NHS Resolution

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

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

12 January 2026

REF: SHA/ 26668

APPEAL AGAINST KENT AND MEDWAY ICB DECISION TO REFUSE AN APPLICATION BY SWALECLIFFE PHARMACY LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT PHARMACY UNIT, ESTUARY VIEW MEDICAL CENTRE, 25 ESTUARY VIEW BUSINESS PARK, BOORMAN WAY, WHITSTABLE CT5 3SE

REF: SHA/ 26679

APPEAL AGAINST KENT AND MEDWAY ICB DECISION TO REFUSE AN APPLICATION BY EAZIHEALTH LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT 25 BOORMAN WAY, ESTUARY VIEW BUSINESS PARK, WHITSTABLE CT5 3SE

1 Outcome

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

1.2 The Committee determined that the application from Swalecliffe Pharmacy Ltd should be granted.

1.3 The Committee determined that the application from Eazihealth Ltd should be refused.

A copy of this decision is being sent to:
Rushport Advisory LLP on behalf of Swalecliffe Pharmacy Ltd
Eazihealth Limited
PCSE on behalf of Kent and Medway ICB
Boots UK Ltd
Avana Healthcare Ltd
Kent LMC

NHS Resolution

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

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

REF: SHA/ 26668

APPEAL AGAINST KENT AND MEDWAY ICB DECISION TO REFUSE AN APPLICATION BY SWALECLIFFE PHARMACY LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT PHARMACY UNIT, ESTUARY VIEW MEDICAL CENTRE, 25 ESTUARY VIEW BUSINESS PARK, BOORMAN WAY, WHITSTABLE CT5 3SE

REF: SHA/ 26679

APPEAL AGAINST KENT AND MEDWAY ICB DECISION TO REFUSE AN APPLICATION BY EAZIHEALTH LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT 25 BOORMAN WAY, ESTUARY VIEW BUSINESS PARK, WHITSTABLE CT5 3SE

1 A summary of the applications, decision, appeals, representations and observations are attached at Annex A.

2 **Site Visit**

The Pharmacy Appeals Committee (the Committee), appointed by NHS Resolution (which compromised of [redacted by NHSR]), completed a site visit on the morning of 8 December 2025.

2.1 Arriving at the proposed site on Boorman Way, Committee Members first visited the Estuary View Medical Centre (EVMC) which is co-located with the Urgent Treatment Centre. It is situated on an industrial park with private healthcare provider offices, legal firms and, directly opposite the EVMC is a new care home. There is large car park with disabled spaces and whilst it was very busy, there were still plenty of spaces available. Visitors are required to pay £1 for parking using an automated pay machine. There were patient co-ordinators by the car park pay machines to provide visitors with assistance.

2.2 Patient co-ordinators were also located at the Urgent Treatment Centre entrance and at the GP practice which was located on the right hand side. The building was purpose built and easily accessible. The Urgent Treatment Centre was very busy at the time of the visit with a 60-minute wait advertised. It has an automated self-check-in system and provides a wide range of services including minor injuries and x-rays. The GP practice had a small reception area. There were no patients waiting at the time of the visit.

2.3 To the right of the building are stairs leading to the level of the road, Thanet Way. There is a vacant unit signposted Estuary View Pharmacy. The sign advertises a number of services and opening hours of Monday to Friday 9am – 6.30pm. To the left of the doors was a sign stating that the pharmacy was currently closed and inviting people to email in support of re-opening the pharmacy. The unit is accessible and sits level with the road and the bus stop outside.

2.4 Committee Members then walked to Thanet Way towards Tyrell and Jones Pharmacy. Thanet Way is a very busy road and there were pavements for the first 300 yards of that section. Members then walked down a steep alleyway which had a cracked pavement and was overgrown in places. Members met with a gentleman who was taking a rest at the top of the path as he was out of breath. He was on his way to the EVMC. The path leads onto a residential estate with a mix of detached and semi-detached housing. There were no pavements along part of the route although the roads were quiet. Members walked across a field with an uneven stone path where there was a control barrier at the end to prevent motorcycles or bicycles accessing it. Members noted the barrier would also prohibit mobility scooters, wheelchairs and possibly pushchairs.

2.5 Walking a further 0.3 miles through more housing, Members arrived at the Tyrell and Jones Pharmacy. The Pharmacy is located in a bungalow surrounded by similar housing. There was a paved area outside for parking, which would provide enough spaces for around 2-3 cars. It is well signposted from one side advertising a weight loss clinic as well. There was a step up into the pharmacy's main doors with no ramp evident. The Pharmacy itself was a reasonable size with a seating area and a small choice of over the counter products.

2.6 Members then walked back to the EVMC at a leisurely pace, which took around 15 minutes to walk the 0.6 miles.

2.7 Members then drove to Tesco Pharmacy via Thanet Way and onto Millstrood Road. There was a large housing development on the left had side, Whitstable Heights, and notices advertising further planning. There is a large car park with disabled and family parking spaces. It was 1.9 miles and took approximately 6 minutes. The Pharmacy is located at the back of the store and is clearly signposted. There were six people waiting at the counter and three people waiting for vaccinations in front of the consultation room. Opening hours were not advertised however staff informed us that it was open 8am to 8pm Monday to Saturday and 10am to 4pm on Sundays. There was a large dispensing area and Committee Members were informed that there were 11 dispensers employed and one pharmacist.

2.8 Driving into Whitstable town centre took approximately eight minutes and was 1.4 miles away from Tesco. There was no parking available on the High Street. Members parked in a pay and display car park at the back of the shops and walked onto the main street. There were bus stops at various points along the High Street. PRX Pharmacy is located on the High Street. It advertised an ear care walk in clinic for all age groups and a weight management clinic. The opening hours were signposted as 9am to 5.30pm Monday to Friday and 9am

to 5pm on Saturday, closed on Sundays. There was no one waiting to be observed at the time of the visit. There was one dispenser and one pharmacist.

2.9 Members then walked further down the high street to Boots Pharmacy. The pavements were in poor repair with cracked uneven surfaces, raised and broken utility covers in places. Boots Pharmacy advertised a number of services including an online doctor, contraceptive service, Pharmacy First and New Medicine Service. The opening hours were advertised as open Monday to Saturday 9am to 5.30pm closing for lunch between 1pm and 2pm. There was a consultation room in the back corner of the store and a small dispensing area. The store was quiet during the visit with no one waiting to be seen by the pharmacy. There was a small retail offer however the majority of the stock appeared to be aimed at pharmacy over the counter products rather than beauty.

2.10 Members then drove to Whitstable Health Centre on Harbour Road about 0.5 miles from the High Street. There was a reasonably sized car park outside the Health Centre with disabled spaces. The reception area was large with plenty of seating available. There was also a health hub in the corner where patients could take their blood pressure, weight and height.

2.11 Members walked to Tyrell and Jones Pharmacy on Tower Parade, which took less than five minutes. There was minimal parking available outside the Pharmacy on the street with no disabled access from the road onto the pathway outside the Pharmacy and there was a step up into the Pharmacy. Opening times were advertised as 9am until 6pm Monday to Friday and closed on Saturday and Sunday.

3 A summary of the above observations were provided to those in attendance. They were invited to comment upon them or indicate if any of the observations appeared to be inaccurate. No such comments or observations were made from any party.

4 **Oral Hearing Submissions**

The Chair invited submissions from the Applicants.

Application SHA/ 26668 - Swalecliffe Pharmacy Ltd

4.1 Mr [D], Rushport Ltd, acting on behalf of Swalecliffe Pharmacy Ltd, introduced his client and explained that he had also been advising Whitstable Medical Practice who own the EVMC premises, as they had been negotiating with his client about the lease.

4.2 Mr [D] started by describing Whitstable as a pleasant town with a working fishing port. He said that it does not have a natural town centre, as the harbour and sea is to the north with the area then expanding to the south. The application site is a good example of how the town has developed because the town centre has not been capable of supporting the needs as the area has expanded. It is very busy with cars parked on double yellow lines around the independent retail shops, a lot of pedestrian footfall and it is even busier in the summer. He suggested it was not the type of place that you would ‘pop’ into if you had an urgent need for something.

4.3 He said that he had walked from the centre to the EVMC and had to navigate a steep hill, which made the journey more challenging. He said there was a bus available, however, it is unlikely that anybody would be starting their journey from there.

4.4 He referred the Committee to the commercial developments around the site, which started around 2010. The Prospect Way Retail Park, which is situated right next to the EVMC, is sizeable with a Marks and Spencer's Food Hall, Aldi and Home Bargains. The estimated footfall for the retail park is around 25,000 per week. Mr [D] also described the holiday accommodation nearby including several static caravan parks where around 2,300 people live for most of the year. He referred to the primary school in Seasalter with around 600 children attending and said the population has grown considerably. He noted that all of this activity is away from the town centre.

4.5 Mr [D] said that there are 45,000 patients registered with the medical group and around 200 patients who attend the Urgent Treatment Centre on a daily basis. He explained that it is well signposted in the area, is open seven days per week, 12 hours per day and not all of those patients attending will be registered with the Medical Centre. He said that the Urgent Treatment Centre was busier on weekdays than on weekends and patients are frequently advised to attend a pharmacy either with a prescription or for other services. Mr [D] then explained that the previous occupants had been dispensing around 8,500 items per month before they closed. He told the Committee that Tyrell and Jones Pharmacy had originally applied on the basis that having a pharmacy situated at the Medical Centre would offer unforeseen benefits, however are now opposing this application after they withdrew theirs.

4.6 Mr [D] introduced Dr [J R] from EVMC. Dr [R] explained that EVMC is much more than just a GP surgery and is very busy. He said that it has a patient list size of 17,000 and 8 GPs and, with the Urgent Treatment Centre, they have 56 consultation rooms and around 200 patients per day. Dr [R] explained that they had conducted a patient survey asking whether patients would support the reopening of the pharmacy. They received around 7,000 replies, which could be categorised as follows:

4.6.1 Delayed access to essential medication and site difficulties getting to a pharmacy. There is no direct bus service to Tyrell and Jones Pharmacy and those who travel by car are usually being given a lift by someone else;

4.6.2 Significant complaints from those who say that they cannot travel to another location;

4.6.3 Mobility issues as they have significant numbers of people over 65 with mobility challenges and it presents an additional challenge for them to take another journey;

4.6.4 Those without access to private transport. The practice have sometimes paid for taxis for patients;

4.6.5 Difficulties obtaining prescription items which lead to longer turnaround times and poor medication compliance.

4.7 Mr [D] submitted that this application provides an additional opportunity for significant improvements by using the pharmacy as a triage system for the Urgent Treatment Centre, which is difficult at the moment because of the lack of integration. He described that the EVMC is currently isolated from the rest of the pharmacy network which was not the intention when it was developed. He explained that the previous contractors had obtained multiple mortgages that had been secured across their various premises. Following a disagreement between the directors, there were difficulties maintaining the rental payments to Whitstable Medical Practice resulting in notice being given. The pharmacy closed in 2023. Mr [D] went onto explain that Tyrell and Jones Pharmacy then purchased the NHS contract for £45,000, however Whitstable Medical Practice were concerned about ensuring the previous experience was not repeated so did not engage. He said that Tyrell and Jones Pharmacy then withdrew their application.

4.8 Mr [D] described the challenges with public transport with no direct bus route to Tesco Pharmacy and the town centre being difficult to access even by car. He said that all pharmacies have seen a significant increase in item numbers initially which has subsequently reduced in some. He submitted that this was evidence of people experiencing difficulties accessing those services. He said Boots and PRX Pharmacy have a relatively small number of dispensing items that demonstrates patients are not using them. He said these difficulties are also supported by the comments received from the survey where patients have referenced problems with the elderly, disabled and children accessing services.

4.9 He then addressed the Committee regarding the competing applications. He explained that the Medical Practice were working exclusively with Swalecliffe Pharmacy Ltd as they need the service to be sustainable. He said that Eazihealth Ltd's application proposes opening 84 hours per week from the outset which is not practical. By contrast, he explained that Swalecliffe Pharmacy Ltd intend to open with lower opening hours, which they will build upon according to need.

4.10 Mr [D] referred the Committee to the case of *R (on the application of Rushport Advisory LLP) v NHS Litigation Authority 2016* which dealt with competing applications. He reminded the Committee that the High Court had found that NHS Litigation Authority had erred in law by disregarding the availability of the premises and whether it had been committed to another party was a relevant consideration.

4.11 He concluded that this application would secure both improvements and better access to services and patients clearly need the pharmacy to be reopened.

Questions

4.12 Mr [A], Director of Eazihealth Ltd, asked whether a lease had been signed with Swalecliffe Pharmacy Ltd. Mr [D] confirmed that no lease had been signed but the Medical Practice are working exclusively with Swalecliffe Pharmacy Ltd.

4.13 In response to a question from the Committee, Dr [R] clarified that the nursing home on the site had 102 beds and the development next door will provide a second standalone nursing home. He also explained that the practice deals

with a significant number of temporary residents and some of the regular holiday makers use the practice to support their long term conditions because of the service they receive. Dr [R] told the Committee that the Medical Practice has been identified as an exemplar with the 7 days permanent model of opening and the Urgent Treatment Centre which includes Advanced Nurse Practitioners and GPs who issue around 70 prescriptions per day.

4.14 Committee Members asked how the survey had been undertaken. Dr [R] and Mr [B] explained that the practice had designed a simple survey in dialogue with the Patient Participation Group and proactively contacted patients via text messages, social media and a paper survey in the practice. Patients were asked if they supported the return of the pharmacy, which was a mandatory yes or no answer and then free text inviting additional comments. They also asked for the patient's name and address to ascertain the catchment area which was very wide. Mr [B] confirmed that responses could be given anonymously though and a closure date was provided. He said that they only surveyed those registered with the practice so it is likely an underestimate of numbers.

4.15 Committee Members asked about the nature of the relationship with Swalecliffe Pharmacy Ltd and Dr [R] confirmed that the practice are not dealing with any other applicant. He explained that they had a good pre-existing relationship with Swalecliffe Pharmacy Ltd, that they are the largest dispensers in the area and have had the best feedback from patients. He said that the practice do not want to let patients down.

Application SHA/ 26679 - Eazihealth Ltd

4.16 Mr [A], Director of Eazihealth Ltd, addressed the Committee. He said that the first Applicant had discussed the access elements so he did not intend to repeat this and reminded the Committee that they would need to consider which of the applications should be preferred. He explained that he is offering extended opening hours of 12 hours per day, seven days per week and core hours of 8am – 11am and 5pm to 8pm Monday to Saturday and 4pm – 8pm on Sunday. He said that this compares to Swalecliffe Pharmacy Ltd who are proposing much shorter hours with no core hours at the weekend. He submitted that extended hours provision will improve access and choice and that currently no other pharmacy is providing these extended hours. He said that the hours are needed for accessibility and early and late opening provides cover when other pharmacies do not.

4.17 Mr [A] referred to the NHS 10 Year Plan and submitted that his application provides an innovative approach in line with this, which will include two consultation rooms. He said he would use a dispensing robot to reduce errors and increase efficiency focusing on clinical care not just dispensing. He submitted that as no contract had been signed with Whitstable Medical Practice, the two applications are on an equal footing, however his application should be preferred due to the extended opening hours and innovative service delivery.

Questions

4.18 Mr [D] first explained that although he had no financial interest, he was representing Whitstable Medical Practice and Swalecliffe Pharmacy Ltd. He then asked Mr [A] if he owned a community pharmacy at the moment. Mr [A] said no, that his pharmacy had closed in 2025. He explained that it was a Distance Selling Pharmacy and the model was becoming unviable. He said the model he is proposing as part of this application was different. Mr [D] then enquired about an interview that Mr [A] gave to P3pharmacy earlier in the year where he stated that he was incurring unsustainable debts and needed to close to avoid going 'bust'. Mr [A] explained that the NHS had changed the operating model for Distance Selling Pharmacies and it was not working so they decided to close voluntarily rather than being forced to. Mr [D] then asked him about the rent and business rates for Estuary View Pharmacy. Mr [A] said that he did not know what the rent or rates would be and he has estimated them based upon the going rates.

4.19 Mr [D] then asked about the proposed 84 hours opening and suggested that this would present a significant financial challenge. Mr [A] responded that any business has financial challenges and he has planned for this and has been discussing it with other pharmacists.

4.20 Committee Members asked him about the structure of the innovation model he had talked about. Mr [A] explained that his model is about the service delivery, as normally pharmacies would have one consultation room whereas his model is to have a minimum of two, so that is how the service will be delivered. When asked about the staffing model, he said that he was in discussion with three other pharmacy colleagues and the use of automation would reduce the number of staff needed. He said he plans to use three pharmacists and 43 dispensers.

4.21 He was then asked by Committee Members about the core opening hours which include seven hours when the pharmacy would be closed in the middle of the day. He explained that he would not be closing in the middle of the day but will be open according to the supplementary hours proposed. When pressed about the difference between the core opening hours and supplementary hours, he said that he had only been able to offer 40 core hours as it is limited by the Commissioner. Mr [M], Senior Commissioning Manager for Kent and Medway ICB, corrected this, explaining that additional hours can be applied for. Mr [A] was then asked whether there was any other site that he had considered to open a pharmacy if the Estuary View unit was not available. He confirmed he had not thought about that but he was not aware of anywhere else.

4.22 Finally, Mr [A] was asked why he would not be providing contraceptive services. He responded that he would be providing all services and was unaware that he had indicated otherwise in his application.

Closing statements

4.23 Mr [D] provided the closing statement on behalf of EVMC and Swalecliffe Pharmacy Ltd. He referred to the wording under the Regulations that looked at securing improvements and submitted that Eazihealth Ltd's application is not a credible one and presents a significant risk that the practice would not wish to take. He suggested that their application is not financially viable and the predicted result would be reverting to their core hours. Swalecliffe Pharmacy Ltd, he argued, is taking the opposite approach by providing reasonable core hours with the intention to build on this, as the need is identified. In terms of innovation, he reminded the Committee that only one application has ever been approved on this basis and having a second consultation room does not meet this high bar. He concluded that Swalecliffe Pharmacy Ltd's application would secure the improvements, better access and reasonable choice.

4.24 Mr [A] closed his submissions by reiterating that having a second consultation room is innovative as other pharmacies are not providing this. He submitted that his application would provide better access and reasonable choice for the patients.

Other representations

4.25 Mrs [P], on behalf of Avana Healthcare Ltd, then addressed the Committee stating that she wished to clarify the reasons why they had withdrawn their application. She explained that when she looked at the costings and valuation, which included £90,000 per annum in rent for a unit that is smaller than the previous site, it was not financially worthwhile. She said that Avana Healthcare Ltd has secured planning permission on their Seasalter site to expand the premises. She said that there are seven pharmacies in the area and the Urgent Treatment Centre is busiest on week days when all of those pharmacies are open. She also advised that the care home opposite EVMC uses a pharmacy in London for their dispensing needs. When asked by the Committee about the expansion in services that she referred to, she explained that these relate to private services. Mrs [P] also raised that Tyrell and Jones Pharmacy in Seasalter does have disabled access as the separate door a few metres to the right of the main doors has a ramp approaching it.

5 Consideration

5.1 The Committee 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.

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

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

Regulation 31

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

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

(2) This paragraph applies where -

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

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

(ii) adjacent premises; and

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

5.5 The Committee noted that in the application, Swalecliffe Pharmacy Ltd had indicated that there is no pharmacy trading from or adjacent to the proposed premises, so Regulation 31 does not apply.

5.6 Eazihealth Ltd had not answered this question in their application but the Committee noted that the wording of the application form only required the Applicant to include information in the relevant section if the proposed premises were adjacent to, or in close proximity to, another pharmacy or dispensing appliance contractor premises. The Committee considered it reasonable to determine that the lack of information in the application form on this point when read with the wording of the application form allowed it to be reasonably satisfied that the Applicant considered that the proposed premises were not adjacent to, or in close proximity to, another pharmacy or dispensing appliance contractor premises.

5.7 The Committee also noted the conclusions of the Commissioner in this respect and further that this had not been disputed on appeal or in subsequent representations. On the basis of the information before it, the Committee was not required to refuse either of the applications under the provisions of Regulation 31.

Regulation 18

5.8 The Committee noted that the applications were 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)."

5.9 The Committee considered that Regulation 18(1)(a) was satisfied in that it was required to determine whether it was satisfied that granting an 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 Health and Wellbeing Board ("HWB").

5.10 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 applications were granted were or was included in the Pharmaceutical Needs Assessment ("the PNA") in accordance with paragraph 4 of Schedule 1 of the Regulations.

5.11 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).

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

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

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

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

5.16 The Committee considered the PNA prepared by Kent HWB, conscious that the document provides an analysis of the situation as it was assessed at the date of publication. The Committee bears in mind that, under Regulation 6(2), the body responsible for the PNA must make a revised assessment as soon as reasonably practicable unless to do so appears to be a disproportionate response to those changes. Where it appears disproportionate, the responsible body may, but is not obliged to, issue a supplementary statement under Regulation 6(3). Such a statement then forms part of the PNA. The Committee noted that the PNA was dated April 2025, updating the previous PNA published in 2022. One supplementary statement had been issued in 2025 which did not relate to Whitstable.

5.17 The Committee noted that the PNA refers to 12 localities with Canterbury being identified as one. Whitstable is not specifically mentioned in terms of demographics or needs, instead forming part of the analysis of services provided in Canterbury locality. The PNA concludes that "*NHS pharmaceutical services are well distributed across Kent, serving all the main population centres. There is adequate access to a range of NHS services commissioned from pharmaceutical service providers. As part of this assessment, no gaps have been identified in provision either now or in the next three years for pharmaceutical services deemed necessary by the Kent HWB*."

5.18 Under the heading of "Improvements and better access – gaps in provision", the PNA states:

> "*Based on current information, no gaps have been identified in respect of securing improvements or better access to essential or other relevant services, either now or in specific future circumstances across Kent to meet the needs of the population. However, community pharmacies should be encouraged to sign up to Advanced Services to improve access where possible.*"

5.19 The Committee noted that both Applicants seek to provide unforeseen benefits to the patients of Whitstable.

5.20 The Committee noted that the improvements or better access that the Applicants were claiming would be secured by their applications were not included in the relevant PNA in accordance with paragraph 4 of Schedule 1.

5.21 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)

5.22 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"*

5.23 The Committee noted the decision of the Commissioner that stated "*The [Commissioner] was not aware of any plans that would be affected and concluded that granting the application would not have an adverse effect on any future plans. None of the submissions included any comment or evidence in regard to this matter. Therefore the [Commissioner] concluded that granting an application would not cause significant detriment in this regard*." The Committee noted that Avana Healthcare Limited referred to this decision by the Commissioner as "*fundamentally flawed*". They went on to argue "*The closures of [Estuary View Pharmacy] and Seasalter Pharmacies resulted in a significant and measurable movement of prescription items at the remaining pharmacies in Whitstable, clearly demonstrating the impact on service provision, and patient access. Likewise granting this application would similarly disrupt the careful planning of pharmaceutical services in the area, creating a redistribution of demand, potentially destabilise providers and impact patient care. Such an outcome is contrary to the principles of sound pharmaceutical planning*."

5.24 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.

5.25 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.

5.26 The Committee did not concur with Avana Healthcare Ltd's view and noted that no evidence had been provided to support this assertion. The fact that prescription items have been redistributed across the remaining pharmacies in Whitstable has little bearing on whether granting the application would cause significant detriment to the planning for the provision of pharmaceutical

services in the area of the HWB. The Committee was mindful of the view of the Commissioner which is responsible for the proper planning of services and which concluded that granting the application would not adversely affect future planning.

5.27 On the basis of the information available, the Committee was not satisfied that, if an application was 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.

