

18 December 2024

REF: SHA/26335

APPEAL AGAINST NORTH EAST AND NORTH CUMBRIA ICB DECISION TO REFUSE AN APPLICATION BY QUAYSIDE PHARMACY LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT CRUDDAS PARK SHOPPING CENTRE, WESTMORLAND ROAD, NEWCASTLE-UPON-TYNE, NE4 7QY

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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:

Quayside Pharmacy Ltd
PCSE on behalf of North East and North Cumbria ICB
Boots UK Ltd
Community Pharmacy North East - North

Advise / Resolve / Learn

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1 The Application

By application dated 5 February 2024, Quayside Pharmacy Ltd (“the Applicant”) applied to North East and North Cumbria ICB (“the Commissioner”) for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at Cruddas Park Shopping Centre, Westmorland Road, Newcastle-Upon-Tyne, NE4 7QY. In support of the application it was stated:

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

- 1.1 “The nearest pharmacy is Boots Pharmacy at Westmorland Road. This pharmacy has given notice to close by 2 March 2024. At the point this application is determined the best estimate location will not be adjacent or in close proximity to any pharmacy.”

Information in support of the application

“Background

- 1.2 The location of the proposed pharmacy is within a shopping centre that is adjacent to high rise apartments and so is a densely populated area. It is understood that the Boots Pharmacy currently at Unit 10 Cruddas Park, Westmoreland Road, Tyne and Wear, NE4 7QY has given notice to close by 2 March 2024. The closure of the Boots Pharmacy will remove a significant provider of pharmacy services near the applicant’s proposed location. It is roughly estimated that the closing pharmacy dispenses 8,000 to 10,000 items per month.
- 1.3 The applicant proposes to replace the pharmaceutical services provided by the Boots pharmacy and more generally the reduction in the provision of pharmaceutical services across Newcastle and according provide a significant benefit to the community.

Reg 18(1)(b) – PNA

- 1.4 The improvements and better access that would be secured were not included in the relevant Pharmaceutical Needs Assessment (PNA) as the PNA does not cover the closure and loss of service of the Boots pharmacy nor other pharmacies in the area. The PNA indicated in 2022 that there was no gap in service but importantly for this application says at page 45 “Although there has been a reduction in pharmacy provision in Newcastle since the last PNA, there continues to be adequate access to community pharmacies during the weekdays and weekends, although this is more limited in the evenings and on Sundays.”

- 1.5 The reduction in pharmacy services mentioned above between 2018 and 2022 was significant as there were six pharmacy closures, one of which offered a 100-hour provision of services and only two pharmacies opened.
- 1.6 Since the PNA was drafted in 2022 there have been no supplementary statements issued to reassess the provision of pharmaceutical services in the HWB area in view of the imminent closure of Boots Pharmacy at Cruddas Park, the closures of Boots and Lloyds Pharmacies at other locations across Newcastle.
- 1.7 Overall the PNA paints a picture of busy pharmacies - page 42 "The HWB recognise that community pharmacies in Newcastle dispense significantly higher numbers of prescriptions than the national average" but it does not specify the improvements or better access that would be required at the applicants proposed site.

Reg 18(2)(a)(i) and (ii)– Would granting the application cause significant detriment to the proper planning of, or the arrangements for, the provision of pharmaceutical services in the HWB's area?

- 1.8 The proposed pharmacy would be largely replacing existing pharmacy provision therefore rather than causing detriment to either the planning or arrangements for the provision of pharmaceutical services in the area, the proposed pharmacy would preserve the status quo and ensure that access to pharmaceutical services is consistent and reliable.
- 1.9 When considering the application, the NHSCB must have regard to the matters set out in paragraph (2) of the 2013 regulations. These include: -

Reg 18(2)(b)(i) – there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB

- 1.10 The proposed location, within the Elswick ward, falls within the most deprived 10% of LSOAs nationally, (page 23 of the PNA) Currently, the nearest pharmacy to the proposed location is the Boots at Unit 10 Cruddas Park, Westmorland Road, Tyne and Wear, NE4 7QY [also listed as NE4 7RW] but this pharmacy is scheduled to close on 2 March 2023.
- 1.11 After the closure of the Boots Pharmacy in Cruddas Park, the nearest pharmacy to the proposed location will be 0.5 km away. This pharmacy does not offer Saturday opening and would cater for a different population to those visiting the proposed site as it is located on a standalone plot of land and unlike the proposed pharmacy is not in a predominantly retail area.
- 1.12 Many of the people who live around Cruddas Park are reliant on having access to a pharmacy to which they can walk. There are no pharmacies between the river and the south of Cruddas Park so if there are no replacement pharmaceutical services for the Boots Pharmacy when it closes, a patient living near the river, say at Essex Close, will have to walk 1 km or more to access pharmaceutical services. The walk is up a significant gradient which will also be a barrier to access for those who are unwell or have a disability.
- 1.13 Nearest pharmacies to the proposed site post 2/3/24:

Pharmacy Name	Address	Walking distance from Cruddas Park	Opening Times
Whitworth Pharmacy	132 – 136 Elswick Road, Elswick,	0.3 miles	Mon-Fri: 8:30am-6pm

	Newcastle upon Tyne, NE4 6SL	0.5 km	Sat & Sun: Closed
Cockerton Pharmacy Stanhope Street	141 Beaconsfield Street, Newcastle upon Tyne, NE4 5JP	0.8 miles 1.2 km	Mon-Fri: 9am-6pm Sat: 9am-noon Sun: Closed

1.14 [Map provided at Appendix A]

1.15 There are a number of nearby GP practices and the closest two are as follows:

GP Surgery Name	Address	Distance from Cruddas Park	Opening Times
Cruddas Park Surgery	178 Westmorland Road, Cruddas Park, NE4 7JT	0.2 miles 350 m	Mon-Fri – 8:30 to 6pm
Elswick Family Practice	Meldon Street, NE4 6SH	0.3 miles 0.5 km	Mon-Fri:: 8am-6pm Sat: 9am-12:30pm Sun: Closed

1.16 It can be seen that there is a GP surgery close to Cruddas Park Shopping Centre which is currently served by the closing Boots at Cruddas Park. The applicant's pharmacy will be open from 9am to 5:30pm on Mondays to Friday, 9am to 1pm on Saturday which are the hours offered by the closing Boots pharmacy.

1.17 The pharmacy will offer accessible service for the patients of Cruddas Park Surgery. The hours also cover the Saturday opening hours of Elswick Family Practice as Whitworth pharmacy does not open on a Saturday.

1.18 This application will be a replacement of a Boots Pharmacy with an independent pharmacy and as the pharmacy will be independent it will be responsive to local needs. The Superintendent Pharmacist has provided pharmaceutical services in the local area for over 30 years and has a proven record of running successful pharmacies in the area.

1.19 Without the replacement of the Boots the chemist the population will not have reasonable choice or access to services.

Reg 18(2)(b)(ii) - people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access.

1.20 The closure of Boots will mean that the people living in this deprived area who are accustomed to accessing services from the shopping centre location will have difficulty in accessing services.

1.21 Providing services at the proposed location would have a significant benefit for patients, particularly those who may have difficulty in accessing services in other areas, such as

the elderly, disabled or people who have the protected characteristics of race or gender.

