NHS Resolution

8th Floor
10 South Colonnade
Canary Wharf
London
E14 4PU

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

25 October 2024

REF: SHA/26280

APPEAL AGAINST NHS CHESHIRE AND MERSEYSIDE ICB DECISION TO REFUSE AN APPLICATION BY PVMC LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST AT 4 FAULKNER STREET, HOOLE, CHESTER, CH2 3NL (BEST ESTIMATE) WITH REGARD TO CURRENT NEED UNDER REGULATION 13

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:

PVMC Ltd
PCSE, on behalf of Cheshire and Merseyside ICB

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1 The Application

By application dated 1 February 2024, PVMC Ltd ("the Applicant") applied to Cheshire and Merseyside ICB ("the Commissioner") for inclusion in the pharmaceutical list at 4 Faulkner Street, Hoole, Chester, CH2 3NL (best estimate) with regard to Current Need under Regulation 13. In support of the application it was stated:

1.1 In response to why the application should not be refused pursuant to Regulation 31 the Applicant left this section blank.

Information in support of the application

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

1.2 "The current Boots store on Faulkner Street, Hoole, reg no 1029538, is closing on 19/01/2022 [sic]. This will create a significant new need for pharmaceutical services. Page 8, paragraph 2.2.3 of the full PNA document states that it will be under constant review for changes including pharmacy closures. This clearly applies to this application.

1.3 Page 50 of the PNA states that greater access to the newly introduced Hypertension case finding service would be welcomed. We would be keen supporters of this service in the light of the clear health benefits this offer [sic] the community."

Please insert the identified current need you are offering to meet here.

1.4 "Hoole is a well defined community in the east of Chester. It is bound by busy main roads, canals and railway line. The current contractor was well used and prescription volumes have always been above average for the area.

1.5 Upon its closure, many of the local population will encounter significant barriers to, and difficulties in accessing pharmaceutical services. This will be particularly severe for those with mobility, transport or communication issues.

1.6 Whilst some further out pharmacies outside of Hoole may be able to offer a prescription service, many of the local population will miss out on the day to day access to a pharmacy and its team that bring so many benefits, such as ad hoc advice, access to OTC medication, signposting and many more. This, in turn, will no doubt lead many people to seek help from their already overstretched GP surgery."

In the box below please explain how you intend to meet the identified current need either in whole or in part.

1.7 "As a full service local pharmacy contractor, we would meet the clear need, created by the closure of the current contractor, by offering:-

1.8 All essential services as required by the pharmacy contract.

1.9 Advanced Services, including but not limited to CPCS, NMS, NHS Flu vaccination service, Hypertension case finding service, smoking cessation.

1.10 We would be enthusiastic adopters of the newly launched Pharmacy First scheme, which again would provide greater access to healthcare, and help in reducing waiting times at GP surgeries.

1.11 We would also work closely with local commissioners to identify any further services which would be needed for the community."

2 **The Decision**

The Commissioner considered and decided to refuse the application. The decision letter dated 12 July 2024 states:

2.1 "Cheshire and Merseyside ICB has considered the above application and I am writing to confirm that it has been refused. Please see the enclosed report for the full reasoning."

Extract from Pharmaceutical Services Regulations Committee minutes dated 3 July 2024

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

2.2 "**Applicant:** PVMC Limited

2.3 **Proposed best estimate address:** 4 Faulkner St, Hoole, Chester, CH2 3NL

2.4 The current Boots branch at this address is due to close on 19/01/2024. Our application aims to provide pharmaceutical services at, or as close as possible to, this address but certainly within the Faulkner St shopping area.

2.5 The committee considered this application, alongside the committee report, Regulations and comments received from interested parties, including the unsolicited comments received.

2.6 The committee determined that there is no requirement to refuse this application under Regulation 31.

2.7 The committee determined that there are no grounds for deferral under Regulation 32 as there are no LPS designations in this locality.

2.8 The committee determined that this application does not meet the requirements of regulation 13 specifically with regard to Regulation 13(1)(a) and (b) and 13(2)(f) to (h).

2.9 The committee cannot be satisfied that the PNA contained a statement pursuant to paragraph 2(a) of Schedule 1 to the Regulations.

