

25 February 2019

REF: SHA/19981

1 Trevelyan Square
Boar Lane
Leeds
LS1 6AE

APPEAL AGAINST NHS COMMISSIONING BOARD ("NHS ENGLAND") DECISION TO REFUSE AN APPLICATION BY WRINGTON VALE MEDICAL SERVICES LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT PUDDING PIE LANE SURGERY, PUDDING PIE LANE, LANGFORD, BRISTOL, NORTH SOMERSET, BS40 5EL

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1 Outcome

- 1.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashed and redetermined the decision of NHS England for the reasons set out hereafter. The application is refused.

Advise / Resolve / Learn

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Unit 7, 2023



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

2 Site Visit

2.1 The Committee commenced its site visit by travelling from the hearing venue north on the A38 toward Langton. This is a fairly major road but is single track and winding in places although nothing particularly sharp. It was once the principal road serving the area but has been superseded by the M5. However there are pinch-points where traffic comes off the motorway to head into south Bristol. One such point is the traffic lights just outside Langford.

2.2 Leaving the A38 we turned left into Ladymead Lane which is a small winding road flanked by cottages and housing. There is an amount of building work in progress. The road then becomes the old Langford Road which leads to the very large surgery site on the edge of the village. There is plenty of parking for patients. We noted that it is closed on Saturday and Sunday. The Committee travelled clockwise round the village back to the A38 and the combined site of the Budgens and petrol station. The Budgens is quite a large store. It is greater than a convenience store but less than a supermarket. It is quite feasible for someone who cannot or does not wish to leave the village to undertake a moderate sized weekly shop. The car park was quite busy with some turnover of cars. There was a bus-stop immediately outside. The village is flat with pavements along the roadsides.

2.3 The Committee travelled east through Langford to the site of the old post office which is now closed we turned left and travelled north to Wrington along a narrow and winding country lane. Like most country roads this did not have a pavement. The journey took a little under 10 minutes. Wrington is a small village but with several amenities. There is an impressive church and several old stone properties that suggest it has had some wealthy inhabitants in its time. Some areas were a little more run down (shabby) but that might just be the time of the year. There were local and tourist shops including the pharmacy, a bakery, hairdresser, petrol station, flower-shop, teashop, a hardware and convenience store at least two pubs and a farmers market in the village hall. It had the feeling of a village with real centre to it albeit one from which residents or visitors would travel for their daily needs and/or weekly shopping. The pharmacy was small with limited parking outside for 3 – 4 cars however we noted several people attending. An older gentleman drove, a mother & child walked, there was another patient in the consultation room. It had the air and position of a village asset that was definitely in use. There was a bus-stop nearby.

2.4 We travelled north east toward Congresbury noting a ribbon-development of substantial older houses as we exited Wrington. A newer development of houses on the north side of Wrington was also visible from the road. The journey to Congresbury took 10 minutes. The village is more spread out with main roads going past or through it. We noted a Tesco Express as well as several large estate-type

developments. The Day Lewis Pharmacy is tucked down a cul-de-sac just away from the major junction of the A370 and B3133 High Street. There were other shops nearby and alongside the junction. We travelled west on the A370 to view the surgery and noted a Premier 1 Stop shop and the village hall nearby. We retraced our path to the junction which was notably congested. It was clear that this would be a major source of congestion at rush-hour and in the summer holidays. Having turned onto the B3133 we travelled south back to Langford and the A38. There was quite a queue to re-join the main road by the Budgens store and we noted a community bus whilst waiting.

- 2.5 The Committee next travelled west along the A38 and the A368 through Churchill noting the school and ski-centre on the way. Travelling on toward Sandford we observed the ribbon and estate-type development, a Spar shop, additional housing and the large Thatchers Cider plant. Arriving at Banwell the traffic became congested in the very narrow street which had a news-shop, post office, fish & chip shop and a primary school. We turned left and left again into the large carpark behind the new village hall to observe the GP surgery at the rear and the small pharmacy tucked behind it. It appears to be a small medical and pharmaceutical facility serving the village.
 - 2.6 From Banwell we travelled south on the A 371 up to the castle/folly built by the Wills family before passing the garden centre and travelling on to Winscombe. This village has quite a large number of shops in the high street where the A371 meets the Sandford Road. There is a small Boots pharmacy at the junction. There was a small step at the front door which may limit access although a lady did negotiate this on a walking frame. The store looked a little careworn. We noted the GP surgery across the busy main road before continuing on to join the A38 and complete our journey.
 - 2.7 The Committee gained the impression of an area of small to medium sized villages connected by a variety of minor roads and some major roads. The applicant's large dispensing surgery is surrounded by a network of small village pharmacies supporting their respective villages.
 - 2.8 The Committee was of the initial view that access to and from pharmaceutical services would generally be by car or on foot. Those outside the village would most likely drive whilst it would not be unreasonable for able-bodied local patients to walk to their respective pharmacies. There were some bus-stops and some bus-services but they were limited.
 - 2.9 The Committee observed that it would be assisted by submissions on the following: what is the unforeseen benefit; is the current situation of a large dispensing surgery and a network of pharmacies working for patients and workable in the future; what is the financial impact of this application upon Wrington – is it currently viable or not; what would happen if Wrington closed; would public services be adversely affected.
- 3 A summary of the above observations was provided to those in attendance. They were invited to comment upon them.
 - 3.1 No such comments or observations were made.

4 **Oral Hearing Submissions**

Procedure

- 4.1 It was agreed that it would be appropriate for Mr Daly to make the case for the Applicant under Regulation 18. Those objecting would put their case on that issue. Objectors would then raise any issue of detriment or prejudice following which Mr Daly should respond to the latter. All parties would then have the opportunity of making short closing submissions.

Mr Daly for the Applicant (attended by Mr Clarke together with Mr Lovell)

- 4.2 Mr Daly commenced by asserting that the application was intended to secure improvements or provide better access to pharmaceutical services. He acknowledged that the Committee had seen a great deal of the area and that there was a good description in the papers of any other locations. He said that there had been several applications to open a pharmacy in Churchill the last of which was not considered due to changes in the legislation and, the application had lapsed. There was a fair amount of history to the practice and, he called Mr Clarke to provide this evidence
- 4.3 Mr Clarke said there had been a history of mergers to form the Mendip Vale Practice (MVP). He joined the MVP when the Yatten, Congresbury and Wrington practices joined. The latter had now closed. The practices had merged to make services more viable. The MVP was joined by St George's practice and latterly by Riverbank practice bringing the total patient list of MVP to 44,000 patients. He said this allowed for greater efficiencies in services over their catchment area in Weston Super Mare, Somerset and Clevedon. There were plans to merge the Yatten and Congresbury sites and, similarly, plans to merge St George's and Riverbank in St George's. The merging process had made it easier to recruit and support GPs in a multi-disciplinary team however there was still a preference to work at the Langton Pudding Pie Lane site. He continued that all these changes enabled them to improve services and patients had commented on these. The mergers had enabled them to maximise clinical appointments and patients could be offered the next available appointment at any of the various sites. Langford, unlike all the other sites, was a dispensing practice. This caused concern to patients who wanted to access services equally at all sites. The MVP wanted to be able to have the advice of a pharmacist on site to provide advice rather than tie-up a GP. Mr Clarke said that the intention was to replace the dispensary with a pharmacy. He said this would reduce the income from pharmaceuticals but the benefit was that it would free up GP time since patients could see a pharmacist. He said that the MVP was not just cutting costs but wanted to provide the right service to patients.
- 4.4 Mr Daly continued that there is a new development at Langton providing for some 2400 residents. There are however about 10-11,000 patients using the Langton site and this may drop a little when the new surgeries mentioned above are built. All the surgeries are 'health hubs' with a pharmacy including Well and Cohens which will move to the new sites. He said the MVP was looking after its patients. In terms of hours the Langton practice is open 8am-6.30pm during the week and is even open at 6am on Tuesdays. This he cited as an example of the MVP putting patients first. The intention was to have three hubs with integrated services which included giving up the dispensary at Langton and have a pharmacy instead. It was part of a bigger picture.
- 4.5 Regarding facilities in the village, Mr Daly said that the Budgens was a large store with 'trolley-shopping' not just baskets. There was a coffee shop, it was open 24hrs and was the busiest of the semi-supermarkets in the area. None of the other villages mentioned had stores of comparable size save for Yatten which had a large CoOp store.
- 4.6 Looking at the current reality of services Mr Daly said there were some 10,000 patients accessing primary care services at Langton with prescriptions being issued as part of the core service. There was no reason for patients to go elsewhere to obtain the medication, or there were only some disparate reasons. He suggested the development of large scale GP practices had left pharmacy behind and had had a direct impact on access and choice.
- 4.7 Mr Daly called Mr Lovell (an ex Councillor) who said he had chaired various planning committees over the years. He said that a lack of funds had resulted in the poor (antediluvian) road-system and that public transport was wholly inadequate and unable to deliver a return journey for most locations. Traffic had increased and now included unrestricted access to lorries for quarries and construction. He said the

village roads had no footpaths. Whilst there had been a housing plan this was now being ignored and there was a great deal of building going on. He said that 30% of the new housing was designated as affordable for low-income households but that they would be unable to afford appropriate transport like the more affluent residents. He said that as an NHS customer with a minor ailment he could attend a pharmacy but at present he could only do so by getting in the car. He could see a GP but not a pharmacist locally. He also questioned why there were different rules regarding obtaining medication (as between dispensing and non-dispensing patients) in an era of equality.

- 4.8 Mr Daly observed that Langford Fields development on Pudding Pie lane did indeed have 30% of affordable housing. He concluded this part of his case by asserting that a pharmacy at the practice would mean that patients could be triaged to the most appropriate services making everything more efficient.
- 4.9 Turning to the issue of access, Mr Daly said that it was not just a question of physical access but when a service is available. The opening hours of the pharmacy would be the same as the dispensary including 9 – 12 on Saturdays. The hours offered were core hours and are longer than offered by other local pharmacies. He suggested that a patient attending a late appointment at some locations could not get their medicines dispensed easily and may have to travel to Yatten or even to Cheddar. He said there was a patient-led demand for later hours.
- 4.10 Turning to the appeal documents Mr Daly observed that the decision included the points raised by the applicant and did not appear to be contradicted. The site-visitor had recommended approval on the basis that it would confer a significant benefit (p45 para 78) and would improve choice (p46 para 89) and the original panel did not explain why this was rejected.
- 4.11 Mr Daly submitted that the case against improved access was based on an assertion of high car-ownership however he submitted that if the reality is that access is determined by car ownership then access to services could be improved upon. He submitted that this would benefit minority groups in particular because all patients had a protected characteristic of one sort or another. He submitted that walking was not acceptable and buses were unreliable. He continued that a key point was access to other services at the Langford surgery and that it was not practical to open a private pharmacy. A pharmacy at Langford would provide a better service. He said the choice within the relevant part of the HWB is currently not reasonable. Finally in looking at the Wrington Pharmacy he said it only provided very limited services. It had only undertaken 3 MURs in the last six months, none of which were in the last four months. Likewise there had been no follow up by way of NMS in the last nine months. Wrington and Ringscombe were the only pharmacies in the area not providing these services and as such they were not maximising their income. (The implication being that any alleged prejudice or detriment was thus to an extent of their own making.)
- 4.12 In conclusion Mr Daly submitted that the Langford surgery was the largest one in the area and the only one without co-located services thereby forcing people to leave the village to access pharmaceutical services.
- 4.13 In Cross-examination, Mr Wardle asked when Mr Lovell had moved to the area. He confirmed he had moved to the MVP practice area about six years ago and lived in Langford itself. He said he had his prescriptions made up at the dispensary and was not aware that others did not. The dispensary provided an excellent service and, having lived elsewhere he realised just how good it was. He had not discussed the application with his former constituents since, as local residents, they too were dispensing patients. He said that he and his wife did their shopping in Wells.
- 4.14 Mr Clark confirmed that previous pharmacy applications had been opposed by the MVP but that was at a time where the landscape of GP surgeries was different. He agreed that if a third-party were to apply to put a pharmacy in Langford the surgery

could not properly object. He said that patients who come to the practice can choose to obtain their medicines elsewhere but many chose to accept the dispensing service. He said that the practice had two cars used to deliver to patients who could not attend the surgery.

- 4.15 Mr Lovell said it was hypothetical to suggest that the Wrington pharmacy would close if Langford opened and he could not say if this would occur. Wrington appeared to him to be a successful business. As far as he was concerned he saw people having to go elsewhere to get their items dispensed, unlike him, and he regarded this as unfair. The pharmacy may be some distance from home and it was less convenient.
- 4.16 On the issue of repeat prescriptions as opposed to prescriptions by way of appointment, Mr Clark was unable to give an exact figure but thought the split was about 80/20%. As to how many repeat prescriptions involved patients re-visiting the surgery, he thought this was about 50% (of the 80%).
- 4.17 In answer to questions from the Committee Mr Clark was unable to provide figures as to the use of EPS although he said its use was encouraged. About 85% of patients attended the surgery using their own transport, a lift from a neighbour or using community transport. The latter worked well for pre-arranged appointments but not for emergency or short-notice appointments. However on occasion the surgery helped less mobile patients to access the surgery and a pharmacy. He said that there was a high demand for community transport which the practice supported.
- 4.18 Finally Mr Clark said that they had not raised or argued that Langford was a reserved location. The intention was to replace the dispensary with a pharmacy.

Mr Cox on behalf of Lloyds Pharmacy

- 4.19 Mr Cox pointed out the effect of Langford as a controlled location namely that the surgery would have to give up its dispensing rights but, if it was a reserved location the practice would not have to do this. (The implication being that it could maximise its profits.)

Mr Wardle on behalf of Wringtons Pharmacy (with Mr Barbour in attendance)

- 4.20 Mr Wardle began by asserting that this was a Regulation 18 application in a controlled locality thus Regulation 41 applied and the Committee should determine if this was a reserved location with under 2750 patients or whether there was evidence that there would be patient-use similar to or in excess of 2750 patients. Mr Wardle said there was evidence of the Langford site attracting 10-11,000 patients which generated a demand for pharmaceutical services. The question was whether the demand was in excess of 2750 patients (or the equivalent) and that Regulation 44 and the 'prejudice test' was engaged. The application must be refused if it would prejudice pharmaceutical or primary medical services.
- 4.21 Turning to Regulation 18 Mr Wardle submitted the Committee must first assess whether there would be significant detriment to the current pharmaceutical arrangements in place. If it would not, it should go on to consider whether there were significant benefits in terms of access, choice, services to those with protected characteristics having difficulty or innovation and, any such benefit was not foreseen in the relevant PNA. He stressed that the test was not what would benefit the surgery, having three medical hubs, recruiting doctors or recruiting them elsewhere than the 'shiny new hub'. All of this was irrelevant. He submitted that the application was not based on altruism since the current position of dispensing was restricted in numbers. Granting the application would remove the restriction thereby increasing the surgery's catchment. He referred to the written submissions and then summarised as follows.
- 4.22 Regarding controlled locality he submitted that this meant an essentially rural area with small sparse populations and facilities and, little or no employment outside rural

employment. This was interspersed with three small settlements including Langford which had no real community focus. Services were scattered. He referred the Committee to the population figure of 2335 in the papers. He urged the Committee to look at the purpose of the Budgens store and the fact that the only local witness shopped in Wells. The suggestion it was a local semi-superstore was not backed up by the evidence. He agreed that there was some population growth and building work and more being planned but there was no guarantee when it would start or end. There was limited information that the local authority had taken up some affordable housing places on one site. There was no evidence that residents taking up those places could not afford private transport and it was highly unlikely they would ignore that necessity when moving. He suggested it was likely people had and used a car. Looking at the patient list for the applicant he said it was 26,000 on the papers but was now said to be 41,000 due to a new location some distance away. As to the suggestion that patients could use any site he suggested it was more likely that they would use one they are close to or familiar with. On this point he said that the prescriptions at the Wrington pharmacy all appear to come from the Langford surgery, patients don't often go elsewhere. He qualified this to say that about 90% of the prescriptions coming into the surgery were electronic (ETP) and over 90% of them came from the MVP.

- 4.23 Looking at the PNA Mr Wardle submitted that it revealed (at p59) an older than average population with higher life-expectancy and better health than across the HWB. It had the highest car ownership and 100% of residents were with ten-minutes drive of a pharmacy. It concludes there are no gaps. The bundle of documents (p159-160) confirms the age-structures and population, the better health and higher house ownerships and car ownership at over 92%. Existing pharmaceutical provision should be looked at in light of these statistics.
- 4.24 Mr Wardle submitted that almost everyone in Langford and Churchill were eligible to be dispensing patients. There were 5453 dispensing patients in total. NHS England had provided figures of 2384 patients in Langford and Churchill all but 198 of whom were dispensing patients and 64 were registered elsewhere. This meant that there were about 3000 dispensing patients not resident in Langford and Churchill. It was reasonable to assume they were eligible for (resident over 1.6km from a pharmacy) and chose to access this service. Thus half of Langford's patients were eligible for and do access dispensing services. Presumably the rest live within 1.6km of a pharmacy. Mr Wardle reminded the Committee that there was no complaint about the dispensary, quite the reverse. He submitted that it was reasonable to conclude that non-residents of Langford either drove to the surgery and chose to accept dispensing or they lived within 1.6km of a pharmacy and so did not use the dispensing service. He said the application was really only relevant to the latter patients. Page 170 of the bundle provided distances such patients drove and these were not unreasonable. He said the drive to and from the Wrington pharmacy took about 7 minutes each way.
- 4.25 Turning to the issue of detriment and the financial information for the Wrington pharmacy, Mr Wardle called Mr Barbour to give evidence. He took the Committee through the figures for the group of four pharmacies omitting information he suggested was irrelevant and confidential and, the profit and loss figures for Wrington itself. There had been some changes of late with a reduction in provision of pharmaceutical services to care-homes because they were no longer viable. This had resulted in two redundancies and one additional person departing.
- 4.26 Mr Barbour took the Committee through the various figure including APAS payments, quality scheme payments, additional payments for services such as flu-vaccinations, counter-sales and prescriptions etc. Having considered the figures for the year ending 30th September 2018 he pointed out the the net operating profit to be £12,000. Mr Barbour then took the Committee through several scenarios making allowance for the changes in pharmaceutical provision to the care-homes, reduced staff costs and changes including to the APAS scheme payments.

