

14 March 2025

REF: SHA/ 26413

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**APPEAL AGAINST HERTFORDSHIRE AND WEST
ESSEX ICB DECISION TO REFUSE AN APPLICATION
BY BRODELOE LTD FOR INCLUSION IN THE
PHARMACEUTICAL LIST OFFERING UNFORESEEN
BENEFITS UNDER REGULATION 18 AT CAMBRIDGE
ROAD SHOPS, STANSTED MOUNTFITCHET, ESSEX
CM24 8BZ**

1 Outcome

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

A copy of this decision is being sent to:
Healthcare Plus Consulting Ltd on behalf of Brodeloe Ltd
PCSE on behalf of Hertfordshire and West Essex ICB
Temple Bright LLP on behalf of Peacock Pharmacy
Community Pharmacy Hertfordshire

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APPEAL AGAINST HERTFORDSHIRE AND WEST ESSEX ICB DECISION TO REFUSE AN APPLICATION BY BRODELOE LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT CAMBRIDGE ROAD SHOPS, STANSTED MOUNTFITCHET, ESSEX CM24 8BZ

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1 The Application

By application dated 18 December 2023, Healthcare Plus Consulting Ltd on behalf of Brodeloe Ltd ("the Applicant") applied to Hertfordshire and West Essex ICB ("the Commissioner") for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at Cambridge Road Shops, Stansted Mountfitchet, Essex CM24 8BZ. In support of the application it was stated:

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

1.1 "Cambridge Road Shops, Stansted Mountfitchet, Essex CM24 8BZ."

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

1.2 "N/A. Despite there being a pharmacy currently trading near the proposed site, the current pharmacy located at 4-8 Cambridge Road, CM24 8BZ is due to close on the 6th January 2024.

1.3 Should a new pharmacy contract ultimately be granted, there will no longer have been a pharmacy trading from 4-8 Cambridge Road.

1.4 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:

1.5 "Please see enclosed supporting Information"

1.6 "This application is in respect of opening up a new pharmacy to provide better access for patients requiring access to pharmaceutical services in Stansted Mountfitchet. Namely the upper/ Northern section of the village.

1.7 The best estimate of the proposed site we wish to open up a new pharmacy is located in the vicinity of the Parade of Shops located near CM24 8BZ. We understand that there is a Boots pharmacy located at the proposed site, however this is due to close on 6th January 2024 and we believe will leave a significant gap in pharmaceutical services. Hence this application is offering unforeseen benefits not captured within the PNA.

1.8 Background

- 1.9 It is important to understand the contextual background surrounding pharmaceutical need in Stansted Mountfitchet when assessing this application.
- 1.10 The Boots pharmacy until recently was the only pharmacy serving the village. The Boots pharmacy is located atop Chapel Hill in the upper/ Northern section of Stansted Mountfitchet. An unforeseen benefits application by Mountfitchet partners was successful at appeal in obtaining a new pharmacy contract to serve the lower/ Southern section of Stansted Mountfitchet.
- 1.11 Mountfitchet partners successfully demonstrated that there was a lack of reasonable choice of accessible pharmacies on the premise of two main arguments:
- 1.11.1 The barrier in physical access due to the steep walk up Chapel Hill did not provide reasonable choice.
- 1.11.2 The population had increased such that a single pharmacy was unable to meet the needs of residents in Stansted Mountfitchet.
- 1.12 They also successfully demonstrated that there was insufficient access for those groups with protected characteristics without a car, when seeking to access pharmaceutical services.
- 1.13 With the closure of the Boots atop Chapel Hill imminent, these exact same issues will once again be present in Stansted Mountfitchet. Thus, based on precedent, a new contract application should be granted on the grounds better access through reasonable choice and for those sharing protected characteristics.
- 1.14 Proposed Location
- 1.15 The proposed location is situated amongst a busy parade of shops, on Cambridge Road, atop Chapel Hill. It should be noted that at this stage the location is a best estimate.
- 1.16 The thriving parade is home to a Tesco Express; Hair Salons; a Domino's Pizza; Estate Agents; among various other shops. These are typical shops that would be found within the local community; all with ample parking to access local services. There is also an Esso petrol station with convenience store. There is good access by foot, car, and public transport with the parade being well served by the 7A and 301 buses.
- 1.17 Please see Map below [appendix A].
- 1.18 Mountfitchet Partners successful appeal
- 1.19 The Mountfitchet partners successful appeal is dated 13th July 2023 with case reference: SHA/25850. We have appended the full appeal documentation [appendix A] and urge the committee to read the decision in full when assessing this application.
- 1.20 This appeal will be referenced throughout this application, and specific references have been cited in brackets.
- 1.21 We would like to note that the decision was aided with the benefit of thorough examination of Stansted Mountfitchet and its terrain, with three separate committee members conducting site visits of the village on three separate occasions.
- 1.22 We would also like to note the conclusions that were drawn by the committee in the granting of the new contract:

- 1.22.1 Based on new site inspections, the committee agreed that Stansted Mountfitchet was 'split into two main shopping areas at the top and bottom of a significant hill.' The Boots location was referred to as the top of Chapel Hill (Point 8.25 appended appeal documentation).
- 1.22.2 The very steep incline up Chapel Hill was difficult to navigate and an impediment for many accessing pharmaceutical services (Point 8.28). The journey would be difficult for those who had acute conditions or in inclement weather (Point 8.31).
- 1.22.3 Public transport would be difficult to use to travel from the lower part of the village to the (soon to be closed Boots) pharmacy (Point 8.29).
- 1.22.4 The committee had observed that there may be difficulty for able-bodied persons accessing the Boots pharmacy given the lack of public transport to travel to the pharmacy from the lower part of the village and the difficulty in walking up Chapel Hill. It concluded that the disabled, those who were pregnant, parents with young children and the elderly would have difficulty in accessing the pharmacy if they did not have access to a car and were travelling from the lower part of the village (Point 8.46).
- 1.22.5 The Stansted Mountfitchet GP patient list had grown from around 9,000 in 2014 to 12,330 in June 2023 (Point 8.32). The committee concluded that the increase in the demand on GP services would be mirrored by an increase in demand on pharmaceutical services (Point 8.34).
- 1.22.6 There is a significant temporary patient population requiring pharmaceutical services as a result of the housing of refugees and asylum seekers in local hotels (Point 8.33).
- 1.22.7 The long queues outside the Boots were a consequence of the single pharmacy being overwhelmed by the significant increase in both registered and unregistered patients in Stansted Mountfitchet. A 'tipping point' had been reached within Stansted Mountfitchet where one pharmacy was no longer sufficient to support the population (Point 8.35, Point 8.38).
- 1.22.8 The barrier in physical access up Chapel Hill, and the inability of the pharmacy to meet patient demand led to the conclusion that residents of Stansted Mountfitchet did not have a reasonable choice of accessible pharmacies (Point 8.39).
- 1.23 For the benefit of the committee, we have rehashed the successful facts and placed them into the context of this specific application. First, we must consider the pharmaceutical regulations.
- 1.24 Regulations
- 1.25 We are required by NHS England to address the overarching question in an Unforeseen Benefits application:
- 1.26 "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".
- 1.27 When considering the above question, the provisions of Regulation 18(2)(b) should be noted: [Regulation 18(2)(b) quoted in full].

- 1.28 We note that points on reasonable choice; protected characteristics; and innovation are desirable, however, they are merely supporting considerations when determining whether in fact the overarching test in regulation 18(2)(b) has been met: an application should be granted should it provide improvements or better access to pharmaceutical services, or pharmaceutical services of a specified type in the HWB's area.
- 1.29 We have addressed these regulations overleaf.
- 1.30 Patient Journeys
- 1.31 When considering securing better access, we must consider what a typical patient journey would currently look like. We also consider the reasonable choice within these journeys, alongside how those with protected characteristics find those journeys.
- 1.32 If we take the population of Stansted Mountfitchet to be 9000, as was undisputed in the application by Mountfitchet Partners in June 2023. It would be reasonable to assume that at least 4500 residents require access to pharmaceutical services atop Chapel Hill, if not more, on the basis that the Northern section [sic] of Stansted Mountfitchet is larger than the Southern section.
- 1.33 Using the proposed site, CM24 8BZ, as an arbitrary marker to represent these residents; we can see that the next nearest pharmacy (Peacock Pharmacy, CM24 8XG) is 0.4 miles away, at the bottom of Chapel Hill. For residents currently residing near the proposed site, current pharmaceutical services are difficult to access by foot and public transport.
- 1.34 By Foot from Proposed site to current nearest pharmacy (Peacock Pharmacy)
- 1.35 The journey from the proposed site consists of a 0.4 mile walk along the full length of Chapel Hill. On flat terrain such a journey could be deemed reasonable, however this journey is far from flat and far from reasonable.
- 1.36 From the committee site visits that occurred in connection with the Mountfitchet Partners application, the gradient of Chapel Hill was estimated at 8% or 1 in 12. Soon residents will no longer have choice of accessing pharmaceutical services atop Chapel Hill due to the closure of the Boots, and the journey to Peacock Pharmacy will not provide reasonable choice.
- 1.37 When we consider the return journey from Peacock Pharmacy, we can understand the lack of reasonable choice that residents face due to physical access.
- 1.38 The walk-up Chapel Hill is not viable for residents seeking to access pharmaceutical services. One able-bodied committee member had to abandon the walk halfway up due to "steepness and danger from passing traffic".
- 1.39 Another committee member cited that the walk up Chapel Hill "Would have been very difficult for anyone in a weak, infirm or disabled condition", and "was fraught with danger from passing traffic".
- 1.40 The committee came to the conclusion that the walk was an "impediment" to accessing pharmaceutical services and able-bodied persons may have difficulty walking up Chapel Hill. "It concluded that the disabled, those who were pregnant, parents with young children and the elderly would have difficulty in accessing the pharmacy if they did not have access to a car and were travelling from the lower part of the village" (Point 8.46).
- 1.41 It is clear that the walk up Chapel Hill is not viable and presents a clear physical access barrier to accessing pharmaceutical services, and thus there is not reasonable choice

to accessing pharmaceutical services for those living in the Northern section of Stansted Mountfitchet.

- 1.42 It is also clear that the journey up Chapel Hill is not viable for groups with protected characteristics: the disabled, those who were pregnant, parents with young children and the elderly.
- 1.43 It should be noted that the next nearest pharmacy is JE Williamson Chemist a 2.4 mile walk away. This is clearly not a reasonable choice in accessing pharmaceutical services by foot.
- 1.44 By Car from Proposed site to Peacock Pharmacy
- 1.45 The journey by car to Peacock Pharmacy is currently a 3-minute drive along the full length of Chapel Hill from the proposed site.
- 1.46 This journey is per google maps estimation however in reality this journey is likely to take much longer with many obstacles to navigate. On their site visit in May 2023 one committee member noted: "There are a lot of parked cars on the road and delivery vehicles obstructed the whole road during both ascents by car".
- 1.47 Clearly the journey by car also presents a physical barrier to access. The elderly, infirm, or other groups with protected characteristics may not feel comfortable making this journey by car due to the traffic that needs to be navigated and potential safety issues. Evidently those with protected characteristics living in the Northern section of Stansted Mountfitchet would not consider Peacock Pharmacy to present reasonable choice of access to pharmaceutical services by car.
- 1.48 By Public Transport from Proposed site to Peacock Pharmacy
- 1.49 The journey by bus to Peacock Pharmacy is not well served by public transport. Patients would obtain the No.7/7A bus from outside the nearby Tesco Express. However, the bus service is infrequent with buses arriving every two hours at best, as ratified by committee member visits.
- 1.50 This inaccessibility was confirmed by the committee appeal decision stating that:
- 1.50.1 *"Public transport would be difficult to use to travel from the lower part of the village to the (Boots/ Proposed site) pharmacy."*
- 1.50.2 *"The committee had observed that there may be difficulty for able-bodied persons accessing the Boots pharmacy given the lack of public transport to travel to the pharmacy..."*
- 1.51 Thus, it is clear that the bus service is a physical barrier to access to pharmaceutical services and does not provide reasonable choice.
- 1.52 Such poor choice of pharmaceutical access is felt especially by the elderly and disabled. These patient groups could face having to waiting for hours for a bus in the shivering cold on a winters day. When we consider that these patients clearly are unable to walk to the current pharmacy for the reasons outlined above, it is obvious that current pharmaceutical provision is inadequate for those with protected characteristics.
- 1.53 Population Growth
- 1.54 Stansted Mountfitchet has traditionally been served by one pharmacy (the Boots that is soon to be closed), however rapid population growth within Stansted Mountfitchet

within years of late has meant that one pharmacy was no longer enough to adequately serve the population. As a result, the application by Mountfitchet partners for an additional pharmacy in Stansted Mountfitchet was granted in July 2023.

- 1.55 In their successful new contract application, Mountfitchet Partners stated through their Oral Hearing submission that *“one pharmacy might have been enough in the past, but it was not anymore. There was a tipping point and the tipping point had been reached several years ago”*.
- 1.56 The committee noted that the Stansted Mountfitchet GP patient list had grown from around 9,000 in 2014 to 12,330 in June 2023. The committee also observed that the increase in the demand on GP services would be mirrored by an increase in demand on pharmaceutical services.
- 1.57 The committee concluded that the long queues outside the Boots were a consequence of the pharmacy being overwhelmed by the significant increase in both registered and unregistered patients in Stansted Mountfitchet. Hence, a ‘tipping point’ had been reached within Stansted Mountfitchet where one pharmacy was no longer sufficient to support the population.
- 1.58 It is clear that the population of Stansted Mountfitchet cannot be adequately supported by one pharmacy and thus there is a need to grant this new contract application to restore reasonable choice for the growing population.
- 1.59 Opening Hours
- 1.60 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.
- 1.61 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.
- 1.62 We note that the nearest pharmacy providing Saturday & Sunday core opening hours is the Boots in Bishop’s Stortford, CM23 3UL. This is a 3.4-mile drive away from the proposed premises, thus access to weekend pharmaceutical provision will be vastly improved should this application be granted.
- 1.63 Conclusion
- 1.64 In our view, the closure of the Boots Pharmacy, CM24 8BZ, will leave a significant gap in pharmaceutical services for Stansted Mountfitchet, especially for those residing in the Northern section of Stansted Mountfitchet.
- 1.65 Granting this application would secure better physical access to pharmaceutical services and restore reasonable choice. The elderly, disabled, and those with protected characteristics 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 and reinstate the two-pharmacy provision that is needed for Stansted Mountfitchet.
- 1.66 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, CM24 8BZ, closure; and notwithstanding the fact that the nearest pharmacy to the proposed site is clearly inaccessible.
- 1.67 On the evidence outlined above and precedent set, 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:

- 1.68 “The Boots Pharmacy, Cambridge Road, CM24 8BZ 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.
- 1.69 An increase in local pharmacy capacity and improved choice to meet the needs of the local population.
- 1.70 Better access to pharmaceutical services given the closure of Boots Pharmacy.
- 1.71 See enclosed Supporting information for further detail. [see 1.6 to 1.67 above].”

