

18 July 2024

REF: SHA/26171

**APPEAL AGAINST NHS GREATER MANCHESTER ICB
DECISION TO REFUSE AN APPLICATION BY EVEREST
HEALTHCARE LIMITED FOR CONSOLIDATION ONTO THE
SITE AT 420 WILBRAHAM ROAD, CHORLTON-CUM-HARDY,
MANCHESTER, M21 0AS, OF EVEREST HEALTHCARE
LIMITED ALREADY AT THIS SITE AND EVEREST
HEALTHCARE LIMITED CURRENTLY AT 496 WILBRAHAM
ROAD, CHORLTON-CUM-HARDY, MANCHESTER, M21 9AS**

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1 Outcome

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

A copy of this decision is being sent to:

PSC on behalf of Everest Healthcare Limited
Manchester Health and Wellbeing Board
Trafford Health and Wellbeing Board
Greater Manchester LPC
PCSE on behalf of NHS Greater Manchester ICB

Advise / Resolve / Learn

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ROAD, CHORLTON-CUM-HARDY, MANCHESTER, M21 9AS**

1 The Application

By application dated 11 September 2023, Everest Healthcare Ltd ("the Applicant") applied to the NHS Greater Manchester ICB ("the Commissioner") in respect of a consolidation onto the site at 420 Wilbraham Road, Chorlton-cum-Hardy, Manchester, M21 0AS of Everest Healthcare Ltd already at this site and Everest Healthcare Ltd currently at 496 Wilbraham Road, Chorlton-cum-Hardy, Manchester, M21 9AS. The application was made pursuant to Regulation 26A of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations"). In support of the application it was stated:

- 1.1 "When considering an application made under regulation 26a, the NHS Commissioning Board ("NHSCB") is required to consider whether "it is satisfied that granting the application would not create a gap in pharmaceutical services provision that could be met by a routine application".
- 1.2 Routine applications are made in respect of:
 - 1.2.1 Needs that have been identified within the prevailing PNA (regulations 13, 15 and 17) or;
 - 1.2.2 Benefits that were not foreseen when the PNA was drafted (regulation 18).
- 1.3 In respect of the PNA, there are no needs identified within the current Manchester PNA that would be met by granting an application in the area served by these two pharmacies.
- 1.4 It is likely, therefore, that any changes in provision that might result in an application being made would be considered as 'unforeseen' (as a result of the closure of one pharmacy) and therefore any application would be made under regulation 18. In fact, in the absence of any need identified in the PNA, the NHSCB would be required to refuse any application made under regulations 13, 15 or 17.
- 1.5 The NHSCB will therefore need to be satisfied that, should this consolidation application be approved, the requirements of an application made under regulation 18 would not be met.
- 1.6 The key matters the NHSCB would need to consider if such an application were made are as follows:
 - 1.6.1 Is it satisfied that granting the application.....would secure improvements, or better access, to pharmaceutical services, in the area of the relevant HWB having particular regard to the desirability of:

- 1.6.1.1 There being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB;
 - 1.6.1.2 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;
 - 1.6.1.3 There being innovative approaches taken with regard to the delivery of pharmaceutical services such that 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.
- 1.7 We have therefore provided information below which will satisfy the NHSCB that granting an application for a new pharmacy (following the closure of the pharmacy at site 2) would not secure improvements or better access that were unforeseen in the PNA.

Background

- 1.8 The context of this application is the increasing pressure felt by all pharmacy contractors since the funding cuts that were first introduced in December 2016. The combination of these cuts, high levels of inflation and pharmacist shortages has resulted in unprecedented difficulties, with some fairly substantial pharmacy businesses unable to remain profitable.
- 1.9 This has been brought into sharp focus by the recent closure of a significant number of pharmacies across the country.
- 1.10 Furthermore, 100-hour pharmacies are required to offer extended opening hours so they have been particularly affected by the challenges and costs associated with obtaining pharmacist cover for their extended hours. As a result, maintaining profitability is particularly challenging.
- 1.11 Consolidation of two of these pharmacies ensure the long-term viability of pharmaceutical services for patients currently attending site 1. This is entirely in keeping with the Department of Health's aims and expectations when Regulation 26A was introduced to facilitate consolidations.

Location

- 1.12 The two consolidating pharmacies are located in Chorlton-Cum-Hardy, a suburb of Manchester, located three miles southwest from the city centre.
- 1.13 The closing pharmacy (site 2) is located within a parade of shops on the main street through Chorlton-cum-Hardy. Patients travel to this site from the wider area to visit the pharmacy and other amenities nearby such as food stores, various takeaways, charity shops, hairdressers and barbers, banks, post office and medical centres.
- 1.14 As would be expected at a high street pharmacy, the site is easily accessible for car users with 2 hours free on street parking available, and a pay and display car park located behind site on Manchester Road. The majority of patients attending the pharmacy at present will travel by car to get there. As a result, the pharmacy has a large 'catchment area', with patients who attend the pharmacy living throughout Chorlton-Cum-Hardy and the surrounding area. On Street parking is also available at Site 1 and at the Morrisons Food Store which is near to the remaining site.
- 1.15 The location is also accessible by public transport with a regular bus service running near to the site from the city centre and the surrounding areas. The nearest bus stop is approximately 100 metres from the pharmacy entrance of site 2.

- 1.16 Few patients walk to the pharmacy at present but those who do will travel around the Greater Manchester area as part of their daily lives to travel to work / college or to visit other amenities located within the wider area. Site 2 is store is not located within a deprived area, [sic] so any patient who does choose to walk to the pharmacy at present is likely to have access to a car or will be happy to pay the costs of public transport to access a pharmacy if necessary.
- 1.17 Both sites are located within an urban area which is well served by many other competing pharmacies operated by a variety of contractors ensuring residents and visitors to the area have a choice of provider.
- 1.18 The map (at Appendix A) shows the location of the closing pharmacy location (marked with a green pointer) and other pharmacies within the surrounding area. This information is taken from Google Maps.
- 1.19 There are 19 other pharmacies within a 1.5-mile radius of the pharmacy proposed to close. These are:

Name	Address	Distance from closing pharmacy	Opening hours
Boots	20-22 Chorlton Place, Wilbraham Road, Chorlton-cum-Hardy, Manchester, M21 9AQ	0.0 miles	53.5 hours Monday – Friday 09.00-18.00, Saturday 09.00-17.30, Sunday closed
Everest Chorlton Village Pharmacy	420 Wilbraham Road, Chorlton-cum-Hardy, Manchester, M21 0AS	0.1 miles	49 hours Monday – Friday 09.00-18.00, Saturday 09.00-13.00, Sunday closed
Wilbraham Pharmacy	521 Wilbraham Road, Chorlton-cum-Hardy, Manchester, M21 0UF	0.3 miles	51 hours and 45 minutes Monday – Friday 08.30-18.15, Saturday 09.00-12.00, Sunday closed
Beech Road Pharmacy	101 Beech Road, Chorlton, Manchester.M21 9EQ	0.3 miles	51 hours Monday – Friday 09.00-18.00, Saturday 10.00-16.00, Sunday Closed
Manley Pharmacy	207 Clarendon Road, Whalley Range, Manchester, M16 0EH	0.5 miles	58 hours Monday Friday 09.00 - 19.00, Saturday 09.00 - 17.00, Sunday Closed
Elliot's Pharmacy	Whalley Range 201 Upper Chorlton Road, Whalley Range, Manchester, M16 0BH	0.7 miles	57 Hours Monday 08.30-18.30, Tuesday 08.30-20.00, Wednesday, 08.30-18.30, Thursday 08.30-20.00, Friday 08.30-18.30, Saturday 09.00-13.00, Sunday Closed
C & T Pharmacy	77 Great Stone Road, Stretford, Manchester, M32 8GR	0.8 miles	46.5 hours Monday – Friday 09.00-17.30, Saturday 09.00-13.00, Sunday Closed
Well	280 Barlow Moor Road, Chorlton- Cum-Hardy	0.9 miles	45 hours Monday – Friday 09.00-18.00, Saturday - Sunday Closed

G Pennant Roberts	137 Ayres Road, Old Trafford, M16 9WR	1.1 miles	49 hours Monday – Friday 09.00-18.00, Saturday 09.30-13.30, Sunday Closed
Everest Pharmacy	117B Withington Road, Manchester M16 8EE	1.1 miles	56 hours Monday – Friday 09.00-19.00, Saturday 12.00-18.00, Sunday Closed
Range Pharmacy	121 Withington Road, Whalley Range, Manchester, M16 8EB	1.1 miles	65.25 hours Monday – Friday 08.15-19.00, Saturday 09.00-18.00, Sunday Closed
Easy Med Pharmacy	6 Lime Grove, Old Trafford, Manchester, M16 0WL	1.1 miles	Unknown
Cohens Chemist	874 Chester Road, Stretford, Manchester, M32 0PA	1.1 miles	40 hours Monday – Friday 09.00-13.00 & 14.00- 18.00, Saturday- Sunday Closed
Elliotts Pharmacy	60 Seymour Grove, Old Trafford, Manchester, M16 0LN	1.2 miles	75 hours Monday – Friday 09.00-21.00, Saturday 13.00-21.00, Sunday 10.00-17.00
Well	65 Ayres Road, Old Trafford, Manchester, M16 9NH	1.3 miles	45 hours Monday – Friday 09.00-18.00, Saturday – Sunday Closed
Boots	69-72 The Mall, Arndale Centre, Stretford, Manchester, M32 9BD	1.3 miles	51 hours Monday – Saturday 09.00-17.30, Sunday Closed
Lloyds	The Delamere Centre, Delamere Avenue, Stretford, Manchester M32 0DF	1.3 miles	42.5 hours Monday – Friday 09.00-17.30, Saturday - Sunday Closed
Tesco Instore Pharmacy	Chester Road, Stretford, Manchester, M32 0RW	1.3 miles	78 hours Monday – Saturday 09.00-21.00, Sunday 11.00-17.00
Harry's Pharmacy	92 Mitford Street, Stretford, Manchester M32 8AQ	1.4 miles	49 hours Monday – Friday 09.00-18.00, Saturday 09.00-13.00, Sunday Closed

1.20 In total, excluding the two pharmacies involved in this application, there are 18 contractors, two of which trade for 7 days/week, within a 1.5-mile radius of the proposed site. They are operated by a variety of different contractors.