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

Regulation 18(2)(a)(ii)

5.29 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"*

5.30 The Committee noted the decision of the Commissioner that "*None of the submissions included any evidence on this question and the [Commissioner] found no proof to support the suggestion that if an application was to be granted, it would cause significant detriment to the arrangements in place for pharmaceutical services in the area.*"

5.31 The Committee also noted the representations from Avana Healthcare Ltd that this decision was "*fundamentally flawed*". They referred to the redistribution of prescriptions and subsequent uplift in activity and stated "*this proposal would adversely affect [pharmaceutical service] providers who have made substantial investments to accommodate increased demand, potentially resulting in business closures and staff redundancies*."

5.32 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.

5.33 The Committee therefore concluded that a finding that granting the 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.

5.34 The Committee did not concur with Avana Healthcare Ltd's view and was mindful that no evidence of any pharmacies making substantial investments to accommodate increased demand had been provided. It concluded that there is no evidence before it that granting an application would cause a significant detriment to the arrangements in place currently.

5.35 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 an application.

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

Regulation 18(2)(b)

5.37 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)

5.38 The Committee first considered the demographics of the area and current service provision before going on to consider the accessibility of those services.

Background

5.39 Whitstable is a fishing town on the north coast of Kent, five miles north of Canterbury city. It has a population of around 32,900 and is a popular holiday

destination, which increases the numbers of people in the area significantly over the summer period.

5.40 The Committee noted the housing developments and shopping facilities situated outside of the town centre along with holiday accommodation. There are around 190 static caravans for people over the age of 50 and 820 caravans for family holidays.

5.41 There are a number of other housing developments near EVMC including:

5.41.1 Whitstable Heights with 400 houses;

5.41.2 Old Thanet Way with 42 houses;

5.41.3 Prospect House with 66 houses;

5.41.4 Land South of Thanet Way with 220 houses; and

5.41.5 Clapham Hill with 28 houses

5.42 Prospect Way Retail Park is next to EVMC and includes Home Bargains store, Marks and Spencer, Aldi, Halfords and a Vet4Pets store. It has a footfall of around 25,000 per week. There are also a number of businesses located on the same site as EVMC.

5.43 Whitstable House Nursing Home is situated on the other side of EVMC, and provides 102 care beds. There is further planning permission for the development of another care home with 75 beds on the site next door.

5.44 The Committee were provided with the demographic profile for Seasalter which showed a large proportion of elderly in the population and slightly above average numbers who are classed as disabled under the Equality Act.

Current service provision

5.45 Whitstable Medical Practice is a single GP practice Primary Care Network covering the Whitstable area. EVMC, located on Boorman Way is the main hub for the Whitstable Medical Practice and includes the Urgent Treatment Centre, which provides a minor injuries and minor illness service as well as x-ray facilities. It is open 12 hours a day, seven days a week. 45,000 patients are registered with Whitstable Medical Practice, 17,000 of which are with EVMC. The building was purpose built in 2010 and the Committee were informed that it is considered an exemplar practice model, supporting the NHS 10 Year Plan. The Estuary View Pharmacy was dispensing around 8,500 items per month until it closed in July 2023. It was one of two pharmacies that closed in 2023, the other being Lloyds Pharmacy in Sainsburys.

5.46 There are four pharmacies within two miles of the proposed site.

5.46.1 Tyrell and Jones Pharmacy, located in Seasalter on a large residential estate is open 9am to 6pm Monday to Friday and 9am to 12pm on Saturday. It was co-located with Seasalter Surgery until the surgery

closed in 2020 following consultation. It has been dispensing on average 5,137 items per month.

5.46.2 Tesco Pharmacy is on Millstrood Road in a large superstore and is open 8am to 8pm Monday to Saturday and 10am to 4pm in Sunday. It dispenses around 8,830 items per month and has seen an increase of around 1,000 items per month since the pharmacies closed in 2023.

5.46.3 PRX Pharmacy is located on the High Street in Whitstable town and is open 9am to 5.30pm Monday to Friday and 9am to 5pm on Saturday. It dispenses approximately 2,527 items per month with the vast majority being from Whitstable Medical Practice.

5.46.4 Boots Pharmacy is on the High Street in Whitstable town and is open 9am to 5.30pm Monday to Saturday. It dispenses approximately 3,977 items per month with most of these prescribed by Whitstable Medical Practice.

5.46.5 Tyrell and Jones Pharmacy on Tower Parade is open from 9am to 6pm Monday to Friday and closed at weekends. It dispenses on average 7,300 items per month.

5.47 The Committee also noted that there were two other pharmacies located to the northeast of Whitstable. Tankerton Pharmacy is 2.6 miles from EVMC and dispenses around 7,888 items per month and Swalecliffe Pharmacy, over three miles from EVMC. Swalecliffe Pharmacy is owned by the first Applicant and dispenses around 20,000 items per month, most of which are from Whitstable Medical Practice.

Access to services

5.48 The Regulations do not provide a definition of accessibility and the Committee were mindful that it cannot be determined by method of transport alone. It also recognised the patient journey depends upon their starting point. As this application centres around access and reasonable choice for those using EVMC and the number of people accessing those services on site and in the surrounding area, the Committee considered that using the proposed site as a starting point to be reasonable. It further noted that the PNA refers to the majority of people accessing pharmaceutical services on foot or by car. The public consultation also highlighted that patients preferred to use the same pharmacy either close to their home or to their doctor.

On foot

5.49 Tyrell and Jones Pharmacy is located 0.6 miles northwest of EVMC and takes approximately 14 minutes to walk through residential housing and a park. There are sections of the walk with no pavements and some of the pathways that are present are not paved. There is some street lighting along the route but not in all areas. The Committee were of the view that it would present some difficulties for those of limited mobility or parents with pushchairs.

5.50 Tesco Pharmacy is 1.4 miles east of the EVMC along Thanet Way and Millstrood Road which are both very busy. The route has street lighting and

pathways, however it includes the need to cross a very busy roundabout with no zebra crossing or pedestrian lights. The walk takes approximately 34 minutes, depending upon traffic.

5.51 PRX Pharmacy is located 1.6 miles away in the centre of Whitstable town and takes approximately 35 minutes to walk. The journey includes navigating a very busy and fast road network although the route is mostly flat, there is a steep hill coming out of the town, which may impair access for some. The Committee noted during the site visit that the pavements along the High Street were poorly maintained in places and included broken and raised stones and utility covers. This would present challenges to patients travelling on mobility scooters, in wheelchairs or parents with pushchairs.

5.52 Boots Pharmacy is located a few hundred yards away from PRX Pharmacy.

5.53 Tyrell and Jones Pharmacy on Tower Parade is 2.2 miles from EVMC, but only a few hundred yards away from the Whitstable Health Centre. It was not accessible for those with limited mobility, particularly those using mobility scooters or wheelchairs. The Committee were of the view that this pharmacy is unlikely to be used by patients visiting EVMC due to its proximity to the Whitstable Health Centre.

5.54 The Committee concluded that access on foot to other pharmacies was limited but could be possible for those patients who are relatively mobile. The routes are varied and may present challenges in the dark or poor weather as much of the walk is exposed.

By public transport

5.55 There is no direct public transport option to Tyrell and Jones Pharmacy. Patients would have to walk to 0.5 miles for about 10 minutes to Shamrock Avenue before taking the number 5 bus for a three minute journey.

5.56 The journey to Tesco Pharmacy by public transport involves a 40 minute journey into the centre of Whitstable before heading back towards Tesco. It also involves walking 0.5 mile to get to the bus stop on Shamrock Avenue.

5.57 Travelling by public transport to either PRX Pharmacy or Boots Pharmacy, the number 400 bus takes around 14 minutes and requires an additional five minute walk. The bus runs every half hour.

5.58 The Committee were of the view that whilst some sites are accessible by public transport, the options are limited.

By car

5.59 The Committee noted Mr [D]s submission that patients using the Estuary Pharmacy would not incur parking fees.

5.60 Driving from EVMC to Tyrell and Jones Pharmacy in Seasalter takes around three minutes to drive the one mile along Thanet Way and Church Lane. There is free parking available outside the Pharmacy.

5.61 Driving to Tesco Pharmacy is 1.8 miles and takes approximately eight minutes. There is plenty of free parking available at the Superstore, including disabled and parent and child spaces.

5.62 Driving from EVMC to PRX or Boots Pharmacy on the High Street via Borstal Hill and Canterbury Road is 1.6 miles and takes approximately seven minutes, depending upon traffic. There is limited parking available in the town centre and no parking available on the High Street near either pharmacy. There are public pay and display car parks nearby at a cost of £1.90 for the first hour, however spaces are limited.

5.63 The Committee noted the findings of a study undertaken by Canterbury City Council Retail and Leisure Study in 2020 where people were asked about their views on shopping in Whitstable. 20% referred to car parking costs and another 20% responded that it was too busy.

5.64 The Committee concluded that driving to the other pharmacies was reasonable in terms of distance and journey time but parking was limited, which could significantly impact patient access.

Other Considerations

5.65 The Committee noted the representations made by other parties. The LMC supported the application stating that it would "*support the needs of the registered patients at Estuary View Surgery, particularly vulnerable patients that cannot currently access a pharmacy within walking distance, as well as the significant number of patients that attend the onsite Urgent Treatment Centre on a daily basis*."

5.66 Avana Healthcare Ltd, having initially submitted an application for the proposed site and an appeal, then withdrew and provided representations that reopening a pharmacy at the proposed site was unnecessary. The Committee noted that Avana Healthcare Ltd stated that "*after careful deliberation and comprehensive advice from its advisors, AHL has determined not to proceed with an appeal. The decision reflects a clear assessment that an appeal to re-establish a pharmacy at EVMC would not be commercially viable. Moreover, as this was a foreseen closure, we have been unable to demonstrate any unforeseen benefits that would justify further action. Regulatory evaluations have further reinforced this position, confirming the absence of sufficient evidence to support the applications*."

5.67 They stated "*given the current level of service delivery, consistently high patient satisfaction, absence of patient complaints and the questionable viability of the proposed site, there is no demonstrated need for an additional pharmacy or gap in pharmaceutical service provision….The existing infrastructure is fully equipped and capable of meeting patient demand – both now and into the future*." However, the Committee also noted that Avana Healthcare Ltd had initially applied for the pharmacy identifying at that time that there was a gap in service provision. Further, they had referred to the impact on service provision to pharmacies in the area following the pharmacies closures and that providers have made "*substantial investments to accommodate increased demand*." The Committee did not consider these representations to be consistent.

5.68 The Committee also noted that a number of the objections raised by other parties referred to a lack of evidence provided by the Applicants of difficulties accessing the current service. However, the Commitee were of the view that Swalecliffe Pharmacy Ltd and EVMC had provided a significant amount of evidence following the patient survey undertaken. It noted that 7,000 patients responded to the survey with 3,000 providing additional comments, which the Committee recognised is a particularly high response rate. The Committee also recognised that a significant number of responses referred to how reopening the pharmacy would be convenient, which whilst not a specific consideration under the Regulations is a relevant factor. However, the comments also included references to other pharmacies being oversubscribed with long waits for medications and concerns regarding capacity of existing services due to the housing developments. Others describe how they can walk to EVMC but not the other pharmacies. Some examples include:

5.68.1 *"since the pharmacy closed at Estuary View it has become harder for local residents to get their prescriptions";*

5.68.2 *" the closure of pharmacies and at the same time increase in new housing, growing elderly population, doesn't make sense and is putting a huge strain with longer waiting times at remaining pharmacies and greater distances to travel for vulnerable people";*

5.68.3 *"A pharmacy at Estuary View would be a great asset to the surgery. It is not always easy especially for the elderly and vulnerable people to have to make extra trips to out of the way pharmacies only to have to wait ages, then be told they would have to go back for owings. A pharmacy at Estuary View is both convenient and easily accessible to patients";*

5.68.4 *"It's insane not to have a pharmacy there. The operative word in NHS is "service"; for older patients, having a pharmacy on site is imperative; an undeniable service requirement.";*

5.68.5 *"Yes we did [have] more pharmacies in the area. As the existing ones are struggling to cope with demand often running out of medication and also long waits for picking up prescriptions. Some times taking over an hour to pick up a prescription which has been pre ordered.";*

5.68.6 *"With the closure of Sainsbury's pharmacy we are very limited with choice of where to go it makes so much sense to have the pharmacy attached to the surgery";*

5.68.7 *"I do not have my own transport, therefore the journey to the surgery and then to a pharmacy in the town centre is too much for me to undertake in one day, causing a significant delay in treatment for myself, once the GP has diagnosed and prescribed medication"*

5.68.8 *"Pharmacy closures in the area resulted in additional pressure on the few that remain. A Pharmacy at Estuary View would support Whitstable, Chestfield, Herne, Herne Bay and Blean side of Canterbury. Additional planned Housing developments will create even more demand in an area where there is already insufficient Pharmacy capacity.";*

5.68.9 *"There is insufficient choice of pharmacy in the area. Last time I got a prescription from Tesco I had to wait 30 minutes to find out that they didn't have what was needed, the following day another wait. I'm sure that WMP will give a good service and give easier access."*

5.68.10 *"It has been chaos since the loss of estuary view pharmacy. It can take an hour to stand in queue waiting at Tesco. I've tried repeat prescriptions with Boots, which is good, but then the system gets very confused with non repeat prescriptions and the patient is left sitting it all out. Very much welcome a return."*

5.69 The Committee considered this to be compelling evidence that patients of EVMC have been experiencing difficulties accessing pharmaceutical services.

Reasonable Choice

5.70 The Committee then went on to consider reasonable choice. Reasonable choice is not defined in the Regulations and the Committee were of the view that it is not restricted to the number of pharmacies that an individual has access to. Neither does the closure of a pharmacy in itself result in a conclusion that there is no longer reasonable choice.

5.71 The Committee noted the representations from Swalecliffe Pharmacy Ltd that prior to the closure of Estuary View Pharmacy in 2023, those living in the Seasalter area had the choice of two pharmacies serving the resident population and holiday makers. However, they now only have one which was previously co-located with a surgery. The Committee noted the number of items that Tyrell and Jones dispense each month. It also noted that the town centre pharmacies have relatively low dispensing items, which suggests that residents do not consider them to be a reasonable choice. The Committee was of the view that this is likely to be due to the challenges with accessing these pharmacies, particularly during the summer months which would experience significantly higher footfall.

5.72 The Committee was of the view that patients living in the vicinity of EVMC or Seasalter who are reliant on accessing services on foot do not have a reasonable choice of pharmacies currently. It also determined that, taking into account the feedback provided by patients, whilst patients with cars have more choice than those relying on other methods of transport, patients do not have reasonable choice, which is reflected in the patient survey responses as well.

5.73 Therefore, the Committee was satisfied that, having regard to there being a reasonable choice with regard to obtaining services, granting the applications would confer significant benefits by way of physical access on persons.

5.74 The Committee was of the view that there is not 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 applications would confer significant benefits on persons.

5.75 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. In considering 18(2)(b)(ii), the Committee noted during the site visit that those with limited mobility or who are disabled have less access to a number of the existing pharmaceutical services. This was due to the terrain that they would have to navigate or limited disabled access to a number of the premises. The Committee heard examples about persons with certain protected characteristics experiencing issues with access and recognised that the proposed site is more accessible than many of the existing facilities. However, with the exception of the premises themselves, the Committee considered that there was little reference to services that would meet the specific needs of those with protected characteristics. Therefore, the Committee considered that there was not a robust body of evidence that enabled it to be satisfied that a pharmacy at the proposed site would convey significant benefits pursuant to Regulation 18(2)(b)(ii).

5.76 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 applications would confer significant benefits on persons.

5.77 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. Swalecliffe Pharmacy Ltd were not proposing any innovative services. Eazihealth Ltd proposed the following innovations:

5.77.1 Extended hours model which aligns with the Urgent Treatment Centre's 12 hour a day 7 days a week, supporting a localised 'NHS Pharmacy First Access Hub";

5.77.2 Use of a pharmacy robot to improve efficiency within the pharmacy and reduce errors;

5.77.3 A service provision model based upon at least two consultation rooms.

5.78 The Committee had provided Eazihealth Ltd with the opportunity to expand upon why they considered these to be innovative and noted that the response related to these services not being provided by others. The Committee did not accept that any of these proposals were innovative, for the following reasons:

5.78.1 Tesco Pharmacy is providing a seven day per week extended hours model and whilst Eazihealth Ltd are proposing an additional six hours on a Sunday as part of their supplementary hours, this does not equate to innovative services;

5.78.2 The use of a pharmacy robot in community pharmacy is well utilised and does not equate to innovative services; and

5.78.3 The provision of a second consultation room in itself does not equate to innovative services and other pharmacies provide this as well.

5.79 The Committee was therefore not satisfied that, having regard to the desirability of there being innovative approaches taken with regard to the deliverability of pharmaceutical services, granting the applications would confer significant benefits on persons.

Regulation 18(2)(b) generally

5.80 The Committee noted the representations received regarding opening hours, in particular the extended opening hours for EVMC and the Urgent Treatment Centre. It also noted that a number of patients had commented in the survey about their preference for opening hours to reflect those of the practice. It considered the evidence provided by EVMC that the Urgent Treatment Centre was busiest on weekdays and that this was not disputed. It was also mindful that Tesco Pharmacy had extended opening hours that almost matched those of EVMC, however this was the only one in the vicinity, in particular opening on a Sunday.

5.81 Eazihealth Ltd were proposing to open extended hours, however there was concern about the viability of their proposal. The Committee noted that Eazihealth Ltd had not provided any evidence that the extended opening hours would confer significant benefits. The Committee was of the view that whilst there was information before it that having pharmaceutical services accessible during the hours that EVMC operated would be beneficial to patients and would provide better access for those patients, there was little evidence that this would confer significant benefits in relation to opening hours. Therefore, it was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the applications would confer significant benefits (in relation to opening hours) on persons.

5.82 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.

5.83 The Committee was not satisfied that granting the application would confer significant benefits for patients who share protected characteristics on the basis that those benefits would be secured for all parties, regardless of their status.

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

Other considerations

5.85 Having determined that Regulation 18(2)(b) had been satisfied, the Committee needed to have regard to Regulation 18(2)(c) to (e) and determined that it was not aware of any other applications or appeals relating to applications offering to secure improvements or better access that the Applicants were offering to

secure and that there was no need to consider applications from other persons offering to secure such improvements or better access.

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

5.87 The Committee had regard to Regulation 18(2)(g) and found that it was not applicable.

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

5.89 The Committee was 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.

5.90 The Committee considered that both applications would provide better access, therefore the Committee considered that it had three options:

5.90.1 grant both applications;

5.90.2 grant one application and refuse the other; or

5.90.3 refuse both applications.

5.91 The Committee discounted the third option as unreasonable given that it had decided that there is difficulty in accessing current pharmaceutical services such that a pharmacy at the proposed location would provide better access to pharmaceutical services.

5.92 The Committee therefore considered which of the remaining options was preferable.

5.93 The Committee had regard to comments in R (on the application of Rushport Advisory LLP) v NHS LA [2016] EWHC 907 (Admin) ("Rushport case") which stated at paragraph 43:

> *"the decision maker must be very careful not to decide that [the public benefit test] is met in a case where there is a real possibility of services under both grants coming on stream, leading to over- provision at the expense of the public purse (since providers are entitled to charge the NHS for the services)"*

5.94 The Committee noted that in the Rushport case, the issue was the potential grant of an application where an extant grant was in place. The Committee, however, considered that it could be inferred from the extract above that in a situation where more than one application secures improvements or better access, more than one grant should be avoided. In that regard the Committee noted Kerr J's observation in the Rushport case that "*successive applications determined sequentially in respect of the same services are awkward, and are best avoided if they can be*..." Again, the Committee considered that this was supportive of the view that where two applications seek to deliver the same benefits, they will be considered together (as is the case here) and granted only

to the extent necessary to deliver the benefits identified. Where one application is superior to the other on relevant grounds, that application should be granted, and if the effect of granting that application is to occupy the field so that the less favoured application no longer meets the public benefit test, then the less favoured application should be refused even if considered in isolation it would have satisfied that test.

5.95 On the basis of the information provided, the Committee considered that only one pharmacy was required to open to provide better access to pharmaceutical services in Whitstable. The Committee noted that neither party had suggested that both applications should be granted. The Committee therefore proceeded to consider which application should be granted.

Swalecliffe Pharmacy Ltd

5.96 The Committee noted that Swalecliffe Pharmacy Ltd is an existing provider operating a pharmacy in Swalecliffe. They dispense the highest number of items in the area per month, most of which are prescribed by Whitstable Medical Practice. The Committee noted that, whilst no lease agreement has been signed, Swalecliffe Pharmacy Ltd are the only applicant being supported by the EVMC who are the owners of the proposed site. The Committee considered this factor had significant weight.

5.97 In terms of their proposal, Swalecliffe Pharmacy Ltd are offering to open 40 core hours per week between 9am and 6pm Monday to Friday closing for lunch between 1pm and 2pm. Supplementary hours are proposed from 9am to 6.30pm Monday to Friday and 9am to 5pm on Saturdays. They offer all commissioned services with all pharmacists accredited.

5.98 Whitstable Medical Practice informed the Committee that they had full confidence in Swalecliffe Pharmacy Ltd being able to provide pharmaceutical services and advised that their patients were very supportive of them as well.

Eazihealth Ltd

5.99 The Committee noted that Eazihealth Ltd's application included core opening hours Monday to Saturday 8am to 11am and 5pm to 8pm and Sunday 4pm to 8pm. The proposed supplementary hours are 12 hours per day, seven days per week to match those of the EVMC. The Committee was mindful that when asked about the six hour closing in the middle of the day, Mr [A] was insistent that the service would be provided based upon the supplementary hours, not the core ones. He went on to explain that the core hours were based on the limitation of 40 hours per week. The Committee noted that this was corrected by the Commissioner during the hearing.

5.100 The Committee is required to take into account the core hours proposed as these are the contractual requirements and was aware that supplementary hours can be removed by giving the required notice to the Commissioner. It did not consider the core hours to be representative of significant improvements or better access for patients, as it is reasonable to conclude that patients would be wanting to access pharmaceutical services in the middle of the day and indeed would likely expect to be able to do so.

5.101 The Committee also considered the explanations provided by Eazihealth Ltd about how they intended to provide the service, noting that they had clearly not fully costed it and was unaware of the rent or business rates. When asked about the staffing model to be able to deliver the supplementary hours, Mr [A] replied that he was intending to employ three pharmacists and 43 dispensers. It was unclear on what basis he had arrived at these numbers and the Committee were of the view that this was unrealistic. In terms of the services proposed, Mr [A] was unaware that his application had excluded contraceptive services and whilst he advised the Committee that he intended to provide all services, the Committee could only consider services specified in the application.

5.102 The Committee noted that Eazihealth Ltd do not currently provide any pharmaceutical services in the community, having closed their Distance Selling Pharmacy, which was based in Faversham, in January 2025. Mr [A] confirmed the circumstances of the closure, which included a lack of financial sustainability of the Distance Selling Pharmacy that he had been operating.

5.103 The Committee was mindful of the background to the closure of Estuary Pharmacy and the representations made by EVMC regarding the need to ensure a sustainable provider. It noted that EVMC, as owners of the building, were only negotiating with Swalecliffe Pharmacy Ltd due to the existing relationship and current experience in delivering community pharmacy services to its patients. Whilst Swalecliffe Pharmacy Ltd were offering less supplementary hours than Eazihealth Ltd, the core hours were more reflective of access for patients than Eazihealth Ltd's. It also noted that Swalecliffe Pharmacy Ltd's proposal appeared to have been properly costed, planned and would be more sustainable.

5.104 The Committee was mindful of the desirability of only granting one application and on the basis of the arguments outlined above, it preferred the application of Swalecliffe Pharmacy Ltd.

