

21 July 2017

1 Trevelyan Square
Boar Lane
Leeds
LS1 6AE

REF: SHA/18611

APPEAL AGAINST SOUTH (SOUTH CENTRAL) AREA TEAM, NHS COMMISSIONING BOARD ("NHS ENGLAND") DECISION TO REFUSE AN APPLICATION BY FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 WITHIN THE PROPOSED RETAIL UNITS, APPROXIMATELY 100-200M NORTH OF THE NEW UNIVERSITY TECHNICAL COLLEGE, GREENWOOD WAY, HARWELL, DIDCOT, OX11 6BZ

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1 A summary of the application, decision, appeal and representations and observations are attached at Annex A.

2 **Initial Consideration**

2.1 The Pharmacy Appeals Committee (“The Committee”), appointed by the Family Health Services Appeal Unit of the NHS Litigation Authority, had before it the papers considered by NHS England, together with a plan of the relevant area showing the location of existing pharmacies and doctors surgeries and the approximate site of the pharmacy proposed by the applicant.

2.2 It also had before it the written responses to the statutory consultations by the NHS LA

2.3 On the basis of this material the committee considered that it was necessary to conduct an oral hearing.

2.4 The Committee comprised Judge Graham White (Chair), Mr Michael Smith (Pharmacy Member), and Ms Katie Limm (Lay Member)

2.5 Mr Kevin Harrall appeared with Mr Martin Phipers on behalf of the applicant, Day Lewis Plc and Mr Matthew Cox appeared on behalf of interested party Lloyds Pharmacy Ltd. Also present as observers were Claire Brittain from Boots UK Ltd; Beth Lacey and Sue Williams both from NHS England; and Carole Trower from the Local Pharmacy Committee, Pharmacy Thames Valley.

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3 Site Visit

- 3.1 Immediately prior to the hearing, the Committee undertook a site visit. It was taken by taxi from the hearing venue to Great Western Park (GWP) via the A4130 main road into Ask Way and thence to the District Centre. The Committee noted substantial new residential development on all sides with a wide range of housing stock. It appeared that four separate development companies were involved.
- 3.2 Before reaching the centre itself the Committee passed an extensive open grassed area for sporting activities, with a very large clubhouse/social centre, and space for many pitches. Arriving at the District Centre location site in Greenwood Way, the Committee noted that in close proximity to it were the University Technical College, the proposed Asda supermarket, the other retail shops and public house sites, a new secondary school, the proposed primary school, a nursery, and sites for a community centre, extra care facility and apartments for the over 70's.
- 3.3 The Committee then proceeded to Didcot along the B4439. After 0.6 miles it reached Woodlands Surgery in a side turning setback from the main road and barely visible from it. Attached to the surgery is a Lloyds Pharmacy. There was a customer parking area which appeared to be adequate as there were no other patient or customer facilities close by. A bus stop for the No. 98 service was situated a short walking distance away.
- 3.4 After continuing for a further 0.6 miles along the B4493, the Committee reached a line of retail shops on the left and also Didcot Civic Hall, Didcot Health Centre, another Lloyds Pharmacy, and a Fire Station. Opposite was a Public Library.
- 3.5 The Committee continued for another 0.5 miles, where it reached a fairly new looking shopping centre on the left and, just beyond that, a Boots Pharmacy fronting the road itself. The Boots store included provision for optical services. There were also three banks and a Royal Mail office in the vicinity.
- 3.6 Further on, within the acute angle of the major junction with Station Road Didcot, was a large retail Park which included a substantial Sainsbury supermarket, Argos, Next and PC World. Although extremely large, the car park was only accessible by private vehicles from Station Road. Within the supermarket was another Lloyds Pharmacy.
- 3.7 The Committee had noted from the papers that there is a Tesco store containing a pharmacy further along the B4493, but in view of the information contained within the papers did not consider it necessary to view it.
- 3.8 Turning sharp left along Station Road, the Committee was driven past the Didcot mainline railway station on its right. It was prevented by a one-way street from turning under the railway bridge and into the residential area beyond, but eventually gained access by looping round via the A4130 and approaching it from the rear. The residential area here was all fairly recent origin but clearly well established.

- 3.9 After being driven past a primary school, the Committee reached Oaktree Health Centre which is located close to Didcot Football Club and a Leisure Centre. The Committee had noted from the papers that this medical practice has a patient list similar in number to that of Woodlands Surgery. Proceeding to the Ladygrove Shopping Centre, the Committee there noted the existence of a nursery school, a Co-operative store, takeaway shops, a dental practice, and a Boots pharmacy.
- 3.10 The Committee was then taken back under the railway onto Station Road by the one-way street and noted that pedestrian access in both directions at that point was straightforward. Continuing along Station Road, but this time joining the A4130 to head away rather than back, the Committee followed well displayed signs to GWP from the opposite direction to that by which they had originally entered. On the way, the Committee noted the residential buildings to the left, but none to the right where a large power station is located.
- 3.11 Close by the junction with the A34, and well beyond the GWP access road, the Committee noted the Apollo Pharmacy situated within the Milton Park Retail site. It considered this to be irrelevant to its considerations in view of its considerable distance away from the GWP District Centre.
- 4 A summary of the above observations was provided to those in attendance. They were invited to comment upon them and to indicate if any of the observations appeared to be inaccurate.
- 4.1 No relevant comments or submissions were made.
- 5 **Oral Hearing Submissions**
- 5.1 The bundle of documents before the Committee, which its members had read prior to the hearing, ran to 121 pages ending with a key to the map on page 120. This map showing the position of existing medical practices and pharmacies within 1.7 miles of the proposed location site. The applicant had provided, in addition, a letter dated 8 June 2017 from the Chairperson of the Great Western Park Residents Association expressing support for the appeal.
- 5.2 During the course of the evidence, Mr Harrall introduced a plan showing the retail site within which the proposed pharmacy was to be located, and also a draft plan with details of the intended Valley Park development which abuts GWP. Although they were produced outside the prescribed time limits, Mr Cox confirmed he did not object, and the Committee allowed their inclusion.
- 5.3 The oral submissions made on behalf of each party reflected their respective written submissions.
- 5.4 **Mr Harrall** confirmed the applicant's intention to locate the pharmacy within the group of 11 retail units now under construction. These include, not only a fish and chip shop, a hairdresser, estate agent and coffeehouse, but also veterinary and dental practices. There will also be a public house which is to open in this coming winter. Asda will occupy 11,000 ft.² and, as a major

supplier of food and other supermarket items, it will provide the facility for a full weekly shop by local residents.

- 5.5 There are currently no plans to create a general medical centre.
- 5.6 Although no up-to-date demographic information was available, Mr Harrall maintained it could be assumed from the number of schools opening in the area that there will be a large number of children and young parents living in the GWP development, which should be regarded as a community in its own right. There is a requirement for 30% of the dwellings to be affordable housing and, with the addition of the 60 McCarthy & Stone apartments for people over 70 years old, the resultant community will be mixed and wide-ranging in terms of age.
- 5.7 There are currently 1900 dwellings either built or under construction and the population figure is estimated to be 4000 at the present time. The projected eventual figures are 3,300 dwellings and a population of over 10,000. Close to the location site is the Gems Primary Academy with 420 available places and there are plans to open a nursery. A second primary school with 420 places is to open in September 2018. The secondary school situated close to the location site is to open in September 2017 with 600 places for children between the ages of 14 and 19.
- 5.8 There is provision for a second care facility, and a planning application for the development of a community centre opposite the site is about to be concluded. There is already one community centre elsewhere in GWP.
- 5.9 Mr Harrall submitted that there will be a significant proportion of individuals for whom current access to pharmaceutical services is not reasonable. There is no bus service at all on Sundays. The nearest pharmacy at present is that of Lloyds, which is attached to Woodlands Surgery. It is invisible from the road and there is limited car parking. More than 95% of prescriptions dispensed there in the month of February 2017 were for patients registered at that surgery. It is unlikely that, for example, students at the UTC would be registered at Woodlands or that they would choose to go to Lloyds for pharmaceutical support services.
- 5.10 The round trip to Woodlands on foot from the GWP retail centre is 2.5 km (or 1.5 miles). The sidewalk for Wantage Road, off which Lloyds Pharmacy is located, is on the opposite side and there is no controlled crossing point. Lloyds Pharmacy in Britwell Road Didcot is over a mile and a half away from the GWP retail centre. 93% of prescriptions dispensed there derive from the adjoining Didcot Health Centre. 70 to 80% of prescriptions dispensed at Lloyds in Sainsbury's are repeats. In the absence of any evidence to the contrary, Mr Harrell's assumption was that new GWP residents will continue to be registered with their existing General Practitioners.
- 5.11 Apart from the McCarthy & Stone development and the likely statistical bias for the development as a whole towards young families, Mr Harrall acknowledged there was no evidence to indicate the precise number of people

in GWP who might have a protected characteristic. It was reasonable to assume that it would broadly equate to society as a whole.

