

7 April 2025

REF: SHA/ 26443

**APPEAL AGAINST SUFFOLK AND NORTH EAST
ESSEX ICB DECISION TO REFUSE AN APPLICATION
BY APROSTE LTD FOR INCLUSION IN THE
PHARMACEUTICAL LIST OFFERING UNFORESEEN
BENEFITS UNDER REGULATION 18 AT BLACKBERRY
ROAD SHOPS, STANWAY, COLCHESTER CO3 0RZ
(BEST ESTIMATE)**

8th Floor
10 South Colonnade
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1 Outcome

- 1.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, confirms the decision of the Commissioner, therefore the application is refused.

A copy of this decision is being sent to:
Healthcare Plus Consulting Ltd on behalf of Aproste Ltd
Suffolk and North East Essex ICB
Boots UK Limited

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1 The Application

By application dated 11 March 2024, Healthcare Plus Consulting Ltd on behalf of Aproste Ltd ("the Applicant") applied to the Commissioner for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at Blackberry Road Shops, Stanway, Colchester CO3 0RZ (Best Estimate). In support of the application it was stated:

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

- 1.1 *"N/A. There is 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:

- 1.2 "Stanway New Contract Supporting Information
- 1.3 This application is in respect of opening a new pharmacy to provide better pharmaceutical access and choice for residents of the Stanway Ward, and the surrounding areas.
- 1.4 We understand that the Stanway Ward has recently seen two pharmacy closures:
- 1.4.1 Boots Pharmacy, Stanway Retail Park, CO3 0LX closed 02/03/2024
- 1.4.2 Lloyds in Sainsbury's, CO3 8AA closed Summer 2023
- 1.5 We believe that both closures have led to a significant gap in pharmaceutical services within Stanway. Hence this application is offering unforeseen benefits not captured within the PNA.
- 1.6 The best estimate of the proposed site we wish to open a new pharmacy is located on Blackberry Road Shops, Stanway, CO3 0RZ. This site is just down the road from the recently closed Boots.
- 1.7 The Stanway Ward covers a vast area and thus it is more prudent to analyse the LSOAs (Lower-layer Super Output area) within the defined area to determine the local population that are likely to utilise the site.

LSOA	Population
Colchester 012D	1,906
Colchester 012C	1,566
Colchester 009B	1,398
Colchester 014C	1,462
Colchester 014B	1,316
Total 7,648	Total 7,648

- 1.8 From the table above we can see at least 7,500 residents of the aforementioned LSOAs who would likely access pharmaceutical services at the proposed site. Now the Boots has closed, these residents no longer have sufficient access to pharmaceutical provision.
- 1.9 Using the proposed site, CO3 0RZ, as an arbitrary marker to represent these residents; we can see that the next nearest pharmacy is Boots Pharmacy, CO3 8RG, which is 0.7 miles away - a 17-minute walk, and this is on top of any time patients have spent travelling to Winstree Medical Practice. For residents currently residing near the proposed site, alternative pharmacies do not present reasonable choice or access to pharmaceutical provision.
- 1.10 We do not consider a 1.4-mile round journey to access pharmaceutical provision as representative of reasonable choice or access. The elderly, disabled, and the defined population are likely to find the proposed pharmacy significantly more accessible than alternative choices.
- 1.11 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, CO3 0LX closure; and notwithstanding the fact that the nearest pharmacy to the proposed site is located 0.7 miles away.
- 1.12 Granting this application would secure better access to pharmaceutical services for the large reliant population, especially when we consider the recent loss of alternative pharmaceutical provision.”

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

- 1.13 “The Boots Pharmacy, Stanway Retail Park, CO3 0LX, and the Lloyds pharmacy in Sainsbury’s, CO3 8AA were 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.
- 1.14 An increase in local pharmacy capacity and improved choice to meet the needs of the local population.
- 1.15 Better access and choice to pharmaceutical services given the closure of the above pharmacies.
- 1.16 See enclosed Supporting information for further detail [1.2 to 1.12 above].”

2 The Decision

The Commissioner considered and decided to refuse the application. The decision letter dated 5 December 2024 states:

- 2.1 “Suffolk and North East 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 Suffolk and North East 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.”

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

Decision report

- 2.4 **“UB Application for inclusion in a pharmaceutical list: routine application offering to secure unforeseen benefits:**
- 2.5 **Aproste Ltd, Blackberry Road Shops, Stanway, Colchester CO3 0RZ.**
- 2.6 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
- 2.7 (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”).
- 2.8 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.
- 2.9 The Committee first considered Regulation 31.
- 2.10 The Committee noted that the applicant provided the address of Blackberry Road Shops, Stanway, Colchester, CO3 0RZ as a best estimate 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 [Appendix A]. There were four nearest pharmacies within 1.3 miles of the proposed site.
- 2.12 The Committee noted that in regard to Regulation 31, the applicant has stated within their application:

- 2.13 *“There is no pharmacy trading from or adjacent to the proposed premises, so Regulation 31 does not apply.”*
- 2.14 The Committee were not required to refuse the application under the provisions of Regulation 31.
- 2.15 **Paragraph 31, Schedule 2 – conditional grant of applications where the address of the premises is unknown**
- 2.16 The Committee agreed, as it was not yet known where the premises would be located, there were no grounds to refuse the application on the basis of Regulation 31.
- 2.17 **Regulation 32 – Is the application to be deferred?**
- 2.18 The Committee noted this Regulation does not apply as the proposed listed pharmacy premises is not an LPS designated premises.
- 2.19 **Regulation 40 to 44 - Applications in a controlled locality**
- 2.20 The Committee noted that the proposed location is not within a controlled locality or reserved locality, so these Regulations do not apply.
- 2.21 **Regulation 18(1) – does the need on which the applicant based its application satisfy the elements of Regulation 18(1)?**
- 2.22 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.
- 2.23 **Regulation 18(1)(b)**
- 2.24 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.
- 2.25 Paragraph 4 of Schedule 1 requires the PNA to include:
- 2.25.1 *“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).*
- 2.26 The Committee noted that the applicant has stated the following within their application:
- 2.26.1 *“The Boots Pharmacy, Stanway Retail Park, CO3 0LX, and The Lloyds pharmacy in Sainsbury’s, CO3 8AA were 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. An increase in local pharmacy capacity and improved choice to meet the needs of the local population.*
- 2.26.2 *Better access and choice to pharmaceutical services given the closure of the above pharmacies.”*

- 2.27 And in their supporting statement: [1.2 to 1.12 above].
- 2.28 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 Colchester showed that another pharmacy had 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 5 are located in the locality of Colchester.
- 2.29 The Committee noted the current Essex PNA concludes:
- 2.29.1 *"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".*
- 2.30 The Committee noted there have been supplementary statements published since the application was received, in April 2023 for the whole of Essex and more recently in December 2023 for the area of Colchester. The June 2024 statement noted the closure of Lloyds and Boots. The supplementary statement concludes:
- 2.30.1 *"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."*
- 2.31 With regards the PNA, the applicant stated the following:
- 2.31.1 *"We understand that the Stanway Ward has recently seen two pharmacy closures:*
- 2.31.2 *Boots Pharmacy, Stanway Retail Park, CO3 0LX closed 02/03/2024*
- 2.31.3 *Lloyds in Sainsburys, CO3 8AA closed Summer 2023*
- 2.31.4 *We believe that both closures have left a significant gap in pharmaceutical services within Stanway. Hence this application is offering unforeseen benefits not captured within the PNA."*
- 2.32 The Committee agreed it was of the view 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.
- 2.33 The Committee noted that in order to be satisfied in accordance with Regulation 18(1), regard was also to be had to those matters set out in Regulation 18(2).
- 2.34 **Regulation 18(2)(a)(i) & (ii)** [quoted in full].
- 2.35 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.

- 2.36 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).
- 2.37 **Regulation 18(2)(b)(i)**
- 2.38 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— [Regulation 18(2)(b)(i) quoted in full].
- 2.39 The Committee noted that the applicant states the following points: [table and 1.8 – 1.9 quoted above].
- 2.40 The Committee was informed that the Pharmacy and Optometry Contracting Team (P&O team) have reviewed contracting files and confirmed that the ICB have not received any patient complaints or concerns relating to the closure of either Lloyds Pharmacy (May 2023) or Boots Pharmacy (March 2024) resulting in residents being unable to access pharmaceutical services or obtain their medication.
- 2.41 Therefore, there is no evidence to suggest that patients cannot, or are struggling to, access pharmaceutical services.
- 2.42 The nearest pharmacy, Boots Pharmacy, Tollgate West, is currently providing the following services:
- 2.42.1 Pharmacy First
 - 2.42.2 Hypertension Service
 - 2.42.3 Contraception Service
 - 2.42.4 NMS
 - 2.42.5 NHS flu vaccinations
 - 2.42.6 Covid 19
 - 2.42.7 Supervised consumption
 - 2.42.8 NHS Health Checks
- 2.43 The Committee noted that in addition to the above, the proposed application proposed to offer the following additional services to the area:
- 2.43.1 Needle exchange
 - 2.43.2 Smoking cessation
 - 2.43.3 CPCS
 - 2.43.4 Minor Ailments
 - 2.43.5 Sexual Health
 - 2.43.6 Palliative Care
 - 2.43.7 Substance Misuse

- 2.44 The Committee noted that the applicant was proposing to offer 49 core hours; with the proposed directed core hours being from 13:00-14:00 weekdays and 09:00-13:00 on Saturday.

Proposed											49:00	0.00
	S1		C1		S2		C2		S3		C3	
Monday			09:00	13:00			13:00	18:00				
Tuesday			09:00	13:00			13:00	18:00				
Wednesday			09:00	13:00			13:00	18:00				
Thursday			09:00	13:00			13:00	18:00				
Friday			09:00	13:00			13:00	18:00				
Saturday			09:00	13:00								
Sunday												

- 2.45 There are four pharmacies within 1.3 miles of the proposed location, with the closest being a 17-minute walk (0.8 miles) away, along flat terrain with pavement access the whole way (Google Maps/Google Street View). Of these pharmacies, three are 100hr pharmacies who have reduced their hours in line with the Regulations, offering between 75 and 82 hours. The remaining 40 hours pharmacy is currently offering 54.45 hours, although those hours above 40 are supplementary and can be removed at any time.
- 2.46 The Committee noted the data below showing the top 20 dispensing locations for prescriptions issued by the two pharmacies that are within 1.6km of the proposed site.
- 2.47 [Appendix B] (Source *SHAPE Atlas)
- 2.48 The Committee noted that patients were using a wide range of pharmacies for their pharmaceutical needs, and therefore agreed that patients were exercising their choice. No evidence has been provided to demonstrate that those living in the area were currently unable to exercise a choice in obtaining pharmaceutical services.
- 2.49 The Committee was of the view there is patient choice available and that patients are able to access pharmaceutical services within the area of Essex HWB.
- 2.50 The Committee noted that the test was whether or not those living in Stanway, Colchester have reasonable choice with regard to obtaining pharmaceutical services in the area of Essex HWB, not just in the area of Stanway. The Committee noted that no evidence was provided to demonstrate that those living in Stanway, Colchester were currently unable to exercise a choice in obtaining pharmaceutical services.
- 2.51 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 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.

2.52 **Regulation 18(2)(b)(ii)**

2.53 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— [Regulation 18(2)(b)(ii) quoted in full].

2.54 The applicant notes that the *“elderly, disabled, and the defined population are likely to find the proposed pharmacy significantly more accessible than alternative choices.”* However, they have not provided any information to substantiate this claim.

2.55 There is no evidence, by way of complaints etc that patients who share a protected characteristic are unable to access services.

2.56 The Committee noted the applicant provided no evidence to meet the criteria of Regulation 18(2)(b)(ii).

2.57 Whilst it is accepted that there would be people with protected characteristics living in Stanway, Colchester and that some may need pharmaceutical services as a result, there was no evidence that any specific groups had any difficulty accessing such services.

2.58 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.

2.59 **Regulation 18(2)(b)(iii)**

2.60 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— [Regulation 18(2)(b)(iii) quoted in full].

