

22 August 2024

REF: SHA/26234

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**APPEAL AGAINST NHS GREATER MANCHESTER ICB
DECISION TO REFUSE AN APPLICATION BY PHARMACY
PLUS LIMITED FOR CONSOLIDATION ONTO THE SITE AT
54 HIGHER HILLGATE, STOCKPORT, SK1 3PX OF
BESTWAY NATIONAL CHEMISTS LTD ALREADY AT THAT
SITE AND PHARMACY PLUS LIMITED CURRENTLY AT 56-
58 HIGHER HILLGATE, STOCKPORT, SK1 3PZ**

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:
Pharmacy Sales & Consultancy on behalf of Pharmacy Plus Limited
PCSE on behalf of NHS Greater Manchester ICB
Stockport Health & Wellbeing Board

Advise / Resolve / Learn

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58 HIGHER HILLGATE, STOCKPORT, SK1 3PZ**

1 The Application

By application dated 28 November 2023, Pharmacy Sales & Consultancy on behalf of Pharmacy Plus Limited ("the Applicant") applied to Greater Manchester ICB ("the Commissioner") in respect of a consolidation onto the site at 54 Higher Hillgate, Stockport, SK1 3PX of Bestway National Chemists Ltd already at that site and Pharmacy Plus Limited Currently at 56-58 Higher Hillgate, Stockport, SK1 3PZ. 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 [sic], 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 2022 Stockport 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 (i) There being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB;

- 1.6.1.2 (ii) People who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access;
- 1.6.1.3 (iii) 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.
- 1.8 Background
- 1.9 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. This has been brought into sharp focus by the recent closure of a significant number of pharmacies across the country, including large numbers of Boots and Lloyds Pharmacy branches. Extended hours pharmacies feel these financial pressures most acutely due to their high operating costs.
- 1.10 The applicant has reached agreement with the owners of site 1, Bestway National Chemists Limited, to acquire that pharmacy and to consolidate the pharmacy currently trading at site 2 into those premises.
- 1.11 This will ensure the long-term viability of pharmaceutical services in the area which would be provided by one profitable pharmacy rather than two with borderline profitability. This is entirely in keeping with the Department of Health's aims and expectations when Regulation 26A was introduced to facilitate consolidations.
- 1.12 The two pharmacies proposed for consolidation are adjacent to each other within a small parade approximately half a mile to the south-east of Stockport town centre. This is 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 providers.
- 1.13 Hillgate Pharmacy (site 2), located at 56-58 Higher Hillgate, SK1 3PZ is a former '100 hour' pharmacy that now opens for 75 ½ hours per week over 7 days. Bestway National Chemists (trading as Well), located at 54 Higher Hillgate (site 1) opens for 52.5 hours per week over 6 days.
- 1.14 In addition to the Well pharmacy at site 1, there are many other pharmacies within a mile radius of the pharmacy our clients propose to close. These are:
 - 1.14.1 Wellington Road Pharmacy, 236 Wellington Road South, SK2 6NW – 0.3 miles away from the closing pharmacy and **open 7 days per week**, until 6.00pm from Monday to Saturday and 10am to 8pm on Sunday.
 - 1.14.2 Well, Shaw Health Centre, Gilmore Street, SK3 8DN – 0.4 miles away from the closing pharmacy and open 5 days per week, from 8.30am to 6.00 pm Monday to Friday.
 - 1.14.3 Cale Green Pharmacy, 145 Shaw Heath, SK2 6QZ – 0.4 miles away from the closing pharmacy and open 6 days per week, from 9.00am to 6.00 pm Monday to Friday and 9.00am to 1.00pm on Saturday.

- 1.14.4 Boots, 47/49 Merseyway, Stockport, SK1 1PU - 0.6 miles away from the closing pharmacy and open 6 days per week, from 9.00am to 5.30 pm Monday to Friday and 9.00am to 2.00pm on Saturday.
- 1.14.5 Superdrug, 4-6 Mersey Square, Stockport, SK1 1RA - 0.6 miles away and open 6 days per week, until 5.30 pm from Monday to Saturday.
- 1.14.6 Well, 217 Hall Street, Offerton, SK1 4JH - 0.6 miles away and open 5 days per week from 9.00am to 6.00pm Monday to Friday.
- 1.14.7 Asda Pharmacy, Warren Street, Stockport, SK1 1UA - 0.6 miles away and **open 7 days per week**, until 8.00 pm Monday to Saturday and from 10.30am to 4.30pm on Sunday.
- 1.14.8 Boots, 82 Castle Street, Edgeley, SK3 9AL - 0.6 miles away from the closing pharmacy and open 6 days per week, from 8.45am to 5.30 pm Monday to Friday and 9.00am to 4.00pm on Saturday.
- 1.14.9 Davenport Pharmacy, 191 Bramhall Lane, Davenport, SK2 6JA - 0.7 miles away and open 6 days per week, until 5.30 pm on weekdays and 4.00pm on Saturdays.
- 1.14.10 Offerton Pharmacy, 513 Hempshaw Lane, Offerton, SK2 5TP, 0.9 miles away and **open 7 days per week** from 9.00am to 7.00pm Monday to Friday, 9.00am to 5.00pm Saturday and 10am to 4pm on Sunday.
- 1.14.11 Edgeley Pharmacy (formerly Lloyds), 99 Bloom Street, Edgeley, SK3 9LQ 0.9 miles away and open 5 days per week, until 6.00 pm Monday to Friday.
- 1.14.12 Dial House Pharmacy, 144 Dialstone Lane, Offerton, SK2 6AP 0.9 miles away and open until 6.00pm from Monday to Friday and 1.00pm on Saturday.
- 1.15 In total, excluding the two pharmacies involved in this application, there are 12 contractors, three of which trade for 7 days/week, within a 1-mile radius of the proposed site. They are operated by a variety of different contractors.
- 1.16 (Note: all information taken from www.NHS.uk)
- 1.17 The distribution of these pharmacies can be seen on the map below [appendix A] where the closing and remaining pharmacies are marked with a green star.
- 1.18 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 a choice of contractors who open 7 days/week meaning there will be no material loss of the 'out of hours service' should this consolidation application be approved.
- 1.19 Location
- 1.20 Both pharmacies are located within an area which comprises a mix a [sic] residential properties, light industrial / retail businesses and other amenities such as places of worship and schools. This is unsurprising given the proximity to Stockport town centre.
- 1.21 Residents and visitors to the area who are accustomed to accessing the pharmacy at site 2 (the closing pharmacy) will clearly find the remaining pharmacy (site 1) equally easy to access as it is essentially in the same location.
- 1.22 For those who access the pharmacies by bus currently, the nearest bus stops are located 250m to the south on Hempshaw Lane or 250m to the west on Wellington Road

South. Clearly as site 1 is adjacent to site 2 there will be absolutely no reduction in accessibility for bus users because patients will continue to use exactly the same bus service and bus stops. Those who require pharmaceutical services on a Sunday can access these at Wellington Road Pharmacy which is located on Wellington Road South with buses passing every few minutes. The bus stops [sic] is almost immediately outside the Wellington Road Pharmacy.

