

4 May 2022

REF: SHA/24660

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APPEAL AGAINST NORTH EAST & YORKSHIRE (CUMBRIA & NORTH EAST) AREA TEAM, NHS COMMISSIONING BOARD ("NHS ENGLAND") DECISION TO GRANT AN APPLICATION BY B & S HEALTH LTD FOR INCLUSION IN THE PHARMACEUTICAL LIST AT BEST ESTIMATE OF DINNINGTON VILLAGE CENTRE WITH REGARD TO CURRENT NEED UNDER REGULATION 13

1 Outcome

- 1.1 The Committee has determined that the application should be granted for the following reason:
 - 1.1.1 The PNA has identified a current need which this application could meet.
 - 1.1.2 Accordingly, the application is granted.

A copy of this decision is being sent to:
Great Park Pharmacy – Appellant
Rushport Advisory LLP – on behalf of the Applicant
NHS England
North of Tyne LPC

Advise / Resolve / Learn

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1 The Application

By application dated 16 July 2021, B&S Health Ltd ("the Applicant") applied to NHS Commissioning Board ("NHS England") for inclusion in the pharmaceutical list within Dinnington Village Centre (map provided), with regard to Current Need under Regulation 13. In support of the application it was stated:

- 1.1 In response to Part 5 of the application form (reference to Regulation 31) the Applicant stated: *"No other pharmacy in same or adjacent premises so not applicable."*
- 1.2 In response to Part 6 of the application form, the Applicant stated that the identified current need it is offering to meet is:
 - 1.2.1 PNA references a gap in essential service provision in Dinnington – pages 4, 61 & 67;
 - 1.2.2 Page 61 states: *"REC: The PNA identifies that there is a gap in essential pharmaceutical service in Dinnington."*

Extract from Newcastle HWBs extant PNA 2018-2021 (page 61)

Dinnington Village

- 1.3 Dinnington village has recently (Summer 2017) been re-designated a rural area by the NHS England local area team (Map A2 in appendix 1 indicates areas designated as rural areas in Newcastle). This decision maintains the current situation where the local dispensing practice is the only route to access medicines in the village.
- 1.4 However, during the process of engagement for the determination of rurality, residents of Dinnington expressed dissatisfaction to the council at the provision of pharmaceutical services for local residents. As a result, a note was made to investigate further for this version of the Pharmaceutical Needs Assessment.
- 1.5 A parish council meeting was attended in November 2017 and local residents reported dissatisfaction at the closure of one of the two village practices. This occurred in May 2017 leaving residents with access to prescription medicines for only minimal hours during the week (10.30am to 12pm Monday to Friday).
- 1.6 Residents also reported that even during these times, the services are unreliable. This challenging environment is being further compounded for those without access to a car by relatively long and infrequent (or non-existent) public transport journey times to Kingston Park, Wideopen and Ponteland - the next nearest community pharmacies to Dinnington.

- 1.7 It is also worth considering that housing developments currently underway in the village will boost the local population considerably over the next few years. There are currently around 760 houses in the village but this will rise to 1100 homes over the next 5 years. Dispensing Doctors do not provide the same advanced or local pharmacy services, so this in itself is a gap in provision for this area.
- 1.8 Notwithstanding the financial viability of any potential community pharmacy, this PNA highlights a gap in pharmaceutical service provision for Dinnington residents.
- 1.9 The Applicant intends to provide the following services:
- 1.9.1 Essential services;
- 1.9.2 Appliances as per part IX of the Drug Tariff;
- 1.9.3 The PNA states that there is a requirement for essential services to be provided in Dinnington. The pharmacy will provide all essential services as well as additional advanced and enhanced services and will therefore meet the need identified.
- 1.10 The Applicant's proposed core opening hours are:
- 1.10.1 Mon to Fri – 9am to 5pm.
- 1.10.2 Sat -
- 1.10.3 Sun -
- 1.11 The Applicant's proposed total opening hours are:
- 1.12 As above

2 The Decision

NHS England considered and decided to grant the application. The decision letter dated 2 November 2021 states:

Covering letter

- 2.1 NHS England has considered the above application and is writing to confirm that it has been granted. Please see the enclosed report for the full reasoning.
- 2.2 Also enclosed is a template of the notice of commencement which the Applicant is required to submit to NHS England. Please note that if this is submitted before the end of the 30 day appeal period and a valid notice of appeal is then received by the Secretary of State, the notice of commencement will cease to have effect. This means that if the Applicant has opened its new premises then it will be required to close with immediate effect.
- 2.3 Please also note: Due to a change to the regulations which came into effect on 9 November 2020, the Applicant must submit the notice of commencement at least 30 days before the date it intends to start service provision. If it is received less than 30 days in advance it is not a valid notice of commencement and will not be accepted by NHS England. The only exception to this is where NHS England has agreed to a shorter notification period.

Decision report

- 2.4 At its meeting of 27 October 2021, the Pharmaceutical Services Regulations Committee (PSRC) considered and approved this Application for inclusion in a pharmaceutical list – routine application offering to meet a current need, on the following basis:
- 2.5 Regulation 13(1) – additional matters to which the NHSCB must have regard. The application satisfies this Regulation for pharmaceutical services in Newcastle’s Health and Wellbeing Board area as it meets the identified current need included in Newcastle HWB’s Pharmaceutical Needs Assessment dated 2018-2021 (this being the extant version at the time of the receipt and determination of the Application).
- 2.6 Regulation 13(2) – additional matters to which the NHSCB must have regard (referring to Regulation 14 where necessary). This Regulation is met as the application can be heard without being deferred, will not provide significant detriment to current services and granting the application will fully meet the current identified need and improve access for patients.
- 2.7 Regulation 13(3) – additional matters to which the NHSCB must have regard. Great Park Pharmacy commenced services (2018) and the PNA on page 67 states that the grant of approval for that pharmacy did not fully meet the gap. There are no LPS contractors in the area nor are any other pharmacies waiting to submit a notice of commencement.
- 2.8 Regulation 31 - Refusal: same or adjacent premises. As there is no pharmacy currently in Dinnington, this Regulation is not applicable.
- 2.9 Regulation 32 - Deferrals arising out of LPS designations. This Regulation is not applicable as there are no LPS contractors’ applications pending.
- 2.10 Regulation 40 – Applications for new pharmacy premises in controlled localities: refusals because of preliminary matters. This application is not to be refused under preliminary matters by virtue of the addition to the Regulations of clause (5), which states that applications for new pharmacy premises in controlled localities – refusals under preliminary matters - is to be ignored for the purposes of the calculation of a 5-year period.
- 2.11 Regulation 41 – Applications for new pharmacy premises in controlled localities: reserved locations. This Regulation is satisfied. The proposed premises are in a controlled locality which has reserved location status owing to the size of the resident registered population count being less than 2750. The applicant submitted a best estimate of premises only, resulting in postcode NE13 7JR being used by NHS England for undertaking the resident registered population count.
- 2.12 The current GP dispensing provider has already given notice to cease dispensing in Dinnington.
- 2.13 Regulation 42 - second and subsequent determinations of reserved location status. This Regulation is applicable. The reserved location determination is made based on the circumstances as they pertained on the day the application was received and takes effect once the pharmacy premises to which it relates are listed in the pharmaceutical list.
- 2.14 Regulation 43 - Determinations of reserved locations: supplemental matters. Dinnington is to be considered a reserved location because the number of individuals residing in the area which is within 1.6km of the ‘relevant location’ who are registered with a GP practice (excluding temporary residents) is less than 2,750; and NHS England is not satisfied that if pharmaceutical services were provided at the ‘relevant location’, the use of those services would be similar to, or greater than, the use that might be expected if the number of individuals residing in that area who are on a patient list were 2,750 or more.

- 2.15 Regulation 44 - Prejudice test in respect of routine applications for new pharmacy premises in a part of a controlled locality that is not a reserved location. This Regulation is not applicable as Dinnington is a reserved location, therefore the application needs to be determined under the market entry provisions of the Regulations.
- 2.16 Regulation 50 - gradualisation for doctors. This Regulation is applicable and patient dispensing rights will be affected. Whilst Ponteland Medical Group has withdrawn its dispensing service, the White Medical Group will lose its right to dispense to the 44 patients living within 1.6 km of the pharmacy when it opens.
- 2.17 Regulation 65 - core opening hours conditions. This Regulation is not applicable as NHS England will not be directing the core hours of opening.
- 2.18 Regulation 66 – conditions relating to providing directed services. This Regulation is not applicable as NHS England will not be directing services.
- 2.19 Schedule 2, Paragraph 31 - Conditional grant of applications where the address of the premises is unknown. This Regulation is applicable, as the Applicant has only been able to provide a best estimate of where the proposed listed pharmaceutical premises will be sited.
- 2.20 Accordingly, the Applicant will need to notify NHS England of the premises to be listed, within 6 months of the date on which the Applicant is sent the notice of decision; or if the grant of the application is appealed, the date on which the appeal is determined by the Secretary of State, whichever is the latest.

Appeal Rights:

- 2.21 If refused, the Applicant will be able to Appeal PSRC's decision.
- 2.22 If granted, Great Park Pharmacy will be able to Appeal PSRC's decision as they objected to the application.
- 2.23 **Boots Head Office** submitted objections on behalf of their pharmacies [listed], which means that if granted the following will be able to Appeal PSRC's decision.
- 2.24 If granted, the four Lloyds pharmacies will not be able to Appeal PSRC's decision. Whilst the Head Office provided comments on the pharmacies' behalf, no objection to the Application was made.

3 The Appeal

Using NHS Resolution's 'On line form for pharmacy application appeals' dated 22 November 2021, Pharmicare4u Ltd t/a Great Park Pharmacy ("the Appellant") appealed against NHS England's decision. The grounds of appeal are:

- 3.1 The Appellant wishes to appeal the decision of NHS England to grant the above application.
- 3.2 In the next few paragraphs, the Appellant will show that NHS England's basis for granting the application is unfounded and will provide further evidence that a pharmacy is not needed in Dinnington Village.
- 3.3 Firstly, Newcastle Health and Wellbeing Board (HWB) have not deemed necessary to review their 2018 PNA following the opening of Great Park Pharmacy in August 2018, nor amend their conclusions in a way which reflects the evidence on the ground.
- 3.4 When the 2018 PNA was published on 1 April 2018, there was no mention of Castle Ward or Newcastle Great Park development, which has been the biggest development

in the local authority since 1990s. The Appellant's pharmacy was granted, under unforeseen benefits, on 2 Nov 2017 and opened on 3 Aug 2018. During the time it was somewhat surprising that the HWB failed to assess the largest housing development in the North East. The PNA simply stated that there was adequate provision of pharmaceutical services in Newcastle. This was not accurate as there were no services readily available at Newcastle Great Park, part of Castle Ward.

