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6 December 2024

REF: SHA/26299

APPEAL AGAINST NHS NORTH EAST AND NORTH CUMBRIA ICB DECISION TO REFUSE AN APPLICATION BY PHARMACARE4U LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST AT 41, 43A/43B HALEWOOD AVE, KENTON, NEWCASTLE UPON TYNE, NE3 3RX 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:

Pharmacare4u Ltd
PCSE, on behalf of the Commissioner
Community Pharmacy North East – North
Douglas Pharmacy

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1 The Application

By application dated 22 March 2024, Pharmacare4u Ltd ("the Applicant") applied to North East and North Cumbria ICB ("the Commissioner") for inclusion in the pharmaceutical list at 41, 43a/43b Halewood Ave, Kenton, Newcastle Upon Tyne, NE3 3RX with regard to Current Need under Regulation 13. In support of the application it was stated:

1.1 In response to Section 2 'Proposed premises', the Applicant stated:

1.1.1 "The landlord has offered us 43A and or 43b Halewood Ave, however we are awaiting on Boots (41 Halewood Ave) for a decision on a lease assignment as they currently have this till 2026. Should this not be available it will be 43a Halewood Avenue. I have supporting evidence that the landlord has offered us the premises next to boots pharmacy, should this be required."

1.2 In response to Section 5 'Applications in relation to premises that are in close proximity to other listed chemist premises', the Applicant stated:

1.2.1 "There are no other pharmacies withing [sic] 2 kms."

Information in support of the application

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

1.3 "Newcastle HWB PNA 2022, states (p 73-74):

1.4 *There is adequate provision of pharmacies across Newcastle Monday to Friday 9am to 5pm...*

1.5 *If any further gaps are identified between now and the next version of the PNA being produced in 2025 then the City Futures Board will issue a supplementary statement and attach it to this PNA.*

1.6 However, Newcastle has lost six pharmacies in the last two years, including Lloyds Pharmacy in Sainsbury's in High Heaton and it is set to lose three more in the coming weeks.

1.7 We are proposing to meet needs that are current and real due to Boots abandoning their patients. In line with comments in the PNA and discussions with local people we have amended our proposed opening hours.

1.8 **It is to be noted that councillors for the area and the MP for Newcastle have campaigned against Boots pharmacy closure, seeking to protect pressing needs and valuable existing services. We have spoken to a local councillor and local**

MP, and they have both welcomed our intention to reopen the pharmacy. We will provide names if necessary.

1.9 Here are the key indicators of these needs and services in Kenton:

1.10 **1. GP Surgeries**

1.11 There are two GP surgeries in the area. Their dispensing for Nov 2023 was as follows: Kenton Medical – 30,853 items and Cruddas Park Surgery – 33,111 items. At least 29,559 items were dispensed by pharmacies within NE3 and immediate area.

1.12 **2. Protected Characteristics**

1.13 Kenton is a suburb and electoral ward in the northwest of Newcastle upon Tyne. It has a population of 11,528 people in 2021 census, which makes it as one of the most populated wards in Newcastle. Some 1678 are over 65 years or age and 2803 are under 17, including 1,444 under 9 years old. Our proposed pharmacy will cater for children, elderly people living in the area and groups with protected characteristics. There is a nearby residential care home and assisted living accommodations, which were largely neglected by the previous pharmacy.

1.14 These specific groups are having to make long journeys to visit a pharmacist, as many are unable to walk the distances due to lack of means or access to transport. We will address these issues and ensure that a full pharmacy service is provided to these protected groups.

1.15 Newcastle has high levels of deprivation in some areas, which has led to increased health needs. Not having a local pharmacy means people are having to get a bus to another pharmacy at additional cost or walking on busy and unsafe roads. There is difficulty in crossing several busy roads to get to other pharmacies some miles away. People who have mobility scooters, for example, will have to ride them on the main roads.

1.16 **3. Transport**

1.17 There are significant barriers to getting to other pharmacies outside Kenton, which means walking from any surgery to the nearest pharmacy takes an average of 17 minutes. Add to that the roads are busy and with little to no shelter from poor weather to make a walking journey unreasonable for many residents. Those with limited mobility, or walking with children, face an even more daunting journey.

1.18 Cost of travel (especially for the disabled/elderly) by taxis to access the surgery and then a further trip to the town centre to access a pharmacy is an added barrier to access services.

