

7 May 2025

FILE REF:

SHA/26532

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

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

COMMISSIONER:

**Northamptonshire ICB
("the Commissioner")**

PHARMACIST:

**Jardines (U.K.) Limited
("the Applicant")**

PREMISES:

**Jardines Pharmacy
The Brook Health Centre
Swinneyford Road
Towcester
Northamptonshire
NN12 6HD**

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

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

Outcome

- 1.1 Based on the information provided, I am satisfied that the pharmaceutical services provision that would result from the Applicant's proposed hours would maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises.
- 1.2 Therefore I substitute the decision of the Commissioner to reject the change of hours application, with the decision to grant the change of hours application, without a direction.

A copy of this decision is being sent to:

Pharmacy Sales and Consultancy on behalf of the Applicant
Northamptonshire ICB

FILE REF: SHA/26532

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

COMMISSIONER: Northamptonshire ICB
("the Commissioner")

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

PHARMACIST: Jardines (U.K.) Limited
("the Applicant")

PREMISES: Jardines Pharmacy
The Brook Health Centre
Swinneyford Road
Towcester
Northamptonshire
NN12 6HD

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

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

1 Introduction

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

Rights of appeal

- 1.3 Where the Commissioner has determined an application under paragraph 26 of Schedule 4 of the Regulations and has granted it in part only or has taken an action that has the effect of refusing it, paragraph 26(9) provides a right of appeal to the Secretary of State for Health and Social Care ("the Secretary of State").
- 1.4 The Secretary of State has directed NHS Resolution to determine such appeals. As an authorised officer of NHS Resolution, I have considered the appeal and have determined it, in accordance with my delegated powers.

Opening hours

- 1.5 A pharmacy's opening hours may be categorised as:
- 1.5.1 "core opening hours" (at the hours during which the pharmacy must be open by virtue of paragraph 23(1) of Schedule 4 of the Regulations), which may

incorporate a direction of the Commissioner requiring fewer or greater than 40 hours and at set times and days; or

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

Alteration of core opening hours

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

Alteration of supplementary opening hours

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

The Applicant's proposals

- 1.11 The Applicant in its application form indicates that it currently has core opening hours totalling 40 hours per week.
- 1.12 The Applicant wishes to:
 - 1.12.1 Open 30 minutes earlier at 15:30 instead of 16:00, Monday to Friday; and
 - 1.12.2 Close on Saturday instead of opening 09:30 – 12:00.

2. Application

In this case, Pharmacy Sales and Consultancy on behalf of the Applicant provided the following information in its application form and supporting information dated 20 November 2024:

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

Monday	09:00 – 14:00 16:00 – 18:30
Tuesday	09:00 – 14:00 16:00 – 18:30
Wednesday	09:00 – 14:00 16:00 – 18:30
Thursday	09:00 – 14:00 16:00 – 18:30
Friday	09:00 – 14:00 16:00 – 18:30
Saturday	09:30 – 12:00
Sunday	Nil

2.3 Proposed core opening hours for these premises:

Monday	09:00 – 14:00 15:30 – 18:30
Tuesday	09:00 – 14:00 15:30 – 18:30
Wednesday	09:00 – 14:00 15:30 – 18:30
Thursday	09:00 – 14:00 15:30 – 18:30
Friday	09:00 – 14:00 15:30 – 18:30
Saturday	Nil
Sunday	Nil

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

2.4.1 1 February 2025

2.5 **Supporting Information:**

2.6 **Application to amend core opening hours at Jardines Pharmacy, The Brook Health Centre, Swinneyford Road, Towcester, Northamptonshire. NN12 6HD**

2.7 We act for Jardines (U.K.) Limited, trading as Jardines Pharmacy. Our client has instructed us to submit an application to NHS England to amend the core hours for its pharmacy located at:

2.7.1 *The Brook Health Centre, Swinneyford Road, Towcester, Northamptonshire NN12 6HD*

2.8 **Regulatory context**

2.9 The introduction of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) (Amendment) Regulations 2023 in May 2023 brought in changes to the legal tests to be considered by the NHS Commissioning Board when a pharmacy contractor wishes to change core opening hours for an NHS Pharmacy.

2.10 As is often the case when there is a change to the Regulations, decision makers have interpreted these new Regulations in different ways, with some ICBs approving

applications for changes of core hours when other ICBs refused applications where identical circumstances apply.

- 2.11 In a number of cases, where applications have been refused by individual ICBs, applicants have lodged appeals against these decisions and the application has been determined by NHS Resolution. At the time of submitting this application there have been several appeal decisions published by NHS Resolution relating to applications in accordance with paragraph 26 of Schedule 4 to the Regulations (determination of pharmacy premises core opening hours instigated by the NHS pharmacist).
- 2.12 This is helpful for both applicants and ICBs as the approach taken by NHS Resolution effectively sets a precedent for how future applications will be determined. It is appropriate, therefore, for ICBs who are in receipt of these applications to be mindful of other decisions made in similar circumstances. Their approach should be consistent with the approach taken by NHS Resolution to avoid unnecessary appeals.
- 2.13 To assist the ICB consider this application we have attached a copy of a recent approval by NHS Resolution for a change of core hours in Ormskirk (SHA/26102) and we have summarised the approach taken by NHS Resolution below.
- 2.14 The approach taken by the Head of Appeals at NHS Resolution in this case was to effectively consider two matters:
- 2.15 Is it necessary to maintain the existing level of service provision?
- 2.16 This is dealt with in paragraphs 2.31 to 2.43 of the Ormskirk decision.
- 2.17 The approach taken was to first establish what the current level of service provision by the applicant is. The Ormskirk decision report makes it clear that, when considering the current service levels, the decision maker should take into account not only at what times of day those services are provided, but also *“other characteristics of the service, such as types and range of services provided, geographical access to services provided, other aspects of physical access aside from location, and the quality of services provided”*.
- 2.18 The implication here is that it is for the applicant and other relevant parties to provide the decision maker with sufficient information to allow it to assess the current level of provision.
- 2.19 The Head of Appeals then went on to consider (2.36 onwards), the matter of whether *“it is necessary to maintain the existing level of service provision”*.
- 2.20 In 2.43 the report states *“From the information provided, it is clear that there are some people using the pharmacy at the times the Applicant wishes to close, albeit low in numbers and therefore I consider it is necessary to maintain the existing level of service provision”*.
- 2.21 Essentially what NHS Resolution is saying here is that, if there is evidence that there is *any* demand for pharmaceutical services at the pharmacy during the hours it proposes to close in the future, even if this demand is very low, then it is *necessary* to maintain service provision to these patients during those hours.
- 2.22 The implication of this is that if evidence was provided that there was absolutely *no* demand for pharmaceutical services whatsoever during the hours it is proposed to close, then it could be concluded that it is not necessary to maintain the existing level of service provision and the application could be approved.

