NHS Resolution

25 April 2025

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REF: SHA/26481

APPEAL AGAINST CHESHIRE AND MERSEYSIDE ICB DECISION TO REFUSE AN APPLICATION BY GREEN LANE PHARMACY LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT OR WITHIN 200M WALK OF 6 SMITHDOWN PLACE, LIVERPOOL, L15 9EH

1 **Outcome**

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

1.2 The Committee determined that the application should be refused.

A copy of this decision is being sent to:

Temple Bright on behalf of Green Lane Pharmacy Ltd
PCSE on behalf Cheshire & Merseyside ICB
Liverpool Health & Wellbeing Board

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1 The Application

By application dated 18 September 2024, Green Lane Pharmacy Ltd ("the Applicant") applied to Cheshire and Merseyside ICB ("the Commissioner") for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at or within 200m walk of 6 Smithdown Place, Liverpool, L15 9EH. In support of the application it was stated:

1.1 "6 Smithdown Place, Liverpool, L15 9EH. We have an agreement in principle with the landlord to take up the lease of this property subject to this application being successful. However, there are other properties available within a 200m walk of this address that we feel is suitable for a new pharmacy premises. We plan to open a new pharmacy within a stretch of Smithdown Road/Allerton Road in the area highlighted in the attached map" [no map provided].

1.2 In response to why the application should not be refused pursuant to Regulation 31 the Applicant stated "n/a".

Enclosed supporting information

In making this application you are offering to secure improvements or better access that were not included in the HWB's pharmaceutical needs assessment. 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.

1.3 "Since the last Pharmaceutical Needs Assessment was published, sixteen pharmacies have closed in Liverpool. Eight of these closures have been in South Liverpool. South Liverpool already had fewer pharmacies than in Central and Northern Liverpool and travelling times between pharmacies in South Liverpool are further than the Liverpool average.

1.4 The closure of three pharmacies at Smithdown Place, Taggart Avenue and Greenbank Road at the start of 2024 meant that around 15,000 patients were displaced and needed to find pharmaceutical services elsewhere. Residents within the Fiveways area of the city now have the most residents per pharmacy in the whole city. This stands at 7228 per pharmacy, an increase of 2711 residents per pharmacy since the PNA was published. This is well above both the Liverpool and national averages and has put local pharmacies under massive strain. Patients have had to wait longer for prescriptions, services and over the counter consultations; and this has led to a decrease in service and patient satisfaction in local pharmacies.

1.5 Our current pharmacy is one of those affected pharmacies. We have heard many complaints regarding increased waiting times at ours and other local pharmacies.

Patients are dissatisfied, and want a new pharmacy to be opened. Local residents know that we have applied to open a new pharmacy and regularly ask when the new pharmacy is opening. They are baffled that the pharmacies were allowed to close in the first place, and do not understand how the NHS can refuse to open a pharmacy to replace those lost. There is a desire from local residents to open a pharmacy in the area which is evident through a petition to attempt to stop Boots from closing in the first place https://www.change.org/p/boots-penny-lane, but also a petition set up by local counsellors championing our application: https://www.liverlibdems.org.uk/campaigns/supportlocal-pharmacies where 371 residents have supported our application specifically. Our patients and other residents are willing us, a locally owned and run business, to open this pharmacy.

1.6 Two papers have been published by Liverpool Health and Wellbeing Board on the pharmaceutical provision within the city. One was produced for the March meeting, and the other for the September meeting. For reference, they can be found here.

1.7 March paper:

https://councillors.liverpool.gov.uk/documents/s296989/Pharmaceutical%20Needs%20Assessment.pdf

1.8 September paper:

https://councillors.liverpool.gov.uk/documents/s303117/Pharmaceutical%20Needs%20Assessment%20Update.pdf

1.9 The March paper states on page four that "… *signs of potential gaps are developing in areas where pharmacies have closed*." There is either a gap in pharmaceutical provision or there is not. It is our view that this statement confirms that a gap has been created in this area given the three pharmacies that have closed, and the huge increase in patients per pharmacy in this area. The committee then revisited the closure of three pharmacies in this area in the September meeting. It is our understanding from our local councillor that the Health and Wellbeing Board now support the opening of a pharmacy in this area. The paper provides fifteen-minute walking times for patients in the area of the proposed pharmacy as shown below: [see Appendix A]

1.10 The circled area is in the 20% most deprived areas in the country, where car ownership is less, and therefore patients will be more likely to walk to a pharmacy. Without a pharmacy at or near the proposed site, there will be a 35 minute walk between the closest pharmacies along Smithdown and Allerton Road, as can be seen in the map below. [see Appendix A]

1.11 56% of residents walk to their pharmacy according to the Liverpool 2022 PNA data. Whilst fifteen-minute walking times are a standard feature of Pharmaceutical Needs Assessments, we would argue that a 15-minute walk is too far for someone acutely unwell let alone someone of poor mobility. For many patients, the walking distance to their new nearest pharmacy is now too far.

1.12 Liverpool City Council Ward data suggests that between 23.3% and 28% of ward residents in this area have limited activities, therefore will struggle to access pharmaceutical services on foot. Closure of pharmacies can have a disproportionate impact on people with disabilities who may no longer be able to access pharmaceutical services. Some 42% of people with a disability use a pharmacy at least monthly compared with 21% who do not have a disability.

1.13 Around a quarter of residents in this area are declared disabled with limited activities. We know of anecdotal examples of patients with reduced mobility have struggled to access pharmaceutical services since the three pharmacies closed at the start of the

year. They tell us that whilst they used to be able to walk to their pharmacy independently, they now either must rely on others to bring them or collect on their behalf. Many others are struggling to make the multiple busses they now need to get to our current pharmacy.

1.14 Pharmacy users from ethnic minority backgrounds are also more likely to walk to their regular pharmacy (71% compared with 56% from a white ethnic background) 25% of the residents in this area are from an ethnic background which is higher than the Liverpool and national average.

1.15 Granting this application would therefore improve access and patient choice to patients; in particular those with protected characteristics.

1.16 The local area has also seen a marked reduction in Saturday opening hours since the last PNA. At that time, there were eight pharmacies open on a Saturday, with six pharmacies open on after 1pm. The map below denotes this, with dark green markers showing pharmacies open in the morning, and light green markers depicting pharmacies open after 1pm: [see Appendix A]

1.17 Not only has the closure of the three Boots pharmacies left significant gaps in Saturday coverage; another local pharmacy has cut its Saturday opening significantly and is now open in the morning only. This again is demonstrated below with those pharmacies open after 1pm shown in light green, and those open until 1pm shown in dark green: [see Appendix A]

1.18 The siting of the proposed new pharmacy can be seen in the red marked area in the above map [see Appendix A].

1.19 It clearly shows that Saturday coverage will be much improved if this application is granted.

Please explain how you intend to secure the unforeseen benefit(s).

1.20 “The proposed site will be located at or near one of the recently closed pharmacies – at or around Smithdown Place. This pharmacy was the busiest of those closed and is located in one of the areas with the highest population densities in the city. This would indicate it is situated in the area of highest need. It is also located near a bus intersection, meaning that patients will be able to access the pharmacy via the 80, 86, 62, 68, 61B, 76 and 174 bus routes. These feed in from areas where the other two recently closed pharmacies were situated. It is also very close to three GP surgeries. The 2022 Liverpool PNA data suggests that 76% of residents want their pharmacy to be close to their home, and 43% near their surgery. This location fulfils both desires. We also have an agreement in principle with the landlord of the old Boots pharmacy to rent the property. There is also a lack of property available to rent to the west of the proposed site.

1.21 We feel the location is the perfect place to position a pharmacy in order to completely fill the gap that was created by the three pharmacy closures.

1.22 The current PNA could never have foreseen three pharmacies closing in that area and we would argue that granting a pharmacy application at or around Smithdown Place would indeed offer an improvement in access to pharmaceutical provision to the residents of that area and will massively improve patient choice.

1.23 It is obvious that the PNA doesn’t suggest there is a lack of patient choice as the PNA lists three more pharmacies in the area. Given the lack of pharmacies in an area of deprivation with higher than average levels of ethnic minorities and disabled people; granting this application will improve patient choice and improve accessibility to

patients especially those with protected characteristics who can often be the most vulnerable.

1.24 This application has already demonstrated an improvement in access on Saturdays; particularly in the afternoon. This time is increasingly busy in our existing pharmacy with NHS 111 referrals for both urgent supplies of medications and pharmacy first referrals. By opening on Saturday afternoons, we will reduce system pressures on out-of-hours provision in the area such as Walk-in-Centres and A&E as the Liverpool 2022 PNA highlights that if a patient cannot obtain healthcare through their pharmacy or general practice then they are likely to attend in other acute settings.

