

26 September 2024

REF: SHA/26258

**APPEAL AGAINST NHS GREATER MANCHESTER ICB
DECISION TO REFUSE AN APPLICATION BY MKA 786
LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST
AT 30 CONCORD WAY, DUKINFIELD, SK16 4DB WITH
REGARD TO CURRENT NEED UNDER REGULATION 13**

8th Floor
10 South Colonnade
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London
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Tel: 0203 928 2000
Email: nhsr.appeals@nhs.net

1 Outcome

- 1.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, confirms the decision of the Commissioner, therefore the application is refused.

A copy of this decision is being sent to:
MKA 786 LTD
PCSE on behalf of Greater Manchester ICB
Gorgemead Ltd (Cohens Pharmacies)

Advise / Resolve / Learn

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1 The Application

By application dated 4 November 2023, MKA 786 LTD ("the Applicant") applied to Greater Manchester ICB ("the Commissioner") for inclusion in the pharmaceutical list at 30 Concord Way, Dukinfield, SK16 4DB with regard to Current Need under Regulation 13. In support of the application it was stated:

In response to "in my/our view this application should not be refused pursuant to Regulation 31 for the following reasons" the Applicant stated:

- 1.1 "This site has been an existing pharmacies [sic] for many decades.
- 1.2 I used to own this pharmacy from 2002 to 2008 – under the name Davina Chemist (Dukinfield).
- 1.3 It is a heavily populated community who have been receiving vital pharmacy services. If there is no pharmacy at this location, patients/elderly/families will be deprived of NHS services.
- 1.4 Other NHS services around the parade – Drs GP Surgery/Dentist. Patients visiting here can easily then go to the pharmacy and receive their medication.
- 1.5 Existing patients should not be punished or feel the loss of no NHS pharmacy services due to the decision of Boots chemist closing the store at this location.
- 1.6 It will reduce pressure/burden on other NHS services GP/hospital/other services in the area.
- 1.7 Existing pharmacies at the same location."

In response to "In making this application I/we am/are seeking to meet the current need identified on page.... of the HWB's pharmaceutical needs assessment" the Applicant stated:

- 1.8 "See point 5 – please [1.1 – 1.7 above].
- 1.9 NHS Pharmacy Needs.
- 1.10 Existing pharmacy closing due Boots [sic] decision.
- 1.11 Elderly/families/community need to continue to use a pharmacy. Of all who [sic] depend on the pharmacy for advice and medication.
- 1.12 If the pharmacy closes, this will increase pressure/burden on other NHS services. Patients need to continue their pharmacy needs."

In response to “in the box below please explain how you intend to meet the identified current need either in whole or in part”, the Applicant stated:

- 1.13 “Provide full service. I am aware of the location and GP services in the area as I used to operate the pharmacy at this location.
- 1.14 Will use highly experienced/accredited team to deliver more essential/advanced/enhanced services. I am Contractor [sic] in Oldham at the moment (FDV75).”

2 The Decision

The Commissioner considered and decided to refuse the application. The decision letter dated 5 July 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.”

PSRC decision report

- 2.2 “Name of Applicant: MKA786 Ltd.
- 2.3 Address: 30 Concord Way, Dukinfield, SK16 4DB.
- 2.4 Identified current need that the Applicant is offering to meet as stated in the HWB’s PNA:
 - 2.4.1 There is no current need stated in the Tameside Health & Wellbeing Board (HWB) Pharmaceutical Needs Assessment (PNA).
 - 2.4.2 <https://www.tameside.gov.uk/TamesideMBC/media/PublicHealth/Tameside-Pharmacy-Needs-Assessment-2022-25.pdf>
 - 2.4.3 There has been one Tameside pharmacy closed in the vicinity 1.2 miles away, which was E-Pharmacy, at 2 Chapel Street, Stalybridge, Cheshire, SK15 2AW 31/03/2024 distance selling pharmacy other than the Boots Pharmacy which was situated at 30 Concord Way, Dukinfield, SK16 4DB. There remains 18 pharmacies within a 2km radius of this application.
- 2.5 Status of location: not a controlled locality.
- 2.6 Relevant regulations and guidance
- 2.7 Regulations 13 and 14 – current needs: additional matters and consequences.
- 2.8 Regulation 31 – refusal: same or adjacent premises.
- 2.9 Regulation 32 – deferral arising out of LPS designations. N/A – no LPS designations.
- 2.10 Regulations 40 to 44 – applications in a controlled locality. N/A – not a controlled locality, nor within 1.6km of one.
- 2.11 Regulation 50 – gradualisation for doctors. N/A – see above regarding controlled localities.
- 2.12 Regulation 65 – core opening hours conditions. N/A – not undertaking to provide more than 40 core hours.

