

22 December 2025

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

FILE REF: **SHA/ 26698**

COMMISSIONER: **HAMPSHIRE AND ISLE
OF WIGHT ICB
("the Commissioner")**

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

PHARMACIST: **LP SD ONE HUNDRED TWENTY FOUR LIMITED
T/A KINGSLAND PHARMACY (FKH63)
("the Applicant")**

PREMISES: **76 ST MARY'S STREET,
SOUTHAMPTON,
SO14 1NY**

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

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

Outcome

- 1.1 Based on the information provided, I am not satisfied that the pharmaceutical services provision that would result from the Applicant's proposed hours are likely to benefit the people who are accustomed to accessing pharmaceutical services at the pharmacy premises such that they would be more likely to access services during the proposed hours.
- 1.2 I substitute the decision of the Commissioner with a decision to refuse the application on the grounds that the application has not met the requirements as set out in paragraph 26(2ZB) of Schedule 4 of the Regulations.

A copy of this decision is being sent to:

LP SD One Hundred Twenty Four Limited
South East Commissioning Hub on behalf of Hampshire and Isle of Wight ICB

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

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

1 Introduction

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

1.2 The Commissioner has refused the application. The Applicant seeks to appeal to NHS Resolution.

Rights of appeal

1.3 Where the Commissioner has determined an application under paragraph 26 of Schedule 4 of the Regulations and has granted it in part only or has taken an action that has the effect of refusing it, paragraph 26(9) provides a right of appeal to the Secretary of State for Health and Social Care ("the Secretary of State").

1.4 The Secretary of State has directed NHS Resolution to determine such appeals. As an authorised officer of NHS Resolution, I have considered the appeal and have determined it, in accordance with my delegated powers.

Opening hours

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

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

Alteration of core opening hours

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

Alteration of supplementary opening hours

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

2. Application

In this case, the Applicant provided the following information in its application form and supporting information dated 1 July 2025:

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

Monday	08:30 – 14:00 16:30 – 18:30
Tuesday	08:30 – 14:00

	16:30 – 18:30
Wednesday	08:30 – 14:00 16:30 – 18:30
Thursday	08:30 – 14:00 16:30 – 18:30
Friday	08:30 – 14:00 16:30 – 18:30
Saturday	09:30 – 12:00
Sunday	Closed

2.3 Proposed core opening hours for these premises:

Monday	08:30 – 14:30 16:30 – 18:30
Tuesday	08:30 – 14:30 16:30 – 18:30
Wednesday	08:30 – 14:30 16:30 – 18:30
Thursday	08:30 – 14:30 16:30 – 18:30
Friday	08:30 – 14:30 16:30 – 18:30
Saturday	Closed
Sunday	Closed

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

2.5 12 August 2025

2.6 The Applicant confirmed that it wished its application to be determined on the basis of Paragraph 26(2ZB), Schedule 4.

2.7 Please provide the information that demonstrates that your proposed core opening hours will ensure that the people who are accustomed to accessing pharmaceutical services at the pharmacy premises listed above are likely to benefit from the changes because, overall, they would be more likely to access those services at the pharmacy premises during the proposed core opening hours than during the existing core opening hours.

2.8 The pharmacy seeks to redistribute core/supplementary hours and to close on Saturdays. Please refer to the attached supporting paperwork which includes a survey carried out between 7/10/2024 and 23/1/2025 as well as information regarding all local pharmacies, services and opening times.

2.9 People in the area already have enough pharmacies to get the help they need at the times that we are seeking to close. They can get to a pharmacy within 20 minutes from their home or doctor's surgery. There are pharmacies open every day of the week, including Boots, all within 1 mile. So, keeping the same service as before is possible by reason of the other pharmacies being open

and available or not needed or possible for this pharmacy due to very low usage on a Saturday and is economically unviable.”

3. The Decision

In a letter to the Applicant dated 13 August 2025 the Commissioner decided to refuse the application. The Commissioner stated:

- 3.1 “I write with reference to your application to permanently change the Core hours for LP SD One Hundred Twenty Four Ltd t/a Kingsland Pharmacy, 76 St Marys Street, Southampton, SO14 1NY received on 01 July 2025 Hampshire and Isle of Wight Integrated Care Board (ICB), has considered the above application and I am writing to confirm that it has been refused.

