NHS Resolution

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20 June 2025

REF: SHA/26565

APPEAL AGAINST HEREFORDSHIRE AND WORCESTERSHIRE ICB DECISION TO REFUSE AN APPLICATION BY TRUE NORTH PHARMA LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST AT 16 MEADOW DRIVE, CREDENHILL, HEREFORD HR4 7EF WITH REGARD TO CURRENT NEED UNDER REGULATION 13

1 Outcome

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

1.2 The Committee determined that the application should be refused.

A copy of this decision is being sent to:

True North Pharma Ltd
Herefordshire and Worcestershire ICB
Pharmacy Sales and Consultancy on behalf of Hereford Hub Retail Limited t/a Hereford Pharmacy

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1 The Application

By application dated 9 April 2024, True North Pharma Ltd ("the Applicant") applied to Herefordshire and Worcestershire ICB ("the Commissioner") for inclusion in the pharmaceutical list at 16 Meadow Drive, Credenhill, Hereford HR4 7EF with regard to Current Need under Regulation 13. In support of the application it was stated:

1.1 In response to "In my view this application should not be refused pursuant to Regulation 31 for the following reasons" the Applicant left this box blank.

1.2 In making this application [the Applicant] is seeking to meet the current need identified on page "8, 9, 10, 22, 24, 51, 66, 67, 69, 74, 83, 84, 88 and 89" of the Herefordshire Pharmaceutical Needs Assessment 2022.

1.3 "Credenhill community deserves a local pharmacy for enhanced pharmaceutical services. The absence of a nearby pharmacy underscores an unmet need that reverberates not only within the immediate community but also resonates with residents from surrounding rural areas. The proximity of Credenhill Pharmacy to a population of approximately 10,292, as indicated by the 2021 census, underscores its immense value as a crucial healthcare resource for the community.

1.4 Currently, the closest accessible pharmacies are inconveniently situated in Westfailing Street and Grandstand Road, necessitating a 15-minute bus journey followed by a 10-minute walk. Alternatively, a 30-minute bus ride to Tesco in Hereford offers pharmaceutical services, albeit at a considerable distance.

1.5 In response to this pressing demand, the establishment of a pharmacy within Credenhill would be convenient for local residents. The demographic distribution and geographic layout of the area make it abundantly clear that a pharmacy within Credenhill would not only cater to the local residents but also alleviate the burden of travel for neighbouring communities.

1.6 According to the 2021 census, Herefordshire boasts a notably higher-than-average ageing population, with 26% of residents aged over 65, surpassing the national average. This demographic trend underscores the imperative of ensuring accessible healthcare services tailored to the needs of the elderly population.

1.7 A pharmacy within Credenhill, we embark on a journey to diminish the community's reliance on external pharmaceutical providers, thereby facilitating prompt access to essential medications and healthcare guidance. The strategic placement of a

healthcare professional within Credenhill promises tangible improvements in local health outcomes, fostering a healthier and more resilient community.

1.8 In line with our commitment to bridging the gap in pharmaceutical provision, our proposed pharmacy offers a comprehensive range of services tailored to meet the diverse needs of the community:

1.9 Extended Opening Hours: From 08:00 to 20:00, including Saturdays (09:00 - 17:00), ensuring accessibility to healthcare services at convenient times.

1.10 On-site Consultation Facilities: Providing a comfortable and confidential space for individuals to discuss their healthcare concerns with qualified professionals.

1.11 Essential and Advanced NHS Services: Delivering essential and advanced healthcare services recommended by the NHS, ensuring comprehensive care for all patients.

1.12 Free Home Delivery Service: Offering a free home delivery service for prescribed products, ensuring accessibility for those unable to visit the pharmacy in person.

1.13 Emergency Supply and Contraception Services: Facilitating emergency supply and contraception services, ensuring timely access to crucial medications.

1.14 Supervised Administration and Phlebotomy Services: Providing supervised administration and phlebotomy services, catering to the specific healthcare needs of patients.

1.15 Disease-Specific Medicines Management: Offering disease-specific medicines management services to optimise treatment outcomes for chronic conditions.

1.16 Vaccination and Screening Services: Administering vaccination and screening services, promoting preventive healthcare within the community

1.17 Additional Services: Offering independent prescribing and medicines optimization services, further enhancing the quality of care provided. Demographic insights gleaned from the 2021 census highlight a noteworthy concentration of elderly residents in Herefordshire, surpassing the national average. This underscores the imperative for tailored healthcare solutions, including specialised offerings such as Medication Dispensing Systems (MOS) trays, to cater to the unique needs of this demographic.

1.18 Moreover, our commitment to access and equality is exemplified by our provision of amenities such as free onsite parking and an accessible entrance for pushchairs, wheelchairs, and walking frames.

1.19 Additionally, the presence of a bus stop within 100 metres of the premises ensures ease of access for all members of the community. We not only address this immediate need but also serve as a beacon of convenience for neighbouring rural communities.

1.20 By bridging the existing gap in pharmaceutical provision, our initiative pledges to deliver essential services from 08:00 to 20:00, including Saturdays from 09:00 to 17:00. On-site consultation facilities, aligned with NHS recommendations, will ensure prompt access to advanced healthcare services.

1.21 In conclusion, the establishment of a community pharmacy in Credenhill represents not only a step towards addressing the immediate healthcare needs of the local population but also a testament to our commitment to fostering a healthier and more resilient community. Through our comprehensive range of services and dedication to

accessibility, we aim to enhance the well-being of residents and usher in a new era of healthcare excellence in Credenhill and its surrounding areas.

1.22 We will deliver a diverse range of services adhering to standardised operating procedures (SOPs). Our collective expertise will not only meet but exceed the service standards, ultimately enhancing patient health outcomes.

