

17 December 2013

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REF: SHA/17304

APPEAL AGAINST EAST ANGLIA AREA TEAM NHS COMMISSIONING BOARD "NHS ENGLAND" DECISION TO REFUSE AN APPLICATION BY PASAB LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS AT THE NEW LONGSTANTON NEIGHBOURHOOD CENTRE, THE CORNER OF HIGH STREET AND NELSON CRESCENT, LONGSTANTON, CB24 3GN

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1 The Application

By application dated 26 March 2013, PASAB Ltd ("the Applicant") applied to Cambridgeshire Primary Care Trust ("the PCT") for inclusion in the pharmaceutical list offering unforeseen benefits at the new Longstanton Neighbourhood Centre, the corner of High Street and Nelson Crescent, Longstanton, CB24 3GN . In support of the application it was stated:

Background

- 1.1 The applicant applies for this application for inclusion in the pharmaceutical list under Regulation 18.
- 1.2 Longstanton is a village in South Cambridgeshire about 6 miles north west of Cambridgeshire City Centre. There are no pharmacies in the Village. The nearest pharmacies are at least 2.5 miles away, these being Tesco to the south of the A14 (Bar Hill) and Willingham to the north. In 2011 the population of Longstanton parish was approximately 2,700.
- 1.3 Longstanton is a village with a mix of housing, post office/ village store, dental surgery, veterinary practice, Village hall, Army Cadet Force unit, and Longstanton Medical Practice. The settlement is also and is also experiencing significant growth in housing, range of services and facilities [sic]. At least 500 new homes now occupy the old Home Farm site in the vicinity of Over Street. Additional housing is also planned as part of the Charles Church and Persimmon Homes development at Stantone Gardens. There is the new Hatton Park primary school, which has 156 pupils between the ages of 5-11. A new neighbourhood centre is also being constructed, for which building work is underway.
- 1.4 This is the proposed site for this application. This will comprise of a convenience store and 4 retail units. The developer has already exchanged contracts with the Co-op as the supermarket provider. There will be dedicated car parking. There will also be associated flats and new homes as part of the development, which will compliment the new housing already built on the Home Farm site adjacent to the neighbourhood centre.

Further Development

- 1.5 Adjacent to Longstanton village planning permission has now been granted (Oct 2012) for the first 1,500 homes at Northstowe. This will increase the population by over 3,000). This development will be built on the site of Longstanton's Golf Course. See plan accompanying this application. Building work is expected to start in the summer of this year (2013). This decision follows the earlier endorsement of the master plan for Northstowe, which will ultimately have 10,000 homes (4,800 of which are to be built by 2016). The first phase of the Northstowe development will also include a three-form entry primary school, shops, sports facilities and a community

centre, 5 hectares of employment land as well as a cycleway between Longstanton and Bar Hill.

- 1.6 This application would significantly secure an improvement and better access to pharmaceutical services, as no pharmacies currently exist within Longstanton or within walking distance. Patients and residents currently have to rely on the rural dispensing services of the medical practice or a delivery service from outlying pharmacies. A rural dispensing service does not and cannot provide the full range of services that an NHS contract pharmacy can provide such as all essential, advanced and enhanced services.
- 1.7 The fact that the nearest pharmacies are all over 2 miles away supports the applicant's submission that this application will provide an improvement and better access to pharmaceutical services. There are bus services in operation into and out of Longstanton, indeed there is a Park and Ride facility, however the most frequent services are into Cambridge which is 6 miles away which are both costly and time consuming. The nearest village with a pharmacy is Willingham but there is only a two hourly service from Longstanton.
- 1.8 Alternatively, bus services to Tesco are only hourly. It is not sufficient to allow patients to rely on a bus service, particularly with the population having increased and continuing to increase significantly.

Innovative Services

- 1.9 Jhoots Pharmacy is committed to providing free Blood Pressure Testing Services. In 2010 Jhoots worked alongside the Blood Pressure Association to take part in the nations biggest Blood Pressure event. The applicant sees this as a vital service as in managing patients health and reducing the number of admissions to hospital. There are a significant number of elderly people in the Longstanton ward as well as those of working age who may have undiagnosed blood pressure.

Weight Management

- 1.10 Jhoots Pharmacy sees the availability of weight management as a service that would benefit the Longstanton and Northstowe population and they would make this service available to the PCT. For the last few years Jhoots Pharmacy has been commissioned by Walsall PCT to provide a 'level 3' programme over a six month period to patients with a Body Mass Index of 32 and above for patients who had not succeeded on other weight loss measures. Jhoots tailor a dedicated programme, which would involve one on one time and group sessions with a dietician. The applicant also works closely with a patient's GP to ensure that the necessary support is in place if medication has been prescribed and patients have regular weight and bio-chemical checks.
- 1.11 The key performance indicator is to prevent at least one case of bariatric surgery, which can cost the NHS up to £20,000. From the first cohort of patients that the applicant saw in the programme 12 patients decided against surgery.
- 1.12 Other benefits can evolve from the scheme such as a more healthy and active lifestyle and stopping smoking. Over two thirds of those who were smokers and engaged in the scheme were motivated to quit. All these enable patients to lead a more enjoyable life.
- 1.13 These services will be particularly beneficial to support the growth of the Longstanton and the Northstowe development.