- 3.5 Had the HWB carried out a proper needs assessment by locality, they would have realised that a pharmacy was granted on Great Park on Nov 2017 and due to open by Aug 2018. The PNA nevertheless concludes that there was a gap in services and identifies this in Dinnington, the smallest village in north Newcastle and a controlled locality, as reviewed by NHS England in April 2017.
- 3.6 It is the Appellant's view that Newcastle PNA should not be relied upon, nor be used as a reliable source of information as it is extremely inaccurate and needs reviewed (sic) before any decisions are reached. The following is evidence was ignored by the HWB when they published their Pharmaceutical Needs Assessment (PNA):
 - 3.6.1 Newcastle HWB list three main localities for Newcastle in their 2018-2021 PNA. The area of Dinnington falls into Castle Ward, which is in Newcastle North locality. There is no assessment of this area in the PNA.
 - 3.6.2 The HWB has concluded that there is a current need in the area without carrying out further assessment at the beginning of the PNA or more recently. Failure to properly assess an area has huge consequences for patients and contractors and leads to wrong advice being given and decisions being made without any basis. The Committee will be aware that NHS England and the LPC rely on such information to reach their decisions.
 - 3.6.3 Since opening Great Park Pharmacy in August 2018, the Appellant and other pharmacies have made provision to service the needs of patients in Dinnington area. The HWB would know this if they carried out an assessment of the area. They would have concluded that the "gap" identified in their PNA has been closed once the Appellant opened in Aug 2018.
- 3.7 The PNA's conclusion that there was a gap in services in Dinnington, was based on a discussion in the Local Parish Council in Nov 2017. The Parish Council called a meeting to discuss the services provided by Dispensing GPs as this is a controlled locality. The Councillors were worried that GPs would move and create a gap, i.e., reduce access to GPs. Page 61 of the PNA refers to the parish council meeting as follows:
 - 3.7.1 *"Residents of Dinnington expressed dissatisfaction to the (Newcastle City) council at the provision of pharmaceutical services for local residents. As a result, a note was made to investigate further for this version of the Pharmaceutical Needs Assessment."*
- 3.8 This meeting, held before Great Park Pharmacy opened, was to express the dissatisfaction of residents that one of the village's two dispensing practices may close. The residents' fundamental issue was the potential lack of access to GP services as opposed to pharmacy services, which many pharmacies were meeting by offering a free delivery service. The pharmacies in the surrounding area were also joined by an online pharmacy situated in the Dinnington Village Post Office.
- 3.9 Great Park Pharmacy opened on 3 August 2018. Shortly after that, the Appellant attended a parish council meeting on 17 October 2018 to discuss the FREE services the Appellant was able to offer patients in the area. It was made clear again that this meeting was focussed on the declining GP services and the planned reduction in opening hours as opposed to pharmacy services.

- 3.10 However, the PNA seems to have used the parish meetings, mainly attended by residents, as its only “evidence” to assess the whole area. In fact, apart from Dinnington, there is no mention of Castle Ward which includes Great Park, Kingston Park and Newcastle Airport.
- 3.11 During the course of the above-mentioned application, it is understood that the current dispensing GPs have given notice to cease providing services from Dinnington. This comes after Ponteland Medical Practice have been reducing and limiting their services since 2018. Patients had not been dispensed their prescriptions from Dinnington for a long time. They were instead asked to pick up their prescriptions from Ponteland 5 miles away. It is to be noted that both NHS England and Newcastle HWB were aware of this arrangement since 2018 but never took any steps regarding the dispensing GPs.
- 3.12 Until the GPs decided to close their services completely, there was no move to identify any gap. There is now a gap in GP services. However, there is no gap in pharmaceutical services in Dinnington as they are met by the Appellant’s pharmacy in Great Park and Boots and Tesco pharmacies in Kingston Park, both at 2.7 miles of Dinnington. An online pharmacy also dispenses from Dinnington itself. These pharmacies have been meeting any gaps created by GPs since 2018.
- 3.13 The Appellant therefore submits that the outcome of the closure by doctors is completely irrelevant to the issue of pharmaceutical services. NHS England have not carried out due diligence with regard to services provided by the dispensing doctors over the last 3 years as these services have been reducing since the end of 2017.
- 3.14 Ponteland Medical Practice has only 431 registered patients receiving dispensing services in Dinnington. This is a very low number to sustain any service. Where have all the other patients on the dispensing GPs books gone? In truth, the GPs have not had their full complement of patients for a long time, and no one seemed to take note. These patients have migrated to the Appellant’s pharmacy and others, because they were provided with a better service and from a nearer point than Ponteland Medical Practice was offering.
- 3.15 You will see from the items below, dispensed by Ponteland Medical Practice that patients have, over time, migrated elsewhere:
- 3.15.1 Jan 2018 – 4616
- 3.15.2 Jan 2019 – 4207
- 3.15.3 Jan 2020 – 3786
- 3.15.4 Jan 2021 – 2679
- 3.16 The above figures indicate there is no need for a standalone pharmacy in Dinnington. With 431 patients and 2679 items, it would be impossible to sustain a pharmacy in the area. Any pharmacy would need ten times more patients and 4 times more items to remain viable.
- 3.17 The Appellant needs to add to that the village will never grow sufficiently to sustain the pharmacy. It is situated on the flight path of an international airport, which has already objected to the expansion of Dinnington village. New developments may add a couple hundred houses over time, but not the thousands needed for a viable community.
- 3.18 Newcastle City Council had studied this over 20 years ago and decided that Great Park is the area that would develop and grow within the Castle Ward. Had Newcastle HWB studied its own council’s plan and carried out an assessment of the whole ward, they would have known this when they wrote their PNAs of 2011, 2015 and 2018. They would have known that patients are better served by other pharmacies in the area, and that the need for a pharmacy in Dinnington has not been needed for years.

- 3.19 The PNA has recognised, in part, the issue when it states: *“Notwithstanding the financial viability of any potential community pharmacy, this PNA highlights a gap in pharmaceutical service provision for Dinnington residents.”*
- 3.20 On the point of viability, the Appellant has witnessed several pharmacies consolidate or close in the last 3-4 years. The Appellant estimates that more closures will occur in the coming years as Lloyds and Boots have identified targets for closure or merger. The pharmacies under threat are those whose dispensing volumes fall to 6,000–7,000 items per month as they are deemed to be financially non-viable. How can a pharmacy in a small village with a total maximum 1100 houses within the next 5 years (currently 760) expect to be sustainable in these unprecedented times, not to mention the changes in market forces?
- 3.21 Covid-19 has speed up innovation by many years and has changed the patterns of access to GP and dispensing services. As patients have less need to visit their GP and their pharmacy, this has rendered the existence of physical pharmacies less relevant. Covid has led to patients visiting both GP and pharmacy a lot less than they used to. A physical pharmacy is therefore no longer the answer for providing pharmaceutical services.
- 3.22 The HWB should be forward thinking in terms of the changing market environment, the habits of patients and the new patterns of delivering services. The focus is now much more on innovation than setting up physical pharmacies as many changes are here to stay. These factors should be taken into consideration when reaching conclusions and making commissioning decisions as 2021 looks very different to 2018.
- 3.23 Based on the above points, the HWB was wrong to conclude that there is a current need in Dinnington, given that they have failed to assess the area properly at the beginning of the PNA and again in view of the recent changes. Failure to properly assess an area and the lack of supplemental updates to the PNA have huge consequences for patients and contractors. The Appellant feels that neither the HWB nor NHS England have carried out a detailed assessment of the Dinnington area. In the Appellant’s view this should have been done before making a decision of far-reaching consequences. The following key information is absent from the PNA:
- 3.23.1 According to ONS 2011: (please note these are the most up to date statistics until the new census data is released, however the new figures will not be significantly higher as very little development has taken place up to now)
- 3.23.1.1 11,636 residents;
- 3.23.1.2- 740 houses;
- 3.23.1.3- 67.7% population is young to middle aged;
- 3.23.1.4- 90.3% of residents are in fair to very good health;
- 3.23.1.5 - Car ownership per household is over 100% out of 740 households there are 859 cars/vans;
- 3.23.1.6- 0 communal establishments.
- 3.24 Based on the information above the majority of residents living in Dinnington are young to middle aged, in good health, mobile and have vehicle access.
- 3.25 The population in the newer development of Dinnington are primarily young, mobile, working, healthy individuals attracted by first time buyer incentives. These people also tend to make use of online/delivery services. They also have the privilege of small journey times to access pharmaceutical services from the Appellant, Boots and Tesco (100 hour pharmacies) all of which are open for longer hours and provide weekend

provision, which is a lot more than what B&S Health Ltd are proposing to provide. This again makes the Appellant more accessible in terms of providing pharmaceutical services to the residents of Dinnington.

- 3.26 The majority of people living in Dinnington have their own vehicle and are used to travelling short distances to access amenities such as supermarkets and healthcare. A large Morrisons Supermarket is expected to open directly opposite the Great Park Pharmacy in 2022. This will be the closest supermarket serving the residents of Dinnington Village and bus routes are often adapted when large amenities are built, this will connect Dinnington even more closely to Great Park and make all services even more accessible for Dinnington residents.
- 3.27 This objection to NHS England's decision to grant the application is therefore valid and relevant in view of the factors the Appellant summarised above and the fact that the HWB has failed to properly assess the area and the provision of services since Great Park Pharmacy opened in 2018. It is therefore accurate to deem the provision of pharmaceutical services as adequate and that NHS England's decision to grant the application is misguided and based on a false premise. Dinnington Village is in need of better GP services, not pharmaceutical services.

4 **Summary of Representations**

This is a summary of representations received on the appeal. A summary of those representations made to NHS England are only included insofar as they are relevant and add to those received on the appeal.

Rushport Advisory LLP (on behalf of the Applicant)

- 4.1 Rushport act for B&S Health Limited in the above application and submit this reply on behalf of the Applicant to the appeal.
- Preliminary Point
- 4.2 The Applicant is of the view that the appeal should have been dismissed. As the Committee will be aware Schedule 2, Part 5, para 30(3)(c) states;
- 4.2.1 (c) subject to sub-paragraph (5), the NHSCB is satisfied, having regard to those representations in writing and any oral representations made at any oral hearing, that
- 4.2.2 P1—
- 4.2.2.1 (i) made a reasonable attempt to express P1's grounds for opposing the application adequately in P1's representations, and
- 4.2.2.2 (ii) has grounds for opposing the application, which—
- 4.2.2.2.1(aa) do not amount to a challenge to the legality or reasonableness of the relevant pharmaceutical needs that assessment was undertaken, and
- 4.2.2.2.2(bb) are not vexatious or frivolous.
- 4.3 Upon reading the letter of appeal it is clear that it seeks to challenge the reasonableness of the PNA and the fairness of the process by which the assessment was undertaken. The Appellant provides a number of reasons for their view and provides some limited evidence to support their view (which is disputed in any event), but the entire appeal is invalid for the reasons given above.

- 4.4 As the Committee will be aware, it is not open to NHS England or Primary Care Appeals to “investigate” the PNA. Any part of the appeal which amounts to a challenge to the correctness, reasonableness, or process used in producing the PNA must be dismissed. Once the appeal is read with that in mind, there is little or nothing left for the Applicant to comment on in reply.
- 4.5 Despite the above submission, the Applicant considers it prudent to point out why the Appellant is wrong in any event and address the legal test.

Appellant’s Submissions

- 4.6 The Appellant’s argument is essentially that, had the PNA considered the approval and opening of her pharmacy in Great Park, Newcastle, that the HWB would not have concluded that there was a need for a pharmacy in Dinnington.

- 4.7 The Appellant states;

4.7.1 *When the 2018 PNA was published on 1 April 2018, there was no mention of Castle Ward or Newcastle Great Park development, which has been the biggest development in the local authority since 1990s. Our pharmacy was granted, under unforeseen benefits, on 2 Nov 2017 and opened on 3 Aug 2018. During the time it was somewhat surprising that the HWB failed to assess the largest housing development in the North East. The PNA simply stated that there was adequate provision of pharmaceutical services in Newcastle. This was not accurate as there were no services readily available at Newcastle Great Park, part of Castle ward.*

- 4.8 However, it appears that the Appellant is not familiar with the contents of the PNA. Section 8, page 67 of the PNA states;

4.8.1 *The conclusion of this PNA is that people in the city have very good access to community pharmacy services. The only exceptions have been noted in Dinnington village where local residents report that they do not have satisfactory access to medicines and in Great Park, in the north of the city, where a recent pharmacy application was granted based on ‘unforeseen need’ by NHS England. On that basis, we conclude that there is a gap in provision in both of these areas.*

- 4.9 It is clear that the PNA did properly consider the opening of the Appellant’s own pharmacy and still decided that there was a need for a pharmacy in Dinnington.

