NHS Resolution

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23 June 2025

REF: SHA/ 26571

APPEAL AGAINST NORTH EAST LONDON ICB DECISION TO GRANT AN APPLICATION BY GREENLIGHT HEALTHCARE LIMITED FOR INCLUSION IN THE PHARMACEUTICAL LIST AT ST ANDREWS HEALTH CENTRE, HANNAFORD WALK, E3 3FF WITH REGARD TO FUTURE NEED UNDER REGULATION 15

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 granted, subject to the condition as set out in the PNA that *"pharmaceutical services are not provided at the premises to which the application relates (St Andrews Health Centre, Hannaford Walk, E3 3FF) until the services provided by the current LPS pharmacy at St Andrews Health Centre cease to be provided".*

A copy of this decision is being sent to:
Rushport Advisory LLP on behalf of Greenlight Healthcare Limited
PCSE on behalf of North East London ICB
Kamsons Pharmacy

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1 The Application

By application dated 2 October 2024, Rushport Advisory LLP on behalf of Greenlight Healthcare Limited ("the Applicant") applied to North East London ICB ("the Commissioner") for inclusion in the pharmaceutical list at St Andrews Health Centre, Hannaford Walk, E3 3FF with regard to future need under Regulation 15. In support of the application it was stated:

In response to why the application should not be refused pursuant to Regulation 31, the Applicant stated:

1.1 "THE EXISTING PHARMACY OPERATING AT THE MEDICAL CENTRE DOES SO UNDER AN LPS CONTRACT AND IS THEREFORE NOT INLCUDED [sic] IN THE PHARMACEUTICAL LIST FOR THE HWB.

1.2 REGULATION 31(2)(A) IS CLEAR THAT AN APPLICATION WOULD ONLY BE REFUSED WHERE THERE IS AN EXISTING PHARMACY THAT IS "ON THE PHARMACEUTICAL LIST" AND THAT IS NOT THE CASE HERE.

1.3 IN ADDITION, THE PNA IS CLEAR THAT A CONDITION MUST BE PLACED UPON THE OPENING OF A PHARMACY FOLLOWING A SUCCESSFUL FUTURE NEEDS APPLICATION WHICH ACTS TO ENSURE THAT THE NEW PHARMACY DOES NOT COMMENCE SERVICES UNTIL THE PREVIOUS LPS PHARMACY CEASES TO PROVIDE SERVICES.

1.4 FOR THESE REASONS REGULATION 31 DOES NOT APPLY."

In making this application the Applicant is seeking to meet the future need identified on page 67 of the HWB's pharmaceutical needs assessment.

1.5 "Since 2012 a pharmacy has operated at 2 Hannaford Walk E3 3FF which is to expire on 7 June 2025, this being co-located with the St Andrews Health Centre, under a contract for local pharmaceutical services (a "LPS contract") in order to provide pharmaceutical services. Tower Hamlets Health & Wellbeing Board recognises the important function of a pharmacy at the St Andrews Health Centre and has determined that the termination of the current LPS contract will create a gap in provision. Tower Hamlets Health & Wellbeing Board determines that, an NHS pharmacy, at the same premises as the current LPS pharmacy, will be needed to secure access to pharmaceutical services in the event that the existing LPS pharmacy at St Andrews Health Centre ceases to provide pharmaceutical services under their LPS contract.

1.6 Any routine application should only be granted subject to a condition that pharmaceutical services are not provided at the premises to which the application relates until the services provided by the current LPS pharmacy at St Andrews Health Centre cease to be provided and this condition should be included within any approval

of a routine application in accordance with Schedule 2, Part 5, 33(2)(a) of the Regulations."

In response to "please explain how you intend to meet the identified future need either in whole or in part" the Applicant stated:

1.7 "THE NEED WILL BE MET IN FULL BY OPENING A PHARMACY AT THE LOCATION IDENTIFIED IN THE PNA".

2 **The Decision**

The Commissioner considered and decided to grant the application. The decision letter dated 21 February 2025 states:

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

2.2 Enclosed is a template of the notice of commencement which you are required to submit to us. Please note that if this is submitted before the end of the 30 day appeal period and a valid notice of appeal is then received by the Secretary of State, the notice of commencement will cease to have effect. This means that if you have opened your new premises then you will be required to close with immediate effect and until the appeal has been determined and a final decision issued relating to your application.

