

18 October 2018

1 Trevelyan Square
Boar Lane
Leeds
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REF: SHA/19944

APPEAL AGAINST MIDLANDS & EAST (CENTRAL MIDS) AREA TEAM, NHS COMMISSIONING BOARD ("NHS ENGLAND") DECISION TO REFUSE AN APPLICATION BY ASCENT HEALTHCARE LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT THE SHOPPING PRECINCT ON HALDENS/SLOANSWAY, WELWYN GARDEN CITY, HERTFORDSHIRE, AL7 1DD/1NB

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REF: SHA/19952

APPEAL AGAINST MIDLANDS & EAST (CENTRAL MIDS) AREA TEAM, NHS COMMISSIONING BOARD ("NHS ENGLAND") DECISION TO REFUSE AN APPLICATION BY JHOOTS PHARMACY FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 WITHIN AN 80 METRE RADIUS OF 84 HALDENS, WELWYN GARDEN CITY, HERTFORDSHIRE, AL7 1DD

1 Outcome

- 1.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, confirms the decision of NHS England.
- 1.2 The Committee determined that the applications should be refused.

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Accredited
UNIT 2023



REF: SHA/19944

APPEAL AGAINST MIDLANDS & EAST (CENTRAL MIDS) AREA TEAM, NHS COMMISSIONING BOARD ("NHS ENGLAND") DECISION TO REFUSE AN APPLICATION BY ASCENT HEALTHCARE LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT THE SHOPPING PRECINCT ON HALDENS/SLOANSWAY, WELWYN GARDEN CITY, HERTFORDSHIRE, AL7 1DD/1NB

Tel: 0113 86 65500
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1 The Application (1 of 2)

By application dated 31 January 2018, Ascent Healthcare Ltd applied to NHS Commissioning Board ("NHS England") for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at Shopping Precinct on Haldens/Sloansway, Welwyn Garden City, AL7 1DD/1NB. In support of the application it was stated:

- 1.1 In response to why the application should not be refused pursuant to Regulation 31 Ascent Healthcare Ltd stated:
 - 1.1.1 No other pharmacy in same or adjacent premises so not applicable.
- 1.2 As NHS England will be aware, the Haldens area has for many years been served by a branch of Lloyds Pharmacy which was located at the shopping precinct located centrally next to Haldens Medical Practice.
- 1.3 It was a well used pharmacy that was important to the local community. However unfortunately Lloyds decided to close the branch in January 2018 as part of a wave of planned branch closures.
- 1.4 In December 2016, amendments to the 2013 Regulations came into force which facilitated pharmacy business consolidations from two sites on to a single existing site. This would protect two pharmacies that choose to consolidate on a single existing site, where this does not create a gap in provision after NHS England approval. It is important to note that Lloyds chose not to consolidate the branch with other sites within their group.
- 1.5 Ascent Healthcare Ltd are aware that patients have complained about the closing of the only Lloyds pharmacy in the area and, given the size of the Lloyds Pharmacy and the number of patients that relied on it, the closure has left a significant gap in local service provision such that granting this application will secure better access to pharmaceutical services for local people and provide them with reasonable choice which does not currently exist.
- 1.6 The PNA does not consider the benefits that would accrue from locating a pharmacy in this location as a pharmacy existing at the time of the PNA being written and this application is therefore submitted under Regulation 18 as an unforeseen benefits application. Whilst an updated PNA may well identify the gap created by the unforeseen closure of the Lloyds pharmacy and lead to an identified current need, this has not happened yet, and Ascent Healthcare are therefore asking NHS England to grant this application in order to provide pharmaceutical services in this location.

- 1.7 In addition to providing dispensing services this pharmacy would provide all other essential, advanced and enhanced services that are commissioned by NHS England or the local authority. Providing access to these services will be of significant benefit for patients, particularly those who may have difficulty in accessing other parts of the area, such as the elderly, infirm, disabled or parents with young children (i.e. those who share a protected characteristic). There are several schools located close to the proposed site and parents and children are part of the groups who may be identified as sharing protected characteristics.
- 1.8 Ascent Healthcare Ltd therefore ask NHS England to approve this application.

REF: SHA/19952

APPEAL AGAINST MIDLANDS & EAST (CENTRAL MIDS) AREA TEAM, NHS COMMISSIONING BOARD ("NHS ENGLAND") DECISION TO REFUSE AN APPLICATION BY JHOOTS PHARMACY FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 WITHIN AN 80 METRE RADIUS OF 84 HALDENS, WELWYN GARDEN CITY, HERTFORDSHIRE, AL7 1DD

The Application (2 of 2)

By application dated 15 February 2018, Jhoots Pharmacy applied to NHS Commissioning Board ("NHS England") for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 within an 80 metres radius of 84 Haldens, Welwyn Garden City, Hertfordshire, AL7 1DD. In support of the application it was stated:

- 1.9 In response to why the application should not be refused pursuant to Regulation 31 Jhoots Pharmacy Ltd stated:
- 1.9.1 There are no pharmacies at this location. The previous pharmacy has closed.
- 1.10 A Pharmacy at the 84 Haldens has recently closed – January 2018. This closure has left a gap in the provision of pharmaceutical services. The Pharmacy was dispensing in excess of 4,000 prescription items month and evidence of a demand for access and provision of pharmaceutical services at this location. The Haldens Medical Centre is within 100 metres of the proposed site and this supports the need for access to pharmaceutical services at this location.
- 1.11 There are a range of shops on Haldens. This includes off licence, Nisa grocery store, Ladbrookes, newsagent, bakers, hairdresser and take-aways.
- 1.12 Haldens supports a large residential area that also contains primary schools (Rowans) and Holy Family Catholic Primary School), and the Waterside Childrens Centre (It provides activities such as Early Talk, Disco Duck, Baby Sensory and Baby massage Child health clinic and development checks run from the centre).
- 1.13 In terms of levels of deprivation The Haldens Ward is ranked 13,325 out of 32,844 where 1 is most deprived and therefore within the most 50% neighbourhoods in England.
- 1.14 The nearest pharmacy is well over half a mile away on the other side of the main railway line to London.
- 1.15 There is a large community that would confer significant benefits from a pharmacy at the proposed site particularly due to the lack of reasonable choice, and to the benefits that would be to groups who share a protected characteristic.

- 1.16 Jhoots Pharmacy are aware (through MP) of local concern at the closure of the previous pharmacy and of the vital lifeline it provided and the benefit it would have to the local elderly population Jhoots Pharmacy therefore ask NHS to approve this application to allow a restoration of pharmaceutical services.
- 1.17 By opening a pharmacy at the Marina Health Centre site as listed above. The gap in provision of pharmaceutical services would be closed.

2 The Decision (1 of 2 – 19944)

NHS England considered and decided to refuse the application. The decision letter dated 26 June 2018 states:

- 2.1 NHS England has considered the above application and are writing to confirm that it has been refused.
- 2.2 The full reasoning for this decision has been enclosed along with this letter.

Ascent Healthcare Limited’s application for inclusion in the pharmaceutical list: routine application offering to secure unforeseen benefits at the best estimate proposed premises of Shopping Precinct on Haldens/Sloansway, Welwyn Garden City AL7 1DD/1NB

- 2.3 NHS England – Midland & East (Central Midlands) Pharmaceutical Services Regulations Committee ((hereafter referred to as the PSRC) has considered Ascent Healthcare Limited’s application for inclusion in the pharmaceutical list and this is to advise that the submission has not been approved.
- 2.4 The PSRC acknowledged that it must have regard to the NHS (Pharmaceutical & Local Pharmaceutical Services) Regulations 2013 and the initial consideration made was in regard to Regulation 31 [quoted in full]:
- 2.5 The PSRC concluded that the proposed premises to which the application relates, or adjacent premises, there are no existing listed NHS contracted pharmacies operating within the vicinity of Haldens Shopping Centre and therefore, under this provision, regulation 31 would not cause the application to be refused.
- 2.6 Due to the determination in regard to Regulation 31, NHS England PSRC then considered the applicant’s submission against the regulatory criteria for this routine application for “unforeseen benefits”,

Regulation 18 (1) [quoted in full]:

- 2.7 The PSRC noted that the Hertfordshire 2018 Pharmaceutical Needs Assessment (PNA) - shows an analysis of the situation as it was assessed at the date of publication (April 1st 2018) and there had been no revised assessments issued, in the form of a Supplementary Statement under Regulation 6(3), in regard to this area. The current regulations consider that any benefit is regarded as unforeseen at the time of the pharmaceutical needs assessment simply if it is not mentioned in the document and it can be noted that the benefits proposed in the application are not mentioned.
- 2.8 On page 127 of the PNA it states “There is currently a Lloyds Pharmacy in the locality which may be removed if the pharmacy is not sold to an alternative provider before 26 January 2018”. On the following page of the PNA, page 128, it then clarifies this possible closure by stating “...even if the pharmacy were to cease trading altogether, it is not considered that this would result in a gap in service provision, as there are many other pharmacies in the locality who provide the same services as Lloyds”.

