

24 April 2025

FILE REF:

SHA/ 26456

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

Tel: 020 3928 2000
Email: nhsr.appeals@nhs.net

COMMISSIONER:

**HERTFORDSHIRE AND WEST
ESSEX ICB
("the Commissioner")**

PHARMACIST:

**DURACHEM LTD T/A BIRCH PHARMACY
("the Applicant")**

PREMISES:

**67 NORTON WAY NORTH, LETCHWORTH,
HERTFORDSHIRE, SG6 1BH**

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

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

Outcome

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

A copy of this decision is being sent to:
Durachem Ltd t/a Birch Pharmacy (FM229)
Hertfordshire and West Essex ICB

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

1 Introduction

1.1 The Applicant has applied to the Commissioner to change the days and times at which it is obliged to provide pharmaceutical services at the above premises. The Applicant seeks to keep the total number of core opening hours the same while offering a different distribution of these hours during the week.

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

Rights of appeal

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

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

Opening hours

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

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

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

Alteration of core opening hours

- 1.6 In accordance with paragraphs 1(7)(c) and 1(7)(d) of Schedule 2 of the Regulations, the pharmacy must provide, as part of an application for entry in the pharmaceutical list:
- 1.6.1 the proposed core opening hours in respect of the premises; and
- 1.6.2 the total proposed opening hours for the premises (having regard to both the proposed core opening hours and any supplementary opening hours).
- 1.7 The Commissioner maintains pharmaceutical lists that include the days on which and times at which, at those premises, the listed person is to provide those services during the core opening hours and any supplementary opening hours of the premises.
- 1.8 The days on which or times at which a pharmacy is obliged to provide pharmaceutical services at the premises may only be altered by the pharmacy on application under paragraph 26(1) of Schedule 4 of the Regulations, so long as the effect of that application is to reduce the total number of hours for which a pharmacy is obliged to provide, or keep the total number of hours the same.

Alteration of supplementary opening hours

- 1.9 Supplementary opening hours may be altered by the pharmacy giving notice to the Commissioner, in accordance with paragraph 23(6)(a) of Schedule 4 of the Regulations, without the need to make an application to the Commissioner.
- 1.10 There is no specific right of appeal to NHS Resolution in respect of notices given under paragraph 23(6)(a).

2. Application

In this case, the Applicant provided the following information in its application form and supporting information dated 5 July 2024:

- 2.1 “This is an application to permanently change core opening hours.
- 2.2 Current opening hours for these premises:

Monday	8:45 – 12:15 15:00 – 19:00
Tuesday	8:45 – 12:15 15:00 – 19:00
Wednesday	8:45 – 12:15 15:00 – 19:00
Thursday	8:45 – 12:15 15:00 – 19:00
Friday	8:45 – 12:15 15:00 – 19:00
Saturday	09:00 – 11:30
Sunday	

2.3 Proposed core opening hours for these premises:

Monday	8:45 – 12:15 14:30 – 18:30
Tuesday	8:45 – 12:15 14:30 – 18:30
Wednesday	8:45 – 12:15 14:30 – 18:30
Thursday	8:45 – 12:15 14:30 – 18:30
Friday	8:45 – 12:15 14:30 – 18:30
Saturday	09:00 – 11:30
Sunday	

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

2.5 As soon as possible”.

2.6 “I am writing to formally request a modification to our pharmacy's core operating hours, specifically to adjust our closing time from 7:00 pm to 6:30 pm. This adjustment is being sought for several important reasons that collectively align with the operational efficiency and financial viability of our pharmacy.

2.7 Firstly, it has come to our attention that the local GP surgeries in our vicinity uniformly close their doors at 6:30 pm. Given the symbiotic nature of our services and the strong interdependence between the healthcare providers in the area, aligning our closing time with that of the GP surgeries would facilitate a seamless experience for our patients.

2.8 Secondly, our current operating hours have presented challenges in recruiting and retaining a qualified workforce. Expecting our employees to work until 7:00 pm has proven to be a deterrent to prospective candidates and has led to increased turnover among our existing staff. By aligning our closing time with that of the local GP surgeries, we anticipate a more attractive work schedule that would contribute to greater employee satisfaction and retention.

2.9 Furthermore, the financial implications of operating until 7:00 pm have become evident through mounting electricity bills and increased staff wages. The extended operating hours have not yielded a corresponding increase in footfall to offset these costs, resulting in a deficit that is negatively impacting our profitability. By closing at 6:30 pm, we anticipate a reduction in overhead expenses and a more balanced financial performance.

2.10 In light of these considerations, we kindly request your support in implementing this adjustment to our core operating hours. We believe that the proposed change will not only enhance our collaboration with local healthcare providers but also foster a more sustainable and economically viable business model. Your understanding and support are greatly appreciated.”

Supporting information

2.11 “It is our position that the needs of the local population in this area have changed significantly since the current core hours were established.

- 2.12 The pharmacy is located to the north-east of Letchworth Garden City on the opposite side of a major railway to the town centre. The area immediately around the pharmacy is quite sparsely populated. The area to the north and north-west of the pharmacy location comprises Norton Common, a large area of open space. The area to the east is largely 'light-industrial' in nature, comprising car dealerships, a railway depot and number small to medium sized business. There are relatively few houses in the area. The railway line clearly separates this area from the town centre area
- 2.13 Supporting businesses near to the pharmacy premises are limited to:
- 2.13.1 The Little Lock Shop – 61 Norton Way North. Open Tuesday to Friday: 10am-4pm, Saturday: 9am-2pm
- 2.13.2 Norton Way Gallery, 51 Norton Way North - Open generally only by appointment, except Thursday 11.00am-4.00pm, Friday 11.00am - 4.00pm, Saturday 11.00am - 4.00pm
- 2.14 The only reason the pharmacy is located in its current position is the presence of Birchwood Surgery nearby at 232-240 Nevells Road. Given the lack of any significant residential housing nearby, or meaningful supporting businesses other than the GP surgery, it is clear that the key purpose of this pharmacy is to meet the needs of patients attending the nearby medical centre.
- 2.15 In common with most other surgeries in the country, the operating model of this medical centre has changed since the Covid-19 pandemic. Far fewer patients attend the surgery in person now as many are offered remote appointments instead. As many of these patients do not live close to the surgery, they will typically obtain their pharmaceutical services from pharmacies closer to home. Given the slightly isolated location of our pharmacy, many would have no reason to travel to our pharmacy if they have not attended the medical centre in person.
- 2.16 Furthermore, and of greatest relevance in respect of paragraph 26(2) of Schedule 4, Part 3 to the Regulations, the practice no longer has appointments beyond 6pm and closing at 6.30pm on weekdays any day of the week. Evening GP opening is now limited to the Sollershot [sic] Surgery, a mile away to the south of the town centre. That surgery is significantly closer to numerous other pharmacies.
- 2.17 Reduced demand due to the prevalence of remote consultations and the lack of any supporting trade which opens for extended hours, we believe that the needs of patients in the area have changed. They no longer have a reason to attend the pharmacy after 6.30pm in the evening (due to the surgery being closed).
- 2.18 Further evidence of the reduced demand for pharmaceutical services at this location can be seen from the prescription dispensing numbers (reduced from approximately 11,000 items in 2020 to around 4,000 items in September 2022) where a very notable decline is visible which corresponds to the pandemic. Post pandemic a lot more patients are using online pharmacies to delivery [sic] medication direct to the patient which has contributed to a decline in the use of local independent pharmacies who are now struggling with unusual and unrealistic core hours.
- 2.19 Whilst it is not directly relevant to the legal test, we would also point out that there is a late opening pharmacy less than half a mile away from our current location (Morrisons, The Broadway, SG6 3TS), which opens from 8.30am to 8pm from Monday to Friday. Not only does this ensure patients who require access after 6pm have easy access to a pharmacy, it may also further explain the reduced demand at our current location during extended hours, as patients have been accustomed over time to obtaining

