22 August 2025

REF: SHA/ 26624

APPEAL AGAINST KENT AND MEDWAY ICB DECISION TO REFUSE AN APPLICATION BY EAZIHEALTH LIMITED FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING IDENTIFIED IMPROVEMENTS OR BETTER ACCESS UNDER REGULATION 17 AT BROGDALE FARM, BROGDALE ROAD, FAVERSHAM, ME13 8XZ

8th Floor
10 South Colonnade
Canary Wharf
London
E14 4PU

Tel: 020 3928 2000
Email: nhsr.appeals@nhs.net

1 Outcome

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

1.2 The Committee determined that the application should be refused.

A copy of this decision is being sent to:
Eazihealth Limited
PCSE on behalf of Kent and Medway ICB
Paydens Limited
Boots UK Limited

NHS Resolution

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1 The Application

By application sent on 2 December 2024, Eazihealth Limited ("the Applicant") applied to Kent and Medway ICB ("the Commissioner") for inclusion in the pharmaceutical list offering identified improvements or better access under Regulation 17 at Brogdale Farm, Brogdale Road, Faversham, ME13 8XZ. In support of the application it was stated:

In response to why the application should not be refused pursuant to Regulation 31, the Applicant stated:

1.1 "Supporting Rationale for the Application

1.2 1. Increased Local Demand for Pharmaceutical Services:

1.3 Since 2018, Faversham has experienced significant residential growth due to several housing developments. The following key developments, all within a 3 to 11-minute drive of Brogdale Farm, highlight the rapid population increase:

1.3.1 Faversham Lakes Development: 400 homes

1.3.2 Preston Fields: 320 homes

1.3.3 Perry Court: 320 homes

1.3.4 Ospringe Gardens: 123 homes

1.4 2. Additionally, new developments are continually being approved and built, further expanding the local population. This growth has created a substantial and increasing demand for accessible pharmaceutical services.

1.5 3. Existing Gap in Face-to-Face NHS Services:

1.6 The nearest pharmacy is a distant-selling pharmacy, which is not designed to provide essential NHS services through face-to-face interaction.

1.7 Residents in both new developments and surrounding villages (Eastling, Throwley Forstal, Throwley, and Painters Forstal) currently lack closer access to walk-in pharmaceutical services.

1.8 4. Improved Accessibility and Convenience:

1.9 5. Brogdale Farm is strategically located with ample free parking for up to 100 cars and full wheelchair accessibility, making it an ideal location to address the needs of the growing population.

1.10 6. Approving this application will directly address the immediate and future needs of the Faversham community, ensuring better access for residents of nearby villages and housing developments.

1.11 7. Alignment with NHS Goals:

1.12 Our pharmacy will provide essential NHS pharmaceutical services, including walk-in consultations, prescription dispensing, and health advice, which are critical for underserved populations.

1.13 This aligns with the NHS's commitment to ensuring equitable and convenient access to primary healthcare services for all communities.

1.14 This application represents a proactive and strategic response to the evolving healthcare needs of the Faversham area."

In response to "In making this application I/we am/are seeking to secure the improvements or better access identified on page", the Applicant stated:

1.15 "We are attempting to meet the needs identified in the Final version of the March 2018 PNA for Swale CCG. This can be found on page 15.

1.16 "Lack of parking and access for the disabled was a recurring comment by responders to the consultation. Therefore any new contract must also demonstrate that there is adequate parking available for the business and that access for the disabled is available."

1.17 Any application must demonstrate that it can improve on the availability of services across the specific area without destabilising the current provision. of the HWB's pharmaceutical needs assessment."

In response to "Please insert the identified improvement or better access you are offering to secure here", the Applicant stated:

1.18 "Having spoken to a number of individuals, a theme that keep recurring is the lack of free or affordable car parking in the town centre of Faversham where most of the pharmacies are concentrated.

1.19 Brogdale Farm will provide free car parking for up to a hundred cars and disabled access as well."

In response to "In the box below please explain how you intend to secure the identified improvements or better access either in whole or in part", the Applicant stated:

1.20 "Meeting the Identified Improvements and Access Needs in Faversham

1.21 1. Relieving Pressure on Overburdened Town Centre Pharmacies

1.22 While there are pharmacies located in Faversham town centre, they are increasingly unable to meet the growing demand for services. Customers frequently report:

1.22.1 Longer waiting times, which affect timely access to prescriptions and healthcare advice.

1.22.2 Lack of adequate parking facilities, which poses significant challenges, especially for those driving in from surrounding areas or with mobility needs.

1.23 Our proposed pharmacy at Brogdale Farm will alleviate these pressures by providing an additional service point with ample parking more convenient experience for residents.

1.24 2. Addressing Gaps in Face-to-Face Services Beyond the Town Centre

1.25 Currently, Faversham's surrounding villages (Eastling, Throwley Forstal, Throwley, Painters Forstal and surrounding areas) lack near accessibility to face-to-face pharmacy services. By establishing a pharmacy at Brogdale Farm that can provide face to face essential services, we will:

1.25.1 Provide a convenient and central location for underserved rural communities.

1.25.2 Offer walk-in access for essential NHS services, addressing the needs of those who face barriers in reaching the town centre or accessing online services.

1.25.3 Enhance inclusivity with wheelchair-accessible facilities, ensuring accessibility for all.

1.26 3. Serving a Growing Population Due to Housing Developments

1.27 Faversham has seen a significant increase in population due to new housing developments, including:

1.27.1 Faversham Lakes Development (400 homes)

1.27.2 Preston Fields (320 homes)

1.27.3 Perry Court (320 homes)

1.27.4 Ospringe Gardens (123 homes)

1.28 These developments, all within a 3 to 11-minute drive of Brogdale Farm, have led to an increased demand for pharmacy services that current facilities struggle to meet. Future housing projects will only amplify this need.

1.29 4. Improving Accessibility and Convenience

1.30 Brogdale Farm offers significant advantages over the town centre for pharmacy services:

1.30.1 Free parking for up to 100 cars, accommodating residents who drive from surrounding villages or housing developments.

1.30.2 A less congested location, making it easier and faster for patients to access services.

1.31 5. Alignment with NHS Goals

1.32 Our proposal addresses the NHS objective of improving access to primary care services, particularly in underserved areas and growing communities. By locating a brick and mortar pharmacy at Brogdale Farm, we will provide equitable and timely access to healthcare for the local population, easing the strain on existing facilities and meeting both current and future needs.

1.33 6.This pharmacy will not only improve access for residents of Faversham and surrounding villages but will also reduce the pressure on overburdened town centre pharmacies. It provides an immediate and future-oriented solution to the healthcare challenges created by the growing population and increasing demand for services."

2 The Decision

The Commissioner considered and decided to refuse the application. The decision letter dated 29 April 2025 states:

2.1 "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.