1.23 Experienced Professional Staff:

1.24 This proposal is submitted by [SKR], an experienced pharmacist and also a qualified independent pharmacist prescriber with a proven track record of delivering a range of NHS and private services. The dedication and expertise brought forth aim to address the identified needs outlined in the Pharmaceutical Needs Assessment (PNA) report, particularly focusing on the challenges faced by rural communities, notably in Credenhill. We will have an experienced and qualified pharmacists to provide high-quality pharmaceutical services. Ensuring continuous training for staff to stay updated on the latest advancements, following the standard operation procedures for all the services we provide.

1.25 Qualified Pharmacist: A dedicated pharmacist will spearhead our pharmaceutical services, ensuring precise medication dispensing and offering invaluable guidance on medication usage, safety and patient well-being.

1.26 Qualified Pharmacy Technician: Working in tandem with our pharmacist, skilled pharmacy technicians will streamline prescription preparation and inventory management, maintaining the operational backbone of our pharmacy.

1.27 Qualified Pharmacy Dispenser: Our team will include proficient pharmacy dispensers, adept at providing personalised patient care, addressing inquiries, and ensuring accurate and prompt medication dispensing.

1.28 Healthcare Care Assistant: Committed healthcare assistants will bolster patient care, providing vital support to our pharmacy team and ensuring a seamless patient experience through attentive assistance and empathetic service.

1.29 Accuracy Checking Pharmacy Technician (ACPT): Specialized ACPTs will play a pivotal role in our operations, conducting meticulous final checks on dispensed medications to uphold our commitment to precision and patient safety.

1.30 By assembling this comprehensive team, we aim not only to meet but exceed the needs of our community, delivering services aligned with SOPs to enhance patient health and well-being. Together, we will establish our pharmacy as a cornerstone of trusted healthcare provision, fostering lasting relationships with patients and contributing positively to their lives.

1.31 Flexible Operating Hours:

1.32 Committing to flexible operating hours is integral to meeting the needs outlined in the Pharmaceutical Needs Assessment. By accommodating diverse schedules and offering weekend hours, including Saturdays, we acknowledge the significance of convenient access, particularly for patients travelling from rural areas.

1.33 Transport Accessibility:

1.34 Selecting a strategic location within Credenhill, considering proximity to public transportation, such as a bus stop. Providing free onsite parking and ensuring the facility is accessible to all.

1.35 Monitored Dosage Systems (MOS) Medication Management:

1.36 Employing pharmacists with expertise In medication management, particularly for elderly patients. Introducing a dedicated service for Monitored Dosage Systems (MDS) trays to enhance medication adherence.

1.37 Consultation Facilities

1.38 Establishing well-equipped consultation facilities for personalised discussions about medication plans and addressing patient concerns.

1.39 Educational Programs:

1.40 Conducting educational programs to inform patients, caregivers, and healthcare professionals about the benefits of MOS and medication adherence.

1.41 Improving Access to Pharmaceutical Services:

1.42 Adhering to NHS recommendations and expanding services to cover a wide spectrum, including emergency supply services, disease-specific management, and vaccinations.

1.43 Free Home Delivery:

1.44 Implementing a noncommissioned free home delivery service to enhance convenience, especially for patients with limited mobility. Demonstrating commitment to patient wellbeing by going beyond the basic service requirements.

1.45 Point of Care Services:

1.46 Offering point-of-care services like cholesterol and HbA1c tests to provide immediate insights into patients' health. Ensuring patients have access to a range of services in one convenient location.

1.47 Addressing Accessibility and inclusivity:

1.48 Establishing the pharmacy strategically within Credenhill to enhance accessibility for rural residents. Demonstrating a commitment to community well-being through active engagement in local healthcare initiatives.

1.49 Transport and Parking Facilities:

1.50 Ensuring proximity to public transportation and offering free onsite parking to eliminate barriers related to transportation. Providing facilities for mobility devices to cater to the needs of individuals with diverse mobility requirements.

1.51 Technology Integration:

1.52 Utilising the latest technology for patient engagement, including virtual consultations and real-time communication for healthcare inquiries. Incorporating the latest technology to enhance patient experience, including the introduction of a 24-hour prescription pick-up point for added convenience.

1.53 We will also have a full-time delivery service during our opening hours. This service will enable us to ensure timely delivery of medications to our patient's doorsteps, enhancing convenience and accessibility. Moreover, we understand the importance of safeguarding our operations and our clients. Therefore, we are committed to having the necessary insurance coverage in place, including professional indemnity, employer liability, and public liability insurance. This ensures that both our professional responsibilities and the safety of our team and clients are adequately protected. By prioritising these elements, we aim to provide a comprehensive and reliable service while maintaining the highest standards of professionalism and safety.

1.54 In summary, the proposed pharmacy in Credenhill intends to meet identified needs through a combination of experienced professional staff, tailored services, comprehensive offerings, and a commitment to accessibility and inclusivity. The goal is to bridge existing gaps in pharmaceutical services and provide a holistic healthcare solution tailored to the specific needs of the local community.

1.55 I am committed to making the pharmacy in Credenhill a state-of-the-art facility, equipped with the latest technologies and amenities to benefit patients above and beyond NHS requirements. By investing in modern equipment, innovative dispensing systems, and cutting-edge digital solutions, we aim to elevate the standard of pharmaceutical care provided to the community. This commitment to excellence ensures that patients receive the highest quality of service and access to advanced healthcare solutions, ultimately contributing to improved health outcomes and enhanced patient satisfaction.

1.56 Thank you for considering our proposal. We look forward to the opportunity to serve our community with excellence."

2 The Decision

The Commissioner considered and decided to refuse the application. The decision letter dated 20 February 2025 states:

2.1 "Herefordshire and Worcestershire 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."

Extract from decision report

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

2.2 "Committee refused the application. The Applicant has applied to open a pharmacy on the basis that there is a current need. Credenhill is controlled locality with a patient population as of September 2024 of 2295. The Herefordshire Pharmaceutical Needs Assessment 2022-2025 made no mention of a need for a pharmacy in Credenhill and Credenhill is not mentioned anywhere in the PNA. The draft PNA was sent out for consultation and no person or organisation replied saying a pharmacy in Credenhill was required. No supplementary statement has been issued which could have identified Credenhill as an area where a new pharmacy might be beneficial to patients. There is no GP practice in Credenhill. The applicant said there was outline planning consent but the practice closed in September 2024. This was also confirmed by a closed sign at the GP surgery when two PSRC members visited the site.