services during these hours from supermarkets which tend to be significantly more accessible and convenient.

2.20 Finally, we note that the 2022 Hertfordshire PNA contains the following comments in respect of the availability of pharmaceutical services in North Hertfordshire: (emphasis added):

2.21 6.6.2.1 Necessary Services: current provision There are 20 community pharmacies in this locality (down from 22 in 2018), 19 of which are open on Saturdays. Ten are open after 6 pm on weekdays, and four are open on Sundays. There is one 100-hour pharmacy.”

3. The Decision

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

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

3.2 The Committee considered this application under Schedule 4, Part 3, Paragraph 24 and 26 of The Regulations 2013.

3.3 This application was considered under 26(1)(b)

3.4 The current core hours are:

Current									40:00	13:45		
	S1		C1		S2		C2		S3		C3	
Monday			08:45	12:15	12:15	15:00	15:00	19:00				
Tuesday			08:45	12:15	12:15	15:00	15:00	19:00				
Wednesday			08:45	12:15	12:15	15:00	15:00	19:00				
Thursday			08:45	12:15	12:15	15:00	15:00	19:00				
Friday			08:45	12:15	12:15	15:00	15:00	19:00				
Saturday			09:00	11:30								
Sunday												

3.5 The applicant proposes core hours of:

	S1	C1	S2	C2	S3	C3
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Monday			08:45	12:15	12:15	14:30	14:30	18:30				
Tuesday			08:45	12:15	12:15	14:30	14:30	18:30				
Wednesday			08:45	12:15	12:15	14:30	14:30	18:30				
Thursday			08:45	12:15	12:15	14:30	14:30	18:30				
Friday			08:45	12:15	12:15	14:30	14:30	18:30				
Saturday			09:00	11:30								
Sunday												

3.6 The applicant currently provides no enhanced services and the following advanced services:

3.6.1 Smoking Cessation

3.6.2 Contraceptive Services

3.6.3 Pharmacy First

3.6.4 Hypertension Case Finding

3.6.5 Lat Flow Device Registrations

3.7 The applicant proposed to leave the total number of core hours unchanged, however, the afternoon core hours would change from 15:00 – 19:00 to 14:30 – 18:30.

3.8 In support of their application, the applicant provided the following information on the usage of the pharmacy at the time(s) it was proposing that the pharmacy would close and/or now open:

3.9 [see 2.6 – 2.10 above].

3.10 As there was no supporting evidence to show that the pharmacy was underutilised during the times that the applicant was proposing to remove the core hour provision, it was concluded that the current core hours were necessary to maintain the existing level of service provision.

3.11 The Committee noted that whilst the regulations state that it might take supplementary opening hours into consideration, it was to be mindful that these could be changed by the giving of notice. Therefore the Committee placed no weight on the provision of pharmaceutical services during supplementary opening hours.

3.12 The applicant did not provide any information on how people travel to the pharmacy premises at the times the pharmacy would be closed if the application is granted.

3.13 The Committee noted the provision of advanced and enhanced services by the nearest pharmacies. There were no enhanced services offered by the applicant or any of the nearest pharmacies. The detail of advanced services provided by the pharmacies could be found in the nearest pharmacies document that was provided in the Committee

report. Only one other pharmacy in a 1.3 mile radius stayed open until 19:00 and only one other pharmacy provided the same advanced services.

- 3.14 The Committee considered the provision of pharmaceutical services during core opening hours by other pharmacies in the area and whether patients would be able to access the same services from the alternative pharmacies if the application was granted, and therefore the existing level of service provision would be maintained by those other pharmacies.
- 3.15 Grange Pharmacy and Birch Pharmacy are the only pharmacies to provide Smoking Cessation, therefore the existing level of service provision would not be maintained as Grange Pharmacy core hours are until 17:00. However, it was noted that the applicant did not provide any information regarding travel times for patients accessing the pharmacy during the proposed removal of services from 18:30 -19:00.
- 3.16 **Paragraph 24(1)(b), Schedule 4 - are the proposed core opening hours such as to maintain a sustainable level of adequate service provision for the people in the area of the pharmacy or other likely users of the pharmacy premises, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome?**
- 3.17 It was recommended that maintaining the existing level of service provision is necessary, therefore reference in paragraph 24(1)(b) to “in circumstances where maintaining the existing level of service provision is unnecessary” was not relevant. Consideration was therefore given to whether or not maintaining the existing level of service provision was not a realistically achievable outcome.
- 3.18 In relation to whether maintaining the existing level of service provision was not a realistically achievable outcome, the applicant provided the following information:
- 3.19 [see 2.11 – 2.18 above].
- 3.20 Decision:
- 3.21 The Committee agreed to refuse the application. Whilst some information has been provided and statements made about “reduced demand” by the applicant, no evidence has been provided to support these statements.
- 3.22 The applicant did not provide assurance that the days and times at which pharmacy premises are open for the provision of pharmaceutical services in the area in which the premises that are the subject of the direction are located are such as —
- 3.22.1 (a) to maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises; or
- 3.22.2 (b) to maintain a sustainable level of adequate service provision for the people in that area or other likely users of the pharmacy premises, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome.
- 3.23 The rationale for the Committee’s decision is as follows:
- 3.23.1 The Committee noted the information provided by the applicant and agreed:
- 3.23.2 The applicant did not provide any information/evidence regarding how people travel to the pharmacy.

