

19 June 2025

REF: SHA/26368

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 THE SHOPS ON CHILLINGHAM ROAD NE6, BETWEEN SIMON SIDE TERRACE AND FARNLEY ROAD NE6 (BEST ESTIMATE)

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1 Outcome

- 1.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of the Commissioner and redetermines the applications.
- 1.2 The Committee determined that the application by Jiwa Pharm Ltd should be granted and the application by Quayside Pharmacy Ltd be refused.
- 1.3 The Committee noted that the Commissioner would now need to consider the issuing of a direction for the hours above 40 core hours which Jiwa Pharm Ltd has offered to provide.

A copy of this decision is being sent to:

Rushport Advisory LLP on behalf of Jiwa Pharm Ltd
Gordons Partnership LLP on behalf of Quayside Pharmacy Ltd
PCSE on behalf of North East and North Cumbria ICB
Community Pharmacy North East - North

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- 1 A summary of the applications, decision, appeals, representations and observations are attached at Annex A - C.
- 2 **Site Visit**
 - 2.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution comprised of [redacted] undertook a site visit. The Chairman read out a summary of the site report. No comments were made on it by the parties.
 - 2.2 Chillingham Road is the main road in Heaton. It runs in a straight line North to South. At its northern end, it is crossed by the Coast Road (A1058) by way of a large roundabout; it then runs slightly downhill to its southern end, where it forms a small humpback bridge over the railway line. In terms of character, it's split into three distinct thirds:
 - 2.2.1 The northern third is almost wholly residential.
 - 2.2.2 The southern third is mainly residential, but mixed in with a primary school, a pub, and a smattering of small shops.
 - 2.2.3 The middle third is a shopping area designated the Chillingham Road Shops on the bus stop, with a range of shops on both sides of the road. The pavements in this stretch of the road are in notably better condition, there are planters, benches and bike racks.
 - 2.3 There are yellow lines along almost the whole length of the road. In the middle sections, the yellow lines are broken every so often with small parking lay-bys, each accommodating a handful of cars. Some of the lay-bys are designated for blue badge holders only. All lay-bys are limited to 1 hour's parking, with return restricted for 6 hours. We found these spaces consistently occupied. There are a large number of side streets running east-west on both sides and all the way along Chillingham Road. On the side streets we went down, there were no parking restrictions, but the roads are narrow and are almost full of parked cars. The difficult parking situation tells us that the

shops are intended for, and primarily used by, those who live in the immediate vicinity and walk to the shops rather than drive.

- 2.4 Almost all the side streets comprise densely populated terraced housing. A number of the shops on Chillingham Road were estate agents (about 4 or 5 of them) which might suggest a fair amount of private ownership in the area. There was also a letting agent on Chillingham Road, whose window display also referred to student lettings in the area.
- 2.5 At the southern end of Chillingham Road, just before the railway, there is a relatively new small housing development, which appeared to comprise mainly flats. Just behind it, the development is extending (and is still ongoing), with the developer's boarding referring to the 'Heaton Quarter' which will have 2, 3 & 4 bedroom houses.
- 2.6 The former Boots pharmacy at 293/295 Chillingham Road is at the very northern end of the central shopping area. It is currently shuttered, with an agent's board inviting enquiries. There is a Tesco Express and a Sainsburys Local, a Post Office, an optician, a dentist, a GP surgery just off the main road, on Biddlestone Road, and a range of other independent shops. The GP surgery, Biddlestone Health Group is a modern purpose-built surgery; the board at the front referred to there being 6 GPs. There are apparently sufficient amenities on, or just off, Chillingham Road to fulfil all the daily needs of the local residents. There is a relatively low number of shuttered/unoccupied units. The pavements in the shopping section are wide and in good condition; they are in much poorer condition in the southern third of the road.
- 2.7 Chillingham Road appeared to be a very busy road but there are regular crossing points for pedestrians. There are bus stops on both sides of the road, served by the numbers 62 and 63 bus and also the number 1 on the southern part of the road until its route turns off down Simonside Terrace.
- 2.8 The old Boots store [no 293/295] to the nearest pharmacy at Asda is referenced in the papers as being a 17 minute walk, but it took just over 20 minutes following the main roads. It wasn't a particularly pleasant walk – poor pavements at the southern end of Chillingham Road, crossing very busy roads after Chillingham Road, and trying to navigate an entrance to the retail park that is designed more for motorists than pedestrians.
- 2.9 Asda is situated in a small retail park, which also includes TK Maxx, M&S Outlet, JD Sports. There is a large car park, with plenty of spaces. Inside Asda, at the pharmacy located at the back of the store, there were 5 customers – 2 being attended to and 3 waiting. There was a sign on the desk (although tucked away at the side) saying that it would take 72 hours to dispense repeat prescriptions and a second sign (more prominent at the front of the counter) asking patients to give the pharmacy 1 to 2 days' notice when collecting repeat prescriptions. No longer visible is the sign referred to in the papers telling all patients that they would have a 1-hour wait.
- 2.10 Returning to Chillingham Road and then driving north, over the roundabout with the Coast Road, to the Benton Road area, it was noted that there was previously a Lloyds Pharmacy in the Sainsbury's supermarket. This was primarily an area with social housing, which appeared generally well-kept.
- 2.11 The 3 next-nearest pharmacies are in Byker. Byker is a highly deprived area comprising almost wholly high-density social housing; the Molineux Pharmacy is directly opposite a high-rise block of flats. It is located next to the "Walk in Molineux Street NHS Centre". It is described on its website as a nurse led unit for treating minor injuries and illnesses, open 8am to 8pm for seven days per week. There are no other

amenities in the area to suggest that residents of Heaton would need to visit here for any other reason.

- 2.12 On Heaton Road is located the Heaton Road Surgery open 8.30am-6pm each week day, late opening till 8pm on Tuesdays, closed at weekends. It was flanked by 3 closed and shuttered pharmacies, The Well, St. Steven's, and Kerr.
- 2.13 In terms of the proposed sites:
- 2.13.1 Quayside have submitted Heads of Terms agreement dated 27.2.25 at 225 Chillingham Road NE6 5LJ currently sporting a sign "Festival Gift Shop" selling products from India and Nepal.
- 2.13.2 Jiwa propose the previous Boots site 293/295 Chillingham Road, NE6 5LL on the northern end to the roundabout where it meets the Coast Road.
- 2.14 In general the range of retail outlets would serve local residents without the need to move further afield. They were all readily accessible on foot by people living in the densely populated side streets along its length. Buses appeared regularly along the whole length of Chillingham Road. During the site visit, the road was very busy with cars, buses and people of all ages, including the elderly and mothers with prams/small children. It appeared to be a very diverse population, in a relatively deprived area.

3 Oral Hearing Submissions

Application SHA/26368

- 3.1 Mr Daly on behalf of Jiwa Pharm Ltd stated that Boots in 293/295 Chillingham Road is the fifth closure of a pharmacy in the eastern area of Newcastle. It was a large unit with some 10,000 items dispensed per month. Population to the north of the Coast Road roundabout, is some 24,000, also have no pharmacy now that the Sainsbury's Lloyds has closed. Heaton Ward has a population of about 10,600, densely populated and a built up city suburb. It is designated to be a "district center" and a Safety Zone, with the Chillingham Shops providing the daily needs of the local community. There is a new housing development at the south end "Ouseburn Heights", and the Biddlestone Health Group provides the GP surgery services for this area, and their patient list is increasing. There are three primary schools and a secondary school in the vicinity. However there is no pharmacy, the nearest one being located inside ASDA. ASDA's dispensing figures moved from 3,000/month to 5,000/month and then down to 4,000/month. The Walkergate pharmacies are not accessible for the Chillingham residents. The ICB recognised the need for a pharmacy, but did not include this fact in their Supplementary Statement. In assessing the merits of the two applications it is important to only rely on core hours to secure improvements.
- 3.2 Boots was providing a vital service to the Heaton community. Newcastle, and indeed now Heaton has a reduced number of pharmacies compared to the England average, and many of the pharmacies that are located in the city are prescribing well over the national average of items per month.
- 3.3 Car ownership: 35.4% (over a third) of all households in Heaton have no car or van. This means that having local access to pharmaceutical services at local shopping center such as Chillingham Road is a vital community service, particularly where the local GP surgeries are located in the same area. There is a high student population and above average unemployment.
- 3.4 The closure of Lloyds in Sainsbury's effectively removed the most obvious alternative choice for this community.

- 3.5 The population of Heaton at 10,600, would support at least two pharmacies. Boots closure has been wholly unacceptable to the local community and makes its replacement an absolute necessity. A survey conducted by Jiwa received 92 supportive responses. These are corroborated by the witness Mr. Mark Ridyard, a campaigner for Heaton, and a local resident since 1995. He gave oral evidence at the hearing. He stated that due to the expense of the bus journey and 1.5- 2 hour round trip to collect medication, people tend not to leave home. Instead they may order on line or have home deliveries, or get family members to pick up their prescriptions. Instead of asking their pharmacist for advice, they may well end up waiting, and getting worse before presenting at the GP surgery.
- 3.6 Comparing the two applications, Jiwa's core hours, was supported by the GPs at the Biddestone Heath Group. This is in comparison to the supplementary 2 hours late opening on Monday offered by Quayside.
- 3.7 With regard to services, both parties have offered to provide any services commissioned.
- 3.8 Property: the landlord of the Boots premises 293/5 Chillingham Road NE6 5LL, has offered support in the following terms:
- 3.8.1 *"I am the landlord of the above property which we previously and personally operated as a pharmacy since 1983. later, leasing the business to Boots from August 2006 - April 2024. Boots decided to terminate their lease and to surrender their licence."*
- 3.8.2 *I have been made aware by Mr Daly of the application from Jiwa Pharm Limited to open a pharmacy on Chillingham Road.*
- 3.8.3 *As the property has always been a pharmacy, providing an invaluable pharmaceutical service, going beyond the expectations of the community and in very close proximity to the surgery, housing doctors, nurses and therapists it came as a shock, not only for the latter professionals but also to the community of the closure of their only pharmacy in this area, leaving the patients with no access to a convenient pharmacy."*
- 3.9 Quayside's Heads of Terms is not binding. In any event the Rushport case (Rushport Advisory LLP) v National Health Service Litigation Authority 2016, established that as other vacant premises are available, confirmation or otherwise of the proposed sites should not be a determining factor.
- 3.10 Jiwa has conducted a survey of local residents, obtaining some 92 responses. These are analysed in the bundle and provide support for a pharmacy in Heaton, and highlight those with protected characteristics like mobility problems and the elderly, expressing a view that they would derive significant benefit from a more accessible pharmacy. A number of news articles are at Appendix 3 showing concerns in the press and local councilors have expressed strong criticism of the recent pharmacy closures and highlighted the need for a new one to be opened.
- 3.11 In conclusion, Mr Daly highlighted the following: Jiwa were experienced pharmacists and looking to start their own business at the proposed location. They have the support from the landlord of the now closed Boots in Chillingham Road. They will deliver the services they have committed to in their application. The core hours are a key factor distinguishing the two applications. They offer 1-7pm on Sunday, within their 62.5 core hours vs 59.5 hours and 2 supplementary hours late on Monday evenings offered by Quayside. In answer to an enquiry from Mr Daly on 22 April 2025, the Biddlestone Health Group had stated that for the Monday evening surgery 6-8pm , there would be

an Advance Nurse Practitioner or a rota GP for the twelve 10-minute appointments which would be made available.

- 3.12 In answer to a question, Mr Daly confirmed that his client Mr Kholi will be the nominated pharmacist, had acquired local knowledge from being a locum pharmacist over 5-6 years and will have a period of 18 months if he was successful, to recruit support staff.

Application SHA/26371

- 3.13 Ms Hunneyball on behalf of Quayside Pharmacy Ltd stated that the option of both applications being granted is unlikely because of Rushport.
- 3.14 Her primary submission was that the population requires a pharmacy and her client is best placed to provide that as soon as possible on the current application.
- 3.15 Her client had secured premises at 225 Chillingham Road, with a non-refundable deposit and it is now off the market. It is suitable and more viable than Boots: the fabric of the Boots premises was in poor condition and it suffered from leaks, whereas 225 Chillingham Road would be purpose built, with a consultation room, two storage areas and a delivery bay at the rear. It also had disabled parking directly outside. On the other hand, Jiwa had not secured premises yet. Quayside staffing would comprise one experienced pharmacist, one ACT (accredited checking technician), 2 dispensers and one counter assistant. There would also be one delivery driver.
- 3.16 The application by Quayside as it stands will provide significant benefits to the provision of pharmaceutical services in the area and should be preferred over the application made by Jiwa Pharm Ltd. Miss Ellis, Councilor for Heaton, was called as a witness, and set out her personal experience of shifting to the Asda in house pharmacy after Boots closed. The queue went “down the aisle” and as the service was inadequate, people were not coming in. Instead they relied on friends and family to collect medication, leading to a loss of independence, social interaction and advice from the pharmacist. Further, as an area of low car ownership, local residents using public transport would find the bus/metro fares a disincentive if they are on benefits or on low income. Those with mental health issues would find travelling some distance to a pharmacy a barrier to continuing their medication. Distance would also be a problem for the aged, those with mobility issues and those with chronic conditions. In her road side survey, responders did not specify what hours they wanted: they simply wanted the Boots hours to be replicated.
- 3.17 Both the applications should be remitted back to the ICB to be determined with Quayside's final application, if her client is not successful today.
- 3.18 However there is a third option. It is likely to be a point of contention that the extra hours offered on Monday evening are not offered as core hours in this application [although they are in our client's subsequent application].
- 3.19 It would be open to the panel to grant our client's application and request that a direction is issued by the ICB for the hours 6 to 8 on a Monday under Regulation 23. These hours would then be considered as core hours.
- 3.20 The same result could be achieved by a late amendment and in the alternative this should be considered as an option in these very exceptional circumstances. There is no prejudice as Jiwa have been on-notice that these were proposed hours since the application was first made.

- 3.21 She was not seeking for the purpose of this oral hearing to have the difference in weekday morning hours (15 minutes) adjusted as she considered that was minor in the context of the applications.
- 3.22 Nor was she seeking a change to Sunday hours as that is a significant change and following research and discussion her client believes the hours offered are appropriate to the local population.

4 **Consideration**

- 4.1 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.
- 4.2 It also had before it the responses to NHS Resolution's own statutory consultations.
- 4.3 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations").

Preliminary Consideration

- 4.4 The Committee noted in its appeal, Quayside Pharmacy Ltd contend that *"an overall procedural irregularity meant the determination of this application took place with five other applications but not with two further applications, one of which was our client's second application. The procedure used to consider our client's applications at this location was unfair and prejudicial as there has been a failure to consider our client's second and relevant application with the application that is the subject of this appeal."*
- 4.5 As per Schedule 2 paragraph 22 of the Regulations, the Committee noted that the Commissioner was not obligated to hear applications together, as the ability to do so is described as "may" which provides the Commissioner with discretion.
- 4.6 The Committee noted that Quayside Pharmacy Ltd had provided an extract from the Pharmacy Manual to support its appeal, which referred to a 30 day cut-off period being reasonable for deciding when not to combine appeals. However, having reviewed the relevant provisions, the Committee took note of the follow-up statement which read:
- "There may be circumstances in which a different approach is to be taken and it is for each decision-maker to consider whether it is reasonable to determine the applications together and fully document the reasons why."*
- 4.7 The Committee noted that it had not been provided with any representations as regards the reason why the Commissioner had not decided to hear all the applications together. The Committee, in light of this, considered that any decision by the Commissioner to hear, or not to hear all applications together, is outside of the scope of the basis for this appeal being brought, which is in relation to the decision not to grant Jiwa Pharm Ltd's application and not to grant Quayside Pharmacy Ltd's application (the latter being their application made 4 January 2024). As such, the Committee is not able to comment on any procedural irregularity in relation to Quayside Pharmacy Ltd's second application.
- 4.8 In relation to the applications before it, the Committee was mindful of the fact that Jiwa Pharm Ltd's application being heard in relation to this appeal was in fact its second application, and that Quayside Pharmacy Ltd's application was its first application. It appeared to the Committee that Jiwa Pharm Ltd had potentially been given an advantage over Quayside Pharmacy Ltd, due to the fact that the Commissioner had exercised discretion, but only in favour of one of the appellants.

