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**APPEAL AGAINST BIRMINGHAM AND SOLIHULL ICB  
DECISION TO REFUSE AN APPLICATION BY PAN  
HEALTHCARE LTD FOR CONSOLIDATION ONTO THE SITE  
AT 2154A – 2156 COVENTRY ROAD, SHELDON,  
BIRMINGHAM, B26 3JB OF PAN PHARMACY ALREADY AT  
THE SITE AND PAN PHARMACY CURRENTLY AT 2222  
COVENTRY ROAD, SHELDON, BIRMINGHAM, B26 3JH**

**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 granted.

A copy of this decision is being sent to:

Rushport Advisory LLP on behalf of Pan Healthcare Ltd  
Birmingham HWB  
PCSE on behalf of Birmingham and Solihull ICB

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**APPEAL AGAINST BIRMINGHAM AND SOLIHULL ICB DECISION TO REFUSE AN APPLICATION BY PAN HEALTHCARE LTD FOR CONSOLIDATION ONTO THE SITE AT 2154A – 2156 COVENTRY ROAD, SHELDON, BIRMINGHAM, B26 3JB OF PAN PHARMACY ALREADY AT THE SITE AND PAN PHARMACY CURRENTLY AT 2222 COVENTRY ROAD, SHELDON, BIRMINGHAM, B26 3JH**

## 1 The Application

By application dated 26 July 2023, Pan Healthcare Ltd (“the Applicant”) applied to Birmingham and Solihull ICB (“the Commissioner”) in respect of a consolidation onto the site at 2154A – 2156 Coventry Road, Sheldon, Birmingham, B26 3JB, of Pan Pharmacy already at that site and Pan Pharmacy currently at 2222 Coventry Road, Sheldon, Birmingham, B26 3JH. The application was made pursuant to Regulation 26A of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (“the Regulations”). In support of the application it was stated:

- 1.1 “Both of these pharmacies are located on Coventry Road and are a short distance from one another (approximately 300 metres). The closing pharmacy at 2222 Coventry Road is a 40 hour pharmacy but has core hours arranged so that it is required to be open until 10pm most evenings. This pharmacy is very quiet after 6pm and at weekends as the main late night or weekend pharmacy is located further along Coventry Road and is Tesco Instore Pharmacy located at the Swan Shopping Centre which is approximately 1.7 miles further along Coventry Road.
- 1.2 As well as the Tesco Pharmacy there are a significant number of other pharmacies located within this area. The NHS website currently identifies 7 pharmacies operating within a 1 mile radius of 2222 Coventry Road and this increases to 24 if a 2 mile radius is used.
- 1.3 Given the opening hours and location of existing pharmacies, this proposed consolidation would not leave any gap in pharmaceutical service provision that could be met by a routine application to meet a current or future need for pharmaceutical services, or to secure improvements or better access to pharmaceutical services.
- 1.4 The most recent PNA does not identify any gaps in service provision in any areas similar to this one or where there are fewer pharmacies. There is no reason why any such gap could be identified as the result of this consolidation. Similarly, there are multiple local pharmacies in the area and these include late night and Sunday opening hours.
- 1.5 The pharmacy at 2222 Coventry Road is no longer a viable pharmacy due to its late opening and 7 days opening and lack of prescription volume and associated other income needed to support such long hours. In the event that this consolidation were to be refused we would have no option other than to close this pharmacy. We would prefer to consolidate the branches instead of giving notice to close as it will be much easier for patients if their nominations are seamlessly transferred to our other nearby pharmacy rather than them having to re-nominate and potentially miss prescriptions.”
- 1.6 Current core opening hours for Site 1 (continuing site)

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
9am to 12pm and 2pm to 6pm	9am to 12pm and 2pm to 6pm	9am to 12pm and 2pm to 6pm	9am to 12pm and 2pm to 6pm	9am to 12pm and 2pm to 6pm	9am to 11:30am and 3pm to 5:30pm		40 hours

1.7 Current total opening hours for Site 1

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
8.30am to 6pm	8.30am to 6pm	8.30am to 6pm	8.30am to 6pm	8.30am to 6pm	9am to 5:30pm		56 hours

