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

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

17 October 2025

REF: SHA/26676

APPEAL AGAINST BIRMINGHAM AND SOLIHULL ICB DECISION TO REFUSE AN APPLICATION BY LP SD ONE HUNDRED SIX LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT ALCESTER ROAD SOUTH, BIRMINGHAM B14 5JA (BEST ESTIMATE)

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:

LP SD One Hundred Six Ltd represented by Healthcare Plus Consulting Ltd
PCSE on behalf of Birmingham and Solihull ICB
Boots UK Ltd
Browns Pharmacy represented by Rushport Advisory LLP
Druids Heath Pharmacy represented by Rushport Advisory LLP
Prince of Wales Pharmacy represented by Rushport Advisory LLP
Whites Pharmacy represented by Rushport Advisory LLP

NHS Resolution

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

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

REF: SHA/26676

APPEAL AGAINST BIRMINGHAM AND SOLIHULL ICB DECISION TO REFUSE AN APPLICATION BY LP SD ONE HUNDRED SIX LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT ALCESTER ROAD SOUTH, BIRMINGHAM B14 5JA (BEST ESTIMATE)

1 The Application

By application dated 19 May 2024, LP SD One Hundred Six Ltd ("the Applicant") applied to Birmingham and Solihull ICB for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at Alcester Road South, Birmingham B14 5JA (Best Estimate). In support of the application it was stated:

1.1 "In my/our view this application should not be refused pursuant to Regulation 31 for the following reasons:

1.2 N/A

1.3 There is no pharmacy trading from or adjacent to the proposed premises, so Regulation 31 does not apply.

1.4 In making this application I/we am/are offering to secure improvements or better access that were not included in the HWB's pharmaceutical needs assessment.

1.5 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 HWBs area.

1.6 This application is in respect of opening a new pharmacy to provide better pharmaceutical access and choice for residents of Maypole, Highter's Heath, and the surrounding areas.

1.7 We understand that the Boots Pharmacy, 1005 Alcester Road South, B14 5JA, closed on the 6th April 2024 and has left a significant gap in pharmaceutical services within Maypole and Highter's Heath. Hence this application is offering unforeseen benefits not captured within the PNA.

1.8 The best estimate of the proposed site we wish to open a new pharmacy is located near 1005 Alcester Road South, B14 5JA. This is the same site as the recently closed Boots.

1.9 The proposed location is situated amongst a communal parade of shops that residents access as part of their daily lives. Shops include a Co-Operative, a

hairdresser, a Greggs, an Iceland, and many other shops. The parade has ample parking and wide walkways to access local services.

1.10 The closed Boots served a densely populated, highly deprived population. By assessing the local LSOAs, we can see that approximately 8,500 residents would utilise a pharmacy at the proposed site.

1.11 We also highlight that according to the 2019 index of multiple deprivation; the proposed site serves some of the most deprived areas in the country. The Birmingham 121B LSOA (Lower-layer Super Output Area) is amongst the top 10% most deprived LSOAs in the country and can be simply described as one of the most deprived areas in the country. It is well documented that health needs are greater in deprived areas, and after the Boots closure these residents no longer have sufficient access or choice to pharmaceutical provision.

1.12 The next nearest pharmaceutical provision is a one-mile round journey away. We do not consider this journey to represent reasonable pharmaceutical choice or access, especially for the elderly, disabled, and the infirm.

1.13 Granting this application would secure better access to pharmaceutical provision for a large, deprived population. The elderly, disabled, and infirm are likely to find the proposed pharmacy significantly more accessible than their alternative choices.

1.14 We would like to note that granting this application would not cause significant detriment to access of pharmaceutical services, as this application is seeking to fill a gap vacated by the Boots, B14 5JA closure.

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

1.16 The Boots Pharmacy, 1005 Alcester Road South, B14 5JA, was open with no plans for closure at the time of the PNA being written. This application is therefore submitted under Regulation 18 as an unforeseen benefits application.

1.17 An increase in local pharmacy capacity and improved choice to meet the needs of the local population.

1.18 Better access to pharmaceutical services given the closure of Boots pharmacy."

2 The Decision

Birmingham and Solihull ICB ("the Commissioner") considered and decided to refuse the application. The decision letter dated 19 June 2025 states:

2.1 "Birmingham and Solihull ICB has considered the above application and I am writing to confirm that it has been refused. Please see the enclosed report for the full reasoning.

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

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

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

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

Actions from the Pharmacy Services Regulations Committee 6 May 2025

2.4 **"Unforeseen Benefit Application**

2.5 **LP SD One Hundred Six Ltd**

2.6 **CAS-308277-Q2J2G4**

2.7 **Proposed Site:- Best estimate address of Alcester Road South, Birmingham, B14 5JA (including either side of red line of map provided)**

2.8 **Regulation 31 – refusal: same or adjacent premises**

2.9 Regulation 31 (1) A routine or excepted application, other than a consolidation application, must be refused where paragraph (2) applies.

2.10 Regulation 31(2)(a) (i) (ii) There is no pharmacy providing pharmaceutical services at the same or adjacent premises.

2.11 As Regulation 31(2)(a) does not apply, the Committee is not required to consider Regulation 31(2) (b).

2.12 Therefore, the Committee concluded that it was not required to refuse the application under the provisions of Regulation 31. The Committee noted that if the application were granted – in due course – the successful applicant would have to notify the Integrated Care Board of the precise location of its premises (in accordance of Paragraph 31 of Schedule 2). Such a notification would be invalid (and the applicant would not be able to commence provision of services) if the location then provided would (had it been known now) have lead the application to being refused under Regulation 31.

2.13 The Committee then went on to consider Regulation 18

2.14 **Regulation 18 - Unforeseen benefits applications**

2.15 18.—(1) If—

2.16 (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;

2.17 The Committee was not satisfied that granting the application, or granting it in respect of some only of the services specified in it, would secure the

improvements or better access to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the Birmingham Health and Wellbeing Board. The applicant has not proposed to increase hours or services outside of what is currently offered by existing pharmacies. This Regulation is deemed **not** to have been met.

2.18 And

2.19 (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.

2.20 The Committee confirmed that the improvements or better access offered within the application were not included in the Birmingham and Solihull Pharmaceutical Needs Assessment. The 2022-2025 Birmingham and Solihull Pharmaceutical Needs Assessment was published in Autumn 2022. The conclusions of the Executive summary on page 19 state that there are a wide range of pharmaceutical services across Birmingham and Solihull to meet the health needs of the population. The provision of current pharmaceutical services and locally commissioned services is distributed across localities providing good access throughout Birmingham and Solihull. As part of this assessment no gaps were identified in provision at that time or within in the next three years. Birmingham Health and Wellbeing Board published a supplementary statement in November 2024. Boots pharmacy on the proposed location closed in April 2024 and it contains no reference to the closure having an impact on local service provision. The applicant identified that this area was a lower super output area with high levels of deprivation, however Birmingham City Council based on information provided by the Office of National Statistics, produced a fact sheet for the Highters Heath ward in which the proposed location is within, in May 2023. The fact sheet stated that this ward is not amongst the most deprived areas of Birmingham and sat somewhere in the middle. The site visit showed owner-occupied housing surrounding the area, and the tower blocks mentioned within the application were within 0.2 and 0.3 miles of the nearest pharmacies and GP practices.

2.21 This Regulation is deemed **not** to have been met.

2.22 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).

2.23 (2) Those matters are—

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

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

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

2.27 The Committee were satisfied that should the application be granted, it would cause significant detriment to the proper planning in respect of the provision of

pharmaceutical services in the Birmingham Health and Wellbeing Board area and the arrangements in place for the provision of pharmaceutical services in that area.

2.28 This is due to the over provision of Essential Services in the area.

2.29 This Regulation is deemed to have been **met.**

2.30 (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—

2.31 (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)), and 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;

2.32 The Committee determined that they were satisfied that as there are 22 pharmacies within 2 miles of the proposed location, 5 of which are within a mile, a further 5 within 1.5 miles and a further 12 within 1.5-2 miles from the proposed location that there is a reasonable choice with regard to obtaining pharmaceutical services in the area of the Birmingham Health and Wellbeing Board, taking into account duty as to patient choice and duty as respects variation in provision of health services. The applicant is not proposing to open on a Sunday, so residents will already have to travel to existing pharmacies to access services on a Sunday. Bank Holiday coverage in the proposed location has not identified the need to commission any additional pharmaceutical provision as there is adequate pharmaceutical cover. The Committee determined that the applicant has not demonstrated that they would secure improvements or better access, therefore granting the application would not confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant pharmaceutical needs assessment was published;

2.33 This Regulation is deemed **not** to have been met.

2.34 (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)) and 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;

2.35 The applicant has identified several patient groups who share a protected characteristic such as the elderly, disabled, parents with prams and has linked these to the distance by foot, bus or car to the nearest 2 pharmacies.

2.36 The site visit identified that there was excellent bus services from the proposed location to Maypole and Druids Heath GP surgeries. For those travelling on foot, the site visit identified that the roads had crossing and wide pavements.

Therefore the Committee were satisfied that people who share a protected characteristic currently have access to services that meet specific needs for pharmaceutical services in the area of Birmingham Health and Wellbeing Board. There have been no complaints received in relation to patients not being able to access pharmaceutical services. The Committee determined that the applicant has not demonstrated that they would secure improvements or better access. therefore granting the application would not confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant pharmaceutical needs assessment was published;

2.37 This Regulation is deemed **not** to have been met.

2.38 (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)), and 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;

2.39 The Committee noted that there were no innovative approaches with regard to the delivery of pharmaceutical services detailed within the application and were therefore satisfied that granting the application would not confer significant benefits on persons in the area of Birmingham Health and Wellbeing Board which were not foreseen when the relevant pharmaceutical needs assessment was published;

2.40 This Regulation is deemed to have **not** been met.

2.41 (2) (c)-(g) are not relevant to this application, therefore were not considered (3) is not relevant to this application, therefore was not considered.

2.42 Regulation 19 is not relevant to this application, therefore was not considered.

2.43 Regulations 40-44 are not relevant to this application, therefore were not considered. Regulation 65 was considered as the applicant is proposing to provide all 45 opening hours as core hours.

2.44 The Committee determined that if the application is approved, then a Direction is to be issued to direct the additional 5 core hours. It has been agreed that a Direction of additional core hours would be 11:30-13:00 and 14:00-17:30 a Saturday which would be issued upon inclusion in the Pharmaceutical List, **if** the application is granted.

2.45 Regulation 66 is not relevant to this application, as it is to be refused, therefore was not considered.

2.46 The Committee **refused** the application.

2.47 The Committee determined that appeal rights are to be granted to the applicant."

3 The Appeal

In a letter dated 18 July 2025 addressed to NHS Resolution, the Applicant represented by Healthcare Plus Consulting Ltd appealed against the Commissioner's decision. The grounds of appeal are:

3.1 "Thank you for your letter dated 19th June 2025. LP SD ONE HUNDRED SIX LTD have instructed us (Healthcare Plus Consulting Ltd) to act on their behalf for this appeal, please find an authorisation letter attached.

3.2 We would like to appeal the decision made in relation to the above unforeseen benefits application.

3.3 We submit that NHS England have failed to properly evaluate Regulation 18 and the fundamental question within the Regulation: does the application provide *'improvements or better access to pharmaceutical services, or pharmaceutical services of a specified type in the HWB's area.'* In their decision, the Birmingham and Solihull ICB refused our client's application, and we believe they misdirected themselves in doing so.

