NHS Resolution

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23 October 2025

REF: SHA/ 26662

APPEAL AGAINST DERBY AND DERBYSHIRE ICB DECISION TO GRANT AN APPLICATION BY HENMORE HEALTH LIMITED FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT THE GREEN, BRAILSFORD, DERBYSHIRE, DE6 3BX

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:
N V M Holdings Ltd on behalf of Henmore Health Limited
Pharmacy Sales and Consultancy on behalf of LP SD Twenty Six Limited
PCSE on behalf of Derby and Derbyshire ICB
Boots UK Limited
Community Pharmacy Derbyshire

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1 The Application

By application dated 7 January 2025, Henmore Health Limited ("the Applicant") applied to Derby and Derbyshire ICB ("the Commissioner") for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at The Green, Brailsford, Derbyshire, DE6 3BX. In support of the application it was stated:

In response to "In my/our view this application should not be refused pursuant to Regulation 31 for the following reasons:" the Applicant left this box blank.

In response to "please describe the unforeseen benefit(s) that you are offering to secure and how it will secure improvements or better access to pharmaceutical services, or pharmaceutical services of a specified type in the HWB's area" the Applicant stated:

1.1 "Rationale

1.2 Brailsford is a small red-brick village and civil parish in Derbyshire on the A52 midway between Derby and Ashbourne. The parish also includes Brailsford Green. The civil parish population at the 2021 Census was 1,406 a 28% increase since the last census. The village has a pub, a golf club, a post office and a school. Medical services are provided by Brailsford and Hulland Medical Centre.

1.3 The Brailsford and Hulland practice provides Medical Services to the following locations: Brailsford Hulland, Hulland Ward, Brassington, Carsington (part thereof), Hognaston, Kniveton, Kirk Ireton, Idrigehay, Ireton Wood, Hillclifflane, Windley, Upper Biggin, Muggington, Atlow, Osmaston, Wyaston, Turnditch, Weston Underwood, Keddleston, Thurvaston, Dalbury, Sutton on the Hill, Church Broughton, Longford, Hollington, Boylestone, Yeaveley, Alkmonton, Trusley, Rodsley, Shirley, Yeldersley and Bradley.

1.4 It is significant that the age profile of the population is older than the national average. As evidenced by computer searches of Brailsford and Hulland Medical Practice showing that the age profile of their patients are:

1.4.1 45-59 21.84%

1.4.2 60+ 37.71%

1.4.3 65+ 28.77%.

1.5 This is significantly higher than the average for Derbyshire 22% and for England 18.6%. The elderly are therefore a significant cohort of persons with protected characteristics.

1.6 It is intended that if a grant of consent to join the Pharmaceutical List is given our community pharmacy will be collocated within the surgery premises.

1.7 The nearest Pharmacy to the Medical Centre is Dean and Smedley Ltd (DE22 4BG) which is 5.3miles from the Medical Centre and approximately a 20-minute return drive or over a three-hour return walk. Access for those who choose to drive to the Pharmacy in Mackworth is difficult as it has limited parking outside the Pharmacy.

1.8 The next nearest pharmacies are located in Mickleover, Allestree Derby, Ashbourne and Duffield Derby. All being 5.5 to 6 miles away.

1.9 The only practical way to access these distant pharmacies is by car as bus services are not available or practical. They all have their issues with parking.

1.10 Census data indicates that 27% of the population resident in Brailsford and its surrounds are aged 65 and over, this compares to 18.5% for England as a whole. Projections are that the over 65's will form an even greater proportion of the population over the next decade. As this group is more susceptible to long-term conditions – this will continue to impact the provision of local health services.

1.11 In the context of health and pharmaceutical services, those over 65 are within a group commonly defined as 'sharing protected characteristics. In addition to being more susceptible to long term conditions, this group:

1.11.1 are often prescribed medicines on a long-term basis

1.11.2 are frequently prescribed multiple medicines

1.11.3 may require the support of carers

1.11.4 are more susceptible to falls and mobility issues

1.11.5 are less likely to have access to private means of transport to access services

1.12 Across the locations identified above:

1.12.1 32.7% are economically inactive

1.12.2 25.1% are One person households

1.12.3 10% are unpaid carers

1.12.4 12% have no qualifications

1.12.5 27% have long term physical or mental health conditions

1.12.6 38% have no or only one car.

(All Census data provided is accessed via NOMIS)

1.13 This data is significantly worse than the averages for Derbyshire and England.

1.14 One of our principal objectives is to ensure equality of access to pharmaceutical services for all members of the community who share protected characteristics. This extends beyond the cohort of those aged over 65 to include: the disabled, mothers with young children who may not have access to private transport or are totally reliant on public transport to access pharmacy services.

1.15 All the above would have significant difficulties in accessing local pharmacies who are all more than 5 miles away. For Pharmaceutical Services from existing contractors this would entail a lengthy journey. If the patient was required to return back to the surgery for any medication or prescription queries this would entail the reverse journey, which can be very time consuming and exhausting for patients with mobility difficulties.

1.16 The colocation of pharmaceutical services will significantly assist those patients who will find accessing existing pharmacies difficult due to the distance involved and their own mobility limitations.

1.17 Our proposed pharmacy collocated or adjacent to the surgery site will ensure that the population will have easy access to a complete range of pharmaceutical services and advice. In addition to Essential Services and commissioned services, we will implement our own free or private services which will target the health priorities of the locality – notably those affecting older people and the management of long-term conditions. Specifically, we will include in our services:

1.17.1 Healthy Heart Screening

1.17.2 Weight Management Support Services

1.17.3 Healthy Eating Advice

1.17.4 Compliance Aid Service

1.18 One of our principal objectives will be to meet the criteria necessary to gain Healthy Living Pharmacy (HLP) status thereby providing Enhanced Services which will seek to engage with patients at the three defined levels of engagement i.e.

1.18.1 Promotion

1.18.2 Prevention

1.18.3 Protection

1.19 HLP's generally offer at least two services from the following:

1.19.1 Smoking Cessation support

1.19.2 Alcohol Interventions

1.19.3 Emergency Hormonal Contraception

1.19.4 Health Checks

1.20 There is a poverty of supply of the above services by the existing contractors in Derbyshire Dales.

1.21 The Healthy Living Pharmacy Scheme is an excellent vehicle for providing high- quality pharmaceutical services working in conjunction with other health and social care professionals and will be particularly appropriate in meeting the needs of the population of the rural areas of Derbyshire.

1.22 We are committed to providing opening hours that will at least mirror Brailsford Medical Centre opening hours and meet the needs of the community. Our hours will include Saturdays and Sundays. Closing times will extend beyond those of the Medical Centre so that patients who have attended a late appointment with their GP and have been prescribed medicines may get these dispensed without having to make a further journey or wait until the following day. With the exception of the Tesco's pharmacy in Mickleover all the other pharmacies in the locations above close at the latest 18:15. The Tesco's closes at 20:00.

1.23 The choice of having a pharmacy collocated within Brailsford and Hulland Medical Centre new premises will make a difference by offering immediate and convenient access to pharmaceutical services without the current difficulties associated with additional travel, access, and parking. Our pharmacy will be accessible for those with mobility issues and have the added benefit of convenient parking facilities and the avoidance of an extra journey.

1.24 The co-location of pharmacy services will further enhance the care delivered to the community including those with palliative care and multi-morbidity needs.

1.25 We anticipate that the pharmacy will work closely with the practice offering patients access to a qualified pharmacist and a range of pharmaceutical and clinical services which are not currently or conveniently available to the local community.

1.26 We know that some patients are not always at home during the day to receive deliveries of prescribed medication from their local pharmacy. We are unaware that any pharmacy currently delivers to neighbourhood of Brailsford and Hulland. We intend to provide evening deliveries to those affected patients.

1.27 In accordance with Regulation 11 of NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, we will provide all Essential Services:

1.27.1 Dispensing

1.27.2 Repeat dispensing

1.27.3 Disposal of unwanted medicines

1.27.4 Promotion of healthy lifestyles

1.27.5 Signposting and support for self-care

1.27.6 Home delivery of stoma and incontinence supplies – including the provision of Appliance Use Reviews (AURs)

1.28 We will also supply the Pharmacy First Initiative Service which is a new advanced service that includes 7 new clinical pathways and will replace the CPCS. The clinical pathways element of Pharmacy First will enable the designated pharmacist to offer advice to patients and supply NHS medicines, where appropriate to treat 7 common conditions: sinusitis, sore throat, earache, infected insect bite, impetigo, shingles, uncomplicated urinary tract infections in women. Pharmacy First will be delivered remotely where it safe to do so, and with suitable safeguards to ensure a face-to- face clinical assessment is provided in person.

1.29 The above will be available from the initial opening of the pharmacy. Services will be targeted towards compliance, reduction in medicine waste (resulting from non- compliance), and health promotion will be promoted vigorously as part of our strategy to ensure that young families as well as the over 65's are comprehensively catered for.

1.30 In accordance with Regulation 11 we will provide Directed Services identified and as per service specifications determined by NHS England, Derbyshire ICB and Public health England. The essential services we will provide in compliance with the NHS Community Pharmacy Contractual Framework are:

1.30.1 New Discharge Medicine Service

1.30.2 Dispensing Medicines

1.30.3 Disposal of unwanted medicines

1.30.4 Healthy Living Services

1.30.5 Public Health Promotion

1.30.6 Repeat Dispensing

1.31 We will also be able to provide support to patients on opioid substitution.

1.32 Treatment (OST) by offering the following services:

1.32.1 Needle and syringe exchange

1.32.2 Supervised administration of OST (i.e. Methadone, Buprenorphine)

1.33 We will respond positively and participate in new initiatives especially any new advanced or enhanced services added by the NHS or Commissioners. We recognise that Primary Care and specifically pharmacy can, through well targeted advice reduce pressure in terms of resources and costs which impact on other parts of the NHS.

1.34 The permanent Responsible Pharmacist will be qualified as a Pharmacist Prescriber to facilitate a wider range of services within their sphere of expertise

available without the need to wait for an appointment to see a GP and thereby streamlining patient pathways where a pharmacist is clinically trained. We have identified a prospective registered pharmacist who is a pharmacist prescriber with extensive clinical experience.

1.35 This development can easily support a pharmacy and therefore a pharmacy in Brailsford will not cause significant detriment to the proper planning in respect of the provision of pharmaceutical services in the area of Derbyshire ICB in general or within the locality of Brailsford in particular (NHS Pharmaceutical Services and Local Pharmaceutical Services) Regulations 2013 Regulation 18 (2a).

1.36 It is not in dispute that there are no Pharmaceutical Providers close enough to be able to provide Pharmaceutical Services to both Brailsford and the villages to the North, South and East of Brailsford. The nearest pharmacy is 5.3 miles with very limited parking and disabled access.

1.37 Derbyshire Pharmaceutical Needs Assessment

1.38 Derbyshire ICB published their second revised PNA 2022. Since this PNA will be used by ICB/NHS England when considering whether to grant applications to join the Pharmaceutical List for the area of the ICB. We therefore reproduce, with the page numbers some verbatim extracts of this PNA relating to the Derbyshire Dales relevant to this application.

1.39 P.45

1.40 Population

1.41 Derbyshire Dales has an estimated population of 72,422 that is projected to increase to 77,190 by 2043. With 27% of the population aged 65 and over, the borough is generally older than Derbyshire and England as a whole, which highlights a greater need for health and social care. The proportion of older people over 65 is expected to increase to 35%by 2043.

1.42 Poverty

1.43 Approximately 960 children (8.7%) live in poverty. These children live in income- deprived families who experience deprivation relating to low income.

1.44 P.46

1.45 There are only 10 pharmacies in Derbyshire Dales with a rate per 100,000 of population only 40% of the Derbyshire average. There are no 100-hour pharmacies, no pharmacies offering Appliance Use Reviews, no pharmacies offering Hepatis C Testing or Smoking Cessation only one pharmacy offering Emergency Hormonal Contraception and only one offering Needle Exchange and Stoma Appliance customisation.

1.46 Quality of Health

1.47 The Chlamydia detection rate amongst 15–24-year-olds is significantly worse than the national average.

1.48 Accessibility

1.49 There are 14 pharmacies to every 100,00 of population in Derbyshire Dales, lower than the national average of 21.

1.50 Strategic priorities and key health needs

1.51 Priorities in Derbyshire Dals include reducing health inequalities, increasing healthy life expectancy, and improving mental health and wellbeing for residents. Key additional health needs include (but are not limited to):

1.51.1 Fuel Poverty

1.51.2 Road Traffic incidents and causalities

1.51.3 Unpaid care provision

1.51.4 Travel Time to services (specifically GPs)

1.51.5 Diagnosis of Dementia

1.51.6 Living well with a long-term health condition or care need

1.51.7 Financial Inclusion

1.51.8 Community resilience and networks

1.51.9 Recovery from the pandemic

1.52 Statement of pharmaceutical need: Derbyshire Dales

1.53 This PNA found that the pharmaceutical needs in the Derbyshire Dales area is adequately met by the current pharmacy providers. Pharmaceutical need will be reviewed again in 2025 when the PNA is revisited, or in the event of significant changes affecting need in the interim years.

1.54 We would say that the introduction of the Hub and Spoke dispensing legislation was unforeseen by the PNA as the consultation and the Governments response to the consultation was published after that of the PNA. The ability of the pharmacy to dispense for dispensing patients overseen by a pharmacist was not foreseen when the PNA was constructed.

1.55 It will be our intention to offer when the pharmacy is open or when the Medicines Act 1968 is amended to allow Hub and Spoke dispensing (whichever is the earliest in 2025) to the two surgeries controlled by the Henmore Health Group namely Brailsford and Hulland and Ashbourne Surgery for their dispensing patients only. They will of course be a mandatory service agreement as laid out by the Regulations by the Ministers enabling Hub and Spoke to be offered to Dispensing practices. The published document by The Department of Health and Social Care in May 2024 refers.

1.56 There is a poverty of pharmacies and the services offered by the Derbyshire Dales pharmacies. We intend to remedy this by offering Emergency Hormonal Contraception, Needle Exchange, Stoma Appliance Customisation, Appliance

Use Reviews and most importantly smoking cessation services for this catchment area.

1.57 Cohort of persons with protected characteristics

1.58 Whilst the pharmacy will be available to patients of all medical practices, we have identified the following patients that will particularly benefit from a de novo pharmacy at the new surgery site.

1.58.1 The vulnerable that do not have their own transport and no other means of obtaining a prescription.

1.58.2 Housebound extremely vulnerable and the elderly

1.58.3 Those who have difficulty getting to the surgery

1.58.4 Mothers with young children with no access to a car during the day

1.58.5 The disabled especially those with stomas.

1.59 Summary

1.60 Granting this application will ensure that the expanding community of Brailsford, coupled with the fact that the proportion of over 65's in Brailsford is significantly higher than is the case nationally, will have improved access to a comprehensive range of Pharmaceutical Services.