1.25 Our plan will be to offer nationally commissioned services such as Pharmacy First, Pharmacy Contraception Service, Hypertension Case Finding, Flu and COVID vaccinations and the New Medicines Service. We will also offer locally commissioned services such as the local Pharmacy First service, Care at the Chemist, Not Dispensed, Infant Feeding, Spacer Provision, Supervised Consumption, Nicotine Voucher Dispensing and sexual health services such as Emergency Hormonal Contraception. This is important as it continues access to these vital local services for patients, but also continues provision of sexual health services for the high student population in the area.

1.26 In summary:

1.26.1 Liverpool Health and Wellbeing Board have outlined support for an application in this area and suggest in their meeting papers that gaps are forming in areas where pharmacies have closed.

1.26.2 This application does improve access to pharmaceutical services to local residents. The current PNA does not suggest there is a gap because when published there were three more pharmacies in the local area.

1.26.3 This application does improve access to pharmaceutical services as the pharmacy will open until 5pm on a Saturday. This improves coverage and patient choice.

1.26.4 Patient choice will improve due to the granting of this application as this has been severely curtailed due to the closure of the three pharmacies. The PNA does not account for this as the three pharmacies were open when it was published.

1.26.5 Given the lack of pharmacies in an area of deprivation with higher-than-average levels of ethnic minorities and disabled people; granting this application will improve patient choice and improve accessibility to patients especially those with protected characteristics."

2 The Decision

The Commissioner considered and decided to refuse the application. The decision letter dated 23 December 2024 states:

2.1 "Cheshire and Merseyside ICB has considered the above application and I am writing to confirm that it has been refused. Please see the enclosed report for the full reasoning."

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

Extract from the Cheshire and Merseyside Pharmaceutical Services Regulations Committee meeting minutes of 13th December 2024

2.2 "Applicant: Green Lane Pharmacy Limited

2.3 Proposed Premises: At or within a 200m walk of 6 Smithdown Place, Liverpool, L15 9EH

2.4 The committee considered this application, alongside the committee report, Regulations and comments received from interested parties and the response to these comments from the applicant.

2.5 NHS Cheshire and Merseyside's PSRC decision making is governed by the Regulations. In order to approve an Unforeseen Benefits application, the committee must be satisfied that it meets the requirements of Regulation 18, Regulation 19 (where applicable) and Regulation 31. These minutes, alongside the committee report will outline whether this application meets the requirements of each regulation.

2.6 The committee concluded that:

2.7 There is no requirement to refuse this application under the provision of Regulation 31.

2.8 Regulation 19 is not applicable to this application.

2.9 In consideration of Regulation 18(1):

2.10 The committee cannot be satisfied in consideration of this application that this would secure better access to pharmaceutical services or pharmaceutical services of a specified type in the area of Liverpool HWB as a result of granting this application and that this better access was unforeseen by the PNA at the time of the submission of this application.

2.11 In consideration of improvement, the committee find the applicant has failed to establish significant improvements in this application. Granting the application would not confer significant benefits on persons in the area of the relevant HWB which were unforeseen when the relevant pharmaceutical needs assessment was published.

2.12 In consideration of innovation, the committee find the applicant has failed to establish significant innovation in this application

2.13 In consideration of regulation 18(2), the committee is satisfied that significant detriment to the arrangements that are in place for the provision of pharmaceutical services would not result from the grant of the application.

2.14 In consideration of reasonable choice, the committee consider the applicant has failed to evidence how the PNA demonstrates a lack of patient choice - either in the general population of this neighbourhood or in the patient groups that would be considered as having protected characteristics.

2.15 The committee noted that there is support for this application from the Lord Mayor, residents and the HWB; however, it can be determined that the support is for a pharmacy in this location with services provided by this applicant. The support does not demonstrate that this application meets the requirements of the regulations.

2.16 The committee noted that the applicant has stated that they are offering the following benefits:

2.16.1 Filling a gap left by the closure of the pharmacy previously at this location

2.16.2 Offering opening hours on Saturdays

2.17 The committee acknowledge that the current Liverpool PNA (2022-25) was written prior to the closure of a number of pharmacies within Liverpool. However, the HWB have issued a supplementary statement following each closure and none of the supplementary statements have identified that a gap has been created as a result of the closures. Nor has the HWB deemed the closures significant enough to rewrite the PNA earlier than its September 2025 endpoint.

2.18 In its letter of support for this application, the HWB state that it has been made aware of the large number of cases of people raising pharmacy related issues through Healthwatch, and of the challenges faced by local communities through many pharmacies reducing their opening hours. The committee noted that the ICB has not been made aware of any concerns raised within this locality from patients struggling to access services, other than those noted in the response letters from residents who have written in to show their support of the applicant.

2.19 The HWB also stated that it is "*the opinion of Liverpool Health and Wellbeing Board that access to pharmacy provision has been impacted by pharmacy closures and reductions in opening hours in some localities which has caused gaps to occur. The Board therefore supports applications to open new pharmacies which will increase access to pharmacy services outside usual business hours for residents*."

2.20 The committee noted that the applicant is only offering to provide core hours Mon – Fri 9am – 5pm. All other hours, including Saturday opening hours, are supplementary hours, as such the applicant could remove these hours with just 5 weeks' notice. Therefore, the committee determined that this application does not meet the expectations of the HWB.

2.21 The Liverpool PNA states that "*there are very few residential areas in Liverpool that cannot access a pharmacy within a 15-minute walk. Every Liverpool resident can access a pharmacy travelling by car within 5 minutes or using public transport within 20-minutes*."

2.22 From the information provided in the application and the committee report the committee determined that the closure of the pharmacy previously at this site does not change this fact.

2.23 The committee noted that there are 8 pharmacies within 1 mile of the proposed best estimate and 32 pharmacies within 2 miles, all offering essential, advanced and enhanced pharmaceutical services. NHS Cheshire & Merseyside ICB has not been made aware of plans for any of the remaining pharmacies to close.

2.24 The committee considered the demography of the locality and whilst there appear to be conflicting views on deprivation, the information the committee had in front of it, which included access to the SHAPE mapping tool, show the pharmacy is not in an area of high deprivation.

2.25 The applicant is not offering any unique or specifically identified services in this application other than those described in the PNA.

2.26 The applicant states that they plan to open longer than the current pharmacies in this locality on Saturdays. However, the proposed opening hours for Saturday are supplementary hours and as such could be removed with only 5 weeks' notice by the applicant. This is the same for the proposed evening opening of 5pm – 6pm. As such the committee determined these opening hours cannot be relied upon when considering the benefits to the population in this locality.

2.27 The committee noted the comments from all interested parties, including the unsolicited responses from residents and the Lord Mayor, and although mindful that there will be a re-write of the PNA in the next 12 months, as it stands there is no identified gap in pharmaceutical provision. The ICB have not been made aware of any complaints regarding lack of access within this locality. The applicant has failed to identify any areas of significant improvement or innovation within the application. As such the application is refused.

2.28 Decision: Refused

2.29 Rights of appeal: Applicant

2.30 Action: PCSE to notify the applicant."

3 The Appeal

In a letter dated 21 January 2025 addressed to NHS Resolution, Temple Bright on behalf of the Applicant appealed against the Commissioner's decision. The grounds of appeal are:

3.1 "We act for Green Lane Pharmacy Limited. On behalf of our client, we write to appeal a decision of NHS England to refuse our client's application for inclusion in the pharmaceutical list offering unforeseen benefits for premises at or within 200m walk of 6 Smithdown Place, Liverpool, L15 9EH. The decision was notified to our client by letter dated 23rd December 2024.

3.2 Our client grounds of appeal are that:

3.2.1 NHS England failed to apply the correct legal test in its determination of this application. In particular, NHS England:

3.2.1.1 appears to have considered whether granting the application would result in "significant" improvements in the HWB's area, whereas regulation 18 only requires NHS England to consider whether granting an application would secure improvements or better access (ie the improvements or better access do not need to be "significant")

3.2.1.2 Considered that the applicant had failed to "evidence how the PNA demonstrates a lack of patient choice", but this is not part of the regulatory test.

3.2.2 NHS England failed to have proper regard to the supporting information provided by our client. Whilst noting that there was "support for this application from the Lord Mayor, residents and the HWB", NHS England concluded that the support was "for a pharmacy in this location with services provided by the applicant" and that "the support does not demonstrate that this application meets the requirements of the regulations". This conclusion by NHS England was flawed, because the supporting material clearly goes to the heart of the regulatory test in relation to access difficulties and a lack of reasonable choice and was therefore highly relevant to NHS England's determination of our client's application.

Factual background

3.3 By way of background, our client has applied for inclusion in the pharmaceutical list for premises within 200m of 6 Smithdown Place, Liverpool, L15 9EH pursuant to regulation 18 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

3.4 The proposed location is within a very busy and well-used local shopping area (the Penny Lane District Centre) which contains a large number of shops and other services to meet local needs. It is estimated that the District Centre serves a catchment of around 25,000 residents. The proposed location is within close proximity of the Penny Lane GP surgery (at 7 Smithdown Place) which has a patient list size of around 6,000 patients and prescribes an average of around 9,000 items per month. The Rutherford Medical Practice (with a patient list of 3,000) is also located 400m from 6 Smithdown Place (the proposed location).

