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13 February 2025

REF: SHA/ 26375

APPEAL AGAINST DERBY AND DERBYSHIRE ICB DECISION TO REFUSE AN APPLICATION BY LP SD FIVE LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT DERBY ROAD, SANDIACRE, NG10 5HZ (BEST ESTIMATE)

1 **Outcome**

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

1.2 The Committee determined that the application should be refused.

A copy of this decision is being sent to:

Healthcare Plus Consulting Ltd on behalf of LP SD Five Ltd
PCSE on behalf of Derby and Derbyshire ICB
PCT Healthcare Ltd t/a Peak Pharmacy
Community Pharmacy Derbyshire
Community Pharmacy Nottinghamshire

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1 The Application

By application dated 11 March 2024, Healthcare Plus Consulting Ltd on behalf of LP SD Five Ltd ("the Applicant") applied to Derby and Derbyshire ICB ("the Commissioner") for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at Derby Road, Sandiacre NG10 5HZ. In support of the application it was stated:

In response to "Please provide the address or best estimate of the proposed premises" the Applicant stated:

1.1 "Derby Road, Sandiacre NG10 5HZ

1.2 For clarity, best estimate units included directly either side of the red line below [appendix A]."

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

1.3 "N/A

1.4 Despite there being a pharmacy currently trading near the proposed site, the current pharmacy located at 85-91 Derby Road, NG10 5HZ, is due to close on the 22nd March 2024.

1.5 Should a new pharmacy contract ultimately be granted, there will no longer have been a pharmacy trading from 85-91 Derby Road, NG10 5HZ.

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

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

1.7 "Please see enclosed supporting Information."

Supporting information

1.8 "This application is in respect of opening a new pharmacy to provide better pharmaceutical access and choice for residents of Sandiacre. Specifically, patients requiring access to pharmaceutical services in the Sandiacre North Ward and surrounding areas.

1.9 We understand that the Boots Pharmacy, 85-91 Derby Rd, Sandiacre, Nottingham, NG10 5HZ is set to close on the 22nd March 2024 and will leave a significant gap in pharmaceutical services within Sandiacre. Hence this application is offering unforeseen benefits not captured within the PNA.

1.10 The best estimate of the proposed site we wish to open a new pharmacy is located near Adam House Medical Centre 85-91 Derby Rd, Sandiacre, NG10 5HZ. This is the same site as the soon to be closed Boots.

1.11 The area is naturally defined by the M1 to the West, the A52 to the South, and the railway to the East. Once the Boots closes, residents will no longer have sufficient access to pharmaceutical provision.

1.12 The Sandiacre North Ward covers a vast area and thus it is more prudent to analyse the LSOAs (Lower-layer Super Output area) surrounding the proposed location to determine the local population that are likely to utilise the site.

1.13 We can see from the table [appendix B] above that 8000+ local residents would likely access pharmaceutical services at the proposed location. Once the Boots closes, these patients will no longer have access to pharmaceutical provision nearby.

1.14 Using the proposed site, NG10 5HZ, as an arbitrary marker to represent these residents; we can see that the next nearest pharmacy, notwithstanding the Boots that is set to close, is Peak Pharmacy 40 Derby Rd, NG9 7AA, which is 1 mile away. For residents currently residing near the proposed site, current pharmacies do not present reasonable choice or access to pharmaceutical provision.

1.15 Granting this application would secure better access to pharmaceutical services for the large reliant population. We do not consider a 2-mile round journey to access pharmaceutical provision as representative of reasonable choice or access. The elderly, disabled, and the local population are likely to find the proposed pharmacy significantly more accessible than alternative choices.

1.16 We would like to note that granting this application would not cause significant detriment to access of pharmaceutical services, as this application is seeking to fill a gap vacated by the Boots, NG10 5HZ closure; and notwithstanding the fact that the nearest pharmacy to the proposed site is located 1 mile away."

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

1.17 "The Boots Pharmacy, 85-91 Derby Road, NG10 5HZ, was open with no plans for closure at the time of the PNA being written. This application is therefore submitted under Regulation 18 as an unforeseen benefits application.

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

1.19 Better access to pharmaceutical services given the closure of Boots pharmacy.

1.20 See enclosed Supporting information for further detail." [1.8 – 1.17 above].

2 The Decision

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

2.1 “Derby and Derbyshire 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.

2.2 You have a right of appeal to the Secretary of State against Derby and Derbyshire ICB’s decision. Should you choose to appeal then you should either complete the online form available on the NHS Resolution website or send a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this letter to nhsr.appeals@nhs.net or:

2.3 Primary Care Appeals
NHS Resolution
8th Floor
10 South Colonnade
Canary Wharf
London
E14 4PU.”

PSRC report

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

2.4 “LP SD Five Limited has made an unforeseen benefit to secure improvements or better access to pharmaceutical services at the proposed location, 85-91 Derby Road, Sandiacre, NG10 5HZ, within Derbyshire Health and Wellbeing Board.

2.5 Application summary by Applicant

2.6 The applicant states that the closure of the Boots Pharmacy at 85-91 Derby Road, Sandiacre, NG10 5HZ has left a gap in the provision of pharmaceutical services within the Sandicare [sic] area. They suggest that filling the gap will increase local pharmacy capacity and improve choice and improve choice, meeting the needs of the local population. Under the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, this application prevents new applications to this site unless where this creates a gap in provision.

2.7 Pharmaceutical Needs Assessment (PNA)

2.8 The PNA has not been provided within the application, however details given by the applicant suggests the PNA reflects a significant gap left in pharmaceutical services since the closure of Boots Pharmacy.

2.9 The PNA provided by Derby and Derbyshire Health and Wellbeing Board does not reflect this statement.

2.10 Relevant regulations

2.11 Regulation 18 -- Unforeseen benefits and additional matters and consequences

2.12 Regulation 31 – refusal same or adjacent premises

2.13 Regulations 40 to 44 – applications in a controlled locality

2.14 Regulation 65 -- Core hours conditions

2.15 Regulation 66 -- Conditions relating to providing directed services.

2.16 Regulation 18

2.17 Regulation 18(1) [Regulation 18 quoted in full].

2.18 The Committee noted that;

2.19 Regulation 18(2) (b) (i) is not satisfied as the applicant has not provided sufficient information to outline how introducing an operator into the area that already provides pharmaceutical services proffers an improvement in patient choice.

2.20 Regulation 18 (2) (b) (ii) is not satisfied as the applicant has not identified any protected characteristic in their application that the proposed pharmacy will improve or better access to pharmaceutical services for this group of individuals.

2.21 Regulation 18 (2) (b) (iii) is required to consider whether the applicant is proposing new or innovative approaches for the delivery of pharmaceutical services in the area, the Committee noted that the applicant does not identify any specific innovative approaches and has provided no evidence that the application should be granted on this basis

2.22 <u>Regulation 31</u>

2.23 East Midlands Primary Care Team on behalf of Nottingham & Nottinghamshire ICB, Pharmaceutical Services Regulations Committee (PSRC) first considered Regulations 31 of the NHS (Pharmaceutical & Local Pharmaceutical Services) Regulations 2013. The Committee agreed that it was not required to refuse the application under the provisions of Regulation 31 as the proposed pharmacy will not be adjacent or in close proximity to an existing pharmacy premises. There are no existing pharmacies operating from the proposed best estimate location and therefore, under this provision, regulation 31 would not cause the application to be refused.

2.24 The applicant proposes to provide the Essential Service and the following advanced and enhanced services.

2.24.1 Hypertension Service

2.24.2 New Medicines Service

2.24.3 NHS Flu Vaccinations

2.24.4 Minor Ailment Service

2.24.5 Contraception Service

2.24.6 Smoking Cessation

2.24.7 Pharmacy First

2.24.8 Palliative Care

2.24.9 Discharge Medicines Service

2.24.10 Supervised Consumption

2.24.11 Emergency Supply

2.25 The Committee further noted that the applicant has outlined services as above that they intend to provide, however, as the applicant are not yet in possession of the premises and have not provided a floor plan to the proposed location, they do not have premises accreditation to provide these services.

2.26 Regulation 65

2.27 The committee noted the applicant is proposing to open 40 core hours.

2.28 Regulation 66

2.29 The committee noted that Regulation 66 does not apply to this application and would not cause the application to be refused.

2.30 Conclusion

2.31 The applicant failed to provide evidence to support the need for another pharmacy in the area and has not offered anything innovating regarding additional services not already provided by other surrounding pharmacies.

2.32 The applicant references the PNA within the application, stating the closure of Boots Pharmacy has left a significant gap in services. However, there have been no supplementary statements issued by either Derbyshire HWB or Nottinghamshire HWB with regards [sic] to a gap in provision created by the closure of Boots in Sandiacre and therefore adequate provision of services is provided by existing pharmacies, two of which are within less than a one mile radius. Patients have been absorbed within the other surrounding pharmacies in the area so the impact to patients is minimal.

2.33 The LPC has requested the application is refused because it fails to meet the requirements of the regulations for an Unforeseen Benefits application.

2.34 The Committee noted the above points and determined to refuse this application on the basis that no service gap has been identified locally or within the PNA, the applicant is not offering anything additional to the existing population, and it appears that the existing patient groups have been absorbed by the surrounding community pharmacy provision.

2.35 **Appeal Rights**

2.36 The applicant has a right of appeal."

3 The Appeal

In a letter dated 5 November 2024 (received 6 November 2024) addressed to NHS Resolution, the Applicant appealed against the Commissioner's decision. The grounds of appeal are:

3.1 "Thank you for your letter dated 7th October 2024 to my client. LP SD Five Ltd have instructed us (Healthcare Plus Consulting Ltd) to act on their behalf for this appeal.

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

3.3 Unfortunately, we were not privy to the meeting minutes and thus cannot see the full decision reasoning from NHS England. We would be grateful if this could be provided; however, we appeal based upon the very limited information available to us. We submit that NHS England have come to a conclusion to refuse my client's application based on fundamentally flawed logic.