- 4.27 Having looked at the modest operating profit Mr Barbour then considered what would happen if the pharmacy lost 48% of its prescription customer base which, he asserted, was what the Langston surgery hoped to achieve by way of market-capture were it to open a pharmacy. (This figure was contained in the papers at pp152-153 being an average of the range of intended market capture from 27 – 69%.) He said he had not adjusted the counter-sales even though the footfall would be reduced and he had used figures that were historically higher profit levels than those expected. He firmly asserted that whether they kept or dispensed with the care-home, the pharmacy became unviable if it lost 48% of its prescription trade. It would therefore close since the group could not sustain the losses. Remaining open was not an option. Any additional income from an increase in MURs or similar would not make much difference particularly if a substantial number of patients were lost. He said that there comes a point where one cannot just keep cutting staff to keep expenses down in order to keep a pharmacy going.
- 4.28 Mr Wardle then applied the financial analysis to the case whether the applicant's location was reserved or not. He submitted that granting the application would result in Wrington becoming unviable and it would close. That would prejudice pharmaceutical services. It was not a question of swapping one pharmacy for another since. Now that the GP surgery had closed, it would mean the loss of all/any healthcare services in the village. The current situation was of a pharmacy in Wrington and a surgery with dispensing in Langford. That balance would be completely upset removing healthcare provision from the village and prejudicing the proper provision of pharmaceutical services. He said that the same factual matrix applied to the issue of a significant detriment to current arrangements. There was no reason to upset the current arrangements and cause that detriment to Wrington. He also suggested that changing all dispensing patients to pharmacy patients may also amount to a significant change
- 4.29 Turning to the application itself Mr Wardle suggested that patients within the HWB area do have a reasonable choice. Many can and do choose to accept dispensing services, many others can and do choose to use a pharmacy the nearest of which is a couple of miles away. He said there is a network of pharmacies serving rural villages. Mr Wardle pointed to a complete lack of local support. There was no complaint regarding the dispensing service, quite the opposite as confirmed by Mr Lovell, there was no evidence of dissatisfaction or a lack of choice or opening-hours and no evidence of any patients with protected characteristics experiencing any difficulty accessing pharmaceutical services that they needed(whether they used the dispensary or a pharmacy). He continued that most non-dispensing patients are likely to have driven to a pharmacy and there was no evidence of any patients experiencing difficulty in getting a prescription after 5.30pm. There was, he said, no great need as the applicants asserted. If there was a real problem a patient could always apply to become a dispensing patient. He said that the application failed on every limb and it failed because there are no significant benefits. Looking at the location, it is tucked away behind housing and adjacent to green fields, no-one passing the village would know it was there.
- 4.30 Turning to the PNA Mr Wardle said that nothing was unforeseen. Opening hours, location, health needs, distance, drive-times, that walking is unlikely, all of this was dealt with in the PNA. Nothing in the application was unforeseen. He concluded that the area is rural with small villages an sparse services. At the moment there is balanced provision that meets the needs of residents in the HWB without complaint. The application provided no greater choice, access or significant benefit.
- 4.31 In cross-examination Mr Daly challenged the accounting information provided. Mr Barbour confirmed that company accounts were available as a matter of public record, he had simply excluded his own personal financial information and data concerning he entire group. He had reluctantly provided the information that was necessary and it had all been prepared by Moor Stevens accountants. When asked about access payments he said that the Wrington pharmacy had the highest of the

three that received such payments. Mr Daly suggested that if a Langford patient could get to Wrington then the reverse must be the case.

- 4.32 When further questioned about the figures Mr Barbour said that he had allowed for a pro-rata reduction in PAS payments and had provided both scenarios namely whether they continued to service the care homes or not. He said that the pharmacist at Wrington only provided MURs that were clinically necessary. Whilst as a manager he would like more to be done he should not and did not apply pressure to the pharmacist. Mr Daly pointed out that there was only one pharmaceutical service at the Langton surgery, namely dispensing. Mr Barbour pointed out that although that may be true, a clinical pharmacist was employed there. Looking at the PAS figures Mr Barbour confirmed that over the last 12 months these were £21,800 and the documents demonstrated a drop to £16,000 or £15,000. It would require 400 MURs and a very strong wind to draw level. He firmly asserted that however other income-generators were adjusted it made no difference, there was always a loss.

Ms Watson (Boots Pharmacy)

- 4.33 Ms Watson confirmed that she relied upon the matters set out in the bundle but also added the comment that on a view of the applicant's location it was clear that the car-park was well used. She suggested that this indicated most patients travelled there by car.

Mr Ward (NHS England)

- 4.34 Mr ward confirmed that he was the person who had first considered the application and recommended that it be approved. He pointed to p45 in the bundle where he made several options clear namely that the panel could conclude that access to services was adequate and, with high car-ownership there would be no significant benefit in granting the application. His recommendation was based primarily on the consideration that a dispensary is not a full replacement to a pharmacy and, since the bus-services were inadequate there remained a section of the community who would benefit from access to non-dispensing services should they need them. The Committee noted that he suggests there is no evidence of significant benefit to patients with protected characteristics.
- 4.35 Concerning new householders, he said that NHS England had no information on their car-ownership. The panel did not make a finding of significant detriment on the papers they saw but they clearly expressed concern as to the fragility of current arrangements and access for local people. Having considered what he had seen and heard he suggested that closing the Wrington pharmacy would cause a significant detriment to patients. Weighing the benefits against the detriments, the removal of an existing service is more harmful than the marginal benefits that would be achieved beyond the dispensing already provided. Wrington would have no pharmacy at all and the balance of a pharmacy in one location and a dispensing surgery in the other would be altered to one location having nothing at all.
- 4.36 When cross-examined by Mr Daly about his recommendation Mr Ward said that he had 'tossed and turned' over his decision.

Mr Brown (Avon LPC)

- 4.37 Mr Brown observed that the MVP now covered a huge area and actively moved patients around to fill available appointments with GPs. In itself that suggested patients are mobile but, if they were not, the practice was able to collect patients. He submitted there was adequate provision of pharmaceutical services by car, dispensing and local pharmacies. He said that the practice does well regarding EPS, 95% of patients have a nominated dispensary and 82% used EPS. He said that recent data suggested patients wanted access to their medicines close to where they live or work and that was a change of emphasis. He said that EPS was a great way of

transferring prescriptions. Looking at the Wrington pharmacy, 87% of its volume came from the MVP. In his role as chief officer he was having more and more conversations with pharmacy managers trying to keep things going. He thought that a pharmacy at the location would not achieve a PAS and would be likely to run at a deficit. Another part of the business would have to subsidise this. If all surgeries in MVP used EPS he was concerned that they may shift work to place it at the new pharmacy and that effect may be felt across a wider area. In summary he held a genuine concern that a pharmacy in Langford would cause the pharmacy in Wrington to close and that was a significant detriment.

Mr Cox (Lloyds Pharmacy)

4.38 Mr Cox relied upon the matters set out in the bundle however he reminded the Committee that there was no evidence of any patient of the Langford surgery experiencing any difficulty with the current arrangements. No-one had raised any concerns regarding access. Everyone knows that in a rural area there are dispensing practices and patients do have to travel further to access services.

Mr Daly (for the applicant)

4.39 Mr Daly commented briefly on the PNA. He said that it showed Langford to be the only surgery without a pharmacy inside a one-mile radius (para 4.2). The suggestion that patients might prefer their medicines to be dispensed closer to home or work was not reflected in the PNA (para 4.3). People wanted longer hours, a good relationship, continuity and location was closer to home or a surgery. The hours offered were an improvement.

4.40 In response to the comments on prejudice or detriment Mr Daly suggested that the Wrington pharmacy accounts excluded income from potential undeveloped services. He questioned the figures and said that the Langton surgery issues 9871 prescriptions per month and it dispenses 7782 items per month. There were thus only 2000 items that Wrington pharmacy could in theory lose but, that loss would be spread across pharmacies right across the area. The figures suggesting a reduction from 5233 to 2880 items was impossible it would mean losing more items than exist. He suggested there was no guarantee that the pharmacy would close.

4.41 Mr Daly further submitted that the bar for prejudice was a high one. They needed to prove that prejudice would occur, that access would be compromised. It required a cessation of a service with no suitable alternative and they could not argue that there would be no access. He submitted that the prejudice argument was not credible.

4.42 Regarding the issue of significant detriment he said the Committee had to ask whether the pharmacy would close or not. If not, the submission fails. The Committee needed to be satisfied that it would happen and all it had was figures which assumed all patients at Wrington would go elsewhere,

4.43 In cross-examination Mr Wardle put that all the Wrington patients received their prescriptions from the MVP. If 48% of prescriptions were captured by the new pharmacy that would be the end of the pharmacy at Wrington. Mr Clark said there were 44,000 patients across all the MVP sites and they generated about 50,000 prescriptions per month. The 5,500 dispensing patients generated 8,500 items per month.

4.44 Mr Daly repeated that the suggestion was simply that everyone would abandon Wrington and the figures did not add up.

4.45 Mr Brown confirmed that 50,000 prescriptions was the figure for the MVP as a whole and with an average of 7882 items being dispensed. Up to September 2018, Wrington pharmacy had dispensed 5186 items per month of which 4529 came from prescriptions issued by the MVP across its sites. Mr Ward had similar figures.

- 4.46 In response to questions from the Committee Mr Clark confirmed that the Wrington surgery closed in December 2018.

Submissions and further comments

- 4.47 In his closing submissions Mr Daly said that the point of the application was access and choice and, whether granting the application would secure improvements or better access. Walking to a pharmacy was recognised as unreasonable which necessarily raised better access. Buses are poor and, although car-ownership may be high this included people with only one car. When that was not available they had no access to a pharmacy. He submitted that patients wanted longer opening hours which fed into their choices. He pointed to the new homes being built with more planned that will come on line in the future. He said the issue was about demand and not about the pharmacy increasing its income.
- 4.48 Mr Daly said that the Committee need only find that the demand would be more than that of 2750 patients and the surgery would have to stop dispensing. They saw the bigger picture or triaging and helping patients. He said it was common sense that people would accept a new house if offered since they may go to the back of the queue if they refused. He said that every other potential pharmaceutical service such as MURs had been ignored by the objectors and patients had to make a journey to access these.
- 4.49 Mr Daly reminded the Committee that the test is not whether something is unforeseen but whether it is included in the PNA. He said that none of the matters had been considered in the PNA. He said that the comment regarding no complaints referred only to the dispensing services. He said there was no significant detriment and no prejudice. Any pharmacy that has decided to reduce its contracts and is not prepared to adjust or adapt or provide other services with which to boost its financial projections was not credible. As for significant changes to arrangements, the whole thrust of Regulation 18 is about bad changes not good changes.

5 Consideration

- 5.1 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.
- 5.2 It also had before it the responses to NHS Resolution's own statutory consultations.
- 5.3 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations").
- 5.4 Langford is in a controlled locality and the application was based on securing improvements or better access to pharmaceutical services in that controlled locality.
- 5.5 The Committee considered that the correct course was to first consider if the application must be refused pursuant to Regulation 31. The Committee will then consider if the application must be refused pursuant to Regulation 40. If the Committee is not so required to refuse the application, it will consider the issue of reserved location pursuant to Regulation 41. The Committee will then consider the application under Regulation 18. If the Committee has determined that the Applicant is seeking the listing of pharmacy premises which are in a part of a controlled locality that is not in a reserved location, it will consider the issue of prejudice under Regulation 44 last. The reason for this staged approach and in particular for dealing with prejudice last is that if the application does not meet the requirements of Regulation 18 the Committee is required to refuse it and prejudice cannot arise. The potential for prejudice only arises if the Committee has concluded that the application meets the requirements of Regulation 18 and may be granted. It is then for the party

asserting prejudice to satisfy the Committee that this provides a reason to refuse an otherwise valid application. Depending on the determinations of the Committee in respect of the above as well as taking into consideration of whether NHS England has considered Regulation 50(1), the Committee will then consider Regulation 50(1) - discontinuance of arrangements for the provision of pharmaceutical services by doctors.

Regulation 31

5.6 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).

5.7 The Committee noted that no pharmacy existed or was said to exist at or adjacent to the proposed location. In addition there was no person on the pharmaceutical list providing or undertaking to provide pharmaceutical services from or adjacent to the premises. The Committee was thus not required to refuse the application under the provisions of Regulation 31.

Regulation 40

5.8 The application (which is made under Regulation 18 of the Regulations) must be assessed against the provisions of Part 7 of the Regulations and, in particular Regulation 40 which reads:

(1) This paragraph applies to all routine applications—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Regulation 41

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

(1) This paragraph applies to any routine application—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) for the reasons relating to prejudice in—

(i) regulation 44(3),

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

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

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

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

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

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

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

- 5.11 Regulation 41(2) is mandatory: it requires NHS England to make a determination regarding reserved location status in circumstances such as these.
- 5.12 The Committee considered the issue of reserved location for premises described in the application.
- 5.13 The Committee noted that the Churchill Parish of which Langford is a large part was declared controlled in March 2013. That was not challenged by any party and the Committee had no reason to reconsider that finding.
- 5.14 The Committee noted that the Applicant/Appellant had not challenged NHS England's position regarding whether Langford was in a reserved location. However, other parties did raise this issue. Mr Daly acknowledged that it needed to be addressed and dealt with it in argument.
- 5.15 In its decision of 20 July 2018, the NHS England Committee found that the location is in a reserved location. Looking at the first limb of the test for reserved location in Regulation 41(3)(a), there were 2394 registered patients living within 1.6km of the location and that is less than the 2750 threshold. It was not argued that the use of services would be similar to or greater than the use that might be expected from a population of 2,750 or more so the second limb in Regulation 41(3)(b) was also met. However, this Committee was addressed upon these issues.
- 5.16 The Committee considered that Regulation 41(3)(b) involved a consideration of:
- 5.16.1 what the overall use of the services provided by the pharmacy would be if they were provided at the relevant location; and
- 5.16.2 whether that use would be similar to or greater than the use that might be expected of the proposed services if there were 2,750 or more individuals who are on a patient list residing in an area within 1.6 kilometres of the relevant location.
- 5.17 The Committee considered that it did not necessarily follow that if the pharmacy was likely to provide services to more than 2,750 persons then this would satisfy Regulation 41(3)(b). The Committee considered that Regulation 41(3)(b) did not require determination of a hard and fast number of persons who may use the pharmacy but instead required consideration of whether there were factors present that made it reasonable to consider that paragraph 8.25.2 above would be satisfied.

- 5.18 Whilst the population was not said to have changed dramatically from the above figure of 2394 reference was made by the Applicant to the upward growth in the area and, the Committee saw a considerable number of development sites. On the papers, the developments in Langford are said to be likely to increase the population by approximately 600 residents. There is also reference to a new 'garden village' of 2800 residents with associated infrastructure but that is some way in the future and entirely speculative. The Committee therefore discounted that information for present purposes.
- 5.19 Whilst the Committee could not assess the size of the population within the concluded developments it is reasonable to infer that the population is increasing not decreasing. That is in accordance with the assertions made or inferences urged by all parties.
- 5.20 In addition to the potential increase in population, reference was made to the very large patient list of the MVP. The practice-group comprises several individual practices that have merged over time. The most recent mergers have led to an increase in the patient list to around 44,000. Mr Clark advised that the MVP will offer patients an appointment at any of its locations with a view to seeing patients at the earliest opportunity. That brings with it the potential for more patients to attend the Langford location.
- 5.21 A number of figures were provided regarding the current use of pharmaceutical services at the Langford practice however it appeared that currently the practice issues a little under 10,000 prescriptions per month. A figure of 9871 prescriptions was given and a figure of 8500 for dispensing patients. A further range of 10-11,000 was also mentioned but this may have been a shorthand comment. Whichever figure is used, it is greater than the average given for the MVP as a whole which was 7882.
- 5.22 Finally on this point, the papers contain assertions made by Mr Daly in support of other similar applications that a pharmacy within a medical centre would hope and expect to achieve a "prescription capture" of between 27 and 69% of the prescriptions that go to existing pharmacies. The average of this being the 48% capture referred to above and later in this determination. That figure was expressly put in argument and was not refuted by Mr Daly or his client. On the figures to September 2018 Wrington pharmacy dispenses 5186 of which 86/87% comes from the Langford practice. A 48% capture of this would represent a material uplift in dispensing and, if it were to be repeated in respect of other pharmacies that too would represent an additional uplift.
- 5.23 Gathering all the above information together the Committee concluded that, on the balance of probability (the standard of proof applicable to these proceedings) the use of pharmaceutical services would be similar to, or greater than, the use that might be expected if the number of individuals residing in that area who are on a patient list were 2,750 or more.
- 5.24 Having come to the above conclusion the Committee was aware that it may need to deal with prejudice. However, the Committee considered that prejudice could only arise if the application meets the requirements of Regulation 18 and may be granted. If it did not meet the requirements and may not be granted then no prejudice arises. It therefore next considered whether the application met the requirements of Regulation 18.

Regulation 18

- 5.25 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)."*

- 5.26 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
- 5.27 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.
- 5.28 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).
- 5.29 The Committee considered the North Somerset Pharmaceutical Needs Assessment ("the PNA") prepared by North Somerset Council, conscious that the document provides an analysis of the situation as it was assessed at the date of publication. The Committee bears in mind that, under regulation 6(2), the body responsible for the PNA must make a revised assessment as soon as reasonably practicable (after identifying changes that have occurred that are relevant to the granting of applications) unless to do so appears to be a disproportionate response to those changes. Where it appears disproportionate, the responsible body may, but is not obliged to, issue a Supplementary Statement under regulation 6(3). Such a statement then forms part of the PNA. The Committee noted that the PNA was dated 2018 and that no supplementary statements had been issued.
- 5.30 The Committee noted that the Applicant seeks to provide unforeseen benefits to the patients of Langford (also referred to as Langford and/or Churchill).

5.31 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.

5.32 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)

5.33 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"

5.34 The Committee received no information or argument concerning the issue of planning in respect of the provision of pharmaceutical services in the area of the HWB.

5.35 On the basis of the information available, the Committee was not satisfied that, if the application were to be granted and the pharmacy to open, the ability of the NHS England thereafter to plan for the provision of services would be affected in a significant way.