2 The Decision

The Commissioner considered and decided to refuse the application. The decision letter dated 8 November 2024 states:

- 2.1 “Hertfordshire and West Essex ICB has considered the above application and I am writing to confirm that it has been refused. Please see the enclosed report for the full reasoning.
- 2.2 You have a right of appeal to the Secretary of State against Hertfordshire and West Essex ICB’s decision. Should you choose to appeal then you should either complete the online form available on the NHS Resolution website or send a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this letter to nhsr.appeals@nhs.net or:
- 2.3 Primary Care Appeals
NHS Resolution
8th Floor
10 South Colonnade
Canary Wharf
London
E14 4PU”

PSRC report

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

- 2.4 “Brodeloe Ltd, Cambridge Road Shops, Stansted Mountfitchet, CM24 8BZ
- 2.5 The Pharmaceutical Services Regulations Committee (hereafter referred to as “the Committee”) considers all pharmaceutical services applications for the 6 Integrated Care Boards (ICB) within the East of England footprint. NHS Hertfordshire & West Essex ICB
- 2.6 (HWE ICB) hosts the meeting on behalf of the 6 ICBs, in accordance with the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 as amended (hereafter referred to as “the Regulations”).
- 2.7 The Committee considered this routine application offering unforeseen benefits in the area of the Essex Health and Wellbeing Board (HWP) under Regulation 18 of the Regulations.

- 2.8 The Committee noted that Abax Health Ltd have also submitted an Unforeseen Benefits application in respect of Shop Unit 2, The Greens, Building 4-8, Cambridge Road, Stansted Essex, CM24 8BZ. The distance between the two sites would be less than 200m. Due to the proximity between the two sites, this application will be heard alongside that for Brodeloe Ltd.
- 2.9 The Committee first considered Regulation 31.
- 2.10 The Committee noted that the applicant has provided the address of Cambridge Road Shops, Stansted Mountfitchet, Essex, CM24 8BZ for the location of the proposed pharmacy premises.
- 2.11 The Committee noted the information provided to the Committee in advance of the meeting on nearest pharmacies. There is one pharmacy within 1.3 miles of the proposed site and then three more between 2-3 miles.
- 2.12 The Committee noted that in regard to Regulation 31, the applicant has stated within their application:
- 2.13 “N/A. Despite there being a pharmacy currently trading near the proposed site, the current pharmacy located at 4-8 Cambridge Road, CM24 8BZ is due to close on the 6th January 2024. Should a new pharmacy contract ultimately be granted, there will no longer have been a pharmacy trading from 4-8 Cambridge Road. Thus, there will be no pharmacy trading from or adjacent to the proposed premises, so Regulation 31 does not apply.”
- 2.14 The Committee noted that the pharmacy at this location, Boots, did indeed close on 6th January 2024.
- 2.15 The Committee were not required to refuse the application under the provisions of Regulation 31.
- 2.16 **Paragraph 31, Schedule 2** – conditional grant of applications where the address of the premises is unknown
- 2.17 The Committee noted that this Regulation does not apply as the applicant has provided the address of the proposed premises.
- 2.18 **Regulation 32** – Is the application to be deferred?
- 2.19 The Committee noted this Regulation does not apply as the proposed listed pharmacy premises is not an LPS designated premises.
- 2.20 **Regulation 40 to 44** - Applications in a controlled locality
- 2.21 The Committee noted that the proposed location is not within a controlled locality or reserved locality, so these Regulations do not apply.
- 2.22 **Regulation 18(1)** – does the need on which the applicant based its application satisfy the elements of Regulation 18(1)?
- 2.23 The Committee considered Regulation 18(1)(a) is satisfied in that it is required to determine whether it is satisfied that granting the application or granting it in respect of some of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB.
- 2.24 **Regulation 18(1)(b)**

- 2.25 The Committee considered whether Regulation 18(1)(b) is satisfied i.e. whether the improvements or better access that would be secured if the application was granted were or were not included in the relevant pharmaceutical needs assessment (PNA) in accordance with Paragraph 4 of Schedule 1.
- 2.26 Paragraph 4 of Schedule 1 requires the PNA to include:
- 2.27 *“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).
- 2.28 The Committee noted that the applicant has stated the following within their application: [see 1.6 -1.67 above].
- 2.29 The Essex PNA for 2022-2025 states that there are 249 community pharmacies in Essex, with the subsequent Supplementary Statement for April 2023 noting that five have closed. A further Supplementary Statement in June 2024 for the area of Uttlesford showed that another pharmacy also closed. However, it should be noted that the overall number of providers of pharmaceutical services increases when combined with dispensing GP practices present in Essex. Essex has 46 dispensing GP practices providing pharmaceutical services, of which 8 are located in the locality of Uttlesford.
- 2.30 The Committee noted the current Essex PNA concludes:
- 2.30.1 *“The conclusion of the PNA is that the population of Essex’s HWB area currently has sufficient numbers of pharmaceutical contractors to meet the needs of the population.” And with regards to Planned Housing “Having considered available plans, travel distance and access to provision, we are satisfied that all areas are well served by the existing network and we have not identified any gaps in pharmaceutical provision based on the agreed rate of development during the lifetime of this PNA”.*
- 2.31 The Committee noted there have been supplementary statements published since the application was received, in April 2023 (see Additional Information above) for the whole of Essex and more recently in June 2024 for the area of Uttlesford. The supplementary statement concludes:
- 2.31.1 *“No gaps in pharmaceutical services have been identified that if provided either now or in the future would secure improvements or better access to necessary pharmaceutical services across the locality.”*
- 2.32 *In the appeal for Mountfitchet and Partners Ltd (REF: SHA/25850), at point 8.54 NHS Resolution was of the view that “in accordance with Regulation 18(2)(b) the granting of this application would confer significant benefits on persons in the area of the HWB which were not foreseen when the PNA was published.” However, this relates to an application to provide pharmaceutical services adjacent to the only GP surgery in the town, Peacock Surgery. The application was granted on appeal and the Pharmacy has been operating since November 2023.*
- 2.33 The Committee were of the view that the improvements or better access that the applicant is claiming would be secured by its application, were not included in the relevant PNA in accordance with Paragraph 4 of schedule 1.
- 2.34 The Committee noted that in order to be satisfied in accordance with Regulation 18(1), regard is also to be had to those matters set out in Regulation 18(2).

- 2.35 Regulation 18(2)(a)(i) & (ii)
- 2.36 The Committee considered whether it is satisfied that granting the application would cause significant detriment to—
- 2.36.1 *proper planning in respect of the provision of pharmaceutical services in the area of the relevant HWB, or*
- 2.36.2 *the arrangements the [ICB] has in place for the provision of pharmaceutical services in that area;*
- 2.37 The Committee noted that there was no evidence to suggest granting the application would cause significant detriment to proper planning in the area and for any arrangements the ICB has in place for the provision of pharmaceutical services in the area.
- 2.38 In the absence of any significant detriment as described in Regulation 18(2)(a), the Committee were not obliged to refuse the application and should go on to consider Regulation 18(2)(b).
- 2.39 **Regulation 18(2)(b)(i)**
- 2.40 The Committee considered whether, notwithstanding that the improvements or better access were not included in the Essex PNA, 2022 - 2025, it is satisfied that, having regard in particular to the desirability of—
- 2.40.1 *there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB (taking into account also the [ICB'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))*
- 2.40.2 *granting the application would confer significant benefits on persons in the area of Essex HWB that were not foreseen when the PNA was published.*
- 2.41 The Committee noted that the applicant states the following points:
- 2.41.1 *"In our view, the closure of the Boots Pharmacy, CM24 8BZ, will leave a significant gap in pharmaceutical services for Stansted Mountfitchet, especially for those residing in the Northern section of Stansted Mountfitchet.*
- 2.41.2 *Granting this application would secure better physical access to pharmaceutical services and restore reasonable choice. The elderly, disabled, and those with protected characteristics 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 and reinstate the two-pharmacy provision that is needed for Stansted Mountfitchet."*
- 2.42 The P&O team have reviewed contracting files and can confirm that the ICB have not received any patient complaints or concerns relating to the closure of Boots Pharmacy (January 2024) resulting in residents being unable to access pharmaceutical services or obtain their medication. The existing pharmacy, Peacock Pharmacy, has no reviews on NHS Find a Pharmacy, however, it has 4.8 stars from 38 reviews on Google i.e. two 1 star and 36 5 star. The two 1 star reviews mention dissatisfaction at wait times but others complimented the speed of service View all Google reviews.
- 2.43 Therefore, there is no evidence to suggest that patients cannot, or are struggling to, access pharmaceutical services.

- 2.44 The nearest pharmacy, Peacock Pharmacy, is currently providing:
- 2.44.1 Pharmacy First
 - 2.44.2 Hypertension Service
 - 2.44.3 NMS
 - 2.44.4 CPCS
 - 2.44.5 NHS flu vaccinations
 - 2.44.6 Smoking cessation
 - 2.44.7 Hepatitis C
- 2.45 The Committee noted that the proposed application does not list offering Pharmacy First but does propose to offer the following additional services to the area:
- 2.45.1 Minor Ailment Service
 - 2.45.2 Contraception Service
 - 2.45.3 Palliative Care
 - 2.45.4 Sexual Health
 - 2.45.5 NHS Health Checks
- 2.46 The Committee noted that the applicant is proposing the following opening hours of 46 core hours and 9 supplementary hours; providing a total of 55 hours [appendix B].
- 2.47 The Committee noted that the applicant is proposing the following opening hours of 46 core hours and 9 supplementary hours; providing a total of 55 hours [sic].
- 2.48 The nearest pharmacy, Peacock Pharmacy (an 8 minute walk away), provides 40 core hours and 18.5 supplementary hours; providing a total of 58.5 hours [appendix B].
- 2.49 In comparison to the hours provided by Peacock Pharmacy, the applicant is offering an extra 6 core hours at weekends and provision from 5-6pm weekdays but there would be no core hours at lunchtimes i.e. 1-2pm. The applicant is offering 9.5 less supplementary hours, noting that, upon giving the required notice, these can be removed.
- 2.50 The applicant cites a number of points from appeal SHA/25850 heard by NHS Resolution in July 2023 with regards to accessing pharmaceutical services in the area:
- 2.51 *“8.25 The Applicant described Stansted Mountfitchet as “split into two main shopping areas at the top and bottom of a significant hill.” The Committee agreed with this description, based on its own site inspection.”*
- 2.52 And
- 2.53 *“8.28 In particular, the Committee had noted the difficulty of accessing the pharmacy on foot from the lower part of the village due to the steepness of Chapel Hill.”*
- 2.54 The Committee noted that there is no evidence that patients will start their journey from the proposed premises, which will make accessing pharmaceutical services difficult for

patients. There is no evidence, by way of complaints etc that patients are struggling to access the pharmaceutical services in their new location in the lower part of the village. Moreover, for those attending Peacock Surgery in person there would be no difficulty in accessing pharmaceutical services as these are located, in the same building, next door.

- 2.55 In 5.10 of the appeal the Committee noted that *“A particular purpose of the visit was to investigate the access, via Chapel Hill from the surgery to Boots.”* ie access from the surgery to a pharmacy was a factor that was taken into consideration. As Peacock Surgery is located, in the same building, next to Peacock Pharmacy, access from the surgery should not prove to be an issue.
- 2.56 The applicant notes the comments from NHS Resolution regarding the ability of the (now closed) Boots pharmacy to deliver services i.e. *“The long queues outside the Boots were a consequence of the single pharmacy being overwhelmed by the significant increase in both registered and unregistered patients in Stansted Mountfitchet. A ‘tipping point’ had been reached within Stansted Mountfitchet where one pharmacy was no longer sufficient to support the population (Point 8.35, Point 8.38).”*
- 2.57 There is no evidence to show that the current pharmacy, Peacock Pharmacy, has struggled to provide sufficient access to pharmaceutical services since the closure of Boots pharmacy in January 2024.
- 2.58 Taking all the above into account, it can be concluded that there is patient choice available and that patients are able to access pharmaceutical services within the area of Essex HWB.
- 2.59 The Committee noted that the test is whether or not those living in Stansted Mountfitchet have reasonable choice with regard to obtaining pharmaceutical services in the area of Essex HWB, not just in the area of Stansted Mountfitchet.
- 2.60 No evidence has been provided to demonstrate that those living in Stansted Mountfitchet are currently unable to exercise a choice in obtaining pharmaceutical services.
- 2.61 Based on the information presented, the Committee were of the view that there is already reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB, such that it cannot be satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the Essex PNA, 2022-2025 was published.
- 2.62 **Regulation 18(2)(b)(ii)**
- 2.63 The Committee considered whether, notwithstanding that the improvements or better access were not included in the Essex PNA, 2022-2025, it is satisfied that, having regard in particular to the desirability of—
- 2.63.1 *people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access (taking into account also the NHSCB's duties under section 13G of the 2006 Act (duty as to reducing inequalities))*
- 2.63.2 granting the application would confer significant benefits on persons in the area of Essex HWB that were not foreseen when the PNA was published.

