

8 July 2025

REF: SHA/26654

**APPEAL AGAINST KENT AND MEDWAY ICB DECISION
TO REFUSE AN APPLICATION BY EAZIHEALTH LTD
FOR INCLUSION IN THE PHARMACEUTICAL LIST AT
NORTHDOWN ROAD, MARGATE, KENT, CT9 2QN WITH
REGARD TO CURRENT NEED UNDER REGULATION 13**

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1 Outcome

- 1.1 In accordance with paragraph 2 of Schedule 3 the Committee dismisses the appeal as it is of the view that it contains no reasonable grounds of appeal.

A copy of this decision is being sent to:

Eazihealth Ltd
PCSE on behalf of Kent and Medway ICB

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REGARD TO CURRENT NEED UNDER REGULATION 13****1 The Decision**

Kent and Medway ICB ("the Commissioner") considered and decided to refuse the application. The decision letter dated 3 June 2025 stated:

- 1.1 "Kent and Medway ICB has considered the above application and I am writing to confirm that it has been refused. Please see the enclosed report for the full reasoning."

Extract from the 'Pharmaceutical Services Regulations Committees meeting in common for Kent & Medway ICB, Surrey Heartlands ICB & Sussex ICB' minutes

- 1.2 "Annex 33.1 & 33.2 to the minutes of the meeting held on Thursday 15 April 2025.
- 1.3 Applications offering to meet a Current Need as identified in the PNA being considered together and in relation to each other:
- 1.4 Application 1: Advantage Health Ltd
- 1.5 ...
- 1.6 Application 2:
- 1.6.1 Eazihealth Limited
- 1.6.2 CAS-347555-M9K0P2
- 1.6.3 Best Estimate Address: Northdown Road, Margate, Kent CT9 2QN. No 129-142 and 190-198, Northdown Road
- 1.6.4 Kent HWB
- 1.6.5 Kent and Medway ICB
- Introduction and background
- 1.7 Current need applications have been received as detailed above. The Committee was now required to consider the application in accordance with Regulations 13 and 14 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.

1.8 Full details of the applicant's proposals had been notified to the various interested parties in accordance with the Regulations.

1.9 It had been previously agreed and notified that the two applications would be considered together.

Consideration by the Committee – Applications

1.10 Summary of application 1 – Advantage Health Ltd

1.11 ...

1.12 Summary of application 2 – Eazihealth Limited

1.13 The Applicant proposed core opening of 42 hours per week and total proposed opening of 78 hours per week.

1.14 The Applicant has 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 12:00-14:00 on Sundays).

1.15 The hours proposed as indicated in section 3.1 of the application form are:

1.16 Proposed core opening hours

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
09:00 – 11:00 17:00 – 21:00	09:00 – 11:00 17:00 – 21:00	09:00 – 11:00 17:00 – 21:00	09:00 – 11:00 17:00 – 21:00	09:00 – 11:00 17:00 – 21:00	09:00 – 11:00 17:00 – 21:00	12:00 – 18:00	42.00

1.17 Total proposed opening hours

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
09:00 – 11:00 11:00 – 17:00 17:00 – 21:00	09:00 – 11:00 11:00 – 17:00 17:00 – 21:00	09:00 – 11:00 11:00 – 17:00 17:00 – 21:00	09:00 – 11:00 11:00 – 17:00 17:00 – 21:00	09:00 – 11:00 11:00 – 17:00 17:00 – 21:00	09:00 – 11:00 11:00 – 17:00 17:00 – 21:00	12:00 – 18:00	78.00

1.18 The Applicant proposed to provide essential, enhanced and advanced services, if commissioned.

1.19 The Committee considered the Applicant's statement as to the current need it is offering to meet. The Applicant stated that

"The Closure of Central Pharmacy (142 Northdown Road, Cliftonville, CT9 2QN) on 3rd February 2025, as reported in the Thanet News. With an average monthly dispensing volume of 12,000 items (as of September 2024), its closure will place significant strain on the remaining local pharmacies, potentially worsening healthcare accessibility in the area.

Representations

1.20 The Committee considered the representations made by Advantage Health Ltd, Boots UK Ltd, Day Lewis Plc and Paydens Ltd – and noted the comments made by the interested parties. The Committee noted that Boots UK Ltd, Day Lewis Plc and Paydens Ltd all opposed the application.