2.3 Regulation 13 (1) (a) Not Satisfied

2.4 The applicant has failed to identify a current need in Herefordshire PNA (2022)

2.5 Regulation 13 (1) (b) Not Satisfied

2.6 The applicant has failed to identify a current need in Herefordshire PNA (2022)

2.7 Regulation 13 (2) (a) Not Applicable

2.8 Regulation 13 (2) (b) Not Applicable

2.9 Regulation 13 (2) (C) Not Applicable

2.10 Regulation 13 (2) (D) Not Satisfied

2.11 There is no mention of Credenhill in the PNA 2022-25.

2.12 Nothing in any supplementary statement. No person or organisation replied to the draft PNA saying a pharmacy in Credenhill was required.

2.13 Regulation 13 (2) (e) (i) Not Satisfied

2.14 The applicant has not identified a Current Need

2.15 Regulation 13 (2) (e) (ii) Not Satisfied

2.16 The applicant has not identified a Current Need

2.17 Regulation 13 (2) (f) (i) Not Satisfied

2.18 The applicant has not identified a Current Need

2.19 Regulation 13 (2) (f) (ii) Not Satisfied

2.20 The applicant has not identified a Current Need

2.21 Regulation 13 (2) (g) (i) Not Satisfied

2.22 The applicant has not identified a Current Need

2.23 Regulation 13 (2) (h) Not Applicable

2.24 Regulation 13 (2) (i) Not Applicable

2.25 Regulation 13 (3) Not Applicable

2.26 Regulations 40 to 43:

2.27 This is a controlled locality determined in September 2024, so redetermination is not required within next 5 years.

2.28 Regulations 44 Not Applicable

2.29 Regulation 65: Not Applicable

2.30 Regulation 31 – Satisfied

2.31 The proposed premises are not adjacent to or in close proximity to other pharmacy premises

2.32 Appeal rights to the applicant [sic]"

3 The Appeal

In an email dated 20 March 2025, the Applicant appealed against the Commissioner's decision. The grounds of appeal are:

3.1 "I am writing to formally appeal the decision made by the Pharmacy Market Administrative Services to reject the application for a pharmacy at the former doctors' surgery in Credenhill due to an alleged "lack of need." I strongly believe that this decision does not accurately reflect the current healthcare needs of the local population, nor does it take into account significant recent developments in the healthcare landscape.

3.2 **Grounds for Appeal:**

3.3 **Inadequate Consultation Process**

3.4 The decision was based on a poorly responded-to consultation on the Pharmaceutical Needs Assessment (PNA). However, evidence from local residents, including the attached forwarded email, confirms that some responses were submitted but seemingly not acknowledged in the final report.

3.5 Additionally, numerous residents directly contacted Herefordshire and Worcestershire Integrated Care Board (ICB) (hw.primarycare@nhs.net) to express their support for the pharmacy, yet these responses appear to have been disregarded in the Committee's decision-making process.

3.6 **Closure of Existing Healthcare Services**

3.7 The former Credenhill doctors' surgery has been permanently closed, leaving a significant gap in healthcare provision. The proposed pharmacy would help fill this gap by offering essential pharmaceutical and minor healthcare services to residents.

3.8 Furthermore, the closure of Lloyds Pharmacy in Sainsbury's has further limited pharmacy access in the region. This closure was a national corporate decision, not one driven by a lack of local demand.

3.9 **Changing Role of Pharmacies in Healthcare**

3.10 Pharmacies are increasingly being relied upon to alleviate pressure on general practitioners by offering expanded services, including vaccinations, minor ailment treatments, pharmacy first services and medication reviews.

3.11 The rejection of this application contradicts NHS England's broader objective of shifting appropriate healthcare services to pharmacies to support community health and reduce the burden on GPs.

3.12 **Demonstrated Need in the Community**

3.13 The proposed pharmacy would be the closest pharmacy for approximately **10,292** residents across multiple parishes, including Credenhill (2,332), Burghill (1,556), Weobley (1,274), and others (full list attached).

3.14 The 2022 PNA itself acknowledged issues with poor access to pharmacies via foot or public transport in this area, reinforcing the necessity of a local pharmacy.

3.15 The Parish Council has submitted a full letter of support alongside a detailed business case highlighting the benefits of the proposed pharmacy.

3.16 **Market Dynamics Have Changed**

3.17 The current pharmacy landscape has shifted significantly, and the existing PNA does not reflect these changes. The growing demand for pharmacy services and the increased reliance on local healthcare facilities necessitate a reassessment of the application.

3.18 **Request for Reconsideration:**

3.19 Given the points above, I respectfully request that the decision to reject this application be reconsidered. The substantial population in and around Credenhill requires accessible pharmacy services, particularly in light of recent closures and the increasing role of pharmacies in primary healthcare provision.

3.20 I appreciate your time and consideration of this appeal and look forward to your response.

3.21 **Attachments via this email:**

3.22 Decision Report/Letter

3.23 Parish Council Letter of Support & Business Case

3.24 PNA 2022 Excerpt Highlighting Poor Access by Foot/Public Transport"

Letter from Credenhill Parish Council dated 11 January 2024

3.25 "I write to you on behalf of Credenhill Parish Council with reference to your enquiries about transforming Credenhill Surgery into a Pharmacy.

3.26 As you are aware Hereford Medical Group are currently consulting with the public about closing this much needed surgery in the Parish of Credenhill; we however accept the reasons for closure and will be lobbying for another surgery to be built in or near to the Parish in the future when new housing developments come forward. In the meantime, we are keen to see the old surgery redeveloped for the benefit of the residents in the Parish.

