

10 January 2018

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**REF: SHA/18748**

**APPEAL AGAINST NHS ENGLAND (SOUTH WEST) AREA TEAM, NHS COMMISSIONING BOARD ("NHS ENGLAND") DECISION TO REFUSE AN APPLICATION BY MAGNA HEALTHCARE LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 IN THE VICINITY OF THE CO-OP STORE, WINDMILL CRESCENT, WOOLAVINGTON, TA7 8HP**

**AND**

**REF: SHA/18749**

**APPEAL AGAINST NHS ENGLAND (SOUTH WEST) AREA TEAM, NHS COMMISSIONING BOARD ("NHS ENGLAND") DECISION TO GRANT AN APPLICATION BY SCRIPTS DIRECT LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 WITHIN 100 metres OF THE WOOLAVINGTON SURGERY, WOOLAVINGTON ROAD, WOOLAVINGTON, TA7 8RD**

## **1 Outcome**

- 1.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution quashes the decision of NHS England and redetermines the applications.
- 1.2 The Committee determined that the application by **Magna Healthcare Ltd** should be **granted** and the application by **Scripts Direct Ltd** should be **refused**.

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### Advise / Resolve / Learn

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2 A summary of the applications, decision, appeal and representations and observations are attached at Annex A.

3 **Site Visit**

3.1 The Committee commenced its' site visit by travelling north from the A39 into Woolavington. It first visited the area of the estate which was the location of the Magna Healthcare Ltd application. The old Co-Op shop is empty and there is a small grass area immediately in front of the shop with several parking spaces adjacent to the road. The estate is quite large and consists of small social houses. We drove around Sedgemoor Way and Oakmoor Way to Old Mill Road looping around the estate, noting that there were a great many cars, a small playing field and more bungalows to the north and slightly downhill. We then drove past the new Co-Op site and down the main hill toward the church. On the way we observed a playground and a small roadside shop ("Grandma's") which appeared to be closed. We travelled beyond the church to the northern end of the village before turning around and retracing our route and turning right into Lower Road and then Crockers Hill driving towards the surgery.

3.2 We drove past the surgery to see the small estate of new housing beyond it. This appeared to be a development of small to medium style houses. We returned to the surgery and parked at the rear before looking inside the premises. The surgery is a modern building with six doctors as well as nursing and other additional or complimentary services. We saw the small dispensary area and were able to relate this to the plans provided by Mr Morley.

3.3 The Committee walked from the surgery east along Upper Road passing the primary school and the village hall before turning south and up the hill toward the new Co-Op shop. This was a sizeable shop with a good cross-section of items. One could comfortably do a modest weekly shop or use this to top-up a monthly foray into Bridgewater. There was ample parking alongside. The Committee continued walking up to the old Co-Op site and location of the Magna Healthcare Ltd application. We confirmed our initial impression of the areas as a large estate of social housing. The premises are quite large with a paved area to the front and about 10 or 11 parking spaces on the road adjacent. Next to the location there is a small community hall with a defibrillator and advertisements for first-aid classes. All the homes appeared to be modest in size and, although there were no signs of dilapidation, the area appeared to be less well-off and rather 'down-beat'.

3.4 The Committee returned to the car and drove east to Cossington, Chilton Polden, Edington and Calcott. Not far from Woolavington we noticed a travellers site to the south of the road and an area of static caravans to the north. We were informed that the travellers' site can become busy at times (information we passed on to the parties). The above villages include both ribbon-developments along the road and larger village-centres. There were some very large traditional residences as well as more modest housing. There appeared to be greater wealth in these areas.

- 3.5 The Committee travelled west back along the A39 past a large caravan/holiday site and then into Bridgewater. The route in past the hospital, college and rugby grounds was a busy main-road with a large housing development underway to one side and plenty of business premises along the route. The Committee went into the Sainsburys car-park, which was a little cramped, and from there to the East Quay Medical Centre which again has offices and industrial properties nearby. Further large properties were under construction and the whole area had the air of commerce and growth. However, the roads layout included several junctions and traffic lights. It was plain that it would get very busy if not grid-locked at peak times. From here the Committee returned via the Bristol Road, the M5 junction and Puriton Hill to see developments in that area.
- 3.6 The Committee gained an overall impression of an area which is undergoing a significant amount of growth albeit that housing around the villages is by way of smaller developments. There is further larger-scale housing and industrial development in Bridgewater much of it linked to the nuclear power development at Hinkley Point.
- 3.7 Woolavington is very much a village of two halves with a more-deprived area to the south at the top of the hill (around the Magna Healthcare Ltd application site) and a more affluent area to the north at the bottom of the hill (around the Scripts Direct Ltd application site). Between the two sites there is a range of housing however many were bungalows. The roads and pavements in the village were reasonably well maintained. The road through the spine of the village, Woolavington Hill is at a middling incline, easily walked by someone of moderate fitness but it may present difficulties to someone with substantially reduced mobility.
- 4 A summary of the above observations was provided to those in attendance. They were invited to comment upon them or indicate if any of the observations appeared to be inaccurate.
- 4.1 No such comments or observations were made
- 4.2 The Committee acknowledges that it could not see everything and that the site visit is intended to assist by giving some context to submissions. It formed no settled views as a result of its journey around the various locations.
- 5 **Oral Hearing Submissions**
- 5.1 **Preliminary Issue**
- 5.2 **Mr Morley on behalf of Scripts Direct Ltd**  
Mr Morley produced a new plan of the suggested changes to the surgery and a letter from Ms Norton of the Upper Woolavington Residents Association. These were admitted as new documents.
- 5.3 **Submissions and Evidence**
- 5.4 **Mr Yadav on behalf of Magna Healthcare Ltd**  
Mr Yadav relied upon the documentation previously submitted and proceeded to highlight specific points that differentiate the two competing applications. Regarding accessibility he observed that whilst the NHSE report differentiated groups the issue is not simply how far the pharmacy is from the surgery.

Patients travel from all areas of the village and from other villages and most do not need to attend the surgery at all. He suggested 80% of dispensing is made up of repeat-orders and these patients do not need to see the GP. He said the site of the surgery is not convenient to most people. It is not accessible for the elderly or disabled residents of Woolavington most of whom live in the south of the village. For them, his site would be more accessible. In addition, he said that a large number of people, some 25% of village-residents, are not registered with the surgery, his proposed site is more accessible to them as well particularly for residents of other nearby villages such as Bawdrip and Cossington.

- 5.5 Mr Yadav also emphasised that a modern pharmacy is not just about prescriptions and dispensing. There is a trend to provide more advice, various additional services such as MURs, flu-jab services and similar services. This will increase in the future. He said that the premises we had seen would be split into two with the pharmacy on one side and a new fish & chip shop on the other. Along with the newly located Co-Op store (2/300yards away) this would provide a greater concentration of services.
- 5.6 When looking at protected characteristics and access, he reasserted that his site would be more accessible. He said the surgery had a 28 day prescription cycle meaning that patients had to attend the surgery 13 times per year just to get their prescription. IF a patient was already at the surgery this was convenient if they were not, it is not convenient and since most of the village and surrounding villages are to the south the surgery was less convenient to most people. Regarding parking Mr Yadav said there are 11 parking spaces to the front of the premises one of which is a disabled space plus there are 3 parking spaces which would be designated for the pharmacy alone since they are in the loading area to the rear. He said that the Saturday opening hours were longer and better for people particularly if they were out and about buying items from the new Co-Op. he repeated that the shop next door would also be a draw meaning people would be used to this as a little centre.
- 5.7 When considering the surgery premises Mr Yadav queried whether there needed to be a planning application for change of use to A1 retail premises. He said that a community pharmacy on-site would need this and it was not settled that the planning authorities would simply allow a pharmacy on site at the surgery. He produced an example of this from Orpington, Kent. This prompted a debate on the type of pharmacy proposed with Mr Morley asserting that where there is already a dispensing practice the pharmacy would merely be an extension of that service under Class D1 planning which would not require full planning permission. He did agree that external access (changing a window to a door) would require planning approval. Mr Yadav persisted that in his view a community pharmacy would require planning permission for the change of use and the external access.
- 5.8 Returning to the issue of access, Mr Yadav said that parking at the surgery was restricted and, as the surgery grows (as intended) that would place further pressure on the existing facility. Adding a pharmacy to the site would increase the pressure further.
- 5.9 Regarding the move by the surgery from where he, Mr Yadav was proposing to site his pharmacy, he said that local people had objected because it would cause accessibility issues. The surgery had acknowledged this and he pointed to comments by the surgery in the paperwork referring to "extra

difficulties” for some residents and potential solutions such as a local Village-Wheels car service and voluntary walkers delivering items. (see bundle pp80-81). Mr Yadav observed that this showed the surgery appreciated there was a need for prescription collection and delivery something that his pharmacy would provide as it does elsewhere. He also referred to ‘EMIS Patient Access’ which is an online system which allows patients to order prescriptions without the need to go to the surgery. Patients could then pick up their prescriptions at his pharmacy or have them delivered.

- 5.10 Mr Yadav said he had experience with two pharmacies including a rural pharmacy in a reserved location. In Chew Magna, one of his sites, he said they had had the option of going next to the surgery and dispensary, but chose not to in order to be at the centre of the village with other amenities. He said that people use other village amenities and so visit his pharmacy. The good customer service and OTC products helped the pharmacy survive and the competition had improved the services offered by the local surgery benefitting patients. He said that without such passing and commercial trade the Woolavington surgery option would be financially challenged and may not survive. He said they simply cannot offer what is needed in a 50 square metre premises.
- 5.11 Mr Yadav said he had experience of starting a pharmacy in the modern system, he knows how it works and could be operating within a couple of months. At Woolavington he said he was lucky enough to have a 200 square metre premises half of which would be dedicated to the pharmacy and half to provide added value such as local health-related events, campaigns and facilities. He would like to run a proactive health campaign specific to the needs of the population working in conjunction with the surgery. Regarding addition services such as the minor ailments scheme and the NUMAS service these would be provided if the authorities permitted it.
- 5.12 Mr Morley challenged Mr Yadav on the issue of planning relying upon examples of successful applications to open pharmacies on site where they provide services ancillary to the existing medical services. The difference was between A1 which allowed for retail and OTC products whereas D1 will allow for the provision of prescriptions, a pharmacy advisory service and listed medicinal products. Mr Morley asserted that a pharmacy on the surgery site would not sell toiletries, perfumes and items seen a high-street shop. He said that there is a difference between a community pharmacy and one attached to the surgery which would only need a certificate of lawful use which he had obtained many times.
- 5.13 Regarding financial viability, Mr Yadav reiterated that with a figure of less than 2750 patients, the proposal at the surgery was not financially secure. Mr Morley said there was nothing in the regulations about viability, that was a matter for the Committee but he considered it viable. Mr Yadav reiterated that he had specific experience opening and operating a pharmacy in the current climate whereas Mr Morley did not. He accepted that Mr Morley was a pharmacist with many years’ experience, but drew the distinction between his application for his business which he would run and Mr Morley’s application which was to enable a 3<sup>rd</sup>-party, the GP practice, to expand on their dispensing service.
- 5.14 In answer to questions from the Committee Mr Yadav said that one of the reasons he had made the application was because he realised patients had

difficulty accessing a pharmacy. He said that he was aware of the small community hall a few yards from the proposed location and that it advertised various services. He said he intended that the pharmacy would become an asset in a deprived area providing opportunities to improve health through classes, services that are currently unavailable such as ear-syringing and chiropractic services and other activities as well as reducing unsocial behaviour. He felt a pharmacy would provide an uplift and he intended to provide much more than simple pharmacy services as he does at his other sites. He said his siting would be more accessible to residents with drink and/or drug problems and would be most accessible to and beneficial for the most deprived area of Woolavington. A community pharmacy would offer scope for the opportunistic use of its services by those who were not visiting the surgery or would prefer not to do so (eg for services like EHC).

- 5.15 Finally Mr Yadav pointed to p61 of the Woolavington village plan where particular emphasis is placed on the greater level of deprivation and isolation at the south of the village where his pharmacy would be situated. He said a pharmacy is for everyone and the site is better for residents in the village as well as others outside the village particularly to the south.

**Mr Morley on behalf of Scripts Direct Ltd**

- 5.16 Mr Morley started by calling Dr Rowling to give evidence

**Dr Rowling**

- 5.17 Dr Rowling provided a short history of the surgery and its change of location that was predicated n anticipated changes in the area. The PCC approached the practice in 2008 and invited it to expand provision based on an influx of some 10,000 workers at Hinkley point which would cause existing patients to change from surgeries in Bridgewater to practices such as that in Woolavington. The existing premises were no longer suitable for access by disabled patients and so they looked at their options. Whilst local residents were concerned about the move he said that the practice was aware of their needs but they also had to consider the expected increase in the villages to west and elsewhere. He said the parish council was very supportive. Whilst Woolavington was important the picture was bigger with villages such as Puriton and the development of an energy park between the villages part of which would include a dedicated pathway between the villages. In addition, there was the issue of traffic with people from Puriton, East Huntspill and elsewhere driving through Woolavington. He said there is an argument regarding location whichever application is granted. He said the surgery is very accessible and visible. He referred to the Villages Together scheme as between Woolavington and Puriton and Mr Morley pointed out the letter received from Ms Norton.
- 5.18 Dr Rowling said the that the surgery moved but the needs of local people were kept in mind. He commented that with the increased distance from south Woolavington they had expected an increase in home visits to patients who could not attend the surgery, but this did not materialise so people were managing. He said the surgery had not made transport arrangements for people in south Woolavington because there are deprived people elsewhere and ethically the surgery could not help some patients and refuses others in other villages.

- 5.19 Dr Rowling referred to south Woolavington as a “hotspot of deprivation” and the Village Wheels scheme which was up and running assisted in helping patients. He referred to local surveys and said 317 people did not want a pharmacy in the location proposed by Magna Healthcare Ltd they wanted it at the surgery. He said that co-location can work in practice and a pharmacist in the surgery improves the workloads and expertise of the Drs which is a model the practice would like to pursue. Residents in south Woolavington have also asked about other services such as the availability of dentists and Condoms. He said the practice is trying to make strategic decisions to make the surgery resilient. He referred to the difficulty in attracting GPs into rural practice so they wished to make it dynamic and provide educative and other services.
- 5.20 Mr Morley and Dr Rowling referred to pockets of development around the village and the patient list now stands at about 9000 patients and it is rising. Some elderly patients had transferred from town to their surgery. However he thought there were about 800 patients who were not registered with the surgery comprising young working families and professional who are working out of town and he thought they did not feel the need to change surgery.
- 5.21 Dr Rowling said there is a contrast between the two sites and there was always a parking issue at the old surgery site (the site of the Magna Healthcare Ltd application) with competition between the surgery residents and the shop. At the current site, other than a weekly training day he said the surgery had sufficient parking with turnover of attendees and there is a large area of land that could be used for additional parking subject to planning approval. He said that local perception had changed from worrying to seeing that the new surgery location worked. Residents valued the better services now provided. He said that Magna Healthcare Ltd site is in an area where people don't go. It is isolated and is not a through-route to attract trade.
- 5.22 In answering questions by Mr Yadav, Dr Rowling said that the surgery's move originated from the prospect of expansion due to Hinkley but they were aware that the premises were dilapidated and the CQC were demanding improvements or change. He referred to patients having needs without much representation and the CQC leaving them with no real choice. Mr Yadav challenged the suggestion that patients changed surgeries and Dr Rowling said that was a matter for the PCT, the surgery did not expect patients to move. He did say that the practice had expanded from 7400 to 9000 patients. Regarding Hinkley, he said a workforce of about 10,000 is expected and the practice has simply been offered the opportunity to expand because of this and they may well expand to reach a list-size of 10,000 patients. Regarding the move Dr Rowling said there were no other sites within the boundaries of Woolavington and they were in danger of losing the time-slot within which to make the change. There were two locations, one to the south and one to the north but there were issues of cost and viability in respect of both.
- 5.23 When questioned about the pharmacy Dr Rowling said they had always entertained the idea of a pharmacy and wanted to keep their options open. He conceded that there were objections to the surgery moving but there were equal numbers of objections to the other options. He confirmed the surgery was built at the same time as the 45 new houses nearby. The alternative option was with 300 houses to the south of village but that has not been built.
- 5.24 Dr Rowling said that the comment that Woolavington was a ‘hotspot’ of deprivation did not detract from the fact that other villages such as Bawdrip

and Cossington have their own problems, they are isolated and have transport issue as well. He said they did have a delivery service for prescriptions. Regarding the siting of the pharmacy Dr Rowling did not disagree that the Magna Healthcare Ltd location would be closer to Cossington and Bawdrip and an easier journey for patients but he did not accept that the Co-Op and the pharmacy would be 'co-located' and form a village centre. He said it would not be an easier journey from Puriton Mr Yadav made the point that a surgery may not be able to make a pharmacy viable whereas an independent contractor such as himself could. Dr Rowling agreed that a pharmacy in the village may reduce the number of patient-consultations with GPs. He did not dispute the need for a pharmacy.