3.4 NHS England states that:

3.5 *"The PNA has not been provided within the application, however details given by the applicant suggests the PNA reflects a significant gap left in pharmaceutical services since the closure of Boots Pharmacy.*

3.6 *The PNA provided by Derby and Derbyshire Health and Wellbeing Board does not reflect this statement."*

3.7 *"there have been no supplementary statements issued by either Derbyshire HWB or Nottinghamshire HWB with regards to a gap in provision created by the closure of Boots in Sandiacre and therefore adequate provision of services is provided by existing pharmacies"*

3.8 *The Committee noted the above points and determined to refuse this application on the basis that no service gap has been identified locally or within the PNA."*

3.9 We are unsure as to why NHS England are concerned by the fact that no gap has officially been identified in the PNA. This application has been made under Regulation 18 - Unforeseen Benefits. This type of application is in its very nature, unforeseen, offering improvements or better access to pharmaceutical services not captured within the PNA. Had any gap been identified in the PNA then Regulation 18 would have ultimately been rendered irrelevant. It is clear that NHS England have misunderstood the premise of regulation 18, and ultimately have made a decision based on flawed understanding. We submit that this flawed lens has negatively impacted how NHS England viewed the application in its entirety and ultimately lead to the refusal of my client's application.

3.10 We also note that it appears that NHS England have not given due consideration to the difficult journeys that residents now face following the closure of the Boots in Adam House Medical Centre. These journeys have been detailed in previous correspondence submitted by my client; however, NHS England have not made any reference to these journeys in their explanation for refusal.

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

3.12 **<u>Conclusion</u>**

3.13 In conclusion, granting this application would secure better access and improvements to pharmaceutical services for residents of Sandiacre and the surrounding areas.

3.14 There is a need for a pharmacy near Adam House Medical Centre, especially to serve the elderly, disabled, and those with impaired mobility. This would also confer significant benefits to those residents living in high pockets of deprivation near the proposed site.

3.15 Regulation 18 has been met through previous representation by my client and thus we invite NHS Resolution to grant my client's application."

3.16 [Supporting information with application – see 1.8 – 1.17 above].

Letter to the Commissioner dated 12 August 2024

3.17 "Thank you for your correspondence dated 30th July 2024.

3.18 We welcome comments from all local parties and note the following:

3.19 A number of parties have raised that the PNA has not recognised any gap in pharmaceutical provision. Whilst this is true, we submit that an Unforeseen Benefits application is in its very nature, unforeseen, offering improvements or better access to pharmaceutical services not captured within the PNA. We also note that the Boots, NG10 5HZ, was open at the time of the last PNA assessment. Thus, comments by parties surrounding the PNA are widely irrelevant.

3.20 There have been a number of comments highlighting that the application by my client does not meet the requirements for an Unforeseen Benefits application as per the 2013 Pharmaceutical Regulations. For the benefit of all parties, we note that my client is required by NHS England to address the overarching question in an Unforeseen Benefits application:

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

3.22 When considering this overarching question, the provisions of Regulation 18(2)(b) should be noted: [Regulation 18(2)(b) quoted in full].

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

3.24 In light of comments from interested parties and the regulations above, we highlight the difficulty in the journeys that patients currently face to access alternative pharmaceutical provision following the closure of the Boots, overleaf.

3.25 **Patient Journeys**

3.26 We note that the closest pharmacy to the proposed site is Peak Pharmacy, 40 Derby Rd, NG9 7AA, which is 1 mile away.

3.27 When considering securing better access, the overarching criteria for an Unforeseen Benefits application, we must consider what a typical patient journey currently looks like. We also consider the reasonable choice within these journeys, alongside how those with protected characteristics find those journeys. It must be noted that distance in itself is a barrier to access. We previously identified approximately 8000 residents that would utilize a pharmacy at the proposed site – this is undisputed by all parties.

3.28 When assessing patient journeys, it is important to note the significance of the recently closed Boots (the proposed site) being co-located with the Adams House Medical Centre. The closing Boots dispensed 5,824 items in November 2023 with 4,730 originating from the Adams House Medical Centre - representing 81% of total pharmacy items. Clearly a lot of patients have been accessing pharmaceutical services in connection with a visit to the GP. The closure of the Boots means that those accessing pharmaceutical services in connection with a visit to the GP, now have two journeys to make: the first to the GP practice, and the second to the pharmacy. This should be kept in mind for the scenarios below.

3.29 By Foot from Proposed site to current nearest pharmacy (Peak Pharmacy, NG9 7AA)

3.30 As can be seen from the map on the following page [appendix C], this journey is 1 mile or 23 minutes; equating to a 46-minute round-journey.

3.31 It is worth highlighting that distance in itself is a barrier to access, and this journey length is clearly excessive. For residents of the densely populated Sandiacre area, a 23-minute walk to access pharmaceutical services depicts dire access and is not representative of reasonable choice. We also note that this journey length is also greater than the 20-minute target by foot, as stipulated by the Derbyshire PNA. Given that Sandiacre is a built-up densely populated area, this 2-mile round walk to access pharmaceutical services clearly represents insufficient access, and we cannot consider the local population as having a reasonable choice to pharmaceutical services.

3.32 For the significant number of patients that first must walk to access GP services at Adams House Medical Centre, an additional 2-mile walk to access pharmaceutical services can be considered poor access and not representative of reasonable choice. Further, such an extended journey may prove difficult for the elderly, disabled, or parents with young children. Groups with protected characteristics do not have sufficient access by foot.

3.33 It must also be noted that residents who live near the proposed site do not have the same levels of mobility that others may do in surrounding areas. Per the 2021 Census, 22.7% of residents in the Erewash 008C Lower-Layer Super Output Area (LSOA) were of impaired mobility. When we compare this figure to the 17.30% impaired mobility figure for the rest of England, we can see that residents near the proposed site have poor mobility and struggle with the extra journeys required to access pharmaceutical provision following the closure of the Boots.

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

3.35 <u>By Car from Proposed site to current nearest pharmacy (Peak Pharmacy, NG9 7AA)</u>

3.36 The journey by car to Peak Pharmacy 40 Derby Rd, NG9 7AA is currently a 5-minute drive from the proposed site. However, car parking is an issue with no parking available outside of this Town Centre site, with patients likely to use the Pay and Display Victoria St Car Park, NG9 7AP. The paid parking may deter patients from accessing pharmaceutical provision frequently and thus presents a barrier to accessing pharmaceutical services.

3.37 The barrier that paid parking presents is even more pertinent when the Committee consider that the Sandiacre North Ward contains some of the most deprived areas in the country. The Erewash 008C Lower-Layer Super Output Area (LSOA) is amongst the top 20% most deprived LSOAs in the country, per the 2019 Index of multiple deprivation. It is well documented that health needs are greater in deprived areas as well as economic outcomes being poorer.

3.38 We submit that those patients with a car who would like to access pharmaceutical services may be deterred from doing so frequently due to parking costs and also petrol costs. Given that these patients face both petrol costs and parking costs to access pharmaceutical provision, it is clear that these charges form a barrier to access. Thus, it cannot be determined that residents have reasonable choice in access to pharmaceutical services by car.

3.39 <u>By Public Transport from Proposed site to current nearest pharmacy (Peak Pharmacy, NG9 7AA)</u>

3.40 As highlighted by a couple of parties, the journey by bus to Peak Pharmacy is in itself a 7-minute journey; however, patients living to the North of the proposed site will still have a significant journey to access pharmaceutical provision by public transport. When we account for walking time, bus waiting time and round journey's, journey time alone to a local pharmacy exceeds 45 minutes for these residents.

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

3.42 As previously mentioned, the recently closed Boots/ the proposed site serve some of the most deprived areas in the country. Much like costs involved with journeys by car, we submit that the cost of bus travel also presents a barrier to access for a number of residents surrounding the proposed site.

3.43 <u>Summary</u>

3.44 It is clear that the journeys by foot, bus, and car to alternative pharmacies are inaccessible for a number of patients given the excessive distance to nearby pharmacies and deprivation in the area.

3.45 Granting my clients application would enable those residing near the proposed site to walk to nearby pharmaceutical provision, eliminating the barrier to access that distances, bus, and car travel present. We submit that this would also restore reasonable choice to pharmaceutical provision for the local population.

3.46 <u>Representation by PCT Healthcare</u>

3.47 From all representation received from interested parties, we note that representation by PCT Healthcare is the most extensive. My client disagrees with a number of claims made by PCT Healthcare and wishes to address these separately below.

3.48 PCT claim that Sandiacre is effectively an extension of the Stapleford area. We could not disagree with such sentiment any more. As previously highlighted, Sandiacre is clearly defined by the railway line to the East of the proposed site. Such is the definitive marking of this railway, that the area to the East of the railway line is classified as Nottinghamshire and the area to the West (the location of the proposed site) is classified as Derbyshire.

3.49 We submit that residents in Sandiacre access all their daily needs to the West of this railway, in Derbyshire. Residents of Sandiacre, to the West of the proposed site, have access to the following amenities on this side of the railway line:

3.49.1 GP provision (Adam House Medical Centre)

3.49.2 Fish & Chips Shop

3.49.3 Co-operative Supermarket

3.49.4 Lidl Supermarket

3.49.5 Church

3.49.6 Car Dealers/ Garage

3.49.7 DIY store

3.49.8 Public House (The White Lion)

3.49.9 Charity Shop

3.49.10 Hairdresser

3.49.11 Events Hall

3.49.12 ATM

3.49.13 Florist

3.49.14 Tattoo Studio

3.49.15 Cafés

3.49.16 Restaurants

3.49.17 Furniture Shop

3.50 Note the list above is not exhaustive, but clearly demonstrates that residents of Sandiacre access all their day to day needs to the West of the railway line, in Derbyshire. This is in stark contrast to the statement by PCT Healthcare that there are 'no facilities within the area defined by the applicant'.

3.51 Following the closure of the Boots Pharmacy, NG10 5HZ, residents are now faced with difficult journeys to Stapleford which is situated to the East of the railway line in a different county, Nottinghamshire.