3.5 The application was made following the closure of 3 Boots pharmacies in the local area: Smithdown Place (the location of the proposed pharmacy); Taggart Avenue shopping area (approximately 1 mile to the northeast of the proposed location); and Greenbank Road (which is located 1km to the west of the proposed location).

3.6 It is of note that there were high profile petitions raised when the Boots pharmacies announced their closures (see, for example, https://www.change.org/p/boots-penny-lane and Petition · Stop the closure of Boots Pharmacy Childwall! - United Kingdom · Change.org with considerable local concern expressed about the closures and the gaps in pharmacy service provision that would result.

3.7 These 3 closures are against the background of the closure of 16 pharmacies in Liverpool as a whole, and 8 closures in South Liverpool.

3.8 The closure of three pharmacies has meant that around 15,000 patients were displaced and needed to find pharmaceutical services elsewhere. Residents within the Fiveways area of the city now have the most residents per pharmacy in the whole city. This stands at 7228 per pharmacy, an increase of 2711 residents per pharmacy since the PNA was published. This is well above both the Liverpool and national averages and has put local pharmacies under massive strain. Patients have had to wait longer for prescriptions, services and over the counter consultations; this has led to a decrease in service and patient satisfaction in local pharmacies.

3.9 Our client operates a pharmacy approximately 1km from the proposed site (Green Lane Pharmacy) and is one of the pharmacies that has been significantly affected by the Boots pharmacy closures. Our client has heard many complaints regarding increased waiting times at the remaining pharmacies and difficulties accessing the remaining pharmacies.

3.10 By way of example, the 4 nearest pharmacies to the proposed location have seen a very significant increase in dispensing volumes over the last 18 months (between April 2023 and September 2024). We have set out, below, the relevant dispensing figures for the 4 nearest pharmacy for the beginning and end of the 18-month reference period (ordered from the closest to the furthest away to the proposed site):

3.10.1 Day Lewis Pharmacy, Lance Lane Medical Centre, Lance Lane, Wavertree, L15 6TS has seen an increase from 5,892 to 10,113

3.10.2 Green Lane Pharmacy (our client's pharmacy) at 167-169 Allerton Road, L18 6HG has seen an increase from 17,299 to 24,071

3.10.3 Tesco Pharmacy at Mather Avenue, Allerton, L18 6HF has seen an increase from 5,940 to 9,446

3.10.4 Watterson Pharmacy at 79 High Street, Liverpool, L15 8HF has seen an increase from 5,502 to 7,282

3.11 This gives a combined increase across the nearest 4 pharmacies over an 18-month period of 16,279 items per month, or 47%. The closures have therefore led to a

significant increase in pressure on the remaining pharmacy network, a reduction in patient choice, a physical gap in service provision and a decrease in the availability of services at particular times (particularly on a Saturday).

3.12 In contrast, the next-nearest 3 pharmacies have seen hardly any increase in their dispensing volume of the reference period:

3.12.1 Asda Pharmacy, Smithdown Road, L15 3JR has seen an increase from 8,417 to 9,111

3.12.2 Picton Road Pharmacy, 65 Picton Road, L15 4LF has seen an increase from 3,164 to 3,168

3.12.3 Cohens Pharmacy, Queens Drive, L15 6YG has seen an increase from 15,161 (in September 2023 after it acquired the branch) to 15,195

3.13 This represents an increase of only 732 items across the next-nearest 3 pharmacies, or only 3%.

3.14 Whilst our client has done all it can to manage the increased workload, it is simply not been possible for the remaining pharmacies to close the gap in service provision created by the Boots closures.

3.15 The pressure on the remaining pharmacy network has also led to pharmacies cutting nonessential services so that they can concentrate on dispensing medications. For example, Tesco pharmacy has recently stopped providing locally commissioned services such as Care at the Chemist and Nicotine Replacement Therapy dispensing. This has led to a gap in the provision of locally commissioned services.

3.16 Having become aware of significant local concerns in relation to the provision of pharmaceutical services in the area following the closure of the Boots pharmacies, our client has sought to engage with the local community to seek their views on pharmaceutical service provision. Our client created an online survey form that was circulated to local groups (including a local Facebook group and by Rutherford, Penny Lane and Greenbank Drive GP practices) as well as providing paper copies in its pharmacy and local GP practices for patients to complete.

3.17 The survey was run between 10th January 2025 and 19th January 2025 and received 497 responses (44 paper responses and 453 online forms completed).

3.18 We attach to this letter of appeal a copy of the completed paper survey forms (appendix 1 of Appendix B) together with a table which collates the responses to the online survey (appendix 2 of Appendix B).

3.19 As NHS Resolution will see from the attached, the survey responses demonstrate significant difficulties being experienced with existing service provision by local pharmacies.

3.20 Our client has also been provided with 3 emails from local GP practices, again detailing issues with pharmaceutical service provision following the Boots closures. Again, these are attached for NHS Resolution's consideration (appendix 3 of Appendix B).

Regulatory test

3.21 Our client's application is submitted pursuant to regulation 18. NHS Resolution, on appeal, must therefore determine whether granting our client's application would secure improvements in, and better access to, pharmaceutical service provision in the local area.

3.22 In particular, NHS Resolution must have regard to the matters contained within regulation 18(2)(b) and whether it is satisfied that our client's application would confer significant benefits. having regard to the desirability of:

3.22.1 There being a reasonable choice of service provision in the HWB's area, and

3.22.2 Patients who share a relevant protected characteristic and who require access to pharmaceutical services but who currently find access difficult

3.23 Taking each of these in turn, our client comments as follows.

Reasonable choice of service provision

3.24 With the closure of 3 pharmacies in the local area (and the closure of other pharmacies in the wider South Liverpool and Liverpool localities), our client believes that there is no longer a reasonable choice of service provision in the local area. This is evidenced by the significantly increased demand for dispensing services from the nearest 4 pharmacies to the proposed location (as detailed above), together with evidence of patient complaints regarding the provision of pharmaceutical services locally (about which more information is provided below).

3.25 We attach, to this letter, unsolicited comments received by NHS England from local residents which detail the local issues which are being experienced by patients following the closure of the Boots pharmacies (appendix 4 of Appendix B). NHS Resolution will no doubt consider these comments carefully and will note the recurring themes of the remaining pharmacies being under significant pressure following the closures and difficulties accessing the remaining pharmacies.

3.26 Our client's application also has the support of the Lord Mayor of Liverpool. Again, we attach, to this appeal, a copy of the Lord Mayor's letter which was sent to NHS England (Appendix 5 of Appendix B).

3.27 Finally, as stated above, we attach (appendices 1 and 2 see Appendix B) the responses received to our client's recent survey (both paper responses and online responses which have been put into a table for ease of reference).

3.28 Our client believes that the attached documents demonstrate the lack of reasonable choice for patients, both in terms of difficulties accessing the remaining pharmacy network and evidence of a lack of capacity (evidenced by complaints in relation to a lack of stock, repeated trips to pharmacies and long waiting times).

3.29 By way of example in relation to hand-completed survey forms, the following comments demonstrate a lack of choice (page numbers are at the bottom of the handwritten forms bundle):

3.29.1 Green Lane pharmacy are "inundated with extra work" (page 3)

3.29.2 The one chemist locally is inundated (page 4)

3.29.3 This is essential due to the lack of pharmacies in the area now and the overwork of the staff and to prevent patients being delayed (page 6)

3.29.4 Less choice – patients are best served by greater choice (page 7)

3.29.5 Long queues and waiting time (page 9)

3.29.6 I have signed up to a new pharmacy, but it is always so busy that there is a wait (page 16)

3.29.7 Very limited pharmacies in local area since closure of Boots other pharmacies are overwhelmed (page 25)

3.29.8 It is awful. Local pharmacies are far too busy. Long wait for prescriptions (page 41)

3.30 In relation to the online survey forms, the themes of delays and long waits are repeated throughout the responses as NHS Resolution will see from the attached table. NHS Resolution will no doubt consider the responses carefully but, by way of example, the following comments are relevant:

3.30.1 My husband is diabetic and has had awful trouble getting his prescriptions since both Boots closed. After trying other chemists including Green Lane, but finding the queues and waits so long, he's now using Lance Lane but says they're currently so swamped that they've told him he should expect to wait upto [sic] a week to get prescription requests processed. As the doctors won't prescribe repeats more than a week before he needs them, this could cause serious issues, especially when requests might span a weekend or holiday (page 3)

