

3 March 2025

REF: SHA/ 26401

**APPEAL AGAINST BUCKINGHAMSHIRE,
OXFORDSHIRE AND BERKSHIRE WEST ICB DECISION
TO REFUSE AN APPLICATION BY SKP PHARM
LIMITED FOR INCLUSION IN THE PHARMACEUTICAL
LIST OFFERING UNFORESEEN BENEFITS UNDER
REGULATION 18 AT BUTTER MARKET (2-20A),
CORNMARKET (5-18), UPPER HIGH STREET (1-26),
THAME, OX9 (BEST ESTIMATE)**

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REF: SHA/ 26402

**APPEAL AGAINST BUCKINGHAMSHIRE,
OXFORDSHIRE AND BERKSHIRE WEST ICB DECISION
TO GRANT AN APPLICATION BY NUTRIBERRY LTD
FOR INCLUSION IN THE PHARMACEUTICAL LIST
OFFERING UNFORESEEN BENEFITS UNDER
REGULATION 18 AT EAST STREET/WELLINGTON
STREET, THAME, OX9 3JZ**

1 Outcome

- 1.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of the Commissioner and redetermines the applications.
- 1.2 The Committee determined that the application from SKP Pharm Limited should be refused and the application from Nutriberry Ltd should be granted.
- 1.3 The Committee noted that the Commissioner's decision regarding the discontinuation of services having not been appealed against, should stand.

A copy of this decision is being sent to:
Temple Bright LLP on behalf of SKP Pharm Limited
Healthcare Plus Consulting Ltd on behalf of Nutriberry Ltd
PCSE on behalf of Buckinghamshire, Oxfordshire and Berkshire West ICB

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1 The Applications

By application dated 9 May 2024, SKP Pharm Limited applied to Buckinghamshire, Oxfordshire and Berkshire West ("the Commissioner") for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at Butter Market (2-20A), Cornmarket (5-18), Upper High Street (1-26), Thame, OX9. In support of the application it was stated:

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

- 1.1 "Not applicable. The proposed location is not the same as, or adjacent to, premises which are included in the pharmaceutical list. Whilst there is a Boots Pharmacy in Thame, this is located further down on the High Street, so not within our best estimate location."

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

- 1.2 "Please see attached: Section 6 - information in support of the application and appendices 1-4."
- 1.3 "This application is being made to provide pharmaceutical services within central Thame in order to meet the pharmaceutical needs of the current population."
- 1.4 Background
- 1.5 The information in support of this application is being submitted with the views of the residents of Thame and the surrounding areas. The population realise an immediate need for improved pharmaceutical provision in and around Thame. The realisation of an immediate need for improved pharmacy provision came about before and after the

announcement of the closure of the East Street health centre pharmacy in Thame [1,2]. Many people relied on the pharmacy especially the elderly, parents with young children and those with regular medications. In this application, we hope to present evidence to demonstrate that there is a gap in pharmaceutical provision in Thame. The application does not seek to criticise any entity mentioned, it aims only to present evidence, summarise and conclude any findings. We respect all providers associated with healthcare and understand the pressures of delivering a customer based service.

1.6 PNA analysis

- 1.7 Thame is based in South Oxfordshire, closely bordering Buckinghamshire. The Oxfordshire and Buckinghamshire PNA [3,4] predates the events that have led to the submission of this application which is the closure of the Boots Health Centre Pharmacy on East Street, Thame by approximately 2 years. The improvements and better access to pharmaceutical service provision that would be secured by the granting of this application are therefore unforeseen in the context of the current PNA since when the PNA was published there were two pharmacies in Thame. Thame is mentioned in the Oxfordshire and Buckinghamshire PNA. A review of the Oxfordshire PNA found that the consultation survey respondents identified a need for a second pharmacy in Oxford City centre. There is currently a large pharmacy that serves the city centre but respondents to the consultation found that excessive queues as well as a host of other factors contributed to the need for another pharmacy. The authors of the Oxfordshire PNA acknowledge the issue and seem to be open to the idea of a future application in the city centre to rival the existing contractor. This is relevant here because it mirrors the experience of the residents of Thame (evidence presented later on in the application).

1.8 Thame Pharmacy Consultation (TPC) survey

- 1.9 The Thame Pharmacy Consultation (TPC) survey ran for approximately 3 weeks from March 21st 2024 and was advertised through leaflets. Only data from patients who selected the Thame High Street pharmacy as their local pharmacy are presented here (unless otherwise stated). There were 603 patients who selected Thame High Street as their main pharmacy in the website survey. The data presented is using n=603 (unless otherwise stated). The TPC survey was made up of the following questions:

- 1.9.1 (1) Is having a pharmacy important to you?
- 1.9.2 (2) What age group category do you belong to?
- 1.9.3 (3) Do you have a medical condition?
- 1.9.4 (4) Can you identify with any of these patient groups?
- 1.9.5 (5) Why do you visit a pharmacy?
- 1.9.6 (6) Where is your local pharmacy?
- 1.9.7 (7) How often do you use a local pharmacy?
- 1.9.8 (8) Do you own a vehicle?
- 1.9.9 (9) How do you travel to the pharmacy?
- 1.9.10 (10) How long does it usually take?
- 1.9.11 (11) Do you struggle in any way to access your pharmacy?

- 1.9.12 (12) What do you do if you cannot access your pharmacy on the day?
- 1.9.13 (13) Would you prefer a free delivery service within or outside of Thame?
- 1.9.14 (14) Do you use any advanced/additional services at your pharmacy?
- 1.9.15 (15) Would you like to use any advanced/additional services?
- 1.9.16 (16) Do you have issues with medicine stock, medicine shortages, telephoning pharmacies and waiting times?
- 1.9.17 (17) Do you think Thame requires better pharmacy services?
- 1.9.18 (18) Is there a reasonable choice of pharmacies in Thame and the surrounding areas?
- 1.9.19 (19) How satisfied are you with the pharmacy services in Thame?
- 1.9.20 (20)[if Q19 was 'NO'] Why you think there is a lack of choice of pharmacies?
- 1.9.21 (21) Do you have any delivery concerns from outside Thame?
- 1.9.22 (22) Please enter your postcode
- 1.9.23 (23) Do you have anything else to add about your current pharmacy services? [open comment only]

1.10 For the first question of the survey one hundred percent of the patients who took the survey answered 'yes' to 'Is having a pharmacy important to you?'. This may seem obvious because they chose to answer the survey but it also shows how integrated pharmacies are in people's lives.

1.11 Patient comment analysis

1.12 The TPC survey asked patients to comment about anything related to their pharmacy experience in Thame. The survey received a large and wide variety of responses listed in Appendix 1 [appendix A]. The responses are self explanatory and support the responses to the survey. Within this application a small proportion of comments will be used as examples to support patient responses to the survey. In brief, the table below shows key words from the comments and how many times they were mentioned:

Queue / wait	136	Population	24
Delivery	27	Another	66
Open/ close / late / early / time	190	Car / Bus / Taxi / Vehicle	36
Parking	13	Choice	32
Issue	30		
Space	18		
Staff	55		

Haddenham / Vicary	49		
Cope / demand / busy	54		
Stock	39		
GP	55		
Bad / Poor / terrible / hard / problem	74		
Large	12		

1.13 Thame Population (current and future projections)

- 1.14 Thame parish has a population of 13,273 according to the 2021 census [5]. This figure will be significantly higher now and will continue to grow in the near future. Recently, the completion of the Sycamore Rise development of 175 homes, Yeats Lodge of 41 residences, Elton Field of 12 dwellings, Windmill Road of 31 dwellings and Phoenix Park of 126 properties will add to the recorded population. In addition, Bellway homes have an application approved for 54 dwellings, Tamanend Estates LLP for 21 homes and Bloor homes have an application pending for 154 new dwellings. A further 25 and 15 dwellings at Cattle Market and Reagent diagnostics sites have proposals supported. In addition to residential dwellings, Thame has two care homes, the most recent completed in late 2023 (Cuttlebrook Hall, 68 residences). The combined capacity of both care homes is 139 individual rooms [6]. The population of Thame can now be conservatively estimated to be in the region of over 15,000 residents. This means the immediate population of Thame is now served by a single pharmacy per 15,000 residents. Thame is also surrounded by a number of villages. These include the villages of Shabbington (205 homes), Worminghall (275 homes), Ickford (350 homes), Long Crendon (1150 homes) and Tetsworth (300 dwellings). Many residents of these villages are using pharmacy services in Thame as their first option as distance is a primary factor in choice (evidenced by postcode data from the TPC survey). When you take the housing in and around Thame into account a potential population of close to 18,000 people are now served by a single pharmacy. The Thame TNP2 survey [7] has selected various sites around Thame earmarked for future development. The addition of 250+ dwellings on the Moreton Road site would be the next big development for Thame. Clearly, housing is going to be continually built.
- 1.15 The housing increases can be seen in the number of prescriptions that are being issued by the two main surgeries in Thame (Table 1).
- 1.16 Table 1. This table shows the number of prescriptions written by the GPs in the two Thame surgeries and their 12 month trend [appendix B].
- 1.17 The data shows that close to 45,000 items are being issued on average over the year. There is clearly a large cohort of patients requiring pharmaceutical provision. Patient comments below [appendix B] show they are in tune with the housing developments and rising population.
- 1.18 The main conclusion we can draw is that Thame has expanded significantly and is continuing to be expanded. Therefore, pharmacy provisions must stay on top of the growing need for pharmaceutical services in Thame. Any deficiencies in pharmaceutical services will have a material impact on the health outcomes of the local

population. A second pharmacy in Thame will help avert this situation and cover the expanding population for years to come.

1.19 Population make-up

1.20 In mid-2019, compared with the district, county, regional and national averages, Thame had a higher proportion in both the younger age group (0-15) and the group that includes older people aged 65+ (Figure 1. [8]).

1.21 Figure 1 [appendix B]. Proportion of residents aged 0-15 and 65+ (2019) in Thame (blue) compared locally and nationally.

1.22 The TPC survey received a high proportion of comments from the 65 years and over category (41%) and 11% of the patients were 80 and over. This is important as the over 65 category will contain a larger proportion of vulnerable people, for example, those with mobility issues. This group can also be identified as being highly dependent on clinical, social and pharmaceutical services. There will be a clear benefit in having a second pharmacy in the town for this population. The survey also received 14% of responses from the 18-30 year age category. Although young people are less reliant on pharmaceutical services, there are nevertheless distinct benefits to be achieved in terms of health issues which are of particular relevance to young people e.g. Smoking, Drinking, Weight Management and Sexual Health. We will be providing these services should this application be successful. The TPC survey asked patients if they have a long term medical condition (e.g. asthma, high BP, cardiovascular event, diabetes) or none (figure 2). There were 86% of patients that specified they had a medical condition and 14% of patients selected 'none'. This shows that the survey is covering the patient groups who are highly likely to be dependent on pharmaceutical services. A point to note is that people who do not have medical conditions are equally important to a pharmacy as those with a medical condition.

1.23 Figure 2. [appendix B] Survey responses on whether respondents have a medical condition.

1.24 The survey sought to find out if patients could identify with any patient groups (who have protected characteristics besides age). Seventeen percent of patients also selected they were parents with young children, 13% stated they had a disability or mobility issue, 11% said they received a type of benefit and 7% were either housebound or a carer for a housebound patient (Figure 3).

1.25 Figure 3. [appendix B] Survey results indicating a patient group.

1.26 Again this shows there are significant numbers of important patient groups that are being represented.

1.27 Deprivation

1.28 According to the latest indices of deprivation (IMD), Thame was relatively un-deprived with all areas of the town within the 30% least deprived nationally. However, two areas of the town rank within the 10% most deprived nationally on the Barriers to Housing and Services domain[9] (Figure 4). This is due to the low score in the geographical barriers subdomain which measures the physical accessibility and proximity of local services.

1.29 Figure 4. [appendix B] Areas of Thame showing deciles of IMD for barriers to housing and services.

1.30 Evidence shows that there is indeed a barrier to services in the town. Thame is a historic town and the layout can be dated back to the 1600s. Everybody living in and

around Thame are aware that all the amenities are centralised and nothing much can be done about this due to the dense historic listed buildings and housing throughout the town. Therefore, accessibility and proximity issues will remain regardless of the location of the proposed pharmacy.

1.31 Location of the proposed pharmacy

1.32 The application looked at several sites around Thame. The proposed location which is centralised is highly accessible. The chosen location in this application is the most viable site for the proposed pharmacy.

1.33 Accessibility issues into Thame

1.34 In order to find out if access issues were in any way hindering the local population during travel to the pharmacy in Thame, the survey asked a series of questions. When asked about how long it takes to get to their pharmacy, 77% said between less than 20 minutes, and 18% said more than 20 minutes. This result included both walking and taking a vehicle to their local pharmacy (Figure 5).

1.35 Figure 5. [appendix B] Survey responses on travel time to the pharmacy.

1.36 Of those who stated they took more than 20 minutes (n=115), 53 (46%) stated that they were from OXX postcodes (within Thame) and walked to the pharmacy. Those who stated their journey took 20 minutes or more within Thame also stated they had a mobility issue, were parents with young children and/or did not own a vehicle. The remaining 62 (54%) reported that they were from HPXX postcodes (outside of Thame) and travelled to the pharmacy by car. The results clearly show a significant portion of people in and around Thame use its pharmacy services even if it takes more than 20 minutes to access. If this patient population needed to go elsewhere to get their medicines due to, for example, out of stock items or shortages, then they would have to travel even further therefore taking even more time. Having another pharmacy in Thame will give patients a choice to fulfil their medicines or access services locally (if one pharmacy cannot fulfil their requirement) rather than hunting for pharmaceutical services miles away.

1.37 Next we asked patients if they struggled in any way to access their pharmacy. The survey found only 6% of patients did not have an issue with access. The main factors were opening hours (57%) followed by transport (17%), distance (13%) and parking (11%) (Figure 6).

1.38 Figure 6. [appendix B] Survey responses for issues accessing the Thame High Street pharmacy.

1.39 Patient comment analysis (below) [appendix B] backed up the survey results and show opening hours as a major barrier to access.

1.40 A review of the opening/closing hours of the two main GP surgeries in Thame highlight the potential issue (Figure 7).

1.41 Figure 7. [appendix B] Opening times for Rycote Practice and Unity Health both based in the Thame Health Centre.

1.42 The current opening and closing times of the Thame High Street pharmacy are stated as 9.00am - 5.30pm Mon-Fri and Sat 9-5pm. Patient comments highlighted the opening/closing times of the Thame pharmacy being later than the opening times and earlier than the closing times of the pharmacy. Specifically comments included not being able to access the pharmacy before 9am which is also the start time for work for the majority of the population. Clearly, The Rycote Practice has early opening times

(7.30am-8.15am (M-F)) which would mean any early appointments could have prescriptions issued before 8.30 am. On the other hand the Unity Health Practise opens at 8.30am and even after the first appointments prescriptions could be sent to the pharmacy before 9am. In addition, there were comments highlighting the pharmacy closing before the surgeries which meant that acute prescriptions from late appointments (after 5 pm) could not be obtained on the day. Lastly, the pair of surgeries are covering late night appointments on Tues-Thur. To overcome some of the opening/closing time issues we propose an opening time of 8.30 am and closing time of 6.30pm. This will make a significant difference towards the issues presented in the findings. Even if the High Street pharmacy changed its opening hours there are other factors, discussed later on, which would mean having another independent pharmacy would be highly beneficial to the local population. Essentially, we are proposing that the current pharmacy and the proposed pharmacy work together to cover the needs of the local population. Large multiples may be restricted by policies and procedures but small independent pharmacies can make changes to cater for the local population needs which includes Sunday and bank holiday opening hours.

- 1.43 Next, we looked into the reasons why 17% of the patients responded to say they were experiencing transport issues. Comment analysis shows it is mainly related to unreliable bus services in and around Thame and/or a lack of transport due to not owning a car. A few comments mentioned having to wait 15-30 min for a Taxi to arrive. Patients who selected transport issues had postcodes on the suburbs of Thame and in the areas of low IMD scores e.g. OX9 3DS. Another pharmacy in a similar area will not solve issues of transport but additional services such as free delivery could help alleviate some of these issues. As for parking issues an interesting comment made by a patient highlighted the fact that longer queues at the High Street, pharmacy were having a major impact on parking in town because parking spaces were not being turned over quickly. Another pharmacy should speed this process up significantly and relieves some of the parking related problems. This is because the same number of people could be served in a quicker time. Related to access issues, the survey also asked patients if they had a vehicle to travel to the pharmacy. The survey found 10.6% of patients (64 out of 603) selected they did not own a vehicle. This closely correlates to ONS census number of cars or van information [10] which shows 11.95% of residents specified they did not own a car or van across North and South Thame (Figure 8).
- 1.44 Figure 8. [appendix B] ONS data on households with no car or van in North and South Thame.
- 1.45 The TPC survey results show 76% of the people (n=64) who identified as not having a car belonged to the 65 - 80 and over age category. The remaining 24% of people were mainly in the 18-30 category, and also mainly identified as parents with young children and receiving benefit. It appears that these two population categories are restricted in their ability to access pharmacy services away from Thame if and when there would be a need to seek an alternative pharmacy. For example, if a medicine was low in stock at the High Street pharmacy and there was an urgent need then in this situation two pharmacies would increase the odds of obtaining that supply.
- 1.46 In conclusion, the evidence shows there are real access issues when you live in Thame itself and more significantly if you are travelling into Thame from the surrounding areas. We have established access issues are affecting 94% of the population which is highly significant especially when there is only one pharmacy serving the local population. If another pharmacy was approved with broader opening times within Thame then this would alleviate a significant majority of access issues. Another pharmacy in itself will speed up the turnaround of waiting patients which in turn could reduce parking related issues. Lastly, we have also shown a significant number of people are without vehicular access which means that these cohorts are more than likely to be restricted to using

their immediate pharmacy rather than travelling nearly 4 miles to another pharmacy. One way to alleviate transport issues is to offer a free local delivery service.

1.47 Accessibility issues out of Thame

1.48 This application considered accessible community pharmacies from Thame. There are two pharmacies within 5 miles of Thame (Table 2). Only one of the two pharmacies can be reached within 20 minutes during non-busy times if using public transport. Even then at peak times the journey will take more than 20 minutes (evidenced firsthand and through review of survey and social media comments). Neither of these pharmacies is accessible by foot.

1.49 Table 2. Accessible Pharmacies from Thame [appendix B]

1.50 Patient comment analysis highlight some of the issues facing patients trying to access pharmacy services away from Thame [appendix B].

1.51 The Thame to Haddenham Medical Centre bus route is operated by Arriva who run the X7 service. The journey times on the Arriva app vary between 14 - 35 minutes (excluding a 2 minute walk to the surgery from the bus stop). In addition, the bus service is not as reliable as people might expect. Appendix 2 [appendix A] shows a recent comments trail on the local residents page relating to the X7 service which runs from Thame to Haddenham Medical Centre and back. Not that far back the local councillor for Thame wrote an open letter to the bus operating company to look at the issues after a number of complaints from local users (Appendix 3) [appendix A]. High on the list were bus cancellations and delays which still number on average 3-4 per day (evidenced through the bus app for the X7 service over 1 week (Appendix 4)) [appendix A]. This shows that although on paper it seems the closest pharmacy to Thame (3.97 miles) would be reasonably accessible the reality is that this route in particular is riddled with problems. To make matters worse the X8 bus service (which runs from Thame to Oxford) is closing, meaning that the X7 service will run every 30 min instead of every 15 minutes which it is currently doing. In conclusion, rural bus routes are restrictive due to a number of factors and in this case because of a lack of choice in alternate services beside the X7. The route to Chinnor is 23 minutes according to the Red Rose 40 route on the Carrosel App. This route also operates on the hour every hour only. This makes access very difficult for those who require medicines quickly. It would be difficult to ask hundreds/thousands of patients (who have limited or no access to other modes of transport) to endure both the Haddenham and Chinnor route regularly. The alternate access by a personal vehicle would be better suited but as highlighted later on there is a significant proportion of the population without vehicular access and the environmental impact should not be underestimated. Lastly, residents from the villages of Shabbington (4 miles), Ickford (5.5 miles), Worminghall (5.8 miles) and Tetsworth (4.8 miles) have a greater distance to travel to Thame. Long Crendon is 3 miles away but the single route to Thame (and back) is extremely busy at peak times. The bus and car routes from these villages will take longer than 20 minutes and longer during peak times. In essence, only one pharmacy can be called accessible outside Thame and even then it is with difficulty for patients.

