

21 May 2025

REF: SHA/ 26490

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**APPEAL AGAINST NHS LEICESTER, LEICESTERSHIRE
AND RUTLAND ICB DECISION TO REFUSE AN
APPLICATION BY BERYL SERVICES LIMITED FOR
INCLUSION IN THE PHARMACEUTICAL LIST
OFFERING UNFORESEEN BENEFITS UNDER
REGULATION 18 AT THE NEW LOCAL CENTRE, TAY
ROAD, NEW LUBBESTHORPE (NEAREST POSTCODE
LE19 4BF)**

1 Outcome

- 1.1 The Pharmacy Appeals Committee (“Committee”), appointed by NHS Resolution, quashes the decision of the Commissioner, for the reasons given above, and redetermines the application.
- 1.2 The Committee determined that the application should be refused.

A copy of this decision is being sent to:
Temple Bright LLP on behalf of Beryl Services Limited
PCSE on behalf of Leicester, Leicestershire and Rutland ICB
Boots UK Limited

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1 The Application

By application dated 6 May 2024, Beryl Services Limited (“the Applicant”) applied to Leicester, Leicestershire and Rutland ICB (“the Commissioner”) for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at The New Local Centre, Tay Road, New Lubbethorpe (nearest postcode LE19 4BF). In support of the application it was stated:

In response to the section titled “Applications in relation to premises that are in close proximity to other listed chemist premises” the Applicant stated:

1.1 “Not applicable”.

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

1.2 “We wish to open a pharmacy within the new Lubbethorpe community. This development is situated in Leicestershire, located between Leicester Forest East and Enderby.

1.3 Planning consent for New Lubbethorpe was granted in 2014, and construction work commenced in 2016. Upon completion, the development will offer a mix of amenities, catering to the needs of the growing New Lubbethorpe community. The development will be constructed in four phases. The first phase includes:

1.3.1 Approximately 1,265 homes

1.3.2 M1 Bridge and link

1.3.3 The building of the first primary school

1.3.4 The building of the first Local Centre

1.3.5 Old Warren Park

1.3.6 Northern sections of Lubbethorpe Park and Brook Park

1.3.7 Feature square and community hub

1.3.8 Two equipped children’s play areas and MUGA (multi-use games area)

- 1.4 Phase 2:
 - 1.4.1 Approximately 887 homes
 - 1.4.2 Health Centre
 - 1.4.3 The building of the second primary school
 - 1.4.4 The building of the secondary school
 - 1.4.5 Lubbesthorpe Park extension
 - 1.4.6 Parks to the south of the Leicester Forest East Services
 - 1.4.7 Embankment to the M1 completed and landscaped
 - 1.4.8 Three equipped children's play areas
 - 1.4.9 Work on the Business Gateway site to commence
 - 1.4.10 Main community facility to be delivered at or alongside the secondary school
- 1.5 Phase 3:
 - 1.5.1 Approximately 1,073 homes
 - 1.5.2 The M69 link
 - 1.5.3 Four equipped children's play areas
 - 1.5.4 District Centres completed
 - 1.5.5 Opening of the second phase of the second primary school
 - 1.5.6 Opening of the second phase of the secondary school
 - 1.5.7 The building of a second Local Centre
- 1.6 Phase 4:
 - 1.6.1 Approximately 1,025 homes
 - 1.6.2 Brook Park to be completed
 - 1.6.3 The Commons Park to be completed
 - 1.6.4 Three equipped children's play areas
 - 1.6.5 M69 Link and Bridge
- 1.7 The development is shown in the site master plan below [appendix A].
- 1.8 The second phase of the development is underway, and the first local shopping centre is currently under construction, with an anticipated completion date of March 2025.
- 1.9 The centre will feature a two-storey local centre housing a Sainsbury's Local store, three retail units and a cafe/bistro on the ground floor. The first floor will be occupied

by Forest House Medical Centre. The local centre would also be co-located with a 66-bedroom luxury care home. Our pharmacy, which would be located at the estimated postcode of LE19 4BF, aims to become a valuable addition to the New Lubbethorpe Retail Centre, providing essential healthcare services to the new residents of New Lubbethorpe.

- 1.10 When complete, the New Lubbethorpe community will contain 4,250 homes (giving a total of around 10,000 residents)) together with a range of other services to meet the daily needs of the new community, including schools, shops and healthcare facilities.
- 1.11 There are no pharmacies in New Lubbethorpe, with the nearest pharmacies being at least 1km away, and in an area of Leicester which is physically separate from New Lubbethorpe, making access to the existing pharmacy network difficult. A development of the size and nature of New Lubbethorpe requires a pharmacy of its own in order to secure a reasonable choice of service provision.
- 1.12 Granting our application will secure improvements in, and better access to, pharmaceutical services for this new community. In particular, it will confer significant benefits in terms of patients have a reasonable choice of pharmaceutical services and easy and convenient access to pharmaceutical services, which are currently difficult to access for the new population.
- 1.13 Benefits
- 1.14 Increased Convenience and Reduced Travel Time:
 - 1.14.1 Residents, particularly those with limited mobility or transportation options, won't need to travel far to access a pharmacy. This can be especially helpful for individuals requiring frequent prescriptions.
- 1.15 Stronger Community Ties and Focus on Local Needs:
 - 1.15.1 A new pharmacy will become a focal point for the community, fostering a sense of familiarity and trust with residents. Pharmacists can tailor their services to better understand and address the specific needs of the local population.
- 1.16 Unveiling Hidden Needs:
 - 1.16.1 Increased access to a pharmacy may uncover previously unmet needs within the community. For instance, residents who haven't been managing chronic conditions due to difficulty obtaining medication might seek help from a pharmacy opening nearby.
 - 1.16.2 The pharmacy might identify a need for additional services beyond just dispensing medication. This could lead to offering, health screenings (e.g., blood pressure checks), or even educational workshops on specific health topics.
- 1.17 Collaboration with Local Healthcare Providers:
 - 1.17.1 The pharmacy can establish relationships with nearby GPs and other healthcare providers, creating a more collaborative approach to patient care. This can improve communication and coordination, potentially leading to better medication management and adherence."

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

1.18 “Residents of New Lubbethorpe currently face challenges accessing pharmacy services due to:

1.18.1 Limited Public Transportation: The inadequate bus route in and out of the area creates a significant barrier for those who rely on public transport to reach the nearest pharmacy (Saffron Pharmacy situated in Leicester Forest East), which is already a 15-minute walk or 3- minute drive away. Having a pharmacy conveniently located within the new development would greatly improve healthcare accessibility for the entire community.

1.18.2 Growing Population: The population of New Lubbethorpe is steadily increasing, leading to a rising demand for convenient access to a local pharmacy. As of April 30th, 2024, 1055 homes have been occupied and a total of 4250 homes are to be completed by 2035. The proposed pharmacy at the New Lubbethorpe local centre will fill a critical gap in healthcare access for the rapidly growing community.

1.18.3 Co-Located with New GP Practice and Care Home: The proposed pharmacy's presence at the same site as the new GP practice and a 66-bed Care home, offers a significant advantage. Patients can seamlessly collect prescriptions after consultations, improving overall healthcare efficiency and convenience.

1.18.4 Granting a pharmacy application for our proposed location would directly address these unmet needs in the growing community of New Lubbethorpe. It would ensure timely access to essential medications, promote better health outcomes, and provide a valuable service for residents, particularly those facing mobility limitations or relying on public transportation.”

2 The Decision

The Commissioner considered and decided to refuse the application. The decision letter dated 3 January 2025 states:

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

2.2 You have a right of appeal to the Secretary of State against Leicestershire and Rutland ICB's decision. Should you choose to appeal then you should either complete the online form available on the NHS Resolution website or send a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this letter to nhsr.appeals@nhs.net or:

2.3 Primary Care Appeals
NHS Resolution
8th Floor
10 South Colonnade
Canary Wharf
London
E14 4PU”.

Decision report

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

2.4 “The unforeseen benefits application is proposed within the best estimate of The new local center, Tay Road, New Lubbethorpe, Leicester (nearest postcode LE19 4BF)

(Leicestershire) which is not in a controlled locality or LPS designation thereby regulations 32, 40, 44 50 are not relevant and therefore have not been considered.