3.27 Your letter expressing a desire to open a modern Pharmacy in the village to serve the Parish and surrounding area is therefore well timed.

3.28 Having reviewed the availability of pharmaceutical services in the area the 2 nearest Pharmacy's [sic] are Westfailing Street or Grandstand Road; both require a 15minute bus journey and a 10-minute walk alternatively a 30-minute bus journey into Hereford gets you to Tesco, this is the Wheelchair accessible route. Therefore, having a Pharmacy would be much more convenient for people living in the Parish and remove the need for unnecessary travel on public transport or via car into the congested City of Hereford.

3.29 You have also expressed the desire to provide additional services that would normally be delivered by the doctor's surgery such as emergency contraception, flu

vaccinations, blood tests, wart/tag/verruca removal, as well as giving treatment advice about a range of common conditions and minor injuries. This would reduce the need for residents to go to the doctors for minor conditions both helping reduce the burden on the NHS and help our residents get the treatment they need quickly by a qualified healthcare professional. The nearest doctors are Bobblestock Surgery and Station Medical Centre requiring a journey of between 30 and 45 minutes on public transport. Therefore, a Pharmacy in Credenhill would be more convenient and will reduce journeys into the City.

3.30 The proposed location is central to the village with good footpath access as well as a large parking area. The location is served by an hourly public bus service to and from Hereford (Number 71 & 71B) as well as another bus service (Numbers 461, 462 & 861) that runs every 30 minutes from Kington to Hereford which is an 8-minute walk from the proposed location.

3.31 The location is already part of a busy parade of shops/businesses, Credenhill Fish bar, Onestop & The New Jasmine House with opening hours ranging from 07:00 to 23:00; therefore, your proposed opening hours fit within this and would add no additional noise or disruption to the local area.

3.32 The population (census 2021) of Credenhill Parish is 2332 however the location would also serve several other local Parishes.

3.33 The below map shows the distribution of Pharmacy's in North Herefordshire. The proposed location of the pharmacy would be closest to the parishes highlighted in green as well as 3 local Care Homes (Credenhill Court, Stretton Nursing Home and The Weir Gardens Nursing Home) and Headway:

3.34 [Map provided at Appendix A]

3.35 The following parishes are within the green shaded area: Credenhill (2332), Stretton Sugwas (475), Breinton (893), Bishopstone (192), Burghill (1556), Brinsop & Wormsley (122), Mansell Lacy (136), Byford (188), Staunton on Wye (473), Norton Canon (261), Yazor (113), Weobley (1274), Kinnersley (311), Dilwyn (739), Canon Pyon (733), Preston on Wye (190), Moccas (107), Bredwardine (197).

3.36 Total Population (Census 2021) where Credenhill Pharmacy would be the closest is approx.: 10,292

3.37 The total population of Herefordshire in 2021 was 187,034 therefore your proposed location would be closest for 5.5% of the county. In addition, this excludes people that work in the area which includes the biggest employer in the county, being the MoD site in Credenhill. The 2021 census demonstrated that Herefordshire has a higher-than-average aging population with 26% of people being over 65; the national average being 18.6%.

3.38 A Pharmacy in the Parish would reduce the community's reliance on travel to other providers, having a Healthcare Professional Actively working in the Parish will have a positive impact on health outcomes in the local community and ensure citizens obtain necessary medications and advice promptly.

3.39 Having considered all the factors, the Parish Council fully supports your proposal to open a Pharmacy in Credenhill."

4 Summary of Representations

This is a summary of representations received on the appeal. A summary of those representations made to the Commissioner are only included insofar as they are relevant and add to those received on the appeal.

4.1 PHARMACY SALES AND CONSULTANCY ON BEHALF OF HEREFORD HUB RETAIL LIMITED

4.1.1 "We act for Hereford Hub Retail Limited and have enclosed a letter of authorisation confirming our instructions in this matter.

4.1.2 We have received a copy of your letter dated 2nd April 2025 enclosing the above appeal. On behalf of our client we wish to make the following representations in respect of this matter.

4.1.3 We note that the key grounds of appeal cited by the appellant and respond to each of these using the same numbering.

4.1.4 **Inadequate Consultation Process**

4.1.5 It is not clear from the comments submitted by the appellant whether it is challenging the legitimacy of the PNA, or the consultation process in respect of its application to NHS England.

4.1.6 Either way this is not a legitimate ground for appeal.

4.1.7 In respect of the process followed in the drafting of the PNA, paragraph 2(a) of Schedule 3 to the Regulations states:

Misconceived appeals

2. If the Secretary of State, after considering a valid notice of appeal under regulation 45, 63 or 77, or paragraph 30, 32(5) or 36 of Schedule 2 against a decision, is of the opinion that the notice—

*(a) contains no valid grounds of appeal (**for example, because it amounts to a challenge to the legality or reasonableness of a HWB's or Primary Care Trust's pharmaceutical needs assessment, or to the fairness of the process by which the HWB or a Primary Care Trust undertook that assessment**);……*

the Secretary of State may determine the appeal by dismissing it (without proceeding to notify the appeal under Part 2).

4.1.8 If the appellant's challenge is in respect of the consultation process for the application, the Regulations deal with this in paragraph 19 to Schedule 2 which sets out the notification procedure. It is clear that 'local residents' are not a statutory consultee, and therefore the decision maker is not required to take their representations into account.

4.1.9 **Closure of existing healthcare services**

4.1.10 Notwithstanding the fact we disagree with the appellant's assertion that the closure of a GP surgery has resulted in a gap in pharmaceutical services provision, the PNA has not identified such a gap and no supplementary statement has been issued that refers to a gap arising following the closure of

this surgery. The fundamental requirements for an application made under regulation 13 have not been met, therefore.

4.1.11 The Lloyds Pharmacy within Sainsbury's referred to by the appellant was located in Hereford where there are several other pharmacies. No information is provided by the appellant as to why it believes opening a pharmacy in Credenhill would replace pharmaceutical services previously provided within a supermarket in Hereford.