3.4 We assert that this application does provide improvements or better access to pharmaceutical provision, as set out in our client's original application and the comments previously provided by our client. We have re-attached these submissions for re-consideration by NHS Appeals.

3.5 There are a number of issues with the decision report, which we wish to appeal and expand on further below.

3.6 **Preliminary Matter**

3.7 Unfortunately, we were not privy to the meeting minutes and thus cannot see the full decision reasoning from NHS England. We would be grateful if this could be provided; however, we appeal based upon the limited information available to us.

3.8 **Deprivation in Maypole**

3.9 In their decision report, the ICB stated that the Highters Heath ward is not amongst the most deprived areas in Birmingham. This is not surprising given that the ward boundary does not capture those residents living to the west of the proposed site as shown in the image below. [Figure 1. Image taken from NOMIS - provided in Appendix A for Committee]

3.10 Green star depicts proposed site (B14 5JA)

3.11 Thus, we submit that the ICB have dismissed the high levels of deprivation amongst the local population, especially those living to the west of the proposed site. This is illustrated in the annotated image of the 2019 Index of Multiple Deprivation below. [Figure 2. Image taken from 2019 Index of Multiple Deprivation - provided in Appendix A for Committee]

3.12 Green star depicts proposed site (B14 5JA)

3.13 We highlight that the dark red (west of the proposed site) reflects those areas within the top 10% most deprived LSOAs in the country. Of particular note is the 121B LSOA, which is within the 0.14% most deprived areas in the country.

The lighter red colour (east of the proposed site) reflects the areas within the top 20% most deprived LSOAs in the country. Thus, we can clearly see that the proposed site is indeed situated within a highly deprived area and are unsure as to how the ICB surmised that this was not the case. Notably the 122D LSOA, where the proposed site falls under, is still in the top 40% most deprived areas in the country.

3.14 We note that the Birmingham and Solihull Pharmaceutical Needs Assessment 2022-2025 (PNA) recognises that *"Birmingham suffers from high levels of deprivation, with 43% of the population living in Lower Layer Super Output Areas (LSOAs) in the 10% most deprived in England"* (Birmingham and Solihull Pharmaceutical Needs Assessment 2022-2025, pg. 24). It also highlights that *"The same study found that access is greater in areas of high deprivation. Higher levels of deprivation are linked with increased premature mortality rates and therefore greater health needs."* (Birmingham and Solihull Pharmaceutical Needs Assessment 2022-2025, Point 3.2.3, pg 33).

3.15 The PNA is cognizant of the higher health needs within areas of high deprivation, and the Committee will be aware that pharmaceutical provision should be doubly concentrated within such areas. Since the closure of the Boots Pharmacy (B14 5JA), we submit that local residents no longer have sufficient access to pharmaceutical provision.

3.16 As demonstrated above, we can [sic] there are a number of LSOAs located at/near the proposed site which are within the top 10% or 20% most deprived areas across the country. Residents in these areas have:

3.16.1 Are long-term sick or disabled

3.16.2 Have poor health outcomes

3.16.3 Are more likely to be disabled under the 2010 Equality Act

3.16.4 Have poor vehicular access

3.16.5 Reside in Social rented accommodation

3.17 **Long-term sick or disabled**

LSOA	Long term sick or disabled
Birmingham 121B LSOA	12.3%
Birmingham 121D LSOA	9.6%
Birmingham 117B LSOA	10.3%
Birmingham 117A LSOA	6.3%
England	4.1%

3.18 From the table above it is clear that there are a high proportion of residents in the area who are long term sick or disabled. This can be seen particularly in the 121B LOSA [sic], the LSOA adjacent to the proposed site, where the proportion of these residents is three times that of the England average. For these residents, it is imperative that pharmaceutical provision is accessible in close proximity.

3.19 **Bad/Very Bad Health**

LSOA	Bad Health	Very bad health	Combined bad/ very bad health
Birmingham 121B LSOA	8.7%	2.8%	11.5%
Birmingham 121D LSOA	6.2%	2%	8.2%
Birmingham 117B LSOA	5.8%	1.6%	7.4%
Birmingham 117A LSOA	5.1%	0.9%	6%
England	4.0%	1.2%	5.2%

3.20 Again, when compared to the national average of bad health (4%) and very bad health (1.2%), it is evident that the local population are of significantly worse health. This is even more prudent when we consider that the Birmingham Local Authority averages for bad health is 4.5% and very bad health is 1.5%. We submit that all of the LSOAs in the table above have health rates that are equal to or worse than the high Birmingham Local Authority average.

3.21 It is well documented that health needs are greater in deprived areas. Thus, such high levels of bad/very bad health indicates that the local population are more reliant on pharmaceutical provision.

3.22 **Disabled under the Equality Act 2010**

LSOA	Disabled under the Equality Act: Day to day activities limited a little	Disabled under the Equality Act: Day to day activities limited a lot	Combined disabled under the Equality Act 2010
Birmingham 121B LSOA	13.2%	16.1%	29.3%
Birmingham 121D LSOA	12.1%	11.2%	23.3%

Birmingham 117B LSOA	11.2%	12.6%	23.8%
Birmingham 117A LSOA	11.4%	8.2%	19.6%
England	10.0%	7.3%	17.3%

3.23 From the table above, we can clearly see that a high proportion the local population are disabled under the Equality Act 2010. Compared to the 17.3% combined averages for Birmingham Local Authority and England, we submit that local residents have limited mobility and will indeed struggle to access pharmaceutical provision at the surrounding pharmacies, especially when considering the steep hills that must be navigated to Druids Heath, and Whites Pharmacy.

3.24 **Car/Van Ownership**

LSOA	No car/van
Birmingham 121B LSOA	64.8%
Birmingham 121D LSOA	47.1%
Birmingham 117B LSOA	30.1%
Birmingham 117A LSOA	26.6%
England	23.5%

3.25 We can see that access to a car/van for the local population is much worse than the national average of 23.5%. In particular, we highlight that car ownership for residents in the Birmingham 121B and 121D LSOAs are over the double national average, and much higher figures than the very high Birmingham Local Authority average (31.7%).

3.26 Evidently, local residents have poor access to a car/van and thus have no choice but to rely on travelling by foot or via public transport.

3.27 **Residents in Social rented accommodation**

LSOA	Those residing in Social rented accommodation
Birmingham 121B LSOA	77.8%
Birmingham 121D LSOA	47.2%
Birmingham 117B LSOA	27.7%

Birmingham 117A LSOA	24.8%
England	17.1%

3.28 Finally, we can see that a large percentage of residents live in social rented accommodation. A staggering three quarters of those residents in the 121B LSOA are in socially rented accommodation – four and a half times the national average. This is a clear indicator that residents can find bus fares particularly punitive, and very much a barrier to accessing pharmaceutical services. We submit, that this is clearly not just, and residents should have access to a pharmacy regardless of economic status.

3.29 **Summary**

3.30 Given that the relevant PNA outlined that *"Birmingham suffers from high levels of deprivation"*, yet the local population are of poorer health; lower car/van ownership; of more limited mobility; and worse economic status we submit this clearly depicts the extent to which the local population is deprived and would confer significant benefits from the granting of our client's application.

3.31 We reiterate that pharmaceutical provision should be doubly concentrated in deprived areas, and certainly not reduced. In fact, this is synonymous with the Birmingham and Solihull Pharmaceutical Needs Assessment 2022-2025 (PNA), which explicitly states that "*there is a positive correlation between the number of community pharmacies and the level of deprivation in BSOL (i.e. a greater number of pharmacies in the more deprived areas).*" (Birmingham and Solihull PNA 2022-2025, pg. 15). We are unsure as to why the ICB stated that granting the application would cause significant detriment as the Committee will be aware that a pharmacy previously operated at this location and, before its closure, consistently dispensed over 5,000 items per month on average, indicating it was well-utilised.

3.32 Further, the Birmingham PNA highlights the Core20PLUS5 strategy, which the Committee will be aware is a national NHSE approach to support the reduction of health inequalities at both national and ICS level. It highlights that *"The targeted population approach focuses on the most deprived 20% of the national population (CORE20) as identified by the Index of Multiple Deprivation (IMD)…"* (Birmingham and Solihull PNA 2022-2025, pg. 16). We submit that the goals of the Core20PLUS5 strategy cannot be met without an accessible pharmacy. This is particularly crucial given that Maypole, an area comprised of LSOAs within the top 10% and 20% most deprived quintiles, has experienced a reduction in pharmaceutical provision.

3.33 We trust that the Committee will consider that Maypole is a highly deprived community in greater need of pharmaceutical provision and therefore grant our client's application.

3.34 **Patient Journeys**

3.35 The Committee stated that there are 22 pharmacies within 2-miles of the proposed location. We wish to correct the Committee and highlight that while this may be the case as the crow flies, we submit that this is not the case in

reality. They also stated that five of these are within a mile of the proposed site. In fact, there are only two pharmacies within 1-mile of the proposed site: Whites Pharmacy (B14 5EZ), and Druids Heath Pharmacy (B14 5SB).

3.36 Given the high levels of deprivation among residents living at/near the proposed site, it is reasonable to conclude that travelling by car or public transport is not a likely option for the local population due to petrol costs and bus fares presenting a barrier to access.

3.37 When travelling on the Platinum 50 bus service, we note that a single bus ticket is £3, and a day ticket is £5.20. We submit that this can be a barrier to access for the local population especially when we consider that the adjacent Birmingham 121B LSOA is within the top 0.14% most deprived areas in the country, and the high number of residents in social rented accommodation. The bus fare can very much be a barrier to access, particularly in accessing services such as Pharmacy First where patients may be deterred from seeking help from a pharmacy due to transport costs. Their condition may worsen, and health may deteriorate, all because they could not afford to see a pharmacist for their minor ailment. This is clearly not representative of reasonable choice or access to pharmaceutical provision.

3.38 Petrol costs can also present the same barrier to access for these residents, although, as per above, a number of households do not have vehicular access anyway.

3.39 Thus, a number of residents in the area are reliant on accessing pharmaceutical provision by foot.

3.40 There are only two pharmacies within a mile of the proposed site, however both of these pharmacies involve patients having to traverse steep hills in order to access provision.

3.41 When travelling to Whites Pharmacy by foot, we reiterate that patients must navigate the steep hill along the A435/Alcester Road South. This hill is continuous for a length of around 200 metres, with the gradient averaging 1 in 15 or 6.67% over a 100-metre stretch. For context, guidance states that a disabled access ramp should have a gradient of no more than 1 in 20 for a maximum ramp length of 10 metres. Given this hill is not only steeper but also significantly longer than such a ramp, we conclude that this is a clear barrier to access for the high proportion of residents disabled under the Equality Act 2010 such as those in a wheelchair/mobility scooter/of impaired mobility. We submit that these groups with protected characteristics do not have sufficient access to pharmaceutical services by foot.

3.42 When travelling to Druids Heath Pharmacy by foot, we reiterate that patients must also navigate the steep hill along Bells Lane on the return journey. This hill is continuous for a length of around 240 metres, with the gradient averaging 5.9% or 1 in 17. Again, this hill is much steeper and longer than disabled access ramp guidance, and therefore local residents – especially groups with protected characteristics – do not have sufficient access to pharmaceutical services by foot.

3.43 It is evident that some local residents, who do not have adequate access by means of transport, do not have sufficient access to alternative provision, given

the hills involved. Asking residents with high health needs and disabilities to access pharmaceutical provision via steep hills is representative of no pharmaceutical choice – much less than the threshold of 'reasonable choice'.

