

7 March 2025

8<sup>th</sup> Floor  
10 South Colonnade  
Canary Wharf  
London  
E14 4PU

**REF: SHA/26305**

**APPEAL AGAINST NORTH EAST AND NORTH CUMBRIA ICB  
DECISION TO REFUSE AN APPLICATION BY JIWA PHARM LTD  
FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING  
UNFORESEEN BENEFITS UNDER REGULATION 18 AT KENTON  
SHOPS ON HALEWOOD AVENUE/KIRKWOOD DRIVE, NE3**

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**REF: SHA/26315**

**APPEAL AGAINST NORTH EAST AND NORTH CUMBRIA ICB DECISION TO REFUSE AN  
APPLICATION BY ALRAHI & SINGH LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST  
OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT 41 HALEWOOD AVENUE,  
KENTON, NEWCASTLE-UPON-TYNE, NE3 3RX (BEST ESTIMATE)**

**REF: SHA/26323**

**APPEAL AGAINST NORTH EAST AND NORTH CUMBRIA ICB DECISION TO REFUSE AN  
APPLICATION BY QUAYSIDE PHARMACY FOR INCLUSION IN THE PHARMACEUTICAL LIST  
OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT THE SHOPPING CENTRE,  
HALEWOOD AVENUE, NEWCASTLE-UPON-TYNE, NE3 3RX**

## 1 Outcome

- 1.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decisions of the Commissioner and redetermines the applications.
- 1.2 The Committee determined that the application of Jiwa Pharm Ltd should be granted.

A copy of this decision is being sent to:

Jiwa Pharm Ltd  
Temple Bright LLP, on behalf of Alrahi & Singh Ltd  
Quayside Pharmacy Ltd  
PCSE, on behalf of North East & North Cumbria ICB  
North of Tyne LPC

## Advise / Resolve / Learn

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- 1 A summary of the applications, decisions, appeals and representations and observations are attached at Annex A.
- 2 **Site Visit**
  - 2.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution (which comprised of Lucy Reid, Phil Bratley and Paul Chapman) visited Kenton on Thursday 16<sup>th</sup> January and Saturday 25<sup>th</sup> January.
  - 2.2 Committee members started at the proposed premises at Kenton Shopping Centre on Halewood Avenue. The shops are located in a heavily populated, deprived area with a mixture of housing including flats, bungalows and houses. The parade of shops is on an incline with a 2 tier layout with the majority of premises on the upper level. One of the slopes was quite steep which could cause some challenges to wheelchair users or prams.
  - 2.3 There were 3 units to let with 2 different letting agents. Decorating materials were visible in the units. There were a variety of other retail outlets including a Premier Store, Spar and Post Office, Milligan's Bakery and café. There was also a dementia support service occupying 2 large units. Opposite the parade was a school and there was a park on the other side. There was a car park at the rear and additional parking surrounding the centre. On the Thursday afternoon, the parking was congested, which may have been due to the pick up time for the school opposite. There were bus stops on 3 sides of the retail area for the numbers 7, 10 and 11 and people were queueing at 2 of them. Both the number 11 and 7 buses were seen at the time of the visit. The retail parade is situated next to the Kenton Centre, a relatively modern looking building where a number of community services are located including a library, community housing and health services and social services. Betts Avenue Medical Centre occupies the same building. The centre has its own staff car park and a number of on-street parking places available, separate to the retail area.

- 2.4 Committee members then travelled to the nearest pharmacies. Pharmacy Express was located 0.8 miles to the south east of Halewood Avenue along Kenton Lane and then the Crossway. It is located on a small parade of shops which included a Premier Store, a hairdressers and workwear store. There was a small number of parking spaces outside which were located on the pavement. The area surrounding this parade was heavily vandalised and there was razor wire and anti-climb paint on the surrounding buildings. There was a bus stop outside serving the numbers 31 and 32 buses.
  - 2.5 Douglas pharmacy was located 1 mile from Kenton by travelling along Kenton Lane and then Kenton Road before arriving on Ashburton Road. The pharmacy is situated next to an independent fruit and vegetable shop and opposite an interiors store and a boutique. Across the road is an artisan bakery and specialist art store. It's located in amongst housing estates with on street parking. There are no bus stops located on Ashburton Road.
  - 2.6 Committee members then travelled to 3 pharmacies located to the north of the Kenton Centre. Meadows pharmacy is 0.8 miles to the north of Kenton along Kirkwood Avenue and then onto Edgefield Avenue. A double fronted unit, it is located within a housing estate and there are no other commercial premises in the immediate vicinity. There is no bus stop nearby.
  - 2.7 J&J Whitaker Chemists is located 1.2 miles north east from Kenton on Wansbeck Road on a moderate sized parade of retail premises next to a small Asda supermarket. There is a school opposite and housing estates surrounding the area. Retailers included Greggs, One Stop convenience store with post office and some take away restaurants. There were a number of parking spaces around the parade and next to it in the Asda car park. The nearest bus stop was about 120 yards away.
  - 2.8 Fawdon pharmacy was a short walk away from J&J Whitaker but a mile away from the Kenton Centre on Halewood Avenue. Located on Fawdon Park Road next to a bus stop and across the road from Park Medical Group. There were other shops including a CostCutter and a Ladbrooks. There was limited parking. It is located across the metro line with a barrier crossing. The route is served by the number 7 bus although this does not stop at the pharmacy.
  - 2.9 Committee members also visited the Boots pharmacy at the Kingston Park Shopping Centre which is a large retail park about 2 miles from Kenton across the A1. The traffic was heavy at the time of the visit and it took about 20 minutes to travel by car. Public transport is available however would require multiple changes or travelling by foot for around 0.7 miles. The Boots store is a large unit with a spacious dispensary. At the time of the visit the dispensary was closed for lunch and the pharmacy medicines units were covered with a pull down blind as the pharmacist was unavailable.
- 3 A summary of the above observations were provided to those in attendance. They were invited to comment upon them or indicate if any of the observations appeared to be inaccurate.
- 3.1 The Local Pharmaceutical Committee raised that there was a pharmacy located in the Tesco store situated on the Kingston Retail Park which is open 7 days per week. No further observations were made.

#### 4 Oral Hearing Submissions

The Chairman invited oral submissions from parties and noted that the Committee must first consider whether Regulation 18(2) is met in terms of unforeseen benefits. Only if the Committee decides that the test is met will the question then be considered as to which applicant the contract should be awarded to.

**Application SHA/26305 JIWA**

- 4.1 Mr Jiwa first addressed the Committee on the question of better access describing the high levels of deprivation in Kenton. There are 2 busy surgeries, Betts Avenue in the Kenton Medical Centre and Hills View. He estimated that they were generating 20,000 – 25,000 items together per month. He said that the choice of pharmacies for patients living in Kenton are on the fringes. He went on to describe the nearest pharmacies. Pharmacy Express, located to the south of Kenton was in an area where people had very little reason to visit other than to go to the pharmacy itself. Douglas pharmacy is located in a very affluent area and residents living in Kenton would have no other reason to visit. Kingston Park is a very busy area with heavy traffic and walking there is difficult for patients. He raised the question of how far does someone need to travel to access basic health services.
- 4.2 Mr Jiwa introduced Rob Austin as a representative of the local community. Mr Austin explained that he has been a local councillor since May 2024 and whilst he lives in a different ward, he has family who live in Kenton. He campaigned against the closure of the Boots pharmacy in Halewood Avenue before he became a councillor.
- 4.3 Mr Austin described how the closure of Boots pharmacy has had a profound impact on the local community. He explained how his 92 year old grandmother would visit the pharmacy as part of her routine and it helped her to maintain her independence. He said that she rarely leaves the house now and it has left her feeling isolated. He explained how others have had to take on additional roles obtaining medication for her from pharmacies outside of Kenton as she is unable to do so herself.
- 4.4 Mr Austin stated that Kenton residents would not go to Douglas Pharmacy in Ashburton, describing it as a “no go area” due to the significant difference in demographics. He went on to explain the difficulties accessing pharmacy services in Kingston Park saying that, due to stock issues, people have to go there several times to make sure they have got all of their items. Picking up medication in Tesco means going through security and all through the store. He referred to the aging population and the impact that the closure of the pharmacy has had on them.
- 4.5 Mr Jiwa addressed the findings of the survey that he and Mr Austin had undertaken. He explained that the reason he had undertaken the survey was to understand what the impact of not having a pharmacy in Kenton had on the local community. He took the Committee to some examples of the feedback that had been provided by participants describing the difficulties that they had encountered, including examples of people having to return to the pharmacy at Kingston Park twice because of stock shortages. He said stock problems with medications are considerable and means that patients are having to return to the pharmacy on multiple occasions to pick up their items.
- 4.6 Mr Jiwa said he had worked in the area for a number of years and understood the demanding healthcare needs in the locality. He said looking at the current pharmacy provision in the area there are services that are not being provided despite there being demand for it. He referred to blood pressure checks as an example.
- 4.7 He then summarised the services that he would provide if he were awarded the contract. He said he is experienced in primary and community care, is an independent prescriber and has good existing working relationships with the local GP surgeries. He said he understands the needs of the local population as someone who is an active member of the community and could provide the services that they need. He highlighted the extended hours that he was offering which is in contrast to Mr Alrahi and Mr Singh who are offering to cover the basic 40 hours. Finally, he referred to the opening hours in Quayside’s application being similar to his offer, but questioned whether they would be using locums to deliver the service.

#### **Questions from interested parties**

- 4.8 Mr Jiwa was asked about people accessing Kingston Park. Mr Austin responded that a lot of people would go to Tesco rather than Boots which is slightly further away. Mr Clark, who works for Tesco, said that more than half of the local population shop there. Mr Jiwa said that whilst people might go to Tesco for their weekly shop, it is not somewhere they would access for day to day medical care.
- 4.9 Mr Alrahi and Mr Singh asked about Mr Jiwa's independent prescribing stating that community pharmacy is not funded to support this. They also highlighted that Mr Jiwa has no experience running a community pharmacy and questioned whether he would be successful in such a challenging environment. Mr Jiwa responded that as an independent prescriber he would be better placed delivering some of the clinical services such as Pharmacy First. Mr Morris raised that some of the advanced community pharmacy services were not being supported by the GPs. Mr Jiwa said that pharmacists used to know their patients but the quality of care is being diluted by the larger pharmacies. This knowledge helped pharmacists double check what the GPs are prescribing which, he said, is less likely to happen in the larger pharmacies.

#### **Questions from Committee Members**

- 4.10 In response to questions, Mr Jiwa summarised his work experience, including working in community pharmacy as a manager for Boots and working in a GP surgery. He was asked how the survey was undertaken and explained that some petitions had been circulated by others objecting to the closure of Boots but these did not ask people about how it was affecting them. He said that he set the survey up on Facebook to get feedback from a wide variety of people and Mr Austin went door to door. In response to enquiries about his accreditation status, he explained that he was accredited to provide some advanced services but would need to undertake the training for others, which he would speak to the LPC about.
- 4.11 Mr Jiwa was asked about how he would cover the proposed opening hours to ensure continuity of service. He explained that he would be delivering most of them himself and has 3 or 4 colleagues with similar backgrounds to him and he would hope to get the hours covered that way. He said that he believed continuity of care is important.

