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18 December 2024

REF: SHA/26336

APPEAL AGAINST NORTH EAST AND NORTH CUMBRIA ICB DECISION TO REFUSE AN APPLICATION BY ALNWICK HEALTHCARE LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 IN THE AREA COVERED BY FENKLE STREET, BONDGATE WITHIN, NARROWGATE, CLAYPORT STREET & MARKET PLACE, ALNWICK NE66 1XX (BEST ESTIMATE)

1 Outcome

1.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of the Commissioner and redetermines the application.

1.2 The Committee determined that the application should be refused.

A copy of this decision is being sent to:

Alnwick Healthcare Ltd (the Applicant)
North East and North Cumbria ICB
Boots UK Ltd
Community Pharmacy North East - North

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1 The Application

By application dated 10 November 2023, Alnwick Healthcare 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 in the area covered by Fenkle Street, Bondgate within, Narrowgate, Clayport Street & Market Place, NE66 1XX (best estimate). In support of the application it was stated:

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

1.2 This is a new application and not related to an existing provider.

1.3 **Information in support of the application**

1.4 Please describe the unforeseen benefit(s) that you are offering to secure and how it will secure improvements or better access to pharmaceutical services, or pharmaceutical services of a specified type in the HWB's area.

1.5 Application due to unforeseen benefit – supporting document.

1.6 The recently published Northumberland PNA touches briefly on future need but offers no solution or plan to meet these increased demands on the existing Community Pharmacy service provision.

1.7 Alnwick is a major market town located in the North locality of Northumberland and at the 2021 census has a population of 10,319 served by two pharmacies and one GP surgery. Until 2019 the town had three pharmacies but Boots was allowed to consolidate two branches subject to certain conditions agreed by the local Health and Well Being Board. By comparison Berwick is also a major market town located in the North locality of Northumberland with a population of 11,671 at the 2021 census yet has three pharmacies located in the town centre with two additional pharmacies located on the outskirts of the town including a 100 hour supermarket based pharmacy. Both towns are subject to substantial visitor population increases during the tourist season both as day visitors and those residing in holiday homes and caravan parks.

1.8 The 2021 census shows that the largest population age group in the North East is 55 - 59yrs compared to the 2011 census when the 45-49yrs was the largest age group.

1.9 The 2021 census also shows a 28.9% increase in population of Northumberland who are over 65yrs which is higher than the national figure of 20.1%. These aging statistics are reflected in the Northumberland Local Plan published in March 2022 which predicts

a significant acceleration in the ageing of Northumberland's population profile. Between 2016 and 2036 there is projected to be a significant increase in older age groups – 43.8% increase in over 65yrs, 100% increase in over 80yrs and 161.1% increase in over 90yrs. The draft PNA received a number of responses during its consultation period one of which was - A local councillor felt that the document did not consider future forecasted needs of an increasingly aging population, especially in rural communities with reduced or non-existent public transport options. Limited IT skills and poor broadband connectivity also disadvantage aging rural communities. The PNA acknowledges 'As the population ages the proportion of people with a disability is also likely to increase creating additional demands for service provision. In a rural county like Northumberland, provision of these services will be difficult and costly due to the rural nature of the County' though no possible solution or plan is offered for these increased demands.

1.10 The PNA notes that Alnwick Medical Group has started a public consultation regarding the closure of their branch surgery in Longhoughton which historically has dispensed for patients living in this location. Longhoughton has a population of 4327 at the 2021 census – this is a drop of nearly 1% since 2011 most likely due to the scaling down of Boulmer RAF base. The closure of the branch surgery will require the relocation of the dispensing patient list to the main surgery in Alnwick and though potentially there will be a delivery service to some dispensing patients many patients may remove themselves from the dispensing list and opt to use Pharmacy services in Alnwick so increasing demand on existing services providers. This change in patient behaviour is shown by a similar closure of the Gables Medical Practice branch surgery in Cambois in August 2021. Though the dispensing list was transferred to the main Bedlington Station Gables Surgery the Community Pharmacy nearest Cambois experienced a three fold uplift in its market share of prescriptions from The Gables Surgery possibly indicating patients chose to use more convenient Community Pharmacy service.

1.11 Existing Community Pharmacy services are already stretched in Alnwick and a number of patient group organisations including Healthwatch Northumberland have received complaints where a pharmacy did not have a pharmacist available during the lunch hour. This led to problems for patients who may be restricted by bus times or their own working hours. An article published in the Northumberland Gazette in October 2022 quoted Councillor Gordon Castle saying 'queues for pharmacy and GP services in Alnwick were so bad that residents would sometimes find the medicines they needed were unavailable by the time they reached the front.'

1.12 Though 'locally commissioned services' from pharmacies do not fall within the legal definition of pharmaceutical services, HWBs are asked to make reference to them in their PNAs as 'other NHS services'. These services are all designed to improve access to services for patients, while relieving pressure from other areas of the NHS.

1.13 Neither pharmacy in Alnwick currently offers the COVID-19 vaccination service or are listed on Pharmacy Services North East (PSNE) as contracted for the Nitrofurantoin service for urinary tract infections (UTI) via a patient group directive. The Autumn 2023 COVID Booster campaign opened up the service provision to all community pharmacies yet neither Alnwick pharmacy applied to provide the service.