- 2.9 Page 76 of the PNA, highlights the current ratio of pharmacies to 100,000 Hertfordshire population as “There are 254 community pharmacies in Hertfordshire (as of 10 January 2018), which is an increase of four from 2015, for a population of 1,176,720. This equates to an average of 21.6 pharmacies per 100,000 population. This figure has decreased slightly from 22 per 100,000 in the 2015 PNA, and is just above the England average of 20.8 and higher than the East of England average of 18.8 community pharmacies per 100,000 population”.
- 2.10 The PSRC noted that the applicant seeks to provide unforeseen benefits to the patients of the Haldens area, and in order to be satisfied in accordance with Regulation 18(1), the criteria set out in Regulation 18(2) was considered.
- 2.11 In determining whether it is satisfied as mentioned in section 129(2A) of the 2006 Act (regulations as to pharmaceutical services), the NHSCB must have regard to the matters set out in paragraph 18(2).
- Regulation 18(2)(a) [quoted in full]*
- 2.12 If the application was granted and the pharmacy was to open, the ability of NHS England to plan for the provision of services would not be significantly affected and therefore it was concluded that the proposed pharmacy would not cause significant detriment to the proper planning of pharmaceutical services. Further that granting the application would not cause significant detriment to the arrangements currently in place for the provision of pharmaceutical services.
- Regulation 18(2)(b) [quoted in full]*
- 2.13 The PSRC noted the LPC’s IP response that contained a table showing an accurate representation of the available pharmacies in the area. There are three pharmacies within one mile and a further five within one and a half miles of the proposed site (NHS Choices). All of them provide a collection and delivery service. The parade of shops where the applicant is proposing to site the pharmacy is a large local hub.
- 2.14 The PSRC were of the view that there is already reasonable choice with regard to obtaining pharmaceutical services, such that granting the application would not lead to significant benefits based on choice.
- 2.15 The PSRC noted that the information within the application is generalised “...such as the elderly, infirm disabled, or parents with young children (ie those who share a protected characteristic). There are several schools located close to the proposed site and parents and children are part of the groups who may be identified as sharing protected characteristics”. In the applicant’s response to interested parties representations, they highlight the LPC’s data on deprivation without adding any analysis of this data. This response headlines “Protected Characteristics” but details the number of residents in the 0-17 and over 65 age groups however this does not provide evidence that there are currently patient groups, that come under any of these categories, living within the area or demonstrated that there are difficulties in these patient groups accessing any specific needs or current pharmaceutical services.
- 2.16 The PSRC considered, from the evidence supplied, that any specific patient group, that shares a protected characteristic, would not derive significant benefits from the granting of this application.
- 2.17 The PSRC noted that the applicant did not submit any evidence of innovative approaches being offered in the application or in their response to interested parties representations.
- 2.18 The applicant is proposing to offer 40 core hours, to comprise of weekday opening 9am until 1pm and 1:30pm until 5:30pm however Peartree Pharmacy, 1.1 miles

distant, offers 100 core contracted hours that greatly exceed those proposed; Monday – Thursday: 7am until 10pm | Friday: 7am – 11pm | Saturday: 8am until 11pm | Sunday: 8am until 5pm. The proposal also includes six supplementary hours (weekdays 1pm until 1:30pm and Saturday 9am to 12:30pm) but these can be withdrawn after 90 days' notice. There is no evidence to demonstrate that pharmaceutical services are not currently available at such times as needed, meaning granting this application would not lead to significant benefits in regard to opening hours.

- 2.19 The applicant lists the services which are proposed to be provided from the site, however does not evidence that existing pharmacies are not already providing these services nor that, if they are not, they are unable to or unwilling to provide said pharmaceutical services. Therefore the PSRC considered that the granting of this application would not confer significant benefits on the resident population of the HWB.

Regulation 18(2)(c),(d) & (e) [quoted in full]

- 2.20 Another application offering to secure the improvements or better access had been submitted and this was considered at the same time as the applicant's application.

Decision

- 2.21 The PSRC determined that there is reasonable choice, that the applicant has not evidenced people sharing a protected characteristic having difficulty accessing pharmaceutical services and that innovative approaches that would be taken, with regard to delivery of pharmaceutical services, had not been evidenced, therefore the application was not approved.

The Decision (2 of 2 – 19952)

- 2.22 **Jhoots Pharmacy Limited's application for inclusion in the pharmaceutical list: routine application offering to secure unforeseen benefits at the best estimate proposed premises of within an 80 metre radius of 84 Haldens, Welwyn Garden City AL7 1DD**
- 2.23 NHS England – Midland & East (Central Midlands) Pharmaceutical Services Regulations Committee ((hereafter referred to as the PSRC) has considered Jhoots Pharmacy Limited's application for inclusion in the pharmaceutical list and this is to advise that the submission has not been approved.
- 2.24 The PSRC acknowledged that it must have regard to the NHS (Pharmaceutical & Local Pharmaceutical Services) Regulations 2013 and the initial consideration made was in regard to Regulation 31 [quoted in full]:
- 2.25 The PSRC concluded that the proposed premises to which the application relates, or adjacent premises, there are no existing listed NHS contracted pharmacies operating within the vicinity of Haldens Shopping Centre and therefore, under this provision, regulation 31 would not cause the application to be refused.
- 2.26 Due to the determination in regard to Regulation 31, NHS England PSRC then considered the applicant's submission against the regulatory criteria for this routine application for "unforeseen benefits",

Regulation 18(1) [quoted in full]

- 2.27 The PSRC noted that the Hertfordshire 2018 Pharmaceutical Needs Assessment (PNA) - shows an analysis of the situation as it was assessed at the date of publication (April 1st 2018) and there had been no revised assessments issued, in the form of a Supplementary Statement under Regulation 6(3), in regard to this area.

The current regulations consider that any benefit is regarded as unforeseen at the time of the pharmaceutical needs assessment simply if it is not mentioned in the document and it can be noted that the benefits proposed in the application are not mentioned.

- 2.28 On page 127 of the PNA it states “There is currently a Lloyds Pharmacy in the locality which may be removed if the pharmacy is not sold to an alternative provider before 26 January 2018”. On the following page of the PNA, page 128, it then clarifies this possible closure by stating “...even if the pharmacy were to cease trading altogether, it is not considered that this would result in a gap in service provision, as there are many other pharmacies in the locality who provide the same services as Lloyds”.
- 2.29 Page 76 of the PNA, highlights the current ratio of pharmacies to 100,000 Hertfordshire population as “There are 254 community pharmacies in Hertfordshire (as of 10 January 2018), which is an increase of four from 2015, for a population of 1,176,720. This equates to an average of 21.6 pharmacies per 100,000 population. This figure has decreased slightly from 22 per 100,000 in the 2015 PNA, and is just above the England average of 20.8 and higher than the East of England average of 18.8 community pharmacies per 100,000 population”.
- 2.30 The PSRC noted that the applicant seeks to provide unforeseen benefits to the patients of the Haldens area, and in order to be satisfied in accordance with Regulation 18(1), the criteria set out in Regulation 18(2) was considered.
- Regulation 18(2)(a) [quoted in full]*
- 2.31 If the application was granted and the pharmacy was to open, the ability of NHS England to plan for the provision of services would not be significantly affected and therefore it was concluded that the proposed pharmacy would not cause significant detriment to the proper planning of pharmaceutical services. Further that granting the application would not cause significant detriment to the arrangements currently in place for the provision of pharmaceutical services.
- Regulation 18(2)(b) [quoted in full]*
- 2.32 The PSRC noted the LPC’s IP response that contained a table showing an accurate representation of the available pharmacies in the area. There are three pharmacies within one mile and a further five within one and a half miles of the proposed site (NHS Choices). All of them provide a collection and delivery service. The parade of shops where the applicant is proposing to site the pharmacy is a large local hub.
- 2.33 The PSRC were of the view that there is already reasonable choice with regard to obtaining pharmaceutical services, such that granting the application would not lead to significant benefits based on choice.
- 2.34 The PSRC noted that the information within the application mentions “...a large community that would confer significant benefits from a pharmacy at the proposed site particularly due to a lack of reasonable choice, and to the benefits that would be to groups who share a protected characteristic” but then does not expand on that statement. Earlier in the application, the deprivation ranking is stated (13,325th out of 32,844) together with the presence of two primary schools.
- 2.35 The PSRC considered, from the evidence supplied, that any specific patient group, that shares a protected characteristic, would not derive significant benefits from the granting of this application.
- 2.36 The PSRC noted that the applicant did not submit any evidence of innovative approaches being offered in the application or in their response to interested parties representations.

Regulation 18(2)(c), (d) & (e) [quoted in full]

- 2.37 Another application offering to secure the improvements or better access had been submitted and it was considered at the same time as the applicant's application.

