

16 September 2025

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

FILE REF: SHA/ 26661

COMMISSIONER: NOTTINGHAM AND
NOTTINGHAMSHIRE ICB
("the Commissioner")

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

PHARMACIST: THURMASTON PHARMACY LIMITED
(FN124)
("the Applicant")

PREMISES: 721 MELTON ROAD,
THURMASTON,
LEICESTER,
LE4 8ED

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

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

Outcome

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

A copy of this decision is being sent to:
Thurmaston Pharmacy Ltd
Nottingham and Nottinghamshire ICB

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

1 Introduction

- 1.1 The Applicant has applied to the Commissioner to change the days and times at which it is obliged to provide pharmaceutical services at the above premises. The Applicant seeks to keep the total number of core opening hours the same while offering a different distribution of these hours during the week.
- 1.2 The Commissioner has refused the application. The Applicant seeks to appeal to NHS Resolution.

Rights of appeal

- 1.3 Where the Commissioner has determined an application under paragraph 26 of Schedule 4 of the Regulations and has granted it in part only or has taken an action that has the effect of refusing it, paragraph 26(9) provides a right of appeal to the Secretary of State for Health and Social Care ("the Secretary of State").
- 1.4 The Secretary of State has directed NHS Resolution to determine such appeals. As an authorised officer of NHS Resolution, I have considered the appeal and have determined it, in accordance with my delegated powers.

Opening hours

- 1.5 A pharmacy's opening hours may be categorised as:

- 1.5.1 “core opening hours” (at the hours during which the pharmacy must be open by virtue of paragraph 23(1) of Schedule 4 of the Regulations), which may incorporate a direction of the Commissioner requiring fewer or greater than 40 hours and at set times and days; or
- 1.5.2 “supplementary” opening hours (other hours during which the pharmacy premises are open which are in addition to the core hours), pursuant to paragraph 23(3) of Schedule 4 of the Regulations.

Alteration of core opening hours

- 1.6 In accordance with paragraphs 1(7)(c) and 1(7)(d) of Schedule 2 of the Regulations, the pharmacy must provide, as part of an application for entry in the pharmaceutical list:
 - 1.6.1 the proposed core opening hours in respect of the premises; and
 - 1.6.2 the total proposed opening hours for the premises (having regard to both the proposed core opening hours and any supplementary opening hours).
- 1.7 The Commissioner maintains pharmaceutical lists that include the days on which and times at which, at those premises, the listed person is to provide those services during the core opening hours and any supplementary opening hours of the premises.
- 1.8 The days on which or times at which a pharmacy is obliged to provide pharmaceutical services at the premises may only be altered by the pharmacy on application under paragraph 26(1) of Schedule 4 of the Regulations, so long as the effect of that application is to reduce the total number of hours for which a pharmacy is obliged to provide, or keep the total number of hours the same.

Alteration of supplementary opening hours

- 1.9 Supplementary opening hours may be altered by the pharmacy giving notice to the Commissioner, in accordance with paragraph 23(6)(a) of Schedule 4 of the Regulations, without the need to make an application to the Commissioner.
- 1.10 There is no specific right of appeal to NHS Resolution in respect of notices given under paragraph 23(6)(a).

2. Application

In this case, the Applicant provided the following information in its application form and supporting information dated 29 May 2025:

- 2.1 “This is an application to permanently change core opening hours.
- 2.2 Current opening hours for these premises:

Monday	9am to 1pm 2pm to 6pm
Tuesday	9am to 1pm

	2pm to 6pm
Wednesday	9am to 1pm 2pm to 6pm
Thursday	9am to 1pm 2pm to 6pm
Friday	9am to 1pm 2pm to 6pm
Saturday	CLOSED
Sunday	CLOSED

2.3 Proposed core opening hours for these premises:

Monday	9am to 5.30pm
Tuesday	9am to 5.30pm
Wednesday	9am to 5.30pm
Thursday	9am to 3pm
Friday	9am to 5.30pm
Saturday	CLOSED
Sunday	CLOSED

2.4 If this is a permanent change, please state below the date from which you would like the change to take effect:

2.5 4/8/2025

2.6 Please provide information that demonstrates that your proposed core opening hours will:

2.6.1 either maintain as necessary the existing level of service provision for people in the area of the pharmacy, or other likely users of the pharmacy premises; or

2.6.2 maintain a sustainable level of adequate service provision for the people in the area of the pharmacy, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome.

