

REF: SHA/19959

APPEAL AGAINST EAST (MIDLANDS & EAST) AREA TEAM, NHS COMMISSIONING BOARD ("NHS ENGLAND") DECISION TO REFUSE AN APPLICATION BY RUSHPORT ADVISORY LLP FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT LAND OFF FYFIELD ROAD/ ST PETER'S AVENUE/ MORETON ROAD, ONGAR, ESSEX

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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.

Advise / Resolve / Learn

NHS Resolution is the operating name of NHS Litigation Authority – we were established in 1995 as a Special Health Authority and are a not-for-profit part of the NHS. Our purpose is to provide expertise to the NHS on resolving concerns fairly, share learning for improvement and preserve resources for patient care. To find out how we use personal information, please read our privacy statement at www.nhs.uk/About-us/How-we-use-your-information---FHSOU.aspx



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1 A summary of the application, decision, appeal(s) and representations and observations are attached at Annex A.

2 Preliminary Consideration and Site Visit

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

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

2.3 The Committee held an oral hearing to determine the application. This took place on 8 January 2019 at Zinc Arts Centre, Chipping Ongar. The Committee comprised of Mrs # (Chair), Mr # and Ms #.

2.4 The Applicant, Rushport Advisory LLP was represented by Mr # accompanied by Mr #. Essex LPC was represented By Ms #. Sutton Chase (Kamsons) was represented by Ms # of Charles Russell Speechleys accompanied by Mr #. Well pharmacy was represented by Ms #.

2.5 There were three observers present, Ms #, Ms # and Mr #. The observers did not take part in any of the discussions or decision-making.

2.6 Before the hearing started the Committee undertook a site visit. The Committee were accompanied by an observer Ms #.

2.7 The site visit started at the venue for the hearing, the Zinc Arts Centre. The visit commenced at 10:17 AM. As the car conveying the Committee turned right on to Ongar High Street, the Committee noted that the traffic was light. The Committee travelled towards the Four Wantz roundabout and on to Fyfield Road. It noted that there was a fish and chip shop and a Nisa shop on the approach to the Ongar War Memorial Medical Centre ('the Medical Centre').

2.8 The Committee arrived at the Medical Centre at 10:19 AM. The Chair notified the receptionist on the ground floor reception that the Committee was present.

- 2.9 The Committee noted that the Medical Centre was a new large, well laid out medical centre. It noted that there was a cardboard box to receive prescription requests on the reception desk at the entrance to the building.
- 2.10 There was a large notice board at the ground floor entrance with many notices displayed. The Committee noted that the opening hours of the centre were listed as Monday to Wednesday 8 AM to 6:30 PM, Thursday 8 AM to 2 PM and 4 PM to 6:30 PM and Friday 8 AM to 6:30 PM. A notice on behalf of Ongar Villages Voluntary Care Group offered a free service to drive people to and from doctors' and other appointments.
- 2.11 On the ground floor there was a dental suite and consulting rooms and a lift and stairs up to the first floor. On exiting the lift on the first floor, the Committee noted that there was a dispensary service hatch directly opposite the lift. There was no-one waiting to receive prescriptions at the time of the site inspection and there were several staff in the dispensary. It noted the health centre also offered an online renewal prescription service described as a 'renew your prescription on the move' service. There was also a prescription delivery service offered twice a week for repeat prescriptions and non-urgent prescriptions.
- 2.12 There were 12 consulting rooms and six treatment rooms on the first floor. There was approximately 6 people in the large reception area waiting for appointments, with very many empty seats.
- 2.13 Returning to the ground floor, the Committee asked the receptionist for information about available parking. She said that there was parking behind the Medical Centre, although this was limited but there was over spill parking at the leisure centre and the academy car park, which was free parking. The Committee noted there was a notice advising patients not to use the car park belonging to the adjacent restaurant.
- 2.14 The Committee noted that the car park behind the Medical Centre had limited parking spaces but there were free parking spaces at the time of the visit. Both the disabled parking spaces were full as were the three drop off spaces. The Committee then went across the road into the grounds of Ongar Academy ('the Academy'). It noted that the Academy itself had its own parking area beyond a barrier. The Academy had a large public car park. At the time of the visit, there were 13 free spaces and all three disabled spaces were free. There was a Zebra crossing on the Fyfield Road leading from the Academy car park to the Medical Centre which was almost directly opposite. The road did not appear busy at the time of the Committee visit but it accepted that it may well be busy at school opening and closing times.
- 2.15 The Committee went into the Ongar business area which was adjacent to the Academy but accessed via a separate entrance into the Gables housing estate. The Committee noted that there was a youth centre, leisure centre and other buildings. There was a large parking area with many free spaces.
- 2.16 The Committee then travelled back onto Fyfield Road, turning right onto Moreton Road. The surrounding area was observed to be a residential area consisting of older, former local authority properties. The roads were relatively narrow with occasional parking bays. There was limited parking on either side of the road. The designated parking bays were all full. There was sheltered housing on the right of the Moreton Road.

- 2.17 The Committee noted that there was a Boots pharmacy van delivering prescriptions at the time of the visit. It also noted that there were a number of bus stops along Moreton road for the 47 and 148 services but no timetables were displayed. It noted the sign for a primary school.
- 2.18 The Committee travelled around St Peter's Avenue and noted that there was a row of shops next to the Shelley Park play area for children. There was a hairdressers, a fish and chip shop, an indian takeaway and a tobacconist and general store. No shoppers were observed in the vicinity of the shops, some of which appeared to be closed. Parking was very limited. Some parking was designated residents only and the rest was on road parking which was already very crowded. The Committee noted that the roads around St Peter's Avenue were in a poor state of repair, although there was dropped paving.
- 2.19 The Committee noted that the row of shops was a considerable distance from the Medical Centre, estimated to be 500 m away. There was no bus service from the Saint Peter's Avenue area to access the Medical Centre. There was no crossing assistance on a road that had to be crossed to access the Medical Centre.
- 2.20 The Committee then travelled out to the new housing development at Livingstone Gardens. It noted that there was a new foot path on one side of the road which ran the whole length of the road to the new development. There was open countryside between the established Ongar housing stock and the new development. The Fyfield Business Park was in the centre of the new development. There were several major employers including Selcia. There were a number of cars parked for those using the business development. The Committee noted that there were a number of commercial developments and that the Poppets Day Nursery was already open.
- 2.21 The housing development was of a modest size. One member of the Committee went into the Bovis site office and asked about the development. He was told that eventually there would be one hundred and four dwellings of between two and five bedroom houses. The site office personnel stated that 35% of these properties will be housing association houses and the rest will be a private development. The development will not be finished until 2020 and it is currently still at stage one.
- 2.22 The Committee then travelled back to the High Street and noted that there were buses running along the High Street. The High Street was well stocked with all possible shops and services including a police station. However, two bank branches had closed and stood empty. It noted that there were two pharmacies, the Well Pharmacy which was a large double fronted pharmacy and the smaller Chipping Ongar Pharmacy. The pharmacies were in the very centre of the High Street across the road from one another and only a very short distance from the bus stops on either side of the road.
- 2.23 The Committee noted that there was a pay and display car park a short distance away, parking cost twenty pence for half an hour and eighty pence for an hour. At the time of the visit, there were a number of spaces free, including disabled spaces. There was also the Sainsburys car park which was also a pay and display car park which had a number of spaces free. It noted there was an unauthorized footpath running from the Sainsburys' car park over rough ground to the main High Street. There was a long stay car park further up the High Street at the library.

- 2.24 Due to a disability of one member of the Committee, only two members of the Committee returned to the Medical Centre to walk to the pharmacies on the High Street. The members walked along Fyfield Road on the right hand side of the pavement. At the junction with Moreton Road, they noted that there was a refuge area in the centre of the road but no crossing. At the Four Wantz roundabout there was a pedestrian crossing with a refuge in the centre of the road.
- 2.25 The members crossed 5 other minor roads on route. There were dropped kerbs at all crossings and tactile paving. The paths were generally in good order and of reasonable width, apart from a small section beyond the roundabout where foliage obtruded. There was a slight but insignificant incline towards the village centre. The walk took 18 minutes at a fairly gentle pace.
- 3 A summary of the above observations was provided to those in attendance. They were invited to comment upon them **OR** indicate if any of the observations appeared to be inaccurate. Such comments as were made appear in the submissions section below.
- 4 **Oral Hearing Submissions**
- 4.1 The Chair indicated that there was no need to address the Committee on regulation 31. The Committee would be considering the Essex Pharmaceutical Needs Assessment (the PNA) for April 2018- March 2021 which was due to be reviewed in 2020.
- Mr # (representing Rushport Advisory LLP)**
- 4.2 He said that granting this application would secure improvements for better access.
- 4.3 He outlined the history, there had been a surgery and a single-handed practice in Ongar both located in the town centre. Both surgeries had moved to the new Medical Centre in 2014 and this was the reason the two pharmacies were clustered in the town centre. Both pharmacies had applied to move out with the Medical Centre. The NHS had approved both moves without appeal but for whatever reason, the pharmacies had decided not to move and to stay where they were.
- 4.4 He said that Ongar and Chipping Ongar had been two distinct areas that had gradually merged. Ongar was a market town and the services had been part of the main area. However, that change was now reversing and the areas were demerging. He said that there was no development of note in the market town area. He said that whilst the Committee on the site visit had noted that there were all services that could be required in the town centre, there were also empty premises. The banks had recently closed. He could not remember when he had last been to a market town that did not have a bank.
- 4.5 He said that although the roads have not been busy at the time of the site inspection, the High Street was an incredibly busy road. It was not a road where shoppers were visible. He claimed that the evidence was that this was a market town struggling to maintain its character. It was a misnomer to suggest that everyone local used the services on the High Street.

- 4.6 The development in Ongar had been constrained by flood plains. He said that the development was taking place north of the town centre. Chipping Ongar to the south of the High Street had not been developed.
- 4.7 He stated that there was no need for residents to go into the town centre. There was duplication of facilities to the north. The Nisa shop was a deep shop which attracted a lot of shoppers. There was also the shopping parade on Saint Peter's Avenue. There were other places to shop other than the High Street. The roundabout separated the north and the south of Ongar.
- 4.8 He said that if you focused on those using primary care services, the Medical Centre was the only source of primary care to the north . Over 22,000 items per month were prescribed. A pharmacy would offer other services not just dispensing for example, Medical Use Review, New Medicine Review.
- 4.9 He said that at present to access these services you had to leave the area and make an additional journey. Those who lived more than a mile from the dispensing doctors could have their prescriptions dispensed in the vicinity. He said there was no difficulty accessing the High Street if you owned your own car or were healthy and fully fit. However for others it was not manageable.
- 4.10 He then considered those sharing protected characteristics. He noted that the site inspection had taken place on a nice winter's day but it was not a journey anyone would relish if they were ill, if for example, they had a cough. If you had an acute illness, you had to see a doctor and make this journey, this would not be a pleasant journey. There was only one bus that went past Fyfield Road and that went every two hours.
- 4.11 He referred to the 2016 Town Council response to the Local Plan. This described problems with the traffic and with access to the High Street. There had been a request for more sheltered housing as there was no provision for this in the Local Plan and the population was ageing.
- 4.12 The Town Council had drawn attention to flooding on the High Street. The Town Council had said that public transport was poor and the buses unreliable. If there were problems on the M11 or M25, the High Street was used as a short cut and became very congested. He said that the Councillors were people with local experience and knowledge. He said that objectors had described this as a rural area surrounded by open fields but this was a market town surrounded by a rural area.
- 4.13 He also looked at statistics for car ownership. 14% of households didn't have access to a car. This was a commuter town. He said that 26% of all households have at least one person with a limiting long-term disability and a walk to the High Street or waiting two hours for a bus would not be acceptable.
- 4.14 The area around the Medical Centre and Saint Peter's Avenue was local authority housing. It would be common sense that those with the lowest income would be unlikely to have access to a car. He noted that 16% of all residents have day-to-day activities which are limited in some manner. At present such people would have an extra journey to collect their prescriptions from the pharmacy. Having to wait two hours for a bus was unreasonable.

- 4.15 Although there had previously been a hospital on the Medical Centre site, there had been no primary care facility and no issuing of prescriptions at the hospital so this was a radically different use of the site.
- 4.16 He said that pharmaceutical services were not offered at the Medical Centre and whilst similar services may be offered by other healthcare providers, these could not be described as pharmacy services. He said that the journey from the Medical Centre to the pharmacies was not a journey anyone would relish.
- 4.17 He did not know the opening hours of the parade of shops on St Peter's Avenue.
- 4.18 He agreed that he was not offering to match the opening hours that are currently available, although there would be a late surgery on one evening. He was not proposing to mirror the Medical Centre's opening hours but he commented that usually the need for opening hours is assessed after the pharmacy opened and changes made if necessary.
- 4.19 He conceded that he was hopeful that he would be able to open the pharmacy at the Medical Centre itself, rather than in the St Peter's shopping area. He was aware that the GPs had hoped to open their own pharmacy. He therefore hoped to persuade them to have a pharmacy on site but he currently had no arrangement with the GPs.
- 4.20 He did not know how many patients who currently had their prescriptions dispensed at the Medical Centre would lose that right if a pharmacy was located in or around the existing site.
- 4.21 He had not had a discussion with patients or doctors or the Town Council as to whether or not a pharmacy was required at this site. He had not sought to get any support from patient groups or others in the town because he was aware that it was a rather emotive subject as the doctors did not want anyone to open the pharmacy other than themselves at the site. However he said the fact that the doctors wanted to open a pharmacy meant that they recognised there was a need for a pharmacy at the site.
- 4.22 He said that the Town Council represented the entire town. He did not know if the Town Council had conducted surveys or how they had engaged with the population of Ongar to prepare the response to the Local Plan but he was certain that a proper sign off process had been followed.

Mr # (representing Rushport Advisory LLP)

- 4.23 His report described the 'dumbbell' layout of Ongar. He said that the High Street was a traditional high street in a conservation area and there was a river alongside. The flood plains and the river had restricted development . There was development to the north and south of the town.
- 4.24 The fact that the Medical Centre was located outside of the town centre may have been due to constraints because of design or available space. He said this was predominantly a residential area. However there were two different locations for schools and retail outlets in Ongar. There was the Fyfield Road area which had the leisure centre and would attract the population from the south and north of Ongar.

