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REF: SHA/19999

APPEAL AGAINST NHS ENGLAND NORTH (LANCASHIRE AND SOUTH CUMBRIA) AREA TEAM, NHS COMMISSIONING BOARD ("NHS ENGLAND") DECISION TO REFUSE AN APPLICATION BY NORFOLK STREET PHARMACY LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 WITHIN 0.5 MILE RADIUS FROM LIVERPOOL ROAD (A59) BETWEEN STATION ROAD AND BROOK LANE JUNCTION c, PR4 5LE

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1 Outcome

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

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Accredited
Unit 17, 2023



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APPEAL AGAINST NHS ENGLAND NORTH (LANCASHIRE AND SOUTH CUMBRIA) AREA TEAM, NHS COMMISSIONING BOARD ("NHS ENGLAND") DECISION TO REFUSE AN APPLICATION BY NORFOLK STREET PHARMACY LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 WITHIN 0.5 MILE RADIUS FROM LIVERPOOL ROAD (A59) BETWEEN STATION ROAD AND BROOK LANE JUNCTION c, PR4 5LE

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1 The Application

By application dated 14 December 2017, Norfolk Street Pharmacy Ltd ("the Applicant") applied to NHS Commissioning Board ("NHS England") for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 within 0.5 mile radius from Liverpool Road (A59) between Station Road and Brook Lane junction, c PR4 5LE. In support of the application it was stated:

- 1.1 In response to why this application should not be refused pursuant to Regulation 31 the Applicant stated:
 - 1.1.1 The proposed premises are not utilised as a pharmacy.
 - 1.1.2 Premises adjacent to the premises are not utilised as a pharmacy.
 - 1.1.3 Regulation 31 is not in play in relation to this application.
- 1.2 The area surrounding the application has a significantly large population, the Little Hoole and Much Hoole ward with 4,067 people (Census 2011). People in the area of the application have access to community and retail services such as schools, Spar convenience store, post office services, fuel station, hair dressers, public house, food outlets and Industrial/work units etc. The resident and reliant population has no access to GP or pharmacy services within the ward.
- 1.3 Existing pharmacy providers are located +3 miles round trip away from the best estimate application site and therefore the significant large population has no access to pharmaceutical services on a face to face basis and therefore reasonable choice is not satisfied in the area of the application. This application will therefore secure better/ improved access to pharmaceutical services. .
- 1.4 People with a shared characteristic:
 - 1.4.1 Age- People aged 16 and under 680 17% of the population
 - 1.4.2 Age- People aged 60 years and over 936 23% of the population.
 - 1.4.3 Disability- People describing day to day activities limited a little and a lot 643 16%
 - 1.4.4 Disability- People describing their health as bad and very bad 156

(Census 2011)

- 1.5 There is clearly an issue of age, disability and health of the people in the area and their ability to access full pharmaceutical services.
- 1.6 The above is a significant number of people who are most in need of better/ improved access to pharmaceutical services and a reasonable choice of pharmaceutical services provider. This group of people need access to pharmaceutical services essential, advanced and enhanced.
- 1.7 On this basis this application affords better/ improved access to pharmaceutical services and therefore satisfies the requirements for a Regulation 18 unforeseen benefits application.

Please explain how you intend to secure the unforeseen benefit(s), or meet identified/future need/better access.

- 1.8 The granting of this application will significantly improve access resulting in significantly improved availability of pharmacy services.
- 1.9 The application site is easily accessible by all the local population; the pharmacy will be operational for 64 hours weekly providing adequate cover and improved access for the whole area.
- 1.10 Services out with those commissioned but important from a strategy point of view and to be provided Include:
 - 1.10.1 Diabetes screening
 - 1.10.2 Cholesterol testing
 - 1.10.3 Blood pressure testing
 - 1.10.4 Weight management services
 - 1.10.5 Alcohol FAST interventions
 - 1.10.6 Health checks

2 **The Decision**

NHS England considered and decided to refuse the application. The decision letter dated 21 September 2018 states:

- 2.1 NHS England has considered the above application and is writing to confirm that it has been refused.
- 2.2 Full reasoning for the decision is enclosed.

PSRC LANCASHIRE & SOUTH CUMBRIA AREA TEAM – Minutes of Meeting of 23 August 2018

- 2.3 Norfolk Street Pharmacy Limited - Application for Inclusion in the Pharmaceutical List offering Unforeseen Benefits at Best Estimate Site of Liverpool Road (A59) between Station Road and Brook Lane Junctions PR4 5LE
- 2.4 The Committee referred to the report and the overview of the map which outlined the current location of pharmacies and GP practices in the surrounding area.

2.5 It was noted that a best estimate site had already been confirmed at a previous Committee meeting.

2.6 Taking into consideration the report and representations, the Committee determined the application in line with the relevant regulations. Their determination was as follows:

Regulation 31: Refusal: Same of adjacent premises

2.7 The Committee were satisfied that that the application met the requirements of the regulation i.e. that the Committee could not refuse the application due to a person on the pharmaceutical list providing pharmaceutical services from the site to which the application relates, from either the same site or from adjacent premises.

Regulation 41: Applications for new pharmacy in controlled localities: reserved locations

2.8 With regard to regulation 41,

2.8.1 Regulation 41 (1) (a) The Committee determined that the application meet the requirements as the applicant has applied via a routine application for inclusion in a pharmaceutical list as an NHS Pharmacist.

2.8.2 Regulation 41 (2) (b) The Committee determined that the application is at a "best estimate site" and confirmed that they would consider whether the area is a reserved location.

2.8.3 Regulation 41 (3) (a) The Committee acknowledged that on 18 May 2018, the patient count provided by Primary Care Support England (PCSE) was 4,552. Therefore the committee determined that the area was not a reserved location.

2.9 (The Committee also noted the confirmation from PCSE that they are unable to collate back-dated patient counts (i.e. date of application) as they are taken from a live system, as far as they are aware there would be no way for PCSE to retrieve this information.)

2.9.1 Regulation 41 (4) (a) and (b) The Committee determined that the notification had been processed by PCSE on behalf of NHS England.

2.9.2 Regulation 41 (5) (a) and (b) The Committee confirmed that no previous application have been made within the proceeding 5 years.

2.9.3 Regulation 41 (6) (a) and (b) The Committee confirmed that a Best Estimate had been received by the applicant and accepted by the Committee on 29th June 2018.

2.9.4 Regulation 44: Prejudice test in respect of routine application for new pharmacy premises in a part of a controlled locality that is not a reserved location

With regard to regulation 44,

2.9.5 Regulation 44 (1) (a) The Committee determined that the application met the requirements as the applicant has applied via a routine application for inclusion in a pharmaceutical list as an NHS Pharmacist.

2.9.6 Regulation 44 (2) The Committee determined that the application is at a "best estimate site" within a controlled locality that is a reserved location.

2.9.7 Regulation 44 (3) The Committee determined that the application would not prejudice the proper provision of relevant NHS services in the area of the relevant HWB or a neighbouring HWB of the relevant HWB.

2.9.8 Regulation 44 (4) The Committee confirmed that the application is at a “best estimate site”.

Regulation 18: Unforeseen benefits applications: additional matters to which the NHSCB must have regard

2.9.9 With regard to regulation 18,

2.9.10 Regulation 18 (1) (a) and (b) The Committee was satisfied that an application had been received and that they must determine the application with regard to matters set out in paragraph (2).

2.9.11 Regulation 18 (2) (a) (i) or (ii) The Committee was satisfied that granting the application would not cause significant detriment to the proper planning in respect of provision of pharmaceutical services in the area of the relevant HWB or the arrangements the NHSCB has in place of the provision of pharmaceutical services in that area.

2.9.12 Regulation 18 (2) (b) (i) The Committee acknowledged that the Pharmaceutical Needs Assessment (PNA) highlights no gaps in the provision of pharmaceutical services and that the HWB of Lancashire has adequate provision is more pharmacies per 100,000 population than the national average.

2.9.13 The Committee acknowledged that the nearest pharmacy and GP practice were 1.5 miles away from the best estimate site and did not feel that this was a significant distance. There are also 10 pharmacies within 4 miles offering a range of services and opening times. The nearest 100 hour pharmacy was identified as being 4.2 miles away.

2.9.14 The Committee acknowledged that NHS England has not received any complaints in relation to access of pharmaceutical services in the area of the relevant HWB.

2.9.15 In summary the Committee determined that they were satisfied that there is already reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB.

2.9.16 Regulation 18 (2) (b) (ii) The Committee (based on the information provided within the application), were not satisfied that people who shared protected characteristics do not have access to services that meet specific needs for pharmaceutical services within the area of the relevant HWB.

2.9.17 Regulation 18 (2) (b) (iii) The Committee, based on the information provided within the application, were satisfied that no innovative approaches had been outlined.

2.9.18 Regulation 18 (2) (c) The Committee did not consider this part of the regulation in line with Regulation 18 (3).

2.9.19 Regulation 18 (2) (d) The Committee did not consider this part of the regulation in line with Regulation 18 (3)

2.9.20 Regulation 18 (2) (e) The Committee did not consider this part of the regulation in line with Regulation 18 (3)

- 2.9.21 Regulation 18 (2) (f) The Committee were satisfied that the application does not need to be deferred or refused by virtue of any provision of Part 5 to 7.
- 2.9.22 Regulation 18 (3) The Committee adhered to this element of the regulation.
- 2.9.23 In summary, the Committee determination was not to grant the application in relation to Regulation 18 (2) (b) (i) and (2) (b) (ii) and (2) (b) (iii). Based on the information provided by the applicant, the Committee did not feel that 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.
- 2.9.24 Appeal rights were granted to the applicant

3 The Appeal

In a letter dated 16 October 2018 addressed to NHS Resolution, Rushport Advisory LLP on behalf of the Applicant appealed against NHS England's decision. The grounds of appeal are:

3.1 With reference to NHS England's decision letter and minutes (attached):

3.2 NHS England state:

"Norfolk Street Pharmacy Limited – Application for inclusion in the Pharmaceutical list offering Unforeseen Benefits at Best Estimate site of Liverpool Road (A59) between Station Road and Brook Lane Junctions PR4 5LE

The Committee referred to the report and the overview of the map which outlined the current location of pharmacies and GP practices in the surrounding area."

3.3 'The Committee referred to the report...'

3.4 There is no report included with the decision minutes, the Applicant is unclear as to what this report includes and its relevance and weight apportioned to the decision to reject this application.

3.5 The report may be a site visit report although the entirety of the minutes doesn't refer to a site visit being conducted by NHS England. It is the Applicant's belief that no site visit has been conducted and therefore NHS England has been unable to understand the unforeseen benefits this application confers on people in the area of the best estimate application site.