1.61 The applicant wishes to work closely with commissioners and local health professionals as well as the ICB to ensure an appropriate range of Pharmaceutical Services are made available to the wider locality. This will be achieved by ensuring the pharmacy is accessible when patients need it to be, by becoming a Healthy Living Pharmacy and providing services which are targeted to the health priorities identified by Derbyshire Joint Strategic Needs analysis.

1.62 We will provide additional and innovative services to all the essential, advance and enhanced services which extend the accessibility to pharmacy services e.g., evening deliveries and the opportunity to collect medicines outside of the pharmacy's opening hours.

1.63 We will make good the shortfall of Pharmaceutical Services listed in the PNA in respects of Smoking Cessation, Needle Exchange, Emergency Hormonal Contraception, Appliance Use Reviews, Stoma Appliance Customisation.

1.64 Perhaps most importantly under the new Hub and Spoke Regulations, the pharmacy will undertake all the dispensing for dispensing patients both at Brailsford and the Dispensing Patients at The Surgery, Clifton Road, Ashbourne, DE6 1RR. This will ensure that all dispensed prescriptions at both sites will be supervised by a Registered Pharmacist. This will be Model One as per the new Legislation to be introduced to the NHS by the Department of Health effective early 2025.

1.65 Conclusion

1.66 We therefore respectfully request that on at least the balance of probabilities the committee in their report to the Commissioner and NHS England should recommend that NHS England should grant consent for the pharmaceutical application before them by Henmore Health Limited to enter the Pharmaceutical List of NHS England."

In response to "please explain how you intend to secure the unforeseen benefit(s)" the Applicant stated:

1.67 "By opening a Community Pharmacy at the collocated site the neighbourhood will enjoy a Community Pharmacy when the nearest extant pharmacy contractor is over five miles away. Our Community Pharmacy will remedy a poverty of pharmaceutical services currently existing in the Derbyshire Dales area. This will enable improvement and better access to pharmaceutical services in Brailsford and its catchment area.

1.68 Additionally, Community Pharmacy by offering a Hub and Spoke pharmacy supervised prescription dispensing service to dispensing doctor dispensing contractors will improve their pharmaceutical services in general and in particular Brailsford and Ashbourne Dispensing Practices."

2 '14 day comments' to the Commissioner

2.1 The Applicant

2.1.1 "I write in my formal capacity as Superintendent Pharmacist Designate of Henmore Health Ltd. Thank you for sending the responses to the 45-day consultation to which we reply as follows:

2.1.2 As several of the respondents adduce the same objections or observations to avoid duplication, we reply generically in reference to all the responses.

2.1.3 1)We welcome the statement by the Derbyshire Health and Well Being Board that our application provides a welcome increase in the number of pharmacies per head in the Derbyshire Dales. It is a fact that the number of Community Pharmacies are low in the Derbyshire Dales.

2.1.4 2)Community Pharmacies provide a far greater range of Pharmaceutical Services than a dispensing practice which is limited basically to dispensing services. They additionally provide walk in advice and Over the Counter medicines.

2.1.5 3)We do not dispute that the application site is both rural and a reserved location. There is no impediment in the Regulations to inhibit the grant of consent joining the Pharmaceutical List in a rural reserved location.

2.1.6 4)The Regulations are silent as regards viability of a Community Pharmacy, the Directors believe that the pharmacy will be viable.

2.1.7 5)The Regulations are silent as regards the needs of competing applications at an application site or a need to canvas for such.

2.1.8 6)The Directors are fully aware of a need to show probity in relation to conflicts of interests in general and the Non Directions of Prescriptions to any one particular pharmacy. They give a categorical assurance that the pharmacy will be ringfenced from any other business interest and additionally the Superintendent Pharmacist if consent is granted will be given full professional autotomy as is only correct.

2.1.9 7)Brailsford being a rural area with a poverty of transport links, patients who share protected characteristics include the following cohorts:

2.1.9.1 Disabled patients

2.1.9.2 Mothers with young children who do not have access to a car during the day.

2.1.9.3 The elderly whether house bound or no longer able to drive

2.1.9.4 The unemployed and disadvantaged patients who cannot afford a taxi

2.1.10 8)The lack of complaints regarding Pharmaceutical Services as is well agreed does not imply that there are neither complaints or at a lack of Pharmaceutical Services in the locality.

2.1.11 9)It is laid down in the Regulations that in a Reserved location, no dispensing practice or their patients will lose their dispensing rights if a pharmacy consent is granted in such.

2.1.12 10)We will be offering hub and spoke services to other pharmacies which will both enhance our viability and add to the viability of other contractors in Derbyshire.

2.1.13 <u>Summary</u>

2.1.14 We would say that the responses received to the 45-day consultation have not adduced any serious or significant impediment to dissuade the IC B to follow the recommendation by the Derbyshire Health and Well Being Board that our application should be granted.

2.1.15 <u>Conclusion</u>

2.1.16 We would say that on at least the balance of probabilities that our application meets the test of the entry Regulations.

2.1.17 We therefore respectfully invite the responsible committee of the IC B to grant our application for consent to join the Pharmaceutical List of NH S England at The Green, Brailsford, Derby, Derbyshire, DE6 3BX."

2.2 Community Pharmacy Derbyshire

2.2.1 "Thank you for sending through the responses received for the above unforeseen benefit application.

2.2.2 Community Pharmacy Derbyshire support the other comments received from interested parties for the application with the exception of the response from the Derbyshire HWB who have contradicted their own PNA in their response and have made subjective comments without any apparent consideration of the regulations.

Community Pharmacy Derbyshire would like the opportunity if it arises, to be able to comment further and attend any hearings, as well as be kept informed of progress. Thank you."

3 The Decision

The Commissioner considered and decided to grant the application. The decision letter dated 19 June 2025 states:

3.1 "Derby and Derbyshire ICB has considered the above application and I am writing to confirm that it has been granted. Please see the enclosed report for the full reasoning.

3.2 Enclosed is a form confirming acceptance of the condition imposed by virtue of regulation 66(5) of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, which should be completed by an authorised person and returned to me.

3.3 Also enclosed is a template of the notice of commencement which you are required to submit to us. Please note that if this is submitted before the end of the 30 day appeal period and a vaid [sic] notice of appeal is then received by the Secretary of State, the notice of commencement will cease to have effect. This means that if you have opened your new premises then you will be required to close with immediate effect.

3.4 Please also note that you must submit the notice of commencement no fewer than 30 days before the date you intend to start service provision. If it is received fewer than 30 days in advance it is not a valid notice of commencement and will not be accepted by Derby and Derbyshire ICB unless you successfully ask to give a shorter notice period. Should you wish to ask to give a shorter notice period please complete the enclosed application form."

PSRC report

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

3.5 "The East Midlands Pharmaceutical Services Regulations Committee (hereafter referred to as "the Committee") considers all applications for inclusion in a pharmaceutical or dispensing doctors' list for the health and wellbeing boards (HWBs) in the East Midlands. It has been established under section 65Z5 of the NHS Act 2006 by the following integrated care boards (ICBs).

3.5.1 Derbyshire and Nottinghamshire ICB

3.5.2 Leicester, Leicestershire and Rutland ICB

3.5.3 Lincolnshire ICB

3.5.4 Northamptonshire ICB

3.5.5 Nottingham and Nottinghamshire ICB.

3.6 The PSRC is hosted by Nottingham and Nottinghamshire ICB who manage this function on behalf of the four other ICBs.

3.7 Relevant regulations

3.8 Regulations 18 and 19 – unforeseen benefits: additional matters and consequences. The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013. The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

3.9 Regulation 31 – refusal: same or adjacent premises. The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

3.10 Regulation 32 – deferral arising out of LPS designations. The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

3.11 Regulations 40 to 44 – applications in a controlled locality. The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

3.12 Regulation 50 – gradualisation for doctors. The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

3.13 Regulation 65 – core opening hours conditions. The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

3.14 Regulation 66 – conditions relating to providing directed services. The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

3.15 Paragraph 31, schedule 2 – conditional grant of applications where the address of the premises is unknown. The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

3.16 Regulation 31 - refusal: same or adjacent premises

3.17 The Committee noted that as this is a routine application it was required to consider whether it must be refused by virtue of regulation 31.

3.18 The Committee noted that there is no person on the pharmaceutical list for the area of Derbyshire Health and Wellbeing Board who is providing or has undertaken to provide pharmaceutical services from the premises listed in section 2 of the application, or adjacent premises. It was therefore satisfied that regulation 31(2) does not apply and there are no grounds to refuse the application by virtue of regulation 31.

3.19 Regulation 32 – deferral arising out of LPS designations.

3.20 The Committee noted that as this is a routine application it was required to consider whether there are grounds to defer it under regulation 32.

3.21 The Committee noted that the premises listed in section 2 of the application are not premises, or part of premises that have been designated for local pharmaceutical services. They are also not in an area that has been designated for local pharmaceutical services. It was therefore satisfied that there are no grounds to defer the application by virtue of regulation 32.

3.22 Regulation 40 and 41 – Controlled Localities and Reserved Locations

3.23 The application site falls within a controlled locality. The Committee reviewed whether it meets the criteria of a reserved location under Regulation 41.

3.24 It noted that 1,315 patients reside within 1.6km of the proposed premises. No evidence was provided to suggest their use of pharmaceutical services equates to or exceeds usage expected from a population of 2,750. The Committee therefore determined that the proposed premises are in a reserved location.

3.25 As such, the prejudice test under Regulation 40(3) is not applicable.

3.26 Regulation 18 – Unforeseen benefits: additional matters to which the PSRC must have regard

3.27 The Committee noted that the improvements or better access that the applicant was claiming would be secured by its application were not included in the Derbyshire pharmaceutical needs assessment in accordance with paragraph 4, Schedule 1. In order to be satisfied in accordance with regulation 18(1) it went on to have regard to the matters set out in regulation 18(2).

3.28 Regulation (18)(2)(a) – No Significant Detriment

3.29 The Committee was satisfied that granting the application would not cause significant detriment to either the proper planning in respect of the provision of pharmaceutical services in the area of Derbyshire HWB or the arrangements in place for the provision of pharmaceutical services in that area.

3.30 While Ashbourne Medical Practice raised concerns over the potential financial impact due to the proximity of the proposed pharmacy, the Committee noted that, given the reserved location status, the practice will retain its dispensing rights for eligible patients within 1.6km.

3.31 Regulation 18(2)(b)(i) – Reasonable Choice

3.32 The Committee determined that the application would significantly improve reasonable choice for pharmaceutical services. The local population currently lacks a pharmacy within a walkable or easily accessible distance. The new premises would provide additional access for residents, particularly older adults, disabled individuals, and those without private transport, supporting improved choice.

3.33 Regulation 18(2)(b)(ii) – Protected Characteristics

3.34 The Committee was satisfied that persons sharing protected characteristics, including age, disability, and caregiving responsibilities, would benefit from improved access to local pharmaceutical services.

3.35 Regulation 18(2)(b)(iii) - Innovation

3.36 The Committee noted that the application demonstrated partial innovation, including: -

3.36.1 Co-location with GP Practice

3.36.2 Pharmacist prescriber role (pending)

3.36.3 Healthy Living Pharmacy (HLP) delivery and support

3.36.4 Hub & Spoke delivery model noted (though not yet enacted in law)

3.37 Regulation 65 - core opening hours conditions

3.38 It was noted that as the applicant was only undertaking to provide pharmaceutical services for 40 core opening hours per week, this regulation was not applicable.

3.39 Regulation 66 – conditions relating to providing directed services

3.40 The Committee noted that the applicant had undertaken to provide a number of directed services in section 4 of its application. By virtue of regulation 66(5) the applicant will be required to provide those directed services and not unreasonably withhold agreement to the service specifications where they are commissioned within three years of the date the premises are included in the pharmaceutical list for the area of Derbyshire HWB. For the avoidance of doubt, the applicant must start to provide the following advanced services within eight weeks of their premises being included in the pharmaceutical list for the area of Derbyshire HWB.

3.40.1 New medicine service

3.40.2 Appliance use reviews

3.40.3 Stoma appliance customisation

3.40.4 Community pharmacy seasonal influenza vaccination

3.40.5 NHS community pharmacy hypertension case-finding

3.40.6 NHS community pharmacy smoking cessation

3.40.7 NHS pharmacy contraception service

3.40.8 Lateral flow device tests supply service

3.40.9 NHS Pharmacy First service.

3.41 Other Matters

3.42 The Committee acknowledged that the granting of this application is anticipated to improve local access to pharmaceutical services, particularly for residents in Brailsford and the surrounding rural area. This is consistent with NHS England and ICB objectives to reduce health inequalities and enhance service provision in underserved communities.

3.43 The Committee also noted that:

3.44 The application supports wider primary care integration by proposing co-location with a GP practice.

3.45 Enhanced accessibility for individuals with protected characteristics, such as older adults and those with limited mobility, is expected to be achieved through improved physical proximity to a community pharmacy.

3.46 The applicant should liaise with the local ICB pharmaceutical commissioning team to ensure that service mobilisation, compliance with clinical governance frameworks, and contractor onboarding processes are completed in a timely and coordinated manner.

3.47 The Committee expects that NHS England and the ICB will monitor the implementation of services post-inclusion, in line with the agreed six-week timeframe for service commencement and national assurance standards.

3.48 Final Decision

3.49 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31 and was satisfied that the application met the criteria under Regulation 18. The application is therefore granted on the basis that it would secure unforeseen benefits not captured in the current Derbyshire PNA.

3.50 Rights of appeal

3.51 Granted appeal rights (decision to grant):

3.51.1 Boots UK Ltd, Unit 7, Horse & Jockey Yard, Ashbourne, Derbyshire. DE6 1GH

3.51.2 PCT Healthcare Limited, B Payne & Son, 1 Blenheim Parade, Blenheim Driver, Allestree, Derbyshire DE22 2GP

3.52 Granted appeal rights (reserved location determination):

3.52.1 Henmore Health Ltd

3.52.2 [email address redacted by NHSR] of Derbyshire LPC

3.52.3 [email address redacted by NHSR] of Derby & Derbyshire LMC

3.53 Dispensing practices that were notified of the application:

Brailsford & Hulland Medical Practice	The Green	Brailsford	Derbyshire	DE6 3BX	[email address redacted by NHSR]
Ashbourne Medical Practice	Clifton Road	Ashbourne	Derbyshire	DE6 1DR	[email addresses redacted by NHSR]
The Surgery	Clifton Road	Ashbourne	Derbyshire	DE6 1RR	[email addresses redacted by NHSR]

3.54 Pharmacies that were notified of the application

Dean & Smedley Ltd	75 Prince Charles Avenue	Mackworth		Derbyshire	DE22 4BG	[email address redacted by NHSR]
Mickleover Pharmacy & Travel Vacc Clinic	79 Devonshire Drive	Mickleover	Derby	Derbyshire	DE3 9HD	[email address redacted by NHSR]
B Payne & Son Pharmacy	1 Blinheim Parade	Blenheim Driver	Allestree	Derbyshire	DE22 2GP	[email address redacted by NHSR]
Boots	46 Station Road	Mickleover	Derby	Derbyshire	DE3 9GH	[email address redacted by NHSR]
Boots	Unit 7, Horse & Jockey Yard	Ashbourne		Derbyshire	DE6 1GH	[email address redacted by NHSR]
Ashbourne Pharmacy	Ashbourne Health Centre	Clifton Road	Ashbourne	Derbyshire	DE6 1DR	[email addresses redacted by NHSR]

4 **Preliminary Matter**

4.1 Pharmacy Sales and Consultancy, on behalf of LP SD Twenty Six Limited, in a letter received by NHS Resolution on 10 July 2025 appealed against the decision of the Commissioner to not give them third party rights of appeal.