5.36 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)

5.37 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"

5.38 The arguments concerning significant detriment covered much of the same ground as that involving prejudice albeit that the two issues are different provisions within the legislation and are not mutually determinative. It centred around the effect that granting this application would have in particular on the Wrington pharmacy.

5.39 The Committee considered the above-mentioned PNA. It noted that the distribution of pharmacies together with the two dispensing surgeries in the area of the HWB is currently said to be even. Narrowing this down to the Nailsea and Rurals area which covers Langford, Wrington and the other locations mentioned in this case, there is said to be no gap in necessary or relevant services and, that improvements or better access may be obtained by directing one or more pharmacy in the area to open on a Sunday.

5.40 The picture from the PNA both in map/diagrammatic form and in the descriptions is of a network of suppliers including the various pharmacies such as in Wrington, and the dispensing practice at Langford, forming a network of providers. Those providers collectively deliver a service that meets the needs of patients in the area. That mirrors the submissions made in the hearing. It accords with experience of the Committee on its site visit.

- 5.41 Taking the above into consideration, the issue of significant detriment applies both to a local level in Wrington and nearby but also in terms of that network of suppliers.
- 5.42 The Committee considered the accounts submitted by Mr Barbour as provided to him by Messrs Moor Stevens accountants. It also assessed Mr Barbour's evidence concerning the accounts themselves and the scenarios he put forward. The Committee considered that Mr Barbour was open and honest in his assertions. He made it plain he had not disclosed material that was personal to him or relevant only to the group rather than the specific pharmacy. He provided a range of scenarios and, on each occasion he disclosed where he had made assumptions and what those assumptions were. Some of the assumptions were quite conservative and it was plain he was not trying to paint the worst possible picture. The Committee took note of the assertion and/or implication that Mr Barbour may be partial in his own cause and, as with all witnesses his evidence was carefully considered. However, the Committee considered him to be a credible witness attending the hearing to assist as best he could.
- 5.43 The oral evidence set out above mirrored the information on the papers namely that the Wrington pharmacy is a small business keeping its head above water in difficult times. The accounts show that the profit margin for the group is small. The projected margins for the specific pharmacy is also small. The profit and loss account for the year ended 30 September 2018 gives a net operating profit of £12,129. If the Wrington pharmacy continues servicing the remaining care-homes that profit increases to £25,354 based upon current average dispensing levels or to £21,374 based on projected dispensing levels. Using projected dispensing levels, if this application is granted and the pharmacy loses 48% of its prescription base, the margins are turned into a £26,270 loss if the pharmacy services the care homes or a £30,249 loss if it does not.
- 5.44 The 'profit turned to loss' scenarios were argued at length. However, whatever the exact numerical figure may be the clearest evidence given by both Mr Barbour and confirmed by Mr Brown from the LPC is that the bulk of prescriptions received at the Wrington pharmacy comes from the Langford surgery. Mr Wardle submitted that about 90% of prescriptions came from the Langford surgery; Mr Barbour did not give a percentage but made it very clear that it was the vast bulk of prescriptions; Mr Brown said it was 87%; the papers contain the figure 86% increasing to 97% if the care-homes are disregarded.
- 5.45 The Committee concluded that the Wrington pharmacy is almost entirely reliant upon the MVP for its prescriptions whether one considers the group as a whole or just the Langford surgery.
- 5.46 Neither Mr Daly nor Mr Clark demurred from the intended/expected prescription capture of around 48% (the average of the range of 27-69% set out in the papers). Indeed the papers disclose that that is a figure Mr Daly has previously argued as an expected capture rate in applications such as this. Whilst the Committee understood and accepted the suggestion that there was an altruistic part to the application, the practice is a business and would be expected to make an operating profit. Mr Brown made clear that the pharmacy may in fact run at a loss. It would therefore need to maximise the funds it generates. The Committee had little doubt that the practice would make every effort to attain the 48% prescription capture rate and, given its success as a business to date there was every chance it would achieve that aim. It was certainly satisfied of such on the balance of probability.
- 5.47 If that capture-rate is applied to the Wrington pharmacy, the effect is clear. It turns a just profitable business into a clear loss-maker. Mr Daly asserted that the pharmacy could do more to generate income by providing a greater number of services including for example additional MURs. Mr Barbour was very clear that such services are driven by clinical need as indicated by his pharmacist. Whilst he agreed it would be nice to boost MUR numbers they are not to be used simply as income-generators.

In any event he said he would need about 400 MURs and a following wind. The Committee accepted Mr Barbour's evidence and stance on this point.

- 5.48 The clear reality of losing a large part of its prescription-base is that the pharmacy would become unviable. Mr Barbour was quite emphatic that the group could not carry a loss-making pharmacy and as such the pharmacy would close. Whilst the Committee noted Mr Daly's assertion that one cannot simply assume that the Wrington pharmacy would lose all its patient or prescription base, the clear thrust of the Applicant's intention was to take a large slice of it. The clear import of Mr Barbour's evidence was that this would be hugely detrimental to his pharmacy and it would close.
- 5.49 Based on methods of travel, there are arguably pros and cons to a pharmacy being at Wrington and/or at Langford. There are currently around 2666 residents in Wrington. Their immediate source of healthcare is the pharmacy and, they can currently walk to that pharmacy or be there in moments by car. Those in Langford cannot walk to a pharmacy but they do have the benefit of a large dispensing primary-care practice with a pharmacist on site. Residents in either location who have access to a car can attend both and several other locations without great difficulty. There may be a local bus network but no party suggested this would be a long-term and reliable method of accessing services from or to either village. The Applicants argue that Langford residents are currently denied all the services of a pharmacy. The Respondents argue that granting the application will deprive Wrington's residents of their current services and, now that the GP practice has closed, it will deprive the village of all healthcare services.
- 5.50 Pulling the above points together, the Committee was satisfied on balance of probability that granting this application would lead to a substantial loss of prescription-income to the Wrington pharmacy. The pharmacy and its parent group could not sustain the level of loss predicted and it would therefore close. Closing the pharmacy would have two clear effects. At a village-level it would deprive the residents of Wrington of the only healthcare provider they currently enjoy. The replacement service, whilst accessible by car, is not reasonably accessible on foot or by public transport. On a wider level, the current even distribution of service-providers within the relevant area of the HWB is upset.
- 5.51 In short, there would be a complete cessation of a service in Wrington that the Committee was satisfied residents value, is of benefit to them and which they have rightly come to expect. The loss of the Wrington Pharmacy was of particular concern to the Parish Council who considered it a valued local service. The current wider balanced network of provision would also be upset. A pharmacy in Langford would not be an adequate alternative to the service currently provided and which the residents in Wrington enjoy. Finally, the Committee was of the view that patients in Langford are not adversely affected by this decision since, on the evidence, they currently enjoy an excellent service from their dispensing surgery. If there were a pharmaceutical service which it was felt a Langford patient needed (and there was no evidence of any such patient or any such need) they can of course see a pharmacist in Wrington or elsewhere.
- 5.52 On an initial assessment the Committee was satisfied that significant detriment would occur for the reasons set out above. However, the Committee recognised that, even if significant detriment occurred it might be argued that any such detriment could be reversed or compensated for by granting the application. An argument along the lines of "the benefits of the application outweigh any significant detriment" was not deployed by the Applicant however, the Committee is aware that such arguments have been raised in the past on appeal. The Committee therefore considered the merits of the application itself to see whether it in fact provided significant benefits and if those benefits outweighed the significant detriment it has identified above.

- 5.53 The Committee's consideration of the application and Regulation 18 are set out below. However, in short the Committee concluded that the application did not meet the requirements of Regulation 18 and thus there were no significant benefits with which to mitigate the significant detriment. Having come to that conclusion the Committee affirmed its initial assessment of significant detriment.
- 5.54 The Committee was therefore satisfied that significant detriment to the arrangements currently in place for the provision of pharmaceutical services would result from a grant of the application.

Regulation 18(2)(b)

- 5.55 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)

Regulation 18(2)(b)(i) - Choice

- 5.56 The Committee noted that much of Mr Clark's evidence was angled toward what was good for the practice. However, it understood by implication that this was intended to be to the benefit of patients. The Committee has set out above that, in its view there is currently a network of pharmaceutical providers which includes the dispensing practice. The network is spread evenly as pointed-out in the PNA, there are plenty of different providers and there is good coverage over many hours save perhaps on a Sunday (a fact also pointed out in the PNA and which could be addressed by the current providers). There was no evidence of dissatisfaction regarding the dispensing service at the surgery indeed quite the reverse. There are several pharmacies within a short drive of Langford.
- 5.57 The Committee was satisfied that patients currently enjoy a reasonable choice. Those choosing to accept dispensing services appear to be very pleased with their lot. Those who do not accept dispensing services raised no concern as to their lot. There was clear evidence of high car-ownership and, as was pointed out, the MVP moves patients around which itself suggests they are mobile. There was clear evidence of a population that, overall, was in reasonable health.

- 5.58 The Committee considered whether there was a cadre of patients who were in some way disadvantaged in their choice. The Applicant relied in particular in the recommendation of Mr Ward that there would be a significant benefit because of choice. However Mr Ward's reasoning in what he clearly regarded as a very fine balance decision is important. He sets out two options, one that the Committee *could* conclude there is adequate access and no significant benefit or, "it *could* conclude that there is a section of the population experiencing difficulties in accessing nearby pharmacies for non-dispensing services (*should they need them*) .. so there would be a significant benefit."
- 5.59 Mr Ward's latter reasoning is really the state of the evidence on this point. IF there were a patient or patients who were having difficulty accessing non-dispensing services then granting this application would be of benefit to them. However, there was no evidence of any such patient or patients and, in respect of dispensing patients the evidence was quite the reverse. It may be that for some patients, if they needed non-dispensing services it would be more convenient to access them at the location of the application but that is not the same as patients being denied a reasonable choice. Convenience is not the same as significant benefit.
- 5.60 Having considered all the evidence 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.
- 5.61 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 there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits on person.

Regulation 18(2)(b)(ii) – Protected characteristics & difficulty

- 5.62 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.
- 5.63 Whilst the Committee acknowledged that Langford like any other community will have a number of elderly residents and/or residents with other protected characteristics, there was no evidence of any particular group of patients relied on by the Applicant. In addition there was no evidence of any such persons having a specific need for pharmaceutical services and no evidence of any patients having difficulty in accessing such services.
- 5.64 Whilst the papers contained population statistics, this is insufficient from which to infer that there may be patients with particular needs who experienced difficulties. This was particularly the case given the information that although there was an aging population in the area it was for the most part reasonably well and mobile.
- 5.65 The Committee was therefore not satisfied that, having regard to the desirability of people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that are difficult for them to access, granting the application would confer significant benefits on persons.

Regulation 18(2)(b) (iii) - Innovation

- 5.66 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.
- 5.67 Innovation was not relied upon by the Applicant and none was evident on the papers.
- 5.68 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

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

Regulation 44 - Prejudice

- 5.70 Having considered the matter of reserved location and, having considered the application under Regulation 18, the Committee next considered the question of prejudice under Regulation 44.
- 5.71 The Committee has already indicated that if the application does not meet the requirements of Regulation 18 then the Committee is required to refuse it and prejudice cannot arise. The potential for prejudice only arises if the Committee has concluded that the application meets the requirements of Regulation 18 and may be granted.
- 5.72 As indicated above, the Committee has determined that the application does not meet the requirements of Regulation 18 and therefore the Committee considered that consideration of prejudice was not required. However for the reasons stated above, we set out in short form our consideration of this issue.
- 5.73 The Committee noted that consideration of prejudice pursuant to Regulation 44 was relevant where the Applicant is seeking the listing of pharmacy premises which are in a part of a controlled locality that is not in a reserved location. The Committee has determined that, in this case, the Applicant is seeking the listing of premises which are in a part of a controlled locality that is not in a reserved location. The potential for prejudice only arises if the Committee has concluded that the application meets the requirements of Regulation 18 and may be granted. It is then for the party asserting prejudice to satisfy the Committee that this provides a reason to refuse an otherwise valid application.

- 5.74 Regulation 44 states:

44(1) This paragraph applies to all routine applications—

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

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

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

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

(2) As regards any application to which paragraph (1) applies, the NHSCB must have regard to whether or not the applicant is seeking the listing of pharmacy premises which are in a part of a controlled locality that is not a reserved location.

(3) If the applicant is seeking the listing of pharmacy premises which are in a part of a controlled locality that is not in a reserved location, the NHSCB must refuse the application if granting it would, in the opinion of the NHSCB, prejudice the proper provision of relevant NHS services in the area of—

(a) the relevant HWB; or

(b) a neighbouring HWB of the relevant HWB.

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

5.75 The Committee has determined that the Applicant is seeking the listing of pharmacy premises which are in a part of a controlled locality that is not in a reserved location. The Committee therefore went on to consider if granting the application would prejudice the proper provision of relevant NHS services in the area of the relevant HWB or a neighbouring HWB of the relevant HWB.

5.76 The Committee was aware of guidance issued by the Department of Health regarding the provision of pharmaceutical services in controlled areas (Chapter 14) which states:

“The Regulations do not provide any definition of the concept of prejudice. In general, it means that nothing must be done which would compromise the ability of people in any controlled locality to access pharmaceutical services, LPS, dispensing services or primary medical services....

A mere reduction in the total level of service provided by a particular pharmacist or GP Practice is not of itself “prejudice”. Prejudice arises where the service that people can rightly expect to be provided by the NHS has in some respect to cease or otherwise be curtailed or withdrawn without proper substitution in the area. In practice, the existence of prejudice involves, to a greater or lesser extent, making a judgment about events that will occur in the future. Inevitably, therefore, it can often be extremely difficult to judge whether or not there will be prejudice.

The burden of proof is on the party alleging that prejudice will occur. Each case will, therefore, turn very much on its own particular facts. In considering questions of prejudice, it is important that decision-takers focus only on those services which have to be provided within the terms of service of NHS primary medical and pharmaceutical services provision. The fact that non-NHS services or NHS services provided above the standard level set by the terms of service may be curtailed should not be regarded as relevant”.

5.77 The Committee was mindful of the 1996 case of R –v- North Yorkshire FHSA ex parte Dr. Wilson and Partners when Justice Carnwath said *“It is not part of the scheme of those regulations or indeed of the statute that pharmaceutical services should be relied upon to provide financial underpinning for medical services which are intended to be financed in other ways”.*

5.78 The Committee has already observed that the issue of prejudice is similar to that of significant detriment. It has set out its findings and reasons regarding significant detriment above including weighing any alleged potential benefits against any identified detriment. In this case the evidence and arguments upon prejudice covered similar ground and, had the Committee been obliged to go on and consider prejudice (if it had not already refused the application), it would have adopted the findings set out under significant detriment.

Other considerations

- 5.79 Having determined that Regulation 18(2)(a) had not been satisfied, the Committee did not need to have regard to Regulation 18(2)(c) to (e).
- 5.80 No deferral or refusal under Regulation 18(2)(f) was required in this case.
- 5.81 The Committee had regard to Regulation 18(2)(g) and found that it did not apply.
- 5.82 The Committee considered whether there were any further factors to be taken into account and concluded that there were not.
- 5.83 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.
- 5.84 Since Regulation 18(2)(a) applies, the Committee had regard to Regulation 19(5) which states:
- (5) If the NHSCB is satisfied as mentioned in regulation 17(2)(d) to (g) or 18(2)(a) [or (g)], it must refuse the application.*
- 5.85 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 5.85.1 confirm NHS England's decision;
- 5.85.2 quash NHS England's decision and redetermine the application;
- 5.85.3 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.
- 5.86 In the circumstances as set out above, in particular regarding the finding of significant detriment, the Committee determined that the decision of NHS England must be quashed and redetermined
- 5.87 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.
- 5.88 The Committee noted that representations on Regulations 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. Representations had also been made by parties upon Regulations 31, 40, 41 and 44.
- 5.89 The Committee concluded that further notification under paragraph 19 of Schedule 2 would not be helpful in this case.

6 DECISION

- 6.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of NHS England, for the reasons given above, in particular because of its finding in respect of Regulation 18(2)(a)(ii), and redetermines the application.

- 6.2 The Committee determined that the application should be refused.
- 6.3 The Committee has considered whether the granting of the application would cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area covered by the HWB, and is not satisfied that it would;
- 6.4 The Committee has considered whether the granting of the application would cause significant detriment to the arrangements in place for the provision of pharmaceutical services in that area and is satisfied that it would. In coming to that conclusion the Committee has taken into account its findings in respect of Regulation 18.
- 6.5 The Committee concluded that the Application is in a controlled locality and that the site of the application is not in a reserved location.
- 6.6 Having determined that the application should be refused, it was unnecessary for the Committee to make a decision upon whether granting the application would prejudice the proper provision of relevant NHS services in the area of (a) the relevant HWB; or (b) a neighbouring HWB of the relevant HWB.
- 6.7 The Committee determined that the application should be refused on the following bases:
- 6.7.1 In considering whether the granting of the application would cause significant detriment to the arrangements in place for the provision of pharmaceutical services in the area of the HWB, the Committee determined that it would.
- 6.7.2 In considering whether the granting of the application would confer significant benefits, the Committee determined that –
- 6.7.2.1 there is already a reasonable choice with regard to obtaining pharmaceutical services;
- 6.7.2.2 there is no evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services; and
- 6.7.2.3 there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services;
- 6.7.3 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. Rather the Committee is satisfied that it would cause significant detriment to the arrangements in place.

Committee Chair

A copy of this decision is being sent to:

Rushport Advisory representing Mendip Vale Medical Services (the Applicant)
NHS England
Boots UK Ltd
Lloyds Pharmacy
Charles Russell representing Wrington Pharmacy
Avon LPC

Annex A

REF: SHA/19981

1 Trevelyan Square
Boar Lane
Leeds
LS1 6AE**APPEAL AGAINST NHS COMMISSIONING BOARD ("NHS ENGLAND") DECISION TO REFUSE AN APPLICATION BY WRINGTON VALE MEDICAL SERVICES LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT PUDDING PIE LANE SURGERY, PUDDING PIE LANE, LANGFORD, BRISTOL, NORTH SOMERSET, BS40 5EL**Tel: 0113 86 65500
Fax: 0207 821 0029
Email: appeals@resolution.nhs.uk**1 The Application**

By application dated 1 April 2018, Wrington Vale Medical Services Ltd ("the Applicant") applied to NHS Commissioning Board ("NHS England") for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at Pudding Pie Lane Surgery, Pudding Pie Lane, Langford, Bristol, North Somerset, BS40 5EL. In support of the application it was stated:

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

1.1 No other pharmacy in same or adjacent premises so not applicable.

Information in support of the application

1.2 Lower Langford is a village within the civil parish of Churchill in the unitary authority of North Somerset, England. It is located on the western edge of the Mendip Hills about 8 miles (12.9 km) east of Weston-Super-Mare. It was a village built around estate of Sidney Hill who was the original inhabitant of the village.

