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

Site Visit

Prior to conducting the oral hearing, the Committee conducted a site visit of the locations relevant to the application. The Committee left the Council’s office at Pathfinder House in Huntingdon and travelled by taxi noting the Boots store in the centre of town. The Committee did not walk through Huntingdon town centre. The Committee drove past the Lloyds pharmacy before driving along Ermine Street to The Stukeleys. The Committee stopped at the Alconbury Weald development site and spoke to a sales assistant at the sales office for Hopkins Homes then went up to the offices of Urban and Civic and then went to Alconbury village where it walked round the village observing the surgery and dispensary which it did not go in to, primary school and Costcutter store as well as the Church. The Committee then drove to Alconbury Weston before driving to the Tesco store where it went in to store and observed the in-store pharmacy. The Committee then returned to the Council’s offices passing the Sainsbury’s store and immediately opposite was a surgery and pharmacy.

The Committee invited the parties to make any comments or observations about the site and none were received other than Mr Daly enquiring whether the Committee had noted the location of the hairdresser’s in a converted house in Alconbury village.

Oral Hearing Submissions

Mr Conor Daly – the applicant

The applicant explained that Alconbury village, which was approximately 5 miles from Huntingdon town centre, was adjacent to the largest area of development in the UK which would a total of 5000 homes to be built over a 20 year period with commercial and industrial units. The residential development of the homes had begun and the primary school at the Alconbury Weald site was already in use. There were plans for a health centre, road, bus and rail transport links and the development would create 8000 jobs.

The distances between the various locations in the vicinity of Alconbury and to the dispensary could not be traversed on foot, except within Alconbury village, but had to be by car and there was a corresponding high level of car ownership within the villages. There were facilities within the village including the Costcutter store, pub, hairdresser’s as well as the GP’s surgery and community hall. Those outside of the village had the option of coming in to the village or alternatively travelling in to Huntingdon and the Costcutter store in Alconbury village did extend back some way and was not just for essential groceries.
The population of Alconbury village was approximately 2200. The population of the outlying villages was 3700. There were 5000 patients registered at the surgery which showed how many more people than those in the village made use of the GP and dispensary services in Alconbury village. The combined list of the Alconbury and Brampton surgeries was 9300 patients. The dispensary at Alconbury surgery dispensed 9000 prescriptions a month which placed the dispensary in the top 25% of all pharmacies in the country and in the top 3% of dispensaries. It was stated that patients had a choice which pharmacy they could go to and they were choosing to use the dispensary because patients were not choosing to travel to areas where there was a greater range of services such as in Huntingdon. There was a choice but that choice was not reasonable and that was relevant to the regulations under which the application was being considered. There was poor public transport links and that had not been challenged.

The applicant had stated on 1.6.2016, that the population registered with the GP's practice and living within a 1.6km radius of the application site was less than 2750 people then it was regarded by the parties as a reserved location. However, the Committee was obliged also to consider Regulation 41(3)(b) and the number of prescriptions being dispensed was similar to, or greater than, the use that might be expected if the number of individuals residing in that area who were on a patient list were 2750 or more. He stated that the second part of the test had not been considered and the area should not continue to be classed as a reserved location.

The issue of prejudice had to be considered. The parties were familiar with regulations and the issues pertinent to the application and none of the parties had argued that there would be any prejudice to the provision of pharmaceutical services.

He argued that there were those with protected characteristics which included those with mobility problems and the elderly.

Mr Daly concluded by saying that there was not a clearer case than this application where there would be improvements and better access.

Ms Powell – Boots UK Ltd

Miss Powell highlighted how it was unusual that the population of Alconbury village had, over 10 years, gone down which was unusual for a village. There were few amenities and services in Alconbury village. Patients had a choice because there were 8 pharmacies within 5 miles and patients had a choice of pharmaceutical providers in Alconbury, Huntingdon or St Neots. The development at Alconbury Weald was underway but the date for completion was unclear. The proposed “affordable homes” would not start until 250 homes had been built and there was a new health centre planned as part of the development but since it was not known when it might be built the surgery in Alconbury village had applied to extend its premises. The PNA did consider the issue of choice and it had taken account of the housing provision. There was good provision for pharmacies in Huntingdon and therefore good choice. The applicant had not identified any group with protected characteristics and there were no innovative approaches identified. There was no evidence that there was not already reasonable choice.

Dr Outram – Alconbury and Brompton surgeries

Dr Outram was invited to give evidence by Boots UK Ltd. He had raised an objection that he had not been invited independently of Boots UK Lt to give evidence at the oral hearing. Dr Outram was invited to highlight any points or issues he wanted to ensure that the proceedings were conducted fairly. He explained that contrary to what the applicant had said, Alconbury was not a substantial village but was merely a village. The surgery's dispensary provided medication in accordance with the regulations and
they provided any enhanced services that were broadly equivalent to what a pharmacy would provide. They provided prescriptions and services to all those in the area and would continue to do so. The existing surgery was being extended, which was agreed with NHS England, to take account of the increased demand following the completion and accommodation of the first 500 homes. There were ring and ride bus services that enabled those with no transport (i.e. those with protected characteristics) to access the surgery and therefore the pharmacy and there was no evidence that the provision of pharmaceutical services was worse than other rural areas. He anticipated the likely growth of the patient list would be 400-500 patients which they had capacity to service and hold on to. The dispensary had 4-5 staff as the 5th member of that team had been recruited a few months ago.

Mr Ladva – Cambridgeshire & Peterborough LPC

3.10 Mr Ladva made the point that the LPC were aware of the growing size and needs of the population in the area and took that into account in the PNA.

4 Consideration

4.1 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 area showing existing pharmacies and doctors’ surgeries and the site of the proposed pharmacy.

4.2 It also had before it the responses to the NHS LA’s own statutory consultations.

4.3 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (“the Regulations”).

4.4 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).

4.5 The Committee noted the comments from the Applicant in respect of Regulation 31 that there is no other pharmacy at the same or adjacent premises. The Committee further noted the conclusion of NHS England at 2.12 that Regulation 31 does not apply as there is no suggestion that the application will be for inclusion in the same or adjacent premises and that this had not been disputed by parties either on appeal or in subsequent representations. On the basis of the information before it, the Committee concluded that the premises to which this application relates, or the adjacent premises, are not already occupied by a person on a pharmaceutical list who is providing or has undertaken to provide pharmaceutical services and that it was not required to refuse the application under the provisions of Regulation 31.
4.6 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.

4.7 Alconbury is in a controlled locality and the application was based on securing improvements or better access to pharmaceutical services in that controlled locality.

4.8 In those circumstances, the application (which is made under Regulation 18 of the Regulations) must be assessed against the provisions of Part 7 of the Regulations and, in particular Regulation 40 which reads:

(1) This paragraph applies to all routine applications—

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

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

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

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

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

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

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

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

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

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

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

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

was refused within the 5 year period starting on the date on which the proceedings relating to the refusal reached their final outcome and ending on the date on which A1 is made,
unless the NHSCB is satisfied that since the date on which the 5 year period started, there has been a substantial and relevant change of circumstances affecting the controlled locality.

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

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

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

4.9 The Committee noted that there was no information to suggest that the instant application was in respect of a location where there had been a refusal for a previous application within the last 5 years.

