

22 March 2024

8<sup>th</sup> Floor  
10 South Colonnade  
Canary Wharf  
London  
E14 4PU

**FILE REF:** SHA/26129

**DECISION MAKING BODY:** NORTH EAST & NORTH CUMBRIA  
ICB (“the Commissioner”)

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

**PHARMACIST:** SHARIEF HEALTHCARE LTD T/A ALLIED  
PHARMACIES  
(“the Applicant”)

**PREMISES:** 88 ACKLAM ROAD  
MIDDLESBROUGH  
TS5 5HR

**THE NATIONAL HEALTH SERVICE (PHARMACEUTICAL AND LOCAL PHARMACEUTICAL  
SERVICES) REGULATIONS 2013 [“THE REGULATIONS”]**

**SCHEDULE 4 [Terms of Service of NHS Pharmacists]  
PART 3 [Hours of Opening]**

**Outcome**

- 1.1 Based on the information provided, I am satisfied that the pharmaceutical services provision that would result from the Applicant’s proposed hours would maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises.
- 1.2 Therefore I substitute the decision of the Commissioner to refuse the application with a decision to grant the application.

A copy of this decision is being sent to:

Allied Pharmacies  
North East & North Cumbria ICB

**Advise / Resolve / Learn**

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**SCHEDULE 4 [Terms of Service of NHS Pharmacists]  
PART 3 [Hours of Opening]**

**1 Introduction**

- 1.1 The Applicant has applied to the Commissioner to change the days and times at which it is obliged to provide pharmaceutical services at the above premises. The Applicant seeks to keep the total number of core opening hours the same while offering a different distribution of these hours during the week.
- 1.2 The Commissioner has refused the application. The Applicant seeks to appeal to NHS Resolution.

**2. Consideration**

**Rights of appeal**

- 2.1 Where the Commissioner has determined an application under paragraph 26 of Schedule 4 of the Regulations and has granted it in part only or has taken an action that has the effect of refusing it, paragraph 26(9) provides a right of appeal to the Secretary of State for Health and Social Care (“the Secretary of State”).
- 2.2 The Secretary of State has directed NHS Resolution to determine such appeals. As an authorised officer of NHS Resolution, I have considered the appeal and have determined it, in accordance with my delegated powers.

**Opening hours**

- 2.3 A pharmacy's opening hours may be categorised as:
  - 2.3.1 “core opening hours” (at the hours during which the pharmacy must be open by virtue of paragraph 23(1) of Schedule 4 of the Regulations), which may incorporate a direction of the Commissioner requiring fewer or greater than 40 hours and at set times and days; or

- 2.3.2 “supplementary” opening hours (other hours during which the pharmacy premises are open which are in addition to the core hours), pursuant to paragraph 23(3) of Schedule 4 of the Regulations.

#### Alteration of core opening hours

- 2.4 In accordance with paragraphs 1(7)(c) and 1(7)(d) of Schedule 2 of the Regulations, the pharmacy must provide, as part of an application for entry in the pharmaceutical list:
- 2.4.1 the proposed core opening hours in respect of the premises; and
- 2.4.2 the total proposed opening hours for the premises (having regard to both the proposed core opening hours and any supplementary opening hours).
- 2.5 The Commissioner maintains pharmaceutical lists that include the days on which and times at which, at those premises, the listed person is to provide those services during the core opening hours and any supplementary opening hours of the premises.
- 2.6 The days on which or times at which a pharmacy is obliged to provide pharmaceutical services at the premises may only be altered by the pharmacy on application under paragraph 26(1) of Schedule 4 of the Regulations, so long as the effect of that application is to reduce the total number of hours for which a pharmacy is obliged to provide, or keep the total number of hours the same.

#### Alteration of supplementary opening hours

- 2.7 Supplementary opening hours may be altered by the pharmacy giving notice to the Commissioner, in accordance with paragraph 23(6)(a) of Schedule 4 of the Regulations, without the need to make an application to the Commissioner.
- 2.8 There is no specific right of appeal to NHS Resolution in respect of notices given under paragraph 23(6)(a).