- 2.13 Regulation 66 – conditions relating to providing directed services. N/A – not offering any directed services.
- 2.14 Paragraph 31, schedule 2 – conditional grant of applications where the address of the premises is unknown. N/A – applicant has provided a full address, not a best estimate.
- 2.15 Additional information:
- 2.16 The NHS GM PSRC considered the following additional matters:
- 2.16.1 Does NHS GM consider that it would be desirable to consider, at the same time as this application, applications from other persons offering to meet the same current need?
- 2.16.1.1 The PSRC concluded that it would not, based on all available information, and in particular noting that there is no identified current need included within the Tameside HWB PNA.
- 2.16.2 Has another application offering to meet the same current need been submitted, and would it be desirable to consider it at the same time as this application?
- 2.16.2.1 The PSRC concluded that it would not, as it noted there is no identified current need included in the Tameside HWB PNA and therefore no other applications received.
- 2.16.3 Is an appeal relating to another application offering to meet the same current need pending, and it would be desirable to await the outcome of that appeal before considering this application?
- 2.16.3.1 The PSRC concluded that it would not, as it noted there is no identified current need included in the Tameside HWB PNA and therefore no appeals are pending.
- 2.17 Regulation 31 – Must the application be refused?
- 2.17.1 The proposed site identified in the application is currently a Boots Pharmacy, which permanently closed on 24/03/2024 (the notice of closure has been received and formally noted/accepted by the PSRC).
- 2.17.2 The PSRC reviewed the site via Google Streetview (shown below): [appendix A, page 7].
- 2.17.3 Outcome: Noting that Boots Pharmacy has now closed at the proposed site, there is no pharmacy on the same or adjacent premises, the nearest pharmacy is Well 104 King Street, Dukinfield, SK16 4JZ 0.6 miles away from the proposed location - the application should not be refused under Regulation 31.
- 2.17.4 Source (Google Maps).
- 2.18 Regulation 32 – Is the application to be deferred?
- 2.18.1 Based on all available information, the PSRC considered there were no reasons to justify deferral of the application.
- 2.19 Regulation 41 – Is the relevant location in a reserved location?
- 2.19.1 The PSRC noted the relevant location is not in a reserved location.

- 2.20 Regulation 44 – Prejudice test
- 2.20.1 The PSRC was satisfied that this test did not apply as it relates only to controlled localities/reserved locations. The proposed location is neither in (or within 1.6km of) a controlled locality, nor is it in a reserved location.
- 2.21 Regulation 13(1) – does the need on which the applicant based its application satisfy the elements of Regulation 13(1)?
- 2.21.1 The PSRC considered the content of the application and applied the appropriate regulatory tests:
- 2.21.2 Have there been changes to the needs for pharmaceutical services in the HWB's area since the PNA was published?
- 2.21.2.1 The PSRC noted that although there had been changes in pharmaceutical service provision within the Tameside HWB area since the PNA was published, Tameside HWB had not published a revised PNA nor any supplementary statements to identify a current need as a result of those changes.
- 2.21.3 Are there any other pharmacies or DACs in the area and what services do they provide?
- 2.21.3.1 The PSRC noted that there were five other pharmacies in addition to the Boots Pharmacy which permanently closed on 24/03/2024. Of the five remaining pharmacies, one provides extended hours (as a former 100 core hour site now operating reduced opening hours following the 2023 change in regulation), and all provide all Essential Services and a range of Advanced and Enhanced Services).
- 2.21.4 Has the current need been met by another person who is providing services in the area?
- 2.21.4.1 The PSRC noted that there is no current need identified in the Tameside HWB PNA, therefore there is no need to be met by another person providing services in the area.
- 2.21.5 Is the current need due to be met by another person who has undertaken to provide services in the area? (Such persons are those whose application has been granted but have not yet submitted their notice of commencement. They may also be contractors who have entered into an LPS scheme but have not commenced service provision).
- 2.21.5.1 As there is no current need identified in the Tameside HWB PNA, there are no other granted applications nor any LPS schemes.
- 2.21.6 The PSRC noted that the applicant offers to provide all appliances on prescription, 'Flu vaccination service, Hypertensive Case-finding Service, Smoking Cessation Service, CPCS, Contraception Service, and also intends to provide COVID-19 vaccination service.
- 2.21.7 The applicant has split their supporting information across the section of the application form relating to Regulation 31 and subsequent sections which require the applicant to state the current need they are offering to meet (either in full or in part).
- 2.21.8 Under the Regulation 31 section of the application form, the applicant states: [1.1 – 1.7 above].