4.9 The Committee considered whether this impacted the appeals before it. It noted that Quayside Pharmacy Ltd had made three requests in relation to this issue:

4.1.9 That the current application was considered as if it had the same hours as their second application, as per their representations;

4.1.10 That the current application's supplementary hours on Monday were amended to be core hours, as per their oral representations; and/or

4.1.11 The outcome of this appeal be that both applications were remitted to the Commissioner in order that it consider them alongside Quayside Pharmacy Ltd's secondary application.

Current Application's Hours to be the Same as the Second

4.10 The Committee found it unclear if Quayside Pharmacy Ltd were asking that their application be amended as per Schedule 2 paragraph 9 of the Regulations, or if they were requesting that the Committee treat their first application as if it were their second.

4.11 In relation to the request, the Committee considered that Schedule 2 paragraph 9 only provides that an applicant must inform the Commissioner of a material change, but does not clarify if this change must be accepted, the process for accepting a change, or the consequences for making a change.

4.12 The Committee considered that any such change would need to be assessed on a number of factors such as the level of prejudice a change would inflict on the other applicant, whether the Commissioner had any opportunity to consider the change, and the impact the change had on the nature of the application itself.

4.13 The Committee considered that any change could not be so significant as to fundamentally alter the original application, such that it no longer could be seen as the same application. The Committee also considered that a change may necessitate a further notification under paragraph 19 of Schedule 2, depending on the circumstances.

4.14 The Committee considered that the change of hours was in order to essentially render this application the same as their subsequent one. The Committee thus concluded that it was more than a minor change being requested. In consideration of the impact on the other appellant the Committee was of the opinion that it would be highly prejudicial. The reason for this was that Quayside Pharmacy Ltd was being given the opportunity to make, what amounted to, a wholly new application during the appeals process, which the other appellant had not had the opportunity to make representations on, and where they had not been provided the opportunity to make its own similar amendments.

4.15 The Committee was also mindful that Schedule 2 paragraph 9 of the Regulations conferred no right on Quayside Pharmacy Ltd to make amendments, only the process by which it might. The Committee considered that to be acceptable the impact of any such change would need to be proportionate to the circumstances, and have minimal impact on the application. The Committee thus reached the opinion that this change was too drastic, substantial and prejudicial to be permitted in the circumstances of the appeal.

Supplementary Hours Changed to Core Hours

4.16 The Committee considered this to be a different request for amendment, which would still be in accordance with Schedule 2 paragraph 9 of the Regulations. The Committee

noted that this was a less of a substantial change than the first request, but still represented a significant change to the application.

- 4.17 Again the Committee considered the impact of the change on the application, the other applicants, and whether any further notification under paragraph 19 of Schedule 2 should be made.
- 4.18 The Committee noted that the second amendment to the hours proposed by Quayside Pharmacy Ltd would have substantially improved the offering made in the application. This would have aligned it more closely with Jiwa Pharm Ltd's application. However, Quayside Pharmacy Ltd stated that there was no prejudice with this change due to Jiwa Pharm Ltd's being on notice that they intended to do so. The Committee noted the fact that these hours were originally supplementary hours, so were always included in the application, and considered that this did have some level of bearing on the prejudicial impact on Jiwa Pharm Ltd. The Committee concluded that there was some level of forethought with these considerations, that all parties had the opportunity to view them and that there was paperwork to support the hours being made out.
- 4.19 However, the Committee was mindful that whilst the Commissioner would have had some level of ability to consider these supplementary hours, they would not have been attributed the same level weight as if they had always been listed as core hours. Additionally Jiwa Pharm Ltd's awareness of the hours did not equate to an ability to understand the new weight that they would be given during the appeal, and the impact that may have had on its chosen representations and observations.
- 4.20 The Committee noted that in only changing the Monday hours and not the full proposed changes allegedly contained in its second application, then it would still leave Quayside Pharmacy Ltd's application with substantially less hours than Jiwa Pharm Ltd's. The Committee noted that if this change was accepted, then there would be less detriment to Jiwa Pharm Ltd, as their hours would still exceed those of Quayside Pharmacy Ltd.
- 4.21 Nevertheless, the Committee considered that the change would have improved Quayside Pharmacy Ltd position, and would be allowing applicants to exchange supplementary hours to core hours during the appeals process, under the request of the applicant. The Committee returned to the fact that the Regulations provide no process by which amendments should be accepted, or under what grounds they need to be. The Committee was mindful that any amendment needed to have a good reason for being made, a reason why it should be accepted, and could only be accepted where any prejudice to the other parties are minimised.
- 4.22 Additionally, the Committee was aware there was already a second application being made. The Committee considered that if the changes were accepted, then essentially the second application was being allowed via a different method.
- 4.23 Finally, the Committee, considered that change to the core hours of a pharmacy usually represents a fundamental change to an application. The Committee noted that there are specific Regulations regarding changes of core hours, when they can occur and how. The Committee thus considered that this was more than a straightforward amendment and changed the material nature of the application.
- 4.24 Consequently, the Committee also considered that these changes were not suitable for acceptance during this appeal.
- Remittance of the Applications to the Commissioner*
- 4.25 The Committee finally considered Quayside Pharmacy Ltd's suggestion that the applications should be remitted to the Commissioner.

- 4.26 The Committee was mindful of the issues highlighted by Quayside Pharmacy Ltd in regard to the Commissioner's decision not to hear its second application alongside the other ones that it did hear. The Committee noted that this could have caused some unfairness with regard to how Jiwa Pharm Ltd was able to proceed.
- 4.27 However, the Committee noted that this second application was not under consideration in this appeal. The Committee was also mindful that it appeared that the Commissioner had not yet considered this additional application. The Committee considered that, as per the Regulations, it was only able to consider an application once it had been considered by the Commissioner, and not before.
- 4.28 The Committee was mindful that, if the applications were remitted, then, as per Schedule 2 paragraph 22 of the Regulations the Commissioner would need to consider if it would be heard at the same time as any other applications. The Committee had been made aware, by Quayside Pharmacy Ltd, that a further application from a further applicant had already been declined to be heard alongside the others at the time that it made its secondary application. This further application, alongside any number of others, could all potentially be heard by the Commissioner. But as this further application was not before the Committee, it considered that it could not direct the Commissioner in relation to this application. The Committee noted that the same events which transpired to create the possible remittance could occur again and the Committee considered it would possibly end up remitting the applications again, but that it still remained open for Jiwa, Quayside or another applicant to make yet another application. The Committee was concerned that this could potentially go on forever.
- 4.29 The Committee noted that in remitting the application to be heard with the second one, it would still, in essence, be making a determination as to the credibility and sensibility of the Commissioner's decision not to hear the applications together. Under Schedule 2 paragraph 9 the Committee noted that it was entitled to provide such directions as it saw fit alongside the remittance. The Committee was mindful that any such remittance would need to be accompanied by a direction that the applications would be heard together. The Committee considered this to be equivalent to ordering the Commissioner to utilise its discretion. In doing so, the Committee would be judging the initial decision not to do so, as incorrect.
- 4.30 As the Committee had already considered, such a decision was outside of the scope of this appeal. Additionally, the Committee again noted that it had no representations as to the reasoning behind such a decision. The Committee noted the language in the Pharmacy Manual which indicated that delaying of a determination in relation to other applications was a reason not to hear applications together. The Committee was mindful that at least seven applications had been made, based on the Appellant's provided information, and that if each applicant was given the opportunity to create an additional application that the process could have been delayed indefinitely.
- 4.31 The Committee was reluctant to make any determination, by implication or otherwise, as to the correctness of the Commissioner's determination, without the evidence and basis to do so.
- 4.32 The Committee was mindful that under paragraph 9(1)(a) of Schedule 3 of the Regulations it was only permitted to remit the matter to the Commissioner where it considered there would need to be a further notification under paragraph 19 of Schedule 2.
- 4.33 The Committee considered that this element posed an issue with any decision to remit the applications, as the need for further notification was not immediately obvious, as a result of either of the applications under consideration as part of the appeal.

- 4.34 The Committee found it difficult to establish what decision it could take in relation to the applications currently under consideration that would require notification under paragraph 19 of Schedule 2, and so justify remitting them to the Commissioner. It noted that the Commissioner's consideration of an application other than the two before the Committee would require the notification to individuals, but that this step would be one after the remittance, as it would be in relation to an application which was not currently under appeal. The notification, therefore, would not be as a result of the Committee's decision, but as a result of the Commissioner's consideration of the additional application.
- 4.35 The Committee therefore concluded that there was no reasonable rationale for further notification of the two applications before it on appeal and so remittance would not be appropriate.

Regulation 31

- 4.36 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).

- 4.37 In its application form, Jiwa Pharm Ltd states that there is "*no other pharmacy in same or adjacent premises*". Quayside Pharmacy Ltd states that "*the nearest pharmacy is Boots pharmacy at 293 and 295 Chillingham Road. This pharmacy has given notice to close. However, the best estimate location is not adjacent or in close proximity to this pharmacy.*" The Committee noted that no party on appeal had sought to argue that Regulation 31 would require it to refuse either application.
- 4.38 Therefore the Committee was not required to refuse the application under the provisions of Regulation 31.
- 4.39 The Committee noted that, if the application(s) 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(s) being refused under Regulation 31.

Regulation 18

- 4.40 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)."*

- 4.41 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
- 4.42 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.
- 4.43 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).
- 4.44 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 2022 - 2025 and that supplementary statements were published on 15 May 2024, which set out the six pharmacy closures in Newcastle since the 2022 PNA was published.

4.45 The Committee noted the PNA states

1) *“There are 60 pharmacies across the city (plus 1 distance selling pharmacy and 1 dispensing appliance contractor), in the town centre, in shopping centres, supermarkets, high streets, housing estates and at doctor’s surgeries. These pharmacies offer a security in the supply of medicines against a prescription but also offer advice about those medicines. In addition to prescription medication Newcastle pharmacies also offer access to “pharmacy only medicines” for people to buy over the counter and as outlined in this document, they offer an extensive range of locally commissioned and non-commissioned services that are catered to the needs of local communities in Newcastle. These services, often designed in partnership with local commissioners, (Local Authority/NHS) help improve the quality of life for many of our most vulnerable people.”*

4.46 The PNA concludes that *“people in the city have very good access to community pharmacy services. The only exceptions have been noted in Dinnington village, where a recent pharmacy application was granted following appeal to NHS Resolution. On that basis, until the new pharmacy opens, we conclude that there remains a gap in provision in this area.*

4.47 *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.”*

4.48 The Committee noted that both Applicants seek to provide unforeseen benefits to the patients of Heaton.

4.49 The Committee noted that the improvements or better access that the Applicants were claiming which would be secured by their applications were not included in the relevant PNA in accordance with paragraph 4 of Schedule 1.

4.50 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)

4.51 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”

4.52 The Committee noted that the Commissioner had in its decision stated that this was *“not applicable as there is no pharmaceutical service plan currently in place and therefore **Regulation 19(5)** is met and the application must be refused”*. The Committee could not understand how the use of the term “not applicable” and the absence of any plan led the Commissioner to this finding.

4.53 There have been no submissions in relation to this point during the hearing.

4.54 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.

4.55 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)

4.56 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"

4.57 The Committee noted that the Commissioner had in its decision letter stated that *"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"*.

4.58 There have been no submissions on this point during the hearing.

4.59 The Committee was unable to ascertain why there would be significant detriment. The comments above from the Commissioner did not explain this. 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.

4.60 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)

4.61 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)

- 4.62 Based on its site visit and upon hearing oral submissions, the Committee was of the view that the recent pharmacy closures have left Heaton with a much diminished choice in terms of physical access to services. The walk to ASDA, the nearest pharmacy within the superstore in a retail park, is a 17-20 minute walk from the southern end of Chillingham Road. This would be daunting to anyone in poor health, infirm or those with small children. The bus option is available and there is a good service; however for those without a bus pass, a round trip would be some £5 per head, with a 1.5-2 hour round trip. Those with a car may well drive to ASDA which has ample car parking. The Committee noted that Heaton has a low [35%] car/van ownership statistic so the option to drive remains open but to only a small proportion of the local population.
- 4.63 Therefore the Committee was satisfied that, having regard to there being a reasonable choice with regard to obtaining pharmaceutical services, granting the applications would confer significant benefits by way of physical access on persons.
- 4.64 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 pharmaceutical services that meet specific needs which, in the relevant area, are difficult for them to access.
- 4.65 The Committee considered that individual comments had been received either from persons with certain protected characteristics or which referenced persons with protected characteristics, about issues with access to the existing pharmaceutical services. The Committee had regard to these comments but noted that there was little reference to services that meet specific needs. The comments on access were general in nature and might apply to any persons as explained by the assessment as to the lack of reasonable access above. The Committee 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).
- 4.66 The Committee was therefore not satisfied that, having regard to the desirability of people who share a protected characteristic having access to pharmaceutical services that meet specific needs, that are difficult for them to access, granting the applications would confer significant benefits on persons. having access to pharmaceutical services that meet specific needs.
- 4.67 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.
- 4.68 The Committee noted that neither Applicant had proposed any innovative approaches and that no submissions had been made on this point.

- 4.69 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

- 4.70 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.
- 4.71 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

- 4.72 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 aware of 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 a need to consider applications from other persons offering to secure such improvements or better access.
- 4.73 No deferral or refusal under Regulation 18(2)(f) was required in this case.
- 4.74 The Committee had regard to Regulation 18(2)(g) and found that it was not applicable.
- 4.75 The Committee considered whether there were any further factors to be taken into account and concluded that there were not.
- 4.76 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.
- 4.77 The Committee considered that both applications would provide better access, therefore the Committee considered that it had three options:
- 4.77.1 grant both applications;
- 4.77.2 grant one application and refuse the other; or
- 4.77.3 refuse both applications.
- 4.78 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.
- 4.79 The Committee therefore considered which of the remaining options was preferable.
- 4.80 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)"

- 4.81 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 two 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 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 no longer meets the public benefit test, then the less favoured application should be refused even if considered in isolation it would have satisfied that test.
- 4.82 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 Heaton. The Committee noted that neither party had suggested that both applications should be granted. The Committee therefore proceeded to consider which application should be granted.
- 4.83 The agreed position by all parties is that a pharmacy is required in Heaton. This is corroborated by a survey conducted by Jiwa. Similar views were expressed by a long term resident of Heaton who gave oral evidence. Quayside provided evidence of local support for a pharmacy through a road side campaign conducted by the local councillor for Heaton.