1.8 Current core opening hours for Site 2 (closing site)

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
9am to 11am and 6.30pm to 10pm	9am to 11am and 6.30pm to 10pm	9am to 11am and 6.30pm to 10pm	9am to 11am and 6.30pm to 10pm	9am to 11am and 6.30pm to 10pm	9am to 11am and 5.30pm to 10pm	10am to 12pm and 1pm to 5pm	40 hours

1.9 Current core opening hours for Site 2

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
9am to 10pm	9am to 10pm	9am to 10pm	9am to 10pm	9am to 10pm	9am to 10pm	10am to 5pm	85 hours

2 **The Decision**

The Commissioner considered and decided to refuse the application. The decision letter dated 10 January 2024 states:

2.1 “Birmingham and Solihull ICB has considered the above application and I am writing to confirm that it has been refused. Please see the enclosed report for the full reasoning.”

Decision report

2.2 “Name of Applicant: Pan Healthcare Ltd

2.3 Address of Consolidating Premises

- 2.3.1 Site 1: the continuing site – 2154a – 2156 Coventry Road, Sheldon, Birmingham, B26 3JB
- 2.3.2 Site 2: the consolidating site – 2222 Coventry Road, Sheldon, Birmingham, B26 3JH
- 2.4 Committee Determination
- 2.5 The committee refused the application. Regulation 26(a)(5)(a) [sic] has not been met and this consolidation would create a gap in pharmaceutical services. The committee were not satisfied that in granting the application the current provision of pharmaceutical services offering core opening hours on a Sunday within the locality would be maintained.
- 2.6 3rd Party Appeal Rights
- 2.7 Appeal rights to the applicant only.”

### 3 The Appeal

In a letter dated 31 January 2024 addressed to NHS Resolution, Rushport Advisory LLP on behalf of the Applicant appealed against the Commissioner's decision. The grounds of appeal are:

- 3.1 “I act for Pan Healthcare Limited in the above application and have been instructed by my client to submit this appeal against the decision of the ICB to refuse the above application. The decision to refuse the application was sent to us by email on 10 January 2023.
- 3.2 As Primary Care Appeals (“PCA”) will note, the ICB decision report is rather brief and simply states;  
  
*The committee refused the application. Regulation 26(a)(5)(a) has not been met and this consolidation would create a gap in pharmaceutical services. The committee were not satisfied that in granting the application the current provision of pharmaceutical services offering core opening hours on a Sunday within the locality would be maintained.*
- 3.3 It is clear that the ICB has not applied the correct legal test when considering my client's application and as no valid reasons have been provided for refusing the application we instead focus the appeal on reasons that show why the application meets the legal test.
- 3.4 PCA is clearly aware of the legal test under regulation 26A and we do not repeat it here.
- 3.5 In relation to Regulation 26A(1), it has not been disputed by any party that the Applicant is included in the pharmaceutical list.
- 3.6 26(A)(2) does not require further consideration.
- 3.7 In relation to 26(A)(3) both sites are operated by the same contractor.
- 3.8 In relation to Regulation 26A(5)(a), PCA must refuse a consolidation application if it is satisfied that granting the application would create a gap in pharmaceutical services provision that could be met by a routine application to:
  - meet a current or future need for pharmaceutical services, or
  - secure improvements or better access to pharmaceutical services.