Other considerations

5.105 The Committee had regard to Regulation 19(5) which states:

If 18(2)(b) applies (granting would confer significant benefits) then 19(6) applies and you may grant the applications.

5.106 The Committee had regard to Regulation 19(6) which states:

(6) If NHS England is satisfied as mentioned in regulation 18(2)(b), it may grant the application not withstanding that the improvements or better access were or was not included in the relevant pharmaceutical needs assessment.

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

5.107.1confirm the Commissioner's decisions;

5.107.2quash the Commissioner's decisions and redetermine the applications;

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

5.108 The Committee noted that at the time that the Commissioner was reviewing the application, the 2025 PNA had not been published and they referred instead to the 2022 PNA. They quoted from that PNA "*Currently there are no gaps in provision of pharmacy services in the Canterbury locality. There are housing developments planned across the locality. The access to pharmacies from the new developments is good and the 24 pharmacies that responded to the contractor questionnaire stated that they had capacity to respond to an increased demand. No gaps in provision have been identified*." The Commissioner also referred to:

5.108.1 *"there had been previously been a pharmacy, operated by Avana Healthcare Ltd, located at 25 Boorman Way, Estuary View Business Park, Whitstable, Kent CT5 3SE but pharmaceutical services had not been provided since July 2023. Following the closure of the pharmacy the [Commissioner] was unaware of any complaints from patients who were now unable to access pharmaceutical services."*

5.109 The Committee noted that the previous pharmacy had actually been operated by a different pharmacy and had closed due to a dispute with the Landlords. It was unclear how the Commissioner may have received complaints directly and the Committee was mindful that, following the appeal, a significant amount of patient feedback and support to reopen the pharmacy has been provided which was not available to them at the time.

5.110 The Committee also noted that the Commissioner had referred to the opening hours of the existing pharmacies ranging "from 08:00 to 20:00 Monday to Saturday and from 10:00 to 16:00 on Sundays." It considered this to be unrepresentative of the opening hours available to patients as there is only one pharmacy that provides the extended hours opening as well as Sunday opening. The Commissioner also noted information on local bus service routes stating "*the 400 bus service runs approximately every half hour and the 683 bus service approximately one hour and half hours*." They do not refer to how these bus services relate to access to the existing pharmacies and some of the routes that they take. The Commissioner also does not appear to have considered the impact of the patients visiting the Urgent Treatment Centre or the temporary residents that EVMC serve.

5.111 In those circumstances, the Committee determined that the decisions of the Commissioner must be quashed.

5.112 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 applications.

5.113 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 applications by the Commissioner. The Committee further noted that when the appeals were circulated representations had been sought from parties on Regulation 18.

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

5.115 The Committee had regard to Regulation 50(1) which states:

Discontinuation of arrangements for the provision of pharmaceutical services by doctors

In circumstances where NHS England has arrangements (whether they were made under these Regulations or were made under or continued by virtue of the 2012 Regulations) with a dispensing doctor (D) to provide pharmaceutical services to a person (P), if…

D must terminate the provision of pharmaceutical services to P, subject to any postponement of the discontinuation by NHS England in accordance with paragraphs (2) to (6).

5.116 Regulation 50(3) states:

This paragraph applies where—

(a) NHS England grants a routine or excepted application, the result of which is the inclusion in a pharmaceutical list of pharmacy premises that are not already listed in relation to an NHS pharmacist; .

(b) the pharmacy premises to which that application relates are not distance selling premises but— .

(i) are in a controlled locality, or

(ii) are within 1.6 kilometres of a part of a controlled locality in which patients of a dispensing doctor reside and those patients are being provided with pharmaceutical services by that dispensing doctor; and

(c) granting the routine or excepted application, in the opinion of NHS England, results in a significant change to the arrangements that are in place for the provision of pharmaceutical services (including by a person on a dispensing doctor list) or local pharmaceutical services in any part of a controlled locality.

5.117 The Committee noted that the proposed pharmacy would be located within 1.6km of a controlled locality and considered the impact on any dispensing patients in that area. The Commissioner had stated "*if any of the applications were approved, it was inclined that the service provided by the dispensing doctors to the affected patients should be discontinued, and that the discontinuation should be postponed in order to give the doctors reasonable notice of the discontinuation*." They refer to a small number of patients affected

(5-6) registered with Old School Surgery and Bearsted Surgery, the exact number is not clearly identified. The Commissioner determined a period of 1 month for gradualisation would be sufficient.

5.118 The Committee noted this and the lack of representations from other parties. The Committee took into account the small numbers of patients affected and confirmed the decision of the Commissioner that a period of one month gradualisation for the removal of patients would apply for Old School Surgery and Bearsted Surgery.

6 DECISION

6.1 In respect of the application by Swalecliffe Pharmacy Ltd,the Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of the Commissioner, for the reasons given above, and redetermines the application.

6.2 In respect of the application by Eazihealth Ltd,the Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of the Commissioner, for the reasons given above, and redetermines the application.

6.3 The Committee concluded that it was not required to refuse either of the applications under the provisions of Regulation 31.

6.4 The Committee has considered whether the granting of an 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;

6.5 The Committee determined that an application should be granted on the following basis:

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

6.5.1.1 there is not already a reasonable choice with regard to obtaining pharmaceutical services;

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

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

6.5.2 Having taken these matters into account, the Committee is satisfied that granting an application would confer significant benefits as outlined above that would secure improvements or better access to pharmaceutical services.

6.6 Having considered the relative merits of each application the Committee has determined that Swalecliffe Pharmacy Ltd's application is preferred on the basis that:

6.6.1 They offer better core opening hours that suit the needs of patients;

6.6.2 They have secured premises;

6.6.3 They have an existing relationship with EVMC and a successful track record in providing pharmaceutical services to their patients; and

6.6.4 Their application reflects the provision of all services.

6.7 Whereas, the Committee were concerned that Eazihealth Ltd:

6.7.1 Did not appear to have an understanding of the contractual requirements in terms of the core hours and what was being offered was not considered to be improving access due to the excessive period of closing in the middle of the day;

6.7.2 Had not secured premises or costed the service provision; and

6.7.3 Was unable to satisfy the Committee that they could provide a sustainable service.

6.8 The Committee therefore determined to grant the application from Swalecliffe Pharmacy Ltd.

Committee Chair

Annex A

REF: SHA/ 26668

APPEAL AGAINST KENT AND MEDWAY ICB DECISION TO REFUSE AN APPLICATION BY SWALECLIFFE PHARMACY LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT PHARMACY UNIT, ESTUARY VIEW MEDICAL CENTRE, 25 ESTUARY VIEW BUSINESS PARK, BOORMAN WAY, WHITSTABLE CT5 3SE

REF: SHA/ 26679

APPEAL AGAINST KENT AND MEDWAY ICB DECISION TO REFUSE AN APPLICATION BY EAZIHEALTH LIMITED FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT 25 BOORMAN WAY, ESTUARY VIEW BUSINESS PARK, WHITSTABLE CT5 3SE

1 The Applications

By application dated 6 February 2025, Rushport Advisory LLP on behalf of Swalecliffe Pharmacy Ltd applied to Kent and Medway ICB ("the Commissioner") for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at Pharmacy Unit, Estuary View Medical Centre, 25 Estuary View Business Park, Boorman Way, Whitstable CT5 3SE. In support of the application it was stated:

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

1.1 "NO OTHER PHARMACY AT EITHER THE SAME OR ADJACENT PROPOSED PREMISES".

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

1.2 "As the ICB will be aware, until July 2023 there was a pharmacy trading from this location. The pharmacy was forced to close in July 2023 after a dispute about the non-payment of rent to the landlord.

1.3 The previous pharmacy dispensed a high percentage of the items issued by Estuary View Medical Centre and was an important asset to the local community. The pharmacy did not close because it was not viable, rather it lost the ability to trade due to the landlord dispute.

1.4 This application references the previous pharmacy as its presence and previous trading are helpful when considering what the use of such a pharmacy would be. However, this is not simply about replacing a pharmacy that has closed.

1.5 We operate Swalecliffe Pharmacy and have heard first hand about the problems that patients now have trying to access pharmaceutical services. The closest pharmacy to the medical centre is Tyrell & Jones which is approximately a 0.7 mile walk. There is no reasonable public transport option to access this pharmacy from the medical centre as buses travel away from the Tyrell & Jones pharmacy before looping back on themselves. A similar problem exists if trying to access Tesco pharmacy to the east, which is 1.6 miles away but would require two bus journeys to access it. The nearest pharmacy to the north east is PRX which suffers from poor parking provision and appears to be underused. Whitstable is also a popular tourist destination and the main shopping area becomes very difficult to access, particularly in the summer and for those who need to access a pharmacy as opposed to spending a relaxing day wandering the town's streets.

1.6 Estuary View Medical Centre is the main hub for additional, comprehensive community healthcare services and a 7 days per week urgent care walk-in centre. Whitstable Medical Practice is the heart of a single GP practice PCN. Estuary View medical Centre ("EVMC") is the largest site. The others are Whitstable health Centre, Chestfield medical Centre and Estuary House. Estuary House is next door to EVMC and houses the East Kent Hospitals coastal outpatient dept together with admin and management.

1.7 17,000 of the PCN's 45,000 patients are registered with GPs at EVMC.

1.8 Most of the services provided from EVMC are accessed by all 45,000 of the total registered patient list.

1.9 Prospect Retail Park is located beside the medical centre and this means that patients not only access the area for medical services but also for day to day shopping needs.

1.10 Granting this application would secure improvements and better access to pharmacy services and the application should therefore be approved."

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

1.11 "THE UNFORSEEN BENEFITS DESCRIBED ABOVE WILL BE DELIVERED FROM THE PREMISES ONCE THE APPLICATION IS APPROVED".

By application dated 6 March 2025, Eazihealth Limited applied to the Commissioner for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at 25 Boorman Way, Estuary View Business Park, Whitstable CT5 3SE. In support of the application it was stated:

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

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

1.12 “Further to the Facebook announcement by Whistable Medical Practice in mid-February 2025, that Estuary View Medical Centre is looking forward to a pharmacy being opened within their premises, Our application is based on the provision of unforeseen benefits that would significantly improve patient access to NHS pharmaceutical services in Whitstable. This need has arisen due to:

1.12.1 The planned closure on one pharmacy (Lloyds Pharmacy) in June 2023 and the unplanned abrupt closure of two local pharmacies (Cheadles Pharmacy & Estuary View Pharmacy) in July 2023, creating an unanticipated service gap not accounted for in the current Pharmaceutical Needs Assessment (PNA) 2022.

1.12.2 While one of the closed pharmacies reopened in June 2024 as Tyrell & Jones Pharmacy, there remains a significant gap in pharmaceutical service provision.

1.12.3 The limited availability of extended-hour pharmacy services in the area, particularly on Sundays, when only one pharmacy (Tesco Pharmacy) operates until 4 PM, leaving no evening or late-afternoon provision.

1.12.4 The need for a pharmacy open from 8 AM – 8 PM, Monday to Sunday, to enhance accessibility for working patients, those requiring urgent medication, and those needing services outside standard hours.

1.12.5 The fact that our proposed pharmacy’s opening hours align with the local surgery and urgent treatment centre, ensuring seamless access to pharmaceutical services when patients need them most.

1.13 Given that the next PNA update is not due until October 2025, this unforeseen gap in service must be addressed now to ensure patient safety and continued access to pharmaceutical care.

1.14 Evidence of Service Gaps and Need for Better Access

1.15 Pharmacy Closures in June and July 2023 and Partial Reopening

1.15.1 Three pharmacies in Whitstable closed between June 2023 and July 2023, creating a service disruption that was not foreseen in the current PNA.

1.15.2 One of these pharmacies reopened in June 2024, but this has not fully restored service levels, and also, there remains a lack of extended-hour and Sunday evening provision.

1.16 Limited Sunday Pharmacy Service in the Area

1.16.1 Only one pharmacy (Tesco Pharmacy) in Whitstable is currently open on Sundays, operating for just 6 hours (10am to 4 pm).

1.16.2 There is no pharmacy open beyond 4 PM on Sundays, meaning patients requiring urgent medication or pharmaceutical advice are left without access for the remainder of the day. The nearest pharmacy that opens up to 6pm is six miles away (Paydens Pharmacy, Herne Bay).

1.16.3 Our proposed 12-hour Sunday service (8 AM – 8 PM) would double the current availability of NHS pharmacy services, ensuring patients have access throughout the day.

1.17 Extended Hours to Improve Access

1.17.1 Only one pharmacy (Tesco Pharmacy) in the area operates until 8 PM on weekdays and Saturdays.

1.17.2 All other local pharmacies close earlier, meaning there is limited access to pharmaceutical services in the evening.

1.17.3 Our proposed 8 AM – 8 PM, 7-day-a-week service will ensure that working professionals, families, and patients needing urgent care can access pharmacy services conveniently."

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

1.18 "The July 2023 pharmacy closures were not anticipated in the 2022 PNA, and without intervention, this service gap will remain unaddressed until at least October 2025.

1.19 The current Sunday pharmacy provision (6 hours) is insufficient to meet patient demand. Our extended 12-hour Sunday service (8 AM – 8 PM) would significantly enhance access.

1.20 Only one pharmacy in the area is open until 8 PM Monday to Saturday, meaning evening access remains limited. Our 8 AM – 8 PM, 7-day-a-week service would ensure consistent availability."

2 **'14 day comments' to the Commissioner**

2.1 Rushport Advisory LLP on behalf of Swalecliffe Pharmacy Ltd

2.1.1 "Thank you for your letter of 7 May 2025. I act for Swalecliffe Pharmacy Limited in the above application and have been instructed by my client to submit the following reply to comments received from Interested Parties.

2.1.2 **LMC**

2.1.3 We note that the LMC supports the granting of this application.

2.1.4 **Avana Healthcare Limited**

2.1.5 As the ICB will note, Avana Healthcare Ltd has objected to my client's application and claimed that a new pharmacy is not needed at Estuary

View Medical Centre. However, Avana Healthcare Limited has submitted its own application for inclusion in the pharmaceutical list under regulation and has stated in that application that there is a "critical gap" in pharmaceutical services and that "granting the application would lead to significant improvements in access for the reliant population". Clearly Avana Healthcare Limited, as owners and operators of the nearest pharmacy, are aware of the requirement for a pharmacy in this location.

2.1.6 **PRX Pharmacy and Boots**

2.1.7 As PRX Pharmacy represented by PSC and Boots make similar comments we reply to these letters together as follows.

2.1.8 PSC describes Estuary View Medical Centre as being "remote to the main residential area" and then speculates that patients would use a pharmacy closer to where they live. It is a fact that Estuary View Medical Centre is remote from all other pharmacies but it is also within an area that is growing in terms of residential population and also contains a significant number of other services that draw people to this area as part of their day to day lives.

2.1.9 Whitstable town centre is located on the sea edge and the town has grown in a southernly, easternly and westerly direction. Because of the Estuary, the town centre is 'off centre' and as development has taken place over recent decades, the traditional town centre has become increasingly distant from the new residential areas and services that have been provided.

2.1.10 Whitstable town centre (where Boots and PRX Pharmacy are located) retains its traditional Victorian character with pebble beaches separated and protected by wooden groynes which extend out to the sea. It has a working harbour. Set back from the sea front is the old town centre, with its narrow street layout. As a result of the historic layout, a criticism of Whitstable is its limited parking and accessibility for modern day cars. In short it is an attractive town centre to visit for holiday makers but not a modern centre that is designed to meet the needs of sick patients. This is discussed further below.

2.1.11 The area around the proposal site has been developed since around 2010. The area includes the new EVMC and the surrounding offices and uses. These include lawyers offices, business services offices and a complex care at home service. Recently Whitstable House Nursing Home has opened beside the EVMC. This provides 101 new care suites for the elderly. Planning permission is granted for a further 75 bed care suite within the same estate. Construction work will commence in July.

2.1.12 Beside the EVMC estate is the new Prospect Way Retail Park, which includes a Home Bargains store, M&S, Aldi, Halfords, Pets at Home and Vets4Pets. A retail park such as this would expect to achieve a footfall of about 25,000 shoppers per week. There is a pedestrian

access from this retail park onto Thanet Way providing a walking route linking the Retail Park and the EVMC.

2.1.13 West of the area on the edge of Seasalter, there is a large number of caravan parks. These are located along Church Lane and Faversham Road. They include:

2.1.14 Rowan Tree Park, 28 residential caravans for over 50s;

2.1.15 Applegareth Park with about 112 caravans providing residential accommodation for the over 50s;

2.1.16 Beach Court Residential Park providing about 50 caravans for the over 50s;

2.1.17 Homing Holiday Park with about 200 pitches for caravans and tents;

2.1.18 Bridgeways Park, 20 caravan pitches;

2.1.19 Bridge Country and Leisure Park with 28 pitches;

2.1.20 Alberta Holiday Park, with about 450 caravans; and

2.1.21 Seasalter Holiday Park providing about 125 caravans

2.1.22 As such there is about 190 caravan homes for people aged over 50 in this area living all year round and (a population of between 190-380) and over 820 caravans for families on holiday, which would attract perhaps 2,000 people per week in peak season.

2.1.23 There is up to 2,380 people living in caravan accommodation over the summer months in this area. This is a significant boost to the population and indicates that the official population levels are an under estimate especially for the summer months of the year.

2.1.24 The Seasalter area of Whitstable has a population of about 11,700, which in the summer months is likely to be over 13,000 and with the ongoing residential development coming forward these figures will increase further [population data provided].

2.1.25 To the southwest of the area, just off Church Lane planning permission has been granted for 250 dwellings with the first homes being occupied before the end of this year. There are numerous other and significant developments underway in close proximity, including:

2.1.26 Whitstable Heights – 400 dwellings

2.1.27 Old Thanet Way – 42 dwellings

2.1.28 Prospect House, Markerstudy Ind Estate – 66 dwellings

2.1.29 Land South of Thanet Way – 220 dwellings

2.1.30 Clapham Hill – 28 dwellings.

2.1.31 It is expected that all of these residents will register as patients at Estuary View Medical Centre.

2.1.32 The previous pharmacy at Estuary View Medical Centre did not close because it was not viable. It closed due to a disagreement between the previous Directors which led to non-payment of rent. One of the previous Directors is making an application for inclusion in the pharmaceutical list at the same location as my client's application which evidences its financial viability.

2.1.33 The PNA proximity to their home is an overwhelmingly important factor when choosing a pharmacy. Second in importance is proximity to the doctor.

2.1.34 The PNA also states that that the vast majority of people either walk or use a car to visit their pharmacist. Public transport is largely an insignificant consideration when it comes to accessing a pharmacy and this appears to be because public transport in the Whitstable area is poor. For example, whilst PRX talks about public transport to the town centre they fail to acknowledge the lack of any direct bus route to either of the nearest two pharmacies to Estuary View Medical Centre (Tyrell & Jones and Tesco).

2.1.35 PSC then lists pharmacies within varies different distances all measured by radius / straight line distance. This simply ignores the difficulties that patients have accessing the remaining pharmacies in Whitstable or the real distance they are away from where the patient demand is centred.

2.1.36 PRX Pharmacy is 1.6 miles from the application site by real methods of travel. Like PRX, Boots is also limited by the narrow streets of the town centre and the limited parking opportunities in the town centre. These pharmacies have relatively low dispensing volume and are clearly not seen as being accessible by patients.

2.1.37 There is a very clear need to replace the pharmacy that previously operated from Estuary View Medical Centre. The town centre pharmacies are grouped into an historic town centre and are not suited for modern day car users and patients. Tesco's pharmacy is inside its large superstore shop and it caters for the needs of mainly food shoppers getting prescriptions dispensed whilst undertaking their weekly shopping. The eastern pharmacies at Tankerton and Swalecliffe are located in their own suburbs and are not located or designed to cater for the large population living and visiting the Seasalter area.

2.1.38 The previous pharmacy at Estuary View Medical Centre dispensed circa 8,500 items per month. It was busy and well used. Its closure, as well as the closure of Lloyds in Sainsburys (which was also not related to viability) have created a significant gap in service provision that approving this application will meet.

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

2.2 Avana Healthcare Ltd

2.2.1 "We note KMC's comments in support of the Swalecliffe Pharmacy application, particularly in reference to vulnerable patients, access, and proximity to the urgent treatment centre. However, we respectfully submit that these considerations are broadly applicable to all applicants and do not constitute a unique basis for preferential support of a single application.

2.2.2 Regarding the objection raised concerning Avana Healthcare Ltd's application, we would like to clarify that Avana Healthcare has a provisional agreement in place with the landlord of the medical centre to occupy the proposed premises. This arrangement is known to the ICB and forms part of our ongoing discussions."

2.3 Eazihealth Ltd

2.3.1 "I write on behalf of Eazihealth Ltd in response to the comments raised regarding our pharmacy market entry application under Regulation 18 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, for the provision of unforeseen benefits at Estuary View Medical Centre, Whitstable.

2.3.2 We address each point below:

2.3.3 **Regulation 18 and Supplementary Statement Misinterpretation (Boots, PRX Pharmacy)**

2.3.4 The assertion that a Supplementary Statement is required before an application under Regulation 18 can be considered misunderstands the regulatory framework. The absence of a Supplementary Statement is not legally determinative under Regulation 18. Rather, the test is whether the application, if granted, would secure improvements or better access to pharmaceutical services that were not foreseen when the PNA was published.

2.3.5 The closures of Estuary View Pharmacy, Cheadles Pharmacy, and Lloyds Pharmacy in 2023 were clearly unforeseen by the 2022 PNA and created a material access gap.

2.3.6 Though the former Cheadles Pharmacy in Seasalter, Whitstable reopened under a new name, Tyrell & Jones, Eazihealth Limited's application still addresses the gap left by Estuary View Pharmacy and Lloyds Pharmacy by aligning its opening hours (8 AM to 8 PM, 7 days a week) with the medical practices's Urgent Treatment Centre, significantly improving patient access.

2.3.7 **Engagement with Estuary View Medical Centre (Kent LMC)**

2.3.8 Contrary to the LMC's claim, Eazihealth Ltd did engage with the Practice Manager at Estuary View in February 2024 to express interest

in the pharmacy site. At the time, the Practice Manager informed us that site discussions were being handled by an agent, with whom we were advised to liaise. Unfortunately, we received no response from the agent.

2.3.9 When Whitstable Medical Practice engaged the public via Facebook in February 2025, we realised it may now be out of the agent's' hands, then submitted our application in good faith, with every intention to re-engage directly. Our approach is transparent and consistent with NHS England's goal of community-led pharmaceutical access.

2.3.10 Attached is a redacted copy of email communication indicating that we have always been interested in opening a pharmacy at Estuary View Medical Centre in Whitstable to secure better pharmaceutical access for the public.

2.3.11 **Commercial Sustainability and Strategic Withdrawal from NHS DSP contract (Avana Healthcare)**

2.3.12 Avana's objection misrepresents our previous NHS exit. Eazihealth's withdrawal from the Pharmaceutical List in December 2024 was strategic. The pharmacy did not close down; it only withdrew from the old NHS contract as a DSP. The new community pharmacy contractual framework published in March 2025 now prohibits Distance Selling Pharmacies (DSPs) from offering advanced and enhanced services on their premises. This policy shift effectively strips DSPs of their clinical service relevance.(Please, see page 2 of attached infographic)

2.3.13 Our current application is aligned with the NHS 10-Year Plan to deliver integrated care locally. Furthermore, Since 3rd of April 2025, we have been in constructive talks with like-minded pharmacists and non-pharmacists, willing to support the operation of the new pharmacy if our application is granted.