- 1.22 As stated above the proposed location is significantly deprived. Accordingly, there likely to be a high level of health needs in the area, including a need for substance misuse services, services specifically for women and for people who share the protected characteristic of disability.
- 1.23 The location is also adjacent to Newcastle College, Rye Hill Campus. There will be a group of young students who may have specific needs for pharmaceutical services that they will find difficult to access elsewhere.
- 1.24 The area also houses a number of refugees and asylum seekers, who may have a high need of accessible healthcare advice which they have difficulty accessing elsewhere.
- 1.25 Services that the applicant wishes to provide includes all essential services, advanced services and commissioned services. The closing Boots pharmacy provides a number of services, and it would be the applicant's intention to provide these in the place of those provided by Boots and increase number of services provided and the quality of provision.
- 1.26 The applicant already operates three pharmacies in Newcastle and at these has experience and the relevant accreditation in relation to the following:
 - 1.26.1 NMS
 - 1.26.2 CPCS
 - 1.26.3 EHC
 - 1.26.4 Substance misuse services
 - 1.26.5 Flu and Covid Vaccine service
 - 1.26.6 Smoking cessation advanced service
 - 1.26.7 Hypertension case finding (only one pharmacy is currently providing this in the Outer East section of Newcastle which includes Heaton).
- 1.27 Neither our client nor the closing Boots operate the following services but would be willing to offer:
 - 1.27.1 Hep C testing
 - 1.27.2 AUR
 - 1.27.3 Stoma customisationLocally commissioned services
- 1.28 Minor Ailments –
- 1.29 The applicant already offers the locally commissioned service in his existing pharmacy in Newcastle and is keen to offer it at the new location.
- 1.30 The applicant is also keen to offer the newer nationally commissioned services; The Pharmacy Contraception Service and Pharmacy First; the advanced minor ailments scheme.

- 1.31 The applicant will also arrange a free collection and delivery service in contrast to the Boots pharmacy at Cruddas Park which is scheduled for closure where a charge for some deliveries is imposed. The proposed pharmacy will of course dispense medication into Monitored Dosage Systems where appropriate.

Reg 18(2)(b)(iii) – Providing an innovative approach to the delivery of pharmaceutical services

- 1.32 The application is not made on the basis that it will provide an innovative approach to the delivery of services.
- 1.33 In summary, this applicant offers a combination of replacement of an important provider of services, and improved services, and will provide choice and accessibility to pharmaceutical services where both are currently limited and are likely to be increasingly so in the future. The applicant will accordingly provide overall improvements and better access to pharmaceutical services in the HWB area.”

2 The Decision

The Commissioner considered and decided to refuse the application. The decision letter dated 6 September 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

- 2.2 “The PSRC considered the application at its meeting on 4 September 2024 (this was the August meeting which had been moved from 28 August owing to lack of quorum of the panel). All the evidence provided by the applicant, the committee report and the regulations were considered and discussed by the committee. It was agreed that under Regulations 18 and 19 of the NHS (Pharmaceutical and Local Pharmaceutical Services) (Amendment) Regulations 2023 – unforeseen benefits: additional matters and consequences the application should be **refused** on the basis that the relevant Regulations were not met:
- 2.3 **Regulations 18(1)** – is not met as the Applicant has failed to identify any unforeseen benefits.
- 2.4 **Regulations 18(2)(a)(i)** – is not applicable as there is no pharmaceutical service plan currently in place and therefore **Regulation 19(5)** is met and the application must be refused.
- 2.5 **Regulations 18(2)(a)(ii)** – 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 this regulation is satisfied, therefore **Regulation 19(5)** is also met and the application must be refused.
- 2.6 **Regulations 18(2)(b)(i),(ii)&(iii)** – 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. No innovative approaches to the delivery of pharmaceutical services are offered by the applicant. It is the opinion of PSRC that granting the application would not confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant PNA was published. The regulation is not met and therefore **Regulation 19(6)** is also not met and the application must be refused.

- 2.7 **Regulation 18(2)(g)** – is not met and therefore **Regulation 19(5)** is met and the application must be refused - the application is not the result of a closure of a Pharmacy owing to consolidation and since the last revision of the PNA (2022) no review of the PNA has been undertaken and published in line with the Regulations.
- 2.8 **Regulation 18(3)** – PSRC was not satisfied with regard to paragraph (2)(b) so there was no need to consider paragraphs 2(c) to (e).
- 2.9 **Regulations considered by PSRC but deemed not to be applicable to this application.**
- 2.10 The following Regulations were deemed not to be relevant to this application:
 - 2.10.1 Regulation 18(2)(c, d, e & f)
 - 2.10.2 Regulation 19(1, 2, 3 & 4)
 - 2.10.3 Regulation 31
 - 2.10.4 Regulation 32
 - 2.10.5 Regulations 40 to 44
 - 2.10.6 Regulation 50
 - 2.10.7 Regulation 65
 - 2.10.8 Regulation 66
 - 2.10.9 Paragraph 31, Schedule 2"

Extracts from the Commissioner's decision making report

- 2.11 **"The Application**
- 2.12 ...
- 2.13 **The PNA**
- 2.14 The extant 2022 PNA states: (page 74) *"After considering all the elements of the PNA, the Health and Wellbeing Board concludes that there is adequate provision of NHS pharmaceutical services across Newcastle."*
- 2.15 In response to local concerns from residents and councillors in Newcastle about the pharmacy closures, the Director of Public Health wrote to NENC ICB on 16 January 2024 to express the Council's view that the closures were unacceptable and likely to exacerbate inequalities in the Elswick population, which has one of the highest proportion of 0-16 year old children and young people, whom the HWB believes *"to be a key population requiring access to pharmacy provision to alleviate pressure on the primary care system."*
- 2.16 Since the closure of Cruddas Park Boots Pharmacy, the HWB published a Supplementary Statement on 15 May 2024 following presentation of the DPH's May report to the HWB. The HWB considered that *"the pharmacy closure in Elswick (Boots, Cruddas Park) will likely impact the surrounding resident population. The area around this pharmacy is in the top 10% most deprived LSOAs nationally, with a relatively high proportion identifying themselves as disabled. There are other pharmacies in Elswick, but non within walking distance (800m) of the closing pharmacy, and no other pharmacy in the south or east of the ward."*