3.6 NHS England has determined that the best estimate application site is within a controlled locality but is not a reserved location

Regulation 41(3)(a) The Committee acknowledged that on 18 May 2018, the patient count provided by Primary Care Support England (PCSE) was 4,552. Therefore the committee determined that the area was not a reserved location.

(The Committee also noted the confirmation from PCSE that they are unable to collate back dated patient counts (i.e. date of application) as they are taken from a live system, as far as they are aware there would be no way for PCSE to retrieve this information).

3.7 NHS England however as above admit that they failed to determine a patient count when the application was received as is required. They have therefore erred in terms of required process and procedures in the determination of the application.

3.8 Furthermore, the decision report later states:

Regulation 44(2) The Committee determined that the application is at a “best estimate site” within a controlled locality that is a reserved location.

3.9 The location is either reserved or not, NHS England cannot have it both ways.

3.10 In relation to Regulation 18, NHS England state:

Regulation 18(2)(b)(i) The Committee acknowledged that the Pharmaceutical Needs Assessment (PNA) highlights no gaps in the provision of pharmaceutical services and that the HWB of Lancashire has adequate provision is more pharmacies per 100,000 population than the national average.

The Committee acknowledged that the nearest pharmacy and GP practice were 1.5 miles away from the best estimate site and did not feel that this was a significant distance. There are also 10 pharmacies within 4 miles offering a range of services and opening times. The nearest 100 hour pharmacy was identified as being 4.2 miles away.

3.11 This statement should be discounted as:

3.11.1 The PNA covers the entire geography of Lancashire and is not restricted to the area of the application where there is no pharmacy.

3.11.2 This is an application under Regulation 18 offering benefits that were unforeseen when the PNA was published, NHS England’s total reliance on what the PNA says has led them to find reasons to reject the application rather than consider the unforeseen benefits put forward by the Applicant. There is no reference in the decision minutes that leads the Applicant to believe their case submitted has been considered. (The Applicant includes detail provided for completeness).

3.11.3 It appears that in consideration of existing pharmacy and GP locations that NHS Choices has been used which considers only a radius distance rather than any ‘real life’ access difficulties experienced by people in the area of the application.

3.12 Rushport on behalf of the Applicant believe that NHS England has failed to consider the case as submitted by the Applicant who believes has clearly shown how this application satisfies the test for Regulation 18 and they look forward to hearing further in due course.

4 A copy of the report which the Applicant referenced in their appeal and as referred to in the decision letter from NHS England was circulated to all parties. The Applicant was offered the opportunity to provide representations on the report.

Pharmaceutical Services Regulations Committee – Lancashire and South Cumbria

Committee report dated Thursday 23 August 2018

4.1 Additional information

4.2 Using NHS Choices, there are 10 pharmacies within 4 miles of the proposed premises, offering a range of services and opening times. The nearest pharmacy with opening hours on a Sunday is 4.2 miles away. There are 10 GP practices within 4 miles of the proposed premises.

4.3 There have not been any previous applications in this locality within the last 5 years.

- 4.3.1 There are 4,552 patients who are registered with a GP within 1.6 km of PR4 5LE of which 0 patients are flagged on a dispensing doctors list.
- 4.3.2 From google maps street view (August 2016) – the site of the best estimate is “A” road with public footpaths on either side. One side of road is lined with hedgerows, with houses behind. The other side there is a small retail site and other retail buildings including a builder’s merchant and garage.
- 4.4 Current provision of NHS Pharmaceutical Services, Pan-Lancashire Pharmaceutical Needs Assessment 2018 reference “There is currently no need for any additional pharmacies as there are sufficient existing community pharmacies across pan-Lancashire. This PNA has not identified a current need for new NHS pharmaceutical service providers across pan-Lancashire.”

Representations

- 4.5 Representations have been received from Leyland Late Night Pharmacy, Rowlands Pharmacy, Lancashire LPC, Boots and Charles Russell Speechlys on behalf of A S (Longton) Facer and M & B Healthcare Ltd.
- 4.6 In summary,
 - 4.6.1 Leyland Late Night Pharmacy has stated that they have no objection to the application and do not believe a new pharmacy will have any significant adverse impact on pharmacies in the Leyland area.
 - 4.6.2 Rowlands Pharmacy has made reference to details within the Pharmaceutical Needs Assessment (PNA) which does not highlight any gaps in pharmaceutical provision.
 - 4.6.3 Lancashire LPS has stated the recommendations of the latest PNA give a clear message - that no more contracts are required in Lancashire and NHS England - North (Lancashire and South Cumbria) would rather use any investment opportunities to develop pharmaceutical services from existing providers, where this is feasible and is consistent with procurement responsibilities. This would be in line with the visions set out in the NHS Five Year Forward View.
 - 4.6.4 Charles Russell Speechlys acting on behalf of A S Facer (Longton) Ltd and M & B Healthcare Ltd has stated that the applicant has failed to meet the relevant statutory test and believes the application should be refused.
- 4.7 Full details of the representations were provided.

Further comments to representations

- 4.8 Mr John Devlin, Director of Rushport Advisory has provided a response in relation to the representations received from interested parties.
- 4.9 Charles Russell Speechlys have provided further representations in relation to representations received by Leyland Late Night Pharmacy.
- 4.10 Full details of the response representations were provided.

Recommendation

- 4.11 The Committee should consider 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 PNA, or the arrangements in place for the provision of pharmaceutical services in that area.

- 4.12 The Committee should determine the application and it should be approved if the Committee is satisfied that granting the application would secure improvements or better access to pharmaceutical services.
- 4.13 The Committee should consider whether the granting of the application would secure better access to pharmaceutical services and have regard whether:
 - 4.13.1 there is already a reasonable choice with regard to obtaining pharmaceutical services,
 - 4.13.2 there is evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services, and
 - 4.13.3 there is evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services.
- 4.14 If the Regulation 41 (3)(a) and (b) is not satisfied, the Committee does not have to regard Regulation 42 and 43.
- 4.15 If the Regulation 18 is not satisfied, the Committee does not have to regard to Regulation 19

5 Summary of Representations

This is a summary of representations received on the appeal.

5.1 NHS ENGLAND

- 5.1.1 NHS England can confirm that the decision of the Pharmaceutical Services Regulations Committee was based on the Pan-Lancashire Pharmaceutical Needs Assessment published on 1 April 2018 (<http://www.lancashire.gov.uk/lancashire-insight/health-andcare/health-and-care-services/pharmaceutical-needs-assessment/>)
- 5.1.2 NHS England has reviewed the Lancashire Pharmaceutical Needs Assessment 2015. (<https://www.lancashire.gov.uk/lancashire-insight/health-and-care/health-and-care-services/pharmaceutical-needs-assessment/pharmaceutical-change-memos/>)
- 5.1.3 NHS England makes reference to page 3 of the Executive Summary within the Lancashire Pharmaceutical Needs Assessment 2015 which states:

“There is currently no need for any further additional pharmacies as current pharmaceutical services provision is deemed adequate across Lancashire.”
- 5.1.4 Therefore NHS England does not feel that the revision of the PNA has caused any significant changes that would affect the Pharmaceutical Services Regulations Committee determination.
- 5.1.5 In relation to Regulation 41, the NHS England local area office receives patient list size data from Primary Care Support England (PCSE). PCSE have confirmed that they are unable to collate back-dated patient counts as they are taken from a live system, as far as they are aware there would be no way for them to retrieve this information. Therefore NHS England can confirm the following patient list size information was requested on 17 May 2018 and

used by the Pharmaceutical Service Regulations Committee in their determination:

5.1.5.1 4,552 patients reside within 1.6km of post code PR4 5LE

5.1.5.2 4,552 patients who live within 1.6km of post code PR4 5LE are registered with a GP practice.

5.1.5.3 0 patients who live within 1.6km of post code PR4 5LE are registered with a GP practice are listed on a "dispensing GP Practices List"

5.1.6 In response to the applicant letter of appeal dated 16 October 2018, NHS England would like to make the following representations:

5.1.6.1 The reference to the "Committee Report", this is an internal report based on the PCSE Committee report produced by a member of the NHS England Primary Care Pharmacy Team. This report is then presented to Pharmaceutical Services Regulations Committee Members in order for them to determine the application. NHS England note that this report has been circulated as part of the relevant papers to this appeal.

5.1.6.2 In reference to the last paragraph of item 2, NHS England can confirm that the word "not" was missing from the decision report in relation to regulation 44 (2). The statement should read "Regulation 44 (2) The Committee determined that the application is a "best estimate site" within a controlled locality that is not a reserved location". This statement has been updated within our internal records and a copy is attached for information.

5.1.7 NHS England looks forward to hearing the outcome of the appeal in due course.

5.2 RUSHPORT ADVISORY LLP

5.2.1 In the letter dated 16 October 2018 the grounds for appeal are and we expand on these below:

'The Committee referred to the report...'

There is no report included with the decision minutes, we are unclear as to what this report includes and its relevance and weight apportioned to the decision to reject this application.

The report may be a site visit report although the entirety of the minutes doesn't refer to a site visit being conducted by NHS England. It is our belief that no site visit has been conducted and therefore NHS England has been unable to understand the unforeseen benefits this application confers on people in the area of the best estimate application site.

5.2.2 The PSRC report appears to be a guidance document in terms of what should be considered during the decision-making process.

5.2.3 There are inaccuracies throughout the report.

5.2.4 The report states Leyland Pharmacy has not submitted any representations but then goes on to state:

“Leyland Late Night Pharmacy has stated that they have no objection to the application and do not believe a new pharmacy will have any significant adverse impact on pharmacies in the Leyland area.”

- 5.2.5 It is clear from the PSRC report that no site visit was conducted as reference is made to google maps:

“From google maps street view (August 2016) – the site of the best estimate is “A” road with public footpaths on either side. One side of road is lined with hedgerows, with houses behind. The other side there is a small retail site and other retail buildings including a builder’s merchant and garage.”

- 5.2.6 NHS England has determined that the best estimate application site is within a controlled locality but is not a reserved location:

Regulation 41(3)(a) The Committee acknowledged that on 18 May 2018, the patient count provided by Primary Care Support England (PCSE) was 4,552. Therefore the committee determined that the area was not a reserved location.

(The Committee also noted the confirmation from PCSE that they are unable to collate back dated patient counts (i.e. date of application) as they are taken from a live system, as far as they are aware there would be no way for PCSE to retrieve this information).