1.19 A good proportion of Kenton population does not have access to private means of transport.

1.20 Please note the times it takes to travel from a GP surgery to alternate pharmacies.

PHARMACY NAME	**POSTCODE**	**DISTANCE FROM SURGERY NE3 3QP**	**WALK (MINS)**	**BUS (MINS)**
BOOTS KENTON (CLOSING 3/3/24)	NE3 3RX	0.2 M	3 MIN	0
PHARMACY EXPRESS	NE3 4TS	0.8 M	17	12

WELL PHARMACY	NE3 3NA (meadows)	1 mile	19	14
DOUGLAS PHARMACY	NE3 4XN	1 mile	22	12
TESCO	NE3 2FP	1.1 M	24	20
BOOTS KINGSTON PARK	NE3 2FP	1.1 M	23	20

1.21 **4. Dispensing**

1.22 Boots pharmacy in Kenton has been running down its services for about 2 years. They did not deliver to people's homes, they stopped making Medi boxes and discontinued their services to local care homes and assisted accommodations. Despite that, they still had above average figures for dispensing. See below the last few months prior to the announcement of closure:

1.23 NOV 23 – 7511 items
OCT 23 – 7629
SEPT 23 – 7885
AUG 23 – 7515
JULY 23 – 7732
JUN 23 – 7984
MAY 23 – 7620
APR 23 – 7513

1.24 In the last 2 years, Boots first started charging for deliveries, then stopped offering weekly dossete boxes to their patients. Prior to this, Boots Kenton was dispensing around the figures below. Despite limiting their services, Boots pharmacy still dispensed more than the average pharmacy in the UK.

1.25 Jan 2021 - 10,278 items
Jan 2020 - 10,579 items

1.26 There is a clear demand for pharmacy services in Kenton, as evidenced by the above dispensing figures. The average UK pharmacy dispenses around 6966 items per month (www.statista.com)

1.27 Boots decision to close was more motivated by corporate considerations than by local pharmaceutical needs.

1.28 **5. Demographics**

1.29 Kenton has a population of 11,528 people, of whom:

1.29.1 37.2% of households have no car or van.

1.29.2 41.8% of households have one car or van.

1.29.3 31% of the population are over 50 years of age (census 2021).

1.29.4 Reports say that Newcastle Central parliamentary constituency, which covers areas in Kenton, Benwell, Scotswood, Arthur's Hill and Elswick has 45.4% of children living in poverty.

1.29.5 Unemployment is 7.13%, which is double the UK average at 3.7% (ONS 2023).

1.29.6 People in Kenton are less healthy and have a worse general health when compared to the rest of the North East as a whole.

1.29.7 11.2% of people in Kenton regard their health as bad, compared to North East's 7.4% (themovemarket.com).

1.29.8 24.6% have limited activities due to poor health.

1.30 The above demographics show that there are health needs that require a local delivery of service by way and pharmacy in Kenton. The closure of the previous pharmacy has not taken these factors or needs into account. Boots had acted in the single interest of Boots.

1.31 We aim to restore the much-needed services to this corner of Newcastle.

1.32 We are confident that we have the support of local representatives for this area of Newcastle."

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

1.33 "Our proposed pharmacy will cater for children, the elderly, people living in the area and all groups with protected characteristics. There is a nearby residential care home and assisted living accommodations, which were largely neglected by the previous pharmacy. We will restore services to them and others who prefer to be delivered at home. We are offering opening hours in line with needs identified by the PNA i.e. for evening and weekend openings.

1.34 We will work with the GP surgeries, serving the area, to get a smooth dispensing service to those who don't want to attend the surgeries and ensure we deliver at home to those who can't or won't attend the pharmacy.

1.35 In addition to essential and other services, our pharmacy will have car parking at the front and rear of premises for patients to use. The bus stop is located just outside the pharmacy and one GP surgery is located behind the pharmacy, a 3-minute walk. The pharmacy will be a warm, modern and welcoming environment for patients of all categories and an efficient organisation working closely with GPs and other healthcare professionals. We have a clear plan and a track record of service delivery to make this a success. As an existing pharmacy in Great Park, we are fully invested in the local economy, the local community and the local health service.

1.36 **Innovation**

1.37 In addition to above, we will offer more convenience to patients by offering services in ways not available previously, by having a 24hr collection point, to alleviate any issues around opening hours.

1.38 **In conclusion**, we will run the pharmacy that patients want to have: a modern, efficient and friendly service focussed on patients' needs and good relations with other healthcare professionals. We have already achieved this at our existing pharmacy and we intend to replicate this at Kenton."

2 The Decision

The Commissioner considered and decided to refuse the application. The decision letter dated 27 August 2024 states:

2.1 “North East and North Cumbria 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.”

Decision report

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

2.2 “All the evidence provided by the applicant, the committee report and the regulations were considered and discussed by the committee. The committee considered whether Regulations 13(1)(a & b) were met and particularly whether the supplementary statement published by the Health and Wellbeing Board satisfied Regulation (13)(1)b. The committee concluded that the HWB statement was not based on a review of the needs of the HWB area of a whole and the statement itself was factual and did not indicate a gap in provision. Current Needs in the area were not included in the relevant pharmaceutical needs assessment and therefore Regulation (13)(1)b was not met.