1.52 To conclude, we have provided evidence to show that the patients concern for accessibility to pharmacy services outside of Thame is warranted. We provide specific evidence of inadequate bus services which is affecting accessibility issues and hampering the local population. If approved, a second pharmacy would tackle these issues which will make a significant impact on the outlook and health outcomes of the local population.

1.53 Lack of reasonable choice in pharmacy provision

- 1.54 The provision of pharmaceutical services must keep pace with the population growth both in terms of the location of pharmacies and overall capacity in order to maintain a reasonable choice of service. A point to note is that Thame was once served by 3 pharmacies and now there is only one. In 2021, Thame parish had a population of 13,273 and was served by two pharmacies. That gave a ratio of 1 pharmacy per 6637 residents - i.e. 1.5 per 10000. If no new pharmacies will replace the closed pharmacy then this ratio will fall to 1 pharmacy per 10000 population. Compared against the national average of 2.1 pharmacies per 10000 population, the provision of pharmacy per capita is 50% below the national average [11]. By its very definition patients do not have a reasonable choice. This is particularly relevant in Thame, where there has been an expanding population with the construction of related services such as care homes. If we were to include estimates of current population based on new homes from the 2021 census point and patients from the surrounding villages who use the Thame pharmacy, a population in excess of 18000 (conservative estimate) would be reached. The ratio of people to pharmacies in Thame was also highlighted in the TPC survey open comments section. A number of patient comments noted that the population of Haddenham was approx. 5600 (2021) whereas the population of Thame parish was approximately 13,200 (2021), yet both are now only served by one pharmacy. The evidence shows there is a clear lack of reasonable choice.
- 1.55 Patients comment [appendix B] analysis shows patients understand the idea of choice as below.
- 1.56 To understand and provide evidence for the reasons for a lack of choice the TPC survey asked a series of questions around the issue. The first question that was asked was what were the reasons for choosing their current pharmacy. Results are presented in Figure 9.
- 1.57 Figure 9 [appendix B]. Survey results on reasons for choosing your pharmacy.
- 1.58 Results show patients mainly choose their pharmacy based on proximity. We can also assume to some degree that patients who selected 'GP sends prescriptions to this pharmacy', align with 'it is close to me' because GP surgeries usually send prescriptions to the closest pharmacy unless specified by the patient to go elsewhere. It is interesting that nearly 60% of patients choose 'I have no other viable choice'. This shows the population's reliance on local pharmacy services is high and that they are less inclined to go elsewhere. Lastly, it must be highlighted that only 39% of the patients were happy with the overall service. Again survey data and comments show various factors are contributing to this opinion which we will be discussing further on. Related to this the TPC survey asked questions around pharmacy services in Thame. The results are presented in Figure 10.
- 1.59 Figure 10 [appendix B]. Survey results on pharmacy services in Thame.
- 1.60 The results show an overwhelming majority of respondents think Thame requires better pharmacy services, there are not enough pharmacy services in Thame and there is a lack of reasonable choice of pharmacy in Thame and the surrounding areas. The evidence cannot be refuted. In addition, it supports the fundamental reason for an application of unforeseen benefits. To understand the reasons behind the answers to these questions in Figure 10 the survey asked patients to specify why they felt there was a lack of choice in pharmacy services in Thame (Figure 11).
- 1.61 Figure 11 [appendix B]. Survey results showing reasons for a lack of choice of pharmacy provision in Thame.
- 1.62 The results show the overwhelming response was that there are not enough pharmacies in and around Thame (96%). Other responses highlight further reasons why patients feel there is a lack of reasonable choice of pharmaceutical provisions

including other pharmacies were too far (92%), they did not want their medicines delivered from outside of Thame (87%) and that they did not want to use an internet pharmacy (86%). Those living outside of Thame (HPXX postcodes) all responded by selecting 'my dispensing doctors is not adequate'. Again the evidence shows people are struggling with a severe lack of choice that underpins this application for unforeseen benefits. Lastly, the survey asked patients what they would do if they could not access the pharmacy. Patients answered that they collect on another day (93%), followed by 5% stating they would go to another pharmacy and only 2% would ask another pharmacy to deliver (Figure 12).

- 1.63 Figure 12 [appendix B]. Survey responses on what respondents do if they can't access the pharmacy.
- 1.64 Results show that the majority of patients would collect on another day when they cannot access their pharmacy. This shows that people are looking to go to their pharmacy rather than travel out of Thame or change their pharmacy even for irregular prescriptions. If there were two pharmacies in Thame, you could speculate patients may be more inclined to go to the other pharmacy rather than collect on another day because there is a choice.
- 1.65 In conclusion, Thame is now experiencing a severe reasonable lack of choice in pharmacy provisions. Patients are putting up with the local pharmacy provision but only because they have no other reasonable choice. The issue of a lack of choice can only be satisfied with the introduction of a second pharmacy.
- 1.66 Lack of choice in essential, advanced and additional service provision
- 1.67 Essential services
- 1.68 In the last year the number of medicines which were out of stock or short in supply has grown significantly [12, 13]. This includes serious shortage protocols, price concessions, generic pricing issues, manufacturer issues etc. The situation is only going to get worse. Dispensing activities show approximately 9500 items for Boots High Street and 7700 items for Boots Health centre in Dec 2023. This makes an approximate total of 17,000 items. This would mean that there is likely to be a high proportion of patients who will be affected by stock issues. The issue of stock availability (stock the pharmacy has to order in) and stock shortages (a shortage in obtaining stock through wholesalers) can have a massive impact on patient satisfaction due to answering telephones (stock queries) and pharmacy waiting times (due to impact of answering stock related queries and patients having to constantly come back). Patients were asked if they had any issues with medicine stock availability, medicine shortages, telephoning pharmacies and waiting times. We present the results in Figure 13.
- 1.69 Figure 13 [appendix B]. Patients responses to pharmacy service issue questions.
- 1.70 Clearly, the results show a very high percentage of patients are experiencing issues with stock levels (56%), stock shortages (52%), telephoning pharmacies (56%) and waiting times (69%). When you factor in patient 'yes' responses with 'sometimes' the results show that the population are experiencing high levels of service issues. Patient comment analysis shows the keyword 'queue' was mentioned 76 times and the keyword 'wait' 60 times which shows that there are a very large number of comments highlighting the waiting time issue with 69% of respondents experiencing this issue. Other comments below show the stock issues that patients are experiencing. A point to note is that patients are well informed on why stock issues arise, for example, large multiples have a restrictive range of suppliers compared to independent pharmacies.

- 1.71 A second pharmacy would unquestionably help improve the outcomes because there will be double the amount of support for patients. To address these specific issues we have set out some proposals below.
- 1.72 Firstly, another pharmacy in Thame, especially in an area of high population density, would increase the likelihood of patients finding medicines because of stock shortages (in terms of both stock availability and out of stock items). This is based on the number of stock items held by the pharmacy and the amount of suppliers a pharmacy has access to. Issues with stock levels can be attributed to how much stock of high and low volume items a pharmacy keeps on its dispensary shelves. We would negate stock level issues by anticipating regular repeat prescription items a month in advance and retaining a historical inventory of low volume essential items. The practise of retaining one or two months worth of high volume stock will be the norm for the proposed pharmacy.
- 1.73 Secondly, as the application is for an independent pharmacy we will have access to a very large variety of suppliers compared to large multiple pharmacies like the one in Thame. This will provide a greater chance and better ability to locate items that are low in wholesaler stock or about to go out of stock. Both stock shortages and out of stock items can be alleviated by having a variety of first (AAH, ALLIANCE (AB) and Phoenix), generic (Trident, OTC direct, Bestway, B&S Colorama, Sigma) and short line suppliers (Chemilines, Smartway, Mediwin etc). Having different suppliers also means we can circumvent delivery issues by placing orders with multiple suppliers and therefore increasing the chances of getting the items in a shorter space of time. Other ways to get around the problem of out of stock items is to switch to brands or generics (whichever is available) or vice/versa through a new prescription. These practises are all currently being employed at our own pharmacy and we look to provide exactly the same type of operation to make sure availability and shortages have the lowest impact on patient health.
- 1.74 Lastly, the survey has also identified several reasons for a negative patient experience. This includes long waiting times and telephone issues. Our current practise, which includes employing two pharmacists and other propriety methods, has led to patients not having to wait more than 5 minutes for over 10 years. Every pharmacy has their own way of operating its business and we pride ourselves on KPIs such as delivering the shortest possible waiting times, maintaining the highest levels of accuracy, answering calls within 10 seconds and many more. We look to maintain these standards at the proposed pharmacy.
- 1.75 In conclusion, the reasons behind the issues in essential service delivery have been identified. Stock levels and shortages are of concern. To counteract these issues the proposed pharmacy will have higher than average supply of stock and a larger number of suppliers to obtain stock from.
- 1.76 Advanced & additional services
- 1.77 The current population in Thame has a need for inclusive pharmaceutical service provision, not only in terms of essential services (e.g. dispensing medicines) but also in relation to advanced services such as flu vaccinations, Hypertension Service, Pharmacy First, EHC, smoking cessation etc and additional services, for example, pillbox service. The TPC survey sort to as certain which advanced and additional services patients were able to access. The survey first asked what services patients could access now at their pharmacy. The survey found blood pressure checking (53%) and vaccinations (45%) were reasonably well accessed. The survey also found 32% of patients selected they did not access services at their local pharmacy in Thame (Figure 14). This implies they may be using other avenues to access advanced/additional services like using the GP or another pharmacy.

- 1.78 Figure 14 [appendix B]. Survey responses to do you access additional services at your pharmacy?
- 1.79 Patient comments analysis (below) supports this view that they are experiencing problems with accessing advanced/additional services now Thame is down to a single pharmacy. It is also clear to see that patients are acutely aware of how a lack of staff, organisation and space can change their view on accessing advanced services as it puts a burden on the pharmacy team and the other patients waiting their turn. Clearly, this is counterintuitive to the ethos of the roll out of schemes like pharmacy first and minor ailments.
- 1.80 Again another pharmacy will help deliver the services that are available to patients by providing them with the opportunity. There is no substitute for additional premises, space and staff to help provide maximum coverage. In addition, the main reason for pharmacies hosting advanced services is to cover as many of the population as possible thus improving patient health outcomes. Another effect is that it can alleviate the pressure on GP services. Clearly, if the population in and around Thame experience a barrier to access these services because of the lack of provision then this would reduce coverage and put more burden on GP practices. Another pharmacy in Thame will definitely help towards providing greater coverage of advanced pharmaceutical services.
- 1.81 The survey then went onto ascertain what advanced/additional services patients would like to access at a pharmacy (Figure 15).
- 1.82 Figure 15 [appendix B]. Survey responses to additional services access.
- 1.83 The results from Figure 15 show patients are looking for additional services. A significant number of people selected they would like the option of a free delivery service. The pillbox service is also significant when you take the proportion of patients who require the service are most likely to be from a smaller cohort. There does seem to be a proportion of patients who still selected they do not require access. This may be because they have not had good experiences of accessing services at pharmacies or they may not need any of these services. In any case services are important and even if only a few patient numbers take them up it can still make a difference. The proposed pharmacy will be offering all the services mentioned in Figure 15. Patients comment analysis (below) [appendix B] shows patients are looking for additional services.
- 1.84 To conclude we have provided evidence to show that the patients concern for accessing advanced/additional services in Thame is warranted. We provide specific evidence of the issues resulting in patients not taking up advanced/additional services at their current pharmacy. Two pharmacies working side by side would surely offer the maximum coverage of services which would greatly improve the current populations experiences and health. The proposed pharmacy being owner operated has a vested interest to make sure the pharmacy is well staffed so that we can deliver everything that is being planned. Additional services such as a free delivery and pill box service will be offered at the proposed pharmacy.
- 1.85 Free delivery Service
- 1.86 The current pharmacy in Thame does offer a delivery service for £5 per delivery or a yearly fee. However, patients commented that they found the cost of delivery prohibitive. Evidence shows that patients are avoiding the use of a local delivery service which they may actually need. Whilst Vicary Pharmacy in Haddenham provides a delivery service, there was a high percentage of patients who selected they did not want their medications delivered from outside of Thame (87%), the survey asked patients if they had the choice of a free delivery service would they prefer this to be

within or outside of Thame. The results were very stark in that one hundred percent of the patients selected they would prefer a free delivery service from within Thame (Q13 in the TPC survey). Further scrutiny of the reasons behind patients not wanting to have their medicines delivered from further afield are presented in Figure 16.

- 1.87 Figure 16 [appendix B]. Survey responses for delivery concerns from outside Thame.
- 1.88 Patients were mainly concerned about having to stay at home otherwise they would miss the delivery (89%) and medicines reaching them on time (86%) followed by the environmental impact of deliveries (83%). When reviewing comments a number of patients said when medicines are delivered from afar and they had a missed delivery they would have to wait another day for delivery to be re-arranged. However, if they missed a delivery from a pharmacy within Thame they could make arrangements to get the medicines themselves because it was closer. A free local delivery service that can do am/pm deliveries would alleviate most of these concerns. The proposed pharmacy will have this option. Patients were also concerned about phoning pharmacies because it is difficult to get through when they want to chase deliveries. Lastly, the 31% of patients who selected they struggle with online services were all 65 and over. Clearly, there is a category of patient who are less inclined to access delivery services which are further afield. If the pharmacy in this application is approved then, being local, we can avoid the need for patients (who do not want to access online service) to go online for delivery signups or for EPS nomination changes for example, consenting to delivery and online delivery information. Patient comment analysis (below) [appendix B] supports patients survey responses and are well aware that an external delivery service is not sustainable now and in the future.
- 1.89 The proposed pharmacy will offer a free delivery service to those that require it. As mentioned before the service will offer am/pm deliveries to make sure medicines are getting to the patients within a reasonable time period. Patients will have the ability to have a courtesy text or phone call before delivery to make sure anxieties around deliveries are reduced. Related to this, the pharmacy will have a dedicated delivery telephone line to answer delivery related questions only. Again this has worked very well from our experience and reduces patient anxiety when it comes to phoning the pharmacy and chasing up their medicines.
- 1.90 Pillbox Service
- 1.91 Currently, there is no pillbox service being provided within Thame. Patients do have access to pill boxes at a cost £15 (per month) including delivery from Haddenham. To help patients in Thame we will be offering a free service or pay for a plastic pillbox service. To reduce costs and the environmental impact of disposable plastic pillbox use we will be offering a pillbox service where patients can choose to buy sturdy reusable plastic pillboxes instead. Again this is a service we currently offer at our pharmacy and we have a very high uptake of self purchased plastic pillboxes (accounts for over 86 out of approx 100 of our pillbox patients) each month. The re-usable pill box service means costs are reduced significantly hence the ability to provide this as a free service to those who cannot afford to buy the plastic boxes.
- 1.92 In conclusion, some parts of the local population have used delivery services from outside of Thame. This may be because the delivery service offered by the Thame pharmacy is cost prohibitive for many people. Patients have identified they would rather support a free local delivery service. This includes being able to have the choice to collect their medicines locally if deliveries fail or they need the item/s urgently. Patients are also experiencing difficulty when it comes to MDS/dosette/pillbox choices. The proposed pharmacy will be offering a free delivery and free pillbox service. Patients will have a choice to buy sturdy reusable plastic pillboxes and the service will remain free after the initial purchase.

1.93 Innovation

1.94 Innovation in pharmacy is not a known quantity when considering Regulation 18(2)(b)(iii). This application is submitting a few select ideas of innovative approaches for the delivery of pharmaceutical services that have been used with success based around population requirements. This may or may not be innovative in the views of the reviewers, however, every idea has merit if it can make a patient's life easier and changes health outcomes for the better. The proposed pharmacy will not only ensure the pharmacy and the pharmacist(s) are accredited to offer the widest possible range of locally commissioned services but also to be proactive in developing new innovative services to meet local health needs. We present the health hub which puts the patient at the centre of clinical services, advanced services, prevention and advice. The diagram below (Figure 17) shows how these four categories can be interchangeable and combine services.

1.95 Figure 17 [appendix B]. Patient centred Health Hub pathways

1.96 Below is a list and a brief description of some innovative services that will be incorporated into the health hub.

1.97 Early cancer alert service

1.98 Evidence shows the leading cause of death in Oxfordshire is cancer and in 2021-2022 the prevalence of cancer and depression were each above the national average [14]. We have implemented a highly successful early cancer alert service at our current pharmacy which we will be implementing at the proposed site. Essentially, staff are trained to refer 'red flag' symptoms to the pharmacist. The pharmacist then engages with the patient to find out if there are any cancer related factors surrounding the red flag symptoms. The pharmacist advises and then refers on. In certain circumstances we may use the phlebotomy services to aid investigations. We have identified 7 cases in ten years of pre cancer tumours (hyperplasia or dysplasia) and cancer. In one case the patient had to have resection of the nose and in another case a mole showing dysplasia was removed preventing cancer. Another intervention was referred to the GP but delays in hospital referrals led to the patient dying within a year of detection. This service could be very useful due to the large population (in and around Thame) and the fact that Thame has a higher percentage of over 65s. Having conducted research in cancer [15,16] we take cancer's impact on communities very seriously. Overall, with the right training and investigative provision this service could be highly effective and beneficial.

1.99 Supervised medicines consumption for dementia patients

1.100 We have found there are a significant number of patients struggling with medicines consumption due to diseases such as dementia in areas where there is a higher proportion of elderly patients (for example, Fairford Leys, Aylesbury). Over the last few years we have been providing a supervised medicines consumption service where patients can come into the pharmacy (usually with their partner to help) at anytime to get help in consuming their medications. We found that patients like to come in at the beginning of each week and take their tablets at the pharmacy and ask for guidance for the rest of the week. Sometimes when a husband or wife is looking after the other the service can take a lot of stress off their shoulders as patients with dementia respond better to a healthcare professional. Thame already has a Dementia Cafe set-up to tackle the social side of the disease [17]. Therefore, this service would be invaluable at the proposed pharmacy.

