

26 February 2024

8th Floor
10 South Colonnade
Canary Wharf
London
E14 4PU

REF: SHA/26094

**APPEAL AGAINST NORTH EAST AND CUMBRIA ICB
DECISION TO REFUSE AN APPLICATION BY
EXPERTCARE LIMITED FOR INCLUSION IN THE
PHARMACEUTICAL LIST OFFERING UNFORESEEN
BENEFITS UNDER REGULATION 18 AT ELM TREE
CENTRE, ELM TREE AVENUE, STOCKTON ON TEES,
TS19 0UW**

Tel: 0203 928 2000
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1 Outcome

- 1.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of the ICB and redetermines the application.
- 1.2 The Committee determined that the application should be granted.

A copy of this decision is being sent to:

Rushport Advisory LLP on behalf of Expertcare Limited
Stockton on Tees LPC
PCSE on behalf of North East and Cumbria ICB

Advise / Resolve / Learn

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

2 **Site Visit**

The Pharmacy Appeals Committee ("Committee") appointed by NHS Resolution visited Stockton on Tees on the morning of Saturday 20th January 2024.

- 2.1 The visit began at the proposed site at Elm Tree Centre (Elm Tree) which is located next to a public house and a parade of shops including a hairdressers and Morrison's Daily. There were a number of car parks within the vicinity of the buildings with plenty of spaces available. Elm Tree was surrounded by high density mixed housing estates of varying age and included both social and private housing. Committee Members noted that the majority of houses had cars parked outside.
- 2.2 There were bus stops for the number 59 bus located on both sides of the road outside of Elm Tree. The 59 bus runs every 15 to 20 minutes Monday to Friday and approximately every 20 minutes on Saturday.
- 2.3 Committee Members then drove to Fairfield pharmacy, which took approximately 5 minutes. Although Fairfield pharmacy is just over a mile away, it is in what could be described as another catchment area. It is surrounded by social housing and there were no parking spaces. Cars were parked either on pavements or partly off road. There was a school next to the pharmacy, which may further impact upon the availability of parking at certain times of the day. There was a large dispensing area inside the pharmacy and a consulting room. The choice of retail products was limited. The pharmacy was relatively busy with people picking up their medications. There was no bus stop within the immediate vicinity of the pharmacy.
- 2.4 Committee Members then drove to Newham pharmacy, which was located just over 2 miles away in the Hardwick area, opposite the site of the University Hospital of North Tees. There was minimal parking available and it was clearly in a different catchment area to Elm Tree.
- 2.5 Finally, Committee Members travelled to the town centre where the majority of the GP practices are located. There are a number of pharmacies around the GP practices. The journey took approximately 10 minutes by car and is under 2 miles using the most direct route. It is also accessible by public transport with the number 59 bus travelling directly from Elm Tree to the town centre. If a patient was walking from Elm Tree to the town centre, it is not easily accessible due to the roads being very busy and a lack of pavements across the route. However, if a patient was starting their journey immediately after visiting the GP practice in the town centre, it would be easily accessible.
- 2.6 Committee Members noted that Stockton-on-Tees is a considerably large town centre and this is also reflected in the traffic and nature of the routes into the centre.

- 3 A summary of the above observations was provided to those in attendance. They were invited to comment upon them. No comments or observations were made.

4 **Oral Hearing Submissions**

Mr Daly provided representations on behalf of Mr Aziz, the Applicant, referring to the information provided in the bundle.

- 4.1 He first provided some background in terms of the number of pharmacies closing across the country referring to the recent news of Lloyds pharmacy going into liquidation. He pointed out that the decision to close Lloyds in the nearby Sainsbury's was not due to a lack of demand but rather a corporate policy. He explained that there also used to be a GP practice about 10 years ago at Elm Tree and there had been complaints at the time about poor access to healthcare services when it closed.
- 4.2 He referred to the reduction of healthcare services across the wider area with no GP practices at all in the western area of Stockton. In terms of Fairfield and Newham pharmacies, he referred to the Committee Members observations about the areas that they are situated in and how they are clearly different neighbourhoods. The population of the area is 32,700 and has above average areas of deprivation and high numbers of residents over the age of 60, young children and those classified as disabled. He said that the data equates to 1 pharmacy for every 16,100 patients, which is "astonishingly high" and in an area with higher than average health needs. He referred to the map on p42 of the bundle which shows a lot of services in the vicinity, such as schools and lots of social housing, however few healthcare services.
- 4.3 Mr Daly invited Mr [redacted by NHS Resolution], a local resident, to describe to the Committee the impact that the closure of Lloyds pharmacy in Sainsbury's has had on the community.
- 4.4 Mr [redacted by NHS Resolution] explained that residents used to travel to Sainsbury's by bus or car and would do their shopping and pick up their prescriptions at the same time. He said that he and others now have to travel to Fairfield which presents difficulties including parking because of the school. Mr [redacted by NHS Resolution] informed the Committee about a single parent he knew who would previously travel to Sainsbury's by bus to do her shopping and pick up her medications at the same time. However, recently she had to take a taxi to Fairfield pharmacy and when she arrived the medication for her children was not ready. This meant she had to return in another taxi which she could not afford as she was on benefits. He said that Sainsbury's was very central and was on the main bus route so it was easily accessible. However, to take a bus to either Fairfield or Newham pharmacies is more difficult and not a straightforward route.
- 4.5 In response to a question from Mr Badenhorst about convenience, Mr [redacted by NHS Resolution] said he could cope with the additional travel and inconvenience but referring back to the example of the single parent, it was more than that for many. Mr Aziz added that he has seen a significant increase in prescriptions since the closure of Lloyds, which has prevented him from being in a position to offer Pharmacy First from 31st January because of the additional workload.
- 4.6 Mr Daly referred to Mr [redacted by NHS Resolution]'s comment about being able to cope and reminded the Committee that convenience was a consideration in the old regulations. He referred to the High Court's view that something can be so inconvenient that it can impact accessibility of services.
- 4.7 Mr Daly said that 20% of the local population do not have access to a vehicle and would have to pay for public transport. He referred to the letter from 2 local councillors in the bundle both of whom were supportive of the application in recognition of the value it would add to the local population. He also raised the Pharmacy First service and in an

area where there is no GP surgery, being able to access that service would be highly beneficial to the population.

- 4.8 He reminded the Committee that the key tests to consider under Regulation 18, are access and reasonable choice. In terms of Fairfield pharmacy, residents in Elm Tree would have to take 2 buses to get there. He said that there are also no other services in that area and is positioned on its own. Newham pharmacy is not easily accessible which is demonstrated by the fact that the number of items dispensed has not increased significantly since the closure of Boots and Lloyds. He concluded that this is a very densely populated area which does not have good access or reasonable choice in terms of pharmacy services.
- 4.9 Mr Badenhorst asked Mr Daly about the PNA's conclusions that they had not identified a gap in services. Mr Daly responded by pointing out that filling a gap is not a test under the regulations, however he does not agree with the conclusions in the PNA for the reasons laid out in the application. Mr Badenhorst suggested that Pharmacy First services could be provided remotely and asked what additional benefit would be provided by granting the application. Mr Daly responded that the application is about providing pharmaceutical services in an area that currently does not have any.

Mr Badenhorst was in attendance as Chair of the LPC.

