pharmacies.

3.13 **Provision of pharmaceutical services in Sudbury**

3.14 As stated above, there is no pharmacy within the SCHC and no pharmacy which is reasonably accessible from the SCHC site for patients. I have set out, below, a google maps image which shows the location of existing pharmacies in Sudbury.

3.15 It can be seen from this image that not only are there no pharmacies within the SCHC, but there are no pharmacies within a reasonable distance of the SCHC. In fact, it is a considerable distance from the SCHC to any pharmacies – there are no pharmacies within 1.8km (over a mile) of the SCHC by the shortest practicable route. It is submitted that this is extremely unusual for a health centre in a town setting, particularly one of the size of the SCHC.

3.16 I have detailed, below, the distances and other barriers to accessing the pharmacies in Sudbury from the SCHC.

3.17 **Tesco in-store pharmacy**

3.18 Tesco in-store pharmacy is 1.9km (or a 26 minute walk) from the SCHC as shown in the image below. This is a significant distance to walk for any patient, but particularly for those who are unwell or who have reduced mobility.

3.19 Whilst it can be seen from the above map that there is a shorter route, this is along the A134 which has no footpath along its entire length between the SCHC and the Tesco store entrance, making it entirely unsuitable for pedestrian use. See google streetview image below.

3.20 **Boots pharmacy**

3.21 Boots pharmacy is located to the south of the SCHC. It is also 1.9km from the SCHC, or a 28-minute walk as shown on the google maps image below.

3.22 In addition to the distance to the Boots pharmacy, which represents a barrier to access by foot, as can be seen from the map above, the route runs through a large industrial estate which makes the walk particularly unattractive as the roads are busy with heavy goods vehicles and have few pedestrians. The industrial area does not have pavements through part of the route, with rough terrain, meaning that it is unusable for patients in wheelchairs or those walking with pushchairs.

3.23 **Town centre pharmacies - North Street Pharmacy, Superdrug Pharmacy and Boots Pharmacy**

3.24 North Street Pharmacy and Superdrug Pharmacy are both located 1.8km, or a 27-minute walk, from the SCHC in Sudbury town centre as shown in the google maps image below.

3.25 Boots Pharmacy is located 1.9km, or a 28-minute walk, from the SCHC in Sudbury town centre as shown in the google maps image below.

3.26 The B1115/Waldingfield Road is the main route from Sudbury Community Health Centre to the Sudbury town for pharmacy access. This route consists of a narrow but a very busy road that has a small pavement on only one side. When coming from SCHC into Sudbury town, the road is on a gradient down into the town centre. This narrowness of the pavement makes it challenging for two people to cross paths with a gap in between. This challenge is more severe for anyone with a buggy, a wheelchair, or a mobility scooter. The narrowness of the pavement and obstructions because of poles on the pavement in a few places makes this route unsuitable for disabled patients and parents with children.

3.27 I have provided, below, some photographs which show the barriers along the B1115/Waldingford Road:

3.28 **Access to pharmacies by car**

3.29 It is, of course, the case that many people who require access to a pharmacy may not have access to a car, either because they do not own a car at all, or because the car is in use by another member of the family.

3.30 However, even for those who do have access to a car, getting to a pharmacy can still be difficult. In particular, parking at the town centre pharmacies is extremely limited, some distance from the pharmacies (meaning patients have to park and then walk to a pharmacy) and parking charges have just been introduced, making a trip into the town centre to access a pharmacy more expensive.

3.31 There is a car park at the Tesco store, but many patients have expressed a concern that the Tesco pharmacy is under significant pressure, particularly following closure of the Lloyds Pharmacy in the Sainsbury store (which offered an alternative “supermarket” pharmacy) meaning that even if patients can drive to Tesco pharmacy, accessing pharmaceutical services is difficult due to long wait times (see further below).

3.32 **Access to pharmacies by bus**

3.33 Finally, in relation to public transport, there are limited public transport links between the surgery and Sudbury town centre.

3.34 Bus route 700 operates with 8 buses in a day (roughly one bus per hour). This puts a severe strain on patients as they will have GP appointment times which mean that they have no flexibility over when they can leave to travel to a pharmacy. The first bus from the SCHC to Sudbury town centre is at 9:18am which means patients that attend for their appointments at 8am will have to wait for over an hour for the first bus. The last bus from SCHC to Sudbury town is at 17:18pm. The surgery operates until 8pm on Mondays and opened till 18:30pm on other weeks days. This means that patients that attend their appointments after 5pm will not be able to use this service to access a pharmacy after a visit to their GP.

3.35 Bus route 750 does not stop at the SCHC, meaning that patients have a 14-minute walk through two roundabouts on very busy roads to get to the nearest bus stop served by bus route 750. The first bus from the nearest bus stop to the SCHC into Sudbury town centre comes at 9:56am which means patients that attend for their appointments at 8am will have to wait for over an hour and a half for the first bus. The last 750 bus from SCHC to Sudbury town is at 17:28pm. The surgery operates until 8pm on Mondays and opened till 18:30pm on other weeks days. This means that patients that attend their appointments after 5pm will not be able to use this service.

3.36 **Regulatory test**

3.37 Having regard to the matters summarised above, granting my client's application would secure improvements in, and better access to, pharmaceutical services in the HWB's area that are not contained within the relevant PNA.

3.38 For the purposes of this application, the current PNA is the 2022 Suffolk PNA. Whilst the PNA does not identify a need for additional pharmaceutical services in its area, the PNA does not specifically consider the matters raised in support of this application, meaning that the significant benefits that would be conferred by the granting of my client's application are unforeseen in the context of the PNA. It was also published before the closure of the Lloyds pharmacy within the Sainsburys store and its conclusions are therefore out of date.

3.39 Having regard, in particular, to the matters contained within regulation 18(2)(b), my client comments as follows:

3.40 **The desirability of there being a reasonable choice of service provision**

3.41 My client believes that there is currently not a reasonable choice of service provision in the HWB's area, particularly for patients of, and those in the immediate vicinity of, the SCHC.