3.30.2 Queues to pick up prescriptions are becoming increasingly long as there isn't a separate counter for dispensing prescriptions or other non prescription medicines. My monthly experience of collecting my prescription causes me a great deal of anxiety and dread. Often getting my prescription involves 2-3 visits to get my full medication as my current pharmacy can't store enough tablets etc. to fulfil my prescription. I know that this is a regular occurrence for others as I've witnessed it whilst waiting in the queue. Plastic boxes full of prescriptions are piled up on the floor behind the counter due to there not being enough storage at the chemist and the staff are constantly under immense pressure to deliver customers vital medications. I believe that people who are reliant on prescriptions are being put at genuine risk by the current lack of local dispensing pharmacies (page 4)

3.30.3 I use Green Lane pharmacy who are excellent but since other local pharmacies closed they've been completely overwhelmed. It now takes longer to get my regular prescriptions and there is often a lengthy queue. The area needs more pharmacies (page 4)

3.30.4 It is clear that since the closure of the three Boots pharmacies in this area the remaining pharmacies are struggling under the pressure of the extra demand (page 9)

3.30.5 Much longer walk to alternative pharmacies, and they are close to being overwhelmed because of the recent closures, with long queues and waits. Demand is too high for the remaining pharmacies to cope (page 30)

3.30.6 There are just not enough pharmacies to serve this immediate area (page 44)

3.30.7 Horrendous queues at pharmacist , I've heard people say they will try and do without their medication because the queues are so long (page 63)

3.30.8 The Tesco pharmacy put up notices about the large number of extra patients they were dealing with after the closures and waiting times for repeat prescriptions etc. There are always long queues to pick up medications (page 79)

Difficulties accessing existing pharmacies

3.31 Without a pharmacy at or near the proposed site, there is a 35-minute walk between the closest pharmacies along Smithdown and Allerton Road, as can be seen in the map [see Appendix C]. This makes access to the remaining pharmacy network difficult, particularly when access is required from either the Penny Lane surgery or the Rutherford Medical Centre (which are both in the vicinity of our client's proposed location) and particularly for those with reduced mobility.

3.32 56% of residents walk to their pharmacy according to the Liverpool 2022 PNA data. Whilst fifteen-minute walking times are a standard feature of Pharmaceutical Needs Assessments, we would argue that a 15-minute walk is too far for someone acutely unwell let alone someone of poor mobility. For many patients, the walking distance to their new nearest pharmacy is now too far.

3.33 Liverpool City Council Ward data suggests that between 23.3% and 28% of ward residents in this area have limited activities, therefore will struggle to access pharmaceutical services on foot. Closure of pharmacies can have a disproportionate impact on people with disabilities who may no longer be able to access pharmaceutical services. Some 42% of people with a disability use a pharmacy at least monthly compared with 21% who do not have a disability. Around a quarter of residents in this area are declared disabled with limited activities.

3.34 Our client is aware of many examples of patients with reduced mobility having struggled to access pharmaceutical services since the three pharmacies closed at the start of the year. Patients tell our client that whilst they used to be able to walk to their pharmacy independently, they now either must rely on others to bring them or collect on their behalf. Many others are struggling to make the multiple buses they now need to get to our client's pharmacy.

3.35 These themes are evident from the survey forms that are provided with this letter of appeal. By way of example in relation to hand-completed survey forms, the following comments demonstrate difficulties with access to existing pharmacies:

3.35.1 I have a health condition – limited walking ability so rely on easy access for chemists…accessibility is important – reduces waiting times in pharmacies in such a busy residential area (page 8)

3.35.2 I would be very pleased if another pharmacy could open by my drs at Penny Lane/Smithdown Place. If ever there is a query about my medications and I need to go back to my Drs at Penny Lane, it would be so much easier for me to get to (page 11)

3.35.3 I find it really difficult to get to other pharmacys [sic] and was really upset when Bots [sic] closed as it was right next door to my surgery so was great, now I have to ask a neighbour to get my meds for me…it would be a godsend to have that pharmacy to open again. A lot of my friends use to go to that chemist as well and find it hard to get their medication (page 15)

3.35.4 Since the closure of the local Boots, the nearest pharmacy is a very long work [sic] (no parking is accessible at either GP or pharmacy). This is horrible when you have a poorly child and they need medication after a GP visit (page 21)

3.35.5 I have a disability and care for 2 young children with disabilities…I have struggled with accessing pharmacies as I don't drive (page 30)

3.35.6 It is very difficult to get to a pharmacy close by. I used to use Boots Penny Lane + sometimes Childwall which are both now closed. So inconvenient. Green Lane are always so busy + bit far for me (page 35)

3.35.7 Struggle walking. I can't get to a pharmacy (page 42)

3.36 In relation to the online survey forms, the themes of difficulty accessing the remaining pharmacies are again repeated throughout the responses as NHS Resolution will see from the attached table. NHS Resolution will no doubt consider the responses carefully but, by way of example, the following comments are relevant:

3.36.1 It's a long walk to the nearest pharmacy along a main road which makes it difficult to navigate with young children. I don't drive (page 1)

3.36.2 I have problems with walking long distances and the wait you will have when you arrive at the pharmacy is about a two hour wait for your prescription (page 2)

3.36.3 There is no local pharmacy since the Boots one at Smithdown Place closed down. This makes it difficult to get to the nearest Pharmacy which is Green Lane by Allerton library (page 5)

3.36.4 Massively, it has impacted my life greatly, travelling to Green Lane Pharmacy it's sometimes impossible due to my health conditions (page 44)

3.36.5 I opted to have my prescriptions sent to Tesco but this has proved very troublesome. I always have to queue to get my prescription, sometimes in a line of 10 customers. The car park is often busy and, when I had to pick up a prescription over the festive period, it took me 20 minutes to get out of the car park. It is also out of my way and even if I drive it takes longer than it would to get to Boots. The location of the former Boots chemist was perfectly ideal, both for the GP surgery and for stopping off on my way home from work (page 47)

3.36.6 Due to my own mobility issues, I have no pharmacy available in walking distance. This is ridiculous in a large city (page 51)

3.36.7 It has been really difficult as there is no longer a pharmacy in walking distance from my house that I can access in opening hours and I really miss having the pharmacy on Smithdown place (page 65)

3.36.8 I have to walk down the Green Lane pharmacy which is not always possible when my condition is flared up. There is never parking there. It is also very busy. I miss being a 2 minute walk from a pharmacy (page 70)

3.36.9 Since the pharmacy on Church Rd has closed, the nearest pharmacy is 3-4 bus stops away, which makes it hard to pick up prescriptions during working hours (page 72)

3.36.10 Since closures it's been very hard and expensive. Can't walk to Sefton Park Doctor and pharmacy. Often can't even get down or up hill to bus stop (page 75)

3.36.11 Its v.inconvenient since boots in smithdown place closed down. I have to walk with my walking sticks, crossing roads & busy traffic along allerton rd to collect my meds from green lane pharmacy, which takes me about 30-45 mins one way which is v.exhausting (page 81) [sic]

3.36.12 I struggle to get to the green lane pharmacy due to the distance to walk (page 84)

3.36.13 I used to use the Boots chemist at Greenbank which I live and work near. I don't have access to a car and work long hours including Saturday mornings

but I used to be able to get to my old pharmacy on foot during a lunch break. It takes too long to get to other pharmacies to be sure of being there and back in my lunch break. I tried the one near Asda but it was very busy with other displaced patients so now I use Green Lane but I have to wait until I can have a long lunch break and rush to the pharmacy to collect my medication and hope not to be too late back or else take time off work. The pharmacy staff are great but the pharmacy is so busy now I usually have to wait and am late. I am on multiple medications which are on different prescription cycles so this isn't an occasional thing. I have often had to put off getting my medication and had gaps between prescriptions (page 95)

Would granting the application confer significant benefits?

3.37 Our client believes that its application would confer significant benefits in relation to the relevant regulatory test.

3.38 Our client's application would secure a reasonable choice of pharmaceutical service provision through increased local capacity. Many of the issues reported by local residents and representatives (as summarised above and referred to in the attached survey responses) relate to the pressure on existing service provision; since granting our client's application will create additional service provision it will, as a consequence, reduce this pressure.

3.39 Our client's application would also improve the geographical spread of service provision by reopening a pharmacy within the Penny Lane District Centre.

3.40 Our client's pharmacy staff are great but the pharmacy is so busy now I usually have to wait and am late. I am on multiple medications which are on different prescription cycles so this isn't an occasional thing. I have often had to put off getting my medication and had gaps between prescriptions (page 95)

Would granting the application confer significant benefits?

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3.43 Our client's application would also improve the geographical spread of service provision by reopening a pharmacy within the Penny Lane District Centre.

3.44 Our client's application would therefore overcome access difficulties which have been caused by the closure of the Boots Pharmacy. As stated above, our client's proposed pharmacy would be located within the Penny Lane District Centre and would therefore be easily accessible to local residents who access the District Centre as part of their daily lives.