2.2 You have a right of appeal to the Secretary of State against Kent and Medway ICB's decision. Should you choose to appeal then 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]

2.4 **Eazihealth Limited** – Identified improvement or better access

2.5 **CAS no:** CAS – 341422 – V1R9W2

2.6 **Best Address**: Brogdale Farm, Brogdale Farm Road, Faversham ME13 8XZ

2.7 **HWB:** Kent

2.8 **ICB:** Kent and Medway

2.9 **Introduction and background**

2.10 An Identified improvement or better access application had been received from Eazihealth Limited, on 2 December 2024. The Committee was now required to consider the application in accordance with Regulations 17 and 19 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.

2.11 Full details of the applicant's proposal had been notified to the various interested parties in accordance with the regulations. Comments had been received from the following parties, Paydens Ltd, Boots UK Ltd, Tesco Stores Ltd and Kent Health and Wellbeing Board. There were also follow up comments from the applicant.

2.12 **Consideration by the Committee**

2.13 The Committee had before it:

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

2.15 Department of Health guidelines on market entry by means of pharmaceutical needs assessment – Chapter 7 – Identified improvement or better access to services

2.16 Department of Health guidance on Market Entry by means of pharmaceutical needs assessment – Chapter 14 – provision of pharmaceutical services in controlled localities

2.17 The Report and annexes prepared by Primary Care Support England (PCSE) and NHS England:

2.18 The application form provided by the applicant.

2.19 The Committee noted that the applicant's fitness to practise was approved on 2 April 2025.

2.20 It was noted that the applicant's best estimate had been previously agreed.

2.21 The Committee noted that the applicant was proposing to provide essential, enhanced and advanced services, if commissioned.

2.22 The applicant also proposed core opening of 40 hours per week and total proposed opening of 44 hours per week.

2.23 The Committee considered the applicant's statement as to how they intend to secure identified improvements or better access either in whole or in part. The Applicant has stated that [see 1.18 to 1.33 above].

2.24 The information submitted by the Applicant along with the application indicates that the Applicant proposes to provide pharmaceutical services to the residents of Faversham from the best estimate location. The applicant had stated that "In making this application I/we am/are seeking to secure the improvements or better access identified on page [see 1.15 to 1.17 above].

2.25 The applicant also stated for clarification of PNA reference *"The reference to the 2018 PNA was an inadvertent oversight that does not change the underlying public need and service accessibility issues outlined in our application. Upon reviewing the 2022 PNA, we reaffirm that our application aligns with its objectives, particularly in enhancing service distribution".*

2.26 All additional information, including location, opening times and distances of surrounding pharmacies and GP Surgeries were noted and considered by the Committee.

2.27 The Committee considered Information from a virtual site visit of the Faversham area that had been undertaken by a Pharmacy Commissioning Hub representative who was present at the meeting.

2.28 The Committee considered the representations made by Paydens Ltd, Boots UK Ltd, Tesco Stores Ltd and Kent Health and Wellbeing Board – and noted the comments made by the interested parties. The Committee noted that Boots UK Ltd and Paydens Ltd, opposed the application.

2.29 The applicant's response to the representations received during the consultation period was also considered.

2.30 **Regulation 31 – Refusal: same or adjacent premises**

2.31 The Committee first considered Regulation 31(2)(a)(i) and was of the view that Regulation 31(2)(a)(i) is not met as there is currently no person on the pharmaceutical list at the premises to which the application relates.

2.32 The Committee went on to consider paragraph (a)(ii) of Regulation 31(2); whether there is a person on the pharmaceutical list providing pharmaceutical services from adjacent premises.

2.33 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.

2.34 **Regulations 40,41 and 44**

2.35 The Committee noted that the proposed pharmacy location was in a controlled locality, and therefore Part 7 of the Regulations (in particular Regulations 40, 41 and 44) did have to be considered.

2.36 ***Regulation 40*** *– Application for new pharmacy premises in controlled localities: refusal because of preliminary matters – the Committee was aware that no application has been refused within the controlled locality, nor has outline consent for GP dispensing been granted within five years of receipt of this application. There was therefore no need to refuse the application under Regulation 40.*

2.37 ***Regulation 41*** *– Applications for new pharmacy premises in controlled localities: reserved locations* – The Committee noted that the number of registered patients within 1.6km of the best estimate address was 10. The Committee further noted that interested parties had been informed that the Committee is required to make a determination on whether the location of the proposed pharmacy is in a reserved location as defined in regulation 41(3). None of the representations received contained any statement disputing the figures nor were any particular arguments made regarding the possibility that the area might be a reserved location.

2.38 The Committee determined that the area was not a reserved location and that it was now required to consider the matter of prejudice.

2.39 There are 10 dispensing patients living within 1.6km radius of the proposed best estimate address, therefore the Committee noted that if the application was approved it would be required to consider the discontinuation of arrangements for the provision of pharmaceutical services by doctors to the affected patients under Regulation 50.

2.40 The Committee agreed that if the application is approved, it was inclined that the service provided by the dispensing doctors to the affected patients should be discontinued, and that the discontinuation should be postponed in order to give the doctors reasonable notice of the discontinuation, as follows for a period of:

2.40.1 one (1) month – Northgate Medical Practice (1 patient)

2.40.2 one (1) month – Old School Surgery (Alfriston branch Surgery) (9 patients)

2.41 **Oral Hearing**

2.42 The Committee decided that it was not necessary to hold an oral hearing before determining the application.

2.43 **Regulation 17**

2.44 The Committee noted that this was an application for "Identified improvement or better access" and fell to be considered under the provisions of Regulation 17 which states: [Regulation 17(1) quoted in full].

2.45 Paragraph 4(a) of Schedule 1, reads as follows: [quoted in full].

2.46 The Committee was of the view that the onus was on the Applicant to identify where within the PNA the future improvements or better access that this application would secure are indicated, and to satisfy the Committee that the granting of this application would secure those identified improvements or better access.

2.47 The Committee noted that the Applicant if offering to meet an Identified improvement or better access in Faversham.

2.48 The Committee had regard to the Kent PNA 2022-2025 (issue date 01 October 2022) (the 'PNA') and noted that supplementary statements had been issued for July – September 2022, but not in relation to the Faversham area.

2.49 The Committee noted that there is no specific reference to Faversham in the PNA.

2.50 The Committee noted that under current provision of the local pharmaceutical services the PNA states:

2.50.1 "There is currently good access to pharmacy services by foot, public transport, and car across the locality. The population is set to increase over the next three years, but the information shows that good access will still be present. All 14 pharmacies that responded to the contractor survey indicated that they had capacity to increase both dispensing and other services. No gaps were identified". [Page 24, Kent PNA, Direct Swale Analysis 2022-2025].

2.51 The Committee also noted the PNA stated; ***"Improvements or better access: Gaps in provision. Gaps in Provision – No gaps were identified"*** [Page 24, Kent PNA, Direct Swale Analysis 2022-2025].

2.52 The Committee noted that there was no specific reference in the PNA to improvements or better access specifically in Faversham. Representations from Kent Health and Wellbeing Board stated "The applicant highlights the growing population in Swale and proposes to relieve pressure on overburdened town centre pharmacies, however, the 2022 PNA anticipated the population growth in Swale. Although the Faversham population is not specifically mentioned, consideration was given to new housing developments in the Faversham area and the PNA did not identify any future improvement or better access needs in Swale. Further, a number of pharmacy contractors in Swale indicated their capacity to increase both dispensing and other services".