- 4.10 The remainder of the Appellant’s submission is simply an attempt to justify her view that;

4.10.1 *“[the] Newcastle PNA should not be relied upon, nor be used as a reliable source of information as it is extremely inaccurate and needs reviewed before any decisions are reached.”*

- 4.11 Each and every point made by the Appellant is incorrect and simply fails to properly consider the evidence, the PNA itself or census statistics. However, as none of this is relevant to the determination that the Committee will make, the Applicant has not replied to each point and instead wish to focus on the legal test that must be applied.

The Pharmaceutical Needs Assessment

- 4.12 The PNA references a gap in essential service provision in Dinnington on Pages 4, 61, and 67

- 4.13 *The PNA identifies that there is a gap in essential pharmaceutical service provision in Dinnington.*

Page 61

Dinnington Village

- 4.14 *Dinnington village has recently (Summer 2017) been re-designated a rural area by the NHS England local area team (Map A2 in appendix 1 indicates areas designated as rural areas in Newcastle). This decision maintains the current situation where the local dispensing practice is the only route to access medicines in the village.*
- 4.15 *However, during the process of engagement for the determination of rurality, residents of Dinnington expressed dissatisfaction to the council at the provision of pharmaceutical services for local residents. As a result, a note was made to investigate further for this version of the Pharmaceutical Needs Assessment.*
- 4.16 *A parish council meeting was attended in November 2017 and local residents reported dissatisfaction at the closure of one of the two village practices. This occurred in May 2017 leaving residents with access to prescription medicines for only minimal hours during the week (10.30am to 12pm Monday to Friday). Residents also reported that even during these times, the services are unreliable. This challenging environment is being further compounded for those without access to a car by relatively long and infrequent (or non-existent) public transport journey times to Kingston Park, Wideopen and Ponteland - the next nearest community pharmacies to Dinnington.*
- 4.17 *It is also worth considering that housing developments currently underway in the village will boost the local population considerably over the next few years. There are currently around 760 houses in the village but this will rise to 1100 homes over the next 5 years. Dispensing Doctors do not provide the same advanced or local pharmacy services, so this in itself is a gap in provision for this area.*
- 4.18 *Notwithstanding the financial viability of any potential community pharmacy, this PNA highlights a gap in pharmaceutical service provision for Dinnington residents. REC: The PNA identifies that there is a gap in essential pharmaceutical service provision in Dinnington*

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- 4.19 *The conclusion of this PNA is that people in the city have very good access to community pharmacy services. The only exceptions have been noted in Dinnington village where local residents report that they do not have satisfactory access to medicines and in Great Park, in the north of the city, where a recent pharmacy application was granted based on 'unforeseen need' by NHS England. On that basis, we conclude that there is a gap in provision in both of these areas.*
- 4.20 Given the above it is submitted that the need for a pharmacy has been properly identified in the PNA.

The Legal Test

- 4.21 The Applicant has set out each part of the legal test as per Primary Care Appeals letter of 7 December 2021 below and dealt with each section as it arises with the Applicant's submission highlighted in bold text.
- 4.22 **13.— Current needs: additional matters to which the NHSCB must have regard**

4.22.1 (d) whether it is satisfied that, since the publication of the relevant pharmaceutical needs assessment, there have been changes to the needs for pharmaceutical services in the area of the relevant HWB that are such that

refusing the application is essential in order to prevent significant detriment to the provision of pharmaceutical services in that area;

4.23 **The only change in need since the publication of the PNA has been caused by the doctors in Dinnington ceasing to provide dispensing services to their patients (see NHSE decision letter for confirmation). The need for pharmaceutical services has therefore increased.**

4.24 (e) whether it is satisfied that—

4.24.1 (i) granting the application would only meet the current need mentioned in paragraph (1) in part, and

4.24.2 (ii) if the application were granted, it would be unlikely, in the reasonably foreseeable future, that the remainder of that need would be met;

Granting this application will meet the identified need in full.

4.25 (f) whether—

4.25.1 (i) it is satisfied that granting the application would only meet the current need mentioned in paragraph (1) in part, but

4.25.2 (ii) it considers that, if the application were granted, it would not be unlikely, in the reasonably foreseeable future, that the remainder of that need would be met;

Answered above.

4.26 (g) whether it is satisfied that—

4.26.1 (i) the current need mentioned in paragraph (1) was for services other than essential services, and

4.26.2 (ii) granting the application would result in an increase in the availability of essential services in the area of the relevant HWB;

Not applicable as the identified need is for essential services.

4.27 (h) whether it is satisfied that, since the publication of the relevant pharmaceutical needs assessment, the current need mentioned in paragraph (1) has been met by another person who is providing, or is due to be met by another person who has undertaken to provide, either in the area of the relevant HWB or in the area of another HWB, NHS services;

4.28 Whilst the Appellants pharmacy has opened in Great Park, this grant was specifically referenced and considered in the PNA. Great Park is approximately 2.7 miles from Dinnington. It is clear from the PNA that the need for a pharmacy in Dinnington came about as a direct result of consultation with local people. Dinnington residents could already travel approximately 2.3 miles to a pharmacy in Wideopen (Avicenna) and it is therefore irrational to say that a pharmacy even further away in Great Park has somehow met the need that was identified. No supplementary statement was issued to the PNA and the need is now greater than it previously was as the Dinnington GP practice has ceased dispensing to its patients.

4.29 The difficulties faced by residents have been specifically noted within the PNA and includes at page 61;

- 4.29.1 *“This challenging environment is being further compounded for those without access to a car by relatively long and infrequent (or non-existent) public transport journey times to Kingston Park, Wideopen and Ponteland - the next nearest community pharmacies to Dinnington.”*
- 4.30 In their letter of appeal (page 3) the Appellant makes the following statement about the need identified;
- 4.30.1 *This meeting, held before Great Park pharmacy opened, was to express the dissatisfaction of residents that one of the village’s two dispensing practices may close. The residents’ fundamental issue was the potential lack of access to GP services as opposed to pharmacy services, which many pharmacies were meeting by offering a free delivery service. The pharmacies in the surrounding area were also joined by an online pharmacy situated in the Dinnington village post office.*
- 4.31 This statement is demonstrably false. The Applicant has attached the minutes of the relevant meetings and summarise the points made below;
- 15 November 2017
- Pharmaceutical Needs Assessment (PNA)
- 4.32 An officer was present from Newcastle City Council. He was in the process of writing the PNA for the Health and Wellbeing Board at NCC and the Clinical Commissioning Group. He was attending to collate views on provision of local pharmacy services which could be input into the document.
- 4.33 Members provided some background information to the current situation within the village. The Woodlands Park surgery had closed in May of this year leaving Ponteland Medical Group providing limited dispensing of repeat prescriptions between 10.30 and 12.30 weekdays. The chemist within the Post Office was not allowed to dispense prescriptions.
- 4.34 Members made a number of comments for incorporation by Andre into his report:-
- 4.34.1 Reliability and access issues in relation to the service within the village – the pharmacy was open five mornings a week, but only dispensed repeat prescriptions between 10.30 and 12.30. Often medicines weren’t available and had to be sought from elsewhere or prescriptions weren’t ready when they were supposed to be. Limited access to GPs meant a greater reliance on pharmacist advice.
- 4.34.2 Transport issues – there is no easy direct public bus service to Ponteland where the main GP surgery is. There are pharmacies available at Boots and Tesco at Kingston Park, however there are extremely limited bus services. There is a chemists with a pharmacy at Wideopen, but bus services are difficult to access for the elderly or infirm, or those with young children. There is also a good distance to walk from the Bus stop to the Doctors surgery.
- 4.34.3 Population issues – the population of the village at the time of the last census was 1632. There were 760 houses, which is due to rise to 1100 progressively within the next five years’ time with the current housing developments. This means a growing demand for services, not less.
- 4.34.4 Needs of the elderly – the elderly had particular difficulties because of the lack of public transport and the cost of taxis when they did not drive or own a car themselves. Also, many did not have access to the internet or were not IT literate so could not order prescriptions on-line or arrange to have them delivered.

4.34.5 The Head of the Ponteland Doctors 'practice attended a recent meeting of the Parish Council to hear the Parish Council's concerns about the levels of service being provided.

21 February 2018

Dinnington Surgery

4.34.6 Cllr Wood raised the ongoing situation of access to appointments (particularly with a named doctor), poor service and pharmacy services in the village and asked Cllr Lower if there was anything the Parish Council could do to raise this as an issue so the situation could be improved. Cllr Lower agreed to investigate whether this was a topic which the Health Scrutiny Committee could look at.

4.34.7 The Appellant states;

4.34.7.1 *"The pharmacies in the surrounding area were also joined by an online pharmacy situated in the Dinnington village post office."*

4.35 This is incorrect. A distance selling pharmacy called PCH Chemist advertises in the Dinnington post office, but there is no pharmacy located there or anywhere else in Dinnington. PCH Chemist is based in Blaydon which is circa 10 miles from Dinnington. PCH has been operating since at least 2017 however we do not have access to data from before that year. The need identified has therefore not been met by any other person since the publication of the PNA.

4.36 In relation to the other matters identified in Primary Care Appeals letter of 7 December 2021 we reply to each as follows;

4.36.1 whether the application relates to premises in a controlled locality (as described in Regulation 40) and,

4.37 **It is accepted that the area is a controlled locality.**

4.37.1 whether the application relates to a reserved location (as described in Regulation 41) and,

4.38 **It is accepted that the area is currently a reserved location.**

4.38.1 if not, whether granting the application would prejudice the proper provision of NHS pharmaceutical services, local pharmaceutical services or primary medical services in the area of the Health and Wellbeing Board or a neighbouring Health and Wellbeing Board (as described in Regulation 44).

4.39 **Not applicable given answers above.**

North of Tyne Local Pharmaceutical Committee

4.40 Following receipt of the appeal against granting permission in relation to the above application, members of North of Tyne LPC were consulted and the following submission is made in support of the appeal.

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

4.42 With regard to regulation 31, the LPC accepts that the regulation does not apply to the original application, as there is no other pharmacy located within Dinnington.

- 4.43 The application was made under regulation 13 to meet an identified current need. The LPC considered the points:
- 4.43.1 Part 2 points a, b and c
- 4.43.1.1 The LPC is not aware of any other applications or outstanding appeals in respect of this locality.
- 4.43.2 Point d
- 4.43.2.1 There was a need identified within the PNA published by Newcastle Health and Wellbeing Board (HWB) in April 2018 for a pharmacy in Dinnington and in Great Park until a pharmacy opened. Since then, more homes have been built within the village of Dinnington and there has been further development of the Great Park.
- 4.43.3 It must be noted, that following the opening of Great Park Pharmacy, no supplementary statement was issued by the HWB. Following the closure of two pharmacies during 2019, a supplementary statement was issued which identified that there was a gap in services on Sunday evenings across the city. The lack of a supplementary statement following the opening of Great Park pharmacy must be interpreted that no review of the pharmaceutical needs of patients was undertaken within the Newcastle North locality. The 2018-21 PNA cannot therefore be relied upon to determine if there is still a need for pharmaceutical services within the locality and specifically the village of Dinnington.
- 4.43.4 The development of the electronic prescription service and increased use by GP practices means patients only have to attend their GP practice when they have a face to face appointment with a member of the clinical staff. Most prescriptions are for repeat medicines and these are sent electronically to pharmacies for dispensing, patients do not need to collect a paper prescription from their surgery. Great Park Pharmacy offers a comprehensive delivery service which includes Dinnington village and therefore patients have ready access to any medication prescribed by their GP practice without having access to pharmaceutical services within the village.
- 4.43.5 The ongoing development of the infrastructure within the Great Park now makes accessing Great Park Pharmacy from Dinnington village much easier. There is increased public transport and direct road links which no longer require residents to access the A1 in order to get to the Great Park.
- 4.43.6 Points e and f
- 4.43.6.1 The application, if granted, would meet the identified need in full however the LPC does not believe the need still exists following the opening of Great Park Pharmacy.
- 4.43.7 Point g
- 4.43.7.1 The need identified in the PNA was for essential services, however, the LPC believes these additional essential services are not required following the opening of Great Park Pharmacy and this need no longer exists. Granting the application will not meet a current need and could have an adverse impact upon the proper planning of pharmaceutical services.
- 4.43.8 Point h

4.43.8.1 Great Park Pharmacy has met the identified need since the PNA was published. No supplementary statement has been published to this effect that the LPC was able to identify.