- 1.23 For car users, patients currently attending site 2 will have access to free parking immediately outside the site 1 premises as they do currently. There is also free parking outside Wellington Road Pharmacy and there is, of course, a large customer car park free of charge for upto [sic] 2 hours at Asda for those people who require access to a pharmacy during 'extended hours'.
- 1.24 Patients who currently visit the closing pharmacy on foot can clearly visit the remaining pharmacy equally easily as it is next door. There are also several other pharmacies in the area that can be accessed with a walk of less than 15 minutes of the closing pharmacy.
- 1.25 The nearest GP surgery to the closing pharmacy is Manor Medical Practice, which is co-located with the pharmacy at site 2. As site 1 (the remaining premises) are next door, clearly patients attending this medical centre will have no material reduction in access.
- 1.26 Other medical centres in the area are located further afield and all have community pharmacies closer to them than the closing pharmacy so patients attending these surgeries will see no change whatsoever in the accessibility of pharmaceutical services,
- 1.27 Securing improvements or better access
- 1.28 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.
- 1.29 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.
- 1.30 Furthermore, there is no evidence of any improvements required in respect of the numerous other pharmacies located within the area.
- 1.31 There are many other pharmacies in the area, so patients retain choice in respect of access to pharmaceutical services in very close proximity.
- 1.32 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.
- 1.33 In terms of access to pharmaceutical services, it is clear that access to services across the centre and south of Stockport is excellent given the number of pharmacies within a short distance. This is true both geographically and in terms of opening hours as there are three other 7-day pharmacies within 1 mile of the closing pharmacy.
- 1.34 Choice

- 1.35 When considering choice, as previously stated, there are 12 pharmacies (excluding the two in question) within a mile radius of the proposed consolidation application. These pharmacies are operated by a variety of different contractors including Asda, Boots, Well, Superdrug and a variety of independents. Patients will therefore continue to have choice of provider if this consolidation application is approved.
- 1.36 With particular regard to patients who require access to services beyond 7pm in the evening or on Saturday afternoons / Sundays, there are two easy options:
- 1.37 Wellington Road Pharmacy – Open until 6pm on Saturday and 8pm on Sunday. This pharmacy is a walk of 8 minutes (0.3 miles) from the closing premises. As discussed earlier this is on a very frequent multiple bus route and has free parking outside.
- 1.38 Asda Pharmacy - Hancock Road – Open until 8pm Monday to Saturday and for 6 hours on a Sunday. This pharmacy is approximately 14 minutes on foot (0.6 miles), and is within the town centre so is very easily accessible by car or public transport, particularly for residents who are doing their shopping. There is, of course, a large customer car park free of charge for up to 2 hours at Asda for those people who require access to a pharmacy
- 1.39 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.
- 1.40 Patients sharing protected characteristics
- 1.41 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 as the premises are adjacent [sic].
- 1.42 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.
- 1.43 Innovation
- 1.44 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.
- 1.45 The general area
- 1.46 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 part of the town.
- 1.47 Conclusion
- 1.48 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.
- 1.49 In fact we would suggest that after the closure of Hillgate Pharmacy (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.

- 1.50 In conclusion there is no reason to believe that any gaps will be created as a result of this consolidation.”

- 1.51 Current core opening hours for Site 1 (continuing site)

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
09:00-13:00 14:00-18:00	09:00-13:00 14:00-18:00	09:00-13:00 14:00-18:00	09:00-13:00 14:00-18:00	09:00-13:00 14:00-18:00	Nil	Nil	40 Hrs

- 1.52 Current total opening hours for Site 1

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
09:00-19:00	09:00-19:00	09:00-19:00	09:00-19:00	09:00-18:30	09:00-12:00	Closed	52.5 Hrs

- 1.53 Current core opening hours for Site 2 (closing site)

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
09:30-21:00	09:30-21:00	09:30-21:00	09:30-21:00	09:30-21:00	17:00-21:00	06:00-20:00	75.5 Hrs

- 1.54 Current total opening hours for Site 2

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
09:30-21:00	09:30-21:00	09:30-21:00	09:30-21:00	09:30-21:00	17:00-21:00	06:00-20:00	75.5 Hrs

2 The Decision

The Commissioner considered and decided to refuse the application. The decision letter dated 16 May 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 April 2024

- 2.2 Regulatory tests

- 2.3 Consolidation onto an existing site. [Regulation 26A quoted in full]

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

- 2.5 *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?*

- 2.6 Their supporting information states the following: [Application quoted in full]
- 2.7 The PSRC considered the application and supporting information, and further information was presented to the PSRC by the NHS GM presenting officer:
- 2.8 Looking at the population data extracted from Shape Atlas [appendix B], the PSRC noted that this area of Stockport is in the high index multiple deprivation [sic] top 10%.
- 2.9 Both Hillgate Pharmacy and Well are situated [sic] on Higher Hillgate, Stockport. Hillgate Pharmacy is co-located within the Manor Medical Practice at 56-58 Higher Hillgate, Stockport, SK1 3PZ and Well is the adjacent property at 54 Higher Hillgate, Stockport, SK1 3PX [street view provided, see appendix B].
- 2.10 Site 1 – the continuing premises Well, 54 Higher Hillgate, Stockport, SK1 3PX [street view provided, see appendix B].
- 2.11 Site 2 – the closing premises Hillgate Pharmacy, 56-58 Higher Hillgate, Stockport, SK1 3PZ [street view provided, see appendix B].
- 2.12 Source: Google Streetview
- 2.13 As the two sites are adjacent to each other, the PSRC did not consider that the distance or terrain between the sites posed any barriers in terms of accessibility, and therefore would not adversely affect patients either travelling to the site from home, or from their GP practice.
- 2.14 The nearest GP practices are as follows:

Manor Medical Practice	56 Higher Hillgate, Stockport, Cheshire, SK1 3PZ	0 miles away (co-located with Hillgate Pharmacy)
Stockport Medical Group (Lowfield)	5 Lowfield Road, Shaw Heath, Stockport, Cheshire, SK2 6RW	0.3 miles away
Little Moor Surgery	10 Offerton Lane, Stockport, Cheshire, SK2 5AR	0.7 miles away
Manor Medical Practice	Offerton Health Centre, 10 Offerton Lane, Offerton, Stockport, Cheshire, SK2 5AR	0.7 miles away
Caritas General Practice Partnership	131 Mile End Lane, Stockport, Cheshire, SK2 6BZ	0.9 miles away
Stockport Medical Group	1-3 Avondale Road, Edgeley, Stockport, Cheshire, SK3 9NX	1 mile away

- 2.15 The PSRC then looked at the opening hours of the continuing site (Site 1) and the closing site (Site 2), which were listed as follows: [1.51 – 1.54 above].

- 2.16 The PSRC noted that the continuing site is a 40-core hour contractor with supplementary hours and opens for significantly fewer hours than the closing site, which is a former 100-core hour contractor, now operating 75.5 hours per week Monday to Sunday. The remaining site would be maintaining 52.5 hours per week Monday to Saturday lunchtime [sic], if the consolidation was granted.
- 2.17 Looking at the number of items dispensed according to the NHSBSA's dispensing data [appendix B]:
- 2.17.1 Hillgate Pharmacy dispensed 11,155 items, whereas Well dispensed 5,514 items in December 2023, the remaining pharmacy would need to absorb a significant increase in dispensed items (this example shows 202% more items dispensed by Hillgate Pharmacy in a 75.5 hours week).
- 2.18 Therefore, the applicant would need to provide a cumulative total of items in 52.5 hours (based on the reasonable assumption that the majority of patients would choose to remain with the pharmacy due to its close proximity to the GP practice).
- 2.19 It was noted by the PSRC that the Stockport HWB-area is currently served by 63 Pharmacies; however only three of those pharmacies are 100 core hour contractors. All three have reduced their hours under the 2023 regulatory amendments. Their hours are listed below (with Hillgate Pharmacy highlighted in orange): [appendix B].
- 2.20 Within the 2km area there are 19 other community pharmacies. Hillgate Pharmacy is the only 100-core hour contractor within that area. The PSRC was mindful that the nearest remaining 100-hour pharmacy contractors (both of which also now operate reduced hours) are Heald Green Pharmacy 4.7 miles away/ 21 mins away by car/41 mins by public transport/1hr 42 mins walk away (Source – Google Maps) [Hillgate Pharmacy to Heald Green Pharmacy - Google Maps](#) [appendix B].
- 2.21 And Medichem Pharmacy, which is 3.2 miles away/15 mins by car/37 mins by public transport/1hr 9 mins walk away (Source: Google Maps [Hillgate Pharmacy to Medichem Pharmacy and Travel Clinic - Google Maps](#) [appendix B]).
- 2.22 The PSRC also noted that the following pharmacies operate extended hours by virtue of supplementary hours: [appendix B].
- 2.23 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 Stockport Health and Wellbeing Board (HWB) has provided the following comment:
- 2.23.1.1 *If the application were granted, in the opinion of the Stockport Health and Wellbeing Board, the proposed removal of premises from the pharmaceutical list would not create a gap in pharmaceutical services that would be met by granting a routine application in the area.*
- 2.23.1.2 *However the Stockport Health and Wellbeing Board would like to highlight that the closing site was one of only 5 sites across Stockport open after 19h00 on a weekday evening, as noted in our PNA analysis supplementary statement <https://www.stockport.gov.uk/documents/stockport-pharmaceutical-needs-assessment-2022>, and we remain concerned about the levels of provision of evening out of hours services in the Borough.*
- 2.23.1.3 *Stockport Health and Wellbeing Board encourage discussion between Greater Manchester ICB and the applicant during this process about the feasibility of extending opening at the continuing site until 21h00.*

