

20 September 2024

REF: SHA/26235

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**APPEAL AGAINST GREATER MANCHESTER ICB DECISION
TO REFUSE AN APPLICATION BY EVEREST PHARMACY
LIMITED FOR INCLUSION IN THE PHARMACEUTICAL LIST
OFFERING UNFORESEEN BENEFITS UNDER REGULATION
18 AT WILMSLOW ROAD, MANCHESTER BETWEEN THE
JUNCTION WITH WILLOW BANK TO THE SOUTH AND
MABFIELD ROAD TO THE NORTH (BEST ESTIMATE)**

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 refused.

A copy of this decision is being sent to:

Pharmacy Sales Consultancy on behalf of Everest Pharmacy – the Applicant
PCSE on behalf of Greater Manchester ICB
AIM RIX Ltd t/a Ladybarn Lane Chemist
Boots UK Ltd

Advise / Resolve / Learn

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APPEAL AGAINST GREATER MANCHESTER ICB DECISION TO REFUSE AN APPLICATION BY EVEREST PHARMACY LIMITED FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT WILMSLOW ROAD, MANCHESTER BETWEEN THE JUNCTION WITH WILLOW BANK TO THE SOUTH AND MABFIELD ROAD TO THE NORTH (BEST ESTIMATE)

1 The Application

By application dated 1 June 2023, Everest Pharmacy Limited ("the Applicant") applied to Greater Manchester ICB ("the Commissioner") for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at Wilmslow Road, Manchester between the junction with Willow Bank to the South and Mabfield Road to the North (Best Estimate). In support of the application it was stated:

In the Applicant's view, the application should not be refused pursuant to Regulation 31 for the following reasons:

1.1 *"There is no other pharmacy in close proximity."*

Information in support of the application.

1.2 **"Application by Everest Pharmacy Limited for inclusion in the Pharmaceutical List of Manchester Health & Wellbeing Board:**

1.3 *Best estimate location: Wilmslow Road Manchester, between the junction with Willow Bank to the South and Mabfield Road to the North.*

1.4 We act for Everest Pharmacy Limited. In accordance with the NHS (Pharmaceutical Services) Regulations 2013 we would ask NHS England & NHS Improvement ("NHSE&I") to take into account the following information when considering this application for inclusion in the pharmaceutical list.

1.5 We believe that, should NHSE&I grant this application, it will secure improvements in terms of access to pharmaceutical services for the local population and the wider area.

Background

1.6 This application has been prompted by a significant reduction in pharmaceutical services provision within this area in the recent past. This situation will be compounded further by the imminent closure of the Lloyds Pharmacy branch in the Sainsbury's store at 347 Wilmslow Road. It is our client's position that the cumulative effect of these closures is such that the residents of this area will no longer have reasonable access to pharmaceutical services.

1.7 The map below [provided] shows the locations of three former Lloyds Pharmacy stores, marked with a red pointer, which have closed in recent years. The orange pointer shows the Lloyds Pharmacy in Sainsbury's that will have closed by the time this application is determined.

1.8 The only pharmacy left which serves this entire area is Ladyburn [sic] Lane Chemist, marked with a blue pointer. This is a small community pharmacy which is located in a

parade of four shops tucked away within a residential area. In our client's view, this pharmacy will not be able to adequately meet the needs of local residents and shoppers within this area after the closure of the final Lloyds store.

- 1.9 We are aware that the Manchester PNA has only very recently been published, and did not identify any gaps in pharmaceutical services provision within the city. However, pages 44 & 45 of the PNA discusses the fact that 9 pharmacies in the city closed between the 2019 and 2023, one of which was Lloyds Pharmacy, 228 / 230 Wilmslow Road, Fallowfield, M14 6LE (closed 11 December 2020).
- 1.10 The PNA also makes the following comment (on page 45):
 - 1.10.1 *"The HWB will however need to be mindful of the effect of any further closures of pharmacies in Manchester"*.
- 1.11 The implication of this comment is that, whilst the HWB did not feel that the previous closures mentioned resulted in a gap in provision, further closures *might* lead to such a gap and the HWB will need to consider such closures carefully. It is our client's position that the closure of the Lloyds branch in Sainsburys is a material change of circumstances in the area and that the benefits our client proposes are therefore *unforeseen* in the context of the 2013 NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (as amended).

Local Area

- 1.12 The nature of the local area is an important consideration in this case, and can be seen in the aerial image [provided] looking south along Wilmslow Road towards the Sainsbury's store.
- 1.13 Photograph [provided]
- 1.14 There are several key features of this image that are noteworthy:
 - 1.14.1 The area to the bottom left of the image shows the 'Fallowfield Campus', the main residential campus of the University of Manchester.
 - 1.14.2 The areas to the bottom right and top left show how this part of the city is densely populated.
 - 1.14.3 The only pharmacy in the area (once Lloyds has closed) can be seen in the top left (marked with a red pharmacy symbol), some way distant from Wilmslow Road.
- 1.15 The part of Wilmslow Road identified as the 'best estimate' for our client's application is busy and forms the major shopping area of the locality with a wide range of national and local retailers (including the Sainsburys store), cafes, bars, hairdressers and takeaways. It is very well used by the local permanent residents and students alike, as well as people from the wider area travelling along the A6010 Wilmslow Road. This can be seen from the image below, looking north along Wilmslow Road with the Sainsbury's store on the right.
- 1.16 Photograph [provided]
- 1.17 The closure of the last pharmacy serving this significant shopping area will be a major blow for this population, who will no longer have reasonable access to pharmaceutical services when going about their daily lives.

Remaining Pharmacy Provision

- 1.18 As discussed earlier, this was historically an area where there was a good choice of pharmacy provision. Whilst unfortunate, the erosion of this service over the years has been tempered by the retention of the pharmacy in Sainsbury's which ensured residents and shoppers had easy access to a pharmacy on Wilmslow Road. Once this pharmacy closes, the final pharmacy in the area will be Ladybarn Lane Chemist.
- 1.19 As can be seen from the images [provided] this pharmacy is located over 300m to the east of Wilmslow Road within a small parade servicing a local residential area. Supporting shops here are limited to a sandwich bar, fish and chip shop and a hairdresser.
- 1.20 Importantly, this pharmacy is not visible for the many thousands of people accessing the amenities along Wilmslow Road and many will be unaware of its existence.
- 1.21 The next nearest pharmacies are Westpoint Pharmacy, even further to the east (a 1.5km walk away from the Sainsbury's store), and Wilmslow Road Pharmacy to the south, 1km away). These pharmacies clearly serve very different populations to those our client will serve at the proposed location.

Unforeseen Benefits

- 1.22 As discussed earlier, within the Manchester Pharmaceutical Needs Assessment, published in 2023, there is no specific mention of a gap in pharmaceutical services within the proposed area. Therefore this application is made to provide 'unforeseen benefits' to the local community in accordance with Regulation 18, in response to the further reduction in pharmaceutical services provision since the PNA was published.
- 1.23 We are required by NHS England to address two specific questions in this supporting information:
- 1.23.1 (i) *"Please describe the unforeseen benefit(s) that you are offering to secure and how it will secure improvements or better access to pharmaceutical services, or pharmaceutical services of a specified type in the HWB area".*
- 1.23.2 (ii) *Please explain how you intend to secure the unforeseen benefit(s).*
- 1.24 When considering these questions, it is worth noting the provisions of Regulation 18(2)(b) as highlighted below:
- 1.25 (b) *whether, notwithstanding that the improvements or better access were not included in the relevant pharmaceutical needs assessment, it is satisfied that, having regard in particular to the desirability of—*
- 1.25.1 (i) *there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB (taking into account also the NHSCB's duties under sections 13I and 13P of the 2006 Act(b) (duty as to patient choice and duty as respects variation in provision of health services)),*
- 1.25.2 (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 (taking into account also the NHSCB's duties under section 13G of the 2006 Act(c) (duty as to reducing inequalities)), or*
- 1.25.3 (iii) *there being innovative approaches taken with regard to the delivery of pharmaceutical services (taking into account also the NHSCB's duties under section 13K of the 2006 Act(a) (duty to promote innovation)), granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant pharmaceutical needs assessment was published;*

- 1.26 The implication is NHSE&I [sic] does not have to find evidence in respect of all three of these matters. These are simply matters it is required to take into account when deciding the application.
- 1.27 In fact, even if it does not find that any of the three matters discussed in (18)(2)(b) apply, the overarching test is whether *granting the application would secure improvements, or better access, to pharmaceutical services in the area of the HWB*. In our opinion there is clear evidence that it would.
- 1.28 We have addressed both of the questions above by setting out in further details below:
- Securing better access and choice
- 1.29 The matters of access and choice are inextricably linked. Whilst it may be the case that there is a choice of pharmacy provider within the Health & Wellbeing Board (HWB) area, this does not mean that the choice for residents is *reasonable* if they are not able to access these pharmacies when they need to.
- 1.30 As discussed earlier, taking into account the number of permanent residents in the area, as well as the substantial student population, there will no longer be reasonable choice for these residents. The only pharmacy in the area is located well away from the area where they go about their daily business and many will be unaware of its existence.
- 1.31 If these residents do not have reasonable access to pharmaceutical services then they do not have reasonable choice.
- 1.32 Many residents of city do not own a car so will be reliant on either walking a significant distance to a pharmacy or incurring costs to travel by public transport. Patients who are elderly or less mobile, particularly when suffering from acute illness, may find this journey challenging regardless of how they travel.
- 1.33 By approving this application, it is clear that local residents will benefit by having a choice of contractor.
- 1.34 Our client will also ensure that patients continue to have guaranteed access to services in this busy shopping area in both the evenings and on Saturdays, by committing to core hours until 7pm on weekdays and 3pm on Saturdays.
- 1.35 If this application is approved, the applicant will offer the local residents a full and comprehensive pharmaceutical service, ensuring that local residents can, once more, access pharmaceutical services when they need them.
- Patient groups sharing protected characteristics
- 1.36 For those people who are elderly, less abled or families with very young children (all of which can be classified as having protected characteristics) access to the existing pharmacies is likely to be more difficult than for those who are more able. This would particularly apply if these people are unable to drive or don't have access to a motor vehicle.
- 1.37 Granting the application will significantly improve the accessibility of pharmaceutical services for these people.
- Summary
- 1.38 In our client's view it can be clearly seen that the residents of this area would benefit greatly from having a community pharmacy within the area identified. This application clearly demonstrates benefits which were unforeseen and not identified when the PNA was published.

- 1.39 The resident population will not have a reasonable choice of provider or enjoy easy access to any existing pharmacy contractors once Lloyds has closed, especially for those who are on foot, are reliant on public transport, elderly, infirm or disabled. There is a gap in pharmaceutical services in this part of the city.
- 1.40 We firmly believe if this application is approved it will secure improvements in choice and better access to pharmaceutical services and thus provide significant benefits for the resident population.
- 1.41 Finally, our client would wish to attend any oral hearing convened by NHSE&I [sic] to consider this application.”
- 1.42 The Applicant intends to provide the following services:
- 1.42.1 Essential services
- 1.42.2 Appliances list in Part IX of the Drug Tariff
- 1.42.3 Advanced and Enhanced services:
- 1.42.3.1 Flu Vaccination Service
- 1.42.3.2 Community Pharmacy Consultation Service (CPCS)
- 1.42.3.3 NMS
- 1.42.3.4 Hepatitis C test service
- 1.42.3.5 Hypertension case finding service
- 1.43 The Applicant would propose to provide an local enhanced service commissioned by the CCG, HWB or NHS England.
- 1.44 The Applicants proposed core opening hours
- | | |
|------------|----------------------------------|
| Mon to Fri | 09:00 to 13:00
14:00 to 19:00 |
| Sat | 09:00 to 12:00
13:00 to 15:00 |
| Sun | - |
- 1.45 The Applicant's total opening hours
- | | |
|------------|----------------------|
| Mon to Fri | 09:00 to 19:00 |
| Sat | 09:00 to 13:00 [sic] |
| Sun | - |

2 The Decision

The Commissioner considered and decided to refuse the application. The decision letter dated 14 May 2024 states:

- 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.

- 2.2 You have a right of appeal to the Secretary of State against Greater Manchester ICB's decision. Should you choose to appeal then you should either complete the online form available on the NHS Resolution website or send a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this letter to nhsr.appeals@nhs.net or:

2.2.1 Primary Care Appeals, NHS Resolution, 8th Floor, 10 South Colonnade, Canary Wharf, London, E14 4PU."

NHS Greater Manchester Pharmaceutical Services Regulations Committee (PSRC)

- 2.3 "Initial additional matters considered. Was the NHS Greater Manchester Pharmaceutical Services Regulations Committee (PSRC) satisfied that:

2.3.1 It would be desirable to consider, at the same time as this application, applications from other persons offering to secure the same improvements or better access?

