

22 October 2020

Arena Point
Merrion Way
Leeds
LS2 8PA

REF: SHA/23378

APPEAL AGAINST NHS COMMISSIONING BOARD ("NHS ENGLAND") DECISION TO REFUSE AN APPLICATION BY RUSHPORT ADVISORY LLP FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT THE NEW HEALTH CENTRE, KENT & CANTERBURY HOSPITAL, ETHELBERT ROAD, CANTERBURY, KENT, CT1 3NG

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1 Outcome

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

Advise / Resolve / Learn

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1 The Application

By application dated 17 December 2019, Rushport Advisory LLP ("the Applicant") applied to NHS Commissioning Board ("NHS England") for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at the New Health Centre, Kent & Canterbury Hospital, Ethelberg Road, Canterbury, Kent CT1 3NG. In support of the application it was stated:

- 1.1 In response to Part 5 of the application form (reference to Regulation 31) the Applicant stated: *"No other pharmacy in same or adjacent premises so not applicable."*
- 1.2 The Applicant also stated: *"We are unable to provide a floor plan of the proposed premises as the premises have not yet been identified and secured. Once the premises have been secured, they will be registered with the GPhC and will comply with all the relevant legal and ethical requirements for the operation of a retail pharmacy business."*

Information in support of the application

PNA points

- 1.3 The redevelopment and relocation of the two GP surgeries to this new site at Canterbury Hospital was not known about at the time that the last PNA was published. The Applicant believes that, had the Health and Wellbeing Board been aware of this development, it is likely that they would have considered that a pharmacy would have been included in the PNA as an identified need. However, as the development was unforeseen the Applicant has had to apply under regulation 18 as an unforeseen benefit. The Applicant would nevertheless hope that the Health and Wellbeing Board would support this proposal to bring accessible pharmaceutical services to the new development, which is a significant distance from any of the existing pharmacies in Canterbury.

Proposal

- 1.4 The proposed scheme is to develop a new Canterbury Medical Practice premises to relocate 2 GP practice branches (Cossington House and London Road) together in a new fit for purpose building co-located on the Kent and Canterbury Hospital site. This will significantly contribute towards the Canterbury and Coastal Clinical Commissioning Group (CCCCG) Estates strategy plan by:
 - 1.4.1 Providing a modern, purpose built, high quality premises for primary care in the area that are CQC compliant, meet minimum standards and DOA regulations;
 - 1.4.2 Delivering purpose built accommodation for clinical services, designed to modern healthcare and environmental standards;

- 1.4.3 Taking advantage of co-location opportunities/efficiencies and supporting the implementation of integrated care;
 - 1.4.4 Enabling a fully collaborative, shared approach to care;
 - 1.4.5 Allowing, where possible, for the increased use of new technologies that will save time and reduce workload for staff, this will also lead to improved patient outcomes through faster response times;
 - 1.4.6 Providing increased GP surgery provision aligned to projected population growth expectations for the local area;
 - 1.4.7 Allowing for better space utilization and have the potential to accommodate more GP and other healthcare professional training sessions.
- 1.5 As part of these plans, space has been allocated for a pharmacy unit at the new site and the Applicant has agreed a lease for the pharmacy unit (picture and plan provided) with Assura, the developer.
- 1.6 The new facility will be built to the latest NHS standards that will provide a fit for purpose modern facility with improved accessibility for all patients and compliant with the Equality Act.
- 1.7 Canterbury Medical Practice currently provides GMS services in Canterbury from four sites:
- 1.7.1.1 Bridge Health Centre,
 - 1.7.1.2 Cossington House Surgery,
 - 1.7.1.3 Littlebourne Surgery, and
 - 1.7.1.4 London Road Surgery.
- 1.8 Healthcare estates quality audits found the Cossington House and London Road branch buildings as failing to meet the GP practice buildings minimum standards and were unsustainable for the delivery of general practice and primary care services for the future population of Canterbury. Both premises were granted 'red-rating' status and were deemed to be non-purpose built converted surgery premises that no longer meet the standard minimum requirements. Therefore, Canterbury Medical Practice had to seek alternative accommodation to relocate the surgeries into modern, fit-for-purpose healthcare facilities. Additionally, the London Road site has a lease due to expire in March 2020 and Canterbury Medical Practice cannot look to retain the site.
- 1.9 Assessment of future patient demand based upon demographic trends result in the assumption that GPs will see an increase in their list size (and hence patients treated) over the coming years. The planned new housing developments across Canterbury will have an impact on new families needing to access primary care services. The current patient list size (Summer 2018 figures) from the London Road (4,744) and Cossington House (7,400) is just over 12,000 combined. Canterbury CCG estimate that the projected growth across Canterbury is likely to be 7,000 over the next 10-25 years with 5,000 across Canterbury South. It has been estimated that the impact on the two premises combining at London Road and Cossington House could be an additional 3-4,000 patients during this timeframe and therefore has resulted in a planned Schedule of Accommodation to accommodate 15,000 patients.
- 1.10 The doctors and the developers see pharmacy as a key asset to the provision of joined up healthcare, not only for patients who access the new surgery, but also for those who attend or work at the hospital and may require pharmaceutical services while they are there.

- 1.11 The location of the proposed pharmacy - co-located with the medical centre and with the hospital - provides an opportunity to improve access to prescription collection using innovation. The Applicant will install a Medpoint collection machine which will allow patients to access their dispensed medication 24 hours a day and 365 days per year. The collection point will be the first that the Applicant is aware of in England that will allow for the collection of fridge lines as well as regular prescription items. As the hospital is a 24 hour environment and many staff work shifts at night, this will be particularly useful for those who rely on out of hours access to services and will provide services not only for those registered at Canterbury Medical practice, but those from any medical practice who wish to use the hospital site.
- 1.12 The 3 nearest pharmacies to the proposed location are all owned and operated by Boots and are all between 1,100 metres and 1,500 metres from the application site. The nearest "non-Boots" pharmacy is Superdrug which is in Canterbury town centre and a distance of 1,760 metres from the application site.
- 1.13 All pharmacies are beyond a reasonable walking distance from the application site and this adds weight to the submission that granting this application would secure better access to pharmaceutical services as required under regulation 18.
- 1.14 It is not unreasonable to suggest that the two City Centre pharmacies are out of reach of patients by reason of distance (about a mile or more), gradients and the busy heavily urbanised environment that they would need to walk through. It has been noted in the PNA that congestion in Canterbury is a concern and can cause air pollution leading to health issues. None of the other pharmacies in the retail parks or west of the City Centre could be reasonably considered in any assessment of walking from the proposal site.
- 1.15 Canterbury suffers from traffic congestion due to its medieval streets and heritage buildings and again, granting this application will secure better access to pharmaceutical services for those who rely on cars to travel around.
- 1.16 The Applicant intends to provide the following services:
- 1.16.1 Essential services;
- 1.16.2 Appliances listed in Part IX of the Drug Tariff;
- 1.16.3 Advanced and Enhanced Services as indicated on the application form.
- 1.17 In addition, the Applicant stated that it: *"Intends to provide all commissioned services and will ensure that all pharmacists employed are accredited to provide these services. The premises will also be accredited. In addition the Applicant intends to provide a number of services that are not currently being commissioned and will seek to work with local GP practices to develop joint working on the provision of non-commissioned services."*
- 1.18 The Applicant's proposed core opening hours are:
- | | |
|------------|---------------|
| Mon to Fri | 9am to 5.30pm |
| Sat | - |
| Sun | - |
- 1.19 The Applicant's proposed total opening hours are:
- | | |
|------------|---------------|
| Mon to Fri | 9am to 6.00pm |
| Sat | 9am to 1pm |

2 The Decision

NHS England considered and decided to refuse the application. The decision letter dated 3 July 2020 states:

Covering letter

- 2.1 NHS England has considered the application and is writing to confirm that it has been refused. Please see the enclosed report for the full reasoning.

Decision Report (Minutes of the meeting of the NHS England South East Pharmaceutical Services Regulations Committee of 27 May 2020)

- 2.2 An unforeseen benefits application had been received from Rushport Advisory LLP, on 19 December 2019.
- 2.3 The Committee was now required to consider the application in accordance with Regulations 18 and 19 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.

Consideration

- 2.4 The Committee considered the following:
- 2.4.1 The NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended;
 - 2.4.2 The application form provided by the applicant – (this was a repeat of the information at points 1.4 to 1.16 above);
 - 2.4.3 The information submitted by the Applicant along with the application indicates that the Applicant proposes to provide pharmaceutical services to the residents of Canterbury from the best estimate location. The Applicant had stated that (repeat of point 1.3 above);
 - 2.4.4 The Applicant had also stated that (repeat of point 1.9 above);
 - 2.4.5 The Report and annexes prepared by Primary Care Support England (PCSE) and NHS England:
 - 2.4.5.1 The Committee noted that the Applicant's fitness to practise was approved on 16 March 2020;
 - 2.4.5.2 All additional information, including location, opening times and distances of surrounding pharmacies and GP Surgeries were noted and considered by the Committee.
- 2.5 The Committee considered the representations made by the Applicant – and noted the comments made by the interested parties:
- 2.5.1 Kent LPC: *'The LPC note that this application is submitted under Part 3 of the Pharmaceutical Services Regulations, Regulation 18, Unforeseen Benefits: additional matters to which the NHSCB must have regard as unforeseen benefits. The LPC would like to share the following observations:*

- 2.5.1.1 *The PNA is nearing the end of its life and makes no mention of the need for any additional pharmaceutical services, the LPC would advise to wait until the new PNA is in place.*
 - 2.5.1.2 *There are 11 pharmacies less than 2 miles away from the proposed site (4 less than 1 mile away). These current pharmacies are open varied hours and cover 7 days a week and some have free parking providing good accessibility for patients. Has the location in question got free parking? The LPC note that the location is not open extended hours and not open on Sunday's.*
 - 2.5.1.3 *11 pharmacies with good opening hours across the week and good accessibility also means that there is capacity if more housing is being built as that is a high number of pharmacies in a small geographical area.*
 - 2.5.1.4 *This application does not improve patient choice with regard to pharmaceutical services. It should also be noted that due the use of EPS pharmacies no longer need to be near a surgery as they can transfer prescriptions electronically. Therefore, they don't need to get from their GP to their pharmacy in most cases they can go straight to their pharmacy which they can collect from when doing their other household shopping.*
 - 2.5.1.5 *The LPC note that the pharmacy is not planning to open for a lot of the weekend and whilst having a medication collection point the LPC believe it's important to have someone there to give people advice about their medication especially if it is a new medication and if the surgery/hospital has a walk in centre so they can be referred directly especially for Minor Ailments whereas at the weekend they would still have to go to another pharmacy which isn't the best solution for a patient.*
 - 2.5.1.6 *The LPC would also like to see a plan of the space that the applicant has, to ensure that they can provide a full pharmacy service including a good range of over the counter medication.*
 - 2.5.1.7 *In view of the above matters the LPC believe this application is not necessary to ensure the adequacy of community pharmacy services in the area and should be declined. A relocation of a current contract may be more appropriate.'*
- 2.6 The Applicant's response to the representations received during the consultation period was also considered:
- 2.6.1 *'Further to its letter of 30 March the Applicant would be grateful if the following information was also provided to NHS England as part of their consideration of this application.*
 - 2.6.2 *The GPhC has recently considered the use of "collection point" technology at pharmacies. The consideration was mainly driven by the current COVID 19 pandemic, but it is likely that social distancing will be with us for some time to come and the Applicant will of course still have the normal flu season every year and possibly coronavirus too as a yearly problem.*
 - 2.6.3 *The technology reviewed is the same type as the Applicant is offering to provide as part of its application. It is noteworthy that the GPhC has found that:*
 - 2.6.3.1 *This is innovative technology and*

2.6.3.2 *The innovation supports the safe and efficient collection of assembled medicines.*

2.6.3.3 *The GPhC report can be found here:*

2.6.3.3.1 <https://inspections.pharmacyregulation.org/knowledge-hub/notable-practice/using-pharmacy-vending-machines-to-support-access-to-medicine-213>

2.7 *The reports states: Using pharmacy vending machines to support access to medicine.*

Pharmacy type

2.8 *Community Pharmacy context - COVID-19*

Relevant standards

2.9 *4.1 - The pharmacy services provided are accessible to patients and the public*

Why this is notable practice?

2.10 *The pharmacy is using innovative technology to support the safe and efficient collection of assembled medicines.*

How the pharmacy did this

2.11 *The pharmacy was encouraging as many people as possible to collect their dispensed medicines through the pharmacy's two vending machines, located outside the pharmacy. The machines acted as 24-hour collection points to people. The pharmacy sent people a text message when their medicine was ready for collection and this included a secure code to enter into the relevant machine. The pharmacy reported a rise in the number of people using this collection option. The option had been used by people of all ages and positive feedback about the ease-of-use of the machines had been posted to the pharmacy's social media page.*

2.12 *A pharmacist risk assessed the suitability of medicine being put into the machine. The machines were commonly used for collection of repeat prescribed medicines. The pharmacist contacted people by telephone if any additional counselling or information needed to be provided prior to collection.*

2.13 *The machines were thoroughly cleaned each day and at regular points throughout the day by team members. And notices displayed close to the machines advised people to wash their hands after using the machines and to dispose of gloves safely.*

What difference this made to patients

2.14 *People can collect their medicines 24-hours a day at a time convenient to them. This option is convenient to people and it limits the number of people requiring physical access to the pharmacy premises.*

2.15 *No such facility is available either in Canterbury or the wider area. It is innovative technology that provides significant benefit to patients, especially those who share a protected characteristic that makes them more vulnerable to pandemics.'*

2.16 *Department of Health guidelines on market entry by means of pharmaceutical needs assessment – Chapter 8 – Unforeseen Benefits*

Regulation 31 – Refusal: same or adjacent premises

- 2.17 The Committee considered Regulation 31(2)(a)(i). The Committee was satisfied that there was no person on the pharmaceutical list at the premises to which the application relates. The application did not therefore need to be refused in accordance with Regulation 31.
- 2.18 The Committee went on to consider paragraph (a)(ii) of Regulation 31(2); whether there is a person on the pharmaceutical list providing pharmaceutical services from adjacent premises.
- 2.19 The Committee was satisfied that there is no person providing pharmaceutical services at the same or adjacent premises. The application did not therefore need to be refused in accordance with Regulation 31.
- 2.20 The Committee decided that it was not necessary to hold an oral hearing before determining the application.

Decision

- 2.21 Having considered the application, representations received and all additional information, the Committee determined to **refuse** the application.