Regulation 65 (4) [quoted in full]

- 2.38 The PSRC noted that the applicant is proposing to offer 43 core hours, to comprise of weekday opening 09:00 until 13:00 and 14:00 until 18:00 and Saturday opening 09:00 – 12:00 however Peartree Pharmacy, 1.1 miles distant, offers 100 core contracted hours that greatly exceed those proposed; Monday – Thursday: 7am until 10pm | Friday: 7am – 11pm | Saturday: 8am until 11pm | Sunday: 8am until 5pm. The proposal also includes five supplementary hours (weekdays 13:00 until 14:00 but these can be withdrawn after 90 days' notice. The PSRC noted that there is no evidence to demonstrate that pharmaceutical services are not currently available at such times as needed, meaning granting this application would not lead to significant benefits in regard to opening hours. Regulation 65 (4) (a) (i) applies because the applicant is offering in excess of 40 core hours. Should this application be approved, the Pharmacy Contract Manager will need to agree which of these hours are contracted core hours (must be 40) and which of the three remaining are directed core hours.
- 2.39 The applicant lists the services which are proposed to be provided from the site, however does not evidence that existing pharmacies are not already providing these services nor that, if they are not, they are unable to or unwilling to provide said pharmaceutical services. Therefore the granting of this application would not confer significant benefits on the resident population of the HWB

Decision

- 2.40 The PSRC determined that there is reasonable choice, that the applicant did not evidence that people sharing a protected characteristic have difficulty accessing pharmaceutical services, and that innovative approach, that would be taken with regard to delivery of pharmaceutical services, had not been evidenced, therefore the application was not approved.

3 The Appeal (1 of 2) [19944]

In a letter dated 2 July 2018 addressed to NHS Resolution, Ascent Healthcare Ltd appealed against NHS England's decision. The grounds of appeal are:

- 3.1 The PSRC, noted LPC comments that *"There are three pharmacies within one mile and a further five within one and a half miles of the proposed site (NHS Choices). All of them provide a collection and delivery service."* And determined *"there is already reasonable choice with regard to obtaining pharmaceutical services, such that granting the application would not lead to significant benefits based on choice."*
- 3.2 However, PSRC never took into consideration representations from Ascent Healthcare providing evidence of difficulties in accessing pharmaceutical services by actual road/pathways.
- 3.3 PSRC did accept the refutable that *"the parade of shops where the applicant is proposing to site the pharmacy is a large local hub."* The list of services available at the proposal site including a GP branch surgery is extensive.
- 3.4 The PSRC considered, *"from the evidence supplied, that any specific patient group, that shares a protected characteristic, would not derive significant benefits from the granting of this application."*

3.5 However, the proposal will be a significant benefit to the community of the Haldens area and to those protected characteristic groups that have no health care support at present. The main users of primary health care services, including the GP surgery and pharmacy services, are within the groups who share a protected characteristic.

3.6 The PSRC also mentioned that "*Peartree Pharmacy, 1.1 miles distant, offers 100 core contracted hours that greatly exceed those proposed*". However, the pharmacy is 1.7 miles by actual pathways/road serving its own local residential community.

In a letter to NHS England, dated 21 March, Ascent Healthcare responded to the representations made and enclosed a copy of this letter with their letter of appeal. The letter stated:

3.7 Thank you for your letter dated 20th March 2018 informing us of representations received by interested parties. In response, I would like to make the following comments:

Boots

3.8 Boots mention that there are two pharmacies within approximately 1 mile radius of the proposed location. However, as this is as the crow flies and not by actual roads or pathways the statement should be given little weight.

3.9 There is currently one pharmacy approximately 1 mile away from the proposed location, however there are significant access issues which will be discussed further on this reply.

3.10 Boots have also mentioned that Ascent Healthcare are offering less core and supplementary hours than what Lloyds offered previously. However, it should be noted that the Lloyds pharmacy only opened a further 1.5 hours more on Saturday afternoons.

3.11 Taking into consideration that currently there are no pharmaceutical services provided from the area following the closure, 1.5 hours less can be deemed insignificant.

3.12 Ascent Healthcare are proposing to open between 9.00am – 5.30pm Monday to Friday and 9.00am – 12.30pm on Saturday. Ascent Healthcare will also look to review and increase the opening hours according to demand.

3.13 In terms of relocation of Haldens medical practice it is important to note that currently The Garden City Practice are only seeking views on a possible move to the Parkway Clinic.

3.14 However, if this does go ahead then consequently the residents of Haldens would have lost all healthcare provision in the area in such a short time.

Lloyds Pharmacy

3.15 Lloyds have mentioned that '*The Committee will be aware the NHS Pharmaceutical Services Regulations does not state that following the closure of a pharmacy it is axiomatic to grant an additional pharmacy license*'.

3.16 Ascent Healthcare agree with Lloyds that it is not axiomatic to grant a pharmacy license following a closure.

3.17 As was the case in the recent applications that were refused in the vicinity of Hall Grove Group Practice. However, the demographics of this application are completely different. Lloyds have also mentioned that the previous pharmacy did not qualify for the Pharmacy Access Scheme (PhAS) however nor does their branch at Shoplands.

The qualification to the scheme does not determine whether a gap has been created following a closure.

- 3.18 It is however important to note that Lloyds did not choose to consolidate. As NHS England is aware on 5 December 2016, amendments to the 2013 Regulations came into force which allowed pharmacy business consolidations from two or more sites on to a single existing site.
- 3.19 A new pharmacy would be prevented from stepping in straight away if a chain closes a branch or two pharmacy businesses merge and one closes. This therefore protects two pharmacies that choose to consolidate on a single existing site – where this does not create a gap in provision.

Hertfordshire Local Pharmaceutical Committee (LPC)

- 3.20 The LPC are correct to mention that ‘The parade in which the premises are proposed to be situated within the vicinity act as a hub for the local community’. This is one of the reasons the site was chosen. To reinstate easily accessible services from within the community.
- 3.21 The LPC have also mentioned that residents were accustomed to using other pharmacies however it is important to note that residents were also accustomed to using the previous Lloyds pharmacy that was located at the proposed site. The LPC have further acknowledged that car ownership in the area (Haldens Ward) is lower than the Welwyn Hatfield locality and Hertfordshire.
- 3.22 The LPC have also mentioned that the Haldens Ward has medium deprivation however it is important to note the following health statistics for the Haldens Ward
- 3.22.1 Very Bad Health 1.2% - Highest ward in the Town
- 3.22.2 Bad Health 4.1% - Highest ward in Town
- 3.22.3 Fair Health 13.1% - Highest in Town
- 3.22.4 Very Good Health – 45.8% - Lowest in Town
- 3.23 It is important to note that the LPC has not object to the application

Introduction

- 3.24 This is a new application for inclusion in the pharmaceutical list by Ascent Healthcare for premises at the Shopping Precinct on Haldens/Sloansway, Welwyn Garden City, AL7 1DD/1NB.
- 3.25 The application is being made to the Hertfordshire Wellbeing Board, and is made under Regulation 18 of the NHS (Pharmaceutical Services) Regulations 2013 in that the proposal will offer unforeseen benefits.

The Proposal

- 3.26 The application site is in an established community north of Welwyn Garden City which benefited from an established pharmacy for many years.

Welwyn Garden City

- 3.27 Welwyn Garden City is a town in Hertfordshire, England. It was the second garden city in England (founded 1920) and one of the first new towns (designated 1948). It is

unique in being both a garden city and a new town and exemplifies the physical, social and cultural planning ideals of the periods in which it was built.

- 3.28 Welwyn Garden city is bisected by the railway line which that runs through the centre of the town. The town centre is located towards the west of the town and the railway line. Access to the town is via Bridge road, Parkway or Church Road. The town centre's main shopping area is the Howard Centre.

General Location

- 3.29 The proposal site is in the Haldens and Digswell Water area of Welwyn. The general location in relation to the town centre (yellow) is set out (appendix A). It can be seen that the area (red) is separated from it by a large industrial estate, railway line, open space and housing.

Proposal Site

- 3.30 The Haldens shopping parade consists of 16 units in total encompassing:

3.30.1 Newsagents

3.30.2 Nisa Local Supermarket (3 Units)

3.30.3 Bakery & Coffee Lounge (2 Units)

3.30.4 4 x Takeaways

3.30.5 2 x Hairdressers

3.30.6 Pet Shop

3.30.7 Betting Shop

3.30.8 Beauty Shop

3.30.9 Vacant Unit (Ex Lloyds)

3.30.10 Public House / Restaurant

- 3.31 Church & Community Hall

3.31.1 Christ the King Halden's church and community hall is located across the road of the shopping parade. Its serves the local community in a variety of ways, including helping with local schools and running coffee mornings and meals for the elderly in the community.

- 3.32 Haldens Medical Practice

3.32.1 Haldens Medical Centre is one of the branch surgeries of The City Garden Practice which has a total of around 10,000 patients. It is located at the end of the parade of shops.

- 3.33 Nurseries in the area

3.33.1 Annabel's Montessori School - Christ The King Church Haldens, Welwyn Garden City AL7 1DH for 2 to 5 year olds.

3.33.2 Busy Bees in Welwyn Garden City - Unit 1-2 Kestrel Way, Shire Walk, Welwyn Garden City AL7 1TN for 3 months to 5 years olds.