- 2.23 If there is evidence of some demand then the decision maker should go on to consider other matters.
- 2.24 If the applicant's pharmacy changed its core hours, are these 'necessary services' available to patients from other pharmacies during the times the pharmacy previously opened?
- 2.25 This is dealt with in paragraphs 2.44 to 2.56 of the Ormskirk decision.
- 2.26 Paragraph 2.44 notes that the applicant had provided information showing that other pharmacies in the area have opening hours which cover those during which the applicant proposes to close.
- 2.27 Paragraph 2.45 states *"If I consider that the characteristics of other pharmacies, e.g. where they are located, their access, the services provided and the times they are open, means that the level of service provision is maintained for people in the local area or other likely users of the pharmacy, then I am able to grant the application under paragraph 24(1)(a)."*
- 2.28 The decision report then goes on to consider whether the information provided by the applicant satisfied NHS Resolution that this is the case i.e. are the other pharmacies providing equivalent services when the applicant proposes to close and are those pharmacies accessible to the patients?
- 2.29 Importantly, in paragraph 2.50 NHS Resolution noted that even though the nearest alternative pharmacies with extended core opening hours were located more than 4 miles away, it was reasonable to assume that patients would be able to travel to these pharmacies based on the information provided by the applicant.
- 2.30 Even though this distance of 4 miles does not necessarily set any form of precedent, and it may not always be appropriate to take into account pharmacies this distance away, it does demonstrate that the decision maker should take a broad view of provision available in the wider area.
- 2.31 In paragraph 2.54 the report took note of the services that were being provided by the applicant during the hours it proposed to close and was satisfied that these services were available from the alternative pharmacies discussed above.
- 2.32 In 2.56 the decision maker concluded *"Based on the information provided, I am therefore satisfied that the existing level of service provision would be maintained by virtue of the existence of other local pharmacies."*
- 2.33 The application was therefore approved.
- 2.34 **Our client's application**
- 2.35 Taking into account the decision above, we have provided information below that will enable the ICB to consider our client's application fully.
- 2.36 *A. What is the current level of service provision at our pharmacy during the hours we propose to close?*
- 2.37 The proposal is for our client to remove its core hours on Saturday mornings between 9.30am and 12pm and move these to the middle of the day on weekdays.

- 2.38 The core hours currently make provision for closure between 2pm and 4pm on weekdays. It is proposed that the closure period will be reduced to 2pm-3.30pm (albeit the pharmacy will open longer hours through its supplementary hours).
- 2.39 The reason for this proposed change is that the pharmacy is located within a medical centre that does not open on Saturday mornings. As a result, there is no meaningful demand for pharmaceutical services at these premises on a Saturday.
- 2.40 In order to assess the level of demand, our client has carried out a patient survey to review demand on Saturday mornings.
- 2.41 The survey was carried out over four consecutive weeks, starting on Saturday 12th October 2024, with the purpose being to count the number of people attending the pharmacy between 9am and 12.00pm on Saturdays and understand the services they access and how they have travelled there. The outcome of the survey, **for the entire 4 week period**, is summarised as follows:
- 2.41.1 1 patient attended the pharmacy with prescriptions that they wished to have dispensed that day.
- 2.41.2 13 patients attended to collect prescriptions that had been dispensed previously. These were not acute prescriptions.
- 2.41.3 6 patients attended to purchase OTC products.
- 2.41.4 1 patient attended for advice.
- 2.41.5 1 patient attended to collect a lateral flow test device.
- 2.42 In terms of how these patients travelled to the pharmacy*:
- 2.42.1 18 patients drove
- 2.42.2 1 patient walked
- 2.42.3 No patients used public transport.
- 2.42.4 *Note – the count of patients by their method of travel is lower than the total number of services received as some patients received more than one service during their visit e.g. collection of dispensed medication and a purchase of an OTC product.
- 2.43 A copy of this survey is attached.
- 2.44 Whilst clearly any survey is no more than a snapshot in time, the findings during this four-week period are very clear. There is negligible demand for services of any sort on Saturday mornings (with fewer than 5 patients attending on average each Saturday). Furthermore, demand is almost completely limited to *essential* pharmaceutical services only. Only one patient attended to receive an *advanced* pharmacy service, namely to collect an LFD.
- 2.45 Whilst, as we have noted, demand for pharmaceutical services on Saturdays is very limited, we are mindful of the approach taken by Primary Care Appeals who considered that *any* demand for *any* pharmaceutical services during the hours it is proposed to close means that those services are *necessary*.