#### **Application SHA/26315 ALRAHI AND SINGH**

- 4.12 Mr Alrahi referred to the information contained within the bundle and said that the local population were used to the service provided by Boots before it closed. He explained that they have a network of pharmacies across the north east and have delivered a number of hours including a 100 hour contract. They took over Pharmacy Express in February 2024 and whilst they have averaged about 20 blood pressures and 2-3 emergency hormonal contraceptive services per month, these had not been entered into the data system because of integration issues. Since taking on Pharmacy Express, they have increased free delivery services in the area and they work on a 2 pharmacist model plus a technician. They described how they have 16 sites but because there is no middle management, all pharmacists are accredited to deliver the services needed.
- 4.13 He explained that some of the staff working for them in Pharmacy Express were from the Boots branch before it closed and that if they were awarded the contract, they would transfer back over. He submitted that they have the infrastructure and staff in place to deliver the services for Kenton. He confirmed that they had made enquiries about the units available at Halewood Avenue and they can secure one within 2 weeks. He said they have a proven track record for delivering community pharmacy services in the area.

#### **Questions from Interested Parties**

- 4.14 Mr Jiwa asked why Mr Alrahi and Mr Singh think there is a gap in the service and whether, if awarded the contract, they would be looking to consolidate Halewood Avenue and Arlington Avenue. They responded that patients were saying that is what

they wanted. They said Boots have not been able to make their business work and took the decision to move all of the work to Kingston Park. They confirmed that they would not be looking to consolidate, as they are looking to change the lease to freehold in Arlington Avenue. They said that they would be seeking to achieve economies of scale such as the delivery drivers and the staff that they already have in place. They stated that they did not believe that consolidation works because it creates a gap in services somewhere else.

- 4.15 In response to a question about their proposed opening hours, they explained that their intention would be to provide more. In particular, they said, they would not seek to close over the lunchtime period and having a 2 pharmacist model would enable them to keep it open throughout the day. They explained that they had put the basic hours down in their application because they were working to a deadline and had experienced delays in another area waiting for the approval for directed hours. They acknowledged that they could decide to keep to the core hours specified in their application if they were awarded the contract but stated that this would not make good business sense.
- 4.16 They were asked about their use of locums and responded that when they do use locums, it is only ones that work exclusively for them. They said they were very particular about which locums they use to ensure that they are all accredited.

#### **Questions from Committee Members**

- 4.17 In response to a question about where the prescribing items from the closed pharmacy had gone, they explained that the majority have gone to Kingston Park, which may be due to brand loyalty. They said the remainder have been allocated out equally. In terms of the technical difficulties that they had referred to, they explained that they had bought the Arlington Avenue site from Well Pharmacy and needed to install their own systems and procedures. They said that taking over a pharmacy from another company is always more challenging than opening a new one. They confirmed that Well Pharmacy had sold their branch due to corporate and competition issues as opposed to not being financially viable.

#### **Application SHA/26323 QUAYSIDE**

- 4.18 Mr Jassal first addressed the question of unforeseen benefits and said that since Boots has closed, patients have repeatedly expressed to him that they miss the service. He explained that he has a pharmacy 2-3 miles away and has provided vaccinations since the pandemic and people have told him that they have difficulty accessing vaccination services since the closure. He referred the Committee to the letter of support from local councillors contained within the bundle.
- 4.19 He said that he would offer extended opening hours and enhanced services which would fill a critical gap in the service. He described the services that Quayside would provide to meet the gap including opening 57 hours per week, targeted support for elderly patients and young people, substance misuse and wheelchair accessibility, which Pharmacy Express is not offering. He said that he would go beyond merely replacing Boots and would meet the needs of protected groups. He said he would also offer modern digital prescription management systems and a free collection and delivery service.

#### **Questions from Interested Parties**

- 4.20 Mr Alrahi and Mr Singh confirmed with Mr Jassal that Pharmacy Express are proposing to offer all the services that Quayside are and there was no difference in the applications in this respect.
- 4.21 Mr Jiwa referred to how busy Quayside Pharmacy is and asked how Mr Jassal would manage if granted the contract. Mr Jassal explained that he is a floating pharmacist

and fully accredited. He said he would be the second pharmacist at Kenton. When asked about some of the services not currently being delivered at Quayside, he said that there was limited need for blood pressure checks because there is an urgent care centre across the road from the pharmacy. He confirmed that he has just started offering emergency hormonal contraceptive services. Mr Jiwa then enquired about the fact that Quayside Pharmacy was up for sale and the memo of sale included reference to the use of locums. Mr Jassal confirmed that his company is for sale but that he had had no offers for it. He said if he were awarded the contract, he would definitely make sure that Halewood Avenue would remain open.

### **Closing Submissions**

- 4.22 Mr Jiwa submitted that the need for the pharmacy in Kenton is established. He said that Mr Alrahi and Mr Singh are experienced in community pharmacy, however their core hours are much lower than he is offering and there is a risk that they would look to consolidate the 2 pharmacies in future. He said that Mr Jassal is selling his business and does not know who he will employ, suggesting that he would not be in a position to provide advanced services. He submitted that he was experienced in pharmacy and primary care and he knows the population.
- 4.23 Mr Alrahi and Mr Singh submitted that they have no intention to consolidate and that they believe that they can make the 2 pharmacies work. They said that the Boots model is very different as it relies heavily on retail as opposed to dispensing services. They said they have the most knowledge of the area and the demographics and they reiterated that the proposed hours in their application was a timing issue and that their intention to open only half a day on Saturday was following feedback from the Boots staff who said there was no need for an afternoon service. They submitted that they already provide all local, enhanced and accredited services and have a network of pharmacists ready. They suggested that the benefits of independent prescriber qualifications are unfounded and that the other applicants' proposed opening hours are unrealistic and unviable. They concluded that, unlike the other applicants, their offer is sustainable.
- 4.24 Mr Jassal stated that he did not understand why there would be any problem in the use of locums and suggested that this is not a consideration for the Committee. He concluded that his application offers better core hours, good understanding of the local area and its needs and a proven track record.

## **5 Consideration**

- 5.1 The Committee 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.
- 5.2 It also had before it the responses to NHS Resolution's own statutory consultations.
- 5.3 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations").

### **Regulation 31**

- 5.4 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).*

- 5.5 The Committee was of the view that there are no other pharmacies in the same or adjacent premises and neither had any party made any representations to this effect. On the basis that there is no argument to the contrary or evidence before it, the Committee determined that it was not required to refuse any of the applications under the provisions of Regulation 31.
- 5.6 The Committee noted that, if an application were granted, the successful applicant(s) 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(s) 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**

- 5.7 The Committee noted that the applications were 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)."*

- 5.8 The Committee considered that Regulation 18(1)(a) was satisfied in that it was required to determine whether it was satisfied that granting an 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
- 5.9 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 applications were granted were or was included in the Pharmaceutical Needs Assessment ("the PNA") in accordance with paragraph 4 of Schedule 1 of the Regulations.
- 5.10 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).
- 5.11 The Committee considered the PNA prepared by Newcastle City Council, 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 September 2022 which was before the closure of Boots on Halewood Avenue in Kenton. The following conclusion was noted "*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.*"
- 5.12 The Committee had regard to the HWB meeting held on 15 May 2024 which considered the closure of multiple local Boots pharmacies. At this meeting, the HWB were "*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.*" Halewood Avenue was named as one of those closures.
- 5.13 The HWB then noted "*Supplementary statements are statements of fact; they do not make any assessment of the impact the change may have on the need for pharmaceutical services. Effectively, they are an update of what the Pharmaceutical Needs Assessment says about the availability of pharmaceutical services. They are not a vehicle for updating what the PNA says about the need for pharmaceutical services.*" The relevant supplementary statement was published on 15 May 2024 stating that the pharmacy had closed on 3 March 2024 but provided no assessment as to any gaps in provision.
- 5.14 The Committee noted that all three Applicants seek to provide unforeseen benefits to the patients of Kenton.
- 5.15 The Committee was provided with details of a letter that was sent to Jiwa Pharm Ltd on 2 May 2024 by the HWB which stated that "*we intend to publish a supplementary statement for both locations and therefore would support an application to open a pharmacy at an appropriate premises in the locations where the previous pharmacy was situated.*" The Committee considered that whilst the HWB had inferred that they had identified a gap in services in their recommendations and correspondence, the supplementary statement issued in accordance with paragraph 4 of schedule 1 does not in fact state this.

- 5.16 The Committee noted that the improvements or better access that the Applicants were claiming would be secured by their applications were not included in the relevant PNA in accordance with paragraph 4 of Schedule 1.
- 5.17 In order to be satisfied in accordance with Regulation 18(1), regard is to be had to those matters set out at Regulation 18(2). The Committee's consideration of the issues is set out below.

**Regulation 18(2)(a)(i)**

- 5.18 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"*

- 5.19 The Committee noted that the Commissioner had in its decision report stated that Regulation 18(2)(a)(i) *"not applicable as there is no pharmaceutical service plan currently in place."* The Committee noted that there is no plan currently in place and therefore granting the application would not cause any detriment to proper planning. It also noted that no party sought to argue that any application should be refused pursuant to Regulation 18(2)(a)(i).
- 5.20 On the basis of the information available, the Committee was not satisfied that, if an application was 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.
- 5.21 The Committee was therefore not satisfied that significant detriment to the proper planning of pharmaceutical services would result from a grant of an application.

**Regulation 18(2)(a)(ii)**

- 5.22 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"*

- 5.23 The Commissioner in its decision report dated 27 August 2024, stated *"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."* The Committee considered that the Commissioner erred in their assumption about the financial viability of the pharmacy as there was no evidence before it to suggest this was the case. It concluded that this was therefore not a reasonable assumption to make. It further considered that whether the existing services were providing a reasonable level of service was not the test under this regulation and more applicable to Regulation 18(2)(b) when considering reasonable choice and better access. The Committee also noted the representations made by the Applicants and other parties where the viability of services was considered. It concluded that there was no evidence before it that granting an application would cause significant detriment to arrangements in place.

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

**Regulation 18(2)(b)**

- 5.26 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)**

- 5.27 The Committee first considered the area of Kenton, where the proposed premises would be located and the existing services around. In terms of access and reasonable choice, it considered that the relevant patients fall into 2 main categories – those who live in the immediate vicinity of Halewood Avenue and those who come in to access the services in the community hub and the school.
- 5.28 Kenton is a densely populated, highly deprived area. The resident population is approximately 11,500 according to the 2022 data. It has a high percentage of social housing, accounting for around 41.7% and a significant proportion of people on low incomes. Residents who have a disability and/or are in poor health are higher than the national average with 22.1% of residents describing their day to day activities as being limited as a result. Kenton also has low car ownership with 37.3% of homes with no transport.
- 5.29 There are a range of facilities available to residents of Kenton, including 4 primary schools, a secondary school, shopping centre, care home, park and library. The proposed premises where Boots pharmacy was previously located is in a community hub with housing services, social services, a GP surgery, along with approximately 20 retail units providing a comprehensive range of services including dementia support services, post office, café/bakery, sandwich shop, a range of take-aways and convenience stores, bookmaker, DIY supplier, hair salons etc.