- 3.34 Schools in the area
- 3.34.1 Waterside Academy (Previously Rowans Primary School) – 189 pupils aged 3 to 11
- 3.34.2 The Holy Family Catholic Primary School - 220 pupils aged 3 to 11
- 3.34.3 St John's C of E Primary School – 217 pupils aged 3 to 11
- 3.35 Healthcare provision in the area
- 3.36 At present there is no pharmacy in this area to care for the needs of the neighbourhood population, which is nearly 7,000. The nearest pharmacies in this case are either located in the town centre, in other self contained neighbourhoods or in supermarket locations.
- 3.37 The Haldens Medical Centre which is located next to the parade of shops is the only healthcare provision in the area following the closure of the pharmacy.
- Regulation 18 Compliance
- 3.38 Regulation 18(1) [quoted in full]
- 3.39 Pharmaceutical Needs Assessment (PNA)
- 3.40 The application was submitted to NHS England in January 2018 following the announcement that Lloyds will be closing the branch. This closure was obviously unforeseen when the 2015-2018 Hertfordshire PNA was drafted.
- 3.41 The recently published 2018 – 2021 Hertfordshire PNA has taken into consideration the closure of the Lloyds pharmacy at the proposal site under the sub heading 'Other Services'. However, concludes that there are '*many other pharmacies in the locality who provide the same services as Lloyds*'. See extract:
- 6.7.6.5 Other Services*
- 'There is currently a Lloyds Pharmacy in the locality which may be removed if the pharmacy is not sold to an alternative provider before 26 January 2018:*
- *Lloyds Pharmacy, 84 Haldens, Welwyn Garden City AL7 1DD*
- However even if the pharmacy were to cease trading altogether, it is not considered that this would result in a gap in service provision, as there are many other pharmacies in the locality who provide the same services as Lloyd's.*
- 3.42 However to determine gaps in service provision the PNA steering group divided Hertfordshire into 11 localities, with populations as large as 210,978 per locality.
- 3.43 The Welwyn Hatfield locality which encompasses the proposal site has a population of 116,627. The locality is essentially too broad to analyse a gap in service provision, therefore the benefits a pharmacy would bring at the proposal site are unforeseen in the current PNA. Furthermore, the authors of the PNA do not expand further on '*there are many other pharmacies in the locality*'. Access to these pharmacies for those residing in the Haldens and/or Digswell Water area) have not been considered at all.
- 3.44 The following however has been mentioned in the PNA with regards to the Welwyn Hatfield locality:
- 3.44.1 9% of over 65 year olds are reported as living in care homes.

- 3.44.2 The BME population represents around 10% of the locality total, which is one of the highest in Hertfordshire.
 - 3.44.3 Welwyn Hatfield has pockets of marked deprivation and is the second highest locality in Hertfordshire with regard to crime deprivation.
 - 3.44.4 It records the lowest employment figure at 74% and the rate is worsening
 - 3.44.5 A total of 28% of adults are physically inactive.
 - 3.44.6 The second highest smoking prevalence.
 - 3.44.7 Third highest under 75 mortality rates from cardiovascular disease.
 - 3.44.8 One of the highest prevalence of mental health disorders in children and young people in Hertfordshire.
 - 3.44.9 Expected to see an increase in population of 10% in next 5 – 10 years.
- 3.45 It also has been mentioned that the number of pharmacies per 100,000 is below the national average (18.9) without taking into consideration the closure of the Lloyds pharmacy at the proposal site.

Regulation 18 (2)(a)(i) [quoted in full]

- 3.46 Again, to support an objection on this ground would require substantial evidence from NHS England and any objector seeking to advance such a case.
- 3.47 The closest pharmacies to the proposal site are the Lloyds pharmacy (Shoplands) and Boots pharmacy (Moors Walk) that operate from different neighbourhoods serving their own retrospective communities.
- 3.48 The Boots pharmacy in town centre is serving those that find it convenient to those visiting the town centre. The pharmacies in the Sainsbury's and Waitrose supermarket will be continued to be used by those carrying out their larger monthly shopping. These shoppers will not divert to a pharmacy proposal in Haldens and therefore will not suffer any detriment as a result of the proposal. Furthermore as a pharmacy existed at this site for decades until only 2 months ago without causing any detriment it is unlikely to cause any detriment if this application is granted.

Regulation 18 (2)(b) (i-iii) [quoted in full]

Reasonable Choice

- 3.49 The residents of Haldens with a neighbourhood of nearly 7,000 residents have no pharmacy at present. That is wholly unreasonable. When one looks for the nearest pharmacy, the only choices are outside the daily patterns and movements of people in the Haldens area and this is not a reasonable choice. For residents that walk, the pharmacies are too far to walk to. The nearest pharmacy is the Lloyds Pharmacy at Shoplands which is in its own suburban neighbourhood.
- 3.50 Those traveling using a car would have to pay for car parking and those that use public transport would have to pay to reach the pharmacies, when these may not in fact be close to their nearest surgery.

Accessibility on Foot

- 3.51 Lloyds Pharmacy - 9 Shoplands, Welwyn Garden City, AL8 7RH.

- 3.52 The shortest route involves crossing Haldens and walking into the adjacent estate via a pathway which then leads to an undesirable subway below a block of flats.
- 3.53 This is followed by turning left on Dawley and then right to Fallowfield. Then crossing Blythway and following the road until it reaches Bessemer Road. Crossing Bessemer Road via light assisted pedestrian crossing. Then travelling down Bessemer road via a pathway which is split halfway into a cycle lane. There is a steep decline leading towards the passage under the railway line.
- 3.54 After passing the railway line the pathways narrows considerably and is uneven when turning into Digswell Road. Then you need to cross Digswell Road which is a busy through road followed by a right into Kirklands which has a very steep end. This then lead to Shoplands towards the right which encompasses the Lloyds pharmacy. It is important to note that the parade of shops where the pharmacy is located is not as extensive as the proposal location.

Topography

- 3.55 Furthermore, the topography heat map confirms the variation in levels from the proposal site (white) to existing pharmacies.

Accessibility by Public Transport

- 3.56 Taking into consideration the cost, lack of bus shelters and the need to walk up to 11 minutes to access a pharmacy public transport cannot be considered reasonable.

Accessibility by Car

- 3.57 In terms of car ownership 23.7% of the households in this neighbourhood (Haldens Ward) do not have access to one or more cars in comparison to 20.3% of those within the Welwyn Hatfield Local Authority area and compared with 16.9% across Hertfordshire.

Protected Characteristics

- 3.58 The proposal will cater for people of protected characteristics, namely those people of a particular age, disability, religion and pregnancy and maternity. In the Haldens ward there are 1,309 residents 0 to 17 year olds and 1,022 residents over 65.
- 3.59 Having a pharmacy in close proximity to the main shopping in the area, and close to the school and community centres, creates the opportunity for linked trips to the pharmacy for members of the community when they travel to school and their child care facilities. The proposal will bring a significant benefit to this protected group by offering pharmacy provision in close proximity to a location where they visit on a daily basis.

Summary

- 3.60 The proposal satisfies the Regulation 18 tests. It will:
- 3.60.1 Secure better access to pharmaceutical services for nearly 7,000 residents in the Haldens;
- 3.60.2 Will not cause detriment to the proper planning of pharmaceutical services in the HWB;
- 3.60.3 Will not cause detriment to the provision of pharmaceutical service in the area;

3.60.4 Will confer significant benefits to the local population and its surrounding area by improving choice of pharmacy services particularly through increased access to such services and will be a source of contracted and non contracted health care in a community which has none at present; and

3.60.5 Will confer significant benefit to people of protected characteristics, particularly mothers with children that need access to healthcare within reasonable proximity to their daily activities.

3.61 Ascent Healthcare therefore request NHS England to grant this application.

The Appeal (2 of 2) [19952]

In a letter dated 24 July 2018 addressed to NHS Resolution, Jhoots Pharmacy appealed against NHS England's decision. The grounds of appeal are:

3.62 Jhoots Pharmacy do not believe NHS England has given proper consideration to the fact that a pharmacy closed on this retail parade back in January 2018 and has left a gap in access to a pharmacy for many of the local population.

3.63 The NHS decision minutes 26 June recognized the location is a 'large local hub':

The PSRC noted the LPC's IP response that contained a table showing an accurate representation of the available pharmacies in the area. There are three pharmacies within one mile and a further five within one and a half miles of the proposed site (NHS Choices). All of them provide a collection and delivery service. The parade of shops where the applicant is proposing to site the pharmacy is a large local hub.

3.64 The NHS decision minutes also suggests (below) the PNA has accounted for the closure of the Lloyds Pharmacy that closed:

On page 127 of the PNA it states "There is currently a Lloyds Pharmacy in the locality which may be removed if the pharmacy is not sold to an alternative provider before 26 January 2018". On the following page of the PNA, page 128, it then clarifies this possible closure by stating "...even if the pharmacy were to cease trading altogether, it is not considered that this would result in a gap in service provision, as there are many other pharmacies in the locality who provide the same services as Lloyds".

