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REF: SHA/24474

**APPEAL AGAINST MIDLANDS AREA TEAM, NHS COMMISSIONING BOARD ("NHS ENGLAND") DECISION TO REFUSE AN APPLICATION BY NACAD 3 LIMITED FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 ON THE SITE OF BASLOW HEALTH CENTRE, CHURCH LANE, BASLOW, DERBYSHIRE, DE45 1SP**

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## 1 Outcome

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

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## 1 The Application

By application dated 23 January 2020, NACAD 3 Limited ("the Applicant") applied to NHS Commissioning Board ("NHS England") for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 on the site of Baslow Health Centre, Church Road, Baslow, Derbyshire, DE45 1SP. In support of the application it was stated:

In the Applicant's view this application should not be refused pursuant to Regulation 31 for the following reasons:

- 1.1 The reason this is not applicable is that there is not another pharmacy or dispensing appliance contractor premises either adjacent to or in close proximity to those properties which fall within its best estimate for the location of its proposed pharmacy.

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

### 1.2 Context

- 1.2.1 Baslow Health Centre (which is the expected location of the Applicant's proposed pharmacy), is located in Church Lane, Baslow and is a dispensing practice. As with all dispensing practices, the dispensary only dispenses prescriptions. No other pharmaceutical services are available.
- 1.2.2 Baslow Health Centre has a patient list of 4739 patients registered (NHSBSA September 2019) and 86% of patients registered are dispensing patients.
- 1.2.3 The nearest pharmacies to the Health Centre are Boots the Chemists, Granby Road Bakewell and Bakewell Pharmacy, Holme Court, Bakewell. Both are located 4.1 miles from the Health Centre. The next nearest pharmacy to Baslow Health Centre is Jayne Hibbard Pharmacy at Two Dales which is over 7 miles away.

1.2.4 Baslow Health Centre covers a wide area located between Sheffield and Bakewell. It is situated one mile from Chatsworth House in the Derbyshire Dales district of the county where there are an average of 17 pharmacies per 100,000 of population - which is below the national average.

### 1.3 Population Characteristics

1.3.1 Local demographic statistics (ONS Data and GP Practice Profiles), indicate that those over the age of 65 account for 32% of the population. This is considerably greater than the national average (18%). This proportion is expected to increase further during the next two decades reaching 36% in the Derbyshire Dales District as acknowledged in the 2018-21 Pharmaceutical Needs Assessment.

1.3.2 ONS Data reveals that 11% of the population in Baslow do not have access to a car or van, the majority of who will be over 65. 19.3% of the population admit that their day to day activities are limited and over 15% of the community are involved in providing unpaid care, which is well above the national average of 10.5%.

1.3.3 The prevalence of long term conditions among the older community is reflected in the GP Practice Profile which indicates the incidence of coronary heart disease (CHD) to be 4.1% (3.1% nationally), strokes to be 2.5% (1.8% nationally) and cancer 4.4% (2.7% nationally).

### 1.4 Implications of an Aging Population for Pharmaceutical Services

1.4.1 The need for access to pharmaceutical services which are conveniently located is most acute for the over 65's (a group with protected characteristics). While Baslow Health Centre dispenses around 80% of the items prescribed, it necessarily follows that those who benefit from this facility do not have the same convenient access to pharmacy services ranging from Essential Services e.g. over the counter medicines, to Advanced and Enhanced Pharmacy Services. Baslow does not benefit from frequent bus services to the location of other pharmacies. Therefore, those patients without access to private transport are at a disadvantage. The nearest pharmacies are not accessible on foot most especially for the elderly or those with mobility problems.

1.4.2 The nearest pharmacies (Bakewell Pharmacy and Boots the Chemists at Bakewell) dispense just under 15% of items prescribed for those registered with Baslow Health Centre. The provision of Advanced Services such as the New Medicine Service for the six months to July 2019 was less than 15 interventions for both pharmacies combined. This suggests that a significant and potentially beneficial pharmaceutical service is not accessible to those with long term conditions who might benefit from this service.

### 1.5 Improved Health Interventions for Younger people

1.5.1 The provision of pharmaceutical services relevant to young people needs to be accessible and convenient for all age groups including those at the younger end of the age spectrum. It is also important to be

able to offer a choice of provider within reasonable travelling distance. At Baslow this is not currently the case.

## 1.6 Better Access and Improved Opening Times

1.6.1 The opening times of the two nearest pharmacies to Baslow are:

Boots the Chemists	Monday to Saturday 9.00am to 5.30pm Sunday 11.00am to 4.00pm
Bakewell Pharmacy	Monday to Friday 9.00am to 6.00pm Saturday 9.00am to 1.00pm

1.6.2 Any non-dispensing patients will find these weekday opening times restrictive if they have late or early appointments with their GP and then wish to access a pharmacy. The opening hours of the proposed pharmacy will at least mirror the surgery hours including the early GP appointments available on Wednesdays.

## 1.7 Summary

1.7.1 In seeking to join the Pharmaceutical List to provide pharmaceutical services in Baslow, the Applicant would identify the following improvements or better access compared to the status quo:

1.7.1.1 Significantly improved access to ALL pharmaceutical services. Currently to access such services, residents must travel to Bakewell (4.1 miles), or to other pharmacies located in excess of 7 miles from the village.