2.7 We are proposing to slightly amend our core opening hours from the current schedule of Monday to Friday, 9:00 AM 1PM and 2 PM to 6:00 PM, to the following:

2.7.1 Monday–Wednesday & Friday: 9:00 AM – 5:30 PM

2.7.2 Thursday: 9:00 AM – 3 PM

2.7.3 Saturday & Sunday: Closed (no change)

2.8 The proposed changes reflect a modest adjustment to our current opening hours, based on ongoing monitoring of footfall, prescription collection patterns, and patient engagement. Our analysis has shown that the final 30–90 minutes

of trading each day see minimal patient activity, particularly on Thursdays. These adjusted hours remain aligned with the needs of our local population while ensuring more sustainable use of resources.

- 2.9 Despite the slight reduction in daily opening time, all essential and advanced NHS pharmacy services will continue to be provided as before, including:

2.9.1 Dispensing of NHS and private prescriptions

2.9.2 Provision of emergency medicines and advice

2.9.3 Advanced services such as flu vaccination, CPCS, and NMS

2.9.4 EPS (Electronic Prescription Service)

2.9.5 Support for patients with chronic conditions and medication queries

- 2.10 The revised hours continue to provide access throughout the working week, capturing core patient demand between 9:00 AM and 5:30 PM—a period which includes all peak usage times. Additionally, alternative local pharmacy providers remain available outside of our proposed hours, including evenings and weekends, ensuring that patients still have access to pharmaceutical care when needed.

- 2.11 The modest reduction in hours helps support the sustainability of the pharmacy, enabling us to maintain a safe and efficient staffing model and better manage workload and staff wellbeing. In turn, this allows us to continue delivering high-quality, dependable services to our community without disruption or decline in care standards.

- 2.12 In summary, our proposed hours represent a carefully considered adjustment that maintains the availability and quality of services for our patients, while also ensuring that our pharmacy can operate in a safe, efficient, and sustainable manner.”

3. The Decision

In a letter to the Applicant dated 26 June 2025 the Commissioner decided to refuse the application. The Commissioner stated:

- 3.1 “Thank you for your application to change the core opening hours at Thurmaston Pharmacy received on 29 May 2025.

- 3.2 Thurmaston Pharmacy Limited is seeking to change the core opening hours at the branch at 71 Melton Road, Thurmaston, Leicester, LE4 8ED.

- 3.3 **The Pharmacy’s Current core opening hours as follows;**

3.3.1 **Monday** – 09:00 to 13:00 14:00 to 18:00

3.3.2 **Tuesday** – 09:00 to 13:00 14:00 to 18:00

3.3.3 **Wednesday** – 09:00 to 13:00 14:00 to 18:00

- 3.3.4 **Thursday** – 09:00 to 13:00 14:00 to 18:00
- 3.3.5 **Friday** – 09:00 to 13:00 14:00 to 18:00
- 3.3.6 **Saturday** – Closed
- 3.3.7 **Sunday** – Closed
- 3.4 **The pharmacy's proposed core opening hours are as follows;**
 - 3.4.1 **Monday** – 09:00 to 17:30
 - 3.4.2 **Tuesday** – 09:00 to 17:30
 - 3.4.3 **Wednesday** – 09:00 to 17:30
 - 3.4.4 **Thursday** – 09:00 to 15:00
 - 3.4.5 **Friday** – 09:00 to 17:30
 - 3.4.6 **Saturday** – Closed
 - 3.4.7 **Sunday** – Closed
- 3.5 The Pharmaceutical Services Regulation Committee (PSRC) reviewed the application on 17 June 2025 and the decision was made to reuse the application.
- 3.6 The reasons for the refusal were as follows;
- 3.7 You stated in your application that the revised hours continue to provide access throughout the working week, capturing core patient demand between 9:00 AM and 5:30 PM—a period which includes all peak usage times. The PSRC noted that there is no evidence that the existing level of service provision is either unnecessary or not a realistically achievable outcome.
- 3.8 You also stated that additionally, alternative local pharmacy providers remain available outside of our proposed hours, including evenings and weekends, ensuring that patients still have access to pharmaceutical care when needed. The PSRC noted that no information had been provided on the location of the other pharmacies, their opening hours or the services provided. In addition, no information had been provided to demonstrate that those accessing Thurmaston Pharmacy would be able to access the same services at those other pharmacies between 17:30 and 18.00 in the evenings Monday to Friday. The PSRC could therefore not be satisfied that the existing level of service provision would be maintained by other pharmacies in the area.
- 3.9 The PSRC noted that you had not sought to demonstrate that the proposed core opening hours would maintain a sustainable level of adequate service provision for the people in the area of the pharmacy, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome.

