

4 June 2026

REF: SHA/26904

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**APPEAL AGAINST BIRMINGHAM AND SOLIHULL
ICB DECISION TO REFUSE AN APPLICATION BY
ROSHBAN LTD FOR INCLUSION IN THE
PHARMACEUTICAL LIST OFFERING
UNFORESEEN BENEFITS UNDER REGULATION
18 AT GROVE LANE SHOPPING PARADE, 101 -
123 GROVE LANE (BOTH SIDES), BIRMINGHAM,
B17 0QT**

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:

Rushport Advisory LLP on behalf of Roshban Ltd
Boots
PCSE on behalf of Birmingham and Solihull ICB

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1 The Application

By application dated 17 January 2025, Roshban Ltd (“the Applicant”) applied to Birmingham and Solihull ICB (“the Commissioner”) for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at Grove Lane Shopping Parade, 101 – 123 Grove Lane (both sides), Birmingham, B17 0QT. In support of the application it was stated:

- 1.1 In response to why the application should not be refused pursuant to Regulation 31, the Applicant stated:

1.1.1 “No other pharmacy at either the same or adjacent proposed premises.”

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

- 1.2 “Grove Lane is a reasonable sized shopping parade situated to the west of Birmingham City Centre. As well as the shops at the parade, there are a number of community facilities around Grove Lane that make it an attractive focal point for the local community, such as Grove Hall Social & Community Centre.
- 1.3 The Kenrick Centre is a Birmingham City Council run care home and is located beside the shops on Grove Lane. The centre caters for up to 64 people and to the south of the shops lies the Cadham Hall which provides student accommodation.
- 1.4 Grove Lane lies centrally in an area which is significantly under-provided for in terms of pharmaceutical services. The area around Grove Lane contains a population of 20,600 without a pharmacy. The area is relatively average in respect of deprivation, general health and disability, but a very significant percentage of households (35%) have no access to a car and this leaves them reliant on local services.

- 1.5 The nearest pharmacies to Grove Lane are approximately 1 mile or more in any direction.
- 1.6 Significant gradients make walking to any pharmacy a much more difficult option for those who are elderly, disabled or infirm. It is notable that the nearest pharmacies are located close to GP surgeries rather than centrally to the community around Grove Lane. This is a throwback to the times when having a pharmacy beside a GP surgery was considered to be the best location to trade from. Nowadays, with the advent of new pharmacy services such as vaccinations and Pharmacy First, there is an increasing need for pharmacies to be located not only at GP surgeries, but within the heart of the local community so that patients are not forced to travel long distances to access health services.
- 1.7 We would urge the ICB to arrange for an officer to visit this area to see for themselves the difficulty that patients have in accessing pharmaceutical services.
- 1.8 Granting this application would secure improvements and better access to pharmacy services and the application should therefore be approved."

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

- 1.9 "The unforeseen benefits described above will be delivered from the premises once the application is approved."

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 **RUSHPORT ADVISORY LLP ON BEHALF OF THE APPLICANT**

- 2.1.1 "Thank you for your letter of 14 April 2025. I act for Roshban Limited in the above application and have been instructed by my client to submit the following reply to comments received from interested parties.
- 2.1.2 In summary, interested parties provide some limited statistics about the area surrounding Grove Lane and claim that access to existing pharmacies is easy. We do not accept that these comments are correct for the following reasons.
- 2.1.3 Grove Lane is located about 4 miles southwest of Birmingham City Centre. It is located in a Victorian suburb, close to the Queen Elizabeth Hospital and Birmingham University.

- 2.1.4 The area of Grove Lane would comprise a population of about 8,400 and would be an area framed by the University to the east, a golf course to the west, Harborne to the north and Lodge Hill to the south. Grove Lane is located east of the Midlands railway and the University stop for students arriving at college is located about 1 mile to the east of the site. Similarly the A38 main route into Birmingham is about 1 mile to the southeast of Grove Lane.
- 2.1.5 Given this strategic accessibility of the area to the University and the hospital, the area around Grove Lane is a popular place to live.
- 2.1.6 Grove Lane is a main road running north-south through this area. At its southern end it has a parade of shops and services along its west side which are classed by the Council as a potential new Neighbourhood Centre, which serve a neighbourhood catchment. Such a Centre is considered by the Council to be important in the context of having a liveable neighbourhood (i.e. with services withing 15/20minuts [sic] walk).
- 2.1.7 The Grove Lane Neighbourhood Centre services the local community around the Grove area. It is important because it is located over a mile from the nearest pharmacy and health centre and is catering for the day to day needs of the local community.
- 2.1.8 This importance is reinforced by the topography of the area. The nearest shopping location at Harborne is located up a hill from Grove Lane. This is shown below, [see Appendix B] where the land rises from 149m at the Grove Shops to 177m at Harborne Park Road and 166m at Harborne High Street.
- 2.1.9 Contrary to the comments from objectors, the area surrounding the proposal site includes a variety of community uses. Just north of the Neighbourhood Centre is Grove Tenants Hall Community Centre which provides local daily facilities to accommodate social, hobby and fitness clubs in the area for children, toddlers, youths and adults.
- 2.1.10 Opposite the Community Centre is the Kendrick Centre run by Birmingham City Council. This is a Nursing Home which can accommodate 64 people. It also provides day services for elderly residents called Balance Senior Day Service. North of this area is Grove Park which sits either side of Grove Lane. Travelling north there is a clear sense of leaving the Grove area and walking through parkland, which has no natural surveillance.
- 2.1.11 Further north is Harborne Hall student apartments and St Peter CoE Primary School (437 children). Also in this area is a pub, and cemetery. The majority of the housing in the area of Grove Lane is semi-detached and detached. To the west is Duncan Smith House, which is student halls providing 42 rooms. To the south of the site is a local pub. There are local flats located at Arosa Drive. More student halls at located at Cadham Hall (112 rooms) and Riverside House (12 rooms).
- 2.1.12 Beyond these to the south is Bourn Brook Walkway a linear park running south through the area, which has no vehicular access. Just

south are two more primary schools at Paganel Primary School (370 pupils) and Water Mill Primary School (205 pupils) and local shops and services along Swinford Road.

- 2.1.13 About 900m to the west is a second group of shops at Northfield Road which includes a chip shops, convenience store, post office and Mace shop, hair dressers, window glazing business and a car repairs and MOT business. These shops have parking for over 20 cars.
- 2.1.14 Further west is the Golf Course.
- 2.1.15 To the east, there is a third group of shops at Harborne Lane, where there is a Shell Garage, 2 take away, hairdressers, 2 estate agents, army surplus store, convenience store, wine shop, international food supermarket. Beside these shops is another block of student halls at Metchley Hall. Just east of this is the massive Queen Elizabeth Hospital and east of this is the university of Birmingham.
- 2.1.16 The area is therefore a multi-use area with different populations. There would be the residents of the area, children passing around the area, students resorting to live in the area during term time and, elderly residents living in care in the area and people passing through the area to use the hospital.

Pharmacy Services outside Grove Lane

- 2.1.17 Residents in Grove have to leave their area to access pharmacy services and contrary to the comments of objectors, the journeys to these pharmacies are not straightforward at all.
- 2.1.18 The closest pharmacy is Knights Lordswood Pharmacy, located at Lordswood Road. This is located about 0.9miles northwest of the proposal site. It opens 8:30 am to 6:00pm Monday to Friday and 9:00am to 3:00pm on Saturday.
- 2.1.19 This pharmacy dispenses in the region of 12,700 items per month. It is a pharmacy that is co-located with Lordswood House Group Medical Practice.
- 2.1.20 This pharmacy dispenses well over the average items per month at 13,390. Unsurprisingly, 83% of these items are prescribed at the adjacent Medical Practice. This accounts for 41% of the 28,000 items prescribed at this Medical Practice each month. The Medical Practice has a substantial 24,000 patients registered.
- 2.1.21 This pharmacy is about 0.9miles walk from the proposal site.
- 2.1.22 To access this pharmacy on public transport requires patients to walk over 500m to Harbone [sic] Park Road and get a bus and walk a further 150m from the bus stop.
- 2.1.23 Harborne District Centre is the hub for a large part of southwest Birmingham. It functions as a town centre and has three pharmacies located in it as follows:

