

20 June 2025

REF: SHA/26576

**APPEAL AGAINST SUSSEX ICB DECISION TO REFUSE
AN APPLICATION BY CURE CONNECT LTD FOR
INCLUSION IN THE PHARMACEUTICAL LIST
OFFERING UNFORESEEN BENEFITS UNDER
REGULATION 18 AT EAST GRINSTEAD TOWN
CENTRE, WEST SUSSEX, RH19**

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1 Outcome

- 1.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, confirms the decision of the Commissioner, therefore the application is refused.

A copy of this decision is being sent to:

Healthcare Plus Consulting Ltd, on behalf of Cure Connect Ltd
PCSE, on behalf of Sussex ICB
Community Pharmacy Surrey and Sussex
Boots UK Ltd

REF: SHA/26576

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1 The Application

By application dated 3 November 2024, Cure Connect Ltd ("the Applicant") applied to Sussex ICB ("the Commissioner") for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at East Grinstead Town Centre, West Sussex, RH19 - to be ultra specific 1-32A Railway Approach, 1-129 London Road, 1-79 High Street, 1-17 Ship Street, 1-30 West Street. Best estimate specifically excludes 34-48 (inclusive) London Road. In support of the application it was stated:

- 1.1 In response to section 5 'Applications that are in close proximity to other listed chemist premises', the Applicant stated:
- 1.2 "N/A"
- 1.3 Despite there being a pharmacy currently trading near the proposed site, Boots, 40-46 London Road, RH19 1AB, this unit and adjacent units have been specifically excluded from the best estimate.
- 1.4 Thus, there will be no pharmacy trading from or adjacent to the proposed premises, so Regulation 31 does not apply."
- 1.5 Information in support of the application:
- 1.6 Please describe the unforeseen benefit(s) that you are offering to secure and how it will secure improvements or better access to pharmaceutical services, or pharmaceutical services of a specified type in the HWB's area.
- 1.7 "Please see enclosed supporting information."
- 1.8 Please explain how you intend to secure the unforeseen benefit(s).
- 1.9 "The Lloyds Pharmacy in Sainsbury's, RH19 1DD, and the Boots Pharmacy in Waitrose, RH19 4YZ were open with no plans for closure at the time of the PNA being written. This application is therefore submitted under Regulation 18 as an unforeseen benefits application.
- 1.10 An increase in local pharmacy capacity and improved choice to meet the needs of the local population.
- 1.11 Better access and choice to pharmaceutical services given the closure of the above pharmacy.
- 1.12 See enclosed Supporting information for further detail."

Supporting information

1.13 **“Background**

1.14 This application is in respect of opening up a new pharmacy in order to provide better access for patients requiring access to pharmaceutical services in East Grinstead and the surrounding areas.

1.15 The best estimate of the proposed site we wish to open a new pharmacy is located in East Grinstead town-centre, RH19.

1.16 East Grinstead can be described as a large town in Mid Sussex and is comprised of 5 wards with a combined population of 26,830 (according to 2021 census data), currently served by 3 pharmacies. Available pharmaceutical provision in East Grinstead has decreased from 5 pharmacies to 3 in the past 18 months with Boots and Lloyds Pharmacy closing their branches in the town. For clarity, the two pharmacies that have closed are:

1.16.1 Boots Pharmacy, C/O Waitrose, West Street, East Grinstead, West Sussex, RH19 4YZ which closed in November 2023

1.16.2 Lloyds Pharmacy, Brooklands Way, East Grinstead, West Sussex, RH19 1DD which closed in June 2023

1.17 The closure of these pharmacies has resulted in poor pharmaceutical provision for East Grinstead residents. From population figures alone it is apparent that there is insufficient pharmaceutical provision to serve local residents. East Grinstead now has an effective 11 pharmacies per 100,000 people – well below the average for West Sussex (18/100,000 people), and England (21/100,000 people). Thus, it is apparent that pharmaceutical provision is dire in East Grinstead, and common sense alone would dictate that there is a requirement for another pharmacy.

1.18 We are aware that the pharmacy closures have placed a great amount of stress on the remaining pharmaceutical network, and we submit that this current network is unable to cope with the demands placed upon it by the reliant population. Hence, we submit this application to introduce reasonable choice of pharmaceutical provision within East Grinstead and restore sufficient access and choice to pharmaceutical provision.

1.19 **Proposed Location**

1.20 As mentioned above, the proposed location is situated in the town centre, where the majority of amenities are situated and a place that residents are accustomed to accessing as part of their daily lives.

1.21 The town centre is home to many high street shops, café's, restaurants, and local amenities such as: supermarkets, banks, and laundromats. The area is well-served by wide, well-lit pavements, good parking and good access via public transport.

1.22 Given the town-centre has the most accessible transport links, we submit that this location is the most advantageous sitting [sic] for another pharmacy within East Grinstead.

1.23 **Regulations**

1.24 We are required by NHS England to address the overarching question in an Unforeseen Benefits application:

- 1.25 *“Please describe the unforeseen benefit(s) that you are offering to secure and how it will secure improvements or better access to pharmaceutical services, or pharmaceutical services of a specified type in the HWB area”.*
- 1.26 When considering the above question, the provisions of Regulation 18(2)(b) should be noted: [quotes Regulation 18(2)(b) in full]
- 1.27 We note that points on reasonable choice; protected characteristics; and innovation are desirable, however, they are merely supporting considerations when determining whether in fact the overarching test in regulation 18(2)(b) has been met: an application should be granted should it provide *improvements or better access to pharmaceutical services, or pharmaceutical services of a specified type in the HWB’s area.*
- 1.28 We have addressed these regulations overleaf.
- 1.29 **Population**
- 1.30 East Grinstead has experienced significant population growth in years of late. The 2021 census population of East Grinstead, estimated at 26,830, represents a 15% increase over the 2001 census. It is clear that the population of East Grinstead is expanding, and yet pharmaceutical provision has markedly decreased.
- 1.31 We also note that the elderly demographic of the population holds significance and should be considered when assessing the demand for pharmaceutical services. The table below highlights the percentages of those residents that are aged over 65 in each of the Wards that make up East Grinstead, according to the 2021 Census.

Ward	% Population Aged 65+
Ashplats Ward	17%
Baldwins Ward	20.20%
Herontye Ward	24.90%
Imberhorne Ward	25.70%
East Grinstead Town Ward	19.30%
Ward Average	21.42%
England	18.30%

- 1.32 From the above data it is clear that East Grinstead is home to a disproportionate number of elderly residents. Notably all but one ward has a higher percentage of elderly residents when compared to England.
- 1.33 It is well-documented that the elderly often have more complex and greater health needs. With the advent of Pharmacy First, pharmacies are no longer just dispensers and act as the first port of call for minor ailment services. There is clearly a greater population within East Grinstead that would utilise and find benefit from these services, however, current pharmaceutical provision is too busy dispensing to effectively provide these additional services. Judges Close Pharmacy (RH19 3AE) only averages 19 Pharmacy First consultations per month; this is significantly lower than the average of 40 consultations per month for England. The Boots (RH19 1AB) also only averages 53

Pharmacy First consultations per month. Whilst the consultations undertaken by Boots are above national averages, such number of consultations is still poor for the town-centre location. Typically we see that centrally located pharmacies within town-centres average approximately 100 consultations per month. We would anticipate that this figure should be even higher given the elderly population within East Grinstead. Hence, it is clear that the current pharmaceutical network is unable to deliver Pharmacy First adequately and thus the grant of my client's application is needed for these vital services to be administered effectively in East Grinstead.

1.34 **Alternative Provision**

1.35 As previously highlighted, 2 out of the 5 pharmacies in East Grinstead have now closed:

1.35.1 Boots Pharmacy, C/O Waitrose, West Street, East Grinstead, West Sussex, RH19 4YZ – closed in November 2023

1.35.2 Lloyds Pharmacy, Brooklands Way, East Grinstead, West Sussex, RH19 1DD - closed in June 2023

1.36 Those accessing amenities within East Grinstead town centre are now likely to utilise Judges Close Pharmacy (RH19 3AE), or Boots Pharmacy (RH19 1AB). We submit that both of these pharmacies provide inadequate pharmaceutical access to the local population.

