

3 June 2025

FILE REF:

SHA/26572

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10 South Colonnade
Canary Wharf
London
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Tel: 020 3928 2000
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COMMISSIONER:

**HAMPSHIRE & ISLE OF WIGHT ICB
("the Commissioner")**

PHARMACIST:

**JCL UK LTD T/A LALYS PHARMACY (FNH78)
("the Applicant")**

PREMISES:

**67 MILTON ROAD
PORTSMOUTH
PO3 6AN**

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

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

Outcome

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

A copy of this decision is being sent to:

JCL (UK) Ltd
Hampshire & Isle of Wight ICB

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10 South Colonnade
Canary Wharf
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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 letter of appeal indicates that it currently has core opening hours totalling 40 hours per week.
- 1.12 The Applicant wishes to:
 - 1.12.1 Stay open for half an hour longer in the morning/early afternoon between 9am and 1pm
 - 1.12.2 Close half an hour earlier in the evening and so stay open between 2pm – 5:30pm
 - 1.12.3 The pharmacy is closed on Saturday and Sunday

2. Application

In this case, the Applicant provided the following information in its application form and supporting information dated 16 January 2025:

- 2.1 “Summary of request:

2.2 To realign core hours and close 30 minutes earlier Monday to Friday

2.3 To reduce supplementary hours to 2.5 hours per week

	Current Opening Hours	Current Core Hours	Current Supplementary Hours
Mon	09:00-18:00	09:00-13:00 14:00-18:00	13:00-14:00
Tues	09:00-18:00	09:00-13:00 14:00-18:00	13:00-14:00
Weds	09:00-18:00	09:00-13:00 14:00-18:00	13:00-14:00
Thurs	09:00-18:00	09:00-13:00 14:00-18:00	13:00-14:00
Fri	09:00-18:00	09:00-13:00 14:00-18:00	13:00-14:00
Sat	Closed	None	None
Sun	Closed	None	None
Total	45	40	5

	Proposed Opening Hours	Proposed Core Hours	Proposed Supplementary Hours
Mon	09:00-17:30	09:00-13:30 14:00-17:30	13:30-14:00
Tues	09:00-17:30	09:00-13:30 14:00-17:30	13:30-14:00
Weds	09:00-17:30	09:00-13:30 14:00-17:30	13:30-14:00
Thurs	09:00-17:30	09:00-13:30 14:00-17:30	13:30-14:00
Fri	09:00-17:30	09:00-13:30 14:00-17:30	13:30-14:00
Sat	Closed	None	None
Sun	Closed	None	None

Total	42.5	40	2.5
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- 2.4 After careful evaluation of our Data Activity, it is evident that there is very minimal activity and footfall between the hours of 17:30 to 18:00. We will continue to ensure viability of Pharmacy activities by operating within the new core hours and ensure continuity of all services. The change of hours will have no effect on our Patients/ customers as majority are willing/ able to come into the pharmacy between 09:00-17:30. An alternative option for customers/ Patients would be our nearby branch located on 8E Fratton Way (4 min drive / 21 min walk) which is open until 18:00 and note Rowlands Pharmacy located at 187-189 Eastney Road (5 min drive / 26 min walk) is open on Saturdays.”

3. The Decision

In a letter to the Applicant dated 11 March 2025 the Commissioner decided to refuse the application. The Commissioner stated:

- 3.1 “I write with reference to your application to permanently change the Core hours for JCL (UK) Ltd t/a Lalys Pharmacy 67 Milton Road, Portsmouth, PO3 6AN received on 16 January 2025 Hampshire and Isle of Wight Integrated Care Board (ICB), has considered the above application and I am writing to confirm that it has been refused.

3.2 REASON FOR THE DECISION

- 3.3 Your application has been refused on the grounds that you have not met the requirements set out in paragraph 24, Schedule 4 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013. There was no information as part of the application to describe the existing level of service provision. The Committee therefore agreed that it could not determine if it was necessary to maintain the existing level of service provision. Following the refusal of the core hours application, the supplementary hours notification will be recorded as withdrawn.

3.4 RIGHT OF APPEAL

- 3.5 You have a right of appeal to the Secretary of State against the decision of Hampshire and Isle of Wight Integrated Care Board (ICB). Should you choose to appeal then you should send a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this letter to: NHS Resolution, 8th Floor, 10 South Colonnade, Canary Wharf, London, E14 4PU or email: nhsr.appeals@nhs.net.”