- 2.5 Fitness to practice was required and approved.
- 2.6 **Relevant regulations**
- 2.7 Regulations 18 and 19 – unforeseen benefits: additional matters and consequences. [The National Health Service \(Pharmaceutical and Local Pharmaceutical Services\) Regulations 2013](#) [The National Health Service \(Pharmaceutical and Local Pharmaceutical Services\) Regulations 2013](#)
- 2.8 Regulation 31 – refusal: same or adjacent premises. [The National Health Service \(Pharmaceutical and Local Pharmaceutical Services\) Regulations 2013](#)
- 2.9 Regulation 32 – deferral arising out of LPS designations. [The National Health Service \(Pharmaceutical and Local Pharmaceutical Services\) Regulations 2013](#)
- 2.10 Regulations 40 to 44 – applications in a controlled locality. [The National Health Service \(Pharmaceutical and Local Pharmaceutical Services\) Regulations 2013](#)
- 2.11 Regulation 50 – gradualisation for doctors [The National Health Service \(Pharmaceutical and Local Pharmaceutical Services\) Regulations 2013](#)
- 2.12 Regulation 65 – core opening hours conditions [The National Health Service \(Pharmaceutical and Local Pharmaceutical Services\) Regulations 2013](#)
- 2.13 Regulation 66 – conditions relating to providing directed services [The National Health Service \(Pharmaceutical and Local Pharmaceutical Services\) Regulations 2013](#)
- 2.14 Paragraph 31, schedule 2 – conditional grant of applications where the address of the premises is unknown [The National Health Service \(Pharmaceutical and Local Pharmaceutical Services\) Regulations 2013](#)
- 2.15 **Regulation 31 - refusal: same or adjacent premises**
- 2.16 The application cannot be refused pursuant to this regulation as no persons on the pharmaceutical list (which may or may not be the applicant) is providing or has undertaken to provide pharmaceutical services from the premises to which the application relates, or adjacent premises.
- 2.17 **Regulation 32 – deferral arising out of LPS designations.**
- 2.18 The application does not need to be deferred pursuant to regulation 32 as the relevant premises are not premises or part of premises, or are not located within an area, designated under regulation 99 for local pharmaceutical services.
- 2.19 **Regulations 18 – unforeseen benefits: additional matters and consequences**
- 2.20 **Regulation 18(1)**
- 2.21 It is to be noted that the improvements or better access that Beryl Services Ltd claims would be secured by its application were not included in the relevant PNA in accordance with paragraph 4 of Schedule 1. This regulation is therefore satisfied.
- 2.22 **Regulation 18(2)(a)(i)**

- 2.23 There is already an extant grant for a pharmacy in New Lubbethorpe and no evidence has been provided that two pharmacies are required.
- 2.24 The committee stated that granting this second application would cause significant detriment to the proper planning in respect of the provision of pharmaceutical services in the area of Leicestershire HWB as there is no evidence that two pharmacies are required, and if both came on stream there is a real possibility that both would close as there is insufficient demand for pharmaceutical services to support two pharmacies. Therefore as stated in [regulation 19\(5\)](#) the PSRC must refuse the application.
- 2.25 **Regulation 18(2)(a)(ii)**
- 2.26 There is no evidence that granting the application would cause significant detriment to the arrangements that are currently in place for the provision of pharmaceutical services in the area of Leicestershire HWB.
- 2.27 **Regulation 18(2)(b)(i)**
- 2.28 Based on a review of the area and pharmaceutical provision, there is no evidence that there is not already reasonable choice with regard to obtaining pharmaceutical services in the area of the Leicestershire HWB.
- 2.29 **Regulation 18(2)(b)(ii)**
- 2.30 The applicant had provided no evidence of people sharing a protected characteristic having difficulty accessing services that meet their specific needs for pharmaceutical services other than general statements about older people needing to use services more, for example.
- 2.31 Consideration that there is no evidence had been provided to conclude that granting the application would confer significant benefits on people within the area of Leicestershire HWB.
- 2.32 **Regulation 18(2)(b)(iii)**
- 2.33 The applicant had not stated that they would be taking any innovative approaches to the delivery of pharmaceutical services.
- 2.34 **Regulation 40, 44 and 50**
- 2.35 are not applicable to this application as the proposed premises are not in a controlled locality.
- 2.36 **Regulation 65 core opening hours conditions**
- 2.37 Not applicable for this application
- 2.38 **Regulation 66 – conditions relating to providing directed services.**
- 2.39 This regulation would be satisfied.
- 2.40 **Other Matters**
- 2.41 This application should have no impact on those with protected characteristics under the Equalities Act 2010 and is in accordance with NHS England/the ICB's Public Sector Equality Duty or NHS England/the ICB's duty on health inequality.
- 2.42 **Decision**

2.43 The Committee determined to Reject the application.”

PSRC Committee Report dated 2 December 2024

2.44 **“CAS reference number** - CAS-311598-W8R2D3

2.45 **Name of applicant** - Beryl Services Ltd

2.46 **Fitness to practise** - Fitness to practice was required and approved

2.47 **Address/best estimate of proposed premises** - The new local centre, Tay Road, New Lubbethorpe, Leicester (nearest postcode LE19 4BF)

2.48 **Status of location** - The pharmacy is not in a controlled locality.

2.49 **Relevant regulations and guidance**

2.50 Regulations 18 and 19 – unforeseen benefits: additional matters and consequences. [The National Health Service \(Pharmaceutical and Local Pharmaceutical Services\) Regulations 2013](#) [The National Health Service \(Pharmaceutical and Local Pharmaceutical Services\) Regulations 2013](#)

2.51 Regulation 31 – refusal: same or adjacent premises. [The National Health Service \(Pharmaceutical and Local Pharmaceutical Services\) Regulations 2013](#)

2.52 Regulation 32 – deferral arising out of LPS designations. [The National Health Service \(Pharmaceutical and Local Pharmaceutical Services\) Regulations 2013](#)

2.53 Regulations 40 to 44 – applications in a controlled locality. [The National Health Service \(Pharmaceutical and Local Pharmaceutical Services\) Regulations 2013](#)

2.54 Regulation 50 – gradualisation for doctors [The National Health Service \(Pharmaceutical and Local Pharmaceutical Services\) Regulations 2013](#)

2.55 Regulation 65 – core opening hours conditions [The National Health Service \(Pharmaceutical and Local Pharmaceutical Services\) Regulations 2013](#)

2.56 Regulation 66 – conditions relating to providing directed services [The National Health Service \(Pharmaceutical and Local Pharmaceutical Services\) Regulations 2013](#)

2.57 Paragraph 31, schedule 2 – conditional grant of applications where the address of the premises is unknown [The National Health Service \(Pharmaceutical and Local Pharmaceutical Services\) Regulations 2013](#)

2.58 **Additional information**

2.59 This is an application by Beryl Services Ltd to secure unforeseen benefits under regulation 18 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 as amended.

2.60 With a proposed premises at The new local center [sic], Tay Road, New Lubbethorpe, Leicester (nearest postcode LE19 4BF).

2.61 A future improvements or better access application for the New Lubbethorpe development was granted by the committee in January 2024. The applicant has subsequently notified the ICB of the premises at which it will open a pharmacy and this notification was accepted on 17 July 2024. The applicant therefore has 12 months to submit a valid notice of commencement, in the correct form.

- 2.62 Beryl Services have cited the following for the unforeseen benefits.
- 2.63 [see 1.14 – 1.18.4 above].
- 2.64 **Regulatory Matters**
- 2.65 **Regulation 31 – refusal: same or adjacent premises**
- 2.66 The application cannot be refused pursuant to this regulation as no persons on the pharmaceutical list (which may or may not be the applicant) is providing or has undertaken to provide pharmaceutical services from the premises to which the application relates, or adjacent premises.
- 2.67 **Regulation 32 – deferral arising out of LPS designations.**
- 2.68 The application does not need to be deferred pursuant to regulation 32 as the relevant premises are not premises or part of premises, or are not located within an area, designated under regulation 99 for local pharmaceutical services.
- 2.69 **Regulations 18 and 19 – unforeseen benefits: additional matters and consequences.**
- 2.70 **Regulation 18(1)**
- 2.71 The improvements or better access that Beryl Services Ltd claims would be secured by the granting of the application are not included in the relevant PNA. Whilst it talks about New Lubbethorpe it states that "Whilst current access to pharmacy provision is largely good, with the projected increases in population that are anticipated in Leicestershire, the areas of Harborough, Hinckley and Bosworth, and North-West Leicestershire and the New Lubbethorpe area should in particular be kept under review to ensure that the provision remains adequate to meet the future needs of the populations in these areas." It is to be noted that Beryl Services Ltd seeks to open a pharmacy within the new Lubbethorpe community in order to secure improvements in, and better access to, pharmaceutical services for this new community in particular by way of providing reasonable choice of, and easy and convenient access to, pharmaceutical services which are currently difficult to access for the new population.
- 2.72 It is to be noted that the improvements or better access that Beryl Services Ltd claims would be secured by its application were not included in the relevant PNA in accordance with paragraph 4 of Schedule 1. This regulation is therefore satisfied.
- 2.73 In order to be satisfied in accordance with regulation 18(1), the committee is to have regard to those matters set out at regulation 18(2).
- 2.74 **Regulation 18(2)(a)(i)**
- 2.75 There is already an extant grant for a pharmacy in New Lubbethorpe and no evidence has been provided that two pharmacies are required. Both this application and the extant application claim to have the premises within their possession.
- 2.76 There is therefore a real possibility that if the second application was granted that both grants would come on stream, leading to over-provision at the expense of the public purse since both would be able to claim reimbursement for the provision of pharmaceutical services.
- 2.77 In paragraph 42 of the attached judicial review (which looked at the situation where an application had been granted and a second one received for the same general location) the judge said