3.45 The proposed pharmacy would also be of significant benefit in terms of accessibility for patients who are registered with the Penny Lane surgery and the Rutherford Medical Centre and who require access to pharmaceutical services after a visit to their GP, since those patients currently have to travel significant distances away from their GP surgery in order to have a prescription dispensed. The lack of pharmacy service

provision near to these two GP surgeries is a repeated concern of those who completed the recent survey as NHS Resolution will note from the attached.

3.46 Our client intends to offer nationally commissioned services such as Pharmacy First, Pharmacy Contraception Service, Hypertension Case Finding, Flu and COVID vaccinations and the New Medicines Service. Our client will also offer locally commissioned services such as the local Pharmacy First service, Care at the Chemist, Not Dispensed, Infant Feeding, Spacer Provision, Supervised Consumption, Nicotine Voucher Dispensing and sexual health services such as Emergency Hormonal Contraception. This is important as it continues access to these vital local services for patients, but also continues provision of sexual health services for the high student population in the area.

3.47 Our client also proposes to offer extended hours provision by opening from 9am to 5pm on a Saturday (the nearest pharmacy to the proposed location – Day Lewis Pharmacy – is closed on Saturdays). Whilst, in its decision report, NHS England noted that our client's proposed Saturday hours were not specified as core hours, our client's pharmacy at Green Lane also has non-core hours on a Saturday but has always opened on a Saturday since the pharmacy was purchased 4.5 years ago.

3.48 The improvements and better access that would be secured by the granting of our client's application were not foreseen in the context of the current PNA for the simple reason that the PNA was published before the pharmacy closures.

3.49 Whilst the fact of the various closures has been discussed by the HWB in recent meetings, it appears that the HWB's approach to these closures has been to await the publication of the new PNA (which is not expected until October 2025). This places the local population in the entirely unfair position of having to wait many more months before the gap in service provision created by the Boots closures is properly reflected in the PNA.

3.50 NHS England states in its decision report that the HWB could issue a supplementary statement in order to identify a gap in service provision following the Boots closures if it considered this was necessary. However, supplementary statements are intended to report on changes in service provision rather than to revisit the overall provision of pharmaceutical services in an area, which would require the publication of a new PNA.

3.51 For the reasons given above and those given in our client's application form, on behalf of our client we assert that there is overwhelming evidence that there is not currently a reasonable choice of service provision in the local area, and that existing pharmacies are difficult to access for many.

3.52 On behalf of our client we therefore invite NHS Resolution to conclude that granting our client's application would secure improvements and better access to service provision and to uphold our client's appeal.

3.53 We look forward to hearing from you."

4 Summary of Representations

This is a summary of representations received on the appeal.

4.1 THE COMMISSIONER

4.1.1 "Thank for your letter dated 5th February 2025 inviting representations in response to the appeal by Green Lane Pharmacy Ltd against the decision made by NHS Cheshire & Merseyside ICB to refuse an application for inclusion

in the pharmaceutical list offering unforeseen benefits at or within 200m walk of 6 Smithdown Place, Liverpool, L15 9EH.

4.1.2 The application was refused by NHS Cheshire & Merseyside ICB's Pharmaceutical Services Regulatory Committee (PSRC) on the basis that the PSRC members could not be satisfied that the application meets the requirements of Regulation 18 specifically with regard to Regulation 18 (1) and Regulation 18 (2).

4.1.3 In relation to Regulation 18, [Regulation quoted in full]

4.1.4 Each of the above Regulations were considered and a detailed review of each is recorded in the committee report and minutes that have previously been provided to NHS Resolution and are enclosed again with this letter; so please refer to these in addition to this response, as NHS Cheshire & Merseyside ICB's position has not changed in respect of this. The majority of the points raised by the applicant in their appeal letter appear to have already been considered and addressed within the committee report and minutes, and as NHS Cheshire & Merseyside ICB's position has not changed in respect of these I will avoid duplicating each point within this letter.

4.1.5 In response to the appeal letter, we dispute the applicant's assertion that we have failed to apply the correct legal test in our determination of this application, as it is evident throughout the committee report and the minutes of the PSRC meeting.

4.1.6 We also dispute the applicant's claim that we have failed to have proper regard to the supporting information provided. Throughout the committee report we have referred to the support for a pharmacy in this location. We do not dispute the fact that there is support for a pharmacy. However, we do not consider that the opinions provided through unsolicited comments to be evidence that this application meets the requirements of the Regulations. As stated in the report, and as supported by the response from the LPC, the closure of a pharmacy does not necessitate the need for a new pharmacy.

4.1.7 We have noted that the applicant referred to two petitions within their application; whilst not an insignificant number, the number of people signing the petitions is considered relatively low when compared to the number of people the applicant claims have been displaced because of the closure of pharmacies in this and neighbouring localities. In their appeal letter they provide evidence of a survey they have carried out over a 9-day period after the application was refused. Again, we note that there is support for a pharmacy in this location; however, that does not provide evidence that this application meets the requirements of the Regulations.

4.1.8 Cheshire & Merseyside ICB does not dispute that there may be some benefit of a pharmacy at this location; however, Regulations do not allow us to approve an application on this basis alone. The application fails to satisfy the Regulations that the Committee is bound to consider

4.1.9 The unforeseen benefits the client is offering to provide are:

4.1.9.1 Improved access to pharmacy services on a Saturday

4.1.9.2 Reasonable choice of pharmaceutical provision.

4.1.10 In relation to improved access to pharmaceutical services on Saturday, the applicant is offering to provide supplementary hours only, which can be

removed with only 5-weeks' notice. We acknowledge the comments made in the appeal letter that the applicant only offers supplementary hours at their current pharmacy and has continued to provide these. We do not dispute this; however, this does not change the fact that the applicant would only be guaranteeing this improved access for a period of 5 weeks. It would be improper for the committee to approve an application on the basis that services might be provided on Saturdays based simply on past performance of the applicant.

4.1.11 In relation to reasonable choice, we have provided a number of maps within the committee report which show the spread of pharmacies around the proposed location of this pharmacy and the wider Liverpool HWB area. The NHS.uk website lists 8 pharmacies within 1 mile of the proposed best estimate. The nearest one being 0.5miles.

4.1.12 Of the pharmacies within 1 mile of the proposed best estimate, 6 open on Saturday AM, 4 open Saturday PM, 2 open on Sunday AM and 2 open Sunday PM.

4.1.13 The following image taken from Google maps [see Appendix D] show that the distance to the next nearest pharmacy is 0.5 miles equating to a 13-minute walk.

4.1.14 The committee also noted that Cheshire & Merseyside ICB has not received any complaints regarding access to pharmaceutical services in the locality following the closure of pharmacies. Nor has it been made aware of any concerns from local pharmacies or GP Practices regarding an unsustainable increase in demand; other than the claims made by the applicant in their application and appeal letter and the letters received as part of the consultation, and those collated in the survey, which was submitted in response to the rejection of this application and forms part of the applicants appeal.

4.1.15 Whilst the committee acknowledges that persons residing in the locality are used to having a pharmacy in their locality, and there is support from the HWB, a number of local residents and the Lord Mayor, the fact remains that this application does not satisfy the requirements of Regulation 18 specifically with regard to Regulation 18 (1) and Regulation 18 (2) as outlined above and within the enclosed committee report.

4.1.16 Therefore, we maintain that the application should be refused."

4.2 LIVERPOOL HWB

4.2.1 "Liverpool Health and Wellbeing Board has previously written letters to Primary Care Support England (dated 16th September 2024 and 22nd October 2024) in support of opening of a pharmacy in the vicinity of 6 Smithdown Place. It is the opinion of Liverpool Health and Wellbeing Board that granting the above application would secure improvements and better access to pharmaceutical services, following the closure of a number of community pharmacies in the area:

4.2.1.1 Boots Pharmacy, 6 Smithdown Place closed on 2nd March 2024.

4.2.1.2 Boots Pharmacy, 1A, Greenbank Road L18 1HG closed on 1st March 2024.

4.2.1.3 Boots Pharmacy, 15 Allerton Road, L18 1LG closed on 8th August 2020. following a consolidation approval moving services to Smithdown Place.

4.2.1.4 Lloyds Pharmacy, 114 Allerton Road, L18 2DG closed in April 2018.

4.2.2 Since the publication of the last PNA in October 2022, 15 community pharmacies and the LSP contract pharmacy have closed either through closure or consolidation, reducing the overall number of pharmacies in Liverpool to 101. The closure of community pharmacies can disrupt healthcare access and community well-being in an area. Pharmacies often serve as community hubs where people interact with familiar faces and receive trusted advice. Without these spaces, some residents may feel disconnected or less supported. Older adults, individuals and families on low-incomes, and those with disabilities may face the most significant challenges, as they may not have the means or ability to travel longer distances to access medication or healthcare services.