#### The Applicant's proposals

- 2.9 The Applicant in its application indicates that it currently has core opening hours totalling 40 hours per week.
- 2.10 The Applicant wishes to:
- 2.10.1 open 9am to 12pm and 1pm to 5.30pm Monday to Friday, instead of 9am to 12.30pm and 2pm to 5.30pm as usual; and
- 2.10.2 open 9am to 11.30am on Saturday, instead of 9am to 11.30am and 3pm to 5.30pm as usual.

#### Assessment

- 2.11 In this case, the Applicant provided the following information in its application form and supporting information dated 8 September 2023:
- 2.11.1 “This is an application to permanently change core opening hours.
- 2.11.2 Current opening hours for these premises:

| Monday      | Tuesday     | Wednesday   | Thursday    | Friday      | Saturday    | Sunday |
|-------------|-------------|-------------|-------------|-------------|-------------|--------|
| 09:00-12:30 | 09:00-12:30 | 09:00-12:30 | 09:00-12:30 | 09:00-12:30 | 09:00-11:30 | Nil    |
| 14:00-17:30 | 14:00-17:30 | 14:00-17:30 | 14:00-17:30 | 14:00-17:30 | 15:00-17:30 |        |

2.11.3 Proposed core opening hours for these premises:

| Monday      | Tuesday     | Wednesday   | Thursday    | Friday      | Saturday    | Sunday |
|-------------|-------------|-------------|-------------|-------------|-------------|--------|
| 09:00-12:00 | 09:00-12:00 | 09:00-12:00 | 09:00-12:00 | 09:00-12:00 | 09:00-11:30 | Nil    |
| 13:00-17:30 | 13:00-17:30 | 13:00-17:30 | 13:00-17:30 | 13:00-17:30 |             |        |

2.11.4 If this is a permanent change, please state below the date from which you would like the change to take effect:

2.11.5 07/12/2023

2.11.6 Please provide information that demonstrates that your proposed core opening hours will:

2.11.6.1 either maintain as necessary the existing level of service provision for people in the area of the pharmacy, or other likely users of the pharmacy premises; or

2.11.6.2 maintain a sustainable level of adequate service provision for the people in the area of the pharmacy, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome.

2.11.7 Granting this application would not result in any reduction in the existing level of service provision for people in the area of the pharmacy, or other likely users of the pharmacy premises.

2.11.8 Whilst the application reduces core hours to 11:30 on a Saturday, other pharmacies in the local area are open on Saturday afternoon and are available to provide pharmaceutical services to patients as necessary:

2.11.9 Boots Pharmacy and Morrisons Pharmacy at the Teeside [sic] Retail Park are both open on Saturday until 5pm. The Teeside [sic] Shopping Park is a major retail area which local residents will be accustomed to accessing in order to shop and for leisure activities. It has a large, free car park making it easily accessible by car.

2.11.10 There are also a number of pharmacies on Linthorpe Road which are open Saturday afternoons and which are easily accessible from the Acklam Road site: Boots Pharmacy (which is open until 5.30pm), Your Family Pharmacy (which is open until 9pm) and Lloyds Pharmacy (which is open until 11pm).

2.11.11 The Linthorpe Road area is approximately 1 mile from Acklam Road Pharmacy, or a 20-minute walk.

2.11.12 The Linthorpe Road area is accessible by bus from Acklam Road (bus routes 12, 17 and 17A pass both Acklam Road Pharmacy and the pharmacies on Linthorpe Road). The journey time between the two locations is only a few minutes with services running approximately every 10 minutes.