- 3.9 The two pharmacies that are the subject of this application are located approximately 300 metres from each other along the same road, Coventry Road. Both are 40 hour contracts, albeit that the closing site has core hours spread over the week to include late night opening and Sunday opening in a manner that makes it appear more like a 100 hour pharmacy.
- 3.10 The NHS website currently identifies 7 pharmacies operating within a 1 mile radius of 2222 Coventry Road and this increases to 24 if a 2 mile radius is used (see map at Appendix A - pharmacies marked as red dots and green arrow to Tesco and between the 2 consolidation sites)
- 3.11 The main late night or weekend pharmacy is located further along Coventry Road and is Tesco Instore Pharmacy located at the Swan Shopping Centre which is approximately 1.7 miles further along Coventry Road. The walk is straightforward but patients are more likely to use a car or bus as it is easier.
- 3.12 Tesco Pharmacy opening hours as of January 2024 are;
- 3.12.1 Monday to Saturday 9 AM - 9 PM
- 3.12.2 Sunday 11 AM - 5 PM
- 3.13 Coventry Road is a busy and well-used road with good public transport links to the wider area. Travelling from my client's pharmacy to Tesco Pharmacy takes 8 minutes by bus (number 60 operating every 20 minutes) and the same no.60 bus route also operates on Sundays. The X1 Platinum bus route also operates on the same route every 30 minutes including Sundays. Both bus routes operate until after 10pm all week.
- 3.14 Car owners would find parking at Tesco straightforward as it has its own large car park unlike the existing site at 2222 Coventry Road (site 2 – the closing pharmacy) which has both limited and restricted on-road parking on a main dual carriageway. The car park on the proposed consolidation site at 2154a-2156 Coventry Road (site 1 the remaining pharmacy) also has a dedicated car park.
- 3.15 It should of course be noted that this requirement to access Tesco only applies to late night or Sunday services as my client will retain their pharmacy that operates from Monday to Saturday (core hours).

3.16 Current core opening hours for Site 1

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
9am to 12pm and 2pm to 6pm	9am to 12pm and 2pm to 6pm	9am to 12pm and 2pm to 6pm	9am to 12pm and 2pm to 6pm	9am to 12pm and 2pm to 6pm	9am to 11:30am and 3pm to 5:30pm		40 hours

- 3.17 Using the most recent available data from NHSBSA (September 2023) Site 2 (closing pharmacy) dispensed only 4223 items with 4 NMS and 10 CPCS and had less than £150 per week of counter sales. This would be a small pharmacy by any measure, but in this case it is a pharmacy that opens for 85 hours per week due to the odd nature of the core hours spread. It is quite clearly not being used to any real extent by the local population.

- 3.18 The most recent PNA does not identify any gaps in service provision in any areas similar to this one or where there are fewer pharmacies. There is no reason why any such gap could be identified as the result of this consolidation. Similarly, there are multiple local pharmacies in the area and these include late night and Sunday opening hours as shown on the map below.
- 3.19 Looking at the wording of Regulation 26A(5)(a) it clearly sets a high threshold that must be met in order to refuse an application. The decision maker must be satisfied that granting the application “would” create a gap in pharmaceutical services provision that could be met by a routine application.
- 3.20 It is worth considering what would be likely to happen if an Applicant were to submit a regulation 18 application at 2222 Coventry Road had my client’s pharmacy not already been there. Whilst this invites some speculation, PCA is well versed in these applications. With 1 pharmacy 300 metres away opening 6 days per week and a 100 hour pharmacy with Sunday opening 1.7 miles along the same road, 8 minutes by bus, and 7 pharmacies within a 1 mile radius we would say it is impossible to imagine the same ICB granting such an application.
- 3.21 The HWB has not even commented on this application and that lack of comment should not go against my client. Had the HWB had any concerns then the obligation would be on them to voice those concerns.
- 3.22 The Birmingham and Solihull PNA 2022 states;
- 3.23 Page 31

*BSOL has a transient population with generally good transport links. Populations may therefore find community pharmacies in neighbouring HWB areas more accessible and/or more convenient. Neighbouring areas include Warwickshire, Coventry, Staffordshire, Walsall, Sandwell, Dudley and Worcestershire.*

- 3.24 Page 33

*In summary:*

- *Walking: 90% of the population can walk to a pharmacy within 15 minutes (97.8% within 20 minutes)*
- *Public transport: Approximately 87% of the population can reach a community pharmacy within 10 minutes (afternoon is faster than morning); up to 99% of people can reach a pharmacy by public transport within 20 minutes*
- *Driving: 100% of the population can drive to a pharmacy within 10 minutes regardless of time of day*

- 3.25 It is important to note that the Birmingham localities are more densely populated than Solihull. This will mean the travel time to the nearest pharmacy will be shorter in the Birmingham localities than in Solihull.
- 3.26 This all remains the case should this application be approved.
- 3.27 Page 58 - Discussing the east locality where this application relates to