4.2 The Secretary of State for Health and Social Care has directed NHS Resolution to exercise the function of determining whether certain persons have rights of appeal on his behalf.

4.3 NHS Resolution, in a decision dated 30 July 2025, determined that LP SD Twenty Six Limited is a person with third party rights of appeal against the decision of the Commissioner as set out in its letter dated 19 June 2025.

5 The Appeal

In a letter received by NHS Resolution on 10 July 2025 addressed to NHS Resolution, Pharmacy Sales and Consultancy on behalf of LP SD Twenty Six Limited ("the Appellant") appealed against the Commissioner's decision. The grounds of appeal are:

5.1 "We act for LP SD Twenty Six Limited and have enclosed a letter of authorisation confirming our instructions in this matter.

5.2 Our client has been made aware by Community Pharmacy Derbyshire (the LPC) that the above application has been granted. Our client has several concerns about this approval and the process followed by NHS England in considering this matter so has asked us to submit an appeal against this decision.

5.3 The first of these concerns is that, despite the fact our client instructed PSC to object to this application (and our letter of objection was received by NHS England and circulated to interested parties), neither we nor our client were notified of the decision. The ICB therefore failed in its obligation to notify relevant parties of the outcome of the application in accordance with the requirements of paragraph 28(h) of Schedule 2 to the Regulations.

5.4 Linked to the above matter, the decision report our client has seen does not grant any appeal rights to our client. Our client's first appeal, therefore, is in respect of the failure of the ICB to grant third party appeal rights.

5.5 Our second appeal is in respect of the ICB's approval of this application which was, in our client's opinion, flawed for several reasons.

5.6 We discuss each of these appeals in more detail below.

5.7 We have included a copy of the ICB decision report with this appeal letter, but we are unable to attach a copy of the ICB decision letter as our client was not sent this.

5.8 <u>Appeal against the failure of NHS England to grant third-party appeal rights</u>

5.9 Our client was notified of this application on 9th January 2025. We have enclosed a copy of the list of notified parties that was circulated with the application. For the avoidance of doubt, our client's pharmacy is listed as Ashbourne Pharmacy.

5.10 Our client instructed PSC to prepare and submit an objection to this application on its behalf. This objection was submitted on 24th January, well within the 45 days required by the Regulations. We have enclosed a copy of that letter of objection.

5.11 On 4th March 2025, Primary Care Support England (acting for NHS England) circulated third party comments received in respect of the application. This circulation included our client's letter of objection, so it is clear that the letter had been received by NHS England.

5.12 The matter of appeal rights is dealt with in paragraph 30 of Schedule 2 to the Regulations as follows [quoted in full]:

5.13 Taking these matters one at a time:

5.13.1 Our client was entitled to receive notification of the decision, being included in the pharmaceutical list and having been considered an interested party by the ICB.

5.13.2 Our client made representations in respect of the application.

5.13.3 Our client's letter of objection clearly set out its grounds for objection, did not challenge the reasonableness of the PNA and was not vexatious or frivolous.

5.14 We therefore ask the Committee to grant third party appeal rights to our client.

5.15 <u>Appeal again [sic] the application grant</u>

5.16 *Grounds for Appeal*

5.17 Our client's key grounds for appeal are summarised as follows:

5.17.1 The ICB failed to follow proper process in respect of the notification of an application submitted within a controlled locality.

5.17.2 The ICB failed to properly consider the wording of Regulation 18 and the tests it was required to take into account.

5.17.3 The ICB appear to have no regard to the fact the applicant provided no information whatsoever from local residents as evidence to support the view that they do not have reasonable choice in respect of pharmaceutical services provision.

5.18 We discuss each of these matters further below.

5.19 We have included a copy of our client's original letter of objection so will not repeat the matters raised in the letter in any detail but ask that the Committee takes these comments into account when determining this application.

5.20 **The ICB failed to follow proper process in respect of the notification of an application submitted in a reserved location.**

5.21 The decision report provided by NHS England states, on page 2, that the application falls within a controlled locality. The report goes on to state that the committee reviewed whether the area meets the criteria of a reserved location under Regulation 41. The ICB considered the number of patients living within 1.6km of the proposed premises and concluded that the area was reserved.

5.22 Whilst our client agrees with this conclusion, based on its own research, the ICB failed to follow the correct process when interested parties were first notified about the application.

5.23 Regulation 41 deals with applications made within reserved locations. Paragraph (4) of Regulation 41 states [quoted in full]:

5.24 In other words, when notifying interested parties about the application, the ICB should have stated that the area within which the application was situated is controlled and that its preliminary assessment was that this was a reserved location. In this case the parties were not provided with this information, so were not invited to make representations on this matter. We have enclosed a copy of the original notification letter from NHS England.

5.25 As the ICB have failed to follow to proper process we invite the Committee to remit this matter back to the ICB so that the application may be circulated again and proper process followed.

5.26 **The ICB failed to properly consider the wording of Regulation 18 and the tests it was required to take into account.**

5.27 We have already commented on some of the matters raised by the applicant in support of its application within our client's original objection letter. We do not intend to repeat those matters within this appeal.

5.28 Instead, by way of additional comments, we have addressed some of the wording used by the ICB in their decision report.

5.29 *Regulation 18(2)(b)(i) – Reasonable Choice*

5.30 In determining that “the application would significantly improve reasonable choice for pharmaceutical services”, the ICB has not considered the correct legal test.

5.31 Within its decision report, the ICB states “the local population currently lacks a pharmacy within a walkable or easily accessible distance. The new premises would provide additional access for residents, particularly older adults, disabled individuals, and those without private transport, supporting improved choice”.

5.32 The IBC [sic] has erred by placing too much weight on the ability of residents to walk to a pharmacy. They have also made the mistake of referring to “improved choice” rather than reasonable choice.

5.33 If it was a requirement that everybody in England had access to a pharmacy within walking distance there would be a need for a pharmacy in pretty much every village in the country. Clearly this is not the case. For this reason that the decision maker is required to consider whether the current choice is

'reasonable'. This must take into account a range of factors including the nature of the area and the extent to which residents have access to public or private transport.

5.34 It is noteworthy that, under the heading "Other Matters" in its decision letter the ICB state "the Committee acknowledged that the granting of this application is anticipated to improve local access to pharmaceutical services, particularly for residents in Brailsford and the surrounding rural area".

5.35 Whilst the ICB do not define what they mean by "the surrounding rural area", as can be seen from the map below [provided] the proposed site (marked with a 'H') is surrounded by small villages.

5.36 We assume the ICB would not think it was reasonable for patients living in these surrounding villages to walk to Brailsford either, so realistically the only people who may be able to walk to this proposed site are the 1,315 residents of Brailsford. If the ICB's main concern is the fact people cannot walk to a pharmacy then it cannot be the case that granting this application would improve access in "the surrounding rural area".

5.37 It is also relevant in this case that the Brailsford Surgery (which is the site of this application) is a dispensing practice. Given that the residents of the village all live more than 1.6km from by pharmacy at present they are all entitled to receive pharmaceutical services from these dispensing doctors. Whilst we accept that the services provided by dispensing doctors are slightly different to those provided by a community pharmacy, when considering reasonableness the committee will wish to take into account the fact patients can already have prescriptions dispensed within the village.

5.38 As stated within our client's objection letter, the facilities within the village are highly limited. It is simply not the case that residents have access to everything they need to meet their daily requirements within Brailsford. That being the case it is clear that they are required to travel out of the village to access these amenities from larger villages and towns in the wider area such as Ashbourne and Mickleover.

5.39 We have commented previously on the high levels of car ownership within the village and also on the existence of a bus service which runs every 30 minutes to the nearby towns where pharmaceutical services are already provided.

5.40 It is for these reasons that we say the existing choice is reasonable in the context of Regulation (18)(2)(b)(i).

5.41 *Regulation 18(2)(b)(ii) – Protected Characteristics*

5.42 The ICB reached the conclusion that "persons sharing protected characteristics, including age, disability, and caregiving responsibilities, would benefit from improved access to local pharmaceutical services".

5.43 However, this conclusion does not address the question asked in Regulation 18(2)(b)(ii). This part of the Regulations requires the decision maker to have regard to people who share a protected characteristic having access to

services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access.

5.44 The applicant has provided no evidence whatsoever that there are people who share protected characteristics who have specific needs for pharmaceutical services that are difficult for them to access. Without this evidence the ICB cannot be confident that this test has been met.

5.45 *Regulation 18(2)(b)(iii)*

5.46 The ICB's comments in this respect are perplexing to say the least.

5.47 Firstly they refer to two matters that are not current i.e. the potential future prescribing role of a specific pharmacist (who may or may not work at this pharmacy) and a Hub and Spoke delivery model which is not yet enacted in law. In our opinion the ICB was wrong to place weight on things which may or may not apply in the future.

5.48 Secondly, and more importantly, none of the points listed are in any way innovative. These are all common within the existing pharmacy network.

5.49 In our opinion it is clear that the requirements of Regulation 18(2)(b)(iii) have not been met.

5.50 As the committee will be aware, the burden of proof in respect of making a case that patients do not have 'reasonable choice' rests with the applicant yet it has provided very little evidence in this respect.

5.51 The ICB appeared to have no regard to the fact the applicant provided no information whatsoever from local residents as evidence to support the view that they do not have reasonable choice in respect of pharmaceutical services provision.

5.52 The glaring omission from this application is that no evidence has been provided by the applicant to demonstrate that any residents of the area it proposes to serve currently have difficulties accessing pharmaceutical services.

5.53 The ICB appear to have been comfortable to make a decision based on broad assumptions without supporting evidence, but it cannot be correct that an application for inclusion in the pharmaceutical list would be granted without a single patient having identified any difficulties they might have experienced.

5.54 We submit that the level of information provided by the applicant falls a long way short of that that would ordinarily be required to convince the Committee that, on the balance of probabilities, the test set out in Regulation 18(2)(b)(i) has been met.

5.55 <u>Other regulatory tests</u>

5.56 We note the ICB committee's finding in respect of various other parts of the Regulations and we agree with these (other than where we have commented above), so have no further comments to add.

5.57 Other matters

5.58 We note the ICB's comments on various other matters, and comment on these as follows:

5.58.1 The ICB cite "wider primary care integration" due to co-location, but this does not form part of the regulatory tests. We have commented already that there is nothing innovative about co-location between pharmacies and medical centres.

5.58.2 "Enhanced accessibility" is not grounds to grant an application for inclusion in the pharmaceutical list. Every new pharmacy opening will increase accessibility for someone, including patients who share protected characteristics, but that is not a reason to grant every application. The ICB has made no comment on the exceptionally high levels of car ownership in the village or the public transport network.

5.58.3 Matters such as service mobilisation and contractor onboarding processes have no relevance to the tests the ICB was required to consider.

5.59 We believe there is enough evidence within our client's appeal for the Primary Care Appeals Committee to grant the application based on the written evidence. However, should the committee wish to convene a hearing our client would wish to attend.

5.60 We look forward to hearing the outcome of this appeal in due course."

Letter dated 24 January 2025 to the Commissioner

5.61 "We act for LP SD Twenty Six Limited (trading as Ashbourne Pharmacy) and have enclosed a letter of authorisation from our client accordingly.

5.62 Our client has passed us a copy of your letter dated 9th January informing it of the above application.

5.63 On behalf of LP SD Twenty Six Limited, who provide pharmaceutical services from premises at Ashbourne Health Centre, Clifton Road, Ashbourne, DE6 1DR, we wish to object to this application and make the following comments in response:

5.64 As a preliminary matter we note that no information has been provided by the applicant, or NHS England, in respect of the controlled locality status of the proposed location. Our working assumption is that, given the rural nature of the area, the location for this application is a controlled locality.

5.65 If our assumption is correct, it is noteworthy that information provided by the applicant suggests that the population of Brailsford is around 1,400 residents. The ICB will need to consider whether this is a 'reserved location' as discussed in Regulation 41. The wording of the first part of Regulation 41 is provided below: [quoted in full]

5.66 It is also relevant that Regulation 41 places additional obligations on the ICB in respect of notification and representations in respect of this reserved location status.

5.67 It is worth noting that the guidance notes to the current regulations produced by the Department of Health (Chapter 14, paragraph 63) state:

5.67.1 "*The reason the figure of 2,750 has been chosen is that this is the figure below which pharmacy viability becomes questionable".*

5.68 These guidance notes were produced in 2012. We would suggest that, in the current funding environment, the viability level is now significantly higher.

5.69 The reason this matters is that granting an application for a new pharmacy in a rural area can be extremely destabilising for the existing fragile pharmacy network, which is already under immense pressure. It is entirely appropriate, therefore, that the ICB considers whether opening a pharmacy in a rural community with such a small population risks this significant destabilisation when there is a very real prospect that the pharmacy will not be viable in the medium term and would be likely to close.

5.70 In any event, the ICB will be required to carry out these preliminary checks in respect of whether the area is reserved, and will have to consider the implications of this in the context of Regulation 41.

5.71 <u>Regulatory tests</u>

5.72 This application has been submitted pursuant to Regulation 18 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (as amended).

5.73 The ICB is required to determine whether granting the application would secure improvements in, or better access to, pharmaceutical services in the HWB's area which were not included in the relevant pharmaceutical needs assessment.

5.74 The ICB must have particular regard to the matters set out in regulation 18(2). It must consider whether it is satisfied, having regard in particular to the desirability of-

5.74.1 There being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB;

5.74.2 People who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access;

5.74.3 There being innovative approaches taken with regard to the delivery of pharmaceutical services;

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

5.75 To the extent that there is a burden of proof, it is submitted that this rests with the applicant. That is, it is for the applicant to demonstrate to the ICB that the application meets the regulatory test, not for our client to demonstrate that it does not meet the relevant regulatory test.

5.76 We submit that the information provided by the applicant in this case is not sufficient to satisfy the ICB that the requirements of Regulation 18 have been met.

