

20 May 2024

FILE REF: **SHA/26159**

8th Floor
10 South Colonnade
Canary Wharf
London
E14 4PU

DECISION MAKING BODY: **Hertfordshire and West Essex ICB
("the Commissioner")**

Tel: 0203 928 2000
Email: nhsr.appeals@nhs.net

PHARMACIST: **Repeat Prescription Order Line Ltd
("the Applicant")**

PREMISES: **85 Saddlebow Road
South Lynn
Kings Lynn
Norfolk
PE30 5BH**

THE NATIONAL HEALTH SERVICE (PHARMACEUTICAL AND LOCAL PHARMACEUTICAL SERVICES) REGULATIONS 2013 ["THE REGULATIONS"]

**SCHEDULE 4 [Terms of Service of NHS Pharmacists]
PART 3 [Hours of Opening]**

Outcome

- 1.1 Based on the information provided, I am satisfied that maintaining the existing level of service provision is unnecessary but that a sustainable level of service provision is maintained for the people in the area or other likely users of the pharmacy premises.
- 1.2 Therefore, I substitute the decision of the Commissioner to reject the change of hours application, with the decision to grant the change of hours application, without a direction.

A copy of this decision is being sent to:

Gordons Partnership on behalf of Repeat Prescription Order Line Ltd
Hertfordshire and West Essex ICB

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**SCHEDULE 4 [Terms of Service of NHS Pharmacists]
PART 3 [Hours of Opening]**

1 Introduction

1.1 The Applicant has applied to the Commissioner to change the days and times at which it is obliged to provide pharmaceutical services at the above premises. The Applicant seeks to keep the total number of core opening hours the same while offering a different distribution of these hours during the week.

1.2 The Commissioner has refused the application. The Applicant seeks to appeal to NHS Resolution.

Rights of appeal

1.3 Where the Commissioner has determined an application under paragraph 26 of Schedule 4 of the Regulations and has granted it in part only or has taken an action that has the effect of refusing it, paragraph 26(9) provides a right of appeal to the Secretary of State for Health and Social Care ("the Secretary of State").

1.4 The Secretary of State has directed NHS Resolution to determine such appeals. As an authorised officer of NHS Resolution, I have considered the appeal and have determined it, in accordance with my delegated powers.

Opening hours

1.5 A pharmacy's opening hours may be categorised as:

1.5.1 "core opening hours" (at the hours during which the pharmacy must be open by virtue of paragraph 23(1) of Schedule 4 of the Regulations), which may incorporate a direction of the Commissioner requiring fewer or greater than 40 hours and at set times and days; or

1.5.2 "supplementary" opening hours (other hours during which the pharmacy premises are open which are in addition to the core hours), pursuant to paragraph 23(3) of Schedule 4 of the Regulations.

Alteration of core opening hours

- 1.6 In accordance with paragraphs 1(7)(c) and 1(7)(d) of Schedule 2 of the Regulations, the pharmacy must provide, as part of an application for entry in the pharmaceutical list:
- 1.6.1 the proposed core opening hours in respect of the premises; and
- 1.6.2 the total proposed opening hours for the premises (having regard to both the proposed core opening hours and any supplementary opening hours).
- 1.7 The Commissioner maintains pharmaceutical lists that include the days on which and times at which, at those premises, the listed person is to provide those services during the core opening hours and any supplementary opening hours of the premises.
- 1.8 The days on which or times at which a pharmacy is obliged to provide pharmaceutical services at the premises may only be altered by the pharmacy on application under paragraph 26(1) of Schedule 4 of the Regulations, so long as the effect of that application is to reduce the total number of hours for which a pharmacy is obliged to provide, or keep the total number of hours the same.

Alteration of supplementary opening hours

- 1.9 Supplementary opening hours may be altered by the pharmacy giving notice to the Commissioner, in accordance with paragraph 23(6)(a) of Schedule 4 of the Regulations, without the need to make an application to the Commissioner.
- 1.10 There is no specific right of appeal to NHS Resolution in respect of notices given under paragraph 23(6)(a).

The Applicant's proposals

- 1.11 The Applicant in its letter of appeal indicates that it currently has core opening hours totalling 40 hours per week.
- 1.12 The Applicant wishes to:
- 1.12.1 Open at 9am Monday to Friday rather than at 9:30am; and
- 1.12.2 Close at 6pm Monday to Friday rather than at 6:30pm.

2. Application

In this case, the Applicant provided the following information in its application form and supporting information dated 26 May 2023:

- 2.1 "This is an application to permanently change core opening hours.
- 2.2 Current opening hours for these premises:

Monday	9.30am to 1pm; 2pm to 6:30pm
Tuesday	9.30am to 1pm; 2pm to 6:30pm
Wednesday	9.30am to 1pm; 2pm to 6:30pm
Thursday	9.30am to 1pm; 2pm to 6:30pm
Friday	9.30am to 1pm; 2pm to 6:30pm
Saturday	Closed
Sunday	Closed

- 2.3 Proposed core opening hours for these premises:

Monday	9am – 1pm; 2pm – 6pm
Tuesday	9am – 1pm; 2pm – 6pm
Wednesday	9am – 1pm; 2pm – 6pm
Thursday	9am – 1pm; 2pm – 6pm
Friday	9am – 1pm; 2pm – 6pm
Saturday	Closed
Sunday	Closed

- 2.4 If this is a permanent change, please state below the date from which you would like the change to take effect: Monday 3 July 2023 or as soon as possible thereafter.
- 2.5 The pharmacy will continue to provide 40 core hours of pharmacy service each week to support the service provision for the people in the area, or other likely users of the pharmacy premises.
- 2.6 Based on our many years' experience, it has been unnecessary, unrealistic and unviable to trade between 6pm and 6.30pm; the need for pharmaceutical services is significantly greater between 9am and 9.30am.
- 2.7 There are other pharmacies in close proximity providing pharmaceutical services after 6pm, namely: Well Pharmacy, Gayton Road; and, Lloydspharmacy, Hardwick Roundabout. There are other pharmacies a short drive away: Key Chemist, Terrington. St Clement; Watlington Health, Watlington; and, Willows Pharmacy, Terrington St. John."

3. The Decision

In a letter to the Applicant dated 4 January 2024 the Commissioner decided to refuse the application. The decision letter stated:

- 3.1 "The Pharmaceutical Services Regulations Committee (hereafter referred to as "the Committee") considers all pharmaceutical services applications on behalf of NHS Hertfordshire & West Essex ICB on behalf of all six ICBs in the East of England region, in accordance with the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 as amended (hereafter referred to as "the Regulations").
- 3.2 The Committee considered this application under Schedule 4, Part 3, paragraph 24 and 26 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 9 as amended). [sic]
- 3.3 The application was considered under 26(1)(b)
- 3.4 The current core hours are:

Current			40:00	0:00
Monday	9:30	13:00	14:00	18:30
Tuesday	9:00	13:00	14:00	18:30
Wednesday	9:00	13:00	14:00	18:30
Thursday	9:00	13:00	14:00	18:30
Friday	9:00	13:00	14:00	18:30
Saturday				
Sunday				

- 3.5 Total 40 core hours per week.
- 3.6 The applicant proposed core hours of:

