

18 October 2018

1 Trevelyan Square
Boar Lane
Leeds
LS1 6AE

REF: SHA/19947

APPEAL AGAINST NHS COMMISSIONING BOARD ("NHS ENGLAND") DECISION TO REFUSE AN APPLICATION BY BOOTS UK LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT UNIT B, A1 SHOPPING PARK, BIGGLESWADE SHOPPING CENTRE, LONDON ROAD, BIGGLESWADE, SG18 8PS

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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 application should be refused.

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Accredited
(April 2020)



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1 The Application

By application dated 8 February 2018, Boots UK Ltd ("the Applicant") applied to NHS Commissioning Board ("NHS England") for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at Unit B, A1 Shopping Park, Biggleswade Shopping Centre, London Road, Biggleswade, SG18 8PS. In support of the application it was stated:

This application should not be refused pursuant to Regulation 31 for the following reasons:

- 1.1 There are no other pharmacy contractors in the same building or the immediate vicinity of these premises.

Information in support of the application

Please describe the unforeseen benefit(s) that you are offering to secure and how it will secure improvements or better access to pharmaceutical services, or pharmaceutical services of a specified type in the HWB's area.

- 1.2 The Applicant is aware that the branch of Lloyds in Market Square is closing as part of their closure programme at the end of January 2018. This will reduce the number of pharmacies in the locality and the wider demographic and partially rural area that the Biggleswade pharmacies serve.
- 1.3 The NHS area team will be aware that the Applicant's store at the retail park has been open for well over two years and in this time have been offering a hub and spoke dispensing service where patients can drop off their prescriptions and pick them up at a convenient time after it has been dispensed at the Applicant's store in the market square. It has also been providing private services on a daily basis for Flu, EHC and travel vaccinations.
- 1.4 The Applicant has approx. 1000 customers/ patients that visit the store each day, and many of these it has to refuse the option of dispensing their prescription, collecting their prescriptions from the surgeries/ offering EPS and providing them with NHS services such as NMS and MUR's and instead refer them to pharmacies in the town centre, which is not always ideal for patients.
- 1.5 Due to the imminent Lloyds closure the Applicant believes, should this be granted, that it will be able to effectively maintain the number of contractors in this part of the Health and Wellbeing board.
- 1.6 The Applicant will offer patients and customers the opportunity to receive pharmaceutical services at the retail park instead of the town centre, which may alleviate any traffic and parking issues they may come across in the town centre, and

provide another locality that's easy to access off the A1 where the Applicant will be offering extended hours. The Applicant proposes to provide all the NHS and private services that Lloyds currently do at their market square branch.

- 1.7 The Applicant is aware of course of the more recent unforeseen benefits application for this locality that was refused at appeal – SHA/18609 by Farali, however as this application differs as this one is to replace an existing contract rather than increasing the number of pharmacies, the Applicant believes that NHS England would see good reason that this one should be approved.
- 1.8 The increase in population over the past few years in the nearby Kings Reach development that is significantly referenced in the Farali application, is a true fact and whilst at the time of their appeal the existing contracts could accommodate the additional demand brought on by the development, with one pharmacy now closed it is likely that the existing contractors may have difficulty accommodating the remaining future growth still to come from the area.

Area

- 1.9 Ample free parking is accessible for customers with spaces provided for around 1000 cars, and it is easily accessible from the A1. It is a large busy retail park that is located opposite a large industrial and business area serving not only the day to day shoppers, but those who travel to and from the area for work.
- 1.10 Visitors to the shopping park are drawn from a wide area, and there is easy access to the shopping park from the A1 which carries in excess of 30,000 cars per day. Other retailers on the park are Next, Marks and Spencer's, Argos, New Look, Homebase, Halfords, Laura Ashley, Wilko's, Pets at Home and Cotswold Outdoor.
- 1.11 A pharmacy on the A1 Shopping Park would provide pharmaceutical services to all visitors to the retail park; the employees of the other retail units on the Shopping Park and the large number of workers on the Industrial Park off London Road.
- 1.12 The Applicant submits a map that indicates where customers travel from to reach the shopping park – this marketing data is taken from the Boots loyalty card, the Advantage Card and whilst does not give indication they travel to the Applicant just for pharmacy, it gives indicative information about how far customers are travelling to shop at the park.

Existing provision

- 1.13 There are two pharmacies in close proximity to each other in the centre of Biggleswade (once the Lloyds branch closes), the closest of which is approximately 2.1 kilometres from the proposed location.
- 1.14 There is a 100-hour pharmacy at a Sainsbury's supermarket on the northern outskirts of the town and that is approximately 3.3 kilometres away.
- 1.15 Finally, the nearest pharmacy, Jardines, is approximately 1200 metres away in a local neighbourhood centre close to Saxon Fields development.
- 1.16 The existing contractors including the 3 Lloyds stores (before closure), Jardines, and the Applicant's store in the Market Square dispense between them approx. 435,866 items based on 2016/17 dispensing figures this is an increase of nearly 5000 items on the year before.
- 1.17 The two local surgeries have 13,000 patients registered at Saffron Rd and 10,900 registered at Ivel medical centre. The Biggleswade 2011 census indicated the population was 16,555, this population now shows an increase, albeit based on the increased patients list, of circa 6000 people.

Access

- 1.18 Securing a pharmacy contract here, would allow patients to be able to access pharmaceutical services at a time and place convenient to them. The proposed extended opening hours would allow access both early and later in the day, and the store will also be open on a Sunday when the nearest pharmacy is closed. The only pharmacy that is open beyond 6pm in the evenings or on Sunday is Lloyds within the Sainsbury's supermarket which is 3.3 kilometres to the north of the proposed location.

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

- 1.19 These benefits are unforeseen as the Lloyds closure was not foreseen at time of the writing of the 2015 PNA or any subsequent supplementary statements.
- 1.20 With extended opening hours, the Applicant will be able to offer pharmaceutical services to patients seven days a week. The Applicant will offer any services that NHS England wish to commission, including those that are not available in the area at this present time.
- 1.21 The Applicant will also be able to offer additional services such as erectile dysfunction advice/support, hair retention, weight management and travel vaccinations as well as new innovative services such as a diabetes risk assessment and provide Cancer support from its Macmillan pharmacists. The store team are ready to be accredited with HLP status should the contract be awarded.

2 The Decision

NHS England considered and decided to refuse the application. The decision letter dated 19 June 2018 states:

- 2.1 NHS England have considered the above application and are writing to confirm that it has been refused.
- 2.2 Please see the enclosed report for reasoning behind the decision.

Decision Report

- 2.3 NHS England – Midlands & East (Central Midlands) Pharmaceutical Services Regulations Committee ((hereafter referred to as the PSRC) has considered the Applicant'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 was made in regard to Regulation 31 which states:

(1) Regulation 31(1) a routine or excepted application must be refused where paragraph (2) applies

(2) Regulation 31(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 from 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 service (and so the premises to which the application relates and the existing listed chemist premises should be treated as the same site).

2.5 The PSRC concluded that the proposed premises to which the application relates, or adjacent premises, there are no listed NHS contracted pharmacies operating within the vicinity of Biggleswade Shopping Park 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",

2.7 Regulation 18(1) 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,

2.8 The PSRC noted that the Central Bedfordshire 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.

2.9 The PSRC noted that the Applicant seeks to provide unforeseen benefits to all visitors to the retail park, employees of the other retail units and workers on the Industrial Park off London Road, and in order to be satisfied in accordance with Regulation 18(1), the criteria set out in Regulation 18(2) should be considered.