1.7.1.2 The proportion of those aged over 65 and the rate of increase in the proportion of over 65's is significantly greater in Baslow and the Derbyshire Dales locality (32%) than is the case nationally (18%). As this group is highly dependent on clinical, social and pharmaceutical services, there are clear benefits in having a pharmacy located in the village.

1.7.1.3 Although young people are less reliant on pharmaceutical services, there are nevertheless distinct benefits to be achieved in terms of health issues which are of particular relevance to young people e.g. Smoking, Drinking, and Sexual Health.

1.7.1.4 The nearest existing pharmacy providers do not have opening times which mirror local surgery hours. This has an impact on patient accessibility.

1.7.1.5 The local GP Practice Profile suggests there is a higher prevalence of long term conditions among the population than is the case nationally. Such conditions usually require the patient to be prescribed long term medication. The lack of a local pharmacy provider increases the risk of non-compliance with medication and therefore wasted medication and a deterioration in the patient's health and well-being.

1.7.1.6 Advanced services including the new Community Pharmacist Consultation Service (CPCS) and the New Medicine Service (NMS) can where effectively targeted do much to ensure compliance with medicines and avoid situations where inappropriate use of medicines might lead to falls and/or hospital admission.

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

## 1.8 Better Access to Essential Services

1.8.1 In accordance with The NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 [Schedule 2, paragraph 9(c)(ii)], the Applicant will (as required by the Regulations) provide all essential services thereby providing the residents of Baslow and the surrounding community access to the full complement of Essential Services:

1.8.1.1 Dispensing

1.8.1.2 Repeat dispensing

1.8.1.3 Disposal of unwanted medicines

1.8.1.4 Promotion of healthy lifestyles

1.8.1.5 Sign posting & Support for self-care

1.8.1.6 Clinical governance

1.8.1.7 Home delivery of stoma and incontinence supplies - including the Provision of Appliance Use Reviews (AURs).

1.8.2 The above will be available from the initial opening of the pharmacy. This will be achieved by effective recruitment of trained personnel or providing training as necessary sufficiently in advance of the commencement of trading to be able to deliver the above services. It is intended to recruit dispensing staff of sufficient calibre (including a Pharmacy Technician) which will enable the Responsible Pharmacist to oversee and participate in the full range of services.

1.8.3 Services targeted at compliance, reduction in medicinal waste (resulting from non-compliance) and health promotion will be promoted vigorously as part of its strategy to ensure the over-65s are comprehensively catered for.

## 1.9 Better Access- Opening Hours

1.9.1 The Applicant has indicated above, its best estimate for the location of the proposed premises [as per Paragraph 1 (7)(a)(ii) of Schedule 2 The NHS Pharmaceutical Services Regulations 2013]. The anticipated location will provide the following facilities:

1.9.1.1 Pharmaceutical services to all patients accessing the locality

1.9.1.2 Safe and sufficient car parking facilities

1.9.1.3 DDA compliant access to all pharmacy facilities

1.9.1.4 A minimum of one private fully equipped consultation room

1.9.2 It has stated its proposed opening hours above [as per Paragraph 1(7)(c)&(d) of Schedule 2]. These mirror the times at which the nearby surgery opens in the morning and extends to the closing time of the Health Centre. In addition, the pharmacy will be open on Saturdays (9am to 1.00pm).

1.9.3 It is the Applicant's contention that the nature and characteristics of Baslow including its rural location, its location in respect of other towns and conurbations and its demographic profile result in restricted access to comprehensive pharmaceutical services.

1.9.4 Its objective is to provide access to more than just dispensing services for the Baslow community by establishing a pharmacy which sets out to satisfy an obvious shortfall in service provision which the 2018 PNA did not identify due to the inevitable limitations of the report in terms of a forensic assessment of local needs.

#### 1.10 Better Access- Advanced Services

1.10.1 The Applicant recognises the contribution the above services can make to the community and therefore take seriously matters affecting the quality, reliability and delivery of such services. It recognises that several of the services outlined above will require Pharmacist intervention and involvement. With this in mind, it intends to use a second pharmacist on a part time basis which will be self-funding from the fees/payments provided by the commissioning body.

#### 1.11 Better Access to Pharmacy Services for Older People

1.11.1 It has already eluded to the fact that it notes that the over-65's represent a significant proportion of the population in Baslow and within the Derbyshire Dales district. With the accompanying risk of long term conditions, this group of people share a protected characteristic as identified in the NHS (Pharmaceutical Services) Regulations 2013 [Part 2, Para 18 (2)b (ii)].

1.11.2 Almost inevitably, a high proportion of elderly residents within a community necessitates the support of carers.

1.11.3 Convenience, choice and access to comprehensive pharmaceutical services is as critical to carers as it is to the 'cared for'. Pharmacies often have more contact with carers than other health providers and therefore are well placed to identify issues which carers are facing before they escalate. By providing a locally focused service, the Applicant's proposed pharmacy will ensure this group are comprehensively catered for.