Proposed			40:00	0:00
Monday	9:00	13:00	14:00	18:00
Tuesday	9:00	13:00	14:00	18:00
Wednesday	9:00	13:00	14:00	18:00
Thursday	9:00	13:00	14:00	18:00
Friday	9:00	13:00	14:00	18:00
Saturday				
Sunday				

- 3.7 The current core and supplementary hours were confirmed as correct in line with the pharmaceutical list and the current overall opening hours agree with the hours listed on NHS.UK.
- 3.8 The Committee noted the proposed change will result in no overall change in the total number of core opening hours. The applicant proposed to open at 09.00am rather than 09.30am and close at 18.00 rather than 18.30.
- 3.9 In accordance with the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 as amended, Schedule 4, Part 3, paragraph 26(2) the pharmacy...
- 3.9.1 *"...must provide the NHSCB with such information as the NHSCB may reasonably request in respect of the matters that NHS England must seek to ensure pursuant to paragraph 24(1)."*
- 3.10 The Committee considered Schedule 4, Part 3, paragraph 24(1) of the Regulations.
- 3.11 The Committee noted the information provided and is as follows:
- "The pharmacy will continue to provide 40 core hours of pharmacy service each week to support the service provision for the people in the area, or other likely users of the pharmacy premises.*
- Based on our many years' experience, it has been unnecessary, unrealistic and unviable to trade between 6pm and 6.30pm; the need for pharmaceutical services is significantly greater between 9am and 9.30am.*
- There are other pharmacies in close proximity providing pharmaceutical services after 6pm, namely: Well Pharmacy, Gayton Road; and, Lloyds pharmacy, Hardwick Roundabout. There are other pharmacies a short drive away: Key Chemist, Terrington. St Clement; Watlington Health, Watlington; and, Willows Pharmacy, Terrington St. John".*
- 3.12 The Committee noted the nearest pharmacy and surgery opening hours by the most practicable route. Details were disseminated to all members and attendees prior to the meeting.
- 3.13 It was noted there are seven pharmacies within a 1.5-mile radius, with varying opening hours. One pharmacy is open until 18.30 Monday to Friday and another pharmacy is open until 20.00. The other five pharmacies close at 18.00 or earlier. Two pharmacies have Saturday opening hours and another two have Saturday and Sunday opening hours.
- 3.14 However, it was noted that some of these opening hours are supplementary hours which may be withdrawn at any time with the required notice.
- 3.15 The numbers of prescriptions dispensed by those nearest to the applicant during the month of June 2023 was shared with the Committee prior to the meeting.

- 3.16 The Committee noted that information as to what days of the week and what times the prescriptions were dispensed is not available, however it does show a good comparison against the other pharmacies in close locality.
- 3.17 It was noted there are 5 surgeries within a 1.5-mile radius. These are all open Monday to Friday with opening hours ranging from 08.00 to 18.30, with one surgery open from 07.30 – 20.00, Monday to Friday and another surgery with Saturday opening hours of 08.30 – 11.00.
- 3.18 The Committee noted any needs, improvements or better access that are included in the latest PNA for the area within which the contractor’s premises are located.
- 3.19 The Committee noted that this pharmacy is situated within the Kings Lynn and West Norfolk locality. The PNA made the following statement:
- “No gaps have been identified in the need for pharmaceutical services in specified future circumstances across Norfolk.*
- No gaps have been identified in the provision of advanced or essential services at present or in the future that would secure improvements or better access in Norfolk”.*
- 3.20 The Committee noted the number of Temporary Suspensions for the applicant and nearest pharmacies, since October 2022 which was shared with the Committee prior to the meeting.

Decision

- 3.21 The Committee refused the application, and the rationale for their decision is outlined below:
- 3.22 The applicant has not provided an assurance that the days and times at which pharmacy premises are open for the provision of pharmaceutical services in the area in which the premises that are the subject of the direction are located are such as —
- (a) to maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises; or
 - (b) to maintain a sustainable level of adequate service provision for the people in that area or other likely users of the pharmacy premises, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome.
- 3.23 The Committee agreed that as the application has been refused, appeal rights are granted to the applicant, Repeat Prescription Order Line Ltd
- 3.24 Therefore, you are expected to be open as follows: -

Current			40:00	0:00
Monday	9:30	13:00	14:00	18:30
Tuesday	9:30	13:00	14:00	18:30
Wednesday	9:30	13:00	14:00	18:30
Thursday	9:30	13:00	14:00	18:30
Friday	9:30	13:00	14:00	18:30
Saturday				
Sunday				

- 3.25 You have the right of appeal to the Secretary of State against our decision. Should you choose to appeal, then you should send in writing a concise and reasoned statement

of the grounds for your appeal within 30 days of the date of this letter to: nhsr.appeals@nhs.net or NHS Resolution, 8th Floor, 10 South Colonnade, Canary Wharf, London, E14 4PU.”

4. The Appeal

In a letter to NHS Resolution dated 2 February 2024, Gordons Partnership Solicitors appealed against the Commissioner’s decision. The grounds of appeal are :

4.1.1 “We act for Repeat Prescription Order Line Limited trading as Halls the Chemist. Our client wishes to appeal against the decision by NHS England (NHS Hertfordshire & West Essex ICB) to refuse the application to permanently change core opening hours at Halls the Chemist (FWH40), 85 Saddlebow Road, South Lynn, Kings Lynn, Norfolk, PE30 5BH.

The Application

4.2 This was an application for change of hours for a pharmacy located on Saddlebow Road, South Lynn, Kings Lynn, Norfolk, PE30 5BH operating 40 core hours per week.

4.3 The test for the application is set out in Schedule 4, Paragraph 24(1) of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 and is in two parts. The application was largely made on the basis that it satisfied the first limb of the test in that the existing level of service provision would have been maintained, however, the aspect of sustainable service provision was also relevant.

4.4 The current core hours are from 9.30am to 1pm and 2pm to 6.30pm Mondays to Fridays. The applicant proposed to amend these to 9am to 1pm and 2pm to 6pm Mondays to Fridays. This proposal would not have resulted in an overall change to the total number of core opening hours.

The decision by NHS Hertfordshire & West Essex ICB

4.5 The reasons for the decision was that:

4.5.1 *“The applicant has not provided an assurance that the days and times at which pharmacy premises are open for the provision of pharmaceutical services in the area in which the premises that are the subject of the direction are located are such as —*

(a) to maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises; or

(b) to maintain a sustainable level of adequate service provision for the people in that area or other likely users of the pharmacy premises, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome.”

The grounds of appeal

Procedural defects

4.6 No proper reasons have been given by the ICB for the refusal of the application. The decision set out above merely constitutes a restatement of the test to be applied and provides no indication of the basis on which the decision is made and the reasons for the committee’s conclusion that the assurances provided by the applicant were not adequate.

4.7 Other procedural defects include the time that it has taken to make the decision. The application was made in May 2023 and our client engaged fully with the process but in

breach of regulatory obligations no formal communication of the decision was made to our client until January 2024.

- 4.8 On this basis the decision made is unlawful and should be quashed and redetermined.

Flawed analysis of application

- 4.9 The further ground of appeal is that the committee came to an incorrect decision based on a flawed analysis of the facts of this application.