REASON FOR THE DECISION

- 3.2 Your application has been refused on the grounds that you have not met the requirements set out in paragraph 24, Schedule 4 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.
- 3.3 Schedule 4, Part 3, Regulation 26 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended, state that a pharmacist must introduce the changes not earlier than 30 days after the date on which the pharmacy receives notification of the decision.
- 3.4 Schedule 4, Paragraph 26(2ZB) to ensure that the people who are accustomed to accessing pharmaceutical services at the pharmacy premises listed above are likely to benefit from the changes because, overall, they would be more likely to access those services at the pharmacy premises during the proposed core opening hours than during the existing core opening hours.
- 3.5 The Committee first considered the existing core hours and what information had been provided to describe access to the pharmacy during the time that would change – i.e. for 09:30-12:00 Saturday and 14:00-14:30 Monday to Friday. There was some audit information provided, but no information about people accessing pharmaceutical services on Saturday.
- 3.6 Given that there was very limited information about access to the pharmacy during the existing core opening hours that would change, the Committee was not able to consider whether patients would be more likely to access the pharmacy services during the proposed core opening hours.
- 3.7 The Committee agreed the Applicant had not demonstrated people accustomed to accessing pharmaceutical services are likely to benefit from the proposed changes.
- 3.8 Following the refusal of the core hours application, the supplementary hours notification will be recorded as withdrawn.

RIGHT OF APPEAL

- 3.9 You have a right of appeal to the Secretary of State against the decision of Hampshire and Isle of Wight Integrated Care Board (ICB). Should you choose to appeal then you should send a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this letter to: NHS Resolution, 8th Floor, 10 South Colonnade, Canary Wharf, London, E14 4PU or email: nhsr.appeals@nhs.net.”

4. The Appeal

In a letter to NHS Resolution dated 26 August 2025 the Applicant appealed against the Commissioner’s decision. The grounds of appeal are:

- 4.1 “We write on behalf of LP SD One Hundred Twenty Four Ltd t/a Kingsland Pharmacy (ODS code FKH63) to appeal the decision of Hampshire & Isle of Wight ICB dated 13 August 2025 refusing our application, made on 1 July 2025, to redistribute core opening hours under paragraph 26(2ZB) of Schedule 4 to the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.
- 4.2 We respectfully request that Primary Care Appeals:
- 4.2.1 Allows this appeal and grants the application; or, in the alternative,
- 4.2.2 Quashes the ICB’s refusal and remits the matter with directions to apply the correct legal test under paragraph 26(2ZB).

Background

- 4.3 The pharmacy’s existing core hours are Mon–Fri 08:30–14:00 & 16:30–18:30 (8.0 hrs/day) [sic], Sat 09:30–12:00 (2.5 hrs), and closed on Sundays, totalling 42.5 hours per week. [sic]
- 4.4 The proposed redistribution keeps the total at 42.5 hours [sic], moving 2.5 hours from Saturday morning into weekday late-lunchtime (Mon–Fri 14:00–14:30). The application expressly elected the new 26(2ZB) route and included supporting material such as a patient survey (Oct 2024–Jan 2025) and information on other local Saturday provision.

The Decision Under Challenge

- 4.5 The ICB’s decision letter stated that the application was refused under paragraph 24, but also cited the test in paragraph 26(2ZB). It concluded that there was insufficient information about Saturday usage and therefore could not determine that people would be more likely to access services under the proposed hours.
- 4.6 Grounds of Appeal
- 4.6.1 Error of law / misdirection – The application was made under 26(2ZB) but refused under paragraph 24, a different route. This misdirection invalidates the decision.