2.10 The committee determined that the current need the applicant was offering to fill, namely offering the Hypertension service was a need that could be filled by the existing contractors within Cheshire West & Chester. This was also supported by the PNA. Whilst the committee noted the response from the Chair of the HWB stating their support of the application, they believe there is still sufficient pharmaceutical cover and patient choice within the locality. The committee felt that the applicant failed to meet the requirements of the Regulations for a current needs application as stated above

and within the committee report. Therefore, the committee determined that this application should be refused.

2.11 **Decision:** Refused

2.12 **Third Party Rights of appeal:** Applicant

2.13 **Action:** PCSE to notify the applicant"

3 **The Appeal**

By email dated 11 August 2024, the Applicant appealed against the Commissioner's decision. The grounds of appeal are:

3.1 "On 19/02/2024, our application ME3181 was submitted to NHS England for a new market entry under the current need provision.

3.2 This application was intended to meet the pharmaceutical needs of the community of Hoole in Chester. This area has been without any pharmacy services since the previous branch of Boots closed in January 2024. This closure has caused widespread distress and inconvenience to patients within the community. Simultaneously, it has caused the next nearest contractors to suffer increased workloads beyond their existing capacity, adding further strain to an already overstretched system. This in turn has led to greater pressure and workload on the local GP network.

3.3 On 12/07/2024, we were advised by NHS England that our application had been refused.

3.4 In this appeal we will demonstrate that –

3.4.1 The decision of Cheshire and Merseyside ICB to refuse the application was flawed and should be quashed, and that the decision be redetermined and granted; and

3.4.2 Our application meets the requirements of Regulation 13 of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

3.5 **Background**

3.6 When we became aware that the branch of Boots at 4 Faulkner Street was due to close, it became clear that this would create a significant, current need for a new pharmacy in the area.

3.7 Hoole is a distinct, well-defined suburb of Chester, bordered by main roads, railway lines and canals. There is a large resident population within the immediate area who historically have been reliant on this pharmacy to cater for their health needs and medication supply. There has been a pharmacy on this site for decades, having been previously an independent family business before being taken over by Boots.

3.8 We will demonstrate that the closure of the Boots branch has created a current need for pharmaceutical services in line with the latest Pharmaceutical Needs Assessment ("PNA") and NHS regulations, and that our application fulfils the requirement to meet this need.

3.9 **Decision of ICB is flawed**

3.10 As with almost every PNA the CW&C publication concluded there were no gaps in pharmaceutical services in the area. At the time the PNA was published the Boots store in Hoole was included in the list of contractors.

3.11 Following the closure of that store we are not aware of any supplementary statement being published addressing/recognising this withdrawal from the pharmaceutical list.

3.12 It is our belief that the PNA is largely irrelevant to this particular application because the withdrawal of the Boots pharmacy from the pharmaceutical list occurred after it was published and in our view that has resulted in a lack of access in the area which could not have been foreseen at the time the PNA was issued. However, we will demonstrate that our application still meets the criteria contained within the PNA.

3.13 The decision report of Cheshire and Merseyside PSRC, copy attached, states:

3.14 *"The committee determined that this application does not meet the requirements of regulation 13 specifically with regard to Regulation 13 (1) (a) and (b) and 13(2)(f) to (h)."*

3.15 This is incorrect.

3.16 Whilst, at the time it was written in 2022, the PNA states that no gaps in pharmaceutical services had been identified (pg 5, line 6), it also specifically qualifies this later in the document, section 2.2.3, stating that:

3.17 "***Once published, the PNA will be under constant review for any changes which might dictate a new or diminished pharmaceutical need. Examples of such changes could include:***

3.18 ***• Pharmacy closures"***

3.19 Our application clearly falls within this provision as the closure of the key, local branch of Boots has occurred during the intervening period.