- 4.25 There were twenty six business units in Ongar and ten in Fyfield Road. He said that based on his experience, you might get 800 people a week visiting the Nisa shop and 400 people a week visiting the chip shop. There might be 2000 people visiting the GPs and using other services at the Medical Centre. His estimate was based on his experience. There might be 10,000 people visiting the area each week. He noted that if people went into the town centre to collect their prescriptions they would be charged eighty pence to park.
- 4.26 He confirmed that his calculation of 10,000 visitors per week was not based on actual observations but based on his experience of likely usage. He did not know where those 10,000 people would travel from.
- 4.27 He conceded that the reason the health centre was located on this site was probably because the NHS already owned the land.

Ms # (representing Sutton Chase (Kamsons))

- 4.28 She said there was no evidence that the High Street was failing. There were many shops and facilities on the High Street. Although the banks had closed, there was a post office and this had banking facilities.
- 4.29 She said that there had been some confusion between Ongar and Chipping Ongar. The difference related to Parish boundaries.
- 4.30 There had been a hospital on the site of the Medical Centre for many years therefore it had always been a medical centre for the town.
- 4.31 She disputed the suggestion that there was no parking on the High Street, there was free parking along the High Street, it was just not immediately outside the pharmacies but it was very close. There was parking around the closed bank.
- 4.32 She said that there were buses that run from the Four Wantz roundabout along the High Street every five minutes on weekdays.
- 4.33 She said the Committee must consider the reliant population. This was a population that was more affluent and healthier than the rest of the UK. This was evidenced in the current PNA. The census data also suggested that the parish was in better health than the national population.
- 4.34 There have been different suggestions as to the size of the population. It was suggested that the population was 7500 and this was taken by reference to information provided by the Town Council however, the Town Council boundaries consisted of two wards and some rural areas. This was not the size of the population that was serviced by the Medical Centre and the pharmacies.
- 4.35 There were 2 pharmacies in Ongar and this meant that there was one pharmacy per a maximum of 3,750 people. The area was adequately served with pharmacies.
- 4.36 There were new houses being built in the area and it had been suggested that these would total 519. She believed that the Applicant had taken figures from the Epping Forest draft plan. This was still in draft. The figures put forward by the Applicant had to be treated with caution. There would only be

104 new houses by 2020 and this would not result in a significant increase in demand. This was a commuter town and many people accessed pharmacy and medical services outside of the area.

- 4.37 It was clear that the services in Ongar were well used and many people would travel into Ongar to use the amenities. Car ownership was very high, it was much higher than level of ownership in the national population. It should be noted that there was a Range Rover dealership in the town. There was also a high number of parked cars in the area which was additional evidence of the affluence of the area and the access to vehicles.
- 4.38 There were two existing pharmacies and these already provided good opening hours and services. There was no suggestion that they could not cope with demand. Kamsons offered all the usual commissioned pharmaceutical services. They also offered flu vaccines, smoking cessation, palliative care and C cards. They also had a collection and delivery service.
- 4.39 She had made the journey today and it had taken her 14 minutes on foot from the surgery to the pharmacy. There was good parking if people were coming by car. There were lots of options for parking and lots of empty spaces. Parking charges were not high and it was free to park on the road in the High Street.
- 4.40 She referred to the PNA, ' Nearly the entire Essex area population can reach a pharmacy within a 20 minute travel time by car, with 95% of residents responding in the survey that their recent trip to a pharmacy was a reasonable distance to travel.'¹
- 4.41 There was public transport available, it was a short five minute walk to the roundabout to get a bus service which ran every five minutes. There were pedestrian crossings available. The journey could be made with very little difficulty by a variety of means. Local amenities were clustered in the town centre so the reliant population would be drawn to it as it was used to accessing it on a daily basis.
- 4.42 She said that of the 20,000+ items prescribed monthly by the surgery, 60% were dispensed by the existing pharmacies, 30% were dispensed by the Medical Centre and the other remaining 10% were dispensed by a wide range of pharmacies. This indicated that there was already reasonable choice. The existing pharmacies were easily accessible and offered the full range of services. There was no suggestion by the Applicant that's the services would be delivered innovatively. There was no evidence that there would be significant benefits. The PNA have been published within a matter of months of the application and there was nothing to suggest that this was not an accurate reflection of the needs of the population.
- 4.43 The evidence showed that the reliant population was mobile and car ownership was particularly high. They were already used to travelling into the High Street and travelling to the two existing pharmacies which were close to the other amenities. The pharmacies were accessible and close to other services which the population wanted to access.

¹ P9 Essex Pharmaceutical Needs Assessment for April 2018- March 2021

- 4.44 She said that Kamsons were providing additional services because it was in line with the company's general policy and it was important that all the pharmacies in the group offered the full range of services. She was confident that the population already had a reasonable choice. She did not accept that people would have to wait two hours for a bus to the High Street as it was a short walk to the roundabout where there were frequent buses which stopped outside the pharmacies.
- 4.45 She said that 80% of prescriptions were delivered electronically. She said that the collection and delivery service would deliver after 6 PM or if it was an urgent prescription, they would try to deliver it on the same day. Not many people used the delivery service, most came in to collect their prescriptions. She confirmed that there was no patient dissatisfaction with the arrangements as far as she was aware.
- 4.46 She said that the fact an additional pharmacy may make it easier for some people to access a pharmacy did not meet the test to be applied.
- 4.47 She confirmed that the current opening hours were 8.30 AM to 6.30 PM Monday to Friday and 9 AM to 1 PM Saturday. There were 100 hour pharmacies 8 miles away in Epping at Loughton or Harlow .

Ms # (representing Well Pharmacy)

- 4.48 She queried the evidence given by Mr # in terms of the numbers of visitors to the area around the application site. This was not based on fact just based on his general experience and did not take into account that the numbers would include those who lived in Ongar and those who would use all of the services at the same time. Based on her observations of Nisa this was not a main centre of shopping for local people.
- 4.49 She considered the car ownership figures, this was an affluent area with a high level of car ownership, only 14 % of the population do not have access to a vehicle.
- 4.50 The application that had previously been granted was that of a minor relocation to which different tests applied and therefore could not be compared with the current application. She said that at the time, both pharmacies had been in talks with the GPs but ultimately, it was decided that the Medical Centre was not the right place for the pharmacies. They had tested the idea of relocation but it hadn't met the needs of the patients. At the time of the application, the NHS had decided that there were no barriers to access.
- 4.51 The Well Pharmacy opened 8.30 AM to 6.45 PM Monday to Friday and 9AM to 5PM on Saturday. The Well pharmacy had no experience of any concerns from patients about access and no such evidence had been put forward by the Applicant.
- 4.52 She said the current pharmacy was a large double fronted unit with scope for expansion if any capacity issues arose, which they had not. The pharmacy had an existing delivery service for existing patients and those who are housebound. They did not offer the service more widely because the population was very mobile and came into the pharmacy when accessing other services.

- 4.53 She said the current branch manager had given feedback that most people drove to collect their prescriptions, some chose to walk and the rest used the delivery service.
- 4.54 The Medical Centre prescriptions were dispensed at around 140 different pharmacies which was a very large number for such a rural area but reflected that many of the population were commuters.
- 4.55 She said that they had offered supervised consumption but there had been no uptake. They had issued three Emergency Hormonal Contraception prescriptions in the last year, this was a private service. They were willing to offer Chlamydia testing, C-Card and free condom services. They had approached the NHS to see if these services could be commissioned but there was no demand. There was very little uptake on the smoking cessation service. They were currently preparing to make an application to offer NHS Health Checks.
- 4.56 She accepted that to obtain some locally commissioned services you would currently have to drive or get a bus out of the area but said it was only 20 minutes to Harlow for these services or to access 100 hour pharmacies. There was already reasonable choice. Some people chose to access services online. She said that the services that were not available locally were locally commissioned services not pharmaceutical services. She agreed that if there were two pharmacies close together, as the Well and Kamson's were, it was unnecessary for them both to offer all services, they would sign-post patients to the nearest pharmacy which in Ongar was across the road. This worked well in Ongar.

Ms (representing Essex LPC)

- 4.57 She made the point that 14% of people not having access to a car meant that there was a very high level of access to cars in this area.

5 Consideration

- 5.1 The Committee noted that the application form refers to 'Ongar'. There was no dispute that town is otherwise known as 'Chipping Ongar'.
- 5.2 The Committee noted a previous application by Ongar Health Ltd for inclusion on the pharmaceutical list offering unforeseen benefits at Ongar War Memorial Medical Centre, Fyfield Road, Ongar, Essex, CM5 0AL. That application was refused on 3 November 2015 (appeal case reference SHA/18078). The Committee whilst mindful of its previous decision, also had to determine the current application on its own merits.
- 5.3 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations").
- 5.4 The Committee first considered Regulation 31 of the regulations which states:
(1) A routine or excepted application must be refused where paragraph (2) applies
(2) This paragraph applies where -

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

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

(ii) adjacent premises; and

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

5.5 The Committee noted that in part 5 of its application form (reference to Regulation 31) the applicant had stated: *"No other pharmacy in same or adjacent premises so not applicable."* The Committee further noted that in its decision letter NHS England had stated: *"There is no reason to refuse the application on Regulation 31 as the proposed pharmacy will not be adjacent to or in the same building as another provider."* The Committee having regard to the information provided to it including that the above had not been disputed on appeal, determined that it was not required to refuse the application under the provisions of Regulation 31.

5.6 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.

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

"(1) If—

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

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

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

(2) Those matters are—

- (a) *whether it is satisfied that granting the application would cause significant detriment to—*
 - (i) *proper planning in respect of the provision of pharmaceutical services in the area of the relevant HWB, or*
 - (ii) *the arrangements the NHSCB has in place for the provision of pharmaceutical services in that area;*
- (b) *whether, notwithstanding that the improvements or better access were not included in the relevant pharmaceutical needs assessment, it is satisfied that, having regard in particular to the desirability of—*
 - (i) *there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB (taking into account also the NHSCB's duties under sections 13I and 13P of the 2006 Act (duty as to patient choice and duty as respects variation in provision of health services)),*
 - (ii) *people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access (taking into account also the NHSCB's duties under section 13G of the 2006 Act (duty as to reducing inequalities)), or*
 - (iii) *there being innovative approaches taken with regard to the delivery of pharmaceutical services (taking into account also the NHSCB's duties under section 13K of the 2006 Act (duty to promote innovation)),*

granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant pharmaceutical needs assessment was published;
- (c) *whether it is satisfied that it would be desirable to consider, at the same time as the applicant's application, applications from other persons offering to secure the improvements or better access that the applicant is offering to secure;*
- (d) *whether it is satisfied that another application offering to secure the improvements or better access has been submitted to it, and it would be desirable to consider, at the same time as the applicant's application, that other application;*
- (e) *whether it is satisfied that an appeal relating to another application offering to secure the improvements or better access is pending, and it would be desirable to await the outcome of that appeal before considering the applicant's application;*

- (f) *whether the application needs to be deferred or refused by virtue of any provision of Part 5 to 7.*
 - (g) *whether it is satisfied that the application presupposes that a gap in pharmaceutical services provision has been or is to be created—*
 - (i) *by the removal of chemist premises from a pharmaceutical list as a consequence of the grant of a consolidation application, and*
 - (ii) *since the last revision of the relevant HWB's pharmaceutical needs assessment other than by way of a supplementary statement.*
- (3) *The NHSCB need only consider whether it is satisfied in accordance with paragraphs (2)(c) to (e) if it has reached at least a preliminary view (although this may change) that it is satisfied in accordance with paragraph (2)(b)."*
- 5.8 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 5.8.1 confirm NHS England's decision;
 - 5.8.2 quash NHS England's decision and redetermine the application;
 - 5.8.3 quash NHS England's decision and, if it considers that there should be a further notification to the parties to make representations, remit the matter to NHS England.
- 5.9 The Committee considered that Regulation 18(1)(a) was satisfied in that it was required to determine whether it was satisfied that granting the application, or granting it in respect of some only of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB.
- 5.10 The Committee went on to consider whether Regulation 18(1)(b) was satisfied, i.e. whether the improvements or better access that would be secured if the application was granted were or was included in the PNA in accordance with paragraph 4 of Schedule 1 of the Regulations.
- 5.11 Paragraph 4 of Schedule 1 requires the PNA to include: "*a statement of the pharmaceutical services that the HWB had identified (if it has) as services that are not provided in the area of the HWB but which the HWB is satisfied (a) **would** if they were provided....secure improvements or better access, to pharmaceutical services... (b) **would** if in specified future circumstances they were provided...secure future improvements or better access to pharmaceutical services...*" (emphasis added).
- 5.12 The Committee considered the Essex Pharmaceutical Needs Assessment ("the PNA"), 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 April 2018-March 2021 and that it had not been provided with any supplementary statements.

5.13 The Committee noted that the PNA's 'Executive Summary' includes:

"Local Context

5.13.1 *Essex currently has a population of 1.46 million residents residing in twelve district and borough Council areas with a slightly higher proportion of 65-69 year olds compared with the East of England region. By 2020, the total population in Essex is expected to rise to 1.50 million.*

5.13.2 *Although Essex is relatively healthier and affluent in comparison with the rest of England there is a growing disparity in health between the most affluent and most deprived areas of Essex. The pockets of severe deprivation in Essex are noticeably present in Harlow, Tendring and Basildon. This trend of performing well as a whole across Essex with pockets of poor performance is evident throughout. Life style issues such as obesity and smoking, employment and poverty issues are becoming more prevalent in the most deprived areas. This is reflected in the trends seen in life expectancy, with a growing disparity between life expectancy in those from the most affluent areas compared with those from the most deprived areas of Essex.*

5.13.3 *To meet the needs of this growing population and to help reduce inequalities in Essex it is vital that appropriate pharmaceutical services are in place and that they are accessible and improve choice to support the most deprived and vulnerable individuals in Essex.*

Findings and Assessment

5.13.4 *As of September 2017, there are 264 pharmacies, 5 dispensing doctors, 5 dispensing appliance contractors and 5 distance selling pharmacies registered in the Essex HWB area.*

5.13.5 *The conclusion of the PNA is that the population of Essex's HWB area currently has sufficient numbers of pharmaceutical contractors to meet the needs of the population. This is clearly demonstrated through the following points:*

5.13.5.1 *All of the large towns in Essex have more than one pharmacy in the town centre in addition to those in the surrounding suburbs.*

5.13.5.2 *Since the last PNA in 2015, there have been five new pharmacies and/or new 100-hour pharmacies to accommodate the increase in population.*

5.13.5.3 *Nearly the entire Essex area population can reach a pharmacy within a 20 minute travel time by car, with 95% of residents responding in the survey that their recent trip to a pharmacy was a reasonable distance to travel.*

5.13.5.4 *75% to 91% of all prescriptions generated in the area are dispensed within the same area.*

Conclusion

5.13.6 *Continuing to assess and develop pharmaceutical services to meet the needs of the population is an essential component to improve the health of individuals in Essex. We have concluded that at present we have adequate choice and access to pharmaceutical services in order to meet the needs of our population. With a growing and ageing population it will be important not only to provide ample pharmaceutical services in the community but also to support individuals to manage their own medicines and associated conditions."*

5.14 The Committee noted the PNA indicates that Ongar is included in the Epping Forest Locality. Other than reference to the existing pharmaceutical services provided, there is no specific reference in the PNA to Ongar (or Chipping Ongar).