2.61 The applicant provided no evidence regarding innovative approaches in the delivery of pharmaceutical services, therefore, 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 in the area of the relevant HWB which were not foreseen when the Essex PNA, 2022 - 2025 was published.

2.62 **Representations**

2.63 During the 45-day notification period, representations was received from:

2.63.1 North and South Essex Local Medical Committees

2.63.2 Boots Ltd

2.63.3 Community Pharmacy Essex

2.64 Representations were made available to the Committee prior to the meeting.

2.65 **Regulation 18(2)(b) generally**

2.66 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.

- 2.67 The Committee considered whether there were any other factors that would confer significant benefits including on patients who share protected characteristics based on the information provided by the applicant. The Committee noted 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.
- 2.68 The Committee noted the applicant provided no evidence to satisfy the conclusion that there were other factors that would confer significant benefits on patients who shared protected characteristics.
- 2.69 **Regulation 50 - Discontinuation of arrangements for the provision of pharmaceutical services by doctors.**
- 2.70 The Committee noted the proposed location was not a controlled locality or within 1.6km of a controlled locality.
- 2.71 **Regulation 65 – core opening hours conditions**
- 2.72 The applicant offered 49 core hours, 9 of which would be directed with the proposed directed core hours being from 13:00-14:00 weekdays and 09:00-13:00 on Saturday.

Proposed											49:00	0.00
	S1		C1		S2		C2		S3		C3	
Monday			09:00	13:00			13:00	18:00				
Tuesday			09:00	13:00			13:00	18:00				
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Thursday			09:00	13:00			13:00	18:00				
Friday			09:00	13:00			13:00	18:00				
Saturday			09:00	13:00								
Sunday												

2.73 Decision

- 2.74 The Committee refused the application on the following basis, under Regulation 18(2)(b):
- 2.74.1 There was no evidence provided to suggest that there was not already a reasonable choice with regard to obtaining pharmaceutical services in the area of Essex HWB.
- 2.74.2 There was no evidence provided 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.
- 2.74.3 There was no evidence showing 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.

- 2.75 The Committee agreed 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 may not 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 (in relation to opening hours) on persons.
- 2.76 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.
- 2.77 The Committee was not satisfied that granting the application would confer significant benefits as outlined above or would secure improvements or better access to pharmaceutical services.
- 2.78 The Committee agreed that appeal rights are granted to the applicant, Aproste Ltd.
- 2.79 **Regulation 66 – conditions relating to providing directed services.**
- 2.80 The Committee agreed that as the application has been refused, it is not required to consider this regulation.”

3 The Appeal

In a letter dated 4 January 2025 addressed to NHS Resolution, Healthcare Plus Consulting Ltd on behalf of the Applicant appealed against the Commissioner’s decision. The grounds of appeal are:

- 3.1 “Our client, Aproste Ltd, has instructed us (Healthcare Plus Consulting Ltd) to act on their behalf for this appeal, please find an authorisation letter attached.
- 3.2 We would like to appeal the decision made in relation to our prior unforeseen benefits application.
- 3.3 We submit that NHS England have failed to properly evaluate Regulation 18 and the fundamental question within the Regulation: does the application provide ‘improvements or better access to pharmaceutical services, or pharmaceutical services of a specified type in the HWB’s area’. Throughout the decision report, NHS England have cited that there has been “no evidence” provided by my client. However, this is not the correct regulatory test, and thus we submit that NHS England have ultimately misdirected themselves.
- 3.4 We assert that this application does provide improvements or better access to pharmaceutical provision, as set out in our client’s original application.
- 3.5 There are a number of additional issues with the decision report, which we wish to appeal:
 - 3.5.1 NHS England has considered that the current pharmacies near Stanway offer reasonable choice of pharmaceutical provision to residents. We submit that NHS England has failed to consider that the majority of these pharmacies are not accessible to local residents due to the demographics of the area.
 - 3.5.2 There are a high number of residents living in the area of the proposed site that have no car/van, are aged 65 and over, have a disability as defined by the Equality Act 2010, and bad/very bad health. Thus, it is reasonable to conclude

that the defined area is in greater need of access to pharmaceutical provision due to these considerations.

- 3.5.3 The pharmacies that could be perceived as accessible to the patients described above by way of journeys, are also pharmacies which are struggling to cope with the pharmaceutical demands placed upon them. These demands stem from the high number of patients in the area (c.10,500), in combination with the closure of the Boots and Lloyds pharmacies near the proposed site. This has resulted in poor service for patients which is evidenced below.
- 3.5.4 Finally, we reiterate that the closure of the Boots Pharmacy and Lloyds Pharmacy has created a gap in pharmaceutical provision for residents of Stanway and populations within the relevant Lower-Layer Super Output Areas (LSOAs) that are likely to utilise the pharmacy at the proposed location.

3.6 Background

- 3.7 Stanway Ward has recently seen two pharmacy closures: Boots Pharmacy, Stanway Retail Park, CO3 0LX, which closed in March 2024 and Lloyds in Sainsbury's, CO3 8AA, which closed in Summer 2023. We submit that these closures have leave a significant gap in pharmaceutical services within Stanway, hence this application is offering unforeseen benefits not captured within the PNA.
- 3.8 2021 Census data indicates that c.10,500 residents live in the Stanway Ward and adjacent LSOAs that would likely access pharmaceutical services at the proposed site. Since the closure of the Boots and Lloyds pharmacies, we submit that a large number of these residents no longer have sufficient access to pharmaceutical provision.
- 3.9 The Committee commented in their decision report that there were four pharmacies located within 1.3 miles of the proposed location. This is an accurate assertion "as the crow flies", however it does not reflect the actual distance that patients would have to travel in order to access current pharmaceutical provision. If we consider what the patient journey may look like realistically, there remain only three pharmacies within 1.3 miles of the proposed location.
- 3.10 We stress to the Committee the importance of having accessible pharmacies within communities, especially with the advent of Pharmacy First. For Pharmacy First to be effective, we submit that we must try and be realistic about where patients will access these services and the distances they will travel to access them. In this particular instance, the proposed location is much closer to many residents in Stanway and therefore they will be more likely to utilise the Pharmacy First service. We also highlight that Support for self-care/ Pharmacist advice is an essential pharmaceutical service. Again, we submit that pharmacies need to be realistically accessible in order for patients to access these alternative services to dispensing.
- 3.11 The Public Survey undertaken for the PNA highlights the need for accessible pharmacies where patients can interact with the local Pharmacist face to face: "Participants also valued the personal approach established with their friendly pharmacist, particularly the possibility of seeing a specialist face to face" (Essex PNA, 6.3.2.4, pg.84).

3.12 Proposed Location

- 3.13 The best estimate of the proposed site upon which we wish to open a new pharmacy, is located on a communal parade of shops on Blackberry Road, Stanway, CO3 0RZ. As displayed on the map below [appendix C], the proposed location is centrally based in the Stanway area and nestled amongst a number of community shops. The amenities available on the parade consist of a Barber, Hair and Beauty Salon, Dry

cleaner, Restaurants, and a Convenience Store featuring a Post Office. The parade features good accessibility with dropped curbs and a zebra crossing. There is ample free parking on the parade itself, on the road, and to the rear to the parade.

- 3.14 A pharmacy located here would integrate access to pharmaceutical provision with the daily routines of patients, allowing patients to make less trips to source their medication; obtain advice; and interact with minor ailments services. This is particularly important for the elderly, disabled, and those with poor/very poor health.
- 3.15 Site Images [appendix C]
- 3.16 Picture depicting ample free parking, wide footpaths, and zebra crossing.
- 3.17 Picture depicting shops and free parking to the rear of parade.
- 3.18 Accessibility
- 3.19 Journeys to alternative pharmacies in Stanway are difficult due to poor bus service, the condition of local footpaths, and limited crossing infrastructure along the routes. It is worth noting that distance itself is a barrier to access.
- 3.20 This is particularly pertinent when we consider the demographics of residents living near the proposed site. It is worth noting that the adjacent 012C LSOA contains an elderly population, who have poor mobility; poor health outcomes; and poor vehicular access.
- 3.21 Per 2021 census data:
 - 3.21.1 30.3% of residents in the Colchester 012C LSOA are over the age of 65. This is far greater than the figures for the Colchester Local authority (17.8%) and England (18.3%).
 - 3.21.2 22.9% of residents in the Colchester 012C LSOA have a disability under the 2010 Equality Act. This is far greater than the figures for the Colchester Local authority (16.9%) and England (17.3%).
 - 3.21.3 7.4% of residents in the Colchester 012C LSOA have bad/very bad health. This is again far greater than the figures for the Colchester Local authority (4.2%) and England (5.2%).
 - 3.21.4 25.7% of residents in the Colchester 012C LSOA do not have access to a vehicle. This figure is significant when compared to Colchester local authority and national averages (18.2% and 23.5% respectively).
- 3.22 It is clear that these residents would benefit significantly from a Pharmacy located at the Proposed Site.
- 3.23 Looking at Journeys from the Proposed Site to current nearest pharmacy provision:
- 3.24 **Boots Pharmacy, CO3 8RG**
- 3.25 Using the proposed site, CO3 0RZ, as an arbitrary marker to represent residents, we can see the next nearest pharmacy is Boots, CO3 8RG, which is 0.7 miles away or a 17-minute walk as calculated by Google Maps. This equates to a 34-minute round-trip. Google Maps states that its pace estimates do not factor in topography or mobility issues of individuals when calculating walking times. Therefore, it is reasonable to conclude that the journey could take much longer, especially for those who are elderly and/or disabled. These factors could quickly amount to an increased journey time to

the Boots Pharmacy, with the travel time likely to be in excess of 20 minutes. In light of this, we cannot consider a 1.4-mile round-journey to access pharmaceutical provision as representative of reasonable choice or access.

- 3.26 NHS England commented in their decision that the route to Boots had pavement access throughout the whole trip, however upon further analysis of the journey on foot we have found in many places patients must cross the road many times at uncontrolled crosswalks by busy roundabouts. This is due to the pavement ending on one side of Tollgate Road. The route also features many obstructions and sections of narrow pavement. We submit that having to cross this many times at uncontrolled crosswalks whilst also navigating obstructions to access pharmaceutical provision does not represent good access, especially for the elderly, disabled, or patients with young children.
- 3.27 We submit that accessing pharmaceutical services by foot is not viable for a number of local residents, particularly those with mobility issues. These residents ultimately have to access pharmaceutical provision by car or via public transport. As 25.7% of the population in the Colchester 012C LSOA do not own a vehicle, they must rely on walking or public transport to access current pharmaceutical provision.
- 3.28 Journey on foot to Boots Pharmacy, CO3 8RG [appendix C].
- 3.29 Picture depicting an uncontrolled crossing with obstruction to pavement [appendix C].
- 3.30 As alternative Pharmacies are even further it follows that those locations also do not represent reasonable choice or access for patients. The Essex PNA states: *"Of those replying to the survey, 83% have a reasonable distance to travel to the pharmacy equating to less than 20 minutes"*. (Essex PNA, 6.3.2.6, pg.84) This statement suggests that the HWB considers that a trip of less than 20 minutes is reasonable. We submit that the decision made by the committee has not factored in travel times for those with mobility issues.
- 3.31 The journey to Boots Pharmacy is not well-served by public transport. The trip by bus can take 16 minutes, with patients boarding the S2 bus at Holly Rd before having to walk a further 12 minutes to the Boots Pharmacy. This amount of walking is difficult for the elderly or disabled, especially during the winter months, which may increase the travel time for these patients. The S2 bus service can also be infrequent, arriving every 30 minutes. With the inclusion of waiting times, a return journey by bus to the Boots Pharmacy can take 1-hour 2 minutes. It is worth noting that section 6.3.2.6 of the Essex PNA also states that *"34% had travelled on foot—only 3% used public transport"*, indicating that walking is by far the preferred method of travel over public transport for residents.
- 3.32 **Ambrose Pharmacy, CO3 4LN**
- 3.33 The journey by foot is 1.1 mile, equating to a 2.2-mile round-journey. We do not consider a 24-minute walk as sufficient access to pharmaceutical provision. Considering the high number of elderly and disabled residents evidenced in this appeal, it is very likely that this journey could be significantly longer for many patients in Stanway Ward.
- 3.34 There is no direct bus route between the proposed site and Ambrose Pharmacy, ultimately leaving residents without access to a car/van with no choice but to travel by foot.
- 3.35 Furthermore, residents who cannot drive, or do not feel comfortable driving in adverse weather conditions have no choice but to walk. A 48-minute round walk, especially in cold winter months, cannot be considered good pharmaceutical choice for the elderly

and disabled. We would consider this as no pharmaceutical choice at all, much less than the threshold of 'reasonable choice'. It follows that the lack of bus service in the area and the significant walking time would also be a barrier to patient access of pharmacies further to the east, such as the Prettygate Pharmacy, CO3 4NW.