- 4.44 The LPC is aware that there is no longer a dispensary at the branch surgeries in Dinnington, however, medication is dispensed at the main practice in Ponteland then delivered to Dinnington for patients to collect. An LPC member who is also the Newcastle City Councillor for the Castle ward has confirmed with Dinnington Parish Council that residents are happy with the delivery services offered by Great Park Pharmacy and the dispensing GP practice.
- 4.45 In its decision in April 2017 to maintain the rural status of Dinnington, NHS England noted that the majority of the resident population was aged 20-64 years and would therefore generally have less need to access pharmaceutical services. The LPC is mindful that if the majority of this population is working, they may need to leave Dinnington for work and therefore the pharmacy proposed opening hours of Monday to Friday, 9am to 5pm may not meet this population's needs.
- 4.46 When NHS England designated Dinnington as rural in April 2017, the population was estimated to be 1636. If the application is granted, given the increase in housing, the LPC requests that the population size is reviewed to inform whether Dinnington is a controlled location or a reserved location.

5 Summary of Observations

This is summary of observations received.

Pharmacare4u Ltd t/a Great Park Pharmacy (Appellant)

- 5.1 Should there be an oral hearing, the Appellant would take the opportunity to clarify its pharmacy's position directly to the Appeals Committee. The Appellant awaits Primary Care Appeals decision.
- 5.2 Regarding the representations received, the Appellant welcomes the comments and clarifications provided by the LPC and find that they reflect the situation as it is on the ground. The Appellant would like to impress on Primary Care Appeals that the LPC are in full knowledge of the local pharmacy economy. The Appellant understands that they have taken the trouble to study the various ways of accessing Dinnington village.

Meeting the legal test

- 5.3 The Appellant agrees with the LPC's conclusions, and particularly the following statements:
- 5.3.1 *It must be noted, that following the opening of Great Park Pharmacy, no supplementary statement was issued by the HWB. Following the closure of two pharmacies during 2019, a supplementary statement was issued which identified that there was a gap in services on Sunday evenings across the city.*
- 5.3.2 *The lack of a supplementary statement following the opening of Great Park pharmacy must be interpreted that no review of the pharmaceutical needs of patients was undertaken within the Newcastle North locality. The 2018-21 PNA cannot therefore be relied upon to determine if there is still a need for pharmaceutical services within the locality and specifically the village of Dinnington.*
- 5.3.3 *Great Park Pharmacy has met the identified need since the PNA was published. No supplementary statement has been published to this effect that the LPC was able to identify.*

- 5.4 With regards to Applicant's representation, the Appellant notes that they are asking the Appeals Committee to ignore any views on the value of the pharmaceutical needs assessment (PNA) as this is a legal point. The Appellant finds this assertion disingenuous given that much has happened since the PNA was published. The Appellant urges the Appeals Committee to look afresh at the evidence on the grounds, regardless of the quality, or lack, of the PNA.
- 5.5 Furthermore, the Appellant believes that some evidence is being misrepresented by Applicant.
- 5.5.1 They state that the PNA took into account the likely opening open of Great Park pharmacy. Although it was mentioned, it does not follow that it was indeed taken into account. PNAs are required to base their conclusions on existing evidence at the time of writing, which usually means that granted pharmacies are ignored till they are open. Once open, a supplementary statement is published to clarify whether any gap in services has been closed. Granting a pharmacy is no guarantee of its opening.
- 5.5.2 The PNA and the explicit support of Newcastle's health and wellbeing board (HWB) to the application are instrumental in forcing NHS England's hand to grant the above application. Prior to this intervention by Newcastle HWB, NHS England received and rejected several applications for this area. They were some 3 applications between 2015 and 2018 for the area, which NHS England rejected as not needed.
- 5.6 In fact, the local clinical commission group (CCG) and NHS England were in the process of consultation to decommission the remaining GP surgery which provided part-time services in Dinnington.
- 5.6.1 Why would NHS England therefore commission a pharmacy in the same area it is decommissioning all NHS services?
- 5.6.2 Why would NHS England commission a pharmacy in the same area, where it had recently rejected 3 applications in a row?
- 5.6.3 Why would NHS England commission a pharmacy in the current climate when patients do not attend pharmacies?
- 5.7 The answer is that it was compelled by the misleading information from the HWB.
- 5.8 The Applicant has put much stock into the local Parish Council meetings of Nov 2017 and Feb 2018. The parish council have indeed discussed the provision of services in Dinnington. The HWB were invited to attend as were NHS England and others. However, the issue at stake was specifically:
- 5.8.1 The closure of the Woodlands Park surgery in May 2017 and the likely closure of the remaining GP services provided by the Ponteland Medical Group.
- 5.8.2 The poor service provided by the GPs in providing appointments and dispensing medicines. Ponteland Medical Group were the dispensing doctors as this is a controlled locality. The medicines were originally collected from Dinnington then moved 3.5 miles away to Ponteland.
- 5.8.3 In the background to the parish council meetings, NHS England, the CCG and Ponteland Medical Group had put an engagement plan in place with a view to decommission the GP services (and dispensing) from Dinnington. This raises these questions:

- 5.8.3.1 Why would the CCG and NHS England decommission services if they were still needed? Where is the influx of residents to justify keeping NHS services?
 - 5.8.3.2 Why would Newcastle HWB not reassess the area following the opening of Great Park Pharmacy and the decommissioning of GP/dispensing services by Ponteland Medical Group?
 - 5.8.3.3 Why is Rushport using arguments relating specifically to GP services to describe a gap in pharmaceutical services?
- 5.9 From the above points, the Appeals Committee would understand the pivotal role of the PNA or, more precisely, that of Newcastle HWB in determining the gap in services in real time. No one can dispute that the residents of Dinnington received a poor service (followed by no service) from the local GPs, both in terms of appointments and dispensing. However, no assessment has been made of the situation following the opening of Great Park pharmacy. This is the core of the Appellant's challenge to Newcastle HWB's lazy assertion that the gap in services still existed.
- 5.10 There are 3 key reasons for Newcastle HWB to reassess the situation in 2021:
- 5.10.1 The CCG and NHS England have been decommissioning NHS services;
 - 5.10.2 Great Park pharmacy has opened on 3 Aug 2018, after the PNA was published on 1 April 2018;
 - 5.10.3 The Covid pandemic has affected all NHS services, especially the way patients access their GP appointments and receive their pharmaceutical services.
- 5.11 The Appellant has mentioned that NHS England rejected no less than 3 applications in the period leading up to the publication of the PNA on 1 April 2018. This was a period when the pharmacy cuts have not hit home yet and Covid was still distant into the future.
- 5.12 Why would NHS England reverse their stand and commission another pharmacy, after granting Great Park pharmacy and right in the middle of the pandemic, if it wasn't for the misguided, unfounded and un-evidenced conclusion by the HWB?
- 5.13 Despite above, the HWB failed to update their assessment. The Appellant therefore submits that reviewing the evidence upon which the application was granted is a valid request and well within the Appeals Committee's remit.
- 5.14 Rushport allege that the only change since the publication of the PNA is that the GPs in Dinnington have ceased to provide dispensing services. The Appellant would submit that this is incorrect as the Appellant has referred to other important factors above. The GPs may have ended their dispensing to patients (a dwindling number by all accounts), but the service from Great Park pharmacy has improved the situation since it opened.
- 5.15 In addition to the Appellant's points above, the Appeals Committee needs to consider the changing landscape in the provision of NHS services. Most patients no longer attend their GP appointments in person, nor collect their medicines from a pharmacy. Throughout the pandemic, pharmacies have been instrumental in providing reliable deliveries to patients and in keeping infections down by minimising patients trips out of their own homes. The need for a physical pharmacy in every local community is no longer necessary, viable nor desirable.
- Access to Dinnington Village
- 5.16 The Applicant has also raised the matter of access to Dinnington, to stress the need for a local pharmacy. To measure the distances based on estimates, there are only two

possible locations for the proposed pharmacy: the vacated doctor's surgery or the village shops. The distances given by the Applicant, such as 2.7 miles to Great Park pharmacy, are inaccurate. The Appellant submits they used outdated measurements from the furthest point in Dinnington.

- 5.17 Distances - Please note below the distances given by NHS.UK, the service finder website, which provides real-time information on services available in an area and is used by NHS care navigators (NHS111, CPCS and others). Primary Care Appeals will note that Great Park pharmacy is the nearest pharmacy to Dinnington.

Pharmacies near NE13 7JW

1.7 miles away

Great Park Pharmacy
Unit 5, Middleton North
Wagonway Drive
Great Park
Newcastle upon Tyne
NE13 9BH

1.9 miles away

5.17.1 Davison Chemist Ltd

36 Bridge Street
Seaton Burn
Tyne & Wear
NE13 6EN

2 miles away

Davison Chemist Ltd
42 Park View
Wideopen
Newcastle upon Tyne
NE13 6LH

- 5.18 In addition to that, Great Park pharmacy is on the same side of A1 motorway as Dinnington, unlike the other pharmacies listed.
- 5.19 Traffic - Since the opening of Great Park pharmacy, there have been significant changes to road infrastructure and access to Great Park, which have made a difference to access by reducing congestion and shortening journey times.
- 5.20 There will also be another way in and out of Great Park from the top of Brunton Lane to allow access from Kingston Park straight onto Great Park. The opening of this road, once complete, will make bus journey times even shorter than they are now.
- 5.21 Journey times – to illustrate this clearly, the Appellant took it upon themselves to measure the realistic journey times it would take a patient from Dinnington to reach Great Park pharmacy.
- 5.22 25 Jan 2022 – pharmacist left at 16:46 and arrived at 16:50; the journey time by car was: 4 min 20 sec. Weather conditions: Dark and windy.
- 5.23 There were two sets of pedestrian traffic lights on two consecutive roundabouts, but no speed bumps, zebra crossings or traffic calming measures. Speed limits on route: 30 mph; On Brunton Lane 60 + 40 mph.

- 5.24 26 Jan 2022 – Pharmacist left at 08:32 and arrived at 08:36. The journey time by car was 4 min 34 sec. Weather conditions: light, rainy, very windy.
- 5.25 This was during rush hour with the children back to school; However, there was very little traffic, no queuing and minimal stopping.
- 5.26 Conclusion – In addition to the appeal letter, the Appellant submits these clarifications in response to the representations received from the LPC and the Applicant. The Appellant’s knowledge of the area and its experience in running Great Park pharmacy so close to Dinnington compels the Appellant to oppose the unnecessary granting of this application. Furthermore, the Appellant finds the points submitted by the Applicant, incorrect, unfounded and unrelated to both the reality on the ground and the current economic climate.
- 5.27 The Appellant hopes that it has covered all the necessary points to help the Appeals Committee reach a decision. Should this be necessary, the Appellant would look forward to clarifying its points further at an oral hearing.

6 Further Representations

- 6.1 NHS Resolution received an unsolicited letter from the Parish Council which included the following wordings:

“Contrary to what is in the LPC submission, the Pharmacy at Great Park is no real help at all to residents in Dinnington, as there are no direct public transport links to the pharmacy. It can only be accessed by car and not all residents have their own transport or are elderly and no longer drive. We doubt if Great Park Pharmacy would even be their first choice to have prescriptions delivered from.”