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 Regulation 18(2).

Regulation 18(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 is has in place for provision of pharmaceutical services in the area of the relevant HWB;

- 2.10 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 could be 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.

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

(i) there being reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB;

(ii) people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access, or

(iii) there being innovative approaches taken with regard to the delivery of pharmaceutical services,

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

- 2.11 The PSRC noted that there are 4 existing pharmacies within a 2 mile radius of the Applicant's proposed pharmacy, the closest is located at The Saxon Centre and is 0.9 miles via road, an approximate 4 minute car journey from the proposed site. There are two pharmacies within the town centre of Biggleswade and they are 1.4 miles by road, an approximate 5 minute journey from the proposed site. These two pharmacies are located in close proximity to the two medical practices within the town; the closest medical practice is located 2 miles via road from the Applicant's proposed site. Both medical practice providing dispensing services to eligible patients. Another pharmacy is located within a supermarket store and is 2.2 miles by road, an approximate 7 minute car journey from the proposed site. This pharmacy is open for 101 hours per week.
- 2.12 The PSRC also noted that there had previously been 3 town centre pharmacies up to January 2018 when one had closed. This had resulted in both other town centre pharmacies having increased prescription numbers resulting in increased waiting times and on occasions it has been noted that several patients have been queuing while waiting for prescriptions.
- 2.13 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.
- 2.14 The Applicant has not provided any evidence that there are currently patient groups who share a protected characteristic, living within the area or demonstrated that there are difficulties in these patient groups accessing any specific needs or current pharmaceutical services.
- 2.15 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.

(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;

- 2.16 No other application have been received therefore Regulation 18 (2) c) (d) and (e) were not considered.

Decision

- 2.17 The PSRC rejected this application as it has not evidenced sufficient unforeseen benefits, innovation, or people sharing a protected characteristic having difficulty accessing pharmaceutical services. There is already reasonable choice. The PNA took account of the closure of one of the town centre pharmacies & still concluded that provision is sufficient. The Applicant has not demonstrated that granting the application meets any of the statutory tests.

3 The Appeal

In a letter dated 16 July 2018 addressed to NHS Resolution, the Applicant appealed against NHS England's decision. The grounds of appeal are:

- 3.1 The Applicant will first address the application and the relevant decision separately however would first like to provide some background to previous applications in Biggleswade.
- 3.2 As NHS Resolution will know, the Applicant had an application refused at appeal, reference SHA/18036 in 2015 for this address. This was before the shopping park had been redesigned and grown and the Applicant had limited supporting evidence on patients and visitors to the park at that time. In 2016 the retailers on the park would have attracted more infrequent visitors, now the range is such that people shop there on a day to day basis.
- 3.3 Retailers now include M+S – including Food, Next with Costa, Matalan, TK Max, H&M, Laura Ashely, Cotswold Outdoor, Argos, River Island, New Look, Outfit and Wilko. The original retailers also include Sainsbury's Homebase, Pets at Home, and Halfords. A MacDonal'd's drive thru is due to open shortly.
- 3.4 There has also been a further application and subsequent appeal by Farali Ltd SHA/18609 which was also refused, however that application was within a residential area and looked to increase the number of pharmacies at that time to 6, this was before Lloyds closed one of its stores in the Market place.

Existing provision

- 3.5 There are now only four pharmacies in the whole of Biggleswade (within a 2 mile radius) Lloyds in Sainsbury's, Lloyds in the Market Place, Boots in the Market Place and Jardine's at the opposite end of town in the Kings Reach Housing development, this is nearer to the application site. The distance taken to travel from the two extremes to Sainsbury's to Jardine's, takes approx. 15 mins by car (non-rush hour).

- 3.6 The other Lloyds branch that was in the Market Place (opposite Boots pharmacy and the other Lloyds pharmacy) closed on 31st January 2018. This branch had been identified to close or be sold by the Competition and Markets Authority as a result of Lloyds buying the Sainsbury's pharmacy chain.
- 3.7 All four remaining pharmacies appear to offer the locally commissioned services and a varying range of private services.
- 3.8 Lloyds in Sainsbury's opening times (100hr)
- 3.8.1 Monday – Friday 7am – 11pm
- 3.8.2 Saturday 7am – 10pm
- 3.8.3 Sunday 10am – 4pm
- 3.9 Lloyds Market Square opening times
- 3.9.1 Monday – Friday 8.30 am – 6pm
- 3.9.2 Saturday 9.00am – 5.30pm
- 3.9.3 Sunday – Closed
- 3.10 Jardine's opening times (close daily 1hr for lunch)
- 3.10.1 Monday – Friday 9am – 6pm
- 3.10.2 Saturday 9am – 12.30pm
- 3.10.3 Sunday Closed
- 3.11 Boots Market Square opening times
- 3.11.1 Monday – Friday 8.30am – 6pm
- 3.11.2 Saturday 8.30am – 5.30pm
- 3.11.3 Sunday 10am – 4pm
- 3.12 The impact to patients due to the closing of the Lloyds branch has been huge but clearly can be difficult to quantify, the Applicant therefore wishes to submit a statement from its store manager at the retail park to evidence it is not all anecdotal. See separate document
- 3.13 The existing contractors (including the closed branch of Lloyds) dispensed between them 435,866 (averages at over 7,000 a month for each pharmacy) items based on 2016/17 dispensing figures which was an increase of nearly 5000 items on the year before. The two surgeries have over 23,900 patients registered between them, and this number is increasing month on month as the houses continue to be built and the local population growing.
- 3.14 Whilst there were 5 pharmacies this volume of dispensing was busy but usually manageable, now a pharmacy has closed, it is getting difficult to continue to provide the same level of care for patients as the numbers increase. The Applicant does not have details of the number of Pharmacy Services (enhanced and advanced) that patients may have access in this time period across the pharmacies, but you would assume that they too have increased on a similar volume.

Biggleswade's current and future population growth

- 3.15 Biggleswade's resident population at its last count in 2015 was 18,000 people (source: Office of National Statistics) it is said the population now is approx. 20,000. The Biggleswade master plan indicated in the space of ten years (2011 – 2021), the population would increase by 40% to 23,000 in total. Clearly these numbers are proving to be correct so far, and very likely to exceed.
- 3.16 It is evident that this number is however less than the number of patients on the GP list size, so it is right to assume that a large number of patients come to the area that do not necessarily live in the town's wards. These are from Sandy, Potton, Langford and other surrounding villages.
- 3.17 Biggleswade's transient population of works and visitors is also significantly on the increase. With a large extension, known as 'G Park', to the existing Stratton Business Park yet another Industrial park approx. 5 mins walk from the proposed site is already well under construction. This is called Symmetry Park and the Applicant submits a document that has been created for the purpose of recruitment for Symmetry Park that clearly shows the desire to recruit from a local catchment area. When you compare that area to the Applicant's map created with data from the Boots Advantage Loyalty Card it is very similar in shape and size. This again indicates the distances people and patients travel to access the Applicant's store at the retail park on a regular basis.
- 3.18 Builders continue to build new homes in the area. Bellway homes, (Ivel Chase development) are constructing 90 homes towards the North of the town. Bloor Homes (St Andrews development) are constructing 330 homes just along the road from Ivel Chase. Howard Cottage Housing Association are about to start construction of new affordable homes across the Kings Reach development (Taylor Wimpey and Martin Grant developments)
- 3.19 There is also reference as part of the Bedfordshire local plan, to the creation of a proposed 'new village' which will be a further extension to the East of the town – see extract from website. Whilst this work has not yet started, the Applicant believes some of the planning elements have already been submitted to the county council. This is a further increase of 1,500 homes – a circa 4,000 increase in population.
- 3.20 There is also plans to start construction in the near future on land to the West of the Retail Park, the other side of the A1 roundabout, where there is already an access road from the roundabout itself.