2.3 Please also note that you must submit the notice of commencement no fewer than 30 days before the date you intend to start service provision. If it is received fewer than 30 days in advance it is not a valid notice of commencement and will not be accepted by North East London ICB unless you successfully ask to give a shorter notice period. Should you wish to ask to give a shorter notice period please complete the enclosed application form."

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

2.4 "**CAS reference number** - CAS-332489-K9Q7Q5

2.5 **Name of applicant** - Greenlight Healthcare Ltd

2.6 **Fitness to practise** - Not applicable, already included in respect of other premises.

2.7 **Address/best estimate of proposed premises** - Pharmacy Unit

2.8 St Andrews Health Centre, Hannaford Walk, E3 3FF

2.9 **Identified future need that the applicant is offering to meet, as stated in the HWB's PNA** - Page 67 of the PNA

2.10 **Status of location** - Non-controlled locality.

2.11 **Relevant regulations and guidance** –

2.11.1 Regulations 15 and 16 – future needs: additional matters and consequences.

2.11.2 Regulation 31 – refusal: same or adjacent premises.

2.11.3 Regulation 65 – core opening hours conditions1.

2.11.4 Regulation 66 – conditions relating to providing directed services.

2.11.5 DH market entry guidance chapter 6.

2.12 **Consider impact of decision on those with protected characteristics under the Equalities Act 2010 and is this in accordance with NHS England's Public Sector Equality Duty**

2.13 **Consider impact of decision on NHS England's duty on health inequality**

2.13.1 None identified

Interested parties notified of the application – Representation Submitted			
Name	**Address**	**Postcode**	**Reason appeal rights – given or reason why not given**
Boots	31-32 The Mall, The Stratford Centre	E15 1XD	**Appeal rights given if granted**
Boots	Unit 14 Canada Square	E14 5AX	
Boots	18-20 The Vesey Path	E14 6BT	
Kamsons Pharmacy	18 Stroudley Walk	E3 3EW	
Lansbury Chemist	85 Chrisp Street	E14 6GG	
Lincoln Pharmacy	124 St Pauls Way	E3 4QA	
Sinclairs	50 Ben Jonson Road	E1 3NN	
Sinclairs	559 Roman Road	E3 5EL	
Tesco Instore Pharmacy	Hancock Road	E3 3DA	
Community Pharmacy North East London (LPC)			**Appeal rights not given as not a pharmacy**

Interested Parties notified of the application – Representations not submitted		
Name	**Address**	**Postcode**
Greenlight Pharmacy	St Andrew's Health Centre, 2 Hannaford Walk	E3 3FF
Mayors Chemist	67 Bow Road	E3 2AD
Forward Pharmacy	648 Mile End Road	E3 4LH
Chrischem Pharmacy	578 Mile End Road	E3 4PH
Britannia Pharmacy	35 Aberfeldy Street	E14 0NU
Parnell Chemist	625-627 Roman Road	E3 2RN
Bell Pharmacy Bow	520 Roman Road	E3 5ES
Nash Chemist	817 Commercial Road	E14 7HG
Britannia Pharmacy	259 Poplar High Street	E14 0BE
Wagpharm Chemist	8 Mitre Road	E15 3JF
Green Light Pharmacy	Harford Street Health Ctr, 115 Harford St	E1 4FG
Jetsol Pharmacy	The Hub, 123 Star Lane	E16 4PZ

Berg's Pharmacy	4 Rathbone Market	E16 1EH
Sherman Chemists	21 Hermit Road	E16 4HP
Britannia Pharmacy	6 Church Street	E15 3HX
Medichem	100 Whitehorse Lane	E1 4LR
Medina Pharmacy	161 Plaistow Road	E15 3ET
Tower Hamlets LMC		
Tower Hamlets HWBB		
Tower Hamlets Healthwatch		
Newham HWB		
Newham Healthwatch		

2.14 **Regulations**

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

2.16 **Regulation 31**

2.17 There are no pharmacies adjacent to the site in question; therefore regulation 31 does not apply.

2.18 There is currently an LPS on site under the same company name, however, this has been given notice of termination; to expire on 7 June 2025, a new pharmacy would not be opened until this had been closed.

2.19 **Regulation 32**

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

2.21 **Information from Applicant** [see 1.5 to 1.6 above].

2.22 **Regulation 31** [see 1.1 to 1.4 above].

2.23 **Boots Comments**

2.24 The applicant has submitted an application under Regulation 15 of these regulations offering to meet an identified future need.