5.15 The Committee noted that the Applicant seeks to provide unforeseen benefits to the patients of Ongar. 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.

5.16 In order to be satisfied in accordance with Regulation 18(1), regard is to be had to those matters set out at 18(2). The Committee's consideration of the issues is set out below.

Regulation 18(2)(a)(i)

5.17 The Committee had regard to

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

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

5.18 The Committee noted the applicant's comment that this issue is rarely disputed in Regulation 18 cases, and it does not consider there to be any objection based on Regulation 18(2)(a)(i) in the case of Ongar. NHS England had made no specific reference in its decision letter or on appeal, to any consideration of Regulation 18(2)(a)(i). The Committee having regard to the information provided to it including that the above had not been disputed on appeal, 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.

5.19 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)

5.20 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"

5.21 The Committee noted the applicant's comment that it does not consider any pharmacy in the Ongar area will experience significant detriment under Regulation 18(2)(a)(ii). NHS England had made no specific reference in its decision letter or on appeal, to any consideration of Regulation 18(2)(a)(ii). The Committee having regard to the information provided to it including that the above had not been disputed on appeal, 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.

5.22 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)

5.23 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)

- 5.24 The Committee noted that there were currently two existing pharmacies, directly opposite each other on the High Street, offering different pharmaceutical services. On the information provided, they appeared to work collaboratively, referring patients to the other pharmacy if they were unable to offer a service. The Applicant had indicated that they would provide all the essential, advanced and enhanced services but there had been no evidence to show that patients did not currently have reasonable access to all the usual essential, advanced and enhanced services .
- 5.25 The Committee had observed that the roads and pavements on the routes between the Medical Centre and the pharmacies were maintained in reasonable condition. The pharmacies could be accessed on foot on a relatively flat route, on well-maintained pavements in under 20 minutes. It did not agree with the Applicant's suggestion that the '*pharmacies in the town centre are not within reasonable walking distance*' given the findings of the site visit.
- 5.26 The Committee noted that there were frequent bus services available to those who did not have access to a car, upon a short walk to the Four Wantz roundabout.
- 5.27 The Committee also noted that the level of car ownership was higher than the national average and there was plentiful parking both in the vicinity of the Medical Centre and the two pharmacies. The parking was either free or modestly priced. The Committee did not accept that parking was '*expensive*' in that it was either free or procured for 20 pence for a half hour or 80 pence for an hour.
- 5.28 The Committee had observed the new housing development to the north of Ongar but this was of modest size and there was no evidence to suggest that it was of such a scale or location that a third pharmacy was required. At the present time, there were no shops at the new development and no services other than a children's nursery. Although a wide pavement had been purpose built for the development, it seemed unlikely to the Committee that the residents would walk into Ongar. It seemed likely to the Committee that residents would either drive or use public transport to travel into Ongar. Residents would either have to travel into Ongar for shops and services or travel further afield.
- 5.29 There were specific reasons why residents would travel to the Fyfield Road area to access the Leisure Centre, the Youth Club, the college or the Medical Centre but there was no evidence to suggest that this was leading to any significant shift in commercial premises or leading to any noticeable commercial development as suggested by the Applicant. Having observed the High Street with its wide variety of shops and services and the Nisa and shops on St Peter's Avenue, the Committee did not find the applicant's suggestion that the High Street was in decline with a shift in focus for the residents to the area around the Nisa credible. Although the Applicant had referred to the lack of evidence of shoppers in the High Street, this was far

more pronounced in the St Peter's Avenue/Fyfield Road area, which had limited parking available around the St Peter's Avenue shopping precinct due to residents parking. Not all of the limited shops on St Peter's Avenue were open at the time of the site visit. It was also apparent that this area lacked the financial investment in the commercial properties evident on the High Street.

- 5.30 Much of the population of Ongar appeared to live to the south of Ongar and the High Street would be far more convenient for this group. However Ongar was relatively compact and it seemed credible that residents in the St Peter's Avenue/Fyfield Road area would also travel the short distance to the High Street to access the wider range of services and make use of the parking spaces available.
- 5.31 The Committee noted that the Applicants had not sought the views of patient groups or the residents of Ongar and none had come forward to express a view with regard to the need for a pharmacy to be located in the vicinity of the Medical Centre. The Applicant had referred extensively to the response to the Local Plan by the Town Council but this had provided limited evidence to support the application.
- 5.32 The Committee had readily accepted that there would be times when the traffic would be far busier than observed at the time of the site visit as indicated in the Town Council's response. There was nothing to suggest that the traffic was such to prevent reasonable access to the pharmacies currently in place. The Committee noted that the Town Council response made reference to there being '*concern about the primary schools and health centre's nearing capacity*' but the Committee had received no evidence to suggest when that capacity would be reached or that it was likely in the near future. Indeed the Committee had observed that the large and well-laid out Medical Centre appeared under used at the time of the site inspection with ample space in the waiting areas.
- 5.33 The Committee did not see evidence of pavements '*in a very poor condition*' referred to by the Town Council in the vicinity of the pharmacies nor on the walk taken by two of the Committee members from the Medical Centre to the pharmacies. However, it had seen evidence of pavements and roads in a very poor condition in the area around the St Peter's Avenue shopping precinct.
- 5.34 The comments regarding the destination of the buses made by the Town Council seemed to refer to limited destinations with regard to those travelling to work and social activities outside of Ongar but it was silent as to any problem identified which would impact on those accessing a pharmacy. The response did state that the local bus service was '*unreliable*' but again the Committee did not have any evidence that this impacted on those who were accessing pharmacy services at the current locations.
- 5.35 Therefore the Committee was not satisfied that, having regard to there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits by way of physical access on persons.
- 5.36 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

- 5.37 In considering Regulation 18(2)(b)(ii) the Committee reminded itself that it was required to address itself to people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that are difficult for them to access. The Committee was also aware of its duties under the Equality Act 2010 which include considering the elimination of discrimination and advancement of equality between patients who share protected characteristics and those without such characteristics.
- 5.38 The Applicant had relied on the Town Council's statement that there was frequent flooding on the High Street between Tesco Express and Central Electrics due to land drains becoming blocked after heavy rainfall making it *'difficult for the less able bodied and those using mobility scooters or walking aids to walk to the shops'*. However this was of limited support for its contention that as a result there should be a pharmacy in the vicinity of the Medical Centre.
- 5.39 The Applicant had also relied on its description of the available bus services as being one every two hours with no bus services running along Moreton Road. The Committee did not accept this description of the bus services available noting that there were bus services along Moreton Road and the description was inaccurate. It considered that the availability of bus services from the Four Wantz roundabout provided a reasonable method of transport for those who did not have access to a car and whose mobility was limited.
- 5.40 No other evidence had been presented to the Committee with regard to those sharing a protected characteristic. The Committee was not satisfied in the absence of more compelling evidence 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.
- 5.41 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.
- 5.42 The Applicant had not sought to suggest that the services would be delivered in an innovative manner. 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

- 5.43 The Committee noted that the Applicant was offering shorter opening hours than the existing pharmacies. 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.

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

Other considerations

5.45 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).

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

5.47 The Committee had regard to Regulation 18(2)(g) and found that the circumstances set out in that regulation did not apply to the current application.

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

5.49 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.

5.50 In those circumstances given that further evidence had been made available to it and that NHS England had not provided the reasoning for its decision Committee determined that the decision of NHS England must be quashed.

5.51 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.

5.52 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.

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

6 DECISION

6.1 The Committee quashes the decision of NHS England and redetermines the application.

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

- 6.3 The Committee determined that the application should be refused on the following basis:
- 6.3.1 In considering whether the granting of the application would confer significant benefits, the Committee determined that –
- 6.3.1.1 there is already a reasonable choice with regard to obtaining pharmaceutical services;
- 6.3.1.2 there is no evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services; and
- 6.3.1.3 there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services;
- 6.3.2 Having taken these matters into account, the Committee is not satisfied that granting the application would confer significant benefits as outlined above that would secure improvements or better access to pharmaceutical services.

#

Committee Chair

A copy of this decision is being sent to:

Mr #, Rushport Advisory LLP – Applicant/Appellant
Mr #, Primary Care Support England (on behalf of NHS England)
Mr # (Kamsons Pharmacy)
Mrs # (Well)
Dr # (Ongar Health Centre)
Ms # (Essex LPC)
Ms # (West Essex Clinical Commissioning Group)

Annex A

REF: SHA/19959

**APPEAL AGAINST EAST (MIDLANDS & EAST)
AREA TEAM, NHS COMMISSIONING BOARD
("NHS ENGLAND") DECISION TO REFUSE AN
APPLICATION BY RUSHPORT ADVISORY LLP
FOR INCLUSION IN THE PHARMACEUTICAL LIST**

**OFFERING UNFORESEEN BENEFITS UNDER
REGULATION 18 AT LAND OFF FYFIELD ROAD/
ST PETER'S AVENUE/ MORETON ROAD, ONGAR,
ESSEX**

1 The Application

By application dated 12 January 2018, Rushport Advisory LLP (“the Applicant”) applied to NHS Commissioning Board (“NHS England”) for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at ‘Land off Fyfield Road/St Peters Avenue/Moreton Road, Ongar, Essex.’ In support of the application it was stated:

- 1.1 In respect of Part 5 of the application form (reference to Regulation 31) the applicant stated: *“No other pharmacy in same or adjacent premises so not applicable.”*
- 1.2 Ongar Health Centre relocated to the newly built Ongar War Memorial Medical Centre in June 2014, and Ongar Surgery has now also relocated to the same premises. The Ongar War Memorial Health Centre now serves just under 12,000 patients and issues between 20,000 and 24,000 items per month. It is also a dispensing practice and dispenses circa 7,000 items per month.
- 1.3 The area to the north of Ongar which now contains all GP provision is separated geographically, if not physically from the rest of Ongar by the main A414 road running east/west.
- 1.4 North Ongar has developed its own range of services and facilities as development has happened to the north of the town.
- 1.5 The two pharmacies located to the south in the town are clustered together and patients have no option other than to travel circa 1 mile to the town centre or further if they wish to avoid the town centre. Whilst these pharmacies are well placed for those who have a requirement to use the town centre at the same time as needing pharmaceutical services, they are poorly placed for those who live to the north of the town or who visit the medical centre without wishing to visit the town centre afterwards.
- 1.6 A new pharmacy located in the north of the town would secure better access to pharmaceutical services and provide reasonable choice to the reliant population.
- 1.7 In addition to providing dispensing services, the pharmacy would provide all other essential, advanced and enhanced services that are commissioned by NHS England or the local authority. Providing access to these services will be of significant benefit to patients, particularly those who may have mobility issues, such as the elderly, infirm disabled, or parents with young children (i.e. those who share a protected characteristic).
- 1.8 Whilst a previous application has been refused at appeal, the applicant is asking that NHS England looks again at this area as opening a pharmacy

within the area defined in the best estimate would secure better access to pharmaceutical services.

- 1.9 The Local Plan seeks to make the most efficient use of resources including land, and to reduce dependence on private transport. It is Government policy to develop land within urban areas, particularly town centres and previously developed or 'brownfield' sites in preference to 'greenfield' sites.
- 1.10 The proposal would make use of an existing site that will reduce dependence upon the use of the car, and ensuring shorter journeys where this is necessary.
- 1.11 Ongar is planned to have an additional 600 homes as part of the council's requirement for new housing in coming years. This will increase the population by approximately 1,500 people.
- 1.12 Given the above the applicant asks that NHS England approves the above application.
- 1.13 The applicant intends to provide the following services:
 - 1.13.1 Essential services
 - 1.13.2 Clinical governance.
 - 1.13.3 Appliances as listed in Part IX of the Drug Tariff.
 - 1.13.4 Advanced and Enhanced services as indicated on the application form.
 - 1.13.5 The applicant also stated: *"The applicant intends to provide all commissioned services and will ensure that all pharmacists employed are accredited to provide these services. The premises will also be accredited. In addition we intend to provide a number of services that are not currently being commissioned. And will seek to work with local GP practices to develop joint working on the provision of non commissioned services."*
- 1.14 The applicant's proposed core opening hours are:
 - 1.14.1 Mon to Fri 8.30am to 6.00pm
 - 1.14.2 Sat 9.00am to 1.00pm
 - 1.14.3 Sun -
- 1.15 The applicant's proposed total opening hours are:
 - 1.15.1 As above.

2 The Decision

NHS England considered and decided to refuse the application. The decision letter dated 7 August 2018 states:

- 2.1 NHS England have considered the application and is writing to confirm that it has been refused.
- 2.2 NHS England considered this application under Regulation 18 and 19 whether granting of some or part of this application would secure improvements or better access to pharmaceutical services or pharmaceutical services of a specified type in the area of the Essex Health and Wellbeing Board.
- 2.3 NHS England noted that;
- 2.3.1 The Essex Pharmaceutical Needs Assessment (PNA) stated '*The provision of dispensing services across the locality is deemed to be adequate...and no gaps have been identified...*'
- 2.3.2 There was an application in 2015 that was rejected by both the local regulations committee and at appeal.
- 2.3.3 The applicant is offering hours that are not an improvement on what is currently available.
- 2.3.4 The applicant makes a case for the provision of a pharmacy near to the newly built Ongar War Memorial Medical Health Centre (OWMMHC) to which the Ongar Health Centre and the Ongar Surgery have relocated.
- 2.3.5 The area to the north of Ongar now contains all GP provision and is separated geographically, if not physically, from the rest of Ongar by the main A414 road running East/West. The two pharmacies located to the south in the town centre are clustered together one mile away from OWMMHC.
- 2.3.6 Ongar is planned to have an additional 600 homes as part of the council's requirement for new housing in the coming years. This will increase the population by approximately 1,500 people. The population growth is still very much at the planning stage, any impact is still some years away.
- 2.3.7 Submissions had been received from Well Pharmacy, Kamsons Pharmacy and OWMMHC.

Regulation 31

- 2.4 There is no reason to refuse the application on Regulation 31 as the proposed pharmacy will not be adjacent to or in the same building as another provider.