- 5.2.7 NHS England however as above admit that they failed to determine a patient count when the application was received as is required. They have therefore erred in terms of required process and procedures in the determination of the application.

- 5.2.8 Furthermore, the decision report later states:

Regulation 44(2) The Committee determined that the application is at a “best estimate site” within a controlled locality that is a reserved location.

- 5.2.9 The location is either reserved or not, NHS England cannot have it both ways.

- 5.2.10 The only reference to rural matter in the PSRC report is:

There are 4,552 patients who are registered with a GP within 1.6km of PR4 5Le of which 0 patients are flagged on a dispensing doctors list.

- 5.2.11 This confirms the Applicant’s belief as per the grounds for appeal that a patient count was not conducted on receipt of this application confirming that NHS England has erred in terms of correct procedures in dealing with this application.

- 5.2.12 The PSRC report contains no detail in how NHS England has determined that the area is both reserved and not reserved.

- 5.2.13 In relation to Regulation 18, NHS England state:

Regulation 18(2)(b)(i) The Committee acknowledged that the Pharmaceutical Needs Assessment (PNA) highlights no gaps in the provision of pharmaceutical services and that the HWB of Lancashire has adequate provision is more pharmacies per 100,000 population than the national average.

The Committee acknowledged that the nearest pharmacy and GP practice were 1.5 miles away from the best estimate site and did not feel that this was a significant distance. There are also 10 pharmacies within 4 miles offering a range of services and opening times. The nearest 100 hour pharmacy was identified as being 4.2 miles away.

5.2.14 This statement should be discounted as:

5.2.14.1 The PNA covers the entire geography of Lancashire and is not restricted to the area of the application where there is no pharmacy.

5.2.14.2 This is an application under Regulation 18 offering benefits that were unforeseen when the PNA was published, NHS England's total reliance on what the PNA says has led them to find reasons to reject the application rather than consider the unforeseen benefits put forward by the applicant. There is no reference in the decision minutes that leads the Applicant to believe that their case submitted has been considered. (The Applicant includes detail provided for completeness).

5.2.14.3 It appears that in consideration of existing pharmacy and GP locations that NHS Choices has been used which considers only a radius distance rather than any 'real life' access difficulties experienced by people in the area of the application.

5.2.15 Again, as no site visit was conducted NHS England has relied on NHS Choices radius calculation of distances. The applicant has provided NHS England and Primary Care Appeals with actual distances which are all in excess of 1.9 miles and additionally detail in terms of access difficulties due to distance/route and time on foot and by public transport. This is not considered at any point in the PSRC report.

5.2.16 In summary, the Applicant feels that the PSRC report adds nothing to the decision letter which the Applicant was in receipt of originally. The report whilst providing limited information for the committee to consider and a summary of representations; albeit with inaccuracies; fails to include ANY detail in relation to how NHS England applied Regulation 18 tests. The Applicant believes that NHS England has failed to consider the case in a competent manner erring both in terms of information inaccuracies and following due process.

5.3 CHARLES RUSSELL SPEECHLYS

5.3.1 Charles Russell Speechlys act for A.S Facer (Longton) Ltd of Ramshead Corner, 66 Liverpool Road, Longton, Preston PR4 4PB and M&B Healthcare Ltd of Village Pharmacy, 356 Chapel Lane, New Longton, Preston, Lancashire, PR4 4AA.

5.3.2 Charles Russell Speechlys have been passed a copy of the letter dated 5 November 2018, and note that NHS Resolution has received an appeal dated 16 October 2018, from Norfolk Street Pharmacy Ltd, against the decision of the NHS Commissioning Board (NHS England) to refuse its application for inclusion in the pharmaceutical list for premises within a 0.5 radius of Liverpool Road (between Station Road and Brook Lane Junction). The application was made pursuant to Regulation 18 of The National Health Service (Pharmaceutical and Local Pharmaceutical) Regulations 2013, ("the Regulations"), on the basis of a best estimate with regard to the proposed premises. On behalf of AS Facer (Longton) Ltd Charles Russell Speechlys write to make the following representations in relation to this appeal:

Representations

- 5.3.3 As NHS Resolution is aware, Charles Russell Speechlys made representations on behalf of AS Facer (Longton) Ltd as to why this application does not meet the relevant statutory test in a letter addressed to NHS England dated 3 July 2018. Charles Russell Speechlys attach a further copy of this letter for reference, and should be grateful if Primary Care Appeals could treat it as forming part of the representations in relation to this appeal.
- 5.3.4 NHS England's decision was correct.
- 5.3.5 NHS England determined this application and refused it. The decision was communicated to interested parties by way of a letter dated 21 September 2018. NHS England was correct in refusing this application for the following reasons (this is not an exhaustive list):
- 5.3.6 The current PNA was published in 2018 and represents a recent assessment of pharmaceutical needs in the relevant area. As NHS England correctly notes, the PNA states:
- 5.3.6.1 There are no gaps in the provision of pharmaceutical services,
- 5.3.6.2 Lancashire has more pharmacies per 100,000 population than the England average.
- 5.3.7 The nearest pharmacy and surgery to the proposed site are 1.5 miles distant. This is not significant in the context of this being a rural location.
- 5.3.8 There are 10 pharmacies within four miles of the proposed site which offer a range of hours and services.
- 5.3.9 The NHSCB has not received any complaints in relation to accessing pharmaceutical services in the area of the relevant HWB.
- 5.3.10 The applicant does not offer innovative approaches to the provision of services.
- 5.3.11 In light of the matters outlined above, granting this application would not confer upon persons in the area of the relevant HWB significant benefits which were not foreseen when the PNA was published.
- Additionally:
- 5.3.12 NHS England has produced detailed reasons for its decision.
- 5.3.13 The Regulations place no obligation on NHS England to carry out a site visit before determining an application.

The appeal

- 5.3.14 The Applicant seeks to argue that the 2018 PNA should be disregarded on the basis that it covers the whole of Lancashire. However, it is the purpose of the PNA is to assess pharmaceutical needs in the area of the relevant HWB. Importantly, in so doing, no gaps in services are identified in the vicinity of the proposed site.
- 5.3.15 The appellant goes on to argue that NHS England has rejected the application without taking into consideration the unforeseen benefits which

the application purports to provide. However, as NHS Resolution will be aware, in determining this application, NHS England was under an obligation to consider whether granting the application would confer significant benefits on persons in the area which were not foreseen when the relevant PNA was published. In this case, the applicant offers hours and services which are less extensive than those provided by existing contractors, and for the reasons set out in our previous letter, the reliant population is able to access, easily, pharmaceutical services from these contractors. In this context, it cannot be said either that granting the application would secure benefits which would be significant, or that any benefits were unforeseen when the PNA was published earlier this year. It is also relevant that, if when making a current assessment of pharmaceutical needs, the HWB had concluded that there was a need for additional hours or services, these could have been commissioned from existing pharmacies.

5.3.16 The Applicant refers to a failure on the part of NHS England to consider any "real life" access difficulties experienced by people in the area of the application". However, the Applicant has provided no evidence to suggest that the reliant population experience such difficulties, particularly in the context of Regulation 18(2)(b)(ii).

5.3.17 For the reasons set out in this letter and the letter of 3 July 2018, NHS Resolution cannot be satisfied that granting the application would secure improvements or better access to pharmaceutical services in the area of the HWB in whose pharmaceutical needs assessment the improvements or better access have not been included.

Other matters

5.3.18 Parties have not previously had sight of the letter from Rushport Advisory LLP dated 16 July 2018 which was sent to NHS England. The majority of the matters raised in this letter have already been dealt with in the letter of 3 July 2018. However, for the avoidance of doubt it is AS Facer (Longton) Ltd's position that:

5.3.18.1 The proposed opening hours are less extensive than those already provided by existing contractors.

5.3.18.2 The reliant population is mobile and already accustomed to travelling around the area, both in terms of their place of work, and in order to access primary medical services, existing pharmaceutical services, and other amenities. Charles Russell Speechlys have previously provided information regarding access to existing pharmacies.

5.3.18.3 Existing pharmacies are owned and operated by a number of different contractors, and provide a wide range of services. Therefore, the reliant population already has a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB (this being the wording of Regulation 18(2)(b)(i)).

5.3.18.4 There is no evidence that people who share a protected characteristic have difficulty in accessing services.

5.3.18.5 Charles Russell Speechlys have previously provided details of where major employers in the area are located. As is typical of a more rural location, these cluster together in larger towns and cities. Both pharmacies are located close to the A59 which is one of the main arterial and commuter routes into Preston.

5.3.18.6 Charles Russell Speechlys note that the LPC confirms that 87% of pharmacies in Lancashire provide a delivery service. As indicated in the previous letter, both AS Facer (Longton) Ltd and M&B Healthcare provide this service free of charge.

5.3.18.7 As indicated, previously, NHS Resolution must consider whether the best estimate which has been given is sufficiently precise, and whether taking any specific location within the best estimate would result in the same decision being made. For example, it is currently particularly difficult to make an assessment regarding parking. In any event, regardless of where the pharmacy is located, patients who live in Much Hoole would need to cross the A59 which, at the relevant section, is a busy dual carriage way.

5.3.18.8 In its application, mention is made of local amenities. AS Facer (Longton) Ltd believe it will assist NHS Resolution to be aware that these are all located in or towards Walmer Bridge, and are not in the immediate vicinity of Station Road/Brook Lane.

5.3.19 For the reasons set out in this letter and the letter of 3 July 2018, this application does not meet the relevant statutory test and NHS England was correct in refusing it. AS Facer (Longton) Ltd, therefore, respectfully request that NHS Resolution upholds NHS England's decision.

5.3.20 Finally, please note that should NHS Resolution hold an oral hearing before determining this appeal, both our clients would wish to attend such a hearing and to make oral representations.

In a letter dated 3 July to NHS England, Charles Russell Speechlys stated:

5.3.21 On behalf of AS Facer (Longton) Ltd are writing to make the following representations in relation to this application:

Representations

5.3.22 Controlled Locality

5.3.23 When determining this application, NHS England must consider whether:

5.3.24 Any of the factors contained in Regulation 40 apply, such as this is an area to which outline consent has been granted within the relevant five year period, or whether an application for premises within 1.6 kilometres of the proposed pharmacy was refused within the five year period.

5.3.25 Whether the proposed site falls within a reserved location pursuant to Regulation 41.

5.3.26 Whether granting this application would prejudice the proper provision of relevant NHS services in the HWB's area pursuant to Regulation 44.

Best Estimate

5.3.27 The Applicant has provided a best estimate of the proposed location. NHS England must consider whether the applicant should have been more specific (i.e. that this is actually the best estimate which could be provided), and whether taking any specific location within the best estimate would result in NHS England reaching the same conclusion when determining this application.

