NHS Resolution

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REF: SHA/26896

APPEAL AGAINST NORTH EAST AND NORTH CUMBRIA ICB DECISION TO GRANT AN APPLICATION BY ASTER HEALTH LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT 3 THE CROSSWAY, NEWCASTLE UPON TYNE, NE15 7LA

1 Outcome

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

1.2 The Committee determined that the application should be refused.

A copy of this decision is being sent to:

Aster Health Ltd
PCSE, on behalf of North East and North Cumbria ICB
Rushport Advisory LLP, on behalf of Lemington Pharmacy
Boots UK Ltd

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1 The Application

By application dated 28 July 2025, Aster Health Ltd ("the Applicant") applied to North East and North Cumbria ICB for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at 3 The Crossway, Newcastle Upon Tyne, NE15 7LA. In support of the application it was stated:

1.1 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.

1.2 "The proposed Aster Pharmacy at 3 The Crossway, Lemington, NE15 7LA offers multiple unforeseen benefits not accounted in current Pharmaceutical Needs Assessment (PNA), directly addressing gaps in access, service availability, and health outcomes in a significantly underserved area.

1.3 Improved Access for Isolated Residents: The pharmacy will serve a community with poor transport links - residents must walk up to 20 minutes to reach a bus stop. Aster Pharmacy will provide highly accessible, walk-in care for local people, particularly those with limited mobility or no private transport.

1.4 Extended Hours and 24/7 Access: The pharmacy will operate to Friday, 9am-7pm, and Saturday 9am-2pm, addressing the unmet need for late weekday access. In addition, we plan to introduce the area's first prescription ATM, offering secure 24/7 access to medicines.

1.5 Filling the Primary Care Gap: Lemington has no GP surgery, leaving residents without nearby access to face-to-face healthcare. Aster Pharmacy will provide a Neighbourhood Health offering clinical consultations, public health services and minor ailments care to reduce unnecessary GP visits and delays in treatment.

1.6 Support for Substance Misuse Patients: The pharmacy will offer supervised consumption and needle exchange, supporting vulnerable individuals who currently face travel and stigma-related barriers to care.

1.7 Preparation for Local Population Growth: New housing developments in area are increasing demand for healthcare services. The pharmacy will offer a timely capacity expansion to meet this demand."

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

1.9 "Despite claims of sufficient pharmaceutical coverage in the Lemington area, Aster Pharmacy brings critical, unforeseen benefits that existing providers are unable to offer. These benefits directly address local access gaps, healthcare inequalities, and community-specific service needs:

1.10 Response to Local Developments and Increased Demand

1.11 Ongoing residential developments in Lemington are expanding the local population base. Forecasted demographic growth creates new demand pressure that current providers have not accounted for. Aster Pharmacy is proactively positioned to absorb this growth with scalable capacity.

1.12 Poor Transport Connectivity Requires Local Access

1.13 Large sections of Lemington remain poorly connected by public transport, with minimal or indirect bus services. This leaves many residents - especially the elderly and disabled - unable to reach distant pharmacies. Aster will provide immediate walking access to healthcare for these overlooked groups.

1.14 No GP Surgery in Lemington - Critical Healthcare Gap

1.15 Lemington lacks an in-area GP surgery, forcing residents to travel for basic clinical services. Aster Pharmacy will immediately implement advanced and enhanced services (e.g. hypertension checks, contraception, minor ailments advice) to fill this void and reduce pressure on regional NHS services.

1.16 Enhanced and PGD Services Unavailable Elsewhere

1.17 Our offering includes independent prescribing, use of Patient Group Directions (PGDs) for services such as period delay treatment, travel vaccinations, and seasonal immunisations. Current competitors do not provide these specialist services at walk-in level, leaving gaps in accessible care.

1.18 Equitable Access for Elderly and At-Risk Residents

1.19 The pharmacy is strategically located within walking distance of elderly populations, who often lack digital literacy and transport. Our model provides face-to-face clinical advice without appointments, ensuring equitable access for vulnerable and digitally excluded patients.

1.20 Optimised Operations with Same-Day Delivery Promise

1.21 Aster Pharmacy will launch with a slow but sustainable scale-up model, allowing us to maintain high quality from day one. We will also offer same-day prescription delivery, supporting chronically ill and housebound patients - a service currently inconsistent or unavailable in the area.

1.22 Extended Core Opening Hours

1.23 We will operate with longer-than-average hours, including evenings, and weekends, significantly increasing healthcare accessibility compared to existing providers who offer more limited core hours.

1.24 Immediate Roll-Out of All Services

1.25 From day one, Aster will deliver a fully-operational service suite, including dispensing, enhanced services, digital ordering, delivery logistics, and independent prescribing.

1.26 Locally Rooted Healthcare Provider with Broader Impact

1.27 Our team will include a qualified Independent Prescriber Pharmacist and experienced professionals with a history of service in deprived communities. We will also serve as a public health resource, hosting NHS campaigns, winter health clinics, and emergency supply provisions.

1.28 The existing providers, while present, do not meet the actual lived healthcare needs of Lemington residents. By prioritising geographic access, immediate clinical support, enhanced services, extended hours, and operational innovation, Aster Pharmacy will improve health outcomes, reduce inequalities, and deliver tangible benefits beyond anything currently available."

1.29 [Supporting information at Appendix A for Committee]

2 Comments to the Commissioner

On reviewing the paperwork provided by PCSE, it was noted that the comments made by the Applicant to the representations on the application, had not been circulated or seen by parties.

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 circulate these comments to parties for them to make observations on them if they so wished.

2.1 "Thank you for sharing the written representations with us.

2.2 We respectfully disagree with the LPC's and Lemington pharmacy recommendation and maintain that our Regulation 18 application does meet the statutory test. The benefits we set out are (i) specific to providing better access to pharmaceutical services in Lemington's geography and service configuration, (ii) not captured by area-wide PNA conclusions, and (iii) directly aligned with current NHS policy objectives to shift care into the community. In short: they are unforeseen, material, and necessary.

2.3 We identified the key issues raised in the written representations submitted by the parties and we provide our responses to each as follows.

2.4 **1) Why the 2022 and 2025 draft PNAs do not extinguish Reg. 18**

2.5 Regulation 18 is expressly for unforeseen benefits that may not be identified by a PNA, particularly where micro-access and equality issues are masked by "as the crow flies" distances or city-wide averages.

2.6 Historic closure does not equal no gap today. The former Boots at The Crossway closed in April 2020. The 2022 PNA took a city-level view post-closure, during atypical pandemic patterns, and did not model topography, bus reliance, nor absence of in-area GP services in Lemington. These are precisely the conditions now generating inequities on the ground.

2.7 Draft 2025 PNA is not a veto. Draft conclusions do not negate clear, locality-specific evidence of unmet access and clinical need. Regulation 18 allows the ICB to consider such evidence where PNAs generalise away the "last mile" to care.

2.8 **2) The core unforeseen benefit: practical, equitable access in a hilly ward with poor transport**

2.9 Headline drive-time rings and straight-line radii do not reflect Lemington's terrain or reliance on walking:

2.9.1 **Uphill barrier**: Walking uphill from the competitor Lemington Pharmacy to our site area for ~15 minutes as Lemington pharmacy has suggested is not feasible for many residents, including younger adults with mobility, caring or time constraints. For elderly or disabled patients, a **30-minute return trip—largely uphill on the way back—**is an obvious barrier. "Coverage exists somewhere in the ward" is not the same as equitable reach for those without cars or reliable bus options. The journey from Lemington Pharmacy to the proposed Aster site involves climbing an elevation of approximately 40 metres over just 0.6 miles. According to hiking difficulty calculators, this qualifies as a *moderate-level hike*, recommended only for "someone in good hiking condition." This level of exertion is challenging not only for many working-age adults, including those in their 30s, but is plainly prohibitive for residents with protected characteristics such as older age, disability, pregnancy, or long-term health conditions.

2.9.2 **Poor bus connectivity**: Large sections of Lemington have indirect or infrequent services. Many residents simply do not, in practice, "access" pharmacies that are theoretically inside a radius.

2.9.3 **A1/A69 highway barrier**: Lemington is geographically confined by the A1 and A69, two major arterial highways. These act as physical boundaries that severely limit safe or practical access on foot or by bicycle to other pharmacies outside the immediate Lemington area.

2.10 From first-hand professional experience, I know of Lemington residents who are technically registered with pharmacies as far as the West Road that have never once set foot inside them. They rely solely on nomination for prescriptions and are therefore excluded from the preventative services, health checks, first aid, and public health interventions that pharmacies are designed to deliver.

2.11 This approach is consistent with NHS Resolution's **Cramlington decision (Case 25785)**, where the Committee found that despite theoretical coverage, patients lacked a reasonable choice due to walking and transport barriers, and those with mobility issues faced disproportionate challenges.

2.12 **3) No GP surgery in Lemington – a unique configuration risk**

2.13 Lemington has no GP surgery in-area. This is highly unusual for a residential district of this size and creates a primary care vacuum. Aster Lemington will implement a **Neighbourhood Health model** to fill this gap from day one:

2.13.1 Pharmacy First clinical pathways (minor ailments, common conditions).

2.13.2 Independent prescribing clinics for accessible, timely treatment.

2.13.3 Commissioned services: hypertension case-finding, contraception, smoking cessation, Hep C testing, flu/COVID vaccinations, CPCS, SAC/AUR.

2.13.4 Public health & prevention programmes and same-day advice.

2.14 This integrated, walk-in clinical offer is absent locally and directly reduces pressure on regional GP hubs and urgent care.

2.15 **4) Extended core hours + 24/7 medicines collection meet real-world constraints**

2.16 We will open Mon–Fri 9:00–19:00 and Sat 9:00–14:00. That addresses the late-weekday gap for working families and carers. In addition, we plan to install a secure 24/7 prescription collection ATM.

2.17 By contrast, the existing Lemington Pharmacy closes for lunchtime and at 17:30. This leaves working families, commuters, and carers with little or no opportunity to access walk-in pharmacy services. Such opening hours effectively exclude a large working-age demographic. Our extended opening and 24/7 collection directly resolve this inequity.

2.18 The LPC notes another Newcastle pharmacy has a locker and cites “low engagement.” Engagement is location-sensitive. In Lemington - where many juggle shift work, school runs, and bus timetables - out-of-hours pickup is the difference between adherence and delay.

2.19 **5) Innovation and service differentiation**

2.20 Our model is not “standard.” From day one we will deliver:

2.20.1 **Independent prescriber-led access** via PGDs and IP clinics (e.g., period delay, travel, seasonal vaccinations).

2.20.2 **Same-day delivery promise** for housebound/chronically ill patients, countering Lemington’s transport and terrain barriers.

2.20.3 **Substance misuse support**: supervised consumption, naloxone supply, blood-borne virus testing, and needle exchange, reducing stigma and travel burden.

2.20.4 **Digital convenience** for a younger, tech-engaged population, alongside full walk-in access for the digitally excluded.

2.20.5 **Sustainability initiatives**: medication and blister-pack recycling

2.21 In our business plan, we highlighted our intention to expand services as we grow. Since the LPC did not consider our initial offering sufficiently innovative, we have developed the following proposals for the LPC and ICB, outlining services we commit to implement at the earliest opportunity.

2.22 **Innovative Service Proposals for Aster Pharmacy Lemington**

2.23 **1. Opioid Harm Reduction & Substance Misuse Support**

2.24 **Why it's innovative:** Goes beyond standard supervised consumption.

2.25 **What we offer:**

2.25.1 Naloxone supply & training for patients/families.

2.25.2 Blood-borne virus testing (HIV/Hep C) with referral pathways.

2.25.3 Digital check-ins for adherence and harm reduction advice.

2.25.4 Needle exchange.

2.26 **Local angle:** Lemington has a high prevalence of substance misuse, and closures like Boots Cruddas Park reduce accessible support hubs.

2.27 **2. Point-of-Care Testing (POCT) Hub**

2.28 **Why it's innovative:** Brings diagnostics directly to patients in a deprived area with transport barriers.

2.29 **What we offer:**

2.29.1 Strep A, flu, COVID-19 testing with immediate treatment or referral.

2.29.2 HbA1c and cholesterol checks tied into GP pathways.

2.29.3 Hypertension detection aligned with Pharmacy First.

2.30 **Local angle:** Patients in Lemington face difficulty accessing GP services promptly — our pharmacy becomes a front-line diagnostic point.

2.31 **3. Women's & Family Health Service**

2.32 **Why it's innovative:** Holistic service tailored to gaps in local provision.

2.33 **What we offer:**

2.33.1 Contraception service (aligned with new national commissioning).

2.33.2 Menopause support: advice, BP/lipid checks for HRT monitoring.

2.33.3 Maternal health workshops (safe meds in pregnancy, healthy weight in pregnancy, breastfeeding support).

2.34 **Local angle:** Area shows high rates of unplanned pregnancies and barriers to women's health access.

2.35 These are service-mix innovations matched to Lemington's unusual access constraints and demographics. They represent exactly the kind of unforeseen, locally tailored benefit Regulation 18 was designed to capture.

2.36 **6) Alignment with NHS policy and the 10-Year direction of travel**

2.37 Our model follows the NHS objective to move more care into the community, expand Pharmacy First, and make better use of pharmacists' clinical skills. We will deliver the entire commissioned suite on day one, with an IP at the helm—exactly as envisaged by national policy.

2.38 **7) Proper planning, viability, and patient-first priorities**

2.39 The LPC asserts detriment without evidence. On what basis—other than speculation—has it concluded that a second pharmacy in Lemington would destabilise provision? If two pharmacies co-existed in Lemington previously, why is it now assumed that patients would be harmed by restored choice and resilience?

2.40 While we recognise that funding has historically failed to keep up with inflation, it is important to note that the present contract offers the most favourable position in over a decade: a 19.7% uplift to £3.073bn, £617m additional funding, and a £193m margin write-off. Concerns about viability cannot be extrapolated from Lloyds and Boots closures—these were corporate cost-cutting decisions, not failures of local demand. Boots' recent profit announcements confirm this.

2.41 Independents like ourselves are deeply rooted in the community, personally accountable, and service-led rather than volume-dependent. We will operate leanly in a compact 598 sq ft unit with in-house fit-out savings. **Our detailed business plan demonstrates that operating is viable with a modest patient base and organic growth, ensuring financial sustainability without reliance on unrealistic volume assumptions.** Far from being detrimental, having two providers in Lemington enhances system resilience: it prevents over-reliance on a single outlet, ensures surge capacity for winter and vaccination programmes, and secures continuity of supply if one site faces temporary closure.

2.42 **8) Population growth and near-term demand**

2.43 Ongoing residential developments in Lemington will add further pressure to already stretched primary care pathways. Establishing a ready-to-scale site at The Crossway is timely capacity that anticipates, rather than reacts to, demand. PNAs typically lag behind such micro-growth.