3.52 The Committee will observe the amenities listed above are extensive, however pharmaceutical provision is markedly missing from this list following the closure of the Boots Pharmacy, NG10 5HZ.

3.53 PCT Healthcare also state that there are 10 pharmacies within two miles of the site proposed by my client. Whilst this may be true, this distance is misleading as it is given 'as the crow flies' opposed to journeys via their most practicable routes. We also highlight that it is strange that PCT use the metric of pharmacies within 2 miles opposed to pharmacies within a mile; we submit that perhaps this is because they are acutely aware of the much poorer access at a local level. In reality, when we look at journeys via the most practicable routes there are **zero** pharmacies within a mile of the proposed site. We reiterate that this is representative of dire access to pharmaceutical provision [Applicant's emphasis].

3.54 <u>Conclusion</u>

3.55 In our view, the closure of the Boots Pharmacy, NG10 5HZ, has left a significant gap in pharmaceutical services for Sandiacre.

3.56 Granting this application would secure better access to pharmaceutical services. The elderly, disabled, and the wider population are likely to find the proposed pharmacy significantly more accessible than alternative choices. It would also allow the population to once again access pharmaceutical provision within the course of their daily lives.

3.57 Moreover, it would restore reasonable choice of pharmaceutical provider for those in the local area, and not force the population into a choice between accessing pharmaceutical provision or more economical spending of resource.

3.58 We would like to note that granting this application would not cause significant detriment to access of pharmaceutical services, as this application is seeking to fill a gap vacated by the Boots, NG10 5HZ closure; and notwithstanding the fact that the nearest pharmacy to the proposed site is located 1 mile away.

3.59 On the evidence outlined above, we believe that a new pharmacy contract should be granted under Regulation 18."

4 Summary of Representations

This is a summary of representations received on the appeal.

4.1 PCT Healthcare Ltd

4.1.1 “Thank you for your letter dated 5 December 2024 regarding the above application. PCT Healthcare Limited wish to make the following written representations on this application.

4.1.2 PCT Healthcare Limited do not believe that this application meets the requirements of the Pharmaceutical Regulations 2013 for an unforeseen benefits application.

4.1.3 We want the NHS Resolution Committee to fully consider our previous representations on this application in the letter dated 17 June 2024.

4.1.4 PCT Healthcare Limited with regards [sic] to this application wish to reiterate that it is the NHS Regulations which determine if a new contract is to be granted, not the closure of a previous contractor.

4.1.5 The PNAs relevant to this application is both the Derbyshire Pharmaceutical Needs Assessment 2022 and the Nottinghamshire Pharmaceutical Needs Assessment 2022. Sandiacre is located within Erwash, part of Derbyshire however Stapleford sits within Broxtowe, Nottinghamshire and the patient catchment area for the Adam House Medical Centre, (shown later in this letter) includes Stapleford and other environs within Broxtowe, Nottinghamshire.

4.1.6 Please see below a map Map [sic] 38, page 183 of the Nottinghamshire PNA which indicates the location of the relevant pharmacies to the [sic]. [appendix D].

4.1.7 The closest pharmacy to the proposed best estimate location is Peak Pharmacy at 40 Derby Road, Stapleford which is located:

4.1.7.1 5 minutes in a car from the proposed site, our Peak Pharmacy has free parking available near-by and paid parking near-by in the Council car-park.

4.1.7.2 7 minutes travel time via public transport from the proposed location. (Via i4 bus in addition there is the My15 from Stapleford to Sandiacre)

4.1.7.3 Free off-peak concessionary travel is available on buses for older people (over 66 years of age) and the concession is also in place for disabled persons.

4.1.8 To qualify for a disabled person’s bus pass, you must either:

4.1.8.1 Be sight impaired or severely sight impaired

4.1.8.2 Be severely deaf (minimum hearing loss if it reaches 70 dB HL)

4.1.8.3 Be without speech in any language

4.1.8.4 Have a disability, or an injury, which has long term effect on the ability to walk

4.1.8.5 Not have arms or have long term loss of the use of both arms

4.1.8.6 Have a learning disability, which includes significant impairment of intelligence and social functioning

4.1.8.7 Be prevented from being granted a motor vehicle licence under Part III of the Road Traffic Act 1998, section 92 (other than on the grounds of persistent misuse of drugs and alcohol)

4.1.9 Peak pharmacy offers longer opening hours than this application as this pharmacy is open for 42.5 hours each week.

4.1.10 Peak Pharmacy offers the full range of advanced and enhanced services.

4.1.11 In addition Peak Pharmacy operates a free delivery service to elderly, disabled and house-bound patients.

4.1.12 The applicant places a lot of emphasis on the fact that the nearest pharmacy to their propose location is 0.9 miles away. However the applicant has failed to consider that the residents of Sandiacre and the patients of Adam House Medical Centre requiring pharmaceutical services as part of their daily lives freely travel throughout Erewash and into Stapleford, Long Eaton and Toton to access pharmaceutical services, since the pharmacy closed at NG10 5HZ in April 2024 over 9 months ago.

4.1.13 Regulation 18(2)(b)(i)- we believe that there is a reasonable choice of existing pharmaceutical provision with regard to obtaining pharmaceutical services within our defined area of Long Eaton, Stapleford & Toton, as patients who access these services will have travelled from where they live, work or shop.

4.1.14 PCT Healthcare Ltd does not agree with the area defined by the applicant as the paients [sic] who are served by Adam House Medical Centre live throughout Risley, Sandiacre Toton, Long Eaton and Stapleford. There are large supermarkets to undertake a weekly shop in Long Eaton (Asda, Aldi and Tesco), Stapleford (Aldi, Sainsbury's Local) and Toton (Tesco) a short distance from the capture area of Adam House Medical Centre.

4.1.15 We wish the Appeals Authority [sic] to specifically consider the fact that there are ten pharmacies within two miles of the applicants proposed location (from NHS.uk), these pharmacies clearly offer choice for pharmaceutical provision and a choice of provider in the area to the local population. There is no evidence to show that these existing pharmacies are not meeting the pharmaceutical services needs of patients within the HWB area. There is no information provided in this application to show that patients are experiencing difficulties when accessing pharmacies.

4.1.16 To evidence the flow of prescriptions from Adam House surgery, the percentage share of prescriptions from the Adam Surgery to our pharmacy in February 2023 was 6%.

4.1.17 Based on the most recent dispensing figures Peak Pharmacy are dispensing 11% of the prescriptions from Adam House.

4.1.18 Peak Pharmacy reiterates again that patients access pharmacies appropriate to their daily lives with the majority of prescriptions being sent electronically patients are accessing pharmaceutical services where they live, work and shop.

4.1.19 Regulation 18(2)(b)(ii) – we do not believe the applicant has given sufficient evidence of need for those people who share a protected characteristic within the application. We are not aware of any specific complaints regarding access to pharmaceutical services within this area for these specific protected groups. The applicant has failed to identify whether there are any people who share a protected characteristic who require access to a specific pharmaceutical service, who would benefit significantly from granting this application.

4.1.20 PCT Healthcare Limited find it Interesting that at neither the application stage nor at the appeal stage are any letters of support included in the application by the applicant, from patients, local doctors or the parish council.

4.1.21 Regulation 18(2)(b)(iii) - The applicant is not offering any innovative approaches with regards to the delivery of pharmaceutical services, including the length of opening hours or services provision.

4.1.22 The proposed opening times are also shorter than most of the pharmacies within the locality. There are already many pharmacies within the existing network that provide additional hours during weekdays and weekends, compared to the applicant.

4.1.23 Surgeries within Sandiacre

4.1.24 The application concentrates on the Adam House Medical Centre, please see below [appendix D] that the Adam House Medical Centre covers an extensive practice area throughout Sandiacre, Stapleford, Stanon-by-Dale [sic] and Risley which is served by the existing pharmacies within Erewash and Stapleford.

4.1.25 Link to this page shown below.

4.1.26 New Patient Registration - Adam House Medical Centre

4.1.27 With regards [sic] to this application please see below the practice catchment area of Adam House Medical Centre which indicates an area throughout the environs of Sandiacre, Stapleford, Toton and beyond to villages distant from Sandiacre itself (Risley & Stanton-by-Dale), this clearly indicates that patients are in the habit of freely accessing healthcare and pharmaceutical services throughout Erewash & Stapleford.

4.1.28 My family and I lived in Stanton-by-Dale for almost 20 years, our Medical Centre was Adam House Medical Centre, we routinely visited Long Eaton for our pharmaceutical needs. We visited Long Eaton as part of our daily lives due to the other facilities the town offers supermarkets (Asda, Aldi & Tesco), high street shops, banks, clothes shops, leisure centre with swimming pool, cafes and restaurants are available in this town.

4.1.29 PCT Healthcare Limited is not aware of any patient complaints with regards to accessing pharmaceutical services from those patients which the applicant is referring to in the application submitted by LP SD Five Limited.

4.1.30 In summary, PCT Healthcare Limited t/a Peak Pharmacy, does not agree that this application meets the requirements of the Pharmacy Regulations for a unforeseen benefits application:

4.1.30.1 Regulation 18(2)(b)(i) -There is already a reasonable choice with regard to obtaining pharmaceutical services in Stapleford, Long Eaton & Toton.

4.1.30.2 Regulation 18(2)(b)(ii) -The applicant has not provided sufficient evidence of people sharing a protected characteristic who are having difficulty in accessing pharmaceutical services.

4.1.30.3 Regulation 18(2)(b)(iii) – within the application we do not believe there are innovative approaches taken with regard to the delivery of pharmaceutical services.

4.1.31 PCT Healthcare Limited would like to be informed of the outcome of this application, and we would wish to attend an Oral Hearing, should one be deemed necessary."

Letter of 20 June 2024 addressed to the Commissioner

4.1.32 "Thank you for your letter dated 14th June 2024 regarding the above application. PCT Healthcare Limited wish to make the following written representations on this application.

4.1.33 We operate one pharmacy on the distribution list:

4.1.33.1 PCT Healthcare Limited, t/a Peak Pharmacy (FD664), 40 Derby Road, Stapleford, Nottingham, Nottinghamshire NG9 7AA.