- 3.10 In summary, based on the information provided, the PSRC was not satisfied that the pharmaceutical services provision that would result from your proposed hours would maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises. The PSRC was satisfied that maintaining the current levels of service provision is a realistically achievable outcome and therefore you cannot rely on paragraph 24(1)(b), Schedule 4 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations, as amended.
- 3.11 The PSRC therefore refused the application.
- 3.12 You have the right of appeal to the Secretary of State against the PSRC's decision.
- 3.13 Should you choose to appeal, then you should send in writing 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
- 3.14 NHS Resolution
8th Floor
10 South Colonnade
Canary Wharf
London
E14 4PU."

4. The Appeal

In a letter to NHS Resolution received on 10 July 2025 the Applicant appealed against the Commissioner's decision. The grounds of appeal are:

- 4.1 "I am writing on behalf of Thurmaston Pharmacy Limited to formally appeal the decision of the Pharmaceutical Services Regulation Committee (PSRC) dated 17 June 2025, which refused our application to amend the core opening hours at our branch located at 721 Melton Road, Thurmaston.
- 4.2 We acknowledge the PSRC's concerns regarding the evidence provided to demonstrate that the proposed reduction in core opening hours would maintain an adequate and sustainable level of pharmaceutical services for the local community. To address these concerns, we have conducted a detailed internal audit of patient visits, pharmacy sales, and phone enquiries during the extended hours over the last three months. The audit data, which is attached with this letter, shows minimal patient activity and service demand during the extended hours beyond our proposed core opening times, supporting our position that the revised hours will continue to meet patient needs effectively.
- 4.3 Regarding the PSRC's observation that we had not provided sufficient information about alternative local pharmacy providers available outside our proposed hours (two of which are over-night pharmacies), including their locations, opening hours, and services, we now provide the following details to demonstrate that pharmaceutical care remains accessible to patients during these times:

4.4 Alternative Pharmacies Within Proximity to Thurmaston Pharmacy:

Pharmacy Name	Address	Distance from LE4 8ED (approx. by car/public transport)	Opening Hours (Mon-Fri)	Core Services Provided
Pattani Chemist	575 Melton Road, Leicester LE4 8EG	0.3 miles	09:00 – 18:00	Prescription dispensing, OTC sales, NHS services including flu vaccinations and health checks
ASDA Pharmacy	Barkby Thorpe Lane, Leicester LE7 3FG	0.7 miles	08:00 – 22:00	Prescription dispensing, OTC sales, smoking cessation, health advice
Boots Pharmacy	Thurmaston Shopping Centre, Leicester LE4 8BX	0.7 miles	09:00 – 20:00	Prescription dispensing, OTC sales, NHS services, minor ailments scheme
Silverdale Chemist	Silverdale Road, Leicester LE4 9QJ	0.9 miles	08:30 – 18:30	Prescription dispensing, OTC sales, medication reviews, flu vaccinations

4.5 All these pharmacies are located within a 2-mile radius of Thurmaston Pharmacy, easily accessible by public transport or car.

4.6 Availability of Services Between 17:30 and 18:00, Monday to Friday

4.7 Each of these pharmacies remains open beyond 17:30 and continues to provide the following essential services during this time frame:

4.7.1 Prescription dispensing, including urgent prescriptions

4.7.2 Over-the-counter (OTC) medicines sales

4.7.3 Health advice and consultations from qualified pharmacists

4.7.4 Additional NHS services such as flu vaccinations and health checks

4.8 This ensures that patients who currently access Thurmaston Pharmacy during the proposed reduced hours can continue to receive equivalent pharmaceutical care at these alternative providers.