- 4.6.2 Failure to apply the correct test – The ICB did not conduct the required 'overall' balancing of accessibility gains on weekdays against the loss of Saturday hours.
- 4.6.3 Failure to consider relevant material – Evidence was provided, including a survey and information about nearby Saturday-opening pharmacies, which the ICB did not address.
- 4.6.4 Irrationality – The refusal disregards the fact that the proposal maintains the same total hours while enhancing weekday accessibility.
- 4.6.5 Inadequate reasons – The decision letter does not explain why the weekday accessibility gains were insufficient or how the evidence was weighed.

4.7 Evidence Relied Upon

- 4.7.1 Application dated 1 July 2025 (Appendix 2). [section 2 above]
- 4.7.2 ICB decision letter dated 13 August 2025. [section 3 above]
- 4.7.3 Supporting survey data (Oct 2024–Jan 2025). [see 4.9 – 4.14 below]
- 4.7.4 Information on local Saturday-opening pharmacies. [see Appendix 1]
- 4.7.5 Any further utilisation data now provided to address points raised by the ICB. [see Appendix 2]

Conclusion

- 4.8 For the reasons above, the refusal should be overturned. We respectfully ask that Primary Care Appeals grant the application to redistribute core hours as proposed, or remit with directions to apply the correct legal test.”

Survey Data summary for Saturdays

- 4.9 “A survey was conducted between 7/10/2024 and 23/01/2025.
- 4.10 A summary of the data is as follows:

Question	Responses
Q6: Do you use the pharmacy on a Saturday? If so, what time do you visit	• 9am – 10am: 1.82% (1 response) • 10am – 11am: 1.82% (1 response) • 11am – 12pm: 0.00% (0 responses) • Do not use on Saturday: 92.73% (51 responses) • Other (please specify): 5.45% (3 responses) • Responses in “other” included:

	- “very rarely” - “rarely” - “sometimes rarely”
Q7: What do you visit the pharmacy for on a Saturday?	• Do not visit: 89.09% (49 responses) • Prescription: 5.45% (3 responses) • Owing: 1.82% (1 response) • OTC (Over the Counter): 3.64% (2 responses) • Other (please specify): 0.00% (0 responses)
Q14: If we are closed on a Saturday, would you have any difficulty attending an alternative pharmacy or supermarket	• Yes: 9.09% (5 responses) • No: 90.91 (5 responses)

4.11 As can be seen:

4.11.1 Low Saturday usage: The majority of respondents (92.73%) do not use the pharmacy on Saturdays. Only a small percentage visit during the morning hours (9am-11am).

4.11.2 Reasons for Saturday visits: For those who do visit on Saturdays, the primary reasons are to collect prescriptions or purchase over-the-counter medicines. These facilities are available locally from other pharmacies on Saturdays.

4.11.3 Alternatives: If the pharmacy were closed on Saturdays, 90.91% of respondents indicated they would have no difficulty attending an alternative pharmacy or supermarket. However, 9.09% (5 respondents) stated that they would face difficulties.

4.12 The data supports the proposition that Saturday is not a critical day for most customers or the local community of Kingsland Pharmacy, as the majority do not use the pharmacy on that day. For those who do, the primary needs are prescription collection and OTC purchases. Most customers would not be significantly impacted if the pharmacy were closed on Saturdays.

4.13 The five patients who say that they would face difficulties:

4.13.1 Two have access to a car (and therefore we would argue will in fact not have difficulties)

4.13.2 Three walk to the pharmacy (please refer to the table below which sets out distance from their post code to current and the other local pharmacies)

4.13.3 Walking patients advised the pharmacy team that they have access to a car

4.13.4 Walking patients informed the pharmacy team through the survey that they do not access the pharmacy on a Saturday.

4.14 Travel information for patient postcode to pharmacy, using Google Maps with patient postcode as starting point to pharmacy postcode.”