Services already offered in the locality

- 4.10 As noted by the Committee, there are seven other pharmacies within a 1.5 miles radius. Therefore there is significant choice for the population in the vicinity of Halls the Chemist. Of these, one of the closest is Boots The Chemist, 4 Hardwick Retail Park which is open Mon-Fri 8.30am-8pm, Sat 8.30am-6pm and Sun 10am-4pm. This pharmacy is 0.8miles away. The pharmacy is accessible; the retail park has a large car park and it is served by 4 different bus routes. It is also a location that people will travel to in the evening as part of their day to day lives as it has a number of late-night retail outlets such as Tesco Extra and McDonalds.

- 4.11 Overall, the PNA records that the whole of Norfolk has 19 100-hour pharmacies, the latest opening time is 11pm on a weekday. There are no gaps in provision identified in the vicinity of the applicants pharmacy.

- 4.12 The hours of the doctors surgeries were noted in the decision:

“It was noted there are 5 surgeries within a 1.5-mile radius. These are all open Monday to Friday with opening hours ranging from 08.00 to 18.30, with one surgery open from 07.30 – 20.00, Monday to Friday and another surgery with Saturday opening hours of 08.30 – 11.00.”

- 4.13 The weekend opening hours are irrelevant to this application as the application only applies to weekday hours. The committee have failed to identify whether the surgeries were already served pharmacies immediately adjacent to them. The position is that two of the five surgeries have adjacent pharmacies. Well at Gayton Road Health Centre is open until 6.30pm and will cater for demand for any acute prescription at the adjacent health centre. Boots The Chemist at Southgates Medical Centre 41 Goodwins Rd is open Mon-Fri 8am-6pm and our client did not receive any requests for prescriptions from this surgery, or in fact any other surgery, between 6pm and 6:30pm when the data was surveyed. A further GP surgery does not open after 5:30pm.

Patient usage audit

- 4.14 The applicant has surveyed the number of people visiting the pharmacy over a four-week period before the application was made. This was done by a member of staff simply marking patients attending the pharmacy on a spreadsheet on the relevant days/ hours where change in times is applied for. There were separate columns indicating whether they attended for an OTC sale, to collect a prescription or for other essential services. The collated totals of all visits are set out in the attached document. [Appendix A].

- 4.15 It can be seen that no essential services were provided between 6:00 and 6:30pm.

Likely users of the pharmacy

- 4.16 Likely users of the pharmacy include those with acute prescriptions who have come from the GP surgeries. Our comments above show that the existing level of service will be maintained if the pharmacy closes at 6pm rather than 6:30pm.

- 4.17 Opportunistic users of pharmaceutical services and local residents are other possible users – these could be considered as two separate groups but because of geographical and social factors for this pharmacy they are considered as one group. The pharmacy is located in a predominantly residential area. Geographically, the nature of the pharmacy population has changed as at one time Saddlebow Road, where the pharmacy is located, was a through road [sic] and the pharmacy dealt with passing customers. However, the road is now limited to bus access only and the majority of the pharmacy users are the residential population.
- 4.18 The peak of demand is linked to the local school which has been redeveloped and has had a nursery facility added. Therefore, the pharmacy has a high demand for use around 9am and 3pm. There is another peak in use at around 5pm but very little activity after 6pm. The change in core hours would reflect the demand of the residential population.
- 4.19 For those seeking out of hours services by car - parking is generally available at the neighbouring pharmacies and the fact that no potential patients have visited during the hours that the pharmacy proposes closure is thought to be due to the fact that other services exist in places where people are already travelling to such as Boots and where there is extremely easy access in terms of parking and access to major roads.
- 4.20 In summary, the ICB was wrong in finding that existing level of service will be not maintained if the application is granted. On the evidence provided there appears to be no need for pharmaceutical services in the hours that have been identified as to be closed in the application. In addition, the pharmacy service will be enhanced by the addition of hours in the weekday mornings.

Maintenance of a sustainable level of adequate service provision.

- 4.21 If the ICB was not satisfied that the application would maintain the existing level of service provision it should have proceeded to consider whether the applicant meets the second strand of the test as set out below.

“24(1)(b) to maintain a sustainable level of adequate service provision for the people in that area or other likely users of the pharmacy premises, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome.”

- 4.22 The points set out above also demonstrate why the existing level of service provision in the hours the applicant wishes to close is unnecessary and to avoid repetition, they are summarised as follows:

4.22.1 The hours that are proposed to be closed in the evening are not used,

4.22.2 The provision of pharmaceutical services in the surrounding area is extensive and accessible,

4.22.3 There are no likely users of the service who will be unable to access pharmaceutical services during the hours that are proposed to be closed.

4.22.4 In addition, the additional hours in weekday mornings will support patients when there is demand for services.

- 4.23 We ask NHS Resolution to allow our client’s appeal. If an oral hearing is arranged our client would want to attend and be represented.”

5. Representations

In a letter to NHS Resolution dated 7 March 2024 the Commissioner stated:

- 5.1 “Please note that from the 01 April 2023, community pharmacy contracting and commissioning has been delegated to Integrated Care Boards (ICBs). Hertfordshire and West Essex (HWE) ICB are hosting the function on behalf of the six East of England ICBs.
- 5.2 Please find below information we wish to be considered in relation to Repeat Prescription Order Line Limited T/A Halls the Chemist (‘Halls the Chemist’).
- 5.3 Having reviewed the grounds of the appeal and the information provided by Gordons Partnership Solicitors on behalf of Halls the Chemist, we remain of the opinion that this application should be refused.
- 5.4 The grounds for the appeal appear to be:
- 5.4.1 *The Committee came to an incorrect decision based on a flawed analysis of the facts of this application.*
- 5.4.2 *Procedural defects such as no proper reasons have been given by the ICB for the refusal of the application and the time that it has taken to make the decision. The application was made in May 2023 and no formal communication of the decision was made until January 2024.*
- 5.5 Having reviewed the notice of appeal, HWE ICB would like to make the following representations on behalf of Norfolk and Waveney ICB.
- 5.6 As the Appellant submitted an application to make a permanent change to core hours, the Pharmaceutical Services Regulations Committee (PSRC) considered this application under paragraphs 24 and 26, Schedule 4 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended (‘the regulations’). It is noted that Repeat Prescription Order Line Limited T/A Halls the Chemist do not provide any supplementary hours, although did have supplementary opening hours between 09.00 and 10.30 Monday to Friday until 31 July 2023.
- 26.— (1) *An NHS pharmacist (P) may apply to the NHSCB for it to change the days on which or times at which P is obliged to provide pharmaceutical services during core opening hours at P’s pharmacy premises in a way that—*
- (a) *reduces the total number of hours for which P is obliged to provide pharmaceutical services at those premises each week; or*
- (b) *keeps that total number of hours the same.*
- (2) *Except where sub-paragraph (2A) applies, where P makes an application under sub-paragraph (1), as part of that application P must provide the NHSCB with such information as the NHSCB may reasonably request in respect of the matters that NHS England must seek to ensure pursuant to paragraph 24(1).*
- 24.— (1) *Subject to paragraph 26(2A), where NHS England issues a direction for setting any days or times for opening hours under this Part, or determines them without issuing a direction, it must in doing so seek to ensure that the days and times at which pharmacy premises are open for the provision of pharmaceutical services in the area in which the premises that are the subject of the direction are located are such as—*
- (a) *to maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises; or (b) to maintain a sustainable level of adequate service provision for the people in that area or other likely users of the pharmacy premises, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome.*