4.2.3 Liverpool Health and Wellbeing Board is in the process of producing a new pharmaceutical needs assessment for publication by 1st October 2025. Analysis undertaken to inform the needs assessment shows there are currently 5 community pharmacies in Fiveways neighbourhood (see Table 1), where the proposed new pharmacy is located. This means Fiveways neighbourhood has the most residents per pharmacy in the city (7,187) which is much higher than England, the Core Cities and Cheshire & Merseyside averages. Community pharmacies in Fiveways neighbourhood dispense an average of 11,790 items every month, which is the second highest rate in the city after Smithdown neighbourhood.

Table 1: Rates of community pharmacies in January 2025 and average items dispensed per month per pharmacy between Nov 23 to Oct 24 (unadjusted for prescribing length)

Area	Community Pharmacies	Rate per 100,000 population	Persons per pharmacy	Population mid-2023	Average items dispensed per month per pharmacy
Liverpool	101	20.1	4,988	503,740	9,409
Cheshire & Merseyside	516	20.0	1,992	2,576,057	9,345
Core Cities	900	18.8	5,307	4,776,621	8,486
England	10,155	17.6	5,681	57,690,323	8,855
Neighbourhood				Population mid-2022	
Fiveways	5	13.9	7,187	35,936	11,790
Mather	5	14.3	6,980	34,898	8,588
Smithdown	5	15.3	6,520	32,601	12,246
Parks	7	16.3	3,143	42,999	9,641
Speke-Garston	5	18.9	5,291	26,454	9,799
Longmoor	7	19.2	5,208	36,454	11,699
City Centre	8	19.7	5,082	40,652	5,980
Broadway	10	20.5	4,887	48,872	10,839
Stanley Park	7	22.0	4,535	31,748	7,635
West Derby	11	22.8	4,390	48,288	9,033
Newsham	11	23.4	4,279	47,070	9,950
North Docks	9	27.9	3,578	32,202	8,335

Valley	11	29.2	3,425	37,675	8,828

4.2.4 The Board has previously been made aware of the large number of cases of people raising pharmacy related issues through Healthwatch, and of the challenges faced by local communities through many pharmacies reducing their opening hours. Drawing on the results of the Liverpool Pharmacy Services Public Survey 2024 which ran from 18th September to 31st December 2024 and received 377 responses:

4.2.5 3 in 10 (28.9%) respondents could remember a time recently when they had problems finding a pharmacy that was open, this is an increase of +56% compared to 3 years ago when 18.5% of respondents said they had issues finding an open pharmacy.

4.2.6 Of those with a valid postal district recorded, residents in L15 postal district were most likely to say they had problems finding a pharmacy that was open (76.2%) followed by residents in L16 (57.1%), L25 (35%) and L18 (33.3%).

4.2.6.1 Respondents in L15 postal district were less likely to be satisfied with the opening hours of their pharmacy (71.4% compared to 74% for all respondents).

4.2.6.2 Overall satisfaction with pharmacy services in L15 is below average (85.7% compared to 87%).

4.2.7 Liverpool Health and Wellbeing Board continues to support the opening of a pharmacy in the vicinity of 6 Smithdown Place on the grounds that the application would (i) confer significant benefits on persons in the area (following the recent Boots pharmacy closures which were not foreseen when the pharmaceutical needs assessment was published), (ii) provide a reasonable choice with regard to obtaining pharmaceutical services in the area and (iii) improve access to pharmacy services for older adults, those on low-incomes and people with disabilities."

5 **Observations**

5.1 TEMPLE BRIGHT ON BEHALF OF THE APPLICANT

5.1.1 "I continue to act for Green Lane Pharmacy Limited. On behalf of my client I write further to your letter of 11th March 2025 and in order to respond to representations submitted by interested parties on my client's appeal.

5.1.2 Taking each letter in turn, my client comments as follows:

Health and Wellbeing Board

5.1.3 I note that the HWB supports my client's application and appeal, stating, for example, that:

"Liverpool Health and Wellbeing Board continues to support the opening of a pharmacy in the vicinity of 6 Smithdown Place on the grounds that the application would (i) confer significant benefits on persons in the area (following the recent Boots pharmacy closures which were not foreseen when the pharmaceutical needs assessment was published), (ii) provide a reasonable choice with regard to obtaining pharmaceutical services in the area and (iii) improve access to pharmacy services for older adults, those on low-incomes and people with disabilities."

5.1.4 Since NHS Resolution's consideration of this appeal is by way of a reconsideration of the application rather than a review of NHS England's decision, it would seem that a line-by-line response to the letter from NHS England is unlikely to assist NHS Resolution. However, on behalf of my client, I make the following observations:

5.1.5 My client's appeal contains information which was not available to NHS England when it made its decision. As a matter of fact, NHS England is therefore incorrect to assert that "*The majority of the points raised by the applicant in their appeal letter appear to have already been considered and addressed within the committee report and minutes*".

5.1.6 NHS England's approach to evidence of local support is clearly flawed. In its response to my client's appeal, NHS England states "Throughout the committee report we have referred to the support for a pharmacy in this location. We do not dispute the fact that there is support for a pharmacy. However, we do not consider that the opinions provided through unsolicited comments to be evidence that this application meets the requirements of the Regulations." The opinions of local residents, GPs and representatives is clearly relevant to the consideration of my client's application and NHS England's apparent disregard of this information demonstrates that NHS England failed to have regard to all relevant matters when it determined my client's application.

5.1.7 In relation to the Committee report, much of this document appears to rehearse the relevant regulatory test and repeat parts of the PNA (which are now out of date). Where the report looks at the specific locality, it does this through a paper-based exercise, using mapping tools, heat maps and ward data. This somewhat sterile approach to considering my client's application entirely removes, from consideration, the lived experience of local residents following the closure of the 3 Boots pharmacies. By dismissing the actual experience of patients and overly focussing on computer generated data, NHS England failed to take into account the most important part of the regulatory test: patients. In determining this appeal, I respectfully invite NHS Resolution to carefully consider the supporting material provided with my client's letter of appeal which, it is asserted, provides ample evidence that granting my client's application would secure improvements in, and better access to, pharmaceutical services.

5.1.8 NHS England states in its response "*We have noted that the applicant referred to two petitions within their application*". I assume that this is a reference to the petitions mentioned at paragraph 4 of my client's letter of appeal as opposed to the patient survey that was undertaken by my client in support of its application. For the sake of clarity, these petitions were set up by the local communities, entirely independent of my client's application. The fact that local communities felt so concerned about the Boots Pharmacy closures that they set up online petitions is a relevant factor. There is no reason to assume that these petitions are not reflective of the feelings and experiences of at least a proportion of the reliant patient population.

5.1.9 For the reasons given in my client's letter of appeal, the survey clearly does "*provide evidence that this application meets the requirements of the Regulations*" since many of the survey responses deal with matters which are directly relevant to the regulatory test (as summarised in my client's letter of appeal).

5.1.10 As should be clear from my client's letter of appeal, choice is not simply a mathematical exercise of counting the number of pharmacies within a given radius. This ignores matters such as the difficulties which may be experienced in reaching those pharmacies and the demand for services and consequent pressure on those pharmacies. On behalf of my client, I submit that there is a wealth of evidence provided with my client's appeal to demonstrate that existing pharmacies do not secure a reasonable choice of service provision.

5.1.11 For the reasons given above and those given in my client's appeal, on behalf of my client I invite NHS Resolution to uphold this appeal and to grant my client's application. I look forward to hearing from you."

6 **Consideration**

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

6.2 It also had before it the responses to NHS Resolution's own statutory consultations.

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

6.4 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations").

Regulation 31

6.5 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).

6.6 The Committee noted that the Applicant, in their application, had stated "n/a" in response to why the application should not be refused pursuant to Regulation 31. Whilst the Committee noted that the Applicant had not provided any information in the application form on this point it was mindful that the wording of the application form only required the Applicant to include information in the relevant section if the proposed premises were adjacent to, or in close proximity to, another pharmacy or dispensing appliance contractor premises. The Committee considered it reasonable to determine that the lack of information in the application form on this point when read with the wording of the application form allowed it to be reasonably satisfied that the Applicant

considered that the proposed premises were not adjacent to, or in close proximity to, another pharmacy or dispensing appliance contractor premises.

6.7 The Committee noted the decision of the Commissioner that "there is no requirement to refuse this application under the provision of Regulation 31" and that this had not been disputed on appeal or in subsequent representations. The Committee therefore determined that it was not required to refuse the application under the provisions of Regulation 31.