- 2.11.13 For those travelling by car, there is free, on-street car parking along Linthorpe Road and its residential side streets.”
- 2.12 In a letter to the Applicant dated 29 November 2023 the Commissioner stated:
- 2.12.1 “The Pharmaceutical Services Regulations Committee (PSRC), which met on **29 November 2023**, has determined its assessment of your application to change your core hours, pursuant **paragraph 26 of Schedule 4** of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 - Application to amend Core Hours:
- 2.12.2 **1. Schedule 4, Part 3, Paragraph 26 (1)(b) - Change the days on which or times at which P is obliged to provide pharmaceutical services during the core opening hours at P’s pharmacy premises in a way that keeps that total number of hours the same.** The application has met this criterion.
- 2.12.3 **2. Schedule 4, Part 3, Paragraph 26 (2) and Schedule 4, Part 3, Paragraph 24: Where Pharmacist makes an application under sub-paragraph (1), as part of that application P must provide the NHSCB with such information as the NHSCB may reasonably request in respect of:**
- 2.12.4 **24(1)(a) to maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises; or**
- 2.12.5 **24(1)(b) to maintain a sustainable level of adequate service provision for the people in that area or other likely users of the pharmacy premises, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome**
- 2.12.6 The application has not met the criterion of 26(2) or 24(1)(a)&(b) – The existing level of service provision would be reduced on a Saturday between the hours of 17:00 and 17:30 for people in the area or other likely users of the pharmacy.
- 2.12.7 **3. Schedule 4, Part 3, Paragraph 26 (3): determination within 60 days.** This criterion has **not been met**.
- 2.12.8 **3.1.1** The application was delayed going to panel, due to it being sent to the incorrect department at NENC ICB.
- 2.12.8.1 8 September 2023, the applicant sent the application to ICB contact us.
- 2.12.8.2 13 September 2023, ICB Contact us sent the application to Enquiries at NENC ICB.
- 2.12.8.3 13 September 2023, Enquiries sent the application to a Primary Care Manager that was on long term sick.
- 2.12.8.4 16th October 2023, the application was sent to PCM for Middlesbrough.
- 2.12.9 The application was then put on hold and the applicant was asked to submit information relating to dispensing and over the counter medication.
- 2.12.10 Applicant was informed that the application would be determined at the PSRC Meeting on 29 November 2023.

2.12.11 4. **Schedule 4, Part 3, Paragraph 26 (4-11):** These regulations relate to directing pharmacy hours and is not applicable to this application.

2.12.12 5. **Schedule 4, Part 3, Paragraph 26 (12): this paragraph deals with the date on which the pharmacy can implement the changes to the opening hours.** In view of PSRC's decision, this is not applicable.

2.12.13 6. **Regulation 65:** This has been considered but none of the criteria are applicable to this application.

2.12.14 PSRC considered the application and for reasons noted above your application has been **rejected**.

2.12.15 Your core opening hours remain therefore, as below:"

|           |                            |
|-----------|----------------------------|
| Monday    | 09:00-12:30<br>14:00-17:30 |
| Tuesday   | 09:00-12:30<br>14:00-17:30 |
| Wednesday | 09:00-12:30<br>14:00-17:30 |
| Thursday  | 09:00-12:30<br>14:00-17:30 |
| Friday    | 09:00-12:30<br>14:00-17:30 |
| Saturday  | 09:00-11:30<br>15:00-17:30 |
| Sunday    | Closed                     |
| Total     | 40 Hours                   |

2.13 In an email to NHS Resolution dated 23 December 2023 the Applicant stated:

2.13.1 "I refer to your [sic] decision letter dated 29/11/2023. We wish to appeal your [sic] decision and can provide the following evidence in support of this application.

2.13.2 Our application was to reduce Saturday hours from 09:00-17:30 to 09:00-13:00. In support of our application, we provided the following information, granting this application would not result in any reduction in the existing level of service provision for people around the pharmacy, or other likely users of the pharmacy premises. Whilst the application reduces core hours to 1pm on a Saturday, other pharmacies in the local area are open on Saturday afternoon and are available to provide pharmaceutical services to patients as necessary, both branches offer the same services that we do in branch such as Hypertension Case Finding, Pharmacy Contraception Service, Flu Vaccinations and Minor Ailments.

2.13.3 Boots Pharmacy and Morrisons Pharmacy at the Teeside [sic] Retail Park are both open on Saturday until 5pm. The Teeside [sic] Shopping Park is a major retail area which residents will be accustomed to accessing to shop and for

leisure activities. It has a large, free car park making it easily accessible by car. Both Boots Pharmacy and Morrisons Pharmacy at Teeside [sic] Retail park is 2.7 miles away which is a 9-minute drive from Acklam Road and can be accessed via the number 14 and 38 bus which takes 31 minutes from the branch, if a patient wishes to walk it is 25 mins on foot and is 1.2 miles away and the terrain is mostly flat.