PSRC Report

- 3.6 “JCL UK Ltd t/a Lalys Pharmacy (FNH78)
- 3.7 Application to permanently change the core & supplementary opening hours
- 3.8 67 Milton Road, Portsmouth, PO3 6AN
- 3.9 Change of Core Hours and supplementary hours
- 3.10 Application by Lalys Pharmacy (FNH78), 67 Milton Road, Portsmouth, PO3 6AN received on 16th January 2025 to change core hours.

Current Core Hours	Proposed Core Hours
Mon-Fri: 09:00-13:00; 14:00-18:00	Mon-Fri: 09:00-13:30; 14:00-17:30
Sat: None	Sat: None
Sun: None	Sun: None

- 3.11 Application
- 3.12 The Committee noted that the overall effect of the change would be that the pharmacy would close 30 minutes earlier Monday to Friday (at 5.30pm)
- 3.13 The Committee also noted that associated changes to supplementary hours had been notified. However, these were not taken into account given that the pharmacy could change those opening times by giving 5 weeks' notice.
- 3.14 As part of the application, the applicant provided the following information:
- 3.15 *"After careful evaluation of our Data Activity, it is evident that there is very minimal activity and footfall between the hours of 17:30 to 18:00. We will continue to ensure viability of Pharmacy activities by operating within the new core hours and ensure continuity of all services. The change of hours will have no effect on our Patients/ customers as majority are willing/ able to come into the pharmacy between 09:00-17:30. An alternative option for customers/ Patients would be our nearby branch located on 8E Fratton Way (4 min drive / 21 min walk) which is open until 18:00 and note Rowlands Pharmacy located at 187-189 Eastney Road (5 min drive / 26 min walk) is open on Saturdays."*
- 3.16 Regulations Schedule 4, Part 3, Regulation 26 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended, state that a pharmacist must introduce the changes not earlier than 30 days after the date on which the pharmacy receives notification of the decision.
- 3.17 Schedule 4, Paragraph 24(1) 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—
- 3.17.1 c. to maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises; or
- 3.17.2 d. to maintain a sustainable level of adequate service provision for the people in that area or other likely users of the pharmacy premises, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome.
- 3.18 Consideration
- 3.19 The Committee first considered that to assess the application against Paragraph 24(1)(a), it needed to determine the existing level of service provision. It could then consider whether it is necessary to maintain the existing level of service provision and if so, whether the proposed change would maintain the existing level of service provision. Matters to consider in relation to the level of service provision would include days and times services are provided, the 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.

- 3.20 There was no information as part of the application to describe the existing level of service provision. The Committee therefore agreed that it could not determine if it was necessary to maintain the existing level of service provision.
- 3.21 The Committee further agreed that it could not conclude that the change in core 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.
- 3.22 The Committee then went on to consider Paragraph 24(1)(b). Given that there was no information provided as part of the application to describe the current level of service provision, the Committee could not conclude that the change in core hours would maintain a sustainable level of adequate service provision for the people in that area or other likely users of the pharmacy premises, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome.
- 3.23 Decision
- 3.24 The application to change core hours was therefore refused.”

4. The Appeal

In a letter to NHS Resolution dated 21 March 2025 the Applicant appealed against the Commissioner's decision. The grounds of appeal are:

- 4.1.1 “We appreciate the time and consideration given to our application for the permanent change of core hours at Lalys Pharmacy (FNH78), 67 Milton Road, Portsmouth. We respectfully submit this appeal, providing additional evidence to address the committee's concerns and reaffirm that the proposed change will not impact patient access or service provision.
- 4.1.2 **1. Evidence of Minimal Pharmacy Activity Between 17:30-18:00**
- 4.1.3 Since Monday, 30th September 2024, we have monitored pharmacy activity between 17:30 and 18:00. The data, summarised below, shows minimal patient interactions, with 0-2 enquiries per day, most of which were non-pharmacy related.
- 4.1.4 **Table 1: Pharmacy Activity (17:30-18:00) from 30th September 2024 – 31st December 2024**

Week Commencing	Avg. Prescriptions Processed	Avg. Patient Enquiries	Nature of Enquiries
30 Sept 2024	0	2	Asking for directions, flu jab info
7 Oct 2024	0	1	Checking opening hours
14 Oct 2024	0	2	Query about a GP appointment
21 Oct 2024	0	0	N/A

28 Oct 2024	0	1	Asked for paracetamol but left without purchasing
4 Nov 2024	0	1	General health advice (not prescription related)
11 Nov 2024	0	0	N/A
18 Nov 2024	0	1	Enquiry about a flu jab but booked for next day
25 Nov 2024	0	0	N/A
2 Dec 2024	0	1	Checked prescription status but came back next day
9 Dec 2024	0	0	N/A
16 Dec 2024	0	1	Asked about over-the-counter vitamins
23 Dec 2024	0	0	N/A
30 Dec 2024	0	0	N/A

- 4.1.5 This data demonstrates that there is no meaningful pharmacy activity between 17:30 and 18:00, as patient interactions were either non-prescription-related, casual inquiries, or requests easily handled the following day.