The application site

- 3.21 The application site is not in the town centre but on an existing Retail Park site that has been open for two years. This location would provide excellent access to pharmacy services for patients and people approaching from the southern end of the A1 and does not add to the two pharmacies in the area of the market square therefore avoiding a 'cluster'. The Lloyds in Sainsbury's is ideally sited at the roundabout immediately off the A1 exit. For the Applicant's store to have the ability to provide services at the A1 exit to the South would undoubtedly increase patient choice depending on the starting point of their journey or their end destination. It is certainly desirable. At peak travel times, it can take 40 mins in a car from the A1 junction where the Boots store is to get to the A1 junction where Sainsbury's is. A distance that should take 5 minutes.
- 3.22 The Applicant's extended opening hours will allow access to patients both early on and late in the day, weekday lunchtimes, Saturday afternoons and on Sundays when the closest pharmacy to this location is closed. The next nearest pharmacy, in fact all the others are approx. 3km away in the North part of Biggleswade. This is not within walking distance and can take a consideration time by car due to the convoluted road

system. Bus services run approx. every half an hour between the Retail Park and the town centre using the No 85 and 85A bus. The buses run hourly on Saturdays and do not run on Sundays at all.

- 3.23 The car parks in the town centre are quite small and all of them up until recently did have up to two hours free parking. Parking charges are now about to come into force in the town centre (machines are in place, not yet in use) see article from local press the Applicant submits as evidence. This will add more pressures now for local residents and visitors accessing the town. The closest carpark to the existing pharmacies being St Andrews St with 38 spaces. There is a small area close to the White Hart pub which is next to Market Square which has 14 spaces, but as you can imagine these few spaces are constantly in use. Parking is available in both Asda and Aldi but is designated for customer use only.
- 3.24 A recent addition to the A1 Retail Park is the NHS Breast Screening vehicle which has been parked close to Boots over the past few weeks. This location was chosen due to the accessibility of the park to patients and the free parking available. Visitors to this clinic are very likely to be ladies with protected characteristics such as the elderly and less abled, as of course the service is targeted to the over 50's.
- 3.25 The Applicant submits that NHS England have failed to take into consideration the information submitted.
- 3.25.1 The area is not only continuing to grow with the ongoing housing developments, it is also growing just as dramatically with the additional large extensions to the Business Park.
- 3.25.2 The Retail Park (the application site) continues to attract more and more people from further afield as its location becomes a key destination that allows excellent access and free parking. A new contract, should it be granted, would provide an alternative choice to those living and working in the southern part of town, and those visiting the Retail Park. This is especially relevant for evenings and weekends where existing provision is relatively poor.
- 3.25.3 The closure of the Lloyds branch in the town centre has placed extreme pressure on the existing pharmacies to maintain a high level of patient care.
- 3.25.4 Access for patients with protected characteristics is much more accessible at the Retail Park than in the Market Place, with its free parking, large number of parking spaces, dedicated disabled shopping bays and public toilets including disabled access in three stores (M&S, Next and Matalan) during their normal opening hours. Parking charges are about to apply in the town centre, creating restrictions for all.
- 3.25.5 The Applicant regularly has to turn patients away with prescriptions or those wishing to receive NHS pharmacy services, forcing them then to locate the next nearest accessible pharmacy.
- 3.26 The 2018 PNA deems pharmacy provision in Central Bedfordshire as only adequate, the Applicant would state that in Biggleswade, pharmacy provision is now significantly less than adequate.
- 3.27 There is no doubt it is not just those patients with protected characteristics having difficulty accessing pharmacy services in Biggleswade and the surrounding area, it is every patient. Granting a new contract at the Applicant's store will improve not just access in Biggleswade, but in the whole Health and Wellbeing Board area due to its central location off the A1.

- 3.28 The benefits were unforeseen at the time of the completion of the PNA, as the Lloyds closure was not considered when it was published in March 2018.
- 3.29 In conclusion, the Applicant submits that its application meets the criteria of Regulation 18, and it respectfully urges NHS Resolution to uphold this appeal accordingly.
- 3.30 Please be aware that the Applicant may wish to make further representations at a later stage and attend any oral hearing should the panel deem it necessary to hold one.
- 3.31 The Applicant submits its original application and the subsequent decision by NHS England. The Applicant also submits a statement from its store manager who has managed this store since its opening in 2016 and various appendices to support this appeal.
- 3.32 [Supporting information provided to the Committee at Appendix A]
- 3.33 Statement by Jo Hobson-Cooper to support Boots UK Pharmacy application at A1 Shopping Park London Rd, Biggleswade
- 3.33.1 *"I have been the manager at this store for the past two years since its opening in the summer of 2016, but have been a manager for Boots UK for many years before this in other areas.*
- 3.33.2 *My store at the A1 Retail Park can and does cater for different customer and patients needs than our store in the town centre. It is a destination people travel to from a wide area of Bedfordshire and people access it regularly as they travel up and down the A1 as part of a commute or in their free time such as weekends.*
- 3.33.3 *Since we opened, I have witnessed a dramatic increase in visitors to the park. The retailers that are here are attractive to a wide audience, however I believe we are letting our customers and patients down as we are not able to dispense prescriptions for them or offer NHS services.*
- 3.33.4 *I have nearly a 1000 customers a day come through my store, more in the lead up to Christmas, and I would say at least 50% of them fall into the category of those with protected characteristics. Elderly, young mums with children, those that are disadvantaged, less abled, wheelchair bound and those with learning difficulties.*
- 3.33.5 *My store sells a wide range of incontinence products of which I struggle to keep my shelves full of stock, especially the pads. We get Carers and the elderly come in all the time and buy in bulk because they don't have to carry them far to their car.*
- 3.33.6 *A couple of times a week we have a local minibus service from a local day centre that comes to the park bringing people that are in wheelchairs, or less able to do their shopping and to get them out of the house. The retail park is ideal as there are many parking places, its free to park, it's all on the flat, no steps into the shops, there are accessible toilet facilities in the nearby shops, and there are two cafes so they can have a cup of tea. There are no restrictions for them unlike in the town centre, which is quite the opposite.*
- 3.33.7 *We also have regular members of the LGBT community that come specifically to my store for the service my team gives them. These transgender/transsexual customers know they can be treated as equals and are not judged by my team, they come in weekly and often receive make up advice and have makeovers by my beauty consultants. They seem to prefer*

our store rather than ones in towns such as Bedford as we are discreet and they pick times when the store may be a bit quieter.