Regulation 18

5.3.28 Granting this application would not secure improvements or better access to pharmaceutical services for the following reasons:

Reliant population

5.3.29 The pharmacy's proposed location is in the village of Much Hoole which is an affluent suburb of Preston.

5.3.30 The site is situated adjacent to the A59, which is one of the main arterial roads into Preston.

5.3.31 In addition to being affluent, the reliant population has lower than average health needs. Employment levels are high, and people are already accustomed to travelling around the wider area in order to access amenities. In addition, there are no barriers to movement, with higher than average levels of car ownership and good public transport links. This is supported by ward data from the 2011 Census which shows that:

5.3.31.1 28.8% of households have no adults in employment (this is lower than the England average of 33.3%);

5.3.31.2 92.2% of households have access to a vehicle (this is higher than the England average of 74.2%),

5.3.31.3 34.6% of people describe their health as good (this is higher than the England average of 34.2%);

5.3.31.4 48% of people describe their health as very good (this is higher than the England average is 47.17%)

5.3.32 There are no major employers in the vicinity of the proposed site, and so people are already drawn towards Preston, as part of their daily lives, in order to travel to and from work as this is where major employers in the area are based. These include Lancashire Constabulary, which is located north of the proposed site off the A59; and BAE Systems and Lancashire Teaching Hospital Trust, both of which are situated in Preston itself.

5.3.33 In addition, amenities in the area of the proposed site are limited. For example, there are no banks or supermarkets. Therefore, people who live in the area are also accustomed to leaving the village of Much Hoole and travelling around the area in order to access amenities, including healthcare, on a regular basis.

Existing services

5.3.34 There are already a number of existing pharmacies located within easy reach of the proposed site. These are typically located close to existing surgeries. The closest pharmacy is Facer Pharmacy, which is owned by AS Facer (Longton) Ltd. This pharmacy is only 1.5 miles distant. It takes six minutes to travel between the two by car. Particularly in a rural context, where the reliant population is already accustomed to travelling freely around the area in order to access other amenities, this is not a significant distance.

5.3.35 For people using public transport, the local bus service (2 and 2A) runs directly from Much Hoole to Longton, where Facer Pharmacy is situated. Buses then run along the A59 through Penwortham and into the centre of Preston. In the opposite direction, buses run regularly from Much Hoole to Tarleton. This means that the reliant population is already able easily to access pharmaceutical services from existing pharmacies

- 5.3.36 Those travelling from a starting point in the vicinity of the proposed site into Preston to go to work, or to access other amenities located there, will travel along the A59 as this is the main arterial route into the city.
- 5.3.37 In doing so, they will pass close to AS Facer (Longton) Ltd's pharmacy, Facer Pharmacy, located in Longton. These people will also be able to access pharmaceutical services from the many pharmacies already located in the city centre.
- 5.3.38 In terms of opening hours, Facer Pharmacy previously opened until 7pm during the week, but subsequently reduced its hours, due to lack of demand in the area. Pentwortham Pharmacy opens for 100 hours a week and is easily accessible. Consequently, in terms of opening hours this application cannot be said to offer to secure improvements of better access to services.
- 5.3.39 As far as services are concerned, both Facer Pharmacy and Village Pharmacy already provide all advanced and commissioned services which include MURs; NMS; flu vaccinations; EHC; minor ailment service; palliative care stock holding; stop smoking; allergy screening; blood pressure checks and NHS health checks. Neither pharmacy has been asked to provide needle exchange or supervised consumption due to lack of demand in the area. In addition, Facer Pharmacy provides cholesterol testing, and diabetes screening. Both pharmacies provide a delivery service to patients in the surrounding areas.

Access to the proposed site

- 5.3.40 There does not appear to be any parking at the proposed site which would make it difficult to access for those travelling by car. By contrast, Facer Pharmacy is located in a parade of shops in Longton with parking spaces immediately outside the premises. There is also a car park situated opposite Village Pharmacy which offers free parking.
- 5.3.41 Patients intending to access the proposed pharmacy from Much Hoole on foot would need to cross the A59.
- 5.3.42 As mentioned, above, this is a busy arterial road into Preston, and the relevant section of this road is a dual carriage-way.
- 5.3.43 Granting the application would not confer significant benefits on person in the area of the relevant HWB which were not foreseen when the relevant PNA was published.
- 5.3.44 When determining this application, NHS England must have specific regard to the desirability of:

Reasonable Choice

- 5.3.45 There are a number of existing pharmacies which are easily accessible to the reliant population and which provide a full range of opening hours and services. Consequently, the reliant population already has reasonable choice with regard to obtaining pharmaceutical services in the relevant area.

People who share a protected characteristic having access to services which meet specific needs and which are currently difficult to access

- 5.3.46 Statistics are provided by the Applicant about people who share a protected characteristic. However, data from the 2011 census shows that the health needs of the reliant population are lower than average. Additionally, no evidence has been provided by the applicant which demonstrates that people

who share a protected characteristic have difficulty in accessing services within the relevant area.

There being innovative approaches taken with regard to the delivery of services

- 5.3.47 The Applicant has provided no information or evidence to suggest that it intends to adopt innovative approaches with regard to the delivery of services
- 5.3.48 The Applicant has also failed to demonstrate that the significant benefits it says that the granting of this application would confer were not foreseen when the relevant Pharmaceutical Needs Assessment (PNA) was published. This is because, for the purposes of this application, the relevant PNA is that dated April 2018, as this is the PNA which will be in force on the date on which this application is determined by NHS England. In publishing the PNA two months ago, the Health and Wellbeing Board has only very recently carried out an assessment of pharmaceutical needs in the relevant area, and has expressly concluded at page 3 of the Executive Summary that "There is currently no need for any further additional pharmacies, as current pharmaceutical service provision is deemed adequate across pan-Lancashire".
- 5.3.49 Taking these factors into account, the Applicant has failed to establish that granting this application would confer significant benefits on persons in the area of the relevant PNA, or that any such benefits were not foreseen when the relevant PNA was published in April 2018.

Conclusion

- 5.3.50 For the reasons set out above, the Applicant has failed to meet the relevant statutory test. On this basis Charles Russell Speechlys invite NHS England to refuse this application.
- 5.3.51 Finally, should NHS England (or NHS Resolution in the event of an appeal) decide to hold an oral hearing before determining this application, AS Facer (Longton) Ltd would wish to attend the hearing and make oral representations.

5.4 BOOTS UK LTD

- 5.4.1 Boots UK Ltd agree with the Area Team in rejecting the original application and their reasoning.
- 5.4.2 Boots UK Ltd believe that there is no requirement for a further pharmacy in the locality of the proposed location. Patients currently access pharmaceutical services and are accustomed in doing so, however they chose to. Boots UK Ltd are not aware of any complaints made to NHS England with regards to this access to these services Whilst Boots UK Ltd accept that the application is based on benefits not foreseen when drafting the PNA, it is unclear from the information provided what elements of this application were 'unforeseen' during the preparation of the PNA.
- 5.4.3 The application does not offer any innovation by means of services and does not offer an innovative approach to delivery of such services.
- 5.4.4 Boots UK Ltd do not believe that there are any gaps in services and neither does the PNA. Should any gaps arise however, existing contractors could be approached to support such findings.
- 5.4.5 Boots UK Ltd believe that the Applicant has still failed to provide any evidence that granting the application would confer significant benefits not

foreseen at the time the Pharmaceutical Needs Assessment was produced and Boots UK Ltd submit it should be refused for this reason. The PNA was published earlier this year and Boots UK Ltd believe that should any reason have been identified with respect to the requirement of an additional pharmacy, it would have been identified here. Boots UK Ltd are not aware of any changes to the locality, for example a large increase in population increasing demand.

5.4.6 In conclusion, Boots UK Ltd submit that the above application does not meet the required criteria of the Regulations, and respectfully urge the NHS Resolution to dismiss this appeal accordingly

5.4.7 Boots UK Limited would wish to attend any oral hearing that may be held in response to this appeal.

5.5 LPC

5.5.1 The LPC include a copy of their original response as well.

5.5.2 The LPC note that this is a routine application and should one be required the LPC would be willing to attend an oral hearing if it were to be deemed necessary.

5.5.3 Community Pharmacy Lancashire (“CPL”) have had the opportunity to consider the application and would like to make the following comments;

5.5.4 The current PNA (Pharmaceutical Needs Assessment) for Lancashire (Pan Lancashire PNA 2018) states:

There is currently no need for any additional pharmacies as there are sufficient existing community pharmacies across pan-Lancashire. This PNA has not identified a current need for new NHS pharmaceutical service providers across pan-Lancashire

5.5.5 Further:

Across Lancashire, the number of pharmacies per 100,000 people is 26 compared to the England average of 21 and the North average of 24, (5 higher than the National Average).

Taking into account information gathered for this PNA, the distribution of pharmaceutical service provision across pan-Lancashire is adequate. There is no current need identified for more pharmaceutical providers at this time.

Review of the locations, opening hours and access for people with disabilities, suggest there is adequate access to NHS Pharmaceutical Services across pan-Lancashire. There appears to be good coverage in terms of opening hours across the area. The extended opening hours of community pharmacies are valued and these extended hours should be maintained. Many pharmacies and dispensing surgeries have wheelchair access and home delivery services can help to provide medications to those who do not have access to a car or who are unable to use public transport.

Furthermore, rather than investing resource in new pharmacies, the NHS England - North (Lancashire and South Cumbria) would rather use any investment opportunities to develop pharmaceutical services from existing providers, where this is feasible and is consistent with procurement responsibilities. This would be in line with the visions set out in the NHS Five Year Forward View.

- 5.5.6 The previous PNA (Pharmaceutical Needs Assessment) for Lancashire (2015) the period during which the application was made stated much the same:

There is currently no need for any further additional pharmacies as current pharmaceutical service provision is deemed adequate across Lancashire.