1.37 **Boots (RH19 1AB)**

1.38 Over recent months, service levels have deteriorated at the Boots in the town centre. There have been a number of 1 star google reviews highlighting the issues that residents have faced with accessing pharmaceutical provision: [copies of Google reviews provided]

1.39 There have been numerous 1 star google reviews regarding the service provided by Boots Pharmacy. With reviews citing extensive queues:

1.40 *"I waited 50 minutes [to collect their emergency supply medication]"*

1.41 *"Pharmacy always has a massive queue and only 1 person serving takes forever just to pick up a prescription."*

1.42 We do not consider a 50-minute wait to pick-up emergency medication as constituting reasonable choice or sufficient access to pharmaceutical provision.

1.43 One reviewer even comments how they were turned away for the Hypertension advanced service: *"Basically Boots as company say they advertise they do free blood pressure, but these lazy rude and unprofessional employees don't want to do"* [sic]. Whilst we submit that it may be unfair to label the staff as 'lazy', the inability of the Boots to provide this service is likely down to the inability to cope with the pharmaceutical demand placed upon it following the closure of the two pharmacies in the area. Again, inability to access a basic service such as that of blood pressure checks is clearly not representative of reasonable choice or access to pharmaceutical provision, especially for those groups with protected characteristics, such as the elderly, for whom this is an important service.

1.44 These poor reviews are very much concurrent with the closure of the Boots and Lloyds Pharmacies. Prior to the 1-star reviews this Boots pharmacy received mostly 5-star reviews, however, the closure of the 2 aforementioned pharmacies has caused the Boots to be unable to cope with the new demands placed upon it. Patients are visibly

struggling to access pharmaceutical services at this site, and this is clearly not representative of reasonable choice or access.

1.45 **Judges Close Pharmacy (RH19 3AE)**

1.46 As previously mentioned, this pharmacy is not adequately providing the Pharmacy First services due to the dispensing pressures currently faced by the pharmaceutical network in East Grinstead.

1.47 We also note that access to Judges Close Pharmacy is not straightforward, and it is not easily identifiable. The pharmacy is accessed off the high street via Judges Terrace with there being no designated pedestrian access and people having to access the site via Judges Terrace Road. We note that there is only one-way in and out of Judges Close via Judges Terrace Road.

1.48 As can be seen from the images below, Judges Terrace Road is extremely narrow, just about being able to accommodate a car. Indeed, we submit that an SUV may struggle to fit through this narrow passage. The Committee will also note how this is a blind corner and thus drivers may not be able to see oncoming traffic/ pedestrians. It is clear from the images that this access point is unsafe with there being a very real risk of a pedestrian being hit by an oncoming car. We submit that the real worry of being hit by a car when accessing pharmaceutical services is not representative of reasonable choice and access. The elderly, disabled, infirm, mothers with young children will no doubt have some form of trepidation when navigating Judges Terrace Road to access pharmaceutical services. Clearly, this pharmacy does not represent sufficient access for these groups who share protected characteristics.

1.49 This also may explain why the unwell are not utilising Judges Close Pharmacy for Pharmacy First Services; as those who are vulnerable feel unsafe navigating this route, and thus do not engage with pharmacy provision unless absolutely necessary. Only being able to access pharmaceutical provision when in dire need is clearly not representative of reasonable choice or sufficient access.

1.50 Image depicting narrow access point for both 2-way traffic and pedestrians on Judges Terrace Road. [Photograph provided]

1.51 Image depicting narrow access point for Judges Terrace Road as seen from the high street. [Photograph provided]

1.52 **Conclusion**

1.53 In our view, the growing population, the need for Pharmacy First services, and the closure of the nearby Lloyds and Boots Pharmacies has meant that pharmaceutical provision in East Grinstead is no longer sufficient to support such a large reliant population.

1.54 Residents would benefit significantly from having another pharmacy located in the town-centre, with alternative options clearly not offering reasonable choice to all facets of pharmaceutical provision.

1.55 Granting this application would secure better access to pharmaceutical services, ease pressures on current operators, and encourage the local population to engage further with commissioned services from their community pharmacies.

1.56 On the evidence outlined above, we invite the Committee to grant this application."

1.57 Supporting information is at Appendix A.

2 The Decision

The Commissioner considered and decided to refuse the application. The decision letter dated 25 February 2025 states:

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

- 2.1 "Sussex 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."

Decision report

2.2 "Introduction and background

- 2.3 An unforeseen benefits application had been received from Cure Connect Ltd, on 19th November 2024. The proposed best estimate address was East Grinstead town centre, West Sussex, RH19- To be ultra specific 1-32a Railway Approach, 1-129 London Road, 1-79 High Street, 1-17 Ship Street, 1-30 West Street. Best estimate specifically excludes 34-48 (inclusive) London Road. Map covering best estimate area depicted below, with proposed best estimate sites directly either side of the red line. The Committee was now required to consider the application in accordance with Regulations 18 and 19 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.

- 2.4 Full details of the applicant's proposal had been notified to the various interested parties in accordance with the regulations. Comments had been received from Boots UK Ltd, Day Lewis Plc and Surrey & Sussex LPC. There were also follow up comments from the applicant.

2.5 Consideration by the Committee

- 2.6 The Committee had before it:

- 2.6.1 The NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.

- 2.6.2 Department of Health guidelines on market entry by means of pharmaceutical needs assessment – Chapter 8 – Unforeseen Benefits.

- 2.6.3 The Report which included:

- 2.6.3.1 the application form and information provided by the Applicant,

- 2.6.3.2 letters from interested parties and a response to those comments from the Applicant,

- 2.6.3.3 maps of the location,

- 2.6.3.4 opening times and distances to surrounding pharmacies and GP Practices,

- 2.6.3.5 a site visit report,

- 2.6.3.6 West Sussex PNA extracts and a link to the full PNA,

- 2.6.3.7 demographic information including population density,

- 2.6.3.8 public transport information,
 - 2.6.3.9 prescription information,
 - 2.6.3.10 previous PSRC Boots UK Ltd Consolidation Decision Report (Annex H) and,
 - 2.6.3.11 the relevant Regulations (18, 19, 31, 65, 66 and paragraph 31, schedule 2).
- 2.6.4 In relation to the application, the Committee noted the following:
- 2.6.4.1 The applicant's fitness information was approved on 2nd December 2024.
 - 2.6.4.2 The Committee noted that the applicant was proposing to provide essential, enhanced and advanced services, if commissioned.
 - 2.6.4.3 The applicant also proposed core opening of 44 hours per week and total proposed opening of 44 hours per week.
 - 2.6.4.4 The applicant had also indicated which hours they proposed to be the 40 core hours, and which hours were proposed as additional core hours (the additional core hours/directed hours were 09:00-13:00 on Saturdays).
- 2.6.5 The Committee considered the applicant's statement as to the unforeseen benefits it is offering. The Applicant has stated that *"In our view, the growing population, the need for Pharmacy First services, and the closure of the nearby Lloyds and Boots Pharmacies has meant that pharmaceutical provision in East Grinstead is no longer sufficient to support such a large reliant population."*
- 2.6.6 *Residents would benefit significantly from having another pharmacy located in the town-centre, with alternative options clearly not offering reasonable choice to all facets of pharmaceutical provision."*
- 2.7 The Committee considered information from a site visit of the East Grinstead area that had been undertaken by a Pharmacy Commissioning Hub representative who was present at the meeting.
- 2.8 East Grinstead is a town in West Sussex, near East Sussex, Surrey and Kent borders. It has a one-way system primarily along the A22 London Road, meaning traffic flows in one direction through the town centre. It is a busy town centre with many shops both independent and some well-known businesses. There are residential houses on roads around the town centre and these are a mix of detached, semi-detached, terraced and flats.
- 2.9 The Committee noted the decision made by the PSRC dated 2nd February 2023 to refuse a Consolidation Application submitted by Boots UK Ltd. The proposed remaining site was Boots the Chemist, 40-46 London Road, East Grinstead, RH19 1AB, the proposed closing site was Boots within Waitrose Ltd, West Street, East Grinstead, RH19 4YZ.
- 2.10 The Committee considered the representations made by Boots UK Ltd, Day Lewis Plc and Surrey & Sussex LPC – and noted the comments made by the interested parties. The Committee noted that they all opposed the application.

