17 February 2025

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10 South Colonnade
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FILE REF: **SHA/ 26417**

DECISION MAKING BODY: **NHS HERTFORDSHIRE AND WEST ESSEX ICB ("the Commissioner")**

PHARMACIST: **WATERTON PHARMACY LTD ("the Applicant")**

PREMISES: **FRAMFIELD MEDICAL CENTRE, IPSWICH ROAD, WOODBRIDGE, IP12 4FD**

THE NATIONAL HEALTH SERVICE (PHARMACEUTICAL AND LOCAL PHARMACEUTICAL SERVICES) REGULATIONS 2013 ["THE REGULATIONS"]

SCHEDULE 4 [Terms of Service of NHS Pharmacists]
PART 3 [Hours of Opening]

Outcome

1.1 Based on the information provided, I am not satisfied that the pharmaceutical services provision that would result from the Applicant's proposed hours would maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises. I am satisfied that maintaining the current levels of services is a realistically achievable outcome and therefore the Applicant cannot rely on paragraph 24(1)(b).

1.2 The action taken by the Commissioner to refuse the application is confirmed.

A copy of this decision is being sent to:

Waterton Pharmacy Ltd
Hertfordshire and West Essex ICB

NHS Resolution

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

Tel: 020 3928 2000
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SCHEDULE 4 [Terms of Service of NHS Pharmacists]
PART 3 [Hours of Opening]

1 Introduction

1.1 The Applicant has applied to the Commissioner to change the days and times at which it is obliged to provide pharmaceutical services at the above premises.

1.2 The Commissioner has refused the application. The Applicant seeks to appeal to NHS Resolution.

Rights of appeal

1.3 Where the Commissioner has determined an application under paragraph 26 of Schedule 4 of the Regulations and has granted it in part only or has taken an action that has the effect of refusing it, paragraph 26(9) provides a right of appeal to the Secretary of State for Health and Social Care ("the Secretary of State").

1.4 The Secretary of State has directed NHS Resolution to determine such appeals. As an authorised officer of NHS Resolution, I have considered the appeal and have determined it, in accordance with my delegated powers.

Opening hours

1.5 A pharmacy's opening hours may be categorised as:

1.5.1 "core opening hours" (at the hours during which the pharmacy must be open by virtue of paragraph 23(1) of Schedule 4 of the Regulations), which may incorporate a direction of the Commissioner requiring fewer or greater than 40 hours and at set times and days; or

1.5.2 “supplementary” opening hours (other hours during which the pharmacy premises are open which are in addition to the core hours), pursuant to paragraph 23(3) of Schedule 4 of the Regulations.

Alteration of core opening hours

1.6 In accordance with paragraphs 1(7)(c) and 1(7)(d) of Schedule 2 of the Regulations, the pharmacy must provide, as part of an application for entry in the pharmaceutical list:

1.6.1 the proposed core opening hours in respect of the premises; and

1.6.2 the total proposed opening hours for the premises (having regard to both the proposed core opening hours and any supplementary opening hours).

1.7 The Commissioner maintains pharmaceutical lists that include the days on which and times at which, at those premises, the listed person is to provide those services during the core opening hours and any supplementary opening hours of the premises.

1.8 The days on which or times at which a pharmacy is obliged to provide pharmaceutical services at the premises may only be altered by the pharmacy on application under paragraph 26(1) of Schedule 4 of the Regulations, so long as the effect of that application is to reduce the total number of hours for which a pharmacy is obliged to provide, or keep the total number of hours the same.

Alteration of supplementary opening hours

1.9 Supplementary opening hours may be altered by the pharmacy giving notice to the Commissioner, in accordance with paragraph 23(6)(a) of Schedule 4 of the Regulations, without the need to make an application to the Commissioner.

1.10 There is no specific right of appeal to NHS Resolution in respect of notices given under paragraph 23(6)(a).

2. Application

In this case, the Applicant provided the following information in its application form and supporting information dated 19 September 2024:

2.1 “This is an application to permanently change core opening hours.

2.2 Current opening hours for these premises:

Monday	09:00-11:00 15:00-19:30
Tuesday	09:00-11:00 15:30-19:30
Wednesday	09:00-11:00 15:30-19:30
Thursday	09:00-11:00 15:30-19:30
Friday	09:00-13:00 13:00-19:30
Saturday	08:00-13:00
Sunday	Closed

2.3 Proposed core opening hours for these premises:

Monday	09:00-11:00 15:00-18:30
Tuesday	09:00-11:00 15:00-18:30
Wednesday	09:00-11:00 15:00-18:30
Thursday	09:00-11:00 15:00-18:30
Friday	09:00-13:00 14:00-18:30
Saturday	09:00-13:00
Sunday	Closed

2.4 If this is a permanent change, please state below the date from which you would like the change to take effect:

2.5 “Therefore, the overall opening hours with effect from 18 November 2024”.

2.6 “Pharmacies in England have been reducing their opening hours and closing down due to a number of factors, including funding cuts, workforce shortages, and rising costs:

2.7 Opening at times of the day when income does not cover opening costs used to be cross-funded by more profitable times of the day,

2.8 Pharmacies are closing at record rates due to a number of factors, including:

2.8.1 Funding: Real terms funding has decreased by 40% over the last decade, and the government and NHS are financially squeezing the sector.

2.8.2 Rising costs: Pharmacies are facing rising costs and high levels of inflation.

2.8.3 Workforce shortages: There is a severe shortage of pharmacists, primarily locums.

2.8.4 Burnout: Pharmacists are experiencing high levels of burnout due to inadequate staffing and a lack of work-life balance.

2.8.5 Competition: Pharmacies are facing competition from online pharmacies.

2.8.6 Supply chain disruptions: Pharmacies are experiencing supply chain disruptions.

2.8.7 Technological integration: Pharmacies are facing challenges with technological integration.

2.8.8 Regulatory compliance: Pharmacies are facing challenges with regulatory compliance.

2.8.9 Rising costs

2.8.10 The rising cost of medicines and living has impacted profitability.

2.8.11 Staff shortages

2.8.12 A lack of permanent staff and short notice staff sickness are common reasons for temporary closures.

2.8.13 Patient demand

2.8.14 There is an increasing demand for help with symptoms, minor conditions, and long-term conditions.

2.8.15 Supply chain and distribution

2.8.16 There are shortages of shipping containers and delays in authorization by the Medicines and Healthcare products Regulatory Agency (MHRA).