1.3 Mendip Vale Medical practice covers a wide rural area which covers the villages of Blagdon, Churchill, Claverham, Cleeve, Congresbury, Hewish, Kenn, Kingston Seymour, Langford, St Georges, Wrington, and Yalton. The Applicant serves patients from five premises; modern state of the art surgeries in Langford and St Georges, long standing GP surgeries in Yalton and Congresbury and a limited GP clinic in Wrington. The Applicant's 26,000 patients are able to choose to be seen at any of the five locations.

1.4 The West of England Joint Spatial Plan is being considered by the Planning Inspectorate in April 2018 for Adoption in early 2019. Significant new housing is proposed across the area which will have a knock on impact on demand for medical and pharmaceutical services. Whilst the practice currently provides dispensing services to eligible patients, the Applicant wishes to have a new pharmacy company set up to replace dispensing where possible and allow patients full access to all pharmaceutical services. The Applicant saw a 3% increase (751) in patients registering with the practice in 2016/2017, moving from 24,994 to 25,745. This is now at 25,934 (March 2018) and is continuing to grow rapidly.

1.5 Those who are resident in the area, have no reasonable choice of pharmacy provider. Whilst there are pharmacies located several miles away in Wrington, Winscombe, Banwell and Congresbury these cannot be considered as providing reasonable choice for those attending surgery or living in and around Langford and Churchill.

1.6 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 for patients, particularly those who may have difficulty in accessing other areas, such as the elderly, infirm disabled, or parents with young children (i.e. those who share a protected characteristic).

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

1.7 By opening a pharmacy at the proposed location.

2 The Decision

NHS England considered and decided to refuse the application. The decision letter dated 8 August 2018 states:

2.1 NHS England has considered the above application and is writing to confirm that it has been refused. Please find enclosed document detailing the refusal of the application.

NHS England Decision Report

2.2 The above application was considered by NHS England's South West Pharmaceutical Services Regulations Committee on 20 July 2018 and was refused.

Langford

2.3 Langford is located in the Parish of Churchill in North Somerset. It has two parts: the older hamlet of Lower Langford, and the modern part known as Upper Langford. The University of Bristol School of Veterinary Science occupies a large area of land between the two settlements, while Monaghan Mushrooms operates from a site to the north of Upper Langford.

2.4 The population of Churchill Parish was reported as 2,235 at the 2011 census, comprising: (Data from ONS NOMIS website. Lower Langford built-up area = GSS code E35000272, Upper Langford (Churchill built-up area) = GSS code E35001336, Dinghurst built-up area = GSS code E34000018, Churchill Parish = GSS code E04001008. A small part of Lower Langford built-up area falls outside Churchill Parish; the figure for Lower Langford includes that area but the total/rest of parish figures do not.)

2.4.1 Lower Langford: 308

2.4.2 Upper Langford: 1,070

2.4.3 Dinghurst: 309

2.4.4 Rest of parish: 548

2.5 A count indicated that there are 2,394 registered patients within 1.6km of Pudding Pie Lane Surgery as at April 2018.

2.6 There are four sites in Langford with ongoing house building or at least outline planning permission:

2.6.1 Crest Nicholson's Langford Fields development, to the north of the eastern end of Pudding Pie Lane: 141 plots for 3, 4 and 5 bedroom houses – construction commenced

- 2.6.2 Bellway Homes site off Bristol Road/Says Lane: 43 houses – outline planning permission granted 2016, reserved matters application granted June 2018 (ref 17/P/2560)
- 2.6.3 Edward Ware Homes site between A38 and A368 at south-west end of Langford – outline planning permission for 41 homes granted February 2018 subject to legal agreement (ref 17/P/1200)
- 2.6.4 Site adjacent to (east and north of) Pudding Pie Lane Surgery – outline planning permission for 35 homes granted January 2018 subject to legal agreement (ref 15/P/2521).
- 2.7 This is therefore a total of 260 houses planned, so ultimately approximately 550-600 people in addition to those already present.
- 2.8 It was noted that Rushport Advisory, on behalf of the application, had referred to the selection of Churchill as a ‘Strategic Development site’. From a paper on North Somerset Council’s website <https://www.n-somerset.gov.uk/wp-content/uploads/2017/11/Churchill-background-paper.pdf> it was noted that a site to the north of Churchill/west of Langford could be developed for 2,675 homes but is at a very early stage of planning: construction would probably not start until 2025/26 at the earliest. Therefore this was not considered to be relevant at the present time.
- 2.9 Pudding Pie Lane Surgery was purpose-built on a green-field site on the northern edge of Upper Langford and opened in December 2012. It is the main surgery of Mendip Vale Medical Group (which also 3 branch surgeries in Yatton, Congresbury and St Georges and a ‘limited GP clinic’ in Wrington). Pudding Pie Lane Surgery is the location of the practice’s sole dispensary. There are currently no pharmacies located within Langford.
- 2.10 Aside from the GP surgery, Langford’s principle local amenities are a primary school and a medium-sized 24-hour supermarket, Tout’s Budgens, located adjacent to the Esso petrol station at the junction of the A38 and B3133, at the eastern end of Upper Langford.
- 2.11 A site visit to Langford and the locations of nearby pharmacies had been carried out by an officer, the report of which is included in the appendix.

Summary of the application

- 2.12 The Applicant is proposing to open from 8am to 6.30pm on weekdays and 9am to 12pm on Saturdays, closed Sundays. All of the opening hours (55.5 per week) would be core hours.
- 2.13 The pharmacy would provide appliances, Medicines Use Reviews, the New Medicines Service, flu vaccinations, specialist medicines service and services commissioned by the CCG/public health.
- 2.14 Within the application it is stated that the applicant/practice “wish to have a new pharmacy company set up to replace dispensing where possible and allow patients full access to all pharmaceutical services”.
- 2.15 The Applicant considers that there is currently no reasonable choice of pharmacy because the pharmacies in Wrington, Winscombe, Banwell and Congresbury are located several miles away.
- 2.16 They consider that providing the full range of pharmaceutical services in Langford would be of significant benefit, in particular for elderly, infirm or disabled patients and those with young children.

2.17 The application also refers to future plans (not yet finalised) for additional housing in the area.

2.18 The Committee noted the full supporting statement included in the application form.

Representations on the application

2.19 The Committee noted the representations received, of which the following is a summary only:

2.20 Wringtons Ltd opposes the application, saying:

2.20.1 the practice previously opposed applications to open a pharmacy in Langford

2.20.2 patients can access dispensing at the surgery or at pharmacies in the surrounding villages, all of which will deliver – there is “ample choice”

2.20.3 all of the surrounding pharmacies are in villages where parking is available, and the majority of patients have a car.

2.20.4 there are bus services from Churchill/Langford to Wrington, Banwell and Winscombe where there are pharmacies

2.20.5 the 2018 PNA concluded that pharmaceutical coverage in North Somerset was good, and there have been no significant changes since the PNA was published

2.20.6 housing schemes near Langford were given planning permission in 2016 so would have been taken into account when the 2018 PNA was written. They amount to 180 new homes, some of which are already being built. Changes to the local population will not be significant.

2.21 Boots oppose the application, saying:

2.21.1 there is no shortfall in current provision, no declared healthcare need and no obvious deprivation in the area

2.21.2 residents will consistently leave the village to access services as the level of amenities within the village is poor

2.21.3 there is a choice of three other pharmacies within 5 miles/20 minutes drive (the measure used in the PNA).

2.21.4 car ownership is high. 100% of the population of the Nailsea and Rural locality are within a 10 minute drive, and 92% within a 30 minute bus ride, of a pharmacy.

2.22 Lloyds oppose the application, saying:

2.22.1 the practice already provide dispensing to local patients

2.22.2 Langford is not deprived, and car ownership is well above average

2.22.3 there is no evidence provided with regards to patients who share protected characteristics.

2.23 Gorgemead Ltd (Cohens Pharmacy) oppose the application, saying:

- 2.23.1 the Applicant has not provided evidence that there is difficulty in accessing current provision
- 2.23.2 there are seven pharmacies within a 4 mile radius, the nearest being only 1.7 miles
- 2.23.3 among those pharmacies there is a wide choice of provider
- 2.23.4 the area is affluent and car ownership is higher than average
- 2.23.5 surrounding pharmacies provide delivery, and there have been no complaints about existing services
- 2.23.6 there would be prejudice to Mendip Vale Medical Group
- 2.24 Avon Local Pharmaceutical Committee (note: response received 1 day late) oppose the application, saying:
 - 2.24.1 the 2018 PNA identified no gap, and the number of pharmacies in the Nailsea and Rural locality is on a par with the rest of North Somerset
 - 2.24.2 there is reasonable choice of pharmacy in the area
 - 2.24.3 the closest pharmacy in Wrington is 2 miles away and two-thirds of its prescriptions originate from this surgery
 - 2.24.4 there would be significant detriment to the pharmacy in Wrington which could lead to closure and so a loss of provision in Wrington.
- 2.25 Cheddar Medical Centre responded to say that they had no comments.
- 2.26 The Committee noted the response provided by Rushport Advisory on behalf of the Applicant, which in summary was as follows:
 - 2.26.1 references to the PNA not identifying a need in this locality are not relevant to an application under regulation 18
 - 2.26.2 “there is no doubt that difficulty [accessing existing services] exists”, not least evidenced by the fact that nearby pharmacies offer to deliver to patients who “are having difficulty” accessing those pharmacies
 - 2.26.3 Wringtons probably make a large number of deliveries to Langford (Rushport suggest that this is evidenced by that pharmacy’s low level of MURs and NMSs)
 - 2.26.4 Wringtons is actually 2.4 miles away by road
 - 2.26.5 a bus journey involves a walk of between 0.5 and 0.7 miles depending on the bus used – in the case of Boots a total journey on foot of nearly 1 mile is needed to access the relevant buses
 - 2.26.6 the bus services are poor, particularly after the recent withdrawal of the A2 service
 - 2.26.7 over a third of households either have no car or only one car, which is probably already in use for commuting during the day
 - 2.26.8 granting the application would secure better access to services

2.26.9 there is no evidence that there would be detriment to existing arrangements – all the closest pharmacies receive Pharmacy Access Scheme funding “and are likely to be very profitable”

2.26.10 Churchill has been selected as a ‘Strategic Development Location’. 200 homes already have planning permission and further applications are being considered.

2.26.11 the local population will increase to over 3,400 when the housing developments currently with planning are occupied.

Oral hearing

2.27 The Committee was satisfied that it had adequate information to determine the application without an oral hearing.

Same or adjacent premises (regulation 31)

2.28 As there is not currently a community pharmacy located anywhere in Langford, the Committee was satisfied that the application did not need to be refused under regulation 31.

Controlled locality status

2.29 It was noted that Churchill Parish was declared controlled in March 2013 (appeal decision SHA/17001).

Five-year bar (regulation 40)

2.30 The Committee noted that three applications to open pharmacies in Langford were submitted in February 2012 (under the 2005 regulations), and were deferred while a rurality determination was made. This was appealed and the appeal decision received in March 2013, which confirmed that Churchill Parish was controlled. However by that time the new 2012 regulations had come into effect, and had voided the three applications – therefore decisions on those applications were never made.

2.31 As there had been no applications refused within Langford within the last five years, the Committee was satisfied that the five-year bar had not been invoked.

Reserved location (regulation 41)

2.32 As Langford is in a controlled locality patient counts were requested to assess reserved location status.

2.33 A count provided by PCSE registrations in mid-April 2018 indicated that there are 2,394 registered patients living within 1.6 km of Pudding Pie Lane Surgery.

2.34 As this figure falls below the 2,750 threshold the Committee noted that the first limb of the reserved location test was met.

2.35 Regarding the second limb of the test, it was noted that the applicant had not sought to argue that the use of services would be similar to, or greater than, the use that might be expected from a population of 2,750 or more. As there was nothing to indicate that this might be the case, the Committee noted that the second limb was also met.

2.36 Accordingly the Committee determined that the proposed location is in a reserved location.

Prejudice (regulation 44)

- 2.37 As the proposed location is in a reserved location it was not necessary for the Committee to consider prejudice.

The Pharmaceutical Needs Assessment

- 2.38 This application was submitted just after the 2018 North Somerset PNA came into force. Langford falls within the Nailsea and Rurals locality.
- 2.39 The Committee referred to relevant extracts from the PNA. It noted that the PNA records the presence of the GP dispensary in Langford, and notes that this raises the number of dispensing sites in the locality from 19 to 21 per 100,000. It notes that this locality has the lowest proportion (in North Somerset) of people living within 20 minutes walk of a pharmacy, but the highest proportion with access to a car. Overall it concludes that there are no gaps in provision.
- 2.40 The Committee was satisfied that the improvements or better access being offered by the applicant are not benefits which were foreseen in the PNA and therefore this is the correct type of application.
- 2.41 Reg 18(2)(a) – Would granting the application cause significant detriment to the proper planning or arrangements in place for provision of pharmaceutical services in this area
- 2.42 It was noted that NHS England has no particular plans for this location and so the Committee could not be satisfied that there would be detriment to proper planning.
- 2.43 The Committee noted that Avon LPC had suggested that there would be significant detriment to the pharmacy in Wrington such that the pharmacy might close leading to a reduction in pharmacy services for the population of Wrington.
- 2.44 Data provided to the Committee showed that, across 2017/18, Wrington Pharmacy dispensed an average of 6,750 items per month, which puts it exactly at the 50th percentile within Bristol, North Somerset, Somerset and South Gloucestershire.
- 2.45 Figures from datasets published on the NHS Business Services Authority website also showed that in January – March 2018 just over 70% of prescriptions dispensed by Wrington Pharmacy originated from Mendip Vale Medical Practice:

	January 2018	February 2018	March 2018
Mendip Vale Practice	4,611 70%	4,246 72%	4,382 72%
Tyntesfield Practice	478 7%	263 4%	248 4%
Longton Grove Surgery	260 4%	223 4%	231 4%
Winscombe Surgery	222 3%	185 3%	202 3%
37 other surgeries	1,016 15%	1,002 17%	1,045 17%
Total items	6,587	5,919	6,108

- 2.46 In their response to representations Rushport Advisory, on behalf of the applicant, referred to the Pharmacy Access Scheme. The Committee noted that Wrington and Banwell Pharmacies, Day Lewis Pharmacy in Congresbury and Boots Pharmacy in Winscombe were all eligible for payments under this scheme because they are each more than 1 mile (by road) from the closest pharmacy and not in the top 25% largest pharmacies by volume (nationally).
- 2.47 The Committee considered Rushport’s argument that, because Wrington Pharmacy receives Access Scheme funding, it is “likely to be very profitable” as speculative.

- 2.48 Taking into account the above figures, the Committee was concerned that the opening of a pharmacy in Langford might adversely affect the viability of Wrington Pharmacy. It also felt that, if Wrington Pharmacy were to close, patients in Wrington would face difficulties in accessing alternative pharmacies (whether in Langford or elsewhere) because of the rural nature of the area, the distances involved and the limitations of public transport. Therefore the Committee was of the view that there could be detriment to the existing provision of pharmaceutical services if the application were granted.
- 2.49 However the Committee also noted that Wrington Pharmacy itself had not claimed that there would be significant detriment, and no actual evidence had been provided to quantify any impact on the viability of that pharmacy.
- 2.50 Therefore, while concerned that there could be some detriment to the existing provision of pharmaceutical services, the Committee was unable to be satisfied that there would be detriment or that it would be significant. Therefore the application was not refused on this point.
- 2.51 Regulation 18(2)(g) – Whether the application presupposes that a gap in pharmaceutical services provision has been or is to be created as a result of a consolidation application.
- 2.52 As no consolidation applications had been made relating to North Somerset the Committee was not required to refuse the application under regulation 18(2)(g).
- 2.53 Reg 18(2)(b)(i) – Significant benefit: Reasonable choice with regard to obtaining pharmaceutical services.

Existing provision: the surgery dispensary

- 2.54 Mendip Vale Medical Group operates a dispensary at Pudding Pie Lane Surgery which can dispense against prescriptions issued to patients of the practice (whether by the GPs/nurses at the practice, or another prescriber). It cannot dispense to patients who live within 1.6 km of a pharmacy or who are registered with a different practice.
- 2.55 Of the 2,394 patients living within 1.6km of the surgery, 198 appear to be non-dispensing patients of the practice, 64 are non-dispensing patients of other practices and 1 is a dispensing patient registered with another practice – these patients cannot use the dispensary.
- 2.56 The practice dispensary hours (as declared as part of the 2017/18 Dispensary Services Quality Scheme assessment) are Monday-Friday 8am – 6.30pm, and Saturday 9am-12pm – the same as are proposed in the application.
- 2.57 The Committee adopted the view (supported in previous appeals, for example in the St Day and Coleford cases) that the dispensing service provided by a GP surgery is not directly equivalent to the services provided by a pharmacy. For example, unlike a GP dispensary, a pharmacy can:
- 2.57.1 sell P- and GSL-medicines (which a dispensing GP may instead prescribe and dispense, subject to any prescription charge)
 - 2.57.2 provide emergency supplies of repeat medication when the GP surgery is closed
 - 2.57.3 offer advice on self-care and the use of medicines without an appointment
 - 2.57.4 carry out Medicines Use Reviews

2.57.5 offer the New Medicines Service

2.57.6 offer such other services (for example a Minor Ailments Service or provision of Emergency Hormonal Contraception) as may be commissioned by the local clinical commissioning group or local authority public health team.

Sale of OTC medicines by village shops

2.58 General retail outlets such as the Budgens supermarket in Langford can sell medicines on the General Sales List (GSL) only. They cannot sell:

2.58.1 P medicines, which can only be sold in a pharmacy under the supervision of a pharmacist; these are the medicines which are 'behind the counter' in a pharmacy but for which a prescription is not needed.