- 5.25 In answering questions to the Committee Dr Rowling said that the Village Wheels local service is up and running but the surgery had not seen an increase in people being delivered to us so they assumed patients were reaching the surgery satisfactorily. Regarding the increased list size he felt a 'fair number' were the result of relocations from Highbridge others were from Woolavington and elsewhere. Regarding travellers from the site east of the village he agreed that some did walk into the village. He said that the phone-in service was not used much since people could come in and be seen anyway. If patients phoned with an acute problem they would be seen the same day or at least very quickly. More routine callers would be seen within a week or two. He confirmed the delivery service covered the whole practice area from both practice dispensaries. This amounted to 8-10 deliveries per afternoon with a high concentration in south Woolavington (the 'estate') but that was because it is a dense area with elderly residents, some without cars. However they delivered to outlying communities too. He confirmed that a patient could be seen and obtain their prescriptions at either Eddington or Woolavington practice.
- 5.26 Mr Morley next took the Committee to parts of the bundle and made the following comments. He said it was not disputed that the village was a controlled area but that may change with an increase in service users. He said that Woolavington and other areas were deprived and all agreed that a pharmacy would benefit all villages bearing in mind the patients who must access both medical and pharmaceutical services. He said the NHSE decision was correct and the appeal should be dismissed He reiterated that with local patient figures at 2590 the surgery site was rural and a reserved location but that was certain to change with time to a non-reserved status.
- 5.27 In line with recent authority Mr Morley said that there should only be one grant since only one was needed. He suggested that of the two applications the one at the surgery was preferable with better access and co-located with medical services. This was a "hybrid pharmacy" providing immediate access to both prescribing and dispensing patients. He referred to the longer opening hours during the week and said the opening hours were guaranteed. He suggested that since the surgery opened early it would be easy for people to access the pharmacy on their way to work or on the 'school run'. He suggested that the demand for pharmaceutical services on a Saturday afternoon was minimal. He said that the pharmacy would in fact remain open whilst there were patients seeing GPs in the surgery. Mr Morley said the Scripts Direct Ltd application was supported by the GPs, by local patient groups and residents and referred to the letter by Ms Norton.



- 5.28 Regarding planning he submitted that all that was required by the surgery was Category D1 permission since the services would be limited to medical and NHS supplies and would not include retail products available at a high street chemist. The latter would require Category A1 permission. He cited nine examples where the appropriate permission had been obtained and a pharmacy had been opened in place of a dispensary since both were ancillary to existing medical services. Regarding financial viability he said that the regulations were silent on this but that he was confident a hybrid pharmacy was viable. Both applications would in effect rely on the same pool of patients however he felt it likely the surgery would get more. He acknowledged that Mr Yadav had run a successful pharmacy in a rural location but also cited his own experience over many years. He said he was not in the business of opening a pharmacy that would not work. Mr Morley said that the surgery had always intended to open a pharmacy and that intention remained. The application was genuine and not a spoiler. If the service needed expanded premises then they would seek to do so in the future.
- 5.29 Mr Morley referred to specific point in the bundle (over pp119-120 and pp148-149) to highlight that patients groups preferred the surgery application and they were entitled to hold that opinion. He said that the increase in housing added to the viability of a pharmacy but asserted that once the area tipped into a non-reserved status the pharmacy was crucial. At that point patients will have the choice whether they are pharmacy or dispensing patients. He said the Magna Healthcare Ltd site was isolated and a pharmacy should be for all patients from all villages. Magna Healthcare Ltd was not at the centre of the village and was not supported locally.
- 5.30 Finally in looking at the plans and the sites, he said the document submitted today was not a settled plan but had been drawn up by someone locally. When the surgery was built it was designed with the loft to be available for offices and with scope for the current dispensing area to be independent with its own access and services access. He again asserted that the surgery was better located with better parking and said that a hybrid pharmacy would be good for both prescribing and dispensing patients.
- 5.31 In answer to points raised by Mr Yadav both asserted they would open such hours as patients required. Mr Yadav drew the distinction between himself as the person owning and running the business for which the application was made and Mr Morley as someone making an application for a collaborative venture with a surgery. Mr Morley confirmed he would be the shareholder in the surgery pharmacy and any GO could join him if they wished to. He said he owned the company and the company would run the pharmacy. The GPs could be shareholders in that company. They would have to provide an arms-length lease to the company. Mr Morley confirmed that currently he did not own or operate a pharmacy, but he was applying to do so. He was currently a superintendent pharmacist at a pharmacy in Bideford. He said a superintendent would be put in place in Woolavington. Regarding opening hours he said that despite what is publicised the dispenser remains in the practice if patients are still being seen and that would continue with a pharmacist. He confirmed that in his view the pharmacy was viable albeit not the most profitable. He said there was no argument between the two of them since they both have the same pool and we both consider it to be viable.
- 5.32 The issue of patient figures and the list-size was revisited but Mr Morley said they were not alleging prejudice. He said that the Government was now

promoting pharmacists in surgeries as part of the team providing education to nurses and GPs to help them.

- 5.33 Mr Yadav suggested that much of the Scripts Direct Ltd application was simply an issue of putting a pharmacist in place of a dispenser. He said that a community pharmacy was quite different to a practice pharmacy. It should work responsibly and closely with any surgery. Mr Morley responded by again saying that the Magna Healthcare Ltd site was not at the centre of the village and had limited parking. He said that there were elderly and disabled people throughout the village not just in the south but in any event parking facilities would be provided.
- 5.34 Mr Yadav questioned the weight to be applied to local opinion saying it was curious that local residents did not want to have a service that would clearly be of benefit to them. Mr Morley replied that the Committee would have to weigh that issue for themselves. He agreed that for the traveller site the Magna Healthcare Ltd location would be more accessible. He reiterated that people did not want the Magna Healthcare Ltd site as a pharmacy. Mr Yadav said there was a covenant preventing the site from being used as a food-shop as Ms Norton's letter suggested.
- 5.35 The two returned to the issue of financial viability. Mr Morley saying the surgery pharmacy would be marginal but viable and Mr Yadav asserting that to survive in the new world a pharmacy had to do far more than just dispensing. Mr Morley agreed with that trend.

### **5.36 Concluding submissions**

#### **Mr Yadav**

- 5.37 Mr Yadav said that a pharmacy at his proposed locations was accessible, independent of other practitioners both in terms of influencing practice and in terms of finance. He said it was financially viable and would be able to trade within 2 months of approval. He reiterated that he had experience of small pharmacies such as this and was looking at other services to add value as well as liaising with local care-home to help with their needs. He observed that the longer Saturday hours improved accessibility and helped the GP practice. He reiterated that in his view there was a problem regarding planning with the GP surgery application. He concluded by submitting that the NHSE decision was flawed because they had failed to consider and compare how each of the two applications would assist patients with protected characteristics

#### **Mr Morley**

- 5.38 Mr Morley rejected the submission that there is an issue with planning and asserted that the NHSE decision was correct. He relied on caselaw to say that only one pharmacy should be opened and submitted that the deficiency in a few hours on a Saturday afternoon was more than compensated for by co-location of the pharmacy and surgery. He submitted the Magna Healthcare Ltd appeal should be dismissed.

## **6 Consideration**

- 6.1 The Pharmacy Appeals Committee ("Committee") appointed by NHS Resolution had before it the papers considered by NHS England, together

with a plan of the area showing existing pharmacies and doctors' surgeries and the location of the proposed pharmacy.

- 6.2 It also had before it the responses to NHS Resolution's own statutory consultations.
- 6.3 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations").
- 6.4 It was common ground between the parties that a pharmacy should be opened in Woolavington. Both argued that there was not a reasonable choice for patients and that there was difficulty in access. Neither party suggested that both applications should be granted. Both submitted that their own application best met the needs of patients.
- 6.5 In looking at both Appeals the Committee determined that the proper approach was to first consider the Appeal against the refusal by NHSE to grant application 18748 by Magna Healthcare Ltd. Thereafter, if it concluded that the application should in principle be granted, it should consider the Appeal against the grant to Scripts Direct Ltd (application 18749) which would require comparison of the two applications. This would follow the scheme of Regulation 18(2) itself and the submissions by both parties that there should not be an 'over-grant' of applications and only one application should be granted.

### **Regulation 31**

- 6.6 The Committee first considered Regulation 31 of the regulations which states:
- (1) A routine or excepted application must be refused where paragraph (2) applies*
- (2) This paragraph applies where -*
- (a) a person on the pharmaceutical list (which may or may not be the applicant) is providing or has undertaken to provide pharmaceutical services ("the existing services") from -*
- (i) the premises to which the application relates, or*
- (ii) adjacent premises; and*
- (b) the NHSCB is satisfied that it is reasonable to treat the services that the applicant proposes to provide as part of the same service as the existing services (and so the premises to which the application relates and the existing listed chemist premises should be treated as the same site).*
- 6.7 The Committee noted that no pharmacy existed or was said to exist at or adjacent to the proposed site of the Magna Healthcare Ltd pharmacy. In addition there was no person on the pharmaceutical list providing or undertaking to provide pharmaceutical services from or adjacent to the premises. The Committee was thus not required to refuse the application under the provisions of Regulation 31.

- 6.8 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.

#### **Regulations 40 and 41 (the five-year rule and reserved locations)**

- 6.9 Woolavington is in a controlled locality and the applications are based on securing improvements or better access to pharmaceutical services in that controlled locality.
- 6.10 In those circumstances, the applications (which are 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).]*

6.11 The Committee noted that there was no information to suggest that the instant applications were in respect of a location where outline consent had been granted or there had been a refusal for a previous application within the last 5 years.

6.12 Based on its conclusion above, the Committee went on to consider the applications 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) Before making a determination under paragraph (2) (referred to in this regulation and regulation 42 as “D1”), the NHSCB must—*

*(a) notify the persons notified under Part 3 of Schedule 2 about A1 that the NHSCB is required to make D1 (and it may make this notification at the same time as it notifies those persons about A1); and*

*(b) invite them, within a specified period of not less than 30 days, to make representations to the NHSCB with regard to D1 (and the period specified must end no earlier than the date by which the person notified needs to make any representations that they have with regard to A1).*

*(5) The NHSCB must not make a determination under paragraph (2) in respect of A1 in circumstances where an earlier application which was in respect of the relevant premises and to which paragraph (1), regulation 44 of the 2012 Regulations (prejudice test in respect of routine applications for new pharmacy premises in a part of a controlled locality that is not a reserved location) or regulation 18ZA of the 2005 Regulations (refusal: premises which are in a controlled locality but not a reserved location) applied was refused—*

*(a) for the reasons relating to prejudice in—*

*(i) regulation 44(3),*

*(ii) regulation 44(3) of the 2012 Regulations, or*

*(iii) regulation 18ZA(2) of the 2005 Regulations; and*

*(b) 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.*

*(6) For the purposes of paragraph (5), the “relevant premises” are—*

*(a) the premises which are proposed for listing; or*

*(b) if no particular premises are proposed for listing in A1, 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.*

### **Reserved Location**

6.13 The Committee considered the issue of reserved location for both of the premises described in the application.

6.14 Depending on the Committee's view on reserved location, it would then need to deal with prejudice as follows:

*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.*

6.15 The Committee noted that the appellant had not challenged NHS England's position regarding the reserved location decision in that the premises in the Magna Healthcare Ltd application are not in a reserved location but that the premises in the Scripts Direct Ltd application are in a reserved location.

6.16 Regulation 41(2) is mandatory: it requires NHS England to make a determination regarding reserved location status in circumstances such as these.

6.17 The Committee determined that in relation to the reserved location the use of pharmaceutical services would not 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.

6.18 Given that the location of the Scripts Direct Ltd application **is reserved** the Committee did not have to consider if granting this application would

prejudice the proper provision of relevant NHS Services in the area of the relevant HWB or a neighbouring HWB of the relevant HWB.

6.19 Given that the location of the Magna Healthcare Ltd application was **not reserved** the Committee went on to consider if granting this application would prejudice the proper provision of relevant NHS Services in the area of the relevant HWB or a neighbouring HWB of the relevant HWB.

6.20 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”.*

6.21 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”.*

6.22 The Committee noted that neither party suggested that the granting of the Magna Healthcare Ltd application would cause prejudice to the proper provision of relevant NHS services. Indeed, Mr Morley expressly stated that prejudice was not being argued on behalf of the Woolavington Surgery.

6.23 Given the above, and that there was no information to the contrary, the Committee concluded that the granting of this application would not cause prejudice to the proper provision of relevant NHS Services.

## **Regulation 18**

6.24 The Committee noted that Magna Healthcare Ltd had made an application for “unforeseen benefits” and fell to be considered under the provisions of Regulation 18 which states:



"(1) If—

- (a) *the NHSCB receives a routine application and is required to determine whether it is satisfied that granting the application, or granting it in respect of some only of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB; and*
- (b) *the improvements or better access that would be secured were or was not included in the relevant pharmaceutical needs assessment in accordance with paragraph 4 of Schedule 1,*

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

(2) Those matters are—

- (a) *whether it is satisfied that granting the application would cause significant detriment to—*
  - (i) *proper planning in respect of the provision of pharmaceutical services in the area of the relevant HWB, or*
  - (ii) *the arrangements the NHSCB has in place for the provision of pharmaceutical services in that area;*
- (b) *whether, notwithstanding that the improvements or better access were not included in the relevant pharmaceutical needs assessment, it is satisfied that, having regard in particular to the desirability of—*
  - (i) *there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB (taking into account also the NHSCB's duties under sections 13I and 13P of the 2006 Act (duty as to patient choice and duty as respects variation in provision of health services)),*
  - (ii) *people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access (taking into account also the NHSCB's duties under section 13G of the 2006 Act (duty as to reducing inequalities)), or*
  - (iii) *there being innovative approaches taken with regard to the delivery of pharmaceutical services (taking into account also the NHSCB's duties under section 13K of the 2006 Act (duty to promote innovation)),*

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

- (c) *whether it is satisfied that it would be desirable to consider, at the same time as the applicant's application, applications from other persons offering to secure the improvements or better access that the applicant is offering to secure;*
- (d) *whether it is satisfied that another application offering to secure the improvements or better access has been submitted to it, and it would be desirable to consider, at the same time as the applicant's application, that other application;*
- (e) *whether it is satisfied that an appeal relating to another application offering to secure the improvements or better access is pending, and it would be desirable to await the outcome of that appeal before considering the applicant's application;*
- (f) *whether the application needs to be deferred or refused by virtue of any provision of Part 5 to 7.*

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

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

6.25.1 confirm NHS England's decision;

6.25.2 quash NHS England's decision and redetermine the application;

6.25.3 quash NHS England's decision and, if it considers that there should be a further notification to the parties to make representations, remit the matter to NHS England.

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

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

6.28 Paragraph 4 of Schedule 1 requires the PNA to include: "a *statement of the pharmaceutical services that the HWB had identified (if it has) as services that are not provided in the area of the HWB but which the HWB is satisfied*

*(a) would if they were provided....secure improvements or better access, to pharmaceutical services... (b) would if in specified future circumstances they were provided...secure future improvements or better access to pharmaceutical services...* (emphasis added).

- 6.29 The Committee considered the Pharmaceutical Needs Assessment ("the PNA") prepared by Somerset 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 2015 and that a supplementary statement had been issued in October 2015.
- 6.30 The Committee noted that the Applicant seeks to provide unforeseen benefits to the residents of Woolavington as well as to the patients of Polden Medical Practice.
- 6.31 The Committee noted that the improvements or better access that the Applicant was claiming would be secured by its application were not included in the relevant pharmaceutical needs assessment in accordance with paragraph 4 of Schedule 1.
- 6.32 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.

## **Significant Detriment**

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

- 6.33 The Committee had regard to
- “(a) whether it is satisfied that granting the application would cause significant detriment to—*
- (i) proper planning in respect of the provision of pharmaceutical services in the area of the relevant HWB”*
- 6.34 The Committee received no information concerning planning in respect of the provision of pharmaceutical services in the area of the HWB and, neither party argued that granting an application would adversely impact upon this.
- 6.35 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.
- 6.36 The Committee was therefore not satisfied that significant detriment to the proper planning of pharmaceutical services would result from a grant of the application.

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

6.37 The Committee had regard to

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

*(ii) the arrangements the NHSCB has in place for the provision of pharmaceutical services in that area"*

6.38 The Committee received no information to suggest that granting the application would adversely affect the arrangements in place for the provision of pharmaceutical services in the area of the HWB and neither party argued that granting an application would do so.

6.39 The Committee was therefore not satisfied that significant detriment to the arrangements currently in place for the provision of pharmaceutical services would result from a grant of the application.

6.40 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).

6.41 Given the significant detriment as found above the Committee is obliged to refuse the application and therefore did not go on to consider 18(2)(b).

