

9 May 2025

REF: SHA/26492

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**APPEAL AGAINST SOUTH WEST LONDON ICB
DECISION TO REFUSE AN APPLICATION BY HD
PHARMACY LIMITED FOR INCLUSION IN THE
PHARMACEUTICAL LIST OFFERING UNFORESEEN
BENEFITS UNDER REGULATION 18 AT THE PARADE
OF RETAIL UNITS ON THE ROUNDABOUT WHERE
GREEN WRYTHE LANE (RUNNING NORTH/SOUTH)
MEETS MIDDLETON LANE (RUNNING EAST/WEST),
CARSHALTON, SURREY, SM5 1HA (BEST ESTIMATE)**

1 Outcome

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

A copy of this decision is being sent to:

Pharmacy Sales & Consultancy (on behalf of HD Pharmacy Limited),
Primary Care Support England (on behalf of South West London ICB)
Rushport Advisory LLP (on behalf of Anna Healthcare Limited)
Boots UK Ltd
Kamsons Pharmacy

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1 The Application

By application dated 18 April 2024, Pharmacy Sales & Consultancy, on behalf of HD Pharmacy Ltd ("the Applicant") applied to South West London ICB ("the Commissioner") for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at the parade of retail units on the roundabout where Green Wrythe Lane (running north/south) meets Middleton Lane (running east/west), Carshalton, Surrey – approx. postcode SM5 1HA. In support of the application it was stated:

- 1.1 In response to why the application should not be refused pursuant to Regulation 31, the Applicant stated: *"There is an existing contractor within the Best Estimate location, but our client has no connection whatsoever with the owners of that pharmacy. Our client will ensure the premises they secure are not adjacent to that contractor."*

In making this application you are offering to secure improvements or better access that were not included in the HWB's pharmaceutical needs assessment. Please describe the unforeseen benefit(s) that you are offering to secure and how it will secure improvements or better access to pharmaceutical services, or pharmaceutical services of a specified type in the HWB's area.

- 1.2 "In accordance with the NHS (Pharmaceutical Services) Regulations 2013 we would ask NHS England to take into account the following information when considering this application for inclusion on the pharmaceutical list.
- 1.3 Our clients, H D Pharmacy Ltd believe that should NHS England ("NHSE") grant this application it will secure improvements in terms of both the access to pharmaceutical services for the local population and the range of services provided in the wider area.

Background

- 1.4 Our clients have become aware that the Boots Pharmacy located at 370 Middleton Road, Carshalton, Surrey SM5 1HA recently withdrew from the pharmaceutical list. The Boots store closed around Christmas 2023.
- 1.5 We are unaware of the reasons for Boots deciding to close the pharmacy but there is a large residential population living in the immediate area of the proposed location who are heavily reliant on a pharmacy in the area to cater for their health needs and medication. Opposite the parade of shops where the Boots store was located is Carshalton Clinic which houses several health-related services including the busy Circle GP Practice which prescribes in the region of 19,000 items/month.

General Information

- 1.6 The proposed location for this pharmacy is within the parades of retail units on the roundabout where Green Wrythe Lane (running north /south) meets Middleton Lane (running east/west), Carshalton. Please see map 1 [attached for Committee at Appendix A] highlighting the best estimate area, which is on the edge of a very large, primarily Local Authority housing estate.
- 1.7 The best estimate area includes two parades of retail units known as The Circle with numerous units offering a variety of trades including a Co-op, Budgens, other convenience stores, barbers, post office, bakers, hair salon, café, bookmakers, grocers, take aways etc. There are one or two vacant units (including the closed Boots store) and one other existing pharmacy contractor (see later). All the units have residential accommodation above.
- 1.8 The parade is very well used and there is free parking outside the entire set of shops plus plenty of additional on street parking close by. In addition, in the immediate surrounding areas interspersed amongst the residential properties are a variety of facilities including a library, leisure complex, schools, places of worship, green spaces and some office accommodation.
- 1.9 The housing is densely populated and consists primarily of local authority/ex local authority and private semi-detached/terraced properties built mainly during 1930's and 1960's. There are some more modern blocks of mainly apartments which have been built more recently on an infill basis.

Existing Pharmacy Provision

- 1.10 The only pharmacy within the immediate area of the Boots store that closed is Anna Pharmacy, 398 Green Wrythe Lane, SM5 1JF, which lies within the Best Estimate area. It open [sic] standard hours and is an extremely busy pharmacy dispensing in excess of 22,000 items/month. That is likely to have increased following the closure of the Boots store. This dispensing figure is almost three times the national average.
- 1.11 Between the Boots store and Anna pharmacy they were dispensing around 26,000 plus items/month. It is likely that due to the close proximity of these two pharmacies and the Circle GP Practice, the majority of the 4,000 items dispensed by Boots are likely to move across to Anna Pharmacy meaning they will have become even busier.
- 1.12 The closing Boots pharmacy has been established in the area for some time and residents have become accustomed to accessing pharmaceutical services as part of their everyday lives. Being located opposite the GP Circle Practice meant most of the items dispensed by the pharmacy (approx. 70%) originate that surgery [sic]. Patients who were attending that GP surgery were accustomed to utilising the Boots store to pick up their medication.
- 1.13 The next nearest pharmacies are some distance away (in excess 1 mile by the most practical route in all cases) serving different communities as follows:
 - 1.13.1 Rosehill Pharmacy, 28 The Market, SM5 1AG approx. 0.9m distant (19-minute walk) by the most practical route. The pharmacy is located to the west of the proposed near to St Hellier hospital location serving a different community. The two pharmacies are separated by extensive green/recreational areas.
 - 1.13.2 MPS Pharmacy, 46/47 The Market, SM1 3HE. This pharmacy is approx. 1 mile (20- minute walk) from the closing Boots store and is in the same complex of shops as Rosehill Pharmacy. The same comment in terms of green spaces applies.

- 1.13.3 Salmina Pharmacy, 107 Wrythe, Lane SM5 2RR. This pharmacy is approx. 0.8 miles distant by the most practical route (18-minute walk) directly to the south of the closing Boots store.
- 1.14 Map 2 [provided in Appendix A for Committee] showing these pharmacies is attached to this document.
- 1.15 There are of course other pharmacies further afield, but we don't believe any of those are relevant to this application due to the distance from the proposed site. In addition, they clearly serve different populations in established settings.

Existing Medical Provision

- 1.16 As previously mentioned, Circle GP Practice/Carshalton Clinic is located opposite the recently closed Boots store and is a modern purpose built complex with its own car parking facilities. The surgery is busy and prescribes approx. 19,000 items/month.
- 1.17 The next closest GP surgery is as follows:
- 1.18 Bishopsford Road Medical Centre, 191 Bishopsford Road SM4 6BH which is approx. 0.4 miles to the north west of the proposed site. This GP practice is housed in a converted detached residential property and the GP's prescribe in the region of 10,000 items/month.
- 1.19 There are other GP surgeries further afield, but they are located in different neighbourhoods serving different communities.

Unforeseen Benefits

- 1.20 Within the Sutton HWB Pharmaceutical Needs Assessment (PNA), published in 2022, there is no specific mention of a gap in pharmaceutical services within the proposed area as, of course, the Boots store was trading at the time it was published.
- 1.21 In many ways that means that the conclusions reached within the PNA document are not relevant to this application, as when the Boots branch at Middleton Road closed, the level of pharmaceutical provision within this specific location will have changed significantly.
- 1.22 We are required by NHS England to address two specific questions in this supporting information:
- (i) *"Please describe the unforeseen benefit(s) that you are offering to secure and how it will secure improvements or better access to pharmaceutical services, or pharmaceutical services of a specified type in the HWB area".*
- (ii) *Please explain how you intend to secure the unforeseen benefit(s).*
- 1.23 When considering these questions, it is worth noting the provisions of Regulation 18(2)(b) as highlighted below:
- (b) *whether, notwithstanding that the improvements or better access were not included in the relevant pharmaceutical needs assessment, it is satisfied that, having regard in particular to the desirability of—*
- (i) *there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB (taking into account also the NHSCB's duties under sections 13I and 13P of the 2006 Act(b) (duty as to patient choice and duty as respects variation in provision of health services)),*

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

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

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

1.24 The implication is NHS England does not have to find evidence in respect of all three of these matters. These are simply matters it is required to take into account when deciding the application.

1.25 In fact, even if it does not find that any of the three matters discussed in (18)(2)(b) apply, the overarching test is whether *granting the application would secure improvements, or better access, to pharmaceutical services in the area of the HWB*. In our opinion there is clear evidence that it would.

1.26 We have addressed both of the questions above by setting out in further details below:

Securing better access

1.27 The matters of access and choice are inextricably linked. Whilst it may be the case that there is a choice of pharmacy provider within the Health & Wellbeing Board (HWB) area, this does not mean that the choice for residents is *reasonable* if they are not able to access these pharmacies when they need to.

1.28 Obviously whilst the Boots store was trading, the residents had easy access and choice of services. However, following the closure of the branch in December 2023, residents will of course be denied those services. With the Circle GP Surgery prescribing in excess of 19,000 items/month and only Anna Pharmacy in the immediate vicinity, we believe there is a significant gap in services and this application would indeed secure better access.

1.29 Whilst there are existing contractors as described earlier in the surrounding areas, they are some distance away, and it is our view that those residents living in the vicinity of the closed Boots store no longer have reasonable choice of contractor. This is particularly true for those who do not have access to a motor vehicle.

1.30 The nearest pharmacies, with the exception of Anna Pharmacy are all almost 20 minutes' walk from the proposed site and for some residents, journey times would be considerably longer than that.

1.31 Accessing other established contractors would add significant distance to that journey further restricting choice for many patients.

1.32 Residents have for many years had the benefit of the Boots opposite their GP surgery and utilised the pharmacy accordingly. The closure of this pharmacy will without doubt leave a significant gap in services within the area and this application, if approved, will address that gap.

Choice of pharmaceutical service provider

- 1.33 The relevant consideration in the case of this application is whether residents of, and visitors to, the area identified in our application have *reasonable* access to existing pharmacies. If they do not, then it follows that they do not have reasonable choice.
- 1.34 Clearly the residents of the area where the applicant proposes to open the pharmacy have until recently enjoyed the benefits of having two pharmacies in the immediate vicinity. Once the Boots store closed, they have had greatly reduced choice of provider as there is only a single contractor within the vicinity. That pharmacy is extremely busy and dispenses 22,000 plus items which is almost three times the national average. Patients are now forced to travel out of the area to access choice of provider.
- 1.35 By approving this application, it is clear that residents will benefit by having their choice of contractor restored.
- 1.36 If this application is approved, our clients intend to offer the local residents a full and comprehensive pharmaceutical service to replace those that have been offered by Boots for many years, ensuring that local residents can, once more, access pharmaceutical services when they need them.
- 1.37 It should be noted that our clients are proposing to offer core hours 7 days/week ensuring patients can access services when required without the need to travel.

Patient groups sharing protected characteristics

- 1.38 For those people who are elderly, less abled or families with very young children (all of which can be classified as having protected characteristics) access to the existing pharmacies is likely to be more difficult than for those who are more mobile. This would particularly apply if these people are unable to drive or don't have access to a motor vehicle.
- 1.39 Following the closure of the Boots store residents of the local residential housing estate will only have a single provider. If they are elderly, in poor health or have mobility issues, for example, the journey they face to access alternative pharmaceutical services would be much more difficult than first appears.
- 1.40 We firmly believe if this application is approved it will ensure that residents retain their choice and access to pharmaceutical services which they have enjoyed and become accustomed to for many years in the local area."

2 The Decision

The Commissioner considered and decided to refuse the application. The decision letter dated 31 December 2024 states:

- 2.1 "South West London ICB has considered the above application and I am writing to confirm that it has been refused. Please see the enclosed report for the full reasoning.
- 2.2 You have a right of appeal to the Secretary of State against South West London ICB's decision. Should you choose to appeal then you should either complete the online form available on the NHS Resolution website or send a concise and reasoned statement of the grounds for your appeal within 30 days of the date of this letter to nhsr.appeals@nhs.net or:
- 2.3 Primary Care Appeals, NHS Resolution, 8th Floor, 10 South Colonnade, Canary Wharf, London, E14 4PU"

DECISION REPORT

- 2.4 "Name of Applicant: HD Pharmacy Ltd
- 2.5 Fitness to practice: Approved for inclusion
- 2.6 Address/best estimate of proposed premises: Best estimate. The proposed site is the parades of retail units on the roundabout where Green Wrythe Lane (running north/south) meets Middleton Lane (running east/west). Carshalton, Surrey. Approx postcode SM5 1HA
- 2.7 Status of location: Non-controlled locality.
- 2.8 Relevant regulations and guidance: Regulations 18 and 19 – unforeseen benefits: additional matters and consequences. Regulation 31 – refusal: same or adjacent premises. Paragraph 31, schedule 2 – conditional grant of applications where the address of the premises is unknown. DH market entry guidance chapter 8.
- 2.9 Interested parties notified of the application – Representations submitted.
- 2.9.1 Harland Chemist (Pearl Chemist Group), 58 Central Road, SM4 5RP – Appeal Rights given in granted.
- 2.9.2 Kamsons Pharmacy, 40 Green Wrythe Lane, SM5 2DP – Appeal rights given if granted.
- 2.9.3 Kamsons Pharmacy, Wrythe Lane, SM5 2RE – Appeal rights given if granted.
- 2.9.4 SG Barai Chemist, 39 Erskine Road, SM1 3AT – Appeal rights given if granted.
- 2.9.5 Anna Pharmacy, 398 Green Wrythe Lane, SM5 1JF – Appeal rights given if granted.
- 2.9.6 Anna Pharmacy Hackbridge, Unit 4 186 London Road, SM6 7FW – Appeal rights given if granted.
- 2.9.7 Rosehill Pharmacy, 28 The Market, Wrythe Lane, SM5 1AG – Appeal rights given if granted.
- 2.9.8 Boots [there are no Boots listed for branches, but Boots is listed under interested parties] – No appeal rights as not an interested party for this application.
- 2.9.9 Community Pharmacy South West London (LPC) – no appeal rights as not a pharmacy
- 2.9.10 Londonwide LMC, Merton LMC, Sutton LMC – no appeal rights as not a pharmacy.
- 2.10 Interested parties notified of the application – representations not submitted:
- 2.10.1 Sutton & Murton OOH Co-Op Ltd, 28 The Market, Wrythe Lane, SM5 1AG
- 2.10.2 MPS Pharmacy, 46 – 47 The Market, Rosehill, SM1 3HE
- 2.10.3 Day Lewis Pharmacy, 64 Middleton Road, SM4 6RU
- 2.10.4 Salmina Pharmacy, 107 Wrythe Lane, SM5 2RR
- 2.10.5 Pyramid Pharmacy, 43 St Helier Avenue, SM4 6HY

2.10.6 Jhoots Pharmacy, Ravensbury Park Med Ctr, Ravensbury Lane, SR4 4DQ

2.10.7 Sutton Pharmacy Surrey, 86 Westmead Road, SM1 4HY

2.10.8 Sutton HWB

2.10.9 Merton Healthwatch

2.10.10 Merton HWBB

2.10.11 Sutton Healthwatch

2.10.12 Sutton HWBB

2.11 Additional information:

2.11.1 PSRC have determined that there is enough information within the papers to decide the application without an oral hearing.

2.12 Regulation 31:

2.12.1 We note that Anna Pharmacy Green Wrythe Lane is located within the best estimate. Whilst we do not have the precise location of the proposed pharmacy, this could be next door to this pharmacy, therefore, regulation 31(2)(a) is engaged.

2.12.2 We will therefore need to assess 31(2)(b).

2.12.3 This part of the regulations asks if it is reasonable to treat the services that the applicant proposes to provide as part of the same service as the existing services. As these two are not linked in any way, they should not be treated as the same, therefore 31(2)(b) is not engaged.

