NHS Resolution

4 September 2025

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REF: SHA/26621

APPEAL AGAINST CORNWALL AND THE ISLES OF SCILLY ICB DECISION TO REFUSE AN APPLICATION BY BANNS PHARMACY LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT QUEENS CRESCENT TO ST PIRAN'S CLOSE, 73 ST MARY'S ROAD TO 28 ST MARY'S ROAD, 22 TRELAWNEY ROAD TO ST MARY'S ROAD, 32 ROCK LANE TO ST MARY'S ROAD, BODMIN (BEST ESTIMATE)

1 Outcome

1.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of the Commissioner and remits the matter to the Commissioner for it to redetermine subject to the directions set out in this determination.

A copy of this decision is being sent to:

Rushport Advisory LLP on behalf of Banns Pharmacy Ltd
PCSE on behalf of Cornwall and the Isles of Scilly ICB
Day Lewis Plc
Boots UK Ltd

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1 The Application

By application dated 20 November 2024, Banns Pharmacy Ltd ("the Applicant") applied to Cornwall and the Isles of Scilly ICB ("the Commissioner") for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at Queens Crescent to St Piran's Close, 73 St Mary's Road to 28 St Mary's Road, 22 Trelawney Road to St Mary's Road, 32 Rock Lane to St Mary's Road, Bodmin (best estimate). In support of the application it was stated:

In response to section 5 'Applications in relation to premises that are in close proximity to other listed chemist premises', the Applicant stated:

1.1 "NO OTHER PHARMACY AT EITHER THE SAME OR ADJACENT PROPOSED PREMISES".

Information in support of the application

1.2 "In recent times Bodmin has experienced a significant decline in the availability of pharmaceutical services. Boots Pharmacy at Unit 5 Bell Lane and also ASDA at Launceston Road (a 100 hour pharmacy) have both closed during 2024.

1.3 When the PNA was written these closures were not known about. Indeed, the PNA considered pharmacies located within Bodmin as helping to serve the East Cornwall PCN (page 65).

1.4 Primary Care services in Bodmin have become clustered in the central area, with Boots Pharmacy, Day Lewis Pharmacy, Carnewater Practice and Stillmoor House Medical Practice all located within a small circle of less than 200 metres radius.

1.5 Bodmin is effectively made up of 3 distinct areas. The east of Bodmin (where ASDA used to be located) which contains housing but is largely commercial in nature, central Bodmin, which again has significant amounts of housing but also contains many smaller shops and services and finally West Bodmin which is largely residential, but with its own range of services including larger buildings such as the hospital and library and a significant amount of larger commercial offerings such as Home Bargains and Howdens to the northern edge.

1.6 The area to the west of Bodmin contains a wide range of services and facilities and is also seeing population increases due to ongoing housing development. The area also contains the Bodmin Community Hospital, community hub, Morrison Daily, Spar etc.

1.7 New housing is being built of Westheath Avenue (Laveddon Way) and to the north of the Community Hospital.

1.8 Access to the town centre facilities can be particularly challenging. It is well known that access to services can become severely limited during summer months due to the massive influx of tourists and vehicles. Boots and Day Lewis pharmacies in Bodmin are located over a mile's walk for those who live around the best estimate area proposed in this application.

1.9 Whilst there is a bus service along St Mary's Road to the town centre, (number 96), this only operates once every 2 hours and is not a viable alternative for most people as whilst a journey in one direction may be planned to hopefully coincide with the bus leaving, it is much more difficult to know exactly when one might be leaving a doctor's surgery, or pharmacy for the return journey. A return journey to access a pharmacy by bus could end up taking 2 to 3 hours, which means that walking would be a better option for those who can. Buses along the A389 take a circuitous route across the south eastern edges of Bodmin rather than travelling ot [sic] the town centre directly and also require patients to walk further to access the bus stops and services compared to the 96 bus.

1.10 Typically car ownership in Cornwall is high, with a car being seen as a necessity rather than a luxury. However, looking at the Bodmin St Mary's & St Leonard Ward it can be seen that almost 25% of households have no access to a car, compared to 15% for Cornwall. There are also significantly higher levels of poor health in the ward compared to both the Cornwall and English average as well as significantly higher levels of disability.

1.11 In areas such as this, with higher than average health needs and poor access to services, the role of community pharmacy is particularly important and this is especially true of services such as Pharmacy First and vaccinations, where uptake of the services will be much higher when they are placed in areas with high health needs and poor access to alternate providers.

1.12 Granting this application would secure improvements and better access to pharmacy services and the application should therefore be approved."

Please explain how you intend to secure the unforeseen benefit(s)

1.13 "THE UNFORSEEN BENEFITS DESCRIBED ABOVE WILL BE DELIVERED FROM THE PREMISES ONCE THE APPLICATION S [sic] APPROVED."

2 The Decision

The Commissioner considered and decided to refuse the application. The decision letter dated 14 May 2025 states:

2.1 "Cornwall and the Isles of Scilly 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.

2.2 You have a right of appeal to the Secretary of State against Cornwall and the Isles of Scilly ICB's decision. Should you choose to appeal then you should either complete the online form available on the NHS Resolution website or send a concise and reasoned

statement of the grounds for your appeal within 30 days of the date of this letter to nhsr.appeals@nhs.net or:

2.3 Primary Care Appeals
NHS Resolution
8th Floor
10 South Colonnade
Canary Wharf
London
E14 4PU"

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

Decision report

2.4 "**The SW Committee noted:**

2.5 The application is for Unforeseen Benefit with a best estimate address in the area around St Marys Road in Bodmin.

2.6 There was a Boots Pharmacy at 5 Bell Lane, Bodmin which closed on 23 March 2024 and Asda Pharmacy at Launceston Road, Bodmin closed on 30 Jul 2024 - both closed under the Market Exit process. The SW Committee had confirmation of their locations and opening hours.

2.7 The location is within 1.6km of a controlled locality, with one dispensing practice (Bosvena Health) having a number of dispensing patients within 1.6km of the best estimate provided.

2.8 **PRELIMINARY ISSUES**

2.9 Summary of the application:

2.10 The applicant is proposing to open Monday to Saturday for 40.5 Core Hours. The hours proposed are indicated below from section 3.1 and 3.2 of the application form:

"3 Opening hours

3.1 Proposed core opening hours

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
9AM TO 1PM AND 2PM TO 5.30PM	9AM TO 1PM AND 2PM TO 5.30PM	9AM TO 1PM AND 2PM TO 5.30PM	9AM TO 1PM AND 2PM TO 5.30PM	9AM TO 1PM AND 2PM TO 5.30PM	9AM TO 12PM		40.5

3.2 Total proposed opening hours

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
9AM TO 1PM AND	9AM TO 1PM AND	9AM TO 1PM AND	9AM TO 1PM AND	9AM TO 1PM AND	9AM TO 12PM		40.5"

2PM TO 5.30PM	2PM TO 5.30PM	2PM TO 5.30PM	2PM TO 5.30PM	2PM TO 5.30PM			

2.11 At section 4 of the application form the applicant proposes to provide essential services, advanced services, enhanced services and appliances listed in Part IX of the Drug Tariff.

2.12 The applicant states the premises have not yet been secured so a floor plan has not been provided.

2.13 At section 6 of the application form the applicant describes the unforeseen benefit they are offering to secure, concluding:

2.13.1 Granting this application would secure improvements and better access to pharmacy services and the application should therefore be approved.

2.14 **PUBLIC INVOLVEMENT / REPRESENTATIONS**

2.15 The SW Committee noted full details of the applicant's proposals were notified to various parties in accordance with the Regulations. Representations have been received from:

2.16 Bodmin Town Council confirmed the Town Councils Planning Committee supports the idea of a pharmacy in the area of Bodmin.