5.77 Part 6 of the application form

5.78 The applicant is invited, in part 6 of the application form, to "describe the unforeseen benefit(s) that you are offering to secure and how it will secure improvements or better access to pharmaceutical services, or pharmaceutical services of a specified type in the HWB's area." We note that the applicant has provided an appendix setting out its case for this pharmacy.

5.79 We address the comments made by the applicant in the same order they have been made in this appendix. The applicant's comments are provided in italics for ease.

5.80 *The village has a pub, a golf club, a post office and a school. Medical services are provided by Brailsford and Hulland Medical Centre.*

5.81 We note that the amenities in Brailsford are extremely limited. This is to be expected in a village with fewer than 1,500 residents. It is clear that residents are required to travel out of the village to access almost all their daily needs and, living in a rural location, they would expect to travel. As a result they are highly mobile, so are able to access pharmacies in the larger towns nearby where they travel to access the amenities they require.

5.82 *It is significant that the age profile of the population is older than the national average.*

5.83 Whilst this may be the case, the applicant has provided no evidence to show that these residents are not able to access pharmaceutical services.

5.84 *The nearest Pharmacy to the Medical Centre is Dean and Smedley Ltd (DE22 4BG) which is 5.3miles from the Medical Centre and approximately a 20-minute return drive or over a three-hour return walk. Access for those who choose to drive to the Pharmacy in Mackworth is difficult as it has limited parking outside the Pharmacy.*

5.85 *The next nearest pharmacies are located in Mickleover, Allestree Derby, Ashbourne and Duffield Derby. All being 5.5 to 6 miles away.*

5.86 *The only practical way to access these distant pharmacies is by car as bus services are not available or practical. They all have their issues with parking.*

5.87 The applicant has provided absolutely no evidence to supports its comments regarding parking. Our client's pharmacy in Ashbourne benefits from a substantial car park next to the pharmacy. We discuss the bus service later.

5.88 *38% have no or only one car.*

5.89 Whilst this statistic is correct, it does not tell the full story. 2021 census data (source Nomis) shows that, for the Lower Super Output Area (LSOA) Derbyshire Dales 010A, in which Brailsford is located, car ownership is as follows: [table showing car ownership provided].

5.90 Only 5.8% of households have no car, compared the national average of 23.5%. The households that have one car are most likely to be those whose residents are retired and therefore have no need for 2 cars.

5.91 As would be expected in an area of this nature, car ownership and availability is exceptionally high.

5.92 Furthermore, it is noteworthy that the website for Brailsford surgery provides a link to the Ashbourne Community Transport Service which runs Mon-Fri from 7am to 7pm and Saturdays 8am to 7pm. This service would be available to any resident who does not have access to private transport, or does not want to catch the bus.

5.93 In respect of the bus, the *Swift* service runs twice an hour through Brailsford to destinations including Mackworth and Ashbourne where there are existing pharmacies. We would suggest this is an unusually good service for such a rural area.

5.94 In addition to Essential Services and commissioned services, we will implement our own free or private services which will target the health priorities of the locality.

5.95 This is an application for inclusion in the NHS pharmaceutical list. Private, or indeed locally commissioned, services are outside the scope of the relevant regulations, so must be disregarded.

5.96 *We are committed to providing opening hours that will at least mirror Brailsford Medical Centre opening hours and meet the needs of the community. Our hours will include Saturdays and Sundays.*

5.97 This is not correct. The application form shows that the applicant will only open from Monday to Friday, 9am to 1pm and 2pm to 6pm.

5.98 *We will also supply the Pharmacy First Initiative Service which is a new advanced service that includes7 new clinical pathways and will replace the CPCS….. Pharmacy First will be delivered remotely where it safe to do so.*

5.99 Existing pharmacies already provide the Pharmacy First service, and those in the surrounding area are already able to deliver these remotely where appropriate.

5.100 *We have identified a prospective registered pharmacist who is a pharmacist prescriber with extensive clinical experience.*

5.101 There is no guarantee that this 'prospective' pharmacist will actually be employed or will remain at the pharmacy for the long-term. It is not appropriate to grant an application based on the promise to employ a pharmacist with specific skills when that person could leave the business at any time.

5.102 *Derbyshire Pharmaceutical Needs Assessment*

5.103 The applicant provides several extracts from the current PNA but fails to provide the most relevant extract, which is on page 143 and states:

5.104 ***Statement of pharmaceutical need: Derbyshire County***

5.105 *Based on the information collated, the PNA found that the pharmaceutical need in the Derbyshire County Health & Wellbeing Board area is adequately met by the current pharmacy providers. Pharmaceutical need will be reviewed again in 2025 when the PNA is revisited, or in the event of significant changes affecting need in the interim years.*

5.106 The HWB clearly considered, when it produced the PNA, that there were no gaps in provision. The applicant has provided no information to suggest there have been changes since the PNA was published, so nothing within this application is unforeseen in the context of Regulation 18.

5.107 *It will be our intention to offer when the pharmacy is open or when the Medicines Act 1968 is amended to allow Hub and Spoke dispensing (whichever is the earliest in 2025) to the two surgeries controlled by the Henmore Health Group namely Brailsford and Hulland and Ashbourne Surgery for their dispensing patients only.*

5.108 At this time the changes in the law required to facilitate this have not been made so this 'future hope' must be disregarded.

5.109 The applicant goes on to summarise why it believes its application will secure Unforeseen Benefits.

5.110 With respect to the applicant, this is nothing more than a range of promises that have little, if anything, to do with the relevant regulatory tests. Furthermore, no evidence has been provided to show that everything promised by this applicant is not already provided by existing pharmacies.

5.111 <u>Conclusion</u>

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

5.113 Should the ICB decide to hold an oral hearing I can confirm that our client would wish to attend."

6 Summary of Representations

After reviewing the paperwork provided by the Commissioner, it was noted that the comments made by the Applicant and Community Pharmacy Derbyshire in response to the representations on the application [see 2.1.1 to 2.2.3 above] 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 these. This is a summary of representations received.

6.1 N V M Holdings Ltd on behalf of the Applicant

6.1.1 "Thank you for your communication of 31st July informing us that the decision of the Commissioner has been appealed against to NHS Resolution.

6.1.2 As the authorised representative of Henmore Health Limited I respond as follows:

6.1.3 As regards the matters to be considered

6.1.4 We would say that:

6.1.4.1 The Commissioner did not misdirect themselves in granting this application as it would secure improvements, or better access to Pharmaceutical Services in the area of the Health and Wellbeing Board, in whose Pharmaceutical Needs Assessment (PNA) the improvements or better access had not been included [Regulation 18 (1)].

6.1.4.2 That there is no pharmacy either adjacent or in the immediate vicinity. Indeed, the nearest pharmacies are over 5 miles.

6.1.4.3 That granting the application would not cause significant detriment to either planning or the provision of Pharmaceutical Services in the Health and Wellbeing Board Area.

6.1.4.4 That the application would provide a remedy for the lack of reasonable choice of obtaining Pharmaceutical Services in Brailsford.

6.1.4.5 The village has grown significantly, with over 400 new homes approved since 2017, nearly quadrupling its size.

6.1.4.6 Healthy Living Pharmacy (HLP) Framework. HLP's are designed to reduce health inequalities and provide consistent health promotion services tailored to local needs. Becoming an HLP is a requirement under NHS Terms of Service, and Henmore Health's commitment to this model supports preventative care and public health in rural areas.

6.1.4.7 That the application would provide specific benefit to those persons with protected characteristics in general and in particular because of the poverty of transport links to the distant pharmacies. This would be of particular benefit to single parents, the disabled, the elderly and those residents without access to a car during the day.

6.1.4.8 That there are innovative approaches proposed by the appellant with delivery of Pharmaceutical Services.

6.1.4.9 That the Commissioner did not misdirect themselves in determining that application relates to a premises in a controlled locality (Regulation 40).

6.1.4.10 That the Commissioner did not misdirect themselves in determining that application relates to a premises in a Reserved Location on the date of the receipt of the Application (Regulation 41).

6.1.4.11 That this application is more than five years after the determination of any matters relating to Pharmaceutical Services in a 1.6km radius. The 'five-year rule' (Regulation 42).

6.1.5 As regards to the substantive appeal by the representative [KH] of Pharmacy Advice Consultancy Services on behalf of LP SD Twenty Six Limited who are an interested party in relation to their ownership of a pharmacy at Ashbourne.

6.1.6 We would say that:

6.1.6.1 No doubt NHS Resolution will have had regard to the comments made in their own decision in case SHA/26681.

6.1.6.2 Ashbourne Pharmacy is some 5.6 miles as the crow flies, further by road and is unlikely to be affected by this application.

6.1.6.3 Patients in the locality of the application site do not enjoy a reasonable choice of Pharmaceutical Services. Dispensing Services are not the same as pharmaceutical Services especially with the enhanced roles currently and proposed for Retail Pharmacies by the NHS. Retail Pharmacies provide advanced services such as:

6.1.6.4 Pharmacy First

6.1.6.5 New Medicines Service

6.1.6.6 Vaccinations

6.1.6.7 Health Promotions and lifestyle advice

6.1.6.8 Clinical checks and medicines optimisation

6.1.7 Dispensing practices primarily focus on basic dispensing with limited scope for public health interventions.

6.1.7.1 We note paragraph 2.4 of the appeal letter that the appellant accepts 'given the rural nature of the area, the location for this application is a controlled locality' (verbatim).

6.1.7.2 That the number of individuals residing within a 1.6km radius of the application site on the patient list is circa 1400. This figure being substantially less than the threshold of 2750. The opinions of the appellant that this threshold of 2750 needs revising is only that an opinion and carries no weight in determining the appeal.

6.1.7.3 The viability of a Retail Pharmacy is not relevant to the granting of a pharmacy application. The Pharmaceutical Services Regulations 2013 as amended are silent in this regard.

6.1.7.4 Our client in their application have outlined their proposals in regards offering a Hub and Spoke service to Dispensing Practices. By definition this would not destabilise Pharmaceutical Services offered by Retail Pharmacies.

6.1.7.5 As regards to the statement by the appellant in paragraph 2.5.10 'To the extent that there is a burden of proof, it is submitted that this rests with the applicant. That it is for the applicant to demonstrate to the ICB that the application meets the regulatory test, not for our client to demonstrate that it does not meet the relevant regulatory test. Since the Commissioner has granted our application, in any appeal process the burden of proof is now with the appellant.

6.1.7.6 The village of Brailsford has a Post Office, school and a Medical Centre so patients may very well access these on a frequent basis. The appellant has offered no evidence that all the population in Brailsford and the surrounding area are highly mobile. Undoubtedly many persons with Protected Characteristics will be by definition be unlikely to be mobile or have access to a car during the day.

6.1.7.7 The appellant does not dispute that the age profile of the population is older than the national average. We would say this is significant as this increases the need for local Pharmaceutical Services. The local Medical Centre inform us that 29% of their patient list is over 65.

6.1.8 As regards transportation links:

6.1.8.1 The scheduled bus service offered by Swift namely route 114 stops close to Brailsford but not does stop in Brailsford, in any case is limited in both frequence and convenience. It is more suited to commuting between Ashbourne and Derby and would appear neither significant or relevant to this appeal. It is relevant that it is subsidised by a temporary government scheme ending in early 2026, raising concerns about future reliability. Only 1.9% of Brailsford residents use public transport, compared to 4.1% across Derbyshire, indicating limited practical access.

6.1.8.2 The ACT charity offerings namely routes 110 and 111 operated by the Ashbourne Bus Company, on examination of their timetables and routes does not appear to go through Brailsford. We believe we are reliably informed that the associated

volunteer Community Bus offers a very limited service and does not usually offer a bespoke Taxi Service. It is not a substitute for walkable access to Pharmaceutical Services. It requires pre-booking, lacks on demand flexibility, and may not be suitable for urgent or spontaneous pharmacy visits. The service is not guaranteed long term, being dependent on funding and volunteer availability. In any case it is not available on Sunday's or Bank Holidays.

6.1.8.3 Whilst Brailsford has above-average car ownership (1.76 cars per household), this does not guarantee daytime access especially for:

6.1.8.4 Elderly patients

6.1.8.5 Single Parents

6.1.8.6 People with disabilities

6.1.8.7 Households with only one car used by a working adult

6.1.8.8 It is noted the appellant in response to our application in paragraph 2.5.30 has stated that our offer should be disregarded as described in paragraph 2.5.29 'in addition to Essential Services and commissioned services, we will implement our own free or private services which will target the health priorities of the locality.'

6.1.8.9 As regards the appellant comments in paragraph 2.5.32. our total Opening Hours including both core and supplementary hours disprove [sic] their comments. As our application clearly states we are open on Saturday and Sunday mornings. The Directors of the applicant have confirmed that the pharmacy will always at least mirror the Opening Hours of the Brailsford Medical Practice.

6.1.8.10 As regards claims by the appellant that their client Ashbourne Pharmacy can offer remote services is both hypothetical and contradicts the NHS Philosophy that face-to-face services are always to be preferred to that of remote services.

6.1.8.11 Our application is clearly made under Regulation 18.1 offering unforeseen services and by definition Pharmaceutical Need would not be identified in the PNA.

6.1.8.12 NHS Regulations regarding the implementation of Hub and Spoke Dispensing have been made with an implementation date of 1st October 2025 and an Operational Date to allow for applications and approval of 29th October. By the time this appeal is determined and a Retail Pharmacy set up in Brailsford, the concept of Hub and Spoke dispensing will have Regulatory approval in place. In any case our application is not totally dependent on this innovatory offering.

6.1.9 We note in relation to the late comments by Community Pharmacy Derbyshire which NHS Resolution is allowing the appellant to make comments on and confirming we can make comments on such.

6.1.9.1 *'Community Pharmacy Derbyshire support the other comments received from interested parties for the application with the exception of the response from the Derbyshire HWB who have contradicted their own PNA in their response and have made subjective comments without any apparent consideration of the regulations.'*

6.1.10 We would say that Derbyshire Health and Wellbeing Board are not contradicting their own PNA as this is an application under Regulation 18.1. The appellant has offered no evidence that the comments by Derbyshire HWB are either subjective or that they have misdirected themselves.

6.1.11 We would invite the appeals panel to put significant weight on the evidence provided by the Derbyshire HWB in support of our application.

6.1.12 <u>Conclusion</u>

6.1.13 We would say that the appellant has offered no significant or relevant information in their appeal to show that either the Commissioner or Derbyshire HWB misdirected themselves in consideration of my clients application.

6.1.14 We would say that on least the balance of probabilities that the evidence and rationale offered in my clients application met all three of the Regulatory tests in Regulation 18.1.

6.1.15 Namely:

6.1.15.1 Reasonable choice

6.1.15.2 Significant benefit to Persons with Protected Characteristics

6.1.15.3 Innovative approaches of Pharmaceutical Services (in relation to a Hub and Spoke offering)

6.1.16 We therefore respectfully invite the appeals panel to grant my clients application to join the Pharmaceutical List of NHS England on the balance of probabilities and therefore dismiss the appeal by the appellant."