2.3.14 **Access, Reasonable Choice, and Protected Characteristics (PRX Pharmacy)**

2.3.15 PRX argues that a reasonable choice already exists in Whitstable and that no specific patient group faces barriers. However, this perspective ignores key facts:

2.3.16 Only Tesco Pharmacy opens past 5:30 PM on weekdays and up to 4 pm on Sundays

2.3.17 No pharmacy in Whitstable offers late evening access on Sundays or alignment with the 12-hour operation of the Estuary View Urgent Treatment Centre.

2.3.18 Our proposal offers 12-hour service, 7 days a week, directly enhancing access for:

2.3.19 Working families

2.3.20 NHS staff

2.3.21 Carers with limited availability

2.3.22 Mobility-limited patients who rely on the co-location advantage

2.3.23 PRX's own cited transport data fails to acknowledge that accessibility is not only about owning a vehicle, but also includes:

2.3.24 Parking difficulty during peak hours

2.3.25 Public transport scheduling gaps

2.3.26 Elderly or disabled individuals preferring walk-in access to post-clinic visits

2.3.27 Furthermore, we note that equality impact assessments under the Equality Act 2010 support widening access to health services for those with protected characteristics, which our application promotes.

2.3.28 **Innovation and Future Service Planning (PRX Pharmacy)**

2.3.29 It is incorrect to say our proposal lacks innovation. We offer:

2.3.30 Fully integrated hours with the UTC

2.3.31 Planned future implementation of automated prescription lockers

2.3.32 The potential to host NHS winter and vaccination campaigns 12 hours a day, 7 days a week.

2.3.33 We also note Whitstable Medical Practice's public engagement via Facebook in February 2025, which demonstrated community enthusiasm for restoring a pharmacy presence at Estuary View. Public comments were overwhelmingly in favour of increased access.

2.3.34 **Preference Between Applicants (Swalecliffe Pharmacy)**

2.3.35 Swalecliffe Pharmacy’s comment concedes the need for a pharmacy at Estuary View but does not raise substantive regulatory objections. Their submission reads more like a competitive preference than an argument against our eligibility. This should carry limited weight in a regulatory decision based on merit and patient benefit.

2.3.36 **Conclusion**

2.3.37 We respectfully submit that Eazihealth’s application:

2.3.38 Meets the Regulation 18 test by addressing unforeseen access gaps

2.3.39 Provides better access through co-location and extended hours

2.3.40 Serves the needs of protected and underserved groups

2.3.41 Aligns with the NHS 10-Year Strategy

2.3.42 We invite the ICB to approve our application in the interest of public health, equity, and community resilience. Should an oral hearing be scheduled, Eazihealth Ltd would be pleased to attend and present further evidence."

3 The Decision

The Commissioner considered and decided to refuse both applications. The decision letter dated 24 June 2025 states:

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

3.2 You have a right of appeal to the Secretary of State against Kent and Medway ICB 's decision. Should you choose to appeal then either complete the online form available on the NHS Resolution website or send a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this letter to nhsr.appeals@nhs.net or:

3.3 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]

PSRC report

3.4 "Applications offering Unforeseen Benefits being considered together and in relation to each other:

3.5 **HWB: Kent**

3.6 **ICB: Kent and Medway**

3.7 **Application 1:**

3.7.1 **[redacted by NHSR]**

3.7.2 **Address: Estuary View Medical Centre, 25 Estuary View Business Park, Boorman Way, Whitstable CT5 3SE**

3.8 **Application 2:**

3.8.1 **Eazihealth Health Limited**

3.8.2 **CAS no: CAS-356302-Q5V7P9**

3.8.3 **Address: 25 Boorman Way, Estuary View Business Park, Whitstable CT5 3SE**

3.9 **Application 3:**

3.9.1 **Swalecliffe Pharmacy Ltd**

3.9.2 **CAS no: CAS-351170 – Z0W7H8**

3.9.3 **Address: Pharmacy Unit, Estuary View Medical Centre, 25 Estuary View Business Park, Whitstable CT5 3SE**

3.10 **Introduction and background**

3.11 Unforeseen benefits applications had been received as detailed above. The Committee was now required to consider the applications in accordance with Regulations 18 and 19 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.

3.12 Full details of the Applicant's proposals had been notified to the various interested parties in accordance with the regulations.

3.13 It had been previously agreed and notified that the three applications would be considered together.

3.14 **Consideration by the Committee - Applications**

3.15 **Summary of application 1 – [redacted by NHSR].**

3.16 **Summary of application 2 – Eazihealth Limited**

3.17 The Applicant proposed core opening of 40 hours per week and total proposed opening of 84 hours per week.

3.18 The hours proposed as indicated in section 3.1 of the application form are:

3.19 Proposed core opening hours:

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
08:00-11:00 17:00-20:00	08:00-11:00 17:00-20:00	08:00-11:00 17:00-20:00	08:00-11:00 17:00-20:00	08:00-11:00 17:00-20:00	08:00-11:00 17:00-20:00	16:00-20:00	40

3.20 Total proposed opening hours:

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
08:00-20:00	08:00-20:00	08:00-20:00	08:00-20:00	08:00-20:00	08:00--20:00	08:00-20:00	84

3.21 The Applicant proposed to provide essential, enhanced and advanced services, if commissioned.

3.22 The Applicant had not provided a floor plan.

3.23 At part 6 of the application form, the Applicant describes the unforeseen benefit they are offering to secure as:

3.23.1 "Further to the Facebook announcement by Whitstable Medical Practice in mid-February 2025, that Estuary View Medical Centre is looking forward to a pharmacy being opened within their premises, our application is based on the provision of unforeseen benefits that would significantly improve patient access to NHS pharmaceutical services in Whitstable.

3.23.2 The fact that our proposed pharmacy's opening hours align with the local surgery and urgent treatment centre, ensuring seamless access to pharmaceutical services when patients need them most.

3.23.3 Our proposed 12-hour Sunday service (8 AM – 8 PM) would double the current availability of NHS pharmacy services, ensuring patients have access throughout the day.

3.23.4 Our proposed 8 AM – 8 PM, 7-day-a-week service will ensure that working professionals, families, and patients needing urgent care can access pharmacy services conveniently".

3.24 **Representations**

3.25 The Committee noted the Applicant's proposals were notified to various interested parties in accordance with the Regulations.

3.26 Representations have been received from:

3.27 Avana Healthcare Limited raised concerns on the viability of the proposed opening hours stating *"While the application places strong emphasis on extended opening hours, we would note that Tesco Whitstable currently provides 78 hours of pharmaceutical service per week. We do not consider the proposed additional 6 hours on Sundays alone to constitute sufficient grounds for granting this application, especially given the existing service provision in the area. We also note the unusual distribution of core to supplementary hours.*

3.28 *Given the Applicant's recent withdrawal from the Pharmaceutical List due to concerns over commercial viability, the lack of a clear and sustainable business case for the proposed extended hours, and the already sufficient pharmaceutical coverage in the area—including services provided by existing contractors—we respectfully submit that this application lacks merit and should be refused".*

3.29 Rushport Advisory LLP on behalf of Swalecliffe Pharmacy Ltd object to the application but agree a new pharmacy is required stating *"My client agrees with Eazihealth Limited that a new pharmacy is required at Estuary View Medical Centre but submits that the application from Swalecliffe Pharmacy Limited should be preferred".*

3.30 Pharmacy Sales and Consultancy on behalf of PRX Pharmacy Ltd raised concerns that the Applicant *"has failed to identify what the current level of access is to pharmacies within Whitstable and how the application would secure improvements or better access to pharmaceutical services. The closure of one pharmacy does not automatically lead to a granting of a replacement without there being a pharmaceutical need and an application that fully satisfies the regulatory test.*

3.31 *There is currently one pharmacy within a one-mile radius of the proposed location and a further four pharmacies within a two-mile radius which are meeting the pharmaceutical needs of the locality and the surrounding area. One of the existing pharmacies (Tesco Pharmacy) offers extended trading hours, opening until between 8am and 8pm Monday – Saturday and between 10am and 4pm on a Sunday. The opening hours offered by the existing pharmacy network exceed the proposed opening hours for this application so provided no better access to pharmaceutical services".*

3.32 *They also raised concerns that the Applicant had failed to describe how access for patient groups with protected characteristics would be improved by granting the application and "what pharmaceutical needs are currently unmet within the existing population growth, as well as those of the future population growth".*

3.33 PRX Pharmacy Ltd oppose the application.

3.34 Boots UK Ltd stated *"Boots UK Limited have the following comments to make.*

3.35 *Whilst we accept that the application is based on benefits not foreseen when drafting the Pharmaceutical Needs Assessment (PNA), it is clear that these applications are based on the closures of pharmacies in this locality.*

3.36 *As the ICB will be aware, the closure of a pharmacy (or pharmacies) within an area does not automatically create a gap and should a gap have arisen as a consequence of a reduction in provision, then the PNA should be updated to reflect this, usually by way of the publication of a supplementary statement.*

3.37 *As far as we can see, no updated PNA or Supplementary Statement has been produced following the closures of the pharmacies in this locality. We believe that this is the correct way of identifying any gaps that may have as a result of the closures.*

3.38 *The pharmacies closed 18 months ago now, so there has been plenty of time for the production of supplementary statements and the amendment of the PNA to have taken place if there was a requirement to do so.*

3.39 *Furthermore, the Applicants have not provided any evidence of patients having difficulty in accessing pharmaceutical provision in the area. Therefore, we respectfully urge the ICB to refuse this application".*

3.40 Kent Local Medical Committee stated *"Kent LMC has concerns about this application as the LMC is aware that Eazihealth Ltd does not have the premises secured and no engagement with the landlord of the premises and this is not reflected in their application.*

3.41 The Committee noted the Applicant's response to the consultation representations. Which addressed the concerns raised by the interested parties. The main point being *"We respectfully submit that Eazihealth's application:*

3.41.1 Meets the Regulation 18 test by addressing unforeseen access gaps

3.41.2 Provides better access through co-location and extended hours

3.41.3 Serves the needs of protected and underserved groups

3.41.4 Aligns with the NHS 10-Year Strategy

3.42 *We invite the ICB to approve our application in the interest of public health, equity, and community resilience".*

3.43 **Summary of application 3 – Swalecliffe Pharmacy Ltd**

3.44 The Applicant proposed core opening of 40 hours per week and total proposed opening of 50.5 hours per week.

3.45 The hours proposed as indicated in section 3.1 of the application form are:

3.46 Proposed core opening hours:

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
09:00-13:00 14:00-18:00	09:00-13:00 14:00-18:00	09:00-13:00 14:00-18:00	09:00-13:00 14:00-18:00	09:00-13:00 14:00-18:00	None	None	40

3.47 Total proposed opening hours:

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
09:00-18:30	09:00-18:30	09:00-18:30	09:00-18:30	09:00-18:30	09:00-12:00	Closed	50.5

3.48 The Applicant proposed to provide essential, enhanced and advanced services, if commissioned.

3.49 The Applicant had not provided a floor plan.

3.50 At part 6 of the application form, the Applicant describes the unforeseen benefit they are offering to secure as:

3.50.1 "We operate Swalecliffe Pharmacy and have heard first hand about the problems that patients now have trying to access pharmaceutical services. The closest pharmacy to the medical centre is Tyrell & Jones which is approximately a 0.7 mile walk. There is no reasonable public transport option to access this pharmacy from the medical centre as buses travel away from the Tyrell & Jones pharmacy before looping back on themselves. A similar problem exists if trying to access Tesco pharmacy to the east, which is 1.6 miles away but would require two bus journeys to access it. The nearest pharmacy to the north east is PRX which suffers from poor parking provision and appears to be underused. Whitstable is also a popular tourist destination and the main

shopping area becomes very difficult to access, particularly in the summer and for those who need to access a pharmacy as opposed to spending a relaxing day wandering the town's streets.

3.50.2 Granting this application would secure improvements and better access to pharmacy services and the application should therefore be approved."

3.51 **Representations**

3.52 The Committee noted the Applicant's proposals were notified to various interested parties in accordance with the Regulations.

3.53 Representations have been received from:

3.54 Avana Healthcare Limited, who oppose the application stating *"For the following reasons, we do not believe the Applicant's justification for this pharmacy application at Estuary View Medical Centre is sufficient:*

3.54.1 The Applicant's principal reason for seeking a new pharmacy is based on the closure of the previous pharmacy in July 2023.

3.54.2 The financial viability of the previous pharmacy does not automatically imply that a replacement pharmacy would be sustainable at this site.

3.54.3 In conclusion, we believe the application is primarily a proposal to replace a closed pharmacy".

3.55 Pharmacy Sales and Consultancy on behalf of PRX Pharmacy Ltd raised concerns that the Applicant *"has failed to identify what the current level of access is to pharmacies within Whitstable and how the application would secure improvements or better access to pharmaceutical services. The closure of one pharmacy does not automatically lead to a granting of a replacement without there being a pharmaceutical need and an application that fully satisfies the regulatory test.*

3.56 *There is currently one pharmacy within a one-mile radius of the proposed location and a further four pharmacies within a two-mile radius which are meeting the pharmaceutical needs of the locality and the surrounding area. One of the existing pharmacies (Tesco Pharmacy) offers extended trading hours, opening until between 8am and 8pm Monday – Saturday and between 10am and 4pm on a Sunday. The opening hours offered by the existing pharmacy network exceed the proposed opening hours for this application so provided no better access to pharmaceutical services".*

3.57 They also raised concerns that the Applicant had failed to describe how access for patient groups with protected characteristics would be improved by granting the application and *"what pharmaceutical needs are currently unmet within the existing population growth, as well as those of the future population growth".*

3.58 PRX Pharmacy Ltd oppose the application.

3.59 Boots UK Ltd stated *"Whilst we accept that the application is based on benefits not foreseen when drafting the Pharmaceutical Needs Assessment (PNA), it is clear that these applications are based on the closures of pharmacies in this locality.*

3.60 *As the ICB will be aware, the closure of a pharmacy (or pharmacies) within an area does not automatically create a gap and should a gap have arisen as a consequence of a reduction in provision, then the PNA should be updated to reflect this, usually by way of the publication of a supplementary statement.*

3.61 *As far as we can see, no updated PNA or Supplementary Statement has been produced following the closures of the pharmacies in this locality. We believe that this is the correct way of identifying any gaps that may have as a result of the closures.*

3.62 *The pharmacies closed 18 months ago now, so there has been plenty of time for the production of supplementary statements and the amendment of the PNA to have taken place if there was a requirement to do so.*

3.63 *Furthermore, the Applicants have not provided any evidence of patients having difficulty in accessing pharmaceutical provision in the area. Therefore, we respectfully urge the ICB to refuse this application.*

3.64 Kent Local Medical Committee stated *"Kent LMC supports this application as outlined in your letter dated 18th February 2025 believing it to support the needs of the registered patients at Estuary View Surgery, particularly vulnerable patients that cannot currently access a pharmacy within walking distance, as well as the significant number of patients that attend the onsite Urgent Treatment Centre on a daily basis."*

3.65 The Committee noted the Applicant did not provide a response to the consultation responses.

3.66 **Further Consideration by the Committee**

3.67 The Committee also considered:

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

3.69 Department of Health guidelines on market entry by means of pharmaceutical needs assessment – Chapter 8 – Unforeseen Benefits.

3.70 The Report which included:

3.70.1 maps of the location,

3.70.2 opening times and distances to surrounding pharmacies and GP Practices,

3.70.3 a joint site visit report,

3.70.4 Kent PNA 2022-2025 extracts and a link to the full PNA,

3.70.5 public transport information,

3.70.6 prescription information,

3.70.7 the relevant Regulations (18, 19, 31, 65 & 66).

3.71 In relation to the applications, the Committee noted the Applicants Fitness to Practise Status:

3.72 Applicant 1: [redacted by NHSR]

3.73 Applicant 2: Eazihealth Limited: CAS-356305-Q5V7P9

3.74 Fitness information was determined and approved on 06 March 2025.

3.75 Applicant 3: Swalecliffe Pharmacy Ltd: CAS-351170-Z0W7H8 Fitness information was determined and approved on 06 March 2025.

3.76 The Committee considered information from a site visit of the Whitstable area that had been undertaken by a Pharmacy Commissioning Hub representative who was present at the meeting.

3.77 Whitstable is a town on the north coast of Kent at the convergence of the Swale and Greater Thames Estuary. Five miles north of Canterbury and two miles west of Herne Bay.

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

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

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

3.81 The Committee was satisfied that there is no pharmacy providing pharmaceutical services within the area of the best estimate address/proposed premises of any the applications. The applications did not therefore need to be refused in accordance with Regulation 31.

3.82 **Regulations 40,41 and 44**

3.83 The Committee noted that the best estimate address/proposed premises location for all the applications was not in a controlled locality, and therefore, Part 7 of the Regulations (in particular Regulations 40, 41 and 44) did not have to be considered.

3.84 **Regulation 50**

3.85 Ther number of dispensing patients living within 1.6km radius of the proposed best estimate address of:

3.85.1 application 1, [redacted by NHSR]

3.85.2 application 2, Eazihealth Limited is 6 patients.

3.85.3 application 3, Swalecliffe Pharmacy Ltd is 5 patients.

3.86 Therefore, the Committee noted that if any of the applications were approved it would be required to consider the discontinuation of arrangements for the provision of pharmaceutical services by doctors to the affected patients under Regulation 50.

3.87 The Committee agreed that if any of the applications were approved, it was inclined that the service provided by the dispensing doctors to the affected patients should be discontinued, and that the discontinuation should be postponed in order to give the doctors reasonable notice of the discontinuation, as follows –

3.87.1 Application 1 – [redacted by NHSR]

3.87.2 Application 2 - Eazihealth Limited: CAS-356305-Q5V7P9 – 6 Dispensing patients

3.87.3 Old School Surgery and Bearsted Surgery for a period of one (1) month – (6 patients)

3.87.4 Application 3 - Swalecliffe Pharmacy Ltd: CAS-351170-Z0W7H8 – 5 Dispensing patients

3.87.5 Old School Surgery for a period of one (1) month – (5 patients)

3.88 **Oral Hearing**

3.89 Having reviewed the content of each application and the consultation responses for each one, the Committee was satisfied it was not necessary to hold an oral hearing to determine the applications.

3.90 **Regulation 18 – Unforeseen benefits application**

3.91 The Committee noted that this was an application for “unforeseen benefits” and fell to be considered under the provisions of Regulation 18 which states: [Regulation 18(1) quoted in full].

3.92 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

3.93 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 (the ‘PNA’) in accordance with paragraph 4 of Schedule 1 of the Regulations.

3.94 The Committee had regard to the Kent PNA 2022-2025 (issue date 1st October 2022) (the 'PNA') and noted that supplementary statements had been issued but were not in relation to the Whitstable area.

3.95 The Committee noted that the Health and Wellbeing Board ('HWB') had commissioned an assessment of the current capacity of pharmacies in the areas of known housing growth within Canterbury District and had reached the conclusion that

3.95.1 *"Currently there are no gaps in provision of pharmacy services in the Canterbury locality. There are housing developments planned across the locality. The access to pharmacies from the new developments is good and the 24 pharmacies that responded to the contractor questionnaire stated that they had capacity to respond to an increased demand. No gaps in provision have been identified".* [P.28, Kent (Canterbury Direct Analysis PNA, 2022-25.]

3.96 The Committee also noted that, having considered the entire Kent locality including the area of Whitstable, the HWB had reached the conclusion that

3.96.1 *"Access to pharmaceutical services for the residents of Kent is good and the main conclusion of this pharmaceutical needs assessment is that there are currently no gaps in the provision of pharmaceutical services".* [p.7, Kent PNA, 2022-25]

3.97 The Committee noted that the HWB had considered access (distance, travelling times and opening hours') to assess how current service provisions will meet the needs of the population within the lifetime of the PNA.

3.98 The Committee noted that the improvements or better access that the Applicants were claiming would be secured by their application were not included in the relevant pharmaceutical needs' assessment in accordance with paragraph 4 of Schedule 1.

3.99 The Committee was satisfied that the improvements or better access which the Applicants were proposing to secure were not identified in the PNA, and an 'unforeseen benefits' application is the correct type of application.

3.100 In order to be satisfied in accordance with Regulation 18(1), the Committee went on to consider those matters set out at Regulation 18(2).

3.101 **Regulation 18(2)(a)(i)** - *whether or not granting the application would cause significant detriment to the proper planning in respect of the provision of pharmaceutical services.*

3.102 The Committee was not aware of any plans that would be affected and concluded that granting the application would not have an adverse effect on any future plans. None of the submissions included any comment or evidence in regard to this matter. Therefore, the Committee concluded that granting an application would not cause significant detriment in this regard.

3.103 **Regulation 18(2)(a)(ii)** - *whether or not granting the application would cause significant detriment to the arrangements in place for the provision of pharmaceutical services.*

3.104 None of the submissions included any evidence on this question and the Committee found no proof to support the suggestion that if an application was to be granted, it would cause significant detriment to the arrangements in place for pharmaceutical services in the area.

3.105 The Committee did not find any significant detriment to proper planning or to the arrangements in place for the provision of pharmaceutical services and therefore was not obliged to refuse an application under Regulation18(2)(a).

3.106 **Regulation 18(2)(b)(i)** – *whether notwithstanding that the improvements or better access were not included in the relevant PNA, it is satisfied that, having regard in particular to the desirability of – there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB – granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant PNA was published.*

3.107 The Committee noted there had previously been a pharmacy, operated by Avana Healthcare Ltd, located at 25 Boorman Way, Estuary View Business Park, Whitstable, Kent CT5 3SE but pharmaceutical services had not been provided since July 2023. Following the closure of the pharmacy the Committee was unaware of any complaints from patients who were now unable to access pharmaceutical services.

3.108 In order to determine whether patients in the area already had a reasonable choice, the Committee considered access (distance, travelling times and opening hours) as an important factor in determining the extent to which the current pharmaceutical service provision meets the needs of the population in the Whitstable area.

3.109 The Committee considered the location and distance of the pharmacies in Whitstable from the proposed locations as detailed in the site visit report and noted there was several pharmacies in the Whitstable area. In particular the Committee noted the location of and the nearest pharmacy to the proposed locations was Tyrell & Jones Pharmacy at 28 Favesham Road, Seasalter, Whitstable, Kent CT5 4AR, a distance of between 0.6 miles from the proposed locations.

3.110 The Committee had regard to the current service provision in the immediate area of Whitstable area and noted that there are 6 pharmacies within 2.1 mile radius of the best proposed address. This includes a mix of independent and multiple pharmacies.

3.111 The opening hours of the 6 pharmacies range from 08:00 to 20:00 Monday to Saturday and from 10:00 to 16:00 on Sundays.

3.112 The Committee particularly noted that Tesco Pharmacy at Millstrood Road, Whitstable, Kent CT5 3EE provides later opening hours until 20:00 Monday to

Saturday and 10:00-16:00 on Sundays, a distance of 1.4 miles from the proposed location.

3.113 The Committee noted the details around the nature of the journey to the nearest pharmacies, road layouts and parking.

3.114 The Committee considered the representations from PRX Pharmacy Ltd that stated that a number of patients registered at the GP Practice at Estuary View Medical Centre, travel in from the surrounding areas and therefore have means of transport. The Committee noted that not all patients live within the immediate vicinity of the medical centre.

3.115 The Committee was provided with information on local bus service routes through Whitstable to Canterbury showing the 400-bus service runs approximately every half hour and for the 638-bus service approximately every one hour and half hours.

3.116 The committee went on to consider the merits of each of the three applications in relation to choice based on the proposed location.

3.117 Application 1 - The Committee considered the application from [redacted by NHSR] and noted that the Applicant as part of their application stated that "granting this application would lead to significant improvements in access for the reliant population including those with a protected characteristic." However, no evidence was provided of patients having difficulty in accessing pharmaceutical services.

3.118 Application 2 - The Committee considered the application from Eazihealth Limited and noted that the Applicant is proposing to provide extended opening hours that align with the local GP surgery and urgent treatment centre. However, no evidence was provided of patients having difficulty in accessing pharmaceutical services during these extended opening hours.

