

18 February 2025

REF: SHA/26379

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APPEAL AGAINST SOUTH YORKSHIRE ICB DECISION TO REFUSE AN APPLICATION BY SINGHS MEDICAL LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT BEST ESTIMATE WAVERLEY, WITHIN THE AREA BOUNDED BY HIGHFIELD SPRING, MITCHELL WAY, STEPHENSON WAY AND THE AMRC TRAINING CENTRE, TO INCLUDE THE FIRST ROW OF HOUSES ON STEPHENSON WAY

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:

PSC on behalf of Singhs Medical Limited
Temple Bright on behalf of Oakfield Pharma Limited
Community Pharmacy South Yorkshire
PCSE on behalf of South Yorkshire ICB

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1 The Application

By application dated 8 May 2024, Singhs Medical Limited (“the Applicant”) applied to South Yorkshire ICB (“the Commissioner”) for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at Best Estimate Waverley, within the area bounded by Highfield Spring, Mitchell Way, Stephenson Way and the AMRC Training Centre, to include the first row of houses on Stephenson Way. In support of the application it was stated:

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

1.1.1 “There is no other pharmacy in close proximity to the best estimate area.”

Information in support of the application:

- 1.2 “We act for Singh’s Medical Limited. In accordance with the NHS (Pharmaceutical Services) Regulations 2013 we would ask the ICB to take into account the following information when considering this application for inclusion in the pharmaceutical list.

- 1.3 We believe that, should the ICB grant this application, it will secure improvements in terms of access to pharmaceutical services for the local population and the wider area.

1.4 Background

- 1.5 This application has been prompted by the rapid growth of a substantial residential development known as Waverley. There is already a significant residential population within this area but, until this time, the range of local amenities has been relatively limited. This is changing with the planned opening of a new mixed-use development known as Olive Lane which will significantly increase the range of amenities available for local residents.

1.6 Waverley Local Area

- 1.7 Waverley is a new community located approximately 3 miles to the south of Rotherham town centre and 4 miles to the east of Sheffield city centre, as shown on the map below, where the proposed location is marked with a red pointer [see Appendix A, page 1].

- 1.8 The Waverley project is described by the main developers, Harworth as follows:

1.8.1 *Our vision is to create one of the UK's biggest and best brownfield redevelopments. This includes:*

- 1.8.1.1 *Over 3,000 quality new build homes (1,700 are already occupied);*
- 1.8.1.2 *An Advanced Manufacturing Park (the AMP) on 150 acres of land, where the likes of Rolls-Royce, Boeing, the University of Sheffield's AMRC and McLaren Automotive are based;*
- 1.8.1.3 *Community uses including a new primary School and Olive Lane, our next development creating a new heart for Waverley including restaurants, coffee shops, a medical centre and community centre.*
- 1.8.1.4 *300 acres of green spaces including two large lakes and a new 20 acre formal park that will begin to be constructed during 2024.*
- 1.9 The masterplan for the development is shown below [see Appendix A, page 2].
- 1.10 The area marked on this map as 'Next Phase Housing' is now complete, as are other parts of the site so it is estimated that more than 2,500 new homes are now built and occupied. The school is open, as well as a public house, and most of the Advanced Manufacturing Park is occupied by new substantial businesses as well as a number of buildings that are occupied by the University of Sheffield's Advanced Manufacturing Research Centre.
- 1.11 The Waverley area clearly forms a distinct community, being geographically isolated from the surrounding area. The site is bounded by open green space to the west, south and east. To the north is the village of Catcliffe (discussed later), which is completely different in character to Waverley, being a traditional village that was dominated by a glass works established in the 18th century. Much of the housing in Catcliffe was built post-war through to the 60s and 70s and the village benefits from its own amenities.
- 1.12 **Olive Lane**
- 1.13 Olive Lane will be the new commercial centre of Waverley. The developer's website describes this development as follows (emphasis added):
 - 1.13.1 ***Harworth has now commenced construction works at Olive Lane, after securing planning consent for this exciting new part of Waverley late last year. In December, we were joined by members of Waverley Community Council and Rotherham Metropolitan Borough Council to celebrate work beginning on site.***
 - 1.13.2 *We know that the local community is looking forward to Olive Lane being built, and we wanted to provide an update on the amenities we're planning to create there.*
 - 1.13.3 ***Alongside new homes and the medical centre, there will be commercial units which are currently being marketed to potential occupiers for uses such as cafés, restaurants or bars, a convenience food store, a pharmacy, a nursery, and other small retail shops. The exact uses of these units will depend on interest from occupiers.***
 - 1.13.4 *So far, we have confirmed an occupier for the convenience food store, and we can announce that Waverley Community Council will be the occupier of the community centre. **The plan below shows where these units will be [see Appendix A, page 3].***
 - 1.13.5 *While we appreciate residents and businesses at the AMP are excited to find out more about the wider units, we will not be able to make any announcements until agreements with occupiers have been finalised. We are hoping to do so*

over the coming months, so please keep an eye on wearewaverley.com for updates.

1.13.6 *Our intention is for Olive Lane to be built by the end of this year, with the occupiers moving into the units early next year.*

1.14 There are several noteworthy statements here:

1.14.1 (i) The development is currently under construction. Groundworks are complete and the building are starting to be constructed. This was confirmed during a site visit on the 9th of April. Our client has been informed that construction of the shops is on track to be completed by the end of the current calendar year.

1.14.2 (ii) It is proposed that a new medical centre will be built within this development.

1.14.3 (iii) There are additional houses being built within this area and construction of these has also started now. This will further add to the local population.

1.14.4 (iv) There will be a community centre at Olive Lane ensuring that this location becomes the heart of the community.

1.14.5 (v) There are several retail units available which will ensure a mix of shops and cafes/restaurants to meet the needs of the local population.

1.15 In our client's opinion, it is the construction of the Olive Lane facilities that will trigger the need for pharmaceutical services provision within Waverley. Should this application be granted our clients will be in a position to open the pharmacy at the same time as the other community amenities.

1.16 **Pharmaceutical Needs Assessment**

1.17 We have reviewed the 2022 Rotherham Pharmaceutical Needs Assessment (PNA) and note the following comments:

1.17.1 *P6: Based on the information presented herein, the Rotherham Health and Wellbeing Board is satisfied that there are no future needs for pharmaceutical services. Monitoring of the Waverley Site development should be conducted within the lifetime of this PNA to assess whether a future need emerges.*

1.17.2 *P 66-67: The Waverley development is underway with approximately 1,300 dwellings already built and occupied as of 2022, construction of an advanced manufacturing park underway, and construction of an average of 150 new dwellings per year planned. The Pharmaceutical service providers closest to the Waverley site are located in Catcliffe and Treeton (both within the boundaries of Rotherham) and Handsworth (in Sheffield LA) – see Map 13. Considering these plans, it is recommended that the pharmaceutical needs of the occupants of the Waverley site should be closely monitored during the lifetime of this PNA. In particular, there should be monitoring of:*

1.17.2.1 *The demographic profile of new occupants of the Waverley site,*

1.17.2.2 *Progress with plans to establish a health centre within the site, and*

1.17.2.3 *The pace of construction in the site.*

- 1.18 Whilst the authors of the PNA were clearly mindful of the Waverley development, they did not identify a specific current or future need at the time the PNA was written. This application is therefore made under Regulation 18 (unforeseen benefits).
- 1.19 In terms of the three matters they wished to monitor:
- 1.19.1 The medical centre plans are well advanced, with planning permission having been granted and funding agreement reached between the developers, the council and the ICB in accordance with a 'section 106 agreement'.
- 1.19.2 The pace of construction has been rapid and much of the residential accommodation is now built. The completion of Olive Lane is a major milestone as we have discussed above.
- 1.19.3 In terms of the demographic profile it can be difficult to gain a full picture of this in a period of rapid growth. However, key data from the 2021 census, for the lower super output area Rotherham 027B which encompasses Waverley, showed the following:
- 1.19.3.1 21.4% of the population was aged 14 or less compared to the national average of 17.3%.
- 1.19.3.2 16.3% of the population had their day to day activities limited by disability compared to the national average of 17.3%.
- 1.19.3.3 14.1% of households had no car or van compared to the national average of 23.5%.
- 1.19.3.4 17.9% of houses were rented from the local authority or other social landlord compared to the national average of 17.1%.
- 1.19.4 So whilst, as would be expected in a modern residential development, the population is relatively young and car ownership is relatively high it is still notable that a significant proportion of residents are disabled, over 14% of households have no car and a greater than average proportion of residents live in social rented accommodation. For the residents that are least mobile the community pharmacy is an essential amenity within this development.
- 1.20 It is our client's opinion, therefore, that development has now reached the point which the authors of the PNA had envisaged the opening of a new pharmacy would be appropriate.
- 1.21 Alternative pharmacy provision
- 1.22 As can be seen on the map below [see Appendix A, page 4], the two nearest pharmacies to the Waverley development are in Catcliffe and Treeton (Waverley is shown at the bottom left of this map).
- 1.23 As discussed earlier, Catcliffe is an entirely separate village with its own amenities and character. The existing pharmacy is located on the opposite side of the railway line from Waverley and is not in a location residents of Waverley will have any reason to visit once Olive Lane opens. The distance from Olive Lane to the Weldricks pharmacy in Catcliffe is more than a mile using the shortest route on foot and would take approximately 25 minutes in each direction.
- 1.24 The Cohens pharmacy in Treeton, is even further away and is also on the opposite side of a railway line. The distance to this pharmacy on foot is 1.6 miles due to the limited locations where it is possible to cross the river to get to Treeton.

- 1.25 In our client's opinion it is not reasonable for residents of Waverley to be reliant on either of these pharmacies or any others further afield.
- 1.26 **The applicant**
- 1.27 Our client has relatively recent experience of opening a new pharmacy to provide unforeseen benefits to the local population, having been granted an application for inclusion in the pharmaceutical list for its current pharmacy in Rotherham (Silverwood Pharmacy). That pharmacy was established in 2017 and has grown to the extent that it now dispenses more than 12,000 prescriptions per month.
- 1.28 Our clients have taken a very proactive approach to service provision, throwing themselves into major campaigns such as COVID-19 vaccinations as well as providing services to meet specific local needs such as dietetic prescriptions and the 'labelling OTC medication scheme for children'. Should this application be granted they intend to replicate this approach for residents and employees in Waverley.
- 1.29 **Unforeseen Benefits**
- 1.30 As discussed earlier, within the Rotherham Pharmaceutical Needs Assessment, published in 2022, there is no specific mention of a gap in pharmaceutical services within the proposed area. Therefore this application is made to provide 'unforeseen benefits' to the local community in accordance with Regulation 18, in response to the further reduction in pharmaceutical services provision since the PNA was published.
- 1.31 We are required by the ICB to address two specific questions in this supporting information:
- 1.31.1 (i) *"Please describe the unforeseen benefit(s) that you are offering to secure and how it will secure improvements or better access to pharmaceutical services, or pharmaceutical services of a specified type in the HWB area".*
- 1.31.2 (ii) *Please explain how you intend to secure the unforeseen benefit(s).*
- 1.32 When considering these questions, it is worth noting the provisions of Regulation 18(2)(b) as highlighted below:
- 1.32.1 (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—*
- 1.32.2 (i) *there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB (taking into account also the NHSCB's duties under sections 13I and 13P of the 2006 Act(b) (duty as to patient choice and duty as respects variation in provision of health services)),*
- 1.32.3 (ii) *people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access (taking into account also the NHSCB's duties under section 13G of the 2006 Act(c) (duty as to reducing inequalities)), or*
- 1.32.4 (iii) *there being innovative approaches taken with regard to the delivery of pharmaceutical services (taking into account also the NHSCB's duties under section 13K of the 2006 Act(a) (duty to promote innovation)), granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant pharmaceutical needs assessment was published;*

- 1.33 The implication is that the ICB does not have to find evidence in respect of all three of these matters. These are simply matters it is required to take into account when deciding the application.
- 1.34 In fact, even if it does not find that any of the three matters discussed in (18)(2)(b) apply, the overarching test is whether *granting the application would secure improvements, or better access, to pharmaceutical services in the area of the HWB*. In our opinion there is clear evidence that it would.
- 1.35 We have addressed both of the questions above by setting out in further details below:
- 1.36 **Securing better access and choice**
- 1.37 The matters of access and choice are inextricably linked. Whilst it may be the case that there is a choice of pharmacy provider within the Health & Wellbeing Board (HWB) area, this does not mean that the choice for residents is *reasonable* if they are not able to access these pharmacies when they need to.
- 1.38 As discussed earlier, taking into account the number of residents and employees of the Advanced Manufacturing Park in this new community and the planned opening of new amenities there is not reasonable choice in respect of pharmaceutical services provision for these residents. The only pharmacies in the vicinity are located well away from the area where they go about their daily business and are beyond reasonable walking distance for many people.
- 1.39 If these residents do not have reasonable access to pharmaceutical services then they do not have reasonable choice.
- 1.40 A proportion of Waverley residents do not own a car so will be reliant on either walking a significant distance to a pharmacy or incurring costs to travel by public transport. Patients who are less mobile, particularly when suffering from acute illness, may find this journey challenging regardless of how they travel.
- 1.41 By approving this application, it is clear that local residents will benefit by having a choice of pharmacy contractor.
- 1.42 If this application is approved, the applicant will offer the local residents a full and comprehensive pharmaceutical service, ensuring that local residents can access pharmaceutical services when they need them.
- 1.43 **Patient groups sharing protected characteristics**
- 1.44 For those people who are elderly, less abled or families with very young children (all of which can be classified as having protected characteristics) access to the existing pharmacies is likely to be more difficult than for those who are more able. This would particularly apply if these people are unable to drive or do not have access to a motor vehicle.
- 1.45 Granting the application will significantly improve the accessibility of pharmaceutical services for these people.
- 1.46 **Summary**
- 1.47 In our client's view it can be clearly seen that the residents of this area would benefit greatly from having a community pharmacy located within the heart of this new community. This application clearly demonstrates benefits which were unforeseen and not identified when the PNA was published.

- 1.48 The resident population do not have a reasonable choice of provider or enjoy easy access to any existing pharmacy contractors, especially for those who are on foot, are reliant on public transport, elderly, infirm or disabled. There is a gap in pharmaceutical services in this area.
- 1.49 We firmly believe if this application is approved it will secure improvements in choice and better access to pharmaceutical services and thus provide significant benefits for the resident population.
- 1.50 Finally, our client would wish to attend any oral hearing convened by the ICB to consider this application.”