- 2.78 "Next, however, in a case where there are two competing applications and one has already been granted, as in this case, it may well be perverse and irrational to grant the second one unless there are good reasons for forming the view that the service provision required under the first grant is considered undeliverable. Such reasons could include, for example, the insolvency of the first grantee, or a public statement that it has lost interest in the pharmaceutical business."
- 2.79 There is therefore an argument that granting this second application would cause significant detriment to the proper planning in respect of the provision of pharmaceutical services in the area of Leicestershire HWB as there is no evidence that two pharmacies are required, and if both came on stream there is a real possibility that both would close as there is insufficient demand for pharmaceutical services to support two pharmacies. Should the committee be of the same opinion, then regulation 19(5) states that the PSRC must refuse the application.
- 2.80 **Regulation 18(2)(a)(ii)**
- 2.81 There is no evidence that granting the application would cause significant detriment to the arrangements that are currently in place for the provision of pharmaceutical services in the area of Leicestershire HWB.
- 2.82 **Regulation 18(2)(b)(i)**
- 2.83 There is already reasonable choice with regard to obtaining pharmaceutical services in the area of Leicestershire HWB. A review of travel times on SHAPE, on foot, by car and by private transport was undertaken. Maps are included in at the end of this report to show the distances to pharmaceutical services provision.
- 2.84 A review of the level of car ownership for the households in the LSOA in which the proposed premises are located is high with only 8.3% of households not having access to a car or van.
- 2.85 A review of where the prescriptions issued by the practice that is relocating to the development was undertaken against the information provided by the applicant. In July 2024, 106 different pharmacies and dispensing appliance contractor premises dispensed prescriptions issued by the practice. Of these:
- 2.85.1 Saffron Pharmacy which is the closest pharmacy to the proposed site dispensed 25.4% of the prescriptions
- 2.85.2 Thorpe Astley Pharmacy dispensed 23.3% of prescriptions
- 2.86 Based on the above and the maps, there is no evidence that there is not already reasonable choice with regard to obtaining pharmaceutical services in the area of the Leicestershire HWB.
- 2.87 **Regulation 18(2)(b)(ii)**
- 2.88 The applicant had provided no evidence of people sharing a protected characteristic having difficulty accessing services that meet their specific needs for pharmaceutical services other than general statements about older people needing to use services more, for example.
- 2.89 Consideration that there is no evidence had been provided to conclude that granting the application would confer significant benefits on people within the area of Leicestershire HWB.
- 2.90 **Regulation 18(2)(b)(iii)**

- 2.91 The applicant had not stated that they would be taking any innovative approaches to the delivery of pharmaceutical services.
- 2.92 **Regulation 40, 44 and 50**
- 2.93 are not applicable to this application as the proposed premises are not in a controlled locality
- 2.94 **Regulation 65 core opening hours conditions**
- 2.95 Not applicable for this application
- 2.96 **Regulation 66 – conditions relating to providing directed services.**
- 2.97 Regulation 66(4) therefore applies if the application is to be granted, and the inclusion of the applicant and the pharmacy premises in the pharmaceutical list for the area of Leicestershire Health and Wellbeing Board would be subject to the condition set out in regulation 66(5).
- 2.98 The condition is that, at the pharmacy premises, the applicant must:
- 2.98.1 Provide the directed services mentioned in the application and
- 2.98.2 Not withhold agreement to a service specification for those services unreasonably
- 2.99 If the ICB commissions the services from the applicant within three years of the date of either the grant of the application or, if later, the listing in relation to the applicant of the pharmacy premises, unless thereafter the ICB ceases to commission the services (if it has commissioned them).
- 2.100 For the services commissioned by the ICB and NHS England, If the application is granted, the Committee is to consider whether or not to specify a date by which the condition to provide these services is to take effect.
- 2.101 **Additional matters that the committee must consider for this application:**
- 2.102 Whether it would be desirable to consider, at the same time as this application, applications from other persons offering to secure the same improvements or better access?
- 2.103 ***Bearing in mind the extant grant of an application for pharmacy premises in the New Lubbesthorpe development it would not be desirable to consider applications from other persons offering to secure the same improvements or better access.***
- 2.104 Whether there has been another application offering to secure the same improvements or better access has been submitted and it would be desirable to consider it at the same time as this application?
- 2.105 ***No such applications have been submitted.***
- 2.106 Whether there is an appeal relating to another application offering secure the same improvements or better access is pending, and it would be desirable to await the outcome of that appeal before considering this application?
- 2.107 ***There are no outstanding appeals on any other applications offering to secure the same improvements or better access.***

- 2.108 This application should have no impact on those with protected characteristics under the Equalities Act 2010 and is in accordance with NHS England/the ICB's Public Sector Equality Duty or NHS England/the ICB's duty on health inequality.
- 2.109 **The Pharmaceutical Needs Assessment**
- 2.110 The PNA at its time of release stated that overall Leicestershire has 1.9 pharmacies per 10,000 population against the England Average of 2.1 per 10,000 population, this represents a good level of population coverage, however within the PNA it identifies that this coverage of pharmacies is not uniform across the various areas, ranging from 1.4 pharmacies per 10,000 population to 2.2 pharmacies per 10000 population.
- 2.111 The availability of pharmacies in the localities is affected by the rurality of large parts of Leicestershire and is mitigated by the availability of dispensing GP practices.
- 2.112 Population Growth - the population of Leicestershire is growing and by 2043 the total population is predicted to reach over 860,600 people, a 23% increase on 2018. This includes a 43% increase in people aged 65-84 (to over 177,100) and a 104% increase in those aged 85 years and above (to over 37,000). With such a high predicted growth in the numbers of the elderly, the prevalence of long-term conditions is likely to create a significant burden to health and social care in the future.
- 2.113 **Advanced and Enhanced Services provision**
- 2.114 Of the 132 community pharmacies operating in Leicestershire.
- 2.114.1 115 (87%) were offering the New Medicines Service (NMS),
- 2.114.2 124 (94%) were offering the Community Pharmacist Consultation Service (CPCS),
- 2.114.3 17 were offering Stoma Customisation (13%),
- 2.114.4 116 (88%) were offering the Seasonal Influenza Vaccination
- 2.114.5 120 (91%) were offering Medicines Use Review and Prescription Intervention Service.
- 2.115 Across Leicestershire, the delivery of advanced services is at a higher percentage than the England average.
- 2.116 Several community-based services are provided across Leicestershire, including;
- 2.116.1 emergency hormonal contraception (EHC),
- 2.116.2 needle exchange
- 2.116.3 supervised consumption
- 2.116.4 Palliative Care Service
- 2.116.5 Extended Care Service.
- 2.116.6 Appliance Use Reviews
- 2.117 Cross Border Provision - cross border pharmacy provision is also an important element of pharmacy access for county residents, such as to City pharmacies for those that work or live close to Leicester and those that live closer to towns on the outer county

border. The Council will be looking to influence the content of other PNAs, such as the PNA for Leicester to ensure that overall provision is considered.

- 2.118 The PNA does mention that pharmacy coverage in the areas of Harborough, Hinkley and Bosworth and North-West Leicestershire need to be kept under review as well as the growth sites such as New Lubbethorpe. According to the PNA this does not signify a current need for additional pharmacies, however, does identify a suggested future need.
- 2.119 Whilst it talks about New Lubbethorpe it states that "Whilst current access to pharmacy provision is largely good, with the projected increases in population that are anticipated in Leicestershire, the areas of Harborough, Hinckley and Bosworth, and North-West Leicestershire and the New Lubbethorpe area should in particular be kept under review to ensure that the provision remains adequate to meet the future needs of the populations in these areas.
- 2.120 **Area Information**
- 2.121 Lubbethorpe is a hamlet and parish in the district of Blaby within Enderby on the outskirts of Leicester, on the west side of the M1 motorway and the River Soar
- 2.122 The office of national statistics stated that the 2021 census reported that the population of New Lubbethorpe was 1326 people an increase of 1086 since 2015.
- 2.123 Households within the area consisted of the following:
 - 2.123.1 18.6% 1 person households
 - 2.123.2 37.1% 2 person households
 - 2.123.3 24.1% 3 person households
 - 2.123.4 20.3% 4 or more person households
- 2.124 Out of the residents within the area only 8.3% of people did not have a car
- 2.125 New Lubbethorpe is a major new development incorporating over 4,000 new homes including facilities, the first phase of the project began in 2014 and will consist of 4 phases the last of the phases planned for completion in 2030(6 years from now). Based on the above household information and the fact that the largest percentage of the house have 2 persons in them the estimated population growth by 2030 for 4250 homes would be an increase of 7000. The housing development as mentioned below will consist of 2, 3, 4 and 5 bedroom properties.
- 2.126 When the development is finished, it will include:
 - 2.126.1 4,250 homes (unit size ranging from 2, 3,4 and 5 bedrooms)
 - 2.126.2 A District centre with buildings for retail, commercial, employment and community use
 - 2.126.3 Two local centres will include retail, community, and leisure facilities
 - 2.126.4 A secondary school with playing fields, sixth form facility, and community facilities
 - 2.126.5 Two primary schools, playing fields and children's nursery facilities