Reasons for the Decision

- 2.22 The reasons for this decision are as follows:

Pharmaceutical Needs Assessment (PNA)

- 2.23 The Committee had regard to the Kent Pharmaceutical Needs Assessment 2017 (the 'PNA') and noted that relevant supplementary statements had not been issued.
- 2.24 The Committee also noted that, having considered the entire Canterbury area, the HWB had reached the conclusion that '*There is good provision of full pharmaceutical services in and around Canterbury during the week and Saturdays, and adequate provision of full pharmaceutical services in and around Canterbury on Sundays*'.
- 2.25 The Committee noted that the HWB had considered access (distance, travelling times and opening hours') to assess how current service provisions will meet the needs of the population within the lifetime of the PNA.
- 2.26 The Committee noted that the application was correctly submitted under Regulation 18.

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

- 2.27 Further to Regulation 18(1), the Committee was required to determine whether it was satisfied that granting the application or granting it in respect of some of the services specified in it, would secure improvements or better access, to pharmaceutical service, as per Schedule 1, para 4 of the Regulations.
- 2.28 In order to be satisfied in accordance with Regulation 18(1), the Committee went on to consider those matters set out at Regulation 18(2).
- 2.29 **Regulation 18(2)(a)(i) - *whether or not granting the application would cause significant detriment to the proper planning in respect of the provision of pharmaceutical services.***
- 2.30 The Committee was not aware of any plans that would be affected and concluded that granting the application would not have an adverse effect on any future plans.

- 2.31 **Regulation 18(2)(a)(ii)** - *whether or not granting the application would cause significant detriment to the arrangements in place for the provision of pharmaceutical services.*
- 2.32 The Committee found no evidence to support the suggestion that if the application was to be granted, it would cause significant detriment to the arrangements in place for pharmaceutical services in the area.
- 2.33 The Committee did not find any significant detriment to proper planning or to the arrangements in place for the provision of pharmaceutical services and therefore was not obliged to refuse the application under Regulation 18(2)(a).
- 2.34 **Regulation 18(2)(b)(i)** – *whether notwithstanding that the improvements or better access were not included in the relevant PNA, it is satisfied that, having regard in particular to the desirability of – there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB – granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant PNA was published.*
- 2.35 In order to determine if patients in the area already had a reasonable choice, the Committee considered access (distance, travelling times and opening hours) as an important factor in determining the extent to which the current pharmaceutical service provision meets the needs of the population in the Canterbury area.
- 2.36 The Committee had regard to the current service provision in the immediate area of Canterbury and noted that there are eleven pharmacies in the Canterbury area, with five being within 3km of the proposed site. The weekday and Saturday core opening hours of the five pharmacies range from 08:30 to 00:00, Sunday core opening hours from one pharmacy are from 10:00 to 16:00.
- 2.37 The Committee noted that the Applicant had offered to open from 09:00 to 17:30 on Monday to Friday (core hours), Saturday opening of 09:00 to 13:00 (core hours), with total opening times from 09:00-18:00 Monday to Friday, 09:00-13:00 Saturday and closed on Sundays. However, there were already pharmacies in the area providing the same weekday hours and longer hours on Saturdays as indicated above, with one pharmacy offering extended hours until midnight weekly and on Saturday.
- 2.38 The Committee was of the view that the application was based on the surgery move rather than accessibility of access for patients. The proposed location is removed from the centre of town.
- 2.39 Having considered the factors above, the Committee was satisfied that residents of Canterbury already have reasonable choice with regard to obtaining pharmaceutical services.
- 2.40 **Regulation 18(2)(b)(ii)** - *whether notwithstanding that the improvements or better access were not included in the relevant PNA, it is satisfied that, having regard in particular to the desirability of – 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 - granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant PNA was published.*
- 2.41 The Committee received no evidence that identified a group of patients in the Canterbury area, sharing a protected characteristic who had difficulty accessing services that meet a specific need. The Committee therefore concluded that the application did not satisfy the criteria in this part of the Regulation.
- 2.42 **Regulation 18(2)(b)(iii)** - *whether notwithstanding that the improvements or better access were not included in the relevant PNA, it is satisfied that, having regard in particular to the desirability of – there being innovative approaches taken with regard*

to the delivery of pharmaceutical services - granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant PNA was published.

- 2.43 The Committee agreed that there is no evidence that an innovative approach would be taken with regard to the delivery of pharmaceutical services, notwithstanding the introduction of the vending machine to dispense medication at all times of the day. The Committee noted the LPCs comments regarding availability of delivery and lack of pharmacist advice for patients using this system. The Committee had concerns regarding security of this system and its potential vulnerability to attack. It is also not clear how supply of medicines outside pharmacy opening times meet current regulatory requirements.
- 2.44 **Regulation 18(2)(c)-(f)** - The Committee had previously determined that there was no need to defer the application under Regulation 18(2)(c) to (f).
- 2.45 The Committee concluded that Regulation 18(2)(b) had not been met because:
- 2.45.1 there is already a reasonable choice with regard to obtaining pharmaceutical services,
- 2.45.2 there is no evidence of people sharing protected characteristics having difficulty in accessing pharmaceutical services, and
- 2.45.3 there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services.
- 2.46 The Committee was not satisfied that granting the application would confer significant benefits or secure improvements and better access to pharmaceutical services.

RIGHTS OF APPEAL

- 2.47 The application is refused so the Applicant has rights of appeal.
- 2.48 There are no 3rd party appeal rights as the application is refused.

3 The Appeal

In a letter dated 20 July 2020 addressed to NHS Resolution, the Applicant appealed against NHS England's decision. The grounds of appeal are:

- 3.1 The Applicant is surprised that NHS England has not approved this application. In particular the Applicant notes that NHS England did not make any mention of the extensive 47 page report and various appendices that were provided to them to consider which set out in considerable detail why the application should have been approved. It is possible that these documents were not provided to NHS England by PCSE and was therefore not considered.
- 3.2 This development is a key local priority for the NHS. It has been driven by the need for new GP premises and the considerable increase in housing in the area of Kent and Canterbury Hospital. Not only is there currently no pharmacy that can properly serve this growing residential and hospital area, but there will now be a significant medical centre being built on the hospital site to accommodate two GP practices that used to be located close to existing pharmacies, but will now be nearly 1 mile from the nearest pharmacy in an area which still has poor public transport. The new medical centre will serve approximately 15,000 patients.
- 3.3 The Applicant notes that in their reply the LPC refers to "adequacy" which has not been the legal test for nearly 8 years and that they appear to agree that there should be a pharmacy at the new medical centre, but fail to recognise that a relocation of any

existing pharmacy would be refused due to the distances involved and nature of the area meaning that regulation 24(1)(a) would not be met.

3.4 Similarly, the LPC states that;

3.4.1 *“The LPC notes that the pharmacy is not planning to open for a lot of the weekend and whilst having a medication collection point the LPC believe it’s important to have someone there to give people advice about their medication...”*

3.5 The LPC appears again to recognise the requirement for a pharmacy, but simply does not support the application because they represent the interests of existing contractors. The Applicant asks PCA to note that opening hours will be adjusted so that they properly meet demand, however it is much easier for a contractor to increase opening hours than to decrease them and it is sensible for the application to provide details of only the minimum hours that would apply for day 1.

3.6 The report (provided) deals in more detail with the merits of the application. It is disappointing to note that the LPC repeats claims that are sometimes made that there is no longer a need for pharmacies at medical centres due to the introduction of EPS. Pharmacies should be located where they are needed. This includes places where people will shop, but the majority of patients primarily wish to access a pharmacy which is either close to where they live or where their GP is located and that is what this application provides.

3.7 Appendix C of the PNA lists consultation responses and patients were specifically asked;

Q7. In terms of location, what is the main reason you use this pharmacy regularly?

3.7.1	Near to home	32	51%
3.7.2	Near to my doctors	15	24%
3.7.3	In town/Shopping area	9	14%
3.7.4	In the supermarket	1	2%
3.7.5	Near to my work	1	2%
3.7.6	Other	3	5%
3.7.7	Not answered	2	3%

3.8 Clearly with new housing developments and also a new medical centre being built this application meets the “main reason” for 75% of patients choice of location for a pharmacy. In contrast, “shopping” represents 14% yet the LPC focuses on this as the main driver for patients choice of pharmacy when it is clearly wrong to do so.

Health and Wellbeing Board

3.9 The Applicant is grateful for the reply from the HWB but regrettably it does not properly reflect the legal test. Whilst the PNA does indeed mention a future identified need, this relates solely to the new housing developments and not the hospital site itself. In addition, and as the Committee will be aware, for an application to be approved under regulation 15 (future identified need) the need must be included in the PNA in accordance with the requirements of paragraph 2(b) of Schedule 1. Without repeating these requirements, the circumstances that would trigger the need must be specified

and the services required must also be specified. This is in addition to requiring certainty over the location of the need. Therefore, whilst the PNA refers to a future identified need it is not in accordance with paragraph 2(b) of schedule 1 and has therefore not been identified in the PNA and an application under regulation 18 is necessary and correct.

- 3.10 The HWB then states that the need has not been identified as “unforeseen benefits”. As the Committee will be aware, a PNA cannot identify unforeseen benefits (as by definition they would not be unforeseen if they were identified). The Applicant agrees that the area has changed considerably since the last review of the PNA, but unfortunately it is also the Applicant’s understanding that the HWB has not considered any update to its PNA in relation to the new medical centre development.
- 3.11 It is notable that the PNA states on page 15 that;
- 3.11.1 *“Future pharmaceutical need in the area south of Canterbury which needs to be reviewed regularly as the houses are built.”*
- 3.12 Having reviewed the minutes of every HWB meeting since the publication of the PNA the Applicant has been unable to find evidence of any such review having been undertaken.
- 3.13 In reply to the HWB question about the premises the Applicant can confirm that it has agreed terms with Assura for the lease over the pharmacy premises but at the time of the application had to provide a best estimate as the exact location within the development was subject to possible change. The pharmacy will be co-located with the new surgery and have its own internal and external entrance for patients and be available to all patients who wish to use it. Section 3.3 and 3.4 of the attached report (provided) show the up to date position with regard to the location of the pharmacy.
- 3.14 The Applicant asks the Committee to note that the new medical centre will be completed in late 2020.
- 3.15 Granting this application will allow an NHS pharmacy to open at the same time as the medical centre opens and will therefore be an appropriate response for the NHS to make to both recognise, plan for and deliver the pharmaceutical services that are required at the time they are required.

Innovation

- 3.16 This pharmacy will be the first in England to make use of a Medpoint machine which enables patients to receive both thermolabile and non-thermolabile medication 24 hours a day and 7 days per week.
- 3.17 The GPhC has recently considered the use of “collection point” technology at pharmacies (although the machine they considered was unable to provide cold chain products). The consideration was mainly driven by the current COVID 19 pandemic, but it is likely that social distancing will be with us for some time to come and the Applicant will of course still have the normal flu season every year and possibly coronavirus too as a yearly problem.
- 3.18 The technology reviewed is the same type as the Applicant is offering to provide as part of its application. It is noteworthy that the GPhC has found that;
- 3.18.1 This is innovative technology and
- 3.18.2 The innovation supports the safe and efficient collection of assembled medicines
- 3.19 The GPhC report can be found (see paragraph 2.6.3.3.1 above).

- 3.20 The reports states; (already referred at paragraph 2.7 above)
- 3.21 No such facility is available either in Canterbury or the wider HWB area. It is innovative technology that provides significant benefit to patients, especially those who share a protected characteristic that makes them more vulnerable to pandemics.
- 3.22 It is disappointing to note that NHS England considered the use of such technology and stated;
- 3.22.1 *“The Committee agreed that there is no evidence that an innovative approach would be taken with regard to the delivery of pharmaceutical services, notwithstanding the introduction of the vending machine to dispense medication at all times of the day. The Committee noted the LPCs comments regarding availability of delivery and lack of pharmacist advice for patients using this system. The Committee had concerns regarding security of this system and its potential vulnerability to attack. It is also not clear how supply of medicines outside pharmacy opening times meet current regulatory requirements.”*
- 3.23 There is no merit in any of the concerns raised by NHSE or the LPC in opposition to this use of technology.
- 3.24 Medpoint machines are designed with an all metal casing to withstand “attack” and are fitted with CCTV. Payment is contactless to reduce any form of contamination when using payment systems and the machine has a calibrated temperature controlled facility which is fully automated and has its own audit trail to alert the pharmacy to any breach in temperature norms. As the Committee will be aware, there is no regulatory requirement which restricts access to services outside pharmacy opening times.
- 3.25 Whilst the Applicant believes that there is more than sufficient evidence to approve the application on the papers, it recognises that the Committee normally does not approve any application under regulation 18 without an oral hearing. Given that the medical centre development will be complete and the practices have moved to their new site before the end of this year, the Applicant would be grateful if some consideration was given to timing in this case as there will be significant demand for pharmaceutical services from the new medical centre/hospital site in the immediate future and no pharmacy can sensibly be considered to be meeting that demand. The Applicant has gone to considerable effort to show that this application does meet the requirements of regulation 18. The attached report forms the main evidence base for this appeal the Applicant asks the Committee to note that it does not rely on any single point to make this case but instead ask that the Committee considers the totality of the evidence which includes;
- 3.25.1 Provision of a new medical centre on a hospital site being used 24 hours a day 7 days a week;
- 3.25.2 Significant new housing developments completed and ongoing around the hospital site;
- 3.25.3 The move of two medical practices that serve nearly 15,000 patients away from local pharmacies;
- 3.25.4 The recognition in the PNA that a new pharmacy will be required in this area and a statement that the area must be “reviewed regularly” – but no such review having been carried out during the life of the PNA;
- 3.25.5 Poor access from the hospital site to the existing pharmacy network due to both lack of public transport, poor parking at some existing pharmacies and significant gradients and obstacles making walking difficult;

- 3.25.6 The provision of a new and innovative approach taken with regard to the delivery of pharmaceutical services, with patients to access pharmaceutical services using automated collection.

PHARMACY NEEDS REPORT

Proposal: Proposed new pharmacy

Location: New Health Centre, Kent & Canterbury Hospital, Canterbury

Applicant: Rushport Advisory LLP

Introduction

- 3.26 This report supports an application for a new pharmacy for premises at the new GP Surgery at an existing staff car park on lands located 20m southeast of the Ethelbert Road/South Canterbury Road junction, Kent & Canterbury Hospital (K&CH), Canterbury.
- 3.27 This report is been commissioned by Rushport Advisory LLP, the Applicant in this case.
- 3.28 Rushport Advisory LLP consider that the closure of two GP surgeries and their relocation to a new purpose built surgery at the K&CH, combined with the with [sic] potential to work closely with the hospital and enhancement of services at this location is compelling argument for a new pharmacy.