2 The Decision

The Commissioner considered and decided to refuse the application. The decision letter dated 11 October 2024 states:

- 2.1 “South Yorkshire ICB has considered the above application and I am writing to confirm that it has been refused. Please see the enclosed report for the full reasoning.”

Decision report

- 2.2 “The Committee noted that this is an application made under Regulation 18 to open a pharmacy in the Waverley area of Rotherham. The Committee considered the information provided about the area. The Committee noted that Waverley is included in the Rotherham Local Plan (2013-2028) and has been considered in the Rotherham Pharmaceutical Needs Assessments covering 2015-2018, 2018-2022 and 2022-2025.
- 2.3 The 2022-2025 Rotherham Pharmaceutical Needs Assessment (PNA) noted that the Waverley development is underway with approximately 1,300 dwellings already built and occupied as of 2022, construction of an advanced manufacturing park underway, and construction of an average of 150 new dwellings per year planned. The PNA noted that the pharmaceutical service providers closest to the Waverley site are located in Catcliffe and Treeton (both within the boundaries of Rotherham) and Handsworth (in Sheffield LA). The PNA concluded that, overall, access to pharmaceutical services in Rotherham is good and most of the population live within easy access of a pharmacy. The Health and Wellbeing Board was satisfied that there is sufficient choice with regard to obtaining pharmaceutical services in Rotherham and that there are no services that would secure improvements or better access to pharmaceutical services either now or in the future.
- 2.4 The PNA recommended that monitoring of the Waverley Site development should be conducted within the lifetime of this PNA to assess whether a future need emerges. In particular, there should be monitoring of:
- 2.4.1 The demographic profile of new occupants of the Waverley site,
- 2.4.2 Progress with plans to establish a health centre within the site, and
- 2.4.3 The pace of construction in the site.
- 2.5 The Committee noted that the Health and Wellbeing Board has not judged it necessary to update the PNA due to changes in need for pharmaceutical services or gaps in provision.
- 2.6 The Committee considered the information included in the application regarding the Waverley development. The Committee agreed that the application does not provide

any evidence that the nature or pace of the development nor the demographic profile has changed from what was foreseen in the PNA.

- 2.7 The Committee noted that there are eight existing providers of pharmaceutical services within 1.5 miles of the application location. The pharmacies are owned by five different contractors and two of the pharmacies have 72 core opening hours per week, including late evenings and Sundays.
- 2.8 Regarding public transport, Waverley is served by two bus routes, linking it with surrounding areas. Buses operate seven days per week, with two buses per hour Monday to Friday.
- 2.9 The application suggests that for those people who are elderly, less able or families with very young children access to the existing pharmacies is likely to be more difficult than for those who are more able. However, the application does not provide evidence of patients who share a protected characteristic and who require access to pharmaceutical services but who currently find access difficult.
- 2.10 The Committee also noted that the application does not provide evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services.
- 2.11 Having considered all the information provided, the Committee refused the application on the grounds that it does not demonstrate unforeseen benefits as required by Regulation 18 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013. The Committee determined that there is reasonable choice with regard to obtaining pharmaceutical services in the Health and Wellbeing Board area. The application does not demonstrate that the proposed new pharmacy would confer significant benefits or provision of access to services to meet the specific needs of people with a shared protected characteristic and does not identify innovative approaches that would be undertaken to the delivery of pharmaceutical services.
- 2.12 Rights of appeal: Singhs Medical Ltd”.

3 The Appeal

In a letter dated 9 November 2024 addressed to NHS Resolution, Pharmacy Sales & Consultancy on behalf of the Applicant appealed against the Commissioner’s decision. The grounds of appeal are:

- 3.1 “We act for Singhs Medical Limited and have enclosed a letter of authorisation confirming our instructions in this matter.
- 3.2 Our client has been notified by South Yorkshire ICB (“The ICB”) that the above application, made pursuant to Regulation 18 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (“The Regulations”), has been refused. I have enclosed a copy of their decision letter and report for your information. Our client wishes to appeal this decision and we set out the key grounds for appeal below by reference to the ICB decision report.
 - 3.2.1 The ICB noted that the 2022-2025 Rotherham Pharmaceutical Needs Assessment made reference to the Waverley Development, but the ICB misquoted the specific wording used within PNA by referring to the need to “assess whether a future needs emerges”. That was not the wording used in the PNA as we discuss later.

- 3.2.2 The ICB concluded that the application “does not provide any evidence that the nature or pace of the development.....[has] changed from what was foreseen in the PNA”. We disagree with this conclusion. It is clear that the imminent opening of the Olive Lane development and the new medical centre will significantly change the character of Waverley. In our client’s opinion, this is exactly the sort of change envisaged by the HWB when they referred to monitoring the ‘pace of construction in the site’.
- 3.2.3 The ICB referred to pharmacies within “1.5 miles of the application location” and concluded that residents of Waverley have “reasonable choice with regard to obtaining pharmaceutical services in the health and well-being board area.” We disagree that the pharmacies referred to provide reasonable choice for the reasons set out in our client’s application. We expand on this further below.
- 3.3 We have provided further detail below in respect of our client’s grounds for appeal as well as additional information to assist the Primary Care Appeals Committee in considering this matter.
- 3.4 **Background and update**
- 3.5 As can be seen within our client’s application and previous representations, this application was prompted by significant changes taking place within the new Waverley development in South Yorkshire. The background to this development was set out within our client’s application, so we will not repeat that here. However, we can [sic] enclosed a copy of the supporting document submitted with our client’s application and the background to Waverley can be summarised as follows:
- 3.6 Waverley is a very substantial ‘brownfield development’ located to the South of Rotherham and the east of Sheffield, in South Yorkshire. The vision for Waverley is to deliver over 3,000 new homes, an Advanced Manufacturing Park and a mix of community uses including a new school, neighbourhood centre and 300 acres of lakes and green spaces.
- 3.7 Residential building began in 2011 and more than 1,700 homes have now been constructed and occupied. However, until recently, amenities for residents within the development were essentially limited to the school and a public house.
- 3.8 The character of Waverley is about to change significantly with the completion and occupation of the ‘Olive Lane’ commercial centre. Work on Olive Lane commenced in December 2023 and is reaching its conclusion at the time of preparing this appeal. The plan for Olive Lane is to deliver a range of shops, restaurants, coffee shops, a medical centre and community centre.
- 3.9 The Olive Lane development is in two parcels and is partly being constructed by local residential and commercial developers, Sky-House.co with the remainder being built by Haworth, the main developer for the entire Waverley Project.
- 3.10 The developers and their representatives have confirmed that tenants have been secured for the following commercial properties to date:
- 3.10.1 Financial Services / Estate Agents
- 3.10.2 Hair Salon
- 3.10.3 New HQ for Sky-House.co
- 3.10.4 Restaurant and Bar

- 3.10.5 Tesco
- 3.10.6 Starbucks
- 3.10.7 Creche
- 3.10.8 Medical centre
- 3.10.9 Community Centre / Village Hall
- 3.10.10 Bakery
- 3.10.11 Indian Restaurant
- 3.10.12 Optician
- 3.10.13 Veterinary surgery
- 3.10.14 Dentist
- 3.11 Discussions are ongoing with potential tenants for three remaining properties, and it is proposed that one of these will be occupied by our client for a pharmacy, if this application is approved.
- 3.12 We have enclosed emails from David Cross, director and architect for Sky-House.co and Kitty Henrick of Knight Frank (representing Haworth) confirming these lettings [Appendix B, page 1-3].
- 3.13 Building work at Olive Lane is on track to be completed by the end of the current calendar year. The website <https://www.wearewaverley.com/olivelane> provides live images of progress with the development. The photograph below was taken on 30th October 2024 and shows the progress of these units [Appendix C, page 1].
- 3.14 The Sky-House commercial premises are due for construction shortly, and foundations for these buildings can be seen in the bottom right of the image above. Business premises Community Centre Tesco Retail units Medical Centre.
- 3.15 The developer's site plan has also been provided below, which aligns with the photograph above [Appendix C, page 2].
- 3.16 It has been confirmed by Waverley Community Council that the new medical centre will occupied [sic] by Gateway Primary Care, which currently operates three medical centres in the area, namely The Gate Surgery in Rotherham, Rosehill Medical Centre in Rawmarsh and Canklow Road surgery, 2.5 miles to the north of Waverley.
- 3.17 In respect of the extent of residential occupation, we have received information from Rachel Graham, clerk to Waverley Community Council, that as of September 2024, there were 2,978 electorates in Waverley (i.e. registered voters over the age of 18).
- 3.18 Clearly the total population, including children, will be significantly larger. Ms Graham also confirmed that 1,769 houses within the Waverley development had been sold at that point.
- 3.19 We enclose a copy of the email from Ms Graham confirming this information [Appendix B, page 4].

- 3.20 In respect of the adjacent Advanced Manufacturing Park, the following information is provided on the www.wearewaverley.com website:
- 3.20.1 *The Advanced Manufacturing Park (AMP) is Harworth's flagship development and is home to some of the world's biggest employers and renowned institutions including*
 - 3.20.2 *Rolls-Royce, Boeing, McLaren Automotive, UK Atomic Energy Authority, Insight and Danieli. It is anchored by the world-renowned University of Sheffield Advanced Manufacturing Research Centre (AMRC).*
 - 3.20.3 *As master developer, Harworth provide key property solutions across the site to facilitate the expansion of existing business and to also attract new occupiers as part of their growth and development ambitions. At the AMP Harworth have a proven track record of masterplanning, development management and the design and build of bespoke industrial units. **Over 1.7m sqft has been constructed (or under construction)** to date at the AMP with circa 250,000 sqft remaining that can be accommodated across 3 plots.*
- 3.21 Further information is provided on the website <https://harworthgroup.com/projects/advanced-manufacturing-park/>. The summary of the AMP development shown on that website (which is slightly out of date as it appears to have been last updated in the second half of 2022) is as follows:
- 3.21.1 *1.6m sq ft of space has been delivered over the past ten years, **with over 2,500 people already employed at the AMP.** Nearly 100 companies are located on the AMP including Nuclear AMRC (a Westinghouse, Areva, Sheffield Forgemasters joint venture), The Advanced Manufacturing Research Centre (AMRC), a Boeing / University of Sheffield partnership; Rolls-Royce and McLaren Automotive – McLaren's new technology centre opened in October 2018 to specialise in the research and production of carbon fibre tubs, employing 250 people.*
- 3.22 It is clear, therefore, that the numbers of workers in Waverley is almost as high as the number of residents, resulting in a very substantial day-time population in Waverley.
- 3.23 It is also noteworthy that Olive Lane is located adjacent to the AMP, providing the opportunity for employees of the numerous businesses to access these amenities during their working day. This can be seen on the masterplan below [Appendix C, page 3].
- 3.24 **Local area**
- 3.25 As discussed within our client's application, Waverley is a distinct community, separated both geographically and socially from its surroundings. The opening of the Olive Lane development, including the provision of facilities such as the medical centre, a dental practice, an optician and a veterinary surgery, as well as the shops, restaurants and the community centre, will enable the area to become largely self-sufficient in respect of the provision of daily needs for both residents of Waverley and employees at the Advanced Manufacturing Park.
- 3.26 *Geographical boundaries*
- 3.27 The geographical separation of Waverley from the surrounding area can be seen in the satellite image below [Appendix C, page 4].

- 3.28 It is very clear from this image that the development is bordered to the west and south-west by green space, creating a clear distinction between Waverley and the Sheffield suburb of Handsworth. There is also a railway line running along the southwestern boundary from the junction with the A630 to the west.
- 3.29 The only route out of Waverley to the south is using the B6066, which links to the roundabout visible at the southern tip of the development. We discuss this access route further below.
- 3.30 On the eastern side of Waverley the River Rother runs alongside the boundary of the development and there is a further railway line (which can also be seen in the satellite image above) [see Appendix C, page 4] running from north to south.
- 3.31 As can be seen in the map below [see Appendix C, page 5], there is no direct route from Waverley to Treeton, the nearest village to the east of the development. Access is only possible via Catcliffe.
- 3.32 To the north of Waverley, there are two routes out of the development. These can be seen in the image below, marked with red stars [Appendix C, page 5].
- 3.33 To the north-west, the road leads out to the A630 dual carriageway which links Rotherham and Sheffield. Whilst this is a useful commuter route, which provides access to the M1 and the towns & cities around South Yorkshire, it is clearly not a route that would be used by anybody other than motorists. There is no pedestrian route along the A630; the only option for pedestrians would be to use an unlit track through the wooded area between the dual carriageway and the AMP, as can be seen below [Appendix C, page 6].
- 3.34 To the north east, the route out of Waverley leads to Catcliffe. Whilst there is pedestrian access along the B6066, which connects Waverley and Catcliffe, the road runs alongside the River Rother and there a green space with large trees on both sides of the road as can be seen below [Appendix C, page 6].
- 3.35 It is clear, therefore, that Waverley is geographically separated from the wider area.
- 3.36 Footpath
- 3.37 *Social separation*
- 3.38 Not only is Waverley physically separated from the surrounding area, it is very different in character from neighbouring localities. As a result, residents of the development would not typically find themselves accessing the amenities in the surrounding areas when going about their daily lives.
- 3.39 As would be expected, Waverley has a very modern character, having been constructed largely within the last 10 years. The 'look and feel' of the development is characterised in the images below from the www.wearewaverley.com website.
- 3.40 As discussed earlier, there are two routes of exit from Waverley to access the surrounding areas (excluding the north west route out to the A630 link road and M1 which is essentially a commuter route).
- 3.41 Heading south along the B6066 into Handsworth across the railway, the area comprises a light industrial park on the left-hand side of the road and an estate of traditional postwar semi-detached houses and former mine-workers cottages. The route into Handsworth can be seen in the image below [Appendix C, page 7].