1.14 The PNA acknowledges that Cramlington may have a future need for essential and additional pharmacy services, as the population expands as a new housing development is under construction at the site next to NSECH, with 192 houses expected to be delivered by 2023. The PNA also acknowledges that Alnwick has seen the development of about 250 homes over the last 5 years, with a further 250 projected within the next 3 years. This is a significant increase in a relatively isolated community though there is not comment of the future need for Pharmacy services in this location. Though the North locality has 17 pharmacies for a population of 73,000 and so it would appear to have a high ratio what has to be considered is that 8 pharmacies each serve isolated, contained rural communities – Rothbury, Belford, Wooler, Seahouses, Shilbottle, Widdrington, Hadston and Lynemouth and this will drastically reduce the true

ratio of pharmacies to population. The measure of the ratio of Pharmacies to population could be considered an outdated means of calculating need as it does not take into consideration a number of factors such as population demographics and accessibility. If we consider the figures published in the neighbouring PNA's of North Tyneside and Newcastle it can be seen that both have similar ratio of Pharmacies to population in much smaller geographical areas with greater public transport links. The North Tyneside PNA acknowledges 'this relative surfeit of community pharmacies gives additional patient choice and capacity to provide services to the growing elderly and young population' and Newcastle PNA highlights that Newcastle has the lowest proportion of people aged 65yrs and over in the North East region – 14.3%. Though Newcastle and Northumberland have similar population sizes in Northumberland 700,000 more prescriptions were dispensed in 2020/21 highlighting the greater aged population. The direction of travel of both NHSE and the local ICB is to signpost patients away from traditional GP and local Secondary Care Services such as the minor injuries unit at Alnwick Infirmary to alternate providers such as Community Pharmacy, for this signposting to be effective there has to be sufficient providers of Enhanced Services such as the National Flu service, UTI service and any future commissioned service. There have been 10 closures of GP practices in Northumberland since 2013 and current workforce pressures could result in more closures and mergers again increasing demand for alternate providers.

1.15 Changes to the GP extended hours contract beginning 1st October 2022, mean that pharmacy services may need to realign with the requirements of the new GP enhanced service. As a result of this change Alnwick Medical Group has an extended surgery finishing at 7.30pm on a Monday night. Detailed in this application is supplementary hours offering Pharmacy services until 8.00pm, the use of supplementary rather than core hours means that any change by the surgery can be accommodated.

1.16 Overall this application is offering unforeseen benefit by meeting future demands in the Alnwick location created by an ageing population, increased house building, providing a wider range of commissioned services, aligning with the GP extended hours contract.

1.17 Please explain how you intend to secure the unforeseen benefit(s).

1.18 Application due to unforeseen benefit – supporting document."

1.19 [Repeat paragraphs 1.6 to 1.16 as above.]

2 The Decision

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

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

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

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

Decision Rationale

2.4 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:

2.5 **Regulations 18(2)(a)(i) –** 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.

2.6 **Regulations 18(2)(a)(ii) –** it is reasonable to assume that the consolidation 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.

2.7 **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 recommendation to members of the 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 not met and the application must be refused · **Regulations 18(1) –** is not met as the Applicant has failed to identify an unforeseen benefit.

2.8 **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.

2.9 **Regulation 18(3)** – is met. The PSRC was not satisfied with regard to paragraph (2)(b) so there was no need to consider paragraphs 2(c) to (e).

2.10 **Regulations also considered by PSRC but deemed not to be applicable to this application.**

2.11 The following Regulations were also considered by PSRC but were deemed not to be relevant to this application:

2.11.1 Regulation 18(2)(c-f)

2.11.2 Regulations 19(1)(2)(3)(4)

2.11.3 Regulation 31

2.11.4 Regulation 32

2.11.5 Regulations 40- 44

2.11.6 Regulation 50

2.11.7 Regulation 65

2.11.8 Regulation 66

2.11.9 Paragraph 31, schedule 2

2.12 **Appeal rights:** only the Applicant."

3 **The Appeal**

In a letter dated 25 September 2024 addressed to NHS Resolution, the Applicant appealed against the Commissioner's decision. The grounds of appeal are:

3.1 "We submitted the above Pharmacy Application and wish to appeal the decision issued on the 5th September 2024.

3.2 With regards to the decision:-

3.3 The decision state **"Regulations 18(2)(a)(i) –** 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"

3.4 The last PNA was published in September 2022 and could not foresee the introduction of new community pharmacy services which aid the primary care recovery plan which helps patients to access care. Any changes will now not be considered until the consultation for the next PNA in 2025.

3.5 At the time of consultation for the 2022 PNA a local councillor felt that the document did not consider future forecasted needs of an increasingly aging population, especially in rural communities with reduced or non-existent public transport options. Limited IT skills and poor broadband connectivity also disadvantage aging rural communities.

3.6 One respondent also felt that the document needed more emphasis on the provision of clinical services by pharmacists.

3.7 Pharmacy services not included in the document included

3.7.1 Walk in emergency supply.

3.7.2 The expanded Think Pharmacy First service available to a wider population.

3.7.3 Nitrofurantoin service for urinary tract infections via a patient group direction.

3.7.4 Provision of COVID vaccination.

3.7.5 Oral Contraceptive services.

3.7.6 Hypertension finding.

3.8 The decision states **"Regulations 18(2)(a)(ii) –** it is reasonable to assume that the consolidation of a Pharmacy in this location was due to it not being financially viable.