3.36 Marks Tey Pharmacy, CO6 1EB

3.37 The journey on foot to Marks Tey Pharmacy is 2.8 miles or 1-hour 3 minutes, equating to a 2-hour 6-minute round-journey. We reiterate that Google Maps does not consider topography or mobility issues when calculating trips, so this journey could be even longer for the elderly, disabled, or those with young children.

3.38 We cannot consider a 5.6-mile round walk to access pharmaceutical services as sufficient access, nor can we consider this as having a reasonable choice to pharmaceutical services. We have already shown that many residents have low car/van ownership, leaving walking or public transport as the only option to access pharmaceutical provision.

3.39 The journey by bus to Marks Tey Pharmacy is not well-served by public transport. The journey involves taking multiple buses depending on what time of day the patients are traveling. The trip can take up to 31 minutes one-way, equating to a total journey of over an hour. Patients are required to catch a minimum of two buses which can feature poor service, arriving only every 30 minutes.

3.40 Another consideration is the unsheltered bus stop on the return journey, which ultimately leaves patients exposed to the elements on days with poor weather. Such poor choice of pharmaceutical access is especially felt by the elderly and disabled. These groups could face having to wait 30 minutes for a return bus in the cold on a winter's day. When we consider that these patients may not be able to drive, or may not feel comfortable driving in winter conditions, it is clear that the current access by public transport to Marks Tey Pharmacy is also inadequate.

3.41 Current Provision

3.42 Boots Pharmacy, CO3 8RG

3.43 The remaining Boots Pharmacy is unable to cope with the extra demands placed upon it following the closure of the Boots Pharmacy, CO3 0LX, and the Lloyds Pharmacy, CO3 8AA.

3.44 The Boots, CO3 8RG is currently dispensing c.20,000 items per month, and by all accounts is a large dispensing pharmacy.

3.45 This poor service is evidenced by the numerous negative Google and NHS reviews citing long lines, unsatisfactory service, and the pharmacy being closed during core hours. Some of the comments from patients are as follows:

3.45.1 *"Very slow service ever time I've visited. Have to wait approximately 30 minutes to be seen then a similar time to have the medication dispensed. Lots of people waiting around both in the queue and for their medication. With only 3 chairs and a pregnant wife waiting with me, this was not ideal. This has been the same experience every time I have been and will always try and avoid this pharmacy if I can."* (NHS Review)

3.45.2 *"Sadly the service here has really gone down hill. Never enough staff at the pharmacy so you have to queue for over 30 minutes most if the time."* (Google Review)

- 3.45.3 *“When you turn up to find the chemist shut when meant to be open and the staff do not even answer the phone when calling for over 15mins. Worst service ever.”* (Google Review)
- 3.45.4 [screenshots of further comments provided at appendix C].
- 3.46 **Ambrose Pharmacy, CO3 4LN**
- 3.47 Ambrose Pharmacy is the next closest pharmacy after the Boots Pharmacy, however it also suffers from negative reviews and has a lower Google Reviews rating than the Boots Pharmacy, indicating consistently poor service which is likely also due to the recent closures. Common complaints from patients include the pharmacy closing early, missed items and poor customer service. Some complaints from patients are as follows:
- 3.47.1 *“Google, NHS and the signage on the front of this pharmacy all clearly list it as being open until 9pm on a Sunday. I arrived at 8:25pm and I may as well have arrived on the moon. Not a soul around!”* (Google Review)
- 3.47.2 *“Turned up 15 minutes before their closing time to find the pharmacy closed. Lights were off and I rung the designated bell a few times and received no answer.”* (NHS Review)
- 3.47.3 [screenshots of further comments provided at appendix C].
- 3.48 The reviews above are indicative of a decline in the quality of services that are currently available to patients, as stated by the patients themselves.
- 3.49 The timeline of negative reviews with themes of poor service, long waits, and early closures are consistent with the instances of pharmacy closures in the area (Boots Pharmacy and Lloyds Pharmacy).
- 3.50 This suggests a link between patient dissatisfaction and a lack of adequate pharmaceutical provision in the area, caused by the remaining pharmacies experiencing an unsustainable demand from the number of patients.
- 3.51 The growing evidence of poor service perceived by patients indicates residents of Stanway Ward lack reasonable choice, where they are deciding between poor service or poor access to the current pharmaceutical provision.
- 3.52 Conclusion
- 3.53 We submit that NHS England have failed to properly evaluate Regulation 18 and the fundamental question within the Regulation: does the application provide ‘improvements or better access to pharmaceutical services, or pharmaceutical services of a specified type in the HWB’s area’.
- 3.54 We assert that this application does provide improvements or better access to pharmaceutical provision, as set out in our client’s original application and this appeal.
- 3.55 There is a need for a pharmacy to serve the elderly, disabled, and those with impaired mobility. We submit that the recent closure of two pharmacies in the Stanway area has overwhelmed the current pharmaceutical provision, leading to poor service and increased travel times for patients in Stanway.
- 3.56 We submit that Regulation 18 has been met through all representations by our client and therefore we invite NHS Resolution to reconsider their stance and grant our client’s application.”

- 3.57 [A copy of the application form and the supporting information at 1.2 to 1.12 were also enclosed].

4 Summary of Representations

This is a summary of representations received on the appeal.

4.1 Boots UK Limited

- 4.1.1 “Thank you for your letter dated 21st February 2025 informing us of the above appeal.
- 4.1.2 We would like to highlight that the Essex Health and Wellbeing board have issued supplementary statements since the closures of Lloyds in Sainsbury’s and our pharmacy at Stanway Retail Park. Both statements conclude that no gaps have been identified now or in the future.
- 4.1.3 We have no further comments to make but ask that we are informed of the decision in due course.”

4.2 The Commissioner

- 4.2.1 “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 in the East of England.
- 4.2.2 As requested in your letter, the Essex Pharmaceutical Needs Assessment (PNA) and Supplementary Statements can be found at Pharmaceutical Needs Assessment (PNA) 2022-2025 | Essex Open Data. This PNA was reviewed when assessing and determining this application.
- 4.2.3 The 2022-2025 Essex PNA does not identify any gaps in the provision of pharmaceutical services. It does not articulate any current or future gaps in the provision of necessary and other relevant services across the Colchester locality and this is further reinforced by the supplementary statement that was published in June 2024.
- 4.2.4 The appeal has been submitted by Healthcare Plus Consulting Ltd, advisor on behalf of Aproste Ltd and shall be referred to as the Appellant within this document.
- 4.2.5 The grounds for appeal as set out by the Appellant are that the ICB failed to evaluate the evidence supplied within the application with regards to Regulation 18.
- 4.2.6 The Appellant states that *“the current pharmacies near Stanway offer reasonable choice of pharmaceutical provision to residents. We submit that NHS England has failed to consider that the majority of these pharmacies are not accessible to local residents due to the demographics of the area”* (page 1, appeal document) as well as *“The Committee commented in their decision report that there were four pharmacies located within 1.3 miles of the proposed location. This is an accurate assertion “as the crow flies,” however it does not reflect the actual distance that patients would have to travel in order to access current pharmaceutical provision. If we consider what the patient journey may look like realistically, there remain only three pharmacies within 1.3 miles of the proposed location”* (page 2, appeals document).

4.2.7 The Pharmaceutical Services Regulation Committee (PSRC) made this decision based on the information it had before it and as shown in Table 1, there is a minimal difference between 'as the crow flies' and the distances taken from Google maps.

4.2.8 There are a total of 5 pharmacies within 1.5 miles of the best estimate postcode. For ease, the distance and time taken by type of travel is shown below along with a map for illustration purposes in Appendix 1 [appendix D]:

4.2.9 **Table 1**

Pharmacy	Distance from best estimate (miles)	Travel time on foot (minutes)	Travel time by car (minutes)
Boots, CO3 8RG	0.8	18	3
Ambrose Pharmacy, CO3 8RG	1.1	23	5
Prettygate Pharmacy, CO3 4NW	1.2	26	5
Boots, CO3 4PG	1.5	34	6
Hutt Pharmacy, CO2 9EB	1.5	35	6

4.2.10 *(Pharmacy taken from NHS website. Distance and travel times take from Google Map data ©2025)*

4.2.11 The ICB recognises that the test is choice within the Essex Health and Wellbeing Board (HWB) and there is extensive choice across Essex HWB. Table 1 also shows that there is a reasonable choice of pharmaceutical provision within the town of Stanway, five pharmacies within 1.5 miles.

4.2.12 The Appellant states *"There are a high number of residents living in the area of the proposed site that have no car/van, are aged 65 and over, have a disability as defined by the Equality Act 2010, and bad/very bad health. Thus, it is reasonable to conclude that the defined area is in greater need of access to pharmaceutical provision due to these considerations"* (page 2, appeals document).

4.2.13 Whilst the ICB notes that there will be people in the area of the proposed site that do not have a car or are of a certain age or who have a disability, this does not mean they cannot access pharmaceutical services and/or do not have a choice. There are 5 pharmacies within a 1.5 mile radius of the best estimate postcode. In considering access to these pharmacies, the way in which people travel to pharmacies to access services needs to be considered.

4.2.14 The Census 2021 maps demonstrate that 86.6% have 1 or more cars or vans (see Appendix 2) [appendix D]. There is a small number of people therefore that do not have access to a car/van however this does not mean they cannot

access pharmaceutical services. Services can be accessed via public transport or on foot. Some patients may choose to access services from a distance selling premises (DSP) and whilst the ICB recognises that DSPs are not the preference for all patients, some residents 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.

- 4.2.15 It should also be noted that all five pharmacies referenced in Table 1 above offer a prescription delivery service. The ICB recognises that some pharmacies may charge for this or withdraw the service at any time.
- 4.2.16 The Appellant states *“we reiterate that the closure of the Boots Pharmacy and Lloyds Pharmacy has created a gap in pharmaceutical provision for residents of Stanway and populations within the relevant Lower-Layer Super Output Areas (LSOAs) that are likely to utilise the pharmacy at the proposed location”* and *“Stanway Ward has recently seen two pharmacy closures: Boots Pharmacy, Stanway Retail Park, CO30LX, which closed in March 2024 and Lloyds in Sainsbury’s, CO3 8AA, which closed in Summer 2023. We submit that these closures have left a significant gap in pharmaceutical services within Stanway, hence this application is offering unforeseen benefits not captured within the PNA. (page 2, appeals document).*
- 4.2.17 The closure of Lloyds Pharmacy, Western Approach, Stanway, CO3 8AA on the 21 May 2023 was noted within the December 2023 supplementary statement. The closure of Boots, Fiveways Superstore, Peartree Road, CO3 0LX on the 2 March 2024 was noted within the June 2024 PNA supplementary statement. The Essex Health and Wellbeing Board (HWB) were of the opinion when taking these closures into account, that no gap was identified either now or in the future that would secure improvements or better access to necessary pharmaceutical services across the locality of Colchester. If the HWB was of the view that any of these closures identified a gap, the specific pharmaceutical need would have been articulated in the supplementary statement.
- 4.2.18 Furthermore, in the 18 months post the closure of Lloyds and the 9 months since the closure of Boots, the ICB has not received any concerns or complaints from people who have not been able to access pharmaceutical services from other community pharmacies.
- 4.2.19 The Appellant states *“Journeys to alternative pharmacies in Stanway are difficult due to poor bus service”* (page 5, appeals document).
- 4.2.20 On review of the bus service from Blackberry Road, Stanway to the nearest pharmacies, it shows that there is a good bus service to each of the nearest pharmacies which can be seen in the table below:

From	To:	Frequency
Blackberry Road	Boots, CO3 8RG	S2 Colchester Shuttle runs approximately every 20 minutes weekdays and approximately every half hour on Sundays
Blackberry Road	Ambrose Pharmacy	20 minute journey, running approximately

		every 12 minutes - Arriva
Blackberry Road	Prettygate Pharmacy	22 minute journey, running approximately every 12 minutes.
Blackberry Road	Boots Pharmacy, CO3 4PG	27 minutes journey, running approximately every 12 minutes.
Blackberry Road	Hutt Pharmacy	35 minutes journey, running approximately every 12 minutes

4.2.21 (information taken from Google maps)

4.2.22 It is noted that when getting off the bus at the desired location, there may be a short walk to the specific pharmacy. Whilst there may not be a bus stop directly outside the patient home or the pharmacy they are travelling to, people who use public transport will be aware of the journey and the frequency of buses.