2.3 It was agreed that under Regulations 13 and 14 of the NHS (Pharmaceutical and Local Pharmaceutical Services) (Amendment) Regulations 2023 – current needs additional matters and consequences, the application should be **refused** on the basis that the relevant Regulations as set out in the committee report were not met:

2.3.1 **Regulation 13(2)(d)** is met therefore **Regulation 14(4)** is also met and refusal is necessary.

2.3.2 **Regulation 13(1)** is not met as the PNA does not identify any gaps or current needs; therefore the contractor cannot meet this regulation.

2.3.3 **Regulations 13(2)(a&b)** are satisfied and therefore **Regulation 14(1) and (2)** are met. The level of applications received for the Kenton area is unprecedented. Sporadic receipt of the Kenton Batch 1 applications overall between December and 21 March 2024 has caused an unavoidable delay of over 6 months' duration of some applications.

2.3.4 As there is no identified current need in the PNA and the application fails to secure improvements or better access, **Regulation 14(5)** is not met.

2.3.5 **Regulation 13g(ii)** - there is reasonable choice with regard to pharmaceutical services in the area. There is no evidence that people with protected characteristics find accessing pharmaceutical services difficult in the area. The proposed innovative approach to the delivery of pharmaceutical services offered by the applicant has already been introduced by other pharmacies, therefore no innovation has been identified. It is the decision of the members of the PSRC that granting the application would not secure improvements or better access to, or increase the availability of, essential services in the area of the relevant HWB. The regulation is not met, therefore **Regulation 14(5)** is not met and the application must be refused.

2.3.6 **Regulation 13(h)** - it is reasonable to assume that the recent closure of a Pharmacy in this location was due to it not being financially viable. There is no evidence of the existing Pharmacy services not providing a reasonable level of service and so granting the application may cause significant detriment to existing local services by destabilising their viability without conferring significant benefits on persons in the area of the relevant HWB. As PSRC is satisfied with regard to 13(h), **Regulation 14(5)** is not met and the application must be refused.

2.4 **Regulations considered by PSRC but deemed not applicable to this application.**

2.5 The following Regulations were also considered by PSRC at its meeting on 6 August 2024, but were deemed not to be relevant to this application:

2.5.1 Regulation 13(2)(c)

2.5.2 Regulations 13(2)(e,f & g(i))

2.5.3 Regulation 13(2)(i)

2.5.4 Regulation 14(3)

2.5.5 Regulation 31

2.5.6 Regulation 32

2.5.7 Regulations 40 to 44

2.5.8 Regulation 50

2.5.9 Regulation 65

2.5.10 Regulation 66

2.5.11 Paragraph 31, schedule 2"

3 The Appeal

In a letter dated 2 September 2024, the Applicant appealed against the Commissioner's decision. The grounds of appeal are:

3.1 "I am writing to formally appeal the decision to reject our application below, by NHS England's North East and North Cumbria ICB.

3.2 **Re: Application offering to meet identified current needs at: 43A Halewood Ave, Kenton, Newcastle upon Tyne, NE3 3RX; NHS England Ref: CAS-281593-J1G1X2;**

3.3 After five months of consideration from the date of our application, NHS England's North East and North Cumbria ICB have informed us, via their agency PCSE, that our application has been rejected.

3.4 In the following paragraphs we will outline the purpose of our application and the basis of our appeal against a decision that has not only ignored the facts on the ground but also the recommendation of the Newcastle Health and Wellbeing Board.

3.5 First, we would like to set the background for the members of the Appeal Committee so that subsequent clarifications are understood in their correct context.

3.6 **Boots Closures**

3.7 In the beginning of December 2023, Boots notified NHS England of their intention to close several pharmacies, including the one at: **Halewood Ave, Kenton, Newcastle upon Tyne, NE3 3RX**. This pharmacy did in fact close on 3 March 2024. The following events then ensued:

3.8 **1.** PCSE – for NHS England – started receiving applications to open a pharmacy in Kenton offering to meet Unforeseen needs immediately after applicants learnt of Boots closures. Departing from their usual practice of **not** accepting or considering applications to an area where a pharmacy is yet to close, NHS England accepted and acknowledged receipt of various applications **before** Boots closed.

3.9 **2.** In January 2024, the Leader of Newcastle City Council – ultimate Chair of Newcastle's HWB - writes to the Chief Executive of North East and North Cumbria ICB to express his concern about the closures and the expected impact on services in many areas of Newcastle, including Kenton.

3.10 **3.** In February 2024, patients and their representatives staged their opposition to the closures outside Boots pharmacies, including Kenton. Newcastle councillors and the local MP for Newcastle wrote separately to Boots head office to express their opposition to the closure of Kenton pharmacy.