- 2.64 The applicant cites point 8.46 of the Appeal with regards to those with protected characteristics being able to access services between Peacock Surgery at the bottom of the hill and those patients residing at the top of the hill, where the proposed location is.
- 2.65 *“8.46 The Committee had observed that there may be difficulty for able-bodied persons accessing the Boots pharmacy given the lack of public transport to travel to the pharmacy from the lower part of the village and the difficulty in walking up Chapel Hill. It concluded that the disabled, those who were pregnant, parents with young children and the elderly would have difficulty in accessing the pharmacy if they did not have access to a car and were travelling from the lower part of the village.”*
- 2.66 The Committee noted that patients with protected characteristics accessing pharmaceutical services who live in the upper part of the village would still need to traverse the hill in order to access the services, which are now located at the bottom of the hill. However, there is no evidence, by way of complaints etc that patients are struggling to do so.
- 2.67 The Committee noted the applicant provided no evidence to meet the criteria of Regulation 18(2)(b)(ii).
- 2.68 Whilst it is accepted that there would be people with protected characteristics living in Stansted Mountfitchet and that some may need pharmaceutical services as a result, there was no evidence that any specific groups had any difficulty accessing such services.
- 2.69 The Committee were 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 in the area of the relevant HWB which were not foreseen when the relevant pharmaceutical needs assessment was published.
- 2.70 **Regulation 18(2)(b)(iii)**
- 2.71 The Committee considered whether, notwithstanding that the improvements or better access were not included in the Essex PNA 2022-2025, it is satisfied that, having regard in particular to the desirability of—
- 2.71.1 there being innovative approaches taken with regard to the delivery of pharmaceutical services (taking into account also the NHSCB's duties under section 13K of the 2006 Act (duty to promote innovation)),
- 2.71.2 granting the application would confer significant benefits on persons in the area of Essex HWB that were not foreseen when the PNA was published.
- 2.72 The applicant provided no evidence regarding innovative approaches in the delivery of pharmaceutical services, therefore the Committee were not satisfied that, having regard to the desirability of there being innovative approaches taken with regard to the deliverability of pharmaceutical services, granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the Essex PNA, 2022 - 2025 was published.
- 2.73 **Representations**
- 2.74 During the 45-day notification period, representations was received from:
- 2.74.1 Mountfitchet Partners Ltd

- 2.74.2 Abax Health Ltd
- 2.74.3 Community Pharmacy Hertfordshire
- 2.74.4 North and South Essex Local Medical Committees
- 2.75 Representations were made available to the Committee prior to the meeting.
- 2.76 The Committee noted that all those who made representations, except North and South Essex LMC, raised substantial comments. Mountfitchet Partners Ltd and Abaz Health Ltd may be granted appeal rights, if the Committee decided to grant the application.
- 2.77 **Regulation 18(2)(b) generally**
- 2.78 The opening hours of those pharmacies that are closest to the proposed postcode were discussed. The Committee noted that supplementary hours can be withdrawn at any time in line with the Regulations.
- 2.79 The Committee considered whether there are any other factors that would confer significant benefits including on patients who share protected characteristics based on the information provided by the applicant.
- 2.80 The Committee noted the applicant provided no evidence to satisfy the conclusion that there are other factors that would confer significant benefits on patients who shared protected characteristics.
- 2.81 **Regulation 50** - Discontinuation of arrangements for the provision of pharmaceutical services by doctors.
- 2.82 The Committee noted the proposed location is not a controlled locality.
- 2.83 **Regulation 65** – core opening hours conditions
- 2.84 The Committee noted that the applicant is proposing to offer 46 core hours [appendix B].
- 2.85 The Committee noted that core opening hours conditions need to be agreed prior to the discussion at PSRC.
- 2.86 **Regulation 66** – conditions relating to providing directed services
- 2.87 The applicant has undertaken to provide the following directed services if the application is granted.
 - 2.87.1 Hypertension Service
 - 2.87.2 NMS
 - 2.87.3 CPCS
 - 2.87.4 NHS flu vaccinations
 - 2.87.5 Minor Ailment Service
 - 2.87.6 Contraception Service
 - 2.87.7 Smoking cessation

2.87.8 Palliative Care

2.87.9 Sexual Health

2.87.10 NHS Health Checks

2.88 Regulation 66(4) therefore applies if the application was granted, and the inclusion of the applicant and the pharmacy premises in the pharmaceutical list for the area of Essex HWB would be subject to the condition set out in Regulation 66(5).

2.89 The Committee noted that some services are advanced services, and some are enhanced services and if the application was granted, they must consider whether or not to specify a date by which the condition to provide these services is to take effect.

2.90 **Decision**

2.91 The Committee refused the application on the following basis, under Regulation 18 (2)(b):

2.91.1 There was no evidence that there is not already a reasonable choice with regard to obtaining pharmaceutical services in the area of Essex HWB.

2.91.2 There was no evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services that meet their specific needs for such services in the area of Essex HWB.

2.91.3 There was no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services in the area of Essex HWB. The granting of this application would not offer significant benefits to people within the area of Essex HWB.

2.92 There was no information provided to support a finding that pharmaceutical services are not currently provided at such times as needed and therefore the Committee were not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits (in relation to opening hours) on persons.

2.93 For all the above reasons the view in accordance with Regulation 18(2)(b), the granting of this application would not confer significant benefits on persons in the area of the Essex HWB which were not foreseen when the Essex 2022 - 2025 PNA was published.

2.94 The Committee were not satisfied that granting the application would confer significant benefits as outlined above or would secure improvements or better access to pharmaceutical services.

2.95 The Committee agreed that appeal rights are granted to the applicant, Brodeloe Ltd."

3 **The Appeal**

In a letter dated 8 December 2024 addressed to NHS Resolution, the Applicant appealed against the Commissioner's decision. The grounds of appeal are:

3.1 "Thank you for your letter dated 8th December 2024 to my client. Brodeloe Ltd have instructed us (Healthcare Plus Consulting Ltd) to act on their behalf for this appeal, please find authorisation letter attached.

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

- 3.3 Having reviewed the decision minutes by the Pharmacy Services Regulations Committee (PSRC) it is clear that the refusal of my client's application was based on incorrect application of the relevant regulatory test.
- 3.4 Throughout their report, the PSRC emphasize how my client has provided "no evidence" with regard to there being reasonable choice to provision or difficulty for those who share protected characteristics. NHS Resolution will be aware that this is not in fact the regulatory test and the PSRC should have been asking themselves whether the application provides 'better access', as per the regulations.
- 3.5 We submit that there is not necessarily a need to submit 'evidence' as such, but rather for a reasonable interpretation to be made based on the facts of the case. A number of relevant facts of this case were established by the grant of an unforeseen benefits application in Stansted by NHS Resolution in July 2023 – SHA/25850.
- 3.6 My client has previously provided extensive correspondence as to the relevance of these established facts, and reasoning why this unforeseen benefits application should be granted, based on these facts. Hence, we reattach this correspondence for redetermination by NHS Resolution [appendix A/1.6 to 1.67 above].
- 3.7 We maintain that granting this application would secure better access and improvements to pharmaceutical services for residents of Stansted, especially those residing atop Chapel Hill. Regulation 18 has been met through previous representation by my client and thus we invite NHS Resolution to grant my client's application."

Letter to the Commissioner dated 10 May 2024

- 3.8 "Thank you for your letter dated 29th April 2024. We welcome comments from interested parties and address relevant representations in turn:
- 3.9 Abax Health Ltd (Other Applicant)
- 3.10 Abax Health Ltd appear to express their dissatisfaction with the consideration of my client's application alongside theirs. Whilst we understand there may be frustration with delays, we believe the decision to consider both applications together is indeed the correct one. Both applications were made in consecutive months and in any case, my client's application was circulated before that of Abax Health. For applications submitted so close together, in our experience, this is normal practice.
- 3.11 My client also confirms that they are willing to provide any service that is commissioned locally by any commissioner.
- 3.12 Abax Health question the usefulness of the hours proposed by my client. The Saturday and Sunday morning core opening hours proposed by my client will provide healthcare coverage when the GP surgery is closed, thus improving access to pharmaceutical provision. My client also proposes to open on Saturday afternoons through supplementary opening, further improving access to pharmaceutical provision. Indeed, the recently closed Boots pharmacy was open all-day on Saturdays.
- 3.13 The committee will be aware that where there are two similar applications offering benefits at a similar location; the application that offers more core hours should be preferred. This is applied in regulation 18(2)(b) generally, and numerous past appeal decisions.
- 3.14 Hence, my client's application should be preferred.

- 3.15 Much like Abax Health, my client has had positive dialogues with potential units 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.
- 3.16 Should an application be granted, the application by my client should be preferred to that of Abax Health.
- 3.17 **Mountfitchet Partners (owners of Peacock Pharmacy, CM24 8XG)**
- 3.18 My client would like to express his disappointment to the objection of this application by Mountfitchet Partners. After such a well-publicised campaign by Mountfitchet Partners for 2 pharmacy provision in Stansted, it is somewhat disappointing that they now seek to deny the local population of a much-needed second pharmacy atop Chapel Hill. No less hiring the same Solicitor to object to this application who less than a year ago successfully demonstrated the need for 2 pharmacy provision in Stansted, and the barrier to access that Chapel Hill presents.
- 3.19 We observe that Mountfitchet Partners have written a lot without producing much of substance.
- 3.20 For the committee's ease we reiterate the **basic facts** that have been established by the Mountfitchet Partners decision, highlighting their Solicitor's own representations in red. Note that references in brackets are to the original appeal decision: SHA/25850 [Applicant's emphasis].
- 3.21 Stansted Mountfitchet can be described as split into a Northern/ Southern section separated by Chapel Hill. *"The town is split into two main shopping areas at the top and bottom of a significant hill"*. The committee agreed with this assessment of Stansted Mountfitchet.
- 3.22 The committee visits deemed all routes up this hill to represent a barrier to access by foot, car, and public transport, especially for the disabled, those who are pregnant, those with young children, and the elderly. (Point 8.46). We have highlighted these inaccessible journeys in our original application. *"There is a long incline up Chapel Hill from the surgery to Boots on Cambridge Road. Patients with COPD and asthma exacerbations struggle tremendously."* And: *"access was difficult even if you had the option of driving by car. There was no public transport and if you went by car, there was congestion."* The committee agreed that the hill constituted a barrier to access, especially for those groups who share protected characteristics.
- 3.23 One pharmacy is no longer sufficient to support the growing Stansted Mountfitchet population. *"One pharmacy might have been enough in the past, but it was not anymore. There was a tipping point and the tipping point had been reached several years ago"*. The committee agreed that singular pharmaceutical provision was no longer enough to support the growing Stansted Mountfitchet population and in fact 2 pharmacies are needed.
- 3.24 To summarize [sic], Stansted Mountfitchet is clearly split into two distinctive areas at the top and bottom of Chapel Hill. This hill presents a barrier to access by foot, car, and public transport, especially for the aforementioned groups who shared protected characteristics. Stansted Mountfitchet requires two pharmacies to serve its growing population. These facts all originate from previous representations by Mountfitchet Partners and their Solicitor.
- 3.25 In the context of this situation, the scenario is simply that those living in Southern Stansted Mountfitchet have suitable access to pharmaceutical provision at Peacock Pharmacy. However, those living in Northern Stansted Mountfitchet no longer have suitable access to pharmaceutical provision after the closure of the Boots. Chapel Hill

presents a barrier to accessing pharmaceutical provision at Peacock pharmacy for residents in Northern Stansted, especially when we consider the return journey that these patients would have to make after visiting Peacock Pharmacy. These inaccessible journeys are highlighted per our original application and Mountfitchet Partners successful appeal. Thus, a pharmacy needs to be present atop Chapel Hill to restore access and reasonable choice to pharmaceutical provision for residents in Northern Stansted Mountfitchet, especially for those groups who share protected characteristics. Additionally, granting this application would also restore the 2-pharmacy provision that is needed for Stansted Mountfitchet.

- 3.26 Addressing Mountfitchet Partners comments on my client's application directly:
- 3.27 The Objector states that the reasoning behind granting Mountfitchet Partners application is "*not materially significant*" in the context of my client's application and claim that my client has cited "*flawed logic*" and "*material misstatements*". These remarks are outright false.
- 3.28 Of course, the conclusions in the Mountfitchet Partners application are highly relevant and significant in the context of my client's application. Both applications concern the same pharmaceutical locations (One atop Chapel Hill, and the other at its base), the same location (Stansted Mountfitchet), the same barrier to access (Chapel Hill), the same patient journeys, and the same growing population. The decision is also very recent – July 2023. The successful application by Mountfitchet Partners is highly relevant in the context of my client's application, to suggest otherwise is nonsensical.
- 3.29 The Objector states that my client has "*failed to evidence*" how improvements or better access will be secured. My client has clearly detailed how Chapel Hill presents a barrier to access in the application, and how access will be improved for residents, especially the elderly, those who are pregnant, those with young children, the disabled, and infirm by having a pharmacy atop Chapel Hill. This is supported by recent field evaluations conducted by the NHS appeals committee [sic], and the agreement of this barrier to access by the appeals committee in their decision in Mountfitchet Partners appeal (Point 8.46). The ignorance of such evidence is wilfully dismissive of those groups who share protected characteristics.
- 3.30 The Objector states *that* "*Stansted Surgery acts as a very significant focus for demand*" and hence this is a reason that the Mountfitchet Partners application was granted. Again, this is a false narrative – this is not cited as a direct reason for granting the Mountfitchet Partners application by the committee.
- 3.31 Nevertheless, the Objector appears to perpetuate the notion that every pharmaceutical visit is directly after a visit to the GP. This is evidently not the case, with the majority of visits to a pharmacy coming in the form of collecting repeat medication and accessing pharmaceutical services as part of people's daily lives. It is common knowledge that a visit to the GP surgery is not required every time historic medication is required; and the recently closed Boots had a 95% EPS uptake.
- 3.32 The Objector states that the proposed site is not among "*destination shops*". Such a comment is farcical. The proposed parade is home to a Tesco Express; a Domino's Pizza; Estate Agents; local café; a Fish & Chips shop; a hairdresser; among various other shops. It is clear that these are in fact destination shops.
- 3.33 The Objector then goes on to argue that patients would not access pharmaceutical provision in connection with a visit to these shops. We contend that more patients are likely to access pharmaceutical provision alongside a visit to this shopping parade than they are alongside a visit to the GP surgery.