4.1.12 **Changing role of pharmacies in healthcare**

4.1.13 Whilst our client does not disagree with the comments made regarding the shift of primary care provision to pharmacy in general, this does not change the failure of the PNA to identify any Current Needs in the context of Regulation 13.

4.1.14 **Demonstrated need in the community**

4.1.15 Whilst the PNA did mention accessibility of pharmaceutical services in rural areas by foot and by public transport, the parishes mentioned by the appellant cover a huge rural area. No evidence has been provided by the appellant to suggest that the residents of these parishes will be any more likely to be able to walk to a pharmacy in Credenhill than they would be able to walk to a pharmacy in Hereford.

4.1.16 Furthermore, the appellant has provided no information in respect of public transport. Two main routes travel from Credenhill to Hereford (routes 71 & 461) with services running every 30 minutes. Given that the amenities in Credenhill are very limited, residents travel to Hereford for the majority of their daily needs, where they can find several pharmacies. For those who don't have a car we would suggest that a 30-minute bus service in a rural area is more than adequate.

4.1.17 We note the letter of support from the parish council but this does not address the relevant regulatory tests.

4.1.18 **Market dynamics have changed**

4.1.19 Whilst it might be the case that the landscape has changed to some extent since the current PNA was published, it will be a matter for the authors of the next PNA to decide whether these changes are such that a gap in provision has arisen within Credenhill. Until that PNA is published, the Primary Care Appeals committee will consider the contents of the *current* PNA.

4.1.20 **Regulatory test**

4.1.21 As the Primary Care Appeals will consider this matter afresh, we wish to comment more fully on Regulation 13 as follows:

4.1.22 This application has been submitted under Regulation 13 which states the following:

4.1.23 [Regulation 13 quoted]

4.1.24 Paragraph 2(a) of Schedule 1 states: [quoted]

4.1.25 For the sake of clarity, for an application to be approved in accordance with Regulation 13, the PNA **must** include a statement to the effect that there are services which are not currently being provided that need to be provided *and* the application must offer to provide those services.

4.1.26 Within its application, the applicant stated that the needs that had been identified were discussed on pages 8, 9, 10, 22, 24, 51, 66, 67, 69, 74, 83, 84, 88 & 89 of the PNA. However, it is clear that there is nothing on these pages (or in fact anywhere else in the PNA) that constitutes a statement as envisaged by Paragraph 2(a) of Schedule 1. Furthermore, there have been no supplementary statements issued which refer to gaps in provision that have arisen since the PNA was published.

4.1.27 In its decision report, the PSRC stated:

4.1.28 *The applicant has failed to identify a current need in Herefordshire PNA (2022).*

4.1.29 We agree with the PSRC's findings in this respect.

4.1.30 In the absence of any 'current need' having been identified within the PNA, it is clear that the requirements of Regulation 13 have not been met and therefore the application should be refused.

4.1.31 We therefore urge Primary Care Appeals to reach the same conclusion as the ICB and refuse this application accordingly."

5 Summary of Observations

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

6 Unsolicited comments

6.1 CREDENHILL PARISH COUNCIL

6.1.1 "Please find attached letter from the Parish Council in support of the prosed Pharmacy in the village. I would be very grateful if this could be considered during the appeal. [See paragraphs 3.25 – 3.39 above]

6.1.2 Additionally in the original decision it mentioned that nobody had responded to the PNA expressing a need for a Pharmacy in Credenhill; this is not true, I personally responded on behalf of the Parish Council and you will see from the below email chain that a Local resident who attends a weekly craft group in the parish mentioned that 15 of the 20 who attended had replied to one of the consultations – whether that was the PNA or one of the various other stages of consultation to close the surgery and requests to residents to show support.

6.1.3 One of the issues I believe is that there was a consultation on closing the surgery (asking opinions on other uses for the building) – where people expressed their views to Hereford Medical Group.

6.1.4 Then there was a request to write directly to Hereford and Worcester ICB (hw.primarycare@nhs.net) to express a need for a pharmacy in the parish. I have copied the ICB in in the hope that they will collate and forward responses that they have received.

6.1.5 And then there was the PNA which was a highly complex questionnaire and was not easy to fill in – particularly for less tech savvy elderly/vulnerable residents.

6.1.6 Please also note below support from our local MP; I have asked her to write directly to you."

6.1.7 [Supporting information at Appendix B]

6.2 MS ELLIE CHOWNS MP

6.2.1 "I'm writing re: concerns expressed by Credenhill Parish Council (CPC) in relation to the application to establish a community pharmacy at Credenhill. As you'll know, the application is currently under appeal with NHS Resolution (ref: SHA/ 26565), and for reference the applicant True North Pharma Ltd has applied for '*inclusion in the pharmaceutical list offering to meet a current need at 16 Meadow Drive, Credenhill, HR4 7EF*'.

6.2.2 I'm told by CPC that the original application was rejected by the Pharmacy Services Regulations Committee partly on the basis of an assessed 'lack of need', including a very low recorded response rate to the public consultation. However CPC has expressed concern that a number of public responses may not have been captured within the assessment; I'm told that numerous residents have reported that they had in fact submitted responses directly to the online consultation, or otherwise submitted their views by email to Hereford and Worcester ICB via hw.primarycare@nhs.net. CPC tell me that in their view, a community pharmacy would be important in bridging some of the primary healthcare gaps in Credenhill and a wide surrounding area, following the recent closure of the local GP surgery - particularly for residents with lower mobility and access to transport. CPC emphasise that an accurate and thorough assessment of community need is therefore vital in reaching a decision on this application.

6.2.3 Given the above concerns raised by CPC, I'm writing to ask that the appeal submitted is given full and thorough consideration, including the points raised around the capturing of public responses and expressions of support."