3.11 **4.** On 3 March 20204, Boots closed the pharmacy at Kenton after refusing to head pleas from patients and their representatives to keep it open or to consider a transfer of ownership to other pharmacists.

3.12 **Application Process**

3.13 After engaging with local people, the Councillor for Kenton, Ged Bell and the MP for Newcastle Chi Onwurah, Labour MP. Pharmacare4u Ltd concluded that there is acute need and strong support for services in Kenton and that Newcastle HWB would, at some point, identify that a gap in services has been created. Local people and councillors wanted to keep the services going and were relaying their views to Newcastle City Council leaders and their HWB.

3.14 Based on these factors and our knowledge of the area, we put in an application to reopen a pharmacy in Kenton. Our aim is to restore services and improve on what Boots were delivering to local people.

3.15 To increase the chances of reopening the pharmacy in the briefest of delays, we contacted the landlord for the building next to Boots and secured key premises. It is to be noted that Boots were intending to keep their premises for an indefinite period beyond the closure of the pharmacy. So, the landlord agreed for us to have the only other free premises in the parade of shops.

3.16 It is to be noted that PCSE processed the application and were in contact several times over various points and procedural details, namely:

3.17 **1.** To establish whether we had any engagement with the local community, which we had at different levels. (Please find attached correspondence with representatives).

3.18 **2.** To establish whether we had secured the premises, as we stated that we did in our application. We confirmed this. (Please find attached evidence from the landlord).

3.19 In summary, we submit that we have put forward a well-researched and well-founded application, which complies with all the requirements and correct procedures to allow the ICB's Primary Care Services Regulation Committee (PSRC) reach a decision that would benefit the community in Kenton.

3.20 **Reasons for Rejection**

3.21 After 5 months, North East and North Cumbria ICB considered our application and rejected it, along with others. Part of the reasoning for rejecting our application lies in their interpretation of the Regulations. The letter cites:

3.21.1 "*The committee considered whether Regulations 13(1)(a&b) were met and particularly whether the supplementary statement published by the Health and Wellbeing Board satisfied Regulation (13)(1)b. The committee concluded that the HWB statement was not based on a review of the needs of the HWB area of a whole and the statement itself was factual and did not indicate a gap in provision.*

3.21.2 *Current Needs in the area were not included in the relevant pharmaceutical needs assessment and therefore Regulation (13)(1)b was not met."*

3.22 In clear, the ICB are saying if a gap is identified in the supplementary statement "we won't accept it". They are drawing a clear distinction between a Pharmaceutical Needs Assessment (PNA) and a Supplementary Statement (SS) and concluding that the supplementary statement is not sufficient ground for a HWB to identify a gap in services on their area. So, what does Regulation 13 specify:

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

13.-(*1) If 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—*

(a) for pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB; and

(b) that has been included in the relevant pharmaceutical needs assessment in accordance with paragraph 2(a) of Schedule 1;

3.24 It was our understanding of the above Regulation that the ICB needs to consider granting an application if the PNA deems that it would meet identified needs. However, with the ICB not considering that a Supplementary Statement has the same weight as the PNA, we submit that they are not interpreting the following Regulation correctly.

3.25 **Pharmaceutical needs assessments**

(2) *A HWB must make a revised assessment as soon as is reasonably practicable after identifying changes since the previous assessment, which are of a significant extent, to the need for pharmaceutical services in its area, having regard in particular to changes to-*

(a) the number of people in its area who require pharmaceutical services;

(b) the demography of its area; and

(c) ***the risks to the health or well-being of people in its area****, unless it is satisfied that making a revised assessment would be a disproportionate response to those changes.*

(3) *Pending the publication of a statement of a revised assessment, a HWB may publish a supplementary statement explaining changes to the availability of pharmaceutical services since the publication of its or a Primary Care Trust's pharmaceutical needs assessment (and any such supplementary statement becomes part of that assessment), where-*

(a) the changes are relevant to the granting of applications referred to in section 129(2)(c)(i) or (ii) of the 2006 Act;

3.26 The regulation clearly states that "*a HWB may publish a supplementary statement explaining changes to the availability of pharmaceutical services since the publication… the PNA".* We note that the ICB states that the HWB statement must be based on the review of needs.

3.27 We submit that the current needs of patients in Kenton were comprehensively identified over time.

3.27.1 In January 2024 the leader of Newcastle City Council – and ultimate Chair of Newcastle's HWB - wrote to the Chief Executive of North East and North Cumbria ICB to voice his concerns about the loss of services in some areas of Newcastle, including Kenton, as Boots set to close several pharmacies.

3.27.2 In February the local councillor for Kenton and the MP for Newcastle joined patients in Kenton to campaign against the closure of the pharmacy.