6.2 Pharmacy Sales and Consultancy on behalf of the Appellant

6.2.1 "Thank you for your letter of 31st July with various enclosures, including confirmation that our client has been granted appeal rights in this case. We continue to act for LP SD Twenty Six Limited.

6.2.2 We note that you have invited our client to make further representations in respect of the '14 day comments'. On behalf of the appellant we wish to make the following brief comments accordingly.

6.2.3 **Community Pharmacy Derbyshire (LPC) – letter dated 18th March**

6.2.4 We note that the LPC supported our client's objections to this application, so we have nothing further to add.

6.2.5 **Applicant (Henmore Health Limited) – letter dated 10th March**

6.2.6 We respond to the comments made by the applicant using the same numbering:

6.2.6.1 1)The comments made by the HWB do not align with the regulatory tests for an unforeseen benefits application. The regulations do not require the decision maker to have any regard to the number of pharmacies per head. It is common for community pharmacy numbers to be lower in rural areas and it is for this reason that dispensing doctors are permitted to provide pharmaceutical services.

6.2.6.2 2)There is nothing to stop dispensing practices providing 'walk-in advice' to patients. Whilst it is correct that they are not permitted to sell over the counter medicines they would be able to open alternative registered premises should they wish to sell these medicines without the need to be included on the pharmaceutical list.

6.2.6.3 3)The applicant is correct in that the regulations do not specifically inhibit the grant of an application for inclusion in the pharmaceutical list within a reserved location. However it is a matter of common sense that locations with small populations have a lower level of demand for pharmaceutical services than more populated areas.

6.2.6.4 4)Whilst the regulations are silent on this point the appeals committee may wish to consider the risk of a pharmacy opening which subsequently closes due to financial pressures, as this is likely to be highly disruptive for patients.

6.2.6.5 5)Whilst, contrary to the applicant's comments, the regulations are not silent on the matter of competing applications, we have no specific comments to make on this point.

6.2.6.6 6)We note the assurances from the directors in respect of prescription direction but we are also aware that GP practices are uniquely placed to influence patient behaviour, particularly when operating a business which is likely to be borderline viable at best. It is likely that the directors will need to provide significant evidence to the ICB in respect of avoiding the risk of direction, if this application is granted. Assurances may not be sufficient.

6.2.6.7 7)We have discussed the matter of accessibility and patients with access difficulties previously, so have nothing further to add on this point.

6.2.6.8 8)It is for the applicant to provide evidence to support its case. It is not sufficient to state that there might be complaints without backing this statement up.

6.2.6.9 9)This point is correct. For that reason the viability of a community pharmacy is likely to be even more challenging.

6.2.6.1010)The applicant has provided no evidence to support its assertion that there will be a demand for hub and spoke services from its premises. Where dispensing hubs are provided these are typically in populated areas where there are numerous existing pharmacies that will wish to make use of this hub. It is stretching credibility to suggest that a rural village is a natural location for a dispensing hub to be located.

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

6.3 Boots UK Limited

6.3.1 "Thank you for your letter dated 31st July 2025 informing us of the above appeal.

6.3.2 We disagree with the decision of the Derby and Derbyshire ICB and their reasoning to approve the application as above.

6.3.3 We stand by our comments in our objection letter, and we have attached this for your information.

6.3.4 Boots UK Ltd have no further comments to make, and we respectfully ask that NHS Resolution inform us of the decision in due course."

Letter to the Commissioner dated 21 February 2025

6.3.5 "Thank you for your letter dated 9th January 2025 and enclosures regarding the above application. Boots UK Limited have the following comments to make.

6.3.6 Whilst we accept that the application is based on benefits not foreseen when drafting the Pharmaceutical Needs Assessment (PNA) Derby and Derbyshire, it is clear that the PNA does not identify any gaps in current pharmacy provision. Nor does it identify any future gaps and there have been no supplementary statements produced to our knowledge. We fail to see what unforeseen benefit this application is proposing to fulfil.

6.3.7 The applicant admits that the population of Brailsford is 1406 (2021 census data) and therefore it must be considered rural in nature. The population will be accustomed to accessing nearby towns for their day to day activities, such as shopping, schools, places of work to name a few. This may include a trip to a pharmacy for services or advice. The suggestion that this is a rural locality is further supported by the fact that the surgery is a dispensing practice and offers a prescription service to its patients who live more than 1.6km away from a pharmacy. We would suggest that the patients who live in Brailsford and attend the medical

practice in Brailsford therefore already have adequate access to pharmaceutical services. With such a small population, we question the viability of a new pharmacy and how this would affect the current dispensing offer at the practice, especially as it is to be collocated if approved? It is of note that the applicant, Henmore Health Ltd are also the operators of the Brailsford and Ashbourne surgery's [sic].

6.3.8 The applicant is not proposing to open on a Saturday or Sunday, suggesting that pharmaceutical provision is adequate at these times. If a patient is deemed able to access local towns at the weekends, they surely can do so in the week too?

6.3.9 The surgery list includes patients from other towns and villages in the area and of course, some of these patients will live closer to the existing pharmacy network and will not require a visit to the surgery for their prescriptions due to the increasing number of telephone appointments and the Electronic Prescription Service where the patient can collect their prescription directly from a pharmacy of their choice.

6.3.10 The applicant has not identified any specific patient groups that may wish to access a pharmacy at the proposed location that currently have expressed difficulty in accessing services in the area.

6.3.11 We believe that patients have already access to providers and choice in this locality and do not believe that the applicant is offering to secure any innovation by way of services or delivery.

6.3.12 For these reasons we respectfully urge the ICB to refuse this application.

6.3.13 Please be aware that we may wish to make further representations at a later stage and attend any oral hearing that may be held in relation to the application. We would be most grateful if you could keep us informed of the progress of this application."

6.4 Community Pharmacy Derbyshire

6.4.1 "Thank you for sending the appeal documents received for the above unforeseen benefit application. Community Pharmacy Derbyshire committee reviewed the appeal information and would like to make the following comments:

6.4.2 Community Pharmacy Derbyshire stand by the points raised in our original response (copy attached).

6.4.3 The applicant has not demonstrated how their application would meet regulations 18(2)(b) – specifically how their application provides:

6.4.3.1 (i) Additional choice and enhanced accessibility to patients.

6.4.3.2 (ii) The applicant has not provided information pertaining to protected characteristics and how specific patient groups with these protected characteristics would be supported above what existing pharmacies already provide.

6.4.3.3 (iii) Innovation – the application does not reference anything innovative that they would be offering above what is already available from existing pharmacies.

6.4.4 Community Pharmacy Derbyshire would like the opportunity should it arise, to be able to comment further and attend any hearings, as well as be kept informed of progress."

Letter to the Commissioner dated 26 February 2025

6.4.5 "Thank you for sending the documents received for the above unforeseen benefit application. Community Pharmacy Derbyshire committee reviewed the application and would like to make the following comments:

6.4.5.1 There have been no supplementary statements to the PNA issued by Derbyshire HWB for the area of Brailsford.

6.4.5.2 The application does not detail any innovation regarding provision of the claimed unforeseen benefit.

6.4.5.3 The applicant is stating that they will provide a significant list of NHS services but many of these are not currently commissioned in the area.

6.4.5.4 The rurality and controlled location in the area should be reviewed prior to the application being considered.

6.4.5.5 The hours stated in the statement on the application are different to those in the actual application – please can these be verified.

6.4.6 Community Pharmacy Derbyshire would like the opportunity if it arises, to be able to comment further and attend any hearings, as well as be kept informed of progress. Thank you."

7 Observations

The following observations were received in response to the representations received on appeal.

7.1 Pharmacy Sales and Consultancy on behalf of the Appellant

7.1.1 "Thank you for your letter of 3rd September enclosing third-party comments in respect of the above appeal.

7.1.2 We wish to make final observations on this matter as follows:

7.1.3 We note that Boots and Community Pharmacy Derbyshire continue to share our view that this application does not meet the requirements of Regulation 18. We therefore have no comments to make in respect of their submissions.

7.1.4 We do, however, wish to respond to the letter by [NM], acting for the applicant, Henmore Health Limited. As our representations at this

stage must be limited to matters raised by the applicant, for the committee's ease we respond to each of the points in Mr [M]'s letter in blue text.

7.1.5 1) The Commissioner did not misdirect themselves in granting this application as it would secure improvements, or better access to Pharmaceutical Services in the area of the Health and Wellbeing Board, in whose Pharmaceutical Needs Assessment (PNA) the improvements or better access had not been included [Regulation 18 (1)].

7.1.6 We disagree with the applicant for the reasons set out in our client's appeal letter.

7.1.7 2) That there is no pharmacy either adjacent or in the immediate vicinity. Indeed, the nearest pharmacies are over 5 miles.

7.1.8 That is factually correct. However, for the reasons set out in our client's appeal, residents of Brailsford have reasonable choice given the nature of the setting and the size of the village. It must be remembered that dispensing doctor services are available in Brailsford, so residents do have access to pharmaceutical services.

7.1.9 3) That granting the application would not cause significant detriment to either planning or the provision of Pharmaceutical Services in the Health and Wellbeing Board Area.

7.1.10 Our client is not advancing an argument in respect of detriment.

7.1.11 4) That the application would provide a remedy for the lack of reasonable choice of obtaining Pharmaceutical Services in Brailsford.

7.1.12 We disagree with the assertion that residents of Brailsford do not already have reasonable choice.

7.1.13 5) The village has grown significantly, with over 400 new homes approved since 2017, nearly quadrupling its size.

7.1.14 The population of the village remains very small, with fewer than 1,400 residents. The suggestion that 400 homes being approved would quadruple the size of the village does not make sense unless there were only 125 homes in the village prior to 2017. If that was the case then this further supports the view that this is a very small settlement. Furthermore, it is noted that the applicant states 400 homes approved rather than being built and occupied).

7.1.15 6) Healthy Living Pharmacy (HLP) Framework. HLP's are designed to reduce health inequalities and provide consistent health promotion services tailored to local needs. Becoming an HLP is a requirement under NHS Terms of Service, and Henmore Health's commitment to this model supports preventative care and public health in rural areas.

7.1.16 Becoming a HLP is not, in any way, innovative. As the applicant states, it is a requirement of the NHS Terms of Service.

7.1.17 7) That the application would provide specific benefit to those persons with protected characteristics in general and in particular because of the poverty of transport links to the distant pharmacies. This would be of particular benefit to single parents, the disabled, the elderly and those residents without access to a car during the day.

7.1.18 We have commented on the transport links previously. The applicant has provided no evidence from any patients which suggests they have difficulties accessing existing pharmacies either by car or public transport.

7.1.19 8) That there are innovative approaches proposed by the appellant with delivery of Pharmaceutical Services.

7.1.20 Again, we have commented on this matter previously. Simply stating that there are innovate approaches does not satisfy the regulatory test.

7.1.21 9) That the Commissioner did not misdirect themselves in determining that application relates to a premises in a controlled locality (Regulation 40).

7.1.22 10) That the Commissioner did not misdirect themselves in determining that application relates to a premises in a Reserved Location on the date of the receipt of the Application (Regulation 41).

7.1.23 Our client does not dispute that the area is both controlled and reserved. However, it is clear than the ICB failed to follow proper process when notifying interested parties of the application.

7.1.24 11) That this application is more than five years after the determination of any matters relating to Pharmaceutical Services in a 1.6km radius. The ‘five-year rule’ (Regulation 42).

7.1.25 This is not disputed.

7.1.26 As regards to the substantive appeal by the representative [KH] of Pharmacy Advice Consultancy Services on behalf of LP SD Twenty Six Limited who are an interested party in relation to their ownership of a pharmacy at Ashbourne.

7.1.27 We would say that:

7.1.28 12) No doubt NHS Resolution will have had regard to the comments made in their own decision in case SHA/26681.

7.1.29 NHS Resolution considers each case on its own merits and will, no doubt, do so in this case.

7.1.30 13) Ashbourne Pharmacy is some 5.6 miles as the crow flies, further by road and is unlikely to be affected by this application.

7.1.31 Whether or not our client’s pharmacy will be affected by this application is not a relevant consideration (other than in the matter of detriment).

Our client was deemed by the ICB to be an interested party, so has exercised its right to submit representations accordingly.

7.1.32 14) Patients in the locality of the application site do not enjoy a reasonable choice of Pharmaceutical Services. Dispensing Services are not the same as pharmaceutical Services especially with the enhanced roles currently and proposed for Retail Pharmacies by the NHS. Retail Pharmacies provide advanced services such as:

7.1.32.1Pharmacy First

7.1.32.2New Medicines Service

7.1.32.3Vaccinations

7.1.32.4Health Promotions and lifestyle advice

7.1.32.5Clinical checks and medicines optimisation

7.1.33 Dispensing practices primarily focus on basic dispensing with limited scope for public health interventions.

7.1.34 Whilst it is correct that the services offered by Dispensing Practices are not exactly the same as those offered by community pharmacies, this application should be considered in the context of the existing provision of medical services from the same premises proposed by the applicant. The co-located medical practice is able to provide vaccinations, health promotion and advice and medicines optimisation using employed pharmacists in the practice.

7.1.35 Other services such as Pharmacy First and NMS can be provided remotely if required without the need for patients to attend a pharmacy in person.

7.1.36 15) We note paragraph 2.4 of the appeal letter that the appellant accepts ‘given the rural nature of the area, the location for this application is a controlled locality’ (verbatim).

7.1.37 This is not disputed.

7.1.38 16) That the number of individuals residing within a 1.6km radius of the application site on the patient list is circa 1400. This figure being substantially less than the threshold of 2750. The opinions of the appellant that this threshold of 2750 needs revising is only that an opinion and carries no weight in determining the appeal.

7.1.39 It remains a matter of fact that the area is reserved and patient numbers are well below the current threshold.

7.1.40 17) The viability of a Retail Pharmacy is not relevant to the granting of a pharmacy application. The Pharmaceutical Services Regulations 2013 as amended are silent in this regard.

7.1.41 This is accepted, save for the fact that opening a pharmacy which subsequently closes because it is not a viable business is likely to be disruptive for patients rather than beneficial.

7.1.42 18) Our client in their application have outlined their proposals in regards offering a Hub and Spoke service to Dispensing Practices. By definition this would not destabilise Pharmaceutical Services offered by Retail Pharmacies.

7.1.43 No statement was made within the application that a Hub and Spoke service will be offered exclusively to Dispensing Practices. It is not clear that the amendments to the legislation would permit this in any event.

7.1.44 19) As regards to the statement by the appellant in paragraph 2.5.10 'To the extent that there is a burden of proof, it is submitted that this rests with the applicant. That it is for the applicant to demonstrate to the ICB that the application meets the regulatory test, not for our client to demonstrate that it does not meet the relevant regulatory test. Since the Commissioner has granted our application, in any appeal process the burden of proof is now with the appellant.