Structure of Report

- 3.29 This report is structured as follows:
- 3.29.1 Section 2 deals with the General Location;
 - 3.29.2 Section 3 deals with the Proposal;
 - 3.29.3 Section 4 sets out the Statutory Tests;
 - 3.29.4 Section 5 considers the PNA under Regulation 18 (1)(b);
 - 3.29.5 Section 6 considers Significant Detriment Tests under Regulation 18 (2)(a)(i) & (ii);
 - 3.29.6 Section 7 considers Existing Pharmacy and Healthcare Provision in the Canterbury area;
 - 3.29.7 Section 8 summarises the Business Case and Benefits of the New Surgery and a Co-located Pharmacy;
 - 3.29.8 Section 9 sets out factors relevant to the consideration of the Grant of a New Pharmacy;
 - 3.29.9 Section 10 considers the Improvement, Access, Choice, Protected Characteristics and Innovation under Regulation 18 (2)(b) (i) (ii) & (iii);
 - 3.29.10 Section 11 sets out the Summary and Conclusion.

Appendices

- 3.30 Appendices included with this report are:

- 3.30.1 General Location Plan;
 - 3.30.2 Layouts of K&CH X 2;
 - 3.30.3 Design and Access Statement;
 - 3.30.4 Planning Statement;
 - 3.30.5 Map of Canterbury of Pharmacies and Surgeries;
 - 3.30.6 Analysis of Pharmacies and Surgeries in Canterbury;
 - 3.30.7 Business Case;
 - 3.30.8 Census Information.
- 3.31 **The Committee is asked to note that since this report was written Boots St George has permanently closed. The Applicant apologises for the remaining references to this pharmacy within the report and the maps.**

General Location

- 3.32 Canterbury is a historic City in east Kent, located about 42 miles east of the M25 at Dartford, about 18 miles north of Dover, about 14 miles northeast of Ashford and 17 miles west of Ramsgate. It is located just north of the intersection of the A2 running between London and Dover and the A28 running between Margate and Ashford.
- 3.33 Canterbury has two railway stations at Canterbury East and Canterbury West. Canterbury therefore has two rail lines, that run between Dover, Margate and London, some via Ashford and serve local towns in between.
- 3.34 Canterbury is an ancient Roman settlement and its historic layout is formed by the location of the Great Stour River that runs diagonally from southwest to northeast through the City and the existence of numerous large historic buildings such as St Augustine's Abbey and Canterbury Cathedral. Canterbury is a City that has long history of attracting visitors and pilgrims to visit the historic city and its Cathedral.
- 3.35 The City Centre historically grew up along the east bank of the River Stour and today it is largely encircled by an inner ring road of the A290/A28 that wraps around the west, south and east of the City Centre. This wide road is interrupted at junctions where it crosses main arterial routes to the south and east. It is designed principally to facilitate the movement of traffic. Pedestrian crossings take the form of sloping paths that lead to unwelcome underpasses.
- 3.36 The town centre is heavily pedestrianised preventing private cars from accessing areas within the town centre such as St Peters Street and High Street. The main bus station is located at St Georges Lane.

Kent & Canterbury Hospital Site

- 3.37 The K&CH is located about 1 mile (1.6km) southeast of the City Centre (**Appendix 1** - provided). It is located in a suburban area on the southern edge of Canterbury.
- 3.38 The K&CH is a large multi-function hospital. Two maps are provided at **Appendix 2** (provided). These show the main layout of the site and a layout of Outpatients and clinics. It can be seen that it is a major hospital with A&E, X-ray, Children's Assessment Centre, Day Surgery, Maternity, Ambulatory Care and Wards, Outpatients Services and Renal Services. The site has two entrances from Ethelbert Road and from South Canterbury Road. 3 public car parks are located along the length of the site. Non patient

areas of the site includes a Medical Physics and Medical Photography area and student Education Centre and Library.

- 3.39 As with any major hospital there is a variety of patient and visitor services provided including café areas, small shops, and telephone booths. The hospital has an outpatient hospital pharmacy. Public transport in the form of a bus service/park and ride service is located on this extensive site.

Proposed New GP Surgery

- 3.40 Planning permission (Ref: 17/02133) for a “*Proposed detached two storey building comprising GP surgery and Pharmacy together with associated parking and reconfiguration of existing hospital parking*” was granted on 18 January 2018.
- 3.41 In support of the application a Design and Access Statement was prepared and submitted. A copy of this is **Appendix 3** (provided).
- 3.42 This proposal seeks to develop a new GP surgery to facilitate the relocation of two long established but now outdated medical practices to a modern surgery environment. The planning application for the development justified the proposal based on the grounds that the existing surgeries are no longer suitable for the future delivery of Primary Care Services and are unable to absorb the demand from the expected growth in patient numbers arising from new housing developments in Canterbury and the surrounding area.
- 3.43 The new surgery site extends to about 2ha and is used as a staff car park for hospital workers.
- 3.44 The new surgery will be an approximately 1015 sq m (10.925 sq ft) with 130 sq m (1400 sq ft) of retail floor space. It will be two storey surgery (with the ground floor the location for patients and the first floor being for non-public functions) providing primary care with consultation rooms, nurse treatment rooms and a minor operating suite. It will have ancillary administration rooms and a meeting room.
- 3.45 The existing access to the car park will be used to access to the surgery car parking area from the internal hospital estate road. Parking for 20 cars is provided within the site and a further 12 spaces are located at the edge of the site accessed directly from the estate road. The surgery layout is set out below (map provided entitled ‘Proposed new surgery’).
- 3.46 The surgery was designed in line with current healthcare design standards and significant consultation was undertaken with the proposed medical practice and the Patients Liaison Groups. The design and access statement for the proposed surgery confirms that the needs of patients with limited mobility have been “*paramount in the design process with all public and non-public areas being accessible by ambulant and disabled users alike*”.
- 3.47 The Design and Access Statement notes that “*The building will provide a modern and therapeutic environment for patients, clinicians and practice staff. The new building will cater for the ever increasing demand created by residential development in the area. The provision of flexible primary care premises in a community setting is in accordance with national and regional primary care strategies which seek to enable patients to access a range of primary care services closer to home.*”
- 3.48 Canterbury Medical Practice provided a Planning Statement to support the Planning Application. A copy of the statement is at **Appendix 4** (provided).
- 3.49 It makes the following salient points:

- 3.49.1 The proposal seeks to relocate 2 doctor surgeries to a new Primary Care facility to serve circa 15,000 patients from the Canterbury area;
 - 3.49.2 The current surgeries are 'red-rated' reflecting the out of date nature of the existing surgeries;
 - 3.49.3 This proposed surgery will be 'state of the art including a co-located pharmacy';
 - 3.49.4 The proposal helps in addressing transformational change in primary and out of hospital care and helps break down barriers in how care is provided between family doctors, hospitals and social care;
 - 3.49.5 The proposal is supported by NHS England, Canterbury and Coastal Clinical Commissioning Group, Canterbury Medical Practice and their Patient Group, East Kent Hospitals and other Canterbury Practices;
 - 3.49.6 The proposal is a key part of the National "Vanguard" proposals that have been delivering health and social care improvements locally in recent years; and Unlike other locations considered, the K&CH site provided sufficient space to accommodate the demands of the patients including providing car parking and also the provision of a modern pharmacy facility for patient convenience.
- 3.50 Among the advantages of this proposal the Canterbury Medical Practice lists:
- 3.50.1 Rectify and solve the 'red-rating' problems of 2 the surgeries which will be relocated;
 - 3.50.2 Provide much needed additional capacity to meet existing and future needs of an expanding local population;
 - 3.50.3 Provides patients with a purpose-built facility and co-location adjacent to Secondary Care which provides important longer term efficiency with greater range of Health Care Services available;
 - 3.50.4 Will be able to attract and secure recruitment of high calibre GPs as well as additional skilled clinical and non-clinical staff; and
 - 3.50.5 Served by existing public transport that serves K&CH.

The Proposal

- 3.51 The proposal site is located within the boundaries of the K&CH. This is shown in the aerial photograph below (photograph entitled 'Proposal site' provided).
- 3.52 Notably in respect of the proposed pharmacy the Design and Access Statement notes "*The provision of a co-located pharmacy is integral to providing a complete service in one location*".
- 3.53 The proposed pharmacy is located on the northern end of the new surgery. It has an entrance from the car parking area and also has an internal entrance from the surgery foyer area. The position of the pharmacy within the surgery is outlined below (map entitled 'Location of Pharmacy within New Surgery' provided). Also see: 'The Computer Generated Image of the pharmacy located beside the new surgery'.
- 3.54 The pharmacy will open the following hours:
 - 3.54.1 Mon to Fri 9am to 5.30pm
 - 3.54.2 Sat -

- 3.54.3 Sun -
- 3.55 **Normal core hours – 9am to 5pm Monday to Friday**
- 3.56 **Additional core hours (directed) 5pm to 5.30pm Monday to Friday**
- 3.57 Total proposed opening hours:
- 3.57.1 Mon to Fri 9am to 6.00pm
- 3.57.2 Sat 9am to 1pm
- 3.57.3 Sun -
- 3.58 The pharmacy has been an integral component of the proposed development of the surgery. Notably in respect of the proposed pharmacy the Design and Access Statement notes “*The provision of a co-located pharmacy is integral to providing a complete service in one location*”.
- 3.59 The services that the pharmacy will provide are:
- 3.59.1 All essential services;
- 3.59.2 All advanced and enhanced services;
- 3.59.3 All locally commissioned services.
- 3.60 In addition a Medpoint collection machine which will allow patients to access their dispensed medication 24 hours a day and 365 days per year. The collection point (the first of its kind in the UK) will be the first that the Applicant is aware of in England that will allow for the collection of fridge lines as well as regular prescription items. As the hospital is a 24 hour environment and many staff work shifts at night, this will be particularly useful for those who rely on out of hours access to services and will provide services not only for those registered at Canterbury Medical practice, but those from any medical practice who wish to use the hospital site.
- 3.61 This demonstrates true innovation in the delivery of pharmaceutical services in a setting which will benefit greatly from having access to medicines outside of normal working hours.
- 3.62 In addition, the [sic] is an Urgent Care Centre at the hospital and conditions the Urgent Care Centre can treat include:
- 3.62.1 Wounds;
- 3.62.2 Wound infections;
- 3.62.3 Minor burns and scalds;
- 3.62.4 Minor head injuries;
- 3.62.5 Insect and animal bites;
- 3.62.6 Minor eye injuries;
- 3.62.7 Minor injuries to the back, shoulder and chest;
- 3.62.8 Children over one year old with a minor injury.

- 3.63 Again, the [sic] is an obvious and significant benefit to having an NHS pharmacy on site as many patients or parents will be told to buy OTC and/or P medicines or dressing etc. if they attend this centre, but there is nowhere to get them from at the hospital.
- 3.64 All of these patients will share several protected characteristics and the new pharmacy will be of significant benefit for them.

Statutory Tests

- 3.65 The statutory tests are set out under “The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013” (the “Regulations”). In particular the application should be assessed under Regulation 18.
- 3.66 The first test is whether an application for has been considered under the Pharmaceutical Needs Assessment for Kent (the “PNA”). A review of the PNA in Section 5 below, confirms that there is no mention of the proposal in the Kent PNA and no aspect of the proposal is countenanced in the PNA. As such the application is an ‘unforeseen’ application and Regulation 18 applies to its assessment. The Applicant discusses the PNA further below.
- 3.67 Other aspects of the Regulations are Regulation 18(2)(a)(i) whether significant detriment to proper planning in respect of the provision of pharmaceutical services in the area of the relevant HWB would occur and Regulation 18(2)(a)(ii) whether significant detriment to the arrangements the NHSCB has in place for the provision of pharmaceutical services in that area would occur. The Applicant assesses these tests in Section 6.
- 3.68 The Regulations have been in place for over 6 years and are well understood. They have been distilled into the central issue of whether a proposal will provide improvements or better access to pharmaceutical services (Regulation 18(1)(a)) and whether there is reasonable choice of pharmaceutical services (Regulation 18(2)(b)(i)). The Regulations provide no guidance as to what is “improvement”, “better access” or “reasonable choice”, such matters are determined by the facts of the case.
- 3.69 Better access and reasonable choice cannot be met by arbitrary figures provided in documents such as the PNA or being able to drive to a pharmacy within a radius of 5 miles or a drive time of 5 minutes. Such an arbitrary approach does not reflect the characteristics of an area and the daily travel patterns of local people. It would pay no regard to the policy driven need for co-located pharmacies to enable patients to benefit from the most modern up to date health care services which is proposed in this case.
- 3.70 The other aspects that an Applicant can ground their application on includes Regulation 18(2)(b) (ii) and (iii) being that a proposal will support the needs of people who share a protected characteristic and innovative approaches are being taken. Innovation in this case is demonstrated by the use of the Medpoint collection system allowing 24 hour, 365 day access to dispensed medicines, including fridge lines. Significant benefits for those who share Protected characteristic is justification for this application as shown later.

The Kent Pharmaceutical Needs Assessment

- 3.71 The Kent Pharmaceutical Needs Assessment (PNA) (March 2018) states on its front cover that: *“This is an overarching document to provide strategic information for the whole of Kent. Kent has a population of over 1.5 million people and it is difficult to assess the needs of this population within one document. Therefore the area has been divided up into 7 localities co-terminus with the current 7 Clinical Commission Groups”*.
- 3.72 The PNA Executive Summary notes that one of the key findings and recommendations of the PNA Steering Group was:

3.72.1 *Lack of parking and access for the disabled was a recurring comment by responders to the consultation. Therefore any new contract must also demonstrate that there is adequate parking available for the business and that access for the disabled is available”.*

3.73 The PNA (page 11) makes the normal generalised assumptions (which the Applicant cautions against) that:-

3.73.1 *“Using simple “as the crow flies” parameters of one and five miles to represent the distance walked and driven respectively within 20 minutes, the majority of Kent residents are able to access a provider of pharmaceutical services (either community pharmacy or dispensing practice) within 20 minutes. Also the majority of the residents living within the deprived areas of Kent, which may mean that there is not access to a car, are also able to access pharmaceutical services within 1 mile (1.6km) of their residence”.*

3.74 The use of “simple as the crow flies” calculation has no regard to the difficulties people face in accessing pharmacies in busy urban cities where traffic congestion, narrow footpaths, hilly topography and limited public transport constrain patients’ availability to access pharmacies. It pays no regard to the existence of car parking and needs of disabled people. It directly conflicts with the key finding of the PNA on this issue and demonstrates the PNA is internally conflicted in this respect. Such an approach would not withstand any objective scrutiny and it is unwise that PNA’s such as Kent apply and rely upon it.