- 2.13.4 There are also several pharmacies on Linthorpe Road which are open Saturday afternoons, and which are easily accessible from the Acklam Road site: Boots Pharmacy (which is open until 5.30pm), Your Family Pharmacy (which is open until 9pm) and Lloyds Pharmacy (which is open until 11pm). The Linthorpe Road area is approximately 1 mile from Acklam Road Pharmacy, or a 20-minute walk. The Linthorpe Road area is accessible by bus from Acklam Road (bus routes 12, 17 and 17A pass both Acklam Road Pharmacy and the pharmacies on Linthorpe Road). The journey time between the two locations is only a few minutes with services running approximately every 10 minutes. For those travelling by car, there is free, on street car parking along Linthorpe Road and its residential side streets. The services offered at these branches are the same as we offer Hypertension Case Finding, Pharmacy Contraception Service, Flu Vaccinations and Minor Ailments.
- 2.13.5 NHS England refused based on a loss of hours between 17.00 and 17.30. This was presumably on the basis that the nearest two pharmacies close at 5pm. However, NHS England failed to have regard to other pharmacies which are reasonably accessible, and which are open beyond 5pm as detailed in the application form and above. From the data we have gathered in the last 4 weeks you can see that during 17:00-17:30 there were no more than 2 patients that visited the branch during this period. I have attached the data gathered for your reference, which is a tally kept of the number of patients who visited the branch between 17:00-17:30.
- 2.13.6 For the reasons given above I therefore invite NHS Resolution to uphold this appeal and grant the application.”
- 2.14 By email to NHS Resolution dated 16 January 2024 the Commissioner provided its paperwork regarding the application, which was copied to the Applicant.
- 2.15 In an email to NHS Resolution dated 27 February 2024 the Applicant stated:
- 2.15.1 “In its response, NHS England notes that there is 1 pharmacy in Middlesbrough HWB’s area which has core hours until 4.45pm on Saturday and one pharmacy in Stockton HWB’s area which has core hours until 5pm on Saturday. NHS England therefore concluded that granting our application would result in “a gap in service provision between 16.45 and 17.30” and a “loss of 30 minutes late opening” for each HWB areas respectively should my client’s application be approved.
- 2.15.2 This decision by NHS England was flawed for two reasons.
- 2.15.3 Firstly, NHS England appears to have failed to consider whether the 45 minutes and 30 minutes (respectively) of core opening times on Saturday evening were “necessary” in accordance with paragraph 24(1)(a) of the Terms of Service. We believe that they are not necessary because, as stated in our application, we provide services to virtually no patients during those times (a maximum of 2 patients per day during the survey period).
- 2.15.4 It is submitted that there must come a point where access to service provision is so low as to render it “unnecessary” in the context of the provision of pharmaceutical services within the HWB’s area. We believe that the provision

of services by our pharmacy after 16.45 or 17.00 on a Saturday is so low as to render it unnecessary.

2.15.5 Secondly, NHS England appears to have concluded that because the provision of pharmaceutical services after 16.45 or 17.00 from the existing pharmacy network was not through core hours, that NHS England could not have regard to that service provision. This approach was wrong in law, because paragraph 24(2)(b) explicitly states that NHS England “may have regard to any pharmaceutical services that are being provided in its area during supplementary opening hours”.

2.15.6 By entirely disregarding the supplementary hours offered by a number of nearby pharmacies after 16.45 or 17.00 on Saturday evenings (as detailed in our application form and appeal), NHS England made an error of law.

2.15.7 In conclusion, we therefore believe that not only is the provision of pharmaceutical services after 17.00 “unnecessary” in the context of the provision of pharmaceutical services in the HWB’s area (having regard to the extremely low usage of our pharmacy at those times), but also that the existing pharmacy network (through both core and supplementary hours) would continue to secure the existing level of service provision.”