- 2.1.23.1 Jhoots Pharmacy 131 High Street which dispenses 2500 items per month and opens 9am to 5pm Monday to Friday but is closed at the weekend;
- 2.1.23.2 Boots Pharmacy, 87-87a High Street which dispenses about 5,800 items per month and opens 8:30 am to 5:30pm Monday to Saturday and from 10am to 4:00pm on Sunday; and
- 2.1.23.3 Superdrug, 124-140 High Street which dispenses about 7,400 items per month and opens 9:00am to 6:00pm Monday to Friday and from 9:00am to 5:30pm on Saturday.
- 2.1.24 These pharmacies all serve Harborne Medical Practice which is located at York Street, Harborne and has over 16,000 patients. Harborne is a busy retail location and the centre extends for 1.2km from east to west. It is dominated by vehicular traffic which detracts from the centre and is impacted by high congestion. Whilst there are parking spaces around the centre, it is very limited and often difficult to get a parking space.
- 2.1.25 It is a 1 mile walk from the proposal site to Harborne. This goes through the parkland north of Grove Lane and up a hill as shown earlier. To get a bus would mean walking south of the site to get a bus at Quinton Road.
- 2.1.26 West of the Grove area there is a pharmacy and medical centre at Quinborne Medical Practice and Selfcroft Pharmacy. These two premises are co located on the same site.
- 2.1.27 This is part of the Lordswood House Medical Group and this surgery and pharmacy would cater for the needs of the residents that live in the housing estates around the surgery.
- 2.1.28 South of the site there are three pharmacies located around Weoley Castle Square. The pharmacies are:
 - 2.1.28.1 Castle Chemist, 104 Weoley Castle Road. This pharmacy opens 9:00am to 1:00pm and from 2:00pm to 5:30pm Monday to Friday and from 9:00am to 1:00pm on Saturday. It dispenses 5,800 items per month mostly from the Millenium Medical Centre;
 - 2.1.28.2 Dean Pharmacy, 175 Weoley Castle Road. This pharmacy opens 9:00am to 7:00pm Monday to Friday and from 9:00am to 4:30pm on Saturday. It dispenses 6,500 items per month mostly from the Millenium Medical Centre; and
 - 2.1.28.3 Kings Pharmacy, 118-120 Weoley Castle Square. This pharmacy opens 9:00am to 6:00pm Monday to Friday and from 9:00am to 4:00pm on Saturday. It dispenses 11,200 items per month mostly from the Millenium Medical Centre and Weoley Park Surgery.
- 2.1.29 These pharmacies all serve

2.1.29.1 Millenium Medical Centre which has 9,600 patients and prescribes 14,000 items per month; and

2.1.29.2 Weoley Park Surgery which has 7,400 patients and prescribes 9,400 items per month.

2.1.30 These pharmacies are serving the needs of the people and shoppers in the Weoley Castle area. They are not located to serve the needs of the residents of Grove Lane. These pharmacies are located 1.3miles from the proposal site as shown below. Accessing these pharmacies by public transport requires patients to walk to Quinton Road.

2.1.31 Importantly, there is a University Medical Practice located at 5 Pritchatts Road. There is 14,500 students registered with this Medical Practice and these patients have to use the existing network of pharmacies. The proposal site is well placed in the heart of a number of student residencies to cater for the needs of students that present at the University Medical Practice.

Summary

2.1.32 All existing pharmaceutical services are beyond walking distance and a congested drive for people in Grove Lane area. Parking in the main centres is severely limited and patients would have a low expectation of finding a convenient parking space. There is a geographical gap of about 2miles between pharmacy services provided north and south of Grove Lane.

Population

2.1.33 The population of Grove Lane area is 8,400. This is the Census population. However, this is likely to be an underestimate as students may be recorded in their home address when the 2021 Census was recorded. During 2021, Covid lockdowns were still taking place and many University courses would have been delivered online, allowing students to study from home. With the return to normal conditions, students have returned to campus and many live in halls which may not have been captured previously.

2.1.34 A population of 8,400 is significant and it would comfortably support one pharmacy and in many areas would be supporting two pharmacies.

2.1.35 The age profile shown below reinforces the case that the area has a large student population, with a clear spike in the 20-24 age group.

2.1.36 Consistent with the evidence above, the diagram below shows that the Grove Lane area has above average levels of deprivation.

2.1.37 The access issues for the people in the Grove Lane area are set out above. The proposal site is located within the Grove Lane shops and is a designated neighbourhood centre. It is an important hub of community shopping and services in the south west of Birmingham. It meets the needs of residents, students and people passing through the area to the hospital and university. Many local people are severely

disadvantage given the low car ownership rates and levels of deprivation in the area. Many patients have to pay to access pharmaceutical services by making two bus trips to and from an alternative pharmacy. The proposal will remove the need for these trips.

2.1.38 For the reasons given above we ask the ICB to approve this application and we look forward to hearing from you in due course.”

3 The Decision

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

The Commissioner considered and decided to refuse the application. The decision letter dated 4 February 2026 states:

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

Extract from the Pharmacy Services Regulations Committee 17 December 2025

3.2 “Regulation 31 – refusal: same or adjacent premises [quoted in full]

3.3 Regulation 31(2)(a) (i) (ii) The Committee were satisfied that there is no pharmacy providing pharmaceutical services at the same or adjacent premises.

3.4 As Regulation 31(2)(a) does not apply, the Committee was not required to consider Regulation 31(2) (b)

3.5 Therefore, the Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.

3.6 The Committee then went on to consider Regulation 18

3.7 Regulation 18 - Unforeseen benefits applications

3.8 Regulation 18(1) [quoted in full]

3.9 The Committee noted that the Birmingham and Solihull Pharmaceutical Needs Assessment 2025-2028 identified there were no gaps in pharmaceutical services provision in the South locality.

3.10 There are no gaps identified that additional or new pharmaceutical services provided now or in the future would secure better access or improvements to services.

3.11 There are no gaps in service provision in the South locality.

3.12 The proposed location is within the Edgbaston ward; one of the least deprived wards in the city with lower-than-average illness numbers and percentages, higher than average uptake for vaccinations and a high proportion of car ownership.

- 3.13 The PNA identified no gaps in services with no mention of the Grove Lane area or the Harborne locality requiring either a new or additional pharmaceutical services.
- 3.14 The Committee noted that the improvements or better access offered within the application were not included in the Birmingham Pharmaceutical Needs Assessment
- 3.15 The Committee noted that in order to be satisfied in accordance with Regulation 18(1), it also had to have regard to those matters set out in Regulation 18(2)
- 3.16 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).
- 3.17 Regulation 18(2) [quoted in full]
- 3.18 The Committee were satisfied that should the application be granted, it would cause significant detriment to the proper planning in respect of the provision of pharmaceutical services in the Birmingham Health and Wellbeing Board area and the arrangements in place for the provision of pharmaceutical services in the area. This is because there are 26 pharmacies within 2 miles of the proposed location, and 10 within one mile
- 3.19 The PNA did not identify any gaps in the Grove Lane or Harborne area for pharmaceutical service provision.
- 3.20 Granting the application would cause significant detriment to the proper planning and provision of pharmaceutical services in the HWB area (i) and (ii).
- 3.21 Therefore, this Regulation is deemed to have not been met.
- 3.22 Regulation 18(2)(b)(i) 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)), and granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant pharmaceutical needs assessment was published;
- 3.23 The PNA identified no gaps in pharmacy services with no mention of Grove Lane, Harborne or the Edgbaston locality.
- 3.24 The two nearest GP practices that the residents near the proposed location and surrounding area will travel to are located in Harborne and are either co-located with a pharmacy or within 100 metres of the GP practice.
- 3.25 There are 10 pharmacies within a mile of the proposed location, a further 5 within 1.6 miles and a further 11 between 1.6 and 2 miles.

- 3.26 There is reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant health and wellbeing board.
- 3.27 Due to the lack of general services in the proposed location, residents will be accustomed to travel to Harborne to access the full range of retail, financial or commercial services.
- 3.28 For residents using public transport, there are regular bus services very close to the proposed location that go to Harborne where residents can access the services mentioned above and which are not available near to the proposed location.
- 3.29 For residents choosing to walk, the access is along well-maintained roads and pavements, with traffic lights and pedestrian crossings.
- 3.30 There are 26 pharmacies within 2 miles of the proposed location; 10 of which are within 1 mile.
- 3.31 Several of these pharmacies have longer core opening hours than those proposed by the applicant.
- 3.32 The Committee determined that the applicant has not demonstrated that they would secure improvements or better access, therefore granting the application would not confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant pharmaceutical needs assessment was published;
- 3.33 Therefore, this Regulation is deemed to have not been met.
- (ii) people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access (taking into account also NHS England's duties under section 13G of the 2006 Act (duty as to reducing inequalities)) and granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant pharmaceutical needs assessment was published;*
- 3.34 The applicant has identified generally persons with protected characteristics but has provided no evidence within the application that that persons with protected characteristics are experiencing difficulties accessing the existing pharmaceutical services.
- 3.35 Therefore, this Regulation is deemed to have not been met.
- (iii) there being innovative approaches taken with regard to the delivery of pharmaceutical services (taking into account also NHS England's duties under section 13K of the 2006 Act (duty to promote innovation)), and granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant pharmaceutical needs assessment was published;*
- 3.36 The applicant proposes to provide the same essential and advanced services that the 10 pharmacies within one mile and 26 within 2 miles currently provide.

Several of these pharmacies have longer core opening hours than those proposed by the applicant.

- 3.37 The applicant is not proposing any innovative approaches with regard to the delivery of pharmaceutical services.
- 3.38 Therefore, this Regulation is deemed to have not been met.
- 3.39 Regulation 18 (2) (c)-(g) are not relevant to this application, therefore were not considered
- 3.40 Regulation 18(3) is not relevant to this application, therefore was not considered
- 3.41 The applicant has not provided any evidence that the application would secure improvements or better access and that any person within the proposed location are having difficulty accessing pharmaceutical services.
- 3.42 The Committee was not satisfied that granting the application or granting it in respect of some only of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the Birmingham Health and Wellbeing Board.
- 3.43 Regulations 18(2)a is not met. Regulations 18(2)b(i), (ii) and (iii) are not met.
- 3.44 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).
- 3.45 No deferral or refusal under Regulation 18(2)(f) was required in this case.
- 3.46 The Committee had regard to Regulation 18(2)(g) and found no reason that required it to refuse the application under this regulation.
- 3.47 Regulation 19 is not relevant to this application, therefore was not considered
- 3.48 Regulations 40-44 are not relevant to this application, therefore were not considered
- 3.49 Regulation 65 - Not applicable – in that the applicant is not seeking to provide more than 40 core hours
- 3.50 Regulation 66 - Should the application be approved, a Direction will be issued in relation to the NHS England commissioned services identified in the application
- 3.51 The Committee refused the application.
- 3.52 The Committee determined that appeal rights are to be granted to the applicant.”