4.2.23 Some people may choose to walk to a pharmacy. Having a longer journey on foot does not equate to the conclusion the Appellant has made that if people have to walk to a pharmacy, it is an indication that 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.

4.2.24 The Appellant then goes on to detail why it is believed the journeys to Boots Pharmacy, CO3 8RG, Ambrose Pharmacy, CO3 4LN and Marks Tey Pharmacy, CO6 1EB are unreasonable to travel to based on journey times and topography (pages 5-8, appeals document). Whilst the Appellant may be of this opinion, no evidence has been submitted to demonstrate that people living within Stanway have difficulty in obtaining pharmaceutical services for this reason.

4.2.25 Furthermore, the PNA concluded that *“Overall, across Essex, generally residents are within a relatively short travel time whichever method is chosen:*

4.2.25.1 99.9% of the Essex population could get to a pharmacy in a 20-minute drive.

4.2.25.2 95% a 20-minute public transport journey.

4.2.25.3 83% within a 20-minute walk. Residents have to travel for longer if they walk.

4.2.25.4 11% over 30-minute walk away.

4.2.25.5 Colchester residents can drive to a pharmacy within 20 minutes

4.2.25.6 Most residents can get to a pharmacy within a 20-minute journey on public transport in most districts. However, some districts see a relatively high % of their population having to travel for longer

(Braintree, Maldon, Uttlesford 20-30 minutes; Braintree, Epping Forest, Uttlesford over 30 minutes).

- 4.2.25.7 *Most residents can get to a pharmacy within 20-minute walk in most districts. Some districts however see a relatively higher % of their population that'd have to walk further (Braintree, Brentwood, Uttlesford 20-30 minutes; Braintree, Maldon, Uttlesford over 30 minutes)" (page 162, PNA).*
- 4.2.26 In addition to this, the results of the public survey included within the PNA found that *"83% of residents stated that they had a reasonable distance to travel to the pharmacy equating to less than 20 minutes, 14% had travelled between 20 and 30 minutes, and 3% had travelled between 30-45 minutes. 61% made the trip by car, and 34% had travelled on foot—only 3% used public transport and 2% a bicycle"* (page 163, PNA).
- 4.2.27 The HWB were therefore of the opinion when reviewing access and travel times that the availability of pharmaceutical services is reasonable and adequate.
- 4.2.28 The ICB also notes that the supplementary statement published by the HWB in June 2024 concluded *"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"* (Supplementary statement June 2024, page 3).
- 4.2.29 The Appellant refers to the location of the best estimate site and states that it is centrally based within Stanway and consists of a *"barber, hair and beauty salon, dry cleaner, restaurant and a convenience store which features a post office."* (page 3, appeals document).
- 4.2.30 These local amenities whilst beneficial, are not likely to cater for the entirety of residents' needs and therefore people will be travelling further afield for their shopping, leisure, education and work purposes. People are therefore able to travel to access pharmaceutical services.
- 4.2.31 Throughout the appeal document, the Appellant highlights the closure of Lloyds Pharmacy at 1 Western Approach, Stanway, as a reason for the perceived 'gap' in pharmaceutical services in the area as well as how this closure forces residents to travel further to obtain pharmaceutical services.
- 4.2.32 The Appellant seems to present conflicting statements within its appeal. The Appellant makes reference to how the closure of the Lloyds Pharmacy has forced residents to travel further. It remains unclear how the opening of a new pharmacy at Blackberry Road will alleviate the perceived gap given that the distance between the former Lloyds Pharmacy and the proposed new location is approximately 1 mile. Consequently, it cannot be deemed unreasonable for patients to travel to the pharmacies listed within Table 1 of this document as residents living on the side of Stanway where the former Lloyds pharmacy was located would still need to travel the 1-mile journey to Blackberry Road. For clarity, the map below illustrates the walking distance from the former Lloyds Pharmacy to Blackberry Road: [appendix D].
- 4.2.33 (Google maps – Map data ©2025)
- 4.2.34 Again, the ICB refers to the fact that the Essex Health and Wellbeing Board (HWB) did not articulate a gap had been identified either now or in the future

that would secure improvements or better access to necessary pharmaceutical services across the locality of Colchester when taking into account the closure.

- 4.2.35 When considering access to pharmaceutical services, it is also important to note that some people who live within the HWB are dispensing patients. The ICB recognises that not everyone is eligible to be dispensed to and that dispensing practices do not offer the same services as pharmacies. However, some people will be eligible and will choose to access pharmaceutical services in this way.
- 4.2.36 The PNA cites that *“Colchester residents also have access to dispensing doctors, pharmacies in other HWB areas and distance selling pharmacies in England”* (page 163, PNA). Table 24 within the PNA lists there are a total of 5 dispensing doctors (page 163, PNA).
- 4.2.37 When looking at the dispensing data from the 3 GP practices in Stanway (taken from NHS Website) a variety of pharmacies are being utilised including DSPs as well as a dispensing GP practice: [appendix D].
- 4.2.38 (Shape Tool, NHSBSA dispensing data September 2024)
- 4.2.39 The data shows that people are accessing a range of different pharmacies. For example, prescriptions issued from Ambrose Avenue Group Practice are being dispensed at 98 different pharmacies. These pharmacies are not always the nearest to where the patient lives or nearest to the GP practice. People can choose to access pharmaceutical services from any pharmacy, and it is evident people are exercising their right to choose.
- 4.2.40 The Appellant suggests in its appeal that the ICB failed to consider how the elderly population have difficulty in accessing pharmaceutical services. When considering the demographics of Stanway, the Census 2021 maps (see Appendix 2) [appendix D] show that 59.2% of people are aged between 16 – 64 years and only 21.3% are aged 65 years. Whilst the ICB does not dispute that there are older people in the area, the Appellant has provided no evidence to demonstrate that the elderly are unable to access pharmaceutical services.
- 4.2.41 The Appellant has cited the demographics for Stanway, indicating a population that is elderly, has poor mobility and health outcomes, and limited vehicle access according to the 2021 Census maps. It should however be noted that these maps do not specify the ages of individuals in these categories, as shown in Appendices 2. Therefore, it would be wrong to conclude that only the elderly are represented in these demographics, and there is no evidence to suggest that those fitting these criteria have difficulties accessing pharmaceutical services. The Appellant has not provided any evidence demonstrating how individuals in these categories are unable to access pharmaceutical services.
- 4.2.42 The PNA does not highlight any specific issues for those that may share a protected characteristic within the Colchester locality and states *“Whilst data on some of these protected characteristics is available and presented in this PNA, not all areas have good quality local coverage. However, for those groups not explored in detail, no specific pharmaceutical needs have been identified and all available and planned services are deemed accessible to these groups and their needs can be met by provision of necessary services”* (5.1.4.3, page 46).
- 4.2.43 In relation to the Equality Act, the 2021 Census Maps show that there is small percentage of residents that are limited from performing day to day activities due to having a disability (see Appendix 2) [appendix D]. This does not mean

they cannot access pharmaceutical services and the ICB is not aware of any patient concerns/complaints with regards to residents not being able to access pharmaceutical services. It is therefore unclear which patients or how many patients in this cohort cannot obtain their medicines or access a specific pharmaceutical service.

4.2.44 **Current Provision**

4.2.45 The ICB is always concerned to read feedback from patients who have not had a good experience when attending a community pharmacy. When the ICB are made aware of concerns, matters are dealt with by the ICB in line with the contractual framework. The ICB have not been made aware of poor service that the patients have received by way of patient complaints/concerns.

4.2.46 The Appellant has included on pages 8 and 9 of the appeal, six reviews from Google in relation to Boots Pharmacy, CO3 8RG. There was no evidence of the 2 reviews from Google where 1 star was given however the ICB have noted a 5 star review from 3 months ago.

4.2.47 Of the 4 reviews on the NHS Website, three are two stars or below and one is three stars. Whilst it is disappointing to read any negative review, reviews do need to be considered relatively and proportionately. For example, Boots does dispense more than 20,000 items per month, every month and the reviews were left over a period exceeding one year (July 2023 – September 2024). This demonstrates that there are many patients obtaining their medicines day in, day out who have no cause to raise an issue.

4.2.48 Similarly, the Appellant has included on page 10 of the appeal one review from Google in relation to Ambrose Pharmacy, CO3 4LN. This is one review which when considering Ambrose Pharmacy dispense approximately 10,769 items per month (NHSBSA dispensing data), it would not be proportionate or appropriate to grant an application on the basis of a Google review.

4.2.49 The ICB note that the Appellant has chosen to provide negative reviews from only 2 of the 5 pharmacies within a 1.5 miles radius.

4.2.50 Noting that the Appellant had referenced several reviews as part of the appeal and noting that the ICB were concerned to read some negative comments, we did undertake a wider review of social media to ascertain the extent of any feedback. It was through this review that the ICB discovered a post from Cllr Lesley Scott-Boutell on the 9 January 2025. The post advised the Stanway Residents Group that the ICB had refused the application for a new pharmacy. Cllr Lesley Scott-Boutell encouraged residents to submit letters and emails detailing examples of where people have experienced:

4.2.50.1 long queuing times,

4.2.50.2 lack of medication,

4.2.50.3 unavailability of in-store services (e.g. sore throat, cough),

4.2.50.4 difficulty accessing a pharmacy by bus,

4.2.50.5 difficulty accessing a pharmacy on foot.

4.2.51 (Source Facebook)

- 4.2.52 The ICB therefore questions the legitimacy of recent comments and suggests that NHS Resolution places little weight on this feedback. There is a difference between someone having an experience and genuinely wanting to provide feedback, to one where people are influenced to provide feedback on a pre-determined list of concerns. Concerns that would not ordinarily have been fed-back but have been communicated in response to a suggestion that if they provide negative feedback, they may get a new pharmacy.
- 4.2.53 In conclusion, the Appellant is of the opinion that PSRC “failed to properly evaluate Regulation 18 and the fundamental question within the Regulation” and that “Regulation 18 has been met through all representations”, (page 11, appeals document). The Appellant has still not included any new evidence to demonstrate that its application meets the requirement of Regulation 18.
- 4.2.54 **The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013**
- 4.2.55 **Regulation 31**
- 4.2.56 PSRC noted that the applicant had provided the best estimate address of Blackberry Road Shops, Stanway, Colchester, CO3 0RZ. The Committee further observed that if the application were granted, but the actual address differed from the provided postcode, the application would be refused.
- 4.2.57 **Paragraph 31, Schedule 2 – conditional grant of applications where the address of the premises is unknown**
- 4.2.58 The Committee noted that the application gave a best estimate for the location of the best estimate location of the pharmacy premises and therefore it was unable to determine if the application should be refused by virtue of Regulation 31.
- 4.2.59 **Regulation 18**
- 4.2.60 As the best estimate postcode is within Colchester, it was assessed against the 2022-2025 Essex PNA. The assessment concluded with the following statement:
- 4.2.61 *“No gaps in the provision of necessary pharmaceutical services have been identified in the Colchester locality*
- 4.2.62 *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 Colchester locality”* (page 171, PNA).
- 4.2.63 **Regulation 18(1)(a)**
- 4.2.64 PSRC were 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.
- 4.2.65 **Regulation 18(1)(b)**
- 4.2.66 PSRC noted the evidence within the 2022-2025 Essex PNA and took into consideration the supplementary statement. PSRC noted that the Essex HWB had not detailed any gaps.