## Existing services

- 5.30 Community pharmacies in Newcastle dispense higher than average numbers of prescriptions. There are 7 pharmacies that were specifically highlighted to the Committee that were located near to Kenton and, due to the demographics and population needs for Kenton, the Committee considered these as the starting point.
- 5.30.1 Pharmacy Express is 0.8 miles located on Arlington Avenue. It takes approximately 17 minutes to walk and involves a gentle hill. By car, it's approximately 5 minutes to drive. If travelling by public transport, patients would have to walk 0.2 miles to board the 32A bus to Arlington Avenue which takes approximately 11 minutes. There is a bus stop outside and parking is available. While it is less than a mile from Kenton, the other retail offers on Arlington Avenue do not provide day to day convenience services and is unlikely to be a destination choice for most people other than to access the pharmacy. There is evidence of vandalism with razor wire and anti-climb paint as preventative measures. The Committee was of the view that vulnerable people such as the elderly may find the journey intimidating and it is unlikely to be their destination of choice.
- 5.30.2 Douglas pharmacy is 1 mile from Kenton, taking around 20 minutes to walk and 5 minutes to drive. There is very limited parking with only 2 spaces immediately outside the pharmacy and the streets surrounding the pharmacy were taken by residents. From Kenton, the number 10 or 11 bus travels to Salters Road and patients would then walk 0.2 miles to the pharmacy. The Committee noted the feedback provided by a local resident during the oral hearing that, due to differences in the community, Douglas is considered to be a 'no go area' by those living in Kenton. It had observed the considerable difference in demographics and agreed that those living in Kenton may not find Douglas Pharmacy easily accessible. Furthermore, due to the retail offer at Gosforth compared to Kenton, it considered it unlikely that residents would visit there other than to access the pharmacy.
- 5.30.3 Fawdon Park Pharmacy on Fawdon Park Road is 1.1 miles from Kenton and takes 19 minutes to walk there and around 6 minutes by car providing the rail crossing is not closed to allow the Metro to pass. There was very limited parking. The number 7 bus from Kenton stops at Edgefield Avenue with a further 290 yard walk to arrive at the pharmacy. There are other shops located by the pharmacy which include some of the same retail offers as those available in Kenton. The Committee heard examples of patients from Kenton currently using Fawdon Park Pharmacy following the closure who described it as a long walk and the difficulty they have parking there.
- 5.30.4 Meadows Pharmacy is 0.9 miles from Kenton on Edgefield Avenue taking 18 minutes to walk or 4 minutes to drive. The number 7 bus takes 7 minutes and then a 90 yard walk to the pharmacy. There are no other commercial premises near the pharmacy so residents travelling here would be doing so only to access pharmaceutical services.
- 5.30.5 J&J Whitaker Chemists is 1.2 miles from Kenton on Wansbeck Road and takes 24 minutes to travel on foot and approximately 6 minutes to drive. By public transport, the number 7 bus stops at Jubilee Road and takes 5 minutes, after which there is a further 0.3 miles to walk. There is a wider retail offer than some of the other locations, including a small Asda supermarket. There is also parking available.
- 5.30.6 Boots pharmacy and Tesco pharmacy on the Kingston Park Shopping Centre is just over 2 miles from Kenton and takes around 8 minutes by car, although it took Committee members 20 minutes due to heavy traffic leading onto the retail park. It is not easily accessible by foot as it is located across the A1 and

the traffic is very heavy, particularly on weekends. Travel by public transport takes between 23 and 41 minutes depending upon the bus route and can include changing buses or walking up to 0.8 miles further. It is a large retail park with a number of well known brands and the Committee heard evidence of how residents would visit the park regularly for their regular shop. However, there was also evidence of Boots experiencing difficulties in meeting the demand for prescriptions following the closure of their branch in Kenton. The Committee had no evidence before it about how much residents used the pharmacy in Tesco. The local councillor referred to some physical access barriers as patients are required to walk through the security section and through the rest of the shop to access the dispensing area.

- 5.31 One of the Applicants carried out a survey of residents in Kenton, which produced 132 responses. The survey was undertaken using a variety of methods including door to door canvassing, Facebook and asking patients using the Boots pharmacy in Kenton before it closed. The survey asked a number of questions including any specific health needs that respondents had, access to transport, and why they were using the Boots pharmacy there. Of those surveyed, the overall location and being close to home were the main reasons that patients were using that particular pharmacy. 52% identified as having a long-term medical condition and 61% did not have access to a car.
- 5.32 The Committee noted the methodology described in how the survey had been undertaken and the weight that should be given to it in terms of the other evidence available. The survey results described a range of difficulties accessing services that respondents were experiencing. These included difficulties travelling further when unwell and the need to return on a number of occasions due to medications being owed due to stock shortages. A number of respondents made reference to previously walking to the pharmacy and no longer being able to do so because of the distance, particularly for the elderly. Opening hours was also identified as a problem with the closer pharmacies not opening at the weekend.
- 5.33 The Committee was mindful that pharmaceutical services are not limited to dispensing medications and the NHS are encouraging people to use services such as Pharmacy First in order to support other areas of health care. Being able to access the full range of pharmaceutical services is an essential part of that and requires patients to be able to see a pharmacist in person. Whilst the Committee were being invited to take into account collection and delivery services, it considered that this was likely to limit access to the full range of services that would be accessible in person.

#### **The proposed location**

- 5.34 The Committee then went on to consider the proposed location in terms of whether it would secure improvements and better access.
- 5.35 The Committee was mindful that a pharmacy closing does not in itself lead to a gap in services. Whilst aware of the closures of Boots branches across the country, the Committee noted that there was no evidence before it as to the reasons for the closure.
- 5.36 The Committee were informed that the Boots pharmacy located on Halewood Avenue, Kenton had been dispensing around 12,000 items per month. It heard evidence from a local resident and councillor how the pharmacy formed part of the hub of community services available to local residents. It also noted the nursing home located opposite the Kenton shopping centre and reference made to the home being able to access medicines urgently from the pharmacy in the bundle.
- 5.37 The Committee recognised that access to pharmaceutical services is dependent upon where the individual's journey starts from. It noted that the immediate area surrounding Kenton was densely populated with evidence of high levels of deprivation and poor health outcomes. The Committee were of the view that the site of the proposed premises represents a significant community hub in a highly populated area in that it

included the library, community services, the school, social services and the GP practice. There was evidence of significant challenges accessing services elsewhere, and noted the sign on display in the Kingston Park Boots store that they were experiencing a greater volume of prescriptions following the closure of the Kenton branch. It considered that this was evidence of difficulties accessing services and was resulting in delays in dispensing. It also noted the impact on those relying on public transport to have to return to pharmacies outside of Kenton due to ongoing stock issues in an area of high deprivation. Whilst these specific access challenges may not be ongoing, the Committee were mindful of the evidence before it of how this is impacting pharmacies and patients.

### **Reasonable Choice**

- 5.38 The Committee went on to consider the question of reasonable choice. Reasonable choice is not defined in the Regulations and the Committee were of the view that it is not restricted to the number of pharmacies that an individual has access to. Neither does the fact that a pharmacy has closed result in a conclusion that there is no longer reasonable choice.
- 5.39 The Commissioner concluded that there is reasonable choice with regard to pharmaceutical services in the area but did not provide any rationale for this decision.
- 5.40 Applicants invited the Committee to consider that residents visit the shopping centre as part of their day to day activities and having to travel elsewhere specifically for medications did not provide reasonable choice. Furthermore, they submitted that there is no reasonable choice for the population who have to access services by foot, which is relevant particularly given the low car ownership in the area.
- 5.41 The Committee determined that there was evidence of difficulties accessing current pharmaceutical services for those living in Kenton and that those who rely on accessing services on foot do not have a reasonable choice.
- 5.42 The Committee also noted the comments made by the HWB who expressed a concern about the number of pharmacies in the area that were not open on a Saturday.
- 5.43 Therefore the Committee was satisfied that, having regard to there being a reasonable choice with regard to obtaining services, granting the applications would confer significant benefits by way of physical access on persons.
- 5.44 The Committee was of the view that there is not already reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB, such that it was satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the applications would confer significant benefits on persons.
- 5.45 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 had evidence of people with protected characteristics in the relevant area having difficulty accessing services. In particular, the elderly, people with mobility issues and parents with young children were identified as experiencing difficulties in terms of travel time, safety issues and increasing anxiety. The Committee had regard to these difficulties, however it noted that there was no reference made by the Applicants to services that may meet their specific needs. The access difficulties were important but the Committee were of the view that these might apply to any persons experiencing access difficulties as described. It therefore considered that there was not a robust body of evidence that enabled it to be satisfied

that a pharmacy at the proposed site would convey significant benefits pursuant to Regulation 18(2)(b)(ii).

- 5.46 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 applications would confer significant benefits on persons.
- 5.47 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.
- 5.48 None of the Applicants were seeking to argue innovation and there was no information within the applications that would support the definition of innovation in terms of the delivery of pharmaceutical services.
- 5.49 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 applications would confer significant benefits on persons

#### ***Regulation 18(2)(b) generally***

- 5.50 The Committee also considered the representations made by other parties, some of whom argued that there was no gap in services and that they were serving the patients from the former Boots branch. They also highlighted the use of free delivery services for the patient population and the services that they provide. There was also reference to no issues having been reported to them that patients cannot access pharmacy services in the area. The Committee also noted references from existing providers about pressures on the workforce and lack of financial sustainability and the evidence presented in support of these objections.
- 5.51 As already mentioned, the Committee had evidence before it about some of the challenges that patients had been experiencing since the Boots branch closed including those participating in the survey, local news reports and letters of support from local councillors. The Committee also noted the sign that the Boots in Kingston Park had displayed about delays providing medicines to patients as a result of the volume of prescriptions. The Committee was also mindful that it cannot rely on collection and delivery services when considering access as it does not form part of the contract.
- 5.52 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.
- 5.53 The Committee was not satisfied that granting the applications would confer significant benefits for patients who share protected characteristics on the basis that those benefits would be secured for all patients, regardless of their status.
- 5.54 The Committee was of the view that in accordance with Regulation 18(2)(b) the granting of an application would confer significant benefits on persons in the area of the HWB which were not foreseen when the PNA was published.

#### ***Other considerations***

- 5.55 Having determined that Regulation 18(2)(b) had been satisfied, the Committee needed to have regard to Regulation 18(2)(c) to (e) and determined that it was not aware of

any other applications or appeals relating to applications offering to secure improvements or better access that the Applicants were offering to secure and that there was no need to consider applications from other persons offering to secure such improvements or better access.