2.16 I note the following:

2.16.1 The Applicant's core opening hours total 40 hours and the Applicant proposes to redistribute those 40 core opening hours pursuant to paragraph 26 of Schedule 4. The Applicant seeks to provide services as per its proposed changes in the table at 2.11 above.

2.17 The Applicant proposes to:

2.17.1 open 9am to 12pm and 1pm to 5.30pm Monday to Friday, instead of 9am to 12.30pm and 2pm to 5.30pm as usual; and

2.17.2 open 9am to 11.30am on Saturday, instead of 9am to 11.30am and 3pm to 5.30pm as usual.

2.18 The Regulations, which came into force on 1 April 2013, have been amended a number of times. Certain amendments, relating to pharmacy premises opening hours, came into force with effect from 25 May 2023.

2.19 The application to change the hours was made by the Applicant on 8 September 2023 and a decision was made by the Commissioner on 29 November 2023. The decision was appealed to NHS Resolution by email of 23 December 2023. I am of the view that the application and subsequent appeal should be considered against the Regulations as amended with effect from 25 May 2023.

2.20 The Applicant has sought to change the days and times at which it is obliged to provide pharmaceutical services under paragraph 26 of Schedule 4, Part 3, “Hours of opening”.

2.21 Paragraph 26(1) states:

*“26.— (1) An NHS pharmacist (P) may apply to the NHSCB for it to change the days on which or times at which P is obliged to provide pharmaceutical services during core opening hours at P's pharmacy premises in a way that—*

*(a) reduces the total number of hours for which P is obliged to provide pharmaceutical services at those premises each week ...; or*

*(b) keeps that total number of hours the same.”*

- 2.22 I have first considered paragraph 26(2) of Schedule 4 of the Regulations, which reads as follows:

*"Except where sub-paragraph (2A) applies, where P makes an application under sub-paragraph (1), as part of that application P must provide the NHSCB with such information as the NHSCB may reasonably request in respect of the matters that NHS England must seek to ensure pursuant to paragraph 24(1).*

- 2.23 Paragraph 24(1) reads as follows:

*"24 (1) Subject to paragraph 26(2A), where NHS England issues a direction for setting any days or times for opening hours under this Part, or determines them without issuing a direction, it must in doing so seek to ensure that the days and times at which pharmacy premises are open for the provision of pharmaceutical services in the area in which the premises that are the subject of the direction are located are such as –*

- (a) to maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises; or*
- (b) to maintain a sustainable level of adequate service provision for the people in that area or other likely users of the pharmacy premises, in circumstances where maintaining the existing level of service provision is either unnecessary or not a realistically achievable outcome.*

- 2.24 Paragraph 24(2) states:

*(2) In considering the matters mentioned in sub-paragraph (1), the NHSCB –*

*(a) must treat any local pharmaceutical services being provided in its area as if they were pharmaceutical services being so provided, and*

*(b) may have regard to any pharmaceutical services that are being provided in its area during supplementary opening hours.*

- 2.25 I will start by considering the application of paragraph 24(1)(a) and whether the proposed hours are such as to maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises. I will then consider the application of 24(1)(b) if that is required.

- 2.26 To properly assess the application against paragraph 24(1)(a), I need to determine the existing level of service provision. I then need to consider whether it is necessary to maintain the existing level of service provision. If it is necessary to maintain the existing level of service provision, I need to consider whether, despite the proposed change of hours, the existing level of service provision to people in the area or other likely users would be maintained, e.g. by nearby pharmacies being open and providing the same level of service provision.

- 2.27 If I consider it unnecessary to maintain the existing level of service provision or that it is necessary to maintain the existing level of service provision but doing so is not a realistically achievable outcome, then I need to consider paragraph 24(1)(b) and determine whether the proposed change of hours are such that a sustainable level of adequate service provision would be maintained.

- 2.28 I therefore need to be provided with sufficient information to understand a range of matters, starting with the existing level of service provision. The references to days and times in paragraph 24(1) leads me to consider that the reference to "level" of service provision in paragraph 24(1)(a) is mainly focused on the days and times services are provided. I would point out that "level" of service provision could also refer to other characteristics of the service, such as types and range of services provided,

geographical access to services provided, other aspects of physical access aside from location, and the quality of services provided.