“The population figures quoted in the LPC submission are now outdated. As you are probably aware there have been a large number of new houses built in the village and the population has increased by almost 60%, making the need for our own chemists shop in the village even greater”

- 6.2 Although unsolicited, NHS Resolution noted that this was contradictory to the comments of the LPC which the Appellant was, in part, relying. NHS Resolution therefore provided parties with the opportunity to comment on this letter. The responses are set out below.

North of Tyne Local Pharmaceutical Committee

- 6.3 Following receipt of the letter from Dinnington Parish Council, a meeting of North of Tyne LPC considered the comments at their meeting on 9th March 2022 and the following response was agreed.
- 6.4 All declarations of conflict of interest were made.
- 6.5 The majority of Dinnington residents do have access to a car and the improved road links in the area make accessing local pharmaceutical services easier than ever. For those residents without access to a car, local pharmacies make regular deliveries of medication to Dinnington residents thus ensuring access to pharmaceutical services. The Parish Council provides no evidence to support their statement that Great Park Pharmacy would not be resident’s first choice of pharmacy but notwithstanding this, there are a number of other local pharmacies which can meet the needs of Dinnington residents.
- 6.6 The LPC acknowledges that Ponteland Medical Group has now ceased to provide dispensing services but this does not substantially change access to medicines for Dinnington residents because local pharmacies now dispense and supply these

medicines, via delivery to patient's homes if needed. Whilst dispensing, Ponteland Medical Group delivered to a central collection point, so the pharmacy delivery service is an improvement for residents, as medicines are now delivered to their home rather than a collection point.

- 6.7 The LPC in its own submission, requested that the population of Dinnington be confirmed due to the new housing stock. This will impact upon whether the location is still regarded as rural but given that Ponteland Medical Group has now ceased dispensing, whether the area is a controlled locality or reserved location will have little impact.
- 6.8 The LPC member who made comment about Dinnington residents being happy with delivery services has acknowledged that this is not the current position of the Parish Council. However, the LPC has not been made aware of how the Parish Council surveyed residents for their views about pharmaceutical services and no evidence has been submitted by the Parish Council of the number of residents who have expressed views and the percentage of residents who are unhappy with the current service.
- 6.9 Whilst the Parish Council may support and want a local pharmacy, this is not a factor within the pharmaceutical regulations. The need for additional local pharmaceutical services needs to be demonstrated for granting of a new pharmacy. Every population, if asked, would like a local pharmacy at the end of their street but that does not constitute a need for those services.
- 6.10 Given the small population size of Dinnington, the LPC questions the viability of a local pharmacy and considers this may have been part of the GP practice decision to cease dispensing. A number of community pharmacies have already consolidated, with one closing due to the financial strains of operating multiple pharmacies in a location. The residents may end up being in a worse situation if the pharmacy is granted, opens but then closes due to unsustainability and other surrounding pharmacies have ceased their delivery services in the interim.
- 6.11 The LPC stands by its previous submission regarding its comments pertaining to regulation 13, under which the application has been submitted and the fact that the PNA cannot be relied upon to demonstrate need as the opening of Great Park Pharmacy was not the subject of a supplementary statement. The LPC considers that had a review of the Dinnington need taken place following the opening of Great Park Pharmacy, the identified need in the PNA would have been removed.

Rushport Advisory LLP (on behalf of the Applicant)

- 6.12 The Parish Council confirms that the submissions the Applicant has previously made in respect of the continuing need for pharmaceutical services in Dinnington were and are correct.

Pharmacare4u Ltd t/a Great Park Pharmacy (Appellant)

- 6.13 The Appellant finds that the Parish Council has added nothing new. The comments are about their wishes and desires, which have been heard and considered by NHS England and the CCG over a period stretching back to 2017 and before.
- 6.13.1 Direct link Dinnington to Great Park Pharmacy – in the Appellant's previous representation, the Appellant laid out in detail the links from its pharmacy to Dinnington. The Appellant has measured and given the times it takes, and the ways patients can access the Appellant's pharmacy or receive deliveries. The Parish Council has given no data or clarifications about their assertion.

Regarding the transport links, Great Park Pharmacy and other pharmacies can be accessed by bus. Statistics also show that Dinnington has a high car ownership. For those without cars, the Appellant offers a free delivery - as do

most other pharmacies in the surrounding areas. In fact, due to Covid, home delivery has become the method of choice to receive medications for those who won't or can't drive.

As for the statement doubting if "Great Park Pharmacy would even be their first choice", it shows that the members of the Parish Council speak for themselves, not the wider population. The Appellant has an increasing number of patients in Dinnington, and delivers there every day.

On this point, the Parish Council ought to focus on promoting to residents the local pharmacies and the free services they provide, given that they have lost their local GP services. The Appellant provides, for example, a free same day delivery service, free telephone advice, signposting service and more. Many people are still unaware of the wide services pharmacies can provide. The Appellant would be more than happy to set up a meeting for residents to inform them and promote a range of healthcare services they can access. Should they need to visit, the Appellant is only a small journey away.

6.13.2 Ponteland doctors – this point was also covered previously and the matter dates from 2017. There is a need to pause and think as to why was the service discontinued and to ask why would NHS England commission a GP service in Dinnington (after closing it) rather than in Great Park, which is expanding? The rumour that a GP surgery would open in Dinnington is just that. Great Park had a plot of land earmarked for a health centre as long ago as 2017. The CCG did submit a business plan, based on that land, to NHS England in 2018-19 to open a health centre. This is yet to materialise.

6.13.3 Population of Dinnington – the Parish Council states that "the population figures quoted in the LPC submission are now outdated". However, they do not give the up-to-date figures. Stating that it has increased by almost 60% is misleading and inaccurate. The Appellant has covered this point in its previous representation.

For the avoidance of doubt, the Appellant will state that Dinnington population will never increase to justify a new pharmacy. Newcastle Airport would object to any major expansion as Dinnington is right under their flight path. Newcastle City Council know this, as should the Parish Council. The developers are also aware of this.

6.13.4 LPC position – The Appellant has reflected on the LPC position again, and would like to reiterate its support to it. Unlike the Parish Council, the LPC are in full knowledge of the local pharmacy economy. Furthermore, the Appellant understands that they have taken the trouble to study the various ways of accessing Dinnington village.

6.14 The Appellant hopes that it has covered the points raised by the Parish Council and that its clarifications would help the Appeals Committee reach a decision soon. Should this be necessary, the Appellant would look forward to clarifying its points further at an oral hearing.

7 Further Observations

The further representations set out above were circulated to the parties for observations which are set out below.

Rushport Advisory LLP (on behalf of the Applicant)

7.1 At the outset it is worth remembering that this is an application under regulation 13 to meet an identified need.

- 7.2 There is no doubt that the need for a pharmacy in Dinnington has been identified in the correct manner in the relevant PNA. The Applicant has already made submissions on this point and do not repeat them here, but no party seeks to argue that the need was not properly identified.
- 7.3 The LPC, in their letter of 11 March 2022 states in their last paragraph that
- “The LPC stands by its previous submission regarding its comments pertaining to regulation 13”*
- 7.4 However, in their initial response to this application dated 3 September 2021, the same LPC author, Ann Gunning, stated;
- Point d*
- There has been no change to the need identified within the PNA. Indeed, more homes have been built within the village since the PNA was published.*
- Points e and f*
- The application, if granted, will meet the identified need in full.*
- Point g*
- The need identified in the PNA was for essential services, so granting the application will not cause an increase of essential services which are not required.*
- Point h*
- No other person has met the identified need since the PNA was published.*
- 7.5 Since 3 September 2021 LPC has completely abandoned its stated position, then claimed people in Dinnington were happy with delivery services, and then had to abandon that position when it became clear that instead of being based on any knowledge, it was entirely fabricated to try to help a local contractor.
- 7.6 The LPC's position in this application should be the cause of some internal scrutiny once this appeal is concluded in order to determine whether conflicts of interest were allowed to inappropriately influence and cause a complete u-turn in their stated position and include fabrications rather than facts.
- 7.7 Pharmicare4u Limited
- 7.8 Much, if not all, of the objectors' submissions simply argue that, in their opinion, no need should have been identified. However, as the Committee will be aware, such arguments must be dismissed under the rule set out in Schedule 2, Part 5, para 30(3)(c) as they “amount to a challenge to the legality or reasonableness of the relevant pharmaceutical needs assessment, or to the fairness of the process by which that assessment was undertaken.”
- 7.9 The only way that the Appellants could succeed would be if the Committee was persuaded that the submissions were relevant to regulation 13(2)(d), 13(2)(h) or the “new” regulation 21A.
- 7.10 Regulation 13(2)(d) states that the Committee must have regard to;
- (d) whether it is satisfied that, since the publication of the relevant pharmaceutical needs assessment, there have been changes to the needs for*

pharmaceutical services in the area of the relevant HWB that are such that refusing the application is essential in order to prevent significant detriment to the provision of pharmaceutical services in that area;

- 7.11 There is no suggestion from any party that granting this application would cause significant detriment to the provision of pharmaceutical services in the relevant area or that it is “essential” to refuse it. To find something to be “essential” would require a very high evidential threshold and no evidence for such a finding exists.
- 7.12 Regulation 13(2)(h) states that the Committee must have regard to;
- “whether it is satisfied that, since the publication of the relevant pharmaceutical needs assessment, the current need mentioned in paragraph (1) has been met by another person who is providing, or is due to be met by another person who has undertaken to provide, either in the area of the relevant HWB or in the area of another HWB, NHS services;”*
- 7.13 The Appellant does not claim in their submissions that the opening of their pharmacy in Great Park had now met the need identified in the PNA. Instead, they continue to argue that there was never a need. However, the Dinnington Parish Council letter of 13 February 2022 makes it very clear that both the Appellant and the LPC are wrong and that the need still exists. All the Appellant can do is try to discredit the Parish Council and the views of the residents of Dinnington that the Parish Council has consulted with, campaigned for and represents.
- 7.14 Further, the PNA noted the approval of the Appellants pharmacy and still found the need for a pharmacy in Dinnington.
- 7.15 It is clear that the identified need has not been met.
- 7.16 Regulation 21A states that the Committee must have regard to;
- whether granting the application would result in an undesirable increase in the availability of essential services in the area of the relevant HWB
- 7.17 Regulation 21A is silent as to who must find the increase in availability to be “undesirable”, but the Applicant submits that the business interests of a contractor who objects to an application are not relevant, whereas the views of the Health and Wellbeing Board (which has identified the need for pharmaceutical services in Dinnington), local NHSE Area Team (which has approved the application and agrees that the need has been identified) and patients (who have made their views clear via the Parish Council) would be highly relevant. Simply put, there is nothing undesirable about granting this application other than to one existing contractor who does not wish to see competition for pharmaceutical services even when they clearly benefit patients.
- 7.18 On the basis of the above and the Applicant’s previous submissions the appeal should be dismissed.

Pharmacare4u Ltd t/a Great Park Pharmacy (Appellant)

- 7.19 Thank you for sharing the comments from other parties. The Appellant is writing, with what it hopes will be the last correspondence, on this matter.
- 7.20 To that end, the Appellant will make two final two points:
- 7.20.1 Applicant’s representative

Rushport Advisory, acting for B&S Health Limited, have provided no further evidence other than to refer to the Parish Council's support. The Appellant has provided further clarifications on 9 March, and notes that no contrary evidence has been put forward.

7.20.2 LPC comments

The Appellant finds the LPC comments accurate and sensible and supports them as a basis for considering the appeal. The positions taken by the LPC and Great Park Pharmacy are based on facts and verifiable evidence, while that of Dinnington Parish Council is about hearsay and wishful aspirations.