- 3.34 The Objector states that it is *“artificial for the applicant to place significant weight on the journey between the applicant’s proposed premises and my client’s pharmacy because that does not represent a journey that those who require access to pharmaceutical services are likely to make.* Again, the Objector makes another ludicrous statement. For residents who live near the proposed site and those accessing Cambridge Road shops as part of their daily lives, in order to access current pharmaceutical provision, they will have to navigate the barrier that is Chapel Hill – it is well established that this is an obstacle that many cannot overcome. Thus, these residents currently do not have sufficient access to pharmaceutical provision. Moreover, the committee have already assessed all the routes between Northern/Upper Stansted Mountfitchet and Stansted Surgery/ Peacock Pharmacy and established that all routes represent a barrier to access. Those residents residing in Northern/ Upper Stansted Mountfitchet do not currently have sufficient access to pharmaceutical provision.
- 3.35 The Objector states that *“residents to the north may use High Lane or St Johns Road.”* The Objector once again makes another ridiculous statement. The committee determined that the route using St John’s Road was equally steep and was ultimately considered a barrier to access in the Mountfitchet Partners appeal– a fact the Objector will be aware of.
- 3.36 Moreover, the notion that the path up High Lane to Northern Stansted represents a reasonable choice is again ludicrous. A patient residing on Rainsford Road (CM24 8EA) in Northern Stansted Mountfitchet, would have a 3.2-mile round journey via High Lane to access pharmaceutical provision at Peacock Pharmacy. This route involves uneven narrow pavements; pavements only on one side of the road; no dropped kerbs in crossing to the only available pavement; poor lighting; gravel tracks; and still has an incline. Clearly, this is not representative of reasonable pharmaceutical access and choice. For those groups who share protected characteristics, this is representative of no pharmaceutical choice at all.
- 3.37 The Objector also states that *“those living to the west of Stansted Mountfitchet may use Mill Side/ Sunnyside or Chapel Hill”.* Yet another misleading statement by the Objector. The walk-up Chapel Hill has already been determined to be a barrier to access. The walk along Mill Side/ Sunnyside does not have any pavement; is a single-track road; has blind corners; and is extremely steep in parts. Again, this is not representative of reasonable pharmaceutical access and choice, especially for those groups who share protected characteristics.
- 3.38 The Objector takes issue with the arbitrary marker that has been used in my client’s application. Whilst we agree that not all residents will start their journey here, it is impractical to assess patient journeys from every single household. The arbitrary marker is very sensible in that it is at a location where residents of Northern/ Upper Stansted Mountfitchet would access local amenities. The arbitrary marker is also very fair in terms of location; the majority of alternative markers in Northern/Upper Stansted would produce one-way journeys of greater distance than a mile and would still include having to navigate the Chapel Hill barrier. Obviously, these journeys are more onerous than the ones highlighted in my client’s application. Regardless of starting point, for those residing in Northern/ Upper Stansted Mountfitchet, Chapel Hill represents a barrier to accessing pharmaceutical services.
- 3.39 The Objector also appears to take issue with the best estimate proposed by my client. It is quite normal to use best estimate addresses in unforeseen benefits applications and my client has highlighted a parade of local shops which span approximately 100 metres. This is nothing unreasonable or out of the ordinary. We understand that Mountfitchet Partners utilized a best estimate in their successful appeal.

- 3.40 Under the 'Reasonable Choice' subheading, the Objector fails to acknowledge that the Mountfitchet Partners application was also granted under reasonable choice due to the barrier that Chapel Hill presents. We just wanted to make the committee aware of this.
- 3.41 The Objector goes on to argue that their pharmacy meets the needs of the Stansted Mountfitchet population under the 'Reasonable Choice' subheading.
- 3.42 This represents a complete U-turn on the assertions by Mountfitchet Partners in their successful application that: *"One pharmacy might have been enough in the past, but it was not anymore. There was a tipping point and the tipping point had been reached several years ago."*
- 3.43 We note that it is highly convenient that the Objector has thought for years that 2 pharmacies are required in Stansted, up until at least July 2023, and then decides that no such provision is required when my client tries to restore this 2-pharmacy provision.
- 3.44 We note that the Objector lists a number of services that they provide, such as free delivery. However, we highlight that many of these services, including free delivery, are not NHS commissioned and can be withdrawn at any time.
- 3.45 The Objector appears to criticise the Sunday opening proposed by my client, however, chooses not to offer pharmaceutical provision on a Sunday. It is obvious that providing pharmaceutical provision on more days provides better access, especially when we consider that the nearest Sunday opening is 3.4 miles away. For the patient groups who work and are likely to access pharmaceutical provision in relation to frequenting the local amenities such as Tesco, Sunday opening provides improved access and choice. Thus, Sunday opening does secure better access and improvements to pharmaceutical provision in Stansted Mountfitchet.
- 3.46 We conclude that the comments by Mountfitchet Partners lack substance. As demonstrated, many of their comments are intended to complicate what ultimately is quite a simple situation regarding barriers to access and the need for pharmaceutical provision in Northern/Upper Stansted Mountfitchet, atop Chapel Hill. The appeal decision (SHA/25850) confirms this barrier to access, and that one pharmacy is needed atop Chapel Hill and another at its base.
- 3.47 Conclusion
- 3.48 In conclusion, granting this application would secure better access and improvements to pharmaceutical services for Stansted Mountfitchet, especially for those residing in the Northern/ Upper section of Stansted Mountfitchet.
- 3.49 Granting this application would secure better physical access to pharmaceutical services and restore reasonable choice. The elderly, disabled, pregnant, and those with young children are likely to find the proposed pharmacy significantly more accessible than their current choices, and the barrier to access of Chapel Hill will be removed for these residents.
- 3.50 It is obvious that Sunday opening provision will also provide better access to the resident population. There is a need for a pharmacy on such a well-utilised parade, in the Northern/ Upper Section of Stansted Mountfitchet.
- 3.51 Additionally, the granting of Mountfitchet partners appeal has set a precedent in 2-pharmacy provision for Stansted Mountfitchet – one atop Chapel hill, and the other at its base.
- 3.52 Regulation 18 has been met and an application should be granted.

- 3.53 The application by my client should be preferred to that of Abax Health Ltd due to the reasoning above and the greater core hours proposed.”

4 Summary of Representations

This is a summary of representations received on the appeal.

4.1 Temple Bright LLP on behalf of Peacock Pharmacy

- 4.1.1 “I continue to act for Mountfitchet Partners Limited, which is included in the Essex pharmaceutical list for premises trading as Peacock Pharmacy, 2 Lower Street, Stansted Mountfitchet, Essex, CM24 8XG.
- 4.1.2 On behalf of my client, I write further to your letter of 18th December 2024 and in order to submit representations to NHS Resolution on an appeal by Brodeloe Limited against a decision of NHS England to refuse its application for inclusion in the pharmaceutical list offering unforeseen benefits for premises at the Cambridge Road shops, Stansted Mountfitchet, Essex, CM24 8BZ.
- 4.1.3 The applicant’s ground of appeal is contained within the applicant’s representative’s letter of appeal dated 8th December 2024. In that letter, the applicant’s representative states relevantly as follows:
- 4.1.4 *“Throughout their report, the PSRC emphasize how my client has provided “no evidence” with regard to there being reasonable choice to provision or difficulty for those who share protected characteristics. NHS Resolution will be aware that this is not in fact the regulatory test and the PSRC should have been asking themselves whether the application provides ‘better access’, as per the regulations.*
- 4.1.5 *We submit that there is not necessarily a need to submit ‘evidence’ as such, but rather for a reasonable interpretation to be made based on the facts of the case. A number of relevant facts of this case were established by the grant of an unforeseen benefits application in Stansted by NHS Resolution in July 2023 – SHA/25850.”*
- 4.1.6 It is submitted on behalf of my client that the applicant’s ground of appeal is misconceived both legally and factually.
- 4.1.7 It is clear from a careful consideration of NHS England’s decision report that it correctly applied the relevant regulatory test to the application by Brodeloe Limited. In doing so, NHS England considered the information before it, including the previous decision of NHS Resolution to grant my client’s application (appeal reference SHA/25850).
- 4.1.8 NHS England appropriately identified that the factual matters which caused NHS Resolution to determine that my client’s application should be granted did not necessarily also apply to the application by Brodeloe Limited. NHS England therefore considered what, if any, evidence had been provided by Brodeloe Limited that its application satisfied the relevant regulatory test.
- 4.1.9 The applicant’s representative asserts that a consideration by NHS England of what “evidence” had been provided by the applicant in support of its application amounted to a misapplication of the relevant regulatory test. This assertion is wrong for two reasons.
- 4.1.10 Firstly, as NHS Resolution will be aware, to the extent that there is a burden of proof in respect of an application for inclusion in the pharmaceutical list, this

falls on the applicant (see, for example, the judgment of HHJ Hickinbottom in *R (on the application of Assura Pharmacy Limited) v NHS Litigation Authority* [2007] EWHV 289 (Admin) at paragraph 15).

- 4.1.11 Secondly, it is clear from NHS England's decision report that it applied each part of the regulatory test in regulation 18 when considering this application.
- 4.1.12 In respect of the factual matters referred to by the applicant in support of its application, these related (either entirely or to a large extent) on the decision of NHS Resolution to grant my client's application in July 2023. As stated in my client's representations to NHS England contained within its letter dated 7th February 2024 (a copy of which is attached to this letter for ease of reference), this approach by the applicant was materially flawed.
- 4.1.13 In essence, the applicant asserted (and its representative maintains in the letter of appeal) that because an application was granted to my client for inclusion in the pharmaceutical list for premises in Stansted Mountfitchet in addition to the existing Boots pharmacy which was, at that point, also located in the town, its application must be granted following the subsequent closure of the Boots pharmacy. For the reasons given in the attached letter of 7th February 2024 (which my client continues to rely upon in support of these representations), this assertion by the applicant entirely misunderstands the factual basis on which the application by my client was granted.
- 4.1.14 In short, the applicant's reliance, solely or in large part, on the July 2023 appeal decision in support of its application was misconceived. NHS England was therefore correct to conclude that the applicant had failed to provide any, or any sufficient, evidence to support why granting its application would meet the relevant regulatory test and to refuse the application.
- 4.1.15 It is of note that the applicant, in its letter of appeal, does not provide any additional information or evidence in support of its appeal. On that basis, my client has nothing further to add in relation to the substantive facts of this case to the comments made in its letter of 7th February 2024.
- 4.1.16 On behalf of my client, and for the reasons given above and in my client's letter of 7th February 2024, I therefore respectfully invite NHS Resolution to conclude that the application fails to meet the regulatory test set out in regulation 18 and to dismiss the appeal and refuse the application."

Letter dated 7 February 2024 addressed to the Commissioner

- 4.1.17 "I act for Mountfitchet Partners Limited which is included in the pharmaceutical list for premises trading as Peacock Pharmacy, 2 Lower Street, Stansted Mountfitchet, CM24 8XG.
- 4.1.18 On behalf of my client I write further to your letter of 9th January 2024 and in order to submit representations to NHS England on the above application.
- 4.1.19 My client asserts that the application by Brodeloe Limited has been made on flawed logic and materially misstates the basis upon which my client's application for inclusion in the pharmaceutical list was granted last year. In particular, the applicant states that the reasons given by NHS Resolution for granting my client's application apply equally to the application by Brodeloe Limited, which is incorrect.
- 4.1.20 In fact, the reasons given for granting my client's application are either entirely absent in the context of the application by Brodeloe Limited, or are not

materially significant in the context of the location proposed by Brodeloe Limited.

- 4.1.21 As NHS England will be aware, each application for inclusion in the pharmaceutical list turns upon its own facts. Contrary to the assertion by the applicant, there was no “precedent set” when my client’s application was made and granted on appeal.
- 4.1.22 The application by Brodeloe Limited is made solely on the basis of the closure of the Boots Pharmacy on Cambridge Road. However, the applicant has failed to evidence that the closure of the Boots Pharmacy requires NHS England to grant its application. The market entry regulations in England are not based on a “one in, one out” system, such that the mere fact that a pharmacy has closed does not mean that an application to “replace” that pharmacy should be granted.
- 4.1.23 Instead, the applicant must demonstrate to NHS England that the regulatory test contained within regulation 18 is met by its application, and the burden of proof rests with the applicant. On behalf of my client, I submit that the applicant has failed to discharge that burden of proof and its application should be refused.
- 4.1.24 Having regard to specific matters raised by the applicant in its application form, my client comments further as follows:
- 4.1.25 **Access to pharmaceutical services**
- 4.1.26 Whilst it is accepted that NHS Resolution concluded that Chapel Hill represented a barrier to accessing the former Boots Pharmacy from my client’s proposed premises, the reverse is not also true for a very simple reason: my client’s application for inclusion in the pharmaceutical list was made for premises which were to be located either within, or very close to, the Stansted Surgery premises and the same does not apply to the location proposed by the applicant.
- 4.1.27 As stated by the applicant, the patient list of Stansted Surgery has grown considerably over recent years, meaning that Stansted Surgery acts as a very significant focus for demand for pharmaceutical services. It was in the context of that focus for demand for pharmaceutical services (ie, patients leaving the Surgery and requiring access to pharmaceutical services) that NHS Resolution considered access to existing pharmacies.
- 4.1.28 In the context of my client’s application, therefore, Chapel Hill represented a barrier to accessing the only pharmacy in Stansted Mountfitchet because of the number of patients who were present at the Surgery and needed to make a journey directly to the Boots Pharmacy. NHS Resolution therefore correctly concluded that the incline and lack of public transport to Boots Pharmacy meant that, for many patients, Boots Pharmacy was difficult to access.
- 4.1.29 However, the reverse is not true in relation to the applicant’s proposed site because there is no focus for demand for pharmaceutical services at the applicant’s proposed site. Whilst there are a small number of retail units strung along Cambridge Road, these are not “destination” shops and are more likely to be accessed on a convenience basis by residents as they go about their daily lives. Access to those shops on Cambridge Road also has no link to a need to access a pharmacy – that is, for example, residents who use the Tesco Express store to make a convenience purchase are unlikely, thereafter, to need to visit a pharmacy.