- 2.11 The applicant's response to the representations received during the consultation period was also considered.
- 2.12 **Regulation 31 – Refusal: same or adjacent premises**
- 2.13 The Committee first considered Regulation 31(2)(a)(i) and was of the view that Regulation 31(2)(a)(i) is not met as there is currently no person on the pharmaceutical list at the premises to which the application relates.
- 2.14 The Committee went on to consider paragraph (a)(ii) of Regulation 31(2); whether there is a person on the pharmaceutical list providing pharmaceutical services from adjacent premises.
- 2.15 The Committee was satisfied that there is no pharmacy providing pharmaceutical services within the area of the best estimate. The application did not therefore need to be refused in accordance with Regulation 31.
- 2.16 Therefore, based upon the information before it, the Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.
- 2.17 **Regulations 40, 41 and 44**
- 2.18 The Committee noted that the proposed pharmacy location was not in a controlled locality, and therefore Part 7 of the Regulations (in particular Regulations 40, 41 and 44) did not have to be considered.
- 2.19 **Oral Hearing**
- 2.20 The Committee decided that it was not necessary to hold an oral hearing before determining the application.
- 2.21 **Regulation 18 – Unforeseen benefits application**
- 2.22 The Committee noted that this was an application for "unforeseen benefits" and fell to be considered under the provisions of Regulation 18 which states: [quotes 18(1) in full]
- 2.23 The Committee considered that **Regulation 18(1)(a)** was satisfied in that it was required to determine whether it was satisfied that granting the application, or granting it in respect of some only of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB.
- 2.24 The Committee went on to consider whether **Regulation 18(1)(b)** was satisfied, i.e. whether the improvements or better access that would be secured if the application was granted were or was included in the Pharmaceutical Needs (the 'PNA') in accordance with paragraph 4 of Schedule 1 of the Regulations.
- 2.25 The Committee had regard to the West Sussex PNA 2022-2025 (issue date 1st October 2022) (the 'PNA') and noted that a supplementary statement had been issued in September 2023, however this was not in relation to the East Grinstead area.
- 2.26 The Committee also noted that, having considered the entire West Sussex locality including the area of East Grinstead, the HWB had reached the conclusion that *"The PNA has not identified any gaps in current service provision of necessary services within the West Sussex area. The current coverage is adequate to provide the necessary services such as essential/dispensing services and advanced services."*

- 2.27 *For the lifetime of this PNA (October 2022 to October 2025) after reviewing the location and scale of proposed housing development it is anticipated that the current pharmaceutical providers will be sufficient to meet the local needs.” [Page134, West Sussex PNA, 2022-25].”*
- 2.28 The Committee noted that the HWB had considered access (distance, travelling times and opening hours) to assess how current service provisions will meet the needs of the population within the lifetime of the PNA.
- 2.29 The Committee noted that the Applicant had stated: *“The Lloyds Pharmacy in Sainsbury’s, RH19 1DD, and the Boots Pharmacy in Waitrose, RH19 4YZ were open with no plans for closure at the time of the PNA being written. This application is therefore submitted under Regulation 18 as an unforeseen benefits application.”*
- 2.30 The Committee noted that the improvements or better access that the Applicant was claiming would be secured by its application were not included in the relevant pharmaceutical needs assessment in accordance with paragraph 4 of Schedule 1.
- 2.31 The Committee was satisfied that the unforeseen benefits claimed in the application were not identified in the PNA.
- 2.32 In order to be satisfied in accordance with Regulation 18(1), the Committee went on to consider those matters set out at Regulation 18(2).
- 2.33 **Regulation 18(2)(a)(i) - whether or not granting the application would cause significant detriment to the proper planning in respect of the provision of pharmaceutical services.**
- 2.34 The Committee was not aware of any plans that would be affected and concluded that granting the application would not have an adverse effect on any future plans. None of the submissions included any comment or evidence in regard to this matter. Therefore, the Committee concluded that granting the application would not cause significant detriment in this regard.
- 2.35 **Regulation 18(2)(a)(ii) - whether or not granting the application would cause significant detriment to the arrangements in place for the provision of pharmaceutical services.**
- 2.36 None of the submissions included any evidence on this question and the Committee found no proof to support the suggestion that if the application was to be granted, it would cause significant detriment to the arrangements in place for pharmaceutical services in the area.
- 2.37 The Committee did not find any significant detriment to proper planning or to the arrangements in place for the provision of pharmaceutical services and therefore was not obliged to refuse the application under Regulation 18(2)(a).
- 2.38 **Regulation 18(2)(b)(i) – whether notwithstanding that the improvements or better access were not included in the relevant PNA, it is satisfied that, having regard in particular to the desirability of – there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB – granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant PNA was published.**
- 2.39 On this point the Applicant has said: [see paragraphs 1.36-1.37]
- 2.40 The application also stated: [see paragraphs 1.17-1.18]
- 2.41 The application also stated: [see paragraph 1.48]

- 2.42 The Committee noted the Boots UK Ltd representations that stated, *“As the ICB will be aware, the closure of a pharmacy or in this case, pharmacies within an area does not automatically create a gap in pharmaceutical provision. Our pharmacy in Waitrose has been closed for over a year, and Lloyds closed over 18 months ago. Should a gap have arisen as a consequence of these closures, then the PNA should be updated to reflect this and a supplementary issued. We are not aware that this has been the case for this locality.”*
- 2.43 The Committee noted the Day Lewis Plc representations that stated, *“There are two pharmacies in East Grinstead town centre, and four within 2 miles of the application site. It is our position that these fully meet the pharmaceutical needs of residents regardless of the closure of the pharmacies discussed by the applicant.*
- 2.44 *The Applicant suggests that Judges Close Pharmacy is dangerous to access but provides no evidence to back this up other than pictures. The road it refers to is a cul-de-sac with very little traffic. We are not aware that any patient has come to harm when visiting the pharmacy.*
- 2.45 *It is relevant that relatively few people live in the town centre itself. Most travel into the town from surrounding residential areas. If they are mobile, they have the choice of accessing other pharmacies outside the town centre if they wish. 2021 census data shows that people living in the wider East Grinstead area (who would travel into the town centre to access pharmaceutical services) have significantly higher than average levels of car ownership. They therefore have reasonable choice in respect of access to pharmaceutical services.”*
- 2.46 The Committee noted the Surrey & Sussex LPC representations that stated, *“The NHS pharmacy finder lists 4 community pharmacies within a 2-mile radius of the proposed site, and a total of 7 pharmacies within 3.5 miles providing both access to services and a choice of provider. The applicant has not provided evidence of patients in this locality having difficulty accessing the existing pharmacies in the area.”*
- 2.47 In order to determine if patients in the area already had a reasonable choice, the Committee considered access (distance, travelling times and opening hours) as an important factor in determining the extent to which the current pharmaceutical service provision meets the needs of the population in the East Grinstead area.
- 2.48 The Committee had regard to the current service provision in the immediate area of East Grinstead and noted that there are 9 pharmacies within a 5-mile radius of the best estimate address. This includes a mix of independent and multiple pharmacies. The two closest pharmacies are in the vicinity of the best estimate. The next two are 0.5 miles and 1.4 miles away respectively.
- 2.49 The opening hours of the 9 pharmacies range from 08:30-19:00 Monday to Friday, from 08:30-18:00 on Saturdays and from 10:00-16:00 on Sundays.
- 2.50 The Committee noted that the Applicant had offered to open from 09:00-13:00; 14:00-18:00 on Monday to Friday, 09:00-13:00 on Saturdays and closed on Sundays. There are already pharmacies in the area providing longer weekday hours and longer hours on Saturdays as indicated above.
- 2.51 The Committee noted that the proposed core hours are 09:00-13:00; 14:00-18:00 Monday to Friday, 09:00-13:00 on Saturdays. The Applicant does not propose any supplementary opening hours.
- 2.52 The Committee noted the points made in the application and supporting documentation about the poor service provided by the Boots the Chemist and this being a reason for having an alternative choice of pharmacy. The Committee reminded itself that poor

performance should be dealt with separately and directly with the pharmacy in accordance with the Pharmaceutical Regulations.