*There are 64 community pharmacies (including four DSPs) in this locality. The estimated average number of community pharmacies per 100,000 population is 26.5, above the England average of 20.6 and the BSOL average of 23.3 (Section 3.2). There are 51 pharmacies (excluding the DSPs) that hold a standard 40-core hour contract, and there are nine 100-hour pharmacies.*

*Of the 64 community pharmacies:*

- 21 pharmacies (33%) are open after 6.30 pm on weekdays
- 40 pharmacies (63%) are open on Saturdays
- 11 pharmacies (17%) are open on Sundays

*There are also a number of accessible providers open in neighbouring localities and HWB areas.*

*100% of the population can travel to their pharmacy by car within 10 minutes, irrespective of day.*

*No gaps in the provision of Necessary Services have been identified for East locality*

3.28 Page 60

*No gaps have been identified that if provided either now or in the future would secure improvements or better access to services across East locality.*

3.29 It is of course always the case that a consolidation will create some sort of change or gap in pharmaceutical services as that is the entire purpose of the regulation. However, the question is whether the gap is such that it would be met by a routine application as per Regulation 26A(5)(a).

3.30 In this case it seems very clear that no such gap would be created and the appeal should therefore be allowed.

3.31 We look forward to hearing from you in due course.”

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

This is a summary of representations received on the appeal.

##### 4.1 BIRMINGHAM HEALTH AND WELLBEING BOARD

4.1.1 “In response to your request for the Birmingham Health and Wellbeing Board to make a representation on the above consolidation application, we have reviewed the application and the appeal, together with the [PNA](#) and the [Supplementary Statement](#), which has just recently been agreed by the Board.

4.1.2 The Board recognises the issue the Committee identified around core opening hours on a Sunday within the locality. The Board has previously discussed its concern about reductions in pharmacy access hours and the national investment in community pharmacies as key points of access for citizens to get support from a trained healthcare professional.

4.1.3 However, it is the Board’s view that the proposed consolidation would not create a significant gap in pharmaceutical provision as there will remain Sunday hours provision nearby in the locality. Three pharmacies with Sunday opening hours are relatively close to the pharmacy in question. These are:

4.1.3.1 Tesco Pharmacy (20 Church Rd, Yardley, Birmingham)

4.1.3.1.1 Sunday Hours: 11:00 – 17:00

4.1.3.1.2 Distance from Pan Pharmacy ≈1.54 miles

4.1.3.2 Village Green Pharmacy (1095 Warwick Rd, Acocks Green, Birmingham)

4.1.3.2.1 Sunday Hours: 10:00 – 20:00

4.1.3.2.2 Distance from Pan Pharmacy ≈ 2.07 miles

4.1.3.3 Asda Pharmacy (Bosworth Drive, Birmingham)

4.1.3.3.1 Sunday Hours: 10:00 – 16:00

4.1.3.3.2 Distance from Pan Pharmacy ≈ 2.54 miles

4.1.4 Birmingham Health and Wellbeing Board Executive Group\*

\*N.B. Birmingham Health and Wellbeing Board Executive Group consists of the core statutory membership of Birmingham Health and Wellbeing Board. Dr [CD] (Acting Chair of Birmingham Health and Wellbeing Board and Chief Medical Officer of Birmingham and Solihull Integrated Care Board) did not provide a view due to a conflict of interest.”

## 5 Observations

The following observations were received by NHS Resolution in response to the representations received on appeal.

5.1 Rushport Advisory LLP on behalf of the Applicant

5.1.1 “I can confirm that my client is grateful for the HWB response which accords with their own view and has nothing further to add.”

## 6 Consideration

6.1 The Pharmacy Appeals Committee (“Committee”) appointed by NHS Resolution, had before it the papers considered by the Commissioner.

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 Regulation 26A states:

“1. A person already included in a pharmaceutical list may make an application pursuant to this paragraph (“a consolidation application”) in respect of the consolidation onto the site (S1) of listed chemist premises in the area of the relevant HWB (HWB1) of the provision of pharmaceutical services provided at or from S1 and other listed chemist premises (S2) in the area of HWB1.

2. Section 129(2A) of the 2006 Act (regulations as to pharmaceutical services) does not apply to a consolidation application by a person already included in a pharmaceutical list for inclusion in respect of premises not already listed in relation to that person.