1.101 Free cholesterol and glucose spot check

- 1.102 We will offer free cholesterol and glucose spot checks with GP referrals where required. Again a service we have previously developed and run with great success. Once the equipment is purchased the outlay for consumables are relatively low hence the service can be offered for free. This service is intended to identify new patients with potential health issues but also check those who are currently on medications for the conditions. Alongside the pharmacy first scheme the impact of these services together are likely to be substantial.
- 1.103 Conclusion
- 1.104 Overall, we have shown that there is a definite and immediate need for better pharmacy service provision in Thame. Patients have expressed their views and highlighted numerous issues which cause real barriers to accessing pharmaceutical services. There is no amount of adding, changing, altering or refitting of the one and only pharmacy in Thame that can replace the need for a much needed second pharmacy. A second pharmacy will help secure patient choice in accessing essential, advanced and additional services. The proposed pharmacy aims to bring in services catered to the needs of the local population for the purpose of improving health outcomes. The proposed pharmacy will also have innovative elements which when combined will give the patient a choice to identify and tackle any health issue. Extrapolation of the population covered by the survey (approx. 5% of the population) compared to the actual population of Thame provides an insight into how significant the findings in this application are. In conclusion, for the reasons given above we invite NHS England to grant this application and by doing so secure a reasonable choice and improvements to pharmaceutical services for the local population.
- 1.105 Acknowledgements
- 1.106 Website – [C and N] (Chinnor)
- 1.107 Information and data collection advice – [W, J and A] (Thame)
- 1.108 Statistics – [N] (Thame)
- 1.109 Proof reading – [S] (Thame), [E] (Aylesbury)
- 1.110 References
- 1.111 [1]<https://www.oxfordmail.co.uk/news/23954336.boots-pharmacy-oxfordshire-close-next-year-staff-say/>
- 1.112 [2] <https://www.thame.net/discover/pharmacy-closure/>
- 1.113 [3] Oxfordshire PNA - <https://insight.oxfordshire.gov.uk/cms/PNA>
- 1.114 [4] Bucks Current PNA - <https://www.buckinghamshire.gov.uk/health-wellbeing-and-sports/buckinghamshire-pharmaceutical-needs-assessment-2018-to-2021/>
- 1.115 [5]https://www.citypopulation.de/en/uk/southeastengland/admin/south_oxfordshire/E04008171_thame/
- 1.116 [6]<https://www.thametowncouncil.gov.uk/thame-town-council/thame-neighbourhood-plan-revision/>
- 1.117 [7] <https://www.thametowncouncil.gov.uk/wp-content/uploads/2021/12/TNP2-Survey-Vision-and-Sites-summary-LR.pdf>
- 1.118 [8] ONS mid-year population estimates (Thame parish)

- 1.119 [9] MHCLG IMD 2019
- 1.120 [10]<https://www.ons.gov.uk/census/maps/choropleth/housing/number-of-cars-or-vans/number-of-cars-5a/no-cars-or-vans-in-household?msa=E02005958>
- 1.121 [11]<https://lginform.local.gov.uk/reports/lgastandard?mod-area=E92000001&mod-group=E07000179&mod-metric=3707&mod-type=area>
- 1.122 [12] <https://cpe.org.uk/our-latest-news-category/shortage/>
- 1.123 [13] <https://www.mims.co.uk/drug-shortages>
- 1.124 [14] Targeting of 5-aza-2'-deoxycytidine residues by chromatin-associated DNMT1 induces proteasomal degradation of the free enzyme. Katan Patel, Jacqueline Dickson, Shahida Din, Kenneth Macleod, Duncan Jodrell, Bernard Ramsahoye.
- 1.125 [15]<https://www.thametowncouncil.gov.uk/business-directory/22802/dementia-cafe/>
- 1.126 [16] Optimization of the antitumor activity of sequence-specific pyrrolobenzodiazepine derivatives based on their affinity for ABC transporters. Maciej Kaliszczyk, Dyeison Antonow, Katan Patel, Philip Howard, Duncan I Jodrell, David E Thurston, Sylvie M Guichard.
- 1.127 [17] <https://insight.oxfordshire.gov.uk/cms/joint-strategic-needs-assessment>
- 1.128 Appendices 1-4: Please see separate attachment [appendix A].

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

- 1.129 “This application is offering to secure improvements to pharmaceutical services that have not been identified in the PNA by offering a reasonable choice with regard to obtaining pharmaceutical services in Thame and the surrounding area. The PNA pre-dates the recent closure of the second pharmacy in Thame by approximately two years. The closure has meant that there is now a severe lack of choice in Thame. The lack of reasonable choice extends not only in delivering essential services but also to advanced and enhanced services. This has been evidenced and discussed at length with irrefutable evidence in the previous section. Should this application be approved these patients will have improvements in, and better access to, pharmaceutical services in place of the closed pharmacy.
- 1.130 Granting this application will also secure a reasonable choice of pharmaceutical service provision to cover an expanding population. It will improve overall provision within the HWB's area, and ensure that service provision is located where there is a particular focus for demand ensuring that the pharmacy network adapts to changing patient needs arising from existing and new housing developments in the area.
- 1.131 This application has also identified people sharing a protected characteristic (for example, the elderly, those with a disability) having difficulties accessing services that meet specific needs to the local area. We identified a larger group of elderly people than average in Thame who have needs such as deliveries and pillbox access which are currently restrictive due to costs or nonexistent within Thame. We have proposed measures to ensure that pharmaceutical services are accessible to these groups. Lastly, the application has identified innovative approaches with regard to the delivery of pharmaceutical services. We anticipate that the two pharmacies in Thame (current and proposed) will work together to cover the health requirements of the local population. There is no doubt that another pharmacy will have a significant impact on the choices for health improvement.

- 1.132 In conclusion, for the reasons given above we invite NHS England to grant this application and by doing so secure a reasonable choice and improvements to pharmaceutical services for the local population in Thame and the surrounding areas.”

By application dated 27 February 2024, Healthcare Plus Consulting Ltd on behalf of Nutriberry Ltd applied to Buckinghamshire, Oxfordshire and Berkshire West (“the Commissioner”) for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at East Street/ Wellington Street Thame OX9 3JZ. In support of the application it was stated:

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

- 1.133 “N/A. Despite there being a pharmacy currently trading near the proposed site, the current pharmacy located at The Health Centre, East Street, Thame, OX9 3JZ is due to close on the 22nd March 2024.
- 1.134 Should a new pharmacy contract ultimately be granted, there will no longer have been a pharmacy trading from The Health Centre, OX9 3JZ.
- 1.135 Thus, there will be no pharmacy trading from or adjacent to the proposed premises, so Regulation 31 does not apply.”

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

- 1.136 “Please see enclosed supporting Information”.
- 1.137 “Background
- 1.138 This application is in respect of opening a new pharmacy to provide better pharmaceutical access and choice for residents of Thame and the surrounding areas.
- 1.139 We understand that currently there are two pharmacies serving Thame and the surrounding areas; however, the impending closure of the Boots Pharmacy, The Health Centre, East Street, Thame, OX9 3JZ on the 22nd March 2024 will reduce provision to a single pharmacy. This closure will leave a significant gap in pharmaceutical services within Thame; hence this application is offering unforeseen benefits not captured within the PNA.
- 1.140 The best estimate of the proposed site we wish to open a new pharmacy is located on East Street, Thame, OX9 3JZ.
- 1.141 Thame can be described as a rural town, serving residents not only in the town but also those residing in the surrounding hinterland. Per 2021 Census data, we can see that Thame houses 12,951 residents. However, due to the rural nature of the surrounding areas, healthcare provision in Thame also serves surrounding areas. Thus, when assessing the population that utilise pharmaceutical services in Thame, it is more prudent to assess the patient list size of local doctor's surgeries. The Rycote Practice, which is within the best estimate location, is the only doctor's surgery for 5 miles and has a patient list size upwards of 13,000.
- 1.142 Extrapolating this population figure allows us to conclude that Thame will soon only have an effective 7.7 pharmacies per 100,000 people – well below the average for Oxfordshire (15.1/100,000) and England (20.6/100,000). Thus, it is apparent that pharmaceutical provision will be dire in Thame, and common sense alone would dictate that there is a requirement for another pharmacy; however, we have set out distinct benefits of granting this application further on within this document.

1.143 Proposed Location

- 1.144 The proposed location is situated adjacent/ inside Thame's only medical centre, The Rycote Practice.
- 1.145 The practice dispenses c.13,500 items per month, with the current Boots pharmacy co-located with the practice. The closing Boots is a busy pharmacy dispensing c. 8,000 items per month, of which c.5,000 originate from The Rycote Practice.
- 1.146 The Medical Practice is situated in East Thame, with the proposed site providing plenty of free parking, disabled access ramps, as well as having a bus stop directly outside. There is good access by foot, car, and public transport.
- 1.147 We would like to highlight the sentiment of residents per the PNA survey that *"pharmacies should be located near to GP surgeries as a matter of course"*. Clearly granting this application would achieve this goal.
- 1.148 The map overleaf [appendix C] illustrates the location of current pharmaceutical provision in Thame, and the location of the proposed site.
- 1.149 From the map above we can see that Thame and the surrounding areas will soon only have one pharmacy to serve the entire population, Boots Pharmacy, OX9 2BU.
- 1.150 The next nearest pharmacy is Vicary Pharmacy, Haddenham, HP17 8JX. This pharmacy is over 4 miles away from the proposed site and 4.4 miles away from the remaining pharmacy in Thame (Boots Pharmacy). This highlights how alternative pharmaceutical provision is sparse in the areas surrounding Thame.

1.151 Regulations

- 1.152 We are required by NHS England to address the overarching question in an Unforeseen Benefits application:
- 1.153 *"Please describe the unforeseen benefit(s) that you are offering to secure and how it will secure improvements or better access to pharmaceutical services, or pharmaceutical services of a specified type in the HWB area"*.
- 1.154 When considering the above question, the provisions of Regulation 18(2)(b) should be noted: [Regulation 18(2)(b) quoted in full].
- 1.155 We have addressed these regulations overleaf.

1.156 Population Growth

- 1.157 Thame has experienced rapid population growth in years of late. The 2021 census population of Thame, estimated at 12,951, represents a 13% increase over the 2011 census. When we also consider new housing developments within the town, single pharmaceutical provision is simply inadequate to support such a large population.
- 1.158 New housing developments are concentrated on the Southeast side of Thame:
- 1.158.1 Phoenix Park Development: 129 new homes
- 1.158.2 Sycamore Rise Development: 175 new homes
- 1.158.3 Thame Park Development: 79 new homes
- 1.158.4 Hampden Gardens Development: 100 new homes (est.)

- 1.159 Residents of the above developments are highly likely to utilise pharmaceutical provision at the proposed site due to its sitting on the East side of Thame.
- 1.160 For the residents of Thame and especially for those residing within Thame's new housing developments, granting this application would secure better access and reasonable choice to pharmaceutical services.
- 1.161 Patient Journeys
- 1.162 When considering securing better access, we consider what a typical patient journey would look like. We also consider the reasonable choice within these journeys, alongside how those with protected characteristics find those journeys.
- 1.163 When assessing patient journeys, it is important to note the significance of the soon to be closed Boots (the proposed site) being co-located with The Rycote Practice. The closing Boots is a high-volume pharmacy and dispensed 8,182 items in November 2023 with 5,146 originating from the co-located Rycote Practice, representing 63% of total pharmacy items. Clearly a lot of patients are accessing pharmaceutical services in connection with a visit to the GP. The closure of the Boots will mean that those accessing pharmaceutical services in connection with a visit to the GP, now have two journeys to make: the first to the GP practice, and the second to the pharmacy. This should be kept in mind for the scenarios below.
- 1.164 Using the proposed site, OX9 3JZ, as an arbitrary marker to represent those residing in East Thame; we can see that the remaining pharmacy, Boots Pharmacy (OX9 2BU) is 0.5 miles away. For residents currently residing near the proposed site, current pharmaceutical services are difficult to access by foot and public transport.
- 1.165 By Foot from Proposed site to nearest pharmacy (Boots Pharmacy, OX9 2BU)
- 1.166 As can be seen from the map below [appendix C], this journey is 0.5 miles or 11 minutes, equating to a 22-minute round-journey. For the less able-bodied this journey may be significantly longer. It is worth highlighting that distance in itself is a barrier to access, and this journey length is excessive, especially considering that patients are likely to visit this pharmacy after first travelling to the Doctor's Surgery.
- 1.167 We do not consider a 1 mile round walk to access pharmaceutical services as sufficient access, nor can we consider this as having a reasonable choice to pharmaceutical services.
- 1.168 For the significant number of patients that first must walk to access GP services at The Rycote Practice, an additional 1 mile walk to access pharmaceutical services could be considered poor access. Further, such an extended journey may prove difficult for the elderly, disabled, or parents with young children. Groups with protected characteristics do not have sufficient access by foot.
- 1.169 It should be noted that residents living to the East of the proposed site can experience an even longer round journey to access pharmaceutical services. Some residents will have to endure a 46- minute walk, a 2.2-mile round-journey to access current pharmaceutical services. Granting this application would reduce this journey to 23 minutes, not perfect, but a significantly more accessible trip.
- 1.170 It follows that alternative pharmaceutical provision is also not accessible by foot on account of the greater distances involved. The next nearest pharmacy is over 4 miles away and thus there is a lack of reasonable choice and access to pharmaceutical services for those travelling by foot.

- 1.171 By Public Transport from Proposed site to nearest pharmacy (Boots Pharmacy, OX9 2BU)
- 1.172 The journey to the Boots Pharmacy, OX9 2BU, is not the best served by public transport. Patients would obtain the 40link40 bus from outside the proposed site. The journey in itself is 3-minutes; however, frequency is poor with buses only arriving hourly. Once a patient has arrived at the Boots pharmacy, they could be waiting up to an hour for the return journey. Clearly this does not provide adequate access to pharmaceutical services. When we also consider that patients may first need to obtain a bus to the medical practice and then obtain a subsequent bus to the Boots pharmacy in West Thame, we can see that patients could be waiting up to 2 hours for buses. This is clearly representative of no pharmaceutical choice at all, much less than the threshold of 'reasonable choice'.
- 1.173 Such poor choice of pharmaceutical access is felt especially by the elderly and disabled. These patient groups could face having to wait up to 2 hours for buses in the shivering cold on a winter's day. When we consider that these patients may not be able to drive, or even may not feel comfortable driving in winter conditions; alongside their inability to walk long distances, it is obvious that current pharmaceutical provision is inadequate and such scenarios stem from a lack of reasonable choice.
- 1.174 A pharmacy at the proposed site would mean pharmaceutical services are accessible in a setting where patients are accustomed to accessing pharmaceutical services. Thus, granting this application would restore reasonable choice and sufficient access to pharmaceutical provision.
- 1.175 Opening Hours
- 1.176 When considering better access, we must also consider the current provision of opening hours, and the reasonable choice that patients have on each day of the week.
- 1.177 The applicant recognises that access to pharmaceutical services on a weekend is especially important, particularly given new the Pharmacy First Service proposed by NHSE and has thus committed to core Saturday & Sunday morning opening hours.
- 1.178 Per the current PNA, we understand that Boots Pharmacy (OX9 2BU) was previously open on Sundays serving the 13,000-reliant population. However, this is no longer the case, and we believe that this lack of Sunday opening hours has created a gap in provision.
- 1.179 Currently, the nearest pharmacy opening on a Sunday is the Tesco Pharmacy, HP19 8BU, which is over 10 miles away. For those seeking to access pharmaceutical services on a Sunday, this is clearly not a reasonable choice, especially for those residing in Thame and the surrounding areas. Clearly, by granting this application, access and reasonable choice to pharmaceutical services on a Sunday and weekend as a whole will be significantly better.
- 1.180 Conclusion
- 1.181 In our view, the closure of the upcoming closure of the Boots Pharmacy, OX9 3JZ, will leave a significant gap in pharmaceutical services for Thame and the surrounding areas.
- 1.182 Granting this application would secure better access to pharmaceutical services, especially on a Sunday. 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 Thame and the surrounding areas.

1.183 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 closure; and notwithstanding the fact that the nearest pharmacy to the proposed site is located 0.5 miles away.

1.184 On the evidence outlined above, we believe that a new pharmacy contract should be granted.”

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

1.185 “The Boots Pharmacy, The Health Centre, East Street, Thame, OX9 3JZ, 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.

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

1.187 Better access and choice to pharmaceutical services given the closure of the above pharmacies.

1.188 See enclosed Supporting information for further detail” [see 1.136 -1.184 above].

2 The Decision

The Commissioner considered and decided to grant the application from Healthcare Plus Consulting Ltd on behalf of Nutriberry Ltd and refuse the application from SKP Pharm Limited. The decision was communicated to parties by cover letter dated 25 October 2024. The undated decision report states:

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

2.1 “Applications offering Unforeseen Benefits being considered together and in relation to each other:

2.2 Application 1:

2.2.1 Nutriberry Ltd

2.2.2 CAS-279557-R1G7H4

2.2.3 East Street / Wellington Street units as indicated on map below, Thame, OX9 3JZ. The Rycote Practice, OX9 3JZ, included in best estimate. Map covering best estimate area depicted below, with proposed best estimate sites located inside of the red line (map referred to was included with the application).

2.2.4 Oxfordshire HWB

2.2.5 Buckinghamshire, Oxfordshire and Berkshire West ICB

2.3 Application 2:

2.3.1 SKP Pharm Ltd

2.3.2 CAS-306307-T4K4V4

2.3.3 Butter Market (2-20A), Cornmarket (5-18), Upper High Street (1-26), Thame, OX9. Please see attached map of best estimate (map referred to was included with the application).

2.3.4 Oxfordshire HWB

2.3.5 Buckinghamshire, Oxfordshire and Berkshire West ICB

2.4 Introduction and background

2.5 Unforeseen benefits applications had been received as detailed above. The Committee was now required to consider the applications in accordance with Regulations 18 and 19 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.

2.6 Full details of the applicant's proposals had been notified to the various interested parties in accordance with the regulations.

2.7 It had been previously agreed and notified that the two applications would be considered together.

2.8 Consideration by the Committee – Applications

2.9 Summary of application 1 – Nutriberry Ltd

2.10 The applicant proposed core opening of 46 hours per week and total proposed opening of 51 hours per week.

2.11 The applicant had also indicated which hours they proposed to be the 40 core hours, and which hours were proposed as additional core hours. The additional core hours/directed hours were 10:00-13:00 on Saturday and Sunday.

2.12 The hours proposed as indicated in section 3.1 of the application form are:

2.13 Proposed core opening hours:

Monday to Friday	Saturday	Sunday	Total
09:00-13:00, 14:00-18:00	10:00-13:00	10:00-13:00	46 hrs

2.14 Total proposed opening hours:

Monday to Friday	Saturday	Sunday	Total
09:00-18:00	10:00-13:00	10:00-13:00	51 hrs

2.15 The applicant proposed to provide essential, enhanced and advanced services, if commissioned.

2.16 At part 6 of the application form, the applicant describes the unforeseen benefit they are offering to secure as: *"This application is in respect of opening a new pharmacy to provide better pharmaceutical access and choice for residents of Thame and the*

surrounding areas. We understand that currently there are two pharmacies serving Thame and the surrounding areas; however, the impending closure of the Boots Pharmacy, The Health Centre, East Street, Thame, OX9 3JZ on the 22nd March 2024 will reduce provision to a single pharmacy. This closure will leave a significant gap in pharmaceutical services within Thame; hence this application is offering unforeseen benefits not captured within the PNA.”

2.17 **Representations**

2.18 The Committee noted the applicant’s proposals were notified to various interested parties in accordance with the Regulations.

2.19 Representations have been received from:

2.20 SKP Pharm Ltd, the committee noted the comments in the representation. SKP Pharm Ltd concluded that:

2.21 “Overall comments

2.22 *The applicant has outlined a few reasons why they believe this application would secure unforeseen benefits to the residents of Thame. However, the applicant has not provided enough data to support claims that patients are experiencing any difficulty or inconvenience in accessing pharmaceutical services. No additional services have been mentioned over and above the ones that are accessible to patients already. There needs to be more data to support the claim that people sharing a protected characteristic are having difficulty in accessing pharmaceutical services. A measured application with actual data and references backing up the key points could have helped understand the lack of reasonable choice. An application that has engaged in widespread consultation with local residents and representatives and is fully evidenced is likely to provide real insights, whereas the application from Nutriberry Ltd has a lack of insight as there is no supporting evidence.”*

2.23 Oxfordshire HWB stated *“Although we note the closure of one pharmacy in Thame in March 2024, in terms of geographical coverage, there remains no gap in Thame, and we have not issued a supplementary statement to the PNA. We regard this area as having possible future need, but this is beyond the life-time of the current PNA. We will review housing growth and demographic change in our work on the new PNA due to be published in 2025. We acknowledge that an additional pharmacy would add choice.”*

2.24 Thames Valley LPC stated *“The LPC is not aware of any concerns raised by patients locally about the level of service, opening hours or availability of a pharmacist in the locality. The LPC would therefore encourage NHS England to refuse this application.”*

2.25 Boots UK Ltd had no comments to make neither supporting nor opposing the application.

2.26 The Committee noted the applicant’s response to the consultation responses.

2.27 The Applicant stated that

2.28 *“In conclusion, granting this application would secure better access and improvements to pharmaceutical services for East Thame, especially on a Sunday. Those accessing GP provision within Thame will likely find the proposed premises significantly more accessible for their pharmaceutical needs – a sentiment highlighted by residents in the Oxfordshire PNA survey: “pharmacies should be located near to GP surgeries as a matter of course”. There is a need for a pharmacy in East Thame, especially when we consider the growing population. 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. Hence, regulation 18 has been met and this application should be granted."