- 2.53 The Committee noted that there are bus routes that stop at various points along the proposed best estimate address, the buses then go onto Uckfield (route 261 Monday to Saturday), Crawley (routes 84 & 281 Monday to Saturday) and Brighton (route 270 Monday to Friday). The buses run regularly on these days.
- 2.54 The Committee noted that since the closure of the 2 pharmacies in East Grinstead there had been no concerns or complaints received by the ICB about the level of service in the area.
- 2.55 Having considered the factors above, the Committee was satisfied that residents of East Grinstead already have reasonable choice with regard to obtaining pharmaceutical services.
- 2.56 **Regulation 18(2)(b)(ii)** - *whether notwithstanding that the improvements or better access were not included in the relevant PNA, it is satisfied that, having regard in particular to the desirability of – people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access - granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant PNA was published.*
- 2.57 The Committee reminded itself that it was required to address itself to people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that are difficult for them to access. The Committee was also aware of its duties under the Equality Act 2010 which include considering the elimination of discrimination and advancement of equality between patients who share protected characteristics and those within such characteristics.
- 2.58 The Applicant stated that *“We also note that the elderly demographic of the population holds significance and should be considered when assessing the demand for pharmaceutical services. The table below highlights the percentages of those residents that are aged over 65 in each of the Wards that make up East Grinstead, according to the 2021 Census.*
- 2.59 *From the above data it is clear that East Grinstead is home to a disproportionate number of elderly residents. Notably all but one ward has a higher percentage of elderly residents when compared to England. It is well-documented that the elderly often have more complex and greater health needs.”*
- 2.60 The Committee noted that the West Sussex PNA states: 6.35.1 *“In West Sussex, 23% of the population is aged 65 years or over, compared with 19% nationally.”* (Page 27, West Sussex PNA 2022)
- 2.61 The Committee agreed that whilst it was clear that there is an elderly population in the area, the Applicant did not any provide information about how elderly patients access services, or any specific needs for pharmaceutical services that were difficult for them to access.
- 2.62 The Committee noted that whilst these statements had been included by the Applicant there was no evidence provided that identified a group of patients in the East Grinstead area, sharing a protected characteristic with difficulty accessing services that meet a specific need.

- 2.63 The Committee noted the Surrey & Sussex LPC representation that stated, *“The applicant has not provided any evidence that patients who share a protected characteristic do not have access to services to meet any specific needs.”*
- 2.64 The representations from Boots UK Ltd and Day Lewis Plc did not include comments relating to groups of patients having difficulty accessing pharmaceutical services.
- 2.65 The Committee therefore concluded that the application did not satisfy the test in this part of the Regulation.
- 2.66 **Regulation 18(2)(b)(iii)** - *whether notwithstanding that the improvements or better access were not included in the relevant PNA, it is satisfied that, having regard in particular to the desirability of – there being innovative approaches taken with regard to the delivery of pharmaceutical services - granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant PNA was published.*
- 2.67 The Committee agreed that the applicant had not provided evidence that an innovative approach would be taken with regard to the delivery of pharmaceutical services.
- 2.68 Therefore, the Committee concluded that there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services.
- 2.69 The Committee was of the view that in accordance with Regulation 18(2)(b) the granting of this application would not confer significant benefits on persons in the relevant area of the HWB which were not foreseen when the PNA was published.
- 2.70 **Other Considerations**
- 2.70.1 **Regulation 18(2)(c)-(f)** - The Committee had previously determined that there was no need to defer the application under Regulation 18(2)(c) to (f).
- 2.71 **Decision**
- 2.72 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.
- 2.73 The Committee had considered whether the granting of the application would cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area covered by the HWB, or the arrangements in place for the provision of pharmaceutical services in that area and was not satisfied that it would.
- 2.74 The Committee determined that the application should be refused on the following basis:
- 2.74.1 In considering whether the granting of the application would confer significant benefits, the Committee determined that –
- 2.74.1.1 there is already a reasonable choice with regard to obtaining pharmaceutical services;
- 2.74.1.2 there is no evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services; and
- 2.74.1.3 there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services.

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

2.75 Rights of appeal

2.76 The application is refused so the applicant has the right to appeal.

2.77 The Committee decided not to grant third party rights of appeal to the decision to any of the parties that responded during the consultation period because the application had been refused."

2.78 Supporting information is at Appendix B

3 The Appeal

In a letter dated 25 March 2025 (received on 26 March 2025) addressed to NHS Resolution, the Applicant, through its representative Healthcare Plus Consulting Ltd, appealed against the Commissioner's decision. The grounds of appeal are:

3.1 "Thank you for your letter dated 25th February 2025. Cure Connect Ltd have instructed us (Healthcare Plus Consulting Ltd) to act on their behalf for this appeal, please find an authorisation letter attached.

3.2 We would like to appeal the decision made in relation to the above unforeseen benefits application.

3.3 We submit that NHS England have failed to properly evaluate Regulation 18 and the fundamental question within the Regulation: does the application provide *'improvements or better access to pharmaceutical services, or pharmaceutical services of a specified type in the HWB's area.'*

3.4 In their decision, the PSRC refused our client's application, and we believe they misdirected themselves in doing so. We assert that this application does provide improvements or better access to pharmaceutical provision, as set out in our client's original application and the comments previously provided by our client. We have re-attached these submissions for reconsideration by NHS Resolution.

3.5 From the decision report, we submit that the PSRC did not adequately consider the following points outlined in our client's previous correspondence:

3.5.1 The refused Consolidation application by Boots

3.5.2 The disproportionate number of pharmacies per 100,000 population

3.5.3 The high elderly population

3.5.4 The insufficient service provided by Boots Pharmacy

3.5.5 The poor access to Judges Close Pharmacy

3.6 In this appeal, we address each of these points below.

3.7 Boots Pharmacy Refused Consolidation

3.8 From Annex H of the decision report we note that there has recently been a refused consolidation between two Boots town-centre pharmacies in East Grinstead:

- 3.8.1 Boots, 40-46 London Road, East Grinstead, RH19 1AB
- 3.8.2 Boots in Waitrose , West Street, East Grinstead, RH19 4YZ
- 3.9 This consolidation was considered and refused in February 2023, with capacity concerns raised due to the impending closure of the Lloyds Pharmacy in Sainsbury's at the time.
- 3.10 Quoting directly from Annex H (appended below), Point 2.29:
- 3.11 *"On balance, taking into account the views of the local community about access to services at site 2 and the fact that the consolidation would lead to a second pharmacy closing, the Committee was satisfied for the purposes of Regulation 26A(5)(a)(i) &(ii) that granting the application would create a gap in pharmaceutical services provision that could be met by a current or future needs, or improvements or better access application."*
- 3.12 Following the refused consolidation, the Boots in Waitrose closed regardless in late 2023. Notably the Lloyds in Sainsbury's also proceeded to closure in Summer 2023. We submit that the closure of the Boots in Waitrose, has now triggered a gap in pharmaceutical provision which our client is aiming to meet through their better access/ unforeseen benefits applications – per the consolidation regulations (Reg 26A).
- 3.13 We also highlight to the Committee that it is our understanding that Boots did not appeal the decision; and thus, we can only interpret that Boots were accepting of the decision that closure of the Boots in Waitrose would create a gap in provision.
- 3.14 We are currently awaiting further information on the refused consolidation from the ICB.
- 3.15 **Pharmacy Closures**
- 3.16 At the time of writing the West Sussex PNA in 2022, there were 153 community pharmacies in West Sussex (West Sussex PNA 2022, pg. 9). There are now 143 community pharmacies in West Sussex, and we highlight that two of these unforeseen pharmacy closures were in East Grinstead. East Grinstead is a large market town situated in the northeastern corner of West Sussex, comprised of five wards with a combined population of 26,830 according to 2021 Census data. Thus, the loss of two pharmacies concentrated in the vicinity of East Grinstead's town centre has significantly reduced pharmaceutical provision in a highly populated town.
- 3.17 As mentioned in our client's previous correspondence, the number of community pharmacies per population in East Grinstead is 11 per 100,000, which falls drastically below the average for West Sussex (18/100,000) and is nearly half of the national average (21/100,000).
- 3.18 We wish to draw the Committee's attention to the West Sussex PNA which articulates this barometer across the county in further detail, stating that *"The number of community pharmacies in West Sussex district and boroughs ranged from 14 to 20 per 100,000 population."* (West Sussex PNA 2022, pg. 57)
- 3.19 It is clear that the number of community pharmacies in East Grinstead (11 per 100,000) is now much further below any level previously considered within the PNA – 14 per 100,000 being the de-minimis level considered. Thus, we reiterate that East Grinstead clearly lacks adequate access to pharmaceutical provision, and such a markedly low number of pharmacies is not representative of reasonable choice or sufficient access.
- 3.20 **Current Service Provision**