Comparing the two applications

- 4.84 The Committee compared the two applications under the following headings:
- 4.85 Proposed locations:
- 4.85.1 Jiwa has provided a letter of support from the landlord of 293/295 Chillingford Road NE6 5LL. Quayside have submitted a Head of Terms agreement dated 27 February 2025, for premises at 225 Chillingham Road NE6 5LJ. The Quayside property will require some alterations. Jiwa would use the now closed Boots premises. In any event, the Committee noted that the regulator, GPhC, would inspect the premises for suitability, and therefore this is not a determinative factor. Both proposed sites are on Chillingham Road.
- 4.86 Staffing:
- 4.86.1 Jiwa will be new entrants to the market, but would be staffed by experienced pharmacists who, through their locum contracts, now have knowledge of the area. Quayside are already owners of other local pharmacies, and if successful their staff would include one pharmacist, one accredited checking technician [ACT] two dispensers and one counter assistant. The Committee concluded that staffing is not a determining factor
- 4.87 Services:

4.87.1 Both Applicants will provide the services they have committed to.

4.88 Hours:

4.88.1 Jiwa's total core hours are 62.5 including 1-7pm on Sunday. Quayside's total core hours are 59.5 hours including 10am-3pm on Sunday. The supplementary hours proposed by Quayside are an additional 2 hours 6-8pm on Monday.

4.89 The Committee concluded that Jiwa's later Sunday hours 1pm-7pm would serve the community better than those offered by Quayside's Sunday 10am-3pm which are duplicated by ASDA's 10am-4pm Sunday opening. The Committee reminded itself of its duty to disregard the supplementary hours on Monday evening 6-8pm proposed by Quayside, and it is not the Committee's responsibility to "direct" the Commissioner as suggested by their representative, to include these hours as "core".

4.90 The Committee was mindful of the desirability of only granting one application and on the basis of the advantage outlined above, it preferred the application of Jiwa Pharm Limited.

4.91 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); ...

4.92 The Committee noted that, if the Jiwa application was to be granted, a direction would need to be issued for the "additional" supplementary hours which were being offered by them.

Other considerations

4.93 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.

4.94 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.

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

4.91.1 confirm the Commissioner's decision;

4.91.2 quash the Commissioner's decision and redetermine the applications;

4.91.3 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.

4.96 In these circumstances the Committee determined that the decision of the Commissioner must be quashed. This is on the basis that the reasons provided by them to refuse *both* applications are not adequately evidence based. The HWB had issued its supplementary statement identifying a gap in pharmaceutical provision created by recent closures. This was not given sufficient weight by the Commissioner. Furthermore, the issues relating to reasonable choice and accessibility were not considered adequately.

4.97 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. The Committee noted that it had already considered this matter in detail earlier in this determination and that it had concluded that there was no reasonable rationale for further notification of the two applications before it on appeal and so remittance would not be appropriate.

5 DECISION

5.1 In respect of the applications by Jiwa Pharm Ltd and Quayside Pharmacy Ltd. the Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of the Commissioner, for the reasons given above, and redetermines the applications.

5.2 The Committee concluded that it was not required to refuse either of the applications under the provisions of Regulation 31.

5.3 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 not satisfied that it would.

5.4 The Committee determined that an application should be granted on the following basis:

5.4.1 In considering whether the granting of an application would confer significant benefits, the Committee determined that:

5.4.1.1 there is not already a reasonable choice with regard to obtaining pharmaceutical services;

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

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

5.4.2 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.

- 5.4.3 The better hours which will be provided by Jiwa are benefits which outweighed those which may flow from the Quayside application. As such, the Jiwa application was to be preferred.
- 5.4.4 The Committee noted 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/26368**

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 THE SHOPS ON CHILLINGHAM ROAD NE6, BETWEEN SIMONSIDE TERRACE AND FARNLEY ROAD NE6 (BEST ESTIMATE)

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

Tel: 020 3928 2000
Email: nhsr.appeals@nhs.net

1 The Application

By application dated 22 February 2024, Jiwa Pharm Ltd (“the Applicant”) through its representative, Rushport Advisory LLP, applied to North East and North Cumbria Integrated Care Board (“the Commissioner”) for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at the shops on Chillingham Road NE6, between Simonside Terrace and Farnley Road NE6 (best estimate). In support of the application it was stated:

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

- 1.1 “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 Chillingham Road Boots will have a much larger impact on patients than some of the other planned closures and will lead to a deficiency in pharmaceutical services in the Chillingham Road area. Chillingham Road is located in South Heaton and has its own distinct identity and range of shops and services. There has been a pharmacy in this location for approximately 40 years and it is well used by the local population who cannot understand why Boots has taken the decision to close such an important community facility. In recent years the prescription item numbers dispensed at the Boots store dropped from approximately 13,000 to around 9,000 and this appears to have been due to service issues that Boots were experiencing. Despite these problems, the Boots pharmacy remained busy and still dispenses more than an average pharmacy.
- 1.3 There is significant health deprivation and disability in South Heaton as well as the areas that border it and it is classed as a low income area. This further adds to the need for community pharmacy services, especially with the launch of the Pharmacy First service.
- 1.4 Biddlestone Health Group is located almost opposite the current Boots and issues circa 14,000 items per month from approximately 10,000 patients, with many South Heaton residents using this as their GP surgery due to its accessibility for them.
- 1.5 Once Boots closes patients will have to undertake significant journeys of 1 mile or more, which is a very significant journey for such a built up area with high health needs.

- 1.6 Patients who were once able to access a pharmacy of foot would be forced to use a bus or access a car.
- 1.7 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.”

2 The Decision

The Commissioner considered and decided to refuse the application. The decision letter dated 8 October 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. ...”

Extract from decision report

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

- 2.2 “The PSRC considered the application at its meeting of 7 October 2024 (moved from 25 September 2024). All the evidence provided by the applicant, the committee report and the regulations were considered and discussed by the committee. It was agreed that under Regulations 18 and 19 of the NHS (Pharmaceutical and Local Pharmaceutical Services) (Amendment) Regulations 2023 – unforeseen benefits: additional matters and consequences the application should be **refused** on the basis that the relevant Regulations were not met:
- 2.3 **Regulations 18(1)** – is not met as the Applicant has failed to identify any unforeseen benefits.
- 2.4 **Regulations 18(2)(a)(i)** – is not applicable as there is no pharmaceutical service plan currently in place and therefore **Regulation 19(5)** is met and the application must be refused.
- 2.5 **Regulations 18(2)(a)(ii)** – There is no evidence of the existing Pharmacy services not providing a reasonable level of service and so granting the application may cause significant detriment to existing local services by destabilising their viability without conferring significant benefits on persons in the area of the relevant HWB. As this regulation is satisfied, therefore **Regulation 19(5)** is also met and the application must be refused.
- 2.6 **Regulations 18(2)(b)(i),(ii)&(iii)** – there is reasonable choice with regard to pharmaceutical services in the area. There is no evidence that people with protected characteristics find accessing pharmaceutical services difficult in the area. No innovative approaches to the delivery of pharmaceutical services are offered by the applicant. It is the opinion of PSRC that granting the application would not confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant PNA was published. The regulation is not met and therefore **Regulation 19(6)** is also not met and the application must be refused.
- 2.7 **Regulation 18(2)(c&d)** are both met as there are multiple applications being considered together and in relation to each other today. Therefore **19(2)and(3)** are also both met.

2.8 **Regulation 18(2)(g)** – is not met and therefore **Regulation 19(5)** is met and the application must be refused - the application is not the result of a closure of a Pharmacy owing to consolidation and since the last revision of the PNA (2022) no review of the PNA has been undertaken and published in line with the Regulations.

2.9 **Regulation 18(3)** - This regulation has been met so there is no need to consider paragraphs 2(c) to (e).

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

2.10 The following Regulations are deemed by PSRC not to be relevant to this application:

2.10.1 Regulation 18(2)(e&f)

2.10.2 Regulation 19(1)&(4)

2.10.3 Regulation 31

2.10.4 Regulation 32

2.10.5 Regulations 40 to 44

2.10.6 Regulation 50

2.10.7 Regulation 65

2.10.8 Regulation 66

2.10.9 Paragraph 31 Schedule 2"

3 **The Appeal**

In a letter dated 30 October 2024 addressed to NHS Resolution, the Applicant appealed against the Commissioner's decision. The grounds of appeal are:

3.1 "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 8 October 2024 (attached).

3.2 The Committee will note that this was one on a number of applications that the Commissioner had received requesting permission to open a pharmacy at this location following the closure of Boots on Chillingham Road.

3.3 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.

3.4 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.

3.5 In addition to this report, we ask the Committee to note that my client knows the area of Newcastle well and has engaged with the local community extensively as part of the application process.

- 3.6 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.
- 3.7 Attached with this appeal is a 16 page document that contains answers to a survey that my client carried out.
- 3.8 The survey produced 92 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.
- 3.9 We ask the Committee to note some specific points about the cohort of patients that were surveyed.
- 3.9.1 The majority of those who support this application work either full time or part time, but there are a range of employment types represented
- 3.9.2 Details of specific disabilities are provided.
- 3.9.3 38% have a long-term medical condition
- 3.9.4 22% do not have access to a car
- 3.9.5 Overall location, and being close to home are the main reasons for using the previous Boots pharmacy
- 3.9.6 All 92 patients provided specific comments describing the difficulties they now face accessing pharmaceutical services. 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 the closure of Boots has had a dramatic impact on the lives of patients who were used to having a pharmacy at this location.
- 3.10 In addition we ask the Committee to note that nearest alternate pharmacy, at ASDA has now placed a notice inside the pharmacy as shown below (picture from October 2024).
- 3.11 [Photo provided]
- 3.12 The sign advises that there is a “1 hour wait for all” which refers to anyone who comes in to collect a prescription and that anyone who has had a prescription sent to ASDA electronically will have to wait 2 days for the prescription to be dispensed, before then accessing ASDA and waiting 1 hour to collect the prescription. It is worth noting that this is not a 2 day wait from ordering a prescription due to the GP practice having to issue it, but a 2 day wait for dispensing once the prescription has been received.
- 3.13 Recent Google reviews state that the queue at the pharmacy “only goes down because a few people give up and leave”.
- 3.14 **The Health and Wellbeing Board**

- 3.15 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;

Page 31

3.16 **1 Purpose of the Report**

- 3.17 1.1 The purpose of this report is to:

- 3.18 (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;

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

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

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

3.19.3 Boots, Cruddas Park Shopping Centre, Westmorland Road, Cruddas Park,

3.19.4 Elswick, Newcastle upon Tyne, NE4 7RW

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

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

- 3.20 (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:

3.20.1 Halewood Avenue, Kenton, Newcastle upon Tyne

3.20.2 **Chillingham Road, Heaton, Newcastle upon Tyne**

3.21 **2 Recommendations**

- 3.22 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.

- 3.23 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:

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

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

- 3.24 **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:

- 3.24.1 Boots, Cruddas Park Shopping Centre, Westmorland Road, Cruddas Park, Elswick, Newcastle upon Tyne, NE4 7RW
- 3.24.2 Boots, 41 Halewood Avenue, Kenton, Newcastle upon Tyne, NE3 3RX
- 3.24.3 **Boots, 293/295 Chillingham Road, Heaton, Newcastle upon Tyne, NE6 5LL**
- 3.25 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:
 - 3.25.1 Halewood Avenue, Kenton, Newcastle upon Tyne
 - 3.25.2 Chillingham Road, Heaton, Newcastle upon Tyne

Page 33

- 3.26 **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.**
- 3.27 **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.**

PAGE 36

Page 39

- 3.28 **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.**
- 3.29 [emphasis added]
- 3.30 The HWB subsequently published a Supplementary Statement and that statement is enclosed with this appeal.
- 3.31 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. The HWB states,
 - 3.31.1 *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.*

- 3.32 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.
- 3.33 In their letter of response to my client's application dated 2 May 2024 the HWB states;
- 3.33.1 *Boots, 293/295 Chillingham Road, Heaton, Newcastle upon Tyne, NE6 5LL*
- 3.33.2 *Boots, 41 Halewood Avenue, Kenton, Newcastle upon Tyne, NE3 3RX*
- 3.33.3 *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.*
- 3.33.4 *It would be desirable for a new pharmacy to offer:*
- 3.33.4.1 *At least the same range of NHS pharmaceutical essential and advanced services as the outgoing contractor, but preferably a full range.*
- 3.33.4.2 *At least the same range of Local Authority commissioned services as the outgoing contractor, but preferably a full range.*
- 3.33.4.3 *At least the same range of NENC ICB commissioned services as the outgoing contractor, but preferably a full range.*
- 3.33.4.4 *Non-commissioned services, such as prescription collection and delivery services*
- 3.33.5 *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.*
- 3.34 In reality, my client, and others, should have been submitting applications 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.
- 3.35 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."

Copy report dated June 2024

3.36 **"Introduction**

3.37 Jiwa Pharm Ltd have submitted an application for inclusion in the pharmaceutical list for the Newcastle upon Tyne Health and Well Being Board. The location of the proposed premises is at Chillingham Road (between Simonside Terrace and Farnley Road), Heaton, Newcastle.

3.38 This report has been prepared for the applicant, Jiwa Pharm Ltd.

3.39 **Structure of Report**

- 3.40 This report sets out the case for this application. It is structured as follows:
- 3.40.1 **Section 2** discusses a preliminary matter;
 - 3.40.2 **Section 3** sets out the background to the application site and its surroundings;
 - 3.40.3 **Section 4** comments on the statutory tests;
 - 3.40.4 **Section 5** reviews the Newcastle upon Tyne PNA;
 - 3.40.5 **Section 6** sets out the details of health care provision in Heaton;
 - 3.40.6 **Section 7** provides an assessment against the key regulation 18 tests; and
 - 3.40.7 **Section 8** sets out the conclusion.
 - 3.40.8 **Appendices**
- 3.41 The following appendices are included:
- 3.41.1 **Appendix 1** Map of Heaton
 - 3.41.2 **Appendix 2** Health Check of Chillingham Road Shops (District Centre)
 - 3.41.3 **Appendix 3** News Articles
 - 3.41.4 **Appendix 4** Bus Routes in Heaton
- 3.42 **PRELIMINARY MATTERS**
- 3.43 This is an application by Jiwa Pharmacy Ltd which seeks to replace the now closed Boots Pharmacy at 293-295 Chillingham Road, Heaton. Boots have been located in this part of Heaton for many years and has played an important role in meeting the pharmaceutical needs of the Heaton population and worked closely with the surgery at Biddlestone Health Group located at Biddlestone Road. Boots closure was a company restructuring decision with Boots reducing its portfolio. It is not a decision based on the health and wellbeing needs of the local people.
- 3.44 This closure will leave a gap in service provision and a hole in the network of pharmacies provided to the east Newcastle population.
- 3.45 This is the fifth closure of a pharmacy in the eastern area of Newcastle, with Boots having closed its pharmacy in Jesmond and Lloyds closing its pharmacy just north of this area at Sainsbury's, Benton Avenue. Additional pharmacy closures occurred south of this area with Boots closing its Shields Road pharmacy and St Steven's Pharmacy closed at Heaton Road.
- 3.46 Added to this, the area is an area of significant population, deprived in many ways, with high demands placed on pharmacies across the city and under provided for in pharmaceutical services terms.
- 3.47 It is important that urgent action is taken to remedy the deficit in services arising from these closures.
- 3.48 **THE SITE AND SURROUNDING AREA**

3.49 **General Location**

3.50 A map of Heaton is at **Appendix 1**. Heaton is located in Newcastle, about 2.5 miles (mls) northeast the City Centre. It is located just south of the A1058 Coast Road, and north of the Great Northern railway line/metro line at Chillingham.