3.27.3 Encouraged by patients, Newcastle City Council and the MP wrote separately to Boots head office asking them to reconsider the closures.

3.27.4 Finally, in June 2024 Newcastle's Health and Wellbeing Board met to formally identify the gaps in services, issue a supplementary statement and inform North East and North Cumbria ICB of the areas where they wish to see pharmacies re-opened, including in Kenton.

3.28 This confirmed our own assessment of the situation and the basis for our application.

3.29 **The ICB and closures**

3.30 It is to be noted that, during this period, North East and North Cumbria ICB failed to respond properly to a wave of pharmacy closures. They ignored Newcastle patients' legitimate concerns and failed to find alternative solutions to the closures. The ICB also failed to engage with pharmacy chains such as Boots and to convince them to either keep some pharmacies open or to get them to transfer the ownership to willing local pharmacists.

3.31 Unlike Lloyds, for example, Boots were adamant that they would close, not sell. The ICB, as commissioners of services, sat and watched them do it despite the impact on local people and the groundswell of opposition to the closures.

3.32 This failure of the ICB has now continued through their dismissal of Newcastle HWB's new assessment and their rejection of our legitimate application.

3.33 It is to be noted that Boots argued that their dispensing declined to some 7000 items, which made Kenton pharmacy unviable. However, this is just a smoke screen to justify their corporate cost cutting. Kenton pharmacy items declined over the years because of:

3.33.1 **a)** Boots' refusal to put together the medical boxes for the most vulnerable and needy patients. These patients migrated elsewhere over many years.

3.33.2 **b)** Boots discontinued their delivery service to these and other patients after they failed to introduce a charge for home delivery.

3.34 In our application, we have said that we will restore all these services and improve the relations with patients and local surgeries. The medical practices serving Kenton area have been advising patients about pharmacies like ours for a number of years. We provide a full and comprehensive service, especially to those who are house bound, have multiple needs or have no access to a vehicle. Subsequently, we have seen the dispensed items by our pharmacy in Great Park increase almost every month.

3.35 **Our application – Current Needs**

3.36 We have applied under this category to restore the existing services, based on the patients and their representatives' opposition to the loss of their pharmaceutical provision. This situation has been highlighted and discussed publicly as well as between the Newcastle City Council, Boots Head Office and N East and N Cumbria ICB from January 2024 till the pharmacy closed on 3 March. The debate was concluded with the issue of a supplementary statement in June 2024.

3.37 Our proposed pharmacy in Kenton will reverse all the bad practices and habits that Boots had displayed over many years. As of July 2024, our pharmacy in Great Park has been providing services to some 60% of Boots Kenton patients. However, these patients are also telling us that they would appreciate a pharmacy closer to them in Kenton.

3.38 N East and N Cumbria ICB have rejected our application on the following basis:

3.39 *As there is no identified current need in the PNA and the application fails to secure improvements or better access, Regulation 14(5) is not met.*

3.40 We find that this statement is not in line with the said regulation, below:

3.41 *Reg 14(5) If the NHSCB is satisfied as mentioned in regulation 13(2)(f) to (h), it may only grant the application if it is satisfied that to do so would secure improvements, or better access, to pharmaceutical services in the area of the relevant HWB.*

3.42 Newcastle HWB has carried out their assessment and concluded there is a gap in services and recommended that provision be provided to satisfy the needs of local people. This is in line with the Reg which states: "*a HWB may publish a supplementary statement explaining changes to the availability of pharmaceutical services since the publication… the PNA".* There has been a major reduction in the availability of pharmaceutical services in Newcastle, including Kenton.

3.43 The ICB statement implies that it is for them – not the HWB – to determine if an application would secure improvement and access to pharmaceutical services.

3.44 We submit that the ICB is overreaching and substituting themselves to the HWB and/ or determining that the HWB's assessment is not valid and can be ignored.

3.45 The ICB also asserted in their rejection letter that:

3.46 *There is no evidence that people with protected characteristics find accessing pharmaceutical services difficult in the area.*

3.47 *The proposed innovative approach to the delivery of pharmaceutical services offered by the applicant has already been introduced by other pharmacies, therefore no innovation has been identified.*

3.48 On the point of people with protected characteristics, the ICB would not and could not know if these patients have difficulty accessing services as they have carried out **no** assessment themselves **nor** surveyed the area's population. The leader of Newcastle City Council wrote to the ICB Chief Executive in January 2024 following representations from patients and local councillors to state the opposite.

3.49 Our pharmacy in Great Park has since (Boots closure) increased the size of its prescriptions from Boots former patients to over 4000 items. This was made possible by our comprehensive delivery service and referrals from various healthcare providers to take on services that boots and other nearby pharmacies refused to provide such as MDS boxes. However, these patients also tell us that they were missing out on direct contact with pharmacists and on regular reviews of their medication.