- 3.42 The only amenities of note in Handsworth are two medical centres as well as Asda and Aldi supermarkets, which are located more than 2 miles away by road from the Olive Lane site.
- 3.43 Given that there is a Morrisons supermarket to the immediate north of Waverley, less than half a mile away, and the fact there will be a new Tesco Express store constructed within Olive Lane, residents have little reason to travel to these supermarkets further afield. In terms of the medical centres, whilst there may be some Waverley patients registered with these at present, it is likely that many will choose to register with the new Waverley Practice when the medical centre opens.
- 3.44 Heading north from Waverley along the B6066 to Catcliffe, again there is a very clear change in character. Like Handsworth, the village has an industrial past, being known for its glassworks which were established in 1740.
- 3.45 Housing here typically comprises Victorian and post-war semi-detached and terraced properties and the village has a slightly 'run-down' appearance, as can be seen from the images at Appendix C page 8.
- 3.46 There are no amenities in Catcliffe that residents of Waverley have any reason to access.
- 3.47 In summary, therefore, whilst the term 'neighbourhood' no longer has any meaning from a regulatory perspective, it is very clear that Waverley is a very distinct community in every way, which is separated both geographically and socially from its surroundings. In that respect it is a true neighbourhood that will, following the opening of Olive Lane and the medical centre, be almost entirely self-sufficient in respect of its amenities.
- 3.48 *Demographic profile of Waverley residents*
- 3.49 Whilst demographic information was included within our client's application, we have sought to refine this information further for the purposes of this appeal.
- 3.50 Using the website www.nomisweb.co.uk we have attempted to construct a bespoke area for analysis, from individual 'super output areas (SOAs)' which most closely matches the boundaries of the Waverley development. This area is shown on the map below, with each of the relevant SOAs outlined in black [Appendix C, page 9].
- 3.51 Whilst, as is the case with any new development, the demographic profile will be constantly changing to a degree, data from the 2021 census is still helpful given that building started in Waverley in 2011.
- 3.52 The key demographic data for this constructed area for 2021 is summarised below.
- 3.52.1 29.2% of the population was aged 19 or less compared to the national average of 23.0%. Of these, 12.5% were under the age of 4 compared to 5.4% nationally.
- 3.52.2 9.0% of the population had their day to day activities limited by disability compared to the national average of 17.3%.
- 3.52.3 5.1% of households had no car or van compared to the national average of 23.5%.
- 3.52.4 36.1% of households had one car compared to the national average of 41.3%.
- 3.52.5 10.4% of homes were social rented or shared ownership properties.

- 3.53 This demographic data is not, in any way, surprising for a modern residential development. Waverley clearly attracts a significant number of families with young children and, as a result, levels of disability are lower than the national average. Equally car ownership within the development is relatively high, which is not a surprise given that the number of amenities within Waverley have been relatively limited to date.
- 3.54 However, bearing in mind the information from Waverley Community Council that the current population of residents aged 18 or over is approximately 3,000 and that 1,769 homes have been sold, the following information is noteworthy:
- 3.54.1 Taking into account the number of children, the total population of Waverley at present is likely to be close to 4,000. Fewer than 60% of planned homes have been built, so this is likely to rise to more than 6,500 in due course.
- 3.54.2 270 current residents have disabilities that limited their day-to-day activities.
- 3.54.3 90 homes have no car and 639 homes have only one car that may not be available during the day if it is being used by one of the residents to travel to work.
- 3.54.4 More than 170 homes are social rented or shared ownership.
- 3.55 So whilst the demographic data does not paint a picture of a deprived area, or one where in percentage terms there are high levels of residents with limited mobility, the scale of Waverley is such that there is a significant number of residents for whom accessing amenities outside the development may not be straightforward. Furthermore there is an exceptionally high number of very young children living in Waverley and many of these are likely to have been born to 'first time parents' who would benefit significantly from the support that could be provided from a pharmacy in the heart of their community.
- 3.56 **Existing provision of medical services**
- 3.57 We have considered the medical centres that are currently the nearest to Waverley, but it is relevant that many patients registered with them are likely to transfer their registration to the new medical centre when it opens.
- 3.58 Handsworth
- 3.59 There are two medical centres in Handsworth as follows:
- 3.59.1 *Handsworth Medical Practice*, 432 Handsworth Road, Handsworth, Sheffield, South Yorkshire, S13 9BZ. This is a small surgery in a converted residential property, as can be seen in the image at Appendix C, page 10. The medical centre is 1.3 miles away from the Olive Lane site via the shortest practicable route.
- 3.59.2 *Fitzalan Surgery*, 1 Fitzalan Road, Sheffield, South Yorkshire, S13 9AW. This is a branch surgery of Handsworth Surgery and is slightly further away, at 1.6 miles from Olive Lane. Again the premises are small and comprise a converted house [Appendix C, page 10].
- 3.60 It is clear that these two surgeries are not suitable for serving the large and growing population of Waverley.
- 3.61 Treeton

- 3.62 The next nearest surgery is Treeton Medical Centre. This is located 1 mile away ‘as the crow flies’ from the proposed location but 1.8 miles away by road (see Cohens Pharmacy, Treeton, below [Appendix C, page 11]). Whilst this is a purpose-built surgery, it is also small, having been built to meet the needs of the residents of Treeton Village.
- 3.63 It is apparent, therefore, why one of the conditions for the developers building Waverley was the construction of a new medical centre for its residents. Existing surgeries in the surrounding area are not adequate in the long term to provide medical services for Waverley residents. It is also clear why many residents of the development are expected to register at the new medical centre.
- 3.64 **Pharmacy Provision**
- 3.65 We have considered the location of the nearest pharmacies in relation to the proposed site. Of course, most patients will have travelled from home or elsewhere to the proposed site, so the journey from the site to the nearest pharmacy may be an *additional* journey many will have to make if they require pharmaceutical services. However, considering these journeys is a useful starting point.
- 3.66 Catcliffe
- 3.67 *Weldricks* 26 Main Street, Catcliffe, S60 5SR As we have discussed previously, Catcliffe is the nearest village to the north of Waverley, and is also the location of the nearest pharmacy. The shortest journey to this pharmacy on foot from the proposed location is shown on the map below [Appendix C, page 12].
- 3.68 The distance is 1 mile in each direction and takes approximately 21 minutes for a person of average mobility to walk.
- 3.69 As can be seen from the topographical map below (where the proposed site is marked with a blue star) , there are gradients throughout the area, with the eastern side of Waverley being located in a dip (down to 38m below sea level) and the western side being notably elevated in comparison [Appendix C, page 13].
- 3.70 Depending on where residents are walking from, they may find there are noticeable gradients along their journey. In the image of *Weldricks Pharmacy* provided on page 10, the gradient of the B6066 in this area is apparent.
- 3.71 It is noteworthy that page 40 of the Rotherham PNA considers walking distances and times to pharmacies when considering accessibility. The measure used in the PNA is a 15-minute walk time or a 1.6km walk distance. People using the Olive Lane development who require pharmaceutical services face a walk time of significantly more than 15 minutes and a walk distance at the limit of the measure used in the PNA to access Catcliffe.
- 3.72 For motorists who drive to Catcliffe, whilst the journey time is likely to be within the 10-minute measure used in the PNA, there is no parking at this pharmacy, which is located on a busy road with double yellow lines outside.
- 3.73 In terms of public transport, whilst there is a route along Highfield Spring, past Olive Lane, there are no routes that travel through the rest of the Waverley development, so residents are required to walk to Highfield Spring to catch a bus.
- 3.74 There is one bus route (route 95) that travels from Olive Lane to Catcliffe, and services run every half an hour in each direction. However, given that there are no amenities in Catcliffe other than the pharmacy, this is not a particularly useful service for Waverley residents.

- 3.75 For example, a patient who had attended an appointment at the new medical centre will then be required to wait up to 30 minutes for a bus, travel to Catcliffe, access pharmaceutical services then wait up to 30 minutes more (with nothing else to do) before catching a bus back to Olive Lane then walking home, possibly to the other side of Waverley. This is not a reasonable journey for a patient with acute illness.
- 3.76 Handsworth
- 3.77 *Allied Pharmacy* - 292-294 Handsworth Road, Handsworth, Sheffield, S13 9BX As we have discussed previously, Handsworth can be accessed using either the A630 dual carriageway (although not by foot) or via the B6066 at the southern end of Waverley. The shortest journeys to this pharmacy on foot from the proposed location are shown on the map below (blue dotted line and solid light blue line) [Appendix C, page 14].
- 3.78 Whilst the blue dotted line shows a slightly shorter route (1.6 miles rather than 1.7 miles) this involves using unlit footpaths through open land, so is unlikely to be a reasonable option for many pedestrians. Either way, the walking distance is in the region of 40 minutes. This is well beyond a reasonable walking distance to access a community pharmacy.
- 3.79 For motorists, whilst it would take approximately 5 minutes to drive to Allied Pharmacy if there was no traffic, this is rarely the case. There is regularly congestion on Handsworth Road which doubles this travel time. As with Catcliffe Pharmacy there is no parking at this location.
- 3.80 Bus route 95 also travels to Handsworth Road, so provides the only option for patients wishing to use public transport to access Allied Pharmacy. The same issues will apply as those discussed for Weldricks earlier.
- 3.81 There is also a pharmacy at the Asda store further along Handsworth Road, but as discussed earlier this is not a location residents of Waverley have a reason to travel to given the Morrisons supermarket that is much closer for them.
- 3.82 Treeton
- 3.83 *Cohens Chemist*, 10b Station Road, Treeton, S60 5PN
- 3.84 As we have discussed previously, Treeton can only be accessed via Catcliffe, as there is no other route that avoids the railway and the river.
- 3.85 The shortest journey to this pharmacy on foot from the proposed location is shown on the map below [Appendix C, page 15].
- 3.86 The minimum walking distance is 1.6 miles, which takes approximately 34 minutes and almost passes Catcliffe Pharmacy. This is well beyond a reasonable walking distance to access a community pharmacy.
- 3.87 Once again, the only public transport option is route 95, which has been discussed previously. Again there are no amenities in Treeton that residents of Waverley would have a reason to access.
- 3.88 To summarise, in respect of the pharmacies that patients living or working in Waverley might wish to access, the challenges are as follows:
- 3.88.1 There are no pharmacies within a reasonable walking distance for many of the residents of Waverley, particularly if they have attended an appointment at the new medical centre first.

- 3.88.2 Accessing pharmacies in the surrounding area necessitates travelling out of Waverley, to a location they would otherwise have no reason to visit given that they will be able to access almost all of their daily needs from Waverley.
- 3.88.3 Surrounding pharmacies do not have dedicated parking, with the exception of Asda, which is not a supermarket many will use given the proximity of Morrisons and the new Tesco Express store.
- 3.88.4 Bus services are limited, and patients relying on them may face a significant wait for a bus in a location they would not usually visit. In our opinion it is not reasonable to expect patients living in a large newly built community, with access to a wide range of amenities, to rely on a bus service each and every time they require pharmaceutical services.

3.89 Local support

- 3.90 In preparing this appeal, our client has engaged with, Jamie Baggaley the local ward councillor (Rother Vale Ward) and Waverley Community Council ("WCC").
- 3.91 At the request of these local representatives, our client carried out a quick poll using the Waverley Facebook page. This is a closed Facebook page, so is accessible only to Waverley residents.
- 3.92 At the time of preparing this appeal, there had been 173 responses to this poll with 100% of responders supportive of the opening of a pharmacy at Olive Lane.
- 3.93 Following this poll, the matter was discussed as at WCC meeting on Thursday 7th November, and the proposal was unanimously supported at this meeting.
- 3.94 We enclose a letter from Rachel Graham, clerk to WCC, setting out their support. As well as clearly setting out the case for a community pharmacy in Waverley, the council emphasise the measures that have been put in place to reduce the number of car journeys made by Waverley residents and employees at the AMP. It is clear that this ambition can only be met if a full range of amenities is provided within the heart of the community.

3.95 Regulatory tests

3.96 Regulation 18(1)

- 3.97 As a preliminary matter, the Primary Care Appeals Committee ("the Committee") will need to consider whether our client's application meets the test set out in Regulation 18(1) as follows (emphasis added):
- 3.98 **18.—(1) If—(a) the NHSCB 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**
- 3.99 **(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(a) (regulations as to pharmaceutical services), the NHSCB must have regard to the matters set out in paragraph (2).

- 3.100 The effect of Regulation 18(1) is that, if the improvements or better access being proposed by our client were *included* in the PNA, the Committee might conclude that the test in 18(1) was not met as the benefits being proposed were not *unforeseen*.
- 3.101 In our opinion, the improvements, or better access being proposed by our client were *not* included in the PNA.
- 3.102 The relevant wording is set out on pages 63 & 64 of the PNA as follows:
- 3.103 *The Waverley development is underway with approximately 1,300 dwellings already built and occupied as of 2022, construction of an advanced manufacturing park underway, and construction of an average of 150 new dwellings per year planned. The Pharmaceutical service providers closest to the Waverley site are located in Catcliffe and Treeton (both within the boundaries of Rotherham) and Handsworth (in Sheffield LA) – see Map 13.*
- 3.104 *Considering these plans, it is recommended that the pharmaceutical needs of the occupants of the Waverley site should be closely monitored during the lifetime of this PNA. In particular, there should be monitoring of:*
- 3.104.1***The demographic profile of new occupants of the Waverley site,*
- 3.104.2***Progress with plans to establish a health centre within the site, and*
- 3.104.3***The pace of construction in the site.*
- 3.105 The wording above makes it clear that, whilst the HWB formed view at the time the PNA was published that there were no gaps in pharmaceutical services provision in Waverley, the situation might change during the lifetime of the PNA. There would be no other reason to closely monitor the development.
- 3.106 This is clearly not a case where there is an unequivocal statement in the PNA that pharmaceutical needs of a particular area have been considered and it has been concluded that the current level of provision will be adequate until a new PNA is published. The intentions of the PNA's authors are clear. It was recognised that the position in Waverley should be kept under review because it was perfectly possible that pharmaceutical needs might change before the publication of the next PNA.
- 3.107 Equally, the statement within the PNA does not constitute an identified 'future need' (as envisaged by Regulation 15) because the comments in the PNA do not set out specific circumstances that might arise triggering the need for a new pharmacy. The wording used on page 67 of the PNA is as follows:
- 3.108 *Based on the information presented herein, the Rotherham Health and Wellbeing Board is satisfied that there are no future needs for pharmaceutical services. Monitoring of the Waverley Site development should be conducted within the lifetime of this PNA to assess whether a future need emerges.*
- 3.109 So whilst we accept that the PNA discussed the Waverley development, the wording used, which makes reference to monitoring the ongoing development, is such that it constitutes neither a statement that no need will arise during the lifetime of the PNA, nor a statement that a future need will arise in specified circumstances.
- 3.110 That being the case, in our opinion the application should not be refused in accordance with Regulation 18(1) and the Committee is able to consider the remaining tests in Regulation 18.

