

8 May 2024

**REF: SHA/26162**

**APPEAL AGAINST FRIMLEY ICB DECISION TO REFUSE  
AN APPLICATION BY ZINBAKE LTD FOR INCLUSION IN  
THE PHARMACEUTICAL LIST OFFERING  
UNFORESEEN BENEFITS UNDER REGULATION 18 AT  
CROWN ROW, CROWN WOOD, BRACKNELL,  
BERKSHIRE, RG12 0TH**

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## 1 Outcome

- 1.1 The Pharmacy Appeals Committee (“Committee”), appointed by NHS Resolution, confirms the decision of the Commissioner therefore the application is refused.

A copy of this decision is being sent to:

Temple Bright on behalf of Zinbake Ltd  
Click Solutions  
Kamsons  
LPC  
PCSE on behalf of Frimley ICB

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## 1 The Application

By application dated 27 April 2023, Zinbake Ltd (“the Applicant”) applied to Frimley ICB (“the Commissioner”) for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at Crown Row, Crown Wood, Bracknell, Berkshire, RG12 0TH . In support of the application it was stated:

1.1 In response to “In our view this application should not be refused pursuant to Regulation 31” the Applicant stated:

1.1.1 “There is no other pharmacy in the immediate of where the best estimate application is submitted for. [sic]”

“Supporting information

1.2 Background to the application

1.3 The area of Crown Wood in Bracknell Forest was built in the 1970s and is bounded by Forest Park to the east, Hermans Water to the North, and Birch Hill to the West, and is East of the A322 Bagshot Road. It has a population of 7,610 according to the Local Government Association document based on 2021 census information which is included in Appendix A.

1.4 The facilities and amenities located within the area are a medical centre, Crown Wood Primary School, a community centre, public house and a shopping centre housing a post office, dentist, estate agents and two convenience stores.

1.5 The nearest Pharmacy to this area is Lloyds in Sainsbury, Ringmead, Bagshot Road, Bracknell, Berkshire, RG12 7SS which is located 0.3 miles from the proposed area which is due to close on the 14th May 2023. The removal of this pharmacy will negatively significantly impact the local reliant population for two reasons;

1.5.1 There will be a significantly increased journey for Crown Wood residents to access a full range of pharmaceutical services from circa 0.5 miles to in excess of 0.9 miles by the shortest practical route on foot,

1.5.2 The extended hours Lloyds currently offer will no longer be available in a reasonable distance for those residents with protected characteristics and significant health needs.

1.6 The reason for the closure of the Sainsbury stores nation wide have been well published in the press but the specific reasons for the closure are known only to them but as far as we are aware, no consultation was carried out with the general public on the impact to the withdrawal of the pharmacy services would have on the reliant population.

Legal Test

- 1.7 As this is an unforeseen benefits application, it is to be considered under Regulation 18 of the National Healthcare Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013. In summary the application must demonstrate that it improves access to pharmaceutical services for protected characteristics and that those services are not foreseen in the current Pharmaceutical Needs Assessment. It is also necessary to show that the proposal will not cause 'significant detriment' to the proper planning of the provision of the pharmaceutical services in the Health and Wellbeing Board.

Current Pharmaceutical Needs Assessment

- 1.8 The current Pharmaceutical Needs Assessment (PNA) for Bracknell (2022-2025) (referred to as The PNA) is included as Appendix B. There have not yet been any supplementary statements issued. The PNA concluded that access to pharmaceutical services across all areas of Bracknell as meeting the needs of the reliant and transient population. However, this PNA takes into consideration the Lloyds Pharmacy operating in Sainsbury on Bagshot Road and as such the application is considered an unforeseen benefit.

- 1.9 Amenities in the Crown Wood area

- 1.9.1 Crown Wood Medical Centre
- 1.9.2 Crown Wood Primary School
- 1.9.3 Crown Wood Community Centre
- 1.9.4 Public House
- 1.9.5 2 convenience stores, one with a Post Office
- 1.9.6 Dentist
- 1.9.7 Estate Agent

Access difficulties.

- 1.10 When considering the pharmaceutical network post closure of the Lloyds pharmacy on the 14<sup>th</sup> May 2023 the nearest pharmacies within a 1.5 linear mile from the proposed location are displayed on the table below, which is sourced from NHS choices and the distances added from Google Maps.

Pharmacy	Address	Linear Distance	Shortest Practical Distance by car	Shortest Practical Distance by foot
Kamsons Pharmacy	97 Liscombe, Birch Hill, Bracknell, RG12 7DE	0.7 miles	1.4 miles	0.9 miles
Boots	5 The Square, Harmans Water, Bracknell, RG12 9LP	0.7 miles	1.7 miles	0.9 miles
Lloyds Pharmacy	8 Rectory Road, Easthampstead, Bracknell, RG12 7BN	1 mile	1.8 miles	1.3 miles
Bullbrook Pharmacy	3 Bullbrook Road, Bracknell, RG12 2NL	1.4 miles	2.8 miles	1.8 miles

Superdrug	Unit d, 13 Charles Square, Bracknell, RG12 1DF	1.5 miles	2.5 miles	1.8 miles
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- 1.11 The distance between the proposed location and the Lloyds that will close was 0.3 miles. The new distances as can be seen from the table above are considerably longer which will negatively impact the reliant population and how pharmaceutical services will be accessed especially with regards to support for self-care.
- 1.12 Walking between the sites especially for the elderly or those with young children can be a barrier to access pharmaceutical services. The elderly or parents with young children make up circa 30% of the population based on Local Government Association information (Appendix A) which is a significant proportion. For those with the outline protected characteristics and those residents experiencing ill health that do not have access to private transport the public transport or walking routes to the alternative pharmacies within a reasonable distance could be challenging.
- 1.13 The most direct bus route (Route 156) to Boots Pharmacy in Harmans Water operates hourly and takes 13 minutes but will still involve a walk of 0.3 miles to the appropriate bus stop. The direct bus journey (route 171) towards the Kamsons Pharmacy in Birch Hill operates every 30 minutes and will take 28 minutes. For those patients with protected characteristics this can be a difficult journey certainly for the elderly or those parents with young children.
- 1.14 P82 - P83 of The PNA show the number of pharmacies per ward with the Population size per electoral ward. Crown Wood is the highest population without access to a community Pharmacy.

Table 7.1: Distribution of community pharmacies by ward

Ward	Number of Community Pharmacies	Population size	Community Pharmacies per 10,000 residents
Crowthorne	3	5,880	5.1
Wildridings and Central	2	5,781	3.5
Hanworth	2	8,175	2.4
Warfield Harvest Ride	1	8,150	1.2
Priestwood and Garth	1	8,238	1.2
Owlsmoor	1	5,179	1.9
Old Bracknell	1	6,151	1.6
Hamans Water	1	9543	1.0
Great Hollands North	1	8079	1.2
College Town	1	6207	1.6
Central Sandhurst	1	5030	2.0
Bullbrook	1	6819	1.5
Binfield with Warfield	1	10948	0.9
Ascot	1	6024	1.7
Winkfield and Cranbourne	0	4853	0.0
Little Sandhurst and Wellington	0	6268	0.0
Great Hollands South	0	5015	0.0
Crown Wood	0	7824	0.0
Borough Total	18	124165	1.4

Sources: ONS (2020 mid year estimates) and NHSE

- 1.15 With the removal of the Lloyds pharmacy, which is located within the Hanworth ward currently, will increase the already high reliance on a full range of pharmaceutical services within that ward and the adjacent ward of Harmans Water. Removal of the

Lloyds pharmacy also removes the accessibility of the services in a reasonable distance for those with protected characteristics and have a reliance on a full range of pharmaceutical services.

#### Location of Medical Centres

- 1.16 The table below shows the distances to the closest medical centres, information has been sourced from NHS choices and Google Maps

Medical Centre	Address	Linear Distance	Shortest Practical Distance by car	Shortest Practical Distance by foot
Crown Wood Medical Centre	4A Crown Row, Crown Wood, Bracknell, RG12 0TH	0.0 miles	0.0 miles	0.0 miles
Forest Health Group	Ringmead, Birch Hill, Bracknell, Berkshire, RG12 7PG	0.3 miles	0.5 miles	0.4 miles
Easthampstead Surgery	23 Rectory Lane, Bracknell, RG12 7BB	1.0 miles	1.7 miles	1.3 miles
Boundary House Surgery	Mount Lane, Bracknell, RG12 9PG	1.3 miles	2.6 miles	1.7 miles
Great Hollands Practice	Great Hollands Health Centre, Great Hollands Square, Great Hollands, Bracknell, RG12 8WY	1.5 miles	1.9 miles	1.8 miles

- 1.17 A pharmacy at the proposed location would complement the location of the Crown Wood Medical Centre by working closely together for the benefit of patients. There will no longer be a pharmacy within 0.5 miles of the Crown Wood Medical Centre which is mentioned on page 85 of the PNA which will disadvantage the residential population of Crown Wood over other similar wards.

#### Protected characteristics

- 1.18 As stated earlier circa 30% of the resident population would be classed as having protected characteristics due to age alone but there are also other characteristics which can be considered such as those residents with ill health. 3.9% of the residential population of Crown Wood are claiming incapacity benefits, which is higher than the Bracknell Forest average. When this is considered along with 5.3% of adults in the Crown Wood ward would consider their lives limited due to ill health or disability and 6.6% of adults slightly limited due to disability or ill health, there are significant health needs within the Crown Wood locality.