2.13 Regulation 32:

2.13.1 There are currently no LPS designations in this area therefore regulation 32 is not engaged.

General Comments:

Applicant Comments:

2.14 Application Details:

2.15 [as noted at 1.2 – 1.40 above]

Comments from Interested Parties

2.16 Comments were received from Pearl Pharmacy, Kamson Pharmacy, Boots, SG Baria [sic], Anna Pharmacy.

Pearl Chemist Ltd (Harland Pharmacy) Comments

2.17 I have read through the applications [sic] and do not see how this application meets the criteria for market entry.

- 2.18 The area is well serviced with an established network of existing pharmacies providing a wide range of both essential, advanced and enhanced services. This is highlighted in the Pharmaceutical Needs Assessment for Sutton which reports the same fact.
- 2.19 Our Pharmacy is also a covid vaccination site and patients have been attending from across the borough for 3 years now.
- 2.20 We are also about to embark on the Independent Prescribing pathfinder project support by NHSE. This demonstrates that there are local pharmacies in the area that are already offering many more services than proposed by the applicant.

Kamsons Pharmacy comments

- 2.21 This application should be refused. It is not axiomatic that another pharmacy should be approved to replace one that has closed. Patients already have plentiful choice of pharmacy within the locality including a Kamsons Pharmacy at Wrythe Ln, Carshalton SM5 2RE and another one at 40 Green Wrythe Lane, Carshalton, Surrey, SM5 2DP. This is in addition to the pharmacy in the location identified by the applicant and the many other pharmacies in Carshalton.
- 2.22 Our pharmacies provide all enhanced services as I expect all of the pharmacies do locally.

SG Barai comments

- 2.23 I have read through the application and do not see how this application meets the criteria for market entry.
- 2.24 The area is well serviced with an established network of existing pharmacies providing a wide range of both essential, advanced and enhanced services. This is highlighted in the Pharmaceutical Needs Assessment for Sutton which reports the same fact.
- 2.25 Our pharmacy is also a covid vaccination site and patients have been attending from across the borough for 3 years now.
- 2.26 We are also about to embark on the Independent Prescribing pathfinder project supported by NHSE. This demonstrates that there are local pharmacies in the area that are already offering many more services than proposed by the applicant.

Anna Pharmacy comments

- 2.27 Proposed premises, floor plan and consulting area.
- 2.28 The applicant has provided an unclear location of where the proposed Community Pharmacy is to be located. If you compare the applicant's submitted map against the map of SM51HA (below), there is a clear difference.
- 2.29 Applicant's map [provided for Committee at Appendix B]
- 2.30 Actual map SM5 1HA
- 2.31 The applicant has failed to provide either a precise location or a best estimate of the premises location within this application. There is missing relevant information for the purposes of paragraph 11 of Schedule 2.
- 2.32 The applicant has not provided details of the premises, proposed floor plan and consulting area. There is a promise of the proposed premises being secured and meeting GPhC standards, subject to an approved application.

- 2.33 This indicates that this is a speculative application, and no firm judgement can be made without assurance that premises will be secure and a more precise location.

2. Proposed Opening Hours

- 2.34 The applicant proposes to be open 7 days a week 84 hours a week. I would like to point out that there are 41 Community Pharmacies in Sutton, and I have noted that since the Sutton Pharmaceutical Needs assessment was published in 2022 only one pharmacy (Boot Middleton Road) has closed. The Sutton Pharmaceutical list shows out of 41 Community Pharmacies

2.34.1 36 community pharmacies are opened Saturday. [sic]

2.34.2 7 Community Pharmacies are open 7 days a week.

2.34.3 The Local Pharmaceutical service (LPS) contractor Sutton is open between 7.30 pm and 10.30 pm on weekdays, 7 pm to 10 pm on Saturdays and 5 pm to 10 pm on Sundays. It also provides the bank holiday service for Sutton and supports access to palliative care medicines which is utilised by the end-of-life care team. The LPS was designed to manage access to medicines out of hours across the whole of Sutton.

3. Pharmaceutical services to be provided at the premises.

- 2.35 The applicant proposed to offer all NHS advanced and locally commissioned services. It should be noted the roll out of existing NHS pharmacy services (Pharmacy first, Hypertension, contraception, Discharge Medicines service (DMS) and Smoking Cessation are still being ramped up; the referrals are low and under capacity. DMS activity is 1% average across SW London, which is the lowest in London There is enough current community pharmacy capacity in Sutton to provide these services. Community pharmacy uptake of national NHS services is very high but are facing low referrals.
- 2.36 Local authority services are currently under commissioned and the LPC is in formal discussion to expand locally commissioned services. There is enough current community pharmacy capacity in Sutton to provide these services.
- 2.37 I also note the applicant is not accredited yet to provide these services, to contrast my pharmacy team is accredited to provide all services.
- 2.38 An additional Community Pharmacy would only dilute existing services and add no discernable [sic] value. This would cause detriment to be planning of pharmaceutical services and overprovision.

4. Sutton Pharmaceutical Needs assessment (PNA).

- 2.39 The Sutton PNA was published in 2022. At the time there were 42 Community Pharmacies and there are now 41 Community Pharmacies. This represents and insufficient change as there are currently 41 Community Pharmacies, section 2 of the letter has suitable evidence there is adequate access to pharmaceutical services. The applicant has challenged the findings of the PNA as they believe due to the closure of one Community Pharmacy the PNA is not relevant.
- 2.40 This finding is incorrect as the demographics of Sutton, expected population changes and transport links have not changed in the last 2 years. The relevant sections from the Sutton PNA(2022) are presented below with conclusions.
- 2.41 3.2 Community Pharmacies

2.41.1 There are 42 community pharmacies in Sutton, which has reduced from 43 since the last PNA. The England average is 20.6 community pharmacies per 100,000 population, which has decreased slightly from 2018 when the average number was [sic]

2.41.2 The London average has also decreased to 20.7 from the previous 22.3 community pharmacies per 100,000 population. The Sutton average of 20.2 pharmacies per 100,000 is slightly below both the London and National averages.

2.42 London has a transient population with generally good transport links. Populations may therefore find community pharmacies in neighbouring HWB areas more accessible and/or more convenient. There is a variable rate of community pharmacies per 100,000 population in neighbouring HWB areas: Croydon (19.0), Kingston-upon-Thames (17.5), Merton (19.3) and Surrey (16.9).

2.43 London has a transient population with generally good transport links. Populations may therefore find community pharmacies in neighbouring HWB areas more accessible and/or more convenient. There is a variable rate of community pharmacies per 100,000 population in neighbouring HWB areas: Croydon (19.0), Kingston-upon-Thames (17.5), Merton (19.3) and Surrey (16.9).

2.44 Table 3 shows the change in the numbers of pharmacies over recent years compared with regional and national averages.

2.45 Table 3: Number of pharmacies per 100,000 population (including DSP)

	England	London	Sutton
2021 – 21	20.6	20.7	20.2
2019 – 20	21.0	20.2	20.5
2018 – 19	21.2	20.7	21.1

2.46 Patients in Sutton can access Community Pharmacies inside and outside the borough by existing public transport links, therefor [sic] there are no access issues.

2.47 3.2.1 Choice of community pharmacies

2.48 Table 4 shows the breakdown of community pharmacy ownership in Sutton. The data shows that Sutton has a higher percentage of independent pharmacies compared with England and London, with no one provider having a monopoly in any locality. People in Sutton therefore have a good choice of pharmacy providers.

2.49 Table 4: Community pharmacy ownership, 2021 – 22

Area	Multiples (%)	Independent (%)*
England	60%	40%
London	39%	61%
Sutton	26%	74%

*includes the pharmacies on AIMP list

2.50 These figures have not changed drastically in 2 years and there is sufficient competition and choice in Sutton, which is higher than London and England averages.

2.51 3.2.3.1 Routine daytime access to community pharmacies

2.52 In summary:

2.52.1 Walking: 94% of the population can walk to a pharmacy within 15 minutes (99.8% within 20 minutes)

2.52.2 Public transport: Approximately 84% can reach a community pharmacy within 10 minutes (afternoon is faster than morning); up to 99% of people can reach a pharmacy within 20 minutes.

2.52.3 Driving off-peak and peak: 98.4% of the population can drive to a pharmacy within 5 minutes (100% within 10 minutes)

2.53 This challenges the assertion by the applicant that certain patient groups would have access issues with the closure of one pharmacy. There is a Sutton Carers association where patients having difficulties accessing services can go to for advice and support.

Section 7: Conclusions

2.54 Necessary Services – normal working hours- There is no current gap in the provision of Necessary Services during normal working hours across Sutton to meet the needs of the population.

2.55 Necessary Services – outside normal working hours- There is no current gap in the provision of Necessary Services during normal working hours across Sutton to meet the needs of the population.

2.56 Future provision of Necessary Services- No gaps have been identified in the need for pharmaceutical services in specified future circumstances across Sutton.

2.57 Current and future access to Advanced Services- There are no gaps in the provision of Advanced Services at present or in the future that would secure improvements or better access to services in Sutton.

2.58 Current and future access to Enhanced Services- No gaps have been identified that if provided either now or in the future would secure improvements or better access to Enhanced Services across Sutton

2.59 Current and future access to Locally Commissioned Services (LCS)- Based on current information, no current gaps have been identified in respect of securing improvements or better access to Locally Commissioned Services, either now or in specific future circumstances across Sutton to meet the needs of the population.

2.60 The PNA provides robust evidence that current pharmaceutical provision is being met, this considers the closure of one pharmacy, and the capacity of the Sutton Community Pharmacy network to meet patient needs.

5. Existing Community Pharmacy Provision

2.61 The applicant has alleged that the dispensing volume of Anna Pharmacy in Carshalton has increased, due to the closure of Boots Middleton Road.

- 2.61.1 There is no evidence to suggest that Anna Pharmacy is not coping with the workload.
- 2.61.2 It should be noted that nearly all prescriptions are electronic and can be nominated by patients to any community pharmacy.
- 2.62 Anna Pharmacy has delivered all national NHS Pharmacy services and locally commissioned services by Sutton Council. Anna Pharmacy Hackbridge and Carshalton have performed highly in local smoking cessation services, and the ICS services such as Winter Fit.
- 2.63 The three nearest pharmacies are accessible from SM5 1HA by walking (15 minutes) or 10 minutes by local bus. The green spaces identified are not barriers to access in and round SM5 1HA and the Rosehill area, these are grass covered areas next to the roads and pavements.
- 2.64 The closure of Boots has not impacted patients as there is sufficient access to local pharmacies. Most prescriptions are managed through repeat dispensing, which reduced the need of the patient to go to the GP practice each time to collect a prescription.
- 2.65 There are 12 pharmacies within a 1-mile radius of the proposed application, and 6 pharmacies within a 0.6-mile radius of the proposed application.
- 2.66 One of the Pharmacies is an out of hours Co-operative LPS, (already mentioned in this letter), and is designed to provide access to medicines and palliative care out-of-hours for the whole borough. This is co-located at Rosehill Pharmacy when the total hours by both Rosehill Pharmacy and the LPS contract are added up this exceeds the opening hours for the applicant's proposed pharmacy.
- 2.67 The distance between the proposed location of the Pharmacy and the Out of Hours LPS is 0.7miles or 1.17 km. This would fall within the locality of the LPS contact.
- 2.68 Public Transport between Rosehill LPS and SM5 1HA [provided for Committee at Appendix C]
- 2.69 Walking distance between Rosehill LPS and SM5 1HA
- 2.70 There is existing suitable Community Pharmacy access available to Sutton residents and the locality is well serviced by public transport. Patients can access pharmacies in the locality by bus which takes on average 10 – 15 minutes or by car which takes 5- 10 minutes. This is evidenced with the current Sutton PNA.
- 2.71 There are at least 6 Community Pharmacies within the immediate vicinity of the application, so regulation 31 would be engaged .
- 2.72 The applicant has not provided an evidenced based rationale for unforeseen benefits.
6. In conclusion
- 2.73 The applicant has provided enough information within the papers to confirm this application should be rejected for the following reasons.
- 2.73.1 There are at least 6 Community Pharmacies within the immediate vicinity of the application, so regulation 31 would be engaged.
- 2.73.2 There is an LPS contract 0.6 miles away from the proposed location area of the application.

- 2.74 The applicant has provided an unclear estimate if the location of the proposed pharmacy. This should be classed as missing relevant information for the purposes of paragraph 11 of Schedule 2. There is no evidence that the applicant would provide unforeseen benefits or better access with regard to 18(1)(a). There is already suitable access to Community Pharmacy services the granting of the application would lead to significant detriment either to the proper planning of pharmaceutical services provision, and a dilution of effort for locally commissioned services. This regulation has not been met.
- 2.75 With regard to 18(1)(b) the granting of the application would not secure a significant improvement or better access in relation to pharmaceutical services. This regulation has not been met.

Anna Healthcare comments

- 2.76 As NHSE will be aware, this application falls to be considered under regulation 18 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.
- 2.77 It is for the Applicant to satisfy NHSE that their application will secure improvements or better access to pharmaceutical services having particular regard to

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

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

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

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

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

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

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

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

- 2.78 In this case the Applicant has failed to meet the required standard of proof or addressed the legal test correctly.
- 2.79 The proposed location for the new pharmacy covers a very small area that also includes the location of my client's pharmacy. The Applicant states;

- 2.80 *The only pharmacy within the immediate area of the Boots store that closed is Anna Pharmacy, 398 Green Wrythe Lane, SM5 1JF, which lies within the Best Estimate area. It open standard hours and is an extremely busy pharmacy dispensing in excess of 22,000 items/month. That is likely to have increased following the closure of the Boots store. This dispensing figure is almost three times the national average.*
- 2.81 It is unclear what the Applicant means by the “immediate area”, but it appears that the Applicant is focusing on a very small area that already contains my client’s pharmacy. It is not clear why the Applicant believes it is correct to narrow consideration to such a small area, or why they believe that the relevant “area” should stop just before the location of other pharmacies (if that is what they believe).
- 2.82 The Applicant notes that there are 3 other pharmacies within a 1 mile travelling distance of my client’s pharmacy. All these pharmacies dispense prescriptions from the Circle GP Practice as do other pharmacies located further away. This is not unusual as patients will travel to see their doctor from where they work or live and will use whichever pharmacy is convenient for them.
- 2.83 The location is on the border of two wards, namely St Helier East Ward and St Helier West Ward. The combined population of these two wards is just under 20,000 and the patient list of the practice referred to by the Applicant as Circle GP Practice/Carshalton Clinic is approximately 10,600. It is reasonable to assume that there is a significant overlap between those who live in the two wards and those who are registered at the GP practice. Clearly not all of the registered patients live within the best estimate that has been provided by the Applicant and instead they will be spread out across the wider area, with many living closer to existing pharmacies such as Salmina, MPS, Kamsons or Rosehill Pharmacy than they do to the surgery or my client’s pharmacy.
- 2.84 Approximately 75% of those who live in these wards have access to one or more cars. The Applicant notes that the location where my client operates their pharmacy from has ample parking and that the shops are well-used and we agree with that assessment.
- 2.85 The Applicant ignores the existence of public transport which is available for those who do not have or do not wish to use a car. MPS Pharmacy and Rosehill are located on the S1 and 151 bus routes and takes between 9 minutes and 11 minutes to access by bus (including walking time).
- 2.86 Similarly, Salmina Pharmacy is likewise located on the S1 bus route and takes 14 minutes to access (including walking time).
- 2.87 Kamsons Pharmacy is just off the 151 bus route and takes 11 minutes to access via the 151 bus and a short walk. Whilst being easier to access by bus than Salmina Pharmacy, the Applicant does not even consider access to Kamsons as they claim it is “[not] relevant to this application due to the distance from the proposed site”.
- 2.88 This clearly demonstrates that the Applicant has incorrectly focussed on basic distance measurements rather than access (as required by the legal test).
- 2.89 However, the most obvious point to make is that my client’s pharmacy is already located at the same location that the Applicant wishes to open at and already serves those who require access to pharmaceutical services at this location.
- 2.90 It is not disputed that my client’s pharmacy is busy, but those are not grounds for permitting the opening of an additional pharmacy. If such rationale were accepted then new pharmacies would be permitted to open beside all such “busy” pharmacies. Such an approach finds no support within the Regulations, which instead focus on the issues of accessibility and reasonable choice.