- 4.2.67 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).
- 4.2.68 **Regulation 18(2)(a)(i) & (ii)**
- 4.2.69 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.
- 4.2.70 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.
- 4.2.71 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).
- 4.2.72 **Regulation 18(2)(b)(i)**
- 4.2.73 PSRC noted that the 2022-2025 Essex made no mention of any additional needs in the area of Colchester. It was of the view that there is reasonable choice with regards to obtaining pharmaceutical services.
- 4.2.74 PSRC noted that patients are using a wide range of established pharmacies for their pharmaceutical needs, and therefore it can be said that patients are exercising their choice and the level of choice available to patients was considered reasonable.
- 4.2.75 **Regulation 18(2)(b)(ii)**
- 4.2.76 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 PNA was published.
- 4.2.77 **Regulation 18(2)(b)(iii)**
- 4.2.78 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.
- 4.2.79 **Conclusion**
- 4.2.80 The ICB remains of the opinion that the application should be refused.
- 4.2.81 In the publication of the 2022-2025 Essex PNA, the HWB has remained of the opinion that there is no gap in the provision of pharmaceutical services in this part of its area, or indeed any part of Essex, that would require needs, improvements or better access to be identified.

- 4.2.82 We appreciate there may be some convenience in having a new pharmacy, however this is different to one conferring significant benefits. Our priority is ensuring patients can access pharmaceutical services.
- 4.2.83 The regulatory requirements to identify an unforeseen benefit not in the 2022-2025 Essex 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 2022-2025 Essex PNA was published.”

5 Observations

5.1 Healthcare Plus Consulting Ltd on behalf of the Applicant

5.1.1 “Thank you for your letter dated 21st February 2025. We note the responses made by interested parties on my client’s appeal and respond accordingly below.

5.1.1.1 There has been no dispute that the localised population are significantly more elderly; disabled; of worse health; and have poorer access to a vehicle than both Colchester and England.

5.1.1.2 There has been no dispute that there are numerous complaints about current pharmaceutical provision on social media, Google, and the NHS website.

5.1.1.3 No local contractor has provided any substantial appeal comments against our client’s application.

5.1.2 Preliminary Matter

5.1.3 From the appeals comments received from interested parties; it is notable that the East of England PSRC have provided the majority of representation objecting against our client’s application. No local contractor has provided such staunch objections.

5.1.4 We do question the appropriateness of such objections, given the PSRC are the commissioning body at ICB level. We submit that the role of the decision maker should be to evaluate applications from a neutral standpoint, and explanation for the refusal made at ICB level may have been more suitable.

5.1.5 Boots

5.1.6 Boots mention 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.

5.1.7 Essex Pharmaceutical Services Regulatory Committee (PSRC)

5.1.8 Patient Journeys

5.1.9 The PSRC has admittedly made their decision based on the notion that there were four pharmacies located within 1.3 miles of the proposed location. They have now changed the scope to include pharmacies within 1.5 miles of the proposed location, citing minimal distance between the true journey and “as the crow flies”. Whilst difference might appear minimal, an additional 0.2 miles

could be a significant consideration for patients with mobility issues. Additionally, the map provided by the ICB, labelled Appendix 1, demonstrates that most of the Pharmacies in Stanway are clustered in the east, leaving a large gap in the centre of Stanway.

- 5.1.10 The PSRC has suggested that we have presented conflicting statements, referring to patients that utilised the former Lloyds Pharmacy at 1 Western Approach. To clarify, the closure of the Lloyds Pharmacy in Sainsbury's – located near the current Boots – has created further demand and pressure on the Boots pharmacy, which has been unable to cope. Pressure has further increased on this pharmacy by the closure of the Boots Pharmacy in Fiveways. Patients living near Blackberry Road, who utilised the closed Boots in Fiveways, are now faced with more onerous journeys to access pharmaceutical provision.
- 5.1.11 The PSRC has presented a review of the bus routes available from Blackberry Road to the 5 closest pharmacies and suggested there is good bus service to each. We have addressed these trips in greater detail below. As mentioned, walking times may vary based on topography or mobility issues and therefore may be longer for some. We also note at certain times of day the bus services referred to in the table do not run, leading to much longer trips or greater walking distances.
- 5.1.12 The journey to Prettygate and Ambrose pharmacy involves taking the same bus. The bus service the PSRC has cited in their response is the Arriva 1 Shrub End bus. This service, while relatively frequent, involves walking for 0.8 miles (17-minutes) before traveling on the bus for a mere 4 minutes. This cannot be considered good bus access, especially for those with mobility issues.
- 5.1.13 Trip to Boots Pharmacy, CO3 4PG. Again, residents would utilise the Arriva 1 Shrub End bus. The bus stop is a 17 minute or 0.8-mile walk from the proposed site – clearly not representative of reasonable access or choice for those of limited mobility who are dependant on the bus.
- 5.1.14 Trip to Hutt Pharmacy - Walking time 6 minutes – two buses required & no bus shelter at the connecting bus stop meaning patients have to wait whilst exposed to the elements. Total one-way journey time equates to approximately 43 minutes. This cannot be deemed a reasonable one-way journey by bus.
- 5.1.15 As highlighted above, the bus service in Stanway is far from good. The only reasonable bus service to pharmacies in the area is to the Boots, CO3 8RG. However, this pharmacy, which dispenses c.20,000 items per month, is unable to cope with the demands placed upon it following the closure of the nearest two pharmacies. The inadequate access that this pharmacy now presents has been demonstrated in previous google reviews and is also demonstrated in the emails received further below.
- 5.1.16 The Essex PNA public survey found that “83% of residents stated that they had a reasonable distance to travel to the pharmacy equating to less than 20 minutes.” This would imply that the rest of those surveyed felt the travel time was unreasonable. We also note that 34% travelled by foot. The survey indicates that many patients choose to walk to access pharmaceutical provision in the Essex area, meaning greater weight should be placed on pharmacies in Essex being within reasonable walking distances.
- 5.1.17 For residents that do own private vehicles, parking at many pharmacies in the area has been described as difficult or outright impossible to find a times. This is evidenced by emails received from local residents below.

5.1.18 **Demographics**

5.1.19 The PSRC have provided a number of statistics in relation to the wider population. However, have simply ignored the greater health needs of the localised population. We previously highlighted the disproportionate number of elderly persons; disabled persons; persons of worse health; and persons with poor access to a vehicle in our original appeal. We also highlighted the statistics which made for significantly worse reading than Colchester and England averages.

5.1.20 The PSRC uses data from dispensing GP practices to propose that people are exercising their right to choice by traveling to any pharmacy. We submit that only those who are mobile and those who have access to a vehicle are exercising this choice. The data shows that from the three GP Practices, the Boots in Stanway either has the highest or second highest capture rate. Given the poor service levels previously highlighted at this pharmacy, we submit that this demonstrates that a number of patients are unable to exercise choice to a pharmacy and are forced to utilise the Boots Pharmacy. This is not representative of 'reasonable choice' to a pharmacy and can be interpreted as no choice at all.

5.1.21 The PSRC also state that only 21.3% of Stanway residents are over the age of 65, however this figure is still higher than the average for England and Colchester, 18.30% and 17.80% respectively.

5.1.22 There is also sheltered retirement accommodation located at 44-78 Holly Road, Stanway, CO3 0RS, which houses some of the most vulnerable individuals and located only 0.1m away from our clients proposed site.

5.1.23 **Population growth**

5.1.24 We also note that the local population is growing with a number of new housing developments situated near the proposed site:

5.1.25 **Grange Paddocks Development**

5.1.26 Postcode: CO3 8LR (1.4 Miles from proposed site)

5.1.27 Number of Homes: 450

5.1.28 Builder: Persimmon Homes

5.1.29 **Viridis Development**

5.1.30 Postcode: CO3 8LT (1.5 Miles from proposed site)

5.1.31 Number of Homes: 600

5.1.32 Builder: Weston Homes

5.1.33 **Stanway Green Development**

5.1.34 Postcode: CO3 0QR (0.2 Miles from proposed site)

5.1.35 Number of Homes: 420

5.1.36 Builder: Mersea Homes

- 5.1.37 As evidenced above these developments would create an additional c.1,500 homes in the area. In the UK the average amount of persons per new home is 2.5. Extrapolating these figures gives us
- 5.1.38 c.3,750 new residents that will be reliant on Pharmaceutical provision in Stanway.
- 5.1.39 **Deliveries**
- 5.1.40 Whilst we appreciate that Distance Selling Pharmacies 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 Pharmacy2U, 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.
- 5.1.41 Whilst noted that the pharmacies referenced in the PSRC letter offer prescription delivery services. It was correctly recognised that pharmacies can change or withdraw these services at any time and therefore we submit that no weight should be placed on these services to provide adequate choice of pharmaceutical provision.
- 5.1.42 **Current Service Provision**
- 5.1.43 The PSRC said they were concerned with negative comments from residents of the Stanway area, however in the same breath they appear to dismiss the severity and authenticity of these reviews.
- 5.1.44 We provided a number of negative reviews from the two closest pharmacies to our clients proposed location on the basis that these would be the most likely for residents living near to the proposed location to utilise.
- 5.1.45 We are unsure what the PSRC are referring to when they mention there is no evidence of the two 1 star reviews from google as a screenshot of both reviews was provided in our appeal document and both still exist online. We note that one of these reviews is also from within the last 3 months, indicating these issues are ongoing.
- 5.1.46 We submit that many patients are not aware of the ICB complaints procedure and will therefore utilise familiar methods of complaints such as posting Google reviews to share their concern. It is of particular note that 4 particularly poor reviews were left on the NHS website for the remaining Boots in Stanway. In our experience as a consultancy practice, it is highly unusual to see even one review for any particular pharmacy on NHS Choices. So, the fact that Boots has received 4 strongly negative reviews is indicative of the dire situation that patients currently face.
- 5.1.47 To further highlight to the Committee the issues faced by local residents in accessing pharmaceutical services, my client collaborated with Cllr L S-B via a call-to-action Facebook post encouraging residents to write in regarding their personal experiences of local pharmacy provision. It is of note that residents

were not forced to write in and produced written emails of their own accord. Examples of difficulties they may have faced were given as not all, particularly regular pharmacy users, are able to articulate their thoughts well in written form. We strongly dispute the statement from the PSRC questioning the legitimacy of these letters, as ultimately these are lived experiences that were written by people in their own time and in their own words.

5.1.48 It is concerning that the PSRC, as a local body, are so quick to dismiss concerns raised by constituents – especially when they bemoan the ‘lack of evidence’ cited throughout their appeal correspondence.

5.1.49 We have attached these emails [appendix E] as evidence of issues faced by local residents with pharmacy provision. These should be read in conjunction with the poor google and NHS reviews received by local pharmacies – especially Boots. A few emails have been analysed below, but the volume and dates of the emails received indicates these issues are ongoing and a regular occurrence for residents of Stanway. The emails have been redacted for privacy reasons, however, we can provide unredacted versions confidentially, should NHS Resolution require these.

5.1.50 Long Queues in the Boots/alternative pharmacies

5.1.51 Many of the emails have expressed facing long queues at many pharmacies in the area, leading to negative impacts in individual health outcomes for patients.

5.1.52 *“I believe that a new pharmacy is needed in the Stanway area due to the fact that it is an ever growing population, new housing is currently being built, myself and my husband are 71 and 73, I am diabetic with thyroid problems and have mobility issues and my husband has heart failure. The queues to pick up prescriptions or see the pharmacist are horrendous.”* (Email 20)

5.1.53 The above patients describe having multiple protected characteristics and the negative experiences they are having with current pharmaceutical provision labelling it “horrendous”.