- 5.56 No deferral or refusal under Regulation 18(2)(f) was required in this case.
- 5.57 The Committee had regard to Regulation 18(2)(g) and found that it was not applicable.
- 5.58 The Committee considered whether there were any further factors to be taken into account and concluded that there were not.
- 5.59 The Committee was 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.
- 5.60 The Committee considered that all applications would provide better access, therefore the Committee considered that it had three options:
  - 5.60.1 grant all three applications;
  - 5.60.2 grant one application and refuse the other two; or
  - 5.60.3 refuse all applications.
- 5.61 The Committee discounted the third option as unreasonable given that it had decided that there is difficulty in accessing current pharmaceutical services such that a pharmacy at the proposed location would provide better access to pharmaceutical services.
- 5.62 The Committee therefore considered which of the remaining options was preferable.
- 5.63 The Committee had regard to comments in R (on the application of Rushport Advisory LLP) v NHS LA [2016] EWHC 907 (Admin) ("Rushport case") which stated at paragraph 43:

*"the decision maker must be very careful not to decide that [the public benefit test] is met in a case where there is a real possibility of services under both grants coming on stream, leading to over- provision at the expense of the public purse (since providers are entitled to charge the NHS for the services)"*
- 5.64 The Committee noted that in the Rushport case, the issue was the potential grant of an application where an extant grant was in place. The Committee, however, considered that it could be inferred from the extract above that in a situation where more than one application secures improvements or better access, more than one grant should be avoided. In that regard the Committee noted Kerr J's observation in the Rushport case that *"successive applications determined sequentially in respect of the same services are awkward, and are best avoided if they can be..."* Again the Committee considered that this was supportive of the view that where three applications seek to deliver the same benefits, they will be considered together (as is the case here) and granted only to the extent necessary to deliver the benefits identified. Where one application is superior to the other(s) on relevant grounds, that application should be granted, and if the effect of granting that application is to occupy the field so that the less favoured application(s) no longer meet(s) the public benefit test, then the less favoured application(s) should be refused even if considered in isolation it would have satisfied that test.
- 5.65 On the basis of the information provided, the Committee considered that only one pharmacy was required to open to provide better access to pharmaceutical services in Kenton. The Committee noted that none of the parties had suggested that all

applications should be granted. The Committee therefore proceeded to consider which application should be granted.

- 5.66 The Committee noted that all three applications were offering the same services and whilst there were some differences in terms of accreditation of those services, all were committing to ensure that they were delivered.

***SHA/26305 Jiwa Pharm Ltd***

- 5.67 Mr Jiwa had proposed core opening hours totalling 56.5 per week which included Monday to Friday 8.30 to 18.00 and 9.00 to 18.00 on Saturdays. He informed the Committee that he was experienced in primary care and community pharmacy having worked in the local area as a community pharmacy manager (including for Boots) for many years. He submitted that he has an existing relationship with the local GP surgeries from his primary care work and has a good understanding of the needs of the population. He is also an independent prescriber.
- 5.68 The Committee noted that Mr Jiwa does not currently own any other community pharmacies. It also noted that he was able to articulate his plans for staffing the pharmacy and his intention to provide continuity of service for patients. Any necessary accreditations to provide extended services that he did not already possess would be obtained.

***SHA/26315 Alrahi and Singh Ltd***

- 5.69 Mr Alrahi and Mr Singh were offering 40 core opening hours consisting of 09.00 to 13.00 and 14.00 to 18.00 Monday and Tuesday, 09.00 to 12.00 and 14.00 to 18.00 Wednesday to Friday and 09.00 to 12.00 on Saturday. The total proposed opening hours (including supplementary hours which can be withdrawn on provision of the appropriate notice) were 48 which were 09.00 to 18.00 Monday to Friday and 09.00 to 12.00 on Saturday.
- 5.70 They informed the Committee that they had a proven track record of successful community pharmacies in the area and understood the needs of the local population. They advised that their plan was to use economies of scale to provide a sustainable service to patients. They submitted that they had the existing infrastructure to provide the service.
- 5.71 The Committee were mindful however that although they indicated their intention to provide equivalent overall opening hours to those of the other two Applicants, they would not be obliged to do so if offered the contract.

***SHA/26323 Quayside Pharmacy***

- 5.72 Mr Jassal's proposed core opening hours were 8.30 to 18.00 Monday to Saturday. He also had a pharmacy in the local area although it had not been providing the same services that he was proposing as part of this application. He informed the Committee that his intention would be to use a full time accredited pharmacist and he would be the second pharmacist for the branch.
- 5.73 The Committee noted that Mr Jassal was selling Quayside Pharmacy. He advised that his intention would be to keep the Kenton branch open if he were awarded the contract, however the Committee was mindful that this could not be guaranteed. Furthermore, Mr Jassal acknowledged that he used a high number of locums to staff his pharmacies.
- 5.74 The Committee took heed of the comments in the Rushport case regarding that it should not "blind itself to reality" and the need to "look at the relevant evidence that is available, assess it and take it into account when reaching a decision." The Committee carefully considered the merits of each of the applications, noting that each were committing to provide the same level of services. It noted in particular the evidence

before it about opening hours including feedback from the community and the correspondence from the HWB regarding Saturday opening hours.

- 5.75 The Committee noted the comments made by the HWB and the evidence before it in terms of opening hours. Two of the applications, Jiwa Pharm Ltd and Quayside Pharmacy, were offering better core hours that were preferable to the needs of the local population, especially significant opening hours on Saturdays. Whilst Alrahi and Singh had indicated during submissions in the oral hearing that their intention was to provide equally comparable hours, this was not reflected in their application. The Committee considered that this suggestion of providing equally comparable hours therefore offered less certainty of provision than the other applications.
- 5.76 The Committee was mindful that Quayside Pharmacy was currently on the market and that this inherently created uncertainty as to the future of any potentially granted application. The Committee noted that this was not present in the other applications. The Committee was mindful that despite Mr Jassal's assurances relating to keeping a new pharmacy open, once the company had been sold (the company being the same company that has applied to open the new pharmacy) these could not be guaranteed.
- 5.77 The Committee noted that Quayside Pharmacy offered marginally more hours than Jiwa, with an additional half-an-hour being offered on Friday evening and Saturday morning. The Committee was mindful that Saturday mornings had been identified by the HWB as a time where opening was necessary, although Friday evening had not been. The Committee therefore weighed the additional hour against the uncertainty caused by the sale of the company. It considered that the uncertainty created by the sale of Quayside Pharmacy created greater concern than any marginal benefit granted by the additional hour of opening time per week.
- 5.78 Whilst there had been comments made regarding his experience in running a community pharmacy, the Committee noted that Mr Jiwa had a good understanding of the local needs due to his connections with the local community, especially from working within GP practices and being a community pharmacy manager. The Committee had to consider how much weight could be put on all of the factors presented to it. On this basis, the Committee preferred the application made by Jiwa as the benefits outweighed those of the other Applicants.
- 5.79 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); ...*

- 5.80 The Committee noted that a direction would need to be issued for the “additional” hours which were being offered by Jiwa Pharma Ltd.

**Other considerations**

- 5.81 The Committee was 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.

- 5.82 The Committee had regard to Regulation 19(6) which states:
- (6) If NHS England is satisfied as mentioned in regulation 18(2)(b), it may grant the application notwithstanding that the improvements or better access were or was not included in the relevant pharmaceutical needs assessment.*
- 5.83 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 5.83.1 confirm the Commissioner's decision;
- 5.83.2 quash the Commissioner's decision and redetermine the applications;
- 5.83.3 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.
- 5.84 The Committee noted the decision of the Commissioner following their meeting in August 2024 where they determined that the applications should be refused on the basis that the relevant Regulations were not met. Specifically, they decided that "*the Applicant has failed to identify an unforeseen benefit.*" They do not expand upon this. In terms of Regulation 18(2)(a)(ii), the Commissioner determined that "*it is reasonable to assume that the recent closure of a Pharmacy in this location was due to it not being financial [sic] 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.*" The Committee has already determined that there is no evidence of why the previous pharmacy closed and therefore it cannot be assumed that it was due to financial viability.
- 5.85 In terms of Regulation 18(2)(b)(i),(ii), and (iii), the Commissioner decided that "*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...It is the decision of the 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.*" They did not expand on this nor provide any rationale for how they had arrived at this decision.
- 5.86 In those circumstances, the Committee determined that without understanding the evidence that the Commissioner had considered to reach their decision to refuse the applications under the relevant Regulations, the Committee determined that the decisions of the Commissioner must be quashed and redetermined.
- 5.87 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 applications.
- 5.88 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 applications by the Commissioner. The Committee further noted that when the appeals were circulated representations had been sought from parties on Regulation 18.
- 5.89 The Committee concluded that further notification under paragraph 19 of Schedule 2 would not be helpful in this case.

## **6 DECISION**

- 6.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decisions of the Commissioner, for the reasons given above, and redetermines the applications.
- 6.2 The Committee concluded that it was not required to refuse either of the applications under the provisions of Regulation 31.
- 6.3 The Committee has considered whether the granting of an 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 satisfied that it would not;
- 6.4 The Committee determined that an application should be granted on the following basis:
  - 6.4.1 In considering whether the granting of an application would confer significant benefits, the Committee determined that:
    - 6.4.1.1 there is not already a reasonable choice with regard to obtaining pharmaceutical services;
    - 6.4.1.2 there is no evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services; and
    - 6.4.1.3 there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services;
  - 6.4.2 Having taken these matters into account, the Committee is satisfied that granting an application would confer significant benefits as outlined above that would secure improvements or better access to pharmaceutical services.
  - 6.4.3 The Committee determined that the application of Jiwa Pharm Ltd should be granted.
- 6.5 The Committee determined that the Commissioner would now need to consider the issuing of a direction for the hours above 40 core hours which Jiwa Pharm Ltd had offered to provide.

**Committee Chair**

## **Annex A**

**REF: SHA/26305**

**APPEAL AGAINST NORTH EAST AND NORTH CUMBRIA ICB DECISION TO REFUSE AN APPLICATION BY JIWA PHARM LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT KENTON SHOPS ON HALEWOOD AVENUE/KIRKWOOD DRIVE, NE3**

**REF: SHA/26315**

**APPEAL AGAINST NORTH EAST AND NORTH CUMBRIA ICB DECISION TO REFUSE AN APPLICATION BY ALRAHI & SINGH LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT 41 HALEWOOD AVENUE, KENTON, NEWCASTLE-UPON-TYNE, NE3 3RX (BEST ESTIMATE)**

**REF: SHA/26323**

**APPEAL AGAINST NORTH EAST AND NORTH CUMBRIA ICB DECISION TO REFUSE AN APPLICATION BY QUAYSIDE PHARMACY FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT THE SHOPPING CENTRE, HALEWOOD AVENUE, NEWCASTLE-UPON-TYNE, NE3 3RX**

A summary of the applications and decisions are attached at Appendix A (SHA/26305) Appendix B (SHA/26315) and Appendix C (SHA/26323).

### **1 The Appeals**

In a letter dated 9 September 2024 addressed to NHS Resolution, Rushport Advisory, on behalf of Jiwa Pharm Ltd, appealed against North East and North Cumbria ICB's ("the Commissioner's") decision to refuse its application. The grounds of appeal are:

- 1.1 "I act for Jiwa Pharm Ltd and have been instructed by my client to submit this appeal against the decision of the Commissioner to refuse the above application. The decision was communicated to us by letter dated 27 August 2024 (attached).
- 1.2 The Committee will note that this was one on [sic] a number of applications that the Commissioner had received requesting permission to open a pharmacy at this location following the closure of Boots in Kenton.
- 1.3 As the Committee will note, the Commissioner's decision is 2 pages long, with only the first page dealing with the reasons for refusal. The Commissioner provides no intelligible reasons for refusing the application, nor do they deal with or comment on any of the evidence provided to them in support of the application or in objection to it.
- 1.4 Given the lack of any reasons for refusal (other than basic statements that certain regulatory requirements are not met (which is denied)), we attach a detailed report that explains why the application should have been approved.
- 1.5 In addition to this report, we ask the Committee to note that my client knows the area of Kenton well and has engaged with the local community extensively as part of the application process.
- 1.6 Patients have been left without a pharmacy in their area following the closure of Boots and have expressed significant concerns about the closure and the impact it has had on their ability to access pharmaceutical services.