2.58.2 POM medicines, which can only be dispensed by a pharmacy or surgery dispensary on prescription.

2.59 A dispensing practice could issue GSL and P medicines by prescribing and then dispensing them, but this would be at a cost to the NHS budget (subject to any NHS prescription charge paid by the patient) rather than being paid for by the patient.

Access to existing pharmacies

2.60 The closest existing pharmacies to Langford are in Wrington, Winscombe, Banwell, Congresbury and Yatton:

Pharmacy	Distance by road (Google)	Mon-Fri total opening hours	Sat opening(all closed on Sun)	Parking
Wrington Pharmacy, Silver Street, Wrington, BS40 5QE	2.4 miles, (3.8 km)	9am-1pm 1.30pm-5.30pm	9am-1pm	Very limited on-street (or Memorial Hall 100m)
Day Lewis Pharmacy, Broad Street, Congresbury, BS49 5DG	3.0 miles, (4.9 km)	9am-1pm 2pm-6pm) (Wed close 5.30pm)	9am-1pm	On-street
Boots Pharmacy, 33 Woodborough Rd, Winscombe, BS25 1AG	3.3 miles, (5.3 km)	9am-1pm 2pm-6pm	9am-4pm	Free public car park nearby
Banwell Pharmacy, Westfield Road, Banwell, BS29 6AD	4.1 miles (6.6 km)	9am-1pm 2pm-6pm (Thu 9am-2pm)	9am-12pm	Free car park adjacent
Lloyds Pharmacy, 8 Pages Court, Yatton, BS49 4EG	4.4 miles, (7.1 km)	8.45am-6pm	9am-5.30pm	Free supermarket car park very close
Cohens Pharmacy, 155 Mendip Road, Yatton, BS49 4ER	4.5 miles, (7.2 km)	9am-6.30pm	Closed	Small car park adjacent + on-street

Access by car

2.61 The car parking available at each local pharmacy was noted in the site visit report (except Banwell) and summarised in the table above.

2.62 Several interested parties had referred to car ownership. The Committee noted that data from the 2011 census showed that, in Churchill Parish, the proportion of households with 2 or more cars/vans is significantly higher than average, and the proportion of households with no car/van is significantly lower than average: (Data from ONS NOMIS website. Lower Langford built-up area = GSS code E35000272, Upper Langford (Churchill built-up area) = GSS code E35001336, Dinghurst built-up area = GSS code E34000018, Churchill Parish = GSS code E04001008. A small part of Lower Langford built-up area falls outside Churchill Parish; the figure for Lower Langford includes that area but the total/rest of parish figures do not.)

2.63 [see table]

Access by bus

2.64 Interested parties had suggested that bus services make the other pharmacies accessible, while Rushport Advisory, on behalf of the applicant, had described bus services as poor, and mentioned the distance needed to walk to the stops.

2.65 The Committee noted that a new bus service, the A5, started operating on 29 May 2018 (after the application was received) and serves Langford and all of the nearby villages which host pharmacies, except Banwell, as follows (on weekdays only):

2.66 [see table]

2.67 It was noted that the somewhat complicated route and scheduling of the service means that, in effect:

2.67.1 only three return journeys to Wrington are possible per day from the Upper Langford stops, while seven are possible from the Lower Langford stops (but these are about 1.3 – 1.4 km from the surgery)

2.67.2 similarly, only 4 return journeys to Congresbury/Yatton, or to Winscombe, are possible, all with turnaround times of only 15-20 minutes, or a much longer wait for the bus back (at least 1¼ hours, possibly almost 5 hours).

2.68 Regarding access to the bus stops in Langford, it was noted from the site visit report that the Churchill Gate and Churchill Inn stops in Upper Langford are on the A38 Bristol Road, and that:

2.68.1 buses travelling east (to Wrington or from Winscombe) stop on the same side as most of the houses, and can be accessed on foot from the settlement area via a footpath alongside the Stag & Hounds pub (rather than having to walk along the rounds around the outside of the settlement); by this route the Churchill Inn stop is about 475m from the surgery.

2.68.2 buses travelling west (to Winscombe or from Wrington) stop on the opposite site.

2.69 It had been noted on the site visit that the A38 is a very busy road with no formal pedestrian crossing points so can be quite difficult to cross.

2.70 It had also been noted that the St Mary's Gardens stop (at the east end of Upper Langford, adjacent to Budgens supermarket, about 635m from the surgery) is on the B3133 which is much easier to cross, while the Pudding Pie Lane stop is a little further north on the B3133 (about 550m from the surgery). These stops would be quite convenient for patients living in the eastern part of Upper Langford.

2.71 The stops in Lower Langford (Post Office and Langford House) are about 1.3 – 1.4 km from the surgery.

- 2.72 As to bus stops serving the existing pharmacies:
- 2.72.1 Wroughton: the Golden Lion stops are only about 50m from the pharmacy, albeit that there is no pavement for part of this
- 2.72.2 Congresbury: the Mill Lane stop is about 350m from Day Lewis Pharmacy. For journeys back to Langford, there is a stop about 200m away from the pharmacy.
- 2.72.3 Yatton: the bus stops are very close to Pages Court where Lloyds is located.
- 2.72.4 Winscombe: the Brown's Corner stop is about 100m from Boots.
- 2.73 There are some other buses serving stops in Upper and Lower Langford, however they are either:
- 2.73.1 very infrequent:
- 2.73.1.1 the 62 (Winscombe/Churchill/Banwell) is a service for Bridgwater College students so runs only one service each way, early morning and later afternoon
- 2.73.1.2 the 134 (Langford/Banwell) runs a single service each way on Tuesdays only
- 2.73.1.3 the 128 (Langford/Congresbury/Yatton) runs a single service each way on Thursdays only
- 2.73.1.4 the 135 (Langford/Congresbury) runs a single service each way on Fridays only
- 2.74 or
- 2.74.1 stop some distance from existing pharmacies – the South West Falcon (Plymouth-Bristol Airport) passes through Langford numerous times a day, stopping at Churchill Gate and Churchill Inn, but stops:
- 2.74.1.1 on the A38 about 750 metres from Boots in Winscombe
- 2.74.1.2 on the A38 about 2.3 km from Wroughton.

Conclusion

- 2.75 The Committee noted that Langford is a relatively small village at present but will be expanding somewhat in the next few years. It has some limited facilities, such as the 24-hour supermarket and petrol station, the GP surgery and Langford Vets.
- 2.76 While a dispensing service is currently provided at Pudding Pie Lane Surgery, it does not, of itself, meet all the needs that may exist for the full range of pharmaceutical services. Such services are only available from the pharmacies in the wider area. The walking distances to those pharmacies are such that it is very unlikely that patients would access them on foot.
- 2.77 The Committee noted that car ownership is high, that all the nearby pharmacies are within easy driving distance and that all have parking close by, except at Wroughton (though there it may be possible to use the Memorial Hall car park about 100m away). The Committee therefore considered that, for the significant majority of residents of Churchill Parish, the existing pharmacies are reasonably accessible by car and so a significant benefit would not be conferred by granting the application.

2.78 For those residents without access to a car, who would rely on the limited bus services to access the existing pharmacies, the Committee felt that a pharmacy in Langford would be of some benefit. However it noted that this is quite a small proportion of the local population. It therefore did not consider that this amounted to a significant benefit.

Reg 18(2)(b)(ii) – Significant Benefit: Patients with a protected characteristic

2.79 The Applicant had suggested that there would be particular benefits for the elderly, infirm or disabled patients and those with young children (i.e. patients with protected characteristics). However no specific evidence had been provided to show that these groups of patients are experiencing particular difficulties.

2.80 Data from the 2011 census, below,⁴ showed that Upper Langford has more young people, and fewer elderly people, than average, as well as fewer patients than average with health problems which affect their day-to-day activities and fewer patients than average with bad health. Overall the parish is healthier than average.

2.81 [see table]

2.82 In the absence of specific evidence, and given the census data, the Committee was unable to be satisfied that granting the application would confer significant benefits on patients with protected characteristics.

Reg 18(2)(b)(iii) – Significant Benefit: Innovative approaches to delivery of pharmaceutical services

2.83 The Applicant had not included any service they claim would provide a benefit by way of innovation. Therefore the Committee was not satisfied that granting the application would lead to any significant benefits by virtue of innovation.

Reg 18 generally – Opening hours

2.84 The weekday core opening hours being proposed (8am – 6.30pm) would extend the availability of pharmaceutical services in the wider area by a little: 45 minutes in the morning, and 30 minutes in the evening (unless one were to travel to Yatton). If only core hours are considered it would extend these by 1 hour in the morning, over lunchtimes and for 30 minutes in the evening. Saturday provision would not be extended.

2.85 The Committee was of the view that granting the application may, therefore, provide some limited benefit with regards to opening hours, but with the caveats about travel referred to above. It did not consider that this would amount to a significant benefit.

Reg 18: Overall conclusion

2.86 The Committee was not satisfied that granting the application would confer significant benefits and so refused the application.

APPENDIX SITE VISIT IN CONNECTION WITH WRINGTON VALE MEDICAL SERVICES PHARMACY APPLICATION

2.87 The following locations were visited:

2.87.1 Yatton

2.87.2 Congresbury

2.87.3 Wrington

2.87.4 Langford

2.87.5 Winscombe

2.88 It was not possible to visit Banwell due to lack of time.

Yatton

2.89 There are two pharmacies in Yatton. Lloyds Pharmacy is located in Pages Court, a pedestrianised shopping precinct which also includes a veterinary practice, two charity shops, a coffee shop, a hairdresser, NatWest cash machine and mobility scooter supplier. Immediately adjacent is a medium-large Co-operative Food store which has a large car park (2 hours free parking) and another cash machine.

2.90 There is a bus stop at Page Court which is served by the 128 (Thursday only) and A5.

2.91 In the immediately surrounding area are a hardware and DIY store, two takeaway restaurants, more charity shops, Post Office, betting shop, bookshop, another veterinary practice, another hairdresser, a beauty salon, an estate agent, an optician's practice and the Library/Children's Centre.

2.92 The other pharmacy, Cohens, is located within the Mendip Vale Medical Practice branch surgery on Mendip Road. This is in a residential area. The surgery has 8 patient parking spaces + 1 disabled space, plus there is unrestricted on-street parking.

2.93 On the drive from Yatton to Congresbury the 'Double Tree by Hilton Cadbury House Hotel' was noted, along with the large Cadbury Garden Centre.

Congresbury

2.94 Day Lewis Pharmacy in Congresbury is located on Broad Street, a cul-de-sac just off the busy A370 / B3133 junction. Other shops on Broad Street include a gallery, two takeaway food outlets, hair salon, country clothing store, charity shop and two estate agencies. There is some on-street parking available.

2.95 Nearby (on the A370 Station Road or B3133 High Street) there is a pub, carpet shop, windows and conservatories business, hair salon, Methodist church, village social club, physiotherapy clinic, convenience store with cash machine, and a financial business (with Coventry building society agency).

2.96 The Mendip Vale Medical Practice branch surgery is located about 200 metres from the pharmacy at 1 Station Road (other side of the Premier convenience store).

2.97 The closest bus stop travelling from Langford to Congresbury appears to be at Mill Lane (by the Plough Inn), about 350 metres from the pharmacy. Buses to Langford can be caught here, or at stop on the other side of the river about 200m from the pharmacy. (Services: A5 and 128.)

Wrighton

2.98 On Broad Street there is a convenience store/post office (Amors), Golden Lion pub, optometry practice and "Mother Hen" cafe/gift shop.

2.99 Mendip Vale Medical Practice's Wrighton Clinic is in the same building as Mother Hen – signs indicate that it is intended for pre-booked appointments for patients unable to visit the Pudding Pie Lane Surgery site. Distance from the pharmacy: approx. 140 metres.

- 2.100 On Broad Street, between the junction and the Clinic (about 80m from the pharmacy) are bus stops served by the A5.
- 2.101 Wrington Pharmacy is located on Silver Street, adjacent to a garage, and about 50 metres from the junction with Broad Street and High Street. There is no pavement between the junction and the pharmacy. There is very small unofficial parking area immediately outside the pharmacy – at the time of the visit two cars were parked, partially sticking out into the road. There is a medium-sized car park adjacent to the Memorial Hall about 100 metres or so further along Silver Street – use by non-Hall users did not appear to be specifically prohibited but at the time of the visit it was virtually empty (NB: no separate pavement between the Hall and pharmacy, but a line is painted on the road to indicate a walkway).
- 2.102 The route from Wrington to Langford is along Broad Street then south down Station Road and Butt's Batch. Within the village this route has street lights and pavements on one side only (swaps sides periodically), but the pavement and lights stop at the end of the village. Thereafter it is a normal country minor road. Approx. walking / driving distance to Pudding Pie Lane Surgery: 21/3 miles (3¾ km).

Langford

- 2.103 Langford seems to be a village of two parts – Lower Langford (where the road from Wrington comes to first) is the older part. West of this is the University of Bristol School of Veterinary Science, and then west of that is the new part, Upper Langford.
- 2.104 Lower Langford is a rural hamlet focussed on a rural road junction. There are two bus stops (Post Office and Langford House), served by the A5 and 135 (Fridays only).
- 2.105 The modern part, Upper Langford, is broadly triangular in shape. The (narrow) eastern end is bounded by the B3133, the southern side by the A38 Bristol Road/Bypass, the western side by Lady Mead Lane and the northern side by Pudding Pie Lane. Vehicle access into Langford is only possible at the 'corners' (principally the junction of the A38 and Lady Mead Road, in the west, and from the B3133 in the east).
- 2.106 At the eastern end, immediately across the B road in the angle created by a convergence of this road with the A38 Bristol Road (known in Langford as Bypass), is St Mary's Church and an Esso petrol station with an adjacent medium-sized Budgens supermarket (open 24 hours). The supermarket has a cash machine, Subway sandwiches concession at the rear and its own car park. On either side of the B road, adjacent to the supermarket car park, are bus stops (St Mary's Gardens), served by the A5 and 128. Crossing this road between the bus stops was not particularly difficult.
- 2.107 The southern edge of Langford is currently broadly defined by the A38, though there are houses on both sides of the road. This is a very busy single-carriageway road with street-lighting and pavements on both sides; there are no formal pedestrian crossing points or even traffic islands.
- 2.108 Immediately east of Says Lane, which runs south from the A38, is a field with a board announcing that Bellway Homes is planning to build a development of semi- and detached homes (Blagdon Gardens).
- 2.109 About half-way along, on the northern side, is the Stag & Hounds pub. A footpath sign indicates a path heading north, up the side of the pub towards the centre of Langford. This leads to a junction with an east-west footpath running parallel with the Bristol Road which provides foot access to several of the cul-de-sacs within Langford (Broadoak Road, Birch Drive/Rowan Way, and Hill Mead). This network of footpaths (together with Stockmead at the eastern end) therefore provides foot access from

most parts of Langford to the A38 Bristol Road/Bypass, thus avoiding the need to walk around the outside of the 'triangle'.

- 2.110 About two-thirds of the way long the A38 are bus stops (Churchill Inn, though they are somewhat past this second pub) served by the A5, 128 and South West Falcon. Crossing the A road to reach the other stop was quite difficult due to the volume of traffic and lack of formal crossing point.
- 2.111 At the south-western corner, just short of the junction of Bristol Road and Lady Mead Lane were a further pair of bus stops (Churchill Gate), served by the A5 and Falcon.
- 2.112 Lady Mead Lane, which forms the western side of Upper Langford, has a 30 mph speed limit but no pavements or streetlights. A short distance north of the junction with Bristol Road is the Memorial Hall and what appears to be a small ambulance station. The houses on Lady Mead Lane are a mixture of bungalows and ex-council semi-detached houses.
- 2.113 At the north-western corner, where Lady Mead Lane continues northwards, Pudding Pie Lane heads eastwards to form the northern edge of Langford. This road has a pavement on the southern side. Mendip Vale Surgery is located about a third of the way along on the northern side; it has a large patient car park. About half-way along on the right hand side is a school. Side roads off Pudding Pie Lane southwards (Broadoak Rd, leading to Rowan Way and Birch Drive, Hill Mead, Pudding Pie Close and Stock Mead) lead into the centre of the settlement – the housing is all from various points in the second-half of the twentieth-century.
- 2.114 At the north-eastern end, fields to the north of Pudding Pie Lane are a building site for the erection of a Crest Nicholson housing development, Langford Fields.

Winscombe

- 2.115 The visit to Winscombe was brief. It was noted that the South West Falcon probably stops on the A38, adjacent to the Sidcot School playing fields just south of the junction with the A371. The A371 leads downhill towards the centre of Winscombe; the walking route to Boots would be about 750 metres.
- 2.116 In the village centre there is a zebra crossing to facilitate crossing onto the other side of Woodborough Road (A371). The main road turns westwards and Boots is located on this westwards section; nearby there is a baker, a barber, a confectioner, hair salon, estate agent, butcher, home furnishings shop and Co-op food store.
- 2.117 The road that carries on northwards when the A371 turns westwards is Sandford Road and a short distance along this road is a free public car park. Adjacent to the car park are the Brown's Corner bus stops.

3 The Appeal

In a letter dated 7 September 2018 addressed to NHS Resolution, Rushport Advisory LLP representing Wrington Vale Medical Services Ltd (the Applicant) appealed against NHS England's decision. The grounds of appeal are:

- 3.1 Rushport Advisory LLP act for Wrington Vale Medical Services Ltd in the above application and have been instructed by the Applicant to submit the attached appeal in relation to the decision of NHS England to refuse the above application. The decision letter (also attached) was communicated to the Applicant by letter dated 8 August 2018.

Introduction

- 3.2 This Report considers the issues raised by the application by Wrington Vale Medical Services Limited for an application for inclusion in the pharmaceutical list for premises Pudding Pie lane Surgery, Langford.
- 3.3 The application is made under Regulation 18, unforeseen benefits.
- 3.4 The Report is submitted on behalf of Wrington Vale Medical Services Ltd, the applicant and forms the basis of their appeal of NHS England decision to refuse the application.