3.44 **Local Amenities**

3.45 We also note that the local population are accustomed to accessing their day-to-day amenities at/ near the proposed site, which include an Aldi Supermarket, an Iceland, and a Post Office to name a few. Below we provide a list of amenities situated at the proposed site:

3.45.1 Aldi Supermarket

3.45.2 Iceland Supermarket

3.45.3 Sainsbury's Supermarket (Argos inside)

3.45.4 Saint Jude's Catholic School

3.45.5 Maypole youth centre

3.45.6 Post Office

3.45.7 Betting shops

3.45.8 Starbucks

3.45.9 Fish & Chips Shop

3.45.10 Barbers

3.45.11 Greggs

3.45.12 Chinese Takeaway

3.45.13 Convenience Store

3.45.14 Hair and Beauty Salon

3.45.15 Tanning Salon

3.45.16 Nail Salon

3.45.17 Hairdresser's

3.45.18 PureGym

3.45.19 Discount Stores

3.45.20 Evri ParcelShop

3.45.21 Pet Shop

3.45.22 Lloyds Bank

3.45.23 Clothing Shops

3.45.24 Café

3.45.25 Betting Shops

3.45.26 Church

3.46 From the list above, it is clear that residents access all their amenities at the proposed site, however following the closure of the Boots pharmaceutical provision is no longer available. Residents are now forced to undertake separate one-off journeys of *at least* 0.8-miles to access pharmaceutical services – a journey that may be in addition to journeys to the Maypole shops. For residents, especially those carrying shopping, this additional can be particularly onerous.

3.47 We also note with the advent of Pharmacy First, we submit that it is important to have pharmacies located within communities. Residents are more likely to access minor ailments services and advice in connection with other amenities as part of their daily lives, leading to better health outcomes and reducing pressures on GP services. We submit that bus fares/petrol costs can deter residents from accessing these services and ultimately place more strain on the primary care network as conditions worsen. Thus, for Pharmacy First to be effective, pharmacies must be accessible within communities.

3.48 This extra journey is felt disproportionately by those groups who share protected characteristics who may not be able to walk a minimum 0.8-mile round journey or those with lower disposable incomes who cannot afford the bus fare/petrol costs.

3.49 **Conclusion**

3.50 To conclude, we maintain that granting this application would secure better access and improvements to pharmaceutical services for residents living in the highly deprived area of Maypole.

3.51 We reiterate that five out of the seven LSOAs at/near the proposed site are within the top 10% or 20% most deprived areas of the country, therefore among those in greater need of accessible pharmaceutical services targeted in the CORE20PLUS5 strategy.

3.52 The localised population have very low car/van ownership, high levels of bad/very bad health, limited mobility, and worse economic outcomes when compared against national figures and to the already deprived averages for Birmingham Local Authority. We submit that these residents would find additional journeys to current pharmaceutical provision difficult due to the cost barrier and the surrounding steep hills.

3.53 As a result of the Boots closure, we submit that residents must endure additional, one-off journeys to access current pharmaceutical provision. Thus, it is evident that the proposed location would provide much better access for the local population, enabling them to access all of their day-to-day needs in connection with accessing pharmaceutical services.

3.54 Granting this application would provide reasonable choice for c. 8,500 local residents and enable better access to provision for those groups who share protected characteristics.

3.55 We submit that regulation 18 has been met and we invite NHS Resolution to grant our client's application."

Letter from Applicant to the Commissioner dated 8 August 2024 in response to 45 day comments.

3.56 "Thank you for your correspondence on 29th July 2024.

3.57 We welcome comments from all local parties and note the following:

3.58 A number of parties have raised that the PNA has not recognised any gap in pharmaceutical provision. Whilst this is true, we submit that an Unforeseen Benefits application is in its very nature, unforeseen, offering improvements or better access to pharmaceutical services not captured within the PNA. We also note that the Boots, B14 5JA, was open at the time of the last PNA assessment. Thus, comments by parties surrounding the PNA are widely irrelevant.

3.59 Parties also highlight that they offer a free delivery service and this in turn is sufficient to cover the gap left by the closure of the Boots. As the Committee will be aware, free delivery is not an NHS Commissioned service and can be withdrawn at any time. Thus, no weighting should be placed upon these comments.

3.60 There have been a number of comments highlighting that the application by my client: *"fails to meet the criteria outlined under the NHS Pharmacy Market Entry regulations".* For the benefit of all parties we note that my client is required by NHS England to address the overarching question in an Unforeseen Benefits application:

3.61 *"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 area".*

3.62 When considering the above question, the provisions of Regulation 18(2)(b) should be noted:

3.63 *(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—*

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

3.63.2 *(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 the NHSCB's duties under section 13G of the 2006 Act(**c**) (duty as to reducing inequalities)), or*

3.63.3 *(iii) there being innovative approaches taken with regard to the delivery of pharmaceutical services (taking into account also the NHSCB's duties under section 13K of the 2006 Act(**a**) (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;*

3.64 We note that points on reasonable choice; protected characteristics; and innovation are desirable, however, they are merely supporting considerations when determining whether in fact the overarching test in regulation 18(2)(b) has been met: an application should be granted should it provide *improvements or better access to pharmaceutical services, or pharmaceutical services of a specified type in the HWB's area.*

3.65 In light of comments from interested parties and the regulations above, we highlight the difficulty in the journeys that patients currently face to access alternative pharmaceutical provision following the closure of the Boots overleaf.

3.66 **Patient Journeys**

3.67 We note that two closest pharmacies to the proposed site are: Druids Heath Pharmacy, B14 5SB and Whites Pharmacy, B14 5EZ. The pharmacies are 0.6 miles and 0.5 miles distant from the proposed site respectively.

3.68 When considering securing better access, the overarching criteria for an Unforeseen Benefits application, we must consider what a typical patient journey currently looks like.

3.69 We also consider the reasonable choice within these journeys, alongside how those with protected characteristics find those journeys. It must be noted that distance in itself is a barrier to access. We previously identified approximately 8500 residents that would utilize a pharmacy at the proposed site – this is undisputed through all representations.

3.70 **Druids Heath Pharmacy (B14 5SB)**

3.71 **By foot from Proposed Site to Druids Health Pharmacy**

3.72 As can be seen from the map below, this journey is 0.6 miles or 15 minutes, equating to a 30-minute round-journey. [Image depicting journey from the Proposed Site (B14 5JA) to Druids Heath Pharmacy (B14 5SB) - Appendix A for Committee]

3.73 We do not consider a 1.2-mile round walk to access pharmaceutical services as sufficient access, nor can we consider this as having a reasonable choice to pharmaceutical services.

3.74 Such a lengthy journey is difficult for the elderly, disabled, or for parents with young children – all of whom are groups with protected characteristics.

3.75 On a return journey from Druids Heath Pharmacy, those residing near the proposed site have to navigate the steep hill up Bells Lane when walking back home. This hill is continuous for a length of around 240 metres, with the gradient averaging 5.9% or 1 in 17.

3.76 For context, guidance states that a disabled access ramp should have a gradient of no more than 1 in 20 for a maximum ramp length of 10 metres. Given this hill is not only steeper but also significantly longer than such a ramp, it can be concluded that this is a clear barrier to access for those in a wheelchair/ mobility scooter/ or of impaired mobility.

3.77 We also note that the journey between Druids Heath Pharmacy and the proposed site is very much exposed to the elements. We submit that the elderly/ infirm/ pregnant women are unable to make this journey by foot in inclement weather. The exposed nature of the journey can be seen in the image below. [Image depicting exposed pathway on route between the Proposed Site and Druids Heath Pharmacy - Appendix A for Committee]

3.78 **By car from Proposed Site to Druids Health Pharmacy**

3.79 The journey by car to Druids Heath pharmacy is currently a 5-minute drive from the proposed site.

3.80 However, it must be noted that residents who live near the proposed site do not have the same access to a car as others may do in surrounding areas. Per the 2021 Census, 65% of households in the Birmingham 0121B Lower-Layer Super Output Area (LSOA) did not have access to a car or van. Surrounding LSOAs also have similar poor access to a car/ van.

3.81 When we compare this figure to the 23.50% car/van figure for the rest of England, we can see that residents near the proposed site have dire vehicular access and are not likely to utilise a car to access pharmaceutical provision.

3.82 When we also consider the highly deprived nature of the area, we submit that those with a car who would like to access pharmaceutical services may be deterred from doing so frequently due to petrol costs. It is clear that many residents do not have access to a car and thus this mode of transport is not an option for them. For the few who do have access to a car, fuel costs can present a barrier to access to pharmaceutical services. Thus, it cannot be determined that residents have reasonable choice in access to pharmaceutical services by car.

3.83 **By bus from Proposed Site to Druids Heath Pharmacy**

3.84 The journey by bus to Druids Heath Pharmacy in itself is a 2-minute journey. However, this does not take into account wait times and travel times to the nearest bus stop as well as travel times to Druids Heath Pharmacy after alighting at Pound Road stop.

3.85 In any case we submit that the highly deprived nature of the area means residents who wish to access pharmaceutical services by bus may be deterred from doing so frequently due to the transport costs involved.

3.86 As previously mentioned, the recently closed Boots/ the Proposed Site serve some of the most deprived areas in the country. The Birmingham 121B, 121D, 117A, and 122B Lower-Layer Super Output Areas (LSOAs) are amongst the top 20% deprived areas in the country, according to the 2019 index of multiple deprivation. Notably the 121B LSOA is within the top 0.14% most deprived areas in the country.

3.87 It is well documented that health needs are greater in deprived areas, and we submit that the cost of bus travel actually presents a barrier to access for a large proportion of residents surrounding the proposed site.

3.88 **White's Pharmacy (B14 5EZ)**

3.89 **By foot from Proposed Site to White's Pharmacy**

3.90 The journey from the proposed site to White's Pharmacy by foot is 0.4 miles or 8 minutes, however, this pharmacy is also difficult to access for those with mobility difficulties.

3.91 On a journey to White's Pharmacy, those residing near the proposed site have to navigate the steep hill up the A435/ Alcester Road South. This hill is continuous for a length of around 200 metres, with the gradient over a 100-metre stretch averaging 1 in 15 or 6.67%. Again, this hill is much steeper and longer than disabled access ramp guidance. It can be concluded that this is a clear barrier to access for those in a wheelchair/ mobility scooter/ or of impaired mobility.

3.92 We also note that the journey between White's Pharmacy and the proposed site is poorly lit owing to the overgrowth along this route. We submit that the elderly/ infirm/ pregnant women are also unable to make this journey due to safety concerns.

3.93 **By car from proposed site to White's Pharmacy**

3.94 The journey by car to White's Pharmacy is also a 5-minute drive from the proposed site.

3.95 However, as highlighted above, residents near the proposed site have poor access to a car and those that do have access to a car may be deterred from making this journey to the petrol costs involved [sic].

3.96 Again, we submit that lack of vehicular access and fuel costs are a barrier to accessing pharmaceutical provision by car for this deprived population.

3.97 **By bus from proposed site to White's Pharmacy**

3.98 The journey by bus to White's Pharmacy is also a 2-minute journey. However, this does not take into account wait times and travel times to the nearest bus stop as well as travel times to White's Pharmacy after alighting at Glenavon Road stop.

3.99 Again, we submit that the cost of bus travel can present a barrier to accessing pharmaceutical provision for this deprived population.

3.100 **Summary**

3.101 It is clear that the journeys by foot, bus, and car to alternative pharmacies are inaccessible for a number of patients given the topology and the high deprivation of the area.