- 5.12 Outline planning permission for residential and associated development at Valley Park was granted in 2016, but detailed permission has not yet been issued. Mr Harrall conceded that the projected needs of this area should not be taken into account for the purposes of the instant appeal. He further acknowledged having no evidence about where GWP residents were or would be employed, although there might be opportunities within the neighbouring new Business Park. The Didcot main line railway station is close by and provides easy access to other areas, including London.
- 5.13 **Mr Cox** submitted that the test to be applied for reasonable access should be whether the new pharmacy would in fact provide benefits in terms of reasonable choice and, further, whether such benefits would be significant. He argued there was no evidence that children, the elderly or any other defined group, would have difficulty in accessing pharmaceutical services. He pointed out that there was no basis upon which a decision based on the provision of any new medical facility could be made.
- 5.14 Mr Cox also drew attention to the fact that the number 32 bus service operates on Sundays and that its route along the B4493 Wantage Road runs along the southern edge of the GWP development.
- 5.15 He conceded that, despite the fact that the Sainsbury's pharmacy is open for 100 hours every week, its prescription numbers are low.
- 5.16 Although not a party to the hearing, Ms Trower confirmed in answer to a question from the Committee that in the past there were two general pharmacies on the Wantage Road. Both of these moved their operations, one to Didcot itself and the other to Woodstock.
- 5.17 The parties agreed that no issues arise under either Regulation 18 or Regulation 31.

6 Consideration

- 6.1 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations").
- 6.2 The Committee first considered Regulation 31 of the regulations which states:
- (1) A routine or excepted 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).

6.3 The Committee noted that in Part 5 of its application form (reference to Regulation 31) the Applicant had stated; *“There is no pharmacy within 500m of our application site and therefore in our opinion Regulation 31 is not applicable.”* The Committee further noted NHS England’s decision letter includes; *“NHS England was satisfied that there is no pharmacy providing pharmaceutical services at the same or adjacent premises. The application did not therefore need to be refused in accordance with Regulation 31.”* The Committee having regard to the information provided to it, and that the information had not been disputed by the parties on appeal, was not required to refuse the application under the provisions of Regulation 31.

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

6.5 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.*
- (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)."*
- 6.6 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 6.6.1 confirm NHS England's decision;
- 6.6.2 quash NHS England's decision and redetermine the application;
- 6.6.3 quash NHS England's decision and, if it considers that there should be a further notification to the parties to make representations, remit the matter to NHS England.
- 6.7 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
- 6.8 The Committee went on to consider whether Regulation 18(1)(b) was satisfied, i.e. whether the improvements or better access that would be secured if the application was granted were or was included in the PNA in accordance with paragraph 4 of Schedule 1 of the Regulations.
- 6.9 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).
- 6.10 The Committee considered the Oxfordshire Pharmaceutical Needs Assessment ("the PNA") 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 31 March 2015 and that supplementary statements had been issued in January and February of 2016 (five in total). These were concerned with the

closure of a pharmacy, changes of ownership and to opening hours, but not in respect of pharmacies located in Didcot.

- 6.11 The Committee noted that the Applicant seeks to provide unforeseen benefits to the patients at the location of the proposed pharmacy, and to the population of the Great Western Park Development, Didcot. The Committee noted the PNA lists Didcot as being in the ‘South Oxfordshire’ locality. There are several references throughout the PNA to Didcot, including the following:

PNA Page 77

“Future Needs

- 6.11.1 *At the time of developing the PNA no additional needs specific to this locality have been identified. However there are small housing developments in this locality particular in the greater Didcot area.”*

PNA pages 77&78

- 6.11.2 *“The towns, which are densely populated and have highest levels of deprivation (Didcot, Thame and Wallingford), are all served by opening times including evenings and weekends. Residents of Henley also have access to extended hour pharmacies. Didcot has one 100 hundred hour pharmacy.”*

PNA page 85

- 6.11.3 *“GP services close by are in Didcot in the South Oxfordshire locality and are well provided for in terms of pharmaceutical services”*

- 6.12 The PNA ‘Executive Summary – Pharmaceutical Services in Oxfordshire’ page 6 ‘Key Findings’ states:

- 6.12.1 *“Oxfordshire is a relatively affluent county with pockets of deprivation in urban areas. It is well provided with pharmaceutical services.*

- 6.12.2 *Across Oxfordshire the number of pharmacies per 100,000 populations is less than the national average. However, the number of dispensing practices is greater than the national average.*

- 6.12.3 *All pharmacies should make full use of NHS Choices and other internet-based information sources to promote their services, to improve communications so patients and carers are aware of the range and availability of all services.*

- 6.12.4 *Oxfordshire is in no need of further premises to provide pharmaceutical services. However, there are opportunities for improvement and better access to pharmaceutical services for residents of Shipton, Berinsfield and Chinnor.*

- 6.12.5 *When local housing developments are considered over the next three years it is concluded that, in relation to the current provision of*

pharmacies, a gap in pharmaceutical services is unlikely to exist during the lifetime of this PNA.”

- 6.13 In respect of the South Oxfordshire locality (of which Didcot is a part) the PNA includes on pages 79-80:

“Necessary services – gaps in provision

- 6.13.1 *In order to assess the provision of pharmaceutical services against the needs of the population, the HWB considers access (distance, travelling times and opening hours) as the most important factor in determining the extent to which the current provision of pharmaceutical services meets the needs of the population.*
- 6.13.2 *The HWB considers the access to pharmacy of primary importance during normal working hours and at times when GP surgeries are open.*
- 6.13.3 *Having regard to the totality of information for this locality, taking account of service provision elsewhere in Oxfordshire and in other areas, the HWB considers the provision of pharmaceutical services as a whole meets the needs of the locality population, i.e. those reliant on such services.*

Improvements and better access – gaps in provision

- 6.13.4 *In order to assess the provision of pharmaceutical services in respect to providing improvements or better access for the population, the HWB first considered access at times other than during normal working hours. Whilst recognising the importance of provision by those on the dispensing doctor list, the HWB considered the provision of pharmaceutical services by a person on the pharmaceutical list to be paramount in securing a full range of pharmaceutical services.*
- 6.13.5 *The HWB accepts that not all settlements could reasonably be regarded as having a gap in pharmaceutical services, given their size and relative proximity to other provision. However, it takes the view that those with GP surgeries providing extended hours at evenings and weekends require access to the full spectrum of essential services within a reasonable distance and driving time.*
- 6.13.6 *Whilst the HWB concludes there is no further requirement for additional pharmacy premises, there is a gap in the times that pharmaceutical services are provided in respect of:*
- 6.13.6.1 *Chinnor on a Wednesday evening (18:30 until 20:00), and*
- 6.13.6.2 *Berinsfield for four hours on a Saturday morning.*
- 6.13.7 *For the pharmacies in these settlements to provide pharmaceutical services at these times would give better access for the population reliant on those services.*

Future – gaps in provision

- 6.14 *The HWB considered the developments identified in order to assess whether there could be a gap in pharmaceutical services either by way of need or as improvement or better access in the future. Given the nature, extent and location of these developments in relation to current pharmaceutical provision and the absence of any identified gap, the HWB concluded that no gap is likely to exist during the lifetime of this PNA.*
- 6.15 The Committee noted that the improvements or better access that the Applicant was claiming would be secured by its application were not included in the relevant pharmaceutical needs assessment in accordance with paragraph 4 of Schedule 1.
- 6.16 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)

- 6.17 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”

- 6.18 The Committee noted NHS England 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.
- 6.19 On the basis of the information available, including the fact that NHS England's above comment had not been disputed on appeal, the Committee was not satisfied that, if the application were to be granted and the pharmacy to open, the ability of the NHS England thereafter to plan for the provision of services would be affected in a significant way.
- 6.20 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)

- 6.21 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”

- 6.22 The Committee noted NHS England had found no evidence to support the suggestion that if the application was to be granted, it would cause significant detriment to the arrangements in place for pharmaceutical services in the area. The Committee noted the information provided to it, including that NHS England's comment had not been disputed on appeal.
- 6.23 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.
- 6.24 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)

- 6.25 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)

(i) Reasonable Choice

- 6.26 The proposed pharmacy will provide a full range of pharmaceutical services as set out in the original application and will be open every day of the week. The services comprise: minor ailments; supervised consumption; needle exchange;

stop smoking; patient group directions; care home services; EHC; chlamydia screening and treatment; alcohol screening and brief interventions; Ccard service; palliative care; home delivery service; medicine use reviews; and new medicines service.