5.1.54 *“I’ve had to queue in Boots for up to 3/4 of an hour to get my prescription. It’s not good when you have painful knees and hyperhidrosis. So normally end up leaving and having to go back again.”* (Email 16)

5.1.55 The above patient is expressing that they have waited for 45 minutes to collect their prescription. Patients in Stanway are repeatedly waiting over 30 minutes indicates the current pharmacies are struggling to cope with demand.

5.1.56 *“As someone on immuno-suppressants, I rely on a consistent and timely supply of medication to manage m(y) condition. However, the current pharmacy provision in Stanway, particularly the Boots pharmacy, is insufficient for the needs of our growing population. This has resulted in long wait times, reduced availability of medication, and challenges in accessing services, especially during busy periods. As a full-time employee, I face additional difficulties due to limited pharmacy hours and overcrowding. I cannot afford the risk of delayed medication, which could have serious health implications for me. Older residents, parents with young children, and those with mobility issues are undoubtedly facing even greater challenges.”* (Email 28)

5.1.57 The above patient identifies how strained the existing pharmacies in Stanway are, leading to long wait times and overcrowding. They go on to explain how

important timely access to their medication is and express that the Boots is insufficient for the reliant population.

5.1.58 Physical access of current provision

5.1.59 A number of residents talk about the difficulty in walking to current pharmaceutical provision due to the distance involved in their journeys. Other residents who have opted to drive to access pharmaceutical services due to the long walking journey have cited poor parking at current pharmacies in Stanway, making access difficult.

5.1.60 *"There Is now no pharmacy within walking distance so we have to get in the car to get our regular monthly prescriptions When we drive to the pharmacy at Boots Tollgate there is always a long queue and it has got much worse recently with the Tollgate housing development. We have tried Plume Avenue pharmacy but there is never any parking available there."* (Email 9)

5.1.61 Above a resident highlights the poor parking availability at alternative pharmacies and the lack of pharmacies within walking distance.

5.1.62 *"Now this (Boots) has closed as well as the Lloyd Pharmacy in Sainsbury's, we are having to use the Plume Avenue Pharmacy, a ten minute drive in Prettygate which has only parking for a few cars. Trying to park there most times of the day is impossible and very often the queue is out of the door..."* (Email 12)

5.1.63 The above email demonstrates that even residents of Stanway that own cars are having difficulty accessing pharmacies in the area due to limited parking. The resident even highlights the busy nature of alternative pharmacies with queues being outside the door.

5.1.64 *"I live on Stanway Green and we have no pharmacy anywhere close to walking distance for most people. Since our pharmacy at Coop Fiveways closed down we've had to move to Prettygate which is a 30 minute walk away".* (Email 22)

5.1.65 This patient now has a 30-minute one-way walk to access pharmacies in the area after the Boots at CO3 4PG closed.

5.1.66 Growth of Local population

5.1.67 Many residents of Stanway have expressed concerns with a growing reliant population due to additional housing being built in the area. Emails correctly highlight the issue with current pharmaceutical provision being overwhelmed by this increase in population, which is leading to further issues presented in the emails below.

5.1.68 *"The need for a new pharmacy in this location would be an asset to Stanway, especially with a further new housing estate of 450 plus homes being built at the end of the road".* (Email 42)

5.1.69 This resident is referring to the Stanway Green development that is being built within 0.2 miles of our clients proposed location.

5.1.70 *"Collecting prescriptions is now something we consider a real burden. The queue for people waiting to collect prescriptions at Boots Tollgate is always long, as far more people now have no choice but to use this particular Boots branch. The volume of customers will obviously increase with the further imminent housing developments".* (Email 8)

- 5.1.71 *"This area has seen an unprecedented amount of new housing which has added pressure to all services in the area, but particularly to pharmacies since the closing of pharmacies in Sainsbury's and the Boots Chemist in the Fiveways Co-Op supermarket. I am in my late 70's and now have to pick my prescription up from Ambrose Avenue, a more difficult journey for me than the convenience of a chemist in Blackberry Road would offer me". (Email 40)*
- 5.1.72 The above email illustrates the that the journey to Ambrose pharmacy is more difficult for patients in Stanway that used to utilise the recently closed boots Chemist.
- 5.1.73 We urge the committee to read each email and lived experience in detail.
- 5.1.74 We submit that the attached emails provide further evidence that pharmaceutical provision in Stanway is not providing reasonable choice and sufficient access for local residents, including those with protected characteristics.
- 5.1.75 Conclusion
- 5.1.76 We maintain that granting our client's application would secure better access and improvements to pharmaceutical services in Stanway and the surrounding areas.
- 5.1.77 Our client's application intends to meet the needs of Stanway's high elderly and vulnerable population by introducing more pharmaceutical provision within Stanway.
- 5.1.78 We emphasise that our client's proposed site is located close to sheltered accommodation and we submit this is an appropriate location for a new pharmacy due to the number of new homes being built in close proximity.
- 5.1.79 A pharmacy at my client's proposed site would not only improve physical access to pharmacy provision, but it would also relieve the clear pressures on other Pharmacies in the area, which as evidenced by complaints and emails from the Stanway community, are struggling to meet demand.
- 5.1.80 We submit that regulation 18 has been met through all representation and thus we invite the Committee to grant our client's application."

6 Further comments

In the interests of transparency and fairness, NHS Resolution sought to rely on the discretion afforded in paragraph 7 of Schedule 3 of the Regulations to vary the normal procedures and seek observations on the information submitted by Healthcare Plus Consulting Ltd on behalf of the Applicant.

6.1 The Commissioner

- 6.1.1 "Thank you for your letter dated 7 March 2025. We note the response submitted by Healthcare Plus Consulting on behalf of Aproste Ltd (Appellant) and wish to make the following observations on their representations. For ease, we respond under each heading as they appear in the Appellant's letter dated 2 March 2025.

6.1.2 Preliminary Matter

- 6.1.3 The Appellant notes that the majority of representations received were from the Pharmaceutical Services Regulations Committee (PSRC) objecting to the application. (Appellant observation letter, page 1).
- 6.1.4 The PSRC is hosted by Herts and West Essex Integrated Care Board (ICB) on behalf of all ICBs in the East of England. All ICBs within the East of England are in attendance. The role of PSRC is to assess applications presented in line with the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended (the Regulations) and determine whether that application has met the regulatory requirements, or not.
- 6.1.5 The PSRC refused this application because in its view, the application did not meet the regulatory requirements. When submitting representations, the ICB will try to demonstrate and provide information to show why the decision to refuse the application was made. Representations are always likely to appear “in opposition” to the Appellant who we appreciate, would want an application granted.
- 6.1.6 **Patient Journeys**
- 6.1.7 The Appellant states “The PSRC has admittedly made their decision based on the notion that there were four pharmacies located within 1.3 miles of the proposed location. They have now changed the scope to include pharmacies within 1.5 miles of the proposed location, citing minimal distance between the true journey and ‘as the crow flies.’ Whilst difference might appear minimal, an additional 0.2 miles could be a significant consideration for patients with mobility issues.” (observation letter, page 2).
- 6.1.8 To confirm, the committee report makes reference to 1.3 miles and includes all pharmacies that are within 1.5 miles of the Appellant’s best estimate – see Appendix 1 (this document was originally embedded in the committee report) [appendix A].
- 6.1.9 When considering access and patient journeys, the ICB recognises that 0.2 miles could be significant for the people with mobility issues however no evidence or specific information has been included about the numbers or people with mobility issues and the pharmaceutical services they need that they cannot access or are having difficulty in accessing.
- 6.1.10 The Appellant details the bus journey in detail to each of the 5 nearest pharmacies (observation letter, page 2-3). As stated in our previous representation, it is noted that when getting off the bus at the desired location, there may be a short walk to the specific pharmacy. Whilst there may not be a bus stop directly outside the patient home or the pharmacy they are travelling to, people who use public transport will be aware of the journey and the frequency of buses.
- 6.1.11 Some people may choose to walk to a pharmacy. Having a longer journey on foot does not equate to the conclusion the Appellant has made that if people have to walk to a pharmacy, it is an indication that 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.
- 6.1.12 The Appellant has observed that 83% of residents across Essex stated that they had a reasonable journey to a pharmacy. The Appellant has concluded that this would indicate that 17% were not of this opinion. Whilst the ICB does

not disagree with this indication, it should be noted that this 17% is across Essex HWB, not localised to Stanway.

6.1.13 The Appellant states “the map provided by the ICB, labelled Appendix 1 (in the representation submitted in February) demonstrates that most of the Pharmacies in Stanway are clustered in the east, leaving a large gap in the centre of Stanway.” (Observation letter, page 2).

6.1.14 When an Unforeseen Benefits application is considered, the Pharmaceutical Needs Assessment (PNA) for the relevant Health and Wellbeing Board (HWB) area is considered. Published PNAs generally categorise towns and villages into localities and for the purpose of this application the PNA has determined the town of Stanway is included within the Colchester locality, hence the inclusion of the map. The map shows where the pharmacies are located however the test for the PSRC is not choice and access within Colchester or Stanway but choice and access across the HWB.

6.1.15 **Demographics**

6.1.16 The Appellant states “The PSRC have provided a number of statistics in relation to the wider population. However, have simply ignored the greater health needs of the localised population.” (observation letter, page 3).

6.1.17 This is in relation to the elderly population. To confirm the ICB do not dispute there are elderly people living in Stanway and these residents may have age-related or other protected characteristics. At the time PSRC made its decision, there was little or no specific information included about them and the pharmaceutical services they need that they cannot access or are having difficulty in accessing.

6.1.18 The ICB does note that enclosed with the Appellant’s observation letter are emails from people advocating for a new pharmacy and sharing their experiences of current pharmaceutical provision. These emails were sent from January 2025, following the refusal of the application and were not available to PSRC when it made its decision. The ICB acknowledges that some of these emails report negative experiences and we will be following up with Boots via the usual contractual management routes available to the ICB.

6.1.19 **Population Growth**

6.1.20 The Appellant has included a brief outline of three new housing developments to demonstrate the population growth situated near the best estimate location. (Observation letter, page 4). Only one of three new housing developments has been built:

6.1.20.1 Viridis Development – has received outline planning consent but construction work has not started.

6.1.20.2 Stanway Green Development – is still in progress.

6.1.21 PSRC can only make decisions based on the situation as it is on the day the decision was made. It cannot make decisions based on future housing developments that may not come to fruition. Whilst one housing development may increase the population, this does not equate to the need for a new pharmacy.

6.1.22 Furthermore, as set out in our previous representation, the Essex PNA does take into account population growth and housing development and drew the conclusion that there was still adequate provision of pharmaceutical services.

6.1.23 Deliveries

6.1.24 The Appellant refers to Distance Selling Pharmacies (DSP) on page 4 of its observation letter. The Appellant says that “there will be a number of residents who are unable to navigate the barrier that is the internet.”. The ICB acknowledges that there may be people who do not wish to use the internet and this cohort of patients are unlikely to use a DSP. They will access one of the many “bricks and mortar” pharmacies in the HWB (or outside it).

6.1.25 Some residents will prefer to choose this type of pharmaceutical service due to the practicality of accessing the service by post and phone without physically having to make a journey. As DSPs do provide pharmaceutical services they should not be excluded entirely when considering reasonable choice within a HWB.

6.1.26 Current Service Provision

6.1.27 The Appellant states “The PSRC said they were concerned with negative comments from residents of the Stanway area, however in the same breath they appear to dismiss the severity and authenticity of these reviews.” (observation letter, page 5).

6.1.28 The ICB is always concerned to hear of negative experiences from patients. The ICB’s original representations reflected on both negative and positive experiences. NHS Resolution will note the ICB’s comments above regarding the emails shared following the decision made by PSRC and also our next steps now we are aware of these issues in addressing these matters with the current contractor.

6.1.29 The Appellant refers to “We submit that many patients are not aware of the ICB complaints procedure.” (Observation letter, page 5). The ICB notes this is an assumption. The PSRC noted that there were no complaints received when it made its decision. The ICB cannot verify whether this is because patients did not know how to complain or did not want to complain.