7.1.45 NHS Resolution is required to consider whether this application meets the regulatory tests. The burden of proof remains with the applicant.

7.1.46 20) The village of Brailsford has a Post Office, school and a Medical Centre so patients may very well access these on a frequent basis. The appellant has offered no evidence that all the population in Brailsford and the surrounding area are highly mobile. Undoubtedly many persons with Protected Characteristics will be by definition be unlikely to be mobile or have access to a car during the day.

7.1.47 These amenities fall a long way short of meeting even the most basic daily needs for the majority of residents. Our client has provided evidence in respect to both car ownership levels and public transport availability that demonstrate the extent to which local residents are mobile.

7.1.48 21) The appellant does not dispute that the age profile of the population is older than the national average. We would say this is significant as this increases the need for local Pharmaceutical Services. The local Medical Centre inform us that 29% of their patient list is over 65.

7.1.49 Whilst this may be the case, it remains a fact that residents of the village are required to travel elsewhere to access their daily needs, such as groceries, whether they are aged over 65 or not.

7.1.50 22) As regards transportation links:

7.1.51 The scheduled bus service offered by Swift namely route 114 stops close to Brailsford but not does stop in Brailsford, in any case is limited in both frequence and convenience. It is more suited to commuting between Ashbourne and Derby and would appear neither significant or relevant to this appeal. It is relevant that it is subsidised by a temporary

government scheme ending in early 2026, raising concerns about future reliability. Only 1.9% of Brailsford residents use public transport, compared to 4.1% across Derbyshire, indicating limited practical access.

7.1.52 The ACT charity offerings namely routes 110 and 111 operated by the Ashbourne Bus Company, on examination of their timetables and routes does not appear to go through Brailsford. We believe we are reliably informed that the associated volunteer Community Bus offers a very limited service and does not usually offer a bespoke Taxi Service. It is not a substitute for walkable access to Pharmaceutical Services. It requires pre-booking, lacks on demand flexibility, and may not be suitable for urgent or spontaneous pharmacy visits. The service is not guaranteed long term, being dependent on funding and volunteer availability. In any case it is not available on Sunday's or Bank Holidays.

7.1.53 Whilst Brailsford has above-average car ownership (1.76 cars per household), this does not guarantee daytime access especially for:

7.1.53.1 Elderly patients

7.1.53.2 Single Parents

7.1.53.3 People with disabilities

7.1.53.4 Households with only one car used by a working adult

7.1.54 It is simply incorrect to suggest the Swift bus service does not stop in Brailsford. This is evidenced by the images below.

7.1.55 The first image [provided] shows the bus stop at the junction of A52 Main Road and Luke Lane, just 125m from Brailsford Medical Centre. This is more centrally located for residents than the surgery. Given that there are numerous pharmacies in both Ashbourne and Derby, this service is highly relevant. We have enclosed a copy of the timetable for this service [provided].

7.1.56 In respect of car availability, for the very small number of people who may not have access to a car during the day (and are unable to use public transport) it is noteworthy that Tesco Pharmacy in Mickleover, on the western side of Derby opens until 8pm from Monday to Saturday.

7.1.57 23) It is noted the appellant in response to our application in paragraph 2.5.30 has stated that our offer should be disregarded as described in paragraph 2.5.29 'in addition to Essential Services and commissioned services, we will implement our own free or private services which will target the health priorities of the locality.'

7.1.58 The point made was that only NHS Services may be considered in the context of an application for inclusion in the pharmaceutical list.

7.1.59 24) As regards the appellant comments in paragraph 2.5.32. our total Opening Hours including both core and supplementary hours disprove their comments. As our application clearly states we are open on

Saturday and Sunday mornings. The Directors of the applicant have confirmed that the pharmacy will always at least mirror the Opening Hours of the Brailsford Medical Practice.

7.1.60 The applicant knows that hours which are not core do not secure the provision of pharmaceutical services as they can be changed by simply providing 5 weeks' notice.

7.1.61 25) As regards claims by the appellant that their client Ashbourne Pharmacy can offer remote services is both hypothetical and contradicts the NHS Philosophy that face-to-face services are always to be preferred to that of remote services. Remote services are both commonplace and effective in many cases.

7.1.62 26) Our application is clearly made under Regulation 18.1 offering unforeseen services and by definition Pharmaceutical Need would not be identified in the PNA.

7.1.63 This is accepted, but it is noteworthy that the draft PNA, due to take effect in a matter of weeks does not identify any gap in Brailsford either. This is relevant given the applicant's claim that the HWB is supportive of the application.

7.1.64 27) Regulations regarding the implementation of Hub and Spoke Dispensing have been made with an implementation date of 1st October 2025 and an Operational Date to allow for applications and approval of 29th October. By the time this appeal is determined and a Retail Pharmacy set up in Brailsford, the concept of Hub and Spoke dispensing will have Regulatory approval in place. In any case our application is not totally dependent on this innovatory offering.

7.1.65 As we have commented previously, this model may not be appropriate if the intention is to service dispensing doctor practices.

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

7.2 N V M Holdings Ltd on behalf of the Applicant

7.2.1 "Thank you for your communication of 3rd September 2025 regarding the responses to the above appeal circulation.

7.2.2 As the authorised representative of Henmore Health Limited I respond as follows:

7.2.2.1 As regards the matters to be considered we would say that that in regard to the responses of the circulation of the appeal:

7.2.3 <u>Community Pharmacy Derbyshire (28th August 2025)</u>

7.2.4 It is incorrect for them to assert that my client's application would not meet regulations 18(2)(b). Both the application and our response to the appeal adduced

7.2.5 Additional choice and enhanced accessibility to patients.

7.2.6 The applicant has provided information pertaining to protected characteristics and how specific patient groups with these protected characteristics would be supported above what existing pharmacies already provide. e.g. The nearest do not deliver to the Brailsford catchment area or offer face to face visits.

7.2.7 As regards innovation the application offers a Hub and Spoke service in general and to local dispensing practices in particular.

7.2.8 Pharmacy Advice and Consultancy Services Limited (PSC) (20th August 2025)

7.2.9 Addressing PSC comments in their numeral order.

7.2.10 (i) The decision maker can take any significant and relevant information available into consideration when making their decision. The fact that this is a rural area with only dispensing doctors providing limited pharmaceutical services is highly relevant. Of course, those pharmaceutical services for dispensing practices are basically limited to dispensing.

7.2.11 (ii) Dispensing practices do not provide walk in advice. At best the receptionist will Triage a patient to a pharmacy which will be many miles away. The concept of opening a registered pharmacy purely to provide patent medicines is frankly ludicrous. My clients would wish to provide full retail pharmacy Pharmaceutical Services as outlined in their application.

7.2.12 (iii) More populated areas do of course have higher numbers of patients but they also have greater density of retail pharmacies. Brailsford locality and its catchment area have no pharmacies.

7.2.13 (iv) The directors of the applicant are very confident in the financial viability of a Pharmacy. The concept of patient disruption is something we do not recognise and would state is spurious.

7.2.14 (v) There are no competing applications.

7.2.15 (vi) The statement by PSC

7.2.16 *'We note the assurances from the directors in respect of prescription direction but we are also aware that GP practices are uniquely placed to influence patient behaviour, particularly when operating a business which is likely to be borderline viable at best. It is likely that the directors will need to provide significant evidence to the ICB in respect of avoiding the risk of direction, if this application is granted. Assurances may not be sufficient'.*

7.2.17 The directors of the applicant (Not all who are G. P's) and the Superintendent Pharmacist Designate struggle to believe that this statement by [KH] has been authorised by the principals of the appellant. This statement is pejorative, defamatory and libelous. We

trust that neither the representative or the appellant would repeat these scurrilous assertions in the public domain. No doubt NHS Resolution would place no weight on these unfounded speculations.

7.2.18 (vii) No comment on no comment

7.2.19 (viii)Those directors who are G. P's have received complaints regarding Pharmaceutical access. Although no new evidence can be adduced at this stage in the unlikely event of an Oral Hearing my clients will provide written evidence.

7.2.20 (ix) Obviously opening a de novo pharmacy is challenging but my clients believe it is Financially viable.

7.2.21 (x) It is irrelevant to the concept of Hub and Spoke where the Hub is located. It could be argued that a rural location is more viable because of low overheads and much greater mobility of movement outside the congestion of an urban area.

7.2.22 Boots UK Limited (28th August 2025)

7.2.23 Their response to the appeal responses circulation adduces no new information other than that adduced in their letter of 21st February 2025. We therefore have no comment on de facto no comment.

7.2.24 NVM Holdings Ltd on behalf of Henmore Health Limited (31st July 2025)

7.2.25 We stand by all our comments adduced in this letter on behalf of the applicant. We particularly reiterate the following:

7.2.26 **Conclusion**

7.2.27 We would say that the appellant and interested dissenting parties have offered no significant or relevant information in their appeal to show that neither the Commissioner or Derbyshire HWB misdirected themselves in consideration of my client's application.

7.2.28 We would say that on at least the balance of probabilities that the evidence and rationale offered in my client's application met all three of the Regulatory tests in Regulation 18.1.

7.2.29 Namely:

7.2.29.1 Reasonable choice

7.2.29.2 Significant benefit to Persons with Protected Characteristics

7.2.29.3 Innovative approaches of Pharmaceutical Services (in relation to a Hub and Spoke offering)

7.2.30 We therefore respectfully invite the appeals panel to grant my clients application to join the Pharmaceutical List of NHS England on the balance of probabilities and therefore dismiss the appeal by the appellant. "

8 **Regulation 22**

Regulation 22 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations") states that the relevant Pharmaceutical Needs Assessment ("PNA") for the purpose of determining a pharmacy application is the PNA that is current at the time NHS Resolution makes the determination unless the only way to determine the application justly is with regard to an earlier PNA. Regulations 5 and 6 envisage there will be a revised PNA published by each Health and Wellbeing Board regularly. NHS Resolution noted that the original decision of the Commissioner in this matter was taken in relation to an earlier PNA. In the interests of transparency and fairness, NHS Resolution sought to rely on the discretion afforded in paragraph 7 of Schedule 3 of the Regulations to vary the normal procedures and to add an additional round of observations on this matter. The following comments were received.

8.1 Pharmacy Sales and Consultancy on behalf of LP SD Twenty Six Limited

8.1.1 "Thank you for your letter of today's date inviting comments in respect of the recent publication of a new PNA for Derbyshire City and Derbyshire County.

8.1.2 We note the following statements in the PNA (highlighted in blue, with our comments in black):

8.1.3 *Page 22*

8.1.4 Based on the analysis, the current provision of community pharmaceutical services adequately meets the pharmaceutical need in both the Derby and Derbyshire Health and Wellbeing Board areas.

8.1.5 This statement is clear and unequivocal. There is no need for additional provision.

8.1.6 *Page 177 - 181 – In relation to Derbyshire Dales locality in which Brailsford is located*

8.1.7 The district is the least deprived in Derbyshire, ranking 265th out of 316 English local authority districts in the 2019 English Index of Multiple Deprivation (where 1 is the most deprived).

8.1.8 This affluence is reflected in high levels of car ownership and better health outcomes than in other localities.

8.1.9 Figure 71 demonstrates that, considering the highly rural nature of the district, much of the population will be within 1.6km (a 1 mile walk of approximately 20 mins) of a pharmacy or dispensing practice.

8.1.10 The HWB clearly recognise the role dispensing practices play in rural areas, providing pharmaceutical services to residents and take this into account when assessing access.

8.1.11 *Page 204 – Statements of Pharmaceutical Need*

8.1.12 Derbyshire

8.1.13 It is considered that the current provision of community pharmaceutical services adequately meets the pharmaceutical need in the Derby Health and Wellbeing Board area.

8.1.14 Whilst pharmaceutical need is adequately met, it is recognised that for some populations and for those living in some areas – notably, some deprived areas of Chesterfield without access to a car and South Derbyshire as a whole – may face challenges in accessing pharmacy services. These communities may rely more heavily on Distance Selling Pharmacies, which provide services such as remote dispensing and delivery and some online services but do not offer the same range of services as a local community pharmacy.

8.1.15 It is noteworthy that Brailsford is neither in Chesterfield nor South Derbyshire, so the comments around challenges in accessing pharmacy services are less likely to be applicable elsewhere in the county.

8.1.16 In summary, given that the PNA has just been published, it is clearly a very current reflection of the HWB's position in respect of the existing levels of pharmaceutical services provision. That being the case there is simply no evidence that there is any need for a pharmacy in Brailsford."

8.2 Derbyshire Health and Wellbeing Board

8.2.1 "We can confirm that the Derby and Derbyshire Pharmaceutical Needs Assessment for 2025-28 considered demographics, opening times, access, provision of services and housing developments and found that the current provision is adequate.

8.2.2 Therefore the application does not offer unforeseen benefits under regulation 18."

9 Observations on the Regulation 22 comments

The following observations were received by NHS Resolution in response to the Regulation 22 comments.

9.1 N V M Holdings Ltd on behalf of the Applicant

9.1.1 "Thank you for your communication of 14th October 2025 regarding the responses to your letter 3rd October 2025.

9.1.2 As the authorised representative of Henmore Health Limited I respond as follows:

9.1.3 As regards the matters to be considered we would say that that in regard to the responses received by you in relation to that letter our final observations are:

9.1.4 Community Pharmacy Derbyshire [sic] (7th October 2025)

9.1.5 It is incorrect for them to assert that my client's application would not meet Regulation 18 and by inference sub section 18(2)(b). Both the application and our response to the appeal adduced

9.1.5.1 Additional choice and enhanced accessibility to patients.

9.1.5.2 The applicant has provided information pertaining to protected characteristics and how specific patient groups with these protected characteristics would be supported above what existing pharmacies already provide. e.g. The nearest do not deliver to the Brailsford catchment area or offer face to face visits.

9.1.5.3 As regards innovation the application offers a Hub and Spoke service in general and to local dispensing practices in particular.

9.1.6 Pharmacy Advice and Consultancy Services Limited (PSC) (3rd October 2025)

9.1.7 Addressing the PNA (blue) and PSC (italics) comments in their numeral order

9.1.8 i) Page 22

9.1.9 Based on the analysis, the current provision of community pharmaceutical services adequately meets the pharmaceutical need in both the Derby and Derbyshire Health and Wellbeing Board areas.

9.1.10 *This statement is clear and unequivocal. There is no need for additional provision.*

9.1.11 Since this application is made under Regulation 18 Unforeseen benefits the PNA statement is not binding on the Committee and indeed the LWB specifically contradicted it by their support of our application.

9.1.12 ii) Page 177 -181

9.1.13 In relation to Derbyshire Dales locality in which Brailsford is located .The district is the least deprived in Derbyshire, ranking 265th out of 316 English local authority districts in the 2019 English Index of Multiple Deprivation (where 1 is the most deprived).