2.53 The Committee noted that the Applicant had not made specific reference in their application form to any paragraphs within the PNA which had specified there is a need for improvements or better access in the Faverham [sic] area.

2.54 **Paragraph 4(a) of Schedule 1**

2.55 The Committee considered that the PNA was consistent in its terminology and that, read as a whole, it was reasonable to consider that the wording used provided the level of certainty that was required by paragraph 4(a) of Schedule 1.

2.56 The Committee was of the view that the Kent PNA 2022-2025 did not identify improvements or better access in accordance with paragraph 4(a) of Schedule 1 of the Regulations. The Committee therefore determined that the provisions of Regulation 17(2) were not met.

2.57 **Decision**

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

2.59 The Committee determined that the application should be Refused on the following basis:

2.60 The PNA has not identified an improvements or better access to which this application could meet.

2.61 The Applicant had not indicated how they would secure improvements or better access to which this application would meet in accordance with paragraph 4(a) of Schedule 1.

2.62 **Rights of appeal**

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

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

3 The Appeal

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

3.1 "I write in my capacity as Director of Eazihealth Limited to formally appeal the decision by the NHS Kent and Medway ICB to refuse our application for a new NHS pharmacy at Brogdale Farm, Faversham, submitted under Regulation 17 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

3.2 This appeal is made under the relevant provisions of Part 7 of the regulations and is supported by both regulatory grounds and factual evidence that the committee did not adequately consider.

3.3 We respectfully request that the Secretary of State reviews this decision and overturn the refusal.

3.4 1. Summary of Grounds for Appeal

3.5 We respectfully submit that the refusal should be overturned on the following grounds:

3.5.1 Factual and procedural error under Regulation 44, where the committee based its decision on GP dispensing practices from areas not geographically relevant to Faversham (specifically surgeries in Canterbury and East Sussex).

3.5.2 Over-reliance on the 2022 Kent Pharmaceutical Needs Assessment (PNA) without consideration of local patient evidence, contrary to the objectives of Regulation 17.

3.5.3 Failure to consider valid community feedback and patient demand, which has since been gathered and is available for review.

3.5.4 An apparent oversight in viewing our application as lacking alignment with Schedule 1(4)(a), despite its consistency with the NHS's stated goals for access, equity, and community care.

3.6 2. Clarification on Previous Service at Brogdale Farm, Faversham

3.7 We clarify that Brogdale Farm previously hosted a Distance Selling Pharmacy (DSP), which was operated by our company until it officially withdrew from the NHS contract with a notice in December 2024. Under NHS regulations, DSP contracts cannot be modified into walk-in service contracts; a new application must be submitted. Accordingly, this application represents a distinct and fully compliant initiative.

3.8 Recent changes to NHS commissioning rules now restrict the services DSPs are permitted to provide, rendering the model clinically irrelevant for face-to-face patient care. DSPs are no longer allowed to administer flu, COVID-19, or RSV vaccinations on site, nor are they expected to participate in the potential roll out of NHS weight management services.

3.9 While the former DSP was valued by patients, especially for vaccinations, it was never able to provide essential walk-in services, which are now in growing demand. The current application is therefore a deliberate and necessary shift to a model that provides in-person NHS care, meeting evolving healthcare needs and regulatory expectations in the Faversham area.

3.10 3. Inadequate Consideration of Real-World Accessibility Gaps

3.11 While the Committee heavily relied on the 2022 Kent PNA, it failed to adequately consider the real-world experiences of patients in the Faversham area, especially those living in:

3.11.1 Eastling

3.11.2 Throwley

3.11.3 Throwley Forstal

3.11.4 Painters Forstal

3.11.5 And newer developments such as Faversham Lakes and Perry Court

3.12 Our pharmacy would provide critical access to residents of these areas, many of whom are car-dependent and struggle to reach town-centre pharmacies that lack free parking. This need has not been disputed- only that it is not specifically highlighted in the 2022 PNA.

3.13 4. Procedural and Geographic Error Under Regulation 44

3.14 In assessing the impact of our application on dispensing doctors, the Committee referred to:

3.14.1 Old School Surgery (Alfriston Branch) - located in East Sussex

3.14.2 Northgate Medical Practice - located in Canterbury

3.15 These surgeries are not within proximity of our proposed pharmacy and do not serve patients in Faversham. This misrepresentation forms a material procedural error which invalidates the Committee's assessment under Regulation 44 and Regulation 50.

3.16 5. Local Evidence Collected Post-Decision

3.17 Following the Committee's refusal, we conducted a short public feedback exercise involving 40 individuals (This is just a small sample of opinions). The questionnaires were randomly· distributed and some of them were returned by post. Of these, 22 completed and signed questionnaires were returned and are enclosed with this appeal. Key results include:

3.17.1 When asked if they experience difficulty accessing NHS pharmaceutical services in the Faversham area:

3.17.2 3 (14%) answered Yes

3.17.3 3 (14%) answered No

3.17.4 16 (72%) answered Sometimes

3.17.5 When asked whether they had previously used the NHS services provided by the Distance Selling Pharmacy (DSP) that closed in March 2025:

3.17.6 14 (64%) answered Yes

3.17.7 8 (36%) answered No

3.17.8 When asked whether they would support a new walk-in pharmacy at Brogdale Farm without the restrictions of a DSP:

3.17.9 All 22 (100%) answered Yes

3.18 This data shows that access is variable and not universally reliable. It also demonstrates continuity of demand at the Brogdale Farm location and strong local support for establishing a full-service, face-to-face NHS pharmacy.

3.19 A total of 22 completed physical questionnaires are enclosed with this appeal. These were voluntarily completed by local residents, some of whom consented to share their names for potential follow-up. Their responses demonstrate a strong interest in NHS services at the proposed site. We respectfully request that this qualitative evidence be considered alongside the statutory PNA in determining unmet need and access variability in the Faversham area.

3.20 6. Regulatory Compliance and Public Benefit

3.21 Our application complies with Regulation 17(1) by offering:

3.21.1 Improved physical access (free parking, disabled access, and the ability to deliver walk-in NHS advanced and enhanced services when commissioned)

3.21.2 Geographical reach to rural and semi-rural communities

3.21.3 Enhanced choice, equity, and patient dignity

3.22 We also fully meet Regulation 31, as there is no pharmacy on the NHS pharmaceutical list on or adjacent to the site, and the Committee agreed no technical bar applies on location.

3.23 7. Request for Redetermination

3.24 We respectfully ask that the Secretary of State:

3.24.1 Acknowledges the factual and procedural flaws in the Committee's reasoning

3.24.2 Recognises the valid and unmet access needs in the area

3.24.3 Upholds the public interest in supporting a walk-in pharmacy in a growing and underserved part of Faversham

3.24.4 Grants this application under Regulation 17

3.25 Should further documentation or clarification be required, we would be pleased to provide it."

3.26 Enclosed: Questionnaire with the following heading, questions and answer options:

3.27 "Faversham Community Pharmacy Support Form (Eazihealth Limited)

3.28 We are applying to open a new NHS pharmacy at Brogdale Farm, Faversham, to replace the services previously provided by an Online NHS pharmacy, with limited access, which closed in March 2025.