4 The Appeal

In a letter dated 16 February 2026 addressed to NHS Resolution, Rushport Advisory LLP on behalf of the Applicant appealed against the Commissioner's decision. The grounds of appeal are:

- 4.1 "I act for Roshban Limited in the above application and have been instructed by my client to submit this appeal against the Commissioner's decision to refuse their application listed above and made under regulation 18.
- 4.2 As the Committee will note, the Commissioner has refused my client's application as it found that the test under regulation 18 was not met. In making its decision, the Commissioner has failed to properly consider the needs of the 8,400 plus persons who live in the area around the application site and have no reasonable access to healthcare services. In particular, the Commissioner reached a number of conclusions that simply do not support their decision to refuse my client's application such as.
- 4.3 Detriment to Proper Planning – the Commissioner found;

"The Committee were satisfied that should the application be granted, it would cause significant detriment to the proper planning in respect of the provision of pharmaceutical services in the Birmingham Health and Wellbeing Board area and the arrangements in place for the provision of pharmaceutical services in the area. This is because there are 26 pharmacies within 2 miles of the proposed location, and 10 within one mile"
- 4.4 The mere existence of other pharmacies does not mean that the ICB would not be capable of "proper planning" if a new pharmacy were to open. There is no evidence provided to support this finding.
- 4.5 The Commissioner states:

"There are 10 pharmacies within a mile of the proposed location, a further 5 within 1.6 miles and a further 11 between 1.6 and 2 miles."
- 4.6 The Commissioner has calculated distances as the crow flies. In fact the nearest pharmacy to the application site is almost 1 mile away and the difficulties associated with accessing any pharmacy are described in detail in the attached Appeal Report.
- 4.7 Bus Services – the bus services available simply provide a means for those who live in the area and who require access to pharmaceutical services to travel outside of the area where they may live, work or shop and access a completely different area that does have community pharmacies present within it. This does not represent "reasonable choice", in fact it represents the opposite as patients have no choice other than to leave the extensive area that they live in to travel elsewhere to access services.
- 4.8 The Commissioner states;

For residents using public transport, there are regular bus services very close to the proposed location that go to Harborne where residents can access the services mentioned above and which are not available near to the proposed location.

- 4.9 This is simply saying that 8,400 patients should travel to a different area if they require access to pharmaceutical services. Furthermore, and as per the attached Appeal Report (5.7) to access a pharmacy in Harborne by public transport requires patients to walk over 500m to Harbone [sic] Park Road and get a bus and walk a further 150m from the bus stop.
- 4.10 The Commissioner has not properly considered the level of deprivation that exists around Grove Lane. The Commissioner states,
- The proposed location is within the Edgbaston ward; one of the least deprived wards in the city with lower-than-average illness numbers and percentages, higher than average uptake for vaccinations and a high proportion of car ownership.*
- 4.11 Whilst this may be the case for the ward, it is not the correct position for Grove Lane.
- 4.12 The Committee is directed to 6.29 of the Appeal Report which shows the high level of deprivation around the application site.
- 4.13 The Commissioner's comment that there is a high level of car ownership is simply wrong. 38.5% of Grove Lane households have no access to a car. (Appeal Report 6.34)
- 4.14 In addition to the above the Commissioner has not considered the high student population and the fact that these students are likely to be unfamiliar with the wider area.
- 4.15 The attached Appeal Report sets out my client's reasons for requesting that their appeal is allowed and the application granted. In addition to the report the Committee will also note a number of emails of support from local residents. These letters describe the difficulty posed by having to access pharmacies in other areas as well as the benefits that having a pharmacy within Grove Lane would bring.
- 4.16 We look forward to hearing from you in due course."

"Application for inclusion in the pharmaceutical list offering unforeseen [sic] benefits

NHS (Pharmaceutical and Local Pharmaceutical Services) Regulation 2013

"INTRODUCTION

- 4.17 Roshban Ltd have submitted an application for inclusion in the pharmaceutical list for Birmingham Health and Well Being Board. The location of the proposed premises is at the Grove Lane Shopping Parade, 101-123 Grove Lane, Birmingham B17 0QT.
- 4.18 This report has been prepared for the applicant, Roshban Ltd.
- 4.19 Structure of Report
- 4.20 This report sets out the case for this application. It is structured as follows:

- 4.20.1 Section 2 sets out the site and its surroundings;
- 4.20.2 Section 3 comments on the statutory tests;
- 4.20.3 Section 4 reviews the Birmingham PNA;
- 4.20.4 Section 5 sets out the details of health care provision in Grove Lane;
- 4.20.5 Section 6 provides an assessment against the key regulation 18 tests;
and
- 4.20.6 Section 7 sets out the conclusion.
- 4.21 Appendices
- 4.22 The following appendices are included: [see Appendix D for Committee]
 - 4.22.1 Appendix 1 Map of South West Birmingham
 - 4.22.2 Appendix 2 Bus Routes in Birmingham
- 4.23 THE SITE AND SURROUNDING AREA
 - General Location
 - 4.24 A map of the Grove Lane area is at Appendix 1. Gove Lane [sic] is located about 4 miles southwest of Birmingham City Centre. It is located in a Victorian suburb, close to the Queen Elizabeth Hospital and Birmingham University
 - 4.25 The area of Grove Lane would comprise a population of about 8,400 and would be an area framed by the University to the east, a golf course to the west, Harborne to the north and Lodge Hill to the south. Grove Lane is located east of the Midlands railway and the University stop for students arriving at college is located about 1 mile to the east of the site. Similarly the A38 main route into Birmingham is about 1 mile to the southeast of Grove Lane. Given this strategic accessibility of the area to the University and the hospital, the area around Grove Lane is a popular place to live.
 - 4.26 Grove Lane is a main road running north-south through this area. At its southern end it has a parade of shops and services along its west side which are classed by the Council as a potential new Neighbourhood Centre, which serve a neighbourhood catchment. Such a Centre is considered by the Council to be important in the context of having a liveable neighbourhood (i.e. with services withing 15/20 minutes walk).
 - 4.27 The Grove Lane Neighbourhood Centre services the local community around the Grove area. It is important because it is located over a mile from the nearest pharmacy and health centre and is catering for the day to day needs of the local community.
 - 4.28 This importance is reinforced by the topography of the area. The nearest shopping location at Harborne is located up a hill from Grove Lane. This is shown below, where the land rises from 149m at the Grove Shops to 177m at Harborne Park Road and 166m at Harborne High Street.

- 4.29 Beyond the main housing areas around Grove Lane there are open spaces formed by Grove Park to the north and east, the Golf Course to the west and Bourn Brook Linear park to the south. The large areas of open space encircle Grove and influence how and when people move around the area.

The Proposal Site

- 4.30 The proposal site is located at the Grove Lane Shopping Parade, identified as a Neighbourhood Centre by the Council. This Centre has on street parking in front of the shops and services. The Centre is anchored by a local convenience shop and also provides a take away, a music entertainment business, denture laboratory, barbers, café and a hair salon.

Surrounding Area

- 4.31 The area surrounding the proposal site includes a variety of community uses. Just north of the Neighbourhood Centre is Grove Tenants Hall Community Centre which provides local daily facilities to accommodate social, hobby and fitness clubs in the area for children, toddlers, youths and adults.
- 4.32 Opposite the Community Centre is the Kendrick Centre run by Birmingham City Council. This is a Nursing Home which can accommodate 64 people. It also provides day services for elderly residents called Balance Senior Day Service. North of this area is Grove Park which sits either side of Grove Lane. Travelling north there is a clear sense of leaving the Grove area and walking through parkland, which has no natural surveillance.

Grove Lane north of site.

- 4.33 Further north is Harborne Hall student apartments and St Peter CoE Primary School (437 children). Also in this area is a pub, and cemetery. The majority of the housing in the area of Grove Lane is semi-detached and detached. To the west is Duncan Smith House, which is student halls providing 42 rooms. To the south of the site is a local pub. There are local flats located at Arosa Drive. More student halls are located at Cadham Hall (112 rooms) and Riverside House (12 rooms).
- 4.34 Beyond these to the south is Bourn Brook Walkway a linear park running south through the area, which has no vehicular access. Just south are two more primary schools at Paganel Primary School (370 pupils) and Water Mill Primary School (205 pupils) and local shops and services along Swinford Road.
- 4.35 About 900m to the west is a second group of shops at Northfield Road which includes a chip shops, convenience store, post office and Mace shop, hair dressers, window glazing business and a car repairs and MOT business. These shops have parking for over 20 cars. Further west is the Golf Course.
- 4.36 To the east, there is a third group of shops at Harborne Lane, where there is a Shell Garage, 2 take away, hairdressers, 2 estate agents, army surplus store, convenience store, wine shop, international food supermarket. Beside these shops is another block of student halls at Metchley Hall. Just east of this is the massive Queen Elizabeth Hospital and east of this is the university of Birmingham.