3. Subject to paragraph (4), a consolidation application—

(a) must be made by the person (P1) included in the pharmaceutical list in relation to S1; and



- (b) *if different persons are listed in relation to S1 and S2, must include as part of the application an application by P1 to change the ownership of S2.*
4. *If different persons are listed in relation to S1 and S2, and the person (P2) listed in relation to S2 is seeking to become the person listed in relation to S1, a consolidation application—*
    - (a) *must be made by P2; and*
    - (b) *must include as part of the application an application by P2 to change the ownership of S1.*
  5. *The NHSCB must refuse a consolidation application—*
    - (a) *if it is satisfied that granting the application would create a gap in pharmaceutical services provision that could be met by a routine application—*
      - (i) *to meet a current or future need for pharmaceutical services, or*
      - (ii) *to secure improvements, or better access, to pharmaceutical services; or*
    - (b) *if either S1 or S2 are distance selling premises or appliance contractor premises.*
  6. *In the case of an application to which paragraph (3) applies, the NHSCB must refuse the application unless it is satisfied—*
    - (a) *if the NHSCB intends to commission from P1 at or from S1 enhanced services which P2 provides at or from S2 but which P1 has not been providing at or from S1, that the provision of those services will not be interrupted except for such period as the NHSCB may for good cause allow*
    - (b) *in the case of an application to which paragraph (3)(b) applies, that—*
      - (i) *P2 consents to the change of ownership of S2, and*
      - (ii) *P1 and P2 consent to S2 ceasing to be listed chemist premises as a consequence of the application; and*
    - (c) *in the case of an application to which paragraph (3)(b) does not apply, that P1 consents to S2 ceasing to be listed chemist premises as a consequence of the application.*
  7. *In the case of an application to which paragraph (4) applies, the NHSCB must refuse the application unless it is satisfied—*
    - (a) *that P2 is proposing to carry on at S1, in place of P1, the business in the course of which P1 is providing pharmaceutical services at S1;*
    - (b) *that P2 is undertaking to provide the same pharmaceutical services as those that P1 is providing (whether or not P2 is also to provide other services that P2 is providing at S2);*
    - (c) *that the provision of pharmaceutical services at S1 is not to be interrupted, except for such period as the NHSCB may for good cause allow;*
    - (d) *if the NHSCB intends to commission from P2 at or from S1 enhanced services which P2 provides at or from S2 but which P1 has not been providing at or*

*from S1, that the provision of those services will not be interrupted except for such period as the NHSCB may for good cause allow; and*

(e) *that—*

(i) *P1 consents to the change of ownership of S1, and*

(ii) *P1 and P2 consent to S2 ceasing to be listed chemist premises as a consequence of the application.*

8. *If two or more consolidation applications are being considered together, as regards the issue of a gap in provision, as mentioned in paragraph (5)(a), each application may be refused on the basis of the cumulative effect on provision of all the applications being considered together.”*

- 6.5 In relation to Regulation 26A(1), the Committee noted the Commissioner was silent on this, however the Applicant had confirmed that they are already included in the pharmaceutical list for Birmingham Health and Wellbeing Board area and further that this had not been disputed by any party.
- 6.6 In relation to Regulation 26A(2), the Committee noted that this was a statement of fact and did not require any determination.
- 6.7 In relation to Regulation 26A(3), the Committee noted that there is no dispute that the Applicant, Pan Healthcare Ltd, owns both premises in relation to the consolidation application. The Committee therefore determined that this application was not an application to which Regulation 26A(3)(b) applied.
- 6.8 In relation to Regulation 26A(4), the Committee noted that it related to a situation where different persons were listed on the pharmaceutical list for each site. As the Applicant owned both sites, the Committee determined that this application was not an application to which Regulation 26A(4) applied.
- 6.9 In relation to Regulation 26A(5)(a), the Committee was mindful that it must refuse a consolidation application if it is satisfied that granting the application would create a gap in pharmaceutical services provision that could be met by a routine application to:
- 6.9.1 meet a current or future need for pharmaceutical services, or
- 6.9.2 to secure improvements or better access to pharmaceutical services.
- 6.10 The Committee noted that paragraph 19(5) of Schedule 2 of the Regulations provides that, where a Health and Wellbeing Board is notified of a consolidation application, the Health and Wellbeing Board must make representations under paragraph 19(4) of Schedule 2 (representations in writing about the application) which, in addition to any other matter about which it may wish to make representations, indicate whether, if the application were granted, in the opinion of the Health and Wellbeing Board the proposed removal of premises from its pharmaceutical list would or would not create a gap in pharmaceutical services provision that could be met by a routine application:
- 6.10.1 meet a current or future need for pharmaceutical services, or
- 6.10.2 to secure improvements or better access to pharmaceutical services.
- 6.11 The Committee noted that Birmingham Health and Wellbeing Board had been invited by the Commissioner to comment on the application within the 30 day consultation period but had not responded. The Birmingham Health and Wellbeing Board had also been invited to comment on the appeal and representations were received.