- 5.5.7 A site visit was carried out by a representative of CPL in late November 2018 and CPL still see no evidence of any new requirement for a pharmacy. The proposed site could either be part of scattered “ribbon” industrial development alongside the A59 or down a narrow lane which leads into agricultural land. The nearest village of Longton has a long established and widely acknowledged Healthy Living Pharmacy and this is also where the nearest medical services are located.
- 5.5.8 CPL understand the application has been made under The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, Part 3, Section 18 - Unforeseen Benefits.
- 5.5.9 CPL would like to make the following comments in the context of considerations that must be made as defined by the regulations:

Whether the application would secure improvements, or better access, to pharmaceutical services, in the area of the Lancashire Health and Wellbeing Board:

- 5.5.10 From the post code specified in the application there are 2 Pharmacies within a 2 mile radius, a further 4 Pharmacies within a 3 mile radius, and a further 4 Pharmacies within a 4 mile radius. As the applicant is unable to specify an exact location, and has defined a radius of 0.5 miles this may be higher.
- 5.5.11 The application specifically focuses on the populations of Little Hoole and Much Hoole wards. There is a Pharmacy within 1.5 miles of each of these villages. Statistics indicate 95% of households within these areas have access to a car. They are also well serviced by public transport links to Preston and Leyland. The calculated distances from Little Hoole and Much Hoole to the postcode stated in the application are 0.7 miles and 1 mile respectively. If the actual location of the Pharmacy were to be at the further limit of the 0.5 mile radius specified, these distances would then be 1.2 miles and 1.5 miles respectively, therefore no additional benefit would be experienced.
- 5.5.12 The application draws a comparison to availability of convenience shops, public houses, hairdressers, food outlets etc. There is no direct relationship between the need for these services and Pharmaceutical Services.
- 5.5.13 In addition, no evidence is provided that the residents of these wards have difficulty accessing Pharmaceutical services. The Index of Multiple Deprivation decile for this area is 9 and Health and Disability Decile is 8, which contradicts the applicant's statement 'there is clearly an issue of age, disability and health of the people in the area and their ability to access full pharmaceutical services'.
- 5.5.14 Existing Pharmacies offer the full range of NHS commissioned services and a variety of private services including delivery. Both the nearest Pharmacies offer a delivery service.

Whether the improvements or better access that would be secured were or was not included in the relevant pharmaceutical needs assessment.

- 5.5.15 The Pan Lancashire Pharmaceutical Needs Assessment was published in March 2018. Given this is less than three months ago, this can be considered to be very recent and it is unlikely there have been any significant changes to the population or locality since its publication.
- 5.5.16 The PNA quite clearly states that: 'There is currently no need for any additional pharmacies as there are sufficient existing community pharmacies across pan-Lancashire. This PNA has not identified a current need for new NHS pharmaceutical service providers across pan-Lancashire.'
- 5.5.17 The Pan-Lancashire PNA is a robust and detailed document that evidences that it has undertaken the assessment in line with the relevant regulations.
- 5.5.18 The PNA also gives due consideration to the needs of the population of the ward in which the application is made (South Ribble) where it is identified there are 25 Pharmacies which is equal to the number identified in the previous PNA.
- 5.5.19 The PNA acknowledges it has given due consideration to housing developments and will continue to monitor this. There are no planned developments within the locality.

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 Lancashire HWB, or (ii) the arrangements the NHS England have in place for the provision of pharmaceutical services in that area.

- 5.5.20 Given the above it may be considered that granting the application when no current need has been identified, and no significant changes to the locality are anticipated in the short to medium term, that this may jeopardise future applications in neighbouring wards.

Whether there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the Lancashire HWB.

- 5.5.21 Within Lancashire there are 26 Pharmacies per 100,000 population. The borough of South Ribble has 25 Pharmacies serving a population of 109,057. This is higher than the average for England of 21 Pharmacies per 100,000 population.
- 5.5.22 The Pharmacies within a 4 mile radius of the post code of the application vary in profile and ownership.
- 5.5.23 The majority of Pharmacies within the area offer a similar opening hours provision to the applicant. There are Pharmacies with extended opening hours within a 3 mile radius of each GP surgery.

Whether people who share a protected characteristic have access to services that meet specific needs for pharmaceutical services that, in the area of the Lancashire HWB, are difficult for them to access.

- 5.5.24 Each Pharmacy in South Ribble has disabled access specified on it's NHS choices website with a recent validation date.
- 5.5.25 The Applicant has not made us aware of any failure to meet the needs of people who share a protected characteristic on the part of existing contractors and there is no evidence to suggest Pharmaceutical Services are difficult to access or reasonable adjustments cannot be made.

There are innovative approaches being taken with regard to the delivery of pharmaceutical services.

5.5.26 The application does not demonstrate any innovation in service delivery or any superiority in breadth or quality of services over existing providers.

5.5.27 The additional services listed are already widely available from other local Pharmacies as evidenced by their NHS choices profile and although it is claimed these are 'important from a strategy point of view' does not reference any strategy document produced by health and social care commissioners.

5.5.28 In conclusion, CPL still feel that the Applicant has failed to demonstrate that granting the application at this current time, would confer significant benefits not foreseen at the time the PNA and the previous PNA were published.

5.5.29 At a time when the system is under major financial constraints it would be detrimental to current pharmaceutical care provision and directly against the stated wishes of NHS England - North (Lancashire and South Cumbria) and its vision of the NHS Five year forward view.

5.5.30 CPL respectfully request therefore that NHS Resolution reject this appeal.

In a letter dated 5 July 2018 to NHS England, Community Pharmacy Lancashire stated:

5.5.31 CPL note that this is an unforeseen benefits application and would be willing to attend an oral hearing if it were to be deemed necessary.

5.5.32 Community Pharmacy Lancashire have had the opportunity to consider the application and would like to make the following comments;

5.5.33 The current PNA (Pharmaceutical Needs Assessment) for Lancashire (Pan Lancashire PNA 2018) states:

There is currently no need for any additional pharmacies as there are sufficient existing community pharmacies across pan-Lancashire. This PNA has not identified a current need for new NHS pharmaceutical service providers across pan-Lancashire

5.5.34 Further:

Across Lancashire, the number of pharmacies per 100,000 people is 26 compared to the England average of 21 and the North average of 24, (5 higher than the National Average).

Taking into account information gathered for this PNA, the distribution of pharmaceutical service provision across pan-Lancashire is adequate. There is no current need identified for more pharmaceutical providers at this time.

Review of the locations, opening hours and access for people with disabilities, suggest there is adequate access to NHS Pharmaceutical Services across pan-Lancashire. There appears to be good coverage in terms of opening hours across the area. The extended opening hours of community pharmacies are valued and these extended hours should be maintained. Many pharmacies and dispensing surgeries have wheelchair access and home delivery services can help to provide medications to those who do not have access to a car or who are unable to use public transport.

Furthermore, rather than investing resource in new pharmacies, the NHS England - North (Lancashire and South Cumbria) would rather use any investment opportunities to develop pharmaceutical services from existing

providers, where this is feasible and is consistent with procurement responsibilities. This would be in line with the visions set out in the NHS Five Year Forward View.

- 5.5.35 The application refers to Unforeseen Benefits, the PNA references the important beneficial aspects of HLP Pharmacies (Healthy Living Pharmacies) as an identified priority in the Local Professional Network (Pharmacy) Work plan and included in the NHS Five Year Forward View.
- 5.5.36 Neither the Application or its Supporting Document mentions HLP. This important omission would appear to fail The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 Section 18 (2) b (iii) No new Innovation.
- 5.5.37 The Postcode sites the pharmacy in an area of low population, mainly rural. It is the same postcode as the International Aid Warehouse and the A59 is an exceptionally busy road. The nearest village shop is 0.6 miles away at Much Hoole.
- 5.5.38 The applicant points out that there is a maximum 1.5 mile drive for local residents to a current contractor. However, in line with the PNA's findings, CPL do not see this as being problematic for the majority of the population. 87% of pharmacies in Lancashire already offer a free delivery service, with an increasing amount of off-site MUR's and other services contributing to adequate access to NHS Pharmaceutical Services.
- 5.5.39 Stating a proposed distance from another contractor seems meaningless without evidence that this is actually contributing to a gap in service provision. In fact, with technology (a key aim of the NHS Five Year Plan), distance is becoming less of an issue with a growing number of elderly and other patients never actually visiting their pharmacy regardless of its proximity to their homes.
- 5.5.40 A simple search on NHS Choices showed ten pharmacies within four miles.
- 5.5.41 CPL note that no (Standard Operating Procedure) SOP's are included with this application.
- 5.5.42 The Applicant themselves admit that they make reference to providing services that require a consultation room, Medicines Use Reviews and New Medicines Services. Yet since they have no premises, they cannot provide details or a floorplan of the consultation room. This is a necessary requirement for provision of these services.
- 5.5.43 In summary, the recommendations of the latest PNA give a clear message - that no more contracts are required in Lancashire and NHS England - North (Lancashire and South Cumbria) would rather use any investment opportunities to develop pharmaceutical services from existing providers, where this is feasible and is consistent with procurement responsibilities. This would be in line with the visions set out in the NHS Five Year Forward View.

6 Observations

6.1 NHS ENGLAND

- 6.1.1 Within the correspondence email chains NHS England see that Rizwan Akhtar of Leyland Late Night Pharmacy is copied to an email from John Devlin of Rushport, in relation to the progression of that pharmacy application.

- 6.1.2 This raises the question as to whether or not Rizwan Akhtar personally or by way of Leyland Late night Pharmacy has an as yet undeclared commercial, business or other interest in the Much Hoole application.
- 6.1.3 The NHS England view is that they must at least bring this to the attention of the NHS Resolutions team, so as to allow them the opportunity to consider whether or not they will need to seek clarity from Rizwan Akhtar given that his company, Leyland Late Night Pharmacy has made a positive note for the application. This has been provided as an independent contractor and does not indicate any conflict.

6.2 NHS ENGLAND

- 6.2.1 NHS England acknowledge that the committee report contains an error in relation to the representation submitted by Leyland Late Night Surgery for which NHS England apologises.
- 6.2.2 All application documentation is provided to members in their agenda papers for the meeting. Therefore although it is acknowledged that there is an error in the section "interested parties notified of the application" in relation to the representation made by Leyland Late Night Pharmacy, their representation is clearly summarised under the representation section. The comments from Leyland Late Night Pharmacy are included in the agenda papers circulated to PSRC members and the 3rd paragraph of the minutes of the meeting dated Thursday 23 August 2018 comments upon this.
- 6.2.3 Following the presentation of the application by the case presenter, the PSRC reviews each element of the pertinent pharmaceutical regulations, taking into consideration the relevant information from the application, representations and any supporting information e.g., Pharmaceutical Needs Assessment (PNA). Voting members then make the determination against each of the regulations, which is demonstrated in the PSRC minutes of the meeting. NHS England therefore believes due process has been followed.
- 6.2.4 NHS England has previously provided representation within the response dated 4 December 2018 in relation to comments raised on PNA, Regulation 41 and Regulation 44.
- 6.2.5 NHS England looks forward to hearing the outcome of the appeal in due course.