9.1.14 *This affluence is reflected in high levels of car ownership and better health outcomes than in other localities.*

9.1.15 We would refer the Committee to our evidence adduced in earlier documentation addressing this point.

9.1.16 iii) Figure 71 demonstrates that, considering the highly rural nature of the district, much of the population will be within 1.6km (a 1 mile walk of approximately 20 mins) of a pharmacy or dispensing practice.

9.1.17 *The HWB clearly recognise the role dispensing practices play in rural areas, providing pharmaceutical services to residents and take this into account when assessing access.*

9.1.18 We would dispute that the appellants representative has correctly interpreted figure 71. In any case the provision made by dispensing practices carries little or no weight in consideration of our application as previously adduced by ourselves.

9.1.19 iv) Page 204

9.1.20 Statements of Pharmaceutical Need

9.1.21 Whilst pharmaceutical need is adequately met, it is recognised that for some populations and for those living in some areas - notably, some deprived areas of Chesterfield without access to a car and South Derbyshire as a whole - may face challenges in accessing pharmacy services. These communities may rely more heavily on Distance Selling Pharmacies, which provide services such as remote dispensing and delivery and some online services but do not offer the same range of services as a local community pharmacy.

9.1.22 *It is noteworthy that Brailsford is neither in Chesterfield nor South Derbyshire, so the comments around the challenges in accessing pharmacy services are less likely to be applicable elsewhere in the country.*

9.1.23 An opinion not shared by the LWB.

9.1.24 NVM Holdings Ltd on behalf of Henmore Health Limited (31st July 2025)

9.1.25 We stand by all our comments adduced in this letter on behalf of the applicant as applicable in refutation of the above two letters received by you dated 3rd October.

9.1.26 Conclusion

9.1.27 We would say that the appellant and interested dissenting parties have offered no significant or relevant information in their appeal or subsequent correspondence to show that neither the Commissioner or Derbyshire HWB misdirected themselves in consideration of my client's application.

9.1.28 We would continue to say that on at least the balance of probabilities that the evidence and rationale offered in my client's application met all three of the Regulatory tests in Regulation 18.1.

9.1.29 Namely:

9.1.29.1 Reasonable choice

9.1.29.2 Significant benefit to Persons with Protected Characteristics

9.1.29.3 Innovative approaches of Pharmaceutical Services (in relation to a Hub and Spoke offering)

9.1.30 We therefore respectfully invite the appeals panel to grant my clients application to join the Pharmaceutical List of NHS England on the balance of probabilities and therefore dismiss the appeal by the appellant."

10 Consideration

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

10.2 The Committee proceeded to consider the Regulations.

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

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

10.5 The Committee considered that two preliminary points needed addressing.

10.6 Firstly, the Committee noted the comments from Pharmacy Sales and Consultancy on behalf of the Appellant in relation to the Commissioner's failure to abide by the requirements of Regulation 41(4). It also highlighted that neither itself nor the Appellant were sent a copy of the decision letter from the Commissioner, contrary to Regulation 28(h). The Committee noted that before the appeal was circulated, NHS Resolution reviewed the paperwork provided by the Commissioner. The Committee noted that the application was first circulated on 9 January 2025 and the notification letter did not meet the requirements of Regulation 41(4). The application was re-circulated (and the 45 day period to make representations re-started) on 14 January 2025. The Committee noted that both circulations and the decision letter were sent to the Appellant directly via its NHSnet. email address.

10.7 The Committee noted that in its representations on the application to the Commissioner, Pharmacy Sales and Consultancy refer to the Commissioner's notification letter of 9 January 2025 only, which it has provided a copy of. This indicated to the Committee that the Appellant did not advise its representative of the further notification on 14 January 2025 and consequently, Pharmacy Sales and Consultancy did not have sight of the revised notification letter dated 14 January 2025. Therefore, the Committee did not consider it necessary to remit this matter back to the Commissioner, as requested by Pharmacy Sales and Consultancy, as the Commissioner corrected its earlier error in order to abide by the Regulations. The Committee considered it unhelpful that the Commissioner did not address these points in its decision letter and was of the view that the Commissioner should have sent the decision letter to Pharmacy Sales and Consultancy given it was clear they were representing the Appellant.

10.8 Secondly, the Committee noted the Applicant's comment that "*To the extent that there is a burden of proof, it is submitted that this rests with the applicant.*

That it is for the applicant to demonstrate to the ICB that the application meets the regulatory test, not for our client to demonstrate that it does not meet the relevant regulatory test. Since the Commissioner has granted our application, in any appeal process the burden of proof is now with the appellant". In response, the Appellant states that "*NHS Resolution is required to consider whether this application meets the regulatory tests. The burden of proof remains with the applicant".* The Committee was of the view that the appeal is a reconsideration of the application and the onus of proof lies with the Applicant to make its case that the application will confer significant benefits.

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

10.10 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 18. 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 18 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 18 and may be granted. Depending on the determinations of the Committee in respect of the above as well as taking into consideration of whether the Commissioner 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

10.11 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") at or 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).

10.12 The Committee noted that the Applicant had not provided any information in the application form on this point but the Committee noted that the wording of the application form only required the Applicant to include information in the relevant section if the proposed premises were adjacent to, or in close proximity to, another pharmacy or dispensing appliance contractor premises. The Committee considered it reasonable to determine that the lack of information in the application form on this point when read with the wording of the application form allowed it to be reasonably satisfied that the Applicant considered that the proposed premises were not adjacent to, or in close proximity to, another pharmacy or dispensing appliance contractor premises. The Committee further noted that no party had sought to argue that the application should be refused under the provisions of Regulation 31. Therefore, the Committee determined that it was not required to refuse the application under the provisions of Regulation 31.

Regulation 40

10.13 The application (which is made under Regulation 18 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 at or 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).

10.14 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

10.15 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 at or 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 or from 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.

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

10.17 The Commissioner had *"noted that 1,315 patients reside within 1.6km of the proposed premises. No evidence was provided to suggest their use of pharmaceutical services equates to or exceeds usage expected from a population of 2,750. The Committee therefore determined that the proposed premises are in a reserved location".* The Committee noted that no party had sought to dispute this figure or that the use was 2,750 or more either in comments to the Commissioner or on appeal.

10.18 The Committee noted the comments from parties on the reserved location status and that all were in agreement that the area is in a reserved location. As the number of individuals residing in that area who are on a patient list is less than 2,750 and there is no evidence of usage beyond this threshold, the area is therefore in a reserved location. The Committee noted that it would not need to go on to consider prejudice if it subsequently decided to grant the application. The Committee therefore next considered whether the application met the requirements of Regulation 18.

Regulation 18

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

"(1) If—

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

(b) the improvements or better access that would be secured were or was not included in the relevant pharmaceutical needs assessment in accordance with paragraph 4 of Schedule 1,

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

(2) Those matters are—

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

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

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

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

(i) there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB (taking into account also NHS England's duties under sections 13I and 13P of the 2006 Act (duty as to patient choice and duty as respects variation in provision of health services)),

(ii) people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access (taking into account also NHS England's duties under section 13G of the 2006 Act (duty as to reducing inequalities)), or

(iii) there being innovative approaches taken with regard to the delivery of pharmaceutical services (taking into account also NHS England's duties under section 13K of the 2006 Act (duty to promote innovation)),

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

(c) whether it is satisfied that it would be desirable to consider, at the same time as the applicant's application, applications from other persons offering to secure the improvements or better access that the applicant is offering to secure;

(d) whether it is satisfied that another application offering to secure the improvements or better access has been submitted to it, and it would be desirable to consider, at the same time as the applicant's application, that other application;

(e) whether it is satisfied that an appeal relating to another application offering to secure the improvements or better access is pending, and it would be desirable to await the outcome of that appeal before considering the applicant's application;

(f) whether the application needs to be deferred or refused by virtue of any provision of Part 5 to 7.

(g) whether it is satisfied that the application presupposes that a gap in pharmaceutical services provision has been or is to be created—

(i) by the removal of chemist premises from a pharmaceutical list as a consequence of the grant of a consolidation application, and

(ii) since the last revision of the relevant HWB's pharmaceutical needs assessment other than by way of a supplementary statement.

(3) NHS England need only consider whether it is satisfied in accordance with paragraphs (2)(c) to (e) if it has reached at least a preliminary view (although this may change) that it is satisfied in accordance with paragraph (2)(b)."

10.20 The Committee considered that Regulation 18(1)(a) was satisfied in that it was required to determine whether it was satisfied that granting the application, or granting it in respect of some only of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB.

10.21 The Committee went on to consider whether Regulation 18(1)(b) was satisfied, i.e. whether the improvements or better access that would be secured if the application was granted were or was included in the PNA in accordance with paragraph 4 of Schedule 1 of the Regulations.

10.22 Paragraph 4 of Schedule 1 requires the PNA to include: "a *statement of the pharmaceutical services that the HWB had identified (if it has) as services that are not provided in the area of the HWB but which the HWB is satisfied (a)*

would *if they were provided….secure improvements or better access, to pharmaceutical services… (b)* ***would*** *if in specified future circumstances they were provided…secure future improvements or better access to pharmaceutical services…"* (emphasis added).

10.23 The Committee noted that the Applicant had based its application on the 2022 PNA but that the Health and Wellbeing Board ("HWB") had since published a 2025 version of the PNA (the "2025 PNA").

10.24 The Committee considered that there were two related issues that it needs to determine in relation to the PNA. It needed to determine which PNA was the relevant PNA for the purposes of Regulation 22 and whether the relevant PNA had identified the improvements or better access that the application was looking to secure.

10.25 In considering these issues, the Committee had regard to the comments made by the parties.

10.26 As a preliminary point, the Committee noted the HWB's apparent misunderstanding of Regulation 18 applications which the Committee considered necessary to address. The HWB had concluded that as the PNA considered the current provision to be "*adequate…*", "…*the application does not offer unforeseen benefits under regulation 18".* The Committee noted that the Applicant had disputed this comment. The Committee noted the overarching test in relation to Regulation 18 is that "*granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant pharmaceutical needs assessment was published*". In other words, the application must confer "unforeseen benefits" that are not identified in the relevant PNA.

10.27 The Committee considered that the starting point as set out in Regulation 22 was that the relevant PNA was the PNA of the relevant HWB that is current at the time that the decision is taken. There is no dispute that the 2025 PNA is the current PNA.

10.28 The Committee considered the PNA prepared by Derby City Council and Derbyshire County Council HWB, conscious that the document provides an analysis of the situation as it was assessed at the date of publication. The Committee bears in mind that, under Regulation 6(2), the body responsible for the PNA must make a revised assessment as soon as reasonably practicable unless to do so appears to be a disproportionate response to those changes. Where it appears disproportionate, the responsible body may, but is not obliged to, issue a supplementary statement under Regulation 6(3). Such a statement then forms part of the PNA. The Committee noted that the PNA was dated 2025 and that no supplementary statements had been issued.

10.29 The Committee had regard to the PNA and noted the conclusions under section 10:

10.29.1 *"Statements of Pharmaceutical Need:*

10.29.2 *Following the analysis of population health and care needs, analysis and geographical mapping of pharmaceutical services, feedback from public and contractor surveys and wider consideration of the PNA*

Steering Group including factors such as the ongoing viability of existing pharmacies, it is considered that the current pharmacy provision adequately meets the pharmaceutical need in both Derby and Derbyshire.

10.29.3 *It is considered that the current provision of community pharmaceutical services adequately meets the pharmaceutical need in the Derby Health and Wellbeing Board area."*

10.30 The Committee noted that the Applicant seeks to provide unforeseen benefits to the patients of Brailsford.

10.31 Whilst the Committee noted the HWB's comment to the Commissioner on the application that "*this development represents a welcome increase in the number of pharmacies per head in the district (Derbyshire Dales) overall and in the provision of pharmacy services locally. The Board therefore raises no objections to inclusion*" and the Applicant's reliance on this comment, it noted that the improvements or better access that the Applicant was claiming would be secured by its application were not included in the relevant PNA in accordance with paragraph 4 of Schedule 1.

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

Regulation 18(2)(a)(i)

10.33 The Committee had regard to

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

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

10.34 The Committee noted the Commissioner's finding on this point that *"granting the application would not cause significant detriment to…the proper planning in respect of the provision of pharmaceutical services in the area of Derbyshire HWB"* and that no party had sought to dispute this, with the Appellant confirming that *"Our client is not advancing an argument in respect of detriment*".

10.35 On the basis of the information available, the Committee was satisfied that, if the application were to be granted and the pharmacy to open, the ability of the Commissioner thereafter to plan for the provision of services would be affected in a significant way.

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

Regulation 18(2)(a)(ii)

10.37 The Committee had regard to

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

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

10.38 The Committee noted the Commissioner's finding on this point that *"granting the application would not cause significant detriment to…the arrangements in place for the provision of pharmaceutical services in that area"* and that no party had sought to dispute this, with the Appellant confirming that *"Our client is not advancing an argument in respect of detriment*".

10.39 The Committee noted the comments from Ashbourne Medical Practice in relation to the potential financial impact of granting the application, which the Commissioner addressed under Regulation 18(2)(a)(i) and its conclusion that "*While Ashbourne Medical Practice raised concerns over the potential financial impact due to the proximity of the proposed pharmacy, the Committee noted that, given the reserved location status, the practice will retain its dispensing rights for eligible patients within 1.6km".* The Committee considered this finding to be more relevant to Regulation 18(2)(a)(ii), however it noted it had reached the same conclusion as the Commissioner in relation to the reserved location status and was of the same view as the Commissioner given that the dispensing rights for Ashbourne Medical Practice will remain, even if the application is granted.

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

Regulation 18(2)(b)

10.41 The Committee had regard to

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

(i) there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB (taking into account also NHS England's duties under sections 13I and 13P of the 2006 Act (duty as to patient choice and duty as respects variation in provision of health services)),

(ii) people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access (taking into account also NHS England's duties under section 13G of the 2006 Act (duty as to reducing inequalities)), or

(iii) there being innovative approaches taken with regard to the delivery of pharmaceutical services (taking into account also NHS England's duties under section 13K of the 2006 Act (duty to promote innovation)),

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

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

10.42 The Committee had regard to the proposed location of the pharmacy, as identified by the map provided by the Commissioner, which had not been disputed by any party.

10.43 In its application, the Applicant states that *"By opening a Community Pharmacy at the collocated site the neighbourhood will enjoy a Community Pharmacy… Our Community Pharmacy will remedy a poverty of pharmaceutical services currently existing in the Derbyshire Dales area"* however, the Committee was mindful that it must have regard to whether there is a reasonable choice in the area of the relevant HWB.

10.44 The Committee noted the Applicant's comment that *"The civil parish population at the 2021 Census was 1,406 a 28% increase since the last census"* and its description of Brailsford, with amenities comprising of *"a pub, a golf club, a post office and a school".* However, the Committee considered that residents would need to travel outside of the area to access a wider range of services and amenities including pharmaceutical services which is understandable given the rurality of the area.