2.25 The Tower Hamlets PNA appears to suggest that when the current LPS contract at the Health Centre ceases, a gap will be created at this location. We ask that the deciding committee are satisfied that this application meets the relevant criteria and at no point will there be two pharmacies at the same location.

2.26 **Community Pharmacy North East London (LPC) Comments**

2.27 North East London LPC have noted this application in respect of an application offering to meet an identified future need at St Andrews Health Centre, Hannaford Walk, E3 3FF by Greenlight Healthcare Limited.

2.28 We would like to be reassured that NHSE will ensure all the requirements and regulations are met with respect to this this application.

2.29 We would also like to remind NHSE that there are 13 pharmacies within 1 mile and 31 pharmacies within 1.5miles.

2.30 NEL LPC would like to be updated on any further communication on this application.

2.31 **Kamsons Comments**

2.32 I consider that the application should be refused.

2.33 The applicant is applying to change their Local Pharmaceutical Services (LPS) contract to a Pharmaceutical Services (PhS) contract as their LPS contract is ending.

2.34 There are a number of points that the Pharmaceutical Services Regulations Committee (PSRC) should consider with this application.

2.35 The applicant states, in capital letters, that their application should not be refused under Paragraph 31 of the Regulations. This states [quoted in full]:

2.36 It is clear that the applicant is:

2.37 Already on the pharmaceutical list and has premises providing pharmaceutical services under a LPS contract and others under a Pharmaceutical Services (PhS) contract.

2.38 The applicant is already providing pharmaceutical services from the premises.

2.39 It is also clear that Regulation 31(2)(a) uses the words “pharmaceutical services” in a context that does not preclude meaning either services provided under a LPS or a PhS contract.

2.40 As there is already someone, which happens to also be the applicant, who is

2.40.1 on a Pharmaceutical List

2.40.2 already providing “pharmaceutical services” from the premises applied for and

2.40.3 it is also most certainly “reasonable” for NHS England 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).”

2.41 The Regulation gives the PRSC no choice and the application “must be refused where paragraph (2) applies.”

2.42 Upon awarding the LPS contract at this site in 2012, the contract letter sent out by the PCT on 12th April 2012 clearly stated The PCT can also confirm that as this contract is a new contract there will be no right of return to the PCT’s pharmaceutical list at either the end of the 10-year contract or at any other time where the contract is terminated. This letter is attached as Appendix 1. Therefore, from the outset, this LPS contract was not intended to simply convert into a Pharmaceutical Services contracted pharmacy at the end of the term of the LPS contract. Of course, the applicant, like anyone, is entitled to apply for a Pharmaceutical Services contract but it should be to meet a significant need and to fill a gap in services and not just to continue services which the PCT, a body which no longer exists, thought desirable to tender for over a decade ago via a mechanism designed to circumvent the legal tests for a new Pharmaceutical Services contract.

2.43 It is important to remember the reasons why the then PCT decided to tender for a LPS contract rather than allow, what then would have been, a minor relocation. The reason was the upcoming 2012 Olympics and the rush to develop new services and infrastructure for the few weeks that the games were on. There was no guarantee that existing nearby contractors would want to relocate into the new St Andrew's site, which had very limited space for a modern pharmacy. With there already being an excellent range of pharmaceutical services available within walking distance, there was next to no likelihood of a PhS contract being awarded under the then necessary or desirable legal test. The PCT therefore used the LPS mechanism to circumvent the necessary or desirable test. All of this should be borne in mind when considering this application.

2.44 It may be argued by the applicant that as a future need was briefly mentioned in the 2023 Tower Hamlets PNA, that it is axiomatic that this application is approved. That is not the case. The PSRC should be mindful that it needs to consider a number of factors.

2.45 Regulation 15(2)(e) states that the PRSC needs to consider….whether it is satisfied that, since the publication of the relevant pharmaceutical needs assessment, there have been changes to the needs, or future needs, for pharmaceutical services in the area of the relevant HWB that are such that refusing the application is essential in order to prevent significant detriment to the provision of pharmaceutical services in that area;

2.46 Yes, there have been significant changes to the area which the PRSC need to consider. Kamsons Pharmacy at Stroudley Walk, Bow is a PhS-contracted pharmacy situated a short 9 minute flat walk away from the site of the proposed Greenlight PhS contracted pharmacy. With the opening of the LPS-contracted Greenlight pharmacy at St Andrew's, the Kamsons Pharmacy at Stroudley Walk has reduced the number of prescriptions it dispenses from St Andrew's Health Centre and the Bromley by Bow Centre. Kamsons Pharmacy therefore became more reliant upon prescriptions from Stroudley Walk Surgery.