7 Consideration

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

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

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

7.4 As a preliminary matter, the Committee noted the Applicant contends that "*The decision was based on a poorly responded-to consultation on the Pharmaceutical Needs Assessment (PNA). However, evidence from local residents, including the attached forwarded email, confirms that some responses were submitted but seemingly not acknowledged in the final report.*

7.5 *Additionally, numerous residents directly contacted Herefordshire and Worcestershire Integrated Care Board (ICB) (hw.primarycare@nhs.net) to express their support for the pharmacy, yet these responses appear to have been disregarded in the Committee's decision-making process*."

7.6 The Committee was mindful that paragraph 2 of Schedule 3 of the Regulations states:

Misconceived appeals

2. *If the Secretary of State, after considering a valid notice of appeal under regulation 45, 63 or 77, or paragraph 30, 32(5) or 36 of Schedule 2 against a decision, is of the opinion that the notice —*

(a) contains no valid grounds of appeal (for example, because it amounts to a challenge to the legality or reasonableness of a HWB's or Primary Care Trust's pharmaceutical needs assessment, or to the fairness of the process by which the HWB or a Primary Care Trust undertook that assessment); or

(b) contains no reasonable grounds for appeal (for example, where it is vexatious or frivolous),

the Secretary of State may determine the appeal by dismissing it (without proceeding to notify the appeal under Part 2).

7.7 The Committee is mindful that a challenge against the process by which the pharmaceutical needs assessment ("the PNA") is undertaken by the Health and Wellbeing Board ("HWB") was not a matter for it to consider on appeal. This would be a matter for the HWB to consider as part of future iterations.

7.8 However the Committee noted the appeal also contained valid grounds for appeal in which the Applicant indicated that there is a current need for a pharmacy in the area of Credenhill. Further, the Committee noted the appeal had been circulated for representations in line with the Regulations. On appeal, the Committee is required to reconsider the application and will therefore take into account all comments received during the application and subsequent appeal.

7.9 The Committee proceeded to consider the appeal by way of consideration of all the issues.

7.10 The Committee had before it a copy of the Herefordshire PNA dated October 2022 and prepared by Herefordshire HWB, which had been provided by the Commissioner. The Commissioner advised that there have been no further updates or supplementary statements to the PNA.

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

7.12 There is no dispute that Credenhill is in a controlled locality and the application was based on securing improvements or better access to pharmaceutical services in that controlled locality.

7.13 The Committee considered that the correct course was to first consider if the application must be refused pursuant to Regulation 31. The Committee will then consider if the application must be refused pursuant to Regulation 40. If the Committee is not so required to refuse the application, it will consider the issue of reserved location pursuant to Regulation 41. The Committee will then consider the application under

Regulation 13. If the Committee has determined that the Applicant is seeking the listing of pharmacy premises which are in a part of a controlled locality that is not in a reserved location, it will consider the issue of prejudice under Regulation 44 last. The reason for this staged approach and in particular for dealing with prejudice last is that if the application does not meet the requirements of Regulation 13 the Committee is required to refuse it and prejudice cannot arise. The potential for prejudice only arises if the Committee has concluded that the application meets the requirements of Regulation 13 and may be granted. Depending on the determinations of the Committee in respect of the above as well as taking into consideration of whether NHS England has considered Regulation 50(1), the Committee will then consider Regulation 50(1) Discontinuance of arrangements for the provision of pharmaceutical services by doctors.

Regulation 31

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

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

(2) This paragraph applies where -

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

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

(ii) adjacent premises; and

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

7.15 The Committee noted that the Applicant had not provided any information in the application form on this point but the Committee noted that the wording of the application form only required the Applicant to include information in the relevant section if the proposed premises were adjacent to, or in close proximity to, another pharmacy or dispensing appliance contractor premises. The Committee considered it reasonable to determine that the lack of information in the application form on this point when read with the wording of the application form allowed it to be reasonably satisfied that the Applicant considered that the proposed premises were not adjacent to, or in close proximity to, another pharmacy or dispensing appliance contractor premises.

7.16 The Commissioner in its decision report stated that *"the proposed premises are not adjacent to or in close proximity to other pharmacy premises"* which has not been disputed by any party.

7.17 The Committee therefore determined that it was not required to refuse the application under the provisions of Regulation 31.

Regulation 40

7.18 The application (which is made under Regulation 13 of the Regulations) must be assessed against the provisions of Part 7 of the Regulations and, in particular Regulation 40 which reads:

(1) This paragraph applies to all routine applications—

(a) for inclusion in a pharmaceutical list as an NHS pharmacist; or

(b) from an NHS pharmacist included in such a list—

(i) to relocate to different pharmacy premises in the area of the relevant HWB, or

(ii) to open, within the area of the relevant HWB, additional pharmacy premises from which to provide pharmaceutical services,

where the applicant is seeking the listing of pharmacy premises which are in a controlled locality.

(2) If NHS England receives an application (A1) to which paragraph (1) applies, it must refuse A1 (without needing to make any notification of that application under Part 3 of Schedule 2), where the applicant is seeking the listing of premises at a location which is—

(a) in an area in relation to which outline consent has been granted under these Regulations, the 2012 Regulations or under the 2005 Regulations within the 5 year period—

(i) starting on the date on which the proceedings relating to the grant of outline consent reached their final outcome, and

(ii) ending on the date on which A1 is made; or

(b) within 1.6 kilometres of the location of proposed pharmacy premises (other than proposed distance selling premises), in respect of which—

(i) a routine application under these Regulations or the 2012 Regulations, or

(ii) an application to which regulation 22(1) or (3) of the 2005 Regulations (relevant procedures for applications) applied,

was refused within the 5 year period starting on the date on which the proceedings relating to the refusal reached their final outcome and ending on the date on which A1 is made,

unless NHS England is satisfied that since the date on which the 5 year period started, there has been a substantial and relevant change of circumstances affecting the controlled locality.

(3) For the purposes of paragraphs (1) and (2), if no particular premises are proposed for listing in A1, the applicant is to be treated as seeking the listing of pharmacy premises at the location which is the best estimate that NHS England is able to make of where the proposed listed pharmacy premises would be, having regard to the best estimate given by the applicant under paragraph 1(7)(a)(ii) of Schedule 2.