4.9 Maintaining the current extended hours places operational strain disproportionate to the actual patient demand. The proposed core opening hours will enable us to focus resources effectively on peak patient needs while ensuring patients continue to have access to full pharmaceutical services both at our pharmacy and at alternative local providers.

- 4.10 Unlike pharmacies located directly adjacent to GP surgeries, Thurmaston Pharmacy is situated at a significant distance from local surgeries. This geographic factor means that when surgeries close, patient footfall and enquiries at our pharmacy reduce sharply, particularly during late afternoons. Historically, GP surgeries within a 3-mile radius of Thurmaston Pharmacy have closed earlier on Thursdays, reducing this patient footfall even further. This spatial separation reinforces the appropriateness of the proposed reduced hours and further differentiates our service dynamics from other providers.
- 4.11 In response to the PSRC's conclusion that maintaining the current extended opening hours is necessary and realistically achievable under paragraph 24(1)(b) of the NHS Regulations, we respectfully disagree. Our detailed audit data from the past three months clearly shows that patient visits, pharmacy sales, and phone enquiries during the proposed reduced hours are minimal, demonstrating that the current longer hours are not required to meet patient demand. Furthermore, operating the extended hours imposes an operational strain on our pharmacy, impacting staff wellbeing and resource efficiency without corresponding patient benefit. The purpose of paragraph 24(1)(b) is to ensure that pharmaceutical services remain adequate and patient-focused—not to enforce extended hours that are unsupported by actual usage patterns. Our proposed core opening hours offer a sustainable, evidence-based service model that prioritizes accessibility during times of genuine patient need, ensuring high-quality pharmaceutical care is maintained.
- 4.12 In light of the PSRC's concerns regarding the adequacy of our initial application, we have now provided comprehensive additional information to address the identified gaps. This includes detailed audit data demonstrating minimal patient activity during the extended hours beyond our proposed core opening times, information on alternative local pharmacies that remain open beyond 17:30 and continue to provide essential services, and an explanation of the operational considerations and geographic context that support the appropriateness of the proposed reduced hours. We believe this additional evidence comprehensively addresses the PSRC's concerns and supports our position that the revised hours will continue to meet patient needs effectively.
- 4.13 Thank you for your time and consideration. Please feel free to contact us if further information is required."

5. **Representations**

This is a summary of representations received on the appeal in response to the appeal.

5.1 The Commissioner

5.1.1 "Thank you for your letter dated 15 July 2025; The East Midlands Primary Care Team on behalf of Leicester, Leicestershire and Rutland Integrated Care Board would like to make the following representations.

5.1.2 **Relevant Regulations**

5.1.3 Paragraph 26, Schedule 4 – determination of pharmacy premises core opening hours instigated by an NHS pharmacist [The National Health](#)

[Service \(Pharmaceutical and Local Pharmaceutical Services\) Regulations 2013](#)

- 5.1.4 Paragraph 24(1), Schedule 4 – matters to be considered when issuing directions in respect of pharmacy premises core opening hours [The National Health Service \(Pharmaceutical and Local Pharmaceutical Services\) Regulations 2013](#)
- 5.1.5 Regulation 65 – core opening hours conditions [The National Health Service \(Pharmaceutical and Local Pharmaceutical Services\) Regulations 2013](#)
- 5.1.6 Regulation 65A – continuity of opening hours directions [The National Health Service \(Pharmaceutical and Local Pharmaceutical Services\) Regulations 2013](#)
- 5.1.7 An application to permanently change core opening hours at Thurmaston Pharmacy Limited, 721 Melton Road, Thurmaston, Leicester, LE4 8ED was received on 29 May 2025 and the decision was made to refuse the application.
- 5.1.8 A decision letter was sent to the pharmacy on 01 July 2025 confirming the reasons why the application was refused, these were as follows;
- 5.1.9 The appellant stated in their application that the revised hours continue to provide access throughout the working week, capturing core patient demand between 9:00 AM and 5:30 PM—a period which includes all peak usage times. The PSRC noted that there was no evidence that the existing level of service provision is either unnecessary or not a realistically achievable outcome.
- 5.1.10 The appellant also stated that alternative local pharmacy providers remain available outside of our proposed hours, including evenings and weekends, ensuring that patients still have access to pharmaceutical care when needed. The PSRC noted that no information had been provided on the location of the other pharmacies, their opening hours or the services provided. In addition, no information had been provided to demonstrate that those accessing Thurmaston Pharmacy would be able to access the same services at those other pharmacies between 17:30 and 18.00 in the evenings Monday to Friday. The PSRC could therefore not be satisfied that the existing level of service provision would be maintained by other pharmacies in the area.
- 5.1.11 I note that the contractor has now provided details of the additional pharmacies and has provided details of an audit, had this information been provided at the time the application was submitted a different decision may have been made, the regulations clearly state that the contractor as part of their application must provide the Integrated Care Board with such information as the ICB may reasonably request in respect of the matters that the ICB must seek to ensure pursuant to paragraph 24(1) which states that:

- 5.1.12 Subject to paragraph 26(2A) and except where paragraph 26(2ZB) applies, where the ICB issues a direction for setting any days or times for opening hours under this Part, or determines them without issuing a direction, it must in doing so seek to ensure that the days and times at which pharmacy premises are open for the provision of pharmaceutical services in the area in which the premises that are the subject of the direction are located are such as—
- 5.1.13 (a) to maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises; or
- 5.1.14 (b) to maintain a sustainable level of adequate service provision for the people in that area or other likely users of the pharmacy premises, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome.
- 5.1.15 The appellant acknowledged the PSRC's concerns regarding the evidence provided to demonstrate that the proposed reduction in core opening hours would maintain an adequate and sustainable level of pharmaceutical services for the local community. To address this the contractor has now conducted a detailed internal audit of patient visits, pharmacy sales, and phone enquiries during the extended hours over the last three months. This audit was not mentioned or provided with the original application. The audit attached to the application to the appeal does not provide information as to why the patients attended the pharmacy.
- 5.1.16 The appellant has now provided the information for the other pharmacies within the area but as previously stated this was not included as part of the original application and therefore would not have been part of the decision-making process. Due to this omission the committee therefore could not be satisfied that the existing level of service provision would be maintained by other pharmacies in the area.
- 5.1.17 With regards to the appellants claim that the pharmacy is situated at a significant distance from local surgeries, the pharmacy is located within 0.4 miles of Thurmaston Health Centre which provides the pharmacy with 37% of its prescriptions. This health center [sic] is open until 18:30 in the evening so patients may require pharmaceutical services up to and including this time. Thurmaston Pharmacy is the 2nd closest to this health center [sic]. In March 2025 the pharmacy dispensed 5267 prescriptions for 52 GP practices.
- 5.1.18 The appellant has stated within their appeal that they disagree with the committee with regards to the conclusion that maintaining the current extended opening hours is necessary and realistically achievable under paragraph 24(1)(b) of the NHS Regulations, their reasons given for this disagreement was that the detailed audit provided with the appeal demonstrates that the hours are no longer required, however, although the numbers are low there are some patients using the pharmacy at the times the applicant wishes to close. The audit does not confirm why the

patients attended the pharmacy, the health centre is still open until 18:30 and as previously stated the patients may require an emergency prescription or other services up until this time.

5.1.19 In summary the regulations are very clear on what is expected by pharmacies applying to change their core opening hours. The information should have been provided with the application in order for the committee to make an informed decision. There are still patients attending the pharmacy at the times in which the pharmacy wishes to close, and the audit clearly shows this. Providing the information after the application has been reviewed by the PSRC is not in line with the application process or the regulations.

5.1.20 Due to the omission the committee had no choice but to refuse the application as they were not satisfied that the pharmaceutical services provision that would result from the proposed hours would maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises.

5.1.21 I would like to take this opportunity to respond to any further representations provided by Thurmaston Pharmacy Limited, 721 Melton Road, Thurmaston, Leicester, LE4 8ED.”

5.1.22 [Copy of application and decision letter provided].

6. Observations

No observations were received.

7. Consideration

7.1 I note the following:

7.1.1 The Applicant's core opening hours total 40 hours and the Applicant proposes to redistribute those 40 core opening hours pursuant to paragraph 26 of Schedule 4.