2.3.1.1 The PSRC determined it would not.

2.3.2 Another application offering to secure the same improvements or better access has been submitted and it would be desirable to consider it at the same time as this application?

2.3.2.1 N/A – no other applications offering the same improvements or better access.

2.3.3 An appeal relating to another application offering secure the same improvements or better access is pending, and it would be desirable to await the outcome of that appeal before considering this application?

2.3.3.1 N/A – no other similar applications, therefore no appeals either in process or determined.

Regulation 31 – Must the application be refused?

- 2.4 The PSRC was satisfied that it would not be appropriate to refuse the application under Regulation 31. The nearest pharmacy to the location of the best estimate is Ladybarn Pharmacy, 3 Ladybarn Lane, Manchester, M14 6NQ (0.2 miles away - source: NHS Site).

Regulation 32 – Is the application to be deferred?

- 2.5 The PSRC was satisfied that there was no reason to defer the application.

Regulation 41 – Is the relevant location in a reserved location?

- 2.6 The PSRC was satisfied that the location of the best estimate is not in a reserved location.

Regulation 44 – Prejudice test

- 2.7 The PSRC was satisfied this does not apply as is it not a reserved location.

Regulation 18(1) – does the need on which the applicant based its application satisfy the elements of Regulation 18(1)?

Are there any other pharmacies or DACs in the area and what services do they provide?

- 2.8 The PSRC noted that the applicant is proposing 52 core hours and 54 total opening hours (stated as 58 on the application, however the combined total of core and supplementary hours is 54). The applicant has not indicated which of its 52 core hours are intended to be its “main” 40 core and which would be the 12 additional core hours – this would need to be agreed with the commissioner (if the application was to be granted, the commissioner would then issue a direction for the additional core hours).
- 2.9 The applicant is offering flu vaccinations, CPCS, NMS, Hepatitis C testing, Hypertensive Case-Finding Service, *“and any local enhanced services commissioned by the CCG, HWB and NHSE”*.
- 2.10 The PSRC noted that the supporting information provided by the applicant relies on what it believes is the cumulative effect of reduction in pharmaceutical services provision through pharmacy closures, particularly focussing on the loss of Lloyds in Sainsburys, and considers that existing/remaining pharmacy provision is unable to cope with the increased demand. It also references the high student population due to the University of Manchester’s Fallowfield campus being close by.
- 2.11 The applicant states (via its representatives, PSC): [see paragraphs 1.4 – 1.40 above]
- 2.12 Best estimate map provided by the applicant: [provided]
- 2.13 The PSRC noted that Manchester Health & Wellbeing Board (HWB) is fully aware of the pharmacy closures within its locality and has not identified a gap as a result of any of the closures. The Manchester locality has 121 pharmacies, 10 of which are within a mile of the proposed best estimate (source: The NHS Site), offering a choice of providers, contract types and opening hours. The next nearest pharmacy is Ladybarn Lane Chemist (0.2 miles from the proposed best estimate). Locations are shown below (source: Google Maps):
- 2.14 Map [provided]
- 2.15 Interested parties notified of the application were as follows:
- 2.15.1 Ladybarn Lane Chemist, 3 Ladybarn Lane, Manchester, M14 6NQ
- 2.15.2 Wilmslow Pharmacy Withington, 480 Wilmslow Road, Withington, Manchester, M20 3BG
- 2.15.3 Withington Pharmacy, 8 Copson Street, Withington, Manchester, M20 3HE
- 2.15.4 Westpoint Pharmacy, 10 Kingsway, Manchester, M19 2DD
- 2.15.5 Cohens Chemist, The New Health Centre, 56 Briarfield Road, Withington, M20 4SS
- 2.15.6 Rusholme Pharmacy, 253 Wilmslow Road, Manchester, M14 5LW
- 2.15.7 Longboon Pharmacy, 181 Wilmslow Road, Rusholme, Manchester, M14 5AP
- 2.15.8 Boots, 215 Burnage Lane, Levenshulme, Manchester, M19 1FN
- 2.15.9 Davina Chemist, 316 Platt Lane, Manchester, M14 7DA
- 2.15.10 Cohens Chemist, 62 Whitchurch Road, Withington, Manchester, M20 1EY
- 2.15.11 A & A Pharmacy Ltd, 58 Wilmslow Road, Rusholme, Manchester, M14 5AL

- 2.15.12 Longboon & Wise Pharmacy, Rusholme Health Centre, Walmer Street, Rusholme, Manchester, M14 5NP
- 2.15.13 Cohens Chemist, 463 Princess Road, Withington, Manchester, M20 1BH
- 2.15.14 Roberts Gp Ltd, 12 Albert Road, Levenshulme, Manchester, M19 3PJ
- 2.15.15 Medichem Pharmacy, 304 Claremont Road, Manchester, M14 4EP
- 2.15.16 Cohens Chemist, 809 Stockport Road, Levenshulme, Manchester, M19 3BS
- 2.15.17 Wise Pharmacy, Surrey Lodge Practice, 11 Anson Road, Longsight, Manchester, M14 5BY
- 2.15.18 Wise Pharmacy, 372-374 Dickenson Road, Longsight, Manchester, M13 0WQ
- 2.15.19 Cohens Chemist, 55 Barlow Road, Levenshulme, Manchester, M19 3DB
- 2.15.20 Manchester Pharmacy And Health Clinic, 578 Stockport Road, Longsight, Manchester, M13 0RQ
- 2.15.21 Sterling Pharmacy, 103 Lapwing Lane, West Didsbury, Manchester, M20 6UR
- 2.15.22 Cocker Pharmacy, 155 Fog Lane, Didsbury, Manchester, M20 6FJ
- 2.15.23 W&B Pharmacy, 526 Stockport Road, Longsight, Manchester, M13 0RR
- 2.15.24 ASDA Pharmacy, Stanley Grove, Longsight, Manchester, M12 4NH
- 2.15.25 Ipharmacy Princess Rd, 167 Princess Road, Moss Side, Manchester, M14 4RL
- 2.15.26 Newmass Pharmacy, Moss Side Health Centre, Monton Street, Moss Side, Manchester, M14 4GP
- 2.16 Other parties notified of the application:
 - 2.16.1 CPGM
 - 2.16.2 Manchester LMC
 - 2.16.3 Manchester HWB
 - 2.16.4 Healthwatch Manchester
- 2.17 Representations were received from CPGM (formerly known as GM LPC), Ladybarn Lane Chemist, Sterling Pharmacy, Cohens Chemist, Boots and Rusholme Pharmacy. These are set out below:
- 2.18 **CPGM:** *"Thank you for your letter dated 18th October 2023 informing us of the above application and inviting us to make representations."*
- 2.19 *Greater Manchester LPC applications sub group has reviewed this application and decided to not support the application.*
- 2.20 *The subgroup feels that the applicant has not demonstrated how they meet the regulations and criteria of an unforeseen benefits application.*
- 2.21 *Greater Manchester LPC would like to receive any further correspondence regarding this application and wish to be kept informed of its progress."*

- 2.22 **Ladybarn Lane Chemist** (represented by Rushport Advisory LLP): *“Thank you for your letter of 18 October addressed to my client. I act for AIMRX Limited trading as Ladybarn Lane Chemist in the above application and have been instructed by my client to submit the following objection to this application from Everest Pharmacy Limited.*
- 2.23 *As the ICB will note, the supporting information provided by the Applicant states that “should NHSE&I grant this application, it will secure improvements in terms of access to pharmaceutical services for the local population and the wider area”. This is of course not the correct legal test for the ICB to apply, however, we deal with the limited information that has been provided below in order to demonstrate that the application should be refused.*
- 2.24 *The ICB is of course well-aware of the legal test under regulation 18 and we do not set it out here.*
- The Applicant states;*
- 2.25 *This application has been prompted by a significant reduction in pharmaceutical services provision within this area in the recent past. This situation will be compounded further by the imminent closure of the Lloyds Pharmacy branch in the Sainsbury’s store at 347 Wilmslow Road. It is our client’s position that the cumulative effect of these closures is such that the residents of this area will no longer have reasonable access to pharmaceutical services.*
- 2.26 *It is worth noting that the “recent past” referred to by the Applicant covers approximately 5 years. We attach a map that shows the various pharmacies referred to and their approximate closure dates. As is clear from the map, there was significant over-supply of pharmacies in this part of Manchester. What is clear is that Ladybarn Lane Chemist remains very well positioned to be able to provide services to the entirety of the area shown on our attached map and also beyond that area.*
- 2.27 *The Applicant provides a Google satellite image of the area. This image is helpful as it clearly shows that my client’s pharmacy is located close to both the Sainsburys store and the Fallowfield Campus and is within walking distance of all the areas shown on the Applicant’s image.*
- 2.28 *We further note that the Applicant cannot demonstrate any difficulty accessing either my client’s pharmacy or the pharmacies in the wider area. It is true (as stated by the Applicant) that my client’s pharmacy or indeed any other would not be visible to a person who only ever accessed Wilmslow Road, but it is inconceivable that any such person exists as people travel across different roads in the course of their everyday lives. Local people are aware of the pharmacies that are open in their area and visitors can easily find this information from their mobile phones.*
- 2.29 *My client acquired Ladybarn Lane Chemist in April 2017. It was situated at 5 Ladybarn Lane.*
- 2.30 *In the summer of 2017 the retail unit next door (number 3) came up for lease and my client decided to move the pharmacy. The new unit is considerably bigger and has a large warehouse building at the back. During 2017 the shop and warehouse were completely refitted, including air-conditioning and a large purpose built consultation room.*
- 2.31 *The pharmacy has always provided extensive additional services, including EHC, Palliative Care Stock Holding, supervised Methadone, etc, and has excellent links with all the local surgeries and is involved with the local PCN/ICB teams.*
- 2.32 *The branch is managed by an experienced Pharmacist Manager who is also an Independent Prescriber. He has support from a regular 2nd Pharmacist. It is a popular pharmacy that is well known and used by patients in the area.*

- 2.33 *On page 5 of their supporting information the Applicant suggests that it does not matter if there is no evidence of patients having difficulty accessing pharmaceutical services (and other factors). We disagree. The regulatory test is very clear and requires the NHS to consider in particular the tests set out in regulation 18(2)(b) as those tests should inform the decision maker about whether the overall test is met. It is clearly wrong to consider or rely upon an excerpt of regulation 18 which ignores matters that are required to be considered “in particular”.*
- 2.34 *Under the heading Securing better access and choice the Applicant suggests, without any supporting evidence, that patients do not have a reasonable choice of provider of pharmaceutical services and suggests that patients “may find” journeys on foot “challenging”. It is up to the Applicant to provide sufficient evidence to prove their case and as the Applicant has provided no evidence that could be relied upon to grant their application.*
- 2.35 *My client’s pharmacy opens from 9am to 9pm Monday to Saturday and from 10am to 4pm on Sundays. The NHS website lists 10 other pharmacies within a 1 mile radius of my client’s pharmacy. The Applicant deals briefly with two of these pharmacies, namely Westpoint Pharmacy and Wilmslow Road Pharmacy and simply dismisses them by saying that they “serve very different populations”. It does not appear that the Applicant knows anything about the populations that may or may not be served by other pharmacies. However, the Applicant’s suggestion that a pharmacy would not serve patients who lived 1km from where that pharmacy is located is both unsupported by any evidence and illogical. In fact, it is hard to think of any pharmacy that does not serve patients who live within a 1 mile radius of its location, or even further. In some areas there may be specific evidence that explains why access to other pharmacies is considered difficult, however, as the Committee will note, the Applicant provides no such evidence in this case.*
- 2.36 *Similarly, it is important to note that the Applicant is proposing to open a new pharmacy approximately 300 metres from my client’s current pharmacy. It is therefore a fact that, except for the 300 metre difference in location, the patient journey to the Applicant’s proposed site and my client’s existing pharmacy is the same. Despite this fact, the Applicant claims in their summary that patients will not “enjoy easy access to any existing pharmacy contractors”. Even if we ignore the fact that “easy access” does not reflect the legal test, the fact is that patients do have easy access to existing pharmacies. The Applicant’s case appears to be simply that there is no pharmacy on Wilmslow Road and that it is a busy road, rather than being able to identify any problem with the pharmaceutical services provided by any existing pharmacy contractor or access to those contractors.*
- 2.37 *My client offers a wide range of services and this includes a free delivery service for those who do not wish to access the pharmacy in person. 97% of prescriptions my client receives are received electronically, meaning that patients do not have to access their GP to collect their own prescription.*
- 2.38 *In summary, the application does not meet the requirements of Regulation 18 and should therefore be refused.*
- 2.39 *We look forward to hearing from you in due course.”*
- 2.40 *(A map was also provided, showing the location of pharmacies based at M14 6SQ (closed in February 2018), M14 6SS Sainsburys (closed in May 2023), M14 6JR (closed in June 2019) and M14 6LE (closed in December 2020). The map also shows the close proximity of Ladybarn Lane Chemist to the closed pharmacy sites).*