- 3.23.3 The applicant did not provide information/evidence to support that other local pharmacies would be able to maintain the existing level of service provision.
- 3.23.4 The applicant did not provide details around who is using the service and what services they required.
- 3.24 As the application is refused, the contractor has the right of appeal.
- 3.25 You have the right of appeal to the Secretary of State against our decision. Should you choose to appeal, then you should send in writing a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this letter to: nhsr.appeals@nhs.net or
- 3.26 NHS Resolution,
8th Floor,
10 South Colonnade,
Canary Wharf,
London,
E14 4PU.”

4. The Appeal

In a letter to NHS Resolution received 12 January 2025 the Applicant appealed against the Commissioner's decision. The grounds of appeal are:

- 4.1 “This application is made in accordance with paragraph 26(2) of Schedule 4, Part 3, of the National Health Service (Pharmaceutical Services and Local Pharmaceutical Services) 2013 Regulations as amended, to permanently change the core opening hours of this pharmacy.
- 4.2 Paragraph 26(2) states:
- 4.3 Where P makes an application under sub-paragraph (1), as part of that application P must provide the NHSCB with such information as the NHSCB may reasonably request in respect of any changes to the needs of the people in its area, or other likely users of the pharmacy, for pharmaceutical services that are material to the application. It is our position that the needs of the local population in this area have changed significantly since the current core hours were established.
- 4.4 The pharmacy is located to the north-east of Letchworth Garden City on the opposite side of a major railway to the town centre.
- 4.5 The area immediately around the pharmacy is quite sparsely populated. The area to the north and north-west of the pharmacy location comprises Norton Common, a large area of open space. The area to the east is largely 'light-industrial' in nature, comprising car dealerships, a railway depo and number small to medium sized business. There are relatively few houses in the area. The railway line clearly separates this area from the town centre area.
- 4.6 Supporting businesses near to the pharmacy premises are limited to:
- 4.6.1 The Little Lock Shop – 61 Norton Way North. Open Tuesday to Friday: 10am-4pm, Saturday: 9am-2pm.
- 4.6.2 Norton Way Gallery, 51 Norton Way North - Open generally only by appointment, except Thursday 11.00am-4.00pm, Friday 11.00am - 4.00pm, Saturday 11.00am - 4.00pm.

- 4.7 The only reason the pharmacy is located in its current position is the presence of Birchwood Surgery nearby at 232-240 Nevells Road. Given the lack of any significant residential housing nearby, or meaningful supporting businesses other than the GP surgery, it is clear that the key purpose of this pharmacy is to meet the needs of patients attending the nearby medical centre.
- 4.8 In common with most other surgeries in the country, the operating model of this medical centre has changed since the Covid-19 pandemic. Far fewer patients attend the surgery in person now as many are offered remote appointments instead. As many of these patients do not live close to the surgery, they will typically obtain their pharmaceutical services from pharmacies closer to home. Given the slightly isolated location of our pharmacy, many would have no reason to travel to our pharmacy if they have not attended the medical centre in person.
- 4.9 Furthermore, and of greatest relevance in respect of paragraph 26(2) of Schedule 4, Part 3 to the Regulations, the practice no longer opens beyond 6pm on weekdays any day of the week, having recently changed their Tuesday opening hours to close at 6pm instead of 7pm.
- 4.10 Evening GP opening is now limited to the Sollershot Surgery, a mile away to the south of the town centre. That surgery is significantly closer to numerous other pharmacies.
- 4.11 Current opening hours for this medical centre are as follows:
- 4.11.1 Monday to Friday
- 4.11.2 8.30 – 12.30 and 13.30 – 18.00
- 4.12 As a result of changes to the opening hours to the Birchwood surgery, reduced demand due to the prevalence of remote consultations and the lack of any supporting trade which opens for extended hours, we believe that the needs of patients in the area have changed. They no longer have a reason to attend the pharmacy after 6pm in the evening (due to the surgery being closed).
- 4.13 Following our application, we decided to collect more data about our pharmacy usage to provide further evidence for the lack of demand during the hours we now propose to close. For the month of December 2024, a patient survey was carried out to assess the current footfall from 8.45am to 9am and 6.30pm to 7pm on weekdays. The survey has been provided as an appendix (Birch Pharmacy Data Collection) to this application [appendix A].
- 4.14 For the hours of 6.30pm to 7pm, there were a total of 16 attendances, over the entire month i.e. approximately one every other day. Eight of these attendances were to buy something from the pharmacy, two were for advice and eight were to collect dispensed medication. All patients were asked what they would have [sic] the pharmacy would have been closed and all stated they would have waited for the next day or gone to another pharmacy which was open. Out of these total 16 attendances between 6.30pm – 7.00pm it was noted 14 had travelled by car and 2 by walking. Showing that most had access to a car and could drive to another local pharmacy if needed.
- 4.15 Whilst it cannot, therefore, be said that there was no demand at all during those times, it is very clear that the demand was minimal. Importantly the Regulations do not require the decision maker to assess whether there is any demand for pharmaceutical services during the hours it is proposed to close but whether the needs of people have changed.
- 4.16 Majority of customers would have access to a smart phone and internet, if the pharmacy was granted to close at 6.30pm patients would be able to see this on their

phones when searching for any pharmacy. The NHS website also helps with showing pharmacies that are open at any current time. If we were granted this change to core hours, we would make sure we give patients and other members of the public enough notice and not reduce them straight away.

- 4.17 Further evidence of the reduced demand for pharmaceutical services at this location can be seen from the prescription dispensing numbers below (source Pharmdata) [appendix B] where a very notable decline is visible which corresponds to the pandemic.
- 4.18 It is very clear to us that the needs have changed (largely due to reduced service provision at the nearby medical centre) and that the demand for services has reduced very significantly as a result.
- 4.19 Whilst it is not directly relevant to the legal test, we would also point out that there is a late opening pharmacy less than half a mile away from our current location (Morrisons, The Broadway, SG6 3TS), which opens from 8.30am to 7pm from Monday to Friday. Not only does this ensure patients who require access after 6.30pm have easy access to a pharmacy, it may also further explain the reduced demand at our current location during extended hours, as patients have been accustomed over time to obtaining services during these hours from supermarkets which tend to be significantly more accessible and convenient. And just over a mile away is another supermarket pharmacy (Tesco, 58 High Street, Baldock) which is open from 8.00am till 8.00pm Monday to Saturday. Patients would be able to access the same services at these supermarket pharmacies if our application is granted and we do not feel our application will reduce the existing service level due to already reduced demand at our location.
- 4.20 Furthermore, the financial implications of operating until 7:00 pm have become evident through mounting electricity bills and increased staff wages. The extended operating hours have not yielded a corresponding increase in footfall to offset these costs, resulting in a deficit that is negatively impacting our profitability. By closing at 6:30 pm, we anticipate a reduction in overhead expenses and a more balanced financial performance.
- 4.21 Finally, we note that the 2022 Hertfordshire PNA contains the following comments in respect of the availability of pharmaceutical services in North Hertfordshire: (emphasis added):
- 4.21.1 6.6.2 North Hertfordshire
- 4.21.2 North Hertfordshire locality is made up of 20 wards with a total population of 133,463, which includes the population of Royston.
- 4.21.3 Note: populations are provided in Section 2.5.4 on a district rather than a locality basis, which makes direct comparisons of community pharmacy to population ratios difficult. The population of Royston is estimated at just over 19,000, so the population used for this locality will be 113,000.
- 4.21.4 Population density varies throughout the locality with the distribution of pharmacies located in the areas with higher population.
- 4.21.5 6.6.2.1 Necessary Services: current provision
- 4.21.6 There are 20 community pharmacies in this locality (down from 22 in 2018), 19 of which are open on Saturdays. Ten are open after 6 pm on weekdays, and four are open on Sundays. There is one 100-hour pharmacy.