3.9 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"

3.10 The PSRC are not privy to the financial workings of any Pharmacy and this statement is incorrect. The closure of Boots branches across the UK form part of the company's 'Transformational Cost Management Program', which was a business decision aimed

at making existing branches more profitable. This business decision closed more than 300 branches in locations were Boots had multiple representation regardless of the impact on services to patients. Consequently, it cannot be assumed that the granting of this application may cause significant detriment by destabilising viability of existing local services.

3.11 The decision states "**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 recommendation to members of the 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 not met and the application must be refused"

3.12 The Equality Act defines 7 main protected characteristics including age and disability. The 2022 PNA acknowledges "as the population ages the proportion of people with a disability is also likely to increase creating additional demands for service provision. In a rural county like Northumberland, provision of these services will be difficult and costly due to the rural nature of the county" though no possible solution or plan is offered for these increased demands.

3.13 In his recent review "Independent Review of the NHS", Lord Darzi highlighted the accessibility of community pharmacy as 'one of the great strengths of the health service in England'. However, he suggested that 'on current trajectory, community pharmacy will face similar access problems to general practice, with too few resources in the places where it is needed most'. In response, community pharmacy leaders called for urgent action to 'stop the rot' of pharmacy closures and to invest in the sector. Published sept 2024 - An analysis by the National Pharmacy Association found pharmacy closures have disproportionately affected deprived and rural areas. It warned people in these areas will now have to "travel longer and longer distances to get hold of the medication they need". This is highlighted with the launch of the Autumn 2024 COVID vaccination service where the nearest Pharmacy service provider to Alnwick is Pegswood, a distance of 16.4 miles from Alnwick. Patients are unable to access this service from either of the two pharmacies in the centre of Alnwick. This situation could be replicated by future services. Only essential services can be enforced as part of the Pharmacy contract. And it is only essential services which are considered in the PNA.

3.14 Community Pharmacy England, in their submissions to the Lord Darzi and the NHS review analysed closures in England and the data demonstrates that most closures disproportionally affect the most vulnerable and worsening inequalities.

3.15 See Graph – Percentage of community pharmacies closed in IMD decile Oct 2016 to May 2024 [Appendix A for Committee]

3.16 County Council recognises that Alnwick and the surrounding area needs more pharmacy provision. The statistics mentioned in our application demonstrate the lower number of pharmacies per population in Alnwick compared to other parts of Northumberland.

3.17 The decision states **"Regulations 18(1) –** is not met as the Applicant has failed to identify an unforeseen benefit."

3.18 This is incorrect as the decision is based on the PNA from 2022 which did not have a wide enough scope to anticipate changes in population age, increases in population due to increased house building and new pharmacy services.

3.19 The decision states "**Regulation 18(2)(g) –** is not met and therefore **Regulation 19(5)** is met and the application must be refused"

3.20 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.

3.21 We strongly believe that our application aligns with your goals of improving healthcare accessibility. We are confident that our application meets all necessary regulations and would urge you to reconsider the decision. A visit to the area will clearly demonstrate the need for our pharmacy. By approving our application, you will be making a positive impact on the lives of Alnwick residents, particularly for those with protected characteristics. The pharmacy would benefit the community, and we ask that the decision is overturned, and our application accepted."

4 Summary of Representations

This is a summary of representations received on the appeal.

4.1 BOOTS UK LIMITED

4.1.1 "Thank you for your letter dated 8 October 2024 informing us of the above appeal.

4.1.2 We stand by our comments submitted to the ICB, a copy of which is enclosed.

4.1.3 In addition, our pharmacy has recently been visited by a public health pharmacist who was reassured that our consolidation hadn't had a negative effect on patients and was happy with the pharmaceutical provision in Alnwick.

4.1.4 We therefore request that NHS Resolution dismiss this appeal.

4.1.5 Please be aware that Boots UK Ltd may wish to attend any Oral Hearing that may be required in connection with this application."

Boots UK Limited letter to the Commissioner dated 8 May 2024

4.1.6 "Thank you for your letter dated 25 March 2024 regarding the application as stated above.

4.1.7 Boots UK Limited have the following comments to make.

4.1.8 Whilst we accept that the applications are based on benefits not foreseen when drafting the Pharmaceutical Needs Assessment (PNA), the application seems to be based on the previous closure of the Boots pharmacy that was granted as part of a consolidation application back in 2019. The consolidation application was granted under the previous PNA, but we do not believe that there have been any significant changes in the area that would have any impact on the current provision. As the ICB will be aware, a consolidation application must only be granted if the Health and Wellbeing board do not believe that the merging of two contracts (consolidation) would not leave a gap in pharmaceutical provision or a loss of service to patients.

4.1.9 As the ICB will be aware, the closure of any pharmacy within an area does not automatically create a gap and should a gap have arisen since the consolidation of the Boots pharmacies, then we would have expected the PNA to have been updated to reflect this. To our knowledge no changes have been made within the current PNA or any supplementary statements produced. The recent PNA for Northumberland dated 2023 does not identify any gaps since the closure of the Boots pharmacy and therefore we believe that it is agreed that the current provision in Alnwick is still adequate and that the Health and Wellbeing board recognise that the existing network of pharmacies can cope with the current and predicted increase in demand should one arise.