- 1.19 These residents with the above-mentioned protected characteristics would significantly benefit from a pharmacy operating within the local community which can be accessed at the same time as other services and amenities. This would improve access and collaborative working with other healthcare professionals to meet the needs of all residents not just those with protected characteristics.

#### Reasonable choice

- 1.20 It could be argued that there is a choice of pharmaceutical service providers and a choice of service in the area but we would argue that just because there is a choice of pharmacies in a wider area it does not mean the choice is reasonable especially if the existing pharmacies are not easily accessible to the reliant population as these existing pharmacy network will be post the closure of the Lloyds pharmacy in Sainsbury.

1.21 Having a pharmacy operating in with the Crown Wood area would improve choice and accessibility for the reliant population.

Impact on proper planning or provision in the local area.

1.22 There will be no impact on the proper planning of provision in the local area. The existing Pharmacy network is a significant distance away from the proposed location. In fact we would propose that a pharmacy to replace the closed Lloyds Pharmacy would only support the planning of pharmaceutical services within the Crown Wood and surrounding area.

How we intend to secure the unforeseen benefit(s).

1.23 We are intending to meet the unforeseen benefit by

1.23.1 Operation of an NHS pharmacy with the community. This will afford the residential and transient population access to pharmaceutical services which will have been removed as a result of the closure of the Lloyds pharmacy in Sainsbury at Bagshot Road. This will improve access to essential advanced and enhanced services whilst improving choice in the locality.

1.23.2 Offering Enhances [sic] and Advanced services to reduce health inequality and improve overall health for the reliant population. These services will be provided from within the heart of the community and would significantly benefit all patients not just those with protected characteristics. The cost of traveling to the existing pharmaceutical network as a result of the removal of the Lloyds Pharmacy in Sainsbury will not be considered a barrier to access.”

## 2 The Decision

The Commissioner decided to refuse the application. The decision letter dated 11 January 2024 states:

2.1 “NHS Frimley 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.”

Extract from the decision report

“Introduction and background

2.2 An unforeseen benefits application had been received from Zinbake Ltd, on 23 May 2023. The Committee was now required to consider the application in accordance with Regulations 18 and 19 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.

2.3 Full details of the applicant’s proposal had been notified to the various interested parties in accordance with the regulations. Comments had been received from the following parties, Boots UK Ltd, Ware Moss Ltd, Click Solutions Ltd and Community Pharmacy Thames Valley LPC. There were no follow up comments from the applicant.

Consideration by the Committee

2.4 The Committee had before it:

2.4.1 The NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.

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

- 2.4.3 The Report which included:
  - 2.4.3.1 the application form and information provided by the Applicant,
  - 2.4.3.2 letters from interested parties,
  - 2.4.3.3 maps of the location,
  - 2.4.3.4 opening times and distances to surrounding pharmacies and GP Practices,
  - 2.4.3.5 a site visit report,
  - 2.4.3.6 Bracknell Forest PNA extracts and a link to the full PNA,
  - 2.4.3.7 demographic information including population density,
  - 2.4.3.8 public transport information,
  - 2.4.3.9 prescription information,
  - 2.4.3.10 the relevant Regulations (18, 19, 31 and 50).
- 2.5 In relation to the application, the Committee noted the following:
  - 2.5.1 the applicant's fitness information was approved on 29 November 2023.
  - 2.5.2 The Committee noted that the applicant was proposing to provide essential, enhanced and advanced services, if commissioned.
  - 2.5.3 The applicant also proposed core opening of 40 hours per week and total proposed opening of 46.5 hours per week.
- 2.6 The Committee considered the applicant's statement as to the unforeseen benefits it is offering. The Applicant has stated that *"We are intending to meet the unforeseen benefit by; Operation of an NHS pharmacy with the community. This will afford the residential and transient population access to pharmaceutical services which will have been removed as a result of the closure of the Lloyds pharmacy in Sainsbury at Bagshot Road. This will improve access to essential advanced and enhanced services whilst improving choice in the locality.*

*Offering Enhances [sic] and Advanced services to reduce health inequality and improve overall health for the reliant population. These services will be provided from within the heart of the community and would significantly benefit all patients not just those with protected characteristics. The cost of traveling to the existing pharmaceutical network as a result of the removal of the Lloyds Pharmacy in Sainsbury will not be considered a barrier to access".*
- 2.7 The Committee considered information from a site visit of the Crown Wood area that had been undertaken by a Pharmacy Commissioning Hub representative. Crown Wood was built during the late 1970s and is bounded in by Forest Park to the east, Harmans Water to the north and Birch Hill to the west and is east of the A322 Bagshot Road. It and Forest Park are in Crown Wood ward and named after the Crown Estate of Swinley Forest. Crown Row is a small parade of shops situated in a residential area of Crown Wood, Bracknell in Berkshire. Bracknell Town Centre is north to Crown Wood and approximately 1.7 miles from the proposed site in Crown Row.
- 2.8 The Committee considered the representations made by Boots UK Ltd, Waremooss Ltd t/a Kamsons Pharmacy, Click Solutions Ltd and Community Pharmacy Thames Valley

LPC – and noted the comments made by the interested parties. The Committee noted that all those that made representations opposed the application.

- 2.9 The applicant’s response to the representations received during the consultation period was also considered.

Regulation 31 – Refusal: same or adjacent premises

- 2.10 The Committee first considered Regulation 31(2)(a)(i) and was of the view that Regulation 31(2)(a)(i) is not met as there is currently no person on the pharmaceutical list at the premises to which the application relates.

- 2.11 The Committee went on to consider paragraph (a)(ii) of Regulation 31(2); whether there is a person on the pharmaceutical list providing pharmaceutical services from adjacent premises.

- 2.12 The Committee was satisfied that there is no pharmacy providing pharmaceutical services within the area of the best estimate. The application did not therefore need to be refused in accordance with Regulation 31.

Regulations 40,41 and 44

- 2.13 The Committee noted that the proposed pharmacy location was not in a controlled locality, and therefore Part 7 of the Regulations (in particular Regulations 40, 41 and 44) did not have to be considered.

Regulations 50

- 2.14 There are zero dispensing patients living within 1.6km radius of the proposed best estimate address, therefore the Committee noted that if the application was approved it would not be required to consider the discontinuation of arrangements for the provision of pharmaceutical services by doctors to the affected patients under Regulation 50.

Oral Hearing

- 2.15 The Committee decided that it was not necessary to hold an oral hearing before determining the application.

Regulation 18 – Unforeseen benefits application

- 2.16 The Committee noted that this was an application for “unforeseen benefits” and fell to be considered under the provisions of Regulation 18 [quoted in full].

- 2.17 The Committee considered that Regulation 18(1)(a) was satisfied in that it was required to determine whether it was satisfied that granting the application, or granting it in respect of some only of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB.

- 2.18 The Committee went on to consider whether Regulation 18(1)(b) was satisfied, i.e. whether the improvements or better access that would be secured if the application was granted were or was included in the Pharmaceutical Needs (the ‘PNA’) in accordance with paragraph 4 of Schedule 1 of the Regulations.

- 2.19 The Committee had regard to the Bracknell Forest PNA 2022-2025 (issue date 1<sup>st</sup> October 2022) (the ‘PNA’) and noted that supplementary statements had not been issued.



- 2.20 The Committee also noted that, having considered the entire Bracknell Forest locality including the area of Crown Wood, the HWB had reached the conclusion that “*The results of the PNA conclude that there are no gaps in the provision of essential/advanced services at present or in the future, that would secure improvements or better access to advanced services in the lifetime of this PNA*” [Page 118, Bracknell Forest PNA, 2022-25].
- 2.21 The Committee noted that the HWB had considered access (distance, travelling times and opening hours’) to assess how current service provisions will meet the needs of the population within the lifetime of the PNA.
- 2.22 The Committee noted that the Applicant had stated that:
- When the Lloyds Pharmacy in Sainsbury’s closes “A pharmacy at the proposed location would complement the location of the Crown Wood Medical Centre by working closely together for the benefit of patients. There will no longer be a pharmacy within 0.5 miles of the Crown Wood Medical Centre which is mentioned on page 85 of the PNA which will disadvantage the residential population of Crown Wood over other similar wards.”*
- 2.23 The Committee noted that the improvements or better access that the Applicant was claiming would be secured by its application were not included in the relevant pharmaceutical needs’ assessment in accordance with paragraph 4 of Schedule 1.
- 2.24 The Committee was not satisfied that the unforeseen benefits claimed in the application were not identified in the PNA. [sic]
- 2.25 In order to be satisfied in accordance with Regulation 18(1), the Committee went on to consider those matters set out at Regulation 18(2).
- 2.26 Regulation 18(2)(a)(i) - whether or not granting the application would cause significant detriment to the proper planning in respect of the provision of pharmaceutical services.
- 2.27 The Committee was not aware of any plans that would be affected and concluded that granting the application would not have an adverse effect on any future plans. None of the submissions included any comment or evidence in regard to this matter. Therefore, the Committee concluded that granting the application would not cause significant detriment in this regard.
- 2.28 Regulation 18(2)(a)(ii) - whether or not granting the application would cause significant detriment to the arrangements in place for the provision of pharmaceutical services.
- 2.29 None of the submissions included any evidence on this question and the Committee found no proof to support the suggestion that if the application was to be granted, it would cause significant detriment to the arrangements in place for pharmaceutical services in the area.
- 2.30 The Committee did not find any significant detriment to proper planning or to the arrangements in place for the provision of pharmaceutical services and therefore was not obliged to refuse the application under Regulation 18(2)(a).
- 2.31 Regulation 18(2)(b)(i) – whether notwithstanding that the improvements or better access were not included in the relevant PNA, it is satisfied that, having regard in particular to the desirability of – there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB – granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant PNA was published.
- 2.32 On this point the Applicant has said:

*“The nearest pharmacy to this area is Lloyds in Sainsburys, Ringmead, Bagshot Road, Bracknell, Berkshire RG12 7SS which is located 0.3 miles from the proposed area which is due to close on the 14th May 2023. The removal of this pharmacy will negatively significantly impact the local reliant population for two reasons.*

*There will be a significantly increased journey for Crown Wood residents to access a full range of pharmaceutical services from circa 0.5 miles to in excess of 0.9 miles by the shortest practical route on foot,*

*The extended hours Lloyds currently offer will no longer be available in a reasonable distance for those residents with protected characteristics and significant health needs.*

*The current Pharmaceutical Needs Assessment (PNA) for Bracknell (2022-2025) (referred to as The PNA) is included as Appendix 2. There have not yet been any supplementary statements issued. The PNA concluded that access to pharmaceutical services across all areas of Bracknell as meeting the needs of the reliant and transient population. However, this PNA takes into consideration the Lloyds Pharmacy operating in Sainsbury on Bagshot Road and as such the application is considered an unforeseen benefit.*

*It could be argued that there is a choice of pharmaceutical service providers and a choice of service in the area but we would argue that just because there is a choice of pharmacies in a wider area it does not mean the choice is reasonable especially if the existing pharmacies are not easily accessible to the reliant population as these existing pharmacy network will be post the closure of the Lloyds pharmacy in Sainsbury.*

*Having a pharmacy operating in with the Crown Wood area would improve choice and accessibility for the reliant population”.*

- 2.33 The Committee noted the Boots UK Ltd representations that stated, *“The closure of a pharmacy within an area does not automatically create a gap and should a gap have arisen as a consequence of such a closure, then the PNA should be updated to reflect this. As the applicant states, no updated PNA or Supplementary has been produced. The Sainsburys closed a few months ago now, so there has been plenty of time for this to have taken place if there was a requirement to do so”.*
- 2.34 The Committee noted the Community Pharmacy Thames Valley LPC representations that stated, *“The 2022 PNA does not identify a gap in provision in Bracknell. It is clear that the existing pharmacies in Bracknell area are more than sufficient”.*
- 2.35 The representations from Waremooss Ltd t/a Kamsons Pharmacy representations that stated *“The applicant appears to have limited the benefit of their application to solely being that one of the many Lloyds Pharmacy branches that have closed in the country was nearby. Other local pharmacies have been able to meet the needs of those patients who used to use this Lloyds Pharmacy. There has been no gap in services identified by the Health & Wellbeing Board as requiring a supplementary statement to the Pharmaceutical Needs Assessment which was only published within the last year. Despite the closure of the Lloyds Pharmacy, there is still an excellent provision of pharmaceutical services throughout Bracknell”.*
- 2.36 The representations from Click Solutions Ltd representations that stated [sic] *“Following the closure of the previous NHS pharmacy in Crown Row shopping parade, residents of this area will already be accessing pharmaceutical services outwith this immediate neighbourhood and these existing services are easily accessible via both private and public transport”.*
- 2.37 In order to determine if patients in the area already had a reasonable choice, the Committee considered access (distance, travelling times and opening hours) as an

important factor in determining the extent to which the current pharmaceutical service provision meets the needs of the population in the Crown Wood area.

- 2.38 There is no pharmacy provision in the ward area; however, there are pharmacies in the adjacent wards. The closest 2 pharmacies are 0.7 miles away from the best estimate and there are a further 5 pharmacies within 1.5 miles. These include a mix of independent and multiple pharmacies.
- 2.39 The Committee noted that the travel distances cited by the applicant were from the best estimate, but that many people in the ward area would live closer to the surrounding pharmacies.
- 2.40 The opening hours of the seven closest pharmacies range from 08:30 to 18:00 Monday to Friday, from 08:30 to 17:30 on Saturdays. There is a Tesco Pharmacy 2.1 miles away from Best Estimate address that is open until 20:00 Monday to Friday and from 10:00 - 16:00 Sundays.
- 2.41 The Committee noted that the Applicant had offered to open from 09:00-17:30 on Monday to Friday, closed on Saturdays and 10:00-14:00 on Sundays. There are already pharmacies in the area providing the same weekday hours and longer hours on Saturdays [sic] as indicated above. There was no rationale provided for not opening on Saturdays.
- 2.42 The Committee noted that there is a Bus route that has a bus stop at the proposed best estimate address. The Bus runs every 20-30 minutes from 06.03 to 10.58, then 58 minutes past each hour until 13.58, then every 20-30 minutes until 22.49 Monday to Friday. On Saturdays, every 40-50 minutes from 07.04 to 09.58 then at 28 and 58 minutes past each hour until 17.58, then every 40-50 minutes until 22.49. On Sundays it runs hourly between 09.06 to 19.06. The 171 & 172 Bus runs from the proposed best estimate address, the route goes past Boots Pharmacy Harmans Water, Kamsons Pharmacy Birch Hill and Easthampstead Pharmacy.
- 2.43 Having considered the factors above, the Committee was satisfied that residents of Crown Wood already have reasonable choice with regard to obtaining pharmaceutical services.
- 2.44 Regulation 18(2)(b)(ii) - whether notwithstanding that the improvements or better access were not included in the relevant PNA, it is satisfied that, having regard in particular to the desirability of – people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access - granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant PNA was published.
- 2.45 The Committee reminded itself that it was required to address itself to people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that are difficult for them to access. The Committee was also aware of its duties under the Equality Act 2010 which include considering the elimination of discrimination and advancement of equality between patients who share protected characteristics and those within such characteristics.
- 2.46 The Applicant included the following information as part of their application: *“As stated earlier circa 30% of the resident population would be classed as having protected characteristics due to age alone but there are also other characteristics which can be considered such as those residents with ill health. 3.9% of the residential population of Crown Wood are claiming incapacity benefits, which is higher than the Bracknell Forest average. When this is considered along with 5.3% of adults in the Crown Wood ward would consider their lives limited due to ill health or disability and 6.6% of adults slightly limited due to disability or ill health, there are significant health needs within the Crown Wood locality. These residents with the above-mentioned protected characteristics*

*would significantly benefit from a pharmacy operating within the local community which can be accessed at the same time as other services and amenities. This would improve access and collaborative working with other healthcare professionals to meet the needs of all residents not just those with protected characteristics.”*

- 2.47 The Committee noted that the Bracknell Forest PNA shows:  
*“In Crown Wood, 11.1% of the population is aged 65 years or over, compared with 19% nationally.”* (Page 33. Bracknell Forest PNA 2022)
- 2.48 The Committee agreed that whilst it was clear that there are elderly people in the area, the Applicant did not provide any information about this or any other group of people finding it difficult accessing pharmaceutical services.
- 2.49 The Committee noted the Boots UK Ltd representation that stated, *“The applicant has not identified any specific patient group that may wish to access a pharmacy at the proposed location that currently have expressed difficulty in accessing services in the area”.*
- 2.50 The representations from Click Solutions Ltd and Wareness Ltd and Community Pharmacy Thames Valley did not include comments relating to groups of patients having difficulty accessing pharmaceutical services.
- 2.51 The Committee concluded that the application did not satisfy the test in this part of the Regulation.
- 2.52 Regulation 18(2)(b)(iii) - whether notwithstanding that the improvements or better access were not included in the relevant PNA, it is satisfied that, having regard in particular to the desirability of – there being innovative approaches taken with regard to the delivery of pharmaceutical services - granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant PNA was published.
- 2.53 The Committee agreed that the applicant had not provided evidence that an innovative approach would be taken with regard to the delivery of pharmaceutical services.
- 2.54 Therefore, the Committee concluded that there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services.
- 2.55 The Committee was of the view that in accordance with Regulation 18(2)(b) the granting of this application would not confer significant benefits on persons in the relevant area of the HWB which were not foreseen when the PNA was published.

#### Other Considerations

- 2.56 Regulation 18(2)(c)-(f) - The Committee had previously determined that there was no need to defer the application under Regulation 18(2)(c) to (f).

#### Decision

- 2.57 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.
- 2.58 The Committee had considered whether the granting of the application would cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area covered by the HWB, or the arrangements in place for the provision of pharmaceutical services in that area and was not satisfied that it would.

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

#### Rights of appeal

- 2.61 The application is refused so the applicant has the right to appeal.
- 2.62 The Committee decided not to grant third party rights of appeal to the decision to any of the parties that responded during the consultation period because the application had been refused.”