3.75 The PNA (page 12) shows the following:

Number of pharmaceutical service providers

Ratio of number of service provider sites per 100,000 population (excluding appliance contractors)

<u>Locality</u>	<u>No of service provider Sites</u>	<u>Practice population</u>	<u>Ratio per 100,000 population</u>
NHS Ashford CCG	25	131,959	19
NHS Canterbury& Coastal CCG	48	220,550	21
NHS Dartford, Gravesham & Swanley CCG	60	266,075	22
NHS South Kent Coast CCG	48	204,570	23
NHS Swale CCG	28	111,860	25
NHS Thanet CCG	32	145,057	22
NHS West Kent CCG	93	488,377	19
Kent	334	1,570,448	21

- 3.76 The England average is 23, although this is not necessarily a good marker as it does not take the size of the pharmacy into account.

Extract of Kent PNA Overarching Report

- 3.77 In NHS Canterbury and Coastal CCG there are 48 service provides for a population of 220,550 which is below the England average of 21 pharmacies per 100,000 people.
- 3.78 The PNA includes a section that relates specifically to Canterbury and Coastal Clinical Commissioning Group (Canterbury and Coastal CCG). This area is treated as a PNA locality and includes Canterbury and the coastal towns of Whitstable and Herne Bay and all surrounding areas. Canterbury lies at the heart of this locality.
- 3.79 The PNA for Canterbury & Coastal CCG (page 4) notes that this locality has a significant student population *“far greater than the national average”* and that *“all categories above age 60 is also higher than the national average. This will have an impact on health services because people over 60 will generally have greater health needs and service usage”*. This is shown in the graph provided (entitled ‘Current population’).
- 3.80 The proportion of 15-29 year olds living in the Canterbury local authority area is far greater than the national average. This reflects the high percentage of students residing in Canterbury. However, the proportion of people aged 0-15 and 30-54 years is much lower than Kent average. The proportion of the population in all categories above age 60 is also higher than the national average. This will have an impact on health services because people over 60 will generally have greater health needs and service usage.

Extracts of Kent PNA for Canterbury & Coastal CCG

- 3.81 The PNA for Canterbury & Coastal CCG (page 5) notes that *“Life expectancy in Canterbury and Coastal CCG is 82.1 years, just above the Kent life expectancy of 81.8 years”*.
- 3.82 The Table entitled ‘Population growth’ (provided) shows the scale of growth in the various population groups in the Canterbury & Coastal CCG. The growth in the 65+ category is stark.
- 3.83 The PNA for Canterbury & Coastal CCG (page 6-7) notes *“Canterbury City Centre is one of the most congested parts of east Kent. This can lead to increased journey times and higher levels of air pollution such as PM10s that are associated with circulatory and respiratory disease”*.
- 3.84 The PNA for Canterbury & Coastal CCG (page 12) notes that *“There are walk in centres at Kent and Canterbury Hospital in Canterbury ... which treat minor injuries and minor ailments. These services are available from early in the morning until late in the evening”*. The proposal is well located to support the needs of these patients should they require a pharmacist.
- 3.85 The PNA for Canterbury & Coastal CCG (page 13) notes in terms of future housing growth that
- 3.85.1 *“Like most of Kent, considerable new housing is expected to be built in the Canterbury and Coastal area over the next 20 years The Planning department at Canterbury City Council were consulted to identify any new developments that have or are due to be built since the 2015 PNA.*

- 3.85.2 *The local plan indicates that residential building is expected to commence in the future on land to the South of Canterbury adjacent the Kent and Canterbury Hospital site along with plots of land at Nackington Road and Barton Business Park. However this development is unlikely to reach significant proportion until 2021 and therefore is identified as a FUTURE need for pharmaceutical services within this PNA. Various other plots of land have been or are being developed across the area mainly by infilling but none of these have resulted in a significant need (over 1,000 houses) for extra pharmaceutical services.*
- 3.85.3 *Such areas will be reviewed regularly especially if the house building changes the landscape from rural to urban or progresses at a faster rate”.*
- 3.86 As discussed in the covering letter to this document, whilst the PNA states that there is a “future need” it does not do so in a manner which would permit an application made under future need to be approved. Whilst the PNA is well intentioned in this respect, the Regulations require much greater clarity about the trigger point for a future need and the exact location in order for any application to be approved. It was therefore required to submit this application under regulation 18.
- 3.87 It is shown below that there is expected to be a further 4000+ new houses on the south and east of Canterbury.
- 3.88 The PNA for Canterbury & Coastal CCG (page 15) finds there is no need for any new pharmacy services except perhaps in time in south Canterbury where future needs may occur as a result of new housing. Again, this seems to be contradicted by the finding that *“Lack of parking and access for the disabled was a recurring comment by responders to the consultation. Therefore any new contract must also demonstrate that there is adequate parking available for the business and that access for the disabled is available”*. It would have been appropriate for the PNA to objectively assess the existing pharmacies and their suitability to meet the needs of disabled people before determining that there is no new pharmacy requirement.
- 3.89 In summary, it can be noted first and foremost that the PNA does not foresee this proposal and in particular it made no reference to the new medical centre being developed which is the key driver to this application. It is therefore an unforeseen application under Regulation 18. The PNA does highlight that all applications need to have disability access. This is an important consideration and it can be noted that the proposal site is a new build fully accessible surgery building and the pharmacy will be wholly consistent with that.

Significant Detriment Regulations 18(2)(a)(i) & (ii)

- 3.90 Regulation 18(2) stipulates two considerations that must be assessed under an application for unforeseen benefits. These are (a) whether it is satisfied that granting the application would cause **significant detriment** to:
- 3.90.1 (i) proper planning in respect of the provision of pharmaceutical services in the area of the relevant HWB, or
- 3.90.2 (ii) the arrangements the NHSCB has in place for the provision of pharmaceutical services in that area;
- 3.91 **(i) proper planning in respect of the provision of pharmaceutical services in the area of the relevant HWB.**
- 3.92 The proposal does not affect the proper planning of pharmaceutical services. The application for the new surgery which clearly includes a pharmacy as an integral component of that building. The new development has been fully supported by NHS England, Canterbury and Coastal Clinical Commissioning Group, Canterbury Medical Practice and their Patient Group, East Kent Hospitals and other Canterbury Practices.

It would be difficult for any organisation to oppose this application on the basis of Regulation 18(2)(a)(i) in these circumstances.

- 3.93 **(ii) the arrangements the NHSCB has in place for the provision of pharmaceutical services in that area;**
- 3.94 There is no likelihood that any existing contractor or dispensing pharmacy can contend that the proposal will cause significant detriment to the current arrangements for provision of pharmaceutical service in Canterbury. The closest three pharmacies to the proposal site are all Boots shops and all three operate well with the City centre shop extremely busy. The decision to seek the development of a new surgery is strongly supported and is needed to address the inadequacies of existing surgeries, meet the needs of the growing population of the area and cater for disabled the needs of disabled members of the population.
- 3.95 As shown above, the PNA is clear that there is a below average number of pharmacies in the Canterbury area, and that there is an above average amount of elderly people and students. Also the PNA acknowledges that the population in the area will continue to grow.
- 3.96 In such circumstances of clear objective need, there are no grounds to contend that there would be significant detriment to existing arrangements. Few objectors raise the prospects of significant detriment in objection to unforeseen applications. This is because is it a difficult matter to demonstrate as there are many factors that can place pressures on any business and it is too simplistic to say that opening of anew pharmacy in an area will significantly harm a business. To sustain any argument based on significant detriment would require significant evidence to be provided that provides direct correlation between the proposal and any impact envisaged.
- 3.97 There are no grounds to refuse this application on significant detriment either to the future proposals for this area or the existing arrangements in place for pharmacy services in the area.

Existing Pharmaceutical Provision

- 3.98 There are currently 11 pharmacies in the main Canterbury area as shown on the Map at **Appendix 5** (provided).
- 3.99 **Appendix 6** (provided) provides a detailed analysis of these pharmacies and the close-by associated surgeries.
- 3.100 These include:
- 3.100.1 Boots, 29 Oaten Hill;
 - 3.100.2 Boots, St Georges Centre [NB consolidation application approved and store **has now closed**];
 - 3.100.3 Boots, 12 Gravel Walk;
 - 3.100.4 Superdrug, 23 St Georges Street;
 - 3.100.5 Boots, Ten Perch Road;
 - 3.100.6 Morrisons, Ten Perch Road;
 - 3.100.7 Eckersley Pharmacy, 2 Northgate;
 - 3.100.8 Lloyds (inside Sainsbury's), Kingsmead Road;

- 3.100.9 Cheadles, 68 Dunstans Street;
- 3.100.10 Porters Chemist, 2b Hales Drive;
- 3.100.11 Cheadles, Giles Lane.

- 3.101 **The Applicant notes that a consolidation application has been approved in respect of Boots Oaten Hill and Boots St George and that Boots St George is now closed. This application does not rely on any gap that such a closure may create.**
- 3.102 The summary of the assessment of these pharmacies set out at **Appendix 6** is as follows:
 - 3.102.1 none of the pharmacies are within walking distance of the proposal site; **N.b. Appendix C of the PNA states that 43% of patients walk to their current pharmacy showing how important that method of access is for patients.**
 - 3.102.2 the pharmacy nearest the proposal site (Boots Oaten Hill) has no dedicated car parking and limited on-street car parking;
 - 3.102.3 Parking at Boots Oaten Hill, Gravel Walk, Superdrug, Cheadles Dunstans could be considered to be limited and not suitable to patients that have mobility difficulties.
- 3.103 The Table entitled 'Dispensing Patterns Summary Table' (provided) shows the strength of relationship between pharmacies and close-by surgeries. Cheadles has a strong relationship with the University Medical; Lloyds and Eckersley have strong relationships with Northgate; Boots St Georges has strong links with New Dover Surgery. The closure of Canterbury Medical (London Road and Cossington House) will have a small effect across a wide number of pharmacies on a limited basis. It will be a case of 'spreading the effect thinly over a wide area'.
- 3.104 The Map at **Appendix 5** shows the relocation of the two 'red-rated' surgeries of London Road and Cossington House being relocated to the K&CH site. It is notable that the new surgery is designed to accommodate 15,000 patients which includes new patients that come to live in the area following the construction of new houses.

Summary

- 3.105 Existing pharmacies are poorly located to meet the needs of the significant population of southeast Canterbury and specifically those using the new medical centre.
- The Business Case and benefits of the new surgery and a co-located pharmacy**
- 3.106 The Business Case for the relocation of the surgeries is at **Appendix 7** (provided). Section 3.2.1 sets out the following key background points in support of the surgery, which equally support the provision of a new pharmacy:
 - 3.106.1 The registered population for Canterbury & Coastal CCG at 31/12/2014 was 215,285 compared to a resident population of 202,389. The large difference between the two is likely to be due to the transient student population who are transferred to the local university practice population register whilst attending but may not be included in the resident population figures;
 - 3.106.2 Kent ranks 102 out of 152 county and unitary authorities in the English Indices of Deprivation 2010 (ID2010). This places Kent within England's least deprived third of authorities as a rank of one indicates the most deprived area;

- 3.106.3 There are areas within Kent that fall within the 20% most deprived in England;
- 3.106.4 Kent's ageing population will place significant pressures on health and social care services;
- 3.106.5 Canterbury and Coastal CCG serves a population that is expected to grow by approximately 10,900 (7%) over the next 5 years and 41,000 (27%) over the next 15 years and has a life expectancy of 82.1 years, which is just above the Kent average. There is difference of 7.6 years life expectancy between the highest and lowest wards;
- 3.106.6 A robust primary care system supported by effective infrastructure is essential to resolve the challenges currently facing the NHS. Primary care provides the first point of contact in the healthcare system, acting as the "front door" of the NHS and must have the capacity to support the needs of its population and provide the services required to manage complex, chronic conditions within primary and community care settings. If primary care infrastructure is unable to provide adequate services this could lead to the unnecessary pressures on other already stretched parts of the health system and consequently unnecessary acute hospital admissions;
- 3.106.7 The GPs from Canterbury Medical Practice are seeking to develop a practice model, and facilities that enable the delivery of a range of integrated primary, community, and social care services for the benefit of the population and support the recruitment and retention of staff;
- and
- 3.106.8 The increase in population from the local housing developments which would otherwise place excessive pressure on existing Canterbury practices will be partially mitigated by this development.
- 3.107 The Business Case also sets out a plethora of policy driven needs arguments for the delivery of this new surgery. The arguments for joint working, improved integration of services to care for the changing needs of modern society in a bespoke modern sustainable and accessible premises all equally support the provision of the integral pharmacy on this site.

Benefits of Locally Co-Location Pharmacies

- 3.108 The Department for Health has the objective of pharmacies providing a wider range of services and to have a stronger role in the local community. It would encourage the provision of NHS services from a pharmacy to complement peoples' current lifestyles and needs, where prevention of medical conditions can be achieved and where people can become educated in medical conditions so that they are better engaged in taking care of their own health and well-being. The key benefits of co-locating a pharmacy with the new surgery on this K&CH site in this part of Canterbury will be to:
- 3.108.1 give 15,000 patients at the new surgery having access to a pharmacist;
- 3.108.2 give GPs access to a pharmacist on site for consultation without having to rely on practice pharmacists;
- 3.108.3 provide closer working and case review between pharmacists and GPs;
- 3.108.4 provide a pharmacist to deal with patients seeking care that do not need to see the GP, and opportunity for urgent on site referral if necessary;
- 3.108.5 provide on-site service to out-patients from K&CH;

- 3.108.6 provide on-site services to the people that work in the K&CH hospital site;
- 3.108.7 provide on-site services to non-patients bringing friends and family to the K&CH and new surgery site;
- 3.108.8 provide a fully accessible pharmacy services to all patients regardless of mobility; and provide 24 hour service delivery via a prescription vending machine.