- 2.17 **Supplementary Statements** are statements of fact; and make no assessment of the impact the change may have on the need for pharmaceutical services – ie they are an update of what the PNA says about the availability of pharmaceutical services and not a vehicle for updating what the PNA says about the need for pharmaceutical services. Supplementary Statements become part of the PNA and will therefore be referred to by NENC ICB when it determines applications for inclusion in a pharmaceutical list.
- 2.18 The guidance we have received from PCC states that before confirming the existence of any gaps, a full review is first undertaken by the HWB of the extant PNA, which has not been done in this case.
- 2.19 The HWB needs to be able to identify changes to the availability of pharmaceutical services and then to determine whether or not it needs to issue a Supplementary Statement, which, according to national guidance, is to be published to explain changes to the availability of pharmaceutical services where:
- 2.19.1 the changes are relevant to the granting of an application or applications for inclusion in the pharmaceutical list for the area of the health and wellbeing board's area; and
- 2.19.2 the health and wellbeing board is satisfied that producing a new pharmaceutical needs assessment would be a disproportionate response to those changes.
- 2.20 ...
- 2.21 Boots UK Limited closed its pharmacy at Cruddas Park Shopping Centre, Westmorland Road, Cruddas Park, Newcastle upon Tyne, NE4 7RW, on 2 March 2024.
- 2.22 As noted above, the PNA considered the needs of the Newcastle district population are being met by existing pharmacies in term of provision and access to pharmaceutical services. The HWB has published a Supplementary Statement relating to provision in the Elswick area since the closure of Boots Pharmacy. The document is a statement of fact and does not specify that a gap has been created, there has not been a full review of the PNA, which is the only vehicle for determining gaps.
- 2.23 **Deprivation**
- 2.24 The Applicant has made passing reference to Elswick ward as falling within the most deprived 10% of LSOAs but offered no other demographic information.
- 2.25 **PCM Assessment:**
- 2.26 Deprivation levels are measured in ranks and deciles for Local Authorities as Lower-layer Super Output Areas (LSOA) level. The lower the ranking, the more deprived an area is - the IMD 2019 for NE4 7QY lists the deprivation index as 315 (Low).
- 2.27 Deciles are calculated by ranking all LSOAs nationally into equal groups. LSOAs in decile 1 fall within the most deprived 19% of LSOAs nationally.
- 2.28 The 7 domains of deprivation are Income, employment, education, skills and training, health and disability, crime, barriers to housing and living environment. Four of these are listed as Decile 1 (most deprived nationally).
- 2.29 An ONS profile for Elswick ward ... shows some useful demographic information (compared to England):
- 2.29.1 population (16,100)

- 2.29.2 age profile – the largest age group appears to be children aged 0-15 years (above England average) and the smallest is 85+ which are below the England average).
- 2.29.3 ethnic groups – 43.5% of residents are white, but the predominant group(56.5%) are of different ethnic minorities
- 2.29.4 households with no access to a vehicle - 57% of the local population
- 2.29.5 household deprivation - 74% of households have deprivation in 1 or more dimension.
- 2.30 ...
- 2.31 **Choice**
- 2.32 Currently there are 15 Community Pharmacies operating within 2km of the postcode provided by the Applicant (to note this is slightly different to that of the previous Boots Pharmacy but is still in relation to the Shopping Centre site). ... One DAC and one Distance Selling Premise have bases in Newcastle. Since the middle of March 2024, these pharmacies have been providing services to patients and members of the public who previously used the now-closed pharmacy.
- 2.33 ...
- 2.34 **Access - Opening hours:** According to the Pharmaceutical List ... on:
- 2.35 **weekdays** - 13 pharmacies are currently providing evening opening hours until 6 pm (seven of which are operating core hours). One of these 13 pharmacies opens until 7 pm on just Thursday evenings and another pharmacy opens until 8 pm. One pharmacy opens until 5 pm.
- 2.36 The Applicant is proposing to work until 17.30 pm and these will all be core hours.
- 2.37 On weekdays, 6 pharmacies open between 8 and 9 am. The Applicant is proposing to open at 9.00 am. The total opening hours are the same as those previously offered by Boots – albeit all core and there is no intention to close over lunchtime, which Boots did.
- 2.38 **Saturdays** - Seven pharmacies have **core** hours; as follows.
 - 2.38.1 2 pharmacies open 9 am – 11.30 am
 - 2.38.2 1 pharmacy opens 9 am -1 pm and 2-2.30 pm
 - 2.38.3 1 pharmacy opens 930 am-12 noon and 1-3.30 pm
 - 2.38.4 1 pharmacy opens 10 am – 2 pm and 3-5 pm
 - 2.38.5 1 pharmacy opens 9 am-1 pm and 2.30-5.30 pm
 - 2.38.6 1 pharmacy opens 12 noon-5 pm
- 2.39 The opening hours on Saturdays for 8 pharmacies range from 8.00 am-8 pm but these are supplementary hours, which can be removed with 5 weeks' notice.
- 2.40 **Sundays** – One pharmacy currently works core hours between 11 am and 3 pm and then provides supplementary hours until 5 pm. The Applicant does not intend to open Sundays.

2.41 The hours provided by Boots (according to the Supplementary Statement) were:

	Core	Supplementary
Mon	0930-1300 & 1400-1730	0900-0930
Tues	0930-1300 & 1400-1730	0900-0930
Wed	0930-1300 & 1400-1730	0900-0930
Thurs	0930-1300 & 1400-1730	None
Fri	0930-1300 & 1400-1730	None
Sat	0930-1300	None
Sun	None	None
Total	40 hours	1.5 hours

2.42 The Applicant has confirmed that he will provide 46.5 core hours (and no supplementary hours) and the pharmacy will open over lunchtime. The hours being proposed by the Applicant are set out overleaf:

	Core	Additional Core	Supplementary
Mon	0900-1730	To be agreed with applicant	None
Tues	0900-1730		None
Wed	0900-1730		None
Thurs	0900-1730		None
Fri	0900-1730		None
Sat	0900-1300		None
Sun	None	None	None
Total	40 hours	6.5 hours	0 hours

2.43

2.44 **Access - location**

2.45 The proposed premises will be in a predominantly residential area, close to local shops, Post office and library and several residential homes (ie The Larches). However, there is both a primary school, Riverside Dene Campus and Newcastle College Rye Hill Campus within half a mile and the Newcastle Arena in 0.8 of a mile.

2.46 **PCM Assessment (access location)**

- 2.47 **Access by bus / by bicycle / on foot:** ... the location of a bus stop outside the shopping centre on Westmorland Road. The bus stop is in close proximity to the pedestrian crossing to the centre with dropped kerbs at the pedestrian crossing point. Pavements look to be quite wide and Westmorland Road is mostly flat. There is ramp access to the shopping centre from Westmorland Road, suitable for use by patients arriving with prams, on a mobility scooter, wheelchair or on crutches. Traffic calming measures on Westmorland Road are evident, as are double yellow lines.
- 2.48 The terrain on Park Road rises by 49 feet and Street View does show a slope walking south away from the centre towards Scotswood Road. Traffic calming measures and double yellow lines to prevent parking are also evident.
- 2.49 The Applicant states in his application that many patients will need to be within walking distance of the pharmacy. He refers particularly to patients living near the river (ie Essex Close), who will have to walk 1 km or more to access pharmaceutical services and that the walk is up a significant gradient which will be a barrier to access. Google maps shows that the walk between the proposed postcode and Essex Close is 0.3 mile (0.48 km), being most flat in nature albeit, with a rise of 59 ft and taking 8 minutes to walk.
- 2.50 **Access by Car:** There is some allocated on-road parking spaces along Westmorland and Park Roads, adjacent to the centre (off Nesham Street) and to the left of the old Boots Unit, there is also parking for around a dozen cars. There is an additional sizeable car park off Park Road, which is close to the junction where Park Road exits directly to and from the main A695 Scotswood Road – a busy vehicular dual carriageway.
- 2.51 Mr Jassal makes no reference to access by public transport services.
- 2.52 **Services**
- 2.53 **GP Surgeries:** The 'Find a GP2' function on the NHS website accessed by the PCM confirms 8 GP surgeries within 2 km of the postcode provided by the Applicant
- 2.54 ...
- 2.55 PSRC is reminded that all Advanced Services are optional and can be added or removed at the contractor's discretion, at any time. The Applicant has stated that he is willing to provide any other services as required but has not offered any indication as to what these may be.
- 2.56 The Applicant is proposing to provide all services except LFD – according to his application. Currently 10 contractors provide this service. Those which the Applicant proposes to offer are set out below. The (figure) in brackets confirms the number of pharmacies currently offering the service:
- 2.56.1 Pharmacy First (15) / CPCS – Emergency Medicines Walk-in Service
- 2.56.2 NMS (all)
- 2.56.3 EHC (9)
- 2.56.4 SCS - Smoking Cessation (6)
- 2.56.5 Flu vaccinations (all pharmacies)
- 2.56.6 Hypertension (11)
- 2.56.7 AUR (4)

2.56.8 SAC (4)

2.57 **Other Services:**

2.57.1 Covid vaccinations

2.58 **Not commissioned by the Pharmacy and Optometry team:**

2.58.1 Hep C Testing

2.58.2 Substance misuse services

2.58.3 Specialist drug service

2.58.4 Minor Ailments

2.58.5 DMS (delivery services) - free

2.59 ...