1.21 (Note: all information taken from www.NHS.uk)

1.22 Site 1 (the pharmacy that will remain) opens for 49 hours per week and trades for 6 days per week and site 2 (the closing pharmacy) opens for 76 hours per week over 7 days. However, the NHSCB will be mindful that the relevant contractual hours to

consider are the core opening hours for the closing pharmacy, which are 76 over 7 days per week. There are alternative pharmacies trading as by Tesco Instore Pharmacy and Elliotts Pharmacy located within 1.3 miles from site 2 that provides extended hours pharmacy services 7 days a week.

- 1.23 Therefore, there will be no reduction in the availability of pharmaceutical services during the core hours provided at site 2 as a result of this consolidation.
- 1.24 For the reasons provided above, residents and visitors to the area who are accustomed to accessing the pharmacy at site 2 (the closing pharmacy) will find the remaining pharmacies, including site 1 equally easy to access.
- 1.25 Car parking is provided at several pharmacies in the area, including Beech Road, Pharmacy, Tesco and Manley Pharmacy. For patients who currently attend the closing location (site 2) by car, the journey to alternative pharmacies will take no more than a few minutes at the most. Given that patients visit the pharmacy from locations across a wide area, many current patients will pass other pharmacies on their way to site 2 at present.
- 1.26 It is clear, therefore, that access to pharmaceutical services for these patients will not be materially reduced.
- 1.27 For those who access the pharmacies by bus currently, the route(s) that serve site 2 also serve the city centre and surrounding areas where other pharmacies are located such as Beech Road Pharmacy & Manley Pharmacy. Buses operate frequently throughout the day on routes 23, 25, 86, 87, 150 and 758. Patients can easily access alternative pharmacies using the existing bus network so there will be no significant reduction in accessibility for these patients following the closure of site 2 as there is an alternative bus stop approximately 50 metres from the remaining site.
- 1.28 As discussed earlier, few patients currently visit the closing pharmacy on foot. However, those that do can access the next nearest pharmacy on foot within 4 minutes from the current site or use private or public transport to access alternative pharmacies with ease as the pharmacies are only 0.2 miles apart.
- 1.29 The nearest GP surgeries to the closing pharmacy are:
 - 1.29.1 Chorlton Family Practice, Chorlton Health Centre, 1 Nicolas Road, Chorlton-Cum-Hardy, Manchester, M21 9NJ. 0.1 miles from the closing pharmacy,
 - 1.29.2 Corkland Road, Medical Practice, 7-9 Corkland Road, Manchester M21 8UP, 0.2 miles from the closing pharmacy,
 - 1.29.3 Wilbraham Surgery, 515 Wilbraham Road, Chorlton Cum Hardy, Manchester, M21 0UF, 0.3 miles from the closing pharmacy.
- 1.30 Patients attending these medical centres who currently access the pharmacy at site 2 will not have any difficulties accessing alternative pharmaceutical services as there are several other pharmacies in close proximity to these surgeries that they can access without difficulty.
- 1.31 The proposed consolidation will not result in a material reduction in choice or access for patients as there are numerous pharmacies located in all directions from the proposed consolidation site. Importantly there is also a choice of contractors who open extended hours within 1.5 miles, so there will be no reduction in the core opening hours for which pharmaceutical services are provided.

Securing improvements or better access

- 1.32 When considering an application under regulation 18 the fundamental test is whether granting the application will secure improvements or better access in respect of pharmaceutical services.
- 1.33 In respect of improvements, there is no evidence of any shortfall in current service provision by the consolidating pharmacies. Both pharmacies provide a comprehensive range of pharmaceutical services and the consolidated pharmacy is required to provide all of the pharmaceutical services offered by each of the pharmacies at present. Furthermore, there is no evidence of complaints regarding the service provided by either pharmacy. Therefore, there is no reason to believe that there will be any shortfall in the service provided by the consolidated pharmacy.
- 1.34 Furthermore, there is no evidence of any improvements required in respect of the numerous other pharmacies located within the area.
- 1.35 It follows that, if service provision after Site 2 closes continues to meet the needs of the population, there is no reason to grant an application that would secure improvements as there is no evidence that improvements are required.
- 1.36 In terms of access to pharmaceutical services, it is clear that access to services across the Chorlton-Cum-Hardy area is excellent given the number of pharmacies within a short distance. This is true both geographically and in terms of opening hours.

Choice

- 1.37 When considering choice, as previously stated, there are 18 pharmacies (excluding the two in question) within a 1.5 mile radius of the closing pharmacy. These pharmacies are operated by a variety of different contractors including Boots, Well, Tesco, Cohens and numerous independents. Patients will therefore continue to have choice of provider if this consolidation application is approved.
- 1.38 There is no evidence, therefore, that should this application be granted, there is a risk that a future application at this location would be granted on the basis of improved choice.

Patients sharing protected characteristics

- 1.39 Relevant protected characteristics in this case are those relating to the accessibility of pharmaceutical services. These are typically age and disability i.e. matters that affect physical accessibility. Given the proximity of site 1 and the other pharmacies in the area, it is clear that patients who previously attended the closing pharmacy will have no difficulties attending other pharmacies regardless of their means of travel for the reasons we have provided previously.
- 1.40 As accessibility for these patients will be maintained there is no evidence that a future application made to secure improvements in access for these patient groups would be successful.

Innovation

- 1.41 There is no evidence of any gaps in pharmaceutical services provision in the area concerned that would be addressed through the provision of innovative pharmaceutical services.

The general area

- 1.42 Finally, to our knowledge there are no relevant changes planned within the area in the foreseeable future that would materially affect the demand for pharmaceutical services within this area.

Conclusion

- 1.43 Taking into account the number of pharmacies within close proximity and their accessibility, there is no evidence that a future application made at this location to improve access (either physically or in respect of opening hours) would be successful given that the closure of one pharmacy would have no material impact of access to pharmaceutical services.
- 1.44 In fact we would suggest that after the closure of site 2 it is inconceivable that any application made to the NHSCB to 'replace' this pharmacy would be approved. Given this is the relevant legal test, in our opinion there are no grounds to refuse this application.
- 1.45 In conclusion there is no reason to believe that any gaps will be created as a result of this consolidation."

2 The Decision

The Commissioner considered and decided to refuse the application. The decision letter dated 16 February 2024 states:

[Any reference to 'Committee' in this section is not to be confused with the Pharmacy Appeals Committee of NHS Resolution]

- 2.1 "Greater Manchester 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 NHS Greater Manchester Integrated Care Pharmaceutical Services Regulations Committee (PSRC) of 25 January 2024

2.2 Regulatory Tests

- 2.3 Consolidation onto an existing site. Regulation 26A quote in full.

- 2.4 *Both the remaining site and the closing site fall within the Manchester Health and Wellbeing Board (HWB) area.*

- 2.5 **Based on all available information, the PSRC determined there was no reason to refuse the application based on the above regulatory tests.**

- 2.6 *26A.- (5) Would granting the application create a gap in pharmaceutical services that could be met by a current or future needs, or improvements or better access, application?*

- 2.7 The PSRC reviewed the presented information below; and noted that the applicant does not believe that consolidation of the two sites would lead to a gap being created.

- 2.8 Remaining site: 420 Wilbraham Road, Chorlton-cum-Hardy, Manchester, M21 0AS: The remaining site is situated at a crossroads with pedestrian crossings and dropped kerbs. Parking on street (Keppel Road and Morrisons Car park on Wilbraham way). Access to the premises is level with the pavement/no step.

- 2.9 See the maps at Appendix B.

- 2.10 Closing site: 496 Wilbraham Road, Chorlton Cum Hardy, Manchester, M21 9AS: The closing site has an accessible ramp to the pharmacy. Large pay and display car park at closing site behind the premises on Manchester Road.
- 2.11 The distance between the remaining and closing sites is 0.2 miles – estimated 5 minute walk (source: Google Maps). The PSRC did not consider that the distance or terrain posed any barriers to in terms of access, and therefore would not adversely affect patients.
- 2.12 The remaining site opens for significantly fewer hours than the closing site (with the closing site being a 100-hour contractor operating 76 hours per week Monday to Sunday). The remaining site would be maintaining 49 hours per week Monday to Saturday following consolidation, as set out below:

Remaining site's current opening hours:							
Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
09.00-18.00	09.00-18.00	09.00-18.00	09.00-18.00	09.00-18.00	09.00-13.00	Closed	49

Remaining site's proposed opening hours:							
Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
09.00-18.00	09.00-18.00	09.00-18.00	09.00-18.00	09.00-18.00	09.00-13.00	Closed	49

Closing site's current opening hours:							
Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
09.00-13.00 & 14.00-21.00	09.00-13.00 & 14.00-21.00	09.00-13.00 & 14.00-21.00	09.00-13.00 & 14.00-21.00	09.00-13.00 & 14.00-21.00	09.00-13.00 & 14.00-21.00	10.00-20.00	76

- 2.13 It is noted that there are 8 other pharmacies within one mile of the remaining and closing sites (source: the NHS site).
- 2.14 The PSRC was mindful that the nearest remaining 100-hour pharmacy contractors (both of which also now operate reduced hours) are:
- 2.14.1 Elliotts Pharmacy, 60 Seymour Grove, Old Trafford, Manchester, M16 0LN - 1.2 miles from the proposed closing site (which equates to 29 mins walk, 6 min drive, 15 mins public transport). Opening Hours are Monday to Saturday 09:00-13:00 & 14:00-21:00, Sunday 10:00 - 20:00; and
- 2.14.2 Tesco Instore Pharmacy, Chester Road, Stretford, Manchester, M32 0RW - 1.3 miles away (33 mins walk, 7 mins drive 25 min public transport). Opening hours are Monday to Saturday 09:00 - 21:00 and Sunday 11:00 - 17:00
- 2.15 Therefore; the nearest pharmacy with extended hours after 19:00 would be an approximately 30 mins walk away, 15 mins bus journey or 7 mins car ride from the closing site.

Consultation Room

- 2.16 The applicant has provided a floorplan showing the location of the consultation room within the remaining site (see Appendix B).

Will there be an interruption in service provision and if so has the applicant given reasons for this?

- 2.17 The applicant has confirmed there would be no interruption in service provision as a result of the consolidation.