3.20 Also, the regulations quoted direct the committee to consider applications in accordance with paragraph 2(a) of Schedule 1 of the regulations. This describes gaps in the provision of services which the **HWB** has identified in order to meet a **current need.**

3.21 On 7th March 2024, **Cheshire West and Chester Council HWB** issued a strongly worded statement of support for our application, based on provision within the current PNA. I have attached a copy which I commend for your consideration. It clearly identifies needs in the community taken from, and within the scope of the PNA. Furthermore, the letter highlights the need for commissioners to consider the accessibility, quality, and potential for community pharmacy service development when commissioning services, going on to state:

3.22 *"It is recommended that health and care commissioners take into account the accessibility, quality, and potential for community pharmacy service development when commissioning services. It is also suggested that commissioners may wish to think about the suitability of services not traditionally thought of as pharmaceutical, but which could be effectively delivered from pharmacies*."

3.23 The refusal letter also states:

3.24 "*The committee cannot be satisfied that the PNA contained a statement pursuant to paragraph 2(a) of Schedule 1 to the Regulations*."

3.25 As discussed above, the HWB have identified needs and pharmaceutical services within the PNA. These were clearly communicated to the committee, thus satisfying this requirement.

3.26 The refusal letter also states:

3.27 *"Whilst the committee noted the response from the Chair of the HWB stating their support of the application, they believe there is still sufficient pharmaceutical cover and patient choice within the locality."*

3.28 The letter gives no explanation as to why the committee chose to ignore the recommendations of the HWB; it merely noted the recommendations. It was remiss of the committee to overlook this, or at least to fail to explain why it chose to reject the recommendations. This further strengthens the argument for the decision to be quashed.

3.29 Also, the letter states the committee "believe" there is sufficient cover. This is subjective language, which indicates they have failed to consider the objective, factual evidence submitted with our application, including a large number of patient testimonies of their difficulties in accessing services. A schedule of this evidence is attached – I would particularly draw your attention to the submission from [**SH**]**, practice pharmacist at Park Medical Centre**, the closest surgery to the former Boots branch.

3.30 Whilst therein she states her heartfelt personal views, she also gives specific cases and examples of the current need which the committee failed to consider.

3.31 The letter goes on to state:

3.32 *"The committee felt that the applicant failed to meet the requirements of the Regulations for a current needs application"*

3.33 Again, this is subjective language, which falls short of the rigour required for a decision of such importance to the local community.

3.34 **The application meets the needs of the 2013 NHS regulation and is necessary to fulfil the current pharmaceutical needs of the community**

3.35 As referred to earlier, Hoole is a well-defined district to the east of Chester city centre. The only pharmacy in this area, Boots on Faulkner Street, closed in January 2024.

3.36 Data for this branch, for the period prior to the closure announcement, showed that it dispensed above the average for the Chester area. (Appendix 1)

3.37 The Faulkner St commercial area also provided for numerous other services for residents such as numerous food shopping and dining outlets, post office, restaurants opticians, dentistry, hairdressing etc. The local population was well accustomed to accessing all these services without the need to leave the area.

3.38 This comment particularly applies to patients who are registered at Park Medical Centre, which is situated in close proximity to this branch. Patients were used to visiting their GP, and walking the short distance to Boots to collect their medication and to resolve any other health concerns, or access the range of other services now available from pharmacies.

3.39 Existing pharmacy provision

3.40 The next nearest pharmacies are some distance away serving different communities as follows: -

3.41 Hub Pharmacy at Boughton Health Centre, Hoole Lane, Chester CH2 3D. It lies 0.6 miles to the south, but patients attempting to access this via the suggested route would have to cross the busy roundabout at the junction of Westminster Road and Lightfoot St. They are then faced with steep inclines to cross a busy, narrow railway bridge with little or no pavement provision.

3.42 This is co-located with Boughton Surgery, is located within the Boughton district, and serves a different population.

3.43 Swettenhams Chemist at 95 Kingsway, CH2 2LJ. This is 0.8 miles to the northeast of Hoole, again serving a different population in the district of Newton. Patients attempting the suggested route would have to cross the busy A56, Hoole Road, which is the main arterial route into Chester from the M53 to the east. They then again are faced with a steep incline and difficult bridge to traverse as Newton Lane crosses an old railway line.

3.44 Photos and videos illustrating the difficulty of accessing these pharmacies from Hoole are available. (Appendix 2)

3.45 There are of course other pharmacies even further afield, but we do not believe any of those (or in fact the those listed above) are relevant to this application due to the distance from the proposed site and the fact they clearly serve different populations in established settings.