4.1.34 We do not believe that this application meets the requirements of the Pharmaceutical Regulations 2013 for an unforeseen benefits application.

4.1.35 The PNA relevant to this application is Derbyshire Pharmaceutical Needs Assessment 2022, from page 50 of this document:

4.1.36 "The population of Erewash is generally young, with a relatively similar age composition to Derbyshire as a whole. In Erewash, there are a greater proportion of individuals aged 20-39 (24%) than that of those over 65 (21%)."

4.1.37 In addition, as this pharmacy application is in close proximity to Broxtowe the Nottinghamshire Pharmaceutical Needs Assessment 2022 is relevant to this application. Stapleford sits within Broxtowe, Nottinghamshire and the patient catchment area for the Adam House Medical Centre, (shown later in this letter) includes Stapleford and other environs within Broxtowe, Nottinghamshire.

4.1.38 Pharmaceutical needs assessment - Nottinghamshire Insight

4.1.39 Map 38, page 183 of the Nottinghamshire PNA [appendix E].

4.1.40 The closest pharmacy to the proposed best estimate location is Peak Pharmacy at 40 Derby Road, Stapleford which is 7 minutes travel time via public transport from the proposed location. (Via i4 bus)

4.1.41 The applicant has failed to consider that individuals requiring pharmaceutical services as part of their daily lives have freely travelled throughout Erewash and into Stapleford, Long Eaton and Toton to access pharmaceutical services, since the pharmacy closed at NG10 5HZ 3 months ago.

4.1.42 Regulation 18(2)(b)(i)- we believe that there is a reasonable choice of existing pharmaceutical provision with regard to obtaining pharmaceutical services within our defined area of Long Eaton, Stapleford & Toton, as patients who access these services will have travelled from where they live, work or shop.

4.1.43 PCT Healthcare Ltd does not agree with the area defined by the applicant as the paients [sic] who are served by Adam House Medical Centre acess [sic] Stapleford and Long Eaton for their shopping as there a no facilities within the area defined by the applicant. There are large supermarkets to undertake a weekly shop in Long Eaton, Stapleford and Toton a short distance from the capture area of Adam House Medical Centre.

4.1.44 We wish the Appeals Authority [sic] to specifically consider the fact that there are ten pharmacies within two miles of the applicants proposed location (from NHS.uk), these pharmacies clearly offer choice for pharmaceutical provision and a choice of provider in the area to the local population. There is no evidence to show that these existing pharmacies are not meeting the pharmaceutical services needs of patients within the HWB area. There is no information provided in this application to show that patients are experiencing difficulties when accessing pharmacies.

4.1.45 Regulation 18(2)(b)(ii) – we do not believe the applicant has given sufficient evidence of need for those people who share a protected characteristic [sic] within the application. We are not aware of any specific complaints regarding access to pharmaceutical services within this area for these specific protected groups. The applicant has failed to identify whether there are any people who share a protected characteristic who require access to a specific pharmaceutical service, who would benefit significantly from granting this application.

4.1.46 Regulation 18(2)(b)(iii) - The applicant is not offering any innovative approaches with regards to the delivery of pharmaceutical services, including the length of opening hours or services provision.

4.1.47 The proposed opening times are also shorter than most of the pharmacies within the locality. There are already many pharmacies within the existing network that provide additional hours during weekdays and weekends, compared to the applicant.

4.1.48 Surgeries within Sandiacre

4.1.49 The application concentrates on the Adam House Medical Centre, please see below that the Adam House Medical Centre covers a practice area throughout Sandiacre, Stapleford, Stanon-by-Dale [sic] and Risley which is served by the existing pharmacies within Erewash and Stapleford.

4.1.50 Link to this page shown below.

4.1.51 New Patient Registration - Adam House Medical Centre

4.1.52 With regards to this application please see below the practice catchment area of Adam House Medical Centre which indicates an area throughout the environs of Sandiacre, Stapleford, Toton and beyond to villages distant from Sandiacre itself (Risley & Stanton-by-Dale), this clearly indicates that patients are in the habit of freely accessing healthcare and pharmaceutical services throughout Erewash & Stapleford.

4.1.53 My family and I lived in Stanton-by-Dale for almost 20 years, our Medical Centre was Adam House Medical Centre, we routinely visited Long Eaton for our pharmaceutical needs. We visited Long Eaton as part of our daily lives due to the other facilities the town offers supermarkets, shops, banks, leisure centre with swimming pool, cafes and restaurants are available in this town.

4.1.54 [map of surgery catchment area provided – appendix E]

4.1.55 We wish NHS England to specifically consider the fact that there are four pharmacies within Stapleford (from NHS.uk), plus another five pharmacies within Long Eaton and a pharmacy located in Toton. Patients access pharmaceutical provision where they live, work and shop with the advent of electronic prescriptions patients are no longer tied to surgeries to collect their prescriptions.

4.1.56 These pharmacies clearly offer choice for pharmaceutical provision and there is a choice of provider in the area defined by us to the local population. There is no evidence to show that these existing pharmacies are not meeting the pharmaceutical services needs of patients within the area. There is no information provided in the application to indicate that patients are experiencing difficulties when accessing pharmacies.

4.1.57 In summary, PCT Healthcare Limited t/a Peak Pharmacy, does not agree that this application meets the requirements of the Pharmacy Regulations for a unforeseen benefits application:

4.1.57.1 Regulation 18(2)(b)(i) -There is already a reasonable choice with regard to obtaining pharmaceutical services in Stapleford, Long Eaton & Toton.

4.1.57.2 Regulation 18(2)(b)(ii) -The applicant has not provided sufficient evidence of people sharing a protected characteristic who are having difficulty in accessing pharmaceutical services.

4.1.57.3 Regulation 18(2)(b)(iii) – within the application we do not believe there are innovative approaches taken with regard to the delivery of pharmaceutical services.

4.1.58 PCT Healthcare Limited would like to be informed of the outcome of this application and we would wish to attend an Oral Hearing, should one be deemed necessary.”

4.2 Community Pharmacy Nottinghamshire

4.2.1 “Thank you for sending Community Pharmacy Nottinghamshire the appeal documents for the above application with regards to unforeseen benefit application. Community Pharmacy Nottinghamshire would like to make the following comments:

4.2.2 Community Pharmacy Nottinghamshire stand by the points raised in original response (copy attached).

4.2.3 There is no evidence that since the Boots closed that patients have not been able to access Pharmaceutical Services

4.2.4 The applicant has failed to demonstrate how their application would meet regulations

4.2.5 18(2)(b) – specifically how their application provides [Regulation 18(2)(b) quoted in full].

4.2.6 Most prescribing is now electronic via EPS and many GP consultations are now virtual therefore patients are more often than not actually attending Adam House Medical Practice so the suggested journey difficulties detailed by the applicant are not of a scale that they assert.

4.2.7 Please keep Community Pharmacy Nottinghamshire (LPC) informed of progress. Community Pharmacy Nottinghamshire may like to comment further should the opportunity arise including attending and commenting at any oral hearing."

Letter to the Commissioner dated 26 July 2024

4.2.8 "Thank you for sending me the details for the above unforeseen benefit application. This was discussed by Community Pharmacy Nottinghamshire and would like to make the following comments:

4.2.9 *The applicant references the PNA but there have been no supplementary statements issued by the Nottinghamshire HWB with regards to a gap in provision since the pharmacy closed in Sandiacre, so therefore this means that there is adequate provision of services provided by existing pharmacies.*

4.2.10 Therefore the LPC requests that the application is refused because it fails to meet the requirements of the regulations for an unforeseen benefits application.

4.2.11 The LPC would like the opportunity if it arises to be able to comment further and attend any hearings, as well as be kept informed of progress. Thank you."

4.3 Community Pharmacy Derbyshire

4.3.1 "Thank you for sending the appeal documents received for the above unforeseen benefit application. Community Pharmacy Derbyshire committee reviewed the appeal information and would like to make the following comments:

4.3.2 Community Pharmacy Derbyshire stand by the points raised in original response (copy attached).

4.3.3 There has been no evidence that patients have not been able to access pharmaceutical services since the Boots Pharmacy closed in Sandiacre.

4.3.4 The applicant has not demonstrated how their application would meet regulations 18(2)(b), specifically how their application provides [Regulation 18(2)(b) quoted in full].

4.3.5 Most prescribing is now sent electronically via EPS and many GP consultations are now virtual therefore more often than not patients are not attending Adam House Medical Practice for appointments, so the suggested journey difficulties detailed by the applicant are not of a scale that they assert.

4.3.6 Community Pharmacy Derbyshire would like the opportunity if it arises, to be able to comment further and attend any hearings, as well as be kept informed of progress. Thank you."

Letter to the Commissioner dated 25 July 2024

4.3.7 "Thank you for sending the documents received for the above unforeseen benefit application. Community Pharmacy Derbyshire committee reviewed the application and would like to make the following comments:

4.3.8 There have been no supplementary statements issued for the PNA by Derbyshire HWB regarding the closure of Boots Pharmacy in the area

4.3.9 There are numerous pharmacies around the proposed pharmacy site so adequate choice and provision currently.

4.3.10 There are adequate bus routes and parking is available.

4.3.11 The application does not show any innovation regarding unforeseen benefit.

4.3.12 Community Pharmacy Derbyshire would like the opportunity if it arises, to be able to comment further and attend any hearings, as well as be kept informed of progress. Thank you."

5 Observations

This is a summary of the observations received by NHS Resolution in response to the representations received on appeal.

5.1 Healthcare Plus Consulting Ltd on behalf of the Applicant

5.1.1 "Thank you for your letter dated 9th January 2025. We note the responses made by interested parties on my client's appeal and respond accordingly here.

5.1.1.1 There has been no dispute that c. 8,000 residents are likely to access pharmaceutical services at the proposed site.

5.1.1.2 There has been no dispute of the deprived nature of areas surrounding the proposed location.

5.1.1.3 There has been no dispute surrounding the Derby and Derbyshire PNA guidance that residential access to pharmaceutical provision should be within 1 mile.