- 3.33.8 *My healthcare team have been keeping a log for the last three months of how many times we have been presented with a prescription which is indicative of the ongoing and increasing demand. We will submit this log as evidence. Local patients tend to be aware we cannot dispense their repeats for them, so many of the requests are for acute prescriptions such as antibiotics, and whilst we can and do direct them to the nearest pharmacy it only makes their visit to the park very inconvenient when they or a dependent may be ill and needing the medication quickly. Last week, on Sunday we turned away six prescriptions in the first hour of opening.*
- 3.33.9 *Our healthcare sales of Over the Counter medicines are continuing to rise week on week, and I can say this is mainly due to the accessibility of the park. Local people that work in the business park for instance only have limited time in lunch hours, they haven't got time to go into town and park up and then get back.*
- 3.33.10 *Last winter we provided over 250 patients with a private flu vaccination, because they were unable to get them on the NHS at the surgery. Our pharmacist is fully booked most weekends with private consultations for travel vaccination services, evenings and weekends are the most convenient time for most people. We offer a drop in travel clinic 5 days a week. We are working closely with local Macmillan hospices to provide cancer support for patients by our pharmacists and our beauty consultants.*
- 3.33.11 *Myself and my team get asked regularly throughout every day about dispensing prescriptions which we cannot fulfil and this has not changed since day 1 of opening, only increased. People say to me, 'but you're Boots what do you mean I cannot get my prescription here?' As someone who strives to give the best experience to my customers I find this so frustrating, as there is clearly a need at this end of the town. We also get daily requests for NHS pharmacy services such as emergency hormonal contraception, stop smoking services, flu vaccinations and many more.*
- 3.33.12 *I have witnessed myself and been told so many times by others about the long waiting times patients now have to endure at the remaining town centre pharmacies. It is usually an hour's wait at Lloyds and even in our own Boots store at peak times, patients may have to wait a considerable time or agree to come back the next day. The Lloyds at Sainsbury's appear to keep low stock levels so patients often do have to call back the next day, I have myself experienced this a couple of times when I have had acute prescriptions to receive and they haven't had the full quantity. You only need to look at the reviews on NHS choices to see what I mean.*
- 3.33.13 *I believe there is an inadequacy in the pharmacy provision in the town, especially now that the branch of Lloyds has closed, and there is a clear and increasing demand for pharmacy services that will continue to increase with the new housing being built, the new offices and industrial sites at the nearby business park and these cannot currently be fulfilled to the same level of care we would like. We are not able to provide 100% patient care in my store due to the fact we cannot provide NHS services and dispense prescriptions and I ask the appeal committee to please see fit to grant my store an NHS contract so may do so in the future.*

4 Summary of Representations

This is a summary of representations received on the appeal and Regulation 22.

4.1 BOOTS UK LTD

- 4.1.1 The Applicant had the 2018 PNA in mind when the application was drafted, and it reviewed both the 2015 and the 2018 copies when drafting the appeal, so it is happy that the 2018 PNA is the one used by NHS Resolution.

4.2 LLOYDS PHARMACY

- 4.2.1 The Committee will be aware that the Applicant applied for a similar application that was considered and refused by NHS England in May 2015 and decision upheld by NHS Litigation Authority September 2015 Reference SHA/18036.
- 4.2.2 It appears the reason for the Applicant to submit this fresh application is because Lloyds Pharmacy has closed a pharmacy on High Street earlier this year. The pharmacy that closed was part of a cluster of pharmacies in the town centre (which includes a Boots Pharmacy). The pharmacy that closed was opposite another Lloyds Pharmacy which in turn is within 100 metres of Boots on Market Place.
- 4.2.3 The closure of a town centre pharmacy does not change the basis upon which the previous application SHA/18036 was refused.
- 4.2.4 Extended hours pharmacies are also available in Biggleswade and that includes 100 hours Lloyds Pharmacy in Sainsbury's at Bells Brook which has plentiful free car parking. This location is also just off the A1. See below. There is no evidence this pharmacy is not accessible by the population. Despite offering to provide supplementary hours to 2000 Monday to Friday; to 1800 Saturday and to 1600 Sunday, core/obliged hours are only proposed until 1700 Monday to Friday and to 1300 Saturday. The pharmacy in Sainsbury has core/obliged hours to 2200 Monday; 2300 Tuesday to Friday; 2200 Saturday and 1600 Sunday. The proposed application will not therefore secure improvements or better access.
- 4.2.5 The Applicant has suggested the impact of the pharmacy in the town centre closing has been 'huge'. This is not substantiated. The fact that the Applicant already has a store at the proposed site which displays a pharmacy is likely lead to some patients/customers asking about the availability of NHS services if they happen to be there. The Applicant has not provided any evidence that any such groups are having difficulty accessing services elsewhere.
- 4.2.6 Boots store manager refers to the fact that their store sells a wide range of incontinence products of which they struggle to keep the shelves full of stock. The Applicant can continue to provide these products to its customers and does not require an NHS pharmacy licence to do so.
- 4.2.7 In Lloyds Pharmacy's opinion the application does not secure improvements or better access to pharmaceutical services and therefore has not satisfied Regulation 18. In the event an oral hearing is required Lloyds Pharmacy would wish to attend.
- 4.2.8 [Supporting information provided to the Committee at Appendix B]

4.3 BEDFORDSHIRE LPC

- 4.3.1 Bedfordshire LPC ("the LPC") have no further comments to add to its initial response letter, dated 16 April 2018 which is attached for your convenience.

- 4.3.2 The LPC requests to be informed of the progress of the appeal. Bedfordshire LPC may wish to attend any oral hearing should one be held.

LETTER DATED 16 APRIL 2018

- 4.3.3 The LPC notes that a similar application by the Applicant was refused on appeal by the NHS Litigation Authority in September 2015. The LPC also note that another application by Farali Limited was also refused on appeal for the nearby Kings Reach development.
- 4.3.4 The nearest pharmacy to the proposed site is approximately 1200m away in a local neighbourhood centre to the northeast of the application. The LPC is of the opinion that despite the closure of Lloyds Pharmacy Market Square there remains sufficient choice with regard to obtaining pharmaceutical services in the area of the Health and Wellbeing Board.
- 4.3.5 The Applicant has not identified a patient group/s with a protected characteristic who have difficulty accessing pharmaceutical services in the area of the Health and Wellbeing Board.
- 4.3.6 The Applicant has not included within the application or supplied supporting documentation or evidence of new or innovative pharmaceutical services not already being provided by existing pharmacies within the Biggleswade area.
- 4.3.7 Within the application the Applicant states that with the closure of one pharmacy, namely Lloyds Pharmacy, it is likely that existing contractors may have difficulty accommodating the remaining future growth still to come. In the opinion of the LPC there is sufficient capacity within existing pharmaceutical services to accommodate any future growth.
- 4.3.8 It is therefore the opinion of the LPC that there still exists a reasonable choice with regard to obtaining pharmaceutical services within the Biggleswade area.

4.4 JARDINES (UK) LTD

- 4.4.1 Firstly, Jardines (UK) Ltd entirely agrees with the decision of PSRC of NHS England (Central Midlands), which is based on local sound knowledge.

Background

- 4.4.2 This same application was refused by NHS England and by the FHSAU in July 2015 under ref: SHA/18036.