“26A.-(5) The NHSCB must refuse a consolidation application—

(a) if it is satisfied that granting the application would create a gap in pharmaceutical services provision that could be met by a routine application—

(i) to meet a current or future need for pharmaceutical services, or

(ii) to secure improvements, or better access, to pharmaceutical services; or

(b) if either S1 or S2 are distance selling premises or appliance contractor premises.”

- 2.18 In terms of the regulatory test relating to whether a gap in pharmaceutical services which could be met by any of the above-mentioned application types would be created as a result of the consolidation, the PSRC noted that Manchester Health and Wellbeing Board (HWB) has provided no representations.

- 2.19 The opening hours of the two remaining 100-hour pharmacies (now operating reduced hours) both provide coverage Monday to Sunday. However, PSRC noted the significant distance to these sites from the location of the remaining/closing sites, and therefore considered that a gap in provision would be created in terms of access to pharmaceutical services on Saturday or Sunday evenings for patients accustomed to accessing services from the closing site.

Trading name	Address	Miles from closing site	Standard (core) hours	Sun open	Sun close
Everest Chorlton Pharmacy	496 Wilbraham Road, Chorlton-cum-Hardy, Manchester, M21 9AS	0	76 hours	10:00	20:00
Everest Pharmacy Chorlton Village	420 Wilbraham Road, Chorlton-cum-Hardy, Manchester, M21 0AS	0.1	40 hours	n/a	n/a
Elliotts Pharmacy	60 Seymour Grove, Old Trafford, Manchester, M16 0LN	1.2	75 hours	10:00	17:00
Tesco Instore Pharmacy	Chester Road, Stretford, Manchester, M32 0RW	1.3	78 hours	11:00	17:00

- 2.20 Services currently provided at the remaining site are as follows:

2.20.1 NMS

2.20.2 CPCS

2.20.3 Flu Vaccinations

2.20.4 Needle and Syringe Programme

2.20.5 Minor Ailments

2.20.6 Supervised Consumption

2.20.7 Dry Blood Spot Testing

2.20.8 Disposal of Sharps

2.20.9 EHC

2.20.10 Smoking cessation

2.20.11 Hypertension Case Finding

2.21 with the addition of the following services to be provided that are in place at the proposed closing site:

2.21.1 Palliative Care

2.21.2 Covid-19 Vaccinations

2.21.3 Discharge Medicines Service

2.21.4 Healthy Start

2.21.5 Naloxone Supply

2.21.6 Contraception Service

2.22 Therefore, there will be no reduction in services provided. However, 496 Wilbraham Road is the larger premises with longer opening hours and which dispenses far more items as the MYS data shows below:

2.23 Note the NHS Dispensing Data for September 2023

Contractor name	Address	Postcode	Number of forms	Number of items	Number of forms for Electronic Prescription Service (EPS)	Number of items processed via Electronic Prescription Service (EPS)
Everest Chorlton Pharmacy	496 Wilbraham Road	M21 9AS	6610	12,239	6,300	11,804
Everest Pharmacy Chorlton Village	420 Wilbraham Road,	M21 0AS	790	1,365	764	1,328

2.24 The nearest GP practices to the closing site are Wilbraham Surgery and Chorlton Family Practice – these are just 0.2 miles additional miles from the remaining site.

		Miles from closing site	Miles from remaining site
GP Practice		Distance	
Wilbraham Surgery	515 Wilbraham Road, Chorlton-cum-Hardy, Manchester, Lancashire, M21 0UF	0.4	0.2
Chorlton Family Practice	Chorlton Health Centre, 1 Nicolas Road, Chorlton-cum-Hardy, Manchester, Greater Manchester, M21 9NJ	0.1	0.2
Ashville Surgery	171 Upper Chorlton Road, Manchester, Lancashire, M16 9RT	0.9	0.9

David Medical Centre	274 Barlow Moor Road, Chorlton-cum-Hardy, Manchester, Lancashire, M21 8HA	1	0.9
North Trafford Group Practice	864-866 Chester Road, Stretford, Manchester, Lancashire, M32 0PA	1.6	1.7

- 2.25 Neither the remaining site nor the closing site are a Distance Selling Premises (DSP) or a Dispensing Appliance Contractor (DAC).

“26A.-(6) In the case of an application to which paragraph (3) applies, the NHSCB must refuse the application unless it is satisfied —

(a) if the NHSCB intends to commission from P1 at or from S1 enhanced services which P2 provides at or from S2 but which P1 has not been providing at or from S1, that the provision of those services will not be interrupted except for such period as the NHSCB may for good cause allow;

(b) in the case of an application to which paragraph (3)(b) applies, that—

(i) P2 consents to the change of ownership of S2, and

(ii) P1 and P2 consent to S2 ceasing to be listed chemist premises as a consequence of the application; and

(c) in the case of an application to which paragraph (3)(b) does not apply, that P1 consents to S2 ceasing to be listed chemist premises as a consequence of the application.”

(7) In the case of an application to which paragraph (4) applies, the NHSCB must refuse the application unless it is satisfied—

(a) that P2 is proposing to carry on at S1, in place of P1, the business in the course of which P1 is providing pharmaceutical services at S1;

(b) that P2 is undertaking to provide the same pharmaceutical services as those that P1 is providing (whether or not P2 is also to provide other services that P2 is providing at S2);

(c) that the provision of pharmaceutical services at S1 is not to be interrupted, except for such period as the NHSCB may for good cause allow;

(d) if the NHSCB intends to commission from P2 at or from S1 enhanced services which P2 provides at or from S2 but which P1 has not been providing at or from S1, that the provision of those services will not be interrupted except for such period as the NHSCB may for good cause allow; and

(e) that—

(i) P1 consents to the change of ownership of S1, and

(ii) P1 and P2 consent to S2 ceasing to be listed chemist premises as a consequence of the application.

“26A.-(5) The NHSCB must refuse a consolidation application—

(a) if it is satisfied that granting the application would create a gap in pharmaceutical services provision that could be met by a routine application—

(i) to meet a current or future need for pharmaceutical services, or

(ii) to secure improvements, or better access, to pharmaceutical services; or

(b) if either S1 or S2 are distance selling premises or appliance contractor premises”

2.26 Applying the above regulatory tests to the application, and based on all available information, the PSRC concluded that the application did not satisfy Regulation 26A(5)(ii), as granting the consolidation would lead to a gap which could be met by an application to secure improvements, or better access, to pharmaceutical services.

2.27 Interested party representations

2.28 List of interested parties notified of the application

2.29 Pharmacies within 2km of the site:

Code	Trading Name	Address	Miles from closing site
FC231	Wilbraham Pharmacy	521 Wilbraham Road, Chorlton-cum-Hardy, Manchester, M21 0UF	0.3
FGV39	Beech Road Pharmacy	101 Beech Road, Chorlton-cum-Hardy, Manchester, M21 9E	0.3
FX146	Manley Pharmacy	207 Clarendon Rd, Whalley Range, Manchester, M16 0EH	0.5
FHR08	Elliotts Pharmacy	201 Upper Chorlton Road, Whalley Range, Manchester, M16 0BH	0.7
FN831	C&T Pharmacy	77 Great Stone Road, Stretford, Manchester, M32 8GR	0.8
FHL57	Well	280 Barlow Moor Road, Chorlton-cum-Hardy, Manchester, M21 8HA	0.8
FXF96	G Pennant Roberts	137 Ayres Road, Old Trafford, Manchester, M16 9WR	1.1
FA536	Everest Pharmacy	117B Withington Road, Manchester, M16 8EE	1.1
FF590	Range Pharmacy	121 Withington Road, Manchester, M16 8EB	1.1
FA841	Easy Med Pharmacy	6 Lime Grove, Old Trafford, Manchester, M16 0WL	1.1
FN697	Cohens Chemist	874 Chester Road, Stretford, Manchester, M32 0PA	1.1
FMJ94	Elliotts Pharmacy	60 Seymour Grove, Old Trafford, Manchester, M16 0LN	1.2
FH060	Well	65 Ayres Road, Old Trafford, Manchester, M16 9NH	1.3
FVR00	Boots	69.72 The Mall, Arndale Centre, Stretford, Manchester, M32 9BD	1.3
FE896	Lloyds Pharmacy	The Delamere Centre, Delamere Avenue, Stretford, Manchester, M32 0DF	1.3
FP756	Tesco Instore Pharmacy	Chester Road, Stretford, Manchester, M32 0RW	1.3

2.30 Also notified:

- 2.30.1 Community Pharmacy Greater Manchester (formerly known as Greater Manchester LPC)
- 2.30.2 Manchester LMC
- 2.30.3 Manchester HWB
- 2.30.4 Manchester Healthwatch
- 2.30.5 Salford and Trafford LMC
- 2.30.6 Trafford HWB
- 2.30.7 Healthwatch Trafford
- 2.31 The interested party comments received are summarised as follows:
 - 2.31.1 Community Pharmacy Greater Manchester - applications sub group has reviewed this application and would like to note that this consolidation will result in a reduction of hours, however do not currently object on these grounds as there should still be adequate pharmacy provision available within the local area
 - 2.31.2 Gorgemead Ltd t/a Cohens Chemist have no comment to make
 - 2.31.3 Boots UK Ltd have no comments to make
- 2.32 It was noted that no representations were received from either Manchester HWB or Trafford HWB.
- 2.33 Has the impact of the decision on those with protected characteristics under the Equalities Act 2010 been considered?
 - 2.33.1 Is this in accordance with NHS England/the ICB's Public Sector Equality Duty?
 - 2.33.2 Has the impact of the decision on NHS England/the ICB's duty on health inequality been considered?
 - 2.33.3 Have other statutory duties of NHS England/the ICB been considered in making the decision?
- 2.34 Based on all available information, it is not anticipated that the consolidation would adversely impact either patients with protected characteristics, or any other service user groups.
- 2.35 The applicant has confirmed that the remaining site has the following in place:
 - 2.35.1 Access for wheelchair users
 - 2.35.2 Translation service
 - 2.35.3 Induction Loop
- 2.36 Additionally, it was noted that from 01/01/2021 for all face-to-face community pharmacies (and 01/04/2021 for all distance selling premises), the system of clinical governance within the Terms of Service was expanded to include the promotion of healthy living. The Healthy Living Pharmacy (HLP) framework is aimed at achieving consistent provision of a broad range of health promotion interventions through community pharmacies to meet local need, improving the health and wellbeing of the

local population and helping to reduce health inequalities. NHS Greater Manchester is committed to support its community pharmacies in achieving and maintaining compliance with this framework.