2.17 Boots Uk Ltd oppose the application stating:

2.17.1 As the ICB will be aware, supplementary statements are published if there are any changes to pharmaceutical provision since the PNA was published. In this case, the statements published do not identify a gap which an unforeseen benefits application would fulfil.

2.17.2 We do not believe that the applicant has provided any evidence of patients having difficulty accessing pharmaceutical services in this locality. We do not have any further comments to make, but would be grateful if you could keep us informed of the progress of this application.

2.18 Bosvena Health oppose the application stating:

2.18.1 We would like to appeal against the Pharmacy list application submitted by Mr Sarbjit Singh on behalf of Bann's Pharmacy in relation to offering unforeseen benefits. We are a local GP Practice with a dispensing site, and currently provide pharmacy dispensing services to our registered patients within this catchment area.

2.18.2 We understand that this licence is made on the basis of their [sic] being no pharmacy near any of the listed estimated sites, but we would like to highlight that our practice has a confirmed planning application for a new Primary Care Centre at Beacon Technology Park PA23/06567 | Erection of a new primary health care centre without compliance with condition 2 of decision notice PA22/01950 dated 22/08/2022 | Land West Of Chy Trevail Beacon Technology Park Bodmin PL31 2FR, and contained in this approved development is a pharmacy to serve our practice population. We have not to date submitted an application with regard to a pharmacy licence for this site, as final legal transactions for leases are being completed, however any adverse effect on the ability of the practice to secure a pharmacy licence for these premises

would ultimately significantly impact the business case for these premises and therefore significantly risk this 'flagship' Integrated Care Board, supported development for Bodmin. The land included in the Best Estimate from Bann's is within 1 mile of the new Primary Centre.

2.18.3 The areas for the suggested new pharmacy for Bann's is shown below:

2.18.4 We note that the application references recent closures of pharmacies at Boots, Bell Lane and Asda on Launceston Road, however both the remaining existing pharmacies: Day Lewis and Boots Fore Street have increased their workforce and offer patient delivery as part of their service. There is also an established remote pharmacy offer through County Pharmacy in Bodmin, again offering home delivery.

2.18.5 We understand that the application confirms that the new Pharmacy will increase provision of NMS, hypertension case finding, stop smoking, pharmacy first, EHC, and Flu vaccinations however we would question the volume and capacity for these services without a fuller understanding of the likely premises or availability of pharmacists to carry out these services.

2.18.6 From our perspective we currently offer patient choice of GP provider for those patients living in that area through provision of our General Medical Services contract, and our dispensary income in relation to our rural patients helps to support primary care provision to those registered patients. From a viability point of view, the addition of another pharmacy within our catchment area to the West of Bodmin town centre would further erode our dispensing patient numbers removing eligibility for patients who fall within that catchment area. The loss of dispensing patients would significantly impact the already impaired financial status of our dispensary and potentially make this service economically unviable. This would have repercussions specifically for our patients that live in our most rural and deprived areas across Bodmin moor and would ultimately then endanger the future of our branch surgery at Polyphant of over 1,100 patients registered to receive medication from this site.

2.19 Day Lewis oppose the application, stating:

2.19.1 On behalf of Day Lewis PLC, who provide pharmaceutical services from premises at 17 Dennison Road, Bodmin, PL31 2LL, I wish to object to this application for the following reasons.

2.19.2 Addressing some of the matters raised by the applicant within its application:

2.19.3 The applicant makes reference to "a significant decline in the availability of pharmaceutical services" in Bodmin. Whilst it is the case that the number of pharmacies has reduced, it does not necessarily follow that residents have difficulty accessing pharmaceutical services. The existing pharmacies are able to meet the needs of residents, and the applicant has provided no evidence to show otherwise.

2.19.4 The applicant makes specific reference to the fact the Asda pharmacy that closed was a '100 hour' pharmacy, but notably does not offer any extended opening hours within its application. It does not appear to believe that this extended hours opening [sic] was important.

2.19.5 Whilst it is correct that primary care services are centrally located within Bodmin, that is to be expected because this is where the vast majority of the town's amenities are situated. Local residents, as well as visitors, access the

vast majority of their daily needs from the town centre where the existing pharmacies are located.

2.19.6 Whilst it is true that there are some amenities, such as the hospital and the library, located to the west of the town these are clearly facilities that serve the whole town, as well as the wider area. They are not local amenities serving the needs of a discreet residential population. This is simply evidence that people living in Bodmin travel freely around the town to access a range of facilities.

2.19.7 The new housing referred to by the applicant is minimal and no evidence has been provided that suggests the residents who will live here will have any difficulties accessing pharmaceutical services. Car ownership tends to be higher in new residential developments.

2.19.8 In terms of access to services in the summer months, whilst there is clearly tourism in this part of Cornwall, Bodmin is not inundated by tourists in the same way that the seaside towns and villages are. The applicant has provided no evidence to support its assertion that people have difficulty accessing the town centre in the summer months.

2.19.9 In terms of bus travel, whilst the applicant focuses on bus route 96 (because it suits its argument to do so), it also briefly mentions buses travelling along the A389. This route is only a very short walk away from the applicant's best estimate area and buses run along this road to the town centre on average every 15 minutes. The journey time to the town centre is no more than 10 minutes.

2.19.10 The applicant cites the level of car ownership in Bodmin compared to the rest of Cornwall but in fact car ownership in this ward is broadly in line with the national average. 24.4% of households had no car at the time of the 2021 census compared to the national average of 23.5%. Can [sic] ownership is not notably low.

2.19.11 Finally, it is well known to the ICB that the pharmacy closures seen over recent years have resulted from significant shortfalls in pharmacy funding against the backdrop of large increases in costs for pharmacy operators.

2.19.12 It is important that those contractors who remain are given every opportunity to ensure the financial stability of their businesses so the pharmaceutical services that exist in Cornwall at present can be maintained. Granting applications for new pharmacies in the county will simply result in further instability for the sector.

2.19.13 The burden of proof rests with the applicant when making an application for inclusion in the pharmaceutical list but the applicant has actually provided very little relevant information.

2.19.14 In conclusion, this application falls a long way short of providing any evidence that might lead the ICB to conclude that granting it would secure improvements or better access to the provision of pharmaceutical services in the area. For that reason, the application should be refused.

2.20 Kernow LMC oppose the application in support of the impacted practices in the area stating:

2.20.1 As the regional representative body for general practitioners across the county of Cornwall and IoS, we write pursuant to our statutory functions in opposing this application and in support of the impacted practices in the area identified.

2.20.2 In our submission, we speak to the business impact as it is our duty to focus upon the resilience and sustainability of general practice, but also recognised that this is inextricably linked to the benefit for the patients within this community, to have a thriving surgery that can continue to meet their health needs.

2.20.3 We cite the following reasons for opposing this application:

2.20.3.1 Due to the chronic erosion of core GMS funding for general practice, dispensing income is an essential component in the viability of general practice. By granting this application, there will be income erosion fo, [sic] the impaceted Practice, Bosvena Helath; [sic]

2.20.3.2 The approval of this application represents high risk to the viability of the proposed new Primary Care Centre at Beacon Technology Park and may result in project failure;

2.20.3.3 The approval of this application represents a high risk of consequential jeopardy for the future of the current branch surgery in Polyphant, particularly impacting the patient population which is served by that branch and who live in a challenged, exceptionally rural part of the Practice's boundary and who rely on this branch in order to access their medications.

2.21 In their response to the representations the applicant addresses some of the views made within the interested party responses and requests the ICB to consider the opinions of patients when considering the application. They provide copies of recent reviews of patients experience of accessing pharmaceutical services in Bodmin.

2.22 When comments are circulated to the applicant and interest parties the covering letter states:

2.23 *Please note that any new information that you submit at this stage will have little or no weight placed upon it unless it can be demonstrated that you are presenting it in response to representations submitted by another party that you believe are not true or are incorrect.*

2.24 ***The SW Committee was satisfied it is not necessary to hold an oral hearing to determine the application.***

2.25 Regulation 31 (same or adjacent premises)

31.— *(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)the NHSCB 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).