3.119 Application 3 - The Committee considered the from application from Swalecliffe Pharmacy Ltd and noted that the Applicant stated that there was no reasonable public transport option for patients to access other pharmacies. The Committee noted that there was a bus service to Estuary View Business Park from the surrounding areas. The Applicant had also stated that parking was poor at other pharmacies, however, the Committee noted that all pharmacies had parking options, including the pharmacy at the Tesco Store that has substantial parking bays for people using the facilities. The Committee noted no evidence was provided of patients having difficulty in accessing pharmaceutical services.

3.120 The Committee noted there are practices dispensing to patients within 1.6km of the proposed location.

3.121 The Committee noted there was no evidence provided that patients in Whitstable had to make unreasonable journeys to pharmacies thereby rendering choice unreasonable and the lack of evidence pointed to the conclusion that patients had exercised choice by going to other pharmacies and they had not complained that this was unreasonable or curtailed their choice.

3.122 On balance, having considered the factors above, the Committee was satisfied that following the closure of the pharmacy that had been located at Estuary View Business Park, the residents of the Whitstable area have reasonable choice with regard to obtaining pharmaceutical services.

3.123 **Regulation 18(2)(b)(ii)** - *whether notwithstanding that the improvements or better access were not included in the relevant PNA, it is satisfied that, having regard in particular to the desirability of – 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 - granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant PNA was published.*

3.124 The Committee reminded itself that it was required to address itself to people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that are difficult for them to access. The Committee was also aware of its duties under the Equality Act 2010 which include considering the elimination of discrimination and advancement of equality between patients who share protected characteristics and those within such characteristics.

3.125 The Committee noted that whilst [redacted by NHSR] had included a statement in their applications [sic] regarding people who share a protected characteristic, but there was no evidence provided that identified a group of patients in the Whitstable area, sharing a protected characteristic with difficulty accessing services that meet a specific need.

3.126 Eazihealth Limited and Swalecliffe Pharmacy Ltd had not included a statement in their applications regarding people who share a characteristic and there was no evidence provided that identified a group of patients in the Whitstable area, sharing a protected characteristic with difficulty accessing services that meet a specific need.

3.127 The Committee felt that none of the applications had addressed the matter of patients with protected characteristics in any detail or suggested any group has difficult accessing services.

3.128 The Committee concluded that based on the information provided, granting an application would not confer significant benefits on people sharing a protected characteristic.

3.129 *Regulation 18(2)(b)(iii) - whether notwithstanding that the improvements or better access were not included in the relevant PNA, it is satisfied that, having regard in particular to the desirability of – there being innovative approaches taken with regard to the delivery of pharmaceutical services - granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant PNA was published.*

3.130 [Redacted by NHSR] and Swalecliffe Pharmacy Ltd has not offered any information or evidence to demonstrate that their application brings any innovative approaches in the delivery of pharmaceutical services.

3.131 Eazihealth Limited commented in their response to the representations received from PRX Pharmacy Ltd that “It is incorrect to say our proposal lack innovation as we offer fully integrated hours with the Urgent Treatment Centre, planned future implementation of automated prescription lockers and the potential to host NHS Winter and vaccination campaigns 12 hours a day, 7 days a week”. However, the Committee concluded that this statement did not constitute an innovative approach with regard to the delivery of pharmaceutical services.

3.132 The Committee was satisfied that granting the application would not lead to any significant benefits by virtue of innovation.

3.133 **Other Considerations**

3.134 **Regulation 18(2)(c)-(f) -** The Committee had previously determined that there was no need to defer the application under Regulation 18(2)(c) to (f).

3.135 **Overall Decision**

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

3.137 The Committee had considered whether the granting of an 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 was satisfied that it would not.

3.138 The Committee determined none of the three applications should be granted under the requirement of Regulation 18(2)(b)(i), as there is reasonable choice with regard to obtaining pharmaceutical services.

3.139 The Committee determined the applications by Avana Healthcare Ltd, Eazihealth Limited and Swalecliffe Ltd should be refused.

3.140 **Rights of appeal**

3.141 [redacted by NHSR]

3.142 The application is refused so the Applicant has the right to appeal.

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

3.144 **Eazihealth Limited: CAS-351170-Z0W7H8**

3.145 The application is refused so the Applicant has the right to appeal.

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

3.147 **Swalecliffe Pharmacy Ltd: CAS-356302-Q5V7P9**

3.148 The application is refused so the Applicant has the right to appeal.

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

4 The Appeals

In a letter received by NHS Resolution on 14 July 2025, Rushport Advisory LLP on behalf of Swalecliffe Pharmacy Ltd appealed against the Commissioner's decision. The grounds of appeal are:

4.1 "I act for Swalecliffe Pharmacy Ltd in the above application and have been instructed by my client to submit this appeal against the decision of the Commissioner to refuse my client's application.

4.2 Along with this letter I attach a detailed report which addresses the lack of pharmacy services in the south west of Whitstable and provides information to support my client's application.

4.3 Looking at the Commissioner's decision we comment as follows.

4.4 The Commissioner received and refused 3 applications for the area around Estuary View Medical Centre. We are not aware if other Applicants have appealed or not.

4.5 It is notable from the Commissioner's report that it deals in very general terms with issues such as access. For example, the report quotes distances to pharmacies measured as the crow flies, but not in relation to the journey that a patient would have to undertake. The Commissioner provides no explanation for the arbitrary use of a 2.1 mile radius to determine whether pharmacies were relevant to its consideration or not. Further, the Commissioner does not consider the journey from the application site (or any other location) to even a single pharmacy. Instead, the Commissioner appears to make assumptions about those journeys or how they would be undertaken.

4.6 As the Committee will note from the attached report the position on the ground is not nearly as simple as the Commissioner suggests, with real and significant difficulties being experienced by patients.

4.7 To further demonstrate the difficulties faced by patients my client has been given permission to provide the Committee with the attached Pharmacy Survey [see Appendix A]. This survey was carried out by Estuary View Medical Centre as a direct result of being contacted by various Applicants that were seeking to open a pharmacy at their premises. The practice wished to gauge not only the general support for the proposal but also to find out what their patients thought about access to pharmaceutical services following the closure of the pharmacy at their practice (and other pharmacies in the area such as Lloyds in Sainsburys). Over 7,000 patients provided responses to the survey with 97.8% in favour of the pharmacy being permitted to open.

4.8 The Committee will note that the second tab of the excel file is entitled “comments”. This is of significant importance as the Surgery also sought comments from patients to express their views. The survey is therefore not simply a case of patients saying they would like another pharmacy (as objectors may like to claim), but instead also provides over 3,500 comments from patients.

4.9 The survey is colour coded green for supportive comments, yellow for neutral/irrelevant or red for unsupportive comments.

4.10 As there are so many comments in favour of the pharmacy being allowed to open the Committee will note that patients express a wide range of reasons for supporting the proposal. Many speak of convenience, which is of course relevant as access can become very inconvenient for many people. Many other comments discuss how helpful the pharmacy would be for dealing with their own personal conditions and circumstances or those that they care for.

4.11 The comments were not intended to be detailed but the shear [sic] volume of them shows the level of support for this proposal and it is unlikely that Primary Care Appeals has seen this volume of support for a proposal ever before. The practice has also confirmed that they have never in their history received this volume of responses to any survey they have undertaken.

4.12 Some of the comments provide specific reasons for supporting the proposal which go directly to the legal test. Patients comment on the “logistical nightmare” of accessing alternate pharmacies. Others comment on the growth in housing in the area and the impact this is having on services, including queues at other pharmacies. Others call it “much needed” or “valuable”.

4.13 It is impossible to properly summarise so many comments and the Committee is invited to consider the level of support for this proposal and we suggest that at the very least it would be appropriate for an oral hearing in this case.

4.14 Urgent Treatment Centre Attendances

4.15 The Committee will also note that attached map that shows where patients who attend the urgent treatment centre as Estuary View Medical Centre live. The map shows patients who attended from 1 January 2025 to 20 June 2025. As the Committee will note, patients live in a very wide area. Many patients live in remote areas with no pharmacies. It is simply wrong to suggest that patients can simply access alternate pharmacies and the evidence shows that many patients would need to make additional journeys in the event of being referred to a pharmacy or receiving a prescription from the urgent treatment centre.

4.16 Whilst not currently part of the legal test, the new NHS 10 Year Plan sets out a model of “care for every neighbourhood” and aims to bring care together for patients. Whitstable Medical Practice (which operates Estuary View Medical Centre) is cited in the 10 year plan as the type of model that the NHS is seeking to replicated.

4.17 The Plan states at page 35. [see Appendix B].

4.18 Regrettably, the pharmacy has in fact closed and the irony of the previous service provision being held up as a model for others to follow should not be lost on anyone.

4.19 The doctors are fully supportive of my client's application and have provided the attached letter of support [see appendix C] which shows that they are working exclusively with my client.

4.20 We submit that this is exactly the type of application which, if granted, will secure both improvements and better access to pharmaceutical services for a very significant number of patients accessing a range of both health and non-health related services in this part of Whitstable.

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

Report [see appendix D for all attachments referred to]

4.22 "APPLICANT: Swalecliffe Pharmacy Ltd

4.23 LOCATION: Pharmacy Unit, Estuary View Medial Centre, 25 Estuary View Business Park, Boorman Way, Whitstable

4.24 Section

4.24.1 1.0 Introduction

4.24.2 2.0 Whitstable (Seasalter) and the Proposal

4.24.3 3.0 The Statutory Tests

4.24.4 4.0 Review of the PNA

4.24.5 5.0 Health Care in Whitstable

4.24.6 6.0 Assessment Against the Regulation 18 Tests

4.24.7 7.0 Conclusion

4.25 Appendix

4.25.1 Appendix 1 Map of Whitstable

4.25.2 Appendix 2 Press Release on Closure of Seasalter Surgery

4.26 **INTRODUCTION**

4.27 Estuary View Pharmacy was located in Whitstable for a number of years prior to its closure in 2024. This Regulation 18 application for inclusion on the pharmaceutical list for the area of Kent seeks to address the current deficiencies in the pharmacy network in Whitstable and to re-establish pharmacy services at the pharmacy unit at Estuary View Medical Centre (EVMC), 25 Estuary View Business Park, Boorman Way, Whitstable, CT5 3SE.

4.28 This report has been prepared for the applicant Swalecliffe Pharmacy Ltd. Importantly the applicant company has an existing pharmacy already located in the eastern area of Whitstable and have important local knowledge and experience in the pharmaceutical network of the area.

4.29 By way of additional background, the closure of the Estuary View Pharmacy follows the closure of the Lloyds Pharmacy, located at Sainsbury's Whitstable. Closure of two pharmacies in Whitstable has, as is shown below, left Whitstable with an increasingly limited choice which is unreasonable, particularly in the evidential context of an ever growing population.

4.30 This Report is structured as follows:

4.30.1 It discusses the character of Seasalter and Whitstable and sets out the proposal in Section 2;

4.30.2 The legal tests to be applied are set out in Section 3;

4.30.3 The PNA is considered in Section 4;

4.30.4 The pharmacy provision in Whitstable is discussed in Section 5;

4.30.5 An assessment of the proposal against the statutory tests is provided in Section 6; and

4.30.6 The conclusion is set out in Section 7.

4.31 A map of Whitstable is provided at Appendix 1 and a press release pertaining to the closure of Seasalter surgery is at Appendix 2.

4.32 **WHITSTABLE (SEASALTER) AND THE PROPOSAL (APPENDIX 1)**

4.33 With a permanent resident population of at least 32,900, Whitstable is a medium sized town in north east Kent. As well as being a popular town for residents of Kent it is also a popular holiday resort located on the southern edge of the Thames Estuary. It is located about 4.5miles north of Canterbury and is about 8 miles northeast of Faversham.

4.34 Whitstable is bypassed to the south by the A229 Thanet Way dual carriageway. This makes it easily accessible to large parts of Kent, bringing in holiday makers and shoppers to the town. It is notable that the main access off the dual carriageway is the road network at the Thanet Way junction around the proposal site, which means the majority of traffic seeking to enter and leave Whitstable from the strategic highway network will pass or come very close to the proposal site. Because of the topography of the land and the existence of the Chestfield Golf Course etc, the next major junction from the dual carriageway is at Herne Bay, 5 miles to the east.

4.35 Whitstable town centre is located on the sea edge and the town has grown in a southernly, easternly and westerly direction. Because of the Estuary, the town centre is 'off centre' and as development has taken place over recent decades, the traditional town centre has become increasingly distant from the new residential areas and services that have been provided.

4.36 Whitstable is also bisected by the railway line which runs in an east-west direction and also the A2990 Thanet Way which predates the new bypass and was the former main east-west road.

4.37 **Historic Growth of Whitstable**

4.38 Whitstable is an historic settlement that developed around salt making, fishing and oyster dredging activity. It also served as a port for bringing goods to Canterbury. The current recognised settlement originates from a fishing settlement with fishermen's cottages and drinking houses around the Sea Wall and Sea Street. Later development of the town centre occurred around the late 19th Centre. The opening of the railway in 1830 and the completion of the port in 1832 improved the accessibility and importance of Whitstable. By the end of the 19th Century people were coming to Whitstable for day trips and holidays. Development continued during the 19th Century expanding from Seasalter to Tankerton.

4.39 Whitstable expanded from the Sea Wall, Sea Street and Island Wall to develop the town centre around Harbour Street, High Street and Oxford Street. Beyond these came the 19th and early 20th Century urban areas of Canterbury Road, Albert Street, Cromwell Road etc located north of the railway line.

4.40 Whitstable town centre retains its traditional Victorian character with pebble beaches separated and protected by wooden groynes which extend out to the sea. It has a working harbour. Set back from the sea front is the old town centre, with its narrow street layout. As a result of the historic layout, a criticism of Whitstable is its limited parking and accessibility for modern day cars. In short it is an attractive town centre to visit for holiday makers but not a modern centre that is designed to meet the needs of sick patients. This is discussed further below.

4.41 Modern Whitstable dates from the late Victorian period, through the early 20th Century, to the pre and post war periods. Development of the town is continuing today. The expansion from the small historic settlement is significant and extends in a deep linear plan form along the coast line, with development now expanding further south due to the new road infrastructure.

4.42 Whitstable extends for a distance of about 6.5km east – west and about 2km north-south (as the crow flies). It is a large area now comprising a variety of neighbourhoods such as Seasalter, South Street, Chestfield, Tankerton and Swalecliffe. The proposal site is located in the Seasalter area of the town.

4.43 **Recent Growth of the Seasalter Area of Whitstable**

4.44 Before 1990, the Seasalter area south of Whitstable was more sparsely developed as shown below. Three large areas of new development have taken place with two new housing areas and a new commercial development. Some of these developments resulted in the relocation of caravan parks further west.

4.45 **1990 (with New Development Area Highlighted)** [image provided]

4.46 **2023** [image provided]

4.47 First it can be seen that immediately north of the Thanet Way a large housing development is accessed via Speedwell Road, were perhaps 200 housing have been constructed. Second, sandwiched between Thanet Way A2990 and the newer Thanet Way A229 is a mixed use area that has developed since around 2003.

4.48 Third to the north east at Whitstable Heights development is ongoing for the provision of 400 dwellings.

4.49 **Commercial Development Around the Proposal Site**

4.50 The area around the proposal site has been developed since around 2010. The area includes the new EVMC and the surrounding offices and uses. These include lawyers offices and business services offices. Recently Whitstable House Nursing Home has opened beside the EVMC. This provides 100 new care suites for the elderly.

4.51 Beside the EVMC lands is the new Prospect Way Retail Park, which includes a Home Bargains store, M&S, Aldi, Halfords and a Vet4 Pets store. A retail park such as this would expect to achieve a footfall of about 25,000 shoppers per week. There is a pedestrian access from this retail park onto Thanet Way providing a walking route linking the Retail Park and the EVMC.

4.52 Further east along Thanet Way is offices, a Premier Inn Hotel and another care home.

4.53 Uses Around Proposal Site **[image provided]**

4.54 Over 50 and Holiday Maker Accommodation

4.55 West of the area on the edge of Seasalter, there is a large number of caravan parks. These are located along Church Lane and Faversham Road. They include:

4.55.1 Rowan Tree Park, 28 residential caravans for over 50s;

4.55.2 Applegareth Park with about 112 caravans providing residential accommodation for the over 50s;

4.55.3 Beach Court Residential Park providing about 50 caravans for the over 50s;

4.55.4 Homing Holiday Park with about 200 pitches for caravans and tents;

4.55.5 Bridgeways Park, 20 caravan pitches;

4.55.6 Bridge Country and Leisure Park with 28 pitches;

4.55.7 Alberta Holiday Park, with about 450 caravans; and

4.55.8 Seasalter Holiday Park providing about 125 caravans

4.56 As such there is about 190 caravan homes for people aged over 50 in this area living all year round and (a population of between 190-380) and over 820 caravans for families on holiday, which would attract perhaps 2,000 people per week in peak season.

4.57 As such there is up to 2,380 people living in caravan accommodation over the summer months in this area. This is a significant boost to the population and indicates that the official population levels are an under estimate especially for the summer months of the year.

4.58 To the north of Seasalter is the Joy Lane Primary School which educates over 600 children and Oyster Bay nursery which caters for 71 children.

4.59 The Seasalter area of Whitstable has a population of about 11,700, which in the summer months is likely to be over 13,000 and with the ongoing residential development coming forward these figures will increase further.

4.60 Seasalter population [map/data provided]

4.61 As such the population in the area comprises:

4.61.1 11,700+ residents

4.61.2 2,000+ holiday makers

4.61.3 190+ people living in caravans; and

4.61.4 25,000 people resorting to the retail park in the area.

4.62 **Further Affordable Homes in Seasalter**

4.63 To the southwest of the area, just off Church Lane planning permission has been granted for 200 dwellings. The layout is below. This was approved outline permission in March 2023 and during the last two years applications for detailed reserved matters and discharge of planning conditions have been submitted to facilitate commencement of the development. Hyde Housing Association has commenced this development in October 2024 and all homes provided will be affordable homes with 120 homes for shared ownership and 100 for social rented accommodation. This will boost the population further with another 500 or so residents. This development is about 500m from the EVMC.

4.64 **220 Dwellings Approved at Church Lane** [map provided]

4.65 For completeness, it can be noted that at Ridgeway (south of Sainsbury's in east Whitstable) 300 new homes are being built. This will boost the town's population by another 750. These people would previously have expected access to the Lloyds Pharmacy in Sainsbury's but that has closed. These people will need to look elsewhere for their pharmaceutical services.

4.66 **Estuary View Medical Centre**

4.67 The EVMC was officially opened in 2010. It is the main site of the Whitstable Medical Practice. The Practice cares for over 45,000 patients in Whitstable and the surrounding area. 17,000 of these patients are registered with the GPs at the EVMC.

4.68 The EVMC opens 7 days a week between 8am and 8pm. It provides a full range of medical services as well as providing the Urgent Treatment Centre which deals with common ailments that people attend A&E for including minor illnesses, broken bones, head injuries, burns, cuts, allergic reactions, bites, sprains and removal of foreign bodies. It has space for over 100 cars to park and cycle parking spaces.

4.69 The EVMC had a pharmacy located at its ground floor, accessed from the main road by foot and from the car park. It closed in 2024 due to a failure to pay the rent due.

4.70 The Estuary View Pharmacy had been dispensing about 8,500 items per month when it was operating.

4.71 **The Proposal**

4.72 The proposal will re-establish the pharmacy at EVMC. It is a co-located unit, within the footprint of the EVMC. It is accessible to patients of the EVMC and also members of the public that are in the general location.

4.73 Details of the proposal are set out on the application forms. The proposal will operate 40 core hours between 9am to 1pm and 2pm to 6pm Monday to Friday. It will open a total of 50.5 hours from 9am to 6:30pm Monday to Friday and will open on Saturday from 9am to 5pm.

4.74 The proposal will offer all services listed in Part IX of the Drug Tariff. The applicant will offer NMS, Hypertension Case Finding, Stop Smoking, Pharmacy First, EHC, Flu Vaccinations, Supervised Consumption and Needle Exchange.

4.75 The proposal will provide all commissioned services and the applicant will ensure that all pharmacists employed are accredited to provide the services.

4.76 Once the premises has been secured a floor plan will be commissioned and will be provided. The premises will be registered with the GPhC and will comply with relevant legal and ethical requirements for the operation of a retail pharmacy business.

4.77 **THE STATUTORY TESTS**

4.78 The statutory tests are well understood. The proposal is sought under “The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013” (the “Regulations”) Regulation 18.

4.79 The first test is whether an application for the improvements for people living in Whitstable has been considered under the Kent Pharmaceutical Needs Assessment 2022 (the "PNA"). There is one Supplementary Statement dated September 2022 which does not identify the closure of the Estuary View Pharmacy.

4.80 As shown below the PNA does not foresee the closure of the Estuary View Pharmacy or the improvements that its re-opening could deliver to Whitstable. As such this application is an 'unforeseen' application and Regulation 18 applies to its assessment.

4.81 Other aspects of the Regulations are Regulation 18 (2)(a)(i) whether significant detriment to proper planning in respect of the provision of pharmaceutical services in the area of the relevant HWB would occur and Regulation 18(2)(a)(ii) whether significant detriment to the arrangements the NHSCB has in place for the provision of pharmaceutical services in that area would occur.

4.82 There is no evidence that granting the application would cause significant detriment to proper planning for provision of pharmaceutical services or the existing provision of pharmaceutical services in the Whitstable area.

4.83 It will not cause significant detriment to the closest pharmacies which are located in Seasalter and in the town centre. These pharmacies (or a predecessor operator) provided pharmaceutical services during the time the Estuary View Pharmacy operated. There is no basis to suggest that with the ongoing population increases, these pharmacies would experience significant harm if a pharmacy is re-established at EVMC. As such the opening of the proposal will not affect the proper planning of pharmaceutical services.

4.84 The other aspects that an applicant can ground their application on includes Regulation 18 (2)(b) (ii) and (iii) being that a proposal will support the needs of people who share a protected characteristic and innovative approaches are being taken.

4.85 In terms of protected characteristics as shown above and later there are a variety of groups that live in this area that would be groups that share protected characteristics, including young children and the elderly. These groups have increased with the development of the care home beside the site and will increase further with the development of the social housing development that is located close to the site.

4.86 The Regulations have been in place for over a decade and are well understood. They have been distilled into the central issue of whether a proposal will provide better access to pharmaceutical services (Regulation 18(1)(a)) and whether there is reasonable choice of pharmaceutical services (Regulation 18(2)(b)(i). The Regulations provide no guidance as to what is "better access" or "reasonable choice", such matters are determined by the facts of the case.

4.87 Better access and reasonable choice are clearly evident in this case where there is an evidential context that shows that the population of Whitstable have had access to much needed co-located pharmacy at the EVMC for many years and that in the absence of this a large number of patients have no reasonable

access to a pharmacy resulting in a gap in the geographical spread in the pharmacy network of Whitstable.

4.88 **THE KENT PNA**

4.89 The Kent PNA 2022 sets out to assess how the provision of pharmaceutical services can meet the health needs of the population of the Kent Health and Wellbeing Board's area for a period of up to 3 years.

4.90 Like most PNAs, the Kent PNA does not identify any gaps in services. Of course, it could never have predicted that the Estuary View Pharmacy would close and hence it could not have assessed the impact on pharmaceutical services in Whitstable as a result. Notably the PNA's January 2025 update Map - annotated copy below, still includes the Estuary View Pharmacy as contributing to the pharmacy network [It no longer includes Lloyds, Sainsbury's which has closed].

