

25 July 2025

REF: SHA/26602

APPEAL AGAINST NORTH EAST AND NORTH CUMBRIA ICB DECISION TO REFUSE AN APPLICATION BY QUAYSIDE PHARMACY LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST AT CRUDDAS PARK SHOPPING CENTRE, WESTMORLAND ROAD, NE4 7QY WITH REGARD TO CURRENT NEED UNDER REGULATION 13

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1 Outcome

- 1.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of North East and North Cumbria ICB and redetermines the application.
- 1.2 The Committee determined that the application should be refused.

A copy of this decision is being sent to:

Boots UK Limited
Gordons Partnership LLP on behalf of Quayside Pharmacy Limited
PCSE on behalf of North East and North Cumbria ICB
Newcastle Health and Wellbeing Board

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1 The Application

By application dated 21 November 2024, Quayside Pharmacy Ltd, ("the Applicant") applied to North East and North Cumbria ICB ("the Commissioner") for inclusion in the pharmaceutical list at Cruddas Park Shopping Centre, Westmorland Road, NE4 7QY with regard to Current Need under Regulation 13. In support of the application it was stated:

- 1.1 In response to Section 5 "Applications in relation to premises that are in close proximity to other listed chemist premises", the Applicant left this box blank.
- 1.2 In response to Section 6 "Information in support of the application", the Applicant stated:
- 1.3 "In making this application I/we am/are seeking to meet the current need identified in the supplementary statement dated 15 May 2024 (page 1) of the HWB's pharmaceutical needs assessment:
- 1.4 Please insert the identified current need you are offering to meet here.
- 1.5 The location of the proposed pharmacy is within a shopping centre that is adjacent to high rise apartments and so is a densely populated area. The Boots Pharmacy at Unit 10 Cruddas Park, Westmoreland [sic] Road, Tyne and Wear, NE4 7QY closed on 2 March 2024. It is roughly estimated that this pharmacy dispensed 8,000 to 10,000 items per month.
- 1.6 The applicant proposes to replace the pharmaceutical services provided by the Boots Pharmacy and more generally, the reduction in the provision of pharmaceutical services across Cruddas Park and accordingly, provide a significant benefit to the community.
- 1.7 The supplementary statement to the Newcastle Health and Wellbeing Board Pharmaceutical Needs Assessment 2022-25 was issued on 15 May 2024) [sic] and reports the closure of the Boots on Cruddas Park and confirms the services offered as the following:
- 1.8 NHS Essential Services:
 - 1.8.1 Discharge Medicines Service
 - 1.8.2 Dispensing Appliances

- 1.8.3 Dispensing Medicines
- 1.8.4 Disposal of Unwanted Medicines
- 1.8.5 Healthy Living Pharmacies
- 1.8.6 Public Health (Promotion of Healthy Lifestyles)
- 1.8.7 Repeat Dispensing and eRD
- 1.8.8 Signposting
- 1.8.9 Support for Self Care NHS Advanced Services:
- 1.8.10 Community Pharmacist Consultation Service (CPCS)
- 1.8.11 Flu Vaccination Service
- 1.8.12 Hypertension Case-Finding Service
- 1.8.13 New Medicine Service (NMS)
- 1.9 The statement also gives the times the services were offered.
- 1.10 The proposed pharmacy would offer all services listed at the times identified in the statement.
- 1.11 It would also hope to be commissioned to provide the additional services listed in this application and has offered an increase in the times it would provide services."

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

- 1.12 "By commencing the provision of pharmaceutical services at the proposed location."

Information in support of the application

- 1.13 "Cruddas Park – Westmoreland [sic] Road
- 1.14 **6 Information in support of the application**
- 1.15 **In making this application we are seeking to meet the current need identified on page xx of the HWB's pharmaceutical needs assessment.**
- 1.16 Background
- 1.17 The location of the proposed pharmacy is within a shopping centre that is adjacent to high rise apartments and so is a densely populated area. The Boots Pharmacy at Unit 10 Cruddas Park, Westmoreland [sic] Road, Tyne and Wear, NE4 7QY closed on 2 March 2024. It is roughly estimated that this pharmacy dispensed 8,000 to 10,000 items per month.
- 1.18 The applicant proposes to replace the pharmaceutical services provided by the Boots Pharmacy and more generally, the reduction in the provision of pharmaceutical

services across Cruddas Park and accordingly, provide a significant benefit to the community.

1.19 **Reg 6(3) – PNA**

1.20 The improvements and better access that would be secured were not included in the original Pharmaceutical Needs Assessment (PNA) 2022-2025 as the PNA does not cover the closure and loss of service of the Boots Pharmacy nor other pharmacies in the area. The supplementary statement (issued on 15 May 2024) confirms that the closure of the Boots on Cruddas Park does create a significant gap in pharmaceutical services, hence this application.