- 4.10 Mr Badenhorst explained that the LPC had provided representations initially but they failed to meet the deadline. When asked what those representations were, Mr Badenhorst explained that at the time of the application, Lloyds pharmacy had not closed so the LPC did not feel that there was a need for another pharmacy in the area. When asked what the updated position was for the LPC at the hearing, taking into account that Lloyds pharmacy has now closed, Mr Badenhorst stated that he was not able to provide representations on behalf of the LPC. Mr Daly asked Mr Badenhorst why he thought that no other pharmacy had objected to this application. Mr Badenhorst responded that he was unable to talk on behalf of other contractors.
- 4.11 Mr Daly asked Mr Badenhorst whether he had any conflicts in relation to this application. Mr Badenhorst confirmed that he was a director, shareholder and superintendent for Whitworth pharmacy which is located in the centre of Stockton on Tees. He did not think there was any conflict however, because the company was in the process of being sold. When asked why no representations were made previously on behalf of Whitworth, he said it was for the same reason as the LPC in that he was on holiday at the time so was not able to submit any before the deadline. He stated that he was the only person who could have provided any for either the LPC or Whitworth. He agreed that pharmaceutical services in the community were important as it is the front door to health services. He also agreed that there were health inequalities in the area. However, when asked about the importance of equitable access he said he was not in a position to comment on this despite Mr Daly referring him to the statement about inequalities on the LPC website.
- 4.12 Mr Badenhorst was asked by the Committee about his previous reference to being able to provide Pharmacy First services remotely. He responded that there needed to be more pharmacies offering the service rather than the need to have more pharmacies. He referred to how accessing healthcare services has changed, however conceded that not all of these services could be provided remotely, for example a patient would need to provide a sample for a UTI. He also acknowledged that patients would experience a delay in receiving medication following a remote consultation.

Parties were invited to make closing submissions but had nothing further to add.

- 5.1 The Committee had before it the papers considered by the ICB, together with a plan of the area showing existing pharmacies and doctors' surgeries and the location of the proposed pharmacy.
- 5.2 It also had before it the responses to NHS Resolution's own statutory consultations.
- 5.3 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations").

Regulation 31

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

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

(2) This paragraph applies where -

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

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

(ii) adjacent premises; and

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

- 5.5 The Committee noted that in response to the question of Regulation 31 the Applicant had stated "Does not apply as there are no other pharmacies nearby". The Committee noted that the ICB had stated that Regulation 31 "is met" in its decision letter. The Committee noted that this had not been disputed either on appeal or in subsequent representations. On the basis of the information before it, the Committee determined that it was not required to refuse the application under the provisions of Regulation 31.
- 5.6 The Committee noted that, if the application were granted, the successful Applicant would - in due course - have to notify the ICB of the precise location of its premises (in accordance with paragraph 31 of Schedule 2). Such a notification would be invalid (and the applicant would not be able to commence provision of services) if the location then provided would (had it been known now) have led to the application being refused under Regulation 31.

Regulation 18

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

"(1) If—

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

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

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

(2) *Those matters are—*

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

granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant pharmaceutical needs assessment was published;
- (c) *whether it is satisfied that it would be desirable to consider, at the same time as the applicant's application, applications from other persons offering to secure the improvements or better access that the applicant is offering to secure;*
- (d) *whether it is satisfied that another application offering to secure the improvements or better access has been submitted to it, and it would be desirable to consider, at the same time as the applicant's application, that other application;*
- (e) *whether it is satisfied that an appeal relating to another application offering to secure the improvements or better access is pending, and it would be desirable to await the outcome of that appeal before considering the applicant's application;*

- (f) *whether the application needs to be deferred or refused by virtue of any provision of Part 5 to 7.*
 - (g) *whether it is satisfied that the application presupposes that a gap in pharmaceutical services provision has been or is to be created—*
 - (i) *by the removal of chemist premises from a pharmaceutical list as a consequence of the grant of a consolidation application, and*
 - (ii) *since the last revision of the relevant HWB's pharmaceutical needs assessment other than by way of a supplementary statement.*
 - (3) *The NHSCB need only consider whether it is satisfied in accordance with paragraphs (2)(c) to (e) if it has reached at least a preliminary view (although this may change) that it is satisfied in accordance with paragraph (2)(b)."*
- 5.8 The Committee considered that Regulation 18(1)(a) was satisfied in that it was required to determine whether it was satisfied that granting the application, or granting it in respect of some only of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB.
- 5.9 The Committee went on to consider whether Regulation 18(1)(b) was satisfied, i.e. whether the improvements or better access that would be secured if the application was granted were or was included in the Pharmaceutical Needs Assessment ("the PNA") in accordance with paragraph 4 of Schedule 1 of the Regulations.
- 5.10 Paragraph 4 of Schedule 1 requires the PNA to include: "*a statement of the pharmaceutical services that the HWB had identified (if it has) as services that are not provided in the area of the HWB but which the HWB is satisfied (a) **would** if they were provided....secure improvements or better access, to pharmaceutical services... (b) **would** if in specified future circumstances they were provided...secure future improvements or better access to pharmaceutical services...*" (emphasis added).
- 5.11 The Committee considered the PNA prepared by Stockton on Tees 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 1 October 2022 and that a supplementary statements had been issued in August 2023.
- 5.12 The Committee noted that the 2022 HWB had considered the localities as identified previously in the 2018 PNA and determined that there should be two localities for the 2022 PNA; S1: Stockton on Tees North and S2: Stockton on Tees South. It was noted that the proposed site of the pharmacy is situated in the locality of S2: Stockton on Tees South.
- 5.13 The Committee noted the section 10 of the PNA "Shaping the future: Statement of Need for Pharmaceutical Services in Stockton on Tees" which states:
- "10.2 Statement of need: pharmaceutical need for essential services provided by community pharmacy contractors*

10.2.1 Borough of Stockton on Tees – all localities

...

The HWB considers that there is sufficient choice of both provider and services available to the resident and visiting population of both localities of Stockton-on-Tees.

Taking all into account, based on current needs, there are no gaps in pharmaceutical service provision that could not be addressed through the existing providers and commissioned services. There is therefore no current need for any new providers of pharmacy services.

..."

5.14 The Committee noted that the Applicant seeks to provide unforeseen benefits to those in the area surrounding Elm Tree. 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.

5.15 In order to be satisfied in accordance with Regulation 18(1), regard is to be had to those matters set out at 18(2). The Committee's consideration of the issues is set out below.

Regulation 18(2)(a)(i)

5.16 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"

5.17 The Committee noted that the ICB had stated "Regulation 18(2)(a&b) – are not met" and that this had not been expanded upon. The Committee noted that no party had sought to argue, either on appeal or in subsequent representations, that the granting of the application would cause significant detriment to the arrangements currently in place for the provision of pharmaceutical services.

5.18 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 ICB thereafter to plan for the provision of services would be affected in a significant way.

5.19 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)

5.20 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"

5.21 The Committee again noted that this had come under the consideration of ICB and that "Regulation 18(2)(a&b) – are not met" and again this had not been expanded upon. The Committee noted that no party had sought to argue that the granting of the

application would cause significant detriment to the arrangements currently in place for the provision of pharmaceutical services.

- 5.22 On the basis of the information before it, the Committee was not satisfied that significant detriment to the arrangements currently in place for the provision of pharmaceutical services would result from a grant of the application.
- 5.23 In the absence of any significant detriment as described in Regulation 18(2)(a), the Committee was not obliged to refuse the application and went on to consider Regulation 18(2)(b).

Regulation 18(2)(b)

- 5.24 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)

- 5.25 The Committee first considered the current service provision available in the Elm Tree area. Since the closure of Boots in 2022 and Lloyds pharmacy in 2023, there are 2 pharmacies that provide services in the area of West Stockton. These are:

5.25.1 Fairfield pharmacy located approximately 1 mile away next to a school and situated in a large housing estate. There is no bus stop nearby and parking was particularly challenging. There is no direct public transport route from Elm Tree. The pharmacy was dispensing approximately 14,500 items per month at the time of the application, which has since increased to 20,000 items per month; and

5.25.2 Newham pharmacy located approximately 2 miles north of Elm Tree in the Hardwick area and next to the University Hospital of North Tees. It is situated within another large housing estate. There is a bus stop nearby for the number 59 bus. There was minimal parking available. The pharmacy was dispensing approximately 10,000 items per month.