3.46 Whilst we appreciate neighbourhoods no longer form part of the regulations, all of these pharmacies serve entirely different communities. They are not easy to access for patients living around the area of the proposed location, especially if residents do not have access to a motor vehicle.

3.47 <u>Meeting current need</u>

3.48 Whilst the 2022 version of the PNA does not identify any gaps in service provision at the time it was written, as we demonstrated above, in section 2.2.3 it explicitly makes provision for changes which may create a new pharmaceutical need, namely in this case, the closure of Boots.

3.49 In addition to the closure of this particular branch, Chester has seen the number of pharmacies within its Care Communities (formerly Chesters Central, East and South) drop from 21 to 18. The figure is a further decrease from the 2018 PNA of 24 for Chester, a total drop of 25% in 6 years. Hoole, which lies on the boundary of Chester Central and Chester East, has been disproportionately affected. The rate of pharmacies per 100,000 in Chester East is now 15.1, well below the UK national average of 19.8 (PNA page 25, table 2). These figures do not even provide a clear picture for Hoole, where the number of pharmacies is now zero.

3.50 Number and rate of pharmacies by care community as at 29 July 2024. [Appendix A]

3.51 As compared to the 2022 PNA: [Appendix A]

3.52 Please also note the change in the population figures since the last PNA.

3.53 We are fully aware that, just because one pharmacy closes, there is no automatic reason that another one should be given approval, and such approvals must fall within the regulations.

3.54 However, in this instance we feel the closure of this branch, coming on top of the other closures in the area, and the ever increasing demands being placed on the pharmacy network (see below), has led to a distinct gap in pharmaceutical services in the immediate area of the closed pharmacy, and that the this [sic] application is essential in order to prevent significant detriment to the provision of pharmaceutical services in

this area. This is not only our opinion – the many letters of support from local bodies and members of the public which are attached with this application provide unambiguous evidence of such need. We do not consider it to be a matter of convenience or desirability for a new pharmacy, but genuine need.

3.55 Against a well-documented background of severe challenges including funding issues, drug shortages, staffing issues, Community Pharmacy today is now required to provide much more than dispensing of prescription. Also, since the Covid-19 pandemic, working practices in primary care have meant Pharmacy is often the first port of call for patients unable to access their GP practice. The current pharmacy network in Chester is stretched beyond capacity and is barely able to cope, as evidenced by the responses to the consultation. In addition to the essential services of the contract, Pharmacy is also required to provide –

3.55.1 Pharmacy First, which provides patients with the opportunity to access treatment for a range of seven common conditions without seeing a GP;

3.55.2 CPCS, 111 referral, NMS, hypertension case finding, smoking cessation, EHC, amongst many others.

3.56 Additionally, perhaps one of the most important features of a physical pharmacy is simply its presence within the community. This gives people a reassurance that there is a health professional available without a fee or appointment who they can consult, to resolve their issues, or refer on as appropriate.

3.57 Since the closure of the Boots branch, and for some months prior once the closure was announced, patients have had no option but to obtain their prescription medication elsewhere, and prescribing data will confirm this. Whilst patients' prescriptions continue to be dispensed in this manner, this should not be taken to mean there are no issues. As can clearly be seen from the public responses, there continues to be great inconvenience and serious issues over access to pharmaceutical services. Also, the data only cover dispensing of prescriptions. It gives no indication as to the difficulties people face when trying to access services other than dispensing from their pharmacy, most of which require easy face to face access.

3.58 It is our view that the current arrangements are not satisfactory or reasonable, and confirm that there is a clear, current need for the application to be approved.

3.59 Two of the key principles for assessing need within the PNA are: -

3.59.1 High quality pharmacy premises that increase capacity and improve access to primary care services and medicines.

3.59.2 Enhanced services which increase access, choice, and support for self-care (PNA 2.1 pg. 7)

3.60 As we demonstrated above, the current situation has had a detrimental effect on access to medicines and services for patients in Hoole.

3.61 A key part of the PNA process is the Patient Survey of Community Pharmacy Services. The findings expressed therein should be integral to the decision-making process for NHS England, and not be considered as secondary preferences (appendix 3).