Sterling Pharmacy: *“We write to you with regards to the application for the new market entry application for Everest Pharmacy Rusholme - CAS-232384-Z4J4D0. Having reviewed the application and supporting documents, we object to this application due to the following points:*

- 2.41 *1. There are several pharmacies within a 1 mile radius to the proposed area, with better accessibility for patients. (Screenshot provided from Google Maps showing the location of the pharmacies). These other existing local pharmacies are appropriately located and already offer accessibility to those who are disabled, elderly, have young children or have other particular needs. For that reason, we don't feel that Everest Pharmacy will offer any further benefits to this community.*
- 2.42 *Please note, Withington Pharmacy and Rusholme Pharmacy are both late night Pharmacies for round the clock patients.*
- 2.43 *2. The proposed area for the new pharmacy is located in a heavily congested traffic area, with no parking on either side. This limits potential customers to visit by foot or by bus alone and some may find it difficult to even drive due to the road restrictions. (Sterling Pharmacy had provided a number of images taken from Google Maps to illustrate this point)*
- 2.44 *3. The unforeseen circumstances the applicant has stated as the 2 Lloyds pharmacies closing has not made an impact in service provision, as Lloyds were working on transferring as many patients as possible to their online service, and the remainder have been absorbed by the surrounding local pharmacies. Local Pharmacies have increased the service visibility to ensure any gap in provision that may have existed, does not anymore.*
- 2.45 *4. The broken-down operating hours as shown in their application does not add up to the total hours they have proposed. For example, in section 3.2 of the UB application form they state a total of 58 hrs but we count 54 hrs. As well as this, the services they have proposed are all offered by the existing local pharmacies indicating that there is no benefit to Everest Pharmacy operating within this area, especially with Pharmacy First being commissioned in 2024 offering new advanced services in which local pharmacies will implement.*
- 2.46 *5. With the current climate in Pharmacy, we do not see how this application would be financially viable. Pharmacies are recording losses in business terms and are struggling to survive and having a new pharmacy operating locally will have an effect on existing pharmacies.*
- 2.47 *6. The recently published Pharmacy Needs Assessment does not indicate any gap in provision across Greater Manchester.*
- 2.48 *We look forward to your decision on this application."*
- 2.49 **Cohens Chemist:** *"Thank you for sending us the above application dated 18th October 2023.*
- 2.50 *We wish to make the following comments –*
- 2.50.1 *The applicant has not yet secured premises*
- 2.50.2 *There are no innovative/new services being suggested within the application*
- 2.50.3 *We are not aware of any complaints in the area for a lack of service provision*
- 2.50.4 *There is no evidence of access issues for local patients*
- 2.50.5 *There are 12 pharmacies within a one mile distance of the proposed site, these include 5 extended hour sites which are open in the evening and Saturday and Sunday. These are:-*
- 2.50.5.11. *3 Ladybarn Lane M14 6WQ*

2.50.5.22. Withington Pharmacy M20 3HE

2.50.5.33. Westpoint Pharmacy M19 2DD

2.50.5.44. Rusholme Pharmacy M14 5LW

2.50.5.55. A&A Pharmacy M14 5AL

- 2.51 *We are sure that NHS England will have regard for these points when considering this application.”*
- 2.52 **Boots:** *“Thank you for your letter dated 18th October 2023 and enclosures regarding the above application. Boots UK Limited have the following comments to make. Whilst we accept that the application is based on benefits not foreseen when drafting the Pharmaceutical Needs Assessment (PNA), it is clear that this application is based on the closure of a Lloyds pharmacy in particular the 100-hour pharmacy within Sainsburys. The previous closures of any Lloyds branches will have been taken into account when the PNA was drafted and subsequently published. As the ICB will be aware, the closure of a pharmacy within an area does not automatically create a gap and should a gap have arisen as a consequence of such a closure, then the PNA should be updated to reflect this. The applicant makes comment that the Manchester PNA has only very recently been published, which suggests that the Lloyds closures would have been known about when the documents were drafted and consulted on. As far as we can see, no updated PNA or Supplementary has been produced and we believe that this is the correct way of identifying any gaps that may have arisen. The Sainsburys closed many months ago now, so there has been plenty of time for the production of supplementary statements and the amendment of the PNA to have taken place if there was a requirement to do so. The comment as referenced by the applicant drawing attention to page 45: “The HWB will however need to be mindful of the effect of any further closures of pharmacies in Manchester” surely suggests that the HWB are keeping close to all closures and potential gaps in provision. This strengthens the argument to produce and statements to this effect in our opinion.*
- 2.53 *Lloyds have closed many pharmacies, standard 40-hour contracts as well as the 100-hour ones and we have seen PNAs updated since if gaps in pharmaceutical provision have been created. It is of note that, the applicant has not applied to offer opening hours on a Sunday.*
- 2.54 *We believe that there are 10 pharmacies within 1 mile of the proposed site (NHS Choices) offering patients’ choice of a Pharmacy and services, the closest being 0.2 miles away.*
- 2.55 *The applicant has not identified any specific patient groups that may wish to access a pharmacy at the proposed location that currently have expressed difficulty in accessing services in the area. We are unaware of any patients submitting a complaint since the closure of the 100 hour Lloyds or any other pharmacies, to NHS England with regards to accessibility or any concerns regarding services or opening hours.*
- 2.56 *We believe that patients have already access to providers and choice in the area and do not believe that the applicant is offering to secure any innovation by way of services or delivery.*
- 2.57 *For these reasons we respectfully urge the ICB to refuse this application.*
- 2.58 *Please be aware that we may wish to make further representations at a later stage and attend any oral hearing that may be held in relation to the application. We would therefore be most grateful if you could keep us informed of the progress of this application.”*

- 2.59 **Rusholme Pharmacy:** *“Rusholme Pharmacy submits that Everest Pharmacy Ltd’s application to open a pharmacy at Wilmslow Road between the junction with Willow Bank to the South and Mabfield Road to the North should be rejected as the applicant has failed to provide any evidence that granting the application would confer significant benefits not foreseen at the time the Pharmaceutical Needs Assessment (PNA) was produced.*
- 2.60 *Patients living in the Fallowfield and surrounding areas currently benefit from access to excellent pharmaceutical services in their respective neighbourhoods. A simple search on www.nhs.uk will reveal there are at least 44 pharmacies with-in 2-mile radius from proposed site which are open extended hours and are providing patients with better access and choice, seven days a week. Given the good transport links and vehicle ownership, Rusholme Pharmacy submits that the existing pharmacies are within reasonable travelling time and distance for those wishing to access them. For patients who are unable to travel for whatever reason (e.g., the housebound), delivery services are available from almost all pharmacies. Closure of Lloyds pharmacy has not therefore had any impact on choice or accessibility or reduction in provision of pharmaceutical services within this area.*
- 2.61 *PNA has not identified any problem with choice or access due to the closure of pharmacies in Manchester. It is not sufficient simply to offer to provide a service or services for which there is no basis in the PNA. Unforeseen benefits applications must be fully evidenced.*
- 2.62 *The applicant has failed to demonstrate any gaps in the provision of Essential or Enhanced Services in the area or that the existing pharmacies do not provide patients with a reasonable choice.*
- 2.63 *The applicant has provided no evidence to suggest that people who share a protected characteristic experience difficulty accessing pharmaceutical services to meet their specific needs.*
- 2.64 *The applicant is providing a false argument for accessibility. A pharmacy needs not be located where you buy your groceries. In this day and age, with the advancement of communication technologies, delivery services, transportation links and car ownership a geographical proximity does not provide any advantage. How is the applicant improving accessibility to the elderly, less mobile patient or acutely ill patients by opening a pharmacy on an extremely busy road with extremely limited parking. There are approximately less than 10 parking places between on Wilmslow Road, between Furnes Road and Mabfield road. There are no parking spaces on Wilmslow Road between Furnes Road and Willow Bank. This patch of road is double yellow-lined on both sides. Applicant is proposing to open for 58 hours. No early opening. No late-night closing. No Sunday opening. Only opening till 3 pm on Saturday. How is it improving accessibility when other pharmacies in the area are opening much longer hours, 7 days a week and out of hours.*
- 2.65 *The main population in the proposed area are students. Applicant has failed to demonstrate that they find it difficult to access pharmaceutical services to meet their specific needs.*
- 2.66 *We believe the services the applicant intends to provide are not outside of the scope of those normally provided or able to be provided by the existing pharmacies and are not innovative approaches in the delivery of pharmaceutical services as intended within Regulation 18(2)(iii).*
- 2.67 *In conclusion, Rusholme Pharmacy submits that the above application does not meet the required criteria of the Pharmaceutical Services Regulations 2013, and hence should be rejected.”*

- 2.68 **The applicant (via its representatives, PSC) responded to the interested party comments as follows:** *“Thank you for your letter dated 6th December 2023 enclosing third party comments in respect of the above application.*
- 2.69 *We continue to act for the applicant, Everest Pharmacy Limited, and wish to make the following comments in response:*
- 2.70 **Rusholme Pharmacy** – letter dated 2nd December
- 2.71 *The respondent refers to there being 44 pharmacies within a 2 miles radius. The use of a 2-mile radius will be unhelpful to the committee. Not only does the use of distances in a straight line fail to take into account the actual distance a person may need to travel using the road or footpath network, it is also the case that 2 miles is a very significant distance within an urban area. Using the same methodology there is only one pharmacy within a 0.5 mile radius.*
- 2.72 *We dispute the statement that the closure of Lloyds pharmacy “has not therefore had any impact on choice or accessibility”. Within the area our clients proposed pharmacy would serve we submit that the impact of the closure of the Lloyds pharmacy is very significant.*
- 2.73 *Rusholme Pharmacy misunderstand the purpose of an application for unforeseen benefits when considering the contents of the PNA. The PNA was prepared before the Lloyds pharmacy closed. This is clear from the fact that this Lloyds pharmacy branch is listed within appendix 6 to the PNA as a provider of pharmaceutical services. Its closure was therefore unforeseen in the context of the regulations. That being the case, the failure to identify any gaps in the provision of pharmaceutical services within this area within the PNA is not relevant.*
- 2.74 *Our client has made no claim that a pharmacy needs to be located where people buy groceries. The point made within our client’s application is that the accessibility of pharmaceutical services should be considered in the context of how people go about their daily lives. It is clear, as discussed within the application, that the area around this part of Wilmslow Road is very well used by shoppers and it is not unreasonable for these people to expect that they can access pharmaceutical services at the same time.*
- 2.75 *The respondent goes on to discuss the parking arrangements within the area proposed. This is, of course, false logic because patients who have access to a car are those who will have the least difficulty accessing pharmaceutical services because they can drive to pharmacies further afield. It is those people who do not have access to a car (and this will include elderly or less abled patients) who do their shopping here, who would most benefit from a pharmacy.*
- 2.76 *Whilst it is true that there is a significant student population within the area, it is also the case that, as with any urban population, the demographic profile is very mixed. It is inaccurate to suggest that “the main population in the proposed area are [sic] students”.*
- 2.77 **Sterling Pharmacy** – letter undated
- 2.78 *As with the previous respondent, Sterling refer to a radius around the proposed area. We have addressed this point already. In fact, the map provided by Sterling merely serves to highlight the lack of choice within the area proposed by our client compared to that available in the wider area.*
- 2.79 *Similarly, we have addressed the parking point earlier and we accept that the proposed pharmacy will be particularly beneficial for patients travelling by public transport or on foot. However, whilst it is arguably a moot point, as with Rusholme Pharmacy this respondent fails to mention the large car park behind the Sainsbury’s store, where motorists can park for free for up to 3 hours regardless of whether they are shopping in Sainsbury’s or not. (An image of the car park’s location was provided).*