- 5.26 In the town centre there are 2 main areas of GP practices and pharmacies located approximately 2 miles from Elm Tree. In the north of the town centre Rowlands, Well,

Knights Queens Park and Knights pharmacy are located close to 5 GP practices. In the south of the town centre there is a second cluster of pharmacies including Synergise, Rowlands, Whitworth and another Rowlands near the other GP practices. The town centre is on the main bus route, number 59 which also serves Elm Tree.

- 5.27 None of the pharmacies have made any representations regarding the application.
- 5.28 There have been 2 pharmacies closed in the last 18 months. Boots closed in July 2022 and more significantly in terms of the Elm Tree area, Lloyds pharmacy which was situated within Sainsbury's. The supermarket is very large with ample parking and is on the main bus route for the area. When it closed, Lloyds was dispensing approximately 10,000 items per month.
- 5.29 The area is densely populated and the Committee heard evidence from a local resident that Sainsbury's is easily accessible because it is so central to that area. The Committee also heard evidence about the difficulties now being experienced accessing pharmaceutical services. Driving to Fairfield pharmacy is difficult because of the problems parking and the school being immediately next to it. In terms of public transport there is no direct bus route available and no bus stop outside.
- 5.30 The Committee also heard about the difficulties experienced by a single parent with young children who had to use a taxi to access pharmaceutical services incurring additional costs when she was in receipt of benefits.
- 5.31 The Committee recognised that access to pharmaceutical services is dependent upon where the individual's journey starts from. If a patient is looking to access a pharmacy immediately following a GP appointment, then there is a reasonable choice of pharmacies easily accessible on foot. Residents of Elm Tree would be required to use either private or public transport options in order to access face to face appointments with their GP practice. However, the Committee acknowledged that the majority of pharmaceutical services accessed by the public is not related to acute prescriptions, which is also evidenced by the higher than average numbers of items dispensed outside the Stockton town centre, particularly Fairfield and Newham pharmacies.
- 5.32 For those starting their journey from the vicinity of Elm Tree the Committee was of the view that, none of the pharmacies were easily accessible on foot. There were short cuts through the housing estates which would shorten the route and the pavements were generally in good repair. However, there were areas along the route into the town centre and to Fairfield pharmacy where there were no footpaths available.
- 5.33 The Applicant invited the Committee to consider the areas surrounding Fairfield and Newham pharmacies as separate neighbourhoods due to the size and nature of those areas. The Committee agreed and had noted that the journey from Elm Tree to Fairfield and Newham was not straightforward even by car. As previously referred to, there is no direct bus route to Fairfield from Elm Tree and to travel to Newham pharmacy on the number 59 bus is not a straightforward route. The Committee did not consider either pharmacies to be easily accessible by public transport.
- 5.34 The Committee acknowledged that the loss of a pharmacy does not necessarily mean that patients no longer have reasonable choice to pharmaceutical services. However, it concluded that patients living in and around Elm Tree are having access difficulties and do not currently have reasonable choice of pharmaceutical services.
- 5.35 The Committee was of the view that there is not reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB, such that it was satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits on persons.

- 5.36 In considering Regulation 18(2)(b)(ii) the Committee reminded itself that it was required to address itself to people who share a protected characteristic under the Equality Act 2010 (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation) having access to services that meet specific needs for pharmaceutical services that, in the relevant area, are difficult for them to access. Whilst the Applicant had not specifically identified groups with protected characteristics, there was evidence from a local resident about a single parent with young children having difficulty accessing services and incurring additional travel costs. The Committee noted from representations made that the area had a high number of elderly people and young children, which also includes a children's community centre and day care facility located at the Elm Tree Community Centre. The Committee were of the view that the need to make additional journeys on different public transport routes and the lack of parking at Fairfield and Newham pharmacies would present difficulties to disabled people or the elderly. The Committee also considered that people with learning difficulties may experience access problems if required to plan alternative journeys. Furthermore, those living in Elm Tree with protected characteristics would experience more access difficulties were they required to make journeys into the town centre to access pharmaceutical services. The Committee had regard to these comments but noted that there was little reference to services that meet specific needs. The comments on access were important and might apply to any persons as explained by the assessment as to the lack of reasonable access above. The Committee considered that there was not a robust body of evidence that enabled it to be satisfied that a pharmacy at the proposed site would convey significant benefits pursuant to Regulation 18(2)(b)(ii).
- 5.37 The Committee was therefore not satisfied that, having regard to the desirability of people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that are difficult for them to access, granting the application would confer significant benefits on persons.
- 5.38 In considering Regulation 18(2)(b)(iii) the Committee had regard to the desirability of innovative approaches to the delivery of pharmaceutical services. In doing so, the Committee would consider whether there was something more over and above the usual delivery of pharmaceutical services that might be expected from all pharmacies, some 'added value' on offer at the location.
- 5.39 The Committee noted that the Applicant was not submitting the application on the grounds of there being innovative approaches to the delivery of pharmaceutical services and had not identified any as a result.
- 5.40 The Committee was not satisfied that, having regard to the desirability of there being innovative approaches taken with regard to the deliverability of pharmaceutical services, granting the application would confer significant benefits on persons.

Regulation 18(2)(b) generally

- 5.41 The Committee noted that the PNA was written before the closure of both the Boots and Lloyds pharmacies. The Committee also noted the high number of items dispensed which was significantly more than the average number in England. The Committee was satisfied that this could be indicative of an under-provision in the current pharmaceutical services for this area.
- 5.42 The Committee received verbal representations from the LPC during the oral hearing and that the Chair of the LPC appeared to be of the view that whilst there was a need for more pharmaceutical services in the community, he did not support having another pharmacy. He also advised the Committee that he was not in a position to provide a revised opinion from the LPC following the closure of Lloyds and instead reiterated their position that they would not support the application due to there being a pharmacy in the immediate area. No cogent arguments were advanced by the Chair of the LPC in

terms of reasonable choice or why the application should be refused. In fact, the Committee found the LPC's position unhelpful to its considerations.

- 5.43 It concluded that significant benefits would be secured by granting the application in accordance with Regulation 18(2)(b). Specifically, it would provide better access to the current population of Elm Tree to pharmaceutical services in an area where there were limited healthcare services and there was not a reasonable choice to the residents in terms of obtaining pharmaceutical services.
- 5.44 The Committee was of the view that in accordance with Regulation 18(2)(b) the granting of this application would confer significant benefits on persons in the area of the HWB which were not foreseen when the PNA was published.

Other considerations

- 5.45 Having determined that Regulation 18(2)(b) had been satisfied, the Committee needed to have regard to Regulation 18(2)(c) to (e) and found that there were no other applications from other persons to consider, nor were there any appeals against applications pending.
- 5.46 No deferral or refusal under Regulation 18(2)(f) was required in this case.
- 5.47 The Committee had regard to Regulation 18(2)(g) and found that it did not apply in this case.
- 5.48 The Committee considered whether there were any further factors to be taken into account and concluded that there were not.
- 5.49 The Committee was satisfied that the information provided demonstrates that there is difficulty in accessing current pharmaceutical services such that a pharmacy at the proposed site would provide better access to pharmaceutical services.
- 5.50 The Committee had regard to Regulation 19(5) which states:
- If 18(2)(b) applies (granting would confer significant benefits) then 19(6) applies and you may grant the application.
- 5.51 The Committee had regard to Regulation 19(6) which states:
- (6) If the NHSCB is satisfied as mentioned in regulation 18(2)(b), it may grant the application notwithstanding that the improvements or better access were or was not included in the relevant pharmaceutical needs assessment.*
- 5.52 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 5.52.1 confirm the Commissioner's decision;
- 5.52.2 quash the Commissioner's decision and redetermine the application;
- 5.52.3 quash the Commissioner's decision and, if it considers that there should be a further notification to the parties to make representations, remit the matter to the Commissioner.
- 5.53 The Committee noted the decision of the ICB to refuse the application and they did not provide any grounds for that refusal or expand upon their reasons under the Regulations. In those circumstances, the Committee determined that the decision of the ICB must be quashed.