- 2.21.9 Under subsequent sections, where asked to state how the applicant would meet the current need (either in whole or part), the applicant states: [1.8 – 1.14 above].
- 2.22 PSRC considerations
- 2.22.1 Regulation 13 requires that an “identified current need” is one that “has been included in the relevant pharmaceutical needs assessment”.
- 2.22.2 The PSRC reviewed the Tameside HWB PNA 2022-25 and noted there is no current need identified. The Tameside HWB PNA states: “The conclusion of this Pharmacy Needs Assessment is that the population of Tameside has sufficient service provision (including pharmacy contractors) and no identified gaps to meet their essential pharmaceutical needs.” There have been no subsequent updates to indicate an identified current need.
- 2.22.3 At the time of consideration of this application, there are 48 pharmacies within the Tameside HWB locality, three of which are in Dukinfield (including the closing Boots site which is the location of this application); and a further three within a mile (including a former 100 core hour Asda which now offers 72 core hours across seven days). According to NHS Greater Manchester’s records, there is one further pharmacy closure scheduled to take place in Tameside in March 2024; this is a Distance Selling Premises located in Stalybridge which does not impact on the location of this application.
- 2.22.4 The PSRC noted that the applicant is only offering 40 core/total opening hours, Monday to Friday 09:00 – 13:00 & 14:00 – 18:00. The closing Boots site currently offers more opening hours than the applicant if proposing [sic] (49 in total, Monday to Saturday).
- 2.22.5 Noting the content of the application, the PSRC was mindful that the applicant had made its application based on a need it believes exists, rather than a need as identified in the relevant PNA. On this basis alone the application does not meet the regulatory test for granting, as there is no identified current need specified within the Tameside HWB PNA.
- 2.23 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.
- 2.23.1 The PSRC was satisfied that this does not apply, as the proposed location is neither within a controlled locality, nor within 1.6km of one.
- 2.24 Interested Party representations
- 2.24.1 Interested parties notified of the application were pharmacies within 2km of the proposed current and proposed premises:
- 2.24.1.1 WELL, 104-106 KING STREET, DUKINFIELD, SK16 4JZ
- 2.24.1.2 Lad Rj Pharmacy, 201 BIRCH LANE, DUKINFIELD, SK16 5AT
- 2.24.1.3 Asda Pharmacy, CAVENDISH STREET, ASHTON-UNDER-LYNE, OL6 7DP
- 2.24.1.4 GROUP PHARMACY, GLEBE STREET, PENNY MEADOW, ASHTONUNDER-LYNE, OL6 6HD