Reserved location

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

(1) This paragraph applies to any routine application—
   (a) for inclusion in a pharmaceutical list as an NHS pharmacist; or
   (b) from an NHS pharmacist included in such a list—
      (i) to relocate to different pharmacy premises in the area of the relevant HWB, or
      (ii) to open, within the area of the relevant HWB, additional pharmacy premises from which to provide pharmaceutical services,
   where the applicant is seeking the listing of pharmacy premises which are in a controlled locality and the NHSCB is required to notify the application under Part 3 of Schedule 2.

(2) If paragraph (1) applies to an application (referred to in this regulation and regulation 42 as “A1”), subject to paragraph (5), the NHSCB must determine whether or not the “relevant location”, that is—
   (a) the location of the premises for which the applicant is seeking the listing; or
   (b) if no particular premises are proposed for listing in A1, the location which is the best estimate that the NHSCB is able to make of where the proposed pharmacy premises would be, having regard to the best estimate given by the applicant under paragraph 1(7)(a)(ii) of Schedule 2,
   is, on basis of the circumstances that pertained on the day on which A1 was received by the NHSCB, in a reserved location.

(3) Subject to regulation 43(2), the area within a 1.6 kilometre radius of a relevant location is a “reserved location” if—
   (a) the number of individuals residing in that area who are on a patient list (which may be an aggregate number of patients on more than one patient list) is less than 2,750; and
(b) the NHSCB is not satisfied that if pharmaceutical services were provided at the relevant location, the use of those services would be similar to, or greater than, the use that might be expected if the number of individuals residing in that area who are on a patient list were 2,750 or more.

4.11 The Committee considered the issue of reserved location status of Alconbury given that the answer to that question has an onward impact for the rest of the Committee’s consideration.

4.12 Regulation 41(2) is mandatory: it requires NHS England to make a determination regarding reserved location status in circumstances such as these. The Committee noted that NHS England, in their decision of 9 May 2016, had stated that the number of individuals residing within 1.6km of the relevant location who are on a patient list is 2,291.

4.13 In its decision letter, NHS England stated that the number of registered patients living within 1.6 kilometres of Spinney Lane, Alconbury (the best estimate location of the proposed pharmacy) is 2291. That was less than the 2750 aggregate number of patients to determine a reserved location. But, the number of patients using the services at the GP’s dispensary was significantly greater than 2750 and therefore under regulation 41(3)(b) the use of those services was similar to or greater than the use that might be expected if the number of individuals residing in the area who were on the patient list was 2750 or more. This was because whilst the patient list within 1.6km of the location was 2291 the surgery, the dispensary was providing 9000 prescriptions each month as there were over 5000 patients registered at the surgery.

4.14 In addition, it was anticipated that the development at Alconbury Weald meant that there would be an imminent increase in the number of patients registering at the Alconbury Surgery, and as a result using the dispensary attached to the surgery, and that was reflected in the steps taken by the surgery to expand its premises. The applicant had highlighted the ongoing nature of the development at Alconbury Weald which, for the purposes of this appeal, had started and had a significant way to go. A new surgery was likely to be built at Alconbury Weald in the future but was still some years from being completed and in which case there was likely to be increasing demand place on the surgery and therefore the provision of pharmaceutical services in Alconbury.

4.15 The Committee determined that the use of pharmaceutical services would be similar to, or greater than, the use that might be expected if the number of individuals residing in that area who are on a patient list were 2,750 or more.

4.16 The Committee was satisfied that the location was not a reserved location.

**Prejudice**

44(1) This paragraph applies to all routine applications—
(a) for inclusion in a pharmaceutical list as an NHS pharmacist; or
(b) from an NHS pharmacist included in such a list—
(i) to relocate to different pharmacy premises in the area of the relevant HWB, or
(ii) to open, within the area of the relevant HWB, additional pharmacy premises from which to provide pharmaceutical services.

(2) As regards any application to which paragraph (1) applies, the NHSCB must have regard to whether or not the applicant is seeking the listing of pharmacy premises which are in a part of a controlled locality that is not a reserved location.

(3) If the applicant is seeking the listing of pharmacy premises which are in a part of a controlled locality that is not in a reserved location, the NHSCB must refuse the application if granting it would, in the opinion of the NHSCB, prejudice the proper provision of relevant NHS services in the area of—
(a) the relevant HWB; or
(b) a neighbouring HWB of the relevant HWB.
(4) For the purposes of paragraphs (2) and (3), if no particular premises are proposed for listing in the application, the applicant is to be treated as seeking the listing of pharmacy premises which are in a controlled locality if the best estimate that the NHSCB is able to make of where the proposed pharmacy premises would be is at a location which is in a controlled locality, having regard to the best estimate given by the applicant under paragraph 1(7)(a)(ii) of Schedule 2.

4.17 The Committee was aware of guidance issued by the Department of Health regarding the provision of pharmaceutical services in controlled areas (Chapter 14) which states:

“The Regulations do not provide any definition of the concept of prejudice. In general, it means that nothing must be done which would compromise the ability of people in any controlled locality to access pharmaceutical services, LPS, dispensing services or primary medical services....

A mere reduction in the total level of service provided by a particular pharmacist or GP Practice is not of itself “prejudice”. Prejudice arises where the service that people can rightly expect to be provided by the NHS has in some respect to cease or otherwise be curtailed or withdrawn without proper substitution in the area. In practice, the existence of prejudice involves, to a greater or lesser extent, making a judgment about events that will occur in the future. Inevitably, therefore, it can often be extremely difficult to judge whether or not there will be prejudice.

The burden of proof is on the party alleging that prejudice will occur. Each case will, therefore, turn very much on its own particular facts. In considering questions of prejudice, it is important that decision-takers focus only on those services which have to be provided within the terms of service of NHS primary medical and pharmaceutical services provision. The fact that non-NHS services or NHS services provided above the standard level set by the terms of service may be curtailed should not be regarded as relevant”.

4.18 The Committee was mindful of the 1996 case of R –v- North Yorkshire FHSA ex parte Dr. Wilson and Partners when Justice Carnwath said “It is not part of the scheme of those regulations or indeed of the statute that pharmaceutical services should be relied upon to provide financial underpinning for medical services which are intended to be financed in other ways”.

4.19 The Committee went on to consider the issue of prejudice and was satisfied that there was no prejudice in the proper provision of relevant NHS services in the area under Regulation 44. The parties were on notice about the issues to be dealt with at the hearing and about the application and had the opportunity to raise any objections but they did not do so.

4.20 The dispensary in Alconbury was providing approximately 9000 prescription items a month and the applicant explained that this meant that the dispensary would be in the top 25% of all doctor dispensing services. The Committee agreed with the proposition that the proposed pharmacy would not prejudice the proper provision of pharmaceutical services because the level of demand in Alconbury and surrounding villages was at a high level notwithstanding the availability of alternative pharmaceutical services in Huntingdon. It was anticipated that the proposed pharmacy and existing dispensary would be able to operate in the same locality and serving the same patients. No party to the proceedings raised any arguments indicating that there would be any prejudice to the provision of pharmaceutical services.
5.1 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;
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;

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;

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;

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)."

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

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

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

5.5 The Committee considered the Pharmaceutical Needs Assessment ("the PNA") prepared by Cambridgeshire Health and Wellbeing Board, 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 2014 and no supplementary statements had been issued.