	Kingsland SP12 1NY	Spiralstone SP14 0DB	Boots SO14 7DX	TH SO14 2NW	Boots SO15 1BA	Bassil SO15 2BY
SO14 1PG (pg18) Does not use pharmacy on Saturdays	<i>By car</i> 0.1 mile 1 mins Travel <i>Walking</i> 0.1 mile 3 mins <i>Public transport</i>	<i>By car</i> 0.5 miles 3 mins Travel <i>Walking</i> 0.4 miles 9 mins <i>Public transport</i>	<i>By car</i> 1.1 miles 6 mins <i>Walking</i> 0.5 miles 12 mins <i>Public transport</i> #18 bus 9 mins	<i>By car</i> 1.0 mile 5 mins <i>Walking</i> 0.9 miles 19 mins <i>Public transport</i> #U1C/18/19 17 mins	<i>By car</i> 1.1 miles 7 mins <i>Walking</i> 0.8 miles 19 mins <i>Public transport</i> #18 18 mins	<i>By car</i> 0.8 mile 4 mins <i>Walking</i> 0.8 miles 20 mins <i>Public transport</i> #20 & more 16 mins
SO14 3DQ (pg48) Came by car	<i>By car</i> 0.8 miles 4 mins <i>Walking</i> 0.4 miles 8 mins <i>Public transport</i> 0.4 miles 8 mins	<i>By car</i> 1.1 miles 5 mins <i>Walking</i> 0.7 miles 15 mins <i>Public transport</i>	<i>By car</i> 0.6 miles 4 mins <i>Walking</i> 0.4 miles 9 mins <i>Public transport</i>	<i>By car</i> 0.5 miles 3 mins <i>Walking</i> 0.5 miles 11 mins <i>Public transport</i>	<i>By car</i> 1.4 miles 7 mins <i>Walking</i> 0.9 miles 20 mins <i>Public transport</i> #17, 15 etc 18 mins	<i>By car</i> 1.4 miles 6 mins <i>Walking</i> 0.9 miles 21 mins <i>Public transport</i> #17 etc 18 mins
SO14 5RT (p62) Came by car	<i>By car</i> 0.9 mile 5 mins <i>Walking</i> 0.8 mile 19 mins <i>Public Transport</i> #16,14,18 12 mins	<i>By car</i> 1.1 miles 5 mins <i>Walking</i> 0.7 miles 16 mins <i>Public Transport</i> #16,14,18 10 mins	<i>By car</i> 2.1 miles 8 mins <i>Walking</i> 1.2 miles 29 mins <i>Public transport</i> #18 etc 14 mins	<i>By car</i> 1.9 mile 7 mins <i>Walking</i> 1.6 miles 36 mins <i>Public transport</i> #U1C/18/19 17 mins	<i>By car</i> 1.6 miles 10 mins <i>Walking</i> 1.5 miles 34 mins <i>Public transport</i> #14,3,16 18 mins	<i>By car</i> 1.3 mile 6 mins <i>Walking</i> 1.2 miles 29 mins <i>Public transport</i> #14,3,16 17 mins
SO14 1TD (p68)	<i>By car</i> 0.2 mile 2 mins	<i>By car</i> 0.4 miles 2 mins	<i>By car</i> 1.3 miles 6 mins	<i>By car</i> 1.1 mile 5 mins	<i>By car</i> 1.0 miles 6 mins	<i>By car</i> 0.7 mile 4 mins

Walked but has access to car	<i>Walking</i> 0.2 mile 3 mins	<i>Walking</i> 0.3 miles 7 mins	<i>Walking</i> 0.6 miles 14 mins	<i>Walking</i> 0.9 miles 21 mins	<i>Walking</i> 0.8 miles 20 mins	<i>Walking</i> 0.7 miles 17 mins
Does not use pharmacy on a Saturday	<i>Public transport</i>	<i>Public transport</i>	<i>Public transport</i> #18 bus 11 mins	<i>Public transport</i> #18 etc 18 mins	<i>Public transport</i> #14,3,16 19 mins	<i>Public transport</i> #2 16 mins
SO14 ONR (p94)	<i>By car</i> 1.8 mile 7 mins	<i>By car</i> 1.3 miles 6 mins	<i>By car</i> 2.3 miles 10 mins	<i>By car</i> 2.2 miles 9 mins	<i>By car</i> 2.1 miles 12 mins	<i>By car</i> 1.5 mile 7 mins
Walked but has access to car	<i>Walking</i> 0.5 mile 11 mins	<i>Walking</i> 0.4 miles 9 mins	<i>Walking</i> 0.9 miles 21 mins	<i>Walking</i> 1.3 miles 29 mins	<i>Walking</i> 1.2 miles 27 mins	<i>Walking</i> 0.9 miles 22 mins
Does not use pharmacy on a Saturday	<i>Public Transport</i> #18 etc 6 mins	<i>Public Transport</i> #18,3,14,16 6 mins	<i>Public transport</i> #18,14,3,16 11 mins	<i>Public transport</i> #18 etc 18 mins	<i>Public transport</i> #18 etc 18 mins	<i>Public transport</i> #14,3,16 14 mins