- 5.54 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 the ICB) or whether it was preferable for the Committee to redetermine the application.
- 5.55 The Committee noted that representations on Regulation 18 had been sought from parties by the ICB and representations had already been made by parties to the ICB in response. These had been circulated and seen by all parties as part of the processing of the application by the ICB. The Committee further noted that when the appeal was circulated representations had been sought from parties on Regulation 18.
- 5.56 The Committee concluded that further notification under paragraph 19 of Schedule 2 would not be helpful in this case.

6 DECISION

- 6.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of the ICB, for the reasons given above, and redetermines the application.
- 6.2 The Committee has considered whether the granting of the application would cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area covered by the HWB, or the arrangements in place for the provision of pharmaceutical services in that area and is not satisfied that it would.
- 6.3 The Committee determined that the application should be granted on the following basis:
- 6.3.1 In considering whether the granting of the application would confer significant benefits, the Committee determined that –
- 6.3.1.1 there is not already a reasonable choice with regard to obtaining pharmaceutical services;
- 6.3.1.2 there is no evidence of people having difficulty in accessing pharmaceutical services but not specifically due to sharing a protected characteristic; and
- 6.3.1.3 there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services;
- 6.3.2 Having taken these matters into account, the Committee is satisfied that granting the application would confer significant benefits as outlined above that would secure improvements or better access to pharmaceutical services.

Committee Chair

ANNEX A

REF: SHA/26094

**APPEAL AGAINST NORTH EAST AND CUMBRIA ICB
DECISION TO REFUSE AN APPLICATION BY
EXPERTCARE LIMITED FOR INCLUSION IN THE
PHARMACEUTICAL LIST OFFERING UNFORESEEN
BENEFITS UNDER REGULATION 18 AT ELM TREE
CENTRE, ELM TREE AVENUE, STOCKTON ON TEES,
TS19 0UW**

8th Floor
10 South Colonnade
Canary Wharf
London
E14 4PU

Tel: 0203 928 2000
Email: nhsr.appeals@nhs.net

1 The Application

By application dated 14 February 2023, Expertcare Limited (“the Applicant”) applied to NHS England for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at 18 Elm Tree Centre, Elm Tree Avenue, Stockton on Tees, TS19 0UW. In support of the application it was stated:

- 1.1 In response to why this application should not be refused pursuant to Regulation 31, the Applicant stated:
 - 1.1.1 “Does not apply as there are no other pharmacies nearby.”
- 1.2 “We operate a pharmacy in Stockton (Norton Glebe Pharmacy) and are aware that there is local concern about the lack of availability of pharmacy services in the area surrounding the Elm Tree Centre due to the closure of the only nearby pharmacy (Lloyds, Sainsburys).
- 1.3 The Elm Tree Centre is a significant neighbourhood shopping parade with local shops as well as the Elm Tree Community Centre and is the closest significant shopping parade and local centre to the Sainsburys store. Traditionally residents and patients would have gravitated east, towards the town centre, to obtain pharmaceutical services and most would use the Lloyds Pharmacy within Sainsburys/
- 1.4 Lloyds within Sainsburys traditionally dispensed 10,000 items per month, although this has stated to decline over recent time as the pharmacy was marked for closure.
- 1.5 The next nearest pharmacy would be Fairfield Pharmacy which is approximately 1 mile to the west or travelling approximately 2 miles to pharmacies in the town centre.
- 1.6 The Lloyds closure is due to the company deciding to close all of its Sainsburys locations rather than any lack of demand for pharmacy services. This closure will leave a large section of Stockton without reasonable access to pharmaceutical services and we want to maintain access for patients to pharmacy services.”

2 The Decision

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 <https://resolution.nhs.uk/privacy-cookies/primary-care-appeals/>



North East and Cumbria ICB considered and decided to refuse the application. The decision letter dated 20 September 2023 states:

- 2.1 “North East and North Cumbria ICB has considered the above application and I am writing to confirm that it has been refused. Please see the enclosed report for the full reasoning.”

Extract from the Pharmaceutical Services Regulations Committee (PSRC) decision

- 2.2 “The application was considered at PSRC on 30 August 2023, under Regulations 18 & 19 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 – unforeseen benefits: additional matters and consequences.
- 2.3 PSRC agreed that the application appeared to have been submitted based entirely on the closure of another pharmacy in the area. The applicant had not made a compelling case to satisfy the unforeseen benefits regulations, had not shown any innovation or offered any services over and above what the other pharmacies in the area are delivering.
- 2.4 Regulation 18(1)(a) – is not met
- 2.5 Regulation 18(1)(b)- is not met.
- 2.6 Regulations 18(2)(a&b) Are not met
- 2.7 Regulations 18(2)(c-f) are not applicable
- 2.8 Regulation 18(3) is met.
- 2.9 Regulation 31 is met.
- 2.10 Regulation 32 is not applicable
- 2.11 Regulation 40 is not applicable
- 2.12 Regulation 41-43 are not applicable
- 2.13 Regulation 44 is not applicable
- 2.14 Regulation 50 is not applicable
- 2.15 Regulations 65 is not applicable
- 2.16 Regulation 66 is not applicable as NHS England will not be directing services.
- 2.17 On the basis that:
- 2.17.1 the criteria under the relevant Regulation for unforeseen benefits (18) have not all been met by the contractor (or are not applicable).
- 2.18 PSRC rejected the application.
- 2.19 Appeal rights –
- 2.20 The applicant has appeal rights.”

3 The Appeal

In a letter dated 10 October 2023 addressed to NHS Resolution, Rushport Advisory LLP on behalf of the Applicant appealed against the ICB's decision. The grounds of appeal are:

- 3.1 "I act for Expertcare Limited in the above application and have been instructed by my client to submit this appeal along with the attached report and support letter which form part of the appeal.
- 3.2 The decision to refuse my client's application was received on 20 September 2023 and is also attached.
- 3.3 As the Committee will note, the decision report from NHS England is only 1 page long and does not discuss the merits of the application or the position locally in respect of pharmaceutical service provision. It likewise states the wrong legal test, requiring a "compelling case to satisfy the unforeseen benefits regulations" and appears to misunderstand the legal test that should have been applied.
- 3.4 My client has been engaging with local people during the course of this application process and this has led to the relevant local councillors who cover the area affected by the application consulting with their constituents about the availability of pharmaceutical services since the closure of the very well used Lloyds Pharmacy in the area. The councillors have had significant feedback from local people and have prepared the attached letter to support my client's application that sets out a brief summary of the issues reported to the councillors by patients. The councillors would also appreciate the opportunity to speak on behalf of local residents at an oral hearing and we ask that the Committee does provide for such a hearing if there is any doubt about granting this application."

Report dated October 2023

- 3.5 "Expertcare Ltd T/A Norton Glebe Pharmacy have submitted an application for inclusion in the pharmaceutical list for the area of Stockton-on-Tees Health and Well Being Board. The location of the proposed premises is at Elm Tree Centre, Elm Tree Avenue, Stockton.
- 3.6 This report has been prepared for the applicant, Expertcare Ltd T/A Norton Glebe Pharmacy.

Structure of Report

- 3.7 This report sets out the case for this application. It is structured as follows:
 - 3.7.1 Section 2 discusses a preliminary matter;
 - 3.7.2 Section 3 sets out the background to the application site and its surroundings;
 - 3.7.3 Section 4 sets out the application;
 - 3.7.4 Section 5 comments on the statutory tests;
 - 3.7.5 Section 6 reviews the Stockton-on-Tees PNA;
 - 3.7.6 Section 7 sets out the details of health care provision in Stockton;
 - 3.7.7 Section 8 provides an assessment against the key regulation 18 tests; and
 - 3.7.8 Section 9 sets out the conclusion.