- 2.80 *Sterling refer to Lloyds transferring patients to their online service and that “the remainder have been absorbed by the surrounding local pharmacies”.*
- 2.81 *It is not clear how patients can be ‘absorbed’ but it is important to remember that pharmaceutical services extend beyond the simple dispensing of medication and many of these, such as support for self-care or public health promotion, are provided opportunistically in locations where people find themselves during their daily lives. Where services are provided some distance away from where patients live or do their shopping, these opportunistic services are often simply not available to these patients.*
- 2.82 *The respondent refers to the viability of the proposed pharmacy. As the ICB is aware, this is not a matter it is required or even permitted to consider when determining an application for inclusion in the pharmaceutical list.*
- 2.83 *Finally, we have addressed the point made about the PNA already.*
- 2.84 **Cohens** – letter dated 25th October
- 2.85 *We note that Cohens have not actually stated that they object to our client’s application. However we respond to their comments in the same order provided within their letter:*
- 2.85.1 *It is correct that the applicant has not yet secured premises. This application has been made for a best estimate of location and premises will be secured should the application be granted.*
- 2.85.2 *Our client is not making an innovation argument in the context of the regulations.*
- 2.85.3 *Whether or not there have been any complaints within the area, it is not clear how Cohens would be aware even if there had been any.*
- 2.85.4 *The evidence in respect of access has been provided within our client’s application.*
- 2.85.5 *We have already addressed the question of the number of pharmacies within a given radius.*
- 2.86 **GMLPC** – letter dated 1st December
- 2.87 *We note that the LPC states that it does not support the application, but it does not provide any detailed reasoning for its position. That being the case our client has no further comments to make in respect of the LPC’s letter.*
- 2.88 **Rushport on behalf of AIMRX Limited** – letter dated 1st November
- 2.89 *AIMRX Ltd challenge our client’s reference to the ‘recent past’. The position in respect of the current provision of pharmaceutical services is correctly shown on the map provided by this respondent. I.e. Ladybarn Lane Chemists is currently the only pharmacy serving this large and densely populated area regardless of the historical level of provision.*
- 2.90 *Our client maintains its position that, despite the relative proximity of Ladybarn Lane Chemists to the proposed location, it is within an area that many residents of the wider area would not visit when going about their daily lives. As discussed earlier these patients will not have the opportunity to access opportunistic services in the same way they would if there was a pharmacy located in the heart of the local shopping area. (The setting within which Ladybarn Lane Chemists is located was shown via an image).*

- 2.91 *We note the comments made in respect of the improvements that have been made to the Ladybarn Lane Chemists premises, and the range of services provided, but none of these make that pharmacy more accessible.*
- 2.92 *We have no additional comments to make at this time, but should the ICB wish to convene an oral hearing to determine this application, our client would wish to attend.”*
- 2.93 The PSRC took all representations provided by the above interested parties into account.
- 2.94 **If the application is in a controlled locality or the premises are within 1.6km of a controlled locality then gradualisation for doctors may need to be considered. Numbers of dispensing patients who may be affected should be included, along with information on what percentage of a practice’s dispensing patient list this equates to.**
- 2.95 N/A – proposed best estimate is not within a controlled locality nor within 1.6km of one.

Additional Considerations

- 2.96 The PSRC also considered the impact of decision on those with protected characteristics under the Equalities Act 2010, in accordance with NHS England’s Public Sector Equality Duty and the ICB’s commitment to reducing health inequalities.
- 2.97 It was noted that from 1st January 2021 for all face-to-face community pharmacies and 1st April 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

- 2.98 Based on all available information, the PSRC concluded that the application did not offer unforeseen benefits. While pharmacy closures cannot necessarily be predicted and some may have been unforeseen when the Manchester PNA was published, Manchester HWB is aware of the pharmacy closures affecting its area and does not consider that the closures have led to a gap in provision. There is presently a good choice and geographical spread of provider, contract type, and opening hours within a mile of the proposed location. The application offers no additional benefits in terms of services and opening hours to what is already provided by existing contractors. There is no indication that existing providers are unable to meet any additional service demand as a result of pharmacy closures, nor is there any indication that service users are experiencing difficulties in accessing pharmaceutical services.
- 2.99 The application is therefore **refused**. The applicant is awarded appeal rights.”

3 The Appeal

In a letter dated 12 June 2024 addressed to NHS Resolution, Pharmacy Sales Consultancy representing the Applicant appealed against the Commissioners decision. The grounds of appeal are:

- 3.1 “We act for Everest Pharmacy Limited and have enclosed a letter of authorisation confirming our instructions in this matter.
- 3.2 Our client has been notified by the NHS Greater Manchester Pharmaceutical Services Regulations Committee (“PSRC”) that the above application, made pursuant to

Regulation 18 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("The Regulations"), has been refused. I have enclosed a copy of their decision letter and report for your information.

- 3.3 Our client wishes to appeal this decision and we provide the key grounds for appeal below by reference to the final paragraph within the ICB decision report which sets out its decision. We have extracted several statements from this paragraph (provided in blue below) and we briefly respond to each of them accordingly:
- 3.4 *1. While pharmacy closures cannot necessarily be predicted and some may have been unforeseen when the Manchester PNA was published, Manchester HWB is aware of the pharmacy closures affecting its area and does not consider that the closures have led to a gap in provision.*
- 3.5 Manchester HWB did not provide any comments on our client's application (that we have been seen anyway) so there is no evidence that it has considered the closure of the Lloyds Pharmacy in Sainsbury's referred to in our client's application. The PSRC cannot, therefore, conclude that the HWB has determined that no gap has arisen.
- 3.6 *2. There is presently a good choice and geographical spread of provider, contract type, and opening hours within a mile of the proposed location.*
- 3.7 Our client provided evidence within its application in respect of the distribution of pharmacies within this part of Manchester, and specifically the lack of provision in the significant commercial area highlighted on Wilmslow Road. The PSRC have not made any reference to having carried out a site visit prior to determining this application to enable them to assess whether the pharmacies it refers to within a mile radius provide reasonable choice in respect of pharmaceutical services.
- 3.8 *3. The application offers no additional benefits in terms of services and opening hours to what is already provided by existing contractors.*
- 3.9 This statement is linked to point 2 above. It is our client's position that existing pharmacies do not provide reasonable choice, so the services and opening hours it offers would provide significant benefits to patients who otherwise have no access to pharmaceutical services within the best estimate area provided.
- 3.10 Measuring the accessibility of pharmaceutical services by reference to the number of pharmacies within a given radius is rarely helpful because this fails to take account of the actual distance patients may travel or any barriers to movement. We discuss this in more detail later.
- 3.11 *4. There is no indication that existing providers are unable to meet any additional service demand as a result of pharmacy closures, nor is there any indication that service users are experiencing difficulties in accessing pharmaceutical services.*
- 3.12 We address these points later in this appeal.
- 3.13 We have provided further detail below in respect of our client's grounds for appeal as well as additional information to assist the Primary Care Appeals ("PCA") Committee in considering this matter.
- 3.14 For ease we have attached a copy of the original application and supporting documents which were submitted with the application and ask that this information is taken into account to avoid undue repetition within this appeal.

Background

- 3.15 As can be seen within our client's representations, this application was initially prompted by a significant reduction in pharmaceutical services provision within its 'best

estimate' area due to the closure of the Lloyds Pharmacy branch at the Sainsbury's store, 347 Wilmslow Road, Fallowfield, Manchester, M14 6SS.

- 3.16 Within our client's application, reference was made to future plans to close this pharmacy. We can confirm that this pharmacy closed in June 2023.
- 3.17 This closure followed two other significant closures that have taken place within the last 5 years, both also on Wilmslow Road within our client's best estimate area.
- 3.18 It is our client's position that the cumulative effect of these closures over time is such that the residents of, and visitors to, this part of Manchester no longer have reasonable access to pharmaceutical services.
- 3.19 The map below shows the locations of these three closed pharmacies and our client's best estimate area. A further map was provided with our client's application which showed another closure a short distance away, but at this point we wish to focus on the immediate area to which our client's application pertains.
- 3.20 Map [See Appendix C for Committee]
- 3.21 Key
 - 3.21.1 Green line Best estimate area (by way of scale this is a 500m stretch of Wilmslow Road).
 - 3.21.2 1 Lloyds Pharmacy – 228-230 Wilmslow Road (closed Dec 2020)
 - 3.21.3 2 Lloyds Pharmacy – 266 Wilmslow Road (closed June 2019)
 - 3.21.4 3 Lloyds Pharmacy – Sainsbury's 347 Wilmslow Road (closed June 2023)
- 3.22 There is no longer any pharmacy within this significant commercial area along Wilmslow Road.
- 3.23 It is very clear from this map that pharmaceutical services provision in the Fallowfield area of Manchester has been severely depleted as a result of these closures. The only pharmacy remaining within this geographical area is Ladybarn Lane Chemist. We discuss this pharmacy later.

Local area

- 3.24 The proposed location for this pharmacy is within the Fallowfield electoral ward to the south-east of Manchester city centre. The population of this ward at the time of the 2021 census was **14,859** residents. The boundaries of this ward are shown on the map below, with the green star showing the centre of the best estimate area.
- 3.25 Map [provided]]

Demographic profile

- 3.26 In terms of relevant demographic measures for Fallowfield ward we have included data extracted from two sources, namely www.nomisweb.co.uk (which provides data from the 2021 census) and from the Ministry of Housing, Communities and Local Government which provides data from 2019 in respect of the index of multiple deprivation. This information is summarised below.
 - 3.26.1 Fallowfield ward car ownership in 2021 showed that 39.7% of households did not have a car or van in the household compared to the national average of 23.5%.

- 3.26.2 38.8% of the population was aged between 18 and 22 inclusive, compared to the national average of 5.8% reflecting the large student population.
- 3.26.3 Despite the high student population, data in respect of general health shows the proportion of residents reporting bad or very bad health to be broadly in line with the national average at 5.0% compared to 5.2% in England.
- 3.26.4 Similarly the proportion of residents with disability that affects their day to day activities a lot or a little is 17.3%, exactly the same as the national average.
- 3.26.5 The Lower Super Output Area (LSOA) Manchester 036B was ranked 9,763 out of 32,844 areas in England for deprivation overall where 1 is the most deprived (i.e. it is within the third decile). However, importantly it was ranked **2,388 for health and disability deprivation i.e. in the first decile.**
- 3.27 In many ways the health and disability data is surprising given that almost 40% of the ward population is of university student age. It would be usual to assume that this would be reflected in better than average health and mobility but this is not the case. This reflects the fact that the population of this ward is actually very diverse, and the non-student population is relatively deprived and in poor health.

Best estimate area

- 3.28 Our client's best estimate of area for this application was described as follows:
- 3.29 *Wilmslow Road, Manchester between the junction with Willow Bank to the south and Mabfield Road to the north.*
- 3.30 Within this area of Wilmslow Road there is a wide range of amenities summarised as follows:
 - 3.30.1 A variety of national and local retail businesses including large shops such as flooring supplies & plumbing supplies and many smaller shops
 - 3.30.2 Nursery school
 - 3.30.3 A wide range of fast food restaurants and takeaways
 - 3.30.4 Numerous pubs, bars and cafes
 - 3.30.5 A large Sainsbury's supermarket
 - 3.30.6 Various estate agent businesses
 - 3.30.7 Barbers / hairdressers
 - 3.30.8 Convenience stores / off-licences
 - 3.30.9 The substantial Fallowfield student campus and assorted student services.
- 3.31 It is clear therefore, that the area indicated as our client's best estimate is a significant commercial hub. It is a location that residents of the area visit when going about their daily lives.

Accessibility by car

- 3.32 Objectors to our client's application questioned the availability of car parking for residents of the wider area who wish to drive to the Wilmslow Road commercial area.

- 3.33 The main car park in the area is at the Sainsbury's store where the recently closed Lloyds Pharmacy branch was located. Unlike many Sainsbury's car parks, this is not a customer-only car park. The only restriction is that motorists may only park for a maximum of 3 hours.
- 3.34 Shoppers will park here to access the range of amenities provided throughout the Wilmslow Road commercial area so would be able to do so to access our client's proposed pharmacy wherever that might be located within the best estimate area.
- 3.35 Additionally, free on-road parking spaces are provided on Wilmslow Road at the northern part of our client's best estimate area between Landcross Road and Mabfield Road for up to one hour. Furthermore there is unrestricted parking available on each of the side roads coming off Wilmslow Road in that area.
- 3.36 In summary there is no shortage of parking available for shoppers, so access to our client's proposed location by car is very straightforward.

Accessibility by public transport

- 3.37 Wilmslow Road is a busy bus route with several services travelling in each direction to other parts of the city. Whilst objectors may seek to make the case that this also means that residents of this area could use the bus service to access pharmacies further afield, it is important to note that Wilmslow Road is a destination shopping area, so residents will use the bus service to travel here to access the amenities that they do not have close to home.
- 3.38 These residents would expect to be able to access pharmaceutical services at the same time rather than to have to travel to a different part of the city to do so.