2.47 Stroudley Walk Surgery has now moved out of its premises at 38 Stroudley Walk, Bow, London, E3 3EW, about a one minute walk away from Kamsons Pharmacy, and moved into 1A Wellington Way, E3 4NE which is a 12 minute walk of 850 metres away.

2.48 [map provided – see appendix A].

2.49 Initially this caused little change but this is now having a significant impact on Kamsons Pharmacy with many patients now choosing to use Mayors Chemist, immediately opposite Bow Road underground station, rather than make the 12 minute walk to Bow Pharmacy.

2.50 With the closure/merger/move of Stroudley Walk Surgery alongside the opening of the LPS- contracted Greenlight Pharmacy dispensing the majority of prescriptions from St Andrew's Health Centre and Bromley by Bow Centre surgeries, there has been a significant impact on the viability of Kamsons Pharmacy at Stroudley Walk.

2.51 In August 2021, Kamsons Pharmacy dispensed 64% of prescriptions prescribed by the then Stroudley Walk surgery. Pharmdata figures show that in August 2024, Kamsons Pharmacy only dispensed 19% of prescriptions prescribed by the now Wellington Way Health Centre. This ongoing and gradual decline was not taken into account in the PNA and has occurred since its publication. On top of this, Kamsons Pharmacy has suffered from the ongoing demolition work in Stroudley Walk with road closures, demolition and building work affecting patients being able to access the pharmacy for extended periods.

2.52 Through circumstances outside of our control (i.e. the LPS contract at St Andrew's Pharmacy, the closure of Stroudley Walk Surgery and the ongoing demolition works in the area) Kamsons Pharmacy has been adversely affected so that its viability is

becoming at risk. What Greenlight are applying for should be considered solely as a new PhS contract and not just as a technical application for converting an existing pharmacy onto a different contract.

2.53 The ending of the LPS contract at St Andrew's does not require a new PhS contract to be awarded at the risk of decimating the existing PhS pharmacy infrastructure already serving the area.

2.54 Kamsons Pharmacy already provides all of the commissioned services listed by the applicant. Kamsons is also currently providing Covid vaccinations, in addition to the services listed in the PNA. There are no new or innovative services that the applicant is offering.

2.55 I note from the PNA that the applicant stated in there that they offered MURs (Medicines Use Reviews) which were decommissioned years ago. I presume that these were still commissioned from the applicant under the LPS contract but that this will cease upon the expiry of the LPS contract. Hopefully, Greenlight will be able to confirm.

2.56 I believe it is important for the PRSC to carefully read the conclusions on page 96 of the PNA which state:

2.56.1 *"Whether there is sufficient choice of pharmacy in Tower Hamlets has been reviewed, it was decided there was sufficient choice of pharmacy in Tower Hamlets. London boroughs have a greater choice of pharmacy provider compared to many other areas in England."*

2.57 and

2.57.1 *"8.1 Essential services*

2.57.2 *No gaps have been identified in essential services that if provided either now or over the next three years would secure improvements, or better access, to essential services across the whole borough.*

2.57.3 *There is no gap in the provision of essential services during normal working hours across the whole borough.*

2.57.4 *There are no gaps in the provision of essential services outside of normal working hours across the whole borough.*

2.57.5 *8.2 Advanced Services*

2.57.6 *No gaps have been identified that if provided either now or in the future would secure improvements, or better access to advanced services across the whole borough.*

2.57.7 *There are no gaps in the provision of advanced services across the whole borough.*

2.57.8 *8.3 Enhanced Services*

2.57.9 *No gaps have been identified that if provided either now or in the future would secure improvements, or better access to enhanced services (relevant services) across the whole borough.*

2.57.10 *There are no gaps in the provision of enhanced services across the whole borough.*

2.57.11 *8.4 Locally Commissioned Services*

2.57.12 *There are no gaps in the provision of locally commissioned services (relevant services) at present or over the next three years that would secure improvement or better access to locally commissioned services across the whole borough.*

2.57.13 *There are no gaps in the provision of locally commissioned services across the whole borough.*

2.58 As can be seen in the conclusions there are no gaps whatsoever identified in the PNA in essential, advanced or locally commissioned services and a sufficient choice of pharmacies Page 69 of the PNA shows that in Tower Hamlets the average pharmacy dispenses over 500 less items a month than the average for England as a whole ie over 7% less than the national average.