5.1.2 <u>Derby and Derbyshire Pharmaceutical Needs Assessment (PNA)</u>

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

5.1.4 There are a number of conclusions within the Derby and Derbyshire PNA that are of importance in the context of my client's application. We trust that the Committee will give due consideration to the following points made within the Derby and Derbyshire PNA.

5.1.4.1 *"Pharmacy teams play a pivotal role as a community and health asset within local areas."* (Derby and Derbyshire PNA, pg. 14)

5.1.4.2 With regard to the NHS Long Term Plan, the Derby and Derbyshire PNA states *"It has been an important part of the PNA process to consult with these areas and ensure that population health needs are entirely accounted for, and that pharmaceutical services provision is considered in its widest geographical sense."* (Derby and Derbyshire PNA, pg. 22)

5.1.4.3 *"the proportion of older people over 65 is expected to increase by 21.3% by 2043"* (Derby and Derbyshire PNA, pg. 25)

5.1.4.4 *"Strategic priorities and key health needs Priorities in Erewash include encouraging healthy lifestyles, raising aspirations of young people, and reducing alcohol misuse."* (Derby and Derbyshire PNA, pg. 52)

5.1.4.5 *"The length of time taken for a prescription to get from GP to pharmacy and then be dispensed to the customer was flagged as an issue."* (Derby and Derbyshire PNA, pg. 141)

5.1.4.6 *"Locally, the vision of both the Derby and Derbyshire Health and Wellbeing Strategies is to improve the health and wellbeing of people and reduce health inequalities, with an emphasis on integrating services and partnership working. Pharmacies are a key enabler in influencing the success of this strategy implementation through: promoting prevention and early intervention; promoting control, independence and responsibility; building strong and resilient individuals and communities; and making every contact count."* (Derby and Derbyshire PNA, pg. 142)

5.1.5 We note that the Derby and Derbyshire PNA is clear in its vision for pharmacies to play an important role within communities, especially in providing wider health and wellbeing services. As we have previously mentioned, there is currently no pharmacy situated within the Sandiacre area, which may discourage residents from travelling out of their locality to access pharmaceutical provision. This is especially pertinent when we consider patients will be required to make two journeys; first to the GP, and then to the pharmacy.

5.1.6 The PNA also highlights the deprived nature of Derby, which is especially evident when compared to national averages. As the Committee will be aware, health needs are greater in deprived areas, which is also identified within the PNA.

5.1.6.1 *"Generally, the health of the population of Derby is worse than the England average."* (Derby and Derbyshire PNA, pg. 14)

5.1.6.2 *"Life expectancy for both men and women is lower than the national average, and significant inequalities exist. For men, life expectancy is currently 11.1 years lower in the most deprived areas of the city than in the least deprived. For women the difference is 19.2 years."* (Derby and Derbyshire PNA, pg. 14)

5.1.6.3 *"The rate of smoking related deaths is worse than average for England in Derby, as are hospital admissions for alcohol-related conditions and self-harm. The risk of early death (before 75 years of age) from cardiovascular diseases is greater in Derby than the England average. Prevalence of certain long-term conditions, such as diabetes, are higher than average."* (Derby and Derbyshire PNA, pg. 14)

5.1.6.4 *"The rates of admission for self-harm and alcohol-related conditions are significantly higher than the England average. The prevalence of both obesity and smoking in pregnancy is also higher than average."* (Derby and Derbyshire PNA, pg. 14)

5.1.6.5 *"Erewash ranks 168th out of 316 English local authority districts in the 2019 English Index of Multiple Deprivation, where 1 is the most deprived. However, there are small pockets of deprivation in which 11 of 73 lower super output areas are amongst the most deprived 20%nationally."* (Derby and Derbyshire PNA, pg. 49)

5.1.6.6 *"Life expectancy is disproportionately lower for people living in deprived areas."* (Derby and Derbyshire PNA, pg. 89)

5.1.7 When comparing the general health and wellbeing of Derby's population with the average for England, we can see that Derby is a highly deprived area. The PNA is explicit in concluding this, while making specific reference to the Erewash district. As previously mentioned, Sandiacre is an area located within Erewash containing some of the most deprived lower-layer super output areas; the Erewash 008C LSOA located just to the North of the proposed site is within the top 20% most deprived areas in the country. We submit that there is a need for pharmacies within deprived communities to help tackle these issues.

5.1.8 Guidance surrounding accessibility is also highlighted in the Derby and Derbyshire PNA, such as target times a pharmacy should be accessible within.

5.1.8.1 *"Almost 100% of the population are within 1.6km (1 mile, representing an approximately 20-minute walk) of a pharmacy*." (Derby and Derbyshire PNA, pg 28)

5.1.8.2 *"In rush hour/peak traffic conditions a pharmacy should still be accessible within a 5-minute drive for more than 90% of people."* (Derby and Derbyshire PNA, pg. 138)

5.1.8.3 *"Problems with accessibility at a number of (unnamed) pharmacies were mentioned, which do not seem to have been challenged by the NHS."* (Derby and Derbyshire PNA, pg. 141)

5.1.9 <u>PNA Distance</u>

5.1.10 It has previously been commented that there are 3 pharmacies within a mile of the proposed site, and 10 within 2 miles of the proposed site. While this may be the case as the crow flies, we contest that this is not the case in reality. We reiterate there is not even 1 pharmacy within a mile distance of the proposed site.

5.1.11 We would like to draw the Committee's attention to the travel distance to pharmaceutical provision for the population as outlined by the Derby and Derbyshire PNA.

5.1.12 It is widely considered in most PNA's and by the majority of Health and Wellbeing Boards that pharmacies should be within 1 mile.

5.1.13 We submit that the Derby and Derbyshire PNA agrees with this instruction, for it states, "almost 100% of the population are within 1.6km (1 mile, representing an approximately 20-minute walk) of a pharmacy". (Derby and Derbyshire PNA, pg. 28)

5.1.14 From this, we can conclude that pharmacies located 1 mile or further is inadequate access through the lens of PNA guidance. It is noteworthy that Google Maps does not consider topography or mobility issues when calculating trips, so this journey could be even longer for the elderly, disabled, or those with young children. We submit that deductions from the PNA highlight that those residents in Derby should not be more than a 20-minute walk from a pharmacy

5.1.15 Since the Boots Pharmacy (NG10 5HZ) closure, the majority of residents living within Sandiacre are no longer within a mile distance of pharmaceutical provision. In fact, the travel time to access pharmaceutical provision when walking from the proposed site are as follows:

5.1.15.1 To Peak Pharmacy, Derby Road, NG9 7AA – 23 minutes

5.1.15.2 To Well Pharmacy, Church Street, NG9 8DB – 26 minutes

5.1.15.3 To Boots Pharmacy, Church Street, NG9 8GA – 26 minutes

5.1.16 For many residents living to the north and south of the proposed site, this journey could be up to a 1.7-mile walk, which is a one-way distance of 40 minutes. It is evident that the majority of residents in the Sandiacre area are no longer within a 20-minute walk of a pharmacy. This is clearly in excess of what the PNA would consider as representative of reasonable choice to pharmaceutical provision.

5.1.17 The distance of the existing pharmacies since the Boots closure do not uphold the intended travel time specifically outlined by the PNA, and therefore we can consider this as inadequate access to pharmaceutical provision for the population of Sandiacre.

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

5.1.19 Almost all of the Sandiacre residents are not within 1 mile of a pharmacy. Thus, against this criterion, there is no longer reasonable choice to pharmaceutical provision for the c.8000 residents living in the Sandiacre area. Given this, we submit our client's application fulfils PNA guidance, and we invite NHS Resolution to grant this application on this premise alone.

5.1.20 **Sandiacre Area**

5.1.21 We note that PCT Healthcare disagrees with the Sandiacre area as defined by my client and has previously claimed that Sandiacre is effectively an extension of the Stapleford area.

5.1.22 First, we contest this and highlight that geographically, the Stapleford area is settled within the Nottinghamshire County using the Peak Pharmacy postcode (NR9 7AA). We note that the Sandiacre area is situated within the Derbyshire County.

5.1.23 Secondly, we echo that the community living within the Sandiacre area is naturally defined by the M1 circling the north and west, railway tracks to the east, and the A52 to the South. We disagree with previous comments that the Sandiacre area is defined by the wider catchment area for Adam House Medical Centre. This is evidently shown in the map (Appendix A) [appendix F].

5.1.24 As can be seen in the map, travel to alternative pharmaceutical services is beyond the railway tracks which are to the east of Sandiacre. It is clear that patients are required to travel out of Sandiacre to access existing pharmaceutical provision. In order to access a pharmacy, we submit that the only practicable route for the majority of residents in Sandiacre requires travelling along the bridge on the B5010 to cross the railway tracks. We submit the bridge functions as the only direct connection between pharmaceutical provision in Stapleford for the c.8,000 residents living in Sandiacre.

5.1.25 Ultimately, this represents a lack of reasonable choice and inadequate access as Sandiacre's population have no choice but to travel out of their locality. Additionally, we do not consider a minimum of 2-miles round-trip when accessing pharmaceutical services as reasonable choice nor sufficient access. Given Sandiacre's population of c. 8,000 residents, we also submit that a pharmacy located at the proposed site would adequately serve this large community, as well as those who are accessing GP services at Adam House Surgery.

5.1.26 We also note that it has been previously said the catchment area for Adam House Medical Centre shows patients can freely access healthcare services and pharmacy services. We respectfully disagree with this statement. Further, we suggest that this notion also implies that the wider population included in the GP surgery catchment area are also travelling within Sandiacre to access the available health facilities. Therefore, we submit that pharmaceutical provision at the proposed site would serve the local and wider population who already travel into Sandiacre to access its health services.