- 2.126.6 A health centre
- 2.126.7 A Business Centre with office space
- 2.126.8 An employment site including office space, storage and distribution businesses and general industries
- 2.127 As of 27 October 2023, 990 homes are occupied.
- 2.128 New Lubbethorpe will feature many transport features, including:
- 2.128.1 A new bus, pedestrian and cycle only access
- 2.128.2 Improvements will be made to Baines Lane and the Baines Lane/A47 junction
- 2.128.3 Bus, pedestrian, cycle and resident access only onto Watergate Lane
- 2.128.4 The new bridge over the M1 gives access from Meridian Way
- 2.128.5 Two new access points for vehicles from Beggar's Lane
- 2.128.6 Improvements to the Beggar's Lane/A47 junction
- 2.128.7 Access for vehicles from Leicester Lane
- 2.129 More details on the project can be found in the documentation and links section below.
- 2.130 The proposed best estimate that the applicant has identified within their application is Tay Road Local Centre on the New Lobbethorpe Estate.
- 2.131 The Local Centre will be a mixed use two storey building which will house a Sainsbury's Local Store and four additional units for retail. The first floor will be occupied by Forest House Medical Centre. Please see the site maps and information regarding the development In the documentation and links section below (Egginton, 2023).
- 2.132 **Pharmaceutical Provision within 1 mile of LE19 4BF**
- 2.133 There are 2 pharmacies within a 1 mile radius of LE19 4BF and a further 4 pharmacies within a 2 mile radius.
- 2.134 The pharmacies within a 1 mile radius have core opening hours until at least 6pm and both have core opening hours until at least 12 on a Saturday. Both pharmacies are the top two providers of pharmaceutical services to Forest House Medical Centre who will be moving into the centre at Tay road. Saffron Pharmacy are the top provider dispensing 25.4% of prescriptions. Thorpe Astley pharmacy dispense 23.3% of prescriptions for the practice.
- 2.135 There is pharmacy provision within a 5 minute drive, 10 minutes by public transport and within a 16 minute walk of LE19 4BF. Saffron pharmacy is a 2 minute drive from LE19 4BF and a 12 minute walk, there is also a bus stop near the primary school for residents who need to use public transport.

Pharmacy Name	Distance in Miles from LE19 4BF	Opening Hours	Services Provided

FKF03 Saffron Pharmacy Unit 1, Warren Court, Off Warren Lane, Leicester, Leicestershire, LE3 3LW (40 Hr pharmacy)	0.4	<u>Core Hours</u> Monday to Wednesday 09:00 to 12:15 and 15:00 to 18:45 Thursday and Friday 09:00 to 12:15 and 14:30 to 18:45 Saturday 09:00 to 13:00 Sunday Closed <u>Supplementary Hours</u> Monday to Wednesday 12:15 to 15:00 Thursday and Friday 12:15 to 14:30 <u>Total Hours</u> Monday to Friday 09:00 to 18:45 Saturday 09:00 to 13:00	<u>Enhanced Services</u> The pharmacy does not provide any enhanced services <u>Advanced Services</u> BP Services Smoking Cessation Service LFD Service Pharmacy First Contraception Service
FEQ03 Thorpe Astley Pharmacy, 3 Lakin Drive Thorpe Astley, Leicester, Leicestershire, LE3 3RU	0.9	<u>Core Hours</u> Monday to Friday 10:00 to 18:00 <u>Supplementary Hours</u> Saturday	<u>Enhanced Services</u> The pharmacy does not provide any enhanced services. <u>Advanced Services</u> BP Services

		10:00 to 12:00	Pharmacy First
		<u>Total Hours</u>	
		Monday to Friday	
		10:00 to 18:00	
		Saturday	
		10:00 to 12:00	

2.136 **Documentation and Link**

2.137 **PNA Summary and Documentation** - [LEICESTERSHIRE COUNTY & RUTLAND NHS PRIMARY CARE TRUST](#)

2.138 **Documentation for Tay Road Local Centre** - [Construction Progresses on New Community Hub & GP Practice in Leicestershire - Business In The Midlands](#)

2.139 **Blaby.gov.uk New Lubbethorpe Information** - [New Lubbethorpe – Blaby District Council](#)

2.140 **Population Figures Lobbethorpe** - [Lubbethorpe \(Parish, United Kingdom\) - Population Statistics, Charts, Map and Location](#)

2.141 **Maps** [appendix B]”.

3 **The Appeal**

In a letter dated 29 January 2025 addressed to NHS Resolution, Temple Bright LLP on behalf of the Applicant appealed against the Commissioner’s decision. The grounds of appeal are:

- 3.1 “We act for Beryl Services 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 Tay Road, New Lubbethorpe. The decision was notified to our client by letter dated 3rd January 2025.
- 3.2 Our client’s ground of appeal is that NHS England appears to have refused our client’s application on the basis that there is already an extant grant for inclusion in the pharmaceutical list for premises within the New Lubbethorpe development. However, NHS England appears to have given no consideration to whether there was any realistic prospect of that applicant commencing services pursuant to the extant grant. Our client believes that there is no realistic prospect of the applicant commences services such that the extant grant should not have been considered determinative of our client’s application.
- 3.3 By way of background, our client applied to NHS England by application dated 6th May 2024. In support of its application, our client stated as follows: [see 1.2 – 1.17.1 above].
- 3.4 NHS England circulated our client’s application to interested parties. Representations were received from Boots only, who stated:
 - 3.4.1 *“We note that there has already been a contract granted in this locality. CAS-186487-Z7K9S2, by Send Healthcare Ltd was granted on 30/01/2024 and has 12 months from this date in which to open.*

- 3.4.2 *We do not believe that the applicant has provided any evidence for which another contract should be awarded.”*
- 3.5 NHS Resolution will note, from the above, that Boots did not seek to assert that granting an application in the New Lubbethorpe development would not secure improvements and better access (in accordance with regulation 18) but that our client’s application should not be granted because there was already an extant grant for the proposed location.
- 3.6 NHS Resolution will further note that, according to Boots, the other application was granted on 30th January 2024 and “has 12 months from this date in which to open” (ie by 30th January 2025).
- 3.7 In determining our client’s application, the NHS England decision report states relevantly as follows:
- 3.7.1 **“Regulation 18(2)(a)(i)**
- 3.7.2 *There is already an extant grant for a pharmacy in New Lubbethorpe and no evidence has been provided that two pharmacies are required.*
- 3.7.3 *The committee stated that granting this second application would cause significant detriment to the proper planning in respect of the provision of pharmaceutical services in the area of Leicestershire HWB as there is no evidence that two pharmacies are required, and if both came on stream there is a real possibility that both would close as there is insufficient demand for pharmaceutical services to support two pharmacies. Therefore as stated in regulation 19(5) the PSRC must refuse the application.”*
- 3.8 It is therefore clear from NHS England’s decision that our client’s application was refused solely on the basis that there is already an extant grant for inclusion in the pharmaceutical list in New Lubbethorpe. That is, NHS England agrees that there is a need for a new pharmacy in the New Lubbethorpe development but determined that it should refuse our client’s application on the basis that there is already an extant grant for the proposed location.
- 3.9 In conclusion, therefore, it is submitted on behalf of our client that all parties appear to accept that were there no extant grant in New Lubbethorpe, our client’s application should be granted since there is a need for a pharmacy in the new development in accordance with regulation 18.
- 3.10 Turning, therefore, to the extant grant. Our client has no detail in relation to that grant other than the information contained within the representations from Boots and the NHS England decision report. However, according to that information, the extant grant will lapse on 30th January 2025.
- 3.11 Our client can confirm that no pharmacy has commenced the provision of pharmaceutical services in New Lubbethorpe since NHS England refused our client’s application. What is more, our client has contacted the developers who are constructing the local centre within the New Lubbethorpe development. The (under construction) local centre contains the only commercial premises in the New Lubbethorpe development and, therefore, is the only location in the development where a new pharmacy could open in the near term.
- 3.12 The developers have confirmed that whilst the local centre is currently under construction, it has not yet been completed, and will not be completed until, at the earliest, the end of May 2025. Our client has taken photographs of the current state of

the development of the local centre (as of 9th January 2025) [appendix C], and it can be seen that the development is underway but is some way from completion.

- 3.13 Our client further understands from the developers that they have not yet begun marketing the retail units and are not currently accepting tenancy applications.
- 3.14 In conclusion, there is, therefore, no realistic prospect of the other applicant commencing services before its grant lapses such that the reason given by NHS England for refusing our client's application was (and is) invalid.
- 3.15 Our client therefore appeals the decision of NHS England and invites NHS Resolution to uphold its appeal and grant its application on the following grounds:
 - 3.15.1 For the reasons given in our client's application form (and those already accepted by NHS England in granting the earlier application), granting an application at the New Lubbethorpe development would secure improvements in, and better access to, pharmaceutical services in accordance with regulation 18.
 - 3.15.2 Whilst there appears to be an extant grant for premises in New Lubbethorpe, that grant will shortly lapse, with no prospect of the other applicant being able to commence pharmaceutical services within the statutory lifetime of the grant.
 - 3.15.3 Our client is in regular contact with the developers. The local centre in which our client's proposed pharmacy would be located will be completed within the next 4 months or so, meaning that, should our client's application be granted, our client will be in a position to secure premises and commence pharmaceutical service provision within the lifetime of its grant."

