

27 March 2025

REF: SHA/26344

APPEAL AGAINST BLACK COUNTRY ICB DECISION TO REFUSE AN APPLICATION BY THARRA HEALTH LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT WINDMILL LANE SHOPS & INSIDE CASTLECROFT MEDICAL CENTRE, CASTLECROFT, WV3 8HG

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1 Outcome

- 1.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of the Commissioner and redetermines the application.
- 1.2 The Committee determined that the application should be granted.

A copy of this decision is being sent to:

Healthcare Plus Consulting Ltd on behalf of Tharra Health Ltd
Boots UK Ltd
Community Pharmacy Wolverhampton
Wolverhampton LMC
PCSE on behalf of Black Country ICB

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- 1 A summary of the application, decision, appeal and representations and observations are attached at Annex A.
- 2 **Site Visit**
 - 2.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution (which comprised of Ms L Reid as Chair, Mr P Bratley as Pharmacy Member and Ms C Limm as Lay Member) visited the proposed site on 26 February 2025.
 - 2.2 The proposed site on Windmill Lane is situated amongst a small parade of retail stores including a butchers, 2 beauty salons, a small convenience store and a pet grooming parlour. The vacant premises was being decorated at the time of the visit. Committee members noted it was very quiet at the time of the visit with few pedestrians around. There was ample parking available immediately outside and a large public house car park next door. It is located in the middle of a residential area with large houses and overall appears to be a reasonably affluent area.
 - 2.3 Committee members then drove towards Bridgenorth Road down a steep hill, across the canal. Turning right at the busy cross roads onto Bridgenorth Road, members travelled through another residential area. Arriving at Bridgenorth Road Pharmacy, there is parking at the back of the pharmacy and it is situated on a parade of shops including an estate agents, a fireplace retailers and a launderette. Opposite the shops are a number of flats and is surrounded by mixed housing. A few hundred yards down the road, across a roundabout is a Sainsbury's Local. Bridgenorth Pharmacy was closed for lunch at the time of the visit.
 - 2.4 Committee members then turned right at the roundabout onto Finchfield Hill and drove up the steep hill back towards Castlecroft Road. Driving through more residential areas, members noted another parade of shops on Castlecroft Road, which included a café, hairdressers and Premier Convenience Store a short distance away from the proposed site. Members then turned onto Bhylls Lane and drove past a primary school.
 - 2.5 Arriving onto Trysull Road, Boots Pharmacy is located just off a very busy roundabout. There is a wide paved area outside the pharmacy where cars were parked. There were no designated parking spaces and members noted the difficulties experienced by drivers trying to join the road again. The area surrounding the pharmacy was clearly more deprived with high rise flats to the rear. The pharmacy has a consultation room and a small seating area. The dispensary was located at the back of the store with a reasonably sized dispensing area. It appeared to be well staffed and was reasonably busy at the time of the visit with people asking for advice and collecting medications. Members were surprised at how sparsely stocked the shelves were with many empty spaces.

- 2.6 There were bus stops located in the vicinity. There were also 2 dental practices, takeaways, a public house and a Co-op in the surrounding area. Heading back towards Windmill Lane, members noted the route was flat with no significant inclines and the pavements were usable although there were signs of repair in various places.
- 3 A summary of the above observations was provided to those in attendance. They were invited to comment upon them or indicate if any of the observations appeared to be inaccurate. One of the witnesses said that Wednesday was half day opening for some of the shops in Windmill Lane. The Chair thanked them for their feedback and confirmed that the shops were open during the site visit. Mr Koria asked on what basis the Committee had concluded that the area was affluent because that was not his case. The Chair explained that the references to affluence was on the basis of the observations made by members during the site visit. No other comments were made.
- 4 **Oral Hearing Submissions**
- Mr Koria asked the Committee if an additional witness could give evidence for the oral hearing. The Chair was mindful that Mr Koria had been informed only the day before the hearing that he could not introduce new witness evidence at such a late stage. He had also been reminded of the required timescales for providing evidence. On this basis and the fact that no exceptional circumstances were presented by Mr Koria, the Chair refused the request. Mr Koria was then invited to make his submissions.

Applicant's Submissions

- 4.1 Mr Koria submitted that his application centres around reasonable choice. Residents of Castlecroft have had a pharmacy since 1956. He said that Boots was well utilised, dispensing around 5.5 thousand items per month. He said that community pharmacy is about providing the community with help and advice as well as medications and it must be accessible to residents. He referred to the amenities available in Castlecroft and said that residents use Lidl in Finchfield for their main weekly shop. He said that Finchfield and Castlecroft are serviced by the number 3 bus.
- 4.2 Mr Koria referred the Committee to the 2021 Census data contained within the bundle and highlighted that 19.5% of residents in 019D and 18.5% in 019A are aged over 65, which is higher than the average for England. He also referred to 6% of residents in 019D and 6.3% in 019A have bad or very bad health, which is also higher than the average for England.
- 4.3 He then took the Committee through the accessibility challenges for the 2 nearest pharmacies from Castlecroft. He referred to Boots in Merryhill being 0.9 miles away from Castlecroft and taking about 20 mins to walk there. He submitted that this is inaccessible for those with limited mobility and a 40 minute round trip is not representing reasonable choice or access.
- 4.4 He then referred to the journey from Castlecroft to the pharmacy on Bridgenorth Road being 1.1 miles and taking about 25 minutes to walk. He said that this journey was inaccessible on foot because of the steep gradients and that on part of the route there is only one very narrow pavement on one side of the road. He said for those living to the west of Castlecroft, it is a journey of 1.3 miles.
- 4.5 He took the Committee through the public transport options explaining that there is no bus from either Finchfield or Castlecroft to Merryhill, as clearly shown looking at the bus routes in the bundle. He said that the only option for residents would be to take the number 3 bus into town, which would be a 19 minute journey to access a pharmacy there and if the medicines were out of stock, they would have to return again. He referred to the rate of crime in Wolverhampton being high acting as a barrier for some

people. He submitted that the length of journey and the rate of crime did not represent reasonable choice and may dissuade people from accessing pharmacy first services.