3.62 In the survey, when asked what is most important about a pharmacy's location the four most popular responses were –

3.63 *It is close to my home* - 68%

3.64 *It is easy to park nearby* - 40%

3.65 *It is close to my doctor's surgery* - 35%

3.66 *It is close to the shops I use* - 34%

3.67 All these responses support the view that the district of Hoole needs its own pharmacy, and the current situation does not meet patient choices, and prevents reasonable access to pharmaceutical services.

3.68 In another question, 40%, a large and significant figure, said they travelled to their local pharmacy on foot. A substantial proportion of this number of former Boots patients in Hoole will no longer be able to exercise this choice. This will lead to greater use of cars for those who have them, and greater carbon emissions. Reducing carbon emissions and helping prevent climate change is listed as a PNA priority pg 93.

3.69 According to the ONS mid-22 population estimates, the population of the Newton and Hoole ward was 15,073. While exact demographic data is difficult to come by, the majority of this number reside in Hoole. It consists of streets of tightly packed terraced housing with a greater population density. The only pharmacy within the ward boundaries is Swettenhams at Kingsway, to the northeast of the ward. This translates to a rate of pharmacy per 100,000 population of 6.6, one third of the national average, with the pharmacy being at the far end of the ward.

3.70 Prior to the closure of Boots, for the period Aug 22 to Aug 23, Boots dispensed average monthly items of 7589. (Appendix 1) This compares to the average for the Chester area of around 6500 per month for the period 20/21 (Appendix 4, PNA, table 15 pg 43) This demonstrates the Boots Pharmacy was popular and well supported, and confirms that it was very much needed in the area.

3.71 In our experience it is highly unusual for a large, densely populated area to be without a single pharmacy. Without up-to-date demographic information solely for Hoole, it is difficult to state accurately its population, but a figure of 50% of the ward population is undoubtedly conservative, i.e., 7500.

3.72 <u>Protected characteristics</u>

3.73 CW&C has 24.6% of its population aged 65 and over. This is higher than the national average figures. 22% are under 18.

3.74 18.5%, slightly higher that the national average, of the population of CW&C have a long-term health problem or disability.

3.75 These and other groups with different protected characteristics exist in significant numbers in Hoole, and all these groups have particular health needs, often associated with a greater prevalence of long-term conditions. Many of our letter of support refer to these characteristics and conditions, and the greater difficulties experienced thereof.

3.76 Clearly any barriers to accessing pharmaceutical services will exacerbate the already difficult situation these groups face.

3.77 We would ask the committee to bear in mind people with protected characteristics when considering the supporting evidence we have gathered.

3.78 <u>Public Support and Consultation Responses</u>

3.79 We are happy to attach the following submissions

3.79.1 118 unsolicited comments. This is an astonishing number of responses collected in such a short period, after local councillor [AL] (comment 18) posted about the application on the community Facebook group. Whilst there are too many to go into individual detail, many of the comments bear witness to

personal experience of the genuine need and lack of access being experienced in the community, and the real difficulties experienced in finding alternative provision. Many comments refer to the other pharmacies being unable to cope to the extent of withdrawing delivery and other services. I commend these for your consideration, and ask for them to be treated as factual evidence in support of the statements made in our application.

3.79.2 Letter of support from [LB], CEO of Healthwatch Cheshire

3.79.3 Letter of support from Community Pharmacy Cheshire and Wirral LPC. This is significant as the LPC is an integral knowledgeable voice and believes our application satisfies all the criteria needed for approval. It is unusual for an LPC to unequivocally support an application.

3.79.4 Letter of support from Councillor [LG], chair of **CWC Health and Wellbeing Board**. As referred to in the body of our application, we believe this submission to be central to deciding that our application meets the criteria for approval.

3.79.5 Letter of support from [SH], Clinical Pharmacist at Park Medical Centre, the closest surgery.

3.80 Three submissions were received from interested parties – copies attached.

3.81 Firstly, Boots made no objection to the application but asked to be kept up to date.

3.82 Morrisons Pharmacy objected, but, rather oddly, there [sic] objections were based on out-of-date information from the PNA prior to the closure of Boots.