Protected Characteristics and the local population:

- 1.14 Growth of the population has seen a spike in the number of young children in the Longstanton ward. In 2011, 9.1 per cent of the population were aged 0-4 years. This is well above the national average of 6.3 per cent. Young children are often prone to catching illnesses and therefore parents may have increased need to access pharmaceutical services. As the population continues to increase so will the number of families and children. To have to make a journey of over two miles with either lengthy or untimely bus services is not easy especially if you have young children or are elderly.
- 1.15 There are also 8.5 per cent of the population aged 65-74 and 3.6 per cent of the population aged 75-74 [sic].

Choice:

- 1.16 There is currently no choice of pharmaceutical services in Longstanton as there are no pharmaceutical services at all. The applicant submits there is a need for provision of pharmaceutical services in the village due to the expanding population and increase in level and range of services

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

- 1.17 Please see above [within section 6] but in summary this application would:
- 1.17.1 Meet the growing needs of patients and residents in a settlement where no pharmaceutical services exist.
 - 1.17.2 The growth of the population in Longstanton and the recent approval of planning consent of the Northstowe development will increase the benefits for a pharmacy in the village.
 - 1.17.3 The application will cover the opening hours of the Longstanton Medical Practice without patients having to make at least a 4 mile round trip to access pharmacies in other areas.
 - 1.17.4 The pharmacy will be able provide a full range of NHS pharmaceutical services unlike the currently restricted service of the dispensing practice.
 - 1.17.5 Outline Consent to dispense for Medical Practice's are essentially put in place to cover serious difficulty encountered by patients accessing pharmaceutical services. An NHS pharmacy within the village will provide an improvement and better access and availability to a full range of services.
 - 1.17.6 The absence of any pharmacy in the village denies any choice of services to patients. This application will provide a degree of choice to patients in Longstanton

2 The Decision

NHS England considered and decided to refuse the application. The decision letter dated 15 August 2013 states:

- 2.1 NHS England has considered the above application and I am writing to confirm that the application has been refused.
- 2.2 The Pharmacy Regulations Committee gave careful consideration to the application and to the representations submitted. The rurality aspect of the application and location were not considered.

- 2.3 The Committee noted that the application was for 'unforeseen benefits' and that Regulation 18 applied and took into account the factors in Regulation 18.
- 2.4 It was noted that two pharmacy applications for Longstanton had been submitted in 2007 which were both considered and refused in December 2007, there were no appeals against those decisions.
- 2.5 The pharmaceutical service provision in the Health and Wellbeing Board's area had increased since the PNA had been published, the PNA stated that the identified population growth in Cambridgeshire did not indicate a need for additional community pharmacy premises/contracts. The PNA clearly states knowledge of the development in North Stowe and around Cambridge and the Committee were satisfied that the PNA had identified the increase in population and found that the current level of pharmacies was adequate.
- 2.6 There are five pharmacies within a five mile radius of Longstanton and the services offered by the applicant were already provided by existing pharmacies in the area. No need has been identified, for services that are not currently provided in the area, in the PNA or subsequent to the PNA being published. The East Anglia Area Team of NHS England were unaware of any complaints or concerns in relation to pharmaceutical service provision in Longstanton.
- 2.7 It was noted that the nearby GP practices in Willingham and Over had pharmacies collocated with their surgery premises.

3 The Appeal

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority ("the Appeal Unit"), dated 9 September 2013, the applicant appealed against NHS England's decision. The grounds of appeal are:

- 3.1 The NHSCB notes that two pharmacy applications for Longstanton had been submitted in 2007 and were refused. These applications were submitted six years ago but neither of them was appealed. The NHSCB fail to state what relevance they gave this as part of the consideration of the application.
- 3.2 The NHSCB notes in their decision that pharmaceutical provision in the Health and Wellbeing Board (HWB) has increased since the Pharmaceutical Needs Assessment (PNA) was published. The NHSCB does not state where within the HWB area such increases have taken place or to what relevance or impact it has on Longstanton. Notwithstanding any increase in pharmaceutical services provision within the HWB area the fact remains that there is poor access to pharmaceutical services for the population of Longstanton as we evidenced in our application. It is at least two miles to the nearest pharmacy along country roads. Bus services only run hourly and the only means to have a prescription dispensed in Longstanton is via the rural dispensing service by the Longstanton surgery. Such a service provides limited services and does not include any advanced or enhanced services. A rural dispensing service cannot be considered as a substitute for full provision of pharmaceutical services and advice from a pharmacist. A rural dispensing service is often introduced where the population has serious difficulty in accessing a pharmacy. This application would address this.
- 3.3 The NHSCB suggests that the PNA considers the current level of pharmaceutical services to be adequate. This is a sweeping conclusion for the entire Cambridgeshire area. The PNA does not make any reference to an assessment of needs or services provided to Longstanton. Additionally, the PNA merely makes acknowledgment to the proposed new housing development at Northstowe but provides no assessment of any needs or future needs or benefits which may arise from the provision of pharmaceutical services. This application by PASAB Ltd has been submitted under regulation 18 to provide 'unforeseen benefits' and therefore not considered within the

PNA. Such an application must confer significant benefits to the population and secure an improvement and better access to pharmaceutical services. The NHSCB has failed to provide any reasoned response to this application based on the evidence provided in the application.