- 4.37 The area is therefore a multi-use area with different populations. There would be the residents of the area, children passing around the area, students resorting to live in the area during term time and, elderly residents living in care in the area and people passing through the area to use the hospital.

The Proposal

- 4.38 The proposal is for a new pharmacy contract to be located at Grove Lane shops. This is a Neighbourhood Centre catering for the needs of the neighbourhood of Grove Lane.
- 4.39 It is also well positioned to cater for people passing through the area daily.
- 4.40 The proposal will operate 40.5 core hours [sic] between 9:00am to 1:00pm and from 2:00pm to 5:30pm Monday to Friday and 9am to 12pm on Saturday. It will open the same hours.
- 4.41 The proposal will provide appliances listed in Part IX of the Drug Tariff.
- 4.42 The proposal will provide all commissioned services and the applicant will ensure that all pharmacists employed are accredited to provide the services.
- 4.43 Once the premises has been secured a floor plan will be commissioned and will be provided. The premises will be registered with the GPhC and will comply with relevant legal and ethical requirements for the operation of a retail pharmacy business.
- 4.44 The premises will have a consultation area to provide services including NMS, EHC, Hypertension Case Finding, Smoking Cessation, Flu Vaccinations, and Pharmacy First.

THE STATUTORY TESTS

- 4.45 The statutory tests are set out under “The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013” (the “Regulations”). In particular the application should be assessed under Regulation 18.
- 4.46 The first test is whether an application for the improvements for people living in Grove Lane has been considered under the Birmingham and Solihull Pharmaceutical Needs Assessment 2022 (the “PNA”).
- 4.47 As shown below the PNA does not foresee the improvements that the proposal could deliver to the Grove Lane area. As such this application is an ‘unforeseen’ application and Regulation 18 applies to its assessment.
- 4.48 Other aspects of the Regulations are Regulation 18 (2)(a)(i) whether significant detriment to proper planning in respect of the provision of pharmaceutical services in the area of the relevant HWB would occur and Regulation 18(2)(a)(ii) whether significant detriment to the arrangements the NHSCB has in place for the provision of pharmaceutical services in that area would occur.

- 4.49 There is no evidence that granting the application would cause significant detriment to proper planning for provision of pharmaceutical services or the existing provision of pharmaceutical services in the area.
- 4.50 It will not cause significant detriment to the closest pharmacies which are located in Harborne District Centre and well beyond the Grove Lane community. As such the opening of the proposal will not affect the proper planning of pharmaceutical services.
- 4.51 The other aspects that an applicant can ground their application on includes Regulation 18 (2)(b) (ii) and (iii) being that a proposal will support the needs of people who share a protected characteristic and innovative approaches are being taken.
- 4.52 In terms of protected characteristics as shown above and later there are a variety of groups that live in this area that would be groups that share protected characteristics, as mentioned above including young children, students and the elderly.
- 4.53 The Regulations have been in place for over a decade and are well understood. They have been distilled into the central issue of whether a proposal will provide better access to pharmaceutical services (Regulation 18(1)(a)) and whether there is reasonable choice of pharmaceutical services (Regulation 18(2)(b)(i)). The Regulations provide no guidance as to what is “better access” or “reasonable choice”, such matters are determined by the facts of the case.
- 4.54 Better access and reasonable choice are clearly evident in this case where there is an evidential context that shows that the population of Grove Lane have no access to a pharmacy or any medical centre and Grove Lane is a gap in the geographical spread in the pharmacy network of south west Birmingham, particularly in the context of the University and the hospital and the people attracted to these major facilities from and through the Grove Lane area.

REVIEW OF THE PNA

- 4.55 The Birmingham and Solihull PNA (2025) applies in this case. The PNA’s role is to assess local needs for pharmaceutical service provision and identify any gaps in services or unmet needs of the local population. The PNA is only capable of making a judgement about the provision of services at the time of its publication.
- 4.56 The PNA splits the area into six localities and includes the Grove Lane area in the South Locality.
- 4.57 The PNA states that “The HWBs considered provision and choice of pharmacies is determined accessible via 1-mile radius from the centre of the postcode of each pharmacy. This equates to approximately a 20-minute walk to a pharmacy. For residents who live within a rural area, 20 minutes travel by car is considered accessible.” By this measure access to a pharmacy for residents in Grove Lane is not sufficient as it is more than a 20 minute journey to the nearest pharmacy on foot despite being an urban area.
- 4.58 The PNA notes that Birmingham is ranked 7th out of the nation’s 151 upper-tier local authorities, where 1 is the most deprived. It has large pockets of

deprivation with 360 of the city's 639 LSOAs among the most deprived 20% in all of England (deprivation deciles of 1 or 2).

- 4.59 The notes that the south locality currently has the lowest number of pharmacies per 10,000 people (table 7.1) despite having one of the highest population densities.
- 4.60 The PNA has not foreseen this proposal and the benefits and improved access to pharmaceutical services that it will provide.

HEALTHCARE IN GROVE LANE

- 4.61 A Map of Grove Lane is at Appendix 1 [see Appendix D for Committee]. It shows that there is no pharmacy or health centre in Grove Lane.

Pharmacy Services outside Grove Lane

- 4.62 Residents in Grove have to leave their area to access pharmacy services.
- 4.63 The closest pharmacy is Knights Lordswood Pharmacy, located at Lordswood Road.
- 4.64 This is located about 0.9miles northwest of the proposal site. It opens 8:30 am to 6:00pm Monday to Friday and 9:00am to 3:00pm on Saturday.
- 4.65 This pharmacy dispenses in the region of 12,700 items per month. It is a pharmacy that is co-located with Lordswood House Group Medical Practice.
- 4.66 This pharmacy dispenses well over the average items per month at 13,390.
- 4.67 Unsurprisingly, 83% of these items are prescribed at the adjacent Medical Practice.
- 4.68 This accounts for 41% of the 28,000 items prescribed at this Medical Practice each month. The Medical Practice has a substantial 24,000 patients registered.
- 4.69 This pharmacy is about 0.9miles walk from the proposal site.
- 4.70 To access this pharmacy on public transport requires patients to walk over 500m to Harbone Park Road and get a bus and walk a further 150m from the bus stop.
- 4.71 Harborne District Centre is the hub for a large part of southwest Birmingham. It functions as a town centre and has three pharmacies located in it as follows:
 - 4.71.1 Jhoots Pharmacy 131 High Street which dispenses 2500 items per month and opens 9am to 5pm Monday to Friday but is closed at the weekend;
 - 4.71.2 Boots Pharmacy, 87-87a High Street which dispenses about 5,800 items per month and opens 8:30 am to 5:30pm Monday to Saturday and from 10am to 4:00pm on Sunday; and

- 4.71.3 Superdrug, 124-140 High Street which dispenses about 7,400 items per month and opens 9:00am to 6:00pm Monday to Friday and from 9:00am to 5:30pm on Saturday.
- 4.72 These pharmacies all serve Harborne Medical Practice which is located at York Street, Harborne and has over 16,000 patients. Harborne is a busy retail location and the centre extends for 1.2km from east to west. It is dominated by vehicular traffic which detracts from the centre and is impacted by high congestion. Whilst there are parking spaces around the centre, it is very limited and often difficult to get a parking space.
- 4.73 It is a 1 mile walk from the proposal site to Harborne. This goes through the parkland north of Grove Lane and up a hill as shown earlier. To get a bus would mean walking south of the site to get a bus at Quinton Road.
- 4.74 West of the Grove area there is a pharmacy and medical centre at Quinborne Medical Practice and Selfcroft Pharmacy. These two premises are co located on the same site.
- 4.75 This is part of the Lordswood House Medical Group and this surgery and pharmacy would cater for the needs of the residents that live in the housing estates around the surgery.
- 4.76 South of the site there are three pharmacies located around Weoley Castle Square.
- 4.77 The pharmacies are:
- 4.77.1 Castle Chemist, 104 Weoley Castle Road. This pharmacy opens 9:00am to 1:00pm and from 2:00pm to 5:30pm Monday to Friday and from 9:00am to 1:00pm on Saturday. It dispenses 5,800 items per month mostly from the Millenium Medical Centre;
- 4.77.2 Dean Pharmacy, 175 Weoley Castle Road. This pharmacy opens 9:00am to 7:00pm Monday to Friday and from 9:00am to 4:30pm on Saturday. It dispenses 6,500 items per month mostly from the Millenium Medical Centre; and
- 4.77.3 Kings Pharmacy, 118-120 Weoley Castle Square. This pharmacy opens 9:00am to 6:00pm Monday to Friday and from 9:00am to 4:00pm on Saturday.
- 4.78 It dispenses 11,200 items per month mostly from the Millenium Medical Centre and Weoley Park Surgery.
- 4.79 These pharmacies all serve
- 4.79.1 Millenium Medical Centre which has 9,600 patients and prescribes 14,000 items per month; and
- 4.79.2 Weoley Park Surgery which has 7,400 patients and prescribes 9,400 items per month.