- 7.21 In conclusion, B&S Health Limited's application was granted due to a dubious assessment (or lack of) by Newcastle Health and Wellbeing Board, who have failed to update their pharmaceutical needs assessment despite the opening of Great Park Pharmacy in August 2018 and all the changes caused by the pandemic. Granting a new pharmacy in Dinnington goes against NHS England policy and the wider public interest.
- 7.22 The Appellant trusts the Appeals Committee will review all the available evidence and come to the logical conclusion that Dinnington cannot support a physical pharmacy.

8 Consideration

- 8.1 The Pharmacy Appeals Committee ("Committee") appointed by NHS Resolution had before it the papers considered by NHS England, together with a plan of the area showing existing pharmacies and doctors' surgeries and the location of the proposed pharmacy.
- 8.2 It also had before it the responses to NHS Resolution's own statutory consultations.
- 8.3 The Committee went on to consider the application and subsequent appeal which was before it in accordance with the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations").
- 8.4 The Committee noted the Applicant's claim that the Appellant had sought to challenge the reasonableness of the Pharmaceutical Needs Assessment (PNA) and the fairness of the process by which the assessment was undertaken. The Committee was mindful that paragraph 2 of Schedule 3 of the Regulations enables an appeal to be determined by dismissing it without proceeding to notify the appeal if the notice contains no valid grounds of appeal. Paragraph 2 gives examples of no valid grounds of appeal:
- "because it amounts to a challenge to the legality or reasonableness of a HWB's or Primary Care Trust's pharmaceutical needs assessment, or to the fairness of the process by which the HWB or a Primary Care Trust undertook that assessment"*
- 8.5 The Committee noted that paragraph 2 did not require the appeal to be dismissed but gave the power to do so. The Committee noted that the appeal had been notified to the appeal parties. The Committee considered that this was appropriate as, while there were comments by the Appellant on the reasonableness of the PNA, there were also comments indicating that the need had been met by the Appellant's pharmacy.
- 8.6 The Committee noted the comment from the Applicant in its further observations that the Appellant does not claim in their submissions that the opening of their pharmacy in Great Park had now met the need identified in the PNA and instead continue to argue that there was never a need. The Committee, however considered that the following comments from the Appellant in its Appeal (set out earlier in this determination) should be read as the Appellant indicating that a gap identified in the PNA has been met by the opening of its pharmacy at Great Park:

“there is no gap in pharmaceutical services in Dinnington as they are met by the Appellant’s pharmacy in Great Park and Boots and Tesco pharmacies in Kingston Park, both at 2.7 miles of Dinnington;”

and

“Since opening Great Park Pharmacy in August 2018, the Appellant and other pharmacies have made provision to service the needs of patients in Dinnington area. The HWB would know this if they carried out an assessment of the area. They would have concluded that the “gap” identified in their PNA has been closed once the Appellant opened in Aug 2018.”

- 8.7 The Committee considered it appropriate to consider the comments from the parties on these points rather than immediately dismiss the appeal.
- 8.8 The Committee had before it a copy of the Newcastle PNA dated 2018-2021 prepared by Newcastle City Council, as provided by NHS England. The Committee noted NHS England had also provided a copy Supplementary Statement dated 29 November 2019. This was a notification of Boots Saville Row ceasing to trade from midnight on 20 April 2019, and cessation of trading of Benewell Pharmacy from midnight on 31 July 2019. The Committee had no information to show that these closures should have any direct bearing upon the current application.
- 8.9 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.
- 8.10 The Committee dealt with the appeal by way of consideration of all the issues.
- 8.11 Dinnington Village is in a controlled locality and the application was based on securing improvements or better access to pharmaceutical services in that controlled locality. The Committee noted the LPC in its representations, had suggested that the rurality of Dinnington should be revisited. The Committee considered that this was a matter for NHS England.
- 8.12 The Committee considered that the correct course was to first consider if the application must be refused pursuant to Regulation 31. The Committee will then consider if the application must be refused pursuant to Regulation 40. If the Committee is not so required to refuse the application, it will consider the issue of reserved location pursuant to Regulation 41. The Committee will then consider the application under Regulation 13. If the Committee has determined that the Applicant is seeking the listing of pharmacy premises which are in a part of a controlled locality that is not in a reserved location, it will consider the issue of prejudice under Regulation 44 last. The reason for this staged approach and in particular for dealing with prejudice last is that if the application does not meet the requirements of Regulation 13 the Committee is required to refuse it and prejudice cannot arise. The potential for prejudice only arises if the Committee has concluded that the application meets the requirements of Regulation 13 and may be granted. Depending on the determinations of the Committee in respect of the above as well as taking into consideration of whether NHS England has considered Regulation 50(1), the Committee will then consider Regulation 50(1) discontinuance of arrangements for the provision of pharmaceutical services by doctors.

Regulation 31

- 8.13 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) the NHSCB 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).

8.14 The Committee noted that in response to Part 5 of the application form (reference to Regulation 31) the Applicant stated: "No other pharmacy in same or adjacent premises so not applicable." The Committee noted NHS England's decision letter states in respect of Regulation 31: "Regulation 31 - Refusal: same or adjacent premises. As there is no pharmacy currently in Dinnington, this Regulation is not applicable." The Committee having regard to the above information which had also not been disputed on appeal, was not required to refuse the application under the provisions of Regulation 31.

8.15 The Committee noted that, if the application were granted, the successful applicant would - in due course - have to notify NHS England 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 40

8.16 In those circumstances, the application (which is made under Regulation 13 of the Regulations) must be assessed against the provisions of Part 7 of the Regulations and, in particular Regulation 40 which reads:

(1) This paragraph applies to all routine applications—

(a) for inclusion in a pharmaceutical list as an NHS pharmacist; or

(b) from an NHS pharmacist included in such a list—

(i) to relocate to different pharmacy premises in the area of the relevant HWB, or

(ii) to open, within the area of the relevant HWB, additional pharmacy premises from which to provide pharmaceutical services,

where the applicant is seeking the listing of pharmacy premises which are in a controlled locality.

(2) If the NHSCB receives an application (A1) to which paragraph (1) applies, it must refuse A1 (without needing to make any notification of that application under Part 3 of Schedule 2), where the applicant is seeking the listing of premises at a location which is—

(a) in an area in relation to which outline consent has been granted under these Regulations, the 2012 Regulations or under the 2005 Regulations within the 5 year period—

(i) starting on the date on which the proceedings relating to the grant of outline consent reached their final outcome, and

(ii) ending on the date on which A1 is made; or

(b) within 1.6 kilometres of the location of proposed pharmacy premises (other than proposed distance selling premises), in respect of which—

(i) a routine application under these Regulations or the 2012 Regulations, or

(ii) an application to which regulation 22(1) or (3) of the 2005 Regulations (relevant procedures for applications) applied,

was refused within the 5 year period starting on the date on which the proceedings relating to the refusal reached their final outcome and ending on the date on which A1 is made,

unless the NHSCB is satisfied that since the date on which the 5 year period started, there has been a substantial and relevant change of circumstances affecting the controlled locality.

(3) For the purposes of paragraphs (1) and (2), if no particular premises are proposed for listing in A1, the applicant is to be treated as seeking the listing of pharmacy premises at the location which is the best estimate that the NHSCB is able to make of where the proposed listed pharmacy premises would be, having regard to the best estimate given by the applicant under paragraph 1(7)(a)(ii) of Schedule 2.

[(4) Paragraph (2)(b) does not apply where the NHSCB is satisfied that there are reasonable grounds for believing the person making the refused application was motivated (wholly or partly) by a desire for that application to be refused.

(5) The refusal of an application pursuant to paragraph (2)(b), or regulation 40(2)(b) of the 2012 Regulations (applications for new pharmacy premises in controlled localities: refusals because of preliminary matters), is to be ignored for the purposes of the calculation of a 5 year period pursuant to paragraph (2)(b).]

- 8.17 The Committee noted that the relevant case papers for the current application as provided to Primary Care Appeals by Primary Care Support England, included reference to two previous pharmaceutical list applications for Dinnington. However, the earlier application (2016) was now more than 5 years ago. The later (2018) was refused under regulation 40(2). The Committee was satisfied that the instant application was not therefore in respect of a location where there had been a refusal for a previous application within the last 5 years. The Committee has determined therefore that the application did not need to be refused under Regulation 40(2)(b).

Regulation 41

- 8.18 Based on its conclusion above, the Committee went on to consider the application in light of the remainder of Part 7 of the Regulations and, in particular, Regulation 41 which reads:

(1) This paragraph applies to any routine application—

(a) for inclusion in a pharmaceutical list as an NHS pharmacist; or

(b) from an NHS pharmacist included in such a list—

(i) to relocate to different pharmacy premises in the area of the relevant HWB, or

(ii) to open, within the area of the relevant HWB, additional pharmacy premises from which to provide pharmaceutical services,

where the applicant is seeking the listing of pharmacy premises which are in a controlled locality and the NHSCB is required to notify the application under Part 3 of Schedule 2.

(2) If paragraph (1) applies to an application (referred to in this regulation and regulation 42 as "A1"), subject to paragraph (5), the NHSCB must determine whether or not the "relevant location", that is—

(a) the location of the premises for which the applicant is seeking the listing; or

(b) if no particular premises are proposed for listing in A1, the location which is the best estimate that the NHSCB is able to make of where the proposed pharmacy premises would be, having regard to the best estimate given by the applicant under paragraph 1(7)(a)(ii) of Schedule 2,

is, on basis of the circumstances that pertained on the day on which A1 was received by the NHSCB, in a reserved location.

(3) Subject to regulation 43(2), the area within a 1.6 kilometre radius of a relevant location is a "reserved location" if—

(a) the number of individuals residing in that area who are on a patient list (which may be an aggregate number of patients on more than one patient list) is less than 2,750; and

(b) the NHSCB is not satisfied that if pharmaceutical services were provided at the relevant location, the use of those services would be similar to, or greater than, the use that might be expected if the number of individuals residing in that area who are on a patient list were 2,750 or more.

(4) Before making a determination under paragraph (2) (referred to in this regulation and regulation 42 as "D1"), the NHSCB must—

(a) notify the persons notified under Part 3 of Schedule 2 about A1 that the NHSCB is required to make D1 (and it may make this notification at the same time as it notifies those persons about A1); and

(b) invite them, within a specified period of not less than 30 days, to make representations to the NHSCB with regard to D1 (and the period specified must end no earlier than the date by which the person notified needs to make any representations that they have with regard to A1).

(5) The NHSCB must not make a determination under paragraph (2) in respect of A1 in circumstances where an earlier application which was in respect of the relevant premises and to which paragraph (1), regulation 44 of the 2012 Regulations (prejudice test in respect of routine applications for new pharmacy premises in a part of a controlled locality that is not a reserved location) or regulation 18ZA of the 2005 Regulations (refusal: premises which are in a controlled locality but not a reserved location) applied was refused—

(a) for the reasons relating to prejudice in—

(i) regulation 44(3),

(ii) regulation 44(3) of the 2012 Regulations, or

(iii) regulation 18ZA(2) of the 2005 Regulations; and

(b) within the 5 year period starting on the date on which the proceedings relating to the refusal reached their final outcome and ending on the date on which A1 is made,

unless the NHSCB is satisfied that since the date on which the 5 year period started, there has been a substantial and relevant change of circumstances affecting the controlled locality.

(6) For the purposes of paragraph (5), the “relevant premises” are—

(a) the premises which are proposed for listing; or

(b) if no particular premises are proposed for listing in A1, premises at the location which is the best estimate that the NHSCB is able to make of where the proposed listed pharmacy premises would be, having regard to the best estimate given by the applicant under paragraph 1(7)(a)(ii) of Schedule 2.