- 3.4 The NHSCB rely on the PNA to determine the application rather than looking at the significant benefits the application would have in particular to securing an improvement and better access to pharmaceutical services.
- 3.5 The NHSCB note in their decision that the nearby GP practices in Willingham and Over have pharmacies co-located. There is no consideration by the NHSCB of the access to these pharmacies or the services or hours they are available despite the evidence provided in the application.
- 3.6 In summary:
- 3.6.1 The application would provide a significant improvement and better access to pharmaceutical services. The nearest pharmacy is over 2 miles away along country lanes with no pavements with a limited bus service.
- 3.6.2 Longstanton residents only have access to GP dispensing services in the village that does not provide a full provision of pharmaceutical services.
- 3.6.3 The population is growing in the village (500 homes occupy Home Farm site) and building work continues on Over Road with Kier Homes, Barratt and Taylor Wimpey. Planning consent has also now been approved for the Northstowe development (for the first 1,500 new homes). The NHSCB has had no consideration to the significant benefit and improvement and better access our application would bring to this population as well as the existing population.
- 3.6.4 A new neighbourhood centre anchored by a Cooperative store is confirmed which will enhance the existing local services which includes a post office, medical services, newsagents, veterinary practice.
- 3.6.5 There is no choice of pharmaceutical services at all in Longstanton, in fact there are none at all. This application would provide access to pharmaceutical services in Longstanton.
- 3.6.6 There are protected characteristics of the population which would benefit from the application in particular the elderly and young children as outlined in the application. The NHSCB has failed to provide any consideration of this.
- 3.6.7 The applicant has proposed to provide additional innovative services around weight management as detailed in the application but importantly the application would secure the provision of pharmaceutical services where none are currently available. The NHSCB has not taken the above facts into account as part of its decision. Had it done so it should have reached the conclusion that the application would confer significant benefits to the population and which would provide an improvement and better access to pharmaceutical services.

4 **Summary of Representations**

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

4.1 NHS ENGLAND

- 4.1.1 The Regulations Committee fully considered the application from PASAB limited in conjunction with the findings of the PNA.
- 4.1.2 The PNA had not identified any unmet pharmaceutical needs for a pharmacy in the area.
- 4.1.3 The application was for providing Unforeseen Benefits at the Longstanton Neighbourhood Centre, and was therefore carefully considered using the regulations relevant for such an application.
- 4.1.4 The appeal questions the Committee's reliance on the PNA to determine the application. Surely, this is the cornerstone of the Market Entry considerations that the Area Teams' Regulations Committees need to make to determine an application.
- 4.1.5 The Committee were aware of the considerable research, engagement and consultation, that had been undertaken in order to produce the PNA and had used its findings accordingly.
- 4.1.6 The appeal questions the findings of the PNA that there was no need for additional pharmacies in the area. However, this was not then a consideration for the Committee, who were required to determine the unforeseen benefits offered.
- 4.1.7 The appeal also questions the PNA assessment of the developments in housing for Cambridgeshire in general and of Northstowe in particular. The PNA made explicit reference to both and the committee had confirmed that the recent planning permissions outlined in the application had been considered during the PNA process which they were. As such these developments were then not "unforeseen". The committee considered that the onus was on the applicant to demonstrate that the offered benefits were unforeseen by the PNA and this they had not done in the application or have done in the appeal.
- 4.1.8 The appeal summary makes a number of assertions that challenge the PNA's findings, but these are unsubstantiated. The findings of the PNA were also consulted on widely, and these concerns were not raised then.
- 4.1.9 It also restates areas that the appellant suggests were unforeseen by the PNA, but NHS England would challenge this and maintains that the effects of the Northstowe developments and others in Cambridgeshire, were fully considered when the PNA was being developed.