2.60 The Applicant has estimated the number of items dispensed by Boots' each month. The extract from the MIS data in the table below, sets out Boots' actual figures between July 2023 until the pharmacy closed:

YEAR_MONTH	NUMBER STANDARD PX	NUMBER_EPS ITEMS
202307	6726	7918
202308	7074	8311
202309	6520	7713
202310	6635	7882
202311	6358	7684
202312	6665	8378
202401	5482	6250
202402	2067	2493
202403	109	129

2.61 ...

2.62 **Innovation**

2.63 No innovative approaches have been presented by the Applicant in his application in relation to the delivery of pharmaceutical services."

3 **The Appeal**

In a letter dated 30 September 2024 addressed to NHS Resolution, the Applicant through its representative Gordons Partnership LLP appealed against the Commissioner's decision. The grounds of appeal are:

- 3.1 “We are instructed by our client to appeal against the refusal of its application offering unforeseen benefits at Cruddas Park shopping centre, Westmoreland Road, Newcastle-upon-Tyne, NE4 7QY.
- 3.2 The application is made under regulation 18 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2014 (“the Regulations”).
- 3.3 **The Decision**
- 3.4 The Pharmaceutical Services Regulations Committees meeting for North East and North Cumbria ICB determined that the application should be refused on the following basis:
- 3.5 In considering whether the granting of the application would confer significant benefits, the Committee determined that –
 - 3.5.1 The Applicant did not identify any unforeseen benefits;
 - 3.5.2 There is no pharmaceutical service plan currently in place;
 - 3.5.3 The granting of the application may cause significant detriment to existing local services;
 - 3.5.4 There is no evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services;
 - 3.5.5 There is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services; and
 - 3.5.6 The application is not the result of a closure of a Pharmacy owing to consolidation and since the last revision of the PNA (2022) no review of the PNA has been undertaken and published in line with the Regulations.
- 3.6 On that basis the committee concluded that it was not satisfied that granting the application would confer significant benefits as outlined above that would secure improvements or better access to pharmaceutical services.
- 3.7 **The Appeal**
- 3.8 The grounds of the appeal are that the Committee’s processes were flawed as follows:
- 3.9 The Committee made an assumption at 18(2)(a)(ii) that ‘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.’
- 3.10 There is no indication in the decision letter about why this assumption has been made, or any evidence provided on which this is founded. Without this, it is difficult to see how the Committee reached some of the conclusions that it did.
- 3.11 The Committee misdirected themselves in applying Regulations 18(2)(a)(i), (ii) and Regulation 18(2)(g) incorrectly.
- 3.12 The Committee failed to consider the supplementary PNA statement published on 15 May 2024 when applying Regulations 18(2)(b)(i), (ii) and (iii).

- 3.13 Accordingly, the final determination by the Committee was incorrect and the decision by NHS England should be quashed and redetermined to grant our client's application.
- 3.14 **Background**
- 3.15 It may be helpful for Primary Care Appeals to understand the context of the application. Our client's director and superintendent (Mr Arun Jassal) is very familiar with the area, as he operates three pharmacies in Newcastle. The company made its application against a background of a closure of the Boots Pharmacy at Unit 10 Cruddas Park, Westmoreland Road, Newcastle-upon-Tyne, NE4 7QY, as well as two other Boots Pharmacies in Newcastle in Kenton and Heaton and other closures throughout the HWB area.
- 3.16 Mr Jassal is a pharmacist and successfully operates pharmacies in the local area. The group of pharmacies operated successful Covid vaccine clinics during the Pandemic and provided, and continue to provide domiciliary visits for those unable to access the clinics. Mr Jassal is also the PCN lead for the Newcastle Central area, covering five pharmacies. He is familiar with the local needs and will be able to be proactive in the provision of services to the population.
- 3.17 Quayside Pharmacy Ltd intends to run the proposed pharmacy with a focus on customer care and prompt service so that patients obtain access to timely advice and services when they require them.
- 3.18 Turning to the specific regulatory criteria: -
- 3.19 Regulation 18(1)
- 3.20 There being no identified unforeseen benefits.
- 3.21 The improvements and better access that would be secured were not included in the relevant Pharmaceutical Needs Assessment (PNA) published in 2022, as the PNA does not cover the closure and loss of service of the Boots pharmacy nor other pharmacies in the area. This PNA did indicate at page 45 that:
- 3.22 "Although there has been a reduction in pharmacy provision in Newcastle since the last PNA, there continues to be adequate access to community pharmacies during the weekdays and weekends, although this is more limited in the evenings and on Sundays."
- 3.23 Supplementary statements were published on 15 May 2024, which set out the six pharmacy closures in Newcastle since the 2022 PNA was published. Although the statements confirm the closure of the Boots on Cruddas Park it is arguable that the supplementary statement is not a full statement of the pharmaceutical services that are not provided in the area. Consequently, the specific improvements and better access proposed by our client are not included in the PNA in the way mandated by 18(1)(b) and can still be considered unforeseeable.
- 3.24 The PNA and supplementary PNAs paint a picture of busy pharmacies - page 42 "The HWB recognise that community pharmacies in Newcastle dispense significantly higher numbers of prescriptions than the national average" but they do not specify the improvements or better access that would be required at the applicants proposed site.
- 3.25 Regulations 18(2)(a)(i) and (ii)
- 3.26 Would granting the application cause significant detriment to the proper planning of, or the arrangements for, the provision of pharmaceutical services in the HWB's area?
- 3.27 In relation to regulation 18(2)(a)(i), the Committee failed to apply the regulations correctly.