2.8.17 The increase in pharmacy closures in England is concerning. People tell us what an essential source pharmacy are for advice, diagnosis, and getting minor health issues treated. They also help in reducing the pressure on GPs.

2.8.18 "When a pharmacy closes, it impacts communities, especially older people who are the most regular users and those who don't have the means to travel to a pharmacy that is further away.

2.8.19 A toxic mix of funding, workforce, and workload pressures are restricting **pharmacies** from delivering what the Government wants them to deliver It's been caused by a combination of **government funding cuts, rising rents and costs, staff shortages and supply problems**, as well as increased workload.

2.8.20 The vast majority of pharmacies are now facing staffing shortages. 86% of the pharmacy workforce is at risk of burnout.

2.8.21 The Surgery opening hours are between 8am and 6.30pm, and one Saturday morning every six weeks.

2.8.22 Not on a High Street, so no passing footfall."

3. The Decision

In a letter to the Applicant dated 20 November 2024 the Commissioner decided to refuse the application. The Commissioner stated:

3.1 "The Pharmaceutical Services Regulations Committee (hereafter referred to as "the Committee") considers all pharmaceutical services applications on behalf of NHS Hertfordshire & West Essex ICB on behalf of all six ICBs in the East of England region, in accordance with the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 as amended (hereafter referred to as "the Regulations").

3.2 The Committee considered this application under paragraph 24 and 26, Part 3, Schedule 4, of the Regulations.

3.3 The Committee first considered Regulation 65 – Core opening hours conditions.

3.4 **Is there a direction in place in respect of the pharmacy premises?**

3.5 The Committee noted that no direction under Regulation 65 was in existence.

3.6 The Committee moved on to consider paragraph 26(1) of Schedule 4 – Determination of pharmacy premises core opening hours instigated by the NHS pharmacist.

3.7 **Is the applicant seeking to keep the total number of core opening hours of the pharmacy premises the same, but to change when they are?**

3.8 The Committee agreed that the applicant was seeking to reduce the total number of core opening hours from 40 to 34.5.

3.9 The Committee next considered Paragraph 24(1), Schedule 4 – Matters to be considered when issuing directions in respect of pharmacy premises core opening hours.

3.10 **Paragraph 24(1)(a) - are the proposed core opening hours such as to maintain as necessary the existing level of service provision for the people in the area of the pharmacy, or other likely users of the pharmacy premises?**

3.11 **What is the existing level of service provision?**

3.12 The applicant's current and proposed core and supplementary opening hours of the pharmacy premises were as follows.

3.13 Current core and supplementary opening hours:

	S1		C1		S2		C2		S3		C3	
Monday	08:00	09:00	09:00	11:00	11:00	13:00			14:00	15:00	15:00	19:30
Tuesday	08:00	09:00	09:00	11:00	11:00	13:00			14:00	15:30	15:30	19:30
Wednesday	08:00	09:00	09:00	11:00	11:00	13:00			14:00	15:30	15:30	19:30
Thursday	08:00	09:00	09:00	11:00	11:00	13:00			14:00	15:30	15:30	19:30
Friday	08:00	09:00	09:00	13:00							13:00	19:30
Saturday			08:00	13:00								
Sunday												

3.14 Proposed core and supplementary opening hours:

	S1		C1		S2		C2		S3		C3	
Monday	08:00	09:00	09:00	11:00	11:00	13:00			14:00	15:00	15:00	18:30
Tuesday	08:00	09:00	09:00	11:00	11:00	13:00			14:00	15:00	15:00	18:30
Wednesday	08:00	09:00	09:00	11:00	11:00	13:00			14:00	15:00	15:00	18:30
Thursday	08:00	09:00	09:00	11:00	11:00	13:00			14:00	15:00	15:00	18:30
Friday	08:00	09:00	09:00	13:00							14:00	18:30

Saturday			09:00	13:00								
Sunday												

3.15 **Advanced Services in the pharmacy:**

3.15.1 Contraceptive Service

3.15.2 Pharmacy First

3.16 The applicant proposed to change the total number of core hours from 40 to 34.5.

3.17 The proposed core hours would be reduced Monday – Thursday afternoon (from 19:30 to 18:30), Friday afternoon (from 13:00 to 14:00, 19:30 to 18:30) and Saturday morning (from 8:00 to 9:00) and reconfigured Tuesday - Thursday afternoon (15:30 to 15:00).

3.18 **Is it necessary to maintain the existing level of service provision?**

3.19 The Committee noted the applicant provided the following information:

3.20 [see paragraphs 2.6 – 2.8.22 above]

3.21 The Committee agreed, as there was no information submitted that evidenced pharmaceutical services were not utilised during the times that the applicant proposed to remove the core hour provision, it concluded that it was necessary to maintain the existing level of service provision.

3.22 **Will the applicant's proposed core opening hours maintain the existing level of service provision at the pharmacy premises?**

3.23 The Committee agreed they could not be satisfied the applicant's proposed core opening hours would maintain the existing level of service provision at the pharmacy premises, as there was no information submitted that evidenced this.

3.24 **Would the existing level of service provision be maintained by virtue of the existence of other pharmacies in the area at times when the applicant is proposing to close?**

3.25 The Committee noted the applicant had not provided information regarding the existence of other pharmacies in the area at times when the applicant was proposing to close.

3.26 The Committee noted the applicant had not provided any information regarding the provision of advanced and enhanced services by the nearest pharmacies.

3.27 Taking into account that the applicant had not provided any evidence regarding the provision of pharmaceutical services during core opening hours by other pharmacies in the area, the Committee could not be satisfied that patients would be able to access the same services from the alternative pharmacies if the application is granted, and therefore assumed that the existing level of service provision could not be maintained by those other pharmacies.