- 4.1.30 It is therefore artificial for the applicant to place significant weight on the journey between the applicant's proposed premises and my client's pharmacy because that does not represent a journey that those who require access to pharmaceutical services are likely to make. If a patient requires access to pharmaceutical services, that will either be after a visit to their GP at Stansted Surgery (where my client's pharmacy is located), from their home (which, of course, could be anywhere within Stansted Mountfitchet or the wider area) or whilst going about their usual daily activities (which, again, could be anywhere within Stansted Mountfitchet or the wider area).
- 4.1.31 Since the starting point of every resident will be different and will not be (or will very seldom be) at the applicant's proposed premises (in contrast to the location that was specified in my client's application where the starting point of a journey to a pharmacy was from the Surgery), very few people would need to make a specific journey via Chapel Hill to access my client's pharmacy. For example, those starting their journey at the southern end of Stansted Mountfitchet would journey along Church Road, those living to the west of Stansted Mountfitchet may use Mill Side/Sunnyside or Chapel Hill and those living to the north may use High Lane or St Johns Road.
- 4.1.32 In conclusion, therefore, in contrast to NHS Resolution's consideration of my client's application where it was necessary to consider the journey from the Surgery to the nearest pharmacy and where the incline along Chapel Hill was a considerable factor, the same is not true for the applicant's proposed premises because patients will not start their journey at those proposed premises.
- 4.1.33 When considered as a whole, my client's pharmacy is not difficult to access for those who live in, or who are present in, Stansted Mountfitchet.
- 4.1.34 Additionally, access issues in relation to the Boots Pharmacy also involved consideration of the physical premises themselves – the Boots pharmacy was in small premises which did not have step free access and which were cramped inside. This meant that, for those with reduced mobility (including those in wheelchairs or motorised scooters), the Boots pharmacy was to all intents and purposes inaccessible such that patients had to wait outside the Boots pharmacy to be served. This represented a further physical barrier to accessing the Boots pharmacy for patients.
- 4.1.35 Since the applicant does not identify specific premises in respect of its application, NHS England cannot be sure from where it would commence services should its application be granted, and nor can it be sure that those premises would provide step-free access and be fully accessible for those with a physical disability.
- 4.1.36 However, there is no physical barrier to accessing my client's pharmacy because my client's pharmacy is fully accessible for those with a disability since it is in modern, purpose-built premises which are co-located with the GP surgery. The physical barriers to accessing pharmaceutical services in Stansted Mountfitchet that arose from the unsuitable nature of the Boots premises (and which may apply equally to the applicant's proposed premises) have therefore been removed by the granting of my client's application in any event.
- 4.1.37 In relation to the relevant regulatory test, the applicant must prove that granting its application would confer significant benefits in terms of patients who share a protected characteristic and who require access to pharmaceutical services but who currently find access difficult. On behalf of my client I submit that the

applicant has provided no evidence its application would confer significant benefits and, for the reasons given above, relying on the reasons given by NHS Resolution to grant my client's application is a flawed approach.

4.1.38 Reasonable choice

4.1.39 In relation to the availability of a reasonable choice of service provision, it is correct that my client asserted in support of its application that the single Boots pharmacy was unable to provide a reasonable choice of service provision. However, that lack of reasonable choice was evidenced by the obvious pressure that the Boots pharmacy was under, with evidence of long waiting times, patient complaints and inability to provide advanced pharmaceutical services. That appeared, at least in part, to be due to the fact that Boots pharmacy was operating out of small and cramped premises and, consequently, had insufficient space to meet the demand for pharmaceutical service provision. In short, because Boots pharmacy was in small and cramped premises, it did not have sufficient capacity to cope with demand and this was evidence of a lack of reasonable choice of service provision.

4.1.40 Granting my client's application overcame those difficulties by providing additional service provision for the population. However, the closure of the Boots pharmacy does not mean that the previous status quo has been restored, because my client's pharmacy is large and modern. My client's pharmacy is therefore able to provide a high level of service provision and has ample capacity to cope with current and projected future demand for pharmaceutical service provision notwithstanding the closure of the Boots pharmacy.

4.1.41 My client's pharmacy is already dispensing more items per month than the Boots Pharmacy ever did, and has plenty of capacity for additional growth. It is also providing a full range of pharmaceutical services which fully meets local health needs (which Boots consistently failed to do), including:

4.1.42 Delivery Service (Free)

4.1.43 Return of old/unwanted medication

4.1.44 Inhaler recycling

4.1.45 Dossette box dispensing (free)

4.1.46 Discharge medicine service

4.1.47 Repeat medication dispensing

4.1.48 New medicine service

4.1.49 NHS contraception service

4.1.50 NHS hypertension service

4.1.51 HERTS AND WEST ESSEX ICB UTI SERVICE

4.1.52 Pharmacy First (which replaced the CPCS service from 1st February)

4.1.53 NHS stop smoking service

4.1.54 NHS seasonal flu vaccinations

- 4.1.55 Supervised consumption service (it is also on the waiting list to provide the needle exchange service)
- 4.1.56 Weight management (both NHS and private)
- 4.1.57 Selling pre payment certificates on site for patients
- 4.1.58 The new lateral flow distribution service
- 4.1.59 In short, therefore, granting the application by Brodeloe Limited will not confer significant benefits in terms of patients having a reasonable choice because my client's pharmacy meets local healthcare needs in a way that Boots had, for many years, demonstrated that it was incapable of doing from its pharmacy premises.
- 4.1.60 Finally, the applicant refers to the opening hours proposed in its application form. As NHS England will be aware, my client's pharmacy is open for longer hours from Monday to Friday than those proposed by the applicant. My client's pharmacy is also open on Saturday morning. Contrary to the assertion made by the applicant, my client does not believe that there is any demand for pharmaceutical services on a Sunday, and the applicant has failed to demonstrate that Sunday opening would confer significant benefits in terms of the relevant regulatory test.
- 4.1.61 In conclusion, therefore, for the reasons given above I invite NHS England to determine that this application would not secure improvements in, or better access to, pharmaceutical services in the HWB's area in accordance with regulation 18 and to refuse it.
- 4.1.62 Should NHS England consider it necessary to hold an oral hearing prior to its determination of this application, my client would wish to have the opportunity to attend that hearing and to make oral representations."
- 4.2 Community Pharmacy Hertfordshire
 - 4.2.1 "The CPH response has not changed from our original letter:
 - 4.2.2 **Lack of Need:** The recent closure of Boots pharmacy in the proposed location suggests there may not be a current need for another one.
 - 4.2.3 **Accessibility of Existing Pharmacies:** Residents have access to several pharmacies in nearby Bishops Stortford, some with long hours and convenient public transport options.
 - 4.2.4 **High Car Ownership:** Census data shows a high car ownership rate in Uttlesford, making travel to existing pharmacies easier.
 - 4.2.5 **Uttlesford's Ranking:** Uttlesford is ranked among the least deprived local authorities, indicating a lower need for additional services.
 - 4.2.6 **Pharmaceutical Needs Assessment (PNA):** The latest PNA for Essex found no gaps in pharmaceutical services within Uttlesford.
 - 4.2.7 **Regulations:** The application fails to demonstrate unmet needs or innovative service delivery as required by regulations.
 - 4.2.8 Pharmaceutical regulations are based upon the need of patients within the local area and the evidence presented in the appeal does not present evidence

there is a change in the needs of the patients and/or likely users of the service and that people sharing a protected characteristic have difficulty in accessing pharmaceutical services. There is a need to present evidence to support the application in “providing ‘better access’, as per the regulations”.

- 4.2.9 The previous appeal by Mountfitchet Partners successfully demonstrated to NHS Resolution that there was a need for a new pharmacy due to the physical challenges of its location from the surgery and the limitations of the service offering of the Boots pharmacy for people with a protected characteristic. Therefore, the application is different to the “facts of this case were established by the grant of an unforeseen benefits application in Stansted by NHS Resolution in July 2023 – SHA/25850”. This does not automatically justify the approval of every subsequent application in the area. The Boots pharmacy has since closed and no evidence has been presented that this closure has significantly impacted access for residents.
- 4.2.10 Brodeloe Ltd has primarily relied on the arguments and evidence presented in the successful Mountfitchet Partners appeal and do not provide evidence for their own case which is different to the appeal application they are making. They fail to provide any new compelling evidence demonstrating a significant unmet need for pharmaceutical services in the area that would warrant the approval of this specific application. The applicant has not provided evidence regarding significant benefits on persons in the area that were not foreseen when the PNA was published. Furthermore, the application has not provided any evidence that people with protected characteristics would benefit from this pharmacy or that this pharmacy would take innovative approaches to delivering services.
- 4.2.11 The Essex Pharmaceutical Needs Assessment (PNA) concluded that there are no gaps in pharmaceutical services in the Uttlesford locality. This assessment, along with the availability of existing pharmacies (such as those in nearby Bishops Stortford) and the high car ownership rates (91.3% according to the 2021 census) in the area, suggests that there is no significant unmet need for an additional pharmacy in Stansted Mountfitchet.
- 4.2.12 Please note we may wish to make further representations at a later stage and attend any oral hearing that may be held.”
- 4.3 The Commissioner
 - 4.3.1 “Please note that from the 1 April 2023, community pharmacy contracting and commissioning has been delegated to Integrated Care Boards (ICBs). Hertfordshire and West Essex (HWE) ICB are hosting the function on behalf of the six East of England ICBs. The six ICBs have formed one Pharmaceutical Services Regulation Committee (PSRC) which is also hosted by HWE ICB.
 - 4.3.2 Having reviewed the grounds of appeal made by Healthcare Plus Consulting on behalf of Brodeloe Ltd (the Appellant), for premises at Cambridge Road Shops, Stansted Mountfitchet, Essex, CM24 8BZ, the HWE ICB remains of the opinion that this application should be refused.
 - 4.3.3 The Appellant appears to be appealing on the following grounds:
 - 4.3.4 The refusal of the application was based on incorrect application of the relevant regulatory test.
 - 4.3.5 PSRC emphasize how the Appellant has provided ‘no evidence’ with regard to there being reasonable choice to provision or difficulty for those who share

protected characteristics rather than whether the application provides 'better access' as per the regulations. The Appellant believes that there is no need to submit evidence and that a reasonable interpretation should be made based on the facts of the case. A number of relevant facts of this case were established by the grant of an unforeseen benefits application in Stansted in July 2023 – SHA/25850.

4.3.6 **Provision of Pharmaceutical Services**

4.3.7 The Essex Pharmaceutical Needs Assessment (PNA) published 28 September 2022 was reviewed when assessing and determining this application. The link to the 2022-2025 Essex PNA and Appendices is below:

4.3.8 [Pharmaceutical Needs Assessment \(PNA\) 2022-2025 | Essex Open Data](#)

4.3.9 The 2022-2025 Essex PNA does not identify any gaps in the provision of pharmaceutical services, either within normal working hours or outside of them. It does not articulate any current or future needs for, or current or future improvements or better access to, a particular pharmaceutical service or pharmaceutical services in general.

4.3.10 Stansted Mountfitchet falls within the Uttlesford Locality and the PNA states:

4.3.11 *"No gaps in the provision of necessary pharmaceutical services have been identified in the Uttlesford locality" and "No gaps in pharmaceutical services have been identified that if provided either now or in the future would secure improvements or better access to relevant services across the Uttlesford locality."* (Page 243 of PNA).

4.3.12 In addition, on page 248 of the PNA the following is detailed:

4.3.13 "Given the current population demographics, housing projections and the distribution of service providers in the HWB area, this document concludes that the current provision will be sufficient to meet the likely future needs of the residents during the three year lifetime of this pharmaceutical needs assessment. The HWB has not identified any services that would secure improvements, or better access, to the provision of pharmaceutical services either now or within the 3-year lifetime of this pharmaceutical needs assessment."

4.3.14 PSRC also noted the Supplementary Statements published in April 2023 and June 2024. The Supplementary Statement of April 2023 states that five pharmacies have closed since the publication of the 2022-2025 Essex PNA.

4.3.15 The Supplementary Statement of June 2024 was specifically in regard to the Uttlesford Locality and notes two reductions of supplementary hours one of which was Boots Pharmacy at Unit 2, The Green Building, Stansted Mountfitchet, CM24 8BZ, notified in August 2023 and their subsequent closure on 6 January 2024, which was notified in October 2023. The Supplementary Statement for the Uttlesford Locality goes on to say that *'no gaps in pharmaceutical services have been identified that if provided either now or in the future would secure improvements or better access to necessary pharmaceutical services across the locality'*.

4.3.16 It can be concluded therefore that the Health and Wellbeing Board (HWB) did not think the closures and reduction in supplementary hours was detrimental to the provision of pharmaceutical services, otherwise the HWB would have articulated the specific "gap".

4.3.17 Access and Choice

- 4.3.18 The Appellant states that the refusal of the application was based on 'incorrect application of the relevant regulatory test' and that throughout the PSRC report the emphasis is *'that no evidence with regard to there being reasonable choice to provision or difficulty for those who share protected characteristics.'* The Appellant states that 'PSRC should have been asking themselves whether the application provides *'better access', as per the regulations.'*
- 4.3.19 The PSRC note that the onus is on the applicant/Appellant to provide information to demonstrate, or evidence, access difficulties.
- 4.3.20 The Appellant also states that 'there is not necessarily a need to submit 'evidence' as such, but rather for a reasonable interpretation to be made based on the facts of the case. A number of relevant facts of this case were established by the grant of an unforeseen benefits application in Stansted by NHS Resolution in July 2023 – SHA/25850'. (Page 1 of Appeal)
- 4.3.21 The PSRC note that this is not stated as a reason within the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended ("the Regulations") to approve a market entry application. Each application is determined in line with the Regulations. The facts of this application are not the same as the application granted on appeal (SHA/25850).
- 4.3.22 Since PSRC were presented with dispensing data during the October 2024 meeting, there have been some changes to the way in which residents of Stansted Mountfitchet choose to have their medication dispensed: [appendix C].
- 4.3.23 Peacock Pharmacy still remains the top dispenser of prescriptions issued by Peacock GP Surgery. Overall, the data still demonstrates that the residents of Stansted Mountfitchet are exercising their right to choose where they have their medications dispensed and how they access wider pharmaceutical services which may be closer to where they live or work or where they are accessing other services. Some people may choose to access pharmaceutical in a neighbouring HWB.
- 4.3.24 The data shows that patients are accessing a significant number of different pharmacies, including Distance Selling Pharmacies (DSPs). In this case, three DSPs are within the top ten. Whilst the ICB recognises that DSPs are not the preference for all patients, some patients will choose to obtain their services from this type of contractor as not all essential and advanced services require face to face contact at the pharmacy premises.
- 4.3.25 The Appellant refers in their appeal to the success of an unforeseen benefits application by Mountfitchet Partners Ltd where they *'successfully demonstrated that there was a lack of reasonable choice of accessible pharmacies on the premise of two main arguments:*
- 4.3.26 *The barrier in physical access due to the steep walk up Chapel Hill did not provide reasonable choice,*
- 4.3.27 *The population had increased such that a single pharmacy was unable to meet the needs of residents in Stansted Mountfitchet.*
- 4.3.28 *They also successfully demonstrated that there was insufficient access for those groups with protected characteristics with a car, when seeking to access*

pharmaceutical services. With the closure of Boots at the top of Chapel Hill, these exact same issues will once again be present in Stansted Mountfitchet. (Page 3 of Appeal)