3.42 As a matter of common sense, pharmacies which are not reasonably accessible cannot secure a reasonable choice of service provision. I have already set out, above, why existing pharmacies are difficult for patients to access in terms of distance and barriers such as a lack of pavements, terrain, narrow pavements and routes through industrial areas. However, in addition to physical access, it is of note that the number of pharmacies in Sudbury has actually reduced in recent years, thereby reducing patient choice, whilst the population of the town (and the number of patients registered with the SCHC) continues to grow. In May 2022, Parade Pharmacy merged with North Street Pharmacy, resulting in the loss of 100 pharmacy hours per week. In June 2023, Lloyds Pharmacy within the Sainsburys store also closed.

3.43 These closures and the increasing demand for pharmaceutical services in the town mean that Sudbury pharmacies dispense an average of approximately 13,000 items per month each, which is twice the average for a community pharmacy in England.

3.44 The increased pressure on the remaining pharmacy network is clear from a wide range of evidence provided by my client in support of its application. NHS Resolution will no doubt have received the relevant correspondence from NHS England, but, for the sake of completeness, I attach to this letter the following:

3.44.1 Letters and emails in support of my client's application from patients and local residents. NHS Resolution will no doubt carefully consider each letter and email, but key themes emerge from this correspondence:

3.44.1.1 Difficulties accessing existing pharmacies

3.44.1.2 Pharmacies "struggling to cope" and "overstretched", with long queues

3.44.1.3 Lack of parking in the town centre, with recently introduced parking charges adding to the cost of accessing pharmaceutical services.

3.44.2 Report from Healthwatch Suffolk. Whilst not specific to Sudbury, it does reflect the concerns raised in the attached letters and emails in support from patients, showing that these are issues that are widespread.

3.44.3 Letter in support from Siam Surgery

3.44.4 Letter in support from Sudbury Town Council

3.45 Since the refusal of my client's application by the ICB, a news article appeared on the Suffolk News website (Pharmacist to appeal refusal of plans for new dispensary at Sudbury Community Health Centre (suffolknews.co.uk)). The article prompted patients to email PALS or my client if they had any comments on their experience of accessing pharmaceutical services. My client understands that those who contacted PALS have been referred on to the ICB, and my client is therefore sure that the ICB will have received many complaints from patients (and NHS Resolution is invited to specifically request this information from the ICB). In relation to the emails sent directly to my client, these are attached to this letter of appeal and raise many issues of access difficulties and a lack of choice.

3.46 It is clear from the available evidence that the existing pharmacy network does not secure a reasonable choice: it is difficult for patients to get to existing pharmacies from the SCHC, and even if patients can physically reach a pharmacy there is evidence that existing pharmacies are under significant pressure and cannot cope with demand for pharmaceutical services.

3.47 Granting my client's application would confer significant benefits in terms of service provision, by both increasing capacity within the local pharmacy network and also improving physical access by locating a pharmacy within the SCHC.

3.48 **For those who share a protected characteristic and who require access to pharmaceutical services but who currently find access difficult**

3.49 It is submitted that the starting point for consideration of access difficulties is the fact that the proposed location is within a large health centre which houses a GP surgery and a number of other health clinics. It is therefore a matter of common sense that those patients who are present at the SCHC will have a protected characteristic (for example, a particular health condition or disability), will require access to pharmaceutical services (for example, the dispensing of a prescription) and, for the reasons summarised above, will find access to existing pharmacies difficult.

3.50 In addition to the matters summarised above in terms of physical access, NHS Resolution will note that a number of the letters and emails in support deal with the specific circumstances of the writer, their health needs and why they find access to existing pharmacies difficult.

3.51 Granting my client's application would confer significant benefits since it would overcome all of the access difficulties which are summarised above and detailed in the attached support letters and emails.

3.52 **Innovation in service delivery**

3.53 As stated in my client's application form, my client also intends to provide innovation in service delivery to the benefit of its patients.

3.54 The pharmacy will have an app that it will encourage and educate all its patients to use. As well as tracking the progress of their medications, patients will also be able to book video consultations with the pharmacist. The app will use artificial intelligence (AI) to initially interact with the patient to get a history (WWHAM questions) as well as other appropriate information for that particular condition for the pharmacist to use. This will save the pharmacist's time and will offer innovative and accurate ways to treat patients or make referrals with the help of AI which will offer all specific resources from NICE and BNF etc for that specific condition. This will ensure that all patients are able to speak to a pharmacist with ease and from the comfort of their homes. Answering phone calls in pharmacies has become a logistical hurdle for community pharmacies. In K2 Pharmacy, this problem will be solved by an AI Agent. AI Agent is a tool that answers phone calls and with incorporation into the pharmacy software system it can interact

with patients and answer their basic medication related questions e.g. whether the medication is ready? Has a prescription been sent? Certain medication in stock? etc. AI Agent will make referrals to the pharmacist or pharmacy staff when appropriate. These advances will save labour and ensure that personnel are used for other jobs that cannot be performed by AI.

3.55 **Conclusion**

3.56 In conclusion, granting my client's application would secure improvements in, and better access to, pharmaceutical services in the HWB's area.

3.57 Sudbury's demographic changes, particularly the increasing proportion of older residents, coupled with the surge in housing developments in the area, demand a pharmaceutical service that is conveniently located, easily accessible, and well equipped to meet the evolving healthcare needs of the community. Existing pharmacies in the region are struggling to meet the heightened demand, leading to long queues, overburdened services, and a lack of reasonable choice for patients.

3.58 Granting my client's application would provide immediate relief to patients by offering modern, disability-accessible premises within the SCHC, complete with a free car park. It would also address the challenges of physical access, particularly for those who are less mobile, with unsuitable terrains and long distances to the existing pharmacies. This enhanced access to pharmaceutical services would improve patient adherence to medications, allow for better collaboration between healthcare providers and pharmacists, and streamline the overall healthcare experience.

3.59 On behalf of my client, I therefore invite NHS Resolution to uphold my client's appeal and to grant its application."

Supporting information provided with the appeal is at Appendix C.

## 4 Summary of Representations

This is a summary of representations received on the appeal.

4.1 THE COMMISSIONER

4.1.1 "Please note that from the 1 April 2023, community pharmacy contracting and commissioning has been delegated to Integrated Care Boards (ICBs). Hertfordshire and West Essex (HWE) ICB are hosting the function on behalf of the six East of England ICBs.