- 6.12 The Committee noted the undisputed information provided by the Applicant that there are a total of 7 pharmacies within a mile radius of the closing site and there are a total of 24 pharmacies if a 2 mile radius is used.
- 6.13 The Committee noted, from the information provided by the Applicant and supported by the Health and Wellbeing Board, that there is a pharmacy located 1.7 miles away at Tesco which is open on a Sunday from 11am to 5pm. The Committee was mindful that whilst this pharmacy had reduced its core hours, as set out in the supplementary statement, the opening hours on a Sunday remained unchanged and there was still service provision until 9pm during the week.
- 6.14 The Committee noted the undisputed information from the Health and Wellbeing Board that there are a further 2 pharmacies in the area which offer opening hours on Sundays (10am to 8pm and 10am to 4pm) and these are located approximately 2.7 and 2.54 miles respectively from the closing site.
- 6.15 The Committee noted the information provided by the Applicant with regard to access to the nearest pharmacy both on an evening and on a Sunday. The Committee noted the limited information provided with regard to those who currently accessed services on foot. The Committee noted that the walk to Tesco was described as straightforward and, whilst it was over a mile, there was no evidence that those who could and were able to access alternative pharmacies on foot would have difficulties in doing so. The Committee was of the view that for those who had access to private transport there were no access issues. For those who used public transport, the Committee noted that there were two bus routes which served both the closing and consolidation site which also carried on along Coventry Road to the Swan Shopping Centre. The Committee noted that this information was not disputed by any party.
- 6.16 The Committee noted, from the information provided by the Applicant that both the closing and the consolidation site are contracted to provide 40 core hours a week. The Committee further noted:
- 6.16.1 the closing site, currently provides 85 hours a week. The core hours are: 9am to 11am Monday to Saturday and 6:30pm to 10pm Monday to Friday, 5:30pm to 10pm on a Saturday and then 10am to 2pm and 1pm to 5pm on a Sunday;
- 6.16.2 the consolidation site, which is located 300 metres from the closing site, currently provides 56 hours a week; and
- 6.16.3 the consolidation site is currently open 8:30am to 6pm Monday to Friday and 9am to 5:30pm on a Saturday with core hours 9am to 12pm and 2pm to 6pm Monday to Friday and 9am to 11:30am and 3pm to 5:30pm on a Saturday.
- 6.17 The Committee also noted that, in its letter of appeal, the Applicant has submitted further information as to why it consider the application should be granted, which can be summarised as follows:
- 6.17.1 The short distance between the consolidation site and the closing site of 300 metres;
- 6.17.2 Both the consolidation site and the closing site are located on the same road and there would be no problems for individuals who currently access the closing site being able to access the consolidation site;
- 6.17.3 The walk to Tesco is straightforward;
- 6.17.4 Coventry Road is a busy well used road with good public transport links to the wider area;