Appendices

3.7.9 The following appendices are included:

3.7.10 Appendix 1 Map of Lloyds and Elm Tree Centre

3.7.11 Appendix 2 Map of West Stockton

3.7.12 Appendix 3 Bus Routes in Stockton

PRELIMINARY MATTERS

3.8 The background to this application is that the Lloyds Pharmacy located inside Sainsbury's at Whitehouse Shopping Centre, Bishopston Road has closed as part of a wider business rationalisation programme.

3.9 The Map below (also at Appendix 1) illustrates that the proposal site is located 840m (0.5miles) from the Lloyds pharmacy and is located on the same bus route. It is located only 2 bus stops from the Lloyds premises. Whilst the Lloyds patients benefit from access to a large surface level car park, the Elm Tree Centre also has a large area of car parking both in front and to its rear, which can easily accommodate the demands from the patients that are displaced following the closure of Lloyds.

3.10 The photographs below show the walking route between the premises. There are pedestrian footpaths available for those that seek to walk.

3.11 While it is not determining, it is a material consideration that the applicant is seeking to replace a successfully trading pharmacy within the same area, with minimal disruption to patients that use it.

3.12 It should be noted that Lloyds did not take the decision to close this pharmacy due to poor trading, but rather because the company took a decision to close all of their pharmacies that were located within Sainsburys stores.

THE SITE AND SURROUNDING AREA

General Location

3.13 Stockton is a market town located in the north east of England in County Durham. It forms part of the Stockton-on-Tees conurbation and is within the Tees Valley. Stockton is located on the north bank of the River Tees and west of Middlesborough which sits on the south bank of the river. Stockton is a town within the wider borough of Stockton on- Tees.

3.14 Stockton-on-Tees is a mixed borough area with a diverse range of communities living in smaller towns. The Stockton-on-Tees Council has produced a Local Plan that estimates that the population of the Borough will grow from 195,000 people in 2016 to 213,600 by 2032 which will create significant needs for housing and community facilities.

3.15 Stockton is accessed from the M1 (at Darlington) via the A66 which also connects the town to Middlesborough. The A19 runs north south along the east of the town and connects the town to York in the south and Sunderland and Newcastle in the north.

3.16 Stockton is largely bounded by the A66 and A19 dual carriageways to the south and east and by open countryside to the north and west.

3.17 Stockton town centre is situated along the bank of the River Tees and is centred on High Street. The railway line runs along the west side of the town centre and bisects the town. An inner ring road around the town centre is formed by the A1027 (Hartburn

Avenue/Oxbridge Avenue/Bishopton Avenue) and the A177 and A1305 roads that wrap around the west, north and northeast of the central area of the town.

- 3.18 Beyond the town centre, Stockton includes a variety of neighbourhood suburban areas such as Norton to the north, Elm Tree to the west and Hartburn to the south west. To the outer west of Stockton a large area of planned “West Stockton Sustainable Urban Extension” located west of Harrowgate Lane (69 hectares) and east of Yarm Back Lane (49 hectares) is allocated by the Council and extends the full western side of the town from Letch Lane in the north to the A66 in the south. These lands are intended to provide 2,150 dwellings with land reserved for a further 400 dwellings.

Elm Tree Local Centre

- 3.19 Elm Tree is a local community located west of the town centre. It is centred on the Elm Tree Local Centre. The Elm Tree Local Centre is designated as a Local Centre in the Stockton-on-Tees Borough Council Local Plan 2019 as shown below.
- 3.20 The Local Plan defines the role and function of the Elm Tree Centre as being to serve its own catchment and will include a supermarket and a range of other small shops, services and community facilities.
- 3.21 The Elm Tree Local Centre provides:-
- 3.21.1 the Elm Tree Community Centre and Surestart Children’s Centre;
 - 3.21.2 Appletree Daycare Centre;
 - 3.21.3 Fairfield Sports and Social Club;
 - 3.21.4 Morrisons Grocery Store;
 - 3.21.5 Sweet shop;
 - 3.21.6 Pizza hot food take away;
 - 3.21.7 Chinese hot food take away; and
 - 3.21.8 the Elm Tree public house.
- 3.22 The Community Centre is the hub for local services for all forms of groups of the community ranging from older age groups taking computer courses and playing sports such as indoor bowls, table tennis, fitness classes, badminton, yoga, sewing classes, to children’s parties, children’s soccer and youth clubs and weight watchers. The Appletree Daycare Centre supports local families with child care for pre school and primary school children. It is also the location of a local community food bank.
- 3.23 This Local Centre has about 12 car parking spaces located at the front of the Centre and about 70 spaces located to the rear of the Centre. There are also parking spaces located at the public house and the social club.
- 3.24 The Elm Tree Local Centre is located beside a bus stop (Stage Coach route 59). Pedestrian paths link the Local Centre to the housing areas to the north at Ferndale and Brundall Close and Norwich Avenue. The Local Centre is easily accessed by people that live in the surrounding area. For most people in the area that are looking to catch a bus to either their GP or the Sainsbury’s superstore they would catch the bus at the Local Centre.

3.25 Elm Tree is a relatively isolated area in health care terms. The nearest health centre is in the town centre 1.5-2 miles away. As stated above, the nearest pharmacy used to be located at Lloyds, Sainsbury's, Whitehouse Shopping Centre, Bishopston Road.

3.26 This is located about 0.5 miles away, but has now closed.

Surrounding Area

3.27 The area surrounding the Elm Tree Centre is primarily residential with schools such as St Marks Primary, St Mark's Close; Green Gates Academy, Melton Road; Whitehouse Primary, Dunelm Road; Our Lady & St Bedes Primary and Stockton Sixth Form College both at Bishopston Road West.

3.28 The wider area (as noted above) will be developed as a large residential area known as a Sustainable Urban Extension. This is located about 1200m from the Elm Tree Local Centre. Planning permission has been granted for these lands in December 2022 for 969 dwellings at lands east of Yarm Back Lane. An application for reserved matters for 110 dwellings is pending following the approval of outline permission (app ref: APP/H0738/W/15/3063793) which allows up to 340 dwellings at a site known as Tithebarn Fields, land west of Harrowgate Lane. A separate current application for 178 dwellings is pending at land north of Darlington Back Lane.

3.29 In general therefore, this is a heavily populated area which is going to experience significant population growth in the coming years. It is also an area with limited health care provision and no GP services at present

THE APPLICATION

3.30 The application is for a new pharmacy located within the Elm Tree Local Centre at Elm Tree Avenue, Stockton. This is an application which is submitted to meet the needs of the large numbers of people that live in the west Stockton area and who are unable to benefit from a reasonable range and choice of pharmaceutical services.

3.31 The proposal will open 40 core hours a week from 9am until 5pm Monday to Friday. It will open a total of 48 hours per week from 9am until 6pm Monday to Friday and from 9am to 12 noon on Saturday.

3.32 The proposal will provide appliances listed in Part IX of the Drug Tariff.

3.33 The proposal will provide all commissioned services and the applicant will ensure that all pharmacists employed are accredited to provide the services. The premises will also be accredited.

3.34 Once a lease has been agreed for the premises they will be registered with the GPhC and will comply with all relevant legal and ethical requirements for the operation of a retail pharmacy business.

3.35 The premises will have a consultation area to provide services including NMS, Hypertension Case Findings, CPCS and GPCPCS, EHC, Smoking Cessation, Chlamydia Screening, Flu Vaccinations, Needle and Syringe Exchange and Supervised Self Administration.

3.36 The proposal seeks to secure provision of continued pharmaceutical services to the local community of Elm Tree, a community that is facing a reduced pharmaceutical choice.

3.37 First it can be noted that Boots closed its store located at 58-63 High Street within the Castlegate Complex in July 2022. Before closing Boots dispensed about 15,000 items per month at its store.