- 3.28 The Committee made an assumption at 18(2)(a)(ii) that '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.'
- 3.29 This is an unfounded assumption as no supporting evidence has been provided. It should be noted that our client is a provider of existing local services and is proceeding to make an application which he believes will not jeopardise his existing business.
- 3.30 Regulation 18(2)(b)(i)
- 3.31 There being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB.
- 3.32 In relation to the location generally, although it is agreed that the PNA does not refer to Cruddas Park, it should be noted that it draws conclusions that are relevant to this application:
- 3.33 Narrowing down to the Cruddas Park locality, the population of the mid-layer super output area (MLSOA) covering Cruddas Park was at the time of the 2021 census 5,536. The map below shows the relevant area the data covers. (Source – 2021 Census Profile for areas in England and Wales – Nomis).
- 3.34 [Map provided at Appendix B]
- 3.35 The proposed pharmacy is within the Elswick ward, which calls within the most deprived 10% of LSOAs nationally. Since the closure of the Boots Pharmacy in Cruddas Park, the nearest pharmacy to the proposed location will be 0.5km away. This pharmacy does not offer weekend opening and caters to a different population to those visiting the proposed site, as it is located on a standalone plot of land and unlike the proposed pharmacy, is not in a predominately retail area.
- 3.36 Currently, there are no pharmacies between the river and the south of Cruddas Park so if there are no replacement pharmaceutical services for the Boots Pharmacy, a patient living near the river, perhaps at Essex Close, will have to walk 1km or more to access pharmaceutical services. This is significant gradient which will be a barrier to access for those who are unwell or have a disability. Many people living around Cruddas Park are reliant on having access to a pharmacy to which they can walk.
- 3.37 The proposed pharmacy will offer morning Saturday opening and consequently will be accessible at times when existing pharmacies within 1km of the area are not offering services.
- 3.38 The applicant pharmacy will match the opening hours of Elswick Family Practice on Saturdays.
- 3.39 There are two GP practices within a kilometre of the proposed location
- 3.40 The GP surgery close to the Cruddas Park Shopping Centre, Cruddas Park Surgery, was served by the now closed Boots Pharmacy at Cruddas Park. The applicant's pharmacy will be open from 9am to 5.30pm on Mondays to Fridays and 9am to 1pm on Saturday, which are the hours that were offered by the now closed Boots Pharmacy.
- 3.41 The pharmacy will offer accessible services for the patients of Cruddas Park Surgery and will also cover the Saturday opening hours of Elswick Family Practice, as Whitworth Pharmacy does not open on a Saturday.
- 3.42 Transport Arrangements

- 3.43 It is evident from the car and van availability in the area that the local population experience difficulty in accessing services. According to the MLSOA, almost 60% of the local households do not have a car or van, which is well over double the national average of 23.5%, and means that the local population are particularly reliant on having accessible choice of pharmaceutical services at a local level.
- 3.44 Regulation 18(2)(b)(ii)
- 3.45 Regard to the desirability of people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the HWB, are difficult for them to access.
- 3.46 There are a number of issues arising in relation to the provision of services for those with protected characteristics in the Cruddas Park vicinity and it appears that currently their needs are not met.
- 3.47 Providing services at the proposed location would have a significant benefit for patients, particularly those who may have difficulty in accessing services in other localities, such as the elderly, disabled or people who have the protected characteristics of race or gender.
- 3.48 As the proposed area is in a significantly deprived area, there are likely to be a high level of health needs in the area, including a need for substance misuse services, services specifically for women and for people who share the protected characteristic of disability.
- 3.49 The location is also adjacent to Newcastle College, Rye Hill Campus, meaning that there will be a group of young students who may have specific needs for pharmaceutical services that they will find difficult to access elsewhere.
- 3.50 The area also houses a number of refugees and asylum seekers who may have a high need of accessible healthcare advice which they may find difficult accessing elsewhere.
- 3.51 The applicant will have a free collection and delivery service, which was also offered by the now-closed Boots (with a charge for some deliveries).
- 3.52 Regulation 18(2)(g)
- 3.53 The Committee failed to apply this regulation correctly as the removal of the chemist premises was not as a consequence of the grant of a consolidation application.
- 3.54 In summary, this application will provide significant benefits to the provision of pharmaceutical services in the area.
- 3.55 We ask NHS Resolution to allow our client's appeal and to quash the decision by NHS England and redetermine and grant our client's application. If an oral hearing is arranged our client would want to attend and be represented."

4 **Summary of Representations**

This is a summary of representations received on the appeal.

4.1 **BOOTS UK LTD**

- 4.1.1 "We have no further comments to add in addition to those we submitted to the NHS ICB, a copy of which is enclosed."

Letter to the Commissioner dated 19 June 2024

- 4.1.2 “Whilst we accept that this application is based on benefits not foreseen when drafting the Pharmaceutical Needs Assessment (PNA), it is clear this application is purely based on the recent closure of the Boots pharmacy.
- 4.1.3 As the ICB will be aware, the closure of a pharmacy within an area does not automatically create a gap and should a gap have arisen because of such a closure, then the PNA should be updated to reflect this. To our knowledge and as confirmed by the applicant, no changes have been made within the current PNA for Newcastle or any supplementary statements produced. We would therefore suggest that the closure of the pharmacy in the locality has not resulted in a gap to pharmaceutical services and that the Health and Wellbeing board recognise that the existing network of pharmacies can cope should there be any increase in demand?
- 4.1.4 The applicant makes reference to offering extra services as well as a free delivery service. The ICB will be aware that services can be withdrawn at any time and can be decommissioned. The applicant is also offering to open Saturday mornings and refers to there being limited access to pharmaceutical services at the weekend. It is of note that the applicant is only offering to open Saturday mornings and will be closed on Sundays, we believe that this suggests that there is little demand for services outside of these times.
- 4.1.5 We believe that the application should be refused and should there be any gap in the opinion of the Health and Wellbeing Board, that the PNA should be updated to reflect this.”

4.2 COMMUNITY PHARMACY – NORTH EAST – NORTH

- 4.2.1 “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.
- 4.2.2 All declarations of conflict of interest were made and those with a conflict had no input to the decision of the committee.
- 4.2.3 The application was made under regulation 18 to offer an unforeseen benefit, which was the correct regulation at the time the application was submitted. Whilst the Boots pharmacy at 10 Cruddas Park Shopping centre closed on 2nd March, there has been no supplementary statement issued by Newcastle Health and Wellbeing Board indicating that this closure would cause a gap, hence the application must demonstrate that it meets the regulatory requirements for an unforeseen benefit. A supplementary statement following the Health and Wellbeing Board meeting of 15th May was published but this was factual stating the hours and services provided by the Boots pharmacy. No gap in pharmaceutical services was identified.
- 4.2.4 Apple maps shows a direct route from the former Boots pharmacy, along Beech Grove Road to Farah Pharmacy at 132 Elswick Road as the nearest pharmacy. This route takes 7 minutes when walking, along a route with moderate hills, pedestrian crossings and good street lighting being an urban area. The journey takes 3 minutes by car, with off-street parking available beside the pharmacy.
- 4.2.5 Following the closure of the Boots pharmacy, other local pharmacies have absorbed the workload of the patients who were receiving pharmaceutical services from this pharmacy. In the eight months since the closure of Boots, there have been no formal complaints about the service being provided by the alternative pharmacies.

- 4.2.6 If NHS Resolution is persuaded to grant the application, the committee recommends that it ensures that the new contractor should have undertaken to provide all commissioned pharmaceutical services as a minimum and should be providing at least the same opening hours as the previous contractor.”

5 Observations

5.1 THE APPLICANT

- 5.1.1 “Thank you for your letter of 20 November 2024 with enclosures. We note that we have the opportunity to make comments in rebuttal on the enclosed representations. Our client’s comments are as follows:

- 5.1.2 Community Pharmacy North East – North - letter dated 6 November 2024

5.1.3 **The supplementary statement and gap**

- 5.1.4 The comments regarding the supplementary statement are noted. However NHS Resolution should also be aware that when the matter was discussed before the HWB it was discussed with reference to a gap in provision and the proposal that was recommended to be adopted was *“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:*

5.1.4.1 *Boots, Cruddas Park Shopping Centre, Westmorland Road, Cruddas Park, Elswick, Newcastle upon Tyne, NE4 7RW”*

- 5.1.5 It appears that a misunderstanding of the regulatory provisions in relation to supplementary statements has resulted in a supplementary statement that does not reflect the position discussed. We attach the HWB agenda and the document supporting item 6 (a) for your information. As such the supplementary statement with the supporting documents considered by the HWB should be used to assess whether this application would offer unforeseen benefits.