### 3 The Appeal

In a letter dated 8 February 2024 addressed to NHS Resolution, Temple Bright on behalf of the Applicant appealed against the Commissioner’s decision. The grounds of appeal are:

- 3.1 “I act for Zinbake Limited. On behalf of my client I write to appeal a decision of NHS England to refuse my client’s application for inclusion in the pharmaceutical list offering unforeseen benefits for premises at Crown Row, Crown Wood, Bracknell, RG12 0TH. The decision was notified to my client by letter dated 11<sup>th</sup> January 2024.
- 3.2 My client’s ground of appeal is that NHS England failed to have proper regard to information provided by my client in support of its application and placed an overreliance on the contents of the current PNA. As a result, NHS England failed to properly take into account the impact on the local population of the recent closure of a Lloyds Pharmacy and its decision was consequently flawed.
- Factual background
- 3.3 By way of background, my client has applied for inclusion in the pharmaceutical list for premises at the Crown Row shopping parade, Crown Wood, Bracknell, RG12 0TH.
- 3.4 The Crown Wood estate was developed in the 1970s and is located at the southeastern edge of Bracknell. The estate is shown (highlighted in red) on the map (see Appendix C) relative to Bracknell.
- 3.5 The estate contains a mix of flats, terraced, semi-detached and detached housing. Just under a quarter of dwellings in the Crown Wood estate are flats, with around half of houses being terraced. Just under a quarter of homes in the estate are classed as “social rented”. In terms of deprivation, the Crown Wood estate is broadly average for Bracknell (being the 9<sup>th</sup> most deprived ward out of 18 wards).
- 3.6 Approximately 7,610 people live in the Crown Wood estate.

- 3.7 30% of the resident population would be classed as having protected characteristics due to age alone but there are also other characteristics which can be considered such as those residents with ill health. 3.9% of the residential population of Crown Wood are claiming incapacity benefits, which is higher than the Bracknell Forest average. When this is considered along with 5.3% of adults in the Crown Wood ward would consider their lives limited due to ill health or disability and 6.6% of adults slightly limited due to disability or ill health, there are significant health needs within the Crown Wood locality.
- 3.8 According to census data, 12.3% of households (or 415 households) in Crown Wood do not own a car or van. Using the average occupancy rate for dwellings in Crown Wood (2.3 people per dwelling), approximately 1,000 people in Crown Wood have no car or van at all. Almost half of remaining households (44%) have only one car or van.
- 3.9 In addition to a significant resident population, Crown Wood contains a range of services for the local community. These include:
- 3.9.1 The Crown Wood Primary School which is located on Opladen Way, RG12 0PE. The school has three form entry and approximately 580 pupils aged from 4 to 11.
- 3.9.2 Crown Wood Medical Centre at 4A Crown Row, Bracknell, RG12 0TH. The Medical Centre has a patient list of around 6,350 and prescribes in the region of 6,500 items per month.
- 3.9.3 A shopping parade which contains a Martin's convenience store with Post Office, a Londis convenience store, estate agents and dental practice.
- 3.9.4 Leisure facilities, including a community centre and public house.
- Provision of pharmaceutical services
- 3.10 There is no pharmacy in the Crown Wood estate.
- 3.11 However, until May 2023, there was a Lloyds Pharmacy located within the large Sainsburys supermarket which is located on the western edge of the Crown Wood estate. The location of the Sainsburys supermarket and the Crown Row shops (the site of the proposed pharmacy) is shown on the google map image below (see Appendix C).
- 3.12 As can be seen, the distance between the Crown Row shops and the Sainsbury's store is approximately 700 metres by foot.
- 3.13 Whilst there were barriers to accessing the Lloyds Pharmacy from the Crown Wood estate, with the closure of the Lloyds pharmacy it is clear that there is no reasonably accessible pharmacy service provision.
- Access to existing pharmacies
- 3.14 As stated above, there are no pharmacies located within the Crown Wood estate and the nearest pharmacies are not easily or conveniently accessible.
- 3.15 Taking access to each of the nearest pharmacies in turn, my client comments as follows:
- 3.16 Kamsons Pharmacy
- 3.16.1 Kamsons Pharmacy is located at 97 Liscombe, Birch Hill, RG12 7DE. It is located 0.7 miles by straight line measurement from my client's proposed location. However, by the shortest possible route, the distance from my client's

proposed location to Kamsons Pharmacy is 1.6km, or a 22-minute walk at an average pace. The route is shown on the map (see Appendix C).

- 3.16.2 However, as can be seen from the above, this route requires pedestrians to walk through South Hill Park and, in particular, to use a footpath that goes through a wooded area for approximately 1km. The nature of this route presents a barrier to those travelling by foot to Kamsons, particularly out of daylight hours and for more vulnerable members of society.
  - 3.16.3 The shortest possible route that avoids walking through the park and woodland involves walking south along Ringmead, with a journey of around 2.2km or 31 minutes. See map at Appendix C.
  - 3.16.4 This means a round-trip walk of 4.4km, or over an hour, to get from the proposed location (with its GP surgery) and Kamsons Pharmacy.
  - 3.16.5 However, whichever route is taken, patients still have to use an underpass to cross the A322 Bagshot Road which, in itself, would be intimidating for many, particularly outside of daylight hours.
  - 3.16.6 I attach some photographs (see Appendix C) showing the route to Kamsons Pharmacy, including the underpass and footpaths referred to above.
  - 3.16.7 It is also worth noting that the location of the Kamsons Pharmacy in Birch Hill is very similar to Crown Row – Kamsons Pharmacy is located in a local shopping area which has convenience stores, Post Office, a medical centre, community centre and primary school. Those living in Crown Wood would therefore not be accustomed to accessing the Birch Hill local centre as part of their daily lives, because the facilities in the Birch Hill local centre are broadly the same as those in Crown Row (with the exception, of course, of a local community pharmacy).
  - 3.16.8 Whilst there is a bus which connects Crown Wood with Birch Hill, the bus is infrequent (every 30 minutes) and unreliable. For patients who are at the Crown Wood Medical Centre and require access to a pharmacy, the return journey to Kamsons Pharmacy by bus could easily take 2 hours when bus and pharmacy waiting times are factored in. The bus also costs around £4 for a return ticket from Crown Wood, making it prohibitively expensive for many, and particularly inconvenient for those with reduced mobility who are most likely to need to get to a pharmacy.
  - 3.16.9 Whilst there is car parking at the Kamsons site, this is shared with the other shops and the Aldi supermarket. The car parking can get very busy, particularly at school drop off and pick up times meaning that a parking space can be difficult to find.
- 3.17 Boots Pharmacy
- 3.17.1 A similar distance away from Crown Row is the Boots Pharmacy in Harmans Water, which is 0.7 miles from the proposed site as the crow flies. However, by the shortest practicable route on foot, the distance is 1.5km, or a 20-minute walk. This is shown on the google map image at Appendix C.
  - 3.17.2 This route also involves a walk through wooded areas (along Opladen Way) and along a footpath which travels through woodland. In fact, all three of the possible routes shown in the map above involve travelling along footpaths that run through parks and wooded areas. That is because there are no through roads between the proposed location on Crown Row and the location of the Boots pharmacy. This is shown in the photograph see Appendix C.

- 3.17.3 The difficulty travelling from Crown Wood to Harmans Water is shown in the map see Appendix C, which gives the shortest route by car. As can be seen, the distance by car is 2.5km because of the lack of north/south connectivity between the Crown Wood estate and Harmans Water meaning that you have to drive out onto the A322 and then back into the Harmans Water estate.
- 3.17.4 The most direct bus route (Route 156) to Boots Pharmacy in Harmans Water operates hourly and takes 13 minutes but will still involve a walk of 0.3 miles to the appropriate bus stop.
- 3.17.5 Again the services and facilities at the location of the Boots pharmacy (which serves the Harmans Water area of Bracknell) are similar to those available at Crown Wood (convenience store, Post Office, GP surgery) meaning that residents of Crown Wood would not be accustomed to accessing services from the Harmans Water shopping parade. Car parking is also very limited at the Boots site, meaning that it can often be difficult to find a space.
- 3.17.6 I have provided, (see Appendix C), a photograph of the shopping parade in which Boots is located. The photograph was taken on the morning of 8<sup>th</sup> February and it can be seen that the car park is full.
- 3.17.7 It is also the case that Harman's Water (the location of the Boots pharmacy) is very different in terms of character from Crown Wood. It is fair to say that Harman's Water has higher levels of deprivation than Crown Wood and is not considered as such a safe area. It is therefore likely that more vulnerable patients would be reluctant to walk into, and around, the Harman's Water estate.
- 3.18 Other pharmacies in Bracknell
- 3.18.1 There are other pharmacies in Bracknell, but these are even further away, making them even less accessible to residents of Crown Wood. I have set out the relevant distances to the next nearest pharmacies below by the most practicable route by foot:
- 3.18.1.1 Easthampstead Pharmacy – 2.1km. this is located to the north west of Crown Wood. The route requires patients to cross the A322 using an underpass and to use footpaths through wooded areas
- 3.18.1.2 Bullbrook Pharmacy – 2.8km. Bullbrook Pharmacy is to the north of Boots pharmacy, and so involves a route along footpaths through parkland and wooded areas.
- 3.18.1.3 Superdrug Pharmacy – 2.9km. This is in Bracknell town centre. The route includes at least 2km walking alongside the A322, a busy dual carriageway road which links the M4 and M3.