Regulation 40 to 44

- 2.5 NHS England considered if the application is within or near a controlled location.
- 2.6 There is a controlled locality within 1.6km of the proposed premises. If the application is granted Regulations 40 – 44 will be applicable.

Regulation 50

- 2.7 If the application is granted the amount of gradualisation may need to be considered at a later date.

Regulation 65

- 2.8 If the application is granted the applicant will be required to inform NHS England which of the hours are the 40 core hours and the additional 11.5 hours will be directed. This will ensure that the hours are maintained.

Regulation 66

- 2.9 If the application is conditionally granted Paragraph 31, Schedule 2 will apply where the address of the premises is unknown.

Decision

- 2.10 NHS England considered that there was already reasonable choice, and the application was not innovative with regard to delivery and would not secure improvements or better access to pharmaceutical services in the area.
- 2.11 NHS England refused the application as it did not meet the test of regulation 18.
- 2.12 NHS England granted appeal rights to the applicant.

3 The Appeal

In a letter dated 8 August 2018 addressed to NHS Resolution, the applicant appealed against NHS England's decision. The grounds of appeal are:

Covering Letter

- 3.1 The applicant is writing to appeal the decision of NHS England to refuse the application. The refusal was communicated to the applicant by letter dated 7 August 2018.
- 3.2 As NHS Resolution will note, NHS England has failed to provide any or any adequate reasons for its decision. The applicant therefore provides an appeal document which sets out why the application should have been approved by NHS England.

Pharmacy Report

Proposed Pharmacy, Land off Fyfield Road/St Peter's Avenue/Moreton Road Ongar, Essex.

For Rushport Advisory

Introduction

- 3.3 This Report considers the issues raised by the application by Rushport Advisory LLP for an application for inclusion in the pharmaceutical list for premises at land off Fyfield Road /St Peter's Avenue / Moreton Road, Ongar, Essex, CM5 0AL.

- 3.4 The application is made under Regulation 18, unforeseen benefits.
- 3.5 The Report is submitted on behalf of Rushport Advisory Ltd, the applicant.

Structure of Report

- 3.6 This report sets out background to the proposal and proposal site in Section 2. Section 3 sets out the legal tests and Section 4 considers the relevance of the Pharmaceutical Needs Assessment. Section 5 sets out the response to the legal tests. Section 6 responds to the previous Committee decision and Section 7 sets out the conclusion.

Previous Decision

- 3.7 Before considering the proposal it can be noted that a previous application submitted by Ongar Health Ltd dated 3 December 2014 (ref SHA/18078) was refused by the NHS Litigation Authority on 3 November 2015.
- 3.8 A review of that decision shows that:
 - 3.8.1 The Committee did not consider it necessary to hold an oral hearing. The Committee did not have the benefit of a site visit as a consequence;
 - 3.8.2 The Committee was not satisfied that significant detriment to the proper planning of pharmaceutical services would result from the grant of an application.
 - 3.8.3 The Committee was not satisfied that significant detriment to the arrangements currently in place for the provision of pharmaceutical services would result from a grant of the application.
 - 3.8.4 There was a dispute about the distance to the nearest pharmacies - a dispute that the Committee did not appear to resolve.
 - 3.8.5 The Committee noted that no information had been provided to demonstrate the walk from Ongar War Memorial Medical Centre to the two nearest pharmacies on the High Street was challenging or difficult for those willing and able to do so. The absence of an oral hearing prevented the Committee hearing adequate evidence on the accessibility of existing pharmacies.
 - 3.8.6 In terms of car ownership numbers the Committee noted that the applicant had not responded to varying figures presented. Similarly, there was disagreement over the availability of car parking at the existing pharmacies, and was critical of the applicant for not having provided evidence to support the assertion that car parking was difficult. This again illustrates a matter of clarification that an oral hearing would have appropriately addressed.
- 3.9 The Committee had no information provided to it to demonstrate that patients of the existing surgeries are currently experiencing difficulties in accessing pharmaceutical services.

- 3.10 The Committee was of the view that no information had been provided to support a finding that pharmaceutical services are not currently provided at such times as needed. Again, this is an illustration that the Committee determination was based on a lack of evidence from the applicant rather than affirmative evidence to the contrary.
- 3.11 The review of the decision shows that the evidence submitted in the applicant was deficient, and that in the absence of evidence the Committee had no choice but to refuse. The decision not to hold a hearing is somewhat contradictory to the arguments and consideration set out in the decision, where it is apparent that the Committee's decision not to hold an oral hearing resulted in the Committee not having all the information before them.
- 3.12 It clearly implies, that in this case, at the very least the Committee should hold an oral hearing to first of all ensure it has all evidential matters before it and second to allow all matters to be set out and a full interrogation of the evidence to be undertaken.

The Proposal

Ongar

- 3.13 Ongar (sometimes referred to as Chipping Ongar) is a market town that has a retail and service offer that attempts to meet the needs of its local community and the settlements that surround the town. It is located in Epping Forest District in Essex. It is located about 24 miles northeast of central London. It is about 6 miles east of the M11, about 10 miles southeast of Harlow and 11 miles southwest of Chelmsford. It is 7 miles northwest of Brentford.
- 3.14 The main road accessing the town is the A414 Epping Road/Chelmsford Road that bisects the northern third of the town from the southern two thirds.
- 3.15 Ongar is a main town in Epping District. It has a Town Council which covers the area of Shelley Ward and Chipping Ongar, Greensted and Marden Ash Ward. The Area covered by the town Council covers the town of Ongar and the rural area beyond. It is illustrated below and has a population of between 6,500 and 7,000 people.
- 3.16 Map provided showing the boundary of Ongar Town Council.
- 3.17 The 2017 Submission Version of the Epping Forest District Local Plan identified Ongar as a main town in the district. The Plan's vision for Ongar is that it "*will continue to thrive as a settlement and its existing local and independent character will be retained and strengthened. Development in Ongar will contribute towards the settlement's self sufficiency aspirations, particularly through the provision of additional local services and infrastructure. This will include measures that support alternative sustainable modes of travel to reduce congestion and reliance on car-based transport modes*". It also states that "*As a District Centre, Ongar will provide services and amenities for a wide catchment of residents and visitors. Development will seek to diversify the employment offer of the Town by encouraging appropriate town centre uses. Ongar will capitalise upon its heritage and leisure assets, such as Epping Ongar Heritage Railway and connection to the Essex way, with protection and enhancement of the settlements historic character*".

Settlement Pattern

- 3.18 Ongar has a “dumbbell” layout that runs north to south along the B184 and is centred on the Fyfield Road - High Street - Coopers Hill - A113 Stanford Rivers Road corridor. This linear pattern extends for about 3km (1.9 miles).
- 3.19 The area north of the Epping and Chelmsford Road is a main development area. The housing extends principally west of the Fyfield Road. South of the Epping Road/Chelmsford Road there is some depth of housing development on the east side of High Street, but south of the railway line the development pattern of the town is relatively narrow with no significant depth of back land development. Development is constrained by the Cripsey Brook River to the west (which is also an area of potential flooding) and the designation of the area as a Conservation Area.
- 3.20 Flood Map of Ongar provided.
- 3.21 Only at the end of High Street does the town development pattern expand again to housing streets off Greensted Road, Coopers Hill and Brentwood Road.
- 3.22 It is notable that the High Street of Ongar is a Conservation Area. The boundary of this is illustrated on the map provided. The linear nature of the Conservation Area is the key reason for the “dumbbell” pattern of development of the town.
- 3.23 Map provided entitled ‘Chipping Ongar Conservation Area’

Future Growth of the Town

- 3.24 The Epping Forest District Local Plan allocates Ongar with an additional 590 new homes across 8 sites in the town to be developed over the coming years. 424 (about 72%) of these new homes will be in the area north of the town, while 166 (28%) will be in the area south of the town.
- 3.25 The area north will be developed in 4 locations at Coles Close, north of Chelmsford Road and as part of the West Ongar Concept Framework Plan Area south of Epping Road.
- 3.26 In addition, Essex Technology and Innovation Centre is allocated in the north of the town.

Services in Ongar

- 3.27 While the many of shops in Ongar are in the town centre, many community facilities and shops are spread around the town and are integrated into the main residential areas.
- 3.28 The northern area of the town around the application site has Ongar War Memorial Medical Centre, The Ongar Academy which opened in 2017 in its new buildings, Ongar Leisure Centre, a Nisa Shop, Smiths Restaurant and two takeaway food outlets. A local shopping centre is located at St Peters Avenue where a hairdressers, supermarket, café and offices are located. Also in the area is Ongar Primary School (over 100 children).

- 3.29 The town centre, designated by the Council as a 'district centre', has a variety of shops including a Tesco Express store and a Sainsbury's. The town centre is the location of the two pharmacies servicing the town and the wider area.
- 3.30 To the south of the town centre the area around Coopers Hill and The Borough has Jewsons builders merchants, Chipping Ongar Primary School, St James Church, the Stag Pub, the Two Brewers Pub, a café and car wash.

The Proposed Site

- 3.31 The proposal site is located in north Ongar, about 1.12 km (0.7miles) north of the town centre (centred on the Well Pharmacy). It is located in the heart of an established residential community and will form a further enhancement of the community services in the northern area of the town.
- 3.32 The area around the proposal site is predominantly residential, and will continue to grow, but in addition it is supported by educational, employment and recreation and shopping services. Significantly the area north of the town is easily access from the main through road of Epping Road/Chelmsford Road, and means people travelling into the town to visit the GP can access a pharmacy without having to travel into the narrow streets of the town centre to access a pharmacy.

The Proposal

- 3.33 Details of the proposal are set out in the application forms. The proposal site has not yet been secured. Once secured they will be registered with the GPhC and will comply with all relevant legal and ethical requirements for the operation of a retail pharmacy business.
- 3.34 The proposal will open core hours from 8:30am to 6:00pm Monday to Friday and from 9am to 1pm on a Saturday.

The Medical Centre

- 3.35 Planning permission (Ref: PL/EPF/0015/10) was granted on 26 March 2010 for the "*demolition of the existing hospital (C2) and the erection of a new 3 storey primary care centre with ancillary car parking to provide modern health service facilities to local community (D2). Accommodation to include space for 2 local GP practices, consultant and treatment rooms, PCT community accommodation, dental suite, relevant support/service spaces, staff facilities including office space*".
- 3.36 The building sits on the site of approximately 0.21 ha and provides about 1800 sq m floorspace of medical use space. It occupies the former War Memorial Hospital site. The development started on site in October 2010 and was completed in November 2011.
- 3.37 Ongar Health Centre relocated to the Ongar Memorial Medical Centre in June 2014. It has 11,941 patients registered and prescribes between 20,000 and 24,000 items per month. The Medical Centre has provision to dispense to patients that live outside Ongar, and to dispensing patients. It dispenses about 7,000 items each month.

The Legal Tests

- 3.38 The legal tests of this application are set out in National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (“the Regulations”).
- 3.39 This is an application for “unforeseen benefits” and must be considered under the provisions of Regulation 18 of the Regulations.
- 3.40 In summary the application must demonstrate that it improves access to pharmaceutical services, and that those improvements in services are not foreseen in the PNA. It is also necessary to show that the proposal will not cause ‘significant detriment’ to the proper planning of the provision of pharmaceutical services in the HWB. This issue is rarely disputed in Regulation 18 cases, and we do not consider there to be any objection based on Regulation 18 2 a(i) in the case of Ongar.
- 3.41 Similarly, the applicant does not consider any pharmacy in the Ongar area will experience significant detriment under Regulation 18 2a (ii).
- 3.42 Moreover, it can be noted that this application does not rely on Regulation 18 2b (iii) “innovation”.
- 3.43 The key tests in this case are whether the PNA foresees the proposal and if not whether the proposal improves access to services by providing reasonable choice or improves access to pharmaceutical services for people that share protected characteristic and currently have difficulty in accessing pharmaceutical services.

The Pharmaceutical Needs Assessment

- 3.44 The Pharmaceutical Needs Assessment for Essex is a 2018 PNA that has previously been found to not foresee the proposal. That remains the position.
- 3.45 The PNA notes that Epping Forest has a population of 132,578 and there is 24 pharmacies in the area. This equates to 18.1 pharmacies per 100,000, which is significantly below the England average of about 21.3 pharmacies per 100,000.
- 3.46 The PNA makes no comments on the proposal, and information contained within it supports the granting of a new contract.

Response to Regulation 18 Legal Tests – Regulation 18 Compliance

Regulation 18 (1) secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB.

- 3.47 The proposal will secure improvements and better access to pharmaceutical services in the HWB area, because it will provide a large part of Ongar with a new pharmacy contract and the associated health services that that offers. This is an area of significant population, with many elderly and children living in the area.

- 3.48 It is also important to note that the proposal will secure better access for future residents in the area that will come to live in north Ongar when the new housing development north of the town is provided.
- 3.49 Importantly, the proposal provides significantly better access to pharmaceuticals services in Ongar for patients that now travel to the War Memorial Medical Centre. The fact that the Ongar Surgery has relocated to the Medical Centre means that all patients attending a GP in Ongar from the town or indeed further afield travel away from the town centre and are able to avoid the narrow streets, and busy roads and car parking areas of the town centre.
- 3.50 The application site is close to the main Epping Road/Chelmsford Road which is only 360m from the Medical Centre. This illustrates the significant accessibility of the proposal site and the Medical Centre.

Regulation 18 (2)(a)(i) significant detriment to proper planning in respect of the provision of pharmaceutical services in the area of the relevant HWB

- 3.51 As set out above the proposal will not cause significant detriment to the proper planning of pharmaceutical services. The Committee previously accepted this.
- 3.52 *Regulation 18(2) a(ii) significant detriment to the arrangements the NHSCB has in place for the provision of pharmaceutical services in that area;*
- 3.53 As set out above there will not be significant detriment to arrangements the NHSCB has in place for the provision of pharmaceutical services in the area.
- 3.54 The Committee have previously found this, and while the Lloyds pharmacy may have recently changed hands, it remains unlikely that the new pharmacy operator will contend detriment. The HWB must be given compelling evidence from objectors that outweigh the significant benefits of this application to prove significant detriment on a scale that would result in refusal of this application. It is the applicant's view that such detriment does not exist and will not occur.

Regulation 18 (20)(b) (i-iii) reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB; people who share a protected characteristic; or innovative approaches are being taken.

- 3.55 Whether the proposal improves access to services by providing reasonable choice or improves access to pharmaceutical services for people that share protected characteristic and currently have difficulty in accessing pharmaceutical services are the two key tests.