4 Summary of Representations

After reviewing the appeal and the paperwork provided by the Commissioner, NHS Resolution applied its discretion under Schedule 3, Part 3, paragraph 7 and allowed parties, including the Applicant, the opportunity to make comments on the Commissioner's PSRC Committee Report dated 2 December 2024 [see above at 2.44 – 2.155], given it provided more reasoning for the decision and additional information about the other application that was granted by the Commissioner. This is a summary of representations received.

4.1 Boots UK Limited

- 4.1.1 "Thank you for your letter dated 20th February 2025 informing us of the above appeal.
- 4.1.2 We wish for the Committee to consider that Send Healthcare Ltd, who have a contract granted in this locality, have provided notification of the premises in which they intend to open on 17th July 2024, and therefore have 12 months from that date in which to open.
- 4.1.3 We have no further comments to make but would be grateful if you would inform us of the outcome of this appeal in due course."

4.2 The Commissioner

- 4.2.1 "Thank you for your letter dated 20 February 2025; The East Midlands Primary Care Team on behalf of Leicester, Leicestershire and Rutland Integrated Care Board would like to make the following representations.

4.2.2 An application for inclusion in the pharmaceutical list for the area of Leicestershire HWB offering to secure unforeseen by Beryl Services Limited was considered by the Pharmaceutical Services Regulations Committee on 19 November 2025, was refused, and the rationale for the refusal is detailed below.

4.2.3 **Regulation 18(1)**

4.2.4 The improvements or better access that Beryl Services Ltd claims would be secured by the granting of the application are not included in the relevant PNA. Whilst it talks about New Lubbethorpe it states that "Whilst current access to pharmacy provision is largely good, with the projected increases in population that are anticipated in Leicestershire, the areas of Harborough, Hinckley and Bosworth, and North-West Leicestershire and the New Lubbethorpe area should in particular be kept under review to ensure that the provision remains adequate to meet the future needs of the populations in these areas.". It is to be noted that Beryl Services Ltd seeks to open a pharmacy within the new Lubbethorpe community in order to secure improvements, or better access, to pharmaceutical services for this new community in particular by way of providing reasonable choice of, and easy and convenient access to, pharmaceutical services which the applicant claims are currently difficult to access for the new population.

4.2.5 It is to be noted that the improvements or better access that Beryl Services Ltd claims would be secured by its application were not included in the relevant PNA in accordance with paragraph 4 of Schedule 1. This regulation is therefore satisfied although the committee noted that it had previously granted an application under regulation 20 offering to secure future improvements or better access in New Lubbethorpe.

4.2.6 In order to be satisfied in accordance with regulation 18(1), the committee had regard to those matters set out at regulation 18(2).

4.2.7 **Regulation 18(2)(a)(i)**

4.2.8 There is already an extant grant for a pharmacy in New Lubbethorpe under regulation 20. The applicant gave a best estimate in its application and on 17 July 2024 validly notified the ICB of the address at which it intends to open. The applicant therefore has 12 months from that date in which to submit its notice of commencement ([paragraph 34\(4\)\(b\)\(iv\), Schedule 2](#)) and could ask for an extension of up to another three months, giving an overall total of 15 months from 17 July 2024. Therefore, the statement in the letter of appeal that the extant grant will lapse on 30 January 2025 is incorrect.

4.2.9 The committee has noted that both applicants claim to have premises within their possession. There is therefore a real possibility that if the second application was granted that both grants would come on stream, leading to over-provision at the expense of the public purse since both would be able to claim reimbursement for the provision of pharmaceutical services.

4.2.10 In paragraph 42 of the attached judicial review (which looked at the situation where an application had been granted and a second one received for the same general location) the judge said

4.2.10.1 *"Next, however, in a case where there are two competing applications and one has already been granted, as in this case, it may well be perverse and irrational to grant the second one unless there are good reasons for forming the view that the service provision required under*

the first grant is considered undeliverable. Such reasons could include, for example, the insolvency of the first grantee, or a public statement that it has lost interest in the pharmaceutical business."

4.2.11 There is therefore an argument that granting this second application would cause significant detriment to the proper planning in respect of the provision of pharmaceutical services in the area of Leicestershire HWB as there is no evidence that two pharmacies are required, and if both came on stream there is a real possibility that both would close as there is insufficient demand for pharmaceutical services to support two pharmacies. The committee was of the same opinion, and pursuant to [regulation 19\(5\)](#) the PSRC must refuse the application.

4.2.12 **Regulation 18(2)(a)(ii)**

4.2.13 There is no evidence that granting the application would cause significant detriment to the arrangements that are currently in place for the provision of pharmaceutical services in the area of Leicestershire HWB.

4.2.14 **Regulation 18(2)(b)(i)**

4.2.15 There is already reasonable choice with regard to obtaining pharmaceutical services in the area of Leicestershire HWB. A review of travel times on SHAPE, on foot, by car and by public transport was undertaken. Maps are included in an annex to this letter to show the distances to current providers of pharmaceutical services in the area.

4.2.16 A review of the level of car ownership for the households in the LSOA in which the proposed premises are located is high with only 8.3% of households not having access to a car or van, compared to 23.% of households in England.

4.2.17 A review of where the prescriptions issued by the practice that is relocating to the development are dispensed was undertaken against the information provided by the applicant. In November the practice prescribed 24,321 items, 23,716 of which were on electronic prescriptions. Dispensed by 119 different pharmacy/DAC premises. Of these:

4.2.17.1 Saffron Pharmacy which is the closest pharmacy to the proposed site dispensed 25.4% of the prescriptions

4.2.17.2 Thorpe Astley Pharmacy dispensed 23.3% of prescriptions

4.2.18 Based on the above and the maps, there is no evidence that there is not already reasonable choice with regard to obtaining pharmaceutical services in the area of the Leicestershire HWB.

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

4.2.20 The applicant has provided no evidence of people sharing a protected characteristic having difficulty accessing services that meet their specific needs for pharmaceutical services other than general statements about older people needing to use services more, for example.

4.2.21 The committee is of the opinion that no evidence has been provided to conclude that granting the application would confer significant benefits on people within the area of Leicestershire HWB.

4.2.22 Regulation 18(2)(b)(iii)

4.2.23 The applicant has not stated that they would be taking any innovative approaches to the delivery of pharmaceutical services.

4.2.24 The Pharmaceutical Needs Assessment

4.2.25 The PNA at its time of release stated that overall Leicestershire has 1.9 pharmacies per 10,000 population against the England Average of 2.1 per 10,000 population, this represents a good level of population coverage, however within the PNA it identifies that this coverage of pharmacies is not uniform across the various areas, ranging from 1.4 pharmacies per 10,000 population to 2.2 pharmacies per 10,000 population.

4.2.26 The availability of pharmacies in the localities is affected by the rurality of large parts of Leicestershire and is mitigated by the availability of dispensing GP practices.

4.2.27 Population Growth - the population of Leicestershire is growing and by 2043 the total population is predicted to reach over 860,600 people, a 23% increase on 2018. This includes a 43% increase in people aged 65-84 (to over 177,100) and a 104% increase in those aged 85 years and above (to over 37,000). With such a high predicted growth in the numbers of the elderly, the prevalence of long-term conditions is likely to create a significant burden to health and social care in the future.

4.2.28 Advanced and Enhanced Services provision

4.2.29 Of the 132 community pharmacies operating in Leicestershire.

4.2.29.1115 (87%) were offering the New Medicines Service (NMS),

4.2.29.2124 (94%) were offering the Community Pharmacist Consultation Service (CPCS),

4.2.29.317 were offering Stoma Customisation (13%),

4.2.29.4116 (88%) were offering the Seasonal Influenza Vaccination

4.2.29.5120 (91%) were offering Medicines Use Review and Prescription Intervention Service.

4.2.30 Across Leicestershire, the delivery of advanced services is at a higher percentage than the England average.

4.2.31 Several community-based services are provided across Leicestershire, including;

4.2.31.1emergency hormonal contraception (EHC),

4.2.31.2needle exchange

4.2.31.3supervised consumption

4.2.31.4Palliative Care Service

4.2.31.5Extended Care Service.

4.2.31.6Appliance Use Reviews

- 4.2.32 Cross Border Provision - cross border pharmacy provision is also an important element of pharmacy access for county residents, such as to City pharmacies for those that work or live close to Leicester and those that live closer to towns on the outer county border. The Council will be looking to influence the content of other PNAs, such as the PNA for Leicester to ensure that overall provision is considered.
- 4.2.33 The PNA does mention that pharmacy coverage in the areas of Harborough, Hinkley and Bosworth and North-West Leicestershire need to be kept under review as well as the growth sites such as New Lubbethorpe. According to the PNA this does not signify a current need for additional pharmacies, however, does identify a suggested future need.
- 4.2.34 Whilst it talks about New Lubbethorpe it states that "Whilst current access to pharmacy provision is largely good, with the projected increases in population that are anticipated in Leicestershire, the areas of Harborough, Hinckley and Bosworth, and North-West Leicestershire and the New Lubbethorpe area should in particular be kept under review to ensure that the provision remains adequate to meet the future needs of the populations in these areas.
- 4.2.35 It is worth noting that the new PNAs will be available this year.