2.29 Summary of application 2 – SKP Pharm Ltd

2.30 The applicant proposed core opening of 45 hours per week and total proposed opening of 56 hours per week.

2.31 The applicant had also indicated which hours they proposed to be the 40 core hours, and which hours were proposed as additional core hours (the additional core hours/directed hours were 17:00-18:00 Monday to Friday.

2.32 The hours proposed as indicated in section 3.1 of the application form are:

2.33 Proposed core opening hours:

Monday to Friday	Saturday	Sunday	Total
09:00-18:00	None	None	45 hrs

2.34 Total proposed opening hours:

Monday to Friday	Saturday	Sunday	Total
08:30-18:30	10:00-13:00	10:00-13:00	56 hrs

2.35 The applicant proposed to provide essential, enhanced and advanced services, if commissioned.

2.36 At part 6 of the application form, the applicant describes the unforeseen benefit they are offering to secure as:

2.37 *"This application is offering to secure improvements to pharmaceutical services that have not been identified in the PNA by offering a reasonable choice with regard to obtaining pharmaceutical services in Thame and the surrounding area. The PNA pre-dates the recent closure of the second pharmacy in Thame by approximately two years. The closure has meant that there is now a severe lack of choice in Thame. The lack of reasonable choice extends not only in delivering essential services but also to advanced and enhanced services. This has been evidenced and discussed at length with irrefutable evidence in the previous section. Should this application be approved these patients will have improvements in, and better access to, pharmaceutical services in place of the closed pharmacy."*

2.38 Representations

2.39 The Committee noted the applicant's proposals were notified to various interested parties in accordance with the Regulations.

2.40 Representations have been received from:

2.41 Healthcare Plus consulting on behalf of Nutriberry Ltd stated:

- 2.42 *"My client agrees with the Applicant that a new pharmacy is required in Thame, however, asserts that the application from Nutriberry Ltd should be preferred for the following reasons:*
- 2.43 *Location*
- 2.44 *The location proposed by my client is situated in East Thame, where the Boots recently closed, and where both GP Practice's in Thame are located. Granting my client's application would reinstate pharmaceutical provision in an area that residents are accustomed to accessing pharmaceutical provision and improve access for those accessing a pharmacy in connection with a visit to the GP. Such sentiment is very much backed up by comments in the public consultation undertaken by SKP Pharm Ltd.*
- 2.45 *From the public comments above, it is clear that there is a need for a pharmacy on the East side of Thame near the current GP Practices. This will stop patients having to make double journeys: the first to the GP Practice, and the second to the high street to access pharmaceutical provision.*
- 2.46 *The proposed location provided by SKP Pharm Ltd is adjacent to current pharmaceutical provision in Thame. A journey to the proposed site by SKP Pharm will be the same as the journey to the current Boots pharmacy, OX9 2BU. Ultimately, the location proposed by SKP Pharm does not solve the problem of the 'double journey'.*
- 2.47 *Opening hours*
- 2.48 *We note that SKP Pharm offer 45 weekly core opening hours from 09:00-18:00 Monday to Friday. However, my client offers 46 weekly core opening hours with 6 of these being on the weekends from 10:00-13:00 on Saturdays and Sundays. This is compared to the 0 weekend core hours proposed by SKP Pharm. We highlight that the Sunday core hours offered by my client would be of benefit to the whole population within Thame, given that there is currently no Sunday opening by local contractors.*
- 2.49 *SKP Pharm appear to have offered a number of supplementary hours, however as the committee will be aware, supplementary hours can be withdrawn easily with 5 weeks' notice and thus no weighting should be placed on them.*
- 2.50 *Services*
- 2.51 *SKP Pharm highlight that they would provide free delivery. My client also proposes to provide free delivery; however, the committee will be aware that delivery is not NHS commissioned and thus location and accessibility is of much greater importance when deciding whether to grant any application. This is acknowledged by SKP Pharm who in their supporting information state: "distance is a primary factor in choice".*
- 2.52 *SKP Pharm highlight that they would provide Pillbox Services. Again, my client also proposes to provide these services should there be a need within the local population. We note that Pillbox services are also not NHS commissioned.*
- 2.53 *SKP Pharm highlight a number of additional non-commissioned services that they propose to offer. My client would like to highlight that they too would offer these additional services should there be a need within the local population, and will liaise with the ICB to determine any preventative measures that would improve health outcomes within Thame."*
- 2.54 *Oxfordshire HWB stated "Although we note the closure of one pharmacy in Thame in March 2024, in terms of geographical coverage, there remains no gap in Thame, and we have not issued a supplementary statement to the PNA. We regard this area as having possible future need, but this is beyond the life-time of the current PNA. We will*

review housing growth and demographic change in our work on the new PNA due to be published in 2025. We acknowledge that an additional pharmacy would add choice.”

- 2.55 Thames Valley LPC neither support nor oppose the application.
- 2.56 Boots UK Ltd had no comments to make neither supporting nor opposing the application.
- 2.57 The Committee noted the applicant's response to the consultation responses.
- 2.58 The Applicant stated that “We have nothing new to add apart from a few clarifications to the comments:
- 2.59 **Location**
- 2.60 a)'From the public comments above, it is clear that there is a need for a pharmacy on the Eastside of Thame near the current GP Practices.'
- 2.61 Nutriberry Ltd highlight comments made by patients who have only just switched over to the High Street and they only represent a handful of the actual comments. Patients who switched over to the High Street months before the closure of the East Street pharmacy have over 50 comments asking for another pharmacy in Thame regardless of the location. In fact, the most recently acquired comments within the last few months firmly share this sentiment (including over 120 postcodes around East Street) as patients desire, above anything else, choice of service provision in Thame irrespective of whether the new pharmacy is closer to the town centre or the GP surgery.
- 2.62 b)'Ultimately, the location proposed by SKP Pharm does not solve the problem of the double journey.
- 2.63 The applicant fails to realise that the closest location within our application is less than 350 meters away from the surgery, so that there would be no meaningful distance between the surgery and our pharmacy'.
- 2.64 **Opening hours**
- 2.65 'SKP Pharm appear to have offered a number of supplementary hours, however as the committee will be aware, supplementary hours can be withdrawn easily with 5 weeks' notice and thus no weighting should be placed on them.'
- 2.66 We think it is disingenuous to suggest that an application made on behalf of the residents would reduce its hours just because they have not been included as core hours. Being residents and part of the residents association of Thame holds us accountable. On the same merit, core hours can be changed upon application to NHS England and we have no way of knowing that Nutriberry Ltd will not apply to change their hours a few months after an application has been granted.
- 2.67 **Services**
- 2.68 We have listed commissioned and non-commissioned services but also Thame specific services which have been fully consulted on. It appears the applicant within Nutriberry Ltd is not a resident of Thame and/or have no local knowledge of the service requirements hence no mention of them in their application.”
- 2.69 **Further Consideration by the Committee**
- 2.70 The Committee also considered:

- 2.71 The NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.
- 2.72 Department of Health guidelines on market entry by means of pharmaceutical needs assessment – Chapter 8 – Unforeseen Benefits.
- 2.73 The Report which included:
- 2.73.1 maps of the location,
 - 2.73.2 opening times and distances to surrounding pharmacies and GP Practices,
 - 2.73.3 a site visit report
 - 2.73.4 Oxfordshire PNA 2022 extracts and a link to the full PNA,
 - 2.73.5 public transport information,
 - 2.73.6 prescription information,
 - 2.73.7 the relevant Regulations (18, 19, 31 51 and 65).
- 2.74 In relation to the applications, the Committee noted the Applicants Fitness to Practise Status:
- 2.74.1 Applicant 1: Nutriberry Ltd: CAS-279557-R1G7H4
 - 2.74.2 Fitness information was determined and approved on 8th July 2024.
 - 2.74.3 Applicant 2: SKP Pharm Ltd: CAS-306307-T4K4V4
 - 2.74.4 Fitness information was determined and approved on 20th August 2024
- 2.75 The Committee considered information from a site visit of the Thame area that had been undertaken by a Pharmacy Commissioning Hub representative.
- 2.76 Thame is a market town in Oxfordshire, located about 13 miles east of the city of Oxford and 10 miles southwest of Aylesbury. Thame sits on the edge of Oxfordshire/Buckinghamshire HWB border, it is surrounded by rural farmland and villages. The A418 runs between Oxford and Aylesbury and runs along the Northwest side of Thame bypass.
- 2.77 **Regulation 31 – Refusal: same or adjacent premises**
- 2.78 The Committee first considered Regulation 31(2)(a)(i) and was of the view that Regulation 31(2)(a)(i) is not met as there is currently no person on the pharmaceutical list at the premises to which the application relates.
- 2.79 The Committee went on to consider paragraph (a)(ii) of Regulation 31(2); whether there is a person on the pharmaceutical list providing pharmaceutical services from adjacent premises.
- 2.80 The Committee was satisfied that there is no pharmacy providing pharmaceutical services within the area of the best estimate address/proposed premises of any the applications. The applications did not therefore need to be refused in accordance with Regulation 31.
- 2.81 **Regulations 40,41 and 44**

- 2.82 The Committee noted that the best estimate address/proposed premises location for both the applications was not in a controlled locality, and therefore, Part 7 of the Regulations (in particular Regulations 40, 41 and 44) did not have to be considered.
- 2.83 **Regulation 50**
- 2.84 There are no dispensing patients living within 1.6km radius of the proposed best estimate address of application 1, Nutriberry Ltd and there are no dispensing patients living within 1.6km radius of the proposed best estimate address of application 2, SKP Pharm Ltd,
- 2.85 Therefore, the Committee noted that if either of the applications were approved it would not be required to consider the discontinuation of arrangements for the provision of pharmaceutical services by doctors to the affected patients under Regulation 50.
- 2.86 **Oral Hearing**
- 2.87 Having reviewed the content of each application and the consultation responses for each one, the Committee was satisfied it was not necessary to hold an oral hearing to determine the applications.
- 2.88 **Regulation 18 – Unforeseen benefits application**
- 2.89 The Committee noted that this was an application for “unforeseen benefits” and fell to be considered under the provisions of Regulation 18 which states: [Regulation 18(1)(a) and 18(1)(b) quoted in full].
- 2.90 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
- 2.91 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 (the ‘PNA’) in accordance with paragraph 4 of Schedule 1 of the Regulations.
- 2.92 The Committee had regard to the Oxfordshire PNA 2022-2025 (issue date 1st April 2022) (the ‘PNA’) and noted that supplementary statements had been issued on 29th June 2023 but were not in relation to the Thame area.
- 2.93 The Committee noted that, having considered the entire Oxfordshire locality including the area of Thame, the HWB had reached the conclusion that:
- 2.93.1 *“(i) It should be noted that the PNA has not identified any gaps in general access in the present situation in Oxfordshire and in the expected situation in Oxfordshire to 2025, that is during the lifetime of the current PNA.*
- 2.93.2 *(ii)It should be noted that NHS Resolution has adjudicated that a new pharmacy can be opened in Upper Heyford in Cherwell.*
- 2.93.3 *(iii) Special note should be made of the situation in central Oxford City, where there is at present one large pharmacy. An additional pharmacy in the centre could provide service improvement in terms of extra capacity and provide extra choice. The Steering Group recommends 48 core hours and 15 supplementary hours for a second pharmacy, to include opening on Monday to Saturdays and six hours on Sundays.*

2.93.4 *(iv) It should be noted that the Valley Park housing development, west of Didcot, part of the Didcot conurbation and in Vale of White Horse, may have a future need, after the building is completed and as the community matures, but not in the lifetime of the current PNA."*

2.93.5 [Page 15, Oxfordshire PNA, 2022-25].

- 2.94 The Committee noted that the HWB had considered access (distance, travelling times and opening hours) to assess how current service provisions will meet the needs of the population within the lifetime of the PNA.
- 2.95 The Committee noted that the improvements or better access that the Applicants were claiming would be secured by their application were not included in the relevant pharmaceutical needs' assessment in accordance with paragraph 4 of Schedule 1.
- 2.96 The Committee was satisfied that the improvements or better access which the applicants were proposing to secure were not identified in the PNA, and an 'unforeseen benefits' application is the correct type of application.
- 2.97 In order to be satisfied in accordance with Regulation 18(1), the Committee went on to consider those matters set out at Regulation 18(2).
- 2.98 **Regulation 18(2)(a)(i)** [quoted in full].
- 2.99 The Committee was not aware of any plans that would be affected and concluded that granting the application would not have an adverse effect on any future plans. None of the submissions included any comment or evidence in regard to this matter. Therefore, the Committee concluded that granting an application would not cause significant detriment in this regard.
- 2.100 **Regulation 18(2)(a)(ii)** [quoted in full].
- 2.101 None of the submissions included any evidence on this question and the Committee found no proof to support the suggestion that if an application was to be granted, it would cause significant detriment to the arrangements in place for pharmaceutical services in the area.
- 2.102 The Committee did not find any significant detriment to proper planning or to the arrangements in place for the provision of pharmaceutical services and therefore was not obliged to refuse an application under Regulation 18(2)(a).
- 2.103 **Regulation 18(2)(b)(i)** [quoted in full].
- 2.104 The Committee noted that the Boots Pharmacy located at The Health Centre, East Street, Thame, OX9 3JZ closed on 23rd March 2024 leaving one pharmacy within the town. The Committee also noted that in the past there had been three pharmacies located within the town.
- 2.105 In order to determine whether patients in the area already had a reasonable choice, the Committee considered access (distance, travelling times and opening hours) as an important factor in determining the extent to which the current pharmaceutical service provision meets the needs of the population in the Thame area.
- 2.106 The Committee considered the location and distance of the pharmacies in Thame from the proposed locations as detailed in the site visit report. In particular the Committee noted the location of and the nearest pharmacy to the proposed locations was Boots Pharmacy at 4-5 High Street, Thame, a distance of between 0.5 and 0.2 miles away from the proposed locations.

- 2.107 The Committee noted the details around the nature of the journey to the nearest pharmacies, road layouts and parking.
- 2.108 The next nearest pharmacies were both located in villages 3-4 miles away (Vicary Pharmacy in Haddenham and Chinor Pharmacy in Chinor). The Committee considered whether these pharmacies offered reasonable choice and noted there is little else in these villages, so it would be unlikely for people to go to these villages as part of their daily life unless going specifically to access pharmaceutical services.
- 2.109 The Committee noted that Thame is a market town surrounded by villages and farmland and the town draws people in from the surrounding areas.
- 2.110 The Committee also noted the low number of dispensing GP practices located in the surrounding area, indicating patients in the surrounding villages need to travel to a pharmacy to access pharmaceutical services.
- 2.111 The Committee noted that the Boots Pharmacy, High Street, Thame opened Monday-Wednesday 09:00-17:00, Thursday-Friday 09:00-17:30, Saturdays opens 09:00-17:00 and is closed on Sundays.
- 2.112 The Committee noted that both applications offer longer weekday opening hours than Boots Pharmacy, and that the Nutriberry Ltd application offers core opening hours on Saturday and Sunday mornings.
- 2.113 The Committee noted that there are four housing developments that will result in an increase the population of the town.
- 2.114 The Committee noted that the high street car park has limited parking (30 spaces, free for 1 hour) and the upper high street car park has 130 space which are free for 3 hours. The Committee noted that both were full or nearly full at the time on the site visit (a Thursday morning).
- 2.115 The Application from SKP Pharm Ltd includes a survey which demonstrated that some patients have experienced issues with stock, waiting times and access at the sole pharmacy in Thame.
- 2.116 On balance, having considered the factors above, the Committee was not satisfied that following the closure of the Boots Pharmacy at The Health Centre, East Street, Thame, the residents of Thame have reasonable choice with regard to obtaining pharmaceutical services.
- 2.117 The Committee went on to consider the merits of each of the applications in relation to choice, based on the proposed opening hours and locations.
- 2.118 Mindful that supplementary hours can be changed by giving 5 weeks' notice, the Committee place weight only on the core hours that were being proposed. The application by Nutriberry Ltd offers core hours on a Saturday and Sunday morning. The existing pharmacy has core hours on a Saturday, but not on a Sunday. Therefore, the Committee considered that the application by Nutriberry Ltd would confer benefits of choice on a Sunday.
- 2.119 The Committee considered the proposed best estimate location of the application from Nutriberry Ltd and noted that the proposed location was situated away from the town centre and the sole remaining pharmacy in Thame (11 min, a 0.5 mile walk). There is on street parking and parking at the Thame Health Centre. The Committee considered this may be relevant for those accessing pharmaceutical services after visiting the GP Practices. The Committee considered the location of the proposed premises in relation

to the area of Thame and noted that it was to the east of the town and would improve access for the wider population of Thame as well as for those who live nearby.

- 2.120 The Committee considered the proposed best estimate location of the application from SKP Pharm Ltd and noted that the proposed location was in the main shopping area of Thame, geographically closer to the nearest pharmacy, which was a 2 min 0.1 mile walk from the proposed location. The Committee considered that this location was less preferable in terms of improving access for the wider population of Thame and for those who had just visited either of the GP practices.
- 2.121 **Regulation 18(2)(b)(ii)** [quoted in full].
- 2.122 The Committee reminded itself that it was required to address itself to people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that are difficult for them to access. The Committee was also aware of its duties under the Equality Act 2010 which include considering the elimination of discrimination and advancement of equality between patients who share protected characteristics and those within such characteristics.
- 2.123 The Committee noted that whilst SKP Pharm Ltd had mentioned people who share a protected characteristic in their application there was no evidence provided that identified a group of patients in the Thame area, sharing a protected characteristic with difficulty accessing services that meet a specific need.
- 2.124 The Committee felt that none of the applications had addressed the matter of patients with protected characteristics in any detail or suggested any group has difficult accessing services.
- 2.125 The Committee concluded that based on the information provided, granting an application would not confer significant benefits on people sharing a protected characteristic.
- 2.126 **Regulation 18(2)(b)(iii)** [quoted in full].
- 2.127 The applicants have not offered any information or evidence to demonstrate that their application brings any innovative approaches in the delivery of pharmaceutical services. Therefore, the Committee concluded that there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services.
- 2.128 In the absence of any suggestion by the applicants that there would be such benefits, the Committee was satisfied that granting the application would not lead to any significant benefits by virtue of innovation.
- 2.129 **Other Considerations**
- 2.130 **Regulation 18(2)(c)-(f)** - The Committee had previously determined that there was no need to defer the application under Regulation 18(2)(c) to (f).
- 2.131 **Overall Decision**
- 2.132 The Committee concluded that it was not required to refuse the applications under the provisions of Regulation 31.
- 2.133 The Committee had considered whether the granting of an 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 was not satisfied that it would not.