5. Representations

In a letter to NHS Resolution dated 7 October 2025 the Commissioner stated:

- 5.1 “Thank you for your letter of the 10 September 2025 advising us that an appeal has been made against the decision to refuse the application made by LP SD One Hundred Twenty Four Limited T/A Kingsland Pharmacy (FKH63) to change core opening hours.
- 5.2 The application was made under paragraph 26(2ZB) of Schedule 4 to the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.
- 5.3 Unfortunately, there was an administration error and the decision letter referred to both paragraph 24 Schedule 4 and paragraph 26(2ZB) of Schedule 4.
- 5.4 We would like to apologise for this error.
- 5.5 However, I can confirm that the decision made by the PSRC for Hampshire and Isle of Wight ICB on 23 July 2025 was based on paragraph 26(2ZB) of Schedule 4.
- 5.6 The PSRC considered that the information provided as part of the application did not describe how people who are accustomed to accessing pharmaceutical services at the pharmacy premises listed above are likely to benefit from the changes because, overall, they would be more likely to access those services at the pharmacy premises during the proposed core opening hours than during the existing core opening hours.

- 5.7 The PSRC for Hampshire and Isle of Wight ICB respectfully request that the decision to refuse the application to change core hours is confirmed.”

6. Observations

In an email to NHS Resolution dated 15 October 2025 the Applicant stated:

- 6.1 “Further to your email and a copy of the representations, we respectfully submit that the appeal we have made should be allowed because the decision maker should have asked for further information to help it make a fair decision instead of refusing it because as it claims information was missing.”

7. Consideration

- 7.1 I note that on appeal, the Applicant states that they have opening hours of “... (8.0 hrs/day) ... totalling 42.5 hours per week”. I note that the existing core hours as set out by the Applicant in its application form are the same as those in the letter of appeal. Further those hours are given as 7.5 hours a day Monday to Friday as well as 2.5 hours on a Saturday which totals 40 hours a week.

- 7.2 I am of the view that the Applicant’s core hours total 40 hours, not 42.5 as stated by the Applicant. I note that the Applicant proposes to redistribute those 40 core opening hours pursuant to paragraph 26 of Schedule 4.

- 7.3 The Applicant proposes to:

7.3.1 Open until 2.30pm instead of closing at 2pm Monday to Friday; and

7.3.2 Close on a Saturday instead of opening from 9:30am to 12noon.

- 7.4 The Regulations, which came into force on 1 April 2013, have been amended a number of times. Certain amendments, relating to pharmacy premises opening hours, came into force with effect from 25 May 2023. Further amendments to paragraph 26, Schedule 4, Part 3 of the Regulations came into force on 23 June 2025.

- 7.5 Paragraph 26(1) states:

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

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

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

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

Where P makes an application under sub-paragraph (1)(b), as part of that application P must provide NHS England with such information as NHS

England may reasonably request in respect of the matters that NHS England must seek to ensure pursuant to sub-paragraph (2ZB) or paragraph 24(1) (depending on the basis of the application).

7.7 I note the Applicant indicated that it wanted its application to be determined on the basis of Paragraph 26(2ZB), Schedule 4.