- 2.24.1.5 Cohens Chemist, 2 ALBION STREET, ASHTON-UNDER-LYNE, OL6 6HF
- 2.24.1.6 Ashton Primary Care Centre Pharmacy, ASHTON PRIMARY CARE CENTRE, 193 OLD STREET, ASHTON-UNDER-LYNE, OL6 7SR
- 2.24.1.7 Penny Meadow Pharmacy, 61 Penny Meadow, Ashton Under Lyne, OL6 6HE
- 2.24.1.8 Boots, 17-19 STAVELEIGH WAY, ASHTON-UNDER-LYNE, OL6 7JL
- 2.24.1.9 Future Pharmacy, 96 Stockport Road, Ashton-Under-Lyne, OL7 0LH
- 2.24.1.10 WELL, GROSVENOR MEDICAL CENTRE, 62 GROSVENOR STREET, STALYBRIDGE, SK15 1RZ
- 2.24.1.11 WELL, 38/40A MARKET STREET, STALYBRIDGE, SK15 2AJ
- 2.24.1.12 WELL, THE HIGHLANDS SURGERY, 156 STOCKPORT ROAD, ASHTONUNDER-LYNE, OL7 0NW
- 2.24.1.13 Boots, 173 MOSSLEY ROAD, ASHTON-UNDER-LYNE, OL6 6NE
- 2.24.1.14 Adams Pharmacy, 169 MOSSLEY ROAD, ASHTON-UNDER-LYNE, OL6 6NE
- 2.24.1.15 Newton Pharmacy, 132-138 TALBOT ROAD, HYDE, SK14 4HH
- 2.24.1.16 Adams Pharmacy, GROUND FLOOR, STALYBRIDGE, 2 WATERLOO ROAD, STALYBRIDGE, SK15 2AU
- 2.24.1.17 AUDENSHAW PHARMACY, 3 CHAPEL STREET, AUDENSHAW, M34 5DE
- 2.24.1.18 TESCO INSTORE PHARMACY, TRINITY STREET, STALYBRIDGE, SK15 2BJ
- 2.24.2 Other interest parties notified:
 - 2.24.2.1 CPGM (formerly known as Greater Manchester LPC)
 - 2.24.2.2 West Pennine LMC (Oldham, Tameside & Glossop)
 - 2.24.2.3 Tameside HWB
 - 2.24.2.4 Healthwatch Tameside
- 2.24.3 Responses were received from CPGM (formerly known as GM LPC), Boots, Well and Cohens. The responses are set out below:
 - 2.24.3.1 CPGM states that the *“Greater Manchester LPC applications subgroup has completed its review and does not support the application. The subgroup feels that the applicant has not provided sufficient evidence of the suggested identified gap in the PNA and has not demonstrated how they meet the criteria of an unidentified need application.”*
 - 2.24.3.2 Boots states *“This application is based on an identified current need. The applicant has not stated what the current need is and where this*

need has been identified within the current Health and Wellbeing boards Pharmaceutical Needs Assessment (PNA).

2.24.3.3 It would appear that the application is based on the closure of a pharmacy at this location, which has not actually taken place yet, and as the ICB will be aware, the closure of a pharmacy within an area does not automatically create a gap and should a gap arise because of such a closure, then the PNA should be updated to reflect this.

2.24.3.4 To our knowledge no changes have been made within the current PNA or any supplementary statements produced regarding current pharmacy provision in this location.

2.24.3.5 We believe that the upcoming closure of the pharmacy will not result in a gap to pharmaceutical services and that the Health and Wellbeing board will recognise that the existing network of pharmacies can cope with any increase in demand.

2.24.3.6 We are certainly unaware of any current need being identified at this time and therefore this application must be refused. There will still be a remaining 6 pharmacies within a mile of the closing site (NHS CHOICES) once this pharmacy ceases to offer pharmaceutical services and we submit that these pharmacies will be accessible for patients, and continue to offer choice in provider, services and opening hours. For these reasons we respectfully urge the ICB to refuse this application.”

2.24.3.7 Well states “there are currently ten pharmacies in a 1.6km radius of the proposed location (SK16 4DB). This includes the Boots pharmacy location, which is the same location that the applicant is applying to open at. An additional pharmacy would have a negative impact on our business. Our pharmacy located at 106 King Street, SK16 4JZ is 0.7km away and is easily accessible by car which is a 3-minute drive, or a 12 minute walk on foot. Access is also available via a direct bus service which takes just 9 minutes from the proposed location. LAD RJ Pharmacy located at 201 Birch Lane, SK16 5AT is in receipt of more of the market share than that of Boots, which suggests that patients can access the pharmacy just as easily as the current location of Boots Pharmacy. LAD RJ Pharmacy is a 3-minute drive, 11 minutes on a direct bus or a 14 minute walk from the proposed location. The applicant has made an incorrect application, as there is not an identified current need for a pharmacy at this location. The Boots pharmacy located at 30 Concord Way, SK16 4DB is still open and operational. A closure date has not been provided. The current Tameside Pharmaceutical Needs Assessment (2022-2025) page 4, states that: “The population of Tameside has sufficient service provision (including pharmacy contractors) and no identified gaps to meet their essential pharmaceutical needs.”