- 1.21 The Applicant's response to the representations received during the consultation period was also considered.

Further Consideration by the Committee
- 1.22 The NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.
- 1.23 Department of Health guidance on Market Entry by means of pharmaceutical needs assessment – Chapter 5 – Current needs
- 1.24 The Report and annexes prepared by Primary Care Support England (PCSE) and NHS England which included:
 - 1.24.1 Maps of the location
 - 1.24.2 Opening times and distances to surrounding pharmacies and GP Practices
 - 1.24.3 A virtual site visit report
 - 1.24.4 Kent PNA 2025-25
 - 1.24.5 Public transport information
 - 1.24.6 Prescription information
 - 1.24.7 The relevant Regulation (13,14, 31 and 65)
 - 1.24.8 In relation to the applications, the Committee noted the Applicants Fitness to Practise
- 1.25 In relation to the applications, The Committee noted the applicants Fitness to Practise status:
 - 1.25.1 Applicant 2: Eazihealth Limited: CAS-357248-G8Y1D8
 - 1.25.2 Fitness Information was determined and approved 2 April 2025
- 1.26 The Committee considered information from a virtual site visit of the Margate area that had been undertaken by a Pharmacy Commissioning Hub representative who was present at the meeting.
- 1.27 Margate is a seaside town in the Thanet District of Kent. It is located on the north coast of Kent and covers an area of 2 miles (3 kilometres) long, 16 miles (26 kilometres) north-east of Canterbury and includes Cliftonville, Garling, Palm Bay and Westbrook.

Regulation 31 – Refusal: same or adjacent premises
- 1.28 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.
- 1.29 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.

- 1.30 The Committee was satisfied that there is no pharmacy providing pharmaceutical services at the same or adjacent premises. The application did not therefore need to be refused in accordance with Regulation 31.

Regulations 40,41 and 44

- 1.31 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.

Oral Hearing

- 1.32 Having reviewed the content of each application and the consultation responses for each one, the Committee was satisfied it was not necessary to hold an oral hearing to determine the applications.

Regulation 13 – Current need

- 1.33 The applications (which were to be determined in accordance with the procedures in Schedule 2) were submitted by the Applicants based on addressing current need for pharmaceutical services.

- 1.34 The Committee considered whether the need on which the Applicants based their application satisfied elements of Regulation 13(1) which reads as follows:

13(1) If the NHSCB receives a routine application and is required to determine whether granting it, or granting it in respect of some only of the services specified in it, would meet a current need—

(a) for pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB; and

(b) that has been included in the relevant pharmaceutical needs assessment in accordance with paragraph 2(a) of Schedule 1,

in determining whether it is satisfied as mentioned in section 129(2A) of the 2006 Act(1) (regulations as to pharmaceutical services), the NHSCB must have regard to the matters set out in paragraph (2).

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

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

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

- 1.36 The Committee noted that the Applicants are offering to meet a current need in Margate, Kent.

- 1.37 The Committee had regard to the Kent PNA 2022-2025 (issue date September 2022) (the ‘PNA’).

- 1.38 The Committee noted that a supplementary statement had been issued for Quarter 2 of 2022-2023 for the Margate area but had concluded that:

“There are no changes to the recommendations of the current Pharmaceutical Needs Assessment (PNA).”

- 1.39 The Committee noted that there is no specific reference to Margate area in the PNA.
- 1.40 The Committee noted that under ‘current provision of the local pharmaceutical services’ the PNA states:

“Based on the information available at the time of developing these pharmaceutical needs assessment no current gaps in the provision of essential services during normal or outside normal working hours have been identified in any of the twelve localities”. [Page 3&4, Kent PNA Conclusions, 2022-2025].

- 1.41 The Committee noted that there was no specific reference in the PNA to a Current Need within Kent and more specifically Margate.
- 1.42
- 1.43 The Committee noted that Eazihealth Limited had made reference to a current need as identified on page 1 and 3 of the Thanet PNA 2022. However, the Committee noted that the relevant PNA for the Margate area was the Kent PNA.
- 1.44 The Committee agreed that in this case, the provisions of Regulation 13(1) were not met.
- 1.45 The Committee therefore did not proceed to consider the application further having regard to those matters set out at 13(2).