- 4.6 Mr Koria then described access for car owners as “dire” referring to the challenges of parking at Merryhill in particular. He referred to the closure of Boots branches at Bradmore and Castlecroft impacting the Merryhill branch which is now dispensing around 12,000 items per month and often has long queues. He said the pharmacies are all closed over the lunch period whereas if granted the Applicant would be open over lunch as part of their core hours.
- 4.7 Mr Koria then invited his witnesses to talk to the Committee about their experiences. [P O’H], a local resident, described how he had taken a bus into Wolverhampton for his prescription and had not realised that they closed over lunch. He said he had to sit in a launderette to keep warm for around 2-3 hours. He explained that whilst he could continue to take a bus now into Wolverhampton he fears being “set upon”.
- 4.8 [AA] introduced himself as the chair of the community association. He described receiving complaints from residents after the Boots branch closed and said it became apparent that people were relying on the pharmacy more than they had realised. He said that Castlecroft has a higher percentage of elderly residents compared to other areas and a higher demand for services. He said that he has mobility issues and uses a mobility scooter. He described the access difficulties that he had experienced travelling on his scooter to Bridgenorth Road Pharmacy, that the pavement was not continuous and the road was extremely busy making it challenging to cross. He said travelling up and down Finchfield Hill put a strain on his battery and left him concerned that he would not be able to get home. He said that Merryhill is a very busy area as well with no proper parking and he has to navigate around the cars with his mobility scooter.
- 4.9 [BD], a local resident had previously used the Boots pharmacy in Castlecroft. He described the challenges that he has experienced since its closure where he has had to utilise the other pharmacies. He gave examples of medication errors and long queues. He said that one local resident had struggled to get home on foot because the buses had stopped.
- 4.10 Mr Koria concluded that the remaining pharmacies have had a year to sort out issues with waiting and resources but they remain an issue. He said local residents are left with over a mile to travel which, with limited mobility, does not represent reasonable choice or access.

Questions from Committee Members

- 4.11 In response to a question from Committee Members about community transport options, Mr [A] said there used to be a community bus but he had not seen one for a long time. He explained that when there was one, you would have to ring to book it and then would find the pharmacy was closed and would have to wait then for the bus to come back to pick you up. He said that there were similar problems with taxis as if there was a queue at the pharmacy, the taxi would either leave or charge you for waiting.
- 4.12 Mr Koria was asked to clarify the census information contained within the bundle. He confirmed that 019D LSOL is Castlecroft and 019A is Finchfield in the adjacent area. He explained that Castlecroft is not an affluent area but that there are areas of affluence in the vicinity which distort the average.
- 4.13 Mr Koria was asked about the proposed site and confirmed that it is likely to be the parade of shops. He said nothing has been formalised but referred to there being a restrictive covenant on the premises about its usage.

- 4.14 He was asked whether he was aware of any commercial issues or plans with the Boots in Merryhill and explained that as a national business they are clearly struggling financially. He said that independents are under financial pressure as well and many have stopped providing a delivery service as a result. He said Merryhill had been dispensing 7,000 items per month and are now dispensing 12,000. He suggested that a pharmacy should be financially breaking even with around 4,000 items per month and an independent can do this.
- 4.15 In response to a question about the 12,500 patients registered with Castlecroft Medical Centre, he said the majority of these patients use the Boots in Merryhill or the Bridgenorth Road pharmacy. He said he did not think that the lunchtime opening hours were staggered between the pharmacies.

Mr Jeff Blankley, Birmingham and Solihull Local Pharmaceutical Committee

- 4.16 Mr Blankley addressed the Committee explaining that an application has been considered and rejected in accordance with the regulations. He referred to the Pharmaceutical Needs Assessment which has concluded that there is adequate provision. He said that there is a difference between 'needs' and 'wants' and that this is about pharmaceutical needs.
- 4.17 He referred to Castlecroft Medical Centre as being the lowest Pharmacy First referrer in the area. He explained that when Boots Castlecroft closed, he was in dialogue with the branch in Merryhill about how they were managing the transition. He said that when any pharmacy closes, the displacement to the surrounding pharmacies can cause a chaotic period as records are transferred and resources are assessed. He suggested that whilst there was a period of disruption, this has now stabilised and the issues described are not current experiences.

Applicant's Questions for LPC

- 4.18 Mr Koria asked Mr Blankley about why Boots in Merryhill struggled at the beginning as they were aware the Castlecroft branch was closing so should have been prepared for this. Mr Blankley explained that the patient journey cannot be controlled or anticipated. Mr Koria disputed the reference to issues having settled down and referred to problems identified only last week which his witnesses also confirmed.
- 4.19 In response to a question from Mr Koria about the Pharmacy First referrals, Mr Blankley said he could not speak to the relationship between the Castlecroft Medical Centre and Castlecroft Boots branch but that he was aware there had been a change in team in the GP practice and was optimistic that this would improve.
- 4.20 Mr Koria then asked Mr Blankley whether he considered a journey of 3 miles into Wolverhampton centre to represent reasonable access or choice. He responded that people do not go into town specifically to access a pharmacy but for other reasons as well. He said there were also other options for people.
- 4.21 Mr Blankley went onto address a question about Castlecroft providing all the amenities that locals would need and said that pharmacies close because the demand is not there.

Committee Member Questions of Mr Blankley, LPC

- 4.22 Mr Blankley was asked a question about any planning detriment and viability. He responded that he remained very concerned about the independent sector viability and reiterated that the demand is clearly not there.

Applicant's Closing Submissions

- 4.23 Mr Koria summarised his application in terms of reasonable choice and access stating that those who are travelling by foot have no viable option. He said that walking to Merryhill represents an hour's round trip and the steep hills present a barrier for those walking to Bridgenorth Road. He concluded by saying that all the amenities that local residents would need are there in Castlecroft with the exception now of a pharmacy.

5 Consideration

- 5.1 The Committee had before it the papers considered by the Commissioner, together with a plan of the area showing existing pharmacies and doctors' surgeries and the location of the proposed pharmacy.
- 5.2 It also had before it the responses to NHS Resolution's own statutory consultations.
- 5.3 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations").

Regulation 31

- 5.4 The Committee first considered Regulation 31 of the regulations which states:

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

(2) This paragraph applies where -

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

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

(ii) adjacent premises; and

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

- 5.5 The Committee noted that, in response to why the application should not be refused pursuant to Regulation 31, the Applicant had stated "n/a" and had gone on to confirm that the existing pharmacy which was trading on Windmill Lane, was due to close on 31 March 2024 and therefore there would be no pharmacy trading from or adjacent to the proposed premises when this application was considered. The Committee noted that the Commissioner had also considered that Regulation 31 was "not applicable". The Committee noted that this had not been disputed by any party either on appeal or in subsequent representations. On the basis of the information before it, the Committee was not required to refuse the application under the provisions of Regulation 31.
- 5.6 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

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

“(1) If—

- (a) *NHS England receives a routine application and is required to determine whether it is satisfied that granting the application, or granting it in respect of some only of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB; and*
- (b) *the improvements or better access that would be secured were or was not included in the relevant pharmaceutical needs assessment in accordance with paragraph 4 of Schedule 1,*