4.1.2 Having reviewed the grounds of appeal made by Temple Bright LLP on behalf of Supremus Therapeutics Limited (the Appellant), for premises at the Sudbury Community Health Centre (SCHC) at Church Field Road, Sudbury, Suffolk, CO10 2DZ, the HWE ICB remains of the opinion that this application should be refused.

4.1.3 The Appellant appears to be appealing on the following grounds:

4.1.3.1 The ICB failed to consider the barriers to accessing existing pharmacies in Sudbury.

4.1.3.2 The ICB failed to have proper regard to the matters raised by the Appellant in support of its application and that its decision is, consequently, flawed.

4.1.4 **Provision of Pharmaceutical Services**

4.1.5 The 2022 - 2025 Suffolk Pharmaceutical Needs Assessment (PNA) was reviewed when assessing and determining this application. A supplementary statement was initially produced in February 2023 however the Health and Wellbeing Board (HWB) have advised on their website that following a review, the detail within it did not require a supplementary statement. The changes within the supplementary statement have been superseded by the production of an updated map and list of updated pharmacies. The February 2023 supplementary statement has been removed. These documents can be found by following the link below:

4.1.6 The Pharmaceutical Needs Assessment for Suffolk. - Healthy Suffolk

4.1.7 The 2022 - 2025 Suffolk PNA concludes "*provision of current pharmaceutical services and locally commissioned services are well distributed, serving all main population centres. There is excellent access to a range of services commissioned from pharmaceutical service providers. As part of this assessment no gaps have been identified in provision either now or in the future for pharmaceutical services deemed necessary by the Suffolk HWB". (*Page 13 of the PNA*)*

4.1.8 Sudbury falls within the Babergh locality and the PNA states:

4.1.9 *"No gaps in the provision of Necessary Services have been identified for Babergh locality" and*

4.1.10 *"No gaps have been identified that if provided either now or in the future, would secure improvements or better access to Advanced Services across Babergh locality".* (Pages 127 and 128 of PNA*).*

4.1.11 The 2022 - 2025 Suffolk PNA does not identify any gaps in the provision of pharmaceutical services, either within normal working hours or outside of them. It does not articulate any current or future needs for, or current or future improvements or better access to, a particular pharmaceutical service or pharmaceutical services in general.

4.1.12 **Provision of pharmaceutical services in Sudbury**

4.1.13 The Appellant states that "*there are no pharmacies within a reasonable distance of the SCHC. In fact it is a considerable distance from the SCHC to any pharmacies – there are no pharmacies within 1.8km (over a mile of the SCHC by the shortest practicable route*".

4.1.14 There are 5 pharmacies within 1.1 mile of SCHC. All are open on a Saturday with 1 pharmacy having core hours until 21:00 Monday to Saturday and Sunday core hours 10:00-16:00, 2 with core hours until 17:30 Monday to Friday and 2 with core hours until 17:30 Monday to Saturday. 4 of the 5 pharmacies also provide supplementary hours which can be withdrawn by giving the required 5 weeks' notice in line with the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 as amended (hereafter referred to as "the Regulations"). Detail of current core and supplementary hours provision of the 5 pharmacies can be found in **Appendix 1**.

4.1.15 The Appellant refers to the hours the applicant will provide if the application is granted. For ease, the proposed hours are:

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | Proposed Hours | | | | | 40:00 | 26:00 |
| | S1 | C1 | S2 | C2 | S3 | C3 | |

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Monday | 8:00 | 9:00 | 9:00 | 13:00 | | | 13:00 | 17:00 | 17:00 | 20:00 | | |
| Tuesday | 8:00 | 9:00 | 9:00 | 13:00 | | | 13:00 | 17:00 | 17:00 | 18:30 | | |
| Wednesday | 8:00 | 9:00 | 9:00 | 13:00 | | | 13:00 | 17:00 | 17:00 | 18:30 | | |
| Thursday | 8:00 | 9:00 | 9:00 | 13:00 | | | 13:00 | 17:00 | 17:00 | 18:30 | | |
| Friday | 8:00 | 9:00 | 9:00 | 13:00 | | | 13:00 | 17:00 | 17:00 | 18:30 | | |
| Saturday | 9:00 | 13:00 | | | | | | | 13:00 | 17:00 | | |
| Sunday | | | | | | | | | 14:00 | 18:00 | | |

4.1.16 In comparison to the hours provided by existing pharmaceutical providers, these proposed hours are very similar. The hours of 16:00-18:00 on a Sunday are the only hours proposed by the applicant that are not provided by other pharmaceutical providers. It is noted however that Tesco has core hours from 10:00-16:00 on a Sunday and therefore anyone that has not been able to access one of the 5 pharmacies open on a Saturday could access the existing Tesco store between 10:00 – 16:00 on the Sunday. The Sunday hours proposed by the applicant are supplementary and could be withdrawn, providing the required notice period is given.

4.1.17 A map of the existing pharmaceutical providers can be found in **Appendix 2**.

4.1.18 The existing pharmacies are located in areas of greater deprivation and a map of these areas can be found in **Appendix 3**. The proposed location is in a far less deprived part of the town.

4.1.19 Access to pharmaceutical services was considered within the 2022 - 2025 Suffolk PNA and travel times analysed. (Page 96 of the PNA). The HWB noted the following:

4.1.19.1 Walking: 68.7% of the population can walk to a pharmacy within 20 minutes (74.6% within 30 minutes).

4.1.19.2 Driving off-peak: 99.8% of the population can drive to a pharmacy within 20 minutes (100% within 25 minutes).

4.1.19.3 Driving at peak: 98.6% can reach a pharmacy within 20 minutes (100% within 30 minutes).

4.1.19.4 Public transport: Approximately 78% can reach a community pharmacy within 20 minutes (afternoon is faster than morning); up to 86.2% of people can reach a pharmacy within 30 minutes.

4.1.20 A public questionnaire about pharmacy provision was developed inviting stakeholders to comment on pharmacy services in Suffolk HWB. This was circulated to all pharmacy contractors and GP practices and libraries in Suffolk to distribute to the public via a business-card-sized flyer. It was also shared with Healthwatch Suffolk for onward distribution to its members and participation groups, social media and websites, paid advertisements in local paper and internal communication newsletters.