- 4.22 In light of these considerations, we kindly request your support in implementing this adjustment to our core operating hours.”
- 4.23 [Copy of application form and notification to decrease supplementary hours enclosed].

5. Representations

In an email to NHS Resolution dated 10 February 2025 the Commissioner stated:

- 5.1 “Please find attached the ICB representation in relation to the appeal from Durachem Ltd (SHA/26456).
- 5.2 There are a number of embedded documents within the attached Committee Report which is in pdf format. I have identified where they can be located for ease:
- 5.2.1 Application form – this is included in the Appeal by the Appellant (Appendix 1, pages 7-9)
- 5.2.2 Supporting document included with the application on page 3 is attached
- 5.2.3 Nearest Pharmacies – (Appendix 2 attached – with the addition of Tesco as this was referenced by the Appellant in the appeal)
- 5.2.4 Map of existing pharmacies – attached
- 5.3 Please note that the Advanced Services identified for the nearest pharmacies within Appendix 2 were taken at the time the application was considered by PSRC.
- 5.4 Also, I checked the Hertfordshire County Council website today and have been unable to source the 2022 Hertfordshire Pharmaceutical Needs Assessment (PNA) referenced by the Appellant however I was able to source it via the Community Pharmacy Hertfordshire site <https://cpherts.org.uk/wp-content/uploads/sites/66/2022/08/Pharmaceutical-Needs-Assessment-2022.pdf> A copy has been included in Appendix 3.”

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

- 5.5 “Please note that from the 01 April 2023, community pharmacy contracting and commissioning has been delegated to Integrated Care Boards (ICBs). Hertfordshire and West Essex (HWE) ICB are hosting the function on behalf of the six East of England ICBs.
- 5.6 Please find below information we wish to be considered in relation to Durachem Ltd T/A Birch Pharmacy.
- 5.7 Having reviewed the grounds of the appeal and the information provided by [SS] on behalf of Durachem Ltd (the Appellant), we remain of the opinion that this application should be refused.
- 5.8 The grounds for the appeal appear to be:
- 5.8.1 that the needs of the local population have changed significantly since the core hours were established
- 5.8.2 the pharmacy is not required to open after 18:00 when the nearby GP practice closes.

5.9 Having reviewed the notice of appeal, HWE ICB would like to make the following representations:

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

5.11 The current and proposed core hours are set out below:

Current									40:00	13:45		
	S1		C1		S2		C2		S3		C3	
Monday			08:45	12:15	12:15	15:00	15:00	19:00				
Tuesday			08:45	12:15	12:15	15:00	15:00	19:00				
Wednesday			08:45	12:15	12:15	15:00	15:00	19:00				
Thursday			08:45	12:15	12:15	15:00	15:00	19:00				
Friday			08:45	12:15	12:15	15:00	15:00	19:00				
Saturday			09:00	11:30								
Sunday												

Proposed									40:00	11:15		
	S1		C1		S2		C2		S3		C3	
Monday			08:45	12:15	12:15	14:30	14:30	18:30				
Tuesday			08:45	12:15	12:15	14:30	14:30	18:30				
Wednesday			08:45	12:15	12:15	14:30	14:30	18:30				
Thursday			08:45	12:15	12:15	14:30	14:30	18:30				
Friday			08:45	12:15	12:15	14:30	14:30	18:30				
Saturday			09:00	11:30								
Sunday												

5.12 The overall effect of the application is that the Appellant is seeking to redistribute the core hours Monday to Friday resulting in a change to core hours from 15:00 – 19:00 to 14:30 – 18:30. The Appellant is also looking to reduce the total number of supplementary hours by 2.5.

- 5.13 NHS England's template application form asks that the applicant provide such information so as to demonstrate that the proposed core opening hours will either:
- 5.13.1 maintain as necessary the existing level of service provision for people in the area of the pharmacy, or other likely users of the pharmacy premises; or
 - 5.13.2 maintain a sustainable level of adequate service provision for the people in the area of the pharmacy, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome.
- 5.14 In their application, the Appellant stated the following: [see 2.6 – 2.10 above].
- 5.15 On appeal the Appellant has expanded upon this and due to the size of the document this can be found in Appendix 1 [see 4.1 – 4.23 above].
- 5.16 The ICB has reviewed this additional information and maintains that the decision to refuse the application was correct.
- 5.17 **Paragraph 24(1)(a), Schedule 4**
- 5.18 It is first necessary to identify the existing level of service provision for people in the area of Birch Pharmacy or other likely users of the pharmacy.
- 5.19 The Appellant is proposing to redistribute the total number of core opening hours provided Monday to Friday and also proposes some changes to the supplementary hours although these are yet to be notified. The existing level of service provision would therefore not be maintained because the proposed change will see the pharmacy close half hour earlier at 18:30 Monday to Friday.
- 5.20 It is therefore necessary to identify whether there are other providers of pharmaceutical services in the area, when they are open and whether when considered, they would maintain the existing level of service provision.
- 5.21 When assessing the existing level of service provision by these other pharmacies, the ICB has only considered core opening hours Monday to Friday.
- 5.22 There are 7 pharmacies within a 1.3 mile radius* that provide pharmaceutical services. 5 have core hours until 17:00 and 2 until 17:30. There are 4 pharmacies that provide supplementary hours ranging from 17:30 to 19:00. Details of core and supplementary hours can be found in Appendix 2 [appendix C].
- 5.23 In their appeal the Appellant notes that *"there is a late opening pharmacy less than half a mile away from our current location (Morrisons, The Broadway, SG6 3TS), which opens from 8.30am to 7pm from Monday to Friday' and 'just over a mile away is another supermarket pharmacy (Tesco, 58 High Street, Baldock) which is open from 8.00am till 8.00pm Monday to Saturday. Patients would be able to access the same services at these supermarket pharmacies if our application is granted and we do not feel our application will reduce the existing service level due to already reduced demand at our location."*
- 5.24 The ICB notes that Morrisons, The Broadway, Letchworth Garden City, SG6 3TS (0.6 miles*) and Tesco at 58 High Street, Baldock, SG7 6BN (2.5 miles*) both have core hours until 17:00 Monday to Friday. The hours from 17:00 are supplementary hours which can be withdrawn at any time by giving the required 5 weeks' notice.
- 5.25 *Distances taken from google maps