- 2.24 The PSRC noted that although Stockport HWB had stated that the loss of the closing site would not create a gap, it had gone on to highlight a gap in the availability of services during evenings after 19:00; and suggests that the continuing site considers extending its opening hours until 21:00. The PSRC was however aware that the regulations relating to premises consolidation require the continuing site to maintain its current opening hours. There would be the opportunity for the remaining site to add supplementary hours until 21:00 in future should it wish, but this would be the choice of the contractor and therefore is not guaranteed.
- 2.25 It was further noted that Stockport HWB's PNA had highlighted a gap/need during weekday evenings and weekends in:
- 2.25.1.1 Brinnington until 18h00-20h00 on a weekday*
- 2.25.1.2 Marple 18h00-20h00 on a weekday*
- 2.25.1.3 Hazel Grove / south Stockport 18h00-22h00 on weekdays and Saturdays and 10h00- 16h00 on a Sunday"*
- 2.26 Consultation Room
- 2.27 The applicant has provided a floorplan showing the location of the consultation room within the remaining site (see below) [appendix B].
- 2.28 *Will there be an interruption in service provision and if so has the applicant given reasons for this?*
- 2.29 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."
- 2.30 After careful consideration the PSRC concluded that Stockport HWB, despite the wording of its representations, had identified that a gap would be created between 19:00 and 21:00. The PSRC was additionally concerned about the considerable loss of weekend opening hours. The PSRC therefore considered that this gap could be met by a routine application to secure improvements, or better access, to pharmaceutical services. The PSRC also considered that while the opening hours of the two remaining 100-hour pharmacies in the Stockport HWB-area (now both operating reduced hours) provide coverage Monday to Sunday, the significant distance to these sites from the location of the continuing/closing sites would prove to be a barrier to some patient groups currently accustomed to accessing pharmaceutical services from the closing site.
- 2.31 Services currently provided at the remaining site are as follows:
- 2.31.1 NMS
- 2.31.2 CPCS
- 2.31.3 Flu Vaccinations
- 2.31.4 Hypertension Case Finding

- 2.31.5 MECS – Dispensing Service
- 2.31.6 Smoking Cessation Service
- 2.31.7 Minor Ailments
- 2.31.8 Minor Ailments Part 2 Medicine Supply
- 2.31.9 Sharps Disposal
- 2.31.10 Anticoagulant Service
- 2.31.11 COVID-19 LFT Supply
- 2.32 With the addition of the following service to be provided that are in place at the proposed closing site:
 - 2.32.1 Supervised Consumption
- 2.33 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—

1. 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

2. If either S1 or S2 are distance selling premises or appliance contractor premises”

2.34 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.

2.35 Interested party representations

2.36 List of interested parties notified of the application

Well	54 Higher Hillgate		Stockport	SK1 3PX
Wellington Road Pharmacy	236 Wellington Road South		Stockport	SK2 6NW
Well	Shaw Heath Health Centre	Gilmore Street, Shaw Heath	Stockport	SK3 8DN
Cale Green Pharmacy	145 Shaw Heath,		Stockport	SK2 6QZ
Boots	47 – 49 Merseyway		Stockport	SK1 1PU
Superdrug Pharmacy	4 – 6 Mersey Square		Stockport	SK1 1RA
Well	217 Hall Street	Offerton	Stockport	SK1 4JG
Boots	82 Castle Street	Edgeley	Stockport	SK3 9AL
Asda Pharmacy	Asda Stores Ltd	Warren Street	Stockport	SK1 1UA
Davenport Pharmacy	191 Bramhall Lane	Davenport	Stockport	SK2 6JA
Offerton Pharmacy	513 Hempshaw Lane	Offerton	Stockport	SK2 5TP
Lloydspharmacy	99 Bloom Street	Edgeley	Stockport	SK3 9LQ
Dial House Pharmacy	144 Dialstone Lane	Offerton	Stockport	SK2 6AP
Manor Pharmacy	32 Brinnington Road	Brinnington	Stockport	SK1 2EX
Cohens Chemist	76 Belmost Street		Stockport	SK4 1LX
Adswood Pharmacy	205 Garners Lane	Adswood	Stockport	SK3 8QJ
Well	26 Reddish Road	Reddish	Stockport	SK5 7PE
Jaybee Pharmacy	136 Lisburne Lane	Offerton	Stockport	SK2 5RH
Mai's Pharmacy	373 Buxton Road	Great Moor	Stockport	SK2 7EY

2.37 Also notified:

- 2.37.1 Community Pharmacy Greater Manchester (formerly known as Greater Manchester LPC)
- 2.37.2 Stockport LMC
- 2.37.3 Stockport HWB
- 2.37.4 Stockport Healthwatch
- 2.38 The interested party representations received were as follows:
- 2.39 Stockport HWB - *"If the application were granted, in the opinion of the Stockport Health and Wellbeing Board, the proposed removal of premises from the pharmaceutical list would not create a gap in pharmaceutical services that would be met by granting a routine application in the area."*
- 2.40 *However the Stockport Health and Wellbeing Board would like to highlight that the closing site was one of only 5 sites across Stockport open after 19h00 on a weekday evening, as noted in our PNA analysis supplementary statement <https://www.stockport.gov.uk/documents/stockport-pharmaceutical-needs-assessment-2022>, and we remain concerned about the levels of provision of evening out of hours services in the Borough.*
- 2.41 *Stockport Health and Wellbeing Board encourage discussion between Greater Manchester ICB and the applicant during this process about the feasibility of extending opening at the continuing site until 21h00."*
- 2.42 Boots UK Ltd - *"have no comments to make as the two locations are in close proximity to each other. There are other pharmacies nearby so we do not believe that there will be a loss in service provision."*
- 2.43 Has the impact of the decision on those with protected characteristics under the Equalities Act 2010 been considered?
 - 2.43.1 Is this in accordance with NHS England/the ICB's Public Sector Equality Duty?
 - 2.43.2 Has the impact of the decision on NHS England/the ICB's duty on health inequality been considered?
 - 2.43.3 Have other statutory duties of NHS England/the ICB been considered in making the decision?
- 2.44 Based on all available information, it was anticipated that the consolidation may impact on some patient groups currently accustomed to accessing pharmaceutical services from the closing site during weekday evenings until 21:00, Saturday evenings 17:00 – 21:00 and Sundays 06:00 - 20:00, who would instead have to travel a considerable distance to access the remaining two former 100-core hour pharmacy premises.
- 2.45 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.
- 2.46 Based on all available information, the PSRC refused the application for consolidation under Regulation 26A(5)(ii), on the basis that granting the application would create a

gap that could be filled by an application to secure improvements, or better access, to pharmaceutical services.