5.6 The Committee noted that in "Key Findings" in the Executive Summary the PNA stated that Cambridgeshire is well provided for by pharmaceutical service providers and that it goes on to state that the PNA has not identified a current need for new NHS pharmaceutical service providers in Cambridgeshire. The Committee further noted that no responder to the PNA questionnaire had considered provision to be ‘poor’.
The Committee noted that the development at Alconbury Weald is mentioned in the PNA at Section 6 “Future Population Changes and Housing Growth”. The Committee noted that the PNA states that the building of the developments and the need for pharmaceutical services in the developments had been considered and that it goes on to conclude that the HWB will monitor the development of major housing sites and produce supplementary statements to the PNA if deemed necessary, to ensure that appropriate information is available to determine whether additional pharmacies might be required. The Committee noted that the HWB had so far not produced any supplementary statements for Alconbury Weald.

The Committee noted that the Applicant seeks to provide unforeseen benefits to the patients and residents of Alconbury as well as visitors to the village. 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.

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)**

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”

On the basis of the information available, the Committee was not satisfied that, if the application were to be granted and the pharmacy to open, the ability of the NHS England thereafter to plan for the provision of services would be affected in a significant way.

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)**

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"

The Committee was 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. This was because there was currently no provision for pharmaceutical services being provided at Alconbury and for surrounding villages, the pharmaceutical services being provided were Doctor dispensing services and the expansion of the Alconbury surgery demonstrated that there was pressure being placed on the existing services in Alconbury.

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

5.16 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)

Reasonable choice

5.17 The Committee was told that the Alconbury surgery in Alconbury village had a patient list of 9251 and it served patients in the areas surrounding Alconbury which included Alconbury Weston, Alconbury Hill and The Stukeleys (Little Stukeley and Great Stukeley) as well as small areas in the vicinity. The applicant argued that the success of the surgery in Alconbury village and dispensary to serve its patients was an indication of the need for a dedicated pharmacy to serve not only the patients there but also the expanding population of Alconbury Weald which had already begun.

5.18 The Committee accepted that Alconbury village was a village with few services to attract people to it but the GP’s surgery and the dispensary did draw people to the area for those specific services. The success of the medical and pharmaceutical services being provided there was reflected in the high number of patients using the dispensary. The Committee was satisfied that patients that used the dispensary services in Alconbury had very limited choice which pharmacy to access because the alternative pharmaceutical services were some miles away in Huntington.

5.19 The Committee agreed that the choice of pharmaceutical services was not reasonable. This was because;

5.19.1 There was one provider of pharmaceutical dispensing services in Alconbury dispensing 9000 prescriptions but no pharmacy providing Essential, Advanced and Enhanced services.

5.19.2 Boots referred to how alternative providers were available but if 9000 prescriptions were being dispensed each month then that was strong evidence that those accessing the services in Alconbury did not regard those alternative providers as providing a reasonable choice
5.19.3 The evidence before the Committee was that despite high car ownership in Alconbury and surrounding villages, patients were drawn to the dispensary services at Alconbury Surgery because alternatives were not accessible.

5.19.4 Some patients were using the bus services, including the Ring and Ride service, and therefore had the option of travelling further than Alconbury but were nonetheless choosing to access the surgery and dispensary in Alconbury.

5.19.5 There was no provider of pharmaceutical services in Alconbury and therefore patients did not have a choice about which provider to use for their pharmaceutical services.

5.19.6 The Committee noted that Essential, Advanced and Enhanced Services were not available in Alconbury through the dispensary. In order for patients to access those services, the population in Alconbury and surrounding villages had to travel 5 miles to the nearest pharmacy in Huntingdon and they had no choice but to do so.

5.20 The Committee agreed that the expansion of Alconbury Weald was not something that might possibly occur in the future but was something that had already begun. The Committee found the site visit to be revealing and informative; it showed that the plans to expand Alconbury Weald were well advanced and where the applicant had stated that the development was to be largest in the UK that was not an exaggeration. It was clear from the infrastructure already in place at Alconbury Weald that the demand to be placed on the services there would mean that the area would be expanding, and rapidly. The demands on the existing pharmaceutical services would increase day by day.

5.21 Therefore the Committee was satisfied that, having regard to there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits by way of physical access to those seeking full pharmaceutical services.

**Protected characteristics**

5.22 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.

5.23 The main thrust of the applicant’s case focussed on reasonable choice and whilst reference was made to those with protected characteristics little detail was provided to identify the groups with protected characteristics or demonstrate that those with protected characteristics had difficulty accessing pharmaceutical services.

5.24 The Committee was satisfied that because of high car ownership and the access to bus services as well as the Ring and Ride service meant that those with protected characteristics, such as those with mobility issues, nonetheless had equal access to pharmaceutical services. There was no evidence that those with protected characteristics had any more difficulty than other patients.

**Innovation**

5.25 In considering Regulation 18(2)(b)(iii) the Committee had regard to the desirability of innovative approaches to the delivery of pharmaceutical services. In doing so, the Committee would consider whether there was something more over and above the
usual delivery of pharmaceutical services that might be expected from all pharmacies, some 'added value' on offer at the location.

5.26 The Committee was not satisfied that, having regard to the desirability of there being innovative approaches taken with regard to the deliverability of pharmaceutical services, granting the application would confer significant benefits on persons and no arguments about innovative approaches were advanced.

5.27 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

5.28 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:

5.28.1 confirm NHS England’s decision;
5.28.2 quash NHS England’s decision and redetermine the application;
5.28.3 quash NHS England’s decision and, if it considers that there should be a further notification to the parties to make representations, remit the matter to NHS England.

5.29 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 it was not aware of any other applications or appeals relating to applications offering to secure the improvements or better access that the applicants were offering to secure and that there was no need to consider applications from other persons offering to secure such improvements or better access.

5.30 No deferral or refusal under Regulation 18(2)(f) was required in this case.

5.31 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.

5.32 The Committee determined that the decision of NHS England must be quashed.

5.33 The Committee went on to consider whether there should be a further notification to the parties detailed at paragraph 19 of Schedule 2 of the Regulations to allow them to make representations if they so wished (in which case it would be appropriate to remit the matter to NHS England) or whether it was preferable for the Committee to redetermine the application.

5.34 The Committee noted that representations on Regulation 18 had been sought from parties by NHS England and representations had already been made by parties to NHS England in response. These had been circulated and seen by all parties as part of the processing of the application by NHS England. The Committee further noted that when the appeal was circulated representations had been sought from parties on Regulation 18.

5.35 The Committee concluded that further notification under paragraph 19 of Schedule 2 would not be helpful in this case.

6 DECISION

6.1 The Committee quashes the decision of NHS England and redetermines the application.
6.2 The Committee concluded that Alconbury is in a controlled locality and that the site of the application is not a reserved location.

6.3 The Committee concluded that granting the application would not prejudice the proper provision of relevant NHS services in the area of (a) the relevant HWB; or (b) a neighbouring HWB of the relevant HWB.

6.4 The Committee has considered whether the granting of the application would cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area covered by the HWB, or the arrangements in place for the provision of pharmaceutical services in that area and is not satisfied that it would;

6.5 The Committee determined that the application should be granted on the following basis:

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

6.5.2 there is not already a reasonable choice with regard to obtaining pharmaceutical services;

6.5.3 there is no evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services; and

6.5.4 there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services;

6.6 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.