3.50 The specific point of needs assessment is of primary concern to the HWB, not the ICB. However, as the ICB are ignoring the HWB, they can only reach erroneous conclusions.

3.51 With regards to innovation, the ICB are too removed from front line services to recognise what is innovation or how it looks like. We have introduced a 24-hour collection service that is safe and efficient and is well appreciated by patients. This answers a key recurring concern in Newcastle's PNA: there being fewer opening hours

during evenings and weekends. This innovation answers this and our pharmacy in Great Park has the figures and the distribution map to prove it.

3.52 In clear, the ICB are not basing their judgement on evidence, verified information or first-hand knowledge of pharmaceutical services.

3.53 The ICB also conclude with a strange logic, summed up in the following:

3.54 *There is no evidence of the existing Pharmacy services not providing a reasonable level of service and so granting the application may cause significant detriment to existing local services…*

3.55 The ICB are asking people to accept that "**no evidence of something not doing something**" is a good basis for rejecting a perfectly reasoned and well-founded proposition. What is undeniably clear and true is that the ICB do NOT know if other pharmacies are providing services to ALL Boots former patients. It is the remit of HWBs to establish that, then recommend their findings to ICBs. However, the North East and North Cumbria ICB are not minded accepting this.

3.56 In conclusion, we submit to the Appeals Committee that N East and N Cumbria ICB are wrong on three counts:

3.56.1 To misinterpret the regulations as they have done.

3.56.2 To ignore the HWB recommendations, which are in line with the Regulations.

3.56.3 To reject our application, which is well-founded, well-reasoned and much needed.

3.57 I look forward to hearing from and to provide you with further details and evidence should you require them."

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 COMMUNITY PHARMACY NORTH EAST - NORTH

4.1.1 "Following receipt of the above application, members of Community Pharmacy North East - North were consulted and the following submission is made in respect of the application.

4.1.2 All declarations of conflict of interest were made and those with a conflict had no input to the decision of the committee.

4.1.3 The application was made under regulation 13 to meet an identified need but no identified need has been identified. A supplementary statement was issued by Newcastle Health and Wellbeing Board on 15th May 2024. This was factual, stating the date of closure of Boots Pharmacy at 41 Halewood Avenue, Kenon, NE3 3RX, the opening hours of the Boots Pharmacy and the services it provided. No gap in pharmaceutical services was identified.

4.1.4 Apple maps shows four pharmacies located one mile or under from Halewood Avenue. All have gentle slopes between the sites and being an urban location, footpaths, good lighting and when any major roads are between the sites, pedestrian crossings to make crossing easier.

4.1.5 Fawdon Park Pharmacy is 0.8 miles taking 18 minutes to walk or 5 minutes to drive.

4.1.6 Pharmacy Express is 0.8 miles taking 17 minutes to walk or 5 minutes to drive.

4.1.7 Meadows Pharmacy is 0.9 miles taking 18 minutes to walk or 4 minutes to drive.

4.1.8 Douglas Pharmacy is 1 mile taking 20 minutes to walk or 5 minutes to drive.

4.1.9 If patients do not wish to access these services, a number of distance selling pharmacies can be accessed which are required to deliver medication free of charge to the patient. These pharmacies can also provide all essential and advanced services at distance, via telephone or video call.

4.1.10 Whilst the appellant comments upon the lack of service from the previous Boots pharmacy, delivery of medication and supply of medication in a multi-compartment compliance aid are not pharmaceutical services and therefore not relevant to determination of whether provision of pharmaceutical services is sufficient.

4.1.11 If the application is granted, the committee recommends that the new contractor should have undertaken to provide all commissioned pharmaceutical services, as a minimum and should be providing at least the same core opening hours as the previous contractor."

5 Unsolicited comments

5.1 DOUGLAS PHARMACY

5.1.1 "Kindly see below the issues raised previously and our objection to the proposed.

5.1.2 We again raise the same points as the situation has not changed.

5.1.3 Currently the patients are being served both in terms of medicines supply and all services provided - by a significant number of pharmacies within the locality - total of 11 pharmacies within a 3 mile radius of this postcode - and 4 within 1 mile radius ...with appropriate signposting by GP practices / 111 as well as the pharmacies themselves (evidence available through GPHC Pharmaceutical List and google maps) GP practices are also being supported through collaborative working with theses pharmacies within the PCN ...North Gosforth PCN can provide more information.

5.1.4 We have just taken over Meadows Pharmacy (FEC33) as well as providing services from Douglas Pharmacy (FL531) - Douglas is open on a Saturday, and we intend to open Meadows on a Saturday also - so this will ensure that there is adequate opening hours and access to pharmacy services as expected.