#### Regulation 18

- 3.19 As NHS Resolution will be aware, it must consider whether granting my client's application would secure improvements in, or better access to, pharmaceutical services in the HWB's area that are not contained within the relevant PNA.
- 3.20 NHS Resolution must have regard, in particular, to the desirability of:
- 3.20.1 Patients have a reasonable choice of pharmaceutical services
- 3.20.2 Patients who have a protected characteristic having access to pharmaceutical services that meet specific needs for such services that are difficult for them to access



3.20.3 Any innovation in service delivery

- 3.21 Having regard to the above matters, NHS Resolution must consider whether granting my client's application would confer significant benefits.
- 3.22 My client asserts that granting its application would secure improvements and better access to pharmaceutical services in the HWB's area.
- 3.23 It is accepted that those improvements and better access are not contained within the relevant PNA. The relevant PNA is the Bracknell Forest Pharmaceutical Needs Assessment which was published in October 2022.
- 3.24 The PNA does not identify any gaps in service provision. However, when the PNA was published, there was a Lloyds Pharmacy within the Sainsburys Store on the edge of the Crown Wood estate. As stated above, the Lloyds Pharmacy closed in May 2023. The closure of the Lloyds Pharmacy has led to a significant reduction in the accessibility of pharmaceutical services for the residents of the Crown Wood estate, and the closure was unforeseen when the 2022 PNA was published.
- 3.25 In relation to the specific matters contained within regulation 18(2)(b), my client comments as follows.

Reasonable Choice

- 3.26 It is submitted that the starting point for NHS Resolution's consideration of whether patients have a reasonable choice is to consider the size and nature of the relevant population and whether the existing pharmacy network secures a reasonable choice of service provision for that population.
- 3.27 As NHS Resolution will be aware, it is required to consider whether there is a reasonable choice across the Health and Wellbeing Board's area. The relevant HWB for the purposes of this application is Bracknell Forest.
- 3.28 Bracknell Forest has a population of, in the region of, 121,676 residents spread over an area of 109.4km<sup>2</sup>. However, my client accepts that its proposed pharmacy is unlikely to be used by the majority of that population due to its proposed location within the Crown Wood estate. My client therefore invites NHS Resolution to consider, in particular, the population to the south east of Bracknell town centre and, in particular, the population who live in the Crown Wood estate.
- 3.29 As stated above, that population is in the region of 7,610, which is a sizeable residential population. The Crown Wood estate contains a range of shops and services to meet day-to-day needs, including the Crown Wood Medical Centre which has a patient list of around 6,350. It also has a large (3 form entry) primary school.
- 3.30 It is self-evident that a community with a population the size of Crown Wood would have a need to access pharmaceutical services. That is, on any given day, it is a matter of common sense that there will be people present in Crown Wood (such as at home) who require access to a pharmacy, whether that is for dispensing of medication or to access some other service such as support for self-care, the new Pharmacy First scheme or a flu vaccination.
- 3.31 However, there is a particular focus for demand for pharmaceutical services in Crown Wood which arises out of the presence of the Crown Wood Medical Centre. Again, it is a matter of common sense that a GP surgery acts as a focus for demand for pharmaceutical services because patients are regularly present at a Medical Centre and require access to a pharmacy because their GP has written a prescription for them.

- 3.32 It is therefore against the backdrop of a large resident population with a clear focus for demand at the applicant's proposed site that NHS Resolution must consider whether patients have a reasonable choice of pharmaceutical service provision.
- 3.33 My client believes that there is not currently a reasonable choice of service provision for a simple reason: the existing pharmacies are neither easily nor conveniently accessible from the Crown Wood estate. That problem has been considerably exacerbated by the closure of the Lloyds Pharmacy.
- 3.34 I have set out in detail, above, the access difficulties which exist in reaching existing pharmacies, but they essentially relate to:
- 3.34.1 Distance – journeys of at least 1.6km each way, giving round trips of 3km or more, or at least 40 minutes at an average pace.
- 3.34.2 Barriers between the Crown Wood estate and existing pharmacies in the form of underpasses and pedestrian footpaths which pass through open parkland and woodland, often with poor lighting.
- 3.34.3 Infrequent, unreliable and costly bus services with long return journey times.
- 3.34.4 The lack of car ownership for a significant number of residents (in the region of 415 households, or around 1,000 residents have no car or van, and others have only one car which may not be available when access to a pharmacy needed) and a lack of parking.
- 3.35 Given the size and nature of the reliant population and the presence of the Crown Wood Medical Practice, my client considers that there is not currently a reasonable choice of service provision for the local population.
- 3.36 Granting my client's application would confer a significant benefit, because it would provide patients with the choice to access a pharmacy in the Crown Wood estate and from premises which are close to other shops, the GP surgery, dental practice and primary school. Other local areas in Bracknell which have the same (or broadly similar) shops and services to Crown Wood have their own pharmacy (for example, Kamson at Birch Hill and Boots and Harman's Water), meaning that there is a clear and obvious gap in service provision in the Crown Wood estate.
- Access difficulties
- 3.37 As above, it is self-evident and a matter of common sense that a community of the size and nature of Crown Wood will have a population with relevant protected characteristics and who require access to a particular pharmaceutical service. That is particularly the case having regard to the presence of the Crown Wood Medical Practice.
- 3.38 For the reasons given above, the existing pharmacies are difficult for those patients to access, and granting my client's application would confer significant benefits, because its proposed pharmacy would be located in the heart of the local community and close to the shops, other services and the Medical Centre.
- 3.39 My client has recently engaged with local residents regarding access to pharmaceutical services for those living in Crown Wood. I am attaching two emails that my client has received which are representative of local issues and local support for a pharmacy.
- 3.40 As NHS Resolution will see, the first email (at Appendix C) is written by a local resident who used to use the Lloyds Pharmacy in the Sainsburys store which has recently closed. The writer expresses difficulties in accessing the remaining pharmacies in Bracknell as they do not always have access to a car and the bus service is unreliable.

The writer also comments on long waiting times and large queues at the Boots Pharmacy.

- 3.41 The second email (at Appendix C) is from a person whose wife has particular health difficulties. The writer states that they are unable to walk to the Boots pharmacy because of the distance and have to drive. However, there is a lack of parking available at the Boots store. The writer notes that there have been recent instances of the Boots pharmacy being unexpectedly closed or having a queue out the door.
- 3.42 As NHS Resolution will note, these emails echo the matters raised in my client's application and in this letter of appeal and demonstrate that patients of the Crown Wood estate are experiencing significant issues with the provision of pharmaceutical services to the estate following the closure of the Lloyds Pharmacy.

Conclusion

- 3.43 In conclusion, for the reasons given above and those given in my client's application form I invite NHS Resolution to conclude that granting its application would secure improvements in, and better access to, pharmaceutical services. On behalf of my client I therefore invite NHS Resolution to uphold this appeal and to grant its application."

#### 4 Summary of Representations

This is a summary of representations received on the appeal.

##### 4.1 Click Solutions

- 4.1.1 "We have no further comments to make except only to say that odd customers wanting a service on their doorstep does not mean the current service is not sufficient .
- 4.1.2 Also, everyone round the country has problems with weather, delay of Bus Service and that does not warrant a Pharmacy .
- 4.1.3 Please keep us informed whenever there anything to report on this application."

##### 4.2 Kamsons

- 4.2.1 "Thank you for your letter dated 16<sup>th</sup> February with details of the appeal of the refusal of the unforeseen benefits application for a new pharmacy at Crown Row, Crown Wood, Bracknell, Berkshire, RG12 0TH.
- 4.2.2 It is surprising that the applicant has appealed when the Frimley ICB Pharmaceutical Regulations Committee have issued a thorough report, they have obviously carefully considered the application and made a rational conclusion that the application does not meet the legislative test. Frimley ICB correctly states as follows:

*8.3 The Committee determined that the application should be refused on the following basis:*

*8.3.1 In considering whether the granting of the application would confer significant benefits, the Committee determined that –*

- there is already a reasonable choice with regard to obtaining pharmaceutical services;*

- *there is no evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services; and*
- *there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services.*

*8.4 Having taken these matters into account, the Committee is not satisfied that granting the application would confer significant benefits as outlined above*

- 4.2.3 We concur with the ICB's decision. There is already a reasonable choice – the applicant themselves states that patients have the choice of Kamsons, Boots, Easthampstead, Bullbrook and Superdrug Pharmacy. In their original application, the applicant stated that there are five other pharmacies with a mile and a half of their proposed site.
- 4.2.4 However, the applicant appears to have forgotten to mention that there are also other pharmacies such as another Boots Pharmacy in the Lexicon shopping centre in Bracknell town centre. As with all towns of a similar size, people will regularly gravitate to the town centre for shopping and other needs. Boots Pharmacy at The Lexicon Shopping Centre, 19-23 Braccan Walk, Bracknell RG12 1BE is open 7 days a week as stated on NHS.uk at: <https://www.nhs.uk/services/pharmacy/boots/FEK22>
- 4.2.5 Boots at The Lexicon Shopping Centre is a 9 minute drive away. Details are at: <https://maps.app.goo.gl/FFgnHqHXLZrpYojt9>
- 4.2.6 There are also a number of other pharmacies in and around Bracknell, which may not be in walking distance, but are accessible by car such as Great Hollands Pharmacy. According to Google Maps, this is a 9 minute drive of 2.5 miles away. Details at <https://maps.app.goo.gl/BDXTCWpWM5ejFmoN9>
- 4.2.7 Priestwood Pharmacy is a 11 minute drive away. Details at <https://maps.app.goo.gl/C1bE2s8BLFTUbi9p7>
- 4.2.8 David Pharmacy is a 12 minute drive away. Details at: <https://maps.app.goo.gl/Kzvp4khTqBtMjWHq9>
- 4.2.9 Of course, these nine pharmacies demonstrate a more than reasonable choice. There are other pharmacies to the north of Bracknell as well.
- 4.2.10 The applicant's argument is that there are a small minority of patients without a car. Of course these people will have neighbours, friends or relatives with a car. Car ownership is not unusually low in the area. There is also the option of a taxi. I have checked today and a taxi from Crown Row to Kamsons Pharmacy is under £8.
- 4.2.11 However, a bus would be a cheaper and popular option. The applicant mentions that there are few buses from Crown Row to Kamsons. This is to be expected as people will gravitate to the town centre for shopping and other needs. Someone is less likely to catch a bus from Crown Row to Kamsons Pharmacy. They will catch a bus from Crown Row to Boots which is open 7 days a week in the Lexicon Centre. I have just checked the bus times at 2pm and there are 3 buses from Crown Row bus stop within half an hour to Bracknell bus station and a fourth one which departs from a nearby stop six minutes walk away.
- 4.2.12 Crown Row bus stop is three minutes walk from the applicant's proposed site. Bracknell bus station is a 4 minute walk from Boots in the Lexicon shopping centre. Superdrug Pharmacy is only a 2 minute walk from the bus station. Both

Boots and Superdrug are open every Saturday and Boots is also open every Sunday.