6.3 CHARLES RUSSELL SPEECHLYS

- 6.3.1 On behalf of AS Facer (Longton) Ltd Charles Russell Speechlys are writing to make the following observations in relation to the letter from Rushport Advisory LLP dated 15 November 2018:
 - 6.3.1.1 NHS Resolution will be re-determining this application, rather than carrying out a review of the way in which NHS England reached its decision.
 - 6.3.1.2 As Charles Russell Speechlys have mentioned previously, there is no requirement to hold an oral hearing within the Regulations.
 - 6.3.1.3 NHS England has rectified its typographical error, so confirming the proposed site is not within a reserved location.
 - 6.3.1.4 The remaining issues raised in this letter have already been addressed by Charles Russell Speechlys in previous correspondence.

6.3.2 Charles Russell Speechlys look forward to hearing from Primary Care Appeals once the Pharmacy Appeals Committee has determined this appeal.

6.4 RUSHPORT ADVISORY LLP

6.4.1 Rushport Advisory LLP thank you for your letter dated 11th December 2018 including representations from objecting parties, please find on behalf of the Applicant, Norfolk Street Pharmacy Limited, final observations in rebuttal of information provided.

6.4.2 Whilst Boots state “we are not aware of any complaints made to NHS England with regards to access to these services” (pharmaceutical services); there is strong consensus that a pharmaceutical service is needed in Much Hoole.

6.4.3 The Applicant has provided the appeals unit c. 50 letters in support of the need for pharmaceutical services all including the reference SHA/19999. This support includes Much Hoole Parish Council chair and vice chair, the letters cite access difficulties such as access to pharmaceutical services in relation to a 2-3-mile distance, in relation to access in relation to age as per a new old people home (details to follow below) and the documented need for pharmaceutical services as per the Much Hoole Village Plan. Rushport Advisory LLP attach the village plan as Appendix A, the plan conducted by The South Ribble Borough Council Community Engagement Team.

6.4.4 The plan states at Pg. 4

“Just over half of respondents (51.2%) feel that the provision of a local doctors surgery would improve Much Hoole as a place to live.”

6.4.5 (258 surveyed households/ 28.6% of the total household number)

6.4.6 And Pg. 9

“Just over half of respondents (53.9%) feel that the provision of a local chemist would improve Much Hoole as a place to live.”

6.4.7 In addition to the strong feeling presented by way of supporting letters there is clearly strong feelings that there is no access to medical or pharmaceutical services in Much Hoole and the provision of said services would improve people’s lives. There is significant benefit conferred on people in terms of better/ improved access to pharmaceutical services should this application be approved.

6.4.8 CRS state:

“The nearest pharmacy and surgery to the proposed site are 1.5 miles distant”

6.4.9 The experience of people who live in the area of the application is that access to pharmaceutical services is in excess of 2 miles and 3 miles for which residents have communicated by way of their letters of support.

6.4.10 This corresponds with the information provided to NHS England by the applicant in terms of distance and access to pharmaceutical services (see map at Appendix A):

“Healthcare services are to be found in excess of 1.7 miles from the best estimate application site in terms of medical services:

And 1.9 miles in terms of pharmaceutical services”

- 6.4.11 In terms of access to pharmaceutical services:
- 6.4.12 On foot (see map at Appendix A):
- 6.4.13 Surely, NHS England must concur that access to pharmaceutical services on foot is not a reasonable option considering:
- 6.4.13.1 Distance
- 6.4.13.2 Routes
- 6.4.13.3 Geography of the area
- 6.4.14 Almost 4 miles round trip and 80 minutes is not a reasonable choice for people in Much Hoole. (see photograph at Appendix A)
- 6.4.15 By Bus:
- 6.4.16 Total travel time is 16 minutes, BUT this includes in excess of 0.5 miles/ 10 minutes walking (see map at Appendix A).
- 6.4.17 This surely negates any benefits of public transport to the point that the bus service typical of a rural location offers little if any benefit to people in the area of the application in terms of their access to pharmaceutical services.
- 6.4.18 The applicant has provided evidence that access to pharmaceutical services on foot or by public transport is significantly difficult and this view is supported in the Much Hoole Village Plan in terms of suitability of footpaths, street lighting, road safety and poor public transport:
- 6.4.19 In terms of footpaths (Pg. 22) (see appendix A)
- 6.4.20 In terms of street lighting (Pg. 9):
- “Just under a quarter of respondents (24.4%) feel that if a more street lighting was provided it would improve Much Hoole as a place to live. [sic]*
- 6.4.21 In terms of road safety (Pg. 21) (see appendix A)
- 6.4.22 And Pg.25 where speeding vehicles is identified as an issue (see Appendix A):
- 6.4.23 And in terms of public transport only 4.4% of the population use this mode of transport, the reason being the poor service; as detailed above to NHS England (a 16-min journey but with 10-min on foot negates the viability of the bus service); and therefore, a published desire for better local services including pharmaceutical services and a better public transport service for the local population:
- “When asked how access to services could be improved just under 40% of respondents were willing or able to make suggestions. Amongst the remainder, the main issues highlighted were the need for more local facilities and/or services to be provided (19.1%) and for an improved public transport service to be provided (14.8%)*

(Pg. 12- Much Hoole Village Plan)

6.4.24 It is clear that access to pharmaceutical services on foot or via public transport is not a viable option for the local population.

6.4.25 CRS state:

“The appellant refers to a failure on the part of NHS England to consider any “real life” access difficulties experienced by people in the area of the application”. However, the appellant has provided no evidence that the reliant population experience such difficulties, particularly in the context of Regulation 18(2)(b)(ii).”

6.4.26 However, the detail provided above in terms of letters from people residing in the area of the application and the Village Plan show exactly the ‘real life’ difficulties experienced.

6.4.27 The LPC state:

“1.3 The application draws a comparison to availability of convenience shops, public houses, hairdressers, food outlets etc. There is no direct relationship between the need for these services and Pharmaceutical Services.”

6.4.28 The correlation between these local services and pharmaceutical services is that the local population are accustomed to accessing local services but have no access to pharmaceutical services albeit they have identified the need for a chemist in Much Hoole.

6.4.29 Pg. 24- Much Hoole Village Plan (see Appendix A for the tables and maps)

6.4.30 The Much Hoole Stores are situated off the A59 in close proximity to the best estimate address:

6.4.31 People are accessing Much Hoole Village Store for their day to day retail needs on a very frequent basis (38% of the population daily and weekly) and are therefore able to easily access pharmaceutical services in this area should this application be approved. This shows that better/ improved access to pharmaceutical services is satisfied by the approval of this application.

6.4.32 In terms of allowing a significant benefit by return of the better/ improved access, the Much Hoole Village Plan identifies people who by their own admission find access to pharmaceutical services difficult.

6.4.33 Again, there is no access to medical services which increases the reliability of the population on easy access to pharmaceutical services. Whilst objecting parties focus on people who can access pharmaceutical services the Regulatory test focusses on those who do have difficulty accessing services and 8% of households have stated that access to a chemist is very of fairly difficult.

6.4.34 NHS England confirm a population of 4,552

“4,552 patients who live within 1.6km of postcode PR4 5LE are registered with a GP practice.”

6.4.35 Based on 2.49 people per household as per the Village Plan Pg.7 there are 1,828 houses within 1.6km of the best estimate application site with 8% experiencing difficulty accessing a chemist amounting to 146 households/ 364 people.

6.4.36 For these people who access the area of the application for retail purposes they will experience a significant benefit in terms of access to pharmaceutical services.

6.4.37 The LPC state:

“The PNA acknowledges it has given due consideration to housing developments and will continue to monitor this. There are no planned developments within the locality.”

6.4.38 This is incorrect.

6.4.39 There is an approved care home development which received planning permission October 2017.

6.4.40 Rushport Advisory LLP attach the planning details as Appendix A.

6.4.41 The centre is designed to provide residential and nursing care plus specialist dementia care and the residents and staff require easy access to pharmaceutical services.

6.4.42 Additionally, the local population includes a significant number of children.

| Age of children | % |
|------------------|------|
| Less than a year | 7.5 |
| 1/2 | 14.9 |
| 3/4 | 16.4 |
| 5/6 | 19.4 |
| 7/8 | 14.9 |
| 9/10 | 14.9 |
| 11/12 | 19.4 |
| 13/14 | 20.9 |
| 15 and over | 31.3 |

(Pg.27 Much Hoole Village Plan)

6.4.43 Where the LPC state:

“The applicant has not made us aware of any failure to meet the needs of people who share a protected characteristic on the part of existing contractors and there is no evidence to suggest Pharmaceutical Services are difficult to access or reasonable adjustments cannot be made.”

6.4.44 With respect, the above in terms of AGE both elderly and children show real difficulties in terms of accessing pharmaceutical services and ‘reasonable adjustments’ is not included in the Regulatory test. (emphasis added)

6.4.45 In summary, the applicant has satisfied the test in terms of the approval for this application which will allow for improved/ better access to pharmaceutical services.

6.4.46 A significant benefit being conferred in terms of Reasonable Choice and People Sharing a Protected Characteristic (age):

6.4.47 [Regulation 18(2)(b)(i) and (ii) quoted in full]

6.4.48 With respect, Rushport Advisory LLP urge Primary Care Appeals to approve this application to realise the benefits in terms of access to pharmaceutical services for the people in the area of the best estimate application site.

7 Consideration

- 7.1 The Pharmacy Appeals Committee (“the 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.
- 7.2 It also had before it the responses to NHS Resolution’s own statutory consultations. Following receipt of Rushport’s appeal and their statement that they had not had sight of the report referred to, the report was circulated to all parties and Rushport were given the opportunity to make representations on the report.
- 7.3 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.
- 7.4 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (“the Regulations”).
- 7.5 Much Hoole is in a controlled locality and the application was based on securing improvements or better access to pharmaceutical services in that controlled locality.
- 7.6 The Committee considered that the correct course was to first consider if the application must be refused pursuant to Regulation 31. The Committee will then consider if the application must be refused pursuant to Regulation 40. If the Committee is not so required to refuse the application, it will consider the issue of reserved location pursuant to Regulation 41. The Committee will then consider the application under Regulation 18. If the Committee has determined that the Applicant is seeking the listing of pharmacy premises which are in a part of a controlled locality that is not in a reserved location, it will consider the issue of prejudice under Regulation 44 last. The reason for this staged approach and in particular for dealing with prejudice last is that if the application does not meet the requirements of Regulation 18 the Committee is required to refuse it and prejudice cannot arise. The potential for prejudice only arises if the Committee has concluded that the application meets the requirements of Regulation 18 and may be granted.