5.1.5 I am sure you are fully aware of the workforce pressures within the NHS - and in order for Pharmacies to continue to provide enhanced services , whilst maintaining basic essential core activity - there will be a natural reconfiguration of the services - which closure of Boots is an example. The closure was related to inability to sustain the services there - which will not change - as the workforce pool is the same (see NHS Workforce plan for principles of making best use of the workforce).

5.1.6 It is for these reasons - and the evidence is avialable [sic] and quite cklear [sic], that this should not be goven [sic] the go ahead - as it will put pressure upon

availability [sic] of workfoerce [sic]; reduce opportunities for existing / trading pharmacies to remain sustainable."

Representations to the Commissioner dated 8 May 2024

5.1.7 "We have previously emailed you our concerns (see copy of e-mail below). Those concerns persist - even in light of the new application.

5.1.8 In short

5.1.8.1 The GP surgeries are being supported by the current pharmacies within the locality (more than 11 pharmacies within 0.6-1.0 mile from the GP surgery).

5.1.8.2 Patients are being served and they are currently receiving their medication.

5.1.8.3 The use of EPS and prescription delivery service - ensures that there is little need for patients to attend Pharmacy for routine (or even emergency) emergency prescriptions - more importantly those with healthcare inequalities are better served with EPS and prescription delivery services.

5.1.8.4 Enhanced services such as Pharmacy First / vaccinations / BP checks are already being offered and taken up by patients and the GP Surgeries are aware of where to sign post patients for pharmacy first.

5.1.8.5 The ICB need to ensure that the Integrated Urgent Care System makes best use of the current workforce / services - Pharmacies remain under significant funding pressure, and there remain significant workforce pressures - any additional Pharmacy will try to draw upon that very limited workforce - dilute availability of staff and create inefficiency of service delivery; the fact that Boots closed and was unable to sell their business/pharmacy contract highlights such pressures and lack of financial sustainability - by offering a contract again - this will put further strain on the viability of current pharmacies.

5.1.8.6 Access for patients to Pharmacy Services remains very good - along with suitable transport links.

5.1.9 ***For this reason, we would not support - and would strongly object to all of the applications for this site/area - Indeed the patients within this area are already seeking and receiving appropriate services from Pharmacy of their choice - and all of the current pharmacies have offered support to Kenton Medical Practice.***

5.1.10 If you require any further information, please contact us - and do let us know date/time of meeting where this may be discussed further"

6 Summary of Observations

This is summary of observations received.

6.1 THE APPLICANT

6.1.1 "The LPC have made two main points in the letter you circulated to me.

6.1.2 1. They raise the point that we have applied under Reg 13 "current needs". Our application was sent after Boots closed on 3 March 2024. Leading up to that,

we have seen patients outside Boots, local representatives lobbying Boots and Newcastle CC leader writing to NE & N Cumbria ICB in January 2024 asking them to keep Kenton pharmacy open. All these stakeholders were concerned about current services being lost. They wanted things to stay as they were. Ultimately, the HWB issued its statement asking the NHS leaders for a pharmacy in Kenton. I would submit that our application meets the Regs as well as the test of needs - current needs, not some unspecified future improvement.

6.1.3 2. The LPC state that the HWB statement of 15 May is factual and that no need was identified. I submit that they are mistaken at two levels. Firstly, the HWB called for a new pharmacy in Kenton by naming it by name. The HWB held a minuted board meeting, which led to the statement and there was no misunderstanding as to the wishes of Newcastle HWB and the wider City Council. Secondly, the LPC cannot substitute themselves for the HWB and assess the needs of a community for a pharmacy. The distances between pharmacies are a matter of fact. This has not escaped the consideration of the HWB who have been monitoring the issue of closures since January 2024. I will add that the LPC speaks for the existing pharmacies but they do not represent patients.

6.1.4 In conclusion, we know from our engagement with patients, their representatives and the HWB that a pharmacy is sorely needed in Kenton and we are best placed to provide it. We would appreciate if this matter is considered and resolved with some urgency by the Appeals Committee as many patients are now expecting their pharmacy to "return". The HWB has spoken for them."

7 Consideration

7.1 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.

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

7.3 The Committee had before it a copy of the Newcastle PNA dated 2022-2025 and prepared by Newcastle Health and Wellbeing Board, which had been provided by the Commissioner. The Committee noted that Supplementary Statements had been issued on 12 November 2022, 19 July 2023, and three Supplementary Statements had been issued on 15 May 2024.

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

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

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

Regulation 31

7.7 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).

7.8 The Committee noted the Applicant's statement that "*There are no other pharmacies withing* [sic] *2 kms*" and the Commissioner's decision had indicated that Regulation 31 was "*deemed not applicable to this application*". The Committee noted that there has been a Boots Pharmacy at 41 Halewood Avenue, Kenton NE3 3X but that this had closed on 3 March 2024. The Committee was therefore satisfied that it was not required to refuse the application under the provisions of Regulation 31.