- 5.26 The dispensing data below [appendix D] shows the number of prescriptions dispensed from Birchwood Surgery and it is noted that Morrisons and Birch Pharmacy are in the top 5 dispensers at 11.5% with Tesco lower at 1.1%.
- 5.27 (SHAPE Tool, NHSBSA September 2024)
- 5.28 The Appellant has provided prescription dispensing numbers from Pharmdata to evidence *'a very notable decline is visible which corresponds to the pandemic'* however it is difficult to establish the period in question from this data. They have also provided dispensing activity for Birchwood Surgery from May 2023 stating, *'this shows that patients are choosing a different pharmacy (Grange Pharmacy) over Birch Pharmacy'*. (Page 4, appeal document)
- 5.29 There has been a slight shift in where patients are exercising their choice to have their prescriptions dispensed since May 2023 however Grange Pharmacy and Birch Pharmacy still remain in the top 4 dispensers.
- 5.30 On appeal the Appellant states that 'It is our position that the needs of the local population in this area have changed significantly since the current core hours were established. The pharmacy is located to the north-east of Letchworth Garden City on the opposite side of a major railway to the town centre. The area immediately around the pharmacy is quite sparsely populated. The area to the north and north-west of the pharmacy location comprises Norton Common, a large area of open space. The area to the east is largely 'light-industrial' in nature, comprising car dealerships, a railway depo and number small to medium sized business. There are relatively few houses in the area. The railway line clearly separates this area from the town centre area'. (Page 1, appeal document)
- 5.31 The Appellant then goes on to state that the 'only reason the pharmacy is located in its current position is the presence of Birchwood Surgery nearby at 232-240 Nevells Road. Given the lack of any significant residential housing nearby, or meaningful supporting businesses other than the GP surgery, it is clear that the key purpose of this pharmacy is to meet the needs of patients attending the nearby medical centre'. (Page 1, appeal document)
- 5.32 The ICB notes the close proximity of the Birchwood Surgery 232-240 Nevells Road (SG6 4UB) to Birch Pharmacy at a 2 minute walk. They also note that there is another GP Surgery nearby, Nevells Road Surgery, Nevells Road, SG6 4TS which is 1 min by car and a 7 minute walk.
- 5.33 (screenshot taken from google maps) [appendix D]
- 5.34 The Appellant notes that 'far fewer patients attend the surgery in person now as many are offered remote appointments instead. As many of these patients do not live close to the surgery, they will typically obtain their pharmaceutical services from pharmacies closer to home. Given the slightly isolated location of our pharmacy, many would have no reason to travel to our pharmacy, if they have not attended the medical centre in person' (Page 2, appeal document)
- 5.35 This is an assumption by the Appellant and no evidence has been provided with regards to the number of patients registered at both nearby GP surgeries who do not live close to those surgeries.
- 5.36 The Appellant notes that Birchwood Surgery 'no longer opens beyond 6pm on weekdays any day of the week, having recently changed their Tuesday opening hours to close at 6pm instead of 7pm.' They go on to say that "As a result of changes to the opening hours to the Birchwood surgery, reduced demand due to the prevalence of

remote consultations and the lack of any supporting trade which opens for extended hours, we believe that the needs of patients in the area have changed. They no longer have a reason to attend the pharmacy after 6pm in the evening (due to the surgery being closed)." (Page 2, appeal document)

- 5.37 There is no evidence to demonstrate that the needs of the patients have changed.
- 5.38 The ICB noted that as the GP surgery closes at 18.00 it is particularly important that the pharmacy continues to provide pharmaceutical services until 19:00 to ensure the public can continue to access health care services, including those that extend beyond an acute prescription i.e. advanced services, advice, signposting.
- 5.39 The ICB is aware that Birch Pharmacy are providing the following Advanced Services:
- 5.39.1 Pharmacy First
 - 5.39.2 Smoking Cessation
 - 5.39.3 Contraception
 - 5.39.4 Hypertension Case Finding
 - 5.39.5 Lat Flow Device Registrations
- 5.40 and that patients of the nearby GP surgeries in close proximity to Birch Pharmacy, may wish to use the pharmacy to access pharmaceutical services until 19:00 which covers a period when the GP surgeries are closed.
- 5.41 Consequently, it is the view of the ICB that the proposed core opening hours do not satisfy paragraph 24(1)(a), Schedule 4.
- 5.42 **Paragraph 24(1)(b), Schedule 4**
- 5.43 As the ICB remains of the opinion that:
- 5.43.1 it is necessary to maintain the existing level of service provision,
 - 5.43.2 the Appellant's proposed opening hours would not achieve that, and
 - 5.43.3 there is no evidence that other providers of pharmaceutical services would maintain the existing level of service provision,
- 5.44 the ICB now considers paragraph 24(1)(b), Schedule 4 with regard to the Appellant's representations.
- 5.45 The Appellant has not provided any evidence to demonstrate that the current users of Birch Pharmacy who can access services from 18:30 to 19:00 Monday to Friday would not be affected should the change in hours be granted. In light of this, it has to be considered that the service is necessary.
- 5.46 The Appellant [sic] states that they collected data during the month of December 2024 and *'for the hours of 6.30pm to 7pm, there were a total of 16 attendances, over the entire month i.e. approximately one every other day. Eight of these attendances were to buy something from the pharmacy, two were for advice and eight were to collect dispensed medication. All patients were asked what they would have the pharmacy would have been closed and all stated they would have waited for the next day or gone*

to another pharmacy which was open. Out of these total 16 attendances between 6.30pm – 7.00pm it was noted 14 had travelled by car and 2 by walking. Showing that most had access to a car and could drive to another local pharmacy if needed.'