3.83 Vicars Cross Pharmacy objected, but the public submissions offer a clear rebuttal to the points raised. Also, in regard to the comments about opening hours, these are the core hours. Our actual hours will be greater than this and provide excellent access six days a week, alongside free delivery and MDS provision.

3.84 Summary

3.85 We submit our appeal for your consideration, and look forward to hearing from you in due course. Whilst the evidence for the need for a new pharmacy in Hoole is indisputable, we recognise it must be approved in line with the regulations. We firmly believe, for the reasons stated above, that our application does exactly that, further confirmed by the letters of support from the HWB, LPC and others.

3.86 We are more than happy to attend any in person hearings to help resolve any further queries."

Supporting information at Appendix A.

4 Summary of Representations

This is a summary of representations received on the appeal. A summary of those representations made to the Commissioner are only included insofar as they are relevant and add to those received on the appeal.

4.1 THE COMMISSIONER

4.1.1 “The application was refused by NHS Cheshire & Merseyside ICB’s Pharmaceutical Services Regulatory Committee (PSRC) on the basis that the PSRC members could not be satisfied that the application meets the requirements of Regulation 13 specifically with regard to Regulation 13(1)(a) and (b) and 13(2)(f) to (h). The committee could not be satisfied that the Cheshire West and Chester Pharmaceutical Needs Assessment 2022 – 2025 (PNA) contained a statement pursuant to paragraph 2(a) of Schedule 1 to the Regulations Pharmaceutical Needs Assessment | Cheshire West and Chester Council

4.1.2 *13 Current needs: additional matters to which the NHSCB must have regard*

(1) If –

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

(2) Those matters are—

(f) whether-

(i) it is satisfied that granting the application would only meet the current need mentioned in paragraph (1) in part, but

(ii) it considers that, if the application were granted, it would not be unlikely, in the reasonably foreseeable future, that the remainder of that need would be met;

(g) whether it is satisfied that—

(i) the current need mentioned in paragraph (1) was for services other than essential services, and

(ii) granting the application would result in an increase in the availability of essential services in the area of the relevant HWB;

(h) whether it is satisfied that, since the publication of the relevant pharmaceutical needs assessment, the current need mentioned in paragraph (1) has been met by another person who is providing, or is due to be met by another person who has undertaken to provide, either in the area of the relevant HWB or in the area of another HWB, NHS services;.

4.1.3 Whilst the committee noted the response from the Chair of the Cheshire West and Chester Health and Wellbeing Board (HWB) stating their support of the application, they determined that the response does not identify a gap in pharmaceutical provision within the locality, it simply states reasons why it would be beneficial to have a pharmacy back in this locality and refers to services that would benefit the community if the applicant is “willing and able to provide them”. The applicant has not stated in the application that they intend

to provide such services, therefore, it is unrealistic to expect the committee to approve an application on the basis that services might be provided.

4.1.4 The HWB have not issued a supplementary statement, nor have they chosen to rewrite the PNA following the closure of the Boots branch at 4 Faulkner Street, Hoole, Chester, CH2 3BD. Therefore, the committee concluded that the current PNA is still valid.

4.1.5 In their appeal letter the applicant has stated that the committee "have failed to consider the objective, factual evidence submitted with our application, including a large number of patient testimonies of their difficulties in accessing services." As can be seen from the enclosed committee report, the committee did review all evidence presented to it and whilst they acknowledge that 118 patient support letters is not an insignificant number, when considered against a care community population of 33,130 it does equate to only 0.36% of the population.

4.1.6 The committee also had note of the fact that Cheshire & Merseyside ICB has not received any complaints regarding access to pharmaceutical services in the locality following the closure of the Boots branch. Nor has it been made aware of any concerns from local pharmacies or GP Practices regarding an unsustainable increase in demand, other than the claims made by the applicant in their appeal letter and the one letter from a Pharmacist working in General Practice, which was submitted in response to the rejection of this application and forms part of the applicants appeal.