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

6.42 The Committee had regard to

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

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

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

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

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

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

- 6.43 It was common ground as between the parties and evident from the papers and site visit that Woolavington is in some respects a village of two halves. There is a geographical divide and a social divide between residents to the south and those to the north. The land slopes up between the north and the south end of the village. The southern half of the village includes a large area of old-style small social housing units that appeared a little run-down. To the north, there was a greater concentration of traditional stone-built properties, larger premises and very modern housing. Between the two there are homes of various sizes and age many of which are bungalows.
- 6.44 To an extent the social divide mirrors the geographical one. The papers reveal and the parties confirmed that there are people of all ages and social standing distributed through the village however, the greatest concentration of older residents, disabled residents and more deprived residents is in the estate to the south.
- 6.45 The statistics and comments at p8 of the “Villages Together” local plan (p61 of the bundle) provides some of the details. The area was characterised by Dr Rowling as a “deprivation hot-spot”. The Committee could readily understand such a description and concluded that it was an accurate assessment.
- 6.46 The ‘two halves’ divide has the consequence that placing a pharmacy to the north or south of the village (at one or other of the proposed sites) may inconvenience residents at the opposite end of the village. How many people will be inconvenienced, how severe this inconvenience will be and how often it will occur is difficult to assess. Woolavington Hill is moderately steep and whilst able-bodied and/or moderately fit persons are unlikely to find it a barrier, those who are less fit or suffer from limited mobility may do so. The number of people inconvenienced will be affected by the number of items dispensed and it was not disputed that some 80% of dispensed items are repeat-prescriptions.
- 6.47 The Committee noted that there had been considerable opposition to the relocation of the GP practice from the south to the north of the village, on the basis that it would cause difficulties for residents in the south who needed to see their doctor. Dr Rowling said that following this move they had expected a rise in home-visits to meet this perceived increased difficulty. However this had not occurred. He interpreted this as meaning that the expected difficulties were being met.
- 6.48 The Committee considered that the type of facility each applicant would bring to the village was an important factor. Mr Yadav sought to draw a distinction between, as he saw it, his proposal of a fully-fledged community pharmacy operating in the heart of a deprived area, and the Scripts Direct Ltd proposal of a dispensing practice doing little more than employing a pharmacist to enhance what would otherwise be business as usual. He queried why the practice had not opened a pharmacy already if it had always been their intention so to do.
- 6.49 Whilst Mr Yadav did not suggest that the Scripts Direct Ltd application was made in bad faith, there was the implication of it being a business-response to the Magna Healthcare Ltd application rather than one made originally for the benefit of patients. He suggested that much of what the practice regarded as

benefits such as enhanced learning for the GPs, would be met by the practice employing a pharmacist yet they had not done so. As against this Mr Morley argued that although it may be seen as a business deal between the practice and his company, obtaining a pharmacy licence and installing a pharmacy and pharmacist in place of the dispensary was intended to provide a full pharmaceutical service.

- 6.50 The Committee considered that there was some force to Mr Yadav's arguments. His application was to open a brand-new, fully fledged community pharmacy with all the facilities that would provide. He was proposing to do so in a 'deprivation hot-spot' knowing that it would be difficult and would require hard work and flexibility to survive. Yet he was determined to do so because that delivered the best service to patients. As against that the surgery and Mr Morley had originally argued that a pharmacy was not needed in the village at all. Subsequently the application by Scripts Direct Ltd was submitted.
- 6.51 The Scripts Direct Ltd application whilst referred to as a 'hybrid' pharmacy does not deliver the same level of benefits as the Magna Healthcare Ltd application and in some respects, does look rather like a dispensary with a pharmacist on site. That is not intended nor should it be taken to be a criticism of the doctors or their practice. They are entitled to consider service provision in a way that best-suits their own business.
- 6.52 Whilst the Committee considered that there was little to distinguish the pharmacies in terms of their opening hours it did not agree with the suggestion that a community pharmacy opening on a Saturday afternoon in an area of deprivation would be of limited benefit to residents. There are several factors. First the proposal is for a community pharmacy with all the benefits and services that brings; Second, that facility is to be set right in the middle of the most deprived area, bringing the service to the people rather than the reverse; Third an adjacent shop and the nearby position of the main Co-Op shop in the village could help each to thrive; Fourth, whilst there may be moderate issues of access from any direction outside the village, the facility proposed by Magna Healthcare Ltd is likely to provide a service and draw people to itself as opposed to a 'dispensary plus'. There were parking spaces nearby and the premises would have its own dedicated parking slots reducing difficulty for patients from outside the village.
- 6.53 The Committee concluded that the two proposals are quite different in their ethos and effect. One is a new facility in the heart of a deprivation hotspot where it is most likely to be accessed by those who need it. The other is a modest progression from what already exists and is some distance from the deprivation hotspot. The Committee had no doubt that the Magna Healthcare Ltd proposal would be of greater benefit to the most deprived or disadvantaged residents in the village. Patients outside the village would have little difficulty in respect of either location although the Committee noted the traveller settlement to the south-east and Dr Rowling's comment that some of these patients accessed the surgery on foot.
- 6.54 One curious feature touched upon by Mr Yadav is the apparent lack of support for a new and beneficial health-service in the heart of where it is needed most. The letter from Ms Norton reflects this. The reasoning in the letter is however flawed in several respects. The author is clearly unaware that the Co-Op will not allow another food-store in the site proposed by Magna Healthcare Ltd. Furthermore, the letter refers to the Co-Op's move

having an adverse effect on “a huge proportion of the residents who are elderly and/or disabled” and refers to the hazards they face in winter when going to the new shop. The latter comments in this unsolicited letter contain very persuasive reasons why placing a pharmacy exactly where Mr Yadav proposes is of such benefit as opposed to placing it at the other end of the village well beyond the distance the Co-Op store moved.

- 6.55 With repeat prescriptions and modern facilities such as electronic prescription services reducing the need for regular visits to the surgery or dispensary, the elderly and/or disabled residents referred to who live in the most deprived area, will have easy access to a pharmacy to meet their needs. It would appear that Ms Norton has not understood this, nor have such benefits been drawn to her attention, nor has the fact that a pharmacy opening in the south would *not* adversely affect the surgery. This last point, accepted by both parties, is an important one. There is a degree of opposition in the village to the Magna Healthcare Ltd application. However this seems to be based to some extent on worries about the surgery. Now that the prejudice argument and concerns about finance, employment and services at the surgery are no longer relied upon it may be that those worries and the opposition will reduce.
- 6.56 None of the above is intended as a criticism of Ms Norton (or those concerned about the surgery), quite the reverse. Comments from the public are always welcome and of assistance. The Committee has simply used this letter as a vehicle to explain some of its reasoning and in so doing it hopes to assuage some of the concerns raised. In short, the pharmacy proposed by Mr Yadav would provide easy access to elderly and disabled patients and would not harm the surgery.
- 6.57 Should any current dispensing patients resident within 1.6 km of the location be caused undue difficulty in accessing pharmaceutical services because the opening of Magna Healthcare Ltd brings their right to receive dispensing services to an end, those patients could still be provided with dispensing services by reason of the hardship exception. Their interests are protected.
- 6.58 With these thoughts in mind the Committee next considered the individual criteria in this part of Regulation 18.

***Regulation 18(2)(b)(i) (Reasonable Choice)***

- 6.59 Both parties argued that a pharmacy in Woolavington would improve choice and several Parish Councils, the patient participation group, the practice and the LPC supported the principle of a pharmacy in the village. The Committee had little difficulty in accepting the proposition that placing a pharmacy in the village would improve choice for patients.
- 6.60 The Committee acknowledged that choice is to some extent a function of easy access or convenience but that is not the only factor. Already around a quarter of patients registered with the surgery choose to obtain their prescriptions elsewhere. There may be several reasons for their so doing however the current choice is between the limited pharmaceutical services provided by a dispensing practice and those provided by a pharmacy outside Woolavington. Should a patient wish to access pharmaceutical services other than dispensing, the only choice is to go outside the village. Whilst it might be acceptable to car-owners accustomed to travelling outside the village for general services to exercise that choice by driving to a pharmacy in

Bridgewater or elsewhere, the very limited bus-services to and from Woolavington means that there is no reasonable choice for those without a vehicle. Moreover the busy roads and locations of the nearest pharmacies could make a return car journey a long and difficult one.

- 6.61 A pharmacy in Woolavington will improve choice. It will give all patients who have no alternative but to access the full range of pharmaceutical services outside the village the choice of accessing those services in the village.
- 6.62 Those patients who use the dispensing service and are resident further than 1.6km from the location proposed by Mr Yadav (generally patients outside the village) will have the choice of continuing to use the dispensary or accessing the full range of pharmaceutical services at the Magna Healthcare Ltd site.
- 6.63 Those who live within the 1.6 km zone (generally patients in the village) and who would thus be excluded from using the dispensing service would have access to a more complete pharmaceutical service in the village. Should any patients find that the move makes it unduly hard for them to access pharmaceutical services they may still receive dispensing services by applying to receive them under the “serious difficulty” arrangements.
- 6.64 Taking account of the location, the population needs, physical access and opening hours the Committee was of the view that there is not already reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB with reference to Woolavington and the surrounding villages. As such it was satisfied that granting the application **would** confer significant benefits on persons.

***Regulation 18(2)(b)(ii) (Protected Characteristics and Difficulty in Access)***

- 6.65 In considering Regulation 18(2)(b)(ii) the Committee reminded itself that it was required to address itself to people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that are difficult for them to access. The Committee was also aware of its duties under the Equality Act 2010 which include considering the elimination of discrimination and advancement of equality between patients who share protected characteristics and those without such characteristics.
- 6.66 It was asserted by both parties that the Committee could properly make the following inferences:  
Older and/or disabled residents are most likely to need access to pharmaceutical services;  
Such access is most likely to relate to the protected characteristics of age and disability  
Deprivation is likely to increase any such difficulties.
- 6.67 It was common ground as between the parties and evident from the papers and site visit that the southern half of Woolavington includes a large concentration of older, disabled and/or deprived residents. This was emphasised by the term “deprivation hotspot” and from Ms Norton’s letter which underlined the information in the papers and the difficulty suffered by residents particularly those at the southern end of the village.



- 6.68 Having considered the documents and the oral evidence the Committee agreed that the above inferences were reasonable and could properly be drawn.
- 6.69 The issue of access to pharmaceutical services has already been dealt with above under reasonable choice. However in short, there are clear access-difficulties for residents without vehicles the greater number of whom are likely to be in the southern part of the village. Older and or disabled residents are further likely to be disadvantaged in accessing such services. This was made plain in the papers and by Ms Norton's letter as previously discussed.
- 6.70 Having come to the above conclusions the Committee found on the balance of probabilities that there are patients with protected characteristics, likely to have pharmaceutical needs and they are likely to have difficulty accessing pharmaceutical services for the reasons described. A pharmacy on their doorstep as opposed to one at the other end of the village would alleviate these difficulties.
- 6.71 The Committee was therefore satisfied that granting the application would confer significant benefits on persons. In so doing it had regard to the desirability of people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that are difficult for them to access.

***Regulation 18(2)(b)(iii) (Innovation)***

- 6.72 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.
- 6.73 Innovation was not relied upon or advanced by the Applicants. As such the Committee was not satisfied that, granting the application would confer significant benefits on persons by way of innovation.

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

- 6.74 The Committee was of the view that in accordance with Regulation 18(2)(b) the granting of an application for a pharmacy in Woolavington would confer significant benefits on persons in the area of the HWB which were not foreseen when the PNA was published.

***Other considerations***

- 6.75 Having determined that Regulation 18(2)(b) is in principle satisfied, the Committee next consider Regulation 18(2)(c) to (e) which refer to other potential applications or appeals and to the appeal regarding the Scripts Direct Application. This necessarily required a comparison of the two applications.

***Comparing the two applications***

- 6.76 Neither party suggested that both applications should be granted. There was some debate between them as to the patient numbers required to sustain either pharmacy and both raised queries as to whether their individual businesses would survive. These included whether the surgery would in some way support the Scripts Direct pharmacy or, whether the wider range of pharmaceutical, OTC and community services offered by would support the Magna Healthcare Ltd business. Neither party had produced detailed financial documentation however there was nothing to suggest that one or other would fail. Both are commercial enterprises and, although it was common ground that any pharmacy in the village would be a modest enterprise, it is reasonable to assume that they would not be making applications they considered to be loss-making.
- 6.77 Regarding the hours offered by each party, there are swings and roundabouts. The Scripts Direct application includes marginally longer core and supplementary hours. The Magna Healthcare Ltd application has longer hours on a Saturday. From a commercial perspective, whatever the limitations of their application, both parties will most probably offer the hours that local patients need or their businesses need to survive. To do otherwise will alienate patients and/or adversely affect the business. Whilst it might be that the Saturday afternoon opening offered by Magna is better for less mobile patients, the hours offered by each are much of a muchness.
- 6.78 Despite each application being a best-estimate, both parties made it plain that they have premises. Magna Healthcare Ltd's proposed location is in the old Co-Op premises on the estate, the Scripts Direct location is now clarified as being inside the surgery premises albeit with the need to create a new and separate front door. The discussion on planning and the difference between class A1 and class D1 premises highlighted the difference between the two applications namely the physical size of the proposals and the facilities and services within the premises. Mr Morley made it clear that the Scripts Direct application would only require D1 permission since the proposed services are limited to those regarded as ancillary to medical use. There seemed to be no reason to think that the local authority would refuse such a change. The Magna Healthcare Ltd application would include additional facilities and the sale of OTC and other products found at high-street or community pharmacies. The larger Magna Healthcare Ltd location is already an A1 premises and Mr Yadav advised that he could have the business up and running within two months of a grant.
- 6.79 Overall, both applicants appeared to be in a position to obtain premises albeit that the Magna Healthcare Ltd premises may be larger and provide a greater range of services.
- 6.80 The real issues between the two applications are their respective locations and ethos. The Scripts Direct application has the support of some local residents based on two main themes first, concern that a pharmacy might adversely affect the surgery and second, the inconvenience of visiting two locations one to see a GP to obtain a prescription the second to collect that prescription at a pharmacy. Dealing with the first of these, as discussed above the surgery has made it plain that there will be no adverse impact. It was not suggested that the practice would close its dispensary. As to the second, the evidence following the relocation of the surgery was that despite initial fears of inconvenience which resulted in resistance to the move, patients have coped and there have been no complaints. However, even if

there had been complaints (or silent grumblings) the Magna Healthcare Ltd application is for premises that are closest to those most likely to be in need of pharmaceutical services. Placing a pharmacy in the midst of those most likely to need such prescriptions will reduce the journey those patients may have to take.

- 6.81 Taking account of the fact that some 80% of items are repeat prescriptions, such patients will not have to go down to the surgery to obtain repeat prescriptions, they will be available on their doorstep. As to residents at the northern end of the village, if they are caused hardship by locating a pharmacy in the south, they may still apply to access dispensing services at the surgery on the basis of serious difficulty. Their interests are protected as well. However in passing the Committee notes that the northern residents are those who appear 'better off', the owner-occupiers with higher employment and vehicle ownership. As such they are likely to be the more mobile, albeit there will always be exceptions.
- 6.82 On this issue of location, the Magna Healthcare Ltd site provides better access for those most in need and who are concentrated in the south. Together with the dispensary at the surgery it will provide a wider scope of services for village residents and surrounding patients. Those in the south will be better served by the southern location. For the more northerly residents, they may have the choice of accessing the pharmacy or the dispensary if they are outside the 1.6km zone. They may also use the dispensary if they are within 1.6km on the basis of serious difficulty. As discussed earlier, whichever location is chosen, someone is going to be inconvenienced however, that is not a basis upon which to grant or refuse one or other application. The main concern is which applicant will provide the best service to patients and the best value to the NHS. In the Committee's opinion it is the Magna Healthcare Ltd application that does so.
- 6.83 There was some criticism of the Magna Healthcare Ltd suggestion that it would be located in the centre of the village. As previously discussed Woolavington appears to have grown from a small community based around the church and spread south up the hill. There may once have been a village centre around the church but it is long gone and has not been replaced. The surgery is at the western extremity of the village with no other facilities nearby. The old Co-Op site is in the centre of the social housing albeit there are two possible premises and a small hall a few metres away. It might be at the centre of deprivation, it is not at the centre of the village.
- 6.84 However, it was plain that the new Co-Op located in the old pub toward the top of the hill could provide for a weekly shop and reduce if not remove the need to go shopping for food etc outside the village. This location is a modest 2-300mtr walk from the Magna Healthcare Ltd location or a few moments by car. It is not unreasonable to think that someone at the Co-Op may visit the pharmacy or vice-versa. Mr Yadav also made it plain that he would be working in collaboration with the other proposed business at the location. Whilst these three enterprises are not co-located in one street, the existence of three businesses in close proximity is likely to provide a measure of cohesion and support.
- 6.85 Finally, the benefits of co-locating a pharmacy with a surgery were considered. As discussed previously, the point was well made by Mr Yadav that many of the benefits voiced by the surgery could be obtained by the

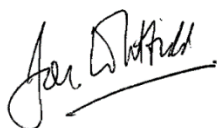
surgery simply employing a pharmacist in the dispensary. If it was so persuasive: why had they not done so? Why had they not opened a pharmacy already? Why did they object to his application and only put theirs in after his? Whilst not dealing with those comments directly, the Committee was impressed by Mr Yadav's application, his commitment to delivering a service and to the fact that he has chosen to site his application where it is most needed. It notes that his business has already won plaudits and that he aims to deliver the same level of service. Notwithstanding the implied criticism of the Scripts Direct application Mr Yadav made it very plain that he would work closely with the surgery and would provide assistance and support as best he could. The Committee had little doubt that he sought to foster and would work towards providing the best service to the community.