- 2.91 My client's pharmacy is perfectly accessible for any person in the vicinity of the proposed application site. For those who are not using the local shops and services there are numerous other pharmacies in the area. Latest figures (Feb 2024) show that the Circle GP Practice/Carshalton Clinic referred to by the Applicant (Green Wrythe Surgery) had prescriptions dispensed by many pharmacies in the area. My client's pharmacy dispenses by far the most items as they are the closest pharmacy to the GP surgery and conveniently located at the local shopping parade.
- 2.92 Should a patient wish to exercise their right to choose a different pharmacy then the correct test is whether such patients have a "reasonable choice" of alternate providers and locations of those providers. Granting this application would simply end up with 2 pharmacies potentially side by side. This does nothing to improve the choice of location at which patients can access services. However, the legal test is not whether choice would be improved, it is whether the existing choice within the HWB can be considered "reasonable". Given the location of my client's pharmacy and the ease that other pharmacies can be accessed by car, on foot (for those who choose to walk) or by public transport, it is clear that patients do have and are already exercising their right to choose both the provider and location of existing pharmacies and that existing provision is more than reasonable.
- 2.93 We note that the Applicant offers core hours on Sunday, however, the surgery upon which the Applicant places so much reliance is not open on Sunday and there is no evidence of any unmet need on a Sunday.
- 2.94 The Applicant does not offer any service that my client is not already offering as my client provides comprehensive services 6 days per week with 7pm closing on weekdays. My client normally has 3 pharmacists on duty as well as two counter assistants and 5 dispensers. The high level of staffing ensures that patients are very happy with the service provided and my client is not aware of any complaints being made to the NHS about the quality of availability of services. My client also delivers medication to any patient who requests that service.
- 2.95 In summary, granting the application would not secure improvements or better access to pharmaceutical services and a reasonable choice of contractors is already available within the HWB area and the application should be refused.

Rosehill Pharmacy Comments

- 2.96 I am the proprietor of Rosehill Pharmacy in Sutton in the vicinity of this application and would like to object to the application as it does not satisfy the regulations and there is existing access to community pharmacy services in the locality.
- 2.97 In Sutton there are already 41 Community Pharmacies. The 2022 Sutton Pharmaceutical needs assessment had 42 pharmacies and only once has closed down
- 2.97.1 36 community pharmacies are opened Saturday [sic]
- 2.97.2 7 community pharmacies are open 7 days a week
- 2.98 There are very good transport links between the postcode of the application and the Rosehill area of Sutton. Patients can walk or access public transport by going to the local shops around Rosehill Pharmacy.
- 2.99 I wish to point out that at Rosehill Pharmacy there is a co-located Local Pharmaceutical service (LPS) that provides late night access 7 days a week open 7.30pm to 10.30pm on weekdays, 7pm to 10pm on Saturdays and 5pm to 10pm Sundays. The LPS service is open for all public holidays and cover for the whole borough. On public holiday days

the pharmacy is open 10am to 10pm. We provide all essential services as well as advanced services to include palliative care and pharmacy first service.

- 2.100 The purpose of the LPS was to provide access to medicines out of hours across the whole of the borough.
- 2.101 Rosehill has just undergone a modern refit with a consultation room offering a more professional and clinical environment. I would suggest that this alone provides the locality unforeseen benefits.
- 2.102 The applicant has not given clarity of the exact location of the proposed premises, which is missing a key detail to be compliant with regulations.
- 2.103 My Pharmacy offers all essential and advanced services and my team, and I are full accredited. I am unclear how the applicant will offer locally commissioned services when Sutton Local authority has limited commissioning and low provision across Community Pharmacies in Sutton. I have asked my LPC to follow up this matter with the local authority. The referral rate for some of the NHS service such as Pharmacy First, smoking cessation and the Discharge Medicine Service are still very low. The additional of another community pharmacy would not provide unforeseen benefits; it would dilute existing service provision. The existing Community Pharmacy network is accredited and has the capacity to deliver more service activity, I note the applicant is not accredited to provide services.
- 2.104 I have been through the 2021 Sutton PNA noted there has been
 - 2.104.1 No change in patient demographics and there is no need to necessitate an additional pharmacy.
 - 2.104.2 The Sutton population can access Community Pharmacies with Sutton and outside the borough due to the very extensive public transport network.
 - 2.104.3 No gaps in service provision was identified.
- 2.105 The lack of information in the application to justify unforeseen benefits as well as the conclusions of the 2022 PNA should be enough information to reject this application.

Boots Comments

- 2.106 Whilst we accept that the application is based on benefits not foreseen when drafting the Pharmaceutical Needs Assessment (PNA), it is clear the application is purely based on the recent closure of the Boots pharmacy.
- 2.107 As the ICB will be aware, the closure of a pharmacy within an area does not automatically create a gap and should a gap have arisen because of such a closure, then the PNA should be updated to reflect this. To our knowledge no changes have been made within the current PNA for Sutton or any supplementary statements produced. We would therefore suggest that the closure of the pharmacy in the locality has not resulted in a gap to pharmaceutical services and that the Health and Wellbeing board recognise that the existing network of pharmacies can cope should there be any increase in demand?
- 2.108 NHS Choices states that there are 8 pharmacies within 1 mile of the estimated postcode and a further 15 within 1.5 miles, a total of 23 pharmacies within 1.5 miles of the proposed location. We submit that these pharmacies offer patients a choice of opening hours, services, and provider.

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

2.110 For these reasons we respectfully urge the ICB to refuse this application.

Community Pharmacy South West London (LPC)

2.111 I am writing to you in my capacity as the Chief executive officer of Community Pharmacy South West London (CPSWL). CPSWL is the statutory representative body for all community pharmacy contractors in South West London.

2.112 Thank you for kindly for forwarding the application stated above. We strongly believe that this application needs to be reviewed and rejected. Please note the points below that need to be taken into consideration.

2.113 ACCESS TO PHARMACY

2.114 Within the local vicinity of the application, there are many Pharmacies that are open until 7pm, this is in line with the Local surgeries timings as they close at 6.30pm. Several Pharmacies in the area are open on a Saturday and are providing a full suite of NHS services including the Pharmacy First Service, NHS Contraception Service and NHS Hypertension Case finding service.

2.115 The area is also covered by a Local Pharmaceutical Service (LPS) contract which is co-located at Rosehill Pharmacy, the LPS contractor provides a late-night pharmacy and weekend provision.

2.115.1 Rosehill Pharmacy - 28 The Market, Wrythe Lane, Carshalton Surrey, SM5 1AG is open 9am – 6pm Monday to Saturday and closed Sunday, which provides total of 54 hours.

2.115.2 The LPS is open 7.30pm – 10.30 pm Monday to Friday, 7pm 10pm Saturday and 5pm 10pm Sunday, which provides a total of 23 hours, in addition to being open bank holidays 10am to 10pm as part of the LPS contract.

2.116 This service is available in Rosehill which is a 5 minute car drive or 10 minute bus journey. So, the increased hours will not provide any further pharmaceutical services benefit for the area as there is no current need, in addition the LPS provides consistent access on bank holidays.

2.117 The area is also afforded with multiple Bus Routes which travel to the main Local town centres.

2.118 LOCAL CAPACITY

2.119 From our enquiries, we have not received any complaints from the local GP service providers, representative organisation's for the area or other pharmacies in the vicinity of the application. Local capacity to provide services is excellent and all the local contractors have absorbed the additional workload effectively. Many contractors have reviewed the service level and adjusted accordingly to ensure patient satisfaction is maintained for both existing and new patients.

2.120 SERVICE PROVISION

2.121 No capacity issue in Pharmacy services or dispensing has been raised. All essential and advanced services are delivered as well as additional council funded services. All local Pharmacies offer these services and there have been no gaps highlighted.

2.122 PATIENT'S CHOICE OF PHARMACIES

2.123 From the Proposed location the area has multiple pharmacies above and beyond the service provision from Anna Pharmacy, which is located within less than a 1 minute walk from the proposed location and whom have received no issues with subsuming the additional capacity – on Green Wrythe Lane, there is a Kamsons Pharmacy which is a 4-minute drive or 12 minutes bus ride from proposed location. In another direction is Rosehill Pharmacy as already mentioned 5 minutes by car or a 10-minute bus journey. In Hackbridge, there is a pharmacy which is a 5-minute drive or 12-min bus ride. There are many others that are in the area and almost all the pharmacies offer a free delivery service to patients in the proposed area.

2.124 In Conclusion, Community Pharmacy South West London do not believe there is a unforeseen benefit to opening a pharmacy and it does not meet the statutory tests that are applied to this application. To be clear the application does not meet regulation 18 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013.

LMC Comments

2.125 Londonwide LMCs has approached local GPs to seek their views on the application and has received no representations. We therefore do not have any comments to make on this occasion, but we would be grateful if you would keep us informed of developments.

PSRC comments

2.126 Boots Pharmacy at 370 Middleton Road closed on 3rd February 2024. Below is a summary of the dispensing by items and prescriptions for Boots Pharmacy and Anna Pharmacy prior to the closure and then also dispensing for Anna Pharmacy post the closure of the Boots Pharmacy.

Boots dispensing (6 months prior to closure)

Month	Forms	Items
Aug 2023	2,082	3,455
Sept 2023	2,107	3,543
Oct 2023	1,931	3,271
Nov 2023	1,886	3,216
Dec 2023	1,560	2,523
Jan 2024	551	881

Anna Pharmacy Dispensing (6 months prior to closure)

Month	Forms	Items
Aug 2023	12,115	23,626

Sept 2023	11,406	21,805
Oct 2023	12,131	23,529
Nov 2023	12,007	24,019
Dec 2023	11,584	23,547
Jan 2024	13,790	27,501

Anna Pharmacy dispensing since Boots closed

Month	Forms	Items
Feb 2024	12,890	25,382
Mar 2024	Unavailable	Unavailable
Apr 2024	13,679	26,831
May 2024	13,429	26,551
June 2024	12,108	23,519
July 2024	14,252	27,955
Aug 2024	12,397	24,500

2.127 Nearest pharmacies to previous site for Boots – 370 Middleton Road, Carshalton, SM5 1HA within 1 mile of 370 Middleton Road (20 mins or less walk), this location has been used as this is a best estimate application. Walking distances and driving distances are from Google Maps. The distance column is from NHS.uk.

ODS	Pharmacy Name	Pharmacy Address	Postcode	Distance (NHS.uk)	Walking distance	Driving Distance
FGT46	Anna Pharmacy	398 Green Wrythe Lane	SM5 1JF	0.1 mile	338ft (1 min)	0.2 mile (2 mins)
FLQ03	Rosehill Pharmacy	28 The Market, Wrythe Lane	SM5 1AG	0.5 mile	0.8 miles (18 mins)	0.8 miles (3 mins)
FMR49	Sutton & Merton OOH Co-Op Ltd (LPS Contract)	28 The Market, Wrythe Lane	SM5 1AG	0.5 mile	0.8 miles (18 mins)	0.8 miles (3 mins)

FWX02	MPS Pharmacy	46 – 47 The Market	SM5 1HA	0.6 miles	0.9 miles (20 mins)	0.9 miles (5 mins)
FCJ02	Salmina Pharmacy	107 Wrythe Lane	SM5 2RR	0.7 miles	0.9 miles (19 mins)	1 miles (4 mins)

2.128 Proposed opening hours for the applicant

Day	Standard Core Hours	Additional Core Hours	Total Opening Hours
Mon	08:00 – 11:00 & 15:00 – 19:00	11:00 – 15:00 & 19:00 – 20:00	08:00 – 20:00
Tues	08:00 – 11:00 & 15:00 – 19:00	11:00 – 15:00 & 19:00 – 20:00	08:00 – 20:00
Weds	08:00 – 11:00 & 15:00 – 19:00	11:00 – 15:00 & 19:00 – 20:00	08:00 – 20:00
Thurs	08:00 – 11:00 & 15:00 – 19:00	11:00 – 15:00 & 19:00 – 20:00	08:00 – 20:00
Fri	08:00 – 11:00 & 15:00 – 19:00	11:00 – 15:00 & 19:00 – 20:00	08:00 – 20:00
Sat	09:00 – 14:00	08:00 – 09:00 & 14:00 – 20:00	08:00 – 20:00
Sun		08:00 – 20:00	08:00 – 20:00
Total Hrs	40	44	84

NB: The applicant does not have any supplementary hours.

2.129 Please note the breakdown between Standard Core Hours and Directed hours above. The directed hours would be in place after the direction has been issued, however after 3 years the applicant could apply for these to be changed.

2.130 Core Hours for Local Pharmacies

Day	FGT46	FLQ03	FWX02	FJC02	FMR49 (LPS)
Monday	09:00 – 17:00	09:00 – 18:00 (Lunch 13:00 – 14:00)	09:00 – 17:00	09:00 – 18:00 (Lunch 13:00 – 14:00)	19:30 – 22:30

Tuesday	09:00 – 17:00	09:00 – 18:00 (Lunch 13:00 – 14:00)	09:00 – 17:00	09:00 – 18:00 (Lunch 13:00 – 14:00)	19:30 – 22:30
Wednesday	09:00 – 17:00	09:00 – 18:00 (Lunch 13:00 – 14:00)	09:00 – 17:00	09:00 – 18:00 (Lunch 13:00 – 14:00)	19:30 – 22:30
Thursday	09:00 – 17:00	09:00 – 18:00 (Lunch 13:00 – 14:00)	09:00 – 17:00	09:00 – 18:00 (Lunch 13:00 – 14:00)	19:30 – 22:30
Friday	09:00 – 17:00	09:00 – 18:00 (Lunch 13:00 – 14:00)	09:00 – 17:00	09:00 – 18:00 (Lunch 13:00 – 14:00)	19:30 – 22:30
Saturday	Closed	Closed	Closed	Closed	19:00 – 22:00
Sunday	Closed	Closed	Closed	Closed	17:00 – 22:00

2.131 Total Hours

Day	Applicant Proposed Hrs	FGT46	FLQ03	FWX02	FJC02	FMR49 (LPS)
Monday	08:00 – 20:00	09:00 – 19:00	09:00 – 18:00	09:00 – 19:00	09:00 – 19:00 (Lunch 13:00 – 14:00)	19:30 – 22:30
Tuesday	08:00 – 20:00	09:00 – 19:00	09:00 – 18:00	09:00 – 19:00	09:00 – 19:00 (Lunch 13:00 – 14:00)	19:30 – 22:30
Wednesday	08:00 – 20:00	09:00 – 19:00	09:00 – 18:00	09:00 – 19:00	09:00 – 19:00 (Lunch 13:00 – 14:00)	19:30 – 22:30

Thursday	08:00 – 20:00	09:00 – 19:00	09:00 – 18:00	09:00 – 19:00	09:00 – 19:00 (Lunch 13:00 – 14:00)	19:30 – 22:30
Friday	08:00 – 20:00	09:00 – 19:00	09:00 – 18:00	09:00 – 19:00	09:00 – 19:00 (Lunch 13:00 – 14:00)	19:30 – 22:30
Saturday	08:00 – 20:00	09:00 – 17:00	09:00 – 18:00	09:00 – 17:30	09:00 – 17:30	19:00 – 22:00
Sunday	08:00 – 20:00	Closed	Closed	Closed	Closed	17:00 – 22:00

Services	Applicant Proposed Hrs	FGT46	FLQ03	FWX02	FJC02	FMR49 (LPS)
Pharmacy First	LISTED BUT NOT ACCREDITED	YES	YES	YES	YES	YES
Advanced Flu	LISTED BUT NOT ACCREDITED	YES	YES	NO	YES	NO
NMS	LISTED BUT NOT ACCREDITED	YES	NO	YES	YES	NO
Hypertension Case Finding	LISTED BUT NOT ACCREDITED	YES	YES	YES	YES	YES
Smoking Cessation	LISTED BUT NOT ACCREDITED	YES	YES	YES	YES	NO
Contraception Service	LISTED BUT NOT ACCREDITED	YES	YES	YES	YES	NO
London Flu	Not included in application	YES	NO	NO	NO	NO

2.132 The applicant states:

2.132.1 “We would propose to provide any local enhanced service commissioned by the CCG, HWB or NHS England”

Sutton PNA

- 2.133 The Sutton PNA has not identified any gaps in the provision of pharmaceutical services. No supplementary statement has been issued since Boots at Middleton Road closed.