- 3.38 Second Lloyds has closed their pharmacy at Sainsbury's, Whitehouse Shopping Centre. This pharmacy would have been dispensing in the region of 10,000 items a month.
- 3.39 In total therefore, with the loss of two pharmacies, there will be circa 25,000 items per month being required to be dispensed elsewhere and there is a clear and significant reduction in choice of pharmacies for the west Stockton population.

THE STATUTORY TESTS

- 3.40 The statutory tests are set out under "The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013" (the "Regulations"). In particular the application should be assessed under Regulation 18.
- 3.41 The first test is whether an application for the improvements for people living in the Elm Tree neighbourhood of Stockton, and the wider Stockton area has been considered under the Pharmaceutical Needs Assessment for Stockton on Tees 2022 (the "PNA").
- 3.42 As shown below the PNA does not foresee the benefits of this proposal. As such this application is an 'unforeseen' application and Regulation 18 applies to its assessment.
- 3.43 Other aspects of the Regulations are Regulation 18 (2)(a)(i) whether significant detriment to proper planning in respect of the provision of pharmaceutical services in the area of the relevant HWB would occur and Regulation 18(2)(a)(ii) whether significant detriment to the arrangements the NHSCB has in place for the provision of pharmaceutical services in that area would occur.
- 3.44 There is no evidence that granting the application would cause significant detriment to proper planning for provision of pharmaceutical services or the existing provision of pharmaceutical services in the area. It will not cause significant detriment to the closest pharmacy as that is closing. Indeed, the application proposal is in part a reaction to the closure and planned closure of two pharmacies in the Stockton area, and as such the proposal will not affect the proper planning of pharmaceutical services.
- 3.45 The other aspects that an applicant can ground their application on includes Regulation 18 (2)(b) (ii) and (iii) being that a proposal will support the needs of people who share a protected characteristic and innovative approaches are being taken.
- 3.46 In terms of protected characteristics as shown below there are a variety of groups that live in this area that would be groups that share protected characteristics, which will be disadvantaged with the closure of Lloyds and Boots.
- 3.47 The Regulations have been in place for 10 years and are well understood. They have been distilled into the central issue of whether a proposal will provide better access to pharmaceutical services (Regulation 18(1)(a)) and whether there is reasonable choice of pharmaceutical services (Regulation 18(2)(b)(i)). The Regulations provide no guidance as to what is "better access" or "reasonable choice", such matters are determined by the facts of the case.
- 3.48 Better access and reasonable choice are clearly evident in this case where there is an evidential context that shows that two busy and well-used pharmacies have closed, despite the significant, increasingly elderly and expanding population of west Stockton and increasing demands for pharmaceutical services of the local community.

REVIEW OF THE PNA

- 3.49 The proposal site sits within the boundary of the Stockton-on-Tees PNA (2022). The borough is split into a north and south localities. The proposal sits within the Stockton South Locality.

- 3.50 The PNA does not foresee the closure of Lloyds and does not foresee the potential changes in patterns of movement and the accessibility concerns arising following the closure of two pharmacies in the Stockton area. The PNA notes that Boots would close in July 2022, and claims that the PNA reflects this planned closure as the PNA was not due to be published until after July 2022.
- 3.51 The PNA also notes that two premises in Stockton Town Centre had consolidated recently. However the PNA Executive Summary states that the most significant change since the last PNA is the closure of a 100 hour pharmacy in the Yarm area and the closure of a 40 hour pharmacy as a result of consolidation. This is the same conclusion as set out in page 10 of the draft PNA (14th March 2022). This is an out of date conclusion and it is questionable what level of re-assessment was given in the PNA to the news that Boots were closing and the Lloyds closure is likewise not considered.
- 3.52 The full conclusions (Section 11) note that there has been a closure of three pharmacies since the last PNA. In essence this means that including Lloyd's closure there is a reduction of four pharmacy premises in the Stockton area.
- 3.53 The PNA (page 33) notes the population for the two localities and the total population of the PNA area in 2020 is estimated to be 197,419. The PNA notes that the population will increase to about 200,511 by 2035. These figures are underestimates given the Council's Local Plan predicts the population to grow from 195, 500 in 2016 to 213,600 in 2032.
- 3.54 The PNA notes that location of the ward of Bishopgarth and Elm Tree to be in the second highest quintile of deprivation in England as shown below. This will be discussed further below, but it can be noted that large areas of Stockton to the east and north of the Elm Tree area is in the highest levels of deprivation in England.
- 3.55 The PNA (page 41) notes that the Bishopsgarth and Elm Tree ward has 2.4% of the working population claiming out of work benefits. 4 people per 1000 of the working age population long term unemployed and 7.2% of households experiencing fuel poverty in 2018.
- 3.56 The PNA (page 43) notes that 18.3% of households in the Bishopsgarth and Elm Tree ward had no access to a car.
- 3.57 The PNA (page 46) notes that 32.2% of people in the Bishopsgarth and Elm Tree wards are aged 65 and living alone. This is above the Borough average.
- 3.58 The PNA (page 54) notes that 21.7% of people in the Bishopsgarth and Elm Tree ward have a limiting long term illness of disability. This is above the Borough average of 19% and the England average of 17.6%.
- 3.59 The PNA (page 66) notes that Stockton-on-Tees has 21 pharmacies per 100,000 population and that this is the England average but does not set out the figures.
- 3.60 Averages will never be determinative, but the the extent that they are relevant (as the PNA appears to suggest) 21 pharmacies per 100,000 people equates to 1 pharmacy per 4762 people. The Council estimates the population of Stockton to be 195,000 in 2016. $195,000 \div 4762 = 40.9$. As such there should be 41 pharmacies to support the population of Stockton however the PNA only lists 39. The PNAs claim that Stockton has the England average is therefore questionable. Moreover, considering the high levels of deprivation within parts of Stockton, it would be expected that Stockton would provide above the average number of pharmacies to reflect the higher demands on pharmaceutical services. Furthermore, when the Lloyd's pharmacy closes, the Stockton area will fall further below the England average, and this reduction in pharmacy numbers will be exacerbated with the annual increases in population. As such at the time when pharmacies are closing, demand is actually increasing.

- 3.61 Consequently the gap in services will widen.
- 3.62 The PNA (page 77) notes that “In S2 Stockton-on-Tees South locality, the population of Grangefield (6,530) are perhaps most likely to access the nearest pharmacy in Bishopsgarth and Elm Tree Ward”. Grangefield is located just south of Bishopton Road and has no pharmacy inside this ward. It is within easy access of the previous and now closed Lloyds pharmacy. While not all the population would have used Lloyds, the PNA envisages a high level of use by these people. The closure of Lloyds has severely disadvantage these people as well as the Bishopsgarth and Elm Tree population.
- 3.63 While the PNA discusses choice of pharmacy providers in page 82, it fails to note the reduction in pharmacy providers will reduce choice, particularly given the population growth in the area. Indeed choice has (and will have) reduced by four pharmacies.
- 3.64 The PNA (Figure 27) notes that in Stockton there will be 207 new homes on key site and in West Stockton 853 new homes will be built between 2021 and 2026. With 1,060 new homes with an average household size of 2.5 this would add a further 2,650 people to the local population. The PNA does not address how this increase in population will be catered for in pharmaceutical terms.
- 3.65 PNA predates the planned closure of Lloyds and cannot have foreseen this. The last minute closure of Boots, only two months before the PNA was published would not have been foreseen in the PNA either, even though some last minute editing will have been possible, the fact that these two premises have or will close is a significant change in the number of pharmacies in the area and the loss of the Lloyds pharmacy will significantly reduce the choice and accessibility of pharmaceutical services to large populations in west Stockton.
- 3.66 The proposal is clearly unforeseen in Stockton-on-Tees PNA 2022.