3.65 This is not a particularly detailed assessment and does not account for the benefits this application would deliver. Jhoots Pharmacy submit this statement by NHS England should not prevent their application being considered on its merits.

3.66 According to NHS data the Pharmacy that closed in January was dispensing in excess of 4,000 prescription items month and is clear evidence of a demand for pharmaceutical services at Haldens. The Haldens Medical Centre is within 100 metres of the proposed site and this supports the need for access to pharmaceutical services at this location.

3.67 There is good range of shops on Haldens. This includes off licence, Nisa grocery store, Ladbrookes, newsagent, bakers, hairdresser and take-aways and as confirmed by the LPC and acknowledged by NHS England is a 'large local hub'.

3.68 Haldens supports a large residential area that also contains primary schools (Rowans and Holy Family Catholic Primary School), and the Waterside Children's Centre (it provides activities such as Early Talk, Disco Duck, Baby Sensory and Baby massage Child health clinic and development checks run from the centre).

3.69 In terms of levels of deprivation The Haldens Ward is ranked 13,325 out of 32,844 where 1 is most deprived and therefore within the most 50% neighbourhoods in

England. This is evidence there are groups who have a protected characteristic who live close by who would benefit.

- 3.70 The nearest pharmacy is well over half a mile away on the other side of the main railway line to London. That is not an easy distance to travel on foot.
- 3.71 There is a large community that would confer significant benefits from a pharmacy at the proposed site particularly due to the lack of reasonable choice, and to the benefits that would be to groups who share a protected characteristic.
- 3.72 Jhoots Pharmacy are aware of local concern at the closure of the previous pharmacy and of the vital lifeline it provided and the benefit it would have to the local elderly population.
- 3.73 The best way to assess the benefits this application will bring is to hold an oral hearing which will allow the Committee to have a good look at the area and to see for itself the gap that has been created by the closure that took place.

4 **Summary of Representations**

This is a summary of representations received on the appeals.

4.1 ASCENT HEALTHCARE LTD

- 4.1.1 Thank you for your letter dated 6 August 2018 informing Ascent Healthcare of the opportunity to provide representations on the appeal submitted by Jhoots Pharmacy Ltd, which will be considered together and in relation to the application by Ascent Healthcare.
- 4.1.2 As much as Ascent Healthcare Ltd agree with the points made by Jhoots Pharmacy Ltd in relation to reinstating pharmaceutical services at the proposed site, granting both applications will lead to overprovision of pharmaceutical services.
- 4.1.3 Ascent Healthcare Ltd therefore request Primary Care Appeals to grant the application by Ascent Healthcare who submitted this application first and refuse the application by Jhoots Pharmacy Ltd. It would be appropriate to grant only one application to prevent overprovision of services.

4.2 BOOTS UK LTD

- 4.2.1 The Lloyds branch that has closed was located close to one of the branches of the Garden City surgery. The main and all branches of this surgery are planning to move to another part of Welwyn Garden City - please see newsletter issued to patients that Boots submit as evidence (see Appendix B). You could assume this surgery relocation would be one of the reasons why Lloyds closed this branch based on future viability, but that is purely speculative. Boots would also add that the quite recent addition of the three Internet Mail order pharmacies have had a detrimental affect on the businesses of many of the local pharmacies.
- 4.2.2 The retail unit that was once the Lloyds pharmacy has now been leased to a local hospice as a charity shop (Isabel's), so currently neither appellant has premises to go into.
- 4.2.3 Pharmacies in the locality offer free delivery services, so would be able to accommodate deliveries to the Haldens area should those patients who have difficulty accessing pharmaceutical services, not be able to access them for one reason or another.

- 4.2.4 The bus service number 403 runs regularly through the Haldens to Welwyn Garden City centre, plus the 203, 204, both shoppers buses, and 388 service runs via main routes through the Haldens again through to Welwyn City Centre. See attached bus timetables. (see Appendix B)
- 4.2.5 Boots ask that NHS Resolution refuse both these applications on the basis that neither of them have met the criteria of Regulation 18.
- 4.2.5.1 They have failed to provide sufficient evidence to prove there is a lack of choice of pharmaceutical contractors within the Health and Wellbeing Board or that access to those contractors is poor and inadequate or that opening hours and services offered do not meet the current patient needs.
- 4.2.5.2 They have not provided evidence that those patients with protected characteristics are currently having difficulty accessing pharmacy services.
- 4.2.5.3 Neither appellant has provided any innovation as part of their application.
- 4.2.6 Boots would wish to attend any oral hearing should NHS England [sic] deem it necessary to hold one.

4.3 LLOYDS PHARMACY

- 4.3.1 It is noted the application has been lodged following the earlier closure of a pharmacy at Haldens.
- 4.3.2 The relevant Pharmaceutical Needs Assessment (PNA) for this application must be the 2018-2021 version. This came into issue from 1st April 2018. At the time the application was submitted the applicant will have been aware that Health & Wellbeing Boards would be required to produce new PNAs by 1 April 2018. Given the four-month timescale for deciding a routine application, they would also have been aware that it would be very likely that the new PNA would be in force by the time that the applications were determined.
- 4.3.3 It would be perverse to ignore the very recent consideration of need that took into account the closure of the Pharmacy at Haldens, Welwyn Garden City. This supports Lloyds view that the relevant PNA is the 2018 version and is the relevant PNA at the time this application is to be considered.
- 4.3.4 Pages 127-128 of the PNA states
- “There is currently a Lloyds Pharmacy in the locality which may be removed if the pharmacy is not sold to an alternative provider before 26 January 2018:*
- Lloyds Pharmacy, 84 Haldens, Welwyn Garden City AL7 1DD*
- However even if the pharmacy were to cease trading altogether, it is not considered that this would result in a gap in service provision, as there are many other pharmacies in the locality who provide the same services as Lloyds”.*
- 4.3.5 Chapter 8 of the Department of Health Guidance to NHS England on unforeseen benefits states:
46. *If NHS England reaches a preliminary view under regulation 18(2)(b) that no significant benefits of a type that was not foreseen when the PNA was produced would be delivered, there would be no purpose to it going on to*

invite other applications, or to consider the application with another one, or to await the outcome of an appeal.

- 47 *In this situation, regulation 22 requires NHS England to refuse the application, even if it believes granting it, or partially granting it would in fact secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the relevant HWB area. Unforeseen benefits applications don to provide an opportunity to reconsider issues that were raised at the time the PNA was produced, for example, if NHS England considered at that time suggested new essential services for a particular area were not in fact appropriate.*
- 4.3.6 Lloyds submit there is no current need, and no current or future improvements or better access, identified in the PNA.
- 4.3.7 Regulation 19(6) does not apply because this is not a case of a benefit not being foreseen in the PNA (an 'unforeseen benefit') – instead, this is a case where the PNA specifically considered the circumstances upon which the applicants are relying and foresaw that there would be no benefit .
- 4.3.8 This is precisely a case where the Health & Wellbeing Board considered at the time that the PNA was produced that new essential services for a particular area (in this case, Haldens) were not appropriate.
- 4.3.9 Regulation 22(1) therefore requires the refusal of the application.
- 4.3.10 Notwithstanding the above:
- 4.3.11 The Committee will be aware the NHS Pharmaceutical Services Regulations does not state that following the closure of a pharmacy it is axiomatic to grant an additional pharmacy licence. There are pharmacies available in the surrounding area that provides a wide range of services to patients, residents and visitors. In particular there are Lloyds Pharmacies in Welwyn Garden City, at 9 Shoplands and within Sainsbury's on Church Road and another three pharmacies within a 1.2 mile radius. The previous pharmacy did not qualify for the Pharmacy Access Scheme (PhAS), which aimed to ensure that a baseline level of patient access to NHS community pharmaceutical services in England was protected as part of the reform measures.
- 4.3.12 It is noted the appeals essentially rely on the applications submitted to NHS England in the first instance.
- 4.3.13 The applicants/appellants do not provide supporting evidence the population is having difficulty accessing the existing pharmacies in the area either by foot, car or public transport. Distance alone is not in itself a determination of need.
- 4.3.14 Bus Services
- 4.3.15 The appellant provides no details of bus routes or indeed costs associated. There is no evidence that those who may use public transport are having difficulty with cost or frequency. Route 403 stops at Haldens shops (proposed site) and this service operates every 30 minutes to the bus station in town centre where other pharmacies are situated.
- 4.3.16 Car Parking
- 4.3.17 Ascent Healthcare Ltd states under the section 'Reasonable Choice' "Those traveling using a car would have to pay for car parking". No details provided or what such costs may be. Lloyds Pharmacy at Shoplands (mentioned by

Ascent Healthcare Ltd) is in a parade of shops which does not have parking charges. Lloyds Pharmacy at the Sainsbury Supermarket in Church Road, Welwyn has 30 minutes free car parking and can also validate free car parking if shopping within the Sainsbury Store as described below. (see appendix A)

- 4.3.18 In addition, there is also free on street parking available in Welwyn Garden City town centre. Parkway has 2 hours free parking and Howardsgate has 1 hour free parking. (see appendix A)
- 4.3.19 With regards to the Haldens Medical Practice this is only a branch surgery of the Garden City Practice and open 3 days a week in the mornings. Neither Ascent Healthcare Ltd nor the Practice has provided evidence that its patients have difficulty accessing pharmaceutical services.
- 4.3.20 Whilst the applicants have highlighted the convenience of their proposed pharmacy's including for those who have a protected characteristic, the applicants have not provided any information to show that there are persons in the area with specific needs for pharmaceutical services that are having difficulty accessing those services.
- 4.3.21 For the above reasons Lloyds ask the Committee to dismiss the appeals and refuse the applications as Regulation 18 has not been met. In the event an oral hearing is required Lloyds would wish to attend.