- 3.21 In their decision report, the PSRC observed that there are nine pharmacies within a 5-mile radius of the proposed site. We disagree with this assertion as, while this may be the case as the crow flies, we note that this is not the case in reality. We submit that there are in fact 7 pharmacies within a 5-mile radius of the proposed site. Although we are also unsure as to the usefulness of utilising 5-miles as an accessible radius, particularly when considering those patient groups that are likely to access pharmaceutical provision.
- 3.22 We reiterate that the facilities and amenities located in East Grinstead's town centre are widely utilised by the community. This is ratified by the PSRC who also describe the town centre as busy.
- 3.23 As mentioned, there are currently two pharmacies located in East Grinstead's town centre. However, we note that Judges Close Pharmacy is not open on weekends and is difficult to access. This ultimately leaves Boots Pharmacy as the only accessible pharmacy for a number of residents within East Grinstead.
- 3.24 **West Sussex Pharmaceutical Needs Assessment 2022 (PNA)**
- 3.25 The West Sussex PNA is clear in its vision for community pharmacies to improve local health priorities, ensure they are easily accessible, and provide a sufficient service. We urge the Committee to place weight on the findings from the West Sussex PNA listed below.
- 3.25.1 *"Community pharmacies are a key public health resource".* (West Sussex PNA 2022, pg. 13)
- 3.25.2 *"Community pharmacies can contribute towards addressing local health and wellbeing priorities and work to tackle health inequalities".* (West Sussex PNA 2022, pg. 15)
- 3.25.3 *"These are issues outside of the specific scope of this needs assessment, but clearly impact residents. Staffing and supply shortages can lead to people waiting longer to access services, and staff having to spend more time resolving supply issues. These problems, alongside rising costs, are placing additional pressures on an already stressed sector and workforce. Commissioners are aware of these problems and, will need to continue to closely monitor the impact on service provision and delivery."* (West Sussex PNA 2022, pg. 15)
- 3.25.4 *"The PNA is a key commissioning tool in the process of aligning pharmaceutical services provision with local needs to ensure improved patient choice, accessibility, and better quality of services."* (West Sussex PNA 2022, pg. 17)
- 3.25.5 *"Community pharmacies are well positioned in places where people live, work, shop and carry out other leisure activities. This makes them easily accessible and a valuable resource for improving health and wellbeing."* (West Sussex PNA 2022, pg. 54)
- 3.25.6 When addressing the aims and intended service outcomes, it stated *"to enable convenient and easy access for patients to community pharmacist advice for the management of minor illness".* (West Sussex PNA 2022, pg. 148)
- 3.26 **Wider Population**
- 3.27 We submit that East Grinstead's population is in greater need of pharmaceutical provision. As highlighted in our client's previous correspondence, all but one of the five

wards which comprise East Grinstead have a higher elderly population when compared to the national average.

- 3.28 The West Sussex PNA forecasts that *“The largest projection increases are in the older age groups, with 9.4% projected in the overall 65 years or over group.”* (West Sussex PNA 2022, pg. 33). Further, an *“ageing population in West Sussex means that the number of people living with dementia will increase”* (West Sussex PNA 2022, pg. 53).
- 3.29 As the elderly have higher health needs, we submit that an ageing population is likely to utilise pharmaceutical services more often which, in turn, will increase patient demand and place greater pressure on the existing pharmaceutical network.
- 3.30 Indeed, this is reflected in the findings of the West Sussex PNA patient survey, which revealed that those *“going every week or monthly rising to over 80% of 55+ year olds”* and *“amongst people who did not work 81% used a pharmacy weekly or monthly”* (West Sussex PNA 2022, pg. 106).
- 3.31 It is clear that demand for pharmaceutical services in West Sussex will increase substantially, and yet pharmaceutical provision within East Grinstead is dire, and already struggling to cope.
- 3.32 We submit that such observations are especially significant when we examine the characteristics of the local population living at/near the proposed site.
- 3.33 We highlight that the adjacent Mid Sussex 003E Lower-layer Super Output Area has not only a high proportion of elderly residents (26.5%), but a significant proportion of retired residents (31.6%). The latter figure is particularly pertinent when compared to the Mid Sussex Local Authority average (23.9%) and national average (21.5%) of retired residents. Thus, in accordance with the West Sussex PNA survey results, we submit that it is highly likely the local population utilise a pharmacy weekly or monthly.
- 3.34 **Boots Pharmacy (RH19 1AB)**
- 3.35 In our client’s supporting information, we highlighted eight Google Reviews demonstrating that Boots Pharmacy is struggling to cope with patient demand. Although the PSRC noted that poor service should be dealt directly with the pharmacy in question, it is clear that this has not had an impact on the poor service levels.
- 3.36 In addition to the reviews previously provided, we submit the following review below which reveals that Boots are continuing to provide an inadequate service for the residents of East Grinstead. We invite the Committee to read this in full below. [Google review provided]
- 3.37 A local resident describes there were *“chaotic and long queues just to collect already prepared prescription medicines”*. It is especially concerning to read that the queues in a vital community healthcare setting are described as *“chaotic and long”*. We do not consider this as representative of reasonable choice or sufficient access to pharmaceutical provision.
- 3.38 This resident also states that *“this is what a lack of competition does”*. This patient clearly feels that there is not reasonable choice by way of provider of pharmaceutical services in East Grinstead. Given the reduction of pharmaceutical provision in the East Grinstead town area, we reiterate that there are limited alternative providers located in the vicinity of the town centre – especially those providing Saturday service provision.
- 3.39 In our client’s supporting information, a number of Google Reviews were submitted reflecting the current situation. We remind the Committee that reports of experiencing

a “massive queue” were uploaded 7 months ago, and therefore it is obvious that the situation has not changed.

- 3.40 Residents are still being forced to wait in such onerous queues for their prescription owing to the clear lack of reasonable choice within East Grinstead. We submit that the experiences of local residents speak for themselves, and the need to open a pharmacy for residents in East Grinstead who are frequently experiencing this inadequate service could not be clearer.
- 3.41 **Judges Close Pharmacy**
- 3.42 The PSRC did not dispute that access to Judges Close Pharmacy is dangerous and unsafe, especially for groups with protected characteristics.
- 3.43 The West Sussex PNA notes that “Community pharmacies are well positioned in places where people live, work, shop and carry out other leisure activities. This makes them easily accessible and a valuable resource for improving health and wellbeing.” (West Sussex PNA 2022, pg. 54).
- 3.44 While Judges Close Pharmacy is located in East Grinstead’s town centre, we reiterate that the absence of any safe, designated pedestrian walkways along Judges Terrace is not at all “well positioned”. This is especially pertinent when we consider that access to the pharmacy via Judges Close is also utilised by cars, who may find their vision is obstructed through the blind corner. Access is clearly dangerous, and it is ridiculous that Day Lewis Plc suggest we wait for an accident to happen before determining that there is an issue. Access to Judges Close Pharmacy is not representative of reasonable choice or sufficient access.
- 3.45 We remind the Committee that Judges Close Pharmacy have not provided any representation, and therefore we can only assume that they have no objections to our client’s application.
- 3.46 **Conclusion**
- 3.47 We submit that the loss of two pharmacies in East Grinstead has meant that the existing pharmaceutical network is no longer sufficient to meet the needs of a large reliant population.
- 3.48 This is especially important when we consider that East Grinstead is home to a high resident elderly population, and it is well documented that an elderly, ageing population have greater health needs.
- 3.49 We note that Boots Pharmacy has failed to provide an adequate service for 9 months despite attempts from the ICB to address this. It is clear that there are capacity issues with pharmacies within the town-centre as was envisaged by the refused consolidation decision in February 2023.
- 3.50 Moreover, access to Judges Close Pharmacy is evidently challenging for residents travelling on foot and by car. Again, we do not consider a pharmacy that is simply dangerous to access as sufficient access to pharmaceutical provision.
- 3.51 Therefore, we maintain that granting this application would secure better access and improvements to pharmaceutical services for local residents. We submit that Regulation 18 has been met and we invite NHS Resolution to grant our client’s application.”
- 3.52 Supporting information is at Appendix C

4 Summary of Representations

This is a summary of representations received on the appeal.