- 4.3.29 The PSRC noted that the unforeseen benefits was granted on appeal (SHA/25850) and NHS Resolution was of the view that *'in accordance with Regulations 18(2)(b) the granting of this application would confer significant benefits on persons in the area of the HWB which were not foreseen when the PNA was published'* (Point 8.54 of SHA/25850).
- 4.3.30 NHS Resolution concluded that Chapel Hill represented a barrier for the patients registered at the GP Surgery accessing Boots Pharmacy, the only pharmacy in Stansted Mountfitchet, because of the incline and lack of public transport which meant that for many patients Boots Pharmacy was difficult to access. The reverse is not true as patients registered at the GP Surgery now have access to pharmaceutical services from Peacock Pharmacy which is adjacent to the GP Surgery.
- 4.3.31 Following the granting on appeal, of the unforeseen benefits application from Mountfitchet Partners Ltd, the Boots Pharmacy at the top of Chapel Hill has closed. Whilst contractors are not required to provide their reasons for giving notice, it is a likely indication that there is not a need for two pharmacies within Stansted Mountfitchet.
- 4.3.32 The Appellant then *states 'thus, based on precedent, a new contract application should be granted on the grounds better access through reasonable choice and for those sharing protected characteristics.'* (Page 3 of Appeal)
- 4.3.33 The PSRC refutes this statement. PSRC is required to determine all applications in line with the Regulations. It is also mindful that the closure of a pharmacy does not automatically lead to the granting of another, nor does it determine a new pharmacy application based on precedent.
- 4.3.34 **Patient Journeys**
- 4.3.35 The Appellant states they take *'the population of Stansted Mountfitchet to be 9000, as was undisputed in the application by Mountfitchet Partners in June 2023.'* The Appellant has then made an assumption that *'at least 4500 residents require access to pharmaceutical services atop Chapel Hill, if not more, on the basis that the Northern section of Stansted Mountfitchet is larger than the Southern section.'* (Page 7 of Appeal)
- 4.3.36 The ICB notes this is an assumption only. The ICB notes that even if this were fact and 4500 require access to pharmaceutical services, they do not have to utilise the pharmacy at the bottom of the hill. These residents can access any pharmaceutical provider they wish. Indeed, 4500 people are already accessing a pharmaceutical provider of their choice. The Boots Pharmacy has been closed for over 1 year and if people were unable to access services, the ICB would be aware.
- 4.3.37 As NHS Resolution will be aware, the Stansted community is very vocal. They are a community who know how to have their voice heard. If people were having trouble in accessing pharmaceutical services or if they were unsatisfied with their current choice, they are aware of established routes into the ICB, the local council, the HWB and other stakeholders to ensure their needs are known and addressed. The ICB is confident that if there were patients experiencing

difficulties in accessing pharmaceutical services, we would be aware. There are no known issues with patients accessing pharmaceutical services.

- 4.3.38 The PSRC maintains that the Appellant has made generic assumptions regarding people with protected characteristics referring to *“the disabled, those who are pregnant, parents with young children and the elderly.”* (Page 7 of Appeal)
- 4.3.39 Having to walk up the hill or having a longer journey on foot to the next nearest pharmacy *“2.4 miles away”* does not equate to the conclusion the Appellant has made that this walk means there is not reasonable choice. Those people who do not or cannot travel by foot have the choice to access pharmaceutical services via private transport (e.g. car) or by public transport (e.g. bus) or a mixture of both.
- 4.3.40 The Appellant notes the *“journey by car to Peacock Surgery is currently a 3-minute drive.”* (Page 8 of Appeal) The ICB notes this is exceptionally reasonable and later in these representations, we detail the high level of car usage for people living in the area.
- 4.3.41 For people travelling by public transport there are services available. Bus services may not be frequent however for people who use public transport, they will be aware of the services and times. The Appellant has not provided any evidence to demonstrate that those who use public transport are currently having difficulty in accessing the existing pharmaceutical provision in the area of the HWB.
- 4.3.42 The ICB notes that the bus services may not be so frequent due to lack of need, noting the high car usage as set out later in these representations.
- 4.3.43 **Census 2021**
- 4.3.44 The reliant population resides within the Stansted North ward. The total population of the ward is 4624. In the Indices of Multiple Deprivation 2019, the Uttlesford Local Authority area was ranked 295 out of 317 lower tier authorities in England. This places Uttlesford in the upper 10% of least deprived Lower Tier Local Authorities (LTLAs) nationally and 0% of Uttlesford residents living in the most deprived decile.
- 4.3.45 The census data from 2021 shows most households in Uttlesford have access to one or more cars (91.3%) which is higher than the East of England average where 83.2% have access to one or more cars. The population increase in Stansted North, in which this proposed pharmacy would be situated, is significantly lower than the population increase for the East of England (8.3%).
- 4.3.46 On appeal, PSRC noted the comments made by the Appellant with regard to *‘a typical patient journey’* to the nearest pharmacy i.e. Peacock Pharmacy, by foot, car and public transport (Page 7 of Appeal). PSRC also noted that patients will already be accustomed to navigating Chapel Hill to access the one GP Surgery in the town. There is no evidence to demonstrate that patients at the top of Chapel Hill are unable to access pharmaceutical services or are struggling to access pharmaceutical services from Peacock Pharmacy. Patients are more likely to access pharmaceutical services either after a visit to their GP Surgery from their home, which could of course be anywhere within Stansted Mountfitchet or outside the area, or whilst going about their daily activities.

- 4.3.47 It is to note that the test is whether there is reasonable choice with regard to pharmaceutical services in the area of the relevant HWB. It is not reasonable choice within one small part of the HWB.
- 4.3.48 Peacock Pharmacy has no reviews on NHS Find a Pharmacy; however it has 4.8 stars from 38 reviews on Google. 36 reviews give the pharmacy 5 stars. All reviews can be found here [peacock pharmacy stansted - Google Search](#).
- 4.3.49 The ICB can confirm that Boots Pharmacy at the top of Chapel Hill has been closed for over 1 year. The ICB has not received any concerns, reports or complaints from patients who are unable to access pharmaceutical services. As referenced above, patient reviews on Google are very positive about Peacock Pharmacy. There have been no concerns raised by any patients with protected characteristics who have found it challenging to access services from Peacock Pharmacy. It is also noted that Peacock Pharmacy currently provide a free delivery service <https://www.peacockpharmacy.net/our-services>. The ICB recognises that this is a private service which can be withdrawn at any time however it is an option currently available to residents.
- 4.3.50 In addition, since early 2021, all pharmacies are required to facilitate remote access to the pharmaceutical services they provide where users wish to access those services in that way. Therefore, for those who are unable to physically access a pharmacy there are alternative ways for them to receive the services they require. The Covid-19 pandemic has changed how many services are provided within the NHS, and accessing services remotely is far more widely accepted and utilised than before the pandemic. Whilst there will always be people who prefer to access services face to face that is their choice to do so.
- 4.3.51 The ICB is aware that the HWB has noted within the PNA, the time it takes to access the pharmacies on foot, by car and by public transport and was of the opinion that there are no current or future gaps in the provision of pharmaceutical services.
- 4.3.52 **Population Growth**
- 4.3.53 PSRC noted the comments made by the Appellant with regard to *‘Stansted Mountfitchet traditionally being served by one pharmacy (the Boots that is soon to be closed), however rapid population growth within Stansted Mountfitchet within years of late has meant that one pharmacy was no longer enough to adequately serve the population. As a result, the application by Mountfitchet partners for an additional pharmacy in Stansted Mountfitchet was granted in July 2023’*. (Pages 8/9)
- 4.3.54 There has been population growth in Stansted Mountfitchet however an increase in population does not automatically lead to the requirement to grant an application. The Appellant relies on statements made about the now closed Boots store:
- 4.3.55 *“long queues outside the Boots were a consequence of the pharmacy being overwhelmed by the significant increase in both registered and unregistered patients in Stansted Mountfitchet. Hence, a ‘tipping point’ had been reached within Stansted Mountfitchet.”* (Page 9 of Appeal)
- 4.3.56 The Appellant has wrongly assumed that the reasons for granting the Mountfitchet Partners Ltd are the same and apply equally. This is incorrect. PSRC made an assessment against the Regulations, based on the information provided by the Appellant and in relation to the situation as it currently stands.

The situation has changed since the granting of the Mountfitchet Partners Ltd who have increased capacity and are able to cope with the pharmaceutical needs of the population and demand for services.

4.3.57 As stated above, since the closure of Boots Pharmacy on 6 January 2024 there have been no concerns or reports received from patients who are unable to access pharmaceutical services or who have found it challenging to access services or obtain their medication.

4.3.58 Opening Hours

4.3.59 PSRC noted that the Appellant is offering to provide 46 core hours and 9 supplementary hours: providing a total of 55 hours.

	S1		C1		S2		C2		S3		C3	
Monday			09:00	13:00	13:00	14:00	14:00	18:00				
Tuesday			09:00	13:00	13:00	14:00	14:00	18:00				
Wednesday			09:00	13:00	13:00	14:00	14:00	18:00				
Thursday			09:00	13:00	13:00	14:00	14:00	18:00				
Friday			09:00	13:00	13:00	14:00	14:00	18:00				
Saturday			10:00	13:00	13:00	17:00						
Sunday			10:00	13:00								

4.3.60 The nearest pharmacy, Peacock Pharmacy, to the proposed location currently provides 40 core hours and 18.5 supplementary hours: providing a total of 58.5 hours.

	S1		C1		S2		C2		S3		C3	
Monday	08:00	09:00	09:00	13:00			13:00	17:00	17:00	18:30		
Tuesday	07:00	09:00	09:00	13:00			13:00	17:00	17:00	18:30		
Wednesday	08:00	09:00	09:00	13:00			13:00	17:00	17:00	18:30		
Thursday	08:00	09:00	09:00	13:00			13:00	17:00	17:00	18:30		
Friday	08:00	09:00	09:00	13:00			13:00	17:00	17:00	18:30		
Saturday	08:00	13:00										
Sunday												

4.3.61 In their appeal, the Appellant 'recognises that access to pharmaceutical services on a weekend is especially important, particularly given the new

Pharmacy First Service proposed by NHSE and is thus committed to core Saturday and Sunday morning opening hours'. (Page 9 of Appeal)

- 4.3.62 PSRC noted that in their application the Appellant does not list the Pharmacy First Advanced Service as a service they propose to offer.
- 4.3.63 It is noted that there are currently six pharmacies within 4.2 miles of the proposed application site. The hours covered by these pharmacies include openings from 7am – 8pm Monday to Friday, 8am – 8pm Saturday and 10am – 4pm on Sunday. Details can be found in Appendix 1 [appendix C].
- 4.3.64 **Regulation 18(1)(a)**
- 4.3.65 PSRC noted it was required to determine this routine application and determine whether it is satisfied that granting the application or granting it in respect of some of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB.
- 4.3.66 No evidence has been provided that granting the application would secure improvements or better access to services in the area of the relevant HWB.
- 4.3.67 **Regulation 18(1)(b)**
- 4.3.68 PSRC agreed that the improvements or better access that the applicant is claiming would be secured by its application, were not included in the relevant PNA in accordance with paragraph 4 of schedule 1.
- 4.3.69 PSRC further agreed that in order to be satisfied in accordance with Regulation 18(1), regard is to be had to those matters set out at Regulation 18(2).
- 4.3.70 **Regulation 18 (2)(a) and (ii)**
- 4.3.71 PSRC noted that there is no plan for the provision of pharmaceutical services in the area. Granting the application would therefore not cause significant detriment to the proper planning in respect of the provision of pharmaceutical services in the area of Essex HWB.
- 4.3.72 PSRC noted there was no evidence to suggest granting this application would cause significant detriment to the arrangements the ICB has in place for the provision of pharmaceutical services in that area.
- 4.3.73 In the absence of any significant detriment as described in Regulation 18(2)(a), the Committee was not obliged to refuse the application and went on to consider Regulation 18(2)(b).
- 4.3.74 **Regulation 18(2)(b)(i)**
- 4.3.75 PSRC noted that even with the closure of the Boots Pharmacy, Unit 2, The Green Building, Stansted Mountfitchet, CM24 8BZ on 6 January 2024 there are no reports of people being unable to obtain their medicines or access pharmaceutical services.
- 4.3.76 PSRC took into account all the information and data presented to it and noted that patients are using a wide range of pharmacies for their pharmaceutical needs, and therefore patients are exercising their choice. No evidence had been provided to demonstrate that those living in Stansted Mountfitchet are

currently unable to exercise a choice in obtaining pharmaceutical services across the HWB.

4.3.77 Regulation 18(2)(b)(ii)

4.3.78 PSRC were 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 in the area of the relevant HWB which were not foreseen when the relevant pharmaceutical needs assessment was published.

4.3.79 No specific evidence has been provided that people sharing a protected characteristic have difficulty accessing current pharmaceutical services generally or that services specific to their needs are not being provided by existing pharmacies.

4.3.80 Regulation 18(2)(b)(iii)

4.3.81 PSRC noted the applicant provided no evidence regarding innovative approaches in the delivery of pharmaceutical services, therefore were not satisfied that, having regard to the desirability of there being innovative approaches taken with regard to the deliverability of pharmaceutical services, granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the 2022-2025 Essex PNA was published.

4.3.82 Conclusion

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

4.3.84 There is no evidence to suggest that the closure of Boots in January 2024 has left a significant gap in pharmaceutical services for Stansted Mountfitchet and that patients are having difficulties in accessing pharmaceutical services.

4.3.85 In the very recent publication of the Supplementary Statement for the Uttlesford locality the Essex HWB remain of the opinion that there is no gap in pharmaceutical services that if provided, either now or in the future, would secure improvements or better access to necessary pharmaceutical services across the locality.

4.3.86 We appreciate there may be some convenience in having a new pharmacy, however this is different to one conferring significant benefit. Our priority is ensuring patients can access pharmaceutical services.

4.3.87 The regulatory requirements to identify an unforeseen benefit not in the PNA accompanied by the significant benefit considerations is a high threshold. We respectfully suggest that this appeal is without any substantive new or compelling evidence. We petition NHS Resolution to refuse the application as granting it will not confer significant benefits that were not foreseen when the PNA was published.”