- 1.7 Attached with this appeal is a 17 page document that contains answers to a survey that my client carried out.
- 1.8 The survey produced 132 responses, which is very significant compared to the number of comments that the Committee may normally see on applications. There is of course no requirement for any patient comments to be received in order for the Committee to approve an application and many applications have been approved without specific patient concerns being raised, however we hope that this shows the strength of feeling locally about the closure of Boots.
- 1.9 We ask the Committee to note some specific points about the cohort of patients that were surveyed.
- 1.9.1 32% have as a physical or mental impairment that has a 'substantial' and 'long-term' negative effect on their ability to carry out normal daily activities.
- 1.9.2 Details of specific disabilities are provided.
- 1.9.3 52% have a long-term medical condition.
- 1.9.4 61% do not have access to a car.
- 1.9.5 Overall location and being close to home are the main reasons for using the previous Boots pharmacy.
- 1.9.6 Q16 shows that the pharmacy is used for prescriptions for the nursing home across the road from the proposed location that are required urgently.
- 1.9.7 All 132 patients provided specific comments describing the difficulties. We ask the Committee to read these comments in full. The comments show that patients see the closure of Boots as affecting them in a variety of ways. At the lowest end patients discuss inconvenience (which of course can be severe) but there are many cases where patients have lost access to a pharmacy, lost independence, say they will now miss medication due to travel difficulty and struggle to access alternate pharmacies for various reasons.
- 1.10 In addition to the matters raised above, there is additional evidence that has come to light since the Boots closure at the Kenton shopping parade. The next [sic] nearest Boots pharmacy, which is 1.2 miles away at Kingston Park Centre has now placed a notice inside the pharmacy as shown below.
- 1.11 Patients now have to wait over an hour to collect prescriptions and many have to make multiple journeys to access pharmaceutical services.
- 1.12 This Boots store has gone from dispensing circa 10,000 items per month to dispensing over 15,000 items per month and seems unable to cope with the additional workload.
- 1.13 **The Health and Wellbeing Board**
- 1.14 We further note that the HWB considered the closure of multiple local Boots pharmacies at its meeting of 15 May 2024. The Agenda Reports Pack (copy attached) for that meeting states as follows;
- 1.14.1 "Page 31
- 1.14.2 **1 Purpose of the Report**
- 1.14.3 1.1 The purpose of this report is to:

1.14.4 (a) Update the Health and Wellbeing Board (HWB) on the local process that has been developed, in line with national guidance, by the Public Health team for managing notifications, from the NENC Integrated Care Board (ICB), of changes to Newcastle pharmaceutical services provision;

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

1.14.5.1 Boots, 53 St. Georges Terrace, Jesmond, Newcastle upon Tyne, NE2 2SX

1.14.5.2 Boots, 121-125 Shields Road, Byker, Newcastle upon Tyne, NE6 1DN

1.14.5.3 Boots, Cruddas Park Shopping Centre, Westmorland Road, Cruddas Park, Elswick, Newcastle upon Tyne, NE4 7RW

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

1.14.5.5 Boots, 293/295 Chillingham Road, Heaton, Newcastle upon Tyne, NE6 5LL

1.14.6 (c) Make a recommendation for a local response to North East and North Cumbria Integrated Care Board (NENC ICB) regarding unforeseen benefits applications from pharmacy contractors to open a new pharmacy in each of the following locations:

1.14.6.1 Halewood Avenue, Kenton, Newcastle upon Tyne

1.14.6.2 Chillingham Road, Heaton, Newcastle upon Tyne

#### 1.14.7 **2 Recommendations**

1.14.8 2.1 The Board is requested to note the process developed, in line with national guidance, by the Public Health team for managing notifications, from the Integrated Care Board (ICB), of changes to Newcastle pharmaceutical services provision.

1.14.9 2.2 The Board is asked to approve the recommendation that the following pharmacy closures are unlikely to create a gap in provision of pharmaceutical services, and therefore a supplementary statement to the Pharmaceutical Needs Assessment 2022-2025 is not required:

1.14.9.1 Boots, 53 St. Georges Terrace, Jesmond, Newcastle upon Tyne, NE2 2SX

1.14.9.2 Boots, 121-125 Shields Road, Byker, Newcastle upon Tyne, NE6 1DN

1.14.10 2.3 **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:**

1.14.10.1 Boots, Cruddas Park Shopping Centre, Westmorland Road, Cruddas Park, Elswick, Newcastle upon Tyne, NE4 7RW

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

1.14.10.3 Boots, 293/295 Chillingham Road, Heaton, Newcastle upon Tyne, NE6 5LL

1.14.11 2.4 The Board is asked to approve the enclosed local response to the NENC ICB regarding unforeseen benefits applications from pharmacy contractors to open a new pharmacy in each of the following locations:

1.14.11.1 Halewood Avenue, Kenton, Newcastle upon Tyne

1.14.11.2 Chillingham Road, Heaton, Newcastle upon Tyne

1.14.12 Page 33

1.14.13 **3.8 Supplementary statements are statements of fact; they do not make any assessment of the impact the change may have on the need for pharmaceutical services. Effectively, they are an update of what the pharmaceutical needs assessment says about the availability of pharmaceutical services. They are not a vehicle for updating what the PNA says about the need for pharmaceutical services.**

1.14.14 **3.9 The supplementary statement then becomes part of the PNA, and will therefore be referred to by NENC ICB when it determines applications for inclusion in a pharmaceutical list. Supplementary statements should be published alongside the PNA on the website where the PNA is hosted.**

1.14.15 Page 36 [table at Appendix A]

1.14.16 Page 39

1.14.17 6.6 Since recommendation 2.3 is that a supplementary statement should be published in relation to both the Boots pharmacies on Chillingham Road, NE6 and Halewood Avenue, NE3, it would be recommended that an application to open a new pharmacy in these areas should be supported."

1.15 The HWB subsequently published a Supplementary Statement and that statement is enclosed with this appeal.

1.16 The Committee will note from the above that the HWB appears to have misunderstood its powers and responsibilities with respect to the PNA and Supplementary Statements.

1.17 The HWB states,

1.17.1 *3.8 Supplementary statements are statements of fact; they do not make any assessment of the impact the change may have on the need for pharmaceutical services. Effectively, they are an update of what the pharmaceutical needs assessment says about the availability of pharmaceutical services. They are not a vehicle for updating what the PNA says about the need for pharmaceutical services.*

1.18 This statement is plainly wrong. A Supplementary Statement is required to identify the need for an additional pharmacy if the HWB is satisfied that such a need exists. The HWB are clearly stating that a need exists for a pharmacy at the Kenton Shops, but then (due to incorrect interpretation of the Regulations) does not identify the need in the PNA.

1.19 In their letter of response to my client's application dated 2 May 2024 the HWB states;

1.19.1 "Boots, 293/295 Chillingham Road, Heaton, Newcastle upon Tyne, NE6 5LL

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

- 1.19.3 *We intend to publish a supplementary statement for both locations and therefore would support an application to open a pharmacy at an appropriate premises in the locations where the previous pharmacy was situated.*
- 1.19.4 *It would be desirable for a new pharmacy to offer:*
- 1.19.5 *At least the same range of NHS pharmaceutical essential and advanced services as the outgoing contractor, but preferably a full range.*
- 1.19.6 *At least the same range of Local Authority commissioned services as the outgoing contractor, but preferably a full range.*
- 1.19.7 *At least the same range of NENC ICB commissioned services as the outgoing contractor, but preferably a full range.*
- 1.19.8 *Non-commissioned services, such as prescription collection and delivery services*
- 1.19.9 *In terms of access it would be desirable for the pharmacy to offer services 6 days per week, with Saturday morning as part of their core hours, to give workers the ability to consult with a pharmacist, or collect medicines."*
- 1.20 The following article appeared in the Chronicle newspaper in February 2024
  - 1.20.1 ***"• Newcastle MP Chi Onwurah slams Boots' closure decision dubbed 'bad news for local community'***
  - 1.20.2 *Local politicians have urged the pharmacy giant to abandon its plans to close Boots in North Kenton, MP Chi Onwurah and Coun Ged Bell at Boots in North Kenton, which is expected to close on March 3. (Image: Supplied - Chi Onwurah) MP Chi Onwurah has slammed the closure of a Boots Pharmacy in Newcastle set to go ahead in early March.*
  - 1.20.3 *Boots bosses have earmarked the North Kenton pharmacy as one of 300 across the country set to close its doors, following an announcement in June 2023 to cut the number of stores from 2,200 down to 1,900 nationwide. In recent months, local [politicians have urged the pharmacy giant to abandon its plans to close the North Kenton store](#), which could leave some [sic]*
  - 1.20.4 *Newcastle Central MP Chi Onwurah visited North Kenton Boots on Thursday, February 15, to show her support for Coun Ged Bell, who is leading a campaign against the planned closure alongside Kenton councillors Stephen Lambert and Paula Maines. Coun Lambert [has already described the expected closure as "bad news for the local community"](#) and spoken of the effect that the closure could have on older and disabled residents who rely on Boots.*
    - 1.20.4.1• *Read more: [Anger at Newcastle pharmacy closures as people face hour-long queues at 'overwhelmed' chemists](#)*
    - 1.20.4.2• *[Keep up to date with all the latest local news from Newcastle with our free newsletter](#)*
  - 1.20.5 *Now, Ms Onwurah has added her voice to the debate, and is writing to the managing director of Boots UK to urge them to reconsider the closure. Ms Onwurah's letter is in addition to [Newcastle City Council](#) writing to the Government and the North East and North Cumbria Integrated Care Board over the issue.*