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

Regulation 18

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

"(1) If—

(a) NHS England receives a routine application and is required to determine whether it is satisfied that granting the application, or granting it in respect of some only of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB; and

(b) the improvements or better access that would be secured were or was not included in the relevant pharmaceutical needs assessment in accordance with paragraph 4 of Schedule 1,

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

(2) Those matters are—

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

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

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

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

(i) there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB (taking into account also NHS England's duties under sections

13I and 13P of the 2006 Act (duty as to patient choice and duty as respects variation in provision of health services)),

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

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

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

(c) whether it is satisfied that it would be desirable to consider, at the same time as the applicant's application, applications from other persons offering to secure the improvements or better access that the applicant is offering to secure;

(d) whether it is satisfied that another application offering to secure the improvements or better access has been submitted to it, and it would be desirable to consider, at the same time as the applicant's application, that other application;

(e) whether it is satisfied that an appeal relating to another application offering to secure the improvements or better access is pending, and it would be desirable to await the outcome of that appeal before considering the applicant's application;

(f) whether the application needs to be deferred or refused by virtue of any provision of Part 5 to 7.

(g) whether it is satisfied that the application presupposes that a gap in pharmaceutical services provision has been or is to be created—

(i) by the removal of chemist premises from a pharmaceutical list as a consequence of the grant of a consolidation application, and

(ii) since the last revision of the relevant HWB's pharmaceutical needs assessment other than by way of a supplementary statement.

(3) NHS England need only consider whether it is satisfied in accordance with paragraphs (2)(c) to (e) if it has reached at least a preliminary view (although this may change) that it is satisfied in accordance with paragraph (2)(b)."

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

6.11 The Committee went on to consider whether Regulation 18(1)(b) was satisfied, i.e. whether the improvements or better access that would be secured if the application was granted were or was included in the Pharmaceutical Needs Assessment ("the PNA") in accordance with paragraph 4 of Schedule 1 of the Regulations.

6.12 Paragraph 4 of Schedule 1 requires the PNA to include: "a *statement of the pharmaceutical services that the HWB had identified (if it has) as services that are not provided in the area of the HWB but which the HWB is satisfied (a)* ***would*** *if they were provided….secure improvements or better access, to pharmaceutical services… (b)* ***would*** *if in specified future circumstances they were provided…secure future improvements or better access to pharmaceutical services…"* (emphasis added).

6.13 The Committee considered the PNA prepared by Liverpool City Council's Health and Wellbeing Board, conscious that the document provides an analysis of the situation as it was assessed at the date of publication. The Committee bears in mind that, under Regulation 6(2), the body responsible for the PNA must make a revised assessment as soon as reasonably practicable (after identifying changes that have occurred that are relevant to the granting of applications) unless to do so appears to be a disproportionate response to those changes. Where it appears disproportionate, the responsible body may, but is not obliged to, issue a Supplementary Statement under Regulation 6(3). Such a statement then forms part of the PNA. The Committee noted that the PNA was dated 1 October 2022 and that 18 supplementary statements had been issued since October 2022.

6.14 The Committee noted the "Overall Conclusions and Recommendations" in the Executive Summary of the PNA that:

"*The totality of information provided in this PNA has led to the following conclusions:*

The number of pharmacies in Liverpool is sufficient for our residents.

Access in terms of location, opening hours, and services is considered to be sufficient for our residents with all constituencies having at least one pharmacy open after 8pm during weekdays.

It is recommended that NHSE/I, the ICB and other local commissioners take accessibility into account when commissioning and developing services, particularly in the most deprived parts of the city.

The PNA has not identified a current need for new NHS pharmaceutical service providers in the city.

The Health and Wellbeing Board has not identified any services that would secure improvements, or better access, to the provision of pharmaceutical services either now or within the lifetime of the pharmaceutical needs assessment.

The provision of pharmacies within Liverpool will continue to be monitored and Supplementary Statements notifying any changes will be published on the Liverpool City Council website.

Due consideration will be given to notifications of pharmacy closures, as well as to proposed mergers and consolidations, and if deemed necessary by members of the steering group then the PNA will be redone prior to its September 2022 endpoint."

6.15 The Committee noted that the localities that had been used in the PNA are based on the 30 Liverpool electoral wards and, in some cases the 5 Liverpool Parliamentary

Constituencies, which match the boundaries of Liverpool. The Committee noted that the proposed site was within the Liverpool, Wavertree boundary.

6.16 The Committee noted the conclusions of the PNA at section 5 "Pharmacy Premises" that "*All of the above information, used together, means that the number of pharmacies in Liverpool is sufficient for our residents. Resident access to Liverpool pharmacies is adequate*" and *"This PNA has not identified a current need for new NHS pharmaceutical service providers in Liverpool."*

6.17 The supplementary statements (issued between October 2022 and March 2025) covered any changes to the pharmaceutical list and that the relevant supplementary statements for the area of the proposed premises in the L15 postcode area of Liverpool were the supplementary statements numbered 1, 2, 6 and 11. The Committee noted that the supplementary statements listed the closures of the pharmacies in the area as well as any reduction in hours and consolidations or change of ownerships.

6.18 The Committee noted the overarching heading for all of the published supplementary statements which states:

"Supplementary Statements are issued for opening or closure of pharmacies or when there are pharmaceutical needs assessment changes that are minor and would be relevant for granting of applications. Once issued, a supplementary statement becomes part of the PNA and is published here."

6.19 The Committee also noted that the introduction for supplementary statements 16 and 17 had the wording:

"As part of its regular review of the provision of pharmaceutical services in the city Liverpool Health and Wellbeing Board is reviewing what constitutes a gap in pharmacy provision – previously this has been based on the number of pharmacies in a specified locality. The new definition also will also consider pharmacy opening hours including evenings and weekends and the capacity of other pharmacies to meet the increased demand arising from pharmacy closures.

The Board has been made aware of the large number of cases of people raising pharmacy related issues through Healthwatch, and of the challenges faced by local communities through many pharmacies reducing their opening hours. It is the opinion of Liverpool Health and Wellbeing Board that access to pharmacy provision has been impacted by pharmacy closures and reductions in opening hours in some localities which has caused gaps to occur. The Board therefore supports applications to open new pharmacies which will increase access to pharmacy services outside usual business hours for residents.

The Health and Wellbeing Board will continue to produce a new pharmaceutical needs assessment which will include more detailed analysis of pharmacy services provision in Liverpool."

6.20 In addition and whilst not part of the PNA or the supplementary statements, the Committee noted the Liverpool Health and Wellbeing Board report as provided by the Applicant and especially the "Recommendations" which stated:

"*That Board members:*

- *Note that despite the recent concerning trend of pharmacy consolidations and closures, pharmacy provision overall in the city remains sufficient for the population.*

- *Agree that the recommendations in the current PNA remain fit-for-purpose and the current timeline for production and publication of the next PNA remain unchanged.*
- *Support the production of a supplementary document to monitor current pharmacy provision before publication of the PNA.*"

6.21 The Committee noted that the Applicant seeks to provide unforeseen benefits to the patients of the Penny Lane Surgery and those resident in the Wavertree area of Liverpool. The Committee was mindful that whilst the HWB were aware that there are gaps in some localities, this was not explicit within the PNA nor supplementary statements and therefore the Committee 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.

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

Regulation 18(2)(a)(i)

6.23 The Committee had regard to

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

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

6.24 The Committee noted the conclusion of the Commissioner in respect of Regulation 18(2) as a whole that "*the Committee was satisfied that significant detriment to the arrangements that are in place for the provision of pharmaceutical services would not result from the grant of the application.*" The Committee considered that Regulation 18(2)(a)(i) was with regard to planning and not the arrangements that are in place so the Commissioner had erred in not considering planning in its own right. The Committee noted that no party had sought to dispute this either on appeal or in subsequent representations.

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

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

Regulation 18(2)(a)(ii)

6.27 The Committee had regard to

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

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

6.28 The Committee noted the conclusion of the Commissioner that "*the Committee was satisfied that significant detriment to the arrangements that are in place for the provision of pharmaceutical services would not result from the grant of the application.*" The

Committee noted that this had not been challenged either on appeal or in subsequent representations.

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

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

Regulation 18(2)(b)

6.31 The Committee had regard to

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

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

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

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

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

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

6.32 The Committee had regard to the location of the existing pharmacies and GP surgeries as provided on the map by the Commissioner, which had not been disputed by any party.

6.33 The Committee noted the comments from the Applicant with regard to the closures of pharmacies in the area and that the application before it was to open a new pharmacy following the closure of the Boots pharmacy which had previously been located in Smithdown Place. The Committee was of the view that the closure of pharmacies did not mean that a new pharmacy should automatically be granted. The Committee noted the undisputed comments from the Commissioner that there are 8 pharmacies within a mile of the proposed site and that there are 32 pharmacies within 2 miles, all of which are operated by a variety of different contractors, including the Applicant. The Committee further noted that there is no dispute between the parties with regard to the distances to these pharmacies from the proposed location at Smithdown Place.