Access for pedestrians

- 3.39 This is a densely populated area of the city, as it apparent from the population size of the ward. In fact, 2021 census data (source Nomis) shows the number of usual residents per square kilometre to be 7,263 compared to the Manchester average of 4,773 and the national average of 434. As such many people access the area on foot.
- 3.40 The Fallowfield area as a whole, and specifically our client's best estimate area, is level, benefits from wide pavements and street lighting and has traffic-light controlled pedestrian crossings at major road junctions with dropped kerbs and tactile pavements.
- 3.41 As would be expected within a shopping area, movement for pedestrians, as well as wheelchair or mobility scooter users, is very straightforward.
- 3.42 Access on foot for university students is particularly relevant given that the Fallowfield Campus is home to several thousand students, the vast majority of whom will not have access to a private vehicle.

Medical service provision

- 3.43 The nearest medical centre to the proposed best estimate area is Bodey Medical Centre, which is located at the eastern end of the Sainsbury's car park as shown in the images below:
- 3.44 Map and Photograph [provided]
- 3.45 Bodey Medical Centre prescribes in the region of 25,000 items per month, of which approximately 40% are dispensed by the nearest pharmacy, Ladybarn Lane Chemist.

- 3.46 The next nearest surgery is Fallowfield Medical Centre, a very small practice (prescribing only 4,500 items per month on average) which is located further south on Ladybarn Lane, 250m away from Bodey Medical Centre, in a converted house in what appears to have previously been retail premises. This is shown in the image below:
- 3.47 Photograph [provided]
- 3.48 Other medical centres are located further afield (at least 0.5 miles away) closer to other pharmacies, so it is likely that any patients travelling from these surgeries to our client's proposed location would do so because they are accessing other amenities on Wilmslow Road at the same time.

Current Pharmacy Provision

- 3.49 We have considered the location of remaining pharmacies in relation to the proposed site. Of course, most patients will have travelled from home or elsewhere to the proposed site, so the journey from the site to the nearest pharmacy is an *additional* journey many will have to make if they require pharmaceutical services. However, considering these journeys is a useful starting point.

Ladybarn Lane Chemist

- 3.50 As we have discussed previously, there is now only one pharmacy located within the area that would be served by our client's pharmacy. This is located at 3 Ladybarn Lane, M14 6NQ.
- 3.51 As discussed within our client's application, this pharmacy is located within a very small shopping parade with negligible other supporting trade. It is clear that this parade, which comprises (in addition to the pharmacy), a fish & chip shop, a sandwich bar and a hair salon is there to meet the needs of a very local residential population in this eastern corner of Fallowfield.
- 3.52 We have provided an image below of the setting for this pharmacy, which is marked with a red star.
- 3.53 Photograph [provided]
- 3.54 This image shows that the pharmacy is located well away from the Wilmslow Road commercial area (which can be seen on the left-hand side of the picture heading north/south and highlighted with a green line) within a residential area. The Sainsbury's store is marked with a blue shopping trolley icon. The Fallowfield student campus can be seen at the top of the image.
- 3.55 Other than those residents living in the immediate area surrounding Ladybarn Lane Chemist, this is not a location that residents of the wider area would have any reason to visit when going about their daily lives. Most local residents, shoppers in the area and students at the Fallowfield campus would not even be aware of the presence of this pharmacy unless they had a reason to search for it. It would be reasonable to assume that anybody visiting the amenities on Wilmslow Road would expect there to be a pharmacy in the shopping area rather than tucked away in a residential area.
- 3.56 It is also noteworthy that there is a single yellow line outside this pharmacy with motorists prohibited from parking at certain times in the morning and afternoon.
- 3.57 In terms of public transport, there are no bus stops on Ladybarn Lane, so bus users would be likely to use stops on Moseley Road, 100m away from the pharmacy.
- 3.58 Given the low levels of car ownership, many residents will have no option but to access pharmaceutical services on foot. Pedestrians who wish to access Ladybarn Lane Chemist from the Sainsbury's store, or indeed the Bodey Medical Centre, are required

to use a footpath to access Ladybarn Lane. As can be seen in the image below the top section of the footpath is overgrown with foliage so pedestrians may be reluctant to use this after dark.

- 3.59 Photograph [provided]
- 3.60 As an alternative pedestrians could choose to walk along Ladybarn Road, which connects Wilmslow Road with Ladybarn Lane, but this road is largely populated by light industrial businesses, so again would not be a particularly attractive route to take after dark as can be seen in the image below.
- 3.61 Photograph [provided]
- 3.62 It is clear, therefore, that not only is Ladybarn Lane Chemist located away from the main commercial area, it is not necessarily straightforward to access on foot. We also note that the premises has only a single door and there is a small step from the pavement into the pharmacy, so physical access for wheelchair users may be difficult.
- 3.63 In term of the service levels provided by Ladybarn Lane Chemist, it is relevant that this is an exceptionally busy pharmacy. The business dispensed an average of 20,431 items per month over the 3 month period to February 2024. This is close to three times the national average and is not surprising given that competing pharmacies have closed.
- 3.64 Whilst there are not many reviews of this pharmacy provided on the NHS website, we have provided a copy of these which shows that of the four reviews provided, three rate the pharmacy as one star out of five and the other reviewer rates it as two stars.
- 3.65 Particularly noteworthy extracts include:
- 3.65.1 *"It's only because there are no other local pharmacies nearby anymore that I am still using them."*
- 3.65.2 *"Never open hours after the chemist is supposed to open"*
- 3.66 The first comment is evidence from this first patient that the lack of choice has forced them to use a pharmacy they are dissatisfied with. The second comment is very concerning given that this is a '100-hour' pharmacy. The perception of this patient is that the pharmacy is failing to open for its contracted hours.
- 3.67 Given the very high prescription numbers it is not surprising that patients can find service levels to be below their expectations.
- Other pharmacies
- 3.68 Other pharmacies in this part of Manchester are significantly further away and are therefore less accessible.
- 3.69 Patients living in the Fallowfield area would have no reason to travel out of the area to access pharmaceutical services when they have a wide range of amenities close to home.
- 3.70 To the south west of the proposed location are Wilmslow Road Pharmacy and Withington Pharmacies, each approximately 0.8 miles away, a journey of 17 minutes on foot from the centre of our client's best estimate area. The journey to Wilmslow Road pharmacy (which is very close to Withington Pharmacy) is shown below.
- 3.71 Map [provided]

- 3.72 Students living on the Fallowfield campus, to the north of the proposed area would have even further to travel. This journey would not be reasonable for many patients, but particularly those with mobility difficulties. It is also relevant that this is a completely different shopping area to the one proposed by our client. Patients who are required to access these pharmacies by public transport would clearly incur costs to do so.
- 3.73 To the north, the nearest pharmacy is Rusholme Pharmacy, which again is in a completely different shopping area. This pharmacy is 0.7 miles away on foot. The journey here requires walking past open parkland as can be seen below.
- 3.74 Map [provided]
- 3.75 To the east, the nearest pharmacy is Westpoint Pharmacy, a journey of 0.9 miles, or 20 minutes on foot. Again the journey is show below:
- 3.76 Map [provided]
- 3.77 To the west, pedestrians would face a journey of 1.2 miles, a walk of 27 minutes to access the nearest pharmacy, Cohens at 463 Princess Road. Again this journey is shown below with a blue dotted line.
- 3.78 Map [provided]
- 3.79 Whilst it might be the case that patients who are fit and healthy might be willing and able to walk these distances to find alternative pharmacies if they are unwilling or unable to use Ladybarn Lane Chemist, the distance to these pharmacies is significantly more than would usually be expected within a city environment.
- 3.80 The significant reduction in accessibility of pharmaceutical services is compounded by the fact patients have always historically had easy access to pharmaceutical services within the commercial area of Wilmslow Road highlighted by our client. The combination of the loss of three pharmacies within the last five years, the remaining pharmacy being tucked out of the way and apparently suffering from some problems with service levels and the distances to alternative pharmacies amounts to a very significant reduction in patient choice.
- 3.81 In our client's opinion it is not reasonable that patients who do not have access to a private vehicle and who would find the walking distances and the nature of the journeys on foot to the existing pharmacies to be unreasonable, to be reliant on a public bus service to access pharmaceutical services when they have access to a wide range of retailers (including a large supermarket) and other amenities at the proposed location.

Regulatory tests

Regulation 18(2)(a)

- 3.82 There is no evidence that the PSRC considered the matter of detriment specifically when they refused the application. However, as this matter appears to be reasonably uncontentious, we propose to add no further comments at this stage. However, we reserve the right to comment later on this matter should any party seek to provide any evidence of detriment.

Regulation 18(2)(b)(i) – Choice

- 3.83 The PSRC committee report refers only fleetingly to the matter of choice, stating “there is presently a good choice and geographical spread of provider, contract type and opening hours within a mile of the proposed location”.
- 3.84 For the reasons we have provided above, we believe that reference simply to provision within a 1 mile radius is too simplistic for the following reasons:

- 3.84.1 The nearest pharmacy is outside the commercial area in a location most residents have no reason to go to.
 - 3.84.2 There is some evidence that the service levels at this pharmacy have suffered as a result of the exceptional dispensing numbers.
 - 3.84.3 Car ownership levels in Fallowfield are low and the area exhibits high levels of health and disability deprivation.
 - 3.84.4 There is a large student population who, whilst they might have relatively low levels of chronic illness, would benefit significantly from the provision of opportunistic pharmaceutical services provision within an area they visit when going about their daily lives.
- 3.85 Taking all of the evidence we have provided into account, it is our client's opinion that there is not *reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB*.

Regulation 18(2)(b)(ii) – Patients with protected characteristics

- 3.86 In its report, the committee limits its comments on patients with protected characteristics to the promotion of healthy living.
- 3.87 For those people who are elderly or disabled (both of which are protected characteristics) access to the existing pharmacies is clearly more difficult than for those who are more able. This would particularly apply if these people are unable to drive or do not have access to a motor vehicle.
- 3.88 The significant student population (whose age would be a relevant protected characteristic) will have specific health needs such as contraception or, increasingly, mental health support, which can be best delivered in a location where they live and go about their daily lives.
- 3.89 Evidence has therefore been provided that there are patients 'sharing a protected characteristic with difficulty accessing services that meet a specific need.'

Regulation 18(2)(b)(iii) – Innovation

- 3.90 We are aware it is difficult to provide evidence of innovation (in such a way that this regulatory test is met) given the narrow definition of pharmaceutical services and the inability to offer these innovatively when commissioning and specification of services is inflexible.
- 3.91 That being the case our client is not advancing an argument of innovation.

Conclusion

- 3.92 In our client's view it can be clearly seen that the residents of this area would benefit greatly from having a community pharmacy reinstated within the area identified. This application clearly demonstrates benefits which were unforeseen and not identified when the PNA was published.
- 3.93 The resident population do not have a reasonable choice of provider or enjoy easy access to any existing pharmacy contractors now that the final pharmacy in the Wilmslow Road commercial area has closed, especially for those who are on foot, are reliant on public transport, elderly, infirm or disabled. There is a gap in pharmaceutical services in this area.

- 3.94 Patients do not have reasonable choice in respect of access to pharmacies in the wider area.
- 3.95 Notwithstanding the fact that there is clearly a geographical gap in the provision of pharmaceutical services resulting from these closures, it is also relevant that when one or more pharmacies close, the shortfall in service provision is felt far more acutely by patients than in areas where there has never been any provision.
- 3.96 Our client firmly believes if this application is approved it will secure improvements in choice and better access to pharmaceutical services and thus provide significant benefits for the resident population.
- 3.97 We therefore urge Primary Care Appeals to overturn the decision of the ICB and grant this application accordingly.
- 3.98 Our clients would wish to attend an oral hearing should the committee decide to convene one."
- 3.99 [Enclosures:
- 3.99.1 Letter of authority dated 11 June 2024
- 3.99.2 Decision letter dated 14 May 2024 [Paragraph 2 above]
- 3.99.3 Decision Report dated 7 May 2024 [Paragraph 2 above]
- 3.99.4 Application form dated 1 June 2023 with supporting information [Paragraph 1 above]
- 3.99.5 TS045 Car or van availability Ward 2022 Fallowfield
- 3.99.6 TS007 Population age Ward 2022 Fallowfield
- 3.99.7 TS037 General Health Ward 2022 Fallowfield
- 3.99.8 TS038 Disability Ward 2022 Fallowfield
- 3.99.9 NHS Services Review Ladybarn Lane Chemist]

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 21st June 2024 informing us of the above appeal. Boots UK Ltd have the following comments to make.
- 4.1.2 We agree with the decision of the Greater Manchester ICB and their reasoning to refuse this application and stand by our original comments which I have included in this response.
- 4.1.3 There has been a supplementary statement produced since the closure of the most recent Lloyd's pharmacy and no gap has been identified. The closure of this pharmacy (and previous closures) appears to be one of the main arguments made by the applicant to grant a new contract and whilst the application is based on unforeseen benefits, the publishing of this supplementary statement, suggests that the closures have been considered.