1.11.4 A delivery service will be offered to all patients who are unable to collect medication or appliances themselves.

- 1.11.5 A comprehensive range of disability and mobility aids has already been researched - which will benefit the physically vulnerable and elderly patients both in domiciliary and care settings.
- 1.11.6 The Applicant will ensure that the recently launched Community Pharmacist Consultation Service is fully supported to ensure appropriate advice is provided concerning the safe and effective use of medicines. The New Medicine Service will be extended in the same way, and through these mechanisms provide effective feedback to clinicians.
- 1.11.7 With an ageing population which is a dominant segment of the local population, the pressure on pharmaceutical services will increase. With relatively poor access to the next available providers, the situation will inevitably deteriorate further. Strategically it is time to approve a pharmacy contract to improve the current and future situation for the Baslow community.
- 1.11.8 As Baslow has a higher proportion of elderly residents, it follows that there are likely to be more 'at risk' groups who could benefit from interventions which would target such groups and promote healthy lifestyles, or be directed to appropriate sources of help and support at an earlier stage than might otherwise be the case. The proportion of such 'at risk' groups in Baslow, the number of people with long term conditions and the number of unpaid carers are at such a level that they are all indicators of a need for additional pharmacy provision. It will work in conjunction with all health and social care providers and therefore gain the necessary benefits which can result from early intervention.

#### 1.12 Better Access to Enhanced Services

- 1.12.1 In accordance with The NHS Pharmaceutical Services Regulations 2013 [paragraph 9(d) of Schedule 2], the Applicant will provide the Directed Services as per service specifications determined commissioning bodies including NHS England, Derbyshire Health & Wellbeing Board, and the Clinical Commissioning Group.

#### 1.13 Service Innovation

- 1.13.1 In order to deliver the improvements and better access identified above, it also intends wherever possible to supplement its range of pharmacy services with innovative approaches. The Applicant's objectives for the proposed pharmacy are not only to ensure the pharmacy and the pharmacist(s) are accredited to offer the widest possible range of locally commissioned services but also to be proactive in developing new innovative services to meet local health needs.

- 1.13.2 These could include:

A service to develop Pain Management

- 1.13.3 As part of a holistic primary care service, the pharmacy will provide via MURs and the NMS, targeted advice for patients taking analgesics such as NSAID or opiates to ensure safe and effective prescribing e.g.

avoidance of co-prescribing NSAIDS with diuretics and ACEs, screening for opiate over-use and instituting proper withdrawal regimes.

#### Falls Prevention Service

- 1.13.4 The Applicant would wish to work closely with commissioners to establish a Falls Prevention Service to older people taking multiple medicines who may be at risk of a fall. By discussing with at risk patients how and when to take their medicines and referral to other specialist services, it is anticipated that this service would reduce hospital admissions or fractures incurred from falls.

#### Stroke referral scheme (in conjunction with New Medicine Service)

- 1.13.5 Stroke victims are a high risk group of poor adherence to medication and using the New Medicine Service can help overcome this problem.

#### Anticoagulant Pharmacy Service

- 1.13.6 Newer oral anticoagulants being prescribed could see patients referred from primary and secondary care to pharmacies for review and initiation of anticoagulants - ensuring patients are engaged in decision making and are fully counselled.

### 1.14 Summary of Distinguishing Characteristics

Characteristic	Proposed Pharmacy
Convenient, and easy access	✓
Surgery hours more than covered	✓
Comprehensive services	✓
Pharmacist Prescriber	✓
Innovative Pharmacy services	✓

- 1.14.1 In summary, it would secure improvement and better access to pharmaceutical services for patients living in Baslow and the surrounding area who currently have difficulty in accessing these services due to the travelling distance involved and the age and health profile of a significant proportion of the population.

- 1.14.2 The opening hours and services provided will compliment those provided by the local surgery. The Applicant will always ensure that it at least matches any future increase in surgery opening hours and will open on Saturday mornings.

- 1.14.3 Its proposed pharmacy will confer significant benefits on those with protected characteristics - specifically the over 65's in the case of this locality who form a significant and rapidly growing proportion of the populations.

- 1.14.4 The potential co-location of a pharmacy with the existing surgery, will provide additional benefits in terms of managing patient outcomes, hospital episodes, medication regime compliance and the provision of innovative services.

## 2 The Decision

NHS England considered and decided to refuse the application. The decision letter dated 26 November 2020 states:

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

Extract from the Decision report dated 23 November 2020

- 2.2 NHS England and NHS Improvement (East Midlands) has considered the above application and it is writing to inform you of the decision.
- 2.3 This unforeseen benefits application is proposed within the best estimate of Baslow Health Centre, Church Lane, Baslow, Derbyshire, DE45 1SP. The village of Baslow is in a controlled locality.

Regulation 31

- 2.4 NHS England and NHS Improvement (East Midlands) Pharmaceutical Services Regulations Committee (PSRC) first considered Regulations 31 of the NHS (Pharmaceutical & Local Pharmaceutical Services) Regulations 2013. The Committee agreed that it was not required to refuse the application under the provisions of Regulation 31 as the proposed pharmacy will not be adjacent or in close proximity to an existing pharmacy premises. There are no existing pharmacies operating from the proposed best estimate location and therefore, under this provision, regulation 31 would not cause the application to be refused.