6.34 The Committee noted the maps provided by the Applicant and further noted the comments from the Applicant that, without a pharmacy at the proposed site, it would

be a 35 minute walk between the two nearest pharmacies. The Committee was unsure of the relevance of this or why a patient who was in the vicinity of a pharmacy would then choose to walk to a different pharmacy. The Committee was mindful that it is access to pharmaceutical services within the area of the HWB that it has to have regard to which might not necessarily be the closest pharmacies taking into account other factors.

6.35 The Committee had very little information regarding the topography of the area and there was nothing to demonstrate that the area was not easy to navigate for those on foot. The Committee noted the comments from the Applicant, taken from the 2022 PNA that "*56% of residents walk to their pharmacy*". The Committee was of the view that for those who did choose to access pharmaceutical services on foot they would be aware of the various paths and routes in the area which would enable them to access pharmaceutical services in the area. Given the lack of information before it, the Committee found it difficult to assess the extent to which patients were accessing services on foot. However given the relatively high percentage who it was claimed were accessing services on foot, the Committee was of the view that there was nothing provided to demonstrate that they were currently having difficulties accessing the existing pharmaceutical provision in the area of the HWB.

6.36 The Committee was mindful that there would be some who would chose not to access services on foot, or who are unable to access services on foot, for whatever reason, the Committee therefore went on to consider the ease and level of access to pharmacies by private and public transport.

6.37 The Committee noted the comments from the Applicant that the proposed site was at a bus interchange. The Committee noted that this had not been expanded upon further and there was no information as to where the buses came from or went to. Whilst the Committee had no information regarding the times or routes of the buses, it was mindful that those who did use public transport, especially if they were using it to access medical provision in the area, would be aware of the services and times. The Committee found it difficult to assess the extent to which patients were using public transport but was of the view that there was nothing provided to demonstrate that for those who were reliant on public transport that they were currently having difficulties accessing the existing pharmaceutical provision in the area of the HWB.

6.38 The Committee noted the comments with regard to the proposed location being in an area of high deprivation which therefore meant that there was low car ownership. The Committee noted the undisputed comments in the PNA with regard to those who do have access to private transport that "*Every Liverpool resident can access a pharmacy travelling by car within 5 minutes …"* The Committee also noted that there was no further information provided with regard to accessing existing pharmacies by car. The Committee concluded that for those who did have access to private transport there was nothing provided by the Applicant to demonstrate that they were currently having difficulties in accessing the existing pharmaceutical provision in the area of the HWB.

6.39 The Committee noted the comments from the Applicant that the transition following the closure of various pharmacies in the area had led to an increase in demand for pharmaceutical services and whilst there were comments from various patients regarding the level of service, there was nothing provided to demonstrate that the existing provision in the area was not able to cope with the increase in demand, given that some of the pharmacies had not appeared to experience any increase and further the Committee was of the view that this demand had now plateaued following the initial spike.

6.40 The Committee noted comments from patients about long waiting times at some pharmacies. The Committee was of the view that performance issues should not be the only reason that a new pharmacy is granted. It is the ICB's role as commissioner

of pharmaceutical services to act on reports of negative service and unplanned temporary suspension of services. 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 Committee noted that the Applicant was relying on comments from those who were registered with the medical practice at Smithdown Place and was unsure how these views and comments had been sought.

6.41 The Committee noted the support from those resident in the area as well as the Lord Mayor of Liverpool and various councillors and the HWB. The Committee was of the view that, if the HWB were of the view that there was demand for pharmaceutical services in the area, they had the mechanism to fill this gap through a supplementary statement. Whilst the Committee noted the various supplementary statements as issued by the HWB none of these considered that a new pharmacy was required to fulfil any perceived gap in the provision of pharmaceutical services in the area. The Committee noted the link to the petition provided by the Applicant, though the Committee accepted that this was with regard to trying to prevent the closure of the Boots pharmacy, rather than a petition to open a new pharmacy. The Committee was mindful that the same arguments as to why patients wished for the Boots not to close would apply as to why they wished a new pharmacy to open given that they had become accustomed to a pharmacy at this location. The Committee was mindful however that, whilst it could be considered convenient to have a pharmacy at this location, this was not a relevant consideration within the Regulations.

6.42 Taking all of the above into consideration, the Committee was of the view that there is already reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB, such that it was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits on persons.

6.43 In considering Regulation 18(2)(b)(ii) the Committee reminded itself that it was required to address itself to people who share a protected characteristic under the Equality Act 2010 (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation) having access to services that meet specific needs for pharmaceutical services that, in the relevant area, are difficult for them to access. In considering 18(2)(b)(ii), the Committee noted the overarching general statements from the Applicant for those in the area. The Committee was of the view that the information regarding those who share a protected characteristic and the pharmaceutical services that they need was limited. The Committee was mindful that pharmaceutical services, especially other essential services apart from the dispensing of prescriptions, which can be delivered, may be difficult to access for people with protected characteristics based on age and disability and whilst the Committee accepted that there were always people in an area who share a protected characteristic, there was no information provided as to why those with a protected characteristic were currently experiencing any difficulties in accessing services. The Committee was therefore not satisfied that, having regard to the desirability of people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that are difficult for them to access, granting the application would confer significant benefits on persons.

6.44 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 the Applicant was not seeking to rely on innovation in this application. The Committee was not satisfied that, having regard to the desirability of there being innovative approaches

taken with regard to the deliverability of pharmaceutical services, granting the application would confer significant benefits on persons.

Regulation 18(2)(b) generally

6.45 The Committee noted that the Applicant was proposing to open for 53 hours a week of which 40 would be core hours. The Committee noted that there would be provision of pharmaceutical services from 9am to 6pm Monday to Friday with core hours being from 9am to 5pm. The Applicant was proposing to open on a Saturday from 9am to 5pm with all of these hours being supplementary. The Committee noted that the Applicant was not proposing any hours, either core or supplementary on a Sunday. The Committee noted the comments from the Applicant with regard to a gap in provision on a Saturday following the closure of pharmacies in the area and the remaining pharmacies only offering services on a Saturday morning.

6.46 Whilst the Committee noted that the Applicant was proposing to open on a Saturday, these were supplementary hours only which, whilst the Applicant stated that they had no intention of amending, they could be withdrawn at any time with the relevant notice period to the Commissioner. The Committee further noted the comments in supplementary statements 16 and 17, published in October and December 2024 which stated *"The Board therefore supports applications to open new pharmacies which will increase access to pharmacy services outside usual business hours for residents."* The Committee noted that the hours, as offered by the Applicant, would not increase access to pharmacy services outside usual business hours.

6.47 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 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 (in relation to opening hours) on persons.

6.48 The Committee has considered whether there are any other factors that would confer significant benefits including on patients who share protected characteristics. The Committee had regard to the need to eliminate discrimination and advance equality of opportunity and foster good relations between these patients and those who do not share their protected characteristics.

6.49 The Committee was of the view that in accordance with Regulation 18(2)(b) the granting of this application would not confer significant benefits on persons in the area of the HWB which were not foreseen when the PNA was published.

Other considerations

6.50 Having determined that Regulation 18(2)(b) had not been satisfied, the Committee did not need to have regard to Regulation 18(2)(c) to (e).

6.51 No deferral or refusal under Regulation 18(2)(f) was required in this case.

6.52 The Committee had regard to Regulation 18(2)(g) and found that it did not apply in this case.

6.53 The Committee considered whether there were any further factors to be taken into account and concluded that there were not.

6.54 The Committee was not satisfied that the information provided demonstrates that there is difficulty in accessing current pharmaceutical services such that a pharmacy at the proposed site would provide better access to pharmaceutical services.

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

6.55.1 confirm the Commissioner's decision;

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

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

6.56 As the Commissioner had not considered Regulation 18(2)(a)(i), the Committee determined that the decision of the Commissioner must be quashed.

6.57 The Committee went on to consider whether there should be a further notification to the parties detailed at paragraph 19 of Schedule 2 of the Regulations to allow them to make representations if they so wished (in which case it would be appropriate to remit the matter to the Commissioner) or whether it was preferable for the Committee to redetermine the application.

6.58 The Committee noted that representations on Regulation 18 had been sought from parties by the Commissioner and representations had already been made by parties to the Commissioner in response. These had been circulated and seen by all parties as part of the processing of the application by the Commissioner. The Committee further noted that when the appeal was circulated representations had been sought from parties on Regulation 18.

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

7 DECISION

7.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of the Commissioner, for the reasons given above, and redetermines the application.

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

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

7.4 The Committee determined that the application should be refused on the following basis:

7.4.1 In considering whether the granting of the application would confer significant benefits, the Committee determined that –

7.4.1.1 there is already a reasonable choice with regard to obtaining pharmaceutical services;

7.4.1.2 there is no evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services; and

7.4.1.3 there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services;

7.4.2 Having taken these matters into account, the Committee is not satisfied that granting the application would confer significant benefits as outlined above that would secure improvements or better access to pharmaceutical services.

Case Manager
Primary Care Appeals