1.21 In the area, the proposed pharmacy would preserve the status quo and ensure that access to pharmaceutical services is consistent and reliable.

1.22 The proposed location, within the Elswick ward, falls within the most deprived 10% of LSOAs nationally. Since the closure of the Boots Pharmacy in Cruddas Park, the nearest pharmacy to the proposed location will be 0.5km away. This pharmacy does not offer weekend opening and caters for a different population to those visiting the proposed site, as it is located on a standalone plot of land and unlike the proposed pharmacy, is not in a predominately retail area.

1.23 Currently, there are no pharmacies between the river and the south of Cruddas Park so if there are no replacement pharmaceutical services for the Boots Pharmacy, a patient living near the river, perhaps at Essex Close, will have to walk 1km or more to access pharmaceutical services. This is significant gradient which will be a barrier to access for those who are unwell or have a disability. Many people living around Cruddas Park are reliant on having access to a pharmacy to which they can walk.

1.24 The proposed pharmacy will offer morning Saturday opening and consequently will be accessible at times when existing pharmacies within 1km of the area are not offering services.

1.25 **Please explain how you intend to meet the identified current need either in whole or in part.**

1.26 The applicant pharmacy will match the opening hours of Elswick Family Practice on Saturdays.

1.27 There are two GP practices within a kilometre of the proposed location:

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

- 1.28 The GP surgery close to the Cruddas Park Shopping Centre, Cruddas Park Surgery, was served by the now closed Boots Pharmacy at Cruddas Park. The applicant's pharmacy will be open from 9am to 5.30pm on Mondays to Fridays and 9am to 1pm on Saturday, which are the hours that were offered by the now closed Boots Pharmacy.
- 1.29 The pharmacy will offer accessible services for the patients of Cruddas Park Surgery and will also cover the Saturday opening hours of Elswick Family Practice, as Whitworth Pharmacy does not open on a Saturday.
- 1.30 **Reg 6(2)(b) – 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.**
- 1.31 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. The closure of the Boots Pharmacy means that people living in this deprived area who are accustomed to accessing services from the shopping centre location now have difficulty in accessing services.
- 1.32 The proposed location is a significantly deprived area. Accordingly, there are likely to be a high level of health needs in the area, including a need for substance misuse services, services specifically for women and for people who share the protected characteristic of disability.
- 1.33 The location is also adjacent to Newcastle College, Rye Hill Campus, meaning that there will be a group of young students who may have specific needs for pharmaceutical services that they will find difficult to access elsewhere.
- 1.34 The area also houses a number of refugees and asylum seekers who may have a high need of accessible healthcare advice which they may find difficult accessing elsewhere.
- 1.35 The applicant wishes to provide all essential services, advanced services and commissioned services. The applicant wishes to provide these in place of those provided by the closed Boots Pharmacy and increase the number of services provided and the quality of provision.
- 1.36 The applicant will also arrange a free collection and delivery service. This service was offered by the Boots Pharmacy with a charge for some deliveries."

2 The Decision

The Commissioner considered and decided to refuse the application. The decision letter dated 2 April 2025 states:

- 2.1 "North East and North Cumbria ICB has considered the above application and I am writing to confirm that it has been refused. Please see the enclosed report for the full reasoning.
- 2.2 You have a right of appeal to the Secretary of State against North East and North Cumbria ICB's decision. Should you choose to appeal then you should either complete the online form available on the NHS Resolution website or send a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this letter to nhsr.appeals@nhs.net or:

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

PSRC report

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

- 2.4 “Name of applicant: Quayside Pharmacy Ltd
- 2.5 Address of proposed premises: Cruddas Park Shopping Centre, Westmorland Road, NE4 7QY
- 2.6 All the evidence provided by the applicant, the committee report and the regulations were considered and discussed by the committee. The committee considered whether Regulations 13(1)(a&b) were met and particularly whether the supplementary statement published by the Health and Wellbeing Board satisfied Regulation (13)(1)b. The committee concluded that the HWB statement was not based on a review of the needs of the HWB area as a whole and the statement itself was factual. Current Needs in the area were not included in the relevant pharmaceutical needs assessment and therefore Regulation (13)(1)b was not met.
- 2.7 It was agreed that under Regulations 13 and 14 of the NHS (Pharmaceutical and Local Pharmaceutical Services) (Amendment) Regulations 2023 – current needs additional matters and consequences, the application should be **refused** on the basis that the relevant Regulations as set out in the committee report were not met:
- 2.8 **Regulation 13(2)(d)** is met therefore **Regulation 14(4)** is also met and refusal is necessary.
- 2.9 **Regulation 13(1)** is not met as the PNA does not identify any gaps or current needs.
- 2.10 **Regulation 13(2)(g(ii))** PSRC considered pharmaceutical services in the area and determined that there is reasonable choice and there is no evidence that people with protected characteristics find accessing pharmaceutical services difficult in the area.
- 2.11 No proposed innovative approach to the delivery of pharmaceutical services offered by the applicant has been identified. PSRC determined that granting the application would not secure improvements or better access to, or increase the availability of, essential services in Newcastle HWB. The regulation is not met, therefore **Regulation 14(5)** is also not met and the application must be refused.
- 2.12 **Regulation 13(2)(h)** – PSRC agreed 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. As the PSRC are satisfied with regard to 13(h), **Regulation 14(5)** is not met and the application must be refused.
- 2.13 The following Regulations were considered by PSRC, but deemed not to be relevant to this application:
- 2.13.1 Regulation 13(2)(a-c) • Regulations 13(2)(e,f & gi))
- 2.13.2 Regulation 13(2)(i)

- 2.13.3 Regulation 14(1)(2)&(3)
- 2.13.4 Regulation 31.
- 2.13.5 Regulation 32.
- 2.13.6 Regulations 40 to 44.
- 2.13.7 Regulation 50
- 2.13.8 Regulation 65
- 2.13.9 Regulation 66
- 2.13.10 Paragraph 31, schedule 2
- 2.14 PSRC **rejected** the application.
- 2.15 **Appeal rights –**
- 2.16 The applicant has appeal rights.”

3 **The Appeal**

In a letter dated 25 April 2025, Gordons Partnership LLP on behalf of the Applicant appealed against the Commissioner’s decision. The grounds of appeal are:

- 3.1 **“Appeal against the decision by North East and North Cumbria ICB to refuse the application offering to meet an identified current need at Cruddas Park shopping centre, Westmoreland [sic] Road, Newcastle-upon-Tyne, NE4 7QY.**
- 3.2 We act for Quayside Pharmacy Ltd. We are instructed by our client to appeal against the refusal of its application offering to meet an identified current need at Cruddas Park shopping centre, Westmoreland [sic] Road, Newcastle-upon-Tyne, NE4 7QY.
- 3.3 The application is made under regulation 13 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (“the Regulations”).
- 3.4 **The Decision**
- 3.5 The Pharmaceutical Services Regulations Committee meeting for North East and North Cumbria ICB determined that the application should be refused on the following basis:
- 3.6 In considering whether the granting of the application would confer significant benefits, the Committee determined that –
 - 3.6.1 Regulation 13(2)(d) is met therefore Regulation 14(4) is also met and refusal is necessary.
 - 3.6.2 Regulation 13(1) is not met as the PNA does not identify any gaps or current needs
 - 3.6.3 Regulation 13(2)(g(ii)) PSRC considered pharmaceutical services in the area and determined that there is reasonable choice and there is no evidence that

people with protected characteristics find accessing pharmaceutical services difficult in the area.

3.6.4 No proposed innovative approach to the delivery of pharmaceutical services offered by the applicant has been identified. PSRC determined that granting the application would not secure improvements or better access to, or increase the availability of, essential services in Newcastle HWB. The regulation is not met, therefore Regulation 14(5) is also not met and the application must be refused.

3.6.5 Regulation 13(2)(h) – PSRC agreed 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. As the PSRC are satisfied with regard to 13(h), Regulation 14(5) is not met and the application must be refused.

3.7 On that basis the committee concluded that the application should be refused on the basis that the relevant Regulations were not met.

3.8 **The Appeal**

3.9 The grounds of the appeal is that the committee misdirected itself. Accordingly, the final determination by the Committee was incorrect and the decision by NHS England should be quashed and redetermined to grant our client's application.

3.10 **Background**

3.11 It may be helpful for Primary Care Appeals to understand the context of the application. Our client's director and superintendent is very familiar with the area, as he operates three pharmacies in Newcastle. The company made its application against a background of a closure of the Boots Pharmacy at Unit 10 Cruddas Park, Westmoreland [sic] Road, Newcastle-upon-Tyne, NE4 7QY, as well as two other Boots Pharmacies in Newcastle in Kenton and Heaton and other closures throughout the HWB area.

3.12 The Superintendent Pharmacist is a pharmacist and successfully operates pharmacies in the local area. The group of pharmacies operated successful Covid vaccine clinics during the Pandemic and provided, and continue to provide, domiciliary visits for those unable to access the clinics. The Superintendent Pharmacist is also the PCN lead for the Newcastle Central area, covering five pharmacies. He is familiar with the local needs and will be able to be proactive in the provision of services to the population.