- 2.46 It is the case that there is occasional demand for some of these services some of the time. Our client does not seek, therefore, to argue that it is not 'necessary to maintain the existing level of service provision'.
- 2.47 *B. Are the services our client provides on Saturday mornings provided by other pharmacies that are reasonably accessible to patients?*
- 2.48 In order to address this question, we have started by considering the demographic profile of local residents, as this is relevant to their ability to access alternative pharmacies.
- 2.49 *Profile of local residents*
- 2.50 In terms of the local demographic profile, key data from the 2021 census for the Towcester and Roade ward, in which the pharmacy is located is as follows:
- 2.50.1 Car ownership is significantly higher than average with only 11.3% of homes having no car compared to the national average of 23.5%.
- 2.50.2 The area has lower than average levels of people whose mobility is limited by illness or disability, being 14.3% compared to the national average of 17.3%
- 2.50.3 The number of residents over the age of 65 is in line with the national average [sic] being 17.6% compared to the national average of 18.4%.
- 2.51 In respect of deprivation measures, the Index of Multiple Deprivation for 2019, published by the Ministry of Housing, Communities and Local Government, shows that the lower super output area ('LSOA') in which the pharmacy is located was ranked 21,291 out of 33,284 where 1 is the most deprived i.e. it is in the 35% least deprived areas of the country.
- 2.52 This profile suggests a healthy, highly mobile and relatively affluent population. The area is not deprived on any measure.
- 2.53 *Alternative provision*
- 2.54 We have then gone on to consider alternative provision of pharmaceutical services within close proximity to our client's premises. This is limited to pharmacies that have opening hours covering the times it is proposed that our client's pharmacy will close.
- 2.55 There is one alternative pharmacy that meets these criteria as follows:
- 2.55.1 **Jardines Pharmacy**, 108 Watling Street, Towcester, Northamptonshire, NN12 6BT
- 2.55.2 Open 9am to 5.30pm on Saturdays.
- 2.55.3 Importantly, the core hours for this pharmacy on Saturdays are 10am-12pm, 2pm-5pm.
- 2.56 So whilst the pharmacy does not have core hours between 9.30am and 10am (which are core hours for the pharmacy subject to this application), it is clear that any patient who requires pharmaceutical services on a Saturday morning is guaranteed provision of these between 10am and 12pm at the very least, as well as on Saturday afternoons.

- 2.57 In reality the pharmacy opens at 9am on Saturdays anyway (with supplementary hours between 9am and 10am) and there are no plans to change this because of the town centre location.
- 2.58 In terms of the services provided, in addition to the *essential* services, Jardines at 108 Watling Street provides **all** the *advanced* services that are provided at the Brook Health Centre branch, including LFD distribution, the only service requested at the pharmacy during the 4 week survey period.
- 2.59 For the avoidance of doubt there is no NHS pharmaceutical services provided by our pharmacy subject to this application that is not also provided at the Watling Street branch.
- 2.60 In respect of the accessibility of this pharmacy, it is relevant that the Watling Street pharmacy is located within the heart of the town centre. This is a location that residents of Towcester, and the surrounding villages, will gravitate towards on a Saturday morning.
- 2.61 The pharmacy is prominently located on the main 'high street' of the town, which is also the A5, so a major 'trunk road' through the area,
- 2.62 As can be seen below, the Watling Street branch of Jardines is located very close to the Jardines branch subject to this application, being only 850m away using the shortest practicable route. This would take no more than 11 minutes to walk along level terrain using wide footpaths which are well lit.
- 2.63 Given the low levels of disability, as demonstrated in the census data, the vast majority of residents would have no difficulties walking this distance if they wished to.
- 2.64 [Map provided]
- 2.65 Clearly most patients would not start their journey at the Swinneyford Road premises, but this gives an indication of how close the two sites are.
- 2.66 For any patient who drives to our client's pharmacy at the moment, it will clearly be very straightforward for them to access the Watling Street pharmacy instead. The journey by car is very short (less than 5 mins) and there is parking, not only on Watling Street (within 30m of the pharmacy premises), but also at several car parks around the town centre.
- 2.67 Given that car ownership is very high, and all but one patients [sic] visiting the pharmacy during the survey period travelled by car, it can be assume [sic] that most patients would choose to drive to this alternative pharmacy on Saturday mornings.
- 2.68 For local residents who use public transport at present, routes 88 and X91 travel along Swinneyford Road, with stops within 100m of the pharmacy. The same routes also travel along Watling Street, and there is a stop within 25m of the Jardines pharmacy there.
- 2.69 It is clear, therefore, that patients who access pharmaceutical services by bus will be able to use exactly the same services to travel to the pharmacy on Watling Street.
- 2.70 In summary, there is clear evidence that the Jardines branch on Watling Street provides a highly accessible alternative to the Swinneyford Road pharmacy on Saturday mornings.
- 2.71 **Conclusion**

- 2.72 In conclusion, and referring back to the legal tests and the approach taken by NHS Resolution, it is clear that whilst there is only a limited demand for services at our client's pharmacy on Saturday mornings there is some demand, so the services could be deemed as necessary.
- 2.73 However, it is also clear that, using the view taken in the Ormskirk appeal, that is another pharmacy in Towcester with core hours on a Saturday that provides exactly the same services as our client's pharmacy and which is very easily accessible to patients.
- 2.74 That being the case *the existing level of service provision would be maintained by virtue of the existence of another local pharmacy.*
- 2.75 We therefore ask the ICB to approve this application accordingly."

3. The Decision

In a letter to the Applicant dated 21 January 2025 (sent by email on 3 February 2025) the Commissioner decided to refuse the application. The Commissioner stated:

- 3.1 "Thank you for your application to make a permanent change to the core opening hours at the above pharmacy.
- 3.2 The Pharmaceutical Services Regulations Committee (PSRC) reviewed the application virtually on 17 January 2025 and a decision was made to refuse the request the change the core opening hours. A separate letter will be sent to you for your request to change your supplementary hours.
- 3.3 The reasons given for the refusal were as follows.
- 3.3.1 the information provided in the supporting document shows that although the numbers are low there are some patients using the pharmacy at the times the applicant wishes to close therefore it is necessary for the existing level of service provision to be maintained.
- 3.3.2 There is also evidence within the supporting documentation that there is demand for pharmaceutical services on Saturdays. The change of core hours request is seeking to close on Saturdays; therefore, the existing level of service provision would not be maintained by the proposed core opening hours.
- 3.3.3 Given that the GP practice is closed on the Saturday, it could be deemed that there is a greater need for the pharmacy to be open to provide its full range of pharmaceutical services and not just dispensing services. There is limited core hour provision within the area too and approving this application does not support the wider urgent care agenda.
- 3.4 Therefore, the committee rejected the application pursuant to Regulation **Schedule 4, Part 3, Regulation 24 and Schedule 4, Part 3 Regulation 26 as the committee felt that the change in core hours would not**
- 3.4.1 a. either maintain as necessary the existing level of service provision for people in the area of the pharmacy, or other likely users of the pharmacy premises; or
- 3.4.2 b. maintain a sustainable level of adequate service provision for the people in the area of the pharmacy, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome

- 3.5 You have the right of appeal to the Secretary of State against our decision. Should you choose to appeal, then you should send in writing a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this letter to: nhsr.appeals@nhs.net

3.5.1 NHS Resolution, 8th Floor, 10 South Colonnade, Canary Wharf, London E14 4PU”

4. The Appeal

In a letter to NHS Resolution dated 24 February 2025, Pharmacy Sales and Consultancy on behalf of the Applicant appealed against the Commissioner’s decision. The grounds of appeal are:

- 4.1 “We act for Jardines (UK) Limited and have enclosed a letter of authorisation confirming our instructions in this matter.
- 4.2 Our client has been notified by the East Midlands Primary Care Team that the above application has been refused. We have enclosed a copy of their decision letter for your information. **Please note that whilst the refusal letter is dated 21st January, it was not notified to us (on behalf of the applicant) until 3rd February, so this appeal is within the 30 day appeal period.** We have included a copy of the covering email dated 3rd February.
- 4.3 Our client wishes to appeal this decision and we set out the key grounds for appeal below by reference to the Primary Care Team letter dated 21st January 2025.
- 4.3.1 Whilst our client accepts that the survey data it provided shows there is evidence of a (very limited) demand for pharmaceutical services provision on Saturdays, the ICB has failed to consider the additional information provided by our client in respect of alternative provision.
- 4.3.2 The ICB state *“given that the GP practice is closed on the Saturday, it could be deemed that there is a greater need for the pharmacy to be open to provide its full range of pharmaceutical services and not just dispensing services”*. However, our client’s survey shows that despite the fact the GP practice is closed, there is negligible demand for pharmaceutical services provision at our client’s pharmacy on Saturdays. The only non ‘essential’ service that was accessed during the four-week period of the survey was a single request for a lateral flow test device.
- 4.3.3 There is no evidence that the lack of medical service provision in the area on Saturdays creates any material demand for pharmaceutical services.
- 4.3.4 The ICB go on to state *“there is limited core hour provision within the area too and approving this application does not support the wider urgent care agenda”*. We dispute the assertion that there is limited alternative core hours provision for the reasons provided in our client’s application and below.
- 4.4 We have included a copy of our client’s application to NHS England with this appeal and provide further information as follows.
- 4.5 **Regulatory context**
- 4.6 As Primary Care Appeals is aware, when considering an application for a change of core hours, it will have regard to paragraph 24 of Schedule 4 to the National Health

Service (Pharmaceutical Services and Local Pharmaceutical Services) Regulations 2013 (as amended).

4.7 Paragraph 24(1) reads as follows:

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

(a) to maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises; or

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

4.8 This appeal focusses on the matters dealt with in 24(1)(a). For the avoidance of doubt, our client is not seeking to make the case that maintaining the existing level of service provision is not realistically achievable according to the strict interpretation of 24(1)(b).

4.9 However, our client would like to make the more general point that, in the context of extreme financial pressures in the sector at present, maintaining Saturday morning provision at a site where there is negligible demand places unnecessary strain on the business given that the company owns another pharmacy within half a mile or so, which opens all day on Saturday. The costs associated with this duplicated provision could be much better spent if they were invested more widely in pharmaceutical services development.

4.10 **24(1)(a)**

4.11 In considering whether granting this application will “*maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises*” the approach usually taken by PCA is to first determine whether the services being provided during the hours it is proposed to close are necessary. Our client accepts that, following the usual approach taken by PCA, the services it provides could be deemed as necessary given that there was *some* demand for pharmaceutical services during the survey period, albeit this was very limited.

4.12 The second question asked by PCA when considering 24(1)(a) is:

4.13 *If it is necessary to maintain the existing level of provision, are these ‘necessary services’ available to patients from other pharmacies during the times the pharmacy previously opened and are those pharmacies reasonable to access?*

4.14 We seek to address this question by considering the services provided by alternative pharmacies which we deem to be ‘reasonably accessible’ to patients who might otherwise attend our client’s pharmacy.

4.15 In this case, as set out in our client’s application, there is one alternative pharmacy which meets these criteria. This is Jardines Pharmacy, 108 Watling Street, Towcester, Northamptonshire, NN12 6BT.

4.16 *Core hours of nearby pharmacies*

- 4.17 Whilst this was discussed in our client's application, we include this information again with this appeal for completeness. As this application concerns the removal of core hours at the Brook Health Centre branch on a Saturday only, we have provided below the Saturday core hours of the Watling Street Jardines pharmacy below. They are: 10:00-12:00 & 14:00-17:00.
- 4.18 Whilst the pharmacy does not have core hours between 9.30am and 10am (which are core hours for the pharmacy subject to this application), it is clear that any patient who requires pharmaceutical services on a Saturday morning is guaranteed provision of these between 10am and 12pm at the very least, as well as on Saturday afternoons.
- 4.19 In reality the pharmacy opens at 9am on Saturdays anyway (with supplementary hours between 9am and 10am) and there are no plans to change this because of the town centre location.
- 4.20 We note that the ICB did not comment specifically on these alternative [sic] core hours. Instead they made the general comment that "there is limited core hours provision within the area".
- 4.21 Whilst the ICB do not expand on their view that core hours provision is 'limited', we submit that this alternative pharmacy provides more than adequate coverage in respect of Saturday core hours provision.
- 4.22 *Services provided*
- 4.23 In terms of the services provided, in addition to the *essential* services, Jardines at 108 Watling Street provides all the *advanced* services that are provided at the Brook Health Centre branch, including LFD distribution, the only service requested at the pharmacy during the 4-week survey period.
- 4.24 For the avoidance of doubt there is no NHS pharmaceutical service provided by the pharmacy subject to this appeal that is not also provided at the Watling Street branch.
- 4.25 Again we note that the ICB did not comment on this matter in its decision letter.
- 4.26 *Journey to the alternative pharmacy in Towcester.*
- 4.27 This matter was discussed within our client's application but there is no evidence that the ICB had proper regard to the matter of alternative provision.
- 4.28 Our client's application provided demographic data for the Towcester and Roade ward which is summarised as follows:
- 4.28.1 Car ownership is very significantly higher than the national average;
- 4.28.2 The levels of residents classed as disabled, as discussed in the Equality Act, is significantly below the national average;
- 4.28.3 The number of residents over the age of 65 is slightly below the national average.
- 4.28.4 The area in which the pharmacy is located is not deprived on any measure of the index of multiple deprivation.
- 4.29 There are no demographic characteristics, therefore, that would suggest residents of the area in which the pharmacy is located would have any particular difficulties travelling to alternative pharmacies.