4.91 **January 2025 PNA Map** [provided]

4.92 As such it is unsurprising, that this proposal is unforeseen.

4.93 Notwithstanding the findings of the PNA it is helpful to review it for relevance to this application.

4.94 The PNA considers the Kent HWB area in a series of 12 localities. Whitstable is located and considered under the Canterbury City Council locality. The PNA estimates that Canterbury had 30 pharmacies equating one pharmacy per 5,559 head of population. Two of these in the Whitstable area have now closed. Notwithstanding these closures, this would equate to about 18 pharmacies per 100,000 people. This is below the England average, which is normally around 21 pharmacies per 100,000 people.

4.95 The PNA provides information on walking distance of 20 minutes to the nearest pharmacies. However, this data includes the Estuary View Pharmacy, which is clearly needed to ensure adequate pharmacy network coverage.

4.96 The PNA provides a Canterbury specific section. This section predicts that there will be a 3 year increase in population in Canterbury from 168,300 to 175,000. This is a growth of 6,700 (+4%). This is enough to support an additional pharmacy and reinforces the case that the current provision is limited even when the Estuary View Pharmacy was open. It is more limited now it and Lloyds have closed.

4.97 The PNA seeks to absorb this large increase in population by contending that it is the equivalent of an additional 244 people per pharmacy. Whilst we disagree with this arbitrary calculation, as it has no fine grained geographical analysis about where this growth will occur. Such a calculation would need to be adjusted to reflect the pharmacies that have closed, which would increase the number of patients remaining pharmacies are expected to absorb.

4.98 The PNA Table 29 also notes that there will be 5,033 new homes built in Canterbury locality by 2025, increasing the population by 12,079. This includes

the 400 homes at Thanet Way and the 250 at Ridgeway. It excludes the new approval for 220 homes at Church Lane, which will start delivering some homes this year. The PNA does not explain how this massive increase in population will be provided their pharmaceutical services. This population increase implies that there would be sufficient people to support three more pharmacies in the Canterbury locality, even before the closure of the Estuary View Pharmacy and Lloyds Sainsbury's are accounted for. The PNA provides mapping of the location of pharmacies based on various drive times. It fails to make any correlation between the busyness of pharmacies and the scale of population in these areas. It simplistically implies that if there is a pharmacy within a certain timed distance, there is no gap in services.

4.99 The PNA for the Canterbury locality Section 8 simply states that currently there are no gaps in provision of pharmacy services in the Canterbury locality, that there are housing developments across the locality and that access to pharmacies from these new developments is good and that 24 pharmacies have confirmed they have capacity to respond to increased demand. There is no interrogation as to why these pharmacies are relied upon, and whether they are in areas that are accessible to the growing population.

4.100 The PNA carried out a patient survey. An extract of some of the findings is below.

4.101 **PNA Patient Questionnaire Results** [provided].

4.102 It can be seen that the PNA found that people have a habit of using the same pharmacy all or most of the time. Patients have a good relationship with their pharmacist and the location of their pharmacy suits their patterns of movement.

4.103 It can be noted that proximity to their home is an overwhelmingly important factor when choosing a pharmacy. Second in importance is proximity to the doctor.

4.104 The final notable feature of the survey is that the vast majority of people either walk or use a car to visit their pharmacist. Public transport is largely an insignificant consideration when it comes to accessing a pharmacy.

4.105 Notwithstanding, the PNA does not foresee the benefits and the improved access to pharmaceutical services that re-opening a pharmacy at EVMC will provide.

4.106 **HEALTH CARE IN WHITSTABLE**

4.107 This proposal is located in southwest Whitstable in the Seasalter area. It is a large area in its own right and as shown above has a population of over 11,700, many holiday makers and people over 50 living in static caravans, as well has a large resorting population of over 25,000 and people living in care homes beside the application site.

4.108 As such it is appropriate to focus the consideration of pharmacy care on this area around the proposal site. The PNA applies a broad rule of thumb that pharmacies within 20 minutes walking distance can be considered to meet the

needs of a population. It then applies this measurement from existing pharmacies. As the proposal site is beyond 20 minutes from all but one pharmacy in Whitstable, there is only one main choice for people in the Seasalter area to access a pharmacy.

4.109 Before considering this, it is material to note the Estuary View Pharmacy was co-located with the EVMC for over a decade. Prior to its closure it was dispensing about 8,500 items per month. It was providing for about 10% of the items prescribed in the Whitstable Medical Practice. It would be a fair assumption that much of their dispensed items would be prescribed at EVMC.

4.110 Tyrell & Jones, 28 Faversham Road, Seasalter is located in a former bungalow dwelling, which formed part of the Seasalter Surgery until the surgery closed in 2020. The Seasalter Surgery closed after a period of community consultation, wherein it was found that the surgery was being underused as the majority of patients preferred to visit their GP at Whitstable Medical Practice where they can access other services (Appendix 2).

4.111 **Tyrell & Jones Seasalter** [image provided]

4.112 This pharmacy is located about 0.6miles northwest of the proposal site. It is a 14minute walk. Whilst this is the shortest route it involves walking across open parkland, which has limited surveillance and is exposed to the elements. It would be an unattractive walk during the darker winter days and evenings.

4.113 **Route to Tyrell & Jones Seasalter** [map provided]

4.114 Photographs of the walk are below

4.115 **Access points to Parkland** [images provided]

4.116 The alternative route to avoid the park is along Church Lane, which is not suitable for pedestrians either.

4.117 **Church Lane has no footpath** [image provided]

4.118 A route along Speedwell Road, Nightingale Avenue and Hazelmere Road is a distance of over 0.8miles. It is through a maze of residential streets, that only local people familiar with the area would be able to navigate.

4.119 This pharmacy opens 9am to 6pm Monday to Friday and from 9am to noon on Saturday. In the last 6 months is dispensing on average about 5,137 items per month from 2,774 forms. As with all pharmacies in Whitstable the majority of its prescriptions are being prescribed at Whitstable Medical Practice [Note, Whitstable Medical Practice comprises the 3 sites of EVMC, Whitstable Health Centre and Chestfield Medical Centre. The data available does not permit splitting the prescribing across these 3 sites]. It has about 11% of the market share of Whitstable Medical Practice.

4.120 This pharmacy is located in the middle of a housing area and whilst it is convenient for local residents to access the pharmacy, it is not a pharmacy that

would cater for those patients that visit the EVMC, the retail park or the residents and holiday makers of the caravan parks.

4.121 This is the only choice for patients that seek a pharmacy in Seasalter. There is a clear disconnect between medical services and pharmacy services given the closure and rationalisation of health care services away from this location and the retention of a pharmacy here and the closure of the pharmacy at EVMC. This pharmacy may complement the services provided at EVMC and the Estuary View Pharmacy, however it does not substitute it.

4.122 This pharmacy is not designed or located to cater for the 11,700 residents of the Seasalter area and the 45,000 patients registered with Whitstable Medical Practice. Indeed in May 2023, both the EVMC and this pharmacy (former operated by Cheadles) were dispensing 8,500 items and 5,805 items respectively, all prescribed by the Whitstable Medical Practice. That is a combined total of 14,300 items per month. At present only about a third of items are now being dispensed in Seasalter. This means that this pharmacy has not benefited from the closure of the Estuary View Pharmacy, and consequently the majority of the patients of the area are having to look outside the area for their pharmaceutical services.

4.123 Before considering the provision elsewhere currently available, it must be noted that Lloyds, Sainsbury's closed in 2023. This pharmacy had been dispensing around 5,000 items per month. In May 2022, (a year before it closed) this pharmacy was dispensing about 6% of the items prescribed from the Whitstable Medical Practice. The closure of this pharmacy has also reduced choice and access for patients that are travelling around south Whitstable. This pharmacy has been relatively close to the Chestfield site of the Whitstable Medical Practice. It was also close to the large new 300 housing development at Ridgeway. These new residents will look to the easily accessible pharmacies around the south of the town for their need, particularly given they will be new to the area, and have no allegiance or indeed knowledge of pharmacies in places like Faversham Road.

4.124 A drop from 9 to 7 pharmacies in 2 years is a reduction of 22%. This is a reduction and a gap that is widened and exacerbated by the continued population growth of Whitstable.

4.125 **Elsewhere**

4.126 In reality there are three other locations providing pharmaceutical services to the Whitstable population. All are over a mile from the proposal site and their relevance is limited by distance and accessibility.

4.127 The nearest alternative locations are in the town centre. There are three pharmacies located in the town centre.

4.128 **Town Centre Pharmacies**

4.129 **PRX Pharmacy, 115 High Street** is located in the heart of the town centre about 1.6miles from the proposal site. The shortest route is shown below. This

pharmacy opens 9am to 5:30pm Monday to Friday and from 9am to 5pm on Saturday.

4.130 **PRX Pharmacy** [image of pharmacy shopfront provided]

4.131 This pharmacy dispenses about 2527 items per month from about 1500 forms. The vast majority of its items are prescribed in the Whitstable Medical Practice. This pharmacy caters for town centre users however, this pharmacy is limited in terms of its accessibility. High Street has no on street parking and patients in cars visiting this site have to find the occasional parking space available in narrow side streets or in Council owned pay car parking spaces beyond the pharmacy.

4.132 **Boots, 33-35 High Street** is also in the town centre, slight further away again. It opens 9am to 5:30pm Monday to Saturday.

4.133 **Boots Pharmacy** [image of pharmacy shopfront provided]

4.134 This pharmacy dispenses about 3,977 items per month from 2,228 forms, again with the vast majority of these being prescribed in the Whitstable Medical practice.

4.135 Like PRX, Boots is also limited by the narrow streets of the town centre and the limited parking opportunities in the town centre. It is notable that despite being closest alternatives outside of Seasalter, these pharmacies have not seen any material change in their dispensing patterns. They are clearly not meeting the needs of those patients that previously used the Estuary View Pharmacy.

4.136 **Walking Route to Town Centre PRX and Boots Pharmacies** [map provided]

4.137 Further northeast close to the seafront is **Tyrell & Jones Whitstable Pharmacy, 1A Tower Parade.** This is located about 2.2miles from the proposal site.

4.138 **Tyrell & Jones Pharmacy** [image of pharmacy shopfront provided]

4.139 This pharmacy opens 9am to 6pm Monday to Friday. It is closed at weekends. This pharmacy dispenses about 7,300 items from 3,725 forms each month, most prescribed in Whitstable Medical Centre.

4.140 **Route to Tyrell & Jones Whitstable Pharmacy** [map provided]

4.141 This pharmacy is located to cater for the people that visit the Whitstable Health Centre which is located a short distance from the pharmacy. This pharmacy is not located to cater for people from the Seasalter area.

4.142 **East of Seasalter**

4.143 **Tesco, Millstrood Road** is a large superstore located about 1.4miles east of the proposal site. It is a large store with a large surface level car park. The store is in a mixed use area with industrial and residential uses surrounding it. The pharmacy is within the massive shop and is designed and located to cater for

main food shoppers that visit the store weekly. This pharmacy opens 8am to 8pm Monday to Saturday and 10am to 4pm on Sunday.

4.144 **Tesco Pharmacy, Millstrood Road** [image of pharmacy shopfront provided]

4.145 This pharmacy dispenses about 8,830 items per month from about 5,543 forms, most prescribed at Whitstable Medical Practice. This pharmacy has seen an uplift of about 1,000 items per month since 2023, probably resulting from the closure of Lloyds at Sainsbury's. It has not compensated for the closure of the Estuary View Pharmacy. This pharmacy serves a specific "100 hour" function and attracts car borne food shoppers that get a prescription dispensed as part of their grocery shopping. It is not catering for the patients, residents and people that resort to the area of Seasalter around the proposal site.

4.146 **Northeast Whitstable**

4.147 Finally, there are two pharmacies in northeast Whitstable worth noting.

4.148 **Tankerton Pharmacy, 99 Tankerton Road** is located about 2.6miles from the proposal site. It opens between 9am to 1pm and 2pm to 6pm Monday to Friday and 9am to 1pm on Saturday.

4.149 **Tankerton Pharmacy** [image of pharmacy shopfront provided]

4.150 This pharmacy dispenses about 7,888 items per month from 4,365 forms. Again most of these are from Whitstable Medical Practice. This pharmacy has seen an uplift in dispensing around May 2023 following the closure of Lloyds with an increase of perhaps 2,500 additional items per month. This pharmacy is located in the northeast suburbs of Whitstable and has some on street parking available which is shared with the other shops and services in this part of the town. This pharmacy is catering for the Tankerton population and would not be considered to be a location attractive to Seasalter residents and visitors because it is too far away and awkward to reach.

4.151 Swalecliffe Pharmacy, 5-7 St John's Road, Swalecliffe is located over 3 miles east of the proposal site. This is simply too far to be a realistic consideration in this case. This pharmacy is located in the suburbs of eastern Whitstable and is designed and located to cater for the local residents of the east of the town. It opens 9am to 6pm Monday to Friday and 9am to 5pm on Saturday.

4.152 It is dispensing in the region of 20,000 items per month, most from the Whitstable Medical Practice. The application in this case is made by the owners of this pharmacy, and it is clear that the applicants have a strong relationship with the Whitstable Medical Practice and the patients use this as the most popular pharmacy in the town. Of course however, this pharmacy's location in Swalecliffe is not reasonably accessible to the patients of EVMC and hence there is a clear need for the original pharmacy to be opened there as proposed by the applicant.

4.153 **In summary,** the area of Seasalter is a large area in its own right. It has lost one of its two pharmacies, notably the pharmacy that is no longer forming part

of a EVMC. Residents and patients of Seasalter are utilising pharmacies elsewhere, most likely the Swalecliffe Pharmacy.

4.154 Two pharmacies have closed in Whitstable in recent times (-22%).

4.155 The town centre pharmacies are grouped into an historic town centre and are not suited for modern day car users and patients. Tesco's pharmacy is inside its large superstore shop and is cater for the needs of main food shoppers getting prescriptions dispensed whilst undertaking their weekly shopping. The eastern pharmacies at Tankerton and Swalecliffe are located in their own suburbs and are not located or designed to cater for the large population living and visiting the Seasalter area.

4.156 **ASSESSMENT AGAINST THE REGULATION 18 TESTS**

4.157 Regulation 18 (20)(b) (i-iii) [sic] is well known and sets out the following: [quoted in full]

4.158 **Reasonable Choice**

4.159 It has been explained in earlier sections that the Seasalter area of Whitstable has previously had two pharmacies serving the resident and reliant population. The most popular of the two pharmacies at Estuary View Pharmacy closed because of operational commercial reasons, not because there was no demand. There former Estuary View Pharmacy was an integral part of the service of the EVMC and it complemented the plethora of services available.

4.160 Whilst there was a reasonable choice when the Estuary View Pharmacy was operating, that choice has now declined and there is now unreasonable choice. The PNA indicates that as people tend to use the same pharmacy, in this case if this pharmacy was re-opened it would be reasonable to assume that most of the patients would naturally return.

4.161 The sole pharmacy in the Seasalter area is the pharmacy in a converted dwelling, which previously supported a surgery, which has now closed. This pharmacy at Faversham Road complemented but was very much secondary to the provision of pharmaceutical services that were being accessed at Estuary View Pharmacy. The volume of dispensing clearly shows this. There is no doubt that a co-located pharmacy at EVMC is necessary to reestablish reasonable choice in pharmaceutical services in the Seasalter area of Whitstable.

4.162 Looking to the wider area, the evidence is of a further decline of pharmaceutical service with the closure of the Lloyds Pharmacy. The loss of this pharmacy adds to the reduction of choice for those that had been using the Estuary View Pharmacy. It is also clear that the other pharmacies in Whitstable have not shared the load to meet the needs of the displaced patients from Estuary View. The Swalecliffe Pharmacy appears to be the principal pharmacy that has stepped in to provide for the pharmaceutical needs of the former Estuary View Pharmacy patients. Whilst others such as Tesco has seen a boost in recent years, the uplift in these locations is likely to reciprocate the loss of Lloyds given the similar bulky food shop nature of the business and its peripheral location.

4.163 As shown above, the population of Seasalter and southern Whitstable generally is increasing with substantial housing development occurring along Thanet Way. This additional population will continue to increase demands on pharmaceutical services in the area. Where there had been three pharmacies located along Thanet Way to meet the needs of this growing population there is now only one. As such the decline of services and the increase in demand constitutes a clear widening gap in services and a fundamental lack of choice.

4.164 **Access to Other Pharmacies**

4.165 The PNA confirms that walking and access by car are the key modes of transport for the population of Kent to access a pharmacy. The proposal site with its large car park is well suited to meet the needs of people accessing the pharmacy and the EVMC by car.

4.166 It has been demonstrated above that the closest pharmacy to the proposal site would require patients to walk through a maze of housing streets and across open parkland. This is not a desirable walk for sick patients. A walk along Thanet Way towards Tesco is possible, but long (1.4miles) and most unlikely for the vast majority of patients.

4.167 Whilst public transport cannot be discounted completely as some of the most deprived members of society rely on it, this is of less assistance in this case because the public transport in Whitstable is limited.

4.168 To access services, people living in the area first have to walk to the nearest bus stop. These are limited around the area; they then have to take a bus to the EVMC and return often via the town centre to their original stop There are two services that stop at EVMC (route 400 operated by Stagecoach and 638 operated by Regent Coaches).

4.169 Route 638 run by Regent Coaches, takes patients and passengers on a confusing route into the town centre before doubling back on itself before linking to the Tyrell & Salter Pharmacy. It has 3 services a day.

4.170 Public transport through the town centre on bus route 400 provides access to services located there but these would be impacted by heavy congestion particularly during the holiday season.

4.171 To access Tesco Stagecoach advises that patients to take route 400 to Long Reach where they get off the bus and walk for a further 34 minutes along the A2990 Thanet Way to Tesco. This is not reasonable. The only alternative is for patients to take a bus to the town centre and a second service (route 915/914) to Tesco. This requires a change in buses in the town centre. This is not reasonable.

4.172 **Whitstable Town Centre Traffic Issues**

4.173 Whitstable town centre contains numerous independent shops especially along High Street and Harbour Street which includes art galleries, boutiques and gift shops. The Council have carried out a survey of the town centre and found that car parking and its busyness are among the main complaints of people.

4.174 When asked ‘What do you dislike about shopping in Whitstable, the most popular answers were ‘no particular reason’ (32%), car parking cost (20%) and ‘too busy’ (20%). **Canterbury City Council Retail and Leisure Study (GL Hearn) 2020**

4.175 The Council’s consultants provide the following SWOT analysis of the town centre. This confirms that poor parking and high traffic levels are clear weaknesses of the town centre.

4.176 **Canterbury City Council Retail and Leisure Study (GL Hearn) 2020** [Whitsable SOWT analysis provided]

4.177 The Study reinforces this below, confirming there are no cycle lanes in the town centre. More than half the businesses in the town centre consider poor parking to be a main weakness.

4.178 **Canterbury City Council Retail and Leisure Study (GL Hearn) 2020** [study extract provided]

4.179 Given this, the three town centre pharmacies are simply not accessible for the patients of EVMC. The fact that these pharmacies have not materially increased their dispensing despite the closure of two pharmacies illustrates that they are not easily accessed alternatives for the majority of EVMC patients.

4.180 **Car ownership**

4.181 Car ownership is high in Seasalter, which reflects the demands for a pharmacy to be located at the EVMC where there is good road transport links and good car parking, as opposed to the limited parking and constrained access in the town centre. The rates of car ownership are shown below where the area has above the England average car ownership for households with 1, 2 and 3 cars.

4.182 **Car Ownership in Seasalter** [data provided]

4.183 **Walking Distances**

4.184 The Tyrell & Jones Seasalter Pharmacy is the closest pharmacy to the proposal, and the shortest route to it is 0.6 miles or 960 metres.

4.185 The Institution of Highways & Transportation provides "Guidelines or Providing for Journeys on Foot" it advises (para 3.30) that "The average length of a walk journey is one kilometre (0.6miles). This differs little by age or sex and has remained constant since 1975/76”. It suggests that an acceptable walking distance in an area such as Whitstable would be 800m, though 400m would be desirable and the preferred maximum would be 1200m. There are no other pharmacies within 400m or 800m of the proposal site and consequently all are beyond an acceptable walking distance. All except one are beyond the maximum walking distance. On this basis the alternative pharmacies in this case are not accessible.

4.186 **Under Provision and Oversubscription**

4.187 Whilst the PNA does not acknowledge it, the number of pharmacies in Seasalter and Whitstable generally, even at the time of the PNA preparation was below the national average. Following the closure of two pharmacies, that gap to the national average will have widened. Moreover, the increasing population will have widened the gap further.

4.188 **Demand at the Proposal Site**

4.189 The demand in EVMC is clear, given Estuary View Pharmacy had previously been dispensing in the region of 8,500 items per month and the EVMC had a patient list of 17,000 and that most of the services of the EVMC are accessed by the total registered patients list of Whitstable Medical Practice of 45,000. This means that the proposal site is a significant hub for health and community services, and even whilst some patients might use the other two practice sites to visit their GP, they will resort to the EVMC site for other services including the urgent care centre. The needs of these people plus the 25,000 shoppers that resort to the area is a significant source of demand and justification for this proposal.

4.190 **Collaborative Working with the EVMC**

4.191 Having a pharmacy beside the EVMC will ensure that the long established benefits of having a pharmacy beside the EVMC is provided. Whilst the previous pharmacy closed due to commercial considerations, this should not be allowed to result in the patterns of established co-located health care services in Whitstable should be altered. This proposal will maintain that pattern of having a pharmacy close to the EVMC. This close working relationship aids and supports provision of collaborative health care and pharmaceutical services.

4.192 One aspect of this collaborative working can be to simply send patients to an on site pharmacist so that minor ailments can be addressed.

4.193 A second aspect can be to allow patients that are leaving the EVMC to be able to access their medication from a fully serviced on-site pharmacy. It would not be unusual for patients that are unwell, to have no desire to drive to another location whether that is in Seasalter or elsewhere in Whitstable to have a prescription dispensed. It would be clearly a much improved service if patients could collect their full medication before leaving the EVMC environs and go straight home. This removes the need for additional journeys, additional parking and delay in patients getting home for recuperation following their GP visit.

4.194 A third reason for the on site pharmacy is that the pharmacy will be available to co-work with the GPs and other services being provided in the EVMC. This co-locating and co-working can result in shared knowledge and experience and expertise from which patients ultimately benefit from. The EVMC provides treatment rooms for potential assessment and diagnosis of sickness and having prescribed a course of medication it is important that that is available as soon as possible. It would good practice, indeed essential practice for the full

pharmaceutical services to be available to complement the treatments being provided in the EVMC.

4.195 **New Homeowners, Holiday Makers and Shoppers**

4.196 It is have already observed above that Seasalter is the location of significant new housing. 220 of these will be affordable and social homes. These are on the 'door-step' of the EVMC. These people will have a requirement for a pharmacy in their area, especially when they visit their GP. It is also worth noting that the various new housing developments will increase the number of families and children in the area. Despite Seasalter having a profile of an elderly population, with the passage of time and indeed during the summer months that profile would have an increased young population which official statistics do not identify in the context of holiday makers, and will not identify in the context of new homeowners until future data is released.

4.197 Whilst holiday makers are unlikely to be registered with the GPs at EVMC, they will frequently need to visit a pharmacist and the urgent treatment centre to treat young and old that take ill or have accidents whilst on holiday in the area. The proposal is well placed to meet this need.

4.198 Similarly, shoppers to the retail park beside the proposal site will have an occasional need to access a pharmacy whilst undertaking their shopping, either to collect a prescription, or to visit the pharmacist for advice whilst in the area. The proposal will support these people.

4.199 **Profile of Seasalter**

4.200 As shown in Section 2 Seasalter has a population of 11,700. This population is largely elderly as shown in the bar chart below with the majority of the population aged over 50. The highest deviation from the England average is in the 70-75 age cohort.