3.102 Granting my clients application would enable those residing near the proposed site to walk to nearby pharmaceutical provision, eliminating the barrier to access that hills, bus, and car travel present. We submit that this would also restore reasonable choice to pharmaceutical provision for the local population.

3.103 **Conclusion**

3.104 In our view, the closure of the Boots Pharmacy, B14 5JA, has left a significant gap in pharmaceutical services for the Maypole area.

3.105 Granting this application would secure better access to pharmaceutical services. The elderly, disabled, and the wider population are likely to find the proposed pharmacy significantly more accessible than alternative choices.

3.106 It would also restore reasonable choice of pharmaceutical provider for those in the local area, and not force the population into a choice between accessing pharmaceutical provision or more economical spending of resource.

3.107 We would like to note that granting this application would not cause significant detriment to access of pharmaceutical services, as this application is seeking to fill a gap vacated by the Boots, B14 5JA closure; and notwithstanding the fact that the nearest pharmacy to the proposed site is located 0.4 miles away.

3.108 On the evidence outlined above, we believe that a new pharmacy contract should be granted under Regulation 18."

3.109 [Enclosed – copy of application form (see Paragraph 1 above) and PSRC Committee report dated 6 May 2025 (see Paragraph 2 above).]

4 **Site Visit**

It was noted that the site visit conducted by the Commissioner along with photographs had not been provided to parties. Therefore NHS Resolution invited parties to comment upon this information as well as the appeal. The Appellant was invited to comment upon the site visit report only.

4.1 "**<u>Site Visit</u>**

4.2 Lay member [*redacted by NHS Resolution*] undertook a site visit on 30th April.

4.3 B14 5JA is a large shopping parade of c200m located along the A435 Alcester Road, a busy dual carriageway.

4.4 There are 25 units including 2 major supermarkets other convenience stores, a driving test centres bank ,hair and beauty salons, a Travelodge, take away units and coffee shops. There is only one unit unoccupied at the area at the corner of Alcester road and Stotfield Road.

4.5 The housing on the roads off the shopping parade and across Alcester Road is mainly owner occupied with a mix of on street parking and private drives. Some of the properties have 2 vehicles. There are 4 tower blocks located along Alcester road on the route to Maypole GP surgery and Whites Pharmacy

4.6 Parking is outside the units and long another side road to Alcester Road. There are 2 pedestrianised lights and crossings at either end of the shopping parade.

4.7 Approximately 100 metres opposite the shopping parade and across Alcester Road is Druids Heath Community library and Neighbourhood Office. Near to the Community library is a small shopping parade of 7 shops with 2 occupied and the remainder boarded up.

4.8 There are 2 bus stops in the shopping parade;

4.9 The first has the number 19,50 and 50A buses which travel from the shopping parade to the maypole shops which includes the nearest GP surgery- Maypole Surgery and Whites pharmacy The number 50 travels every 15 minutes Monday to Saturday with a slightly reduced service on Sundays.

4.10 The second bus stop includes the Number 50 and 19 buses .The number 50 travels to Druids Heath where the second nearest GP surgery Druids Heath Surgery and Druids Heath pharmacy are located. Buses are every 15 minutes Monday to Saturday with a lesser service on a Sunday

4.11 Maypole GP surgery and Whites Pharmacy B14 5DJ

4.12 Google maps calculates the distance between the shopping parade and the nearest GP surgery - Maypole Health Centre as 0.4m, 8 minutes walking, 8 minutes by bus and 4 minutes by car.

4.13 The route has well paved roads with pedestrian crossings throughout the route. There are 4 tower blocks on the route to Maypole GP surgery, all located nearer the surgery with the walking distance between 0.2 and 0.3 miles.

4.14 Maypole GP surgery is located on the corner of Alcester Road and Stadepool Farm Road.

4.15 Whites pharmacy is located across the Alcester Road ,opposite the GP surgery and approximately 75 metres from the surgery. Access from the GP surgery to the pharmacy is by pedestrian crossing on a well paved road 30 metres from the GP surgery. The pharmacy is located in a small parade of shops with parking outside the units.

4.16 Stadepool Farm Road and surrounding streets are owner occupied properties some with 2 vehicles on drives and street parking.

4.17 The number 50 and 50A bus stops are 10 metres from the pedestrian crossing, clearly visible and accessible.

4.18 Residents in the B14 5JA area are likely to be registered with Maypole GP surgery and after a GP/nurse appointment dispense their prescriptions at Whites Pharmacy. The pharmacy offers the full range of serves including a

collection and delivery service to avoid residents having to collect repeat prescriptions from the surgery.

4.19 Druids Heath Surgery and Druids Heath Pharmacy B14 5SB

4.20 Google maps calculates the distance to the GP surgery and pharmacy as,18 minute walking, 11 minutes by bus and 3 minutes by car.

4.21 The route from B14 5JA to Druids Heath GP surgery and Druids Heath pharmacy is along well paved roads with good visibility.

4.22 Druids Heath GP surgery and Druids Heath Pharmacy share the same postcode as the pharmacy is 10 metres opposite the surgery in a separate unit.

4.23 There is a small shopping parade of mainly boarded up units, a small convenience store and a take away.

4.24 The surrounding area is densely populated by council and private flats including 1 tower block approximately 75 metres away from the GP surgery and pharmacy.

4.25 The number 49 and 50 buses have a bus stop c50 metres away from the surgery/pharmacy with a clearly visible pedestrian crossing. The number 50 bus travels from B14 5JA to the surgery and surrounding Druids Heath area.

4.26 It is highly likely that the local population will be registered with Druids Heath GP surgery and have the prescriptions dispensed by the pharmacy which offers the full range of services and a collection and delivery service."

4.27 The following photos were also taken at the visit [Photographs provided – provided in Appendix B for Committee].

5 Summary of Representations

This is a summary of representations received on the appeal and Site visit report.

5.1 PRINCE OF WALES PHARMACY

5.1.1 "I, as the director of Prince of Wales Pharmacy would like to again share my strong opinion regarding the appeal to grant LP SD ONE HUNDRED SIX LTD an NHS contract. Further to the initial discussion and objections raised by many pharmacies I do not believe our opinion or situation has changed from what it was in 2024. Boots Pharmacy closed in 2024 and over 12 months on, pharmaceutical provision is sufficient within the locality and there have not been any complaints as far as I am aware regarding patients not having sufficient access for their health needs. The local pharmacies have taken on the patients from the previous Boots pharmacy and have made arrangements as needed for service provision. We are currently providing free prescription deliver, pharmacy first services via telephone and video consultations and many more services. Thus, the appeal on the basis of patients not having access does not appear viable. We have worked closely with GP surgeries especially Maypole Health surgery to ensure all patient have access to pharmaceutical provision according to the current PNA.

5.1.2 The application is solely based on the closure of Boots pharmacy, which should not grant unforeseen benefits to an NHS contract when there is no viable purpose. **The applicant also initially had stated the pharmacy would be located in the old Boots Pharmacy premises, however this premises is no longer vacant and has been occupied by a convenience store.** There are no further empty units along this parade. The point made regarding other pharmacies not being convenient is not a sufficient reason as they are accessible via a short walk, car or bus journey with sufficient parking. With free delivery services being offered also, I cannot see how this contract can provide any benefits, in fact I believe it could lead to much disruption.

5.1.3 In conclusion, I strongly advise that this appeal is rejected based on insufficient grounds for unforeseen benefits. There is not a premises available, there is no real basis to the appeal as although deprivation is highlighted, it is being managed sufficiently by all of the current pharmacies. Addition of another pharmacy contract will not change any outcomes as there are currently no on-going complaints or issues with provision. In the current world of video consultations and evolving technology it has opened up many options to make services accessible for all without having to issue new contracts. I hope that you are able to take on our concerns of how this could adversely impact existing pharmacies that are currently managing very well and maintaining service provision adequately."

5.2 RUSHPORT ADVISORY LLP REPRESENTING BROWNS PHARMACY, DRUID HEATH PHARMACY, PRINCE OF WALES PHARMACY, WHITES PHARMACY

5.2.1 "I act for,

5.2.1.1 Whites Pharmacy Ltd t/a Whites Pharmacy

5.2.1.2 Druids Heath Pharmacy

5.2.1.3 W M Brown (Kingshurst) Limited t/a Browns Pharmacy

5.2.1.4 K.U Pharma Limited t/a Prince Of Wales Pharmacy

5.2.2 My clients have instructed me to submit this reply to the appeal submitted by healthcare Plus on behalf of LP SD ONE HUNDRED SIX LTD (herein referred to as the Applicant).

5.2.3 As the Committee will note, the Commissioner has provided a comprehensive overview of the local area which considers the proposed location of the application as well as access from that location to nearby pharmacies.

5.2.4 The Commissioner's report considers access to the closest pharmacies, however, the Committee will note from the map provided that there are pharmacies within a relatively short distance of the proposed location to the north, east and west and additional pharmacies in the area of Hollywood to the south.

5.2.5 The application must be considered by reference to regulation 18 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013. The Committee is well versed in consideration of such applications and the legal test to be applied and we do not repeat the wording of the Regulations as the matters to be considered are set out in your letter of 1 August 2025.

5.2.6 Our reply to the appeal focuses on access to the 2 nearest pharmacies, however the Committee will also note from the map provided that there are numerous other pharmacies within the wider area of the application site.

5.2.7 The application appears to have been submitted due to the closure of a Boots pharmacy.

5.2.8 The Boots pharmacy was dispensing approximately 30% less items than an average pharmacy. It may have been convenient for those shopping at the same location, but was not particularly well used. We are not aware of any complaints in relation to access to pharmaceutical services since the Boots closed in 2024.

5.2.9 Existing pharmacies are located in areas where patients live, close to local GP surgeries and form part of local shopping parades. Whilst the location identified by the Applicant is an area of shops without a pharmacy, there is no need for every shopping parade to have a pharmacy, especially when alternate pharmacies are located nearby (see further below).

5.2.10 From reading the content of the appeal and the initial application it is unclear which patients the Applicant believes have significant difficulty accessing existing services. In their application the Applicant states,

5.2.11 *Granting this application would secure better access to pharmaceutical provision for a large, deprived population. The elderly, disabled, and infirm are likely to find the proposed pharmacy significantly more accessible than their alternative choices.*

5.2.12 The Applicant provides census data for the area to the west of their application site, however, as the Committee will note, this area is already served by existing pharmacies. In order for a pharmacy at the proposed location to be more accessible than the current pharmacy network the Applicant would need to be considering a very small area directly around its application site.

5.2.13 The Applicant's description of the walk from the proposed location to Druids Heath Pharmacy is factually incorrect. The Applicant states *When travelling to Druids Heath Pharmacy by foot, we reiterate that patients must also navigate the steep hill along Bells Lane on the return journey. This hill is continuous for a length of around 240 metres, with the gradient averaging 5.9% or 1 in 17. Again, this hill is much steeper and longer than disabled access ramp guidance, and therefore local residents – especially groups with protected characteristics – do not have sufficient access to pharmaceutical services by foot.*

5.2.14 The Committee will note that the Applicant provides no evidence to support its claim that the gradient is 5.9%. Below is a topographic heat map of the relevant area showing a modest increase / decrease in elevation of 7 metres across the entirety of the journey from the application site to Druids Heath Pharmacy. Even considering the maximum elevation change across the journey (shown on the maps below) this is a total of 8 metres over a distance of approximately 500 metres. This equates to a 1.6% gradient compared to the Applicant's claim of a 5.9% gradient. [See Image – provided in Appendix C for Committee].