- 4.80 These pharmacies are serving the needs of the people and shoppers in the Weoley Castle area. They are not located to serve the needs of the residents of Grove Lane.
- 4.81 These pharmacies are located 1.3miles from the proposal site as shown below.
- 4.82 Accessing these pharmacies by public transport requires patients to walk to Quinton Road.
- 4.83 Southeast of the Grove Lane area are two pharmacies in the Bristol Road area. These are
- 4.83.1 Oaks Pharmacy, 564-566 Bristol Road. This pharmacy opens 9:00am to 6:00pm Monday to Friday and from 9:00am to 5:00pm on Saturday. It dispenses 2,980 items per month mostly from the Bournbrook Varsity Medical Centre.
- 4.83.2 Jhoots Pharmacy, 480 Bristol Road. This pharmacy opens 9:00am to 1:00pm and from 2:00pm to 5:30pm Monday to Friday and from 9:00am to 2:00pm on Saturday. It dispenses 2,900 items per month mostly from the Bournbrook Varsity Medical Centre.
- 4.84 These two pharmacies serve the Bournbrook Varsity Medical Centre. This has about 14,500 patients registered and prescribes about 7,200 items per month.
- 4.85 These pharmacies are about 1.4miles from the proposal site and these pharmacies would not be accessible by public transport from the proposal site. Car parking would be limited in this inner city and busy shopping street.
- 4.86 Importantly, there is a University Medical Practice located at 5 Pritchatts Road. There is 14,500 students registered with this Medical Practice and these patients have to use the existing network of pharmacies. The proposal site is well placed in the heart of a number of student residencies to cater for the needs of students that present at the University Medical Practice.

Summary

- 4.87 All existing pharmaceutical services are beyond walking distance and a congested drive for people in Grove Lane area. Parking in the main centres is severely limited and patients would have a low expectation of finding a convenient parking space. There is a geographical gap of about 2miles between pharmacy services provided north and south of Grove Lane.

ASSESSMENT AGAINST THE REGULATION 18 TESTS

- 4.88 Regulation 18 (20)(b) (i-iii) is well known and sets out the following:

(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;

(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; and

(iii) there being innovative approaches taken with regard to the delivery of pharmaceutical services granting the application would confer significant benefits on persons in the area which were not foreseen when it published its pharmaceutical needs assessment.

Reasonable Choice

- 4.89 The first consideration is whether there is a reasonable choice with regard to obtaining pharmaceutical services in this area. The residents of Grove Lane access the majority of the shops and services within their community. They are physically separated from shops and services to the north, south and west by large areas of open space and golf courses and parkland. These residents do not have reasonable access to pharmacy services.
- 4.90 With no pharmacy in the Grove Lane area, which includes three different shopping areas (and shops on its periphery to the south), the residents and shoppers that use these centres are clearly disadvantaged. It is not reasonable to expect people that come to these shops for their day to day needs to turn around and walk a mile and more to have a prescription dispensed.
- 4.91 What is also significant is that the area has no GP practice and that the GP practices are thinly spread around the south Birmingham area. Indeed, one of the main practices for the community would be the University Medical Centre. This has no pharmacy within or close to it. Again, the complete absence of any health care is not reasonable.

Locally Provided Services

- 4.92 A local pharmacy can have a significant positive impact on community spirit and community identity. It provides a local meeting place for people to stop and meet their neighbours.
- 4.93 It is contrary to the aims of good planning and sustainable living to require the population of a Grove Lane to leave the area and travel unnecessarily to Horborne [sic] to access a pharmacy. Such an approach undermines the viability of the local shops and services, undermines the efforts to foster a sense of community spirit, and places an unnecessary burden on people to make long journeys elsewhere rather than visit their local pharmacist. For those that have access to cars it increases traffic congestion on roads.
- 4.94 In planning terms there are no good grounds to require the population of Grove Lane to leave their community to travel elsewhere for a pharmacy.
- 4.95 On the contrary, good planning would actively encourage a pharmacy in Grove Lane as it would reinforce the services being provided in the area, support the needs of the local community, make access to a pharmacy easier and more sustainable encouraging people to walk to local shops, and combining a visit to the pharmacy as part of their day to day activity.

Benefits of Locally Accessible Healthcare in Grove Lane

- 4.96 The Department for Health has the objective of pharmacies providing a wider range of services and to have a stronger role in the local community. It would encourage the provision of NHS services from a pharmacy to complement people's current lifestyles and needs, where prevention of medical conditions can be achieved and where people can become educated in medical conditions so that they are better engaged in taking care of their own health and well-being.
- 4.97 With the closest pharmacy a 2 mile return trip away for many living in this area, a material consideration is the benefits of having a pharmacy in Grove Lane. A pharmacy can provide a private consultation room and provide immediate access to a pharmacist who can help diagnose health conditions, prescribe medication and sign post patients to GP and other health services. It is a fundamental aspect of the health services provided throughout the UK. It is the frontline of health care and has the clear benefits of relieving pressure on GPs.
- 4.98 The proposal will provide significant benefits to the local area, offering patients a full pharmacy accessible to people in an area where there is no GP service at all. This proposal will be the only NHS health service serving a large geographical area.

Under Provision and Over Subscription

- 4.99 The PNA notes that the number of pharmacies in the south locality is below the England average. We would describe this as uncomfortably below the average. It is fundamentally inappropriate to suggest that the under provision can be made up by provision outside the locality. Many people in this area do not have a car as is shown below. People in this area need a pharmacy to provide for their daily and often urgent needs. It is unreasonable to expect them to leave their locality to access pharmaceutical services.
- 4.100 This point is reinforced by the significant disparity between the number of patients registered at GPs in the south locality and the population. There is about a third more patients registered with GP practices in the south locality, than the PNA estimates lives in the area. There is therefore a hidden group or groups of the population that are not being captured in population forecasts that are seeking to access health services in the area.
- 4.101 If the registered patient's population (288,264) was applied to the average number of pharmacies (i.e. there are 38 pharmacies in the south locality) there would be 13 pharmacies per 100,000 population. This is dramatically below the England average.

Walking Distances

- 4.102 The Institution of Highways & Transportation provides "Guidelines on Providing for Journeys on Foot". It advises (para 3.30) that "The average length of a walk journey is one kilometre (0.6 miles). This differs little by age or sex and has remained constant since 1975/76". It suggests that an acceptable walking distance in an area such as Birmingham would be 800m, though 400m would be desirable and the preferred maximum would be 1200m. There are no other pharmacies within 400m or 800m of the Grove Lane shops. It is a significant distance of almost a mile for residents from the area to access the alternative

pharmaceutical services at Harborne and when they get there it is a car dominated, congested and exceedingly busy shopping environment.

- 4.103 The nearest alternative pharmacies are all located beyond the maximum limit of urban walking distances from the proposal site. On this basis the alternative pharmacies in this case are not accessible.

Bus Routes

- 4.104 In terms of bus services, some of the closest pharmacies such as at Knights Lordswood Pharmacy requires patients to walk inconvenient distances to access the bus services and the pharmacy when they alight the bus. The pharmacies in Harborne have buses coming into the centre, but these are very easily delayed because of the traffic congestion that impacts the shopping area.
- 4.105 A map of the bus routes in Birmingham is at Appendix 2. [see Appendix D for Committee]

Hours of Opening

- 4.106 The proposal will open 6 days a week and will provide for those patients that need access to a pharmacy on a Saturday even when their preferred health centre might be closed. This is important for certain population groups in the area such as students that might have need to access pharmaceutical services at the weekend. Given the under estimates of the population in the area and the wider area, it is important that increased choice of alternative pharmacies are available for patients should they need them especially at the weekend.

General Characteristics of the Area

Population

- 4.107 The population of Grove Lane area is 8,400. This is the Census population. However, this is likely to be an underestimate as students may be recorded in their home address when the 2021 Census was recorded. During 2021, Covid lockdowns were still taking place and many University courses would have been delivered online, allowing students to study from home. With the return to normal conditions, students have returned to campus and many live in halls which may not have been captured previously.
- 4.108 A population of 8,400 is significant and it would comfortably support one pharmacy and in many areas would be supporting two pharmacies.
- 4.109 The age profile shown below reinforces the case that the area has a large student population, with a clear spike in the 20-24 age group.

Economic Status

- 4.110 The economic status of the area is illustrated below. The area is dominated by private rented housing with 32.7% of people living in this accommodation compared to the England average of 20.6% and social rented accommodation with 25.2% living in this accommodation type, compared to the England average of 17.1%. substantially fewer people live in owner occupied and outright owned homes.

- 4.111 It is also noted that more people than average live in a flat or apartment. These figures reflect the amount of student apartments and flat developments in the Grove Lane area.

Unemployment

- 4.112 In terms of economic activity it can be seen below that there is a significantly low economically active population in the area of 49.2% compared to the England average of 57.4%. There is a high unemployment rate of 5.5% compared to the England average of 3.5%. There is a high economic inactivity rate of 45.3% compared to the England average of 39.1%. These figures corroborate the deprivation evidence provided below.

Health Demand

- 4.113 The health characteristics of the population is illustrated below. It can be seen that very good health is above the England average (51.5% compared to 48.5%). Good health and fair health are below the England average. Bad health and very bad health are average. The population that would be defined as disabled under the Equality Act is average. These figures reflect the higher levels of students and young people in the area.

Evidence of Deprivation

- 4.114 Consistent with the evidence above, the diagram below shows that the Grove Lane area has above average levels of deprivation.

- 4.115 It can be seen that :

3.1.1 Fewer households are not deprived in any dimension (i.e. 47.6% compared to 48.4%);

3.1.2 Fewer households are deprived in one dimension (i.e. 31.8% compared to 33.5%);

- 4.116 The Grove Lane area clearly suffers from deprivation for many people. The scale of deprivation is further illustrated in the map below [see Appendix C].