- 2.47 The applicant has a right of appeal against this decision.
- 2.48 The Pharmaceutical Services Regulations Committee (PSRC) makes decisions on applications made under the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended. 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:
- 2.48.1 [RB], Chief Officer for Commissioning and Population Health”.

3 The Appeal

In a letter dated 12 June 2024 addressed to NHS Resolution, Pharmacy Sales & Consultancy on behalf of the Applicant appealed against the Commissioner's decision. The grounds of appeal are:

- 3.1 “We act on behalf of Pharmacy Plus Limited and an authorisation letter is attached to this document.
- 3.2 We have been notified by PCSE in a letter dated 16th May 2024 that the above application has been refused. A copy (Appendix 1) [appendix C] of their letter and decision report is attached to this document.
- 3.3 On behalf of our clients, we wish to appeal against the decision of the PSRC as we believe their reasonings for refusal are, in fact, flawed.
- 3.4 For ease of reference, we attach a copy (appendix 2) [appendix C] of our original supporting information including a map of nearby pharmacies.
- 3.5 We will address each of the PSRC's points a little later in this document.
- 3.6 Initially we would like to address comments made by third parties in relation to this application.
- 3.7 Comments from Interested Parties
- 3.8 Only two parties commented on the application, and they were as follows:
- 3.9 Boots Letter dated 7th February 2024
- 3.10 Boots had no comment to make on the application except to say that the two sites in question are close together so they didn't believe there would be a loss of provision.
- 3.11 Stockport HWB Letter dated 31st January 2024
- 3.12 Stockport HWB made three points within their letter as follows:
- 3.12.1 If the application were granted, in the opinion of the Stockport Health and Wellbeing Board, the proposed removal of premises from the pharmaceutical list would not create a gap in pharmaceutical services that would be met by granting a routine application in the area.
- 3.12.2 However, the Stockport Health and Wellbeing Board would like to highlight that the closing site was one of only 5 sites across Stockport open after 19h00 on a weekday evening, as noted in our PNA analysis supplementary statement <https://www.stockport.gov.uk/documents/stockport-pharmaceutical->

[needsassessment-2022](#), and we remain concerned about the levels of provision of evening out of hours services in the Borough.

- 3.12.3 Stockport Health and Wellbeing Board encourage discussion between Greater Manchester ICB and the applicant during this process about the feasibility of extending opening at the continuing site until 21h00.
- 3.13 PSC, on behalf of our client, responded to these comments in an e-mail dated 13th February (copy attached Appendix 3) [appendix C] as follows:
 - 3.13.1 *"We note that the HWB have confirmed, in point 1 of their letter, that "the proposed removal of premises from the pharmaceutical list would not create a gap in pharmaceutical services that would be met by granting a routine application in the area".*
 - 3.13.2 *Given that this is the key legal test to be considered under Regulation 26a, we ask that the ICB places significant weight on this comment.*
 - 3.13.3 *We further note points 2 & 3 concerning the access to out of hours services in the evenings. On behalf of our client, I can confirm that it would be happy to engage in discussions with the ICB in the future regarding the provision of out of hours pharmaceutical services generally."*
- 3.14 It is clear from the above that neither party who commented on the application felt the consolidation, if granted, would leave a gap in services. We think it is of note that the Health & Well Being Board concluded the application does in fact meet the requirements of a consolidation and would not create any gap in services.
- 3.15 In addition, it is interesting that none of the local contractors, with the exception of Boots, commented so one assumes they have no objection to the proposal.
- 3.16 In view of the above both our client and we were very surprised and disappointed to learn that PSRC had refused the application.
- 3.17 PSRC Decision
- 3.18 In summary the reasons for refusal of this application by the ICB were as follows:
 - 3.18.1 *"There was concern about the potentially high number of items dispensed (16,000) over the reduced hours should the application be approved.*
 - 3.18.2 *It was further noted that Stockport HWB's PNA had highlighted a gap/need during weekday evenings and weekends in: Brinnington until 18h00-20h00 on a weekday, Marple 18h00-20h00 on a weekday, Hazel Grove / south Stockport 18h00-22h00 on weekdays and Saturdays and 10h00- 16h00 on a Sunday."*
- 3.19 The conclusion PSRC reached was:
 - 3.19.1 *"After careful consideration the PSRC concluded that Stockport HWB, despite the wording of its representations, had identified that a gap would be created between 19:00 and 21:00. The PSRC was additionally concerned about the considerable loss of weekend opening hours. The PSRC therefore considered that this gap could be met by a routine application to secure improvements, or better access, to pharmaceutical services. The PSRC also considered that while the opening hours of the two remaining 100-hour pharmacies in the Stockport HWB-area (now both operating reduced hours) provide coverage Monday to Sunday, the significant distance to these sites from the location of the continuing/closing sites would prove to be a barrier to some patient groups currently accustomed to accessing pharmaceutical services from the closing site".*

- 3.20 We have addressed each of these points below.
- 3.21 As this is an application for a consolidation made under regulation 26a [sic], the ICB 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"*.
- 3.22 We firmly believe that the information within our supporting document is more than sufficient to satisfy PSRC that granting an application for a new pharmacy (following the closure of the pharmacy at 56-58 Higher Hillgate) would not secure improvements or better access that could be met by a routine application.
- 3.23 To avoid repetition, we do not wish to repeat all the points from the original supporting documents but just wish to highlight those we believe to be the most salient.
- 3.24 To reiterate the background, the reason for our clients submitting the application is due to the financial situation within the pharmacy sector caused by the lack of increased funding since 2016. That financial pressure has led to hundreds of pharmacies closing over the last two years up and down the country.
- 3.25 Our clients are facing the same financial pressures as all other contractors and decided the best way to ensure provision is provided in the area was to "combine" the two local pharmacies. The Well pharmacy is only dispensing around 5,000/5,500 items/month which is some way below the national average whilst our client's pharmacy faces high staffing costs, (which have increased significantly in line with the cost of living in recent years) associated with extended hour pharmacies.
- 3.26 Neither pharmacy is currently viable, so the respective owners face the prospect of making difficult decisions over the coming months.
- 3.27 Combining the two makes complete economic sense and is in line with the aim of consolidation applications.
- 3.28 Taking each of the ICB's points we wish to comment as follows:
- 3.28.1 *It was noted by the PSRC that the Stockport HWB-area is currently served by 63 Pharmacies; however only three of those pharmacies are 100 core hour contractors. All three have reduced their hours under the 2023 regulatory amendments.*
- 3.28.2 *Within the 2km area there are 19 other community pharmacies. Hillgate Pharmacy is the only*
- 3.28.3 *100-core hour contractor within that area. The PSRC was mindful that the nearest remaining 100-hour pharmacy contractors (both of which also now operate reduced hours) are Heald Green Pharmacy 4.7 miles away/ 21 mins away by car/41 mins by public transport/1hr 42 mins walk away and Medichem Pharmacy, which is 3.2 miles away/15 mins by car/37 mins by public transport/1hr 9 mins.*
- 3.29 In our initial supporting document, we listed all the pharmacies within a mile radius (1.6 km) of the consolidation site. Unfortunately, it is not possible for us to establish core hours for each of these contractors as that is not information within the public domain. However, we can list the opening hours based on information taken from NHS website.
- 3.30 For ease of reference the list of local contractors we initially listed is below:
- 3.30.1 Wellington Road Pharmacy, 236 Wellington Road South, SK2 6NW – 0.3 miles away from the closing pharmacy and open **7 days per week**, until 6.00pm from Monday to Saturday and 10am to 8pm on Sunday.