4.1 COMMUNITY PHARMACY SURREY & SUSSEX

- 4.1.1 “Thank you for your letter dated 7th April 2025 along with the accompanying enclosures, advising Sussex Local Pharmaceutical Committee of the above application.
- 4.1.2 Regarding the unforeseen benefits application, we make the following observations:
 - 4.1.3 1. Following the publishing of the West Sussex PNA in October 2022 which stated there were no gaps in pharmaceutical provision, the applicant references in their appeal the subsequent closure of the Boots in Waitrose in late 2023. It is noted that no Supplementary Statement was published either as a result of the Boots closure or as a result of the earlier Lloydspharmacy closure due to the view from the West Sussex Health and Wellbeing Board that no gap in pharmaceutical provision had resulted from either of these closures.
 - 4.1.4 The applicant quotes the number of pharmacies per 100,000 population however, there is no nationally defined definition of the appropriate number of pharmacies per 100,000 population in a locality and hence the number of pharmacies per 100,000 cannot be used to define a need. It is noted that with the quoted population of 26,830 by the applicant and 4 pharmacies falling within the wards of the East Grinstead footprint according to the East Grinstead Town Council website this would equate to 15 per 100,000, which falls within the range stated in the PNA. *“The number of community pharmacies in West Sussex district and boroughs ranged from 14 to 20 per 100,000 population.” (West Sussex PNA 2022, pg. 57)*
 - 4.1.5 2. Existing pharmacy provision
 - 4.1.6 The NHS pharmacy finder lists 4 community pharmacies within a 2-mile radius of the proposed site, and a total of 7 pharmacies within 3.5 miles providing both access to services and a choice of provider. The applicant has not provided evidence of patients in this locality having difficulty accessing the existing pharmacies in the area. In addition, there is currently access to longer opening pharmaceutical provision both in the evening and at weekends than has been applied for by the applicant.
 - 4.1.7 3. Supporting information
 - 4.1.8 Although reference is made to an ageing population, the applicant has not provided any evidence that patients who share a protected characteristic do not have access to services to meet any specific needs.
 - 4.1.9 Judges Close Pharmacy which is co-located with the GP Practice both accessed via Judges Terrace is mentioned and reference made to perceived difficulties in access, however, no robust evidence has been provided of patients experiencing this.
 - 4.1.10 We note that the application is not based on innovative approaches to the delivery of pharmaceutical services.

- 4.1.11 We have no other significant comments to make. I hope this response is helpful for NHS Resolution to consider when coming to a decision about this application.
- 4.1.12 We would wish to ensure that we continue to be included in the circulation list for any relevant correspondence or attend an oral hearing if required. I would be grateful if you would inform me of the decision in due course, so that I can keep the Committee updated."

4.2 BOOTS UK LTD

- 4.2.1 "Thank you for your letter dated 7th April 2025 informing us of the above appeal.
- 4.2.2 The West Sussex PNA nor any supplementary statements issued highlight a gap in provision in this locality.
- 4.2.3 We do not wish to add anything further to the representations we have already made. A copy of which is enclosed.
- 4.2.4 We would be grateful if you would inform us of the outcome of this appeal in due course."

Letter to PCSE dated 9 January 2025

- 4.2.5 "Thank you for your letter dated 28th November 2024 informing us of the above application. Boots UK Limited have the following comments to make.
- 4.2.6 As the ICB will be aware, the closure of a pharmacy or in this case, pharmacies within an area does not automatically create a gap in pharmaceutical provision. Our pharmacy in Waitrose has been closed for over a year, and Lloyds closed over 18 months ago. Should a gap have arisen as a consequence of these closures, then the PNA should be updated to reflect this and a supplementary issued. We are not aware that this has been the case for this locality.
- 4.2.7 According to NHS.UK, there are four pharmacies within East Grinstead RH19 postcode area, Three of which are within a mile of the centre. The applicant hasn't mentioned the access to provision patients also have, provided by Moatfield Pharmacy at the Surgery. The applicant has not offered any commissioned services or additional opening hours that are not already provided by the existing contractors.
- 4.2.8 When discussing the provision of Pharmacy First, the applicant states that the number of consultations we undertake is poor. There is no evidence provided that we are unable to provide more consultations should the demand be there.
- 4.2.9 We believe that the applicant has very much predicated this application on Google reviews and assumptions. We ask the Committee not to give weight to Google reviews as these are not a comprehensive view of all of the patients we serve. Should the ICB have received any complaints about our pharmacy, these should be dealt with locally and we are happy to work together to resolve any issue, should this be the case.
- 4.2.10 We respectfully ask the committee to refuse this application. Please be aware that should an oral hearing be required, we may wish to attend."

5 Observations

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

6 Consideration

- 6.1 The Pharmacy Appeals Committee (“the Committee”), appointed by NHS Resolution, had before it the papers considered by the Commissioner, together with a plan of the area showing existing pharmacies and doctors’ surgeries and the location of the proposed pharmacy.
- 6.2 It also had before it the responses to NHS Resolution’s own statutory consultations.
- 6.3 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.
- 6.4 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (“the Regulations”).

Regulation 31

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

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

(2) This paragraph applies where -

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

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

(ii) adjacent premises; and

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

- 6.6 The Committee noted that the Applicant had stated at section 5 of the application form “*N/A Despite there being a pharmacy currently trading near the proposed site, Boots, 40-46 London Road, RH19 1AB, this unit and adjacent units have been specifically excluded from the best estimate. Thus, there will be no pharmacy trading from or adjacent to the proposed premises, so Regulation 31 does not apply.*” In its determination, the Commissioner stated “*The Committee was satisfied that there is no pharmacy providing pharmaceutical services within the area of the best estimate. The application did not therefore need to be refused in accordance with Regulation 31.*” The Committee noted that there was no dispute from other parties. The Committee therefore determined that it was not required to refuse the application under the provisions of Regulation 31.
- 6.7 The Committee noted that, if the application were granted, the successful applicant would - in due course - have to notify the Commissioner of the precise location of its premises (in accordance with paragraph 31 of Schedule 2). Such a notification would be invalid (and the applicant would not be able to commence provision of services) if the location then provided would (had it been known now) have led to the application being refused under Regulation 31.

Regulation 18

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

“(1) If—

- (a) *NHS England receives a routine application and is required to determine whether it is satisfied that granting the application, or granting it in respect of some only of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB; and*
- (b) *the improvements or better access that would be secured were or was not included in the relevant pharmaceutical needs assessment in accordance with paragraph 4 of Schedule 1,*

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

(2) Those matters are—

- (a) *whether it is satisfied that granting the application would cause significant detriment to—*
 - (i) *proper planning in respect of the provision of pharmaceutical services in the area of the relevant HWB, or*
 - (ii) *the arrangements NHS England has in place for the provision of pharmaceutical services in that area;*
- (b) *whether, notwithstanding that the improvements or better access were not included in the relevant pharmaceutical needs assessment, it is satisfied that, having regard in particular to the desirability of—*
 - (i) *there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB (taking into account also NHS England’s duties under sections 13I and 13P of the 2006 Act (duty as to patient choice and duty as respects variation in provision of health services)),*
 - (ii) *people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access (taking into account also NHS England’s duties under section 13G of the 2006 Act (duty as to reducing inequalities)), or*
 - (iii) *there being innovative approaches taken with regard to the delivery of pharmaceutical services (taking into account also NHS England’s duties under section 13K of the 2006 Act (duty to promote innovation)),*

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

- (c) *whether it is satisfied that it would be desirable to consider, at the same time as the applicant's application, applications from other persons offering to secure the improvements or better access that the applicant is offering to secure;*
 - (d) *whether it is satisfied that another application offering to secure the improvements or better access has been submitted to it, and it would be desirable to consider, at the same time as the applicant's application, that other application;*
 - (e) *whether it is satisfied that an appeal relating to another application offering to secure the improvements or better access is pending, and it would be desirable to await the outcome of that appeal before considering the applicant's application;*
 - (f) *whether the application needs to be deferred or refused by virtue of any provision of Part 5 to 7.*
 - (g) *whether it is satisfied that the application presupposes that a gap in pharmaceutical services provision has been or is to be created—*
 - (i) *by the removal of chemist premises from a pharmaceutical list as a consequence of the grant of a consolidation application, and*
 - (ii) *since the last revision of the relevant HWB's pharmaceutical needs assessment other than by way of a supplementary statement.*
- (3) *NHS England need only consider whether it is satisfied in accordance with paragraphs (2)(c) to (e) if it has reached at least a preliminary view (although this may change) that it is satisfied in accordance with paragraph (2)(b)."*