- 4.1.4 Boots UK LTD respectfully ask that NHS Resolution dismiss the appeal and uphold the decision of the ICB to refuse the application.
- 4.1.5 We look forward to the decision in due course and we would wish to attend an oral hearing should it be deemed necessary to hold one.”

Copy letter to the Commissioner dated 15 September 2023

- 4.1.6 [see paragraphs 2.52 – 2.58 above]

4.2 AIMRX LADYBARN LANE CHEMIST

- 4.2.1 “Thank you for your letter of 21st June 2024 notifying us of this appeal. AIM RX Ltd operate the pharmacy at Ladybarn Lane Chemist, 3 Ladybarn Lane, Manchester, M14 6NQ and have done for over seven years.
- 4.2.2 We refer you to our original letter of objection, with Rushport Advisory LLP acting on our behalf, sent to the ICB and PCSE on 1st November 2023. This is attached for reference.
- 4.2.3 In response to the points raised in [the Applicant’s] letter of 12th June 2024:
- 4.2.4 **P8 paragraph 5.** Ladybarn Lane Chemist is not in a ‘very small shopping parade’. This is the centre of this part of the Fallowfield student area.
- 4.2.5 **Page 9 para 3.** There is off road parking outside the pharmacy and plenty of free, available parking within 100 meters of Ladybarn Lane Chemist. We have never had complaints about parking or accessibility at this site.
- 4.2.6 **Page 9 para 4.** The bus stop is less than 100m away from Ladybarn Lane Chemist. See the below bus map route. Ladybarn Lane is at the centre of an excellent public transport system. The bus routes near the Applicant’s proposed location also serve Ladybarn Lane Chemist due to their proximity (300m).
- 4.2.7 Map [provided]
- 4.2.8 **Page 9 para 5.** This is a purpose built, well lit, pedestrian and cycle route that is used safely and provides excellent, traffic free access from Wilmslow Road to Sainsburys and Ladybarn Lane. The photos below show this well-used, traffic-free route:
- 4.2.9 Photographs [provided]
- 4.2.10 **Page 10 para 1.** This is a main route from Wilmslow Road to Ladybarn Lane. The picture is carefully chosen to make this route look derelict and industrial. This is not the case. This is a different view of the same road, used by hundreds of pedestrians daily:
- 4.2.11 Photograph [provided]
- 4.2.12 **Page 10 para 2.** Ladybarn Lane Chemist has a new purpose-built shop front. There is no step and the door is wide enough for wheelchair access. We have never had any complaints about access.
- 4.2.13 **Page 10 para 3.** Ladybarn Lane Chemist was dispensing this number of items before the nearby closures. The site was refitted completely in 2018 and has a large purpose-built dispensary at the back of the premises that is not on public view.

- 4.2.14 **Page 11.** These comments are anonymous and are hardly representative of the thousands of patients who use the services of Ladybarn Lane Chemist. Not a single review relates to access issues. We do not recognise the comments about not being open and can only imagine that there may have been an isolated incident of a pharmacist not being available due to sickness or other similar reason. We dispense circa 19,000 items to circa 10,000 persons each month. It is normal to have a very small number of customers who experience some sort of issue. Patients tend not to realise that a medicine being out of stock is not the fault of the pharmacy but is due to supply issues affecting all pharmacies. Similarly, the pharmacist does not simply give a patient every item they request – they have to ensure the items supplied/purchased are clinically appropriate and refusal to supply, on clinical grounds, is proper practice.
- 4.2.15 **Page 11 para 3.** Ladybarn Lane Chemist has staffing levels to match its dispensing volumes.
- 4.2.16 **Page 12, para 2.** This is hardly 'open parkland'. This is the centre of Manchester.
- 4.2.17 **Page 14.** Ladybarn Lane Chemist does not have exceptional dispensing numbers. It averages 19,000 per month and is equipped and staffed appropriately for these numbers.
- 4.2.18 Ladybarn Lane Chemist is at the centre of the student area and there are plenty of other pharmacies a short walk away.
- 4.2.19 Although student's ages could be considered a protected characteristic this issue is about access to services. There is no evidence the student population has any problem accessing existing pharmacy services. The student population tends to be young and healthy. Students do not tend to own cars (hence the low car ownership figures) and the campus is in an area that is purposefully chosen to allow access to services with excellent public transport links.
- 4.2.20 The closures occurred as these pharmacies were not used. Wilmslow Road is a busy thoroughfare with bus lanes, cycle lanes and no stopping. The pharmacy provision in the area is now perfectly adequate.
- 4.2.21 In conclusion:
- 4.2.22 Despite claims that patients have problems accessing the pharmacy there is not a single patient who has expressed any support for the application. Not even support based purely on convenience.
- 4.2.23 Ladybarn Lane Chemist is located in the best possible position to serve the local population, a short distance away from the busy thoroughfare of Wilmslow Road with its bus lanes, cycle lanes and parking restrictions. There are ten other pharmacies within a one mile radius of Ladybarn Lane Chemist already offering a huge choice for patients.
- 4.2.24 We would urge NHS Resolution to uphold the original decision of the Commissioner and reject this appeal.
- 4.2.25 We would be available to attend any oral hearing."
- Copy letter to the Commissioner dated 1 November 2023
- 4.2.26 [see paragraphs 2.22 – 2.39 above]

5.1 PHARMACY SALES CONSULTANCY REPRESENTING THE APPLICANT

- 5.1.1 "Thank you for your letter dated 26th July enclosing third party comments in respect of this appeal.
- 5.1.2 We continue to act for the applicant, Everest Pharmacy Limited, and wish to make the following final observations on behalf of our client.
- 5.1.3 Letter from Boots dated 12th July
- 5.1.4 Boots have re-submitted their letter of 15th September responding to our client's application. Our clients have previously responded to this, so we have no additional comments in respect of this letter.
- 5.1.5 In their letter of 12th July in response to our client's appeal, Boots refer to the publication of a supplementary statement that has taken place since the closure of the Lloyds pharmacy. The supplementary statement referred by Boots to is a statement of fact that this pharmacy has closed. It is noteworthy that the introduction to the supplementary statement includes the following comment:
- 5.1.6 *Supplementary Statements cannot provide updates on pharmaceutical need: this can only be achieved through a review of the Pharmaceutical Needs Assessment.*
- 5.1.7 In this case the reference to the closure of the Lloyds pharmacy is not evidence that pharmaceutical needs in the area have been fully considered following that closure. That being the case we ask the committee to consider the merits of this application based on the evidence provided rather than the contents of a supplementary statement.
- 5.1.8 Letter from Aim RX Limited (Ladybarn Lane Chemist) – dated 16th July
- 5.1.9 As with the Boots letter, Aim RX have included a copy of their original representations, to which our client has previously responded, so our comments are limited to addressing the contents of their letter dated 16th July.
- 5.1.10 **P8 paragraph 5.** It is a matter of fact that Ladybarn Lane Chemist is situated in a 'very small shopping parade'. Supporting shops are limited to a fish & chip shop, hairdresser and a sandwich shop. The parade is shown in the image below:
- 5.1.11 Photograph [provided]
- 5.1.12 It is not disputed that this is a student area, but supporting trade here is minimal.
- 5.1.13 **Page 9 para 3.** The off-road parking referred immediately outside the pharmacy is limited to one space and access is restricted by bollards, so this space is not available to patients. As discussed previously, the immediate area is covered by a single yellow line, so parking is restricted at certain times in the morning and afternoon. We do not dispute that there is parking further afield in the surrounding residential area.
- 5.1.14 **Page 9 para 4.** As shown in the image below, the distance to the nearest bus stop is actually approximately 120m. Furthermore, the bus route map provided shows that the routes that stop near Ladybarn Lane Chemist (41, 150 & 171) are not the same routes that pass the proposed location, with route 41 being the only exception. The map also shows that Wilmslow Road is served by a much wider range of bus routes.

- 5.1.15 Map [provided]
- 5.1.16 **Page 9 para 5.** The images provided by the objector reflect our client's observations that the footpath and cycle route are overgrown with dense foliage.
- 5.1.17 **Page 10 para 1.** We do not dispute that some parts of Ladybarn Road are more attractive than others, but the image provided in our client's appeal was genuine and shows that there are stretches of this road that are not attractive to walk along.
- 5.1.18 **Page 10 para 2.** The image below shows the small step referred to in our client's appeal.
- 5.1.19 Photograph [provided]
- 5.1.20 **Page 10 para 3.** The graph below shows the increased in dispensing numbers over time at Ladybarn Lane Chemist. These have increased steadily from 3,500 per month in April 2014 (left hand side of the graph) to more than 20,000 items per month in early 2024. We maintain that this increase is linked to the closure of other pharmacies over this time.
- 5.1.21 Graph [provided]
- 5.1.22 **Page 11.** The committee will form its own view on the relevance of the comments from the NHS website.
- 5.1.23 **Page 12, para 2.** Reference to 'open parkland' was intended to reflect the green nature of the area which can be seen in the satellite image below:
- 5.1.24 Photograph [provided]
- 5.1.25 **Page 14.** Dispensing numbers are exceptional in that they are 3 times the national average. The pharmacy clearly dispenses a particularly high number of prescriptions.
- 5.1.26 Aim RX contradict themselves by referring to students being happy to walk and use public transport, then stating that pharmacy closures on Wilmslow Road resulting from this road being a "busy thoroughfare with bus lanes, cycle lanes and no stopping". It is assumed that 'no stopping' refers to car users, but we have provided evidence that car ownership is low. The amenities on Wilmslow Road are easily accessible, particularly to pedestrians.
- 5.1.27 The decision by Lloyds Pharmacy to close their stores in Sainsbury's was a national decision and was not reflective of local circumstances.
- 5.1.28 We have no additional comments to make at this time and look forward to hearing the outcome of this appeal in due course."

6 Consideration

- 6.1 The Pharmacy Appeals Committee ("the Committee"), appointed by NHS Resolution, had before it the papers considered by the Commissioner, together with a plan of the area showing existing pharmacies and doctors' surgeries and the location of the proposed pharmacy.
- 6.2 It also had before it the responses to NHS Resolution's own statutory consultations.

- 6.3 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").

Regulation 31

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

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

(2) This paragraph applies where -

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

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

(ii) adjacent premises; and

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

- 6.6 The Committee noted that in Part 5 (reference to Regulation 31) of its application form, the Applicant had stated: *"There is no other pharmacy in close proximity"*. The Committee further noted the Commissioner's decision letter states: *"The PSRC was satisfied that it would not be appropriate to refuse the application under Regulation 31. The nearest pharmacy to the location of the best estimate is Ladybarn Pharmacy, 3 Ladybarn Lane, Manchester, M14 6NQ (0.2 miles away - source: NHS Site)."* The Committee having regard to the above which had also not been disputed on appeal, was satisfied that it was not required to refuse the application under the provisions of Regulation 31.
- 6.7 The Committee noted that, if the application were granted, the successful applicant would - in due course - have to notify the Commissioner of the precise location of its premises (in accordance with paragraph 31 of Schedule 2). Such a notification would be invalid (and the applicant would not be able to commence provision of services) if the location then provided would (had it been known now) have led to the application being refused under Regulation 31.