- 4.117 This map shows that the area around Grove Lane (coloured amber) are among the highest levels of deprivation in England. There are pockets of affluence around Edgbaston, but the wider area is dominated by significant high levels of deprivation in Birmingham City Centre. This reinforces the case that a pharmacy in Grove Lane is needed and deprived residents of this area should not be required to travel to more affluent areas or indeed more deprived area to access a pharmacy. Such a scenario widens inequality in this part of the City.

- 4.118 The evidence demonstrates that the area around the proposal site has a significant population, with adjacent areas having high levels of deprivation and with clear health needs. The area around the proposal site is an area where improved health care can support local people. This is an area where a new pharmacy that offers the full panoply of pharmaceutical services will provide improvements to health care outcomes.

Student Population

- 4.119 Young people and students are a group with protected characteristics. The Grove Lane area has a disproportionate number of students, which reflects the characteristics of the area.
- 4.120 The table below confirms that there is 30.4% of people in the area registered as students, compared to the England average of 20.4%.

Students Population

- 4.121 The table below [see Appendix C for Committee] shows that the area has an above average of 1 bedroom accommodation, again reflecting that a large number of people are living on their own with no family support.

Number of Bedrooms

- 4.122 The table below [see Appendix C for Committee] shows that a very large 38.5% of people have no access to a car (compared to 23.5%). This means that for many people, there is no prospect of them travelling to a pharmacy in a car. Many of the young students in the area will be wholly unfamiliar with the surrounding areas and will simply not know where pharmacy is.
- 4.123 Many would be uncomfortable going to different areas of a city in search of a pharmacy. It is extremely important that these young people have access to pharmaceutical services in their area.

Car Ownership

Secure Improvements

- 4.124 It is shown above that there is a significant scale of population in this area with no access to a pharmacy. That population is in many ways deprived and it has many young people with no access to a car and no family support to help them access a pharmacy.
- 4.125 Many would be unfamiliar with their wider surrounding and would be uncomfortable seeking out a pharmacy in areas they are unfamiliar with.
- 4.126 The walk to the nearest pharmacy takes people through parkland that would have no natural surveillance and through unfamiliar housing estates. Public transport is limited in the context of the fact that this is a city location and public transport suffers from significant congestion in the nearest centres.
- 4.127 The Grove Lane area has three neighbourhood centres and no pharmacy. People access much of their needs without leaving the area. Pharmacy, and indeed health care provision is a significant gap and the proposal will secure obvious improvements in this respect.
- 4.128 This is significant demand and clearly warrants renewed provision of all pharmaceutical services in the area.

Better Access

- 4.129 The access issues for the people in the Grove Lane area are set out above. The proposal site is located within the Grove Lane shops and is a designated neighbourhood centre. It is an important hub of community shopping and services in the south west of Birmingham. It meets the needs of residents, students and people passing through the area to the hospital and university. Many local people are severely disadvantaged given the low car ownership rates and levels of deprivation in the area. Many patients have to pay to access pharmaceutical services by making two bus trips to and from an alternative pharmacy. The proposal will remove the need for these trips.

Protected Characteristics

- 4.130 The proposal will cater for people of protected characteristics. Children and elderly people living in the Grove Lane area would be groups with shared protected characteristics. There are elderly people living opposite the proposal site and over 1,000 children at school in the area daily. We have discussed the high level of students in the area above.
- 4.131 These protected groups have no access to a local pharmacy and do not have access to the full panoply of pharmaceutical services as part of their day to day lives. Many are unable to walk the journeys to alternative pharmacy provision and many would not have access to a private car. The location of the proposal in the same general location as their local shops will address this matter and will ensure that a full pharmacy service is provided to these protected groups.

Summary

- 4.132 Overall, having considered the requirements of Regulation 18 the proposal should be granted as there is not reasonable choice of pharmacy services in the Grove Lane area of Birmingham and the Birmingham and Solihull HWB area specifically bearing in mind the localised issues of the scale of the population and its socio economic demographic, scale of deprivation in the wider area, distances to health care services of any kind and the significant under provision of pharmacies in the south locality of Birmingham generally. The proposal will confer significant benefits to the Grove Lane population, and these benefits are wholly unforeseen

CONCLUSION

- 4.133 Grove Lane is an area that does not have a reasonable choice of pharmacy services and is clearly in need of better access to pharmacy services. Following assessment of the circumstances of Grove Lane the applicant contends that the application is an unforeseen proposal that will satisfy the requirements of Regulation 18.”

5 Summary of Representations

This is a summary of representations received on the appeal.

5.1 BOOTS

- 5.1.1 “Thank you for informing us of the above appeal. We agree with the NHS ICBs decision to refuse the application and their reasonings.

- 5.1.2 Pharmaceutical provision across the Health & Wellbeing Board has recently been reviewed and the 2025-2028 PNA published. No gaps in pharmaceutical provision have been identified in this location.
- 5.1.3 The application address provided sits within a ward where deprivation is low compared to other wards in Birmingham. As facilities are restricted around the application site, it is more likely that patients will use services in Harborne or Selly Oak.
- 5.1.4 We are not aware of any complaints from patients about access to our pharmacy, which is located on High Street, Harborne, B17 9NN. Whilst classed as a suburb, Harborne has all the amenities that you would expect in a small town, and we believe that patients would naturally migrate to Harborne for their day-to-day provisions. Should it be required, our pharmacy offers a delivery service, and patients can also choose to use our on-line prescription service and have their items delivered free of charge.
- 5.1.5 The appellant has provided great detail about the area around the application site but there is little evidence of what health need is not being met by existing contractors.
- 5.1.6 We believe that there is already reasonable choice with regard to obtaining pharmaceutical services. The population/pharmacy ratio is already higher than the England average.
- 5.1.7 With this in mind, we respectfully request that the panel dismiss the appeal accordingly.
- 5.1.8 Please be aware that should an oral hearing be held in connection with this appeal, we may wish to attend.”

6 Observations

No observations were received by NHS Resolution in response to the representations received on appeal.

7 Consideration

- 7.1 The Pharmacy Appeals Committee (“the Committee”), appointed by NHS Resolution, had before it the papers considered by the Commissioner, together with a plan of the area showing existing pharmacies and doctors’ surgeries and the location of the proposed pharmacy.
- 7.2 It also had before it the responses to NHS Resolution’s own statutory consultations.
- 7.3 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.
- 7.4 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (“the Regulations”).

Regulation 31

7.5 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).

7.6 The Committee noted that the Applicant had stated "*No other pharmacy at either the same or adjacent proposed premises.*" In its decision letter, the Commissioner had concluded that it was "*satisfied that there is no pharmacy providing pharmaceutical services at the same or adjacent premises.*" The Committee noted that this had not been disputed either on appeal or in subsequent representations and determined that it was not required to refuse the application under the provisions of Regulation 31.

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

Regulation 18

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

"(1) If—

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

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

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

(2) Those matters are—

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

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

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

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

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

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

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

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

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

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

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

- (e) whether it is satisfied that an appeal relating to another application offering to secure the improvements or better access is pending, and it would be desirable to await the outcome of that appeal before considering the applicant's application;*
 - (f) whether the application needs to be deferred or refused by virtue of any provision of Part 5 to 7.*
 - (g) whether it is satisfied that the application presupposes that a gap in pharmaceutical services provision has been or is to be created—*
 - (i) by the removal of chemist premises from a pharmaceutical list as a consequence of the grant of a consolidation application, and*
 - (ii) since the last revision of the relevant HWB's pharmaceutical needs assessment other than by way of a supplementary statement.*
- (3) NHS England need only consider whether it is satisfied in accordance with paragraphs (2)(c) to (e) if it has reached at least a preliminary view (although this may change) that it is satisfied in accordance with paragraph (2)(b)."*

7.9 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").

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

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

7.12 The Committee noted that Regulation 22 states:

"Refusal of routine applications that are based on neither a pharmaceutical needs assessment nor unforeseen benefits

(1) If NHS England receives a routine application to which regulation 19(6) does not apply, NHS England must refuse it unless granting it, or granting it in respect of some only of the services specified in it, would—

(a) meet a current or future need for pharmaceutical services, or a pharmaceutical services of a specified type, in the area of the relevant HWB that has been included in the relevant pharmaceutical needs assessment in accordance with paragraph 2 of Schedule 1; or

(b) secure (including in the future) improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB that have or has been included in the relevant pharmaceutical needs assessment in accordance with paragraph 4 of Schedule 1.

(2) For the purposes of paragraph (1), the relevant pharmaceutical needs assessment is—

(a) the pharmaceutical needs assessment of the relevant HWB that is current at the time that NHS England takes its decision to grant or refuse the application, unless in the opinion of NHS England (or on appeal the Secretary of State) the only way to determine the application justly is with regard to an earlier pharmaceutical needs assessment, in which case the relevant pharmaceutical needs assessment is that earlier assessment, or

(b) if the relevant HWB has not published a pharmaceutical needs assessment, the pharmaceutical needs assessment of a Primary Care Trust (as extended by regulation 7(1)) that relates to the locality in which the location or premises to which the application relates is or are situated.