4.1.10 As well as the Boots in Alnwick, there is also a Well pharmacy and between the two, patients have access to pharmaceutical services 7 days a week and from 8.30am until 6pm Monday to Friday. We have implemented many changes to be able to manage any increase in demand for services, be it from local patients or visitors to the area in peak season. We utilise a Dispensing Support Pharmacy where repeat prescriptions can be dispensed off site and returned to the pharmacy for patients to collect. Changing our operating platform to a Hub and Spoke type model, allows us not only to increase the capacity for these prescriptions by up to 50% but also allows our healthcare colleagues and pharmacist to be able to continue to offer support to patients without compromising service. Freeing up the pharmacist at certain times, allows them to be able to offer additional services on top of those we currently provide. We are always looking at providing new services and work closely with the commissioners.

4.1.11 At our pharmacy in Alnwick, we have a full-time regular pharmacist offering continuity for our patients. We have overstaffed the store to support the fluctuation in the number of customers and patients who access our pharmacy.

4.1.12 The Boots pharmacy does close at lunch time, 12.30-1.30pm. We manage patients during the time when the pharmacist is not available and local patients are accustomed to this now. We are looking into sending texts to patients to inform them when their prescription is ready upon the pharmacists return after lunch.

4.1.13 Boots UK are always happy to discuss opening hours with the ICB should there be a need to increase or change them, along with any other ways we can support changes and patient needs.

4.1.14 We believe that there are still pharmacies within the locality that are accessible for patients, and which will continue to offer choice in provider, services, and opening hours. The applicant refers to other towns and locations within Northumberland and population sizes and number of pharmacies. We do not have to remind the ICB that all applications and locations should be looked at individually and not in comparison to another. Some locations may of course have over provision and 100-hour contracts were granted as they were excepted applications in The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2005 whether there was a need for further provision or not. You cannot compare different Health and Wellbeing boards and the PNAs produced for each one. The PNA is a document produced for each HWB and identifies the needs for their locality based on consultation and fact. We return to the point that the Northumberland PNA has NOT identified any gaps in provision.

4.1.15 Because a gap is not identified it does not mean that certain criteria was not considered when the PNA was produced and published. For example, new housing and population increases have been highlighted and this was clearly not deemed a factor that resulted in the need for a new pharmacy.

4.1.16 The applicant makes reference to the opening hours at the Alnwick Medical Group and the extension of their surgery until 7.30pm. They have stated within their application that they are offering to open until 8pm in response to this, but we are all aware that supplementary hours can be reduced with 5 weeks' notice, and it is also of note that the applicant is not offering opening hours on a Saturday afternoon or Sunday.

4.1.17 The applicants have not identified any specific patient groups that may wish to access a pharmacy at the proposed locations and that currently have expressed difficulty in accessing services in the area. There is mention of certain patient group organisations receiving complaints, but there is no

evidence of these within the application or what these complaints were. Any complaints regarding our service would be dealt with and actioned accordingly if we have been made aware of them.

4.1.18 We do not believe that the applicants are offering to secure any innovation by way of services or delivery.

4.1.19 For these reasons we respectfully urge the ICB to refuse these applications.

4.1.20 Please be aware that we may wish to make further representations at a later stage and attend any oral hearings that may be held in relation to the applications. We would therefore be most grateful if you could keep us informed of the progress of the applications in due course."

4.2 COMMUNITY PHARMACY NORTH EAST - NORTH

4.2.1 "Thank you for your letter and enclosures of 8th October 2024.

4.2.2 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.

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

4.2.4 The application is made under regulation 18 to offer an unforeseen benefit, which is the correct regulation. Following the consolidation of the Boots pharmacies at 50-52 Bondgate Within and 10 Paikes Street, Northumberland Health and Wellbeing Board did not issue a supplementary statement indicating that this would cause a gap in Alnwick. It is now six years since the consolidation and no gap has been identified in subsequent pharmaceutical needs assessments. The application must therefore demonstrate that it meets the regulatory requirements for an unforeseen benefit.

4.2.4.1 (a) Given there has been no gap identified, approving this application could have a significant detrimental effect on the proper planning and provision of pharmaceutical services in the area. A new applicant coming to the market at this time of significant pressure on the financial viability of community pharmacies could destabilise the current pharmacies providing services to the population of Alnwick.

4.2.4.2 (b)(i) There is already a choice of pharmacy providers within Alnwick with an additional pharmacy located in Shilbottle at a distance of 3.5 miles which offers a delivery service into Alnwick for dispensed medication. Whilst the applicant has included opening hours until 8pm on Mondays to accommodate the extended access to GP services, these are supplementary hours which can be withdrawn at any time, having provided 5 weeks' notice. No indication has been made to date that pharmaceutical services are needed to cover this GP extended access. Given the precarious position of community pharmacy funding, a commissioned rota to provide this extended access is preferable to an additional community pharmacy which could destabilise the current pharmacies leading to closures which would not increase patient choice.

4.2.4.3 (ii) No patient groups have been identified in the application but as the proposed location is within the town centre and close to the current Boots pharmacy, this is unlikely to improve access for any disadvantaged patient group defined by age, mobility, disability or access to public transport. The appellant will serve the same

population as current pharmacies having no impact on rural communities with reduced or non-existent public transport options, referenced by the appellant.