4.1.7 Whilst the committee acknowledges that persons residing in the area of Hoole are used to having a pharmacy in their locality, and there is support from the HWB, a number of local residents and a pharmacist based in a GP Practice, the fact remains that this application does not satisfy the requirements of Regulation 13 specifically with regard to Regulation 13 (1) (a) and (b) and 13(2)(f) to (h), as outlined above and within the enclosed committee report.

4.1.8 Therefore we maintain that the application should be refused."

Supporting information at Appendix B

5 **Summary of 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 Cheshire West and Chester PNA dated 2022-2025 and prepared by Cheshire West and Chester Health and Wellbeing Board ("the HWB"), which had been provided by the Commissioner.

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 that the Applicant had not provided any information in the application form on this point but the Committee noted that the wording of the application form only required the Applicant to include information in the relevant section if the proposed premises were adjacent to, or in close proximity to, another pharmacy or dispensing appliance contractor premises. The Committee considered it reasonable to determine that the lack of information in the application form on this point when read with the wording of the application form allowed it to be reasonably satisfied that the Applicant considered that the proposed premises were not adjacent to, or in close proximity to, another pharmacy or dispensing appliance contractor premises. The Committee noted that the Commissioner had determined that "*there is no requirement to refuse this application under Regulation 31*" which had not been disputed by any party. The Committee therefore determined that it was not required to refuse the application under the provisions of Regulation 31.

6.9 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 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 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 the Hoole area of Chester.

6.14 The Committee noted that the Applicant's proposed site (best estimate) was the site of a former Boots Pharmacy which closed in January 2024, and that the application was prompted by the closure of this pharmacy. The Committee noted the Applicant's comments that "*This closure has caused widespread distress and inconvenience to patients within the community. Simultaneously, it has caused the next nearest contractors to suffer increased workloads beyond their existing capacity, adding further strain to an already overstretched system. This in turn has led to greater pressure and workload on the local GP network.*" The Committee was of the view that simply stating that there is 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 the Applicant has referred to page 8, paragraph 2.2.3 of the PNA which states:

6.15.1 "***2.2.3 PNA review process***

Once published, the PNA will be under constant review for any changes which might dictate a new or diminished pharmaceutical need. Examples of such changes could include:

- *New pharmacy contracts*
- *Pharmacy closures*
- *Changes to pharmacy locations or opening hours*
- *Changes in population and significant housing developments*
- *Changes in sources/ numbers of prescription*
- *Changes in workforce due to movement of local businesses/employers*
- *Local intelligence and significant issues relating to pharmacy enhanced service provision*
- *Appliance provision changes.*

If there are any minor changes, the Health and Wellbeing Board are obliged to issue "supplementary statements" where appropriate. However, a significant change would require a complete revision of the whole document even if the

change was in a defined area. The PNA must have a complete review every three years."

6.16 The Committee noted the Applicant had highlighted the inclusion of "*Pharmacy closures*" in the above list. The Committee noted the Applicant's conclusion that the closure of Boots Pharmacy therefore led to a "*gap in the provision of services which the HWB has identified in order to meet a current need.*"

6.17 The Committee noted the above statement appears under the heading "PNA review process". The Committee was of the view that this section was intended to describe examples of circumstances which might lead to a change in pharmaceutical need. The Committee noted that HWB's are obliged to issue a supplementary statement where appropriate, which may include the identification of a gap in pharmaceutical services, or it may choose to revise the whole document. The Committee noted the Commissioner's confirmation that no supplementary statement has been issued, nor has the HWB chosen to revise the PNA following the closure of Boots Pharmacy.

6.18 The Committee considered that this paragraph does not contain a statement in accordance with paragraph 2(a) of Schedule 1 indicating services that are not provided in the area of the HWB but which the HWB is satisfied would, if they were provided, meet a current need for pharmaceutical services, or pharmaceutical services of a specified type, in Chester, which the proposed pharmacy can meet.