Regulation 18

- 2.5 Regulation 18(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 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; and (b) the improvements or better access that would be secured were not included in the relevant Pharmaceutical Needs Assessment (PNA), in determining whether it is satisfied the NHSCB must have regard to the matters set out in paragraph 18(2).
- 2.6 The Committee noted that the Derbyshire PNA 2018-2021 found that the pharmaceutical need in the Health and Wellbeing Board (HWB) area was adequately met by the current pharmaceutical providers. This unforeseen benefits application has been made for an area where there is currently no community pharmacy. Baslow Health Centre is a dispensing practice and provides dispensing services to just over 4000 patients, which is around 85% of their registered population. There are two community pharmacies located within 3.5 miles, in the nearby town of Bakewell. Both pharmacies are contracted to open for 40 hours each week and there is currently pharmaceutical service provision across 7 days of the week.
- 2.7 The Committee further noted that the Applicant has outlined a number of services that they intend to provide, however are not yet accredited or have premises accreditation to provide these services. The Committee also noted that the Pharmacy First scheme is not currently commissioned in Derbyshire

and the Palliative Care Drugs Stockist Scheme is not currently open to new providers. The remainder of the NHS England and NHS Improvement commissioned services listed in the application are currently provided by pharmacies in Bakewell.

- 2.8 The Applicant has outlined a number of reasons why they believe this application would secure unforeseen benefits to the residents of Baslow. However, the Applicant has not provided any evidence that patients are experiencing any difficulty or inconvenience in accessing pharmaceutical services, that there is an identified need for these services or how the application addresses this need.
- 2.9 The Applicant has listed a number of services which they believe to be innovative services, which would meet local health needs. The applicant has not provided any evidence to demonstrate that a) there is a need for these particular services, or b) that they are not currently provided by the GP practice or other local community pharmacies. Two of the listed services appear to rely on the use of the NMS and MUR advanced services, which are neither new nor necessarily innovative. The MUR service is due to cease at the end of March 2021.
- 2.10 Taking the above information into consideration, the Committee determined that Regulation 18 (1) should cause the application to be refused.
- 2.11 In order to be satisfied in accordance with Regulation 18(1), the criteria set out in Regulation 18(2) was considered by the Committee; Regulation 18(2)(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 it has in place for provision of pharmaceutical services in the area.
- 2.12 The Committee determined that if the application was granted and a pharmacy opened in the vicinity of Baslow Health Centre, NHS England and NHS Improvement's ability to plan for the provision of services would not be significantly affected. Furthermore, granting the application would not cause significant detriment to the arrangements currently in place for the provision of pharmaceutical services. Therefore, Regulation 18(2)(a) would not cause the application to be refused.

Regulation 18(2)(b) whether, notwithstanding that the improvements or better access were not included in the relevant PNA, it is satisfied that, having regard to the desirability of;

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

- 2.13 The Committee noted that the Derbyshire 2018-2021 PNA found that there was adequate provision of pharmaceutical services for patients. There is a dispensing practice located in Baslow and there are two community pharmacies located within 3.5 miles, both of which offer a prescription delivery service.

(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;

2.14 The Committee noted that the Applicant has only referenced over-65's as a group of persons with protected characteristics. The applicant has not provided any evidence to demonstrate that this group of patients is having difficulty in accessing pharmaceutical services.

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

2.15 The Committee is required to consider whether the applicant is proposing new or innovative approaches for the delivery of pharmaceutical services in the area. The Committee noted that the Applicant does not identify any specific innovative approaches and has provided no evidence that the application should be granted on this basis.

2.16 The Committee determined that the lack of supporting evidence in respect of Regulation 18(2)(b) should cause the application to be rejected.

Regulation 65 and Regulation 66

2.17 PSRC noted that Regulation 65 and Regulation 66 do not apply to this application and would not cause the application to be refused.

Regulation 50

2.18 Having determined that the application does not meet the requirements under Regulation 18, PSRC did not consider Regulation 50 in regard to gradualisation for dispensing GP practices in the area.

Conclusion

2.19 The Committee concluded that the Applicant has not outlined the benefits that granting the application, or granting it in respect of some of the services specified in the application form, would secure improvements, or better access, to pharmaceutical services, or improvements or better access would be secured which were not included in the relevant Pharmaceutical Needs Assessment.

2.20 The Applicant has not identified any additional, unique or innovative approaches with regard to the delivery of services that they intend to provide.

2.21 The Applicant has not evidenced that individuals sharing a protected characteristic are currently having difficulty in accessing pharmaceutical services. The Applicant has only referenced over-65's as a group of persons sharing protected characteristics in their application form.