Decision

- 2.37 Based on all available information, the PSRC refused the application for consolidation under Regulation 26A(5)(ii), on the basis that a gap would be created that could be filled by an application to secure improvements, or better access, to pharmaceutical services.
- 2.38 The applicant has a right of appeal against this decision
- 2.39 The above decision constitutes a contractual change. Under NHS Greater Manchester governance this determination by the PSRC is to be authorised for and on behalf of NHS Greater Manchester Integrated Care by: [RB] Chief Officer for Commissioning and Population Health."

3 The Appeal

In a letter dated 29 February 2024 addressed to NHS Resolution, Pharmacy Sales & Consultancy ("PSC") on behalf of the Applicant appealed against the Commissioner's decision. The grounds of appeal are:

- 3.1 "We act for Everest Healthcare Limited and have attached a letter of authorisation from our client accordingly.
- 3.2 Our client has been notified by NHS England, in a letter dated 16th February, that the above application has been refused. A copy of their letter and decision report is attached with this appeal letter.
- 3.3 Our client wishes to appeal against the decision of the Greater Manchester ICB to refuse this application as it believes their reasonings for refusal are flawed.
- 3.4 For ease of reference, we attach a copy of our client's original application and supporting information.
- 3.5 As a preliminary matter, we wish to point out that there were no objections to our client's application received from third parties who were consulted on this application.
- 3.6 Comments were received from Boots, Cohens Chemists and the Greater Manchester LPC but none of these parties objected.
- 3.7 There were no representations received from either of the Health and Wellbeing Boards ("HWBs") consulted so it would appear that they had no objections to the application either.

ICB Decision

- 3.8 In summary the key points raised by the ICB in their decision report, were as follows (we have added the numbering for ease of reference):
 - 3.8.1 *"The PSRC was mindful that the nearest remaining 100-hour pharmacy contractors (both of which also now operate reduced hours) are:*
 - 3.8.1.1 *Elliotts Pharmacy, 60 Seymour Grove, Old Trafford, Manchester, M16 0LN - 1.2 miles from the proposed closing site (which equates to 29 mins walk, 6 min drive, 15 mins public transport). Opening Hours are Monday to Saturday 09:00- 13:00 & 14:00-21:00, Sunday 10:00 -*

20:00 [note reference to 20:00 is an error as the pharmacy closes at 17:00 on Sundays] ; and

3.8.1.2 Tesco Instore Pharmacy, Chester Road, Stretford, Manchester, M32 0RW - 1.3 miles away (33 mins walk, 7 mins drive 25 min public transport). Opening hours are Monday to Saturday 09:00 - 21:00 and Sunday 11:00 - 17:00 Therefore; the nearest pharmacy with extended hours after 19:00 would be an approximately 30 mins walk away, 15 mins bus journey or 7 mins car ride from the closing site.

3.8.2 The opening hours of the two remaining 100-hour pharmacies (now operating reduced hours) both provide coverage Monday to Sunday. However, PSRC noted the significant distance to these sites from the location of the remaining/closing sites, and therefore considered that a gap in provision would be created in terms of access to pharmaceutical services on Saturday or Sunday evenings for patients accustomed to accessing services from the closing site.

3.8.3 Therefore, there will be no reduction in services provided. However, 496 Wilbraham Road is the larger premises with longer opening hours and which dispenses far more items as the MYS data shows below.

3.8.4 Based on all available information, it is not anticipated that the consolidation would adversely impact either patients with protected characteristics, or any other service user groups.

3.8.5 Applying the above regulatory tests to the application, and based on all available information, the PSRC concluded that the application did not satisfy Regulation 26A(5)(ii), as granting the consolidation would lead to a gap which could be met by an application to secure improvements, or better access, to pharmaceutical services."

3.9 Taking each of the ICB's points we wish to comment as follows:

[3.8.1 & 3.8.2] Access to the nearest 100 hour pharmacies as alternative providers.

3.10 When considering alternative provision following the closure of the pharmacy at 496 Wilbraham Road (site 2) there are two matters the Primary Care Appeals ("PCA") committee will wish to consider:

3.10.1 Is there a significant demand for pharmaceutical services during the hours for which pharmaceutical services will no longer be provided at the site of the proposed closure?

3.10.2 Is the distance and the nature of the journey required to access alternative pharmacies reasonable, taking into account this level of demand and the profile of patients who might be accustomed to accessing that pharmacy.

Demand

3.11 Taking the first of these two points it is important to be mindful of the reasons the pharmacy at 496 Wilbraham Road (site 2) opens until 9pm from Monday to Saturday and 8pm on Sundays.

3.12 This pharmacy opened as a '100 hour' pharmacy, using the exemption that existed within the 2005 Regulations. Applicants making an application to open a 100-hour pharmacy were not required to provide any evidence of need or demand for pharmaceutical services provided they committed to opening 100 hours per week.

- 3.13 Subsequently, following the amendments to the current regulations in May 2023, 100-hour pharmacies were permitted to reduce their hours to a minimum of 72 per week, provided that these pharmacies remained open until 9pm from Monday to Saturday and retained the total number of core hours on a Sunday. Our client therefore took the opportunity to reduce its opening hours when the regulations were amended.
- 3.14 Once again, the fact that the pharmacy now opens until 9pm from Monday to Saturday and 8pm on Sunday is not evidence that there is a demand for pharmaceutical services at that time. It is simply a contractual requirement that it opens until those times.
- 3.15 The reality is that the demand for pharmaceutical services at this location late in the evenings is minimal. There are no out of hours providers of medical services in this area and, other than takeaways, supporting businesses are closed in the evenings and only open short hours during the weekend. This is simply not an area with a thriving weekend or evening economy.
- 3.16 In order to quantify this demand our client has carried out a survey of activity at the pharmacy proposed for closure for the weekend of Saturday 24th and Sunday 25th February.
- 3.17 We have attached a copy of a 'tally chart' [see Appendix C] provided by our client accordingly. The form used for recording activity is one that was originally designed to audit bank holiday demand so we have explained and summarised the data below.
- 3.18 Number of patients presented at the pharmacy.
- 3.18.1 The first column shows the patients referred by an external agency. No referrals were received after 6pm on Saturday or Sunday. There were 4 referrals after 5pm on a Sunday when Elliots and Tesco are closed. If this consolidation is approved these referrals will be made to other extended hours pharmacies instead (see later in this document).
- 3.18.2 The second column shows 'walk-in patients' seeking general advice. Whilst there was some demand on Sunday evening these consultations did not result in any supply of medication so these consultations could have been made by phone with other extended hours pharmacies in the wider area.
- 3.19 Number of prescriptions.
- 3.19.1 The 'same day' columns refer to patients who have received a prescription on that day and have attended to have it dispensed. Demand was minimal on both Saturday and Sunday and almost non-existent in the evenings.
- 3.19.2 The 'previous day' column actually refers to any items dispensed at the pharmacy that were prescribed at any other time. These are typically repeat items that are dispensed when the pharmacy is quiet, often to be delivered to patients after the weekend. Most of the items dispensed over the weekend fell into this category. They were not acute prescriptions.
- 3.20 Other medicines purchased
- 3.20.1 Demand for OTC medication (P & GSL) over the weekend was very limited, with fewer than 40 sales of medicines over the entire weekend, the vast majority of which was sold at times the nearest extended hours pharmacy (Elliots) was open.
- 3.21 Other services accessed
- 3.21.1 These columns are self-explanatory. As can be seen the demand is negligible.

3.22 Our client also separately noted demand for needle exchange and supervised consumption over this weekend. There were no requests for needle exchange and there were only two patients using the supervised consumption service. In the case of both these patients the drug action team have authorised a double supply to be provided on Saturdays in the event patients are unable to access a pharmacy on a Sunday.

3.23 Given that the decision maker is required to consider whether 'it is satisfied that granting the application would create a gap in pharmaceutical services provision that could be met by a routine application', it must put itself into the position where it considers whether the demand for pharmaceutical services created following the closure of a pharmacy would be so significant that it would be obliged to grant a new application that offered opening hours during those times.

3.24 As the bar for granting a new pharmacy application is set fairly high, the PCA committee would need to be satisfied that this unmet demand would really exist to a meaningful extent.

Distance to alternative providers

3.25 Within its report, the ICB has considered other '100-hour' pharmacies in the area, and whether patients would be able to travel to these as a reasonable alternative.

3.26 The information provided in the ICB's decision report in respect of the distance to these alternative 100 hour pharmacies is consistent with the information provided on Google Maps, but this does not tell the full story.

3.27 Before considering distances, in order to assist the PCA committee to consider the accessibility of these alternative pharmacies, we have reviewed the relevant demographic information relating to Chorlton-cum-Hardy.

Deprivation

3.28 We have considered the Index of Multiple Deprivation 2019 data as produced by the Ministry of Housing, Communities and Local Government. Postcode area M21 9AS (which is the postcode of site 2) is ranked 9,992 out of 32,844 areas in England where 1 is the most deprived. So whilst the area might not be described as affluent, it is not within the 30% most deprived areas in England.

3.29 Within that data, which is broken down into further measures, it is notable that 'income ranking' is 16,041 out of 32,844 i.e. almost in the middle. This is not an area where residents are under undue financial pressure.

Census data

3.30 2021 census data (source Nomis) relating to the Chorlton Park electoral ward (in which the closing pharmacy is located) shows:

3.30.1 27.1% of households have no cars or vans, compared to the national average of 23.5%.

3.30.2 7.9% of residents describe their day-to-day activities limited a lot through disability compared to the national average of 7.3%

3.30.3 9.6% of residents describe their day-to-day activities limited a little through disability compared to the national average of 10.0%

3.31 Overall the demographic profile is unremarkable. Whilst car ownership is slightly below average, it is actually relatively high for a city, where residents are more able to rely on public transport. Levels of disability are broadly in line with national averages and

residents have average levels of household income so are unlikely to have any difficulties affording public transport should they need to use it.

- 3.32 Taking this demographic information into account we have considered the accessibility of other pharmacies in the wider area.