4.2.4.4 (iii) There is no innovation within the application which would distinguish this application from services provided by the current pharmacies.

4.2.5 Whilst the applicant has commented upon pharmaceutical services not being available during the lunch period, the Boots pharmacy remains open, providing access to GSL medication and advice. The Well pharmacy is open throughout the day so pharmaceutical services are available throughout the day. All members of the pharmacy team, including the pharmacist, are entitled to a lunch break which improves patient safety, reducing errors occurring due to fatigue. Should Well choose to close at lunchtime, this can be arranged with the Boots pharmacy so the pharmacies are closed for different periods of time.

4.2.6 The appellant refers to pharmacy services which are not included in the 2022 pharmaceutical needs assessment but those listed are advanced or locally commissioned services, not pharmaceutical services for the purposes of the regulations. The two locally commissioned services, walk-in emergency supply and nitrofurantoin for urinary tract infections have been decommissioned, the latter because it is now included in Pharmacy First.

4.2.7 If the Appeals Authority [sic] 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 full stated opening hours as per the application."

5 Observations

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

6 Consideration

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

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

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

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

Regulation 31

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

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

(2) This paragraph applies where -

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

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

(ii) adjacent premises; and

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

6.6 The Applicant, in its application stated "*this is a new application and not related to an existing provider*." The Commissioner, in its decision, noted that Regulation 31 had been considered but was deemed "*not to be relevant to this application*." The Committee noted the site of the best estimate as provided on the map from the Commissioner. The Committee was of the view that this criteria was not met as the Applicant was not proposing to provide pharmaceutical services in adjacent premises and the application is on the basis of a best estimate location.

6.7 The Committee was therefore not required to refuse the application under the provisions of Regulation 31.

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

Regulation 18

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

"(1) If—

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

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

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

(2) Those matters are—

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

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

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

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

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

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

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

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

(c) whether it is satisfied that it would be desirable to consider, at the same time as the applicant's application, applications from other persons offering to secure the improvements or better access that the applicant is offering to secure;

(d) whether it is satisfied that another application offering to secure the improvements or better access has been submitted to it, and it would be desirable to consider, at the same time as the applicant's application, that other application;

(e) whether it is satisfied that an appeal relating to another application offering to secure the improvements or better access is pending, and it would be desirable to await the outcome of that appeal before considering the applicant's application;

(f) whether the application needs to be deferred or refused by virtue of any provision of Part 5 to 7.

(g) whether it is satisfied that the application presupposes that a gap in pharmaceutical services provision has been or is to be created—

(i) by the removal of chemist premises from a pharmaceutical list as a consequence of the grant of a consolidation application, and

(ii) since the last revision of the relevant HWB's pharmaceutical needs assessment other than by way of a supplementary statement.

(3) NHS England need only consider whether it is satisfied in accordance with paragraphs (2)(c) to (e) if it has reached at least a preliminary view (although this may change) that it is satisfied in accordance with paragraph (2)(b)."

6.10 The Committee considered that Regulation 18(1)(a) was satisfied in that it was required to determine whether it was satisfied that granting the application, or granting it in respect of some only of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB.

6.11 The Committee went on to consider whether Regulation 18(1)(b) was satisfied, i.e. whether the improvements or better access that would be secured if the application was granted were or was included in the Pharmaceutical Needs Assessment ("the PNA") in accordance with paragraph 4 of Schedule 1 of the Regulations.

6.12 Paragraph 4 of Schedule 1 requires the PNA to include: "a *statement of the pharmaceutical services that the HWB had identified (if it has) as services that are not provided in the area of the HWB but which the HWB is satisfied (a)* ***would*** *if they were provided….secure improvements or better access, to pharmaceutical services… (b)* ***would*** *if in specified future circumstances they were provided…secure future improvements or better access to pharmaceutical services…"* (emphasis added).

6.13 The Committee considered the PNA prepared by Northumberland 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 2023 and that no supplementary statements had been issued.

6.14 The PNA, in its Executive Summary on page 1 states:

6.14.1 "*The most deprived communities are in Blyth Valley and Wansbeck, although there are pockets elsewhere particularly in Berwick, Haltwhistle, Alnwick and Amble*."

6.15 Under the heading Demographics, the PNA refers specifically to Alnwick, stating:

6.15.1 "*Alnwick is a small market town which has seen a significant increase in new home completions over the last 5 years, with even more planned over the next 5 years. In the past Alnwick has attracted retirees from more affluent parts of the country, which may result in extra demands on health services as they age and become less able. This will add to the pressures already felt by the one medical practice in Alnwick*."

6.16 With regard to access to pharmacies in the North locality, the Committee noted references to:

6.16.1 Alnwick Medical Group's public consultation regarding its branch surgery at Longhoughton;

6.16.2 The pharmacy consolidation in Alnwick;

6.16.3 The development of 250 homes over the last five years and an expected further 250 homes over the next three years;

to which the Applicant has referred to in its application and appeal.

6.17 The PNA, on page 51 to page 52 states:

6.17.1 "*There are currently adequate pharmacy services in North locality, albeit that some services are dependent on supplementary hours*. …..

6.17.2 *If the supplementary Sunday trading hours of the pharmacy in Alnwick were lost, then this would lead to a gap in services in Alnwick*."