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

(2) Those matters are—

- (a) *whether it is satisfied that granting the application would cause significant detriment to—*
 - (i) *proper planning in respect of the provision of pharmaceutical services in the area of the relevant HWB, or*
 - (ii) *the arrangements NHS England has in place for the provision of pharmaceutical services in that area;*
- (b) *whether, notwithstanding that the improvements or better access were not included in the relevant pharmaceutical needs assessment, it is satisfied that, having regard in particular to the desirability of—*
 - (i) *there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB (taking into account also NHS England’s duties under sections 13I and 13P of the 2006 Act (duty as to patient choice and duty as respects variation in provision of health services)),*
 - (ii) *people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access (taking into account also NHS England’s duties under section 13G of the 2006 Act (duty as to reducing inequalities)), or*
 - (iii) *there being innovative approaches taken with regard to the delivery of pharmaceutical services (taking into account also NHS England’s duties under section 13K of the 2006 Act (duty to promote innovation)),*

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

- (c) *whether it is satisfied that it would be desirable to consider, at the same time as the applicant's application, applications from other persons offering to secure the improvements or better access that the applicant is offering to secure;*
 - (d) *whether it is satisfied that another application offering to secure the improvements or better access has been submitted to it, and it would be desirable to consider, at the same time as the applicant's application, that other application;*
 - (e) *whether it is satisfied that an appeal relating to another application offering to secure the improvements or better access is pending, and it would be desirable to await the outcome of that appeal before considering the applicant's application;*
 - (f) *whether the application needs to be deferred or refused by virtue of any provision of Part 5 to 7.*
 - (g) *whether it is satisfied that the application presupposes that a gap in pharmaceutical services provision has been or is to be created—*
 - (i) *by the removal of chemist premises from a pharmaceutical list as a consequence of the grant of a consolidation application, and*
 - (ii) *since the last revision of the relevant HWB's pharmaceutical needs assessment other than by way of a supplementary statement.*
- (3) *NHS England need only consider whether it is satisfied in accordance with paragraphs (2)(c) to (e) if it has reached at least a preliminary view (although this may change) that it is satisfied in accordance with paragraph (2)(b)."*

- 5.8 The Committee considered that Regulation 18(1)(a) was satisfied in that it was required to determine whether it was satisfied that granting the application, or granting it in respect of some only of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB.
- 5.9 The Committee went on to consider whether Regulation 18(1)(b) was satisfied, i.e. whether the improvements or better access that would be secured if the application was granted were or was included in the Pharmaceutical Needs Assessment ("the PNA") in accordance with paragraph 4 of Schedule 1 of the Regulations.
- 5.10 Paragraph 4 of Schedule 1 requires the PNA to include: "a statement of the pharmaceutical services that the HWB had identified (if it has) as services that are not provided in the area of the HWB but which the HWB is satisfied (a) **would** if they were provided....secure improvements or better access, to pharmaceutical services... (b) **would** if in specified future circumstances they were provided...secure future improvements or better access to pharmaceutical services..." (emphasis added).
- 5.11 The Committee considered the PNA produced by Public Health, City of Wolverhampton Council on behalf of the Health and Wellbeing Board, Wolverhampton, 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 23 September 2022 and that a supplementary statement had been issued on 22 April 2024.

- 5.12 The Committee noted that the supplementary statement as at 22 April 2024 was issued to confirm pharmacies which have closed and therefore been removed from the pharmaceutical list as well as listing pharmacies which have had a change of ownership, are a new distance selling pharmacy, or where there has been a change of opening hours of existing pharmacies. The Committee noted that the closure of the Boots Pharmacy at 92 Windmill Lane, Castlecroft, Wolverhampton, WV3 8HG with effect from 23 March 2024 was listed in the supplementary statement which had confirmed the proximity to the nearest pharmacy as being a 19 minute walk or a 4 minute drive.
- 5.13 The Committee noted that whilst there are wards within the Wolverhampton area and the PNA had provided some information at ward level, the PNA had considered pharmaceutical provision in Wolverhampton as a whole.
- 5.14 The Committee noted the Executive Summary of the PNA had concluded that *“there are 60 community pharmacies within the city ... pharmacies are well spread across the city and are generally located near General Practices. All pharmacies are open for a minimum of 40 hours a week, with services offering longer hours concentrated in the most deprived areas of the city. Seven pharmacies are open after 7pm during the week. The weekend opening is good on Saturday. 8 pharmacies across the city are also open on Sundays.”*
- 5.15 The PNA went on to state:
- “Travel time mapping informs us that, residents with access to a car can reach a pharmacy within a short drive (ten minutes). The majority of residents can reach a pharmacy within a 20-minute walk or 30-minute journey on public transport.”*
- 5.16 The PNA concluded under “Assessment of Need” that *“At this time, there is adequate community pharmacy provision, which is well distributed across the city and sufficient to meet the needs of residents.”*
- 5.17 The Committee noted that the Applicant seeks to provide unforeseen benefits to the patients of Castlecroft Medical Practice as well as those in the surrounding area. 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.
- 5.18 In order to be satisfied in accordance with Regulation 18(1), regard is to be had to those matters set out at 18(2). The Committee's consideration of the issues is set out below.

Regulation 18(2)(a)(i)

- 5.19 The Committee had regard to

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

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

5.20 The Committee noted that the Commissioner was of the view that Regulation 18(2)(a) is *"not met"*. However no details were given as to how future planning could be adversely affected. The Committee noted the comments from the Applicant that *"granting this application would not cause significant detriment to access of pharmaceutical services as this application is seeking to fill a gap vacated by the Boots ..."* however the Committee was mindful that this was not the correct test as set out in the Regulations. The Committee was of the view, on the basis of the information available, 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 not be affected in a significant way.

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

Regulation 18(2)(a)(ii)

5.22 The Committee had regard to

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

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

5.23 The Committee noted that the Commissioner was of the view that Regulation 18(2)(a) is *"not met"*. During the oral hearing, whilst not explicitly citing this regulation, the Local Pharmaceutical Committee raised concerns about the ongoing viability of pharmaceutical services in the area referring to the closure of the Boots branch in Castlecroft being as a result of a lack of demand. The Applicant, in response, referred to the number of dispensing items required for an independent pharmacy to be viable. The Committee considered the submissions made by parties and was of the view that the question of ongoing viability of services may represent significant detriment to the arrangements currently in place. However, it was mindful that there was no evidence before it as to the reason for the Boots branch in Castlecroft closing. The Committee noted that dispensing forms only part of pharmaceutical services and based upon the information before it, the Committee was not satisfied that the viability of the existing pharmacies would be affected to such an extent that it would cause significant detriment in the event that the application were granted.

5.24 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.