(4) Paragraph (2)(b) does not apply where NHS England is satisfied that there are reasonable grounds for believing the person making the refused application was motivated (wholly or partly) by a desire for that application to be refused.

(5) The refusal of an application pursuant to paragraph (2)(b), or regulation 40(2)(b) of the 2012 Regulations (applications for new pharmacy premises in controlled localities: refusals because of preliminary matters), is to be ignored for the purposes of the calculation of a 5 year period pursuant to paragraph (2)(b).

7.19 The Committee noted that there was no information to suggest that the instant application was in respect of a location where outline consent had been granted or there had been a refusal for a previous application within the last 5 years.

Regulation 41

7.20 Based on its conclusion above, the Committee went on to consider the application in light of the remainder of Part 7 of the Regulations and, in particular, Regulation 41 which reads:

(1) This paragraph applies to any routine application—

(a) for inclusion in a pharmaceutical list as an NHS pharmacist; or

(b) from an NHS pharmacist included in such a list—

(i) to relocate to different pharmacy premises in the area of the relevant HWB, or

(ii) to open, within the area of the relevant HWB, additional pharmacy premises from which to provide pharmaceutical services,

where the applicant is seeking the listing of pharmacy premises which are in a controlled locality and NHS England is required to notify the application under Part 3 of Schedule 2.

(2) If paragraph (1) applies to an application (referred to in this regulation and regulation 42 as "A1"), subject to paragraph (5), NHS England must determine whether or not the "relevant location", that is—

(a) the location of the premises for which the applicant is seeking the listing; or

(b) if no particular premises are proposed for listing in A1, the location which is the best estimate that NHS England is able to make of where the proposed pharmacy premises would be, having regard to the best estimate given by the applicant under paragraph 1(7)(a)(ii) of Schedule 2,

is, on basis of the circumstances that pertained on the day on which A1 was received by NHS England, in a reserved location.

(3) Subject to regulation 43(2), the area within a 1.6 kilometre radius of a relevant location is a "reserved location" if—

(a) the number of individuals residing in that area who are on a patient list (which may be an aggregate number of patients on more than one patient list) is less than 2,750; and

(b) NHS England is not satisfied that if pharmaceutical services were provided at the relevant location, the use of those services would be similar to, or greater than, the use that might be expected if the number of individuals residing in that area who are on a patient list were 2,750 or more.

(4) Before making a determination under paragraph (2) (referred to in this regulation and regulation 42 as "D1"), NHS England must—

(a) notify the persons notified under Part 3 of Schedule 2 about A1 that NHS England is required to make D1 (and it may make this notification at the same time as it notifies those persons about A1); and

(b) invite them, within a specified period of not less than 30 days, to make representations to NHS England with regard to D1 (and the period specified must end no earlier than the date by which the person notified needs to make any representations that they have with regard to A1).

(5) NHS England must not make a determination under paragraph (2) in respect of A1 in circumstances where an earlier application which was in respect of the relevant premises and to which paragraph (1), regulation 44 of the 2012 Regulations (prejudice test in respect of routine applications for new pharmacy premises in a part of a controlled locality that is not a reserved location) or regulation 18ZA of the 2005 Regulations (refusal: premises which are in a controlled locality but not a reserved location) applied was refused—

(a) for the reasons relating to prejudice in—

(i) regulation 44(3),

(ii) regulation 44(3) of the 2012 Regulations, or

(iii) regulation 18ZA(2) of the 2005 Regulations; and

(b) within the 5 year period starting on the date on which the proceedings relating to the refusal reached their final outcome and ending on the date on which A1 is made,

unless NHS England is satisfied that since the date on which the 5 year period started, there has been a substantial and relevant change of circumstances affecting the controlled locality.

(6) For the purposes of paragraph (5), the "relevant premises" are—

(a) the premises which are proposed for listing; or

(b) if no particular premises are proposed for listing in A1, premises at the location which is the best estimate that NHS England is able to make of where the proposed listed pharmacy premises would be, having regard to the best estimate given by the applicant under paragraph 1(7)(a)(ii) of Schedule 2.

7.21 The Committee considered the issue of reserved location for premises described in the application.

7.22 In its letter circulating the application, the Commissioner stated that *"according to our records the number of registered patients living within 1.6 kilometres of 16 Meadow*

Drive, Credenhill, Hereford, HR4 7EF is 2295." The Committee noted that no party had sought to dispute this figure either in comments to the Commissioner or on appeal.

7.23 The Committee noted that the Commissioner had not gone on to consider Regulation 41(3)(b) and whether the use of pharmaceutical services would be similar to, or greater than, the use that might be expected if the number of individuals residing in that area who are on a patient list were 2,750 or more.

7.24 In the absence of any information to the contrary and noting that no party has sought to argue this, the Committee determined that the use of pharmaceutical services would not be similar to, or greater than, the use that might be expected if the number of individuals residing in that area who are on a patient list were 2,750 or more.

7.25 The Committee noted that as the number of individuals residing in that area who are on a patient list is less than 2,750, the area is therefore in a reserved location. The Committee did not need to go on to consider prejudice. The Committee therefore next considered whether the application met the requirements of Regulation 13.

Regulation 13

7.26 The application (which was to be determined in accordance with the procedures in Schedule 2) was submitted by the Applicant based on addressing current need for pharmaceutical services.

7.27 The Committee considered whether the need on which the Applicant based its application satisfied the elements of Regulation 13(1) which reads as follows:

"(1) If - —

(a) NHS England receives a routine application and is required to determine whether granting it, or granting it in respect of some only of the services specified in it, would meet a current need for pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB; and

(b) the current need has been included in the relevant pharmaceutical needs assessment in accordance with paragraph 2(a) 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). "

7.28 Paragraph 2(a) of Schedule 1 reads as follows:

"A statement of the pharmaceutical services that the HWB has identified (if it has) as services that are not provided in the area of the HWB but which the HWB is satisfied—

(a) need to be provided (whether or not they are located in the area of the HWB) in order to meet a current need for pharmaceutical services, or pharmaceutical services of a specified type, in its area"

7.29 The Committee noted that the Applicant is proposing to meet a current need in the Credenhill area of Herefordshire.

7.30 In making its application, the Applicant had referred to pages 8, 9, 10, 22, 24, 51, 66, 67, 69, 74, 83, 84, 88 and 89 in the PNA, which the Committee proceeded to consider in turn.