- 7.13 The Committee noted that the Applicant had based its application on the 2022 PNA, but that the HWB had since published a 2025 version of the PNA ("the 2025 PNA"). The report submitted by the Applicant on appeal had considered the 2025 PNA.
- 7.14 The Committee considered that there were two related issues that it needs to determine in relation to the PNA. It needed to determine which PNA was the relevant PNA for the purposes of Regulation 22 and whether the relevant PNA had identified the improvements or better access that the application was looking to secure.
- 7.15 The Committee considered that the starting point as set out in Regulation 22 was that the relevant PNA was the PNA of the relevant HWB that is current at the time that the decision is taken. There is no dispute that the 2025 PNA is the current PNA.
- 7.16 The Committee considered the PNA prepared by Birmingham City Council and Solihull Metropolitan Borough Council on behalf of the Birmingham and Solihull Health and Wellbeing Boards, conscious that the document provides an analysis of the situation as it was assessed at the date of publication. The Committee bears in mind that, under Regulation 6(2), the body responsible for the PNA must make a revised assessment as soon as reasonably practicable

unless to do so appears to be a disproportionate response to those changes. Where it appears disproportionate, the responsible body may, but is not obliged to, issue a supplementary statement under Regulation 6(3). Such a statement then forms part of the PNA. The Committee noted that the PNA was dated 2025 – 2028 and was published in November 2025 and that no supplementary statements had been issued.

7.17 The 2025 PNA Steering Group, based upon the PNA regulations that require the HWB to divide its area into localities as a basis for structuring the assessment, had selected 5 localities for Birmingham (Central, East, North, South and West) and Solihull as a single locality. The Committee noted that the site of the proposed location is in the South locality of Birmingham.

7.18 Whilst the area had been split up into localities, the Committee noted that the general themes of the PNA had considered the areas as a whole and the specific site of the proposed location, within the Harborne and Edgbaston areas had not been specifically referenced.

7.19 The Committee noted the conclusion of the Executive Summary which stated:

“The Health and Wellbeing Boards have concluded that there is good access to necessary and other relevant services, with no gaps in the current and future provision of these services identified.”

7.20 The Committee also noted the various conclusions throughout the PNA with regard to accessibility at section 7 which states:

Summary of the accessibility of pharmacies in Birmingham and Solihull

Overall, there is good pharmacy coverage to provide pharmaceutical services to Birmingham and Solihull residents both within and outside normal working hours. Majority of the residents are within one mile of pharmacy and the entire BSol population can reach a pharmacy within 20 minutes using a car.

7.21 Chapter 9 “Conclusions and statements” states:

Current provision of necessary services during normal working hours

9.11 All pharmacies are open for at least 40 hours each week. There are 285 community pharmacies in BSol [Birmingham and Solihull], and a further 34 within a mile of its border, providing good access as explored in Chapter 7.

...

Based on the information available at the time of developing the PNA, no gaps were identified in the current provision of necessary services inside normal working hours in any of the 6 localities.

7.22 And further:

“Based on the information available at the time of writing this PNA, no gaps were identified in the future provision of necessary services during normal working hours in the lifetime of this PNA in any of the 6 localities.

Though the current pharmacies, with their relatively low dispensing averages, are likely to cope with the demand exerted by the ongoing housing developments, future PNAs should continue to monitor the situation closely."

- 7.23 The Committee noted that the Applicant seeks to provide unforeseen benefits to those resident in and around the Grove Lane area of Birmingham. The Committee noted that the improvements or better access that the Applicant was claiming would be secured by its application were not included in the relevant PNA in accordance with paragraph 4 of Schedule 1.
- 7.24 In order to be satisfied in accordance with Regulation 18(1), regard is to be had to those matters set out at 18(2). The Committee's consideration of the issues is set out below.

Regulation 18(2)(a)(i)

- 7.25 The Committee had regard to

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

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

- 7.26 The Committee noted the comments from the Commissioner that *"the Committee were satisfied that should the application be granted, it would cause significant detriment to the proper planning in respect of pharmaceutical services in the Birmingham Health and Wellbeing Board area ... This is because there are 26 pharmacies within 2 miles of the proposed location and 10 within one mile."*
- 7.27 The Committee further noted the conclusion of the Commissioner that *"Granting the application would cause significant detriment to the proper planning and provision of pharmaceutical services in the HWB area (i) and (ii)."*
- 7.28 The Committee noted the Applicant's response to this in that *"The mere existence of other pharmacies does not mean that the ICB would not be capable of "proper planning" if a new pharmacy were to open. There is no evidence provided to support this finding."*
- 7.29 The Committee was of the view that a statement from the Commissioner setting out how many pharmacies are in an area was not sufficient to demonstrate that granting an application would cause significant detriment to proper planning. The Committee noted that this statement had not been expanded upon and no further information with regard to "proper planning" had been provided by the Commissioner, either in its original decision letter or in subsequent representations.
- 7.30 On the basis of the information available, the Committee was not satisfied that, if the application were to be granted and the pharmacy to open, the ability of the Commissioner thereafter to plan for the provision of services would be affected in a significant way.

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

Regulation 18(2)(a)(ii)

- 7.32 The Committee had regard to

- "(a) whether it is satisfied that granting the application would cause significant detriment to— ...*
- (ii) the arrangements NHS England has in place for the provision of pharmaceutical services in that area"*

- 7.33 In its decision letter, the Commissioner had stated *"The Committee were satisfied that should the application be granted, it would cause significant detriment to ... the arrangements in place for the provision of pharmaceutical services in the area. This is because there are 26 pharmacies within 2 miles of the proposed location, and 10 within one mile."*

- 7.34 The Committee further noted the conclusion of the Commissioner in that *"Granting the application would cause significant detriment to the proper planning and provision of pharmaceutical services in the HWB area (i) and (ii)."*

- 7.35 The Committee noted that the statement by the Commissioner had not been expanded upon and no further information with regard to the arrangements that it has in place for the provision, except for the number of pharmacies in the area, had been provided by the Commissioner either in its decision letter or in response to the appeal.

- 7.36 Based on the lack of information and reasoning before it, the Committee was not satisfied that significant detriment to the arrangements currently in place for the provision of pharmaceutical services would result from a grant of the application.

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

Regulation 18(2)(b)

- 7.38 The Committee had regard to

- "(b) whether, notwithstanding that the improvements or better access were not included in the relevant pharmaceutical needs assessment, it is satisfied that, having regard in particular to the desirability of—*
- (i) there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB (taking into account also NHS England's duties under sections 13I and 13P of the 2006 Act (duty as to patient choice and duty as respects variation in provision of health services)),*

- (ii) *people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access (taking into account also NHS England's duties under section 13G of the 2006 Act (duty as to reducing inequalities)), or*
- (iii) *there being innovative approaches taken with regard to the delivery of pharmaceutical services (taking into account also NHS England's duties under section 13K of the 2006 Act (duty to promote innovation)),*

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

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

- 7.39 The Committee had regard to the location of the existing pharmacies and GP surgeries as provided on the map by the Commissioner, which had not been disputed by any party.
- 7.40 The Committee noted that whilst the application had been based on the 2022 PNA, the appeal had considered and made reference to the 2025 PNA. The Committee was mindful that no gaps in pharmaceutical provision had been identified in the 2025 PNA and that the Applicant had sought to apply for a new pharmacy based on the view that it would confer significant benefits unforeseen by the PNA.
- 7.41 The Committee sought to understand, from the information before it, the nature of the population of the area. The Committee noted that it had been provided, within the report provided on appeal, with background information relating to the area which had not been disputed.
- 7.42 The Committee noted that the proposed site was on Grove Lane in Birmingham which is located to the southwest of the city centre. The Committee noted that this was a residential area containing a mix of housing but there appeared to be very little amenities in the area. The Committee noted that there was a parade of shops, to the southern end of Grove Lane, and whilst the Committee noted the assertions of the Applicant that this was a "Neighbourhood Centre" this was the Applicant's interpretation and that it had not been classed as such.
- 7.43 The Committee noted the Applicant's reference to a Community Centre, a nursing home, some student accommodation as well as two primary schools, a pub and a cemetery.
- 7.44 The Committee did not doubt that the services and amenities may be used by persons in the area, however the Committee considered these services and amenities not so extensive that those resident in the area would not have to travel elsewhere for some of their requirements. In doing so, they may be able to access existing pharmaceutical services in the area.
- 7.45 The Committee was mindful that it is reasonable choice within the area of the HWB that it must have regard to and not just a specific location of the proposed

pharmacy, taking into account the accessibility of existing pharmaceutical services.