3.28 **Paragraph 24(1)(b) - are the proposed core opening hours such as to maintain a sustainable level of adequate service provision for the people in the area of the**

pharmacy or other likely users of the pharmacy premises, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome?

3.29 As the applicant had not provided any evidence, the Committee agreed that maintaining the existing level of service provision is necessary, therefore the reference in paragraph 24(1)(b), part 3 of schedule 4 stating "in circumstances where maintaining the existing level of service provision is either unnecessary", is not relevant. Consideration was therefore given as to whether or not maintaining the existing level of service provision was not a realistically achievable outcome.

3.30 The Committee noted the applicant's information was not specific to their own pharmacy and only included general statements about sector-wide issues like funding, staffing, and burnout, etc.

3.31 The Committee noted the only statement made by the applicant in relation to their own pharmacy was that *"it is not on the high street so no passing footfall."*

3.32 The Committee agreed it could not be satisfied the proposed core opening hours would maintain a sustainable level of adequate service provision for the people in the area of the pharmacy or other likely users of the pharmacy premises, in circumstances where maintaining the existing level of service provision is not a realistically achievable outcome.

3.33 **Decision**

3.34 The Committee refused the application.

3.35 Taking all the above information into account, the Committee were not satisfied that the proposed core hours of opening:

3.35.1 would maintain as necessary the existing level of service provision for the people in the area of the applicant's pharmacy premises, or other likely users of the pharmacy premises.

3.35.2 would maintain a sustainable level of adequate service provision for the people in the area of the applicant's pharmacy premises, or other likely users of the pharmacy premises, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome.

3.36 The rationale for the Committee's decision was as follows:

3.36.1 The applicant did not provide information/evidence to support that other local pharmacies would be able to maintain the existing level of service provision.

3.36.2 The applicant did not provide details around who is using the service and what services they required.

3.36.3 The applicant did not provide information specifically relating to their own pharmacy and did not fully demonstrate that maintaining the existing level of service provision is not a realistically achievable outcome.

3.37 The Committee agreed that Waterton Pharmacy Ltd has the right of appeal.

3.38 You have the right of appeal to the Secretary of State against our decision. Should you choose to appeal, then you should send in writing a concise and reasoned statement

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

3.39 NHS Resolution,
8th Floor,
10 South Colonnade,
Canary Wharf,
London,
E14 4PU."

4. **The Appeal**

In a letter to NHS Resolution dated 11 December 2024 the Applicant appealed against the Commissioner's decision. The grounds of appeal are:

4.1 "I appreciate you having taken the time to look into my application for changes to the core opening hours at my pharmacy: the application was made on 19 September 2024 and unfortunately you have rejected the application.

4.2 Reduction of hours

4.3 My proposal was to reduce the core opening hours of the pharmacy by 5.5 hours a week but still giving my clients **51.5 hours a week** access to my services at the pharmacy. The panel's decision to reject my application leaves me no option but drastically to reduce the opening hours at the pharmacy to **40 core hours a week** only. Accordingly, unless the panel reverses its decision, I will stop providing my supplementary hours with immediate effect (as I have given the panel more than 8 weeks to make its decision). Please be aware that the 5.5 hours a week reduction is an entirely reasonable request in the context of this pharmacy and if granted would likely have saved my business and guaranteed the continuation of this pharmacy for another 2 years. The position is now however extremely uncertain.

4.4 Context

4.5 A perfect storm of funding, workforce, and workload pressures are restricting pharmacies from delivering what the Government wants them to deliver. This is the inevitable result following a toxic combination of government funding cuts, rising rents, rising costs across the board, increased costs of staff, staff shortages and supply problems in general, as well as an increased workload.

4.6 Respectfully, the panel is sitting in offices looking at legislation and regulations that are clearly outdated and need reviewing in the present changed economic circumstances, and the panel is out of touch with the real situation on the ground and has no appreciation of the stress and fatigue that pharmacy owners and their staff are now and increasingly experiencing. The vast majority of pharmacies in the UK are now facing staffing shortages and insurmountable costs. 86% of the pharmacy workforce is at risk of 'burnout'. At least 75% of pharmacies are experiencing severe financial stress. Pharmacies are closing.

4.7 Unique position/status of this pharmacy

4.8 The next door Surgery which we serve has its opening hours between 8am and 6.30pm on weekdays, and otherwise is only open on one Saturday morning every six weeks. We are not on a High Street or on a pedestrian thoroughfare, we are set back and part of a medical complex (served by its own car park), and the pharmacy is adjacent to the Surgery whose clients we service, so there is no passing or casual footfall. According

to my accountant, these are the calculations of cost savings per year which we could achieve were our application re-considered and approved by the panel:

4.8.1 Locum costs: £13,260.00 (This is based on £30 per hour for 1 locum)

4.8.2 Wages costs: £22,704.60

4.8.3 Employer NI: £1,711.94

4.8.4 Pension costs: £449.68

4.8.5 Total: £38,126.21

4.9 Survey of patients and petition

4.10 I conducted a survey of my patients, and they are all supportive of the proposed reduction in hours (by 5.5 hours a week) necessary to save my pharmacy from imminent financial failure and closure. Many of my patients signed a petition to save our pharmacy which I can forward to you if necessary, accumulating over 200 signatures. When I applied to reduce the opening core hours at my pharmacy, I wanted to provide and maintain consistent opening hours for the patients (the rationale for the application). With the panel's decision to reject my application, I have no alternative to cut back to core hours alone in an effort to try to save my business.

4.11 [Following an email dated 12 December 2024 to the Applicant, a copy of the petition was provided [appendix B] but no survey].

4.12 Local services provision (alternative pharmacies)

4.13 I understand that the panel refused the application on the basis inter alia that the applicant did not provide information/evidence to support that other local pharmacies would be able to maintain the existing level of service provision. In this respect, please note that there are pharmacies in Woodbridge at Boots (number 1) and one other in Woodbridge (number 2). Please note also there is an edge of town pharmacy (Tesco at Martlesham) which opens until 8 pm Monday until Saturday and is only 2 miles away according to the NHS website.

4.14 I now urge you to reconsider my application and to reverse your decision. Otherwise this pharmacy will likely be gone in 2025."