3.111 Regulation 18(2)(a)

- 3.112 The decision report provided by the ICB does not discuss regulation 18(2)(a), so there is no evidence that this was considered by the Committee. However, as none of the objectors referred to the matter of detriment, this matter appears to be reasonably uncontentious, so we propose to add no further comments at this stage. However, we reserve the right to comment later on this matter should any party seek to provide any comments in respect of 18(2)(a).

3.113 Regulation 18(2)(b)(i) – Choice

- 3.114 In forming its opinion on the matter of choice, the ICB concluded that there was a reasonable choice based on the following assumptions:

3.114.1a. *there are eight existing providers of pharmaceutical services within 1.5 miles of the application location. The pharmacies are owned by five different contractors and two of the pharmacies have 72 core opening hours per week, including late evenings and Sundays*

3.114.2b. *Waverley is served by two bus routes, linking it with surrounding areas. Buses operate seven days per week, with two buses per hour Monday to Friday.*

- 3.115 We have addressed some of these points already, but for the avoidance of doubt our client's position on each of these matters is as follows:

3.115.1 The reference to other pharmaceutical services providers within 1.5 miles relates to distance in a straight line rather than by the 'shortest practicable route'. This measure is of no help to patients. As we have demonstrated, there is actually only one pharmacy within the 1.5 mile distance referred to by the ICB, and accessing that requires a walk of more than 20 minutes from the proposed site. We note the reference to two of the pharmacies having extended core hours, but these extended hours are of no use to patients who might find these pharmacies difficult to access. In any event, our client's application offers core hours until 7pm on weekdays evenings, well beyond the anticipated closing time of the new medical centre, and after most residents who have been out at work during the day have returned home.

3.115.2 Only one bus route provides access to pharmacies in the surrounding area, as we have discussed. Whilst there is also a service to Sheffield (with buses hourly), it is not reasonable to expect patients to travel more than 5 miles by bus, into a major city centre, to access pharmaceutical services. Furthermore, in respect of choice:

3.115.3 Waverley is a distinct and self-sufficient substantial community, that continues to grow. When the Olive Lane development and the new medical centre open, residents will have access to an extensive range of amenities within their community without having to travel out of Waverley. In this context, our client's position is that it is not *reasonable* that residents are required to travel out of Waverley to access a pharmacy. If the journey they are required to make is not reasonable in the context of their daily lives, then it cannot be said that they have reasonable choice.

3.115.4 The Advanced Manufacturing Park employs more than 2,500 people, which substantially adds to the population of Waverley during the day. Whilst many of these people will commute to Waverley from further afield, access to a community pharmacy within the Olive Lane development, where they are likely

to utilise the shops and other facilities while they are at work, will significantly improve their access to a pharmacy during the day, and therefore their choice in respect of pharmaceutical services provision.

3.115.5 The extent of local support for this new pharmacy is very clear. The opening of a new pharmacy in Waverley is eagerly anticipated by residents and their representatives alike.

3.116 The matters of access and choice are inextricably linked. Whilst it may be the case that there is a choice of pharmacy provider within the Health & Wellbeing Board (HWB) area, this does not mean that the choice for residents is *reasonable* if they are not able to access these pharmacies when they need to.

3.117 Taking all of the above into account, it is our client's opinion that there is not *reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB*.

3.118 Regulation 18(2)(b)(ii) – Patients with protected characteristics

3.119 In its report, the committee stated:

3.120 *The application suggests that for those people who are elderly, less able or families with very young children access to the existing pharmacies is likely to be more difficult than for those who are more able. However, the application does not provide evidence of patients who share a protected characteristic and who require access to pharmaceutical services but who currently find access difficult.*

3.121 We have provided demographic information within this appeal which shows there is a significant number of residents in Waverley who are classed as disabled under the Equality Act. Furthermore, we have shown that there is an unusually high level of families with very young children in the development.

3.122 For those people who are disabled (i.e. who are classified as having protected characteristics) access to the existing pharmacies is clearly more difficult than for those who are more able. This would particularly apply if these people are unable to drive or do not have access to a motor vehicle.

3.123 As age is also a protected characteristic, specific regard must be had to the needs of young children, particularly given that new parents are likely to require significant support from healthcare professionals within their community. The prevalence of childhood illnesses, particularly once children start attending nursery or school, is such that accessible healthcare within the community is essential.

3.124 Evidence has therefore been provided in this appeal of patients 'sharing a protected characteristic with difficulty accessing services that meet a specific need.'

3.125 Regulation 18(2)(b)(iii) – Innovation

3.126 We are aware it is difficult to provide evidence of innovation (in such a way that this regulatory test is met) given the narrow definition of pharmaceutical services and the inability to offer these innovatively when commissioning and specification of services is inflexible. That being the case our client is not advancing an argument of innovation.

3.127 Conclusion

3.128 In our client's view it can be clearly seen that the residents of Waverley would benefit greatly from having a community pharmacy within the Olive Lane development. This

application clearly demonstrates benefits which were unforeseen when the PNA was published.

- 3.129 The resident population do not have a reasonable choice of provider or enjoy easy access to any existing pharmacy contractors, especially for those who are on foot, are reliant on public transport, or are disabled. There is a gap in pharmaceutical services in this area.
- 3.130 Patients do not have reasonable choice in respect of access to pharmacies in the wider area.
- 3.131 Our client firmly believes if this application is approved it will secure improvements in choice and better access to pharmaceutical services and thus provide significant benefits for the resident population.
- 3.132 Linking back to the three grounds of appeal set out at the start of this letter:
- 3.133 1 & 2. As we have shown, the wording of the PNA is such that it is clear the authors anticipated changes might take place in Waverley before the end of the PNA period. It is clear that the position now is not the same as the position when the PNA was drafted. For that reason, despite the fact the HWB had considered Waverley, the application should not be refused in accordance with Regulation 18(1). Furthermore, it is clear that the PNA does not identify a 'future need' as envisaged by Regulation 15.
- 3.134 3. Residents of Waverley do not have reasonable choice in respect of pharmaceutical services provision for the reasons we have provided.
- 3.135 We therefore urge Primary Care Appeals to overturn the decision of the ICB and grant this application accordingly.
- 3.136 Our client would wish to attend an oral hearing should the committee decide to convene one. In fact, we would encourage the Committee to convene a hearing in this case so that it may benefit from a site visit, when the need for a pharmacy in Waverley will be become very apparent."

4 Summary of Representations

This is a summary of representations received on the appeal.

4.1 COMMUNITY PHARMACY SOUTH YORKSHIRE

4.1.1 "Thank you for sending Community Pharmacy South Yorkshire the documents in relation to the above appeal against the decision of the Commissioner to refuse the above application offering unforeseen benefits at Waverley, within the area bounded by Highfield Spring, Mitchell Way, Stephenson Way and the AMRC Training Centre, to include the first row of houses on Stephenson Way. The appeal was discussed by the Community Pharmacy South Yorkshire (CPSY) committee and we would like to make the following comments

4.1.1.1 CPSY committee thoroughly considered the contents of the appeal and contend that no evidence has been submitted by the applicant that should lead to an alternative decision being reached in this appeal case.

4.1.1.2 The opinions of the committee have not changed following our initial comments in our letter dated 10th July 2024 (attached).

4.1.1.3 We support the decision to refuse the application.

4.1.2 Please keep Community Pharmacy South Yorkshire informed of progress. We may like to comment further should the opportunity arise including attending and commenting at any oral hearing.”

In a letter dated 10 July 2024 to the Commissioner, Community Pharmacy South Yorkshire stated:

4.1.3 “Thank you for sending Community Pharmacy South Yorkshire the documents for the above application with regards to an application offering unforeseen benefits. The application was discussed by the committee and we would like to make the following comments:

4.1.3.1 The committee notes that the relocation application by H I Weldricks Ltd to the same location has recently been considered by the committee and refused – the decision being communicated on 4th July 2024 and subject to the statutory appeal period for the applicant.

4.1.3.2 The PNA, whilst mindful of the development at the Waverley Site, has not identified a future need, nor has the Health & Wellbeing Board issued any supplementary statements to change this position.

4.1.3.3 There have been previous unforeseen benefits applications in this area which have been refused citing that the PNA has not identified a future need and the commitment to update once a need is created.

4.1.3.4 The committee accepts that the provisions of the regulations permit applications for unforeseen benefits and that reasonable choice, meetings specific needs of patients with protected characteristics and/or innovative approaches to the delivery of pharmaceutical services.

4.1.3.5 There is minimal substantive evidence presented by applicant to demonstrate that granting this application would secure any unforeseen benefits.

4.1.3.6 The application fails to demonstrate that there is a lack of reasonable choice, given there are four pharmacies within a 1 mile radius which are all easily accessible.

4.1.3.7 The applicant states that they will provide 49 core hours. We are not aware that there is any direction from the HWB to require any applicant to provide more than 40 core hours, therefore this is of particular concern to CPSY.

4.1.3.8 The applicant states that they will provide services commissioned by the CCG, HWB or NHS England. The CCG no longer exists and the HWB nor NHS England commission services from community pharmacies.

4.1.4 In summary, Community Pharmacy South Yorkshire are not supportive of this application for the reasons set out above.

4.1.5 Please keep Community Pharmacy South Yorkshire informed of progress. CPSY may like to comment further should the opportunity arise including attending and commenting at any oral hearing.”

4.2 TEMPLE BRIGHT ON BEHALF OF OAKFIELD PHARMA LIMITED T/A ALLIED PHARMACY

- 4.2.1 “I continue to act for Oakfield Pharma Limited which is included in the pharmaceutical list for premises trading as Allied Pharmacy, 292 – 294 Handsworth Road, Handsworth, Sheffield, S13 9BX.
- 4.2.2 On behalf of my client I write further to your letter of 25th November 2024 and in order to submit representations to NHS Resolution in relation to an appeal by Singhs Medical Limited against a decision of NHS England to refuse its application for inclusion in the pharmaceutical list offering unforeseen benefits for premises in Waverley, Rotherham.
- 4.2.3 As NHS Resolution will be aware, this application is submitted pursuant to regulation 18 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.
- 4.2.4 It may only be granted if NHS Resolution is satisfied that to do so would secure improvements in and better access to pharmaceutical service provision in the HWB’s area which are not contained within the relevant PNA. In that context, the starting point when considering this application is the relevant Pharmaceutical Needs Assessment, which is the Rotherham Pharmaceutical Needs Assessment 2022-2025.
- 4.2.5 The PNA, itself, considers housing growth in the HWB’s area over the lifetime of the PNA and specifically considers the Waverley development. The PNA notes (at pages 63 and 64) relevantly as follows:
- 4.2.6 *“The Waverley development is underway with approximately 1,300 dwellings already built and occupied as of 2022, construction of an advanced manufacturing park underway, and construction of an average of 150 new dwellings per year planned. The Pharmaceutical service providers closest to the Waverley site are located in Catcliffe and Treeton (both within the boundaries of Rotherham) and Handsworth (in Sheffield LA) – see Map 13.*
- 4.2.7 *Considering these plans, it is recommended that the pharmaceutical needs of the occupants of the Waverley site should be closely monitored during the lifetime of this PNA. In particular, there should be monitoring of:*
- 4.2.7.1 *The demographic profile of new occupants of the Waverley site,*
- 4.2.7.2 *Progress with plans to establish a health centre within the site, and*
- 4.2.7.3 *The pace of construction in the site”.*
- 4.2.8 The PNA concludes relevantly (at page 67):
- 4.2.8.1 *“Based on the information presented herein, the Rotherham Health and Wellbeing Board is satisfied that there are no future needs for pharmaceutical services. Monitoring of the Waverley Site development should be conducted within the lifetime of this PNA to assess whether a future need emerges.”*
- 4.2.9 The applicant in its appeal appears to assert that the conclusions in the PNA in relation to pharmaceutical service provision in Waverley are somehow ambiguous, but this is clearly not correct and its logic is flawed.

- 4.2.10 The appellant is correct that the PNA does not say that “no need will arise during the lifetime of the PNA” or “that a future need will arise in specified circumstances”. However, the PNA does clearly refer to the Waverley development and states that the development will be “monitored” by the HWB, which is, of course, able to issue a supplementary statement (or fresh PNA) if required.
- 4.2.11 In short, the application by Singhs Medical Limited is submitted based solely on the Waverley development. Since the PNA explicitly considers the Waverley development, and does so in detail, the matters raised by the applicant in support of its application are not “unforeseen” in the context of the relevant PNA and this application should therefore be refused.
- 4.2.12 Notwithstanding the above primary submission, in any event my client asserts that the applicant has failed to discharge the burden of demonstrating that this application meets the requirements of regulation 18. As NHS Resolution will be aware, to the extent that there is a burden of proof in respect of applications submitted pursuant to regulation 18, this rests with the applicant. That is, it is not for my client to demonstrate that granting this application would not secure improvements in or better access to pharmaceutical services in the HWB’s area but for the applicant to prove that it would do so.
- 4.2.13 The applicant’s letter of appeal raises various matters in support of its appeal but provides no real evidence to support any of the assertions made. Many of the matters which are raised by the appellant are based on possible future events, with uncertainty as to timings, or general assertions which do not appear to be backed up by actual knowledge. This means that NHS Resolution is unable to assess the relevance and effect of the matters raised by the applicant at this stage.
- 4.2.14 In terms of the matters contained within the applicant’s letter of appeal, my client responds as follows.
- 4.2.15 **Background to the Waverley site**
- 4.2.16 It is asserted that the starting point for NHS Resolution’s consideration of this application is that the Waverley development has been ongoing for many years and, by any measure, is progressing slowly.
- 4.2.17 According to information on the “We are Waverley” website ([HISTORY \(wearewaverley.com\)](http://wearewaverley.com)) outline planning permission for the development was submitted in 2008 and granted in 2011.
- 4.2.18 The first residents moved into the site in 2012 and the development will not be completed for several more years.
- 4.2.19 The applicant states that “more than 1,700 homes have now been constructed and occupied”, but this is still only just over half of the total development, even though building has been ongoing for over 12 years.”
- 4.2.20 The applicant refers to the demographics of the population living in the new development, but it is clear from this information that the population is relatively young, in good health and highly mobile.
- 4.2.21 The applicant relies upon the Olive Lane retail development in support of its application. The applicant is correct that construction work on the retail units is currently underway. However, at present, it is not known exactly what shops

and services will be available in the retail centre save for a Tesco Express store (according to the developers). It appears that the other possible tenants of the units have not yet signed leases (the email from the agents states that “all are confidential until completion”).