5.2.15 We have tried to find an area with a 5.9% gradient as claimed (but not evidenced) by the Applicant and cannot do so.

5.2.16 However, even if the Applicant were correct that such a gradient exists, then they are also claiming that patients will not walk the "hill [which] is continuous for a length of around 240 metres" due to this difficulty. By definition this means that the Applicant believes that patient would not walk to their pharmacy if it were to open.

5.2.17 Either this horribly steep walk exists – in which case patients will not walk to the Applicant's pharmacy, or it does not – in which case patients can easily walk to Druids Heath Pharmacy.

5.2.18 By providing incorrect information without any evidential foundation, the Applicant has not assisted their case.

5.2.19 The same rationale applies looking north from the Applicant's proposed location. The Applicant provides no information about which "100-metre stretch" is claimed to have a gradient of 6.67%. The journey is not flat, but nor do we recognise the description provided by the Applicant (see further below).

5.2.20 The walking route to Druids Heath pharmacy is shown below. [See photographs provided in Appendix C for Committee].

5.2.21 As described in the Commissioners report, the proposed location for this pharmacy is a significant shopping centre with 2 major supermarkets, driving test centre and hotel (amongst other facilities). What is notable about the centre is its attraction to car borne visitors as well as the availability of public transport. Major supermarket chains spend significant sums of money when selecting their sites to ensure that they are accessible to as wide a base of customers as possible and this is the case at this location.

5.2.22 In relation to Druids Heath Pharmacy the Applicant states,

5.2.23 *The journey by bus to Druids Heath Pharmacy in itself is a 2-minute journey.*

5.2.24 *However, this does not take into account wait times and travel times to the nearest bus stop as well as travel times to Druids Heath Pharmacy after alighting at Pound Road stop. In any case we submit that the highly deprived nature of the area means residents who wish to access*

pharmaceutical services by bus may be deterred from doing so frequently due to the transport costs involved.

5.2.25 Elsewhere the Applicant states (page 6 of attachment) that,

5.2.26 *"When travelling on the Platinum 50 bus service, we note that a single bus ticket is £3, and a day ticket is £5.20."*

5.2.27 The bus service is frequent (less than every 15 minutes). However, given that the distance to the nearest pharmacies is just over half a mile, it is not clear which patients would use the bus service. Patients of state pension age travel would be free of charge. In our experience, it is rare for younger patients pay to travel very short distances by bus and the Applicant provides no rationale for their claim. We presume that the Applicant is referring to a very specific group of patients who live around the application site and have restricted mobility, do not own a car and are not over state pension age. Given that no evidence is provided about this group (other than general statistics about the wider area) it is not clear if it in fact exists or what size it would be. Further, the Applicant has not provided any letters of support from such a group (or any group) that could assist with its identification.

5.2.28 Another example of "evidence" provided by the Applicant in relation to bus services that does not support their case and yet is claimed to is found on page 6 of the appeal file where the Applicant states,

5.2.29 *"When travelling on the Platinum 50 bus service, we note that a single bus ticket is £3, and a day ticket is £5.20. We submit that this can be a barrier to access for the local population especially when we consider that the adjacent Birmingham 121B LSOA is within the top 0.14% most deprived areas in the country, and the high number of residents in social rented accommodation."*

5.2.30 121B LSOA is shown below. Druids Heath pharmacy lies on the boundary of this LSOA and would be closer to the boundary than the Applicant's proposed site. Approving another pharmacy would therefore do nothing to improve accessibility to the overall LSOA which contains 1406 persons. [See map provided in Appendix C for Committee].

5.2.31 **The Applicant's Appeal Document**

5.2.32 Looking at the Applicant's appeal document there are numerous errors or contradictions as well as facts claimed in support of their application that do not in fact support it.

5.2.33 The Applicant states,

5.2.34 *Thus, we submit that the ICB have dismissed the high levels of deprivation amongst the local population, especially those living to the west of the proposed site. This is illustrated in the annotated image of the 2019 Index of Multiple Deprivation below.*

5.2.35 As the map of this LSOA above shows, the Applicant's pharmacy does not provide better access than the two existing pharmacies on the border of this LSOA.

5.2.36 Further, the area highlighted as most deprived (which extends beyond the LSOA, currently contains 2 pharmacies, namely Druids Heath and Whites. The Applicant is not proposing to open in this area. [See map provided in Appendix C for Committee].

5.2.37 The Applicant then relies on statistics from the same LSOA that they do not propose to open the pharmacy within. This is likely because the area they do propose to open in is average in terms of levels of deprivation and has higher car availability than the English average. The statistics do not help the Applicant's case so they have used statistics from a different area instead.

5.2.38 In respect of patient journeys the Applicant states

5.2.39 *Given the high levels of deprivation among residents living at/near the proposed site, it is reasonable to conclude that travelling by car or public transport is not a likely option for the local population due to petrol costs and bus fares presenting a barrier to access.*

5.2.40 Again this relies on data from a different LSOA than the Applicant intends to open within.

5.2.41 Notwithstanding this, the claim makes little sense. If patients in this different LSOA will not travel by car or public transport, then how would they access the Applicant's pharmacy which is located in a different LSOA? Presumably the answer would be "on foot", but the Applicant claims this is also not possible due to the difficulty of journeys on foot. The Applicant's attempt to cherry pick different data which does not correctly reflect the nature of their application leaves it unable to justify its position.

5.2.42 Druids Heath pharmacy is located 0.6 miles / 14 minutes walk from the centre of the Applicant's proposed best estimate area. In relation to the journey on foot the Druids Heath pharmacy the Applicant states,

5.2.43 *"We do not consider a 1.2-mile round walk to access pharmaceutical services as sufficient access, nor can we consider this as having a reasonable choice to pharmaceutical services. Such a lengthy journey is difficult for the elderly, disabled, or for parents with young children – all of whom are groups with protected characteristics."*

5.2.44 As the Committee is aware, "sufficient access" is not part of the legal test and describing the journey to a single pharmacy is irrelevant to the question of whether there is reasonable choice. Further, given the frequent bus service (every 15 minutes) and availability of cars, it is unclear why a patient who found a 0.6 mile journey to be difficult would choose to walk. It is similarly not clear why a patient would start their journey at ALDI or Sainsburys, then walk to Druids Heath pharmacy and then walk back to the supermarket – but that is the journey that the Applicant suggests would be undertaken.

5.2.45 The Applicant then provides a picture of the “exposed pathway” on the route to Druids Heath pharmacy and states that,

5.2.46 *We submit that the elderly/ infirm/ pregnant women are unable to make this journey by foot in inclement weather. The exposed nature of the journey can be seen in the image below.*

5.2.47 Given that all journeys on foot outdoors are “exposed” and any journey to the Applicant’s proposed premises would be similarly exposed, it is not clear how the Applicant would secure better access to pharmaceutical services (or less exposure to the elements) given that they rely on the population that lives to the west of their proposed site, ie from the very area that their photograph is taken from. Patients who live in the 3 tower blocks pictured by the Applicant live within 400 metres of Druids Heath pharmacy as shown below. The same patients would have to travel over 500 metres to the Applicant’s site. The application simply does not secure better access to pharmaceutical services for the patients that the Applicant has specifically asked the Committee to consider and provided census data for. [See photograph provided in Appendix C for Committee].

5.2.48 The Applicant’s claims about the journey by car to Druids Heath pharmacy are also incorrect as they again use census statistics that are not from the area that they propose to open within.

5.2.49 For Birmingham 122 – the SOA for the Applicant’s site, car ownership is higher than the average for England with 22% having no access to a car or van versus 23.5% for England.

5.2.50 Residents in the Birmingham 121B SOA already have two pharmacies just on the border of the SOA and closer than the Applicant’s proposed location (as already shown above).

5.2.51 Residents can access Druids Heath pharmacy or Whites Pharmacy easily without a car and the Applicant’s proposed location would be further away than the current pharmacy locations.

5.2.52 **Journey to Whites Pharmacy**

5.2.53 As the Applicant states, the journey to Whites Pharmacy is 0.4 miles / 8 minutes on foot. The maximum change in elevation is 10 metres over the entire length of the journey on foot (1.7% average) and we are unable to locate the “100 metre stretch” with a gradient if 6.67%.

5.2.54 Even if such a “stretch” did exist it would apply for those who travel to the Applicant’s proposes site and return home again from this area around Whites Pharmacy. This is highly relevant as it is the area around Whites Pharmacy (and Druids Heath pharmacy) that the Applicant relies on as being its relevant population despite their application site not being located within that area. Whilst the Applicant’s reliance on an area that they do not propose to open within and that already contains 2 pharmacies makes no obvious sense, it is nevertheless the Applicant’s case and we therefore address it.

5.2.55 Bus services run every 15 minutes almost directly door to door between the Applicant's proposed site and Whites Pharmacy (service 2 and 50 platinum). The bus takes 2 minutes.

5.2.56 For those that do not have access to a car the bus journey or the short journey on foot are not difficult. As per our previous comment, the Applicant appears to rely on a group of patients who have mobility issues, cannot use a bus, do not have a car and live east of their proposed location (as there are pharmacies north, south and west already), whilst claiming that it is patients to the west that are of most relevance. There is no evidence that such a group exists and no patient support to suggest the existence of such a group.

5.2.57 The walking route to Whites Pharmacy is shown below. [See photograph provided in Appendix C for Committee].

5.2.58 **Conclusion**

5.2.59 The area that the Applicant claims to be deficient in pharmacies in fact has multiple pharmacies that are easy to access, provide all commissioned services and provide a more than reasonable choice for patients. The appeal should be refused.

5.2.60 We look forward to hearing from you in due course."

5.2.61 [Enclosed map and key - provided in Appendix C for Committee].

5.3 BOOTS UK LTD

5.3.1 "I have attached a copy of the representations we made to PCSE/the ICB for your reference. We have no further comment to make at this time.

5.3.2 We would be grateful if you would inform us of the outcome in due course."

Boots UK Ltd letter to the Commissioner dated 17 July 2024

5.3.3 "Thank you for your letter dated 11th June 2024 and the above application. Boots UK Limited have the following comments to make.

5.3.4 Whilst we accept that this application is based on benefits not foreseen when drafting the Pharmaceutical Needs Assessment (PNA), it is clear this application is purely based on the recent closure of the Boots pharmacy.

5.3.5 As the ICB will be aware, the closure of a pharmacy within an area does not automatically create a gap and should a gap have arisen because of such a closure, then the PNA should be updated to reflect this.

5.3.6 To our knowledge no changes have been made within the current PNA or any supplementary statements produced. We would therefore suggest that the closure of the pharmacy in the locality has not resulted in a gap to pharmaceutical services and that the Health and Wellbeing

board recognise that the existing network of pharmacies can cope should there be any increase in demand?

5.3.7 There has been no evidence provided by the applicant of patients in this locality having difficulty accessing pharmaceutical provision since the closure.

5.3.8 We would be most grateful if you could keep us informed of the progress of the application in due course."

5.4 THE COMMISSIONER

5.4.1 "The additional information provided by the applicant to NHS resolution is new information with maps and boundaries that was not available to Committee at the time deliberations, and a decision was made.

5.4.2 Committee considered Birmingham City Councils Ward Profiles which were published in June 2023. The Highters Heath fact sheet brings together all information available to the council including the 2019 Index of deprivation which includes the Lower Super Output areas. The ward sheet for Highters Heath is attached with the ward ranked 47th of 69 wards in terms of deprivation." [Provided in Appendix D for Committee]

5.5 HEALTHCARE PLUS CONSULTING LTD REPRESENTING THE APPLICANT

5.5.1 [See paragraphs 3.1 to 3.5 above]

5.5.2 **"Preliminary Matter – updated**

5.5.3 We thank NHS Resolution for now providing the site visit report and allowing further time to comment; however, we still note that the decision meeting minutes have still not been received. We would be grateful if this could be provided; however, we appeal based upon the information available to us."