2.24.3.8 Cohens states “There are no innovative/new services being offered within the application; We are not aware of any complaints in the area for a lack of service provision; There is no evidence of access issues for local patients; The opening hours being offered by the new applicant are the basic 40 core hours only and are in fact far less than the Boots contract that closed; There are still 9 pharmacies within a mile radius of this postcode with several of them being open in the evenings/weekends with plenty of parking provision. We are sure that NHS England will have regard for these points when considering this application.”

2.24.4 The applicant responded to interested party comments as follows:

2.24.4.1 *"I wish to add further....*

2.24.4.2 *See further information and support of my application and email attached.*

2.24.4.3 *In todays community pharmacy England email talks about: MPs raise concerns about pharmacy closures.*

2.24.4.4 *As explained in my application, this is an existing [sic] Pharmacy & they have decided to close down.*

2.24.4.5 *I'm applying for a contract to continue these essential services to the existing [sic] people who have needs and they can't be just sent to other pharmacies as mentioned sadly by all the people u sent attachment... boots/cohen/wells Cpgm... etc consultations [sic].*

2.24.4.6 *Sadly to say ... my reaction to their response is with such replies...we are contractors are cutting our own roots and foundation and future of pharmacy. If they don't see closing of exsisting [sic] pharmacy is damaging ..to all.*

2.24.4.7 *Closure of pharmacy is a negative image of the service and pharmacy future. We contractors provide important services and help to reduce load on other nhs - services gps etc hence pharmacie first [sic].*

2.24.4.8 *So to close pharmacy @30 concordway [sic] is not positive result for the community hence I wish to keep the pharmacy open and applying for a new contract [sic].*

2.24.4.9 *As you can see in the email...MPs have concerns over pharmacies closing too".*

2.24.5 The email attachment referred to contains the following:

2.24.5.1 *"Thank you for the email and comments made by the various contractors. I don't agree with any of the comments. It is natural they would object as they are businesses and only thinking of themselves and not the existing patients who use this pharmacy.*

2.24.6 *Please note:*

2.24.6.1 *The existing pharmacy, boots chemist has given notice to close. As I am the landlord of their business I have been given notice hence no pharmacy will continue at this location (as I contractor failed to recognise [sic]).*

2.24.6.2 *As this process takes 3/4 months hence taking advice on which type of application I need to make I did emailed pcse and was sent the application form [sic]. So I believe I sent the correct form, by the time it would be discussed the boots would be closed and there will be a NEED FOR THE PHARMACY SERVICE as this pharmacy was already been providing it.*

2.24.6.3 *There are Eldery [sic] / mums/ disable people who use this pharmacy. With other pharmacy [sic] in the area it would not be easy for them to go to another pharmacy as stated.*

2.24.6.4 *At the time of application [sic], all existing services and advance services were to be provided, as only know new [sic] services have come along , pharmacy first etc , we will also look to provide them and use all strategies etc to ensure people to get the best possible service.*

2.24.6.5 *On closing of the boots pharmacy , I will not be surprised if all the peoples contractors [sic] commenting below will be looking to apply for a new contract and please note ... if this happens and my application gets rejected, I will take further advise [sic], because I feel these comments are unfair and untrue.*

2.24.6.6 *I strongly believe that this location needs to continue to have a pharmacy and patients can continue to benefit.*

2.24.6.7 *Due to large pressures of all pharmacy work all other pharmacies in the area are not able to carry the extra burden and work load and closures are arising and their exsisting services and and staff will be impacted [sic].*

2.24.6.8 *I will appeal to your decision if it is rejected."*

2.24.7 The PSRC had regard to interested party representations and the applicant's response to those representations when considering the application.

2.25 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 its duties around health inequality.