3.51 The Heaton Ward has a population of about 10,600. This is the population living within the densely built terrace housing around Chillingham Road and area of bungalow development located to the northeast between Debdon Gardens and Botsworth Gardens. It is post-war suburban housing area developed in the 1950s and 1960 and focused on the local shops and services at Chillingham Road.

3.52 Heaton is a distinguishable community from the Byker and Walkergate areas located south of the railway line. The Heaton boundary is delineated by the railway line, Heaton Park and the Coast Road. It is a large densely populated and built up city suburb.

3.53 **The Proposal Site**

3.54 The proposal site is located along Chillingham Road and will be in the main shopping thoroughfare between Simonside Terrace and Farnley Road. Whilst the shops within this area are well occupied there are a number of premises that are vacant and could be used for the proposal.

3.55 The important point is that the proposal will be within the Chillingham Road shops to ensure continuity of pharmaceutical services to the local population without affecting how patients access their pharmaceutical services with the same car parking available and the same walking and bus routes available.

3.56 **Chillingham District Centre**

3.57 Newcastle City Council designated Chillingham Road shops as a District Centre which reflects the particular needs of the Heaton local community. It contains a range of shops and services that supports and provides for the daily needs of the local community. It is a long linear shopping area extending to about 450m along both sides of Chillingham Road. It is a traditional shopping street with ground floor shops sitting at the back of the pavement with first floor flats above.

3.58 The Council produced a Health Check of the Chillingham Road (**Appendix 2**) in 2016. The Council indicates that it is a buoyant centre with about 100 shops and services and at the time of the Council's survey had a 14% vacancy rate with Tesco as a key attraction. It is generally busy with pedestrians and in good environmental condition. Since then the Centre has seen increased shops and services open. A main one is the new Sainsbury's Local Store at the junction of Warton Crescent. The Centre continues to appear buoyant and vibrant and a number of shops seem to have been modernised with new shop fronts. The area is busy throughout the day and night with cafes and hot food take aways dotted along the street.

3.59 In addition to Boots, the Centre has the following retailers and services:-

3.59.1	2 Greek restaurants	14 Take Aways
3.59.2	Best one supermarket	6 Estate Agents
3.59.3	Solicitors Offices	2 Phone repair shops
3.59.4	Furniture shop	Massage Therapists

- | | | |
|---------|-----------------|------------------|
| 3.59.5 | Optometrists | 3 Barbers |
| 3.59.6 | Locksmiths | Community Café |
| 3.59.7 | Coffee shop | Peggy Sues Diner |
| 3.59.8 | Hairdressers | Sainsbury's |
| 3.59.9 | Subway | Bargain Shop |
| 3.59.10 | 2 Delicatessens | 3 Charity Shops |
| 3.59.11 | 2 Bookmakers | Tesco |
| 3.59.12 | Post Office | Off licence |
| 3.59.13 | Bar | Newsagents |
- 3.60 The area benefits from on street parking which is limited to a one hour wait between 8am and 6:30pm. There is side street parking. However it can be noted that with the high levels of housing in the immediate area, many people will be walking to these shops.
- 3.61 Also in the area, just off Chillingham Road at Biddlestone Road is Biddlestone Health Group providing the local GP surgery for this area.
- 3.62 **The Surrounding Area**
- 3.63 The area surrounding the District Centre is in mixed use, consistent of a large and vibrant community. There are a number of schools in close proximity to the site. To the north is Ravenswood Primary School (633 pupils aged 3 -11) and to the south is Chillingham Road Primary School (247 pupils aged 2-11). To the west is St Teresa's Primary School (209 pupils aged 4 to 11). On the northside of the Coast Road is Jesmond Park Academy (1997 pupils aged 11 to 18).
- 3.64 At Trewhitt Road is Heaton Community Centre and a Children's Centre. The area provides vets, dentists, sports clubs, allotments, playgrounds and local churches and theatres.
- 3.65 A smaller local centre is located at Heaton Road where further shops and services are located. This includes another Sainsbury's Local Store, hairdressers and barbers, take aways, laundrette, bakery, coffee shops, newsagents, offices, estate agents, gym and small grocery shop, social club and churches. This area does not contain any pharmacy.
- 3.66 As mentioned in Section 2, on the north side of the Coast Road, a large Sainsbury's store is located. This previously had a Lloyds pharmacy located in it. This was about 850m north of the Boots premises.
- 3.67 **South of the Railway**
- 3.68 It is important to note that the area south of the railway is a separate and distinct area. It is increasing urbanised and would be considered inner city. It has large areas of flat development around Byker. It is a heavily deprived area (as shown below) and it would not be appropriate to consider that any services provided in this area are meeting the needs of the Heaton area. The Heaton area is largely self contained, and its needs are considered later.

- 3.69 [Map provided]
- 3.70 **The Proposal**
- 3.71 The proposal is for a new pharmacy contract to be located at Chillingham Road shops. The proposal will replace the Boots Pharmacy in the same shopping location.
- 3.72 The proposal will operate 62.5 core hours with 7 days per week opening..
- 3.73 The proposal will provide appliances listed in Part IX of the Drug Tariff.
- 3.74 The proposal will provide all commissioned services and the applicant will ensure that all pharmacists employed are accredited to provide the services.
- 3.75 Once the premises has been secured a floor plan will be commissioned and will be provided. The premises will be registered with the GPhC and will comply with relevant legal and ethical requirements for the operation of a retail pharmacy business.
- 3.76 The premises will have a consultation area to provide services including NMS, CPCS and GP CPCS, EHC, Smoking Cessation, Chlamydia Screening, Flu Vaccinations, HEP C Service, Pharmacy First, Hypertension Case Finding, Palliative Care, Needle and Syringe Exchange and Supervised Self Administration.
- 3.77 **THE STATUTORY TESTS**
- 3.78 The statutory tests are set out under “The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013” (the “Regulations”). In particular the application should be assessed under Regulation 18.
- 3.79 The first test is whether an application for the improvements for people living in Heaton has been considered under the Pharmaceutical Needs Assessment for Newcastle 2022 (the “PNA”).
- 3.80 As shown below the PNA does not foresee the closure of the Boots Pharmacy nor does it foresee the benefits of this proposal. As such this application is an ‘unforeseen’ application and Regulation 18 applies to its assessment.
- 3.81 Other aspects of the Regulations are Regulation 18 (2)(a)(i) whether significant detriment to proper planning in respect of the provision of pharmaceutical services in the area of the relevant HWB would occur and Regulation 18(2)(a)(ii) whether significant detriment to the arrangements the NHSCB has in place for the provision of pharmaceutical services in that area would occur.
- 3.82 There is no evidence that granting the application would cause significant detriment to proper planning for provision of pharmaceutical services or the existing provision of pharmaceutical services in the area. It will not cause significant detriment to the closest pharmacy at Asda, Newcastle Shopping Park. Asda is a nationwide company and the provision of a pharmacy inside its superstore is an important draw for customers to the store and for customers to dwell longer in the store. This pharmacy has traded successfully with Boots operating at Chillingham Road. If Boots is replaced by the Jiwa Pharma Ltd application, Asda will not be affected. As such the proposed replacement of Boots will not affect the proper planning of pharmaceutical services.
- 3.83 The other aspects that an applicant can ground their application on includes Regulation 18 (2)(b) (ii) and (iii) being that a proposal will support the needs of people who share a protected characteristic and innovative approaches are being taken.

- 3.84 In terms of protected characteristics as shown above and later there are a variety of groups that live in this area that would be groups that share protected characteristics, which will be significantly disadvantaged with the closure of Boots.
- 3.85 The Regulations have been in place for over a decade and are well understood. They have been distilled into the central issue of whether a proposal will provide better access to pharmaceutical services (Regulation 18(1)(a)) and whether there is reasonable choice of pharmaceutical services (Regulation 18(2)(b)(i)). The Regulations provide no guidance as to what is “better access” or “reasonable choice”, such matters are determined by the facts of the case.
- 3.86 Better access and reasonable choice are clearly evident in this case where there is an evidential context that shows that the closure of Boots will significantly disadvantage a large densely populated suburban area, leaving a gap in the geographical spread in the pharmacy network of Newcastle and limiting the access to the full panoply of pharmaceutical services in the City.
- 3.87 **REVIEW OF THE PNA**
- 3.88 The proposal site is in Newcastle Health and Wellbeing Board and the Newcastle PNA (2022) applies in this case. The PNA notes at the outset that its role is to describe the needs of the population, current pharmaceutical service provision, and any gaps in that provision. The PNA is only capable of making a judgement about the provision of services at the time of its publication. No supplementary statements have been issued to reflect any recent changes in the area.
- 3.89 The PNA looks at the entirety of Newcastle and sub divides the City into 6 localities (PNA Map 1). Heaton is in the Outer East area as defined in the PNA. The Outer East Locality has 10 pharmacies (including the soon to close Boots, which will leave 9)¹. The PNA section 3.2 notes that *“The link between social and economic deprivation and poor health has long been recognised. People living in areas with higher levels of deprivation tend to have poorer health than those living in more affluent areas... Newcastle is the 41st most deprived authority out of 326 in the country ... Almost 25% of people in Newcastle live in the 10% most deprived areas nationally”*.
- 3.90 The PNA section 3.3 notes that *“The Healthy Life Expectancy (i.e. the average number of years a person can expect to live in good health) at birth for males in Newcastle is 61 years and for females 58.7 years. This is significantly worse than the England average”*.
- 3.91 The PNA section 3 notes that across a variety of key indicators Newcastle’s population fairs worse than the England average. Indicators show that:
- 3.91.1 Newcastle has amongst the worst premature mortality rate in England;
 - 3.91.2 the incidence of cancer in Newcastle is higher than England. It is significantly worse than the England average;
 - 3.91.3 the amount of deaths in Newcastle attributable to smoking is significantly worse than the England average;
 - 3.91.4 alcohol misuse is an increasing problem for Newcastle. The number of adults in treatment for alcohol misuse in Newcastle is slightly higher than the national average;
 - 3.91.5 in 2016/17 the estimated rate of opiate and/or crack cocaine in Newcastle was higher than the national average;

- 3.91.6 in 2020/21 in Newcastle 66.6% of adults were estimated to be obese compared to 63.5% nationally; and the prevalence of excess weight amongst children in Reception and year 6 is significantly worse than the national average;
- 3.91.7 sexual health indicators such as the diagnostic rate of Gonorrhoea is statistically worse than England; and
- 3.91.8 rates of teenage conception in Newcastle is significant [sic] worse than the rate for England.
- 3.92 The PNA Section 4.2.2 notes that *“the average number of community pharmacies in Newcastle is 19.6 pharmacies per 100,000. This equates to one pharmacy per 5,113 population. This compares to a national figure of 20.4 community pharmacies per 100,000, or one pharmacy per 4,901 population. There are 31 GP practices, which is a reduction of 2 practices compared to the previous PNA”*.
- 3.93 The PNA Table 3 notes that the 12 pharmacies in the Outer East area with a population of 46,747 equates to 25.7 pharmacies per 100,000. However two recent closures bring current pharmacy level down to 10. This means that there are 21.4 pharmacies per 100,000 in the Outer East area. With the closure of Boots this will reduce to 9 pharmacies. This will bring the Outer East Locality to below the England average with 19.3 pharmacies per 100,000 population.
- 3.94 The PNA paragraph 4.2.4 deals with the levels of dispensing in Newcastle. It notes that *“on average, community pharmacies in Newcastle dispensed around 124,174 prescription items during 2020/21 compared to an average of 88,793 for England”*. That is 40% more dispensing than the average pharmacy in England. This is clearly a significant amount of extra dispensing. The PNA accepted that *“The HWB recognise that community pharmacies in Newcastle dispense significantly higher numbers of prescriptions than the national average”*. But somewhat optimistically states that *“services are able to meet this current need”*. The evidence at **Appendix 3** is that a local Councillor has stated that they have experienced an hour long queue at a pharmacy and that their local pharmacy had been overwhelmed and could not cope.
- 3.95 The PNA concludes that *“people in the City have very good access to community pharmacy services”*. It advises that *“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”*. No Supplementary Statement has been issued, and it is clear that the PNA did not foresee the closure of Boots or the other pharmacies in the locality. It is noted that just north of the locality, the Lloyds in Sainsbury’s has also closed. The PNA did not foresee the gap in the network of pharmacies and pharmaceutical services that will arise as a consequence of these closures. As such the proposal is unforeseen in the PNA.
- 3.96 **HEALTHCARE IN HEATON**
- 3.97 A Map of Heaton is at **Appendix 1**
- 3.98 Boots was the only pharmacy in the Heaton ward area – being the area north and west of the railway, south of Coast Road and east of Heaton Park.
- 3.99 **Boots, 293-295 Chillingham Road** had been located in this area for many years. It was a local pharmacy providing vital services to the local community. Boots opened 8:45am to 6pm Monday to Friday and from 8:45am to 5pm on Saturday and from 10am to 3pm on Sunday.

- 3.100 Boots traded very successfully from this location. It was dispensing around 10,000 items per month. It principally dispensed prescriptions prescribed in the Biddlestone Health Group surgery at Biddlestone Road. About 53% of its dispensed items were prescribed in the Biddlestone Group surgery. The remaining items dispensed were prescribed across a wide variety of surgeries from across the City.
- 3.101 The PNA indicates the average monthly dispensing in England is 7,399. Boots had been operating substantially (i.e. 35%) above the England average.
- 3.102 [Photo provided]
- 3.103 The proposal site is the same shopping centre location as these premises and as such once closed and (if granted) replaced by the application, there is no material change in the distance people will have to travel to access this location. The walking distances and journey methods will remain unchanged. The same car parking and bus routes can be used.
- 3.104 **Biddlestone Health Group, Biddlestone Road, Heaton** is located about 125m from the previous Boots. The distance to the proposal site will be similar. They [sic] main access to this health centre is from Chillingham Road and as such most patients will pass close to the proposal site. The health centre has 8 car parking spaces. However for many of the patients visiting the centre they will use the on street car parking, bus stops and footpaths and general access that is available to the pharmacy and shops on Chillingham Road.
- 3.105 [Photo provided]
- 3.106 The Biddlestone Health Group is open Monday from 8:30am-8:00pm and from Tuesday to Friday from 8:30am to 6:30pm. It has a patient list of 10,300 and prescribes about 15,000 items per month.
- 3.107 There is a clear synergy in the Heaton ward area with a population of 10,600 and a patient list in the surgery of 10,300, prescribing 15,000 items per month and a pharmacy providing for the needs of these people dispensing over 10,000 items per month. This is a large urban area, with a single busy health centre and no pharmacy. The closure of Boots has displaced pharmacy [sic] will displace a significant population. Unfortunately the nearest pharmacy that would have been most likely to be the alternative for these patients would have been Lloyds in Sainsbury's at Benton Road, but this has also closed.
- 3.108 **Outside Heaton Ward**
- 3.109 The Heaton Ward is relatively self contained. However, for completeness, it can be noted that the area to the south and southeast also has pharmacies, some are associated with health centres. However, these are of limited relevance in this case as the area to the south is an area of high deprivation and the pharmacies in this area are catering for their own local communities. As mentioned above the area to the south has also seen the decline in pharmacies with two closures in recent years.
- 3.110 A map of the general area and the groups of health care services is shown below.
- 3.111 [Map provided]
- 3.112 **Asda, Newcastle Shopping Park** is located about 0.8 miles (1280m) south of the proposal site. Asda is mainly a large supermarket and as such does not rely principally on patients. These premises are in a car orientated retail park with a large car park in front of the shop and surrounded by a variety of other shops. Asda is dispensing about

4450 items per month. These items are prescribed across a broad range of health centres showing the wide catchment of this store.