- 1.20.6 *Newcastle has lost six pharmacies in the last two years, including Lloyds Pharmacy in Sainsbury's in High [Heaton](#), and it is set to lose three more in the coming weeks and months.*
- 1.20.7 *Ms Onwurah, who grew up in Kenton and relied on the pharmacy growing up, said: "The Boots closing will be a huge loss for the community here in Kenton, leaving people with no local pharmacy nearby. Seeing the 'we are closing' sign in the window after all these years has really hit home.*
- 1.20.8 *"My family relied on this chemist when I was growing up in Kenton, and everyone who relies on it now will have a harder time getting essential prescriptions and advice. The Government are doing little to fix people's access to pharmacies, as they continue to oversee closures and cut essential funding.*
- 1.20.9 *"As a result, people in Newcastle are losing out. A [Labour](#) government would expand the role of community pharmacies."*
- 1.20.10 *A spokesperson for the Department of Health and Social Care said: "Community pharmacies play a vital role in our healthcare system and are backed by £2.6 billion a year in government funding. As part of our Long-Term Workforce Plan, we're providing thousands more training places for pharmacists, and up to £645 million to ensure smooth rollout of our Pharmacy First scheme.*
- 1.20.11 *"We understand how frustrating and distressing it can be for patients affected by medicine supply issues, and that's why the government is working closely with industry, the [NHS](#) and others operating in the supply chain to help resolve any issues as quickly as possible."*
- 1.20.12 *ChronicleLive has approached Boots for comment.*
- 1.20.13 <https://www.chroniclelive.co.uk/news/north-east-news/chi-onwurah-kenton-boots-closure-28652997>
- 1.21 In reality, my client, and others, should have been submitting application under Regulation 13. However, the HWB, despite identifying the need for a pharmacy, has then failed to include that need correctly within the PNA and this has forced applications to be made under regulation 18 and for the HWB to then support those applications.
- 1.22 This application is not simply a case of wishing to open one pharmacy where another closed. It has been carefully considered in consultation with local people who now have significant difficulties accessing pharmaceutical services and we encourage the Committee to approve the application."
- 1.23 Supporting information is attached at Appendix A
- In a letter dated 19 September 2024 addressed to NHS Resolution, Temple Bright LLP, on behalf of Alrahi & Singh Ltd, appealed against the Commissioner's decision to refuse its application. The grounds of appeal are:
- 1.24 "I act for Alrahi & Singh Limited. On behalf of my client I write to appeal a decision of North East Cumbria ICB to refuse my client's application for inclusion in the pharmaceutical list offering unforeseen benefits for premises at 41 Halewood Avenue, Kenton, Newcastle-upon- Tyne, NE3 3RX. The decision was notified to my client by letter dated 27th August 2024.
- 1.25 My client's ground of appeal is that the ICB failed to provide any reasons for the decision that it reached. In particular, the ICB stated that, in its view, my client's application did not satisfy the regulatory test contained within regulation 18, but failed

to explain why it reached this decision, and why it discounted the supporting information provided.

**1.26 Background**

1.27 By way of background, my client's application is made for premises in Kenton, Newcastle-upon-Tyne. Kenton is a large residential estate to the northwest of Newcastle city centre. The south of the Kenton estate comprises mostly of semi-detached, privately owned property. The north of the Kenton estate (which includes the proposed location) contains a mixture of semidetached, terraced and apartment properties, the majority of which are either local authority or ex-local authority.

1.28 The Kenton ward (which comprises the majority of the Kenton estate, including the proposed location) has a resident population of approximately 11,500 according to the 2022 data. In terms of housing, 41.7% of homes in the ward are social rented (the average for England is 17.1%).

1.29 Kenton has relatively low car ownership (37.3% of homes have no car or van, compared to 23.5% nationally), meaning that many households do not have access to a private vehicle. The health of those living in the estate is relatively poor, with 8.2% of residents describing their health as either bad or very bad, compared to 5.2% nationally. 22.1% of residents have their day-to-day activities limited either a little or a lot as a result of a disability, compared to 17.3% nationally.

1.30 As well as having a large resident population, Kenton has a range of facilities for local residents. This includes 4 primary schools and a secondary school with sixth form (two of the primary schools and the secondary school are within 200m of the proposed location); shopping centre (which is the proposed location) which contains convenience stores, a post office, café, takeaways, DIY store, barber, bookmakers, charity shop, etc.; library; care home; sports centre; GP Surgery, etc.

1.31 The shopping centre in Kenton also included a pharmacy (operated by Boots), but the Boots pharmacy closed in early March 2024. The closure of the Boots pharmacy has left a gap in service provision, particularly given the central location of the former Boots pharmacy in Kenton, which many residents visited on a regular basis to shop, go to school, visit their GP, etc. In fact, since the closure of the Boots pharmacy, there are no pharmacies within almost a mile (1.3km) of the Kenton shopping centre.

**1.32 Regulatory test**

1.33 Granting this application would secure improvements in, and better access to, pharmaceutical service provision.

1.34 As summarised above, the Kenton estate is large, and has a diverse and relatively deprived population. Kenton has a significant proportion of residents who are on low incomes, suffer from poor health and have reduced mobility (due to a disability and/or relatively low levels of car ownership).

1.35 The proposed location forms a central hub for the local community, containing a range of shops and other facilities that serve the surrounding population. This includes a GP surgery, together with a range of shops and schools.

1.36 The closure of the Boots pharmacy has created a gap in pharmaceutical service provision for the reliant population. Existing pharmacies are a significant distance away, and that distance represents a barrier, particularly for the more vulnerable members of the community. The closure of the Boots pharmacy has also reduced patient choice, since the community no longer has a pharmacy within the central hub and therefore no longer has a choice to access pharmaceutical services where they shop, go to school or access their GP; patients find access to the remaining pharmacies difficult due to relatively poor health and reduced mobility.

- 1.37 Granting my client's application would therefore confer significant benefits in terms of securing a reasonable choice of pharmaceutical service provision and would overcome access difficulties which currently exist for patients who need to get to a pharmacy following the closure of the Boots pharmacy. These benefits are unforeseen in the context of the PNA, because the Boots pharmacy closed after the most recent PNA was published.
- 1.38 For the reasons given above, on behalf of my client I invite NHS Resolution to conclude that granting my client's application would secure improvements and better access to service provision in the local area and to uphold my client's appeal and grant its application."

In an email dated 25 September 2024 addressed to NHS Resolution, Quayside Pharmacy appealed against the Commissioner's decision to refuse its application. The grounds of appeal are:

- 1.39 "I act on behalf of QUAYSIDE PHARMACY and wish to appeal against the refusal of its application offering unforeseen benefits at THE SHOPPING CENTRE HAL[E]WOOD AVENUE NE3 3RX.
- 1.40 The application is made under regulation 18 of the NHS (pharmaceutical and local pharmaceutical services) regulations.
- 1.41 The Appeal
- 1.42 The grounds of the appeal are based on procedural errors and on the incorrect conclusion reached procedurally, the Committees processes were flawed as follows.
- 1.43 The committee made an assumption 18 (2)(a) ii that It is reasonable to assume that [sic] 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 destabilizing their viability without Conferring significant benefits on persons in the area of the relevant HWB. [sic]
- 1.44 There is no indication in the decision rationale letter about why this assumption has been made, or any evidence provided on which this is founded.
- 1.45 Without this, it is difficult to see how the committee reached the conclusion that it did.
- 1.46 The committee misdirected themselves in applying regulations 18(2)(a)(1) and regulation 18(2)(g) incorrectly.
- 1.47 The committee failed to consider the supplementary PNA statement published on 15 MAY 2024 when applying the regulations 18(2)(b) i. ii. And iii.
- 1.48 Accordingly, the final determination by the committee was incorrect and the decision by NHS England should be quashed and redetermined to grant QUAYSIDE PHARMACY LTD application.
- 1.49 In summary the application will provide significant benefits to the provision of pharmaceutical services in the area.
- 1.50 If an oral hearing is arranged Quayside Pharmacy Ltd would want to attend and be represented."
- 1.51 Supporting information is at Appendix B

This is a summary of representations received on the appeals.

## 2.1 COMMUNITY PHARMACY NORTH EAST – NORTH

[Community Pharmacy North East – North submitted three letters of representation for SHA/26305, SHA26315 and SHA/26323 which were identical therefore only one is summarised here.]

- 2.1.1 “Following receipt of the above application[s], members of Community Pharmacy North East - North were consulted and the following submission is made in respect of the application[s].
- 2.1.2 All declarations of conflict of interest were made and those with a conflict had no input to the decision of the committee.
- 2.1.3 The application[s] was[were] made under regulation 18 to secure improvements or better access to pharmaceutical services.
- 2.1.4 A supplementary statement was issued by Newcastle Health and Wellbeing Board on 15th May 2024. This was factual, stating the date of closure of Boots Pharmacy at 41 Halewood Avenue, Kenon, NE3 3RX, the opening hours of the Boots Pharmacy and the services it provided. No gap in pharmaceutical services was identified.
- 2.1.5 Apple maps shows four pharmacies located one mile or under from Halewood Avenue. All have gentle slopes between the sites and being an urban location, footpaths, good lighting and when any major roads are between the sites, pedestrian crossings to make crossing easier.
- 2.1.6 Fawdon Park Pharmacy is 0.8 miles taking 18 minutes to walk or 5 minutes to DRIVE.
- 2.1.7 Pharmacy Express is 0.8 miles taking 17 minutes to walk or 5 minutes to drive.
- 2.1.8 Meadows Pharmacy is 0.9 miles taking 18 minutes to walk or 4 minutes to drive.
- 2.1.9 Douglas Pharmacy is 1 mile taking 20 minutes to walk or 5 minutes to drive.
- 2.1.10 If patients do not wish to access these services, a number of distance selling pharmacies can be accessed which are required to deliver medication free of charge to the patient. These pharmacies can also provide all essential and advanced services at distance, via telephone or video call.
- 2.1.11 If the application is granted, the committee recommends that the new contractor should have undertaken to provide all commissioned pharmaceutical services, as a minimum and should be providing at least the same core opening hours as the previous contractor.”

## 2.2 PHARMACARE4U LTD

- 2.2.1 “Thank you for sharing with us the appeals you received from the above applicants, regarding the decision by North-East and North Cumbria ICB to reject their applications to open a pharmacy in: **43A Halewood Ave, Kenton, Newcastle upon Tyne, NE3 3RX** or its vicinity.
- 2.2.2 We have noted their comments. We do share their point of view in one respect: North-East and North Cumbria ICB have failed in their duty to consider

thoroughly the applications they received and reach an outcome to the satisfaction of the patients of Kenton.

- 2.2.3 We further consider that North-East and North Cumbria ICB were wrong to misinterpret the NHS Pharmaceutical Services Regulations by not considering Newcastle HWB's supplementary statements of 15 May 2024 as having the weight of a Pharmaceutical Needs Assessment – PNA. We refer you to our own appeal on this matter where this point was extensively clarified and supported with evidence.
- 2.2.4 The officers of North-East and North Cumbria ICB have shown a lack of due diligence when considering how best to assess the needs of the patients of Kenton and an irresponsibility in failing to grasp the meaning of the regulations relating to PNAs and supplementary statements. Regarding this point, we are in agreement with other applicants that a pharmacy is needed in Kenton and that North-East and North Cumbria ICB should have reached the same conclusion.
- 2.2.5 As we believe that either the Appeals Committee (or North-East and North Cumbria ICB if this is referred to them) will eventually grant one applicant the right to open a new pharmacy in Kenton, we would like to suggest some key points to help towards such a decision.
- 2.2.6 Most applications have some varying merit to be considered. However, we believe that not all applicants will have the ability to open a pharmacy, should it be awarded to them. We humbly submit to the Committee that we have a better chance – if not the only chance - than all other applicants, to open a pharmacy in Kenton. We can also do so reasonably quickly and efficiently as our planning is well ahead of the competition. We have been working on this since January 2024. Our argument for being the best placed applicant is supported by the following facts:
  - 2.2.6.1 We have secured the only other available premises in Kenton. We have provided evidence to that effect in our application and in our appeal document.
  - 2.2.6.2 We already serve some 40% of Boots former patients (we can evidence that from our mapped figures appendix a). Kenton patients are being advised by their respective GPs to approach our Great Park Pharmacy as we welcome all patients - regardless of case complexity - and we deliver to them without fail. (evidence attached)
  - 2.2.6.3 Local GPs and Boots Pharmacy had been referring Boots former patients to us since Boots stopped providing dosette boxes and home deliveries. When Boots closed completely, Boots pharmacy and the GPs had no hesitation to refer the remaining patients to us as they knew we could provide a reliable service to the area to fulfil the needs at such short notice as other pharmacies in the area had rejected them.
  - 2.2.6.4 We have an innovative way of providing a 24hr service that ensures that no patient finds themselves without medication. We have already explained the system. (appendix b)
- 2.2.7 In conclusion, we stand ready to open a new pharmacy in Kenton, to meet the needs of patients and the demands of the HWB, as soon as this is awarded to us. We are confident this will be another success just as we have proven by building up a new pharmacy from scratch in Great Park. Our current pharmacy is one of the best performing pharmacies in England, as shown by NHS official figures. We stand ready to provide any evidence or documentation to support

our application. Please note that some of the evidence referred to above, has already been supplied either with our application or at appeal stage.”