- 2.134 The Committee determined an application should be granted under the requirement of Regulation 18(2)(b)(i), there is not already a reasonable choice with regard to obtaining pharmaceutical services.
- 2.135 The Committee was of the view it was only necessary to grant one of the applications and so proceeded to consider which application should be granted.
- 2.136 The Committee compared the applications.
- 2.137 It was agreed that application from Nutriberry Ltd was situated away from the town centre and the existing sole pharmacy, was the best location to secure better access for the wider population of Thame.
- 2.138 It was agreed that application from SKP Pharm Ltd was situated too close to Boots Pharmacy to provide improved access for the wider population of Thame.
- 2.139 It was noted that application from Nutriberry Ltd has slightly less opening hours, but it has core hours on both Saturday and Sunday which would be subject to a 3 year commitment under a Direction arrangement.
- 2.140 The Committee agreed that application from Nutriberry Ltd is the preferred application.
- 2.141 The application from Nutriberry Ltd is therefore granted and the application from SKP Pharm Ltd is refused.
- 2.142 **Core opening hours conditions**
- 2.143 Applicant 1, Nutriberry Ltd, undertakes to provide pharmaceutical services at the proposed pharmacy premises for more than 40 core opening hours per week,
- 2.144 The applicant and Buckinghamshire, Oxfordshire and Berkshire West ICB have agreed that pharmaceutical services are to be provided at the proposed pharmacy premises during those additional opening hours that exceed the 40 core opening hours at set times and on set days, and
- 2.145 The application was granted having regard to that undertaking and that agreement.
- 2.146 Nutriberry Ltd has confirmed that the 40 core opening hours are Monday to Friday 09:00-13:00; 14:00-18:00.
- 2.147 The applicant and Buckinghamshire, Oxfordshire and Berkshire West ICB have agreed that the additional opening hours are Saturday and Sunday 10:00-13:00.
- 2.148 **Rights of appeal**
- 2.149 **Nutriberry Ltd (CAS-279557-R1G7H4)**
- 2.150 The application is granted to Nutriberry Ltd, so the applicant does not have appeal rights.
- 2.151 SKP Ltd had made a reasonable attempt to express their grounds for opposing the Nutriberry Ltd application adequately in their representations. The Committee decided that the SKP Ltd that should have third party rights of appeal.
- 2.152 **SKP Pharm Ltd (CAS-306307-T4K4V4)**
- 2.153 The application is refused so the applicant has the right to appeal.

- 2.154 The Committee decided not to grant third party rights of appeal to the decision to any of the parties that responded during the consultation period because the application had been refused.”

3 The Appeal

In a letter dated 21 November 2024 addressed to NHS Resolution, the Temple Bright LLP on behalf of SKP Pharm Limited appealed against the Commissioner’s decision. The grounds of appeal are:

- 3.1 “We act for SKP Pharm Limited. On behalf of our client we write to appeal the decisions of NHS England to:
- 3.1.1 Refuse our client’s application for inclusion in the pharmaceutical list for premises at Butter Market (2-20A), Cornmarket (5-18), Upper High Street (1-26), Thame, OX9.
- 3.1.2 Grant an application by Nutriberry Limited for premises on East Street/Wellington Street, Thame, OX9 3JZ.
- 3.2 Our client’s ground of appeal is that, had NHS England had proper regard to all relevant matters, it would have granted our client’s application in preference to the application by Nutriberry Limited.
- 3.3 By way of background, both applications have been submitted offering unforeseen benefits in Thame, Oxfordshire. Our client’s application set out, in detail, why granting its application would secure improvements and better access to pharmaceutical services in the town. Our client’s application was fully evidenced and was submitted following detailed consultation with local residents and representatives. NHS Resolution is referred to our client’s application form and 23-page supporting information document in that regard.
- 3.4 In relation to premises, our client submitted a best estimate location, which included potential retail units on Butter Market, Cornmarket and Upper High Street.
- 3.5 An application for inclusion in the pharmaceutical list was also submitted by Nutriberry Limited for premises on East Street/Wellington Street, Thame. The Nutriberry application contained significantly less detail than that provided by our client and did not appear to include any indication that the applicant had sought local views or opinions in relation to the provision of pharmaceutical services in Thame. The application was largely based on the closure of the Boots pharmacy within the medical practice.
- 3.6 NHS England considered both applications together and in relation to each other. NHS England concluded that granting an application would secure improvements and better access to pharmaceutical services in accordance with regulation 18. Our client agrees with that finding by NHS England.
- 3.7 However, NHS England then determined that the Nutriberry application should be preferred over our client’s application on two grounds: premises and proposed contractual hours. Our client believes that this decision was flawed for the following reasons:
- 3.8 Premises
- 3.9 In preferring the Nutriberry application over our client’s application, NHS England determined relevantly as follows:

- 3.9.1 *“9.5.1 It was agreed that application from Nutriberry Ltd was situated away from the town centre and the existing sole pharmacy, was the best location to secure better access for the wider population of Thame.*
- 3.9.2 *9.5.2 It was agreed that application from SKP Pharm Ltd was situated too close to Boots Pharmacy to provide improved access for the wider population of Thame.”*
- 3.10 However, NHS England appears to have failed to have proper regard to all relevant matters when reaching this decision.
- 3.11 Firstly, the applicant has provided the following “best estimate” map of its proposed location: [appendix D].
- 3.12 As can be seen from the above, the majority of this location is within the Thame NHS Community Hospital/Rycote GP Practice site. Our client understands that the operators of the Rycote Practice (Unity Health) have opposed a later application (by Sumra Healthcare Limited), which must raise doubts as to whether a lease would be granted to Nutriberry within the surgery campus even if its application were to be granted.
- 3.13 The remainder of the area highlighted in red on the map above includes an Indian restaurant (which is open and trading and does not appear to be available) and a row of terraced housing which would not be suitable for retail use (and would require planning consent). Please see, below, google street view image [appendix D].
- 3.14 Even if the application by Nutriberry were to be granted, it therefore seems unlikely that the applicant would be in a position to commence the provision of pharmaceutical services. In written representations to NHS England, our client raised a concern about the lack of availability of premises within the Nutriberry Ltd best estimate location. It does not appear that Nutriberry responded to this, nor has it provided any evidence to support a finding that it would be in a position to commence services should its application be granted.
- 3.15 In contrast, our client has submitted an application for premises within a best estimate location which is within part of the retail area of central Thame, meaning that there are available retail premises which our client would be in a position to occupy quickly should its application be granted.
- 3.16 Had NHS England considered (as it should have) the possible availability of premises as part of its general consideration, it therefore should have been apparent to NHS England that our client’s application was preferable.
- 3.17 Secondly, in terms of the physical location of the best estimates provided by Nutriberry and our client, NHS England appears to have determined that since the location specified by Nutriberry Ltd is away from the “town centre”, it is preferable.
- 3.18 As a starting point, this approach was flawed. NHS England noted that the Nutriberry location is away from the town centre where the one remaining pharmacy in Thame is located. However, our client’s proposed best estimate location is within 400m of the Nutriberry location, meaning that there is no material difference in terms of physical accessibility by reference to distances travelled.
- 3.19 In fact, Nutriberry’s proposed location away from the town centre was a reason for preferring our client’s location for the simple reason that Nutriberry’s estimated location is not conspicuous and is not at a location that many residents would pass or be visiting as part of their day to day lives.

- 3.20 Indeed, our client believes that its more central location within Thame should have been preferred since it is nearer to shops and other services which patients would be accustomed to accessing as part of their day to day lives and is within close proximity of car parks and bus stops.
- 3.21 If the Nutriberry application were to be granted, many people may not even realise that there was a new pharmacy opened and would not find the location convenient. This is in contrast to our client's proposed location which is within the main shopping area. Our client's location would therefore be highly visible and give an easily accessible, alternative choice to the single remaining pharmacy in Thame.
- 3.22 Opening hours
- 3.23 NHS England also preferred the application by Nutriberry Limited on the basis that it was offering a small number of core hours on Saturdays and Sundays. However, NHS England's approach to this was flawed for two reasons.
- 3.24 Firstly, as detailed in the decision report, Nutriberry Limited appeared to have confirmed that its core hours would be limited to Monday to Friday, 9am to 1pm and 2pm to 6pm (ie not weekends). The additional hours of 10am to 1pm on Saturday and Sunday were not included in the applicant's proposed core hours but, instead, would have been "directed" hours. Such a direction is time-limited so would not necessarily secure weekend opening hours in the long term. Additionally, NHS England could equally have engaged with our client to agree directed hours on the weekend (our client had already offered non-core hours of 10am to 1pm on Saturday and Sunday), so this was not a distinguishing feature between the applicants.
- 3.25 Secondly, there is no evidence that the directed weekend hours would be of any material benefit to the local population either at all, or from Nutriberry's proposed premises. As stated above, the proposed location is largely within the GP surgery site. Whilst the surgery is open on a Saturday morning for emergency patients, it is only open from 8.30am to 10.30am. It can clearly be seen that an agreement from Nutriberry to open at 10am on Saturday would be of no material benefit, with only a 30 minute overlap between the proposed pharmacy opening and the surgery closing. The surgery is closed all day on a Sunday.
- 3.26 If, as NHS England appears to assert, additional weekend opening would be of material benefit to local residents, it would be of far greater benefit for the proposed pharmacy to be in a town centre location where it would be more readily visible and accessible given the location of shops and other services which are open throughout the weekend.
- 3.27 **Conclusion**
- 3.28 In conclusion, for the reasons given in our client's application form, our client agrees that granting an application in Thame would secure improvements in, and better access to, pharmaceutical services. However, our client believes that NHS England was wrong to prefer the application by Nutriberry Limited over our client's application for the following reasons:
- 3.28.1 It is unlikely that Nutriberry would be in a position to commence the provision of pharmaceutical services at its proposed location given the unavailability of premises. In contrast, our client's proposed location is within the main shopping area in Thame with a number of potential available units.
- 3.28.2 Our client's proposed location, within highly visible retail premises within central Thame would be more conveniently accessible for the greater proportion of patients.

- 3.28.3 The Nutriberry proposed weekend hours should not have been determinative because these were not core, and NHS England could have sought confirmation from our client that it would also agree to weekend directed hours if it felt that this was important. If weekend hours were relevant, it would be preferable to agree a similar weekend hours direction with our client (which our client would be happy to offer) because weekend opening in the town centre would be preferable to weekend opening in a GP surgery which is tucked away in a largely residential area where the GP surgery is mostly closed at weekends.
- 3.28.4 Our client's application was more fully evidenced, and our client has sought to engage proactively with the local community, in contrast to the application by Nutriberry
- 3.29 For the reasons given above, on behalf of our client we therefore invite NHS Resolution to uphold our client's appeal and to grant its application and to refuse the application by Nutriberry Limited.
- 3.30 We look forward to hearing from you."

4 Summary of Representations

After reviewing the paperwork provided by the Commissioner, NHS Resolution applied its discretion under Schedule 3, Part 3, paragraph 7 and allowed parties the opportunity to make comments on the Commissioner's site visit report [appendix E]. This is a summary of representations received.

4.1 Healthcare Plus Consulting Ltd on behalf of Nutriberry Ltd

- 4.1.1 "Thank you for your letter dated 6th December 2024. We are instructed by our client (Nutriberry Ltd) to act on their behalf for the Appeals process. We maintain that the decision by NHS England to grant my client's application should be upheld.
- 4.1.2 We highlight to NHS Resolution that no local contractor has raised any objections to a second pharmacy in Thame. Notably Boots, currently the only provider of pharmaceutical services in Thame, did provide comments but did not raise any objections by way of their letter dated 30th May 2024.
- 4.1.3 We submit that the lack of objection by Boots in particular, is demonstrative of the need for additional pharmaceutical provision to serve Thame.
- 4.1.4 We submit that regulation 18 has been met through my client's original application, and further comments dated 7th August 2024 and 23rd August 2024. We reattach this representation for reconsideration by NHS Resolution.
- 4.1.5 We note that the other Applicant, SKP Pharm Limited, has appealed the decision of NHS England against the grant of my client's application. We address the Appeal by SKP Pharm overleaf. Comments below should be taken in addition to attached previous representation.
- 4.1.6 **SKP Pharm Limited Appeal**
- 4.1.7 My client set out extensively in their original application how improvements or better access would be secured through the six pages of supporting information that was originally submitted. Further information was also provided on letters dated 7th & 23rd August 2024. Hence, we are unsure as to why SKP Pharm appear to take issue with the detail submitted by my client.

- 4.1.8 Whilst we acknowledge the patient consultation undertaken by SKP Pharm, we highlight to the Committee that this is not necessarily a requirement for any Applicant to provide.
- 4.1.9 In any case, as detailed previously, a number of commenters within the consultation undertaken by SKP Pharm highlighted the strong need for a Pharmacy located in East Thame, adjacent to the GP Practices.
- 4.1.10 My client sees no barriers to opening up a Pharmacy within their best estimate location. Further, we are unaware of any evidence presented by SKP Pharm in relation to premises.
- 4.1.11 SKP Pharm also note that *"there is no material difference in terms of physical accessibility by reference to distances travelled."* We would strongly refute this claim and submit the additional 1-mile round journey that residents now face to access pharmaceutical provision is significant. For some residents, especially the elderly and those of impaired mobility this distance is punitive and certainly material. A number of commenters raised this point in the consultation undertaken by SKP Pharm:
- 4.1.12 *"I used to use the east st pharmacy and it was ok. I'm struggling with having young kids and I feel like everything takes too long in boots. I struggle with having to come back. There needs to be more choice on the high street. The best thing would be for someone else to take over the gp surgery pharmacy or have a new pharmacy somewhere in Thame."*
- 4.1.13 *"I can't understand the logic behind the decision to close the pharmacy attached to our GP surgery which was always busy and more convenient."*
- 4.1.14 *"I have a mobility scooter but it still takes me a while to navigate to get to the boots. Now I have moved over to the high street it is horrible to get to. There are so many obstacles."*
- 4.1.15 *"My mobility issue means it's difficult for me to get out and about. Closing the pharmacy at the health centre makes no sense. But replacing it for another pharmacy does make sense."*
- 4.1.16 *"Now closed there will be the additional burden of travelling from the surgery to the pharmacy in Thame High Street."*
- 4.1.17 *"Now the GP pharmacy is closed I have to walk alot further."*
- 4.1.18 *"there are already increased queues and real issues for those with limited mobility and/or compromised health"*
- 4.1.19 *"I have a child and need medicines myself. Many times I get prescriptions sent to the pharmacy next to the surgery so that we can get them and get home. Without this option it's going to be difficult for me especially since I have young children who gets ill often."*
- 4.1.20 *"It's important to have a pharmacy on site at the GP surgery. The closing of this facility has made things difficult."*
- 4.1.21 *"Difficulty accessing services."*
- 4.1.22 *"I don't really want to transfer to the high street pharmacy as it's already difficult for me to get out and about."*

- 4.1.23 *"I find it difficult to access any services at Boots High St pharmacy."*
- 4.1.24 *"I was happy with the east st pharmacy and now I will struggle to walk to the only other pharmacy in Thame."*
- 4.1.25 *"It has been a godsend since they opened the pharmacy next to the surgery. Accessing Thame High Street when unwell and then trying to park. My mother is unable to walk into the town as she has limited mobility, so will have to rely on a taxi, therefore adding to the cost and time."*
- 4.1.26 *"It was so handy having a chemist on the east side of town next to the Rycote and Unity surgeries."*
- 4.1.27 *"I have used boots at the gp because it's close to me and I do not drive now. My only choice now is to walk into town. I feel very anxious about the situation because I have regular meds and I don't know how I am going to manage. Walking is difficult and so is getting on a bus."*
- 4.1.28 *"I am finding it difficult with my mobility issues. Now that the closest one to me is closed its going to get harder for me."*
- 4.1.29 *"It does not make sense to close the pharmacy next to gp. I already have to go several times to the pharmacy and as an elderly person it's getting more and more difficult."*
- 4.1.30 *"I struggle to walk and get around thame and now that the health centre pharmacy is closed it looks like it's going to get difficult for me. I don't drive and have no one to help me."*
- 4.1.31 *"Only one choice of pharmacy in Thame and I have no transport. The distance too far to walk also difficult to visit when working full time."*
- 4.1.32 *"The closure of the healthcentre pharmacy will make it difficult to access the pharmacy."*
- 4.1.33 *"My local Boots next to the GP surgery at Thame Medical Centre has been closed for a few weeks (and no other pharmacy will take its place) and so I will have to use the main Boots in the high street. But that's a 20 min walk each way and I don't have time and sometimes I can't walk due to my back issue."*
- 4.1.34 *"The closure of Boots Pharmacy in East Street has become a real problem for older and less mobile residents who can't readily get to Boots Pharmacy in the town centre for their regular prescriptions."*
- 4.1.35 From the local comments above it is clear that NHS England were correct in drawing the conclusions that:
- 4.1.36 *"9.5.1 It was agreed that application from Nutriberry Ltd was situated away from the town centre and the existing sole pharmacy, was the best location to secure better access for the wider population of Thame."*
- 4.1.37 *"9.5.2 It was agreed that application from SKP Pharm Ltd was situated too close to Boots Pharmacy to provide improved access for the wider population of Thame."*
- 4.1.38 It is clear that the location proposed by my client offers much better physical pharmaceutical access to the wider Thame population. It is notable that my client also provides much better opening access to pharmaceutical provision

by way of opening hours. My client proposes Saturday & Sunday core opening hours providing choice to the Thame population for each day of the week. It is of particular note that my client seeks to restore the Sunday opening hours that have been recently cut by the Boots Pharmacy on the High Street.

- 4.1.39 SKP Pharm argue that NHS England did not engage with them to provide a direction for their Saturday & Sunday supplementary hours. This is nonsensical as there would be no reason for NHS England to engage given SKP Pharm had clearly listed these hours as supplementary on their application form. It would appear that SKP Pharm are seeking to amend their proposed hours halfway through the application process. We submit that this is clearly not conducive to a fair & equitable application process and should SKP Pharm wish to amend their proposed hours at this late stage then we suggest they withdraw their application and re-apply.
- 4.1.40 SKP Pharm state that these additional weekend opening hours would not be of “any material benefit to the local population”, however again this is contrary to responses received under the public consultation conducted by SKP Pharm:
- 4.1.41 *“Surly [sic] we need 6pm as a minimum and Sunday opening hours for emergency medicines.”*
- 4.1.42 *“Having no access to a pharmacy late evenings and on a Sunday is unacceptable to a community that is increasing in size.”*
- 4.1.43 *“delivery service and opening on a Sunday would be very good.”*
- 4.1.44 *“better opening hours/Sunday opening needed/delivery service/pillbox”*
- 4.1.45 *“No pharmacy or over the counter services in Thame on Sundays [or] after 5.30pm.”*
- 4.1.46 *“there will only be one pharmacy to accommodate the whole of thame which isn't acceptable - not open on Sunday's when it could be needed for advice”*
- 4.1.47 From local comments it is clear that the re-instatement of Sunday opening is desperately needed. This will be achieved through core opening hours provided by my client, should NHS Resolution uphold the grant of my client's application.
- 4.1.48 Finally, we note that SKP Pharm claim that a pharmacy at their site would be more readily visible and accessible. We have already shown that accessibility will be far greater at my client's proposed site. In terms of visibility, a Pharmacy at the Proposed Site will be as visible as any other and situated at a location where patients are accustomed to accessing pharmaceutical services.
- 4.1.49 Conclusion
- 4.1.50 It is clear that there is a need for reinstatement of a Pharmacy on the East Side of Thame, that provides weekend core opening hours.
- 4.1.51 Our client provides much better access through the location and opening hours they are undertaking to provide than that of SKP Pharm and thus their application should be preferred to that of SKP Pharm.
- 4.1.52 We conclude that NHS Resolution should uphold the grant of the pharmacy licence to NutriBerry Limited.“

Letter of 7 August 2024 addressed to the Commissioner:

- 4.1.53 “Thank you for your letter dated 24th June 2024. I act for Nutriberry Ltd and have been instructed by my client to object to the above application.
- 4.1.54 My client agrees with the Applicant that a new pharmacy is required in Thame, however, asserts that the application from Nutriberry Ltd should be preferred for the following reasons:
- 4.1.55 Location
- 4.1.56 The location proposed by my client is situated in East Thame, where the Boots recently closed, and where both GP Practice’s in Thame are located. Granting my client’s application would reinstate pharmaceutical provision in an area that residents are accustomed to accessing pharmaceutical provision and improve access for those accessing a pharmacy in connection with a visit to the GP. Such sentiment is very much backed up by comments in the public consultation undertaken by SKP Pharm Ltd:
- 4.1.57 *“It was so handy having as chemist on the east side of town next to the Rycote and Unity surgeries.”*
- 4.1.58 *“I’m finding it difficult to get from the surgery to the High Street in time as this Boots closes at 5.30 and I’ve been seen many times after this time. Also the GP is now doing late night till 8pm. Surly we need 6pm as a minimum and Sunday opening hours for emergency medicines.”*
- 4.1.59 *“Cannot get to the high st on time as it closes before the gp surgery, that never happened at East St”*
- 4.1.60 *“It was extremely important and helpful for me (as it is no doubt for many others) to have the East Street Boots pharmacy in the same location as the GP practices.”*
- 4.1.61 *“I live on Lea Park with no bus service and unless I can find a volunteer driver, I need to get a taxi (which takes 20-30 min to arrive) to the surgery. With the pharmacy closed this will mean another taxi to the High Street then another one home.”*
- 4.1.62 From the public comments above, it is clear that there is a need for a pharmacy on the East side of Thame near the current GP Practices. This will stop patients having to make double journeys: the first to the GP Practice, and the second to the high street to access pharmaceutical provision.
- 4.1.63 The proposed location provided by SKP Pharm Ltd is adjacent to current pharmaceutical provision in Thame. A journey to the proposed site by SKP Pharm will be the same as the journey to the current Boots pharmacy, OX9 2BU. Ultimately, the location proposed by SKP Pharm does not solve the problem of the ‘double journey’.
- 4.1.64 Opening hours
- 4.1.65 We note that SKP Pharm offer 45 weekly core opening hours from 09:00-18:00 Monday-Friday. However, my client offers 46 weekly core opening hours with 6 of these being on the weekends from 10:00-13:00 on Saturdays and Sundays. This is compared to the 0 weekend core hours proposed by SKP Pharm. We highlight that the Sunday core hours offered by my client would be

of benefit to the whole population within Thame, given that there is currently no Sunday opening by local contractors.