Alternative to Providing A New Pharmacy

- 3.109 It is always important to consider implications of a refusal of an application such as this. Failure to provide an on-site pharmacy in a bespoke site such as this undermines the government policy and strategies for integrated health care.
- 3.110 It is also contrary to the aims of good planning and sustainable living to require the resorting population of a major facility such as K&CH and this new 15,000 patient surgery to travel unnecessarily deep into the City to use the local pharmacy services in two small neighbourhood Boots pharmacies. Boots Oaten Hill is simply incapable of accommodating the demands of this major area, and the Boots at St Georges is already having to accommodate the demands from patients that use New Dover Surgery and Canterbury Health Centre as well as the many people that visit the Waitrose and local shops in this shopping centre. Refusal of an application in this case would be contrary to the specific conclusion of the PNA which expects new contracts to be in locations that are highly accessible to people with disabilities.

Summary

- 3.111 There is a clear policy driven need for the co-locating of this pharmacy with the new surgery within the K&CCH estate backed by an NHS supported business case. The benefits of co-locating are many and varied, and the implications of a refusal of this case would taint the public's view on the NHS and the ability of the NHS to implement and achieve its own policy objectives.

Factors Influencing Approval of New Pharmacy

- 3.112 Before considering whether the proposal satisfies the other statutory tests of Regulation 18, it is instructive to set out the key factors that can inform the consideration of matters such as securing improvements, better access, choice, protected characteristics and innovation.
- 3.113 An assessment of all the existing pharmacies has been discussed in detail at **Appendix 6**. This section does not repeat that analysis. Instead it develops further some of the operational, geographical and demographic issues that arise in this part of Canterbury.

Accessibility in terms of Hours of Operation

- 3.114 It can be noted that the area of south Canterbury has two Boots pharmacies. Neither open after 6pm during the week. In modern day living in an area where many people resort to for work, tourism, education and indeed where there is a major health estate in the form of the K&CH this is an inadequacy. Equally it is likely that when the new surgery opens, it will operate hours longer than 6pm and as such patients will have to travel to the City Centre to have a prescription dispensed.

Accessibility on Foot

- 3.115 **NB. Appendix C of the PNA states that 43% of patients walk to their current pharmacy showing how important that method of access is for patients. Walking is the most popular way to access a pharmacy followed by car and then bus.**

- 3.116 In order to discuss accessibility on foot objectively, it is important to understand what an acceptable walking distance is. Two documents are of guidance. The “Manual for Streets” (produced by the Communities and Local Government and Department for Transport) advises (para 4.41) that *‘Walkable neighbourhoods are typically characterised by having a range of facilities within 10 minutes (up to 800m) walking distance of residential areas which residents may access comfortably on foot’*. The Institution of Highways & Transportation provides “Guidelines on Providing for Journeys on Foot”. It states (para 3.30) that *‘Approximately 80% of walk journeys and walk stages in urban areas are less than one mile. The average length of a walk journey is one kilometre (0.6miles). This differs little by age or sex and has remained constant since 1975/76’*. It suggests that an acceptable walking distances in an area such as the Canterbury would be 800m, though 400m would be desirable and the preferred maximum would be 1200m.
- 3.117 With both guidelines identifying 800m to be acceptable it is a reasonable position to adopted 800m/10 minute walk as a guide for this report. Based on this guidance as shown below (table provided entitled ‘Walking Distance Analysis’) none of the pharmacies in Canterbury are accessible on foot from the proposal site.

- 3.118 All pharmacies are beyond a reasonable walking distance.

Footpath issues

- 3.119 The two closest pharmacies are Boots, Oaten Hill and St Georges. One of the routes to these shops is via Ethelbert Road. This is a residential road that has broken pavements and changes in gradient that makes walking by people with poor mobility or parents pushing a pram a challenge. (Two photographs provided with the caption: *‘Numerous dropped kerbs make walking a challenge for people of limited mobility’*. Also a photograph under the caption: *‘Ethelbert Road rising at a gradient away from Old Dover Road’*)
- 3.120 The alternative route to these shops is via South Canterbury Road. This road has a steep gradient on it making it difficult for patients of limited mobility to use. The photographs provided show the significant barriers to movement for pedestrians walking along the South Canterbury Road. These issues are in addition to the change in topography at this location. (Photograph provided under the caption *‘Pavement Narrows to single file (or walk on road as these young people do)’* Photograph provided under the caption: *‘Post blocking path, (but preventing pedestrians walking into traffic at blind corner)’*)
- 3.121 If patients wish to visit the City Centre pharmacies on foot, the main route for this is via Old Dover Road or St Georges Place. In either case patients have to cross the busy inner ring road of the A28. The pedestrian crossing for this road at the roundabout intersections between the Old Dover Road or St Georges Place and the A28 is a pedestrian under pass.
- 3.122 The photographs below show the unwelcome environment for patients that would have to navigate their way underneath the busy A28, and the variety of slopes and tunnels prevalent in this area. (Four photographs provided under the following captions:
- 3.122.1 Busy traffic at the A28 at location of Underpass;
- 3.122.2 Slope down into Underpass;
- 3.122.3 Ramp on Underpass;
- 3.122.4 Tunnel of Underpass).
- 3.123 It is not unreasonable to suggest that the two City Centre pharmacies are out of reach of patients by reason of distance (about a mile or more) and the busy heavily urbanised

environment that they would need to walk through. It has been noted above in the PNA that the congestion in Canterbury is a concern and can cause air pollution leading to health issues. None of the other pharmacies in the retail parks or west of the City Centre could be reasonably considered in any assessment of walking from the proposal site.

Accessibility by Car

- 3.124 The Boots Oaten Hill shop has limited car parking and access to this pharmacy is constrained not only by poor parking availability but physical access and gradients as mentioned elsewhere in this report.
- 3.125 Furthermore Canterbury's traffic problems are reflected in its Local Plan 2017 as shown below (Extract provided entitled 'Chapter 5 Transport Infrastructure').

"Canterbury

3.125.1 Canterbury is recognised as a regional hub for education, shopping and is a major visitor centre attracting millions of visitors a year. The city currently depends on a large net inflow of commuters to support the level of jobs in the area as well as an influx of secondary school children and students in higher education.

3.125.2 Around 160,000 vehicles per day travel to and from Canterbury along the nine 'A' and 'B' roads that converge on the city. The layout of the city with its medieval streets, heritage buildings and railway crossings presents a challenge that makes traffic management solutions very difficult. Some pedestrian, cycle and bus infrastructure already exists although the city is bypassed to the south by the A2, the highway network is under acute pressure. As a result Canterbury suffers from significant peak hour congestion especially on the inner ring road and inner radial routes. This contributes to poor air quality particularly in areas within the Air Quality Management Area. This is despite 1 million passengers using the park and ride every year since 2003. There are two railway stations that serve the City and High Speed One services now stop at Canterbury West Station cutting the journey time to London from approximately 90 to 56 minutes."

- 3.126 The City Centre of Canterbury has restricted public car parking. The historic significance of the City Centre means cars are very much discouraged from coming into the centre. The pharmacies in the City Centre cannot be considered to be accessible given the traffic issues, and it would not be unreasonable for the Council to consider it unsustainable and indeed unhealthy to require the 15,000 patients at the new surgery to have seek out a pharmacy in the City Centre.
- 3.127 Moreover, Council policy seeks to discourage cross city traffic as shown in the Council's Transport Strategy below (see Policy T1 c). As such the Council would encourage visitors to the new surgery to be able to access as much of their health care services as possible without having to seek out services such as a pharmacy elsewhere in Canterbury. This is another example of a policy driven need for the provision of an integrated co-located pharmacy with new surgery.

"Policy T1 Transport Strategy

3.127.1 In considering the location of new development, or the relocation of existing activities, the Council will always take account of the following principles of the Transport Strategy:

3.127.1.1 Controlling the level of environmental impact of vehicular traffic including air quality;

3.127.1.2 *Providing alternative modes of transport to the car by extending provision for pedestrians, cyclists and use of public transport;*

3.127.1.3 *Reducing cross-town traffic movements in the historic centre of Canterbury;*"

Public Transport

3.128 The main public transport serving this area is Bus route 25/25A which runs between the K&CH and the bus station via South Canterbury Road. It does not pass either of the Boots pharmacies in south east Canterbury and as such these would not be accessible to patients on public transport. However, it is noted that Boots Gravel Walk is located beside the bus station. However, it is noted at **Appendix 6** that this Boots store is extremely busy and a person that has worked in this store has reviewed it online and stated:

3.128.1 *"extremely busy with walk-ins if working on the shop floor. There is a care home department upstairs and a DOS department downstairs. There is usually a 2nd pharmacist who is busy with the travel clinic and you are expected to assist customers while checking. A dispenser even told a patient that an emergency supply would be issued without even speaking to a pharmacist. Disgraceful". The person rated this pharmacy 2 out of 5 and classed it as "busy and understaffed".*

Source: Pharmadata website for Boots Gravel Walk

3.129 The fact that this pharmacy is dispensing between 16,000 and 18,000 items a month is an illustration and confirmation of the observations that this is an extremely busy pharmacy. As such requiring patients from a new purpose built DDA compliant surgery to take a bus to one of Canterbury's busiest pharmacies is not a reasonable alternative or choice.

3.130 No other pharmacy is accessible via public transport from the proposal site without taking a further bus trip or a long walk.

Population

3.131 The population of Canterbury in the 2011 Census was 55,240. While this is now a significantly out of date figure it remains the most recent Census data available. The area of south and east Canterbury is covered by two wards of Barton and Wincheap. **Appendix 8** sets out some of the 2011 Census Statistics for these wards. They are summarised below (table entitled 'Demographic and Socio-Economic Characteristics of the Area').

3.132 It can be seen that:-

3.132.1 the combined population of the two wards was about 20,000 in 2011. About 17.6% of this was over 60s;

3.132.2 about 2,964 people in the area have their day to day activities limited due to ill health. This equates to about 15% of the population;

3.132.3 tenure is about 50%:50% between owned and rented accommodation;

3.132.4 29% of the households in the area have no access to a car;

3.132.5 3188 households (42%) are occupied by people over 65;

3.132.6 491 households (6.5%) are lone parent households;

3.132.7 3% of the population are unemployed.

- 3.133 The PNA recognises Canterbury's ageing population and the figures above illustrate there is a clear demand from the 60+ population in this local area as well as about 3,000 people whose health is limiting their daily activities. Increasing healthcare including pharmacy provision is consistent with the demographic demands of this area.

Student Population

- 3.134 The above data is most unlikely to also include the significant student population in Canterbury. Christ Church University has a population of about 15,300 students and 1,700 staff. The Campus is largely located east of the A28 ring road in the area north of the proposal site as shown below. (Map provided entitled 'Christ Church University Campus'). Many students may not be registered with a surgery whilst living in Canterbury. This would be a barrier to accessing healthcare. Having a third pharmacy in this area would help support students that need healthcare for minor ailments or who are unable to see their local GP.

Primary and Secondary School Population

- 3.135 This area is also the location of a number of large schools including:
- 3.135.1 Simon Langton Grammar School for Boys (1091 boys);
 - 3.135.2 Simon Langton Grammar School for Girls (1107 girls);
 - 3.135.3 St Anslem's Catholic School (1130 pupils);
 - 3.135.4 CATs College Canterbury (450 pupils);
 - 3.135.5 Pilgrims Way Primary School (367 pupils);
- 3.136 There are therefore around 4145 children in this area attending primary and secondary schools.

Other Health Care Facilities

- 3.137 The area around the proposal site is the location of a major attraction for workers to the K&CH and for patients and family and friends coming to the K&CH. Other health care facilities in the area include:-
- 3.137.1 The BMI Chaucer Hospital (a private medical hospital); and
 - 3.137.2 Kent MS Therapy Centre;

Other Tourist and Recreational Facilities

- 3.138 Other facilities draw large populations of people into this area. The historic attraction of Canterbury and the location of the St Augustine Abbey ruins attract people to the area. Also in the area is the Canterbury Bowling club and Kent County Cricket Club. Many people coming into this area may have a reason to visit a pharmacist (for minor ailments etc.) and the proposal is will located [sic] and will be highly visible to meet the needs of people that might resort to the K&CH site in need of minor health care.

Future Growth

- 3.139 A key reason for the development of the new 15,000 patient surgery in this K&CH area because of the future development of significant house schemes around south and

east Canterbury. The Map (provided) shows the location of the major housing developments.

3.140 In total there are plans for 5,960 new homes in the area around south and east Canterbury. Over time that could accommodate 15,000 new residents. The latest Council update on major developments is that:

3.140.1 Mountfield Park – Following a legal challenge being resolved an application is now under consideration;

3.140.2 Howe Barracks – A hybrid and reserved matters application have been granted and a Section 106 was signed in December 2015. Currently 13 houses have been constructed on site;

3.140.3 Cockering Farm – Outline planning permission and reserved matters have been granted and Section 106 was signed in July 2016 and work started 2018/2019.

3.140.4 Ridlands Farm – No up date.

3.141 The Council's Housing Monitor and Trajectory for the delivery of strategic sites is set out below (table entitled 'Chapter 7: Table 2 Local Plan Allocations') which shows the Council have identified a number of houses already developed on these sites and that it predicts 1,205 units will be built on strategic sites before 2023. These units will increase the population by about 3,000 and bring the local population to over 23,000 (and more if the 15,000 student population were included).

Improvements, Access, Choice, Protected Characteristics and Innovation Regs 18 (1)(a) & 18 (2)(b)(i) (ii) & (iii)

3.142 The key consideration in this case is under Regulation 18 (1) which states that if the NHSCB receives a routine application it is required to determine whether it is satisfied that granting the application **would secure improvements, or better access, to pharmaceutical services** in the area of the relevant HWB.

3.143 Also to be considered is whether, notwithstanding that the improvements or better access were not included in the relevant PNA, the NHSCB is satisfied that, having regard in particular to the desirability of—

3.143.1 (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(2) (duty as to patient choice and duty as respects variation in provision of health services));

3.143.2 (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(3) (duty as to reducing inequalities)),

and

3.143.3 (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(4) (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.

3.144 These factors can be considered under the main themes of:

3.144.1 Secure Improvements;

3.144.2 Better Access;

3.144.3 Reasonable Choice;

3.144.4 Protect Characteristics;

3.144.5 Innovation.

Secure Improvements

3.145 It is shown above that there are a limited number of pharmacies in Canterbury for its size. It is below the England average in number of pharmacies per 100,000 population. That is a basic indicator of demand. However, it is also clearly acknowledged that there is a combination of factors that leads to the need to secure improvement in health care services. The demands currently placed on pharmaceutical services and which will continue in future with the scale of population and the type of population is only going to continue to place challenges on pharmacy services. The demands for modern accessible pharmacies is clearly identified in research carried out for the PNA. On the supply side the provision of modern health care services through the co-locating of two surgeries and bringing them onto a major hospital site brings with it a clear need for a full suite of health services to be provided and the demand for a pharmacy is a clear and obvious requirement.