Consideration

- 2.134 PSRC has considered the following:

2.134.1 Longer opening hours proposed by the applicant albeit that some of these are additional core hours.

2.134.2 There are 5 pharmacies within 20 minutes of the pharmacy and 14 within 2km

2.134.3 Whilst the May 2022 PNA considered there were no gaps, and there was a subsequent supplementary statement issued in November 2022, there has been no supplementary statement since the Boots branch at 370 Middleton Road closed at the beginning of February 2024.

2.134.4 The applicant has stated they are not currently accredited for services but would be willing to provide all services.

2.134.5 The next nearest pharmacy dispenses a very high volumes [sic] and this has increased further since the Boots branch closed (although the pharmacy which is Anna Pharmacy have not commented about taking on the additional dispensing and in fact have submitted a comment opposing the application).

2.134.6 There is no gap created by the closure of the Boots branch at 370 Middleton Road. The dispensing for Boots was fairly low and has been picked up by existing pharmacies. Whilst the dispensing for Anna Pharmacy has increased Pharmacy [sic] along with neighbouring pharmacies, this does not seem to have been an issue for any of the contractors as they have all objected to a new pharmacy opening.

18(1)(a)

- 2.135 *The ICB received a routine application and is required to determine whether it is satisfied that granting the application, or granting it in respect of some only of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB;*

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

18(1)(b)

- 2.137 *the improvements or better access that would be secured were or was not included in the relevant pharmaceutical needs assessment in accordance with paragraph 4 of Schedule 1 in determining whether it is satisfied as mentioned in section 129(2A) of the 2006 Act (regulations as to pharmaceutical services), the ICB must have regard to the matters set out in paragraph (2).*

- 2.138 The relevant PNA for this Application is the PNA published by Sutton HWBB in May 2022. This is the latest published PNA.

- 2.139 PSRC have determined that the Sutton Pharmaceutical Needs Assessment May 2022 ("the PNA") prepared by Sutton Health and Wellbeing Board, is the relevant PNA, conscious that the document provides an analysis of the situation as it was assessed at the date of publication. PSRC bears in mind that, under regulation 6(2), the body responsible for the PNA must make a revised assessment as soon as reasonably practicable (after identifying changes that have occurred that are relevant to the granting of applications) unless to do so appears to be a disproportionate response to those changes. Where it appears disproportionate, the responsible body may, but is not obliged to, issue a Supplementary Statement under regulation 6(3). Such a statement then forms part of the PNA. It is noted that the PNA was dated May 2022 and that there had been 1 supplementary statement issued, which was in November 2022. This statement pulled together some but not all the changes that have occurred since the PNA was published.
- 2.140 The applicant seeks to provide unforeseen benefits to open a pharmacy near to the premises where a Boots Pharmacy was located, these premises closed on 3rd February 2024, this is a best estimate and the details of the best estimate is given above. The improvements or better access that the Applicant was claiming would be secured by its application were not included in the relevant pharmaceutical needs assessment in accordance with paragraph 4 of Schedule1.
- 2.141 Therefore, the application would need to be assessed in accordance with the regulations under 18(2).
- 2.142 (2) *Those matters are –*
- (a) *whether it is satisfied that granting the application would cause significant detriment to –*
- (i) *proper planning in respect of the provision of pharmaceutical services in its area, or*
- 2.143 There are 14 pharmacies within 2kms of the application site, as the crow flies as per NHS Choices website. 5 of these pharmacies are within 20 minutes walk of the proposed site. Within the best estimate area there had been a pharmacy (Boots) located until the beginning of February 2024 and this had been considered when the PNA was developed. However, the volumes of dispensing for Boots was very low and the dispensing has been picked up by existing pharmacies, therefore granting a new pharmacy application could cause detriment to proper planning or the arrangement in place for pharmaceutical services.
- 2.144 **The PSRC have determined that the granting of this application may result in the over provision of essential services in the area. This may cause detriment to proper planning of pharmaceutical services or the arrangements in place for the provision of pharmaceutical services in this area. At present there is no evidence that this will be significant.**
- (ii) *the arrangements it has in place for the provision of pharmaceutical services in its area;*
- 2.145 The conclusions above relating to 18(2)(a)(i) applied equally to Regulation 18(2)(a)(ii).
- 2.146 **The PSRC have determined that they were not satisfied that significant detriment to the arrangements currently in place for the provision of pharmaceutical services would result from a grant of the application.**

- 2.147 **In the absence of any significant detriment as described in Regulation 18(2)(a), the PSRC was not obliged to refuse the application and went on to consider Regulation 18(2)(b).**
- 2.148 *(b) whether, notwithstanding that the improvements or better access were not included in the relevant pharmaceutical needs assessment, it is satisfied that, having regard in particular to the desirability of–*
- (i) there being a reasonable choice to obtaining pharmaceutical services in the area of the relevant HWB (taking into account also the NHSCB's duties under sections 13I and 13P of the 2006 Act (b)(duty as to patient choice and duty as respects variation in provision of health services)),*
- 2.149 There are 14 pharmacy contractors within [sic] which includes an LPS contract for out of hours which is co-located with another pharmacy. The LPS contract provides evening, weekend and bank holiday opening. There are 5 pharmacy contractors within a 20 minute walk of the proposed location. The full opening hours of these contractors is included in the report above.
- 2.150 **The PSRC determined that residents of this part of Sutton have a reasonable choice of pharmacies. Therefore, if the application were granted this would not secure improvements and better access to pharmaceutical services.**
- (ii) people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access (taking into account also the PSRC duties under section 13G of the 2006 Act(c) (duty as to reducing inequalities)),*
- 2.151 The applicant has provided a statement regarding protected characteristics and they state that patients with protected characteristics would only have access to one pharmacy. This would suggest that they are considering patient choice rather than access for patients with protected characteristics. This is dealt with in regulation 18(2)(b)(i).
- 2.152 There is nothing specific within the application that relates to people who share a protected characteristic that shows they are having difficulty in accessing services.
- 2.153 **The PSRC determined that, having regard to the desirability of people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that are difficult for them to access, granting the application would not confer significant benefits on such persons.**
- (iii) there being innovative approaches taken with regard to the delivery of pharmaceutical services (taking into account also the PSRC duties under section 13K of the 2006 Act(a) (duty to promote innovation)), granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant pharmaceutical needs assessment was published;*
- 2.154 **The PSRC has determined that there is nothing innovative as such in the application.**
- 2.155 **The PSRC have determined that they are not satisfied that there are innovative approaches with regard to pharmaceutical services within this application.**
- 2.156 Regulation 19 - Deferral
- 2.157 n/a as not deferred.

PSRC decision

- 2.158 PSRC have determined that there is enough information within the papers to decide the application without an oral hearing.
- 2.159 With regard to 31 2(a) PSRC have determined that this regulation is engaged and therefore went onto to consider regulation 31 2(b).
- 2.160 With regard to 31 2(b) PSRC have determined that this regulation is not engaged.
- 2.161 With regard to 18(1)(a) PSRC have determined that they were required to determine the application.
- 2.162 With regard to 18(1)(b) PSRC is satisfied that the application would need to be assessed in accordance with the regulations under 18(2).
- 2.163 With regard to 18(2)(a)(i) & (ii) In the absence of any significant detriment as described in Regulation 18(2)(a), the PSRC was not obliged to refuse the application and went on to consider Regulation 18(2)(b).
- 2.164 With regard to 18(2)(b)(i) PSRC have determined that they are satisfied that residents of this part of Sutton have a reasonable choice of pharmacies.
- 2.165 With regard to 18(2)(b)(ii) that PSRC have determined that they are satisfied that, having regard to the desirability of people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that are difficult for them to access, granting the application would not confer significant benefits on such persons.
- 2.166 With regard to 18(2)(b)(iii) PSRC have determined that they are not satisfied that there are innovative approaches with regard to pharmaceutical services within this application.
- 2.167 **The PSRC determined that the applicant has not fulfilled the criteria as required in regulation 18(1) & 18 (2) and therefore the Pharmaceutical Services Regulations Committee have determined to refuse the application.**
- 2.168 **Determination made by London PSRC on behalf of NHS South West London ICB."**

3 The Appeal

In a letter dated 29 January 2025 addressed to NHS Resolution, the Applicant's representative appealed against the Commissioner's decision. [Please note that any reference to Committee in this section is in relation to the Committee of the Commissioner]. The grounds of appeal are:

- 3.1 "We act for HD Pharmacy Limited and have enclosed a letter of authorisation confirming our instructions in this matter.
- 3.2 Our client has been notified by the London Pharmaceutical Services Regulations Committee, on behalf of South West London Integrated Health Board ("The ICB") that the above application, made pursuant to Regulation 18 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("The Regulations"), has been refused. I have enclosed a copy of their decision letter and report for your information.
- 3.3 Our client wishes to appeal this decision and we set out the key grounds for appeal below by reference to the ICB decision report.

(i) Regulation 18(2)(a)(i) – page 26 of the report

3.4 The Pharmaceutical Services Committee (“PSRC”) of the ICB determined that “granting the application may result in the over provision of essential services in this area” yet provides no evidence, other than reference to the number of pharmacies within 2km of the application site that this will be the case. The burden of proof in respect of demonstrating that there would be significant detriment rests with the ICB in this case, but in our client’s opinion it has failed to properly consider this matter.

3.5 It is difficult to see how granting this application could result in over provision when our client seeks to replace a pharmacy in the area which has recently closed.

(ii) Regulation 18(2)(b)(i) – page 26 of the report

3.6 The committee erred by focussing on the number of pharmacies within a 2km mile radius when reaching its conclusion in respect of choice. There is no evidence that the committee considered the specific access issues raised in our client’s application, which exist regardless of the number of pharmacies within this arbitrarily defined area.

3.7 The committee also made reference to a 20-minute walk-time without having regard to the fact that the PNA uses a 15-minute walk-time as its main measure of accessibility.

3.8 We have provided further detail below in respect of our client’s grounds for appeal as well as additional information to assist the Primary Care Appeals (“PCA”) Committee in considering this matter.

Background and Local Area

3.9 As can be seen within our client’s application and previous representations, this application was prompted by a reduction in the level of pharmaceutical services provision within the north Carshalton residential area. This followed the closure of the Boots Pharmacy located at 370 Middleton Road, Carshalton, SM5 1HA. This pharmacy closed in December 2023.

3.10 It is a matter of fact, not opinion, that the number of pharmacies serving the area, and therefore the choice in respect of service provision has reduced as a consequence of that closure. It is our client’s position that the effect of this closure is such that the residents of this area no longer have reasonable choice with regard to obtaining pharmaceutical services in the area of the Sutton Health and Wellbeing Board.

3.11 It is noteworthy that Boots and Anna Pharmacy co-existed at this location for at least 15 years, so patients became accustomed to having a choice of pharmaceutical services provider. Regardless of the fact Boots’ dispensing numbers were lower than Anna Pharmacy numbers, there were a significant number of patients who chose to access Boots and have since lost that choice. As discussed later, almost all the items that were being dispensed by Boots are now dispensed by Anna Pharmacy. Patients have clearly been unable, or unwilling to travel to other pharmacies, so it is clear they now have no meaningful choice.

3.12 The map below [provided for Committee at Appendix D] shows the location of the recently closed pharmacy marked by a blue pointer. Remaining pharmacies in the wider area are shown with a red pharmacy icon, except in the case of Anna Pharmacy, nearest to the proposed site, which is marked with a red circle.

3.13 It is very clear from this map that pharmaceutical services provision in the substantial residential area around the former Boots pharmacy is essentially limited to Anna Pharmacy. Other pharmacies are located some distance away and serve different populations.

- 3.14 The best estimate area for this application encompasses the parade within which the former Boots Pharmacy premises and Anna Pharmacy are located and is shown below.
- 3.15 As this map shows [provided for Committee at Appendix D], this is a significant shopping area with a wide range of businesses.

Reliant population

- 3.16 We have considered the characteristics of the resident population living around the proposed location who would be the likely users of a pharmacy at the location proposed by our client.
- 3.17 Whilst the current regulations do not require the decision maker to consider neighbourhoods and their boundaries, it is helpful to understand where the potential users of a pharmacy may live so an assessment can be made of whether their pharmaceutical needs are currently being met.
- 3.18 The map below [Appendix D for Committee] shows the proposed location marked with a red pointer.
- 3.19 It is apparent from this map that there are some physical / geographical features that are relevant in respect of how residents go about their daily lives.
- 3.19.1 To the north and west of the area there is a significant expanse of open space, comprising Poulter Park to the east and the St Helier open space to the west. This is largely open parkland, and whilst residents are able to access this space, it does form a natural boundary to the north and west of the proposed location that limits movement to an extent.
- 3.19.2 To the east, the River Wandle can be seen running north to south. This forms a natural boundary to the east of this residential area.
- 3.19.3 To the west, Wrythe Lane, which connects Carshalton to Morden, is a major traffic route that forms the recognised boundary between Carshalton and Sutton.
- 3.19.4 Physical boundaries to the south are less clear, but there is a gradual change in character of the area heading south towards the centre of Carshalton, with housing changing from largely post-war terraced properties around the proposed location to more traditional semi-detached houses in the south of the area.
- 3.20 Whilst it is not our client's case that these boundaries form physical barriers to movement between areas, it is natural that residents will be accustomed to accessing amenities within their 'neighbourhood'.
- 3.21 The location of the main amenities across this part of Carshalton and Sutton can be seen on the map below [Appendix D for Committee], where the significant shopping parades within the area are marked with stars. These are the area local residents gravitate towards to access many of their daily needs and each serves a relatively distinct population.
- 3.22 The shops and other amenities at our client's proposed location are apparent from the 'best estimate area' map provided above and include:
- 3.22.1 A post office
- 3.22.2 Several convenience stores

- 3.22.3 Several barbers and hairdressers
 - 3.22.4 Several takeaways
 - 3.22.5 Greengrocer / butcher
 - 3.22.6 Bakery
 - 3.22.7 Dry cleaners
 - 3.22.8 Bookmakers
 - 3.22.9 Café
 - 3.22.10 Tanning salon
 - 3.22.11 Substantial modern medical centre.
- 3.23 There are also other relevant amenities very nearby including a library, a leisure centre a school and a nursery.

Demographic data

- 3.24 We have considered data from the 2021 census to help understand the characteristics of the local population we have discussed above.
- 3.25 Whilst the boundaries do not fully align with the area we have described, the map below shows the 'middle layer super output area' (MSOA) Sutton 01, which largely encompasses the area around the proposed location. The blue star marks the best estimate area for this application.
- 3.26 Key demographic data from the 2021 census for this MSOA is as follows:
- 3.26.1 The resident population was 8,556 people.
 - 3.26.2 26.9% of households had no car or van compared to the national average of 23.5%.
 - 3.26.3 17.6% of the population had their day-to-day activities limited by disability compared to the national average of 17.3%.
- 3.27 At a slightly more local level (the lower layer super output area which incorporates postcode SM5 1HA), we have considered the relative level of deprivation, according to the Index of Multiple Deprivation published by the Ministry of Housing, Communities and Local Government in 2019.
- 3.28 This showed that the area was ranked 8,769 out of 32,844 areas in England, where 1 is the most deprived. i.e. it is within the top 27% most deprived areas in the country. It is ranked even lower for income deprivation at 6,624 out of 32,844 i.e. the top 20% most deprived areas.
- 3.29 So whilst these demographic measures may not be extreme, they do paint a picture of a population which is relatively deprived, has lower than average levels of car ownership and slightly higher than average levels of disability. These are factors which will inevitably impact on the extent to which local residents are in need of, and able to access, pharmaceutical services.

Existing provision of pharmaceutical services

- 3.30 We have considered the location of existing pharmacies in relation to the proposed site. Of course, most patients will have travelled from home or elsewhere to the proposed site, so the journey from the site to the nearest pharmacy may be an *additional* journey many will have to make if they require pharmaceutical services. However, considering these journeys is a useful starting point.