The reasons for the current application:

- 4.4.3 The Applicants' say that there have been some changes since their last refused, as follows:

4.4.3.1 The character of the proposed location has changed. They claim that the retail park has been redesigned, and that the range of shops is such that people shop there on a day-to-day basis.

4.4.3.2 As a result of the above the retail park is a lot busier. They have a footfall of about 1,000 people per day and are getting a lot of enquiries from their customers asking for NHS services which they cannot satisfy. The Applicant's have submitted a letter and an in-house 'patient survey' from their store manager.

4.4.3.3 Reduction of one pharmacy in the town centre, namely Lloyds Pharmacy.

4.4.3.4 Population growth in Biggleswade

4.4.3.5 Application by Ferali Ltd – SHA/18609 – which was refused.

Our response:

4.4.4 Change of character of the proposed location: This is not correct. The A1 retail park has NOT been redesigned since 2015, and shops mentioned in their letter broadly the same as they were then. It is possible that one unit may have been added to the scheme, namely Homebase (the Applicants call it 'Sainsbury's Homebase' in an attempt to mislead by giving it a supermarket association) may have been added since the Applicants' last application. The fundamental fact of the matter remains that the A1 Retail Park is a classic out-of-town retail park located in the south-west edge of Biggleswade. More importantly, there is no resident population there. The planning permission granted in 2012 or 2013 is for Use Class: 'A1 Non-food Retail only' – in order to revive what previously was a run-down industrial estate with trade counters. In order to avoid this retail park becoming part of peoples' daily lives a number of trades are specifically prohibited by the planners, notably:

4.4.4.1 Post Office

4.4.4.2 Bank

4.4.4.3 Pharmacy *

4.4.4.4 Supermarket / Food Retailing **

4.4.4.5 Laundry service

4.4.4.6 Hairdressing

4.4.4.7 Fast-food outlets

4.4.4.8 Drycleaners

4.4.4.9 Estate agents

4.4.4.10 Travel agents

4.4.4.11 Funeral direction

4.4.4.12 Internet café

4.4.5 However, the developers subsequently have been able to secure some exceptions marked * and ** above in order to attract big names, which are:

4.4.5.1 * For pharmacy use, ONLY Boots UK Ltd specifically are allowed to operate a pharmacy within its big store upon condition that they keep the town centre store fully operational as a full service pharmacy.

4.4.5.2 ** For food retail, only Marks & Spencer are allowed to sell a range of foods as ancillary to their core business, and only them and Boots allowed to sell pre-packed sandwiches.

- 4.4.6 The mix of tenants stated by the Applicant clearly demonstrates this is a classic edge-of-town retail park which people visit to by buy-ticket non-essential goods or bargain-hunting – not a kind of place people visit ordinarily for their daily lives.
- 4.4.7 The Applicant's store manager's statement on store footfall the attached patients' survey: Jardines (UK) Ltd note that the manager claims a footfall of 1,000 people daily, and a patient survey attached to the statement conducted over the period 17/03/18 to 19/06/18. The survey reveals that there were 194 enquiries for NHS services at the store over 95 days. This equates to 2/04 enquiries per day. When one considers that this is a very large (15,000 sq ft) Boots store with 'Boots Pharmacy' and Pharmacy green cross splashed all over it, with no hint to indicate that this is not an NHS pharmacy, it only serves to demonstrate that 998 out 1,000 people per day (99.8%) really do not need or expect NHS services there. Furthermore, in Jardines (UK) Ltd's visit to the store on 14th August it noticed that apart from the Responsible Pharmacist's certificate, there were customer notices placed at two prominent locations at the pharmacy counter actually inviting the prescriptions. See photos attached. It was only upon asking specifically it was verbally clarified that private prescriptions could be dispensed whilst waiting, but for NHS prescriptions one has to wait a day because it would be dispensed at their 'town-centre store' and be brought back the following day. So it is clear that the primary motivator for this application is for the Applicant to preserve its brand image rather than public need.
- 4.4.8 Reduction of one pharmacy in town centre: This was a consolidation of two pharmacies under the same ownership in extremely close proximity, as is encouraged under 'Community Pharmacy in 2016/17 and beyond' – this vision of the government. There may have been a short period of disruption following this closure requiring necessary adjustment, but the level of service is now well settled to everyone's satisfaction.
- 4.4.9 Population growth in Biggleswade: Whilst there has been some housing development in Biggleswade, this has all been confined to the east of the town – nowhere near the proposed site. This new population would need to pass Jardines (UK) Ltd's pharmacy or the pharmacies in the town centre to get to A1 Retail Park. Furthermore even with closure of one pharmacy in town centre, the provision of four remaining pharmacies and two dispensing practices serving a population less than 20,000 is still superfluous – especially under the vision set out by the Secretary of State under 'Community Pharmacy 2016/17 and beyond'
- 4.4.10 Application by Farali Ltd SHA/18609. This was quite rightly refused and, besides, it was in a completely different part of Biggleswade. This has no relevance to this Boots' application.

Access & Choice:

- 4.4.11 As said earlier, there is no resident population at the retail park.
- 4.4.12 The location is such that almost all visitors and people working there would get there by car. For motorists there is a choice of FIVE pharmacies (including one at Langford village) within 2 mile radius – nearest being 0.7 mile (Jardines (UK) Ltd's) at The Saxon Centre with abundant parking. For those who choose not to use car despite being there with one, Jardines (UK) Ltd's pharmacy is only 12 – 15 min walk away. Jardines (UK) Ltd personally conducted this walk on Wednesday the 14th July, and found it to be a very pleasant walk with very user-friendly footpath, which is well lit and with flat terrain with drop-kerbs and safe pedestrian crossings. The distance measured was 1,206m from the Applicant's store to Jardines, and 1,098m

back from Jardines to the A1 Retail car park. Please find attached the photos.

- 4.4.13 The bus services are frequent between A1 Retail Park and town centre. There are two bus services – route 85A/B and route 188 with only one stop between Saxon Centre and A1 Retail Park. Please find attached the bus-journey plans.
- 4.4.14 For the motorists travelling along A1 trunk road – which is the primary customer target for this A1 Retail Park – there is Lloyds Pharmacy at Sainsburys supermarket only 1.5 miles further [sic] north along A1, which is not only much more visible but is also much more easier to access from A1.
- 4.4.15 The planned new developments are to the east Biggleswade – and for them to reach A1 Retail Park they would need to pass Jardines Pharmacy at Saxon Centre anyway.
- 4.4.16 Jardines pharmacy at The Saxon Centre is an HLP accredited pharmacy. It is located at the heart of the community adjacent to the town's main leisure centre with full range of shops including Co-op supermarket, drycleaners, hair and beauty salon, a child nursery, and a range of hot food outlets. Car parking is generous. Soon after closure of one of the Lloyds pharmacies in town centre, Jardines (UK) Ltd have now increased the opening times by remaining open during lunchtimes, and have increased the staffing levels too.
- 4.4.17 One particular point Jardines (UK) Ltd would like NHS Resolution to have particular regard for in this case – which NHS England have not fully appreciated – is the detrimental effect the grant of this application will have on the current arrangements. Under the vision of 'Community Pharmacy 2016/17 and beyond' Jardines (UK) Ltd's pharmacy is now heavily reliant on the 'Pharmacy Access Scheme' (PhAS). The grant of this application within a mile will disqualify it for PhAS, and consequently will put in jeopardy the service where it is needed most.
- 4.4.18 In conclusion the Applicant wants an NHS service contract at a location of THEIR choosing, and wants to protect its brand image at the same time; but in doing so it will destroy the service where it is needed i.e. at the heart of the community. This application is also inconsistent to the vision of pharmacy set out by the government under 'Community Pharmacy in 2016/17 and beyond'. Jardines (UK) Ltd therefore urge NHS Resolution to reject this application in the interest of wider community of the HWB.
- 4.4.19 Should NHS Resolution decide to hold oral hearing Jardines (UK) Ltd would like to attend in order to make further representations.
- 4.4.20 [Supporting information provided to the Committee at Appendix C.]