- 6.27 Whilst situated only 0.6 miles from the location site, the nearest existing pharmacy at the Woodlands Medical Centre is used principally by patients registered with the medical practice adjacent to it. Having regard to its very limited visibility and disconnected location the Committee considers that it is unlikely to be used for general pharmaceutical provision by students at the newly opened UTC in particular and residents of GWP in general. There is only a limited bus service along Wantage Road and access on foot, whilst by no means impossible, is not without hazard.
- 6.28 The Committee accepts that residents from the northern part of GWP, who would otherwise gravitate naturally towards the District Centre, would face a longer journey to the Woodlands pharmacy of up to 30 minutes duration each way.
- 6.29 The Committee considers that the other two pharmacies situated further along on the Wantage Road are similarly disconnected from the GWP development. In the case of Lloyds in Britwell Road, the overwhelming majority of its prescriptions are derived from the adjoining Didcot Health Centre. The pharmacy inside Sainsbury's, is, by reason of its further distance away unlikely to be satisfying GWP residents' prescription needs, as is evidenced by a low prescription level .
- 6.30 Having seen the current extent of the GWP development and taken account of its likely character and composition in the near future the Committee accepts Mr Harrall's submission that it will have become a large, self-contained community with ready internal access to most of its needs. The latest estimate is a population of between 7000 and 10000 people and the full extent of the district's growth was not fully recognised in the PNA.
- 6.31 The Committee finds it reasonable to infer, from the number of nursery, primary school and secondary school places being provided, that there will be a significant number of families with young children for whom pharmaceutical services provision in their immediate locality would be a significant benefit.
- 6.32 Therefore, considering the issue of choice in relation to physical access, and opening hours, the Committee was of the view that there is currently insufficient reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB, such that it can be satisfied, having regard to the desirability of there being a reasonable choice with regard to obtaining services, that granting the application would confer significant benefits on persons.

(ii) Protected Characteristics

- 6.33 In considering Regulation 18(2)(b)(ii) the Committee reminded itself that it was required to address itself to people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that are difficult for them to access. The Committee was also aware of its duties under the Equality Act 2010 which include considering the elimination of discrimination and advancement of equality between patients who share protected characteristics and those without such characteristics.

- 6.34 There was limited statistical evidence before the Committee about the numbers of people in GWP sharing a protected characteristic. However it is now known that there are 60 apartments under construction for occupation solely by people over the age of 70, and that further provision of care facilities is planned.
- 6.35 It cannot be assumed that those individuals will have their own means of vehicular transport. For those without it, who are more likely to have mobility concerns, the journey on foot to the nearest existing pharmacy would be hazardous, particularly if walking alone.
- 6.36 However, whilst the Committee accepts that on the balance of probabilities people living in GWP who share a protected characteristic might well have difficulty accessing pharmaceutical services to meet their needs there is currently limited evidence of this.

(iii) Innovative Approaches

- 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 considered whether there was something over and above the usual delivery of pharmaceutical services that might be expected from all pharmacies, in other words some ‘added value’ on offer at the location.
- 6.38 The applicant did not rely on any innovative approaches being provided. The Committee was not satisfied, having regard to the desirability of there being innovative approaches taken with regard to the deliverability of pharmaceutical services, that granting the application would in this case confer significant benefits on persons arising from any innovative approach.

Regulation 18(2)(b) generally

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

Other considerations

- 6.40 Having determined that Regulation 18(2)(b) had been satisfied, the Committee needed to have regard to Regulation 18(2)(c) to (e) and found that none applied in this case.
- 6.41 No deferral or refusal under Regulation 18(2)(f) was required in this case.
- 6.42 The Committee considered whether there were any further factors to be taken into account and concluded that there were not.
- 6.43 The Committee was 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.

- 6.44 The Committee was satisfied that the granting of the application would secure improvements to pharmaceutical services in the area of the relevant HWB and that these were likely to provide significant benefits which were unforeseen at the PNA assessment dates. In those circumstances Committee determined that the decision of NHS England must be quashed.
- 6.45 The Committee went on to consider whether there should be a further notification to the parties detailed at paragraph 19 of Schedule 2 of the Regulations to allow them to make representations if they so wished (in which case it would be appropriate to remit the matter to NHS England) or whether it was preferable for the Committee to redetermine the application.
- 6.46 The Committee noted that representations on Regulation 18 had been sought from parties by NHS England and representations had already been made by parties to NHS England in response. These had been circulated and seen by all parties as part of the processing of the application by NHS England. The Committee further noted that when the appeal was circulated representations had been sought from parties on Regulation 18.
- 6.47 The Committee concluded that further notification under paragraph 19 of Schedule 2 would not be helpful in this case.

7 DECISION

- 7.1 The Committee quashes the decision of NHS England and redetermines the application.
- 7.2 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;
- 7.3 The Committee determined that the application should be granted on the following basis:
- 7.3.1 In considering whether the granting of the application would confer significant benefits, the Committee determined that –
- 7.3.1.1 there is not already a reasonable choice with regard to obtaining pharmaceutical services;
- 7.3.1.2 there is insufficient evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services; and
- 7.3.1.3 there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services;

- 7.3.2 Having taken these matters into account, the Committee is satisfied that granting the application would confer significant benefits as outlined above that would secure improvements or better access to pharmaceutical services.

Graham White
Committee Chair

A copy of this decision is being sent to:

Ms C Reid, Day Lewis plc – Applicant
NHS England
Mrs C Brittain - Boots UK Ltd
Mr M Cox – Lloyds Pharmacy Ltd
Mr G White
Mr M Smith
Ms C Limm

Annex A

REF: SHA/18611

Tel: 0113 86 65500
Fax: 0207 821 0029
Email: fhsau@resolution.nhs.uk**APPEAL AGAINST SOUTH (SOUTH CENTRAL) AREA TEAM, NHS COMMISSIONING BOARD ("NHS ENGLAND") DECISION TO REFUSE AN APPLICATION BY FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 WITHIN THE PROPOSED RETAIL UNITS, APPROXIMATELY 100-200M NORTH OF THE NEW UNIVERSITY TECHNICAL COLLEGE, GREENWOOD WAY, HARWELL, DIDCOT, OX11 6BZ****1 The Application**

By application dated 15 July 2016, Day Lewis plc ("the Applicant") applied to NHS England for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 'Within the proposed retail units, approximately 100-200m north of the new University Technical College, Greenwood Way, Harwell, Didcot, OX11 6BZ.' In support of the application it was stated:

- 1.1 In response to Part 5 of the application form (reference to regulation 31) the Applicant stated: *"There is no pharmacy within 500m of our application site and therefore in our opinion Regulation 31 is not applicable."*
- 1.2 The Applicant believes that, should this application be granted by NHS England, it will secure improvements and better access to pharmaceutical services for the new population at Great Western Park and for the extensive number of people using the new facilities at the proposed site including the proposed new medical centre.
- 1.3 The application is for a 'best estimate' of premises as, whilst, detailed plans for the individual retail units have now been produced, specific premises within the development have not yet been secured. However the Applicant has provided a marketing brochure for the development showing, on page 4, three buildings which will be available for 'retail use'. The pharmacy will be within

Advise / Resolve / Learn

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Accredited
April 2020

one of these buildings. Page 3 of this brochure shows the location of these buildings in relation to the University Technical College which has already been built.

- 1.4 This application is made to provide unforeseen benefits as the needs the Applicant has outlined were not specifically identified in the Oxfordshire Pharmaceutical Needs Assessment published in 2015 or the supplementary statement issued in February 2016.
- 1.5 In the Applicant's opinion there will be a distinct gap in services in Great Western Park as further facilities are developed. The Applicant has provided clear supporting evidence of an opportunity to offer significant benefits to the residents of the local area by granting this application.

General Information

The Area

- 1.6 Great Western Park (GWP) is a significant new housing "village" situated at the western edge of Didcot.
- 1.7 There are approximately 3,300 new dwellings planned for the entire development of which around 1,000 houses have now been constructed and occupied in the northern part of the development. A significant number of houses are now under construction in the central part of the development and building work has recently commenced on the southern side of the B4493 Wantage Road.
- 1.8 A road connecting the more established northern part of the development and the central/southern areas has now been completed and is open to the public.
- 1.9 In addition to the residential housing there are a significant number of facilities planned to support the local residents of Great Western Park. These include two primary schools, a secondary school (which is now under construction), various community facilities and a significant retail/commercial centre which will be completed in 2017.
- 1.10 Plans for the commercial centre include a major supermarket, public house, community facilities, a medical centre, a day-care nursery, and other retail/leisure units. It is within this area that the applicant proposes to open a new pharmacy.
- 1.11 When complete the commercial and educational facilities will meet the needs of all existing residents of Great Western Park as well as the future needs of new residents taking occupation. It will effectively be a self-contained community.
- 1.12 The Applicant has provided a copy of the GWP Master plan document which shows the layout of the development. The 'parcels' shown in the north are the areas which are now largely complete and occupied. The central area (near the Secondary School) is currently under development (with the purple areas

showing where the retail and other community facilities will be built). Development has also now commenced in the southern part of the site.