Overall Decision

- 1.46 The Committee concluded that it was not required to refuse the applications under the provisions of Regulation 31.
- 1.47 The Committee determined the application by ... Eazihealth Limited should be Refused on the following basis:
- 1.47.1 The PNA has not identified a current need which either application could meet.

Rights of appeal

- 1.48 Both applications are refused so each Applicant, Advantage Health Ltd and Eazihealth Limited have the right to appeal in relation to their own application.
- 1.49 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 applications had been refused.”

2 The Appeal

In a letter dated 23 June 2025 addressed to NHS Resolution, the Applicant appealed against the decision of the Commissioner. The grounds of appeal are:

- 2.1 “I am writing on behalf of Eazihealth Ltd to formally appeal against the decision by NHS Kent and Medway ICB to refuse our application to open a new pharmacy premises at Northdown Road, Margate, Kent, CT9, as communicated in the decision letter dated 3rd of June 2025.

- 2.2 This appeal is made under Regulation 19 of the NHS Pharmaceutical Services Regulations 2013.
- 2.3 We respectfully submit that the refusal was made in error based on the following grounds:
- 2.4 Grounds for Appeal
- Material Change in Circumstances (Post-2022 PNA Closures in Margate, Kent).
- 2.5 The 2022 Kent Pharmaceutical Needs Assessment (PNA), upon which the refusal heavily relies, could not have foreseen the closure of two pharmacies in Margate:
- 2.5.1 Central Pharmacy (142 Northdown Road) on 3 February 2025, which previously dispensed an average of 12,000 items per month, and
- 2.5.2 Boots Pharmacy (192 Northdown Road), which ceased operations in January 2024.
- 2.6 Together, these closures represent a substantial and quantifiable reduction in pharmaceutical access in the locality. This double loss of capacity has created a measurable increase in patient burden for the remaining pharmacies and directly undermines the assumption that Margate remains adequately served.
- 2.7 We respectfully argue that the closure of a high-volume pharmacy has created a real-time gap in pharmaceutical provision, and that our application directly responds to this shortfall.
- Clarification on PNA Referencing
- 2.8 We acknowledge that the Committee noted our references to the 'Thanet PNA 2022.' For clarity, we confirm that our references were drawn from the locality-specific content contained within the officially adopted Kent PNA, which applies to Margate and the Thanet district. Any reference to a 'Thanet PNA' was purely descriptive and not intended to imply a separate statutory document.
- Misapplication of Regulation 18(1)(a) and (b)
- 2.9 The decision states that our application does not satisfy the necessity or expediency tests under Regulation 18(1). However, we submit that this conclusion does not fully account for:
- 2.9.1 The disproportionate health inequalities in Margate, the most deprived district in Kent
- 2.9.2 The lack of extended access to pharmaceutical services in the locality
- 2.9.3 The community disruption following the loss of Central Pharmacy
- 2.10 We believe the current context meets both the necessity and expediency thresholds due to clear and measurable gaps in access and provision.
- Note on Framing of the Original Application
- 2.11 We acknowledge that our initial application was framed in response to a perceived current need, particularly relating to deprivation and access limitations. However, upon reflection and with the benefit of additional stakeholder engagement, we believe that

our proposal is more accurately and compellingly justified under Regulation 18(2)(b), namely, that it would confer unforeseen benefits not anticipated in the Kent PNA.

- 2.12 We therefore respectfully invite the Secretary of State to consider this appeal through that lens.

Overlooked "Unforeseen Benefits" (Regulation 18(2)(b))

- 2.13 NHS England's conclusion that our proposal does not offer "unforeseen benefits" fails to consider the critical benefits presented, including:

2.13.1 Extended opening hours (9 AM to 9 PM, 7 days a week)

2.13.2 Direct service to marginalised groups, including the local Traveller and Roma communities. This is supported by stakeholder letters enclosed.

2.13.3 Relief to overstretched local services, including urgent care and GPs

- 2.14 We respectfully assert that these are both unforeseen and significant, especially in the context of post-pandemic health access pressures and NHS's aims to reduce inequality.

Dismissal of Stakeholder and Community Support

- 2.15 While we appreciate that public support does not alone justify an application, the weight of stakeholder engagement in our case includes:

2.15.1 A charity working with Traveller and Roma populations

2.15.2 A community-based academy serving vulnerable families

2.15.3 Individual residents affirming difficulty in accessing pharmacy services

- 2.16 These letters evidence a clear disconnect between official assessments and lived experience, which we believe must be taken seriously in line with NHS commitments to public and community involvement.