6.18 The PNA, on page 76 under the heading Conclusions states:

6.18.1 "*Loss of supplementary hours especially in Morpeth, Alnwick and smaller towns across Northumberland could lead to a gap in services*."

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

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

Regulation 18(2)(a)(i)

6.21 The Committee had regard to

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

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

6.22 The Committee noted Community Pharmacy North East – North, in its representations, stated "*Given there has been no gap identified, approving this application could have a significant detrimental effect on the proper planning and provision of pharmaceutical services in the area. A new applicant coming to the market at this time of significant pressure on the financial viability of community pharmacies could destabilise the current pharmacies providing services to the population of Alnwick*." The Commissioner stated "*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*." Boots UK Ltd, in its representations had stated "*In addition, our pharmacy has recently been visited by a public health pharmacist who was reassured that our consolidation hadn't had a negative effect on patients and was happy with the pharmaceutical provision in Alnwick.*"

6.23 The Committee was confused by the Commissioner's statement in that if there is no pharmaceutical plan in place how could granting a new pharmacy cause significant detriment to proper planning. The Committee was of the view that refusing the application under Regulation 19(5) was not the correct approach.

6.24 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.

Regulation 18(2)(a)(ii)

6.25 The Committee had regard to

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

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

6.26 The Committee noted the Commissioner, in its decision, had stated in relation to Regulation 18(2)(a)(ii) "*it is reasonable to assume that the consolidation 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*." The Committee was also mindful of Community Pharmacy North East - North and Boots UK Ltd representations as quoted at paragraph 6.22 above.

6.27 The Committee considered the Commissioner's approach. Regulation 18(2)(a)(ii) is listed in the Regulations prior to Regulation 18(2)(b) and Regulation 19(5) is clear that if the decision maker is satisfied as set out in Regulation 18(2)(a), the application must be refused.

6.28 The Committee also considered that if the Commissioner was satisfied as to Regulation 18(2)(a)(i) and (ii) then Regulation 19(5) applies to refuse the application regardless of the position in relation to significant benefits under Regulation 18(2)(b). Further, that this suggested a consideration of Regulation 18(2)(b) would not affect the outcome of the determination of the application.

6.29 The Committee considered that Regulation 18(2)(a)(ii) relates to significant detriment to arrangements in place for the provision of pharmaceutical services if the application is granted. The reference to "arrangements in place for provision of pharmaceutical services" is very broad in scope. It is not limited to detriment to a particular person, class of person, patient, patient group or provider of pharmaceutical services whether this is a dispensing practice or community pharmacy.

6.30 The Committee therefore concluded that a finding that granting the application would cause significant detriment to arrangements in place for the provision of pharmaceutical services can only be achieved after a consideration of all the consequences of granting the application, both positive and negative, benefits and detriment, provided that these consequences were all linked to the broad concept of arrangements in place for the provision of pharmaceutical services.

6.31 The Committee noted the Commissioner had considered Regulation 18(2)(b) in that it stated "*It is the recommendation to members of the 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*."

6.32 The Committee considers therefore that the Commissioner needed to have regard to Regulation 18(2)(b) when considering what benefits granting the application may produce. If any benefits are identified, significant or otherwise, and whether one of the three types of benefits referred to in Regulation 18(2)(b)(i) to (iii) or otherwise, the benefits are then weighed against any detriment to arrive at a position on Regulation 18(2)(a)(ii).

6.33 For example, the Committee considered if the Commissioner considered that granting an application would lead to an existing pharmacy closing down, then without further information, there would be no significant detriment as existence of a new pharmacy replaces the closing of the existing pharmacy. The benefit and detriment are evened out.

6.34 If granting an application would lead to the closing of one pharmacy in one area and therefore reduce access to pharmaceutical services for persons in that area but granting the application would also lead to greater choice of pharmaceutical services for persons in the area where the new pharmacy would open, the Commissioner would need to weigh those factors and determine if, overall, there would be significant detriment.

6.35 The Committee considered that Regulation 18(1) provides support for this approach in that it requires the Commissioner to have regard to the matters in Regulation 18(2). There is no express wording stating that the Commissioner does not need to have regard to certain matters if it is satisfied with others. This is particularly noteworthy in light of Regulation 18(3) which does contain express wording indicating that certain elements of Regulation 18(2) do not need to be considered if the Commissioner has reached at least a preliminary view (although this may change) that it is satisfied in accordance with Regulation 18(2)(b).

6.36 Based upon the limited information provided by the Commissioner in this regard, which the Committee considered was based on conjecture, the Committee was therefore not satisfied that significant detriment to the arrangements currently in place for the provision of pharmaceutical services would result from a grant of the application.

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

Regulation 18(2)(b)

6.38 The Committee had regard to

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

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

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

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

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

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

6.39 The Committee noted the application was submitted in response to Northumberland Health and Wellbeing Board's PNA which is dated 2022 by "*offering unforeseen benefit by meeting future demands in the Alnwick location created by an ageing population, increased house building, providing a wider range of commissioned services, aligning with the GP extended hours contract*."