Oxfordshire Pharmaceutical Needs Assessment documents

- 1.13 Both Didcot and the Great Western Park development were specifically mentioned in the Oxfordshire PNA dated February 2011 which stated (from page 21):

5.2.3 Future population growth

- 1.14 *Today in 2010, the registered patient population of Oxfordshire is 675,000. This population is projected to grow to 719,410 by 2015. In recent years there have been net population increases in Oxford and West Oxfordshire, although these were partially offset by reductions in Cherwell, South Oxfordshire and the Vale of White Horse. Future population growth in the county will be concentrated in and around Oxford, Bicester (including EcoBicester) Banbury, Didcot, Grove and Wantage where several thousand new homes will be built over the next five years with further planned growth to 2030.*
- 1.15 *In Oxford City, there are plans for more housing in the West End and Barton. In Cherwell in addition to the first phase of the Ecotown there will also be other housing developments in Bicester at South West Bicester, Gavray Drive and nearby at Upper Heyford. In Banbury housing growth is centred on the Canalside and Bankside developments. In West Oxfordshire Witney and Carterton are the focuses for growth.*
- 1.16 *In Didcot, the Great Western Park and Valley Park developments will increase housing in both South Oxfordshire and the Vale of the White Horse.*
- 1.17 *Also in South Oxfordshire, Wallingford will grow both in the town itself, at Crowmarsh Gifford and in the nearby site of the former Fair Mile Hospital. In the Vale of the White Horse there will be developments in Abingdon, Harwell, Wantage, Faringdon, Botley and Grove, most significantly at the Grove Airfield site.*
- 1.18 *Overall, a total of 19,308 extra housing units are expected to be built between 2010 and 2015. In light of this the PCT will consider the level of pharmacy provision.*
- 1.19 *The 2015 PNA has much less to say on new development, simply stating (in relation to the South Oxfordshire locality) on p.77 "At the time of developing the PNA no additional needs specific to this locality have been identified. However there are small housing developments in this locality particular in the greater Didcot area".*
- 1.20 *In the Applicants opinion, the PNA has failed to properly recognise the scale of planned development at GWP which once completed will add in the region*

of 7,000-10,000 new residents to the area. Once the extent of new planned new facilities is taken into account it is clear that there will be significant demand for pharmaceutical services at this location.

Information in support of the application

1.21 Within the application form the Applicant is asked to address two specific questions:

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

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

1.22 The Applicant has addressed these matters by setting out in further details below:

Securing better access

1.23 The most significant factors to take into account when considering this application are the scale of the new development, the extent to which it is already occupied and the extensive range of new facilities planned for GWP.

1.24 Despite the size of this development, and the fact that the development has been on-site since 2011, no specific mention is made of GWP in the current (2015) PNA.

1.25 As the development was not considered when the new PNA was drafted the implications for the provision of pharmaceutical services were not considered either. It is for this reason this application is made under Regulation 18 (to provide unforeseen benefits).

1.26 GWP is located approximately 1.5 miles to the west of Didcot town centre though the journey by road is significantly longer for many residents in the northern part of the development.

1.27 There are currently very few facilities for residents within the development but this is now changing with the completion of the University Technical College (which opened in September 2015) and the first primary school and the imminent development of the commercial centre and secondary school.

1.28 In the wider area there are very limited local shopping facilities to the south east of GWP on Wantage Road heading to the town centre but in practice these serve the established residential population in that part of the town. There is a pharmacy located within the Didcot community hospital site but it predominantly serves this same local population as well as patients attending Woodlands medical centre. The pharmacy is not visible from Wantage Road so attracts very little 'passing trade'.

- 1.29 Given the range of facilities that will be provided within the development, which include a major supermarket, a range of retail and community facilities and a proposed health centre, it is clear that residents will be able to meet all of their daily needs without travelling further afield. That being the case, in our opinion it is unreasonable for them to travel out of the development to access pharmaceutical services.
- 1.30 Pharmaceutical services will also benefit visitors to the area, such as the students of UTC who, given their age are likely to have specific requirements for pharmaceutical services such as EHC and other sexual health services.

Choice of pharmaceutical service provider

- 1.31 In considering this application NHS England should have regard to the following question:

1.31.1 *"Is there reasonable choice with regard to obtaining pharmaceutical services in the area ?"*

- 1.32 Whilst the Applicant accepts that there is a choice of pharmacy providers across Didcot as a whole, it believes that a patient living in GWP who requires pharmaceutical services will not find the journey to access them is reasonable. That being the case they will not consider that they have a reasonable choice.
- 1.33 In the Applicant's view granting this application is necessary to secure a reasonable choice for the residents of and visitors to the area identified.

Improvements to the provision of pharmaceutical services

Pharmacy Services

- 1.34 The 2015 Oxfordshire PNA provides details of the pharmaceutical services being provided in the area at a specific point in time and also strives to identify potential gaps in services.
- 1.35 However this application is made to provide "unforeseen benefits" rather than to meet specific current or future needs specified in the PNA and therefore the Applicant has not referred specifically to meeting needs discussed/identified within the PNA.
- 1.36 The Applicant proposes providing the following advanced and locally commissioned services (subject to commissioning), and have demonstrated elsewhere in the country its ability to deliver high quality and innovative pharmaceutical services:
- 1.36.1 Minor Ailment Service
- 1.36.2 Supervised Consumption
- 1.36.3 Needle Exchange
- 1.36.4 Stop smoking

- 1.36.5 Patient Group Directions
- 1.36.6 Care Home Services
- 1.36.7 EHC
- 1.36.8 Chlamydia Screening & Treatment
- 1.36.9 Alcohol screening and brief interventions
- 1.36.10CCard service
- 1.36.11Palliative Care
- 1.36.12Home delivery service
- 1.36.13Medicines Use Reviews
- 1.36.14New Medicines Service

- 1.37 The provision of pharmaceutical services from high quality premises which are co-located with a range of community facilities including a medical centre provides an excellent opportunity to delivery truly innovative services. As commissioning becomes increasingly decentralised, there will be opportunities to further develop services to meet the specific needs of this local population.
- 1.38 In the Applicant's opinion, the combination of the on going population increase and provision of extensive facilities are such that a clear need for the provision of pharmaceutical services will arise for the residents of this development. It will no longer be reasonable, particularly when the new medical cent re-opens, for residents to face a long journey to access a pharmacy.
- 1.39 As the residential areas continue to expand the demand for pharmaceutical services will increase and with 3,300 dwellings being constructed in due course there are likely to be up to 10,000 residents requiring health care in the ensuing years. These people will put further pressure on the existing services.
- 1.40 It is clear that the provision of pharmaceutical services for these residents in the future will not be adequate.
- 1.41 Therefore, the need the Applicant is proposing to meet is the provision of full and accessible pharmaceutical services for the residents of this part of the HWB.

Summary

- 1.42 In the Applicant's view the residents of Great Western Park would benefit greatly from having a modern community pharmacy located in the heart of the new housing development. It is clear that there are going to be extensive facilities serving the residents, workers and visitors to the development and

this application clearly demonstrates benefits which would meet the needs of the growing population.

- 1.43 The resident population in the vicinity of the application do not enjoy easy access to any existing pharmacy contractors. Access is particularly difficult for those residents who do not have access to a motor vehicle. As with any new development there are a high number of parents with young children for whom travelling to access services can be more difficult.
- 1.44 With the extent of new housing either already built or planned for the near future there will clearly be further demand for health care facilities to cope with the increasing population numbers. This demand is unlikely to be met by the existing contractors who are situated some distance from the new developments.
- 1.45 There is clearly a gap in pharmaceutical services in GWP which will become significantly more apparent once the community and commercial facilities have been developed.
- 1.46 The Applicant intends to provide the following services:
- 1.46.1 Essential services;
- 1.46.2 Clinical governance;
- 1.46.3 Appliances listed in Part IX of the Drug Tariff;
- 1.47 Advanced and Enhanced services:

<u>Service</u>	<u>Accredited to provide</u>	<u>Premises accredited</u>	<u>Consultation area</u>
Minor Ailment Service	Y	TBA	Y
Supervised Consumption	Y	TBA	Y
Needle Exchange	Y	TBA	Y
Stop smoking	Y	TBA	Y
Patient Group Directions	Y	TBA	Y
Care Home Services	Y	TBA	Y
EHC	Y	TBA	Y
Chlamydia			

Screening & Treatment	Y	TBA	Y
C Card service	Y	TBA	Y
Palliative Care	Y	TBA	Y
Home delivery Service	Y	TBA	Y
Medicines Use Reviews	Y	TBA	Y
New Medicines Service	Y	TBA	Y
Alcohol screening and brief intervention	Y	TBA	Y

1.48 The Applicant would propose to provide any local enhanced service commissioned by the CCG, HWB or NHS England.

1.49 The Applicant's proposed core opening hours are:

Mon to Fri 8.30 to 12.00
15.30 to 18.30

Sat 9.00 to 12.00
14.30 to 17.00

Sun 10.00 to 12.00

The Applicant's proposed total opening hours are:

Mon to Fri 8.30 to 18.30

Sat 9.00 to 17.00

Sun 10.00 to 12.00

2 The Decision

NHS England considered and decided to refuse the application. The decision letter dated 29 December 2016 states:

Covering letter

2.1 NHS England has considered the application and is writing to confirm that it has been refused.

2.2 The decision report (provided) gives full reasoning behind the decision.

Decision report

Consideration

- 2.3 NHS England considered the following:
- 2.3.1 The NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.
- 2.4 The application form provided by the Applicant –
- 2.4.1 NHS England noted that the Applicant was proposing to provide essential, enhanced and advanced services.
- 2.4.2 The Applicant also proposed core opening of 40 hours per week and total proposed opening of 60 hours per week.
- 2.4.3 NHS England considered the information provided by the Applicant in support of the application – noting that the Applicant’s first best estimate was “*within the proposed retail units, approximately 100-200m North of New University Technical College, Greenwood Way, Harwell Didcot OX11 6BZ*”. A map showing the location of the best estimate address was also provided.
- 2.5 The Applicant made the following statement regarding the best estimate in the enclosed supporting information within the application form:
- 2.5.1 “*Whilst detailed plans for the individual retail units have now been produced, specific premises within the development have not yet been secured. However we have enclosed a marking brochure for the development showing, on page 4, three buildings which will be available for ‘retail use’. The pharmacy will be within one of these buildings. Page three of the brochure shows the location of these buildings in relation to the University Technical College which has already been built.*”
- 2.6 The best estimate address submitted was within the proposed retail units, approximately 100-200m north of the new University Technical College, Greenwood Way, Harwell, Didcot OX11 6BZ”. NHS England accepted the best estimate.
- 2.7 The Report and annexes prepared by PCSE and NHS England.
- 2.7.1 NHS England noted that the applicant’s fitness to practise had been previously considered and approved.
- 2.7.2 The information submitted by the Applicant along with the application indicates that the Applicant proposes to provide pharmaceutical services to the residents of the Great Western Park development, from the best estimate location. The Applicant had stated that “*in our opinion there will be a distinct gap in services in Great Western Park as further facilities are developed*”.

- 2.7.3 The information submitted by the Applicant along with the application indicates that the Applicant proposes to provide pharmaceutical services to the residents of Great Western Park development from the best estimate location. The applicant had stated that the Oxfordshire PNA dated 2015; *“In our opinion, the PNA has failed to properly recognise the scale of planned development at GWP which once completed will add in the region of 7,000-10,000 new residents to the area. Once the extent of new planned facilities is taken into account it is clear that there will be significant demand for pharmaceutical services at this location.”*
- 2.7.4 The Applicant stated that the development site indicates a proposal for a medical centre. NHS England was aware that there was no actual plan in place to situate a GP Surgery at the site and therefore residents within the development are accessing the available medical facilities in the Didcot area.
- 2.7.5 The Applicant had also stated that *“A road connecting the more established northern part of the development and the central/southern areas has now been completed and is open to the public.”*
- 2.7.6 All additional information, including location, opening times and distances of surrounding pharmacies and GP Surgeries were noted and considered by NHS England.
- 2.8 NHS England considered the representations made by Lloyds Pharmacy Limited, Boots UK Limited, and Pharmacy Thames Valley (Berkshire & Oxfordshire LPCs) – NHS England noted the objections made by the interested parties.
- 2.9 NHS England noted that the Applicant had responded to the representations received during the consultation period.

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

- 2.10 NHS England noted that the proposed pharmacy location is in a non-controlled locality within 1.6km of an unclassified area.

Regulation 31 – Refusal: same or adjacent premises

- 2.11 NHS England was satisfied that there is no pharmacy providing pharmaceutical services at the same or adjacent premises. The application did not therefore need to be refused in accordance with Regulation 31.
- 2.12 NHS England decided that it was not necessary to hold an oral hearing before determining the application.

Decision

- 2.13 Having considered the application, representations received and all additional information, NHS England determined to refuse the application.

Reasons for Decision

2.14 The reasons for this decision are as follows:

Pharmaceutical Needs Assessment (PNA)

2.15 NHS England had regard to the Oxfordshire Pharmaceutical Needs Assessment 2015 (issue date 31st March 2015, Final v2) (the ‘PNA’) and noted that a supplementary statements had been issued in January and February 2016, but were not in relation to the Didcot area.

2.16 NHS England noted that the Health and Wellbeing Board (‘HWB’) had commissioned an assessment of the current capacity of pharmacies in the areas of known housing growth within Oxfordshire and had reached the conclusion that *“when local housing developments are considered over the next three years, it is concluded that, in relation to the current provision of pharmacies, a gap in pharmaceutical services is unlikely to exist during the lifetime of this PNA”*.

2.17 NHS England noted that the HWB had considered the impact of the population growth in the locality of Didcot on the current provision of pharmaceutical services in the area. On page 77 of the PNA, it is stated that *“At the time of developing the PNA no additional needs specific to this locality have been identified. However there are small developments in this locality particular in the greater Didcot area”*.

2.18 Having considered the impact an increase in population is likely to have on the current provision of pharmaceutical services, the HWB had reached the conclusion on Page 80 that *“given the nature, extent and location of these developments in relation to current pharmaceutical provision and the absence of any identified gap, the HWB concluded that no gap is likely to exist during the lifetime of this PNA”*.

2.19 On the application form, the Applicant stated that *“Despite the size of this development, and the fact that the development has been on-site since 2011, no specific mention is made of GWP in the current (2015) PNA”*.

2.20 NHS England 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.

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

2.21 Further to Regulations 18(1), NHS England was required to consider whether is satisfied that granting the application or granting it in respect of some of the services specified in it, would secure improvements or better access, to pharmaceutical services; and the improvements or better access that would be secured were or was not included in the relevant PNA.

- 2.22 In order to be satisfied in accordance with Regulation 18(1), NHS England went on to consider those matters set out at Regulation 18(2).
- 2.23 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.
- 2.24 NHS England was not aware of any plans that would be affected and concluded that granting the application would not have an adverse effect on any future plans.
- 2.25 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.*
- 2.26 NHS England found no evidence to support the suggestion that if the application was to be granted, it would cause significant detriment to the arrangements in place for pharmaceutical services in the area.
- 2.27 NHS England 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).
- 2.28 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.*
- 2.29 In order to determine if patients in the area already had a reasonable choice, NHS England 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 Didcot area (including the Great Western Park development).
- 2.30 NHS England had regard to the current service provision in the immediate area of Didcot and noted that there are 6 pharmacies within 2km radius of the best estimate address, including one 100 hour pharmacies (Lloyd's Pharmacy within Sainsbury's Supermarket on Central Drive, Didcot open on Monday from 07:00 to 22:00; Tuesday to Friday from 07:00 to 23:00; Saturday from 07:00 to 22:00; and Sunday from 10:00 to 16:00. The Weekday opening hours of the other 5 pharmacies range from 08:00 to 18:30, Saturday opening hours range from 09:00 to 17:30.
- 2.31 NHS England noted that the Applicant had offered to open from 08:30 to 18:30 on Monday to Friday, Saturday opening of 09:00 to 17:00 and Sunday opening of 10:00 to 12:00. However there were already pharmacies in the area providing the same hours and as indicated above, one 100 hour pharmacy operates from the town.

- 2.32 NHS England also noted that patients in the area of Didcot also had a reasonable choice as to the providers to access pharmaceutical services from, including Lloyds, Boots, and Apollo pharmacy.
- 2.33 NHS England was satisfied that the provision of pharmaceutical services in the Didcot area was adequate and was satisfied that residents of Didcot already have a reasonable choice with regard to obtaining pharmaceutical services.
- 2.34 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.*
- 2.35 NHS England noted that the information in support of the application was specifically constructed to serve the population at the Great Western Park development. The Applicant had referred to the opening of medical centre at the development, however NHS England was aware that there was no actual plan in place to situate a GP Surgery at the site.
- 2.36 NHS England received no evidence that identified a group of patients in the Didcot area, sharing a protected characteristic with difficulty accessing services that meet a specific need. NHS England therefore concluded that the application did not satisfy the test in this part of the Regulation.
- 2.37 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.*
- 2.38 NHS England noted the Applicant's comments as to how it would secure improvements in service delivery by offering to provide a range of advanced and locally commissioned services.
- 2.39 The Applicant also stated that 'The provision of pharmaceutical services from high quality premises which are co-located with a range of community facilities including a medical centre provides an excellent opportunity to deliver truly innovate services'.
- 2.40 NHS England noted from the table at Page 79 of the Oxfordshire PNA 2015, that the pharmacies in Didcot and surrounds currently provided the Medicine Use Review service and New Medicines service.
- 2.41 NHS England was not satisfied with the applicant's arguments that the provision of pharmaceutical services for the residents of Great Western Park in the future will not be adequate. NHS England concluded that it is not

satisfied that the approach offered by the applicant would confer significant benefits on persons in the area of Didcot which were not foreseen when the Oxfordshire PNA was published.