- 7.46 The Committee noted the comments from the Commissioner that there are 10 pharmacies located within a mile of the proposed site, with a further 5 within 1.6 miles and a further 11 located between 1.6 to 2 miles away. The Committee noted the Applicant's comments that these distances are given "as the crow flies" and that the nearest pharmacy, by the most practicable route was over a mile away, however the Committee noted that the Applicant had not disputed either the number of pharmacies or the location of such within the area.
- 7.47 The Committee considered access to existing pharmacies on foot. The Committee noted that the distance to the nearest pharmacy had been disputed as they had been given as a radial distance rather than an actual distance and the Applicant had provided alternative distances based on actual routes. The Committee was of the view that the distances to some of the pharmacies was beyond walkable. The Committee noted the comments from the Applicant with regard to the steep gradient in the area, however it was of the view that the increase of between 17 to 28 metres on a journey to Harborne High Street and Harborne Park Road was not such a barrier to movement that it would prevent those that chose to and were able to access existing pharmacies by foot from doing so. The Committee noted that there was no other information provided to demonstrate that there were physical barriers to accessing pharmaceutical services on foot and further noted the conclusions of the PNA that *"Most respondents (90%) reported a journey time of 20 minutes or less to reach their pharmacy, with driving and walking being the most common means of getting there (51% and 41% respectively)"* and further *"The HWBs considered provision and choice of pharmacies is determined accessible via 1-mile radius from the centre of the postcode of each pharmacy. This equates to approximately a 20-minute walk to a pharmacy."* The Committee was of the view that there would be persons who are able and willing to access the existing pharmacies on foot and that there was nothing provided to demonstrate that those who are able to access existing pharmaceutical provision by foot were currently experiencing any difficulties in doing so.
- 7.48 The Committee was mindful that there would be some who would choose not to access services on foot, or who are unable to access services on foot, for whatever reason. The Committee therefore went on to consider the ease and level of access to pharmacies by private and public transport.
- 7.49 The Committee noted the comments from the Applicant with regard to the low car ownership in the area. The Committee considered that levels of ownership could be explained in part by the presence of a student population. The Committee noted the information contained in the PNA that *"According to the 2021 census, 68% of households in Birmingham own either a car or a van..."* and further the comment in the PNA that *"Vehicle ownership in BSol is high (68% for Birmingham ...) ..."* The Committee noted that there was nothing further provided by the Applicant with regard to car ownership.
- 7.50 The Committee noted the comments in the PNA that *"Most respondents (90%) reported a journey time of 20 minutes or less to reach their pharmacy, with driving and walking being the most common means of getting there (51% and 41% respectively)"*. The Committee also noted the conclusion of the PNA that

“...the area that can be accessed within 20 minutes is shaded in green/yellow. As seen the entirety of BSol can reach a pharmacy within a 20 minutes drive. ... Taken together, this attests to good access to pharmacies by BSol residents.”

- 7.51 The Committee noted the general comments from the Applicant with regard to traffic and congestion in the area however it was of the view that there was nothing exceptional in the context of the location and travelling by car in general. The Committee noted the undisputed information contained within the PNA, as set out above, and further noted the limited information provided by the Applicant with regard to actually accessing the existing pharmacies by car. The Committee concluded that for those who did have access to private transport, there was nothing provided by the Applicant to demonstrate that they were currently having difficulties in accessing the existing pharmaceutical provision in the area of the HWB.
- 7.52 The Committee noted the comments from the Applicant with regard to bus services and that this would also entail a walk to the nearest bus stops as well as walk after alighting from the bus. The walking distances did appear excessive but the Committee noted, from the results of the Public Survey in the PNA that “7% travel by bus” in order to access existing pharmaceutical provision which suggests relatively low usage of public transport. The Committee also noted the bus map as provided by the Applicant which showed a comprehensive network covering all of Birmingham.
- 7.53 The Committee was mindful that those who did use public transport, especially if they were using it to access other amenities and facilities in the area, would be aware of the services and times. The Committee was also mindful of the relatively low percentage, in response to the public survey, who stated that they used bus services to access pharmaceutical services in Birmingham overall and was of the view the bus services offered were reasonable. The Committee therefore found it difficult to assess the extent of usage but was of the view that there was nothing provided to demonstrate that for those who were reliant on public transport they were currently having difficulties in accessing the existing pharmaceutical provision in the area of the HWB.
- 7.54 Overall, the Committee was of the view that there is already reasonable choice, having regard to the current provision and accessibility, with regard to obtaining pharmaceutical services in the area of the HWB, such that it was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits on persons.
- 7.55 In considering Regulation 18(2)(b)(ii) the Committee reminded itself that it was required to address itself to people who share a protected characteristic under the Equality Act 2010 (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation) having access to services that meet specific needs for pharmaceutical services that, in the relevant area, are difficult for them to access. The Committee noted the comments from the Applicant with regard to those who share a protected characteristic, including children and the elderly together with the student population. The Committee noted that apart from general statements that they do not have access to pharmaceutical provision

in the area, there was nothing specific provided by the Applicant relating to patients and specific pharmaceutical needs. The Committee was of the view that the population residing in the area was no different to the general population and further that there was no information on specific services relating to specific patient groups and specific pharmaceutical needs.

- 7.56 The Committee was therefore not satisfied that, having regard to the desirability of people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that are difficult for them to access, granting the application would confer significant benefits on persons.
- 7.57 In considering Regulation 18(2)(b)(iii) the Committee had regard to the desirability of innovative approaches to the delivery of pharmaceutical services. In doing so, the Committee would consider whether there was something more over and above the usual delivery of pharmaceutical services that might be expected from all pharmacies, some 'added value' on offer at the location. The Committee noted that the Applicant had not provided any evidence to demonstrate that the application was providing innovative approaches to the delivery of pharmaceutical services and was therefore not seeking to rely on this aspect of the Regulations. The Committee was not satisfied that, having regard to the desirability of there being innovative approaches taken with regard to the deliverability of pharmaceutical services, granting the application would confer significant benefits on persons.

Regulation 18(2)(b) generally

- 7.58 The Committee noted that the Applicant was proposing to open for 40.5 hours a week, of which 40 would be core hours. The Committee noted that there would be provision of pharmaceutical services from 9am to 1pm and 2pm to 5:30pm Monday to Friday as well as 9am to 12noon on a Saturday with all of these (apart from 5 – 5:30pm on a Wednesday) being core hours. The Committee noted that the Applicant was not proposing to offer any hours, either core or supplementary, on a Saturday afternoon or on a Sunday.
- 7.59 The Committee noted the comment from the Commissioner that some of the pharmacies in the area have longer core opening hours than those proposed by the Applicant, which has not been disputed. The Committee noted the statement in the PNA that *"Forty-two pharmacies in BSol are 100-hour pharmacies, with three additional 100-hour pharmacies in neighbouring HWB areas within one mile of its boundaries."* The Committee further noted the PNA states:

"Early Morning Opening

Forty-five pharmacies are open before 9am on weekdays within BSol, and another 7 pharmacies within one mile of its boundary ...

Late evening closure

There are 130 pharmacies in Birmingham and Solihull and 16 others within one mile of its boundaries that are open after 6pm on weekdays ...

Saturday Opening

A vast majority of community pharmacies in BSol (201 out of 285) are open on Saturdays, with additional 26 pharmacies within one mile of its boundaries open on Saturdays ...

Sunday Opening

There are 60 pharmacies in Birmingham and Solihull and 5 others within one mile of its boundaries that are open on Sundays ...”

- 7.60 The Committee noted the conclusion of the PNA that “Overall, there is good pharmacy coverage to provide pharmaceutical services to Birmingham and Solihull residents both within and outside normal working hours”. 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.
- 7.61 The Committee has considered whether there are any other factors that would confer significant benefits including on patients who share protected characteristics. The Committee had regard to the need to eliminate discrimination and advance equality of opportunity and foster good relations between these patients and those who do not share their protected characteristics.
- 7.62 The Committee was of the view that in accordance with Regulation 18(2)(b) the granting of this application would not confer significant benefits on persons in the area of the HWB which were not foreseen when the PNA was published.

Other considerations

- 7.63 Having determined that Regulation 18(2)(b) had not been satisfied, the Committee did not need to have regard to Regulation 18(2)(c) to (e).
- 7.64 No deferral or refusal under Regulation 18(2)(f) was required in this case.
- 7.65 The Committee had regard to Regulation 18(2)(g) and found that it did not apply in this case.
- 7.66 The Committee considered whether there were any further factors to be taken into account and concluded that there were not.
- 7.67 The Committee was not satisfied that the information provided demonstrates that there is difficulty in accessing current pharmaceutical services such that a pharmacy at the proposed site would provide better access to pharmaceutical services.
- 7.68 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 7.68.1 confirm the Commissioner's decision;
 - 7.68.2 quash the Commissioner's decision and redetermine the application;

- 7.68.3 quash the Commissioner's decision and, if it considers that there should be a further notification to the parties to make representations, remit the matter to the Commissioner.
- 7.69 Although the Committee has reached the same conclusion as the Commissioner, it was mindful that it has been provided with more information on appeal. In those circumstances the Committee determined that the decision of the Commissioner must be quashed.
- 7.70 The Committee went on to consider whether there should be a further notification to the parties detailed at paragraph 19 of Schedule 2 of the Regulations to allow them to make representations if they so wished (in which case it would be appropriate to remit the matter to the Commissioner) or whether it was preferable for the Committee to redetermine the application.
- 7.71 The Committee noted that representations on Regulation 18 had been sought from parties by the Commissioner and representations had already been made by parties to the Commissioner in response. These had been circulated and seen by all parties as part of the processing of the application by the Commissioner. The Committee further noted that when the appeal was circulated representations had been sought from parties on Regulation 18.
- 7.72 The Committee concluded that further notification under paragraph 19 of Schedule 2 would not be helpful in this case.

8 DECISION

- 8.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of the Commissioner, for the reasons given above, and redetermines the application.
- 8.2 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.
- 8.3 The Committee has considered whether the granting of the application would cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area covered by the HWB, or the arrangements in place for the provision of pharmaceutical services in that area and is not satisfied that it would;
- 8.4 The Committee determined that the application should be refused on the following basis:
- 8.4.1 In considering whether the granting of the application would confer significant benefits, the Committee determined that –
- 8.4.1.1 there is already a reasonable choice with regard to obtaining pharmaceutical services;
- 8.4.1.2 there is no evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services; and
- 8.4.1.3 there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services;

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

Case Manager
Primary Care Appeals