- 4.2.13 The 172 bus only takes 9 minutes to go from Crown Row bus stop to Bracknell bus station. (see map at Appendix D)
  - 4.2.14 Despite the closure of the Lloyds Pharmacy, there is still an excellent provision of pharmaceutical services throughout Bracknell.
  - 4.2.15 At Kamsons Pharmacy we have a large spacious and recently refitted modern pharmacy with a large car park with four disabled-only bays and four parent and baby bays. There is also a bus stop outside. For anyone who still might be unable to access the pharmacy we have a pharmacist available by telephone and we provide a free delivery service of medicines 5 days a week throughout Bracknell, as we have from all of our pharmacies for over 40 years and have no intention of ever stopping.
  - 4.2.16 Many people from Crown Row will shop near to Kamsons because of the Aldi supermarket nearby.
  - 4.2.17 The provision of our free delivery service to anyone in Crown Row means that even if you cannot attend a pharmacy in person, we will ensure that you have prompt and free access to your medicines. Whilst we would prefer to offer advanced services in person, the Regulations now allow the remote provision of Advanced services such as New Medicines Service, Contraception service and most aspects of Pharmacy First service should anyone not be able to access a pharmacy.
  - 4.2.18 With so many pharmacies locally, a good bus service from Crown Row to local pharmacies as well as the nearest two pharmacies being only 0.7miles way (according to the applicant and NHS.uk) alongside good levels of car ownership and a free delivery service from Kamsons Pharmacy then there are no access issues and a more than reasonable choice for all of the population.
  - 4.2.19 The applicant appears to have limited the benefit of their application to solely being that one of the many Lloyds Pharmacy branches that have closed in the country was nearby. Other local pharmacies have been able to meet the needs of those patients who used to use this Lloyds Pharmacy. There has been no gap in services identified by the Health & Wellbeing Board.
  - 4.2.20 Boots is already open on a Sunday. Our pharmacy and many others are open every Saturday whereas the applicant will not even be open at all on this day and has core hours until only 5pm most weekdays. In fact, looking at the very limited provision of services being offered by Zinbake Ltd, there are certainly no innovations nor unforeseen benefits that this application would bring.
  - 4.2.21 I consider that the application does not meets the requirements of the Regulations and that the decision of Frimley ICB should be upheld.”
- 4.3 Community Pharmacy Thames Valley (“the LPC”)
- 4.3.1 “On behalf of the LPC, I would like to thank you for the opportunity to comment on this appeal.
  - 4.3.2 The LPC commented on the original application. The LPC has no new comments to add to their original submission.
  - 4.3.3 We would ask that the Appeal Unit informs us of any decision reached and where appropriate, of any Oral Hearing date.”

In a letter dated 15 August to the Commissioner, the LPC stated:

- 4.3.4 “The LPC is pleased to have the opportunity to comment on this application.
- 4.3.5 An application offering to secure unforeseen benefits must be judged against the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 having particular concern to regulations 18 and 19. This current application is being submitted as a routine application.
- 4.3.6 An application under these regulations needs to meet certain criteria including:
  - 4.3.6.1 A best estimate of the proposed address – The LPC would ask whether NHS England feels that the location given is specific enough to allow it to make a decision on this application.
  - 4.3.6.2 Evidence of how granting the application would secure unforeseen benefits – The LPC does not believe the applicant has demonstrated this. There is no evidence that the pharmacy will provide additional services that are not available elsewhere.
- 4.3.7 The 2022 PNA does not identify a gap in provision in Bracknell. It is clear that there the [sic] existing pharmacies in Bracknell are more than sufficient. There are 9 Pharmacies offering Pharmaceutical Services all within a reasonable distance from this location. As you can see from the map taken from Shape Atlas (NHS Copyright) (Appendix E) – patients have access to a Pharmacy across the whole of Bracknell within a 20 minute walk. (a 20 minute drive is considered accessible)
- 4.3.8 The LPC is not aware of any concerns raised by patients locally about the level of service, opening hours or availability of a pharmacist in the locality. The LPC would therefore encourage NHS England to refuse this application.”

## 5 Observations

### 5.1 TEMPLE BRIGHT ON BEHALF OF THE APPLICANT

- 5.1.1 “I continue to act for Zinbake Limited. On behalf of my client I write further to your letter of 20<sup>th</sup> March 2024 and in order to respond to representations on my client’s appeal by interested parties. Taking each letter in turn, my client comments as follows:  
  
Kamsons Pharmacy
- 5.1.2 My client does not state that “patients have the choice of Kamsons, Boots, Easthampstead, Bullbrook and Superdrug Pharmacy”. In fact, the opposite is true –these pharmacies do not secure a reasonable choice of pharmaceutical service provision.
- 5.1.3 The reasons why my client asserts that the existing pharmacy network does not secure a reasonable choice are fully detailed in my client’s letter of appeal. However, in short, existing pharmacies are difficult to access, and a pharmacy that is difficult to access cannot secure a choice of service provision for the reliant population.
- 5.1.4 My client has not “forgotten” other pharmacies, but those pharmacies are even further away from Crown Wood than the pharmacies referred to in my client’s letter of appeal. Given that the nearest pharmacies are difficult to access and, consequently, do not secure a reasonable choice, it is hopefully self-evident that pharmacies that are even further away cannot, themselves, secure a reasonable choice of service provision.

- 5.1.5 By way of example, the Boots Pharmacy in the Lexicon shopping centre is 2 miles from Crown Wood and is therefore too far for any patient to walk. Kamsons state that it is a “9-minute drive away”, but using drive times is artificial. The Boots pharmacy is within a pedestrian shopping area. Patients would therefore have to drive to the nearest car park (Braccan Walk car park), which takes 9 minutes, but then park and walk to Boots (which would be at least a 10-minute walk depending upon where the car was parked within the car park). In addition, there are charges for parking at the Braccan Walk car park – being £2 for up to one hour or £3.50 for 1 to 2 hours. Using the Boots store in the Lexicon shopping centre is therefore likely to take well over an hour from Crown Row and cost between £2 and £3.50 in parking charges.
- 5.1.6 That is, of course, assuming that the patient has access to a car when they require access to a pharmacy.
- 5.1.7 Great Hollands Pharmacy is located to the west of Kamsons Pharmacy, meaning that patients would almost pass Kamsons Pharmacy (with the barriers described in my client’s letter of appeal which are not challenged by Kamsons Pharmacy) on their journey to Great Hollands Pharmacy. It is therefore inherently unlikely that any patients would consider Great Hollands Pharmacy to provide a reasonable alternative pharmacy.
- 5.1.8 The same point may be made about Priestwood Pharmacy which is located 2.6 miles away to the north of Bracknell town centre. David Pharmacy is located 5.5 miles away from Crown Row and is not even in Bracknell.
- 5.1.9 In relation to those without a car, it is inherently unfair on this group that they should have to rely on “neighbours, friends or relatives with a car” in order to access pharmaceutical services. Kamsons refer to the availability of a taxi service, but the cost (“under £8”) referred to by Kamsons is a one-way fare, meaning a cost of £15 or more simply to access a pharmacy. This is clearly unreasonable.
- 5.1.10 In relation to the bus service, route 172 operates only every half an hour (hourly on a Sunday), meaning a likely return journey to access Boots or Superdrug from Crown Wood of 2 hours when bus waiting times are factored in. That is particularly the case given the location of the GP surgery and the demand for pharmaceutical services created by that GP surgery, meaning that patients cannot necessarily time their journey with the bus timetable.
- 5.1.11 Additionally, bus route 172 is a circular route: whilst it may take 7 minutes to travel from Crown Wood to Bracknell bus station, the return journey takes 23 minutes.
- 5.1.12 In relation to access to Kamsons Pharmacy, my client has already explained, in its letter of appeal, the barriers that exist between Crown Wood and Kamsons Pharmacy. Kamsons Pharmacy do not seek to dispute the factual matters set out in my client’s appeal letter.
- 5.1.13 Whilst it may be correct that Kamsons Pharmacy provides a free delivery service, this is a voluntary service, and is not a contractual pharmaceutical service. It also cannot replace face to- face contact with a pharmacist. There is also, of course, the inherent inconvenience and difficulties of having to use a delivery service, particularly for acute prescriptions from the GP surgery in Crown Wood.
- 5.1.14 The statement from Kamsons Pharmacy that “many people from Crown Row will shop near to Kamsons because of the Aldi supermarket nearby” does not appear to be based on any actual knowledge, since, it is assumed, Kamsons Pharmacy do not have access to this information.