4.2 THE APPLICANT

Existing Services:

- 4.2.1 The Pharmacy in Willingham village is part of the Willingham Medical Practice. Access is made through the surgery. There is no separate (external) access for the pharmacy and is therefore wholly reliant on access being made available from the surgery. The Pharmacy is only open the following hours:

Monday 08:30-13:00 and 14:30-18:00

Tuesday 08:30-13:00 and 14:00-18:00

Wednesday 08:30-13:00 and 14:00-18:00

Thursday 08:30-13:00

Friday 08:30-13:00 and 14:00-18:00

- 4.2.2 There is currently no provision of pharmaceutical services between 13:00 - 14:30 Monday, and between 13:00 --14:00 Tuesday -Friday. There is also no provision Thursday afternoons and no provision over the weekend. Given the distance of over 2 miles and the infrequency of public transport from Longstanton the proposed opening hours will provide a significant benefit to the population. The application will provide a significant improvement and better access to pharmaceutical services that includes access to pharmaceutical services over 6 days and extended hours to 19:00 on Wednesdays and no closure at lunchtimes.
- 4.2.3 The NHSCB state that the services proposed by the applicant are already provided by pharmacies in the area but they do not state which services, over what area, and how accessible such services are.
- 4.2.4 The existing pharmacy in Willingham for the last financial year also only completed 6 Medicine Use Reviews according to the NHS Business Services Authority.
- 4.2.5 The Dispensing Practice in Longstanton is not on the pharmaceutical list and is not able to provide any advanced, or enhanced pharmaceutical services and neither is there opportunity to seek the advice of a pharmacist.

Housing Development

- 4.2.6 The applicant encloses details of additional housing development that is taking place. This is an expanding village and the needs of those living and visiting must be considered. The Pharmaceutical Needs Assessment has given no consideration to this. The developments at Hatton Grange, Constantine Place and St Michael's Chase are well under construction with many of them built and starting to be occupied. As well as the growing needs of those in Longstanton the approved plans for the Northstowe development will place even further emphasis on access and provision to pharmaceutical services.
- 4.2.7 There is currently no choice of pharmacy in Longstanton evidenced by the fact that there is no pharmacy at all The nearest pharmacy is over two miles away, which can only be accessed through the Willingham Medical Practice and is closed lunchtime, Thursday afternoons and at weekends. The Pharmacy cannot open extended hours when the surgery is closed. There are also no pavements or cycle routes to the Tesco store. The applicant notes that Tesco has not provided any objection to this application.
- 4.2.8 There is no evidence provided by the NHSCB they considered any of the benefits, which this application may bring, and no consideration to the improvements and better access to pharmaceutical services.

Significant Detriment

- 4.2.9 There is no evidence that the application if granted would have any significant detriment to the proper planning of pharmaceutical services.

Local Support

- 4.2.10 There is agreement locally that a pharmacy would have significant benefits to the Longstanton population in terms of providing an improvement and better access to pharmaceutical services. Concern in particular is made over the distance and journey, which has to be made along narrow country lanes and current lack of services. The applicant asks the NHSLA to take into

consideration local opinion when considering this application that has been sent separately.

Premises

4.2.11 The applicant can confirm that they have now secured agreement to lease the necessary premises to which they can provide conformation if required.

4.2.12 The NHSCB has not considered at all the significant benefits that this application proposes to provide to the Longstanton area. The applicant believes it will provide a significant improvement and better access to pharmaceutical services.

4.3 ROWLANDS PHARMACY

4.3.1 Rowlands note this is a Routine Unforeseen Benefits application they believe that this application should satisfy Regulation 18 and 19 of the NHS (Pharmaceutical Services) Regulations 2012.

4.3.2 Applications intended to provide improvements or better access to services that were not foreseen in a PNA will also have to confer a significant benefits on people in the area, but if an application is intended to provide improvements or better access to services not mentioned in the PNA, the NHS CB must take into account factors such as whether granting the application would cause significant detriment to proper planning of pharmaceutical provision (in which case the application must be refused). Whether there would be significant detriment to existing arrangements (in which case, the application must be refused). The desirability of reasonable choice and the desirability of innovative approaches regarding the delivery of services should also be taken into consideration.

4.4 THE CO-OPERATIVE PHARMACY

4.4.1 The Co-op believe that this application fails to satisfy Regulation 18 and 19 of the NHS (Pharmaceutical Services) Regulations 2013 as an application to secure an improvement or better access to the existing pharmacy network if the need had been identified with the Health and Wellbeing Boards (HWB) pharmaceutical needs assessment. The Area Team must have regard to reasonable choice, service innovation and a protected characteristic being able to access pharmaceutical services.

4.4.2 This application does not meet an unforeseen benefit to the residents of the locality for the following reasons, it does not provide a greater choice; it does not seek to meet health needs through service innovation and the applicant has failed to identify a protected characteristic.

4.4.3 It is up to the Area Team to set the standards of pharmaceutical services within its area and they are satisfied that the current standards and availability of pharmaceutical services within this locality are meeting the needs of the local population. This is supported by the Pharmaceutical Needs Assessment published by the previous Primary Care Trust.

4.4.4 The applicant has identified a protected characteristic as those aged between 0 – 4 years of age and the innovative service they have proposed is free blood pressure testing. The Co-op contend that the proposed service will not be meeting the needs of the protected characteristic.