2.44 Recent closures in Newcastle—including Boots Elswick and Cruddas Park—have already prompted council-backed efforts to restore provision. On 9 September 2025 Newcastle City Council explicitly welcomed the return of pharmacies to Kenton and Heaton and confirmed that an application for Cruddas Park is under review. Newcastle City Council announced:

2.44.1 *"Bringing pharmacies back to our communities! We're delighted to welcome two new pharmacies to Heaton and Kenton, bringing vital health services back to people's doorsteps''*

2.45 This clearly demonstrates that where pharmacies have closed, there has been strong public demand for their reopening, supported by Newcastle City Council and its Public Health team. My application for Lemington is fully aligned with this policy direction: it is evidence-led, responsive to local need, and consistent with the Council's stated strategy of tackling health inequalities through better access to community pharmacy services.

2.46 This photograph below provides further demonstration of community dissatisfaction arising from the closure of their local pharmacy at 3 The Crossway.

2.47 [Screenshot of reviews provided as follows:]

2.47.1 "*Very efficient and friendly staff. I have many medications on prescription and the dispensing is always correct. It's a pity that Boots are not paying taxes and have been caught severely overcharging the NHS*"

2.47.2 "*Very efficient and helpful it's a great pity one off are local shops are closing Crossways…*"

2.47.3 "*This shop is closed*"

2.48 It is also important to note that the Kenton pharmacy reopening is **only 0.7 miles from Douglas Pharmacy** (where I have previously worked) or 0.7 miles away from pharmacy express Kenton. That geography is flat, and this area is relatively affluent.

2.49 [Maps provided]

2.50 By contrast, Lemington has been identified in the **2022–2025 PNA as one of the 10% most deprived areas in Newcastle**, where residents face multiple barriers to healthcare.

2.51 [Map showing Index of Multiple Deprivation 2019 in Newcastle provided]

2.52 These restorations are evidence-based responses to access gaps. Our Lemington application is entirely consistent with this trajectory and supported by Newcastle City Council.

2.53 **9) Equality & Public Health impact**

2.54 Our siting and service hours specifically address the elderly, disabled, housebound, and digitally excluded. Equality in pharmacy access is not satisfied by plotting dots on a map; it is delivered when the uphill walk is removed, the bus is no longer required, the highway barrier is no longer an obstacle, and evenings and weekends are available. That is exactly what Aster Lemington will do.

2.55 **10) The 2022 Newcastle PNA itself signals growth in the outer west, reinforcing rather than undermining our case**

2.56 In contrast to the LPC's suggestion that no additional provision is required, the **Newcastle Pharmaceutical Needs Assessment (PNA) 2022–2025** itself identifies growth pressures in the **outer west of the city**. The document notes projected **population increases, housing developments, and changing demand patterns** in Lemington and in peripheral wards. It further acknowledges that although overall coverage may appear sufficient at a city-wide level, there remain **"local gaps" in access** where geography, transport, and opening hours constrain real-world equity.

2.57 The PNA explicitly highlights that future planning must take account of these shifts, including the impact of **new residential developments and population growth in outer wards**. This is exactly the context in Lemington: a peripheral ward bounded by major highways, with no in-area GP surgery and with growing demand.

2.58 If the LPC seeks to rely on the PNA's general conclusions, it must also accept the PNA's recognition that outer-west growth creates new access pressures not captured by static drive-time radii. Our application directly addresses that forecast demand, offering the resilience and service differentiation the PNA itself anticipates as necessary.

2.59 **Conclusion**

2.60 The LPC's reliance on aggregate PNA statements overlooks Lemington's local realities—no GP surgery, uphill topography, poor bus connectivity, the A1/A69 highway barrier, and a deprived population with significant digital exclusion.

2.61 Our proposal offers clear unforeseen benefits, consistent with NHS Resolution precedents such as **Cramlington (Case 25785)** and **Watton (Cases 26412–26415)**, where access difficulties, equality impacts, and innovative service models justified approval under Regulation 18.

2.62 Our application will deliver:

2.62.1 Equitable, walk-in access where it is practically absent.

2.62.2 Clinically led Pharmacy First/IP model substituting for missing in-area primary care.

2.62.3 Extended hours plus 24/7 collection aligned to real-world constraints.

2.62.4 Support for vulnerable cohorts (substance misuse, housebound) with same-day delivery.

2.62.5 System resilience and winter capacity without detriment to proper planning.

2.63 We therefore respectfully request that the ICB approve our Regulation 18 application, ensuring that patients—not competition—remain at the centre of planning."

2.64 [Supporting information at Appendix B for Committee]

3 The Decision

The Commissioner considered and decided to grant the application. The decision letter dated 29 January 2026 states:

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

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

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

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

Decision report

3.4 "The PSRC considered the application at its meeting of 27th January 2026.

3.5 All the evidence provided by the applicant, the committee report and the regulations were considered and discussed by the committee. It was agreed that the application should be **granted** on the basis that the relevant Regulations were met:

3.6 In light of the information contained within this report and its appendices, the PCM recommends that this application is granted on the following grounds:

3.6.1 **Regulation 18(1)(a&b)** is met as the application satisfies by demonstrating better practical access to pharmaceutical services in Lemington that is not identified as a need in the PNA, due to neighbouring pharmacies being situated across the river Tyne and other side of major motorways.

3.6.2 **Regulations 18(2)(a&b)** are met as granting the application would not cause significant detriment to the local area services, evidence shows that the existing network does not adequately serve elderly, mobility-impaired, or non-driving residents in Lemington due to the steep gradients, poor transport, and the up-to-20-minute walk to the nearest bus stop.

3.6.3 **Regulation 18(3)** is met as the PCM is satisfied that the application has been fully assessed in accordance with these regulatory clauses.

3.7 The following regulations were deemed not applicable;

3.7.1 **Regulations 18(2)(c-f)** are not applicable

3.7.2 **Regulation 31** is not applicable.

3.7.3 **Regulation 32** is not applicable

3.7.4 **Regulation 40-44** are not applicable

3.7.5 **Regulation 50** is not applicable

3.7.6 **Regulations 65** is applicable

3.7.7 **Regulation 66** is not applicable

3.8 It is therefore recommended that PSRC **Grants** the application on the basis that the criteria under the relevant Regulation (18) for Unforeseen Benefits either have all been met by the Applicant or are not applicable.

3.9 Appeal rights: Lemington Pharmacy"

3.10 [Commissioner's report to the Pharmaceutical Services Regulations Committee ("PSRC") attached at Appendix C for Committee]

3 The Appeal

In a letter dated 11 February 2026 addressed to NHS Resolution, Rushport Advisory LLP, on behalf of Lemington Pharmacy ("the Appellant"), appealed against the Commissioner's decision. The grounds of appeal are:

3.1 "I act for Lemington Pharmacy and have been instructed by my client to submit this appeal against the decision of the Commissioner to grant the above listed application.

3.2 **ICB Decision Rationale**

3.3 The Committee will note that the Commissioner has not provided any intelligible reasons for approving the application. Those reasons that are provided fail to properly identify or apply the correct legal test.

3.4 Specifically, the Commissioner states that:

3.4.1 *Regulation 18(1)(a&b) is met as the application satisfies by demonstrating better practical access to pharmaceutical services in Lemington that is not identified as a need in the PNA, due to neighbouring pharmacies being situated across the river Tyne and other side of major motorways.*

3.5 Firstly, "*better practical access to pharmaceutical services*" is not the correct legal test.

3.6 Regulation 18 states:

18.—(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).

3.7 The test in regulation 18(1)(a) is therefore qualified by the requirement to take into account the matters identified in regulation 18(2).

3.8 The parts of regulation 18(2) that are likely to be deemed relevant in this case are:

(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 undersection 13G of the 2006 Act (duty as to reducing inequalities)),

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

3.9 The Commissioner's decision fails to address the specific legal tests and instead states:

3.9.1 *Regulations 18(2)(a&b) are met as granting the application would not cause significant detriment to the local area services, evidence shows that the existing network does not adequately serve elderly, mobility-impaired, or non-driving residents in Lemington due to the steep gradients, poor transport, and the up-to-20-minute walk to the nearest bus stop.*

3.10 As far as we are aware, there was no "*evidence [that] shows that the existing network does not adequately serve elderly, mobility-impaired, or non-driving residents in Lemington due to the steep gradients, poor transport, and the up-to-20-minute walk to the nearest bus stop*."

3.11 The Applicant has submitted a 44 page document in support of its application. As the Committee will note this is a Business Plan that attempts to show that a new pharmacy would provide high quality services and be viable. Whilst my client does not doubt the sincerity of the Applicant's plans, there is no unmet need in this part of Newcastle.

3.12 My client's pharmacy already trades as Lemington Pharmacy and is located in Lemington. The journey by car from the old Boots site that the Applicant proposes to use as their premises takes 2 minutes as shown below.

3.13 [Map provided]

3.14 On foot the distance is shorter than driving (0.6 miles) and those that choose to walk will have a 13 minute journey that is straightforward as shown below.

3.15 The Commissioner's decision states that patients in Lemington have an "*up-to-20-minute walk to the nearest bus stop*". No evidence is provided to support this statement. Our own research cannot identify any residential part of Lemington that would be a 20 minute walk from a bus stop. The map below shows bus stops in Lemington, which is very well served with a number of bus routes that provide access not only to my client's pharmacy but to other pharmacies.

3.16 [Maps provided]

3.17 **Neighbourhood Statistics**

3.18 The ward of Lemington is shown below. It contained 10,207 residents as of the 2022 census figures.

3.19 [Map provided]

3.20 Typically, car ownership in city areas is much lower than the English average as built up areas tend to have better public transport, with more rural areas typically having very high car ownership.

3.21 In Lemington 29.4% of households do not have access to a car. This is much lower than the average for Newcastle (36.6%) and compares well (for an urban area) with England as a whole (23.5%).

3.22 Given the relatively high level of car ownership and the excellent public transport network it is difficult to reconcile the decision of the Commissioner with the facts.

3.23 The maps above show that my client's pharmacy, Lemington Pharmacy, is easily accessible by to those who live in Lemington. In addition, there are alternate pharmacies that are also easily accessible. The Commissioner does not even consider these alternate pharmacies because they are "*situated across the river Tyne and other side of major motorways*.". The Commissioner

appears to have been unaware that the A roads that are found to the north and east of Lemington have multiple crossing points to allow easy access to neighbouring areas as shown below.

3.24 [Map provided]

3.25 Denton Pharmacy is less than 1 mile from the Applicant's proposed site and the journey on foot takes 22 minutes (Google). The route is mostly flat as the two points lie a similar distance from the Tyne river. There is an overpass across the A1 so no traffic has to be negotiated. In reality most patients would drive or use public transport and the journey by either method is also straightforward.

3.26 The A69 to the north can be crossed using the normal road / foot path network that continues north over the A69 as shown below at 2 places.

3.27 [Maps provided]

3.28 This provides access on foot to the pharmacies north of the A69 should a patient not wish to drive. There is no requirement to cross the A69 road itself.

3.29 Whilst it is correct that, as with any other area beside a river, there is a gradient as one moves away from the river, the opening of a 2nd pharmacy in Lemington does not do away with this gradient and has only a minimal impact on patient journeys.

3.30 A topographic heat map is shown below. It shows that my client's pharmacy and the proposal site are on similar elevations with the steeper gradients further north. Anyone traveling to or from the Applicant's pharmacy from the north or south would still have the same gradient to negotiate, but just for slightly less time.

3.31 There are already pharmacies to the north of the A69 that patients in those areas would access as part of their daily lives without having to concern themselves with gradients in order to access the Applicant's proposed site.

3.32 [Map provided]

3.33 Further, the proposed location of the pharmacy is in a very small parade of shops that would not be a draw for anyone other than those living in the immediate area. The parade is shown below and the Committee will note that the Applicant is proposing to open on a very steep incline. Far from solving any access issues the pharmacy's location would not make it useable by those with mobility issues.

3.34 [Photograph provided]

3.35 My client already provides high quality patient care to the Lemington area and also serves patients from outside of Lemington. My client's pharmacy is located close to the main ASDA supermarket and in a well-used parade of shops that also serves the housing area to the north. My client also provides a free delivery service to patients. Whilst we could understand this application being made if there were no pharmacy in Lemington, the reality is that there is already a

pharmacy in Lemington and many others outside it that provide reasonable choice within the HWB.

3.36 My client dispenses an average of 9,000 prescription items per month. Whilst this is above the English average, it is not a particularly high level of dispensing. The introduction of a second pharmacy so close to my client's pharmacy would result in having 2 unviable pharmacies and simply having to wait for one of them to close (as happened previously with the Boots closure).

3.37 The Applicant's own figures suggest that within 24 months it will be earning over £50,000 per month in "NHS Revenue" (page 43 Applicant's Business Plan). This suggests that the pharmacy would dispense circa 5,000 prescription items per month. Given that these items would likely come from my client's pharmacy it would render my client's pharmacy unviable and it would close. Far from "securing" improvements or better access to pharmaceutical services, this application, if approved, would risk the closure of the existing pharmacy in Lemington within 2 years.

3.38 My client is active in providing services, averaging 55 Pharmacy First and 116 NMS per month.

3.39 Lemington does not contain a doctor's surgery so there is no immediate source of prescriptions for my client, rather patients use my client's pharmacy because it is conveniently located within the area they live and shop in and provides an excellent service to the community.

3.40 Whilst we appreciate that some people may like to see a pharmacy open at the Applicant's proposed site if they live beside the small parade of shops, the same people are unlikely to appreciate that such an opening would likely lead to the closure of the existing Lemington pharmacy operated by my client, or would itself not be viable and close.

3.41 As the map submitted by the Applicant shows (page 19 of their Business Plan), there are numerous other pharmacies within a reasonable distance of the application site that also serve patients from Lemington and can be accessed by public and private transport. As a suburb of Newcastle, Lemington benefits from an excellent public transport system. Bus routes 6,7,22,137, 941 and 991 stop within metres of my client's pharmacy. Route 7 is also the stops [sic] at the bus stop closest to the Applicant's site and the bus journey is only 3 minutes (7 minutes including walking time at each end).

3.42 In summary, the application does not meet the legal test and should be refused.

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

3.44 [Supporting information at Appendix D for Committee]

4 Summary of Representations

After reviewing the paperwork provided by the Commissioner, it was considered that the Commissioner's report to the Pharmaceutical Services Regulations Committee ("PSRC") should be circulated to parties, given that limited reasons had been provided in the Commissioner's decision letter. NHS Resolution therefore applied its discretion

under Schedule 3, Part 3, paragraph 7 and allowed parties the opportunity to make comments on the PSRC report.

This is a summary of representations received on the appeal.

4.1 Rushport Advisory LLP, on behalf of the Appellant

4.1.1 "I act for Lemington Pharmacy and have been instructed by my client to submit this response to your letter and enclosures of 18 March 2026.

4.1.2 The Commissioner's Report provides more detail that was not previously available when this appeal was submitted.

4.1.3 The report confirms what we had previously suspected, namely that the Commissioner accepted statements made by the Applicant as factually correct when they were not correct in fact correct and made its decision based on that incorrect evidence. My client's appeal sets out why the Commissioner was wrong to accept that the public transport and access generally to existing pharmacies was poor.