5.1.15 However, as NHS Resolution will be aware from my client's letter of appeal, the nearest supermarket to Crown Row is the Sainsburys store which, until recently, contained a Lloyds Pharmacy.

5.1.16 As will be evident from my client's appeal, my client has not "limited the benefit of their application to solely being that one of the many Lloyds Pharmacy branches that have closed in the country was nearby". However, this is clearly a material factor when determining my client's application because the Lloyds Pharmacy was by far the closest pharmacy to Crown Row. Other pharmacies cannot "meet the needs of those patients who used to use this Lloyds Pharmacy" because those pharmacies are difficult to access, as detailed in my client's letter of appeal.

5.1.17 In relation to opening hours, the hours offered by Kamsons are of limited benefit to Crown Wood residents because, as previously detailed, Kamsons Pharmacy is difficult to access. The same is true of Boots Pharmacy on a Sunday.

LPC

5.1.18 My client has no comments to make on the letter from the LPC. The matters raised by the LPC in its representations to NHS England are already addressed in my client's letter of appeal.

Click Solutions Limited (Easthampstead Pharmacy)

5.1.19 My client does not assert that the "odd customer wants a service on their doorstep". There are many thousands of residents of Crown Wood and patients of the Crown Wood GP Surgery who would obtain a significant benefit from the granting of my client's application for the reasons set out in my client's letter of appeal.

5.1.20 In conclusion, for the reasons given above and those given in my client's letter of appeal, on behalf of my client I invite NHS Resolution to uphold my client's appeal and grant its application."

## 6 Consideration

6.1 The Pharmacy Appeals Committee ("the Committee"), appointed by NHS Resolution, had before it the papers considered by the Commissioner together with a plan of the area showing existing pharmacies and doctors' surgeries and the location of the proposed pharmacy.

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

6.3 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.

6.4 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations").

### Regulation 31

6.5 The Committee first considered Regulation 31 of the Regulations which states:

*(1) A routine or excepted application, other than a consolidation application, must be refused where paragraph (2) applies.*



(2) *This paragraph applies where -*

*(a) a person on the pharmaceutical list (which may or may not be the applicant) is providing or has undertaken to provide pharmaceutical services ("the existing services") from -*

*(i) the premises to which the application relates, or*

*(ii) adjacent premises; and*

*(b) the NHSCB is satisfied that it is reasonable to treat the services that the applicant proposes to provide as part of the same service as the existing services (and so the premises to which the application relates and the existing listed chemist premises should be treated as the same site).*

6.6 The Committee noted the comment from the Applicant that "*there is no other pharmacy in the immediate [area]...*" The Committee noted that the Commissioner had concluded that there is no pharmacy providing pharmaceutical services within the area of the best estimate and the application did not need to be refused in accordance with Regulation 31. The Committee noted that this had not been disputed either on appeal or in subsequent representations. On the basis of the information before it, the Committee determined that it was not required to refuse the application under the provisions of Regulation 31.

6.7 The Committee noted that, if the application were granted, the successful applicant would - in due course - have to notify the Commissioner of the precise location of its premises (in accordance with paragraph 31 of Schedule 2). Such a notification would be invalid (and the applicant would not be able to commence provision of services) if the location then provided would (had it been known now) have led to the application being refused under Regulation 31.

### **Regulation 18**

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

"(1) *If—*

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

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

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

(2) *Those matters are—*

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

- (i) *proper planning in respect of the provision of pharmaceutical services in the area of the relevant HWB, or*
  - (ii) *the arrangements the NHSCB has in place for the provision of pharmaceutical services in that area;*
- (b) *whether, notwithstanding that the improvements or better access were not included in the relevant pharmaceutical needs assessment, it is satisfied that, having regard in particular to the desirability of—*
- (i) *there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB (taking into account also the NHSCB's duties under sections 13I and 13P of the 2006 Act (duty as to patient choice and duty as respects variation in provision of health services)),*
  - (ii) *people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access (taking into account also the NHSCB's duties under section 13G of the 2006 Act (duty as to reducing inequalities)), or*
  - (iii) *there being innovative approaches taken with regard to the delivery of pharmaceutical services (taking into account also the NHSCB's duties under section 13K of the 2006 Act (duty to promote innovation)),*
- granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant pharmaceutical needs assessment was published;*
- (c) *whether it is satisfied that it would be desirable to consider, at the same time as the applicant's application, applications from other persons offering to secure the improvements or better access that the applicant is offering to secure;*
- (d) *whether it is satisfied that another application offering to secure the improvements or better access has been submitted to it, and it would be desirable to consider, at the same time as the applicant's application, that other application;*
- (e) *whether it is satisfied that an appeal relating to another application offering to secure the improvements or better access is pending, and it would be desirable to await the outcome of that appeal before considering the applicant's application;*
- (f) *whether the application needs to be deferred or refused by virtue of any provision of Part 5 to 7.*
- (g) *whether it is satisfied that the application presupposes that a gap in pharmaceutical services provision has been or is to be created—*
- (i) *by the removal of chemist premises from a pharmaceutical list as a consequence of the grant of a consolidation application, and*
  - (ii) *since the last revision of the relevant HWB's pharmaceutical needs assessment other than by way of a supplementary statement.*

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

6.9 The Committee considered that Regulation 18(1)(a) was satisfied in that it was required to determine whether it was satisfied that granting the application, or granting it in respect of some only of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB.

6.10 The Committee went on to consider whether Regulation 18(1)(b) was satisfied, i.e. whether the improvements or better access that would be secured if the application was granted were or was included in the Pharmaceutical Needs Assessment ("the PNA") in accordance with paragraph 4 of Schedule 1 of the Regulations.

6.11 Paragraph 4 of Schedule 1 requires the PNA to include: "a *statement of the pharmaceutical services that the HWB had identified (if it has) as services that are not provided in the area of the HWB but which the HWB is satisfied (a) **would** if they were provided....secure improvements or better access, to pharmaceutical services... (b) **would** if in specified future circumstances they were provided...secure future improvements or better access to pharmaceutical services...*" (emphasis added).

6.12 The Committee considered the PNA prepared Bracknell Forest Council, conscious that the document provides an analysis of the situation as it was assessed at the date of publication. The Committee bears in mind that, under regulation 6(2), the body responsible for the PNA must make a revised assessment as soon as reasonably practicable (after identifying changes that have occurred that are relevant to the granting of applications) unless to do so appears to be a disproportionate response to those changes. Where it appears disproportionate, the responsible body may, but is not obliged to, issue a Supplementary Statement under regulation 6(3). Such a statement then forms part of the PNA. The Committee noted that the PNA was dated 2022 – 2025 and that no supplementary statements had been issued.

6.13 The Committee noted that the PNA had considered the provision of pharmaceutical services as a whole and there was limited reference to Crown Wood.

6.14 The Committee noted the "PNA Statements on service provision" within the Executive Summary stated:

*"There are 18 community pharmacies located within Bracknell Forest and a further 14 located within a mile of Bracknell Forest's border.*

*This PNA has assessed whether the current and future pharmacy provision meets the health and wellbeing needs of the Bracknell Forest population. It has also determined whether there are any gaps, or need for improvements or better access, in the provision of pharmaceutical service either now or within the lifetime of this document, 1<sup>st</sup> October 2022 to 30<sup>th</sup> September 2025.*

*Bracknell Forest is well served in relation to the number and location of pharmacies. The findings of this PNA has concluded that there is good access to essential, advanced and other NHS pharmaceutical services for the residents of Bracknell Forest with no gaps in the current and future provision of these services identified. Additionally, no services were identified that would secure improvements or better access to pharmaceutical services if provided, either now or in the future."*

6.15 In Chapter 8, the Committee noted that the PNA concluded:

*"The results of the PNA conclude that there are no current gaps in the provision of essential services during normal working hours for the lifetime of this PNA.*

...

*The results of the PNA conclude that there are no current gaps in the provision of essential services outside normal working hours in the lifetime of this PNA."*

- 6.16 The Committee noted that the Applicant seeks to provide unforeseen benefits to those residing in and visiting the Crown Wood area of Bracknell. The Committee noted that the improvements or better access that the Applicant was claiming would be secured by its application were not included in the relevant PNA in accordance with paragraph 4 of Schedule 1.
- 6.17 In order to be satisfied in accordance with Regulation 18(1), regard is to be had to those matters set out at 18(2). The Committee's consideration of the issues is set out below.

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

- 6.18 The Committee had regard to
- "(a) whether it is satisfied that granting the application would cause significant detriment to—*
- (i) proper planning in respect of the provision of pharmaceutical services in the area of the relevant HWB"*
- 6.19 The Committee noted the Commissioner had stated in its decision that it "...was not aware of any plans that would be affected and concluded that granting the application would not have an adverse effect on any future plans." The Committee noted that this had not been disputed by any party, either on appeal or in subsequent representations.
- 6.20 On the basis of the information available, the Committee was not satisfied that, if the application were to be granted and the pharmacy to open, the ability of the Commissioner thereafter to plan for the provision of services would be affected in a significant way.
- 6.21 The Committee was therefore not satisfied that significant detriment to the proper planning of pharmaceutical services would result from a grant of the application.