2.2.8 Supporting information is at Appendix C

### 3 Observations

#### 3.1 DOUGLAS PHARMACY

- 3.1.1 “Regards your request - Kindly see below , the repeated communication provided both to NENICB and yourselves.
- 3.1.2 At no point have we received direct communication or information regards discussion of this from the LPC ...which I feel is a significant oversight.
- 3.1.3 We have reviewed the most recent appendices - especially the appeals letter raised by PharmaCare4uLTD. This letter is ridiculous and represents their personal opinion regards a service they feel they can offer - with no evidence / needs assessment NOR actual factual basis . Whilst I am pleased that they feel they are already serving the patients of Kenton ....We also are providing services to them from 2 Pharmacies within a short distance of the previous Boots site / GP Practice - Kenton Medical Centre.
- 3.1.4 Meadows Pharmacy (recently acquired from Bestway)
- 3.1.5 Douglas Pharmacy - established ( 2019)
- 3.1.6 We currently provide all services - inc vaccinations . pharmacy first – medicines management - and offer free delivery to patients - and we too are already surviving patients from Kenton - We are also in the process of extending opening hours on a Saturday at both sites with additional resource.
- 3.1.7 The LPC have already highlighted the number of pharmacies within 1 mile radius of the previous Boots site - but actually there are 11 Pharmacies within a 3 mile radius (including 2 of the operators who have put in applications ) - We could have also put in an application for this site - However, it is not required/necessary - The area is services well - and our own informal research of patients / GP practices – has suggested that all patients are happy with access and level of services provided – In deed we have many patients come across to us from Kenton Medical Centre as well as Hillview practice.
- 3.1.8 There are a number of "System Issues" that are required to be considered (not done so by the LPC) –
- 3.1.9 1. Workforce pressures - each and every pharmacy is trying to attract the same pool of Pharmacists / Dispensers / Technicians - by spreading the workforce thinly across multiple sites reduces the efficiency with which Pharmacies can maintain services sustainably - consolidating staff in fewer pharmacies allows for enhanced services / pharmacy first / etc to be carried out with consistency and expertise.
- 3.1.10 2. Financial Pressures - Financial pressures within Community Pharmacy are well documented and still subject to action from NPA which is balloting members. By allowing this application - you would simply be increasing such financial pressures upon an already saturated market - We have had no issues reported that patients cannot access Pharmacy services within the area (unlike NHS dentistry for example).

- 3.1.11 3. Delivery of medication - Each and every pharmacy within the area offers a free delivery service - as well as supporting carer networks / care homes in the oversight of medicines provision and management.
- 3.1.12 4. Pharmacy First - each and every pharmacy in the area currently offers Pharmacy First - and there currently is still much capacity that Kenton Medical Practice could use - sign post to - and this would be a better strategy than simply opening up yet another pharmacy - whose full capability/capacity will not be utilised - but will increase unnecessary completion / financial strain in an already saturated situation.
- 3.1.13 Thus we strongly OBJECT to the application raised by current contractors within the area / and others - who wish to simply profiteer - as opposed to truly work collaboratively within the system provide essential / enhanced services and make best use of current resources - Moreover, the LPC should have coordinated and discussed with the local pharmacies and GP surgeries - along with the PCN as to how best to get the current local pharmacies to best continue provision to all patients in the area - Instead , this has been left to us as individual contractors - and we have indeed discussed with each other - and have increased our resources to meet the demand.
- 3.1.14 We strongly advise the appeals panel to REJECT this application/appeal - which is without base or need.
- 3.1.15 If the Appeals panel feel there is significant need - then this should be highlighted to all current contractors and discussed with them = along with the opportunity for formal bids invited - The LPC has not done so , as it also feels there is no need for additional provision."

Representations to the Commissioner dated 8 May 2024

- 3.1.16 "We have previously emailed you our concerns (see copy of e-mail below). Those concerns persist - even in light of the new application.
- 3.1.17 In short
- 3.1.18 1. The GP surgeries are being supported by the current pharmacies within the locality (more than 11 pharmacies within 0.6-1.0 mile from the GP surgery)
- 3.1.19 2. Patients are being served and they are currently receiving their medication
- 3.1.20 3. The use of EPS and prescription delivery service - ensures that there is little need for patients to attend Pharmacy for routine (or even emergency) emergency prescriptions - more importantly those with healthcare inequalities are better served with EPS and prescription delivery services
- 3.1.21 4. Enhanced services such as Pharmacy First / vaccinations / BP checks are already being offered and taken up by patients and the GP Surgeries are aware of where to sign post patients for pharmacy first
- 3.1.22 5. The ICB need to ensure that the Integrated Urgent Care System makes best use of the current workforce / services - Pharmacies remain under significant funding pressure, and there remain significant workforce pressures - any additional Pharmacy will try to draw upon that very limited workforce - dilute availability of staff and create inefficiency of service delivery; the fact that Boots closed and was unable to sell their business/pharmacy contract highlights such pressures and lack of financial sustainability – by offering a contract again - this will put further strain on the viability of current pharmacies

- 3.1.23 6. Access for patients to Pharmacy Services remains very good - along with suitable transport links
- 3.1.24 ***For this reason, we would not support - and would strongly object to all of the applications for this site/area - Indeed the patients within this area are already seeking and receiving appropriate services from Pharmacy of their choice - and all of the current pharmacies have offered support to Kenton Medical Practice."***

REF: SHA/26305

**APPEAL AGAINST NORTH EAST AND NORTH CUMBRIA ICB DECISION TO REFUSE AN APPLICATION BY JIWA PHARM LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT KENTON SHOPS ON HALEWOOD AVENUE/KIRKWOOD DRIVE, NE3**

**1 The Application**

By application dated 5 December 2023, Jiwa Pharm Ltd applied to the Commissioner for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at Kenton Shops on Halewood Avenue/Kirkwood Drive, NE3. In support of the application it was stated:

- 1.1 In response to Section 5 'Applications in relation to premises that are in close proximity to other listed chemist premises', Jiwa Pharm Ltd stated:

1.1.1 "No other pharmacy in same or adjacent premises so not applicable."

Information in support of the application

- 1.2 "As the ICB will be aware, Boots has announced several closures of pharmacies in the Newcastle area which will significantly affect the ability for patients to access pharmaceutical services. We have carefully considered the announced closures and believe that the closure of the Halewood Avenue, Kenton Boots will have a much larger impact on patients that [sic] some of the other planned closures and will lead to a deficiency in pharmaceutical services in the Kenton area.
- 1.3 Kenton Shopping Centre is a busy and popular local centre with a wide range of services, including Kenton Medical Centre, general shopping and a library, primary school (adjacent) and nursery. The Boots pharmacy used to be much busier than it is now and has suffered from a lack of proper support and staffing. The pharmacy used to dispense circa 12,000 items per month and even now still dispenses in the region of 7,500 items per month.
- 1.4 Once Boots closes patients will have to undertake significant journeys of at least 0.7 miles or more, and this is an area of Newcastle that suffers from high levels of health deprivation and mobility issues (particularly the area just north of the application site).
- 1.5 Patients who were once able to access a pharmacy of [sic] foot would be forced to use a bus or access a car.
- 1.6 We submit that it is important for patients in this area to have proper access to pharmaceutical services and urge the ICB to consider this application as quickly as possible, as even if the application is granted there will still be a significant time when patients in this area have no access to a pharmacy due to the length of the application process and any appeal."

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

- 1.7 "BY OPENING A PHARMACY AT THE PROPOSED LOCATION."

**2 The Decision**

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

- 2.1 “North East and North Cumbria ICB has considered the above application and I am writing to confirm that it has been refused. Please see the enclosed report for the full reasoning.”

#### Decision report

- 2.2 “The PSRC considered the application at its meeting of 6 August 2024 (moved from 31 July 2024 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(2)(c&d)** – are satisfied and therefore **Regulations 19(2)&(3)** are met. The level of applications received for the Kenton area is unprecedented. Sporadic receipt of the Kenton Batch 1 applications overall between December and 21 March 2024 has caused an unavoidable delay of over 6 months' duration of some unforeseen benefits applications.
- 2.4 **Regulations 18(1)** – is not met as the Applicant has failed to identify an unforeseen benefit.
- 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 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.
- 2.7 **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 decision of the 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.
- 2.8 **Regulation 18(3)** The PSRC was not satisfied with regard to paragraph (2)(b) so there was no need to consider paragraphs 2(c) to (e).
- 2.9 **Regulation 18(2)(g)** – is not met and therefore **Regulation 19(5)** is also 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.
- 2.10 **Regulations considered by PSRC but deemed not applicable to this application.**
- 2.11 The following Regulations were also considered by PSRC at its meeting on 6 August 2024, but were deemed not to be relevant to this application:
- 2.12 Regulation 18(2)(e)
- 2.13 Regulation 18(2)(f)

- 2.14 Regulation 19(1)
- 2.15 Regulation 19(4)
- 2.16 Regulation 31
- 2.17 Regulation 32
- 2.18 Regulations 40 to 44
- 2.19 Regulation 50
- 2.20 Regulation 66"

REF: SHA/26315

**APPEAL AGAINST NORTH EAST AND NORTH CUMBRIA ICB DECISION TO REFUSE AN APPLICATION BY ALRAHI & SINGH LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT 41 HALEWOOD AVENUE, KENTON, NEWCASTLE-UPON-TYNE, NE3 3RX (BEST ESTIMATE)**

**1 The Application**

By application dated 22 January 2024, Alrahi & Singh Ltd applied to the Commissioner for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at 41 Halewood Avenue, Kenton, Newcastle-upon-Tyne, NE3 3RX (best estimate). In support of the application it was stated:

- 1.1 In response to section 5 'Applications in relation to premises that are in close proximity to other listed chemist premises', Alrahi & Singh Ltd stated:

1.1.1 "Not applicable"

Information in support of the application

- 1.2 "The proposed pharmacy will secure the following unforeseen benefits:
- 1.3 Patients and local population are used to having access to pharmaceutical services at this site in the normal course of their daily lives.
- 1.4 The closure of Boots Pharmacy has resulted in the area being underserved and the population having to travel a significant distance to access pharmaceutical services.
- 1.5 Our company is also at the forefront of offering services and the newly commissioned services means that the need for a pharmacy to be present in the area is amplified. The local pharmacies are also overworked and may not be able to cope with the increased workload in terms of dispensing volume and services including Pharmacy First referrals.
- 1.6 For these reasons, it is imperative that pharmaceutical services are reinstated at the parade to cater for the community."