8.19 The Committee considered the issue of reserved location for premises described in the application. The Committee noted NHS England’s decision letter states in respect of Regulation 41:

8.19.1 *“This Regulation is satisfied. The proposed premises are in a controlled locality which has reserved location status owing to the size of the resident registered population count being less than 2750. The applicant submitted a best estimate of premises only, resulting in postcode **NE13 7JR** being used by NHS England for undertaking the resident registered population count.”*

8.20 The Committee noted that neither the Applicant nor the Appellant had challenged NHS England’s position regarding reserved location. The LPC though, commented in its representations that the reserved location status should be revisited. The Committee noted NHS England had undertaken the calculation and that the LPC had not put forward any robust arguments that there was a miscalculation. The Committee therefore proceeded on the basis that the proposed location is in a reserved location.

8.21 The Committee was aware that, depending on its view on reserved location, it may then need to deal with prejudice. However, the Committee considered that prejudice could only arise if the application meets the requirements of Regulation 13 and may therefore be granted.

8.22 The Committee therefore next considered whether the application met the requirements of Regulation 13.

Regulation 13

8.23 The application (which was to be determined in accordance with the procedures in Schedule 2) was submitted by the Applicant based on addressing a current need for pharmaceutical services.

8.24 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) *the NHSCB 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), the NHSCB must have regard to the matters set out in paragraph (2). "

8.25 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 the HWB) in order to meet a current need for pharmaceutical services, or pharmaceutical services of a specified type, in its area"

8.26 Before considering the PNA in detail, the Committee considered the comments from the Appellant as to the reasonableness of the PNA and the fairness of the process that led to the publication of the PNA. The Committee noted that the Appellant made a large number of comments on this point including statements that:

8.26.1 the HWB had not carried out a proper needs assessment by locality;

8.26.2 the PNA should not be relied upon, nor be used as a reliable source of information as it is extremely inaccurate;

8.26.3 the HWB was wrong to conclude that there is a current need in Dinnington;

8.26.4 the HWB have failed to assess the area properly at the beginning of the PNA and again in view of the recent changes; and

8.26.5 the conclusions of the HWB were misguided, unfounded and un-evidenced.

8.27 The Committee noted the Applicant's comments that these statements should mean that the appeal is invalid. It also appears that the Appellant was arguing that the HWB should have published a Supplementary Statement indicating that the Great Park Pharmacy had met the need indicated in the PNA.

8.28 The Committee considered that, reading paragraph 30(3)(c) of Schedule 2 of the Regulations (as referenced by the Applicant) and paragraph 2 of Schedule 3 together, it is clear that a challenge to the legality or reasonableness of the PNA, or to the fairness of the process by which the HWB undertook the PNA is considered not to be valid grounds of appeal.

8.29 The Committee therefore considered that it was unable to consider the extent to which the PNA was "wrong" or that a Supplementary Statement should have been published.

8.30 The Committee did, however, consider that the appeal was not simply about the unreasonableness of the PNA. For the reasons given earlier in this determination, the Committee considered that the Appellant was arguing that the commencement of services by its pharmacy in Great Park means the need set out in the PNA has been met.

8.31 The Committee therefore considered that the starting point should be a consideration of what the PNA states in respect of any need in Dinnington. If the Committee

considered there was a need identified, then it would need to consider the application against the provisions of the relevant Regulations.

8.32 The Committee noted that in its application form, the Applicant had in Part 6, identified that the current need that it was offering to meet was:

8.32.1 *“PNA references a gap in essential service provision in Dinnington. Page 4, 61 67.”*

8.33 The Committee further noted the Applicant’s comment that:

8.33.1 *“The PNA states that there is a requirement for essential services to be provided in Dinnington. The pharmacy will provide all essential services as well as additional advanced and enhanced services and will therefore meet the identified need.”*

8.34 The Committee firstly considered page 4 of the PNA and whether it identified a gap in essential pharmaceutical service provision in Dinnington. The Committee noted that page 4 is a continuation of page 3 and the sub-heading ‘Newcastle PNA Key Recommendations’ Under that heading it is stated: *“Listed below are the key recommendations from the Pharmaceutical Needs Assessment for consideration and action where appropriate. Supporting evidence for each recommendation can be found in later sections.”* Whilst the Applicant had not made reference to any specific information on page 4 of the PNA, the Committee noted the following references to Dinnington:

8.34.1 *“The PNA identifies that there is a gap in essential pharmaceutical service provision in Dinnington.”*

8.35 The Committee was satisfied that page 4 of the PNA identifies a gap in essential services in Dinnington.

8.36 The Committee noted that page 61 of the PNA is headed ‘7.4 Consideration of Dispensing Doctor provision in Newcastle’ The following comments are made under that heading:

8.36.1 *“Below is a discussion of current and future service provision in Newcastle (based on section 4.3). Newcastle has only one dispensing practice, in Dinnington village, a designated rural area.*

Dinnington Village

8.36.2 *Dinnington village has recently (Summer 2017) been re-designated a rural area by the NHS England local area team (Map A2 in appendix 1 indicates areas designated as rural areas in Newcastle). This decision maintains the current situation where the local dispensing practice is the only route to access medicines in the village.*

8.36.3 *However, during the process of engagement for the determination of rurality, residents of Dinnington expressed dissatisfaction to the council at the provision of pharmaceutical services for local residents. As a result, a note was made to investigate further for this version of the Pharmaceutical Needs Assessment.*

8.36.4 *A parish council meeting was attended in November 2017 and local residents reported dissatisfaction at the closure of one of the two village practices. This occurred in May 2017 leaving residents with access to prescription medicines for only minimal hours during the week (10.30am to 12pm Monday to Friday). Residents also reported that even during these times, the services are unreliable. This challenging environment is being further compounded for those without access to a car by relatively long and infrequent (or non-existent)*

public transport journey times to Kingston Park, Wideopen and Ponteland - the next nearest community pharmacies to Dinnington.

- 8.36.5 *It is also worth considering that housing developments currently underway in the village will boost the local population considerably over the next few years. There are currently around 760 houses in the village but this will rise to 1100 homes over the next 5 years. Dispensing Doctors do not provide the same advanced or local pharmacy services, so this in itself is a gap in provision for this area.*
- 8.36.6 *Notwithstanding the financial viability of any potential community pharmacy, this PNA highlights a gap in pharmaceutical service provision for Dinnington residents.*
- 8.36.7 *REC: The PNA identifies that there is a gap in essential pharmaceutical service provision in Dinnington*
- 8.37 The Committee noted that the above comments from page 61 of the PNA, were also provided as an extract accompanying the Applicant's instant application.
- 8.38 The Committee noted that page 61 makes several references to Dinnington including the loss of general medical services from the village, and the dissatisfaction expressed by residents over access to pharmaceutical services. The Committee further noted that the PNA had repeated its conclusion on page 4 that there is a gap in essential services provision in Dinnington.
- 8.39 The Committee was satisfied that page 61 of the PNA identifies a gap in essential services in Dinnington.
- 8.40 The Committee next considered page 67 of the PNA. The Committee noted that page 67 is headed 'Section 8, Conclusion' and includes:
- 8.40.1 *"The Newcastle Pharmaceutical Needs Assessment (PNA) provides data and information that can help improve the value delivered by pharmacy services and guide future commissioning decisions.*
- 8.40.2 *There are 65 pharmacies across the city, 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.*
- 8.40.3 *The conclusion of this PNA is that people in the city have very good access to community pharmacy services. The only exceptions have been noted in Dinnington village where local residents report that they do not have satisfactory access to medicines and in Great Park, in the north of the city, where a recent pharmacy application was granted based on 'unforeseen need' by NHS England. On that basis, we conclude that there is a gap in provision in both of these areas.*
- 8.40.4 *If any further gaps are identified between now and the next version of the PNA being produced in 2021 are identified, then the Wellbeing for Life Board will issue a supplementary statement and attach it to this PNA.*

8.40.5 *It is without doubt that our community pharmacies already represent a valuable and valued resource for local people. We hope that this PNA will provide useful context for maintaining (or even increasing) this value over the next 3 years.*

Community Pharmacy Future

8.40.6 *Pharmacists themselves work in community pharmacies, in hospitals, in general practice, at NHS organisations and in other locations. The job that they do, that of 'being a pharmacist' is one that is less about their location of practice and more by 'what they do' for patients and as part of multi-disciplinary teams. Expertise in medicines is something that is very valuable to the NHS and to patients and it is that skill set that unites the pharmacy profession together across all areas of practice. Commissioning structures and ways of working should recognise this fact and encourage a more holistic approach to patient centred care as patients move around within the system.*

8.40.7 *It is unfortunate that at the time of writing of this PNA the future of community pharmacy is perhaps more uncertain than it has ever been. This is partly due to recently imposed government funding cuts but also due to the threat posed by growing numbers of distance selling pharmacies and the drive towards hub and spoke models of medicines."*

8.41 The Committee was satisfied that page 67 of the PNA identifies a gap in essential services in Dinnington.

8.42 The Committee having regard to the above, concluded that there is wording in the PNA which does state that there is a gap in essential pharmaceutical services in Dinnington. In the Committee's view, the requirement in Schedule 1 of the Regulations is that the PNA must contain a statement of the pharmaceutical services that the HWB has identified as services that are not provided in the area of the HWB but which the HWB is satisfied need to be provided in order to meet a current need for pharmaceutical services, or pharmaceutical services of a specified type has been met.

8.43 In this case, the provisions of Regulation 13(1) were met.

8.44 The Committee therefore proceeded to consider the application having regard to those matters set out at 13(2), which states:

(a)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 meet the current need mentioned in paragraph (1) that the applicant is offering to meet;

(b)whether it is satisfied that another application offering to meet the current need mentioned in paragraph (1) has been submitted to it, and it would be desirable to consider, at the same time as the applicant's application, that other application;

(c)whether it is satisfied that an appeal relating to another application offering to meet the current need mentioned in paragraph (1) is pending, and it would be desirable to await the outcome of that appeal before considering the applicant's application;

(d)whether it is satisfied that, since the publication of the relevant pharmaceutical needs assessment, there have been changes to the needs for pharmaceutical services in the area of the relevant HWB that are such that refusing the application is essential in order to prevent significant detriment to the provision of pharmaceutical services in its area;

(e)whether it is satisfied that—

(i)granting the application would only meet the current need mentioned in paragraph (1) in part, and

(ii)if the application were granted, it would be unlikely, in the reasonably foreseeable future, that the remainder of that need would be met;

(f) whether—

(i) it is satisfied that granting the application would only meet the current need mentioned in paragraph (1) in part, but

(ii) it considers that, if the application were granted, it would not be unlikely, in the reasonably foreseeable future, that the remainder of that need would be met;

(g) whether it is satisfied that—

(i) the current need mentioned in paragraph (1) was for services other than essential services, and

(ii) granting the application would result in an increase in the availability of essential services in the area of the HWB;

(h) whether it is satisfied that, since the publication of the relevant pharmaceutical needs assessment, the current need mentioned in paragraph (1) has been met by another person who is providing, or is due to be met by another person who has undertaken to provide, either in the area of the relevant HWB or in the area of another HWB, NHS services;

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

13(2)(a)

8.45 The Committee noted there are no applications from other persons offering to meet the current need mentioned in paragraph (1) that the Applicant is offering to meet.

13(2)(b)

8.46 The Committee was satisfied that there was no other application offering to meet the current need mentioned in paragraph (1) that had been submitted to it, and that it would be desirable to consider, at the same time as the Applicant's application, that other application.

13(2)(c)

8.47 The Committee was satisfied that there is no appeal relating to another application offering to meet the current need mentioned in paragraph (1) pending, and it would be desirable to await the outcome of that appeal before considering the Applicant's application.

13(2)(d)

8.48 The Committee noted that the Applicant has indicated in respect of this provision that the only change in need since the PNA was published was the cessation by the doctors in Dinnington of dispensing services to patients and as such the need for pharmaceutical services has increased. The Committee also noted the LPC's comments in respect of this provision that the need existed in Dinnington and Great Park until "a pharmacy" opened.