- 6.17.5 There is a dedicated car park at the consolidation site compared to the limited car parking available at the closing site; and.
- 6.17.6 There are alternative pharmacies in the vicinity which are a short distance away that offer late night opening hours and that these are served by two bus routes as well as good car parking at the Tesco late night pharmacy.
- 6.18 The Committee noted that none of the information provided by the Applicant had been challenged by any party.
- 6.19 The Committee noted the representations made by the Health and Wellbeing Board and whilst *“the Board has previously discussed its concern about the reductions in pharmacy access hours and the national investment in community pharmacies as key points of access for citizens to get support from a trained healthcare professional”* the Board was of the view that *“the proposed consolidation would not create a significant gap in pharmaceutical provision as there will remain Sunday hours provision nearby in the locality.”*
- 6.20 The Committee went on to consider whether it is satisfied that granting the application would create a gap in pharmaceutical services that could be met by a routine application to meet a current or future need for pharmaceutical services or to secure improvements, or better access, to pharmaceutical services.
- 6.21 The Committee considered that the wording of Regulation 26A(5)(a) sets a threshold that must be met in order to refuse an application. In order to do so, the decision maker must be satisfied that granting the application “would” create a gap in pharmaceutical services provision that could be met by a routine application. This is clearly a higher standard than would be the case if it stated that the application must be refused if granting it “might”, “may” or “could” create such a gap. It suggests that there is at least a high probability, if not a certainty, that granting the application will cause such a gap.
- 6.22 The Committee was of the view that the Health and Wellbeing Board’s comments on whether such a gap would be created, which it is legally obliged to provide, carry significant weight on this point. The Committee noted that the Health and Wellbeing Board is of the view that *“the proposed consolidation would not create a significant gap in pharmaceutical provision ...”*
- 6.23 The Committee considered that the Applicant had addressed the issue of whether or not granting the application would create a gap in pharmaceutical provision that could be met by a routine application. The Applicant has referred to the short distance between the closing site and the consolidation site, the ease of access between them and the availability of other pharmacies nearby and has stated that there will be no change in the services provided by granting the application. The Committee noted that the Commissioner had not sought to expand upon its view in its decision as to why the application should not be granted and provided no response to the appeal.
- 6.24 The Committee determined that the Applicant’s comments on this point were credible. As no party, including the Commissioner, had provided any response to these comments, the Committee determined that it was not satisfied that granting the application would create a gap in pharmaceutical service provision that could be met by a routine application to meet a current or future need for pharmaceutical services or to secure improvements, or better access, to pharmaceutical services. The Committee therefore determined that the application should not be refused under Regulation 26A(5)(a).
- 6.25 In relation to Regulation 26A(5)(b), the Committee was mindful that it must refuse a consolidation application if either sites of the consolidation application are distance selling premises or appliance contractor premises.

- 6.26 The Committee noted that the Commissioner had not considered this aspect in its decision letter, however the Applicant had confirmed in their application form that neither pharmacy is a distance selling or an appliance contractor and this had not been disputed. Therefore the Committee determined that it was not required to refuse the application under Regulation 26A(5)(b).
- 6.27 In relation to Regulation 26A(6)(a) the Committee noted, from the application form that the advanced and enhanced services the Applicant currently provides are the same at both sites, which has not been disputed by any party. The Applicant, in their application form, has confirmed that there will not be any interruption to service provision. Therefore the Committee determined that it was not required to refuse the application under Regulation 26A(6)(a).
- 6.28 In relation to Regulation 26A(6)(b) and Regulation 26A(6)(c), the Committee was of the view that this criteria is not relevant as the Applicant owns both premises and consents to the pharmacy at 2222 Coventry Road ceasing to be listed chemist premises as a consequence of the application. The Committee determined that it was not required to refuse the application under Regulation 26A(6)(b) or 26A(6)(c).
- 6.29 In relation to Regulation 26A(7), the Committee noted that this only applies if Regulation 26A(4) applies. The Committee had already determined that this was not an application to which Regulation 26A(4) applied and so the Committee determined that it was not required to refuse the application under Regulation 26A(7).
- 6.30 In relation to Regulation 26A(8), the Committee noted that this application was not being considered with any other consolidation applications and therefore Regulation 26A(8) did not apply.
- 6.31 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 6.31.1 confirm the Commissioner's decision;
  - 6.31.2 quash the Commissioner's decision and redetermine the application;
  - 6.31.3 if it considers that there should be a further notification to the parties to make representations, quash the Commissioner's decision and remit the matter to the Commissioner.

## 7 Decision

- 7.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of the Commissioner, for the reasons given above, and redetermines the application.
- 7.2 The Committee determined that the application should be granted.

**Case Manager**  
**Primary Care Appeals**