3.13 The appeal is made in the context of an application for inclusion in the pharmaceutical list having already been refused. Consequently, in light of the HWB clear statement about the gap in provision in the Cruddas Park area the application under Regulation 13 is being pursued.

3.14 Turning to the specific regulatory criteria: -

3.15 **Regulation 13(1)**

3.16 **The application would meet a current need for pharmaceutical services that has been identified in the relevant pharmaceutical needs assessment** There is a current need for pharmaceutical services in Cruddas Park, Newcastle-upon-Tyne. This

need was created by the closure of the Boots Pharmacy at Unit 10 Cruddas Park on 2 March 2024.

- 3.17 Following this closure, a supplementary statement was issued by the Newcastle Health and Wellbeing Board on 15 May 2024. This statement confirms that the Boots Pharmacy had closed, and shows the previous opening hours and services provided. This application was made on the basis that the supplementary statement has identified a current need.
- 3.18 The letter from the Newcastle Health and Wellbeing Board dated 9 January 2025 (**enclosed**) confirms that there is a current need for a pharmacy in the Cruddas Park area now that the Boots Pharmacy has closed. The letter states that the supplementary statement “updates the PNA with the fact that the pharmacy has closed and reflects that the closure has created a gap in the provision of pharmaceutical services in the area in this area.”
- 3.19 Therefore, the supplementary statement can be viewed as identifying a current need for pharmaceutical services in Cruddas Park, and our client seeks to provide these services at Cruddas Park shopping centre, Westmoreland [sic] Road, Newcastle-upon-Tyne, NE4 7QY.
- 3.20 The supplementary statement produced would meet the requirements of either paragraph 2 or 4 of Schedule 1 of the Regulations. The supplementary statement identifies the loss of the Boots Pharmacy and sets out the services previously offered. Accordingly, the identified current need is for a replacement of all services offered by the closed Boots pharmacy at the times the services were offered.
- 3.21 The relevance of the issue of the supplementary statement is clear from the wording of Regulation 6(3) of the Regulations.
- 3.22 *“6(3) Pending the publication of a statement of a revised assessment, a HWB may publish a supplementary statement explaining changes to the availability of pharmaceutical services since the publication of its or a Primary Care Trust’s pharmaceutical needs assessment (and any such supplementary statement becomes part of that assessment), where—*
- (a) the changes are relevant to the granting of applications referred to in section 129(2)(c)(i) or (ii) of the 2006 Act; and*
- (b) the HWB—*
- (i) is satisfied that making its first or a revised assessment would be a disproportionate response to those changes, or*
- (ii) is in the course of making its first or a revised assessment and is satisfied that immediate modification of its pharmaceutical needs assessment is essential in order to prevent significant detriment to the provision of pharmaceutical services in its area.”*
- 3.23 Here it would be said that the HWB is in the process of making a revised assessment but immediate modification of the PNA is needed to prevent detriment to the pharmaceutical services. It follows that the only mechanism for a new application that is identified in the PNA would be an application under regulation 13 or 17. Our client’s position is that a Regulation 13 application is appropriate as it wishes to provide the full current need identified.
- 3.24 **Regulation 13(2)(d)**

- 3.25 **Whether there have been any changes to pharmaceutical needs within the HWBB, such that refusing the application is essential to prevent significant detriment to the provision of pharmaceutical services.**
- 3.26 There are no changes that mean this application is required to be refused.
- 3.27 As already highlighted in our client's application, there have been changes to pharmaceutical need within the Newcastle Health and Wellbeing Board due to the closure of the Boots Pharmacy at Unit 10 Cruddas Park.
- 3.28 Cruddas Park is a significantly deprived area, and as such is likely to have higher levels of pharmaceutical need. The closure of the Boots Pharmacy has created a gap in pharmaceutical provision in this deprived area. Therefore, allowing this application would be beneficial, rather than detrimental to the provision of pharmaceutical services. For this reason, Regulation 14(4) is not met, and it is not necessary to refuse the application.
- 3.29 **Regulation 13(2)(g)**
- 3.30 **Whether the current need identified was in respect of services other than essential services and granting the application would lead to an undesirable increase in the availability of essential services.**
- 3.31 The current need was identified in respect of services previously provided by the Boots Pharmacy. These include both NHS essential services and NHS advanced services. The applicant will provide all of the services previously being provided by the Boots Pharmacy.
- 3.32 The granting of the application will not lead to an undesirable increase in the availability of essential services. The applicant will restore essential service provision to the level that it was previously at, which is a desirable increase.
- 3.33 The demographics of the area around Cruddas Park are varied, including high levels of deprivation, close proximity to Newcastle College, and a population of refugees and asylum seekers. These different groups have a variety of different health needs. These will be effectively met by increasing the provision of essential services, as well as advanced and enhanced services.
- 3.34 For these reasons, Regulation 14(5) is also met, and the application does not have to be refused.
- 3.35 **Regulation 13(2)(h)**
- 3.36 **Whether the current need has been met, or is due to be met, by another person who has undertaken to provide NHS Services**
- 3.37 The current need has not been met and is not due to be met by another person. Since the issue of the supplementary statement in May 2024, no other person has taken over the provision of the services previously provided by the Boots Pharmacy previously located at Unit 10 Cruddas Park.
- 3.38 The Pharmaceutical Services Regulations Committee determined that there was no evidence that the existing Pharmacy services were not providing sufficient service. Newcastle Health and Wellbeing Board's letter of 9 January 2025 confirms that this is not the case, and that there is a gap in the provision of pharmaceutical services.