5.7 The current and proposed core hours are set out below:

Current opening hours			Proposed opening hours		
Day	Core	Core	Day	Core	Core
Mon	09.30–13.00	14.00–18.30	Mon	09.00-13.00	14.00–18.00
Tues	09.30–13.00	14.00–18.30	Tues	09.00-13.00	14.00–18.00
Wed	09.30–13.00	14.00–18.30	Wed	09.00-13.00	14.00–18.00
Thurs	09.30–13.00	14.00–18.30	Thurs	09.00-13.00	14.00–18.00
Fri	09.30–13.00	14.00–18.30	Fri	09.00-13.00	14.00–18.00
Sat	Closed	Closed	Sat	Closed	Closed
Sun	Closed	Closed	Sun	Closed	Closed

5.8 The overall effect, therefore, of the application is that the Appellant is seeking to:

5.8.1 Open the pharmacy 30 minutes earlier on Mondays to Fridays,

5.8.2 Close the pharmacy 30 minutes earlier on Mondays to Fridays.

5.9 The PSRC is in agreement with the Appellant that *“this proposal would not have resulted in an overall change to the total number of core opening hours.”* (Page 1 of the appeal letter).

5.10 NHS England's template application form asks that the applicant provide such information so as to demonstrate that the proposed core opening hours will either:

5.10.1 maintain as necessary the existing level of service provision for people in the area of the pharmacy, or other likely users of the pharmacy premises; or

5.10.2 maintain a sustainable level of adequate service provision for the people in the area of the pharmacy, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome.

5.11 In response, the Appellant stated the following:

“The pharmacy will continue to provide 40 core hours of pharmacy service each week to support the service provision for the people in the area, or other likely users of the pharmacy premises.

Based on our many years' experience, it has been unnecessary, unrealistic and unviable to trade between 6pm and 6.30pm; the need for pharmaceutical services is significantly greater between 9am and 9.30am.

There are other pharmacies in close proximity providing pharmaceutical services after 6pm, namely: Well Pharmacy, Gayton Road; and, Lloyds pharmacy, Hardwick Roundabout. There are other pharmacies a short drive away: Key Chemist, Terrington. St Clement; Watlington Health, Watlington; and, Willows Pharmacy, Terrington St. John”.

5.12 On appeal the Appellant has expanded upon this by stating that there is significant choice for the population in the vicinity of Halls the Chemist and goes on to state the following.

“As noted by the Committee, there are seven other pharmacies within a 1.5 miles radius. Therefore there is significant choice for the population in the vicinity of Halls the Chemist. Of these, one of the closest is Boots The Chemist, 4 Hardwick Retail Park which is open Mon-Fri 8.30am-8pm, Sat 8.30am-6pm and Sun 10am-4pm. This pharmacy is 0.8miles away. The pharmacy is accessible; the retail park has a large car

park and it is served by 4 different bus routes. It is also a location that people will travel to in the evening as part of their day to day lives as it has a number of late night retail outlets such as Tesco Extra and McDonalds.” (Page 2 of the appeal letter).

- 5.13 The PSRC has reviewed this additional information and would like to submit the following representations. It maintains that the decision to refuse the application was correct.

Paragraph 24(1)(a), Schedule 4

- 5.14 It is first necessary to identify the existing level of service provision for people in the area of Halls the Chemist or other likely users of the pharmacy.
- 5.15 The Appellant is proposing to maintain the total number of core opening hours (40) provided Monday to Friday but is seeking to change the times when the pharmacy is open. The existing level of service provision would therefore not be maintained because the proposed change will see the pharmacy open 30 minutes earlier and close 30 minutes earlier Monday to Friday.
- 5.16 It is therefore necessary to identify whether there are other providers of pharmaceutical services in the area, when they are open and whether when considered, they would maintain the existing level of service provision.
- 5.17 When assessing the existing level of service provision by these other pharmacies, the PSRC has only considered core opening hours Monday to Friday.
- 5.18 There are 7 pharmacies within a 1.5-mile radius that provide pharmaceutical services with varying opening hours. Of those 7 pharmacies only 1 has core hours until 18:30 which is Well Pharmacy on Gayton Road. The Appellant notes Boots the Chemist, 4 Hardwick Retail Park is open until 20.00. Whilst the store appears to be open until 20:00 Monday to Friday, core hours cease at 18:00 Monday to Friday. The ICB has not been notified of any amendments to supplementary hours after 18:00 Monday to Friday and are currently liaising with the contractor. Three of the remaining pharmacies close at 17:30, 1 at 17:15 and 2 at 18:00 Monday to Friday. The hours of these 7 stores are set out in Appendix 1. [See Appendix B]
- 5.19 The Appellant identified that “*There are other pharmacies in close proximity providing pharmaceutical services after 6pm, namely: Well Pharmacy, Gayton Road; and, Lloyds pharmacy, Hardwick Roundabout. There are other pharmacies a short drive away: Key Chemist, Terrington. St Clement; Watlington Health, Watlington; and, Willows Pharmacy, Terrington St. John*”.
- 5.20 The Appellant relies upon Lloyds Pharmacy at Hardwick Roundabout providing pharmaceutical services after 18.00. The PSRC can confirm that this Lloyds Pharmacy closed on 22 July 2023. There is therefore only 1 other pharmacy with core hours until 18:30 Monday – Friday (Well Pharmacy at Gayton Road Health Centre).
- 5.21 The Appellant references Key Chemist, Watlington Medical Centre and Willow Pharmacy as “*other pharmacies in close proximity providing pharmaceutical services after 6pm..... There are other pharmacies a short drive away: Key Chemist Terrington. St Clement; Watlington Health, Watlington; and, Willows Pharmacy, Terrington St. John*”.
- 5.22 Key Chemist provides supplementary opening hours on a Thursday afternoon between 14.00-18:00. Willow Pharmacy has supplementary hours 18:00 – 18:30 Monday to Friday. Supplementary hours can be withdrawn at any time, given the required notice period so cannot be relied upon. Watlington Medical Centre closes on a Tuesday afternoon from 13:45. Details of the opening hours can be found in Appendix 2. [See Appendix B] Appendix 2 also includes details on travel times as the Appellant notes these premises are a “short drive away”. These premises are between 5.5 and 7.1

miles away, a 10-14-minute drive. Whilst for those people with access to a car, a drive of between 10-14 minutes may be acceptable, those who do not have access to a car, would face a walk of 1 hour 54 minutes to Key Chemist or over a 2-hour walk to both Willow Pharmacy and the Watlington Medical Centre.