5. **Representations**

In a letter to NHS Resolution dated 10 January 2025 the Commissioner stated:

5.1 "Please note that from the 01 April 2023, community pharmacy contracting and commissioning has been delegated to Integrated Care Boards (ICBs). Hertfordshire and West Essex (HWE) ICB are hosting the function on behalf of the six East of England ICBs.

5.2 Please find below information we wish to be considered in relation to Waterton Pharmacy Ltd T/A Waterton Pharmacy.

5.3 Having reviewed the grounds of the appeal and the information provided by Fabio Carbiner on behalf of Waterton Pharmacy Ltd (the Appellant), we remain of the opinion that this application should be refused.

5.4 The grounds for the appeal appear to be:

5.4.1 The Committee is looking at legislation and regulations that are outdated and need reviewing in the present changed economic circumstances.

5.4.2 The Committee is out of touch with the real situation on the ground and has no appreciation of the stress and fatigue that pharmacy owners and their staff are now and increasingly experiencing.

5.5 The ICB notes that regardless of when the legislation was written, the Appellant gave an undertaking to comply with all the obligations that are under the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended (the Regulations). The Appellant must comply with the current regulations. Similarly, the ICB does appreciate the current challenges facing community pharmacy and acknowledges the fatigue business owners and their staff face, however, the ICB must make decisions in line with the regulations in place.

5.6 Having reviewed the notice of appeal, HWE ICB would like to make the following representations on behalf of Suffolk & North East Essex ICB.

5.7 As the Appellant submitted an application to make a permanent change to core hours, the Pharmaceutical Services Regulations Committee (PSRC) considered this application under paragraphs 24 and 26, Schedule 4 of the Regulations. [paragraph 24(1) and 26(1) quoted in full].

5.8 The current and proposed core hours are set out in Appendix 1 [appendix B]. The overall effect of the application is that the Appellant is seeking to reduce the total number of core hours from 40 to 34.5.

5.9 NHS England's template application form asks that the applicant provide such information so as to demonstrate that the proposed core opening hours will either:

5.9.1 maintain as necessary the existing level of service provision for people in the area of the pharmacy, or other likely users of the pharmacy premises; or

5.9.2 maintain a sustainable level of adequate service provision for the people in the area of the pharmacy, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome.

5.10 In response, the Appellant stated the following: [2.6 to 2.8.22 above].

5.11 On appeal the Appellant has expanded upon this by stating that local pharmacies would be able to maintain the existing level of service provision and goes on to state the following:

5.12 *'In this respect, please note that there are pharmacies in Woodbridge at Boots (number 1) and one other in Woodbridge (number 2). Please note also there is an edge of town pharmacy (Tesco at Martlesham) which opens until 8 pm Monday until Saturday and is only 2 miles away according to the NHS website.' (Page 2, appeal letter).*

5.13 The PSRC has reviewed this additional information and maintains that the decision to refuse the application was correct.

5.14 **Paragraph 24(1)(a), Schedule 4**

5.15 It is first necessary to identify the existing level of service provision for people in the area of Waterton Pharmacy or other likely users of the pharmacy.

5.16 The Appellant is proposing to reduce the total number of core opening hours (34.5) provided Monday to Saturday and also proposed some changes to the supplementary hours although these are yet to be notified. The existing level of service provision would therefore not be maintained because the proposed change will see the pharmacy close one hour earlier at 18:30 Monday to Friday.

5.17 It is therefore necessary to identify whether there are other providers of pharmaceutical services in the area, when they are open and whether when considered, they would maintain the existing level of service provision.

5.18 When assessing the existing level of service provision by these other pharmacies, the PSRC has only considered core opening hours Monday to Friday.

5.19 There are 2 pharmacies within a 1.1 mile radius* that provide pharmaceutical services. Woodbridge Pharmacy, 11 Thoroughfare, Woodbridge is open until 17:30 Monday to Saturday and Boots, 58 Thoroughfare, Woodbridge is open until 17:30 Monday to Friday and 15:30 on Saturday.

5.20 The Appellant notes that there is *'an edge of town pharmacy (Tesco at Martlesham) which open until 8pm Monday until Saturday and is only 2 miles away according to the NHS website*'. It is to note that Tesco Pharmacy in Martlesham is 3.2 miles* from Waterton Pharmacy and has core hours until 17:00 Monday to Saturday.

5.21 The opening hours of the nearest pharmacies are set out in **Appendix 2** [appendix C].

5.22 On appeal the Appellant states that the pharmacy *'conducted a survey of my patients, and they are all supportive of the proposed reduction in hours (by 5.5 hours a week) necessary to save my pharmacy from imminent financial failure and closure. Many of my patients signed a petition to save our pharmacy which I can forward to you if necessary, accumulating over 200 signatures. When I applied to reduce the opening core hours at my pharmacy, I wanted to provide and maintain consistent opening hours for the patients (the rationale for the application). With the panel's decision to reject my application, I have no alternative to cut back to core hours alone in an effort to try to save my business.* (Page 2, appeal letter)

5.23 PSRC noted the additional information provided with regards to a survey being carried out however no evidence has been provided to suggest the survey was extended to ask people whether they would be or could access pharmaceutical services from an alternative pharmacy should the pharmacy close one hour earlier.

5.24 PSRC noted the Appellant's comment regarding PSRCs decision to 'reject' the application leaving them '*no alternative to cut back to core hours alone in an effort to try to save my business.*' (Page 2, appeal letter)

5.25 It is noted that the current opening hours of Waterton Pharmacy are 08:00 - 13:00, 14:00 - 19:30 Monday to Thursday, 08:00 – 19:30 Friday and 08:00 13:00 Saturday which are made up of 40 core hours and 18.5 supplementary hours. Please refer to Appendix 1 for a breakdown of core and supplementary hours.

5.26 Waterton Pharmacy can of course reduce their total opening hours by submitting the relevant notification to remove or reduce their supplementary hours only, by giving the required 5 weeks' notice period to the ICB, prior to implementing the change, in accordance with paragraph 23(6)(a) of Schedule 4 of the Regulations.