- 3.30.2 Well, Shaw Health Centre, Gilmore Street, SK3 8DN – 0.4 miles away from the closing pharmacy and open 5 days per week, from 8.30am to 6.00 pm Monday to Friday.
- 3.30.3 Cale Green Pharmacy, 145 Shaw Heath, SK2 6QZ – 0.4 miles away from the closing pharmacy and open 6 days per week, from 9.00am to 6.00 pm Monday to Friday and 9.00am to 1.00pm on Saturday.
- 3.30.4 Boots, 47/49 Merseyway, Stockport, SK1 1PU - 0.6 miles away from the closing pharmacy and open 6 days per week, from 9.00am to 5.30 pm Monday to Friday and 9.00am to 2.00pm on Saturday.
- 3.30.5 Superdrug, 4-6 Mersey Square, Stockport, SK1 1RA - 0.6 miles away and open 6 days per week, until 5.30 pm from Monday to Saturday.
- 3.30.6 Well, 217 Hall Street, Offerton, SK1 4JH - 0.6 miles away and open 5 days per week from 9.00am to 6.00pm Monday to Friday.
- 3.30.7 Asda Pharmacy, Warren Street, Stockport, SK1 1UA - 0.6 miles away and open **7 days per week**, until 8.00 pm Monday to Saturday and from 10.30am to 4.30pm on Sunday.
- 3.30.8 Boots, 82 Castle Street, Edgeley, SK3 9AL - 0.6 miles away from the closing pharmacy and open 6 days per week, from 8.45am to 5.30 pm Monday to Friday and 9.00am to 4.00pm on Saturday.
- 3.30.9 Davenport Pharmacy, 191 Bramhall Lane, Davenport, SK2 6JA - 0.7 miles away and open 6 days per week, until 5.30 pm on weekdays and 4.00pm on Saturdays.
- 3.30.10 Offerton Pharmacy, 513 Hemphshaw Lane, Offerton, SK2 5TP, 0.9 miles away and open **7 days per week** from 9.00am to 7.00pm Monday to Friday, 9.00am to 5.00pm Saturday and 10am to 4pm on Sunday.
- 3.30.11 Edgeley Pharmacy (formerly Lloyds), 99 Bloom Street, Edgeley, SK3 9LQ 0.9 miles away and open 5 days per week, until 6.00 pm Monday to Friday.
- 3.30.12 Dial House Pharmacy, 144 Dialstone Lane, Offerton, SK2 6AP 0.9 miles away and open until 6.00pm from Monday to Friday and 1.00pm on Saturday.
- 3.31 A map showing these pharmacies (Appendix 2) [appendix C] in relation to the proposed consolidation site is attached to this document.
- 3.32 In total, excluding the two pharmacies involved in this application, there are 12 contractors within 1.6km radius operated by a variety of different contractors offering extensive patient choice. Three of those contractors open 7 days/week.
- 3.33 9 of the 12 contractors are open at least one day of the weekend (Saturday) and three of them Asda, Offerton Pharmacy and Wellington Road [sic] pharmacy open on a Sunday as well. Therefore, it cannot be argued that patients do not have a choice of contractor during those times.
- 3.34 We have looked at the journey from the closing site to the three contractors who offer 7-day trading, and the summary of those journeys is below:
 - 3.34.1 Wellington Road Pharmacy
 Approx distance between sites 0.3miles
 Walking time: 8 minutes
 Public Transport: No information found
 Driving Time: 2 minutes

- 3.34.2 Asda Pharmacy
Approx distance between sites 0.7 miles
Walking time: 15 minutes
Public Transport: 17 minutes including walking to/from bus stops
Driving Time: 7 minutes
- 3.34.3 Offerton Pharmacy
Approx distance between sites 0.9 miles
Walking time: 20 minutes
Public Transport: 11 minutes including walking to/from bus stops
Driving Time: 4 minutes
- 3.35 Taking the above into account the above, the three 7-day trading pharmacies are all within 20 minutes' walk or less. Public transport to Offerton Pharmacy and Asda is straightforward and takes 17 minutes or less (we are unable to establish the details for Wellington Road). For those with access to a motor vehicle the maximum journey time is 7 minutes in normal driving conditions and there is parking available at all three pharmacies. Many ICBs take pharmacies within a 20 minutes' drive into consideration when processing routine applications so clearly the three above are well within that driving time frame.
- 3.36 Clearly patients would not have issues accessing these pharmacies should they wish to do so.
- 3.37 In their decision report PSRC have chosen to take a 2km radius (rather than 1.6km) from the closing site which presumably means they believe that is a reasonable distance for patients to travel to access services. The 2km radius encapsulates an additional 7 contractors adding further patient choice to the list above.
- 3.38 Whilst we accept that supplementary hours can be reduced/amended by giving the ICB the relevant notice period, we think it is highly unlikely that the above contractors will all suddenly apply to reduce their weekend hours leaving a gap in services. Therefore, we believe it is correct to take supplementary hours into account when reaching a decision on this application.
- 3.39 Within the Stockport 2022 PNA there are a series of maps showing late night opening, Saturday opening and Sunday opening (pages 58-60 respectively).
- 3.40 Copies (Appendix 4) [appendix C] of those maps are attached to this document, and they clearly show that in all three cases that Hillgate overlaps with other extended hours pharmacies so it cannot be argued that this consolidation would create issues for patients outside standard hours.
- 3.41 If the stance taken by PSRC on supplementary hours in this particular application was taken in all applications, then there would potentially be numerous gaps in services throughout the entire country which could be met by routine applications.
- 3.42 Therefore, whilst the other two 100 hour contractors in Stockport are a little distance away we are confident that, should this application be approved, patients will continue to have access to services 7 days/week with plenty of choice of contractor.
- 3.43 *"The PSRC noted that the continuing site is a 40-core hour contractor with supplementary hours and opens for significantly fewer hours than the closing site, which is a former 100-core hour contractor, now operating 75.5 hours per week Monday to Sunday. The remaining site would be maintaining 52.5 hours per week Monday to Saturday lunchtime, if the consolidation was granted.*
- 3.44 *Looking at the number of items dispensed according to the NHSBSA's dispensing data:*

- 3.44.1 *Hillgate Pharmacy dispensed 11,155 items, whereas Well dispensed 5,514 items in December 2023, the remaining pharmacy would need to absorb a significant increase in dispensed items (this example, shows 202% more items dispensed by Hillgate Pharmacy in a 75.5 hours week).*
- 3.45 *Therefore, the applicant would need to provide a cumulative total of items in 52.5 hours (based on the reasonable assumption that the majority of patients would choose to remain with the pharmacy due to, its close proximity to the GP practice)".*
- 3.46 As PSCR [sic] have stated, our client's pharmacy was originally opening 100 hours/week but in line with a change in regulations our client reduced the opening hours to 75.5 days/week during 2023. Even with those reduced hours our clients are finding it difficult to keep the pharmacy viable under the current funding agreement, hence the reason for the application as explained earlier
- 3.47 Therefore, if this application is approved there will only be a reduction of 23 hours/week compared to a figure of 47.5hours/week had the pharmacy continued to trade 100 hours/week.
- 3.48 In terms of the ability of our clients to cope with the combined total prescriptions of 15-16,000 items/month they had course of [sic] considered this matter in great detail prior to instructing us to submit the application.
- 3.49 Their current premises is very cramped and is inside a medical centre with no room to expand or improve. The intended remaining site is far more spacious and has both ground and first floors.
- 3.50 The first floor of the remaining site has staff facilities, stock room plus other storage. This allows the ground floor to be dedicated to the pharmacy with a sales/customer waiting area, spacious dispensary and a consultation room. The layout of the remaining pharmacy is far superior to the closing site.
- 3.51 In addition to improved premises/space, our client has reached agreement with Well to take over all existing staff from completion so there should be more than ample cover even if all the items do remain with the pharmacy.
- 3.52 In short, our clients are confident that can [sic] comfortably absorb the combined item levels should this application be approved.
- 3.53 *The PSRC noted that although Stockport HWB had stated that the loss of the closing site would not create a gap, it had gone on to highlight a gap in the availability of services during evenings after 19:00 and suggests that the continuing site considers extending its opening hours until 21:00.*
- 3.54 *The PSRC was however aware that the regulations relating to premises consolidation require the continuing site to maintain its current opening hours. There would be the opportunity for the remaining site to add supplementary hours until 21:00 in future should it wish, but this would be the choice of the contractor and therefore is not guaranteed.*
- 3.55 Firstly, it is important to note that Stockport HWB concluded that the loss of the closing site would not create a gap in services. As indicated in previous correspondence at the 14-day stage of the process, our client would be prepared to consider increasing hours. On further discussion they would consider a request from the ICB to have directed extended opening hours in the remaining site.
- 3.56 This would give the ICB more comfort than just increasing supplementary hours to ensure these hours remain protected for patient access.