Anna Pharmacy, 398 Green Wrythe Lane, Carshalton, SM5 1JF

- 3.31 It is accepted that this pharmacy is located within the best estimate area provided in our client's application. We make no claims, therefore, that granting our client's application would significantly improve the geographical access to pharmaceutical services for local residents.
- 3.32 However, it remains our client's view that this pharmacy does not offer reasonable choice in respect of the accessibility of pharmaceutical services.
- 3.33 In respect of opening hours, our client has proposed 84 core opening hours per week, from 8am to 8pm 7 days a week. Anna Pharmacy opens from 9am to 7pm Monday to Friday, 9am to 5pm on Saturday and is closed on Sunday. We note from the report provided by the PSRC that the core opening hours only comprise 9am to 5pm Monday to Friday.
- 3.34 In other words, the provision of pharmaceutical services at this location is only secured for 40 hours per week, without any guaranteed evening or weekend provision whatsoever.
- 3.35 Secondly, as has been covered extensively in previous correspondence, this is an exceptionally busy pharmacy. Data provided in the PSRC decision report showed that pharmacy dispensed 27,955 items in July 2024 and 24,500 items in August 2024.
- 3.36 Further data for September (source: Pharmdata) shows the pharmacy dispensed 25,465 items. [Appendix D for Committee]
- 3.37 The graph above shows that the 'trend line' for item growth, provided in pink, shows significant growth over the 18 month period shown. Average prescription items increased by 19.0% from April 2023 to September 2024, amounting to a substantial increase in workload. The growth is due, in large part, to the closure of the Boots pharmacy. It appears that almost all the dispensing that was carried out by Boots has transferred to Anna Pharmacy.
- 3.38 Anna pharmacy is currently ranked as the 124th busiest dispensing pharmacy in the country and dispenses 3 time the national average number of prescription items. However, it is not a particularly large pharmacy, as can be seen in the image below: [Appendix D for Committee]
- 3.39 In terms of pharmacy services, the pharmacy provides around 80 Pharmacy First consultations per months, 190 NMS consultations per month and provided 955 Flu Vaccinations in October 2024.
- 3.40 It is very clear, therefore, that this is an exceptionally busy pharmacy.

Rosehill Pharmacy, 28 The Market, Wrythe Lane

- 3.41 The information provided by the ICB suggests that this pharmacy is 0.8 miles (18 minutes) away on foot. The map below shows the suggested routes from the former Boots premises to Rosehill Pharmacy according to Google Maps.

- 3.42 The 18-minute route (marked with the dotted line)[Appendix D for Committee] requires walking alongside the park for much of the route. Even for those residents able to walk this distance, this route would not be an attractive prospect after dark.
- 3.43 The other two routes also involve walking either through or alongside the park for some of the journey.
- 3.44 Patients who wish to access this pharmacy on foot, therefore, may have to walk for approximately 20 minutes in each direction (or possibly more depending on where they live), using a potentially undesirable route, to an area they would otherwise have no reason to visit.
- 3.45 In their letter of objection, Anna Pharmacy cite extracts from the PNA (taken from page 43) which refers to both 15 minute and 20-minute walk-times when assessing accessibility. It is noteworthy that this pharmacy is at the upper end of this walk-time.
- 3.46 Given that 17.6% of residents have their day-to-day activities limited by disability, this would not be an acceptable journey for a significant proportion of the population.
- 3.47 For motorists, it is noteworthy that there is no parking outside Rosehill Pharmacy. There are a limited number of parking bays along Wrythe Lane, but there are relatively few given the number of shops at this location.
- 3.48 Whilst there is a bus service that connects the proposed location with the parade in which Rosehill Pharmacy is located, there is, of course, a charge associated with using the bus. Given that the pharmacy is located within an economically deprived area there are clearly some residents for whom paying bus fares to access a pharmacy could be a barrier to access.
- 3.49 The ICB also provide information in respect of the extended hours LPS contract at the same site. We note that whilst this provides pharmaceutical services in the evenings (7.30pm to 10.30pm Monday to Friday, 7pm to 10pm on Saturday and 5pm to 10pm on Sundays), Rosehill Pharmacy does not open at all during the day on Sundays (until the 5pm LPS contract starts) and does not have any core hours on Saturdays.
- 3.50 Granting our client's application would secure provision between 8am and 9am from Monday to Friday and all day on both Saturdays and Sundays. This is far in excess of the current core hours provided in this area.

MPS Pharmacy, 46-47 The Market, SM5 3HE

- 3.51 This pharmacy is located in the same parade as Rosehill Pharmacy (albeit it is slightly further away), so the same considerations apply in respect of accessibility from the proposed location.

Salmina Pharmacy, 107 Wrythe Lane, SM5 2RR

- 3.52 In a similar vein to the other pharmacies above, the walk from the proposed location to Salmina Pharmacy is approximately a mile (depending on the exact route) and takes approximately 20 minutes to walk at average pace. This also requires residents travelling to an area they would otherwise have no reason to visit.
- 3.53 The pedestrian route to this pharmacy is shown on the map below. [Appendix D for Committee]
- 3.54 For motorists, there is parking outside this pharmacy but public transport users face the same issues in terms of costs.

- 3.55 Other pharmacies in the wider area are even further away, so are less accessible than those discussed above.
- 3.56 To summarise, in respect of the existing pharmacies that patients living in and around the proposed area may wish to access, the challenges are as follows:
- 3.56.1 The pharmacy located near to the proposed site is exceptionally busy in respect of both dispensing and other pharmacy services. It is inevitable that this pharmacy will be put under increasing strain as dispensing continues to grow and service levels to patients are likely to fall. Furthermore, this pharmacy does not offer any significant extended opening hours and, in fact, its core hours only cover Monday to Friday from 9am to 5pm.
- 3.56.2 The next nearest pharmacies all require a significant journey for patients to reach them. Those residents lucky enough to own a car may be able to drive to pharmacies in the wider area but, in common with all areas in Greater London, traffic congestion can be a significant issue at certain times of the day. Furthermore parking might not be possible near all of these pharmacies.
- 3.56.3 Residents who don't have access to private transport may be prepared to walk, but the distance is at the edge of what would be considered reasonable by a fit and able person to access a community pharmacy in a densely packed urban setting.
- 3.56.4 Those people unable or unwilling to walk may have no choice but to incur costs to use public transport that they may struggle to afford. In our opinion it is not reasonable to expect patients living in a densely populated area with access to a wide range of amenities to rely on a bus service each and every time they require pharmaceutical services.

Existing provision of medical services

- 3.57 We have considered the medical centres that are currently the nearest to the proposed site. These were discussed at the time of the application, but we have updated some of the information provided below.

Circle GP surgery, 411A Green Wrythe Lane, Carshalton, Surrey, SM5 1JL

- 3.58 The main surgery serving the local population is located within the Green Wrythe Lane Clinic, referred to in our client's application at the Circle GP Practice.
- 3.59 This is a substantial, modern, purpose-built health centre as can be seen in the image below: [Appendix D for Committee]
- 3.60 This medical centre is located opposite the parade which forms the best-estimate area.
- 3.61 The latest data available (source Pharmdata) shows that this practice prescribed 19,167 items in September 2024. Of these, 15,821 (82.5%) were dispensed by Anna Pharmacy.
- 3.62 It is clear, therefore, that this surgery and Anna Pharmacy are very reliant on each other. This supports the argument made earlier that this area is relatively self-contained, with relatively few patients who attend this surgery choosing to travel out of the area to access pharmaceutical services.
- 3.63 In fact, the next largest dispenser of items that originate from this medical centre is MPS Pharmacy which dispensed 668 items from this surgery in September 2024 i.e. only 3.5% of all items prescribed.

Bishopsford Road Medical Centre, 191 Bishopsford Road, Morden, Surrey, SM4 6BH

- 3.64 This is a smaller medical centre, located 0.5 miles (by road) to the north west of the proposed site.
- 3.65 This medical centre operates from a dated converted house and prescribes approximately 10,500 items per month. Of these items, in September 2024, 35.3% were dispensed by MPS Pharmacy, 31.3% (3,288 items) were dispensed by Anna Pharmacy and 11% were dispensed by Rosehill Pharmacy.
- 3.66 Other medical centres are significantly further away, so are of limited relevance to this application.

Other information

- 3.67 In order to assess the level of support for this application, our client arranged to run a short survey over a two days period for Sunday 26th January (4 hours) and Monday 27th January 6 hours (total - 10 hours) to understand whether patients were happy with the current level of provision and what concerns, if any, they may have.
- 3.68 Over that 2 day period, 168 people completed a short questionnaire. A redacted copy of these responses is attached with this appeal [provided at Appendix E for Committee]. We have supplied an unredacted copy to NHS Resolution separately.
- 3.69 Whilst there were some respondents who said they were satisfied with the current provision, many welcomed the prospect of extended opening hours and a number highlighted concerns with existing providers such as waiting times. The majority of people who completed the questionnaire were either dissatisfied or highly dissatisfied with the current level of provision.
- 3.70 A summary of the methodology and the findings of this survey has been included as appendix 5.

Regulatory tests

Regulation 18(1)

- 3.71 As a preliminary matter, the Primary Care Appeals Committee (“the Committee”) will need to consider whether our client’s application meets the test set out in Regulation.
- 3.72 18(1) as follows (emphasis added):

18.—(1) If—

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

*(b) **the improvements or better access that would be secured were or was not included in the relevant pharmaceutical needs assessment in accordance with paragraph 4 of Schedule 1, in determining whether it is satisfied as mentioned in section 129(2A) of the 2006 Act(a) (regulations as to pharmaceutical services), the NHSCB must have regard to the matters set out in paragraph (2).***

- 3.73 The effect of Regulation 18(1) is that if the improvements, or better access being proposed by our client were included in the PNA, the Committee might conclude that the test in 18(1) was not met as the benefits being proposed were not unforeseen.
- 3.74 It has been noted by several of the parties who commented on our client's application that the current Sutton PNA does not discuss the proposed location.
- 3.75 Furthermore, there is no evidence that the HWB has either updated the PNA or even issued a relevant supplementary statement since the Boots pharmacy closed. In fact, the Sutton HWB appears to have only produced one supplementary statement since the PNA was published, and that was in November 2022, long before the Boots pharmacy closed.
- 3.76 That being the case, in our opinion the application should not be refused in accordance with Regulation 18(1) and the Committee is able to consider the remaining tests in Regulation 18.

Regulation 18(2)(a)(i)

- 3.77 This part of Regulation 18 requires the ICB to consider the matter of detriment. The ICB are able to refuse an application if granting it would result in significant detriment as discussed in Regulation (18)(2)(a), parts (i) & (ii).

- 3.78 The wording relevant to part (i) is provided below.

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

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

- 3.79 The decision report states (on page 26):

- 3.80 *There are 14 pharmacies within 2 kms of the application site, as the crow flies as per NHS Choices website. 5 of these pharmacies are within 20 minutes walk of the proposed site. Within the best estimate area there had been a pharmacy (Boots) located until the beginning of February 2024 and this had been considered when the PNA was developed. However, the volumes of dispensing for Boots was [sic] very low and the dispensing has been picked up by existing pharmacies, therefore granting a new pharmacy application could cause detriment to proper planning or the arrangement in place for pharmaceutical services.*

- 3.81 ***The PSRC have determined that the granting of this application may result in the over provision of essential services in the area. This may cause detriment to proper planning of pharmaceutical services or the arrangements in place for the provision of pharmaceutical services in this area. At present there is no evidence that this will be significant.***

- 3.82 There are a number of flaws in this statement. Firstly reference to the number of pharmacies within a certain distance 'as the crow flies' is rarely helpful as patients do not fly. As we have already described, the journeys to many of the pharmacies in the area are lengthy and convoluted so it is not the case that opening a pharmacy at the proposed location would impact up to 14 existing pharmacies.

- 3.83 The PSRC then go on to suggest that granting the application may result in over provision and that this may cause detriment to proper planning without explaining how this will come about, although they then acknowledge that there is no evidence any such detriment would be significant. Given that the test in Regulation 18(2)(a) refers to

any detriment being significant it is clear that there are no grounds to refuse the application in accordance with 18(2)(a).

- 3.84 The ICB then went on to consider the second part of Regulation 18(2)(a) and state “*The conclusions above relating to 18(2)(a)(i) applied equally to Regulation 18(2)(a)(ii).*” No explanation is provided in respect of this statement.
- 3.85 We do note that the PSRC correctly concluded within their report that they were not obliged to refuse the application in respect of 18(2)(a) but it appears to us that there was some muddled thinking that may have influenced their overall decision.

Regulation 18(2)(b)(i) – Choice

- 3.86 In forming its opinion on the matter of choice, the ICB concluded that there was a reasonable choice based on the following assumptions:
- 3.87 *There are 14 pharmacy contractors within which [sic] includes an LPS contract for out of hours which is co-located with another pharmacy. The LPS contract provides evening, weekend and bank holiday opening. There are 5 pharmacy contractors within a 20- minute walk of the proposed location. The full opening hours of these contractors is included in the report above.*
- 3.88 ***The PSRC determined that residents of this part of Sutton have a reasonable choice of pharmacies. Therefore, if the application were granted this would not secure improvements and better access to pharmaceutical services.***
- 3.89 Again the PSRC refers to 14 pharmacy contractors. Whilst this is not stated explicitly, we assume this refers to the 14 pharmacies within a 2km radius discussed above.
- 3.90 There is no evidence that the PSRC considered the accessibility of most of these pharmacies, both in respect of physical access and opening hours, so it is unclear how they could be satisfied that these pharmacies contributed to the choice available to patients.
- 3.91 They go on to state that “5 of these pharmacies are within a 20-minute walk of the proposed site”. This presumably corresponds with the table provided on pages 21 and 22 of the PSRC report.
- 3.92 Firstly, there are 4, not 5, pharmacies in this table. Whilst the LPS contract (FMR49) may be separate to the standard contract at the same location (FLQ03), from a patient perspective it is the same pharmacy.
- 3.93 Secondly, as we have discussed, with the exception of Anna Pharmacy, each of these other pharmacies listed are at the upper limit of the 15-20-minute walk-time discussed in the PNA. For the reasons we have provided earlier, the journey to both Rosehill Pharmacy (where the LPS extended hours contract operates) and MPS Pharmacy is not straightforward. It is our contention that a significant number of patients would be uncomfortable walking through, or alongside, the park in the dark to access these pharmacies. The other pharmacy listed (Salmina) is located within an area that residents of the proposed location would have absolutely no reason to visit.
- 3.94 In our opinion, it is not reasonable to expect patients who live in a very densely populated area to make a round trip of approximately 40 minutes on foot to access pharmaceutical services if they wish to exercise choice.
- 3.95 In respect of patient choice when it comes to extended opening hours, we ask NHS Resolution to consider the extent to which this is accessible for residents of the proposed area.

- 3.96 Anna Pharmacy, when considering opening hours, state (on page 10 of the PSRC decision report):
- 3.96.1 *I have noted that since the Sutton Pharmaceutical Needs assessment was published in 2022 only one pharmacy (Boot Middleton Road) has closed. The Sutton Pharmaceutical list shows out of 41 Community Pharmacies*
- 3.96.2 *36 community pharmacies Are opened Saturday [sic].*
- 3.96.3 **7 Community Pharmacies are open 7 days a week.**
- 3.97 A map is provided on page 171 of the Sutton PNA (Map C) showing the opening hours of community pharmacies in Sutton. We have reproduced this map as Appendix 4 to this report and marked the proposed location with a red star.
- 3.98 The map shows 7-day opening pharmacies marked with green circles. As this map shows, 7-day provision close to the proposed site is very limited.
- 3.99 The nearest 7-day pharmacy to the proposed site is Tesco Pharmacy at 55 Oldfields Road, Sutton, SM1 2NB. This is located 1.8 miles away via the shortest route on foot; a journey of more than 40 minutes in each direction for those people able to walk.
- 3.100 Other 7-day pharmacies are located significantly further away and one of those shown in the PNA, located in Sainsburys in Cheam (highlighted in yellow on the map in Appendix A) has subsequently closed.
- 3.101 Furthermore, in respect of opening hours, as we have discussed earlier Anna Pharmacy only opens six days a week and is in fact only contracted to open 5 days a week according to its core hours. Even the LPS contract does not provide full seven-day coverage because there is no daytime opening on Sundays.
- 3.102 Anna Pharmacy also comment that 41 out of 42 pharmacies listed in the Sutton PNA have remained open. Whilst this is not accurate (as the Lloyds Pharmacy in Sainsbury's has also closed), it also misses the point that for residents of the proposed area the reduction in choice has been very significant.
- 3.103 Whilst choice across the HWB area as a whole may have only reduced slightly, provision within the area our client proposes to serve has reduced by 50%.
- 3.104 It is worth considering that, where a pharmacy closes, patients are very aware that the extent to which they have choice of pharmaceutical services provision has reduced. They feel this lack of choice more acutely than they would do if the pharmacy was never there in the first place.
- 3.105 Taking all these factors into account, it is our client's opinion that patients within the proposed area no longer have reasonable choice in respect of access to pharmaceutical services.