5.27 It is acknowledged that the provision of pharmaceutical services is more than the dispensing of prescriptions or the provision of over-the-counter sales. It encompasses a range of essential services in line with the Terms of Service, advice and advanced

services. The Appellant has provided no evidence as to what services are provided by other pharmacies at the times it is seeking to close. It is therefore not possible for the PSRC to determine whether or not the existing level of service provision would be maintained by other providers for people in the area or other likely users of Waterton Pharmacy. In the absence of no evidence, the conclusion is that the existing level of service provision would not be maintained.

5.28 On appeal the Appellant refers to the 'unique position/status of this pharmacy' and states the following:

5.29 *'The next door Surgery which we serve has its opening hours between 8am and 6.30pm on weekdays, and otherwise is only open on one Saturday morning every six weeks. We are not on a High Street or on a pedestrian thoroughfare, we are set back and part of a medical complex (served by its own car park), and the pharmacy is adjacent to the Surgery whose clients we service, so there is no passing or casual footfall'* (Page 1-2, appeal letter)

5.30 PSRC noted that as the GP surgery closes at 18.30 it is particularly important to maintain cover until 19:30 to ensure the public can continue to access health care services, including those that extend beyond an acute prescription i.e advanced services, advice, signposting.

5.31 It was also recognised that for those patients attending one of the last GP appointments in the evening, they may require access to Waterton Pharmacy post 18:30 to collect acute medication.

5.32 PSRC are aware that Waterton Pharmacy are providing the Contraception and Pharmacy First Advanced Services and whilst the pharmacy *'are not on a High Street or on a pedestrian thoroughfare*' patients of the GP surgery and indeed other people who may wish to use the pharmacy, may need to access pharmaceutical services until 19:30 which covers a period when the GP surgery is closed.

5.33 Consequently, it is the view of the PSRC that the proposed core opening hours do not satisfy paragraph 24(1)(a), Schedule 4.

5.34 **Paragraph 24(1)(b), Schedule 4**

5.35 As the PSRC remains of the opinion that:

5.35.1 it is necessary to maintain the existing level of service provision,

5.35.2 the Appellant's proposed opening hours would not achieve that, and

5.35.3 there is no evidence that other providers of pharmaceutical services would maintain the existing level of service provision,

5.36 The PSRC now considers paragraph 24(1)(b), Schedule 4 with regard to the Appellant's representations.

5.37 The Appellant has not provided any evidence to demonstrate that the current users of Waterton Pharmacy who can access services from 18:30 to 19:30 Monday to Friday would not be affected should the change in hours be granted. In light of this, it has to be considered that the service is necessary.

5.38 As no evidence has been provided to demonstrate where patients who usually attend Waterton Pharmacy after 18:30 Monday to Friday would travel to, the travel options available and the services they could access on arrival, it cannot be determined that

service provision is maintained, and it has to be considered that the opening hours currently provided by Waterton Pharmacy are necessary.

5.39 The PSRC is not persuaded by the Appellant's representations that there are any circumstances where maintaining a sustainable level of adequate service provision for people in the area or other likely users of the pharmacy is either unnecessary or not a realistically achievable outcome. The Appellant in their application provided information that was not specific to their own pharmacy and only included general statements about sector-wide issues including funding, staffing, and burnout.

5.40 On appeal the Appellant states:

5.41 *'According to my accountant, these are the calculations of cost savings per year which we could achieve were our application re-considered and approved by the panel:*

5.41.1 *Locum costs: £13,260.00 (This is based on £30 per hour for 1 locum)*

5.41.2 *Wages costs: £22,704.60*

5.41.3 *Employer NI: £1,711.94*

5.41.4 *Pension costs: £449.68*

5.41.5 *Total: £38,126.21'*

5.42 Whilst PSRC can empathise with the challenges and cost pressures facing community pharmacy, it is unclear if Waterton Pharmacy have explored any other ways to make cost savings. For example, the contractor could give the required notice and reduce some of the 18.5 supplementary hours.

5.43 It is also noted that there have been no temporary suspensions of service reported for Waterton Pharmacy, so it does not appear that the pharmacy has been unable to open in the evening (or at any time) or secure staff each week. It can be concluded therefore that it is realistically achievable for Waterton Pharmacy to continue with their current core hours.

5.44 Consequently, the PSRC is of the view that the proposed core opening hours do not satisfy paragraph 24(1)(b), Schedule 4 and remains of the opinion that the application should be refused.

5.45 **Procedural Issues**

5.46 The Appellant makes note in their appeal that 'unless the panel reverses it's decision, I will stop providing my supplementary hours with immediate effect (as I have given the panel more than 8 weeks to make its decision). (Page 1, appeal letter).

5.47 The Appellant is reminded of the Regulations and the requirement to submit the relevant notification to reduce or remove their supplementary hours by giving the required 5 weeks' notice period to the ICB, prior to implementing the change, in accordance with paragraph 23(6)(a) of Schedule 4 of the Regulations.

5.48 **Conclusion**

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

6. **Observations**

In a letter to NHS Resolution dated 30 January 2025 the Applicant stated:

6.1 “I have set out clear reasons which support the reduction in core hours, specifically noting the other pharmacies in the local area, the reduction in clients after 18.00 when the GP surgery closes and the financial, mental and physical toll that it is taking on myself and my staff. Please see below my final observations in respect of the points already raised.

6.2 **Paragraph 24(1)(a), Schedule 4: existing level of service**

6.3 Waterton Pharmacy are not providing the Pharmacy First service, flu or Covid vaccinations or any other advance services due to lack of manpower and financial difficulties so that is an incorrect statement. The other pharmacies that I have referred to, provide, equivalent services (and in some cases additional services), and therefore the existing level of service can be maintained.

6.4 We are in an area of predominantly elderly people, who access our pharmacy, during the daytime, and it is extremely rare that my patients would be requiring Pharmacy First Advanced services and Contraception services in the evening.

6.5 In respect of the survey my patients would not have supported the reduction in hours if they considered it to be detrimental to themselves there was therefore no need to specifically question if they would or could access services from an alternative pharmacy if it was a concern, they would not have been supportive.