- 5.23 Norfolk and Waveney is a rural area so whilst it is recognised that on occasion patients may have to travel further, the Appellant's premises are in the town of King's Lynn and residents are not accustomed to having to travel any great distance to access pharmaceutical services. The proposed hours by the applicant would not maintain pharmaceutical service provision in the area and users of the pharmacy would be impacted to a greater degree due to the extended travel times to the next nearest pharmacy that is open at the time the Appellant proposes to close their pharmacy.
- 5.24 The Appellant has provided an "activity tracker" showing activity in the pharmacy over a 4-week period between 18:00-18:30 (weeks commencing 17 and 24 April and 1 and 8 May 2023). Whilst no prescriptions have been dispensed, it shows that patients are attending the premises. No evidence has been provided to suggest the survey was extended to ask people whether they would or could be able to access pharmaceutical services from an alternative pharmacy should the pharmacy close 30 minutes earlier. In addition staff were only asked to record people attending for a narrow range of the essential services or over the counter sales. Staff were not, for example, asked to record anyone attending for any advanced services or the discharge medicines service. The PSRC notes that the pharmacy provides the following advanced services:
- 5.24.1 new medicine service,
 - 5.24.2 influenza vaccinations,
 - 5.24.3 hypertension case-finding service, and
 - 5.24.4 Pharmacy First.
- 5.25 It is also noted that the 4-week timeframe is relatively short and over a period when there were two bank holidays. The findings may therefore not represent a typical week at the pharmacy.
- 5.26 It should also be recognised that with the expanding role of community pharmacy and the introduction of Pharmacy First post this application, it is important to maintain necessary cover until 18:30 to support users of the pharmacy and to ease pressure on urgent care services, for example.
- 5.27 It is acknowledged that the provision of pharmaceutical services is more than the dispensing of prescriptions or the provision of over-the-counter sales. It encompasses a range of essential services in line with the Terms of Service, advice and advanced services. The Appellant has provided no evidence as to what services are provided by other pharmacies at the times it is seeking to now close. It is therefore not possible for the PSRC to determine whether or not the existing level of service provision would be maintained by these other providers for people in the area or other likely users of Halls the Chemist.
- 5.28 The Appellant refers to the 5 GP surgeries that were noted in the decision:
- "The committee have failed to identify whether the surgeries were already served pharmacies immediately adjacent to them. The position is that two of the five surgeries have adjacent pharmacies. Well at Gayton Road Health Centre is open until 6.30pm and will cater for demand for any acute prescription at the adjacent health centre. Boots The Chemist at Southgates Medical Centre 41 Goodwins Rd is open Mon-Fri 8am-6pm and our client did not receive any requests for prescriptions from this surgery, or in fact any other surgery, between 6pm and 6:30pm when the data was surveyed.*

A further GP surgery does not open after 5:30pm.”

- 5.29 Whilst two of the five GP practices may have adjacent pharmacies, only one (Well at Gayton Road) is open until 18:30. Halls the Chemist may not have received any requests for prescriptions but as set out above, pharmaceutical services encompass a range of services (essential, advanced, advice etc) and users of the pharmacy may wish to attend Halls the Chemist for services other than the dispensing of an acute prescription.
- 5.30 Noting that “*a further GP surgery does not open after 5:30pm,*” it is particularly important to maintain cover until 18:30 to ensure users of the pharmacy can access health care services and support the wider health economy by easing pressure on other services (urgent care services, A&E). This is vital with the now expanding role of community pharmacy.
- 5.31 Consequently, it is the view of the PSRC that the proposed core opening hours do not satisfy paragraph 24(1)(a), Schedule 4.
- Paragraph 24(1)(b), Schedule 4
- 5.32 As the PSRC remains of the opinion that:
- 5.32.1 it is necessary to maintain the existing level of service provision,
- 5.32.2 the Appellant’s proposed opening hours would not achieve that, and
- 5.32.3 there is no evidence that other providers of pharmaceutical services would maintain the existing level of service provision,
- the PSRC now considers paragraph 24(1)(b), Schedule 4 with regard to the Appellant’s representations.
- 5.33 The Appellant has not provided any robust evidence to demonstrate that the current users of Halls the Chemist who can access services from 18:00 to 18:30 Monday to Friday would not be affected should the change in hours be granted. In light of this, it has to be considered that the service is necessary.
- 5.34 There is 1 pharmacy (Well on Gayton Road) which whilst within a 1.5 mile radius of Halls the Chemist, is a 1.9-mile drive or 1.8 mile walk (41 minutes). The Appellant assumes that this may be within an acceptable walking distance for relatively mobile service users, but this is unlikely to be the case for those who have mobility issues or who are unwell. Other factors to consider are the ways in which patients may travel to obtain pharmaceutical services, on foot, by car or public transport. For some patients, it is recognised that the distance to travel could be less, for others it could be further.
- 5.35 The Appellant makes reference to Boots at Hardwick Retail Park being served by 4 bus routes and whilst this pharmacy appears to be open until 20.00, the two hours from 18.00-20.00 are supplementary hours and can be withdrawn at any time following the required notice period.
- 5.36 As no evidence has been provided to demonstrate where patients who usually attend Halls the Chemist after 18:00 Monday to Friday would travel to, the travel options available and the services they could access on arrival, it cannot be determined that service provision is maintained, and it has to be considered that the opening hours currently provided by Halls the Chemist are necessary.
- 5.37 The PSRC is not persuaded by the Appellant’s representations that there are any circumstances where maintaining a sustainable level of adequate service provision for people in the area or other likely users of the pharmacy is either unnecessary or not a realistically achievable outcome. The Appellant in their application states:

“Based on our many years’ experience, it has been unnecessary, unrealistic and unviable to trade between 6pm and 6.30pm; the need for pharmaceutical services is significantly greater between 9am and 9.30am.”

5.38 The letter of appeal expands on this to state:

“The peak of demand is linked to the local school which has been redeveloped and has had a nursery facility added. Therefore, the pharmacy has a high demand for use around 9am and 3pm. There is another peak in use at around 5pm but very little activity after 6pm.” (Appeal letter, page 3) and “the additional hours in weekday mornings will support patients when there is demand for services.” (Appeal letter, page 4).

5.39 Halls the Chemist opens at 09:30 Monday to Friday so it is unclear how an assessment has been made that there is demand for the service between the hours of 09.00-09:30. Furthermore that this demand would negate the need to sustain a level of adequate service provision for the people in the area or other likely users of the pharmacy between 18.00-18.30. Little weight should be placed on assumptions made by the Appellant that demand is greater between 09.00-09.30 as no robust evidence has been provided.

5.40 In reviewing whether it is realistically achievable for Halls the Chemist to continue with their existing opening hours, the Appellant states in their application that it is *“unviable to trade between 18:00-18:30”* and this is expanded upon in the appeal letter that states *“there is very little activity after 6pm.”* (Appeal letter, page 3). *“Very little activity”* is not no activity and no further information or evidence has been provided to indicate where users of the pharmacy would be able to access alternatively pharmaceutical services within a reasonable distance.

5.41 It is also noted that there have been no temporary suspensions of service reported for Halls the Chemist since October 2022, so it does not appear that the pharmacy has been unable to open in the evening (or at any time) or secure staff each week. It can be concluded therefore that it is realistically achievable for Halls the Chemist to continue with their current core hours.

5.42 Consequently, the PSRC is of the view that the proposed core opening hours do not satisfy paragraph 24(1)(b), Schedule 4 and remains of the opinion that the application should be refused.

Procedural Issues

5.43 The Appellant makes note of the timescales in processing this application and we would like to respond to that.

5.44 Prior to May 2023 the opening hours for this pharmacy were as follows:

5.44.1 09.00-10.30 Monday to Friday supplementary opening hours, and

5.44.2 10.30-18.30 Monday to Friday core opening hours.