4.201 **Age Profile of Seasalter** [data provided]

4.202 In terms of general health, fewer people than the England average consider themselves to be in very good health (45% compared to 48%). Above average consider themselves to be in good health (35% compared to 33.7%) and fair health. Just above average numbers of people consider themselves to be bad health and very bad health.

4.203 **Health of Population of Seasalter** [data provided]

4.204 In terms of disability above average numbers of people in Seasalter are classed as disabled under the Equality Act compared to the England average (20% v 17%).

4.205 **Disability in Seasalter** [data provided]

4.206 The elderly profile of the population is further reflected in the bar chart below, which shows that Seasalter has below average numbers of people economically active and in employment (50% compared to 57%), it has below

average of economically active and unemployed (2.7% compared to 3.5%) but has much higher rates of economically inactive (47% compared to 39%).

4.207 **Economic Activity Status of Seasalter** [data provided]

4.208 In terms of deprivation, Seasalter displays some levels of deprivation as shown below.

4.209 **Deprivation Levels in Seasalter** [data provided]

4.210 It can be seen that above average numbers of households are deprived in one dimension, whereas the number of households not deprived or deprived in more than one dimensions is just below the England average.

4.211 Looking at deprivation in more detail it can be seen below (areas in red) that the areas around the northern edge of Seasalter and eastern edge of Seasalter are classed as being within the second most deprived deciles in England. This includes areas of Lucerne Drive and St Marys Grove to the north and Gosslin Street to the east.

4.212 **Deprivation Ares in Seasalter** [map provided]

4.213 **Secure Improvements**

4.214 It is shown above that Seasalter and west Whitstable has a limited range of pharmacies. The population of Seasalter have only access to one pharmacy within their community at present and the reopening of a second pharmacy will clearly secure improvements for these people, given its close proximity to the EVMC and the other community facilities in this area. Also the provision of a new pharmacy as part of the EVMC will secure improved access for those patients that visit their GP. For some it will remove the need to make a bus journey elsewhere to access a pharmacy. For others it will allow them to return directly home to commence their recovery from illness. It will also provide combined health care services under one roof and is clearly a major improvement on the dispersed and disparate patterns of health care service currently available.

4.215 **Better Access**

4.216 The access issues for the people in Seasalter and Whitstable are set out above. There are no pharmacies within an acceptable walking distance of the proposal site. Even for those that use public transport, and the private car, having a pharmacy under the same roof as their GP will mean that patients can benefit from the 'one stop shop' concept and will not to incur the expense and timing consuming trips to visit other pharmacies where parking availability is not guaranteed.

4.217 **Protected Characteristics**

4.218 The proposal will cater for people of protected characteristics. The high levels of elderly people living in the Seasalter area would be a group with shared protected characteristics. This protected group is having to make long journeys

into the centre of Whitstable and elsewhere to visit a pharmacist and many are unable to walk the journeys. Many when they get to their pharmacy cannot access close car parking, especially in the town centre. The proposal will address this matter and will ensure that a full pharmacy service is provided to this protected group.

4.219 **Summary**

4.220 Overall, having considered the requirements of Regulation 18 the proposal should be granted as there is not reasonable choice of pharmacy services in the Seasalter area and the Kent HWB area specifically bearing in mind the closure of two pharmacies in the Whitstable area, localised issues of residential growth, the substantially below average of pharmacies for the scale of population involved, changes in the patterns of health care provision, and distances to the existing pharmacy network. The proposal will confer significant benefits to the Seasalter and wider Whitstable population, and these benefits are wholly unforeseen.

4.221 **CONCLUSION**

4.222 Seasalter and wider Whitstable is an area of Canterbury locality and Kent HWB that does not have a reasonable choice of pharmacy services and is clearly in need of better access to pharmacy services. Following assessment of the circumstances of this part of Kent the applicant contends that the application is an unforeseen proposal that will satisfy the requirements of Regulation 18."

In a letter received by NHS Resolution on 21 July 2025, Eazihealth Limited appealed against the Commissioner's decision. The grounds of appeal are:

4.223 "As the Director of Eazihealth Limited, I write to formally appeal the decision by NHS Kent and Medway ICB to refuse our application for a new NHS pharmacy at Boorman Way, Estuary View Business Park, Whitstable CT5 3SE, submitted under Regulation 18 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

4.224 We understand that the ICB considered the application under Regulation 18 and concluded that while the proposal met the criteria for an unforeseen benefits application in principle, it did not satisfy the specific provisions of Regulation 18(2)(b)(i) to (iii).

4.225 We believe this conclusion may benefit from a broader consideration of the evidence we provided in support of the application and request that NHS Resolution reconsider the application in light of the following points.

4.226 **Regulation 18(2)(b)(i): Reasonable Choice**

4.227 The ICB concluded that there was already a reasonable choice of pharmacies in the Whitstable area, and that patients had not complained about access following the closure of the Estuary View Pharmacy in July 2023.

4.228 We believe it is important to recognise that this analysis does not reflect the lived realities of many patients who rely on accessible, same-day pharmacy

support following consultations at the co-located Urgent Treatment Centre in Whitstable. While Tesco Pharmacy opens only between 10 am and 4 pm on Sundays, no pharmacy in the area provides access during the early morning (8am to 10am) or after 4 pm, despite the Urgent Treatment Centre remaining open from 8 am to 8 pm. Eazihealth's proposed service therefore provides an additional 6 hours of Sunday cover, ensuring continuity of care from the start to the close of the Urgent Treatment Centre's operational hours.

4.229 Also, Eazihealth's proposal to provide an 8am to 8pm, 7-day-a-week service directly aligns with Urgent Treatment Centre hours and fills a specific gap in evening and weekend provision that may disproportionately affect:

4.230 Elderly and mobility-limited patients who rely on seamless transitions from clinic to pharmacy

4.231 Pregnant women, who may benefit from flexible access options due to varying needs throughout their maternity journey

4.232 Patients with long-term conditions or mental health needs who benefit from care delivered within familiar healthcare environments

4.233 The closure of three pharmacies in the area in 2023 (Estuary View Pharmacy (Now Avana Healthcare), Cheadles Pharmacy, and Lloyds Pharmacy) left the area with unforeseen pharmaceutical service gaps, considering that the population of the area has also grown over the past 24 months (This is evident in the number of populated new build homes in the area).

4.234 The presence of multiple pharmacies within a 2-mile radius does not in itself constitute a reasonable choice, particularly for time-sensitive care following GP and Urgent Treatment Centre consultations.

4.235 In addition to supporting patients attending the co-located Urgent Treatment Centre in Whitstable, the proposed pharmacy would also offer a secondary benefit to patients discharged from the nearby Faversham Urgent Treatment Centre, which similarly operates from 8 am to 8 pm on Sundays but is not supported by any open community pharmacy during those hours. By covering both the early morning (8am to 10 am) and evening period (4 pm to 8 pm), Eazihealth's proposed service provides seamless, 12-hour Sunday pharmaceutical access — the only such provision across both towns hosting Urgent Treatment Centres.

4.236 **Regulation 18(2)(b)(ii): Access for People with Protected Characteristics**

4.237 The Committee concluded that the application failed to identify specific groups with protected characteristics who faced difficulties accessing pharmaceutical services.

4.238 We believe it is important to recognise that the service model proposed by Eazihealth is designed specifically to reduce access barriers for vulnerable populations, particularly:

4.239 Elderly and disabled patients, who often require same-day access to medicines but face significant mobility or transport challenges

4.240 Pregnant women, who may benefit from flexible access options due to varying needs throughout their maternity journey

4.241 Patients with long-term conditions or mental health needs, who benefit from care delivered within familiar healthcare environments

4.242 Our co-location within Estuary View Medical Centre would allow patients already attending the medical practice or Urgent Treatment Centre to access pharmacy services without needing to arrange additional travel, parking, or public transport.

4.243 We wish to highlight that Regulation 18(2)(b)(ii) requires attention to the desirability of meeting the needs of patients with protected characteristics, not just evidence of past complaints. This model helps support NHS England's Public Sector Equality Duty by improving equity of access to essential services.

4.244 **Regulation 18(2)(b)(iii): Innovation in Service Delivery**

4.245 The Committee concluded that Eazihealth's proposal did not offer a sufficiently innovative approach.

4.246 We believe it is important to recognise that innovation must also be assessed in the context of current NHS priorities, not just a technological novelty, but improvements in how, when, and where patients access care.

4.247 The extended-hours model proposed by Eazihealth, which aligns fully with the Urgent Treatment Centre's 12-hour, 7-day operation, reflects the principles of a localised **'NHS Pharmacy First Access Hub'**, with dedicated staffing to support NHS service integration and healthcare access continuity across all days of the week.

4.248 This model will:

4.249 Reduce reattendance at A&E or NHS 111 calls for minor ailments

4.250 Supports Pharmacy First clinical pathways within an integrated care system

4.251 Extends NHS access at the point of need, especially for underserved groups, 12 hours a day, 7 days a week

4.252 We wish to highlight that this approach is not available anywhere else in Whitstable Kent or anywhere within a 15-mile radius of our proposed pharmacy, and meets a clear and present need unaddressed by existing providers. It represents a patient-focused innovation in service delivery, directly aligned with the NHS Long-Term Plan and the aims of the 2022 Community Pharmacy Contractual Framework.

4.253 **Clarification on Dispensing Patients under Regulation 50:**

4.254 We wish to highlight that the surgeries referenced — Old School Surgery and Bearsted Surgery are not located in or near Whitstable. This may indicate that the dispensing patient data referenced under Regulation 50 does not directly

relate to the geographical scope of our application. We kindly ask for this to be reviewed for clarity.

4.255 **Premises**

4.256 We also wish to note, in response to the comment raised by Kent Local Medical Committee regarding engagement with the landlord, that Eazihealth formally expressed interest in January 2024 in operating from Estuary View Medical Centre.

4.257 Although we have not yet secured the premises and have only received a response to our initial contact, we have followed up on two further occasions. These efforts reflect our genuine and ongoing commitment to partnering with the host premises, subject to NHS approval.

4.258 To conclude, we submit that our proposal meets the requirements of Regulation 18 in full:

4.259 It secures better access for all patients, particularly during evenings and weekends

4.260 It addresses the needs of vulnerable groups and will thus improve health equity

4.261 It delivers a practical service delivery innovation that aligns with NHS integration and NHS Pharmacy First ambitions

4.262 We kindly request that NHS Resolution overturn the ICB's decision and approve Eazihealth Ltd's application for inclusion in the pharmaceutical list."

4.263 [Enclosed was three emails and a letter with Whitstable Medical Practice, referred to by Eazihealth Ltd as "engagement with the landlord" – see appendix E].

5 Summary of Representations

After reviewing the paperwork provided by the Commissioner, it was noted that the comments made by both Applicants and Avana Healthcare Ltd in response to the representations on the application [see 2.1 to 2.3.25 above] and the Commissioner's internal paperwork, including a site visit report [see appendix F] had not been circulated or seen by parties. NHS Resolution therefore applied its discretion under Schedule 3, Part 3, paragraph 7 and allowed parties the opportunity to make comments on these. This is a summary of representations received.

5.1 Rushport Advisory LLP on behalf of Swalecliffe Pharmacy Ltd

5.1.1 "Thank you for your email and attachments of 4 August 2025. I act for Swalecliffe Pharmacy Ltd in the above application and have been instructed by my client to submit these comments in reference to the appeal from Eazihealth Limited.

5.1.2 Both my client and Eazihealth Limited agree that a new pharmacy is required in Whitstable and these comments relate solely to which

Applicant should be preferred in the event that the Committee decides to grant one of the applications (there being no need for two grants).

5.1.3 As the Committee will note, Eazihealth Limited has provided a known address for the proposed pharmacy which is 25 Boorman Way, Estuary View Business Park, Whitstable, CT5 3SE. This is the address of Estuary View Medical Centre. Estuary View Medical Centre is operated by Whitstable Medical Practice and the practice has agreed terms to let the pharmacy unit at the medical centre to my client. It is therefore not possible for Eazihealth Ltd to open a pharmacy at this location. This is confirmed in the attached letter from the practice [see appendix G].

5.1.4 Given that my client is the only entity that can open a pharmacy at the medical centre, their application should be preferred.

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

5.2 Boots UK Limited

5.2.1 "Thank you for informing us of the above appeals.

5.2.2 We do not have any further comments to make in addition to those submitted to PCSE/ ICB, which are attached.

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

Letter to the Commissioner dated 19 March 2025

5.2.4 "Thank you for your letters dated 18th February and 18th March 2025 and enclosures regarding the above applications. Boots UK Limited have the following comments to make.

5.2.5 Whilst we accept that the application is based on benefits not foreseen when drafting the Pharmaceutical Needs Assessment (PNA), it is clear that these applications are based on the closures of pharmacies in this locality.

5.2.6 As the ICB will be aware, the closure of a pharmacy (or pharmacies) within an area does not automatically create a gap and should a gap have arisen as a consequence of a reduction in provision, then the PNA should be updated to reflect this, usually by way of the publication of a supplementary statement.

5.2.7 As far as we can see, no updated PNA or Supplementary Statement has been produced following the closures of the pharmacies in this locality. We believe that this is the correct way of identifying any gaps that may have as a result of the closures.

5.2.8 The pharmacies closed 18 months ago now, so there has been plenty of time for the production of supplementary statements and the amendment of the PNA to have taken place if there was a requirement to do so.

5.2.9 Furthermore, the applicants have not provided any evidence of patients having difficulty in accessing pharmaceutical provision in the area. Therefore, we respectfully urge the ICB to refuse this application.

5.2.10 We would therefore be most grateful if you could keep us informed of the progress of these applications."

5.3 Eazihealth Ltd

5.3.1 "I write on behalf of Eazihealth Limited in response to the invitation to make further representations under Schedule 3, Part 3, paragraph 7 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, following the appeal lodged by Swalecliffe Pharmacy Ltd regarding the above application.

5.3.2 We welcome the opportunity to provide further input, having now had sight of the previously undisclosed documents (including the "14-day comments" and the site visit report) and considering Swalecliffe Pharmacy Ltd's appeal submission.

5.3.3 **Procedural Fairness and Equal Treatment**

5.3.4 We wish to begin by acknowledging the fair exercise of NHS Resolution's discretion in allowing these representations. It is now apparent that not all applicants had full access to critical documentation before initial decisions were made, specifically, the 14-day comments and the site visit report. In the spirit of fairness, we trust that all representations, including ours, will be assessed on an equal footing and that no application will gain an unfair advantage based on prior access to documents or relationships with stakeholders.

5.3.5 **Public Need Is Not in Dispute – But Preference Must Not**

5.3.6 Equal Predetermination

5.3.7 The 97.8% public support referenced in the letter from the GP Clinical Director of Strategy at Estuary View Medical Centre is compelling evidence of the clear local desire to reinstate a pharmacy at Estuary View Medical Centre. We fully agree with the medical centre's rationale for restoring on-site pharmaceutical provision. However, we wish to make clear that this support reflects the need for a pharmacy at that location in general, not an endorsement of any specific applicant.

5.3.8 The letter's expression of support for Swalecliffe Pharmacy Ltd, while sincerely held, may inadvertently give the impression of predetermination, especially considering the declaration of an exclusive lease agreement, despite multiple live applications being under consideration at the time. NHS England's duty is to assess Regulation 18 applications based on patient benefit and public interest, not on commercial tenancy arrangements or established relationships.

5.3.9 **Addressing Swalecliffe's Appeal Points**

5.3.10 Swalecliffe Pharmacy Ltd's appeal, while detailed, contains several points requiring clarification:

5.3.11 **On Caravan Parks and Seasonal Demand**

5.3.12 We do not dispute that seasonal population surges occur in Seasalter and the wider CT5 area. However, Eazihealth Ltd also referenced the impact of seasonal variation in our original application. It is not unique to Swalecliffe's proposal. Our planned 8am to 8pm, 7-day service was specifically designed to accommodate both permanent and transient populations, including tourists, carers, and the elderly.

5.3.13 **On Parking and Accessibility**

5.3.14 Both ours and Swalecliffe's applications highlight accessibility challenges to existing town-centre pharmacies. However, only Eazihealth Ltd has proposed to align pharmacy opening hours with the UTC's 12-hour daily operation, creating true co-location synergy and extending accessibility beyond typical weekday hours. This remains our unique value proposition.

5.3.15 **On Innovation**

5.3.16 Swalecliffe's appeal makes no reference to digital or innovative service delivery models. In contrast, Eazihealth Ltd has committed to:

5.3.17 Creating a dedicated Pharmacy First Hub that is fully staffed for that purpose.

5.3.18 This forward-looking innovations support the NHS 10-Year Plan for integrated, accessible care.

5.3.19 **Clarifying Our Strategic DSP Exit**

5.3.20 Some representations, including those by Avana Healthcare Ltd, imply that Eazihealth's December 2024 withdrawal from the NHS Pharmaceutical List undermines our credibility. We strongly refute this.

5.3.21 Our withdrawal was a strategic repositioning in response to NHS policy changes, and we were proven right when the April 2025 NHS community pharmacy settlement placed further restrictions on DSPs, barring them from offering clinical services from their premises.

5.3.22 Rather than operate a moribund model, we have chosen to operate a community-based, patient-facing pharmacy model with a stronger offering. Despite our DSP exit, we were humbled but not surprised by the public nomination of Eazihealth Pharmacy, Faversham in the "Best Pharmacy" category for the Kent Retail Business Awards 2025. Our community has always been the essence of our existence. (Please, see attached)

5.3.23 In summary, our application addresses the unforeseen closure of Estuary View Pharmacy and Lloyds, offers a 12-hour, 7-day service

model aligned with Urgent Treatment Centre hours, improves access for patients with protected characteristics under the Equality Act, and provides innovative delivery models not matched by other applicants.

5.3.24 We urge the Committee to assess all applications solely on merit, and not on commercial arrangements or pre-existing professional relationships.

5.3.25 Should an oral hearing be convened, we will be pleased to attend and provide further evidence."

5.4 Avana Healthcare Ltd [see appendix H for attachments]

5.4.1 "Abbreviation

5.4.2 EVP- Estuary View Pharmacy.

5.4.3 TAJ- Tyrrell and Jones (Seasalter).

5.4.4 SCP- Swalecliffe Pharmacy Ltd.

5.4.5 AHL- Avana Healthcare Ltd.

5.4.6 PL- Pharmaceutical List.

5.4.7 EVMP- Estuary View Medical Practice.

5.4.8 PS- Pharmaceutical Services

5.4.9 PNA1-Kent 2022.

5.4.10 PNA2-Kent 2025 (Draft). Final release by 30th September 2025.

5.4.11 <u>Background</u>

5.4.12 EVP has been closed since 27th July 2023. After 26 months, the pharmacy remains closed. The document [provided] below outlines the reasons for the foreseen closure, as well as the immediate actions taken to facilitate the reopening of the site as quickly as possible.

5.4.13 A commercial agreement with EVMC was reached for the sale of the EVP - NHS Contract in exchange for Seasalter Premises. This deal completed in May 2024 and the TAJ opened on 3rd June 2024.

5.4.14 Since this time the contract for EVP has undergone a change of ownership (COO) twice.

5.4.15 In late November 2024, EVMC approached AHL to gauge our interest in occupying the premises. Following discussions between AHL and EVMC, a commercial agreement was reached. However, the timeframe to execute the agreement lapsed, and as a result, AHL was removed from the PL at EVP.

5.4.16 Significant efforts have been made to reopen this premises, but all attempts have been unsuccessful. As a result, further applications have been submitted to reopen EVP.

5.4.17 After careful deliberation and comprehensive advice from its advisors, AHL has determined not to proceed with an appeal. The decision reflects a clear assessment that an appeal to re-establish a pharmacy at EVMC would not be commercially viable. Moreover, as this was a foreseen closure, we have been unable to demonstrate any unforeseen benefits that would justify further action. Regulatory evaluations have further reinforced this position, confirming the absence of sufficient evidence to support the applications.

5.4.18 Based on the information and resources available to us namely, the Commissioner's Report, the PNA 2022, and the Draft PNA 2025, we are aligned with the ICB's findings and decision.

5.4.19 Photos and recordings are taken in the last 7 days to give a true and accurate representation, unless otherwise stated.

5.4.20 Matters to be noted

5.4.21 There are many references in the applications relating to Urgent Treatment Centres.

5.4.22 These are considered as other services provided by GP practices and are not considered as PS.

5.4.23 [Extract from PNA provided]

5.4.24 Patient Survey- While public support for a new pharmacy is noted, the patient survey alone does not constitute a legal basis for establishing the necessity of an additional pharmacy. The existence of seven pharmacies currently serving the area provides sufficient reasonable choice to the public, and therefore, the survey's indication of demand does not override the established criteria for determining the need for further pharmaceutical services.

5.4.25 Comments on the Commissioners Report.

5.4.26 [Extracts from Commissioner's documentation provided]

5.4.27 We would add that EVMC is not surrounded by residential homes.

5.4.28 We note there is only 1 consultation room in the Pharmacy area and no Private Rooms. Under the ownership of AHL the floor plan was as below:

5.4.29 The current Pharmacy floor plan is given below: [provided]

5.4.30 Patient Journey To Proposed Pharmacy

5.4.31 Yellow line indicates travel via lift and stairs to new Pharmacy entrance and various unautomated doors as marked. [map provided]

5.4.32 Access via lift - Max Capacity 2 persons. The lift is small and narrow [image of lift provided].

5.4.33 Internal Stairs- Access via the rear stairs – 25 steps [image of stairs provided].

5.4.34 Disabled Access- Please see additional ZIP file. The disabled access way is relatively long and steep [images provided].

5.4.35 Pharmacy Parking – Please see additional ZIP file. Parking is restricted to 2 spaces given the bin store [images provided].

5.4.36 Access from Prospect Park – Please see additional ZIP file. [images provided]

5.4.37 Comment on Pharmacy Report Submitted by Rushport Advisory LLP

5.4.38 Section 2.29 - The opening hours listed are inconsistent with those provided in the application. While the application specifies Saturday hours as 9AM to 12PM, the Pharmacy Report indicates Saturday hours from 9AM to 5PM.

5.4.39 Section 2.32 - The exclusive lease terms for the pharmacy unit have been finalised in accordance with the JR letter of support, contradicting the claim that floor plans will only be commissioned after securing the premises. We believe that the pharmacy floor plan is essential and typically a standard requirement when agreeing to any lease terms.

5.4.40 “We fully support the application from Swalecliffe Pharmacy Limited and have agreed exclusive terms for them to lease the pharmacy unit at our premises” (JR letter of support).

5.4.41 Sections 3.5 & 3.6 - The claim that “There is no evidence that granting the application would cause significant detriment to proper planning for the provision of pharmaceutical services or to the existing provision of pharmaceutical services in the Whitstable area” is fundamentally flawed. The closures of EVP and Seasalter Pharmacies resulted in a significant and measurable movement of prescription items at the remaining pharmacies in Whitstable, clearly demonstrating the impact on service provision, and patient access. Likewise, granting this application would similarly disrupt the careful planning of pharmaceutical services in the area, creating a redistribution of demand, potentially destabilise providers and impact patient care. Such an outcome is contrary to the principles of sound pharmaceutical planning. Moreover, this proposal would adversely affect PS providers who have made substantial investments to accommodate increased demand, potentially resulting in business closures and staff redundancies.