- 4.30 Pedestrians
- 4.31 Within our client's application we provided the following map which shows the journey on foot from the premises subject to this appeal and the alternative pharmacy. As can be seen below, this journey time is 11-12 minutes, and the distance is around 850m.
- 4.32 [Map provided]
- 4.33 The area between and around the pharmacy is essentially flat, as can be seen on the topographic map below. The difference in elevation between the pharmacy subject to this application (marked with a blue star), and the alternative pharmacy (marked with a red star) is no more than 5 metres, and the journey between the sites is essentially level.
- 4.34 [Map provided]
- 4.35 The route shown above is fully paved, with street lighting, dropped kerbs and pedestrian islands. Most of the journey involves walking along quite residential roads, such as Bickerstaffe Road, shown below.
- 4.36 [Photo provided]
- 4.37 Approaching the town centre the route passes a Waitrose supermarket site along a cul-de-sac (Meeting Lane) which connects to Watling Street using a pedestrian footpath.
- 4.38 The only busy road pedestrians would need to cross is Watling Street, the A5, where there is a light-controlled pedestrian crossing almost immediately outside the alternative pharmacy as shown below:
- 4.39 [Photo provided]
- 4.40 There are no barriers whatsoever for pedestrians who wish to access this alternative pharmacy.
- 4.41 Motorists
- 4.42 The distance from the pharmacy subject to this application to the alternative pharmacy is between 1.1km and 1.3km depending on the route taken. This takes no more than 3 minutes, as shown on the map below.
- 4.43 [Map provided]
- 4.44 Car parking is available within 50m of the alternative pharmacy as can be seen in the image below, where there are spaces on both sides of the road that are free of charge for up to two hours. The alternative pharmacy site is marked with a red star.
- 4.45 [Photo provided]
- 4.46 Taking into account the high levels of car ownership in the town and the ease with which patients can drive to and park near the alternative pharmacy it is clear that the vast majority of residents will have no difficulty accessing this pharmacy by car.
- 4.47 Public transport

- 4.48 In terms of the bus service, the health centre site at which the pharmacy is located is served by two bus routes. These are the 88 and the X91. We have included timetables for both of these services with this appeal.
- 4.49 Looking at the two services combined, on Saturdays there are two buses every hour which travel from the health centre to Watling Street, where there is a stop within 20m of the alternative pharmacy site. We submit that this is more than adequate provision for the very small number of patients who would be reliant on public transport to make this journey.
- 4.50 This is a relatively affluent area so patients are able to comfortably afford the bus fare, or even travel by taxi if they wished to.
- 4.51 In summary, therefore, in respect of the accessibility of this alternative pharmacy, we submit that this is straightforward.
- 4.52 For those patients who may choose to walk to this alternative pharmacy the route is very straightforward and takes a little over 10 minutes. We have provided information earlier to show that levels of disability in the area are significantly lower than average, so residents are relatively mobile.
- 4.53 For residents who choose to drive, journey times are short and there is parking available within a very short distance of the pharmacy discussed. The demographic data provided shows that fewer than 12% of homes in the area do not have access to a private vehicle, significantly lower than the national average.
- 4.54 We have also shown that for patients who wish to use public transport there is adequate provision in the area, with two buses available every hour on a Saturday that travels directly between the two pharmacies.
- 4.55 For these reasons we say that the test set out in paragraph 24(1)(a) is met i.e. the existing level of service provision for the people in that area or other likely users of the pharmacy premises will be maintained if this application is granted.
- 4.56 **Conclusion**
- 4.57 In conclusion, and referring back to the legal tests and the approach taken previously by NHS Resolution, it is clear that whilst there is only a limited demand for services at our client's pharmacy on Saturdays, there is some demand, so the services could be deemed as necessary.
- 4.58 However, it is also clear that there is an alternative pharmacy with Saturday core hours that provides exactly the same services as our client's pharmacy and which is accessible to patients who have become accustomed to accessing that pharmacy.
- 4.59 That being the case the existing level of service provision would be maintained by virtue of the existence of other local pharmacies.
- 4.60 We therefore ask the Primary Care Appeals to approve this application accordingly."

5. Representations

In a letter to NHS Resolution dated 20 March 2024 the Commissioner stated:

- 5.1 "Thank you for your letter dated 26 February 2024; The East Midlands Primary Care Team on behalf of Northamptonshire Integrated Care Board would like to make the following representations.

5.2 **Relevant Regulations**

5.3 **Schedule 4, Part 3, Regulation 24** - Matters to be considered when issuing directions in respect of pharmacy premises core opening hours The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (legislation.gov.uk)

5.4 **Schedule 4, Part 3 Regulation 26** Determination of pharmacy premises core opening hours instigated by the NHS pharmacist The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (legislation.gov.uk)

5.5 When considering applications to either.

5.5.1 a. reduce the total number of hours for which the Pharmacy is obliged to provide pharmaceutical services at those premises each week; or

5.5.2 b. keep that total number of hours the same.

5.6 The committee must also consider If the application demonstrates that the proposed core opening hours will:

5.6.1 a. either maintain as necessary the existing level of service provision for people in the area of the pharmacy, or other likely users of the pharmacy premises; or

5.6.2 b. maintain a sustainable level of adequate service provision for the people in the area of the pharmacy, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome.

5.7 An application for a permanent change to core hours was received from Jardines (UK) Limited on 20 November 2025. The contractor wanted to close on a Saturday and redistribute their hours during the week. The proposed effective date for the change of hours was 1 February 2025.

5.8 The Pharmaceutical Services Regulations Committee (PSRC) reviewed the application virtually on 17 January 2025 and a decision was made to refuse the request to change the core opening hours.