3.146 The improvements and benefits (many of which are policy driven) have been set out above.

3.147 The population that come to this site are likely to be resorting to the K&CH site from a wide area. They are likely to be mainly car borne, except for those that live nearby as the PNA identifies that the most popular way to access a pharmacy and the reason for choosing a pharmacy is that a patient can walk to it.

3.148 These people will benefit from the first fully co-located pharmacy in Canterbury. Appendix C of the PNA states that 24% of patients consider proximity to their doctor's surgery to be the main reason for choosing a pharmacy and 43% walk to the pharmacy. The proposal secures the improvement of providing a fully accessible pharmacy for the needs of patients visiting this site. The proposal also improves the hours of opening of pharmacies in this area.

Better Access

3.149 The access issues for people from this part of Canterbury are set out above. Access is difficult on foot, in a car and by public transport. The proposal will be a new pharmacy within the same surgery building as a combined GP practice with 15,000 patients. It is clearly providing better access to pharmacy services. The PNA notes the need for pharmacies to be accessible for people of all mobilities. The proposal is inside the purposefully designed building that meets the current guidance on access for all people. It satisfies and reflects the requirements of the PNA. This is a significant benefit in this case. It will be the first co-located pharmacy in Canterbury. The closest alternative is the Northgate Surgery/Eckersley Pharmacy, however, these are located in separate buildings and patients have to move between the two buildings to access the pharmacist. Notwithstanding, the success and demand for that service is clear with the Eckersley Pharmacy providing 80% of the items from the Northgate Surgery.

Reasonable Choice

- 3.150 Patients to the new surgery will have three Boots pharmacies as their closest alternatives. This is plainly a poor choice of provider. Irrespective of the identity of the provider, access to pharmacies is poor from the proposed location and this impacts significantly on whether choice can be considered reasonable or not.

Protected Characteristics

- 3.151 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 and elderly.
- 3.152 Of particular importance, the PNA has registered that disability access is a significant concern for local people. This proposal has been specifically designed to meet the needs of this protected group.
- 3.153 Also as shown above the population of this part of Canterbury has 4,000+ school children and 3,400+ elderly people which are groups of protected characteristics. Moreover, there is a large number of people in the area that have a limiting long term illness. These peoples' day to day activities are limited due to old age and health problems etc. Each of these groups will benefit from the provision of the proposal.

Innovation

- 3.154 The Applicant will install a Medpoint collection machine which will allow patients to access their dispensed medication 24 hours a day and 365 days per year. The collection point will be the first that the Applicant is aware of in England that will allow for the collection of fridge lines as well as regular prescription items. As the hospital is a 24 hour environment and many staff work shifts at night, this will be particularly useful for those who rely on out of hours access to services and will provide services not only for those registered at Canterbury Medical practice, but those from any medical practice who wish to use the hospital site.

Summary and Conclusion

- 3.155 This is a proposal for a new co-located pharmacy to care of [sic] the needs of 15,000 patients in a purpose built surgery in southeast Canterbury within the M&CH [sic] estate. It is consistent to allow an application for the grant of a new contract in this building which has been designed and built to provide people of all mobilities to access a surgery and pharmacy under one roof. Indeed it would be perverse to design and build such a proposal, with the benefit of the support of the NHS to require disabled people to be instead visit existing pharmacies where the disability for some people becomes a challenge again.
- 3.156 The proposal is located in the K&CH estate where a wide variety of patients can benefit from the integrated pharmacy services.
- 3.157 The proposal is located in the K&CH estate where cross working of health care specialists can benefit from an on-site pharmacist.
- 3.158 There is clear support for the proposal from many of the main health care bodies.
- 3.159 The proposal is located in a bespoke designed pharmacy building that reflects the findings of the PNA which stated that future pharmacies should be located in more accessible buildings and locations.
- 3.160 The proposal is unforeseen in the PNA.
- 3.161 The proposal will not cause significant detriment to proper planning of pharmaceutical services nor any detriment to existing provision of pharmaceutical services.

- 3.162 The PNA notes the growth in population and the specific demands from the elderly and students in the Canterbury area, as well as long term housing growth. The proposal will meet the needs of many of these groups of people.
- 3.163 Existing pharmacies have been assessed. The main pharmacies that are worthy of consideration in this case are restricted in terms of opening hours and accessibility and would not meet the demands of the 15,000 new patients in the new surgery or the specialist demands of people with disabilities. Notwithstanding, the existing network of pharmacies will continue to meet demands of their existing patients in their respective City Centre, Retail Park, suburban and University Campus locations.
- 3.164 There is a clear business case and policy driven need for a co-located pharmacy in Canterbury. Failure to provide this will undermine public opinion in the NHS delivery of modern fully integrated health care services.
- 3.165 Inadequacies of existing pharmacy provision relates to the facts that:
- 3.165.1 None are within walking distance of the new surgery;
- 3.165.2 Walking to existing pharmacies would be difficult;
- 3.165.3 Hours of operation are constrained;
- 3.165.4 Driving in Canterbury is actively discouraged by the Council in policy terms;
and
- 3.165.5 Public transport only provides access to a single pharmacy which is extremely busy.
- 3.166 The proposal will provide for the needs of over 20,000 residents including about 3,500 people over 60 and 4,000 school children.
- 3.167 It is also needed to support the 15,000 students in college in the area, workers and visitors to the area particularly those that resort to the K&CH site.
- 3.168 The proposal is needed to cater for the significant increase in population in the area which will grow by between 3,000 in the short term and 15,000 over the long term.
- 3.169 South Canterbury is therefore an area that does not have a reasonable choice of pharmacy services and is clearly in need of better access to pharmacy services especially once the new medical centre is operational in late 2020. Following a critical assessment of the circumstances of Canterbury the Applicant contends that the application is an unforeseen proposal that will satisfy the requirements of Regulation 18.
- 3.170 The various supporting information with the appeal letter included the following:
- The Applicant's letter to NHS England dated 30 March 2020
- 3.171 Thank you for your letter of 27 March 2020 enclosing representations on the above application.
- 3.172 In addition to this letter which primarily deals with the reply from the Health and Wellbeing Board, the Applicant has attached further evidence in reply to the comments from the LPC which suggest that there is no requirement for a new pharmacy and suggests that a relocation of a current pharmacy "may be more appropriate".
- 3.173 The Applicant notes that the LPC refers to "adequacy" which has not been the legal test for nearly 8 years and that they appear to agree that there should be a pharmacy

at the new medical centre, but fail to recognise that a relocation of any existing pharmacy would be refused due to the distances involved and nature of the area meaning that regulation 24(1)(a) would not be met.

3.174 The LPC is correct that the current PNA makes no reference to a need for pharmaceutical services at this location, but to suggest that NHS England should simply ignore the application even though the new PNA is not due for publication for over a year whereas the medical centre will be completed before the end of this year, is absurd. Even if the new PNA did identify a need for a new pharmacy there would then be an application and appeal process that could last a further 12 months and leave patients without access to the pharmaceutical services that they will clearly require.

3.175 Similarly, the LPC states that;

3.175.1 *“The LPC note that the pharmacy is not planning to open for a lot of the weekend and whilst having a medication collection point the LPC believe it’s important to have someone there to give people advice about their medication...”*

3.176 The LPC appears again to recognise the requirement for a pharmacy, but simply does not support the application because they represent the interests of existing contractors. The LPC asks NHS England to note that opening hours will be adjusted so that they properly meet demand, however it is much easier for a contractor to increase opening hours than to decrease them and it is sensible for the application to provide details of only the minimum hours that would apply for day 1.

3.177 The attached report deals in more detail with the merits of the application. It is disappointing to note that the LPC repeats claims that are sometimes made that there is no longer a need for pharmacies at medical centres due to the introduction of EPS. Pharmacies should be located where they are needed. This includes places where people will shop, but the majority of patients primarily wish to access a pharmacy which is either close to where they live or where their GP is located and that is what this application provides.

3.178 Appendix C of the PNA lists consultation responses and patients were specifically asked;

3.178.1 **Q7. In terms of location, what is the main reason you use this pharmacy regularly?**

3.178.2 Near to home 32 51%;

3.178.3 Near to my doctors 15 24%;

3.178.4 In town/Shopping area 9 14%;

3.178.5 In the supermarket 1 2%;

3.178.6 Near to my work 1 2%;

3.178.7 Other 3 5%;

3.178.8 Not answered 2 3%.

3.179 Clearly with new housing development and also a new medical centre being built this application meets the “main reason” for 75% of patients choice of location for a pharmacy. In contrast, “shopping” represents 14% yet the LPC focuses on this as the main driver for patients choice of pharmacy when it is clearly wrong to do so.

Health and Wellbeing Board

- 3.180 The Applicant is grateful for the reply from the Health and Well Being Board but regrettably it does not properly reflect the legal test. Whilst the PNA does indeed mention a future identified need, this relates solely to the new housing developments and not the hospital site itself. In addition, and as NHS England will be aware, for an application to be approved under regulation 15 (future identified need) the need must be included in the PNA in accordance with the requirements of paragraph 2(b) of Schedule 1. Without repeating these requirements, the circumstances that would trigger the need must be specified and the services required must also be specified. This is in addition to requiring certainty over the location of the need. Therefore, whilst the PNA refers to a future identified need it is not in accordance with paragraph 2(b) of schedule 1 and has therefore not been identified in the PNA and an application under regulation 18 is necessary and correct.
- 3.181 The Health and Wellbeing Board then states that the need has not been identified as “unforeseen benefits”. As NHS England will be aware, a PNA cannot identify unforeseen benefits (as by definition they would not be unforeseen if they were identified). The Applicant agrees that the area has changed considerably since the last review of the PNA, but unfortunately it is also the Applicant’s understanding that the Health and Well Being Board has not considered any update to its PNA in relation to the new medical centre development.
- 3.182 It is notable that the PNA states on page 15 that;
- 3.182.1 *“Future pharmaceutical need in the area south of Canterbury which needs to be reviewed regularly as the houses are built.”*
- *Having reviewed the minutes of every Health and Well Being Board meeting since the publication of the PNA the Applicant has been unable to find evidence of any such review having been undertaken.
- 3.183 In reply to the HWB question about the premises the Applicant can confirm that it has agreed terms with Assura for the lease over the pharmacy premises but at the time of the application had to provide a best estimate as the exact location within the development was subject to possible change. The pharmacy will be co-located with the new surgery and have its own internal and external entrance for patients and be available to all patients who wish to use it. Section 3.3 and 3.4 of the attached report show the up to date position with regard to the location of the pharmacy.
- 3.184 The Applicant asks NHS England to note that the new medical centre will be completed in late 2020. Granting this application will allow an NHS pharmacy to open at the same time as the medical centre opens and will therefore be an appropriate response for the NHS to make to both recognise, plan for and deliver the pharmaceutical services that are required at the time they are required.
- 3.185 The Applicant asks that NHSE approves this application.

The Applicant’s letter to NHS England dated 1 May 2020

- 3.186 Further to the Applicant’s letter of 30 March the Applicant would be grateful if the following information was also provided to NHS England as part of their consideration of this application.
- 3.187 The GPhC has recently considered the use of “collection point” technology at pharmacies. The consideration was mainly driven by the current COVID 19 pandemic, but it is likely that social distancing will be with us for some time to come and there will of course still be the normal flu season every year and possibly coronavirus too as a yearly problem.

3.188 The technology reviewed is the same type as the Applicant is offering to provide as part of its application. It is noteworthy that the GPhC has found that;

3.188.1 This is innovative technology and

3.188.2 The innovation supports the safe and efficient collection of assembled medicines.

3.189 The GPhC report can be found: (see paragraph 2.6.3.3.1 above)

3.190 The report states: (already referred to at paragraph 2.7 above).

3.191 No such facility is available either in Canterbury or the wider area. It is innovative technology that provides significant benefit to patients, especially those who share a protected characteristic that makes them more vulnerable to pandemics.

3.192 The Applicant asks that NHS England approves this application.

4 **Summary of Representations**

This is a summary of representations received on the appeal.

NHS England

4.1 NHS England has considered the content of the appeal and has no further comments to add at this stage.

4.2 Therefore, NHS England retains its view that the application should be refused.

5 **Observations**

The Applicant

5.1 The Applicant notes that NHS England has provided no comments on the appeal or challenged any of the information provided at any stage of the process. No other party has provided comments or disputed any of the evidence provided in the application or appeal save for initial representations made by the LPC which makes general comments and considers the wrong legal test, but does not dispute any of the evidence provided in the 47 page appeal report.

5.2 The Applicant asks the Committee to note that the PCA Guidance Note for Parties Involved in Pharmacy Appeals dated 16 December 2019 states;

5.2.1 *Where the parties agree on a relevant fact, NHS Resolution will proceed on the basis of that fact having been proven for the purposes of the appeal.*

5.2.2 *Where a party has provided evidence of a relevant fact which has not been disputed, NHS Resolution will proceed on the basis of that fact also having been proven.*

5.3 As no party has disputed the evidence provided NHS Resolution must proceed on the basis that the facts in evidence are proven.

5.4 Far from disputing evidence, the HWB has in fact accepted that there will be a need for a pharmacy in this area and appears to only be objecting to this application as they would prefer for applications to only be made once they formally identify the need in a new PNA. As the PNA is not due for publication for some time and the medical centre/housing developments are largely complete, this is of no help to patients. It is patient's needs which are to be considered above all else.

- 5.5 The Applicant asks the Committee to note that the requirement for the Committee to proceed on the basis of facts being proven where they have not been challenged still applies in this case. It does not cease to apply simply because parties have chosen not to comment. In other words, the Applicant should not be held to a higher standard of proof simply because there is no material objection.
- 5.6 The Applicant also asks the Committee to note that it is particularly concerned about timing in this case. The medical centre will be operational before the end of 2020 and consideration of this application by NHS England has already been significantly delayed due to the COVID pandemic. Whilst the Committee may prefer for oral hearings to be held where there is dispute in relation to evidence, there is no dispute here and the evidence is unchallenged in any material way. This is therefore a case which the Applicant says should be approved on the papers rather than being delayed due to oral hearing requirements.
- 5.7 This development is a key local priority for the NHS. It has been driven by the need for new GP premises and the considerable increase in housing in the area of Kent and Canterbury Hospital. Not only is there currently no pharmacy that can properly serve this growing residential and hospital area, but there will now be a significant medical centre being built on the hospital site to accommodate two GP practices that used to be located close to existing pharmacies, but will now be nearly 1 mile from the nearest pharmacy in an area which still has poor public transport. The new medical centre will serve approximately 15,000 patients.
- 5.8 The combination of a new medical centre development, large housing developments, poor access to existing pharmacies, innovation and an undeniable demand provides a compelling case for approving this application.