2.22 The Committee noted the above points and determined to **refuse** this application.

Appeal Rights

2.23 The Applicant has a right of appeal.

### 3 The Appeal

In a letter dated 8 December 2020 addressed to NHS Resolution, the Applicant appealed against NHS England's decision. The grounds of appeal are:

- 3.1 The Applicant would say the following in response to this refusal:
- 3.2 It would say that NHS England has misdirected itself in its determination for the following reasons:
  - 3.2.1 The dispensing practice in Baslow does not provide pharmaceutical services and therefore its existence should have no weight in the consideration of its application.
  - 3.2.2 The existence of a provider of medical services in Baslow is an indicator that a pharmaceutical services provider would be of benefit to those persons seeking medical services in the locality.
  - 3.2.3 The nearest pharmaceutical services provider are some 3 and a half miles away. A distance totally impractical to access by foot and with great difficulty by public transport for those without exclusive use of a car.
  - 3.2.4 NHS England has failed to take into account that persons with protected characteristics such as the elderly, persons with disability, mothers with young children as well as persons with no access to a car during the day will have great difficulties in accessing pharmaceutical services.
  - 3.2.5 Baslow being home to the Chatsworth estate enjoys significant and substantial tourist activity and many of these visitors are likely to need pharmaceutical services in general and minor ailments treatments in particular.

#### Conclusion

- 3.3 The Applicant would say that on at least the balance of probability that NHS England has misdirected itself in its consideration of the evidence supporting its application. The Applicant says NHS England should've granted its application to join the Pharmaceutical List at Baslow and therefore it respectfully invites [NHS Resolution] on at least the balance of probabilities to grant its application.

#### 4 **Summary of Representations**

No representations were received by NHS Resolution in response to the appeal.

#### 5 **Consideration**

- 5.1 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.
- 5.2 It also had before it the responses to NHS Resolution's own statutory consultations.

- 5.3 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.
- 5.4 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (“the Regulations”).
- 5.5 There is no dispute that Baslow is in a controlled locality and the application was based on securing improvements or better access to pharmaceutical services in that controlled locality.
- 5.6 The Committee considered that the correct course was to first consider if the application must be refused pursuant to Regulation 31. The Committee will then consider if the application must be refused pursuant to Regulation 40. If the Committee is not so required to refuse the application, it will consider the issue of reserved location pursuant to Regulation 41. The Committee will then consider the application under Regulation 18. If the Committee has determined that the Applicant is seeking the listing of pharmacy premises which are in a part of a controlled locality that is not in a reserved location, it will consider the issue of prejudice under Regulation 44 last. The reason for this staged approach and in particular for dealing with prejudice last is that if the application does not meet the requirements of Regulation 18 the Committee is required to refuse it and prejudice cannot arise. The potential for prejudice only arises if the Committee has concluded that the application meets the requirements of Regulation 18 and may be granted.
- 5.7 Depending on the determinations of the Committee in respect of the above as well as taking into consideration of whether NHS England has considered Regulation 50(1), the Committee will then consider Regulation 50(1) Discontinuance of arrangements for the provision of pharmaceutical services by doctors.

### **Regulation 31**

- 5.8 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).*

- 5.9 The Committee noted in its application, the Applicant states that “*there is not another pharmacy or dispensing appliance contractor premises either adjacent to or in close proximity to those properties which fall within my best estimate for the location of its proposed pharmacy.*” NHS England in its decision letter concluded that Regulation 31 would not cause the application to be refused. The Committee noted that this had not been disputed by any party and therefore determined that it was not required to refuse the application under the provisions of Regulation 31.
- 5.10 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 40**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.12 The Committee noted, in the information provided by NHS England, reference to a previous application that was refused by NHS England under Regulation 40. The Committee noted that that decision was appealed against and in September 2018, NHS Resolution determined that the application should be refused under Regulation 40 (case reference SHA/19933).

5.13 For the purposes of calculating the 5 year period, the Committee noted Regulation 40(5) states that

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

5.14 Therefore as the previous application was refused under a preliminary matter, that being Regulation 40(2)(b), the Committee did not need to take this application into consideration in this instance.

5.15 The Committee noted reference in the previous decision (SHA/19933) to an unforeseen benefits application at Church Street, Baslow, which the Committee notes was refused by NHS England on 22 January 2015.

- 5.16 The Committee noted that the instant application is dated 23 January 2020 and was submitted to NHS England on 27 January 2020 and therefore falls outside the 5 year period since the previous application was refused by NHS England.
- 5.17 The Committee noted that there was no information to suggest that the instant application was in respect of a location where outline consent had been granted or there had been a refusal for a previous application within the last 5 years.

#### **Regulation 41**

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

*(1) This paragraph applies to any routine application—*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*(a) for the reasons relating to prejudice in—*

*(i) regulation 44(3),*

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

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

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

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

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

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

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

5.19 With regard to Regulation 41(1), the Committee noted that there is no dispute that the Applicant is seeking the listing of pharmacy premises which are in a controlled locality.