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

Regulation 18(2)(b)

5.26 The Committee had regard to

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

- (i) there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB (taking into account also NHS England's duties under sections 13I and 13P of the 2006 Act (duty as to patient choice and duty as respects variation in provision of health services)),
- (ii) people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access (taking into account also NHS England's duties under section 13G of the 2006 Act (duty as to reducing inequalities)), or
- (iii) there being innovative approaches taken with regard to the delivery of pharmaceutical services (taking into account also NHS England's duties under section 13K of the 2006 Act (duty to promote innovation)),

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

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

- 5.27 The Committee first considered the question of access and reasonable choice. Reasonable choice is not defined in the Regulations and the closure of a pharmacy does not in itself result in a conclusion that there is no longer reasonable choice.
- 5.28 The Committee noted that the Applicant had made specific reference to those living in the area of 019D Castlecroft and 019A Finchfield LSOA and provided 2021 census data for these areas. 19.5% of residents in Castlecroft are aged over 65 compared to an average of 18.3% for England. 6% of residents in Castlecroft have bad or very bad health, compared to 5.2% average for England. For Finchfield, 18.5% of residents are aged over 65 and 6.3% have bad or very bad health.
- 5.29 The Committee first considered access to existing services, in particular, method of travel, distance and travelling time. An important factor to this consideration is where the patient's journey may be starting from.
- 5.30 The nearest pharmacies to Finchfield and Castlecroft are Bridgenorth Road pharmacy and Boots pharmacy in Merryhill. The Committee considered the Castlecroft area first.
- 5.31 The nearest pharmacies to Castlecroft are Boots, Merryhill which is 0.9 miles away and Bridgenorth Road pharmacy which is 1.1 miles. The Applicant had presented the journeys to each pharmacy with a starting point of the proposed site on Windmill Lane. Whilst recognising that the use of pharmacies are not limited to acute prescriptions the Committee considered it was reasonable to use the Castlecroft Medical Centre as the main starting point for Castlecroft residents, rather than the proposed site. The practice has a list size of 12,500.

By foot

- 5.32 The distance on foot from the Castlecroft Medical Centre to Bridgenorth Road pharmacy is 1 mile using the fastest and most direct route and takes approximately 22 minutes. From Castlecroft Avenue, turning onto Windmill Lane the journey includes a

very steep hill across the canal to the A454. The road is a main route and although there are traffic lights, it is very busy. The Committee heard from a witness how difficult it is to cross the road because of the volume of traffic. The Committee had also noted speed cameras along the A454, suggesting that cars have a tendency to drive fast.

- 5.33 There are other facilities at Bridgenorth Road including a Sainsbury's Local. However, the Committee were of the view that the steep hill represents a significant barrier to those travelling from Castlecroft to Bridgenorth Road on foot, regardless of the exact starting point in Castlecroft itself.
- 5.34 Castlecroft Medical Centre to Boots, Merryhill is 1.1 miles and takes around 24 minutes. The route goes through a number of residential estates and includes generally well maintained pavements, although there was some evidence of repairs. Although there are crossing places, the pharmacy is located just off a very busy roundabout with exits to 5 different roads. There are a number of takeaways, restaurants and a convenience store near the Boots pharmacy. The route involves a gentle incline and is clearly more accessible than the steep hill for the other pharmacy. The Committee were of the view that it was accessible for those with no mobility issues and in good weather, but would present challenges to others.
- 5.35 The distance from the Medical Centre to the proposed site on Windmill Lane is 0.2 miles and takes about 5 minutes. The route is well lit with wide pavements. The road itself is very busy being a main thoroughfare. There are plenty of crossing places and the Committee were of the view that it was easily accessible.

By public transport

- 5.36 For those wishing to take public transport from Castlecroft Medical Centre to Bridgenorth Road, this requires first walking down the steep hill across the canal to the Whitewick Bank bus stop. From there patients could board the number 9 bus for about 4 minutes to arrive at Compton Square which is around 40 yards from the pharmacy. The Committee have already considered that navigating the steep hill on foot represents a significant barrier.
- 5.37 There is no direct bus from Castlecroft to Merryhill with patients having to travel instead into Wolverhampton City Centre to access pharmacies there. The Committee were of the view that if patients are travelling into the city centre, they are more likely to utilise the choice of services within the centre.
- 5.38 There is no bus service available between Castlecroft Medical Centre and the proposed site.

By car

- 5.39 The Committee then went onto to consider access by car. Castlecroft Medical Centre has a large car park at the back of the building so if patients have travelled there by car they would then be able to drive to either pharmacy.
- 5.40 From the Medical Centre to Bridgenorth Road by car, the most direct route is off Castlecroft Avenue onto Windmill Lane, down a steep hill and turning right at the traffic lights onto the A454. Travelling along the A454 for about 0.8 miles the pharmacy is located on the right hand side. There is a large car park at the back of the pharmacy as well as off road parking at the front. The total journey time is around 5 minutes and 1.1 miles.
- 5.41 Travelling by car to the Boots in Merryhill from Castlecroft Medical Centre is about 4 minute drive along Windmill Lane and Bhylls Lane before arriving at 2 roundabouts and

the pharmacy is located set back on the right. There are no clear parking spaces outside the pharmacy with drivers utilising a wide paved area. During the site visit, the Committee noted examples of double parking and the potential for cars to be blocked in.

- 5.42 From Castlecroft Medical Centre to the proposed site on Windmill Lane, the journey of 0.2 miles takes about 1 minute by car. There is parking on both sides of the road outside the parade of shops and a large car park in the public house directly opposite.
- 5.43 The Committee then went onto consider Finchfield as a starting point. The Applicant had identified Finchfield as an adjacent community linked with Castlecroft in terms of services and transport links. The Committee had also heard evidence of residents in Castlecroft travelling to Finchfield for their weekly shop in Lidl, which reduces their need to travel elsewhere for their shopping. For those residents living in Finchfield, the 2 nearest pharmacies following the closure of Boots in Castlecroft is also Bridgenorth Road pharmacy and Boots in Merryhill. In the absence of a specific starting point in Finchfield, the Committee used Broad Lane as it is fairly central to that area.

By foot

- 5.44 Walking from Broad Lane towards Bridgenorth Road pharmacy is around 1.1 miles and takes approximately 25 minutes. The route is through a number of different residential areas before arriving at Finchfield Hill which is on a steep gradient across the canal. The hill has a narrow pavement on one side only. There are a number of roundabouts to cross along the route with most of the pavements being well maintained. However, the Committee was of the view that the steep gradient again represents a physical barrier to those travelling on foot.
- 5.45 Using the same starting point on Broad Lane travelling to Merryhill on foot represents about 0.9 miles and takes around 20 minutes. The route is flat with the pavements generally well maintained.
- 5.46 Walking from Broad Lane to the proposed site is 1.2 miles and takes approximately 27 minutes. The route is flat with the pavements generally well maintained.

By public transport

- 5.47 There are no viable public transport options from Broad Lane to Bridgenorth Road as a patient would be required to walk 0.8 of the 1.1 miles to take the number 3 bus from Castlecroft Road to White Oak Drive. This walk includes Finchfield Hill with a steep gradient.
- 5.48 Travelling by public transport from Broad Lane to the Boots pharmacy in Merryhill requires the patient to walk to Bradmore Inn for 0.3 miles which takes around 6 minutes.
- 5.49 To the proposed site, the number 3 bus from Finchfield Gardens is direct to Windmill Lane. Patients walk from Broad Lane for about 0.3 miles for around 7 minutes to the bus stop in Finchfield Gardens. The whole journey takes around 16 minutes.