Regulation 18

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

"(1) If—

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

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

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

(2) *Those matters are—*

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

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

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

- (f) *whether the application needs to be deferred or refused by virtue of any provision of Part 5 to 7.*
 - (g) *whether it is satisfied that the application presupposes that a gap in pharmaceutical services provision has been or is to be created—*
 - (i) *by the removal of chemist premises from a pharmaceutical list as a consequence of the grant of a consolidation application, and*
 - (ii) *since the last revision of the relevant HWB's pharmaceutical needs assessment other than by way of a supplementary statement.*
 - (3) *NHS England need only consider whether it is satisfied in accordance with paragraphs (2)(c) to (e) if it has reached at least a preliminary view (although this may change) that it is satisfied in accordance with paragraph (2)(b)."*
- 6.9 The Committee considered that Regulation 18(1)(a) was satisfied in that it was required to determine whether it was satisfied that granting the application, or granting it in respect of some only of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB.
- 6.10 The Committee went on to consider whether Regulation 18(1)(b) was satisfied, i.e. whether the improvements or better access that would be secured if the application was granted were or was included in the Pharmaceutical Needs Assessment ("the PNA") in accordance with paragraph 4 of Schedule 1 of the Regulations.
- 6.11 Paragraph 4 of Schedule 1 requires the PNA to include: "*a statement of the pharmaceutical services that the HWB had identified (if it has) as services that are not provided in the area of the HWB but which the HWB is satisfied (a) **would** if they were provided....secure improvements or better access, to pharmaceutical services... (b) **would** if in specified future circumstances they were provided...secure future improvements or better access to pharmaceutical services...*" (emphasis added).
- 6.12 The Committee considered the Manchester Health and Wellbeing Board PNA prepared by Manchester City Council, conscious that the document provides an analysis of the situation as it was assessed at the date of publication. The Committee bears in mind that, under Regulation 6(2), the body responsible for the PNA must make a revised assessment as soon as reasonably practicable (after identifying changes that have occurred that are relevant to the granting of applications) unless to do so appears to be a disproportionate response to those changes. Where it appears disproportionate, the responsible body may, but is not obliged to, issue a Supplementary Statement under Regulation 6(3). Such a statement then forms part of the PNA. The Committee noted that the PNA was dated 2023-2026 and several supplementary statements had been issued in January 2023 to do with three pharmacies closing (including Lloyds Pharmacy, Sainsbury's 347 Wilmslow Road, Fallowfield, Manchester, M14 6SS) and changes to opening hours for sixteen others (including Ladybarn Lane Chemist, 3 Ladybarn Lane, Fallowfield, Manchester, M14 6NQ).
- 6.13 The Committee noted page 6 of the PNA 'Executive Summary' under the sub-heading: 'Overview of current pharmaceutical services' states:
- 6.13.1 *"Manchester currently has 127 pharmacies providing a range of essential services, advanced services, enhanced services, and locally commissioned services on behalf of MCC, Manchester ICP and NHSE.*
 - 6.13.2 *Of those pharmacies, 18 are 100 hour pharmacies and 10 are distance selling or wholly mail order (internet) pharmacies.*

6.13.3 *There are three DACs who provide access to dispensing and services associated with appliances for some patients. In addition to this, DACs offer their services remotely and deliver products across huge footprints both regionally and nationally.*

6.13.4 *Therefore, it is worth noting that there are currently 8 DACs in Greater Manchester (this figure includes the three local to Manchester) that serve the whole of Greater Manchester and beyond.*

6.13.5 *The PNA contractor survey received response from 27 Manchester community pharmacies.*

6.13.6 *The PNA public questionnaire received 91 responses from the public via digital methods of collection.*

6.13.7 *The PNA has not, to date, identified any existing gaps in pharmaceutical services. This is clearly demonstrated by the following points:*

6.13.7.1 *Manchester has 23 pharmacies per 100,000 population, which is higher than the Greater Manchester and England averages;*

6.13.7.2 *Manchester has more prescription items dispensed per pharmacy per month than the Greater Manchester and England average;*

6.13.7.3 *The majority of residents live within one mile of a pharmacy;*

6.13.7.4 *The majority of residents can access a pharmacy within 15 minutes, either by walking, public transport or driving;*

6.13.7.5 *The number, location and distribution of pharmacies across the city of Manchester;*

6.13.7.6 *Over 84% of patients surveyed have a preferred pharmacy that they use regularly;*

6.13.7.7 *Over 71% of patients surveyed are aware there are pharmacies in Manchester that open early mornings, late nights and weekends;*

6.13.7.8 *Manchester has a choice of pharmacies which are open a range of times including early mornings, evenings and weekends;*

6.13.7.9 *82% of patients surveyed are satisfied with the opening hours of their pharmacy;*

6.13.7.10 *Manchester pharmacies offer a range of pharmaceutical services to meet the requirements of the population."*

6.14 Under the sub-heading 'Conclusions' the PNA states:

6.14.1 *"Taking into account the totality of the information available, the HWB considered the location, number, distribution and choice of pharmacies covering the whole of Manchester's HWB area that provide essential and advanced services during the standard core hours to meet the needs of the population.*

6.14.2 *The HWB has not received any significant information to conclude otherwise or any future specified circumstance that would alter that conclusion within the lifetime of this PNA.*

6.14.3 *Based on the information available at the time of developing this PNA, no current gaps have been identified;*

6.14.3.1 *In the need for essential service provision during and outside of normal working hours;*

6.14.3.2 *In the provision of advanced or enhanced services;*

6.14.3.3 *In the need for pharmaceutical services in specified future circumstances;*

6.14.3.4 *In essential services that if provided either now or in the future would secure improvements, or better access, to essential services;*

6.14.3.5 *In the need for advanced services that if provided either now or in the future would secure improvements, or better access, to advanced services;*

6.14.3.6 *In respect of securing improvements, or better access, to other NHS services either now or in specified future circumstances have been identified.*

6.14.4 *Results from both the public and contractor surveys indicate that further collaboration is required working with Manchester ICP, MCC, primary care, NHSE and Local Pharmacy Committee (LPC) stakeholders in order to promote the range of community pharmacy services available to the public and primary care. The HWB also recognise that collaboration with pharmacy contractors is required to understand the capability and capacity to provide existing and future services, commissioned both locally and nationally.*

6.14.5 *Not all changes to pharmaceutical services will result in a change to the need for services. Where required, the HWB will issue supplementary statements to update the PNA as changes take place to the provision of services locally."*

6.15 The Committee noted that the Applicant seeks to provide unforeseen benefits to the patients of Fallowfield, Manchester. The Committee noted that the improvements or better access that the Applicant was claiming would be secured by its application were not included in the relevant PNA in accordance with paragraph 4 of Schedule 1.

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

Regulation 18(2)(a)(i)

6.17 The Committee had regard to

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

(i) *proper planning in respect of the provision of pharmaceutical services in the area of the relevant HWB"*

6.18 The Committee noted that none of the parties had suggested that there would significant detriment to proper planning should the application be granted.

6.19 On the basis of the information available, the Committee was not satisfied that, if the application were to be granted and the pharmacy to open, the ability of the Commissioner thereafter to plan for the provision of services would be affected in a significant way.

- 6.20 The Committee was therefore not satisfied that significant detriment to the proper planning of pharmaceutical services would result from a grant of the application.

Regulation 18(2)(a)(ii)

- 6.21 The Committee had regard to

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

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

- 6.22 The Committee noted that none of the parties had suggested that there would be significant detriment to the Commissioner's arrangements for the provision of pharmaceutical services.

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

- 6.24 In the absence of any significant detriment as described in Regulation 18(2)(a), the Committee was not obliged to refuse the application and went on to consider Regulation 18(2)(b).

Regulation 18(2)(b)

- 6.25 The Committee had regard to

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

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

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

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

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

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

- 6.26 The Committee noted the application had been prompted by what the Applicant had described as a significant recent reduction of pharmaceutical services provision within the Fallowfield area. This included the closure of two pharmacies on Wilmslow Road during the last five years. In the Applicant's view, the cumulative effect of these

closures is such that the residents of this area will no longer have reasonable access to pharmaceutical services. The Committee considered that judging where the point is when a reduction of pharmaceutical services becomes significant is difficult. It might also be the case that there was over provision of pharmaceutical services in the area to the extent that it could withstand a reduction without compromising choice and access for patients.

- 6.27 The Committee noted that the proposed pharmacy location is within the Fallowfield electoral ward to the south-east of Manchester city centre. The population of this ward at the time of the 2021 census was said by the Applicant to be 14,859 residents. The Committee noted the Applicant's comments regarding the main residential campus of the University of Manchester with its large student population.
- 6.28 The Applicant also provided demographic information to further explain the nature of Fallowfield:
 - 6.28.1 Fallowfield ward car ownership in 2021 showed that 39.7% of households did not have a car or van in the household compared to the national average of 23.5%;
 - 6.28.2 Data in respect of general health shows the proportion of residents reporting bad or very bad health to be broadly in line with the national average at 5.0% compared to 5.2% in England;
 - 6.28.3 The proportion of residents with disability that affects their day to day activities a lot or a little is 17.3%, exactly the same as the national average;
 - 6.28.4 The Lower Super Output Area (LSOA) Manchester 036B was ranked 9,763 out of 32,844 areas in England for deprivation overall where 1 is the most deprived (i.e. it is within the third decile). However, importantly it was ranked 2,388 for health and disability deprivation i.e. in the first decile.
- 6.29 The Committee considered that whilst the above information could be interpreted on one hand as indicative of an increased need for pharmaceutical services it is not axiomatic that the pharmacy closures described earlier by the Applicant have resulted as the Applicant claims, in a situation where any existing pharmacies do not offer reasonable choice and reasonable access to services.
- 6.30 The Committee noted the Applicant's focus was on improving pharmaceutical services provision by way of its location on Wilmslow Road. The Applicant described the area of Wilmslow Road identified as its 'best estimate' as being a significant and busy commercial hub forming the major shopping area in the locality. The Applicant claimed that this area is very well used by the local permanent residents and students alike, as well as people from the wider area travelling along the A6010 Wilmslow Road. A variety of national and local retail businesses including large shops such as flooring supplies & plumbing supplies are present together with many other businesses:
 - 6.30.1 Nursery school;
 - 6.30.2 A wide range of fast food restaurants and takeaways;
 - 6.30.3 Numerous pubs, bars and cafes;
 - 6.30.4 A large Sainsbury's supermarket;
 - 6.30.5 Various estate agent businesses;
 - 6.30.6 Barbers / hairdressers;
 - 6.30.7 Convenience stores / off-licences; and

6.30.8 The substantial Fallowfield student campus and assorted student services.

- 6.31 The Applicant claimed that patients living in the Fallowfield area would have no reason to travel out of the area to access pharmaceutical services when they have a wide range of amenities close to home. The Committee will consider the location of existing pharmacies and information in relation to them, in order to determine whether access and choice are available in the area.
- 6.32 According to the Applicant the nearest medical centre to the proposed best estimate area is Bodey Medical Centre, located at the eastern end of the Sainsbury's car park. Bodey Medical Centre prescribes in the region of 25,000 items per month, of which approximately 40% are dispensed by the nearest pharmacy, Ladybarn Lane Pharmacy. The next nearest surgery is Fallowfield Medical Centre, a very small practice (prescribing only 4,500 items per month on average) which is located further south on Ladybarn Lane. The Committee noted that the Ladybarn Lane Pharmacy is by itself dispensing a significant number of items from the nearest GP surgery to the Applicant's proposed location.
- 6.33 The Committee noted that the Applicant's comment that other medical centres are located further afield (at least 0.5 miles away) closer to other pharmacies. In the Committee's view the Applicant had confirmed that patients of these GP surgeries are likely to access pharmaceutical services elsewhere but that they may choose to source other services and amenities in the location of the proposed pharmacy after having attended their GP suggested that the proposed pharmacy may offer an additional level of convenience. This in the Committee's view was not a factor which lent much support to the application.
- 6.34 The Committee noted the Applicant's comment that the only pharmacy in the area is located well away from the area where persons are going about their daily business. The Applicant further claimed that many will be unaware of its existence. At 3 Ladybarn Lane, M14 6NQ, the Applicant states that this pharmacy is located within a very small shopping parade with negligible other supporting trade. In the Applicant's view it is clear that this parade, which comprises (in addition to the pharmacy), a fish & chip shop, a sandwich bar and a hair salon is there to meet the needs of a very local residential population in this eastern corner of Fallowfield. The Committee noted Ladybarn Lane Pharmacy's comment on appeal that it is not in a 'very small shopping parade' being at the centre of this part of the Fallowfield student area. The Committee was of the view that the size of the shopping parade was not the issue in this case. Rather it was the ease with which the pharmaceutical services can be accessed from the surrounding area that is key.
- 6.35 Ladybarn Lane Pharmacy responded that it is located in the best possible position to serve the local population, a short distance away from the busy thoroughfare of Wilmslow Road with its bus lanes, cycle lanes and parking restrictions. There are ten other pharmacies within a one mile radius of Ladybarn Lane Pharmacy already offering a huge choice for patients. Ladybarn Lane Pharmacy is at the centre of the student area and there are plenty of other pharmacies a short walk away.
- 6.36 The Applicant claimed that the next nearest pharmacies are Westpoint Pharmacy, even further to the east (a 1.5km walk away from the Sainsbury's store), and Wilmslow Road Pharmacy to the south, 1km away. The Applicant argued that these pharmacies clearly serve very different populations to those they will serve at the proposed location. The Committee did not accept that these pharmacies could not serve patients from other areas provided that they were accessible.
- 6.37 The Committee noted the Applicant's comment that Ladybarn Lane Pharmacy is an exceptionally busy pharmacy dispensing on average 20,431 items per month over the 3 month period to February 2024. The Applicant stated that this is close to three times the national average and attributable to competing pharmacies having closed.

However the Committee was of the view that just because dispensing was high, it was not automatic that an additional pharmacy was needed.