Regulation 18(2)(b)(ii) – Patients with protected characteristics

- 3.106 In its report, the committee stated:
- 3.107 *The applicant has provided a statement regarding protected characteristics and they state that patients with protected characteristics would only have access to one pharmacy. This would suggest that they are considering patient choice rather than access for patients with protected characteristics. This is dealt with in regulation 18(2)(b)(i).*

- 3.108 *There is nothing specific within the application that relates to people who share a protected characteristic that shows they are having difficulty in accessing services.*
- 3.109 ***The PSRC determined that, having regard to the desirability of people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that are difficult for them to access, granting the application would not confer significant benefits on such persons.***
- 3.110 Whilst every patient shares a protected characteristic, those relevant to the decision maker are protected characteristics specifically relating to a patient's ability to access pharmaceutical services i.e. disability. Clearly patients who suffer a disability will be adversely affected where the journey they have to make to a pharmacy is lengthy or the nature of the route is challenging.
- 3.111 Within this appeal we have highlighted that there is a very substantial population in close proximity to the proposed location and a significant numbers [sic] of those residents find their day-to-day lives are limited through disability. Within the MSOA discussed earlier, this amounts to more than 1,500 people.
- 3.112 For these people the journey to a community pharmacy, particularly if they do not have access to a car, can be significantly more difficult than it is for a person who does not have any disabilities.
- 3.113 Evidence has therefore been provided in this appeal of patients 'sharing a protected characteristic with difficulty accessing services that meet a specific need.'

Regulation 18(2)(b)(iii) – Innovation

- 3.114 We are aware it is difficult to provide evidence of innovation (in such a way that this regulatory test is met) given the narrow definition of pharmaceutical services and the inability to offer these innovatively when commissioning and specification of services is inflexible.
- 3.115 That being the case our client is not advancing an argument of innovation.

Conclusion

- 3.116 We believe there is conclusive evidence in respect of the need for a pharmacy at the proposed location.
- 3.117 The proposed location serves large, densely populated, area where residents can access many of their daily needs, including medical services.
- 3.118 The existing pharmacy is exceptionally busy, with limited capacity to accommodate additional demand for dispensing or other pharmaceutical services.
- 3.119 Patients do not have reasonable choice in respect of access to pharmacies in the wider area. It is clear from the questionnaires collected by the person who carried out the surveys that there is significant support for this pharmacy both to extend the opening hours that pharmaceutical services are available and to provide choice for patients who are not satisfied with the provision currently in place.
- 3.120 What our client offers is a choice for patients. The closure of Boots has left a void, no matter how big or small it may be, but the fact is there is a need for an additional pharmacy to offer choice, even if the majority of patients continue to use Anna Pharmacy. Providing an additional pharmacy within the parade is not about competition with Anna Pharmacy, it is about giving choice for patients and consumers of the NHS and it is about improving access for the residents and visitors to the area.

- 3.121 Anna Pharmacy criticises our client's application as there is no doubt that they consider the application as a threat. However, our client would like to think of it as a partnership in serving the patients/consumers' need rather than competition.
- 3.122 We therefore urge Primary Care Appeals to overturn the decision of the ICB and grant this application accordingly.
- 3.123 Our clients would wish to attend an oral hearing should the committee decide to convene one."

4 Summary of Representations

This is a summary of representations received on the appeal.

4.1 THE COMMISSIONER

- 4.1.1 "I am responding to this appeal on behalf of London PSRC.
- 4.1.2 This response should be read in conjunction with the decision report, we have only responded to points in the appeal within this letter.
- 4.1.3 It should be noted that when a pharmacy closes, it is not automatic that another one has to replace this pharmacy. The best estimate provided by the applicant includes the location of Anna Pharmacy and so whatever the final location, this would be nearby to Anna Pharmacy.
- 4.1.4 The appeal describes the walk to other pharmacies as being undesirable as it is via the green spaces in the area. There are a number of routes to these pharmacies, but in all of these at some point it involves walking next to a green space on one side and most often houses on the other. These are not walks in places that are desolate and have no one else walking there. The roads have street lighting and depending on which way is walked (if via the road past St Helier Hospital) can also include the local buses. In some places it appears that the green space is fenced off.
- 4.1.5 When the PNA describes access to pharmacies it states that residents are within a 15 minute walk of a pharmacy not a choice of pharmacies. As there is a pharmacy, Anna Pharmacy within the best estimate location of the pharmacy application, this information from the PNA would not be any different from when it was published.
- 4.1.6 Patients do have a choice of pharmacies, albeit some are approx. 20 minutes walking distance. Those with cars would have a further choice of pharmacies but may depend on the availability of parking nearby.
- 4.1.7 The distances quoted in the report are of walking distances and not "as the crow flies". The report has a table with direct line distances and walking distances for each pharmacy. The figures quoted are a walking distance, which range from 1 minute to 20 minutes. Anna Pharmacy is 1 min, Rosehill Pharmacy & Sutton & Merton OOH Co-op (which operate in the same premises but different times) is 18 mins, Salmina is 19 mins and MPS pharmacy is 20 mins.
- 4.1.8 London PSRC has determined that the application does not fulfil the criteria as required within the regulation 18(2) and therefore refused this application and believes that the appeal should be dismissed."

4.2 ANNA HEALTHCARE LTD T/A ANNA PHARMACY AND TRAVEL CLINIC

- 4.2.1 “I act for Anna Healthcare Limited t/a Anna Pharmacy and Travel Clinic who operate a pharmacy at 398 Green Wrythe Ln, Carshalton SM5 1JF and have been instructed to submit this reply to the above referenced appeal from H D Pharmacy Limited.
- 4.2.2 PSC (on behalf of the Applicant) make some limited criticism of the Commissioner’s decision and then provides some background information and we do not comment on this part of their appeal letter.
- 4.2.3 It is not disputed that Boots pharmacy at 370 Middleton Road closed. PSC then focuses on the same very small area highlighted in their client’s original application and state that (in relation to my client’s pharmacy and the Boots pharmacy that closed), “*patients became accustomed to having a choice of pharmaceutical services provider*”.
- 4.2.4 PSC is still unable to provide any sensible rationale for limiting their consideration of reasonable choice to the small area around my client’s pharmacy and their approach finds no support in the Regulations.
- 4.2.5 The map provided by PSC is helpful as it shows open land (Poulter Park and St Helier Open Space) immediately north of my client’s existing pharmacy and 5 other pharmacies located to the north, south, east and west of my client’s pharmacy. The map shows that there is no geographical gap in pharmacy coverage.
- 4.2.6 PSC states that other pharmacies are “some distance” from my client’s pharmacy. Clearly any pharmacy would be “some distance” from another pharmacy, even if it were only a matter of a few metres, but there is no evidence whatsoever provided in support of the claim that other pharmacies “serve different populations”. My client serves patients from the entire area of the map provided by PSC. From my client’s discussions with other local pharmacies, they have confirmed that they serve patients who live in the area immediately around my client’s pharmacy as well as other areas covered by the map. PSC’s submission is simply wrong.
- 4.2.7 PSC then confirms that their client could open a pharmacy directly beside my client’s existing pharmacy at the same parade of shops if their application was approved. This clearly does nothing to improve accessibility of pharmaceutical services.
- 4.2.8 PSC then discusses the “reliant population” and appears to attempt to define a “neighbourhood”. Irrespective of the fact that this ignores the real movements of people and is based purely on geography, the black stars on the second map provided by PSC helpfully show that each shopping area that residents may gravitate towards is served by an existing pharmacy.
- 4.2.9 PSC then provides statistics relating to either a small, or very small area around my client’s existing pharmacy. These are uncontentious and show a relatively “normal” area. In our initial reply to this application we provided additional census data which is copied again below for reference.
- 4.2.9.1 *The location is on the border of two wards, namely St Helier East Ward and St Helier West Ward. The combined population of these two wards is just under 20,000 and the patient list of the practice referred to by the Applicant as Circle GP Practice/Carshalton Clinic is approximately 10,600. It is reasonable to assume that there is a significant overlap between those who live in the two wards and those who are registered at the GP practice. Clearly not all of the registered patients live within*

the best estimate that has been provided by the Applicant and instead they will be spread out across the wider area, with many living closer to existing pharmacies such as Salmina, MPS, Kamsons or Rosehill Pharmacy than they do to the surgery or my client's pharmacy.

4.2.9.2 *Approximately 75% of those who live in these wards have access to one or more cars. The Applicant notes that the location where my client operates their pharmacy from has ample parking and that the shops are well-used and we agree with that assessment.*

4.2.10 PSC suggests that the statistics they have provided, which relate to a small area around my client's existing pharmacy "will inevitably impact on the extent to which local residents are in need of, and able to access, pharmaceutical services.". This statement is illogical as their client is applying to open at the same location as my client's existing pharmacy and would not be of any benefit to any person who found physical access to any existing pharmacy to be difficult.

4.2.11 PSC then goes on to consider "Existing provision of pharmaceutical services" and states in relation to the existing Anna Pharmacy;

4.2.11.1 *"However, it remains our client's view that this pharmacy does not offer reasonable choice in respect of the accessibility of pharmaceutical services."*

4.2.12 It appears that, despite considering services offered by local pharmacies, PSC is again limiting the consideration of reasonable choice to the single shopping parade where my client is already located and where PSC's client wishes to open. Such an approach finds no support in the Regulations.

4.2.13 It is not disputed that my client's pharmacy is busy, but those are not grounds for permitting the opening of an additional pharmacy. If such rationale were accepted, then new pharmacies would be permitted to open beside all such "busy" pharmacies. Such an approach finds no support within the Regulations, which instead focus on the issues of accessibility and reasonable choice.

4.2.14 My client's pharmacy is perfectly accessible for any person in the vicinity of the proposed application site. For those who are not using the local shops and services there are numerous other pharmacies in the area.

4.2.15 In respect of Rosehill Pharmacy, PSC claims that the walk beside the park "*would not be an attractive prospect after dark*". PSC fails to provide any pictures showing this walk and we have therefore provided one below that shows the walk is along a normal road, with street lighting, houses on one side, pavements, dropped curbs etc. [Provided to Committee at Appendix F]

4.2.16 It is not clear what part of this walk the Applicant or PSC believe is difficult or dangerous. It is likewise unclear why a patients [sic] would walk from the location of my client's pharmacy to Rosehill Pharmacy unless they lived in the area of Rosehill Pharmacy. There is simply no logic to the points being made by the Applicant.

4.2.17 The Applicant now accepts that public transport which is available for those who do not have or do not wish to use a car. MPS Pharmacy and Rosehill Pharmacy are located on the S1 and 151 bus routes and takes between 9 minutes and 11 minutes to access by bus (including walking time).

- 4.2.18 Similarly, Salmina Pharmacy is likewise located on the S1 bus route and takes 14 minutes to access (including walking time).
- 4.2.19 Kamsons Pharmacy is just off the 151 bus route and takes 11 minutes to access via the 151 bus and a short walk. Whilst being easier to access by bus than Salmina Pharmacy, the Applicant does not even consider access to Kamsons as they claim it is “[not] relevant to this application due to the distance from the proposed site” (from original application documents).
- 4.2.20 PSC claims that having to pay bus fares “*could be a barrier to access*”, however as there is a pharmacy already at the location for this application it is unclear why a patient would wish to travel away from (and presumably back to?) the same area by bus.
- 4.2.21 The same points as above apply to PSC’s consideration of access to alternate pharmacies. None of the highlighted pharmacies are difficult to access, all are accessible using public transport or car and the Applicant is unable to claim otherwise.
- 4.2.22 PSC provides some information in relation to local medical centres which is unremarkable, save to note that they again pursue a suggestion that only the very narrow area of a single parade of shops should be considered where the issue of reasonable choice is concerned. Clearly this is incorrect.
- 4.2.23 The remainder of the letter of appeal repeats the legal test or comments on the Commissioner’s decision and we do not address those points separately and rely on the information we have already provided in this letter and my client’s original letter of objection of 17 June 2024.
- 4.2.24 The Applicant has provided a “SHORT SURVEY FOR A PROPOSED NEW PHARMACY” at page 49 of the appeal letter bundle. The Committee will no doubt recognise just how poorly thought through this survey was. The accompanying letter claims that the person who undertook the survey was shouted at and stayed inside the supermarket and it may not surprise the Committee to note that the same person then produced a survey that did not support my client.
- 4.2.25 The letter accompanying the survey says it was carried out by CJ Enviro Atelier Ltd. No such company exists although a company with a similar name exists but appears to be an architectural design practice based in Surrey.
- 4.2.26 Somewhat bizarrely the accompanying letter to the survey states that;
- 4.2.26.1 *“In our opinion about 99% of people who done the survey was very happy for the proposed pharmacy going to open 7 days a week and late night”*
- 4.2.27 Such an “opinion” is not any way supported by the survey results that have been submitted and this demonstrates clear bias.
- 4.2.28 Irrespective of the above, the survey is of no real probative value. The Applicant argues in their appeal that patients find it difficult to access pharmacies other than my client’s pharmacy – but this is not supported by the survey. Similarly, the Applicant argues that there is not a “reasonable choice” and this is also not supported by the survey. The survey does not provide evidence upon which any decision maker could safely rely.

- 4.2.29 In summary, granting the application would not secure improvements or better access to pharmaceutical services and a reasonable choice of contractors is already available within the local area and the application should be refused.”

4.3 BOOTS UK LIMITED

- 4.3.1 “Thank you for your letter dated 13 February 2025 informing us of the above appeal. We agree with the decision of the ICB and their reasoning for refusing the application.
- 4.3.2 We have no further comments to make in addition to those submitted to the ICB, a copy of which is enclosed for your information.
- 4.3.3 We would be grateful if you would inform us of the outcome of this appeal in due course.”

LETTER DATED 25 JULY 2024

- 4.3.4 “Thank you for your letters dated 12 June 2024 and the above application. Boots UK Limited have the following comments to make.
- 4.3.5 Whilst we accept that the application is based on benefits not foreseen when drafting the Pharmaceutical Needs Assessment (PNA), it is clear the application is purely based on the recent closure of the Boots pharmacy.
- 4.3.6 As the ICB will be aware, the closure of a pharmacy within an area does not automatically create a gap and should a gap have arisen because of such a closure, then the PNA should be updated to reflect this. To our knowledge no changes have been made within the current PNA for Sutton or any supplementary statements produced. We would therefore suggest that the closure of the pharmacy in the locality has not resulted in a gap to pharmaceutical services and that the Health and Wellbeing board recognise that the existing network of pharmacies can cope should there be any increase in demand?
- 4.3.7 NHS Choices states that there are 8 pharmacies within 1 mile of the estimated postcode and a further 15 within 1.5 miles, a total of 23 pharmacies within 1.5 miles of the proposed location. We submit that these pharmacies offer patients a choice of opening hours, services, and provider.
- 4.3.8 We do not believe that the applicants are offering to secure any innovation by way of services or delivery.
- 4.3.9 For these reasons we respectfully urge the ICB to refuse this application.
- 4.3.10 Please be aware that we may wish to make further representations at a later stage and attend any oral hearings that may be held in relation to the applications. We would therefore be most grateful if you could keep us informed of the progress of this application in due course.”

4.4 KAMSONS PHARMACY

- 4.4.1 “Thank you for your letter dated 13 February with details of the above appeal.
- 4.4.2 The PSRC, on behalf of the ICB, thoroughly followed the due process and made the correct decision. The application does not meet the regulatory tests and should be refused.