**2 The Decision**

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

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

Decision report

- 2.2 "The PSRC considered the application at its meeting of 6 August 2024 (moved from 31 July 2024 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(2)(c&d)** – are satisfied and therefore **Regulations 19(2)&(3)** are met. The level of applications received for the Kenton area is unprecedented. Sporadic receipt of the Kenton Batch 1 applications overall between December and 21 March 2024 has caused an unavoidable delay of over 6 months' duration of some unforeseen benefits applications.
- 2.4 **Regulations 18(1)** – is not met as the Applicant has failed to identify an unforeseen benefit.
- 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 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.
- 2.7 **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 decision of the 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.
- 2.8 **Regulation 18(3)** The PSRC was not satisfied with regard to paragraph (2)(b) so there was no need to consider paragraphs 2(c) to (e).
- 2.9 **Regulation 18(2)(g)** – is not met and therefore **Regulation 19(5)** is also 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.
- 2.10 **Regulations considered by PSRC but deemed not applicable to this application.**
- 2.11 The following Regulations were also considered by PSRC at its meeting on 6 August 2024, but were deemed not to be relevant to this application:
- 2.12 Regulation 18(2)(e)
- 2.13 Regulation 18(2)(f)
- 2.14 Regulation 19(1)
- 2.15 Regulation 19(4)
- 2.16 Regulation 31
- 2.17 Regulation 32
- 2.18 Regulations 40 to 44
- 2.19 Regulation 50

- 2.20 Regulation 65
- 2.21 Regulation 66
- 2.22 Paragraph 31, schedule 2"

REF: SHA/26323

**APPEAL AGAINST NORTH EAST AND NORTH CUMBRIA ICB DECISION TO REFUSE AN APPLICATION BY QUAYSIDE PHARMACY FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT THE SHOPPING CENTRE, HALEWOOD AVENUE, NEWCASTLE-UPON-TYNE, NE3 3RX**

**1 The Application**

By application dated 5 March 2024, Quayside Pharmacy Limited (“the Applicant”) applied to the Commissioner for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at the Shopping Centre, Halewood Avenue, Newcastle-Upon-Tyne, NE3 3RX. In support of the application it was stated:

1.1 In response to section 5 ‘Applications in relation to premises that are in close proximity to other listed chemist premises’, Quayside Pharmacy Limited states:

1.1.1 “The nearest pharmacy was Boots Pharmacy at Halewood Avenue. This pharmacy closed at the beginning of March 2024 therefore the best estimate location is not adjacent or in close proximity to any pharmacy.”

Information in support of the application

1.2 “Background

1.3 The location of the proposed pharmacy is within a shopping centre that is adjacent to community hubs such as Kenton Library and the Sure Start Centre. The area is geographically distinct as the A1 and A167 act as a boundary to the North East and South East. It is understood that the Boots the Chemist pharmacy located at 41 Halewood Avenue, Newcastle Upon Tyne, Tyne and Wear, NE3 3RX closed in early March 2024. The closure of the Boots pharmacy removes a significant provider of pharmacy services at or near the applicant’s proposed location. It is estimated that the closed pharmacy dispensed an above average number of items per month.

1.4 The applicant proposes to replace the pharmaceutical services provided by the Boots and more generally the reduction in the provision of pharmaceutical services across Newcastle and according provide a significant benefit to the community.

1.5 **Reg 18(1)(b) – PNA**

1.6 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.

1.7 “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.”

1.8 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.

1.9 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 closure of the Boots pharmacy at Kenton, and the closures of Boots and Lloyds Pharmacies at other locations across Newcastle.

- 1.10 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.
- 1.11 **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?**
- 1.12 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.
- 1.13 When considering the application, the NHSCB must have regard to the matters set out in paragraph (2) of the 2013 regulations. These include: -
- 1.14 **Reg 18(2)(b)(i) – there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB**
- 1.15 The proposed location is within the Kenton ward, which encompasses areas that fall within both the most deprived 10% of LSOAs nationally and the least deprived 10% of LOAs nationally (see page 23 of the PNA). Currently, the nearest pharmacy to the proposed location was the Boots at Kenton, 41 Halewood Avenue, Newcastle Upon Tyne, Tyne and Wear, NE3 3RX but this pharmacy closed in early March 2024.
- 1.16 The nearest pharmacies to the proposed location are currently 0.6 miles away. These pharmacies do not offer Saturday opening.
- 1.17 Nearest pharmacies to the proposed site:

| Pharmacy Name        | Address                                                           | Distance to Kenton Boots | Opening Times                                             |
|----------------------|-------------------------------------------------------------------|--------------------------|-----------------------------------------------------------|
| Well Pharmacy        | 46-50 The Meadows, Fawdon, Newcastle upon Tyne, NE3 3NA           | 0.6 miles                | <b>Mon-Fri:</b> 9am-6pm<br><b>– Sat &amp; Sun:</b> Closed |
| Pharmacy Express     | 29 Arlington Avenue, Newcastle upon Tyne, NE3 4TS                 | 0.6 miles                | <b>Mon-Fri:</b> 9am-6pm<br><b>– Sat &amp; Sun:</b> Closed |
| Fawdon Park Pharmacy | 9 Shopping Centre, Fawdon Park Road, Newcastle upon Tyne, NE3 2PE | 0.6 miles                | <b>Mon-Fri:</b> 9am-6pm<br><b>– Sat &amp; Sun:</b> Closed |

- 1.18 Many of the people who live around Kenton are reliant on having access to a pharmacy to which they can walk. The shopping centre in which the closed Boots pharmacy was located is a community hub to which people will travel to as part of their everyday lives. Consequently, the proposed pharmacy will be an important source of advice and Pharmacy only medicines as well as offering dispensing services.
- 1.19 As there are no pharmacies between the A1 and the Eastern Ward boundary, a patient living near Kenton Bar Primary school will have to walk approximately a mile to access pharmaceutical services if they do not wish to cross the A1.

- 1.20 Access to pharmaceutical services by foot is particularly important for this population as 36.3% of the population in Kenton do not have a car or van. This is considerably higher than the average for England and Wales which is 22%. Overall the difficulties that this population face mean that there is no reasonable choice for those who have to access their pharmaceutical services by foot.
- 1.21 The pharmacy will also offer choice to those who travel by public transport or car as there is a bus stop and car parking at the proposed location.
- 1.22 The applicant's pharmacy will be open from 8:30am to 6pm on Mondays to Friday, 8:30am to 1pm on Saturday which are the hours offered by the closing Boots pharmacy. It will therefore offer important weekday morning and Saturday opening hours that are not provided by the closest pharmacies.
- 1.23 The nearest GP Services to the proposed site are set out in the table below. This clearly illustrates that for the people who live in the vicinity of the proposed site they have access to GP surgery but no longer have an accessible pharmacy to dispense urgent prescriptions.

| GP Surgery Name       | Address                                                                                | Distance from Boots | Opening Times                                           |
|-----------------------|----------------------------------------------------------------------------------------|---------------------|---------------------------------------------------------|
| Kenton Medical Centre | Sherringham Avenue, Newcastle upon Tyne, NE3 3QP                                       | 0.1 miles           | Mon-Fri:8.30am-6pm<br>Sat & Sun: Closed                 |
| Hillsview Surgery     | Hillsview Avenue, North Kenton, Newcastle upon Tyne, Tyne and Wear, NE3 3LB            | 0.3 miles           | Mon-Fri:8.45am-5:30pm<br>Sat & Sun: Closed              |
| Park Medical Group    | Shopping Centre, Fawdon Park Road, Fawdon, Newcastle upon Tyne, Tyne and Wear, NE3 2PE | 0.6 miles           | Mon-Fri:8.30am-12:30pm, 1:30pm-6pm<br>Sat & Sun: Closed |

- 1.24 This application will be a replacement of a Boots the Chemist 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.
- 1.25 Without the replacement of the Boots the Chemist the population will not have reasonable choice or access to services.
- 1.26 **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.**
- 1.27 The closure of Boots will mean that the people living in this deprived area who are accustomed to accessing services from the location will have difficulty in accessing services. 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.
- 1.28 As stated above the proposed location has areas of significant deprivation. Accordingly, 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.

- 1.29 Services to people who share the protected characteristic of age are extremely important in this area. The location is also opposite to a Sure Start Centre and close to a nursery and the two schools located in Kenton. There will be a group of parents of young children who will require the essential services that the pharmacy offers who will find them difficult to access elsewhere when the Boots closes.
- 1.30 For older people, the location is very close to Kirkwood nursing home and the sheltered elderly accommodation of Kilburn House and this population will find pharmaceutical services difficult to access following the closure of the Boots the Chemist in the shopping centre.
- 1.31 Services that the applicant wishes to provide includes all essential services, advanced services and commissioned services. The closed 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.
- 1.32 The applicant already operates three pharmacies in Newcastle and at these has experience and the relevant accreditation in relation to the following:
  - 1.32.1 NMS
  - 1.32.2 CPCS
  - 1.32.3 EHC
  - 1.32.4 Substance misuse services
  - 1.32.5 Flu and Covid Vaccine service
  - 1.32.6 Smoking cessation advanced service
  - 1.32.7 Hypertension case finding
- 1.33 Neither our client nor the closing Boots operate the following services but would be willing to offer:
  - 1.33.1 Hep C testing
  - 1.33.2 AUR
  - 1.33.3 Stoma customisation
- 1.34 Locally commissioned services
- 1.35 Minor Ailments –
- 1.36 The applicant already offers the locally commissioned service in his existing pharmacy in Newcastle and is keen to offer it at the new location.
- 1.37 The applicant is also keen to offer the newer nationally commissioned services; The Pharmacy Contraception Service and Pharmacy First; the advanced minor ailments scheme.
- 1.38 The applicant will also arrange a free collection and delivery service in contrast to the closed Boots pharmacy where a charge for some deliveries can be imposed. The

proposed pharmacy will of course dispense medication into Monitored Dosage Systems where appropriate.

- 1.39 **Reg 18(2)(b)(iii) – Providing an innovative approach to the delivery of pharmaceutical services**
- 1.40 The application is not made on the basis that it will provide an innovative approach to the delivery of services.
- 1.41 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 27 August 2024 states:

- 2.1 North East and North Cumbria ICB has considered the above application and I am writing to confirm that it has been refused. Please see the enclosed report for the full reasoning.

Decision report

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- 2.8 **Regulation 18(3)** The PSRC was not satisfied with regard to paragraph (2)(b) so there was no need to consider paragraphs 2(c) to (e).
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- 2.17 Regulation 32
- 2.18 Regulations 40 to 44
- 2.19 Regulation 50
- 2.20 Regulation 65
- 2.21 Regulation 66
- 2.22 Paragraph 31, schedule 2"