The Proposal

- 3.5 The relevant area to consider in this application is known variously as Langford, Lower Langford and Churchill. These three smaller settlements have essentially merged to form a distinct area that serves the day to day needs of its local residents. The area has its own parish council known as the Churchill and Langford Parish Council. Within this report the Applicant has referred to the relevant area as being “Churchill”.
- 3.6 Churchill lies around the intersection of 2 main arterial routes, namely the A38, the A368. Churchill Parish lies at the foot of the Mendip Hills some fourteen miles southwest of the city of Bristol. The area is predominantly agricultural, with a high proportion of pasture land. The southern border of the parish lies within the Mendip Hills Area of Outstanding Natural Beauty and rises to a height of about 600 feet.
- 3.7 The area lacks a single focal point since it contains two substantial population groupings - Churchill and Lower Langford - and their centres are separated by about a mile. However, beginning in the late 1980s, development of an area lying between these two foci has added 200 new homes and this “Broadoak” development has served substantially to unite the two centres. Three heavily trafficked major roads traverse the parish: the A38, the A368 and the B3133 and an important component part of the local traffic and congestion dilemma results from the lack of an adequate east-west road link immediately south of Bristol.
- 3.8 [see Map of Churchill Parish (Parish boundary edged in dark blue)]
- 3.9 There are two schools within the parish: a Church of England Primary School (about 200 pupils) and a large Academy School (built in the 1960s and now with more than 1400 students) which serves the secondary education needs of a wide surrounding area and is rated by OFSTED as “outstanding”.

Future Growth 4

- 3.10 Housing in the Parish is in demand not only from those who would like to commute out of the Parish to work, but also from a substantial number of people who travel daily into the Parish to work at the Veterinary School, the Primary and Community Schools and in local businesses.
- 3.11 Churchill has been selected as a Strategic Development Location. Over 200 homes already have planning permission to be built close to the application site and additional applications for more housing are being considered. A map showing the location of these developments is set out below.
- 3.12 [see map]
- 3.13 There are four sites in Langford with ongoing planning consent:
 - 3.13.1 Crest Nicholson’s Langford Fields development, to the north of the eastern end of Pudding Pie Lane: 141 plots for 3, 4 and 5 bedroom houses – construction commenced

- 3.13.2 Bellway Homes site off Bristol Road/Says Lane: 43 houses – outline planning permission granted 2016, reserved matters application granted June 2018 (ref 17/P/2560)
- 3.13.3 Edward Ware Homes site between A38 and A368 at south-west end of Langford – outline planning permission for 41 homes granted February 2018 subject to legal agreement (ref 17/P/1200)
- 3.13.4 Site adjacent to (east and north of) Pudding Pie Lane Surgery – outline planning permission for 35 homes granted January 2018 subject to legal agreement (ref 15/P/2521).
- 3.14 These developments will add approximately 600 residents to the Churchill area once complete.
- 3.15 North Somerset Council has proposed a new “garden village” for Churchill, which would include 2,800 new homes, a dual carriageway and a spur road coming out at Churchill village. A plan of the proposals is set out below.
- 3.16 [see map]
- 3.17 Budgens is the supermarket that serves the Parish. It's open 24 hours a day. On the same site there is an ESSO petrol station and a car wash.
- 3.18 Supplies and services include:
 - 3.18.1 Off licence
 - 3.18.2 Lotto
 - 3.18.3 Cash machine
 - 3.18.4 Stamps
 - 3.18.5 Newspapers and magazines
 - 3.18.6 In-store bakery
 - 3.18.7 Hot takeaway food
 - 3.18.8 Wide range of chilled products, meals etc.
 - 3.18.9 Fresh produce
 - 3.18.10 Organic lines.
- 3.19 The area also contains services such as a post office, medical centre, public houses and numerous small businesses.

The Proposal

- 3.20 The proposal site is located in Churchill and would be co-located with the current GP surgery. The Churchill surgery is the main surgery for the Mendip Vale Medical Practice which issues almost 50,000 (fifty thousand) prescription items per month across its 3 sites.

Surrounding Area

- 3.21 The area around the proposal site is predominantly residential, and will continue to grow. In addition it is supported by educational, employment and recreation and shopping services. Housing developments have been approved on the same road as the medical centre location.

The Proposal

- 3.22 Details of the proposal are set out in the application forms. The premises have been secured and 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.
- 3.23 The proposal will open core hours from 8:00am to 6:30pm Monday to Friday and from 9am to 12pm on a Saturday. These are significant hours as they will allow patients to access a pharmacy when they are in Churchill rather than travelling long distances to access alternate pharmacies in different areas.

The Legal Tests

- 3.24 The legal tests of this application are set out in National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (“the Regulations”).
- 3.25 This is an application for “unforeseen benefits” and must be considered under the provisions of Regulation 18 of the Regulations.
- 3.26 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.
- 3.27 Similarly, the Applicant does not consider any pharmacy in the wider area will experience significant detriment under Regulation 18 2a (ii). Whilst the NHS England decision report refers to significant detriment it does not find that significant detriment would occur and states that there is no evidence to support such a claim.
- 3.28 It can be noted that this application does not rely on Regulation 18 2b (iii) “innovation”.
- 3.29 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

- 3.30 The Pharmaceutical Needs Assessment is the 2018 PNA which does not foresee the proposal.
- 3.31 The PNA provides a helpful map (below) which shows the locations of pharmacies relative to GP surgeries and draws a 1.6km “buffer zone” around these areas. It is notable that the surgery in Churchill / Langford is the only one in the entire area without a pharmacy within 1.6km, but no mention of this is made in the PNA.
- 3.32 [see map]
- 3.33 In addition the Applicant notes that the PNA lists the most important factors for patients when accessing pharmaceutical services as;

- 3.33.1 Longer opening hours
 - 3.33.2 Good relationship with a doctor's surgery
 - 3.33.3 Continuity of care – trust - same pharmacist, staff etc.
 - 3.33.4 Location (close to home or doctor's surgery)
 - 3.33.5 Hours of operation
 - 3.33.6 Length of wait for service
 - 3.33.7 Having medication in stock
- 3.34 The current proposal would be of significant benefit in relation to the first six of the seven points listed above and would of course seek to have medication in stock for its patients.

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

- 3.35 The proposal will secure improvements and better access to pharmaceutical services in the HWB area, because it will provide a large part of Churchill 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 or attending schools there.
- 3.36 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 Churchill when the new housing developments are completed.
- 3.37 Importantly, the proposal provides significantly better access to pharmaceutical services for patients that now travel to 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

- 3.38 As set out above the proposal will not cause significant detriment to the proper planning of pharmaceutical services.

Regulation 18(2) a(ii) significant detriment to the arrangements the NHSCB has in place for the provision of pharmaceutical services in that area;

- 3.39 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.

Regulation 18 (2)(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.

- 3.40 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

- 3.41 There are no pharmacies in the entire parish area. 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.

Distribution of Pharmacies

- 3.42 The map below shows the medical centre as a red circle and the nearest pharmacy as a green star.

- 3.43 [see map]

- 3.44 *Wrington Chemists, Wrington* is located in Wrington and is the nearest pharmacy to the application site. It opens from 9am to 5.30pm Monday to Friday and 9am to 1pm on Saturday. Closing at 5.30pm means that the pharmacy is entirely unsuitable for patients who live in the Churchill area who have a doctor's appointment after 4.30pm.

- 3.45 *Wrington Chemists* is approximately 2.4 miles away by road. It is common ground that nobody would walk this distance to access a pharmacy.

- 3.46 *Day Lewis, Congresbury* is located 3 miles from the application site on Broad Street in Congresbury. This pharmacy closes for lunch each day between 1pm and 2pm and closes at 6pm during the week and 5.30pm on Saturdays pm Monday to Friday and 9:00am to 1:00pm on Saturday. It is closed on Sunday.

- 3.47 Whilst there are other pharmacies located even further away than those listed above, the distances involved and journey times mean that it is clear that no existing pharmacy can be considered to be providing a meaningful service for those who live in the Churchill Parish.

Patterns and Movements of the Population

- 3.48 The proposal is ideally located to complement the patterns and daily movements of the local population.

- 3.49 Parents taking the children to and from school will pass close to the site on their way to the schools. This proposal will be a significant benefit to those parents.

- 3.50 Of particular note are then thousands of patients who access the medical centre site each month for the specific purpose of accessing primary medical services.

Difficulties Accessing Pharmacies

- 3.51 Whilst the nearest pharmacies are located between 2.4 miles and 3 miles from the application site, these are only of use to patients if they live in the towns where those pharmacies are located. For residents of Churchill and the surrounding areas, these would be additional journeys that they would not have to make if this application is approved.

Bus Services

- 3.52 The bus service is fragmented at best. The NHS England decision report explains the difficulty very well (although it does not appear to have accepted that the difficulty should be considered as evidence in favour of approval). The following extract is taken from the NHS England report.

- 3.53 *"It was noted that the somewhat complicated route and scheduling of the service means that, in effect:*

- 3.54 - only three return journeys to Wrington are possible per day from the Upper Langford stops, while seven are possible from the Lower Langford stops (but these are about 1.3 – 1.4 km from the surgery)
- 3.55 - similarly, only 4 return journeys to Congresbury/Yatton, or to Winscombe, are possible, all with turnaround times of only 15-20 minutes, or a much longer wait for the bus back (at least 1¼ hours, possibly almost 5 hours).”
- 3.56 Bus services are not a reasonable alternative for local residents and it is unsurprising that they are not well used by local people.
- 3.57 Whilst it is correct that patients who have access to a car can drive several miles to a pharmacy, the focus of the legal test is not on car borne patients. Instead the legal test asks the Committee to consider if granting the application would secure “better access” to pharmaceutical services and requires the committee to focus on the those who share protected characteristics – which is an acknowledgement that those with mobility issues cannot be compared to those who are healthy and car owners.

Protected Characteristics

- 3.58 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.
- 3.59 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.

Objections and Response to those Objections

- 3.60 The entire point of this application is to provide pharmaceutical services to patients that currently have difficulty accessing those services. There is no doubt that this difficulty exists. Even the objectors accept that there is difficulty in accessing pharmaceutical services and Wrington Pharmacy state;
- 3.61 *“Wrington Pharmacy and the other pharmacies in the local area offer a free delivery service to their customers. Thereby ensuring that **those who are having difficulty accessing the surgery or the pharmacy** can have their medicines delivered to them at home as they need them.”* [emphasis added]
- 3.62 As the closest pharmacy to the application site Wrington Pharmacy is probably well aware of the difficulties that patients face, but to claim that a delivery driver dropping off a prescription is a substitute for proper pharmaceutical services provided by a pharmacist, is simply not credible.
- 3.63 It appears likely that a significant number of deliveries are made to patients in Churchill / Langford as the number of NMS and MUR provided by Wrington Pharmacy is very low and the patients that have difficulty accessing their location and rely instead on the delivery service are missing out on every other pharmaceutical service that a modern pharmacy can provide and which would be provided by the Applicant.
- 3.64 In a similar manner it makes no sense for the objectors to measure the distance to the nearest pharmacies in a straight line, when nobody can travel to them in a straight line. The journey to Wrington Pharmacy is 2.4 miles and it is clear that access to any pharmacy on foot is not realistic.

- 3.65 Whilst there is a bus service it still requires a walk of between 0.5 miles and 0.7 miles depending on the bus that is used.
- 3.66 For patients who have mobility issues due to their disease state, age, pregnancy, travelling with young children (i.e. groups that share protected characteristics), such a journey would not be undertaken lightly. This may well explain why patients who are eligible for services such as MUR and NMS are not receiving them as they require a special journey to the pharmacy.
- 3.67 Boots have objected to this application even though they are located over 3 miles from the application site. Patients clearly do not walk to the pharmacy and any patient using bus services would have a total journey on foot of nearly 1 mile just to get to and from the relevant bus stops. Despite this Boots feels happy to claim that “there is no obvious difficulty accessing services”. It is worth remembering that the legal test is whether granting the application would secure improvements or better access to pharmaceutical services and it is simply not credible to suggest that granting this application would not secure better access to pharmaceutical services.
- 3.68 Boots (and other contractors) discuss pharmacy provision within 5 miles, or 8 miles and feel happy with this because the PNA (which is not relevant to this application) considered drive time within 5 miles. Again, this entirely misses the point that granting the application would secure better access to pharmaceutical services.
- 3.69 Objectors rely on the availability of a car for patients as it is clear that walking is unrealistic and the bus service is poor. The recent withdrawal of the A2 bus service was just another blow to patients who rely on bus services and shows the precarious nature of public transport in rural areas where bus services are increasingly under threat as they are not financially viable.
- 3.70 The objectors have entirely ignored the fact that many people use their car to travel to work during the day and this leaves the rest of their family reliant on services that they can access using public transport or on foot. No explanation is provided for ignoring this substantial group that is estimated to include over a third of all households having either no vehicle or no access to a vehicle during the day.
- 3.71 Boots claims that as “amenities are poor” it is acceptable for patients to be forced to travel to other villages to access services there. Again, this ignores the principal of regulation 18 and the requirement to consider better access to pharmaceutical services. One thing that is clear is that no objector has claimed that granting this application would not result in better access to pharmaceutical services. No person could sensibly make such a claim.
- 3.72 There is absolutely no evidence provided to support any claim of detriment to the arrangements that are in place to deliver pharmaceutical services. All the closest pharmacies receive additional funding from the Pharmacy Access Scheme and are likely to be very profitable. If any pharmacy contractor seriously wishes to claim any sort of prejudice then they should at least provide evidence to support such a claim and none have.
- 3.73 Churchill and Langford is a changing and growing area. Churchill has been selected as a Strategic Development Location. Over 200 homes already have planning permission to be built close to the application site and additional applications for more housing are being considered. The rate of growth should not be ignored by NHS England and the local doctors are well placed to be able to provide pharmaceutical services in a joined up and integrated way alongside the surgery.

Conclusion

- 3.74 It would appear that NHS England decision was a finely balanced one. NHS England acknowledge the difficulties that patients have in accessing the existing pharmacy network and note that;
- 3.75 *“For those residents without access to a car, who would rely on the limited bus services to access the existing pharmacies, the Committee felt that a pharmacy in Langford would be of some benefit. However it noted that this is quite a small proportion of the local population. It therefore did not consider that this amounted to a significant benefit.”*
- 3.76 The Applicant respectfully disagrees with this conclusion because;
- 3.76.1 NHS England assumes that the households that have a car have it available during the day.
- 3.76.2 Whilst it may be argued that having a second, or third pharmacy in an area might be of “some” benefit, this is an area with no pharmacy provision. Assuming that NHS England (and indeed all those who have objected to this application) would agree that the services offered by NHS pharmacies are of significant benefit to patients, then it simply is not credible to suggest that this would not be the case for Churchill.
- 3.77 The Applicant therefore ask NHS Resolution to approve this application and allow the appeal.
- 3.78 [Copy of NHS England decision dated 8 August 2018 provided]

4 **Summary of Representations**

This is a summary of representations received on the appeal.

4.1 NHS ENGLAND

- 4.1.1 NHS England note that the Applicant is not challenging NHS England's finding that the proposed location is within a reserved location.
- 4.1.2 With regards to the information about housing developments provided by Rushport in paragraphs 2.6-2.9 of the letter of appeal:
- 4.1.2.1 NHS England confirm the list of sites with planning consent given in paragraph 2.7;
- 4.1.2.2 with reference to paragraph 2.9, as mentioned in NHS England decision letter a paper on North Somerset Council's website (see <https://www.n-somerset.gov.uk/wp-content/uploads/2017/11/Churchill-background-paper.pdf>) indicates that a site to the north of Churchill/west of Langford could be developed for 2,675 homes but is at a very early stage of planning, and construction would probably not start until 2025/26 at the earliest. Therefore NHS England does not consider this to be relevant at the present time.
- 4.1.3 Accordingly the housing/population growth expected in the next few years is fairly modest.
- 4.1.4 Regarding significant detriment, as noted in its decision letter NHS England was of the view that there could be some detriment to the existing provision of pharmaceutical services, but as no firm evidence had been produced it was unable to be certain that there would be detriment or that it would be significant. If other parties produce further evidence on this point as part of

the appeal process then we trust that the Appeal Committee will consider that evidence fully and come to a further decision on this point.

- 4.1.5 NHS England do not disagree that the bus services are less than comprehensive, and that it is not particularly easy to access a pharmacy by bus. However no information has been provided to show how many local residents do, or would wish to, use the bus to visit a pharmacy.
- 4.1.6 However there is data showing unusually high levels of car ownership (see para 55 and subsequent table), which Rushport seem to dismiss - as was noted in NHS England's decision letter, only 8% of households in Churchill parish do not have a car, and almost two-thirds of households have two or more cars. Therefore even if one of the family cars is used for commuting, there may well be another available for driving to a pharmacy if needed. This information was a significant factor in NHS England's conclusion that, for the significant majority of residents of Churchill Parish, the existing pharmacies are reasonably accessible by car and so a significant benefit would not be conferred by granting the application.
- 4.1.7 NHS England would again observe that Rushport's statement in paragraph 5.33 that pharmacies receiving funding from the Pharmacy Access Scheme "are likely to be very profitable" is at best speculative and so should be disregarded.

4.2 BOOTS UK LIMITED

- 4.2.1 The decision letter and site visit report from NHS England South West was extremely detailed and concise, Boots agree with its content therefore have little additional evidence to add.
- 4.2.2 However Boots would like to respond with some specifics on the appeal letter itself.
- 4.2.3 The application and its appeal focuses primarily on the provision of services within the villages of Churchill, Langford, and Upper and Lower Langford. As many of the patients in these villages are more than 1.6km from a pharmacy, the Surgery dispensary can already provide dispensing services to those patients. Whilst they cannot provide NMS, MUR and other NHS commissioned services, they instead provide the equivalent doctors and nurses' clinics and services free of charge from the surgery as advertised on their website and in the surgery waiting room itself.
- 4.2.4 They include services for conditions such as diabetes, asthma, capo, heart disease, stop smoking, vaccinations including travel, weight loss, Minor Injuries and Health checks.
- 4.2.5 Boots disagree that a pharmacy at this location will secure improvements and better access in the HWB area, as it is likely that patients will only go there if they live in that locality, you wouldn't visit here for instance if you lived in Worle or Clevedon or even closer such as in Yatton. Whilst a new pharmacy in this locality may well secure improvements and better access for some of its patients, as a similar scenario would anywhere in the country, Boots do believe it would be significant as it's already been identified that the resident population is less than 2,500 people.
- 4.2.6 It would appear that the surgery wishes to have the opportunity therefore to dispense for all patients registered within the Wrington Vale group i.e. 43,000 patients and in the long term that may well be at the detriment of the surrounding pharmacies.