- 2.42 Regulation 18(2)(c)-(f) – NHS England had previously determined that there was no need to defer the application under Regulation 18(2)(c) to (f).
- 2.43 NHS England concluded that Regulation 18(2)(b) had not been met because:
 - 2.43.1 there is already a reasonable choice with regard to obtaining pharmaceutical services,
 - 2.43.2 there is no evidence of people sharing a protected characteristics having difficulty in accessing pharmaceutical services, and
 - 2.43.3 there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services.
- 2.44 NHS England was not satisfied that granting the application would confer significant benefits or secure improvements and better access to pharmaceutical services.

3 The Appeal

In an undated letter sent by email on 27 January 2017 and addressed to NHS Resolution, formerly known as the NHS Litigation Authority (NHS LA), the Applicant appealed against NHS England's decision. The grounds of appeal are:

- 3.1 NHS England appears to have placed undue reliance on the findings of the PNA despite the fact that this application was made to provide benefits *unforeseen* by the PNA.
- 3.2 The service provided by existing pharmacies some distance away has been deemed to offer sufficient choice to the population without considering how people are actually able to access these pharmacies.
- 3.3 NHS England appears to have disregarded how the impact of further residential development and the new district centre will change how residents access services generally.
- 3.4 NHS England have determined that the lack of agreed plans for a GP surgery in the area in some way reduces the requirements for pharmaceutical services to be provided. This is an outdated view and fails to consider how patients access pharmaceutical services without having first visited their GP.
- 3.5 NHS England has failed to have proper regard to the additional choice offered by a pharmacy opening 7 days a week when there is no extended hours pharmacy located to the west of the town at present.
- 3.6 The Applicant discuss each of these matters in more detail later in this appeal letter.

Background and update in respect of development

- 3.7 Didcot is a large town located approximately 10 miles south of Oxford. At the time of the 2011 census the population was around 25,000 residents. According to South Oxfordshire District Council, this was expected to reach around 30,000 residents by 2016.
- 3.8 The Applicant has included, as appendix A, a map of the town showing the location of all pharmacies and GP surgeries and, as appendix B, a map showing the immediate around the proposed location.
- 3.9 Points to note from these maps include the following:
- 3.9.1 There are currently six pharmacies in the town, three of which are owned by Lloyds Pharmacy, two of which are owned by Boots and one pharmacy is operated by Tesco.
- 3.9.2 There are two pharmacies located to the west of the town centre, both of which are owned by Lloyds and are located within medical centres.
- 3.9.3 The Great Western Park (GWP) development comprises a huge area (179 Hectares) significantly extending the western boundary of the town.
- 3.9.4 Whilst it is not entirely clear from the local area map, the GWP development is not linked to the existing residential areas west of the town centre with the exception of a pedestrian footpath off Blackthorn Road. The only way to access amenities outside GWP is either along the A4130 to the north of GWP or the B4493 to the south.
- 3.10 Building at GWP only commenced in 2010 so there is no meaningful census data available in respect of the demographic profile of residents living within the development. However it is noteworthy that the developers are required to ensure that a minimum of 30% of the houses built are designated as affordable housing.
- 3.11 From the Applicant's observations, the profile of residents living within GWP is typical of many modern housing developments in that a large proportion of houses are occupied by families, generally with young children.
- 3.12 By way of an update on GWP the Applicant has been provided with a letter from HDD, the developers of the Great Western Park District Centre. Clearly HDD work closely with the site owners and other developers in GWP so have a good understanding of the current status of the development. The Applicant has included a copy of this letter as appendix C.
- 3.13 Key points to note from this letter are as follows:
- 3.13.1 The development has advanced very significantly since the application was submitted. In the region of 1,700 homes have now been built and occupied so the population of GWP is already likely to be in excess of 4,000 people.

3.13.2 Work on the District Centre is on track and HDD expect the retail units to open in September this year.

3.13.3 A new 'sheltered housing' development adjacent to the proposed pharmacy is due to open this year which is likely to bring close to 100 new residents over the age of 70 into the development. A number of other amenities are expected to be provided within the near future at GWP.

3.13.4 The retail units will provide a range of businesses that residents are currently required to access elsewhere in the town. Once these facilities are open, residents will have access to many of their daily requirements without having to leave the development.

3.14 By way of additional information to assist the FHS AU committee the Applicant has considered how the residents of GWP currently access pharmaceutical services.

Access on foot

3.15 The nearest pharmacy to the proposed site is Lloyds at the Woodlands Medical Centre. Notwithstanding the fact that many residents may not access this pharmacy (for reasons the Applicant discusses later) it has considered the journey on foot to this site.

3.16 A pedestrian walking from the new District Centre site to the nearest pharmacy would face a walk of approximately 1.2 km as shown on the map provided.

3.17 This walk would take around 15 minutes for a fit and healthy person. Much of the walk would be along the side of a busy main road heading towards the town centre and the pavements in some cases are narrow and uneven. This would not be a pleasant or an easy journey and would be even more difficult for people with mobility difficulties or those with small children.

3.18 However, residents of the northern part of the development who, in the future will gravitate towards the District Centre for many of their requirements, would face a much longer journey to the nearest pharmacy. Depending on where in the development they live this could be further than 2 km, necessitating a walk of 25 to 30 minutes in each direction.

Access by public transport

3.19 In their letter of objection Boots outline the bus service provided through GWP and the Applicant refers further to this service later.

3.20 Whilst it is correct that buses travel through GWP approximately every 30 minutes, it is also the case that bus stops in GWP are few and far between. At present stops are limited to those on 'Sir Frank Williams Avenue' which becomes Greenwood Way heading north to south through the development. Residents who do not live near this main through route may have to walk a

significant distance to the bus stop adding further time to their journey. It is not inconceivable that a resident may face a round trip of 1-2 hours to access a pharmacy depending on where they live, how long they have to wait in a pharmacy and how long they have to wait for a return bus.

Access by car

- 3.21 Whilst there is no data available, it is likely that a reasonably large proportion of houses in GWP have access to a car given the nature of the housing and the likely profile of the residents. However it is also the case that many houses may only have one car which is unavailable during the day if one of the householders is out at work.
- 3.22 There may be many parents with very young children who are left at home during the day without access to a car and are therefore reliant on walking or catching the bus.
- 3.23 For those who do have a car access to the nearest pharmacies may not be straightforward. Parking at Woodlands surgery where Lloyds pharmacy is located can be particularly difficult and has resulted in practice being forced to look at carrying out building work to create more parking capacity. However given the rate of residential development it is unlikely that any short-term improvements to parking will solve the problems in the long-term.
- 3.24 Similar problems can arise at the next pharmacy, Lloyds at Didcot Health Centre where again the car park is often full at peak surgery times.
- 3.25 Therefore residents travelling by car who require access to a pharmacy may find they have to travel to Boots or Lloyds (inside Sainsbury's) in the town centre where they will be required to pay for parking and may still find parking difficult on peak shopping days so may be required to park some distance away from a pharmacy. The only other alternative is Tesco on the far eastern side of the town. Given that a new Asda superstore will be constructed within the GWP District Centre the Applicant does not believe that most residents will, in the future, feel it is reasonable to drive to a different supermarket on the far side of the town simply to access a pharmacy.

Additional evidence for the Committee's consideration in respect of this appeal

- 3.26 Considering an application made under Regulation 18, the appeal committee will have to take into account a number of matters which the Applicant discusses below. The Applicant has also addressed the comments made by NHS England in their decision report:

Regulation 31

- 3.27 It is clear that regulation 31 is not engaged in this case and no party has suggested that it is. The Applicant does not, therefore, propose to provide any additional information on regulation 31 at this point.

Pharmaceutical Needs Assessment (PNA)

- 3.28 The NHS England’s report makes reference to the Oxfordshire PNA dated March 2015. The report discusses a Health and Wellbeing Board (HWB) assessment of pharmacy capacity in areas of local housing development which concluded that a gap [in the provision of pharmaceutical services] was unlikely to exist within the lifetime of the PNA.
- 3.29 The report also refers to conclusions on page 77 of the PNA that no additional needs had been identified within the South Oxfordshire locality but that there are “small developments in this locality” particularly in the greater Didcot area.
- 3.30 It is the Applicant’s position that the NHS England have placed inappropriate weight on the findings of the PNA. As discussed within the application, the previous PNA (published in 2011) did make specific mention of the GWP development and acknowledged that, given the extent of the development, it would be appropriate to keep the level of pharmacy provision under review. However there is no evidence from the 2015 PNA that any specific consideration has been given to this development.
- 3.31 In fact, given that the 2015 PNA refers to “small developments” it seems apparent to the Applicant (given that GWP is the development of 3,300 homes resulting in a population increase of around 10,000 people - which can in no way be described as a small development), that no detailed review has been carried out the impact of this development on pharmacy provision.
- 3.32 Whilst the NHS England did not go as far as rejecting the application based on failing the ‘test’ in Regulation (18)(1)(b) i.e. claiming that the benefits proposed in the application had been considered within the PNA, it is clear that the findings of the PNA influenced the decision of NHS England to refuse the application.
- 3.33 Notwithstanding that, in considering an application made under Regulation 18, NHS England should have minimal regard to the contents of the PNA, the Applicant believes that NHS England’s findings were based on an erroneous assumption that the authors of the PNA had carried out a thorough review on the likely implications for pharmaceutical services provision taking into account the speed and scale of GWP development. There is no evidence that such a review has taken place.
- 3.34 The Applicant has provided evidence elsewhere within this document which contradicts the suggestion by NHSE that the growth in housing would not negatively impact on access to pharmaceutical services.