5 Observations

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

5.1 The Applicant

- 5.1.1 “Thank you for your letter dated 27th January 2025. We make our observations on behalf of Brodeloe Ltd below.
- 5.1.2 Preliminary matter
- 5.1.3 It is alluded to by one of the interested parties that my clients appeal is perhaps misconceived. Such matters are contained within paragraph 2 of Schedule 3 of the Regulations as preliminary matters (i.e. before the appeal is notified to interested parties), it appears clear that NHS Resolution has already determined that my client has raised valid and reasonable grounds of appeal.
- 5.1.4 Mountfitchet Partners
- 5.1.5 Mountfitchet Partners highlight how the burden of proof is on the Applicant. From previous correspondence, we have already highlighted the significant barrier to access that Chapel Hill presents – one of the main facets of this case. We have provided statistical data demonstrating how the journey up the hill is inaccessible. The inaccessibility of this hill has been ratified by NHS Appeals [sic] panel members in their site visits in 2023 – with an able-bodied panel member unable to surmount this hill. Mountfitchet Partners themselves have previously highlighted the inaccessibility of this hill.
- 5.1.6 It has been undisputed that the gradient of this hill is 8% - far in excess of the 5% guidance for disabled access ramps. NHS appeals [sic] and the Appellant have both previously ratified the inaccessibility of this hill, which has been documented, in prior correspondence. So, we are unsure as to what further proof could possibly be provided.
- 5.1.7 We also would like to remind the Committee of previous submissions Mountfitchet Partners have made to NHS Appeals [sic]:
- 5.1.8 *“One pharmacy might have been enough in the past, but it was not anymore. There was a tipping point and the tipping point had been reached several years ago”.*
- 5.1.9 The Appellant themselves have expressed the requirement for two pharmacies in Stansted Mountfitchet. These are submissions provided before the Appellant ever had any knowledge of my client’s application.
- 5.1.10 Given the above comments, we submit that it is frankly bizarre that the Appellant seeks to deny Stansted Mountfitchet of a much-needed second pharmacy.
- 5.1.11 Perhaps explanation for this can be found in the desire for the Appellant to maintain a monopoly on local healthcare. The only pharmacy in Stansted, Peacock Pharmacy, is owned and operated by Mountfitchet Partners Ltd (the Appellant).
- 5.1.12 According to Companies House filings, the shareholders of Mountfitchet Partners are as follows:
- 5.1.13 Dr Christopher Leeman – 25%
- 5.1.14 Dr Angus Henderson – 25%
- 5.1.15 Dr Elena Andrei – 25%
- 5.1.16 Teresa Buglass – 25%

- 5.1.17 All three Doctors are listed as Doctors of Stansted Surgery and are presumably equity partners. Ms Buglass is listed as the Practice Manager for the Surgery.
- 5.1.18 So, the only pharmacy in Stansted is currently owned by the parties who operate the only Doctors Surgery in Stansted. Also, it is notable that the Stansted Surgery recently merged with the dispensing surgery in neighbouring Elsenham resulting in a combined patient list size of approximately 20,000 patients. Again, there are no alternative Doctor's surgeries in Elsenham.
- 5.1.19 For any one of these patients who wish to access any healthcare service in the area, it is likely that this will be overseen by the same group of people, from doctor's appointments; to dispensing services; to Pharmacy First consultations; to general healthcare advice.
- 5.1.20 We submit that there is ultimately no choice of healthcare provider, residents are forced to access healthcare provision offered by the aforementioned shareholders. This is representative of no choice, much less than the threshold of 'reasonable choice'.
- 5.1.21 Hertfordshire & West Essex (HWE) ICB
- 5.1.22 HWE focus heavily on the PNA and lack of identified need within this document. We highlight that an Unforeseen Benefits application is in its very nature, unforeseen, offering improvements or better access to pharmaceutical services not captured within the PNA. Thus, comments by the HWE surrounding the PNA are widely irrelevant.
- 5.1.23 HWE also do not agree with the assertion that Unforeseen Benefits applications should be evaluated under the criteria of whether an application provides 'better access' to pharmaceutical provision. Again, we contest such assertions given the very question an Applicant is required to answer when submitting an unforeseen benefits application is:
- 5.1.24 *"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".*
- 5.1.25 This question is clearly presented in the Chapter 15 application form provided by NHS England for Unforeseen Benefits applications.
- 5.1.26 HWE highlight how Distance Selling Pharmacies provide choice to pharmaceutical provision. Whilst we appreciate that Distance Selling Pharmacies can deliver medication, this still does not represent sufficient access for a number of residents. Firstly, there will be a number of residents who are unable to navigate the barrier that is the internet. Also, elderly residents can often have vastly changing medication and require a regular local pharmacist to aid the patient with any medication changes, and with adherence to prescribed medication. Also, we question the long-term viability of DSPs given they have similar overheads to community pharmacy and yet must provide free delivery. Free delivery over significant geographies often turns a pharmacies profitability into the red under the current dispensing contract and is no better demonstrated by the 5-million-pound losses suffered in 2023 by Pharmacy 2 U, the largest DSP in the UK. Given DSPs seem to be making large losses, it begs the question as to whether they really are a long-term solution to bricks-and-mortar pharmacies.

- 5.1.27 HWE have failed to give regard to those residents who access pharmaceutical provision in conjunction with other shops as part of their daily lives. As previously the mentioned the proposed site features:
- 5.1.28 Tesco Express
- 5.1.29 Dominos Pizza
- 5.1.30 Estate Agent
- 5.1.31 Local Café
- 5.1.32 Fish & Chips Shop
- 5.1.33 Hairdresser
- 5.1.34 Petrol Station
- 5.1.35 Accountants
- 5.1.36 Barbers
- 5.1.37 Bakery
- 5.1.38 Pub
- 5.1.39 Car Showrooms
- 5.1.40 Pregnancy Screening facility
- 5.1.41 With the advent of EPS and repeat dispensing, we argue that residents are more likely to interact with pharmaceutical provision alongside these local services opposed to after a visit to the GP. We submit that HWE have placed undue weight on the importance of having pharmacies co-located with GP practices in the modern age.
- 5.1.42 HWE suggest that the previous Boots pharmacy at this location likely closed due to viability issues. We would contest such claims given that the Boots previously dispensed c. 7500 items per month, so was by all intents and purposes a busy pharmacy. We submit that this particular store was unfortunate enough to be caught in the random closure of c. 200 Boots stores nationally. It is worth noting that Boots closed stores dispensing 14,000 items per month. It is evident that these closures were not necessarily underpinned by financial motives.
- 5.1.43 It appears that HWE have also not taken into account the better opening hours offered by my client or the importance of accessible pharmacies given the advent of Pharmacy First. We highlight that pharmacies are no longer just dispensers but are being tasked with providing a number of minor ailments services through the Pharmacy First scheme and are playing an important role in accessing professional advice for people to lead healthier lives. However, given that Peacock Pharmacy is situated at the bottom of Chapel Hill, we submit that residents of Northern Stansted may be deterred from accessing these services due to the barrier that Chapel Hill presents. We submit for Pharmacy First to be successful; pharmacies need to be accessible within communities.
- 5.1.44 Conclusion

5.1.45 We submit that there is a need for restoration of pharmaceutical provision in Northern Stansted, atop the barrier that is Chapel Hill. Through the reasoning provided above and extensive prior correspondence, we submit that Regulation 18 has been met and invite the Committee to grant this application.”

6 Consideration

- 6.1 The Pharmacy Appeals Committee (“the Committee”), appointed by NHS Resolution, had before it the papers considered by the Commissioner, together with a plan of the area showing existing pharmacies and doctors’ surgeries and the location of the proposed pharmacy.
- 6.2 It also had before it the responses to NHS Resolution’s own statutory consultations.
- 6.3 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.
- 6.4 As a preliminary point, the Committee noted Temple Bright LLP on behalf of Peacock Pharmacy (“Peacock Pharmacy”) contended that the appeal was misconceived both legally and factually.
- 6.5 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (“the Regulations”), in particular Schedule 3, Part 1, paragraph 2 which states:

Misconceived appeals

2. If the Secretary of State, after considering a valid notice of appeal under regulation 45, 63 or 77, or paragraph 30, 32(5) or 36 of Schedule 2 against a decision, is of the opinion that the notice—

(a) contains no valid grounds of appeal (for example, because it amounts to a challenge to the legality or reasonableness of a HWB's or Primary Care Trust's pharmaceutical needs assessment, or to the fairness of the process by which the HWB or a Primary Care Trust undertook that assessment); or

(b) contains no reasonable grounds for appeal (for example, where it is vexatious or frivolous),

the Secretary of State may determine the appeal by dismissing it (without proceeding to notify the appeal under Part 2).

- 6.6 The Committee considered the Applicant’s grounds for appeal and noted that it provided reasons as to why the Applicant did not agree with the decision of the Commissioner and also provides information which was previously submitted to the Commissioner. Therefore, the Committee was of the view that the appeal is a valid notice of appeal.
- 6.7 On a separate point, the Committee noted the Applicant stated that *“The Boots pharmacy until recently was the only pharmacy serving the village. The Boots pharmacy is located atop Chapel Hill in the upper/ Northern section of Stansted Mountfitchet. An unforeseen benefits application by Mountfitchet partners was successful at appeal in obtaining a new pharmacy contract to serve the lower/ Southern section of Stansted Mountfitchet.”* The Applicant then goes on to outline, in its view, the *“main arguments”* raised in the previous application and that *“with the closure of the Boots atop Chapel Hill imminent, these exact same issues will once again be present in Stansted Mountfitchet. Thus, based on precedent, a new contract application should be granted on the grounds better access through reasonable choice and for those*

sharing protected characteristics.” Whilst the Committee noted the findings in the previous application (SHA/25850), it was of the view that it does not set a precedent and that each case is determined on its own merits. Furthermore, the Committee noted that the decision was made in July 2023, roughly 18 months ago, and whilst some findings will be relevant to this application, some will not as there may have been changes during this period of time.

- 6.8 The Committee noted the comments from Peacock Pharmacy and the Commissioner that the onus/burden of proof rests with the Applicant to satisfy the Committee that an application should be granted in accordance with the Regulations. Peacock Pharmacy also go on to rely on a previous judgement (*R (on the application of Assura Pharmacy Limited) v NHS Litigation Authority* [2007] EWHV 289 (Admin) at paragraph 15)). The Committee noted in response, the Applicant states that *“We submit that there is not necessarily a need to submit ‘evidence’ as such, but rather for a reasonable interpretation to be made based on the facts of the case. A number of relevant facts of this case were established by the grant of an unforeseen benefits application in Stansted by NHS Resolution in July 2023 – SHA/25850.”* The Committee was of the view that the onus of proof lies with the Applicant to make its case that the application will confer significant benefits. The Committee therefore proceeded to consider the application in accordance with the Regulations.
- 6.9 The Committee noted that there was another application from Abax Health Ltd which was considered by the Commissioner alongside the application from the Applicant. The Committee noted that Abax Health Ltd had not exercised their right of appeal.

Regulation 31

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

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

(2) This paragraph applies where -

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

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

(ii) adjacent premises; and

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

- 6.11 The Committee noted the Applicant’s response in the application form on this point which stated *“N/A. Despite there being a pharmacy currently trading near the proposed site, the current pharmacy located at 4-8 Cambridge Road, CM24 8BZ is due to close on the 6th January 2024. Should a new pharmacy contract ultimately be granted, there will no longer have been a pharmacy trading from 4-8 Cambridge Road. Thus, there will be no pharmacy trading from or adjacent to the proposed premises, so Regulation 31 does not apply”*. The Committee noted the conclusions of the Commissioner in this respect and further that this had not been disputed either on appeal or in subsequent representations. Therefore, on the basis of the information before it, the Committee was not required to refuse any of the applications under the provisions of Regulation 31.

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

Regulation 18

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

“(1) If—

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

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

(2) Those matters are—

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

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

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

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

- 6.14 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.
- 6.15 The Committee went on to consider whether Regulation 18(1)(b) was satisfied, i.e. whether the improvements or better access that would be secured if the application was granted were or was included in the Pharmaceutical Needs Assessment ("the PNA") in accordance with paragraph 4 of Schedule 1 of the Regulations.
- 6.16 Paragraph 4 of Schedule 1 requires the PNA to include: "a statement of the pharmaceutical services that the HWB had identified (if it has) as services that are not provided in the area of the HWB but which the HWB is satisfied (a) **would** if they were provided.....secure improvements or better access, to pharmaceutical services... (b)

would if in specified future circumstances they were provided...secure future improvements or better access to pharmaceutical services..." (emphasis added).

- 6.17 The Committee considered the PNA prepared by Essex County Council, conscious that the document provides an analysis of the situation as it was assessed at the date of publication. The Committee bears in mind that, under Regulation 6(2), the body responsible for the PNA must make a revised assessment as soon as reasonably practicable (after identifying changes that have occurred that are relevant to the granting of applications) unless to do so appears to be a disproportionate response to those changes. Where it appears disproportionate, the responsible body may, but is not obliged to, issue a Supplementary Statement under Regulation 6(3). Such a statement then forms part of the PNA. The Committee noted that the PNA was dated October 2022 – September 2025 and that 28 supplementary statements had been issued.
- 6.18 The Committee had regard to the PNA and noted the following from the conclusion section:
- 6.18.1 *"Access to pharmaceutical services for the residents of Essex is good and the main conclusion of this PNA is that there are currently no gaps in the provision of necessary or relevant pharmaceutical services..."*
- 6.18.2 *...The HWB has not identified any services that would secure improvements, or better access, to the provision of pharmaceutical services either now or within the 3-year lifetime of this pharmaceutical needs assessment.*
- 6.18.3 *Based on the information available at the time of developing this PNA no current gaps in the provision of **essential services during normal working hours** have been identified in any of the localities.*
- 6.18.4 *Based on the information available at the time of developing this PNA no current gaps in the provision of **essential services outside normal working hours** have been identified in any of the localities.*
- 6.18.5 *Based on the information available at the time of developing this PNA no current gaps in the provision of the **New Medicine Service and Community Pharmacist Consultation Service** advanced services have been identified in any of the localities.*
- 6.18.6 *Based on the information available at the time of developing this PNA no gaps in the need for the **necessary services** in specified future circumstances have been identified in any of the localities.*
- 6.18.7 *Based on the information available at the time of developing this PNA no gaps in the current provision of other **relevant services** or in specified future circumstances have been identified in any of the localities.*
- 6.18.8 *Based on the information available at the time of developing this PNA no gaps have been identified in **essential services** that if provided either now or in the future would secure improvements or better access to essential services in any of the localities.*
- 6.18.9 *Based on the information available at the time of developing this PNA no gaps have been identified in the provision of **advanced services** that if provided either now or in the future would secure improvements or better access to advanced services in any of the localities.*

6.18.10 *Based on the information available at the time of developing this PNA no gaps in respect of securing improvements or better access to the **enhanced services** in specified future circumstances have been identified in any of the localities."*

- 6.19 The Committee noted that the Supplementary Statement dated June 2024 for the Uttlesford locality references the closure of the Boots pharmacy in Stansted Mountfitchet and concludes that *"No gaps in pharmaceutical services have been identified that if provided either now or in the future would secure improvements or better access to necessary pharmaceutical services across the locality"*.
- 6.20 The Committee noted that the Applicant seeks to provide unforeseen benefits to the patients of Stansted Mountfitchet, Essex. The Committee noted that the improvements or better access that the Applicant was claiming would be secured by its application were not included in the relevant PNA in accordance with paragraph 4 of Schedule 1.
- 6.21 In order to be satisfied in accordance with Regulation 18(1), regard is to be had to those matters set out at 18(2). The Committee's consideration of the issues is set out below.