3.113 [Photo provided]

3.114 This pharmacy opens 9am to 8pm Monday to Saturday and 10am to 4pm on Sunday.

3.115 **Byker**

3.116 Byker is a large inner city community and its health care needs are served in a linear area running from Heaton Road along Shields Road where there are two health centres and three pharmacies. There had been 5 pharmacies serving this area but Boots and St Stevens Pharmacy have closed.

3.117 **Well/Kerr Pharmacy, 31 Heaton Road** is located about 0.9m (1440m) southwest of the proposal site. It opens 9am to 6pm Monday to Friday and is closed at the weekends.

3.118 It dispenses about 10,100 items per month. This is again about 35% more than the England average. About 7,300 items dispensed are prescribed in the Heaton Road Surgery. As such this pharmacy relies on the Heaton Road surgery for about 72% of its items. Only about 4% of its items are prescribed in the Biddlestone Health Group surgery. This shows there is minimal interaction between this pharmacy and the Chillingham Road population.

3.119 The Heaton Road Surgery prescribes 16,800 items per month and has 7500 patients.

3.120 [Photo provided]

3.121 **Molineux Pharmacy, Molineux Street** is located about 1 mile (1600m) from the proposal site. It opens 9am to 6pm Monday to Friday and 9am to noon on a Saturday. This pharmacy dispenses a massive 33,460 items per month. It is dispensing over 340% more items than the England average.

3.122 This pharmacy is beside Thornfield Medical Group at Molineux Street. Thornfield Medical Group has 20,000 patients and prescribes about 34,600 items per month. About 50% of these items are dispensed by Molineux Pharmacy. Again there is no overlap with the Biddlestone Health Group with less than 3% of its items dispensed prescribed in Biddlestone Health Group surgery.

3.123 [Photo provided]

3.124 Close to the Molineux Pharmacy is **Kerr/ Well Pharmacy, 26 Shields Road**. This is about 1 mile (1600m) from the proposal site. It opens 9am to 6pm Monday to Friday and 9am to 1pm on a Saturday. This pharmacy dispenses about 9,200 items per month. It is dispensing over 25% above the England average. Its items are mainly prescribed in Thornfield Medical Group, Heaton Road Surgery and Benfield Park Medical group. Only 7% of the items dispensed in this pharmacy are prescribed in the Biddlestone Health Group surgery.

3.125 [Photo provided]

3.126 **Elsewhere**

3.127 It shouldn't be necessary to consider the Walker area, however, for completeness it can be noted that **Parkside Pharmacy, 436 Wellbeck Road** is about 1.4 miles (2240m) from the proposal site. It dispenses about 8,400 items per month which is comfortably over the England average. **Walker Pharmacy, 495A Welbeck Road** is

about 1.5 miles from the proposal site and dispenses about 22,500 items per month. This is an extremely large amount and significantly over the England average. Neither of these pharmacies is dispensing any material levels of items prescribed in Biddlestone Medical Group surgery. There is no physical or functional linkage between the proposal's Chillingham Road area and this area.

3.128 Finally for completeness, it can be noted that **Walkergate Pharmacy, Benfield Road** is located 1.2miles (1,920m) east of the proposal site. This is across the railway and is located in the Walkergate area, beside Benfield Park Medical group. It dispenses about 12,380 items per month, which is about 67% above the England average.

3.129 Benfield Park Medical Group has 9,500 patients. It is prescribing 24,200 items per month and about 45% of these are dispensed in the Walkergate Pharmacy. Only about 5% of the items dispensed in the Walkergate pharmacy are prescribed in Biddlestone Group Medical surgery. Again, there is minimal functional and physical linkage between the Chillingham Road and this area.

3.130 **Summary**

3.131 This review of the pharmacies and healthcare in the Outer East locality illustrates the significant role that Boots Chillingham Road had for its local community. There was a strong link between the Biddlestone Medical Group surgery in the area and Boots. The nearest alternative pharmacy to Boots was Lloyds and it has closed. To the south of the area, there is a large Asda pharmacy which is catering for car borne shoppers. The area of Byker has two surgeries and three pharmacies and these are clearly operating above national levels. This area has lost two pharmacies in recent years, and for an area that is one of the most deprived in England, there is significant demand for the services provided there.

3.132 Elsewhere other pharmacies have been considered for completeness in the Walker and Walkergate areas, but these are detached from the Chillingham Road area and there is no indication that the population from Chillingham Road uses them in any material sense.

3.133 Overall this is an area that retains significant population and health demands and has seen a significant decline in pharmaceutical services and choice in recent years.

3.134 Consequently the other pharmacies in the wider area cannot be expected to make up for the closure and loss of Boots. Such a situation would clearly disadvantage many patients.

3.135 **ASSESSMENT AGAINST THE REGULATION 18 TESTS**

3.136 Regulation 18 (2)(b) (i-iii) is well known and sets out the following: [Quoted]

3.137 **Reasonable Choice**

3.138 The first consideration is whether there is a reasonable choice with regard to obtaining pharmaceutical services in this area. The concept of reasonable choice is not just about stating that there is more than 1 pharmacy in the HWB. The issue is whether the choice that exists is "reasonable" or not and as has been shown in many cases, the mere existence of alternate pharmacies is not sufficient to say that choice is reasonable. If it is not reasonable to expect patients to access particular pharmacies then the choice that exists is not a reasonable one.

3.139 Boots was providing a vital service to the Heaton community. Newcastle, and indeed now Heaton has a reduced number of pharmacies compared to the England average,

and many of the pharmacies that are located in the city are prescribing well over the national averaged of items per month.

- 3.140 The closure of Lloyds in Sainsbury's effectively removed the most obvious alternative choice for this community.
- 3.141 The closure of Boots has put the average number of pharmacies per 100,000 in Newcastle further below the England average. The population of Heaton at 10,600, would support at least two pharmacies. Boots closure has been wholly unacceptable to the local community and makes its replacement an absolute necessity.
- 3.142 Moreover, it can be noted that the attraction of the various shops and services in Chillingham District Centre would attract more people to the area, beyond the resident population. The Council's Health Check indicates that residents from the surrounding neighbourhood also resort to this District Centre. This increases the need for additional choice in the area.
- 3.143 There is deep concern among local representatives that the closure of Boots will remove choice in the area. A number of news articles are at **Appendix 3** showing the concern in the press. One of the local political parties (Liberal Democrats) has raised a petition to prevent its closure. It advises :-

3.143.1 *"We the undersigned wish to register our serious concern about the proposed closure of the Heaton branch of Boots the Chemist. This pharmacy is locally well used and supported by the community in Heaton, being near to the medical centre, healthcare provision, and other local shops, and is easily accessible with good transport links. The nearest alternative pharmacies are 20 minutes walk or a bus ride away and are not convenient for local elderly and less mobile residents to access. We ask for an assurance that pharmacy services will continue to be provided on this or a nearby site if Boots closes".*

3.144 **Text from Liberal Democrats Petition to Retain a Pharmacy at Heaton**

- 3.145 A member of the Liberal Democrats states :-

3.145.1 *"If Boots, closes in March as planned, residents from Heaton and surrounding areas who attend the Heaton General Practices, will face an inconvenient journey to fill their prescriptions. Many of these residents would face a walk or a bus ride to reach an alternative chemist. The closure of Boots would also be a huge loss to the general community in the area as many people rely on it for advice, over the counter medications and other needs."*

- 3.146 The other articles describe the closure of Boots as having devastating consequences for some of Newcastle's most vulnerable people. Local Councillors have criticised Boots and Lloyds for shutting down pharmacies around Newcastle. Six pharmacies have closed permanently in the last 2 years and three more are due to follow. One Councillor said she had to wait in an hour long queue at a pharmacy which had become overwhelmed following the closure of Boots. She considered the pharmacy could not cope with demand. A Heaton Councillor said her area has been *"left reeling from the closure of both a Lloyds inside the Sainsbury's supermarket and then by Boots on Chillingham Road"*. She is quoted as saying:

3.146.1 *"It is devastating for quite a few residents. A local pharmacy is not just about picking up your prescription, it is about getting advice when you need it and when you potentially cannot get a doctor's appointment because you have to ring up at ridiculous times to get one ... and where you can just check in with people. When I was at the Boots pharmacy in Chillingham Road waiting for my*

prescription and the chemists were telling everyone about needing to move to the next chemist, it was clear that they had developed long-term relationships with the people collecting their prescriptions. They knew them by name and asked them stories about how their families were. Local pharmacies can often combat loneliness as well and really protect our residents in different ways”.

- 3.147 Another Councillor was particularly alarmed by the disproportionate loss of services in the east of Newcastle – with areas like Jesmond, Heaton and Byker the worst hit.
- 3.148 Given the clear concern arising from the recent and proposed closures [sic], this proposal by Jiwa Pharma Ltd will undoubtedly be welcomed by the local community.
- 3.149 **Walking Distances**
- 3.150 The Institution of Highways & Transportation provides “Guidelines on Providing for Journeys on Foot”. It advises (para 3.30) that “*The average length of a walk journey is one kilometre (0.6 miles). This differs little by age or sex and has remained constant since 1975/76*”. It suggests that an acceptable walking distance in an area such as Newcastle would be 800m, though 400m would be desirable and the preferred maximum would be 1200m. There are no other pharmacies within 400m or 800m from Chillingham Road shops. The nearest pharmacies are all located at the outer limit of urban walking distances from the Chillingham Road shops. Of course, for many patients the walk will be further because they live east and west of the main Chillingham Road. On this basis the alternative pharmacies in this case are not accessible.
- 3.151 **Bus Routes**
- 3.152 In terms of bus services, if the Boots pharmacy is replaced by the proposal, then any patients traveling by bus to access their health services will have no disruption in their movement patterns. If Boots is not replaced patients will have to take a second bus route to alternative premises and back again. This is two additional bus journeys adding to their current trip to the Chillingham Road shops and Biddlestone Health Group surgery.
- 3.153 A map of the bus routes in Newcastle is at **Appendix 4**. It is acknowledged that there are bus routes that service the Chillingham Road shops. This is because it is the centre of a large local community and hence the hub of activity including public transport. It is the optimum location for a pharmacy.
- 3.154 **Access to a Car**
- 3.155 It is unsurprising that a suburban city area such as Heaton has a relatively low car ownership rate. This is shown below.
- 3.156 [Graph provided]
- 3.157 It can be seen that 35.4% (over a third) of all households in Heaton have no car or van. The area has above average single car ownership. However, much fewer than average households have 2 or more cars. This means that having local access to pharmaceutical services at local shopping centres such as Chillingham Road is a vital community service, particularly where the local GP surgery is located in the same area.
- 3.158 At present given the high levels of dispensing at Boots, the closure of Boots will displace a substantial number of patients with many of them having no access to a private car.

3.159 Continuing the provision of a pharmacy at Chillingham Road is clearly vital for all patients, but particularly the high numbers that have no access to a car.

3.160 **Chillingham Road Shops as a Hub**

3.161 It is clear that being designated as a District Centre, Chillingham Road enjoys a higher status and a wider range of services when compared to some of the alternative shopping locations in the area. It is distinctly different from the Asda store which would typically attract weekly food shoppers. It is also distinct from the Shields Road inner city shopping area. It is above the status of the Walker shopping area and the Walkergate area.

3.162 A pharmacy within the Chillingham Road shops is a vital service which will complement the local surgeries and can offer advice and access to a variety of medications and treatments without the patient needing to see their GP.

3.163 **Demand at the Proposal Site**

3.164 The demand at the Chillingham Road shops is clear, given Boots had previously been dispensing in the region of 10,000 items per month. This is well above the England average. The demands of the 10,600 people that live in the area and resort to Chillingham Road shops is a significant source of demand. The local children that attend schools in the area is a further source of demand. There are in the region of 3,000 children attending primary and secondary schools in the area daily. These children will have health care needs which are currently met by Boots and will need to be met by the proposal when Boots closes.

3.165 **General Characteristics of the Area**

3.166 The area has significant health needs as shown below.

3.167 *Population*

3.168 The population of Heaton Ward is 10,600

3.169 [Graph provided]

3.170 The area has a significant young population as shown below. This indicates the area has a large student and young professional population.

3.171 [Graph provided]

3.172 *Household and Economic Status*

3.173 The economic status of the area is illustrated below. The area is dominated by private rented housing with 43.2% of people living in private rented accommodation compared to the England average of 26.1%. This would again reflect a high student population. Fewer people than the England average own their home (21.3% compared to 32.5%) and fewer have a mortgage (24.4% compared to 29.8%).

3.174 The area also has an above average level of unemployment with 4.6% of people unemployed compared to the England average of 3.5%. It has a higher number of people economically active and in employment with 64.5% compared to the England average of 57.4%). A lower than average percentage of the population are economically inactive with 30.9% inactive compared to the England average of 39.1%.

3.175 [Graph provided]

- 3.176 In terms of household composition, there is above average single person households with 32.2% compared to 30.1%. This could include the large area of bungalow development east of Chillingham Road where single pensioners may live. It could also reflect the student population. The area has lower than average family households and a larger than average percentage of other types of households of 20.3% compared to the England average of 6.9%. This form of accommodation could be houses in multiple occupation again indicating student or young professional households.
- 3.177 [Graph provided]
- 3.178 *Health Demands*
- 3.179 The health characteristics of the population is illustrated below. It can be seen that the population in the area is slightly above average percentage in terms of very good and good health, reflecting the young demographic of the area. There remains a lower than average percentage of people in fair, bad or very bad health, however, even with this low percentage, these people will be left with no choice of pharmacy should Boots close and not be replaced.
- 3.180 The rates of disability in the area are consistent with the England average.
- 3.181 [Graph provided]
- 3.182 Heaton is an area of mixed population with areas clearly attractive to young student populations. This population living on their own with no family circle will have distinct needs for health care which is clearly being met at present by Boots. Other areas include a large development of bungalows suited to pensioners who will also look to the Boots pharmacy for their pharmaceutical needs.
- 3.183 Moreover, it is accepted that areas of poor health and low affluence place higher demands on health care services and have higher health care needs. In this context as shown below, the needs of this large Heaton population cannot be expected to look to the pharmacies in Byker area to make up for the absence of a pharmacy in Chillingham Road as these are too far away and are already meeting the needs of some of the most deprived communities in England with a reduced pharmacy network.
- 3.184 Moreover, the fact that Newcastle is generally under provided for with higher levels of dispensing than average clearly underscores the need for increased pharmaceutical services in the area. The Boots closure clearly must be replaced with the same and if possible enhanced pharmaceutical services.
- 3.185 **Evidence of Deprivation**
- 3.186 Consistent with the evidence above, the map below further illustrates the level of deprivation in Heaton. It can be seen that there are areas of moderate deprivation towards the south of Chillingham Road, with areas in the 4th decile of deprivation in England. Further north the levels of deprivation reduce. However, the location of alternative pharmacies is principally located south of Heaton in the deprived Byker area.
- 3.187 [Map provided]
- 3.188 This map reinforces the case that the Boots Pharmacy in Chillingham Road should be replaced to prevent an influx of 10,600 more potential patients seeking to use the reduced network of pharmacies in the Byker area, which are already heavily oversubscribed.

3.189 The area around the proposal site is an area where improved health care can support local people, particularly given the closure of Lloyds and the loss of Boots. This is an area where a new pharmacy to replace Boots that provides the full panoply of pharmaceutical services will provide improvements to health care outcomes.