5.5.4 [See paragraphs 3.8 to 3.46 above]

5.5.5 "We highlight that the number of amenities at our client's proposed site were also noted by the Committee during their site visit. In the site visit report, they stated that there is a *"large shopping parade"* along the A435 Alcester Road and *"25 units including 2 major supermarkets"*. By contrast, they described Whites Pharmacy as amongst a *"small parade of shops"* and Druids Heath Pharmacy as amongst a *"small shopping parade of mainly boarded up units"*. Both descriptions suggest that local residents are currently unlikely to access pharmaceutical services [sic] part of their daily lives but instead, are accustomed to accessing all amenities at our client's proposed site during day-to-day shopping trips.

5.5.6 The Committee also note that those residents registered with Maypole and Druids Heath GP surgeries are likely to have their prescriptions dispensed at Whites and Druids Heath Pharmacy. However, when we consider EPS and repeat dispensing, we submit that residents are more likely to interact with pharmaceutical provision alongside these local services opposed to after a visit to the GP. We submit that the

Committee have placed undue weight on the current pharmaceutical provision co-located with GP practices"

5.5.7 [See paragraphs 3.47 to 3.55 above].

5.5.8 [Enclosed – copy of Letter from Applicant to the Commissioner dated 8 August 2024 in response to 45 day comments (see paragraphs 3.56 to 3.108 above), copy of application form (see Paragraph 1 above) and PSRC Committee report dated 6 May 2025 (see Paragraph 2 above) and a copy of the photographs from the site visit report as noted at paragraph 4.27 above provided in Appendix B for Committee]

6 Observations

6.1 HEALTHCARE PLUS CONSULTING LTD REPRESENTING THE APPLICANT

6.1.1 "Thank you for your letter dated 2nd September 2025. We note the responses made by interested parties on our client's appeal and respond accordingly here.

6.1.2 **Preliminary Matter**

6.1.3 The decision meeting minutes have still not been received despite outlining previously in our client's appeal. We would be grateful if this could be provided.

6.1.4 **NHS Birmingham and Solihull ICB**

6.1.5 Representations from NHS Birmingham and Solihull ICB state they relied on demographic data from the Highter's Heath Ward. We reiterate that our client's proposed site is situated on the edge of this ward. Thus, looking at the ward's demographic data does not properly reflect the reliant population who are likely to access pharmaceutical services at the proposed site.

6.1.6 As per our client's previous correspondence, it is undisputed that the local population have a very high level of residents who are long-term sick or disabled; suffer from bad/very bad health; disabled under the Equality Act 2010; have no car/van; and live in social rented accommodation. When we consider that these residents are likely to be more reliant on pharmaceutical services, it is therefore imperative that they have better access to a community pharmacy.

6.1.7 **Boots**

6.1.8 We reiterate that our client seeks to provide *'better access to pharmaceutical services'*. The Committee will be aware that this wording is directly from Regulation 18 (NHS Pharmaceutical and Local Pharmaceutical Services Regulations 2013) which states;

6.1.9 **18.—(1) If—**

6.1.10 *(a)[**F1**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….

6.1.11 As outlined above, it is clear that the overarching legal test to meet Regulation 18 is whether NHS England is satisfied that granting the application would *"secure improvements, or better access, to pharmaceutical services".*

6.1.12 In light of this, we reiterate that granting our client's application would indeed secure improvements or better access to pharmaceutical services, especially when we consider access to the two current nearest pharmacies.

6.1.13 **Local Contractors represented by Rushport Advisory**

6.1.14 We note that Rushport Advisory represent a number of local contractors, so for ease we address Rushport Advisory directly (herein Rushport).

6.1.15 Representations from Rushport describe the proposed location as an *"area with shops"*. We submit this undermines the presence of the ALDI Supermarket, Sainsbury's Supermarket, and even the Iceland Supermarket. The Committee will be aware that community pharmacies are well-positioned and integrated in locations where residents can access pharmaceutical services as part of their day-to-day lives – especially when undertaking food shopping. It is of note that the two current nearest pharmacies lack any supermarket. Thus, we submit that residents are already accustomed to accessing the facilities at our client's proposed site as part of their daily lives. Consequently, the absence of a pharmacy at this location forces patients to travel *at least* 0.8 miles in total to access pharmaceutical provision after shopping at our client's proposed site. We do not consider a separate, additional journey as representative of reasonable choice to pharmaceutical services.

6.1.16 The Committee will be aware that the Boots Pharmacy that closed was dispensing c.5,000 items prior to its closure and, contrary to submissions by Rushport, was very much well-utilised. This is perhaps unsurprising given its siting within a major commercial area.

6.1.17 We urge the Committee to consider the large proportion of residents living at/near the proposed site who are long-term sick or disabled; suffer from bad/very bad health; disabled under the Equality Act 2010; have no car/van; and live in social rented accommodation. It is also undisputed that the surrounding LSOAs fall within the top 10% or 20% **most** deprived areas in the country.

6.1.18 To reiterate the 121B LSOA is in the top 0.14% most deprived LSOAs in the country.

6.1.19 We note that Rushport are critical of our client's usage of population statistics within the 121B LSOA, despite the proposed site being on the

border of this location – as evidenced in prior correspondence. However, Rushport then go on to argue that their client's pharmacies, who are also situated on the border of this LSOA, serve this local population. Simply put, the objectors cannot have it both ways.

6.1.20 We submit that it would be wilfully ignorant and dismissive to not consider residents of the 121B LSOA, who border our client's proposed site and likely utilise the substantial shopping amenities located here.

6.1.21 We note that these residents currently have to make one-off trips to alternative pharmacies outside the course of their daily lives following the closure of the Boots store. We have previously detailed how these trips can be particularly onerous, especially for a population with such bad health outcomes, however, provide clarifications to submissions by Rushport on these journeys below.

6.1.22 **Patient Journeys - Druids Heath Pharmacy**

6.1.23 When considering patient access to Druids Heath Pharmacy, Rushport first disputes the hill that exists along Bells Lane. While the Committee provided a Site Visit report, it is of particular note that the journey by foot was not undertaken as part of this visit. In fact, we carried out a site visit on the afternoon of Wednesday 3rd September, and travelled by foot to both Druids Heath Pharmacy and Whites Pharmacy from the proposed site.

6.1.24 As per our client's previous correspondence, it has been clearly stated that there is a steep hill along Bells Lane – for clarity this is between the three blocks of flats on Kimpton Close and Druids Heath Pharmacy. Previous calculations have involved google maps, however we provide slightly revised figures based on data from mapometer – what we believe to be a more accurate tool: https://gb.mapometer.com/.

6.1.25 The hill between Kimpton Close and Manningford Road has a gradient of approximately 4.4% for approximately 240 metres as per the image below. [provided in Appendix E for Committee]

6.1.26 This hill is steeper toward Manningford Road and looking at different end points, we can see that the gradient is approximately 6.5% for approximately 112 metres as per the image below. [provided in Appendix E for Committee]

6.1.27 We reiterate that guidance outlines that a disabled access ramp should have a gradient of no more than 1 in 20 or 5% for a maximum ramp length of 10 metres. This is clearly above the gradient level mandated for disabled access ramps.

6.1.28 From the above images, there is a very clear gradient along Bells Lane. In fact, this is further validated from the site images gathered below. [provided in Appendix E for Committee]

6.1.29 We trust that the Committee will accept that the above pictures clearly depict a steep hill. It is therefore odd that local contractors have failed to acknowledge the presence of this hill; instead opting to furnish the

Committee with a google maps image, which does not properly depict the hill.

6.1.30 We also provide the Committee with an image atop the hill on Bell Lane from our site visit, which is flat. [provided in Appendix E for Committee]

6.1.31 When reaching the top of the hill, we can clearly see that the terrain is flat at this point. One of the flats on Kimpton Close can be seen in the background and the others are to the right. Therefore, the return journey to Druids Heath Pharmacy for residents living in this accommodation and to the east involves traversing the steep incline which does not represent reasonable choice or access to provision.

6.1.32 Thus, we submit that residents living to the east of Druids Heath Pharmacy (from the accommodation on Kimpton Close onwards) may not feel comfortable navigating the hill and are therefore more likely to access pharmaceutical services at the proposed site, which, as evidenced by the points provided by the representative, patients *"can easily walk"* from the end of Bells Lane and along Druids Lane to our client's proposed site.

6.1.33 We provide the Committee with this journey on foot, again via Mapometer, noting that the gradient is approximately 0.25% over 480 metres. [provided in Appendix E for Committee]

6.1.34 It is notable that enroute to Druids Heath Pharmacy during our site visit, we were met with a waste bin and a car along the pavement of Pound Road. We submit that even the pavement itself is not in good condition, and there is no consistent pavement on the opposite side of the road as can be seen in the images below. [provided in Appendix E for Committee]

6.1.35 Such a journey is unpleasant – especially on a rainy day – with puddles along the uneven surface. We do not consider this as representative of reasonable choice or sufficient access to pharmaceutical provision.

6.1.36 The Committee's site visit report observed that Druids Heath Pharmacy was amongst a *"small shopping parade of mainly boarded up units"*. It is of note that the pharmacy is quite literally surrounded by *"boarded up units"*, with very little supporting trade or amenities along Pound Road. In fact, we contest that the row of units even constitutes a *"small shopping parade"* as can be seen in the image below. [provided in Appendix E for Committee]

6.1.37 We highlight that, at the time of the site visit on Wednesday 3rd September at 15:57pm, Druids Heath Pharmacy was closed. While these hours are in line with those displayed on NHS Choices (9am-1pm on Wednesdays), it is peculiar that the pharmacy only opens for 36 hours a week – not the minimum 40 core opening hours. It is not our client's position to question the pharmacy's inability to open for the minimum core opening hours, but we highlight that our client proposes to open for 45 core hours. This is not only in excess of the minimum requirement of 40 core hours, but also exceeds the opening hours provided by Druids Heath Pharmacy and Whites Pharmacy (40.25

hours). In fact, it must be noted that our client also proposes to open on Saturdays, which neither of the two current nearest pharmacies do. Thus, granting the application would not only provide better access to pharmaceutical services by way of core opening hours, but also on Saturdays when local residents are more likely to utilise the shopping facilities at/near the proposed site.

6.1.38 **Patient Journeys - Whites Pharmacy**

6.1.39 The journey from our client's proposed site to Whites Pharmacy was timed to be a 13-minute walk one-way, equating to a 26-minute round trip. We note that it was raining at the time of the site visit, which is not an unlikely occurrence in England, and thus this journey was understood to be unpleasant – especially for groups with protected characteristics.

6.1.40 We note that the previously highlighted gradient does not appear to be as steep following use of the new mapping software and a site visit, however, note that this hill can still be a struggle for some – as can be seen in the images below.

6.1.41 We also note that in their submissions Rushport included screenshots from Google Maps. We submit that the journey appears much more pleasant from screenshots taken at a distance and on a sunnier day than during the rainy weather conditions at the time of our site visit.