4.1.21 Of the 555 responses received from the public questionnaire (page 164 of the PNA):

4.1.21.1 Reason for choosing a pharmacy – closer to home 76%, close to GP surgery 46%.

4.1.21.2 Mode of transport to a community pharmacy 63% access a pharmacy by car and 28% walk.

4.1.21.3 92% reported no difficulty in travelling to a pharmacy.

4.1.22 The data below shows the top 9 dispensing pharmacies for prescriptions issued by Siam Surgery in June 2024 and utilised by patients. Siam Surgery prescribed 25,671 items, of these 25,495 were electronic prescriptions (99.3%). Of the 176 items that were on paper prescriptions, 145 were personally administered by the practice. Therefore, of those that were dispensed by a pharmacy or DAC, 99.9% were electronic prescriptions and patients would not have needed to go to the practice; they would go straight to the pharmacy of their choice.

4.1.23 The June prescriptions were dispensed by 95 pharmacies or DACs. 96.6% of items however were dispensed at nine different premises*:

| ODS Code | Dispenser | Address | Post Code | Number of Items | Number of EPS items | % of items |
|---|---|---|---|---|---|---|
| FC154 | GM Graham Pharmacies Ltd | 80 North Street, Sudbury | CO10 1RF | 7598 | 7579 | 29.6% |
| FXE88 | Boots UK Ltd | 13-14 Market Hill, Sudbury | CO10 2EA | 5220 | 5219 | 20.3% |
| FC484 | Tesco Stores Ltd | Springlands Road, Sudbury | CO10 1GY | 4113 | 4111 | 16.0% |
| FF269 | Boots UK Ltd | 5 Applegate Centre, Great Cornard, Sudbury | CO10 0GL | 2534 | 2534 | 9.9% |
| FNQ26 | GM Graham Pharmacies Ltd | Richmond House, Hall Street, Long Melford | CO10 9JL | 2388 | 2382 | 9.3% |
| FJ441 | Superdrug Stores PLC | 8 North Street, Sudbury | CO10 1RB | 1080 | 1080 | 4.2% |
| FLM49 | Pharmacy2U Ltd | Victoria Road, Leeds | LS14 2LA | 1022 | 1022 | 4.0% |
| FVG74 | Mats Pharma Ltd | 3 High Street, Lavenham, Sudbury | CO10 9PX | 527 | 526 | 2.1% |
| FN849 | Metabolic Healthcare Ltd | 17 Wadsworth Road, Perivale, Greenford | UB6 7JD | 328 | 328 | 1.3% |

**Dispensing contractor data: June 2024*
*NHS Business Service Authority: Dispensing contractors' data | NHSBSA*

4.1.24 It is to note that the June 2024 prescribing data does not show any other service located in SCHC having issued prescriptions.

4.1.25 This data demonstrates that patients of the Siam Surgery, located within the SCHC, use a variety of pharmacies within the town of Sudbury and surrounding areas, which may be nearer to where they live, work, go shopping, participate in leisure facilities, take their children to school etc. Similarly, the ICB have not assumed that any medication has been delivered by the dispenser, other than where the dispenser is a distance selling premises and must therefore deliver dispensed items. It is clear that there is reasonable patient choice available and that patients are able to access pharmaceutical services within the area of Sudbury HWB, with some patients also choosing to access Distance Selling Premises (online services).

4.1.26 The Appellant has provided information to demonstrate ways in which patients may travel to the nearest pharmacies from SCHC which includes on foot, by car and the use of public transport and the alleged barriers to accessing pharmaceutical services. Maps identifying areas within a 5 minute drive and 15 minutes by public transport to a pharmacy can be found in **Appendix 4.**

4.1.27 The Appellant has assumed that most patients will attend SCHC prior to accessing pharmaceutical services and has calculated journey times and access from this point. The data extracted from the 2022 – 2025 Suffolk PNA (detailed on page 3 of this document) shows that patients are choosing to access a pharmacy near to where they live, rather than near their GP practice. It also shows 92% of patients had no difficulty in accessing a pharmacy. This of course suggests that there may be a small number of patients who have had some difficulty however the HWB were aware of this when publishing the PNA and did not feel that this created any gap in terms of access or choice.

4.1.28 Whilst there may be some who may make the journey on foot to the town centre and some who are unable or unwilling to do so this does not indicate that there is not reasonable choice in obtaining pharmaceutical services. This does demonstrate that people are unlikely to walk from the town centre to SCHC and are much more likely to drive or travel by public transport. The Appellant has provided no information on the number of people who walk to SCHC. Many patients will be on repeat medicines and will have no need to travel to the surgery prior to accessing pharmaceutical services.

4.1.29 The PNA also addresses the way in which patients access pharmaceutical services – through walking, by car and public transport. The HWB was aware that for some patients it may take 20 – 30 minutes to walk and they deemed these travel times to be acceptable and reasonable.

4.1.30 The ICB noted that Siam Surgery relocated from North Street, Sudbury in 2014 into SCHC and as part of this process patients would have been consulted regarding this relocation. Consideration would have been given to how patients attending a new location (SCHC) would access pharmaceutical services. It is suggested that if access had been of significant concern, this would have been raised as part of the consultation and the relocation would not have happened. It is also noted that the routes from SCHC to the nearby 5 pharmacies have not changed in the last 10 years, so it is unclear why access to existing pharmacies is now problematic.

4.1.31 **Access to pharmacies by car**

4.1.32 The appellant has stated that "*many people who require access to a pharmacy may not have access to a car, either because they do not own a car at all, or because the car is in use by another member of the family".*

4.1.33 The Appellant has not quantified how many people this is or provided any evidence of difficulties accessing a pharmacy. Bearing in mind the pharmacies are located in areas of greater population density, people are more likely to

walk from home to a pharmacy than to SCHC. A map showing areas of population density can be found in **Appendix 3**.