7.8 Paragraph 26(2ZB) reads as follows:

In the case of an application under sub-paragraph (1)(b) which is based on the matters that NHS England must seek to ensure pursuant to this sub-paragraph, where NHS England—

issues a direction under sub-paragraph (4) for setting any days or times for opening hours; or

determines the application under sub-paragraph (4) without issuing a direction,

it must in doing so seek to ensure that the people who are accustomed to accessing pharmaceutical services at the pharmacy premises are likely to benefit from the changes because, overall, they would be more likely to access those services at those premises during the proposed core opening hours than during the existing core opening hours.

7.9 I will consider the application of paragraph 26(2ZB) and whether the proposed hours are likely to benefit the people who are accustomed to accessing pharmaceutical services at the pharmacy premises, such that they would be more likely to access those services during the proposed opening hours.

7.10 To properly assess the application against paragraph 26(2ZB), I need to determine the level of demand for pharmaceutical services at the pharmacy premises. I then need to consider whether patients accustomed to accessing those services would be more likely to access services at the pharmacy premises during the proposed opening hours rather than the existing opening hours.

7.11 I therefore need to be provided with sufficient information to understand a range of matters. I consider a core question to be the benefit created because of increased availability to existing users. This can be broken down into three key elements: the first being that the change must be beneficial; the second being that the new hours are more accessible, and the last, which underpins both aspects, is that this must be measured by the impact on people who are accustomed to accessing the pharmacy, not new users.

7.12 As a starting point I note that the language of paragraph 26(2ZB) relates to why a change in hours is being requested. The reason for the change must at the very least include that those individuals who already use the pharmacy will be more likely to do so during the changed hours. The Regulations do not explain how this should be established but I consider that it must form at least part of the explanation and evidence provided by the Applicant.

- 7.13 Having reviewed the application and the appeal I note that part of the Applicant's motivation for the change appears to be financial, referring to the pharmacy's viability. Whilst I consider that these reasons are important to the pharmacy, they are not relevant to paragraph 26(2ZB). I note that paragraph 26(2ZB) is concerned with a situation whereby hours are being redistributed for the benefit of pharmacy users, rather than the pharmacy itself.
- 7.14 I have had regard to the comments by the Applicant of those using the pharmacy. If I am satisfied that there is reliable evidence indicating no users of the pharmacy on/at the relevant days/times that the pharmacy wishes to close, this might support an argument that those accustomed to accessing pharmaceutical services would be more likely to access those services during the proposed opening hours.
- 7.15 I note that on appeal, the Applicant has provided details of existing pharmacies opening hours and the Advanced/Enhanced services provided. The Applicant has also provided the outcomes of a survey entitled "Kingsland Pharmacy – Hours Survey October 2024".
- 7.16 I note that the Applicant carried out a survey over a 4 month period from October 2024 to January 2025. I note that there were only 55 respondents over the 4 month period, which is a small sample size. Further, I note the information provided in the survey appears to be conflicting; Q6 asked 'Do you use the pharmacy on a Saturday? To which 51 respondents answered 'Do not use on a Saturday', 3 respondents answered 'Other', 2 respondents answered 'Yes'. Q7 asked 'What do you visit the pharmacy for on a Saturday? To which 49 respondents answered 'Do not visit', with 6 respondents providing a reason for their visit on a Saturday.
- 7.17 I further note that I have not been provided with any information as to how the survey was carried out and given the conflicting responses I cannot be assured of its robustness .
- 7.18 In its application the Applicant stated there is "*very low usage on a Saturday*". I am aware that pharmaceutical services consist of both dispensing and non-dispensing activity and neither has been provided to demonstrate what level of usage there is for pharmaceutical services on a Saturday which could then have been compared with the survey data.
- 7.19 Based on the Applicant's comments about "*low usage*", I consider it reasonable to take the position that there is demand for pharmaceutical services on a Saturday.
- 7.20 Without robust data regarding the relevant time period in which the Applicant wishes to close, I consider that it is difficult to draw conclusions regarding the demand for services.
- 7.21 Given that insufficient data has been provided to persuade me otherwise, I therefore consider it reasonable to take the position that there is demand for pharmaceutical services on a Saturday between 9.30am and 12noon.