4.4 LPC

- 4.4.1 The PSRC has acknowledged in their decision that there is reasonable choice, the applicant has not evidenced people sharing a protected characteristic having difficulty accessing pharmaceutical services and that innovative approaches that would be taken, with regard to delivery of pharmaceutical services, had not been evidenced.
- 4.4.2 The LPC indicated in its original response to the application that residents living near to this area would be regularly accustomed to using the facilities at Tesco supermarket on Great North Road in Hatfield which has an adequate parking area or go into the town centre that hosts a Sainsbury and a Waitrose, all of which have pharmacy facilities. The LPC presented evidence that the area is already well served by other pharmacies and that no evidence was provided within the application that the Lloyds pharmacy closure had a detrimental impact on access to pharmaceutical services. The LPC maintains this position.
- 4.4.3 The Pharmaceutical Needs Assessment published in April 2018 clearly outlines that even if the Lloyds pharmacy in Haldens were to cease trading that "...it is not considered that this would result in a gap in service provision, as there are many other pharmacies in the locality who provide the same services as Lloyds."
- 4.4.4 Despite the appellant stating that evidence providing difficulties in accessing pharmaceutical services by actual road/pathways, the LPC can see no significant evidence presented either in the original application or in the appeal that supports this statement.
- 4.4.5 We note that the appellant states: "It is important to note that the LPC has not objected to the application." The LPC has neither supported nor objected to the application or appeal but commented on the facts and evidence presented. The LPC has responded to the application based on current regulations.

- 4.4.6 Please note the LPC may wish to make further representations at a later stage and attend any oral hearing that may be held.

In a letter to NHS England dated 10 March 2018, the LPC, in respect of the applications from Ascent Healthcare Ltd and Jhoots Pharmacy stated:

- 4.4.7 The parade in which the premises are proposed to be situated within the vicinity act as a hub for the local community. The facilities there include a small food shop, a newsagent, café and takeaway food shops, hairdresser and a beauty facilities shop to name a few key services. There is a church directly opposite this parade of shops. Residents that live near to this area would regularly, for 'big supermarket' specialised shopping, access the facilities at Tesco supermarket on Great North Road in Hatfield which has an adequate parking area or go into the town centre that hosts a Sainsbury and a Waitrose both with pharmacy facilities. Residents are likely to be accustomed to using these stores and their pharmacies on a regular basis.

Census 2011

- 4.4.8 The immediate postcode area has a population of 260 residents. The ward of Haldens has a population of 6729. The Index of Multiple Deprivation is medium with Haldens ranked 13325 out of 32844 in England.
- 4.4.9 There is 23.7% of the households in this neighbourhood that do not have access to one or more cars in comparison to 20.3% of those within the Welwyn Hatfield Local Authority area and compared with 16.9% across Hertfordshire.

Access to pharmaceutical Services

- 4.4.10 There is currently three pharmacies within a mile and another five pharmacies located within 1.5 miles from the proposed application site one of which is a 100 hour pharmacy. Hours covered by these pharmacies include openings from 7.00am – 10.00pm on Mondays to Thursdays, 7.00am – 11.00pm on Fridays, 8.00am – 11.00pm on Saturdays and 8.00am to 5.00pm on Sundays.
- 4.4.11 Until recently there was a Lloyds pharmacy within this parade of shops that provided pharmaceutical services. The Lloyds when it was open operated from 9.30 – 5.30pm Monday – Friday and Saturday mornings 9.00am – 2.00pm. We note the provision proposed by the applicant is for less hours (1.5) than this. As is shown from the above the area is already well served by other pharmacies and there is no significant evidence provided within the application that the pharmacy closure has had a detrimental impact on access to pharmaceutical services.
- 4.4.12 The 403 bus service operates a frequent service Monday to Saturday every 30 minutes along the route where 7 of the 8 pharmacies are located which requires little walking.

The Pharmaceutical Needs Assessment

- 4.4.13 The PNA was published in April 2015 and no Supplementary Statements have been made.
- 4.4.14 Vulnerable residents have the opportunity to receive delivery services from nearby pharmacies or the whole population has access to national distance selling pharmacies for essential pharmaceutical services as outlined within the Pharmaceutical Needs Assessment (PNA) 2015:

“Generally pharmacies in Hertfordshire are located in close proximity to GP practices, shopping centres or precincts or in areas which reflect the usual social flow of the population. In most areas pharmacies also provide a non NHS prescription collection and delivery services to patients who have difficulty accessing the pharmacy. Additionally the population has access to all the national distance selling (mail order/internet pharmacies) who provide all the essential pharmaceutical services and who arrange delivery of medicines to patients” (p.40).

The Regulations

Regulation 18(2)(a)(i)

4.4.15 On the basis of the information currently available to the LPC, the LPC cannot comment as to whether or not the ability of the NHS England to plan for the provision of services would be affected in a significant way if the application was to be granted.

4.4.16 *Regulation 18(2)(b)*

(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 the NHSCBs duties under sections 13I and 13P of the 2006 Act(6) (duty as to patient choice and duty as respects variation in provision of health services));

4.4.17 The LPC would draw the NHS England’s attention to the chart above showing the locations and opening hours of the existing pharmacies in the relevant area.

Regulation 18(2)(b)(ii)

4.4.18 The LPC can find no evidence provided in the application of people with a protected characteristic who may benefit **significantly** from having access to pharmaceutical services to meet their special needs that are difficult for them to access in the area of the HWB. No specific evidence has been provided that people sharing a protected characteristic have difficulty in accessing current pharmaceutical services generally or that services specific to their needs are not being provided by existing pharmacies.

Regulation 18(2)(b)(iii)

There being innovative approaches taken with regard to the delivery of pharmaceutical services (taking into account also the NHSCB’s duties under section 13K of the 2006 Act(8) (duty to promote innovation:

4.4.19 The LPC can find no evidence provided in the application that innovative approaches would be taken with regard to the delivery of pharmaceutical services.

4.4.20 The LPC notes that the ability to provide the majority of the commissioned services offered would depend on whether commissioners agreed to commission them from this particular pharmacy and the commissioning of proposed services from this pharmacy could not be guaranteed.

- 4.4.21 Please note we may wish to make further representations at a later stage and attend any oral hearing that may be held.

5 Observations

5.1 ASCENT HEALTHCARE LTD

Lloyds Pharmacy

Regulation 22

- 5.1.1 Lloyds have mentioned that the “relevant Pharmaceutical Needs Assessment (PNA) for this application must be the 2018 – 2021 version” and that the PNA has taken into consideration the closure of the pharmacy at Haldens. Lloyds then go on to quote the following statements from the 2018 PNA.
- 5.1.2 “There is currently a Lloyds Pharmacy in the locality which may be removed if the pharmacy is not sold to an alternative provider before 26 January 2018: Lloyds Pharmacy, 84 Haldens, Welwyn Garden City AL7 1DD.....However even if the pharmacy were to cease trading altogether, it is not considered that this would result in a gap in service provision, as there are many other pharmacies in the locality who provide the same services as Lloyds.”
- 5.1.3 The applicant would argue that the significant benefits of this application were still not foreseen when the 2018 PNA was produced. Firstly, the closure was still uncertain when the PNA was written and the locality mentioned is way too large to consider the benefits of this application to the significant population of Haldens.
- 5.1.4 Nevertheless, the applicant requests the Committee to consider its application with regards to the 2015 PNA, as this was the PNA in relation to which the applicant had applied. It could be argued that this approach is unjust as it might be seen to ignore the HWB's recent assessment of the provision of pharmaceutical services in the area. However, if the Committee applies the 2015 PNA, it would still need to determine whether the application satisfies the relevant statutory test as set out in Regulation 18(2).
- 5.1.5 If the application satisfies the test, then the Committee could go on to determine whether it was just to apply the 2015 PNA and grant the application or whether it was just to apply the 2018 PNA and refuse the application. If the application did not satisfy the test, then the application would be refused regardless of whether the 2015 PNA or 2018 PNA applied.
- 5.1.6 Ultimately, the application has been submitted to secure improvements or better access to pharmaceutical services for the significant population of Haldens. The regulations allow the Committee to decide on what is considered as a ‘just’ reason to determine the application with regards to a previous PNA.
- 5.1.7 If an application is submitted when a previous PNA is in force, and the Committee is satisfied that this application satisfied the test as set out in Regulation(2) i.e. Granting the application would confer significant benefits on persons in the HWB area. In our opinion this is a ‘just’ reason to determine the application with regards to the previous PNA.
- 5.1.8 The applicant therefore requests the Committee to resolve this application by considering this application against the relevant test in Regulation 18(2).
- 5.1.9 Lloyds have also mentioned that “the previous pharmacy did not qualify for the Pharmacy Access Scheme (PhAS), which aimed to ensure that a

baseline level of patient access to NHS community pharmaceutical services in England was protected as part of the reform measures.” However, the criteria to qualify for the Pharmacy Access Scheme (PhAS) is unrelated to the requirements as set by regulation 18.