2.59 In 2012, when the LPS contract commenced at St Andrew's Health Centre, pharmacy funding was adequate. After over five years of decreasing national funding in real terms, pharmacies are closing throughout the country. Healthwatch in their report on Pharmacy closures (published in September 2024 at https://www.healthwatch.co.uk/report/2024-09-26/pharmacy- closures-england) state that in 2023, 436 pharmacies closed in England, ie an average of 8 per week.

2.60 These closed pharmacies are not being replaced. Closures are generally not leaving a gap in pharmaceutical services as both nearby pharmacies and distance selling pharmacies are able to adequately continue to provide a good pharmaceutical service without creating any gaps.

2.61 In 2012, distance selling pharmacies were dispensing very little at all. Pharmacy2U, now combined with Lloyds Direct, is now dispensing over 35 million prescription items a year and providing online advanced services such as nearly 30,000 of the New Medicines Service each year.

2.62 The PNA identifies that there are currently no gaps in any service. With the ending of the LPS contract, there will still be no gaps in services. The many nearby existing PhS-contracted pharmacies will be able to more than adequately meet the pharmaceutical needs of the population.

2.63 The nearest pharmacy to St Andrew's is Tesco Pharmacy which is no more than a ten minute short and flat walk away.

2.64 [map provided – see appendix A].

2.65 This Tesco Pharmacy opened in October 2008 ie four years before the LPS contracted Greenlight Pharmacy. It is open for extended hours from 9am to 9pm for six days per week and from 12 noon to 6pm on Sundays. The North East locality of Tower Hamlets, where Greenlight Pharmacy is situated, is the only locality within Tower Hamlets with two 100 hour pharmacies. The North West and the South West localities have zero 100 hour pharmacies (ref Table 16 on page 70 of the PNA). The North East locality is therefore already well served for extended hours provision.

2.66 The applicant proposes to close 2 hours earlier every weekday and every Sunday and 5 hours earlier every Saturday than Tesco open for their core hours

2.67 The Tesco Pharmacy is at risk of closure because it has very low dispensing volumes, due to the Greenlight LPS pharmacy being situated so close to it.

2.68 The most recent published dispensing figures for the Tesco Pharmacy are as follows:

The most recent published dispensing figures for the Tesco Pharmacy are as follows: Month (2024)	Prescription items dispensed
Aug	2883
July	2927
June	2695
May	2840
April	2767
March	2691

2.69 It is important to note that the average monthly prescription volume for a pharmacy in England is 7,230 (from page 69 of the PNA). This PNA figure is over two years old as it is from the year ending March 2022. It will have increased significantly since.

2.70 Tesco is dispensing an average (over the last six months) of 2,800 items per month. Tesco at Bow is therefore only dispensing 38.7% of the national average items.

2.71 It is clear to anyone working in pharmacy that this Tesco Pharmacy is probably loss-making and the pharmacy income is not covering the costs of staffing. Whereas an independent pharmacy may decide to continue, the Board of a major multiple is more likely to one day make a decision to cut loss-making activities.

2.72 The reason why the Tesco Pharmacy is dispensing so little, is because of the decision to open the LPS-contracted pharmacy at St Andrew's Health Centre.

2.73 Should the Greenlight application for a PhS contract be approved, the Tesco Pharmacy is at significant risk of closure because of the increasing financial pressures that pharmacies have been put under during the last 18 months, since the publication of the PNA, with increases in staff costs and the National Living Wage, increases in energy costs, increases in rent, increases in employer National Insurance contributions and declining funding. The House of Commons Health and Social care Select Committee in May 2024 reported that the average community pharmacy now has "an annual shortfall of at least £67,000 per pharmacy." (see page 3 of https://committees.parliament.uk/publications/45156/documents/223614/default/)

2.74 Approval of the Greenlight Pharmacy application will therefore cause significant detriment to the pharmaceutical services in the area as it will highly likely cause the demise of the Tesco Pharmacy with the loss of core hours so that pharmaceutical services are:

2.74.1 no longer available from 7pm to 9pm each weekday evening

2.74.2 no longer available from 4pm to 9pm each Saturday

2.74.3 no longer available from 4pm to 6pm each Sunday

2.75 Under Regulation 15(2)(e) this application should therefore be refused.

2.76 It is important to note that there are many other nearby pharmacies which provide all of the commissioned services and with the capacity to undertake them. The map below [appendix A] shows the position of Tesco, Kamsons, Mayors, Forward, Lincoln and Chrischem Pharmacies in relation to the Greenlight Pharmacy.