- 4.4.3 I am surprised that the applicant has appealed and is suggesting that there is not a reasonable choice in the area. Carshalton, like most of London, is well served by a large number of pharmacies and excellent public transport when compared to the rest of the country. The Borough of Sutton is unusual in that it already commissions an extended hours pharmacy provision, under a LPS contract, half a mile away which is only a few minutes drive or a 18 minute walk away. This pharmacy is open until 10.30pm each weeknight and until 10pm each weekend.
- 4.4.4 There is already excellent access to pharmaceutical services over extended hours. It is not axiomatic that because a pharmacy, already in the area, may be dispensing more than the national average or that another pharmacy would meet any unforeseen benefits.
- 4.4.5 The applicant states that because those small minority of patients that used to use the Boots pharmacy are now using Anna Pharmacy that there is no choice for them. As the PSRC report shows, there is plenty of choice within a reasonable distance and the reason why patients choose to use Anna Pharmacy is because of its highly regarded service. The applicant themselves state that not only is it a popular pharmacy for dispensing prescriptions but also for providing a full range of advanced services at volume.
- 4.4.6 At our two pharmacies in the area, we do not recall anyone mentioning any complaint about Anna Pharmacy. The applicant has had to resort to using a market researcher to conduct an on-street survey in order to find something to use against Anna Pharmacy. However, I am unsure of what accreditation or qualifications Binu, who signed the letter entitled *Short survey for a proposed new pharmacy* has? The letterhead is from CJ Design Atelier Ltd. This company does not appear on Companies House. However, the similarly named CJ Enviro Atelier Ltd, at the same address, does with number 07804273 and the stated nature of the business being "*Architectural activities*". The company website shows the range of building projects they have been involved with but there is no mention of market research.
- 4.4.7 Perhaps the applicant may be able to elaborate whether Binu has a certificate from and is accredited with the Market Research Society or why an *architectural activities* company is undertaking such market research. The final sentence in the letter indicates that the market researcher may not be entirely independent of the client.
- 4.4.8 There is already a good choice of pharmacies providing an excellent service over extended hours. This decision of the ICB should be upheld and this appeal refused."

5 Observations

5.1 PHARMACY SALES & CONSULTANCY (ON BEHALF OF THE APPLICANT)

- 5.1.1 "Thank you for your letter dated 20th March enclosing third party comments in respect of this appeal.
- 5.1.2 We continue to act for the applicant, HD Pharmacy Limited, and wish to make the following final observations in response.

Letter from Boots dated 26th February

- 5.1.3 We note that Boots do not make any new comments, but refer to their representations to the ICB. As we have previously commented on those representations we have nothing further to add.

Letter from NHS England dated 9th March

- 5.1.4 Whilst we accept the principle that the closure of one pharmacy does not automatically lead to the conclusion that a new application *must* be granted, our client maintains its position that there is significant evidence for the need for an additional pharmacy in this area regardless of the proximity to Anna Pharmacy.
- 5.1.5 In respect of the green spaces mentioned, it is easy to dismiss our comments based on a quick review of Google Maps to form a view on the local geography. However, the reality for a potentially vulnerable person walking past open green spaces (even where fences are provided) in the dark is that they may feel uncomfortable doing so. If they are concerned about making this journey on foot to the extent they decide not to make the journey at all, it is clear that their choice has been diminished.
- 5.1.6 The Regulations require the decision makers to consider the matter or 'reasonable choice'. The 15 minute walk-time discussed in the PNA is a measure of what distance it may be reasonable for a person to walk to a pharmacy. If the distance to every pharmacy other than Anna Pharmacy is more than a 15 minute walk then it follows that the only choice patients have is to attend Anna Pharmacy. Reference by NHS England to other pharmacies 20 minutes away offering additional choice contradicts this PNA measure.

Kamsons Pharmacy – letters dated 10th March

- 5.1.7 We note the comments made by Kamsons in respect of the number of pharmacies in Carshalton and the public transport network. These are matters that have already been addressed within our client's application and appeal. Kamsons do not provide any information that contradicts the evidence we have submitted previously.
- 5.1.8 In respect of the extended hour pharmacy opening under an LPS contract, as we have discussed previously, for patients who are unable to access that pharmacy it provides no benefits. Furthermore, it does not open during the day on Sundays. Granting our client's application would ensure additional choice in respect of extended hours provision. It would also provide additional capacity in the network given the high volume of dispensing at Anna Pharmacy.
- 5.1.9 The comments made by Kamsons in respect of why patients might use Anna Pharmacy are nothing more than speculation. It is clear from the survey commissioned by our client that there are a significant number of patients who support the opening of an additional pharmacy because they feel there is not currently reasonable choice.
- 5.1.10 Kamsons comment that they do not recall anybody visiting their pharmacies complaining about Anna Pharmacy. This supports our position that residents are not able to exercise reasonable choice. Those who are able to visit the Kamsons Pharmacy are clearly in a position to exercise choice so they will have nothing to complain about. It is those patients who are not able to get to any other pharmacy who no longer have reasonable choice.
- 5.1.11 We note the comments made by Kamsons regarding the credentials of the market research used by our clients to canvas local public opinion. Whether or

not the research has been carried out by a recognised market research company is entirely irrelevant. Our client stands by its assertion that the data gathered has been presented in full and accurately reflects the comments made by the individuals who responded.

- 5.1.12 We ask that the Primary Care Appeals Committee takes into account and respects the opinions expressed by those individuals who felt strongly enough to provide their views. Kamsons seeks to undermine the findings of this survey without providing any evidence that suggests its findings are not accurate and valid.

Letter from Rushport (for Anna Pharmacy) dated 21st February

- 5.1.13 We note the comment from Rushport in respect of the rationale for considering the extent of choice within the area surrounding its clients pharmacy. This was explained within our clients appeal where we made the point that the area around Anna Pharmacy is essentially a self-contained 'neighbourhood' where residents can meet many of their daily needs. The boundaries of this 'neighbourhood' are created largely by physical and geographical boundaries in the area.
- 5.1.14 Rushport refers to its client's pharmacy serving "patients from the entire area of the maps provided by PSC" and "discussions with other local pharmacies" regarding where their patients live. However, Rushport has provided no evidence from its client to support these assertions.
- 5.1.15 In respect of the accessibility of pharmaceutical services, whilst our client accepts that granting this application would not improve geographical access (given the existing presence of Anna Pharmacy), it would significantly improve access in respect of pharmacy opening hours.
- 5.1.16 We have no further comments to make on the demographic data provided. It will be for the Committee to consider the data provided by each party and its relevance to this application.
- 5.1.17 In respect of the "extent to which local residents are in need of, and able to access, pharmaceutical services", Rushport appear to have misunderstood the point we have made here. Where there is a high demand for pharmaceutical services provision, yet the current provision is limited (both in respect of capacity and opening hours), this is a relevant factor when considering the 'desirability of reasonable choice'.
- 5.1.18 We note the comments made by Rushport in respect of its client's busy pharmacy. The relevance of a pharmacy being busy is where this leads to a reduction in service levels at that pharmacy. This then feeds into the matter of whether the lack of competition in the area has resulted in there no longer being 'reasonable choice'. We invite the Committee to consider the findings of the survey in this regard.
- 5.1.19 We note the image provided by Rushport in respect of the walk beside the park and have commented on this earlier. The comment by Rushport that "it is likewise unclear why a patients would walk from the location of my client's pharmacy to Rosehill Pharmacy unless they lived in the area of Rosehill Pharmacy" disregards the fact patients who are dissatisfied with the service provided by Anna Pharmacy may wish to exercise choice but find it difficult to do so.

- 5.1.20 We note the comments made in respect of access to pharmacies further afield by public transport and have addressed these matters already. We maintain our position that Kamsons Pharmacy is located outside the area that would ordinarily be accessed by residents who live in the area proposed by our client within this application.
- 5.1.21 In respect of paying bus fares being “a barrier to access” again Rushport discount the notion that there are some patients who do not wish to access Anna Pharmacy but who may find it difficult to exercise choice for a range of reasons, including financial considerations.
- 5.1.22 We note the comments made regarding the patient survey and have commented on this already. We dispute the assertion that the case made by our client is not supported by the findings of the survey. It is clear from this survey that there are a significant number of patients who are dissatisfied with the existing level of provision. It follows, therefore, that these patients do not feel they have reasonable choice.
- 5.1.23 We have no further comments to make at this time and look forward to hearing the outcome of this appeal in due course.”

6 Consideration

- 6.1 The Pharmacy Appeals Committee (“the Committee”), appointed by NHS Resolution, had before it the papers considered by the Commissioner, together with a plan of the area showing existing pharmacies and doctors’ surgeries and the location of the proposed pharmacy.
- 6.2 It also had before it the responses to NHS Resolution’s own statutory consultations.
- 6.3 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.
- 6.4 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (“the Regulations”).

Regulation 31

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

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

(2) This paragraph applies where -

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

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

(ii) adjacent premises; and

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

- 6.6 The Committee had regard to the wording of Regulation 31(2)(a), and whether a person on the pharmaceutical list is providing or has undertaken to provide pharmaceutical services from the premises to which the application relates. The Committee noted that the Applicant has applied for a best estimate location and that there is a possibility that the proposed pharmacy, if the application was successful, may be next door to the current pharmacy i.e. Anna Pharmacy. Therefore, the Committee was of the view that regulation 31(2)(a) is engaged and proceeded to consider Regulation 31(2)(b).
- 6.7 The Committee noted that the Applicant, in their application, had stated that *“There is an existing contractor within the Best Estimate location, but [the Applicant] has no connection whatsoever with the owners of that pharmacy. [The Applicant] will ensure the premises they secure are not adjacent to that contractor”*. The Committee noted that no party, either during the initial application stage or the subsequent appeal, had sought to argue that Anna Pharmacy and the Applicant had any commonality whether in the companies themselves or the same Directors / Superintendent Pharmacists.
- 6.8 The Committee further noted that the Commissioner had not refused the application based on Regulation 31 and that no parties had disputed this during the subsequent appeal process,
- 6.9 The Committee was satisfied that it was not required to refuse the application under the provisions of Regulation 31 at this stage. There was no information to demonstrate that the Applicant's premises would be located at premises currently engaged in the provision of pharmaceutical services or adjacent to such premises.
- 6.10 The Committee noted that, if the application were granted, the successful applicant would - in due course - have to notify the Commissioner of the precise location of its premises (in accordance with paragraph 31 of Schedule 2). Such a notification would be invalid (and the applicant would not be able to commence provision of services) if the location then provided would (had it been known now) have led to the application being refused under Regulation 31.

Regulation 18

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

“(1) If—

- (a) NHS England receives a routine application and is required to determine whether it is satisfied that granting the application, or granting it in respect of some only of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB; and*
- (b) the improvements or better access that would be secured were or was not included in the relevant pharmaceutical needs assessment in accordance with paragraph 4 of Schedule 1,*

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

(2) Those matters are—

- (a) *whether it is satisfied that granting the application would cause significant detriment to—*
 - (i) *proper planning in respect of the provision of pharmaceutical services in the area of the relevant HWB, or*
 - (ii) *the arrangements NHS England has in place for the provision of pharmaceutical services in that area;*
- (b) *whether, notwithstanding that the improvements or better access were not included in the relevant pharmaceutical needs assessment, it is satisfied that, having regard in particular to the desirability of—*
 - (i) *there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB (taking into account also NHS England's duties under sections 13I and 13P of the 2006 Act (duty as to patient choice and duty as respects variation in provision of health services)),*
 - (ii) *people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access (taking into account also NHS England's duties under section 13G of the 2006 Act (duty as to reducing inequalities)), or*
 - (iii) *there being innovative approaches taken with regard to the delivery of pharmaceutical services (taking into account also NHS England's duties under section 13K of the 2006 Act (duty to promote innovation)),*

granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant pharmaceutical needs assessment was published;
- (c) *whether it is satisfied that it would be desirable to consider, at the same time as the applicant's application, applications from other persons offering to secure the improvements or better access that the applicant is offering to secure;*
- (d) *whether it is satisfied that another application offering to secure the improvements or better access has been submitted to it, and it would be desirable to consider, at the same time as the applicant's application, that other application;*
- (e) *whether it is satisfied that an appeal relating to another application offering to secure the improvements or better access is pending, and it would be desirable to await the outcome of that appeal before considering the applicant's application;*
- (f) *whether the application needs to be deferred or refused by virtue of any provision of Part 5 to 7.*
- (g) *whether it is satisfied that the application presupposes that a gap in pharmaceutical services provision has been or is to be created—*

- (i) *by the removal of chemist premises from a pharmaceutical list as a consequence of the grant of a consolidation application, and*
 - (ii) *since the last revision of the relevant HWB's pharmaceutical needs assessment other than by way of a supplementary statement.*
- (3) *NHS England need only consider whether it is satisfied in accordance with paragraphs (2)(c) to (e) if it has reached at least a preliminary view (although this may change) that it is satisfied in accordance with paragraph (2)(b)."*
- 6.12 The Committee considered that Regulation 18(1)(a) was satisfied in that it was required to determine whether it was satisfied that granting the application, or granting it in respect of some only of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB.
- 6.13 The Committee went on to consider whether Regulation 18(1)(b) was satisfied, i.e. whether the improvements or better access that would be secured if the application was granted were or was included in the Pharmaceutical Needs Assessment ("the PNA") in accordance with paragraph 4 of Schedule 1 of the Regulations.
- 6.14 Paragraph 4 of Schedule 1 requires the PNA to include: "*a statement of the pharmaceutical services that the HWB had identified (if it has) as services that are not provided in the area of the HWB but which the HWB is satisfied (a) **would** if they were provided....secure improvements or better access, to pharmaceutical services... (b) **would** if in specified future circumstances they were provided...secure future improvements or better access to pharmaceutical services...*" (emphasis added).
- 6.15 The Committee considered the PNA prepared by Sutton Health and Wellbeing Board, conscious that the document provides an analysis of the situation as it was assessed at the date of publication. The Committee bears in mind that, under Regulation 6(2), the body responsible for the PNA must make a revised assessment as soon as reasonably practicable (after identifying changes that have occurred that are relevant to the granting of applications) unless to do so appears to be a disproportionate response to those changes. Where it appears disproportionate, the responsible body may, but is not obliged to, issue a Supplementary Statement under Regulation 6(3). Such a statement then forms part of the PNA. The Committee noted that the PNA was dated October 2022 and that supplementary statements had been issued in November 2022.
- 6.16 The Committee noted that the PNA at 'Section 7: Conclusions' stated:

6.16.1 *"Necessary Services – normal working hours*

There is no current gap in the provision of Necessary Services during normal working hours across Sutton to meet the needs of the population.

Necessary Services – outside normal working hours

There are no current gaps in the provision of Necessary Services outside normal working hours across Sutton to meet the needs of the population.

Future provision of Necessary Services

...

No gaps have been identified in the need for pharmaceutical services in specified future circumstances across Sutton.

Improvements and better access – gaps in provision

...

There are no gaps in the provision of Advanced Services at present or in the future that would secure improvements or better access to services in Sutton.

Current and future access to Enhanced Services

...

No gaps have been identified that if provided either now or in the future would secure improvements or better access to Enhanced Services across Sutton.

Current and future access to Locally Commissioned Services (LCS)

...

Based on current information, no current gaps have been identified in respect of securing improvements or better access to Locally Commissioned Services, either now or in specific future circumstances across Sutton to meet the needs of the population."

- 6.17 The Committee noted that the PNA makes seldom reference to the area of Carshalton, bar the statement that "*Within Sutton, Carshalton PCN has the highest diabetic population*" and further that "*the proportion of patients in need of palliative care/support, as recorded on practice disease registers, is lower than the England average in Carshalton PCN*". Further mention is made of the LPS designation located at Sutton & Merton Out of Hours Co-Operative, as referenced by parties throughout the application and appeal process.
- 6.18 The supplementary statement issued in November 2022 covered any changes to the Pharmaceutical List. The Committee noted that the supplementary statement listed the change of opening hours of four different pharmacies in the HWB area as well as the relocation and change of trading name of a further pharmacy.
- 6.19 The Committee noted that the Applicant seeks to provide unforeseen benefits to the patients of Carshalton. The Committee noted that the improvements or better access that the Applicant was claiming would be secured by its application were not included in the relevant PNA in accordance with paragraph 4 of Schedule 1.
- 6.20 In order to be satisfied in accordance with Regulation 18(1), regard is to be had to those matters set out at 18(2). The Committee's consideration of the issues is set out below.