4.2.36 Area Information

- 4.2.37 Lubbethorpe is a hamlet and parish in the district of Blaby within Enderby on the outskirts of Leicester, on the west side of the M1 motorway and the River Soar
- 4.2.38 The office of national statistics stated that the 2021 census reported that the population of New Lubbethorpe was 1326 people an increase of 1086 since 2015.
- 4.2.39 Households within the area consisted of the following;
- 4.2.39.118.6% 1 person households
 - 4.2.39.237.1% 2 person households
 - 4.2.39.324.1% 3 person households
 - 4.2.39.420.3% 4 or more person households
- 4.2.40 Out of the residents within the area only 8.3% of people did not have a car
- 4.2.41 New Lubbethorpe is a major new development incorporating over 4,000 new homes including facilities, the first phase of the project began in 2014 and will consist of 4 phases the last of the phases planned for completion in 2030(6 years from now). Based on the above household information and the fact that the largest percentage of the house have 2 persons in them the estimated population growth by 2030 for 4250 homes would be an increase of 7000. The housing development as mentioned below will consist of 2, 3, 4 and 5 bedroom properties.
- 4.2.42 When the development is finished, it will include:
- 4.2.42.14,250 homes (unit size ranging from 2, 3,4 and 5 bedrooms)

- 4.2.42.2A District centre with buildings for retail, commercial, employment and community use
- 4.2.42.3Two local centres will include retail, community, and leisure facilities
- 4.2.42.4A secondary school with playing fields, sixth form facility, and community facilities
- 4.2.42.5Two primary schools, playing fields and children's nursery facilities
- 4.2.42.6A health centre
- 4.2.42.7A Business Centre with office space
- 4.2.42.8An employment site including office space, storage and distribution businesses and general industries
- 4.2.43 As of 27 October 2023, 990 homes are occupied
- 4.2.44 New Lubbesthorpe will feature many transport features, including:
 - 4.2.44.1A new bus, pedestrian and cycle only access
 - 4.2.44.2Improvements will be made to Baines Lane and the Baines Lane/A47 junction
 - 4.2.44.3Bus, pedestrian, cycle and resident access only onto Watergate Lane
 - 4.2.44.4The new bridge over the M1 gives access from Meridian Way
 - 4.2.44.5Two new access points for vehicles from Beggar's Lane
 - 4.2.44.6Improvements to the Beggar's Lane/A47 junction
 - 4.2.44.7Access for vehicles from Leicester Lane
- 4.2.45 More details on the project can be found in Appendix 1 of the document.
- 4.2.46 The proposed best estimate that the applicant has identified within their application is Tay Road Local Centre on the New Lubbersthorpe Estate.
- 4.2.47 The Local Centre will be a mixed use two storey building which will house a Sainsbury's Local Store and four additional units for retail. The first floor will be occupied by Forest House Medical Centre. Please see the site maps and information regarding the development In the documentation and links section below (Egginton, 2023).
- 4.2.48 According to Lubbesthorpe Parish Council Website it is hoped the Local Centre will be complete by May 2025.
- 4.2.49 Links to this and other useful documents are included in the table within Annex 1 of this document [appendix D].
- 4.2.50 **Pharmaceutical Provision within 1 mile of LE19 4BF**
- 4.2.51 There are 2 pharmacies within a 1-mile radius of LE19 4BF and a further 4 pharmacies within a 2-mile radius.

- 4.2.52 The pharmacies within a 1-mile radius have core opening hours until at least 6pm and both have core opening hours until at least 12 on a Saturday. Both pharmacies are the top two providers of pharmaceutical services to Forest House Medical Centre who will be moving into the centre at Tay Road. Saffron Pharmacy are the top provider dispensing 25.4% of prescriptions. Thorpe Astley pharmacy dispense 23.3% of prescriptions for the practice. Beryl Services Limited are not offering opening hours that are over and above the current opening hours of the existing pharmacies.
- 4.2.53 There is pharmacy provision within a 5-minute drive, 10 minutes by public transport and within a 16-minute walk of LE19 4BF. Saffron pharmacy is a 2-minute drive from LE19 4BF and a 12-minute walk, there is also a bus stop near the primary school for residents who need to use public transport.
- 4.2.54 **Conclusion**
- 4.2.55 In summary the extant application was for future improvements or better access, and the information provided to say that this application would lapse on 30 January 2025 is incorrect. The date is taken from the valid notification of the premises at which the applicant intends to provide pharmaceutical services to the ICB which was 17 July 2024 and therefore the applicant has 12 months in which to submit their Notice of Commencement (with the potential for a further 3 months).
- 4.2.56 With regard to the delay in the development the Lubbethorpe Parish council website states that the new Lubbethorpe local centre should be completed by May 2025 which will be before the extant application lapses.
- 4.2.57 In the appellant's original application, it was stated that they had already secured the premises, however from their letter of appeal this does not appear to be the case as they have stated that the units have not yet been retailed so with this in mind the premises could not have been secured.
- 4.2.58 There is a real possibility that if the second application was granted both grants could come on stream, leading to over-provision at the expense of the public purse since both would be able to claim reimbursement for the provision of pharmaceutical services.
- 4.2.59 There is legal precedence with the judicial review (which looked at the situation where an application had been granted and a second one received for the same general location)
- 4.2.60 The appellant's representations are based on the fact that the project will not be completed before the extant application lapse this however is not the case. All the benefits detailed within the representations are a duplicate of those already highlighted within the application. There is no additional information provided within the representations to show a significant benefit on persons within the area of Leicestershire HWB which were not foreseen when the PNA was published.
- 4.2.61 I would like to take this opportunity to respond to any further representations provided by Beryl Services Ltd."

5 Observations

No observations were received by NHS Resolution in response to the representations received on appeal.

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 in response to the section titled “Applications in relation to premises that are in close proximity to other listed chemist premises” the Applicant had stated:

6.6.1 *“Not applicable”.*

- 6.7 The Committee noted the Commissioner’s finding on this point:

6.7.1 *“The application cannot be refused pursuant to this regulation as no persons on the pharmaceutical list (which may or may not be the applicant) is providing or has undertaken to provide pharmaceutical services from the premises to which the application relates, or adjacent premises.”*

- 6.8 The Committee noted that no party had sought to argue that the application should be refused under Regulation 31. Therefore based on the information provided the Committee was not required to refuse the application under the provisions of Regulation 31.

- 6.9 The Committee noted that, if the instant application was granted, the 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

6.10 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)."*

- 6.11 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 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.
- 6.12 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.
- 6.13 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).

- 6.14 The Committee considered the PNA prepared by Leicestershire 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 October 2022 and that no supplementary statements had been issued.
- 6.15 The Committee had regard to the PNA and noted the following from the gap analysis section:
- 6.15.1 *"No gaps have been identified in the provision of essential services during normal working hours or outside of normal working areas across the whole Health and Wellbeing Board area. Furthermore, no gaps have been identified in essential services that if provided either now or in the future would secure improvements or better access to essential services across the whole Health and Wellbeing Board area. However, housing and population growth need to be kept under review with a focus on Harborough, Hinckley and Bosworth and North-West Leicestershire as well as New Lubbethorpe..."*
- 6.15.2 *... No gaps have been identified in the provision of advanced services across the whole Health and Wellbeing Board area. No gaps have been identified in the provision of advanced services at present or in the future that would secure improvements or better access to advanced services across the whole HWB area. Though there should be continued promotional activity to ensure take up of advanced services where these are lower...*
- 6.15.3 *... Based on current information, no gaps have been identified in the provision of community-based services across the whole Health and Wellbeing Board area, however consideration should be given to the need for enhanced palliative medicine supply. Going forward these services should be monitored and promoted to secure good service coverage across the whole Health and Wellbeing Board area."*
- 6.16 The Committee further noted the conclusion section:
- 6.16.1 *"The PNA looks at pharmacy cover across Leicestershire in relation to the health needs of the people who live there. It includes existing services, where they are located, the breadth of services they are providing, and the views of people using them."*
- 6.16.2 *Overall, the community-based pharmacies are meeting the current needs of the Leicestershire population for Essential and Advanced services."*
- 6.17 The Committee noted that the Applicant seeks to provide unforeseen benefits to the residents of New Lubbethorpe, Leicester. The Committee noted that the improvements or better access that the Applicant was claiming would be secured by its application were not included in the relevant PNA in accordance with paragraph 4 of Schedule 1.
- 6.18 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)