4.1.4 The Applicant's 14 day comments are addressed below.

4.1.5 The Applicant states;

4.1.5.1 *Uphill barrier: Walking uphill from the competitor Lemington Pharmacy to our site area for ~15 minutes as Lemington pharmacy has suggested is not feasible for many residents, including younger adults with mobility, caring or time constraints. For elderly or disabled patients, a **30-minute return trip—largely uphill on the way back—**is an obvious barrier*

4.1.6 It is not clear why anyone would make the journey suggested by the Applicant. As is clear from our appeal letter, it is the Applicant's site that is situated on a significant gradient and would likely only be used by those who lived in the immediate housing. For those who live across the Lemington area it would be just as easy or even easier to access my client's pharmacy than the Applicant's proposed premises.

4.1.7 The Applicant states;

4.1.7.1 *Poor bus connectivity: Large sections of Lemington have indirect or infrequent services. Many residents simply do not, in practice, "access" pharmacies that are theoretically inside a radius.*

4.1.8 As demonstrated in our letter of appeal, this statement is not correct. No evidence is provided to support the statement yet it was accepted by the Commissioner.

4.1.9 The Applicant states;

4.1.9.1 *A1/A69 highway barrier: Lemington is geographically confined by the A1 and A69, two major arterial highways. These act as*

physical boundaries that severely limit safe or practical access on foot or by bicycle to other pharmacies outside the immediate Lemington area.

4.1.10 As shown in our appeal letter, this statement is not correct. Multiple crossing points exist along the A1 and A69. There is already one pharmacy in Lemington and it is perfectly straightforward to access pharmacies in neighbouring areas by foot, car or public transport.

4.1.11 The Applicant then references a number of previous appeal decisions, namely Cramlington, Kenton, Heaton and Cruddas Park and claims that these decisions in some way support the current application. Having acted for successful parties in the referenced applications it is perfectly clear that they are not in any way supportive of the Applicant's case. In some of the cases quoted, the closure of a pharmacy had left a very significant gap in services with no other nearby local pharmacy for patients to access. In Cramlington a new, large, medical centre was being built away from the town, in other cases there was a need identified within the PNA. None of these are remotely similar to this case.

4.1.12 It is of note that Newcastle HWB carried out extensive consultation and noted comments from patients about the closures of pharmacies in the Newcastle area and then included the need for pharmacies within the PNA where a genuine need arose. Many HWB simply say that there are no needs in their area, but Newcastle HWB undertook a rigorous process and identified several locations where new pharmacies were required. Lemington was not one of those areas.

4.1.13 The Applicant provides a screenshot of what it claims is dissatisfaction with the Boots closure and comments from patients. Only 1 of the 3 comments provided expresses dissatisfaction with the Boots closure.

4.1.14 In respect of innovation, the Applicant has not demonstrated any innovation in the delivery of pharmaceutical services. Instead, the Applicant has simply discussed some existing NHS services that are already provided and claimed that they would provide them in a different or better manner (without any evidence) and then listed some private services that are not relevant to the determination of this appeal.

4.1.15 Our letter of appeal provides additional information that shows why the Applicant's claims are not correct.

4.1.16 The Applicant also states;

4.1.16.1 *Lemington has no GP surgery in-area. This is highly unusual for a residential district of this size and creates a primary care vacuum. Aster Lemington will implement a Neighbourhood Health model to fill this gap from day one:*

4.1.17 Whilst it is correct that there is no GP practice in Lemington, what this means is that patients are not coming in to Lemington to access GP services and are not seeking a pharmacy after a visit to a GP in Lemington, because there is no GP practice. The Applicant claims this

creates a “primary care vacuum”. This claim is obviously false. My client provides primary care services in Lemington from their pharmacy. There is no “vacuum”.

4.1.18 The Applicant claims that there [sic] proposed opening hours will be a major benefit for patients in Lemington, but provides no evidence that there is a demand for these hours or that they would be required.

4.1.19 The Applicant states;

> 4.1.19.1 *The LPC asserts detriment without evidence. On what basis—other than speculation—has it concluded that a second pharmacy in Lemington would destabilise provision? If two pharmacies co-existed in Lemington previously, why is it now assumed that patients would be harmed by restored choice and resilience?*

4.1.20 The Applicant has missed the point being made by both my client and the LPC. The Boots pharmacy closed because it was not viable. One pharmacy is sufficient to serve Lemington and it already exists. By opening another pharmacy there is a real risk of either my client having to close its pharmacy or the new pharmacy failing and closing. The proposal does not “secure” any improvements or better access. There is simply no need for an additional pharmacy in Lemington which has no GP surgery and is already served by a pharmacy.

4.1.21 The Applicant states;

> 4.1.21.1 *Ongoing residential developments in Lemington will add further pressure to already stretched primary care pathways.*

4.1.22 We note that the Applicant does not provide any evidence that there are significant ongoing residential developments or that “primary care pathways” are “stretched”. It is not even clear what the Applicant means with this statement. Lemington is an urban built up area and it is not clear where the housing developments the Applicant mentions would even be.

4.1.23 The Applicant states;

> 4.1.23.1 *Our siting and service hours specifically address the elderly, disabled, housebound, and digitally excluded.*

4.1.24 Again, this is simply incorrect. The elderly and disabled are highly unlikely to access a pharmacy situated on a steep hill. The Applicant has proposed to open in perhaps the most difficult place for mobility impaired patients to access. Housebound patients, by definition, would also not access the Applicant’s proposed premises. The Applicant mentions the “digitally excluded” but provides no information about this group of people or why opening a pharmacy on a hill would help them.

4.1.25 In summary, the application does not meet the legal test and should be refused.

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

4.2 The Applicant

4.2.1 "**1. INTRODUCTION**

4.2.2 I make this response as the Applicant and on behalf of Aster Health Ltd in reply to the appeal against the decision to grant my application for inclusion in the pharmaceutical list at 3 The Crossway, Newcastle Upon Tyne, NE15 7LA.

4.2.3 I respectfully submit that the appeal should be dismissed. The Commissioner was entitled, on the material before it, to conclude that granting the application would secure better access to pharmaceutical services within the meaning of Regulation 18.

4.2.4 The PSRC accepted that, although there are 8 pharmacies within 1.4 miles, accessibility remains poor for non-drivers because of steep gradients, surrounding motorways and poor transport links. It also accepted that there are no pharmacies open until 19:00 within 1.4 miles and none open on Saturdays within 0.4 miles.

4.2.5 The Appellant's grounds rely heavily on a narrow and overly theoretical analysis of distance, road layout and transport availability, theoretical mapping, selected travel calculations and criticism of wording, while giving insufficient weight to the actual findings made by the PSRC about practical access, protected groups, later opening, Saturday access and local inequality. It is also failing to engage sufficiently with the practical realities of patient access, the needs of vulnerable residents, and the value of additional pharmaceutical capacity in a pressured healthcare environment.

4.2.6 Regulation 18 requires the decision-maker to consider whether granting the application would secure improvements, or better access, to pharmaceutical services not identified in the relevant PNA.

4.2.7 The Applicant accepts that the decision-maker must have regard to the matters in Regulation 18(2). However, the question for the appeal body is not whether the Commissioner used the exact wording preferred by the Appellant, but whether the Commissioner's decision was a reasonable one having regard to the statutory framework and the evidence before it.

4.2.8 The Appellant argues that the Commissioner failed to apply the correct test because the decision referred to "better practical access" rather than repeating the statutory wording exactly. A decision is not unlawful merely because it does not recite each statutory provision verbatim. That criticism is misplaced. Whether access is "better" is inherently a practical question. It requires consideration of whether residents can realistically and conveniently use services, not merely whether services exist somewhere within a measurable radius.

4.2.9 The Appellant's case proceeds on the basis that because there is already a pharmacy in Lemington, because other pharmacies can be

identified on a map, because some journeys are said to be short, and because bus routes exist, no better access can be secured.

4.2.10 That approach is flawed. Better access is not limited to situations where there is an absolute absence of pharmaceutical provision. Nor is adequacy determined solely by straight-line proximity, theoretical walking times, or the mere existence of bus routes.

4.2.11 Access must be considered in practical, real-world terms. That includes considering the position of patients who:

4.2.11.1 do not drive,

4.2.11.2 are elderly,

4.2.11.3 have mobility limitations,

4.2.11.4 have long-term conditions,

4.2.11.5 require frequent or repeated access to medicines and advice,

4.2.11.6 rely on public transport,

4.2.11.7 face socioeconomic barriers,

4.2.11.8 or require continuity and convenience in accessing pharmaceutical care.

4.2.12 Notwithstanding the surrounding pharmacies, the existing configuration does not adequately serve elderly, mobility-impaired or non-driving residents and the application would confer significant benefits not foreseen in the PNA.

4.2.13 In substance, the PSRC did address the Regulation 18(2) matters. It considered reasonable choice, inequality and protected groups, innovative delivery, and significant unforeseen benefits. It expressly found improved access for disabled residents, older people, pregnant women, people experiencing addiction and digitally excluded residents.

4.2.14 **REGULATION 31**

4.2.15 Regulation 31 does not arise on the facts of this case. The proposed premises are not the same as, or adjacent to, any existing listed chemist premises, and the application is for a new grant rather than the continuation or relocation of existing services.

4.2.16 **3. RESPONSE TO THIRD-PARTY APPEAL RIGHTS**

4.2.17 **Schedule 2, paragraph 30(3) – NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013**

4.2.18 **Legal framework**

4.2.19 Third-party appeal rights arise only where **all three limbs of paragraph 30(3)** are satisfied.

4.2.20 The appellant has failed to demonstrate any **real, material, or non-trivial adverse effect** arising from the grant of the application.

4.2.21 In particular, the appellant has not evidenced:

4.2.21.1 Any **quantified patient displacement**

4.2.21.2 Any **impact on the provision of pharmaceutical services**

4.2.21.3 Any **destabilisation of commissioned or enhanced services**

4.2.21.4 Any **operational consequences** (staffing levels, opening hours, service withdrawal)

4.2.21.5 Any **public health or access detriment**

4.2.22 The submissions instead rely on **generalised assertions of competition and loss of trade and does not engage with why the grant was wrong under the regulations.**

4.2.23 The ICB North East and Cumbria expressly considered the position of existing contractors and was **not satisfied** that the appellant would be significantly affected by the grant of the application.

4.2.24 No new evidence has been advanced that could rationally undermine that conclusion. By contrast, the appellant has provided no data, modelling, or service-specific analysis capable of meeting the paragraph 30(3)(c) threshold. The appellant's submissions amount to no more than an assertion of potential competitive impact without evidence, coupled with reliance on the geographical proximity between its pharmacy and the proposed premises, neither of which establishes any proper basis for overturning the grant of the application.

4.2.25 Therefore the requirements of paragraph 30(3), and in particular paragraph 30(3)(c), are not met. The Secretary of State is therefore respectfully invited to determine that the appellant does **not** have third-party appeal rights.

4.2.26 In the alternative, the appeal contains no valid or reasonable grounds and should be dismissed as frivolous and **misconceived**.

4.2.27 **4. REGULATION 18**

4.2.28 **Regulation 18(2)(a): No significant detriment**

4.2.29 Granting the application would not cause significant detriment to proper planning in respect of pharmaceutical services in the HWB area, nor to the arrangements currently in place for the provision of pharmaceutical services.

4.2.30 The PSRC expressly reached that conclusion. It recorded that Regulation 18(2)(a) was not satisfied as a ground for refusal and found that granting the application would not cause significant detriment to proper planning or to existing arrangements.

4.2.31 The Appellant's assertions of commercial harm and future unviability are speculative. They depend on assumptions about prescription migration, patient behaviour, revenue levels, and business response. Regulation 18 is not concerned with protecting incumbent contractors from competition as such.

4.2.32 Moreover, the fact that the existing pharmacy dispenses a substantial volume of items suggests strong local pharmaceutical demand. It does not establish that additional provision would necessarily be harmful. The PSRC was entitled to conclude that the public interest favoured granting the application.

4.2.33 My position is that the proposed pharmacy adds resilience, convenience, and local capacity rather than undermining proper planning.

4.2.34 **Regulation 18(2)(b): Significant unforeseen benefits**

4.2.35 Notwithstanding that the improvements or better access were not included in the relevant PNA, granting the application would confer significant benefits on persons in the area that were not foreseen when the PNA was published.

4.2.36 My case under this heading is divided into:

4.2.36.1 reasonable choice;

4.2.36.2 protected characteristics / difficult-to-access needs;

4.2.36.3 innovative approaches to delivery of pharmaceutical services.

4.2.37 **Reasonable choice**

4.2.38 The appeal proceeds on the basis that because there is already a pharmacy in Lemington, because some journeys appear short by car or manageable on paper, and because some bus routes exist, no better access can be secured. That approach is flawed.

4.2.39 Better access is not confined to places with no existing pharmacy at all. Nor is adequacy determined solely by straight-line proximity, a single Google journey estimate, or the existence of bus routes.

4.2.40 The PSRC accepted that there are 8 pharmacies within 1.4 miles, but still found accessibility poor for non-drivers because of poor transport links, steep gradients and surrounding motorways. It also found that there are no pharmacies open until 19:00 within 1.4 miles and no pharmacies open on Saturdays within 0.4 miles. Those are concrete, locality-specific findings that support the conclusion that the application offers reasonable additional choice in practice.

4.2.41 My 14-day comments explained that PNA-level conclusions can generalise away “last mile” barriers in a hilly ward with poor transport, major highway barriers and no in-area GP surgery. I continue to rely on that point.

4.2.42 Pharmacy access must also be assessed cumulatively. Patients do not access pharmacy services only once. Many require repeated visits for dispensing, urgent medicine queries, Pharmacy First, contraception, smoking cessation, supervised consumption, advice and support. A route that may appear manageable in isolation can become a real burden when repeated regularly.

4.2.43 **Protected characteristics / difficult-to-access needs**

4.2.44 One of the strongest aspects of the PSRC’s reasoning is its focus on groups whose needs are difficult to meet under existing arrangements.

4.2.45 The PSRC specifically found that the application improves access for:

4.2.45.1 disabled residents;

4.2.45.2 older people;

4.2.45.3 pregnant women;

4.2.45.4 people experiencing addiction;

4.2.45.5 digitally excluded residents.

4.2.46 That finding should be given substantial weight. The Appellant’s analysis tends to treat access as though all residents are equally mobile, equally able to drive, equally digitally enabled, and equally able to manage a single planned journey. That is not a sufficient basis for assessing access to an essential healthcare service.

4.2.47 In my 14-day comments, I explained that the uphill return journey from Lemington Pharmacy to the proposed site area is a real barrier for elderly, disabled, pregnant or long-term-condition patients; that bus connectivity is poor in practice; and that the A1/A69 act as real physical barriers to practical access.

4.2.48 As a pharmacist, and from my own practical experience, I say that pharmacy access is not experienced as a single map-based journey. It is experienced through repeated need, urgency, convenience, confidence and the ability to obtain face-to-face help when problems arise. That practical reality matters especially for vulnerable patients.

4.2.49 **Innovative approaches to delivery of pharmaceutical services**

4.2.50 My case on innovation is focused on the delivery of pharmaceutical services themselves, including:

4.2.50.1 extended core opening hours;

4.2.50.2 extended Saturday opening;

4.2.50.3 24/7 prescription collection access;

4.2.50.4 improved face-to-face walk-in access;

4.2.50.5 same-day delivery support for patients whose transport or health circumstances make access harder;

4.2.50.6 a more accessible and responsive service model for underserved residents.