2.26 There are no other contractors currently providing pharmaceutical services within the best estimate provided. The nearest pharmacies are just under a mile away in Bodmin (Boots and Day Lewis). ***The SW Committee was satisfied it is not required to refuse the application by virtue of Regulation 31.***

2.27 **CONTROLLED LOCALITY ISSUES**

2.28 The location for the proposed pharmacy is not in a controlled locality but is within 1.6km of a controlled locality.

2.29 **UNFORESEEN BENEFITS**

2.30 Reg 18(1)(b) – Improvements or better access not included in the Pharmaceutical Needs Assessment

2.31 Regulation 18 concerns 'Unforeseen Benefits' applications, which are applications where the improvements or better access that would be secured were or was not included in the relevant PNA. The current Cornwall PNA can be found here: Pharmaceutical Needs Assessment (PNA) - Cornwall Council Bodmin is included in the Three Harbours and Bosvena Health PCN, a profile for the PCN can be found here: Community and health based profiles - Cornwall Council

2.32 The overall conclusion at the time the PNA was written was:

2.32.1 The PNA concludes that, in respect of essential pharmaceutical services:

2.32.1.1 There is no current gap in services across Cornwall and the Isles of Scilly in any of the localities.

2.32.1.2 If current pharmacies remain open there are no future gaps in services across Cornwall and the Isles of Scilly in any of the localities however, given the housing developments in Newquay, Truro (Langarth) and St Austell (West Carclaze) there may be opportunities to consider relocation to enable better overall access for patients.

2.32.2 The PNA concludes that in respect of improvements and better access:

2.32.2.1 There is reasonable choice of pharmacy now and for the future.

2.32.2.2 Future improvements and better access appear on balance to be best managed through working with existing contractors rather than through the opening of additional pharmacies.

2.32.3 After considering all the elements of the PNA, Cornwall and the Isles of Scilly Health and Wellbeing Boards conclude that there is adequate provision of pharmaceutical services across Cornwall and the Isles of Scilly. Data available at the time of publication in relation to the current provision of pharmacies, suggests that a gap in pharmaceutical services is unlikely to exist during the lifetime of this PNA.

2.32.4 The growing and ageing population across Cornwall and the Isles of Scilly mean that the overall demand for health and social care services is likely to increase, particularly in terms of managing long-term conditions. However, pharmacies across Cornwall and the Isles of Scilly are well placed to deliver healthcare services to their local communities and it is anticipated that the role

they play will continue to evolve over the coming years, particularly with changes to future pharmacy and primary care provision. Whilst the core activity of community pharmacies is commissioned by NHSEI, they continue to provide a key partner for Cornwall Council and the Cornwall and Isles of Scilly Integrated Care Board, particularly in relation to improving the public's health and wellbeing and addressing health inequalities.

2.33 The SW Committee noted supplementary statements to the PNA were issued when the Boots and Asda pharmacies in Bodmin closed. The August 2024 statement concludes:

2.33.1 It is the opinion of the Cornwall and Isles of Scilly Health and Wellbeing board that these changes to the pharmaceutical list create a gap in pharmaceutical services provision that could be met by a routine application (a) to meet a current or future need for pharmaceutical services, or (b) to secure improvements, or better access, to pharmaceutical services.

2.33.2 These changes to the availability of pharmaceutical services are relevant to the granting of applications referred to in the NHS Act 2006 and the Group is satisfied that a revised Pharmaceutical Needs Assessment would be an appropriate response and that a revised PNA will be prepared and submitted for approval of the Health and Wellbeing Board in 2025.

2.34 The applicant states the PNA was written when the closure of Boots and Asda were not known about but does not refer to the supplementary statements published by the Health and Wellbeing Board in April and August 2024.

2.35 The SW Committee noted the August 2024 statement concludes that the changes listed within that statement, relating to market exits and hours changes, create a gap in pharmaceutical services provision that could be met by a routine application (a) to meet a current or future need for pharmaceutical services, or (b) to secure improvements, or better access, to pharmaceutical services. The SW Committee noted the supplementary statement indicating that a current or future need is created was somewhat ambiguous, as it does not specify whether the gap is created in response to some or all of the changes detailed in the statement. Focusing on the exit in Bodmin, as the statement is not specific to a geography, the SW Committee was of the view that it had to accept that the HWB had concluded both the detailed exits had created a gap. It was noted that NHS Resolution has in the past accepted that supplementary statements stating gaps have been created, have effectively added a conclusion to the PNA.

2.36 The SW Committee assessed the application against the criteria for Regulation 18 and determined, as the August 2024 supplementary statement does identify a gap and the application is, at least in part, predicated on the reduction in availability of pharmaceutical services subsequent to the market exits, therefore the application is **REFUSED** as the requirements of Regulation 18(1)(b) are not met.

2.37 **Appeal Rights**

2.38 The applicant will have appeal rights as the application is declined."

3 The Appeal

In a letter dated 27 May 2025 addressed to NHS Resolution, the Applicant, through its representative Rushport Advisory LLP, appealed against the Commissioner's decision. The grounds of appeal are:

3.1 “I act for Banns Pharmacy Ltd in the above application and have been instructed to submit this appeal against the decision of the Commissioner to refuse my client’s application.

3.2 As the Committee will note, the Commissioner has refused the application solely because it felt that the relevant PNA has identified the need for this pharmacy and it was therefore obliged to refuse any unforeseen benefits application.

3.3 As a preliminary matter the Committee will therefore need to determine if the need for this pharmacy was in fact properly identified within the supplementary statement highlighted by the Commissioner.

3.4 We were aware of the supplementary statement referred to by the Commissioner when my client submitted their application under regulation 18 and felt that the statement lacked clarity and did not properly identify any need to a sufficient level.

3.5 Having read the supplementary statement, it is unclear what the need identified is. If indeed a need has been identified then it is equally unclear where any new application should be made or what services it should offer, or when services should be provided. Whilst it is not a requirement for the identification of a need to go into every detail, the decision maker must be able to determine what need has been identified and what would be required from an Applicant to meet that need. The lack of any information suggests that an application to open a pharmacy anywhere in the entirety of Cornwall, even next to existing pharmacies, and offering shorter opening hours, would be approved by the Commissioner as meeting a need. However, this also cannot be a correct interpretation as the PNA / Supplementary Statement does not describe such a need. In essence, our submission is that, when the decision maker struggles to identify what need has been identified, this means that no need has been properly identified.

3.6 Assuming the Committee agrees that no need was identified within the PNA, we attach a report which provides significant detail about the issues faced by patients attempting to access services within Bodmin along with letters of support from patients that provide clear evidence of difficulty accessing pharmaceutical services.

3.7 The patient support is mostly recent, i.e. significantly later than the date of the Boots and ASDA closures and show the significant difficulties being faced by patients.”

3.8 [Supporting information provided to Committee at Appendix A]

4 Comments to the Commissioner

4.1 On reviewing the paperwork provided by PCSE, it was noted that the comments made by the Applicant in response to the representations on the application [see paragraphs 4.3 – 4.16 below] had not been circulated or seen by parties.

4.2 In the interests of transparency and fairness, NHS Resolution sought to rely on the discretion afforded in paragraph 7 of Schedule 3 of the Regulations to vary the normal procedures and to circulate these comments to parties for them to make representations on them if they so wished.

4.3 “Thank you for your letter of 3 March 2025. I act for Banns Pharmacy Limited in the above application and have been instructed by my client to submit the following reply to consultation comments received from interested parties.