- 5.47 Whilst the patients who attended the pharmacy during December 2024 after 18:30 Monday to Friday said that they 'would have waited for the next day or gone to another pharmacy which was open', no evidence has been provided to demonstrate where patients who usually attend Birch Pharmacy after 18:30 Monday to Friday would travel to and the services they could access on arrival, it cannot be determined that service provision is maintained, and it has to be considered that the opening hours currently provided by Bridge Pharmacy are necessary.
- 5.48 The ICB notes that of the 16 patients who attended the pharmacy between 6.30 – 7.00pm, 14 had travelled by car which might indicate that they accessed the pharmacy due to their late opening and not because they were local. It also demonstrates that there is demand albeit minimal.
- 5.49 The ICB is not persuaded by the Appellant's representations that there are any circumstances where maintaining a sustainable level of adequate service provision for people in the area or other likely users of the pharmacy is either unnecessary or not a realistically achievable outcome.
- 5.50 In their original application the Appellant states 'the financial implications of operating until 7:00 pm have become evident through mounting electricity bills and increased staff wages. The extended operating hours have not yielded a corresponding increase in footfall to offset these costs, resulting in a deficit that is negatively impacting our profitability. By closing at 6:30 pm, we anticipate a reduction in overhead expenses and a more balanced financial performance'.
- 5.51 Whilst the ICB can empathise with the challenges and cost pressures facing community pharmacy, it is unclear if Birch Pharmacy have explored any other way to make costs savings or sought advice on how to maximise the opportunity to create activity and footfall between 6.30 – 7.00pm.
- 5.52 Consequently, the ICB is of the view that the proposed core opening hours do not satisfy paragraph 24(1)(b), Schedule 4 and remains of the opinion that the application should be refused.
- 5.53 Finally, the Appellant refers to the 2022 Hertfordshire Pharmaceutical Needs Assessment (PNA):
- 5.53.1 *"6.6.2.1 Necessary Services: current provision*
- 5.53.2 *There are 20 community pharmacies in this locality (down from 22 in 2018), 19 of which are open on Saturdays. Ten are open after 6 pm on weekdays, and four are open on Sundays. There is one 100-hour pharmacy."*
- 5.54 The PNA is a snapshot in time and reflects the position in October 2022. The comments made by the Appellant do not reflect any subsequent permanent closures, reduction in hours or supplementary statements. (A copy of the 2022 Hertfordshire PNA can be found in Appendix 3) [appendix E].
- 5.55 [A map of the existing pharmacies in the area was enclosed – appendix F].

PSRC report dated 31 July 2024

- 5.56 **"Name of applicant:** Durachem Limited t/a Birch Pharmacy (FM229)

- 5.57 **Address of premises:** 67 Norton Way North, Letchworth, Hertfordshire, SG6 1BH
- 5.58 **Application form:** [enclosed]
- 5.59 **Relevant provisions of The NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended and guidance:** Paragraph 26, Schedule 4 – determination of pharmacy premises core opening hours instigated by an NHS pharmacist.
- 5.60 Paragraph 24(1), Schedule 4 – matters to be considered when issuing directions in respect of pharmacy premises core opening hours.
- 5.61 Regulation 65 – core opening hours conditions
- 5.62 Regulation 65A – continuity of opening hours directions
- 5.63 **Details of any notifications of temporary suspensions in the provision of pharmaceutical services at the pharmacy premises:** None as of 17th July 2024.
- 5.64 **Consideration**
- 5.65 **Regulation 65**
- 5.66 **Is there a direction in place in respect of the pharmacy premises? No**
- 5.67 **Paragraph 26(1)(b), Schedule 4**
- 5.68 **Is the applicant seeking to keep the total number of core opening hours of the pharmacy premises the same, but to change when they are?**
- 5.69 Yes
- 5.70 **Paragraph 24(1)(a), Schedule 4 - are the proposed core opening hours such as to maintain as necessary the existing level of service provision for the people in the area of the pharmacy, or other likely users of the pharmacy premises?**
- 5.71 **What is the existing level of service provision?**
- 5.72 The applicant's current and proposed core and supplementary opening hours of the pharmacy premises are as follows.

Current									40:00	13:45	
	S1		C1		S2		C2		S3		C3
Monday			08:45	12:15	12:15	15:00	15:00	19:00			
Tuesday			08:45	12:15	12:15	15:00	15:00	19:00			
Wednesday			08:45	12:15	12:15	15:00	15:00	19:00			
Thursday			08:45	12:15	12:15	15:00	15:00	19:00			
Friday			08:45	12:15	12:15	15:00	15:00	19:00			

Saturday			09:00	11:30								
Sunday												

Proposed									40:00	11:15		
	S1		C1		S2		C2		S3		C3	
Monday			08:45	12:15	12:15	14:30	14:30	18:30				
Tuesday			08:45	12:15	12:15	14:30	14:30	18:30				
Wednesday			08:45	12:15	12:15	14:30	14:30	18:30				
Thursday			08:45	12:15	12:15	14:30	14:30	18:30				
Friday			08:45	12:15	12:15	14:30	14:30	18:30				
Saturday			09:00	11:30								
Sunday												

5.73 The applicant currently provides no enhanced services and the following advanced services:

5.73.1 Smoking Cessation

5.73.2 Contraceptive Services

5.73.3 Pharmacy First

5.73.4 Hypertension Case Finding

5.73.5 Lat Flow Device Registrations

5.74 The applicant is proposing to leave the total number of core hours unchanged, however, the afternoon core hours will change from 15:00 – 19:00 to 14:30 – 18:30.

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

5.76 In support of their application, the applicant has provided the following information on the usage of the pharmacy at the time(s) it is proposing that the pharmacy will close and/or now open [2.6 – 2.10 above].

5.77 As there is no supporting evidence to show that the pharmacy is underutilised during the times that the applicant is proposing to remove the core hour provision, it could be concluded that the current core hours are necessary to maintain the existing level of service provision.

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

- 5.79 No
- 5.80 The applicant is applying to change the times that services are provided, and therefore no service provision will be available from 18:30 -19:00 every weekday, consequently not maintaining the existing level of service provision at the pharmacy premises.
- 5.81 **Would the existing level of service provision be maintained by virtue of the existence of other pharmacies in the area at times when the applicant is proposing to close?**
- 5.82 The following information on other pharmacies in the area is provided to assist the Committee in its consideration of this matter [appendix C, E and F].
- 5.83 The Committee is to note that whilst the regulations state that it may take supplementary opening hours into consideration, it is to be mindful that these can be changed by the giving of notice. It is therefore recommended that the Committee places no weight on the provision of pharmaceutical services during supplementary opening hours.
- 5.84 The applicant has not provided any information on how people travel to the pharmacy premises at the times the pharmacy will be closed if the application is granted.
- 5.85 The Committee is to note the provision of advanced and enhanced services by the nearest pharmacies. There are no enhanced services offered by the applicant or any of the nearest pharmacies. The detail of advanced services provided by the pharmacies can be found in the nearest pharmacies document above.
- 5.86 Only 1 other pharmacy in a 1.3 mile radius stays open until 19:00 and only 1 other pharmacy provides the same advanced services.
- 5.87 Taking into account the provision of pharmaceutical services during core opening hours by other pharmacies in the area, the Committee is to determine whether patients would be able to access the same services from the alternative pharmacies if the application is granted, and therefore the existing level of service provision would be maintained by those other pharmacies.
- 5.88 Grange Pharmacy is the only other pharmacy to provide Smoking cessation along with Birch Pharmacy, therefore the existing level of service provision will not be maintained as Grange Pharmacy core hours are until 17:00. However, it is noted that the applicant has not provided any information regarding travel times for patients accessing the pharmacy during the proposed removal of services from 18:30 -19:00.
- 5.89 **Paragraph 24(1)(b), Schedule 4 - are the proposed core opening hours such as to maintain a sustainable level of adequate service provision for the people in the area of the pharmacy or other likely users of the pharmacy premises, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome?**
- 5.90 It is recommended that maintaining the existing level of service provision is necessary, therefore reference in paragraph 24(1)(b) to "in circumstances where maintaining the existing level of service provision is ... unnecessary" is not relevant. Consideration is therefore to be given to whether or not maintaining the existing level of service provision is not a realistically achievable outcome.
- 5.91 In relation to whether maintaining the existing level of service provision is not a realistically achievable outcome, the applicant has provided the following information [2.11 – 2.18 above].