7.2 The Applicant proposes to:

7.2.1 Open between 1pm to 2pm Monday to Friday;

7.2.2 Close at 5.30pm instead of 6pm Monday, Tuesday, Wednesday and Friday; and

7.2.3 Close at 3pm instead of 6pm on Thursday.

7.3 The Regulations, which came into force on 1 April 2013, have been amended a number of times. Certain amendments, relating to pharmacy premises opening hours, came into force with effect from 25 May 2023.

7.4 Paragraph 26(1) states:

“26.— (1) An NHS pharmacist (P) may apply to NHS England for it to change the days on which or times at which P is obliged to provide pharmaceutical services during core opening hours at P's pharmacy premises in a way that—

(a) reduces the total number of hours for which P is obliged to provide pharmaceutical services at those premises each week ...; or

(b) keeps that total number of hours the same.”

7.5 I have first considered paragraph 26(2) of Schedule 4 of the Regulations, which reads as follows:

“Except where sub-paragraph (2A) applies, where P makes an application under sub-paragraph (1), as part of that application P must provide NHS England with such information as NHS England may reasonably request in respect of the matters that NHS England must seek to ensure pursuant to paragraph 24(1).

7.6 Paragraph 24(1) reads as follows:

“24 (1) Subject to paragraph 26(2A), where NHS England issues a direction for setting any days or times for opening hours under this Part, or determines them without issuing a direction, it must in doing so seek to ensure that the days and times at which pharmacy premises are open for the provision of pharmaceutical services in the area in which the premises that are the subject of the direction are located are such as –

(a) to maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises; or

(b) to maintain a sustainable level of adequate service provision for the people in that area or other likely users of the pharmacy premises, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome.

7.7 Paragraph 24(2) states:

(2) In considering the matters mentioned in sub-paragraph (1), NHS England –

(a) must treat any local pharmaceutical services being provided in its area as if they were pharmaceutical services being so provided, and

(b) may have regard to any pharmaceutical services that are being provided in its area during supplementary opening hours.

7.8 I will start by considering the application of paragraph 24(1)(a) and whether the proposed hours are such as to maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises. I will then consider the application of 24(1)(b) if that is required.

- 7.9 To properly assess the application against paragraph 24(1)(a), I need to determine the existing level of service provision. I then need to consider whether it is necessary to maintain the existing level of service provision. If it is necessary to maintain the existing level of service provision, I need to consider whether, despite the proposed change of hours, the existing level of service provision to people in the area or other likely users would be maintained, e.g. by nearby pharmacies being open and providing the same level of service provision.
- 7.10 If I consider it unnecessary to maintain the existing level of service provision or that it is necessary to maintain the existing level of service provision but doing so is not a realistically achievable outcome, then I need to consider paragraph 24(1)(b) and determine whether the proposed change of hours are such that a sustainable level of adequate service provision would be maintained.
- 7.11 I therefore need to be provided with sufficient information to understand a range of matters, starting with the existing level of service provision. The references to days and times in paragraph 24(1) leads me to consider that the reference to "level" of service provision in paragraph 24(1)(a) is mainly focused on the days and times services are provided. I would point out that "level" of service provision could also refer to other characteristics of the service, such as types and range of services provided, geographical access to services provided, other aspects of physical access aside from location, and the quality of services provided.
- 7.12 The existing level of service provision has been outlined by the Applicant, in its own core hours provision, and by an indication of the hours that pharmacies in the local area are open.
- 7.13 I have next considered whether it is necessary to maintain the existing level of service provision. It could be argued that as the Applicant is not looking to reduce the number of hours each week that services are provided, then from a pure "number of hours of service provision each week" perspective, the existing level of service provision is maintained such that consideration of whether it is necessary to maintain the level of service provision is not needed.
- 7.14 However, the Applicant is applying to change the times that services are provided. Taking Thursday as an example, the level of service provision at the Applicant's premises on a Thursday is not being maintained. I consider it appropriate to determine if it is necessary to maintain the existing level of service provision and then, if deemed necessary, consider if the opening hours of other pharmacies mean that level is maintained.
- 7.15 To determine whether it is necessary to maintain the existing level of service provision, I have had regard to the comments by the Applicant of those using the pharmacy. If I am satisfied that there is reliable evidence indicating no users of the pharmacy at the relevant times that the pharmacy wishes to close, this might support an argument that maintaining the existing level of service provision is not necessary.
- 7.16 In its appeal, the Applicant has provided audit data for "*patient visits, pharmacy drug and over the counter sales and phone enquiries during the extended*