3.29 Online pharmacies cannot offer walk-in access. This new location would provide a full range of NHS face-to-face, walk-in services to meet the needs of our local community.

3.30 Please help us by completing this short form. Your feedback will be submitted as part of our appeal to NHS England.

3.31 1. Did you previously use Eazihealth Pharmacy's NHS delivery or dispensing service?

3.31.1 Yes

3.31.2 No

3.32 2. Would you support the opening of a new NHS pharmacy at Brogdale Farm Faversham, with full walk-in access?

3.32.1 Yes

3.32.2 No

3.33 3. Have you had difficulty accessing NHS pharmacy services in the Faversham area?

3.33.1 Yes

3.33.2 No

3.33.3 Sometimes

3.34 4. Which of the following NHS services would you or your family use at the new pharmacy? *(Please tick all that apply)*

3.34.1 Covid-19 vaccinations (NHS)

3.34.2 Disabled access to the premises

3.34.3 Flu vaccinations (NHS)

3.34.4 Free NHS prescription collection and delivery

3.34.5 In-pharmacy NHS prescription dispensing

3.34.6 NHS blood pressure checks

3.34.7 NHS emergency contraception

3.34.8 NHS-funded medication advice and reviews (e.g. NMS, DMR)

3.34.9 NHS Pharmacy First Service

(for treatment of minor conditions without needing to see a GP)

3.34.10 RSV vaccinations (NHS)

3.34.11 Stop smoking support (NHS)

3.34.12 Travel vaccinations

3.34.13 Weight management support (NHS)

3.34.14 Free parking for patients

3.35 5. Please feel free to add any comments or experiences you'd like NHS England to hear:".

4 Applicant's '14 day comments' to the Commissioner

4.1 "I am writing to provide additional evidence in support of our application to establish a new NHS pharmacy in Faversham and to formally request that NHS England engage the Kent Health and Wellbeing Board (HWB) in public consultation before making a final decision.

4.2 While we acknowledge the reference to the 2018 Pharmaceutical Needs Assessment (PNA) instead of the 2022 PNA, we strongly believe that our application remains essential in addressing significant gaps in pharmaceutical services for residents. Furthermore, as no public responses have been recorded in the application review process, we believe that a public engagement exercise would provide critical insights into the actual experiences of local patients.

4.3 <u>Clarification on PNA Reference</u>

4.4 The reference to the 2018 PNA was an inadvertent oversight that does not change the underlying public need and service accessibility issues outlined in our application. Upon reviewing the 2022 PNA, we reaffirm that our application aligns with its objectives, particularly in enhancing service distribution.

4.5 Demonstrated Public Demand & Accessibility Gaps

4.6 Beyond PNA data, there is strong, real-world evidence demonstrating the necessity of our proposed pharmacy:

4.6.1 High patient preference for our location – In October 2024 alone, we administered 540 flu vaccinations and over 650 COVID-19 jabs, surpassing the numbers delivered by all three town centre pharmacies in the same period. This demonstrates that patients actively choose to access services at our location due to convenience and service availability.

4.6.2 Growing patient concerns about existing service options – Just this afternoon, a customer requested registration with our pharmacy after being informed that Boots will be introducing an annual £55.00 delivery charge (to be verified). This suggests that cost barriers may limit access to essential pharmacy services.

4.6.3 Limited service provision from existing pharmacies – Tesco Pharmacy in Faversham while offering extended hours, does not offer delivery services or COVID-19 vaccinations, further restricting patient options.

4.6.4 Pharmacy accessibility concerns – Existing pharmacy services are heavily concentrated in the town centre, making it difficult for some residents, particularly the elderly and those with mobility issues, to access essential care.

4.7 Request for NHS England to Engage the Kent HWB in Public Consultation

4.8 We note that the Kent Health and Wellbeing Board (HWB) has responded to our application, referencing the 2022 PNA. However, this does not necessarily mean that recent public engagement has been conducted specifically to assess current pharmacy accessibility in Faversham.

4.9 Given the clear demand for an alternative pharmacy provider and the absence of any formal public responses in this review process, we respectfully request NHS England to engage the Kent HWB in a public consultation before making a final decision. This would:

4.9.1 Allow residents to directly express their service needs and concerns.

4.9.2 Provide a more comprehensive assessment of patient demand, beyond statistical PNA data.

4.9.3 Ensure transparency and fairness in decision-making.

4.10 If NHS England is relying on the HWB's position, it would be reasonable for NHS England to request that the HWB verify its conclusions by seeking direct input from local residents who experience challenges in accessing pharmacy services. This would ensure that the final decision reflects actual patient experiences rather than just data-driven assumptions.

4.11 Alignment with NHS Priorities

4.12 Our proposed pharmacy directly supports NHS England's objectives by:

4.12.1 Enhancing patient choice.

4.12.2 Improving service accessibility for residents facing financial, geographical, or logistical barriers.

4.12.3 Expanding community healthcare delivery, particularly in vaccination services and home delivery support.

4.13 Given the strong patient preference for our location, our demonstrated service impact, the growing cost and accessibility concerns in existing pharmacies, and the lack of public consultation, we request that NHS England reconsiders the objections raised and evaluates our application based on its significant community benefits.

4.14 We are happy to engage further to support this process."

5 Summary of Representations

After reviewing the paperwork provided by the Commissioner, it was noted that the comments made by the Applicant in response to the representations on the application [see 4.1 to 4.14 above] and a virtual site visit report had not been circulated or seen by parties. NHS Resolution therefore applied its discretion under Schedule 3, Part 3, paragraph 7 and allowed parties the opportunity to make comments on this information. This is a summary of representations received.

5.1 Paydens Limited

5.1.1 "Thank you for your letter dated 19th June 2025 informing us of the above application.

5.1.2 We would like to object to this application for the following reason:

5.1.3 Regulation 17

5.1.4 This application has been submitted under Regulation 17 which states the following:

5.1.5 17. If -

5.1.5.1 (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 secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB; and

5.1.5.2 (b)the improvements or better access that would be secured have or has been included in the relevant pharmaceutical needs assessment in accordance with paragraph 4(a) of Schedule 1,

5.1.6 For the sake of clarity, for an application to be approved in accordance with Regulation 17, the identified need must be identified in the current PNA, which it is not.

5.1.7 There is currently an extensive range of services being offered in the area from existing pharmacies two of which offer extended opening hours and seven day access."

5.2 The Applicant

5.2.1 "On behalf of Eazihealth Limited, I wish to thank you for allowing me to make additional representation regarding the virtual site visit by the commissioner, concerning our application for a new NHS pharmacy at Brogdale Farm, Faversham, Kent.

5.2.2 In addition, we have noted your reference to the shared data on the “pharmacy support forms”.

5.2.3 The data shared was only for those who were happy for the NHS to contact them.

5.2.4 However, to further comply with GDPR, we have sent them letters directing them to the NHS resolution privacy notice with the link supplied in your letter.