5.92 The recommendation is that this requirement has not been demonstrated as no evidence has been provided to support the information provided above.

5.93 Recommendation

5.94 Taking the above into account it is recommended that granting this application:

5.94.1 would not maintain as necessary the existing level of service provision for the people in the area of the applicant's pharmacy premises, or other likely users of the pharmacy premises;

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

5.95 It is therefore recommended that the application is refused."

6. **Observations**

No observations were made by the Applicant in response to the representations from the Commissioner.

7. **Consideration**

7.1 I note the following:

7.1.1 The Applicant's core opening hours total 40 hours and the Applicant proposes to redistribute those 40 core opening hours pursuant to paragraph 26 of Schedule 4.

7.2 The Applicant has proposed to:

7.2.1 Open at 2.30pm instead of 3pm Monday to Friday.

7.2.2 Close at 6.30pm instead of 7pm Monday to Friday.

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

7.4 Paragraph 26(1) states:

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

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

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

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

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

7.6 Paragraph 24(1) reads as follows:

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

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

7.7 Paragraph 24(2) states:

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

- (a) must treat any local pharmaceutical services being provided in its area as if they were pharmaceutical services being so provided, and*
- (b) may have regard to any pharmaceutical services that are being provided in its area during supplementary opening hours.*

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

7.9 To properly assess the application against paragraph 24(1)(a), I need to determine the existing level of service provision. I then need to consider whether it is necessary to maintain the existing level of service provision. If it is necessary to maintain the existing level of service provision, I need to consider whether, despite the proposed change of hours, the existing level of service provision to people in the area or other likely users would be maintained, e.g. by nearby pharmacies being open and providing the same level of service provision.

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

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

geographical access to services provided, other aspects of physical access aside from location, and the quality of services provided.

- 7.12 The existing level of service provision has been outlined by the Applicant, in its own core hours provision, and by an indication of the hours that pharmacies in the local area are open.
- 7.13 I have next considered whether it is necessary to maintain the existing level of service provision. It could be argued that as the Applicant is not looking to reduce the number of hours each week that services are provided, then from a pure "number of hours of service provision each week" perspective, the existing level of service provision is maintained such that consideration of whether it is necessary to maintain the level of service provision is not needed.
- 7.14 However, the Applicant is applying to change the days and times that services are provided. I therefore consider it appropriate to determine if it is necessary to maintain the existing level of service provision and then, if deemed necessary, consider if the opening hours of other pharmacies mean that level is maintained.
- 7.15 To determine whether it is necessary to maintain the existing level of service provision, I have had regard to the comments by the Applicant of those using the pharmacy. If I am satisfied that there is reliable evidence indicating no users of the pharmacy on/at the relevant days/times that the pharmacy wishes to close, this might support an argument that maintaining the existing level of service provision is not necessary.
- 7.16 The Applicant provided with its appeal, the results of a survey which it carried out in December 2024 to establish the number of people who visited the pharmacy at the times that the Applicant proposes to close, together with what services they accessed. I note that the survey also provides information regarding the number of people who visited the pharmacy during the times of 8.45am to 9am. It is unclear to me why this information has been provided given that the Applicant has not applied to amend its core opening hours during this period. I have therefore not considered this particular information any further.
- 7.17 I note the Applicant's comment that *"For the hours of 6.30pm to 7pm, there were a total of 16 attendances, over the entire month i.e. approximately one every other day. Eight of these attendances were to buy something from the pharmacy, two were for advice and eight were to collect dispensed medication."* and *"Whilst it cannot, therefore, be said that there was no demand at all during those times, it is very clear that the demand was minimal. Importantly the Regulations do not require the decision maker to assess whether there is any demand for pharmaceutical services during the hours it is proposed to close but whether the needs of people have changed."*
- 7.18 From the information provided, it is clear that there are some people using the pharmacy at the times the Applicant wishes to close, albeit low in numbers and therefore I consider it is necessary to maintain the existing level of service provision.
- 7.19 I now need to consider if, despite the changes to hours, there is maintenance of the existing level of service provision. The Applicant cannot maintain this as it is changing its hours but I note the information from the Applicant with regard to other pharmacies in the area, namely Morrisons and Tesco Pharmacy.
- 7.20 If I consider that the characteristics of other pharmacies, e.g. where they are located, their access, the services provided and the times they are open, means that the level of service provision is maintained for people in the local area or other likely users of the pharmacy, then I am able to grant the application under paragraph 24(1)(a).