5.9 The reasons for the refusal were as follows.

5.9.1 the information provided in the supporting document shows that although the numbers are low there are some patients using the pharmacy at the times the applicant wishes to close therefore it is necessary for the existing level of service provision to be maintained.

5.9.2 There is also evidence within the supporting documentation that there is demand for pharmaceutical services on Saturdays. The change of core hours request is seeking to close on Saturdays; therefore, the existing level of service provision would not be maintained by the proposed core opening hours.

5.9.3 Given that the GP practice is closed on the Saturday, it could be deemed that there is a greater need for the pharmacy to be open to provide its full range of pharmaceutical services and not just dispensing services. There is limited core hour provision within the area too and approving this application does not support the wider urgent care agenda.

5.10 **Current Pharmaceutical Provision**

- 5.11 Jardines pharmacy is co located next to the Brook Health Centre who's branch surgery is a dispensing practice. A review of where the prescriptions issued by the practice are dispensed was undertaken. In November the practice prescribed 15974 items, 9429 of which were on electronic prescriptions which were dispensed by 91 different pharmacy/DAC premises. Of these:
- 5.11.1 The Brook Health Centre's branch Surgery dispense 40.7% of the prescriptions
 - 5.11.2 Jardines at the brook Health Centre dispense 27.3% of the prescriptions
 - 5.11.3 Jardines within Towcester town centre dispense 10%
- 5.12 The pharmacy does not currently provide any Enhanced Services but provides the following advanced services
- 5.12.1 Blood Pressure Service
 - 5.12.2 Smoking Cessation
 - 5.12.3 Lateral Flow Device Service
 - 5.12.4 Contraception Service
 - 5.12.5 Flu Vaccination Service
 - 5.12.6 New Medicines Service
- 5.13 There is 1 pharmacy within a 1-mile radius delivering Core opening hours on a Saturday between the hours of 09:00 to 13:00 and 14:00 to 17:00, Monday to Friday and 10:00 to 12:00 and 14:00 to 17:00 on a Saturday, the next closest pharmacy is 4.5 miles away. The pharmacy also provides a prescription delivery service.
- 5.14 According to google maps the pharmacies are 0.9 miles from each other, which is a 4-minute drive by car, a 13-minute walk and 9 minutes by public transport. Maps are included in the useful documents section of this paper.
- 5.15 The table below provides details of the pharmacy within a 1-mile radius of the pharmacy, the hours that they provide and the Advanced and Enhanced services they provide.

Nearest Pharmacies and Service Provision within 1 mile radius The Brook Health Centre, Swinneyford Road, Towcester, Northampton, NN12 6HD			
Pharmacy name	Distance in miles	Opening Hours	Services
FE618 Jardines Pharmacy, 108 Watling Street, Towcester, Northants, NN12 6BT	0.85	Core Hours Monday to Friday 09:00 to 13:00 and 14:00 to 17:00 Saturday and Sunday 10:00 to 12:00 and 14:00 to 17:00	Blood Pressure Service Smoking Cessation Lateral Flow Device Service Pharmacy First

		Supplementary Hours Monday to Friday 13:00 to 14:00 and 17:00 to 17:30 Saturday 09:00 to 10:00, 12:00 to 14:00 and 17:00 to 17:30 Total Hours Monday to Friday 09:00 to 18:30 Saturday 09:00 to 17:30 Sunday Closed	Contraception service Flu Vaccination Service New Medicines Service Prescription Delivery Service
--	--	--	--

5.16 In Summary the information provided in the supporting document shows that although the numbers are low there are some patients using the pharmacy at the times the applicant wishes to close therefore it is necessary for the existing level of service provision to be maintained. It also appears that the applicant is of the opinion that there is demand for pharmaceutical services on Saturdays. The applicant is seeking to close on Saturdays; therefore, the existing level of service provision would not be maintained by the applicant's proposed core opening hours.

5.17 I would like to take this opportunity to respond to any further representations provided by Jardines (UK) Limited, The Brook Health Centre, Swinneyford Road, Towcester, Northampton, NN12 6HD”

6. Observations

In a letter to NHS Resolution dated 8 April 2025 Pharmacy Sales and Consultancy on behalf of the Applicant stated:

6.1 “Thank you for your letter dated 4th April providing third party comments from the East Midlands Primary Care Team. We continue to act for Jardines (UK) Limited and have previously provided a letter of authorisation confirming our instructions in respect of this matter.

6.2 We wish to make the following final observations on behalf of the applicant and respond in the same order as the comments from the Primary Care Team on behalf of the ICB.

6.3 Relevant Regulations

- 6.4 The ICB cites the relevant regulations and we agree that these are the matters it was required to consider when determining this application.
- 6.5 In respect of the ICB's reasons for refusing the application our client has responded to these matters already within its appeal letter.
- 6.6 Current Pharmaceutical Provision
- 6.7 We note the data provided by the ICB in respect of the number of prescription items prescribed by The Brook Health Centre, and the breakdown of where the majority of those items were dispensed in November 2024. We agree that this data is accurate.
- 6.8 It is important to consider *why* a greater number of patients registered with this medical centre have their prescriptions dispensed by the co-located Jardines pharmacy i.e. the pharmacy subject to this application.
- 6.9 There are two GP practices in Towcester, namely The Brook Health Centre and Towcester Medical Centre. The two medical centres are adjacent to each other, essentially on the same site, as can be seen in the image below.
- 6.10 [Map provided]
- 6.11 Prescribing and dispensing data for Towcester Medical Centre, for December 2024 (the most recent data available) shows the following:
- 6.12 The practice prescribed 16,389 items that month.
- 6.12.1 4,481 items (27.3%) were self-dispensed by the practice.
- 6.12.2 3,688 items (22.5%) were dispensed by Jardines Pharmacy at 108 Watling Street, Towcester.
- 6.12.3 2,457 items (15.0%) of items were dispensed by Jardines Pharmacy at The Brook Health Centre.
- 6.13 Despite the fact the surgeries are in the same location, and that the Brook Health Centre branch of Jardines Pharmacy is only 50m away from Towcester Medical Centre, significantly more patients registered with Towcester Medical Centre received their prescriptions from Jardines in the town centre during this most recent month.
- 6.14 If the accessibility of the town centre Jardines branch was a concern, it would be expected that a similar pattern would be seen to the Brook Health Centre patient data, where significantly more prescriptions were dispensed at the health centre Jardines branch due to its proximity.
- 6.15 The reality is, that where pharmacies are co-located with medical centres, they are particularly convenient when patients are attending the medical centre for an appointment first. It will invariably be easier for them to access a pharmacy on the same site immediately after their appointment. However, where patients are not accessing the medical centre prior to visiting the pharmacy, it is likely to be more convenient for them to access a pharmacy closer to their home or where they go about their daily lives, such as when they are shopping in the town centre.
- 6.16 It is highly relevant, therefore, that neither of these two medical centres are open on Saturday mornings during the hours our client proposes to close. There will be no patients attending the medical centres prior to visiting a pharmacy. It is for this reason