5.2.5 Please find below additional representations regarding the site visit:

5.2.6 Best Estimate Address / Location

5.2.7 I can confirm that the Best Estimate address and location is correct according to the virtual site visit.

5.2.8 Rurality Status

5.2.9 Rurality status of Brogdale, in Ospringe, Faversham is controlled.

5.2.10 Description of Location

5.2.11 I appreciate the description provided in the virtual site visit report, particularly the note that Brogdale surrounding area is not densely populated and has open fields. — but I kindly invite the committee to consider how much these open fields are being converted into residential developments.

5.2.12 Along Brogdale road, quite close to Brogdale Farm (Best Estimate Address) a new 320-home residential development has now been completed (please, see attached photos and Google Earth maps). Depending on where you are within the estate, it’s just 1 to 3 minutes drive by car, 5 to 10 minutes by cycling, or around 10 to 19 minutes on foot from the proposed pharmacy site.

5.2.13 This same development includes a 66-bed care home and an 84-room hotel, both of which are already operational. These new facilities have brought an entirely different feel to the area — it is no longer just a quiet hamlet, but a growing community with a diverse and increasing population.

5.2.14 Also along Brogdale Road are residential developments on Brogdale Place and Brogdale Close. (Please see attached Google Earth maps)

5.2.15 I just wanted to highlight this gently, as I feel it’s important that the application is viewed in light of what Brogdale and its surrounding area is becoming and its potential impact on healthcare needs in Faversham in general. Not just what it was a few years ago.

5.2.16 Description of Facilities

5.2.17 I can confirm that the description of facilities on the site is accurate, except that within a mile is also a 66-bed care home near the Premier Inn Hotel. (Please, see photos)

5.2.18 Eazihealth Limited no longer operates an NHS DSP from the site as this has been voluntarily withdrawn from the NHS pharmaceutical list in December 2024, following our review of NHS pharmaceutical services policy direction.

5.2.19 Also attached are photos of the ample car parking facility and disabled access to Brogdale Farm Courtyard.

5.2.20 A new craft college (Brogdale CIC) is now on site, catering to a significant number of youths who will benefit from a new NHS Pharmacy (please, see photo)

5.2.21 Description of the Roads and Pavements

5.2.22 I appreciate the commissioner's note in the virtual site visit report regarding pedestrian safety along Brogdale Road. I'd just like to add some local clarification that may help provide a fuller picture.

5.2.23 Brogdale Road is indeed accessible via Junction 6 of the M2 and London Road via the Brenley Corner bypass. From the Brogdale junction at London Road, there is a paved footpath that runs along Brogdale Road, passing Brogdale Farm (Best Estimate Address) and continuing for approximately 200 metres beyond the farm.

5.2.24 This paved footpath is already used by residents and visitors and is sufficient to support pedestrian movement associated with the new housing developments, care home, and hotel along Brogdale Road. I've attached a photo showing this section of the road and pavement for reference.

5.2.25 As for access from the Eastling and Painters Forstal direction, members of the public typically arrive by car or bicycle, given the rural nature of the surrounding villages.

5.2.26 I hope this additional local context is helpful as the committee considers the application in view of both current accessibility and how the area is evolving.

5.2.27 Public Transport

5.2.28 Regarding the virtual site visit report's note on public transport, I would like to offer a few additional insights based on local knowledge:

5.2.29 The nearest bus stop is indeed on Tettenham Hall Way, near Aldi, served by the FH1 Faversham Loop and FH2 Villages and Loop services. From this stop, Brogdale Farm is approximately 0.6 miles away and about a 13-minute walk.

5.2.30 In addition, the 660 Bus operated by Regent Coaches runs along Brogdale Road to Painters Forstall. While the service is not frequent, it does provide an alternative public transport option for residents and visitors heading towards Brogdale Farm and the surrounding areas.

5.2.31 For those arriving by train, Faversham Railway Station is just a 6-minute taxi ride to the proposed pharmacy site, with ample taxis regularly available at the station rank.

5.2.32 The walk from the start of Brogdale Road to Brogdale Farm is approximately 18 minutes, offering a pleasant, healthy option for those on foot, especially given the presence of footpaths for all of the route.

5.2.33 These options, along with the use of private vehicles, bicycles, and motorbikes, offer multiple modes of access to Brogdale Farm and support the site's suitability for delivering accessible NHS pharmaceutical services to this growing community.

5.2.34 New Housing Developments

5.2.35 Yes, there are a number of new housing developments near Brogdale Farm. Perry Court for example , a 320 -home estate is now completed.

5.2.36 Geographical Features

5.2.37 The virtual site visit correctly notes the presence of a bridge over the M2 linking Faversham to Brogdale Farm via Brogdale Road. I would like to add that this bridge includes a dedicated pedestrian footpath, making it possible and safe for members of the public to walk or cycle across from Faversham into Brogdale.

5.2.38 This footpath forms part of the continuous pedestrian route leading toward the proposed pharmacy site and is especially useful for those accessing the area from the town side without a car. Given the new residential developments nearby, this pathway further supports the site's accessibility by multiple transport modes.

5.2.39 Nearest Pharmacy to Best Estimate Address

5.2.40 I would like to respectfully clarify a point noted in the virtual site visit report, which identified Eazihealth Pharmacy & Travel Vaccination Clinic at Brogdale Farm as the nearest pharmacy to the Best Estimate address.

5.2.41 While Eazihealth previously operated from this site under an NHS Distance Selling Pharmacy (DSP) contract, that NHS contract is no longer active, and no NHS pharmaceutical services are currently being provided from this location.

5.2.42 A voluntary notice of withdrawal from the NHS DSP contract was submitted in December 2024, as we recognised that the service model no longer aligned with the evolving direction of NHS pharmaceutical care.

5.2.43 The reference to Eazihealth in the site report appears to reflect the former DSP service, which has since been discontinued.

5.2.44 The site is not currently listed on the NHS pharmaceutical list, and there is no NHS pharmacy operating on or adjacent to the premises.

5.2.45 We hope this clarification helps the committee assess the application based on the current status of the site and the services available to the local population.

5.2.46 Next Nearest Phamacy [sic]

5.2.47 I appreciate the description in the virtual site visit report regarding the route to Newton Place Pharmacy from the Best Estimate Address at Brogdale Farm. However, I would like to offer some additional local context that may assist the committee in visualising the route and assessing access more accurately.

5.2.48 Firstly, while it is noted that Brogdale Road has one-sided paving, I would like to confirm that there are street lamps along the paved side of the road, providing lighting up to the entrance of Brogdale Farm (please see attached photos).

5.2.49 Secondly, it may be helpful to note that most residents in Faversham travel by car or bicycle, particularly those visiting healthcare services. For those who may choose to walk, the route from Brogdale Farm to Newton Place Pharmacy is a straightforward and healthy walk, not especially difficult as described.

5.2.50 Thirdly, the report mentions that the route involves crossing train lines, but in practice, pedestrians do cross over train lines but rather walk under a bridge. The road under the bridge is quite wide, accommodating cars and pedestrians alike. Infact [sic] lots of students walk under this bridge to get to school. The road then leads to the front of Faversham Station, where there is also a taxi rank, before continuing directly onto Newton Road.