- 4.2.22 Even if all the tenants referred to in the developer’s email do complete on leases and open, it can hardly be said that the small parade of shops and other services referred to by the applicant would “*enable the area to become largely self-sufficient in respect of the provision of daily needs for both residents of Waverley and employees at the Advanced Manufacturing Park.*” By way of example, even if the units are occupied as suggested by the agents and the applicant, there will be no banks, Post Office, supermarket (only a Tesco Express convenience store), hairdressers (the applicant refers to a hair salon, but the email from Knight Frank does not), takeaways (the applicant refers to an Indian restaurant, but that is not contained in the email from Knight Frank), clothes shops, hardware stores, book shop/library, department stores, travel agent, beauty salon, launderette/dry cleaners, petrol stations, secondary school, leisure centre/swimming pool, gym, etc.
- 4.2.23 The true position, therefore, is that those who are moving into Waverley will leave the area regularly to access most shops and other services. Indeed, with 1,700 homes completed and occupied to date, residents who are living in Waverley now must be leaving the area for their daily needs because (with the exception of a primary school) there are currently no shops or services in Waverley. The local population appears to be doing that without any compliant, concern or difficulty since the applicant provides no evidence that residents are currently having difficulty accessing services (including pharmaceutical services).
- 4.2.24 In relation to the proposed medical centre in Waverley, whilst it is correct that a new medical centre is planned, the detail of the opening of that medical centre is not yet known. NHS Resolution will note, for example, the absence of any detail about the proposed opening date of the medical centre and the projected patient list size of the medical centre upon opening.
- 4.2.25 The applicant appears to assert that the other GP surgeries in surrounding areas are not suitable for patients but, of course, those living in Waverley must be registered with those existing GP surgeries already and will, therefore, be accustomed to accessing pharmaceutical services from the existing pharmacy network. Whether patients will choose to switch to a new GP surgery in Waverley (if and when it opens) remains to be seen, but the applicant can provide no information to NHS Resolution in relation to that.
- 4.2.26 As such, NHS Resolution is not in a position to assess if and when the medical centre will open, what pharmaceutical needs may be created and whether the existing pharmacy network is able to meet those needs or whether a new pharmacy would be required. It would therefore appear that any unforeseen benefit that may be stated will arise from the construction of the medical centre is premature at best.
- 4.2.27 **Local area**
- 4.2.28 The applicant asserts that Waverley is geographically separated from surrounding areas. However, this is clearly not correct from even a cursory view of the satellite image provided by the applicant in its letter of appeal, where it can be seen that the Waverley development runs directly into the Catcliffe area to the north of Poplar Way.

- 4.2.29 When the Waverley development is viewed in its wider geographical context, it can be seen that it is simply a residential suburb on the boundary between Rotherham and Sheffield. I have provided, below, a google maps satellite image which shows Waverley as the area marked by the red/white bordered square between “Treeton” and “Handsworth”. [Appendix D, page 1].
- 4.2.30 The applicant refers to routes in and out of Waverley, but Waverley is well-connected to surrounding areas:
- 4.2.30.1 The B6066 connects Waverley with Handsworth to the south,
- 4.2.30.2 The A630 is located to the west and is accessed via Poplar Way (the A630 provides a direct link into both Sheffield and Rotherham). The applicant states that the A630 is not a route that would be used by pedestrians, but pedestrians would have no reason to walk along the A630, and certainly do not need to do so in order to access any of the nearest pharmacies, so it is not clear why this is relevant.
- 4.2.30.3 Poplar Way/the B6066 connects Waverley with Catcliffe to the north (and then on to Treeton). The applicant states that the B6066 at this point “runs alongside the River Rother and there is green space with large trees on both sides of the road as can be seen below”. However, not only is this not the only route that pedestrians could take (they can also cross Poplar Way directly into Catcliffe along Sheffield Lane), it is also of note that the B6066 has pavements along both sides, has streetlighting and is overlooked by housing on its western side. There is, therefore, no physical barrier to pedestrians using the B6066.
- 4.2.31 The applicant states that Waverley is “socially separated” from surrounding communities. It is not clear what part of the regulatory test this assertion is relevant to but, in any event, it is factually incorrect.
- 4.2.32 In relation to Handsworth to the south, the housing in Handsworth mostly comprises of owner-occupied semi-detached housing. Whilst the housing in Handsworth is older than in Waverley (and is, therefore, of a different “style”), there is no evidence that the local population is materially different in terms of its social characteristics.
- 4.2.33 The applicant states that the “only” amenities “of note” in Handsworth are two medical centres, an Asda and an Aldi. As a matter of fact, this assertion is incorrect, since Handsworth also contains two pubs, two furniture shops, car dealerships, car garage, petrol station, light industrial units, McDonalds restaurant, boxing and fitness centre, KFC, Greggs, Post Office, nail bar, sandwich shop, dentists, flooring shop, two pharmacies, funeral parlour, hairdressers, tanning studio, 3 primary schools, secondary school, etc.
- 4.2.34 The applicant asserts that those living in Waverley are unlikely to use either of the two supermarkets in Handsworth because the Morrisons supermarket in Catcliffe is closer. Not only is no evidence provided to support this assertion, but it also assumes that shoppers only choose a supermarket based on proximity, which is clearly not correct.
- 4.2.35 In relation to the alleged “social separation” of Waverley from Catcliffe, the starting point to note is that there is no physical separation of Waverley from Catcliffe as one area runs seamlessly into the other. Also, the housing in Catcliffe is mixed, and includes newer housing as well as Victorian terraced housing. By way of example, there is a newly built housing estate to the immediate north of Poplar Way (on the Catcliffe side of Poplar Way) which is

identical in character to the housing being built in Waverley. See google streetview, image at Appendix D page 2.

4.2.36 It is therefore not accepted that Waverley and Catcliffe are materially socially distinct even if this were a relevant factor for NHS Resolution to take into account when applying the regulatory test.

4.2.37 The applicant states that “there are no amenities in Catcliffe that residents of Waverley have any reason to access”, but the Morrisons supermarket (which the applicant asserts residents of Waverley would habitually use) is located in Catcliffe and is to the north of Poplar Way.

4.2.38 **Pharmacy provision**

4.2.39 It is correct that there are no pharmacies within the Waverley development, although there are pharmacies in nearby Catcliffe to the north (Weldricks Pharmacy), Treeton to the east (Cohens) and the Handsworth area to the south (my client’s pharmacy and Asda Pharmacy).

4.2.40 There are therefore 4 pharmacies within 1.5 miles of the proposed premises, with the nearest pharmacy (Weldricks) being just under a mile from Olive Lane or a 21-minute walk according to google maps [Appendix D, page 3].

4.2.41 The applicant refers to the gradient of the local area, but, in fact, the route between Waverley and Catcliffe is mostly flat.

4.2.42 The applicant has included a google maps image which shows the route and distance but has omitted the section which deals with gradient. Below is a full screen shot of the google route map using the same start and end points as those used by the applicant which, as can be seen, states “all routes are mostly flat”. Whilst the route involves 36m of incline and 11m of decline, this is over a distance of 1.6km, so is minimal. [Appendix D, page 4].

4.2.43 There are, therefore, no barriers between Waverley and Weldricks in Catcliffe which would restrict movement by foot. The distance, itself, is not a barrier, particularly having regard to the relatively young, affluent and mobile population that is moving into the new housing.

4.2.44 The applicant refers to the PNA consideration of walking distances and times, referring to a “15-minute walk time or a 1.6km walk distance”. As can be seen from the map above, the distance to Weldricks in Catcliffe is 1.6km from the starting point used by the applicant, so is within the ambit of the distances considered reasonable within the PNA.

4.2.45 In relation to the walk to Cohens Chemist, the applicant is incorrect to assert that the walk to Treeton currently requires a route through Catcliffe because there is a footbridge over the River Rother which connects Treeton by foot directly with Waverley. This will be more accessible once the housing development is complete but is shown on the google satellite image below (marked “Bamford Walk footbridge”) [Appendix D, page 4].

4.2.46 The distance to Cohens Chemist in Treeton is therefore much shorter than is given by the applicant but the relevant route by foot is not shown by google maps at the moment because of the housing development being “open land” rather than a designated footpath.

- 4.2.47 In relation to access to existing pharmacies by car, the starting point is to note that almost every household in Waverley has at least one car and the majority of households – 58.8% - have at least two cars.
- 4.2.48 In relation to parking, at Weldricks there is unrestricted on-street parking on nearby side roads. There is also unrestricted on-street parking immediately outside Cohens Chemist in Treeton and, of course, a large, free car park at the Asda pharmacy within the Asda supermarket.
- 4.2.49 Journey times by car to all four of the nearest pharmacies are broadly similar, at between 5 and 7 minutes. The applicant refers to some traffic congestion in Handsworth, but no evidence is provided in relation to this. In any event, a maximum journey time of 10 minutes to the Asda pharmacy is not excessive during rush hour.
- 4.2.50 The Waverley development is also served by local bus services (routes 70, 73 and 95). Routes 73 and 95 connect Waverley with Catcliffe with at least 2 services an hour. Routes 73 and 95 connect Waverley to Cohens Chemist. Route 95 links the development to my client's pharmacy and the Asda Pharmacy (again with services every half an hour).
- 4.2.51 In relation to bus stops, there are bus stops throughout Waverley and, no doubt, these will be increased as the development continues. Below is a google maps image which shows the current location of bus stops in Waverley. There are bus stops in the immediate vicinity of Weldricks in Catcliffe, Cohens in Treeton and my client's pharmacy and Asda pharmacy in Handsworth [Appendix D, page 5].
- 4.2.52 Additionally, many local patients choose to access pharmaceutical services from distance selling pharmacies; in fact, a distance selling pharmacy has recently opened approximately 1 mile to the south of Waverley (MediFast Delivery Pharmacy).
- 4.2.53 **Unforeseen benefits**
- 4.2.54 Having regard to the information above, my client invites NHS Resolution to conclude that the applicant has failed to demonstrate that granting this application would secure improvements in, and better access to, pharmaceutical services in the HWB's area.
- 4.2.55 **Reg 18(2)(b)(i) – there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB**
- 4.2.56 As summarised above, the existing pharmacy network does secure a reasonable choice of pharmaceutical services in the HWB's area. The applicant provides no evidence that granting its application would confer a significant benefit in terms of the desirability that patients have a reasonable choice of service provision.
- 4.2.57 The applicant refers to the "number of residents and employees...in this new community", but provides no evidence that residents of Waverley or those who work in the local area do not have a reasonable choice of pharmaceutical service provision.
- 4.2.58 It is not accepted that "the only pharmacies in the vicinity are located well away from the area where they go about their daily business". At the moment, of course, there are virtually no amenities in Waverley save for the primary

school, so all residents must leave the Waverley area in order to access even the most basic of services. The nature of the amenities that may be contained within the Olive Lane area once it has been completed is currently uncertain, and it is impossible for NHS Resolution to gauge the extent to which these amenities may be sufficient to satisfy residents' "daily business".

- 4.2.59 For those who work in the industrial units, they are likely to have travelled to work and will be able to access pharmaceutical services on their way to/from work or near to their homes. It is of note that the Advanced Manufacturing Park has been built and open for several years, with workers not expressing any need for, or difficulty access, pharmaceutical services as far as my client is aware. It is inherently unlikely that those who are working at, or visiting, the AMP will look to Waverley for their pharmaceutical needs.
- 4.2.60 It is accepted that not all households own a car, although almost all households in Waverley do, and the majority own at least two cars. As stated above, existing pharmacies are accessible by foot and public transport as well as by private transport, with no evidence that any patients may find the journey to existing pharmacies difficult. Patients may also choose to access pharmaceutical services from distance selling pharmacies, including the recently opened MediFast Delivery Pharmacy.
- 4.2.61 The applicant refers to an online Facebook poll, although no further detail is given about the poll itself. The fact that (apparently) 100% of people who participated in the poll express support for a pharmacy on Olive Lane is of no surprise (because why would they not express support), but it is evidentially irrelevant to the regulatory test that NHS Resolution must apply.
- 4.2.62 In relation to the email and letter from Waverley Community Council, it is of note that the Community Council is actually based in Catcliffe, and approximately 50m from the Weldricks pharmacy. In any event, the Council's support appears to be based largely on a desire to reduce traffic which, again, is evidentially irrelevant to the regulatory test that NHS Resolution
- 4.2.63 In conclusion, the regulations require NHS Resolution to have regard, in particular, to the benefits of patients having a reasonable choice and to consider whether granting this application would confer significant benefits in terms of choice. My client asserts that the applicant has failed to discharge the burden of proving that this part of the statutory test is met and, indeed, my client believes that there is already a reasonable choice of service provision in the HWB's area.
- 4.2.64 **Reg 18(2)(b)(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.**
- 4.2.65 In relation to regulation 18(2)(b)(ii), the applicant provides no evidence of patients who share a protected characteristic and who require access to pharmaceutical services but who currently find access difficult. The applicant gives some demographic information in relation to the size and nature of the population moving into Waverley, but this merely demonstrates that the population is largely young, in good health and mobile.
- 4.2.66 As summarised above, my client invites NHS Resolution to conclude that existing pharmacies are not difficult to access for those who share a relevant protected characteristic and who require access to pharmaceutical services. In fact, existing pharmacies are accessible by foot, private transport and public transport.

4.2.67 The applicant provides no evidence that granting its application would confer significant benefits in relation to the matters contained within regulation 18(2)(b)(ii).

4.2.68 In relation to opening hours, the nearest pharmacies are already open for hours which exceed those proposed by the applicant. My client's pharmacy, Weldricks Pharmacy and Cohens Pharmacy are all open until 6pm Monday to Friday. Weldricks Pharmacy is open from 9am to midday on Saturday and my client's pharmacy is open from 9am to 5pm on Saturday. Asda Pharmacy is open 7 days a week, including until 9pm Monday to Saturday and 10am to 4pm on Sunday.

4.2.69 The applicant does not offer any opening hours which are in addition to those already available from the nearest pharmacies to Waverley. Existing pharmacies also provide a full range of commissioned pharmaceutical services, with no evidence of any gaps in service provision.

4.2.70 **Conclusion**

4.2.71 In conclusion, my client invites NHS Resolution to conclude that the applicant has failed to discharge the burden of proving that this application would meet the regulatory test contained within regulation 18 and to refuse it.