8.49 In its further representations, the LPC questions the viability of a local pharmacy and that residents may end up being in a worse situation if the application to open a pharmacy in Dinnington is granted, it opens but then closes due to unsustainability and other surrounding pharmacies have ceased their delivery services in the interim.

8.50 The Committee noted that in its further observations, the Applicant argues that no party has suggested that granting the application would cause significant detriment or that it is essential to refuse it.

- 8.51 The Committee considered that, while the LPC was referencing a possibility that the scenario it outlines might occur, there is little to indicate that this scenario is a certainty that makes refusal essential.
- 8.52 The Committee was therefore not satisfied that, since the publication of the relevant pharmaceutical needs assessment, there have been changes to the needs for pharmaceutical services in the area of the relevant HWB that are such that refusing the application is essential in order to prevent significant detriment to the provision of pharmaceutical services in its area.

13(2)(e) and (f)

- 8.53 The Committee was not satisfied that granting the application would only meet the current need mentioned in paragraph (1) in part, and if the application were granted, it would be unlikely, in the reasonably foreseeable future, that the remainder of that need would be met.

13(2)(g)

- 8.54 The Committee was satisfied that the current need mentioned in paragraph (1) was for essential services, and so this provision does not apply.

13(2)(h)

- 8.55 The Committee noted that the PNA referred to the grant of Great Park Pharmacy's application. The Committee also noted the Appellant's comment that the application was granted in November 2017, the PNA was published on 1 April 2018 and Great Park Pharmacy opened on 3 August 2018. It appears that services were not being provided from Great Park Pharmacy when the PNA was published. The reference in the PNA does not make clear whether the PNA's determination that a need existed in Dinnington was predicated on the provision of services by Great Park Pharmacy or not.
- 8.56 The Appellant states that, although the grant of the Great Park application was mentioned in the PNA, it does not follow that it was taken into account. The Appellant goes on to state that PNAs are required to base their conclusions on existing evidence at the time of writing, which usually means that granted pharmacies are ignored till they are open.
- 8.57 The Applicant states that it is clear that the PNA did properly consider the opening of the Appellant's own pharmacy and still decided that there was a need for a pharmacy in Dinnington.
- 8.58 The Committee considered that the issue is whether service provision by Great Park Pharmacy can reasonably be considered as being "since publication" of the PNA (to use the words of Regulation 13(2)(h)). If the PNA took into account the provision of services by Great Park Pharmacy, then provision of services by Great Park Pharmacy should not be considered as "since publication" of the PNA. But if the PNA did not take account of provision of services by Great Park and the reference in the PNA was simply an acknowledgement that an application had been granted, then it would be reasonable to consider that provision of services by Great Park Pharmacy is "since publication" of the PNA.
- 8.59 Unfortunately there is no definitive answer to this. In considering the actual words used in the PNA, the Committee considered that it was more likely that the PNA recognised the grant of the application at Great Park but that it did not predicate its decision (i.e. that there was a gap in pharmacy provision in Dinnington) on the actual delivery of services from Great Park. It would have been difficult for the PNA to have done that for two reasons:

- 8.59.1 the services from Great Park had not started by the date the PNA was published – the PNA would have had to assume that the pharmacy would actually open; and
- 8.59.2 even if there was an assumption that the pharmacy would open, there is no certainty as to whether services such as a delivery service that extended to Dinnington would be provided.
- 8.60 The Committee therefore considered that it was reasonable to consider that service provision by Great Park Pharmacy has happened since publication of the PNA.
- 8.61 The Committee went on to consider if it could reasonable be said that Great Park Pharmacy had met the need identified in the PNA.
- 8.62 This point is clearly disputed by the parties to this appeal. The Applicant and the Parish Council are on one side and the Appellant and the LPC on the other.
- 8.63 The Committee noted that the HWB has not issued a supplementary statement since the publication of the PNA stating that the need has been met. The Committee considered that this is relevant. The Committee noted that the LPC state that the lack of a supplementary statement following the opening of Great Park pharmacy must be interpreted that no review of the pharmaceutical needs of patients was undertaken within the Newcastle North locality.
- 8.64 The Committee considered that it was not the case that the lack of a supplementary statement must be interpreted to mean this. The fact that no supplementary statement was published may have been because the HWB considered that the opening of Great Park pharmacy did not affect the wording of the existing PNA with regard to the granting of applications.
- 8.65 The Committee noted that Regulation 6(3) gave the HWB the power but not the obligation to publish a supplementary statement explaining changes to pharmaceutical services since the publication of the PNA where the changes are relevant to the granting of applications. The LPC makes reference to the fact that the HWB did issue a supplementary statement following the closure of two pharmacies during 2019 and the outcome of that was that a gap in services was identified. The HWB are clearly aware of the power to issue supplementary statement but have not done so in respect of Great Park following service commencement even when the HWB were aware that a new pharmacy might open there.
- 8.66 Without information from the HWB as to why a supplementary statement was not published after the opening of Great Park Pharmacy, the Committee considered that it could not agree that the lack of a supplementary statement must be for the reason given by the LPC. Instead the Committee preferred the position that the HWB, at the time the PNA was published, was aware that a new pharmacy might be about to open in Great Park. A year later, the HWB used their power to make supplementary statements elsewhere. Given these factors, the lack of a supplementary statement that removes the current need in respect of Dinnington is more likely to be because the HWB did not consider a change was necessary as the need still stood.
- 8.67 Using that as the starting point, the Committee considered whether there was any compelling reason to take the opposing view – that the need in Dinnington had been met by Great Park Pharmacy.
- 8.68 The Committee noted the disagreement on distances to Great Park (1.7 to 2.7 miles). The Committee noted the references to a poor bus service set out in the PNA and at the residents meeting in 2017 although the LPC states that ongoing development has increased public transport and direct road links. The Appellant echoes the comments about direct road links stating that significant changes to road infrastructure have been made since the opening of its pharmacy and that a potential new road will make bus

journey's shorter. The Committee also noted the Parish Council letter that indicates there are no direct public transport links.

- 8.69 The Committee noted the Appellant's examples of journeys between Dinnington and its pharmacy. It seems that both journeys took 4 minutes. Although not expressly stated, it seems that these are journeys by car. It does appear that there are easy connections for those who would use a car. But there is no typical example of a journey for those unable to use a car. The Committee considered that the walk to the bus stop, the wait and the travelling from the bus stop to the destination would likely make this journey significantly longer and if the journey was attempted by foot, it would be even longer.
- 8.70 The Appellant looks to play down this lack of accessibility by reference to the high percentage of car ownership and that it and other pharmacies in the area offer a delivery service and that delivery is more common due to the impact of Covid-19.
- 8.71 The Committee had regard to all the comments from the parties and considered that there was no clear answer to whether Great Park Pharmacy could reasonably be considered to have met the need. The Committee had to make a finding and determined that it was reasonable to consider that Great Park Pharmacy had not met the need. Some residents in Dinnington do not have access to a car and in respect of the public transport position, while perhaps better than in 2017, no party has provided assurance that the journey by public transport would be easy. The Committee noted the availability of delivery services but considered that this was not a substitute to all the services that walking in to a pharmacy could offer. Added to this were the comments that there is development occurring in Dinnington, albeit not a huge amount. The Committee considered that this further increases those who may find it difficult to access the Great Park Pharmacy premises without a car.
- 8.72 The Committee noted that, in support of the view that the commencement of services by Great Park Pharmacy had not met the need identified in respect of Dinnington, the wording of the PNA on p67 (extracted earlier in this determination), indicates that there is a gap in both Dinnington and Great Park. The Committee considered that the PNA indicated these to be separate areas. If the PNA considered both places to be one area, such that a pharmacy opening in one would meet the need for the other, then the Committee considered that the PNA would have made this clear.
- 8.73 The Committee agreed with the Applicant that the closure of the dispensing service in Dinnington will likely have increased the need for pharmaceutical services.
- 8.74 The Committee was therefore not satisfied that, since the publication of the relevant pharmaceutical needs assessment, the current need mentioned in paragraph (1) has been met by another person who is providing, or is due to be met by another person who has undertaken to provide, either in the area of the relevant HWB or in the area of another HWB, NHS services.

13(2)(i)

- 8.75 The Committee was not satisfied that the application needed to be deferred or refused by virtue of any provision of Part 5 to 7.

Regulation 21A

- 8.76 The Committee noted that Regulation 21A of the Regulations has been in effect since 1 January 2022. Regulation 21A states:

(1) Paragraph (2) applies where the NHSCB receives a routine application which is in respect of premises not already listed, where—

(a) the applicant's stated intention (in accordance with paragraph 7(1)(a) of Schedule 2) is to meet a need, or secure improvements or better access, identified in the relevant pharmaceutical needs assessment (whether current or future gaps in provision); and

(b) the need is, or the improvements are or the better access is, in respect of the days on which or the times at which essential services are provided in the area of the relevant HWB.

(2) In determining whether or not it is satisfied as mentioned in section 129(2A) of the 2006 Act (regulations as to pharmaceutical services), the NHSCB must have regard to whether granting the application would result in an undesirable increase in the availability of essential services in the area of the relevant HWB.

(3) If the NHSCB is satisfied that granting the application would result in the undesirable increase in availability mentioned in paragraph (2), it must refuse the application.

- 8.77 The Committee noted the Applicant's further observations that there is nothing undesirable about granting its application other than to one existing contractor who does not wish to see competition for pharmaceutical services even where they clearly benefit patients.
- 8.78 The Committee considered that, in relation to Regulation 21A(1)(a), the Applicant's stated intention is to meet a need identified in the PNA. Regulation 21A(1)(b) states that the need is in respect of the days on which or the times at which essential services are provided in the area of the relevant HWB. The Committee considered that this means that Regulation 21A applies where the need refers to certain days on which and times at which essential services have been identified as needing to be provided.
- 8.79 The Committee noted that the need in the PNA relevant to this application made no mention of days and times. The Committee therefore determined that Regulation 21A(2) did not apply.

Regulation 44 – Prejudice

- 8.80 The Committee noted that consideration of prejudice pursuant to Regulation 44 was relevant where the Applicant is seeking the listing of pharmacy premises which are in a part of a controlled locality that is not in a reserved location. The Committee has determined that, in this case, the Applicant is seeking the listing of pharmacy premises which are in a part of a controlled locality that is in a reserved location. The Committee considered that it was not, therefore, required to consider prejudice.
- 8.81 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 8.81.1 confirm NHS England's decision;
 - 8.81.2 quash NHS England's decision and redetermine the application;
 - 8.81.3 quash NHS England's decision and, if it considers that there should be a further notification to the parties to make representations, remit the matter to NHS England.
- 8.82 The Committee, have reached its decision for different reasoning, determined that the decision of NHS England must be quashed.
- 8.83 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 NHS England) or whether it was preferable for the Committee to redetermine the application.

- 8.84 The Committee noted that representations on Regulation 13 had already been made by parties to NHS England, and these had been circulated and seen by all parties as part of the processing of the application by NHS England. The Committee further noted that when the appeal was circulated representations had been sought from parties on Regulation 13.
- 8.85 The Committee concluded that further notification under paragraph 19 of Schedule 2 would not be helpful in this case.

9 **Decision**

- 9.1 The Pharmacy Appeals Committee (“Committee”), appointed by NHS Resolution, quashes the decision of NHS England, for the reasons given above, and redetermines the application.
- 9.2 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.
- 9.3 The Committee concluded that Dinnington is in a controlled locality and that the site of the application is in a reserved location.
- 9.4 The Committee has determined that the application should be granted for the following reason:
- 9.4.1 The PNA has identified a current need which this application could meet.
- 9.5 Accordingly, the application is granted.

Case Manager
Primary Care Appeals