4.4 **Bosvena Health**

4.5 We note that Bosvena Health claims that they are finalising “legal transactions” for a new medical centre to be built to the west of the town at the hospital site. This medical centre has been discussed for many years but without any real progress having been made. The west of Bodmin still has no provision of any sort of primary care services and my client’s application should be approved to enable patients to be able to access pharmaceutical services in this area.

4.6 In the event that a new medical centre is ever built then this will simply add to the already significant requirement for pharmaceutical services in this area and there is nothing preventing a further application for entry int [sic] the pharmaceutical list to be made as some future time.

4.7 Day Lewis and Boots may have added to their workforce as claimed by Bosvena Health, but they are still unable to cope with the demand they are experiencing and have had long serving staff leave their positions due to the pharmacies being overwhelmed by current demand.

4.8 **Day Lewis**

4.9 Day Lewis’s response can be summarised as saying that whilst there is no pharmacy to serve the west of Bodmin, patients should simply travel elsewhere to access pharmaceutical services.

4.10 Day Lewis claims that there are buses available every 15 minutes travelling along the A389 to pharmacies in Bodmin town centre. This is simply incorrect. The only buses that travel along the A389 to Bodmin town centre are the 189 and 890 services. Both are a once per day bus service.

4.11 Alternate services such as the 11 or 26 in fact turn off the A389 and travel all the way around the south of Bodmin in a long loop and a patient would have to alight the bus at Mount Folly before walking to a pharmacy. See bus route highlighted in red below. [Map provided]

4.12 Day Lewis states that it should be expected that the only pharmacies would be in the town centre as “that is where the vast majority of the town’s amenities are located”. This statement fails to consider that a very significant percentage of the town’s population live in the west of Bodmin. The statement also ignores the many facilities located to the west such as community hub, Spar, Morrison, community play grounds, library, and new housing.

4.13 Day Lewis then claims that the ICB should consider the profitability of their pharmacy rather than the needs of patients who live in or access the west of Bodmin and who will require pharmaceutical services whilst there. This is clearly not an approach that should be adopted by the ICB.

4.14 Comments from other parties are already dealt with above.

4.15 We ask the ICB to consider the opinions that are being expressed by patients when considering this application. Looking at Google reviews for Day Lewis pharmacy, the most recent are copied below. [Copies of Google reviews provided]

4.16 Whilst these comments may not have been sent to the NHS directly, this is likely because people see websites such as Google as a more effective way of making their voices heard in modern times.”

4.17 [Supporting information provided to Committee at Appendix B]

5 Summary of Representations

This is a summary of representations received on the appeal.

5.1 THE COMMISSIONER

5.1.1 "The SW Committee notes the appeal is based around the fact the application was refused because the PNA (in a supplementary statement) identifies a gap and so this was the wrong type of application. The SW Committee noted the August 2024 statement concludes that the changes listed within that statement, relating to market exits and hours changes, create a gap in pharmaceutical services provision that could be met by a routine application (a) to meet a current or future need for pharmaceutical services, or (b) to secure improvements, or better access, to pharmaceutical services. The SW Committee noted the supplementary statement indicating that a current or future need is created was somewhat ambiguous, as it does not specify whether the gap is created in response to some or all of the changes detailed in the statement. Focusing on the exit in Bodmin, as the statement is not specific to a geography, the SW Committee was of the view that it had to accept that the Health and Wellbeing Board (HWB) had concluded both exits detailed had created a gap in Bodmin. It was noted that NHS Resolution has in the past accepted that supplementary statements stating gaps have been created, have effectively added a conclusion to the PNA.

5.1.2 The SW Committee assessed the application against the criteria for Regulation 18. It determined, as the August 2024 supplementary statement does identify a gap and the application is, at least in part, predicated on the reduction in availability of pharmaceutical services subsequent to the market exits, it should, therefore, refuse the application as the requirements of Regulation 18(1)(b) are not met.

5.1.3 The SW Committee notes the applicant has recently submitted an identified improvements or better access application (in the area of St Marys Rd, Rock Lane, Queens Crescent and Trelkawney Rd [sic], Bodmin - Best estimate). This application is currently out to notification with interested parties and the end date for submissions is 19th July 2025.

5.1.4 The SW Committee looks forward to receiving the Primary Care Appeals' decision in due course."

5.2 BOOTS UK LTD

5.2.1 "Thank you for informing us of the above appeal. We do not have any comments to make in addition to those submitted to the ICB."

5.3 DAY LEWIS PLC

5.3.1 "On behalf of Day Lewis PLC, who provide pharmaceutical services from premises at 17 Dennison Rd, Bodmin PL31 2LL, I wish to respond to this appeal. We continue to object to this application and ask the Primary Care Appeals Committee ("the Committee") to take the following comments into account when considering this application.

5.3.2 Preliminary Matter

5.3.3 We note the preliminary matter raised by the appellant in respect of the grounds for refusal of its application and the wording of the supplementary statement published in August 2024.

5.3.4 We agree with the comments made by the appellant in this respect. In our opinion the [sic] was no clear need identified within the supplementary statement and therefore, by extension, the PNA. For that reason, we agree that the reasons provided by the ICB for refusing the application were incorrect.

5.3.5 However, as we discuss later, it does not follow that the tests for an application made under Regulation 18 have been met. In fact, in our opinion they have clearly not been met and this application should be refused.

5.3.6 Returning to this preliminary matter, the supplementary statement referred to four closures that had taken place across the county. One of these was the closure of the Asda Pharmacy in Bodmin.

5.3.7 The supplementary statement also listed a significant number of pharmacies that had changed ownership and three others that had changed their opening hours since the previous statement was issued.

5.3.8 It was only after listing ***all*** of these changes that the supplementary statement goes on to say [Day Lewis's emphasis]:

5.3.9 *It is the opinion of the Cornwall and Isles of Scilly Health and Wellbeing board that these changes to the pharmaceutical list create a gap in pharmaceutical services provision that could be met by a routine application (a) to meet a current or future need for pharmaceutical services, or (b) to secure improvements, or better access, to pharmaceutical services.*

5.3.10 It is noteworthy that the wording used in the statement is "**a** gap" (singular), not multiple gaps. [Day Lewis's emphasis]

5.3.11 In total the supplementary statement lists **15** changes that have taken place since the PNA was published. These cover a large part of the county. [Day Lewis's emphasis]

5.3.12 In our opinion it cannot possibly have been the intention of the HWB that every single one of these changes has created a gap. If it had been, then they would have referred to multiple gaps. In their decision report the ICB accepted that the statement was somewhat ambiguous but they went on to conclude that "*it had to accept that the HWB had concluded both the detailed exits had created a gap*". We respectfully disagree with the ICB on this matter.

5.3.13 The requirements of Pharmaceutical Needs Assessments are dealt with in Schedule 1 to the Regulations (Information to be contained in pharmaceutical needs assessments). Paragraphs 2 to 4 of Schedule 1 are reproduced below:

Necessary services: gaps in provision

2. 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;

(b) will, in specified future circumstances, need to be provided (whether or not they are located in the area of the HWB) in order to meet a future need for pharmaceutical services, or pharmaceutical services of a specified type, in its area.

Other relevant services: current provision

3. A statement of the pharmaceutical services that the HWB has identified (if it has) as services that are provided—

(a) in the area of the HWB and which, although they are not necessary to meet the need for pharmaceutical services in its area, nevertheless have secured improvements, or better access, to pharmaceutical services in its area;

(b) outside the area of the HWB and which, although they do not contribute towards meeting the need for pharmaceutical services in its area, nevertheless have secured improvements, or better access, to pharmaceutical services in its area;

(c) in or outside the area of the HWB and, whilst not being services of the types described in sub-paragraph (a) or (b), or paragraph 1, they nevertheless affect the assessment by the HWB of the need for pharmaceutical services in its area.