6.6 The Pharmacy is located in Framfield Medical Centre. It is not a separate building. The final clinic at the GP surgery is at 16.45, we see an influx of patients from this time up to approximately 17.30. After this clinic finishes the surgery closes. We have a roller shutter between our premises and the surgery premises which we close at 18.00. We have looked back at our till transactions. for December and January between 18.30-19.30. The total figure of transactions for both months is 13 and the number of clients is approximately 10-13 once the roller shutter comes down at 18.00. I would imagine people may assume that the pharmacy is closed after this time. As you will appreciate this is a very small number, over a 2-month period and supports what I have already set out in my appeal.

6.7 I am trying to, avoid reducing to my core hours only, so that there is not a negative impact.

6.8 Those that cannot access our pharmacy themselves we deliver to.

6.9 The surgery is only open one Saturday in every six, the clinic is run between 9 and 11-30.

6.10 **Paragraph 24(1),(b), Schedule 4**

6.11 We are not on the High Street or in a residential area, the vast majority of our patients arrive either by car or taxi - if needed my patients could make the short journey to the other pharmacies as I have referenced - there is not a heavy reliance on public transport.

6.12 I provided sector wide issues covering funding, staffing and burnout as these are all relevant to my pharma.cy. In addition, I provided the cost saving calculations provided by my accountant which are substantial.

6.13 *"It is also noted that there have been no temporary suspensions of service reported for Waterton Pharmacy, so it does not appear that the pharmacy has been unable to open*

in the evening (or at any time) or secure staff each week. It can be concluded therefore that it is realistically achievable for Waterton Pharmacy to continue with their current core hours."

6.14 This is an incorrect assumption. The reason that it has been achievable is due to the hard work and dedication of my team - in the long term this is not 'realistically achievable', and it will come at a cost both financially, mentally and physically. I note that you acknowledge the 'fatigue business owners and their staff face' however this appears to have been disregarded in your decision making - instead, placing all the emphasis on the regulations. I consider that assumption to be very damaging, and it appears to encourage a culture of closing on a temporary basis in order to prove that my request is valid - this in itself does not take into account the need for the continuity of the services we provide to our clients.

6.15 I would like to add, that I myself, have been suffering with a [redacted by NHSR] and I should have taken time off to recover but without me here, the pharmacy cannot open and this would have a detrimental effect on our patients, you should note that my staff do not take time off with minor illnesses and they have all worked on so as not to delay medication being dispensed and delivered to our patients.

6.16 Myself and my team are frequently on site from 7.45 to 19.45. These are extremely long hours. Without the reduction in core hours, it will not be possible to sustain this level - the physical and mental health of myself and my staff will suffer which will cause a greater detriment to the local people who rely upon the service we provide. If my application should be refused I will be giving my formal notice for reduction in my supplementary hours, four weeks from the date of this letter."

7. Consideration

7.1 I note the following:

7.1.1 In its appeal, the Applicant states that *"My proposal was to reduce the core opening hours of the pharmacy by 5.5 hours a week but still giving my clients 51.5 hours a week access to my services at the pharmacy. The panel's decision to reject my application leaves me no option but drastically to reduce the opening hours at the pharmacy to 40 core hours a week only".* However, I note that the Commissioner has confirmed that the Applicant's core hours total 40 hours a week, which has not been disputed by the Applicant. I have therefore proceeded on this basis.

7.1.2 I further note that the Applicant states in its observations that *"I am trying to, avoid reducing to my core hours only, so that there is not a negative impact".* Given that the Applicant has made an application to amend its core opening hours, I have proceeded on this basis and note that the Applicant proposes to reduce its 40 core opening hours pursuant to paragraph 26 of Schedule 4.

7.2 The Applicant has proposed to:

7.2.1 Open at 9am instead of 8am on a Saturday.

7.2.2 Open at 3pm instead of 3.30pm Tuesday to Thursday.

7.2.3 Open at 2pm instead of 1pm on a Friday.

7.2.4 Close at 6.30pm instead of 7.30pm Monday to Friday.

7.3 The Regulations, which came into force on 1 April 2013, have been amended a number of times. Certain amendments, relating to pharmacy premises opening hours, came into force with effect from 25 May 2023.

7.4 Paragraph 26(1) states:

"26.— (1) An NHS pharmacist (P) may apply to NHS England for it to change the days on which or times at which P is obliged to provide pharmaceutical services during core opening hours at P's pharmacy premises in a way that—

(a) reduces the total number of hours for which P is obliged to provide pharmaceutical services at those premises each week ...; or

(b) keeps that total number of hours the same."

7.5 I have first considered paragraph 26(2) of Schedule 4 of the Regulations, which reads as follows:

"Except where sub-paragraph (2A) applies, where P makes an application under sub-paragraph (1), as part of that application P must provide NHS England with such information as NHS England may reasonably request in respect of the matters that NHS England must seek to ensure pursuant to paragraph 24(1).

7.6 Paragraph 24(1) reads as follows:

"24 (1) Subject to paragraph 26(2A), where NHS England issues a direction for setting any days or times for opening hours under this Part, or determines them without issuing a direction, it must in doing so seek to ensure that the days and times at which pharmacy premises are open for the provision of pharmaceutical services in the area in which the premises that are the subject of the direction are located are such as –

(a) to maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises; or

(b) to maintain a sustainable level of adequate service provision for the people in that area or other likely users of the pharmacy premises, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome.

7.7 Paragraph 24(2) states:

(2) In considering the matters mentioned in sub-paragraph (1), NHS England –

(a) must treat any local pharmaceutical services being provided in its area as if they were pharmaceutical services being so provided, and

(b) may have regard to any pharmaceutical services that are being provided in its area during supplementary opening hours.

7.8 I will start by considering the application of paragraph 24(1)(a) and whether the proposed hours are such as to maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises. I will then consider the application of 24(1)(b) if that is required.