HEALTH CARE IN WEST STOCKTON

- 3.67 A Map of west Stockton is at Appendix 2. As set out above, this application is made by Expertcare Ltd who already operate a pharmacy in Stockton at Norton Glebe Pharmacy. They are already very familiar with the level of healthcare provision in Stockton.
- 3.68 Lloyds Pharmacy, at Sainsubrys, Whitehouse Farm Shopping Centre used to open from 8am till 8 pm (with a hour for lunch between 1 and 2pm) Monday to Saturday and from 10am till 4 pm on Sunday. Customers had access to the 250+ surface level car parking spaces.
- 3.69 As mentioned earlier, it would have dispensed in the region of 10,000 items per month, although that figure dropped leading up to its closure. It attracted a reasonably even share of prescriptions from Queens Park Medical, Tennant Street Medical, Woodlands Medical and Alma Medical Centre (all within the central area of Stockton). The average monthly dispensing in England is about 6750 items¹. So Lloyds was performing well above the England average.
- 3.70 Other than Lloyds there was no other health care provision for the Elm Tree area. Similarly, the area of Grangefield south of the Bishopton Road has no pharmacy and (as the PNA notes) these people looked towards Lloyds. Also the area east of Lloyds known as Newham Grange would have also gravitated towards Lloyds.
- 3.71 We have illustrated above that with the closure of Lloyds, and approval of this application patients would be able to access the new pharmacy by a drive of 0.5miles further to the Elm Tree Local Centre or stay on the same bus for two more stops to access their pharmacy services.

Other Pharmacies in West Stockton.

- 3.72 The entirety of the large area of west Stockton is provided for by only two other pharmacies and neither of these pharmacies (nor indeed any other party) has objected to this application or made any comment on it, presumably because it is not seen as relevant to them as they serve their own distinct patient base as shown below.
- 3.73 Fairfield Pharmacy, 26-28 Glenfield Road is located about a mile from the Elm Tree Local Centre. There is no bus stop at to this pharmacy and as such it is not accessible to Elm Tree residents via public transport.
- 3.74 This pharmacy is open 9am until 6pm Monday to Friday and 9am till 1 pm on Saturday.
- Fairfield Pharmacy
- 3.75 This pharmacy located in the housing area of Fairfield and would serve the local neighbourhood living around it. It is dispensing on average 14,500 items per month, well above the England average. About 4,000 items are from the Queens Park Medical, and 2000 are from Tennant Street and 2,000 are from Woodlands Surgeries. About 1,000 items each are from Alma, Riverside, Densham and Dovecot Surgeries. This is a relatively wide spread of surgeries for this area and shows patients from the Fairfield area are having to travel into the town centre for the GP services.
- 3.76 Newham Pharmacy, 9-10 High Newham Court is located about 2 miles north of Elm Tree Local Centre. This pharmacy forms part of the High Newham Court Local Centre which provides a grocery shop, butchers, fast food shops and a community centre. It has limited on street car parking and some small level s of car parking to the rear of a local Spar shop. It does not compare to the 70 or so spaces available at the Elm Tree Local Centre. The High Newham Court Local Centre has the same status and function as the Elm Trees Local Centre. It is designed to meet its local community needs in the same way that the Elm Tree Local Centre has to meet the needs of its local community.
- 3.77 This pharmacy is located at the end of the bus route 59 which passes Elm Tree. It would require Elm Tree residents to remain on their bus on route back from the town centre and to pass by their homes to visit this pharmacy. They would then have to double back on the bus to return home. This requires a third bus journey.
- 3.78 This pharmacy opens 9am till 5:30pm Monday to Friday and 9am till 1pm on Saturday.
- 3.79 This pharmacy is located in the housing area of Hardwick and would serve the local neighbourhood living around it. It is dispensing on average 10,000 items per month, well above the England average. About 2,000 items each are prescribed in Alma, Tennant Street and Queens Park surgeries. The rest are spread across a variety of pharmacies, mostly located within the town centre.
- 3.80 The fact that there are now two very busy pharmacies in this large and growing area should be a significant concern. The population of this area is about 32,700, which in England average terms should have 7 pharmacies. The two pharmacies now cater for about 3.5 times the population that an average England pharmacy caters for and from local information gained by our client, they are clearly struggling to cope.
- 3.81 Geographically, the closure of the Lloyds pharmacy, which is in between the other two pharmacies reduces the physical distribution of the pharmacies. Lloyds is located closer to the town centre and the other town pharmacies are more peripheral. The loss of Lloyds has left patients in the Elm Tree, Grangefield and New Grange areas having to travel either to housing estates on the outskirts of the town to access their closest pharmacy or go deep into the town centre for alternative pharmacy service provision.
- 3.82 However, given that 2 other pharmacies have also closed, choice has been materially impacted as well as access.

Other Pharmacies

- 3.83 There would be no other pharmacies that would be a consideration in this case.
- 3.84 For completeness, it is acknowledged that there are pharmacies situated in the housing estates north of Stockton, however these are all at least 2 miles away and are not accessible on foot or by bus without multiple bus journeys. These would include Pharmacy World in the Roseworth area (which is dispensing a monthly average of 12,500 items) and the applicant's own premises at Norton Glebe Pharmacy covering the Norton area.
- 3.85 Similarly Boots has two pharmacies at the Norton District Centre which is catering for the residents of the northeast area and the shoppers in the Norton District Centre and the patients at Norton Medical Practice. Boots are dispensing the largest share (the two shops combined are dispensing about 36%) of the items prescribed at these premises.
- 3.86 In the town centre there are clusters of pharmacies around the medical centres in the town centre, with Rowlands, Well, Knights Queens Park Pharmacy and Knights Pharmacy 365 located in the northern part of the town centre close to The Arrival, Riverside Medical, Alma Medical Practice, Tennant Street Medical, Queens Park Medical.
- 3.87 To the south of the town centre is a second cluster of pharmacies and surgeries including Synergise Pharmacy and Rowlands close to Lawson Street and Densham Surgeries and Witworth and Rowlands beside the Woodlands Surgery. None of these pharmacies are providing pharmaceutical services to the suburban communities of west Stockton. They are all in the region of 2 miles from the Elm Trees community.
- 3.88 Again, it is notable that none of these pharmacies has made any comment on this application.

ASSESSMENT AGAINST THE REGULATION 18 TESTS

- 3.89 Regulation 18 (20)(b) (i-iii) is well known and sets out the following:
- (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;
 - (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; and
 - (iii) there being innovative approaches taken with regard to the delivery of pharmaceutical services
- granting the application would confer significant benefits on persons in the area which were not foreseen when it published its pharmaceutical needs assessment.

Reasonable Choice

- 3.90 The first consideration is whether there is a reasonable choice with regard to obtaining pharmaceutical services in this area. At present the west Stockton area has a population of 32,700 and is served by two pharmacies. This is one pharmacy for 16,350 people. It has been shown above that based on the average dispensing levels, the three pharmacies are each dispensing well above the England average. This is evidence that on two levels;

3.90.1 population per pharmacy; and

3.90.2 dispensing per pharmacy,

these pharmacies are trading very considerably above average levels.

3.91 On its own this is clear evidence that the area of west Stockton does not have a reasonable choice of pharmaceutical services.

3.92 In addition, the population of the area of west Stockton is going to increase considerably in the next 5 years with the development of the land at Yarm Back Lane and Harrowgate Lane. This could see a further 2,650 people living in west Stockton, bring the population to 35,350.

Car Parking Inadequacies

3.93 With the closure of Lloyds, patients lost the main pharmacy with the largest car park.

3.94 There is only a couple of on street spaces available at Fairfield and on street parking at High Newham Court Local Centre. The Elm Tree Local Centre is ideally placed to replace the Lloyds pharmacy as patients can access 70 surface level car parking spaces available at the Centre.