Regulation 31

- 7.7 The Committee first considered Regulation 31 of the Regulations which states:
- (1) A routine or excepted application, other than a consolidation application, must be refused where paragraph (2) applies.*
- (2) This paragraph applies where -*
- (a) a person on the pharmaceutical list (which may or may not be the applicant) is providing or has undertaken to provide pharmaceutical services (“the existing services”) 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).*

- 7.8 The Committee noted that the Applicant had stated, in their application form, that Regulation 31 was not “in play in relation to this application” as neither the proposed premises or the adjacent premises are utilised as a pharmacy. The Committee noted that NHS England had concluded that Regulation 31 is not applicable in this case. The Committee further noted that no information had been provided by any party to indicate that Regulation 31 would require the refusal of this application. Given the information available to the Committee it determined that it was not required to refuse the application under the provisions of Regulation 31.
- 7.9 The Committee noted that, if the application were granted, the successful 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 the applicant would not be able to commence provision of services) if the location then provided would (had it been known now) have led to the application being refused under Regulation 31.

Regulation 40

- 7.10 In these circumstances, the application (which is made under Regulation 18 of the Regulations) must be assessed against the provisions of Part 7 of the Regulations and, in particular Regulation 40 which reads:

(1) This paragraph applies to all routine applications—

(a) for inclusion in a pharmaceutical list as an NHS pharmacist; or

(b) from an NHS pharmacist included in such a list—

(i) to relocate to different pharmacy premises in the area of the relevant HWB, or

(ii) to open, within the area of the relevant HWB, additional pharmacy premises from which to provide pharmaceutical services,

where the applicant is seeking the listing of pharmacy premises which are in a controlled locality.

(2) If the NHSCB receives an application (A1) to which paragraph (1) applies, it must refuse A1 (without needing to make any notification of that application under Part 3 of Schedule 2), where the applicant is seeking the listing of premises at a location which is—

(a) in an area in relation to which outline consent has been granted under these Regulations, the 2012 Regulations or under the 2005 Regulations within the 5 year period—

(i) starting on the date on which the proceedings relating to the grant of outline consent reached their final outcome, and

(ii) ending on the date on which A1 is made; or

(b) within 1.6 kilometres of the location of proposed pharmacy premises (other than proposed distance selling premises), in respect of which—

(i) a routine application under these Regulations or the 2012 Regulations, or

(ii) an application to which regulation 22(1) or (3) of the 2005 Regulations (relevant procedures for applications) applied,

was refused within the 5 year period starting on the date on which the proceedings relating to the refusal reached their final outcome and ending on the date on which A1 is made,

unless the NHSCB is satisfied that since the date on which the 5 year period started, there has been a substantial and relevant change of circumstances affecting the controlled locality.

(3) For the purposes of paragraphs (1) and (2), if no particular premises are proposed for listing in A1, the applicant is to be treated as seeking the listing of pharmacy premises at the location which is the best estimate that the NHSCB is able to make of where the proposed listed pharmacy premises would be, having regard to the best estimate given by the applicant under paragraph 1(7)(a)(ii) of Schedule 2.

(4) Paragraph (2)(b) does not apply where the NHSCB is satisfied that there are reasonable grounds for believing the person making the refused application was motivated (wholly or partly) by a desire for that application to be refused.

(5) The refusal of an application pursuant to paragraph (2)(b), or regulation 40(2)(b) of the 2012 Regulations (applications for new pharmacy premises in controlled localities: refusals because of preliminary matters), is to be ignored for the purposes of the calculation of a 5 year period pursuant to paragraph (2)(b).

- 7.11 The Committee noted that there was no information to suggest that the instant application was in respect of a location where outline consent had been granted or there had been a refusal for a previous application within the last 5 years.

Regulation 41

- 7.12 Based on its conclusion above, the Committee went on to consider the application in light of the remainder of Part 7 of the Regulations and, in particular, regulation 41 which reads:

(1) This paragraph applies to any routine application—

(a) for inclusion in a pharmaceutical list as an NHS pharmacist; or

(b) from an NHS pharmacist included in such a list—

(i) to relocate to different pharmacy premises in the area of the relevant HWB, or

(ii) to open, within the area of the relevant HWB, additional pharmacy premises from which to provide pharmaceutical services,

where the applicant is seeking the listing of pharmacy premises which are in a controlled locality and the NHSCB is required to notify the application under Part 3 of Schedule 2.

(2) If paragraph (1) applies to an application (referred to in this regulation and regulation 42 as “A1”), subject to paragraph (5), the NHSCB must determine whether or not the “relevant location”, that is—

(a) the location of the premises for which the applicant is seeking the listing; or

(b) if no particular premises are proposed for listing in A1, the location which is the best estimate that the NHSCB is able to make of where the proposed pharmacy premises would be, having regard to the best estimate given by the applicant under paragraph 1(7)(a)(ii) of Schedule 2,

is, on basis of the circumstances that pertained on the day on which A1 was received by the NHSCB, in a reserved location.

(3) Subject to regulation 43(2), the area within a 1.6 kilometre radius of a relevant location is a “reserved location” if—

(a) the number of individuals residing in that area who are on a patient list (which may be an aggregate number of patients on more than one patient list) is less than 2,750; and

(b) the NHSCB is not satisfied that if pharmaceutical services were provided at the relevant location, the use of those services would be similar to, or greater than, the use that might be expected if the number of individuals residing in that area who are on a patient list were 2,750 or more.

(4) Before making a determination under paragraph (2) (referred to in this regulation and regulation 42 as “D1”), the NHSCB must—

(a) notify the persons notified under Part 3 of Schedule 2 about A1 that the NHSCB is required to make D1 (and it may make this notification at the same time as it notifies those persons about A1); and

(b) invite them, within a specified period of not less than 30 days, to make representations to the NHSCB with regard to D1 (and the period specified must end no earlier than the date by which the person notified needs to make any representations that they have with regard to A1).

(5) The NHSCB must not make a determination under paragraph (2) in respect of A1 in circumstances where an earlier application which was in respect of the relevant premises and to which paragraph (1), regulation 44 of the 2012 Regulations (prejudice test in respect of routine applications for new pharmacy premises in a part of a controlled locality that is not a reserved location) or regulation 18ZA of the 2005 Regulations (refusal: premises which are in a controlled locality but not a reserved location) applied was refused—

(a) for the reasons relating to prejudice in—

(i) regulation 44(3),

(ii) regulation 44(3) of the 2012 Regulations, or

(iii) regulation 18ZA(2) of the 2005 Regulations; and

(b) within the 5 year period starting on the date on which the proceedings relating to the refusal reached their final outcome and ending on the date on which A1 is made,

unless the NHSCB is satisfied that since the date on which the 5 year period started, there has been a substantial and relevant change of circumstances affecting the controlled locality.

(6) For the purposes of paragraph (5), the “relevant premises” are—

(a) the premises which are proposed for listing; or

(b) if no particular premises are proposed for listing in A1, premises at the location which is the best estimate that the NHSCB is able to make of where the proposed listed pharmacy premises would be, having regard to the best estimate given by the applicant under paragraph 1(7)(a)(ii) of Schedule 2.

- 7.13 The Committee considered the issue of reserved location for premises described in the application.
- 7.14 The Committee noted that the Applicant had queried the position of NHS England regarding the reserved location status of Much Hoole. The Committee further noted that NHS England, in their representations, had confirmed that the decision letter had contained a typographical error and that they had concluded that Much Hoole was not a reserved location.
- 7.15 The Committee noted that the Applicant asserted that NHS England had erred as the patient count had not been done at the date the application form was submitted. The Committee noted that NHS England had provided a patient count of 4,552 as at May 2018.
- 7.16 The Committee noted the wording of the Regulation and in particular paragraph (2) which states:
- (2) If paragraph (1) applies to an application (referred to in this regulation and regulation 42 as "A1"), subject to paragraph (5), the NHSCB must determine whether or not the "relevant location", that is—*
- (a) the location of the premises for which the applicant is seeking the listing;*
or
- (b) if no particular premises are proposed for listing in A1, the location which is the best estimate that the NHSCB is able to make of where the proposed pharmacy premises would be, having regard to the best estimate given by the applicant under paragraph 1(7)(a)(ii) of Schedule 2,*
- is, on basis of the circumstances that pertained on the day on which A1 was received by the NHSCB, in a reserved location.*
- 7.17 The Committee noted that there is no reference in the regulations to the date that any count has to take place but that NHS England must determine, on the basis of the circumstances on the day on which the application is received, that the location is in a reserved location.
- 7.18 The Committee noted that NHS England had concluded that, due to the patient list size as at May 2018 being 4,552 it was reasonable to conclude that the circumstances that pertained on the day on which the application was received would not have led it to the conclusion that the number of those on a patient list would be less than 2,750. NHS England had therefore concluded that Much Hoole is not a reserved location.
- 7.19 The Committee noted that no party had not sought to argue that the circumstances that pertained on the day on which the application was received would lead NHS England to conclude that the location of the application was in a reserved location.
- 7.20 Taking all of the information before it in to consideration, the Committee concluded that Much Hoole is not a reserved location.
- 7.21 The Committee was aware that, depending on its view on reserved location, it may then need to deal with prejudice. However, the Committee considered that prejudice could only arise if the application meets the requirements of Regulation 18 and may therefore be granted. It therefore next considered whether the application met the requirements of Regulation 18.

Regulation 18

7.22 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)."*

- 7.23 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
- 7.24 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.
- 7.25 Paragraph 4 of Schedule 1 requires the PNA to include: "a *statement of the pharmaceutical services that the HWB had identified (if it has) as services that are not provided in the area of the HWB but which the HWB is satisfied (a) **would** if they were provided....secure improvements or better access, to pharmaceutical services... (b) **would** if in specified future circumstances they were provided...secure future improvements or better access to pharmaceutical services...*" (emphasis added).
- 7.26 The Committee considered the Pan Lancashire Pharmaceutical Needs Assessment ("the PNA") prepared by the three Health and Wellbeing Boards across Lancashire (Blackburn with Darwen, Blackpool and Lancashire), 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.