Improvements and better access: gaps in provision

4. 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) would, if they were provided (whether or not they were located in the area of the HWB), secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in its area,

(b) would, if in specified future circumstances they were provided (whether or not they were located in the area of the HWB), secure future improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in its area.

5.3.14 In each case, the wording refers to the HWB **identifying** services that are not provided. Use of the words “if it has” refer to the possibility that no such needs may be identified. [Day Lewis’s emphasis]

5.3.15 It is clear to us that the supplementary statement fails to clearly identify which gap its authors believe might exist. The wording of the statement suggests one gap may exist, but without further clarification, the decision maker cannot be certain that the ‘gap’ referred to is one that will be met by this application for inclusion in the pharmaceutical list. It is a matter of common sense that granting an application in Bodmin would not address any perceived shortfall in St Ives for example, which is almost 50 miles away.

5.3.16 Rushport response to comments 09 03 2025

5.3.17 We note the comments made by Rushport, on behalf of the appellant, that we had not seen previously. We wish to address those comments briefly as follows.

5.3.18 The appellant's position appears to be that “the west of Bodmin” is a discreet place that is isolated from the rest of the town. This does not reflect reality. Residents living across Bodmin access the vast majority of their daily needs from the town centre and have a choice of pharmacy provider while they are there.

5.3.19 In terms of the bus service, regardless of the fact bus routes 11 & 26 turn off the A389 through residential areas, the travel time by bus from the Beech Drive stop highlighted by the appellant and the Mount Folly stop is 9 minutes. This is not an unreasonable length of time for somebody to spend on the bus should they wish to travel to the town centre. This walking distance from the Mount Folly stop to the nearest pharmacy (Boots) is 210m, a walk of 3 minutes. The distance to Day Lewis 300m, a walk of 4-5 minutes. No evidence has been provided by the appellant which suggests that this journey causes patients undue difficulties.

5.3.20 The amenities listed by the appellant are very limited, amounting to little more than two convenience stores (the Morrisons referred to is a Morrisons Daily shop). The only exceptions are the library and the community hospital which clearly serve the whole town. The location of these larger facilities outside the town centre support supports the notion that residents of Bodmin move freely throughout the town to access a wide range of amenities.

5.3.21 In respect of the Google reviews provided, we deal with this matter later.

5.3.22 <u>The Appeal</u>

5.3.23 We have included a copy of our original letter of objection to the application submitted by the appellant. We ask the Committee to have regard to those comments when considering this appeal.

5.3.24 *Report provided by the appellant*

5.3.25 The appellant's case is set out largely in its report dated May 2025. We deal with the matters raised by the appellant, where relevant, using the same numbering as its report.

5.3.26 2.0 Preliminary Matters

5.3.27 Whilst it is correct to say that two pharmacies have closed in Bodmin within the last 18 months, the Committee may wish to consider why this is the case. Whilst we cannot speak for either Boots or Asda, it would not be unreasonable to assume that these pharmacies were closed because they were no longer financially viable. If they were profitable enterprises there would be no reason for them to close. The committee will be required to consider whether reasonable choice exists now rather than comparing the current situation to the previous position when there may have been over-provision.

5.3.28 The appellant states that both of these pharmacies were "viable in their own right" but provides no information to support this assertion. We would suggest that, for the Asda pharmacy at least, it is highly unlikely that the pharmacy was financially viable given that it opened for 72 hours per week (as required for a former 100 hour pharmacy) over 7 days and was reliant on securing notoriously expensive locum cover given the shortage of pharmacists in Cornwall. 6,000 items per month Is below the national average of items dispensed (approximately 7,000 items per month in England) not above the average as claimed by the appellant. In our experience a pharmacy dispensing this number of items over extended hours is almost certainly loss- making.

5.3.29 The appellant goes on to mention population growth since 2011 and discusses "national average levels" of pharmacy provision. Neither of these matters form part of the regulatory tests.

5.3.30 The report then goes on to highlight the supplementary statement to the PNA in direct contradiction of the appellant's earlier comment that this supplementary statement should be ignored.

5.3.31 *3.0 The site and surrounding area.*

5.3.32 3.3 The appellant discusses the Beacon public park, which it says "creates a distinctive gap between the east and west of the town". As the appellant also mentions, the park is located to the south of the town centre so it does not constitute any form of barrier between the proposed site to the west of the town and the town centre where the pharmacies are located. The residential areas of Bodmin fan out to both the east and the west, with the town centre forming a central hub between the two sides of the town.

5.3.33 3.6 Reference to 'localised congestion' is not unique to Bodmin. It is a feature of any town or city that there can be traffic congestion at times. There is no evidence that this congestion is so significant that residents do not have reasonable access to pharmaceutical services. It is correct that Fore Street is one way, although the road is plenty wide enough for traffic and benefits from wide pavements and parking / loading bays as can be seen in the image below, which shows the Boots pharmacy on the left. [photograph provided]

5.3.34 In any event most traffic does not use Fore Street but travels along the A389 and passes our pharmacy, which is located just off this main road.

5.3.35 3.8 The appellant discuses housing allocations but limited information is provided in respect of when or where these houses might be built.

5.3.36 3.11 & 3.12 The appellant discusses housing developments to the east and south of the town, yet its proposed location is to the west. Residents of these new houses will find the existing premises to be closer than the proposed pharmacy.

5.3.37 3.13 The level of new housing to the west of the town centre is very modest and does not justify the opening of a new pharmacy.

5.3.38 3.14 The 'urban expansion areas' discussed are clearly aspirational and there is no certainty if and when these may come to fruition. No weight should be placed on these potential future developments.

5.3.39 3.18 Whilst it is certainly the case that there are areas of deprivation in Bodmin, as there are across much of Cornwall, the appellant has not explained how granting its application will address this matter.

5.3.40 3.19 The appellant refers to Council defined 'neighbourhoods' but will be aware that the Regulations make no reference to neighbourhoods and their boundaries. As discussed earlier, the amenities within the area referred to by the appellant are relatively limited.

5.3.41 3.22 We note that the opening hours proposed by the appellant do not offer any additional provision to that already available within the town.

5.3.42 3.26 Equally there is nothing unique to this application in respect of the provision of a consultation room or a wide range of NHS and locally commissioned pharmacy services.

5.3.43 *4.0 The Statutory tests*

5.3.44 4.5 We have commented on the supplementary statement to the PNA previously, but it is not accurate to say this statement “is only reacting to the closure of two pharmacies in the town”. The comments in the statement refer to provision across the whole county rather than specifically in Bodmin. Changes to the town’s population or levels of congestion are not sudden or extreme to the extent that these alone would justify the granting of this application.

5.3.45 4.8 The appellant states “there is no evidence that granting the application would cause significant detriment to proper planning for provision pharmaceutical services or the existing provision of pharmaceutical services in the area”. In our opinion this is not necessarily the case. It is highly likely that the Asda and Boots pharmacies closed as they were no longer financially viable against the backdrop of significant cost increases and extreme difficulties securing pharmacist cover. The remaining pharmacies have now stabilised following these closures. Granting a new application in the town would risk further destabilising the network which is likely to be detrimental to provision dye to further disruption for patients. [sic]

5.3.46 4.11 The appellant claims that the closure of the Boots and Asda pharmacies would have “significantly disadvantaged” patient groups that share protected characteristics. However, the Boots pharmacy that closed was located in the town centre and the Asda pharmacy was located to the east of the town. Patients living to the west of the town have always travelled to the town centre or beyond to access pharmaceutical services so there is no evidence that the pharmacy closures have significantly impacted on these patients in respect of the distance they are required to travel to access a pharmacy.

5.3.47 4.13 The reduction in ‘geographical choice’ might be argued in the east of the town where there was previously a pharmacy at Asda but for residents living to the west of the town there has been no discernible reduction in the geographical access to pharmaceutical services.