5 Observations

5.1 BOOTS UK LTD

5.1.1 The Applicant will address the comments in turn.

Bedfordshire LPC

5.1.2 They provide little challenge to the evidence the Applicant has supplied for the appeal. Innovation is not what the Applicant is proposing to offer as part of this application, only improved access and patient choice. They do not

pass any comments on the evidence the Applicant has supplied with regards improving access to patients or the issues with regards population growth. They also do not appear to dispute the items prescribed and dispensed in the locality, patient list sizes and how they are continually growing year on year.

Lloyds Pharmacy

- 5.1.3 The Applicant cannot dispute the fact that the closure in the town centre has prompted it to re-apply for a new NHS contract, however the application and appeal are not based on this fact alone.
- 5.1.4 The Applicant disagrees with the point made that the closure of a town pharmacy does not change the basis on which the previous application was refused. A viable Lloyd's pharmacy has had to close due to the fact Lloyds chose to buy the Sainsbury's pharmacy chain. The subsequent closure was not due to unviability and as the figures indicate there is a significantly high volume of items being prescribed from the surgeries and a high demand for Pharmacy services. It would not have made sense for the Applicant to apply for a new contract opposite its existing pharmacy and recreate a cluster or be a detriment to proper planning.
- 5.1.5 The Applicant believes it has provided more than sufficient evidence to prove the impact of a) the Lloyds store closing and b) significant population growth that is still growing, and is therefore substantiated within the documents the Applicant has submitted.
- 5.1.6 The Applicant has provided evidence within the appeal that states that patient groups are indeed having difficulty receiving pharmacy services elsewhere.
- 5.1.7 The Applicant's store has been on the A1 shopping park since June 2016 and has a well-established customer and patient base. Having a second pharmacy at the southern end of the town creates choice and improves access for all, including those patients that visit that do not live in Biggleswade itself.
- 5.1.8 The Applicant's extended hours will provide an alternative choice for patients other than Lloyds in Sainsbury's in the evenings and weekends, when access is generally poor in Central Bedfordshire.

Jardines UK Ltd

- 5.1.9 Point 1
- 5.1.10 The Applicant must disagree with the first point made by Mr Modi about the change of retailers on the park since 2015 and it details the change since its first application in 2015 below.
- 5.1.11 Prior to the new development Halfords, Bensons Beds and Pets at Home were all on this retail park and as part of the re- development they moved across the road. Brantano, and Ponden Home were also on the original site but did not transition to the new development.
- 5.1.12 The Applicant's store opened on the 1st June 2016 and at that stage only TK Max, Matalan and Laura Ashley were open. Homebase (originally owned by Sainsbury's with no intent to mislead!) has always been on the site and when the Boots store opened it had Argos in store as well.
- 5.1.13 Next opened in the July 2016, M&S opened in the September 2016. Outfit, River Island, New Look and H&M opened after the Applicant but before Christmas 2016. The Wilko store appeared later on the following year.

- 5.1.14 New Look has since closed and replaced by Cotswold Outdoor and there is currently one retail unit empty. A MacDonald's drive thru is due to open shortly nearby.
- 5.1.15 It is a classic out of town retail park, but it is one that is very busy on a regular basis and increasingly more so as the access into the town centre becomes more difficult and the traffic queues at peak times on the A1 can restrict access getting to Sainsbury's and the pharmacy there.
- 5.1.16 The Applicant finds it hard to understand why this mix of retailers appear to Mr Modi to be big ticket/bargain hunting stores. There is a limited number of small boutique style clothing shops in the town, so residents have much more choice at the park, M+S is not in the town so those wishing to purchase M+S food or clothes, have to go to the park. There is no Wilko in the town either.
- 5.1.17 The Applicant is unclear as the relevance of Mr Modi's comments about the lease arrangement of its store or the submission of meeting minutes from 2014, details of which he already raised in the first round of representation. They have no bearing on a decision that is dependent on the Pharmaceutical Regulations and NHS England. The Applicant has no plans at all to close its store in the Town Centre.
- 5.1.18 Point 2
- 5.1.19 The Applicant's survey that it has submitted is exactly that, patients are still requesting services even though the Applicant has been open for over 2 years with no pharmacy contract. There is still clearly a need. By law the Applicant does not have to state that it does not have a pharmacy contract and it is legally allowed to operate a system that allows a patients prescription to be dispensed at the town centre pharmacy and be collected at the Retail Park if that is what suits the patient. It has absolutely nothing to do with protecting the Applicant's Brand image. The Applicant has many other stores in retail parks across the country that operate as such with no pharmacy contract. If the Applicant is unsuccessful with this appeal then it will continue to operate as such in this store.
- 5.1.20 Point 3
- 5.1.21 The Lloyds closure was not a consolidation of two businesses it was a straightforward closure. The 'short period of disruption' is still continuing now 8 months after the closure. It maybe that Jardine's patients are settled, but the Applicant would state that Jardine's are not in a position to substantiate that claim for patients elsewhere that are still having difficulty accessing pharmacy services.
- 5.1.22 Point 4
- 5.1.23 The Applicant has indicated within the appeal where the new housing has been and is proposed. The Applicant has also provided much evidence surrounding the population growth both of residents to the area and of the increased working population on the industrial sites. None of the representations submitted by interested parties provide any evidence to contradict this information.
- 5.1.24 Point 5
- 5.1.25 The application site of Faralli Ltd was approx. 200m in a southerly direction from Jardines, so yes it was a different location.
- 5.1.26 Access and Choice