By car

- 5.50 To travel by car from Broad Lane to Bridgenorth Road pharmacy is a distance of around 1.2 miles and takes 4 minutes.
- 5.51 Travelling by car from Broad Lane to Boots in Merryhill via Trysull Road takes about 3 minutes and represents 1 mile.

- 5.52 Using the same starting point of Broad Lane to the proposed site takes about 3 minutes by car to travel the 1.2 miles.
- 5.53 The Committee determined that there were clearly considerable difficulties in accessing existing pharmaceutical services on foot from both Castlecroft and Finchfield. The walk to Bridgenorth Road pharmacy represents a significant challenge even to highly mobile, fit residents due to the steep hills on both routes. Public transport options were also challenging or non-existent. For those living in Castlecroft however, being able to access pharmaceutical services within their community would confer significant benefits, given their limited choice in terms of travel. Residents of Finchfield would still have challenges walking to the proposed site, which, depending upon the starting point, represents an hour round trip. However, there are public transport options available for those without a car.
- 5.54 The journeys by car were much more straightforward and ample parking was available at Bridgenorth Road pharmacy. However, the parking at Boots Merryhill was clearly more problematic and the Committee was of the view that residents were more likely to drive to Bridgenorth Road as a result.
- 5.55 The Committee also considered the testimony of local residents who described the facilities available in both Castlecroft and Finchfield meeting their every day needs including schooling, hairdressers, convenience stores, supermarket, butchers and the medical centre. The Applicant had referred to residents having all of their needs met in the 2 areas and therefore did not need to travel elsewhere except for pharmaceutical services.
- 5.56 Therefore the Committee was satisfied that, having regard to there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits by way of physical access on persons.
- 5.57 The Committee was of the view that there is not 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.
- 5.58 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. In considering 18(2)(b)(ii), the Committee had heard evidence of persons with protected characteristics, in particular age and disability, experiencing problems accessing pharmaceutical services.
- 5.59 The Committee had regard to the evidence but noted that there was little reference to services that meet the specific needs of those with protected characteristics. The comments on access were general in nature and might apply to any persons as explained by the assessment as to the lack of reasonable access above. The Committee considered that there was not a robust body of evidence that enabled it to be satisfied that a pharmacy at the proposed site would convey significant benefits pursuant to Regulation 18(2)(b)(ii).
- 5.60 The Committee was therefore not satisfied that, having regard to the desirability of people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that are difficult for them to access, granting the application would confer significant benefits on persons.

- 5.61 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.
- 5.62 The Committee noted that the Applicant was not seeking to argue innovation and there was no information within the application that would support the definition of innovation in terms of the delivery of pharmaceutical services.
- 5.63 The Committee was not satisfied that, having regard to the desirability of there being innovative approaches taken with regard to the deliverability of pharmaceutical services, granting the application would confer significant benefits on persons.

Regulation 18(2)(b) generally

- 5.64 The Committee heard evidence from local residents about their experiences accessing pharmaceutical services during the lunchtime period. One resident described how he had taken public transport into Wolverhampton City Centre to pick up his medications only to find that the pharmacy was closed. The Applicant had also raised the issue of lunchtime opening hours stating that pharmacies had not staggered their opening times leaving local residents without access to services over that period. The Applicant was offering lunchtime opening as part of core hours.
- 5.65 The Committee was of the view that there was information provided to support a finding that pharmaceutical services are not currently provided at such times as needed and therefore it was satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits (in relation to opening hours) on persons.
- 5.66 The Committee has considered whether there are any other factors that would confer significant benefits on including patients who share protected characteristics. The Committee had regard to the need to eliminate discrimination and advance equality of opportunity and foster good relations between these patients and those who do not share their protected characteristics.
- 5.67 The Committee was not satisfied that granting the application would confer significant benefits for patients who share protected characteristics on the basis that those benefits would be secured for all patients, regardless of their status.
- 5.68 The Committee was of the view that in accordance with Regulation 18(2)(b) the granting of this application would confer significant benefits on persons in the area of the HWB which were not foreseen when the PNA was published.

Other considerations

- 5.69 Having determined that Regulation 18(2)(b) had been satisfied, the Committee needed to have regard to Regulation 18(2)(c) to (e) and found that there were no other applications from other persons to consider, nor were there any appeals against applications pending.
- 5.70 No deferral or refusal under Regulation 18(2)(f) was required in this case.
- 5.71 The Committee had regard to Regulation 18(2)(g) and found that it did not apply in this case.

- 5.72 The Committee considered whether there were any further factors to be taken into account and concluded that there were not.
- 5.73 The Committee was satisfied that the information provided demonstrates that there is difficulty in accessing current pharmaceutical services such that a pharmacy at the proposed site would provide better access to pharmaceutical services.
- 5.74 The Committee had regard to Regulation 19(6) which states:
- (6) If NHS England is satisfied as mentioned in regulation 18(2)(b), it may grant the application notwithstanding that the improvements or better access were or was not included in the relevant pharmaceutical needs assessment.*
- 5.75 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 5.75.1 confirm the Commissioner's decision;
- 5.75.2 quash the Commissioner's decision and redetermine the application;
- 5.75.3 quash the Commissioner's decision and, if it considers that there should be a further notification to the parties to make representations, remit the matter to the Commissioner.
- 5.76 Given that the Committee has reached a different decision, it determined that the decision of the Commissioner must be quashed.
- 5.77 The Committee went on to consider whether there should be a further notification to the parties detailed at paragraph 19 of Schedule 2 of the Regulations to allow them to make representations if they so wished (in which case it would be appropriate to remit the matter to the Commissioner) or whether it was preferable for the Committee to redetermine the application.
- 5.78 The Committee noted that representations on Regulation 18 had been sought from parties by the Commissioner and representations had already been made by parties to the Commissioner in response. These had been circulated and seen by all parties as part of the processing of the application by the Commissioner. The Committee further noted that when the appeal was circulated representations had been sought from parties on Regulation 18.
- 5.79 The Committee concluded that further notification under paragraph 19 of Schedule 2 would not be helpful in this case.

6 DECISION

- 6.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of the Commissioner, for the reasons given above, and redetermines the application.
- 6.2 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.
- 6.3 The Committee has considered whether the granting of the application would cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area covered by the HWB, or the arrangements in place for the provision of pharmaceutical services in that area and is not satisfied that it would;

- 6.4 The Committee determined that the application should be granted on the following basis:
- 6.4.1 In considering whether the granting of the application would confer significant benefits, the Committee determined that –
- 6.4.1.1 there is not already a reasonable choice with regard to obtaining pharmaceutical services;
- 6.4.1.2 there is no evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services; and
- 6.4.1.3 there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services;
- 6.4.2 Having taken these matters into account, the Committee is satisfied that granting the application would confer significant benefits as outlined above that would secure improvements or better access to pharmaceutical services.