6.1.42 We highlight that the pavement on the left side of Alcester Road South is very narrow and therefore impracticable. Residents can utilise the pavement behind the bushes on the left hand side but may feel uncomfortable doing so during the darker winter months. Residents must therefore utilise the pavement on the right side of the road. It is of note that this pavement also serves as an entry to local residents' driveways and is therefore utilised by cars too. [provided in Appendix E for Committee]

6.1.43 When travelling along this pavement, we can see that the conditions of the road and pavement is very poor and thus can be a very uncomfortable journey for patients travelling on foot. [provided in Appendix E for Committee]

6.1.44 Along this walk, residents would encounter obstructive hedges which, to avoid, must mean one is in dangerously close proximity to the road and oncoming vehicles.

6.1.45 There is also a risk of the pavement flooding as can be seen, which can be attributed to the uneven and poor conditions of the pavement. This is clearly not a journey that is representative of reasonable choice or sufficient access – especially if residents are already feeling unwell, or for those groups who share protected characteristics.

6.1.46 **All-day Saturday core hours**

6.1.47 We reiterate that our client proposes to provide all-day Saturday core hours, to ensure that Saturday provision is available for local residents, especially those that visit the local supermarkets and shops.

6.1.48 We note that Saturday provision was lost following the closure of the Boots pharmacy, and thus a pharmacy at this location would restore access to this service.

6.1.49 **General**

6.1.50 We note that Rushport mention that no letters of support have been obtained in relation to this application. We highlight to the Committee that there is not a need to obtain letters of support as such, but rather for a sensible determination to be made on the facts, which are:

6.1.50.1 There is a highly deprived population surrounding the proposed site, with the 121B LSOA being within the top 0.14% most deprived areas in the entire country

6.1.50.2 These residents have bad health outcomes; limited mobility; and reside in social rented accommodation

6.1.50.3 These residents access their daily amenities at the proposed site which contains major supermarkets and a number of shops, which have been previously detailed, however no longer have access to pharmaceutical provision at this site following the closure of the Boots Pharmacy

6.1.50.4 Alternative pharmacies require the navigation of hills by this population with poor health outcomes

6.1.51 Thus, we submit that it is obvious that pharmaceutical provision is needed to serve this deprived population. We suggest that the Committee may find it useful to conduct a site visit, so they can see the deprivation and difficult terrain first-hand.

6.1.52 **Conclusion**

6.1.53 We maintain that granting this application would provide much better access to the local population when seeking pharmaceutical services. This is especially the case when we consider the three supermarket shopping facilities available at/near the proposed site all within c. 100 metres. A pharmacy at the proposed site would provide better access by enabling patients to integrate pharmaceutical services within their day-to-day lives.

6.1.54 We note that the local amenities at our client's proposed location differ significantly from the two nearest pharmacies. Further, our client is proposing to open for 45 core opening hours, which is in excess of both Druids Heath Pharmacy and Whites Pharmacy, also providing Saturday core opening hours for those seeking access to pharmaceutical services while shopping.

6.1.55 It is very clear that Druids Heath Pharmacy lacks supporting trade along Pound Road, and Whites Pharmacy does not benefit from any major supermarket facilities. Therefore, residents have no choice but to embark on separate, one-off journeys to access pharmaceutical services at either site. This can be especially difficult for those without access to a car, of which there is a high number among the localised population, or those who are economically deprived.

6.1.56 There are greater health needs in the localised area, meaning the requirement of access to pharmaceutical provision is greater.

6.1.57 We submit that granting this application will secure improvements and better access to pharmaceutical provision and thus meets the criteria for Regulation 18."

7 Consideration

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

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

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

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

7.5 The Committee noted that, at the request of the Applicant's representative, NHS Resolution had requested a copy of the Commissioner's decision report from 6 May 2025. The contents of this report are identical to those in the Commissioner's Action report dated May 6, 2025, (see paragraphs 2.5 to 2.48 above), which was already included with the appeal bundle circulated to all parties on 1 August 2025. The Committee was satisfied that the only information which parties had not been privy to was the Commissioner's site visit report (see paragraphs 4.1 to 4.27 above) and NHS Resolution circulated this to all parties, including the Applicant. The Committee was satisfied that all parties had now received all the documentation which it was going to consider.

Regulation 31

7.6 The Committee first considered Regulation 31 of the Regulations which states:

(1) A routine or excepted application, other than a consolidation application, must be refused where paragraph (2) applies.

(2) This paragraph applies where -

(a) a person on the pharmaceutical list (which may or may not be the applicant) is providing or has undertaken to provide pharmaceutical services ("the existing services") from -

(i) the premises to which the application relates, or

(ii) adjacent premises; and

(b) NHS England is satisfied that it is reasonable to treat the services that the applicant proposes to provide as part of the same service as the existing services (and so the premises to which the application relates and the existing listed chemist premises should be treated as the same site).

7.7 The Committee noted that the Applicant stated in its application "*There is no pharmacy trading from or adjacent to the proposed premises, so Regulation 31 does not apply*." The Commissioner concluded in its decision that "*it was not required to refuse the application under the provisions of Regulation 31*." This information had not been disputed by parties.

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

7.9 The Committee noted and agreed with the Commissioner's conclusion in its decision that, if the application were granted, the successful applicant would - in due course - have to notify the Commissioner of the precise location of its premises (in accordance with paragraph 31 of Schedule 2). Such a notification would be invalid (and the applicant would not be able to commence provision of services) if the location then provided would (had it been known now) have led to the application being refused under Regulation 31.

Regulation 18

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

"(1) If—

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

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

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

(2) Those matters are—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7.11 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.

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

7.13 Paragraph 4 of Schedule 1 requires the PNA to include: "a *statement of the pharmaceutical services that the HWB had identified (if it has) as services that are not provided in the area of the HWB but which the HWB is satisfied (a)* ***would*** *if they were provided….secure improvements or better access, to pharmaceutical services… (b)* ***would*** *if in specified future circumstances they were provided…secure future improvements or better access to pharmaceutical services…"* (emphasis added).

7.14 The Committee considered the PNA prepared by Birmingham and Solihull Health and Wellbeing Boards, 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 August 2022 and that a February 2024 Supplementary Statement had been issued on 15 February 2024 and a November 2024 Supplementary Statement had been authorised on 30 January 2025, although no publication date was listed.

7.15 The Committee is mindful that new PNAs are expected to be published in the latter part of 2025 but at time of the Committee's decision the 2022 – 2025

remains the most current PNA for Birmingham and Solihull Health and Wellbeing Boards.

7.16 The Committee had regard to the PNA and noted the following from page 17 regarding provision of services:

7.16.1 "**6*.1. Current and further provision of Necessary Services***

7.16.2 *BSOL HWBs (through the PNA steering group) have decided that all Essential Services are Necessary Services in BSOL*.

7.16.3 *Access to a community pharmacy within a 20-minute walk is better in BSOL than in England (97.8% compared with 89%), and 87% can reach a community pharmacy within 10 minutes by public transport. 100% of the population can drive to a pharmacy within 10 minutes regardless of time of day*.

7.16.4 *All community pharmacies provide all Essential Services as per the current CPCF. No gaps have been identified either now or in the future of Necessary Services*.

7.16.5 ***6.2. Current and future provision of other relevant services that provide improvement or better access in BSOL (Advanced, Enhanced, Locally Commissioned Services)***

7.16.6 *These are services that the HWBs (through the PNA steering group) are satisfied are not necessary to meet the need for pharmaceutical services, but their provision has secured improvements or better access to pharmaceutical services. Once the HWBs had decided which services are Necessary, the remaining services were classed as 'other relevant services' and include Advanced, Enhanced and Locally Commissioned Services*.

7.16.7 *No gaps have been identified either now or in the future of other Relevant Services*."

7.17 Page 19 of the PNA states:

7.17.1 "**7. Conclusions**

7.17.2 *The PNA steering group provides the following conclusions and recommendations on the basis that funding is at least maintained at current levels and or reflects future population changes a documented above and in the PNA*.

7.17.3 *There are a wide range of pharmaceutical services provided across BSOL to meet the health needs of the population. The provision of current pharmaceutical services and Locally Commissioned Services is distributed across localities, providing good access throughout BSOL*.

7.17.4 *As part of this assessment, no gaps have been identified in provision either now or in the future (over the next three years) for pharmaceutical services deemed necessary. The PNA is a snapshot in time and is undertaken every three years, therefore factors such as population*

growth and pharmacy closures may result in a reduction of the number of pharmacies per population in the area. With future housing growth in BSOL, it is imperative that accessibility to pharmacy services is monitored, and the recommendations actioned to ensure services remain appropriate to the needs of the population."

7.18 The Committee further noted that on Page 76 of the PNA, Section 7 Conclusions states:

7.18.1 "*There is no gap in the provision of Necessary Services during normal working hours across BSOL to meet the needs of the population*."

7.18.2 "*There are no gaps in the provision of Necessary Services outside normal working hours across BSOL to meet the needs of the population*."

7.18.3 "*No gaps have been identified in the need for pharmaceutical services in specified future circumstances across BSOL*."

7.18.4 "*There are no gaps in the provision of Advanced Services at present or in the future that would secure improvements or better access to services in BSOL*."

7.18.5 "*No gaps have been identified that if provided either now or in the future would secure improvements or better access to Enhanced Services across BSOL*."

7.18.6 "*No gaps have been identified that if provided either now or in the future would secure improvements or better access to Locally Commissioned Services across BSOL*."

7.18.7 "*Based on current information, no gaps have been identified in respect of securing improvements or better access to Locally Commissioned Services, either now or in specific future circumstances across BSOL to meet the needs of the population*."

7.19 The Committee noted the February 2024 Supplementary Statement recorded that Boots UK Ltd was to close on 6 April 2024.

7.20 The Committee noted that the Applicant seeks to provide unforeseen benefits to the patients of Maypole and Highters Heath. 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 relevant PNA in accordance with paragraph 4 of Schedule 1.

7.21 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)

7.22 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"

7.23 The Committee noted the Commissioner's finding on this point that "*should the application be granted, it would cause significant detriment to the proper planning in respect of the provision of pharmaceutical services in the Birmingham Health and Wellbeing Board area and the arrangements in place for the provision of pharmaceutical services in that area. This is due to the over provision of Essential Services in the area*." The Committee noted that parties have not disputed this statement.

7.24 The Committee considered that Regulation 18(2)(a)(i) relates to proper planning in respect of the provision of pharmaceutical services in the area of the relevant HWB if the application is granted. The reference to "proper planning in respect of the provision of pharmaceutical services" is very broad in scope.

7.25 The Committee therefore concluded that a finding that granting an application would cause significant detriment to proper planning in respect of the provision of pharmaceutical services can only be achieved after a consideration of all the consequences of granting an application, both positive and negative, benefits and detriment, provided that these consequences were all linked to the broad concept of proper planning in respect of the provision of pharmaceutical services.

7.26 The Committee noted that the Commissioner had gone on to consider Regulation 18(2)(b) and refuse the application. As the Commissioner concluded that the application did not meet the requirements of Regulation 18, there were no significant benefits with which to mitigate the significant detriment. Having come to that conclusion the Commissioner therefore affirmed its initial assessment of significant detriment.

7.27 However, bearing in mind that 18(2)(a)(i) relates to planning, the Committee was not persuaded by the statement "*This is due to the over provision of Essential Services in the area*" as there was no information regarding existing plans which would suffer significant detriment as a result of any grant.

7.28 On the basis of the information available, the Committee was not 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.

7.29 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)

7.30 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"

7.31 The Committee noted the Commissioner's finding on this point that "*should the application be granted, it would cause significant detriment to the proper planning in respect of the provision of pharmaceutical services in the Birmingham Health and Wellbeing Board area and the arrangements in place for the provision of pharmaceutical services in that area. This is due to the over provision of Essential Services in the area*." The Committee noted that parties have not disputed this statement.