4.2.51 The PSRC accepted that the proposed advanced services are above and beyond what neighbouring pharmacies provide, and that the application offers operational innovation and improved accessibility beyond what is currently available.

4.2.52 **5. RESPONSE TO SPECIFIC GROUNDS OF APPEAL**

4.2.53 **5.1 Alleged failure to apply the correct legal test**

4.2.54 The Appellant argues that the Commissioner failed to identify or apply the correct legal test because the decision refers to “better practical access” rather than tracking the exact language of Regulation 18 and by failing properly to address Regulation 18(2). That argument gives undue weight to semantics and insufficient weight to substance. The phrase “better practical access” is not inconsistent with Regulation 18. On the contrary, it reflects the very question the regulation requires the Commissioner to address: whether granting the application would secure better access to pharmaceutical services.

4.2.55 The reference to practical access is entirely appropriate. Access to healthcare services is necessarily a practical concept. It involves asking whether people can realistically and conveniently use those services, not merely whether they exist somewhere within a measurable radius. A decision-maker considering access must look at how services are actually used by patients in real life.

4.2.56 The Appellant further contends that the Commissioner failed to address the factors in Regulation 18(2). That is not accepted. The decision expressly refers to the position of elderly, mobility-impaired and non-driving residents and to barriers arising from transport and topography. Those are plainly matters going to accessibility, inequality, and real choice in pharmaceutical provision. It expressly addressed whether granting the application would cause significant detriment, whether there was reasonable choice, whether people with protected characteristics faced difficulty accessing services, and whether the proposal offered innovative approaches and significant unforeseen benefits.

4.2.57 This ground is therefore really a complaint about wording rather than substance.

4.2.58 Even if the decision could have been more elaborately expressed, that does not establish that the Commissioner failed to have regard to the correct matters. The appeal body is concerned with whether the decision was one that could reasonably be reached, not with imposing an unduly rigid drafting standard.

4.2.59 The Commissioner's reasoning sufficiently identified the central basis for approval: better practical access for local residents whose needs were not adequately met by the existing configuration of provision.

4.2.60 **5.2 Alleged lack of evidence for access difficulties**

4.2.61 The Appellant contends there was no evidence to support the finding that the existing network does not adequately serve elderly, mobility-impaired or non-driving residents because of steep gradients, poor transport and walking distance to bus stops.

4.2.62 That submission is too absolute and should be rejected.

4.2.63 Evidence for most of these parameters was previously submitted and my evidence bundle now includes further plans, photographs, route measurements, and public transport evidence to support those practical access points directly.

4.2.64 First, the Commissioner was entitled to consider not only formal mapping material but also the overall factual context of the area, including the built environment, local geography, transport dependency, and the reasonable inferences arising from those matters.

4.2.65 Second, the Appellant's own evidence does not disprove practical access issues. It focuses on selected route illustrations and theoretical journey calculations. That is not the same as demonstrating that access is straightforward in practice for all relevant patient groups.

4.2.66 Third, the Appellant's reliance on car travel is of limited value. A journey that may be simple by car is not necessarily accessible to residents who do not drive, cannot drive, or do not have regular access to a vehicle.

4.2.67 The Appellant states that 29.4% of households do not have access to a car. Far from assisting the appeal, that is a significant proportion of households. Nearly one-third of households without a car remains a substantial proportion of residents likely to depend on walking or public transport. The Commissioner was entitled to treat that as a reason to focus on practical local access, not to dismiss access concerns. It demonstrates that a substantial segment of the local population is dependent on walking or public transport to access services.

4.2.68 I accept that the appeal has focused heavily on the wording about "up to 20 minutes to reach a bus stop." But the decision did not stand or fall on that single phrase. The broader findings were that Lemington has poor transport connectivity, steep gradients, and practical accessibility problems for non-drivers, especially where residents need repeated pharmacy access. Those findings were expressly recorded by the PSRC.

4.2.69 Fourth, the existence of bus routes is not the same as effective public transport access. Accessibility depends on matters such as walking distance to stops, frequency, reliability, waiting times, return journeys, service span, and the suitability of those arrangements for repeated pharmacy use by vulnerable patients. My 14-day comments explained that large sections of Lemington have indirect or infrequent bus services, that headline drive-time rings do not reflect reliance on walking, and that the A1 and A69 act as real physical barriers to practical access on foot or by bicycle.

4.2.70 A patient requiring regular prescription collection, repeat medication support, advice, or supervised services experiences access differently from a healthy individual making a single planned journey with no urgency or physical limitation. The Appellant's own evidence does not disprove those practical difficulties. It shows only that some routes can be plotted and that some journeys can be made by car or bus. That is not the same as showing that access is straightforward in practice for all patient groups.

4.2.71 The Commissioner was entitled to recognise that practical barriers may exist even where services appear reachable on paper.

4.2.72 **5.3 Walking distance and proximity to existing pharmacies**

4.2.73 The Appellant relies heavily on the claim that Lemington Pharmacy is about 0.6 miles away, around a 13-minute walk, and only a 2-minute drive from the proposed site. That point is overstated. A 13-minute walk may appear modest in abstract terms, but the issue is not whether an able-bodied person can complete that journey once. The issue is whether the existing pattern of provision secures reasonable and convenient access for the local population in all its diversity.

4.2.74 My 14-day comments explained that the journey from Lemington Pharmacy to the proposed site involves a climb of about 40 metres over 0.6 miles, and that a return trip of that kind is an obvious barrier for many elderly, disabled, pregnant or long-term-condition patients. For elderly residents, those with reduced mobility, those with caring responsibilities, those collecting medicines for others, or those making repeated journeys, even relatively short distances can represent a meaningful burden.

4.2.75 The appeal panel is invited to reject any suggestion that a pharmacy on the far side of a highway provides adequate alternative access where the route is interrupted by a substantial road barrier and the available crossing is via an overpass with stairs. Such a route is plainly unsuitable for wheelchair users and presents significant difficulty for many other vulnerable groups. It therefore cannot be relied upon as a realistic or reasonable source of pharmaceutical access for the local population.

4.2.76 [Photographs provided]

4.2.77 Pharmacy access must also be assessed cumulatively. The Appellant's submissions repeatedly treat pharmacy access as if it were a one-off retail trip. That is not an adequate basis for analysing access to an

essential healthcare service. Patients do not access pharmacy services only once. Many require repeated visits for dispensing, urgent queries, public health services, supervised consumption, advice and support. A journey that may appear manageable in isolation can become a real burden when repeated regularly The burden of repeated travel is materially different from a single journey estimate shown on a map. My earlier comments made that point directly from practical pharmacy experience.

4.2.78 [Map provided]

4.2.79 The pharmacies that are available on the other sides of the highways are not an easy task to reach as suggested and also involve reaching overpasses with stairs which are prohibitive to people with disability.

4.2.80 Moreover, Google Maps walking-time estimates appear to be based on a standard walking pace of around 3 mph and do not clearly adjust for slope, meaning actual journey times may be longer for residents facing steep gradients, mobility limitations, people with children and prams, pregnant women, older people, people carrying bags or prescriptions or walking in poor weather.

4.2.81 The accessibility burden on Lemington residents is likely to be worsened by local weather conditions. While Newcastle upon Tyne is not among the wettest or most climatically extreme parts of the UK overall, the North East is generally cooler than many parts of England and is more exposed to coastal and northerly winds. The Met Office notes that, in low-lying areas, mean annual temperatures in the region are around 8.5°C to 10°C, and that coastal and low-lying areas typically experience around 20 days of snow falling each year. In practical terms, this means that patients who already face lengthy journeys involving walking, waiting outdoors, or multiple bus changes may be disproportionately affected during cold, windy, or wintry conditions. This is particularly relevant for older people, disabled patients, parents with young children, and those collecting medicines when unwell, for whom even a journey that appears manageable in fair weather may become significantly harder in adverse conditions.

4.2.82 The Commissioner was entitled to conclude that an additional pharmacy in Lemington would improve convenience and access and reduce travel burden for residents, even if some existing pharmacies are not far away in purely geographic terms.

4.2.83 **5.4 Public transport**

4.2.84 The Appellant contends that Lemington is “very well served” by public transport and lists a number of bus stops. That submission is incorrect and insufficient to displace the Commissioner’s conclusion.

4.2.85 Public transport availability must be assessed functionally, not merely by listing route numbers. The mere presence of services does not answer:

4.2.85.1 how frequently they run,

4.2.85.2 how reliable they are,

4.2.85.3 whether they are convenient for medication collection,

4.2.85.4 whether they involve waiting or interchange,

4.2.85.5 whether they operate at appropriate times,

4.2.85.6 and whether they are suitable for elderly or vulnerable users.

4.2.86 For patients with mobility issues, long-term conditions, financial constraints, or urgent medicine needs, public transport can remain a real barrier even where routes exist. Even where a journey may appear manageable in isolation, the cumulative burden of repeated travel can materially affect access, particularly for vulnerable or non-driving residents.

4.2.87 Additionally, the Appellant's submission itself recognises that a notable proportion of households lack access to private transport. That strengthens, rather than weakens, the importance of improving local healthcare access within the immediate community.

4.2.88 It may be said in response that Lemington is "served" by bus routes and therefore residents are able to access pharmacy services. That is too simplistic. The correct question is not whether buses exist in a general sense, but whether local residents can access pharmacy services **easily, reliably and without disproportionate difficulty in practice**. On the evidence, that threshold is not met.

4.2.89 As shown in the picture evidence below, not only is the network dispersed, but several bus stops are not wheelchair accessible or are placed on narrow pavements, making access for disabled people practically impossible.

4.2.90 [Photographs provided]

4.2.91 Lemington's bus network is **dispersed across several separate corridors rather than centred on one simple, easily usable local route structure**. The locality page for Lemington shows stops spread across Combe Drive, Hospital Lane, Dumpling Hall, Hexham Road/Lemington Road Ends and other points, with different routes serving different parts of the estate. This means that bus access is highly dependent on which part of Lemington a resident lives in, and whether the nearest corridor is one of the better-served ones.

4.2.92 The timetable evidence also shows that service levels are **uneven rather than consistently convenient**. The strongest route is the 39, which from Kirkston Avenue-Dene Avenue runs very frequently through the daytime, with departures such as 07:05, 07:17, 07:30, 07:42 and 07:54. However, that only assists residents close to that corridor.

4.2.93 Other routes are materially weaker. The 7 at the same Lemington corridor is far less frequent and much more irregular, with departures shown at 05:32, 06:17, 07:09, 08:18, 09:34 and then broadly hourly for

much of the day. That is not a turn-up-and-go service, and it is plainly less convenient for residents needing flexible access to healthcare.

4.2.94 Likewise, the 10 from Lemington Road Ends, while usable, is still corridor-specific and variable rather than simple and uniform. Its departures include 06:49, 07:22, 07:50, 08:22, 08:52, 09:12 and 09:33, before thinning later in the day. Residents who do not live close to Lemington Road Ends must first reach that edge-of-area stop cluster before they can benefit from those services.

4.2.95 Evidence from bus stop accessibility analysis and Google Maps journey planning suggests that some residents, particularly those living in the northern parts of Lemington, face significant difficulties accessing existing pharmacy corridors. These routes are not straightforward to navigate by public transport, often requiring multiple bus changes. As a result, residents may incur the cost of up to four separate fares for a return journey, with total travel times exceeding an hour.

4.2.96 In the particular journey depicted below, you can note that at 11:30 a.m. a resident in the northern part of Lemington might have to walk up to 25 minutes to reach a bus stop for this particular trip or wait for half an hour to leave from a closer bus stop (Lemington Road) which is not wheelchair accessible.

4.2.97 [Maps/journey details provided]

4.2.98 The Lemington Road/Riverside Way stop also illustrates the narrowness of provision on that corridor. The live/scheduled board there shows repeated 22 services only, rather than a wide range of high-frequency options. Longer-distance services do not solve the problem. The 684 from West Denton/Lemington Road Ends is only about hourly, with departures such as 06:32, 07:34, 08:34 and 09:48, which does not amount to easy spontaneous local access for healthcare.

4.2.99 Accordingly, the issue is **not absolute absence of buses**, but that the pattern of service is **patchy, corridor-dependent and unequal in practical usefulness**. A resident living near the 39 may have a better experience than a resident whose nearest practical option is the 7, the 22 corridor, or the peripheral Lemington Road Ends cluster. That is not what easy and equitable access looks like.

4.2.100 More importantly, the newer 2025–2028 Pharmaceutical Needs Assessment expressly recognises that **public transport availability does not necessarily mean easy access**. It states that in some areas of Newcastle, bus routes do not directly serve alternative pharmacy locations, requiring extra walking or multiple transfers, and that limited off-peak frequency can create difficulties for elderly and disabled residents. That reasoning is directly applicable here. It shows that the proper test is not whether a bus route exists on paper, but whether pharmacy services can be reached without additional burdens that fall particularly heavily on vulnerable groups.

4.2.101 That is especially important in a place such as Lemington, where residents may include people who are elderly, disabled, pregnant, caring for children, managing long-term illness, collecting urgent medication, or living without access to a private car. For such residents, a fragmented bus network, additional walking to the “right” corridor, irregular frequency, and long waits are not minor inconveniences. They are real barriers to access.

4.2.102 Regional transport policy also supports the proposition that current provision is not yet good enough. The North East Bus Service Improvement Plan says the region’s aim is to make buses **faster, more affordable and more attractive**, and that the network needs to “work for everyone”. Those stated objectives implicitly recognise that the network does not yet consistently achieve that standard.

4.2.103 Similarly, the North East Combined Authority’s March 2025 report on bus service support states that BSIP funding is being used to **maintain 74 existing routes, enhance 41 routes and provide 27 new routes**. The same report also warns that increasing operator costs may render more of the network commercially unviable and at risk of cuts without support. That is powerful evidence that the bus network cannot simply be assumed to provide stable, easy access for all communities.

4.2.104 Taken together, the evidence supports the following conclusion:

4.2.105 **Although buses do operate in and around Lemington, the locality is not served in a way that provides straightforward, reliable and equitable access to pharmacy services. Bus provision is fragmented across different corridors, service frequencies are uneven, some routes are sparse or irregular, and effective use of the network depends heavily on where within Lemington a resident lives. For vulnerable residents in particular, these factors create genuine barriers to accessing pharmacy services with ease.**

4.2.106 My evidence demonstrates that theoretical route availability is not the same as practical accessibility for repeated medicine collection and face-to-face pharmaceutical care. The Commissioner was reasonably entitled to conclude that better local provision would improve access notwithstanding the presence of bus services.

4.2.107 **5.5 Topography and site-specific criticism**

4.2.108 The Appellant argues that the proposed site is on a steep incline and therefore would not improve access. That argument should be treated with caution. Topography is not a one-sided issue. The existence of gradients within the locality does not establish that the proposed site offers no access benefit. On the contrary, the proposed premises are wheelchair accessible, whereas the appellant's premises are not.