5.3.48 5.0 *Review of the PNA*

5.3.49 5.1 We ask the Committee to be mindful that the 2025 PNA may have been published by the time this application is determined.

5.3.50 5.8 Whilst it may be the case that car ownership in Cornwall is not a sign of wealth, the relevant tests require the decision maker to consider the accessibility of pharmaceutical services rather than the affluence of the local population. Where car ownership is higher than average (as it is in this case) patients are able to travel longer distances to access pharmaceutical services.

5.3.51 *6.0 Healthcare in Bodmin*

5.3.52 6.7 The appellant provides information in respect of the distance from its proposed site to Boots. However, there is no explanation as to why patients would choose to start their journey at this site when many of them may live closer to the town centre.

5.3.53 6.8 It is somewhat of a stretch to suggest that patients may find it difficult to access the Boots pharmacy because they do not like reversing into parking spaces. No evidence has been provided to support this assertion.

5.3.54 6.12 Other than broad statements, the appellant has provided no evidence to support its claims that Dennison Road is congested to the point it is not reasonable for patients to drive along it, or that the car park near to Day Lewis

is unreasonably busy during peak trading days and the summer. As we have commented previously Bodmin is not a major tourist town given that it is not coastal and has very few attractions that are of any interest to tourists.

5.3.55 A recent report on domestic tourism numbers for Cornwall (https://cornwall-dmc.co.uk/news/recent-trends-in-domestic-tourism-numbers-in-cornwall/) stated the following:

5.3.56 ***Domestic tourist numbers in Cornwall have been on a steady rise in recent years, with a record 5 million visitors in 2022. However, this trend has abated somewhat in 2023, with visitor numbers down by around 10-15%. The provisional numbers for 2024 show a further decline of more than 10% back to levels last seen in 2013/14.***

There are a few reasons for this decline. First, the cost of living crisis is making it more difficult for people to afford holidays. Second, the rising cost of fuel is making it more expensive to travel to Cornwall. Third, the ongoing war in Ukraine is creating uncertainty and anxiety, which is deterring some people from booking holidays.

5.3.57 This report is at odds with the appellant's suggestion that tourism-driven congestion is becoming worse.

5.3.58 6.14 Whilst County Pharmacy Bodmin is a distance selling pharmacy, it still offers choice in respect of dispensing or remote service provision for any patient who does not wish to use our pharmacy or Boots. This pharmacy dispenses approximately 5,000 items a month so clearly has a significant patient base.

5.3.59 *7.0 Assessment against the Regulation 18 Tests.*

5.3.60 7.4 The Appellant seeks to make case that 7,200 people living to the west of the town have no choice in pharmaceutical services whatsoever. If that was the case, these same people would have no choice in respect of the vast majority above the other amenities most people require as part of their daily lives. These would include medical services and access to a full range of shops, banks, a post office or numerous other businesses located within the town centre. This statement just simply does not stand up to scrutiny.

5.3.61 It is also the case that relatively few people live within the best estimate area identified by the appellant. Many people living to the west of the town centre live closer to the existing pharmacies than they do to the proposed location. Furthermore, those living to the far west or north-west of the town live up to a mile away from the proposed location so may still be reliant on accessing pharmaceutical services by car or public transport. The population living in the immediate proximity of the proposed area is actually relatively small.

5.3.62 7.7 We have commented already on the housing developments mentioned, but it is somewhat hyperbolic to suggest that Bomin's population is growing **exponentially**. [Day Lewis's emphasis]

5.3.63 7.8 We cannot speak for Asda, but we think it is a perfectly rational explanation that a pharmacy open 72 hours per week in an area of the country where locum rates are at highest is a loss-making enterprise. Asda have stated that this was the case and no evidence has been provided by the appellant otherwise.

5.3.64 7.11 The appellant has provided no explanation of how the proposed pharmacy would complement the Community Hospital or the Treatment Centre. No

information has been provided to suggest that these providers of medical services either commission pharmaceutical services or generate a meaningful number of prescriptions that would need to be dispensed at a community pharmacy.

5.3.65 7.12 Again the appellant makes the mistake of assuming residents would walk from the proposed application site. There is no reason for most people to start their journey at this location.

5.3.66 7.13 Given that patients have no reason to start their journey at the proposed site, it is not relevant to consider only bus services that pass this location. We have provided information previously to show that there are at several buses that run every hour between the west of the town and the town centre. We have included timetables for routes 11 & 26 which show at least 2 buses per hour that travel from Beech Drive (within 200m of the best estimate area) to Mount Folly (within 200m of Boots).

5.3.67 7.18 it is notable that the population of the area identified by the appellant is younger than the national or town average. Younger residents are less likely than older residents to rely on the provision of pharmaceutical services.

5.3.68 The appellant highlights the higher than average level of car ownership and states that this “contributes to the levels of congestion in the town centre”. If the appellant's comments are correct this is simply evidence that residents living in the west of the town have access to cars and use these to travel into the town centre to access many of their daily needs. In particular it is noteworthy that there is no proper supermarket to the west of the town so residents will typically travel to the north or east of the town to access the larger supermarkets located there.

5.3.69 7.23 The statement that the “local community are fully supportive” is a stretch. Approximately 45 emails have been received from a population of 17,200. 0.26% of the resident population cannot be said to be representative of the whole community.

5.3.70 7.27 Again the appellant’s case is flawed when it comes to access. It states that the “closure of two pharmacies has placed many local people at severe disadvantage given the long distances to walk and limited public transport”. However, neither of the pharmacies that closed were located in the west of town so the closure of these pharmacies has not changed the accessibility of pharmaceutical services for the residents the appellant proposes to serve.

5.3.71 <u>Service levels at Day Lewis Pharmacy</u>

5.3.72 Finally, we wish to address some of the comments made in the Google reviews and emails provided by the appellant.

5.3.73 We accept that there have been some shortcomings in the service levels provided at our pharmacy over the last year or so. It is natural when pharmacies close that there is a period of adjustment required to adapt to the additional demand. However, our teams have worked hard to resolve these issues and have made significant progress. As a result, Google reviews have started to improve as can be seen below: {Google reviews provided]

5.3.74 We have also provided below a summary of the current position at this pharmacy and the recent improvements made provided by our local support manager:

5.3.75 *I feel it is fair to say some of the reviews were genuine towards the beginning part of the year however in the past few months we have worked extremely hard to get Bodmin in a positive place, we are pleased to share the significant progress made in Bodmin.*

5.3.76 *We have had a change of team which has made a very positive impact within the last few months, this includes moving colleagues into the branch who have been with the company for many years, as well as a dedicated registered technician.*

5.3.77 *Under the guidance of an experienced assistant manager, processes and operations have improved massively, resulting in a smoother, more efficient service.*

5.3.78 *Queues have massively reduced, and the team are actively ensuring when available more than one team member is serving to keep this to a minimum.*

5.3.79 *Our relationship with the local surgery has strengthened; they recently shared positive feedback noting the difference our team has made, with fewer patient queries now impacting their workload. They are currently referring all pharmacy first potentials directly to our team.*

5.3.80 *We have successfully starting [sic] using our central dispensing unit for MDS patients within the last week, freeing team members to spend more time supporting patients directly.*

5.3.81 *The retail area remains clean and fully stocked and patient nominations continue to grow thanks to the team's commitment to building strong relationships.*

5.3.82 *While we actively recruit a permanent pharmacist, regular relief pharmacists are seamlessly supporting daily operations. The pharmacy is now well-staffed, efficient and focused on delivering excellent patient care.*

5.3.83 We have no further comments to make at this time and look forward to hearing the outcome of this appeal in due course.

5.3.84 Should the committee wish to convene an oral hearing to determine this application we would wish to attend."

5.3.85 [Supporting information provided to Committee at Appendix C]

6 **Observations**

6.1 RUSHPORT ADVISORY, ON BEHALF OF THE APPLICANT

6.1.1 "I act for Banns Pharmacy Ltd in the above application and have been instructed to submit this reply to the comments received from interested parties on my client's appeal.