Committee Chair

REF: SHA/26344

APPEAL AGAINST BLACK COUNTRY ICB DECISION TO REFUSE AN APPLICATION BY THARRA HEALTH LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT WINDMILL LANE SHOPS & INSIDE CASTLECROFT MEDICAL CENTRE, CASTLECROFT, WV3 8HG

1 The Application

By application dated 14 March 2024, Tharra Health Ltd (“the Applicant”) applied to Black County ICB (“the Commissioner”) for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at Windmill Lane shops and inside Castlecroft Medical Centre, Castlecroft, WV3 8HG. For clarity, best estimate units included directly either side of the red line [see Appendix A]. In support of the application it was stated:

- 1.1 In the Applicant’s view this application should not be refused pursuant to Regulation 31 for the following reasons:
 - 1.1.1 “n/a
 - 1.1.2 Despite there being a pharmacy currently trading near the proposed site, the current pharmacy located at 92 Windmill Lane, WV3 8HG, is due to close on 31st March 2024.
 - 1.1.3 Should a new pharmacy contract ultimately be granted, there will no longer have been a pharmacy trading from 92 Windmill Lane, WV3 8HG [sic].
 - 1.1.4 Thus, there will be no pharmacy trading from or adjacent to the proposed premises so Regulation 31 does not apply.”

Information in support of the application

- 1.2 “This application is in respect of opening up a new pharmacy in order to provide better access for patients requiring access to pharmaceutical services in Castlecroft, and the surrounding areas.
- 1.3 We believe that the closure of the Boots located at: Boots Pharmacy, 92 Windmill Ln, Castlecroft, Wolverhampton, WV3 8HG, on 21st [sic] March 2024 will leave a significant gap in pharmaceutical services for Castlecroft and the surrounding areas. Hence this application is offering unforeseen benefits not captured within the PNA.
- 1.4 The best estimate of the proposed site we wish to open up a new pharmacy is located on Windmill Lane Shops, Wolverhampton WV3 8HG. This is the same location as the soon to be closed Boots. Castlecroft Medical Centre is located down the road from the proposed location and has a patient list size of circa 12,500.

- 1.5 Using the proposed site, WV3 8HG, as an arbitrary marker to represent these residents; we can see that the next nearest pharmacy (Boots, WV3 7LF) is 0.8 - miles away. For residents currently residing near the proposed site, current pharmaceutical services are difficult to access by foot and public transport.
- 1.6 Granting this application would secure better access to pharmaceutical services. We do not consider a 1.6-mile round journey to access pharmaceutical provision as representative of reasonable choice or access, especially when we consider that this journey is in addition to patients' journeys to Castlecroft Medical Centre. The elderly, disabled, and the wider population are likely to find the proposed pharmacy significantly more accessible than their current choices. It would also introduce reasonable choice of a different pharmaceutical provider for those in the local area.
- 1.7 We would like to note that granting this application would not cause significant detriment to access of pharmaceutical services, as this application is seeking to fill a gap vacated by the Boots Pharmacy, 92 Windmill Ln, WV3 8HG closure; and notwithstanding the fact that the nearest pharmacy to the proposed site is located 0.8-miles away.
- 1.8 The Boots Pharmacy, 92 Windmill Lane, WV3 8HG, was open with no plans for closure at the time of the PNA being written. This application is therefore submitted under Regulation 18 as an unforeseen benefits application.
- 1.9 An increase in local pharmacy capacity and improved choice to meet the needs of the local population.
- 1.10 Better access to pharmaceutical services given the closure of Boots pharmacy."

2 The Decision

The Commissioner considered and decided to refuse the application. The decision letter dated 6 September 2024 states:

- 2.1 "Black Country 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."

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

Decision report

"Actions from the Pharmacy Services Regulations Committee 14th August 2024

- 2.2 Application submitted by Tharra Health Ltd in respect of an Unforeseen Benefit within a HWB area: Wolverhampton Area.
- 2.3 The application is refused.
- 2.4 The application was refused as:
- 2.4.1 18(1)(a) is not met as the applicant has not demonstrated or set out how their application will secure improvements or better access to pharmaceutical services – Not Met.
- 2.4.2 18(1)(b) The executive summary of the City of Wolverhampton Pharmaceutical Needs Assessment states that there is adequate pharmaceutical provision which is well distributed across the city and sufficient to meet the needs of

residents. Page 6 of the PNA states that there are 60 community pharmacies well spread across the city and generally located near a GP practice. Seven pharmacies were open after 7pm with good weekend opening on a Saturday with eight pharmacies open on a Sunday. The PNA travel mapping stated that residents with access to car can reach a pharmacy within ten minutes – Not Met.

- 2.4.3 18(2)(a) granting the application will cause significant detriment to the proper planning and development of pharmaceutical services for the reasons set out in 18(2)(a)(i) and (ii) – Not Met
- 2.4.4 18(2)(b)(i) The PNA states there is provision of pharmacies and pharmaceutical services following the closure of Boots in March 2024.
- 2.4.5 18(2)(b)(ii) the applicant identified people who share a protected characteristic who would have to use public transport or walk. The ONS information in 2021 indicated that Castlecroft which is in Tettenhall Wightwick ward and is not one of the top 20% wards of deprivation. 73% of the ward own 1-2 cars and 10.% own three or more cars. There are other pharmacies that open later in the evening and weekends than the applicant proposes. The applicants core hours do not include all of weekends and on Sunday. However, there are bus services and pharmacies within one mile that are open later in the weekends and in the evening than the applicant is proposing. All the pharmacies offer a collection and delivery service.
- 2.4.6 18(2)(b)(iii) the applicant is not proposing to offer any innovative service or services that the existing pharmacies do not provide.
- 2.5 Regulation 31 – not applicable
- 2.6 There have been no complaints regarding the existing provision of pharmacies or access to them.
- 2.7 Appeal Rights: Applicant has the appeal rights.”

3 The Appeal

In a letter dated 4 October 2024 addressed to NHS Resolution, Healthcare Plus Consulting Ltd on behalf of the Applicant appealed against the Commissioner’s decision. The grounds of appeal are:

- 3.1 “Thank you for your letter dated 6th September 2024 to my client. Tharra Health Ltd have instructed us (Healthcare Plus Consulting Ltd) to act on their behalf for this appeal, please find an authorisation letter attached.
- 3.2 We would like to appeal the decision made in relation to the above unforeseen benefits application.