hours” in the months of February to April 2025. The reference to extended hours creates a degree of ambiguity as it indicates that the Applicant is wishing to increase its hours however from looking at the application form, I am content that this is not the case and the Applicant is applying to redistribute its hours, as outlined above at 7.2.1 to 7.2.3. I have therefore taken the reference to extended hours to mean the hours that the Applicant is proposing to close.

- 7.17 From the information provided, it is clear that there are people using the pharmacy at the times the Applicant wishes to close, albeit low in numbers. I consider that it is relevant to have information as to why persons are using the pharmacy at these times. It is difficult to draw conclusions about the necessity of maintaining the existing level of service provision if there is no information on what specific services, if any, are being provided at those times. Whilst the audit provides some explanation as to the reason for visiting, it is very broad in scope and does not differentiate between those who were coming to collect a prescription, for example, and those that were coming to seek advice or access a further pharmaceutical service or a non-pharmaceutical service.
- 7.18 Without this information it is difficult to make an assessment of whether it is necessary to maintain the existing level of service provision and this in turn makes it difficult to apply paragraph 24(1)(a). I consider it reasonable to take the position that unless I am provided with evidence to the contrary, I should consider that it is necessary to maintain the existing level of service provision.
- 7.19 Having determined that it is reasonable to assume that maintaining the existing level of service provision is necessary, I now need to consider if, despite the changes to hours, there is maintenance of the existing level of service provision. The Applicant cannot maintain this as it is changing its hours but I note the undisputed information from the Applicant with regard to other pharmacies in the area that have opening hours during the times that the Applicant is proposing to close, namely Pattani Chemist, Asda Pharmacy, Boots Pharmacy and Silverdale Chemist.
- 7.20 If I consider that the characteristics of other pharmacies, e.g. where they are located, their access, the services provided and the times they are open, means that the level of service provision is maintained for people in the local area or other likely users of the pharmacy, then I am able to grant the application under paragraph 24(1)(a).
- 7.21 It is worth noting that characteristics of the persons using the pharmacy might be relevant here as well as from where they start their journey to the pharmacy. I do not consider that every single individual need should be considered at length in this regard but it would be helpful to have this information to be certain that the existing level of service provision would be maintained via local pharmacies.
- 7.22 The Applicant has provided information regarding the opening hours and “*approx. by car/public transport*” distances to alternative pharmaceutical services. I note that all four pharmacies are open at times the Applicant is wishing to close. Pattani Chemist is open from 9am to 6pm Monday to Friday and is 0.3 miles away. Asda Pharmacy is open from 8am to 10pm Monday to Friday and is 0.7 miles away. Boots Pharmacy is open from 9am to 8pm and is

also 0.7 miles away. Silverdale Chemist is open from 8.30am to 6.30pm Monday to Friday and is 0.9 miles away. Neither the Applicant nor the Commissioner has confirmed if the opening hours outlined are core or supplementary hours however I note the Applicant's comment that *"two...are over-night pharmacies"* which I presume means they are 100 hour pharmacies.

7.23 The Applicant states that all the alternative pharmacies are *"easily accessible by public transport or car"* however no further information has been provided to support this view. The Applicant has not provided any information on the routes required to walk to these pharmacies, for example, whether there is sufficient street lighting, dropped kerbs and pedestrian crossings where necessary. Nor has any information been provided in relation to car ownership, parking facilities or the routes involved for those with access to a car or on the provision of public transport in the area, which patients may use when travelling to the other pharmacies. Further, the audit data provided does not show how patients accessed the Applicant's pharmacy.

7.24 In its application, the Applicant states that *"Despite the slight reduction in daily opening time, all essential and advanced NHS pharmacy services will continue to be provided as before, including:*

Dispensing of NHS and private prescriptions

Provision of emergency medicines and advice

Advanced services such as flu vaccination, CPCS, and NMS

EPS (Electronic Prescription Service)

Support for patients with chronic conditions and medication queries."