- 5.20 With regard to Regulation 41(2), the Committee noted that the unforeseen benefit application is for a best estimate address as described in Regulation 41(2)(b) and that NHS England would be required to calculate the areas within a 1.6 km radius of it as described in Regulation 41(3).
- 5.21 With regard to Regulation 41(3)(a), the Committee noted that when the application was circulated to parties, NHS England stated that *“according to our records the number of registered patients living within 1.6 kilometres of Baslow Health Centre, Church Lane, Baslow, Derbyshire DE45 1SP is 1205 dispensing patients and 22 non-dispensing patients.”* The Committee noted that no party had sought to dispute this figure in its representations on the application.
- 5.22 The Committee also noted that representations were sought from parties during the appeal process on reserved location and noted that no party sought to dispute the figure provided by NHS England.
- 5.23 Therefore with regard to Regulation 41(3)(a) the Committee would consider that as the number of individuals residing in that area who are on a patient list is less than 2,750 that the locality be considered reserved.
- 5.24 With regard to Regulation 41(3)(b), the Committee noted that no information had been provided to show that the use of pharmaceutical services would be greater than, the use that might be expected if the number of individuals residing in that area who are on a patient list were 2,750 or more.
- 5.25 The Committee therefore concluded that the site of the best estimate of the application is a reserved location.
- 5.26 With regard to Regulation 41(4), the Committee noted that it was not disputed that NHS England had notified parties and invited them to make representations.
- 5.27 With regard to Regulation 41(5), it was not disputed that there had not been an earlier application within the last five years.
- 5.28 As the Committee has concluded that the proposed best estimate address is in a reserved location, it would not need to go on to consider prejudice if it subsequently decided to grant the application. The Committee therefore next considered whether the application met the requirements of Regulation 18.

## **Regulation 18**

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

*“(1) If—*

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

*services, or pharmaceutical services of a specified type, in the area of the relevant HWB; and*

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

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

*(2) Those matters are—*

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

- (i) proper planning in respect of the provision of pharmaceutical services in the area of the relevant HWB, or*

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

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

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

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

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

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

- (c) whether it is satisfied that it would be desirable to consider, at the same time as the applicant's application, applications from*

*other persons offering to secure the improvements or better access that the applicant is offering to secure;*

- (d) *whether it is satisfied that another application offering to secure the improvements or better access has been submitted to it, and it would be desirable to consider, at the same time as the applicant's application, that other application;*
- (e) *whether it is satisfied that an appeal relating to another application offering to secure the improvements or better access is pending, and it would be desirable to await the outcome of that appeal before considering the applicant's application;*
- (f) *whether the application needs to be deferred or refused by virtue of any provision of Part 5 to 7.*
- (g) *whether it is satisfied that the application presupposes that a gap in pharmaceutical services provision has been or is to be created—*
  - (i) *by the removal of chemist premises from a pharmaceutical list as a consequence of the grant of a consolidation application, and*
  - (ii) *since the last revision of the relevant HWB's pharmaceutical needs assessment other than by way of a supplementary statement.*

(3) *The NHSCB need only consider whether it is satisfied in accordance with paragraphs (2)(c) to (e) if it has reached at least a preliminary view (although this may change) that it is satisfied in accordance with paragraph (2)(b)."*

- 5.30 The Committee considered that Regulation 18(1)(a) was satisfied in that it was required to determine whether it was satisfied that granting the application, or granting it in respect of some only of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB
- 5.31 The Committee went on to consider whether Regulation 18(1)(b) was satisfied, i.e. whether the improvements or better access that would be secured if the application was granted were or was included in the PNA in accordance with paragraph 4 of Schedule 1 of the Regulations.
- 5.32 Paragraph 4 of Schedule 1 requires the PNA to include: "*a statement of the pharmaceutical services that the HWB had identified (if it has) as services that are not provided in the area of the HWB but which the HWB is satisfied (a) **would** if they were provided....secure improvements or better access, to pharmaceutical services... (b) **would** if in specified future circumstances they were provided...secure future improvements or better access to pharmaceutical services...*" (emphasis added).
- 5.33 The Committee considered the Pharmaceutical Needs Assessment ("the PNA") prepared by Derby City Council and Derbyshire County Council Health & Wellbeing Boards, conscious that the document provides an analysis of the

situation as it was assessed at the date of publication. The Committee bears in mind that, under regulation 6(2), the body responsible for the PNA must make a revised assessment as soon as reasonably practicable (after identifying changes that have occurred that are relevant to the granting of applications) unless to do so appears to be a disproportionate response to those changes. Where it appears disproportionate, the responsible body may, but is not obliged to, issue a Supplementary Statement under regulation 6(3). Such a statement then forms part of the PNA. The Committee noted that the PNA was dated 2018 - 2021 and that three supplementary statements had been issued since the publication of the PNA.

- 5.34 In its executive summary, the PNA found that *“the pharmaceutical need in Derby City and Derbyshire County HWB areas, is adequately met by the current pharmacy providers. Pharmaceutical need will be reviewed again in 2021 when the PNA is revisited, or in the event of significant changes affecting need in the interim years.”*
- 5.35 The Committee noted that the Applicant seeks to provide unforeseen benefits to the residents of Baslow and surrounding areas. The Committee noted that the improvements or better access that the Applicant was claiming would be secured by its application were not included in the relevant pharmaceutical needs assessment in accordance with paragraph 4 of Schedule 1.
- 5.36 In order to be satisfied in accordance with Regulation 18(1), regard is to be had to those matters set out at 18(2). The Committee's consideration of the issues is set out below.