5.45 The Appellant submitted a range of documents on 26 May 2023:

5.45.1 notification of removal of supplementary opening hours between 09.00-10.30,

5.45.2 notification of the introduction of a rest break between 13.00 and 14.00, and

5.45.3 two different versions of a form to change core opening hours. One was an application to change the pharmacy’s core opening hours based on the pattern as of 26 May 2023, and the other was an application to change the pharmacy’s core opening hours based on the pattern from 3 July 2023 (following the intention expressed in the notification the introduction of a rest break).

- 5.46 Copies of these documents have been provided for completeness. The Appellant stated that they were unfamiliar with the documents so had completed all three types which they believed were required to attain their objective of changing the pharmacy's opening hours to 09.00-13.00 and 14.00-18.00 Monday to Friday.
- 5.47 On 18 July 2023, we responded to the Appellant confirming the removal of the supplementary opening hours with effect from 31 July 2023. It was also confirmed on that date that the notification of the intention to introduce a rest break between 13.00 and 14.00 Monday to Friday met the requirements of the regulations and with effect from 31 July 2023 the core opening hours of the pharmacy would be 09.30-13.00 and 14.00-18.30 as per the notification form dated 26 May 2023.
- 5.48 The Appellant confused matters by submitting the applications to change core opening hours prior to the two notifications relating to the removal of supplementary opening hours and the introduction of a rest break being dealt with and/or having taken effect.
- 5.49 The application to change core opening hours had not been determined however in that application the contractor set out the current core opening hours as 09.30-13.00 and 14.00-16.30 Monday to Friday and was asked by the ICB to review them as core hours did not finish at 16.30 Monday to Friday.
- 5.50 On receipt of the correct information, the application was then processed, the relevant papers prepared for PSRC and the decision communicated to the applicant once PSRC had taken place. It is recognised that there were delays in the process, some of which were on behalf of the applicant.

General Observations

- 5.51 The Appellant notes that there are 19 100-hour pharmacies in Norfolk with the latest opening time of 23:00 and that the Pharmaceutical Needs Assessment (PNA) for the area does not identify any gaps in the locality in terms of provision of Necessary Services. This reflected the position at point of publication in November 2022 and would have been based on the core hours as set out at that point in time, to sustain the necessary level of adequate service provision.
- 5.52 Since the publication of the PNA in November 2022 it is to note that 4 100-hour pharmacies have closed in Norfolk and of the remaining 15 100-hour pharmacies all of them have reduced their 100-hours (in line with the regulations) resulting in a loss of 350 hours. It is of course recognised that the Health and Wellbeing Board will have arrangements in place to assess any future changes that are pertinent to the granting of future applications to the PNA.

Conclusion

- 5.53 In summary, we remain of the opinion that the application should be refused."

6. Observations

In a letter to NHS Resolution dated 2 April 2024, Gordons Partnership on behalf of the Applicant stated:

- 6.1 "Thank you for your letter of 15 March 2024 giving my client an opportunity to respond to the representations received from Hertfordshire and West Essex ICB. Our client has a number of matters to raise in rebuttal of the ICPs submissions.

Core hours

- 6.2 As a preliminary issue we wish to address the ICB's statement that "the PSRC has only considered core opening hours Monday to Friday."

- 6.3 Paragraph 24(2)(b) of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (“the Regulations”) states

“(2) In considering the matters mentioned in sub-paragraph (1), the NHSCB —

(b) may have regard to any pharmaceutical services that are being provided in its area during supplementary opening hours.”

- 6.4 It was incorrect for the ICB to wholly disregard information on supplementary hours where there is no good reason to do so, and as a consequence they have not fairly considered the application by our client.

Paragraph 24(1)(a), Schedule 4

- 6.5 Provision of services between 6:00pm and 6:30pm

- 6.6 It is our client’s position that the application should be considered on the basis of the current provision of pharmaceutical services; i.e. those provided at the time the application is determined. The current opening hours (core and supplementary) of other pharmacies clearly show that there are opportunities to access services at Boots (Hardwick Retail Park), Well (Gayton Road) and others in the locality during the period 6pm to 6.30pm.

- 6.7 The Boots at the Herdwick retail park is open until 8pm. These extended hours are set out on the NHS website. It appears clear that they are operating supplementary hours and our client is aware they have done for a significant length of time. This pharmacy is particularly important to the community as it is a location that the population travel to as part of their everyday lives.

- 6.8 The ICB refers to “extended travel times to the next nearest pharmacy that is open at the time the Appellant proposes to close their pharmacy.” In fact, from Halls to Well (Gayton Road) this is just a 7 minute drive (Google Maps) and 5 minutes to Boots (Hardwick). Bisla Premier Convenience Store (169 Saddlebow Road; open until 8pm Monday to Friday, plus weekends) and Cost Cutter (45-47 Wisbech Road; open until 9pm Monday to Friday, plus weekends) are both a 4-minute walk away from Halls. They may be able to support self-care by offering for sale over the counter paracetamol, ibuprofen, cough and cold remedies and other General Sale List medicines alongside advice from NHS111 and www.nhs.uk.

Activity tracker

- 6.9 Our client wishes to clarify the position in relation to the comments made by the ICB on the historic activity tracker submitted with the application and attaches a further activity tracker [Appendix C] that was prepared when the application was refused.

- 6.10 Firstly, it is wrong for the ICB to suggest that for the historic activity tracker staff were only asked to record people attending for essential services or over the counter sales. The footnote on the tracker shows that staff were asked to record all activity between 6:00pm and 6:30pm. The initial activity tracker was timed to include two bank holidays, to assess the impact on the pharmacy at times of increased pressures. The tracker demonstrated that there was no provision of essential, advanced or enhanced services between 6pm and 6.30pm.

- 6.11 In relation to the new activity tracker, attached, (w/c 8/1/24 to w/c 29/1/24), this has further columns added but still with the same footnote. This further confirms there is neither a need nor a demand for pharmaceutical services between 6pm and 6.30pm Monday to Friday.

6.12 During the period 6/9/23 to 21/3/24 (approximately 6.5 months), Halls has received 52 CPCS/Pharmacy First referrals. None of these were accessed between 6pm and 6.30pm.

Services provided in the locality

6.13 Extensive services are provided by the contractors open between 6:00pm to 6:30pm Monday to Friday.

6.14 A document setting these out is attached – please see Appendix C.

Evidence of need between 9:00am and 9:30pm

6.15 Halls the Chemist has been providing services at the location on Saddlebow Road in South Lynn for 15 years. For most of that of that time they have been open from 9am to 9:30am. Therefore, they have significant local knowledge of the level of need during this period of the day.

6.16 In summary, the wording of the regulation is that the application should “*maintain as necessary the existing level of service provision*”. It is our client’s position that it has demonstrated that the existing level of service provision is not necessary and is not used by people in the area or the likely users of the pharmacy.

Paragraph 24(1)(b), Schedule 4

6.17 As can be seen from the evidence on prescription item numbers our client is generally not a busy pharmacy, therefore, to ensure viability it is keen to open at times where there is maximum use of its resources. It has done everything possible to avoid “temporary suspensions” and to maintain service provision, when other pharmacies have opened late, closed early or not opened at all. But workforce challenges, as experienced nationally in pharmacy, further impact the pharmacy’s viability and sustainability. If the pharmacy opens at times when there is no demand, it is spending resources when there is no income being generated. Halls the Chemist is anxious to be sustainable now and, in the future, and it is in the interests of the general population that the pharmacy is not forced to close completely.