4.1.34 The travel analysis undertaken at the time of the 2022 -2025 Suffolk PNA incorporated the road network, public transport schedules and prevailing traffic conditions and was carried out to model pharmacy accessibility based on driving by car (during peak and off-peak hours) and by public transport (during am and pm) and also by walking (Page – 96 of the PNA and previously referenced earlier in this document). It is clear that the HWB were aware of modes of transport, distance and travel times and were content that this did not present any gaps or identify any current or future needs for, or current or future improvements or better access to, a particular pharmaceutical service or pharmaceutical services in general.

4.1.35 The ICB has also reviewed the 2021 Census and notes that 76.2% of households in Sudbury have 1 or more cars or vans. The data obtained from the 2021 census https://www.ons.gov.uk/census/maps/choropleth/housing/number-of-cars-or-vans/number-of-cars-3a/1-or-more-cars-or-vans-in household?msoa=E02006233 and the dispensing data taken from the NHS Business Services Authority (NHSBSA) demonstrates that as a vast majority of residents have access to one or more cars, not only are they able, but residents clearly do travel to a range of pharmacies.

4.1.36 The ICB also reviewed the data for the postcode CO10 2DZ which is where the SCHC is located and notes that 91.3% of households have 1 or more cars or vans.

4.1.37 A map showing areas within a 5 minute drive of a pharmacy can be found in **Appendix 4.**

4.1.38 The ICB notes that whilst parking may be more difficult in the town centre and parking fees have been introduced, this is an issue faced by anyone accessing any town centre. It is suggested that local residents who access the town centre are not doing so to solely access pharmaceutical provision.

4.1.39 It should also be noted that the test is not access and choice within Sudbury but within the HWB. The Appellant has provided no evidence to demonstrate that patients cannot access pharmaceutical provision in the area of the HWB due to reasonable choice or distance.

4.1.40 **Access to pharmacies by bus**

4.1.41 The Appellant states "*in relation to public transport there are limited public transport links between the surgery and Sudbury town centre*".

4.1.42 This therefore evidences that for those living in the town centre they are unlikely to catch a bus to SCHC to access a pharmacy. A map showing areas within 15 minutes by public transport of a pharmacy can be found in **Appendix 4.**

4.1.43 It is to note that the Appellant is proposing core hours 09:00-17:00 covering Monday to Friday and any additional hours on weekdays/weekend are supplementary, which can easily be withdrawn by giving the required 5 weeks' notice period. The Appellant notes that the last bus from SCHC, via the bus route 700, to the town centre is at 17:18 and patients attending appointments after 5pm will not be able to use this service.

4.1.44 The ICB notes that patients will not be able to use this service on a Saturday or Sunday when the Appellant is proposing supplementary hours as the service only runs from Monday to Friday.

4.1.45 It is noted that patients who rely on public transport will be aware of the services and times. The Appellant has provided no evidence to detail the extent to which patients are using public transport and for those who are reliant on public transport, it is unclear of their current difficulties in accessing the existing pharmaceutical provision in the area of the HWB.

4.1.46 The Appellant states that "*'the number of patients registered with the Siam Surgery has risen over the last few years*".

4.1.47 This would indicate that patients have no trouble accessing the GP surgery at SCHC. The Appellant states that SCHC has a large car park. Again, this is suggestive that the majority of residents have access to a car and would use it to travel to the GP practice. Residents can then use their cars to access pharmaceutical services from the wide range of providers within the HWB, or indeed outside the HWB if that is their choice.

4.1.48 Sudbury and SCHC whilst referred to as a 'compact town' is not such a developed area where the only thing people are leaving it for, is to access pharmaceutical services. It is likely that people will be travelling further afield for their food shopping, shopping in general, leisure etc. There is no evidence to suggest that people who travel for these purposes cannot travel an acceptable distance to access pharmaceutical services.

4.1.49 **Regulation 18(2)(b)(i) – Choice**

4.1.50 The Appellant suggests that "*the ICB failed to consider the barriers to accessing existing pharmacies in Sudbury and repeatedly refers, in its decision report, to pharmacies in Sudbury, but there is no evidence that the ICB properly had regard to whether those pharmacies are difficult to access".*

4.1.51 For the avoidance of doubt, the ICB considered all matters before it and determined the application based on the regulations relevant to the application. The Appellant is suggesting that a new pharmacy is needed based on "*the distances and other barriers to accessing the pharmacies in Sudbury from the SCHC".*

4.1.52 There was no evidence to suggest that granting the application would impact the reasonable choice of pharmaceutical services within the Suffolk HWB with patients already using a range of pharmacies, selecting one that best meets their needs. The ICB has provided evidence to demonstrate that residents can, and are, accessing a wide range of pharmaceutical services. Patients have a choice and are utilising it.

4.1.53 As stated previously, the ICB noted that Siam Surgery relocated from North Street, Sudbury some years ago and as part of this process patients would have been consulted regarding this relocation. The cohort of patients who accessed Siam Surgery when it was located at North Street, Sudbury continue to receive their GP medical care at Siam Surgery, SCHC.

4.1.54 Siam Surgery relocated into the SCHC in 2014. Since this date and up to the point the unforeseen benefits application had been submitted, the ICB had not received any reports or complaints from patients who could not obtain their medicines or access pharmaceutical services. This would demonstrate that patients are able to easily access their GP Practice and pharmaceutical services by travelling by car, public transport or by foot.

4.1.55 The Appellant has assumed that everyone who needs to access a pharmacy will have first gone to SCHC. However, 66% of all prescriptions issued in primary care are repeat prescriptions meaning that people will not have first gone to SCHC and will likely choose a pharmacy nearer to where they live or work. In addition, Pharmacy First means that increasing numbers of people will be referred to a pharmacy, including by the practice, and will not first go to their GP practice.

4.1.56 **The desirability of there being a reasonable choice of service provision**

4.1.57 The Appellant states that they "*believe that there is currently not a reasonable choice of service provision in the HWB's area, particularly for patients of, and those in the immediate vicinity of, the SCHC*".

4.1.58 As evidenced, there are 5 pharmacies within 1.1 mile of SCHC with the Tesco pharmacy offering core hours 7 days per week. It is likely that people will be travelling further afield for their weekly food shop, shopping in general, leisure, education and for work purposes. There is no evidence to suggest that people who travel for these purposes cannot travel an acceptable distance to access pharmaceutical services.