2.26 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.

2.27 Based on all available information, the PSRC concluded that as there is no identified current need within the Tameside HWB PNA 2022-2025, the application does not meet the required regulatory tests. Specifically, Regulation 13(1)(b) requires that "the current need has been included in the relevant pharmaceutical needs assessment in accordance with paragraph 2(a) of Schedule 1".

2.28 The application is therefore Refused and the applicant is awarded appeal rights against this decision.

2.29 The Pharmaceutical Services Regulations Committee (PSRC) makes decisions on applications made under the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013, as amended.

2.30 Although the above decision does not constitute a contractual change at this stage, should the PSRC's decision be appealed by the applicant and the appeal upheld, this would potentially lead to a contractual change at a future date. Under NHS Greater Manchester governance this determination by the PSRC is to be authorised for and on behalf of Greater Manchester Integrated Care by: [RB], Chief Officer for Commissioning and Population Health."

In an email dated 5 July 2024, the Applicant appealed against the Commissioner's decision. The grounds of appeal are:

- 3.1 "Application offering to meet an identified current need at 30 Concord Way, Dukinfield, SK16 4DB by MKA 786 Ltd.
- 3.2 I have been informed by PCSE Market entry pharmacy services (5/7/24) that Greater Manchester ICB has considered the above application and have confirmed that it has BEEN REFUSED.
- 3.3 I reject this decision and wish to appeal on the following grounds:
- 3.4 At 30 concorway dukinfield [sic] the existing pharmacy, boots chemist had given notice to close in January 2024.
- 3.5 I own the building and was operating the pharmacy before I sold to boots back in 2008. This has been very long [sic] established pharmacy even before my time and serving its local community of Dukinfield [sic].
- 3.6 I believe there will be a NEED FOR a PHARMACY SERVICE as this pharmacy was already been [sic] providing it for many years.
- 3.7 There are many Elderly / mothers with children / disable people who use this pharmacy. Just behind the pharmacy is GP [sic] surgery providing NHS services.
- 3.8 Closing of this pharmacy would require existing patients in the area to travel to other locations, which would not be easy for many to go to another pharmacy. This would be due to many not having transport, cost of public transport, easy to get to other pharmacies [sic] etc whereas this was available to them in their location before closing.
- 3.9 Withdrawing pharmacy services, particularly in deprived areas, like dukinfield [sic] is not the way forward to help any people in the this [sic] or any community. Especially when Local Government and primacy care health officials and MPs are encouraging people to use their local community pharmacies.
- 3.10 The crucial role of pharmacies in providing essential healthcare services to communities is of paramount importance. Even due to the financial pressures on pharmacies are extreme [sic], and show no signs of improving.
- 3.11 I still wish to see that these people in the area continue to receive pharmaceutical services and in collaboration with next door healthcare surgeries which is the aim of NHS England and NHS vision.
- 3.12 I have deep concerns about the health risks for the vulnerable, elderly and poor residents of this area who will suffer by not having a pharmacy at this existing location.
- 3.13 I strongly believe that this location needs to continue to have this long established pharmacy so existing patients can continue to benefit.
- 3.14 Community pharmacies are more than just a place to get medicines. They are pillars of the community offering important face-to-face services like vaccines and Bp check [sic] (when surgeries don't have appointments) and a wide range of other healthcare service [sic] and advice. The vital work of local pharmacies reduces pressure on our over-stretched NHS and GP services. Yet, they are having to do more with less; funding has dropped 30% in real terms since 2016. But we also have to think of the patients and continue to provide extra services which will help them and enable for the pharmacy to generate extra revenue to fund the patients services.