5.2.51 Finally, while Newton Place Pharmacy does offer some parking , we believe it's important to highlight that this parking is time-limited and enforced with fines of up to £60 for overstaying. In addition, roadside parking nearby is restricted to permit holders, which limits options for non-residents and could discourage visits from patients travelling by car.

5.2.52 We hope this additional perspective helps the committee form a more complete view of the local landscape and accessibility, especially in considering the practical day-to-day experience of patients accessing pharmaceutical services in this part of Faversham.

5.2.53 Nearest GP Practices

5.2.54 We note the reference in the site visit report to the nearest GP practices; Newton Place Surgery and Faversham Medical Practice.

5.2.55 While both are based in the Faversham town centre, we would like to respectfully highlight that in-person or pharmacy proximity to GP surgeries are no longer the key determinant of pharmacy accessibility.

5.2.56 With the widespread use of the Electronic Prescription Service (EPS), over 90% of prescriptions are now transmitted electronically, meaning patients do not need to physically travel between their GP and pharmacy, carrying prescriptions.

5.2.57 As part of our service model, we intend to offer a local delivery service to patients who request it, ensuring that both convenience and continuity of care are maintained, even for those registered with practices further afield.

5.2.58 In this evolving healthcare environment, our aim is to bring community-level access to pharmaceutical care directly to where people live, especially in areas like Brogdale and southern Faversham where population is growing and local access is currently limited.

5.2.59 Thank you for taking the time to consider these additional representations. Our intention in sharing this information is simply to offer a more complete and local perspective, particularly as the nature of Brogdale and its surrounding area has evolved.

5.2.60 We remain committed to supporting the NHS in delivering accessible, face-to-face pharmaceutical care and believe this application reflects both the needs of the community and the direction of NHS policy.

5.2.61 We trust this additional context will assist the committee in reviewing the proposal considering the current local landscape.

5.2.62 Thank you once again for your attention and consideration."

5.2.63 [Photos provided]

5.3 Boots UK Limited

5.3.1 "Thank you for your letter dated 19th June 2025 informing us of the above appeal.

5.3.2 We stand by our comments submitted to PCSE in response to the initial application, a copy of which is enclosed for your reference.

5.3.3 Whilst not yet published, but available in draft form, the need for additional pharmaceutical provision has been considered in the Kent Health & Wellbeing Board PNA for 2025-2028, and no gap in pharmaceutical provision in Faversham highlighted.

5.3.4 Please be aware that we may wish to make further representations at a later stage and attend any oral hearing that may be held."

Letter to the Commissioner dated 5 February 2025

5.3.5 "Thank you for your letter dated 9th January 2025 informing us of the above application. Boots wish to make the following comments.

5.3.6 The applicant has submitted an application under Regulation 17 of the NHS Pharmaceutical and Local Pharmaceutical Services regulations 2013 offering to meet an identified current need within the relevant pharmaceutical needs assessment (PNA).

5.3.7 There appears to be no reference to gaps in service provision for which a further pharmacy is necessary in this locality.

5.3.8 The applicant also refers to the "March 2018 PNA for Swale" which is no longer the relevant PNA as this has now been superseded with the publication of the 2022 PNA which states:

5.3.9 Access to pharmaceutical services for the residents of Kent is good and the main conclusion of this pharmaceutical needs assessment is ***that there are currently no gaps in the provision of pharmaceutical services.*** The pharmaceutical needs assessment also looks at changes which are anticipated within the lifetime of the document. ***These include the predicted population growth*** and changes in GP opening hours. ***Given the current population demographics, housing projections and the distribution of service providers across the county, the document concludes that the current provision will be sufficient to meet the future needs of the residents during the three-year lifetime of this pharmaceutical needs assessment***, with the exception of specific areas in two localities: Folkestone & Hythe and Ashford Localities.

5.3.10 When looking at the PNA district analysis for Swathe, it also states:

5.3.11 Necessary services: - Gaps in provision

5.3.12 There is currently good access to pharmacy services by foot, public transport, and car across the locality. The population is set to increase over the next three years, but the information shows that good access will still be present. All 14

pharmacies that responded to the contractor survey indicated that they had capacity to increase both dispensing and other services. No gaps were identified.

5.3.13 **Improvements or better access: Gaps in provision**

5.3.14 **No gaps were identified.**

5.3.15 We submit that the applicant has failed to demonstrate that granting the application would secure a current need as identified within the PNA and therefore the application should be refused on this basis.

5.3.16 Please be aware that we may wish to make further representations at a later stage and attend any oral hearing that may be held."

6 Summary of Observations

This is summary of observations received.

6.1 The Applicant

6.1.1 "Thank you for your letter dated 23rd of July 2025 with reference SHA/26624 inviting final observations on the above-referenced appeal.

6.1.2 I appreciate the opportunity to respond and respectfully offer this final submission to assist the Pharmacy Appeals Committee in its deliberation.

6.1.3 1. Consideration of Representations from Boots UK Ltd and Paydens Group

6.1.4 We acknowledge the objections submitted by Paydens Ltd and Boots UK Ltd, who argue that our application should be refused on the basis that the Kent PNA 2022–2025 identifies no specific gaps in pharmaceutical provision in Faversham. While we respect their right to respond, we wish

6.1.5 to address their points as follows:

6.1.6 a. Response to Paydens Ltd

6.1.7 Paydens asserts that our application fails the test under Regulation 17 because the PNA does not identify a need in Faversham. We would like to submit that this interpretation may not fully reflect the scope and intent of Regulation 17. Regulation 17 permits applications that secure improvements or better access to pharmaceutical services that are "included" within the PNA, even if not labelled as formal gaps. The objective of the regulation is not confined to reacting to identified shortages but also includes facilitating proactive enhancements to service access and delivery.

6.1.8 Our proposal enhances access for rural and semi-rural populations in the area and offers in-person services that the prior DSP at the same location could not legally provide. The fact that the population can reach other pharmacies does not negate the improvement our proposed pharmacy would provide in terms of ease, proximity, and public convenience.

6.1.9 We note the assertion that extended hours and seven-day access are available through two existing providers. However, neither of these pharmacies provided NHS COVID-19 vaccination services during the 2024 campaign period. This highlights a practical limitation in service range and supports the case that

better access to NHS-commissioned services, such as walk-in vaccinations, was not universally available, thereby raising an equity of access concern under Regulation 17.

6.1.10 b. Response to Boots UK Ltd

6.1.11 Boots similarly refers to the 2022 PNA and its conclusion of “no gaps.” They also cite a draft 2025–2028 PNA, which, at the time of writing, is not yet published or in effect. It would be procedurally inappropriate to give substantial weight to a non-ratified document.

6.1.12 Additionally, while Boots’ objection refers to the PNA, it does not address more recent evidence we have since gathered directly from members of the public, including:

6.1.13 Public questionnaires showing that 72% of respondents reported difficulty or inconsistency in accessing NHS pharmaceutical services in the area.