4.1.59 The Appellant notes "*in addition to physical access it is of note that the number of pharmacies in Sudbury has actually reduced in recent years, thereby reducing patient choice, which, whilst the population of the town (and the patient registered with SCHC) continues to grow". "In May 2022 Parade Pharmacy merged with North Street Pharmacy, resulting in the loss of 100 pharmacy hours per week. In June 2023, Lloyds Pharmacy within the Sainsburys store also closed. These closures and the increasing demand for pharmaceutical services in the town mean that Sudbury pharmacies dispense an average of approximately 13,000 items per month each, which is twice the average for a community pharmacy in England".*

4.1.60 With regards to the closure of the Lloyds Pharmacy in Sainsbury's the Appellant notes in their application that "*a large number of patients have been affected by this closure many of whom have taken to online community platforms to voice their concerns*".

4.1.61 It has been over a year since the 100-hour Lloyds Pharmacy within Sainsbury's at 66 Cornard Road, Sudbury, CO10 2XB closed in June 2023. The ICB notes that the Sainsbury's store is located 1.8 miles from SCHC and patients would have had to travel 7 mins by car and 45 minutes on foot* to access the Lloyds Pharmacy within Sainsbury's. (**taken from google maps*).

4.1.62 Since the closure of Lloyds within Sainsbury's, and until this unforeseen benefits application was submitted, the ICB had not received reports or complaints about people being unable to access pharmaceutical services or obtain their medication.

4.1.63 In May 2022, Parade Pharmacy of 6 North Street Parade, CO10 1GL consolidated with North Street Pharmacy, 80/81 North Street, CO10 1RF, both being approximately 60 metres apart. Parade Pharmacy was a 100-hour pharmacy and as part of the consolidation stated "*the Pharmacy was opened as a 100-hour contract approx. 10 years ago and was originally located in its current location because one of the local GP surgeries was in an adjoining building. The surgery has relocated to the northern edge of the town a few years ago resulting in a fall in prescription numbers".* It is to note that consolidation of pharmacies is granted where it does not create a gap in pharmaceutical services.

4.1.64 100-hour pharmacies were granted NHS contracts under an exemption to the normal control of entry process, on the basis they guaranteed to open 100 hours per week in a bid to improve out-of-hours access. This did not have the intended outcome in many places and the exemption was removed in 2012. The result of this exemption meant that in some areas there was over-provision of pharmaceutical services with multiple 100-hour pharmacies opening in close proximity to each other. The closure or reduction of these 100-hour pharmacies does not therefore mean that there is a lack of pharmaceutical provision and that a new pharmacy is needed due to the closure of another.

4.1.65 Furthermore, any pharmacy closure would be reported to the HWB, the body responsible for the PNA. The HWB must make a revised assessment if they believe any change would be relevant to the granting of an application. If a review of the entire PNA is disproportionate, the HWB can publish a supplementary statement. The HWB has not undertaken a review of the PNA or issued a supplementary statement so it can be concluded that the closure of Lloyds Pharmacy within Sainsbury's, did not raise any difficulties in terms of access or choice of pharmaceutical services.

4.1.66 It has previously been established on appeal (SHA/19858) that in order to have reasonable choice, those living in the area must be able to exercise that choice. The dispensing data provided above outlining the number of different contractors patients are choosing to use to access and obtain their pharmaceutical services clearly demonstrates that patients have a choice.

4.1.67 **Local support for the application and appeal**

4.1.68 The ICB noted that the Appellant had included examples of local support with both the application and as part of the appeal stating*: Our application has significant local support. Patients of Siam Surgery were asked to provide their opinion on the current pharmaceutical services and whether they feel the need for a reasonable choice when it comes to obtaining their pharmaceutical services. Siam Surgery's Facebook page was used to engage with patients. We are attaching some quotes from those emails in support which have been received and which confirms the matters summarised in support of this application".*

4.1.69 Taking those comments included in the application - Whilst it is of upmost importance to hear the views of residents and patients, it is difficult to put the comments in context when the ICB has not been party to the questions asked or given a copy of the survey that was distributed. Several of the comments make reference to "a survey" with one member of the public stating "*I was the man in white van who you passed your form to."* (Application form, embedded within the Enclosures section of the Committee Report).

4.1.70 It would appear the applicant has canvased for support, which while important to seek the views of residents, asking "would a pharmacy next door to your GP practice be helpful?" or "would you support a pharmacy opening next door?", are likely to end in a positive response.

4.1.71 Some of the comments include references to "it will be more comfortable," "it will be convenient," "it will be helpful". It is appreciated that having a pharmacy next door to a patient's GP practice might be "helpful" or "convenient," but this is not the regulatory test.

4.1.72 Some comments refer to the fact that it was always the intention to house a pharmacy at SCHC in 2014 and that "patients were promised". The inclusion of a pharmacy on building plans for a development does not guarantee a pharmacy in that location and in no way constitutes a gap in service provision

under the Regulations. It is unfortunate that this wasn't communicated to patients at the time, leaving many patients and stakeholders disappointed.

4.1.73 It is also unclear why if it was always the intention to have a pharmacy within the SCHC, why the application wasn't made sooner and has been submitted 10 years after the SCHC opened.

4.1.74 **Newspaper article**

4.1.75 The appellant provided a link to a newspaper article which appeared on the Suffolk News website Pharmacist to appeal refusal of plans for new dispensary at Sudbury Community Health Centre (suffolknews.co.uk) as part of their appeal.

4.1.76 It is noted that in the article the applicant encourages patients to complain to the ICB Patient Advice Liaison Service (PALS) Team. As a result of this request, the ICB can confirm receipt of a small number of concerns raised by patients. These are summarised at **Appendix 5** and have all been responded to.

4.1.77 From the appeal documentation it appears the decision letter has been shared with residents and it is assumed the Appellant has asked for people's views on the decision. This is not completely clear as "the ask" has not been shared, only a summary of responses. This adds a slightly different perspective and is different to residents generally raising issues or concerns about the existing provision of pharmaceutical services.