- 3.57 *PSRC commented further that it noted that Stockport HWB's PNA had highlighted a gap/need during weekday evenings and weekends in:*
- 3.57.1 *Brinnington until 18h00-20h00 on a weekday*
- 3.57.2 *Marple 18h00-20h00 on a weekday*
- 3.57.3 *Hazel Grove / south Stockport 18h00-22h00 on weekdays and Saturdays and 10h00-16h00 on a Sunday.*
- 3.58 We have considered the above and wish to comment as follows:
- 3.58.1 Brinnington is approx. 3.5km north east of our client's pharmacy which would close if this application is approved.
- 3.58.2 Marple is approx. 6.7km directly to the east of our client's closing pharmacy.
- 3.58.3 Hazel Grove is approx 4.3km to the south east of our client's closing pharmacy.
- 3.59 All these areas are far beyond the 2km radius that the PRSC used to identify competing contractors when they were considering the question of opening hours. That would indicate that a 2km radius is the area that could potentially be affected by our clients proposed consolidation, so we would argue that these areas should not be considered in the context of our client's application as they are too far distant. Indeed, they are entirely different neighbourhoods with distinct populations.
- 3.60 It is also worth noting that Medichem Pharmacy (100 hour contractor located in Woodley & opening 7 days/week) is closer to Marple and Brinnington than the proposed closing site at Hillgate.
- 3.61 In addition, these perceived "gaps" were identified within the Stockport PNA dated 2022 and the subsequent supplementary statement issued in June 2023.
- 3.62 Our client's application for consolidation was submitted in November 2023 so clearly sometime after the above two documents were published. The timing here is significant because the gaps were identified before the consolidation application so they would not be a result of our client's application (if approved) as they were already identified.
- 3.63 Therefore, it cannot be argued that the consolidation application would be the cause of a gap in pharmaceutical services provision that could be met by a routine application as it had already been identified prior to submission of our client's application.
- 3.64 In addition, applications under Regulation 18 are generally not approved solely on opening hours. There are many other considerations that need to be addressed such as access and choice with opening hours being only one small part of a large jigsaw. It is therefore hard to envisage a routine application being approved in the circumstances described within this document with so many competing pharmacies close by, some of which open 7 days/week.
- 3.65 Conclusion
- 3.66 Both our clients and ourselves are of the opinion that the decision reached by PSRC is flawed and should be reversed.
- 3.67 The application clearly meets the requirements of an application for consolidation under regulation 26A.
- 3.68 The Stockport HWB (and Boots the only other party to comment) concluded that the application did not create a gap in services although the HWB did express some concerns over late night & weekend provision in the general area. However, the gap

the HWB refers to was identified within the local PNA and subsequent supplementary statements which were published in October 2022 and June 2023 respectively.

- 3.69 Clearly that was some time before our client instructed us to submit their application, so the perceived gap was already identified and not created by our clients' proposals.
- 3.70 In addition, the areas where the perceived gap were highlighted are all some distance from the closing site.
- 3.71 It is clear from the evidence within this document that patients will continue to have the choice of three 7-day trading pharmacies in the local area (plus numerous other contractors offering standard hours) all within easy reach and most with public transport available should this application be approved.
- 3.72 The remaining premises are far more fit for purpose than the closing site, and, as they are spread over two floors, are of more than sufficient size to accommodate a busy community pharmacy should the application be successful.
- 3.73 May we request that this evidence is taken into account when considering this application?
- 3.74 Finally, should the matter progress to an oral hearing either our clients, or their appointed representatives would wish to attend”.

4 **Summary of Representations**

This is a summary of representations received on the appeal.

4.1 Boots UK Ltd

- 4.1.1 “Thank you for your letter dated 20TH June 2024 informing us of the above appeal.
- 4.1.2 Boots UK Ltd have no further comments to make but respectfully ask that NHS Resolution inform us of the decision in due course and we would wish to attend an oral hearing should it be deemed necessary to hold one.”

4.2 Stockport Health & Wellbeing Board

- 4.2.1 “Many thanks for your letter of 20th June, informing the Stockport Health and Wellbeing Board about the above appeal to NHS Resolution, and requesting further representations. On behalf of Stockport Health and Wellbeing Board I would like to make the following representations in response to this appeal:
 - 4.2.1.1 In the opinion of the Stockport Health and Wellbeing Board, the proposed removal of premises from the pharmaceutical list would not create a gap in in-hours [sic]/ daytime pharmaceutical services that would be met by granting a routine application in the area.
 - 4.2.1.2 However the Stockport Health and Wellbeing Board is still concerned that the closing site was one of only 5 sites across Stockport open after 19h00 on a weekday evening , as noted in our PNA analysis supplementary statement <https://www.stockport.gov.uk/documents/stockport-pharmaceutical-needs-assessment-2022>, and remain concerned about the levels of provision of evening out of hours services in the Borough. We do feel this application will lead to a loss of evening service.

- 4.2.1.3 Stockport Health and Wellbeing Board would-support the consolidation [sic] as long as the hours from Pharmacy Plus Limited currently at 56-58 Higher Hillgate could be maintained.”

5 Observations

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

5.1 Pharmacy Sales & Consultancy on behalf of the Applicant

- 5.1.1 “Thank you for your letter dated 23rd July requesting final observations in relation to this matter.

- 5.1.2 We continue to act for Pharmacy Plus Ltd and on behalf of our clients wish to respond to the comments from interested parties as follows:

5.1.3 Boots Letter dated 3rd July

- 5.1.3.1 Boots do not have any further comments and simply request they are kept informed of progress and are willing to attend an oral hearing if the application is decided in that manner.

5.1.4 Stockport Health & Wellbeing Board (HWB) Letter dated 15th July

- 5.1.4.1 Firstly, it is worth remembering that in its letter dated 31st January 2024 the HWB stated:

5.1.4.1.1 “If the application were granted, in the opinion of the Stockport Health and Wellbeing Board, the proposed removal of premises from the pharmaceutical list would not create a gap in pharmaceutical services that would be met by granting a routine application in the area”

- 5.1.4.2 The HWB now state that that the application would not create a gap in terms of hours/daytime services but remain concerned over the “loss” of hours after 7.00pm in the Borough.

- 5.1.4.3 They then go on to state they would support the consolidation as long as the hours from our client’s pharmacy at 56/58 Higher Hillgate could be maintained.

- 5.1.4.4 As the committee will be aware under the consolidation regulations the services and opening hours of the remaining site must be adhered to if an application is granted. Therefore, the request of the HWB to maintain our clients’ current hours is not possible under the regulations.