Regulation 18(2)(a)

- 3.35 The Applicant notes that NHS England had regard to its future plans and the arrangements in place for the provision of pharmaceutical services and found that there were no grounds to refuse this application by virtue of regulation 18(2)(a).

- 3.36 As this matter appears to be uncontentious, the Applicant proposes to add no further comments at this stage.

Regulation 18(2)(b)(i) – Choice

- 3.37 In considering the matter of choice, the committee gave specific regard to the extent to which residents of the proposed area are able to access pharmaceutical services. The Applicant agrees with this approach but does not believe that the committee had the benefit of a recent site visit being carried out by a representative of NHS England so in the Applicant's view it was not possible for the committee to objectively assess the matter of access in this case.
- 3.38 The opening hours of the Lloyds Pharmacy in Sainsbury's were taken into account when considering 'extended hours' access to a pharmacy. It may not have been apparent to NHS England that the Sainsbury supermarket is located within the town centre adjacent to a busy retail park and a number of leisure amenities. Car parking at this location is often extremely busy, particularly at the weekends when residents may wish to benefit from extended hours pharmacy opening.
- 3.39 Furthermore, NHS England may not have been aware that the bus service currently available in GWP (for which the Applicant has provided a timetable as appendix D) does not operate on Sundays. Therefore, residents without access to a car, would have difficulty accessing any pharmacy on a Sunday.
- 3.40 The Applicant has committed to core hours which include Saturday afternoons (not offered by the nearest existing pharmacy) and Sunday mornings. This will significantly improve weekend access for people living to the west of Didcot town centre and unable or unwilling to travel to the busy town centre at weekends to access pharmaceutical services.
- 3.41 The Applicant also note that NHS England referred to choice being provided by a range of providers of pharmaceutical services including Apollo pharmacy. Apollo pharmacy is located within an industrial estate more than 2 miles away from the proposed location and is not a location that the residents of GWP would visit when going about their daily business. Furthermore this pharmacy does not open at all at the weekends.
- 3.42 In respect of choice it is also worth considering the two nearest pharmacies to the proposed location.

Lloyds Pharmacy at Woodlands Medical Centre

- 3.43 This pharmacy is located approximately 1.2km miles away from the proposed location and around 2km from houses in the northern part of the GWP development.
- 3.44 It is located within the Woodlands surgery which is tucked behind Didcot Community Hospital off Wantage Road. The location of the pharmacy is shown on the map provided.

- 3.45 There is no signage for the pharmacy at the entrance to the site on Wantage Road and neither the pharmacy nor the medical centre can be seen from the main road.
- 3.46 Residents of the area who are not patients of Woodlands medical centre and who have no reason to attend the site may have no awareness that this pharmacy exists. Furthermore, residents who are registered with other medical centres may feel uncomfortable accessing a pharmacy which is clearly associated with a medical centre which is not their own.
- 3.47 The next nearest pharmacy is also a branch of Lloyds and is located 1.9km away from the proposed site or 2.7km away from residents living to the north of the GWP development.
- 3.48 Again this pharmacy is co-located with the medical centre (Didcot Health Centre in this case) and it is located to the rear of the health centre and is also not easily visible from the main road due to the lack of prominent signage.
- 3.49 It is entirely possible that somebody driving along Wantage Road/Broadway from GWP towards the town centre would drive past the two Lloyds pharmacies without seeing them.
- 3.50 In the Applicant's opinion, given that:
- 3.50.1 both pharmacies on the west side of Didcot are owned by Lloyds;
 - 3.50.2 both pharmacies are located within medical centres;
 - 3.50.3 neither pharmacy is visible to people passing along the road towards the town centre;
 - 3.50.4 both pharmacies are located some distance away from the proposed site and even further residents living in the northern part of GWP; residents of the proposed area do not have reasonable choice in respect of access to pharmaceutical services.

Regulation 18(2)(b)(ii) – Patients with protected characteristics

- 3.51 This part of the Regulations requires the committee to consider whether “people who share a protected characteristic have access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access”.
- 3.52 The Applicant notes the comments made by the NHS England in respect of plans for a GP surgery to be located at the site. Whilst it is not clear how this matter relates to the question of patients who share protected characteristics the Applicant's understanding of plans for a new health centre is as follows.
- 3.53 As is often the case with the largest residential developments, the developers of the site are obligated (through a section 106 agreement) to construct a medical centre within the district centre development. The Applicant has

provided an extract from the developer's framework plan (appendix E) which provides further information on the requirements for a doctor's surgery.

- 3.54 Whilst the build of the medical centre premises itself will be the responsibility of the developers, as with any new medical centre, approval for the surgery must also be given by other parties such as the CCG and NHS England. It is the Applicant's understanding that there is general acceptance of the need for a new surgery within the new development but that agreement has not yet been reached on whether one of the existing practices will provide the service or whether a new practice will be established. The Applicant has included (as appendix F) a document produced by the CCG in January 2016 which refers to the need for a new surgery when the existing Didcot surgeries reach capacity in 2019, some three years before the GWP development is complete.
- 3.55 So whilst the Applicant accepts that plans for a new health centre within GWP are not yet finalised, it would suggest it is highly likely that a new health centre will open in due course.
- 3.56 However, it is also relevant that the lack of a GP surgery in the short term is a matter of concern for local residents who currently have no healthcare provision whatsoever. The Applicant has included (as appendix G) a letter from the chair of the local residents association which discusses, amongst other things, their concerns about the lack of any medical provision within the development.
- 3.57 In the Applicant's opinion, the provision of a pharmacy opening 7 days/week within the district centre will significantly improve the provision of healthcare within GWP. This will provide a useful first point of contact for residents in the absence of a GP surgery in the short term and an essential service in the future when a medical centre opens.
- 3.58 More generally in respect of people sharing protected characteristics the Applicant believes it is self evident that development on this scale will contain a substantial number of people whose access to pharmaceutical services is limited as a result of the protected characteristics they share. In the case of the GWP development the Applicant would suggest that protected characteristics of age, disability and pregnancy/maternity are particularly relevant.

Age

- 3.59 The Applicant has already referred to the building of an assisted-living development adjacent to the proposed site for residents over the age of 70. These are people highly likely to be reliant on provision of pharmaceutical services but those least likely to find existing services easy to access.
- 3.60 It is perhaps even more relevant that, in a development of this nature with up to 10,000 residents, there are likely to be several thousand children whose needs must be taken into account. This is evident from the provision of a large secondary school, two primary schools and the University Technical College, which have more than 2,500 places between them for students. This does not

take into account pre-school children whose needs will be met to some extent by the building of a new nursery within the district centre.

- 3.61 It is very clear, that there will be a large number of children and young people whose day to day lives will take them to the proposed location. It is highly likely that a proportion of these children, or their parents on their behalf, will have a need to access pharmaceutical services from time to time. In the absence of a pharmacy, and for the reasons discussed previously, these people are likely to find pharmaceutical services difficult to access.

Disability

- 3.62 Whilst the Applicant does not have any data and the levels of disabled people within GWP, it is clear that within an existing population of 4-5,000 people and a future population of double this number there will be a significant number of people whose ability to access pharmaceutical services is limited by disability.
- 3.63 For these people a presence of a pharmacy within the heart of their community will be particularly important.

Pregnancy/maternity

- 3.64 Again, whilst the Applicant does not have data in respect of levels of pregnancy and maternity within GWP, it would suggest that it is highly likely that the development will attract young families and those planning to start a family. It is likely that there will be higher than average proportion of residents within GWP who are pregnant or have recently given birth.
- 3.65 The needs of these people who are likely to make use of facilities close to home wherever possible and who are frequently likely to need healthcare advice and pharmaceutical services, must be taken into account.