4.4.5 The applicant is considering that Longstanton and Northstowe are going to one and the same areas. They have misguided themselves. Northstowe will attract a different demographic than that of Longstanton as the existing

population are established. Northstowe is being built to accommodate the commuters into Cambridge and movement between the two areas will be limited due to the road structures.

- 4.4.6 The area immediately surrounding the proposed pharmacy is primarily residential in nature, with a few very small retail outlets to serve immediate needs for papers, cigarettes, alcohol, and convenience foods. The shops close to the proposed location would not be large enough to carry out a weekly shop in, they are convenience focused. This area is accustomed to travelling which is why there is high car ownership within the area. All of these services are located out with the immediate area of residence, which resident's access in the course of normal living.
- 4.4.7 Where these services and amenities are located, there are also pharmacies located to provide opportunistic healthcare.
- 4.4.8 The Co-op also offer a free and unconditional prescription collection and delivery service from their pharmacy to the surrounding area to improve access to medication when there is no requirement to attend the surgery for an appointment.
- 4.4.9 The enhanced services the applicant is proposing to offer are not innovative as they are all services which are commissioned by the CCGs and Local Authorities. The applicants are not intending to meet any need with a new service that is required under Regulation 18 and 19 of the 2012 Regulations.
- 4.4.10 In summary the Co-op maintain that this application is not meeting any unmet need of a protected characteristic within the locality for it to meet the regulatory requirements under regulation 18 and 19 and they respectfully request the Litigation Authority to dismiss the appeal.

5 Observations on representations

5.1 NHS ENGLAND

- 5.1.1 The representations from PASAB dated 17.10.13 attempts to make a case that the application is offering "significant improvement and better access to pharmaceutical services". However the application was to provide benefits unforeseen by the PNA and it is that test that the application would need to pass by demonstrating how the benefits were unforeseen.
- 5.1.2 The improvements discussed are compared against Willingham Pharmacy and does not discuss the services provided by other the providers in the area which include delivery services.
- 5.1.3 NHS England repeat that the housing developments outlined in the application were considered by NHS Cambridgeshire when they produced the PNA and indeed the developments to date are not as far advanced as was expected when the PNA was published.
- 5.1.4 The Regulations Committee did consider the application fully included the suggested benefits but the application before it was for unforeseen benefits and this is where the considerations were focussed as would be expected in an unforeseen benefits application.
- 5.1.5 NHS England is aware that there have been several representations from local residents to the appeals authority to support the application. However this is not then evidence of "agreement locally that a new pharmacy would bring significant benefits to the Longstanton population". Unlike the PNA there has not been widespread consultation on this application and the views

of several unsolicited comments cannot be seen to be representative of the population as a whole. Neither NHS England, nor its predecessor NHS organisation for the area - NHS Cambridgeshire, have received any complaints/concerns about the adequacy of the pharmaceutical provision in the area.

- 5.1.6 In response to the allegation that the NHSCB “has not considered all of the significant benefits that the application proposes” then again they repeat that the application was considered in its entirety; however the committee focused its attentions on processing the application according to the regulatory test specified by the type of application the applicant chose to make.

5.2 THE APPLICANT

- 5.2.1 The applicant notes that there are no representations on their appeal by the Willingham Medical Practice or by Willingham Pharmacy or by Tesco, which are the nearest services to the proposed site.

Response by NHS England 14th October 2013

- 5.2.2 The advise they "considered the application in conjunction with the findings of the PNA and that the PNA had not identified any unmet need". As stated in the representations the application is for benefits, which were not foreseen in the PNA. The PNA fails to have any regard whatsoever to the provision of pharmaceutical services in, or to Longstanton and therefore this application must be for one under Regulation 18.
- 5.2.3 NHS England says "the Committee were aware of the considerable research, engagement and consultation, that had been taken in order to produce the PNA and had used its findings accordingly" No evidence of such research relating to Longstanton is provided. NHS England fails to provide any evidence of any regard to Longstanton in the PNA. Due to the absence of such information/evidence the PNA cannot be used to determine and reject the application. NHS England relies on a brief reference to Northstowe in the PNA, which the applicant referred to in their application but such a reference is inconclusive and has no regard to the needs of those in Longstanton to where the application has been made.
- 5.2.4 NHS England shows no consideration of any of the access issues the applicant evidenced, the new housing developments taking place in Longstanton, the infrequent bus services, demographics and level of population, future developments, limited dispensing services provided by the Longstanton Surgery dispensing practice, that medical services are provided in Longstanton, and that there are other local community services in Longstanton such as a post office and general stores. Had NHS England considered such evidence they would likely conclude that the application would secure an improvement and better access to pharmaceutical services and one, which would confer significant benefits to the population as no services are currently available which are reasonably accessible .

Response by Rowland's Pharmacy 23rd September 2013

- 5.2.5 Rowland's state they rely on their original objection but also that "they have no comments to make". There is therefore no dispute to the matters raised in the appeal.