Regulation 18(2)(a)(i)

- 6.22 The Committee had regard to

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

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

- 6.23 The Committee noted the Commissioner's finding on this point that *"The Committee noted that there was no evidence to suggest granting the application would cause significant detriment to proper planning in the area"* and that no party had sought to dispute this.
- 6.24 On the basis of the information available, the Committee was not satisfied that, if the application were to be granted and the pharmacy to open, the ability of the Commissioner thereafter to plan for the provision of services would be affected in a significant way.
- 6.25 The Committee was therefore not satisfied that significant detriment to the proper planning of pharmaceutical services would result from a grant of the application.

Regulation 18(2)(a)(ii)

- 6.26 The Committee had regard to

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

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

- 6.27 The Committee noted the Commissioner's finding on this point that *"The Committee noted that there was no evidence to suggest granting the application would cause significant detriment...for any arrangements the ICB has in place for the provision of pharmaceutical services in the area"* and that no party had sought to dispute this.

6.28 The Committee was therefore not satisfied that significant detriment to the arrangements currently in place for the provision of pharmaceutical services would result from a grant of the application.

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

Regulation 18(2)(b)

6.30 The Committee had regard to

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

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

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

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

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

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

6.31 The Committee noted the application was prompted by the planned closure of Boots pharmacy which occurred in January 2024. In its application, the Applicant stated the closure *"will leave a significant gap in pharmaceutical services"*. However the Committee was mindful that the closure of one pharmacy does not automatically mean that there is a need for a pharmacy to open in its place.

6.32 The Applicant states that *"the Boots previously dispensed c. 7500 items per month, so was by all intents and purposes a busy pharmacy"*. Whilst the Committee appreciated the comment from the Applicant, it was mindful that the provision of pharmaceutical services is greater than the dispensing of prescriptions alone.

6.33 The Applicant refers to *"the same growing population"* as highlighted in the previous application and comments made at the time that *"A 'tipping point' had been reached within Stansted Mountfitchet where one pharmacy was no longer sufficient to support the population"*. The Committee had regard to the figures provided in the previous application and accepted that the area had undergone significant population growth. However the Committee was mindful of its view at paragraph 6.7 above and that these statements were made in the context of different application and circumstances at the time. Most notably, there has been a change in pharmaceutical services as a result of the granted application which the Committee noted opened in November 2023 and is

trading as Peacock Pharmacy. The Committee also noted that at the time of the previous application, there had been concerns expressed regarding the capacity of the Boots pharmacy to deliver pharmaceutical services.

- 6.34 On the same topic, the Applicant goes on to state *“If we take the population of Stansted Mountfitchet to be 9000, as was undisputed in the application by Mountfitchet Partners in June 2023. It would be reasonable to assume that at least 4500 residents require access to pharmaceutical services atop Chapel Hill”*. However the Committee was of the same view as the Commissioner that this is merely based on a presumption. No factual analysis has been provided to support the Applicant’s statement. The Applicant goes on to reference the changes to the GP patient list in June 2023. The Committee considered that whilst there may well have been changes to the population and patient list size since 2023, the Applicant has not provided any information on this and what impact it has on the ability of patients to access pharmaceutical services. Notwithstanding this, even if there is an associated increase in population, it does not automatically lead to the requirement to grant an application.
- 6.35 The Committee had regard to the proposed location of the pharmacy, as identified by the map provided by the Commissioner and noted the best estimate address includes the location of the former Boots pharmacy.
- 6.36 The Applicant states that *“The proposed location is situated amongst a busy parade of shops”* and further contends that the Commissioner *“failed to give regard to those residents who access pharmaceutical provision in conjunction with other shops as part of their daily lives”*. The Committee also noted the comment from Peacock Pharmacy that *“Whilst there are a small number of retail units strung along Cambridge Road, these are not destination shops and are more likely to be accessed on a convenience basis by residents as they go about their daily lives”*. The Committee had regard to the range of shops and services as outlined by the Applicant and was of the same view as Peacock Pharmacy. The Committee considered that the facilities at the proposed site were limited and residents would need to travel outside of the area to access a wider range of services and amenities.
- 6.37 The Committee noted the Commissioner’s comments regarding the provision of distance selling pharmacies and the Applicant’s response that *“Whilst we appreciate that Distance Selling Pharmacies can deliver medication, this still does not represent sufficient access for a number of residents”*. The Committee accepted that distance selling pharmacies will provide a type of access to pharmaceutical services and consequently will provide some element of choice in obtaining pharmaceutical services to some persons in the HWB area. The Committee considered that the existence of distance selling pharmacies was a factor to be considered, but only alongside physical access to and availability of pharmaceutical services in the HWB area and recognised the reservations expressed by the Applicant relating to reliance on such services.
- 6.38 The Committee noted the following in the Commissioner’s decision report *“There is one pharmacy within 1.3 miles of the proposed site”*, however the Committee considered this to be an error, given that the information provided in the Commissioner’s representations and by the Applicant demonstrates that the nearest existing pharmacy to the proposed site is Peacock Pharmacy and is 0.4 miles away along Chapel Hill. From the information provided by the Commissioner, which had not been disputed by the Applicant, the Committee noted that this would take between 8 and 9 minutes to walk. The Applicant references the findings of the previous Oral Hearing Committee in relation to the walk along Chapel Hill from the surgery to the former Boots site which is in a similar location to the proposed site. However, the Committee was of the view that patients coming from the southern end of the village would pass Peacock Pharmacy and would therefore have no need to travel onwards to access pharmaceutical services. The Committee was conscious that for patients from the northern part of town, in making their way to Peacock Pharmacy may have to return via Chapel Hill. The

Committee was of the view that those who are fit and able would undertake this journey and that for those who are unfit or unable, the Committee appreciated the walk may present as a barrier to access and that it would need to consider alternative means of access.

- 6.39 The Committee further noted that the next nearest pharmacies are JE Williamson Chemist and Boots at circa 2.4 to 2.6 miles and 3.1 miles respectively. The Commissioner also highlights three other pharmacies that are located further afield at 3.3 to 4.2 miles away. The Committee was of the view that it is unlikely that anyone would access these pharmacies on foot. The Committee therefore proceeded to consider access by public transport.
- 6.40 The Committee noted the Applicant states that *"The journey by bus to Peacock Pharmacy is not well served by public transport. Patients would obtain the No.7/7A bus from outside the nearby Tesco Express. However, the bus service is infrequent with buses arriving every two hours at best, as ratified by committee member visits."* The Committee had regard to the previous Oral Hearing Committee comments the Applicant is referring to however that site visit occurred in 2023 and the Applicant has not provided any information in regards to the current bus service in the area. The Committee had not been provided with a bus timetable or route map which would have supported the Applicant's view. Moreover, the Applicant appears to contradict its statement when referring to the proposed site by saying *"There is good access by foot, car, and public transport with the parade being well served by the 7A and 301 buses"*. Furthermore, the Committee had not been provided with any evidence to demonstrate that patients are experiencing difficulties in accessing the existing pharmaceutical provision as a result of the public transport in the area.
- 6.41 In considering access by private transport, from the Commissioner's representations, which had not been disputed, the Committee noted the high level of car ownership in the area (91.3% of Uttlesford have access to one or more cars). The Committee noted that it would take between 3 and 4 minutes to access Peacock Pharmacy from the proposed site. On this point, the Applicant states that *"this journey is per google maps estimation however in reality this journey is likely to take much longer with many obstacles to navigate. On their site visit in May 2023 one committee member noted: "There are a lot of parked cars on the road and delivery vehicles obstructed the whole road during both ascents by car"*. The Applicant has not provided any current information to demonstrate that those with access to private transport are having difficulties in accessing Peacock Pharmacy or other pharmacies further afield. In regard to the other pharmacies in the area, the Committee noted the journey lengths provided by the Commissioner in its representations of between 7 and 12 minutes, which the Committee did not consider to be unreasonable. Taking the above into account, the Committee was of the view that for those with access to a car, there are no barriers to accessing the pharmaceutical provision in the area.
- 6.42 The Committee was aware that the Commissioner had advised that they have not received any complaints since the closure of Boots pharmacy nor since the opening of Peacock Pharmacy. Both of these occurred over a year ago now, namely in January 2024 and November 2023 respectively. This indicated to the Committee that patients are able to access the existing pharmacies, which appeared to have absorbed the additional prescriptions and patients with minimal impact. Furthermore, the Committee noted the Commissioner's comment that *"the Stansted community is very vocal"*. The Committee noted the considerable amount of public support for the previous application and how this had not been replicated in this application. This indicated to the Committee that the opening of Peacock Pharmacy has rectified the problems that were aired in the previous application. Furthermore, the Committee noted the comment from the owner of this pharmacy that it *"has ample capacity to cope with current and projected future demand for pharmaceutical service provision notwithstanding the closure of the Boots pharmacy"*.

- 6.43 Therefore the Committee was not satisfied that, having regard to there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits by way of physical access on persons.
- 6.44 The Committee was of the view that there is already reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB, such that it was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits on persons.
- 6.45 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.
- 6.46 On this point, the Committee noted that the Applicant referred to the findings of the Oral Hearing Committee in the previous application. Aside from highlighting the previous findings, the Applicant had provided little information regarding those who may share a protected characteristic and the pharmaceutical services they may require in the context of this application. The findings of the previous Oral Hearing Committee, whilst relevant to the area of the proposed site, were findings made regarding that particular application and proposed location at the time.
- 6.47 The Committee was therefore not satisfied that, having regard to the desirability of people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that are difficult for them to access, granting the application would confer significant benefits on persons.
- 6.48 In considering Regulation 18(2)(b)(iii) the Committee had regard to the desirability of innovative approaches to the delivery of pharmaceutical services. In doing so, the Committee would consider whether there was something more over and above the usual delivery of pharmaceutical services that might be expected from all pharmacies, some 'added value' on offer at the location. The Committee noted that no information had been provided to suggest that any innovative approaches would be taken with regard to the delivery of pharmaceutical services. The Committee was not satisfied that, having regard to the desirability of there being innovative approaches taken with regard to the deliverability of pharmaceutical services, granting the application would confer significant benefits on persons.

Regulation 18(2)(b) generally

- 6.49 The Committee noted the Applicant's proposed core hours which are, 9am to 1pm and 2pm to 6pm Monday to Friday and 10am to 1pm on Saturday and Sunday. The Applicant has proposed supplementary hours from 1pm to 2pm Monday to Friday and 1pm to 5pm on Saturday.
- 6.50 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); ...*

- 6.51 The Committee noted that, if the application was to be granted, a direction would need to be issued for the “additional” hours which were being offered by the Applicant.
- 6.52 From the Commissioner’s representations, the Committee noted the core hours provided by the existing pharmacies. Peacock Pharmacy are open 9am to 1pm and 1pm to 5pm Monday to Friday. JE Williamson is also open 9am to 1pm and 2pm to 6pm Monday to Friday. Boots are open 10am to 1pm and 1pm to 5pm Monday to Friday and 10am to 2pm and 3pm to 4pm on Saturday. The other pharmacies mentioned at paragraph 6.39 above have core opening at similar times.
- 6.53 Despite the Applicant stating that Boots had core opening hours on a Sunday, the Committee understands from the Commissioner’s representations that these were supplementary. Therefore, the Committee noted that none of the existing pharmacies have core opening hours on a Sunday. The Applicant contends that this will “*will provide healthcare coverage when the GP surgery is closed*” and further “*provide better access to the resident population*”. The Committee noted that the Applicant had not provided any information to show that there is a demand or need for Sunday opening in Stansted Mountfitchet, beyond the general view that longer opening will provide better access. The Committee was of the view that there was no information provided to support a finding that pharmaceutical services are not currently provided at such times as needed.
- 6.54 Therefore the Committee was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits (in relation to opening hours) on persons.
- 6.55 The Committee has considered whether there are any other factors that would confer significant benefits including on patients who share protected characteristics. The Committee had regard to the need to eliminate discrimination and advance equality of opportunity and foster good relations between these patients and those who do not share their protected characteristics.
- 6.56 The Committee was of the view that in accordance with Regulation 18(2)(b) the granting of this application would not confer significant benefits on persons in the area of the HWB which were not foreseen when the PNA was published.

Other considerations

- 6.57 Having determined that Regulation 18(2)(b) had not been satisfied, the Committee did not need to have regard to Regulation 18(2)(c) to (e).
- 6.58 No deferral or refusal under Regulation 18(2)(f) was required in this case.
- 6.59 The Committee had regard to Regulation 18(2)(g) and found no reason that required it to refuse the application under this regulation.
- 6.60 The Committee considered whether there were any further factors to be taken into account and concluded that there were not.

- 6.61 The Committee was not satisfied that the information provided demonstrates that there is difficulty in accessing current pharmaceutical services such that a pharmacy at the proposed site would provide better access to pharmaceutical services.
- 6.62 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 6.62.1 confirm the Commissioner's decision;
 - 6.62.2 quash the Commissioner's decision and redetermine the application;
 - 6.62.3 quash the Commissioner's decision and, if it considers that there should be a further notification to the parties to make representations, remit the matter to the Commissioner.
- 6.63 Given its findings aligned with the Commissioner's determination, the Committee determined to confirm the decision of the Commissioner.

7 DECISION

- 7.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, confirms the decision of the Commissioner.
- 7.2 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.
- 7.3 The Committee has considered whether the granting of the application would cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area covered by the HWB, or the arrangements in place for the provision of pharmaceutical services in that area and is not satisfied that it would;
- 7.4 The Committee determined that the application should be refused on the following basis:
- 7.4.1 In considering whether the granting of the application would confer significant benefits, the Committee determined that –
 - 7.4.1.1 there is already a reasonable choice with regard to obtaining pharmaceutical services;
 - 7.4.1.2 there is no evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services; and
 - 7.4.1.3 there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services;
 - 7.4.2 Having taken these matters into account, the Committee is not satisfied that granting the application would confer significant benefits as outlined above that would secure improvements or better access to pharmaceutical services.

**Case Manager
Primary Care Appeals**