Committee Chair

18.11.2016

A copy of this decision is being sent to:

Rushport Advisory LLP on behalf of Paran Patel
Boots UK Ltd
Lloyds Pharmacy
Alconbury Parish Council
Cambridge & Peterborough LPC
Cambridge & Peterborough LMC
NHS England
ANNEX A

REF: SHA/18391

APPEAL AGAINST EAST (MIDLANDS AND EAST) AREA TEAM, NHS COMMISSIONING BOARD ("NHS ENGLAND") DECISION TO REFUSE AN APPLICATION BY PARAN PATEL FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 WITHIN THE VILLAGE OF ALCONBURY, CAMBRIDGESHIRE

1 The Application

By application dated 18 November 2015, Paran Patel ("the Applicant") applied to NHS England – East (Midlands and East) NHS CB ("NHS England") for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 within the village of Alconbury, Cambridgeshire. In support of the application it was stated:

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

1.1.1 Not applicable as no other pharmacy in same or adjacent premises.

1.2 Paran Patel - Alconbury - Supporting Information

1.3 Alconbury (and Alconbury Weston) is a village situated North West of Huntingdon village, in the county of Cambridgeshire. Alconbury is located near to the point where the major north/south motorway, the A1(M) crosses the only major east/west road, the A14. Alconbury also leant its name to the former RAF Alconbury Air force station.

1.4 As reported in Cambridgeshire Population and Dwelling Stock Estimates: mid 2012, published in October 2013, the population of Alconbury Village (1,570) and Alconbury Weston (750) was 2,360. The total population of Alconbury and The Stukeleys ward was approximately 3,710 people. (Source: http://www.alconbury-weald.co.uk)

1.5 Just north of the A1/A14 junction is Alconbury Hill, where a major new project, the Alconbury Weald development, is being built north east of Alconbury village. The Alconbury Weald development is a project designed to develop a 580 hectare site which includes 150 hectares awarded Enterprise Zone status as part of a Government backed Enterprise Zone to create a major new campus for manufacturing, engineering and low carbon research and development companies.

1.6 The Alconbury Weald development project will also deliver 5000 homes, schools, a health centre, road, bus and rail transport links and create 8000 jobs.


1.8 In April 2012 the Enterprise Zone became active. Since then a number of companies have moved into the zone including Enval, a modern environmental services company, The Greater Cambridge Greater Enterprise Partnership (LEP) (GCGP), Mole Solutions and Aquavent in May 2013. As of the beginning of September 2015
work has started to put in place the road connection to the first homes and Primary School at Alconbury Weald.

1.9 Proposed Location

1.10 It is proposed to open a pharmacy within Alconbury Village that will serve local residents and also the 9,000 plus patients who are registered with the Alconbury Surgery.

1.11 Difficulties in Accessing Pharmaceutical Services

1.12 Although the population of Alconbury, Alconbury Weston (and The Stukeleys is approximately 3,710 people, the only GP practice within the Alconbury area, the Alconbury Surgery has 9,251 registered patients. Alconbury there attracts in many more people who require access to pharmaceutical services than actually live within the village.

1.13 15% of population of Alconbury feel their day to day activities are limited and 15% of the population also describe their health as ranging from fair to very bad. [sic] (Source: National Statistics 2011).

1.14 Whilst Alconbury is not an area that suffers from higher than average levels of deprivation, its residents have normal health needs and still require access to pharmaceutical services. In addition, the presence of a substantial GP surgery means that patients will have a requirement for pharmaceutical services whilst in Alconbury, but that requirement can only be met by pharmacies several miles away.

1.15 There are no pharmacies within Alconbury/Alconbury Weston or the immediate surrounding area.

1.16 The nearest pharmacies to Alconbury and the surrounding area are between approximately 3.3 - 4.8 miles (5.3 - 7.2 km) in a straight line. However, the real travelling distances is approximately 5 miles. As these distances are well beyond reasonable walking distance, patients must rely on public transport or their own vehicles.

1.17 The lack of a pharmacy in Alconbury adds a significant cost to those not eligible for free transport but also to those who have to use their own vehicles to access pharmaceutical services.

1.18 Public transport serving Alconbury is poor.

1.18.1 Bus way B - Cambridge to Huntingdon, stops off at Alconbury Hill and the main RAF gate at hourly intervals, Monday to Saturday, but does not actually go into Alconbury village.

1.18.2 Bus 46a - Huntingdon - Stilton, stops off in Alconbury at 2 hour and 3 hour intervals Monday to Saturday.

1.18.3 Bus 402 - Huntingdon to St Ives, stops in Alconbury twice a day (travelling in opposite directions) at 10 am and 12:42 pm. However this service only operates on Mondays.

1.19 Approximately 8% of households have no access to a car and 38% have access to only one car. For those living together as families, the car is likely to be used by one parent to go to work and would therefore not always be available.

1.20 Many people in Alconbury will have to plan special trips to access a pharmacy due to either having no access to a car, or having to rely on public transport.
1.21 Developments affecting Alconbury

1.22 The major development project, the Alconbury Weald development currently being built north east of Alconbury village is projected to deliver 5000 homes, schools, transport links, health centre and create thousands of jobs in the area.

1.23 Providing better access and improvements to pharmaceutical services is the main test under regulations 18 and it is undeniable that granting this application will provide better access to pharmaceutical services for a great many people.

1.24 Granting the application would be of significant benefit to both the current and future population of Alconbury and the surrounding areas.

2 The Decision

NHS England considered and decided to refuse the application. The decision letter dated 9 May 2016 states:

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

2.2 Please see the attached

Extract from PSRC decision report

2.3 Paran Patel, Alconbury – unforeseen benefits – best estimate

2.4 From the application the following was noted:

2.4.1 The applicant is looking at a number of options for premises within the village.

2.4.2 Core Hours of opening:

2.4.3 09:00 – 13:00 and 14:00 – 18:00 Monday to Friday

2.4.4 Total proposed opening hours including supplementary hours:

2.4.5 09:00 – 18:00 Monday to Friday

2.4.6 09:00 – 13:00 Saturday

2.4.7 The range of pharmaceutical services offered, some of which are not commissioned locally.

2.4.8 Regulation 31 does not apply as there are no other pharmacies in same or adjacent premises.

2.4.9 The supporting statement that details information about the village of Alconbury, future developments, the proposed location and difficulties in accessing pharmaceutical services

2.5 A number of representations were received and from this the following was noted:

2.6 Cambridgeshire Local Medical Committee

2.6.1 The application contains factual inaccuracies as Alconbury practice serves 4500 patient and not the 9000 stated in the application
2.6.2 The number of patients living within the 1.6km of the area indicate that this is a reserved location.

2.6.3 The application does not fit within the PNA and therefore any alleged benefits would not be unforeseen.

2.7 The Buckden and Little Paxton Surgeries

2.7.1 The proposed pharmacy is within a controlled locality. The population is small with a low population density. There are few facilities available within the village and public transport is poor.

2.7.2 The population within 1.6km of Spinney lane is 2288 which suggests that the proposed pharmacy is in a reserved location.

2.8 Alconbury Parish Council

2.8.1 The application was discussed at the Parish Council meeting on 25.0 January 2016 and the following points were made: Alconbury surgery dispenses prescription medications, a small range of pharmacy items are sold in the local shop and as there are no vacant business premises the councillors are confused as to where the new pharmacy could be located.

2.9 Lloyds Pharmacy

2.9.1 Lloyds do not dispute the NHS England figures with regards to the number of patient on a patient list within 1.6km of the proposed site and so would accept that Alconbury is within a reserved location.