4.2.72 I look forward to hearing from you."

4.3 SOUTH YORKSHIRE INTEGRATED CARE BOARD

4.3.1 "Thank you for your letter dated 25 November 2024 regarding the above appeal. NHS South Yorkshire Integrated Care Board (ICB) refused the application on the grounds that the applicant had not demonstrated unforeseen benefits as required by Regulation 18 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

4.3.2 Waverley is a mixed-use regeneration and development scheme within the area of Rotherham Metropolitan Borough Council, close to the boundary with Sheffield. The Waverley project began over 20 years ago. The website <https://www.wearewaverley.com/> provides a summary of key milestones. The Waverley masterplan comprises an Advanced Manufacturing Park (AMP), housing, community facilities, including a school and a neighbourhood centre, and 300 acres of green space.

4.3.3 Waverley is included in the Rotherham Local Plan (2013-2028) and has been considered in the Rotherham Pharmaceutical Needs Assessments (PNAs) covering 2015-2018, 2018-2022 and 2022-2025.

4.3.4 The applicant has highlighted the development of the Olive Lane commercial centre. Although construction work at Olive Lane commenced in late 2023, a neighbourhood centre has been part of the Waverley masterplan for several years. Indeed, a previous scheme, which was approved in 2017 but did not subsequently proceed, would have been considerably larger, with over 190,000 sq. ft. of mixed-use space.

4.3.5 The current PNA found that, overall, access to pharmaceutical services in Rotherham is good and most of the population live within easy access of a pharmacy. In consideration of all the information available at the time of writing, the Health and Wellbeing Board (HWB) was satisfied that there is sufficient choice with regard to obtaining pharmaceutical services in Rotherham and that

there are no services that would secure improvements or better access to pharmaceutical services either now or in the future.

4.3.6 The PNA considered the Local Plan (2013-2028). Within the Sites and Policies Document, it found that there are two new communities of note:

4.3.6.1 Bassingthorpe Farm: 2,400 anticipated houses with around 1,100 new dwellings expected to be developed in the Local Plan Period (2013 - 2028).

4.3.6.2 Waverley: Outline permission granted for approximately 3,600, with around 2,500 new dwellings expected to be developed in the Local Plan period (2013 - 2028).

4.3.7 The PNA noted that the Waverley development is underway with approximately 1,300 dwellings already built and occupied as of 2022, construction of an advanced manufacturing park underway, and construction of an average of 150 new dwellings per year planned.

4.3.8 The PNA also noted that the pharmaceutical service providers closest to the Waverley site are located in Catcliffe and Treeton (both within the boundaries of Rotherham) and Handsworth (in Sheffield LA).

4.3.9 The PNA recommended that monitoring of the Waverley Site development should be conducted within the lifetime of this PNA to assess whether a future need emerges.

4.3.10 In particular, there should be monitoring of:

4.3.10.1 The demographic profile of new occupants of the Waverley site,

4.3.10.2 Progress with plans to establish a health centre within the site, and

4.3.10.3 The pace of construction in the site.

4.3.11 The Health and Wellbeing Board (HWB) has not judged it necessary to update the PNA in light of the Waverley site development.

4.3.12 A Pharmaceutical Needs Assessment Supplementary Update was presented at the meeting of the Health and Wellbeing Board on 6 March 2024. It had previously been agreed to hold a steering group annually to review any emerging needs or changes to provision and make recommendation to the Board. The steering group met on 5 October 2023.

4.3.13 There are eight existing providers of pharmaceutical services within 1.5 miles of the application location (distances taken from the NHS website, using the postcode S60 5BL).

4.3.14 The location of these pharmacies is the same as when the current PNA was undertaken, and no pharmacy has closed in the vicinity of Waverley since the current PNA was undertaken."

5 Observations

5.1 PHARMACY SALES AND CONSULTANCY ON BEHALF OF THE APPLICANT, SINGHS MEDICAL LIMITED

- 5.1.1 “Thank you for your letter dated 3rd January enclosing third party comments in respect of this appeal.
- 5.1.2 We continue to act for the applicant, Singhs Medical Limited, and wish to make the following final observations in response to these comments.
- 5.1.3 Letter from Community Pharmacy South Yorkshire (LPC) dated 11th December 2024.
- 5.1.4 We note that the LPC does not offer any new information on this matter. It contends that no evidence has been submitted by the applicant to support the case for a new pharmacy at the proposed location. Clearly our client disputes this position and has provided extensive evidence within both its application and appeal.
- 5.1.5 We provide further information below in response to comments made by other parties that further support our client’s case, but we have nothing more to add in respect of the comments from the LPC at this stage.
- 5.1.6 Letter from South Yorkshire ICB dated 24th December 2024
- 5.1.7 As with the LPC, the ICB provides little in the way of new information. It has not specifically responded to many of the points raised by our client in its appeal. However, for completeness we address the comments made by the ICB as follows.
- 5.1.8 The ICB correctly summarises the history of the Waverley development and the fact that it has been “*considered in the Rotherham Pharmaceutical Needs Assessments (PNAs) covering 2015-2018, 2018-2022 and 2022-2025.*”
- 5.1.9 The ICB also notes that the Olive Lane development (which our client contends is a significant change as envisaged by the authors of the PNA) has been part of the Waverley masterplan “for several years”, and it refers to an earlier scheme which did not proceed.
- 5.1.10 Regardless of the extent to which the Olive Lane development has been known about, our client maintains its position that it is the completion of this mixed-use commercial development that makes a material difference to the Waverley development and its residential population.
- 5.1.11 Our client also maintains that the comments in the PNA in respect of monitoring the development over the lifetime of the PNA reflect the recognition by the HWB at the time the PNA was published that the development had reached the point where a need *might* arise before the end of the PNA period in autumn 2025.
- 5.1.12 We note that the ICB summarises the findings of the PNA as follows:
- 5.1.13 *In consideration of all the information available at the time of writing, the Health and Wellbeing Board (HWB) was satisfied that there is sufficient choice with regard to obtaining pharmaceutical services in Rotherham and that there are no services that would secure improvements or better access to pharmaceutical services **either now or in the future.***
- 5.1.14 This summary is not correct and does not reflect the contents of the PNA. The authors of any PNA cannot, and do not, make a statement that no new services will ever be required “in the future”. In fact, we say the opposite applies. We

say that it was clear to the HWB at that time that a need might arise within a 3 year period.

- 5.1.15 Regardless of the wording in the PNA, our client maintains its position that, for the reasons stated in previous representations, the changes that have taken place in Waverley are such that the proposed improvements and better access that would be secured by granting this application were ‘unforeseen’ in the context of Regulation 18.
- 5.1.16 The ICB go on to state “The Health and Wellbeing Board (HWB) has not judged it necessary to update the PNA in light of the Waverley site development.”. Whilst it is a matter of fact that the HWB has not updated the PNA, we have no information on whether it has re-considered Waverley at all. It is perfectly possible that with limited resources and well-publicised financial pressures on local authorities, the HWB has given no consideration to Waverley whatsoever. There is no evidence that the HWB has “*not judged it necessary to update the PNA*” as this implies they considered the current status of Waverley and found that it was satisfied that no update to the PNA was necessary. There is no evidence of this whatsoever.
- 5.1.17 It is noteworthy that the HWB has not provided representations at any stage of this application process, so it is not possible to know their current position on the need for pharmaceutical services provision in Waverley.
- 5.1.18 We have no further comments to make in respect of the ICB response.
- 5.1.19 Letter from Temple Bright (for Oakfield Pharma Ltd) dated 17th December 2024.
- 5.1.20 Many of the matters raised by this objector repeat comments made in its letter of objection dated 2nd July in response to our client’s application. However, as there is some new information provided we address the points raised by Oakfield Pharma Limited (“Oakfield”) in the same order as they are made in this letter of 17th December.
- 5.1.21 We note that Oakfield start by making the case that “*the matters raised by the applicant in support of its application are not unforeseen in the context of the relevant PNA*” and they go on to argue that “*this application should therefore be refused*”.
- 5.1.22 We have addressed this point previously in representations to the ICB following the initial objection by Oakfield, so in order to avoid repetition, we will not repeat those comments now. However, for the avoidance of doubt, our client maintains its position that the wording in the PNA is not such that the Primary Care Appeals Committee (“The Committee”) is required to refuse the application in accordance with Regulation 18(1).
- 5.1.23 The objector suggests that our client “*provides no real evidence to support any of the assertions made*”. We disagree, as our client has provided extensive and highly relevant evidence to support its case already. However, we expand further below on the information provided in our client’s previous submissions in response to Oakfield’s claim that there is “*no real evidence*” and that “*many of the matters which are raised by the appellant are based on possible future events, with uncertainty as to timings, or general assertions which do not appear to be backed up by actual knowledge*”.
- 5.1.24 **Background to the Waverley site**

- 5.1.25 Oakfield suggest that the Waverley development is “by any measure” ... “progressing slowly”.
- 5.1.26 Whilst it is true that the rate of residential development has been steady since the first houses in Waverley were occupied, it is certainly not the case that the building of the extensive supporting amenities discussed in our client’s application is progressing slowly.
- 5.1.27 For some time these amenities have been limited to a school and a public house, but the very rapid development of Olive Lane has resulted in the construction of numerous retail units, restaurants, a café, a community centre, an optician, a veterinary surgery, a dentist, a medical centre, a creche and premises for non-retail businesses such as estate agents and offices.
- 5.1.28 It is clear that, far from slow progress, the last 12 months have rapidly transformed Waverley into a fully formed and discreet community whose residents benefit from a wide range of facilities that meet their everyday needs.
- 5.1.29 Oakfield question the extent to which the Olive Lane development is complete and which tenants have committed to opening premises here. We have therefore sought an update from the two developers responsible for the Olive Lane development and enclose their latest emails accordingly.
- 5.1.30 It is clear from these emails that, in addition to Tesco, lease commitments have been entered into with Haworth by Waverley Community Centre, a vets, a nursery, an Indian restaurant and Specsavers. It is also clear that, should our client’s application being approved, it will also be in a position to legally commit to premises for a pharmacy.
- 5.1.31 The email from David Cross at Sky-House.co also confirms his understanding that a Starbucks coffee shop, NHS (as in the medical centre), the Creche, a bakery, a dentist, a Financial Services business and a hair salon are also committed.
- 5.1.32 It is true that there has been a small delay to the opening of Olive Lane, which was supposed to be trading by the end of 2024. However, as the email from Kitty Hendrick at Knight Frank shows, the delay is only a short one and it is expected that Tesco will open at the end of February, with other units opening at the end of March this year.
- 5.1.33 The email from David Cross shows that he expects the remaining units to be ready for occupation in March / April.
- 5.1.34 We have also provided, below, a photograph which shows the current status of the building work. If this is compared to the image from 30th October 2024 we provided in our client’s appeal letter, it can be seen that significant further progress has been made on the Sky-House.co part of Olive Lane visible on the bottom right of the image. Only the foundations of these buildings had been laid at the end of October, but the buildings are now clearly taking shape [Appendix E, page 1].
- 5.1.35 This provides clear evidence that Olive Lane is not just on the developers’ ‘future wish list’ but is a reality that will be open to residents within a matter of weeks.
- 5.1.36 The Committee is required to consider whether, on the balance of probabilities, the Olive Lane development will provide a wide range of amenities for

Waverley residents in the very near future. In our opinion it is very clear that it will.

- 5.1.37 Oakfield attempt to diminish the significance of these wide-ranging amenities by listing other businesses that it claims would be required to meet the daily needs of residents. However, this objector is living somewhat in the past if it believes that the residents of Waverley would expect to visit a bank or post office daily, or to have a department store, library, book shop or clothes retailers within a residential development.
- 5.1.38 Equally there would be no expectation that a development of 3,000 homes would support a leisure centre or swimming pool. If community pharmacies only opened in locations with leisure centres, banks and libraries, then they would be very few and far between.
- 5.1.39 Oakfield describe Olive Lane as a 'small parade of shops' but it is clear from the information provided previously and above that this is a significant mixed-use development, with a wide range of amenities that is far beyond a parade of shops.
- 5.1.40 Picking up the comment made by Oakfield that the email from Knight Frank did not include some of the amenities listed, it has failed to notice that whilst Knight Frank represent Haworth, who have built some of these premises, others are being built by Sky-House.co whose email listed the additional commercial units referred to by our client.
- 5.1.41 The reality is that residents of Waverley will do their banking and will buy their books and clothes online and, if they require a department store or a leisure centre, they will travel to access these on an occasional basis.
- 5.1.42 However, it is far more likely that these residents will have a need to access pharmaceutical services on a regular basis, not least when the medical centre opens and they no longer need to leave Waverley to access primary care services. In fact, regardless of the medical centre opening, the provision of a wide range of pharmaceutical services such as Pharmacy First and vaccinations, as well as locally commissioned services, will ensure residents of Waverley will finally have access to primary care within their community for the first time if this application is granted.
- 5.1.43 The objector goes on to make a point that the Committee will have seen many times and that we believe it will give little weight to. It states the obvious position that *"residents who are living in Waverley now must be leaving the area for their daily needs because (with the exception of a primary school) there are currently no shops or services in Waverley"*.
- 5.1.44 Whilst it is obvious that residents must leave the area to access shops and services because these have not, until now, been provided in Waverley, this does not mean it is reasonable for them to do so once these facilities are provided within their community.
- 5.1.45 It is natural that neighbourhoods develop over time, particularly when these are brand new communities occupying housing on former brownfield land. Those people who occupy the first phase of houses in these developments will do so in the knowledge that they cannot expect all their daily needs to be met on their doorstep.