Elliotts Pharmacy

- 3.33 The journey from the pharmacy proposed for closure to Elliotts Pharmacy by car is very straightforward. Leaving 496 Wilbraham Road, travel east for 150m then turn left into Manchester Road. Travel north up Manchester Road (which becomes Seymour Grove) for 1 mile then Elliotts Pharmacy is located on the left-hand side.
- 3.34 Travel time by car will depend on traffic conditions, but would rarely take longer than 5 minutes. Given that the ICBs' concern is access during the evenings and weekends, this is a time when the roads are quiet so the journey may take no more than 3-4 minutes. Free parking is available in front of this pharmacy.
- 3.35 Considering the level of car ownership we would suggest that most households would preferentially use a car to access a pharmacy in the evenings should they need to. Even if they do not own a car, if they had need to urgently access a pharmacy it is likely that a friend or relative would have a car and may be willing to assist.
- 3.36 Patients who wish to use public transport would be likely to use the tram. This travels from Chorlton station, on Wilbraham Road, to Trafford Bar station (which is only 250m from Elliotts Pharmacy) every few minutes including late into the evening at weekends. The journey time is only 4 minutes. The 15 minutes referred to in the ICB report includes walking time but, of course, this depends where a journey starts from. There is no reason to assume a patient would start their journey at the closing pharmacy premises.
- 3.37 For patients who are willing and able to walk, it is likely that they will start their journey from home, particularly if they are seeking pharmaceutical services in the evening.
- 3.38 As can be seen in the image [see Appendix C] (where the closing pharmacy is marked with a red pointer), the area to the north of Wilbraham Road (in the direction of Elliotts Pharmacy, which is marked with a green star) is much more densely populated than the area to the south which is much more 'leafy' in nature.
- 3.39 Residents who require access to pharmaceutical services are more likely to live north of Wilbraham Road, so their journey to Elliotts Pharmacy is likely to be less than the 29 minutes referred to in the ICB report.
- 3.40 Finally, in respect of Elliott's, we note that the pharmacy opens until 9pm from Monday to Saturday, the same closing time as the pharmacy our client wishes to close. It remains our client's position that patients accustomed to accessing site 2 in the evenings can access Elliotts without any significant difficulties.
- 3.41 We discuss Sunday evenings later.

Tesco Pharmacy

- 3.42 The journey to this pharmacy is slightly further than the journey to Elliotts, but it provides additional choice, particularly for those patients who wish to use the Tesco store for their shopping in the evenings anyway.
- 3.43 Whilst there is no reason for people to use this pharmacy in preference to Elliotts if they are walking or using public transport, given the longer journey times, it does provide a useful alternative for motorists, who can drive to the pharmacy in a little over 5 minutes and who may choose to use the other amenities provided in the supermarket at the same time.

Other pharmacies

- 3.44 Mindful that the ICB specifically raised the issue of weekend provision, we have considered other extended hours pharmacies slightly further afield.
- 3.45 The next nearest '100 hour' pharmacy that opens late on Sunday evenings is Rusholme Pharmacy, 253 Wilmslow Road, Manchester, M14 5LW. This pharmacy opens from 8am to 11pm Monday to Saturday and 10am to 11pm on Sunday.
- 3.46 The distance from site 2 to Rusholme Pharmacy is 2.3 miles in a straight line or 2.7 miles by road as shown on the map [see Appendix C].
- 3.47 This map shows a drive time at 11 minutes at 11am in the morning, but the journey time would be shorter on a Sunday evening. On-road parking is provided within 50m of this pharmacy and is free of charge for one hour.
- 3.48 For the very small number of patients who might not have any access to a private vehicle on a Sunday evening, it is possible to travel from Chorlton to Rusholme by public transport using a bus to travel along Wilbraham Road as far as Wilmslow Road then a tram along Wilmslow Road to Rusholme Pharmacy. The total journey time would be in the region of 30 minutes. Buses and trams run until at least 11.30pm on Sundays, so well beyond the current closing time at site 2.
- 3.49 If for any reason a patient does not wish to use Rusholme Pharmacy, there is another 100 hour pharmacy slightly further north along Wilmslow Road, namely A&A Pharmacy Limited. This pharmacy opens until 10.30pm from Monday to Saturday and 10pm on Sunday. In a similar vein to Rusholme Pharmacy it can be accessed easily by car (with free on-road parking outside) and using the same public transport options discussed above.
- 3.50 In our client's opinion, therefore, for the small number of patients who might have a genuine need for pharmaceutical services beyond the hours that the remaining pharmacy (site 1) trades, there are several options available to them.
- 3.51 It is important to be mindful that patient expectations in respect of the availability of pharmaceutical services in the evenings, particularly at the weekends, are very different to their expectations during normal trading hours. Given the number of alternative pharmacies in the wider area, including some which provide services beyond the hours currently provided in Chorlton-cum-Hardy, we believe that patients will still have a reasonable choice in respect of access to pharmaceutical services following the closure of site 2.
- 3.52 It is also relevant to note section 5.6.2 on page 38 of the Manchester PNA. This states, when considering the responses to public engagement:
- "Additionally, 34% of respondents stated that they can access a pharmacy within five minutes or less and a further 35% could access their pharmacy within 10 minutes. Most of the respondents had access to a car, either as a driver or a passenger."*
- 3.53 This forms part of the evidence used by the HWB to conclude that there were no gaps in the provision of pharmaceutical services.
- 3.54 As residents will still have access to extended hours pharmacies within a 10-minute drive time it must be the case that no gap would be created as a result of the proposed closure.
- [3.8.2 above] 496 Wilbraham Road is the larger premises with longer opening hours and which dispenses far more items.

- 3.55 Whilst not directly relevant to this application, our client is happy to share his longer term plans for the two pharmacies subject to this consolidation application.
- 3.56 It is true that the closing pharmacy is larger and it does currently dispense significantly more items than the remaining pharmacy. If this application is approved, our client intends to submit an application, once the consolidation has taken effect, for the relocation of the consolidated pharmacy back to the premises at 496 Wilbraham Road.
- 3.57 During the time this application is being determined, our client intends to carry out a significant extension and refit to the premises to provide a substantially bigger pharmacy which is fit for the provision of an extended range of pharmaceutical services in the future. This is only possible if the pharmacy is closed for a period of time, which it will be if the business has been consolidated to the premises at 420 Wilbraham Road.
- 3.58 Clearly the PCA committee is not expected to express any view about whether such an application would be approved but we share this information to enable the committee to be confident that the long-term provision of pharmaceutical services would be secured at this location as a result of substantial investment being made to provide a flagship pharmacy premises.
- 3.59 Our client is also able to confirm that the premises at site 1 are plenty large enough to accommodate the combined dispensing numbers for the two pharmacies.
- [3.8.4 above] Impact on patients with protected characteristics or any other user group.
- 3.60 It is noteworthy that the ICB committee considered this matter and found that it had no concerns that would lead it to refuse the application in respect of the impact of patient groups sharing protected characteristics or any other user group.
- 3.61 Despite their comment about the remaining pharmacy being slightly smaller than the closing pharmacy, the ICB does not have any concerns that patient accessibility will be impaired to any material effect.
- 3.62 The PCA committee should be reassured that the ICB does not have any specific concerns about any patient groups that might access the pharmacy that is proposed to close. Whilst we assume that their comments generally about accessibility out of hours (which have been addressed above) would apply equally to all patients in their opinion, there is no patient group whose needs should be considered to be materially different.
- 3.63 That being the case we have no additional comments to make on this point.
- [3.8.5 above] The application did not satisfy Regulation 26A(5)(ii)
- 3.64 Going back to the principles of consolidation applications, the decision maker is required to refuse an application if the effect of granting it would be such as to result a gap in [sic] pharmaceutical services provision that is of sufficient magnitude that the commissioner would be obliged to grant an application made subsequently to 'replace' the closed pharmacy.
- 3.65 The decision maker should therefore put itself in a position where it imagines that the pharmacy proposed for closure has indeed closed and it is in receipt of an application to open a new pharmacy.
- 3.66 It is clear that there will still be two pharmacies located on Wilbraham Road, within a very short distance of the closed pharmacy, namely the consolidated pharmacy and Wilbraham Pharmacy. It is inconceivable therefore that the ICB would grant a new application based on the need to improve geographical access to pharmaceutical services. The point of contention, therefore, is the extent to which patients need, and will have access to, pharmaceutical services in the evenings and weekends.

- 3.67 It is our client's position that the demand for extended hours services during weekdays is very small. However, for those patients who do need these services, there are two alternative pharmacies within a short drive. Any patient without access to a car (as a driver or passenger) has the option of using the frequent tram service to access Elliotts pharmacy until it closes at 9pm.
- 3.68 At the weekend, the demand for pharmaceutical services in the evening is even smaller. However, there are still two pharmacies that open until at least 10pm on both Saturday and Sunday that can be accessed by car within 10 minutes. Whilst the journey by public transport would take longer, there are transport services that continue to run well beyond 10pm.
- 3.69 The question for the PCA committee, therefore, is whether, if an application was made to open a new pharmacy in the hypothetical situation where site 2 had already closed, to cater for the needs of the negligible number of people who:
- 3.69.1 Have an urgent need for pharmaceutical services that cannot wait until their nearest pharmacy opens and;
 - 3.69.2 Do not have access to a motor vehicle and;
 - 3.69.3 Are unable to use public transport (including taxis) to access an extended hours pharmacy and;
 - 3.69.4 Are unable to walk to an extended hours pharmacy
- the decision maker would be obliged to grant an application in those circumstances to 'to secure improvements, or better access, to pharmaceutical services'.
- 3.70 If it would not grant a new application in those circumstances then there is no reason to refuse this consolidation application. In our opinion it is clear that an application to open a new pharmacy in that situation would not be approved.
- Conclusion
- 3.71 Taking all these factors into account we believe the decision by Manchester ICB to refuse our client's application for consolidation is flawed and we therefore urge the PCA committee to overturn that decision and grant this application.
- 3.72 Our client would wish to attend an oral hearing if one is convened."

4 **Summary of Representations**

This is a summary of representations received on the appeal.