- 3.15 The existing location of the pharmacy also helps other business in the retail parade which all help each other to trade. Closing of this will have affect [sic] on the footfall on other businesses.
- 3.16 Due to large pressures of all existing pharmacy work load all other pharmacies in the area are not able to carry the extra burden and work load. As the ICB states there are other pharmacies in the area and these patients should use them.
- 3.17 I wish to emphasise that this was an existing pharmacy & boots [sic] decided to close down. I'm applying for a contract to continue these essential services to the existing people who have needs. And they can't be just sent to [sic] other pharmacies as mentioned by ICB. This pharmacy has been open in existence then [sic] many of the others in area. Other pharmacy would naturally reject to the [sic] application as a normal instinct purely on financial business basis and not on patient care need of that area, which is disappointing. I believe there is a need for this pharmacy at this site.
- 3.18 Sadly to say foundation and future of pharmacy is at risk if they don't see closing of existing pharmacy is damaging...to all patients, and the local community.
- 3.19 Closure of pharmacy [sic] is a negative image of the NHS service. This pharmacy will help to reduce load [sic] on other nhs - services GP/hospital A&E departments in the area. Through providing services such as hypertension monitoring/pharmacy first services - treating many illness recently approved under this scheme.
- 3.20 Also MPs raised concerns about pharmacy closures; MPs call for urgent change in Community Pharmacy policy and remuneration, and this only [sic] to emphasise the importance and value of the need and importance of the vital services it provides for its communities and importantly to stay open and not be closed.
- 3.21 A collective of 20 MPs from the different political parties have signed a letter calling for urgent action to support community pharmacies.
- 3.22 In the letter to pharmacy Minister, Dame Andrea Leadsom MP. See attachment [appendix B]. This concern surely shows of pharmacy staying open [sic].
- 3.23 So closing pharmacies and not having to open one at the same place where it existed [sic] doesn't make sense and this is simply not delivering what the NHS is saying. Hence people's confidence in their local health care is damaged and local communities will not have faith because their access to their local healthcare pharmacy has been removed.
- 3.24 The people making this decision for my application to be refused [sic] have failed to see the existing patients need [sic] who were are [sic] already visiting this location.
- 3.25 I would sincerely request that this application is reviewed and reconsidered for it to be granted a NHS pharmacy contract for this area of dukinfield community [sic] at this location.
- 3.26 If the contract was awarded I would be happy to provide all essential pharmacy services and many advance services eg pharmacy first, hypertension service / smoking cessation/ contraception service/travel clinic / flu vaccination NHS / covid / working with GPs next to the pharmacy for better patient care/ substance misuse mediation services weight management services, etc. And anything that would benefit the community of that area to achieve a better future outcome of their health."

4 **Representations**

This is a summary of representations received on the appeal.

4.1 Gorgemead Limited (Cohens Pharmacies)

4.1.1 “In relation to the appeal attached Gorgemead Limited would like to make the following points:

4.1.1.1 There is no evidence of need for this new pharmacy contract.

4.1.1.2 You do not need a pharmacy attached or near every surgery.

4.1.1.3 Boots closed their pharmacy on the basis of lack of demand.

4.1.1.4 There are already 9 pharmacies within a 1 mile radius and some of the are open in the evenings and weekends with plenty of parking provision.

4.1.1.5 You don’t need a pharmacy on every street corner.

4.1.1.6 Footfall for other businesses are not provided for or considered within the pharmacy regulations.

4.1.1.7 Part of the appeal is more of a generic political statement on the current funding challenges in pharmacy and not relevant at all.”

5 Observations

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

6 Consideration

6.1 The Pharmacy Appeals Committee (“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 The Committee had before it a copy of the Tameside Pharmaceutical Needs Assessment (“PNA”) dated 2022 – 2025. The Commissioner advised that there have been no further updates or Supplementary Statements to the PNA.

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

6.5 The Committee dealt with the appeal by way of consideration of all the issues.

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

Regulation 31

6.7 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).

6.8 The Committee noted the Applicant's response to the question regarding Regulation 31 in the application form, as outlined at 1.1 to 1.7 above. The Committee noted the Applicant does not address the question, instead it provides background information to support their application. The Commissioner in their decision letter stated that "*Noting that Boots Pharmacy has now closed at the proposed site, there is no pharmacy on the same or adjacent premises, the nearest pharmacy is Well 104 King Street, Dukinfield, SK16 4JZ 0.6 miles away from the proposed location - the application should not be refused under Regulation 31*". The Committee noted that this information had not been disputed.

6.9 The Committee was therefore of the view that it was not required to refuse the application under the provisions of Regulation 31.