- 2.29 The existing level of service provision has been outlined by the Applicant, in its own core hours provision, and by an indication of the hours that pharmacies in the local area are open.
- 2.30 I have next considered whether it is necessary to maintain the existing level of service provision. It could be argued that as the Applicant is not looking to reduce the number of hours each week that services are provided, then from a pure "number of hours of service provision each week" perspective, the existing level of service provision is maintained such that consideration of whether it is necessary to maintain the level of service provision is not needed.
- 2.31 However, the Applicant is applying to change the days and times that services are provided. Taking Saturdays as an example, the level of service provision at the Applicant's premises on a Saturday is not being maintained. Similarly, the level of service provision is not being maintained weekdays between 12pm and 12.30pm. I consider it appropriate to determine if it is necessary to maintain the existing level of service provision and then, if deemed necessary, consider if the opening hours of other pharmacies mean that level is maintained.
- 2.32 To determine whether it is necessary to maintain the existing level of service provision, I have had regard to the comments by the Applicant of those using the pharmacy. If I am satisfied that there is reliable evidence indicating no users of the pharmacy on/at the relevant days/times that the pharmacy wishes to close, this might support an argument that maintaining the existing level of service provision is not necessary.
- 2.33 The Applicant comments in their observations that *"It is submitted that there must come a point where access to service provision is so low as to render it "unnecessary" in the context of the provision of pharmaceutical services within the HWB's area. We believe that the provision of services by our pharmacy after 16.45 or 17.00 on a Saturday is so low as to render it unnecessary."* I am mindful that the hours which the Applicant proposes to no longer provide are between 3pm and 5.30pm, not just a 30 or 45 minute slot at the end of the period.
- 2.34 The Applicant has provided a patient count which it completed between 5pm and 5.30pm over four consecutive Saturdays in December 2023. I note that it has focussed on this time period rather than 3pm – 5.30pm as the decision letter had identified this period as a time when the existing level of service provision would be reduced due to the opening hours of other pharmacies. Having regard to the patient count, I note that prescriptions were collected and OTC sales made on each occasion, with the exception of 23 December, albeit in small numbers. I have not been provided with any information regarding activity levels between 3pm and 5pm, or regarding other services such as enhanced or advanced services, which are offered by the Applicant.
- 2.35 It is clear that there are people using the pharmacy between 5pm and 5.30pm, however I have no information regarding the remaining times during which the Applicant wishes to close. I consider that it is relevant to have information as to why persons are using the pharmacy at these times. It is difficult to draw conclusions about the necessity of maintaining the existing level of service provision if there is only limited information on what services persons are using in a narrow time slot.
- 2.36 Without more detailed information it is difficult to make an assessment of whether it is necessary to maintain the existing level of service provision and this in turn makes it difficult to apply paragraph 24(1)(a). I consider it reasonable to take the position that unless I am provided with evidence to the contrary, I should consider that it is necessary to maintain the existing level of service provision.