6 Consideration

- 6.1 The Pharmacy Appeals Committee (“the Committee”), appointed by NHS Resolution, had before it the papers considered by NHS England, together with a plan of the area showing existing pharmacies and doctors’ surgeries and the location of the proposed pharmacy.
- 6.2 It also had before it the responses to NHS Resolution’s own statutory consultations.
- 6.3 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.
- 6.4 The Committee noted the Applicant’s concern over the length of time it may take to consider its application due to the COVID 19 pandemic, especially if an oral hearing is required. Mindful that the new medical centre will be operational before the end of 2020, the Applicant argued granting of the application could be done on the papers alone. If the Committee decided an oral hearing is the only way to properly determine the appeal within the Regulations, then that course of action would be followed.
- 6.5 The Applicant asked the Committee to take into account its guidance for parties involved in Pharmacy Appeals. The Committee was mindful NHS Resolution’s web page includes in the relevant resources section, a document entitled ‘*Guidance for Parties involved in pharmacy appeals*’. Point 8 ‘*How will NHS Resolution approach the information it receives?*’ states:
- 6.5.1 “*NHS Resolution will consider the application afresh and will seek to give full reasons for its decision (including the relevant regulations, but also explaining how they have been applied).*”
- 6.5.2 “*Where the parties agree on a relevant fact, NHS Resolution will proceed on the basis of that fact having been proven for the purposes of the appeal.*”

- 6.5.3 *Where a party has provided evidence of a relevant fact which has not been disputed, NHS Resolution will proceed on the basis of that fact also having been proven.*
- 6.5.4 *Where any issue of fact is in dispute, and that issue of fact would be material to NHS Resolution's decision, NHS Resolution will set out its finding on the point and give its reasons for that finding.*
- 6.5.5 *Where NHS Resolution has concluded that the issue is not material to its consideration of the appeal, it may elect not to discuss it specifically in its decision.*
- 6.5.6 *NHS Resolution will not treat submissions as evidence but, where submissions are made in relation to a disputed issue of fact, NHS Resolution will take any submissions into account when weighing up its finding."*
- 6.6 The Committee noted that 6.5.3 did not limit its conclusions where no evidence was provided.
- 6.7 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations").

Regulation 31

- 6.8 The Committee first considered Regulation 31 of the Regulations which states:
- (1) A routine or excepted application, other than a consolidation application, must be refused where paragraph (2) applies.*
- (2) This paragraph applies where -*
- (a) a person on the pharmaceutical list (which may or may not be the applicant) is providing or has undertaken to provide pharmaceutical services ("the existing services") from -*
- (i) the premises to which the application relates, or*
- (ii) adjacent premises; and*
- (b) the NHSCB is satisfied that it is reasonable to treat the services that the applicant proposes to provide as part of the same service as the existing services (and so the premises to which the application relates and the existing listed chemist premises should be treated as the same site).*
- 6.9 The Committee noted Part 5 of the application form (reference to Regulation 31), where the Applicant had stated: *"No other pharmacy in same or adjacent premises so not applicable"*. The Committee further noted NHS England's decision letter includes: *"The Committee was satisfied that there is no person providing pharmaceutical services at the same or adjacent premises. The application did not therefore need to be refused in accordance with Regulation 31."* The Committee, having noted the information provided to it, and mindful the above had not been disputed on appeal, was not required to refuse the application under the provisions of Regulation 31.
- 6.10 The Committee noted that, if the application were granted, the successful applicant would - in due course - have to notify NHS England of the precise location of its premises (in accordance with paragraph 31 of Schedule 2). Such a notification would be invalid (and the applicant would not be able to commence provision of services) if the location then provided would (had it been known now) have led to the application being refused under Regulation 31.

Regulation 18

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

“(1) If—

- (a) *the NHSCB receives a routine application and is required to determine whether it is satisfied that granting the application, or granting it in respect of some only of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB; and*
- (b) *the improvements or better access that would be secured were or was not included in the relevant pharmaceutical needs assessment in accordance with paragraph 4 of Schedule 1,*

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

(2) Those matters are—

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

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

- (c) *whether it is satisfied that it would be desirable to consider, at the same time as the applicant's application, applications from other persons offering to secure the improvements or better access that the applicant is offering to secure;*
 - (d) *whether it is satisfied that another application offering to secure the improvements or better access has been submitted to it, and it would be desirable to consider, at the same time as the applicant's application, that other application;*
 - (e) *whether it is satisfied that an appeal relating to another application offering to secure the improvements or better access is pending, and it would be desirable to await the outcome of that appeal before considering the applicant's application;*
 - (f) *whether the application needs to be deferred or refused by virtue of any provision of Part 5 to 7.*
 - (g) *whether it is satisfied that the application presupposes that a gap in pharmaceutical services provision has been or is to be created—*
 - (i) *by the removal of chemist premises from a pharmaceutical list as a consequence of the grant of a consolidation application, and*
 - (ii) *since the last revision of the relevant HWB's pharmaceutical needs assessment other than by way of a supplementary statement.*
- (3) *The NHSCB need only consider whether it is satisfied in accordance with paragraphs (2)(c) to (e) if it has reached at least a preliminary view (although this may change) that it is satisfied in accordance with paragraph (2)(b)."*

- 6.12 The Committee considered that Regulation 18(1)(a) was satisfied in that it was required to determine whether it was satisfied that granting the application, or granting it in respect of some only of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB.
- 6.13 The Committee went on to consider whether Regulation 18(1)(b) was satisfied, i.e. whether the improvements or better access that would be secured if the application was granted were or was included in the PNA in accordance with paragraph 4 of Schedule 1 of the Regulations.
- 6.14 Paragraph 4 of Schedule 1 requires the PNA to include: "a *statement of the pharmaceutical services that the HWB had identified (if it has) as services that are not provided in the area of the HWB but which the HWB is satisfied (a) **would** if they were provided....secure improvements or better access, to pharmaceutical services... (b) **would** if in specified future circumstances they were provided...secure future improvements or better access to pharmaceutical services...*" (emphasis added).
- 6.15 The Committee considered the PNA for Kent prepared by Kent Health & Wellbeing Board, conscious that the document provides an analysis of the situation as it was assessed at the date of publication. The PNA is referred to as being "*..an overarching document to provide strategic information for the whole of Kent*". 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 March 2018 and that no supplementary statements had been issued.

- 6.16 The Committee noted NHS England's decision letter includes: *"The Committee had regard to the Kent Pharmaceutical Needs Assessment 2017....."* When asked by NHS Resolution to confirm if they meant the 2018 PNA, NHS England replied that they did, any reference to 2017 having been an error.
- 6.17 The Committee noted page 28 of the PNA includes under the heading 'Conclusions and Recommendations Kent PNA 2018':
- 6.17.1 *"Overall there is good pharmaceutical service provision in the majority of Kent during the hours of 8am – 6.30pm from Monday to Friday.*
- 6.17.2 *Where the area is rural, there are dispensing practices to provide pharmaceutical services to the rural population from Monday to Friday. It is the responsibility of the relevant CCG to inform NHS England when a practice ceases to dispense as this could affect the overall provision of pharmaceutical services across an area.*
- 6.17.3 *In urban areas there is good provision of pharmaceutical services on Saturdays and Sundays.*
- 6.17.4 *In rural areas, access to pharmaceutical services on Saturdays is good where there is a local village pharmacy. However where there is no local pharmacy access is poor and often results in residents having to travel to nearby towns. In rural areas, access to pharmaceutical services on Sundays is poor resulting in residents having to travel to nearby towns. This is similar to problems with access to medical services in rural areas.*
- 6.17.5 *There are proposed major housing developments across Kent, the main one being Ebbsfleet Garden City and Chilmington Green. This will mean that these areas will need to be reviewed on a regular basis to identify any increases in pharmaceutical need. Locality specific areas are listed within the locality documents.*
- 6.17.6 *The proposed London Resort (formerly Paramount) site plans in North Kent should be reviewed regularly to identify whether visitors and staff will have increased health needs including pharmaceutical.*
- 6.17.7 *The current provision of "standard 40 hour" pharmacies should be maintained especially in rural villages and areas such as Romney Marsh.*
- 6.17.8 *The current provision of "100 hour" pharmacies should be maintained.*
- 6.17.9 *Any application must demonstrate that it can improve on the availability of services across the specific area.*
- 6.17.10 *Lack of parking and access for the disabled was a recurring comment by responders to the consultation. Therefore any new contract must also demonstrate that there is adequate parking available for the business and that access for the disabled is available.*
- 6.17.11 *Any application must demonstrate that it can improve on the availability of services across the specific area without destabilising the current provision. It is recommended that if a need is identified, whether foreseen or unforeseen, that the current providers are approached to establish whether they can meet the need, before a completely new contract is considered.*

- 6.17.12 *Permission for any applicant to provide extra pharmaceutical services to this area must be carefully considered as to whether it will destabilise the current providers, resulting in closures and less pharmaceutical services being available at crucial times.*
- 6.17.13 *The area is changing rapidly and as well as consulting this PNA, the PSRC at NHS England should carry out a rapid review of any area where there is an application, to ensure that the needs of this area have not changed in the lifetime of the PNA. This could include review of rural and urban classification and should be published alongside the PNA in the supplementary statements.*
- 6.17.14 *The Health and Wellbeing Board has the responsibility of publishing supplementary statements when the pharmaceutical need and services to an area change significantly. It is the responsibility of NHS England to inform the HWB of any changes to pharmaceutical service provision, including dispensing services, so that a decision can be made as to whether this change will affect access. This is particular important where pharmacies are closing or consolidating due to the impact of recent funding cuts. The HWB has a duty to respond to all notifications under Regulation 26A (consolidation of pharmacies.) It is proposed that the supplementary statements are issued every 6 months by NHS England (a member of the Board) as they hold all the relevant data. They will be published on the Public Health Observatory website alongside the PNA.”*
- 6.18 The Committee further noted NHS England had provided a copy of the ‘Kent PNA Canterbury & Coastal Area’. NHS Resolution enquired of NHS England as follows:
- 6.18.1 *“We have been provided with a copy of the Kent PNA dated March 2018. Also, the Canterbury & Coastal PNA dated March 2018. Can you confirm which one was used by NHS England in its decision making process? Please provide any Supplementary statements for the relevant PNA.”*
- 6.19 NHS England confirmed in response to the above enquiry:
- 6.19.1 *“The Kent PNA is divided into sections, one of which relates to Canterbury. The Kent PNA provides an overarching review, and the Canterbury PNA drills down to more detail. The Committee would have concentrated their review to the Canterbury section of the PNA. There are no supplementary statements that are relevant to this application.”*
- 6.20 The Committee noted the March 2018 Kent PNA Canterbury & Coastal area includes on pages 15 & 16: *“Conclusions and recommendations Kent PNA 2018 C&C CCG area”:*
- Monday to Friday*
- 6.21 *There is good provision of full pharmaceutical services in and around Canterbury and the coastal towns of Faversham, Herne Bay and Whitstable as well as some of the larger villages such as Seasalter and Ash. Most of the smaller villages in the area have access to pharmaceutical services through their dispensing surgery.*
- Saturdays*
- 6.22 *There is good provision of pharmaceutical services on Saturdays in and around the towns of Canterbury and the coastal towns of Faversham, Herne Bay and Whitstable as well as some of the larger villages such as Seasalter and Ash.*
- Sundays*

- 6.23 *There is adequate provision of full pharmaceutical services in and around the towns of Canterbury and the coastal towns of Faversham, Herne Bay and Whitstable on a Sunday.*
- 6.24 *The essential small pharmacy scheme has now ended and the pharmacy on campus has reverted to a standard 40 hour contract.*
- 6.25 *Therefore pharmaceutical services are mainly good across the area and we do not need any more providers in the Canterbury area except:*
- 6.25.1 *Future pharmaceutical need in the area south of Canterbury which needs to be reviewed regularly as the houses are built.*
- 6.25.2 *It has been identified that there is a current need for a pharmacy on the outskirts of Sandwich due to the access restrictions within the town itself. There is also a need for pharmaceutical services on a Sunday.*
- 6.25.3 *As Discovery Park develops there is a possibility of a future need for pharmaceutical services within or near this complex. This could be combined with No 2 above.*
- 6.26 *The provision of '100 hour' pharmacies needs to be maintained.*
- 6.27 *The provision of rural/outlying pharmacies needs to be preserved.*
- 6.28 *Lack of parking and access for the disabled was a recurring comment by responders to the consultation. Therefore any new contract must also demonstrate that there is adequate parking available for the business and that access for the disabled is available.*
- 6.29 *Any application must demonstrate that it can improve on the availability of services across the specific area without destabilising the current provision. It is recommended that if a need is identified, whether foreseen or unforeseen, that the current providers are approached to establish whether they can meet the need, before a completely new contract is considered.*
- 6.30 *Permission for any applicant to provide extra pharmaceutical services to this area must be carefully considered as to whether it will destabilise the current providers, resulting in closures and less pharmaceutical services being available at crucial times.*
- 6.31 *The area is changing rapidly and as well as consulting this PNA, the PSRC at NHS England should carry out a rapid review of any area where there is an application, to ensure that the needs of this area have not changed in the lifetime of the PNA. This could include review of rural and urban classification and should be published alongside the PNA in the supplementary statements."*
- 6.32 *The Committee noted that the Applicant seeks to provide unforeseen benefits to the patients of Canterbury. The Committee noted that the improvements or better access that the Applicant was claiming would be secured by its application were not included in the relevant pharmaceutical needs assessment in accordance with paragraph 4 of Schedule 1.*
- 6.33 *The Committee noted Applicant's reference to the PNA having identified a future need in the area of the proposed pharmacy. The Committee noted the Canterbury and Coastal CCG PNA, page 13, states:*
- 6.33.1 *"The local plan indicates that residential building is expected to commence in the future on land to the South of Canterbury adjacent the Kent and Canterbury Hospital site along with plots of land at Nackington Road and Barton Business Park. However this development is unlikely to reach significant proportion until*

2021 and therefore is identified as a FUTURE need for pharmaceutical services within this PNA."