- 6.19 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"
- 6.20 The Committee noted the Commissioner's finding on this point that *"There is already an extant grant for a pharmacy in New Lubbethorpe and no evidence has been provided that two pharmacies are required. The committee stated that granting this second application would cause significant detriment to the proper planning in respect of the provision of pharmaceutical services in the area of Leicestershire HWB as there is no evidence that two pharmacies are required, and if both came on stream there is a real possibility that both would close as there is insufficient demand for pharmaceutical services to support two pharmacies. Therefore as stated in regulation [19\(5\)](#) the PSRC must refuse the application."*
- 6.21 In response, the Appellant has stated *"It is therefore clear from NHS England's decision that our client's application was refused solely on the basis that there is already an extant grant for inclusion in the pharmaceutical list in New Lubbethorpe. That is, NHS England agrees that there is a need for a new pharmacy in the New Lubbethorpe development but determined that it should refuse our client's application on the basis that there is already an extant grant for the proposed location."*
- 6.22 The Committee considered the Commissioner's approach. Regulation 18(2)(a)(i) is listed in the Regulations prior to Regulation 18(2)(b) and Regulation 19(5) is clear that if the decision maker is satisfied as set out in Regulation 18(2)(a), the application must be refused.
- 6.23 The Committee also considered that if the Commissioner was satisfied as to Regulation 18(2)(a)(i) then Regulation 19(5) applies to refuse the application regardless of the position in relation to significant benefits under Regulation 18(2)(b). Further, that this suggested a consideration of Regulation 18(2)(b) would not affect the outcome of the determination of the application.
- 6.24 The Committee considered that Regulation 18(2)(a)(i) relates to proper planning in respect of the provision of pharmaceutical services in the area of the relevant HWB if the application is granted. Whilst the Commissioner had not referred to any plans it had in place, in the Committee's view the reference to "proper planning in respect of the provision of pharmaceutical services" is very broad in scope.
- 6.25 The Committee therefore concluded that a finding that granting an application would cause significant detriment to proper planning in respect of the provision of pharmaceutical services can only be achieved after a consideration of all the consequences of granting an application, both positive and negative, benefits and detriment, provided that these consequences were all linked to the broad concept of proper planning in respect of the provision of pharmaceutical services.
- 6.26 The Committee noted the Commissioner had considered Regulation 18(2)(b). The Committee considers therefore that the Commissioner needed to have regard to Regulation 18(2)(b) when considering what benefits granting the application may produce. If any benefits are identified, significant or otherwise, and whether one of the three types of benefits referred to in Regulation 18(2)(b)(i) to (iii) or otherwise, the benefits are then weighed against any detriment to arrive at a position on Regulation 18(2)(a)(i).

- 6.27 The Committee noted that the Commissioner had gone on to refuse the application. As the Commissioner concluded that the application did not meet the requirements of Regulation 18, there were no significant benefits with which to mitigate the significant detriment.
- 6.28 The Committee was mindful of the Rushport case, which had been highlighted by the Commissioner, and was of the view that an extant grant could be considered under Regulation 18(2)(a)(i). The Committee therefore considered the proper planning arrangements in respect of the provision of pharmaceutical services in the area.
- 6.29 The Committee noted the Commissioner's reasoning outlined at 6.20 above and considered that the principal reason for refusing the application under 18(2)(a)(i) was as a result of the extant grant and a concern that if two pharmacies opened in the same area, these would not be financially viable and could lead to the closure of both pharmacies. The Commissioner also highlighted the following from the Rushport case:
- 6.29.1 *"Next, however, in a case where there are two competing applications and one has already been granted, as in this case, it may well be perverse and irrational to grant the second one unless there are good reasons for forming the view that the service provision required under the first grant is considered undeliverable. Such reasons could include, for example, the insolvency of the first grantee, or a public statement that it has lost interest in the pharmaceutical business."*
- 6.30 The Committee also noted the following paragraph from this Judgment:
- 6.30.1 *"It is for the decision maker considering the second grant application to consider and weigh any evidence of that kind, casting doubt on the first grantee's ability to deliver on its undertakings. Contrary to Mr Lock's submission, it is not impossible for the second grantee's application to meet the public benefit test in regulation 18(2)(b) by reason only of the first grant; but the decision maker must be very careful not to decide that it is met in a case where there is a real possibility of services under both grants coming on stream, leading to over-provision at the expense of the public purse (since providers are entitled to charge the NHS for the services)."*
- 6.31 The Committee therefore considered:
- 6.31.1 whether there are good reasons for forming the view that the service provision required under the extant grant is undeliverable; and
- 6.31.2 whether there is a real possibility of services under the extant grant and if the instant application is granted, coming on stream, leading to overprovision.
- 6.32 It had not escaped the Committee that the Applicant had confirmed in its application that it had premises in its possession. The Committee noted that the Commissioner had also highlighted in its representations that both the Applicant and Send Healthcare Ltd had premises. The Applicant did not respond to the Commissioner's comment.
- 6.33 The Committee noted the following comments from the Applicant in its appeal *"our client has contacted the developers who are constructing the local centre within the New Lubbethorpe development. The (under construction) local centre contains the only commercial premises in the New Lubbethorpe development and, therefore, is the only location in the development where a new pharmacy could open in the near term... Our client further understands from the developers that they have not yet begun marketing the retail units and are not currently accepting tenancy applications... Our client is in regular contact with the developers. The local centre in which our client's proposed pharmacy would be located will be completed within the next 4 months or so,*

meaning that, should our client's application be granted, our client will be in a position to secure premises and commence pharmaceutical service provision within the lifetime of its grant."

- 6.34 The Committee noted that it had not been provided with any information in support of the Applicant's statements. The Committee, however, considered whether a lack of evidence in relation to the specific premises associated with the extant grant is a good reason for forming the view that the service provision required under any extant grant is undeliverable.
- 6.35 The Committee considered that for the following reasons this was not a good reason for forming the view that the service provision required under any extant grant is undeliverable:
- 6.35.1 the circumstances in the Rushport case were that the only possible premises from which services could be delivered were under the control of one of the applicants. In the present case, there appeared to be multiple premises from which Send Healthcare Ltd could open and no reason has been given that suggests that services could not be provided from all such premises;
- 6.35.2 the Regulations allow a period of time (6 months) for a granted best estimate application to state the proposed address and then a further 12 months from that date for a notice of commencement to be submitted. The Committee considered that the aim of the 6 month period was for the applicant to take steps to secure premises. Without any other indicators that services may be undeliverable, it would be contrary to the intention of the Regulations to determine that Send Healthcare Ltd could not provide services from premises prior to expiry of the 12 month simply on the basis that it has not entered into a lease or other arrangements to secure premises.
- 6.36 Also the Committee considered that no reason had been given to suggest that services could not be provided from the premises covered by the extant grant nor the instant application.
- 6.37 The Committee determined that, if it were to grant the instant application, there would be a real possibility of services under one or both of the extant grants coming on stream.
- 6.38 The Committee noted from the Judgment the specific sentence:
- "the decision maker must be very careful not to decide that it is met in a case where there is a real possibility of services under both grants coming on stream, leading to over-provision at the expense of the public purse (since providers are entitled to charge the NHS for the services)".*
- 6.39 As the Committee had determined that there was a real possibility of both applications (if the instant application were granted) coming on stream, it was reasonable to determine that the instant application, if granted, would not confer significant benefits on the persons in the HWB area pursuant to Regulation 18(2)(b).
- 6.40 On an initial assessment the Committee was satisfied that significant detriment would occur for the reasons set out above. However, the Committee recognised that, even if significant detriment occurred it might be argued that any such detriment could be reversed or compensated for by granting the application. An argument along the lines of "the benefits of the application outweigh any significant detriment" was not deployed by the Applicant however, the Committee is aware that such arguments have been raised in the past on appeal. The Committee therefore considered the merits of the

application itself to see whether it in fact provided significant benefits and if those benefits outweighed the significant detriment it has identified above.

- 6.41 The Committee's consideration of the application and Regulation 18 are set out below. However, in short the Committee concluded that the application did not meet the requirements of Regulation 18 and thus there were no significant benefits with which to mitigate the significant detriment. Having come to that conclusion the Committee affirmed its initial assessment of significant detriment.
- 6.42 The Committee was therefore satisfied that significant detriment to the proper planning in respect of the provision of pharmaceutical services would result from a grant of the application.

Regulation 18(2)(a)(ii)

- 6.43 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"

- 6.44 The Committee noted the Commissioner's finding on this point that *"There is no evidence that granting the application would cause significant detriment to the arrangements that are currently in place for the provision of pharmaceutical services in the area of Leicestershire HWB"* and that no party had sought to dispute this.
- 6.45 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.
- 6.46 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)

- 6.47 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)