4.2.109 [Photographs provided]

4.2.110 The relevant comparison is not whether every route to the proposed site is flat, but whether the additional pharmacy would improve the practical pattern of local provision for residents taken as a whole.

4.2.111 [Photograph provided]

4.2.112 Even where some residents may still encounter gradients, an additional pharmacy located within the neighbourhood can still reduce overall travel distance, improve convenience, and increase choice.

4.2.113 It was open to the Commissioner to assess the physical characteristics of the area in a broad and practical way. A site-specific criticism of one feature of the route does not displace the broader finding that more local provision would improve access.

4.2.114 Nor should the appeal body lose sight of the fact that access is experienced differently by different patient groups. A location that is materially more convenient for some residents may still amount to better access, even if it does not eliminate every difficulty for every resident.

4.2.115 **5.6 Whether the benefits are truly unforeseen**

4.2.116 The Appellant contends, in substance, that the services and benefits relied on are not unforeseen because existing pharmacies already provide core pharmaceutical services and certain additional services. That analysis is too narrow. A benefit may be unforeseen where the existing pattern of provision does not secure practical and equitable access for the local population, even if similar services can theoretically be obtained elsewhere.

4.2.117 The PSRC made concrete findings that independently support the conclusion that the benefits were unforeseen in practice. It found no pharmacies with opening hours until 19:00 within 1.4 miles and no pharmacies open on Saturdays within 0.4 miles. It also accepted the benefits of 24/7 collection access, extended opening, local face-to-face support and services above and beyond neighbouring pharmacies. Those were material considerations going to real access and convenience.

4.2.118 My 14-day comments also identified the absence of an in-area GP surgery, poor local transport, the A1/A69 barrier, and the deprivation and digital exclusion affecting Lemington residents. Those are locality-specific realities that support a Regulation 18 case even where the PNA takes a broader view.

4.2.119 The Appellant's attempt to reduce the question to abstract service equivalence does not engage with the practical difference between services existing somewhere in the wider area and those being conveniently accessible to local residents in their day-to-day lives.

4.2.120 The local configuration of Lemington matters. In my submission, the Commissioner was entitled to consider the uphill topography, barriers created by the A1 and A69, the practical reliance on walking and bus

travel, and the absence of an in-area GP surgery as part of the real-world access picture.

4.2.121 **5.7 Commercial harm and viability**

4.2.122 It is argued that approval could make both pharmacies unviable and lead to closure of the existing pharmacy. This is not a strong ground of appeal. The Appellant again advances, without evidence or reference, the unsupported assumption that the Boots store at 3 the Crossway closure were the result of unviability and infers that something similar would happen today.. This is inconsistent with Boots' own stated rationale. Boots' 2020 mass closure and restructuring decisions were publicly presented as a response to the significant commercial impact of COVID-19, including dramatically reduced store footfall and severely affected retail sales, rather than as evidence that any individual branch had been shown to be unviable.

4.2.123 The statutory test under Regulation 18 is concerned with improvements or better access to pharmaceutical services, not with protecting existing contractors from competition or preserving a particular commercial position. Assertions that the Appellant may become unviable are speculative. They depend on assumptions about patient behaviour, prescription migration, future revenue, and business response. No certainty is established.

4.2.124 The factors set out previously in this document strongly suggest that additional pharmaceutical capacity in Lemington would not merely be desirable, but necessary to support the area's resilience as demand grows. With ongoing and anticipated population growth in Lemington, pressure on existing healthcare infrastructure can reasonably be expected to increase.

4.2.125 The appellant's case also understates the extent of current and emerging need in Lemington. Newcastle City Council's updated **Housing and Economic Land Availability Assessment (HELAA)** page was updated on **9 September 2025**, and its five-year housing land supply appendix identifies **Newburn Riverside AOC1 in Lemington** as a major residential site with an **estimated housing capacity of 1,000 dwellings**, of which **150 dwellings are projected within the next five years**.

4.2.126 That growth matters because it further weakens any suggestion that existing pharmaceutical provision can adequately serve the ward as a whole. If official council evidence identifies substantial additional housing within Lemington, then population based assumptions derived from earlier census figures are likely already to understate current and near-future demand for local pharmacy services. The panel is therefore invited to treat the local population as one that is increasing, rather than static. Housing growth is a relevant factor in assessing present and future demand for pharmaceutical services in Lemington. While I do not place significant weight on the disputed Newburn Riverside proposal, Newcastle City Council's own current material indicates that the locality is not static. In its August 2025 property

brochure for Haig Crescent, Lemington, the Council describes the area as a “highly residential area” with “new build housing estates being currently developed in close proximity.” In addition, the Council’s September 2025 Residential and Mixed Use Schedule continues to identify residential development capacity within the Lemington area itself. Taken together, these official sources support the proposition that Lemington and its immediate surroundings are experiencing ongoing residential change and that assumptions based solely on older population figures are likely to understate present and near-future demand for local pharmacy services.

4.2.127 This is particularly significant given that Lemington’s existing pharmacy premises are relatively small, which may limit their ability to absorb higher prescription volumes, expanding service demand, walk-in consultations, and seasonal pressures without affecting waiting times, privacy, workflow, or service flexibility.

4.2.128 [Reviews provided]

4.2.129 Increased capacity would therefore improve the resilience of local healthcare services by creating greater headroom within the system, reducing the risk of bottlenecks, and helping to ensure that residents can continue to access timely pharmaceutical care as the community expands.

4.2.130 In any event, commercial impact on an existing pharmacy does not outweigh genuine patient benefit where better access would be secured.

4.2.131 If the Appellant’s pharmacy is currently dispensing around 9,000 items per month, that suggests a substantial level of pharmaceutical demand in the locality. That level of activity is at least consistent with the Commissioner’s conclusion that additional capacity may deliver public benefit.

4.2.132 The Appellant’s attempt to recast high demand as a reason to prevent additional provision should be approached with caution. The Appellant’s concerns as to lost prescriptions and business viability are understandable from a commercial perspective, but they are not determinative under Regulation 18. The relevant question is whether better access for patients would be secured, not whether an incumbent contractor would prefer to avoid the effects of additional local provision.

4.2.133 The Committee should place limited weight on speculative commercial harm. The PSRC expressly found that granting the application would not cause significant detriment to proper planning of pharmaceutical services or to the arrangements in place for their provision. That is the relevant finding under appeal.

4.2.134 In any event, my previous comments explained that two providers can enhance system resilience, surge capacity and continuity of supply rather than undermine it.

4.2.135 **5.8 Existing quality of service and delivery offer**

4.2.136 I do not dispute that the Appellant provides valued services to local patients and a delivery service. This response is not a criticism of the Appellant's professionalism or standards of care.

4.2.137 However, the fact that an existing pharmacy provides a good service does not mean better access cannot still be secured by additional provision.

4.2.138 Nor does delivery answer the whole question. Delivery can be valuable, but it is not a complete substitute for in-person access to urgent medicines advice, over-the-counter support, face-to-face consultations, public health interventions and same-day problem solving. My earlier comments explained this from direct practical experience of how patients actually use pharmacy services.

4.2.139 The Commissioner was entitled to conclude that additional bricks-and-mortar provision would improve access notwithstanding the current offer.

4.2.140 **6. PROTECTED GROUPS, INEQUALITY AND PUBLIC INTEREST**

4.2.141 One of the strongest aspects of the decision is its focus on groups whose needs are difficult to meet under existing arrangements. The PSRC specifically identified disabled residents, older people, pregnant women, people experiencing addiction and digitally excluded residents as groups for whom the application improves access.

4.2.142 Older residents are a material part of the population relevant to this application. While I do not overstate the position by suggesting that Lemington alone has the highest elderly population in the city, Lemington forms part of Newcastle's Outer West locality, and Newcastle's Pharmaceutical Needs Assessment 2025–2028 states that the Outer West has the largest population of residents aged 65 years and over. That is important because older residents are more likely to depend on convenient, local, and physically accessible pharmacy services. This is reinforced by wider Newcastle evidence showing that the city's population aged 65 and over is projected to increase significantly over time. In those circumstances, the need for easily accessible, wheelchair-accessible, centrally located pharmaceutical services in Lemington should be assessed with the needs of older residents firmly in mind.

4.2.143 [Graph provided]

4.2.144 The Appellant's analysis does not adequately engage with those groups. It tends to treat access as though all residents are equally mobile, equally able to drive, equally digitally enabled, and equally able to manage a single planned journey. That is not a sufficient basis for assessing access to an essential healthcare service.

4.2.145 The case for improved local access is therefore a legitimate and important one in a deprived area where significant numbers of residents face transport, mobility and digital barriers.

4.2.146 [Map provided]

4.2.147 There is also clear official evidence that Lemington includes a population with significant additional needs. Newcastle's 2026 technical report on attendance and vulnerability states that, between **2021/22 and 2023/24**, ward-level mental health referral rates among young people aged 0–17 were among the highest in the city in **Lemington, at 174 referrals per 1,000 young residents**, compared with **62 per 1,000 in North Jesmond**. The same report states that, in **2023/24**, **Lemington had the highest female referral rate of any ward**, at **107 referrals per 1,000 females**. These are strong indicators of elevated vulnerability and support needs within the ward.

4.2.148 [Map provided]

4.2.149 Wider public health evidence points in the same direction. Newcastle's **0–19 Needs Assessment 2024** states that **29.7% of households in Newcastle with dependent children** were deprived in the **health and disability** dimension at the time of the 2021 Census, and that there was a **particularly high proportion** of such households in the **Inner West, Outer West and East** of the city. Lemington sits within the **Outer West**, so this is relevant contextual evidence that the area contains a comparatively high proportion of families affected by disability, poor health, or both.

4.2.150 [Graph provided]

4.2.151 Historical local evidence also supports that picture. An Ofsted inspection report for **Lemington Children's Centre described** Lemington as a **"disadvantaged reach area"** with **"pockets of severe deprivation" and** said the ward was relatively more disadvantaged on the **health deprivation and disability** theme. It also recorded that **15.1% of families in Lemington** received out-of-work benefits.

4.2.152 [Map provided]

4.2.153 Taken together, these materials support the proposition that Lemington is both **growing** and contains a **materially vulnerable population with additional health, disability, and support needs**. That is highly relevant to Regulation 18. It reinforces the case that practical accessibility, wheelchair access, topography, ease of route, and convenient opening hours matter particularly acutely in this ward, and that existing provision should not be assessed as if it were serving a static, low-need population.

4.2.154 **7. CONCLUSION**

4.2.155 The Appellant has not shown that the Commissioner's decision was wrong.

4.2.156 The decision addressed the substance of Regulation 18 and reached a conclusion that was reasonably open to the Commissioner on the material before it.

4.2.157 The appeal gives insufficient weight to the broader public interest in local healthcare resilience. It also relies too heavily on theoretical accessibility, selected mapping evidence and speculative commercial harm, while giving insufficient weight to practical access, repeated pharmacy use, protected groups, later opening, Saturday access and the value of additional local pharmaceutical capacity. Community pharmacy is a front-line healthcare service. Additional local capacity can confer benefits that include:

4.2.157.1 improved convenience for residents,

4.2.157.2 reduced travel burden,

4.2.157.3 enhanced service resilience,

4.2.157.4 better support for people requiring regular medicine access,

4.2.157.5 and increased flexibility for patients whose needs are not uniform.

4.2.158 In an area where a substantial proportion of households lack access to a car, and where patients may include elderly, vulnerable and mobility-limited residents, the case for improved local access is a legitimate and important one.

4.2.159 The Appellant cannot realistically maintain that these premises alone, situated at the extreme southern end of Lemington, are capable of meeting the needs of the entire Lemington population of over 11,000 people. Equally, it cannot be said that residents have a reasonable and practical choice of pharmaceutical services where only one pharmacy serves the ward. This is particularly so in an area such as Lemington, which is geographically constrained between two major highways and the River Tyne, creating real barriers to movement within and beyond the ward and making truly local access all the more important. The nomination evidence points clearly to demand from local patients and reinforces the fact that existing arrangements do not provide sufficient inward choice or accessibility. Moreover, the existing pharmacy, like primary care services more generally in the area, is operating against a backdrop of increasing pressure on capacity, further undermining any suggestion that current provision is adequate to meet present and future need. Lemington residents should not be expected to accept limited local provision when they are entitled to genuine choice, improved access within their own ward, and regular opportunities to receive face-to-face pharmaceutical services.

4.2.160 Approval of this application would therefore represent a significant and necessary enhancement to local provision, because it would create a material improvement in choice beyond what is already available. I therefore respectfully invite NHS Resolution to dismiss the appeal and uphold the decision to grant the application.

4.2.161 **8. WITNESS STATEMENT**

4.2.162 I, [RA], make this witness statement in support of the application/appeal relating to **Aster Pharmacy Lemington**, 3/4 The Crossway, Lemington, Newcastle upon Tyne, NE15 7LA.

4.2.163 I am a qualified pharmacist and currently work as a pharmacist manager. I have substantial experience working in community pharmacy, including in deprived areas, and I regularly deal with vulnerable patients, including elderly patients, people with long-term conditions, patients receiving opioid substitution treatment, families with young children, and patients who experience difficulty accessing healthcare services promptly.

4.2.164 I make this statement from my own knowledge and experience, except where I indicate otherwise, and I believe the facts stated in this witness statement are true.

4.2.165 My reason for pursuing this pharmacy application is based on what I believe to be a genuine unmet need in the Lemington area and the significant benefits that a new, accessible, patient-focused pharmacy would bring to the local population. In my professional experience, communities such as Lemington often have higher levels of deprivation, greater health inequality, and a greater reliance on accessible local healthcare services. In such areas, timely access to medicines, advice, and public health services is especially important.

4.2.166 In my experience as a pharmacist, I have seen many patients who struggle with delays in obtaining medicines, difficulties booking GP appointments, poor understanding of their medicines, and barriers to travelling further distances for healthcare. These problems can have a serious effect on adherence, health outcomes, and patient wellbeing. Patients in deprived communities are often less able to overcome these barriers because they may lack access to a car, have mobility issues, have caring responsibilities, or have work and financial pressures that make additional travel difficult.

4.2.167 It is my belief that a pharmacy at Aster Pharmacy Lemington would provide real and meaningful benefits to local residents. The proposed pharmacy would improve access to NHS pharmaceutical services within the local area and would offer patients a convenient and approachable healthcare setting close to where they live and shop. This is particularly important for elderly patients, parents with children, patients with disabilities, and those managing multiple long-term conditions.

4.2.168 A local pharmacy does far more than dispense prescriptions. In my professional role, I regularly support patients who need urgent advice about medicines, over-the-counter treatment, minor illness support, help with repeat prescriptions, explanation of dosing, and reassurance following hospital discharge or changes to treatment. I also support patients who may not otherwise engage well with formal healthcare settings. Many patients seek help from their local pharmacist first because the service is walk-in, immediate, and familiar. For that

reason, improving local pharmacy access can reduce pressure elsewhere in the healthcare system.

4.2.169 The proposed pharmacy would also be well placed to deliver valuable clinical and public health services to the local population. These include services such as blood pressure checks, contraception support, Pharmacy First services, smoking cessation support, advice on common conditions, seasonal vaccinations, and support with medicine adherence. In my professional judgment, easier access to these services would be especially beneficial in an area where health inequalities are likely to be more pronounced and where opportunistic intervention can make a significant difference.