5.1.6 **The route**

- 5.1.7 The route to the nearest pharmacy is said to be straight forward. However, it should be noted that no representations at the appeal stage have been received from the closest pharmacy objecting to the grant of this application. They had an opportunity to comment directly on the route but have not done so. The comment made about the route misses important points:

- 5.1.8 Firstly, the closest pharmacy (Farah Pharmacy which was Whitworth Pharmacy at the time the application was made) closes at 6pm on a Friday and then is closed for the weekend. The next closest pharmacy, Cockerton Pharmacy, is further to the north and therefore a greater distance away from the proposed site at 0.8 of a mile.

- 5.1.9 Secondly, many of the people who were using the pharmacy in the shopping centre live to the south of the proposed location where there are no pharmacies between the proposed location and the river. There is also a significant gradient from the direction of the river to the closest pharmacy.

- 5.1.10 This distance is a significant barrier to access in particular those with limited mobility. Many of the population will not have access to a car as 57% of the households of Elswick do not have a car or van. In addition, although there are buses available, for a person leaving from Essex Close (NE4 7DS), a location

to the south of the proposed site, the route to Cockerton Pharmacy without walking on a Saturday morning between 9am and 9:30am would be at least a round trip of nearly an hour and a change of buses. Alternatively, the shortest time by public transport on Saturday morning would be a round trip of 44 mins which would involve a 14 minute walk. The cost of the journey will vary depending on age but the adult day fare for a plus bus ticket which gives travel across all Newcastle providers is £4.60 which may be a barrier for access to those who are living in a deprived neighbourhood.

5.1.11 [Map provided at Appendix C]

5.1.12 **Role of other pharmacies**

5.1.13 In relation to the comment that “other local pharmacies have absorbed the workload of the patients who were receiving pharmaceutical services from this pharmacy..” the evidence is said to be the fact that there have been no complaints. However there is an area with high levels of deprivation (see below) and the lack of complaints through a formal process that the population may not be aware of, is not an indication that people have a reasonable choice of pharmaceutical services that they can access.

5.1.14 The local newspaper reported the following comments shortly after the issue of the supplementary statements when the Cruddas Park Boots was already closed:

5.1.15 “The board agreed to officially declare a gap in pharmacy provision in the Heaton, Kenton, and Cruddas Park areas – with concerns that communities in the latter two in particular have high levels of deprivation, disabilities, and poor access to public transport. Karen Kilgour, the council’s deputy leader, added: “It is of great concern and is causing a great deal of upset and concern in the local community to see elderly people having to travel quite some distance now....”

5.1.16 ...Mandy Coppin, chief executive of young people’s charity Streetwise, said she was “really concerned” about the impact of long pharmacy queues on those directed to chemists for sexual health support and emergency contraception. She added: “When that becomes too difficult that will add to the highest rate of positive STIs in the country among 18 to 24-year-olds. There are huge consequences.”

5.1.17 [The Chronicle - 18 May 2024] [see Appendix C]

5.1.18 It is clear from these comments and the overall lack of provision in the area that there will be people who do not have access to pharmaceutical services that they need and the grant of this application will offer significant benefits.

5.1.19 DMB decision making report – dated 4 September 2024

5.1.20 The report makes a number of comments which support our client’s position that this application will provide significant benefits to the provision of pharmaceutical services in the area. We do not cover them all below but the deprivation of the area and relative isolation of the Cruddas Park is referenced here:

5.1.21 *“In response to local concerns from residents and councillors in Newcastle about the pharmacy closures, the Director of Public Health wrote to NENC ICB on 16 January 2024 to express the Council’s view that the closures were unacceptable and likely to exacerbate inequalities in the Elswick population, which has one of the highest proportion of 0-16 year old children and young*

people, whom the HWB believes "to be a key population requiring access to pharmacy provision to alleviate pressure on the primary care system."

5.1.22 *Since the closure of Cruddas Park Boots Pharmacy, the HWB published a Supplementary Statement on 15 May 2024. ... The HWB considered that "the pharmacy closure in Elswick (Boots, Cruddas Park) will likely impact the surrounding resident population. The area around this pharmacy is in the top 10% most deprived LSOAs nationally, with a relatively high proportion identifying themselves as disabled. There are other pharmacies in Elswick, but not within walking distance (800m) of the closing pharmacy, and no other pharmacy in the south or east of the ward."*

5.1.23 It should be noted that we do not have access to appendix 2 a - a HWB Letter to ICB (nor many of the other appendices referred to in the report) which appears to set out some serious concerns about the current level of provision. It is requested that a full set of the documentation annexed to the report is provided so that we may make informed comments.

5.1.24 It should also be noted that the committee incorrectly directed itself to say that Supplementary Statements are statements of fact and make no assessment of the impact the change may have on the need for pharmaceutical services. This is incorrect and we repeat our contention that the fact the statement was issued and the minutes and documents referring to gap in provision should be regarded as strong evidence that the grant of the application in a location where there is a gap would offer significant benefits.

5.1.25 We ask NHS Resolution to allow our client's appeal and to quash the decision by NHS England and redetermine and grant our client's application. If an oral hearing is arranged our client would want to attend and be represented."

5.1.26 [Supporting information provided at Appendix C]

6 Following receipt of the observations above and noting the comments at paragraph 5.1.23, NHS Resolution circulated a copy of the Appendices to all parties. [Appendices provided to the Pharmacy Appeals Committee]

7 **Consideration**

7.1 The Pharmacy Appeals Committee ("the Committee"), appointed by NHS Resolution, had before it the papers considered by the Commissioner, together with a plan of the area showing existing pharmacies and doctors' surgeries and the location of the proposed pharmacy.

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

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

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

Regulation 31

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

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

(2) This paragraph applies where -

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

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

(ii) adjacent premises; and

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

7.6 The Applicant states that "At the point this application is determined the best estimate location will not be adjacent or in close proximity to any pharmacy" which the Committee noted had not been disputed by any party. The Committee noted that the Boots Pharmacy at Cruddas Park Shopping Centre closed on 2 March 2024. Based on the information provided, the Committee was not required to refuse the application under the provisions of Regulation 31.

7.7 The Committee noted that, if the application were granted, the successful applicant would - in due course - have to notify the Commissioner of the precise location of its premises (in accordance with paragraph 31 of Schedule 2). Such a notification would be invalid (and the applicant would not be able to commence provision of services) if the location then provided would (had it been known now) have led to the application being refused under Regulation 31.