2.9.2 Lloyds are not aware of patients having difficulty accessing pharmaceutical services from Alconbury. Car ownership is well above average for this location.

2.10 Boots

2.10.1 Boots asked the committee to have regard to regulation 18.

2.10.2 Boots are not aware of any shortfall in the current provision of pharmaceutical services in the area based on the data and information in the 2015 Cambridgeshire PNA.

2.10.3 2011 census information covering the ward of Alconbury and the Stukeleys

2.10.4 Unforeseen benefits are typically considered when the needs of a population have changed, the area of the proposed location has changed or that the Health and Wellbeing board has not taken a location into consideration when collecting data for the latest PNA. Whilst Boots agree that the development in Alconbury Weald is in progress it has a 20 year timeline, so progress and growth is likely to be slow and outside the life of the current PNA.

2.10.5 Access – the applicant has not provided any evidence that patients with protected characteristics have difficulty accessing pharmaceutical services. Amenities are poor suggesting residents leave the village for their day to day needs. The bus services are not frequent but typical of services in similar villages.

2.10.6 Choice – there is only one pharmaceutical provider in the village. The doctors surgery there is a wide choice within a 5 mile 20 minute distance.
2.10.7 Innovation - the applicant gives no suggestion for innovation or innovative services as part of their application.

2.11 Cambridgeshire and Peterborough LPC

2.11.1 The LPC noted that there will be an extra 420 dwelling in Alconbury Weald by mid-2017 according to the PNA. However, the Cambridgeshire PNA has not identified a need for the area indicated.

Consideration

2.12 Regulation 31 does not apply as there is no suggestion that the application will be for inclusion in the same or adjacent premises.

2.13 Regulation 40 does not apply as there is no suggestion the applicant is seeking for a listing at location which is specified in 40 (2).

2.14 Regulation 41 does apply and the PSRC therefore needed to decide whether or not the "relevant location", ... is, on basis of the circumstances that pertained on the day on which A1 was received by the NHSCB, in a reserved location.

2.15 the area within a 1.6 kilometre radius of a relevant location is a "reserved location" if—

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

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

2.16 The committee noted that according to NHS England records the number of registered patients living within 1.6 kilometres of Spinney Lane, Alconbury is 2291. (Spinney lane is in the centre of the best estimate maps provided by the applicant, and was one of the roads suggested as a site for the pharmacy, and has therefore been used for determining the patient count).

2.17 This is well less than the 2,750 aggregate number of patients to determine a reserved location[sic].

2.18 In the submissions received there is nothing to indicate that use of pharmaceutical services would be similar to, or greater than, the use that might be expected if the number of individuals residing in that area who are on a patient list were 2,750 or more.

2.19 The site visit undertaken by a member of the primary care team familiar with the area also indicated that there was nothing that he was aware of that would indicate that the residents in the area would be higher than average users of pharmaceutical services.

2.20 Therefore the proposed pharmacy was determined to be in a reserved location.

2.21 Regulation 42 does not apply as this is the first determination of the area.

2.22 Regulation 43 will need to be followed if the reserved locality determination is agreed.

2.23 Regulation 44 will not apply if the reserved locality determination is agreed.
2.24 Regulation 18 … [quoted in full in the decision]

2.25 The applicant does not make any specific reference to whether there is a reasonable choice with regard to obtaining pharmaceutical services in the area. The application highlights that there are “no pharmacies within Alconbury/Alconbury Weston or the immediate surrounding area”. It goes on to say that the nearest pharmacies to Alconbury are approximately 3.3 – 4.8 miles (5.3 – 7.2km) in straight line; however the travelling distance is approximately 5 miles. As these distances are beyond reasonable walking distance, patients must rely on public transport or their own vehicles.

2.26 NHS Choices confirms that the nearest pharmacy is 3.3 miles away and that there are a further four pharmacies within four miles and a further five within 5.2 miles all of which would provide a choice of pharmaceutical providers in the area. In addition distance selling pharmacies would also provide services to the area should the residents choose to use them. In addition there are dispensing services provided to the area by a number of dispensing doctors.

2.27 This provides a choice of pharmaceutical providers to the residents in the area.

2.28 In addition to providing essential services all the advanced services are provided by pharmacies in the area.

2.29 The only enhanced service commissioned in the area is a rota service to support the out of hour provider. Both the pharmacy service and the Out of Hours provider are located close to each other in Huntingdon.

2.30 The area team have received no complaints regarding lack of service provision within the area and there is nothing to suggest that residents in the area do not have a reasonable choice of providers in the area.

2.31 The committee therefore concluded that there was no evidence to suggest that there was not a reasonable choice of pharmaceutical providers to the residents in the area.

2.32 The applicant has suggested that there are difficulties in accessing pharmaceutical services but has presented little evidence to substantiate this assertion. It sites that the public transport serving Alconbury is poor. Yet the census information from 2011 suggests high car ownership with only 8 % of residents not having a vehicle in the household and over 50% having access to more than one.

2.33 The applicant has provided no evidence to identify specific groups who share a protected characteristic within the area who have any difficulty in accessing pharmaceutical services. The Primary Care Team are also unaware of any people who would meet this test.

2.34 There is an absence of any specific evidence which supports the proposal that there are people who share a protected characteristic who are unable to access pharmaceutical services. Consequently the committee would be unable to approve the application for this test.

2.35 The applicant has made no attempt to demonstrate that there would be any innovative approaches taken with regard to the delivery of pharmaceutical services. The committee could not then approve the application on this regulatory test.

2.36 As the applicant had not been able to satisfy any of the three tests of Regulation 18 the committee decided to refuse the application.

3 The Appeal
In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority (“the Appeal Unit”), dated 1 June 2016, Rushport Advisory LLP on behalf of the Applicant appealed against NHS England’s decision. The grounds of appeal are:

3.1 The primary ground of appeal is that NHSE failed to have any, or any sufficient regard to the information provided to them as part of the application process. NHSE simply ignores much of the evidence that was provided by the Applicant and prefers to rely on either the information provided by those who have objected to this application or their own lack of knowledge of particular facts in order to refuse the application.

3.2 As the Applicant has already stated within their supporting information, Alconbury (and Alconbury Weston) is a village situated North West of Huntingdon village, in the county of Cambridgeshire. Alconbury is located near to the point where the major north/south motorway, the A1(M) crosses the only major east/west road, the A14. Alconbury also lent its name to the former RAF Alconbury Air force station.

3.3 As reported in Cambridgeshire Population and Dwelling Stock Estimates: mid 2012, published in October 2013, the population of Alconbury Village (1,570) and Alconbury Weston (750) was 2,360. The total population of Alconbury and The Stukeleys ward was approximately 3,710 people. (See map at Appendix A)

3.4 In order to consider whether granting this application will meet the test under Regulation 18 it will be helpful for the NHSLA to consider access to existing pharmacies for those who live in and around Alconbury and consider the benefits that having a pharmacy located within Alconbury would secure.

3.5 The Applicant’s case and this appeal are relatively straightforward and can be summarised as follows;

3.5.1 The relevant area is made up of not just Alconbury, but also the smaller villages that surround it (shown on map as yellow shaded area).

3.5.2 In 2011 the population of this area was 3,709

3.5.3 There is a GP surgery in Alconbury which according to the latest data from NHS Choices has 9,384 registered patients (see further below re the Alconbury and Brampton Surgeries)

3.5.4 A large new housing and commercial development is taking place in Alconbury which will deliver 5000 homes, schools, a health centre, road, bus and rail transport links and create 8000 jobs.