6.18 Accordingly, the application falls within paragraph 24(1)(b), Schedule 4 of the Regulations.

Procedural issues

6.19 Our client apologises for anything that was confusing about the application process. We attach a timeline and email correspondence that was initially sent so that the context of the application is clear.

6.20 It can be seen that our client did not set out its core hours as finishing at 16:30 so is unsure what is referred to by the ICB in the penultimate page of its response letter.

6.20.1 We ask NHS Resolution to allow our client’s appeal. If an oral hearing is arranged our client would want to attend and be represented.”

7. Consideration

7.1 I note the following:

7.1.1 The Applicant’s core opening hours total 40 hours and the Applicant proposes to redistribute those 40 core opening hours pursuant to paragraph 26 of Schedule 4. The Applicant seeks to provide services as per its proposed changes in the table at 2.11 above.

- 7.2 I note there was some confusion with regard to the applications to change hours as submitted by the Applicant. In this regard, on 26 May 2023 the Applicant submitted four applications to the Commissioner. These were for:
- 7.2.1 An application to change supplementary hours;
 - 7.2.2 An application to include a rest break during the day from 1pm to 2pm;
 - 7.2.3 An application to change the core hours based on the hours offered as at 26 May 2023; and
 - 7.2.4 An application to change the core hours based on revised opening hours from 3 July 2023 (the date the rest break and supplementary hours were due to become effective).
- 7.3 In an email of 18 July 2023 the Commissioner confirmed the change to the supplementary hours as well as the proposed rest breaks and confirmed that the new core hours for the pharmacy were to be Monday to Friday 9:30am – 1pm and 2pm – 6:30pm.
- 7.4 The Commissioner then proceeded to consider the application to change the core hours based on the revised hours proposed by the Applicant which included a rest break of 1pm to 2pm Monday to Friday.
- 7.5 I note the confusion between the parties, as set out in the email from the Commissioner to the Applicant of 29 June 2023 seeking confirmation of the proposed core hours following the request for a further application form to be completed in respect of the rest break for the pharmacy.
- 7.6 The Applicant, in the timeline provided within their observations, has set out that they were advised to change the hours in stages. The submitting of all the application forms on the same day for all of the changes, whilst being “in stages” has somewhat confused the issue as to what the actual core opening hours of the pharmacy were at any point in the process.
- 7.7 In an email of 18 July 2023, the Commissioner confirmed to the Applicant that the “Annex 4” which introduced the rest break as well as a redistribution of core hours as well as the “Annex 9” the removal of supplementary hours had both been accepted and that the hours effective from 31 July 2023 were:

Monday	09:30 – 13:00	14:00 – 18:30
Tuesday	09:30 – 13:00	14:00 – 18:30
Wednesday	09:30 – 13:00	14:00 – 18:30
Thursday	09:30 – 13:00	14:00 – 18:30
Friday	09:30 – 13:00	14:00 – 18:30
Saturday		
Sunday		

- 7.8 Following receipt of the above decision from the Commissioner on 18 July 2023 and after further correspondence between the parties, the Applicant sought to change their core hours to be the hours as requested in an email trail to the Commissioner when the initial applications were submitted on 26 May 2023.
- 7.9 The Commissioner confirmed that the decision to amend the core opening hours further was to be heard at the PSRC meeting on 1 November 2023. Following the meeting on 1 November 2023, the Applicant was advised by email that the application to change their core hours had been refused, however formal notification was not received from

the Commissioner until the letter of 4 January 2024. It is the decision of 4 January 2024 which is the subject of this appeal.

- 7.10 Whilst I take no view on the processing of an application by the Commissioner I can appreciate the confusion which has been caused by amendments to the Regulations which has been compounded by multiple applications all being submitted on the same day with the same effective date and the Commissioner deciding on the order that these should be considered.
- 7.11 I take no view on the change of supplementary hours as this is not something to which I can have consideration as set out in the Regulations. I further note that the Applicant did not seek to appeal the decision of the Commissioner to grant the rest breaks as set out in the application of 26 May 2023, even though the core hours set out did not align with the intentions of the Applicant.
- 7.12 I therefore propose to consider the appeal before me which relates to the application of 26 May 2023, to change their core hours in which they propose to:
- 7.12.1 Open earlier at 9am rather than at 9:30am Monday to Friday; and
- 7.12.2 To close earlier at 6:00pm, Monday to Friday rather than stay open until 6:30pm.
- 7.13 The Regulations, which came into force on 1 April 2013, have been amended a number of times. Certain amendments, relating to pharmacy premises opening hours, came into force with effect from 25 May 2023.
- 7.14 The application to change the hours was made by the Applicant on 26 May 2023 and a decision was made by the Commissioner on 4 January 2024. The decision was appealed to NHS Resolution by letter dated 2 February 2024. I am of the view that the application and subsequent appeal should be considered against the Regulations as amended with effect from 25 May 2023.
- 7.15 The Applicant has sought to change the days and times at which it is obliged to provide pharmaceutical services under paragraph 26 of Schedule 4, Part 3, "Hours of opening".
- 7.16 Paragraph 26(1) states:
- "26.— (1) An NHS pharmacist (P) may apply to the NHSCB for it to change the days on which or times at which P is obliged to provide pharmaceutical services during core opening hours at P's pharmacy premises in a way that—*
- (a) reduces the total number of hours for which P is obliged to provide pharmaceutical services at those premises each week ...; or*
- (b) keeps that total number of hours the same."*
- 7.17 I have first considered paragraph 26(2) of Schedule 4 of the Regulations, which reads as follows:
- "Except where sub-paragraph (2A) applies, where P makes an application under sub-paragraph (1), as part of that application P must provide the NHSCB with such information as the NHSCB may reasonably request in respect of the matters that NHS England must seek to ensure pursuant to paragraph 24(1).*
- 7.18 Paragraph 24(1) reads as follows:
- "24 (1) Subject to paragraph 26(2A), where NHS England issues a direction for setting any days or times for opening hours under this Part, or determines them without issuing a direction, it must in doing so seek to ensure that the days and times at which*

pharmacy premises are open for the provision of pharmaceutical services in the area in which the premises that are the subject of the direction are located are such as –

- (a) *to maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises; or*
- (b) *to maintain a sustainable level of adequate service provision for the people in that area or other likely users of the pharmacy premises, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome.*

7.19 Paragraph 24(2) states:

(2) In considering the matters mentioned in sub-paragraph (1), the NHSCB –

- (a) *must treat any local pharmaceutical services being provided in its area as if they were pharmaceutical services being so provided, and*
- (b) *may have regard to any pharmaceutical services that are being provided in its area during supplementary opening hours.*

7.20 I will start by considering the application of paragraph 24(1)(a) and whether the proposed hours are such as to maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises. I will then consider the application of 24(1)(b) if that is required.