- 5.1.46 As the development grows and, as the marketing materials produced by the residential developers promises residents that these additional amenities will be constructed, the expectations of residents moving into the development change. In fact, many would have chosen to live here precisely because they have been told they will have access to a range of shops, restaurants, medical facilities and other amenities that will ensure in the medium term they no longer need to travel out of Waverley to access many of these daily needs.
- 5.1.47 Oakfield state *"The local population appears to be doing that without any complaint, concern or difficulty since the applicant provides no evidence that residents are currently having difficulty accessing services (including pharmaceutical services)."*
- 5.1.48 Our client referred in its appeal to a Facebook survey (that has been challenged by Oakfield), but in order to test the claim by this objector that the local population have no concerns about the lack of pharmaceutical services provision, our client, with the support of Waverley Community Council, engaged a local market research company, Viewpoint Research CIC, to engage with the local community to seek their views on the need for a new community pharmacy in Waverley. Their report is provided with this letter and is summarised below:
- 5.1.48.1242 responses to the survey were received from residents. Viewpoint, who are experts in market research state this "gives a 95% confidence level to the results".
- 5.1.48.2Over 98% of residents support the opening of a community pharmacy at Olive Lane.
- 5.1.48.3Over 90% of residents cited the lack of a pharmacy in walking distance as a key reason for their support.
- 5.1.48.4Almost 30% of respondents cited issues with waiting times at existing pharmacies as a concern.
- 5.1.48.5Almost 20% cited parking problems at existing pharmacies.
- 5.1.48.6Almost 12% of respondents stated they cannot easily access a pharmacy as they do not have access to a car. A similar number found that the opening hours of their usual pharmacy did not meet their needs.
- 5.1.48.7Very few of the residents who responded use either Weldricks Pharmacy in Catcliffe or Allied Pharmacy in Handsworth. Asda Pharmacy is the most commonly used pharmacy by Waverley residents, in part because it is open after they finish work.
- 5.1.49 It is also worth noting that the survey did not include employees at the Advanced Manufacturing Park, as the robust methodology adopted by Viewpoint was intended to ensure responses were limited to local residents only. Had these employees also been surveyed it is likely that support would have even greater.
- 5.1.50 Oakfield question the opening of the new medical centre. We have attached a document titled 'Your Health Rotherham Public Agenda' which provides more information on this. The "Rotherham Place Board" oversees Rotherham's Integrated Health and Social Care Place Plan 2023-25 and the Board

comprises senior NHS and local authority leaders. The report we have provided is a summary of the Board's public meeting on 18th September 2024.

5.1.51 Page 7 of this report provides an update on the new Waverley medical centre and states:

5.1.51.1 **Legal agreements completed**, and works are well progressed on site

5.1.51.2 **Development Agreement in place**

5.1.51.3 Completion is on track for late 2024, with **occupation April 2025**

5.1.52 We also enclose a Freedom of Information response, following a request by our client, which confirms that the medical centre will be operated by the Gateway Practice, as stated previously.

5.1.53 Whilst the list size of this surgery cannot yet be confirmed, as it is not yet open for residents to register with, it would be reasonable to assume that a significant proportion of Waverley residents will register with this practice.

5.1.54 Information provided by the designers of the new medical centre show that it has been designed to accommodate an expected 6,000 residents, as shown at Appendix E, page 2.

5.1.55 Furthermore, the floor plan submitted by the developers when they applied for planning permission shows 4 clinical consulting rooms, a treatment room and 3 nurses' rooms on the ground floor, as can be seen below [Appendix E, page 2].

5.1.56 It is clear from the survey responses received that residents feel strongly that a community pharmacy should be located in close proximity to this new medical centre.

5.1.57 **Local area**

5.1.58 We note the comments from Oakfield challenging our client's assertion that Waverley is geographically separated from its surrounding areas. In fact we believe that the images provided in our client's appeal show this very clearly.

5.1.59 Whilst it is true that there is a road connecting Waverley with Catcliffe, it is also the case, for the reasons we have provided previously, that Catcliffe is a discrete and separate community. It is noteworthy that on page 9 of the report commissioned by our client only 19 of 170 patients (11.1%) who answered the question about which pharmacy they regularly use [sic], identified Weldricks Pharmacy in Catcliffe as their regular pharmacy (compared to 69 – 40.6% who use Asda).

5.1.60 This data appears to support the assertion made by my client previously that, not only do residents of Waverley find that the Catcliffe pharmacy is not readily accessible, they also have no reason to go there when going about their daily lives.

5.1.61 The map of the wider area provided by Oakfield shows nothing more than the fact Waverley is to east of Sheffield and the south of Rotherham. Waverley is more than 4 miles from Rotherham by road and more than 6 miles from Sheffield, so it is not a surprise that, at this scale, Waverley can be made to

look like a residential suburb. This is not an accurate portrayal of Waverley as would be apparent to anybody who visited the development.

- 5.1.62 In terms of the access routes in and out of Waverley via the B6066 and the A630, this has been dealt with extensively in our appeal. It remains the case that walking to any pharmacy at present is challenging, and none of the routes described would be an attractive prospect to Waverley residents, particularly after dark or in inclement weather (which is not unheard of in South Yorkshire). In fact, the challenges posed by adverse weather have been very apparent over the last week or so. The area has been significantly impacted by snow and ice which have made many pavements in the area treacherous to the point they are impassable for most residents.
- 5.1.63 In terms of social separation, this is entirely relevant. In determining whether patients have 'reasonable choice' in respect of access to pharmaceutical services, the Committee will, of course, consider whether there are any barriers to accessing existing pharmacies whether these are physical or social.
- 5.1.64 In respect of the objector's claim that the social characteristics of Waverley and Handsworth are no different, we have considered the socio-economic characteristics of the two areas using 2021 census data. This is shown at Appendix E, page 3.
- 5.1.65 It is very clear from this data that the socio-economic profiles of the two areas are very different, with 56.9% of the Waverley population belonging to classifications L1 to L6 (managerial / professional) compared to the national average of 33.1%. By contrast, 28.7% of Handsworth residents belong to these classifications, a stark difference to Waverley.
- 5.1.66 In terms of the amenities in Handsworth, whilst we do not dispute the list provided by Oakfield, it is not clear how a patient's access to pharmaceutical services might be linked to a visit to a fast food restaurant, a nail bar, a flooring shop or a tanning studio, to name but a few. There is no reason to believe that a Waverley resident who was visiting Handsworth to access these businesses would need to access pharmaceutical services at the same time.
- 5.1.67 Whilst we accept the principle that residents may not choose their supermarket solely based on proximity, for those who do not have access to private transport we would suggest this is a particularly important consideration. Whilst walking 0.4 miles from Olive Lane to Morrisons for a larger shop might be feasible for residents, walking almost 2 miles to Asda or Aldi is not.
- 5.1.68 In respect of Catcliffe, as we have stated previously, we dispute the suggestion that the two areas 'run seamlessly into another'. Whilst it is correct that there is some modern housing to the north of Poplar Way, this is closer to Waverley than Catcliffe.
- 5.1.69 Looking at the same socio-economic characteristics as above, it can be seen that the profile of Catcliffe is far more similar to Handsworth than it is to Waverley. [Appendix E, page 4].
- 5.1.70 In this case 23.0% of residents are classified as L1 to L6 compared with 56.9% in Waverley. The suggestion by Oakfield that the areas are not materially socially distinct is simply not supported by the evidence.

- 5.1.71 These differences in character are very apparent ‘on the ground’ so we invite the Committee to consider convening an oral hearing so the Committee members can assess this for themselves.
- 5.1.72 As to whether Morrisons is located in Waverley or Catcliffe, the Committee can judge this for themselves based on the map below, where the supermarket is marked with a blue shopping trolley icon and Weldricks pharmacy can be seen to the north-east. Olive Lane is marked with a green star [Appendix E, page 5].
- 5.1.73 **Pharmacy provision**
- 5.1.74 Our client provided detailed information in its appeal regarding the accessibility of existing pharmacies, so we will not repeat that here. However, we do wish to address some of the specific points raised by Oakfield.
- 5.1.75 We note that the objector relies on Google maps to measure the gradient between Waverley and Catcliffe. Whilst it might be the case that some routes are flatter than others, this depends, of course, on where patients start their journey. We supplied a topographic map with the appeal that showed a difference in elevation of more than 100m across the Waverley estate.
- 5.1.76 There is a particularly steep hill leading from the railway line in Catcliffe up to Weldricks as can be seen in the images at Appendix E, page 6.
- 5.1.77 It is not correct, therefore, when Oakfield say there are “*no barriers between Waverley and Weldricks in Catcliffe*”.
- 5.1.78 We note the comment made by Oakfield in respect of the footbridge over the River Rother between Waverley and Catcliffe and we confess we had missed this when carrying out our site visit.
- 5.1.79 However, the reason we missed this is that the roads in Waverley do not currently connect to this bridge.
- 5.1.80 Whilst these connections may well be addressed in the future, we have provided an aerial image of this bridge and the surrounding area at Appendix E, page 7.
- 5.1.81 As can clearly be seen the bridge (shown by the red star) crosses the river, enters a large open wooded area with no street lighting then, to access Treeton it is necessary to use a second bridge to cross the railway. The railway bridge has more than 10 steps on either side [as shown at Appendix E, page 7] so could not be crossed by anybody with mobility difficulties.
- 5.1.82 Even if a patient was able to make this journey, the distance from Olive Lane to Treeton Pharmacy using these two bridges would be approximately 1.5 miles. It is difficult to measure this accurately as the connecting paths do not exist yet.
- 5.1.83 The Committee will form its own view whether this provides a reasonable pedestrian route for Waverley residents who require pharmaceutical services.
- 5.1.84 We have nothing further to add on car journeys or parking as these matters have been dealt with in detail already.

- 5.1.85 In respect of bus travel, we addressed route 95 in our client's appeal and explained why this would not provide a reasonable option for some residents to access pharmaceutical services.
- 5.1.86 Bus route 70, discussed by Oakfield does not connect Waverley with any of the nearest pharmacies, so is only helpful to those patients willing to travel to Sheffield to access pharmaceutical services. Route 73 does not connect Waverley with Treeton during the day, as services only run in the evenings and Sundays, as can be seen on the enclosed timetable, [Appendix E, page 56 – 59]. This is of no help to patients as Cohens pharmacy is closed at these times.
- 5.1.87 We note the objector's confidence that the number of bus stops will "no doubt" increase as the development continues, despite its earlier criticism of our client for raising matters which are based on *"possible future events with uncertainty as to timings, or general assertions which do not appear to be backed up with actual knowledge"*.
- 5.1.88 In respect of distance selling pharmacies, as Oakfield is well aware, these pharmacies are required to provide pharmaceutical services for anybody in England who wishes to use them and are not permitted to limit provision to residents of the local area. The new DSP that has opened to the South of Waverley is of no more benefit to Waverley residents than any other DSP in England.
- 5.1.89 **Unforeseen benefits**
- 5.1.90 We dispute the assertion that our client has failed to demonstrate the granting this application would secure improvements in, or (rather than *and* as stated by Oakfield) better access to, pharmaceutical services in the HWB's area.
- 5.1.91 **Reg 18(2)(b)(i)**
- 5.1.92 It is our position that our client has provided extensive evidence that granting the application would confer a significant benefit in terms of the desirability that patients have a reasonable choice of service provision.
- 5.1.93 This evidence has been provided in its application, its appeal and in these final observations, including the provision of the resident survey in response to the objector's criticism that our client's assertions were not evidenced.
- 5.1.94 The range of amenities that will be provided in Olive Lane is extensive and will meet many of the daily requirements of local residents, including childcare, food shopping, leisure, community services and healthcare. We have demonstrated that this application has strong support, not only from those residents surveyed but from their representatives who recognise the importance of a community pharmacy within Waverley.
- 5.1.95 Whilst it might be the case that those who work in the industrial units could have access to pharmaceutical services on their way to and from work, there is no guarantee that pharmacies will be open at those times. There has been a significant reduction in pharmacy opening times across the country in response to continued funding pressures with many pharmacies now opening only their core hours which often exclude evening or weekend opening.
- 5.1.96 The provision of a community pharmacy next to the Advanced Manufacturing Park will provide significantly improved access to pharmaceutical services for these people as well as the possibility that they can access opportunistic

pharmaceutical services that they may not have otherwise accessed if they had to make a specific journey to a pharmacy.

5.1.97 For example, workers visiting the supermarket or the bakers to buy a sandwich at lunchtime might walk past the pharmacy and notice health promotion messages which might prompt them to go in and seek advice for public health matters such as smoking cessation or Flu vaccinations. This might simply not happen otherwise.

5.1.98 In respect of the Facebook poll, this was carried out initially at the request of the local councillors to quickly gauge the level of support from local residents for a community pharmacy in Waverley so they could discuss this at their council meeting. When it became clear that support was extensive, the councillors helped to facilitate the subsequent market research project which provided much more detail on why residents feel there is a need for a new pharmacy to open.

5.1.99 It is not clear why Oakfield feel it is relevant that the Waverley Community Council office is located in Catcliffe. However, the suggestion by Oakfield that the council support is based largely on a desire to reduce traffic is disingenuous. The Committee will read the council's letter for itself and will note several reasons are provided for supporting our client's application.

5.1.100 **Reg 18 (2)(b)(ii)**

5.1.101 Whilst we accept that the population of Waverley overall is relatively young, in good health and mobile, this is certainly not the case for everybody. Our client provided demographic information previously which showed there is a significant number of residents whose mobility is limited by illness or disability.

5.1.102 We have described the challenges for some residents in accessing pharmaceutical services currently and these challenges would be even greater for patients whose mobility is limited.

5.1.103 Finally in respect of opening hours, Oakfield are wrong when they state that all existing pharmacies open for longer hours than proposed by our client. Our client's application offers 49 core hours per week which include opening until 7pm Monday to Friday, well beyond the closing times of Cohens and Weldricks and Allied. This additional evening opening will be invaluable to residents who are out at work during the day.

5.1.104 **Conclusion**

5.1.105 In conclusion, despite comments to the contrary by objectors, it is clear that there is compelling evidence of the need for a new pharmacy in the Waverley development.

5.1.106 Local residents have not only expressed their support, but significant numbers have cited the difficulties they experience accessing existing pharmacies.

5.1.107 The geographical and social barriers to accessing pharmacies outside Waverley already exist, but the opening of the Olive Lane centre and the new medical centre will significantly change the lives of Waverley residents. At that point the choice they have in respect of access to pharmaceutical services will no longer be reasonable in the context of their daily lives.

5.1.108 This being the case, we believe granting this application would ‘secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB’.

5.1.109 In our opinion there is sufficient evidence for this application to be granted based on the written submissions alone. However, if the committee is in any doubt about this we would strongly encourage them to convene an oral hearing so they can see the site for themselves and hear oral evidence. Clearly our client would wish to attend such a hearing.”

6 Further comments

6.1 RUSHPORT ADVISORY LLP

6.1.1 “As NHS Resolution will be aware, the applicant is also the appellant in this matter. It was therefore incumbent upon the applicant, in its letter of appeal, to provide any supporting information and evidence with its letter of appeal.