Regulation 18(2)(a)(i)

- 6.21 The Committee had regard to

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

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

6.22 The Committee noted that although the Commissioner did not refuse the application pursuant to Regulation 18(2)(a)(i) it did state, in its decision, that:

6.22.1 *"...the volumes of dispensing for Boots was very low and the dispensing has been picked up by existing pharmacies, therefore granting a new pharmacy application **could** cause detriment to proper planning or the arrangement in place for pharmaceutical services.*

*The PSRC have determined that the granting the application **may** result in the over provision of essential services in the area. This **may** cause detriment to proper planning of pharmaceutical services or the arrangements in place for the provision of pharmaceutical services in this area. At present there is no evidence that this will be significant."* [emphasis added by NHS Resolution]

6.23 The Committee noted that no further information was provided in this regard, either by the Commissioner in its decision letter or during the appeal process by other parties.

6.24 The Committee considered the information that had been provided to it during the appeal process, which included copies of all responses received during the initial application and subsequent consultations. With the exception of comments by Anna's Pharmacy at 2.38, the Committee was unable to see any representations made, either during the Commissioner's consultation or at the appeal stage, that made reference to a significant detriment being a possibility if the application was granted.

6.25 Further, Regulation 18(2)(a)(i) requires the decision maker to consider whether it is satisfied that granting the application **would** cause significant detriment in relation to proper planning in respect of the provision of pharmaceutical services in the area of the relevant HWB (my emphasis). The use of the word 'would' led the Committee to consider that the statement needed to reflect a high level of certainty that the application would cause significant detriment to proper planning of pharmaceutical services within the area rather than it merely being a possibility that it would or a suggestion that it would do so, or that it would potentially do so.

6.26 The Committee considered that the use of the word 'could' and 'may' in the Commissioner's decision indicated that the application, if granted, might cause significant detriment but that this was not certain. The use of the word 'could' and 'may' means that it was merely a suggestion. The Committee considered that this wording did not reasonably convince it that the Commissioner was satisfied that the granting of the application **would** cause significant detriment to the arrangements that are in place for the provision of pharmaceutical services in the HWB area.

6.27 On the basis of the information available, the Committee was not satisfied that, if the application were to be granted and the pharmacy to open, the ability of the Commissioner thereafter to plan for the provision of services would be affected in a significant way.

6.28 The Committee was therefore not satisfied that significant detriment to the proper planning of pharmaceutical services would result from a grant of the application.

Regulation 18(2)(a)(ii)

6.29 The Committee had regard to

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

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

- 6.30 The Committee noted the conclusion of the Commissioner that it had "*determined that they were not satisfied that significant detriment to the arrangements currently in place for the provision of pharmaceutical services would result from a grant of the application. In the absence of any significant detriment as described in Regulation 18(2)(a), the PSRC was not obliged to refuse the application...*". The Committee noted that this had not been challenged by any party during the appeal process.
- 6.31 The Committee was therefore not satisfied that significant detriment to the arrangements currently in place for the provision of pharmaceutical services would result from a grant of the application.
- 6.32 In the absence of any significant detriment as described in Regulation 18(2)(a), the Committee was not obliged to refuse the application and went on to consider Regulation 18(2)(b).

Regulation 18(2)(b)

- 6.33 The Committee had regard to

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

- (i) there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB (taking into account also NHS England's duties under sections 13I and 13P of the 2006 Act (duty as to patient choice and duty as respects variation in provision of health services)),*
- (ii) people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access (taking into account also NHS England's duties under section 13G of the 2006 Act (duty as to reducing inequalities)), or*
- (iii) there being innovative approaches taken with regard to the delivery of pharmaceutical services (taking into account also NHS England's duties under section 13K of the 2006 Act (duty to promote innovation)),*

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

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

- 6.34 The Committee had regard to the location of the existing pharmacies and GP surgeries as provided on the map by the Commissioner, which had not been disputed by any party.
- 6.35 The Committee noted the comments from the Applicant with regard to the closure of the Boots pharmacy in the area and that the application before it was to open a new pharmacy in the vicinity of where the closed pharmacy had been located. The Committee was of the view that the closure of a pharmacy did not mean that a new pharmacy should automatically be granted. The Committee noted the undisputed comments from the Commissioner that there are 14 pharmacies within 2km of the best

estimate location. The Committee further noted that there is no dispute between the parties with regard to the distances to these pharmacies from the proposed best estimate address.

- 6.36 The Committee noted the maps provided and the comments from the Applicant that, excluding the nearest pharmacy (Anna Pharmacy), it would be an approximate 15 – 20 minute walk to an alternative pharmacy, of which there are 5, in order to have reasonable choice of provider. The Committee was mindful that it is access to pharmaceutical services within the area of the HWB that it has to have regard to which might not necessarily be the closest pharmacies taking into account other factors.
- 6.37 The Committee had been provided with no information regarding the topography of the area and there was nothing to demonstrate that the area was not easy to navigate for those on foot. The Committee noted the comments from the Applicant that part of the walking route to Rosehill Pharmacy would include *“walking alongside the park for much of the route... this route would not be an attractive prospect after dark”*. The Committee further noted the comments by the Commissioner that expanded on this point and stated that the route *“involves walking next to a green space on one side and most often house on the other. These are not walk in places that are desolate and have no one else walking there. The roads have street lighting”*. The Committee noted the image provided by Anna’s Pharmacy in its representations that detailed a picture of the route in question and were able to observe that the “green space” is on the opposite side of the path (which appears to be well maintained with dropped curbs and street lighting) and is of the opinion that pedestrians would be unlikely to walk directly next to the park in question given there are no paths on that side of the road. The Committee further noted that the statement from the Applicant that *‘the route would not be an attractive prospect after dark’* is speculative and has not been supported by any evidence from patients.
- 6.38 The Committee noted the comment from the Applicant that the Commissioner referred to a 20 minute walk time when assessing the likelihood of patients accessing a pharmacy, and the statement that the PNA uses a 15 minute walk time in its assessment. The Applicant then states that the walk time to alternative pharmaceutical providers is on *“the edge of what could be considered reasonable by a fit and able person to access a community pharmacy”*. The Committee noted that the PNA states *“94% of the population can walk to a pharmacy within 15 minutes (99.8% within 20 minutes)”* and that there is an earlier reference in the PNA that states *“89% of the population in England has access to a community pharmacy within a 20 minute walk. This falls to 14% in rural areas. Over 99% of those in areas of highest deprivation are within a 20 minute walk of a community pharmacy”*. The Committee did not find it helpful to use these metrics as a person’s ability to access a pharmacy on foot would be dependent on factors including health.
- 6.39 The Committee noted the information provided in the PNA that stated that 56% (84 people) of the 152 respondents to its public questionnaire would access a chosen pharmacy via foot. The Committee also had sight of the survey provided by the Applicant and noted that the questions did not address the method in which respondents accessed pharmaceutical services, only the potential new pharmacy opening. The Committee was of the view that for those who did choose to access pharmaceutical services on foot they would be aware of the various routes in the area which would enable them to access pharmaceutical services. Given the lack of information before it, the Committee found it difficult to assess the extent to which patients were accessing services on foot. However, given the relatively high percentage of patients detailed in the PNA who claimed to be accessing services on foot, the Committee was of the view that there was nothing provided to demonstrate that they were currently having difficulties accessing the existing pharmaceutical services in the area of the HWB.

- 6.40 The Committee was mindful that there would be some who would choose not to access services on foot, or who are unable to access services on foot, for whatever reason. The Committee therefore went on to consider the ease and level of access to pharmacies by private and public transport.
- 6.41 The Committee noted that the Applicant stated that the cost of public transport could act as a barrier to accessing pharmaceutical services. Whilst the Committee has not been provided with any information to demonstrate that this is more than a speculative statement, it is noted that the PNA lists the Sutton HWB as a “*relatively affluent borough; based on IMD 2019, Sutton is ranked 226th overall out of 317 local authorities for deprivation (1st being most deprived)*”. In the absence of information regarding the volume of patients using public transport, the Committee could not be satisfied that there was a barrier to access.
- 6.42 The Committee noted the comments that there are multiple pharmacies in the area which are accessible by buses; MPS Pharmacy and Rosehill Pharmacy (on the S1 and 151 bus routes taking between 9 and 11 minutes to access including walking time), Salmina Pharmacy (on the S1 bus route and 14 minutes to access including walking time), and Kamsons Pharmacy (on the 151 bus route and taking approximately 11 minutes including walking time). Whilst the Committee has not been provided with information to demonstrate how frequently these bus services run, it noted that the Commissioner in its decision letter included a screenshot of a route between Rosehill Pharmacy and the best estimate location which detailed one bus route (it is unknown whether this is S1 or 151) as taking 15 minutes / every 10 minutes and another to take 10 minutes / every 15 minutes. Whilst the Committee had no information regarding the times or routes of the buses, it was mindful that those who did use public transport, especially if they were using it to access medical provision in the area, would be aware of the services and times. The Committee found it difficult to assess the extent to which patients were using public transport but was of the view that there was nothing provided to demonstrate that for those who were reliant on public transport that they were currently having difficulties accessing the existing pharmaceutical provision in the area of the HWB.
- 6.43 The Committee noted the comment by the Applicant, via the 2021 census, that “26.9% of households had no car or van compared to the national average of 23.5%” and that “*there is free parking outside the entire set of shops plus plenty of additional on street parking close by*” which would similarly apply to parking at Anna Pharmacy given the close proximity to the best estimate location. The Committee noted the undisputed comment that “*there is no parking outside Rosehill Pharmacy*” and that Salmina Pharmacy has parking outside, however, it has not been provided with any further information on where exactly ‘outside’ this location is or if there are charges associated with parking there. The Committee further noted the finding in the PNA that, of those respondents to the questionnaire, 30% of patients would access a pharmacy via car and that “*of the 30 respondents (23%) reporting any difficulty, 26 of them report difficulty in travelling to a pharmacy due to parking*”. The Committee is of the opinion that the PNA encompasses the entirety of the Sutton HWB area and not the specific area where the Applicant proposes to open a pharmacy. The Committee noted the table in the Commissioner’s decision which detailed the driving distance and approximate driving time to access the nearest pharmacies from the application site and that, Salmina Pharmacy, is 1 mile away from the proposed site and would take approximately 4 minutes to drive to. It is noted, as above, that Salmina Pharmacy has car parking facilities.
- 6.44 The Committee concluded that for those who did have access to private transport there was nothing provided by the Applicant to demonstrate that they were currently having difficulties in accessing the existing pharmaceutical provision in the area of the HWB.

- 6.45 Taking all of the above into consideration, the Committee was of the view that there is already reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB, such that it was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits on persons.
- 6.46 In considering Regulation 18(2)(b)(ii) the Committee reminded itself that it was required to address itself to people who share a protected characteristic under the Equality Act 2010 (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation) having access to services that meet specific needs for pharmaceutical services that, in the relevant area, are difficult for them to access. In considering 18(2)(b)(ii), the Committee noted the Applicant's statement that *"17.6% of the population had their day-to-day activities limited by disability compared to the national average of 17.3%"* [source: 2021 Census] and that the protected characteristics of this population (in this case, disability) would impact their ability to access pharmaceutical services in the area. The Committee was mindful that pharmaceutical services, especially other essential services apart from the dispensing of prescriptions, which can be delivered, may be difficult to access for people with protected characteristics based on age and disability. Whilst the Committee accepted that there were always people in an area who share a protected characteristic, there was no information provided as to why those with a protected characteristic were currently experiencing any difficulties in accessing services. The Committee was therefore not satisfied that, having regard to the desirability of people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that are difficult for them to access, granting the application would confer significant benefits on persons.
- 6.47 In considering Regulation 18(2)(b)(iii) the Committee had regard to the desirability of innovative approaches to the delivery of pharmaceutical services. In doing so, the Committee would consider whether there was something more over and above the usual delivery of pharmaceutical services that might be expected from all pharmacies, some 'added value' on offer at the location. The Committee noted that the Applicant was not seeking to rely on innovation in this application. The Committee was not satisfied that, having regard to the desirability of there being innovative approaches taken with regard to the deliverability of pharmaceutical services, granting the application would confer significant benefits on persons.

Regulation 18(2)(b) generally

- 6.48 The Committee noted that the Applicant was proposing to open for a total of 84 core hours; 40 of these being standard hours and 44 hours being extended core opening hours. The Committee noted that, under the proposed opening hours, there would be provision of pharmaceutical services from 08:00 to 20:00 Monday to Friday. The Committee noted that the Applicant was not offering to provide any supplementary hours on top of these extended core opening hours.
- 6.49 The Committee noted the survey as provided in the appeal and the comments from respondents about the benefit of Sunday opening hours. It was noted that the Commissioner's decision report lists the opening hours for the five closest pharmacies to the best estimate location and that none of these, aside from the LPS designation that opens 17:00 – 20:00, currently provide opening hours – whether core or supplementary – on a Sunday. Although the Committee do not discount the findings in the Applicant's survey, it is of note that the PNA questionnaire found that of the 143 respondents, only 1 person (1%) answered Sunday in response to the question 'What is the most convenient day for you to visit/contact a pharmacy?'. The Committee was therefore unclear as to the level of demand for increased hours, including on Sunday and if there was such a demand, the Commissioner could issue directions.

- 6.50 The Committee was of the view that there was no information provided to support a finding that pharmaceutical services are not currently provided at such times as needed and therefore it was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits (in relation to opening hours) on persons.
- 6.51 The Committee has considered whether there are any other factors that would confer significant benefits including on patients who share protected characteristics. The Committee had regard to the need to eliminate discrimination and advance equality of opportunity and foster good relations between these patients and those who do not share their protected characteristics.
- 6.52 The Committee was of the view that in accordance with Regulation 18(2)(b) the granting of this application would not confer significant benefits on persons in the area of the HWB which were not foreseen when the PNA was published.

Other considerations

- 6.53 Having determined that Regulation 18(2)(b) had not been satisfied, the Committee did not need to have regard to Regulation 18(2)(c) to (e).
- 6.54 No deferral or refusal under Regulation 18(2)(f) was required in this case.
- 6.55 The Committee had regard to Regulation 18(2)(g) and found that it did not apply in this case.
- 6.56 The Committee considered whether there were any further factors to be taken into account and concluded that there were not.
- 6.57 The Committee was not satisfied that the information provided demonstrates that there is difficulty in accessing current pharmaceutical services such that a pharmacy at the proposed site would provide better access to pharmaceutical services.
- 6.58 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 6.58.1 confirm the Commissioner's decision;
 - 6.58.2 quash the Commissioner's decision and redetermine the application;
 - 6.58.3 quash the Commissioner's decision and, if it considers that there should be a further notification to the parties to make representations, remit the matter to the Commissioner.
- 6.59 The Committee has determined to refuse the application but for different reasons from the Commissioner. The Committee therefore quashed the decision.
- 6.60 The Committee went on to consider whether there should be a further notification to the parties detailed at paragraph 19 of Schedule 2 of the Regulations to allow them to make representations if they so wished (in which case it would be appropriate to remit the matter to the Commissioner) or whether it was preferable for the Committee to redetermine the application.
- 6.61 The Committee noted that representations on Regulation 18 had been sought from parties by the Commissioner and representations had already been made by parties to the Commissioner in response. These had been circulated and seen by all parties as part of the processing of the application by the Commissioner. The Committee further noted that when the appeal was circulated representations had been sought from parties on Regulation 18.

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

7 DECISION

- 7.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of the Commissioner, for the reasons given above, and redetermines the application.
- 7.2 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.
- 7.3 The Committee has considered whether the granting of the application would cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area covered by the HWB, or the arrangements in place for the provision of pharmaceutical services in that area and is not satisfied that it would;
- 7.4 The Committee determined that the application should be refused on the following basis:
- 7.4.1 In considering whether the granting of the application would confer significant benefits, the Committee determined that –
 - 7.4.1.1 there is already a reasonable choice with regard to obtaining pharmaceutical services;
 - 7.4.1.2 there is no evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services; and
 - 7.4.1.3 there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services;
 - 7.4.2 Having taken these matters into account, the Committee is not satisfied that granting the application would confer significant benefits as outlined above that would secure improvements or better access to pharmaceutical services.

**Case Manager
Primary Care Appeals**