- 3.39 For these reasons, Regulation 14(5) is also met, and the application does not have to be refused.
- 3.40 In summary, this application will provide significant benefits to the provision of pharmaceutical services in the area.
- 3.41 We ask NHS Resolution to allow our client's appeal and to quash the decision by NHS England and redetermine and grant our client's application. If an oral hearing is arranged our client would want to attend and be represented."

4 Summary of Representations

In the interests of transparency and fairness, NHS Resolution sought to rely on the discretion afforded in paragraph 7 of Schedule 3 of the Regulations to vary the normal procedures and to circulate the documentation relied upon by the Commissioner to make its determination as well as the Applicant's '14 day comments' received in response to the representations made to the Commissioner as these had not been seen by parties prior to the decision being made by the Commissioner. This is a summary of the representations received.

4.1 Boots UK Ltd

- 4.1.1 "Thank you for your letter dated 14th May 2025 informing us of the above appeal.
- 4.1.2 We agree with the decision of the ICB to refuse this application and we stand by our initial objections. We attach our response to the application with this appeal for information.
- 4.1.3 As stated in the decision report, current Needs in the area were not included in the relevant pharmaceutical needs assessment and therefore Regulation (13)(1)b was not met. We believe that the applicant/appellant are simply basing their application reason on the fact that the Boots pharmacy closed and not the actual regulatory test.
- 4.1.4 We have no further comments to make with regards to this application and subsequent appeal, but we would be grateful if you would inform us of the outcome in due course."

In a letter to PCSE dated 10 January 2025 Boots UK Ltd stated:

- 4.1.5 "Thank you for your letter dated 27th November 2024 and the above application. Boots UK Limited have the following comments to make.
- 4.1.6 We note that the applicant has previously applied for an application at the same site offering to secure and unforeseen benefits under Regulation 18, which was refused by the ICB and subsequently at appeal.
- 4.1.7 The applicant has applied to fulfil a current need. This application is based on the recent closure of the Boots pharmacy. As the ICB will be aware, the closure of a pharmacy within an area does not automatically create a gap. No gaps in service and current or future need have been identified within the Newcastle Pharmaceutical Needs Assessment (PNA) and for that reason alone, this application must be refused. The supplementary statement dated 15th May 2024, simply documents the closure of the Boots Pharmacy and does not state that it is believed that a current need has been identified as a result of the closure.