4.1.78 The ICB appreciates and understands the desire to have a new pharmacy and the convenience that this would bring. This is however not the same as there being a need for an additional pharmacy as defined in the Regulations. Access to pharmaceutical services is different to accessing a physical community pharmacy and residents are currently exercising their choice of where to access pharmaceutical services. The ICB cannot bypass the regulations and the market entry process because patients would find it convenient to have a pharmacy next door to their GP practice.

4.1.79 It is to note that the test is whether there is reasonable choice with regard to pharmaceutical services in the area of the relevant HWB. It is not reasonable choice within one small part of the HWB. The test is not that patients can access pharmaceutical services next door, or in proximity, to their GP practice. In addition, it is reasonable choice with regard to obtaining pharmaceutical services, which is different to physically accessing pharmaceutical services. There is no formal definition of 'obtain' within the regulations and therefore it is used in its everyday way to mean get, acquire or secure. All of the residents within the area of Sudbury are able to obtain their medicines and access pharmaceutical services.

4.1.80 As set out in this response, the dispensing data shows that patients are able to access pharmaceutical services within the HWB and are already exercising their right to choose. The dispensing data shows that some residents prefer to use one of the many distance selling pharmacies (DSPs) available nationally. Whilst the ICB recognises that DSPs are not the preference for all patients, some residents are choosing to obtain their services from this type of contractor. There is no evidence to suggest any patients are unable to obtain their medicines or cannot access pharmaceutical services.

4.1.81 The Appellant states "*the SCHC was completed in 2014, with plans containing space for a community pharmacy. However, a pharmacy never opened with the SCHC*".

4.1.82 The ICB reviewed all available records and can confirm that no previous applications for unforeseen benefits within the postcode area of CO10 2DZ have been received or determined by the ICB since the SCHC was completed in 2014.

4.1.83 The ICB has received a letter of support of a pharmacy in SCHC from Sudbury Town Council dated 24th September 2024 stating that "*when they gave support for the original planning application for the Sudbury Community Health Centre their understanding was that it would include a pharmacy*" (**Appendix 6**).

4.1.84 As identified above, the inclusion of a pharmacy on building plans for a development does not guarantee a pharmacy in that location and in no way constitutes a gap in service provision under the Regulations. Advice should always be sought at the planning stages and the market entry process considered before communicating to patients and stakeholders that a pharmacy will be included.

4.1.85 Whilst it is noted that the town council is different from the Local Authority, it is unclear why the council has not raised their concerns about pharmaceutical service provision with the Local Authority's HWB, the body responsible for assessing pharmaceutical needs across Suffolk HWB. There have been several reiterations of the PNA since 2014 (and prior to this date).

4.1.86 **Regulation 18(2)(b)(ii) - Patients with a protected characteristic**

4.1.87 The Appellant has not provided details about patients with a protected characteristic other than stating that "*the starting point for consideration of access difficulties is the fact that the proposed location is within a large health centre which houses a GP surgery and a number of other health clinics. It is therefore a matter of common sense that those patients who are present at the SCHC will have a protected characteristic (for example, a particular health condition or disability), will require access to pharmaceutical services (for example, the dispensing of a prescription, and, for the reasons summarised above, will find access to existing pharmacies difficult"*.

4.1.88 The ICB noted the general statements made by the Appellant in relation to the relatively high proportion of older residents in Sudbury compared to England averages, and the greater propensity of older people (and of course, those in poor health) who access GP Services. Whilst the ICB noted that older people could be viewed as sharing a protected characteristic, there are older people throughout the country. It does not mean that a pharmacy is needed next door to every GP practice. The ICB concluded that no evidence had been provided, clearly defining those protected groups that cannot access pharmaceutical services or a specific pharmaceutical service.

4.1.89 **Regulation 18(2)(b)(iii) Innovative services**

4.1.90 The ICB agreed that innovative services suggested by the Appellant were not innovative. Pharmacies located within close proximity to the proposed location currently provide prescription delivery services. Additionally, locally commissioned services are provided to patients via pharmacies throughout the Suffolk HWB.

4.1.91 Remote access and remote consultations are used by many health providers and are therefore not innovative. Since early 2021, all pharmacies are required to facilitate remote access to the pharmaceutical services they provide where users wish to access those services in that way. Therefore, for those who are unable to physically access a pharmacy there are alternative ways for them to receive the services they require.

4.1.92 The Covid-19 pandemic changed how many services are provided within the NHS, and accessing services remotely is far more widely accepted and utilised than before the pandemic. Whilst there will always be people who prefer to access services face to face that is their choice to do so. Likewise, robotic dispensing machines and automated prescription collections are used by health providers and are therefore not innovative.

4.1.93 The ICB noted that some of the services listed were not pharmaceutical services and whilst could be commissioned by the local authority or provided privately, were not relevant to the determination of this application.

4.1.94 **Conclusion**

4.1.95 In summary, we remain of the opinion that the application should be refused.

4.1.96 In the publication of the 2022 - 2025 Suffolk PNA, the HWB has remained of the opinion that there is no gap in the provision of pharmaceutical services in the area of Babergh locality, or indeed any part of Suffolk, that would require needs, improvements or better access to be identified.

4.1.97 We appreciate that there may be some convenience in having a new pharmacy in the SCHC, however this is different to one conferring significant benefits. Our priority is ensuring patients can access pharmaceutical services.

4.1.98 The regulatory requirements to identify an unforeseen benefit not in the PNA accompanied by the significant benefit considerations is a high threshold. We respectfully suggest that this appeal is without substantive new or compelling evidence. We petition NHS Resolution to refuse the application as granting it will not confer significant benefits that were not foreseen when the PNA was published."

Supporting information provided with the Commissioner's representations is at Appendix D.

## 5 Observations

### 5.1 TEMPLE BRIGHT LLP, ON BEHALF OF THE APPLICANT

5.1.1 "I continue to act for Supremus Therapeutics Limited. On behalf of my client, I write further to your letter of 21st October 2024 and in order to respond to representations on my client's appeal by the ICB.

5.1.2 In this letter, I do not intend to repeat matters contained in my client's previous correspondence (including its letter of appeal) but, instead, to respond to those matters raised by the ICB which have not previously been addressed by my client.