5.1.27 It has previously been mentioned that there are supermarkets in Long Eaton, Stapleford and Toton where residents can undertake a weekly shop. Yet, we submit that this list excluded the Lidl and Co-op Food supermarkets along Derby Road which currently serve the residents population in Sandiacre. We reiterate that the Sandiacre neighbourhood is served by a free car park and numerous amenities residents would encounter in their daily lives as listed previously. To remind the Committee, we have listed all of these below:

5.1.27.1GP provision (Adam House Medical Centre)

5.1.27.2Co-operative Food Store (DPD Pickup inside)

5.1.27.3Lidl Supermarket

5.1.27.4Fish & Chips Shop

5.1.27.5Chinese Takeaway

5.1.27.6Chinese Restaurant

5.1.27.7Indian Takeaway

5.1.27.8Burger King

5.1.27.9Hair & Beauty Salons

5.1.27.10Barber Shops

5.1.27.11Nursery

5.1.27.12Car Parts Manufacturer (Autosparks)

5.1.27.13DIY & Hardware Shops

5.1.27.14Vehicle Repair Shop

5.1.27.15Church

5.1.27.16Public House (The White Lion)

5.1.27.17InPost Shop

5.1.27.18UPS Access Point

5.1.27.19Home Furniture Stores

5.1.27.20Flooring Shop

5.1.27.21Massage Therapist

5.1.27.22Acupuncture Clinic

5.1.27.23Cafés

5.1.27.24Restaurants

5.1.27.25Pizza Shops

5.1.27.26Charity Shop

5.1.27.27ATM

5.1.27.28Amazon Postal

5.1.27.29Florist

5.1.28 The Committee will observe the amenities listed above are extensive, however, we submit that pharmaceutical provision is markedly missing from this list following the closure of the Boots Pharmacy, NG10 5HZ.

5.1.29 It has been stated that majority of prescriptions are being sent electronically to patients who are accessing pharmaceutical services where residents live, work and shop. We again reiterate that the significant number of amenities listed above should be deemed sufficient to define Sandiacre as a major shopping location for over 8,000 local residents.

5.1.30 Following the closure of Boots Pharmacy, residents have no choice but to embark on challenging journeys when travelling to Stapleford. Further, those residents who are highly deprived may be deterred from travelling out of their locality due to expenses such as bus fares and petrol costs.

5.1.31 Again, we stress to the Committee the importance of having accessible pharmacies within communities, especially with the advent of Pharmacy First. For Pharmacy First to be effective, we submit that we must try and be realistic when considering where patients will access these services, and the distances they will travel to access them. In this particular instance, given that the nearest pharmaceutical provision is 1 mile away, and Adam House Medical Centre is situated at the heart of Sandiacre just off the main road (Derby Road); it is obvious that patients will seek treatment for minor ailments with the doctor's opposed to doing so in a pharmacy setting. This is clearly counter-productive and causes unnecessary strain on the doctor's surgery for issues that can be dealt with by a pharmacy. Hence, we submit that a pharmacy at the proposed site would benefit local residents and ease pressure on the current primary care network.

5.1.32 The Derby and Derbyshire PNA makes reference to Primary Care Networks as a key part of the NHS Long Term Plan. Additionally, the PNA encapsulates the vision of the Derby Health and Wellbeing Strategies, which place "an emphasis on integrating services and partnership working" (Derby and Derbyshire PNA, pg. 142). This application seeks to integrate the role of pharmacists into pathways of care and make "every contact count". (Derby and Derbyshire PNA, pg. 142)

5.1.33 Thus, we believe that the local population would benefit from not only gaining better access to pharmaceutical services in Sandiacre but also visiting the pharmacy in connection with a visit to the GP. As mentioned in the Derby and Derbyshire PNA 2022, "The length of time taken for a prescription to get from GP to pharmacy and then be dispensed to the customer was flagged as an issue." (Derby and Derbyshire PNA, pg. 141). We believe that such sentiment is especially relevant for residents in the Sandiacre area. As the nearest current pharmacies are at least 1 mile away from the proposed site, we submit that it is likely patients could be embarking on several extensive trips back and forth between the GP and pharmacy, especially when there is confusion surrounding the whereabouts of any prescription in the dispensing workflow. Such unnecessary journeys to and from GPs and pharmacies represents a lack of reasonable choice, and is simply strenuous for patients, especially for those groups with protected characteristics.

5.1.34 Thus, we submit that pharmaceutical provision near the doctor's surgery would fulfil the NHS Long Term Plan and support the needs of the local community.

5.1.35 In addition to providing reasonable choice to provision as part of a Medical Centre, a pharmacy at the proposed site will significantly improve health outcomes for local residents.

5.1.36 Local Population

5.1.37 New housing developments are already underway in Sandiacre, with a completed project of 38 new homes on Longmoor Lane currently for sale, and planning permission secured for 53 new dwellings on Bridge Street. As outlined in the Erewash Core Strategy, further housing developments are yet to come, which we submit will increase the number of residents reliant on pharmaceutical services in Sandiacre.

5.1.38 Moreover, the current age of young adults in Derby taken from the PNA was highlighted by PCT Healthcare previously, yet they failed to finish the quote, which ended with "…the proportion of older people over 65 is expected to increase by 21.3% by 2043" (Derby and Derbyshire PNA, pg. 25). As the elderly have greater health needs, this insight from the PNA reveals that the demand for pharmaceutical provision in Derby will increase.

5.1.39 We note that there is already a high number of residents aged 65 and over currently residing adjacent to the proposed site. According to 2021 Census data, 33.6% of residents are aged 65 and above in the Erewash 008F LSOA. This is nearly double the national average (18.3%), and significantly higher than the already high local authority average (20.8%). If the PNA predicts a significant increase in the proportion of people over 65 across Derby, we can conclude that this particular LSOA will increase accordingly, as well as the numerous surrounding LSOAs likely to access pharmaceutical services at the proposed site.

5.1.40 Previously, it has also been raised by the relevant parties that there are an increasing number of digital solution pathways such as virtual GP consultations. It must be noted that using technology is not an answer applicable to all. When we consider this very high elderly population who may not feel comfortable using technology and prefer face to face modes of communication, we believe a pharmacy situated near a GP would greatly benefit these residents seeking in person advice from their local pharmacy and access to Pharmacy First.

5.1.41 The Derby and Derbyshire PNA highlights that there are "small pockets of deprivation in which 11 of 73 lower super output areas are amongst the most deprived 20% nationally" (Derby and Derbyshire PNA, pg. 49). We reiterate that one of these pockets is found within Sandiacre, adjacent to the proposed site in the Erewash 008C LSOA. Residents of this LSOA have poor mobility, poor health, and poor vehicular access.

5.1.42 Per 2021 Census data, 23.9% of households in the Erewash 008C LSOA did not have access to a car or a van. 22.1% of households in the Erewash 008D LSOA (the LSOA of the proposed site) also did not have access to a car or a van. This is in excess of the 19.4% no car/van ownership for the Erewash Local Authority.

5.1.43 Further, per census data, 8.4% of residents in the Erewash 008C LSOA had bad or very bad health. For the 008D and 008F LSOAs these figures are 6.3% and 7% respectively. When compared to the average of 5.6% for Erewash, we can see that the localised population is of particularly bad health.

5.1.44 Additionally, 22.7% of residents in the Erewash 008C LSOA are disabled under the Equality Act 2010. These figures there are 18.9% in the 008D LSOA and 22.5% in the 008F LSOA. This is a significant proportion of the population especially when compared to local (19.6%) and national (17.3%) averages.

5.1.45 When we compare these figures above to local and national averages, we can see that the population nearby the proposed site has greater health needs, given the relative deprivation. Such deprivation is not only indicative of lower health outcomes but also suggests local residents can encounter difficulties such as a cost barrier when accessing pharmaceutical provision.

5.1.46 The PNA also notes the "Strategic priorities and key health needs Priorities in Erewash include encouraging healthy lifestyles, raising aspirations of young people, and reducing alcohol misuse." (Derby and Derbyshire PNA, pg. 52). Such concerning poor health figures for the local population do not reflect the key health priorities in Erewash.

5.1.47 When we consider that the PNA recognises "Pharmacy teams play a pivotal role as a community and health asset within local areas." (Derby and Derbyshire PNA, pg. 14), we note that residents in Sandiacre, are no longer served by a "health asset". Thus, by reintroducing pharmaceutical provision in Sandiacre, we submit that a pharmacy can facilitate the key health needs of Erewash, such as "encouraging healthy lifestyles", and restore the invaluable "health asset" that the local population do not currently benefit from having access to.

5.1.48 Patient Journeys

5.1.49 We remind the Committee of the journeys patients are required to take to access pharmaceutical services in Stapleford. Patient journeys are likely to be similar, as all current pharmaceutical provision is located in Stapleford.

5.1.50 We reiterate that distance itself is considered a barrier to access. Thus, we cannot consider a minimum 2-mile round trip as sufficient access to pharmaceutical provision, in fact; we submit this is well below the 'threshold' for reasonable choice, and is representative of no choice at all.

5.1.51 We urge the Committee to consider this high resident elderly population who may not feel comfortable driving, and whose preferred mode of transport may indeed be on foot or by bus for the scenarios below.

5.1.52 We also strongly encourage the Committee to consider the locally deprived population who may feel they are on a tight budget, and do not wish to spend money on what they may consider unnecessary travel, whether that be bus fares or petrol costs.

5.1.53 By Foot

5.1.54 As highlighted previously, patients journeys are extensive and can prove difficult for those navigating trips to pharmaceutical provision by foot. The journey is also in excess of times/ distances stipulated by the PNA.

5.1.55 A 2-mile round trip by foot can prove very difficult for the high elderly and disabled local population, as well as those who are visually impaired. As mentioned earlier, it is also in excess of PNA guidance. We reiterate that some residents to the North of the Proposed site will now have round-journeys of approximately 3.4- miles to access a pharmacy – this is clearly not representative of sufficient choice nor access.

5.1.56 By Car

5.1.57 We would like to highlight that the journey by car to access the current nearest pharmacy (Peak Pharmacy) has been recorded as a 5-minute drive. While it may be a 5-minute drive without traffic, we submit that this is not the case during peak times. Rush hour traffic causes this journey to be 8 minutes long and does not account for the time spent in finding parking.