6.40 The Applicant has in its application stated that "*Boots was allowed to consolidate two branches*." The map and key provided by the Commissioner, which is undisputed shows there are two existing pharmacies currently in Alnwick, Boots and Well. The Applicant is proposing to open a pharmacy in the area covered by Fenkle Street, Bondgate within, Narrowgate, Clayport Street & Market Place, NE66 1XX (best estimate). The Committee noted Boots representations which have not been disputed stating: "*our pharmacy has recently been visited by a public health pharmacist who was reassured that our consolidation hadn't had a negative effect on patients and was happy with the pharmaceutical provision in Alnwick*." The Committee was mindful that a consolidation application must satisfy a number of criteria under Regulation 26A before it can be approved to ensure it would not cause a gap in pharmaceutical services provision. Therefore the Committee was of the view that the consolidation approval from 2019 had no bearing upon the need for another pharmacy in its place in 2024.

6.41 The Committee considered whether there is reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB. There are two pharmacies, Boots and Well, in Alnwick with another pharmacy, K-Chem Ltd situated in Shilbottle which are all shown on the undisputed map provided by the Commissioner. The Committee had not been provided with any information, such as, but not limited to, distances, terrain, footpaths, street lighting, car parking which would demonstrate that pharmaceutical users are currently experiencing any difficulties in accessing the existing pharmaceutical provision either on foot, or by private transport.

6.42 With regard to patients accessing existing pharmaceutical provision by public transport, the Applicant states "*Existing Community Pharmacy services are already stretched in Alnwick and a number of patient group organisations including Healthwatch Northumberland have received complaints where a pharmacy did not have a pharmacist available during the lunch hour. This led to problems for patients who may be restricted by bus times or their own working hours*." The Committee was of the view that the description "*patients who may be restricted* …." was limited to the Applicant's opinion rather than fact based. For example, the Committee was mindful that the Applicant had not provided any information in relation to the existing bus services or an indication of the numbers of existing services users that utilise public transport which would support a finding that those who chose to use public transport are currently experiencing any difficulties in accessing the existing pharmaceutical provision.

6.43 The Applicant has referred to the consultation by Alnwick Medical Group stating "*many patients may remove themselves from the dispensing list and opt to use Pharmacy services in Alnwick so increasing demand on existing services providers*." The Applicant indicates that this will increase patient use of community pharmacies. The Committee was of the view that the Applicant fell short of demonstrating that this cross-section of patients are currently experiencing any difficulties in accessing the existing pharmaceutical provision.

6.44 The Applicant states "*Existing Community Pharmacy services are already stretched in Alnwick and a number of patient group organisations including Healthwatch Northumberland have received complaints where a pharmacy did not have a pharmacist available during the lunch hour*." Boots, in its representations states "*As well as the Boots in Alnwick, there is also a Well pharmacy and between the two, patients have access to pharmaceutical services 7 days a week and from 8.30am until 6pm Monday to Friday. We have implemented many changes to be able to manage any increase in demand for services, be it from local patients or visitors to the area in peak season*. …… *Changing our operating platform to a Hub and Spoke type model, allows us not only to increase the capacity for these prescriptions by up to 50% but also allows our healthcare colleagues and pharmacist to be able to continue to offer support to patients without compromising service*." The Committee was of the view that no information had been provided to substantiate the Applicant's claim.

6.45 The Applicant has stated in its application "*Neither pharmacy in Alnwick currently offers the COVID-19 vaccination service or are listed on Pharmacy Services North East*

(PSNE) as contracted for the Nitrofurantoin service for urinary tract infections (UTI) via a patient group directive. The Autumn 2023 COVID Booster campaign opened up the service provision to all community pharmacies yet neither Alnwick pharmacy applied to provide the service." Further on appeal it lists several services at 3.7 above which it states are "*not included in the document"* [PNA]. Community Pharmacy North East - North, states that "*The* [Applicant] *refers to pharmacy services which are not included in the 2022 pharmaceutical needs assessment but those listed are advanced or locally commissioned services, not pharmaceutical services for the purposes of the regulations. The two locally commissioned services, walk-in emergency supply and nitrofurantoin for urinary tract infections have been decommissioned, the latter because it is now included in Pharmacy First*." The Committee was mindful that the criteria for Regulation 18 is with reference to Essential Services so it placed limited weight to advanced and locally commissioned services in this regard.

6.46 The Applicant refers to "*the development of about 250 homes over the last 5 years, with a further 250 projected within the next 3 years*." The Committee noted no information had been provided to indicate that the existing pharmaceutical providers were unable to cope with a potential addition of pharmacy service users created by the new housing developments.

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

6.48 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 Applicant, in its application refers to the PNA stating "*The PNA acknowledges 'As the population ages the proportion of people with a disability is also likely to increase creating additional demands for service provision. In a rural county like Northumberland, provision of these services will be difficult and costly due to the rural nature of the County' though no possible solution or plan is offered for these increased demands*." On appeal, the Applicant states "*The Equality Act defines 7 main protected characteristics including age and disability. The 2022 PNA acknowledges "as the population ages the proportion of people with a disability is also likely to increase creating additional demands for service provision. In a rural county like Northumberland, provision of these services will be difficult and costly due to the rural nature of the county" though no possible solution or plan is offered for these increased demands*." Boots UK Ltd in its representations states "*There is mention of certain patient group organisations receiving complaints, but there is no evidence of these within the application or what these complaints were*." Community Pharmacy, in its representations states "*No patient groups have been identified in the application but as the proposed location is within the town centre and close to the current Boots pharmacy, this is unlikely to improve access for any disadvantaged patient group defined by age, mobility, disability or access to public transport. The* [Applicant] *will serve the same population as current pharmacies having no impact on rural communities with reduced or non-existent public transport options, referenced by the* [Applicant]." The Committee was of the view that the Applicant had not provided any information, other than its opinion that there are patients who share a protected characteristic requiring pharmaceutical services. In short, beyond the generally broad reliance placed on age as supporting a conclusion that older people use more services and may be less mobile, no evidence to support a conclusion of specific needs or particular difficulties was presented.