- 7.22 I now need to consider if, the changes to hours are likely to be beneficial for those accustomed to accessing pharmaceutical services at the pharmacy premises because they are more likely to access services at those times. It is worth noting that evidence to demonstrate the actual level of demand might be relevant here.
- 7.23 The Applicant states *"The refusal disregards the fact that the proposal maintains the same total hours while enhancing weekday accessibility"*. I note the survey covered the weekday opening hours and further that Question 5 asks *"If you visit the pharmacy during the weekday. What time do you prefer to visit? This includes collecting your prescription/s?"* [sic] The responses are split into time blocks however I note that the time that the Applicant is proposing to open is included within the period 12pm to 3pm (Mon-Fri). Again, without robust data regarding the relevant period, this time for the period in which the Applicant wishes to open compared to the position as it is now, it is difficult to draw conclusions regarding the demand for services.
- 7.24 I consider that evidence of demand would only form one part of the overall picture required to be established under paragraph 26(2ZB). I am mindful of the use of the phrase *"people who are accustomed"* in the Regulations. I consider such language to be indicative of the fact that if there is demand, no matter how small, and if those individuals are likely to cease to use the pharmacy as a result of the changes, then this would be strongly indicative that the requirements of paragraph 26(2ZB) would not be met.
- 7.25 I note that no information has been produced by the Applicant which explains what will become of the patients who previously accessed the pharmacy on a Saturday. It is unclear from both the application and the appeal whether the new hours will benefit these people in any meaningful way. I have not been provided with sufficient information on why patients are using the pharmacy on a Saturday, which would assist an understanding of why they may use the new hours on other days.
- 7.26 I consider that without such information the base assumption must be that this change is not likely to benefit those who are accustomed to accessing the pharmacy, and, if anything, it would appear to be to their detriment.
- 7.27 I note that the Applicant has stated that there are other pharmacies open during its proposed closed hours that pharmacy users could instead visit. I note that this information is more relevant to the considerations under paragraph 24(1), which the Applicant has opted not to rely on. I consider that in the context of paragraph 26(2ZB), however, such information is detrimental to the Applicant. When read contextually, the inclusion of this information suggests that the proposal is not aimed at providing better access to services at the pharmacy for those that are accustomed to using the pharmacy during the hours which it is proposing to close and instead, the intention appears to be that they will seek the provision of services elsewhere.
- 7.28 I am mindful that the provision of pharmaceutical services is greater than the dispensing of prescriptions and includes all services that the pharmacy may offer, including additional enhanced and advanced services that may be commissioned. I am of the view that I have not been provided with sufficient

information to demonstrate how the proposed opening hours are likely to benefit those accustomed to accessing pharmaceutical services at the pharmacy premises.

- 7.29 I note the Applicant's comment that "*The application was made under 26(2ZB) but refused under paragraph 24, a different route. This misdirection invalidates the decision.*" In response, the Commissioner states "*Unfortunately, there was an administration error and the decision letter referred to both paragraph 24 Schedule 4 and paragraph 26(2ZB) of Schedule 4.*"
- 7.30 I note that the decision letter states "*Your application has been refused on the grounds that you have not met the requirements set out in paragraph 24, Schedule 4 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.*"
- 7.31 Schedule 5, paragraph 26(10) states:
- The Secretary of State may, when determining an appeal, either confirm the action taken by NHS England or take any action that NHS England could have taken under sub-paragraph (4).*
- 7.32 I therefore consider that I may substitute the Commissioner's decision with a decision to refuse the application on the basis that insufficient information has been provided to demonstrate that the application has met the requirements set out in paragraph 26(2ZB) of Schedule 4 of the Regulations.

8. Determination

- 8.1 Based on the information provided, I am not satisfied that the pharmaceutical services provision that would result from the Applicant's proposed hours are likely to benefit the people who are accustomed to accessing pharmaceutical services at the pharmacy premises such that they would be more likely to access services during the proposed hours.
- 8.2 I substitute the decision of the Commissioner with a decision to refuse the application on the grounds that the application has not met the requirements as set out in paragraph 26(2ZB) of Schedule 4 of the Regulations.

Head of Appeals NHS Resolution