- 5.1.10 Bus Services - The Route 403 which stops at Haldens shops (the proposal site) and travels into the bus station in the town centre site operates only once every 30 minutes. Therefore, patients can end up waiting up to 30 minutes on each side. Taking that into consideration with the walk to and from the bus stops on each side it could take the residents or the patients visiting the doctor surgery at the proposal site up to 2 hours to get a prescription dispensed. Furthermore, the cost for a day return ticket is prohibitive at £4.50 for an adult return.
- 5.1.11 Car Parking - In terms of car parking it is as important to consider the low car ownership in the neighbourhood (Haldens Ward). 23.7% of the households do not have access to one or more cars in comparison to 20.3% of those within the Welwyn Hatfield Local Authority area and compared with 16.9% across Hertfordshire. Our proposal site is conveniently located in the community hub of Haldens, easily accessed via a short walk.
- 5.1.12 Haldens Medical Centre - With regards to the Haldens Medical Practice, it is correct that this is a branch surgery of the Garden City Practice and open 3 days a week in the mornings. However, this only supports the need for pharmaceutical services in the area. Following the closure the significant resident population now only have limited access to healthcare facilities.
- 5.1.13 Ascent Healthcare Ltd therefore request Primary Care Appeals to resolve this application by considering this application against the relevant test in Regulation 18(2) and to grant the application to secure improvement or better access.

6 Consideration

- 6.1 The Pharmacy Appeals Committee (“Committee”), appointed by NHS Resolution, had before it the papers considered by NHS England, together with a plan of the area showing existing pharmacies and doctors’ surgeries and the location of the proposed pharmacy.
- 6.2 It also had before it the responses to NHS Resolution’s own statutory consultations.
- 6.3 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.
- 6.4 The Committee noted that the applications from Ascent Healthcare Ltd and Jhoots Pharmacy were both based on securing improvements or better access that were not included in the PNA under Regulation 18 and that both of these applications had been appealed. The Committee noted that under paragraph 7(3) of Schedule 3 of the Regulations it had flexibility with regard to the manner of determining appeals and that, where appropriate, the Committee could consider appeals together and in relation to each other. The Committee noted that both appeals related to applications made under the same regulation, for the same general area and that it was likely that if the Committee decided to grant one of the applications, the Committee would need to consider the relative merits of each application against the other. The Committee had therefore decided to consider both appeals made under Regulation 18 together and in relation to each other. The Committee noted that all parties had been advised that the Committee will consider both appeals together and in relation to each other.
- 6.5 If it determined to re-determine the applications, the Committee considered that if, after considering both applications, it was likely that one of the applications might be

granted on appeal then the Committee would need to give further consideration to which of the applications was granted and which was refused.

6.6 The Committee noted the comments from Ascent Healthcare that the owners of the previous pharmacy could have consolidated this pharmacy with another pharmacy. The Committee noted that there was no consolidation of the previous pharmacy and takes no view on this and proceeded to consider the applications before it.

6.7 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (“the Regulations”).

6.8 The Committee first considered Regulation 31 of the regulations which states:

(1) A routine or excepted application must be refused where paragraph (2) applies

(2) This paragraph applies where -

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

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

(ii) adjacent premises; and

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

6.9 The Committee noted that both of the Applicant’s had stated, in their application forms, that Regulation 31 was not applicable as there is no other pharmacy in the same or adjacent premises. The Committee noted that NHS England had considered Regulation 31 and were of the view that it was not applicable. The Committee noted that no information had been provided by any party to indicate that Regulation 31 would require the refusal of either of these applications. Given the information available to the Committee it determined that it was not required to refuse either of the applications under the provisions of Regulation 31.

6.10 The Committee noted the application from Ascent Healthcare Ltd was for a best estimate address and was therefore mindful that if this application was to be granted, this Applicant would – in due course – have to notify NHS England of the precise location of its premises (in accordance with paragraph 31 of Schedule 2). Such a notification would be invalid (and this 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.

6.11 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) the NHSCB 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), the NHSCB 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 the NHSCB 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 the NHSCB'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 the NHSCB'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 the NHSCB'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) *The NHSCB need only consider whether it is satisfied in accordance with paragraphs (2)(c) to (e) if it has reached at least a preliminary view (although this may change) that it is satisfied in accordance with paragraph (2)(b)."*
- 6.12 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 6.12.1 confirm NHS England's decision;
 - 6.12.2 quash NHS England's decision and redetermine the application;
 - 6.12.3 quash NHS England's decision and, if it considers that there should be a further notification to the parties to make representations, remit the matter to NHS England.
- 6.13 The Committee considered that Regulation 18(1)(a) was satisfied in that it was required to determine whether it was satisfied that granting the application, or granting it in respect of some only of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB
- 6.14 The Committee went on to consider whether Regulation 18(1)(b) was satisfied, i.e. whether the improvements or better access that would be secured if the application was granted were or was included in the PNA in accordance with paragraph 4 of Schedule 1 of the Regulations.
- 6.15 Paragraph 4 of Schedule 1 requires the PNA to include: "*a statement of the pharmaceutical services that the HWB had identified (if it has) as services that are not provided in the area of the HWB but which the HWB is satisfied (a) **would** if they were provided....secure improvements or better access, to pharmaceutical services... (b) **would** if in specified future circumstances they were provided...secure future improvements or better access to pharmaceutical services...*" (emphasis added).
- 6.16 The Committee considered the Pharmaceutical Needs Assessment ("the PNA") prepared by Hertfordshire County Council on behalf of Hertfordshire Health and Wellbeing Board, 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 (after identifying changes that have occurred that are relevant to the granting of applications) 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 2018 and that no supplementary statements had been issued.

- 6.17 The Committee noted that the PNA had split Hertfordshire into smaller localities, based on the CCG localities, and that the area of Haldens fell to be considered as part of Welwyn Hatfield. The Committee noted that the PNA had looked at each area and had provided an overall brief summary of the area and had then looked to see if there were any gaps in provision for the Welwyn Hatfield area.
- 6.18 The Committee noted that the PNA had made reference to the potential of the Lloyds Pharmacy at Haldens ceasing trading in January 2018 if it was not sold to an alternative provider. The Committee noted that the PNA then went on to state "However even if the pharmacy were to cease trading altogether, it is not considered that this would result in a gap in service provision, as there are many other pharmacies in the locality who provide the same services as Lloyds." The Committee noted that no gaps in provision had been identified in Welwyn Garden Locality in the PNA and that even the closure of the Lloyds Pharmacy would not result, as far as the PNA was concerned, in a gap which had been identified. The Committee further noted the overall conclusions of the PNA at section 7 in which no need and no gaps in provision had been identified for any area of Hertfordshire.
- 6.19 The Committee noted that the Applicants seek to provide unforeseen benefits to the residents of the Haldens area of Welwyn Garden City. The Committee noted that the improvements or better access that the Applicant was claiming would be secured by its application were/were not included in the relevant pharmaceutical needs assessment in accordance with paragraph 4 of Schedule 1.
- 6.20 In order to be satisfied in accordance with Regulation 18(1), regard is to be had to those matters set out at 18(2). The Committee's consideration of the issues is set out below.

Regulation 18(2)(a)(i)

- 6.21 The Committee had regard to

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

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

- 6.22 The Committee noted that NHS England had concluded that the granting of either of the applications would not cause significant detriment to the proper planning of pharmaceutical services. The Committee noted that this had not been disputed by any party either on appeal or in subsequent representations. On the basis of the information available, the Committee was not satisfied that, if either application was to be granted and a pharmacy to open, the ability of the NHS England thereafter to plan for the provision of services would be affected in a significant way.
- 6.23 The Committee was therefore not satisfied that significant detriment to the proper planning of pharmaceutical services would result from a grant of an application.

Regulation 18(2)(a)(ii)

- 6.24 The Committee had regard to

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

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

- 6.25 The Committee noted that NHS England had had regard to Regulation 18(2)(a)(ii) and had concluded that granting of either application would not cause significant detriment to the arrangements currently in place for the provision of pharmaceutical services. The Committee noted that no party had sought to dispute this either on appeal or in subsequent representations. On the basis of the information available, the Committee was therefore not satisfied that significant detriment to the arrangements currently in place for the provision of pharmaceutical services would result from a grant of the application.
- 6.26 In the absence of any significant detriment as described in Regulation 18(2)(a), the Committee was not obliged to refuse the application and went on to consider Regulation 18(2)(b).