6.19 The Committee noted the Applicant has referred to page 50 of the PNA regarding the Hypertension case finding service. The Committee noted that paragraph 6.2.7 of the PNA states:

6.19.1 "***6.2.7 Hypertension case finding service*** *…*

At January 2022 there were 23 pharmacies offering this service in CW&C. Although there is not a service in each care community, services are well distributed across the borough, with numerous pharmacies offering this in the urban areas. Coverage is sufficient, but due to the high levels of cardiovascular disease in CW&C, further uptake of this service by current pharmacies would be welcomed. The Local Pharmaceutical Committee have indicated that more pharmacies will be providing this service in the near future once they have ambulatory blood pressure monitoring devices. …"

6.20 The Committee further noted that section 10 'Conclusions' at paragraph 10.3.2 states:

6.20.1 "***10.3.2 Statement two: Necessary services: Gaps in provision***

There is sufficient coverage of the newer advanced Hypertension Case Finding Service. However, it may be advantageous to have this service offered in as many pharmacies as possible given that Hypertension is the top chronic condition in CW&C and cardiovascular disease is one of the biggest causes of under-75 mortality.

In all these instances the "gap" refers to existing contractors who should be encouraged to provide these services."

6.21 The Committee noted that the wording of both paragraphs clearly indicate that it would be welcome for current pharmacies to take up provision of this service, rather than stating a current need that could be met by the opening of a new pharmacy.

6.22 The Committee considered that these paragraphs do not contain a statement in accordance with paragraph 2(a) of Schedule 1 indicating services that are not provided in the area of the HWB but which the HWB is satisfied would, if they were provided, meet a current need for pharmaceutical services, or pharmaceutical services of a specified type, in Chester, which the proposed pharmacy can meet.

6.23 The Committee noted that the Applicant had provided a letter of support dated 7 March 2024 from the HWB to the Commissioner. The Committee noted the Applicant's view that the letter "*…clearly identifies needs in the community taken from, and within the scope of the PNA. Furthermore, the letter highlights the need for commissioners to consider the accessibility, quality, and potential for community pharmacy service development when commissioning services…*".

6.24 The Committee noted the HWB's comments that:

6.24.1 "*The most recent PNA, published in October 2022, concluded that: "There is no current need for new pharmacies in CW&C for the lifespan of this PNA.*";

6.24.2 "*…the local authority was recently notified that Boots Pharmacy in the vicinity of Faulkner Street, Hoole is to close. Such a closure will significantly reduce the accessibility of services to residents living in that area, therefore consideration should be given to the benefits of a replacement pharmacy being commissioned in this locality.*"; and

6.24.3 "*…the local authority and the Health and Wellbeing Board strongly support this application.*"

6.25 The Committee also noted that the Applicant had highlighted the HWB's comment as follows:

6.25.1 *"It is recommended that health and care commissioners take into account the accessibility, quality, and potential for community pharmacy service development when commissioning services. It is also suggested that commissioners may wish to think about the suitability of services not traditionally thought of as pharmaceutical, but which could be effectively delivered from pharmacies*."

6.26 Whilst the Committee noted the HWB's support for the application and its recommendations as to factors which Commissioners should consider when commissioning services, the Committee was of the view that as the letter of support does not form part of the PNA or a supplementary statement, it does not indicate a current need that "*…has been included in the relevant pharmaceutical needs assessment in accordance with paragraph 2(a) of Schedule 1…*".

6.27 The Committee noted the Applicant had provided information regarding access to and choice of pharmaceutical services for patients in the area, and has also provided various unsolicited comments in support of the application. However the Committee was mindful that these are not relevant considerations for an application made in accordance with Regulation 13. The Committee noted that it is open to the Applicant to submit an application under an alternative Regulation.

6.28 The Committee determined that the need in question was not included in the PNA dated 2022-25 in accordance with paragraph 2(a) of Schedule 1.

6.29 In this case, the provisions of Regulation 13(1) were not met.

6.30 The Committee therefore did not proceed to consider the application having regard to those matters set out at 13(2).

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

6.31.1 confirm the Commissioner's decision;

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

6.31.3 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.

6.32 Although the Committee had reached the same conclusion as the Commissioner, it had provided further reasoning in order to do so and therefore the Committee determined that the decision of the Commissioner must be quashed.

6.33 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.

6.34 The Committee noted that representations on Regulation 13 had already been made by parties to the Commissioner, and these had been circulated and seen by all parties as part of the processing of the application by the Commissioner. The Committee further noted that when the appeal was circulated representations had been sought from parties on Regulation 13.

6.35 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 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