3.5.5 The nearest pharmacies are approximately 5 miles away from Alconbury.

3.5.6 Public transport is poor.

3.5.7 There are patients who share protected characteristics that have difficulty in accessing pharmaceutical services and for whom the pharmacy would be of significant benefit.

3.6 The relevant area is made up of not just Alconbury, but also the smaller villages that surround it (shown on map at Appendix A as yellow shaded area) AND

3.7 In 2011 the population of this area was 3,709

3.8 Of the people that live in this area 8.7% have no access to their own can. The population of working age is approximately 2,365 of which 60% drive themselves to work and this leaves 25% of people without access to a car during the day and reliant on public transport to access services.
3.9 There is a GP surgery in Alconbury which according to the latest data from NHS Choices has 9,384 registered patients.

3.10 The Alconbury and Brampton Surgeries are part of the same overall practice but operate from two sites, one in each village. In the replies to this application the LMC has stated that Alconbury surgery serves 4,500 of these patients. It is however notable that only one of the surgeries, namely Alconbury, has a dispensary that can be used only by patients who are registered with the Alconbury Surgery (according to their receptionist).

3.11 The Alconbury Surgery dispensary dispenses over 9,000 items per month (9,336 for January 2016) with the combined practices issuing nearly 20,000 items per month.

3.12 Whilst the population that lives within 1.6km of the application site may be less than 2,750 it is clear that there is very significant demand for pharmaceutical services in Alconbury and the surgery is not permitted to provide any pharmaceutical service other than the dispensing of prescriptions. Patients are therefore forced to travel 5 miles each way to access even basic services such as support for self-care or to receive a Medicines Use Review.

3.13 The dispensary only provides services 4.5 days a week meaning that patients are without pharmaceutical services for half a day mid week, throughout lunch hour through the week and weekends hence the 60% of commuting population that may be home over the weekend have to resort to driving 5 miles to access pharmacy services.

3.14 The Applicant also advises that the doctors surgery has already started to expand the surgery because of the expected influx of patients in the coming years, hence it is difficult to understand why they would not acknowledge the need for a pharmacy service within the village.

3.15 A large new housing and commercial development is taking place in Alconbury.

3.16 The Applicant’s argument is that there is already sufficient demand for pharmaceutical services in the relevant area to fully justify the opening of a pharmacy to meet that demand. However, in addition to this a very large development is taking place at Alconbury Weald which is set to further increase demand for pharmaceutical services.

3.17 On 12 May 2016 the new academy launched a search for a provider for the early years school and in April 2016 the first phase of new homes were unveiled. Hopkins Homes’ properties at Alconbury Weald will consist of two-bed coach houses, two-bed terraced, three-bed terraced, semi-detached, linked detached & detached houses, three-bed town houses, three and four-bed town houses, four-bed linked detached, detached and five-bed detached houses. Prices start from £199,995.

3.18 Larger than a garden village but smaller than a new town, the £1.5bn scheme includes a Government-backed enterprise zone, two primary schools, a secondary school, a health centre, 700 acres of green space and a cricket pitch.

3.19 The land owner and developer, Urban and Civic, who bought the brownfield site from the Ministry of Defence and started building on it in 2015. There are also plans to add a railway station on the abandoned line that runs across the 1,425 acre site to shuttle commuters into Huntingdon, Cambridge and onto London.

3.20 This is not a scheme that “may” happen – it is happening now and will steadily increase demand for pharmaceutical services as it progresses. Additional information on the development including the location plan is attached to this appeal.

3.21 The nearest pharmacies are approximately 5 miles away from Alconbury.
NHS England appears to have simply ignored the word “reasonable” when considering the issue of choice and have ignored the poor public transport and distances involved when concluding that “there was no evidence to suggest that there was not a reasonable choice of pharmaceutical providers to the residents in the area.” Within the defined area there is no choice of pharmacy, reasonable or otherwise and in our submission it is wholly unreasonable to expect patients to travel over 5 miles to reach any pharmacy and more than that to have a choice available to them. At the very least, granting the Applicant’s application will secure better access to pharmaceutical service and provide real choice to patients.

Public transport is poor.

There appears to be no argument that public transport is poor. Even some of the objectors to this application accept that it is poor. It is surprising to note that NHS England does not in any way dispute that public transport is poor. They simply ignore it.

Bus way B – Cambridge to Huntingdon, stops off at Alconbury Hill and the main RAF gate at hourly intervals, Monday to Saturday, but does not actually go into Alconbury village.

Bus 46a – Huntingdon – Stilton, stops off in Alconbury at 2 hour and 3 hour intervals Monday to Saturday.

Bus 402 – Huntingdon to St Ives, stops in Alconbury twice a day (travelling in opposite directions) at 10 am and 12.42 pm. However this service only operates on Mondays.

Approximately 8% of households have no access to a car and 38% have access to only one car. For those living together as families, the car is likely to be used by one parent to go to work and would therefore not always be available.

Many people in Alconbury will have to plan special trips to access a pharmacy due to either having no access to a car, or having to rely on public transport.

There are patients who share protected characteristics that have difficulty in accessing pharmaceutical services and for whom the pharmacy would be of significant benefit.

Within the defined area, 16% of residents describe their day to day activities as being limited either a little or a lot.

27% of the population is under 16 years old (1,000 children)

14.8% of the population are pensioners (over 500 people).

The percentage of people reporting bad or very bad health is approximately 5%.

These are all groups that either share a protected characteristic and who are likely to be the largest users of pharmaceutical services.

Reserved Location

Whilst the Applicant accepts that the population registered with a GP practice and living within a 1.6km radius of the application site is less than 2,750 it is submitted that the significant influx of patients to the village and the fact that the GP surgery dispenses nearly 10,000 items per month if pharmaceutical services were provided at the relevant location, the use of those services would be similar to, or greater than,
the use that might be expected if the number of individuals residing in that area who are on a patient list were 2,750 or more.

3.34 The area should therefore not be classified as a reserved location.

3.35 Summary

3.36 Alconbury is already a village of reasonable size and contains a GP surgery which caters for approximately three times as many people than live in the village itself. Alconbury is therefore clearly acting as a destination for those who require primary medical services and there is a clear demand for pharmaceutical services as demonstrated by the fact that the Alconbury Surgery dispenses almost 10,000 prescription items per month. In addition to this, the area is growing considerably and, whilst already well underway, it is planned for the growth to continue for the next 20 years.

3.37 At present the population has choice [sic] other than to rely on the availability of their own car to access a pharmacy as the distances on foot are not reasonable (5 miles each way) and the public transport system is poor with limited and infrequent buses.

3.38 The overall legal test to be applies is whether granting this application would secure improvements or better access to pharmaceutical services [sic]. This is not a case where the applicant relies on what sounds at first glance to be a very low threshold to grant an application. In this case the Applicant's submission is that there will be very significant improvements in services as none are currently available within a reasonable distance. Likewise, access will be massively improved as it is currently so poor.

3.39 In addition, the area contains patients who share a protected characteristic and the building of new schools in the area as part of development plans will only increase these numbers. Such patients would derive significant benefit from a new pharmacy as they require access to all pharmaceutical services and those services are currently difficult for them to access.

3.40 For the above reasons the Applicant asks the NHSLA to allow this appeal.

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.