4.1 THE COMMISSIONER

- 4.1.1 "NHS Greater Manchester acknowledges receipt of your letter and enclosures in relation to the above appeal, dated 12/04/2024.
- 4.1.2 It is noted that additional/new information has been provided by the contractor at the point of appeal which was not included in the original application; and therefore, could not be taken into account by the Pharmaceutical Services Regulations Committee (PSRC) when determining the application.
- 4.1.3 NHS Greater Manchester makes the following observations on the appeal:
 - 4.1.3.1 While the Health and Wellbeing Board (HWB) did not submit representations on the consolidation application, the appellant's

statement that this indicates that the HWB had no objections is conjecture rather than fact.

4.1.3.2 Although the appellant makes reference to the availability/accessibility of other pharmacy providers, the map provided as part of the appeal documentation clearly shows a large area to the west of the location with very little alternative pharmaceutical provision.

4.1.3.3 The appellant has provided a tally of activity for one weekend only (24 & 25 February 2024). NHS Greater Manchester cannot draw any meaningful conclusions from this information, as measuring activity over the course of a single weekend does not necessarily give an accurate indication of demand. An audit over a longer period of time to evidence whether there is consistently low or no demand at weekend would have been more beneficial.

4.1.3.4 The appellant refers to its future intentions, which involve relocating the continuing site (a standard, 40 core hour pharmacy) to the closing site (a pharmacy which opened under the 100 hour regulatory exemption). It would therefore seem that the consolidation application is a means to an end; i.e. to enable the appellant to close its 100 hour exempted site and replace it with the standard 40 core hour pharmacy, while preventing a need/gap from subsequently being identified by the HWB as a result of the 100 hour exempted site's closure.

4.1.3.5 The appellant states that *"It is inconceivable therefore that the ICB would grant a new application based on the need to improve geographical access to pharmaceutical services."* This is purely speculation, as it is impossible for the appellant to pre-empt the decision of a Pharmaceutical Services Regulations Committee (PSRC) on an application, hypothetical or otherwise.

4.1.4 In conclusion, NHS Greater Manchester maintains that the decision to refuse the consolidation application was correct; and that the additional/new information provided through this appeal does not support a different outcome.

4.1.5 NHS Greater Manchester is assured that NHS Resolution Primary Care Appeals will reach an appropriate determination based on the information it has received through this process, and therefore respectfully awaits the outcome of this appeal."

4.2 MANCHESTER HEALTH & WELLBEING BOARD

4.2.1 "I was forwarded your details, alongside the Consolidation Application Appeal for Everest Pharmacy Ltd which has asked for representations. Sincere apologies for the delay, however the Manchester HWB have since reviewed the application appeal and have made representations. A summary of this assessment is as follows:

4.2.1.1 That there are no significant issues identified that present any barriers in terms of physical access to either sites; consolidation would therefore not adversely affect patients in this regard.

4.2.1.2 Consolidating the two sites would not have an adverse impact on the availability of pharmaceutical services as all services currently delivered on either site will be offered on the existing premises.

4.2.1.3 There is a significant reduction in hours as the proposed closing site is a 100-hour contractor operating 76 hours per week Monday to Sunday

whilst the remaining site would be maintaining 49 hours per week Monday to Saturday following consolidation.

4.2.1.4 There is a significant distance to the two remaining nearby 100-hour pharmacies (now operating reduced hours) that provide coverage Monday to Sunday.

4.2.2 Based upon this assessment, and subsequent reduction in opening hours, it is considered that a gap in provision would be created in terms of access to pharmaceutical services on a Saturday or Sunday evenings for patients accustomed to accessing services from the closing site. It is therefore concluded that granting the consolidation would lead to a gap which could be met by an application to secure improvements, or better access, to pharmaceutical services.

4.2.3 As this was discussed at the Manchester Health and Wellbeing Board Wednesday 5th June 2024, please note that a full report detailing this assessment can be accessed via the Manchester City Council website below (agenda item 7).

4.2.4 [Agenda for Health and Wellbeing Board on Wednesday, 5th June, 2024, 10.00 am \(manchester.gov.uk\)](https://www.manchester.gov.uk/agenda/2024/06/05/Agenda-for-Health-and-Wellbeing-Board-on-Wednesday-5th-June-2024-10.00-am)

4.3 TRAFFORD HEALTH & WELLBEING BOARD

4.3.1 "Trafford's Health and Wellbeing Board's PNA shows that Trafford has an appropriate level of services through community pharmacy for its population. Trafford is higher than the GM/England average for the amount of pharmacies in our borough and resident proximity. Trafford has a choice of pharmacies open a range of times including early mornings, evenings and the weekend. Trafford pharmacies offer a range of pharmaceutical services to meet the requirements of the population. The vast majority of the Trafford population are unlikely to regularly access pharmacy provision in Chorlton-cum-Hardy given the range of accessible pharmacies within our borough. There is a portion of the Stretford where Chorlton-cum-Hardy provision would be convenient [sic], however they would have suitable other options within the Stretford/Trafford area that are probably equidistant.

4.3.2 Trafford's Health and Wellbeing Board would like to draw attention to the fact that Boots at Stretford Mall has recently closed so is not an option as alternative pharmacy provision as detailed in the documentation. Trafford's Health and Wellbeing Board has recently raised concerns about four closures in the Trafford area and the impact this will have to capacity of nearby pharmacies to deliver services."

4.4 COMMUNITY PHARMACY GREATER MANCHESTER

4.4.1 "Thank you for your letter dated 12th March 2024, informing us of the above application and inviting us to make representations.

4.4.2 Community Pharmacy Greater Manchester (CPGM) application subgroup has reviewed this application and notes it is an appeal with the clear intention of relocating the contract should the consolidation appeal be granted.

4.4.3 Community Pharmacy Greater Manchester would like to receive any further correspondence regarding this application and wish to be kept informed of its progress."

5 Observations

The following observations were received by NHS Resolution in response to the representations received on appeal.

5.1 PSC ON BEHALF OF THE APPLICANT

5.1.1 “Thank you for your letter dated 11th June enclosing third party representations in respect of the above application.

5.1.2 We continue to act for Everest Healthcare Limited and wish to make the following final observations.

5.1.3 As a preliminary matter, we note that the map provided by Primary Care Appeals (“PCA”) does not show the Tesco Pharmacy at Chester Road, Stretford, Manchester, M32 0RW. As this pharmacy is mentioned within our client’s appeal, we wish to point out to the PCA committee that this pharmacy is located within the map area provided. The location is marked as “Tesco Extra” towards the top left of the map, adjacent to the A56 Chester Road.

5.1.4 We respond to the additional representations as follows:

Letter from Community Pharmacy Greater Manchester (LPC) dated 10th April

5.1.5 The LPC does not express any opinions in respect of our client’s application so we have no additional comments to make at this time.

Trafford Health & Wellbeing Board – email dated 2nd May

5.1.6 We note that the Trafford HWB comments are understandably limited to the provision of pharmaceutical services within their area. The theme of their response is that there [sic] HWB area has good provision pharmaceutical services, which is higher than the national average. This includes pharmacies which open for extended hours.

5.1.7 We note that the opinion of the HWB is that Trafford residents would not typically need to access pharmaceutical services in Chorlton-cum-Hardy as they have adequate provision already within their area.

5.1.8 However, it is the case that the border between the Manchester and Trafford HWBs is close to the consolidation site as shown on the map [see Appendix D], where Trafford is shaded in blue. The location of the closing site is marked with a green star.

5.1.9 As a result, Chorlton residents will access amenities within the Trafford area, including both Elliotts Pharmacy and the Tesco store with pharmacy referred to in our client’s appeal.

5.1.10 We note the comments made by the HWB regarding the closure of the Boots store at Stretford Mall, but as this was not an extended hours pharmacy, and there are several other closer pharmacies to the closing site, we do not believe its closure has any material relevance to the committee’s deliberations in this case.

Letter from NHS Greater Manchester dated 9th April

5.1.11 We respond to the points raised by NHS Greater Manchester in the same order as they are made with in its letter.

- 5.1.12 We note the comments made about the HWB not having submitted representations on our client's application. As we have now received representations from the HWB we respond to those later in this letter.
- 5.1.13 It is suggested that there is a "large area to the west of the location with very little alternative pharmaceutical provision". It is important to remember that if this application is granted there will still be two pharmacies in Chorlton, (marked 1 & 3 on the PCA map) within a very short distance of the closing site. Whether or not there are other pharmacies further to the west of this site will be largely irrelevant to patients who are accustomed to accessing pharmaceutical services in Chorlton.
- 5.1.14 In terms of the tally information provided, our client confirms that this information is entirely typical of demand over weekends. There was nothing unusual about the weekend selected. Given the significant financial pressure faced by my client operating two pharmacies in very close proximity, one of which has extended hours, and given the limited time to submit an appeal, it was important to submit the appeal without delay rather than collect data over an extended period which would show the same picture. For the avoidance of doubt my client confirms that demand during subsequent weekends since the data was collated has not been materially different.
- 5.1.15 NHS Greater Manchester questions the reasons why my client has applied for this consolidation application and intends to follow it with a relocation application. It is indeed correct that the outcome our client seeks is a standard hour pharmacy at the larger of the two premises. This is an entirely rational strategy given the over provision of services in Chorlton, the lack of demand for services during extended hours, and the exceptional financial pressures being placed on pharmacies at present. This has no bearing on whether the legal tests for a consolidation have been met. That is a matter for the PCA committee to determine. Despite the fact the premises that will remain following this consolidation are smaller, they are still perfectly suitable for the additional dispensing volume following consolidation.
- 5.1.16 It is suggested that it is impossible to pre-empt the decision of the PSRC in respect of a hypothetical application, but of course that is entirely what consideration of a consolidation application requires the PSRC to do. It must consider whether the closure of a pharmacy would leave a gap that could be met through the granting of a routine application. The only way it can do that is by imagining a scenario where the pharmacy had closed and it was in receipt of such an application.

Manchester HWB email dated 6th June

- 5.1.17 We have noted the contents of the HWB report and its covering email.
- 5.1.18 The conclusion reached by the HWB is that it has no concerns that there will be any reduction in the physical access to services following the proposed consolidation, or to the pharmaceutical services offered by the remaining pharmacies.
- 5.1.19 The point of contention, therefore, is the reduction in opening hours that will come about should this application be approved.
- 5.1.20 We note that the HWB reach the same conclusion as the ICB i.e. that *"there is a significant distance to the two remaining nearby 100-hour pharmacies that provide coverage Monday to Sunday"*. They then go on to conclude that the reduction in opening hours that would result from approving this application would amount to a gap being created in terms of *"access to pharmaceutical*

services on a Saturday or Sunday evenings for patients accustomed to accessing services from the closing site”.