Preliminary matter
- 3.3 From the decision report provided, it appears that the Pharmacy Services Regulations Committee (PSRC) met on the 14th August 2024 to determine the outcome of my client’s application.
- 3.4 We highlight that my client was only invited to provide a response to representations received on their application on the 19th August 2024. Despite my client choosing not

to provide further representation at this stage, we are unsure as to why the PSRC meeting was conducted prior to PCSE asking for further representation from my client.

- 3.5 It would appear that even if my client had provided representation at this stage, the outcome was already determined. This is concerning to say the least.

Appeal Body

- 3.6 We submit that NHS England have failed to properly evaluate Regulation 18, particularly the aspect of whether there is reasonable choice to pharmaceutical provision, and access for those group who share protected characteristics.
- 3.7 We submit that NHS England, despite considering travel by car, failed to consider travel by alternative journey modes such as a public transport or by foot. Not all residents will have access to a vehicle and for some residents residing near the proposed site vehicular access is relatively poor. 28.1% of residents in the adjacent Wolverhampton 019A Lower-Layer Super Output Area (LSOA) do not have access to a car/van; this is significantly higher than the average of 23.5% for England. Hence, it is clear that journeys by public transport and by foot play a major role in accessing pharmaceutical services for local residents. We submit it was remiss of NHS England to not evaluate these journeys, and we provide further details of these journeys below.

Patient Journeys

- 3.8 We note that two closest pharmacies to the proposed site are: Boots Pharmacy, WV3 7LF and Bridgnorth Road Pharmacy, WV6 8AF. The pharmacies are 0.9 miles and 1.1 miles distant from the proposed site respectively.
- 3.9 When considering securing better access, the overarching criteria for an Unforeseen Benefits application, we must consider what a typical patient journey currently looks like for those without access to a vehicle. We also consider the reasonable choice within these journeys, alongside how those with protected characteristics find those journeys.
- 3.10 Bridgnorth Road Pharmacy (WV6 8AF)
- 3.11 By foot from Proposed Site to Bridgnorth Road Pharmacy
- 3.12 As can be seen from the map below [see Appendix B], this journey is 1.1 miles or 25 minutes, equating to a 50-minute round-journey.
- 3.13 We do not consider a 2.2-mile round walk to access pharmaceutical services as sufficient access, nor can we consider this as having a reasonable choice to pharmaceutical services.
- 3.14 Such a lengthy journey is difficult for the elderly, disabled, or for parents with young children – all of whom are groups with protected characteristics.
- 3.15 We also note that the Staffordshire and Worcestershire canal, which can be seen travelling from the bottom left to the top right of the image above, represents a barrier to accessing pharmaceutical services. There are two possible crossing points: the first on the left of the image on Windmill Lane, and the second to the right of the image on Bridgnorth Road. Both routes are mired by steep hills which some residents will be unable to navigate, especially those groups who share protected characteristics.
- 3.16 The first route along Windmill Lane, contains a steep hill which is continuous in length of around 110 metres, with the gradient averaging 10% or 1 in 10.

- 3.17 The second crossing at Bridgnorth Road is accessed via Finchfield Hill. Finchfield Hill is continuous in length of around 96 metres, with an even steeper gradient averaging 11% or 1 in 9.
- 3.18 For context, guidance states that a disabled access ramp should have a gradient of no more than 1 in 20 for a maximum ramp length of 10 metres. Given both hills are not only significantly steeper but also significantly longer than such a ramp, it can be concluded that these hills are a clear barrier to access for those groups who share protected characteristics, especially those in a wheelchair/ mobility scooter/ or of impaired mobility.
- 3.19 We also note that the pavement on Finchfield Hill is narrow and only on one side of the road, making this tough journey even more difficult to persons. The narrow pavement can be seen visually in the image below [see Appendix B].
- 3.20 Given both hills represent barriers to accessing the only two crossing points on the canal, we submit that all pharmacies to the north of the Staffordshire and Worcestershire canal are inaccessible by foot.
- 3.21 By bus from Proposed Site to Bridgnorth Road Pharmacy
- 3.22 The journey by bus to Bridgnorth Road Pharmacy is also inaccessible via both crossing routes.
- 3.23 Patients could obtain the No.9 bus from Wightwick Bank, however, this would require patients to navigate the 10% hill on Windmill Lane by foot to access this bus stop. As demonstrated above, this journey is inaccessible.
- 3.24 Patients could obtain the No.3 bus from outside the proposed site, however, would have to alight at Broughton Road stop and walk the rest of the distance. This walk involves having to navigate Finchfield Hill, which we also previously demonstrated is inaccessible.
- 3.25 Again, given both hills represent barriers to accessing bus services, we submit that all pharmacies to the north of the Staffordshire and Worcestershire canal are inaccessible by bus. [see Appendix B].
- 3.26 It is clear for those residing near the proposed site that journeys by bus to Bridgnorth Road Pharmacy do not represent reasonable choice or access to pharmaceutical provision, especially for those groups who share protected characteristics.
- Boots Pharmacy (WV3 7LF)
- 3.27 By foot from Proposed Site to Boots Pharmacy
- 3.28 The journey from the proposed site to Boots Pharmacy by foot is 0.9 miles or 20 minutes, equating to a 40-minute round-journey.
- 3.29 We do not consider a 1.8-mile round walk to access pharmaceutical services as sufficient access, nor can we consider this as having a reasonable choice to pharmaceutical services.
- 3.30 Such a lengthy journey is difficult for the elderly, disabled, or for parents with young children – all of whom are groups with protected characteristics.
- 3.31 This is especially pertinent when we consider that mobility levels are poor for those residing near the proposed site. 19.6% of residents in the Wolverhampton 019D LSOA

and 20.5% of residents in the Wolverhampton 019A LSOA are disabled under the 2010 Equality Act. This is compared to an average of 17.3% for England; thus, it is clear that mobility levels are poor for those residing near the proposed site and longer journeys by foot are not an option for a number of residents.

3.32 By bus from Proposed Site to Boots Pharmacy

3.33 The journey by bus to Boots Pharmacy is non-existent as there is no bus between the two sites. This is clearly representative of no pharmaceutical choice, much less than the threshold of 'reasonable choice'.

Summary

3.34 It is clear that the journeys by foot and bus to alternative pharmacies are inaccessible for a number of patients given the topography and the limited mobility of patients in the area.

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

Conclusion

3.36 In our view, the closure of the Boots Pharmacy, WV3 8HG, has left a significant gap in pharmaceutical services for the Castlecroft area.

3.37 Granting this application would secure better access to pharmaceutical services. The elderly, disabled, and the wider population are likely to find the proposed pharmacy significantly more accessible than alternative choices.

3.38 It would also restore reasonable choice of pharmaceutical provider for those in the local area.

3.39 We would like to note that granting this application would not cause significant detriment to access of pharmaceutical services, as this application is seeking to fill a gap vacated by the Boots, WV3 8HG closure; and notwithstanding the fact that the nearest pharmacy to the proposed site is located 0.9 miles away.