- 4.1.8 A review of NHS.UK shows that there are 7 pharmacies within a mile of the proposed location already offering services to patients in the area. The applicant has not provided any evidence of patients having difficulty accessing the pharmacy contractors in this locality and it is stated within the decision of the appeal for the previous application that there are no known difficulties in access to pharmaceutical provision.
- 4.1.9 We respectfully ask that this application be refused and would be most grateful if you could keep us informed of the progress of the application in due course.”
- 4.2 Gordons Partnership LLP on behalf of the Applicant
 - 4.2.1 “Thank you for your letter of 14 May 2025 enclosing the letter from the Director of Public Health writing on behalf of the Newcastle Health and Wellbeing Board (“HWB”).
 - 4.2.2 The letter from the HWB board entirely supports the position set out in our letter of appeal.
 - 4.2.3 They explicitly state:
 - 4.2.4 *“Furthermore, according to the guidance, a supplementary statement should not be published if no gap in provision is believed to have been created. Consequently, the act of publishing the supplementary statement inherently infers that the HWB considers the closure of the pharmacy to have resulted in a gap in the provision of pharmaceutical services.”*
 - 4.2.5 The intention in Regulation 6 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (“the Regulations”) is to provide the HWB with a mechanism to highlight a need for a pharmacy in its area. The HWB could not be clearer in the letter of 16 January 2025 that it believes that there is a gap in provision in the Cruddas Park area. It drafted the relevant supplementary statement as explicitly as it could and our client’s case is that the supplementary statement read with the PNA is sufficient to meet the criteria in Regulation 13. It sets out the identified current need which is for a replacement of all services offered by the closed Boots pharmacy at the times the services were offered.
 - 4.2.6 If Primary Care Appeals do not accept this, we would ask that the HWB’s strong explanatory statements be read with the supplementary statement as these show that not only did the HWB believe that the supplementary statement was sufficient to identify a current need but also there was, at the time the statement was drafted, and continues to be, a current need for pharmaceutical services at this location in the HWB area.
 - 4.2.7 It should also be noted that an application under Regulation 18 of the Regulations has already been made which identified the high levels of deprivation and limited access to public transport in the area. This application was refused by the ICB and on appeal. Accordingly, there is no other feasible regulatory route to put in place a pharmacy in this location without delay.
 - 4.2.8 We ask NHS Resolution to allow our client’s appeal and to quash the decision by NHS England and redetermine and grant our client’s application. If an oral hearing is arranged our client would want to attend and be represented.”
- 4.3 Newcastle Health and Wellbeing Board

- 4.3.1 “Thank you for your letter dated 14th May 2025, regarding the appeal against the Commissioner’s decision on the above application.
- 4.3.2 We note that in the notification of their decision to refuse the application, the Pharmaceutical Services Regulations Committee concluded that the supplementary statement issued by the Health and Wellbeing Board on 15th May 2024 *“was not based on a review of the needs of the HWB area as a whole and the statement itself was factual. Current Needs in the area were not included in the relevant pharmaceutical needs assessment and therefore Regulation (13)(1)b was not met”*.
- 4.3.3 In publishing the supplementary statement, the HWB followed national guidance issued by the Department of Health and Social Care (DHSC) in their document “Information Pack for Local Authority Health and Wellbeing Boards”. This document is publicly available at: <https://www.gov.uk/government/publications/pharmaceutical-needs-assessments-information-pack>
- 4.3.4 The DHSC guidance includes template supplementary statements in Appendix 3, including one for closures of pharmacies. The template does not recommend including an explicit statement regarding a gap in provision for current need. Instead, the guidance advises that supplementary statements provide factual updates on changes in service provision. The supplementary statement published by the HWB adheres to this requirement by documenting the closure of the former Boots pharmacy.
- 4.3.5 Furthermore, according to the guidance, a supplementary statement should not be published if no gap in provision is believed to have been created. Consequently, the act of publishing the supplementary statement inherently infers that the HWB considers the closure of the pharmacy to have resulted in a gap in the provision of pharmaceutical services (page 64 and 65 of DHSC guidance).
- 4.3.6 The HWB carefully considered local factors before deciding to publish the supplementary statement. These included the high levels of deprivation and disability in the Elswick area, as well as limited access to personal transport, which are likely to impact residents’ ability to access alternative pharmacies. The HWB also noted that, had this pharmacy not been open when the current PNA was published, it would likely have resulted in the identification of a gap in pharmaceutical service provision. Whilst not included in the supplementary statement document itself, this rationale is recorded in the minutes of the Health and Wellbeing Board meeting on 15th May 2024, available at: <https://democracy.newcastle.gov.uk/ieListDocuments.aspx?CId=2476&MId=14138&Ver=4>
- 4.3.7 The HWB is confident that the publication of the supplementary statement complies fully with national guidance. The statement provides a factual update on the closure, while its publication implicitly acknowledges the creation of a gap in provision to meet the current needs of the local population.
- 4.3.8 Should you require any further clarification, please do not hesitate to contact me.”

5 Summary of Observations

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

6 Consideration

- 6.1 The Pharmacy Appeals Committee ("Committee") appointed by NHS Resolution had before it the papers considered by the Commissioner, together with a plan of the area showing existing pharmacies and doctors' surgeries and the location of the proposed pharmacy.
- 6.2 It also had before it the responses to NHS Resolution's own statutory consultations.
- 6.3 The Committee had before it a copy of the 2022 to 2025 Newcastle Pharmaceutical Needs Assessment ("PNA") dated 29 September 2022 prepared by Newcastle City Council, which had been provided by the Commissioner. The Commissioner advised that a supplementary statement to the PNA had been published, dated 15 May 2024. No further supplementary statements have been provided.
- 6.4 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.
- 6.5 The Committee dealt with the appeal by way of consideration of all the issues.
- 6.6 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations").