- 6.86 No deferral or refusal under Regulation 18(2)(f) was required in this case.
- 6.87 The Committee considered whether there were any further factors to be taken into account and concluded that there were not.
- 6.88 The Committee was satisfied that the information provided demonstrates that there is difficulty in accessing current pharmaceutical services such that a pharmacy at the proposed site would provide better access to pharmaceutical services.
- 6.89 For the reasons given above the Committee considered that the application by Magna Healthcare Ltd is to be preferred over that of Scripts Direct Ltd. In those circumstances the Committee determined that the decision of NHS England must be quashed.
- 6.90 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 re-determine the application.
- 6.91 The Committee noted that representations on Regulation 18 had been sought from parties by NHS England and representations had already been made by parties to NHS England in response. These had been circulated and seen by all parties as part of the processing of the application by NHS England. The Committee further noted that when the appeal was circulated representations had been sought from parties on Regulation 18.
- 6.92 The Committee concluded that further notification under paragraph 19 of Schedule 2 would not be helpful in this case.

## **7 DECISION**

- 7.1 The Committee quashed the decisions of NHS England and re-determined the applications.
- 7.2 The Committee concluded that Woolavington is in a controlled locality and that the site of the application by Magna Healthcare is not in a reserved location but that the site of the application by Scripts Direct Ltd is in a reserved location.

- 7.3 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.
- 7.4 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;
- 7.5 The Committee determined that the Magna Healthcare Ltd application should be **granted** on the following basis:
- 7.5.1 In considering whether the granting of the application would confer significant benefits, the Committee determined that –
- 7.5.1.1 there is not already a reasonable choice with regard to obtaining pharmaceutical services;
- 7.5.1.2 there is evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services; and
- 7.5.1.3 there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services;
- 7.5.2 Having taken these matters into account, the Committee is satisfied that granting an application would confer significant benefits as outlined above that would secure improvements or better access to pharmaceutical services.
- 7.5.3 The above-mentioned benefits provided by the Magna Healthcare Ltd application outweighed those that may flow from the Scripts Direct Ltd application. As such the Magna Healthcare Ltd application was to be preferred.



**Jon Whitfield QC**  
**Committee Chair**

A copy of this decision is being sent to:

Magna Healthcare Ltd  
Scripts Direct Ltd  
Mr N Morley on behalf of Polden Medical Practice  
Polden Medical Practice Patient Participation Group  
Woolavington Parish Council  
NHS England – South West  
Somerset LPC  
Somerset LMC

## Annex A



**Resolution**

REF: SHA/18748

**APPEAL AGAINST NHS ENGLAND (SOUTH WEST) AREA TEAM, NHS COMMISSIONING BOARD ("NHS ENGLAND") DECISION TO REFUSE AN APPLICATION BY MAGNA HEALTHCARE LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 IN THE VICINITY OF THE CO-OP STORE, WINDMILL CRESCENT, WOOLAVINGTON, TA7 8HP**

1 Trevelyan Square  
Boar Lane  
Leeds  
LS1 6AE

Tel: 0113 86 65500  
Fax: 0207 821 0029  
Email: fhsau@resolution.nhs.uk

REF: SHA/18749

**APPEAL AGAINST NHS ENGLAND (SOUTH WEST) AREA TEAM, NHS COMMISSIONING BOARD ("NHS ENGLAND") DECISION TO GRANT AN APPLICATION BY SCRIPTS DIRECT LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 WITHIN 100 metres OF THE WOOLAVINGTON SURGERY, WOOLAVINGTON ROAD, WOOLAVINGTON, TA7 8RD**

### 1 The Application

By application dated 14 October 2016, Magna Healthcare Ltd ("the Applicant") applied to NHS Commissioning Board ("NHS England") for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 in the vicinity of the Co-op Store, Windmill Crescent, Woolavington, TA7 8HP . In support of the application it was stated:

1.1 In response to why the application should not be refused pursuant to Regulation 31 Magna Healthcare Ltd stated "There are no other chemist premises in close proximity of the proposed location".

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

Advise / Resolve / Learn

NHS Resolution is the operating name of NHS Litigation Authority – we were established in 1995 as a Special Health Authority and are a not-for-profit part of the NHS. Our purpose is to provide expertise to the NHS on resolving concerns fairly, share learning for improvement and preserve resources for patient care. To find out how we use personal information, please read our privacy statement at [www.nhs.uk/AboutUs/PrivacyPolicy.aspx](http://www.nhs.uk/AboutUs/PrivacyPolicy.aspx)



Accredited  
(2017-2020)



- 1.2 The proposed pharmacy will secure improvements and better access to pharmaceutical services in Woolavington as there is no pharmaceutical service provider in the village. The nearest pharmacy from Woolavington is at Easy Quay Medical centre in Bridgwater which is 4.5miles. This means a 9 mile round trip to access pharmaceutical services for people living in and around Woolavington. The public bus service between Woolavington and Bridgwater is limited with bus service every two hours at best.
- 1.3 There is a dispensing GP practice branch in Woolavington which provides dispensing service on week days to patients registered at the surgery. Presence of a pharmacy will mean the residents will have access to complete NHS pharmaceutical services as well as access to self-care advice and over the counter medicines.
- 1.4 By improving access the proposed pharmacy will also provide reasonable choice to the local residents. It will [sic]
- 1.5 While the PNA gives a broad assessment of the Bridgwater Bay Health federation, it does not detail the situation of local areas. Below, Magna Healthcare Ltd has highlighted the important points from the PNA that are relevant to the services that the proposed pharmacy will offer. The PNA in Section II: Bridgwater Bay Heath, page 5,6 and 7 states;
  - 1.5.1 The Federation has challenging levels of deprivation. Some 28% of people are in one of the 10% most deprived areas in Somerset and 42% are in the 20% most deprived neighbourhoods in Somerset. Wider determinants of health are generally poor.
  - 1.5.2 Life expectancy is worse than average. Rates of premature mortality are the highest in the county, with 15% of deaths occurring before age 65 compared to 13% Somerset average. Mortality rates are frequently the worst in the county with rates from all causes.
  - 1.5.3 Disease prevalence is generally higher than expected compared to modelled rates. The Federation has the highest rates compared to expected levels for chronic kidney disease, COPD, coronary heart disease, diabetes and obesity.
  - 1.5.4 Disease levels compared to the rest of Somerset mirror these patterns. The proportions of people with diabetes and COPD who have been diagnosed is the highest in the county and the proportion with dementia who have been diagnosed is increasing.
  - 1.5.5 Smoking rates are high with 19% of adults 16+ recorded as smokers compared to 16% Somerset average. Relatively few go through smoking cessation services. (Pharmacy based smoking cessation clinics/champix PGD to help people quit)
  - 1.5.6 Rates of excess weight in school children and adults are higher than the county average. (Pharmacy based weight management and healthy lifestyle interventions)
  - 1.5.7 Hospital admissions for drug and alcohol related reasons are higher than the Somerset average. (Ac cess to supervised consumption and needle exchange service with pharmacists intervention and referrals)

- 1.5.8 Rates of teenage deliveries are the highest in the county. (Pharmacy intervention through EHC, sexual health clinic and awareness and referral for contraceptives)
- 1.6 The PNA goes on to suggest areas of public health to prioritise in order to tackle the health inequality faced by the residents.
- 1.7 Suggested public health areas to prioritise
  - 1.7.1 Increase numbers of those asked about smoking status and increase numbers of smokers referred to smoking cessation services
  - 1.7.2 Reduce adult and child obesity
  - 1.7.3 Reduce risky alcohol consumption in adults
  - 1.7.4 Increase current low rates of delivery of health checks to combat higher than average mortality rates from CHD (Pharmacy based NHS health checks to improve access and opportunistic intervention to those who are at high risk but would normally not see their GP)
- 1.8 The proposed pharmacy services match the aspiration of the PNA in tackling the health inequalities in isolated deprived areas. Thus the proposed pharmacy not only brings improvements that were not foreseen in the PNA, it also adds towards fulfilling the priority areas identified in the PNA.

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

- 1.9 The proposed pharmacy will ensure access to complete pharmaceutical service to the local residents on 6 days of the week. This offers improvement and better access through a truly 6 day pharmaceutical service. Thus, granting this application will confer significant benefits (as detailed above) to the local area that were not realised in drafting of the PNA.
- 1.10 This will also help to fulfil the aspirations sought in the PNA to improve the health inequality faced by the residents in the area.
- 1.11 Proposed core opening hours

Monday	9am – 6:30pm
Tuesday	9am – 6:30pm
Wednesday	9am – 6:30pm
Thursday	9am – 6:30pm
Friday	9am – 6:30pm
Saturday	9am – 3pm
Sunday	Closed
Total	53.5 hours

- 1.12 Total proposed opening hours

Monday	8am – 6:30pm
Tuesday	8am – 6:30pm
Wednesday	8am – 6:30pm
Thursday	8am – 6:30pm



Friday	8am – 6:30pm
Saturday	9am – 5pm
Sunday	Closed
Total	60.5 hours

By application dated 21 December 2016, Scripts Direct Ltd (“the Applicant”) applied to NHS Commissioning Board (“NHS England”) for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 within 100 metres of the Woolavington Surgery, Woolavington Road, Woolavington, TA7 8RD. In support of the application it was stated:

- 1.13 In response to why the application should not be refused pursuant to Regulation 31 Scripts Direct Ltd stated “Not Applicable. The reason this is not applicable is that there is no other pharmacy or dispensing appliance contractor premises either adjacent to or in close proximity to the location of the proposed pharmacy.”

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

- 1.14 GP services in the area are provided by Polden Medical Practice at their surgeries in Edington and Woolavington . The practice list as at November 2016 stands at 8600 patients. This is an increase of 1100 patients (+14.6%) since January 2015. This increase can be attributed to two factors:

1.14.1 The surgery in Woolavington opened in 2015 and a number of patients who at the time were registered with other practices moved to the Polden Medical Practice as the new surgery is more convenient for them.

1.14.2 NHS England have recognised that construction work on the nearby Hinkley C nuclear power station is expected to bring 10,000 workers into the area over the next 10 years. To ensure health services can meet the increased demand arising from this increase in the population, NHSE have encouraged GP practices on the periphery of the Bridgwater Bay Health federation to take some patients from Bridgwater practices which in turn will enable them to cope with the increase in demand. This was also a contributory factor in the decision to build the surgery at Woolavington.

- 1.15 Although the Pharmaceutical Needs Assessment (PNA) published in 2015 acknowledges that the Hinkley Point project will increase demand for health care services, it has not taken any account of the knock on effect of a significant proportion of the indigenous population moving to practices on the periphery of the Bridgwater Bay area and the consequential need for pharmaceutical services as a result.

- 1.16 Current access to pharmaceutical services from Woolavington is poor. The nearest pharmacy is 4.6 miles away in Bridgwater. While Polden Medical Practice has dispensaries at both Edington and Woolavington surgeries, service provision is limited to NHS dispensing which means that patients are deprived of reasonable access to a full range of pharmaceutical services, the expertise of a pharmacist and even access to over the counter medicines.

- 1.17 Pharmacy provision in England as an average is 20 pharmacies per 100,000 population. In the Bridgwater Bay Health Federation area, the average is 16.3 pharmacies per 100,000 population. This includes Woolavington where visiting a pharmacy involves a 9 mile return journey.
- 1.18 The increase in the patient list at Polden Medical Practice also brings into sharp focus the proportion of patients over the age of 65 who have the greatest need for good access to both clinical and pharmaceutical services as this group tend to develop a range of long term conditions. The proportion of the population in Woolavington Parish who are over the age of 65 is 25.5%. The national average is 16.3%. This divergence is also reflected in the age profile of the practice list and the disease prevalence of common long term conditions recorded in practice data is significantly higher than compared with the clinical commissioning group average as well as the national average. (see table below)
- 1.19 Disease Prevalence - Polden Medical Practice

	% of population		
	England	CCG	Polden Practice
CHD	2.9	3.8	4.2
Stroke TIA	1.7	2.3	2.6
Heart Failure	0.8	0.9	1.2
Hypertension	13.8	16.2	16.8
Diabetes	6.5	6.7	7.8
Osteoporosis	0.3	0.3	1.0
COPD	1.9	2.1	2.6

(Source Public Health England National General Practice Profiles)

- 1.20 The over 65's are recognised as a group with protected characteristics. In addition to being susceptible to long term conditions, this group are:
- 1.20.1 Often prescribed medicines on a long term basis
  - 1.20.2 Are frequently prescribed multiple medicines
  - 1.20.3 Require the support of carers
  - 1.20.4 Are more susceptible to falls and mobility issues
- 1.21 Access to the full range of pharmaceutical services is essential for this group. For those living in the Woolavington neighbourhood access is restricted because of :
- 1.21.1 The nearest pharmacies being located 4.6 miles away

- 1.21.2 14% of households do not have access to private transport - an issue which particularly affects the elderly.
- 1.21.3 Public transport services are poor with one bus service (No. 75 route) operating between Street and Bridgwater and while morning services are typically hourly, services in the afternoon are far less frequent and would appear almost non-existent after 3pm on weekdays.
- 1.22 Where a community includes a higher proportion of elderly residents, this is often accompanied by a significant proportion of the population providing unpaid care to a relative, friend or neighbour. The average proportion of the national population engaged in unpaid care according to the 2011 census was 10.2% whereas in the Woolavington community, the proportion of the population providing unpaid care was 13.6% and this is increasing at a more rapid rate than nationally.
- 1.23 This group are themselves frequently under pressure as a result of their caring responsibilities and their health needs can often go unnoticed. As carers tend to collect prescribed medication on behalf of those they care for, the pharmacy will be uniquely placed to monitor the needs of carers and provide advice or signposting where appropriate.
- 1.24 Scripts Direct Ltd would conclude that this protected group currently has significant difficulty in accessing a comprehensive range of pharmaceutical services.
- 1.25 A community pharmacy offering a wide range of pharmaceutical services and professional advice will bring significant benefits to the area by improving access to services to patients who will have been affected by the arrival of many 1000's of workers to the Hinkley Point C project which will add pressure to the current provision of health services. The anticipated impact on GP services has already been acknowledged and action taken.
- 1.26 The proposed pharmacy will offer choice to those who may face long return journeys to access pharmacy services.
- 1.27 The proposed pharmacy will address the specific needs of the over 65's by providing relevant services and ease of access for this group with a protected characteristic and which forms a far larger proportion of the local population than is the case nationally.

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

#### Access

- 1.28 Scripts Direct Ltd has indicated in 2 (above), the best estimate for the location of the proposed premises [as per Paragraph 1(7)(a)(i) of Schedule 2 The NHS Pharmaceutical Services Regulations 2013].
- 1.29 The proposed location will provide the following facilities:
- 1.29.1 Pharmaceutical services to all patients accessing the locality
- 1.29.2 Safe and sufficient car parking facilities

- 1.29.3 DDA compliant access to all pharmacy facilities
- 1.29.4 A minimum of one private fully equipped consultation room
- 1.29.5 Pharmaceutical services integrated closely with clinical services
- 1.30 Scripts Direct Ltd has stated their proposed opening hours in 3 above. These mirror the opening times of the surgery hours at the Woolavington Surgery. In fact, they extend beyond the published surgery hours for the Practice so that pharmaceutical services remain available to allow for any over run of GP appointments. Scripts Direct Ltd undertake that any future extension of surgery hours will be mirrored by the pharmacy.
- 1.31 The location of pharmaceutical services will significantly assist those patients who will find accessing existing pharmacies difficult due to the distance involved and their own mobility limitations.
- 1.32 Scripts Direct Ltd plan to make Advanced Services (MUR's and the New Medicine Service) available to patients who are housebound.
- 1.33 Dispensing patients will be able to easily access other non-dispensing pharmaceutical services when visiting the Health Centre.

#### Pharmaceutical Services

- 1.34 In accordance with Regulation 11 [paragraph 9(c)(ii) of Schedule 2], Scripts Direct Ltd will provide all essential services:
  - 1.34.1 Dispensing
  - 1.34.2 Repeat dispensing
  - 1.34.3 Disposal of unwanted medicines
  - 1.34.4 Promotion of healthy lifestyles
  - 1.34.5 Signposting & Support for self care
  - 1.34.6 Home delivery of stoma and incontinence supplies - including the provision of Appliance Use Reviews (AURs)
- 1.35 The above will be available from the initial opening of the pharmacy. Services will be targeted at compliance, reduction in medicinal waste (resulting from non-compliance) and health promotion will be promoted vigorously as part of my strategy to ensure the over-65s are comprehensively catered for.
- 1.36 In accordance with Regulation 11 [paragraph 9(d) of Schedule 2], Scripts Direct Ltd will provide the Directed Services identified in 4 and as per service specifications determined by NHS England, Somerset Health & Wellbeing Board and Public Health England.
  - 1.36.1 Medicine Use Reviews (including domiciliary MURs where required)
  - 1.36.2 New Medicine Service
  - 1.36.3 Appliance Use Reviews

- 1.36.4 Emergency Hormonal Contraception
  - 1.36.5 Emergency Palliative Care
  - 1.36.6 Needle Exchange
  - 1.36.7 Supervised Administration
  - 1.36.8 Out of Hours Service Provision
  - 1.36.9 Smoking Cessation
  - 1.36.10 Chlamydia Screening
  - 1.36.11 Minor Ailments Scheme
  - 1.36.12 Care Home Service
  - 1.36.13 Seasonal Influenza Vaccinations
- 1.37 Scripts Direct Ltd will support healthcare professionals in ensuring the needs of end of life care are met and that there is access to palliative care drugs both during normal operating hours and out of hours. Scripts Direct Ltd will be willing to provide this service.