6.1.14 Strong support for a walk-in NHS pharmacy model at Brogdale Farm from residents.

6.1.15 The objections overlook the impact of the closure of a previously operational DSP in the same location, which while restricted in its service offering, achieved exceptionally high NHS vaccination uptake, thereby confirming sustained public engagement with the site.

6.1.16 2. Evidence of Established Public Engagement at Brogdale Farm

6.1.17 There has been consistent patient use of the area around Brogdale Farm during the time a Distance Selling Pharmacy (DSP) operated nearby. This is evidenced by:

6.1.18 **High uptake of NHS COVID-19 vaccinations** at the location during the Spring and Winter 2024 campaigns and also the high uptake of NHS Flu vaccination for eligible people aged 18 years and above.

6.1.19 The administration of **over 500 NHS flu vaccinations in October 2024 alone**, according to PharmData records (www.pharmdata.co.uk), the **highest delivery among pharmacies in the area during that period.**

6.1.20 While the DSP could not legally offer face-to-face essential services, these figures strongly demonstrate that the site is already known, accessible, and preferred by many patients. Our proposal builds upon this familiarity to offer full NHS walk-in pharmacy services, including advanced and enhanced services where commissioned.

6.1.21 3. Focus on Equitable Access and Public Convenience

6.1.22 This application does not challenge or diminish the work of existing pharmacies. Instead, it addresses an important NHS objective; equity of access especially for:

6.1.23 Residents of Painters Forstal, Eastling, Throwley, Throwley Forstal, and new estates like Faversham Lakes and Perry Court.

6.1.24 Individuals who rely on cars, have limited mobility, or lack convenient access to current providers.

6.1.25 We are emphasising the positive public health value of a new access point that complements and strengthens the local system.

6.1.26 4. Summary

6.1.27 To conclude:

6.1.28 Regulation 17 permits applications that offer to secure improvements which are included within the PNA, even where not identified as explicit gaps.

6.1.29 Patient activity at the Brogdale Farm site has been strong and consistent, with proven NHS engagement.

6.1.30 Equitable and convenient access, particularly in semi-rural areas, is essential to NHS delivery and inclusion.

6.1.31 We therefore respectfully request that the Pharmacy Appeals Committee allows this appeal and grants the application in full.

6.1.32 Thank you once again for this opportunity."

7 Consideration

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

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

7.3 In making its application, the Applicant had highlighted page 15 of the Kent Pharmaceutical Needs Assessment ("PNA") dated 2018, where the improvements or better access which the Applicant seeks to address, had been identified. In its 14 day comments to the Commissioner, the Applicant stated that *"The reference to the 2018 PNA was an inadvertent oversight that does not change the underlying public need and service accessibility issues outlined in our application. Upon reviewing the 2022 PNA, we reaffirm that our application aligns with its objectives, particularly in enhancing service distribution".*

7.4 In a separate but linked matter, the Committee noted that Boots, in its representations, had referenced the draft 2025 PNA.

7.5 The Committee noted that Regulation 22 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations") states that:

"Refusal of routine applications that are based on neither a pharmaceutical needs assessment nor unforeseen benefits

(1) If NHS England receives a routine application to which regulation 19(6) does not apply, NHS England must refuse it unless granting it, or granting it in respect of some only of the services specified in it, would—

(a) meet a current or future need for pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB that has been included in the relevant pharmaceutical needs assessment in accordance with paragraph 2 of Schedule 1; or

(b) secure (including in the future) improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB that have or has been included in the relevant pharmaceutical needs assessment in accordance with paragraph 4 of Schedule 1.

(2) For the purposes of paragraph (1), the relevant pharmaceutical needs assessment is—

(a) the pharmaceutical needs assessment of the relevant HWB that is current at the time that NHS England takes its decision to grant or refuse the application, unless in the opinion of NHS England (or on appeal the Secretary of State) the only way to determine the application justly is with regard to an earlier pharmaceutical needs assessment, in which case the relevant pharmaceutical needs assessment is that earlier assessment; or

(b) if the relevant HWB has not published a pharmaceutical needs assessment, the pharmaceutical needs assessment of a Primary Care Trust (as extended by regulation 7(1))that relates to the locality in which the location or premises to which the application relates is or are situated."

7.6 The Committee considered that the starting point is that the relevant PNA is the PNA of the relevant Health and Wellbeing Board ("HWB") that is current at the time that the decision is taken. The Committee noted that there is no dispute that the 2022 PNA is the current PNA.

7.7 The Committee therefore had before it a copy of the 2022 PNA prepared by Kent HWB, which had been provided by the Commissioner. The Commissioner also provided a copy of a supplementary statement to the PNA named "Quarter 2 Year 2022-2023" which lists the pharmacy closures, openings, relocations, alteration of opening hours and changes of ownerships in the area.

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

7.9 The Committee dealt with the appeal by way of reconsideration of the application.

7.10 The Committee had regard to the Regulations.

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

7.12 The Committee considered that the correct course was to first consider if the application must be refused pursuant to Regulation 31. The Committee will then consider if the application must be refused pursuant to Regulation 40. If the Committee is not so required to refuse the application, it will consider the issue of reserved location pursuant to Regulation 41. The Committee will then consider the application under Regulation 17. If the Committee has determined that the Applicant is seeking the listing of pharmacy premises which are in a part of a controlled locality that is not in a reserved location, it will consider the issue of prejudice under Regulation 44 last. The reason for this staged approach and in particular for dealing with prejudice last is that if the application does not meet the requirements of Regulation 17 the Committee is required to refuse it and prejudice cannot arise. The potential for prejudice only arises if the Committee has concluded that the application meets the requirements of Regulation 17 and may be granted. Depending on the determinations of the Committee in respect of the above as well as taking into consideration of whether NHS England has

considered Regulation 50(1), the Committee will then consider Regulation 50(1) Discontinuance of arrangements for the provision of pharmaceutical services by doctors.

Regulation 31

7.13 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).

7.14 The Committee noted the Applicant's response to the question regarding Regulation 31 in the application form, as outlined at 1.1 to 1.14 above. The Committee noted the Applicant does not address the specific question, instead it provides information to support its application. However, in its appeal, the Applicant states that *"We also fully meet Regulation 31, as there is no pharmacy on the NHS pharmaceutical list on or adjacent to the site, and the Committee agreed no technical bar applies on location"*. The Commissioner in its decision letter stated that "*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".* The Committee noted that this information had not been disputed.

7.15 The Committee was therefore not required to refuse the application under the provisions of Regulation 31.

7.16 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 40

7.17 The application (which is made under Regulation 17 of the Regulations) must be assessed against the provisions of Part 7 of the Regulations and, in particular Regulation 40 which reads:

(1) This paragraph applies to all routine applications—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Regulation 41

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

(1) This paragraph applies to any routine application—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) for the reasons relating to prejudice in—

(i) regulation 44(3),

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

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

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

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

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

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

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

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

7.21 The Committee noted that the Commissioner had stated that *"the number of registered patients within 1.6km of the best estimate address was 10"* and had concluded that the site of the proposed premises is not in a reserved location and subsequently considered the provision of prejudice.