Bus Routes

3.95 Lloyds and Newham Pharmacies were on the same bus route (Route 59). Fairfield Pharmacy is not on a bus route and to access it by public transport would require using a separate bus service. The closure of the Lloyds means there is no pharmacy on Bus Route 59 between the town centre and the very last stop on the route. Providing a new pharmacy at the Elm Tree Local Centre will provide an accessible pharmacy for public transport users on this route as part of their daily patterns of movement. A copy of the Bus Route map is at Appendix 3. As set out above, the Elm Tree Local Centre is only two stops from the previous Lloyds, and as such it will be easy for public transport users to make the switch between locations.

Elm Tree Local Centre as a Hub

3.96 Clearly being recognised as a Local Centre, with a wide variety of community uses to support the local people, the Elm Tree Local Centre is an ideal location for health care services and the provision of a pharmacy. Unlike the large Sainsbury's supermarket which has a retail focus, the Elm Tree Local Centre attracts all sections of the community from very young children with their parents to elderly people. The purpose for people being at the Elm Tree Local Centre is often for health related purposes such as fitness and food nutrition classes, sporting activity, educational gatherings. It attracts people that will have health related issues and questions. Providing a pharmacy within the Centre will provide on site advice and access to a variety of medications and treatments without the need to visit a GP.

Population of West Stockton

3.97 The Infograph below shows the population in 2021 of west Stockton to be 32,700.

3.98 It shows that this area not only has a high population, but that the age profile among the ages of people 60 and over is above the England average and that the population in the age groups from the age of 20-50 are below the England average. As such west Stockton has an older age profile. Elderly people have a higher demand for pharmaceutical services.

3.99 It can also be noted that in the young children age group, west Stockton has the England average number of children between the ages of 5 to 15.

- 3.100 The infograph also highlights that 20.4% of people in west Stockton are classed as disabled under the Equality Act, above the England average of 17.3%.

Localised Characteristics

- 3.101 Looking more closely at the characteristics of the Elm Tree and Grangefield area, the infograph below shows that this area has a population in 2021 of 6,800. This population is more than sufficient to support a pharmacy.
- 3.102 The area of Elm Tree & Grangefield has an older population compared to both the England average and indeed the wider west Stockton area. It can be seen in the age profile that from the age of 60 the area has well above average levels of elderly people compared to England generally.
- 3.103 Perhaps unsurprisingly given this age profile, the amount of people that would consider themselves to be in very good health is well below the England average. Slightly more people consider themselves in good or fair health and the amount of people that consider themselves to have bad health is above average (5.5% compared to the England average of 4%) and very bad health is slightly above average.
- 3.104 The elderly nature of the area accounts for the lower levels of economic activity in the area, with 50.6% of the population economically active compared to 57.4% and 46.4% of people economically inactive compared to 39.1% of the England average.

Evidence of Deprivation

- 3.105 The diagram below shows that the Stockton area has high levels of deprivation spread around the town centre to the east, the north and the north west around the Hardwick area where the Newham Pharmacy is located. This level of deprivation is consistent with the high levels of dispensing patterns found in the pharmacies around Stockton and reinforces the case that there are high (and indeed well above average) demands for pharmaceutical services in Stockton.
- 3.106 Looked at more closely below, around the Elm Tree Local Centre area it can be noted that the area of Elm Tree is amongst the 3rd most deprived decile areas in England and among the 2nd most deprived deciles in terms of health and employment.
- 3.107 The evidence demonstrates that the area around the proposal site has a reasonably significant population, with high levels of elderly people, some areas of deprivation and with clear health needs. The area around the proposal site is an area where improved health care can support local people. This is an area where a new pharmacy that provides the full panoply of pharmaceutical services will provide improvements to health care outcomes.

Travel Matters

- 3.108 The accessibility of NewPharm and Fairfield will be the principal consideration. The walk for people at Elm Tree Local Centre to a pharmacy has now increased to 0.8 miles and takes these people outside of their community into a separate neighbourhood. There is no direct public transport link between these locations.
- 3.109 The alternative is to walk north to the Newpharm Pharmacy. This is a walk of a mile and brings patients along parkland where the path is narrow and has limited footfall on it. Many elderly people would not feel safe walking along this path in dark days and in the early evenings during the winter.
- 3.110 There is no guidance provided dealing specifically for access distances to pharmacies for any population and none that provide any advice for access for people that would be classed as among the elderly groups of society. However, having to increase the

walking distance to a pharmacy is a clear reduction and deterioration in services for the local population.

Other Needs in the Area

- 3.111 It is noted that despite the elderly population, there are also a large number of schools in area around the proposal site. These schools include

3.111.1 Appletree Daycare 20-30 children

3.111.2 Our Lady and St Bede Roman Catholic School 800 pupils

3.111.3 Stockton Sixth Form 2,200 pupils

3.111.4 Whitehouse Primary School 400 pupils

3.111.5 Oak Tree Primary 330 pupils

3.111.6 St Bede's Catholic Primary 200 pupils

3.111.7 Grangefield Academy 1,000 pupils

3.111.8 St Marks 450 pupils

3.111.9 Green Gates 45 pupils

- 3.112 There is in the region of 5,400 children per day moving around the Elm Tree and Grangefield area. These children will have demands for health care and pharmaceutical services, which the proposal site is well placed to meet.

Secure Improvements

- 3.113 It is shown above that west Stockton has a limited range of pharmacies. The population of west Stockton have seen a reduction in pharmacies in recent years and that decline has increased with the closure of Lloyds. The opening of a new pharmacy will support the existing community and help to sustain a proper level of service. It will clearly secure improvements for the local Elm Tree population, given its close proximity to a variety of community facilities and schools in this area. It is also notable that there is no medical centre in west Stockton and that pharmacies have a wider community role to play providing the first point of contact for many patients. This is an important factor as we now enter flu and COVID vaccination season again and consider the many other services that modern pharmacies now provide to patients. In most areas there is some sort of competition between GP surgeries and pharmacies for vaccination services, but with no GP service in this part of Stockton patients have no properly accessible healthcare service.
- 3.114 For many patients locating a new pharmacy within the Elm Tree Local Centre will remove the need to make a bus journey elsewhere to access a pharmacy. For others it will allow them to return directly home to commence their recovery from illness without having to make multiple bus trips.

Better Access

- 3.115 The access issues for the people in west Stockton area are set out above. With the closure of Lloyds there are no pharmacies within walking distance of the proposal site.
- 3.116 Even for those that use public transport, and the private car, having a pharmacy within a local centre which is located central within the west Stockton area and on a main bus route will mean that patients can benefit from a more accessible and useable pharmacy

and will not incur the expense and timing consuming trips to visit other pharmacies where parking availability is severely limited.

Protected Characteristics

- 3.117 The proposal will cater for people of protected characteristics. Children and elderly people living in the west Stockton area would be groups with shared protected characteristics. These protected groups are having to make long journeys into the centre of Stockton to visit their GP and many are unable to walk the journeys and many would not have access to a private car. The proposal will address this matter and will ensure that a full pharmacy service is provided to these protected groups.

Summary

- 3.118 Overall, having considered the requirements of Regulation 18 the proposal should be granted as there is not reasonable choice of pharmacy services in the west Stockton area and the Stockton-on-Tees HWB area specifically bearing in mind the localised issues of residential growth, the below average number of pharmacies for the scale of population involved, changes and reduction in the patterns of health care provision, and distances to the existing pharmacy network. The proposal will confer significant benefits to the west Stockton population, and these benefits are wholly unforeseen.

CONCLUSION

- 3.119 West Stockton is an area of Stockton-on-Tees that does not have a reasonable choice of pharmacy services and is clearly in need of better access to pharmacy services.
- 3.120 Following assessment of the circumstances of this part of Stockton-on-Tees the applicant contends that the application is an unforeseen proposal that will satisfy the requirements of Regulation 18.”

4 **Summary of Representations**

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