- 4.1.66 SKP Pharm appear to have offered a number of supplementary hours, however as the committee will be aware, supplementary hours can be withdrawn easily with 5 weeks' notice and thus no weighting should be placed on them.
- 4.1.67 Services
- 4.1.68 SKP Pharm highlight that they would provide free delivery. My client also proposes to provide free delivery; however, the committee will be aware that delivery is not NHS commissioned and thus location and accessibility is of much greater importance when deciding whether to grant any application. This is acknowledged by SKP Pharm who in their supporting information state: "distance is a primary factor in choice".
- 4.1.69 SKP Pharm highlight that they would provide Pillbox Services. Again, my client also proposes to provide these services should there be a need within the local population. We note that Pillbox services are also not NHS commissioned.
- 4.1.70 SKP Pharm highlight a number of additional non-commissioned services that they propose to offer. My client would like to highlight that they too would offer these additional services should there be a need within the local population, and will liaise with the ICB to determine any preventative measures that would improve health outcomes within Thame.
- 4.1.71 Conclusion
- 4.1.72 We conclude that my client offers a more accessible location and more accessible core hours than SKP Pharm, and thus the application by Nutriberry Ltd should be preferred."

Letter of 24 August 2024 addressed to the Commissioner:

- 4.1.73 "Thank you for your letter dated 13th August 2024. We welcome comments from all local parties and note the following:
- 4.1.73.1 It is undisputed through all representations that pharmaceutical provision is dire in Thame, with an effective 7.7 pharmacies per 100,000 people, well below the average for Oxfordshire (15.1/100,000) and England (20.6/100,000).
- 4.1.73.2 It is undisputed that population growth in Thame has been rapid in years of late
- 4.1.73.3 It is undisputed that the bus service between the proposed site and current pharmaceutical provision in Thame does not provide sufficient access.
- 4.1.73.4 No other pharmaceutical provider has committed to offering Sunday opening.
- 4.1.73.5 Boots have no objections to my client's application, despite making representation.
- 4.1.74 Taking each representation in turn below:

4.1.75 Oxfordshire Health and Wellbeing Board (HWB)

4.1.76 Oxfordshire HWB recognise that there is no longer a choice to pharmaceutical provision following the closure of the Boots in East Street. Given that the next nearest pharmacy is located 4.4 miles away in Haddenham, patients are forced to access pharmaceutical provision at the Boots in Thame Centre. Clearly being forced to access pharmaceutical provision at a certain pharmacy is not representative of reasonable choice.

4.1.77 Local Pharmaceutical Committee (LPC)

4.1.78 We would like the committee to note that the LPC represents the interest of current pharmaceutical contractors. The LPC are inherently obliged to contest unforeseen benefits applications, in order to fulfil their responsibilities to current contractors. Hence, comments by the LPC are biased and should be read in such context.

4.1.79 Boots

4.1.80 Boots, who operate the only other pharmacy in Thame, have no objections to this application, despite making representation. It is clear that there are no plausible arguments to reject this application under regulation 18. Hence, we invite the committee to grant this application and restore much-needed pharmaceutical provision to Thame.

4.1.81 SKP Pharm (Other Applicant)

4.1.82 We submit that my client's application should be preferred to that of SKP Pharm due to the better location and core hours that my client proposes.

4.1.83 The location proposed by my client is situated in East Thame, where the Boots recently closed, and where both GP Practice's in Thame are located. Granting my client's application would reinstate pharmaceutical provision in an area that residents are accustomed to accessing pharmaceutical provision and improve access for those accessing a pharmacy in connection with a visit to the GP. Such sentiment is very much backed up by comments in the public consultation undertaken by SKP Pharm Ltd:

4.1.84 *"It was so handy having as chemist on the east side of town next to the Rycote and Unity surgeries."*

4.1.85 *"I'm finding it difficult to get from the surgery to the High Street in time as this Boots closes at 5.30 and I've been seen many times after this time. Also the GP is now doing late night till 8pm. Surly we need 6pm as a minimum and Sunday opening hours for emergency medicines."*

4.1.86 *"Cannot get to the high st on time as it closes before the gp surgery, that never happened at East St"*

4.1.87 *"It was extremely important and helpful for me (as it is no doubt for many others) to have the East Street Boots pharmacy in the same location as the GP practices."*

4.1.88 *"I live on Lea Park with no bus service and unless I can find a volunteer driver, I need to get a taxi (which takes 20-30 min to arrive) to the surgery. With the pharmacy closed this will mean another taxi to the High Street then another one home."*

- 4.1.89 From the public comments above, it is clear that there is a need for a pharmacy on the East side of Thame near the current GP Practices. This will stop patients having to make double journeys: the first to the GP Practice, and the second to the high street to access pharmaceutical provision.
- 4.1.90 The proposed location provided by SKP Pharm Ltd is adjacent to current pharmaceutical provision in Thame. A journey to the proposed site by SKP Pharm will be the same as the journey to the current Boots pharmacy, OX9 2BU. Ultimately, the location proposed by SKP Pharm does not solve the problem of the 'double journey'.
- 4.1.91 We also note that SKP Pharm offer 45 weekly core opening hours from 09:00-18:00 Monday-Friday. However, my client offers 46 weekly core opening hours with 6 of these being on the weekends from 10:00-13:00 on Saturdays and Sundays. This is compared to the 0 weekend core hours proposed by SKP Pharm. We highlight that the Sunday core hours offered by my client would be of benefit to the whole population within Thame, given that there is currently no Sunday opening by local contractors.
- 4.1.92 Contrary to representations by SKP Pharm, my client has had several positive dialogues with potential units within the best estimate and can see no barriers to opening up a pharmacy. Nevertheless, we highlight to the committee that no weighting should be placed upon this per the regulations.
- 4.1.93 My client does not agree with SKP Pharm's comments with regard to parking. Parking is plentiful at the location proposed by my client, and we would actually argue that parking is more difficult to obtain in the town centre where SKP Pharm's application is based.
- 4.1.94 My client also disagrees with the notion that SKP Pharm's application is more accessible to patients within the new housing developments and maintains that the East Street Surgery site actually provides better access.
- 4.1.95 SKP Pharm seem to suggest that location isn't an issue within Thame due to delivery services. We would strongly contest this notion and highlight that delivery is not NHS commissioned and can be withdrawn at any time. Thus, we submit that location and accessibility is of much greater importance when deciding whether to grant any application.
- 4.1.96 Conclusion
- 4.1.97 In conclusion, granting this application would secure better access and improvements to pharmaceutical services for East Thame, especially on a Sunday.
- 4.1.98 Those accessing GP provision within Thame will likely find the proposed premises significantly more accessible for their pharmaceutical needs – a sentiment highlighted by residents in the Oxfordshire PNA survey: *"pharmacies should be located near to GP surgeries as a matter of course"*.
- 4.1.99 There is a need for a pharmacy in East Thame, especially when we consider the growing population.
- 4.1.100 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.
- 4.1.101 Hence, regulation 18 has been met and this application should be granted."

4.1.102 [A copy of Nutriberry Limited's application and supporting information submitted with its application was also enclosed – see 1.133 to 1.188 above].

4.2 SKP Pharm Limited

4.2.1 “The commissioner's site visit report present the facts that were doubtless used to support a decision for the site suitability of the two applications. However, we do feel there are a few site specific points that were evaluated by us when making our application but do not appear in the commissioners site visit report. In this letter we will be presenting some additional facts that we deem pertinent in reaching any conclusions.

4.2.2 The first point is evaluating the current and future housing applications/allocations for Thame which are contained within the Thame Neighbourhood Plan (previously referenced in our application). Annex 1 clearly shows the areas of Thame that are likely to be developed. There is the pending application of 150 homes on the Oxford Road site and a future allocation of 650 new homes on the land to the side of Moreton Road. Both of these sites are towards the West of Thame (land is clearly available to develop within the boundaries of Thame). Both developments also require going into the Town Centre to access any services. Therefore, when considering pharmacy provisions and current and future housing developments the whole of Thame would be best served from a more central location (Figure 1).

4.2.3 Fig 1. Shows the centre point of Thame falls at the Town Centre and provides excellent accessibility to all parts of Thame. [appendix F]

4.2.4 The second point is a comparison of the size of the buildings available to deliver pharmaceutical services in Thame. Actual space (square footage) is a key requirement in delivering an efficient and safe pharmaceutical service (<https://inspections.pharmacyregulation.org/knowledge-hub/notable-practice/the-dispensary-size-is-inadequate-for-the-services-provided-188>). As the Nutriberry Ltd application only covers two viable sites it would be very straightforward to do this. Annex 1 shows a square footage of approximately 350 sq ft for the vacated surgery pharmacy and 450 sq ft for restaurant in the Nutriberry Ltd application. To put this into context we work in a pharmacy that dispenses above 8k items (average number of items dispensed at the now vacated pharmacy in Thame) and has a dispensary area of approx 200 sq ft. Unfortunately, this space was very limiting and required a conversion of an office into a dispensing area to afford more space (to 225 sq ft). We have mentioned in our application the negative comments by patients pertaining to the size of the healthcare pharmacy and the provisions provided. It should be noted that one of the reasons for the closure of the Health Centre pharmacy was due to the small footprint. Having evaluated the properties in and around the surgery ourselves we came to the conclusion that in order to adequately deliver services like pharmacy first, hypertension service, vaccinations and locally tailored services, floor space is critical. This is particularly important because of the role that pharmacies now play in supporting and taking the strain off GP surgeries.

4.2.5 As we have shown (and commented extensively in our appeal application letter) accessibility for the whole of Thame is better suited from a more centralised location (to secure better pharmaceutical provisions). This is further backed up by the size of property available in the centralised zone compared to the East Street area. A point to note is that we have considered proximity to existing contractors ourselves and our best estimate covers areas away from the existing contractor which would be our strongest preference as this makes the most business sense. In our investigations for best estimate we were faced

with strong opposition from one of the partners of the surgery itself. They were against a pharmacy, a fact that the ICB are aware of, but it appears no consideration has been given. This fact is hard to reconcile when your best estimate is at the place of strong objection. Lastly considering there were no comments and therefore no objections from the existing contractor we suggest the facts show that no weighting should be placed on proximity. In not doing so there is a significant risk of a highly compromised outcome. Based on these additional points and the commissioners report, we would like to present an alternate outcome (Table 1).

- 4.2.6 Table 1. This table shows an advantage (+1) or no advantage (0) between the two applications when taking into account all the details in the commissioners report, SKP Pharm LTD appeal letter and this letter/Annex 1 [appendix F].

Site suitability parameter	Nurtriberry Ltd	SKP Pharm LTD
Accessibility for current and future housing developments	0	+1
Size of building	0	+1
Proximity to existing contractor/surgery	0	0

- 4.2.7 In conclusion, when you add the extra detail to the site report and the responses in our appeal letter it would suggest the SKP Pharm Ltd application is more favourable in securing better pharmaceutical provision in Thame.”

5 Observations

The following observations were received by NHS Resolution in response to the representations received on appeal.

5.1 Temple Bright LLP on behalf of SKP Pharm Limited

- 5.1.1 “I continue to act for SKP Pharm Limited. On behalf of my client I write further to your letter of 10th January 2025 and in order to respond to representations from Nutriberry Limited in respect of my client’s appeal.

- 5.1.2 Taking the matters raised by Nutriberry Limited in turn, my client comments as follows:

5.1.3 Supporting information

- 5.1.4 NHS Resolution will no doubt have received, from NHS England, a copy of my client’s application and the application by Nutriberry. It will therefore be abundantly clear to NHS Resolution that my client’s application is far more detailed and evidenced than the application by Nutriberry Limited.

5.1.5 Availability of premises

- 5.1.6 In its letter of appeal, my client asserted that Nutriberry Limited is unlikely to be able to commence the provision of pharmaceutical services within its best estimate location due to the unavailability of premises. It is of note that Nutriberry Limited does not seek to dispute this assertion in its response to the

appeal. In fact, Nutriberry makes no mention of the availability of premises at all in its response, which NHS Resolution may find telling.

- 5.1.7 In contrast, my client has proposed a best estimate location within part of the shopping area of Thame which has a number of available units. I have set out, below, a table [appendix G] which shows the current, vacant, commercial units within my client's best estimate location.

5.1.8 Proposed locations

- 5.1.9 Nutriberry Limited, in its response to my client's appeal, asserts that the comments from some local patients are more supportive an application [sic] at its proposed location compared to my client's proposed location. However, this assertion is flawed for two reasons.

- 5.1.10 Firstly, to the extent that the comments refer to the closure of the Boots pharmacy in Thame in terms of physical access, these refer to the convenience of a pharmacy which is co-located with the GP surgery. As will be apparent from my client's letter of appeal, Nutriberry has provided a best estimate location which includes premises which are not co-located with the GP surgery, such that granting the application by Nutriberry would not, necessarily, restore the status quo (even if Nutriberry were able to secure premises within its best estimate, which our client disputes).

- 5.1.11 Secondly, the comments which refer to access to the remaining pharmacy in Thame are referring to access to Boots pharmacy, which is further away from the health centre than my client's proposed best estimate location. As shown in the google maps images below [appendix G], my client's best estimate location is between 350m and 750m, on foot, from the GP surgery, or a walk of between 5 and 10 minutes.

- 5.1.12 Finally, as detailed in my client's application, there is significant housing development planned for Thame, but this is all planned for areas to the west of the town. This is shown on the document below [appendix G].

- 5.1.13 The new housing developments will therefore be closer to my client's proposed location, meaning that my client's proposed location would be preferable in terms of overall accessibility within Thame.

- 5.1.14 NHS Resolution will note that the Council's local development proposals also include plans to relocate the medical centre (which is the location of the Nutriberry application) to new premises as shown in the above map. If this were to occur, my client's proposed location would be closer to the newly constructed medical centre than the Nutriberry proposed location. My client's proposed location is therefore preferable not only at the present time, but will also be preferable going forward as the town grows.

5.1.15 Sunday opening hours

- 5.1.16 In terms of Sunday hours, the Boots pharmacy that recently closed was not open on a Sunday, and nor are the GP practices at the Thame Health Centre (or the NHS Community Hospital), so the closure of the Boots pharmacy has not led to any reduction in weekend opening.

- 5.1.17 In addition, since the Health Centre is closed on a Sunday, it is not clear how the applicant would be able to fulfil its commitment to open on a Sunday if its application were to be granted and if it were to secure premises within the health centre (which is part of its best estimate location).

- 5.1.18 In relation to weekend opening hours generally, my client has offered opening hours which include both Saturdays and Sundays, but as non-core hours. My client would be happy to agree a direction from NHS England for these to be directed hours if required.
- 5.1.19 In its response to the appeal, Nutriberry refer to comments in relation to extended opening hours, but these comments include opening in the evenings, which Nutriberry do not propose to do. Nutriberry offers opening hours up to 6pm Monday to Friday, whereas my client's proposed pharmacy would be open until 6.30pm during weekdays.
- 5.1.20 In conclusion, for the reasons given above and those given in my client's letter of appeal, my client asserts that its application should have been preferred over the application by Nutriberry Limited. My client therefore invites NHS Resolution to uphold its appeal, to grant its application and to refuse the application by Nutriberry Limited."

6 **Observations on the Commissioner's 14 day comments**

It came to the attention of NHS Resolution that the '14 day comments' to the Commissioner were not circulated prior to the application being considered, therefore parties were given the opportunity to make comments on this information.

No observations were received by NHS Resolution in response to the '14 day comments'.

7 **Consideration**

- 7.1 The Pharmacy Appeals Committee ("the Committee"), appointed by NHS Resolution, had before it the papers considered by the Commissioner, together with a plan of the area showing existing pharmacies and doctors' surgeries and the location of the proposed pharmacy.
- 7.2 It also had before it the responses to NHS Resolution's own statutory consultations.
- 7.3 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.
- 7.4 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations").

Regulation 31

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

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

(2) This paragraph applies where -

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

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

(ii) adjacent premises; and

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

- 7.6 In response to the question in the application form, the Committee noted that SKP Pharm Limited stated *"Not applicable. The proposed location is not the same as, or adjacent to, premises which are included in the pharmaceutical list. Whilst there is a Boots Pharmacy in Thame, this is located further down on the High Street, so not within our best estimate location."* In response to the same question, Nutriberry Ltd stated *"N/A. Despite there being a pharmacy currently trading near the proposed site, the current pharmacy located at The Health Centre, East Street, Thame, OX9 3JZ is due to close on the 22nd March 2024. Should a new pharmacy contract ultimately be granted, there will no longer have been a pharmacy trading from The Health Centre, OX9 3JZ. Thus, there will be no pharmacy trading from or adjacent to the proposed premises, so Regulation 31 does not apply."*
- 7.7 The Committee noted the conclusions of the Commissioner in this respect and further that this had not been disputed either on appeal or in subsequent representations. On the basis of the information before it, the Committee was not required to refuse either of the applications under the provisions of Regulation 31.
- 7.8 The Committee noted that, if an application were granted, the successful applicant(s) 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(s) would not be able to commence provision of services) if the location then provided would (had it been known now) have led to the application being refused under Regulation 31.