6.1.30 Conclusion

6.1.31 For this Unforeseen Benefits application, the test is whether or not those living in Stanway have reasonable choice within the Essex HWB not just the town of Stanway. It is evident that patient choice is facilitated by the five pharmacies with 1.5 miles of the best estimate postcode.

6.1.32 Regrettably, it is not sufficient to grant this type of application on the grounds of:

6.1.32.1 Difficulties accessing on foot – this does not indicate that there is not a reasonable choice.

6.1.32.2 Difficulties in parking – this does not indicate that there is not a reasonable choice.

6.1.32.3 Long queues – this does not indicate that there is not a reasonable choice.

6.1.32.4 The closure of a pharmacy does not automatically mean that there is a need for a pharmacy to open in its place.

6.1.32.5 Elderly population figure higher than the national average – does not indicate that there is not a reasonable choice.

6.1.33 The Appellant focuses on the closure of the Lloyds pharmacy in Sainsburys and the Boots pharmacy in Stanway as the foundation of the application as it is felt the closures have impacted on the Boots Pharmacy within Tollgate West. Since those closures, the Essex HWB have issued supplementary statements to the PNA and not identified any gap in provision of pharmaceutical services in the locality.

6.1.34 Therefore, PSRC were of the view that there was no information provided to support a finding that pharmaceutical services are not currently provided at such times as needed and therefore it was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits.”

7 Consideration

7.1 The Pharmacy Appeals Committee (“the Committee”), appointed by NHS Resolution, had before it the papers considered by the Commissioner, together with a plan of the area showing existing pharmacies and doctors’ surgeries and the location of the proposed pharmacy.

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

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

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

Regulation 31

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

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

(2) This paragraph applies where -

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

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

(ii) adjacent premises; and

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

7.6 In response to the question in the application form, the Committee noted that the Applicant stated “N/A. There is 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. On the basis of the information before it, the Committee was not required to refuse the application under the provisions of Regulation 31.

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

Regulation 18

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

"(1) If—

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

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

(2) Those matters are—

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

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

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

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

7.9 The Committee considered that Regulation 18(1)(a) was satisfied in that it was required to determine whether it was satisfied that granting the application, or granting it in respect of some only of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB.

7.10 The Committee went on to consider whether Regulation 18(1)(b) was satisfied, i.e. whether the improvements or better access that would be secured if the application

was granted were or was included in the Pharmaceutical Needs Assessment ("the PNA") in accordance with paragraph 4 of Schedule 1 of the Regulations.

- 7.11 Paragraph 4 of Schedule 1 requires the PNA to include: "a statement of the pharmaceutical services that the HWB had identified (if it has) as services that are not provided in the area of the HWB but which the HWB is satisfied (a) **would** if they were provided....secure improvements or better access, to pharmaceutical services... (b) **would** if in specified future circumstances they were provided...secure future improvements or better access to pharmaceutical services..." (emphasis added).
- 7.12 The Committee considered the PNA prepared by 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.
- 7.13 The Committee had regard to the PNA and noted the following from the conclusion section:
- 7.13.1 "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..."
- 7.13.2 "...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.
- 7.13.3 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.
- 7.13.4 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.
- 7.13.5 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.
- 7.13.6 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.
- 7.13.7 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.
- 7.13.8 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.

7.13.9 *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.*

7.13.10 *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."*

7.14 The Committee noted that the Supplementary Statement dated June 2024 for the Colchester locality references both the closure of the Lloyds Pharmacy and the Boots pharmacy in Stanway 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"*.

7.15 The Committee noted that the Applicant seeks to provide unforeseen benefits to the patients of Stanway, Colchester. The Committee noted that the improvements or better access that the Applicant was claiming would be secured by its application were not included in the relevant PNA in accordance with paragraph 4 of Schedule 1.

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

Regulation 18(2)(a)(i)

7.17 The Committee had regard to

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

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

7.18 The Committee noted 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.

7.19 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.

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

Regulation 18(2)(a)(ii)

7.21 The Committee had regard to

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

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

- 7.22 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.
- 7.23 The Committee was therefore not satisfied that significant detriment to the arrangements currently in place for the provision of pharmaceutical services would result from a grant of the application.
- 7.24 In the absence of any significant detriment as described in Regulation 18(2)(a), the Committee was not obliged to refuse the application and went on to consider Regulation 18(2)(b).

Regulation 18(2)(b)

- 7.25 The Committee had regard to

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

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

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

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

- 7.26 The Committee noted the application was prompted by the closure of two pharmacies, namely Lloyds Pharmacy and Boots Pharmacy which, according to the Supplementary Statement, occurred in April 2023 and March 2024 respectively. The Applicant states that the closures have *"have left a significant gap in pharmaceutical services within Stanway"*. However the Committee was mindful that the closure of one or more pharmacies does not automatically mean that there is a need for a pharmacy to open in their place.
- 7.27 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 is in close proximity to the location of the former Boots pharmacy. The Committee also noted the Commissioner's comment that *"the distance between the former Lloyds Pharmacy and the proposed new location is approximately 1 mile."*

- 7.28 The Applicant states that *“the proposed location is centrally based in the Stanway area and nestled amongst a number of community shops. The amenities available on the parade consist of a Barber, Hair and Beauty Salon, Dry cleaner, Restaurants, and a Convenience Store featuring a Post Office”*. The Committee also had regard to the site images provided by the Applicant indicating the shops on the parade. 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 including pharmaceutical services.
- 7.29 The Committee noted from the information provided by the Applicant in its appeal that *“2021 Census data indicates that c.10,500 residents live in the Stanway Ward and adjacent LSOAs that would likely access pharmaceutical services at the proposed site”*, which the Committee noted is higher than the figure quoted in its application. The Committee considered that figures based on the Ward were generally too broad to be able to identify the patient size. The Committee further noted that the Applicant’s comment that *“We also note that the local population is growing with a number of new housing developments situated near the proposed site”*. The Committee had regard to the information provided by the Applicant in relation to the Grange Paddocks, Viridis and Stanway Green developments and its comment that *“As evidenced above these developments would create an additional c.1,500 homes in the area. In the UK the average amount of persons per new home is 2.5. Extrapolating these figures gives us c.3,750 new residents that will be reliant on Pharmaceutical provision in Stanway.”* The Committee also noted the comments from the local residents on this topic contained within the emails of support. From the information provided by the Applicant, it was unclear to the Committee what stage these developments were at but the Committee noted the comments from the Commissioner that *“Only one of three new housing developments has been built: Viridis Development – has received outline planning consent but construction work has not started. Stanway Green Development – is still in progress.”* The Committee was mindful that an associated increase in population, does not automatically lead to the requirement to grant an application. The Committee went on to consider access to the existing pharmacies.
- 7.30 The Committee noted from the Commissioner’s decision report that there are five pharmacies within 1.5 miles of the proposed location, namely Boots (Tollgate West), Ambrose Pharmacy, Prettygate Pharmacy, Boots (Plume Avenue) and Hutt Pharmacy. The Committee noted the Applicant’s comment that *“The PSRC has admittedly made their decision based on the notion that there were four pharmacies located within 1.3 miles of the proposed location. They have now changed the scope to include pharmacies within 1.5 miles of the proposed location”*. However the Committee noted that the document titled “Nearest Pharmacies – Aproste Ltd” contained within the decision report refers to the five pharmacies, which the Commissioner had also commented on. In any event, the Committee did not consider this to be a material point. The Committee noted the Applicant’s comment that these distances are correct *“as the crow flies”* but do not reflect the actual journey distance. It was unclear to the Committee why the distances provided by the Commissioner vary from the information contained in the “Nearest Pharmacies” document to those contained in its representations as well as those provided by the Applicant, however the Committee considered that the likely reason is due to the proposed location being a best estimate address and some distances not reflecting the actual journey required, as indicated by the Applicant.
- 7.31 Furthermore, the Applicant provided information on Marks Tey Pharmacy which the Committee noted is 2.8 miles or a 63 minute walk from the proposed site. As a result of the distance, the Committee was of the view that it is unlikely that anyone would access this pharmacy on foot. Therefore, the Committee proceeded to consider access to the nearer existing pharmacies on foot.

- 7.32 There is no dispute that the nearest pharmacy is Boots (Tollgate West) at 0.7 to 0.8 miles away and takes 17 to 18 minutes to walk. Prettygate and Ambrose Pharmacy are at similar distances away, 1.1 and 1.2 miles respectively and walking times of 23 and 26 minutes. The Committee did note the Applicant's comment that *"Ambrose Pharmacy is the next closest pharmacy after the Boots Pharmacy"* which isn't in line with the distances outlined by the Commissioner however the Committee considered that the likely reason is as a result of the best estimate address. Boots (Plume Avenue) and Hutt Pharmacy are both 1.5 miles away with walking times of 34 and 35 minutes respectively. The Committee noted the Applicant's comment that *"Journeys to alternative pharmacies in Stanway are difficult due to...the condition of local footpaths, and limited crossing infrastructure along the routes."* The Committee noted the differing view of the Commissioner in its decision report when it considered access to Boots (Tollgate West) in that it described the access as *"along flat terrain with pavement access the whole way"*. The Applicant has addressed this point further by stating that *"upon further analysis of the journey on foot we have found in many places patients must cross the road many times at uncontrolled crosswalks by busy roundabouts. This is due to the pavement ending on one side of Tollgate Road. The route also features many obstructions and sections of narrow pavement. We submit that having to cross this many times at uncontrolled crosswalks whilst also navigating obstructions to access pharmaceutical provision does not represent good access"*.
- 7.33 The Committee also had regard to the image by the Applicant which, in the Applicant's view, *"depic[ts] an uncontrolled crossing with obstruction to pavement"*. The Committee noted the one picture was of a mini roundabout and that it did not provide a clear view of the actual location it was taken nor of the pavements which made it difficult for the Committee to be persuaded by the Applicant's view. Furthermore, the Committee noted that none of the emails in support of the application highlight difficulties in accessing Boots (Tollgate West) or any of the existing pharmaceutical provision on foot as a result of the routes involved. With that said, the Committee did note some of the emails indicate that residents cannot access a pharmacy on foot due to the distance involved, therefore, the Committee proceeded to consider access by other means.
- 7.34 The Committee noted the Applicant's comment that *"Journeys to alternative pharmacies in Stanway are difficult due to poor bus service"*. The Committee had regard to the differing views of the Applicant and the Commissioner on the provision of bus services in the area. The Committee noted that there is no dispute that buses stop on Blackberry Road and that there are bus routes to access the five nearest existing pharmacies. The Committee noted it would take between 20 and 35 minutes to access Ambrose Pharmacy, Prettygate Pharmacy, Boots (Plume Avenue) and Hutt Pharmacy. The Committee noted the Applicant's response to the information provided by the Commissioner that *"The journey to Prettygate and Ambrose pharmacy involves taking the same bus...This service, while relatively frequent, involves walking for 0.8 miles (17-minutes) before traveling on the bus for a mere 4 minutes"* which indicated to the Committee that the journey lengths provided by the Commissioner included the walking times and the journey on the bus but this wasn't clear. The Committee also noted the contradiction between this statement and the following statement provided by the Applicant in its appeal *"There is no direct bus route between the proposed site and Ambrose Pharmacy"*. The Committee further noted the Applicant's comments with regard to Boots (Plume Avenue) and Hutt Pharmacy and that for Hutt Pharmacy a *"one-way journey time equates to approximately 43 minutes"*, which is a different length to that outlined by the Commissioner. It was unclear to the Committee why the bus journey length for Boots (Tollgate West) had not been provided by the Commissioner. However the Committee noted the Applicant's comment that *"The only reasonable bus service to pharmacies in the area is to the Boots, CO3 8RG"* but the Committee observed that the Applicant appears to contradict this statement when referring to the same pharmacy by saying *"The journey to Boots Pharmacy is not well-served by public transport. The trip by bus can take 16 minutes, with patients boarding the S2 bus at Holly Rd before having to walk a further 12 minutes to the Boots Pharmacy...The S2 bus service can*

also be infrequent, arriving every 30 minutes." The Committee observed the difference in frequency of this service compared with the information provided by the Commissioner and noted that this had not been commented on. Overall, the Committee noted the frequency of each service and considered the services to be regular, which was supported by the comment from the local resident contained within an email of support that *"the bus service is quite frequent"*.