5.1.21 It is noteworthy that, in their report, the HWB provides exactly the same information as that provided by the ICB in their decision report in respect of the distance and travel time to these nearest extended hour pharmacies. They state:

5.1.21.1 Elliotts Pharmacy: 60 Seymour Grove, Old Trafford, Manchester, M16 0LN - 1.2 miles from the proposed closing site (which equates to 29 mins walk, 6 min drive, 15 mins public transport)

5.1.21.2 Tesco Instore Pharmacy: Chester Road, Stretford, Manchester, M32 0RW- 1.3 miles away (33 mins walk, 7 mins drive 25 min public transport).

5.1.22 These points were addressed extensively within our client's appeal, yet there is no evidence that the HWB committee were presented with any of the evidence on these matters provided within that appeal. For example they make no reference to the demographic profile of the area, the levels of car ownership, the frequency and availability of public transport or the lack of demand during the hours for which pharmaceutical services in Chorlton will be reduced.

5.1.23 As the HWB appear to have simply 'parroted' the ICB, their conclusions are flawed for the same reasons as raised within our client's appeal.

5.1.24 For example, they measure the distance to alternative pharmacies by reference to the location of the closing pharmacy. This incorrectly assumes that patients who are seeking a pharmacy 'out of hours' start their journey at the closing site. Clearly this is highly unlikely to be the case. It is far more likely that patients will start their journey from home (particularly out of hours) and, as we have already shown, the residential areas to the north of the closing pharmacy (which are closer to Elliot's Pharmacy in particular) are far more densely populated than those to the south. It is likely, therefore, that their travel time will be less than suggested above.

5.1.25 In terms of Table 7 provided in the HWB report, we note that the only medical centre listed that is in close proximity to the closing pharmacy is Chorlton Family Practice, as can be seen from the map provided by PCA. This is to the north of the closing pharmacy, so is closer to Elliott's than the distances provided above.

5.1.26 In conclusion, therefore, there has been no information provided by any third party which properly addresses the evidence provided within our client's appeal. It remains our client's position that the requirements for a pharmacy consolidation application have been met and its application should be approved.”

6 Consideration

6.1 The Pharmacy Appeals Committee (“Committee”) appointed by NHS Resolution, had before it the papers considered by the Commissioner.

6.2 It also had before it the responses to NHS Resolution's own statutory consultations.

6.3 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.

6.4 Regulation 26A states:

- “1. A person already included in a pharmaceutical list may make an application pursuant to this paragraph (“a consolidation application”) in respect of the consolidation onto the site (S1) of listed chemist premises in the area of the relevant HWB (HWB1) of the provision of pharmaceutical services provided at or from S1 and other listed chemist premises (S2) in the area of HWB1.*
- 2. Section 129(2A) of the 2006 Act (regulations as to pharmaceutical services) does not apply to a consolidation application by a person already included in a pharmaceutical list for inclusion in respect of premises not already listed in relation to that person.*
- 3. Subject to paragraph (4), a consolidation application—*
 - (a) must be made by the person (P1) included in the pharmaceutical list in relation to S1; and*
 - (b) if different persons are listed in relation to S1 and S2, must include as part of the application an application by P1 to change the ownership of S2.*
- 4. If different persons are listed in relation to S1 and S2, and the person (P2) listed in relation to S2 is seeking to become the person listed in relation to S1, a consolidation application—*
 - (a) must be made by P2; and*
 - (b) must include as part of the application an application by P2 to change the ownership of S1.*
- 5. NHS England must refuse a consolidation application—*
 - (a) if it is satisfied that granting the application would create a gap in pharmaceutical services provision that could be met by a routine application—*
 - (i) to meet a current or future need for pharmaceutical services, or*
 - (ii) to secure improvements, or better access, to pharmaceutical services; or*
 - (b) if either S1 or S2 are distance selling premises or appliance contractor premises.*
- 6. In the case of an application to which paragraph (3) applies, NHS England must refuse the application unless it is satisfied—*
 - (a) if NHS England intends to commission from P1 at or from S1 enhanced services which P2 provides at or from S2 but which P1 has not been providing at or from S1, that the provision of those services will not be interrupted except for such period as NHS England may for good cause allow*
 - (b) in the case of an application to which paragraph (3)(b) applies, that—*
 - (i) P2 consents to the change of ownership of S2, and*
 - (ii) P1 and P2 consent to S2 ceasing to be listed chemist premises as a consequence of the application; and*

- (c) *in the case of an application to which paragraph (3)(b) does not apply, that P1 consents to S2 ceasing to be listed chemist premises as a consequence of the application.*
 - 7. *In the case of an application to which paragraph (4) applies, NHS England must refuse the application unless it is satisfied—*
 - (a) *that P2 is proposing to carry on at S1, in place of P1, the business in the course of which P1 is providing pharmaceutical services at S1;*
 - (b) *that P2 is undertaking to provide the same pharmaceutical services as those that P1 is providing (whether or not P2 is also to provide other services that P2 is providing at S2);*
 - (c) *that the provision of pharmaceutical services at S1 is not to be interrupted, except for such period as NHS England may for good cause allow;*
 - (d) *if NHS England intends to commission from P2 at or from S1 enhanced services which P2 provides at or from S2 but which P1 has not been providing at or from S1, that the provision of those services will not be interrupted except for such period as NHS England may for good cause allow; and*
 - (e) *that—*
 - (i) *P1 consents to the change of ownership of S1, and*
 - (ii) *P1 and P2 consent to S2 ceasing to be listed chemist premises as a consequence of the application.*
 - 8. *If two or more consolidation applications are being considered together, as regards the issue of a gap in provision, as mentioned in paragraph (5)(a), each application may be refused on the basis of the cumulative effect on provision of all the applications being considered together.”*
- 6.5 In relation to Regulation 26A(1), the Committee noted the Commissioner’s comments that the Applicant is included in the pharmaceutical list for Manchester Health and Wellbeing Board area and further that this had not been disputed by any party.
- 6.6 In relation to Regulation 26A(2), the Committee noted that this was a statement of fact and did not require any determination.
- 6.7 In relation to Regulation 26A(3), the Committee noted that there is no dispute that the Applicant, Everest Healthcare Ltd, owns both premises in relation to the consolidation application. The Committee therefore determined that this application was not an application to which Regulation 26A(3)(b) applied.
- 6.8 In relation to Regulation 26A(4), the Committee noted that it related to a situation where different persons were listed on the pharmaceutical list for each site. As the Applicant owns both sites, the Committee determined that this application was not an application to which Regulation 26A(4) applied.
- 6.9 In relation to Regulation 26A(5)(a), the Committee was mindful that it must refuse a consolidation application if it is satisfied that granting the application would create a gap in pharmaceutical services provision that could be met by a routine application to:
- 6.9.1 meet a current or future need for pharmaceutical services, or
 - 6.9.2 to secure improvements or better access to pharmaceutical services.

- 6.10 The Committee noted that paragraph 19(5) of Schedule 2 of the Regulations provides that, where a Health and Wellbeing Board is notified of a consolidation application, the Health and Wellbeing Board must make representations under paragraph 19(4) of Schedule 2 (representations in writing about the application) which, in addition to any other matter about which it may wish to make representations indicate whether, if the application were granted, in the opinion of the Health and Wellbeing Board the proposed removal of premises from its pharmaceutical list would or would not create a gap in pharmaceutical services provision that could be met by a routine application:
- 6.10.1 meet a current or future need for pharmaceutical services, or
 - 6.10.2 to secure improvements or better access to pharmaceutical services.
- 6.11 The Committee noted that both Manchester and Trafford Health and Wellbeing Boards had been invited by the Commissioner to comment on the application within the 30 day consultation period but neither had responded. Both of the Health and Wellbeing Boards had been invited to comment on the appeal and representations from both Manchester and Trafford Health and Wellbeing Boards were received.
- 6.12 The Committee noted that there are 8 pharmacies within 1 mile of the closing site with a total of 19 pharmacies located within 1.5 miles, which are operated by 18 different contractors and that two of these pharmacies offer pharmaceutical services 7 days a week.
- 6.13 The Committee noted, from the information provided by the Applicant and confirmed by the Commissioner, that there are two 100 hour pharmacies (now operating reduced hours) located at 1.2 miles (Elliotts Pharmacy) and 1.3 miles (Tesco) away. Both of these pharmacies open on a Sunday, Elliotts from 10am to 5pm and Tesco from 11am to 5pm. The Committee was mindful that whilst the pharmacy at Site 2 had reduced its hours, the opening hours on a Sunday of 10am to 8pm had remained unchanged and the pharmacy was also open until 9pm Monday to Saturday.
- 6.14 The Committee also noted the undisputed information from the Applicant with regard to Rusholme Pharmacy, which offers opening hours on a Sunday (10am to 11pm) and that this pharmacy is located approximately 2.3 miles away from the closing site.
- 6.15 The Committee noted, from the information provided by parties that:
- 6.15.1 The closing site, which was a 100 hour pharmacy, now has reduced operating hours of 76 hours a week and is open from 9am to 1pm and 2pm to 9pm Monday to Saturday and 10am to 8pm on Sundays;
 - 6.15.2 The consolidation site at 420 Wilbraham Road, which is located 0.2 miles away from the closing site, currently provides 49 hours a week; and
 - 6.15.3 The consolidation site is currently open 9am 6pm Monday to Friday and 9am to 1pm on a Saturday with core hours of 9am to 1pm and 2pm to 6pm Monday to Friday.
- 6.16 The Committee also noted:
- 6.16.1 The short distance between the consolidation site and the closing site of 0.2 miles;
 - 6.16.2 Both the consolidation site and the closing site are located on the same road and there would be no barriers for individuals who currently access the closing site being able to access the consolidation site;
 - 6.16.3 Wilbraham Road is a busy well used road with good public transport links, due to tram and bus services, to the wider area;