Reasonable Choice

- 3.56 There are current two standalone pharmacies in Ongar, both are located together in the town centre – almost directly opposite each other. This is not a reasonable choice for the reliant population as discussed below having regard to walking distances, distribution of pharmacies and their accessibility from the proposal site, the scale of patients registered in the medical centre in the town, the scale of the population of the area and the future developments in the area.

Objectively Determined Walking Distances

- 3.57 To discuss accessibility on foot objectively, it is important to understand what an acceptable walking distance is. Two documents are of guidance. The “Manual for Streets” (produced by the Communities and Local Government and Department for Transport) advises (para 4.41) that *‘Walkable neighbourhoods are typically characterised by having a range of facilities within 10 minutes (up to 800m) walking distance of residential areas which residents may access comfortably on foot’*. The Institution of Highways & Transportation provides “Guidelines on Providing for Journeys on Foot”. It states (para 3.30) that *‘Approximately 80% of walk journeys and walk stages in urban areas are less than one mile. The average length of a walk journey is one kilometre (0.6miles). This differs little by age or sex and has remained constant since 1975/76’*. This suggests that an acceptable walking distances in an area such as the Warminster (sic) would be 800m, though 400m would be desirable and the preferred maximum would be 1200m. With both guidelines identifying 800m to be acceptable it is a reasonable position to adopt 800m/10 minute walk as a guide for this application.
- 3.58 Applying these objectively based thresholds shows that the two pharmacies in Ongar are beyond a reasonable walking distance. The distances are as follows:

Walking Distances Analysis

Pharmacy	Dist (metres)	Dist (metres)	Exceedance above Guidelines (800m)%	Grad	Time in mins	Exceedance Above Guidelines (10 mins)%
Lloyds	1360	0.85	170%	Crosses busy main through road	17	170%
Well	1400	0.875	175%	Crosses busy main through road	17	170%

- 3.59 They are also all beyond a reasonable time to walk to.

Topography

- 3.60 The distance is added to by the changes in topography between the proposal site and the town centre. This is shown in the map provided where it can be seen that the Medical Centre sits in a hill that people have to walk down and up on return from the town centre.

Footpaths

- 3.61 Walking to the town centre via Main Street is not particularly attractive. Main Street moves from a suburban area in north Ongar to a busy strategic highway road network, followed by a countryside road where footpaths vary in width before entering the busy commercial town centre. There is little or no cover for pedestrians from bad weather.

- 3.62 Contrary to the findings of the Committee in the earlier application, the evidence is clear that the distance, topography, land uses and condition of the paths clearly makes the walk unreasonable for the majority of residents in the northern area of the town, and certainly unreasonable for patients that are ill, elderly or young children attending the Medical Centre.

Distribution of Pharmacies

- 3.63 There is no pharmacy in the north Ongar area. Both pharmacies are all located inside the town centre and within 40m of each other.
- 3.64 Looking at the location of the pharmacies in the town they can be considered together.
- 3.65 Both are located fronting on to Main Street. Neither shop has on street parking in front of the shop. They are both prevented in providing this because of the narrowness of the road, and the need to keep roads free from parking to reduce congestion in the town centre.
- 3.66 *Well, 198-202 High Street* is located in the main road running through the town centre. High Street is a busy main road. Directly outside the shop parking is prohibited by single yellow lines that prevent parking during the day. This shop opens between 8:30am to 6:45 pm Monday to Friday and 9:00am to 5:00pm on Saturday. It is closed on Sunday.
- 3.67 *Chipping Ongar Pharmacy 205 High Street* is located in the main road running through the town centre. High Street is a busy main road. Directly outside the shop parking is prohibited by single yellow lines that prevent parking during the day. This shop opens between 8:30am to 6:30 pm Monday to Friday and 9:00am to 1:00pm on Saturday. It is closed on Sunday.
- 3.68 Parking in the town centre can be difficult to find with certainty, especially during busy periods. Some on street parking is provided further south of the pharmacies. Ongar has three Council run pay and display car parks at The Pleasance car park east of High Street with 73 spaces which costs 90p per hour and Basons Lane west of the High Street which has 52 spaces and costs 80p per hour to park. Sainsbury's have a 56 space car park and also charge 80p per hour. The fact that Sainsbury's customers are charged for parking is indicative of the demands placed on car parking in the town centre. Main food shops would prefer to provide free car parking, unless the parking is being misused by shoppers that are not in fact customers of the store.
- 3.69 The relationship between the two town centre pharmacies and the Medical Centre is unclear at present as a result in the change in ownership of the Lloyds unit. Historically the two pharmacies dispensed 60% of items prescribed in the Medical Centre. That leaves 40% being dispensed by the surgery itself or by pharmacies outside Ongar. If the Medical Centre prescribes 24,000 items a month that means there is 14,400 items a month being dispensed by the town centre pharmacies (7,200 each) and just under 10,000 items being dispensed elsewhere.
- 3.70 This indicates that there is comfortably sufficient demands in Ongar for 3 pharmacies.

Medical Centre

- 3.71 The Medical Centre has a patient list of over 12,000 according to NHS Choices website. It has 16 GPs (partner doctors, salaried doctors and GP registrars) and opens 8:00am to 6:30pm Monday to Friday.
- 3.72 It offers a full range of health services including family planning and health promotion, maternity, examinations, child immunisations, flu vaccinations, travel advise and smoking cessation. The proposal will be a significant enhancement in services on offer.

Parking and Opening Hours

- 3.73 The proposal will open similar hours to the existing pharmacies. This means that patients that are in the north of the town would not need to travel into the town centre to have their prescription dispensed. The pharmacy will be an accessible location, and conveniently located to cater for patients attending the Medical Centre. The two town centre pharmacies do not have any dedicated car parking, and patients would have to use off street Council run paid parking areas, where parking availability may be difficult. Again the absence of free car parking is illustrative of the high level of parking demand in the town centre.

Patterns and Movement of the Population

- 3.74 The proposal is ideally located to complement the patterns and daily movements of the local population. The Epping Road/Chelmsford Road roundabout is the hub of the road network with four roads branching off it to the north, south, east and west. The proposal site in the north of the town is highly accessible from the main road network and means patients do not have to travel the 0.7 miles out of their way (1.4 miles return), to access a pharmacy.
- 3.75 Of course, for those patients living south of the town centre, the existing pharmacies will still be a suitable location for them to access their pharmaceutical services, but with the opening of a third pharmacy, the demand, car parking and congestion issues in the town centre would be lessened by the proposal, benefiting the accessibility of these pharmacies for these patients.
- 3.76 Parents taking the children to and from school will pass close to the site on their way to the Academy and the Ongar Primary schools. This proposal will be a significant benefit to those parents.

Resident Population

- 3.77 The population of Ongar is in the region of 7,500. The wider area that looks to Ongar for its needs is significantly larger given the patient list of the Medical Centre is almost 12,000. The likely catchment of Ongar is probably over 14,000.

Future Growth

- 3.78 As mentioned above major growth is proposed for Ongar, with 590 new homes planned. This will increase the population by about 1500, giving the town a population of about 8000 to 8500. Much of this growth will be in the north Ongar area, where the population will grow by 1,080 people.

- 3.79 It should also be noted that the area north of Ongar has a number of attractions that draw people into the area at the Adult Community Learning Centre, Essex Technology and Innovation Centre, the Ongar Leisure Centre and the Youth Centre, all located opposite the Medical Centre.

Other Attractions to the Area

- 3.80 The proposals will provide easy and improved access to pharmaceutical services for the people visiting and using these services without the 1.4mile round trip to the town centre.

Difficulties Accessing Pharmacies in Ongar

- 3.81 In 2016 the Town Council issued their response (provided) to the proposed Local Plan. The following comments are taken directly from that response and are the views of the Town Council.

Difficulties Accessing Pharmacies in Ongar

- 3.82 *“Ongar is an historic market town with a population of approximately 7,500. It has numerous listed buildings, a conservation area, focusing on part of the High Street and including the castle which is a Scheduled Monument. The shop units are small and the historic nature of the centre limits the potential for change in the High Street. A small but dwindling weekly market is held in one of Ongar’s car park areas. The town has two major roads running through it the A128 and A414, which is the busy main route linking Hertfordshire and to the ports of Felixstowe and Harwich. The old Central Line remaining track is now used by the Epping Ongar Railway for as a leisure/tourism line and is not a commuter line. Greensted Church, a Grade 1 listed building, and the Essex Way are nearby and are also tourist attractions. Occasional flooding from the River Roding and Cripsey Brook affects the eastern and western sides of the town. Ongar is surrounded by Green Belt with very little brownfield sites remaining. There has already been a considerable amount of new housing during the last ten years and there is already concern about the primary schools and health facilities nearing capacity. Public transport is limited and there is no train station. The narrow High Street causes a bottle neck and there is often traffic congestion even outside peak hours.”*
- 3.83 *With an ever ageing population, more provision for the elderly, such as sheltered housing, care homes and retirement flats, will be necessary and there seems to be no provision for this in the Draft Local Plan.*
- 3.84 *Road improvements to the A414, A10, M25 and M11 are all mentioned in the Local Plan. The A128 (Ongar High Street) has no mention yet is in a very poor condition as are the pavements.*
- 3.85 *The land drains in the High Street frequently get blocked following heavy rainfall, especially between Tesco Express and Central Electrics, leading to flooding of the pavement and road, making it difficult to walk to the shops, especially for the elderly and less able bodied using mobility scooters or walking aids.*
- 3.86 *Current situation and the effects of proposed new development*

- 3.87 *Ongar currently has around 2,500 homes; the proposed development of over 700 new homes (including the 105 homes on the Fyfield Business Park, already approved by EFDC) and the subsequent influx of new residents will put increased pressure on the existing infrastructure and the community. Existing problems relating to heavy traffic, inadequate parking spaces, healthcare, school places, public transport, and local services will only get worse and there is no provision in the plan to accommodate an increase in population. Ongar is a commuter town and cannot support employment for the working population therefore many residents need to travel to work. The local bus service is unreliable and has limited destinations and therefore residents need a vehicle to get to their place of work.*
- 3.88 *Ongar is a rural community and does not enjoy the same level of public transport, or the variety of shops and facilities, enjoyed in the more urban parts of the Epping Forest District Council's area and therefore cannot fully support the needs of the residents. Ongar cannot rely on the present public transport infrastructure, with its limited service and destinations, to accommodate the needs of the residents. We live in a mobile age with a diverse culture and choice cannot be restricted to public transport for residents to visit larger shopping centres, to socialise with family and friends, to attend community sports facilities and visit other areas for leisure or work. Additionally, due to the rural nature of Ongar and the surrounding narrow country roads which provide access to the town, agricultural vehicles commonly cause delay and congestion.*

Traffic Congestion

- 3.89 *Ongar already has a problem with the high volume of non-local traffic passing through it to access either the M11 or M25 and other major routes. Essex County Council recognises that the current flow of traffic on the M11 is not fit for purpose and has, for some time, been lobbying Central Government to improve the traffic management. An increase in local population will intensify this issue. When the M11 or M25 are congested or blocked the A128, A414 and A113 are used by motorists, including heavy goods vehicles, to avoid the motorways, causing severe congestion in Ongar High Street and surrounding routes. Major traffic tailbacks in the High Street, caused by heavy goods vehicles loading and unloading and illegally parked cars, occur at any time, particularly at peak periods. Traffic queues extend along the High Street to the Four Wantz roundabout and onto the A414 from either Chelmsford or Harlow and in the other direction along the A128 and A113 from Brentwood and Romford. The two access points to Ongar – Four Wantz roundabout and Coopers Hill - are already congested during rush hour periods. The provision of a bypass would help to ease this problem. Traffic management plans for all the proposed development should be made available for consultation prior to the Local Plan being adopted.*
- 3.90 *The northern area of Ongar has no choice but to access pharmacies in the town centre. Both pharmacies are together in the town centre. Thus, anyone that finds the town centre difficult to access because they have no transport or because their daily patterns of movement take them elsewhere have no choice in pharmacy provision. The proposal spreads pharmaceutical services to the north of the town to the area which is an established residential area and is also the area of ongoing housing growth, which will be substantial in coming years.*

Bus Services

- 3.91 The main bus service that runs passed the Medical Centre is First Essex Route 46 which runs roughly every two hours. There are only four buses that pass the Medical Centre during pharmacy opening hours.
- 3.92 Bus services are not reasonable to provide access to the town centre pharmacies for those people without a car.
- 3.93 Objectors have claimed that there is a bus service from the medical centre to the pharmacies in the town centre every 10 to 15 minutes. This is simply not true. The only bus that travels to the town centre from the medical centre is the number 46 approximately every two hours (timetable provided).

Protected Characteristics

- 3.94 The proposal will cater for people of protected characteristics, namely those people of a particular age, disability and as well as expectant mothers and mothers with very young children.
- 3.95 The main users of primary health care services, including the GP surgery and pharmacy services, are within the groups above who share a protected characteristic. These also tend to be the groups that have the least access to their own private transport and who find using bus services more difficult, i.e. due to age, infirmity, disability or having to also push a pram/carry young children. The proposal will be a significant benefit to the community of the north Ongar area and to those protected characteristic groups that have no health care support in this part of the town at present.

Response to Previous Committee Decision

- 3.96 The Committee refused the earlier application without a full understanding of the circumstances of the case. Ongar has developed and has a very distinct layout, with the northern area of the town largely detached from the southern area by a main road. The northern area has a large number of houses, which will increase in coming years and is also the location of schools, health, employment, leisure and recreational uses.
- 3.97 It is clear that the pharmacies in the town centre are not within reasonable walking distance due to distances, topography, changes in land use, absence of shelter and varying quality of footpaths.
- 3.98 The north of the town is now the focus for all medical care, and it unreasonable to expect patients (almost 12,000 of which) to travel into the often congested town centre to have their prescriptions dispensed, a return journey of 1.4milles, where parking is expensive and limited.
- 3.99 Bus services to the north of the town do not run every 10 minutes. That would be a regularity found in a busy city, and certainly not in a town in a rural area such at this. The buses are in fact limited to 4 per day (two hours apart).
- 3.100 From the above it is clear that access on foot is not reasonable, access by bus is severely limited and access by care is difficult due to parking and

congestion issues. The proposal will therefore secure better access to pharmaceutical services for the reliant population.

- 3.101 The opening times of the town pharmacies are similar to the Medical Centre. They are not open to allow for the last patients of the day leaving the Medical Centre, and walking into the town centre (by which time they will be closed). The close proximity and opening hours of the proposal are such the patients will be able to immediately access their pharmacy services following their visit to the Medical Centre, without concern about traffic and car parking difficulties and the imminent closure of the pharmacy in the town centre.
- 3.102 Ongar is an attractive historic tourist town and during summer period experiences high level of visitors that can increase demands on the roads and car parking infrastructure. This adds to the attraction of the town for its rural hinterland and demonstrates the town's accessibility is challenging for many visitors. Allowing a pharmacy north of the town will remove unnecessary trips into the town centre for patients and leave more space for people that need to access the town centre.