7.9 To properly assess the application against paragraph 24(1)(a), I need to determine the existing level of service provision. I then need to consider whether it is necessary to maintain the existing level of service provision. If it is necessary to maintain the existing

level of service provision, I need to consider whether, despite the proposed change of hours, the existing level of service provision to people in the area or other likely users would be maintained, e.g. by nearby pharmacies being open and providing the same level of service provision.

7.10 If I consider it unnecessary to maintain the existing level of service provision or that it is necessary to maintain the existing level of service provision but doing so is not a realistically achievable outcome, then I need to consider paragraph 24(1)(b) and determine whether the proposed change of hours are such that a sustainable level of adequate service provision would be maintained.

7.11 I therefore need to be provided with sufficient information to understand a range of matters, starting with the existing level of service provision. The references to days and times in paragraph 24(1) leads me to consider that the reference to "level" of service provision in paragraph 24(1)(a) is mainly focused on the days and times services are provided. I would point out that "level" of service provision could also refer to other characteristics of the service, such as types and range of services provided, geographical access to services provided, other aspects of physical access aside from location, and the quality of services provided.

7.12 The existing level of service provision has been outlined by the Applicant, in its own core hours provision, and by an indication of the hours that pharmacies in the local area are open, albeit limited in detail.

7.13 I have next considered whether it is necessary to maintain the existing level of service provision. As the Applicant is looking to reduce the number of hours each week that services are provided, then from a pure "number of hours of service provision each week" perspective, the existing level of service provision is not maintained.

7.14 Therefore I consider it appropriate to determine if it is necessary to maintain the existing level of service provision and then, if deemed necessary, consider if the opening hours of other pharmacies mean that level is maintained.

7.15 To determine whether it is necessary to maintain the existing level of service provision, I have had regard to the comments by the Applicant of those using the pharmacy. If I am satisfied that there is reliable evidence indicating no users of the pharmacy on/at the relevant days/times that the pharmacy wishes to close, this might support an argument that maintaining the existing level of service provision is not necessary.

7.16 I note the Applicant's reference to a survey and that all its patients *"are... supportive of the proposed reduction in hours"* and furthermore that *"In respect of the survey my patients would not have supported the reduction in hours if they considered it to be detrimental to themselves there was therefore no need to specifically question if they would or could access services from an alternative pharmacy if it was a concern, they would not have been supportive."* I consider that this type of information would have been pertinent to the application at the time it was considered by the Commissioner and on appeal. Furthermore, despite an email to the Applicant emphasising the need to provide all information in which it intends to rely on as part of its appeal, a copy of the survey and responses were not provided to me. On the Applicant's inferences from undertaking the survey, without having sight of the survey, I am of the view that these are merely based on a presumption. Notwithstanding this, it is unclear what the specific intention of the survey was and whether it would have supported the Applicant's application. I have considered the petition provided by the Applicant which is titled *"save our pharmacy"* and has over 200 signatures. However it is unclear how this petition regarding a threatened closure is relevant to an application to reduce core opening hours.

7.17 I note the Applicant states that *"The Pharmacy is located in Framfield Medical Centre. It is not a separate building. The final clinic at the GP surgery is at 16.45, we see an influx of patients from this time up to approximately 17.30. After this clinic finishes the surgery closes. We have a roller shutter between our premises and the surgery premises which we close at 18.00. We have looked back at our till transactions. for December and January between 18.30-19.30. The total figure of transactions for both months is 13 and the number of clients is approximately 10-13 once the roller shutter comes ,down at 18.00."*

7.18 From the information provided, it is clear that there are some people using the pharmacy at the times the Applicant wishes to close, albeit low in numbers and therefore I consider it is necessary to maintain the existing level of service provision.

7.19 I now need to consider if, despite the changes to hours, there is maintenance of the existing level of service provision. The Applicant cannot maintain this as it is changing its hours but I note the information from the Applicant with regard to other pharmacies in the area that, namely "Woodbridge at Boots", "one other in Woodbridge" and "Tesco at Martlesham". I understand from the Commissioner's representations that these are Woodbridge Pharmacy, Boots and Tesco Pharmacy.

7.20 If I consider that the characteristics of other pharmacies, e.g. where they are located, their access, the services provided and the times they are open, means that the level of service provision is maintained for people in the local area or other likely users of the pharmacy, then I am able to grant the application under paragraph 24(1)(a).

7.21 The Applicant has provided limited information regarding access to those pharmacies as well as their opening hours. The Applicant has not provided any information on how patients might travel but I consider it likely that there will be a mix of people who drive to the Applicant's pharmacy, those who use public transport and those who walk.

7.22 It is worth noting that characteristics of the persons using the pharmacy might be relevant here as well as from where they start their journey to the pharmacy. I do not consider that every single individual need should be considered at length in this regard but it would be helpful to have this information to be certain that the existing level of service provision would be maintained via local pharmacies.

7.23 I note the Applicant's comment that *"When a pharmacy closes, it impacts communities, especially older people who are the most regular users and those who don't have the means to travel to a pharmacy that is further away."* Whilst I appreciate that the comment was made in the context of pharmacy closures and this is an application to reduce core opening hours, both will result in a loss of service so it is clear that the Applicant understands the impact this can have. However despite this, the Applicant has not provided any information on the routes involved to walk to these pharmacies, for example, whether there is sufficient street lighting, dropped kerbs and pedestrian crossings where necessary, nor the length of time it will take. No information has been provided in relation to car ownership, parking facilities or the routes involved for those with access to a car and no information has been provided on the provision of public transport in the area, which patients may use when travelling to the other pharmacies.

7.24 Furthermore, the Applicant contends that *"the vast majority of our patients arrive either by car or taxi - if needed my patients could make the short journey to the other pharmacies as I have referenced - there is not a heavy reliance on public transport"*. However it is unclear how the Applicant has reached this conclusion as no evidence has been provided to support this finding.