Regulation 18

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

"(1) If—

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

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

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

(2) Those matters are—

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

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

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

granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant pharmaceutical needs assessment was published;
- (c) *whether it is satisfied that it would be desirable to consider, at the same time as the applicant's application, applications from other persons offering to secure the improvements or better access that the applicant is offering to secure;*
- (d) *whether it is satisfied that another application offering to secure the improvements or better access has been submitted to it, and it would be desirable to consider, at the same time as the applicant's application, that other application;*
- (e) *whether it is satisfied that an appeal relating to another application offering to secure the improvements or better access is pending, and it would be desirable to await the outcome of that appeal before considering the applicant's application;*
- (f) *whether the application needs to be deferred or refused by virtue of any provision of Part 5 to 7.*
- (g) *whether it is satisfied that the application presupposes that a gap in pharmaceutical services provision has been or is to be created—*
 - (i) *by the removal of chemist premises from a pharmaceutical list as a consequence of the grant of a consolidation application, and*
 - (ii) *since the last revision of the relevant HWB's pharmaceutical needs assessment other than by way of a supplementary statement.*

- (3) *NHS England need only consider whether it is satisfied in accordance with paragraphs (2)(c) to (e) if it has reached at least a preliminary view (although this may change) that it is satisfied in accordance with paragraph (2)(b)."*
- 7.9 The Committee considered that Regulation 18(1)(a) was satisfied in that it was required to determine whether it was satisfied that granting the application, or granting it in respect of some only of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB.
- 7.10 The Committee went on to consider whether Regulation 18(1)(b) was satisfied, i.e. whether the improvements or better access that would be secured if the application was granted were or was included in the Pharmaceutical Needs Assessment ("the PNA") in accordance with paragraph 4 of Schedule 1 of the Regulations.
- 7.11 Paragraph 4 of Schedule 1 requires the PNA to include: "a statement of the pharmaceutical services that the HWB had identified (if it has) as services that are not provided in the area of the HWB but which the HWB is satisfied (a) **would** if they were provided....secure improvements or better access, to pharmaceutical services... (b) **would** if in specified future circumstances they were provided...secure future improvements or better access to pharmaceutical services..." (emphasis added).
- 7.12 The Committee considered the PNA prepared by Newcastle Health and Wellbeing Board, conscious that the document provides an analysis of the situation as it was assessed at the date of publication. The Committee bears in mind that, under Regulation 6(2), the body responsible for the PNA must make a revised assessment as soon as reasonably practicable (after identifying changes that have occurred that are relevant to the granting of applications) unless to do so appears to be a disproportionate response to those changes. Where it appears disproportionate, the responsible body may, but is not obliged to, issue a Supplementary Statement under Regulation 6(3). Such a statement then forms part of the PNA. The Committee noted that the PNA was dated 2022 - 2025 and that five supplementary statements had been issued since its publication.
- 7.13 The Committee noted that the supplementary statements issued on 12 November 2022, 19 July 2023 and 15 May 2024 covered changes to the pharmaceutical list including closures and the opening of a new pharmacy.
- 7.14 The Committee noted that a supplementary statement dated 15 May 2024 confirmed the closure of Boots Pharmacy at Cruddas Park Shopping Centre and provided a factual update in terms of the services it provided and at what times.
- 7.15 The Committee noted that section 7.3 of the PNA titled 'Conclusions' states:
- 7.15.1 *"There are 60 pharmacies across the city (plus 1 distance selling pharmacy and 1 dispensing appliance contractor), in the town centre, in shopping centres, supermarkets, high streets, housing estates and at doctor's surgeries. These pharmacies offer a security in the supply of medicines against a prescription but also offer advice about those medicines. In addition to prescription medication Newcastle pharmacies also offer access to "pharmacy only medicines" for people to buy over the counter and as outlined in this document, they offer an extensive range of locally commissioned and non-commissioned services that are catered to the needs of local communities in Newcastle. These services, often designed in partnership with local commissioners, (Local Authority/NHS) help improve the quality of life for many of our most vulnerable people.*
- 7.15.2 *The conclusion of this PNA is that people in the city have very good access to community pharmacy services. The only exceptions have been noted in Dinnington village, where a recent pharmacy application was granted following*

appeal to NHS Resolution. On that basis, until the new pharmacy opens, we conclude that there remains a gap in provision in this area.

7.15.3 *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."*

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

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

Regulation 18(2)(a)(i)

7.18 The Committee had regard to

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

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

7.19 The Committee noted the Commissioner had stated this regulation is "*not applicable as there is no pharmaceutical service plan currently in place and therefore **Regulation 19(5)** is met and the application must be refused.*" The Committee considered that this statement was ambiguous. It appears that the Commissioner had intended to conclude that Regulation 19(5) was not met, given that it states that "*no pharmaceutical service plan is currently in place*". The Committee saw no information by which to conclude that if the application was granted and a pharmacy to open, the ability of the Commissioner thereafter to plan for the provision of services would be affected in a significant way.

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

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

Regulation 18(2)(a)(ii)

7.22 The Committee had regard to

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

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

7.23 The Commissioner had stated in its decision that:

7.23.1 *"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 this regulation is satisfied, therefore **Regulation 19(5)** is also met and the application must be refused."*

- 7.24 The Committee noted that no information had been provided by the Commissioner to support its determination and considered that a more detailed explanation, weighing up the positive and negative consequences of granting an application was required. The Committee was of the view that an assumption that Boots Pharmacy was not financially viable did not provide sufficient reasoning to support the Commissioner's determination that the viability of existing pharmacies may be destabilised if an application were granted.
- 7.25 The Committee was therefore not satisfied that significant detriment to the arrangements currently in place for the provision of pharmaceutical services would result from a grant of the application.
- 7.26 In the absence of any significant detriment as described in Regulation 18(2)(a), the Committee was not obliged to refuse the application and went on to consider Regulation 18(2)(b).

Regulation 18(2)(b)

- 7.27 The Committee had regard to

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

- (i) there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB (taking into account also NHS England's duties under sections 13I and 13P of the 2006 Act (duty as to patient choice and duty as respects variation in provision of health services)),*
- (ii) people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access (taking into account also NHS England's duties under section 13G of the 2006 Act (duty as to reducing inequalities)), or*
- (iii) there being innovative approaches taken with regard to the delivery of pharmaceutical services (taking into account also NHS England's duties under section 13K of the 2006 Act (duty to promote innovation)),*

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

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

- 7.28 The Committee noted that the application was prompted by the closure of Boots Pharmacy at the Cruddas Park Shopping Centre. The Applicant contends that *"without the replacement of the Boots the chemist the population will not have reasonable choice or access to services."* However the Committee was mindful that the closure of one pharmacy does not automatically mean that there is a need for a pharmacy to open in its place.
- 7.29 The Committee noted from the information provided, that the proposed location is located within the Elswick ward which has a population of approximately 16,100 and falls within the most deprived 10% of LSOAs nationally. The Committee considered

that the level of deprivation would need to be taken into account when considering access to existing pharmacies in the area.