Conclusion

- 3.103 Given the forgoing it is respectfully concluded that the proposal will have unforeseen benefits for the population of Ongar, especially those living in the northern half of the town. The application should be allowed.
- 3.104 Photograph provided of New Ongar Medical Centre.
- 3.105 Photograph provided of the area of north Ongar without any pharmacy provision.
- 3.106 Photograph provided of new housing development "The Gables" opposite new medical centre.
- 3.107 Photograph showing location of two town centre pharmacies almost opposite each other.
- 3.108 Photograph showing route walking from High Street to Medical Centre uphill.

Ongar Town Council Response to Local Plan

Opening Statement

- 3.109 Ongar is an historic market town with a population of approximately 7,500. It has numerous listed buildings, a conservation area, focusing on part of the High Street and including the castle which is a Scheduled Monument. The shop units are small and the historic nature of the centre limits the potential for change in the High Street. A small but dwindling weekly market is held in one of Ongar's car park areas. The town has two major roads running through it the A128 and A414, which is the busy main route linking Hertfordshire and to the ports of Felixstowe and Harwich. The old Central Line remaining track is now used by the Epping Ongar Railway for as a leisure/tourism line and is not a commuter line. Greensted Church, a Grade 1 listed building, and the Essex Way are nearby and are also tourist attractions. Occasional flooding from the River Roding and Cripsey Brook affects the eastern and western sides of the town. Ongar is surrounded by Green Belt with very little

brownfield sites remaining. There has already been a considerable amount of new housing during the last ten years and there is already concern about the primary schools and health facilities nearing capacity

- 3.110 Public transport is limited and there is no train station. The narrow High Street causes a bottle neck and there is often traffic congestion even outside peak hours.

Introduction

- 3.111 Ongar Town Council (OTC) appreciates that new housing is needed to provide homes for the increasing population but OTC would only support new housing provided it is in a controlled manner that the community and infrastructure can support. Current deficiencies in infrastructure (see below) already affecting the residents of Ongar will only be exacerbated by the substantial growth in population proposed by Epping Forest District Council's draft local plan.
- 3.112 OTC demands that any new housing should be small scale developments. This would be more likely to retain Ongar's existing character, which has grown gradually over a long period of time. The Local Plan essentially proposes 3 large estates in Green Belt.
- 3.113 OTC believes the proposed increase in housing is disproportionate to that in other areas. Ongar would be taking a 28% increase against just over 20% projected for EFDC as a whole (ref. Local Plan Chapter 2 points 2.3 and 2.7). A 28% increase in a place without adequate local employment will necessitate more commuting. The poor public transport links to places of work from Ongar will make it a less desirable place to live for new residents, so the demand is likely be lower than in other areas. Ongar can never be a self-sufficient market town and the proposals are essentially for 3 large estates, which would not retain the character of the historic town
- 3.114 A large estate of houses such as is proposed will increase the risk of flooding or a larger flood plain area. The high density of new housing is a concern and will permanently change the balance and mix of socioeconomic groups in Ongar.
- 3.115 Ongar Town Council is concerned that EFDC's Draft Local Plan lacks Green Belt policies. If Green Belt land is to be released for building, there needs to be clear and transparent policies relating to such things as limited infilling, previously developed land, conversions and similar issues as found in the Brentwood draft Local Plan in addition to the NPPF. The Council believes there should be further definition as to how the Green Belt policy will be applied to new developments to ensure that further 'inappropriate' building within the Green Belt does not happen either now or in the future.

Current deficiencies in infrastructure

- 3.116 Primary schools in Ongar are already full or nearly full. Currently some children living in Marden Ash have to travel to Doddinghurst Primary School as Chipping Ongar School is currently over-subscribed. Some children have to be transported to Moreton School for the same reason.

- 3.117 The Ongar Academy will not be large enough to provide secondary education for the expected number of pupils, and currently takes pupils from a very wide area, not just Ongar.
- 3.118 Since the closure of the High Street doctor's surgery in August, the Ongar Health Centre in Fyfield Road is already oversubscribed. Patients find it very difficult to get an appointment or to find adequate parking near the surgery. There is no room on the site for the building to be extended to provide further treatment and consultancy rooms.
- 3.119 With the prospect of St Margaret's Hospital closing and Princess Alexandra Hospital being relocated on the outskirts of Harlow town centre, residents of Ongar without transport will have problems travelling to hospital for appointments and treatment.
- 3.120 With an ever ageing population, more provision for the elderly, such as sheltered housing, care homes and retirement flats, will be necessary and there seems to be no provision for this in the Draft Local Plan.
- 3.121 The restrictions and cuts to emergency services, especially the police, is an increasing concern.
- 3.122 Road improvements to the A414, A10, M25 and M11 are all mentioned in the Local Plan. The A128 (Ongar High Street) has no mention yet is in a very poor condition as are the pavements.
- 3.123 OTC's cemetery will be at full capacity in approx. 20 – 30 years. After that a new site will need to be found but the Council will still have to maintain the existing cemetery with a much reduced income. There is currently no suitable site within the town. St Peter's church in Shelley has an open burial ground but it is not known for how much longer. There is no other burial ground in the parish of Ongar which means residents will have to travel to other parishes and pay the "out of parish" increased fees. OTC fees for outside of parish are triple, other parishes can charge up to x10 fees. Other councils who have implemented a new burial ground have said it can take approx. 20 – 25 years from planning to opening. The process can also be costly as potential sites will need to meet certain criteria on environment, soil suitability, height of water table etc. as well as is planning, design and building costs.

Utilities

- 3.124 There are no guarantees that the various utility companies will upgrade and provide new supplies. Water pressure is often very low in Ongar and there are regular leaks in the current mains water supply. The land drains in the High Street frequently get blocked following heavy rainfall, especially between Tesco Express and Central Electrics, leading to flooding of the pavement and road, making it difficult to walk to the shops, especially for the elderly and less able bodied using mobility scooters or walking aids. It also causes flooding and damp in the basements of nearby properties (Bansons Court.) They require repair or renewal before any further development takes place. Broadband speeds and mobile phone reception are inadequate.

Current situation and the effects of proposed new development

3.125 Ongar currently has around 2,500 homes; the proposed development of over 700 new homes (*including the 105 homes on the Fyfield Business Park, already approved by EFDC*) and the subsequent influx of new residents will put increased pressure on the existing infrastructure and the community. Existing problems relating to heavy traffic, inadequate parking spaces, healthcare, school places, public transport, and local services will only get worse and there is no provision in the plan to accommodate an increase in population.

Commuting – public transport and car use

3.126 Ongar is a commuter town and cannot support employment for the working population therefore many residents need to travel to work. The local bus service is unreliable and has limited destinations and therefore residents need a vehicle to get to their place of work. Many people commute to Brentwood, Harlow, Chelmsford and other local centres as well as by tube to London and various points on the tube network. Epping Forest District Council's vision for Ongar to support non-car based modes of travel is not realistic.

3.127 For those commuting by tube, the only reliable way to get to Epping station is by car. It has been stated that there will be no loss of parking spaces at local underground stations if car parks are developed. With the increase in the population of the district, commuter parking would be expected to increase putting additional pressure on parking at all stations. Neither is there a solution suggested to solve the problem of commuter parking while these sites are under construction.

3.128 Additionally, trains from Epping and beyond are already full to capacity. TFL cannot increase capacity on the Central Line due to the following: -

3.128.1 The dimensions of the tunnels prevents an increase in carriage size;

3.128.2 Platform length in Central London prevents the number of carriages being increased;

3.128.3 The signalling system prevents the provision of more frequent trains;

3.128.4 Passengers travel to Epping from further afield to use the tube rather than the more expensive mainline trains;

3.128.5 Development in other areas will increase the demand on the underground service.

3.129 Ongar is a rural community and does not enjoy the same level of public transport, or the variety of shops and facilities, enjoyed in the more urban parts of the Epping Forest District Council's area and therefore cannot fully support the needs of the residents. Ongar cannot rely on the present public transport infrastructure, with its limited service and destinations, to accommodate the needs of the residents. People now live in a mobile age with a diverse culture and choice cannot be restricted to public transport for residents to visit larger shopping centres, to socialise with family and friends, to attend community sports facilities and visit other areas for leisure or work. Additionally, due to the rural nature of Ongar and the surrounding narrow

country roads which provide access to the town, agricultural vehicles commonly cause delay and congestion. An increase in population will exacerbate this problem. New residents and their family and friends may not necessarily be from the local area - this will lead to a further increase in road usage. Again Epping Forest District Council's vision for Ongar to support non-car based modes of travel is not realistic.

Air pollution

- 3.130 Current air pollution in Ongar is in excess of EU regulation. Pollution will rise with the inevitable increase in the number of vehicles using local roads. Noise, vibration and air pollution is intensified in Ongar's historic high street due its narrow and restrictive nature. This has an impact on residents living in the High Street, pedestrians and shoppers and also has the potential to further damage Ongar's historic buildings in this conservation area.

Car parking provision

- 3.131 No provision has been made to cater for additional car parking in Ongar High Street to deal with the significant increase in vehicles from new residential developments, and to cater for the "vibrant centre" proposed by Epping Forest District Council. Currently residential side roads are already used as free parking and residents already suffer because of this. Additional car parking is essential and car parking charges should be reviewed, reduced or free parking periods should be provided to ease the parking situation and attract more trade to the local retailers, who are the life blood of the High Street, and to entice more businesses to locate here. Adequate car parking must be provided in any new development.

Traffic Congestion

- 3.132 Ongar already has a problem with the high volume of non-local traffic passing through it to access either the M11 or M25 and other major routes. Essex County Council recognises that the current flow of traffic on the M11 is not fit for purpose and has, for some time, been lobbying Central Government to improve the traffic management. An increase in local population will intensify this issue. When the M11 or M25 are congested or blocked the A128, A414 and A113 are used by motorists, including heavy goods vehicles, to avoid the motorways, causing severe congestion in Ongar High Street and surrounding routes. Major traffic tailbacks in the High Street, caused by heavy goods vehicles loading and unloading and illegally parked cars, occur at any time, particularly at peak periods. Traffic queues extend along the High Street to the Four Wantz roundabout and onto the A414 from either Chelmsford or Harlow and in the other direction along the A128 and A113 from Brentwood and Romford. The two access points to Ongar – Four Wantz roundabout and Coopers Hill - are already congested during rush hour periods. The provision of a bypass would help to ease this problem. Traffic management plans for all the proposed development should be made available for consultation prior to the Local Plan being adopted.

Infrastructure

- 3.133 The Local Plan appears to have a vague approach with regard to infrastructure with little recognition of problems that residents currently face or the detrimental affect any additional development will present. Infrastructure

improvements appear to be totally reliant on other agencies over which Epping Forest District Council has no direct control or authority. It seems unlikely that S106 agreements on individual sites will provide enough funding to accommodate the necessary improvements to the infrastructure for both existing and new residents. Ongar Town Council opposes further urban intensification unless adequate infrastructure is identified, discussed and agreed, alongside timescales for its implementation, to help minimise any negative impact on our residents

Comments re specific sites

SR 0102 – Land rear of 57a and 57b Fyfield Road – Approx. 16 homes - Suggested alternative use

- 3.134 Ongar Town Council strongly recommends that part of this site should be considered for additional parking for the Ongar Health Centre, which currently has very limited parking and has also recently increased its patient number due to the closure of the practice in the High Street. The limited parking will be greatly exacerbated with the significant increase in the population of Ongar. The limited additional parking currently available for patients will disappear if **SR0848 – Leisure Centre, The Gables** is developed. When the Health Centre opened, this area was made available for additional patient parking due to the limited parking provided on the Health Centre site. This site would also be an ideal location for a small number of retirement bungalows.

SR0848 – Leisure Centre, The Gables – Approx. 24 homes - Strong objection, site should be retained for community use refurbished/enlarged when necessary. Relocating is unacceptable

- 3.135 The local primary schools walk to the Leisure Centre for swimming and other activities. They would need a coach or similar to travel elsewhere and this would be a) expensive, b) take more time, c) use roads which are already busy. Reduced road usage is a key point of the plan.
- 3.136 Ongar Academy is being built without a swimming pool and it will have a sports hall which will have no gym equipment. The pupils will have to rely on the facilities at the Leisure Centre to fulfil their needs for a full and proper education.
- 3.137 Many residents walk to the Leisure centre for their activities, and would not be able to get to another location without a car or decent public transport. Reduced road usage is a key point of the plan.
- 3.138 Road user and pedestrian safety is a prime concern. Traffic on Fyfield Road has already increased traffic due to the Ongar Health Centre and the Ongar Academy. This will escalate once the Fyfield Business Park housing development and the proposed use of the remaining land to increase businesses and job opportunities is completed. Development of this site will lead to further traffic in this area.
- 3.139 Points taken from the Draft Plan below include accessibility if facilities need to be relocated- this is a key issue for Ongar residents and schools.

Draft Policy D 4 - Community, Leisure and Cultural Facilities

- 3.140 The Council will safeguard against the unnecessary loss of valued facilities and services. It will also plan positively for the improvement of existing facilities and the provision of new shared spaces and community facilities. The Council will work with partners in the public, private and voluntary sector to achieve this.
- 3.141 Access to a range of indoor sports and leisure facilities is also vital for healthy communities. The Council will ensure existing facilities are maintained and improved where possible. The Council supports dual use of school sports facilities by the community.
- 3.142 In some instances, it may be necessary to consolidate or relocate facilities to better serve the growing population and provide more accessible facilities. Where this is appropriate there should be no net loss of community, leisure or cultural facilities.

Draft Policy D 4 Community, Leisure and Cultural Facilities

- 3.143 D. Proposals that would result in the loss of valued facilities currently or last used for the provision of community, leisure and cultural activities will only be permitted if it is demonstrated that:
- 3.143.1 The facility is no longer needed for any of the functions that it can perform; or
- 3.143.2 It is demonstrated that it is no longer practical, desirable or viable to retain them; and
- 3.143.3 Any proposed replacement or improved facilities will be equivalent or better in terms of quality, quantity and accessibility and there will be no overall reduction in the level of facilities in the area in which the existing development is located; or
- 3.143.4 The proposal will clearly provide sufficient community benefit to outweigh the loss of the existing facility, meeting evidence of a local need.