7.25 I note in its representations, the Commissioner has provided information in relation to the distances to the nearest pharmacies and the core opening hours, which has not

been disputed. From the Applicant's pharmacy, Boots is 1 mile away, Woodbridge Pharmacy is 1.1 miles away and Tesco Pharmacy is 3.2 miles away. I note the considerable difference in relation to the distance to Tesco Pharmacy provided by the Applicant and that provided by the Commissioner. I note that no explanation has been provided to explain why this is. Notwithstanding the ambiguity, it is unlikely that patients would access this pharmacy on foot. Furthermore, I note from the Commissioner's representations that the nearest pharmacies to the Applicant's pharmacy do not have core opening hours at the times the Applicant is wishing to close. The closing time of 8pm Monday to Saturday at Tesco Pharmacy as outlined by the Applicant, is supplementary, this pharmacy has core hours until 5pm as evidenced by the Commissioner which has not been disputed.

7.26 From the Commissioner's decision letter and representations, I note that the Applicant provides the Pharmacy First and the Pharmacy Contraception Service however I note in response, the Applicant states that *"Waterton Pharmacy are not providing the Pharmacy First service, flu or Covid vaccinations or any other advance services due to lack of manpower and financial difficulties so that is an incorrect statement. The other pharmacies that I have referred to, provide, equivalent services (and in some cases additional services), and therefore the existing level of service can be maintained…We are in an area of predominantly elderly people, who access our pharmacy, during the daytime, and it is extremely rare that my patients would be requiring Pharmacy First Advanced services and Contraception services in the evening."* These two statements appear to be contradictory and the latter presumptive however despite this, given my findings above in relation to the core opening hours of the nearest pharmacies, it is clear that patients will not be able to access these services from the alternative pharmacies at the times the Applicant is wishing to close.

7.27 Based on the information above, I am therefore struggling to be satisfied that the existing level of service provision would be maintained by virtue of the existence of other local pharmacies.

7.28 I have decided that it is necessary to maintain the current service provision but, due to the cumulative effect of:

7.28.1 limited information regarding the journey to alternative pharmacies whether on foot or by public or private transport;

7.28.2 a lack of information about the services provided at the alternative pharmacies; and

7.28.3 a lack of information about the demand for other essential services at the pharmacy during the hours the Applicant wishes to close.

I am not satisfied that there will be maintenance of the existing level of service provision by virtue of other pharmacies in the area at times the Applicant is wishing to close.

7.29 I therefore next consider if I need to have regard to paragraph 24(1)(b) which states that I must seek to ensure that the changed hours are such as to:

"maintain a sustainable level of adequate service provision for the people in that area or other likely users of the pharmacy premises, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome".

7.30 I have already determined that it is necessary to maintain the existing level of service provision so reference in paragraph 24(1)(b) to "*in circumstances where maintaining the existing level of service provision is … unnecessary"* is not relevant.

7.31 I note that the Applicant has provided some figures from its Accountant at 5.41 to 5.41.5 above which are *"the calculations of cost savings"* if the application is *"re-considered and approved by the panel".* The Applicant also states that *"A perfect storm of funding, workforce, and workload pressures are restricting pharmacies from delivering what the Government wants them to deliver. This is the inevitable result following a toxic combination of government funding cuts, rising rents, rising costs across the board, increased costs of staff, staff shortages and supply problems in general, as well as an increased workload."* I consider that the Applicant is effectively relying on the second part of paragraph 24(1)(b), that maintaining the existing level of service provision is not a realistically achievable outcome. I consider that I need to determine if it is or is not a realistically achievable outcome and if I determine that it is, then I need to consider if the amended hours are such as to maintain a sustainable level of service provision.

7.32 I note in its representations, the Commissioner states that "*"It is also noted that there have been no temporary suspensions of service reported for Waterton Pharmacy, so it does not appear that the pharmacy has been unable to open in the evening (or at any time) or secure staff each week. It can be concluded therefore that it is realistically achievable for Waterton Pharmacy to continue with their current core hours"* and I note in response, the Applicant states that *"This is an incorrect assumption. The reason that it has been achievable is due to the hard work and dedication of my team - in the long term this is not 'realistically achievable', and it will come at a cost both financially, mentally and physically."*

7.33 On the point of whether maintaining the existing level of service provision is not a realistically achievable outcome, I consider that the evidence that has been put forward by the Applicant is limited. To demonstrate that keeping the pharmacy open for its existing core hours is not realistically achievable, the Applicant must be able to demonstrate the correlation between the hours being complained of and the purported issues. Whilst I note the figures provided by the Accountant, no explanation has been given to outline why a reduction in the particular hours proposed by the Applicant would result in those cost savings. Furthermore, I note the reference to locums which indicates to me that the Applicant is using locums and that no explanation as to why locums rather than employees have to be used has been provided. Whilst I sympathise with the pressures the pharmacy industry is facing as a whole and the information provided by the Applicant on this point, the information provided is generic and not specific to the Applicant's own pharmacy.

7.34 The wording of paragraph 24(1)(b) is such that maintaining existing service levels must not be realistically achievable before considering a sustainable level of adequate provision. I consider that this sets a fairly high bar as to the level of difficultly that the Applicant must find themselves in. I do not consider that sufficient evidence has been provided to indicate that the economic and practical viability of the current opening hours has been compromised. I therefore consider that maintaining the existing level of service is a realistically achievable outcome and therefore the Applicant cannot rely on paragraph 24(1)(b).

7.35 I note the Applicant has provided information regarding the opening times of Framfield Medical Centre. However I am mindful that the provision of pharmaceutical services is greater than the dispensing of prescriptions and that maintaining a level of service provision includes all services that the pharmacy may offer, including additional enhanced and advanced services that may be commissioned. I am of the view that I have not been provided with sufficient information to demonstrate how the proposed change of hours would maintain, as necessary, the existing levels of service provision.

7.36 I note the Applicant states in its observations that *"If my application should be refused I will be giving my formal notice for reduction in my supplementary hours, four weeks*

from the date of this letter." I take no view on this and note this is a matter for the Applicant to instigate through the Commissioner.

8. **Determination**

8.1 Based on the information provided, I am not satisfied that the pharmaceutical services provision that would result from the Applicant's proposed hours would maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises. I am satisfied that maintaining the current levels of services is a realistically achievable outcome and therefore the Applicant cannot rely on paragraph 24(1)(b).

8.2 The action taken by the Commissioner to refuse the application is confirmed.

Head of Appeals
NHS Resolution