6.1.2 **The Commissioner**

6.1.3 The Commissioner does not address the merits of the application in any way, now did it do so in the original decision letter. We have nothing further to add in relation to the Commissioner's comments.

6.1.4 **Day Lewis**

6.1.5 Unsurprisingly Day Lewis continues to oppose my client's application. The Committee will note that Day Lewis, whilst taking a expressing a different opinion on the facts, does not dispute the facts themselves.

6.1.6 For example, Day Lewis states that walking to a bus stop, waiting for a bus, travelling on the bus, walking to the pharmacy and then making a return journey after maybe 1 hours of queuing does not cause "undue difficulties". Similarly, despite the extensive facilities in the west of Bodmin, Day Lewis simply describes these as "very limited".

6.1.7 It is clear from even a basic review of the maps provided, that the west of Bodmin, whilst part of the larger town, has its own services and facilities. When Bodmin had 4 pharmacies, these pharmacies appeared to be able to cope with patient demand. Even those who lived to the west of Bodmin were willing to make the journeys required to access services as they could avoid the town centre and the four pharmacies were able to cope with the level of demand they had and provide a good service. The closure of the ASDA and Boots pharmacies has focussed pharmacy provision on a tiny part of the very congested town centre. However, it is not simply aa [sic] matter of physical access to these pharmacies. Many patients report that they are having to wait for prolonged periods of time in a queue before they can even be served, but only then to find out that there is a problem with their prescription that they have not been informed about. This may necessitate a return journey on another day.

6.1.8 Day Lewis appears to take issue with our report which uses the proposed application site as the location to measure distances from. For decades, the use of application sites to measure distances has been accepted in planning and by courts in licensing cases. The approach is favoured as it creates a single point to measure from in relation to access and the alternative would be hundreds, or even thousands of potential journeys to consider. Of course the Committee can take into account whatever other information it considers relevant, but we stand by the way that the report is prepared and presented as being the most logical approach to use. We note that Day Lewis is unable to suggest an alternate method.

6.1.9 The fact is that whichever starting point is used (other than the town centre), patients face significant issues accessing pharmacies in Bodmin. In 2020 the town council attempted to help the issue with traffic congestion by banning vehicles from the town centre itself, but then had to reverse this policy as it affected disabled and elderly persons so much that the traffic congestion was considered a better option.

6.1.10 We note that Day Lewis claims that whilst they agree there are service issues at their pharmacy, these are now resolved. This is simply not true. Day Lewis lists actions it claims to have taken and provides a total of 2 positive reviews of its pharmacy from recent months. However, the reviews below have also been posted, but not mentioned by Day Lewis.

6.1.11 [Reviews provided]

6.1.12 It is simply not credible to suggest that Day Lewis has now managed to sort problems out when the overwhelming majority of patients are complaining about the exact same problems. ASDA and Boots have been closed for over a year now and it is clear that the remaining Day Lewis and Boots simply cannot cope with the work they have to do.

6.1.13 Day Lewis's response to the letters of support for my client's application that their own patients have written is to dismiss them as not being representative. The reason we say that they are representative is that there has not been a single person who has stated that my client's proposal is a bad idea or not needed. It is very difficult to get patients to write letters, but in this case they have done exactly that and in significant numbers.

6.1.14 Whilst Day Lewis would prefer to keep the status quo for obvious reasons, we submit that there is a significant amount of evidence to show that the two pharmacies in the town centre of Bodmin can no longer properly meet the needs of what is an expanding population and in a time where pharmacy services are being expanded in order to better serve the needs of patients. Granting this application would secure both improvements and better access to pharmaceutical services for those who live in, visit, or work in the west of Bodmin and would provide those living in other areas with the ability to avoid using the town centre to access healthcare services."

6.1.15 [Supporting information provided to Committee at Appendix D]

7 Consideration

7.1 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.

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

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

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

Regulation 31

7.5 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).

7.6 The Committee noted that the Applicant had stated "*NO OTHER PHARMACY AT EITHER THE SAME OR ADJACENT PROPOSED PREMISES*" in the relevant section

of the application form. The Commissioner had stated that "*There are no other contractors currently providing pharmaceutical services within the best estimate provided. The nearest pharmacies are just under a mile away in Bodmin (Boots and Day Lewis)"* and had determined that it was not required to refuse the application by virtue of Regulation 31.

7.7 Given the above findings have not been disputed by any party, the Committee was satisfied that it was not required to refuse the application under the provisions of Regulation 31.

7.8 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

7.9 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)."

7.10 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 Health and Wellbeing Board ("HWB").

7.11 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.

7.12 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).

7.13 The Committee considered the PNA prepared by Cornwall HWB, 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 to 2025 and that supplementary statements had been issued in January 2022, January 2024, April 2024 and August 2024.

7.14 The Committee noted that the Applicant seeks to provide unforeseen benefits to the patients of Bodmin.

7.15 The Committee noted the Applicant's comments in its appeal that:

7.15.1 "*As a preliminary matter the Committee will therefore need to determine if the need for this pharmacy was in fact properly identified within the supplementary statement highlighted by the Commissioner.*

7.15.2 *We were aware of the supplementary statement referred to by the Commissioner when my client submitted their application under regulation 18 and felt that the statement lacked clarity and did not properly identify any need to a sufficient level.*

7.15.3 *Having read the supplementary statement, it is unclear what the need identified is. If indeed a need has been identified then it is equally unclear where any new application should be made or what services it should offer, or when services should be provided. Whilst it is not a requirement for the identification of a need to go into every detail, the decision maker must be able to determine what need has been identified and what would be required from an Applicant to meet that need. The lack of any information suggests that an application to open a pharmacy anywhere in the entirety of Cornwall, even next to existing pharmacies, and offering shorter opening hours, would be approved by the Commissioner as meeting a need. However, this also cannot be a correct interpretation as the PNA / Supplementary Statement does not describe such a need. In essence, our submission is that, when the decision maker struggles to identify what need has been identified, this means that no need has been properly identified.*"

7.16 The Committee had regard to the comments from the parties in response to these points.

7.17 The Commissioner states that:

7.17.1 "*The SW Committee noted the August 2024 statement concludes that the changes listed within that statement, relating to market exits and hours changes, create a gap in pharmaceutical services provision that could be met by a routine application (a) to meet a current or future need for pharmaceutical services, or (b) to secure improvements, or better access, to pharmaceutical services. The SW Committee noted the supplementary statement indicating that a current or future need is created was somewhat ambiguous, as it does not specify whether the gap is created in response to some or all of the changes detailed in the statement. Focusing on the exit in Bodmin, as the statement is not specific to a geography, the SW Committee was of the view that it had to accept that the Health and Wellbeing Board (HWB) had concluded both exits detailed had created a gap in Bodmin. It was noted that NHS Resolution has in the past accepted that supplementary statements stating gaps have been created, have effectively added a conclusion to the PNA.*

7.17.2 *The SW Committee assessed the application against the criteria for Regulation 18. It determined, as the August 2024 supplementary statement does identify a gap and the application is, at least in part, predicated on the reduction in availability of pharmaceutical services subsequent to the market exits, it should, therefore, refuse the application as the requirements of Regulation 18(1)(b) are not met.*

7.17.3 *The SW Committee notes the applicant has recently submitted an identified improvements or better access application (in the area of St Marys Rd, Rock Lane, Queens Crescent and Trelkawney Rd, Bodmin - Best estimate). This application is currently out to notification with interested parties and the end date for submissions is 19th July 2025.*"

7.18 Day Lewis Plc states that:

7.18.1 "*We agree with the comments made by the appellant in this respect. In our opinion the was no clear need identified within the supplementary statement and therefore, by extension, the PNA. For that reason, we agree that the reasons provided by the ICB for refusing the application were incorrect.*

7.18.2 *However, as we discuss later, it does not follow that the tests for an application made under Regulation 18 have been met. In fact, in our opinion they have clearly not been met and this application should be refused.*

7.18.3 *Returning to this preliminary matter, the supplementary statement referred to four closures that had taken place across the county. One of these was the closure of the Asda Pharmacy in Bodmin.*

7.18.4 *The supplementary statement also listed a significant number of pharmacies that had changed ownership and three others that had changed their opening hours since the previous statement was issued.*

7.18.5 *It was only after listing **all** of these changes that the supplementary statement goes on to say:*

7.18.5.1 It is the opinion of the Cornwall and Isles of Scilly Health and Wellbeing board that these changes to the pharmaceutical list create a gap in pharmaceutical services provision that could be met by a routine application (a) to meet a current or future need for pharmaceutical services, or (b) to secure improvements, or better access, to pharmaceutical services.