Regulation 13

7.9 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.

7.10 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). "

7.11 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"

7.12 The Committee noted that the Applicant is proposing to meet a current need in the Kenton area of Newcastle-upon-Tyne.

7.13 The Committee noted that the Applicant's proposed premises are in the location of a former Boots Pharmacy which closed in March 2024, and that the application was prompted by the closure of this pharmacy. The Committee noted the Applicant's aim

"t*o restore services and improve on what Boots were delivering to local people*" and that it has applied under Regulation 13 "*to restore the existing services, based on the patients and their representatives' opposition to the loss of their pharmaceutical provision.*" 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.

7.14 The Committee noted that the Applicant had referred to pages 73 to 74 of the PNA, quoting the following extracts from section 7.2 'Recommendations' and section 7.3 'Conclusions':

7.14.1 "*There is adequate provision of pharmacies across Newcastle Monday to Friday 9am to 5pm...*"

7.14.2 "*If any further gaps are identified between now and the next version of the PNA being produced in 2025 then the City Futures Board will issue a supplementary statement and attach it to this PNA.*"

7.15 The Committee noted the Applicant's comment that "*However, Newcastle has lost six pharmacies in the last two years, including Lloyds Pharmacy in Sainsbury's in High Heaton and it is set to lose three more in the coming weeks.*"

7.16 The Committee was of the view that the Applicant had not identified a statement in the PNA 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 Kenton, which the proposed pharmacy can meet.

7.17 The Committee noted the Applicant had provided a copy of a supplementary statement dated 15 May 2024 regarding the closure of Boots Pharmacy. The Committee also noted the Applicant's comment that "*with the ICB not considering that a Supplementary Statement has the same weight as the PNA, we submit that they are not interpreting the following Regulation correctly.*"

7.18 The Committee had regard to the Supplementary Statement which states:

7.18.1 "***Date Pharmaceutical Needs Assessment published****: 29th September 2022*

Date supplementary statement issued*: 15th May 2024*

The following pharmacy has closed:

Boots, 41 Halewood Avenue, Kenton, Newcastle upon Tyne, NE3 3RX

…

***The pharmacy closed on 3rd March 2024*"**

7.19 The Committee noted that the supplementary statement provides a factual update on the closure of Boots Pharmacy, rather than 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 Kenton, which the proposed pharmacy can meet.

7.20 The Committee noted the Applicant had provided a copy of a report by the Newcastle Health and Wellbeing Board issued to its meeting on 15 May 2024 concerning "*Newcastle Pharmaceutical Needs Assessment 2022-2025: changes to Pharmaceutical Services (April 2024 update)*". The Committee had regard to the report and noted that section 1 titled 'Purpose of the Report' states:

7.20.1 "*The purpose of this report is to:*

…

(b) Make recommendations on the actions that are required by the HWB following the recent closures of the following pharmacies across Newcastle:

…

- *Boots, 41 Halewood Avenue, Kenton, Newcastle upon Tyne, NE3 3RX …* "

7.21 The Committee noted section 2 titled 'Recommendations' states:

7.21.1 "*The Board is asked to approve the recommendation that the following pharmacy closures are likely to create a gap in provision of pharmaceutical services, and therefore a supplementary statement to the Pharmaceutical Needs Assessment 2022-2025 should be published:*

- *Boots, 41 Halewood Avenue, Kenton, Newcastle upon Tyne, NE3 3RX …* "

7.22 The Committee noted the recommendation to the HWB that the closure of Boots Pharmacy on Halewood Avenue was "*…likely to create a gap in provision of pharmaceutical services…*", however this recommendation was not reflected in the supplementary statement. The Committee was therefore of the view that as the report 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".*

7.23 The Committee was of the view that any purported "need" identified by the Applicant in its application and appeal does not constitute a "current need" as that term is used in the Regulations and which is specifically set out in paragraph 2(a) of Schedule 1.

7.24 The Committee was mindful of the express and unambiguous wording of the Regulations and considered that the PNA does not specify that there is a current need for pharmaceutical services in the Kenton area of Newcastle-upon-Tyne.

7.25 The Committee determined that the need in question was not included in the PNA dated 2022 – 2025, or the supplementary statement dated 15 May 2024, in accordance with paragraph 2(a) of Schedule 1.

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

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

7.27.1 confirm the Commissioner's decision;

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

7.27.3 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.

7.28 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.

7.29 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.

7.30 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.

7.31 The Committee concluded that further notification under paragraph 19 of Schedule 2 would not be helpful in this case.

8 Decision

8.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of the Commissioner, for the reasons given above, and redetermines the application.

8.2 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.

8.3 The Committee has determined that the application should be refused for the following reason:

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

Case Manager
Primary Care Appeals