4.2.170 Another important point, in my opinion, is continuity and personal support. Patients value being known by their local pharmacy team. In my experience, this is particularly important for vulnerable patients, patients on multiple medicines, people with mental health challenges, and those receiving supervised or structured treatment. A pharmacy that is embedded in the local community can identify concerns early, build trust, support compliance, and signpost patients appropriately. This sort of day-to-day healthcare support is often underestimated, but it is extremely important in practice.

4.2.171 My intention for Aster Pharmacy Lemington is to provide a safe, accessible, community-focused pharmacy with a high standard of professional care. It would not simply be an additional dispenser of prescriptions, but a healthcare access point for advice, early intervention, and ongoing support.

4.2.172 I chose to pursue this pharmacy in Lemington because, as a practising community pharmacist, I understand how important local access is in areas where patients may already face social and health disadvantages. My aim is to create a pharmacy that is not only clinically safe and professional, but also genuinely responsive to the needs of the local community. I believe this proposal would make a practical difference to patients' daily lives. As I have seen in practice, patients are sometimes nominated to pharmacies that are located a significant distance from their home and, as a result, come to rely entirely on delivery of their medicines. While delivery can be helpful in some circumstances, it is not a substitute for the wider role of a community pharmacy. Pharmacies are there not only to supply medicines, but also to provide face-to-face advice, clinical support, reassurance, and access to a range of important services. A more locally accessible pharmacy would allow many different patient groups to benefit from direct personal contact and from the full range of services that community pharmacies are intended to provide.

4.2.173 I believe the benefits of the proposed pharmacy would be significant, particularly for patients who currently experience barriers to access, delay in treatment, or difficulty obtaining timely healthcare advice. In my professional opinion, improved access to pharmaceutical services in Lemington would have a positive effect on patient convenience,

medicine adherence, early treatment of minor illness, and wider public health outcomes.

4.2.174 I also believe that the needs of this community should be considered in the context of its characteristics. Where an area has deprivation, poorer health outcomes, transport limitations, or vulnerable patient groups, even what may appear to be a modest improvement in local access can have a substantial practical effect. In my experience, patients are far more likely to seek help and engage with healthcare when it is nearby, convenient, and delivered by professionals they trust.

4.2.175 I also note that the Appellant's own evidence is that it dispenses around 9,000 items and has approximately 3,700 nominations. In my view, those figures do not demonstrate that the pharmaceutical needs of the whole Lemington population are adequately met. In a community of around 10,000 residents, those numbers may equally suggest substantial demand on existing provision and the benefit of additional local capacity. They also do not address the wider issue of practical access, including the need for repeated face-to-face contact, urgent advice, walk-in support, and access to services beyond the supply of prescribed medicines.

4.2.176 [Screenshot provided]

4.2.177 For all of these reasons, I respectfully say that the proposed Aster Pharmacy Lemington would provide important and meaningful benefits to the local population."

4.2.178 [Details of relevant references included]

4.2.179 [Supporting information at Appendices E and F for Committee]

4.3 Boots UK Ltd

4.3.1 "Thank you for your letter dated 18th March 2026 informing us of the above appeal.

4.3.2 Boots UK Ltd support the appellant and believe that the application should be refused. We stand by our original comments submitted with regards to the application; a copy is included for your convenience.

4.3.3 We have no further comments to make but respectfully ask that NHS Resolution inform us of the decision in due course and should an oral hearing be deemed necessary, we would wish to be given the opportunity to attend."

Letter to the Commissioner dated 17 September 2025

4.3.4 "Thank you for your letter dated 6th August 2025 and enclosures regarding the above application.

4.3.5 Boots UK Limited have the following comments to make.

4.3.6 Whilst we accept that the application is based on benefits not foreseen when drafting the Newcastle upon Tyne Pharmaceutical Needs Assessment (PNA), it is clear that the PNA does not identify any gaps in current pharmacy provision. Nor does it identify any future gaps and there have been no supplementary statements produced to our knowledge to date. The draft PNA 2025-2028 does not identify any gaps in the locality either, this is due to be published in October 2025. We therefore fail to see what unforeseen benefit this application is proposing to fulfil.

4.3.7 The applicant makes reference to future development and housing, suggesting an increase in demand for pharmaceutical services, but we would have expected that any future demands to have been highlighted within the PNA. Of course, because a need has not been identified, it does not mean that a future or current need has not been considered, it simply means that a need has not been identified.

4.3.8 The population will be accustomed to accessing nearby neighbourhoods for their day-to-day activities, such as shopping, schools, places of work to name a few. This may include a trip to a pharmacy for services or advice. There are 4 pharmacies within 1 mile of the proposed location (NHS.UK). The applicant confirms that there is no GP in in Lemington and that this application fills “the Primary Care Gap”. There is no mention of any gap in Primary Care and suggest that this is the opinion of the applicant rather than an evidenced one.

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

4.3.10 The applicant has not identified any specific patient groups that may wish to access a pharmacy at the proposed location that currently have expressed difficulty in accessing services in the area. We are not aware of any complaints made to NHS England regarding access to pharmacy provision in the area. There is reference to isolated residents, in whose opinion are these residents isolated? There is also reference to those that must walk 20 minutes to a bus stop, where are these residents starting their journey from? Not everyone will have such a walk depending on where they live etc. The proposed pharmacy will not be close to every patient that the applicant is proposing to offer services to. With the nearest pharmacy being 0.5 miles away , which is in Lemington (NHS.UK) it is likely that many patients will live closer to this existing pharmacy than the proposed location.

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

4.3.12 The applicant is also offering a total of 55 hours, all Core. Unless the hours are directed as part of the application process should it be approved, the applicant can apply to reduce these hours. They are also proposing to offer an array of services, many of which are not

commissioned and can be withdrawn at any time. The substance misuse service and needle exchange are already offered to patients in the area.

4.3.13 If there are any services not being offered or a gap in opening hours, we are happy to talk to the commissioners. We believe that the correct process should be to discuss any such gaps with existing providers initially.

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

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

5 **Observations**

5.1 Rushport Advisory LLP, on behalf of the Appellant

5.1.1 "I act for Lemington Pharmacy and have been instructed by my client to submit these final comments in respect of the above appeal.

5.1.2 As the Committee will no doubt see, the reply from Aster Health Ltd has all the hall marks of being AI generated, with the Applicant then adding some of its own points.

5.1.3 We are seeing a significant increase in the use of AI in applications and AI is a very useful tool. However, there are very clear deficiencies in AI reasoning.

5.1.4 As the Committee will note, rather than accepting that previous evidence provided was factually incorrect, the AI tool argues that this dos [sic] not matter and that it may as well be correct. Examples of this include:

5.1.5 **ICB Decision Rationale**

5.1.6 Specifically, the Commissioner states that:

5.1.6.1 *Regulation 18(1)(a&b) is met as the application satisfies by demonstrating better practical access to pharmaceutical services in Lemington that is not identified as a need in the PNA, due to neighbouring pharmacies being situated across the river Tyne and other side of major motorways.*

5.1.7 "*better practical access to pharmaceutical services*" is not the correct legal test.

5.1.8 In response, Aster Health states;

5.1.8.1 *A decision is not unlawful merely because it does not recite each statutory provision verbatim. That criticism is misplaced.*

Whether access is "better" is inherently a practical question. It requires consideration of whether residents can realistically and conveniently use services, not merely whether services exist somewhere within a measurable radius.

5.1.9 My client's concern is not stylistic. The statutory test under Regulation 18 requires satisfaction that granting the application would secure improvements, or better access, to pharmaceutical services, and that this must be assessed having regard to the specific matters in Regulation 18(2). The Commissioner's reasons fail to engage with those matters. There is no analysis of what the relevant protected characteristics are, why the existing pharmacy does not meet those needs, or how the Applicant's proposal would specifically address them. Generic references to "elderly" and "mobility-impaired" residents do not substitute for the reasoned analysis Regulation 18(2) requires.

5.1.10 The Applicant does not deny this. It argues instead that the substance of the decision sufficiently addressed Regulation 18(2). But as the evidence demonstrates, the factual findings underlying that decision are not supported by the evidence, and the reasoning therefore cannot stand.

5.1.11 Respectfully, the wrong legal test was used. The decision maker cannot use a different legal test and then just hope that it is in some way similar to the test that should have been used. The criticism was not that the Commissioner "*does not recite each statutory provision verbatim",* it was that the test applied was simply wrong.

5.1.12 This completely wrong characterisation of my client's appeal continues throughout the Applicant's responses. Almost every paragraph of the response makes claims that are untrue or places requirements upon my client that do not exist. Taking one example, the Applicant states;

5.1.12.1 *The appellant has failed to demonstrate any real, material, or non-trivial adverse effect arising from the grant of the application. In particular, the appellant has not evidenced:*

5.1.12.1.1 *Any quantified patient displacement*

5.1.12.1.2 *Any impact on the provision of pharmaceutical services*

5.1.12.1.3 *Any destabilisation of commissioned or enhanced services*

5.1.12.1.4 *Any operational consequences (staffing levels, opening hours, service withdrawal)*

5.1.12.1.5 *Any public health or access detriment*

5.1.12.2 *The submissions instead rely on generalised assertions of competition and loss of trade and does not engage with why the grant was wrong under the regulations.*

5.1.13 My client is not required to provide anything. The burden of proof rests on the Applicant and the points listed above such as “patient displacement” do not have to be proven.

5.1.14 **Access**

5.1.15 The Commissioner’s decision states that residents face an “*up-to-20-minute walk to the nearest bus stop*.” The Applicant accepts that this specific claim may be questioned but argues that the decision “*did not stand or fall on that single phrase*.”

5.1.16 That concession is significant. If the Commissioner’s stated reason for finding poor transport access cannot be supported, the factual foundation of the decision is clearly wrong. Our own research, as set out in the original appeal, demonstrates that no residential part of Lemington is 20 minutes from a bus stop. The Applicant does not produce evidence to rebut this. The Applicant’s bus timetable evidence, examined carefully, actually confirms that the most popular local routes – including the Route 39 – are frequent and well-located for the majority of Lemington residents. Whilst the evidence shows this, the Applicant simply claims that it in some way supports their case. It does not.

5.1.17 As far as we are aware, there was and still is no “*evidence [that] shows that the existing network does not adequately serve elderly, mobility-impaired, or non-driving residents in Lemington due to the steep gradients, poor transport, and the up-to-20-minute walk to the nearest bus stop*.”

5.1.18 The Applicant makes much of a claimed 40-metre elevation gain over 0.6 miles between Lemington Pharmacy and The Crossway site, describing this as equivalent to a “*moderate-level hike*.” This is a significant overstatement.

5.1.19 First, both the Applicant’s proposed site and my client’s pharmacy are shown on the topographic map to be at similar elevations – as shown in our original appeal. The steeper gradients are to the north, affecting any pharmacy in the area equally. Second, and critically, the Applicant proposes to open on a steep incline. The photograph of The Crossway submitted in our original appeal shows a notably steep road. The Committee should consider whether a pharmacy on a steep incline truly provides better access for mobility-impaired patients than my client’s pharmacy, which is located on flat ground near the Asda supermarket.

5.1.20 Third, my client offers a free delivery service. Any patient who genuinely cannot make the journey to the pharmacy already has access to a reliable, no-cost alternative. The Applicant’s own proposal includes delivery but this does not differentiate it from what is already offered.

5.1.21 The Applicant submits an analysis of bus routes in Lemington and argues that provision is “patchy, corridor-dependent and unequal.” However:

5.1.21.1 The Applicant does not dispute that multiple bus routes serve the area around my client's pharmacy. Routes 6, 7, 22, 137, 941 and 991 all stop within metres of Lemington Pharmacy.

5.1.21.2 The Route 7 also serves the Applicant's proposed site – with a bus journey of only 3 minutes between the two stops (7 minutes including walking time at each end).

5.1.21.3 The Applicant's analysis focuses on the difficulty of reaching pharmacies outside Lemington. It does not engage with the straightforward bus access to my client's pharmacy within the ward.

5.1.21.4 The Applicant's complaint about wheelchair-inaccessible bus stops is not supported by specific evidence identifying which stops are inaccessible (if indeed there are any), and in any event is irrelevant to access to my client's premises, which is on flat ground in the centre of the ward.

5.1.22 The 2025 PNA's observation that "public transport availability does not necessarily mean easy access" is a general statement of principle, not a specific finding about Lemington. It does not assist the Applicant.

5.1.23 The Applicant claims that the proposed premises at 3 The Crossway are wheelchair accessible, and submits a photograph purportedly showing this, while suggesting my client's pharmacy is not. This assertion is incorrect. The Committee is invited to consider the photograph submitted in the original appeal, which shows the proposed premises on a steeply inclining road. The approach to those premises from the local residential area involves navigating that incline. A wheelchair-accessible interior does not address the challenge of reaching the premises in the first place if the approach involves steep gradients.

5.1.24 By contrast, my client's pharmacy is located adjacent to the main Asda supermarket in a flat, well-used parade of shops. It is demonstrably accessible to the residential community it serves.

5.1.25 The Applicant argues that commercial harm to my client is irrelevant under Regulation 18 and that the Commissioner's finding of no significant detriment should be upheld. This argument misunderstands the relevance of commercial harm to the statutory test.

5.1.26 Regulation 18(2)(a) requires that granting the application would not cause significant detriment to proper planning in respect of pharmaceutical services. If, as the Applicant's own business plan suggests, the proposed pharmacy would divert around 5,000 items per month from my client, the consequence is not "competition" in any benign sense – it is the likely closure of the existing pharmacy and the loss of pharmaceutical services in Lemington. That is the very opposite of improved access. It is the destruction of the existing access that patients in Lemington currently enjoy.

5.1.27 The Applicant attempts to dismiss this risk by reference to the Boots store that previously occupied The Crossway premises, suggesting that Boots' closure was a corporate decision unrelated to viability. That argument (which from our own knowledge is completely wrong) actually strengthens my client's case: the fact that a well-funded national chain found the site non-viable and closed it is powerful evidence that the Lemington market cannot support two pharmacies. An independent pharmacy with a £50,000 personal investment and a £50,000 business loan will be far more exposed to market conditions than Boots.

5.1.28 The Applicant's representations do not identify any material error in the grounds of appeal. The appeal should be allowed for the following reasons:

5.1.28.1 The Commissioner's decision does not properly apply the legal test under Regulation 18 and Regulation 18(2), deploying instead a non-statutory "better practical access" formulation without adequate reasoning.

5.1.28.2 The key factual findings in the PSRC's decision – most notably the "up-to-20-minute walk to a bus stop" – are not supported by evidence and are contradicted by the available mapping and transport data.

5.1.28.3 Lemington is well served by my client's pharmacy, which is accessible on flat ground in the centre of the ward, served by multiple bus routes, and provides free home delivery to those who need it.

5.1.28.4 The proposed site is on a steep incline, limiting access for mobility-impaired patients and undermining the Applicant's primary access argument.