7.18.6 *It is noteworthy that the wording used in the statement is "**a** gap" (singular), not multiple gaps.*

7.18.7 *In total the supplementary statement lists **15** changes that have taken place since the PNA was published. These cover a large part of the county.*

7.18.8 *In our opinion it cannot possibly have been the intention of the HWB that every single one of these changes has created a gap. If it had been, then they would have referred to multiple gaps. In their decision report the ICB accepted that the statement was somewhat ambiguous but they went on to conclude that "it had to accept that the HWB had concluded both the detailed exits had created a gap". We respectfully disagree with the ICB on this matter.*

7.18.9 *The requirements of Pharmaceutical Needs Assessments are dealt with in Schedule 1 to the Regulations (Information to be contained in pharmaceutical needs assessments). Paragraphs 2 to 4 of Schedule 1 are reproduced below: [quoted in full]*

7.18.10 *In each case, the wording refers to the HWB **identifying** services that are not provided. Use of the words "if it has" refer to the possibility that no such needs may be identified.*

7.18.11 *It is clear to us that the supplementary statement fails to clearly identify which gap its authors believe might exist. The wording of the statement suggests one gap may exist, but without further clarification, the decision maker cannot be certain that the 'gap' referred to is one that will be met by this application for inclusion in the pharmaceutical list. It is a matter of common sense that granting an application in Bodmin would not address any perceived shortfall in St Ives for example, which is almost 50 miles away.*"

7.19 The Committee noted that the Supplementary Statement dated April 2024 lists the following changes to the pharmaceutical list:

7.19.1 the closure of two pharmacies, including Boots Pharmacy, Unit 5, Bell Lane, Bodmin, Cornwall, PL31 2JL;

7.19.2 a change in ownership of one pharmacy; and

7.19.3 a change in opening hours of five pharmacies.

7.20 The Supplementary Statement then goes on to state:

7.20.1 "*It is the opinion of the Cornwall and Isles of Scilly Health and Wellbeing board that these changes to the pharmaceutical list do not create a gap in pharmaceutical services provision that could be met by a routine application (a) to meet a current or future need for pharmaceutical services, or (b) to secure improvements, or better access, to pharmaceutical services.*

7.20.2 *These changes to the availability of pharmaceutical services are relevant to the granting of applications referred to in the NHS Act 2006 and the Group is satisfied that a revised Pharmaceutical Needs Assessment would be, at this time, a disproportionate response. Whilst this was the decision at the time of issuing the statement, the PNA Steering Group recognise the fast-changing landscape of pharmacy provision and will continue to routinely assess the impact of any future closures or changes in opening hours on health inequalities and service access.*"

7.21 The Committee was therefore satisfied that the improvements or better access that the Applicant is seeking to secure were not or was not included in the PNA by way of the Supplementary Statement dated April 2024.

7.22 The Committee noted that the Supplementary Statement dated August 2024 lists the following changes to the pharmaceutical list:

7.22.1 the closure of four pharmacies, including Asda Pharmacy, Launceston Road, Bodmin, PL31 2AR;

7.22.2 a change in ownership of eight pharmacies; and

7.22.3 a change in opening hours of three pharmacies.

7.23 The Supplementary Statement then goes on to state:

7.23.1 "*It is the opinion of the Cornwall and Isles of Scilly Health and Wellbeing board that these changes to the pharmaceutical list create a gap in pharmaceutical services provision that could be met by a routine application (a) to meet a current or future need for pharmaceutical services, or (b) to secure improvements, or better access, to pharmaceutical services.*

7.23.2 ***These changes to the availability of pharmaceutical services are relevant to the granting of applications referred to in the NHS Act 2006 and the Group is satisfied that a revised Pharmaceutical Needs Assessment would be an appropriate response and that a revised PNA will be prepared and submitted for approval of the Health and Wellbeing Board in 2025.***"

7.24 The Committee noted that whilst the wording in the Supplementary Statement is specific that the changes identified "*create a gap in pharmaceutical services provision*", the subsequent wording is very broad, referring to "*a routine application (a) to meet a current or future need for pharmaceutical services, or (b) to secure improvements, or better access, to pharmaceutical services*" with no reference to specific services or the location(s) where they are required. The Committee considered that this created a significant level of ambiguity about any gap that could potentially be filled.

7.25 The Committee was of the view that in order to properly identify a gap in pharmaceutical provision, a PNA or supplementary statement would need to identify a site (or area) at which the provision of pharmaceutical services would meet a current or future need for pharmaceutical services, or secure improvements or better access to pharmaceutical services. In this case, as argued by parties, the Supplementary Statement appears to indicate that an application anywhere in Cornwall could be approved in response to the changes identified. The Committee was not persuaded that this is the intention of the Regulations nor of the HWB had erred in not providing sufficient clarity in the Supplementary Statement. The Committee considered that the level of ambiguity was such as to enable it to determine that the improvements or better access that the Applicant is seeking to secure were not or was not included in the PNA.

7.26 The Committee noted the conclusion of the Commissioner in relation to Regulation 18(1)(b) that "*The SW Committee assessed the application against the criteria for Regulation 18 and determined, as the August 2024 supplementary statement does identify a gap and the application is, at least in part, predicated on the reduction in availability of pharmaceutical services subsequent to the market exits, therefore the application is* ***REFUSED*** *as the requirements of Regulation 18(1)(b) are not met*" and that the Commissioner had not proceeded to consider the provisions of Regulation 18(2).

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

7.27.1 confirm the Commissioner's decision;

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

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

7.28 Given the Committee's determination in relation to Regulation 18(1)(b) differed to that of the Commissioner, the Committee determined that the decision of the Commissioner must be quashed.

7.29 The Committee next considered whether there should be a further notification to the parties, as detailed at paragraph 19 of Schedule 2 of the Regulations, to allow them to make representations if they so wished (in which case it would be appropriate to remit the matter to the Commissioner) or whether it was preferable for the Committee to redetermine the application. As the Commissioner had not made a finding on Regulation 18(2), the Committee considered that parties may have limited their comments on appeal to the provisions of Regulation 18(1) and it would not be appropriate for the Committee to essentially make a first-line determination in relation to Regulation 18(2). The Committee considered therefore that there should be a further notification under paragraph 19 of Schedule 2 to enable parties to make comments if they so wished.

7.30 The Committee therefore directs the Commissioner to:

7.30.1 Carry out a further notification under paragraph 19 of Schedule 2 of the Regulations to enable parties to make comments on the application in light of this determination and provide this determination to those parties; and

7.30.2 Re-determine the application taking into account the Committee's determination of Regulation 18(1)(b).

8 DECISION

8.1 The Pharmacy Appeals Committee ("Committee") appointed by NHS Resolution quashes the decision of the Commissioner and remits the matter to the Commissioner, for it to redetermine the application subject to the directions set out in this determination.

Case Manager
Primary Care Appeals