3.190 **Secure Improvements**

3.191 It is shown above that closure of Boots and replacement by this proposal will secure the existing much needed and much used pharmaceutical services in Heaton. Indeed with the similar opening hours it maintains the length of time patients can access these services and will provide this enhancement in an area where (other than the large Asda) there is no other local pharmacy opening late afternoon on a Saturday.

3.192 **Better Access**

3.193 The access issues for the people in the Heaton area are set out above. The proposal site is located in the hub of Heaton, where patterns of movement are well established to ensure that access to pharmaceutical services are adequate. Boots closure has placed many local people at severe disadvantage given the low car ownership rates, high levels of student population with reducing network of pharmacies in the wider east Newcastle area. It will mean some patients will have to pay to access pharmaceutical services by making two bus (possibly additional) trips to and from an alternative pharmacy.

3.194 Replacing Boots with the proposal will improve access to services as it will prevent the need for local patients to travel away from their local surgery and local shops into another area to access pharmaceutical services. Allowing this application will importantly preserve a vital service in the Chillingham Road, Heaton area of Newcastle and arrest the decline of pharmaceutical services in the heavily population and often deprived part of the city.

3.195 **Protected Characteristics**

3.196 The proposal will cater for people of protected characteristics. Children, students and elderly people living in the Heaton area would be groups with shared protected characteristics. These protected groups will lose access to their local pharmacy when Boots closes and will no longer be able to access the full panoply of pharmaceutical services as part of their day to day lives. Many are unable to walk the journeys to alternative pharmacy provision and many would not have access to a private car. The location of the proposal in the same shopping centre as the soon to close Boots will address this matter and will ensure that a full pharmacy service is provided to these protected groups.

3.197 **Summary**

3.198 Overall, having considered the requirements of Regulation 18 the proposal should be granted as there is not reasonable choice of pharmacy services in the Heaton area and the Newcastle HWB area specifically bearing in mind the localised issues of the closure of Boots at Chillingham Road District Centre and Lloyds in Sainsburys, high demand for pharmacy services, the below average number of pharmacies for the scale of population involved, the scale of deprivation in the adjacent Byker area, changes and reduction in the patterns of health care provision, and distances to the existing pharmacy network. The proposal will confer significant benefits to the Heaton population, and these benefits are wholly unforeseen.

3.199 **CONCLUSION**

3.200 Heaton is an area that does not have a reasonable choice of pharmacy services and is clearly in need of better access to pharmacy services. Following assessment of the circumstances of Heaton the applicant contends that the application is an unforeseen proposal that will satisfy the requirements of Regulation 18.”

3.201 [Further supporting information provided]

ANNEX B

REF: SHA/26371

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APPEAL AGAINST NORTH EAST AND NORTH CUMBRIA ICB DECISION TO REFUSE AN APPLICATION BY QUAYSIDE PHARMACY LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT 100 TO 292, 294 AND 296 TO 300 CHILLINGHAM ROAD, HEATON NE6 (BEST ESTIMATE)

1 The Application

By application dated 6 February 2024, Quayside Pharmacy Ltd (“the Applicant”) applied to North East and North Cumbria Integrated Care Board (“the Commissioner”) for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at 100 to 292, 294 and 296 to 300 Chillingham Road, Heaton NE6 (best estimate). In support of the application it was stated:

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

- 1.1 “The nearest pharmacy is Boots pharmacy at 293 and 295 Chillingham Road. This pharmacy has given notice to close. However, the best estimate location is not adjacent or in close proximity to this pharmacy.

Information in support of the application

- 1.2 “Background
- 1.3 Chillingham Road area is a mixed retail and residential area with a high population density. It is understood that the Boots Pharmacy currently at 293/295 Chillingham Road, Heaton NE6 5LL has given notice to close. The closure of the Boots Pharmacy would remove a significant provider of pharmacy services near the applicant’s proposed location. The closing pharmacy currently dispenses approximately 8,000 to 10,000 items per month.
- 1.4 In addition, since the issue of the 2022 PNA the [sic] have been further pharmacy closures that reduce availability of services in Heaton.
- 1.5 The applicant proposes to replace the pharmaceutical services provided by the Boots pharmacy and more generally the reduction in the provision of pharmaceutical services in the Heaton area and according provide a significant benefit to the community.
- 1.6 **Reg 18(1)(b) –PNA**
- 1.7 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

- 1.8 *“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.”*
- 1.9 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.
- 1.10 Since the PNA was drafted in 2022 there have been no supplementary statements issued to reassess the provision of pharmaceutical services in the HWB area in view of the imminent closure of Boots Pharmacy at Chillingham Road, the closures of Boots and Lloyds Pharmacies at other locations in or adjacent to Heaton. The consolidation of Knights pharmacies and Gill and Schofield are also not considered in the PNA.
- 1.11 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.
- 1.12 **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?**
- 1.13 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.
- 1.14 When considering the application, the NHSCB must have regard to the matters set out in paragraph (2) of the 2013 regulations. These include: -
- 1.15 **Reg 18(2)(b)(i) – there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB**
- 1.16 There is no reasonable choice with regard to obtaining pharmaceutical services for the people seeking pharmaceutical services in the area of the relevant HWB. At the moment the nearest pharmacy to the proposed location is the Boots at 293/295 Chillingham Road NE6 5LL.
- 1.17 This pharmacy is scheduled to close in March. The provision of pharmacy services has diminished greatly since the PNA was published in 2022 including:
- 1.17.1 Boots at 121-125 Shields Rd, Newcastle Upon Tyne, NE6 1DN,
- 1.17.2 Boots at St George’s Terrace, Acorn Road in Jesmond,
- 1.17.3 Lloyds pharmacy in Sainburys at Etherstone Ave, Newcastle upon Tyne NE7 7JW.
- 1.18 There have also been consolidations between branches of Knights Pharmacy and Gill and Scholfield which leads to an overall reduction in choice and availability of services.
- 1.19 After the closure of the Boots pharmacy on Chillingham Road, the nearest pharmacies to the proposed location will be 0.8 miles away; ASDA pharmacy in a superstore and

Knights Pharmacy which is closed at weekends. These are both to the south of the proposed location.

Pharmacy Name	Address	Distance from Heaton Boots	Opening Times
ASDA Pharmacy	Unit 5 Shopping Park, Fossway, Byker, Newcastle upon Tyne, NE6 2XP	0.6 miles	Mon-Sat: 9am – 8pm Sun: 10am – 4pm
Walkergate Pharmacy	Benfield Road, Appletree Gardens, Walkerville, Newcastle upon Tyne, NE6 4NT	0.7 miles	Mon-Fri: 9am – 1pm, 2pm – 6pm Sat & Sun: Closed
Knights Heaton Road Pharmacy	31 Heaton Road, Newcastle upon Tyne, NE6 1SA	0.7 miles	Mon-Fri: 8:45am – 6pm Sat & Sun: Closed
Molineux Pharmacy	Molineux Primary Care Centre, Molineux Street, Byker, Newcastle upon Tyne, NE6 1SG	0.8 miles	Mon-Fri: 9am – 6pm Sat: 9am - noon Sun: Closed
Knights Kerr Pharmacy	26 Shields Road, Byker, Newcastle upon Tyne, Tyne and Wear, NE6 1DR	0.9 miles	Mon-Fri: 9am – 6pm Sat: 9am – 1pm Sun: Closed

1.20 [Map provided]

1.21 The Newcastle PNA (p82) shows that for people living to the North, East or West of the proposed location in March there is no alternative accessible provision within 20 minutes by foot and the position is broadly equivalent by public transport. Therefore, when the Boots pharmacy closes it will create a significant gap in pharmacy provision. The applicant's proposed pharmacy will offer choice if granted before closure and will importantly fill this gap in provision when the pharmacy closes.

1.22 There are a number of nearby GP practices.

GP Surgery Name	Address	Distance from Heaton Boots	Surgery Opening Times
Biddlestone Health Group	Biddlestone Road, Heaton, Newcastle upon Tyne, Tyne and Wear, NE6 5SI	0.1 miles	Mon: 8:30am-8pm Tue-Fri: 8:30am-6pm

			Sat & Sun: Closed
Heaton Road Surgery	17-19 Heaton Road, Newcastle upon Tyne, Tyne and Wear, NE6 1SA	0.7 miles	Mon, Wed, Fri: 8:30am-6pm Tue: 8:30am-8pm Thurs: 8:30am- noon, 1:30pm- 6pm Sat & Sun: Closed
Benfield Park Medical Centre	Benfield Road, Newcastle upon Tyne, Tyne and Wear, NE6 4QD	0.7 miles	Mon, Wed, Thur, Fri: 8:30am- 6:15pm Tue: 8am-8pm Sat & Sun: Closed
Thornfield Medical Group	Molineux Street, Newcastle upon Tyne, Tyne and Wear, NE6 1SG	0.8 miles	Mon-Wed: 8:30am-6pm Thur: 8:30am- 12:30pm, 1:30pm- 6pm Fri: 8:30am-6pm Sat & Sun: Closed

- 1.23 The patients of the closest GP surgery will be left without an accessible pharmacy when the Boots on Chillingham Road closes and already the patients using this surgery have limited choice unless the application is granted.
- 1.24 The applicant's pharmacy will be open from 9am to 6pm on Monday to Friday, 9am to 5pm on Saturday and 10am to 3pm on Sunday. These are the hours offered by the closing Boots pharmacy.
- 1.25 In addition, the applicant's pharmacy will offer an additional two hours on Monday evening to provide cover for the late-night opening of the closest surgery.
- 1.26 This application will be a replacement of a Boots Pharmacy with an independent pharmacy and as the pharmacy will be independent it will be responsive to local needs. The Superintendent Pharmacist has provided pharmaceutical services in the local area for over 30 years and has a proven record of running successful pharmacies in the area.
- 1.27 **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.**

- 1.28 Providing services at the proposed location would have a significant benefit for patients, particularly those who may have difficulty in accessing other areas, such as the elderly, disabled or parents with young children.
- 1.29 The location also has a high level of student accommodation as it is affordable and relatively near the university. There will be a group of young female students who may have specific needs for pharmaceutical services that they will find difficult to access elsewhere.
- 1.30 Services that the applicant wishes to provide include all essential services, advanced services and commissioned services. The closing Boots pharmacy provides a number of services, and it would be the applicant's intention to provide these in the place of those provided by Boots and increase number of services provided and the quality of provision.
- 1.31 The applicant already operates three pharmacies in Newcastle and at these has experience and the relevant accreditation in relation to the following:
- 1.31.1 NMS
- 1.31.2 CPCS
- 1.31.3 EHC – this service is particularly important in the Chillingham Road area as there are a high number of students living at in the vicinity of the pharmacy and with the closure of Boots would struggle to obtain timely access to this medication.
- 1.31.4 Flu and Covid Vaccine service
- 1.31.5 Smoking cessation advanced service
- 1.31.6 Hypertension case finding (only one pharmacy is currently providing this in the Outer East section of Newcastle which includes Heaton).
- 1.32 Quayside also offers substance misuse services that are not currently offered at Boots. The applicant would offer these services which would be an important additional service in the area.
- 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 Specialist drug service –
- 1.36 The service, where the pharmacy offers a permanent stock of medicines that require access without any delays in dispensing, is offered by the Boots pharmacy which is closing in Heaton and it was one of only six pharmacies offering the service. The applicant would wish to offer the service in place of Boots.
- 1.37 Minor Ailments –

- 1.38 The applicant already offers the locally commissioned service in his existing pharmacy in Newcastle and is keen to offer it at the new location.
- 1.39 The applicant is also keen to offer the newer nationally commissioned services; The Pharmacy Contraception Service and Pharmacy First; the advanced minor ailments scheme.
- 1.40 The applicant will also arrange a free collection and delivery service in contrast to the Boots pharmacy at Chillingham Road which is scheduled for closure where a charge for some deliveries is imposed. The proposed pharmacy will of course dispense medication into Monitored Dosage Systems where appropriate.
- 1.41 **Reg 18(2)(b)(iii) – Providing an innovative approach to the delivery of pharmaceutical services**
- 1.42 The application is not made on the basis that it will provide an innovative approach to the delivery of services.
- 1.43 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 8 October 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. ...”

Extract from decision report

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

- 2.2 “The PSRC considered the application at its meeting of 7 October 2024 (moved from 25 September 2024). All the evidence provided by the applicant, the committee report and the regulations were considered and discussed by the committee. It was agreed that under Regulations 18 and 19 of the NHS (Pharmaceutical and Local Pharmaceutical Services) (Amendment) Regulations 2023 – unforeseen benefits: additional matters and consequences the application should be **refused** on the basis that the relevant Regulations were not met:
- 2.3 **Regulations 18(1)** – is not met as the Applicant has failed to identify any unforeseen benefits.
- 2.4 **Regulations 18(2)(a)(i)** – is not applicable as there is no pharmaceutical service plan currently in place and therefore **Regulation 19(5)** is met and the application must be refused.
- 2.5 **Regulations 18(2)(a)(ii)** – There is no evidence of the existing Pharmacy services not providing a reasonable level of service and so granting the application may cause significant detriment to existing local services by destabilising their viability without conferring significant benefits on persons in the area of the relevant HWB. As this

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

- 2.6 **Regulations 18(2)(b)(i),(ii)&(iii)** – there is reasonable choice with regard to pharmaceutical services in the area. There is no evidence that people with protected characteristics find accessing pharmaceutical services difficult in the area. No innovative approaches to the delivery of pharmaceutical services are offered by the applicant. It is the opinion of PSRC that granting the application would not confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant PNA was published. The regulation is not met and therefore **Regulation 19(6)** is also not met and the application must be refused.
- 2.7 **Regulation 18(2)(c&d)** are both met as there are multiple applications being considered together and in relation to each other today. Therefore **19(2)and(3)** are also both met.
- 2.8 **Regulation 18(2)(g)** – is not met and therefore **Regulation 19(5)** is met and the application must be refused - the application is not the result of a closure of a Pharmacy owing to consolidation and since the last revision of the PNA (2022) no review of the PNA has been undertaken and published in line with the Regulations.
- 2.9 **Regulation 18(3)** - This regulation has been met so there is no need to consider paragraphs 2(c) to (e).