Regulation 31

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

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

(2) This paragraph applies where -

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

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

(ii) adjacent premises; and

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

- 6.8 The Committee noted that the Applicant had not provided any information in the application form on this point but the Committee noted that the wording of the application form only required the Applicant to include information in the relevant section if the proposed premises were adjacent to, or in close proximity to, another pharmacy or dispensing appliance contractor premises. The Committee considered it reasonable to determine that the lack of information in the application form on this point when read with the wording of the application form allowed it to be reasonably satisfied

that the Applicant considered that the proposed premises were not adjacent to, or in close proximity to, another pharmacy or dispensing appliance contractor premises.

- 6.9 The Committee noted that in its decision letter the Commissioner had stated, "*The following Regulations were considered by PSRC, but deemed not to be relevant to this application: Regulation 31.*" This has not been disputed by any party.
- 6.10 The Committee therefore determined that it was not required to refuse the application under the provisions of Regulation 31.
- 6.11 The Committee noted that, if the application were granted, the successful applicant would - in due course - have to notify the Commissioner of the precise location of its premises (in accordance with paragraph 31 of Schedule 2). Such a notification would be invalid (and the applicant would not be able to commence provision of services) if the location then provided would (had it been known now) have led to the application being refused under Regulation 31.

Regulation 13

- 6.12 The application (which was to be determined in accordance with the procedures in Schedule 2) was submitted by the Applicant based on addressing current need for pharmaceutical services.
- 6.13 The Committee considered whether the need on which the Applicant based its application satisfied the elements of Regulation 13(1) which reads as follows:

"(1) If - —

(a) *NHS England receives a routine application and is required to determine whether granting it, or granting it in respect of some only of the services specified in it, would meet a current need for pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB; and*

(b) *the current need has been included in the relevant pharmaceutical needs assessment in accordance with paragraph 2(a) of Schedule 1,*

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

- 6.14 Paragraph 2(a) of Schedule 1 reads as follows:

"A statement of the pharmaceutical services that the HWB has identified (if it has) as services that are not provided in the area of the HWB but which the HWB is satisfied—

(a) need to be provided (whether or not they are located in the area of the HWB) in order to meet a current need for pharmaceutical services, or pharmaceutical services of a specified type, in its area"

- 6.15 The Committee noted that the Applicant is proposing to meet a current need in the Cruddas Park area of Newcastle upon Tyne.
- 6.16 The Committee noted that the Applicant's proposed best estimate address includes the location of a former Boots Pharmacy which closed in March 2024. The Committee noted the Applicant's comment that:

“The location of the proposed pharmacy is within a shopping centre that is adjacent to high rise apartments and so is a densely populated area. The Boots Pharmacy at Unit 10 Cruddas Park, Westmoreland [sic] Road, Tyne and Wear, NE4 7QY closed on 2 March 2024.

It is roughly estimated that this pharmacy dispensed 8,000 to 10,000 items per month. The applicant proposes to replace the pharmaceutical services provided by the Boots Pharmacy and more generally, the reduction in the provision of pharmaceutical services across Cruddas Park and accordingly, provide a significant benefit to the community.

Reg 6(3) – PNA

The improvements and better access that would be secured were not included in the original Pharmaceutical Needs Assessment (PNA) 2022-2025 as the PNA does not cover the closure and loss of service of the Boots Pharmacy nor other pharmacies in the area. The Supplementary Statement (issued on 15 May 2024) confirms that the closure of the Boots on Cruddas Park does create a significant gap in pharmaceutical services, hence this application.”

- 6.17 The Committee was of the view that simply stating that there is a need for pharmaceutical services following a closure is not the criteria for current need applications as such applications are based on the findings of the PNA. The Committee therefore went on to consider any identified current need against the PNA.
- 6.18 The Committee noted the comment from the Commissioner that, *“Current Needs in the area were not included in the relevant pharmaceutical needs assessment and therefore Regulation (13)(1)b was not met.”* The Applicant’s focus was however on the supplementary statement issued on 15 May 2024. The Committee noted the supplementary statement, which will have become part of the PNA, referred to the Boots closure in Cruddas Park shopping centre on 2 March 2024. The Committee was of the view that simply referring to changes in the area as had occurred, in the supplementary statement, is not the criteria for current need applications.
- 6.19 The Committee further noted the Applicant’s comments that *“there have been changes to pharmaceutical need within the Newcastle Health and Wellbeing Board due to the closure of the Boots Pharmacy at Unit 10 Cruddas Park. Cruddas Park is a significantly deprived area, and as such is likely to have higher levels of pharmaceutical need. The closure of the Boots Pharmacy has created a gap in pharmaceutical provision in this deprived area. Therefore, allowing this application would be beneficial, rather than detrimental to the provision of pharmaceutical services. For this reason, Regulation 14(4) is not met, and it is not necessary to refuse the application.”*
- 6.20 The Applicant states, in its application, that it will meet the need by *“replac[ing] the pharmaceutical services provided by the Boots Pharmacy and more generally, the reduction in the provision of pharmaceutical services across Cruddas Park.”* However, the Committee noted that no further information had been provided by the Applicant as to why this constituted a “current need” for the purposes of Regulation 13.
- 6.21 The Committee was of the view that the Applicant had not identified any statement in the PNA in accordance with paragraph 2(a) of Schedule 1 indicating services that are not provided in the area of the HWB but which the HWB is satisfied would, if they were provided, meet a current need for pharmaceutical services, or pharmaceutical services of a specified type, in Cruddas Park, which the proposed pharmacy can meet.