Response by Co-op Pharmacy 16th October 2013

- 5.2.6 The Co-op states that the application does not provide greater choice. There is currently no choice of services in Longstanton as there no pharmaceutical

services at all . The regulations only require the decision maker to 'have regard' to matters such as choice, innovation and protected characteristics. The Co-op state in paragraph 3 that the applicant have failed to identify a protected characteristic but in paragraph 5 states, "the applicant has identified a protected characteristic". The Co-op fails to have regard to the fact the application would secure an improvement and better access to pharmaceutical services and the applicant notes this has not been disputed. Neither has the Co-op disputed the fact that the application would confer significant benefits to the population.

5.3 Various responses from the local community

5.3.1 The representations from the local community confirm the evidence provided is valid and that there are significant difficulties in accessing pharmacies in other areas . They confirm that the distance, lack of pavements, irregular bus services, and reliance on a rural dispensing service creates problems and difficulty accessing pharmaceutical services. They are also aware of the growth of Longstanton and the future impact of the Northstowe development. The fact that local residents feel strongly about the current lack of a pharmacy and the problems in accessing the existing services also supports the contention that the PCT failed take such matters into account when the PNA was compiled. The applicant asks the Committee to be particularly mindful of these representations when considering the appeal.

5.3.2 The applicant would be grateful if the FHSAU would consider these comments as part of the determination of their application/appeal which they maintain should be granted to secure an improvement and better access to pharmaceutical services and have significant benefits to the population.

5.4 WILLINGHAM MEDICAL PRACTICE

5.4.1 The practice reiterate their original objection and the reasons they submitted for that.

5.4.2 The practice understand that there has been a campaign by an individual in the village encouraging residents to write in support of the pharmacy application and stating that this will not have any effect on the services provided by the local surgery.

5.4.3 The practice themselves have received numerous emails and letters from residents of Longstanton who oppose the application and just a few in support from the same residents who have also sent a communication to the Litigation Authority. There is an overwhelming response from patients who are visiting Longstanton Branch Surgery specifically to express their concerns that if the pharmacy is granted a license they will no longer be able to obtain medicines from the surgery and how much they value the excellent and easily accessible service the dispensary provides.

5.4.4 The practice are aware that such responses are not relevant in the decision making process but they can forward these "unsolicited responses" if it is appropriate. The applicant has stated that there is "agreement locally that a pharmacy would have significant benefits to the Longstanton population" but this is not the message that is coming from the majority of the residents of Longstanton. The practice agree with the applicant that local opinion should be taken into consideration when considering this application and can provide further evidence of local opinion if required.

5.4.5 A recent Patient Survey at the Longstanton Branch Surgery highlighted how highly the dispensary is valued by the patients and their additional comments show how impressed they are with the attitude and professionalism of the

dispensary staff and the efficient service provided. There is a dedicated telephone line to the Longstanton Dispensary which is answered by qualified dispensing staff at all times when the Willingham Surgery is open, including the extended hours. Dispensary staff can refer patients on to a doctor, nurse, health visitor, midwife or pharmacist if appropriate or requested by the patient. This is an added benefit of the close working relationships between the healthcare professionals locally.

5.5 WILLINGHAM PHARMACY

5.5.1 Willingham Longstanton Medical Practice and Willingham Pharmacy have worked together for 13 years to provide a seamless service for the residents of Willingham and Longstanton and the surrounding villages. The pharmacy have worked closely with Cambridgeshire PCT over those years to ensure a co-ordinated approach to pharmaceutical needs in the area. Indeed the pharmacy were in favour of granting a pharmacy contract at Over surgery.

5.5.2 It is the pharmacy's understanding that at some point in the future a pharmacy in Longstanton would be necessary and desirable and they have discussed this with the PCT in the past.

5.5.3 Following the Pharmaceutical Needs Assessment Willingham Pharmacy state that they were advised that a pharmacy would not be required at this time but it was their intention to apply for a contract along with any other interested parties when the PNA expired. This co-ordinated approach would be preferable as it would ensure that the contract would be awarded to the most suitable applicant.

5.5.4 Willingham Pharmacy believe there may also be an issue around the viability of the Longstanton branch surgery if the revenue from Doctor Dispensing is removed.

5.5.5 Therefore they strongly object to this application being made during the duration of the PNA and ahead of the scheduled process.

6 Unsolicited Comments

6.1 Unsolicited comments were received by the FHSAU from 6 local residents in support of a pharmacy opening in Longstanton. These can be found at Appendix A.

7 Comments on Observations

7.1 THE APPLICANT

7.1.1 The applicant states that NHS England has again suggested they considered Longstanton in the PNA, however the applicant states that there is no reference to Longstanton in the PNA and NHS England has still not provided evidence from the PNA that suggests otherwise.

7.1.2 The applicant would wish to draw the Committee's attention to the fact that Willingham Pharmacy agrees that a pharmacy is required in Longstanton.

8 Consideration

8.1 The Pharmacy Appeals Committee appointed by the Family Health Services Appeal Unit of the NHS Litigation Authority, ("the Committee") 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.