Regulation 13

6.10 The application (which was to be determined in accordance with the procedures in Schedule 2) was submitted by the Applicant based on addressing a current need for pharmaceutical services.

6.11 The Committee considered whether the need on which the Applicant based its application satisfied the elements of Regulation 13(1) which reads as follows:

"(1) If - —

(a) *NHS England receives a routine application and is required to determine whether granting it, or granting it in respect of some only of the services specified in it, would meet a current need for pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB; and*

(b) *the current need has been included in the relevant pharmaceutical needs assessment in accordance with paragraph 2(a) 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). "

6.12 Paragraph 2(a) of Schedule 1 reads as follows:

"A statement of the pharmaceutical services that the HWB has identified (if it has) as services that are not provided in the area of the HWB but which the HWB is satisfied—

(a) need to be provided (whether or not they are located in the area of the HWB) in order to meet a current need for pharmaceutical services, or pharmaceutical services of a specified type, in its area"

6.13 The Committee noted that the Applicant is proposing to meet a current need in Dukinfield.

- 6.14 The Committee noted that the proposed site identified was a Boots pharmacy which permanently closed on 24 March 2024. The Committee noted that the application was prompted by the closure of this pharmacy. The Committee had regard to the Applicant's comment that: *"I believe there will be a NEED FOR a PHARMACY SERVICE as this pharmacy was already been [sic] providing it for many years"*. The Committee was of the view that simply stating that there will be a need for pharmaceutical services following a closure is not the criteria for current need applications as such applications are based on the findings of the PNA. The Committee therefore went on to consider any identified current need against the PNA.
- 6.15 The Committee noted that the Applicant has not highlighted any pages in the PNA where the current need that they are proposing to meet is identified and that no supplementary statements were issued following the closure of the Boots pharmacy indicating a current need.
- 6.16 The Committee noted the Commissioner had reviewed the PNA stating that there is no current need identified. They provided a quote from the "Executive Summary" on page 4:
- 6.16.1 *"The conclusion of this Pharmacy Needs Assessment is that the population of Tameside has sufficient service provision (including pharmacy contractors) and no identified gaps to meet their essential pharmaceutical needs"*.
- 6.17 The Committee also noted the following:
- [6.16.1 above] *is clearly demonstrated by:*
- 6.17.1 *The higher number of pharmacies per 100,000 population (24) compared with the England average (22)"*.
- 6.18 The Committee further noted the following on the same page:
- 6.18.1 *"Any future development of housing and industry that may have further impact will be re-assessed at the point that it becomes relevant and a supplementary statement will be issued if it affects the findings of this PNA"*.
- 6.19 The Committee noted that Dukinfield is in the Stalybridge Neighbourhood and noted the following conclusion on page 69:
- 6.19.1 *"The pharmacy provision in the Stalybridge neighbourhood is satisfactory in meeting the needs of the local population now and in the near future as any anticipated rises in demand due to demographic change should be easily responded to by existing local suppliers being able to flexibly increase staff levels and skill mix appropriate to the increased pressure"*.
- 6.20 The Committee determined that the need in question was not included in the PNA dated 2022-2025 in accordance with paragraph 2(a) of Schedule 1.
- 6.21 In this case, the provisions of Regulation 13(1) were not met.
- 6.22 The Committee therefore did not proceed to consider the application having regard to those matters set out at 13(2).
- 6.23 The Committee noted the Applicant's comment in response to the representations made on the application *"As this process takes 3/4 months hence taking advice on which type of application I need to make I did emailed pcse and was sent the application form [sic]. So I believe I sent the correct form, by the time it would be discussed the boots would be closed and there will be a NEED FOR THE PHARMACY SERVICE as this pharmacy was already been providing it."* Whilst the Committee can sympathise

with the Applicant, the Committee was of the view that it is the Applicant's responsibility to apply under the correct Regulation.

6.24 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:

6.24.1 confirm the Commissioner's decision;

6.24.2 quash the Commissioner's decision and redetermine the application;

6.24.3 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.

7 Decision

7.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, confirms the decision of the Commissioner.

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 determined that the application should be refused for the following reason:

7.3.1 The PNA has not identified a current need which this application could meet.

**Case Manager
Primary Care Appeals**