- 6.16.4 There is car parking available at the consolidation site; and
- 6.16.5 There are alternative pharmacies in the vicinity which are a short distance away that offer late night opening hours and that these are served by bus and tram routes as well as good car parking at the Tesco late night pharmacy.
- 6.17 The Committee noted the information provided by the Applicant with regard to access to the nearest pharmacies both on an evening and on a Sunday. The Committee noted the limited information provided with regard to those who currently access services on foot. The Committee noted the comments from the Applicant that for those who do walk, they are likely to commence their journeys from home and due to the housing in the area, they are likely to reside to the north of Wilbraham Road in the direction of Elliotts Pharmacy. The Committee noted that there was no evidence that those who could and were able to access alternative pharmacies on foot would have difficulties in doing so. The Committee was of the view, from the information before it, that for those who have access to private transport there were no access issues. For those who use public transport, which could include the use of trams as well as buses, the Committee noted the various bus routes in the area which ran along Wilbraham Road which served both the closing and consolidation sites and which also carried on along Wilbraham Road to other pharmacies in the area. The Committee noted that this information was not disputed by any party.
- 6.18 The Committee considered if the Applicant had addressed the issue of whether or not granting the application would create a gap in pharmaceutical provision that could be met by a routine application. The Applicant had addressed this issue in its application, appeal and subsequent representations. In particular the Applicant had referred to the short distance between the closing site and the consolidation site, the ease of access between them, the availability of other pharmacies nearby and had stated that there will be no change in the services provided by granting the application.
- 6.19 The Committee determined that the Applicant's comments on these points were credible and the Commissioner had agreed with the Applicant's assertions regarding physical access to pharmacies in the area. Further no party had provided any response to these comments in respect of the topography and geography of the area or the public transport available. The Committee also noted the comments from the Applicant regarding car ownership and the levels of deprivation in the area, which again had not been challenged by any party.
- 6.20 The Committee noted that the dispute between the parties was with regard to the potential loss of a 100 hour pharmacy, which operates from the closing site, albeit with reduced hours. The Committee was of the view that this had been considered by the Applicant and that information had been provided to demonstrate that those who did access the pharmacy during the extended opening hours would be able to access alternative pharmaceutical provision within the area.
- 6.21 The Committee noted that the Commissioner had invited representations from Trafford Health and Wellbeing Board. Trafford Health and Wellbeing Board had made reference to closures of pharmacies in their area and in particular the latest closure of the Boots pharmacy in the Stretford Mall. The Committee was mindful that Trafford Health and Wellbeing Board are the adjoining Health and Wellbeing Board and that the representations did not make reference to the criteria as set out in the Regulations. The Committee noted the Boots pharmacy at Stretford Mall did not have extended hours and had not been referred to or marked on the maps provided. The Committee was mindful of the Regulations and considered that, whilst the border between the two Health and Wellbeing Boards was close to the consolidation site, this was not the relevant Health and Wellbeing Board as set out in the Regulations.
- 6.22 The Committee noted the representations made by the Manchester Health and Wellbeing Board that *"there is a significant reduction in hours as the proposed closing site is a 100 hour contract operating 76 hours per week Monday to Sunday whilst the*

remaining site would be maintaining 49 hours per week Monday to Saturday following consolidation” and “there is a significant distance to the two remaining nearby 100 hour pharmacies (now operating reduced hours) that provide coverage Monday to Sunday.”

- 6.23 The Manchester Health and Wellbeing Board had concluded that *“based upon this assessment, and subsequent reduction in opening hours, it is considered that a gap in provision would be created in terms of access to pharmaceutical services on a Saturday or Sunday evenings for patients accustomed to accessing services from the closing site. It is therefore concluded that granting the consolidation would lead to a gap which could be met by an application to secure improvements, or better access, to pharmaceutical services.”*
- 6.24 The Committee noted the Applicant’s response to these representations that there are no concerns from the Manchester Health and Wellbeing Board with regard to actual physical access to services following the consolidation or to pharmaceutical services offered by the remaining pharmacies. The Committee noted the comments from the Applicant with regard to the consideration by the Manchester Health and Wellbeing Board in terms of the hours offered. The Applicant again provided information regarding the other 100 hour pharmacies in the area (Elliotts and Tesco) who both have extended hours during the week as well as on a weekend. The Committee also noted the undisputed information previously provided by the Applicant with regard to access to Rusholme Pharmacy which has hours on a Sunday from 10am to 11pm and is located approximately 2.3 miles away from the closing site.
- 6.25 The Committee noted that the journey to Rusholme Pharmacy via private transport is straightforward and that there is free on road parking within the vicinity. Further, the Committee noted the undisputed comments from the Applicant with regard to access by public transport using both the buses and trams that run frequently and regularly throughout the area, including on a Sunday.
- 6.26 With regard to the Applicant’s assertion that the demand that the proposed closing site sees during the hours of 6am and 9am and after 6pm is minimal, the Committee noted the tally chart provided for one weekend in February 2024, which the Applicant states is reflective of the situation as a whole. The Committee further noted that this had not been challenged by any party in subsequent representations.
- 6.27 The Committee noted that the closing site does have a higher proportion of dispensing than the consolidation site however the Committee was of the view that this is not a relevant consideration to which it should have regard. The Committee has considered the application based on the criteria set out in the Regulations.
- 6.28 Given that there would be a reduction in hours, the Committee was mindful that granting the application would result in a loss of core opening hours that were currently provided at the closing site and this would create a gap in provision, however the Committee considered that the gap was not such that it would be met by a routine application as indicated in Regulation 26A(5)(a).
- 6.29 The Committee therefore determined that it was not required to refuse the application under Regulation 26A(5)(a) on the basis that it was satisfied that granting the application would not create a gap in pharmaceutical services provision that could be met by a routine application to meet a current or future need for pharmaceutical services or to secure improvements or better access to pharmaceutical services.
- 6.30 The Committee was mindful that this could lead to potential complications in the future in that Manchester Health and Wellbeing Board could, if the proposed consolidation did go ahead, remain of the view that *“granting the consolidation would lead to a gap which could be met by an application to secure improvements, or better access, to pharmaceutical services”* of a type set out in Regulation 26A(5)(a) and Manchester Health and Wellbeing Board could issue a supplementary statement to update the PNA

in this regard. It would then be open for third parties to apply to open a pharmacy based on this identified gap. There was no statutory prohibition on this.

- 6.31 The Regulations only require the Health and Wellbeing Board to issue a supplementary statement saying that no gap that could be met by a routine application has been created if the Health and Wellbeing Board considers a gap would not be created. It is not the grant of the application that triggers this requirement; it is only if the Health and Wellbeing Board considers no gap has been created. In the current matter, the Health and Wellbeing Board considers that it could be argued that such a gap will be created. If, therefore the application is granted and the relevant pharmacy closes, there is no certainty for the Applicant that a new pharmacy will not open at or near the old site. It is possible that the Health and Wellbeing Board might issue a supplementary statement to update the PNA indicating that a gap has been created and so make it more likely that applications to open a pharmacy in that location would be made. The Committee considered that this is a consequence of the wording of the Regulations.
- 6.32 The Committee considered that this is ultimately a risk for the Applicant to take into account in deciding whether to proceed with the consolidation (knowing that it could result in another pharmacy opening in the area). The protection offered to a consolidation applicant in the Regulations that protects a pharmacy that has undergone a consolidation if the Health and Wellbeing Board agreed there was no gap does not apply to the Applicant's position.
- 6.33 In relation to Regulation 26A(5)(b), the Committee was mindful that it must refuse a consolidation application if either sites of the consolidation application are distance selling premises or appliance contractor premises.
- 6.34 The Committee noted that the Commissioner, in its decision letter, states that neither pharmacy is a distance selling or an appliance contractor, which had not been disputed by any party. Therefore the Committee determined that it was not required to refuse the application under Regulation 26A(5)(b).
- 6.35 In relation to Regulation 26A(6)(a) the Committee noted the Applicant states that the advanced and enhanced services they currently provide are the same on both sites, which has not been disputed by any party. The Applicant further states that there will be no interruption in service provision. Therefore the Committee determined that it was not required to refuse the application under Regulation 26A(6)(a).
- 6.36 In relation to Regulation 26A(6)(b) and Regulation 26A(6)(c), the Committee was of the view that this criteria is not relevant as the Applicant owns both premises and consents to the pharmacy at 496 Wilbraham Road ceasing to be listed chemist premises as a consequence of the application. The Committee determined that it was not required to refuse the application under Regulation 26A(6)(b) or 26A(6)(c).
- 6.37 In relation to Regulation 26A(7), the Committee noted that this only applies if Regulation 26A(4) applies. The Committee had already determined that this was not an application to which Regulation 26A(4) applied and so the Committee determined that it was not required to refuse the application under Regulation 26A(7).
- 6.38 In relation to Regulation 26A(8), the Committee noted that this application was not being considered with any other consolidation applications and therefore Regulation 26A(8) did not apply.
- 6.39 The Committee further noted the comments from the Applicant that, in due course, they are proposing to apply to move the contract from the consolidation site back to the closing site, via no significant change relocation. The Committee took no view on what the Applicant may or may not choose to do in the future as this is not a relevant consideration to which it can have regard as part of this determination and was also mindful that the criteria for addressing no significant change relocations and

consolidations are different. The Committee considered the application before it on its own merits based on the criteria as set out in the relevant Regulation.

- 6.40 Pursuant to paragraph 9(1) of Schedule 3 to the Regulations, the Committee may:
- 6.40.1 confirm the Commissioner's decision;
 - 6.40.2 quash the Commissioner's decision and redetermine the application;
 - 6.40.3 if it considers that there should be a further notification to the parties to make representations, quash the Commissioner's decision and remit the matter back to the Commissioner.
- 6.41 As the Committee has reached a different conclusion to that of the Commissioner, the Committee determined that the decision of the Commissioner must be quashed.
- 6.42 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 Commissioner) or whether it was preferable for the Committee to redetermine the application.
- 6.43 The Committee noted that representations on Regulation 26A had already been made by parties to the Commissioner, and these had been circulated and seen by all parties as part of the processing of the application by the Commissioner. The Committee further noted that when the appeal was circulated representations had been sought from parties on Regulation 26A.
- 6.44 The Committee concluded that further notification under paragraph 19 of Schedule 2 would not be helpful in this case.

7 Decision

- 7.1 The Committee quashes the decision of the Commissioner, for the reasons given above, and redetermines the application.
- 7.2 The Committee determined that the application should be granted.

Case Manager
Primary Care Appeals