4.1.6 **2. Patient Needs Continue to Be Met**

- 4.1.7 All essential pharmacy services are completed before 17:30, as confirmed by our dispensing records.

- 4.1.8 Patients requiring later services have alternative options: Lallys Pharmacy, 8E Fratton Way (4 min drive / 21 min walk) – Open until 18:00.

- 4.1.9 Rowlands Pharmacy, 187-189 Eastney Road (5 min drive / 26 min walk) – Open on Saturdays, ensuring additional weekend access.

- 4.1.10 We have received no patient complaints regarding limited access due to early closure.

4.1.11 **3. Compliance with NHS Regulations**

- 4.1.12 The proposed change aligns with Schedule 4, Paragraph 24(1) of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, ensuring:

4.1.12.1(a) The existing level of service provision is maintained where necessary.

4.1.12.2(b) A sustainable level of adequate service is provided, given that the current level of provision (17:30-18:00) is unnecessary.

4.1.13 **4. Request for Reconsideration**

- 4.1.14 Based on the above evidence, we kindly request that NHS England reconsider our application to adjust the core hours to:

- 4.1.15 Proposed Core Hours:

- 4.1.16 Monday – Friday: 09:00-13:30; 14:00-17:30

- 4.1.17 Saturday & Sunday: Closed (No Change).

4.1.18 We are confident that this adjustment will not impact patient access and will ensure the continued viability and efficiency.”

5. Representations

In an email to NHS Resolution dated 1 April 2025 the Commissioner stated:

2.3 “Please see the enclosed requested documents [copy of PSRC decision and decision report – see above at 3.6].

2.4 Please note that comments may be sent at a later point.”

[No further representations were provided by the Commissioner]

6. Observations

No observations were received in response to the representations.

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.

7.1.2 The Applicant proposes to:

7.1.2.1 Open until 1:30pm instead of closing at 1pm Monday to Friday

7.1.2.2 Open until 5:30pm instead of closing at 6pm Monday to Friday

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, albeit limited in detail.

- 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 not 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 times from Monday to Friday that services are provided. Taking Monday as an example, the level of service provision at the Applicant's premises on a Monday 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 stated to the Commissioner in their application that, *“After careful evaluation of our Data Activity, it is evident that there is very minimal activity and footfall between the hours of 17:30 to 18:00.”* The Commissioner, in its PSRC report, stated that *“There was no information as part of the application to describe the existing level of service provision. The Committee therefore agreed that it could not determine if it was necessary to maintain the existing level of service provision.”*
- 7.16 The Applicant provided as part of their appeal, the results of a data collection activity, which it carried out from Monday 30 September 2024 on fourteen consecutive Monday afternoons in September, October, November and December 2024 to establish the number of people who visited the pharmacy at the times that the Applicant proposes to close, together with what services they accessed. The data collected shows the number that attended the pharmacy during a period of 4 months and does differentiate between those who attended to collect a prescription, for example, and those that were coming to seek advice or access a further pharmaceutical service or a non-pharmaceutical service. Having regard to the patient count, I noted that no prescriptions were dispensed to patients during the 30 minute period between 17:30 and 18:00 and the nature of the patient interactions were ad hoc but they do consist of elements of signposting, support for self-care or health promotion.
- 7.17 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. Therefore I consider it is necessary to maintain the existing level of service provision.
- 7.18 Having determined that it is reasonable to assume that maintaining the existing level of service provision is necessary, 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, that have opening hours during the times that the Applicant is proposing to close, namely Lalys Pharmacy on Fratton Way. I also note from the PSRC report that additional pharmacies in the area are open after the proposed closing time: for example Bobat Pharmacy is open from 09:00-13:00 and 14:00-18:00 as part of their core opening hours.
- 7.19 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).