that, as was shown in the data we provided with our client's application, footfall to the pharmacy premises on a Saturday morning is very low.

- 6.17 Furthermore, given that even taking into account the weekdays when Towcester Medical Centre is open more patients visit the town centre (Watling Street) pharmacy than the branch co-located with the adjacent medical practice, it is clear that the distance to this Watling Street pharmacy does not constitute a barrier for patients to travel there.
- 6.18 We note the pharmacy services listed by the ICB at the Brook Health Centre branch, and we also note that, using the table provided by the ICB, the ICB confirms these services are also provided by the other Jardines pharmacy in the town.
- 6.19 We also note that the ICB provides travel times from the Brook Health Centre branch of Jardines to the Watling Street branch and we accept these. Notwithstanding the fact there is no reason that a patient would start their journey at The Brook Street Health Centre on a Saturday morning (given that the surgeries will be closed), we note that the *maximum* travel time to an alternative pharmacy is 13 minutes (on foot). The travel time is less by car and by public transport.
- 6.20 We also note, from the table provided by the ICB, that they confirm the Watling Street branch of Jardines has core hours throughout Saturday (although we would point out that their suggestion that there are core hours on a Sunday is not correct, as confirmed under the heading 'total hours' which shows that the pharmacy is actually closed on Sundays).
- 6.21 The ICB conclude by re-stating that there is some demand for pharmaceutical services on Saturdays. Our client does not dispute that conclusion. However, as discussed in our client's application and appeal, there is alternative provision available on a Saturday very close by, which is easily accessible to residents. The ICB do not provide any evidence to challenge this assertion.
- 6.22 As the ICB have provided no further new information we have nothing further to add at this stage and look forward to hearing the outcome of this appeal in due course."

7. Consideration

- 7.1 I note the following:
- 7.1.1 The Applicant's core opening hours total 40 hours and the Applicant proposes to redistribute those 40 core opening hours pursuant to paragraph 26 of Schedule 4.
- 7.2 The Regulations, which came into force on 1 April 2013, have been amended a number of times. Certain amendments, relating to pharmacy premises opening hours, came into force with effect from 25 May 2023.
- 7.3 Paragraph 26(1) states:
- "26.— (1) An NHS pharmacist (P) may apply to NHS England for it to change the days on which or times at which P is obliged to provide pharmaceutical services during core opening hours at P's pharmacy premises in a way that—*
- (a) reduces the total number of hours for which P is obliged to provide pharmaceutical services at those premises each week ...; or*
- (b) keeps that total number of hours the same."*

- 7.4 I have first considered paragraph 26(2) of Schedule 4 of the Regulations, which reads as follows:
- "Except where sub-paragraph (2A) applies, where P makes an application under sub-paragraph (1), as part of that application P must provide NHS England with such information as NHS England may reasonably request in respect of the matters that NHS England must seek to ensure pursuant to paragraph 24(1).*
- 7.5 Paragraph 24(1) reads as follows:
- "24 (1) Subject to paragraph 26(2A), where NHS England issues a direction for setting any days or times for opening hours under this Part, or determines them without issuing a direction, it must in doing so seek to ensure that the days and times at which pharmacy premises are open for the provision of pharmaceutical services in the area in which the premises that are the subject of the direction are located are such as –*
- (a) to maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises; or*
 - (b) to maintain a sustainable level of adequate service provision for the people in that area or other likely users of the pharmacy premises, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome.*
- 7.6 Paragraph 24(2) states:
- (2) In considering the matters mentioned in sub-paragraph (1), NHS England –*
- (a) must treat any local pharmaceutical services being provided in its area as if they were pharmaceutical services being so provided, and*
 - (b) may have regard to any pharmaceutical services that are being provided in its area during supplementary opening hours.*
- 7.7 I will start by considering the application of paragraph 24(1)(a) and whether the proposed hours are such as to maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises. I will then consider the application of 24(1)(b) if that is required.
- 7.8 To properly assess the application against paragraph 24(1)(a), I need to determine the existing level of service provision. I then need to consider whether it is necessary to maintain the existing level of service provision. If it is necessary to maintain the existing level of service provision, I need to consider whether, despite the proposed change of hours, the existing level of service provision to people in the area or other likely users would be maintained, e.g. by nearby pharmacies being open and providing the same level of service provision.
- 7.9 If I consider it unnecessary to maintain the existing level of service provision or that it is necessary to maintain the existing level of service provision but doing so is not a realistically achievable outcome, then I need to consider paragraph 24(1)(b) and determine whether the proposed change of hours are such that a sustainable level of adequate service provision would be maintained.
- 7.10 I therefore need to be provided with sufficient information to understand a range of matters, starting with the existing level of service provision. The references to days and times in paragraph 24(1) leads me to consider that the reference to "level" of service provision in paragraph 24(1)(a) is mainly focused on the days and times

services are provided. I would point out that "level" of service provision could also refer to other characteristics of the service, such as types and range of services provided, geographical access to services provided, other aspects of physical access aside from location, and the quality of services provided.