5.1.28.5 The application, if approved, would risk the closure of the existing pharmacy within the ward.

5.1.28.6 The Applicant's own financial projections are irreconcilable with a finding of no significant detriment to my client and to proper planning in the area.

5.1.29 In summary, the application does not meet the legal test and should be refused.

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

5.2 The Applicant

5.2.1 "The Applicant provides the following final comments in response to the Appellant's submissions.

5.2.2 The Appellant's assertion that the Applicant has provided no evidence, and that the Applicant's claims are incorrect, is plainly unfounded. The Applicant's submissions are supported by referenced material throughout. In contrast, the Appellant has produced no substantive

evidence to support their own claims, relying primarily on a map illustrating distance—an uncontested point—and an elevation diagram which, if anything, supports the Applicant's position. The appeal also raises self-evident or widely recognised matters, such as digital exclusion and pressures on community pharmacy, without engaging with the supporting evidence provided. Despite repeatedly questioning the "level of evidence" required, the Appellant has not clarified this standard nor met it themselves. In these circumstances, the appeal appears unsubstantiated and should be afforded limited weight.

5.2.3 The Appellant's claim that there is no evidence of residential development in Lemington is incorrect. Recent planning activity, including Planning Application 127791, demonstrates that housing development is taking place within the local area. This is supported by the Newcastle City Council Housing and Economic Land Availability Assessment (HELAA), which identifies sites in the area as suitable and available for residential development, as well as further council evidence referencing future housing growth within the ward. Together, these sources confirm a clear trajectory of population increase.

5.2.4 In relation to accessibility, while the Appellant refers to the existence of crossing points, this does not equate to accessibility. Several crossings are not suitable for all users, particularly cyclists, wheelchair users, and those with mobility limitations. The presence of stairs and restrictive barriers materially limits usability. Accessibility must be assessed inclusively; infrastructure that cannot be used by significant sections of the population cannot reasonably be relied upon to demonstrate adequate access.

5.2.5 The Appellant further asserts, again without evidence, that the previous Boots pharmacy closure was due to lack of viability. This is not supported by evidence. Public statements by Boots indicate that closures of this nature were linked to wider operational pressures during the COVID-19 pandemic. It is therefore inappropriate to draw conclusions regarding long-term viability from a closure that occurred under exceptional national circumstances.

5.2.6 To assist the panel in understanding these practical challenges, the Applicant would welcome a site visit. The topography, walking routes, and physical barriers within Lemington are best appreciated in person and would provide useful context to the accessibility considerations raised.

5.2.7 The location of the Appellant's pharmacy is also a relevant factor. It is situated at the southern extent of the ward, meaning that a significant proportion of patients travelling to and from that location will encounter uphill return journeys. Topography is a material consideration, particularly for elderly, disabled, and mobility-limited patients.

5.2.8 The Applicant also rejects any suggestion that proposed services are speculative or misleading. As a regulated healthcare provider, any commitment to deliver NHS or private services is made in good faith

and with the intention of full implementation. There is no basis to suggest that such commitments are made to mislead the panel.

5.2.9 While the Appellant states that there is no “vacuum,” the absence of a GP practice within the ward remains a relevant contextual factor. Patients are required to travel outside the locality for GP services, increasing fragmentation in care pathways. The provision of additional locally accessible pharmacy services would help mitigate this by offering a point of access for advice, urgent care, and medicines supply within the community.

5.2.10 This must also be considered within the broader context of pressures on primary care services. The Applicant notes that such pressures are widely recognised and well documented across the NHS. A coroner’s report highlighted that delays in processing repeat prescriptions - sometimes up to ten days - can contribute to serious patient harm, reflecting wider system pressures including workforce strain, medicine shortages, and inefficiencies in primary care pathways. It is therefore reasonable to conclude that existing services are operating under strain, particularly in deprived areas, and this context is directly relevant when assessing whether additional accessible provision would deliver meaningful benefits to patients.

5.2.11 The Appellant’s position appears to be that accessibility is satisfied where access is theoretically possible. This is not the correct test. Barriers such as stairs, restricted access points, and infrastructure limitations mean that certain routes are not realistically usable for significant patient groups, including wheelchair users, those with limited mobility, and cyclists. Accessibility must be assessed in practical, not theoretical, terms.

5.2.12 In terms of service provision, the Applicant’s proposed extended opening hours are designed to meet the needs of working populations and those requiring access outside standard hours. It is reasonable to infer that patients finishing work at or around 18:00 would benefit from access to a pharmacy open later in the evening, particularly where urgent medication is required following GP consultation. This aligns with known patterns of healthcare utilisation and does not require speculative justification. The Applicant further confirms that it would be willing to accept conditions or directions in respect of opening hours and has no intention of reducing the proposed level of service.

5.2.13 The Respondent seeks to dismiss patient feedback on the basis of limited volume. However, the relevance of such evidence lies in illustrating lived experience and patient perception, rather than statistical weight. Qualitative evidence of dissatisfaction or difficulty accessing services is directly relevant to the assessment of accessibility and patient impact.

5.2.14 This is particularly important when considering digitally excluded individuals, including those without access to smartphones, internet services, or the skills required to engage with digital healthcare systems. This group is disproportionately represented within deprived

communities and is more reliant on walk-in, face-to-face services. This further reinforces the importance of accessible local pharmacy provision.

5.2.15 The Appellant places significant reliance on the absence of identified need within the PNA. However, Regulation 18 specifically addresses circumstances where benefits arise that are not captured within the PNA. While the PNA is a valuable document, it is not exhaustive. It is also noted that representation from the Lemington ward within the PNA consultation process was comparatively limited, which may affect the extent to which local issues are reflected.

5.2.16 Notwithstanding this, the PNA itself identifies concerns raised by respondents regarding reduced opening hours, increased waiting times, and logistical challenges in accessing pharmacy services (see pages 14, 15, and 108). These findings support the Applicant's position that capacity constraints and access issues exist. Furthermore, responses from contractors within the PNA consultation indicate that time pressures limit their ability to engage with patients effectively, suggesting that capacity constraints are already present within the system. It is therefore reasonable to conclude that additional provision would support improved service delivery and patient interaction.

5.2.17 In support of the legal framework, the Applicant refers in particular to the decision in NHS Resolution 25785 Cramlington decision as authority for the proposition that factors such as walking distance, topography, and transport links are material considerations in assessing accessibility. Additional cases cited are not presented as identical in fact, but as supporting examples demonstrating that new pharmacy provision may be justified where local access barriers and patient needs are identified, including in circumstances following previous closures. The relevance of these cases lies in the principles they establish, rather than factual similarity.

5.2.18 Drawing these points together, the Appellant's case relies largely on unsubstantiated assertions and a misapplication of the relevant legal test. No robust or verifiable evidence has been provided to support the claims advanced, and therefore little weight can properly be attached to them.

5.2.19 In contrast, the Applicant has presented a comprehensive and evidence-based case, including clearly referenced supporting material, a detailed assessment of accessibility, and meaningful consideration of the needs of vulnerable populations. The application demonstrates a sound and correct application of Regulation 18, grounded in the statutory framework and supported by objective analysis.

5.2.20 The proposed pharmacy would deliver clear, credible and significant benefits to the local population, particularly in improving accessibility, relieving existing capacity pressures, and enhancing patient choice. Accordingly, the Applicant respectfully submits that the Appellant's case should be afforded minimal weight and that the appeal should be dismissed, and the commissioner's decision confirmed."

5.2.21 [Details of relevant references included]

6 Consideration

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

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

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

6.4 The Committee noted the Applicant in its representations had referred to Schedule 2, paragraph 30(3) of the Regulations and commented that "*Third-party appeal rights arise only where all three limbs of paragraph 30(3) are satisfied*" and further that "*…the requirements of paragraph 30(3), and in particular paragraph 30(3)(c), are not met. The Secretary of State is therefore respectfully invited to determine that the appellant does not have third-party appeal rights.*"

6.5 The Committee noted that the papers provided by the Commissioner confirmed that the Appellant, Lemington Pharmacy, is included in a pharmaceutical list and made representations in writing about the application within 45 days of the date on which the application was notified to it. Further, having regard to those representations, the Committee was of the view that Lemington Pharmacy had made a reasonable attempt to express its grounds for opposing the application, which did not amount to a challenge to the legality or reasonableness of the pharmaceutical needs assessment, or to the fairness of the process by which the HWB undertook that assessment, and were not vexatious or frivolous.

6.6 The Committee noted that, in accordance with paragraph 30(4), the Commissioner had awarded appeal rights to Lemington Pharmacy. The Committee was therefore satisfied that Lemington Pharmacy had third party appeal rights.

6.7 The Committee went on to consider the Applicant's comment that "*In the alternative, the appeal contains no valid or reasonable grounds and should be dismissed as frivolous and misconceived.*" Having regard to the appeal, the Committee noted that it contains reasonable grounds of appeal concerning significant detriment and reasonable choice and therefore did not satisfy the requirements of Schedule 3, paragraph 2 regarding misconceived appeals.

6.8 The Committee therefore proceeded to consider the appeal.

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

Regulation 31

6.10 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).

6.11 The Committee noted that the Applicant had not provided any information in the application form on this point but the Committee noted that the wording of the application form only required the Applicant to include information in the relevant section if the proposed premises were adjacent to, or in close proximity to, another pharmacy or dispensing appliance contractor premises. The Committee considered it reasonable to determine that the lack of information in the application form on this point when read with the wording of the application form allowed it to be reasonably satisfied that the Applicant considered that the proposed premises were not adjacent to, or in close proximity to, another pharmacy or dispensing appliance contractor premises. The Committee noted the Commissioner in its decision report had stated "*Regulation 31 is not applicable*" and there was no dispute on the matter from any other party. The Committee therefore determined that it was not required to refuse the application under the provisions of Regulation 31.

Regulation 18

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

"(1) If—

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

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

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

(2) Those matters are—

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

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

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

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

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

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

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

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

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

(d) whether it is satisfied that another application offering to secure the improvements or better access has been submitted to it, and

it would be desirable to consider, at the same time as the applicant's application, that other application;

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

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

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

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

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

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

6.13 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 Health and Wellbeing Board ("HWB").

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

6.15 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).

6.16 The Committee considered the PNA prepared by Newcastle 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) explaining changes to the availability of pharmaceutical services since the publication of its PNA. Such a statement then forms part of the PNA. A supplementary statement must not provide a new analysis of service provision. The Committee noted that the PNA was dated 2025-2028 and that no supplementary statements had been issued.

6.17 The Committee noted that the proposed premises are situated in Lemington which falls within the Outer West locality as defined in the PNA.

6.18 Having regard to section 9.2 'Statement of pharmaceutical needs', the Committee noted that whilst three current needs had been identified, none were for the Outer West locality.

6.19 The Committee also noted that the PNA states:

"***9.2.2 Future provision of Necessary services***

- *No gaps have been identified in the need for pharmaceutical services in future circumstances across Newcastle*

9.2.3 Improvements and better access

- *There are no gaps in the provision of Advanced services at present or in the future (lifetime of this PNA) that would secure improvements or better access in Newcastle.*

- *There are no gaps in the provision of Enhanced services at present or in the future (lifetime of this PNA) that would secure improvements or better access in Newcastle.*

- *Based on current information no current gaps have been identified in respect of securing improvements or better access to Locally Commissioned services, either now or in specific future (lifetime of this PNA) circumstances across Newcastle to meet the needs of the population.*"

6.20 The Committee noted that the Applicant seeks to provide unforeseen benefits to the patients of Lemington. The Committee noted that the improvements or better access that the Applicant was claiming would be secured by its application were not included in the relevant PNA in accordance with paragraph 4 of Schedule 1.

6.21 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)

6.22 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"

6.23 The Committee noted the Commissioner in its decision report stated "***Regulations 18(2)(a&b)*** *are met as granting the application would not cause significant detriment to the local area services…*" The Committee noted that the Commissioner had not made any specific reference to proper planning.

6.24 In the appeal, Rushport Advisory comment that "*My client dispenses an average of 9,000 prescription items per month. Whilst this is above the English average, it is not a particularly high level of dispensing. The introduction of a second pharmacy so close to my client's pharmacy would result in having 2 unviable pharmacies and simply having to wait for one of them to close (as happened previously with the Boots closure)*" and further "*The Applicant's own figures suggest that within 24 months it will be earning over £50,000 per month in "NHS Revenue" (page 43 Applicant's Business Plan). This suggests that the pharmacy would dispense circa 5,000 prescription items per month. Given that these items would likely come from my client's pharmacy it would render my client's pharmacy unviable and it would close. Far from "securing" improvements or better access to pharmaceutical services, this application, if approved, would risk the closure of the existing pharmacy in Lemington within 2 years.*"

6.25 In response, the Applicant states "*The Appellant's assertions of commercial harm and future unviability are speculative*" and "*…the fact that the existing pharmacy dispenses a substantial volume of items suggests strong local pharmaceutical demand. It does not establish that additional provision would necessarily be harmful.*"

6.26 In their observations, Rushport Advisory further state "*The Applicant's own financial projections are irreconcilable with a finding of no significant detriment … to proper planning in the area.*"

6.27 The Committee was mindful that no information had been provided in support of the Appellant's claims. The Committee considered that the information before it was not enough to persuade it that significant detriment to proper planning in respect of the provision of pharmaceutical services in the area would result from a grant of an application.

6.28 The Committee was not satisfied that, if the application were to be granted and the pharmacy to open, the ability of the Commissioner thereafter to plan for the provision of services would be affected in a significant way.

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

Regulation 18(2)(a)(ii)

6.30 The Committee had regard to

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

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

6.31 The Committee noted the Commissioner in its decision report states "***Regulations 18(2)(a&b)*** *are met as granting the application would not cause significant detriment to the local area services…*".

6.32 In the appeal, Rushport Advisory comment that "*My client dispenses an average of 9,000 prescription items per month. Whilst this is above the English average, it is not a particularly high level of dispensing. The introduction of a second pharmacy so close to my client's pharmacy would result in having 2 unviable pharmacies and simply having to wait for one of them to close (as happened previously with the Boots closure)*" and further "*The Applicant's own figures suggest that within 24 months it will be earning over £50,000 per month in "NHS Revenue" (page 43 Applicant's Business Plan). This suggests that the pharmacy would dispense circa 5,000 prescription items per month. Given that these items would likely come from my client's pharmacy it would render my client's pharmacy unviable and it would close. Far from "securing" improvements or better access to pharmaceutical services, this application, if approved, would risk the closure of the existing pharmacy in Lemington within 2 years.*"

6.33 In response, the Applicant states "*The Appellant's assertions of commercial harm and future unviability are speculative*" and "*…the fact that the existing pharmacy dispenses a substantial volume of items suggests strong local pharmaceutical demand. It does not establish that additional provision would necessarily be harmful.*"

6.34 In their observations, Rushport Advisory further state "*The Applicant's own financial projections are irreconcilable with a finding of no significant detriment to my client ...*".

6.35 The Committee was mindful that no information had been provided in support of the Appellant's claims. The Committee considered that the information before it was not enough to persuade it that significant detriment to the arrangements currently in place for the provision of pharmaceutical services would result from a grant of the application.