10.45 In its application, the Applicant further states that *"32.7% are economically inactive, 25.1% are One person households, 10% are unpaid carers, 12% have no qualifications, 27% have long term physical or mental health conditions, 38% have no or only one car. (All Census data provided is accessed via NOMIS)".* The Applicant also states that "*Across the locations identified above",* although it was unclear to the Committee which particular area these figures related to. The Committee also noted the Applicant's comment *"The village has grown significantly, with over 400 new homes approved since 2017, nearly quadrupling its size"* and the Appellant's response *"The suggestion that 400 homes being approved would quadruple the size of the village does not make sense unless there were only 125 homes in the village prior to 2017. If that was the case then this further supports the view that this is a very small settlement. Furthermore, it is noted that the applicant states 400 homes approved rather than being built and occupied".* The Committee was mindful that it must have regard to the present situation and that even if there is an associated increase in population, this does not automatically lead to the requirement to grant an application.

10.46 In its application, the Applicant provided information on the distances to the nearest pharmacies from Henmore Health Brailsford Surgery (or Brailsford Medical Practice/Brailsford Surgery as it is sometimes referred to by parties). The Committee noted that the Applicant proposes to co-locate with this GP premises, therefore the distances would be the same. The Applicant states that there are pharmacies located within the neighbouring villages of Mackworth, Mickleover, Allestree Derby, Ashbourne and Duffield Derby with distances between 5.3 and 6 miles away. The Applicant states that it would be *"over a three-hour return walk"* to the nearest pharmacy. The Committee noted that the Applicant had provided no further information to demonstrate the walking route

that would be required to be undertaken to access the existing pharmacies however it had indicated that walking would not be practical. Due to the distance, the Committee considered it unlikely for anyone to make the journey on foot.

10.47 The Committee was mindful that the Commissioner "*determined that the application would significantly improve reasonable choice for pharmaceutical services. The local population currently lacks a pharmacy within a walkable or easily accessible distance".* In response to this point, the Appellant stated that *"The IBC* [sic] *has erred by placing too much weight on the ability of residents to walk to a pharmacy…If it was a requirement that everybody in England had access to a pharmacy within walking distance there would be a need for a pharmacy in pretty much every village in the country. Clearly this is not the case. For this reason that the decision maker is required to consider whether the current choice is 'reasonable'. This must take into account a range of factors including the nature of the area and the extent to which residents have access to public or private transport".* The Committee agreed that consideration is based on whether there is a reasonable choice and a range of factors need to be taken into account to determine whether this is the case. The Committee was of the view that difficulties with access on foot is not in itself an indication that there is not a reasonable choice in obtaining pharmaceutical services. The Committee therefore went on to consider the ease and level of access to the existing pharmacies by other means.

10.48 Looking at access by private transport, in its application form, the Applicant states that *"The only practical way to access these distant pharmacies is by car"* and the nearest pharmacy, Dean & Smedley Ltd is *"approximately a 20-minute return drive",* which the Committee considered would be a similar journey length to access the other existing pharmacies due to them being of a similar distance from the proposed site. Contained within its comments to the Commissioner, the Appellant provided data on car ownership in the LSOA which Brailsford is located in. The Committee noted that 94.2% of households have at least one car or van. The Appellant goes on to state that *"Only 5.8% of households have no car, compared the national average of 23.5%".* The Applicant states that *"Undoubtedly many persons with Protected Characteristics will be by definition be unlikely to be mobile or have access to a car during the day"* however this was speculative and no further information has been provided to support this finding. The Applicant states that Dean & Smedley Ltd has limited parking and the other alternative pharmacies have no parking. The Appellant disputes this by stating that its pharmacy *"benefits from a substantial car park next to the pharmacy"* which had not been disputed. The Committee was mindful of the high level of car ownership in the area and concluded that for those who did have access to private transport there was nothing provided by the Applicant to demonstrate that they were currently having difficulties in accessing the existing pharmaceutical provision in the area of the HWB.

10.49 In terms of access by public transport, in its application, the Applicant states that *"bus services are not available or practical".* The Committee had regard to the information provided by the Appellant in its comments to the Commissioner on the application that on the Henmore Health Brailsford Surgery website, there is a link to the Ashbourne Community Transport Service website which runs Monday to Friday 7am to 7pm and Saturday 8am to 7pm and further that *"the*

Swift service runs twice an hour through Brailsford to destinations including Mackworth and Ashbourne where there are existing pharmacies". In its representations, the Applicant responds to these points by stating that *"The ACT charity offerings namely routes 110 and 111 operated by the Ashbourne Bus Company, on examination of their timetables and routes does not appear to go through Brailsford. We believe we are reliably informed that the associated volunteer Community Bus offers a very limited service and does not usually offer a bespoke Taxi Service. It is not a substitute for walkable access to Pharmaceutical Services. It requires pre-booking, lacks on demand flexibility, and may not be suitable for urgent or spontaneous pharmacy visits. The service is not guaranteed long term, being dependent on funding and volunteer availability. In any case it is not available on Sunday's or Bank Holidays"* and *"The scheduled bus service offered by Swift namely route 114 stops close to Brailsford but not does stop in Brailsford, in any case is limited in both frequence and convenience. It is more suited to commuting between Ashbourne and Derby and would appear neither significant or relevant to this appeal. It is relevant that it is subsidised by a temporary government scheme ending in early 2026, raising concerns about future reliability. Only 1.9% of Brailsford residents use public transport, compared to 4.1% across Derbyshire, indicating limited practical access".* The Appellant then responds to these points in its observations by stating that *"It is simply incorrect to suggest the Swift bus service does not stop in Brailsford. This is evidenced by the images below. The first image shows the bus stop at the junction of A52 Main Road and Luke Lane, just 125m from Brailsford Medical Centre. This is more centrally located for residents than the surgery. Given that there are numerous pharmacies in both Ashbourne and Derby, this service is highly relevant. We have enclosed a copy of the timetable for this service".*

10.50 The Committee considered the information before it, first looking at the Swift bus service. The Committee considered it important to address the Applicant's comment in relation to the relevance of this service to the appeal. Irrespective of type, public transport provision in an area is taken into account by the Committee in order to assess access to the existing pharmacies and help determine whether there is reasonable choice. From the timetable provided by the Applicant, it noted that buses run Monday to Saturday at least every hour, with some running more frequently throughout the day. It noted from the name of the stops and from the image provided by the Appellant that there is a bus stop in Brailsford, near to the location of the proposed site, as well as in Mackworth and Ashbourne. The Committee noted it would take approximately fifteen to twenty minutes to reach Ashbourne, the location of the Appellant's pharmacy.

10.51 In considering the Ashbourne Community Transport Service/ACT, the Committee noted the comments from the Applicant that this service does not run in Brailsford and that no party had not sought to dispute this. Whilst it was therefore unclear to the Committee why this would appear on the Henmore Health Brailsford Surgery website, the Committee did not place weight on this service.

10.52 Overall, the Committee was of the view that the Swift service provided patients of Brailsford with a frequent bus service, given the rural setting of the area, that stops at villages where existing pharmacies are located. The Committee noted the figure provided by the Applicant demonstrating a low usage of public

transport in the area. The Committee was mindful that this could be for a variety of reasons including the fact that there is a high level of car ownership in the area. Low usage does not in itself indicate that the public transport provision in the area is not sufficient. The Committee noted the comment from the Applicant on the funding for this service however from the information provided, there was nothing to indicate that this service would cease in early 2026 and the Committee was mindful that it must have regard to the current situation. The Committee was of the view that there was nothing provided to demonstrate that for those who were reliant on public transport that they were currently having difficulties accessing the existing pharmaceutical provision in the area of the HWB.

10.53 The Committee was of the view that there is already reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB, such that it was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits on persons.

10.54 In considering Regulation 18(2)(b)(ii) the Committee reminded itself that it was required to address itself to people who share a protected characteristic under the Equality Act 2010 (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation) having access to services that meet specific needs for pharmaceutical services that, in the relevant area, are difficult for them to access.

10.55 The Applicant states that *"Whilst the pharmacy will be available to patients of all medical practices, we have identified the following patients that will particularly benefit from a de novo pharmacy at the new surgery site:*

10.55.1 *The vulnerable that do not have their own transport and no other means of obtaining a prescription.*

10.55.2 *Housebound extremely vulnerable and the elderly*

10.55.3 *Those who have difficulty getting to the surgery*

10.55.4 *Mothers with young children with no access to a car during the day*

10.55.5 *The disabled especially those with stomas".*

10.56 The Committee also noted the figures provided by the Applicant on the age profile for Brailsford and medical centres in the area and its comment "*Census data indicates that 27% of the population resident in Brailsford and its surrounds are aged 65 and over, this compares to 18.5% for England as a whole".*

10.57 The Appellant and Community Pharmacy Derbyshire both contend that the Applicant has not satisfied the requirements of Regulation 18(2)(b)(ii).

10.58 The Committee was mindful of this Commissioner's finding on this point *"The Committee was satisfied that persons sharing protected characteristics, including age, disability, and caregiving responsibilities, would benefit from improved access to local pharmaceutical services".* However, the Committee

considered that the information regarding those who share a protected characteristic and the pharmaceutical services they needed was limited. There was little or no evidence of specific pharmaceutical needs. The issue of access and choice as might apply to these persons was dealt with in the assessment of reasonable access discussed above and the Committee was mindful that there are always people in an area who share a protected characteristic.

10.59 The Committee was therefore not satisfied that, having regard to the desirability of people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that are difficult for them to access, granting the application would confer significant benefits on persons.

10.60 In considering Regulation 18(2)(b)(iii) the Committee had regard to the desirability of innovative approaches to the delivery of pharmaceutical services. In doing so, the Committee would consider whether there was something more over and above the usual delivery of pharmaceutical services that might be expected from all pharmacies, some 'added value' on offer at the location.

10.61 Within its application, the Applicant contends that *"We will provide…innovative services to all the essential, advance and enhanced services which extend the accessibility to pharmacy services".* The Commissioner identified "*partial innovation*" in the application by way of:

10.61.1 *"Co-location with GP Practice*

10.61.2 *Pharmacist prescriber role (pending)*

10.61.3 *Healthy Living Pharmacy (HLP) delivery and support*

10.61.4 *Hub & Spoke delivery model noted (though not yet enacted in law)".*

10.62 In response to the Commissioner's finding, the Appellant states that *"none of the points listed are in any way innovative. These are all common within the existing pharmacy network".* Both Community Pharmacy Derbyshire and Boots are of the view that the Applicant has not identified any innovative approaches.

10.63 The Committee considered each of the points identified by the Commissioner and the comments from the Applicant, and it concluded that:

10.63.1 Many pharmacies are already co-located with a GP Practice and therefore co-location cannot be innovative;

10.63.2 The Healthy Living Pharmacy framework is a requirement under the NHS Terms of Service and therefore cannot be claimed as an innovative approach;

10.63.3 Whilst the Responsible Pharmacist may not always be a prescriber, the role of a Pharmacist Prescriber is not innovative and therefore cannot be defined as innovation; and

10.63.4 Whilst there are amendments to the Regulations coming into force on 1 October 2025, Hub and Spoke model is already well-known and used by many pharmacies and therefore cannot be claimed as innovative.

10.64 The Committee noted that the Applicant had not identified any other innovative approaches. The Committee was therefore not satisfied that, having regard to the desirability of there being innovative approaches taken with regard to the deliverability of pharmaceutical services, granting an application would confer significant benefits on persons.

Regulation 18(2)(b) generally

10.65 In its application, the Applicant states that *"Our hours will include Saturdays and Sundays"* and in response, the Appellant states that *"This is not correct. The application form shows that the applicant will only open from Monday to Friday, 9am to 1pm and 2pm to 6pm".* In response, the Applicant states that *"our total Opening Hours including both core and supplementary hours disprove their comments. As our application clearly states we are open on Saturday and Sunday mornings. The Directors of the applicant have confirmed that the pharmacy will always at least mirror the Opening Hours of the Brailsford Medical Practice".*

10.66 The Applicant also refers to the closing times of the existing pharmacies and states that Tesco Pharmacy is open until 8pm but all the other pharmacies close at 6.15pm.

10.67 The Committee had regard to the application form and noted that the Applicant's proposed core hours are 9am to 1pm and 2pm to 6pm Monday to Friday, with no proposed supplementary opening. It was therefore unclear to the Committee why the Applicant remained of the view that it had proposed weekend opening. The Committee noted that both the Appellant and Boots refer to the lack of weekend opening proposed by the Applicant. The Committee was mindful that it must have regard to the information before it and without evidence to the contrary, the Committee proceeded on the basis that the hours proposed by the Applicant are those outlined in the application form.

10.68 The Committee was of the view that there was no information provided to support a finding that pharmaceutical services are not currently provided at such times as needed and therefore it was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits (in relation to opening hours) on persons.

10.69 The Committee has considered whether there are any other factors that would confer significant benefits including on patients who share protected characteristics. The Committee had regard to the need to eliminate discrimination and advance equality of opportunity and foster good relations between these patients and those who do not share their protected characteristics.

10.70 The Committee was of the view that in accordance with Regulation 18(2)(b) the granting of this application would not confer significant benefits on persons in the area of the HWB which were not foreseen when the PNA was published.

Other considerations

10.71 Having determined that Regulation 18(2)(b) had not been satisfied, the Committee did not need to have regard to Regulation 18(2)(c) to (e).

10.72 No deferral or refusal under Regulation 18(2)(f) was required in this case.

10.73 The Committee had regard to Regulation 18(2)(g) and found no reason that required it to refuse the application under this regulation.

10.74 The Committee considered whether there were any further factors to be taken into account and concluded that there were not.

10.75 The Committee was not satisfied that the information provided demonstrates that there is difficulty in accessing current pharmaceutical services such that a pharmacy at the proposed site would provide better access to pharmaceutical services.

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

10.76.1 confirm the Commissioner's decision;

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

10.76.3 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.

10.77 As the Commissioner reached a different decision to the Commissioner, the Committee determined that the decision of the Commissioner must be quashed.

10.78 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.

10.79 The Committee noted that representations on Regulation 18 had been sought from parties by the Commissioner and representations had already been made by parties to the Commissioner in response. These had been circulated and seen by all parties 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 18.

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

11 DECISION

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

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

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

11.4 The Committee has considered whether the granting of the application would cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area covered by the HWB, or the arrangements in place for the provision of pharmaceutical services in that area and is not satisfied that it would;

11.5 The Committee determined that the application should be refused on the following basis:

11.5.1 In considering whether the granting of the application would confer significant benefits, the Committee determined that –

11.5.1.1 there is already a reasonable choice with regard to obtaining pharmaceutical services;

11.5.1.2 there is no evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services; and

11.5.1.3 there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services;

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

Case Manager
Primary Care Appeals