- 5.1.27 The Applicant would find it highly unusual that any retail park had residents and it has never claimed that to be a fact of the application, however immediately behind the park is the start of a residential street called Holme Court Avenue that the panel will be able to see from the map. This street, which is 0.7 miles long, and is the perimeter road of a large residential area encompassing the postcode SG18.
- 5.1.28 There are nearly 11,000 properties (likely to be at least 22,000 residents) within SG18 (details taken from Streetcheck.co.uk). If you lived the furthest end of Holme Court it would take you between 10-15 minutes to walk to the retail park, but over 20 mins walk to get to Jardines.
- 5.1.29 The Applicant does not dispute the distance between the application site and the Jardines pharmacy, the Applicant also does not dispute the bus timetable, which it also submitted as part of the appeal.
- 5.1.30 The Applicant does not dispute the accreditation of Jardines HLP status or its location at the heart of the relatively new community surrounding the Saxon Centre. Jardines advertise on their shop door that they close for lunch and have always done so, so the Applicant is unsure at what point they now appear to be open over lunch. Certainly up until the last few weeks they have not been.
- 5.1.31 The Applicant does though disagree with the statement Jardines make about the Pharmacy Access scheme, the reason NHSE made no comment on this is because Mr Modi's claims are untrue.
- 5.1.32 Referencing the PSNC website and Department of Health guidelines, the scheme was launched in December 2016. The scheme ran until March 2018 and at present an interim scheme is in place until the Dept of Health make their assessment of future payments.
- 5.1.32.1A pharmacy once accredited with Pharmacy Access scheme (PHaS) payments will not have their payments stopped. If a new pharmacy opens very close to a pharmacy receiving PHaS, the PHaS pharmacy will not lose payment nor will the new pharmacy be eligible for PHaS.
- 5.1.33 To assist with explanation for NHR the Applicant submits the PHaS summary issued by the Dept of Health as part of its rebuttal.
- 5.1.34 In summary, the Applicant does not wish for a pharmacy at a point of 'our' choosing or to protect our image, it wishes for a pharmacy at the location where one is needed and not at the detriment of the existing town centre pharmacies or those in the wider community.
- 5.1.35 The Applicant believes it has provided sufficient current and near future factual evidence to support its case.
- 5.1.36 The 2018 PNA deems pharmacy provision in Central Bedfordshire as only adequate, the Applicant would state that in Biggleswade, pharmacy provision is now significantly less than adequate.
- 5.1.37 [Supporting information provided to the Committee at Appendix D.]

- 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 had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (“the Regulations”).
- 6.5 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).*
- 6.6 The Committee noted the Applicant’s statement regarding Regulation 31 and NHS England’s decision that this regulation would not cause the application to be refused. The Committee further noted that no dispute on the matter had been raised by parties in subsequent representations. The Committee concluded that the premises to which this application relates, or the adjacent premises, are not already occupied by a person on a pharmaceutical list who is providing or has undertaken to provide pharmaceutical services and therefore it was not required to refuse the application under the provisions of Regulation 31.
- 6.7 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)."*
- 6.8 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 6.8.1 confirm NHS England's decision;
 - 6.8.2 quash NHS England's decision and redetermine the application;
 - 6.8.3 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.
- 6.9 The Committee considered that Regulation 18(1)(a) was satisfied in that it was required to determine whether it was satisfied that granting the application, or granting it in respect of some only of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB.
- 6.10 The Committee went on to consider whether Regulation 18(1)(b) was satisfied, i.e. whether the improvements or better access that would be secured if the application was granted were or was included in the PNA in accordance with paragraph 4 of Schedule 1 of the Regulations.
- 6.11 Paragraph 4 of Schedule 1 requires the PNA to include: "*a statement of the pharmaceutical services that the HWB had identified (if it has) as services that are not provided in the area of the HWB but which the HWB is satisfied (a) **would** if they were provided....secure improvements or better access, to pharmaceutical services... (b) **would** if in specified future circumstances they were provided...secure future improvements or better access to pharmaceutical services...*" (emphasis added).
- 6.12 The Committee considered the Pharmaceutical Needs Assessment ("the PNA") prepared by Central Bedfordshire 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 2018-2021.
- 6.13 The Committee noted the proposed site lies in the Ivel Valley locality defined in the PNA, however the PNA mainly references Central Bedfordshire as a whole. The Committee noted the recommendation at point 3.3 of the PNA "That the current number of community pharmacies providing essential and advanced services is sufficient to meet current needs in Central Bedfordshire".

- 6.14 The Committee had regard to Regulation 22 and considered whether in this case it should have regard to an earlier PNA. The Committee noted the comments from the Applicant with regard to the 2015 PNA. The Committee considered that whichever PNA it had regard to it would not materially affect its decision.
- 6.15 The Committee noted that the Applicant seeks to provide unforeseen benefits to all visitors to the retail park, employees of other retail units at the park and those working on the nearby Industrial Park off London Road. The Committee noted that the improvements or better access that the Applicant was claiming would be secured by its application were not included in the relevant pharmaceutical needs assessment in accordance with paragraph 4 of Schedule 1.
- 6.16 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)

- 6.17 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"*
- 6.18 The Committee noted the determination by NHS England at 2.10 that "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 could be concluded that the proposed pharmacy would not cause significant detriment to the proper planning of pharmaceutical services". The Committee noted that this had not been disputed by any party on appeal or in subsequent representations.
- 6.19 On the basis of the information available, the Committee was satisfied that, if the application were to be granted and the pharmacy to open, the ability of the NHS England thereafter to plan for the provision of services would be affected in a significant way.
- 6.20 The Committee was therefore not satisfied that significant detriment to the proper planning of pharmaceutical services would result from a grant of the application.

Regulation 18(2)(a)(ii)

- 6.21 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"*
- 6.22 The Committee noted NHS England's determination at 2.10 that "granting the application would not cause significant detriment to the arrangements currently in place for the provision of pharmaceutical services". The Committee noted this had been disputed by Jardines (UK) Ltd who comment that their pharmacy at The Saxon Centre is heavily reliant on the Pharmacy Access Scheme and that the granting of an application within a mile would disqualify it from the scheme and put the service that it provides in jeopardy. The Committee noted the Applicant's response that these claims are untrue, that the scheme ran until March 2018 and an interim scheme is

currently in place until the Department of Health makes an assessment of future payments. The Committee also had regard to the Department of Health publication "Community Pharmacy in 2016/2017 and Beyond: Update to the Pharmacy Access Scheme List", in particular the excerpt quoted from paragraph 2.7.

- 6.23 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.
- 6.24 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)

- 6.25 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)

- 6.26 The Committee noted the location of the proposed site within the Applicant's store at the A1 retail park on the outskirts of Biggleswade. The Committee noted the Applicant wishes to provide improvements and better access for its customers and workers in the area by negating the need for them to travel to other pharmacies such as those in Biggleswade town centre. The Committee noted the Applicant currently offers a "hub and spoke" dispensing service for customers whereby prescriptions may be dropped off, dispensed at the Applicant's town centre pharmacy and collected from the retail park store at a later time. The Committee was mindful that the test is whether there is a reasonable choice in obtaining pharmaceutical services in the area of the relevant HWB.

- 6.27 The Committee noted that NHS England's decision report states that there are four pharmacies within a 2 mile radius of the proposed site, with the closest (Jardines) located at The Saxon Centre at 0.9 miles by road. There are also two pharmacies (Lloyds and Boots) in the town centre 1.4 miles by road, with the fourth pharmacy (Lloyds) within a supermarket store 2.2 miles by road from the proposed site. The