- 7.20 The Applicant has not provided evidence as to how existing patients travel to the Applicant's pharmacy or surrounding pharmacies but I consider it likely that there will be a mix of people who drive to the Applicant's pharmacy, those who use public transport and those who walk.
- 7.21 It is worth noting that characteristics of the persons using the pharmacy might be relevant here as well as from where they start their journey to the pharmacy. If they live close by, walk a few minutes to the pharmacy and walk back home, then even an additional 21 minute walk to the next nearest pharmacy might be considered as not maintaining the level of service provision to users of the pharmacy. I do not consider that every single individual need should be considered at length in this regard but it would be helpful to have this information to be certain that the existing level of service provision would be maintained via local pharmacies.
- 7.22 I note the Applicant's comment that "*All essential pharmacy services are completed before 17:30, as confirmed by our dispensing records. Patients requiring later services have alternative options*" and so consider that the Applicant is aware that patients may still require access to pharmaceutical services at the proposed closing times and can do this by visiting neighbouring pharmacies. However despite this, the Applicant's comments on the distance to Laly's pharmacy is limited to "*21 min walk*" and they have not provided any information on the routes involved to walk to this pharmacy, for example, whether there is sufficient street lighting, dropped kerbs and pedestrian crossings where necessary. No information has been provided in relation to car ownership, parking facilities or the routes involved for those with access to a car and no information has been provided on the provision of public transport in the area, which patients may use when travelling to the other pharmacies.
- 7.23 I note also that the distance to the Lalys Pharmacy has been described by the Applicant as a "*4 min drive*" but no details regarding the nature of the route have been provided. It is unclear what a 4 minute drive might entail for a user or what the starting point of this 4 minute drive is, although I assume it is from the Applicant's pharmacy.
- 7.24 I note from the information provided by the Applicant that on weekdays between 17:30–18:00 Lalys Pharmacy on Fratton Way is open if the Applicant's proposed hours are implemented.
- 7.25 I note in its representations, the Commissioner has provided the PSRC report which contains information in relation to the distances to the nearest pharmacies and the core opening hours, which has not been disputed. From the Applicant's pharmacy, Bobat Pharmacy is 0.2 miles away, The Pharmacy is 0.5 miles away and Lalys Chemist (Kingstone Road) is 0.6 miles away. I note that the Applicant only mentions Lalys Pharmacy and Rowlands Pharmacy and I note that no explanation has been provided to explain why this is. Furthermore, I note from the Commissioner's representations that the nearest pharmacies to the Applicant's pharmacy do have core opening hours at the times the Applicant is wishing to close. Two of the nearest pharmacies have core hours until 6pm as evidenced by the Commissioner.
- 7.26 Based on the limited information above, I am therefore struggling to be satisfied that the existing level of service provision would be maintained by virtue of the existence of other local pharmacies.
- 7.27 I have decided that it is necessary to maintain the current service provision but, due to the effect of:

- 7.27.1 a lack of information regarding the journey to alternative pharmacies whether on foot or by public or private transport
- 7.28 I am not satisfied that there will be maintenance of the existing level of service provision by virtue of other pharmacies in the area at times the Applicant is wishing to close.
- 7.29 I therefore next consider if I need to have regard to paragraph 24(1)(b) which states that I must seek to ensure that the changed hours are such as to:
- “maintain a sustainable level of adequate service provision for the people in that area or other likely users of the pharmacy premises, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome”.*
- 7.30 I have already determined that it is necessary to maintain the existing level of service provision so reference in paragraph 24(1)(b) to *“in circumstances where maintaining the existing level of service provision is ... unnecessary”* is not relevant.
- 7.31 On the point of whether maintaining the existing level of service provision is not a realistically achievable outcome, I consider that no evidence has been put forward in respect of this criteria.
- 7.32 The wording of paragraph 24(1)(b) is such that maintaining existing service levels must not be realistically achievable before considering a sustainable level of adequate provision. I consider that this sets a fairly high bar as to the level of difficulty that the Applicant must find themselves in. I do not consider that sufficient evidence has been provided to indicate that the economic and practical viability of the current opening hours has been compromised for example. I therefore consider that maintaining the existing level of service is a realistically achievable outcome and therefore the Applicant cannot rely on paragraph 24(1)(b).
- 7.33 I am mindful that the provision of pharmaceutical services is greater than the dispensing of prescriptions and that maintaining a level of service provision includes all services that the pharmacy may offer, including additional enhanced and advanced services that may be commissioned. I am of the view that I have not been provided with sufficient information to demonstrate how the proposed change of hours would maintain, as necessary, the existing levels of service provision.

8. Determination

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

**Head of Appeals
NHS Resolution**