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

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

6.50 In considering Regulation 18(2)(b)(iii) the Committee had regard to the desirability of innovative approaches to the delivery of pharmaceutical services. In doing so, the Committee would consider whether there was something more over and above the usual delivery of pharmaceutical services that might be expected from all pharmacies, some 'added value' on offer at the location.

6.51 The Applicant was not proposing any innovative approaches to the delivery of pharmaceutical services as part of its application. Therefore the Committee was not satisfied that, having regard to the desirability of there being innovative approaches taken with regard to the deliverability of pharmaceutical services, granting the application would confer significant benefits on persons.

Regulation 18(2)(b) generally

6.52 The Applicant is proposing to provide 40 core opening hours, Monday to Friday 09:00 to 12:00 and 13:00 to 17:30 and Saturday mornings 09:00 to 11:30. The Applicant had made reference to its supplementary hours being extended to 20:00 in line with Alnwick Medical Group which has an extended surgery finishing at 19:30 on a Monday night. The Applicant explains "*the use of supplementary rather than core hours means that any change by the surgery can be accommodated*." The Committee noted Boots UK Ltd comment, in its representations that "*we are all aware that supplementary hours can be reduced with 5 weeks' notice, and it is also of note that the applicant is not offering opening hours on a Saturday afternoon or Sunday*." The Committee noted the opening hours of the existing providers and was of the view that there was no information provided to support a finding that pharmaceutical services are not currently provided at such times as needed and therefore it was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits (in relation to opening hours) on persons.

6.53 The Applicant makes reference to the Independent Review of the NHS, particularly regarding access to community pharmacy. The Applicant states that "*Only essential services can be enforced as part of the Pharmacy contract. And it is only essential services which are considered in the PNA*." The Committee is mindful of the importance of this report but was of the view that the Applicant has fallen short of demonstrating that pharmaceutical services were not accessible in Alnwick. Further, the Commissioner has the power to direct existing pharmacies to provide additional services or hours if it so requires.

6.54 The Applicant has compared population numbers in neighbouring PNAs. The Applicant is of the view that "*The statistics mentioned in our application demonstrate the lower number of pharmacies per population in Alnwick compared to other parts of Northumberland*." However the Committee was of the view that such a comparison is impractical and defeats the object of individual Health and Wellbeing Boards producing individual PNAs for their own areas.

6.55 The Committee commends the Applicant's belief in the "*goals of improving healthcare accessibility."* However the Committee was of the view that this application falls short of meeting the criteria as required under Regulation 18.

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

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

Other considerations

6.58 Having determined that Regulation 18(2)(b) had not been satisfied, the Committee did not need to have regard to Regulation 18(2)(c) to (e).

6.59 No deferral or refusal under Regulation 18(2)(f) was required in this case.

6.60 The Committee had regard to Regulation 18(2)(g) and found no reason that would require it to refuse the application.

6.61 The Committee considered whether there were any further factors to be taken into account and concluded that there were not.

6.62 The Committee was not satisfied that the information provided demonstrates that there is difficulty in accessing current pharmaceutical services such that a pharmacy at the proposed site would provide better access to pharmaceutical services.

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

6.63.1 confirm the Commissioner's decision;

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

6.63.3 quash the Commissioner's decision and, if it considers that there should be a further notification to the parties to make representations, remit the matter to the Commissioner.

6.64 As the Commissioner did not provide any reasons with regard to Regulation 31 and the decision was limited with regard to Regulation 18 in general, the Committee determined that the decision of the Commissioner must be quashed.

6.65 The Committee went on to consider whether there should be a further notification to the parties detailed at paragraph 19 of Schedule 2 of the Regulations to allow them to make representations if they so wished (in which case it would be appropriate to remit the matter to the Commissioner) or whether it was preferable for the Committee to redetermine the application.

6.66 The Committee noted that representations on Regulation 18 had been sought from parties by the Commissioner and representations had already been made by parties to the Commissioner in response. These had been circulated and seen by all parties as part of the processing of the application by the Commissioner. The Committee further noted that when the appeal was circulated representations had been sought from parties on Regulation 18.

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

7 DECISION

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

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

7.3 The Committee has considered whether the granting of the application would cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area covered by the HWB, or the arrangements in place for the provision of pharmaceutical services in that area and is not satisfied that it would;

7.4 The Committee determined that the application should be refused on the following basis:

7.4.1 In considering whether the granting of the application would confer significant benefits, the Committee determined that –

7.4.1.1 there is already a reasonable choice with regard to obtaining pharmaceutical services;

7.4.1.2 there is no evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services; and

7.4.1.3 there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services;

7.4.2 Having taken these matters into account, the Committee is not satisfied that granting the application would confer significant benefits as outlined above that would secure improvements or better access to pharmaceutical services.

Case Manager
Primary Care Appeals