Committee noted that there are two medical practices in Biggleswade, both in close proximity to the town centre pharmacies. In considering access, the Committee noted that the majority of parties' comments deal with access by private or public transport, rather than by walking. The Committee accepted that the majority of people are likely to attend the retail park because of its convenience for using private or public transport and it is unlikely that many would be starting a journey on foot from there. However the Committee noted that Jardines had commented that its pharmacy at The Saxon Centre is approximately a 12-15 minute walk along flat terrain, providing photographs of crossings and dropped kerbs along the route, with the town centre being an approximate 22 minute walk. The Committee noted the Applicant's response to these walking times and was mindful that walking distances would of course vary depending on the starting point. However the Committee was of the view that distance of itself does not necessarily result in difficulties in obtaining pharmaceutical services. For those who choose not to walk, or are unable to walk in order to access existing pharmacies, the Committee considered access by private or public transport. The Committee noted the Applicant's comments that for those driving there is ample free parking at the retail park with spaces for around 1000 cars, and that it is easily accessible from the A1. The Committee had regard to Jardines' response that there is generous car parking at The Saxon Centre where its pharmacy is located and that for those travelling along the A1 the Lloyds Pharmacy located at Sainsbury's supermarket is easily accessible. The Committee noted Lloyds' comment that its pharmacy at Sainsbury's has plentiful free parking. The Committee also noted the Applicant's comments that car parks in the town centre are quite small and that parking charges are about to come into force. The Committee also noted the Applicant's comment that car journeys along the A1 can take some time at peak travel times. The Committee was of the view that the Applicant had not demonstrated that those with private transport are having difficulties in parking in the town centre, that any charges that may come into force are unreasonable, or that there is not sufficient parking at other nearby pharmacies. The Committee next considered access by public transport and noted the Applicant's references to route 85 and 85A running between the retail park and the town centre half hourly during the week, with an hourly service on Saturdays and also route 188 which is referenced in the route planner submitted by Jardines. The Committee noted the bus routes include a stop at The Saxon Centre. The Committee was of the view that there was no information provided to indicate that those reliant on public transport were experiencing any difficulties in accessing existing pharmacies. Therefore the Committee was not satisfied that, having regard to there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits by way of physical access on persons.

- 6.28 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 Applicant had commented generally that access for those with protected characteristics is better at the retail park due to free parking, plenty of spaces, dedicated disabled bays and public toilets with disabled access in M&S, Next and Matalan (during their opening hours). The statement provided by the Applicant's store manager indicates that there is a minibus service bringing less able bodied people from local day care centres to do their shopping and that there are no restrictions for them at the retail park unlike in the town centre. Whilst accepting that the nature of the retail park would most likely provide easy access for the less able bodied, the Committee saw no supporting information to suggest that this group is having difficulties in accessing current pharmaceutical services from the existing pharmacies either in the town centre, at Sainsbury's or the Saxon Centre. The Committee noted that the store manager's statement further indicates that there are regular visitors from members of the LGBT community who go to the Applicant's store for the service that is provided to them, in

particular for the service provided by the beauty consultants there. Again, the Committee saw no information to suggest that this group is having difficulties in accessing current pharmaceutical services from the existing pharmacies either in the town centre, at Sainsbury's or the Saxon Centre. 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.

- 6.29 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. Whilst noting the services proposed by the Applicant, the Committee considered that there were no innovative approaches being offered, indeed the Applicant had confirmed in its observations at 5.1.2 that "Innovation is not what [the Applicant is] proposing to offer as part of this application...". The Committee was not satisfied that, having regard to the desirability of there being innovative approaches taken with regard to the deliverability of pharmaceutical services, granting the application would confer significant benefits on persons.

Regulation 18(2)(b) generally

- 6.30 The Committee noted that the Applicant proposes to open for a total of 70 hours with 40 of these being core hours however the Committee noted that while the total hours stated did total 70, the core hours only totalled 39. The Committee noted that the core hours covered 9am to 5pm Monday to Friday (with a lunch break of 12pm to 1pm) and 9am to 1pm on Saturdays. The Committee noted that the Applicant was proposing to offer supplementary hours on weekday evenings, Saturday afternoons and on Sundays 10am to 4pm. The Applicant had confirmed that they would provide all services throughout the proposed opening hours. The Committee noted the Applicant's comments that its proposed extended opening hours would allow access early and late in the day, and on Sundays when the nearest pharmacy is closed and the only pharmacy offering late or Sunday opening is 3.3km to the north of the proposed location. The Committee was mindful that it is open to NHS England to direct existing contractors to provide additional hours where it determines that there is a need. The Committee was of the view that there was no information provided to support a finding that pharmaceutical services are not currently provided at such times as needed and therefore it was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits (in relation to opening hours) on persons.
- 6.31 The Committee was mindful that the application form states that "Core opening hours must total 40 hours per week for pharmacies or not less than 3 hours for DACs unless the applicant is proposing more core opening hours to secure unforeseen benefits". The Committee was mindful that this was not an application for DACs and so the core hours stated should have totalled at least 40. Given the Committee's view that the granting of this application would not lead to a significant benefit in relation to opening hours, the Committee took no view on this oversight by the Applicant as there had been nothing provided to show that there was currently a gap in the provision of services at such times that the pharmacy was proposing to offer.
- 6.32 The Committee noted the comments regarding the recent closure of one of the Lloyds pharmacies in the town centre. The Applicant states that the impact of the closure has been huge but difficult to quantify. The Committee noted the dispensing figures provided by the Applicant and its comment that with this volume of dispensing it is now difficult to provide the same level of care for patients. The Committee was not persuaded that the limited figures provided indicate that dispensing is at such a scale

that existing providers are unable to cope with the current or future demand for pharmaceutical services.

- 6.33 The Committee noted the Applicants comments regarding the various residential and business developments in the area. The Committee accepted that the consideration of these developments was a relevant factor, however on the information available, it did not consider that the developments were of such a scale that the granting of this application would confer significant benefits on persons.
- 6.34 The Committee was of the view that in accordance with Regulation 18(2)(b) the granting of this application would not confer significant benefits on persons in the area of the HWB which were not foreseen when the PNA was published.

Other considerations

- 6.35 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).
- 6.36 No deferral or refusal under Regulation 18(2)(f) was required in this case.
- 6.37 The Committee had regard to Regulation 18(2)(g) and found no information to cause it to refuse the application under this regulation.
- 6.38 The Committee considered whether there were any further factors to be taken into account and concluded that there were not.
- 6.39 The Committee was not satisfied that the information provided demonstrates that there is difficulty in accessing current pharmaceutical services such that a pharmacy at the proposed site would provide better access to pharmaceutical services.
- 6.40 The Committee went on to consider whether there should be a further notification to the parties detailed at paragraph 19 of Schedule 2 of the Regulations to allow them to make representations if they so wished (in which case it would be appropriate to remit the matter to NHS England) or whether it was preferable for the Committee to redetermine the application.
- 6.41 The Committee noted that representations on Regulation 18 had been sought from parties by NHS England and representations had already been made by parties to NHS England in response. These had been circulated and seen by all parties as part of the processing of the application by NHS England. The Committee further noted that when the appeal was circulated representations had been sought from parties on Regulation 18.
- 6.42 The Committee concluded that further notification under paragraph 19 of Schedule 2 would not be helpful in this case.

7 DECISION

- 7.1 The Committee confirms the decision of NHS England.
- 7.2 The Committee has considered whether the granting of the application would cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area covered by the HWB, or the arrangements in place for the provision of pharmaceutical services in that area and is not satisfied that it would;
- 7.3 The Committee determined that the application should be refused on the following basis:

- 7.3.1 In considering whether the granting of the 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 the application would confer significant benefits as outlined above that would secure improvements or better access to pharmaceutical services.

Abby Davies
Case Manager
Primary Care Appeals

A copy of this decision is being sent to:
The Applicant – Boots (UK) Ltd
Primary Care Support England, on behalf of NHS England
Lloyds Pharmacy Ltd
Jardines (UK) Ltd
Bedfordshire LPC