#### Innovation

- 1.38 Scripts Direct Ltd will respond positively and participate in new initiatives. Scripts Direct Ltd recognise that Primary Care and specifically pharmacy can, through well targeted advice reduce the pressure in terms of resources and costs on other parts of the NHS.
- 1.39 The permanent Responsible Pharmacist will be qualified or will train to qualify as a Pharmacist Prescriber to facilitate a wider range of services within their sphere of expertise available without the need to wait for an appointment to see a GP and therefore stream lining patient pathways where a pharmacist is clinically trained.
- 1.40 Scripts Direct Ltd will work closely with clinicians and commissioners to ensure a high quality medicines optimisation service is available with a particular focus on the elderly.
- 1.41 The objective will be to improve the patient experience with regard to their medication regime, reduce referrals and reduce A & E admissions - particularly as a result of falls. This will involve regular and close monitoring of patients and carers – providing support in instances where patients experience compliance difficulties .
- 1.42 Scripts Direct Ltd will work towards 'Healthy Living Pharmacy' status which will enable the pharmacy to project those services intended to provide support and advice in relation to lifestyle behaviours; healthy eating, exercise, smoking cessation. The pharmacy will support the best interests of patients while at the same time seeking to reduce the demand on clinical services.

#### Summary

- 1.43 Scripts Direct Ltd recognise the significant uplift in patients accessing clinical services at the Polden Medical Practice which also reflects the movement of patients in response to the Hinkley Point C Project. Furthermore, Scripts Direct Ltd recognise the specific impact of the higher than average proportion of over 65's within the community and the health inequalities which arise from this. Scripts Direct Ltd intend to secure the previously unforeseen benefits by offering:
- 1.43.1 Dramatically improved access to pharmacy services with extended hours and an out of hours service.
  - 1.43.2 Convenience in terms of being located in close proximity to the surgery, ample parking and access via public transport.
  - 1.43.3 A wide choice of advanced and enhanced services reflecting to the needs of the community and the over 65's in particular.
  - 1.43.4 In association with clinical and other health professionals, develop innovative pharmacy services and solutions to meet local health needs – whether commissioned or made available privately.
  - 1.43.5 Achieving Healthy Living Pharmacy status.
- 1.44 There is in effect no reasonable choice of pharmacy provider for those living in the Woolavington community. Scripts Direct Ltd believe the community can easily support a pharmacy and that a pharmacy in the locality will not cause significant detriment to the proper planning in respect of the provision of pharmaceutical services in the area of the Somerset Health & Wellbeing Board in general or within the locality of the Bridgwater Health Federation in particular. [NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 Regulation 18 (2a)].
- 1.45 There are an above average number of people within the Woolavington community who are over the age of 65 and as is the case nationally, this proportion is set to increase. This age group inevitably tends to rely much more on clinical and pharmacy provision due to age related long term conditions. There is a real and current difficulty for this protected group in accessing pharmaceutical services which needs to be addressed to reduce or eliminate this inequality. [NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 20 13 Regulation 18 (2b)].
- 1.46 A pharmacy in Woolavington will secure improvements to pharmaceutical services not only in terms of access but also in terms of the portfolio of services available within the community including the lifestyle advice and support plus the use of MURs as a conduit to ensure compliance with medication regimes and identifying risks which could lead to admission to A&E e.g. as a result of falls. Again, this will specifically benefit the elderly and have positive benefits for both patients. Clinicians and carers.
- 1.47 Proposed core opening hours

Monday	8:30am – 6:45pm
Tuesday	8:30am – 6:45pm

Wednesday	8:30am – 6:45pm
Thursday	8:30am – 6:45pm
Friday	8:30am – 6:45pm
Saturday	8:30am – 1pm
Sunday	Closed
Total	55.75 hours

1.48 Total proposed opening hours

Monday	8am – 6:45pm
Tuesday	8am – 6:45pm
Wednesday	8am – 6:45pm
Thursday	8am – 6:45pm
Friday	8am – 6:45pm
Saturday	8:30am – 1pm
Sunday	Closed
Total	58.25 hours

2 **The Decision**

NHS England considered and decided to refuse the application by Magna Healthcare Ltd and grant the application by Scripts Direct Ltd. The decision letter dated 30 June 2017 states:

2.1 The South West Pharmaceutical Services Regulations Committee, on behalf of NHS England, considered the above applications on 16 June 2017 and determined them as follows:

2.1.1 the application from Scripts Direct Ltd ('Scripts Direct') is granted,

2.1.2 the application from Magna Healthcare Ltd ('Magna') is refused.

**PRELIMINARY ISSUES**

2.2 Receipt of the applications, and consideration of the applications together and in relation to each other

2.3 Magna's application was received on 19 October 2016.

2.4 Scripts Direct's application was initially received on or about 21 December 2016, however some information was missing which was received by PCSE on 26 January 2017, and the application was passed to NHS England on that date. NHS England requested (via PCSE) clarification on further aspects of the application, responses to which were received (via PCSE) on 2 March 2017.

2.5 The Committee had determined on 27 January 2017 that it was appropriate for the two applications to be considered together and in relation to each other.

2.6 Representations received

2.7 The Committee received and noted the following representations:

Respondent:	Date of letter/email:	Relating to applications from:
Crossington Parish Council	15 December 2016	Magna
Woolavington Parish Council	15 December 2016	Magna
Polden Medical Practice	19 December 2016	Magna
Patient Participation Group		
Bawdrip Parish Council	19 December 2016	Magna
Nigel Morley on behalf of	20 December 2016	Magna
Polden Medical Practice		
Local Medical Committee	21 December 2016	Magna
Bawdrip Parish Council	12 April 2017	Scripts Direct
Polden Medical Practice	17 April 2017	Scripts Direct
Patient Participation Group		
Woolavington Parish Council	20 April 2017	Scripts Direct
Local Pharmaceutical	21 April 2017	Scripts Direct
Committee		
Polden Medical Practice	6 May 2017	Scripts Direct
Local Pharmaceutical	24 April 2017	Magna
Committee		

2.8 The Committee also received and noted the applicant's responses to the other applications or comments about their own applications as follows:

<b>Respondent:</b>	<b>Date of letter/email:</b>	<b>Relating to applications from:</b>
Nigel Morley on behalf of Polden Medical Practice	4 January 2017	Magna
Magna Healthcare Ltd	11 January 2017	Magna
Magna Health Care Ltd	21 April 2017	Scripts Direct
Scripts Direct Ltd	26 April 2017	Scripts Direct
Magna Health Care Ltd	3 May 2017	Scripts Direct

Oral Hearing

2.9 The Committee considered whether it was necessary for it to hold an oral hearing to determine the applications. It was decided that there was sufficient information to enable the applications to be determined and so it was not necessary to hold an oral hearing.

Same or adjacent premises (regulation 31)

2.10 The Committee noted that there is not currently a community pharmacy in Woolavington, and that a doctors' dispensary does not count for this purpose. Therefore it determined that the applications did not need to be refused under regulation 31.

2.11 It was noted that, if any of the applications 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 if the location then provided would (had it been known now) have led to the application being refused under regulation 31.

#### CONTROLLED LOCALITY ISSUES

- 2.12 It was noted that Woolavington is within a controlled locality and consequently the application needed to be considered in accordance with Part 7 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

Five-year bar (regulation 40)

- 2.13 The committee noted that there had not been any previous applications for a pharmacy within Woolavington therefore the five year bar had not been invoked.

Reserved Location (regulation 41)

- 2.14 The Committee considered whether the applications related to reserved locations as defined in Regulation 41(3).

#### Magna

- 2.15 For the purpose of regulation 41(2), the Committee considered the “relevant location” of Magna’s proposed pharmacy to be The Co-operative Food store on Windmill Crescent, as Magna had indicated that they hoped to take the lease of those premises.

- 2.16 A count of registered patients was undertaken based on the most recently-available dataset, provided by the Commissioning Support Unit on 27 October 2016. A circle of 1.6km radius was centred on The Co-operative Food store (it was noted that that circle included the neighbouring villages of Bawdrip and Cossington). The number of registered patients living within that circle was 3,406, above the threshold of 2,750 patients.

- 2.17 The Committee therefore determined that the relevant location of Magna’s application is not in a reserved location.

#### Scripts Direct

- 2.18 For the purpose of regulation 41(2), the Committee considered the “relevant location” of Scripts Direct’s proposed pharmacy to be Woolavington Surgery, as Scripts Direct and Polden Medical Practice had both indicated that the pharmacy would probably be co-located with the surgery. The Committee noted that a circle of 1.6km radius centred on the surgery did not include any of the neighbouring villages.

- 2.19 A count of registered patients was undertaken by the Commissioning Support Unit on 16 March 2017 and showed 2,591 patients living within 1.6km of Woolavington Surgery. This is below the threshold of 2,750 patients, so the committee noted that the first part of the reserved location test was met.

- 2.20 The Committee considered dispensing data relating to the average number of items dispensed by Polden Medical Practice’s two dispensaries between August 2016 and February 2017 (derived from Polden Medical Practice’s Dispensary Services Quality Scheme return for 2016/17). Taking into account

the size of the practice's dispensing list, it could be estimated that the Woolavington dispensary was dispensing to about 3,770 patients.

- 2.21 However it was noted that this figure would include patients living more than 1.6km from the relevant location, who would continue to be able to use the dispensary if the pharmacy opened.
- 2.22 The Committee also noted 2011 census information indicating that a higher proportion of Woolavington residents than average are aged 75 or over, or suffer from long-term health problems or disability. However there are no residential or nursing homes located within the village.
- 2.23 Overall, the Committee felt that it could not be 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 registered patients were 2,750 or more.
- 2.24 The Committee therefore determined that the relevant location of Scripts Direct's application is in a reserved location.

Prejudice (regulation 44)

Magna

- 2.25 As it had been determined by the committee that the Magna application related to a location which was not reserved, the Committee next considered whether granting this application would prejudice the proper provision of relevant pharmaceutical services, local pharmaceutical services or primary medical services in Somerset.
- 2.26 The Committee noted that there is an evidential burden on the party alleging that there would be prejudice.
- 2.27 It was noted that in Mr Morley's letter dated 20 December 2016 he alleged that there would be prejudice to Polden Medical Practice's primary medical services. A supporting statement from the practice's accountant stated that the practice would see a reduction in dispensing income of around **£93,000** per annum, and suggested that this would lead to staff redundancies and also potential difficulties recruiting new partners to the practice which would have 'a huge impact on succession planning'.
- 2.28 The committee also noted that the chair of the patient participation group (letter of 19 December 2016) also raised concerns about the possible impact of a loss of income to the practice if the Magna application is approved.
- 2.29 However, the committee considered that in order to gain a complete picture of the likely impact of the opening of a pharmacy and therefore possible prejudice to the provision of medical services, figures for the income of the practice as a whole – and not limited to dispensing – are required. Such figures had not been provided.
- 2.30 In the absence of such evidence, the Committee was not of the opinion that granting the Magna application would prejudice the proper provision of relevant pharmaceutical services, local pharmaceutical services or primary medical services.

## Scripts Direct

- 2.31 As it had been determined by the committee that the Scripts Direct application related to a location which was reserved, it was not necessary for the Committee to consider the issue of prejudice in relation to that application.

## UNFORESEEN BENEFITS

Reg 18(1)(b) – Improvements or better access not included in the Pharmaceutical Needs Assessment

- 2.32 Having reviewed the section of the 2015 Somerset PNA relating to the Bridgwater Bay locality (which includes Woolavington), the Committee concluded that the PNA does not identify any gaps in provision and so the improvements or better access which the applicants are claiming would be secured if their applications were granted were not included in the PNA.
- 2.33 The Committee noted the opening hours and services being proposed by the two applicants, and the statements each made in support of their application.
- 2.34 In relation to the Scripts Direct application, the committee noted that comments from Polden Medical Practice refer to the pharmacy being “owned and run by the surgery as a hybrid pharmacy”. The Committee noted that a ‘hybrid pharmacy’ is a community pharmacy which also acts a dispensary for dispensing doctors; prescriptions dispensed are submitted for payment separately on behalf of the pharmacy (for non-dispensing patients) and the doctors (for dispensing patients).
- 2.35 The Committee noted that, in order to be satisfied in accordance with regulation 18(1), regard is to be had to those matters set out in regulation 18(2), and so went on to consider those matters.

Reg 18(2)(a) – Would granting the application cause significant detriment to proper planning in respect of, or the arrangements in place for the provision of, pharmaceutical services

- 2.36 NHS England had no particular plans relating to Woolavington, and so the Committee was unable to be satisfied that significant detriment to proper planning would result from granting either application.
- 2.37 As no party had suggested that granting either of the applications would cause significant detriment to the arrangements in place for pharmaceutical services, the Committee was unable to be satisfied that significant detriment to such arrangements would result from granting either application.

Reg 18(2)(b) – Significant benefit: availability of premises

- 2.38 The Committee noted that both applicants had provided assurances that securing suitable premises would be possible were their application to be granted. The Committee therefore considered that this issue did not provide grounds for refusing the applications.
- 2.39 Reg 18(2)(b)(i) – Significant benefit: Reasonable choice with regard to obtaining pharmaceutical services

- 2.40 The committee noted that almost all responding interested parties agreed that having a pharmacy in Woolavington would be a benefit. The principal subject of dispute is which application should be preferred (with particular reference to location within the village).
- 2.40.1 Woolavington Parish Council (letter of 15 December): “Members recognised that there was a need for a pharmacy in Woolavington...”
- 2.40.2 Bawdrip Parish Council (email of 12 April): “... the proposed pharmacy would be of community benefit”
- 2.40.3 Cossington Parish Council (letter of 15 December): “... recognis[e] the advantages of a local community pharmacy”
- 2.40.4 Patient participation group (letter of 17 April): “... providing the undoubted benefits of full pharmacy services to all patients...”
- 2.40.5 Polden Medical Practice (email of 6 May): “... strongly support [the Scripts Direct] application. We feel it to be in the best interest of both our patients [and] local residents in the surrounding area who may not be patients ...”.
- 2.40.6 The practice’s initial representations regarding the Magna application, sent on its behalf by Nigel Morley, argued that a pharmacy in Woolavington was not needed. However as Mr Morley then submitted the Scripts Direct application, which the practice is supporting, the Committee felt it was reasonable to assume that the practice no longer stood by those initial representations.
- 2.40.7 Somerset LPC (email of 24 April): supports both applications.
- 2.41 It was noted that only Somerset LMC are opposing a pharmacy, having objected to the Magna application and not commented on the Scripts Direct application.
- Existing provision: the surgery dispensary
- 2.42 It was noted by the committee that Woolavington Surgery, a branch of Polden Medical Practice, operates a dispensary which can dispense against prescriptions issued to patients of the practice (whether by the GPs or another prescriber). It cannot dispense to patients who live within 1.6 km of a pharmacy or who are registered with a different practice. Of the 3,406 patients living within 1.6km of the Co-Op store, 893 are not registered with Polden Medical Practice and so cannot use the dispensary.
- 2.43 The practice dispensary hours are not specified on the practice’s website but the surgery hours are 8.00am to 6.30pm on weekdays and 8.30am to 12.30pm on Saturday mornings. The Saturday morning hours alternate between Woolavington and the other branch in Edington.
- 2.44 The committee took the view that the dispensing service provided by a GP surgery is not directly equivalent to the services provided by a pharmacy. For example, unlike a GP dispensary, a pharmacy can:

- 2.44.1 sell P- and GSL-medicines (which a dispensing GP may instead prescribe and dispense, subject to any prescription charge)
  - 2.44.2 provide emergency supplies of repeat medication when the GP surgery is closed
  - 2.44.3 offer advice on self-care and the use of medicines without an appointment
  - 2.44.4 carry out Medicines Use Reviews
  - 2.44.5 offer the New Medicines Service
  - 2.44.6 offer such other services (for example a Minor Ailments Service or provision of Emergency Hormonal Contraception) as may be commissioned by the local clinical commissioning group or local authority public health team.
- 2.45 The committee concluded that the dispensing services provided by Woolavington Surgery do not, of themselves, meet any need that may exist for the full range of pharmaceutical services. Such services are only available from the pharmacies in Bridgwater or Highbridge.

Sale of OTC medicines by village shops

- 2.46 It was also noted that general retail outlets such as village shops can sell medicines on the General Sales List (GSL) only. The two other categories of medicine are:
- 2.46.1 P medicines – which can only be sold in a pharmacy under the supervision of a pharmacist; these are the medicines which are ‘behind the counter’ in a pharmacy but for which a prescription is not needed.
  - 2.46.2 POM medicines – which can only be dispensed by a pharmacy or surgery dispensary on prescription.
- 2.47 A dispensing practice could issue GSL and P medicines by prescribing and then dispensing them, but this would be at a cost to the NHS budget (subject to any NHS prescription charge paid by the patient) rather than being paid for by the patient.