- 6.22 The Committee further noted the contents of the letter dated 9 January 2025 from the Newcastle Health and Wellbeing Board (HWB), which stated: *“the HWB issued a supplementary statement, which updates the PNA with the fact that the pharmacy has closed and reflects that the closure has created a gap in the provision of pharmaceutical services in this area.”* As per its comments above, the Committee has already noted its view that the supplementary statement to the PNA did not explicitly identify a current need for pharmaceutical services in the area.
- 6.23 The Committee further considered the HWB’s letter of representation dated 12 June 2025, which stated that the act of publishing a supplementary statement *“inherently infers”* that a current need for a pharmacy had been identified in the area surrounding the proposed location. The letter also stated that the supplementary statement *“provides a factual update of the closure”* and *“implicitly acknowledges the creation of a gap in provision to meet the current needs of the local population.”* The Committee was of the view that it was not enabled to “infer” that there was now a current need.
- 6.24 Additionally, the Committee noted that the HWB had referred to the Department of Health and Social Care (DHSC) *Pharmaceutical Needs Assessments* guidance booklet, specifically the section titled *“Does a supplementary statement need to be published?”* The Committee recognised that the guidance advises HWBs to consider whether, had the pharmacy not existed at the time the PNA was written, its absence would have constituted a gap in pharmaceutical service provision.
- 6.25 The Committee considered that the clear implication here is that the supplementary statement will contain a statement relating to the need for pharmaceutical services. As per paragraph 5, this is the only reason for publishing the supplementary statement. The Committee considered that this directly contradicts the earlier statement in the guidance that the supplementary statement should not relate to needs for pharmaceutical services.
- 6.26 Further, the Committee noted Regulation 6(4) which requires a HWB, in the situation explained in Regulation 6(4), to publish a supplementary statement explaining that a gap is not created. The Committee noted that the Regulations clearly envisage here that a supplementary statement will contain a statement relevant to needs for pharmaceutical services that forms part of the PNA.
- 6.27 The Committee was mindful that the DHSC document is intended as guidance only and does not replace the statutory requirements set out in the Regulations.
- 6.28 The Committee determined that the need in question was not included in the PNA dated 2022-2025 in accordance with paragraph 2(a) of Schedule 1.
- 6.29 In this case, the provisions of Regulation 13(1) were not met. The Committee therefore did not need to go on and consider Regulation 13(2).
- 6.30 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 6.30.1 confirm the Commissioner’s decision;
 - 6.30.2 quash the Commissioner’s decision and redetermine the application;
 - 6.30.3 quash the Commissioner’s decision and, if it considers that there should be a further notification to the parties to make representations, remit the matter to the Commissioner.

- 6.31 Given the Commissioner had not provided reasoning in its decision regarding Regulation 31, the Committee determined that the decision of the Commissioner must be quashed.
- 6.32 The Committee went on to consider whether there should be a further notification to the parties detailed at paragraph 19 of Schedule 2 of the Regulations to allow them to make representations if they so wished (in which case it would be appropriate to remit the matter to the Commissioner) or whether it was preferable for the Committee to redetermine the application.
- 6.33 The Committee noted that representations on Regulation 13 had already been made by parties to the Commissioner, and these had been circulated and seen by all parties as part of the processing of the application by the Commissioner. The Committee further noted that when the appeal was circulated representations had been sought from parties on Regulation 13.
- 6.34 The Committee concluded that further notification under paragraph 19 of Schedule 2 would not be helpful in this case.

7 Decision

- 7.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of the Commissioner, for the reasons given above, and redetermines the application.
- 7.2 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.
- 7.3 The Committee has determined that the application should be refused for the following reason:
- 7.3.1 The PNA has not identified a current need which this application could meet.
- 7.4 Accordingly, the application is refused.

Case Manager Primary Care Appeals