7.21 To properly assess the application against paragraph 24(1)(a), I need to determine the existing level of service provision. I then need to consider whether it is necessary to maintain the existing level of service provision. If it is necessary to maintain the existing level of service provision, I need to consider whether, despite the proposed change of hours, the existing level of service provision to people in the area or other likely users would be maintained, e.g. by nearby pharmacies being open and providing the same level of service provision.

7.22 If I consider it unnecessary to maintain the existing level of service provision or that it is necessary to maintain the existing level of service provision but doing so is not a realistically achievable outcome, then I need to consider paragraph 24(1)(b) and determine whether the proposed change of hours are such that a sustainable level of adequate service provision would be maintained.

7.23 I therefore need to be provided with sufficient information to understand a range of matters, starting with the existing level of service provision. The references to days and times in paragraph 24(1) leads me to consider that the reference to "level" of service provision in paragraph 24(1)(a) is mainly focused on the days and times services are provided. I would point out that "level" of service provision could also refer to other characteristics of the service, such as types and range of services provided, geographical access to services provided, other aspects of physical access aside from location, and the quality of services provided.

7.24 The existing level of service provision has been outlined by the Applicant, in its own core hours provision, and by an indication of the hours, including both core and supplementary hours, that pharmacies in the local area are open.

7.25 I have next considered whether it is necessary to maintain the existing level of service provision. It could be argued that as the Applicant is not looking to reduce the number of hours each week that services are provided, then from a pure "number of hours of service provision each week" perspective, the existing level of service provision is maintained such that consideration of whether it is necessary to maintain the level of service provision is not needed.

- 7.26 However, the Applicant is applying to change the times that services are provided. The level of service provision at the Applicant's premises is not being maintained as the Applicant is proposing to open earlier and close earlier Monday to Friday. I consider it appropriate to determine if it is necessary to maintain the existing level of service provision and then, if deemed necessary, consider if the opening hours of other pharmacies mean that level is maintained.
- 7.27 To determine whether it is necessary to maintain the existing level of service provision, I have had regard to the comments by the Applicant of those using the pharmacy. If I am satisfied that there is reliable evidence indicating no users of the pharmacy on/at the relevant days/times that the pharmacy wishes to close, this might support an argument that maintaining the existing level of service provision is not necessary.
- 7.28 The Applicant states that "*based on our many years' experience, it has been unnecessary, unrealistic and unviable to trade between 6pm and 6:30pm, the need for pharmaceutical services is significantly greater between 9am and 9:30am.*" In support of this, the Applicant provided with their original application an activity tracker for the weeks commencing 17 April 2023 to 8 May 2023 for the period 6pm to 6:30pm. This showed that activity had been limited to over the counter sales during this period. With their appeal, the Applicant submitted a revised activity tracker, which again covered a four week period between 6pm and 6:30pm for the weeks commencing 8 January 2024 to 29 January 2024. This activity tracker again showed no use of pharmaceutical services and that on one week, 22 January 2024, there was no over the counter activity at all after 6pm.
- 7.29 No information has been provided to support the assertion from the Applicant that "*the need for pharmaceutical services is significantly greater between 9am and 9:30am.*" Whilst I note the comment from the Applicant that they have been providing services between 9am and 9:30am and have "*significant local knowledge of the level of need during this period of the day*" I must consider the consequences of closing earlier on an evening
- 7.30 I further note the comment from the Applicant that as the Regulations state "*maintain as necessary the existing level of service provision ... it has demonstrated that the existing level of service provision is not necessary and is not used by the people in the area or the likely users of the pharmacy.*" I am mindful that the period 9am to 9:30am is currently part of the supplementary hours of the pharmacy and whilst the Applicant has said that for most of the time they have owned the pharmacy they have opened during this period, there is still nothing provided to demonstrate that changing the core hours will maintain as necessary the existing level of service provision.
- 7.31 I note the Applicant's comments regarding the number of CPCS/Pharmacy First referrals it had between 6 September 2023 and 21 March 2024, none of which were between 6pm and 6.30pm. I have considered the data collected by the Applicant in both April/May 2023 and January 2024. I note that during the data collection period there were no pharmaceutical services provided during the hours that the Applicant is proposing to close.
- 7.32 I consider, in relation to paragraph 24(1)(a) that I have been provided with sufficient information to demonstrate that it is not necessary to maintain the existing level of service provision as no one is accessing pharmaceutical services at the times that the Applicant is wishing to close.
- 7.33 As I have determined that maintaining the existing level of service provision is unnecessary, I next consider if, taking into account the Applicant's amended hours, the days and times at which pharmacy premises are open for the provision of pharmaceutical services in the area are such that a sustainable level of adequate service provision is maintained for the people in that area or other likely users of the pharmacy premises.

- 7.34 The Applicant is not reducing its hours and is wanting to close when no-one accesses pharmaceutical services. There is no further reduction in service provision. There is also evidence provided of other pharmacies located in the area that provide services during the hours the Applicant wishes to close. I am therefore satisfied that taking into account the amended hours that adequate service provision is maintained. I consider it reasonable to presume that the level of service provision taking into account the amended hours are sustainable. No evidence has been provided to me that rebuts this presumption. I am therefore satisfied that, taking into account the Applicant's amended hours, the days and times at which pharmacy premises are open are such that a sustainable level of adequate service provision is maintained for the people in that area or other likely users of the pharmacy premises.
- 7.35 Under paragraph 26(1) "*The Secretary of state may, when determining an appeal, either confirm the action taken by the NHSCB or take any action that the NHSCB could have taken under sub-paragraph (4)*".
- 7.36 Paragraph 26(4) states:
- (4) *When it determines the application, the NHSCB must –*
- (a) *issue a direction (which replaces any existing direction) which meets the requirements of sub-paragraphs [F391(4(A),] (5) and (5) and which has the effect of either granting the application under this paragraph or granting it only in part;*
- (b) *confirm any existing direction in respect of the times at which P must provide pharmaceutical services at the pharmacy premises, provided that the existing direction (whether issued under regulation 65, this Part, the 2012 Regulations, the 2005 Regulations or the 1992 Regulations) would meet the requirements of sub paragraph (5) and (6); or*
- (c) *either –*
- (i) *revoke, without replacing it, any existing direction in respect of the times at which P must provide pharmaceutical services at the pharmacy premises (whether issued under regulation 65, this Part, the 2012 Regulations, the 2005 Regulations or the 1992 Regulations), where this has the effect of granting the application under this paragraph or granting it only in part, or*
- (ii) *in a case where there is no existing direction, issue no direction.*
- 7.37 With regard to paragraph 26(4)(a) I note that a direction is not in place for the Applicant to provide 40 core hours as it was, and remains, a condition on inclusion for the Applicant to provide those hours.
- 7.38 For the above reasons, I am not confirming any existing direction in line with paragraph 26(4)(b).
- 7.39 Further, there is no direction to revoke in line with paragraph 26(4)(c).
- 7.40 The only option left to me is therefore to substitute the decision of the Commissioner to reject the change of hours application with the decision to grant the change of hours application, without a direction.

8. Determination

- 8.1 Based on the information provided, I am satisfied that maintaining the existing level of service provision is unnecessary but that a sustainable level of service provision is maintained for the people in the area or other likely users of the pharmacy premises.

8.2 Therefore, I substitute the decision of the Commissioner to reject the change of hours application, with the decision to grant the change of hours application, without a direction.

**Head of Appeals
NHS Resolution**