- 5.1.4.5 The remaining site here is currently a branch of Well, located at 54 Higher Hillgate and for clarity its current core/opening hours are as follows:

5.1.4.5.1 Core Hours: 9.00-13.00 & 14.00 18.00 Monday-Friday.

5.1.4.5.2 Opening Hours: 9.00-19.00 Monday-Thursday, 9.00-18.30 Friday & 9.00-Noon Saturday.

- 5.1.4.6 Our client’s core/opening hours are:

5.1.4.7 Core Hours: 9.30-21.00 Monday -Friday, 17.00-21.00 Saturday & 06.00-20.00 Sunday.

5.1.4.8 Opening Hours: Same as the core hours.

5.1.5 We have already addressed this matter in great detail within our letter of 12th June, explaining why we do not believe this consolidation application, if approved, will create a gap in services within the Stockport area so will not repeat those comments here.

5.1.6 To reiterate our client's pharmacy opened as a '100 hour' pharmacy, using the exemption that existed within the 2005 Regulations. Applicants were not required to provide any evidence of need for pharmaceutical services provided they committed to opening 100 hours per week.

5.1.7 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.

5.1.8 The fact that the pharmacy now opens until 9pm from Monday to Saturday and 8pm on Sunday is not evidence that there is a need for pharmaceutical services. It is simply a contractual requirement.

5.1.9 Whilst our clients are unable to meet the HWB's request to offer extended opening hours, as the regulations do not permit them to do so, we again reiterated in our letter of 12th June they would be willing to discuss the matter. The extract from that letter is as follows:

5.1.9.1 *"Firstly, it is important to note that Stockport HWB concluded that the loss of the closing site would not create a gap in services. As indicated in previous correspondence at the 14-day stage of the process, our client would be prepared to consider increasing hours. On further discussion they would consider a request from the ICB to have directed extended opening hours in the remaining site."*

5.1.9.2 *This would give the ICB more comfort than just increasing supplementary hours to ensure these hours remain protected for patient access."*

5.1.10 The HWB state that our client's pharmacy is currently one of only 5 contractors "across Stockport" open after 7.00pm on a weekday. One of those 5 contractors, namely Asda, is only 0.6 miles from our client's pharmacy. Therefore, local residents, with or without protected characteristics, would still easily be able to access a late-night pharmacy should this application be approved so there would be no gap in the local area created by this application.

5.1.11 We have already explained in our document dated 12th June that the perceived gap the HWB are claiming would be created was identified before the consolidation application was submitted and not as a result of our client's application.

5.1.12 Clearly this application would not create any gap in services and, as we have previously stated, opening hours are only one of many matters that have to be taken into account when considering an application under Regulation 18. The bar for approving an application is set very high and there are 12 other contractors within a 1mile radius, three of which open 7 days/week and one after 7.00pm. Under those circumstances it is difficult to envisage a contract

application being granted as there will continue to be weekend and late evening provision in the immediate area.

5.1.13 In conclusion neither of the parties who have commented on our client's appeal have made any new points that have not already been addressed by ourselves in previous correspondence. We maintain that this application meets the requirements of Regulation 26A (1) and respectfully request it be approved.

5.1.14 May we request these comments are taken into account when the panel come to decide the outcome of this application."

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 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations").

6.5 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.”

6.6 In relation to Regulation 26A(1), the Committee noted the Commissioner's comments that the Applicant is included in the pharmaceutical list for Stockport Health and Wellbeing Board area and further that this had not been disputed by any party.

- 6.7 In relation to Regulation 26A(2), the Committee noted that this was a statement of fact and did not require any determination.
- 6.8 In relation to Regulation 26A(3)(a), the Committee noted that this is not relevant as the application was made by Pharmacy Plus Limited in relation to the continuing site. 26A(3)(b) is not relevant either as the application was made by Pharmacy Plus Limited to change the ownership of the continuing site. The Committee noted that 26A(3) is subject to 26A(4).
- 6.9 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 which is relevant to this application as the Applicant does not own both sites. The application was made by Pharmacy Plus Limited which satisfies 26A(4)(a) as they do not own the continuing site and 26A(4)(b) is satisfied as the application included an application by the Applicant to change the ownership of the continuing site.
- 6.10 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:
- 6.10.1 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, from the information provided by parties that:
- 6.11.1 The closing site which was a 100 hour pharmacy, now has reduced opening hours of 75.5 hours a week and is open 9.30am to 9pm Monday to Friday, 5pm to 9pm Saturday and 6am to 8pm Sunday;
 - 6.11.2 The consolidation site at 54 Higher Hillgate, located adjacent to the closing site, provides 52.5 hours a week.
 - 6.11.3 The consolidation site is open 9am to 7pm Monday to Thursday, 9am to 6.30pm Friday and 9am to 12pm Saturday with core hours of 9am to 1pm and 2pm to 6pm Monday to Friday.
- 6.12 As the pharmacies are adjacent to each other, the Committee noted:
- 6.12.1 The extremely short distance between the consolidation and closing site;
 - 6.12.2 There would be no physical barriers for individuals who currently access the closing site being able to access the consolidation site on foot;
 - 6.12.3 Patients will be able to use the same bus service and bus stops, with the nearest being 250 metres away located on Hempshaw Lane or Wellington Road South; and
 - 6.12.4 Patients will be able to use the same, free car parking facilities outside the consolidating site as they did when accessing the closing site.
- 6.13 The Committee noted that there are 12 pharmacies located within a mile/1.6 kilometres of the closing site with a total of 19 pharmacies located within 2 kilometres, which are operated by different contractors. Three of these pharmacies offer pharmaceutical services 7 days a week, though none of these offer 100 core opening hours.
- 6.14 The Committee had regard to the opening hours information provided by the Applicant and Commissioner for the pharmacies open 7 days per week, namely Wellington Road Pharmacy, Asda Pharmacy and Offerton Pharmacy. Wellington Road Pharmacy is

open 63 hours a week from 9am to 6pm Monday to Friday, 10am to 6pm Saturday and 10am to 8pm Sunday. Asda Pharmacy is open 60 hours a week from 9am to 8pm Monday to Saturday and 10.30am to 4pm Sunday. Offerton Pharmacy is open 60 hours a week from 9am to 7pm Monday to Friday (including a lunchtime closure), 9am to 5pm Saturday and 10am to 4pm Sunday. The Commissioner confirmed that these *“pharmacies operate extended hours by virtue of supplementary hours”* however the Committee had no information to show which are the core hours and which are the additional, supplementary hours.