4.1 NHS ENGLAND

4.1.1 In response to paragraph 3.1 above, NHSE England would like to point out that the application process was followed thoroughly which included reviewing all of the points made in the application submitted by Paran Patel.

4.1.2 In response to paragraph 3.5 and in particular 3.5.1 above, NHS England concluded that there is a reasonable choice of pharmacies within the area, and are not aware of any complaints. There is no evidence to say locals would access pharmacy services from Alconbury as opposed to the current pharmacy that they use.

4.1.3 In response to paragraph 3.5 and in particular 3.5.2 above, NHS England state that they based the decision on the official registered population as listed in the minutes of the PSRC.

4.1.4 In response to paragraph 3.5 and in particular 3.5.3 above, NHS England state the GP surgery in Alconbury is divided over two sites and the other site,
which is Brampton surgery, accounts for approx. 50% of the registered patients.

4.1.5 In response to paragraph 3.5 and in particular 3.5.4 above, NHS England state that housing and future growth needs will be picked up in next PNA which is due for publication in 2018. Whilst NHSE are aware of future planned growth the choice of pharmacies give reasonable access to medicines people generally accept any travel services as part of living in a rural area. The current population in the area will have set up their own access for all services including access to medicine, banking, food etc. much of this access will be access by car.

4.1.6 In response to paragraph 3.5 and in particular 3.5.5 and 3.5.6 above, NHS England state:

4.1.7 Public transport –NHS England previously highlighted that they are not aware that patients had difficulties regarding public transport.

4.1.8 In response to paragraph 3.5 and in particular 3.5.7 above, NHS England state that they have seen no evidence either presented in the application or in appeal demonstrating how patients with protected characteristics are having difficulties accessing pharmaceutical services and no complaints have been received about this.

4.1.9 Reserved Location

4.1.10 In response to paragraphs 3.33 and 3.35 above, NHS England state that whilst they are aware that GP dispensary is dispensing approximately 10000 items per month it should be noted that a number of these items will be for those people living within 1.6k and the remainder will be for those outside this area; the proportions of each is unknown.

4.1.11 The number of registered patients living within 1.6 kilometres of Spinney Lane, Alconbury is 2291. In the submissions received there was nothing to indicate that use of pharmaceutical services would be similar to, or greater than, the use that might be expected if the number of individuals residing in that area who are on a patient list were 2,750 or more. NHS England could therefore only classify the area as a reserved location.

4.1.12 The regional team have reviewed the minutes of the PSRC meeting and believe that these clearly demonstrate that the concerns put forward were considered thoroughly by the PSRC when it made its decision; and that the PSRC made the correct decision with the information that it had before it.

4.2 BOOTS UK LTD

4.2.1 Boots ask that NHS England [sic] have regard to Regulation 18 to secure improvements or better access to pharmaceutical services, or pharmaceutical services of a specified type, and that the improvements or better access were not identified in the PNA and granting the application would confer significant benefits on persons in the area of the HWB that were not foreseen when the PNA was published.

4.2.2 Boots are not aware of any shortfall in the current provision of pharmaceutical services in the area based on the data and information in the 2015 Cambridgeshire PNA.

4.2.3 Alconbury is a small village in Cambridgeshire and is, as already indicated, a controlled locality with a considerably small population of 2288, with the ward itself only approx. 3,799.
4.2.4 The census information of 2011 covering the ward of Alconbury and The Stukeleys, summarises the following:

4.2.5 There is high car ownership with only 8% of residents in the ward not having a vehicle in the household, over 50% of residents have access to more than one vehicle.

4.2.6 Health is good in the ward with 85% of residents having very good or good health, which is greater than the Huntingdon area as a whole - 63% of residents travel to work with the majority taking the car, 70% being economically active.

4.2.7 Average age being 35-54 years.

4.2.8 8% of residents being over 75, which is the same as Huntingdonshire, but in comparison is less than the East of England.

4.2.9 Boots agree that the development to the North East of the village in Alconbury Weald is in progress however it has a 20 year timeline. In the current economic climate, progress and growth is likely to be slow, being budget and planning approval driven, and outside the life of the current PNA. If the development proposal comes to fruition and the 5000 houses do get constructed, then this development, as indicated by the appellant is larger than a ‘garden village’ then surely the opportunity for a pharmacy is better suited in Alconbury Weald itself, rather than the village of Alconbury. This application is therefore very premature and in Boots view, the wrong location.

4.2.10 The proposed address indicated in the appeal bundle is 18 Spinney Lane which is a residential property, the only retail unit in the village apart from the convenience store, is a busy hairdressers salon across the green from 18 Spinney Lane.

4.2.11 Access

4.2.12 The Applicant hasn't provided any evidence that patients with protected characteristics in the village of Alconbury currently have difficulty accessing pharmaceutical services, it's purely speculative this may be the case. Whilst there is always an argument for desirability in any application, this particular example does nothing to fulfil any declared healthcare need, there is no obvious deprivation or difficulty accessing services. The village contains a few public houses and a post office/ convenience store, this would indicate that the residents and commuters consistently leave the village for their day to day needs as the level of amenities are poor, but typical of a village of this type.

4.2.13 The Applicant provides details of the three bus services currently operating, whilst these are not a frequent service, they still are typical of those services that travel through similar villages throughout the UK.

4.2.14 Choice

4.2.15 Although the only pharmaceutical provider in the village is the Drs Surgery, within 5 miles there’s a wide choice of other providers, and meets the considerations of the 5 mile, 20 min distance used when compiling the PNA. Choice consists of Independents, Multiples and Supermarkets.

4.2.16 Innovation

4.2.17 The applicant gives no suggestion of innovation or innovative services as part of their application.
4.2.18 Boots assumption, as this is a controlled locality that when determining this application, NHS England will consider the status of the Alconbury Surgery in relation to it being a controlled locality / reserved location and whether or not it is subject to the prejudice test

4.2.19 Please be aware that Boots may wish to make further representations at a later stage and attend any oral hearing and, if it proves that their interests are adversely affected, appeal against a decision to grant the application.

4.2.20 Boots have attached images of Alconbury to support this objection (Appendix B)

4.3 LLOYDS PHARMACY

4.3.1 In response to the appeal Lloyds would wish to stand by the representations made to NHS England that were:

4.3.2 Reserved Location

4.3.3 Lloyds have no evidence by which to dispute the data provided by NHS England with regards to the number of those on a patient list within 1.6km of the proposed site and therefore Lloyds would accept that Alconbury is within a reserved locality.

4.3.4 Regulation 18

4.3.5 Lloyds are not aware of patients having difficulty accessing pharmaceutical services from Alconbury. Lloyds note that car ownership is well above average for this location.

4.3.6 Lloyds would be grateful if [the FHSAU] would place this letter before the Committee as required. In the event an oral hearing is required Lloyds would wish to reserve the right to attend.

4.4 CAMBRIDGE & PETERBOROUGH LPC

4.4.1 Following discussion by the LPC Contracts Group and all relevant Declarations of Interest made, the Contracts Group have asked to let the FHSAU know that they have no further comment to make on this appeal, but would like to be kept informed of the outcome. They have also confirmed that the LPC would be willing to send a representative to an oral hearing if necessary.

4.4.2 The LPC attach a copy of their original response to this application sent to Serco on 3 March 2016.

4.4.3 The Contracts Group has asked to express their concern that the LPC was not notified or provided with a copy of the response to the original application.