Access to existing pharmacies

- 2.48 The Committee considered a map showing the locations of the closest pharmacies, and noted that the closest are in Bridgwater and in Highbridge, over 4.5 miles away, as follows:

Lloyds, Sainsbury’s Store, The Clink, Bridgwater, TA6 4AB	Distance: 4.5 miles by car (AA route planner)
	Opening hours: Monday-Wednesday 8.00am-8.00pm
	Thursday-Friday 8.00am-9.00pm

	<p>Saturday 8.00am-7.00pm</p> <p>Sunday 10.00am-4.00pm</p> <p>Parking: Large free supermarket car park</p>
Asda, East Quay, Bridgwater TA6 5AZ	<p>Distance: 4.6 miles by car (AA route planner)</p> <p>Opening hours: Monday 8.00am-23.00pm Tuesday-Friday 7.00am-23.00pm</p> <p>Saturday 7.00am-22.00pm Sunday 10.00am-4.00pm</p> <p>Parking: Large free supermarket car park</p>
Cranleigh Gardens, Cranleigh Gardens Medical Centre, Bridgwater TA6 5JS	<p>Distance: 4.8 miles by car (AA route planner)</p> <p>Opening hours: Monday-Saturday 8.00am-10.30pm Sunday 9.00am-9.00pm</p> <p>Parking: Large free car park located at medical centre</p>
Superdrug, 19 Fore Street, Bridgwater TA6 3NH	<p>Distance: 4.8 miles by car (AA route planner)</p> <p>Opening hours: Monday-Friday 8.30am-5.30pm Saturday 9.00am-5.30pm</p> <p>Parking: In pedestrianised area, would need to use town car park. Closest - Dampiet Street 49 spaces</p>
Boots, 34-38 Fore Street, Bridgwater TA6 3NG	<p>Distance: 4.8 miles by car (AA route planner)</p> <p>Opening hours: Monday-Saturday 8.30am-5.30pm Sunday 10.00am-4.00pm</p> <p>Parking: In pedestrianised area, would need to use town car park. Closest - Dampiet Street 49 spaces</p>
Lloyds, 22 Market Street, Highbridge TA9 3BT	<p>Distance: 5.1 miles by car (AA route planner)</p> <p>Opening hours: Monday-Friday 9.00am-5.30pm Saturday 9.00am-1.00pm</p> <p>Parking: Free on-street parking for 1</p>

	hour (no return within 2hrs) for 3-4 vehicles directly outside. Large Co-op car park directly opposite.
Rowlands, New East Quay Medical Centre, East Quay, Bridgwater TA6 5BF	Distance: 5.2 miles by car (AA route planner) Opening hours: Monday-Friday 9.00am-1.00pm and 1.30pm-6.30pm Saturday 9.00am-12.30pm Parking: Medical centre free car park available
Lloyds, Redgate Health Centre, Westonzoyland Road, Bridgwater TA6 5BF	Distance: 5.2 miles by car (AA route planner) Opening hours: Monday-Friday 8.30am-6.00pm Saturday 9.00am-12.00pm Parking: Medical centre free car park available

- 2.49 The committee considered that the walking distances to the pharmacies are such that it is extremely unlikely that patients would access them on foot.
- 2.50 The committee noted that for patients travelling by car, all the pharmacies in Bridgwater and Highbridge have parking close by. The journeys would take about 10-11 minutes each way, depending on traffic conditions.
- 2.51 Data from the 2011 census indicated that 13.7% of households in the parish of Woolavington did not have access to a car or van (compared with 15.9% for Somerset or 25.6% for England and Wales); 44.5% of households had access to one vehicle (against 43.3% for Somerset or 42.2% for England and Wales).
- 2.52 It was noted by the committee that there is currently only one regular bus route servicing stops in Woolavington through to Bridgwater, the Buses of Somerset number 75. From any of the 8 stops within Woolavington it travels westwards to Puriton before proceeding south towards Bridgwater. Weekday and Saturday services leave Woolavington at 8.16am, 9.10am and then hourly from 9.40 am until 3.40pm. There are then services at 5.34pm, 6.19pm and 7.36pm; the journey takes 20-30 minutes depending on which stops you use. Return services leave Bridgwater at 8.50am and then every 30 minutes until 3.45pm there are then 2 other services at 4.40pm and 6.06pm. There is no Sunday or bank holiday bus service.
- 2.53 While it would theoretically be possible to complete a return bus journey to a pharmacy in Bridgwater within 1.5 hours (for example: leaving Woolavington on the 10.40am, arriving at Bridgwater at 11.10am, then catching the bus back at 11.45am to return to Woolavington at 12.10pm) this assumes no delays at the pharmacy – in the scenario quoted, if there were a delay then the next bus back would be at 12.15pm, meaning the overall trip would take over 2 hours. A journey to Lloyds in Highbridge cannot be made via a direct

bus from Woolavington and would require travelling to Bridgwater to get a connection to Highbridge.

- 2.54 The committee considered that while it is likely the Woolavington residents would travel to Bridgwater or Highbridge for other purposes such as shopping, work or visiting a bank, and so could combine a visit to a pharmacy with such a trip, a patient without a car who had a pressing need to access pharmaceutical services at another time would end up spending a considerable amount of time doing so.
- 2.55 The Committee therefore concluded that there was not reasonable access to the full range of pharmaceutical services by bus.

Conclusion on reasonable choice

- 2.56 Overall the committee concluded that because of:
- 2.56.1 the distance to the nearest providers of the full range of pharmaceutical services, which renders walking impossible, and
- 2.56.2 the limitations of the bus service available for patients without access to a car there is not currently reasonable choice with regard to obtaining pharmaceutical services in Woolavington.
- 2.57 Consequently the Committee was satisfied that granting an application for a pharmacy in Woolavington would confer a significant benefit, having regard to the desirability of there being a reasonable choice with regard to obtaining pharmaceutical services.

Reg 18(2)(b)(ii) – Significant Benefit: Patients with a protected characteristic

- 2.58 It was noted that Magna had asserted in their response to representations that a pharmacy in the village would be a significant benefit to patients with a protected characteristic.
- 2.59 Scripts Direct's application cites patients over 65, especially those with long term condition, and carers as two cohorts of patients whose protected characteristic could make accessing pharmaceutical services from one of the existing providers especially difficult.
- 2.60 The committee noted that 2011 census data indicated that the proportion of residents of the parish of Woolavington:
- 2.60.1 whose day-to-day activities are limited (a little or a lot) by long-term health problems or disability is 22.7%, above the Somerset average of 18.8% and England and Wales average of 17.9%
- 2.60.2 who are aged 75 or over is 11.4%, a little above the Somerset average of 10.2% and well above the England and Wales average of 7.8%.
- 2.61 The committee concluded that these statistics would point towards a higher number of patients with a protected characteristic than average, therefore a reasonable proportion of the local population may fall into these categories.



2.62 It was considered likely that patients with a disability or mobility issues (such as the elderly) would experience the access difficulties to current pharmaceutical services in Bridgwater or Highbridge to a more acute degree than the general population.

2.63 Therefore the Committee was satisfied that granting an application would confer a significant benefit on patients with protected characteristics.

Reg 18(2)(b)(iii) – Significant Benefit: Innovative approaches to delivery of pharmaceutical services

2.64 As neither applicant had claimed a benefit by way of innovation, or were offering anything particularly unusual or innovative, the Committee was unable to be satisfied that granting either of the applications would lead to any significant benefits by way of innovation.

Choosing between the applications

2.65 Having concluded that granting an application for a pharmacy in Woolavington would confer a significant benefit, the Committee went on to consider whether it should:

2.65.1 grant only one of the applications, and refuse the others, or

2.65.2 grant both of the applications, and let market forces decide which opens or is viable in the longer term.

2.66 It noted that in the recent High Court case of R (on the application of Rushport Advisory LLP) v NHS Litigation Authority, 20 April 2016, in cases where only one pharmacy was needed to meet the need in the locality, the judge had said that

*“the decision maker must be very careful not to decide that [the test] is met in a case where there is a real possibility of services under both grants coming on stream, leading to over-provision at the expense of the public purse” (para 43).*

2.67 The court also said that the power to consider cases together was “plainly there to enable the relative merits of applications to be weighed against each other” (para 40).

2.68 The Committee also noted that in appeal decision SHA/18014 (dated 16 November 2015), an oral hearing committee of the FHSAU, chaired by Jon Whitfield QC, had stated:

*“9.43 ... The Committee concluded that it was not required to consider the applications on a ‘first past the post basis’. ...*

2.69 The Committee regarded the omission of ‘first past the post’ in the 2013 Regulations, which may in fact be little more than the luck of the draw/postal service to break a deadlock between equal applications, supports its conclusion that it should properly assess the applications in relation to each other.”

- 2.70 Bearing in mind the size of Woolavington, the Committee was of the view that to grant more than one application would risk over-provision. It went on to assess the applications in relation to each other.

#### Hours

- 2.71 The committee noted that both Magna and Scripts Direct are offering above the standard 40 core opening hours,
- 2.72 Magna's core hours are from 9am-6.30pm Monday-Friday and 9am-3pm on Saturday (53.5 core hours). In addition they would have supplementary hours from 8am-9am Monday-Friday and from 3pm-5pm on Saturday.
- 2.73 Scripts Direct's core hours are from 8.30am-6.45pm Monday-Friday and 8.30am-1pm on Saturday (55.75 core hours). In addition they would open from 8am-8.30am Monday-Friday as supplementary hours.
- 2.74 As noted previously, the surgery's hours are 8.00am-6.30pm on weekdays and 8.30am-12.30pm on alternate Saturday mornings.
- 2.75 In their representations Magna have argued that the longer opening hours they offer on Saturdays (in particular in the afternoon after the surgery has closed) are preferable to the slightly longer weekday opening offered by Scripts Direct.
- 2.76 In response Scripts Direct stated that "our ... opening hours ... will at least always mirror the surgery hours".
- 2.77 Having noted that both applicants would be open on Saturday mornings, the Committee was doubtful that opening on Saturday afternoon was a significant additional factor. It therefore considered that neither applicant had an advantage in terms of proposed opening hours.

#### Services

- 2.78 The committee noted that both applicants have stated that they will provide all appliances listed in the Drug Tariff, and listed an extensive range of advanced and enhanced service they would provide. With regard to services commissioned by NHS England, both have stated they will provide MURs, NMS, Flu vaccinations and Appliance Use Reviews.
- 2.79 Magna have also indicated that they would provide Stoma customisation which Scripts Direct has not. As this is a specialist service the committee felt it would be unlikely that Magna would offer this service if its application were successful.
- 2.80 It was therefore agreed by the committee that there was no appreciable difference between the applications as regards services.

#### Premises

- 2.81 The Committee next considered the issue of premises. It noted that both of the applications were for 'best estimate' locations; however both have provided a clear indication of where a successful pharmacy would open if the corresponding application were granted.

- 2.82 Magna have expressed the hope to trade from the current site of the Co-operative Food store (after the Co-op moves), and have provided a copy of a letter from the landlord, Sedgemoor District Council, indicating that the terms of a 15 year lease to Magna have been agreed.
- 2.83 Information contained in Polden Medical Practice's comments strongly indicated that the intention would be for Scripts Direct's pharmacy to be located in the surgery building, though it was not completely clear whether or not it would be within the existing footprint: Dr Rowling's email of 6 May 2017 stated that "the surgery was specifically designed to accommodate a future pharmacy", while Mr Morley's email of 26 April 2017 had stated "We have identified opportunities for co-locating the pharmacy with the medical practice by the means of an extension. We believe space constraints are not a barrier".
- 2.84 The Committee noted that Magna had queried whether the practice would need planning permission to open a pharmacy at the surgery, but accepted Mr Morley's response that a pharmacy would be covered by the existing category B planning consent as ancillary to medical services.
- 2.85 Overall it appeared that both applicants were likely to be able to obtain premises and so the committee concluded that neither has a particular advantage in this regard.

#### Location within the village

- 2.86 The merits of both the proposed locations were then considered by the committee. It was noted that a large part of the representations had been devoted to this issue (with the assumption being made that they would be located in the surgery or Co-op store as indicated above).
- 2.87 There was strong support among interested parties for the Scripts Direct application due to it probably being located in/at the surgery.
- Woolavington Parish Council (letter of 20 April): "...felt that it would be preferable for [a pharmacy] to be located at the surgery where it could be integrated with existing services" and (letter of 15 December) "This would avoid the negative impact which would be experienced by existing patients having to visit separate locations, some distance apart..."
  - 2.87.1 Bawdrip Parish Council (letter of 19 December): "Members were concerns that if [the Magna application were] granted a large number of existing patients would suffer inconvenience by having to attend two separate sites in different locations ... The Council believed that an alternative site in or adjacent to the surgery ... was preferable"
  - 2.87.2 Cossington Parish Council (letter of 15 December): a pharmacy at the surgery "should provide better integration with current healthcare facilities, a more sustainable solution and greater convenience for the local population"
  - 2.87.3 Patient participation group (letter of 19 December): "Woolavington Surgery is at the bottom of a hill and the [Co-op site] at the top of this hill. This makes it at best inconvenient and in some cases actually difficult to collection prescriptions due to age, disability, illness etc." and (letter of 17 April): the Scripts Direct application "... provid[es] the

undoubted benefits of full pharmacy services to all patients without any loss of convenience”

- 2.88 Polden Medical Practice referred to the benefits to be gained from the surgery and pharmacy working closely together, including:
- It would enable both dispensing and non-dispensing patients to collect medicines from the same site
- 2.88.1 “synergistic benefits will considerably enhance the function of the practice and help improve our ability to recruit and retain good quality clinical staff in the years ahead”
- 2.88.2 Woolavington is “likely to be the site the surgery uses for providing increased opening hours provision in the future which is a model being encouraged by the CCG currently. It would make more sense to have this co-located with the pharmacy and we would expect the pharmacy opening hours to match the surgery opening hours”
- 2.88.3 “close working proximity and relationship to the practice means there should be a benefit both ways here. – patients attending the pharmacy for advice could have access to GP advice if this were needed, whilst the GP’s at the practice can have the close working support of an in house pharmacist to assist with patient care helping to support efficient prescribing within the surgery. We would hope the Pharmacist could help with provision of face to face appointments for our patients but also provide a system to see walk in patients who may not be registered with the practice”
- 2.89 Magna Healthcare argued at great length (letters of 11 January and 21 April) that their proposed location would offer better accessibility because, in summary:
- The significant majority of elderly residents in the village live in the southern part, and so a pharmacy there would be much more accessible
- 2.90 A pharmacy in the south of the village would be more accessible for residents of Cossington and Bawdrip, and for patients coming from Edington
- 2.90.1 For the approximately 900 patients living within 1.6 km who are not patients of Polden Medical Practice, a pharmacy in the village centre would be ideally located
- 2.90.2 A village-centre location, close to other amenities, would facilitate opportunistic use and so opportunistic health interventions
- 2.90.3 The surgery is located on the edge of the village and there was significant local opposition whether the surgery moved from a site adjacent to the Co-Op store (where Magna intend to open) to its current location
- 2.90.4 As about 80% of prescriptions are for repeat medicines it is unnecessary for the patient to visit the surgery before collecting their medicine, so a central location would be more convenient and avoid the need for a special journey.
- 2.91 The committee had available to it:

- 2.91.1 a report of a site visit to Woolavington
- 2.91.2 a map of the topography of the village
- 2.91.3 a map showing the distribution of the population across the village, and also the locations of various village amenities
- 2.91.4 a map showing the distribution of residents aged 65+ across the village
- 2.91.5 National Statistics census area classifications for the different parts of the village
- 2.91.6 the (Woolavington and Puriton) Villages Together Local Plan 2015.
- 2.92 The committee noted from the topographic map and the description in the site visit report that there is a significant difference in altitude between the south and north of the village:
  - 2.92.1 the Co-operative store is at an altitude of about 55m
  - 2.92.2 the surgery is at an altitude of about 15m.
- 2.93 The route from the surgery to the Co-op is about 1.2 km (0.7 miles) in length and involves gradients of about 6%.
- 2.94 In terms of population distribution it was noted that:
  - 2.94.1 the southern part of the village, around the current Co-op store, has a generally denser population than the middle and northern end
  - 2.94.2 residents aged 65+ are distributed across the village, but there does appear to be a greater proportion in the southern part.
- 2.95 The census area classifications for the parts of the village were:
  - 2.95.1 south: 'migration and churn': higher proportion of young children, likely to live in social housing, fewer people with higher qualifications, higher unemployment, lower vehicle ownership,
  - 2.95.2 middle: 'semi-detached suburbia': mix of middle-aged parents and the retired, mix of owner-occupiers and renting, more people with higher qualifications, lower unemployment.
  - 2.95.3 north: 'farming communities' / 'ageing rural dwellers': tend to be older, owner-occupiers, well educated, lower unemployment, higher vehicle ownership.
- 2.96 Pages 6-7 of the Villages Together Local Plan 2015 were noted to include the following:
  - 2.96.1 Local authority houses were built in the village in the 1930s and the 1940s. ... In 1941 a large new housing estate was begun on the hillside south of the village to house workers at the Royal Ordnance Factory in Puriton. By October 1942, 177 pre-cast, concrete bungalows, described as temporary, had been built by the Ministry of

Supply. For a long time it was a separate community with its own social centre and youth club. Between 1963 and 1966 the prefabricated houses were replaced by 228 local authority houses and bungalows. The space between that estate and the village was subsequently filled by private housing, and in the later 20th century more houses were built on orchards and other sites within the original village. It is evident that the southern part of Woolavington faces different challenges to the other parts of the village ...