7.31 Page 8 states that there is "*currently sufficient provision of pharmacies and dispensing GP practices in Herefordshire".* Further it goes on to note the number of pharmacies and dispensing GP practices in the area.

7.32 Page 9 provides a summary of travel times in terms of access to pharmacies by car, on foot and by public transport.

7.33 Page 10 refers to the current provision of Advanced services in the area. It also refers to services to be considered for commissioning based on the health needs of the population of Herefordshire.

7.34 Page 22 provides a map showing pharmacies that are open on Sundays within 10 minutes travelling time by car. It also provides information regarding the travel time on foot to pharmacies.

7.35 Page 24 provides a map showing pharmacies and dispensing GP practices that are 5-30 minutes travel time (on foot) within Herefordshire. It also provides information regarding travel time by public transport.

7.36 Page 51 titled 'Local Need' begins with a summary of the characteristics of Herefordshire.

7.37 Pages 66, 67 and 69 provides narrative on why and when respondents (to the PNA consultation) use a community pharmacy / dispensing GP surgery.

7.38 Page 74 provides a summary of responses to an online Pharmacy Survey undertaken by the Herefordshire County Council.

7.39 Pages 83 and 84 provide a summary of key findings from the public and contractor engagement and current recommendations. The Committee noted there is no mention of Credenhill, nor 'current needs' on these pages.

7.40 Finally, pages 88 and 89 provide a summary of recommendations and conclusions, in particular that:

7.40.1 *"This PNA has found that the level of access to pharmaceutical services currently commissioned across Herefordshire generally meets the needs of the population, as described in the findings. The pharmaceutical service in Herefordshire is provided by a variety of contractors that are appropriately located to meet the needs of the vast majority of the population. However, it is clear that the role of community pharmacies in preventing ill-health and supporting self-care could be strengthened through the existing pharmacy contractor base.*

7.40.2 *All pharmacies in Herefordshire are now Healthy Living Pharmacies (HLPs), ensuring that pharmacies have a workforce with the skills and opportunity to make an important impact on the health and wellbeing of the communities they serve. However, an interesting finding of this PNA is that some of the respondents to the small sample in the public survey currently report having less confidence in the ability of pharmacies to provide healthy living advice compared with the GP, highlighting the need for us to increase awareness about the skills and services on offer at pharmacies. It should be noted*

however, that we do not know the proportion of respondents who would usually use a dispensing practice rather than a community pharmacy. As dispensing practices are not commissioned to provide additional services, this may have influenced responses.

7.40.3 *Dispensing practices are of utmost importance to reduce geographical barriers to dispensing services in areas of high rurality. However, these areas have reduced access to Advanced, Enhanced and Locally Commissioned Services that may be provided by community pharmacies.*

7.40.4 *Currently, the ratio of pharmacies to population is lower in Herefordshire than England and Herefordshire has a growing older population with greater need of these services. Services need to be aware of these changing demographics. Commissioners must also ensure that any additional services do not compromise the availability and quality of essential services."*

7.41 The Committee was of the view that the pages highlighted by the Applicant provide factual information regarding the current pharmacy and dispensing GP provision in Herefordshire as a whole, as opposed to statements of the pharmaceutical services that the HWB has identified as services that are not provided in the area of the HWB but which the HWB is satisfied would, if they were provided, meet a current need for pharmaceutical services.

7.42 The Committee noted the Applicants comments that *"The current pharmacy landscape has shifted significantly, and the existing PNA does not reflect these changes. The growing demand for pharmacy services and the increased reliance on local healthcare facilities necessitate a reassessment of the application.*

7.43 *The substantial population in and around Credenhill requires accessible pharmacy services, particularly in light of recent closures and the increasing role of pharmacies in primary healthcare provision*."

7.44 The Committee also noted that the local MP for the area had provided a letter in support of the application, together with the Parish Council. However, the Committee was mindful that the contents of these letters are not relevant considerations for an application made in accordance with Regulation 13. The HWB has the ability to issue a supplementary statement highlighting any changes to the availability of pharmaceutical services since the publication of the PNA, prior to a new PNA being published however the Committee noted that this was not the case here.

7.45 Further, the Committee noted that it is open to the Applicant to submit an application under an alternative Regulation to address gaps in service provision which the PNA has not identified.

7.46 The Committee was of the view that any purported "need" identified by the Applicant in its application and appeal does not constitute a "current need" as that term is used in the Regulations and which is specifically set out in paragraph 2(a) of Schedule 1.

7.47 The Committee determined that the need in question was not included in the PNA dated October 2022 in accordance with paragraph 2(a) of Schedule 1.

7.50 In this case, the provisions of Regulation 13(1) were not met. The Committee therefore did not need to go on and consider Regulation 13(2).

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

7.51.1 confirm the Commissioner's decision;

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

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

7.52 Although the Committee has reached the same conclusion to that of the Commissioner, it has done so for different reasons. The Commissioner did not make a complete finding on Regulation 40 and 41 in its decision letter, therefore the Committee determined that the decision of the Commissioner must be quashed.

7.53 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.

7.54 The Committee noted that representations on Regulation 13 had already been made by parties to the Commissioner, and 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 13.

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

8 Decision

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

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

8.3 The Committee concluded that Credenhill is in a controlled locality and that the site of the application is in a reserved location.

8.4 The Committee has determined that the application should be refused for the following reason:

8.4.1 The PNA has not identified a current need which this application could meet.

Technical Case Manager
Primary Care Appeals