- 4.2.7 Boots wish to re-emphasise that within 5 miles there's a choice of three other providers, and meets the considerations of the 5 mile, 20 min distance used when compiling the PNA.
- 4.2.8 Choice consists of an Independent, Wrington Pharmacy in Wrington, Day Lewis in Congresbury and our Boots store in Winscombe. Other nearby pharmacies are located in Banwell and Yatton.
- 4.2.9 A much wider choice is available closer to the outskirts of Weston Super Mare (8 miles) where most residents and patients are more likely to go to for their day to day needs as all the major supermarkets and retail stores are located here.
- 4.2.10 The Applicant gives no suggestion of innovation or innovative services as part of their application.
- 4.2.11 On reviewing the 2011 census data, the following is taken from the 2018 PNA:
- 4.2.12 Car ownership - only 10% of the population across the 3 local wards within the Nailsea and Rural area do not have access to a privately owned vehicle indicating that the population is extremely mobile, with over 52% of residents having access to more than 1 vehicle. Boots submit census data from NOMIS to support this.
- 4.2.13 Health status - only 7% of the population across the 3 local wards in the Nailsea and Rural area claim to have long term illnesses or disability that limits their day to day activity a lot indicating that the population is extremely healthy with only 4% claiming that they have bad or very bad health. Boots submit census data from NOMIS to support this 100% of the population of this locality is within a 10 minute drive, at peak times, of a pharmacy. 92% is within a 30 minute journey by public transport at peak times and 69% within a 20 minute walk. Details taken from the 2018 PNA.
- 4.2.14 Please be aware that Boots may wish to attend any oral hearing should the panel deem it necessary to hold one.
- 4.2.15 [Supporting information available to Committee]

4.3 LLOYDS PHARMACY

- 4.3.1 Lloyds Pharmacy would wish to submit the following comments in response.
- 4.3.2 With regards to whether the proposed site is within a reserved locality, from the data provided by NHS England then it would appear it is a reserved locality, however; the number of patients is close to the threshold of 2,750. The Applicant refers in their application to proposed new housing developments and this may push the total over this.
- 4.3.3 With regards to whether the application will secure improvements or better access to pharmaceutical services, the Applicant has confirmed they already provide dispensing services to their rural patients. There is also no evidence provided with regards to any specific groups who share a protected characteristic who would confer significant benefits from the application. Neither is there evidence of innovative services or a lack of reasonable choice within the area of the Health and Wellbeing Board.
- 4.3.4 Langford is not an area of deprivation in fact it is among the least 20 per cent deprived areas of the country. The following data also shows that car ownership for the Ward within which Langford is located is good with

households with 2, 3 or 4 cars well above well above the national average. Households in Langford has almost twice the proportion of households with two cars; more than double the proportion of households with 3 cars and three times more than the national average with 4 or more cars.

- 4.3.5 Lloyds Pharmacy submit there is insufficient evidence to satisfy Regulation 18 and therefore the application will not secure improvements or better access to pharmaceutical services. In the event an oral hearing is required Lloyds Pharmacy would wish to attend.

4.4 WRINGTON PHARMACY REPRESENTED BY CHARLES RUSSELL SPEECHLYS LLP

- 4.4.1 Charles Russell Speechlys LLP act for Wringtons Limited trading as Wrington Pharmacy (sometimes known as Wrington Chemist).

- 4.4.2 On behalf of Wrington Pharmacy, Wringtons Pharmacy's Representative write in order to submit representations to NHS Resolution in relation to an appeal by Wrington Vale Medical Services Limited against a decision of NHS England to refuse the above application.

- 4.4.3 Taking each part of the Applicant's letter of appeal of 7 September 2018 in turn, Wrington Pharmacy comments as follows:

Langford

- 4.4.4 The geographical location of Langford by reference to surrounding villages, the City of Bristol and major routes is broadly correct.

- 4.4.5 Whilst it is correct that land use in the local area is predominantly rural in nature, the description of the "merger" of the three settlements of Langford, Lower Langford and Churchill is somewhat overstated. Below is a satellite image of the three settlements which shows that they are small in size, but also remain distinct in the sense that there are green spaces between them.

- 4.4.6 Wrington Pharmacy's does not agree that the combined villages "serve the day to day needs of its local residents" for the reasons given below.

- 4.4.7 [see photograph of aerial view]

- 4.4.8 Neither Churchill nor Langford can properly [be] described as having "substantial population groupings". According to the 2011 census, the parish of Churchill as a whole has a population of only 2,235. The map [available to Parties] shows the parish boundary which, as can be seen, covers a wider area than just the villages themselves.

- 4.4.9 [see map]

- 4.4.10 The Churchill parish is a controlled locality following a rurality review undertaken in 2013 (during which the Langford Medical Practice submitted representation in support of Langford being a controlled locality). By definition, therefore, the area has a small resident population, has few facilities and is essentially rural in character.

- 4.4.11 It is correct that there are two schools within the parish. The Primary School is near to the proposed site. The secondary school is approximately 1.6 miles away from the proposed site to the west of the village of Churchill and towards the border with Sandford.

Future growth

- 4.4.12 The Applicant refers to Churchill being “selected as a Strategic Development Location” and a “garden village”. This appears to be a reference to a North Somerset Council document dated October 2017 (<https://www.n-somerset.gov.uk/wp-content/uploads/2017/11/Churchill-background-paper.pdf>). As NHS Resolution will see from this document, any development that may take place has a lead time of at least 9 years (from 2016/2017) and faces several potential barriers. Even on October 2017 estimates the first homes would not be built until 2025/2026 and the development would not be completed until 2035/2036. Construction of this scale is therefore far too speculative to form part of NHS Resolution’s consideration of regulation 18 in the context of this application and appeal.
- 4.4.13 In relation to the planning applications and consents described by the Applicant at pages 4 and 5, the applicant provides no timetable for completion of these developments and two of the four have not yet commenced and appear to be subject to legal agreement.
- 4.4.14 As stated by the Applicant, the total number of additional residents may amount to 600 over the next few years, although no evidence is provided that existing service provision would be unable to cope with relatively modest growth spread out over several years.

Services

- 4.4.15 It is correct that there is a Budgens store within the Esso petrol station on the A38. As will be seen from the google street view image below, this is a convenience store which is combined with the petrol station, so a description that it “is the supermarket that serves the Parish” is perhaps overstating the nature of the facility.
- 4.4.16 [see photograph]
- 4.4.17 The nearest post office to the proposed site is located in Churchill, which is approximately 1.2 miles away, the Langford post office having closed a number of years ago. It is of note that the route from the proposed site to both the Churchill post office and the senior school takes you along Ladymead Lane which does not have a pavement on either side of the road for the majority of its length and the road itself is small and single lane for large sections.

The Proposed site

- 4.4.18 As of June 2018, the Mendip Vale Medical Practice had 25,771 registered patients. According to its website (<http://www.mendipvale.nhs.uk/index.aspx>), the Practice operates over 5 sites (not three as referred to by the Applicant): Langford, Yatton, Congresbury, St Georges, Sunnyside and Riverbank. The Practice provides dispensing services at its Langford branch and has 5,453 dispensing patients.
- 4.4.19 The Practice has a large catchment area, shown on the catchment area map below. The Langford site is marked with a red “GP” square. The blue “GP” squares are the other practice sites. It is difficult to give a precise total area for the practice’s catchment, but it would appear to cover around 120 square miles (being approximately 12 miles from west to east and 10 miles from north to south).

- 4.4.20 [see map]

The Legal Tests

- 4.4.21 NHS Resolution will, of course, be familiar with the relevant regulatory test in its determination of this application.

Pharmaceutical Needs Assessment

- 4.4.22 It is agreed that the starting point for assessing this application is the current Pharmaceutical Needs Assessment, since, in order for the application to be granted, the applicant must demonstrate that any identified improvements or better access are “unforeseen” for the purposes of the relevant PNA.

- 4.4.23 The relevant PNA for the purposes of this application is the North Somerset Pharmaceutical Needs Assessment (<https://www.n-somerset.gov.uk/wp-content/uploads/2018/03/North-Somerset-pharmaceuticalneeds-assessment-2018.pdf>).

- 4.4.24 The PNA considers service provision by locality. The proposed pharmacy is within the “Nailsea and Rurals” locality. In relation to that locality, the PNA provides as follows:

4.4.24.1 “11.2 Nailsea and Rurals Summary

4.4.24.2 *This locality has 29% of the GP registered population of North Somerset: 62,352 registered patients. Compared to the rest of North Somerset it has an older population with fewer young people aged under 15-44. There is a greater proportion of people aged 55+ and high proportion of people aged 65-69.*

4.4.24.3 *Life expectancy rates are the highest of the localities with men averaging 82 years and women 85 years. This locality has the lowest fertility rate of 58 per 1,000 females aged 15-44.*

4.4.24.4 *The health status of people registered with practices living in the Nailsea/Rurals area is good compared to North Somerset overall and the other locality areas. 17% of those registered within Nailsea/Rurals practices report having a long-standing health condition and the same proportion (17%) reported long-term health problem or disability that limits their day-to-day activities.*

4.4.24.5 *One in six people are recorded as having hypertension (16%), 6% suffer from diabetes, 4% from coronary heart disease and 2% from stroke. About 19% are carers.*

4.4.24.6 *The highest car ownership is recorded in this locality.*

4.4.24.7 11.2.1 Necessary services: current provision

4.4.24.8 *There are 12 pharmacies in the Nailsea/Rurals locality and one dispensing doctor (a rate of 21 per 100,000 population).*

4.4.24.9 *Between 2013/2014 and 2016/2017 there was an 8.3% increase in prescription items dispensed in the locality compared with a 0.9% increase in population between 2012 and 2015.*

4.4.24.10 *100% of the population of this locality is within a 10 minute drive, at peak times, of a pharmacy, 92% is within a 30 minute journey by public transport at peak times and 69% within a 20 minute walk.*

4.4.24.11 *This is the lowest population with a 20-minute walk time but this locality has the highest car*

4.4.24.12 *On Mondays-Fridays one pharmacy has core opening hours after 6pm, and one other pharmacy opens after 6pm as supplementary hours. One pharmacy opens for half a day only on Thursday.*

4.4.24.13 *There is core hours coverage from 7am to 10.30pm on Monday to Friday.*

4.4.24.14 *Seven pharmacies have core hours on Saturday morning, three also open on Saturday afternoon and one has core hours after 6pm. There is core hours coverage from 7am to 10.30pm. When supplementary hours are included, ten pharmacies are open on Saturday mornings, four are open in the afternoon and one is open after 6pm.*

4.4.24.15 *One pharmacy has core opening hours on Sundays from 10am to 5pm. There are no pharmacies with supplementary hours on Sundays*

4.4.24.16 *All of the pharmacies in Nailsea/Rurals provide MURs and NMS. One long-opening pharmacy provides the Access to Specialist Medicines enhanced service.*

4.4.24.17 *Necessary services: statement of any gaps in provision*

4.4.24.17.1 *No gap in current provision in the Nailsea/Rurals locality area*

4.4.24.18 *Other relevant services: current provision*

4.4.24.18.1 *No gap in the provision of other relevant services*

4.4.24.19 *Improvements or better access: statement of any gaps in provision*

4.4.24.19.1 *Sunday access is only available from one location and whilst coverage hours are good, given the size of this area some improvements may be made if other locations were open on Sundays. This could be remedied by NHS England commissioning or directing existing pharmacies to open additional hours on Sundays, without the need for a new pharmacy.”*

4.4.25 A review of the relevant PNA therefore demonstrates that none of the matters raise by the applicant in support of its application in terms of choice of service provision or access are unforeseen in the context of the relevant PNA.

4.4.26 In relation to the “buffer zone” referred to by the applicant, as NHS Resolution will be aware, the Langford Medical Practice is a dispensing practice and, therefore, Langford does have pharmaceutical service provision from the dispensing doctors, a fact which is referred to within the PNA.

Regulation 18 compliance

Regulation 18(1)

4.4.27 Whilst every new pharmacy would result in a “new pharmacy contract”, this is insufficient evidence to support a conclusion that granting this application would secure improvements or better access to pharmaceutical services. No evidence is provided that “this is an area of significant population” and, in fact, the contrary is true.

Regulation 18(2)(a)(i)

- 4.4.28 Wrington Pharmacy makes no comment in relation to whether granting this application would result in significant detriment to proper planning in respect of the provision of pharmaceutical services in the area of the relevant HWB.

Regulation 18(2)(a)(ii)

- 4.4.29 Wrington Pharmacy does believe that granting this application would result in significant detriment to the arrangements in place for the provision of pharmaceutical services in the HWB's area since it would lead to the unviability and closure of our client's pharmacy.
- 4.4.30 Wrington Pharmacy is a small (in terms of prescriptions dispensed per month) village pharmacy which is located 2.4 miles by road from the proposed site of the new pharmacy and 1.5 miles by road from the centre of the village of Langford.
- 4.4.31 Wrington Pharmacy currently dispenses on average 5,124 items per month (based on the figures for May to June 2018). Of this total number over the same period, on average 554 items per month were for care homes that the pharmacy provides services to in Long Ashton, Winscombe, Weston-Super-Mare and Cheddar. Although it should be noted that services to the care home in Cheddar ended in April 2018 and to Weston-Super-Mare it ended in May 2018.
- 4.4.32 Of the 5,124 items per month dispensed by the pharmacy, 86% come from Mendip Vale Medical Practice in Churchill. If the care homes are disregarded, 97% of the pharmacy's prescription items come from this one GP surgery.
- 4.4.33 In September 2018 Wrington Pharmacy was informed by telephone by the practice pharmacist at Mendip Vale Medical Practice that they were going to change their prescribing for MDS tray patients and comply with the local Clinical Commissioning Groups (CCG) guidance that prescriptions for this group of patients should be prescribed monthly unless there are patient specific exceptions.
- 4.4.34 When Mendip Vale Medical Practice instigates this change in its prescribing it will lead to a drop of 910 prescription items per month at Wrington Pharmacy.
- 4.4.35 The average community pharmacy in England dispenses 7,444 items per month (May 2018, see <https://www.nhsbsa.nhs.uk/prescription-data/dispensing-data/dispensing-contractors-data>). Currently Wrington Pharmacy's dispensing volume is in the bottom **32%** of pharmacies in England. When Mendip Vale Medical switch their MDS tray patients to monthly prescriptions the pharmacy will be in the bottom **21%** of community pharmacies in the UK and without the care homes it would be in the bottom **15%**.
- 4.4.36 In support of previous applications, the Applicant's representative has asserted that an "average" prescription capture rate for a Health Centre pharmacy is 48% (see, for example, NHSLA's decision reference SHA/18458 which quotes Mr Daly at paragraph 4.15 asserting that "*Mr Daley provided a document of market-capture data referable to pharmacies within healthcare centres. This gave a picture of 27 – 69% capture and an average of 48%*")
- 4.4.37 If this new pharmacy application were to be granted by NHS Resolution and the new pharmacy at Pudding Pie Lane had an "average" capture rate, the number of items dispensed by our client's pharmacy would drop to 2,191 once the changes to MDS tray prescribing take effect. This would place

Wrington Pharmacy within the **bottom 5%** of community pharmacies in England based on the number of prescriptions dispensed each month (using the same data as detailed in section 1.12 above). In those circumstances, the pharmacy would become unviable.

- 4.4.38 Wrington Pharmacy's accountant has prepared a projected profit and loss account for the scenario where the pharmacy experiences a reduction in dispensing volume as described above. In those circumstances, the pharmacy would carry a loss of approximately £38,000 and would be forced to close.
- 4.4.39 In the appeal by Rushport Advisory they say in section 5.33 that "*All the closest pharmacies receive additional funding from the Pharmacy Access Scheme and are likely to be very profitable*".
- 4.4.40 Wrington Pharmacy does currently receive this payment. The payment from the Pharmacy Access Scheme that Wrington Pharmacy currently receives is £1,803.14 per month (£21,637.68 per annum).
- 4.4.41 The continuation of this Pharmacy Access Scheme payment is not guaranteed and subject to annual review as part of the NHS's negotiations on community pharmacy funding with the PSNC. Furthermore if the NHS decides to continue with these payments after the next funding settlement is announced, Wrington Pharmacy's payment will drop at least £450 per month (£5,400 per year) as the pharmacy is now doing 25% fewer prescription items.
- 4.4.42 Considering Wrington Pharmacy costs well in excess of £180,000 per annum to operate this Pharmacy Access Scheme payment merely helps Wrington Pharmacy, which is a small but essential pharmacy to the local community in Wrington to remain barely viable.
- 4.4.43 If the pharmacy in Wrington were to become unviable as result of this application for a new pharmacy there would be no dispensing available in the Wrington parish. This would leave all the residents of this area without any pharmaceutical or dispensing service and would lead to a significant detriment to the provision of pharmaceutical services in the area.
- 4.4.44 The community of Wrington approximately 2666 residents would be left with no healthcare provision within the village if the pharmacy were to close. This is because the Mendip Vale Medical Practice no longer appears to operate the branch surgery at Wrington as far as our client is aware (the branch surgery premises appear to be unused and the site is no longer mentioned in the Mendip Vale Medical Practice website).
- 4.4.45 The detriment to service provision which would be caused by the granting of this application is supported by the Parish Council, who have written the attached letter which details their concerns.

Reasonable Choice

- 4.4.46 The existing network of pharmacies together with the dispensing GP practice secures a reasonable choice of service provision in the HWB's area. Granting this application would therefore not confer significant benefits in terms of the desirability that patients have a reasonable choice of service provision.
- 4.4.47 As a starting point, NHS Resolution should assess the size and nature of the proposed reliant population and will therefore, no doubt, be assisted by information from the 2011 census for the Churchill Parish.