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

4 Summary of Representations

This is a summary of representations received on the appeal.

4.1 BOOTS UK LTD

4.1.1 "Thank you for your letter dated 18th October 2024 informing us of the above appeal.

4.1.2 We do not have any comments to make in addition to those submitted to the ICB. A copy of which is enclosed."

In a letter to PCSE dated 9 May 2024, Boots UK Ltd stated:

- 4.1.3 “Thank you for your letter dated 3rd April 2024 informing us of the above application. Boots UK Limited have the following comments to make.
- 4.1.4 As the ICB will be aware, the closure of a pharmacy or pharmacies within an area does not automatically create a gap and should a gap have arisen as a consequence of a closure, then the PNA should be updated to reflect this. We are not aware that this has been the case for this locality. We do not believe that the applicant has provided any evidence of patients having difficulty accessing pharmaceutical provision in this locality. We do not have any further comments to make, but would be grateful if you would keep us informed of the progress of this application.”

5 Observations

5.1 HEALTHCARE PLUS CONSULTING LTD ON BEHALF OF THE APPLICANT

- 5.1.1 “Thank you for your letter dated 21st November 2024. We provide final observations below.
- 5.1.2 It is undisputed that the steep hills on Windmill Lane and Bridgnorth Road render pharmaceutical provision to the North of the Staffordshire and Worcestershire canal inaccessible. Especially when we consider that there is not a bus route that crosses to the North of this canal.
- 5.1.3 Whilst these pharmacies may provide a delivery service, we highlight that delivery services are not NHS commissioned and can be removed at any time.
- 5.1.4 We note that there is little dispute that the local population is deprived, with poor mobility and poor vehicular access. We also note that the local population is elderly and of general poorer health. Per 2021 Census data:
 - 5.1.4.1 6% of residents in the Wolverhampton 019D LSOA, and 6.3% of residents in the Wolverhampton 019A LSOA have bad or very bad health. This is far in excess of the 5.2% average for England.
 - 5.1.4.2 19.5% of residents in the Wolverhampton 019D LSOA, and 18.5% of residents in the Wolverhampton 019A LSOA are aged over 65. These figures are also higher than the 18.3% average for England.
- 5.1.5 Given these factors, we submit that it is not reasonable that these residents now have a 1.8-mile round journey to access pharmaceutical provision following the closure of the Boots store.
- 5.1.6 It is notable that the closed Boots in Castlecroft dispensed approximately 5,500 items per month so was well-utilised.
- 5.1.7 We also highlight that residents access all their day-to-day needs within the Castlecroft area. This community contains:
 - 5.1.7.1 A Doctors Surgery – Castlecroft Medical Practice (c.12,500 patient list)
 - 5.1.7.2 A Primary School – Castlecroft Primary School (c. 254 pupils)
 - 5.1.7.3 A Secondary School – Smestow Academy (c. 654 pupils)
 - 5.1.7.4 A Pub

- 5.1.7.5 Two Hair Salons
- 5.1.7.6 A Picture framing shop
- 5.1.7.7 A Massage therapy centre
- 5.1.7.8 A Pet groomer
- 5.1.7.9 A Butchers
- 5.1.7.10A Newsagent
- 5.1.7.11An Opticians
- 5.1.7.12A Barbers shop
- 5.1.7.13A Fish & Chips Shop
- 5.1.7.14A Sweet Shop
- 5.1.7.15A Charity Shop
- 5.1.7.16A Café
- 5.1.7.17A Premier Convenience Store

- 5.1.8 It is clear that residents are accustomed to accessing all amenities within the Castlecroft area as part of their daily lives.
- 5.1.9 We stress to the Committee the importance of having accessible pharmacies within communities, especially with the advent of Pharmacy First. For Pharmacy First to be effective, we submit that we must try and be realistic about where patients will access these minor ailments services and the distances they will travel to access them. In this particular instance, given that the nearest pharmaceutical provision is 0.9 miles away, and Castlecroft medical centre is situated a short walk away; it appears obvious that patients will seek treatment for minor ailments with the doctors opposed to doing so in a pharmacy setting.
- 5.1.10 This is clearly counter-productive and causes unnecessary strain on the doctors for issues that can be dealt with by Pharmacy. Additionally, residents may have disproportionately long waits for a doctor's appointment for the minor issues they may have.
- 5.1.11 We submit that residents are also more likely to access Pharmacy First alongside amenities that they access as part of their daily lives.
- 5.1.12 Whilst we do acknowledge that there is no major supermarket situated in Castlecroft, we note that residents that undertake a weekly shop are likely to access the Lidl supermarket in neighbouring Finchfield. For residents with a car this is a 3-minute journey; or for those without vehicular access 5 stops on the number 3 bus – a 5-minute journey.
- 5.1.13 Finchfield also contains a number of additional amenities:
 - 5.1.13.1 A Co-operative Convenience Store

5.1.13.2 A Fish & Chips Shop

5.1.13.3 A Chinese takeaway

5.1.13.4 Two Barbers shops

5.1.13.5 An interior decorating shop

5.1.13.6 A Kitchen/ Bathroom shop

5.1.13.7 A Florist

5.1.13.8 A Nationwide Bank

5.1.13.9 A Hi-Fi shop

5.1.13.10 An Accountants

5.1.13.11 A Beauty Salon

5.1.13.12 An Off-Licence

5.1.13.13 A Wellness Spa

5.1.13.14 A Coffee Lounge

5.1.14 Adjained by the Number 3 bus route, which frequents every 20 minutes, residents of Castlecroft and Finchfield are able to freely travel between these areas for all their daily needs and amenities.

5.1.15 However, following the closure of the Boots store, residents must now travel 0.9 miles to the nearest pharmacy. For those that do not have access to a car and are unable to walk long distances, current nearest pharmaceutical provision by bus is in Wolverhampton town centre. This pharmacy is 3.5 miles away and a 19-minute bus journey via the No.3 bus. Given that residents access all their day-to-day amenities in the Castlecroft/ Finchfield area, we do not consider an additional 38-minute round journey by bus as constituting sufficient access or choice to pharmaceutical provision. We also submit that it is unlikely to be a journey that residents make when faced with a minor ailment.

Conclusion

5.1.16 We conclude that there is a need for a pharmacy in the Castlecroft area, particularly for those accessing pharmaceutical provision in connection with a visit to Castlecroft Medical Practice.

5.1.17 We also note that there is a localised elderly population in the Castlecroft/ Finchfield area, with poor health, poor mobility, and poor vehicular access, who would benefit significantly from a pharmacy at the proposed site.

5.1.18 Also, those residents who utilise the local amenities would be able to access pharmaceutical provision in the course of their daily lives; significantly bettering health outcomes especially through services such as Pharmacy First.

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

5.1.20 We invite the Committee to grant the application.”