- 7.30 The Committee had regard to the map supplied by the Commissioner showing the location of the proposed site and nearby pharmacies and GP surgeries, which had not been disputed.
- 7.31 The nearest pharmacies are said to be located 0.3 miles and 0.8 miles away from the proposed site. The Applicant states that *"there are no pharmacies between the river and the south of Cruddas Park so if there are no replacement pharmaceutical services for the Boots Pharmacy when it closes, a patient living near the river, say at Essex Close, will have to walk 1 km or more to access pharmaceutical services. The walk is up a significant gradient which will also be a barrier to access for those who are unwell or have a disability."* However it is not clear whether the gradients are encountered between the river and the proposed site, or between the proposed site and the nearest pharmacy. The Committee also noted comments from Community Pharmacy – North East that the route from the proposed site to the nearest pharmacy takes *"7 minutes when walking, along a route with moderate hills, pedestrian crossings and good street lighting being an urban area."* The Committee saw no reason to conclude that for those who are reasonably fit and able, they were currently experiencing any difficulties accessing the existing pharmacies on foot. However the Committee was mindful of the HWB's comment regarding high rates of disability in Elswick and therefore went on to consider access by other means.
- 7.32 The Applicant states that *"According to the MLSOA, almost 60% of the local households do not have a car or van, which is well over double the national average of 23.5%".* The Committee noted that there is no dispute on this matter and accepted that there is clearly a low level of car ownership in the area. This could be due to choice or affordability. For those with access to a car, the Committee saw no difficulties identified with regard to accessing the existing pharmacies. For those without access to private transport, the Committee went on to consider access by public transport.
- 7.33 Beyond conflicting statements that *"there are buses available"* and *"that there is poor access to public transport"*, the Committee noted that there was very little information with regard to the bus services available for those wishing to access existing pharmacies. The Applicant states that *"for a person leaving from Essex Close (NE4 7DS), a location to the south of the proposed site, the route to Cockerton Pharmacy without walking on a Saturday morning between 9am and 9:30am would be at least a round trip of nearly an hour and a change of buses. Alternatively, the shortest time by public transport on Saturday morning would be a round trip of 44 mins which would involve a 14 minute walk."* However the Committee noted that no information had been provided with regard to accessing Cockerton Pharmacy on other days of the week, or from other starting points. Further no information had been provided regarding access to other pharmacies in the area, particularly the nearest pharmacy. The Applicant states that *"The cost of the journey will vary depending on age but the adult day fare for a plus bus ticket which gives travel across all Newcastle providers is £4.60 which may be a barrier for access to those who are living in a deprived neighbourhood."* However the Committee had not been provided with any information to show that bus fares are so expensive so as to inhibit their use by persons in the area to access existing pharmaceutical services. Therefore, the Committee was of the view that for those reliant on public transport there was no information provided to show that patients were currently experiencing any difficulties in accessing the existing pharmaceutical provision.
- 7.34 The Applicant is proposing to provide 46 ½ core opening hours a week, which includes opening on Saturday morning from 9am – 1pm. The Committee had regard to Schedule 4, Part 3 of the Regulations which states:

Pharmacy opening hours: general

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

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

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

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

7.36 The Applicant contends that *“the closest pharmacy closes at 6pm on a Friday and then is closed for the weekend. The next closest pharmacy, Cockerton Pharmacy, is further to the north and therefore a greater distance away from the proposed site at 0.8 of a mile.”* However the Committee was mindful of its considerations above regarding physical access to the existing pharmacies and further, that no information had been provided to support a finding that pharmaceutical services are not currently provided at such times as needed.

7.37 The Committee noted the Applicant has provided a copy of a report from the HWB, which appears to support an application in Cruddas Park. The report states that *“had this pharmacy not been open when the current PNA was published, it would have been likely to have resulted in a gap in pharmaceutical services.”* The Committee was mindful however that despite the recommendations made, they were not subsequently reflected in the relevant supplementary statement.

7.38 Based on its conclusions above, the Committee was of the view that there is already reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB, such that it was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits on persons.

7.39 In considering Regulation 18(2)(b)(ii) the Committee reminded itself that it was required to address itself to people who share a protected characteristic under the Equality Act 2010 (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation) having access to services that meet specific needs for pharmaceutical services that, in the relevant area, are difficult for them to access. The Committee noted the Applicant's comments that *“there likely to be a high level of health needs in the area, including a need for substance misuse services, services specifically for women and for people who share the protected characteristic of disability. The location is also adjacent to Newcastle College, Rye Hill Campus. There will be a group of young students who may have specific needs for pharmaceutical services that they will find difficult to access elsewhere. The area also houses a number of refugees and asylum seekers, who may have a high need of accessible healthcare advice which they have difficulty accessing elsewhere.”* However, the Committee considered that the information regarding those who share a protected characteristic and the pharmaceutical services they needed was limited. There was little or no evidence of specific pharmaceutical needs beyond the general presumption that women, young students and those with a disability for example ‘may’ need more services. The issue of access and choice as might apply to these persons was dealt with in the assessment of reasonable access discussed above and the Committee was mindful that there are always people in an area who share a protected characteristic.

7.40 The Committee was therefore not satisfied that, having regard to the desirability of people who share a protected characteristic having access to services that meet

specific needs for pharmaceutical services that are difficult for them to access, granting the application would confer significant benefits on persons.

- 7.41 In considering Regulation 18(2)(b)(iii) the Committee had regard to the desirability of innovative approaches to the delivery of pharmaceutical services. In doing so, the Committee would consider whether there was something more over and above the usual delivery of pharmaceutical services that might be expected from all pharmacies, some 'added value' on offer at the location. The Committee noted that no information had been provided in this regard and was therefore not satisfied that, having regard to the desirability of there being innovative approaches taken with regard to the deliverability of pharmaceutical services, granting the application would confer significant benefits on persons.

Regulation 18(2)(b) generally

- 7.42 The Committee has considered whether there are any other factors that would confer significant benefits including on patients who share protected characteristics. The Committee had regard to the need to eliminate discrimination and advance equality of opportunity and foster good relations between these patients and those who do not share their protected characteristics.
- 7.43 The Committee was of the view that in accordance with Regulation 18(2)(b) the granting of this application would not confer significant benefits on persons in the area of the HWB which were not foreseen when the PNA was published.

Other considerations

- 7.44 Having determined that Regulation 18(2)(b) had not been satisfied, the Committee did not need to have regard to Regulation 18(2)(c) to (e).
- 7.45 No deferral or refusal under Regulation 18(2)(f) was required in this case.
- 7.46 The Committee had regard to Regulation 18(2)(g) and found no reason that would require it to refuse the application.
- 7.47 The Committee considered whether there were any further factors to be taken into account and concluded that there were not.
- 7.48 The Committee was not satisfied that the information provided demonstrates that there is difficulty in accessing current pharmaceutical services such that a pharmacy at the proposed site would provide better access to pharmaceutical services.
- 7.49 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 7.49.1 confirm the Commissioner's decision;
 - 7.49.2 quash the Commissioner's decision and redetermine the application;
 - 7.49.3 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.
- 7.50 Given the ambiguity regarding the Commissioner's decision in respect of Regulation 18(2)(a)(i), the different decision reached by the Committee regarding Regulation 18(2)(a)(ii) and the lack of reasoning provided in the Commissioner's decision report, the Committee determined that the decision of the Commissioner must be quashed.
- 7.51 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.

- 7.52 The Committee noted that representations on Regulation 18 had been sought from parties by the Commissioner and representations had already been made by parties to the Commissioner in response. These had been circulated and seen by all parties as part of the processing of the application by the Commissioner. The Committee further noted that when the appeal was circulated representations had been sought from parties on Regulation 18.
- 7.53 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 considered whether the granting of the application would cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area covered by the HWB, or the arrangements in place for the provision of pharmaceutical services in that area and is not satisfied that it would;
- 8.4 The Committee determined that the application should be refused on the following basis:
- 8.4.1 In considering whether the granting of the application would confer significant benefits, the Committee determined that –
- 8.4.1.1 there is already a reasonable choice with regard to obtaining pharmaceutical services;
- 8.4.1.2 there is no evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services; and
- 8.4.1.3 there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services;
- 8.4.2 Having taken these matters into account, the Committee is not satisfied that granting the application would confer significant benefits as outlined above that would secure improvements or better access to pharmaceutical services.

**Technical Case Manager
Primary Care Appeals**