- 7.27 The Committee noted that the Pan-Lancashire PNA looked at pharmaceutical services across Lancashire and was carried out by the HWB's from Blackburn with Darwen, Blackpool and Lancashire. The Committee noted that the location of the proposed site fell within the local authority area of South Ribble in Lancashire. The Committee noted that the PNA considered the local authority area of South Ribble as a whole and that there was no specific mention of Much Hoole within the PNA.
- 7.28 The Committee noted the conclusions of the PNA in the "Executive Summary" in 'Findings' which stated "*There is currently no need for further additional pharmacies, as current pharmaceutical service provision is deemed adequate across pan-Lancashire.*" The summary went on to state "*across the pan-Lancashire area there is good coverage of pharmacies and over 98% of the population has access to a pharmacy within a 20 minute drive*". The Committee noted the 'Recommendations' for the PNA concluded by stating *In conclusion, this PNA 2018 identifies that the PNA should be the basis for all future pharmacy commissioning intentions, pharmacies provide a wide range of services above core contracts and there was no identified need for additional pharmacies.*"
- 7.29 The Committee noted that the Applicant seeks to provide unforeseen benefits to the patients of Much Hoole. 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.
- 7.30 In order to be satisfied in accordance with Regulation 18(1), regard is to be had to those matters set out at 18(2). The Committee's consideration of the issues is set out below.

Regulation 18(2)(a)(i)

- 7.31 The Committee had regard to
- "(a) *whether it is satisfied that granting the application would cause significant detriment to—*
- (i) *proper planning in respect of the provision of pharmaceutical services in the area of the relevant HWB*"
- 7.32 The Committee noted that NHS England had concluded that the application would not cause significant detriment to the proper planning in respect of the provision of pharmaceutical services in the area of the relevant HWB. The Committee noted that this had not been disputed either on appeal or in subsequent representations by either the Applicant or interested parties.
- 7.33 On the basis of the information available, the Committee was not satisfied that, if the application were to be granted and the pharmacy to open, the ability of the NHS England thereafter to plan for the provision of services would be affected in a significant way.
- 7.34 The Committee was therefore not satisfied that significant detriment to the proper planning of pharmaceutical services would result from a grant of the application.

Regulation 18(2)(a)(ii)

- 7.35 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"

7.36 The Committee noted that NHS England had concluded that granting the application would not cause significant detriment to the arrangements in place for the proper provision of pharmaceutical services in the area. 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 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.

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

Regulation 18(2)(b)

7.38 The Committee had regard to

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

(i) there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB (taking into account also 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)

7.39 The Committee noted the comments from the Applicant that there is no pharmacy in Much Hoole and therefore there is no choice of pharmaceutical services for those living in Much Hoole. The Committee was mindful that consideration needs to be given as to whether there is a reasonable choice in obtaining pharmaceutical services in the area of the relevant HWB. The Committee noted the information from parties that the nearest pharmacy is located approximately 1.5 miles away from the proposed site and further noted from the map provided by NHS England the location of pharmaceutical provision in the area. The Committee noted, from representations from parties, that there are 10 pharmacies within 4 miles of the proposed site which are operated by a variety of contractors and that some of these pharmacies were in the vicinity of the existing medical provision in the area. The Committee further noted

the comments that there is a 100 hour pharmacy located just over 4 miles away in Leyland.

- 7.40 The Committee noted the distances to the nearest pharmacy as quoted by NHS England, the Applicant and parties. Given the information with regard to distance and from viewing the map provided by NHS England, the Committee was of the view that it was unlikely that those in Much Hoole would choose to access services outside of Much Hoole on foot, however the Committee was of the view that difficulties of access on foot did not of itself indicate that there was not reasonable choice in obtaining pharmaceutical services. The Committee went on to consider the ease of access to the nearest pharmacies by private and public transport.
- 7.41 With regard to access via private transport, the Committee noted the comments that the area was relatively affluent with high car ownership, 92.2% of households having access to a vehicle which is higher than the English average. The Committee further noted the comments from parties that there were no difficulties in accessing the existing pharmacies for those who did have access to their own transport and that there was parking available at the pharmacies. The Committee concluded, from the information before it that there appeared to be a relatively high level of mobility and car ownership in the area. The Committee was of the view that for those who had their own transport there was nothing provided to demonstrate that they were experiencing any difficulties in accessing the existing pharmaceutical provision
- 7.42 The Committee noted the comments from parties that there are good public transport links with buses running through Much Hoole to Longton, where there is a pharmacy. The Committee noted that buses travel along the A59 through Penwortham and then on into the centre of Preston, where there are pharmacies in the town centre. The Committee also noted that in the opposite direction there are buses that run from Much Hoole to Tarleton where there is a pharmacy located within the vicinity of the medical centre. The Committee noted that the Applicant had not sought to dispute the buses or the routes in the area but had commented that the journey time was in excess of 16 minutes which also included the time taken to walk to the bus stop as well as after alighting from the bus. The Committee had no information before it as to the times of the buses, but note that the Applicant had not sought to argue that the times and frequency of the bus service lead to a service which was unreasonable. The Committee noted the low number of the population who use the bus service, however given the information before it, the Committee was of the view that there was nothing provided which demonstrated that those who did use public transport were experiencing any difficulties in accessing the existing pharmaceutical provision.
- 7.43 The Committee noted the comments from all of the parties with regard to the facilities in the area and noted the comments from the Applicant that those in Much Hoole did not necessarily need to leave the area on a daily basis. The Committee noted that this had been disputed by parties that whilst there were facilities in the area, those referred to by the Applicant were not large or various 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 was of the view that there are services in the area of Much Hoole, such as the one stop shop, however these are limited. Given the nature of the area, together with the public transport links to Preston and Leyland as well as the information on private transport, the Committee was of the view that the population was a relatively mobile population that would leave Much Hoole on a regular basis to go to work as well as to access a variety of services both in Preston and Leyland as well as further afield including the larger supermarkets in the area as well as the town centres and the medical practices, where there were pharmacies located, which provided choice in obtaining pharmaceutical services in the area of the HWB.
- 7.44 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 the application would confer significant benefits on persons.

- 7.45 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 comments and information from the Applicant with regard to the demographics of the population that are resident in the village of Much Hoole that share a protected characteristic. The Committee accepted that there are 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 a benefit to some people, there was no information provided by the Applicant which indicated why this was a significant benefit or how those with a protected characteristic were currently experiencing any difficulties in accessing pharmaceutical services. The Committee was therefore not satisfied that, having regard to the desirability of people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that are difficult for them to access, granting the application would confer significant benefits on persons.
- 7.46 In considering Regulation 18(2)(b)(iii) the Committee had regard to the desirability of innovative approaches to the delivery of pharmaceutical services. In doing so, the Committee would consider whether there was something more over and above the usual delivery of pharmaceutical services that might be expected from all pharmacies, some 'added value' on offer at the location. The Committee noted that the Applicant had provided no information with regard to innovation in their application form and had not claimed that their application included any innovative approaches. The Committee was not satisfied that, having regard to the desirability of there being innovative approaches taken with regard to the deliverability of pharmaceutical services, granting the application would confer significant benefits on persons

Regulation 18(2)(b) generally

- 7.47 The Committee noted that the Applicant was proposing to open for a total of 64 hours a week, all of which would be core hours. The Committee noted that the core hours were arranged so that provision would be available from 8am to 7pm Monday to Friday and on a Saturday from 9am to 6pm. The Committee noted that the Applicant was not proposing any hours, either core or supplementary on a Sunday. The Committee noted the comments from parties that there is a 100 hour pharmacy which is easily accessible. The Committee was of the view that there was no information provided to support a finding that pharmaceutical services are not currently provided at such times as needed and therefore it was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits (in relation to opening hours) on persons.
- 7.48 The Committee noted the information provided by the Applicant in their response to the representations received which included the Much Hoole Village Plan. The Committee noted that this was dated February 2010 and further that this would have been available to the Applicant when they submitted their appeal if this was something which they were wishing to rely on. The Committee, however on this occasion did note the contents of the Village Plan and was mindful of the date of the plan and that the information provided in the plan was now over 8 years old.
- 7.49 The Committee also noted the letters of support from the public. The Committee noted that these all appeared to be of a generic nature and that the Applicant had provided no information as to how these letters were obtained. For this reason the

Committee considered this information and support for a pharmacy in Much Hoole but placed limited weight on the letters.

- 7.50 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.

Regulation 44 – Prejudice

- 7.51 Having considered the matter of reserved location and, having considered the application under Regulation 18, the Committee next considered the question of prejudice under Regulation 44.

- 7.52 The Committee has already indicated that if the application does not meet the requirements of Regulation 18 then the Committee is required to refuse it and prejudice cannot arise. The potential for prejudice only arises if the Committee has concluded that the application meets the requirements of Regulation 18 and may be granted. As indicated above, the Committee has determined that the application does not meet the requirements of Regulation 18 and therefore the Committee considered that consideration of prejudice was not required.

Other considerations

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

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

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

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

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

7.57.1 confirm NHS England's decision;

7.57.2 quash NHS England's decision and redetermine the application;

7.57.3 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.

- 7.58 In those circumstances, given the typographical error of NHS England in respect of the reserved location status of Much Hoole the Committee determined that the decision of NHS England must be quashed.

- 7.59 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.

- 7.60 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.

- 7.61 The Committee concluded that further notification under paragraph 19 of Schedule 2 would not be helpful in this case.
- 7.62 The Committee noted it had received additional comments from Charles Russell Speechlys on behalf of AS Facer (Longton) Ltd dated 10 January 2019 (copy attached). The Committee noted that these had not been circulated to parties. The Committee considered these additional comments but given its findings above and decision as set out below placed no weight upon them.

8 DECISION

- 8.1 The Pharmacy Appeals Committee (“Committee”), appointed by NHS Resolution, quashes the decision of NHS England, for the reasons given above, and redetermines the application.
- 8.2 The Committee determined that the application should be refused.
- 8.3 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.
- 8.4 The Committee concluded that Much Hoole is in a controlled locality and that the site of the application is not in a reserved location.
- 8.5 Having determined that the application should be refused, it was unnecessary for the Committee to make a decision upon whether granting the application would prejudice the proper provision of relevant NHS services in the area of (a) the relevant HWB; or (b) a neighbouring HWB of the relevant HWB.
- 8.6 The Committee has considered whether the granting of the application would cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area covered by the HWB, or the arrangements in place for the provision of pharmaceutical services in that area and is not satisfied that it would;
- 8.7 The Committee determined that the application should be refused on the following basis:
- 8.7.1 In considering whether the granting of the application would confer significant benefits, the Committee determined that –
- 8.7.1.1 there is already a reasonable choice with regard to obtaining pharmaceutical services;
- 8.7.1.2 there is no evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services; and
- 8.7.1.3 there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services;
- 8.7.2 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.

A copy of this decision is being sent to:

Rushport Advisory LLP on behalf of the Applicant
Charles Russell Speechlys on behalf of AS Facer (Longton) Ltd
Boots UK Ltd
LPC
NHS England – North (Lancashire & South Cumbria) Area Team