- 6.15 The Committee noted from the information provided by the Applicant which was confirmed by the Commissioner that there are two 100 hour pharmacies in the Health and Wellbeing area (now operating reduced hours), namely Heald Green Pharmacy, 4.7 miles away and Medichem Pharmacy, 3.2 miles away. The Committee noted the opening hours provided by the Commissioner for these pharmacies. Heald Green Pharmacy is open for 72 hours a week from 9am to 1pm and 2pm to 9pm Monday to Saturday and Medichem Pharmacy is open for 81 hours a week from 8.30am to 9pm Monday to Friday, 10am to 9pm Saturday and 10am to 5.30pm Sunday.
- 6.16 The Committee was mindful of the information outlined by the Commissioner that *“this area of Stockport is in the high index multiple deprivation top 10%”* and 28 neighbourhoods in Stockport *“were among the 20 percent most income-deprived in England”*. From the heat map provided, the Committee observed that the continuing site is located in one of these areas. Therefore the Committee found it reasonable to assume that car ownership might be lower than in other areas and patients residing in this area would be reliant on public transport.
- 6.17 The Committee noted the undisputed information provided by the Applicant regarding access to the nearest pharmacies from the closing site that are open on weekday and Saturday evenings and on a Sunday. Wellington Road Pharmacy is 0.3 miles away and an 8 minute walk, Asda Pharmacy is 0.6 miles away and a 15 minute walk and Offerton Pharmacy is 0.9 miles away and a 20 minute walk. 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. For access by public transport, the Applicant advised that it could not find any information for the journey to Wellington Road Pharmacy however it did previously confirm that buses pass this pharmacy *“every few minutes”* and the bus stop is *“almost immediately outside”*. Including walking from and to the bus stops, it would take 17 minutes by bus to Asda Pharmacy and 11 minutes to Offerton Pharmacy. The Committee did not find the journey lengths to be excessive. For those with access to a car, it would take two minutes to drive to Wellington Road Pharmacy, 7 minutes to Asda Pharmacy and 4 minutes to Offerton Pharmacy. The Applicant confirmed there is free parking outside Wellington Road Pharmacy and up to 2 hours free parking at Asda Pharmacy.
- 6.18 In terms of the 100 hour pharmacies, the Commissioner confirmed that Heald Green Pharmacy would take 1 hour 42 minutes to walk; 41 minutes by public transport and 21 minutes by car. Medichem Pharmacy would take 1 hour 9 minutes to walk; 37 minutes by public transport and 15 minutes by car.
- 6.19 The Committee went on to consider 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 Committee noted the representations made by Stockport Health and Wellbeing Board stated that *“the proposed removal of premises from the pharmaceutical list would not create a gap in in-hours/ daytime pharmaceutical services that would be met by granting a routine application in the area”* and further *“Stockport Health and Wellbeing Board is still concerned that the closing site was one of only 5 sites across Stockport open after 19h00 on a weekday evening, as noted in our PNA analysis supplementary statement... we do feel this application will lead to a loss of evening service”*.

- 6.20 The Committee noted that the Supplementary Statement was issued on 15 June 2023, following the closure of two pharmacies within the Health and Wellbeing Board area. The Committee noted this was before the Applicant submitted their consolidation application. The findings of the review state that:
- 6.20.1 *“Stockport as a locality still has adequate provision of essential services to meet the needs of the population...the closures...do not change this position”.*
- 6.20.2 *“The closure...does not affect the provision of either advanced or locally commissioned services and does not change the conclusions of the 2022 PNA”.*
- 6.20.3 *“Analysis of opening hours and trading days...causes an additional out of hours service need...overall there are therefore the following need for out of hours pharmacy services in:*
- 6.20.3.1 *Brinnington until 18h00-20h00 on a weekday*
- 6.20.3.2 *Marple 18h00-20h00 on a weekday*
- 6.20.3.3 *Hazel Grove/south Stockport 18h00-22h00 on weekdays and Saturdays and 10h00-16h00 on a Sunday”.*
- 6.21 The Committee considered the findings further as it noted that the comments cover times that the closing site currently offers. The Committee noted the undisputed information provided by the Applicant regarding the distance to these areas from the closing site. *“Brinnington is approx. 3.5km north east”, “Marple is approx. 6.7km directly to the east” and “Hazel Grove is approx 4.3km to the south east”.* The Committee noted the location of these areas in comparison to the closing site in *“map 09”* and *“map 10”* of the Pharmaceutical Needs Assessment (“PNA”). The Committee observed that the closing site is not located in either Brinnington, Hazel Grove/South Stockport or Marple. The Committee also noted from the undisputed information provided by the Applicant that *“Medichem Pharmacy...is closer to Marple and Brinnington than the proposed closing site”.* The Committee noted the other pharmacies that are near the proposed closing site that provide late evening and Sunday opening, from *“map 02”* of the Supplementary Statement. Notably, Asda pharmacy is one of these pharmacies, as discussed above at 6.14 and 6.17. As a result, the Committee did not feel the closure of the proposed site would have a material impact on pharmaceutical services in these areas.
- 6.22 The Committee next 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 Committee noted the Applicant’s reference to the short distance between the closing site and the continuing 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. 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 the remaining site whether travelling to/from home or their GP Practice.
- 6.23 The Committee noted that the closing site does have a higher proportion of dispensing than the continuing 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.
- 6.24 The Committee was mindful that granting the application would result in a loss of core opening hours on Sundays between 6am to 10am although there is no information to show that patients are accessing pharmaceutical services at those times. Further no complaints have been received as outlined by the Applicant, which has not been disputed by the Commissioner and there still remains accessible pharmacies in the

locality within a mile of the proposed remaining site as outlined by the Applicant and discussed previously.

- 6.25 The Committee noted the comment from the Applicant that it would be prepared to consider a direction for extended hours however this is not something the Committee could take a view on as it is not outlined in the Regulations for consolidation applications. This would be for the Commissioner to consider if the application is granted.
- 6.26 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.
- 6.27 The Committee was mindful that this could lead to potential complications in the future in that the HWB could, if the proposed consolidation did go ahead, remain of the view that *"this application will lead to a loss of evening service"* as in (b) to secure improvements, or better access, to pharmaceutical services of a type set out in Regulation 26A(5)(a) and the HWB could issue a further 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. In relation to the supplementary statement that has been issued, it is already open for third parties to apply to open a pharmacy based on the identified gap.
- 6.28 The Regulations only require the HWB to issue a supplementary statement saying that no gap that could be met by a routine application has been created if the HWB considers a gap would not be created. It is not the grant of the application that triggers this requirement; it is only if the HWB considers no gap has been created. In the current matter, the HWB considers that it could be argued that such a gap will be created by the loss of evening service and a supplementary statement has already been issued in this area. 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 HWB might issue a further supplementary statement to update the PNA indicating that a further 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.
- 6.29 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 HWB agreed there was no gap does not apply to the Applicant's position.
- 6.30 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.
- 6.31 The Committee noted that the Applicant had stated, which was later confirmed by the Commissioner, that neither pharmacy is a distance selling or an appliance contractor. Therefore the Committee determined that it was not required to refuse the application under Regulation 26A(5)(b).
- 6.32 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).

- 6.33 In relation to Regulation 26A(6)(b) and 26A(6)(c), the Committee was of the view that this criteria is not relevant as 26A(3) does not apply, as noted above at 6.8. The Committee determined that it was not required to refuse the application under Regulation 26A(6)(b) and 26A(6)(c).
- 6.34 The Committee had regard to Regulation 26A(7) as 26A(4) applies. 26A(7)(a) is satisfied as the Applicant confirmed in their application form that *"I (the applicant) propose to carry on at site 1, the business in the course of which the above owner is providing pharmaceutical services at the above site"*. 26A(7)(b) is satisfied as the Applicant stated in their application form that all the services that are currently provided by Bestway National Chemists Ltd, will continue to be provided following the consolidation. 26A(7)(c) is satisfied as the Applicant ticked "no" in their application form to the question *"Will there be any interruption to service provision?"*. 26A(7)(d) is satisfied as the Applicant has confirmed that all the services (including locally commissioned services) they currently provide at the closing site will continue to be provided at continuing site. This is supported by the Applicant's answer to the question as outlined previously in relation to 26A(7)(c). 26A(7)(e) is satisfied as Bestway National Chemists Ltd has made the declaration in the application form that *"we confirm that this application is being made with our full knowledge and consent"* and further Pharmacy Plus Limited (the Applicant), in the application form consents to the closing site ceasing to be listed as chemist premises as a consequence of this application. Further, the Committee noted that the Commissioner did not find any reason to refuse under Regulation 26A(7).
- 6.35 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.
- 6.36 The Committee noted the comments regarding the financial viability of both sites and whilst the Committee sympathises, the Regulations are clear and this is not something that is covered so the Committee did not take this into account.
- 6.37 Pursuant to paragraph 9(1) of Schedule 3 to the Regulations, the Committee may:
- 6.37.1 confirm the Commissioner's decision;
 - 6.37.2 quash the Commissioner's decision and redetermine the application;
 - 6.37.3 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.
- 6.38 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.
- 6.39 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.
- 6.40 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.
- 6.41 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**