7.25 In its appeal, when discussing the alternative pharmacies, the Applicant states that *"Each of these pharmacies remains open beyond 17:30 and continues to provide the following essential services during this time frame:*

Prescription dispensing, including urgent prescriptions

Over-the-counter (OTC) medicines sales

Health advice and consultations from qualified pharmacists

Additional NHS services such as flu vaccinations and health checks."

7.26 I also note the "Core Services Provided" by the alternative pharmacies in the table provided by the Applicant with its appeal. It does not appear from the information provided that any of the alternative pharmacies offer the New Medicine Service or CPCS. Therefore, patients will not be able to access the same services from the alternative pharmacies at the times the Applicant is wishing to close. Further, due to the way the information has been provided it is difficult to know for certain which advanced services the Applicant is currently providing.

- 7.27 I am therefore struggling to be satisfied that the existing level of service provision would be maintained by virtue of the existence of other local pharmacies.
- 7.28 I have decided that it is necessary to maintain the current service provision but, due to the cumulative effect of:
- 7.28.1 a lack of information about the services provided at the Applicant's pharmacy;
 - 7.28.2 a lack of information about the demand for services at the pharmacy during the hours the Applicant wishes to close;
 - 7.28.3 a lack of information on how patients accessed the Applicant's pharmacy during the audit period; and
 - 7.28.4 a lack of information regarding the journey to alternative pharmacies whether on foot or by public or private transport,
- I am not satisfied that there will be maintenance of the existing level of service provision, whether by virtue of other pharmacies in the area or by the Applicant swapping hours to earlier in the morning.
- 7.29 I therefore next consider if I need to have regard to paragraph 24(1)(b) which states that I must seek to ensure that the changed hours are such as to:
- "maintain a sustainable level of adequate service provision for the people in that area or other likely users of the pharmacy premises, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome".*
- 7.30 I have already determined that it is necessary to maintain the existing level of service provision so reference in paragraph 24(1)(b) to *"in circumstances where maintaining the existing level of service provision is ... unnecessary"* is not relevant.
- 7.31 I note that the Applicant has stated *"Maintaining the current extended hours places operational strain disproportionate to the actual patient demand"*. I consider that the Applicant is effectively relying on the second part of paragraph 24(1)(b), that maintaining the existing level of service provision is not a realistically achievable outcome. I consider that I need to determine if it is or is not a realistically achievable outcome and if I determine that it is, then I need to consider if the amended hours are such as to maintain a sustainable level of service provision.
- 7.32 On the point of whether maintaining the existing level of service provision is not a realistically achievable outcome, I consider that the evidence that has been put forward by the Applicant is limited. To demonstrate that keeping the pharmacy open for its existing core hours is not realistically achievable, the Applicant must be able to demonstrate the correlation between the hours being complained of and the purported issues. Whilst I sympathise with the efforts of the Applicant to provide services where there is higher demand, the information provided does not establish that there is operational strain.

- 7.33 The wording of paragraph 24(1)(b) is such that maintaining existing service levels must not be realistically achievable before considering a sustainable level of adequate provision. I consider that this sets a fairly high bar as to the level of difficulty that the Applicant must find themselves in. I do not consider that sufficient evidence has been provided to indicate that the economic and practical viability of the current opening hours has been compromised. I therefore consider that maintaining the existing level of service is a realistically achievable outcome and therefore the Applicant cannot rely on paragraph 24(1)(b).
- 7.34 I note the Applicant's comment "*Unlike pharmacies located directly adjacent to GP surgeries, Thurmaston Pharmacy is situated at a significant distance from local surgeries. This geographic factor means that when surgeries close, patient footfall and enquiries at our pharmacy reduce sharply, particularly during late afternoons*" however I am mindful that the provision of pharmaceutical services is greater than the dispensing of prescriptions alone. Maintaining a level of service provision includes all services that the pharmacy may offer, including additional enhanced and advanced services that may be commissioned. I am of the view that I have not been provided with sufficient information to demonstrate how the proposed change of hours would maintain, as necessary, the existing levels of service provision.

8. Determination

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

Head of Appeals NHS Resolution