- 7.35 The Committee appreciated that a walk in excess of a few minutes to access a bus stop may not be desirable for some however the Committee was mindful that for those who use public transport, would be aware of the services. The Committee noted the Applicant's comments in relation to access by bus to Marks Tey Pharmacy and was mindful that it would be unlikely for patients to access this pharmacy by bus, however it did note the positive reflections from the local residents in the emails of support which indicated to the Committee that they are able to access this pharmacy but it was unclear by which mode of transport. Overall, the Committee found it difficult to assess the extent to which patients were using public transport and noted that none of the residents who had submitted the emails in support of the application had demonstrated or commented upon having difficulties accessing the existing pharmaceutical provision as a result of the public transport provision in the area.
- 7.36 In considering access by private transport, the Committee noted the Applicant's comment that *"25.7% of residents in the Colchester 012C LSOA do not have access to a vehicle. This figure is significant when compared to Colchester local authority and national averages (18.2% and 23.5% respectively)"*. However the Committee noted the figure provided by the Commissioner which was in relation to the MSOA of Stanway which highlighted a much lower figure in that *"14.4% of households in Stanway MSOA have no cars or vans"* and therefore, *"85.6% of households in Stanway MSOA have 1 or more cars or vans"*, which the Committee noted was above the national average figure provided by the Applicant. The Committee had regard to the journey lengths outlined by the Commissioner, which had not been disputed by the Applicant, that highlight that it would take between three and six minutes to access the existing nearest pharmacies by car, which the Committee did not consider unreasonable. The Committee had regard to the small number of comments contained within the emails of support in relation to parking at Boots (Plume Avenue). Whilst the Committee appreciated the comments from these residents, the number of comments was low, and therefore the Committee did not consider this to be representative of the population as a whole. Further, there was no indication to suggest that parking was a problem at the other existing pharmacies which are in a close proximity to Boots (Plume Avenue). The Committee was therefore not persuaded that those with access to private transport as a whole are experiencing any difficulties.
- 7.37 The Committee noted the comment from the Commissioner that patients can also access pharmaceutical services by way of distance selling pharmacies and the Applicant's response to this point. The Committee considered that a distance selling pharmacy is required to provide pharmaceutical services to patients on a non-face to face basis. A distance selling pharmacy therefore provides a type of access to pharmaceutical services and cannot be discounted when considering access to pharmaceutical services. The Committee felt that, on one hand, it was reasonable to consider that some people are likely to view a distance selling pharmacy as less accessible than a traditional "walk in" pharmacy because patients cannot simply walk in and have a prescription dispensed or obtain advice immediately. The Committee also acknowledged that, on the other hand, it could be considered that distance selling pharmacies are more accessible due to patients being able to access services by post, phone or electronic communication without having to physically make the journey to a "walk in" pharmacy. While the type of access to pharmaceutical services provided by distance selling pharmacies will benefit some persons, the Committee also felt it was reasonable to consider that some persons do not access pharmaceutical services via distance selling pharmacies because they prefer face to face contact.

- 7.38 The Committee noted the comment from the Applicant that it had collaborated with the local Ward Councillor for Stanway *“via a call-to-action Facebook post encouraging residents to write in regarding their personal experiences of local pharmacy provision”*. The Committee had regard to the emails as provided by the Applicant, which referred to long queues, waiting times and occasional medicine shortages along with the problems that patients are facing in receiving medication in a timely fashion. The Committee noted that the comments appear to centralise around the Boots (Tollgate West) pharmacy, with a small number in relation to the Boots (Plume Avenue) pharmacy. The Committee was of the view that waiting times and general performance issues should not be the only reason that a new pharmacy is granted. It is the Commissioner’s role to act on reports of negative service, which the Committee noted the Commissioner had confirmed it would *“be following up with Boots via the usual contractual management routes”*. The Committee considered that performance issues should not be a reason to completely discount the existence of a pharmacy when considering whether there is reasonable choice, but that continued ongoing problems and complaints will affect an individual’s decision whether to make the journey to that pharmacy. The emails in support of the application demonstrated that patients were able to access the two Boots pharmacies but the difficulties as outlined above make it a less than a positive patient experience. However, the Committee considered that patients had not indicated difficulties in accessing services elsewhere and noted the positive comments in relation to Marks Tey Pharmacy. Further the Committee was mindful that the availability of medication is an issue that is unfortunately affecting all pharmaceutical providers currently. Moreover, despite the assurance from the Applicant that *“residents were not forced to write in and produced written emails of their own accord”*, the Committee was conscious that the Applicant had stated that the Facebook post *“encourage[ed] residents to write in regarding their personal experiences”*. The Commissioner had commented that it had *“discovered”* this post which *“encouraged residents to submit letters and emails detailing examples of where people have experienced long queuing times, lack of medication, unavailability of in-store services (e.g. sore throat, cough), difficulty accessing a pharmacy by bus, and difficulty accessing a pharmacy on foot.”* The Committee also noted the Commissioner’s concerns regarding the *“legitimacy”* of the comments and further that *“There is a difference between someone having an experience and genuinely wanting to provide feedback, to one where people are influenced to provide feedback on a pre-determined list of concerns”*. It was therefore apparent to the Committee that whilst the residents had been encouraged to submit emails of support in relation to particular topics, patients had a free will to respond and the matters raised were a relevant factor which the Committee would consider as part of its consideration of reasonable choice.
- 7.39 The Committee had regard to the Google reviews provided by the Applicant in relation to Boots (Tollgate West) and Ambrose Pharmacy. The Committee noted that the concerns are similar to those raised in the emails of support, which the Committee has addressed above. The Committee further noted the comments in relation to the pharmacies being closed at times they should be open. The reasons for such closures were unknown and the Committee considered that this was a matter for the Commissioner to address. In relation to the reviews as a whole, whilst sympathising with the comments made, the Committee noted the small sample provided and was of the view that it must have regard to the area as a whole. Furthermore, it was mindful that the Commissioner had advised that it has not received any complaints following the closure of the two pharmacies in the area and that *“There was no evidence of the 2 reviews from Google where 1 star was given however the ICB have noted a 5 star review from 3 months ago”*. The Committee also noted the Applicant’s response that *“both [reviews] still exist online”*.
- 7.40 The Committee had regard to the comments from the Applicant regarding the number of items that Boots (Tollgate West) dispenses a month. Whilst the Committee noted the high number of items it dispenses, it was mindful that the provision of pharmaceutical services is greater than the dispensing of prescriptions alone.

- 7.41 The Committee was mindful that there will be some patients who have lost pharmaceutical provision that was conveniently located to them, and can now no longer walk to their nearest pharmacy. However the Committee must have regard to the entire demographic in the area, access to current pharmaceutical services and consider whether services provided from the proposed site would be a significant benefit in the area of the relevant HWB.
- 7.42 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.
- 7.43 The Committee was of the view that there is already reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB, such that it was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits on persons.
- 7.44 In considering Regulation 18(2)(b)(ii) the Committee reminded itself that it was required to address itself to people who share a protected characteristic under the Equality Act 2010 (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation) having access to services that meet specific needs for pharmaceutical services that, in the relevant area, are difficult for them to access. The Committee had regard to the following figures, from the 2021 census, and comments provided by the Applicant *"30.3% of residents in the Colchester 012C LSOA are over the age of 65. This is far greater than the figures for the Colchester Local authority (17.8%) and England (18.3%). 22.9% of residents in the Colchester 012C LSOA have a disability under the 2010 Equality Act. This is far greater than the figures for the Colchester Local authority (16.9%) and England (17.3%). 7.4% of residents in the Colchester 012C LSOA have bad/very bad health. This is again far greater than the figures for the Colchester Local authority (4.2%) and England (5.2%)"*. The Committee also had regard to the figure provided by the Commissioner on the Stanway MSOA which indicates a lower figure for those aged over 65 in this area, however the Committee noted this figure is higher than the national average figure provided by the Applicant.
- 7.45 Furthermore, the Committee noted the Applicant's comment that *"There is also sheltered retirement accommodation located at 44-78 Holly Road, Stanway, CO3 0RS, which houses some of the most vulnerable individuals and located only 0.1m away from our clients proposed site."* In addition, the Committee had regard to the comments from the Applicant regarding those who have protected characteristics as well as the comments from those with protected characteristics who provided emails in support of a new pharmacy. However, the Committee considered that the information regarding those who share a protected characteristic and the pharmaceutical services they needed was limited. The Committee was of the view that there was little or no evidence of specific pharmaceutical needs. The issue of access and choice as might apply to these persons was dealt with in the assessment of reasonable access discussed above and the Committee was mindful that there are always people in an area who share a protected characteristic.
- 7.46 The Committee was therefore not satisfied that, having regard to the desirability of people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that are difficult for them to access, granting the application would confer significant benefits on persons.
- 7.47 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

7.48 The Committee noted the Applicant's proposed core hours which are, 9am to 6pm Monday to Friday and 9am to 1pm on Saturday.

7.49 The Committee had regard to Schedule 4, Part 3 of the Regulations which states:

Pharmacy opening hours: general

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

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

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

7.50 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.

7.51 From the decision report, the Committee noted the opening hours provided by the nearest existing pharmacies. Boots (Tollgate West) has core opening hours from 8am to 1pm and 2pm to 9pm Monday to Saturday and 10am to 4pm on Sunday, with supplementary opening from 1pm to 2pm Monday to Saturday and 4pm to 6pm on Sunday. Ambrose Pharmacy has core opening hours from 10am to 9pm Monday to Friday, 10am to 1pm and 5pm to 9pm on Saturday and 8am to 9pm on Sunday. Prettygate Pharmacy has core opening hours from 8.45am to 12pm and 2pm to 6pm Monday to Thursday, 8.45am to 11.45am and 2pm to 6pm on Friday and 9am to 1pm on Saturday, with supplementary opening from 12pm to 2pm Monday to Thursday, 11.45am to 2pm on Friday and 1pm to 5.30pm on Saturday. Boots (Plume Avenue) has core opening hours from 8am to 1pm and 2pm to 9pm Monday to Saturday and 9am to 7pm on Sunday, with supplementary opening from 1pm to 2pm Monday to Saturday. Hutt Pharmacy has core opening hours 9am to 1pm and 2pm to 6pm Monday to Friday, with supplementary opening from 9am to 1pm on Saturday. The Committee noted that the Applicant is not proposing to open at times that are not currently offered by the other pharmacies in the area.

7.52 The Committee noted the Applicant's comment in relation to the Boots (Tollgate West) pharmacy that *"This poor service is evidenced by...the pharmacy being closed during core hours"*. The Committee had regard to the image provided in a Google review by the Applicant which depicts the opening hours for Boots (Tollgate West) as 8am to 9pm Monday to Friday and 10am to 6pm on Sunday. The Committee noted that this is in line with the opening hours outlined by the Commissioner. The Committee noted that it had addressed the comments in relation to pharmacies not being open during their contracted hours above at paragraph 7.39.

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

Other considerations

- 7.56 Having determined that Regulation 18(2)(b) had not been satisfied, the Committee did not need to have regard to Regulation 18(2)(c) to (e).
- 7.57 No deferral or refusal under Regulation 18(2)(f) was required in this case.
- 7.58 The Committee had regard to Regulation 18(2)(g) and found no reason that required it to refuse the application under this regulation.
- 7.59 The Committee considered whether there were any further factors to be taken into account and concluded that there were not.
- 7.60 The Committee was not satisfied that the information provided demonstrates that there is difficulty in accessing current pharmaceutical services such that a pharmacy at the proposed site would provide better access to pharmaceutical services.
- 7.61 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 7.61.1 confirm the Commissioner's decision;
 - 7.61.2 quash the Commissioner's decision and redetermine the application;
 - 7.61.3 quash the Commissioner's decision and, if it considers that there should be a further notification to the parties to make representations, remit the matter to the Commissioner.
- 7.62 Given its findings aligned with the Commissioner's determination, the Committee determined to confirm the decision of the Commissioner.

8 DECISION

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

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

Case Manager
Primary Care Appeals