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

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

Regulation 18(2)(b)

6.38 The Committee had regard to

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

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

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

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

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

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

6.39 The Committee noted the proposed location of the pharmacy in the Lemington area to the west of Newcastle. The Committee also had regard to the location of existing pharmacies and GP surgeries as identified on the map provided by the Commissioner, which had not been disputed.

6.40 The Committee noted the Applicant had referred to recent closures of pharmacies in Newcastle, including the closure of Boots UK Ltd at the proposed premises in April 2020. The Applicant also commented on the return of pharmacies to other areas of Newcastle such as Kenton and Heaton, with "*strong public demand*" for their reopening and an announcement from Newcastle City Council. The Committee had regard to the three reviews provided by the Applicant in their 14 day comments, noting as Rushport Advisory states that "*Only 1 of the 3 comments provided expresses dissatisfaction with the Boots closure.*" The Committee was mindful that the grant of applications in other areas did not automatically mean that applications in adjacent areas would be granted.

6.41 In terms of capacity issues, the Committee noted the Applicant's comment in its representations that "*Lemington's existing pharmacy premises are relatively small, which may limit their ability to absorb higher prescription volumes, expanding service demand, walk-in consultations, and seasonal pressures without affecting waiting times, privacy, workflow, or service flexibility*". The Applicant also provided copies of online reviews from patients regarding Lemington Pharmacy including the following examples:

6.41.1 "*Having loads of bother with Lemington chemist 2 weeks ago I ordered a prescription and only dated yesterday only ready this morning and I item not in stock another one wasn't even ready 4 days ago was ordered after I get this one I'm not using any more absolution [sic] ridiculous queued out the door. Never like this when it was boots*"

6.41.2 "*I had to wait 20 minutes in the que [sic] today for my prescription. And some people were there longer , waiting for their meds thay they were missing from their prescription*"

6.41.3 "*I've been in twice today and there was about 15 people in the queue both times, I got my prescription but felt a bit sorry for the lass who was serving as a few people were having a go at her*"

6.42 The Committee gave these comments limited weight, given that the number of comments were small in view of a population of around 10,000 residents in Lemington. The Committee saw no other information to indicate that existing pharmacies are struggling to cope with the level of demand for pharmaceutical services. The Committee was mindful that performance issues are a matter for the Commissioner to deal with in accordance with the Regulations. Further the Committee was of the view that the closure of one or more pharmacies in an area does not automatically lead to the conclusion that an application should be granted to replace them.

6.43 The Applicant had commented that "*New housing developments in the area are increasing demand for healthcare services. The pharmacy will offer a timely capacity expansion to meet this demand.*" The Committee also noted Rushport Advisory's response that "*Lemington is an urban built up area and it is not clear where the housing developments the Applicant mentions would even be.*" Whilst noting the Applicant had not provided any detail as to the location or current status of any developments, the Committee had regard to the PNA which states at 3.7 "*The planned developments in the Outer West are currently served by the 9 pharmacies in this locality. The HWB will continue to monitor the increasing demands on pharmaceutical services in the future as a result of these developments.*" The Committee saw no information to indicate that the proposed location offers any advantage over existing pharmacies in terms of access to pharmaceutical services for any patients living in new developments either now or in the future. Further, the Committee was mindful that an increase in population does not automatically lead to the requirement to grant an application.

6.44 The Applicant had highlighted that there is no GP surgery in Lemington, stating in their 14 day comments that "*This is highly unusual for a residential district of this size and creates a primary care vacuum. Aster Lemington will implement a Neighbourhood Health model to fill this gap from day one…*". The Committee noted Rushport Advisory's comment that "*patients are not coming in to Lemington to access GP services and are not seeking a pharmacy after a visit to a GP in Lemington, because there is no GP practice*". The Committee was of the view that the lack of a GP surgery does not automatically lead to the requirement to grant an application, and also noted that patients are currently leaving the Lemington area in order to access primary care services, with no information provided to indicate that they are having difficulty in doing so.

6.45 The Committee went on to consider access to existing pharmacies and noted that the nearest is Lemington Pharmacy located on Tyne View approximately 0.6 miles from the proposed premises. The Committee noted the Applicant had commented that "*Walking uphill from the competitor Lemington Pharmacy to our site area for ~15 minutes as Lemington pharmacy has suggested is not feasible for many residents, including younger adults with mobility, caring or time constraints. For elderly or disabled patients, a **30-minute return trip—largely uphill on the way back—**is an obvious barrier. "Coverage exists somewhere in the ward" is not the same as equitable reach for those without cars or reliable bus options.*" The Committee also noted the Applicant had referred to "*hiking difficulty calculators*" recommending this journey as only for *"someone in good hiking condition."* The Committee noted Rushport Advisory's response that "*It is not clear why anyone would make the journey suggested by the Applicant. As is clear from our appeal letter, it is the Applicant's site that is situated on a significant gradient and would likely only be used by those who lived in the immediate housing. For those who live across the Lemington area it would be just as easy or even easier to access my client's pharmacy than the Applicant's proposed premises.*" The Committee also had regard to the topographic heat map provided in Rushport Advisory's observations, noting that the proposed premises do not appear to be on a significantly higher gradient than Lemington Pharmacy, with the highest points of Lemington being to the north west. Rushport Advisory further comment "*The photograph of The Crossway submitted in our original appeal shows a notably steep road. The Committee should consider whether a pharmacy on a steep incline truly provides better access for mobility-impaired patients than my client's pharmacy, which is located on flat ground near the Asda supermarket.*" The Committee accepted that patients would experience different journeys depending on which part of Lemington they were starting their journey. The Committee considered that the distance in itself was not excessive and no difficulties other than the gradient had been raised with the journey to Lemington Pharmacy.

6.46 The Committee considered the location of other pharmacies for those on foot, noting pharmacies to the north of the A69 and to the east of the A1. The Committee noted the Applicant had commented in their 14 day comments that "*Lemington is geographically confined by the A1 and A69, two major arterial highways. These act as physical boundaries that severely limit safe or practical access on foot or by bicycle to other pharmacies outside the immediate Lemington area.*" The Committee noted Rushport Advisory's comments on appeal that "*Denton Pharmacy is less than 1 mile from the Applicant's proposed site and the journey on foot takes 22 minutes (Google). The route is mostly flat as the two points lie a similar distance from the Tyne river. There is an overpass across the A1 so no traffic has to be negotiated*" and "*The A69 to the north can be crossed using the normal road / foot path network that continues north over the A69 as shown below at 2 places.*" The Committee also had regard to the route map of the journey to Denton Pharmacy across the A1 to the east of the proposed site and the photographs of the overpasses on the A69 for access to pharmacies in the north. The Committee noted the Applicant's comment in response that "*The appeal panel is invited to reject any suggestion that a pharmacy on the far side of a highway provides adequate alternative access where the route is interrupted by a substantial road barrier and the available crossing is via an overpass with stairs. Such a route is plainly unsuitable for wheelchair users and presents significant difficulty for many other vulnerable*

groups." The Committee considered that the distance in itself to Denton Pharmacy was not excessive and no difficulties other than the A-roads had been raised with the journey to other pharmacies.

6.47 The Committee was of the view that for those patients who are willing and able to walk, they were unlikely to experience any difficulties, however there would be some patients, such as the elderly or those with mobility difficulties, who may find the journey on foot to existing pharmacies difficult.

6.48 For those with access to private transport, the Committee noted Rushport Advisory's comment that "*The journey by car from the old Boots site that the Applicant proposes to use as their premises takes 2 minutes as shown...*" and had regard to the accompanying route map. They further comment that "*In Lemington 29.4% of households do not have access to a car. This is much lower than the average for Newcastle (36.6%) and compares well (for an urban area) with England as a whole (23.5%).*" The Committee noted the Applicant's response that "*Nearly one-third of households without a car remains a substantial proportion of residents likely to depend on walking or public transport. The Commissioner was entitled to treat that as a reason to focus on practical local access, not to dismiss access concerns.*" For those with access to private transport, the Committee saw no information to indicate that there are any difficulties for patients when driving to or parking at existing pharmacies.

6.49 The Committee noted the Applicant had commented in the application that "*Large sections of Lemington remain poorly connected by public transport, with minimal or indirect bus services.*" and the Commissioner had referred in its decision to an "*up-to-20-minute walk to the nearest bus stop*". The Committee had regard to the map showing the location of bus stops in Lemington provided by Rushport Advisory and noted their comment that "*Our own research cannot identify any residential part of Lemington that would be a 20 minute walk from a bus stop.*" The Committee further noted that Rushport Advisory's had provided information regarding available bus routes as follows: "*Bus routes 6,7,22,137, 941 and 991 stop within metres of my client's pharmacy. Route 7 is also the stops* [sic] *at the bus stop closest to the Applicant's site and the bus journey is only 3 minutes (7 minutes including walking time at each end).*" The Committee noted that these routes had not been disputed.

6.50 The Committee noted the Applicant's response that "*…bus access is highly dependent on which part of Lemington a resident lives in, and whether the nearest corridor is one of the better-served ones.*" The Applicant further comments that:

6.50.1 "*The strongest route is the 39, which from Kirkston Avenue-Dene Avenue runs very frequently through the daytime, with departures such as 07:05, 07:17, 07:30, 07:42 and 07:54. However, that only assists residents close to that corridor.*";

6.50.2 "*The 7 at the same Lemington corridor is far less frequent and much more irregular, with departures shown at 05:32, 06:17, 07:09, 08:18, 09:34 and then broadly hourly for much of the day. That is not a turn-up-and-go service, and it is plainly less convenient for residents needing flexible access to healthcare.*"; and

6.50.3 "*…the 10 from Lemington Road Ends, while usable, is still corridor-specific and variable rather than simple and uniform. Its departures include 06:49, 07:22, 07:50, 08:22, 08:52, 09:12 and 09:33, before thinning later in the day. Residents who do not live close to Lemington Road Ends must first reach that edge-of-area stop cluster before they can benefit from those services.*"

6.51 Whilst the Applicant had focused on particular journeys to Lemington Pharmacy from the north west of Lemington, the Committee saw no information to suggest that journeys by bus to other existing pharmacies are not reasonable. The Committee accepted that bus services will vary depending on a patient's starting point, however it considered those patients accustomed to using bus services will be familiar with the routes available and the various services described provide reasonable options for those wishing to access existing pharmacies.

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

6.53 In considering Regulation 18(2)(b)(ii) the Committee reminded itself that it was required to address itself to people who share a protected characteristic under the Equality Act 2010 (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation) having access to services that meet specific needs for pharmaceutical services that, in the relevant area, are difficult for them to access. The Committee noted the Applicant had referred to various groups including the elderly, disabled, pregnant, those caring for children, those managing long-term illness and housebound. The Committee considered that beyond general references to such groups, no evidence to support a conclusion of specific needs or particular difficulties was presented by the Applicant. The issues of access and choice as might apply to these persons was dealt with in the assessment of reasonable access discussed above.

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

6.55 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.

6.56 The Committee noted the Applicant had referred in their representations to the following as "*Innovative approaches to delivery of pharmaceutical services*":

6.56.1 "*extended core opening hours*" and "*extended Saturday opening*" – the Committee was of the view that extended core hours including on weekends are offered by many pharmacies and therefore could not be considered as offering something over and above the usual delivery of pharmaceutical services.

6.56.2 "*24/7 prescription collection access*" – the Committee was mindful that automated prescription collection services are available at many pharmacies and, whilst it may be new to the area, it could not be considered as offering something over and above the usual delivery of pharmaceutical services.

6.56.3 "*improved face-to-face walk-in access*" – the Committee considered that face to face walk-in access is offered by all pharmacies, with the exception of distance selling pharmacies, and it had considered reasonable choice above. It did not consider that the Applicant was offering something over and above the usual delivery of pharmaceutical services in this respect.

6.56.4 "*same-day delivery support for patients whose transport or health circumstances make access harder*" - the Committee noted that a delivery service is offered by many pharmacies and therefore could not be considered as offering something over and above the usual delivery of pharmaceutical services.

6.56.5 "*a more accessible and responsive service model for underserved residents*" – the Committee considered that pharmacies are expected to be accessible and responsive in general, and this comment did not specify an offer over and above the usual delivery of pharmaceutical services.

6.56.6 "*proposed advanced services are above and beyond what neighbouring pharmacies provide*" – the Committee did not consider that offering Advanced services was innovative in itself, rather this was something to take into account as part of its overall consideration.

6.57 The Committee also noted that in their 14 day comments the Applicant had also referred to "*Independent prescriber-led access via PGDs and IP clinics (e.g., period delay, travel, seasonal vaccinations)*", "*Substance misuse support: supervised consumption, naloxone supply, blood-borne virus testing, and needle exchange, reducing stigma and travel burden*", "*Digital convenience for a younger, tech-engaged population...*"; "*Sustainability initiatives: medication and blister-pack recycling*"; "Opioid Harm Reduction & Substance Misuse Support"; "Point-of-Care Testing (POCT) Hub"; and "Womens & Family Health Service". Whilst noting that the Applicant is proposing to provide a wide variety of services, the Committee was mindful that some of these services are already offered by pharmacies and therefore cannot be considered innovative. The Committee noted that other proposed services are private services which the Committee could not take into account as part of this consideration.

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

Regulation 18(2)(b) generally

6.59 The Committee noted the Applicant's proposed core hours are 9am to 7pm Monday to Friday and 9am to 2pm on Saturdays, totalling 55 core hours, with no supplementary hours. The Committee noted the Applicant's comment in the

application that it "*…will operate with longer-than-average hours, including evenings, and weekends, significantly increasing healthcare accessibility compared to existing providers who offer more limited core hours.*" The Committee had been provided with limited information regarding the opening hours of existing pharmacies, however it noted the Applicant's comment that Lemington Pharmacy closes at lunchtime and at 5.30pm. The PSRC report states that "*There are no pharmacies with core or supplementary opening hours until 19:00pm within 1.4 miles of the proposed premises*" and "*There are no pharmacies that open on Saturdays within 0.4 miles from the proposed premises*".

6.60 The Committee noted that no information had been provided to indicate that there is a particular demand for services on weekday evenings in Lemington after 5.30pm, or that additional cover is required on Saturdays. The Committee was mindful that the Commissioner already has the power to bring about changes to the opening hours of existing pharmacies where it considers there is a need to do so.

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

6.62 The Committee had regard to the services offered by the Applicant as listed on the application form. The Committee also noted the details of advanced services provided by existing pharmacies as provided by the Commissioner. The Committee considered that no information had been provided to suggest that there is a particular need for additional provision to the services currently offered by the existing pharmacies.

6.63 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.

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

Other considerations

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

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

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

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

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

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

6.70.1 confirm the Commissioner's decision;

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

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

6.71 Given that the Committee had reached a different decision to that of the Commissioner, it determined that the decision of the Commissioner must be quashed.

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

6.73 The Committee noted that representations on Regulation 18 had been sought from parties by the Commissioner and representations had already been made by parties to the Commissioner in response. These had been circulated and seen by all parties as part of the processing of the application by the Commissioner. The Committee further noted that when the appeal was circulated representations had been sought from parties on Regulation 18.

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

7 DECISION

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

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

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

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

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

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

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

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

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

Case Manager
Primary Care Appeals