7.32 The Committee considered that Regulation 18(2)(a)(ii) relates to significant detriment to arrangements in place for the provision of pharmaceutical services if an application is granted. The reference to "arrangements in place for provision of pharmaceutical services" is very broad in scope. It is not limited to detriment to a particular person, class of person, patient, patient group or provider of pharmaceutical services whether this is a dispensing practice or community pharmacy.

7.33 The Committee therefore concluded that a finding that granting an application would cause significant detriment to arrangements in place for the provision of pharmaceutical services can only be achieved after a consideration of all the consequences of granting the application, both positive and negative, benefits and detriment, provided that these consequences were all linked to the broad concept of arrangements in place for the provision of pharmaceutical services.

7.34 The Committee noted that the Commissioner had gone on to consider Regulation 18(2)(b) and refuse the application. As the Commissioner concluded that the application did not meet the requirements of Regulation 18, there were no significant benefits with which to mitigate the significant detriment. Having come to that conclusion the Commissioner therefore affirmed its initial assessment of significant detriment.

7.35 However, the Committee was not persuaded by the statement "*This is due to the over provision of Essential Services in the area*" was a sufficient, detailed examination of the impact of any grant and how this would affect the arrangements in place.

7.36 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.

7.37 In the absence of any significant detriment as described in Regulation 18(2)(a), the Committee was not obliged to refuse the application and went on to consider Regulation 18(2)(b).

Regulation 18(2)(b)

7.38 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)

7.39 The Committee noted that the proposed pharmacy is to be located within a best estimate of the site of the closed Boots Pharmacy in the postcode area B14 5JA as indicated by the map and key provided by the Commissioner which shows the location of the proposed site, together with the locations of existing pharmacies and GP surgeries in the local area. The Committee noted that this map had not been disputed by parties.

7.40 The Committee observed the Applicant's list of amenities located at or in the vicinity of the proposed premises as stated in its appeal above. While the Committee had not received specific details regarding the exact distribution or proximity of these amenities relative to the proposed site, it considered it reasonable to assume that they were situated within the same LSOAs referenced by the Applicant throughout the appeal process.

7.41 The Committee noted the Commissioner refers to "*22 pharmacies within 2 miles of the proposed location, 5 of which are within a mile, a further 5 within 1.5 miles and a further 12 within 1.5-2 miles from the proposed location*." The Applicant, in its appeal states "*that while this may be the case as the crow flies, we submit that this is not the case in reality. They also stated that five of these are within a mile of the proposed site. In fact, there are only two pharmacies within 1-mile of the proposed site: Whites Pharmacy (B14 5EZ), and Druids Heath Pharmacy (B14 5SB)*." The Committee was mindful that its consideration of reasonable choice was not simply based on distances alone to existing pharmacies and that it would be required to consider all factors relevant to access.

7.42 The Applicant has provided information with regard to the terrain which it describes as steep. It has also provided maps to show the route patients will undertake in order to access the two nearest pharmacies from the proposed site. The Committee noted the Applicant describes a journey on foot as 0.6 miles to Druids Heath Pharmacy for "*those residing near the proposed site have to navigate the steep hill up Bells Lane when walking back home. This hill is continuous for a length of around 240 metres, with the gradient averaging 5.9% or 1 in 17*." The Applicant describes the journey on foot as 0.4 miles to Whites Pharmacy and that "*those residing near the proposed site have to navigate the steep hill up the A435/ Alcester Road South. This hill is continuous for a length of around 200 metres, with the gradient over a 100-metre stretch averaging 1 in 15 or 6.67%*."

7.43 Rushport Advisory LLP representing four of the local pharmacy contractors provided topographic heat maps stating that the "*topographic heat map of the relevant area showing a modest increase / decrease in elevation of 7 metres across the entirety of the journey from the application site to Druids Heath Pharmacy. Even considering the maximum elevation change across the journey (shown on the maps below) this is a total of 8 metres over a distance of approximately 500 metres. This equates to a 1.6% gradient compared to the Applicant's claim of a 5.9% gradient*" and with regard to Whites pharmacy "*The maximum change in elevation is 10 metres over the entire length of the journey on foot (1.7% average) and we are unable to locate the "100 metre stretch" with a gradient if 6.67%*."

7.44 The Committee accepted there was some elevation within the area but was not persuaded that it was to such an extent that it impeded access for a significant proportion of the journey on foot.

7.45 The Committee had also been provided with photographs from the Applicant, from the Commissioner's site visit and Rushport showing footpaths along the route to existing pharmacies. The Applicant shows a snapshot of an uneven footpath and other obstacles whilst Rushport show a snapshot of maintained footpaths. The Commissioner's site visit records a finding of "*well paved roads with pedestrian crossings throughout the route*" for Whites Pharmacy and "*a clearly visible pedestrian crossing*" for Druids Heath Pharmacy.

7.46 The Committee noted some variation in the pavement condition and that patients might be momentarily impeded by bins and overgrown bushes but was not persuaded that these were to such an extent that it created difficulty in access for a significant proportion of the journey on foot.

7.47 The Committee was of the view that those willing and able to undertake the walk to the two nearest pharmacies would be aware of the distance and terrain. The Committee also considered that there are a further 20 pharmacies within a 2 mile radius of the proposed site to which no information had been provided as to accessibility.

7.48 The Committee noted the Applicant had described the area as deprived and provided tables from LSOAs in areas surrounding the proposed site showing the population percentages of residents without access to a car or van. The Committee noted the Applicant did not provide figures for the actual LSOA for the proposed premises although did reference it in its appeal stating "*Notably*

the 122D LSOA, where the proposed site falls under, is still in the top 40% most deprived areas in the country." Based on the data from the Applicant and Rushport, the Committee accepted that many people in the surrounding area would not have access to a vehicle. However, for those that do have access to private transportation, no information had been provided to demonstrate that patients are currently having difficulties accessing the existing pharmaceutical provision by private transport.

7.49 The Committee proceeded to consider access by public transport. The Applicant describes access to Druids Heath Pharmacy from the proposed premises as "*a 2-minute journey. However, this does not take into account wait times and travel times to the nearest bus stop as well as travel times to Druids Heath Pharmacy after alighting at Pound Road stop*." Access to Whites Pharmacy from the proposed premises "*is also a 2-minute journey. However, this does not take into account wait times and travel times to the nearest bus stop as well as travel times to White's Pharmacy after alighting at Glenavon Road stop*." The Applicant also comments that "*the cost of bus travel can present a barrier to accessing pharmaceutical provision for this deprived population*" and that "*When travelling on the Platinum 50 bus service, we note that a single bus ticket is £3, and a day ticket is £5.20."* The Committee was of the view that patients would time their journey to minimise waiting times and in regard to the cost, some patients would receive concessions.

7.50 The Committee reviewed the Commissioner's site visit report which states "*There are 2 bus stops in the shopping parade; The first has the number 19, 50 and 50A buses which travel from the shopping parade to the maypole shops which includes the nearest GP surgery - Maypole Surgery and Whites pharmacy. The number 50 travels every 15 minutes Monday to Saturday with a slightly reduced service on Sundays. The second bus stop includes the Number 50 and 19 buses .The number 50 travels to Druids Heath where the second nearest GP surgery Druids Heath Surgery and Druids Heath pharmacy are located. Buses are every 15 minutes Monday to Saturday with a lesser service on a Sunday*."

7.51 Rushport states that "*The bus service is frequent (less than every 15 minutes). However, given that the distance to the nearest pharmacies is just over half a mile, it is not clear which patients would use the bus service. Patients of state pension age travel would be free of charge. In our experience, it is rare for younger patients pay to travel very short distances by bus. …. We presume that the Applicant is referring to a very specific group of patients who live around the application site and have restricted mobility, do not own a car and are not over state pension age. Given that no evidence is provided about this group (other than general statistics about the wider area) it is not clear if it in fact exists or what size it would be*."

7.52 The Committee considered the information provided by parties and was of the view that there is a regular bus service to the two closest pharmacies from the proposed site. The Committee concluded that for patients who chose to use public transportation, no information had been provided to demonstrate that such patients are currently facing difficulties accessing the existing pharmaceutical provision as a result of the public transport provision in the area.

7.53 Taking the above into account, the Committee was not satisfied that, having regard to there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits by way of physical access on persons.

7.54 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.

7.55 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. The Committee noted that the Applicant had provided a table indicating the proportion of residents in the surrounding LSOAs who are long term sick or disabled. The Applicant states "*For these residents, it is imperative that pharmaceutical provision is accessible in close proximity*" and "*such high levels of bad/very bad health indicates that the local population are more reliant on pharmaceutical provision*." Further, "*we submit that local residents have limited mobility and will indeed struggle to access pharmaceutical provision at the surrounding pharmacies, especially when considering the steep hills that must be navigated to Druids Heath, and Whites Pharmacy*." The Committee is mindful that the statistics provided are from the LSOAs in the surrounding area but do not include the statistics for the LSOA in which the proposed premises are situated. The Committee was of the view that other than highlighting those patients with limited mobility, the Applicant had not identified those who share a protected characteristic and the pharmaceutical services they require. The Committee was of the view that 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.

7.56 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.

7.57 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.

7.58 The Committee noted that no information had been provided to suggest that any innovative approaches would be taken with regard to the delivery of pharmaceutical services. The Committee was not satisfied that, having regard to the desirability of there being innovative approaches taken with regard to the

deliverability of pharmaceutical services, granting the application would confer significant benefits on persons.

Regulation 18(2)(b) generally

7.59 The Committee noted that the Applicant was offering to provide 45 core hours, Monday to Saturday 9am to 1pm and 2pm to 5.30pm. The Applicant states in its observations with regard to its offer of 45 core hours "*This is not only in excess of the minimum requirement of 40 core hours, but also exceeds the opening hours provided by Druids Heath Pharmacy and Whites Pharmacy (40.25 hours). In fact, it must be noted that our client also proposes to open on Saturdays, which neither of the two current nearest pharmacies do*."

7.60 The Committee noted it had not been provided with information regarding the core opening hours of any the 22 existing pharmacies in the two mile radius of the proposed premises or even just the pharmacies in the LSOAs which the Applicant had provided demographic data upon in its appeal. The Committee was mindful of Page 76 of the current PNA, Section 7 Conclusions which states:

7.60.1 "*There is no gap in the provision of Necessary Services during normal working hours across BSOL to meet the needs of the population*."

7.60.2 "*There are no gaps in the provision of Necessary Services outside normal working hours across BSOL to meet the needs of the population*."

7.61 The Committee also considered that if a gap in provision is established, the Commissioner has the power to direct the existing pharmacies to open in order to fill such a gap.

7.62 The Committee was therefore 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.

7.63 Furthermore, the Committee noted that no evidence had been provided to substantiate a finding that existing pharmacies in the area are unable to meet the current demand for pharmaceutical services. In the absence of such information, the Committee concluded that there was insufficient information to support the need for additional pharmaceutical provision.

7.64 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.

7.65 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

7.66 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).

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

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

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

7.70 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.

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

7.71.1 confirm the Commissioner's decision;

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

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

7.72 In those circumstances given that the Committee has reached different findings to that of the Commissioner in respect of Regulation 18(2)(a)(i) and 18(2)(a)(ii), the Committee determined that the decision of the Commissioner must be quashed.

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

7.74 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.

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

8 DECISION

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

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

8.3 The Committee 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;

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

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

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

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

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

8.4.2 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