- 6.48 The Committee noted that the proposed pharmacy is to be located at the Local Centre within the New Lubbesthorpe development, as indicated by the map submitted with the application. The Committee also had regard to the map provided by the Commissioner showing the location of the proposed site, together with the locations of existing pharmacies and GP surgeries in the local area. The Committee noted that this had not been disputed by parties.
- 6.49 The Committee noted the background to the ongoing developments in the New Lubbesthorpe area which commenced in 2016, which had been provided by the Applicant and the Commissioner. The Applicant has quoted some key facts indicating that over four phases, there would be 4,250 new homes, two primary schools, one secondary school, a medical centre, a pharmacy, a mix of retail units, parks, children's play areas, as well as links and improvements to existing road networks. The Committee noted the Applicant's comment that the second phase of development is underway and from the link provided by the Commissioner to the District Council's website, as of February 2025, 1,185 homes were occupied and that construction of all four phases is due to be completed in the 2030s. It was unclear to the Committee which stage the Local Centre (where the proposed pharmacy will be located) is in, as it noted the building of a local centre appears in phase one and three, but the Committee noted the comment from the Applicant that *"The developers have confirmed that whilst the local centre is currently under construction, it has not yet been completed, and will not be completed until, at the earliest, the end of May 2025"*. The Committee also had regard to the photographs provided by the Applicant which evidenced this. The Committee noted the comment from the link provided by the Commissioner to the New Lubbesthorpe website that the developers *"are creating a vibrant new community with all of its own community facilities"* along with the comment from the Applicant that *"A development of the size and nature of New Lubbesthorpe requires a pharmacy of its own in order to secure a reasonable choice of service provision"*. This allowed the Committee to appreciate the intention behind the development and its scale but was mindful that development was ongoing and even if there is an increase in population, this does not automatically lead to the requirement to grant an application and went on to consider access to the existing pharmacies.
- 6.50 The Committee noted the comment from the Applicant that *"There are no pharmacies in New Lubbesthorpe, with the nearest pharmacies being at least 1km away, and in an area of Leicester which is physically separate from New Lubbesthorpe, making access to the existing pharmacy network difficult"*. The Committee had regard to the location of existing pharmacies as shown on the map provided by the Commissioner and noted that the nearest pharmacies to the proposed site are Saffron Pharmacy, Thorpe Astley Pharmacy and Boots pharmacy. The Committee noted that the Commissioner, in its representations, had provided a document titled "Travelling Distance to the nearest pharmacy" however the Committee noted that this was a map of the area and did not appear to provide information in relation to the distances required to be travelled.
- 6.51 From the Commissioner's Report, the Committee noted that Saffron Pharmacy is 0.4 miles or a 12 minute walk from the proposed best estimate address. However the Committee noted the Applicant, in its application, indicates that to walk to this pharmacy, it would take 15 minutes. The Committee noted that no party had sought to

comment on this matter. Regardless of the ambiguity, the Committee did not consider the distance involved to be excessive for those who are willing and able to walk. The Commissioner's Report also outlines the distance to Thorpe Astley Pharmacy as 0.9 miles. No information had been provided on the time it would take to walk to this pharmacy nor had any information been provided regarding the Boots pharmacy but from the map provided by the Commissioner, the Committee noted that this pharmacy appeared to be located further than both Saffron and Thorpe Astley Pharmacy. The following comment from the Commissioner *"There are 2 pharmacies within a 1-mile radius of LE19 4BF and a further 4 pharmacies within a 2-mile radius"* indicated to the Committee that Boots is one of the four pharmacies located within a 2 mile radius to the proposed site. The Committee noted that no information had been provided to indicate that residents are currently facing difficulty in accessing pharmaceutical services on foot and was mindful in any case that distance of itself does not necessarily lead to the conclusion that pharmacies are difficult to access. Further, from the link to the New Lubbethorpe website, the Committee had regard to the section titled "Getting About" and noted the following statement *"Our network of footpath ways...connect New Lubbethorpe into the wider networks and make the countryside just as accessible as the city"* indicated to the Committee that access on foot was a priority for the developers and that the footpaths would be new and well maintained. The Committee noted that the photograph mentioned above at 6.49 supported this view.

- 6.52 The Committee went on to consider access by public transport and observed the limited information that had been provided. The Committee noted the Applicant's comment, in its application, that *"The inadequate bus route in and out of the area creates a significant barrier for those who rely on public transport to reach the nearest pharmacy (Saffron Pharmacy situated in Leicester Forest East)"*. On the "Map to show public transport within 10 minutes of proposed premises" provided by the Commissioner, the Committee noted that two pharmacies are listed in the vicinity of the proposed best estimate area, which the Committee considered to be Saffron Pharmacy and Thorpe Astley Pharmacy. The Committee further noted the comment from the Commissioner, in its representations, *"There is pharmacy provision...10 minutes by public transport...of LE19 4BF"* however no further information had been provided to outline which pharmacy this was in relation to or the route involved or frequency of service. The Committee again noted the "Getting About" section of the New Lubbethorpe website and the statement *"To reflect the commitment of the Drummond Trust to sustainability, local transport consultancy GO Travel Solutions was appointed in April 2018 as the Travel Plan Coordinator for the development. They help residents with all their travel needs, offering advice, discounts on sustainable travel... and help with public transport"*. The Committee followed the link on this page to the "Visit LocalGo" website and noted the comment that *"Our NovusDirect service offers a fast, frequent link from New Lubbethorpe to Leicester City Centre, running up to every 15 minutes on weekdays and every 20 minutes at the weekend, providing regular buses seven days a week"*. The Committee had regard to the route map which shows that the service operates as a "hail and ride" service in New Lubbethorpe and has intermediate stops near to Thorpe Astley Pharmacy and Boots. The limited information provided by the Applicant made it difficult for the Committee to assess the extent to which patients were using public transport but as a result of the information provided by the Commissioner, the Committee was of the view that current and future residents of New Lubbethorpe would be able to access two of the nearest existing pharmacies by bus. Furthermore, the Committee noted that no information had been provided to demonstrate that patients are currently facing difficulties accessing the existing pharmaceutical provision as a result of the public transport provision in the area.
- 6.53 The Committee proceeded to consider access by private transport and again noted that limited information had been provided on this point. In its application, the Applicant states that Saffron Pharmacy is a three minute drive away from the proposed site whereas the Commissioner states that it is a two minute drive. Due to the minor difference in journey lengths, the Committee did not consider this to be a material point

nor did it consider the time it would take to access the nearest existing pharmacy to be unreasonable. The Committee noted the comment from the Commissioner, in its representations, which had not been disputed, that *“A review of the level of car ownership for the households in the LSOA in which the proposed premises are located is high with only 8.3% of households not having access to a car or van, compared to 23% of households in England”*. From the “Visit LocalGo” page discussed previously, the Committee noted that New Lubbesthorpe has an Enterprise Car Club where *“residents can now access two cars based next to the primary school, giving residents an easy way to access a vehicle when they need it without the ongoing costs of owning and maintaining one”* which the Committee considered could be utilised for the small number of households without a car or van. The Committee also considered that there are ongoing improvements to key roads and junctions in and surrounding New Lubbesthorpe. Further, the Committee noted that no information had been provided to demonstrate that patients are currently having difficulties in accessing the existing pharmacies by private transport and without evidence to the contrary, indicated to the Committee that for those patients with access to private transport, they are not currently facing any problems.

- 6.54 Taking the above into account, the Committee was not satisfied that, having regard to there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits by way of physical access on persons.
- 6.55 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.
- 6.56 In considering Regulation 18(2)(b)(ii) the Committee reminded itself that it was required to address itself to people who share a protected characteristic under the Equality Act 2010 (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation) having access to services that meet specific needs for pharmaceutical services that, in the relevant area, are difficult for them to access. The Committee noted that other than highlighting *“those with limited mobility”*, the Applicant had not identified those who share a protected characteristic and the pharmaceutical services they require. The Committee was of the view that there was little or no evidence of specific pharmaceutical needs. The issue of access and choice as might apply to these persons was dealt with in the assessment of reasonable access discussed above and the Committee was mindful that there are always people in an area who share a protected characteristic
- 6.57 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.
- 6.58 In considering Regulation 18(2)(b)(iii) the Committee had regard to the desirability of innovative approaches to the delivery of pharmaceutical services. In doing so, the Committee would consider whether there was something more over and above the usual delivery of pharmaceutical services that might be expected from all pharmacies, some ‘added value’ on offer at the location. The Committee noted that no information had been provided to suggest that any innovative approaches would be taken with regard to the delivery of pharmaceutical services. The Committee was not satisfied that, having regard to the desirability of there being innovative approaches taken with regard to the deliverability of pharmaceutical services, granting the application would confer significant benefits on persons.

Regulation 18(2)(b) generally

6.59 The Committee noted the Applicant's proposed core hours which are 9am to 6pm Monday to Friday and 9am to 12pm on Saturday.

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

Pharmacy opening hours: general

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

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

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

6.61 The Committee noted that, if the application was to be granted, a direction would need to be issued for the "additional" eight hours which were being offered by the Applicant.

6.62 From the Commissioner's Report, the Committee noted the opening hours provided by the nearest existing pharmacies. Saffron Pharmacy has core opening hours 9am to 12.15pm and 3pm to 6.45pm Monday to Wednesday, 9am to 12.15pm and 2.30pm to 6.45pm Thursday and Friday and 9am to 1pm on Saturday, with supplementary opening from 12.15pm until the time it re-opens Monday to Thursday. Thorpe Astley Pharmacy has core opening hours 10am to 6pm Monday to Friday, with supplementary opening from 10am to 12pm on Saturday. No information on the opening hours of Boots had been provided. The Committee noted that the Applicant is not proposing to open at times that are not currently offered by the other pharmacies in the area.

6.63 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.

6.64 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.

6.65 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

6.66 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).

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

6.68 The Committee had regard to Regulation 18(2)(g) and found no reason that required it to refuse the application under this regulation.

- 6.69 The Committee considered whether there were any further factors to be taken into account and concluded that there were not.
- 6.70 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.
- 6.71 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 6.71.1 confirm the Commissioner's decision;
 - 6.71.2 quash the Commissioner's decision and redetermine the application;
 - 6.71.3 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.
- 6.72 In those circumstances, given that the Committee has reached different findings to that of the Commissioner in respect of Regulation 18(2)(a)(i), the Committee determined that the decision of the Commissioner must be quashed.
- 6.73 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.
- 6.74 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.
- 6.75 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 satisfied that it would in respect of proper planning;
- 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