6.1.2 Whilst the appellant would properly have been given the opportunity to comment on any matters raised by respondents to the appeal following circulation of the appeal, this opportunity is intended to be for rebuttal purposes only – that is, to respond to matters which have been raised by interested parties to the appeal. It is not intended that an applicant/appellant will provide wholly new material and information at this stage, not least because interested parties are then not given the opportunity to comment further.

6.1.3 My client is therefore concerned that the appellant’s letter of 10th January contains a significant amount of new information, including a survey. It is of note that the survey appears to have been undertaken in November 2024. Since the appeal letter was submitted on 9th November 2024, it is clear that the survey has not been prepared as “rebuttal” evidence, but is material that could and should have been obtained earlier by the appellant if it intended to engage, and rely on, a survey.

6.1.4 I note that my client is not being given the opportunity to comment further in relation to the appellant’s letter of 10th January 2025. I therefore request that NHS Resolution gives no weight to any information contained within that letter which cannot properly be considered as rebuttal evidence (including the survey).”

7 Consideration

7.1 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.

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

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

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

Regulation 31

7.5 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).

7.6 The Committee noted that the Commissioner had not made a determination regarding Regulation 31. The Committee noted the comment from the Applicant that *"There is no other pharmacy in close proximity to the best estimate area."* The Committee noted that this had not been disputed either on appeal or in subsequent representations. On the basis of the information before it, the Committee determined that it was not required to refuse the application under the provisions of Regulation 31.

7.7 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

7.8 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)."*
- 7.9 The Committee considered that Regulation 18(1)(a) was satisfied in that it was required to determine whether it was satisfied that granting the application, or granting it in respect of some only of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB.
- 7.10 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.
- 7.11 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).
- 7.12 The Committee considered the PNA prepared by Rotherham Metropolitan Borough Council, 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 a Supplementary Statement had been issued on 6 March 2024.
- 7.13 The Committee noted the following in the PNA under the heading 5.1 Housing Developments [page 63 & 64]:
- 7.13.1 *The Waverley development is underway with approximately 1,300 dwellings already built and occupied as of 2022, construction of an advanced manufacturing park underway, and construction of an average of 150 new dwellings per year planned. The Pharmaceutical service providers closest to the Waverley site are located in Catcliffe and Treeton (both within the boundaries of Rotherham) and Handsworth (in Sheffield LA) – see Map 13.*
 - 7.13.2 *Considering these plans, it is recommended that the pharmaceutical needs of the occupants of the Waverley site should be closely monitored during the lifetime of this PNA. In particular, there should be monitoring of:*
 - 7.13.2.1 *The demographic profile of new occupants of the Waverley site,*

7.13.2.2 *Progress with plans to establish a health centre within the site, and*

7.13.2.3 *The pace of construction in the site.*

- 7.14 The Committee noted the Applicant's assertion that the significant benefits that would be conferred by the granting of this application, were not foreseen in the relevant PNA. Whilst the PNA had referred to the Waverley development and progress of the new health centre, the PNA concluded that *"it is recommended that the pharmaceutical needs of the occupants of the Waverley site should be closely monitored during the lifetime of this PNA"*.
- 7.15 The Committee noted that the Applicant seeks to provide unforeseen benefits to the patients of Waverley. 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.
- 7.16 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)

- 7.17 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"

- 7.18 The Committee noted that the Commissioner had not made a determination regarding Regulation 18(2)(a)(i). On the basis of the information available, and the fact that no party had provided arguments, 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.
- 7.19 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)

- 7.20 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"

- 7.21 The Committee noted that the Commissioner had not made a determination regarding Regulation 18(2)(a)(ii). The Committee noted that no party had provided any evidence to support any suggestion that if the application was to be granted, it would cause significant detriment to the arrangements in place for pharmaceutical services in the area.
- 7.22 The Committee was therefore not satisfied that significant detriment to the arrangements currently in place for the provision of pharmaceutical services would result from a grant of the application.

- 7.23 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)

- 7.24 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)

- 7.25 The Committee noted the location of the proposed pharmacy is in an area of residential development known as Waverley, 3 miles to the south of Rotherham town centre and 4 miles to the east of Sheffield town centre. The Committee noted in the information provided by the Applicant that *"more than 1,700 homes... [are] now... constructed and occupied"* on the development with data from the 2021 census stating *"the total population of Waverley at present is likely to be close to 4,000."* The Applicant's appeal included a Google Satellite image of the development. The Committee was mindful that even if there is an increase in population, this does not automatically lead to the requirement to grant an application.
- 7.26 The Committee considered the information provided to it regarding the nature of the Waverley development. The Committee noted that the application was prompted by the construction of a significant amount of new housing alongside the imminent opening of a new neighbourhood centre known as Olive Lane, *"which will significantly increase the range of amenities available for local residents"*. The proposed development of the neighbourhood centre, is anticipated to include *"an Advanced Manufacturing Park (the AMP)...[c]ommunity uses including a new primary School... restaurants, coffee shops, a medical centre and community centre"*. The Committee noted the Applicant's comments that due to recent developments, the area of Waverley has become self-contained in nature; *"a distinct community, separated both geographically and socially from its surroundings"* which has likewise prompted the application for a new pharmacy.
- 7.27 The Committee recognised that the aspirations of the planners to create a self-sufficient community are underway however the development of the neighbourhood centre, Olive

Lane, along with the new medical centre has not yet finished. The Committee noted the comments from the Commissioner that the development of a neighbourhood centre in Waverley has been part of the plan for the area for several years and highlighted that although work commenced in late 2023, a previous scheme had been approved in 2017 that had not proceeded..

- 7.28 Nevertheless, the Committee noted the Applicant's claim, that on completion the neighbourhood centre, Olive Lane, will, according to the Applicant, be a central facility where the local population will go to meet their everyday needs. A Tesco supermarket will open and there will be a number of units which will form part of a commercial centre. It is anticipated that these units will contain:

7.28.1 Financial Services / Estate Agents

7.28.2 Hair Salon

7.28.3 New HQ for Sky-House.co

7.28.4 Restaurant and Bar

7.28.5 Tesco

7.28.6 Starbucks

7.28.7 Creche

7.28.8 Medical centre

7.28.9 Community Centre / Village Hall

7.28.10 Bakery

7.28.11 Indian Restaurant

7.28.12 Optician

7.28.13 Veterinary surgery

7.28.14 Dentist

- 7.29 The Committee noted the Applicant's comment that the aim of the application is to ultimately offer pharmaceutical services close to the new health centre in the Waverley development. Given that the GP surgery is currently being built and is not yet occupied and functioning as a GP surgery, the Committee placed no weight upon it. The Committee had to consider the position on the ground as it presently is. In doing so, it noted the facilities currently available are still limited. The Committee was mindful that persons will seek some of their requirements for services elsewhere. In doing so, they may be able to access existing pharmaceutical services at the same time.

- 7.30 The Committee had regard to the map supplied by the Commissioner showing the location of the best estimate and nearby pharmacies and GP surgeries, which had not been disputed. The Applicant had sought to argue that while there may be pharmaceutical services in the wider surrounding areas, namely in the areas of Catcliffe, Handsworth and Treeton, this does not mean that the choice of services for those residing in the Waverley area is reasonable.

- 7.31 The Committee appreciated the Applicant's comment that there is a high number of young children living in the area which may indicate the presence of groups that may have an above average requirement for pharmaceutical services. The Committee will consider the area's demographic, including those with protected characteristics, later in this determination.
- 7.32 The Committee next considered access to existing pharmacies in the area and noted the Applicant had described the distances and routes involved for those on foot.
- 7.33 The Committee noted that there was no dispute between parties that there are 4 pharmacies located within 1.5 miles of the proposed premises.
- 7.34 For those walking, the Applicant states that the journey to Weldricks pharmacy in Catcliffe is *"1 mile in each direction and takes approximately 21 minutes for a person of average mobility to walk"*. Whilst the Committee noted the Applicant's comments regarding a 15 minute or 1.6 km limit for accessing pharmaceutical services, 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. Indeed, the Committee noted Oakfield Pharma Ltd's reference to the demographic of Waverley as a fairly young, mobile population which would suggest that residents are able to move without difficulty. The Committee also noted the dispute between parties regarding the severity of the gradient in the area but was of the view that patients would take this into account when considering whether to make the journey on foot.
- 7.35 The Committee had regard to the map provided by the Applicant [Appendix C, page 12]. The Committee noted that on foot, the journey time would be up to 40 minutes to the other two pharmacies. The Committee also noted the photographs provided with regard to the area and the routes that pedestrians would have to take. The Committee accepted the Applicant's observations that travelling through a *"large open wooded area with no street lighting [...] to access Treeton [followed by] use [of] a second bridge to cross the railway"* would be unappealing for some patients wishing to travel to Treeton pharmacy by foot. Again the Committee considered that this would be a factor that patients would consider and whether to make the journey by that means. The Committee was of the view that difficulties of access on foot did not of itself indicate that there was not reasonable choice in obtaining pharmaceutical services. For those who chose not to access services on foot, or who are unable to access services on foot, for whatever reason, the Committee went on to consider the ease and level of access to pharmacies by private and public transport.
- 7.36 The Committee noted the information provided with regard to the bus services in the area, *"bus route (route 95)... travels from Olive Lane to Catcliffe and services run every half an hour in each direction"*. The Committee noted that this same service goes to Handsworth. Whilst the Committee noted the Applicant's comment that there are no bus routes that run through the Waverley development and so those wishing to travel by bus would be required to walk to Highfield Spring to do so, there was no evidence to suggest that the residents of Waverley were currently experiencing any difficulty in using public transport to access pharmaceutical services in the area. Whilst the Committee understood that for some residents, access to pharmaceutical services using public transport would not be a preferred option, the Committee noted that a service was available and there was no evidence to suggest that residents were struggling to access existing pharmaceutical services by public transport.
- 7.37 The Committee noted the Applicant concedes that there is a relatively high level of car ownership within the Waverley development. The Committee noted 86% of the population have a vehicle. The Committee noted the Applicant's comment that there were double yellow lines outside Catcliffe pharmacy and this would pose a challenge for parking for those accessing this pharmacy by car. Furthermore, the survey

commissioned by the Applicant indicated that 19.6% of the respondents found parking difficult. Conversely, the Committee noted that the Asda pharmacy was located a 7 minute drive from the proposed premises which has a large, free car park. Whilst being mindful of the late submission of the survey findings and the inability of parties to be able to comment on them, the Committee considered them but was of the view that the results lack specificity. The Committee could not be satisfied that car parking issues encountered were widespread or specific to one pharmacy. The Committee was therefore of the view that for those persons with their own vehicle, there was no information provided to show that they were currently experiencing any difficulties accessing existing pharmaceutical provision.

- 7.38 The Committee had before it evidence that suggested that should patients wish to access pharmaceutical services online, a distance selling pharmacy service *“approximately 1 mile to the south of Waverley (MediFast Delivery Pharmacy)”* has recently opened. The Committee considered that a distance selling pharmacy is required to provide pharmaceutical services to patients on a non-face to face basis. A distance selling pharmacy therefore provides a type of access to pharmaceutical services and cannot be discounted when considering access to pharmaceutical services. The Committee felt that, on one hand, it was reasonable to consider that some people are likely to view a distance selling pharmacy as less accessible than a traditional "walk in" pharmacy because patients cannot simply walk in and have a prescription dispensed or obtain advice immediately. The Committee also acknowledged that, on the other hand, it could be considered that distance selling pharmacies are more accessible due to patients being able to access services by post, phone or electronic communication without having to physically make the journey to a "walk in" pharmacy. While the type of access to pharmaceutical services provided by distance selling pharmacies will benefit some persons, the Committee also felt it was reasonable to consider that some persons do not access pharmaceutical services via distance selling pharmacies because they prefer face to face contact.
- 7.39 The Committee noted the survey results submitted by the Applicant. The results indicated, amongst other things, that 91.2% preferred a pharmacy to be closer to home. The Committee recognised that most residents would prefer convenience but was of the view that it must have regard to access when considering this application. The Committee noted Waverley Community Council's support for a new pharmacy that would offer convenient, easy to access pharmaceutical provision however the Committee was mindful that no information had been provided to suggest that there are a significant number of people who are having difficulty in accessing other pharmacies. The Committee considered that there was not a robust body of evidence that enabled it to be satisfied that there was difficulty in access.
- 7.40 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.
- 7.41 In considering Regulation 18(2)(b)(ii) the Committee reminded itself that it was required to address itself to people who share a protected characteristic under the Equality Act 2010 (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation) having access to services that meet specific needs for pharmaceutical services that, in the relevant area, are difficult for them to access. The Applicant anticipated there will be many families with young children and the pharmacy will be conveniently located to provide services to those living within the housing development. However the Committee had no information to show that these patients are currently having difficulties accessing existing pharmaceutical services. 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.

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

Regulation 18(2)(b) generally

- 7.45 The Committee noted the Applicant's total opening hours which are 9am – 1pm and 2pm - 7pm Monday to Friday and 9am – 1pm on Saturday with all of these 49 hours being proposed as "core" hours. The Committee noted the comments from parties with regard to the existing provision of pharmaceutical services and that two of the pharmacies, located within 1.5 miles of the proposed site, provide extended opening hours of 72 core hours a week. 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.
- 7.46 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.
- 7.47 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

- 7.48 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).
- 7.49 No deferral or refusal under Regulation 18(2)(f) was required in this case.
- 7.50 The Committee had regard to Regulation 18(2)(g) and found no reason that required it to refuse the application under this regulation.
- 7.51 The Committee considered whether there were any further factors to be taken into account and concluded that there were not.
- 7.52 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.

- 7.53 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 7.53.1 confirm the Commissioner's decision;
 - 7.53.2 quash the Commissioner's decision and redetermine the application;
 - 7.53.3 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.
- 7.54 As the Commissioner had not addressed some of the regulatory matters in its determination and given the Committee had formed its own findings, the Committee determined that the decision of the Commissioner must be quashed.
- 7.55 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.
- 7.56 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.
- 7.57 The Committee concluded that further notification under paragraph 19 of Schedule 2 would not be helpful in this case.

8 DECISION

- 8.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of the Commissioner, for the reasons given above, and redetermines the application.
- 8.2 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.
- 8.3 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;
- 8.4 The Committee determined that the application should be refused on the following basis:
- 8.4.1 In considering whether the granting of the application would confer significant benefits, the Committee determined that –
 - 8.4.1.1 there is already a reasonable choice with regard to obtaining pharmaceutical services;
 - 8.4.1.2 there is no evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services; and

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

8.4.2 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