- 2.37 Having determined that it is reasonable to assume that maintaining the existing level of service provision is necessary, I now need to consider if, despite the changes to hours, there is maintenance of the existing level of service provision. The Applicant cannot maintain this as it is changing its hours but I note the undisputed information from the Applicant with regard to other pharmacies in the area that, between them, have opening hours during the times that the Applicant is proposing to close, namely Boots, Morrisons, Your Family Pharmacy and Lloyds Pharmacy.
- 2.38 If I consider that the characteristics of other pharmacies, e.g. where they are located, their access, the services provided and the times they are open, means that the level of service provision is maintained for people in the local area or other likely users of the pharmacy, then I am able to grant the application under paragraph 24(1)(a).
- 2.39 The Applicant has provided information regarding access to those pharmacies for those who currently access its own pharmacy and how they might travel to find alternative pharmaceutical services. The Applicant has described the pharmacies in the area indicating how far away certain pharmacies are and whether there is parking available.
- 2.40 It is worth noting that characteristics of the persons using the pharmacy might be relevant here as well as from where they start their journey to the pharmacy. If they live close by, walk a few minutes to the pharmacy and walk back home, then even an additional 20 minute walk to the next nearest pharmacy might be considered as not maintaining the level of service provision to users of the pharmacy, unless alternative methods of travel are available. I do not consider that every single individual need should be considered at length in this regard but it would be helpful to have this information to be certain that the existing level of service provision would be maintained via local pharmacies.
- 2.41 The Applicant states that Boots Pharmacy and Morrisons Pharmacy at the Teesside Retail Park, approximately 2.7 miles away, are open on Saturdays until 5pm. The Applicant comments that this is a major retail area which patients will be accustomed to accessing for shops and leisure facilities. The Applicant claims it has a large free car park and is a 9 minute drive from the Applicant's pharmacy. Further the Applicant comments that the retail park can be accessed by the number 14 and 38 bus services taking 31 minutes, or on foot it is 1.2 miles away taking 25 minutes, and the terrain is mostly flat.
- 2.42 The Applicant also refers to three pharmacies (Boots, Your Family and Lloyds) on Linthorpe Road which are open on Saturday afternoons. The Applicant states that the Linthorpe Road area is approximately one mile away or a 20 minute walk. The Applicant comments that the area is easily accessible by bus with bus routes 12, 17 and 17A passing its pharmacy and the pharmacies on Linthorpe Road with a journey time of a few minutes and services running approximately every 10 minutes. The Applicant further states that there is free on-street car parking in the area. I note that the Commissioner did not consider the Your Family Pharmacy and Lloyds Pharmacy (which is undergoing a change of ownership) as they are outside a one mile radius from the Applicant's pharmacy.
- 2.43 I note that the information provided by the Applicant regarding physical access to other pharmacies has not been disputed.
- 2.44 I am satisfied that physical access to nearby pharmacies is satisfactory by both private and public transport. I consider that it is unlikely that patients will walk in order to access alternative pharmacies due to the distance involved and note that there is no suggestion that a significant proportion of patients walk in order to access the Applicant's pharmacy in any case.
- 2.45 The Commissioner has provided information indicating that Boots Pharmacy at the Retail Park has core opening hours between 3pm and 5pm, whilst Morrisons has no core opening hours after 2pm. Further, the information indicates that Boots Pharmacy

on Linthorpe Road has core opening hours between 2.30pm and 4.45pm on Saturday afternoons, with supplementary hours between 4.45pm and 5.30pm. Although the Applicant has stated that Your Family and Lloyds pharmacies are open on Saturday afternoons, it is not clear whether these are core or supplementary hours. I note that the period between 12pm and 12.30pm on weekdays would be covered by the core opening hours of nearby pharmacies, should the application be approved.

- 2.46 The Regulations indicate that I may take supplementary opening hours into consideration. However I am mindful that supplementary hours may be altered by the pharmacy by giving notice to the Commissioner in accordance with paragraph 23(6)(a) of Schedule 4 without the need to make an application to the Commissioner. On this basis, I have not placed weight on the provision of pharmaceutical services on a Saturday afternoon at Morrisons Pharmacy at the Teesside Retail Park, or Boots Pharmacy on Linthorpe Road between 4.45pm and 5.30pm. I note that patients would be able to access pharmaceutical services up to 5pm during core hours.
- 2.47 The Applicant comments that the pharmacies it has detailed offer the same services as it does, such as Hypertension Case Finding, Pharmacy Contraception Service, Flu Vaccinations and Minor Ailments. I note that according to information provided by the Commissioner there are other services provided by the Applicant but I have no information to suggest that there is a demand for those services at the times the Applicant is proposing to close.
- 2.48 Based on the information provided I am satisfied that the existing level of service provision would be maintained by virtue of the existence of other pharmacies in the area.

### **3. Determination**

- 3.1 Based on the information provided, I am satisfied that the pharmaceutical services provision that would result from the Applicant's proposed hours would maintain as necessary the existing level of service provision for the people in that area or other likely users of the pharmacy premises.
- 3.2 Therefore I substitute the decision of the Commissioner to refuse the application with a decision to grant the application.

**Head of Appeals**  
**NHS Resolution**