5.1.58 The PNA is clear in highlighting its target for vehicular access travel times to local pharmacies. As mentioned above, it states that:

5.1.58.1 *"In rush hour/peak traffic conditions a pharmacy should still be accessible within a 5-minute drive for more than 90% of people."* (Derby and Derbyshire PNA, pg. 13)

5.1.59 We can see that the PNA clearly states that a pharmacy "should" be within a 5-minute drive during busy traffic conditions, however following the closure of the Boots this is no longer the case for residents of Sandiacre.

5.1.60 We note that there has been mention of free parking near the Peak Pharmacy, however, this is very limited with only c. 3 parking spaces, no disabled bays and surrounding permit holders only spaces. As we have highlighted, the closest parking option requires paying to utilise the Victoria Street Short Stay Car Park.

5.1.61 We submit that those patients with a car who would like to access pharmaceutical services may be deterred from doing so frequently due to parking costs and also associated petrol costs. We submit that these charges form a barrier to access. Thus, it cannot be determined that residents have reasonable choice in access to pharmaceutical services by car.

5.1.62 By Bus

5.1.63 The bus journey to access existing pharmaceutical provision via the i4 from Smedley's Avenue bus stop to Memorial Gardens bus stop has previously been stated to be a 7-minute journey.

5.1.64 For clarity, when inputting peak traffic times into Google Maps, we submit that this journey could be at least 11-minutes, equating to a 22-minute round trip for the bus journey alone.

5.1.65 As previously detailed, we must consider that this journey could be significantly longer for residents) living in the north of Sandiacre. These residents can face a 45-minute round-trip. We submit that such an extensive journey is not representative of reasonable choice or access to pharmaceutical provision by bus.

5.1.66 As highlighted above, we must consider the deprived nature of the Sandiacre area. Much like costs involved with journeys by car, we submit that the cost of bus travel also presents a barrier to access for a number of residents surrounding the proposed site.

5.1.67 Therefore, we submit that patients accessing pharmaceutical services by bus is clearly inadequate, and not representative of reasonable choice nor sufficient access.

5.1.68 <u>Conclusion</u>

5.1.69 We conclude that there is a need for a pharmacy in Sandiacre, as the closure of the Boots Pharmacy, NG10 5HZ, has left a significant gap in pharmaceutical services for Sandiacre.

5.1.70 We note that this need is apparent when we assess access and choice against the criteria given in the Derby and Derbyshire PNA.

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

5.1.72 Also, those residents who utilise the local amenities and Adam House Medical Centre would be able to access pharmaceutical provision in the course of their daily lives; significantly improving health outcomes especially through services such as Pharmacy First, and closer collaboration with the Doctors.

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

6 Consideration

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

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

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

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

Regulation 31

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

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

(2) This paragraph applies where -

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

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

(ii) adjacent premises; and

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

6.6 The Committee noted the Applicant's response in the application form on this point *"N/A. Despite there being a pharmacy currently trading near the proposed site, the current pharmacy located at 85-91 Derby Road, NG10 5HZ, is due to close on the 22nd March 2024. Should a new pharmacy contract ultimately be granted, there will no longer have been a pharmacy trading from 85-91 Derby Road, NG10 5HZ. Thus, there will be no pharmacy trading from or adjacent to the proposed premises, so Regulation 31 does not apply."* The Committee noted the conclusions of the Commissioner in this respect and further that this had not been disputed either on appeal or in subsequent representations. Therefore, on the basis of the information before it, the Committee was not required to refuse the application under the provisions of Regulation 31.

6.7 The Committee noted that, if the application were granted, the successful applicant would - in due course - have to notify the Commissioner of the precise location of its premises (in accordance with paragraph 31 of Schedule 2). Such a notification would be invalid (and the applicant would not be able to commence provision of services) if the location then provided would (had it been known now) have led to the application being refused under Regulation 31.

Regulation 18

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

"(1) If—

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

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

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

(2) Those matters are—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6.9 The Committee considered that Regulation 18(1)(a) was satisfied in that it was required to determine whether it was satisfied that granting the application, or granting it in respect of some 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.

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

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

6.12 The Committee noted the comment from PCT Healthcare Ltd on the relevant PNA *"The PNAs relevant to this application is both the Derbyshire Pharmaceutical Needs Assessment 2022 and the Nottinghamshire Pharmaceutical Needs Assessment 2022. Sandiacre is located within Erwash* [sic]*, part of Derbyshire however Stapleford sits within Broxtowe, Nottinghamshire and the patient catchment area for the Adam House Medical Centre".* The Committee noted that Sandiacre is located within Derbyshire, and borders Nottinghamshire. The Committee therefore determined that even though there may be some crossover and the needs of the neighbouring towns maybe similar, Derbyshire is "the relevant HWB", therefore the relevant PNA for the purpose of this application is the Derby and Derbyshire PNA 2022-2025.

6.13 The Committee considered the PNA prepared by Derbyshire County Health & 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 21 September 2022 and that no Supplementary Statements have been issued.

6.14 The Committee had regard to the PNA and noted the conclusions under section 7:

6.14.1 *"Statement of pharmaceutical need: Derby City Based on the information collated, the PNA found that the pharmaceutical need in the Derby City Health & Wellbeing Board area is adequately met by the current pharmacy providers. Pharmaceutical need will be reviewed again in 2025 when the PNA is revisited, or in the event of significant changes affecting need in the interim years.*

6.14.2 *Statement of pharmaceutical need: Derbyshire County Based on the information collated, the PNA found that the pharmaceutical need in the Derbyshire County Health & Wellbeing Board area is adequately met by the current pharmacy providers. Pharmaceutical need will be reviewed again in 2025 when the PNA is revisited, or in the event of significant changes affecting need in the interim years."*

6.15 The Committee noted the Applicant had highlighted the following point made by the Commissioner in its decision report *"The PNA has not been provided within the application, however details given by the applicant suggests the PNA reflects a significant gap left in pharmaceutical services since the closure of Boots Pharmacy".* The Committee noted the Applicant's response in its appeal *"We are unsure as to why NHS England are concerned by the fact that no gap has officially been identified in the PNA. This application has been made under Regulation 18 - Unforeseen Benefits. This type of application is in its very nature, unforeseen, offering improvements or better access to pharmaceutical services not captured within the PNA. Had any gap been identified in the PNA then Regulation 18 would have ultimately been rendered irrelevant."* The Committee agreed with the points made by the Applicant.

6.16 The Committee noted that the Applicant seeks to provide unforeseen benefits to the patients of Sandiacre. 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.

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

Regulation 18(2)(a)(i)

6.18 The Committee had regard to

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

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

6.19 The Committee noted the Commissioner had not made a determination in respect of this. However no party had sought to argue that the granting of the application would cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area of the relevant HWB.

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

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

Regulation 18(2)(a)(ii)

6.22 The Committee had regard to

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

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

6.23 The Committee noted the Commissioner had not made a determination in respect of this. However no party had sought to argue that the granting of the application would cause significant detriment to the arrangements currently in place for the provision of pharmaceutical services.

6.24 Therefore, on the basis of the information before it, the Committee was 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.

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

Regulation 18(2)(b)

6.26 The Committee had regard to

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

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

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

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

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

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

6.27 The Committee noted the application was prompted by the closure of Boots Pharmacy in March 2024 which was co-located with Adam House Medical Centre. In its application, the Applicant stated the closure *"will leave a significant gap in pharmaceutical services within Sandiacre."* However the Committee was mindful that the closure of one pharmacy does not automatically mean that there is a need for a pharmacy to open in its place.

6.28 The Committee had regard to the proposed location of the pharmacy, as identified by the map provided by the Commissioner and noted the best estimate address includes the location of the former Boots Pharmacy.

6.29 The Applicant states that *"The closing Boots dispensed 5,824 items in November 2023 with 4,730 originating from the Adams House Medical Centre - representing 81% of total pharmacy items. Clearly a lot of patients have been accessing pharmaceutical services in connection with a visit to the GP. The closure of the Boots means that those accessing pharmaceutical services in connection with a visit to the GP, now have two journeys to make: the first to the GP practice, and the second to the pharmacy."* Whilst the Committee appreciated that it would be more convenient for patients to have a pharmacy located within close proximity of their GP Surgery, the Committee must have regard to whether there is a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB and aside from this, was mindful that the provision of pharmaceutical services is greater than the dispensing of prescriptions alone.

6.30 The Committee noted from the information provided by the Applicant that *"8000+ local residents would likely access pharmaceutical services at the proposed location"* and further that *"Sandiacre North Ward contains some of the most deprived areas in the country…The Erewash 008C Lower-Layer Super Output Area (LSOA) is amongst the top 20% most deprived LSOAs in the country, per the 2019 Index of multiple deprivation."* The Committee considered that the level of deprivation would need to be taken into account when considering access to existing pharmacies in the area.

6.31 The Applicant contends that *"New housing developments are already underway in Sandiacre, with a completed project of 38 new homes on Longmoor Lane currently for sale, and planning permission secured for 53 new dwellings on Bridge Street."* The Committee was mindful that even if there is an associated increase in population, this does not automatically lead to the requirement to grant an application. The Committee went on to consider access to the existing pharmacies.

6.32 From the PSRC report (circulated to all parties), the Committee noted that there are three pharmacies within 1.1 miles of the proposed location, namely Peak, Boots and Well Pharmacy. All parties agree that Peak Pharmacy is the closest pharmacy to the proposed site however the actual distances quoted by parties vary. In its appeal, the Applicant provided a map which outlines the distance as 1 mile however in it observations, the Applicant states that *"there is not even 1 pharmacy within a mile distance of the proposed site".* The Commissioner outlined the distance as 0.9 miles in its PSRC report. As the proposed site is based on a best estimate address, the Committee considered it likely that distances would vary however it is unclear why the distances provided by the Applicant changed throughout the appeal process. Given the map provided by the Applicant clearly outlines the distance as 1 mile, the Committee proceeded on this basis. The same map indicates a walking time of 23 minutes to Peak Pharmacy which the Applicant states *"depicts dire access and is not representative of reasonable choice. We also note that this journey length is also greater than the 20-minute target by foot, as stipulated by the Derbyshire PNA."* The Committee also noted that according to the Applicant it would take 26 minutes to walk to Boots and Well Pharmacy. Whilst the Committee noted the Applicant's comments, it was of the view that there should not be a blanket approach in terms of maximum walking times and was mindful that a patient's ability to walk would vary depending on their general health and level of fitness. The Committee noted that no information had been provided to demonstrate that for those who are willing and able were having difficulty accessing the existing pharmaceutical provision on foot. The Committee also saw no evidence to suggest that there are any barriers for those on foot such as a lack of pedestrian crossings, poorly maintained pavements, inadequate street lighting and gradients. The Committee went on to consider access by other means.