5.1.3 As a preliminary matter, the ICB goes to great lengths to seek to support its own decision, but it seems that very little, if any, of the detail provided in the ICB's letter appears to have formed part of the ICB's decision-making process. Instead, the ICB appears to have retrospectively sought to gather evidence which supports the decision that it made. NHS Resolution is reminded that the ICB has, as the first instance decision-maker, already made its decision and NHS Resolution must reach its own conclusions on the matters before it. It is therefore not clear why the ICB has prepared a 31-page response, and it is questionable whether this is an appropriate approach for a first-instance decision-maker to take. My client therefore invites NHS Resolution to treat the ICB's letter with some caution.

5.1.4 Notwithstanding the above, in relation to those matters raised by the ICB, my client comments as follows:

5.1.5 The ICB appears to rely heavily upon the 2022 Suffolk PNA. However, the conclusions in the PNA are now outdated, not least because of changes to the provision of pharmaceutical services in Sudbury since the 2022 PNA was published (as detailed in my client's letter of appeal).

5.1.6 The statement that "there are 5 pharmacies within 1.1 mile of SCHC" is misleading because the ICB is using distances as the crow flies, not by the most practicable route. When distances by route are used, there are no pharmacies within 1.1 miles of the SCHC.

5.1.7 Whilst the opening hours of Tesco Pharmacy are noted, for the reasons given in my client's letter of appeal, Tesco Pharmacy is difficult to access. In short, it is irrelevant how long a pharmacy may be open for if it is difficult for patients to access.

5.1.8 In relation to the PNA survey times, it is recorded that "68.7% of the population can walk to a pharmacy within 20 minutes". It is of note that it is at least a 26-minute walk from the SCHC to any pharmacy, meaning that no patients who are present at the SCHC and require access to pharmaceutical services can walk to a pharmacy within the PNA target time of 20 minutes. Similarly, for the reasons given in my client's letter of appeal, patients cannot access a pharmacy by public transport within 20 minutes.

5.1.9 In relation to the PNA survey, this appears to have included only 555 respondents. Given that 768,555 people live in Suffolk (2022 estimates – source, Wikipedia), it is not at all clear how representative the PNA survey was. It is also not clear whether any of the PNA respondents actually live in Sudbury.

5.1.10 The fact that patients of the SCHC "use a variety of pharmacies within the town of Sudbury" to access pharmaceutical services does not lead to a conclusion that they have no difficulty in doing so. Patients have no choice but to access a pharmacy when they have a prescription, no matter how difficult it may be for them to do so. It is also of note, of course, that, contrary to the PNA findings, it appears that most patients of the SCHC are not using a pharmacy closest to their home, but are having to travel into Sudbury town centre (a journey of 1.8km or 1.9km). Most patients are not using the nearest pharmacy to the SCHC (Tesco Pharmacy).

5.1.11 The map of journey times is misleading, because it does not take into account waiting times for public transport. This is a particular issue at the SCHC, where, as summarised in my client's letter of appeal, buses are infrequent.

5.1.12 In relation to the assertion that the PNA concluded that "92% of patients have no difficulty in accessing a pharmacy", again it is not clear whether any patients of the SCHC responded to the PNA survey. The evidence provided by my client with its letter of appeal, however, clearly demonstrates that patients in Sudbury do have difficulty accessing a pharmacy.

5.1.13 There is a lack of reasonable choice, because there are no pharmacies within 1.8km of the SCHC. Given that the PNA identified that around half of patients in Suffolk choose to access a pharmacy near to their GP, this is an obviously gap in Sudbury.

5.1.14 Patients may have been consulted before the Siam Surgery relocated, but this was over 10 years ago, and there have been changes in the provision of pharmaceutical services since then (as summarised in my client's letter of appeal). In any event, contrary to the apparent assertion by the ICB, it is not axiomatic that because Siam Surgery relocated, patients did not express any concerns about the new location. It is not unusual for surgeries to relocate despite patient concerns.

5.1.15 Access to pharmaceutical services has changed in the last 10 years. For example, the pharmacy in Sainsburys recently closed. There have also been changes to parking arrangements in Sudbury.

5.1.16 The ICB's comments in relation to access to pharmacies by car is noted, but even on the ICB's own evidence (the PNA survey), 28% of patients do not access pharmacies by car. Given that Siam Surgery prescribes 25,671 items (on the ICB's evidence), this is 7,188 items prescribed per month where patients do not access a pharmacy by car. This would be consistent with 2021 census data for Sudbury which shows that between a fifth and a quarter of households in Sudbury wards do not own a car or van.

5.1.17 My client does not agree with the ICB's view that it has not provided evidence of letter of appeal which details those difficulties, and the supporting evidence provided with the appeal.

5.1.18 It is surprising that the ICB asserts that patients who receive a repeat prescription "will not have first gone to SCHC", because repeat prescriptions are routinely prescribed only after check up appointments with the surgery, particularly for those medicines which require routine monitoring.

5.1.19 It is interesting to note that the ICB encourages NHS Resolution to disregard the comments made by local residents and representatives in support of this application even though these come from people who live in Sudbury, use the SCHC and are familiar with the local issues, yet encourages NHS Resolution to rely on survey information in the PNA which is out of date and is not directly related to Sudbury.

5.1.20 The ICB also questions the extent to which those who have written in support of my client's application were "encouraged" to do so. Whilst, of course, my client engaged with local residents and representatives, the authors of the letters and emails wrote them themselves – they are the words of local residents, not my client. The fact that the ICB seems so intent on disregarding the concerns of its own patients is concerning. My client has received further emails in support since the letter of appeal was submitted, and these are attached for the sake of completeness.

5.1.21 My client agrees that the regulatory test is whether there is a reasonable choice within the HWB's area. However, the next-nearest pharmacies to the proposed location (outside of Sudbury) are 5.4km away. If pharmacies which are located at least 1.8km away from the SCHC do not secure a reasonable choice (as asserted by my client) then it stands to reason that pharmacies which are 3 times further away clearly do not secure a reasonable choice.

5.1.22 In conclusion, for the reasons given in my client's letter of appeal and those given above, my client asserts that its application would secure improvements in, and better access to, pharmaceutical services in accordance with regulation 18. My client therefore invites NHS Resolution to uphold its appeal and grant its application."

Supporting information provided with the Applicant's observations is at Appendix E.