Forward-Looking Provision in a Regenerating Area

- 2.17 Margate is undergoing substantial regeneration and demographic change. The decision fails to account for forecasted population growth and urban expansion. Granting our application proactively addresses future demand and aligns with the NHS Long Term Plan's goals of preventive, accessible, and community-based care.

Conclusion

- 2.18 Considering:

2.18.1 The closure of Central Pharmacy (a material change post-PNA)

2.18.2 The lack of extended access despite socioeconomic need

2.18.3 The failure to recognise meaningful unforeseen benefits

- 2.19 We respectfully request that the Secretary of State overturn the refusal and grant inclusion of Eazihealth Ltd in the pharmaceutical list for the proposed premises.

2.20 We enclose supporting documents and remain available to provide further information or clarification.

2.21 Thank you for your consideration."

3 Consideration

3.1 The Pharmacy Appeals Committee ("Committee") appointed by NHS Resolution had regard to Regulation 13 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations").

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

3.3 Regulation 13 states:

"(1) If - —

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

(b) the current need has been included in the relevant pharmaceutical needs assessment in accordance with paragraph 2(a) of Schedule 1,

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

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

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

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

3.5 The Committee noted that the application had been made under Regulation 13 and therefore it was a notifiable application in accordance with the Regulations. The Committee noted that the decision had been notified to parties under paragraph 28(1) and a right of appeal was given to the Applicant under paragraph 36 of Schedule 2.

3.6 The Committee noted Schedule 3, Part 1, paragraph 2 states:

Misconceived Appeals

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

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

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

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

- 3.7 The Committee considered the appeal in accordance with paragraph 2 of Schedule 3, misconceived appeals, as quoted above.
- 3.8 The Committee noted that Regulation 13 is specific in the criteria an applicant must satisfy, if the current need application is to succeed.
- 3.9 The Committee noted the Commissioner's decision letter shows that it had considered the application in accordance with Regulation 13. The Commissioner determined to refuse the application as there is no current need identified in the Kent PNA 2022 – 2025 published in September 2022 or in the supplementary statement that had been issued for Quarter 2 of 2022 – 2023 for the Margate area.
- 3.10 The Committee noted that the Applicant had stated in its letter of appeal that there had been a material change in circumstances [due to pharmacy closures], that *"This appeal is made under Regulation 19 of the NHS Pharmaceutical Services Regulations 2013"* and further that:

"Misapplication of Regulation 18(1)(a) and (b)

The decision states that our application does not satisfy the necessity or expediency tests under Regulation 18(1). However, we submit that this conclusion does not fully account for:

- The disproportionate health inequalities in Margate, the most deprived district in Kent*
- The lack of extended access to pharmaceutical services in the locality*
- The community disruption following the loss of Central Pharmacy*

We believe the current context meets both the necessity and expediency thresholds due to clear and measurable gaps in access and provision."

- 3.11 The Committee noted that the appeal went on to state:

"Note on Framing of the Original Application

We acknowledge that our initial application was framed in response to a perceived current need, particularly relating to deprivation and access limitations. However, upon reflection and with the benefit of additional stakeholder engagement, we believe that our proposal is more accurately and compellingly justified under Regulation 18(2)(b), namely, that it would confer unforeseen benefits not anticipated in the Kent PNA.

We therefore respectfully invite the Secretary of State to consider this appeal through that lens.

Overlooked "Unforeseen Benefits" (Regulation 18(2)(b))

NHS England's conclusion that our proposal does not offer "unforeseen benefits" fails to consider the critical benefits presented, ..."

- 3.12 The Committee noted the Applicant has not sought to challenge the Commissioner's decision that its application should be refused on the basis that there are no current

needs identified in the PNA. The Committee noted that on appeal, the Applicant was effectively seeking that the application be considered under the provisions of Regulation 18, an entirely different test from that originally applied for and considered by the Commissioner.

- 3.13 From the information before it, the Committee concluded that the Applicant has not provided grounds of appeal sufficient as to challenge the view that the application should be granted under the provisions of Regulation 13.

4 Decision

- 4.1 In accordance with paragraph 2 of Schedule 3 the Committee dismisses the appeal as it is of the view that it contains no reasonable grounds of appeal.

Case Manager
Primary Care Appeals