8.2 It also had before it the responses to the Authority's own statutory consultations.

- 8.3 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.
- 8.4 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(1) (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(2) (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(3) (duty as to reducing inequalities)), and*
 - (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(4) (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)."*

- 8.5 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 8.5.1 confirm NHS England's decision;
 - 8.5.2 quash NHS England's decision and redetermine the application;
 - 8.5.3 if it considers that there should be a further notification to the parties to make representations, quash NHS England's decision and remit the matter to NHS England.
- 8.6 The Committee went on to consider whether there should be a further notification to the parties to allow them to make further representations (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.
- 8.7 The Committee noted that representations on Regulation 18 had already been made by parties to NHS England, and 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.
- 8.8 The Committee concluded that further notification under paragraph 19 of Schedule 2 would not be helpful in this case.
- 8.9 The Committee considered the 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) of the NHS (Pharmaceutical Services) Regulations ("the 2012 Regulations"), 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 January 2011 and that no supplementary statements have been issued.

- 8.10 The Committee noted that specific reference to Longstanton is not mentioned in the PNA as the PNA covers the wider area that covers Longstanton. The Committee noted that the existing pharmacies and medical practices in Willingham, Longstanton and the surrounding area are mentioned. The Committee further noted that at page 97 of the Executive Summary it stated that "current pharmacy provision addresses the needs of the majority".
- 8.11 The Committee noted that the applicant seeks to provide pharmaceutical services to the population of Longstanton Village. The Committee noted that the applicant had stated that they would be able to provide a full range of pharmaceutical services and that granting this application would confer significant benefits on persons which were not foreseen when the PNA was published.
- 8.12 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)

- 8.13 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, "

- 8.14 The Committee noted that NHS England had not addressed the issue of any detriment to proper planning in its decision or in any subsequent representations. The Committee further noted that no party had produced any information which would support a finding that significant detriment would be caused.
- 8.15 The Committee was therefore satisfied that significant detriment to the proper planning of pharmaceutical services would not result from a grant of the application.

Regulation 18(2)(a)(ii)

- 8.16 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"

- 8.17 The Committee noted that NHS England had not addressed the provisions of Regulation 18(2)(a)(ii). The Committee noted the comment from Willingham Pharmacy at 5.5.4 with regard to the viability of the branch surgery, however this had not been expanded upon and the Committee was mindful that this related to medical provision and not pharmaceutical services as stated in the Regulations. The Committee noted that apart from this statement no party had provided any further information to demonstrate that there would be significant detriment of the kind referred to in 18(2)(a)(ii). The Committee was therefore satisfied that significant detriment to the arrangements currently in place for the provision of pharmaceutical services would not result from a grant of the application.

- 8.18 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)

- 8.19 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(2) (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(3) (duty as to reducing inequalities)), and

(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(4) (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)

- 8.20 The Committee noted the comments from the applicant that as there is currently no pharmaceutical provision within Longstanton there is no choice of pharmaceutical services. The applicant went on to state that the nearest pharmacies to the proposed site are over 2 miles away along country lanes with no pavements and a limited bus service. The Committee noted the additional comments from NHS England that there are 5 pharmacies within 5 miles of Longstanton, though no further information as to the location of these pharmacies is provided by any party.
- 8.21 The Committee noted that there is a medical practice in Longstanton, which is a dispensing branch surgery of the main medical practice in Willingham, and therefore a source of prescriptions. The Committee also noted the comments from parties with regard to the collection and delivery services currently provided by existing providers throughout the area and was mindful that collection and delivery is not a substitute for the actual provision of pharmaceutical services.
- 8.22 The Committee noted the comments from the applicant that the granting of this application would increase choice, as there is currently no choice of obtaining pharmaceutical services within Longstanton. The Committee accepted that there was no choice within the village, however the Committee was mindful that this is not the test, the test is whether there is a reasonable choice in obtaining pharmaceutical services in the area of the relevant HWB.
- 8.23 The Committee accepted that for those with mobility issues associated with age or disability, the distance between the proposed site and existing pharmacies, was too far to walk, and for those who were more able it was unlikely that they would access

existing services on foot. The Committee noted that the applicant had stated that there were bus services, albeit infrequently, to Willingham and to Tesco as well as more frequent services into Cambridge itself. The Committee noted the statement at 4.4.6 from the Co-op, which is undisputed by the applicant, that there is high car ownership in the area and that those resident in the area are accustomed to travelling to access services. The Committee noted that while there were some amenities in Longstanton these were limited. The Committee was of the view that the population would be likely to access services and amenities outside of the village on a regular basis as part of their daily lives. The Committee was of the view that given the undisputed high car ownership and the undisputed bus service, no information had been provided to indicate that patients were having difficulty accessing existing pharmaceutical services. The Committee was of the view that given the number of pharmacies as indicated by NHSE, and that access to these was in the Committee's view reasonable there is already reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB.