SR0184 – Land adjacent High Ongar Road – Approx. 30 homes - Concern

SR0185 – Land adjacent High Ongar Road – Approx. 124 homes - Concern

SR0186 – Land adjacent Chelmsford Road (A414) – Approx. 12 homes - Concern

- 3.144 These three sites merge into one and will form an estate of 166 homes greatly increasing the number of vehicles accessing the A414 very close to the Four Wantz roundabout. Road user and pedestrian safety is the concern as is the overall size of the development. The Draft Local Plan gives no information as to how the additional traffic will be managed, or any suggested alteration to the road system. Traffic management plans should be made available.

SR0067i – Land to the west of Chipping Ongar – Approx. 73 homes - No objection

SR0120 – Bowes Field – Approx. 135 homes - should be reduced in scale to run parallel to the A414 away from existing houses

3.145 These two sites merge into one and will form an estate of 208 homes, greatly increasing the number of vehicles accessing the A414 very close to the Four Wantz roundabout on the opposite side to **SR0184 – Land adjacent High Ongar Road, SR0185 – Land adjacent High Ongar Road and SR0186 – Land adjacent Chelmsford Road (A414)**. Road user and pedestrian safety is the concern. The Draft Local Plan gives no information as to how the additional traffic will be managed, or any suggested alteration to the road system. Traffic management plans should be made available.

3.146 **SR0067i** is virtually a brownfield site to which Ongar Town Council has no objection.

3.147 **SR0120 – Bowes Field** is Green Belt and supports an abundance of flora and fauna. The residents of Great Lawn and Marks Avenue currently enjoy panoramic views of the local countryside which will be lost to them and will have a detrimental effect on the environment they presently enjoy and have done since the homes were built. OTC believes that this development should be removed from the Local Plan or **should be reduced in scale to run parallel to the A414 away from existing houses**.

3.148 This would reduce the impact on existing residents and the flora and fauna and provide a buffer zone between existing homes and development on

SR0067i – Land to the west of Chipping Ongar.

SR0390 – Greensted Road – Approx 175 homes - Concern

3.149 Due to the very narrow, winding and dangerous nature of Greensted Road at this point, road user and pedestrian safety is the concern particularly access onto the A128 at the Two Brewers junction. The Draft Local Plan gives no information as to how the additional traffic will be managed, or any suggested alteration to the road system. Traffic management plans should be made available.

3.150 The residents backing onto this site currently enjoy panoramic views of the local countryside which supports an abundance of flora and fauna. This will be lost to them and will have a detrimental effect on the environment they presently enjoy and have done since the homes were built. OTC believes that this development should be removed from the Local Plan or that the development size is scaled down to reduce any impact on the residents and the flora and fauna.

SR0842 – Car park at the Stag public house – Approx. 10 homes - Strong objection, will make PH unviable

3.151 The Stag Public House is an old and attractive building located in Marden Ash, out of the town centre. The building of 10 modern homes next to it will spoil the street scene and the historic character of the Public House. Many local residents from the Marden Ash area can walk to the pub but customers from further afield drive, especially families who frequently visit the pub during the summer months to enjoy the large garden with outside seating and children's play area. If this site is developed pub customers will have nowhere

to park. The Brentwood Road has a dangerous blind bend at this point and the parking of vehicles along the road would increase the risk of an accident. Passing trade will not stop here if there is no car park. If usage of the pub should diminish because of the lack of parking and it becomes financial unviable, it may have to close and will be yet another loss to this rural community. It provides a much needed service to the local residents for this part of Ongar.

- 3.152 Road user and pedestrian safety is the concern as well as the viability of the pub should it lose its car park.

Closing statement

- 3.153 Ongar Town Council is opposed to the scale of the new housing proposed. Additional school places, additional parking, better public transport and a bypass needs to be in place at the same time or before any increase in population. OTC reserves the right to oppose or suggest amendments to individual developments. New developments must include 'green walks' and landscaping to mitigate the effect on existing houses. Larger developments should also include sufficient leisure and social facilities for the town. OTC reiterates that new developments should be smaller than the large estates proposed as these would permanently change the character of Ongar. OTC demands for there to be staged alterations to the Green Belt over the period to 2033, including only part of each site at each stage.
- 3.154 Ongar Town Council strongly believes that the historic and rural nature of this town should be protected for future generations to enjoy.
- 3.155 Ratified at Ongar Town Council Extra Ordinary Full Council meeting on 5th December 2016.

4 Summary of Representations

This is a summary of representations received on the appeal.

Essex LPC

- 4.1 The LPC agreed with the decision made by NHS England, this is largely reflected in its original comments to them, which are therefore included with this representation.
- 4.2 The proposed site is not at or adjacent to a provider of pharmaceutical services, and the LPC do not feel that Regulation 31 applies.
- 4.3 The LPC would wish to make the following additional representations.
- 4.4 The appellant notes that a previous appeal, SHA/18078, refused an unforeseen benefits application in the vicinity of this application in November 2015. The appellant appears to criticise the committee for choosing to reach its decision without holding an oral hearing, however this would have been for the committee to consider at that time.

- 4.5 The appellant notes that “Epping Forest has a population of 132,578 and there is (*sic*) 24 pharmacies in the area. This equates to 18.1 pharmacies per 100,000, which is significantly below the England average of about 21.3 pharmacies per 100,000.”
- 4.6 The England average will include large urban conurbations and metropolitan areas with a greater concentration of pharmacies per head of population, a more appropriate comparison would be with the East Anglia and Essex average of 19 per 100,000. The LPC also note that only 75% of prescriptions originating in West Essex CCG area are dispensed in the area, presumably reflective of the number of commuters in the area.
- 4.7 The specific address for the site has not been given in the application, however the applicant states that it is 360m from the War Memorial Medical Centre. No information is given as to proposed routes, condition of pavements etc. between these locations.
- 4.8 However, the applicant provides a lot of general information regarding the route between the War Memorial Medical Centre and the current providers in Ongar.
- 4.9 The applicant may not be aware that both Well pharmacy, and prior to the recent change of ownership, Lloyds pharmacy each submitted an application to NHS England in 2015 for a no significant change relocation to the War Memorial Medical Centre.
- 4.10 In reaching its determination NHS England *did* conduct a site visit, and concluded that the premises would not be significantly less accessible: both applications were *granted*, stating:
- 4.10.1 *“The two voting members of the committee undertook a site visit on 9th April 2015. It was noted that the distance from the Ongar War Memorial to Lloyds/Co-Operative is 1333/1375 metres and that access on foot is provided by pavement on both sides...It was also noted that there is a zebra crossing opposite to the pharmacy and that there are two easily accessible car parks in the high street.*
- 4.10.2 *The Committee therefore determined that the proposed premises would not be significantly less accessible to the patient groups who would be regularly accessing pharmaceutical services. The committee considered that the majority of the patient groups who accessed services from the Lloyds/Co-op pharmacy were likely to be registered with the Ongar War Memorial Medical Centre, which is a group GP practice.”*
- 4.11 If the distance between the current providers and the Ongar War Memorial Medical Centre site was not considered to make premises “significantly less accessible” for patient groups used to using them, it would appear to follow that many of the appellant’s claims regarding difficulty in accessing services may not be borne out in reality.

The LPC’s letter to DMB dated 16 March 2018

Best estimate for location of premises

- 4.12 It is for NHS England to consider whether the information provided with regard to the premises is sufficient to be considered a best estimate.

Proposed core opening hours

- 4.13 The applicant has proposed 51.5 core opening hours: however there is no reference to the additional hours being necessary to secure the unforeseen benefits, and therefore core hours would normally be 40 per week. NHS England may wish to clarify this with the applicant.

Close proximity to other listed chemist premises

- 4.14 The proposed location is not at premises adjacent to, or in close proximity to, premises on the Pharmaceutical List, and therefore the application does not need to be refused according to regulation 31.

Unforeseen benefits

- 4.15 The unforeseen benefits offered are to secure better access to pharmaceutical services in the North of Ongar, which is where the GP practices have relocated.

18 (1) Securing better access

- 4.16 The applicant makes reference to the application refused by NHS England, and later on appeal (reference SHA 18078). In that appeal the NHS Litigation Authority determined that there is already reasonable choice with regard to providing pharmaceutical services and that there is no evidence of people sharing protected characteristics having difficulty accessing services. There has been no significant change in the needs of patient groups in Ongar since that time.
- 4.17 Further, in 2015 NHS England approved two excepted applications for relocations with no significant change, by Bestway (now Well Pharmacy) and Lloyds (now Chipping Ongar pharmacy). The applicant may not be aware of these decisions as they are not routinely published as Litigation Authority determinations are.
- 4.18 Neither pharmacy relocated, and the applications have since lapsed; however in reaching these decisions NHS England visited Ongar and considered in some detail the journey, on foot, between the War Memorial Health Centre and the two pharmacies in the town centre.
- 4.19 These decisions required a test that new premises would not be “significantly less accessible” than current premises. Although the test for an excepted application to relocate is not the same as for this application, it does give some indication of the distances involved and the accessibility of the current pharmacies from the location of the proposed new pharmacy, and does somewhat refute the applicant’s assertions that the North of Ongar is “separated geographically” from the rest of Ongar.

18(2)(a) Detriment to proper planning or arrangements for provision of pharmaceutical services.

- 4.20 The LPC have no comments with regard to this.

18 (2)(b)(i) Reasonable Choice

- 4.21 There are two pharmacies in Ongar, this would appear to represent reasonable choice in a town this size as stated in SHA/18078.

18 (2)(b)(ii) People Sharing a Protected Characteristic

- 4.22 The applicant has not specifically identified any people in the area who share protected characteristics, nor have they described any difficulties such people in the specific area have experienced in accessing services.

18 (2)(b)(iii) Innovative Approaches with regard to the delivery of pharmaceutical services.

- 4.23 The applicant has not proposed any innovative approaches in the delivery of pharmaceutical services.

Conclusion

- 4.24 This applicant proposes to offer unforeseen benefits, however this is poorly evidenced and the application appears to be based on commercial interest due to the relocation of GP practices.
- 4.25 The LPC feel that there is already reasonable access to and choice of pharmaceutical services provided in the area and that there is nothing to suggest that people sharing a protected characteristic have difficulty accessing services.

Kamsons Pharmacy

Previous application

- 4.26 Kamsons would suggest that NHS Resolution reacquaints itself with its reasons for refusing a similar application in case SHA/18078 on 3rd November 2015,
- 4.27
- 4.27.1 *“7.3 The Committee determined that the application should be refused on the following basis:*
- 4.27.2 *7.3.1The Committee has also considered whether granting of the application would confer significant benefits and has had regard to the fact that-*
- 4.27.3 *7.3.1.1there is already a reasonable choice with regard to obtaining pharmaceutical services,*
- 4.27.4 *7.3.1.2there is no evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services, and*
- 4.27.5 *7.3.1.3there is no evidence that innovative approach would be taken with regard to delivery of pharmaceutical services*

4.27.6 7.3.2 *Having taken these matters into account, the Committee is not satisfied that granting the application would confer significant benefits as outlined above that would secure improvements or better access to pharmaceutical services.”*

- 4.28 Identical conclusions could be made to the current Rushport application. There is nothing innovative in the application, there is still a reasonable choice of pharmacies and no evidence of difficulty in accessing either pharmacy. There would certainly be no significant benefits obtained by approving this application.

Appeal-general points

- 4.29 Kamsons note that Mr Daly of Rushport LLP has commissioned someone else to write a report in support of his application. This supporting information should have been submitted with the application and not at this stage. Previous applications from Rushport that Kamsons have seen have used named advisers, writing objectively and in a professional capacity. The report submitted with this application states in section 1.3 *that it is submitted **on behalf** of Rushport Advisory Ltd, the applicant* (Kamsons emphasis). However, it is an anonymous report with no indication of who the author is, their role or qualifications and in what capacity they are acting-independent external professional or a colleague writing supporting information for the application. Kamsons assume it could be the latter. It is understandable in the circumstances when there are no obvious reasons to approve this application.

Ongar

- 4.30 It is important to emphasise the rural nature of Ongar. From whichever direction you approach it, it is surrounded by fields. As one goes north from the Ongar War Memorial Hospital, in which Ongar Health Centre is located, within 200 metres, the speed limit increases to 50 mph and the road is clearly rural. There is then limited housing, no pavement, some thatched roofs, lots of fields and 7 miles of single carriageway road on the B184, going through the hamlet of Fyfield, until a T junction is reached with the A1060 to turn right to the hamlet of Leaden Betting.
- 4.31 What this shows is that the Ongar War Memorial Hospital is right on the northern edge of Chipping Ongar. Within a couple of minutes walking past it, you are in a very rural location. Hence it is clear to see why the Ongar Health Centre is a dispensing practice.
- 4.32 It is noteworthy that Rushport LLP make no mention that their proposed pharmacy will provide pharmacy services to those who currently are dispensing patients. The reason is probably because only a handful of patients will be affected as their proposed pharmacy is not going to increase access to pharmaceutical services for the vast majority of doctor-dispensing patients.
- 4.33 Picture (provided) taken 12/9/18 from across the road from the Ongar War Memorial Hospital showing the 50 mph sign in the distance to demonstrate the end of the town and the rural nature of the B184 heading northwards to Fyfield and the A1060 junction.

Car Ownership

- 4.34 In the 2011 Census, 85.8% of households in Ongar Parish owned at least one car, with many owning 2, 3 or over 4, giving a total of 4,050 cars for 6,251 residents. As would be expected for such a rural location, there are exceptionally high levels of car ownership in Ongar. The residents of Ongar have easy access to cars to travel to the doctors' surgery, the town centre to shop at Sainsburys, to visit Well Pharmacy or Chipping Ongar Pharmacy and to go further afield to Chelmsford or Braintree for clothes and other shopping needs.

Car or van availability

	<u>Households</u>	
	<u>Ongar Parish</u>	
	<u>Count</u>	<u>%</u>
All households	2,626	100.0
No cars or vans in household	372	14.2
1 car or van in household	963	36.7
2 cars or vans in household	931	35.5
3 cars or vans in household	249	9.5
4 or more cars or vans in household	111	4.2
Sum of all cars or vans in the area	4,050	

Source: ONS - 2011 Census (KS404EW)

- 4.35 During Kamsons site visit on 12 September 2018, it was clearly noticeable to see the amount of parked cars in residential streets during the afternoon. In other areas Kamsons have visited, often there is only one car per household and the roads have few parked cars until the evening. Because of its rural nature there were many cars on driveways and on the road, whether by affluent housing or the estate situated around St Peter's Avenue and Moreton Road where the applicant has applied.
- 4.36 Photo (provided) showing parked cars at around 3pm on 12/9/18 on Moreton Road, looking away from one of the potential locations of the proposed pharmacy.