In an undated letter to NHS England, the LPC stated:

4.4.4 Thank-you for your letter of 20 January 2016 giving details of the application.

4.4.5 The application has been reviewed by the LPC and Declarations of Interests made.

4.4.6 When the application is considered under Regulation 18, the LPC requests the developing needs of the population in and around Alconbury are considered.
4.4.7 The LPC notes, there will be an extra 420 dwellings in Alconbury Weald by mid-2017 (p88 Cambridgeshire PNA 2014) Huntingdonshire is forecasted for the population aged 65 and over to grow to 38,500 by 2021. This will be an increase of 41% since 2011. (p86 Cambridgeshire PNA 2014)

4.4.8 A community pharmacy in Alconbury would offer access to pharmaceutical services - especially advice and treatment for minor ailments for the people in Alconbury locality.

4.4.9 The LPC would like to be kept updated on this application.

4.5 CAMBRIDGE & PETERBOROUGH LMC

4.5.1 Having read through the appeal from Rushport Advisory, the LMC’s opinion remains unchanged from their original representation, as no additional evidence has been provided to support the application.

In a letter to NHS England dated 5th February 2016 the LMC stated:

4.5.2 The LMC have received the application and note the following:

4.5.2.1 The application contains factual inaccuracy as in Alconbury services approximately 4500 patients, not 9000 stated in the application.

4.5.2.2 The number of patients living within 1.6km of the area indicate that this is a reserved location.

4.5.2.3 This application does not fit within the PNA and therefore any alleged benefits would not be unforeseen.

4.5.3 LMC sees no evidence of the need for a new pharmacy in the village of Alconbury and therefore does not support this application.

4.6 ALCONBURY PARISH COUNCIL

4.6.1 The letter of 20th June has been discussed at a meeting of Alconbury Parish Council.

4.6.2 Councillors are very concerned that residents living within 1.6km of the proposed pharmacy, would no longer be able to collect their prescriptions from the GP surgery. As a result, patients attending the surgery, many of whom are elderly, would have to make an additional journey to the pharmacy.

4.6.3 Councillors are also concerned that the proposed premises at 18 Spinney Lane, is currently a residential property within a residential area. Other than the small driveway, there would be no off road parking for customers. If the majority of prescriptions currently dispensed at the GP surgery, which has a designated car park, were transferred to the proposed new pharmacy, this is likely to create parking issues in Spinney Lane, which would be to the detriment of the existing residents.

4.6.4 The Parish Council understand that the new development of Alconbury Weald, will in due course, have its own surgery and suggest that any new pharmacy would be better located there.

5 Unsolicited comments

5.1 ALCONBURY & BRAMPTON SURgeries
5.1.1 Alconbury and Brampton Surgeries were originally notified late last year about this application and responded in late January to Serco. A copy of the original letter is enclosed. Unfortunately Serco said that they have no record of this submission and therefore it was not taken into account in their original finding.

5.1.2 Alconbury and Brampton Surgeries understand that the application was rejected but the Applicant has appealed to yourselves.

5.1.3 On behalf of Alconbury and Brampton Surgeries, this was discussed with the FHSAU because the Surgeries were worried that if they wrote to the FHSAU, their submission might not be taken into account since Serco did not acknowledge that they had responded to the initial application but the Surgeries were assured that the FHSAU would take their submission into account.

5.1.4 Alconbury and Brampton Surgeries enclose a copy of their original letter, which outlines their reasons for requesting that the appeal should be rejected. The only material change since January is that since the publication of the Government’s GP Forward View and the NHS Five Year Plan, the surgeries are in active discussion with their local federation of practices and it is highly likely that in the next couple of years, the local federation will be employing a practice pharmacist to work across the practices, therefore enhancing even further the services on offer to their patients.

5.1.5 Specifically Alconbury and Brampton Surgeries would like to point out the following. Alconbury and Brampton Surgeries would like to point out that their Practice is a reserved and protected location and a number of patients living within 1.6km either from their Surgery or from the Applicant’s proposed site in Spinney Lane is less than 2700 and therefore is a reserved and protected location. The applicant makes reference in his application to the number of items dispensed, but as a reason that the location should no longer be reserved and controlled, but Alconbury and Brampton Surgeries can find no reference to the number of items dispensed in the Pharmaceutical Regulations (Regulation 41 and Regulation 36 of the Pharmaceutical Regulations 2014).

5.1.6 The Applicant maintains that public transport from the village of Alconbury is poor and describes this as a reason patients will be unable to access pharmaceutical services. As the Surgeries pointed out in their original letter, Alconbury and Brampton Surgeries provide pharmaceutical services under the dispensing doctor regulations and the proposed services that the applicant wants to provide do not materially differ from those that are already available to the patients from the Surgery. Since the applicant’s proposed location is only a matter of a few hundred metres away from the Surgery the adequacy or otherwise of local public transport is irrelevant.

5.1.7 There is likely to be a new development in Alconbury Weald, consisting of 5000 new homes, but this will be more than 1.6km away from Alconbury village and such a development is likely to attract a fresh application for a pharmacy to open in the new development, so again Alconbury and Brampton Surgeries do not see the relevance to this application or its appeal.

5.1.8 Alconbury and Brampton Surgeries would therefore like to maintain that there is absolutely no need for a pharmacy to open in Alconbury and this is supported by the most recent Pharmaceutical needs assessment.

In a letter to NHS England dated 25 January 2016 the Alconbury & Brampton Surgeries stated:
5.1.9 First of all may Alconbury and Brampton Surgeries clarify with [NHS England] that at the present site in School Lane in Alconbury and indeed at the Applicant's proposed site in Spinney Lane, Alconbury the number of patients living within 1.6 km is less than 2,700 and therefore Alconbury and Brampton Surgeries should continue to be a reserved as well as controlled site.

5.1.10 Alconbury and Brampton Surgeries would like to point out several inaccuracies in the application. First of all the applicant is under a misapprehension that Alconbury Surgery serves over 9,000 patients. As [NHS England] know the practice is split over 2 sites with roughly half the practice population something in the order of 4,500 patients being served by Alconbury Surgery and the other 4,500 patients are served by Brampton Surgery where patients have access to several local Pharmacies including one in the village of Brampton on the High Street.

5.1.11 The Applicant claims that opening his Pharmacy in the village of Alconbury will improve access to pharmaceutical services. In this application he makes an assumption that only Pharmacies provide pharmaceutical services whereas Alconbury and Brampton Surgeries would like to point out that their surgery has been providing pharmaceutical services to their practice population under the Dispensing Doctors Regulations for many years. The most recent pharmaceutical needs assessment did not conclude that there were any unmet pharmaceutical needs for the village of Alconbury or its surrounding areas. The list of services which the applicant intends to undertake should his new application be successful does not materially differ from the services available to the patients at Alconbury Surgery.

5.1.12 The proposed site for the new Pharmacy in Spinney Lane is within a few hundred metres of the practice and therefore will not offer any increased access to services over and above that already available from the surgery.

5.1.13 The applicant mentions the forthcoming development at Alconbury Weald and he is right to point out that when the development is complete this will consist of 5,000 homes. This is well over 1.6 km away from the surgery and also from the site of the proposed Pharmacy and will comprise a substantial number of new patients. Alconbury and Brampton Surgeries are not sure of the relevance of this new development to the current application as the proposed development is a significant one which will almost certainly attract applications to open a Pharmacy within the Alconbury Weald site in due course.

6 Observations

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