2.97 And on page 8:

2.97.1 Most of the rented properties are in the southern part of Woolavington. In this development there were originally 228 council rented homes but with changes in housing management 128 are now managed by Homes in Sedgemoor and 54 by SHAL. 46 have been sold to private owners...

2.97.2 The statistics and residents comments show that this part of Woolavington and the people living there face particular difficulties and some residents feel isolated from the rest of the village. The green spaces are rather bare and often damaged by vehicles; community facilities provided as part of the development have problems with their poor quality and use and there are underlying challenges faced by residents. We feel there has been limited investment in the area and housing stock over many years and that the current issues need to be given serious attention by the relevant agencies including the owners of the housing stock.

2.97.3 .....

2.97.4 To illustrate some of the issues: In contrast to the rest of the Villages Together area, the most needy part of Woolavington has a much higher proportion of older people (nearly 50% of tenants are over 60); a much higher proportion of people declaring one or more disabilities; a larger proportion of single person households (around 40% compared to 27% for the Ward area) and there are issues of fuel poverty because of a dependence on oil or electric heating in the homes. These and a number of other indicators demonstrate that there is a clear case for special help.

2.98 The distribution of village amenities was noted as follows:

2.98.1 the current and new Co-operative stores (which host the post office) are in the southern, higher, part of the village, along with the Communal Hall which serves the nearby social housing

2.98.2 the primary school (and children's centre), playground, Village Hall, surgery, parish church and another shop (Grandma's) are located in the northern, lower, part.

2.99 The Committee felt that, apart from the current Co-operative Food Store, there is not really anything to bring residents of the rest of Woolavington into the Windmill Close area. When the Co-op moves to the more prominently-positioned site on Woolavington Hill, there would be no reason. The

committee considered that Magna's claim that a pharmacy at or close to the current location of the Co-op was in the 'village centre' was not accurate.

2.100 Having considered all of the above factors, the Committee was of the view that Scripts Direct's application was to be preferred because:

2.100.1 the support from local organisations for locating a pharmacy at the surgery weighed in favour of Scripts Direct's application

2.100.2 patients from across the village are currently accessing the surgery for medical care and to collect dispensed medicines, so for them to access a pharmacy at the same location would not represent any reduction in convenience

2.100.3 there are considerable patient care benefits to be gained from enabling the pharmacy and surgery to work closely together, which would be greatly aided by co-location

2.100.4 the 'hybrid pharmacy' model indicated by Polden Medical Practice would mean that dispensing patients, as well as non-dispensing patients, would receive many of the benefits of the presence of a pharmacist (eg: advice, sales of P and GSL medicines) at the same site as they collect their prescription medicines from.

2.101 Conversely, while there were some merits of locating a pharmacy in the more deprived part of the village:

2.101.1 the lack of local support for a pharmacy in Magna's proposed location was noticeable

2.101.2 that location was clearly not the 'village centre', and once the Co-op store moves to Woolavington Hill there would be little reason for residents of the rest of the village to go to that location

2.101.3 patients given an acute prescription at the surgery who needed the medication immediately would need to travel 1.2km, up quite a steep hill, to get the prescription dispensed at the pharmacy.

#### Conclusion

2.102 Accordingly, the Committee determined that:

2.102.1 the application from Scripts Direct Ltd should be granted,

2.102.2 the application from Magna Healthcare Ltd should be refused.

2.103 Conditions attaching to the grant of Scripts Direct's application Schedule 2, Paragraph 31 – Address of the premises

2.104 The applicant must notify to NHS England the address of the premises to be included in the pharmaceutical list within 6 months of:

2.104.1 the date of this decision, or

2.104.2 if the grant of the application is appealed to the Secretary of State, the date on which the appeal is determined

- 2.104.3 whichever is the later.
- 2.105 Regulation 66(5) – Directed services
- 2.106 The person included in the pharmaceutical list in relation to the premises which are listed as a result of the application must:
- 2.106.1 provide the directed services mentioned in the application, and
- 2.106.2 not unreasonably withhold agreement to the service specifications for those services,
- 2.106.3 where NHS England commissions them within 3 years of the date the premises are included in the pharmaceutical list.
- 2.107 Regulation 65(4) – Core opening hours
- 2.108 NHS England has agreed to the applicant's proposal to offer 55.75 core opening hours and has granted the application having regard to that undertaking. Therefore upon the inclusion on the pharmaceutical list of the premises which are listed as a result of this application, NHS England will direct that the person included in the pharmaceutical list in relation to those premises is to provide pharmaceutical services at those premises during the following core opening hours:
- 2.108.1 Monday-Friday: 8.30am-6.45pm
- 2.108.2 Saturday: 8.30am-1pm
- 2.109 and during the following supplementary opening hours:
- 2.109.1 Monday-Friday: 8am-8.30am
- 2.110 By virtue of regulation 65(7), the direction relating to core opening hours may not be varied within 3 years of that direction.

### **3 The Appeal**

In a letter dated 26 July 2017 addressed to NHS Resolution, Magna Healthcare Ltd appealed against NHS England's decision. The grounds of appeal are:

- 3.1 The decision by NHS England (South West) pharmaceutical committee has not taken into consideration all the arguments Magna Healthcare raised with regards to accessibility of their proposed pharmacy against the one proposed by Scripts Direct. The committee has based its decision on assumptions which contravene the existing planning regulations. Below Magna Healthcare have referred to some of the points referred to by the committee in their decision letter to which they profoundly disagree.

Reserved location and viability of the proposed pharmacies:

- 3.2 The committee has rightly identified the location of the proposed Magna pharmacy to be non-reserved and that of Scripts Direct to be a reserved location.



- 3.3 While this is not a reason on its own to reject the application by Scripts Direct, this certainly should have bearing when choosing between the two applications.
- 3.4 The pharmacy proposed by Magna Healthcare will have the financial security and thus the community will have guaranteed pharmacy service for years to come.
- 3.5 The Scripts Direct pharmacy will not have any financial security and thus have huge question marks over its viability. The survival of the pharmacy is even more pertinent given the recent funding cuts to pharmacy and the extended opening hours Scripts Direct has committed. Scripts Direct has no experience of operating a pharmacy and has proposed this pharmacy with the only aim of fending off the application by Magna Healthcare Limited. It has no consideration of the sustainability of the pharmacy and most importantly the right of the community to have guaranteed access to the pharmacy.
- 3.6 In SHA/18516/18519 Mr Morley, also proposed superintendent of Scripts Direct Pharmacy, representing his client argued;
- “He suggested that 3,300 patients was the break-even point for an independent pharmacy and 4,000 for a multiple and these figures were assessed before the erosion of the practice allowance.”
- 3.7 These requirements were before the ongoing pharmacy cuts and was for the survival of a 40 hours pharmacy. The 55.75 hours opening offered by Scripts Direct means the pharmacy will need much bigger dispensing business in order to survive. Their proposed location means the pharmacy will not get passing trade and thus would almost exclusively rely on Woolavington surgery for their business. Their location offers very little to no scope for retail business as is customary to regular community pharmacies. If Magna Healthcare consider the initial arguments raised by Mr Morley, this would mean there would be a struggling branch surgery and a struggling pharmacy. It is also to be noted that neither Scripts Direct, the surgery nor Mr Morley have any experience of operating a pharmacy business.
- 3.8 Magna Healthcare have successfully started two community pharmacy in last three years, one being in rural location. Magna Healthcare have a complete business plan and a team ready to execute the proposed pharmacy.
- 3.9 The committee has also raised doubts about Magna Healthcare Limited actually offering the Stoma customisation service if it were to be awarded the grant. Magna Healthcare strongly object to this observation. Magna Healthcare are a responsible pharmacy operator and take their commitments seriously. Magna Healthcare currently offer this service through their existing branches and see no reason to why they cannot deliver this service in the Woolavington branch. This service is not offered by Scripts Direct Limited.
- 3.10 The committee is doubtful of whether the long opening hours offered by Magna on Saturdays are of any benefit. It states: “*Having noted that both applicants would be open on Saturday mornings, the Committee was doubtful that opening on Saturday afternoon was a significant additional factor.*”
- 3.11 Magna Healthcare do not concur with this assumption. This is against all the evidence available to reduce the pressure on A&E and 111 services. Magna

Healthcare find it staggering for the committee to not see any advantage in having a pharmacy open till 5pm on a Saturdays.

Premises:

- 3.12 The committee has concluded that neither party have clear advantage over the premises. Magna Healthcare strongly object to this. While we have provided evidence from our landlord (Sedgemoor District Council) of the agreement we have reached for a 15 years lease the response of Scripts Direct has been muddled. This has been acknowledged by the committee in its letter. The reality is there is no space for a pharmacy in the existing Woolavington surgery. This should have been evident in the site visit of which the committee have made no mention of. The assertion by the surgery that the surgery was designed to accommodate a pharmacy is misleading as there is no mention of pharmacy in any of the planning applications on record.
- 3.13 It is also contravened by Mr Morley's admission of potential extension of the surgery because of planning restrictions.
- 3.14 More importantly, the committee is wrong in accepting the assertion by Mr Morley that a community pharmacy is covered by category B use of the premises. Community pharmacy is classed a retail business and requires a category A use. This can only be achieved by full change of use application and has to go through the public consultation. Magna Healthcare have already given evidences of public opposition to the surgery being located at the current premises.

Access to the proposed pharmacies:

- 3.15 The committee view is based on the accessibility of the pharmacy following face to face consultation at Woolavington surgery. For this small group of patient, the surgery location will be more accessible on that particular instance. However, acute prescribing counts less than 20% (face to face consultation even lesser) thus for majority of the cases, (please refer to Magna Healthcare submissions to NHS England) the Magna Pharmacy will be more accessible. Magna Healthcare have explained all various possible scenarios in their submissions to NHS England. The committee have choose not to comment on the valid arguments.
- 3.16 The co-op has only moved 200yrds from the proposed location of Magna pharmacy and there is a new business (fish and chips) opening next door to the proposed location. Thus, the vicinity of Magna pharmacy will still be the centre of activity in the village.
- 3.17 The committee has rightly acknowledged, as has been by different statistical reports, that the location proposed by Magna is indeed the most deprived part of the village, with higher than usual elderly and disabled population. It is beyond common sense that these groups of population would be better served by having a pharmacy located outside the village than at the centre of the village. The Woolavington surgery has a 28 day prescription policy thus these and other residents would have to travel to the surgery 13 times a year for the benefit of having their acute prescription dispensed at the surgery which they might not have any at all.

- 3.18 The committee, also refers to the objection letters from the patient group and the parish councils against the Magna Healthcare application. The FHSAU would be aware of cases where dispensing practices gets hundreds if not thousands of their patients and well-wishers to write against any pharmacy application that could compromise their financial interest. Magna Healthcare have given explanations, in their submissions to NHS England, to why the objections raised against their application are biased and are unfounded. Again, the committee have not mentioned these arguments but have choose to take the objections on face value.
- 3.19 The committee have seen the idea of 'hybrid pharmacy' as a holy grail. If anything it is a compromised version of pharmacy service usually resorted to by dispensing practices with limited space. These arrangements do not offer a full fledge pharmacy service with all the retail offerings as expected in a community pharmacies. The committee should have made the effort to visit one of these so called 'hybrid pharmacy' to appreciate the difficulties it presents to patients and staffs. Two patients (dispensing and non-dispensing) will have different access to the services offered at this premises. For example a non-dispensing patient will have the benefit of MUR, NMS and others services that will not be available to the dispensing patients.
- 3.20 Such arrangements also denies the opportunity to bring in new suppliers with new ways of working into the health economy. Healthy competition between providers are always a benefit to the patient and the commissioners.
- 3.21 To conclude, Magna Healthcare have got clear advantage of premises and are in a position to operate the pharmacy within three months of approval. Magna Healthcare have a team ready to execute the project with experience of starting up new pharmacies. The Script Direct pharmacy is financially unviable. They have serious issues to overcome primarily because there is no space and also no planning permission to operate community pharmacy at the proposed location. The Saturday opening Magna Healthcare have proposed will greatly increase access and help to alleviate pressure on A&E and other out-of-hours services. The location means Magna Healthcare will be more accessible than the surgery location to the elderly and disabled living predominantly in the south of the village.
- 3.22 Magna Healthcare would thus kindly request the FHSA to allow the appeal. Magna Healthcare would be willing to attend any oral hearing the FHSA might deem necessary.

#### 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 insofar as they are relevant and add to those received on the appeal.

##### 4.1 **NHS ENGLAND**

- 4.1.1 Regarding SHA/18748, please note that the correct description of the applicant's best estimate is "along the B3141 from the junction with Old Mill Road to the Cossington Lane junction or along the length of Windmill Crescent, Woolavington" rather than "in the vicinity of the Co-op Store, Windmill Crescent, Woolavington".

4.1.2 NHS England considers that its decision letter, which covered both applications, was very comprehensive and so we do not wish to make any particular representations regarding the appeals apart from to reiterate that – contrary to Magna Healthcare’s assertions – it is our assessment that the location of Magna’s best estimate is not the village centre.

4.1.3 In support of this view, and to assist the Appeal Unit more generally in its consideration of these appeals, we would draw your attention to the following which were considered by NHS England. Copies are attached to this letter:

4.1.3.1 a report of a site visit to Woolavington by an NHS England officer, including some photographs

4.1.3.2 a map of the topography of the village

4.1.3.3 a map showing the distribution of the population across the village, and also the locations of various village amenities

4.1.3.4 a map showing the distribution of residents aged 65+ across the village

4.1.3.5 National Statistics census area classifications for the different parts of the village.

4.1.4 We ask the Appeal Unit to confirm NHS England’s decisions.

## 4.2 SCRIPTS DIRECT LTD

4.2.1 Scripts Direct Ltd’s interests are significantly affected by the result of the two appeals by Magna Healthcare Ltd against NHS England’s determinations on the above two applications as they have extant consent granted to them by NHS England on 16/06/17.

4.2.2 Scripts Direct Ltd would say that the correct decision was made by NHS England. It’s determination on the 16th June 2017 stated that: ‘The application from Scripts Direct Ltd is granted. The application from Magna Healthcare is refused’ Scripts Direct Ltd will give their reasons why they believe NHS England was correct in its determinations in the following paragraphs.

4.2.3 Scripts Direct Ltd would say that it was not necessary for NHS England to grant two consents to join their Pharmaceutical List at Woolavington.

4.2.4 Mr Morley and Scripts Direct have had a long association with the Practice. The Practice has no relationship with Magna Healthcare Ltd.

4.2.5 The Practice robustly supports the Pharmaceutical Application by Scripts Direct Ltd and definitively, at the very least, does not support the Pharmaceutical Application by Magna Healthcare Ltd.

4.2.6 In Scripts Direct Ltd opinion the application from Scripts Direct Ltd is far superior to that of Magna Healthcare Ltd in professionalism and

quality in general and in particular Scripts Direct Ltd have better and longer opening hours. Scripts Direct Ltd have guaranteed to the practice that they will always at least mirror surgery hours.

- 4.2.7 Scripts Direct Ltd have a contractual agreement if consent should be granted to Scripts Direct Ltd to establish a pharmacy co-located inside the surgery.
- 4.2.8 The Practice believes that only one consent should be granted in Woolavington and that should be to Scripts Direct Ltd.
- 4.2.9 The surgery have commissioned plans for a pharmacy as a template if and when consent to join the Pharmaceutical List of NHS England at the surgery site is granted.
- 4.2.10 Patients are accustomed to accessing their medical services from the surgery at Woolavington. Scripts Direct Ltd.'s co-located pharmacy would enable patients, whether prescribing or dispensing, to conveniently access the full range of pharmaceutical services.
- 4.2.11 The practice has acknowledged to Mr Morley that the pharmacy will be available for any eligible patients, wherever they access their medical services. The pharmacy will have its own independent entrance and will therefore be capable of being open or closed irrespective of whether the Practice is open or closed.
- 4.2.12 The Practice has a delivery service up and running to help with the delivery of medication to those patients whom request it. Scripts Direct Ltd will also be offering a comprehensive delivery service to all those who request it. The surgery is on one of the main roads in and out of Woolavington so it is very accessible and has a good level of passing traffic.
- 4.2.13 In response to the specific issues raised by Magna Healthcare Limited's appeals in their letter 26th July 2017 Scripts Direct Ltd would say:
  - 4.2.13.1 Nothing proposed in Scripts Direct Ltd's application would contravene existing planning regulations in general and in particular Scripts Direct Ltd have made no admission that a potential extension of the surgery is required because of planning restrictions.
  - 4.2.13.2 There are dozens of examples of collocated Healthcare pharmacies having been covered by category 01 use of premises, ancillary to medical services. Category A use is only required where the community pharmacy is not collocated with a surgery practice i.e., not ancillary to medical services.
  - 4.2.13.3 The appellant is wrong both in his understanding of the law and the assertion that the committee were wrong in accepting my assertion that a health care pharmacy collocated with a surgery is covered by category 01 . Subject to consent by the practices concerned Scripts Direct Ltd can adduce

many examples to prove their assertion and enclose a recent case to demonstrate that the appellants claim is erroneous.