#### **Regulation 18(2)(a)(i)**

- 5.37 The Committee had regard to
- “(a) *whether it is satisfied that granting the application would cause significant detriment to—*
- (i) *proper planning in respect of the provision of pharmaceutical services in the area of the relevant HWB”*
- 5.38 The Committee noted in its decision letter, NHS England stated that *“if the application was granted and a pharmacy opened in the vicinity of Baslow Health Centre, NHS England and NHS Improvement’s ability to plan for the provision of services would not be significantly affected.”*
- 5.39 On the basis of the information available, which has not been disputed by any party, the Committee was not satisfied that, if the application were to be granted and the pharmacy to open, the ability of the NHS England thereafter to plan for the provision of services would be affected in a significant way.
- 5.40 The Committee was therefore not satisfied that significant detriment to the proper planning of pharmaceutical services would result from a grant of the application.

#### **Regulation 18(2)(a)(ii)**

- 5.41 The Committee had regard to

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

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

5.42 The Committee noted in its decision letter, NHS England stated that "granting the application would not cause significant detriment to the arrangements currently in place for the provision of pharmaceutical services."

5.43 On the basis of the information available, which has not been disputed by any party, the Committee was therefore not satisfied that significant detriment to the arrangements currently in place for the provision of pharmaceutical services would result from a grant of the application.

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

### **Regulation 18(2)(b)**

5.45 The Committee had regard to

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

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

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

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

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

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

5.46 The Committee noted parties' comments that Baslow Health Centre (which is the expected location of the Applicant's proposed pharmacy) is a dispensing practice. The Committee was mindful that a dispensing practice only provides

dispensing services and does not provide a full range of pharmaceutical services that a community pharmacy can provide.

- 5.47 The Committee noted the Applicant's comment that "*it is ... important to be able to offer a choice of provider within reasonable travelling distance. At Baslow this is not currently the case.*" In its application, the Applicant states that "*the nearest pharmacies to the Health Centre are Boots the Chemists, Granby Road Bakewell and Bakewell Pharmacy, Holme Court, Bakewell. Both are located 4.1 miles from the Health Centre.*" In its decision letter, NHS England states that "*there is a dispensing practice located in Baslow and there are two community pharmacies located within 3.5 miles, both of which offer a prescription delivery service.*"
- 5.48 The Committee noted the discrepancies in distances quoted to the nearest pharmacies however it was of the view that, even at the shorter distance of 3.5 miles, it was unlikely that residents would be willing to walk to access the nearest pharmaceutical services and that there would be those who would be unable to do so. The Committee was of the view that difficulties of access on foot did not of itself indicate that there was not a reasonable choice in obtaining pharmaceutical services. The Committee went on to consider ease of access to the nearest pharmacies by private and public transport.
- 5.49 The Committee noted the Applicant's comment that "*ONS Data reveals that 11% of the population in Baslow do not have access to a car or van, the majority of who will be over 65.*" However no evidence had been provided to support the assertion that the majority of those who do not have access to a car are over 65. Further, the Committee noted that no information had been provided by the Applicant to show that those who have access to private transport, are currently experiencing any difficulties accessing the existing pharmaceutical services in the area and would derive significant benefits from the granting of this application.
- 5.50 Beyond its assertion that "*Baslow does not benefit from frequent bus services to the location of other pharmacies*" and therefore "*those patients without access to private transport are at a disadvantage*", the Committee noted that the Applicant had not provided any information to demonstrate that those who did use public transport were experiencing any difficulties in accessing existing pharmaceutical services, such that granting the application would constitute a significant benefit as required by Regulation 18(2)(b). For example there is no information to quantify what the Applicant meant by "frequent".
- 5.51 The Committee noted that the Applicant intends on providing essential, advanced and enhanced services, as listed in its application form. The Applicant contends that the New Medicines Service is not accessible to those with long term conditions who might benefit from this service, due to its seemingly low uptake. However the Committee was mindful that low uptake did not necessarily mean that this service was difficult to access. Based on its conclusions above, the Committee was of the view that no evidence had been provided by the Applicant to show that patients wishing to access the services proposed are currently experiencing any difficulties in obtaining these services from existing pharmacies. The Committee also noted NHS England's undisputed comments that the Pharmacy First Scheme is not currently commissioned in Derbyshire and the Palliative Care Drugs Stockist Scheme is not currently open to new providers.