Conclusion

- 3.66 In summary the Applicant believes there is conclusive evidence in respect of the need for a pharmacy at the proposed location.
- 3.67 The Applicant proposes to open a pharmacy for seven days a week within a discreet and self-contained residential development which already has some 4-5000 residents and will double in size over the next five years.
- 3.68 The Applicant has provided evidence from the developers in respect of the plans to develop GWP further including opening a substantial District Centre. The Applicant has also provided evidence from the GWP Residents Association that they are highly concerned about the lack of healthcare facilities on the development and that they are very supportive of having a pharmacy within GWP.
- 3.69 Should this application be granted, a large number of people living in GWP will immediately find that their access to pharmaceutical services is substantially improved. At present these people do not have reasonable choice

in respect of access to pharmaceutical services so granting the application would confer significant benefits which were not foreseen in the Oxfordshire PNA.

4 **Summary of Representations**

This is a summary of representations received on the appeal. A summary of those representations made to the NHS England are only included insofar as they are relevant and add to those received on the appeal.

Boots UK Ltd

4.1 Boots do not have any further comments to make in addition to those submitted to NHS England, a copy of which is provided.

Boots letter to NHS England dated 21 September 2016

4.2 There have been two previous applications by Day Lewis Plc offering unforeseen benefits in this locality, the first being in 2013 which was refused and one in September 2015 that was also refused in January of this year.

4.3 Boots stand by its comments made in these submissions.

4.4 Boots do not believe that this application offers anything that has not been considered previously.

4.5 There are six existing pharmacies in Didcot, providing patients with access to a choice of both provider and services, seven days a week and until late in the evening. There is also an Internet/mail order based in nearby Abingdon.

4.6 The Applicant claims that Great Western Park will effectively be a self-contained community.

4.7 Boots believe that residents of Great Western Park would still travel into the town centre to access the wealth of shops and services including pharmaceutical provision or to access their place of work.

4.8 The Applicant has accepted that there is a choice of providers across Didcot. They have not stated how or why the journey to access the existing network of provision is not reasonable.

4.9 They state that access is difficult for residents who do not have access to a car. Housing developments such as this usually attract a mobile population. Residents here do have access to the number 98 bus (operating every half an hour since June 2104 and taking approx. 7 minutes). This clearly fills a need for these patients travelling to and from the town centre.

4.10 The Applicant has not provided any supporting evidence of patients having difficulty nor how many people they believe may be affected.

- 4.11 Boots do not believe that this application meets the requirements of Regulation 18, the applicant has not provided any evidence that has not previously been considered, and Boots see no reason why this application should subsequently be approved.

Boots letter to NHS England dated 18 July 2013

- 4.12 Application offering unforeseen benefits at Great Western Park, off A4130 Sir Frank Williams Avenue, Didcot, Oxfordshire OX11 6AS by PSG Trading Ltd:

4.12.1 Great Western Park is under construction and there are currently 300 of the planned 3,300 homes occupied. The proposed district centre including shops etc. is not yet under construction. The infrastructure including bus routes and access roads are not yet complete and Boots therefore believe that this application may be premature at this time.

Boots letter to NHS England dated 9 November 2015

- 4.13 Application offering unforeseen benefits in the proposed retail units, located no more than 200m from the north east corner of the new University Technical College building (junction of Didcot Rd and Greenwood way), Harwell, Didcot, OX11 6BZ by Day Lewis plc:

4.13.1 A contract application for an unforeseen benefit in this vicinity had been rejected by NHS England in 2013, and even though the development has clearly moved on in the last two years, Boots see no reason why this one should subsequently be approved.

4.13.2 Boots understand the development is not due for completion until 2026, with homes only built in the Northern Neighbourhood so far, with access being via Sir Frank Williams Avenue. Boots also understand that there is no planning permission at present for the commercial centre, albeit the small local food store has opened in the district. The larger supermarket planned as indicated in the Day Lewis application is to be a max of 1000m² not 2,3000m² highlighted in the 2011 GWP development planning document (available online), Boots point being that its likely residents will still leave the vicinity to do their weekly/monthly shop.

4.13.3 There are six existing pharmacies in the town of Didcot, providing patients with a choice of both provider and services, seven days a week and until late in the evening. There is also an Internet/mail order based in nearby Abingdon.

4.13.4 Boots believe that residents of Great Western Park, would travel into the town centre to access the wealth of shops and services available there as well as attending the GP surgeries and pharmaceutical services.

- 4.13.5 The applicant has indicated that they agree there is currently sufficient choice of providers in and around Didcot.
- 4.13.6 With reference to 2011 PNA and comparing information with the current one, just because the H+WB failed to provide a detailed account of the current status of the development in the 2014 edition, doesn't mean to say they did not consider it, in fact Boots would think that they considered:
- 4.13.6.1 the development had not moved on significantly enough;
- 4.13.6.2 the impact on the current availability of the provision of pharmaceutical services was insignificant;
- and therefore came to the agreement an identified current or a future need was not required.
- 4.13.7 Due to the census being in 2011, and this being a new development, National Statistics are obviously not available to identify the usual evidence showing car ownership, mobility, age etc. however the applicant has still failed to:
- 4.13.7.1 Identify any patients with protected characteristics;
- 4.13.7.2 Identify any defined patient groups;
- 4.13.7.3 Provided any evidence to the fact that **any** people in these categories currently have any difficulty accessing pharmaceutical services, let alone significant.
- 4.13.8 Indicating that patients who do not have access to a car would have difficulty accessing said services, goes without saying if there is also no access to public transport, however the number 98 bus (operating every half an hour since June 2104 and taking approx. 7 minutes) clearly fills a need for these patients travelling to and from the town centre.
- 4.13.9 Therefore they have no supporting evidence that this is the case, or how many people may be affected.
- 4.13.10 The applicant has not provided any evidence of the provision of innovative services, and as indicated in their application, are purely relying on the matters of choice and protected characteristics to grant them a new contract.
- 4.13.11 For these reasons Boots do not believe that this application meets the requirements of Regulation 18, and it should therefore be refused.

Lloyds Pharmacy Ltd

4.14 In Lloyds opinion there is no evidence to support any finding that pharmaceutical services are not currently provided and accessed at such times as needed. In particular our Lloyds pharmacy at Sainsbury in Didcot is open to late night Monday to Friday and to 22.00 Saturday and to 16.00 on Sunday. NHSE committee considered opening hours of existing pharmacies and concluded:

4.14.1 *The Committee had regard to the current service provision in the immediate area of Didcot and noted that there are 6 pharmacies within 2km radius of the best estimate address, including one 100 hour pharmacies (Lloyd's Pharmacy within Sainsbury's Supermarket on Central Drive, Didcot open on Monday from 07:00 to 22:00; Tuesday To Friday from 07:00 to 23:00; Saturday from 07:00 to 22:00; and Sunday from 10:00 to 16:00. The Weekday opening hours of the other 5 pharmacies range from 08:00 to 18:30, Saturday opening hours range from 09:00 to 17:30.*

4.14.2 *The Committee noted that the Applicant had offered to open from 08:30 to 18:30 on Monday to Friday, Saturday opening of 09:00 to 17:00 and Sunday opening of 10:00 to 12:00. However there were already pharmacies in the area providing the same hours and as indicated above, one 100 hour pharmacy operates from the town.*

4.14.3 **The Committee also noted that patients in the area of Didcot also had a reasonable choice as to the providers to access pharmaceutical services from, including Lloyds, Boots, and Apollo pharmacy.*

4.15 The appellant confirms details of the half hourly (route 98) bus service in operation from the development. Lloyds enclose a copy of route map. The route goes along Broadway with stops adjacent to Civic Centre which services Lloyds pharmacy at the Didcot Health Centre, further along Broadway about 100 metres from Boots Pharmacy and then on High Street adjacent to the Sainsbury Store. Existing pharmacies can therefore be accessed by public transport.

4.16 NHSE also considered whether significant benefits would be conferred to any groups who may share a protected characteristic. NHSE considered and concluded that:

4.16.1 *The Committee received no evidence that identified a group of patients in the Didcot area, sharing a protected characteristic with difficulty accessing services that meet a specific need. The Committee therefore concluded that the application did not satisfy the test in this part of the Regulation.*

4.17 With regards to whether the application will confer significant benefits with regards to the provision of innovative services NHSE considered in their decision:

4.17.1 *The Applicant also stated that 'The provision of pharmaceutical services from high quality premises which are co-located with a range of community facilities including a medical centre provides an excellent opportunity to deliver truly innovative services'.*

4.18 Lloyds submit the opportunity to deliver truly innovative services is not evidence of an innovative service in the context of Regulation 18.

4.19 With regards to provision of medical services, provision is often made for GP surgery facilities as part of the design of a scheme. Lloyds note there are currently no GP Practices at the development. The nearest surgery is at the Woodlands Medical Centre where Lloyds pharmacy is situated. The next nearest health centre would be Didcot Health Centre. The additional documentation provided with the appeal does not detail any specific proposals with regards to any advancement of additional medical services in the vicinity of the proposed pharmacy location.

4.20 In Lloyds opinion NHSE provided detailed consideration of the application under Regulation 18 and cannot see why that decision should not be upheld.

5 **Observations**

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

Ray Bushell
FHSAU Case Manager

14 April 2017