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

- 2.10 The following Regulations are deemed by PSRC not to be relevant to this application:
- 2.10.1 Regulation 18(2)(e&f)
 - 2.10.2 Regulation 19(1)&(4)
 - 2.10.3 Regulation 31
 - 2.10.4 Regulation 32
 - 2.10.5 Regulations 40 to 44
 - 2.10.6 Regulation 50
 - 2.10.7 Regulation 65
 - 2.10.8 Regulation 66
 - 2.10.9 Paragraph 31 Schedule 2"

3 **The Appeal**

In a letter dated 6 November 2024 addressed to NHS Resolution, the Applicant through its representative Gordons Partnership LLP appealed against the Commissioner's decision. The grounds of appeal are:

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

- 3.1 “We act for Quayside Pharmacy Ltd. We are instructed by our client to appeal against the refusal of its application offering unforeseen benefits at 100 to 292, 294 and 296 to 300 Chillingham Road, Heaton, NE6.
- 3.2 The application is made under regulation 18 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2014 (“the Regulations”).
- 3.3 **The Decision**
- 3.4 The Pharmaceutical Services Regulations Committees meeting for North East and North Cumbria ICB determined that the application should be refused on the following basis:
- 3.5 *“In considering whether the granting of the application would confer significant benefits, the Committee determined that –*
- 3.5.1 *The Applicant did not identify any unforeseen benefits;*
- 3.5.2 *There is no pharmaceutical service plan currently in place;*
- 3.5.3 *The granting of the application may cause significant detriment to existing local services;*
- 3.5.4 *There is no evidence of existing pharmacy services failing to provide a reasonable level of service so the granting of this application may cause significant detriment to existing local services;*
- 3.5.5 *There is no evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services;*
- 3.5.6 *There is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services; and*
- 3.5.7 *The application is not the result of a closure of a Pharmacy owing to consolidation and since the last revision of the PNA (2022) no review of the PNA has been undertaken and published in line with the Regulations.*
- 3.6 *On that basis the committee concluded that it was not satisfied that granting the application would confer significant benefits that would secure improvements or better access to pharmaceutical services.”*
- 3.7 **The Appeal**
- 3.8 The grounds of the appeal are:
- 3.9 Firstly - that the Committee’s processes were flawed as follows:
- 3.9.1 At 18(2)(a)(ii), the Committee stated that ‘there is no evidence of the existing Pharmacy services not providing a reasonable level of service and so granting the application may cause significant detriment to existing local services by destabilising their viability without conferring significant benefits on persons in the area of the relevant HWB.’
- 3.9.2 There is no evidence provided on which this is founded. Without this, it is difficult to see how the Committee reached some of the conclusions that it did.

- 3.9.3 The Committee misdirected themselves in applying Regulations 18(2)(a)(i), (ii) and Regulation 18(2)(g) incorrectly.
- 3.9.4 The Committee failed to consider the supplementary PNA statement published on 15 May 2024 when applying Regulations 18(2)(b)(i), (ii) and (iii).
- 3.10 Accordingly, the final determination by the Committee was incorrect and the decision by NHS England [sic] should be quashed and redetermined to grant our client's application.
- 3.11 Secondly, an overall procedural irregularity meant the determination of this application took place with five other applications but not with two further applications, one of which was our client's second application. The procedure used to consider our client's applications at this location was unfair and prejudicial as there has been a failure to consider our client's second and relevant application with the application that is the subject of this appeal.
- 3.12 **Background**
- 3.13 It may be helpful for Primary Care Appeals to understand the context of the application. Our client's director and superintendent [Mr AJ] is familiar with the area, as he operates three pharmacies in Newcastle. The company made its application against an overall reduction in the number of pharmacies in the locality; including the closure of the Boots Pharmacy at 293/295 Chillingham Road, Heaton, NE6 5LL, as well as two other Boots Pharmacies in Newcastle in Kenton and Cruddas Park.
- 3.14 [Mr J] is familiar with local needs and will be able to be proactive in the provision of services to the population. Quayside Pharmacy Ltd intends to run the proposed pharmacy with a focus on customer care and prompt service so that patients obtain access to timely advice and services when they require them.
- 3.15 Turning to the specific regulatory criteria in relation to the application by our client that was considered by the ICB: -
- 3.16 **Regulation 18(1)**
- 3.17 There being no identified unforeseen benefits.
- 3.18 The improvements and better access that would be secured were not included in the relevant Pharmaceutical Needs Assessment (PNA) as published in 2022, as the PNA does not cover the closure and loss of service of the Boots pharmacy nor other pharmacies in the area. This PNA did indicate at page 45 that:
- 3.19 "Although there has been a reduction in pharmacy provision in Newcastle since the last PNA, there continues to be adequate access to community pharmacies during the weekdays and weekends, although this is more limited in the evenings and on Sundays."
- 3.20 Supplementary statements were published on 15 May 2024, which set out the six pharmacy closures in Newcastle since the 2022 PNA was published. The statements confirm the closure of the Boots in Heaton and provide confirmation of the significant benefit of the pharmaceutical services offered by our client in the Chillingham Road location.
- 3.21 The PNA and supplementary statements paint a picture of busy pharmacies - page 42 "The HWB recognise that community pharmacies in Newcastle dispense significantly

higher numbers of prescriptions than the national average” but they do not specify the improvements or better access that would be required at the applicants proposed site.

- 3.22 Regulations 18(2)(a)(i) and (ii)
- 3.23 Would granting the application cause significant detriment to the proper planning of, or the arrangements for, the provision of pharmaceutical services in the HWB’s area?
- 3.24 In relation to regulation 18(2)(a)(i), the Committee failed to apply the regulations correctly.
- 3.25 The Committee stated in relation to 18(2)(a)(ii) that ‘There is no evidence of the existing pharmacy services not providing a reasonable level of service and so granting the application may cause significant detriment to existing local services by destabilising their viability without conferring significant benefits on persons in the area of the relevant HWB.’
- 3.26 No supporting evidence has been provided and our client, as a provider of existing local services, does not consider the application will jeopardise his existing business.
- 3.27 Regulation 18(2)(b)(i)
- 3.28 There being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB.
- 3.29 In relation to the location generally, although it is agreed that the PNA does not refer to Heaton, it should be noted that it draws conclusions that are relevant to this application:
- 3.30 Narrowing down to the Heaton locality, the population of the mid-layer super output area (MLSOA) covering Heaton was at the time of the 2021 census 9,175. The map below shows the relevant area the data covers. (Source – 2021 Census Profile for areas in England and Wales – Nomis).
- 3.31 [Map provided]
- 3.32 The proposed pharmacy is within the Heaton ward. Since the closure of the Boots Pharmacy in Heaton, the nearest pharmacy to the proposed location will be 0.6 miles away, at the ASDA pharmacy in a superstore. The next closest pharmacy is Walkergate Pharmacy, which is closed at the weekends.
- 3.33 The proposed pharmacy will offer morning Saturday and Sunday opening and consequently will be accessible at times when only one existing pharmacy within a 1km of the area is offering services.
- 3.34 The applicant pharmacy will have longer opening hours than the ASDA pharmacy on Sundays.
- 3.35 There is one GP practices within a kilometre of the proposed location.
- 3.36 The GP surgery closest to the proposed location, Biddlestone Health Group, was served by the now closed Boots Pharmacy at Chillingham Road. The total proposed opening hours in our client’s first application are 8:45am to 8pm on Mondays, 8:45am to 6pm on Tuesday, Weds, Thursday and Friday, 8.45am to 5:00pm on Saturday and 10:00am to 3pm on Sunday.
- 3.37 It should be noted that the applicant also offered additional hours in a further application these were [sic]. This application offered 8.30am to 8pm on Mondays, 8.30am to 6pm

Tuesdays to Fridays, 8.30am to 5pm Saturdays and 1pm to 7pm on Sundays and we would ask that these extended hours be considered by NHS Resolution or alternatively consideration of the first round of applications be delayed in [sic]

- 3.38 Both these sets of opening hours are more extensive hours than those that were offered by the now closed Boots Pharmacy. The Biddlestone Health Group indicated that they fully support the application by our client. A copy of the letter of support was sent to PCSE but a further copy is attached here.
- 3.39 The pharmacy will offer accessible services for the patients of Biddlestone Health Group. It should be particularly noted that our client offers late night services on a Monday evening to tie in with the evening surgery so that the pharmacy will be able to dispense any acute prescriptions coming from that surgery.
- 3.40 Transport Arrangements
- 3.41 It is evident from the car and van availability in the area that the local population experience difficulty in accessing services. According to the MLSOA, almost 50% of the local households do not have a car or van, which is well over double the national average of 23.5%, and means that the local population are particularly reliant on having accessible choice of pharmaceutical services at a local level.
- 3.42 Regulation 18(2)(b)(ii)
- 3.43 Regard to the desirability of people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the HWB, are difficult for them to access.
- 3.44 There are a number of issues arising in relation to the provision of services for those with protected characteristics in the Chillingham Road vicinity and it appears that currently their needs are not met.
- 3.45 Providing services at the proposed location would have a significant benefit for patients, particularly those who may have difficulty in accessing services in other localities, such as the elderly, disabled or people who have the protected characteristics of race or gender.
- 3.46 The location is also in close proximity to several primary schools, including Chillingham Road Primary School and St Teresa's Primary School, meaning there will be a group of young children who may have specific needs for pharmaceutical services that they will find difficult to access elsewhere.
- 3.47 The applicant will offer a free collection and delivery service. A collection and delivery service was offered by the now-closed Boots but a charge was made for some deliveries.
- 3.48 Regulation 18(2)(g)
- 3.49 The Committee failed to apply this regulation correctly as the removal of the premises from the pharmaceutical list was not as a consequence of a grant of a consolidation application.
- 3.50 **Procedural irregularity**
- 3.51 At the ICB stage the following applications were considered together:
- 3.51.1 CAS-280832-V8Z7M4 – Arthur Melton

- 3.51.2 CAS-278070-W1B9N9 – Englecare Ltd
- 3.51.3 CAS-277383-Z2K6C1- Hassan Elsana
- 3.51.4 CAS-264176-D5R3P9 – Jiwa Pharm Ltd
- 3.51.5 CAS-277489-X0T1Q3 – Jiwa Pharm Ltd
- 3.51.6 CAS-267348-B7F4G3 – Quayside Pharmacy Ltd
- 3.52 Our client was notified that two further applications were to be considered together and in relation to each other and were not be considered with the previous 6 above.
 - 3.52.1 CAS-290356-W1H2P7 – Alrahi & Singh Ltd
 - 3.52.2 CAS-293329-R0B0J4 – Quayside Pharmacy Ltd
- 3.53 Quayside Pharmacy Limited does not accept that it is procedurally correct or in line with guidance for the ICB to have considered some of the applications and not others in respect of each other.
- 3.54 There were two initial applications by Quayside Pharmacy Ltd and Jiwa Pharm Ltd which were made in Dec/Jan 2023/24. It is not clear why applications made well over 30 days later were included for consideration with these initial applications when an arbitrary cut-off was imposed for our client's further application. This is particularly the case when in April it was confirmed in letters circulating applications that our client's second application would be considered with all other applications. In addition, our client's second application was made within 30 days of notification of the Jiwa Pharm Ltd second application so did not breach guidance set out in the Pharmacy Manual. The Pharmacy Manual states at page 215, although not directly in relation to unforeseen benefits applications, that *"If a second application is received after 30 days of the date that the first application was notified to interested parties, then the commissioner will usually consider that it is not appropriate to hear the applications together."*
- 3.55 Our client has offered extended hours in the second application reference CAS-293329-R0B0J4. These total 64 hours and are as follows:
 - 3.55.1 Monday 8:30 to 20:00,
 - 3.55.2 Tuesday to Friday 8:30 to 18:00,
 - 3.55.3 Saturday 8:30 to 17:00 and
 - 3.55.4 Sunday 13:00 to 19:00.
- 3.56 With our client's proven track record of provision of services in the HWB area the benefits to the provision of pharmaceutical services in the area in this further application outweigh those offered by others whose applications were considered in the "first round" of applications. It is in the interest of providing the most comprehensive services to the local population that our client's second application should have been considered against the others to be considered in the first round.
- 3.57 We ask NHS Resolution to consider delaying consideration of these appeals until they can be heard with the further applications currently still with the ICB.

3.58 In summary, both this application and the second application by Quayside Pharmacy Ltd will provide significant benefits to the provision of pharmaceutical services in the area.

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

Letter of support from Biddlestone Health Group (undated)

3.60 "In March of this year Boots at Chillingham Road, Newcastle upon Tyne NE6 5SL is closing which will have a substantial effect on our patients.

3.61 Currently we have approximately 5,300 patients who have them as their nominated pharmacy.

3.62 We have had several patients make comment about the difficulties they will incur because of this closure.

3.63 As a practice we feel it is essential our patients have easy access to a pharmacy near to the practice and to our neighbourhood and would fully support the application by [Quayside Pharmacy]."

REF: SHA/26368

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 THE SHOPS ON CHILLINGHAM ROAD NE6, BETWEEN SIMONSIDE TERRACE AND FARNLEY ROAD NE6 (BEST ESTIMATE)

8th Floor
10 South Colonnade
Canary Wharf
London
E14 4PU
I: 020 3928 2000
Email: nhsr.appeals@nhs.net

REF: SHA/26371

APPEAL AGAINST NORTH EAST AND NORTH CUMBRIA ICB DECISION TO REFUSE AN APPLICATION BY QUAYSIDE PHARMACY LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT 100 TO 292, 294 AND 296 TO 300 CHILLINGHAM ROAD, HEATON NE6 (BEST ESTIMATE)

1 Summary of Representations

This is a summary of representations received on the appeal.

1.1 RUSHPORT ADVISORY LLP ON BEHALF OF JIWA PHARM LTD

- 1.1.1 “I act for Jiwa Pharm Ltd and have been instructed by my client to submit this reply to the appeal submitted by Gordons Partnerships (“Gordons”) on behalf of Quayside Pharmacy Ltd (“Quayside”).
- 1.1.2 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 on Chillingham Road.
- 1.1.3 We have already provided substantial evidence relating to the need for a new pharmacy to be permitted to open at Chillingham Road and both Appellants agree that a new pharmacy is required. This letter therefore focusses on the following issue of “procedural irregularity” that has been raised by Gordons and which application should be preferred.
- 1.1.4 **Procedural Irregularity**
- 1.1.5 Gordons correctly lists the applications that were considered by the ICB in the first round of decision making.
- 1.1.6 My client’s first application was submitted on 6 December 2023, with a subsequent application from my client offering improved core opening hours submitted on 23 February 2024. It is this second application that is the subject of this appeal.
- 1.1.7 The Commissioner received numerous applications from parties during the course of early 2024. It became apparent that as each new application was

submitted, this caused further notifications and further new applications to be received by the ICB.

- 1.1.8 The Regulations provide the Commissioner with significant flexibility when it comes to the determination of applications. Part 4 of the Regulations states as follows;

PART 4

Determination and deferral of applications

Flexibility with regard to determining or deferring applications

22.—*(1) Except in so far as these Regulations provide to the contrary, the NHSCB is to determine or defer routine and excepted applications in such manner (including with regard to procedures) as it sees fit.*

(2) The NHSCB may determine a routine or excepted application without hearing any oral representations, if it considers that oral representations are unnecessary.

(3) Where appropriate, the NHSCB may if it thinks fit consider 2 or more applications together and in relation to each other, but where it does so, it must give notice to the applicants of its intention to do so (if it has not already done so under Part 3).

- 1.1.9 There may well be good reason to determine applications together and indeed the Commissioner did so in this case. However, there must also come a time where, for the purpose of good case management, the Commissioner sets a cut off date for any new applications. This is exactly what happened in this case and it is both sensible and lawful for the ICB to have acted as it has.
- 1.1.10 It must of course be remembered that the purpose of the Regulations is to ensure that proper and sufficient pharmaceutical services are provided for patients, and the focus of the Regulations is patients rather than the protection of pharmacy contractors.
- 1.1.11 At the time of writing, the second application from Quayside Pharmacy Limited has not been determined and there is no proper reason to delay these appeals as suggested by Gordons. To do so would not serve patients' interests.
- 1.1.12 Godon's [sic] quotes from the Pharmacy Manual, which is of course only guidance rather than a statement of law. However, even the Pharmacy Manual makes it clear that not all pharmacy applications received within 30 days of each other should be considered together and the full guidance is copied below for reference.

When should applications be heard together?

38. Where the commissioner is presented with more than one application offering to meet the same current or future need, or to secure the same current or future improvements or better access, it may consider that it is reasonable to hear the applications together.

39. The Regulations do not set out when in the application process a decision should be made to hear applications together. The commissioner has to exercise case management judgement without full knowledge of what

applications may or may not be made in the future, or how long in the future they will be made and, once made, will be ready for determination.