- 5.52 The Committee noted that the Applicant is proposing to provide a total of 55 hours a week, 40 of which would be core hours (8.30am to 12.30pm and 2.30pm – 6.30pm, Monday to Friday). NHS England states that the two nearest pharmacies are “*contracted to open for 40 hours each week and there is currently pharmaceutical service provision across 7 days of the week.*” The Applicant contends that “*the nearest existing pharmacy providers do not have opening times which mirror local surgery hours*” and that “*this has an impact on patient accessibility.*” The Committee noted that no information had been provided by the Applicant to support a finding that pharmaceutical services are not currently provided at such times as needed and therefore it was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits (in relation to opening hours) on persons.
- 5.53 Overall, the Committee was of the view that there is already reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB, such that it was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits on persons.
- 5.54 In considering Regulation 18(2)(b)(ii) the Committee reminded itself that it was required to address itself to people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that are difficult for them to access. The Committee was also aware of its duties under the Equality Act 2010 which include considering the elimination of discrimination and advancement of equality between patients who share protected characteristics and those without such characteristics. The Committee noted that the Applicant had identified that there are patients in the area who share a protected characteristic, including the elderly and their carers. The Applicant contends that those over 65 are “*highly dependent on clinical, social and pharmaceutical services*” and that “*there are clear benefits in having a pharmacy located in the village.*” However the Committee noted that no information had been provided by the Applicant to show that those persons sharing a protected characteristic have difficulty in accessing current pharmaceutical services, or that services specific to their needs are not currently being provided by the existing pharmacies.
- 5.55 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.
- 5.56 In considering Regulation 18(2)(b)(iii) the Committee had regard to the desirability of innovative approaches to the delivery of pharmaceutical services. In doing so, the Committee would consider whether there was something more over and above the usual delivery of pharmaceutical services that might be expected from all pharmacies, some ‘added value’ on offer at the location.
- 5.57 The Committee noted the Applicant proposes to provide targeted advice for patients taking analgesics such as NSAID or opiates to ensure safe and effective prescribing e.g. avoidance of co-prescribing NSAIDS with diuretics and ACEs, screening for opiate over-use and instituting proper withdrawal regimes. The Applicant states that it will do this via the NMS and MUR advanced services. However the Committee was mindful that it was common place for pharmacists to provide advice to its patients in relation to their

medication and as such, did not consider this to be an innovative approach to the delivery of pharmaceutical services.

- 5.58 The Applicant proposes to work closely with commissioners to establish a Falls Prevention Service to older people taking multiple medicines who may be at risk of a fall. By discussing with at risk patients how and when to take their medicines and referral to other specialist services, it is anticipated that this service would reduce hospital admissions or fractures incurred from falls. However the Committee was mindful that it was common place for pharmacists to provide advice to its patients on how and when they should take their medication and as such, did not consider this to be an innovative approach to the delivery of pharmaceutical services.
- 5.59 The Committee noted the Applicant proposes to provide a Stroke referral scheme. The Applicant states that "*Stroke victims are a high risk group of poor adherence to medication and using the New Medicine Service can help overcome this problem.*" However the Committee was mindful that the New Medicine Service is already being provided across the country which is a service focused on particular patients groups and conditions and as such, did not consider this to be an innovative approach to the delivery of pharmaceutical services.
- 5.60 The Committee noted the Applicant proposes to provide an Anticoagulant Pharmacy Service. The Applicant states that "*newer oral anticoagulants being prescribed could see patients referred from primary and secondary care to pharmacies for review and initiation of anticoagulants - ensuring patients are engaged in decision making and are fully counselled.*" However the Committee was mindful that this is a locally commissioned service that is already being provided across the country and as such, did not consider this to be an innovative approach to the delivery of pharmaceutical services.
- 5.61 The Committee was not satisfied that, having regard to the desirability of there being innovative approaches taken with regard to the deliverability of pharmaceutical services, granting the application would confer significant benefits on persons.

#### **Regulation 18(2)(b) generally**

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

#### **Other considerations**

- 5.63 Having determined that Regulation 18(2)(b) had not been satisfied, the Committee did not need to have regard to Regulation 18(2)(c) to (e).
- 5.64 No deferral or refusal under Regulation 18(2)(f) was required in this case.
- 5.65 The Committee had regard to Regulation 18(2)(g) and found no information that would require it to refuse the application under this regulation.
- 5.66 The Committee considered whether there were any further factors to be taken into account and concluded that there were not.

- 5.67 The Committee was not satisfied that the information provided demonstrates that there is difficulty in accessing current pharmaceutical services such that a pharmacy at the proposed site would provide better access to pharmaceutical services.
- 5.68 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 5.68.1 confirm NHS England's decision;
  - 5.68.2 quash NHS England's decision and redetermine the application;
  - 5.68.3 quash NHS England's decision and, if it considers that there should be a further notification to the parties to make representations, remit the matter to NHS England.
- 5.69 As NHS England did not consider Regulation 40 or Regulation 41 in its decision, the Committee determined that the decision of NHS England must be quashed.
- 5.70 The Committee went on to consider whether there should be a further notification to the parties detailed at paragraph 19 of Schedule 2 of the Regulations to allow them to make representations if they so wished (in which case it would be appropriate to remit the matter to NHS England) or whether it was preferable for the Committee to redetermine the application.
- 5.71 The Committee noted that representations on Regulation 18 had been sought from parties by NHS England and representations had already been made by parties to NHS England in response. These had been circulated and seen by all parties as part of the processing of the application by NHS England. The Committee further noted that when the appeal was circulated representations had been sought from parties on Regulation 18.
- 5.72 The Committee concluded that further notification under paragraph 19 of Schedule 2 would not be helpful in this case.

## **6 DECISION**

- 6.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of NHS England, for the reasons given above, and redetermines the application.
- 6.2 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.
- 6.3 The Committee concluded that Baslow is in a controlled locality and that the site of the application is in a reserved location.
- 6.4 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;

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

**Rachel White**  
**Technical Case Manager**  
**Primary Care Appeals**

A copy of this decision is being sent to:

NACAD 3 Limited  
PCSE on behalf of NHS England – Midlands Area Team