Regulation 18(2)(b)

- 6.27 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 the NHSCB'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 the NHSCB'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 the NHSCB's duties under section 13K of the 2006 Act (duty to promote innovation)),*

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

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

- 6.28 The Committee had regard to the location of the existing pharmacies and GP surgeries as provided on a map by NHS England, which had not been disputed by any party. The Committee noted that there was, until recently, a Lloyds pharmacy within the vicinity of the proposed locations but that this pharmacy had ceased trading and had closed in January 2018.
- 6.29 The Committee noted the comments from parties with regard to provision in the area and noted that there are 3 pharmacies located within a mile of the proposed site and a total of 5 pharmacies within 1.5 miles, including a 100 hour pharmacy.
- 6.30 The Committee noted that both applicants were of the view that the closing of the pharmacy has left a gap in provision and that patients were now having to access pharmaceutical services further away and that there had been complaints following the closure. The Committee was of the view that the closing of a pharmacy did not automatically lead it to the conclusion that there was a gap in provision and it was not

axiomatic that the closure of a pharmacy would result in a new pharmacy being granted.

- 6.31 The Committee noted the comments from both applicants that the nearest pharmacy to the proposed locations is over half a mile away on the other side of a main railway line and that this is not an easy distance to travel on foot. Further, Ascent Healthcare state that access to the nearest pharmacy involves walking through an undesirable subway and that there are steep gradients involved. The Committee noted these comments as well as the photographs provided by Ascent Healthcare and the distances quoted by parties. The committee noted however that no information had been provided in relation to access to other pharmacies on foot. The Committee accepted that, for reasons of health or mobility, there may be some who may not be able to access services on foot and for those who chose not to do so or who are unable to access services on foot, the Committee went on to consider access by public and private transport.
- 6.32 The Committee noted the statement from Jhoots Pharmacy that Haldens ward is within the most 50% deprived neighbourhoods in England. The Committee further noted the comments from Ascent Healthcare with regard to the low car ownership in the area compared to both the Local Authority as well as to Hertfordshire as a whole. The Committee further noted the comments from Ascent Healthcare that those who did have access to private transport would have to pay for car parking. The Committee noted the comments from parties that disputed this and the Committee noted the various on street parking in the area of the existing pharmacies as well as the parking within the Sainsbury's store car park. The Committee concluded that there appeared to be a level of mobility within the area and was of the view that for those who did have their own transport there was nothing provided to demonstrate that they were experiencing any difficulties in accessing the existing pharmaceutical provision.
- 6.33 The Committee noted the comments from Ascent Healthcare that access by public transport could not be considered reasonable. The Committee noted the bus timetables, which had been submitted by parties, as well as the information from the LPC with regard to the location of bus stops in relation to the existing pharmacy provision. The Committee noted that the buses ran every 30 minutes from Haldens to Welwyn Garden City and was of the view that the timetable, as provided by parties, did not appear to be unreasonable. The Committee noted the comments from Ascent Healthcare with regard to the cost of public transport and whilst it is stated that this is prohibitive Ascent Healthcare had not provided any information to demonstrate that those who did use public transport were currently unable to access pharmaceutical services. The Committee was of the view that there was nothing provided which demonstrated that those who did use public transport were currently experiencing any difficulties in accessing the existing pharmaceutical provision.
- 6.34 The Committee noted the comments from all parties with regard to the facilities in the area and the comments from Ascent Healthcare that the only pharmaceutical provision is outside of the daily patterns and movements of those residing in the area of Haldens. Whilst the Committee noted the facilities surrounding the proposed locations, the Committee was of the view that these were limited and that for example there was no post office or bank in the vicinity of the proposed site. The Committee was of the view that the facilities in the area were not large enough to sustain the population on a daily basis without the need for them to leave the area to supplement the facilities that were available to them. The Committee also noted the comments with regard to the GP practice in the area and that this is a branch surgery, with limited opening hours, and that the practice are seeking to relocate the surgery. The Committee was of the view that the population was a relatively affluent mobile population that would leave Haldens on a regular basis to go to work as well as to access a variety of services both in Welwyn Garden City and further afield including the larger supermarkets in the area as well as the town centre and the medical

practices, where there were pharmacies located, which provided choice in obtaining pharmaceutical services in the area of the HWB.

- 6.35 The Committee noted the comments from Ascent Healthcare with regard to the additional services which it was proposing to provide. The Committee noted the comments that these are services that are already provided, which is not disputed and that there is no information provided which demonstrates that there is currently a gap in provision of these services which this application would secure.
- 6.36 On the information available, the Committee was of the view that there is already reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB, such that it was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting either application would confer significant benefits on persons.
- 6.37 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 having access to services that meet specific needs for pharmaceutical services that are difficult for them to access. The Committee was also aware of its duties under the Equality Act 2010 which include considering the elimination of discrimination and advancement of equality between patients who share protected characteristics and those without such characteristics. The Committee noted the demographic information referred to by Ascent Healthcare in their supporting information with their letter of appeal with regard to the elderly in the area as well as those with young children. The Committee noted the comments from both applicants that the pharmacy would be located by facilities that are used on a daily basis. The Committee accepted that there were always people in an area who share a protected characteristic, and was of the view that whilst a pharmacy located at the proposed site may be of some benefit to some people, there was no information provided by either of the applicants to indicate why this was a significant benefit or how those with a protected characteristic were currently experiencing any difficulties in accessing pharmaceutical services. In the absence of any supporting information and based on the information before it, the Committee was therefore not satisfied that, having regard to the desirability of people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that are difficult for them to access, granting the application would confer significant benefits on persons.
- 6.38 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 neither applicant had claimed that their application included any innovative approaches and that they were not basing their application on innovation. Given that neither applicant was proposing any innovation, 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 either application would confer significant benefits on persons.

Regulation 18(2)(b) generally

- 6.39 The Committee noted that Ascent Healthcare Ltd was proposing to open for a total of 46 hours a week, of which 40 would be core hours. The Committee noted that the core hours were arranged so that provision would be available Monday to Friday 9am to 1pm and 1:30pm to 5:30pm. The Committee noted that Ascent Healthcare proposed total opening hours from 9am to 5:30pm Monday to Friday and Saturday from 9am to 12:30pm, with the additional hours being supplementary hours. The Committee noted that Ascent Healthcare was not proposing any hours, either core or supplementary, on a Saturday afternoon or a Sunday.

- 6.40 The Committee noted that Jhoots Pharmacy was proposing to open for a total of 48 hours a week, of which 43 would be core hours. The Committee noted that the core hours were arranged so that provision would be available Monday to Friday from 9am to 1pm and 2pm to 6pm as well as on a Saturday morning from 9am to 12 noon. The Committee noted that Jhoots Pharmacy's total proposed opening hours would include opening over the lunch hour of 1pm to 2pm Monday to Friday. The Committee again noted that there were no hours proposed, either core or supplementary, on a Saturday afternoon or a Sunday.
- 6.41 The Committee noted the comments from parties that there is a 100 hour pharmacy located within 1.5 miles of the proposed site, which had not been disputed by either of the applicants and further noted the hours given when there was provision of pharmaceutical services in the area. The Committee was of the view that there was no information provided to support a finding that pharmaceutical services were 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 either application would confer significant benefits (in relation to opening hours) on persons.
- 6.42 The Committee was of the view that in accordance with Regulation 18(2)(b) the granting of either application would not confer significant benefits on persons in the area of the HWB which were not foreseen when the PNA was published.

Other considerations

- 6.43 Having determined that Regulation 18(2)(b) had not been satisfied, the Committee did not need to have regard to Regulation 18(2)(c) to (e).
- 6.44 No deferral or refusal under Regulation 18(2)(f) was required in this case.
- 6.45 The Committee had regard to Regulation 18(2)(g) and found no information to cause it to refuse either application under this regulation.
- 6.46 The Committee considered whether there were any further factors to be taken into account and concluded that there were not.
- 6.47 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 locations would provide better access to pharmaceutical services.

7 DECISION

- 7.1 The Committee confirms the decision of NHS England.
- 7.2 The Committee has considered whether the granting of either application would cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area covered by the HWB, or the arrangements in place for the provision of pharmaceutical services in that area and is not satisfied that it would;
- 7.3 The Committee determined that both application should be refused on the following basis:
- 7.3.1 In considering whether the granting of either application would confer significant benefits, the Committee determined that –
- 7.3.1.1 there is already a reasonable choice with regard to obtaining pharmaceutical services;

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

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

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

Jill Jackson
Case Manager
Primary Care Appeals

A copy of this decision is being sent to:

Ascent Healthcare Ltd
Jhoots Pharmacy
Boots UK Ltd
Lloyds Pharmacy
LPC
NHS England – Midlands & East (Central Mids) Area Team