4.4.48 Usual Resident Population - 2,235

4.4.49 Age Structure (percentage)

	Churchill	England and Wales
0-4	5.2	6.2
5-17	16.3	15.1
18-64	59.6	62.2
65 and over	19	16.5
Mean age	41.9	39.4

4.4.50 Health

	Churchill	England and Wales
Very good health	54.4	47.1
Good health	31.1	34.1
Fair health	11.7	13.2
Bad health	2.3	4.3
Very bad health	0.6	1.3

4.4.51 Car Ownership

	Churchill	England and Wales
No car	7.9	25.6
1 car	27.8	42.2
2 cars	44.4	24.7
3 cars	13	5.5
4 cars	6.9	1.0

4.4.52 Tenure

	Churchill	England and Wales
Owned	80	63.6
Shared ownership	0.6	0.8
Social rented	6.8	17.6
Private rented	11.7	16.7
Living rent free	0.9	1.4

4.4.53 Since the entire parish of Churchill is a controlled locality, all residents who wish to access pharmaceutical services from the GP dispensary in Langford are able to do so. That will remain the same if, or when, the housing developments referred to by the applicant are completed. Since the proposed location is a reserved location, even if this application were to be granted, patients in the village would still be able to access pharmaceutical services from the GP dispensary: they would not be required to use the proposed pharmacy.

4.4.54 The starting point for NHS Resolution's determination of this application is, therefore, that all of the local resident population is eligible to use the GP dispensing services and will continue to be permitted to do so should this application be granted.

4.4.55 According to NHS England (paragraph 48 of its decision), there are 2,394 patients living within 1.6km of the proposed site. Of those, 198 people are

registered with the Langford Medical Practice but choose not to use the GP dispensary. 64 are registered with other (non-dispensing) practices and 1 is a dispensing patient registered with another practice. The remainder are registered with the Langford Medical Practice and are dispensing patients.

- 4.4.56 89% of those living within 1.6km of the proposed site are therefore dispensing patients and a further 8% could be dispensing patients should they choose to be. Only 64 patients (less than 3% of the total) living within 1.6km of the proposed site are ineligible to receive dispensing services. There is clearly no unmet need for dispensing service provision in Langford.
- 4.4.57 In terms of the existing pharmacy network, whilst it is correct that there are no pharmacies within walking distance of Langford, the existing pharmacy network is within easy driving distance of the proposed site. Save for those living within the immediate vicinity of the surgery or who live in Langford itself, most visitors to the Medical Centre are likely to have driven and will, consequently, have a car available to them should they need to access pharmaceutical services.
- 4.4.58 Car ownership in Churchill parish is high with over 92% of households having access to at least one car or van compared to a national average of 74.4%. This is unsurprising for a rural community.
- 4.4.59 Put another way, there are 1,604 cars or vans in Churchill parish and 1,752 residents of driving age, which means there is a car or van for every 1.09 residents.
- 4.4.60 Existing pharmacies are within easy drive of the proposed site, with drive times as follows

Pharmacy	Distance	Drive time
Wrington Pharmacy, Wrington	2.2 miles	7 minutes
Day Lewis Pharmacy, Congresbury	2.9 miles	7 minutes
Boots Pharmacy, Winscombe	3.7 miles	9 minutes
Cohens Chemist, Yalton	4.3 miles	11 minutes
Lloyds Pharmacy, Yalton	4.2 miles	11 minutes
Banwell Village Pharmacy, Banwell	4.4 miles	11 minutes
Axbridge Pharmacy, Axbridge	5.5 miles	12 minutes

- 4.4.61 There is adequate car parking at each of these pharmacies. For example, Wrington Pharmacy has parking immediately outside (as shown in the image below) and also to the south of the pharmacy.
- 4.4.62 [see photograph]
- 4.4.63 Further free parking is available in Lawrence Road and Wrington High Street. There is additional parking at the Memorial Hall car park but that is very, very rarely required for pharmacy patients because of the availability of on-street parking.
- 4.4.64 Having regard to the small size of the reliant population, the presence of the dispensing GP practice in the village, the high levels of car ownership and the relative short distance and driving times to the nearest pharmacies (bearing in mind that this is a rural area), the existing pharmacy network already secures a reasonable choice of service provision.
- 4.4.65 The Applicant provides no evidence of any complaints regarding existing service provision and no evidence of a lack of reasonable choice.

- 4.4.66 The Applicant states that the proposed pharmacy is “ideally located to complement the patterns of daily movements of the local population” but, in fact, the proposed location is within a mainly residential area away from the main roads. It will not be visible to passing traffic and, save for those who are registered with the Medical Practice (who can use the GP dispensary in any event or will have driven to the Medical Practice), no-one is likely to be aware of its presence should this application be granted and the pharmacy open.
- 4.4.67 It is correct that the proposed pharmacy is close to the Primary School, but no evidence is provided that patients currently accessible healthcare services as part of a visit to the school. Since this is a local primary school, it is likely that most, if not all, children and their parents will be dispensing patients.
- 4.4.68 The proposed pharmacy is 1.6 miles from the secondary school and is not in a location which would be passed by those travelling to or from the secondary school. It is also not close to the Budgens store, public houses or the Post Office so would not be passed by people accessing those shops or services.
- 4.4.69 In relation to the bus service, the applicant provides no evidence that there are, in fact, any patients who currently require access to pharmaceutical services and who travel by bus. It is clear that the villages are served by a bus and there is no evidence of inadequacy in public transport having regard to the size and rural nature of this community.

Protected characteristics

- 4.4.70 The Applicant provides no evidence of patients who share a protected characteristic, save for listing generic groups which would apply to all communities. The Applicant also provides no evidence that patients require access to pharmaceutical services by reason of a protected characteristic, nor that access is currently difficult for those patients.
- 4.4.71 Whilst the population of Churchill parish is slightly older than the “average” for England and Wales, the population is in good health compared to average. The population is relatively more affluent (as confirmed in the deprivation maps contained within the PNA and the relatively high levels of private home ownership and low levels of social housing). No evidence is provided of particular health needs and, in fact, available data demonstrate that health needs are likely to be less than for an “average” population.
- 4.4.72 In relation to Wrington Pharmacy’s delivery service, Wrington Pharmacy offers a free prescription delivery service via its dedicated company van and delivery drivers on Wednesday (from 10am to 5pm) and Friday (from 10am to 5pm). The pharmacy delivers urgent prescriptions on foot or in the van (by the pharmacy staff) on other days if there is an urgent need.
- 4.4.73 In September 2018, Wrington Pharmacy made 34 deliveries to patients living in Churchill parish. The 34 deliveries were to 12 different patients living at 10 different addresses. Of those 12 patients, 6 are MDS blister tray patients who have their medication delivered each week, so that of the total of 211 items delivered to the parish that month, 187 were MDS tray items.
- 4.4.74 Wrington Pharmacy provides four other locally commissioned services: smoking cessation, EHC, Urgent Repeat Medication and flu vaccinations.
- 4.4.75 In relation to those who travel to work, the applicant provides no information to support the apparent assertion that patients are left without access to a vehicle during the day whilst the vehicle is used by another member of the

household to travel to work. Since there is a car or van for virtually every resident in Churchill parish, this is particularly unlikely to be the case.

- 4.4.76 According to the 2011 census, there are 1,214 people in the parish aged over 16 and living in a couple, with 570 not living in a couple. There are 1,094 people in the parish who are in employment; of those, 809 people in the parish travel to work by car. There are 1,604 cars or vans in the parish. There is no evidence to support the applicant's assertion that there is a "substantial group" of patients who have no access to a car during the day. In fact, there cannot be many, if any, households in the parish that have only one car or van where that car is being used to travel to work and, in any event, those households are very likely to be dispensing patients.
- 4.4.77 In conclusion, the Applicant provides no evidence that granting this application would confer significant benefits in terms of patients who share a protected characteristic and who require access to pharmaceutical services but who currently find access difficult.

Conclusion

- 4.4.78 In conclusion, Wrington Pharmacy's representative invites NHS Resolution to conclude that the Applicant has failed to satisfy the regulatory test contained within regulation 18 and to refuse this application.
- 4.4.79 Should NHS Resolution consider it necessary to hold an oral hearing prior to its determination of this appeal, Wrington Pharmacy would wish to have the opportunity to attend the hearing and to make oral representations.
- 4.4.80 [Projected profit and loss account and Letter from Parish Council available]

5 Observations

5.1 RUSHPORT ADVISORY LLP REPRESENTING WRINGTON VALE MEDICAL SERVICES LTD (THE APPLICANT)

- 5.1.1 Rushport Advisory LLP act for Wrington Vale Medical Services Ltd and have been instructed to submit this reply to the comments received.

Wrington Pharmacy (represented by Charles Russell Speechly ("CRS"))

- 5.1.2 The applicant's representative note that CRS describes the merger of the three local population centres as somewhat overstated. The Committee may wish to note that this information came from the 2008 Parish Plan for Churchill and Langford (which remains the most recent and copy attached). Since that time the merger of the population centres has increased rather than decreased.
- 5.1.3 The same Plan refers to the "substantial population groupings" that CRS and their client deny exist.
- 5.1.4 The Plan in fact states as follows;
- 5.1.4.1 *Our parish lacks a single focal point since it contains two substantial population groupings - Churchill and Lower Langford - and their centres are separated by about a mile. However, beginning in the late 1980s, development of an area lying between these two foci has added to the parish some 200 new homes and this "Broadoak" development has served substantially to unite the two centres. Three heavily trafficked major roads traverse the parish: the A38, the A368 and the B3133 and an important component part of the local traffic*

and congestion dilemma results from the lack of an adequate east-west road link immediately south of Bristol.

- 5.1.5 The applicant has purposefully provided independent views of the local area where available in making their application. They have used the established local view and presented that to the Committee rather than ignoring the reality on the ground.
- 5.1.6 The same applies to the details of future growth, which my client has presented honestly. The applicant's representative note that CRS and their client do not dispute any of the ongoing or completed developments that the applicant has referred to and only take exception to the very large scale growth plans, which the applicant's representative have already accurately described in its appeal.
- 5.1.7 The applicant agrees that the local GP practice serves patients over a wide catchment area and fail to see how that does anything other than support their application. What has clearly been ignored in the reply to my client's appeal is that the location of existing pharmacies means that patients face significant round trips to a pharmacy in addition to their journey to see their doctor unless they live in one of the villages that has its own pharmacy.
- 5.1.8 The focus of the applicant's application is Churchill and Langford rather than villages many miles away with their own pharmacies.
- 5.1.9 With respect to the PNA comments, the applicant's representative agree with CRS that none of the matters raised by the applicant were considered in the PNA and this application has therefore been properly submitted under regulation 18.
- 5.1.10 In relation to the evidence provided by CRS and their client to support their submission that granting this application would prejudice the proper provision of services, the applicant's representative comment as follows.
- 5.1.11 CRS has significant experience in this type of application and must have known that their client should provide the real accounts of the pharmacy for the last available year(s) and then provide projections based on assumptions that can be tested / verified. They have simply failed to do this and the number of errors in their projections show them to be entirely unreliable.
- 5.1.12 Some examples of the numerous errors are provided below.
 - 5.1.12.1 No accounts provided to the Committee for the most recent year, so no way to compare or contrast the projections.
 - 5.1.12.2 No explanation of what instructions Moore Stephens accountants were given or how their numbers were arrived at and no covering letter to explain the projections.
 - 5.1.12.3 Erroneous projected reduction in items and profit due to monthly prescribing, i.e. monthly prescribing may reduce the number of fees the pharmacy can claim, but the value of each prescription will multiply by 4. There appears to be no allowance for this.
 - 5.1.12.4 Incorrect use of average figures with our any reference to the number of prescription items actually being issued by the practice.
 - 5.1.12.5 CRS states that their client receives £21,637.88 per annum under the Pharmacy Access Scheme, yet the number shown in the projections is £6,500 and the number provided by CRS in their report is £5,400

(based on a hypothetical change in funding arrangements that CRS has no knowledge of).

5.1.12.6 CRS states;

5.1.12.6.1 "Considering Wrington Pharmacy costs well in excess of £180,000 per annum to operate..."

5.1.12.7 This is simply wrong as CRS has confused "cost of sales", i.e. the cost of goods purchased, with "Overheads". The total overheads are projected at £130,921 rather than the "in excess of £180,000" listed by CRS. A £50,000 error.

5.1.12.8 No explanation is provided re the overheads, or what the overheads were in previous years, so the numbers are unreliable and cannot be tested.

5.1.13 In summary, the Committee is urged to treat this evidence with extreme caution and ask itself why CRS's client would not provide their real accounts when the burden of proof rests on their client to prove prejudice?

Reasonable Choice

5.1.14 The applicant's representative have addressed this in the applicant's appeal and disagree with the conclusions reached by CRS and their client.

Protected Characteristics

5.1.15 CRS complains about a lack of evidence to support the view that residents of Churchill are required to use the bus. As the Committee will be well aware, they are entitled to use their own knowledge of the habits of people as they go about their daily lives when considering any application in front of them. The argument presented by CRS is also a circular one, as the applicant's representative would agree that patients are unlikely to use the bus to get to existing pharmacies, but this is because it is not a good service. As we have stated in the Appeal Report and as NHS England also stated;

5.1.15.11.1 The bus service is fragmented at best. The NHS England decision report explains the difficulty very well (although it does not appear to have accepted that the difficulty should be considered as evidence in favour of approval). The following extract is taken from the NHS England report.

5.1.15.2 *"It was noted that the somewhat complicated route and scheduling of the service means that, in effect:*

5.1.15.3- *only three return journeys to Wrington are possible per day from the Upper Langford stops, while seven are possible from the Lower Langford stops (but these are about 1.3 – 1.4 km from the surgery)*

5.1.15.4- *similarly, only 4 return journeys to Congresbury/Yatton, or to Winscombe, are possible, all with turnaround times of only 15-20 minutes, or a much longer wait for the bus back (at least 1¼ hours, possibly almost 5 hours)."*

5.1.16 The applicant's representative note that Wrington Pharmacy has simply chosen not to address the comments in the Appeal Report that showed that they did not provide NMS or MUR in any meaningful way. The most recent data shows no NMS service provided since August of 2017 (over a year) and only 11 MUR in total in 2018.

5.1.17 The pharmacy claims to be quiet and have low dispensing figures and facing a struggle to survive, but then does not provide the services that the community requires and which are funded. It is simply not a credible position to adopt. With a growing population and increasing number so prescriptions being issued every year, one might expect to see steady increases in the Wrington Pharmacy dispensing volume, but instead there is a steady decline. Not providing services for patients may well be contributing to this decline and is further evidence of the lack of reasonable choice that patients have.

Boots

5.1.18 The applicant's representative notes that Boots has incorrectly claimed that the % of people noted in the PNA as suffering from a long term limiting condition is 7%. In fact, page 59 of the 2018 North Somerset PNA states that the figure is 17%. This is reflective of the high elderly population.

5.1.19 It is also worth noting the position for the specific area covered by this application, i.e. Churchill, where the 2011 Census shows that nearly 25% of households have one person in the household with a long term health problem or disability. This is a very significant number. Churchill has a high and rapidly growing elderly population which is key. Over 85yrs grew 26% 2001-2011 and fastest population growth for future years is in the section of population which forms part of the practice catchment area.

5.1.20 Even those who enjoy relatively good health are experiencing high life expectancy and living with chronic health conditions, fuelling the high percentage increase in prescription items, which grow faster than population growth.

5.1.21 The elderly have a higher chance of not being independently mobile and being brought to the surgery by carers, friends, relatives. Providing a pharmacy removes the need to travel many more miles to access pharmaceutical services. It secures "better access" to pharmaceutical services and is a significant benefit for this group that will have at least five separate protected characteristics.

5.1.22 Boots discuss services provided by the GP practice under their contract. As the Committee will be aware, those are not pharmaceutical services, with the exception of dispensing.

5.1.23 The applicant's representative notes with interest that Boots states that "you wouldn't visit here if you lived in Worle or Clevedon". Similar comments were made by CRS for their client when they claimed that if the Wrington Pharmacy closed it would leave "all the residents of this area without any pharmaceutical or dispensing service and would lead to a significant detriment to the provision of pharmaceutical services in the area". Neither Boots nor CRS seem to believe that their comments should also apply in reverse. If it is unlikely that people outside of Churchill would go there because of difficulty of access then it is equally likely that Churchill residents currently face difficulty in accessing pharmacies elsewhere.

5.1.24 Boots then makes an entirely fact free, false and unsupported statement that "it would appear that the surgery wishes to have the opportunity to dispense for all patients registered within the Wrington Vale group, i.e. 43,000 patients...". The applicant rejects this statement whilst pointing out that this assumes that patients would come to use the pharmacy in the surgery even though Boots and CRS think that it would be difficult for them to do so.

5.1.25 There is no consistency in the points being made by the objectors. The dilemma the objectors face in their comments is an obvious one, as grating

this application would clearly secure both improvements and better access to pharmaceutical services.

NHS England

5.1.26 The points made in the applicant's Appeal Report already address the majority of the points raised by NHS England.

5.1.27 Rather than ignoring the car ownership statistics, the Appeal Report explains why access to a car should not and cannot be considered as the same as access to pharmaceutical services. A significant part of the applicant's Appeal Report deals with access and specifically deals with access by car. It would appear NHS England has not read the relevant sections, or if they have, they have not disagreed with a single point that was made therein and must therefore be taken as having accepted the content of the Appeal Report.

5.1.28 The applicant's representative should point out that Mr Ward states;

5.1.28.1 *"We would again observe that Rushport's statement in paragraph 5.33 that pharmacies receiving funding from the Pharmacy Access Scheme "are likely to be very profitable" is at best speculative and so should be disregarded."*

5.1.29 With respect, this is not speculation, it is based on a perfectly reasonable interpretation of facts that are not in issue. The fact that the closest pharmacies do receive access scheme payments has already been established. Local pharmacies have chosen not to reveal their accounts or challenge the statement made. Even Wrigton Pharmacy has not challenged the applicant's view and has only provided a remarkably unreliable projection of future income in an attempt to justify a prejudice argument.

5.1.30 The applicant stands by the evidence that has been submitted in support of this appeal.

Lloyds

5.1.31 Lloyds states that the relevant area is "not an area of deprivation" and support this with reference to the Index of Multiple Deprivation. Had Lloyds considered the factors that make up this index they would have found that in relation to Barriers to Housing and Services, Churchill is ranked 11,995 out of 32,844 LSOAs in England; where 1 is the most deprived LSOA. This is amongst the 40% most deprived neighbourhoods in the country. In relation to Living Environment Deprivation Domain Churchill is ranked 15,292 out of 32,844 LSOAs in England; where 1 is the most deprived LSOA. This is amongst the 50% most deprived neighbourhoods in the country (source 2011 Census).