- 7.21 It is worth noting that characteristics of the persons using the pharmacy might be relevant here as well as from where they start their journey to the pharmacy. I do not consider that every single individual need should be considered at length in this regard but it would be helpful to have this information to be certain that the existing level of service provision would be maintained via local pharmacies.
- 7.22 The Applicant has commented that for those that accessed its pharmacy between 6.30pm to 7pm Monday to Friday, *"14 had travelled by car and 2 by walking...showing that most had access to a car and could drive to another local pharmacy if needed."* However I note that the Applicant has not provided any information on the routes involved to access the alternative pharmacies by car nor has it provided information in relation to car ownership or the parking facilities available however I do consider that as the Applicant has stated that these are *"supermarket pharmacies"*, it is likely they will have parking available. For the two people that walked to the Applicant's pharmacy, I note that the Applicant has not provided any information on the walking routes involved to access these pharmacies, for example, whether there is sufficient street lighting, dropped kerbs and pedestrian crossings where necessary, nor the length of time it will take.
- 7.23 The Applicant states that *"there is a late opening pharmacy less than half a mile away from our current location (Morrisons, The Broadway, SG6 3TS), which opens from 8.30am to 7pm from Monday to Friday"* and further *"just over a mile away is another supermarket pharmacy (Tesco, 58 High Street, Baldock) which is open from 8.00am till 8.00pm Monday to Saturday"*.
- 7.24 I note in its representations, the Commissioner has provided information in relation to the distances to the nearest pharmacies and the core opening hours, which has not been disputed. From the Applicant's pharmacy, I note that Morrisons pharmacy is 0.6 miles away, with a walking time of 11 minutes and driving time of 3 minutes and Tesco pharmacy is 2.5 miles away, with a walking time of 50 minutes and driving time of 8 minutes. I consider that due to the distance alone it is unlikely that patients would access Tesco pharmacy on foot and without further information regarding the route involved to walk to Morrisons pharmacy, it is difficult for me to draw a conclusion on this point. Whilst I do not consider a driving time of 3 and 8 minutes to access pharmaceutical services to be unreasonable, I note the comment from the Commissioner that both these pharmacies only *"have core hours until 17:00 Monday to Friday"*. I have also had regard to the "Nearest Pharmacies to (SG6 1BH)" document which demonstrates that both pharmacies have supplementary hours at the times the Applicant is proposing to close which, as highlighted by the Commissioner, can be withdrawn at any time by giving appropriate notice. The same document provided by the Commissioner shows that none of the pharmacies in the area have core opening hours at times the Applicant is wishing to close. I note that the Applicant has not disputed this information nor provided any further information on other pharmacies in the area that have core opening hours between the times of 6.30pm to 7pm.
- 7.25 I note the Commissioner has confirmed that the Applicant provides five advanced services, namely Pharmacy First, Smoking Cessation, Contraception, Hypertension Case Finding and Lateral Flow Device Registrations. I note the Applicant states that *"Patients would be able to access the same services"* at Morrisons and Tesco Pharmacy. However, I note from the information provided by the Commissioner, which has not been disputed, that both these pharmacies do not provide Smoking Cessation although it appears from the Appellant's survey that there are no users of this service between 6.30pm and 7pm. I note that Grange Pharmacy does offer the same Advanced Services as the Applicant however this pharmacy does not have core hours at the times the Applicant is wishing to close.

- 7.26 I note the Applicant's reference to the 2022 Hertfordshire Pharmaceutical Needs Assessment (PNA) which provide an overview of the pharmaceutical provision in the area, I would need more specific information such as the names of the pharmacies, the services offered and distances to the Applicant's pharmacy to be able to reach the conclusion that the current service provision would be maintained. The Applicant has also provided dispensing data and states that *"This shows that most patients are choosing a different pharmacy (Grange Pharmacy) over Birch Pharmacy"*. Whilst I agree that Grange Pharmacy has the highest dispensing rate, the data does not show what times patients accessed pharmaceutical provision at this pharmacy and I am mindful that the provision of pharmaceutical services is greater than the dispensing of prescriptions and that maintaining a level of service provision includes all services that the pharmacy may offer, including additional enhanced and advanced services that may be commissioned.
- 7.27 I am therefore struggling to be satisfied that the existing level of service provision would be maintained by virtue of the existence of other local pharmacies.
- 7.28 As a result, I have decided that it is necessary to maintain the current service provision but, due to the cumulative effect of:
- 7.28.1 the alternative pharmacies not having core opening hours at times the Applicant is wishing to close; and
 - 7.28.2 limited information regarding the journey to alternative pharmacies whether on foot or by private transport.
- I am not satisfied that there will be maintenance of the existing level of service provision by virtue of other pharmacies in the area at times the Applicant is wishing to close.
- 7.29 I therefore next consider if I need to have regard to paragraph 24(1)(b) which states that I must seek to ensure that the changed hours are such as to:
- "maintain a sustainable level of adequate service provision for the people in that area or other likely users of the pharmacy premises, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome"*.
- 7.30 I have already determined that it is necessary to maintain the existing level of service provision so reference in paragraph 24(1)(b) to *"in circumstances where maintaining the existing level of service provision is ... unnecessary"* is not relevant.
- 7.31 I note that the Applicant has stated that *"the financial implications of operating until 7:00 pm have become evident through mounting electricity bills and increased staff wages. The extended operating hours have not yielded a corresponding increase in footfall to offset these costs, resulting in a deficit that is negatively impacting our profitability. By closing at 6:30 pm, we anticipate a reduction in overhead expenses and a more balanced financial performance."* I consider that the Applicant is effectively relying on the second part of paragraph 24(1)(b), that maintaining the existing level of service provision is not a realistically achievable outcome. I consider that I need to determine if it is or is not a realistically achievable outcome and if I determine that it is, then I need to consider if the amended hours are such as to maintain a sustainable level of service provision.
- 7.32 On the point of whether maintaining the existing level of service provision is not a realistically achievable outcome, I consider that the evidence that has been put forward by the Applicant is limited. To demonstrate that keeping the pharmacy open for its existing core hours is not realistically achievable, the Applicant must be able to

demonstrate the correlation between the hours being complained of and the purported issues. Whilst it is accepted that a reduction in hours will result in a cost saving, the wording of paragraph 24(1)(b) is such that maintaining existing service levels must not be realistically achievable before considering a sustainable level of adequate provision. I consider that this sets a fairly high bar as to the level of difficulty that the Applicant must find themselves in. I do not consider that sufficient evidence has been provided to indicate that the economic and practical viability of the current opening hours has been compromised. I therefore consider that maintaining the existing level of service is a realistically achievable outcome and therefore the Applicant cannot rely on paragraph 24(1)(b).

- 7.33 I note the Applicant's comment that *"As a result of changes to the opening hours to the Birchwood surgery, reduced demand due to the prevalence of remote consultations and the lack of any supporting trade which opens for extended hours, we believe that the needs of patients in the area have changed."* However as stated previously, I am mindful that the provision of pharmaceutical services is greater than the dispensing of prescriptions alone and despite the opening hours of the surgery and businesses near to the pharmacy, given that people are using the pharmacy at times the Applicant is wishing to close, I do not consider this to be a relevant consideration.
- 7.34 I am of the view that I have not been provided with sufficient information to demonstrate how the proposed change of hours would maintain, as necessary, the existing levels of service provision.
- 7.35 I note the Applicant submitted a notification to decrease their supplementary hours on 5 July 2024 and provided a copy of this with their appeal. I further note the Commissioner's comment that [the Applicant] *"proposes some changes to the supplementary hours although these are yet to be notified."* As set out in the Regulations, this is not something I can take into consideration so I have not taken a view on this.

8. Determination

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

**Head of Appeals
NHS Resolution**