40. If applications are not received together, hearing applications together could lead to a delay in the determination of the first application (given the need to notify interested parties of the second application) and detrimentally affect the first application if the applications are refused on the basis of the cumulative effect.

41. It is usually reasonable and fair to adopt a cut-off time after which a received application will not be considered together with a previously received application. If a second application is received after 30 days of the date that the first application was notified to interested parties, then the commissioner will usually consider that it is not appropriate to hear the applications together. There may be circumstances in which a different approach is to be taken and it is for each decision-maker to consider whether it is reasonable to determine the applications together and fully document the reasons why.

- 1.1.13 It seems likely and sensible that the Commissioner will defer issuing decisions on any remaining applications relating to Chillingham Road until the outcome of these appeals is known.
- 1.1.14 Gordons's also appears to suggest that the Committee should take into account the hours offered in their client's second application as an amendment to their current application at appeal. Gordon's states;
- 1.1.15 *"It should be noted that the applicant also offered additional hours in a further application these were. This application offered 8.30am to 8pm on Mondays, 8.30am to 6pm Tuesdays to Fridays, 8.30am to 5pm Saturdays and 1pm to 7pm on Sundays and we would ask that these extended hours be considered by NHS Resolution or alternatively consideration of the first round of applications be delayed in [sic]"*
- 1.1.16 If Gordon's client wishes to make such a significant amendment to their application then it should be remitted to the Commissioner for recirculation to all parties as there is no doubt that parties would have reacted to any such proposed change. If this happens then the appeal from Quayside can be severed from my client's appeal and my client's appeal should be considered in isolation rather than being even further delayed to the detriment of patients.
- 1.1.17 **Which Application Should be Preferred?**
- 1.1.18 The application from my client and Quayside cover the same general area and offer to provide all commissioned services.
- 1.1.19 A comparison of opening hours shows that my client offers 62.5 core and total hours as shown below.
- 1.1.20 The application from Quayside offers 59.5 core hours and 61.5 total hours as shown below.
- 1.1.21 There being no other reason to prefer one application over another and with multiple properties being available to rent within the best estimate area provided, we ask that the application from Jiwa Pharm Ltd is approved and the appeal from Quayside Pharmacy Limited against their own refusal be dismissed."

1.2 GORDONS PARTNERSHIP LLP ON BEHALF OF QUAYSIDE PHARMACY LTD

- 1.2.1 “We act for Quayside Pharmacy Ltd. We are instructed by our client to make representations on the appeal by Jiwa Pharm Ltd (“Jiwa”) against the decision by the North East and North Cumbria ICB to refuse the application offering unforeseen benefits on Chillingham Road, Heaton, NE6.
- 1.2.2 We wish to make representations on the appeal by Jiwa under three areas:
 - 1.2.2.1 Grounds for an application under Regulation 18 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (“the Regulations”)
 - 1.2.2.2 Which of the competing applications should be preferred?
 - 1.2.2.3 What is the appropriate appeal outcome?
- 1.2.3 Grounds for an application under Regulation 18 of the Regulations?
- 1.2.4 Much of the justification for the application set out in the appeal by Jiwa is not disputed. It is also agreed that the HWB may have misunderstood their powers and responsibilities with respect to the PNA and supplementary statements.
- 1.2.5 In relation to the detail in the appeal, the map at page 53 of the Jiwa appeal omits the location of Quayside Pharmacy and the NHSR map should be preferred.
- 1.2.6 In relation to the survey conducted by Jiwa Pharm Ltd, our client considers that the results are broadly in line with what would be expected. Our client’s director offers pharmaceutical services in some of the most deprived areas of Newcastle so has firsthand experience of pharmaceutical services in the area. He works as a Responsible Pharmacist at Quayside Pharmacy on Crawhall Road which is marked on the map at item 11. He also runs vaccination clinics that cover the Chillingham Road area. His experience would be that there is low demand for services in the evening unless there is late night opening of a GP surgery and this is supported by the survey data in the Jiwa document. It is also noted that the survey reports a lower level of prescriptions dispensed at weekends which is consistent with our client’s experience.
- 1.2.7 Overall, it is agreed that the provision of pharmaceutical services in the Chillingham Road area would offer significant benefits. Our client’s case is that the services he proposes to offer should be preferred and the Jiwa appeal rejected.
- 1.2.8 Competing applications.
- 1.2.9 It is our client’s position that its application offers more significant benefits to the HWB area and should be preferred to that of Jiwa. There are a number of factors which distinguish the Quayside application(s) from the Jiwa application.
- 1.2.10 Firstly, the applications can be distinguished by the hours that are offered. The Jiwa and Quayside applications offer similar hours but importantly our client is offering a late-night service on a Monday which is when the closest GP surgery, Biddlestone Health Group, offers evening appointments. Currently it is difficult for patients with an acute prescription issued at the end of the evening surgery to get to a pharmacy to have that prescription dispensed. The only local pharmacy open until 8pm is the ASDA pharmacy, which not only is

overstretched in terms of capacity, but is 0.6 miles away. This means that a patient, particularly if relying on public transport, who urgently requires medication will not be able to reach the pharmacy before it closes. Our client would be located in close proximity to the surgery and would be able to work co-operatively with the surgery to ensure these patients receive the medication they require in a timely manner.

- 1.2.11 In addition, our client is offering Sunday opening from 10am until 3pm in this application. Although the application is to provide significant benefits overall rather than providing a replacement of the Boots pharmacy. It should be noted that the Boots Pharmacy provided Sunday opening hours at these times. Quayside would be prepared to offer longer hours as set out in the appeal letter and we attach a copy of the second application issued by Quayside. The patient survey conducted by Jiwa suggests that the hours offered by Boots and offered by our client in the current application cover the most popular times to visit the pharmacy. However, the key point is that, unlike the position on a Monday evening, acute prescriptions are not being issued from GP surgeries so the need for urgent pharmaceutical services is likely to be low.
- 1.2.12 Thirdly, the services offered by our client will provide significant benefits. Vaccination services (Covid and Influenza) are already provided by our client to the population of Chillingham Road by appointment at Quayside Pharmacy. He has received complaints from this population about the difficulty in attending the Quayside location and it will be a significant benefit to be able to offer vaccinations in an accessible location. The area around Chillingham Road has a significant student population and EHC will be provided. The full range of substance misuse services will be provided including Needle and Syringe Exchange and Supervised Administration. The specialist drug service, where the pharmacy offers a permanent stock of medicines that require access without any delays in dispensing, was offered by the Boots pharmacy which closed. It was one of only six pharmacies offering the service across the Newcastle area. The applicant would wish to offer the service. Neither this, nor Covid vaccinations are listed as a services that Jiwa would be providing.
- 1.2.13 Our client would also offer free, on demand delivery services six days a week as are already offered in the three Newcastle pharmacies already owned by the company. Although the Jiwa appeal discusses at length the difficulties in access to the local pharmacies, the pharmacy does not make any mention of mitigating the difficulty for those who are unable to reach a pharmacy. It is assumed this service will not be offered by Jiwa.
- 1.2.14 Finally, together with our client's proven track record of provision of services in the HWB area, the benefits for the provision of pharmaceutical services in the area in our client's application outweigh those offered by Jiwa Pharm Ltd. It is in the interest of providing the most comprehensive services to the local population that our client's application should be preferred.
- 1.2.15 What is the appropriate appeal outcome?
- 1.2.16 Jiwa Pharm Ltd made their first application offering unforeseen benefits on 5 December 2023, and Quayside Pharmacy Ltd made their first application offering unforeseen benefits on 4 January 2024. In response to our client's application, Jiwa Pharm Ltd made a second application on 22 February 2024. Our client submitted their second application on 22 March 2024. The first Jiwa application offered limited hours, was rejected by the North East and North Cumbria ICB and is not the subject of an appeal. Our client's first application and the second Jiwa application are the subject of this appeal and our client's

second application, although made less than 30 days after the second Jiwa application, has still not been determined.

- 1.2.17 We have already set out our concerns about the procedural irregularities in our letter of appeal. We note the letter circulating the appeal states:
- 1.2.18 *“NHS Resolution noted a request from Gordons Solicitors to delay consideration of these appeals until further applications are considered by the Commissioner. We note that one of these further applications was submitted by Quayside Pharmacy. NHS Resolution (“NHS R”) has requested an update on two occasions from PCSE in relation to the status of these applications, who have been unable to provide an update. Therefore we consider to delay consideration of these appeals any further would not be fair to all parties concerned.”*
- 1.2.19 Two issues arise – firstly the procedural unfairness is now compounded by the failure of PCSE to respond and to deal with the second application without undue delay. They have a regulatory obligation to deal with the application within 4 months under schedule 2 paragraph 27 of the Regulations. Our client’s second application was made almost 10 months ago but although the application has been circulated and final responses made in September 2024, no decision has been issued. Furthermore, if the application had been dealt with at the same speed as the original tranche of applications, then the decision should have been made 28 days after the Jiwa second application ie: in October/Nov 2024. (The effect of the delay is that by the time the 2nd Quayside application is considered, if one the instant applications is approved on appeal our clients 2nd application will not be granted as a similar benefit offered by the application may already be offered in the HWB area.) There appears to have been a decision within PCSE or the ICB to which we were not party nor informed about, to not deal with the applications within the timeframe mandated by the regulations. Any such decision is unfair and unlawful.
- 1.2.20 Secondly, NHSR have compounded the procedural impropriety by deciding that “to delay consideration of these appeals any further would not be fair to all parties concerned”. There are two parties in these joined appeals. Our client is the party requesting a delay. Jiwa is the other party. Therefore, a positive determination to proceed with the appeals in the circumstances where NHS R is on notice of the other relevant application but decides not to consider it becomes unfair to our client.
- 1.2.21 In these circumstances our primary submission is that the application by Quayside Pharmacy Ltd will provide significant benefits to the provision of pharmaceutical services in the area and should be preferred over the application made by Jiwa Pharm Ltd.
- 1.2.22 Notwithstanding the above, should NHS R feel unable to make this finding on the material before it, given that procedural flaws have resulted in a situation where NHS Resolution does not have all the relevant applications before it, it appears that the only way to rectify the procedural flaws in the process is to quash the decisions currently under appeal and remit the matter to NHS England for it to redetermine the application. It is submitted that it should be remitted back with a direction that the applications which are the subject of the appeal should be considered with the second application by Quayside Ltd.
- 1.2.23 We ask NHS Resolution to allow our client’s appeal, grant our client’s application and to quash the appeal by Jiwa Pharm Ltd. In the alternative, we ask that both decisions should be quashed, and the applications be remitted

back to the ICB for redetermination with the second application of Quayside Ltd.”

2 Observations

2.1 GORDONS PARTNERSHIP LLP ON BEHALF OF QUAYSIDE PHARMACY LTD

2.1.1 “Our client’s comments are as follows and deal with Rushport’s final point first:

2.1.2 Which Application Should be Preferred?

2.1.3 Rushport set out the relative hours of the two applications and indicate that simply because their client offers one hour more than our client, in a reactive response to our client’s application, the Jiwa Pharm Ltd (“Jiwa”) application should be preferred. Two points arise:

2.1.4 It is our client’s case that because of the importance of late-night opening on Monday evening, which is offered by our client and not by Jiwa, our client’s application should be preferred. We **attach** a letter from the local surgery providing further evidence of the importance of these hours to the local community. It should be noted that these are offered as core hours in our client’s second application and our client is happy to undertake to offer them as core hours if this application is granted.

2.1.5 In addition, Rushport seek to reduce the comparison of the two applications to the hours on offer from each applicant because there is nothing further that his client can say that distinguishes his application over and above our client’s application. In contrast our client’s application offers all the factors already set out at length in our letter of 3 January.

2.1.6 Procedural irregularity

2.1.7 The legislation and guidance quoted by Rushport is not disputed. However we would draw the committee’s attention to the caveats in both the regulations and the pharmacy manual. The Regulations talk about “flexibility with regard to determining ...applications” and appropriateness. The Pharmacy Manual talks about reasonableness and fairness.

2.1.8 An arbitrary cut-off point is neither reasonable nor fair. There were numerous applications made but as set out in the appeal there appears to have been no reasoned decision about which to consider and which to delay. This approach does not afford NHS Resolution the opportunity to assess which application will offer the patients the most comprehensive provision of services.

2.1.9 Our primary submission is that the application by Quayside Pharmacy Ltd will provide significant benefits to the provision of pharmaceutical services in the area and should be preferred over the application made by Jiwa Pharm Ltd. If the committee agree with this the procedural unfairness does not arise.

2.1.10 Should NHS Resolution feel unable to make this finding on the material before it, given that procedural flaws have resulted in a situation where NHS Resolution does not have all the relevant applications before it, it appears that the only way to rectify the procedural flaws in the process is to quash the decisions currently under appeal and remit the matter to NHS England for it to redetermine the applications.”

Letter from Biddlestone Health Group (undated)

- 2.1.11 “Further to our letter of January 2024, we repeat our support for the application made by [AJ] of Quayside for a pharmacy on or near the site of the Boots on Chillingham Road.
- 2.1.12 We are aware that this application includes late night opening on Mondays to tie in with the Biddlestone Health Group’s late-night provision on a Monday and consider these additional opening hours would offer a significant benefit to our patients.”

3 Late Observations

3.1 NEWCASTLE HEALTH AND WELLBEING BOARD

- 3.1.1 “I am writing to provide clarification on the Newcastle Health and Wellbeing Board’s (HWB) position concerning the above applications and to address points raised in the representations from Rushport Advisory (30th October 2024) and Gordons Solicitors (3rd January 2025).
- 3.1.2 **Statement on Supplementary Statements**
- 3.1.3 The statement cited by Rushport Advisory and referenced by Gordons Solicitors regarding Supplementary Statements is not an interpretation made by the HWB. Rather, it is a direct quote from the Department of Health and Social Care (DHSC) Pharmaceutical Needs Assessment Information Pack for Health and Wellbeing Boards (October 2021).
- 3.1.4 The relevant section of the DHSC guidance reads:
- 3.1.5 *“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.”*
- 3.1.6 This guidance provides a nationally recognised framework for how Supplementary Statements should be prepared and applied. It is publicly available via the following link:
<https://www.gov.uk/government/publications/pharmaceutical-needs-assessments-information-pack>
- 3.1.7 The HWB’s actions in relation to the Supplementary Statement were fully informed by this guidance and aligned with its purpose to provide factual updates to the Pharmaceutical Needs Assessment (PNA) without reassessing the broader needs for pharmaceutical services.
- 3.1.8 **Identification of a Gap in Provision**
- 3.1.9 The Supplementary Statement published by the HWB did identify a gap in pharmaceutical service provision to meet a current need. While Supplementary Statements are factual updates to the PNA, the identification of this gap was based on the HWB’s statutory responsibilities under the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.
- 3.1.10 This gap was identified following an assessment of service provision within the locality and reflects the HWB’s ongoing duty to monitor changes in pharmaceutical services. The Supplementary Statement was issued to ensure

the PNA remains an accurate and up-to-date reflection of local service availability.

3.1.11 Conclusion

3.1.12 The HWB has followed the process set out in the DHSC guidance and the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 in preparing both the PNA and the Supplementary Statement. The publication of the Supplementary Statement fulfilled the HWB's duty to identify gaps in service provision and provide accurate information regarding pharmaceutical services.

3.1.13 We trust that this provides clarity regarding the HWB's position and the basis for the Supplementary Statement."