Regulation 18

- 7.9 The Committee noted that these were applications for "unforeseen benefits" and fell to be considered under the provisions of Regulation 18 which states:

"(1) If—

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

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

(2) Those matters are—

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

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

granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant pharmaceutical needs assessment was published;
- (c) *whether it is satisfied that it would be desirable to consider, at the same time as the applicant's application, applications from other persons offering to secure the improvements or better access that the applicant is offering to secure;*
- (d) *whether it is satisfied that another application offering to secure the improvements or better access has been submitted to it, and it would be desirable to consider, at the same time as the applicant's application, that other application;*
- (e) *whether it is satisfied that an appeal relating to another application offering to secure the improvements or better access is pending, and it would be desirable to await the outcome of that appeal before considering the applicant's application;*
- (f) *whether the application needs to be deferred or refused by virtue of any provision of Part 5 to 7.*
- (g) *whether it is satisfied that the application presupposes that a gap in pharmaceutical services provision has been or is to be created—*
 - (i) *by the removal of chemist premises from a pharmaceutical list as a consequence of the grant of a consolidation application, and*

- (ii) *since the last revision of the relevant HWB's pharmaceutical needs assessment other than by way of a supplementary statement.*
- (3) *NHS England need only consider whether it is satisfied in accordance with paragraphs (2)(c) to (e) if it has reached at least a preliminary view (although this may change) that it is satisfied in accordance with paragraph (2)(b)."*
- 7.10 The Committee considered that Regulation 18(1)(a) was satisfied in that it was required to determine whether it was satisfied that granting the applications, or granting it in respect of some only of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB.
- 7.11 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 applications were granted were or was included in the Pharmaceutical Needs Assessment ("the PNA") in accordance with paragraph 4 of Schedule 1 of the Regulations.
- 7.12 Paragraph 4 of Schedule 1 requires the PNA to include: *"a statement of the pharmaceutical services that the HWB had identified (if it has) as services that are not provided in the area of the HWB but which the HWB is satisfied (a) **would** if they were provided....secure improvements or better access, to pharmaceutical services... (b) **would** if in specified future circumstances they were provided...secure future improvements or better access to pharmaceutical services..."* (emphasis added).
- 7.13 The Committee considered the PNA prepared by Oxfordshire Health and Wellbeing Board,, conscious that the document provides an analysis of the situation as it was assessed at the date of publication. The Committee bears in mind that, under Regulation 6(2), the body responsible for the PNA must make a revised assessment as soon as reasonably practicable (after identifying changes that have occurred that are relevant to the granting of applications) unless to do so appears to be a disproportionate response to those changes. Where it appears disproportionate, the responsible body may, but is not obliged to, issue a Supplementary Statement under Regulation 6(3). Such a statement then forms part of the PNA. The Committee noted that the PNA was dated 1 April 2022 and that supplementary statements had been issued on 29 June 2023.
- 7.14 The Committee noted the following under the section titled "Recommendations":
 - 7.14.1 *"Recommendations relating to possible needs and gaps:*
 - 7.14.2 *(i) It should be noted that the PNA has not identified any gaps in general access in the present situation in Oxfordshire and in the expected situation in Oxfordshire to 2025, that is during the lifetime of the current PNA...*
 - 7.14.3 *A small number of people in Oxfordshire might be having routine difficulties in obtaining medicines and the pharmaceutical services that accompany them. Such individuals might be generally disadvantaged by rurality, mobility, and so on, with regard to accessing a number of health, social and civic services. Understanding and addressing these issues could be the focus of future work of Health and Wellbeing Board partners."*
- 7.15 The Committee noted that the supplementary statements issued 29 June 2024, provided details of three pharmacy closures in Littlemore, Bicester and Witney.
- 7.16 The Committee noted that the Applicants seek to provide unforeseen benefits to the patients of Thame. The Committee noted that the improvements or better access that

the Applicants were claiming would be secured by its applications were not included in the relevant PNA in accordance with paragraph 4 of Schedule 1.

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

Regulation 18(2)(a)(i)

- 7.18 The Committee had regard to

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

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

- 7.19 The Committee noted the Commissioner's finding on this point that *"The Committee was not aware of any plans that would be affected and concluded that granting the application would not have an adverse effect on any future plans. None of the submissions included any comment or evidence in regard to this matter. Therefore, the Committee concluded that granting an application would not cause significant detriment in this regard."* The Committee noted this had not been disputed by any party.

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

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

Regulation 18(2)(a)(ii)

- 7.22 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"

- 7.23 The Committee noted the Commissioner's finding on this point that *"The Committee did not find any significant detriment to proper planning or to the arrangements in place for the provision of pharmaceutical services and therefore was not obliged to refuse an application under Regulation 18(2)(a)."* The Committee noted this had not been disputed by any party.

- 7.24 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 an application.

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

Regulation 18(2)(b)

- 7.26 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)

- 7.27 The Committee had regard to the location of the existing pharmacies and GP Surgeries as provided on the maps by the Commissioner, which had not been disputed by any party.
- 7.28 Both Applicants state that according to the 2021 Census, Thame has a population size of circa 13,000 which is set to increase and/or has increased due to new housing developments in the area. SKP Pharm Limited now estimate the population to be circa 15,000 as a result of completed developments. Both Applicants also comment on how the pharmacy provision in Thame supports the surrounding villages, which SKP Pharm Limited go on to state is evidenced by the results of its survey (referenced throughout below). The Commissioner's site visit report (circulated to parties) as well as both Applicants reference the Phoenix Park development which will have 129 plots, with 28 available or awaiting release. Both Applicants also highlight the recently completed Sycamore Rise development which added 175 homes to the area. SKP Pharm Limited also reference the recently completed Yeats Lodge and Elton Field developments which have added 54 homes. The Committee also noted the information in SKP Pharm Limited's representations regarding future applications and developments in Thame. The Commissioner's site visit report also highlighted The Crescent development which added 24 homes to the area in 2024. The Committee was mindful that whilst an increase in population does not automatically lead to the requirement to grant an application, Thame had a significant population already which would increase as developments materialised.
- 7.29 The Committee noted that both applications had primarily been prompted by the closure in March 2024 of Boots pharmacy that was co-located with The Rycote Practice, East Street, Thame, OX9 3JZ. In addition, SKP Pharm Limited state that "A point to note is that Thame was once served by 3 pharmacies" and further that "If no new pharmacies will replace the closed pharmacy then this ratio will fall to 1 pharmacy per 10000 population. Compared against the national average of 2.1 pharmacies per 10000 population". The Committee was mindful that the closure of a pharmacy does not automatically lead to a gap in service provision and that the provision of services

should not be based on ratios but its consideration would be of reasonable choice with regard to 'the area of the relevant HWB'.

- 7.30 Both Applicants refer to the dispensing figures for the former Boots pharmacy with SKP Pharm Limited stating that *"Dispensing activities show approximately...7700 items for Boots Health centre in Dec 2023"* and Nutriberry Ltd stating that *"The closing Boots is a high volume pharmacy and dispensed 8,182 items in November 2023"*. Nutriberry Ltd goes on to state that circa 5,000 of the items dispensed by the former Boots pharmacy originated from The Rycote Practice. SKP Pharm Limited provided information to show that both the GP surgeries together prescribe on average 45,000 items a month. The Committee was mindful that the provision of pharmaceutical services is greater than the dispensing of prescriptions alone but this gave an indication to the Committee of the needs of the area and the volume of items dispensed.
- 7.31 The Committee noted the information provided by SKP Pharm Limited on deprivation *"According to the latest indices of deprivation (IMD), Thame was relatively un-deprived with all areas of the town within the 30% least deprived nationally. However, two areas of the town rank within the 10% most deprived nationally on the Barriers to Housing and Services domain"*. SKP Pharm Limited then went on to state that *"Everybody living in and around Thame are aware that all the amenities are centralised and nothing much can be done about this due to the dense historic listed buildings and housing throughout the town."* The Committee noted the list of facilities and amenities outlined in the Commissioner's site visit report which include two supermarkets, a post office, dentists, opticians, cafes, hairdressers, beauty salons, pubs, restaurants, estate agents and a library which suggested to the Committee that the area of Thame is self-contained, making it unlikely for residents to leave the area as part of their daily lives, except for those who work out of the town.
- 7.32 The Committee noted that both Applicants reference the *"single pharmacy"* in Thame and their shared view that it does not support the needs of the area. From the Commissioner's site visit report, the Committee noted that this is a Boots pharmacy which is located 0.1 miles from SKP Pharm Limited's proposed best estimate and would take 2 minutes to walk and is 0.5 miles from Nutriberry Ltd's proposed best estimate and would take 11 minutes to walk. The Committee also noted the helpful information in the Commissioner's site visit report that there is *"Continuous paving"* and *"Pedestrian crossing points"* surrounding the existing pharmacy. The Committee also observed from the image provided in the site visit report that the pavements are flat and wide with dropped kerbs. The Committee did not consider the distances involved to be excessive, especially as the roads are flat and are lined with pavements. However it was mindful of some of the comments in response to the survey submitted by SKP Pharm Limited that for some residents, the walk involved is difficult or not possible. The Committee also noted that 53 people said it took them more than 20 minutes to walk to the Boots pharmacy although it was unclear which direction they were travelling. For those who are willing and able to walk to Boots pharmacy, the Committee saw no barriers and did not consider the distances involved to be excessive, however for those who are less able or unwilling, the Committee was mindful that they may not access this pharmacy on foot.
- 7.33 The Committee noted from the Commissioner's decision report and information provided by both Applicants that the next nearest pharmacies are located in villages 3 to 4 miles away, namely Vicary Pharmacy in Haddenham and Chinor Pharmacy in Chinor. The Committee further noted the view of the Commissioner that *"there is little else in these villages, so it would be unlikely for people to go to these villages as part of their daily life unless going specifically to access pharmaceutical services."* The Committee was therefore of the view that these pharmacies would not be accessible on foot for residents of Thame. It was also conscious of the view of both Applicants that residents in these areas would also benefit from another pharmacy in Thame due to the rural nature of the area. The Committee was of the view that the amenities and

facilities in these areas are likely to be limited whereas the amenities and facilities in Thame (outlined at 7.31 above) are not, therefore residents of these villages are likely to leave these areas as part of their daily lives.

- 7.34 The Committee went on to consider access by public transport and noted the Commissioner's site visit report stated that there is a *"Bus stop outside Boots the Chemist on the High Street"*. The Commissioner further commented that the same bus stop is the nearest stop to SKP Pharm Limited's proposed site and provided information regarding the buses that pass there, these being bus numbers 40, X7, X20, 110, 111 and 112. The number 40 operates roughly every hour Monday to Friday from 07.05 to 22.02 and 08.54 to 22.02 on Saturdays. On a Sunday it operates roughly every two hours from 09.41 to 18.06. The number 121 operates roughly every two hours Monday to Saturday. X7 operates from 06.11 to 22.05 Monday to Friday, with two buses an hour from 08.05 to 18.35, and every 20 to 60 minutes at other times. On a Saturday, it operates from 05.50 to 22.05, with two buses an hour from 07.10 to 18.35, and roughly every hour at other times. Then on a Sunday it operates from 07.35 to 19.35, with two an hour from 09.05 to 16.35 and one an hour at the other times. The X20 operates from 05.45 to 20.02 Monday to Friday, with two an hour from 06.47 to 16.45, and between 30 to 60 minutes at other times. On a Saturday, two buses an hour run from 07.09 to 16.39, then one an hour until 19.09. On a Sunday, one bus an hour runs from 07.09 to 18.09. The other buses referenced run at infrequent and limited times, with no weekend service. The Committee noted that the buses provide coverage throughout Thame and also link with the neighbouring villages of Chinor and Haddenham. On the face of it, the Committee was of the view that the area is well serviced however it was mindful of the information provided by SKP Pharm Limited by way of its survey findings and proceeded to consider this.
- 7.35 The Committee noted the problems aired on social media by bus users in the area, as well as screenshots provided to demonstrate cancelled buses and a letter from Councillor Francis to Arriva. The Committee noted the issues relate to bus numbers X7 and 40 in particular. It noted the comment from SKP Pharm Limited that *"the reasons why 17% of the patients responded to say they were experiencing transport issues"* is *"mainly related to unreliable bus services in and around Thame"*. From the information provided, it is clear that there are well known problems with reliability of public transport in the area which consequently impacts access to pharmaceutical provision and reasonable choice.
- 7.36 In terms of access by private transport, the Committee noted that SKP Pharm Limited provided data on car ownership in North and South Thame. Looking at the two figures together, circa 12% of Thame do not have access to a car or van. The Committee noted the same Applicant's view that this is in line with the results from its survey as 10.6% said they did not own a vehicle. The Committee presumed that just under 90% of the respondents own a vehicle and circa 78% of Thame residents do. From the Commissioner's site visit report, the Committee noted it is a 1 minute journey from SKP Pharm Limited's proposed best estimate and a 2 minute journey from Nutriberry Ltd's proposed best estimate to Boots pharmacy. The Commissioner stated that there are *"Several car parks nearby, as referenced above"*. The Committee deemed this to mean the findings on parking near to the proposed best estimate addresses which it noted *"the two closest car parks to the best estimate locations are the same"*, namely Upper High Street Car Park and High Street Car Park, with 130 plus 3 disabled spaces and 30 spaces respectively. The former offers free parking for up to 3 hours (1 hour on Tuesday) and the latter offers free parking for up to 1 hour. Both were full at the time of the Commissioner's visit, which was a Thursday morning. The Committee further noted the Commissioner's comment that *"In addition to these car parks, the town also has parking at Cattlemarket Car Park, Southern Road Car Park, Sainsbury's Car Park and Waitrose Car Park."* No further information had been provided about these car parks but the Committee presumed that there would be free parking at the supermarket car parks. In response to the following question in the survey, *"Do you struggle in*

anyway to access your pharmacy", 11% selected parking as a reason. The Committee had regard to the comments on parking in response to the survey and noted that some respondents refer to issues with parking availability in the town with some stating that, despite the journey, they drive to the pharmacy in Haddenham as it has better parking.

- 7.37 The Committee reviewed the survey commissioned by SKP Pharm Limited in more detail and noted it was open for 3 weeks from 21 March 2024. The Committee noted this was at the time the former Boots pharmacy had closed. The Committee had regard to the questions and noted the survey was advertised via leaflets. 603 selected the existing Boots pharmacy in Thame as their *"main pharmacy"* and the Committee noted that 96% selected the option that *"There are not enough pharmacies in Thame"* and 93% answered "no" to *"Is there a reasonable choice of pharmacies in Thame and the surrounding areas?"*. The Committee could not ignore the volume of responses and the overwhelming support for an additional pharmacy in Thame. Many of the comments are strongly worded and demonstrate the difficulties patients are experiencing, in particular regarding accessing services at the existing pharmacy. Patients refer to the long wait times, lack of medicine availability, long queues and difficulties for the elderly and those with mobility issues. The Committee noted that the comments from patients include:

7.37.1 *"I can collect from my Long Crendon surgery but that means waiting 5 days. The only other option is Boots but the waiting times can be long, and limited seating for those with mobility issues. And parking isn't easy."*

7.37.2 *"Staffing and queuing issues needs acknowledgement [sic] at boots high st"*

7.37.3 *"It seems crazy and very concerning that this branch which was clearly so much in demand and provided such a crucial service to the whole community and especially important for the most vulnerable people is closed. And this whilst the local population continues to grow! I shudder to think how the Boots in the centre of Thame will cope and there are already increased queues and real issues for those with limited mobility and/or compromised health. For the many people who like me live in villages with no doctor or pharmacy facilities of their own (e. g. Shabbington / Ickford /Moreton) and very limited bus services it would be incredibly helpful to have access to a pharmacy other than Boots."*

7.37.4 *"Boots in Thame High Street always had a queue and always took a long time to locate the prescription in their boxes. With more people in the area because of the number of houses being built locally, the town needs at least two pharmacies, and it's crazy to be shutting the one at the Health Centre."*

7.37.5 *"A lot of people have switched to Haddenham which is ridiculous [sic] when we have a pharmacy in Thame but you cant blame people when Thame has no adequate pharmacy service."*

7.37.6 *"The long queues are frustrating especially if you have come straight from the GP and have a poorly child with you or are poorly yourself. There have been times where I've waited a long time with a poorly child and then found out they don't have what I've waited for in stock. So had to find another place to take my child."*

7.37.7 *"To only have one pharmacy in our town is ludicrous, it is causing parking issues, long queues and frustration for both staff and patient. This town pharmacy often does not have items in stock and there is obviously the potential for this to become worse."*

- 7.38 The Committee was of the view that the evidence shows that patients are choosing to use the pharmacies elsewhere not through preference for those services but because

of the difficulties accessing the services generally. Taking all the above into account, in particular the limited pharmacy provision in Thame, rising population and problems encountered by patients, the Committee was satisfied that, having regard to there being a reasonable choice with regard to obtaining services, granting an application would confer significant benefits by way of physical access on persons.

- 7.39 In considering Regulation 18(2)(b)(ii) the Committee reminded itself that it was required to address itself to people who share a protected characteristic under the Equality Act 2010 (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation) having access to services that meet specific needs for pharmaceutical services that, in the relevant area, are difficult for them to access. The Committee noted Nutriberry Ltd's view that *"The elderly, disabled, and the wider population are likely to find the proposed pharmacy significantly more accessible than their current choices"* and the comment from SKP Pharm Limited that *"Many people relied on the pharmacy especially the elderly, parents with young children and those with regular medications."* The Committee also noted the figures from the survey provided by SKP Pharm Limited that 17% said they were *"a parent with young children"* and 13% *"have a disability or mobility issue"*. The Committee also had regard to the comments in the survey in relation to protected characteristics. However the Committee considered that the information regarding those who share a protected characteristic and the pharmaceutical services they needed was limited. There was little or no evidence of specific pharmaceutical needs beyond the general presumption that older and younger people and those with a disability need more services. The issue of access and choice as might apply to these persons was dealt with in the assessment of reasonable access discussed above and the Committee was mindful that there are always people in an area who share a protected characteristic.
- 7.40 The Committee was therefore not satisfied that, having regard to the desirability of people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that are difficult for them to access, granting the application would confer significant benefits on persons.
- 7.41 In considering Regulation 18(2)(b)(iii) the Committee had regard to the desirability of innovative approaches to the delivery of pharmaceutical services. In doing so, the Committee would consider whether there was something more over and above the usual delivery of pharmaceutical services that might be expected from all pharmacies, some 'added value' on offer at the location.
- 7.42 The Committee noted that the Commissioner in their decision report stated that *"the applicants have not offered any information or evidence to demonstrate that their application brings any innovative approaches in the delivery of pharmaceutical services. Therefore, the Committee concluded that there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services."* The Committee noted this statement was correct in respect of the information provided by Nutriberry Ltd however the Committee noted that SKP Pharm Limited had proposed some innovative approaches in their application.
- 7.43 SKP Pharm Limited stated that *"This application is submitting a few select ideas of innovative approaches for the delivery of pharmaceutical services that have been used with success based around population requirements. This may or may not be innovative in the views of the reviewers, however, every idea has merit if it can make a patient's life easier and changes health outcomes for the better."* The Committee was mindful that it must have regard to whether the innovative approaches identified would be classed as such under Regulation 18(2)(b)(iii).
- 7.44 SKP Pharm Limited stated that they *"present the health hub which puts the patient at the centre of clinical services, advanced services, prevention and advice"* and then

provide “a brief description of some innovative services that will be incorporated into the health hub.” The Committee considered each proposed innovative approach in turn.