6.33 Looking at bus services in the area, the Committee noted that the Applicant originally stated it would take 7 minutes from the proposed site to Peak Pharmacy by bus, which PCT Healthcare Ltd also confirmed and went on to state is via bus i4. However in its observations, the Applicant contends that *“for clarity, when inputting peak traffic times into Google Maps, we submit that this journey could be at least 11-minutes”.* In addition, PCT Healthcare Ltd state that *“there is the My15 from Stapleford to Sandiacre”.* The Committee was mindful that it is likely that residents would access Boots and Well Pharmacy by the same services. The Committee also noted the Applicant’s view that *“patients living to the North of the proposed site will still have a significant journey to access pharmaceutical provision by public transport. When we account for walking time, bus waiting time and round journey’s, journey time alone to a local pharmacy exceeds 45 minutes for these residents.”* However no further information had been provided to support this view such as a bus timetable or route map and the Committee was also of the view that patients would likely plan to minimise any waiting times when considering their journey. According to the Applicant *“the cost of bus travel also presents a barrier to access for a number of residents surrounding the proposed site”* however, the Committee had not been provided with information to show that bus fares are so expensive so as to inhibit their use by persons in the area to access existing pharmaceutical services. The Committee was also aware that some individuals would be eligible for travel concessions such as those outlined by PCT Healthcare Ltd in its representations. Therefore, the Committee was of the view that for those reliant on public transport there was no information provided to show that patients were currently experiencing any difficulties in accessing the existing pharmaceutical provision.

6.34 For those with access to private transport, the Committee noted the figures provided by the Applicant on car ownership that *“23.9% of households in the Erewash 008C LSOA”* and *”22.1% of households in the Erewash 008D LSOA (the LSOA of the proposed site)…have access to a car or a van*” which *“is in excess of the 19.4% no car/van ownership for the Erewash Local Authority information”.* Presumably therefore just under 76% of households in these areas do own a car or van. The Applicant and PCT Healthcare Ltd state that it is a 5 minute drive from the proposed location to Peak Pharmacy. The Applicant goes on to state that with traffic this would be an 8 minute journey and highlights the following *“We can see that the PNA clearly states that a pharmacy “should” be within a 5-minute drive during busy traffic conditions*”. As with its earlier position, the Committee was of the view that there should not be a blanket approach in terms of journey length and did not consider a journey time between 5 to 8 minutes to be unreasonable. The same parties provided conflicting information regarding parking at Peak Pharmacy. The Applicant contends that *“car parking is an issue with no parking available outside of this Town Centre site, with patients likely to use the Pay and Display Victoria St Car Park*” whereas PCT Healthcare Ltd state that “*our Peak Pharmacy has free parking available near-by and paid parking near-by in the Council car-park”.* In response to this, in its observations, the Applicant states that *“this is very limited with only c. 3 parking spaces, no disabled bays and surrounding permit holders only spaces.”* The Committee considered the number of free spaces to be limited however not unexpected given the nature of a town centre. The Committee had not been provided with any information to show that parking is a barrier for patients accessing the existing pharmaceutical service provision either at Peak Pharmacy or other providers. The Applicant further states that *“those patients with a car who would like to access pharmaceutical services may be deterred from doing so frequently due to parking costs and also petrol costs.”* However as with its view on the Applicant’s statement regarding bus fares, the Committee had not been provided with information to show that parking or car running costs are so expensive so as to inhibit their use by persons in the area to access existing pharmaceutical services nor was it persuaded that those with access to private transport as a whole are experiencing any difficulties.

6.35 The Committee noted the differing views of the Applicant and PCT Healthcare Ltd regarding the geographics of the area. The Applicant states that "*Sandiacre is clearly defined by the railway line to the East of the proposed site. Such is the definitive marking of this railway, that the area to the East of the railway line is classified as Nottinghamshire and the area to the West (the location of the proposed site) is classified as Derbyshire. We submit that residents in Sandiacre access all their daily needs to the West of this railway, in Derbyshire."* PCT Healthcare Ltd state that *"PCT Healthcare Ltd does not agree with the area defined by the applicant as the paients* [sic] *who are served by Adam House Medical Centre live throughout Risley, Sandiacre Toton, Long Eaton and Stapleford. There are large supermarkets to undertake a weekly shop in Long Eaton (Asda, Aldi and Tesco), Stapleford (Aldi, Sainsbury's Local) and Toton (Tesco) a short distance from the capture area of Adam House Medical Centre."* In response, the Applicant states that *"we contest this and highlight that geographically, the Stapleford area is settled within the Nottinghamshire County using the Peak Pharmacy postcode (NR9 7AA). We note that the Sandiacre area is situated within the Derbyshire County… It is clear that patients are required to travel out of Sandiacre to access existing pharmaceutical provision."*. The Committee considered the comments made by both parties and was also mindful of the list of amenities and facilities in the area outlined by the Applicant. The Committee was of the view that the features of an area are only relevant insofar as whether they present a barrier to accessing pharmaceutical services and despite the fact that the proposed location and existing pharmacies are located in different counties, it does not automatically mean that residents cannot leave an area to access, amongst other things, pharmaceutical services. In this regard, the Committee noted from the Commissioner's map that there are main roads that pass over the railway line which connect Sandiacre with Stapleford, the location of the existing pharmacies, indicating that there is the ability to move between the two areas. Further, the Committee was mindful of its findings above in relation to access to the existing pharmaceutical provision.

6.36 The Committee was also conscious that the Commissioner had not reported of receiving any complaints since the closure of Boots Pharmacy and inferred that patients are able to access the existing pharmacies, which appeared to have absorbed the additional prescriptions and patients with minimal impact.

6.37 Therefore the Committee was not satisfied that, having regard to there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits by way of physical access on persons.

6.38 The Committee was of the view that there is already reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB, such that it was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits on persons.

6.39 In considering Regulation 18(2)(b)(ii) the Committee reminded itself that it was required to address itself to people who share a protected characteristic under the Equality Act 2010 (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation) having access to services that meet specific needs for pharmaceutical services that, in the relevant area, are difficult for them to access. The Committee noted the Applicant's view that the *"elderly, disabled, or parents with young children"* would find the proposed pharmacy *"more accessible"* even though that is not the test under the Regulations. The Committee also noted the quotes highlighted by the Applicant taken from the PNA as well as the following figures *"Per the 2021 Census, 22.7% of residents in the Erewash 008C Lower-Layer Super Output Area (LSOA) were of impaired mobility. When we compare this figure to the 17.30% impaired mobility figure for the rest of England, we can see that residents near the proposed site have poor mobility and struggle with the extra journeys required to access pharmaceutical provision following the closure of the*

Boots." The Committee considered that whilst the Applicant had indicated that residents with poor mobility "*struggle with the extra journeys required"* this had not been substantiated. Furthermore, the Committee considered that the information regarding those who share a protected characteristic and the pharmaceutical services they needed was limited. There was little or no evidence of specific pharmaceutical needs beyond the general presumption that older and younger people and those with a disability need more services. The issue of access and choice as might apply to these persons was dealt with in the assessment of reasonable access discussed above and the Committee was mindful that there are always people in an area who share a protected characteristic.

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

6.41 In considering Regulation 18(2)(b)(iii) the Committee had regard to the desirability of innovative approaches to the delivery of pharmaceutical services. In doing so, the Committee would consider whether there was something more over and above the usual delivery of pharmaceutical services that might be expected from all pharmacies, some 'added value' on offer at the location. The Committee noted that no information had been provided to suggest that any innovative approaches would be taken with regard to the delivery of pharmaceutical services. The Committee was therefore not satisfied that, having regard to the desirability of there being innovative approaches taken with regard to the deliverability of pharmaceutical services, granting an application would confer significant benefits on persons.

Regulation 18(2)(b) generally

6.42 The Committee noted the Applicant's proposed core hours which are, 9am to 1pm and 2pm to 6pm Monday to Friday, with supplementary hours from 1pm to 2pm Monday to Friday and 9am to 1pm Saturday. From the PSRC report, the Committee noted that the hours provided by Peak, Boots and Well Pharmacy cover the hours proposed by the Applicant and also cover times the Applicant is not proposing to open.

6.43 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. The Committee was also mindful that the Commissioner has the authority to bring about changes to the opening hours of existing pharmacies where it feels there is a need to do so.

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

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

Other considerations

6.46 Having determined that Regulation 18(2)(b) had not been satisfied, the Committee did not need to have regard to Regulation 18(2)(c) to (e).

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

6.48 The Committee had regard to Regulation 18(2)(g) and found no reason that required it to refuse the application under this regulation.

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

6.50 The Committee was not satisfied that the information provided demonstrates that there is difficulty in accessing current pharmaceutical services such that a pharmacy at the proposed site would provide better access to pharmaceutical services.

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

6.51.1 confirm the Commissioner's decision;

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

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

6.52 Even though the Committee reached the same decision as the Commissioner, the Commissioner had not addressed some of the regulatory matters in its determination, and therefore it determined that the decision of the Commissioner must be quashed.

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

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

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

7 DECISION

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

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

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

7.4 The Committee determined that the application should be refused on the following basis:

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

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

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

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

7.4.2 Having taken these matters into account, the Committee is not satisfied that granting the application would confer significant benefits as outlined above that would secure improvements or better access to pharmaceutical services.

Case Manager
Primary Care Appeals