- 8.24 The Committee noted the comments at 1.14 and 1.15 with regard to the statistical information showing that 8.5% of the population are aged between 65-74 and that 9.1% of the population were aged between 0-4 years, which is not disputed by parties. However, the Committee was of the view that in the absence of any supporting information nothing had been provided to demonstrate that those persons sharing a protected characteristic have difficulty in accessing current pharmaceutical services, or that services specific to their needs are not currently being provided by existing pharmacies and that they would therefore derive significant benefits from the grant of this application.
- 8.25 The Committee noted the comments from the applicant with regard to service innovation and the innovative services that they are planning to implement, being Weight management & blood pressure testing. The Committee noted that while the applicant was providing these programmes in other parts of the country with success, there was no information provided by the applicant to show that there was currently a need for such services in Longstanton. The Committee further noted the comments from parties that these services were already provided and commissioned by either the CCG's or the Local Authority and that there was nothing new or innovative in these services. The Committee after considering the proposals from the applicant concluded that the granting of this application would not lead to significant benefits by virtue of innovation.

Regulation 18(2)(b) generally

- 8.26 The Committee noted that the applicant states that the granting of the application would provide improved hours in that it would be open outside of the hours of the GP surgery as well as being open at additional times when the nearest pharmacy was currently closed and that this would be a huge benefit to patients. The Committee noted however the core hours indicated by the applicant on their application form and was of the view that these did not include opening over the lunch period or on a weekend and although the applicant had proposed supplementary hours at these times, these can be changed with notice at the contractors discretion. The Committee was of the view that no information had been provided as to access to current pharmacies during those hours that the applicant intends to open, or that patients are currently experiencing difficulties in accessing pharmaceutical services during those hours.
- 8.27 The Committee noted that the applicant offers to provide all those services that would be expected of a community pharmacy. The Committee noted however that no information had been provided to demonstrate that such services are not currently reasonably accessible to the patients that the applicant intends to serve.
- 8.28 The Committee noted the unsolicited comments from parties supporting the applicant's proposal for a pharmacy in Longstanton as well as the comments from the

medical practice at 5.4.2 that they have received letters from residents opposing the application for a pharmacy. The Committee was mindful that in every circumstance there would be supporters both for and against any new proposal. The Committee noted the comments, however was of the view that there was nothing provided which demonstrates that the existing pharmaceutical services are not currently reasonably accessible to those wishing to obtain pharmaceutical services such that the granting of this application would confer significant benefits.

- 8.29 The Committee noted that the applicant indicates that there is currently a new development under way called "Northstowe". The Committee noted references to this new town in the PNA under Section 8 "Future Growth" (pages 70-71). The Committee noted that this development had been taken in to consideration when the PNA was published. The Committee was mindful that this is an application made under Regulation 18, Unforeseen Benefit, and that the development at Northstowe had been foreseen when the PNA was published. The Committee noted the statement in the PNA that "population growth in Cambridgeshire does not indicate a need for additional community pharmacy premises/contracts". The Committee noted information from The Co-op at 4.4.5 that Northstowe is being built as a commuter village and that movement between the two areas will be limited due to the road structures. The Committee further noted the information provided by the applicant with regard to other developments in the area, however the Committee was of the view that no further information had been provided to indicate that existing pharmacies were not able to cope with any increase in demand due to these developments.

Summary

- 8.30 The Committee was not satisfied that the information provided demonstrates that there is difficulty in accessing current pharmaceutical services or that a pharmacy at the proposed site would improve access.
- 8.31 The Committee concluded that there was no significant detriment of a kind described in regulation 18(2)(a).
- 8.32 The Committee was of the view that in accordance with Regulation 18(2)(b) the granting of this application would not confer significant benefits on persons in NHS England's area which were not foreseen when it published its PNA.
- 8.33 Having determined that Regulation 18(2)(b) had not been satisfied, the Committee did not need to have regard to Regulation 18(2)(c) to (e).
- 8.34 No deferral or refusal under Regulation 18(2)(f) was required in this case.
- 8.35 The Committee considered whether there were any further factors to be taken into account and concluded that there were not.
- 8.36 The Committee concluded that the granting of this application would not provide better access to pharmaceutical services.

9 DECISION

- 9.1 The Committee quashes the decision of NHS England and redetermines the application.
- 9.2 The Committee has redetermined the application and determined that it should be refused on the following basis:
- 9.2.1 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 has concluded that it would not;

9.2.2 The Committee has also considered whether the granting of the application would secure better access to pharmaceutical services and has had regard to the fact that –

9.2.2.1 there is already a reasonable choice with regard to obtaining pharmaceutical services,

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

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

9.2.3 Having taken these matters into account, the Committee is not satisfied that granting the application would secure improvements or better access to pharmaceutical services.

Jill Jackson
FHSAU Case Manager

A copy of this decision is being sent to:

Pasab Ltd
L Rowland & Co (Retail) Ltd
The Co-operative Group Healthcare Ltd
Willingham Medical Centre
Willingham Pharmacy
NHS England, East Anglia LAT