- 7.45 SKP Pharm Limited stated that “Evidence shows the leading cause of death in Oxfordshire is cancer and in 2021-2022 the prevalence of cancer and depression were each above the national average” and further that they “have implemented a highly successful early cancer alert service at our current pharmacy which we will be implementing at the proposed site.” The Committee noted the process outlined by the Applicant and also that they “have identified 7 cases in ten years of pre cancer tumours (hyperplasia or dysplasia) and cancer”.
- 7.46 The second innovative approach outlined by SKP Pharm Limited is “Supervised medicines consumption for dementia patients”. SKP Pharm Limited states that “We have found there are a significant number of patients struggling with medicines consumption due to diseases such as dementia in areas where there is a higher proportion of elderly patients.” The Committee noted how patients currently access this service at SKP Pharm Limited’s existing pharmacy and also that “Thame already has a Dementia Cafe set-up to tackle the social side of the disease [17]. Therefore, this service would be invaluable at the proposed pharmacy.”
- 7.47 The final innovative approach highlighted is a “free cholesterol and glucose spot checks with GP referrals where required”. SKP Pharm Limited states that they currently run this service at their existing pharmacy with “great success” and goes on to state that “This service is intended to identify new patients with potential health issues but also check those who are currently on medications for the conditions.”
- 7.48 The Committee acknowledged the services proposed by SKP Pharm Limited and the reasoning behind them however the Committee noted that all the proposed services were currently been used at SKP Pharm Limited’s existing pharmacy and therefore these cannot be defined as innovative. Furthermore, cholesterol checks are already available from pharmacies along with supervised consumption, where commissioned. As such, these services cannot be claimed to be innovative.
- 7.49 The Committee was therefore not satisfied that, having regard to the desirability of there being innovative approaches taken with regard to the deliverability of pharmaceutical services, granting an application would confer significant benefits on persons.

Regulation 18(2)(b) generally

- 7.50 The Committee has considered whether there are any other factors that would confer significant benefits including on patients who share protected characteristics. The Committee had regard to the need to eliminate discrimination and advance equality of opportunity and foster good relations between these patients and those who do not share their protected characteristics.
- 7.51 The Committee was of the view that in accordance with Regulation 18(2)(b) the granting of an application would confer significant benefits on persons in the area of the HWB which were not foreseen when the PNA was published.

Other considerations

- 7.52 Having determined that Regulation 18(2)(b) had been satisfied, the Committee needed to have regard to Regulation 18(2)(c) to (e). The Committee noted that there was another application in the same area from Sumra Healthcare Limited which the Commissioner confirmed was put on hold following notification of the appeal from SKP Pharm Limited. The Committee was not aware of any other appeals relating to

applications offering to secure the improvements or better access that the Applicants were offering to secure.

- 7.53 No deferral or refusal under Regulation 18(2)(f) was required in this case.
- 7.54 The Committee had regard to Regulation 18(2)(g) and found that it was not applicable.
- 7.55 The Committee considered whether there were any further factors to be taken into account and concluded that there were not.
- 7.56 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.
- 7.57 The Committee considered that both applications would provide better access, therefore the Committee considered that it had three options:
- 7.57.1 grant both applications;
- 7.57.2 grant one application and refuse the other; or
- 7.57.3 refuse both applications.
- 7.58 The Committee discounted the third option as unreasonable given that it had decided that there is difficulty in accessing current pharmaceutical services such that a pharmacy at the proposed location would provide better access to pharmaceutical services.
- 7.59 The Committee therefore considered which of the remaining options was preferable.
- 7.60 The Committee had regard to comments in R (on the application of Rushport Advisory LLP) v NHS LA [2016] EWHC 907 (Admin) ("Rushport case") which stated at paragraph 43:
- "the decision maker must be very careful not to decide that [the public benefit test] is met in a case where there is a real possibility of services under both grants coming on stream, leading to over - provision at the expense of the public purse (since providers are entitled to charge the NHS for the services)"*
- 7.61 The Committee noted that in the Rushport case, the issue was the potential grant of an application where an extant grant was in place. The Committee, however, considered that it could be inferred from the extract above that in a situation where more than one application secures improvements or better access, more than one grant should be avoided. In that regard, the Committee noted Kerr J's observation in the Rushport case that "successive applications determined sequentially in respect of the same services are awkward, and are best avoided if they can be..." Again the Committee considered that this was supportive of the view that where two applications seek to deliver the same benefits, they will be considered together (as is the case here) and granted only to the extent necessary to deliver the benefits identified. Where one application is superior to the other on relevant grounds, that application should be granted, and if the effect of granting that application is to occupy the field so that the less favoured application no longer meets the public benefit test, then the less favoured application should be refused even if considered in isolation it would have satisfied that test.
- 7.62 On the basis of the information provided, the Committee considered that only one pharmacy was required to open to provide better access to pharmaceutical services in Thame. The Committee noted that neither party had suggested that both applications

should be granted. The Committee therefore proceeded to consider which application should be granted.

Comparing the two applications

- 7.63 The Committee noted the comments from SKP Pharm Limited with regard to the volume of information provided by them over the information provided by Nutriberry Ltd. The Committee was mindful that the majority of the information provided by SKP Pharm Limited was supporting their view that an application should be granted and as such, the Committee had already considered this in coming to the conclusion that an application should be granted.
- 7.64 The Committee considered both of the applications before it in terms of location and premises, services to be provided as well as the opening hours that each Applicant was proposing to offer.
- 7.65 The Committee noted that both of the applications were for “best estimate” areas and that the areas considered by both of the Applicants were relatively broad. From the Commissioner’s maps and site visit report, the Committee noted that the proposed location for SKP Pharm Limited’s application is within the town centre of Thame, near to the existing Boots pharmacy and is *“primarily a commercial area with premises above shops”*. Nutriberry Ltd’s proposed best estimate is *“just outside of the town centre in a residential area”* and includes The Rycote Practice and Unity Health/Thame Health Centre.
- 7.66 In response to the Commissioner’s conclusion in their decision report *“It was agreed that [sic] application from Nutriberry Ltd was situated away from the town centre and the existing sole pharmacy, was the best location to secure better access for the wider population of Thame...It was agreed that [sic] application from SKP Pharm Ltd was situated too close to Boots Pharmacy to provide improved access for the wider population of Thame”*, the Committee noted that SKP Pharm Limited state that *“the majority of this location is within the Thame NHS Community Hospital/Rycote GP Practice site. Our client understands that the operators of the Rycote Practice (Unity Health) have opposed a later application (by Sumra Healthcare Limited), which must raise doubts as to whether a lease would be granted to Nutriberry within the surgery campus even if its application were to be granted. The remainder of the area highlighted in red on the map above includes an Indian restaurant (which is open and trading and does not appear to be available) and a row of terraced housing which would not be suitable for retail use (and would require planning consent). Even if the application by Nutriberry were to be granted, it therefore seems unlikely that the applicant would be in a position to commence the provision of pharmaceutical services.”* In response, Nutriberry Ltd state that *“My client sees no barriers to opening up a Pharmacy within their best estimate location.”*
- 7.67 SKP Pharm Limited go on to state that *“In contrast, our client has submitted an application for premises within a best estimate location which is within part of the retail area of central Thame, meaning that there are available retail premises which our client would be in a position to occupy quickly should its application be granted. Had NHS England considered (as it should have) the possible availability of premises as part of its general consideration, it therefore should have been apparent to NHS England that our client’s application was preferable.”*
- 7.68 The Committee was mindful of the comments made by SKP Pharm Limited but noted their speculative nature and that no evidence had been provided to demonstrate that if the application by Nutriberry Ltd was granted that it could not or would not be able to secure a premises within its proposed best estimate. The Committee noted that neither Applicant had indicated that it had secured or was in the process of securing premises,

therefore the Committee proceeded to consider the information before it in relation to location.

- 7.69 The Committee noted the following quote which was provided by Nutriberry Ltd and taken from the PNA *"pharmacies should be located near to GP surgeries as a matter of course"*. Whilst the Committee appreciated that it would be more convenient for patients to have a pharmacy within close proximity of their GP Surgery, it was of the view that co-location is not as crucial as it once was given the introduction of new services such as the Electronic Prescription Service and Pharmacy First.
- 7.70 The Committee had regard to the responses to SKP Pharm Limited's survey and noted the trends from those who used the former Boots pharmacy and would like a new pharmacy to open in its place. It is apparent from the comments that the former location was well used. The Committee also had in mind its findings above in relation to problems patients are currently facing with accessing the Boots pharmacy whether that be by car, public transport or on foot. The Committee noted SKP Pharm Limited state that *"our client's proposed best estimate location is within 400m of the Nutriberry location, meaning that there is no material difference in terms of physical accessibility by reference to distances travelled."* However the Committee noted this would depend on starting points within the best estimate area and that the same Applicant had stated that the walk from their best estimate to the Rycote Practice is *"between 5 and 10 minutes"*. The Committee was of the view that for someone who is unable to walk, as highlighted previously, a distance of up to 10 minutes could be significant. In addition, part of SKP Pharm Limited's proposed best estimate is in close proximity to the existing pharmacy so if they secure premises in this area, it is likely that residents will experience similar problems in terms of access. In contrast, Nutriberry Ltd's proposed best estimate is roughly 0.5 miles from the existing pharmacy. The Committee considered there are advantages and disadvantages to both proposed best estimates. Mindful of its finding in relation to overall access, the Committee was therefore not persuaded that location should be a distinguishing factor.
- 7.71 The Committee noted that there were no distinguishing features between the services offered by the Applicants given that the only difference is that Nutriberry Ltd are proposing to provide the Pharmacy Contraception Service but the Committee saw no evidence to suggest a need for this specific service from the patients of Thame.
- 7.72 The Committee noted the comments from both Applicants in respect of the free delivery service offered by SKP Pharm Limited in its application. 55% of the respondents to SKP Pharm Limited's survey said that they would like a free delivery service and SKP Pharm Limited go on to state that 87% of patients said *"I do not want my medications delivered from outside Thame"*. The Committee understood from the information provided that the existing Boots pharmacy offers a delivery service for a fee and also noted that SKP Pharm Limited state that *"Vicary Pharmacy in Haddenham provides a delivery service"*. Furthermore the Committee noted the responses to the *"Delivery concerns from outside Thame"* and noted that none relate to the cost of delivery from pharmacies outside of Thame, which suggested to the Committee that the Vicary Pharmacy delivery service was complimentary or if this was not the case, not an issue for the users of this service. It was also of the view that the responses could be relevant to any pharmacy that provides a delivery service and was not specific to the area of Thame. Furthermore, a delivery service can be withdrawn and therefore, the Committee did not consider this to be a distinguishing factor between the two applications.
- 7.73 The Committee also noted the comments from SKP Pharm Limited in relation to the pillbox service it proposes to offer however as this is not an enhanced or advanced service, the Committee was of the same view that this should not be a distinguishing factor.

- 7.74 The Committee next considered the opening hours proposed by both Applicants. The Committee noted SKP Pharm Limited's proposed core hours which are, 9am to 6pm Monday to Friday, with supplementary hours from 8.30am to 9am and 6pm to 6.30pm Monday to Friday and 10am to 1pm Saturday and Sunday. SKP Pharm Limited's core hours total 45 hours a week and including supplementary hours total 56 hours a week.
- 7.75 The Committee noted Nutriberry Ltd's proposed core hours which are, 9am to 1pm and 2pm to 6pm Monday to Friday and 10am to 1pm Saturday and Sunday, with supplementary hours from 1pm to 2pm Monday to Friday. Nutriberry Ltd's core hours total 46 hours a week and including supplementary hours total 51 hours a week.
- 7.76 The Committee had regard to Schedule 4, Part 3 of the Regulations which states:

Pharmacy opening hours: general

23.— (1) *Subject to paragraph 23A, an NHS pharmacist (P) must ensure that pharmaceutical services are provided at P's pharmacy premises—*

(a) *for 40 hours each week; ...*

(d) *if a Primary Care Trust, or on appeal the Secretary of State, has (under previous Regulations) directed that pharmaceutical services are to be provided at the premises for more than 40 hours per week, and at set times and on set days, at the times and on the days so set, subject to any variation in respect of a rest break in accordance with sub-paragraph (7)(bd); ...*

- 7.77 The Committee noted that as the application from Nutriberry Ltd was granted by the Commissioner, an agreement was reached that the "additional" six hours offered by Nutriberry Ltd were 10am to 1pm Saturday and Sunday. As no party had sought to dispute the additional hours previously agreed, the Committee agreed that the direction would stand in the event that this application was granted.
- 7.78 The Committee noted that no agreement was made between the Commissioner and SKP Pharm Limited regarding its "additional" five hours, which were 5pm – 6pm, Monday to Friday. Therefore, if this application was to be granted, a direction would need to be issued for the "additional" hours which were being offered by SKP Pharm Limited.
- 7.79 The Committee noted the comment from SKP Pharm Limited in its appeal that *"Firstly, as detailed in the decision report, Nutriberry Limited appeared to have confirmed that its core hours would be limited to Monday to Friday, 9am to 1pm and 2pm to 6pm (ie not weekends). The additional hours of 10am to 1pm on Saturday and Sunday were not included in the applicant's proposed core hours but, instead, would have been "directed" hours."* However the Committee noted that the hours of 10am to 1pm on Saturday and Sunday were outlined as proposed core hours in Nutriberry Ltd's application form. And further under Regulation 23(2), these hours are included as the Applicant's core hours regardless of which are directed.
- 7.80 The Committee noted the Commissioner, in its decision report stated that *"Boots Pharmacy, High Street, Thame opened Monday-Wednesday 09:00-17:00, Thursday-Friday 09:00-17:30, Saturdays opens 09:00-17:00 and is closed on Sundays"*. The Commissioner has not confirmed if these hours are core or supplementary hours but the Committee noted the Commissioner went on to state that *"The existing pharmacy has core hours on a Saturday, but not on a Sunday"*. The Committee noted the Commissioner had confirmed the opening hours of Vicary Pharmacy as 8am to 6pm Monday to Friday and 9am to 12pm on Saturday and for Chinor Pharmacy, 9am to 6pm

Monday to Friday and 9am to 1pm on Saturday. However, the Commissioner has not confirmed if these are core or supplementary hours.

- 7.81 The Committee noted that Nutriberry Ltd state that *“Currently, the nearest pharmacy opening on a Sunday is the Tesco Pharmacy, HP19 8BU, which is over 10 miles away.”* However no further information was provided about this pharmacy in terms of its hours of opening.
- 7.82 In response to the following question in the survey provided by SKP Pharm Limited *“Do you struggle in anyway [sic] to access your pharmacy?”*, the Committee noted that 57% said they do by reason of opening hours, which, in the SKP Pharm Limited’s view *“show[s] opening hours as a major barrier to access”*. The Committee noted this was in relation to the existing Boots pharmacy only. The Committee also had regard to the comments made by respondents and noted the themes around wanting longer opening hours, hours that fit around working and Sunday opening.
- 7.83 The Committee further noted that SKP Pharm Limited appears to contradict the above, which was also highlighted by Nutriberry Ltd in its representations, by stating in its appeal that *“there is no evidence that the directed weekend hours would be of any material benefit to the local population either at all, or from Nutriberry’s proposed premises. As stated above, the proposed location is largely within the GP surgery site. Whilst the surgery is open on a Saturday morning for emergency patients, it is only open from 8.30am to 10.30am. It can clearly be seen that an agreement from Nutriberry [sic] to open at 10am on Saturday would be of no material benefit, with only a 30 minute overlap between the proposed pharmacy opening and the surgery closing. The surgery is closed all day on a Sunday...If, as NHS England appears to assert, additional weekend opening would be of material benefit to local residents, it would be of far greater benefit for the proposed pharmacy to be in a town centre location where it would be more readily visible and accessible given the location of shops and other services which are open throughout the weekend.”*
- 7.84 Considering the information provided and comparing the two applications, the Committee noted that there is an hour difference between the core hours proposed by both Applicants, which the Committee did not consider to be distinguishing in the context of these particular competing applications. The Committee noted the clear demand for late night and Sunday opening in Thame. Both Applicants have core opening until 6pm Monday to Friday but Nutriberry Ltd has core opening on a Sunday (as well as a Saturday). In its observations, SKP Pharm Limited states that *“Nutriberry offers opening hours up to 6pm Monday to Friday, whereas my client’s proposed pharmacy would be open until 6.30pm during weekdays.”* However the Committee notes the additional 30 minutes are supplementary as opposed to core hours. Furthermore, the SKP Pharm Ltd states that *“In relation to weekend opening hours generally, my client has offered opening hours which include both Saturdays and Sundays, but as non-core hours. My client would be happy to agree a direction from NHS England for these to be directed hours if required”*. However given the nature of competing applications, the Committee was of the view that it must consider the information before it and given that Nutriberry Ltd has proposed core weekend opening, the Committee was of the view that, in relation to opening hours, the application by Nutriberry Ltd is preferred.
- 7.85 The Committee noted the following comment from SKP Pharm Limited that *“the Boots pharmacy that recently closed was not open on a Sunday, and nor are the GP practices at the Thame Health Centre (or the NHS Community Hospital), so the closure of the Boots pharmacy has not led to any reduction in weekend opening”*. However the Committee was mindful of its finding above at 7.30.
- 7.86 The Committee considered the comment from SKP Pharm Limited that *“since the Health Centre is closed on a Sunday, it is not clear how the applicant would be able to fulfil its commitment to open on a Sunday if its application were to be granted and if it*

were to secure premises within the health centre (which is part of its best estimate location)." However the Committee was of the opinion that if the application from Nutriberry Ltd was granted, it would be the responsibility of Nutriberry Ltd to ensure that it opens its premises in line with the hours offered in its application form.

- 7.87 Based on its findings above, in particular in relation to opening hours, the Committee was of the view that the application by Nutriberry Ltd should be preferred.

Further Considerations

- 7.88 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.

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

7.89.1 confirm the Commissioner's decision;

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

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

- 7.90 Even though the Committee reached the same overall decision as the Commissioner, given the Committee's findings in relation to location and innovation, the Committee determined that the Commissioner's decision must be quashed.

- 7.91 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 applications.

- 7.92 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 applications by the Commissioner. The Committee further noted that when the appeal was circulated representations had been sought from parties on Regulation 18.

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

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

Discontinuation of arrangements for the provision of pharmaceutical services by doctors

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

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

7.95 Regulation 50(3) states:

This paragraph applies where—

- (a) NHS England grants a routine or excepted application, the result of which is the inclusion in a pharmaceutical list of pharmacy premises that are not already listed in relation to an NHS pharmacist; .*
- (b) the pharmacy premises to which that application relates are not distance selling premises but— .*
 - (i) are in a controlled locality, or*
 - (ii) are within 1.6 kilometres of a part of a controlled locality in which patients of a dispensing doctor reside and those patients are being provided with pharmaceutical services by that dispensing doctor; and*
- (c) granting the routine or excepted application, in the opinion of NHS England, results in a significant change to the arrangements that are in place for the provision of pharmaceutical services (including by a person on a dispensing doctor list) or local pharmaceutical services in any part of a controlled locality.*

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

7.96.1 confirm the Commissioner's decision;

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

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

7.97 The Committee noted that the Commissioner had considered gradualisation when it took its decision to grant the application by Nutriberry Ltd. In its decision report, the Commissioner stated "*There are no dispensing patients living within 1.6km radius of the proposed best estimate address of application 1, Nutriberry Ltd.*" The Committee noted that no party had appealed against the Commissioner's decision or dispute any aspect of it. On this basis, the Committee confirmed the above.

8 **DECISION**

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

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

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

- 8.4 The Committee determined that the application from SKP Pharm Limited should be refused and the application from Nutriberry Ltd should be granted on the following basis:
- 8.4.1 In considering whether the granting of an application would confer significant benefits, the Committee determined that –
- 8.4.1.1 there is not already a reasonable choice with regard to obtaining pharmaceutical services;
- 8.4.1.2 there is no evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services; and
- 8.4.1.3 there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services;
- 8.4.2 Having taken these matters into account, the Committee is satisfied that granting an application would confer significant benefits as outlined above that would secure improvements or better access to pharmaceutical services.
- 8.4.3 The core opening hours proposed by Nutriberry Ltd are beneficial which outweighed those offered by SKP Pharm Limited. As such the Nutriberry Ltd application was to be preferred.
- 8.5 The Committee noted that the Commissioner's decision regarding the discontinuation of services having not been appealed against should stand.

Case Manager
Primary Care Appeals