- 6.38 The Committee noted Ladybarn Lane Pharmacy comment that it was dispensing this number of items before the nearby closures. The site was refitted completely in 2018 and has a large purpose-built dispensary at the back of the premises that is not on public view. Ladybarn Lane Pharmacy has staffing levels to match its dispensing volumes.
- 6.39 The Applicant referred to a few reviews of the Ladybarn Lane Pharmacy provided on the NHS website. The Committee noted that there are four reviews expressing dissatisfaction with the pharmacy. The Committee had no information from any other party including the Commissioner in particular, to indicate any significant concerns with the provision of services by Ladybarn Lane Pharmacy.
- 6.40 The Committee considered that these comments are anonymous and are hardly representative of the thousands of patients who use the services of Ladybarn Lane Chemist. The pharmacy dispenses circa 19,000 items to circa 10,000 persons each month. It is not unknown to have a very small number of customers who experience some sort of issue.
- 6.41 The Committee noted the Applicant's comment that many residents of the city do not own a car so will be reliant on either walking a significant distance to a pharmacy or incurring costs to travel by public transport. Patients who are elderly or less mobile, particularly when suffering from acute illness, may find this journey challenging regardless of how they travel. The Committee was mindful that a key matter in the consideration of this application was therefore the ease with which persons are able to access existing pharmaceutical services in the area.
- 6.42 The Committee noted the Applicants reference to other existing pharmacies in the area. To the east of its proposed location, the Applicant noted Westpoint Pharmacy, said by the Applicant to be a journey of 0.9 miles, or 20 minutes on foot. To the west, the Applicant noted that pedestrians would face a journey of 1.2 miles, a walk of 27 minutes to access Cohens at 463 Princess Road. The Applicant argued that whilst it might be the case that patients who are fit and healthy might be willing and able to walk these distances to find alternative pharmacies if they are unwilling or unable to use Ladybarn Lane Pharmacy, the distance to these pharmacies is significantly more than would usually be expected within a city environment.
- 6.43 The Committee noted the Applicant's comment that the Fallowfield area as a whole, and specifically the Applicant's best estimate area, is level, benefits from wide pavements and street lighting and has traffic-light controlled pedestrian crossings at major road junctions with dropped kerbs and tactile pavements. Movement for pedestrians, as well as wheelchair or mobility scooter users, is very straightforward.
- 6.44 The Committee noted the Applicant's comment that given the low levels of car ownership, many residents will have no option but to access pharmaceutical services on foot.
- 6.45 The Committee noted the Applicant's assertion that Ladybarn Lane Pharmacy is not only located away from the main commercial area, it is not necessarily straightforward to access on foot.
- 6.46 The Committee noted the Applicant's comments that pedestrians who wish to access Ladybarn Lane Pharmacy from the Sainsbury's store, or indeed the Bodey Medical Centre, are required to use a footpath to access Ladybarn Lane. As can be seen in the image provided the top section of the footpath is overgrown with foliage so pedestrians may be reluctant to use this after dark. However, in the Committee's view, overgrown foliage did not make the route inaccessible.

- 6.47 The Committee noted the Applicant's comment that as an alternative pedestrians could choose to walk along Ladybarn Road, which connects Wilmslow Road with Ladybarn Lane, but this road is largely populated by light industrial businesses, so again would not be a particularly attractive route to take after dark. A photograph provided by Ladybarn Lane Pharmacy shows the same road (said to be used by hundreds of pedestrians daily) from a different direction. It is a wide flat road with well maintained pathways and is edged by housing.
- 6.48 The Committee had no information to show that these routes are not being used by pedestrians for any concerns over safety. The Committee was also aware of Ladybarn Lane Pharmacy's comment that there is a purpose built, well lit, pedestrian and cycle route that is used safely and provides excellent, traffic free access from Wilmslow Road to Sainsburys and Ladybarn Lane. A provided photograph showed a well maintained pedestrian/cycle route as described by Ladybarn Lane Pharmacy. The Committee concluded that the Ladybarn Lane Pharmacy is reasonably accessible on foot for those persons willing to undertake the journey.
- 6.49 The Committee next noted the Applicant's comment on the next nearest pharmacies to its proposed location. To the south west of the proposed location are Wilmslow Road Pharmacy and Withington Pharmacies, each approximately 0.8 miles away, a journey of 17 minutes on foot from the centre of the Applicant's best estimate area. The Committee did not regard the distance to either pharmacy on foot excessive for those persons prepared to undertake them on foot. The Committee has already noted the Applicant's reference to the terrain in the Fallowfield area offering no significant barriers to those on foot.
- 6.50 The Committee next considered the access to the existing pharmaceutical services by car. The Committee appreciated that those with their own vehicle potentially have access to pharmaceutical services in various locations.
- 6.51 The Applicant stated that those attending the Wilmslow Road commercial area by car would use the main car park in the area at the Sainsbury's store. This is not a Sainsbury customer-only car park. The only restriction is that motorists may only park for a maximum of 3 hours. According to the Applicant, shoppers will park here to access the range of amenities provided throughout the Wilmslow Road commercial area.
- 6.52 The Committee noted the Applicant's claim that additional, free on-road parking spaces is located on Wilmslow Road at the northern part of the Applicant's best estimate area between Landcross Road and Mabfield Road for up to one hour. Unrestricted parking available on each of the side roads coming off Wilmslow Road in that area.
- 6.53 Ladybarn Lane Pharmacy commented that there is off road parking outside the pharmacy and plenty of free, available parking within 100 meters of its pharmacy. The Committee was satisfied that Ladybarn Lane Pharmacy has ample parking opportunities nearby or in the main car park at Sainsburys. None of the parties had suggested that the available parking is too costly or oversubscribed.
- 6.54 The Committee noted the Applicant's comment on appeal that Wilmslow Road is a busy bus route with several services travelling in each direction to other parts of the city. The Committee was provided with no information regarding the destinations, frequency and cost of the bus services referred to by the Applicant. However, Ladybarn Lane Pharmacy provided a map showing several bus service route numbers and stops one of which was said to be less than 100m away from Ladybarn Lane Pharmacy. The Committee further noted Ladybarn Lane Pharmacy's argument that the bus routes near the Applicant's proposed location also serve Ladybarn Lane Pharmacy due to their proximity (300m).
- 6.55 The Committee noted the Applicant's comment that for patients who access existing pharmaceutical services by public transport, there would clearly be a cost in doing so. The Committee had no information to show that the costs associated with using

available public transport are so high as to inhibit persons use of the services. The Committee was satisfied that there are existing pharmaceutical services in the area that are accessible by bus.

- 6.56 Therefore the Committee was not satisfied that, having regard to there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits by way of physical access on persons.
- 6.57 The Committee was of the view that there is already reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB, such that it was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits on persons.
- 6.58 In considering Regulation 18(2)(b)(ii) the Committee reminded itself that it was required to address itself to people who share a protected characteristic under the Equality Act 2010 (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation) having access to services that meet specific needs for pharmaceutical services that, in the relevant area, are difficult for them to access.
- 6.59 The Committee noted the Applicant's comments that for those people who are elderly, less able or families with very young children (all of which can be classified as having protected characteristics) access to the existing pharmacies is likely to be more difficult than for those who are more able. This would particularly apply if these people are unable to drive or do not have access to a motor vehicle. Granting the application will significantly improve the accessibility of pharmaceutical services for these people.
- 6.60 The Committee noted Ladybarn Lane Pharmacy's comment that student's ages could be considered a protected characteristic. However there is no evidence that the student population has any problem accessing existing pharmacy services.
- 6.61 The Committee noted that it had not been provided with any information to show that there are people with a protected characteristic not having access to services to meet specific needs for pharmaceutical services that are difficult for them to access in the relevant area.
- 6.62 The Committee was therefore not satisfied that, having regard to the desirability of people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that are difficult for them to access, granting the application would confer significant benefits on persons.
- 6.63 In considering Regulation 18(2)(b)(iii) the Committee had regard to the desirability of innovative approaches to the delivery of pharmaceutical services. In doing so, the Committee would consider whether there was something more over and above the usual delivery of pharmaceutical services that might be expected from all pharmacies, some 'added value' on offer at the location.
- 6.64 The Committee noted that the Applicant had not claimed that its application was innovative.
- 6.65 The Committee was not satisfied that, having regard to the desirability of there being innovative approaches taken with regard to the deliverability of pharmaceutical services, granting the application would confer significant benefits on persons.

Regulation 18(2)(b) generally

- 6.66 The Committee noted the Applicant's proposed core and total opening hours as stated at points 1.44 and 1.45 above. The total opening hours are given as Mon - Fri 9am - 7pm, and Saturday 9am - 1pm. However the Saturday opening hours are less than the

core hours proposed on a Saturday of 9am – 12pm and then 1pm – 3pm. The Committee could see no justification for a reduction in the opening hours of the proposed pharmacy.

- 6.67 The Committee had regard to Schedule 4, Part 3 of the Regulations which states:

Pharmacy opening hours: general

23.— (1) *Subject to paragraph 23A, an NHS pharmacist (P) must ensure that pharmaceutical services are provided at P's pharmacy premises—*

(a) *for 40 hours each week; ...*

(d) *if a Primary Care Trust, or on appeal the Secretary of State, has (under previous Regulations) directed that pharmaceutical services are to be provided at the premises for more than 40 hours per week, and at set times and on set days, at the times and on the days so set, subject to any variation in respect of a rest break in accordance with sub-paragraph (7)(bd); ...*

- 6.68 The Committee noted that, if the application was to be granted, a direction would need to be issued for the “additional” hours which were being offered by the Applicant.

- 6.69 The Committee noted the Commissioners decision letter refers to comments on the application by Cohens Chemist who noted that there are “12 pharmacies within a one mile distance of the proposed site, these include 5 extended hour sites which are open in the evening and Saturday and Sunday. These are:-

6.69.1 Ladybarn Lane M14 6WQ

6.69.2 Withington Pharmacy M20 3HE

6.69.3 Westpoint Pharmacy M19 2DD

6.69.4 Rusholme Pharmacy M14 5LW

6.69.5 A&A Pharmacy M14 5AL”

- 6.70 The Committee was of the view that there was no information provided to support a finding that pharmaceutical services are not currently provided at such times as needed and therefore it was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits (in relation to opening hours) on persons.

- 6.71 The Committee noted the Applicants proposed services at point 1.42 above. The Committee had no information to show that where they are not already doing so, existing pharmacies in the area are unwilling or unable to provide the services proposed by the Applicant.

- 6.72 The Committee has considered whether there are any other factors that would confer significant benefits including on patients who share protected characteristics. The Committee had regard to the need to eliminate discrimination and advance equality of opportunity and foster good relations between these patients and those who do not share their protected characteristics.

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

Other considerations

- 6.74 Having determined that Regulation 18(2)(b) had not been satisfied, the Committee did not need to have regard to Regulation 18(2)(c) to (e).
- 6.75 No deferral or refusal under Regulation 18(2)(f) was required in this case.
- 6.76 The Committee had regard to Regulation 18(2)(g) and found that it was not relevant in this case.
- 6.77 The Committee considered whether there were any further factors to be taken into account and concluded that there were not.
- 6.78 The Committee was not satisfied that the information provided demonstrates that there is difficulty in accessing current pharmaceutical services such that a pharmacy at the proposed site would provide better access to pharmaceutical services.
- 6.79 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 6.79.1 confirm the Commissioner's decision;
 - 6.79.2 quash the Commissioner's decision and redetermine the application;
 - 6.79.3 quash the Commissioner's decision and, if it considers that there should be a further notification to the parties to make representations, remit the matter to the Commissioner.
- 6.80 Given its different reasoning for its decision, the Committee determined that the decision of the Commissioner must be quashed.
- 6.81 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.
- 6.82 The Committee noted that representations on Regulation 18 had been sought from parties by the Commissioner and representations had already been made by parties to the Commissioner in response. 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 18.
- 6.83 The Committee concluded that further notification under paragraph 19 of Schedule 2 would not be helpful in this case.

7 DECISION

- 7.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of the Commissioner, for the reasons given above, and redetermines the application.
- 7.2 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.
- 7.3 The Committee has considered whether the granting of the application would cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area covered by the HWB, or the arrangements in place for the provision of pharmaceutical services in that area and is not satisfied that it would;

- 7.4 The Committee determined that the application should be refused on the following basis:
 - 7.4.1 In considering whether the granting of the application would confer significant benefits, the Committee determined that –
 - 7.4.1.1 there is already a reasonable choice with regard to obtaining pharmaceutical services;
 - 7.4.1.2 there is no evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services; and
 - 7.4.1.3 there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services;
 - 7.4.2 Having taken these matters into account, the Committee is not satisfied that granting the application would confer significant benefits as outlined above that would secure improvements or better access to pharmaceutical services.

Case Manager
Primary Care Appeals