4.2.13.4 The financial viability or otherwise is out with the decision making process of NHS Resolution. The Pharmaceutical Services Regulations are silent on this matter. However Scripts Direct Ltd would dispute that their pharmacy will be financially unviable especially utilising the Hybrid model. On the other hand the same questions of viability could be raised regarding Magna Healthcare's application especially since they are not collocated with the surgery and do not have the benefits of cost savings associated with Hybrid pharmacy.

4.2.13.5 The appellant makes the confusing assertion that because the practice has a 28 day prescription policy patients have to visit the surgery 13 times a year for the benefit of having their acute prescriptions dispensed at the surgery. By definition acute prescriptions are only dispensed when a patient presents for an acute consultation. All patients with repeat or chronic prescriptions will be offered a delivery service by Scripts Direct.

4.2.13.6 The appellant does not understand the concept of a Hybrid Pharmacy. It is quite clear from GPhC guidance and case law that the whole of the footprint of the Hybrid Pharmacy is a registered pharmacy. That the Responsible Pharmacist is responsible for all the prescriptions and all the patients presenting to the Hybrid Pharmacy. It is therefore axiomatic that all patients will have the benefit, if they so choose, to enjoy full pharmaceutical services. A dispensing patient has the right to enjoy dispensing services provided by a pharmacist and could in the event-making that choice benefit from the availability of Advanced and Enhanced Services offered by the pharmacy. Therefore there is internal competition and patients still have a choice.

4.2.13.7 Scripts Direct Ltd would dispute that the appellant has clear advantage of premises and that his proposed location is more accessible than that of the surgery.

#### Summary and Conclusion

4.2.14 Scripts Direct Ltd do not intend to reiterate all the above points however it is quite clear from the facts available to the committee that my application in general and its opening hours in and access to Pharmaceutical Services in particular are far superior to that of Magna Healthcare Ltd.

4.2.15 Scripts Direct Ltd believe on that at least the balance of probabilities that NHS England made the correct determination to grant the application from Scripts Direct Ltd refuse the application from Magna Healthcare Ltd.

4.2.16 Scripts Direct Ltd respectfully invite the Authority to refuse both appeals by Magna Healthcare Ltd.

4.2.17 Scripts Direct Ltd confirm their willingness to attend an NHSLA oral hearing if such should be constituted.

#### 4.3 POLDEN MEDICAL PRACTICE

4.3.1 On behalf of the Practice we would say the following:

4.3.2 The Practice's interests are significantly affected by the result of the two appeals by Magna Healthcare Ltd against NHS England's determinations on the above two applications.

4.3.3 NHS England's determination on the 16th June 2017 that 'The application from Scripts Direct Ltd is granted The application from Magna Healthcare is refused' the Practice would say is the correct decision. The Practice will give our reasons for this in the following paragraphs.

4.3.4 In the Practice's opinion the application from Scripts Direct Ltd is far superior to that of Magna Healthcare Ltd in professionalism and quality in general and in particular Scripts Direct Ltd have better and longer opening hours. They have guaranteed to the Practice that they will always at least mirror surgery hours.

4.3.5 The surgery has had, for a considerable period of time, plans drawn up for a potential pharmacy if and when consent to join the Pharmaceutical List of NHS England at the surgery site was granted. the Practice attach the plans to aid the Authority.

4.3.6 Scripts Direct Ltd and its Director is well known to the Practice and they have a contractual agreement if consent should be granted to Scripts Direct Ltd for them to establish a pharmacy co-located inside the surgery.

4.3.7 The Practice has no relationship with Magna Healthcare Ltd. For the avoidance of any doubt the Practice believes that only one consent should be granted in Woolavington and that should be to Scripts Direct Ltd.

4.3.8 Patients are accustomed to accessing their medical services from the Practice. Scripts Direct Ltd.'s co-located pharmacy would enable the Practice's patients, whether prescribing or dispensing, to conveniently access the full range of pharmaceutical services.

4.3.9 The Practice acknowledge that the pharmacy is available for any eligible patients, wherever they access their medical services and therefore the pharmacy will have an external door for access to the pharmacy. The pharmacy will be capable of being open or closed irrespective of whether the Practice is open or closed.

4.3.10 The Practice has a delivery service up and running to help with delivery to those patients whom request it. The Practice understand that Scripts Direct Ltd will also be offering a comprehensive delivery service to all those that request it. The surgery is on one of the main roads in and out of Woolavington so it is very accessible and has a good level of passing traffic.

4.3.11 Overall the Practice's concern about the other pharmacy is the inconvenience of patients with the need for an acute prescription having to make a separate trip to the pharmacy, after going to the surgery. This would be a very major problem for the less able and more dependent patients perhaps dependent on a neighbour for transport or those without transport. This is particularly important for those patients attending appointments at the end of the day.

#### Summary and Conclusion

4.3.12 The Practice robustly supports the Pharmaceutical Application by Scripts Direct Ltd and definitively, at the very least, does not support the Pharmaceutical Application by Magna Healthcare Ltd.

4.3.13 The Practice believe on that at least the balance of probabilities that NHS England made the correct determination to grant the application from Scripts Direct Ltd refuse the application from Magna Healthcare Ltd

4.3.14 The Practice respectfully invites the Authority to refuse both appeals by Magna Healthcare Ltd. The Practice confirm their willingness to attend an NHSLA oral hearing if such should be constituted.

#### 4.4 POLEN MEDICAL PRACTICE PATIENT PARTICIPATION GROUP ("PPG")

4.4.1 The PPG can confirm that the Patients' Group are still in full support of the application by Scripts Direct Ltd and not in favour of the alternative application by Magna Healthcare Ltd. All the reasons in the original support (17th April 2017) and objection (19th December 2016) letters still stand. Copies are attached for ease of reference. Furthermore the PPG attended a meeting of the Upper Woolavington Residents Association on 21st February 2017. This association is for the people in the Windmill Crescent part of the village and is the area, and the people, mentioned in the letter to FHS AU from Magna Healthcare Ltd dated 26th July 2017 as being "...the most deprived part of the village, with higher than usual elderly disabled population." All present at that meeting were in favour of a pharmacy being located adjacent to the surgery environs and not in the old Co-Op site. The PPG was there to observe views and answer any questions that they may have had, but none were asked and the PPG made no representations of behalf of the Practice. The opinions expressed were their own and without influence.

4.4.2 As a Patients' Group we take exception to the comments "The FHS AU would be aware of cases where dispensing practices get hundreds if not thousands of their patients and well-wishers to write against any pharmacy application that could compromise their financial interest.....". The PPG are totally independent from the Practice and form our own views and opinions on all aspects of the service provided. The Practice was aware at the outset that the PPG would be researching the Magna proposal and forming a view after that was done and we had spoken to other interested parties and patients. You will see that there was no orchestrated deluge of representations from well-wishers. If the Magna Healthcare proposal were the preferred option of this group and of the patients we would have no hesitation in



supporting it. The simple truth is that it is not, but patients are very keen to have a full pharmacy service in house at the site of the surgery.

- 4.4.3 The PPG are confident that the surgery site is able to be developed to accommodate the new pharmacy and that change of use from a class D1 to A1 for a portion of the premises is within permitted development.
- 4.4.4 The financial security referred to by Magna Healthcare Ltd is still by no means evident. The company has a net worth of £6437 i.e. negligible.
- 4.4.5 In summary, the PPG continue to support the Scripts Direct Ltd application.

In a letter to NHS England dated 17 April 2017 in respect of the application by Scripts Direct, Polden Medical Practice PPG stated:

- 4.4.6 The provision of a pharmacy service is one which the PPG have looked at in some detail recently because of the application by Magna Healthcare Ltd for a pharmacy in the Windmill Crescent vicinity (CAS-23180-K3S9W5). Whilst this application would have given benefits to patients in the wider practice area, those 3400 patients within 1.6km of that proposed site would have been at a disadvantage as they would no longer be able to collect prescriptions from the surgery premises, as would the Polden Medical Practice itself with loss of revenue. The PPG also had concerns about the impact loss of dispensing revenue may have on the practice which would impact on all patients. As both applications are being considered together the PPG are aware that [NHSE] will have their letter opposing this application to hand so the PPG will not repeat any further comments here.
- 4.4.7 The Scripts Direct Ltd proposal overcomes all of the issues highlighted previously by providing the undoubted benefits of full pharmacy services to all patients without any loss of convenience or benefit to the 3400. It also strengthens the Polden Medical Practice itself by increasing the services it is able to offer to patients and will increase revenue.
- 4.4.8 The PPG therefore see every reason to wholly support the Scripts Direct Ltd application without any reservation.

In a letter to NHS England dated 19 December 2016 in respect of the application by Magna Healthcare Ltd Polden Medical Practice PPG stated:

- 4.4.9 Initially, the proposal looks attractive in that it is bringing something to the community that we don't currently have. For those of us who are not amongst the 3400 there is a choice in how we may access prescriptions and any other facilities and services provided can only be a bonus. However, we have taken some time to talk to people (via personal contacts, social media, and attending Parish Council meetings) amongst the 3400 in the 1.6km radius for their views and it would seem the vast majority are not happy about the proposal for the following reasons.

- 4.4.10 The Woolavington surgery is at the bottom of a hill and the proposed site of the pharmacy is at the top of this hill. This makes it at best inconvenient and in some cases actually difficult to collect prescriptions due to age, disability, illness etc.
- 4.4.11 The bus service between these two sites only operates every 2 hours, so using public transport to access the surgery and then have to collect medication from a different site is not an easy option. Those relying on friends and relatives to provide transport do not want to have to ask to be taken to different sites.
- 4.4.12 The PPG are aware that the pharmacy intends to provide a delivery service; the PPG understand that this is a discretionary service and isn't an obligation or legal requirement and is therefore not a guaranteed service. More importantly, it doesn't help in the case of acute prescriptions.
- 4.4.13 The PPG have been asked to forward these comments to you by Mrs Carol Pilbrow.

*"I would like to register my objection to plans by Magna Healthcare to open a pharmacy on the Co-op site in Woolavington. We recently moved to Woolavington, very close to the GP practice. My husband has Parkinson's Disease and dementia. As a Carer, being unable to collect his prescriptions from the surgery will be a massive extra burden. I have asthma and COPD and the walk to the proposed site is all uphill. Maybe the new pharmacy would deliver, but we do not know if that will happen and it will add a further complication for us.*

*If it is felt that this pharmacy is necessary for whatever reason, please amend NHS rules to allow disabled patients and carers to obtain prescriptions from a surgery dispensary, even if there is a pharmacy less than a mile away.*

*We thought we had moved to make our lives easier and now we hear this. Please take the views of local residents into consideration in this case, before making a decision."*

- 4.4.14 When speaking to local people it's clear that the provision of a pharmacy isn't on their wish list for the area. The facilities they want to see are more social and recreational, e.g. sports fields, a sports pavilion, a pub.
- 4.4.15 Whilst the PPG are aware that the site of the existing Co-op is not the definite proposed location, many residents would prefer to see this site utilised for something else rather than something that they consider will be of no benefit or indeed an inconvenience. The following comments from Ms Diane Woosley summarise this point.

*"This is not necessary and it makes it very inconvenient for patients not to be able to pick up Px whilst at the surgery. The building could be useful to the community, maybe baker, cake shop, cafe, or wool shop and other crafts, place to sell handicrafts made by local people? etc. It would be much too big for a pharmacy and needs a dispensing*

*chemist to give out prescription medicines so that would limit the availability to the community.”*

- 4.4.16 A few people have raised the concern that the pharmacy will not be able to hand over prescriptions if the pharmacist is at lunch or away from the site for any reason.
- 4.4.17 The Patients' Group main concern relates to the impact opening a pharmacy will have on the running of the Polden Medical Practice itself. The loss of 3400 dispensing patients is going to have a negative impact on the practice income and will result in a loss of jobs. One could argue that this will not impact on patients, however, the PPG have to understand and accept that a GP Partner run surgery is a business. The Practice has two GP partners retiring within the next couple of years and they have to be replaced. In view of the huge shortage of GPs that we are currently experiencing nationally, competition is fierce and the PPG have to make the practice, i.e., this business, look attractive financially and as a career. A reduction rather than expansion of the services that the practice are providing is not going to attract. The practice is already at a disadvantage in being a rural practice in the South West. Not being able to recruit GPs has a very direct impact on patients.
- 4.4.18 Turning to Magna Healthcare Ltd specifically the PPG are concerned about the financial stability of the company. The PPG are sure [NHSE] have your own criteria that you apply to assess financial stability and therefore the viability of an applicant but the PPG are concerned that this is a 2 year old limited company with £2 issued share capital. The filed accounts to their financial year end 31st January 2015 show illiquidity and insolvency due to a retained loss. Whilst this is not unusual for a 1 or 2 year old company, it is more usual to have a proven trading record and a strong financial base, preferably in the form of issued share capital, before embarking on expansion. If the surgeries suddenly had to take up the dispensing needs of the 3400 patients again because of the failure of the company they would not have the resources to do so. This would impact on the whole patient list.
- 4.4.19 The Polden Medical Practice is now going to bring forward a plan for its own in-house pharmacy at the Woolavington surgery. The provision was made when the surgery was built so it's something that can be accommodated with relative ease. This will give the whole community and all patients all of the benefits of a pharmacy service but without any of the inconveniences to local people or risks to GP services that the Magna Healthcare Ltd application for an off-site pharmacy has.
- 4.4.20 In conclusion, having taken all of the obvious benefits into consideration, the PPG feel that they must object to this licence application. It will not provide the best service to all of the patients and risks impacting negatively on core services by making it more difficult to recruit GPs and staff. This is even more keenly felt in light of the application being made by the practice for its own pharmacy.

#### 4.5 WOOLAVINGTON PARISH COUNCIL

- 4.5.1 At the Meeting of Woolavington Parish Council held on 13th December 2016, Members considered information provided by NHS England regarding an application from Magna Healthcare Ltd for a licence to operate a NHS Community Pharmacy in the vicinity of Windmill Crescent.
- 4.5.2 The Parish Council were aware that a similar application was to be submitted to provide a Community Pharmacy attached to Woolavington Surgery in Higher Road. After discussion, the Council decided to object to the Magna Healthcare application. Members recognised that there was a need for a pharmacy in Woolavington but felt that it would be preferable for it to be located at the surgery where it could be integrated with existing services.
- 4.5.3 At the Meeting of Woolavington Parish Council held on 18th April, Members considered information provided by NHS England regarding an application from Scripts Direct Ltd for a licence to operate a NHS Community Pharmacy in the vicinity of Woolavington Surgery, Higher Road, Woolavington.
- 4.5.4 The Parish Council decided to fully support this application. Members confirmed that there was a need for a pharmacy in Woolavington and felt that the surgery would be the preferable location. This would avoid the negative impact which would be experienced by existing patients having to visit separate locations, some distance apart, involving a steep incline, to obtain a prescription and acquire their medication. It was noted that people registered with other medical practices could also acquire their medication there and avoid the need to travel to Bridgwater or Highbridge.

## 5 Observations

### 5.1 MAGNA HEALTHCARE LTD

- 5.1.1 The one-mile radius around the proposed location includes the village of Woolavington, Cossington and Bawdrip. In submissions to NHS England (11th Jan 2017 and the subsequent letters – see Appendix A) Magna Healthcare Ltd has detailed all the situations when the residents of these three villages will need to access a pharmacy. Magna Healthcare Ltd have also detailed how and why in most of the situations, the location proposed by Magna Healthcare will be more accessible than the surgery site. The opposing parties have not objected to the scenarios Magna Healthcare Ltd have described. More importantly for those who are not registered with the Woolavington surgery (one quarter of the population in the one-mile zone) the proposed location will be more accessible. The Scripts Direct application was in direct response to the application from Magna Healthcare Ltd thus is bound make it look advantageous, hence the slightly extended opening hour. However, it does not offer the extended Saturday opening as is offered by Magna Healthcare. Magna Healthcare Ltd can also assure the appeal committee and NHS England that if the surgery was to review their opening hours in future then Magna Healthcare Ltd will be happy to reflect that in their proposed opening time. The Script Direct application is in direct response to the Magna Healthcare Ltd application because Mr Morley

initially objected the idea of having a pharmacy in Woolavington thus he could not have had a plan for pharmacy while outright objecting the idea at first.

- 5.1.2 With regards to the planning consent required for the change of use, Magna Healthcare Ltd assertion is based on the advice they have received on the current planning policy and thus they stand with their argument. Magna Healthcare Ltd would let the committee make a decision on this.
- 5.1.3 The financial protection provided by the one-mile rule will not be available to the pharmacy proposed by Scripts Direct and thus would always rely on financial backing of the surgery. Whereas, the pharmacy proposed by Magna Healthcare Limited will have the dispensing right to the residents within one-mile radius thus will always survive independent of any goodwill arrangement with other business entity.