Town Centre Parking

- 4.37 Next to Chipping Ongar Pharmacy and Well Pharmacy are three car parks. Whenever Kamsons have visited Chipping Ongar Pharmacy, Kamsons have always been able to park in any of the car parks without difficulty. Next to Well Pharmacy is the long-stay The Pleasance Car Park with free parking on Saturdays and a £1.60 charge for two hours parking during the week. However, the two car parks nearest to Chipping Ongar Pharmacy and Sainsburys, on Basons Lane, both charge only 20 pence for 30 minutes parking. This very minimal fee means that the car park always has spaces for patients to pop into the pharmacy.

Buses

- 4.38 Firstly, Kamsons would suggest that the need for buses is very limited because it is a pleasant walk to and from the existing pharmacies to the medical centre and there are high levels of car ownership.
- 4.39 However, section 6.4 of the Rushport report: *“Buses are in fact limited to 4 per day (two hours apart).”*
- 4.40 Rushport LLP have then only enclosed one very limited bus timetable. The bus stop situated a few metres away from Chipping Ongar Pharmacy displays the following bus times (photograph of time table provided).
- 4.41 As can be seen, there are actually up to eight buses per hour (e.g. between 5.03pm and 6:02pm) which leave this bus stop in a northwards direction towards the medical centre. Kamsons appreciate that most do not stop right outside the medical centre because, as highlighted above, past the Ongar Memorial Hospital there is very little other than fields.
- 4.42 However, at least three buses per hour stop at the Four Wantz bus stop which is by the roundabout in the applicant’s map, enclosed with their application. As can be seen from the picture of the bus stop (provided), the numbers 20, 21, 32, 46, 47, 146, 201, 501,502 and 521 all stop at this bus stop. From the Four Wantz bus stop, it is about a 5 minute flat walk to the medical centre.

Walking

- 4.43 Rushport state in their documentation that *“the two pharmacies in Ongar are beyond a reasonable walking distance”* and *“the distance is added to the changes in topography between the proposed site and the town centre”*
- 4.44 Walking from the medical centre to Chipping Ongar Pharmacy, according to Google Maps is a 16 minute straight walk. As an overweight, unfit, middle-aged man the author walked between the two sites in 14 minutes at his normal walking pace.
- 4.45 The footpaths are wide and well maintained. The author would have had no problem pushing a pram or a wheelchair along the footpaths. The footpath on the western side of the road (where the medical centre and Chipping Ongar Pharmacy are) was wider than that on the other side but the author would still envisage no difficulty in pushing a pram or a wheelchair along the other side of the road.
- 4.46 The few roads that needed to be crossed had dropped paving stones at crossing points. The Four Wantz roundabout (with the A414 Epping Rd/Chelmsford Rd turn offs) was very easy to cross. There were two zebra crossings on the western side separated by a pedestrian refuge between them. Cars immediately stopped and it was easy to cross. When the author walked the route at rush hour (around 5.15pm on 12th September 2018), there was traffic but no traffic jams and the number of cars were not that many.
- 4.47 In section 5.14, the author of the Rushport report, writes: *“Walking to the town centre via Main Street is not particularly attractive. Main Street moves....to a busy strategic highway network followed by a countryside road where footpaths vary in width before entering the busy commercial town centre”*

- 4.48 Kamsons assume that the author has cut and pasted this from another report and has not walked the route themselves. Kamsons could not find where Main Street was. Kamsons assume this is in another town?
- 4.49 The main road in Chipping Ongar is High Street. Kamons found it to be an attractive and pleasant walk along wide footpaths, with easy-crossing points, two clean and new-looking benches along the road should anyone wish to rest and no sign of a “*busy commercial town centre*.” Chipping Ongar is not Chelmsford or London and does not have a “*busy commercial*” town centre!
- 4.50 Kamsons provided a picture showing the zebra crossings across the Epping Road (A414) at the Four Wantz roundabout.
- 4.51 Kamsons provided a picture showing wide footpaths and one of the two benches along the route.

Free delivery service

- 4.52 Should anyone request it, Chipping Ongar Pharmacy advertises and offers a free of charge delivery service. Whilst in the neighbourhood, Kamsons also noticed the van from Well Pharmacy making deliveries to patients.
- 4.53 Kamsons provided a picture showing the free delivery service advertised in the window of Chipping Ongar Pharmacy.

PNA

- 4.54 There have been no significant changes to the neighbourhood that indicate an “unforeseen benefit” worthy of approving this application. The NHSLA decision of under three years ago, indicated that there was nothing in the 2015 PNA to indicate that an extra pharmacy would be beneficial.
- 4.55 The new Essex PNA (April 2018) 2 on page 144 states that in the Epping Forest locality, which includes Chipping Ongar, “*The provision of dispensing services across the locality is deemed to be adequate...The provision of necessary and relevant pharmaceutical services in the locality is considered to be adequate and no gaps have been identified in at different times of the day.*”
- 4.56 As the PNA is so recent, one would imagine that a gap in provision would have been highlighted in it. Considering that the new PNA was available in its draft form in January 2018, that had there been a benefit from a new pharmacy it could be included in the new PNA, as the applicant’s letter with their application was dated 1 February 2018. In the unlikely scenario of a “benefit” being identified that requires a new pharmacy contract, it would have been “foreseen” and not “unforeseen” as the new PNA was not yet published.
- 4.57 In fact, there are no benefits, foreseen or unforeseen in the application.

Commissioned Services

- 4.58 There are some changes though to what is mentioned in the PNA. Firstly, the Lloyds Pharmacy at 205 High Street, Chipping Ongar is now owned by Sutton Chase Ltd and trades as Chipping Ongar Pharmacy.

- 4.59 The pharmacy still provides the services listed in the PNA i.e. supervised consumption, smoking cessation, MURs, flu vaccinations and NMS. However, in keeping with the Kamsons Pharmacy ethos of providing a full range of services, the pharmacy also now provides NHS Health Checks, is starting sexual health services (i.e. EHC, chlamydia testing and treatment and C cards) and provides the palliative care just-in-case box service, which Kamsons note that the applicant did not list as a service they would provide.
- 4.60 It is worthwhile noting the volume of advanced services being provided at Chipping Ongar Pharmacy:
- 4.60.1 Flu vaccs - 137 given in 2017/18
- 4.60.2 MURs - 365 in 2017/18
- 4.60.3 NMS -currently an average of around 20 NMS claims each month

Applicant's proposed pharmacy

- 4.61 The applicant's opening times are unremarkable, other than to say that they propose to close half an hour earlier on nearly every weekday than Chipping Ongar Pharmacy and 45 minutes earlier than Well Pharmacy. Their list of services is not innovative. Chipping Ongar Pharmacy is willing to provide any enhanced service that is commissioned and requested to do and already provides a full range of advanced services.
- 4.62 The sole reason that the applicant proposes for an unforeseen benefit is geography. Yet the residents of Chipping Ongar use the town centre for their day to day needs, e.g. to use the Sainsbury Supermarket near to Kamsons pharmacy. The two small shops outside of the town centre stock a very limited range of products.

Conclusions

- 4.63 There is no indication that the existing pharmacies in Chipping Ongar are unable to cope with demand or that access is difficult. Chipping Ongar Pharmacy provides a free-of-charge-to-all delivery service.
- 4.64 The population of Ongar does not justify having another pharmacy in the area.
- 4.65 In summary, there is already a reasonable choice with regard to obtaining pharmaceutical services, there is no evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services and there is no evidence that innovative approach would be taken by the applicant with regard to the delivery of pharmaceutical services. This particular application does not confer significant benefits and under Regulation 18 should be refused.

Well Pharmacy

- 4.66 Well believe that this application fails to satisfy Regulation 18 of the NHS (Pharmaceutical Services) Regulations 2014 as an application to secure an

improvement or better access to the existing pharmacy network if the need had been identified with the Health and Wellbeing Boards pharmaceutical needs assessment (unforeseen benefit). The Area Team must have regard to reasonable choice, service innovation and a protected characteristic being able to access pharmaceutical services. Well maintain that the decision of NHS England was the correct one.

- 4.67 The applicant has failed to identify to difficulties the identified protected characteristic within the locality experience whilst accessing pharmaceutical services that this application would overcome by granting it. They have also failed to identify any specific health needs that the pharmacy would meet should the application be granted.
- 4.68 It is difficult to ascertain if there will be a significant benefit to the residents of the locality if the applicant has failed to provide who the residents are with a protected characteristic, how are they disadvantaged from accessing existing pharmaceutical services and what are the pharmaceutical needs that the application will be addressing. The lack of evidence/arguments within the application form suggests that this application is speculative and is not meeting any real need within the locality.
- 4.69 There are no barriers to access pharmaceutical services within this locality and an additional pharmacy would not confer any significant benefits to the resident population . Distance alone is not a barrier to accessing pharmaceutical services and the applicant has failed to consider the level of car ownership, accesses to bus services and how difficult the journey is between the proposed and existing pharmacies in the locality.
- 4.70 Within the whole of the Chipping Ongar, the level of car ownership is far greater than the applicant is suggesting based on the 2011 census statistics, with only 14% of this area not having access to a car compared to the rest of the U.K. at 26%. Additionally, the number of households with access to two or more cars is far greater than that of the U.K. average.
- 4.71 Furthermore, there is a bus operating in this area more than every two hours as the applicant is suggesting. The applicant has only provided information on a few of the bus routes connecting Ongar to the local area.
- 4.72 The area under consideration within the locality, has very little services and amenities. The resident population would be access the town centre to meet their needs in the course of normal living. Within the town centre , all services and amenities are available for the course of normal living and whilst residents are accessing these services, it is possible to access a full range of pharmaceutical services from either of the existing pharmacies in the town centre. Between both existing pharmacies in the town, all locally commissioned and public health services are available appropriate for the locality. The applicant has failed to offer any innovative services to patients within the locality.
- 4.73 The opening hours within the application form do not exceed the opening hours already provided by the pharmacies in Ongar.
- 4.74 The 2018 Pharmaceutical Needs Assessment for Essex does not acknowledge any significant housing development with Ongar, or even within the Epping Forrest locality that would cause an additional pharmacy application to be granted to meet any increased need.

- 4.75 This application was refused in November, 2015 at appeal (SHA/18078) and there have been no significant developments within the area to change this decision.
- 4.76 In summary, the applicant fails to satisfy the regulatory requirements under regulation 18 and Well respectfully request the application be refused.

5 Observations

Observations received by NHS Resolution in response to the representations received on appeal.

Rushport Advisory LLP (Applicant)

- 5.1 The applicant has the following observations to make on the replies.

Kamsons Pharmacy

- 5.2 Kamsons rely on a decision from November of 2015.
- 5.3 The applicant submits that there are times when the wrong decision can be reached on an application, or where the previous applicant simply fails to present relevant information to the Committee. The applicant is fully aware of this previous refusal, but the applicant has visited Ongar and it is only when you see for yourself what the position is on the ground that you can appreciate fully why this application should be granted and why it would secure better access to pharmaceutical services.
- 5.4 Whilst the application could be summed up by saying that the greatest demand for pharmaceutical services is in the north, the only pharmacies are in the south and getting from one to the other is not straightforward or necessary for many patients, there is a significant amount of evidence that supports this position.
- 5.5 The applicant requests that NHS Resolution does not simply follow a previous decision that was made without the benefit of all the evidence or a site visit and instead allows an oral hearing to take place so that the matters in dispute can be properly resolved.

Ongar

- 5.6 The applicant disagrees with Kamsons description of Ongar as most towns or villages are surrounded by open land when you leave them, so the same could be said of a city. The applicant does however agree that the medical centre is "right on the northern edge" and this is not where the pharmacies are located.
- 5.7 Approximately 7,500 people live in Ongar, but that number increases significantly to approximately 14,000 when one considers those who rely on Ongar for services.
- 5.8 Contrary to Kamsons claims, the proposed pharmacy would offer pharmaceutical services to all patients who requested them and this would include any patient who is currently a dispensing patient.

- 5.9 Whilst Kamsons provide figures for car ownership, this simply tries to ignore the 14.4% of households that have no access to their own transport.
- 5.10 Given the lack of access to a car for this group and the fact that 16.5% of residents consider their day to day activities to be limited either a little or a lot, a very different picture of accessibility starts to emerge. The same statistics referenced by Kamsons also reveal that nearly 26% of all households have one person in the household with a long-term health problem or disability.
- 5.11 These are very significant numbers and it cannot be right to simply ignore the evidence that points towards difficulties in access when it clearly exists.
- 5.12 The applicant would never seek to argue that those with a car can get to a pharmacy, but the legal test can never be so narrowly focussed. In fact, the Regulations require specific consideration of those who share protected characteristics and all UK legislation must be considered in accordance with the Equality Act. It is the rights of minorities that are specifically considered. Disability and infirmness due to age or disease are especially relevant when considering access to something as necessary as pharmaceutical services.

Buses

- 5.13 Kamsons information about bus routes is not supported by the facts. Kamsons provide a photograph of a timetable from a bus stop, but analysis of this shows that the additional buses listed do not travel to the north of Ongar and do not pass the medical centre in either direction.
- 5.14 Kamsons say
- 5.14.1 *“Kamsons appreciate that most do not stop right outside the medical centre because, as highlighted above, past the Ongar Memorial Hospital there is very little other than fields.”*
- 5.15 This is simply wrong. The reason the buses do not stop outside (or near to) the medical centre is because they turn left on Epping Road and travel to Harlow. The 21 service likewise does not go to the medical centre and terminates at the same stop as the 420 mentioned above.
- 5.16 The information that we have provide about the bus routes is correct. The number 46 runs roughly every two hours, but sometimes longer depending on the time of day.

Walking

- 5.17 Kamsons comments re the walking route again show why an oral hearing with a site visit is necessary for this application to be properly determined. Whilst the applicant apologises for the typo of referring to High Street as Main Street”, the applicant does not accept that patients who have any sort of limiting illness or are mobility impaired would consider this a pleasant walk. Given that 26% of all households have one person in the household with a long-term health problem or disability, access should be considered from all perspectives, with particular regard to those who are less able. Whilst the applicant appreciates Kamsons authors description of himself, the applicant

would doubt that he would be considered as having a long term health problem or disability.

Services

- 5.18 The applicant notes that Kamsons provide evidence of the high usage of pharmaceutical services and do not dispute that there is significant demand for these services.
- 5.19 Other comments made by Kamsons are already covered by the applicant's earlier appeal submissions.

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Case Manager
Primary Care Appeals (formerly known as FHSAU)

9 November 2018