- 6.34 The Committee noted the Applicant's comment at paragraph 3.86, but does not accept that a Regulation 18 application can be used in place of a Regulation 15 application for the reasons given by the Applicant.
- 6.35 In order to be satisfied in accordance with Regulation 18(1), regard is to be had to those matters set out at 18(2). The Committee's consideration of the issues is set out below.

Regulation 18(2)(a)(i)

- 6.36 The Committee had regard to:

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

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

- 6.37 The Committee noted NHS England's decision letter includes: *"The Committee was not aware of any plans that would be affected and concluded that granting the application would not have an adverse effect on any future plans."* On the basis of the information available including NHS England's statement having not being disputed on appeal, 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.

- 6.38 The Committee was therefore not satisfied that significant detriment to the proper planning of pharmaceutical services would result from a grant of the application.

Regulation 18(2)(a)(ii)

- 6.39 The Committee had regard to:

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

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

- 6.40 The Committee noted NHS England's decision letter includes: *"The Committee found no evidence to support the suggestion that if the application was to be granted, it would cause significant detriment to the arrangements in place for pharmaceutical services in the area."* On the basis of the information available, including NHS England's statement having not been disputed on appeal, the Committee was not satisfied significant detriment to the arrangements currently in place for the provision of pharmaceutical services would result from a grant of the application.

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

Regulation 18(2)(b)

- 6.42 The Committee had regard to:

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

(i) *there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB (taking into account also the NHSCB's duties under sections 13I and 13P of the 2006 Act (duty as to patient choice and duty as respects variation in provision of health services)),*

(ii) *people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access (taking into account also the NHSCB's duties under section 13G of the 2006 Act (duty as to reducing inequalities)), or*

(iii) *there being innovative approaches taken with regard to the delivery of pharmaceutical services (taking into account also the NHSCB's duties under section 13K of the 2006 Act (duty to promote innovation)),*

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

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

6.43 The Committee noted the Applicant's proposed pharmacy location at the site of Kent & Canterbury Hospital, Ethelbert Road, Canterbury. The hospital is located between the A2, and the Old Dover Road (A2050) approximately 1 mile (1.6km) from the city centre. The hospital is large and multi-functional, having A&E, X-ray, Children's Assessment Centre, Day Surgery, Maternity, Ambulatory Care and Wards, Outpatients Services and Renal Services. A variety of patient and visitor services also exists including café areas, small shops, and telephone booths. The hospital has an outpatient hospital pharmacy.

6.44 The Committee noted the Applicant's proposed pharmacy is specifically linked to the development of new premises to accommodate Cossington House and London Road branch surgeries of the Canterbury Medical Practice. The medical practice currently provides general medical services from four sites in Canterbury. The Committee appreciated the possibilities for co-operation between providers of primary and secondary healthcare. However, effective co-operation is in the Committee's view, still possible between providers not at the same physical site. As regards patients attending the new health centre (it was noted the combined GP list size is 12,000 patients) visitors and workers at the proposed site, the Committee will consider existing pharmaceutical services in the area and person's ability to access them.

6.45 The Committee noted the Applicant's reference to the 2011 Census, giving the population of Canterbury as 55,240. The Committee further noted that the population includes a higher than national average of 15-29 year olds, as well as persons aged 60+. People aged 0-15 and 30-54 years were noted to be much lower in number in Canterbury than the Kent average. The Committee realised that there could be a likely increase in demand for pharmaceutical services connected in particular (but not exclusively) to more mature sections of the population. In addition to those persons for whom Canterbury is their home or main town, the Committee was mindful that the city draws large numbers of students and visitors to its attractions, which include significant historical sites.

6.46 The Committee noted the Applicant's comments regarding new housing developments which could increase demand for pharmaceutical services. The Applicant claimed there are plans for 5,960 new homes in the area around south and east Canterbury. The

Committee accepted that if these developments are fully completed, the number of persons in the area could be increased. However, the Applicant's information suggested that in some instances, the developments had not started or are still at an early stage. The Committee therefore attached limited weight to the significance of these housing developments.

- 6.47 The Committee noted the Applicant's comment that the number of pharmacies in Canterbury is below the England average number of pharmacies per 100,000 population. The Committee considered this is not part of the regulatory test against which the application had to be considered.
- 6.48 The Committee noted undisputed reference to there being 11 pharmacies less than 2 miles away from the proposed site (4 less than 1 mile away). The Applicant noted two of the nearest pharmacies are owned and operated by Boots (a third Boots pharmacy has recently closed). Because those pharmacies are operated by the same parent company did not in the Committee's view, necessarily mean that persons do not have a reasonable choice of pharmaceutical services whether at those pharmacies or elsewhere. NHS England's map shows the nearest existing pharmacies to the proposed site are:
- 6.48.1 Boots, 29 Oaten Hill, Canterbury, Kent, CT1 3HZ;
- 6.48.2 Boots, 12 Gravel Walk, Canterbury, Kent, CT1 2TF;
- 6.48.3 Superdrug Pharmacy, 23 St Georges Street, Canterbury, Kent, CT1 2SS.
- 6.49 The Committee noted the Applicant's reference to the "Manual for Streets" (produced by the Communities and Local Government and Department for Transport) and The Institution of Highways & Transportation Guidelines regarding journeys on foot. These appear however, to have been devised for a purpose other than the consideration of pharmaceutical list applications and are not part of Regulation 18 test. The Committee therefore attached no weight to them in its determination of the current appeal.
- 6.50 The Committee noted that Canterbury city centre is largely encircled by an inner ring road - A290/A28. The Applicant described this as a wide road interrupted at junctions where it crosses main arterial routes to the south and east. The Committee firstly considered access from the Applicant's proposed site to the nearest existing pharmacies on foot. The Applicant suggested that the two City Centre pharmacies are out of reach of patients by reason of distance (about a mile or more). The Committee did not accept on distance alone, that the nearest existing pharmacies are beyond what some people will regard as an acceptable journey on foot.
- 6.51 The Committee next considered the nature of the journey on foot from the proposed site to the nearest existing pharmacies. In doing so, the Committee noted the Applicant's reference to there being a busy heavily urbanised environment that persons would need to walk through to reach them. In the Committee's view this is a feature likely to be accepted by those who choose to live in or visit the city. Patients who wish to visit the City Centre pharmacies on foot, will according to the Applicant, likely use the main route via Old Dover Road or St Georges Place. Accessing the city centre involves crossing the A28 via a subway as illustrated in photographs provided by the Applicant. The Committee had no information to show that this crossing point, for those persons who already or may consider using it, is for any reason difficult to use.
- 6.52 The Committee noted the Applicant's reference to various possible routes from the proposed site to the town centre. The Applicant provided photographs to show what it regarded as obstacles affecting access using some of these routes, including broken/narrow pavements and changes in gradient, although these changes are unspecified. The Committee considered that the photographic information was limited and did not show that the routes are unreasonably difficult to negotiate throughout the

journey on foot. The Committee had no information to show that persons are finding these factors challenging.

- 6.53 The Committee next considered access to the existing pharmacies for those with limited mobility who have access to their own vehicle. The Committee noted the Applicant's comment that the population that come to the proposed site are mainly car borne. The Committee noted Canterbury suffers from traffic congestion and that the city centre has restricted public car parking. According to the Applicant, the pharmacy nearest to the proposed site (Boots Oaten Hill) has no dedicated car parking and limited on-street car parking. The Applicant stated that parking at Boots Oaten Hill, Gravel Walk, Superdrug, Cheadles and Dunstons pharmacies, could be described as limited and not suitable to patients that have mobility difficulties, although the Committee noted this is not supported with any additional information.
- 6.54 The Committee was mindful that many towns and cities now have pedestrianised centres and local authorities often discourage entry of cars to the areas of the city centre that are still accessible. However, it is not disputed that some car parking is still available for those who choose to use it. The Applicant provided no information to show that existing pharmacies in the area cannot be readily accessed by car.
- 6.55 The Committee noted the Applicant's comment that public transport in the form of a bus service/park and ride service is located on the hospital site. The Committee considered this may provide an alternative means of accessing the city centre pharmacies without the need to take the car there.
- 6.56 The Applicant stated that the main public transport (other than the park & ride) serving this area is bus route 25/25A. This runs between the Hospital and the bus station via South Canterbury Road. Whilst the Committee noted the bus route does not pass either of the Boots pharmacies in south east Canterbury, the Applicant has confirmed Boots Gravel Walk is located beside the bus station. The Committee was therefore of the view that bus services are available to one of the nearest existing pharmacies.
- 6.57 The Committee noted the Applicant's comments concerning the ability of existing pharmacies to cope with increased demand for pharmaceutical services. In respect of Boots Gravel Walk, the Committee considered that one review from a former member of staff, does not mean that pharmacy is unable to cope with demand for services. The Committee noted with regard to other existing pharmacies, the Applicant appears to have made assumptions regarding the usage of those pharmacies that is not borne out by any supporting information.
- 6.58 In conclusion, the Committee was of the view that there is already reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB, such that it was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits on persons.
- 6.59 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.
- 6.60 The Committee noted the Applicant's comment that the population of this part of Canterbury includes a large number of school children, elderly people and those who have a limiting long term illness. Whilst the Applicant had extolled accessibility to the proposed site for those with limited mobility, it had not provided any information to show that those persons are currently unable to access services that meet their specific needs for pharmaceutical services.

- 6.61 The Committee was therefore not satisfied that, having regard to the desirability of people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that are difficult for them to access, granting the application would confer significant benefits on persons.
- 6.62 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.
- 6.63 The Committee noted the Applicant intends to install a Medpoint collection machine which will allow patients to access their dispensed medication 24 hours a day and 7 days per week. The proposed collection point will according to the Applicant, be the first in England, allowing for the collection of fridge lines as well as regular prescription items. The Committee noted that the copy leaflet provided for the Medpoint Solo machine, includes; *"The solo consists of two separate insulated compartments capable of maintaining consistent temperature control independent of each other"*.
- 6.64 The Committee noted that the GPhC had also recently considered the use of "collection point" **"Using pharmacy vending machines to support access to medicine"** technology at pharmacies. The Applicant claims that some such systems are unable to provide cold chain products whereas the one that it is intended to use will do so. The Committee considered this to be an **enhancement** to an existing, albeit developing technology that has met with GPhC approval. The Committee further noted comments from the LPC and NHS England concerning the importance of having someone there to give patients advice about their medication, the security of the system and how the supply of medicines outside pharmacy opening times meet current regulatory requirements, but takes no view on these matters. The Committee was of the view that the above shows that collection technology at a pharmacy has already been used, and cannot therefore be defined as innovative. Whilst particularly outside of normal hours, the Applicant's proposed service would no doubt be welcomed by some persons, the Committee was of the view that use of the Medpoint collection machine did not translate into any significant benefit to the usual delivery of pharmaceutical services at the proposed location.
- 6.65 The Committee was not satisfied that, having regard to the desirability of there being innovative approaches taken with regard to the deliverability of pharmaceutical services, granting the application would confer significant benefits on persons.

Regulation 18(2)(b) generally

- 6.66 The Committee noted the Applicant intends to provide the following services:
- 6.66.1 Essential services;
 - 6.66.2 Appliances listed in Part IX of the Drug Tariff;
 - 6.66.3 Advanced and Enhanced Services as indicated on the application form.
- 6.67 In addition, the Applicant stated that it: *"Intends to provide all commissioned services and will ensure that all pharmacists employed are accredited to provide these services. The premises will also be accredited. In addition the Applicant intends to provide a number of services that are not currently being commissioned and will seek to work with local GP practices to develop joint working on the provision of non-commissioned services."*
- 6.68 The Committee had no information to show that there is a requirement at the proposed site for the provision of services being proposed by the Applicant nor that existing

pharmacies, are unwilling or unable to provide those services. The Committee was also aware that such services could be withdrawn at any time by the applicant.

6.69 The Committee noted the Applicant's proposed core opening hours are:

Mon to Fri 9am to 5.30pm

Sat -

Sun -

6.70 According to NHS England's there are already pharmacies in the area providing the same weekday hours and longer hours on Saturdays, with one pharmacy offering extended hours until midnight weekly and on Saturday. The Committee was mindful that NHS England already has the power to bring about changes to the opening hours of existing pharmacies where it considers there is a need to do so.

6.71 The Committee was of the view that there was no information provided to support a finding that pharmaceutical services are not currently provided at such times as needed and therefore it was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits (in relation to opening hours) on persons.

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

Other considerations

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

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

6.75 The Committee had regard to Regulation 18(2)(g) and found that it did not apply in this case.

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

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

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

6.78.1 confirm NHS England's decision;

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

6.78.3 quash NHS England's decision and, if it considers that there should be a further notification to the parties to make representations, remit the matter to NHS England.

6.79 The Committee having reached the same decision but for different reasons, determined that the decision of NHS England must be quashed.

6.80 The Committee went on to consider whether there should be a further notification to the parties detailed at paragraph 19 of Schedule 2 of the Regulations to allow them to

make representations if they so wished (in which case it would be appropriate to remit the matter to NHS England) or whether it was preferable for the Committee to redetermine the application.

- 6.81 The Committee noted that representations on Regulation 18 had been sought from parties by NHS England and representations had already been made by parties to NHS England in response. These had been circulated and seen by all parties as part of the processing of the application by NHS England. The Committee further noted that when the appeal was circulated representations had been sought from parties on Regulation 18.
- 6.82 The Committee concluded that further notification under paragraph 19 of Schedule 2 would not be helpful in this case.

7 DECISION

- 7.1 The Pharmacy Appeals Committee (“Committee”), appointed by NHS Resolution, quashes the decision of NHS England, for the reasons given above, and redetermines the application.
- 7.2 The Committee determined that the application should be refused.
- 7.3 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.
- 7.4 The Committee has considered whether the granting of the application would cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area covered by the HWB, or the arrangements in place for the provision of pharmaceutical services in that area and is not satisfied that it would;
- 7.5 The Committee determined that the application should be refused on the following basis:
- 7.5.1 In considering whether the granting of the application would confer significant benefits, the Committee determined that –
- 7.5.1.1 there is already a reasonable choice with regard to obtaining pharmaceutical services;
- 7.5.1.2 there is no evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services; and
- 7.5.1.3 there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services;
- 7.6 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.

Case Manager Primary Care Appeals

A copy of this decision is being sent to:
Rushport Advisory LLP – Applicant/Appellant.
NHS England