7.22 The Commissioner further stated that *"There are 10 dispensing patients living within 1.6km radius of the proposed best estimate address, therefore the Committee noted that if the application was approved it would be required to consider the discontinuation of arrangements for the provision of pharmaceutical services by doctors to the affected patients under Regulation 50.*

The Committee agreed that if the application is approved, it was inclined that the service provided by the dispensing doctors to the affected patients should be discontinued, and that the discontinuation should be postponed in order to give the doctors reasonable notice of the discontinuation, as follows for a period of

one (1) month – Northgate Medical Practice (1 patient)

one (1) month – Old School Surgery (Alfriston branch Surgery) (9 patients)".

7.23 The Committee noted that the Applicant had challenged the Commissioner's position regarding this and stated that *"In assessing the impact of our application on dispensing doctors, the Committee referred to:*

Old School Surgery (Alfriston Branch) - located in East Sussex

Northgate Medical Practice - located in Canterbury

These surgeries are not within proximity of our proposed pharmacy and do not serve patients in Faversham. This misrepresentation forms a material procedural error which invalidates the Committee's assessment under Regulation 44 and Regulation 50".

7.24 The Committee noted that the Applicant had not challenged the number of patients registered within 1.6km of the proposed best estimate address but had instead challenged the surgeries impacted. As stated above at 7.12, the Committee will consider the provision of prejudice (if it applies) once it has considered the application against Regulations 41 and 17.

7.25 Returning to the Commissioner's conclusion in respect of the reserved location status, the Committee noted that under Regulation 41(3), the relevant location is a reserved location if the number of individuals residing in that area who are on a patient list is less than 2,750 and the Commissioner is not satisfied that if pharmaceutical services were provided at the relevant location, the use of those services would be similar to, or greater than, the use that might be expected if the number of individuals residing in that area who are on a patient list were 2,750 or more. Whilst the Commissioner had not made a finding that Regulation 41(3)(b) is satisfied, no party had sought to argue this point and in the absence of any information to the contrary, the Committee determined that the relevant location is a reserved location as the number of individuals residing in that area who are on a patient list is less than 2,750 and the use that might be expected if the number of individuals residing in that area who are on a patient list was not 2,750 or more.

7.26 The Committee did not therefore need to go on to consider prejudice. The Committee next considered whether the application met the requirements of Regulation 17.

Regulation 17

7.27 The application (which was to be determined in accordance with the procedures in Schedule 2 to the Regulations) was submitted by the Applicant based on providing improvements, or better access, identified in the pharmaceutical needs assessment (pursuant to Regulation 17).

7.28 The Committee considered whether purported improvements or better access, on which the Applicant based its application, satisfied the elements of Regulation 17(1) which reads as follows:

"(1) If -

(a) NHS England receives a routine application and is required to determine whether granting it, or granting it in respect of some only of the services specified in it, would secure improvements, or better access to pharmaceutical services of a specified type, in the area of the relevant HWB: and

(b) the improvements or better access that would be secured have or has been included in the relevant pharmaceutical needs assessment in accordance with paragraph 4(a) of Schedule 1,

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

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

7.30 The Committee noted that the Applicant is proposing to meet an identified improvement or better access in Faversham.

7.31 The Applicant had not highlighted any pages in the 2022 PNA where the improvements or better access which the Applicant seeks to address, have been supposedly identified.

7.32 The Committee noted that the Commissioner had concluded that *"the Kent PNA 2022-2025 did not identify improvements or better access in accordance with paragraph 4(a) of Schedule 1 of the Regulations".*

7.33 The Committee had regard to the Executive Summary on page 7 and 8 which states:

"Access to pharmaceutical services for the residents of Kent is good and the main conclusion of this pharmaceutical needs assessment is that there are currently no gaps in the provision of pharmaceutical services.

The pharmaceutical needs assessment also looks at changes which are anticipated within the lifetime of the document. These include the predicted population growth and changes in GP opening hours. Given the current population demographics, housing projections and the distribution of service providers across the county, the document concludes that the current provision will be sufficient to meet the future needs of the residents during the three-year lifetime of this pharmaceutical needs assessment, with the exception of specific areas in two localities: Folkestone & Hythe and Ashford Localities.

The Health and Wellbeing Board has not identified any gaps in respect of securing improvements, or better access, to enhanced services in specified future circumstances in any of the twelve localities.

Based on the information available at the time of developing this pharmaceutical needs assessment the Health and Wellbeing Board has identified gaps in respect of securing improvements, or better access, to advanced services in specified future

circumstances in specific areas of three localities; Folkestone and Hythe, Ashford and Maidstone."

7.34 Whilst the Committee observed the reference to gaps in future circumstances, it noted that the areas highlighted were not relevant to this application and was of the view that the PNA does not contain any explicit reference to a need for improvements or better access in Faversham as envisaged under paragraph 4(a) of Schedule 1 to the Regulations.

7.35 The Committee noted that the PNA does not contain any specific reference to a need for improvement or better access. In fact, the PNA explicitly states that there are currently no gaps in the provision of pharmaceutical services in Kent.

7.36 The Committee noted that the Applicant has provided information regarding access, opening hours and capacity of the existing pharmaceutical provision and has provided the answers to its questionnaire as outlined at 3.26 to 3.35 above. However, the Committee was mindful that these are not relevant considerations for an application made in accordance with Regulation 17. The Committee noted that it is open to the Applicant to submit an application under an alternative Regulation.

7.37 The Committee concluded that such improvements or better access were not identified in the PNA in accordance with paragraph 4(a) of Schedule 1 of the Regulations and, as such, the provisions of Regulation 17 were not met.

Summary

7.38 The Committee was not required to refuse the application under the provisions of Regulation 31.

7.39 The Committee found no reference in the PNA to services which would fall within the description set out in paragraph 4(a) of Schedule 1 to the Regulations.

7.40 The Committee determined that, in the absence of specified circumstances in which the provision of services would secure improvements, or better access to, pharmaceutical services, the provisions of Regulation 17(1) were not met.

7.41 Therefore, the Committee did not need to go on and consider Regulation 17(2).

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

7.42.1 confirm the Commissioner's decision;

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

7.42.3 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.

7.43 Although the Commissioner had reached the same conclusion as the Commissioner, given the Committee's findings in relation to Regulation 41, the Committee determined that the decision of the Commissioner must be quashed.

7.44 The Committee went on to consider whether there should be a further notification to the parties detailed at paragraph 19 of Schedule 2 of the Regulations to allow them to make representations if they so wished (in which case it would be appropriate to remit the matter to the Commissioner) or whether it was preferable for the Committee to redetermine the application.

7.45 The Committee noted that representations on Regulation 17 had already been made by parties to the Commissioner, and these had been circulated and seen by all parties who made representations on the application, as part of the processing of the application by the Commissioner. The Committee further noted that when the appeal was circulated representations had been sought from parties on Regulation 17.

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

8 Decision

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

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

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

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

8.4.1 The PNA does not specify any circumstances in which the provision of specified services will secure improvements to, or better access to, pharmaceutical services in Faversham.

Case Manager
Primary Care Appeals