- 6.9 The Committee considered that Regulation 18(1)(a) was satisfied in that it was required to determine whether it was satisfied that granting the application, or granting it in respect of some only of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB.
- 6.10 The Committee went on to consider whether Regulation 18(1)(b) was satisfied, i.e. whether the improvements or better access that would be secured if the application was granted were or was included in the Pharmaceutical Needs Assessment ("the PNA") in accordance with paragraph 4 of Schedule 1 of the Regulations.
- 6.11 Paragraph 4 of Schedule 1 requires the PNA to include: "a *statement of the pharmaceutical services that the HWB had identified (if it has) as services that are not provided in the area of the HWB but which the HWB is satisfied (a) **would** if they were provided....secure improvements or better access, to pharmaceutical services... (b) **would** if in specified future circumstances they were provided...secure future improvements or better access to pharmaceutical services...*" (emphasis added).
- 6.12 The Committee considered the PNA prepared by West Sussex Health and Wellbeing Board, conscious that the document provides an analysis of the situation as it was assessed at the date of publication. The Committee bears in mind that, under

Regulation 6(2), the body responsible for the PNA must make a revised assessment as soon as reasonably practicable (after identifying changes that have occurred that are relevant to the granting of applications) unless to do so appears to be a disproportionate response to those changes. Where it appears disproportionate, the responsible body may, but is not obliged to, issue a Supplementary Statement under Regulation 6(3). Such a statement then forms part of the PNA. The Committee noted that the PNA was dated 2022 and that a supplementary statement had been issued in September 2023.

- 6.13 The Committee had regard to section 13 of the PNA titled 'Conclusions and recommendations' which states:

6.13.1 *"The PNA identified that there are 153 community pharmacies, 5 DACs, and 3 distance selling pharmacies on the pharmaceutical list and 12 dispensing doctors on the dispensing doctor list. These are spread across the 7 local authorities, with higher numbers in urban areas. The number of community pharmacies in West Sussex varies across the localities, ranging from 14 to 20 per 100,000 population. The overall West Sussex rate of 18 per 100,000 population is lower than the England rate (21 per 100,000) but higher than the South East (17 per 100,000)."*

6.13.2 *"Across West Sussex, there is reasonable coverage of essential services to meet the pharmaceutical needs of the local population."*

6.13.3 *"There is a good provision of advanced services from pharmacies and appliance contractors across West Sussex. When compared to England, West Sussex, in general, has a higher number of pharmacies and appliance contractors providing advanced services."*

6.13.4 *"There is a good coverage of pharmaceutical service provision during the normal working hours (9-6pm Monday to Friday) across the 7 localities in West Sussex."*

6.13.4.1 *41% of pharmacies are open before 9am during weekdays*

6.13.4.2 *41% are open after 6.00pm.*

6.13.4.3 *11% are open after 8pm during weekdays (none in Adur)."*

- 6.14 The Committee also had regard to the overall conclusion at point 13.7 of the PNA which states:

6.14.1 *"The PNA has not identified any gaps in current service provision of necessary services within the West Sussex area. The current coverage is adequate to provide the necessary services such as essential/dispensing services and advanced services."*

6.14.2 *"For the lifetime of this PNA (October 2022 to October 2025) after reviewing the location and scale of proposed housing development it is anticipated that the current pharmaceutical providers will be sufficient to meet the local needs."*

- 6.15 The Committee noted that the supplementary statement concerns the consolidation of pharmacies in Crawley in June 2023.

- 6.16 The Committee noted that the Applicant seeks to provide unforeseen benefits to the patients of East Grinstead. The Committee noted that the improvements or better access that the Applicant was claiming would be secured by its application were not included in the relevant PNA in accordance with paragraph 4 of Schedule 1.

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

Regulation 18(2)(a)(i)

- 6.18 The Committee had regard to

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

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

- 6.19 The Committee noted that the Commissioner had stated in its decision that it "... was not aware of any plans that would be affected and concluded that granting the application would not have an adverse effect on any future plans. Therefore, the Committee concluded that granting the application would not cause significant detriment in this regard." The Committee saw no dispute on the matter from other parties.

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

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

Regulation 18(2)(a)(ii)

- 6.22 The Committee had regard to

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

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

- 6.23 The Committee noted that the Commissioner had stated in its decision that it "... found no proof to support the suggestion that if the application was to be granted, it would cause significant detriment to the arrangements in place for pharmaceutical services in the area." The Committee saw no dispute on the matter from other parties.

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

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

Regulation 18(2)(b)

- 6.26 The Committee had regard to

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

- (i) *there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB (taking into account also NHS England's duties under sections 13I and 13P of the 2006 Act (duty as to patient choice and duty as respects variation in provision of health services)),*
- (ii) *people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access (taking into account also NHS England's duties under section 13G of the 2006 Act (duty as to reducing inequalities)), or*
- (iii) *there being innovative approaches taken with regard to the delivery of pharmaceutical services (taking into account also NHS England's duties under section 13K of the 2006 Act (duty to promote innovation)),*

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

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

- 6.27 The Committee noted the proposed pharmacy is to be located in East Grinstead town centre as indicated by the green lines on the map provided by the Commissioner. The Committee also had regard to the location of existing pharmacies and GP surgeries in East Grinstead, which had not been disputed.
- 6.28 The Committee noted the Applicant had highlighted a consolidation application by Boots Pharmacy for 40-46 London Road and Boots in Waitrose, West Street which was refused in February 2023. The Applicant had quoted a section of the decision report regarding the application which states *"On balance, taking into account the views of the local community about access to services at site 2 and the fact that the consolidation would lead to a second pharmacy closing, the Committee was satisfied for the purposes of Regulation 26A(5)(a)(i) & (ii) that granting the application would create a gap in pharmaceutical services provision that could be met by a current or future needs, or improvements or better access application."* The Applicant went on to comment that Boots in Waitrose had subsequently closed in late 2023, with Lloyds Pharmacy in Sainsbury's also closing in Summer 2023. The Committee was mindful that, despite the conclusion reached in the consolidation decision, no supplementary statement had been published since the closure of either Boots or Lloyds indicating that this had created a gap in the provision of pharmaceutical services. The Committee went on to consider the Applicant's comments regarding pharmacy closures generally.
- 6.29 The Applicant states that *"At the time of writing the West Sussex PNA in 2022, there were 153 community pharmacies in West Sussex (West Sussex PNA 2022, pg. 9). There are now 143 community pharmacies in West Sussex, and we highlight that two of these unforeseen pharmacy closures were in East Grinstead."* [Applicant's emphasis] The Applicant also states that East Grinstead has a population of 26,830 according to 2021 Census data and that the loss of two pharmacies has *"significantly reduced pharmaceutical provision in a highly populated town."* The Committee further noted the Applicant's comment that *"the number of community pharmacies per population in East Grinstead is 11 per 100,000, which falls drastically below the average for West Sussex (18/100,000) and is nearly half of the national average (21/100,000)."* The Committee noted the response from Community Pharmacy Surrey & Sussex that *"there is no nationally defined definition of the appropriate number of pharmacies per 100,000 population in a locality and hence the number of pharmacies per 100,000 cannot be used to define a need"*. The Committee noted that the application would be considered in accordance with the Regulations based on the

information provided and not with regard to the number of pharmacies per 100,000 of the population. Further, the Committee considered that the closure of the two pharmacies in East Grinstead did not automatically lead to the conclusion that an application should be granted.