- 7.11 The existing level of service provision has been outlined by the Applicant, in its own core hours provision, and by an indication of the hours that pharmacies in the local area are open.
- 7.12 I have next considered whether it is necessary to maintain the existing level of service provision. It could be argued that as the Applicant is not looking to reduce the number of hours each week that services are provided, then from a pure "number of hours of service provision each week" perspective, the existing level of service provision is maintained such that consideration of whether it is necessary to maintain the level of service provision is not needed.
- 7.13 However, the Applicant is applying to change the days and times that services are provided. Taking Saturday as an example, the level of service provision at the Applicant's premises on a Saturday is not being maintained. I consider it appropriate to determine if it is necessary to maintain the existing level of service provision and then, if deemed necessary, consider if the opening hours of other pharmacies mean that level is maintained.
- 7.14 To determine whether it is necessary to maintain the existing level of service provision, I have had regard to the comments by the Applicant of those using the pharmacy. If I am satisfied that there is reliable evidence indicating no users of the pharmacy on/at the relevant days/times that the pharmacy wishes to close, this might support an argument that maintaining the existing level of service provision is not necessary.
- 7.15 The Applicant provided to the Commissioner, with its application, the results of a survey which it carried out over four consecutive weeks, starting on Saturday 12 October 2024, to establish how many people accessed the pharmacy at the times that it is wanting to close, how they travelled to the pharmacy and what services they accessed.
- 7.16 From the information provided, it is clear that there are some people using the pharmacy at the times the Applicant wishes to close, albeit low in numbers and therefore I consider it is necessary to maintain the existing level of service provision.
- 7.17 I now need to consider if, despite the changes to hours, there is maintenance of the existing level of service provision. The Applicant cannot maintain this as it is changing its hours but I note the undisputed information from the Applicant with regard to other pharmacies in the area, namely Jardines Pharmacy at Watling Street.
- 7.18 If I consider that the characteristics of other pharmacies, e.g. where they are located, their access, the services provided and the times they are open, means that the level of service provision is maintained for people in the local area or other likely users of the pharmacy, then I am able to grant the application under paragraph 24(1)(a).
- 7.19 The Applicant has provided information regarding access to those pharmacies for those who currently access its own pharmacy and how they might travel to find alternative pharmaceutical services.
- 7.20 It is worth noting that characteristics of the persons using the pharmacy might be relevant here as well as from where they start their journey to the pharmacy. I do not consider that every single individual need should be considered at length in this regard but it would be helpful to have this information to be certain that the existing level of service provision would be maintained via local pharmacies.

- 7.21 Not everyone will start their journey from the existing site but according to the Applicant, which is not disputed, Jardines Pharmacy on Watling Street is located around 850m from its pharmacy. The Applicant has described the route on foot which takes 11-12 minutes and is well-lit with dropped kerbs, pedestrian islands and a light-controlled pedestrian crossing where necessary.
- 7.22 In terms of car ownership, the Applicant states that this is significantly higher than the national average. The Applicant further comments in its appeal that the journey by car takes no more than 3 minutes with car parking available within 50m of the alternative pharmacy on both sides of the roads.
- 7.23 Although the survey showed that no patient accessed the pharmacy via public transport, the Applicant has provided information regarding bus routes in the area. I note from the undisputed information provided, there are 2 buses every hour on Saturdays, which travel from the Applicant's pharmacy to the alternative pharmacy, where there is a bus stop within 20m / 25m of the alternative pharmacy site.
- 7.24 When considering the opening hours of alternative pharmacies, Jardines Pharmacy at Watling Street has core opening hours of 10am to 12pm. This would mean there is a 30 minute gap between 9.30am and 10am on a Saturday but I do not consider this to be significant and would be considered by patients when they seek to access services.
- 7.25 In terms of services provided, I note the Applicant's undisputed comment that "*Jardines at 108 Watling Street provides all the advanced services that are provided at the Brook Health Centre branch, including LFD distribution, the only service requested at the pharmacy during the 4-week survey period.*
- For the avoidance of doubt there is no NHS pharmaceutical service provided by the pharmacy subject to this appeal that is not also provided at the Watling Street branch."*
- 7.26 I am therefore satisfied that patients would be able to access the same services from the alternative providers if the Applicant's proposal to change its core hours were to be approved.
- 7.27 Based on the information provided, I am satisfied that the existing level of service provision would be maintained by virtue of the existence of other local pharmacies.
- 7.28 Under paragraph 26(1) "*The Secretary of State may, when determining an appeal, either confirm the action taken by NHS England or take any action that the NHS England could have taken under sub-paragraph (4)*".
- 7.29 Paragraph 26(4) states:

(4) *When it determines the application, the NHSCB must—*

(a) *issue a direction (which replaces any existing direction) which meets the requirements of sub-paragraphs [F391(4A),] (5) and (6) and which has the effect of either granting the application under this paragraph or granting it only in part;*

b) *confirm any existing direction in respect of the times at which P must provide pharmaceutical services at the pharmacy premises, provided that the existing direction (whether issued under regulation 65, this Part, the 2012 Regulations, the 2005 Regulations or the 1992 Regulations) would meet the requirements of sub-paragraphs (5) and (6); or*

c) *either—*

revoke, without replacing it, any existing direction in respect of the times at which P must provide pharmaceutical services at the pharmacy premises (whether issued under regulation 65, this Part, the 2012 Regulations, the 2005 Regulations or the 1992 Regulations), where this has the effect of granting the application under this paragraph or granting it only in part, or in a case where there is no existing direction, issue no direction

- 7.30 I note that a direction is not in place for the Applicant to provide 40 core hours, as it was, and remains, a condition on inclusion for the Applicant to provide those hours.
- 7.31 For the above reasons, I am not confirming any existing direction in line with paragraph 26(4)(b).
- 7.32 Further, there is no direction to revoke in line with paragraph 26(4)(c).
- 7.33 The only option left to me is therefore to substitute the decision of the Commissioner to reject the change of hours application with the decision to grant the change of hours application, without a direction.

8. Determination

- 8.1 Based on the information provided, I am satisfied that the pharmaceutical services provision that would result from the Applicant's proposed hours would maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises.
- 8.2 Therefore I substitute the decision of the Commissioner to refuse the application with a decision to grant the application.

**Head of Appeals
NHS Resolution**