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

- 6.22 The Committee had regard to
- "(a) whether it is satisfied that granting the application would cause significant detriment to— ...*
- (ii) the arrangements the NHSCB has in place for the provision of pharmaceutical services in that area"*
- 6.23 The Committee noted that the Commissioner had stated in its decision that it "...did not find any significant detriment to proper planning or to the arrangements in place for the provision of pharmaceutical services ...". The Committee noted that no party had sought to argue, either on appeal or in subsequent representations, that the granting of the application would cause significant detriment to the arrangements currently in place for the provision of pharmaceutical services.
- 6.24 On the basis of the information before it, the Committee was therefore not satisfied that significant detriment to the arrangements currently in place for the provision of pharmaceutical services would result from a grant of the application.

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

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

- 6.26 The Committee had regard to

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

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

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

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

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

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

- 6.27 The Committee had regard to the location of the existing pharmacies and GP surgeries as provided on the map by the Commissioner, which had not been disputed by any party.

- 6.28 The Committee noted the comments from the Applicant that there is currently no pharmacy within the Crown Wood estate and that this had not been disputed by parties in subsequent representations. The Applicant had referred to the large population and amenities in the immediate area as supportive of the application for a new pharmacy. The Committee was mindful that consideration needs to be given as to whether there is a reasonable choice in obtaining pharmaceutical services within the area of the relevant HWB. The Applicant had sought to argue that whilst there may be pharmaceutical services in the wider area this does not mean that the choice of services in Crown Wood is reasonable.

- 6.29 The Committee noted that there was no dispute between parties that there are 5 pharmacies located within a 1.5 mile radius of the proposed site which are operated by a variety of contractors,. Whilst the Committee accepted that the closest pharmacy, which was located 0.3 miles from the proposed site has closed, there are still 2 pharmacies within 0.7 miles of the proposed site.

- 6.30 The Committee noted the comments from the Applicant that some of the distances provided were linear and the actual distances were greater which leads to pharmacies not being accessible. The Committee also noted the photographs provided with regard to the area and the routes that pedestrians would have to take. The Committee noted the well maintained footpaths as well as the underpass which enable pedestrians to cross the arterial roads as shown on the map safely. The Committee accepted the

Applicant's observations that travelling through a wooded area or an unlit underpass might be unappealing for patients. Given the information with regard to distances and from viewing the maps provided as well as the photographs, the Committee was of the view that whilst there were likely to be some that may make the journey to access existing services on foot, there may be others who were either unable or unwilling to do so. The Committee was of the view that difficulties of access on foot did not of itself indicate that there was not reasonable choice in obtaining pharmaceutical services. For those who chose not to access services on foot, or who are unable to access services on foot, for whatever reason, the Committee went on to consider the ease and level of access to pharmacies by private and public transport.

- 6.31 The Committee noted the information provided with regard to the bus services in the area which not only go to the town centre, where there are pharmacies located, but also go to other pharmacies in the wider area. There was a service every 30 minutes which passes Kamsons. The Applicant had stated that the bus journeys would also involve a walk to the nearest bus stop, however the Committee was mindful that for the majority of those wishing to access the Applicant's proposed pharmacy this would also require a walk given the location of the pharmacy and the area that it was proposing to serve. The Committee also noted the comments from the Applicant with regard to the associated cost of using a bus, although some public transport users may benefit from reduced fares. Further, the Committee noted that there were frequent buses to and from the town centre where other amenities were located which those wishing to access pharmaceutical services may also be accessing. The journey time was 7 mins and 23 minutes respectively. The Committee noted the Applicant's reference to an 'unreliable' bus service but no further information was provided in this regard. The Committee was of the view that for those reliant on public transport there was nothing provided by the Applicant to demonstrate that they were currently having difficulties in accessing the existing pharmaceutical provision in the area of the HWB.
- 6.32 The Committee noted the comments from parties with regard to the availability of car parking in the area of the existing pharmacies. Whilst the Applicant had claimed it was limited at Boots and Kamsons, the Committee was of the view that whilst parking may be problematic it was not insurmountable by using for example the Aldi car park near Kamsons. Whilst the Applicant had provided some information with regard to the level of car ownership in the area, the Committee noted the comments from parties that "car ownership is not unusually low". The Committee noted that there was some dispute between parties with regard to the level of car ownership, however the Committee was not persuaded that those who did have access to their own transport were currently experiencing difficulties in accessing the existing pharmacies.
- 6.33 The Committee noted the two letters of support from residents but nothing else had been provided from the local community to demonstrate that there was support for a new pharmacy in the area.
- 6.34 Based on its findings above, the Committee was of the view that there is already reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB, such that it was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits on persons.
- 6.35 In considering Regulation 18(2)(b)(ii) the Committee reminded itself that it was required to address itself to people who share a protected characteristic under the Equality Act 2010 (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation) having access to services that meet specific needs for pharmaceutical services that, in the relevant area, are difficult for them to access. In considering 18(2)(b)(ii), the Committee noted the limited information provided by the Applicant, by way of general statistics for the ward as a whole. The Applicant had also, albeit briefly, referred to those who due to age and illness/disability share a protected characteristic, however they had not expanded upon this as to why they considered that these groups were having difficulty in accessing

pharmaceutical services in the area. The Applicant had concluded that *“these residents with the above mentioned protected characteristics would significantly benefit from a pharmacy operating within the local community which can be accessed at the same time as other services and amenities.”*

- 6.36 The Committee was of the view that there are always people in an area who share a protected characteristic and whilst a pharmacy at the proposed site might be a benefit to some people, there was no information provided by the Applicant as to how those with a protected characteristic were currently experiencing any difficulties in accessing pharmaceutical services specific to their needs. The Committee was therefore not satisfied that, having regard to the desirability of people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that are difficult for them to access, granting the application would confer significant benefits on persons.
- 6.37 In considering Regulation 18(2)(b)(iii) the Committee had regard to the desirability of innovative approaches to the delivery of pharmaceutical services. In doing so, the Committee would consider whether there was something more over and above the usual delivery of pharmaceutical services that might be expected from all pharmacies, some ‘added value’ on offer at the location. The Committee noted that the Applicant had not proposed any innovation either in its original application or on appeal. The Committee was of the view that the Applicant did not seek to rely on innovation in this application. The Committee was not satisfied that, having regard to the desirability of there being innovative approaches taken with regard to the deliverability of pharmaceutical services, granting the application would confer significant benefits on persons.

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

- 6.38 The Committee noted that the Applicant is proposing to open for 46.5 hours a week of which 40 would be core hours. The Committee noted that the core hours were arranged so that there would be provision from 9am to 1pm Monday to Friday and then 2pm to 5:30pm Monday and Friday and 2pm to 5pm Tuesday to Thursday as well as 10am to 2pm on a Sunday. The total opening hours would be 9am to 5:30pm Monday to Friday and 10am to 2pm on a Sunday with the additional hours being supplementary. The Committee noted that the Applicant was not proposing to offer any hours on a Saturday but would have core opening hours on a Sunday. The Committee noted the comments from parties that there are already pharmacies in the area who are providing the same hours during the week as well as other pharmacies being open on a weekend. In addition, the Committee noted the comments with regard to the Tesco pharmacy which is providing extended opening hours. The Committee was of the view that there was no information provided to support a finding that pharmaceutical services are not currently provided at such times as needed and therefore it was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits (in relation to opening hours) on persons.
- 6.39 The Committee has considered whether there are any other factors that would confer significant benefits including on patients who share protected characteristics. The Committee had regard to the need to eliminate discrimination and advance equality of opportunity and foster good relations between these patients and those who do not share their protected characteristics.
- 6.40 The Committee was of the view that in accordance with Regulation 18(2)(b) the granting of this application would not confer significant benefits on persons in the area of the HWB which were not foreseen when the PNA was published.

#### **Other considerations**

- 6.41 Having determined that Regulation 18(2)(b) had not been satisfied, the Committee did not need to have regard to Regulation 18(2)(c) to (e).
- 6.42 No deferral or refusal under Regulation 18(2)(f) was required in this case.
- 6.43 The Committee had regard to Regulation 18(2)(g) and found that it did not apply in this case.
- 6.44 The Committee considered whether there were any further factors to be taken into account and concluded that there were not.
- 6.45 The Committee was not satisfied that the information provided demonstrates that there is difficulty in accessing current pharmaceutical services such that a pharmacy at the proposed site would provide better access to pharmaceutical services.
- 6.46 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
  - 6.46.1 confirm the Commissioner's decision;
  - 6.46.2 quash the Commissioner's decision and redetermine the application;
  - 6.46.3 quash the Commissioner's decision and, if it considers that there should be a further notification to the parties to make representations, remit the matter to the Commissioner.

## **7 DECISION**

- 7.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, confirms the decision of the Commissioner.
- 7.2 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.
- 7.3 The Committee has considered whether the granting of the application would cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area covered by the HWB, or the arrangements in place for the provision of pharmaceutical services in that area and is not satisfied that it would;
- 7.4 The Committee determined that the application should be refused on the following basis:
  - 7.4.1 In considering whether the granting of the application would confer significant benefits, the Committee determined that –
    - 7.4.1.1 there is already a reasonable choice with regard to obtaining pharmaceutical services;
    - 7.4.1.2 there is no evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services; and
    - 7.4.1.3 there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services;
  - 7.4.2 Having taken these matters into account, the Committee is not satisfied that granting the application would confer significant benefits as outlined above that would secure improvements or better access to pharmaceutical services.