- 6.30 The Committee next considered access to existing pharmacies and noted the Applicant's comment that there are 7 pharmacies within a 5 mile radius of the proposed site, rather than 9 as stated in the Commissioner's decision, which it considered may be the case as the crow flies. The Committee noted that there are two pharmacies in East Grinstead town centre and it had regard to the information provided regarding access to those pharmacies.
- 6.31 The Committee noted the Commissioner's comment that "... *there are bus routes that stop at various points along the proposed best estimate address, the buses then go onto Uckfield (route 261 Monday to Saturday), Crawley (routes 84 & 281 Monday to Saturday) and Brighton (route 270 Monday to Friday). The buses run regularly on these days*" which had not been disputed. Additionally, the Committee saw no information suggesting that there is a low level of car ownership, or that there are any difficulties with regard to car parking around the town.
- 6.32 The Committee noted Judges Close Pharmacy is sited nearby Judges Close Surgery in the centre of town and the Applicant's comment that "... *access to Judges Close Pharmacy is not straightforward, and it is not easily identifiable. The pharmacy is accessed off the high street via Judges Terrace with there being no designated pedestrian access and people having to access the site via Judges Terrace Road. We note that there is only one-way in and out of Judges Close via Judges Terrace Road.*" The Applicant describes Judges Terrace Road which leads to the pharmacy as "...*extremely narrow, just about being able to accommodate a car*" with "*a blind corner and thus drivers may not be able to see oncoming traffic/ pedestrians.*" The Committee noted the Applicant's concern that those accessing Judges Close Pharmacy would be worried that they may be hit by a car, in particular those with protected characteristics such as the elderly, disabled and separately, mothers with young children. The Committee had regard to the photographs provided by the Applicant and the Commissioner. Whilst noting that there is no pavement available on turning off the High Street into Judges Terrace, the Committee considered that due to the narrowness of the road leading into the close, together with the blind corner, it is unlikely that a vehicle would be moving fast enough to cause an accident and no information has been provided to show that this has been the case to date. The Committee considered that those accustomed to accessing Judges Close Pharmacy (or the surgery) on foot were likely to use the necessary caution in entering the road and were therefore unlikely to encounter any difficulties. The Committee went on to consider access to alternative pharmacies for those unwilling or unable to access Judges Close Pharmacy.
- 6.33 The Committee noted that there was no information to suggest that there are any issues with physical access to Boots Pharmacy, whether on foot, by public or private transport. The Committee noted that the proposed best estimate included London Road either side of Boots Pharmacy (at numbers 40-46), excluding numbers 34-48 inclusive.
- 6.34 The Committee noted that other pharmacies are available in East Grinstead, namely Moatfield Pharmacy and Day Lewis Pharmacy and it saw no information to suggest that there are any issues with access to these pharmacies or those in the wider area.
- 6.35 The Committee noted the Applicant's comments regarding service provision at Boots Pharmacy and its view that "*Over recent months, service levels have deteriorated...*" The Committee noted that the Applicant had provided eight 1 star Google reviews and it considered the comments therein, but also noted the overall star rating for the pharmacy was 4. Whilst the negative comments were concerning, the Committee was mindful that there would most likely be a substantial number of positive reviews for its

4 star rating. The Committee, whilst in no doubt there has been some dissatisfaction with Boots Pharmacy, was not persuaded that this is the general consensus without being provided full information rather than a selective version of the information.

- 6.36 The Committee noted the Commissioner had stated in its decision that “... *since the closure of the 2 pharmacies in East Grinstead there had been no concerns or complaints received by the ICB about the level of service in the area.*” The Committee was mindful that performance issues are a matter for the Commissioner to deal with in accordance with the Regulations.
- 6.37 Therefore, the Committee was of the view that there is already reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB, such that it was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits on persons.
- 6.38 In considering Regulation 18(2)(b)(ii) the Committee reminded itself that it was required to address itself to people who share a protected characteristic under the Equality Act 2010 (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation) having access to services that meet specific needs for pharmaceutical services that, in the relevant area, are difficult for them to access. The Committee noted the Applicant’s comment that “... *East Grinstead is home to a disproportionate number of elderly residents. Notably all but one ward has a higher percentage of elderly residents when compared to England.*” The Applicant had provided 2012 Census data showing the percentage of those aged over 65 in the East Grinstead wards, showing that all but one ward contains a slightly higher proportion of those over 65 than England overall. The Committee noted the Applicant had also commented on the average consultations per month for the Pharmacy First service for Judges Close Pharmacy and Boots Pharmacy, which it considers are too low for a town centre location. The Committee noted Boots’ response that “*There is no evidence provided that we are unable to provide more consultations should the demand be there.*” The Committee was mindful that the level of provision of the service by the existing pharmacies would depend on various factors, not least the level of demand. The Committee considered that beyond a general reliance on there being a higher than average proportion of patients over 65 in the area, no evidence to support a conclusion of specific needs or particular difficulties was presented by the Applicant. The issues of access and choice as might apply to these persons was dealt with in the assessment of reasonable access discussed above.
- 6.39 The Committee was therefore not satisfied that, having regard to the desirability of people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that are difficult for them to access, granting the application would confer significant benefits on persons.
- 6.40 In considering Regulation 18(2)(b)(iii) the Committee had regard to the desirability of innovative approaches to the delivery of pharmaceutical services. In doing so, the Committee would consider whether there was something more over and above the usual delivery of pharmaceutical services that might be expected from all pharmacies, some ‘added value’ on offer at the location. The Committee noted that there was no information provided to suggest that the Applicant is intending to take an innovative approach with regard to the delivery of pharmaceutical services.
- 6.41 The Committee was not satisfied that, having regard to the desirability of there being innovative approaches taken with regard to the deliverability of pharmaceutical services, granting the application would confer significant benefits on persons.

Regulation 18(2)(b) generally

- 6.42 The Committee noted the Applicant is proposing to provide 44 core opening hours at 09:00 to 13:00 and 14:00 to 18:00 Monday to Friday and 09:00 to 13:00 on Saturday. The Committee noted the Commissioner's comment that "*There are already pharmacies in the area providing longer weekday hours and longer hours on Saturdays...*" which had not been disputed. The Committee had regard to the opening hours of existing pharmacies provided by the Commissioner and that both Boots and Judges Close Pharmacy already offer the hours proposed by the Applicant. The Committee noted that Moatfield Pharmacy and Day Lewis Pharmacy in East Grinstead also offer similar hours to those proposed.
- 6.43 The Committee was of the view that there was no information provided to support a finding that pharmaceutical services are not currently provided at such times as needed and therefore it was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits (in relation to opening hours) on persons.
- 6.44 The Committee has considered whether there are any other factors that would confer significant benefits including on patients who share protected characteristics. The Committee had regard to the need to eliminate discrimination and advance equality of opportunity and foster good relations between these patients and those who do not share their protected characteristics.
- 6.45 The Committee was of the view that in accordance with Regulation 18(2)(b) the granting of this application would not confer significant benefits on persons in the area of the HWB which were not foreseen when the PNA was published.

Other considerations

- 6.46 Having determined that Regulation 18(2)(b) had not been satisfied, the Committee did not need to have regard to Regulation 18(2)(c) to (e).
- 6.47 No deferral or refusal under Regulation 18(2)(f) was required in this case.
- 6.48 The Committee had regard to Regulation 18(2)(g) and found that it was not applicable.
- 6.49 The Committee considered whether there were any further factors to be taken into account and concluded that there were not.
- 6.50 The Committee was not satisfied that the information provided demonstrates that there is difficulty in accessing current pharmaceutical services such that a pharmacy at the proposed site would provide better access to pharmaceutical services.
- 6.51 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 6.51.1 confirm the Commissioner's decision;
 - 6.51.2 quash the Commissioner's decision and redetermine the application;
 - 6.51.3 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.
- 6.52 Given its findings aligned with the Commissioner's determination, the Committee determined to confirm the decision of the Commissioner.

7 DECISION

- 7.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, confirms the decision of the Commissioner.
- 7.2 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.
- 7.3 The Committee has considered whether the granting of the application would cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area covered by the HWB, or the arrangements in place for the provision of pharmaceutical services in that area and is not satisfied that it would.
- 7.4 The Committee determined that the application should be refused on the following basis:
 - 7.4.1 In considering whether the granting of the application would confer significant benefits, the Committee determined that –
 - 7.4.1.1 there is already a reasonable choice with regard to obtaining pharmaceutical services;
 - 7.4.1.2 there is no evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services; and
 - 7.4.1.3 there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services;
 - 7.4.2 Having taken these matters into account, the Committee is not satisfied that granting the application would confer significant benefits as outlined above that would secure improvements or better access to pharmaceutical services.

Case Manager
Primary Care Appeals