		MONTH/ ITEMS			MONTH/ ITEMS		MONTH/ ITEMS	
Pharmacy Name	**ODS**	**Jan-23**	**13/06/2023 LLOYDS CLOSE**	**UPLIFT-DISPERSED**	**Jun-23**	**27/07/2023 EVP AND SEASALTER CLOSED**	**Aug-23**	**UPLIFT FROM JUNE TO AUG 23**
Swalecliffe Pharmacy	FD496	15,376	**13/06/2023 LLOYDS CLOSE**	**2,579**	17,955	**27/07/2023 EVP AND SEASALTER CLOSED**	22,941	4,986
Tesco Pharmacy	FFR87	5,686	**13/06/2023 LLOYDS CLOSE**	**1,439**	7,125	**27/07/2023 EVP AND SEASALTER CLOSED**	10,225	3,100
Tankerton Pharmacy	FC029	4,711	**13/06/2023 LLOYDS CLOSE**	**358**	5,069	**27/07/2023 EVP AND SEASALTER CLOSED**	9,220	4,151
Boots (Whitstable HighSt)	FL499	3,378	**13/06/2023 LLOYDS CLOSE**	**-244**	3,134	**27/07/2023 EVP AND SEASALTER CLOSED**	5,735	2,601
Tyrell & Jones Whitstable	FX518	3,178	**13/06/2023 LLOYDS CLOSE**	**0**	3,178	**27/07/2023 EVP AND SEASALTER CLOSED**	7,368	4,190

5.4.42 Contrary to the Pharmacy Report's assertion that SCL singularly absorbed the displaced demand following the closure of EVP and Seasalter—and that patients registered at Lloyds predominantly transferred to Tesco—this interpretation misrepresents the actual dispensing data (Pharmdata.com). The figures clearly demonstrate a broader redistribution of prescription activity across all local contractors. This pattern of uplift suggests that patients exercised reasonable choice in selecting their preferred pharmacy, reinforcing the resilience and accessibility of the wider network.

5.4.43 Section 3.10 - In this case, the argument that the population of Whitstable benefits from the co-located pharmacy at EVMC does not necessarily equate to improved access for the broader community. Geographic proximity alone fails to account for other key factors, such as opening hours, service quality, and the ability to support vulnerable groups. Moreover, the claim that many patients would have "no reasonable access" without this pharmacy overlooks the presence of alternative pharmacies or healthcare providers that adequately meet local needs and preserve reasonable choice. As such, the assertion that this situation clearly demonstrates improved access and reasonable

choice oversimplifies a more complex issue. While the statement references an evidential context, it lacks definitive evidence indicating that health outcomes would deteriorate in the absence of the pharmacy. Simply pointing to the historical presence of a co-located pharmacy does not prove that its absence would result in an unreasonable gap in service provision.

5.4.44 Section 4.5 - The assertion that the pharmacy-per-population ratio in Canterbury is below the national average (18 per 100,000 vs. 21 per 100,000) oversimplifies what constitutes a "gap" in pharmaceutical services. Gaps are determined by access, equity, capacity, and availability of services—not just density. The PNA appropriately considers more relevant indicators of accessibility, including drive times, walking distances, and how the population is distributed, providing a clearer and more accurate understanding than simple national averages. Quantity alone is not a definitive metric for Regulation 18 determinations.

5.4.45 Section 4.7, 4.8, 4.9 & 4.10 – While the Pharmacy Report highlights projected population growth and housing developments, it overlooks that the PNA already accounts for these projections in its methodology. The claim that the PNA does not explain how services will be provided is inaccurate – 24 pharmacies have confirmed their capacity to meet increased demand. The suggestion that 12,000 more residents automatically justify a new pharmacy assumes a consistent and immediate rise in demand, which is speculative. The PNA emphasises that existing pharmacies can and have adapted to absorb increased demand (see table above). The idea that the closure of EVP creates a critical gap assumes a lack of resilience in the system. Community pharmacy provision across the UK has increasingly shifted toward hub models and consolidated services, without always requiring a 1:1 replacement of closed sites.

5.4.46 Section 4.11, 4.12, 4.13 & 4.14 – The PNA Survey found that patients prioritise proximity to home, and that most either walk or drive. These habits suggest that patients already integrate pharmacy visits into existing routines. While the closure of a familiar pharmacy like Estuary View may be inconvenient, this does not automatically equate to a "gap" in statutory terms. It is important to distinguish between patient preferences and actual unmet needs.

5.4.47 Section 4.15 – The Pharmacy Report asserts that reopening a pharmacy at EVMC would "improve access." However, it does not provide evidence that current pharmacies are unable to meet demand or that patients experience significant barriers to access. In the absence of data showing diminished service levels or geographic challenges, the justification for a new pharmacy appears to be based more on convenience than on demonstrated need. Overall, the report lacks compelling evidence of a genuine gap in pharmacy services.

5.4.48 Section 5.1& 5.2 - The proposal emphasises the need for a new pharmacy based on local population figures but overlooks actual usage

and the accessibility of existing pharmacies. The 20-minute walking guideline is flexible, as many residents use cars or public transport. The claim that only one pharmacy serves the area ignores existing pharmacies' ability to handle demand fluctuations. Planning authorities and Integrated Care Boards have likely already accounted for healthcare needs related to population growth, so this is not "unforeseen." To qualify as an "unforeseen benefit" under Regulation 18, the proposal must show advantages unpredicted by planners and significant enough to change pharmaceutical services. The cited benefits, such as improved access, are foreseeable and generally addressed in local assessments. There's also no clear evidence these benefits aren't already provided by existing pharmacies through extended hours or services.

5.4.49 Section 5.3 - The closure of EVP likely reflects broader changes in the organisation of local health services. The closure of Seasalter Surgery and EVP points to a shift in how healthcare is being delivered in the area. This indicates a change in how and where residents access healthcare, rather than a gap in services. While the pharmacy was co-located with EVMC, this does not necessarily mean there is sufficient demand to justify reopening it, or that doing so would be viable or necessary.

5.4.50 Sections 5.4, 5.5, 5.6, 5.7 & 5.8 –The claim that the pharmacy's location—about 0.6 miles, or a 14-minute walk, from the proposed site—is inaccessible because it lies across open parkland does not constitute a convincing barrier. In fact, this distance is well within what urban and suburban planning standards typically consider a reasonable walking distance for accessing essential services such as pharmacies.

5.4.51 Although the route crosses parkland, this should not be seen as a disadvantage. Open green spaces often provide clear sightlines and create a more pleasant, healthy walking environment, especially during daylight hours. Safety concerns can be alleviated by the presence of a volunteer group, "Friends of Mariners View," which helps protect and maintain the area, contributing positively to security.

5.4.52 References to exposure to weather and seasonal darkness are general challenges faced everywhere and are not unique to this location. Many people routinely walk similar or longer distances year-round. Additionally, alternatives to walking exist, including cycling, driving, or using public transport, which lessen any limitations posed by the walking route.

5.4.53 For drivers, TAJ Pharmacy provides off-street parking directly in front of the premises, including disabled access. With the pharmacy's planning permission granted, even more off- street parking spaces will become available [extract of planning application provided].

5.4.54 Finally, suggesting that residents would avoid residential streets underestimates their adaptability and overlooks the variety of transport options available to them.

5.4.55 Section 5.9 - TAJ Pharmacy maintains operating hours in line with standard community pharmacy practices, reflecting local demand patterns. In response to patient needs, the pharmacy has already introduced extended Saturday hours. Further extension of operating hours will be considered based on ongoing assessments of community demand and patient feedback. Currently dispensing over 8,000 items each month - and steadily increasing - this pharmacy is clearly meeting a substantial portion of the population's healthcare needs, challenging any claim of inadequacy. (See below reference source Pharmdata.com) [provided].

5.4.56 The planned expansion of the pharmacy will greatly increase capacity and enhance service delivery, creating a more commercially viable model compared to a medical centre pharmacy. The latter typically incurs substantial setup costs, ongoing rent (estimated at £90,000 according to Christies Valuation Report, Jan 2023) [extract provided], business rates, utilities, and staffing expenses.

5.4.57 After reviewing patient feedback, conducting commercial evaluations, and considering the enhanced capacity of TAJ pharmacy, we have determined that opening an additional pharmacy in the area is unnecessary. Pharmacies located within medical centres often face financial challenges due to these high costs. Moreover, with the adoption of digital tools like electronic prescriptions and the growing focus on clinical services such as Pharmacy First, Hypertension Case-Finding, and Contraception, the need for pharmacies to be co-located with GP practices has diminished.

5.4.58 Sections 5.10, 5.11 & 5.12 - The claim that this pharmacy does not serve visitors to the EVMC, users of the retail park, or residents of the nearby caravan park rests on an unproven assumption that these groups have distinct and unmet pharmaceutical needs which the pharmacy fails to meet. However, there is no evidence to support this assertion. It also disregards the possibility that these individuals may already have their needs met by other pharmacies in the area, or that their needs are not significantly different from those of the wider community. Additionally, the suggestion of a "disconnection" between the medical services at EVMC and the pharmacy's provision appears speculative. In practice, patients choose pharmacies based on a variety of factors—including convenience, location, personal preference, and quality of service. As such, the expectation that medical and pharmaceutical services must be closely aligned under a single provider misrepresents how people typically navigate their healthcare and oversimplifies patient choice.

5.4.59 Sections 5.13 & 5.14 - Although the closure of Lloyds and Sainsbury's pharmacies in 2023 reduced the total number of local pharmacies, the overall effect on patient access and choice has been minimal. The 6% of prescriptions previously handled by Lloyds were smoothly redistributed among the remaining pharmacies, demonstrating system resilience and adaptability. (Refer to table on page 8)

5.4.60 Assumptions that new residents in the Ridgeway development will rely primarily on pharmacies in south Whitstable overlook the accessibility of Swalecliffe Pharmacy—just a 15- minute walk or a 3-minute drive away. Additionally, the increasing use of modern pharmacy services, such as home delivery and online prescription ordering, reduces reliance on close physical proximity.

5.4.61 Although the number of pharmacies has decreased from nine to seven, improvements in operational efficiency and service innovation mean that these remaining sites are well-equipped to serve a growing population. Services like digital consultations, NHS prescription apps, and expanded delivery options have significantly lessened the need for patients to visit pharmacies in person. Rather than indicating a service gap, these developments reflect a more efficient use of resources.

5.4.62 Sections 5.15 – 5.35

5.4.63 Distance and Accessibility - The claim that nearby pharmacies are too far (1.4 to 2.6 miles) overlooks that this is a reasonable distance in suburban areas, where residents often travel similar lengths for shopping, healthcare and wellbeing. Recommended walking distances (800– 1200m) are guidelines, not strict limits, and many patients regularly go beyond them. Multiple pharmacies within this range ensure sufficient choice and competition, benefiting patients. Additionally, these pharmacies offer delivery services, further enhancing accessibility for patients. The argument focuses on the inconvenience of town centre pharmacies, but town centres generally offer a wider range of services and amenities that can justify travel.

5.4.64 Limited Parking in Town Centre - Parking in the town centre is managed by Kent County Council, similar to many other towns. Free pharmacy parking is available, with Tesco providing the largest parking facility. Many people use public transport, walk, or cycle to access pharmacies, which have operated successfully despite parking constraints. Although high car ownership is used to justify pharmacy parking at EVMC, promoting car use conflicts with public health and environmental goals favouring sustainable travel. Investments should prioritise better public transport and walkability to improve accessibility for all rather than creating dependency on cars, which may exclude less mobile or economically disadvantaged groups.

5.4.65 Opening Hours - The opening hours of the existing pharmacies cover typical working hours and Saturdays, aligning with common business hours in many pharmacies and the PNA. The longer hours at Tesco provide extended access for those who cannot visit during the day. This mix of opening times caters to different customer schedules.

5.4.66 Pharmacy Choice - The argument that other pharmacies do not cater to Seasalter residents ignores the fact that patients are mobile and often combine errands. Large pharmacies in supermarkets serve a dual purpose, making it convenient for patients to pick up prescriptions alongside other shopping, which is an efficient use of their time.

Moreover, these pharmacies also offer delivery services, making access easier for a variety of patient needs. This logic applies to any pharmacy located near a residential area.

5.4.67 Market Trends - The closure of some pharmacies reflects broader trends in pharmacy consolidation and shifts in patient behaviour, rather than a failure of access. Maintaining multiple pharmacies very close together is not always sustainable or necessary, given the presence of alternatives.

5.4.68 The points raised about alternative pharmacies in the town centre and surrounding areas emphasise distance, parking difficulties, and pharmacy opening hours as barriers. However, these concerns are overstated as the distances involved are reasonable for many patients, parking solutions exist, and opening hours are typical for the sector. The existing pharmacies' stable dispensing volumes suggest they are meeting patient needs, and closures reflect market realities rather than gaps in service. Overall, the presence of multiple pharmacies within a reasonable distance supports continued adequate access for Seasalter residents.

5.4.69 **Section 6 - Reasonable Choice, Protected Characteristics, and Innovation:**

5.4.70 **Reasonable Choice**

5.4.71 The current pharmacy network (e.g., Tyrrell & Jones Seasalter & Whitstable, Swalecliffe, Tesco, Tankerton, Prx, and Boots) is considered sufficient and responsive to local needs.

5.4.72 The closure of Estuary View Pharmacy has not created a gap; patients have been absorbed by nearby services, showing market flexibility and resilience.

5.4.73 Simply increasing population or housing does not automatically justify a new pharmacy—demographic needs and service use must guide such decisions.

5.4.74 The reopening of a closed pharmacy is seen as speculative and does automatically create a gap and should a gap have arisen as a consequence of a reduction in provision, then the PNA should be updated to reflect this, usually by way of the publication of a supplementary statement. As far as we are aware, no updated PNA or Supplementary Statement has been produced following the closure of pharmacies in this locality. This would be the proper and correct way of identifying any gaps.

5.4.75 The presence of multiple pharmacies in close proximity may result in overprovision and duplication of pharmaceutical provision, rather than improved choice

5.4.76 **Protected Characteristics**

5.4.77 The argument for better access for protected groups (e.g., elderly, disabled, minorities) is acknowledged, but:

5.4.78 There is no specific evidence that current services are inadequate for these populations.

5.4.79 Existing pharmacies already provide accessibility features like disability access, language support, home delivery, and multi-compartment compliance aids.

5.4.80 Modern service delivery methods (e.g., digital prescriptions, delivery) help address mobility and access challenges, minimising the need for new premises.

5.4.81 Without clear data showing service gaps, the claim remains hypothetical rather than evidence based.

5.4.82 **Innovation**

5.4.83 The proposal for a new pharmacy lacks demonstrable innovative benefits; no transformative service models or unique offerings are presented.

5.4.84 Innovation is already occurring in the existing network—through digital services, extended hours, delivery options, hub and spoke, and automation—making a new premises unnecessary.

5.4.85 Regulatory standards require substantial and demonstrable benefits from new applications, not speculative claims.

5.4.86 The trend toward non-traditional pharmacy models suggests that physical proximity is less critical than it once was.

5.4.87 **Section 7 – Conclusion**

5.4.88 Although the applicant claims that Seasalter and the wider Whitstable area lack adequate pharmacy services, a detailed review of the existing healthcare infrastructure indicates otherwise. The region is already well-served by several pharmacies located within reasonable travel distances, both in Whitstable town centre and nearby neighbourhoods. These pharmacies provide sufficient access to pharmaceutical care, including extended opening hours, delivery options, and a broad range of healthcare services that collectively meet the needs of the local population.

5.4.89 Furthermore, the classification of this application as an “unforeseen benefit” under Regulation 18 is not justified. The stability of the local pharmacy network is well-established and clearly evidenced in both PNA1 and PNA2. Given the current level of service delivery, consistently high patient satisfaction, absence of patient complaints and the questionable viability of the proposed site, there is no demonstrated need for an additional pharmacy or gap in pharmaceutical service provision. Therefore, this application should be refused. The existing

infrastructure is fully equipped and capable of meeting patient demand – both now and into the future.

5.4.90 Kindly see attached images and videos that evidence and demonstrate the patient journey to the proposed pharmacy at EVMP.

5.4.91 We kindly request to be notified should an oral hearing be scheduled."

6 Observations

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

6.1 Rushport Advisory LLP on behalf of Swalecliffe Pharmacy Ltd

6.1.1 "Thank you for your email and attachments of 8 September 2025. I act for Swalecliffe Pharmacy Ltd in the above application and submit these comments in reply to the comments received on the appeals.

6.1.2 **AVANA Healthcare**

6.1.3 Avana Healthcare ("Avana") has now had a complete change of heart and instead of wishing to open a pharmacy now claims that one is "not commercially viable". The Committee may conclude that, given Avana previously operated a pharmacy at Estuary View Medical Centre and writes about their attempts to keep the pharmacy going, that their change of heart simply reflects the fact that the landlord has no desire to ever work with them again given the non-payment of rent in the past.

6.1.4 Avana's submissions are somewhat rambling and fail to properly deal with the issues that the Committee will be considering. Given that much of their reply is irrelevant we focus below on some points that the Committee may wish to be cognisant of when making their decision.

6.1.5 The points below have been provided by the Estuary View Medical Practice.

6.1.5.1 The underhand taking of internal photos at EVMC and EVP without permission in order to deliberately mislead is appalling.

6.1.5.2 They state the lift has a capacity for 2 people which is wrong. The lift has a capacity of 8 people, max 630Kg.

6.1.5.3 Their aerial photo of EVMC misrepresents the large, dense housing adjacent to the site. It is cropped to mislead.

6.1.5.4 They reference the reduced size of the EVP. This is risible, as they had a barrier in place at the very site of the new dividing wall for many years prior to their eviction, excluding access to the same area! They were negotiating a reduced rent in view of not requiring nor using this space prior to their eviction. Now suddenly it appears necessary.

6.1.5.5 They reference a “difficult patient journey” within EVMC to the pharmacy location. This is nonsense compared to the difficulty in accessing and parking at any off site pharmacy. To my knowledge, no patient has ever commented on any difficulty accessing the EVP given the 8 person lift and wide staircases and corridors.

6.1.5.6 They reference poor parking at the site. Again, this is nonsense. There is a very large patient car park adjacent to the building with spaces always available. This is for all visitors, whether to the healthcare facilities or the EVP. The small car park they refer to is for deliveries and waste bins. It can take 4 cars and a delivery van. Not the 2 they state.

6.1.6 We also wish to remind the Committee of what Avana stated in their own application in January 2025.

6.1.6.1 Granting this application would lead to significant improvements in access for the reliant population, including those with protected characteristics. Enhanced access, to and greater choice of pharmaceutical services would be especially beneficial, given the area’s ongoing development of new care homes facilities and housing projects, which are expected to substantially increase population numbers.

6.1.6.2 The proposed pharmacy would be well-positioned to provide a comprehensive range of advanced and enhanced public health services tailored to meet the needs of the growing population. Additionally, pharmacy prescribing services would enable the safe and efficient delivery of clinical care, reducing the strain on local GP surgeries and 111 services. This would result in more accessible and comprehensive pharmaceutical service for all patients in the community. Furthermore, as other providers of pharmaceutical services reducing [sic] offerings such as multi-compartment compliance aids and delivery services, and opening hours, this pharmacy would address a critical gap by providing these essential services. These additional offerings would particularly support the growing elderly and vulnerable population, ensuring their needs are met efficiently and comprehensively.

6.1.7 **Eazihealth Ltd**

6.1.8 As the Committee will note, Eazihealth Limited has provided a known address for the proposed pharmacy which is 25 Boorman Way, Estuary View Business Park, Whitstable, CT5 3SE. This is the address of Estuary View Medical Centre. Estuary View Medical Centre is operated by Whitstable Medical Practice and the practice has agreed terms to let the pharmacy unit at the medical centre to my client and will not let the unit to any other party. It is therefore not possible for Eazihealth Ltd to open a pharmacy at this location. This has already been confirmed in

the letter of 8 August 2025 from the Medical Practice that has already been submitted with my client's appeal.

6.1.9 Given that my client is the only entity that can open a pharmacy at the medical centre, their application should be preferred.

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

7 Unsolicited Comments

7.1 Avana Healthcare Ltd

7.1.1 Response to Rushport Advisory Letter – 11th September 2025

7.1.2 We write in response to the letter from Rushport Advisory dated 11 September 2025. The correspondence presents no new representations under the relevant regulations concerning the unforeseen benefits application or Regulation 18. However, it does include a number of false statements that we will now correct.

7.1.3 Avana Healthcare Ltd (AHL) has never occupied or operated a pharmacy at Estuary View Medical Centre (EVMC). Any suggestion to the contrary is entirely incorrect. How can Rushport claim that a company that has no legal contract/lease with the medical centre fall into rent arrears. It is simply impossible. The assertion that AHL was "evicted" is absurd. Eviction suggests occupation, and no such occupation ever took place.

7.1.4 The comment EVMC had "no desire to ever work with them" is also false. We have already covered this point in our report.

7.1.5 We now turn to specific points raised by Rushport Advisory that require correction.

7.1.6 Photography

7.1.7 Images submitted originated from the ICB Commissioner's site visit report, shared by NHS Resolution on 4th August 2025, or from our own archive relating to earlier attempts to secure the pharmacy contract at the premises. We draw Rushports attention to the contents of that letter.

7.1.7.1 Plans and photographs are often particularly helpful. Where provided, these should be of good quality to ensure no loss of detail when they are scanned or photocopied. Any measurements (including the unit of measurement) should be clear.

7.1.8 Lift

7.1.9 While we note the lift capacity, it is important to highlight that, in the event of a breakdown, access may be significantly restricted for individuals with protected characteristics compared to any offsite pharmacy.

7.1.10 Aerial photographs

7.1.11 The photo simply shows that the majority of the residential population is located in the Seasalter area and is not too dissimilar to that provided in the ICB commissioner's site visit report.

7.1.12 Premises

7.1.13 As previously stated AHL could never be evicted from a premises they never occupied.

7.1.14 The floorplan submission is the applicant's responsibility, yet Rushport has failed yet again to provide one. Rather than deflecting, they should agree to the proposed floorplan or submit their own.

7.1.15 Patient Journey

7.1.16 We would like to draw the committee's attention to the route/s outlined in the relevant floor maps already provided in our report. If these maps are inaccurate, this would have been the appropriate opportunity for Rushport to correct the committee.

7.1.17 Parking

7.1.18 The ICB Commissioners' report distinguishes EVMC from EVP - parking, which we have relied upon. The images indicate an area directly behind the pharmacy marked as 'Pharmacy Customer Parking and Deliveries' it is therefore correct to assume this area is reserved for Pharmacy customers.

7.1.19 Rushport's letter includes a series of misleading and false claims concerning AHL without any supporting evidence. These statements are not only factually incorrect but, in certain cases, potentially defamatory. **We respectfully request that the facts be acknowledged, and any inaccurate or misleading statements be promptly withdrawn to avoid further confusion or reputational damage.**

7.1.20 Rushport has stated that this is an application to **replace** the pharmacy.

7.1.21 There is a very clear need to replace the pharmacy that previously operated from Estuary View Medical Centre.

7.1.22 And more importantly

7.1.23 is operated by Whitstable Medical Practice and the practice has agreed terms to let the pharmacy unit at the medical centre to my client. It is therefore not possible for Eazihealth Ltd to open a pharmacy at this location. This is confirmed in the attached letter from the practice.

7.1.24 Given that my client is the only entity that can open a pharmacy at the medical centre, their application should be preferred.

7.1.25 **This suggests that if the application were to be granted to Eazihealth rather than Rushports client, the pharmacy will still not open.**

7.1.26 If these reasons are offered as the basis for approving the pharmacy application, they are completely irrelevant to the statutory criteria set out in Regulation 18 and the legal framework governing unforeseen benefits applications."

8 Regulation 22

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

8.1 Avana Healthcare Ltd

8.1.1 "We note the contents of your letter dated 3 October 2025. Both the 2022 and 2025 Pharmaceutical Needs Assessments (PNAs) have identified that there are no gaps in the provision of pharmaceutical services, specifically within the Canterbury locality".

9 Observations on the Regulation 22 comments

No observations were received in response to the Regulation 22 comments.

****