2.77 Kamsons Pharmacy has a history of being able to increase dispensing and other services and has a pharmacy of a similar size to our pharmacy in Bow dispensing over

30,000 items a month. It is also important to note that Kamsons Pharmacy provides a free delivery service to patients on request.

2.78 In summary, this application should be refused under automatically under Regulation 31 and also under Regulation 15(2)(e) due to:

2.78.1 the worsening financial situation for community pharmacies since the publication of the PNA

2.78.2 The change in circumstances for Kamsons Pharmacy with its nearest surgery closing.

2.78.3 The Tesco Pharmacy, a few minutes walk, away dispensing very low volumes and being at risk of potential closure if this application is approved

2.78.4 The resultant loss of core hours every evening, seven days per week, with the loss of five hours every Saturday evening and two hours every weekday and Sunday evening

2.78.5 It being clear when the LPS contract was awarded that there is no right to return to the Pharmaceutical List at the end of the LPS contract."

2.79 **Lansbury Comments**

2.80 As you are aware, the soon-expired Local Pharmaceutical Services (LPS) Contract was originally granted to Greenlight Healthcare Limited by the Tower Hamlets PCT in April 2012 with specific service delivery markers and KPIs. Sadly, the contractor has allegedly not fulfilled its contractual obligation by failing to open the pharmacy from 8am to 8pm. As such, by granting the above application to the incumbent contractor, it essentially becomes a reward and disregards the wrongdoings thus raising the question of making the ICB abetting a legal right to do legal wrong. If NHS England shares our views, then the application should be refused.

2.81 As you are also aware, it was also a condition that whilst the above contract was a new contract, there would be no right of return to the PCT's pharmaceutical lists at either the end of the 10-year contract or at any other time when the contract is terminated. This was clearly stipulated and accepted by the applicant at the time. We refer our observation to Regulation 108 of The National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 which states "If a contractor, on entering into the standard form of LPS scheme, gives up a right to be on a pharmaceutical list". If our interpretation is correct, then this application must be refused.

2.82 Moreover, by granting the above contract, it essentially rollovers the LPS contract to the standard NHS dispensing contract without due consideration and that we are unsure if the decision would be unlawful. This is because if the contract were to be granted without sufficient procurement due diligent via a wider expression of interest, the decision making akin that of the unlawful use of the "VIP Lane" by the Government to award contracts for the PPE. If NHS England shares our concern in avoiding drawing unnecessary comparison, then this application must be refused.

2.83 It also follows that upon the end of the LPS contract, should there be a need for pharmaceutical services identified as per the PNA, then there should be an open consultation to seek innovative ways to deliver pharmaceutical care fit for the future. In contrast, we consider the above contract application represents a reincarnation of the old LPS service delivery model, which was 12 years old in the making, and sadly, there was nothing new and without any ground breaking innovation. If NHS England shares our visions, then the application should be disregarded.

2.84 Indeed, we feel the expiry of these LPS contracts presents a fantastic opportunity for the ICB to create a future-looking pharmaceutical hub by leveraging the most abundant and exceptional resource within Tower Hamlets – the pharmacists. Not only Tower Hamlets have one of the highest numbers of IPP working in community pharmacy, with many already making significant differences to patients with diabetes, hypertension etc., but some of us also have special interests in genomics, alternative therapy, diagnostics, artificial intelligence, blockchain technology etc. These are untapped human capital. Furthermore, the technology is already here. For example, "AI Chat box in Pharmacy" has already been featured in the Pharmaceutical Journal [August 23] and so has genomics testing in community pharmacy [June 22] as well as 3D printing and personalised medicine [March 22].

2.85 With a patient-centric and technologically minded workforce amongst the community pharmacists within Tower Hamlets, we believe the timing is perfect. For example, could this site become a consortium hub to deliver the future of pharmaceutical services by embracing nascent healthcare technology? Could the ICB use this opportunity to leverage the strengths of many talented and future-ready Tower Hamlets pharmacists? Could the North East London ICB become the first ICB to trailblazing these nascent technologies and innovative concepts in patient-centred pharmaceutical care?

2.86 In summary, would decision-makers be satisfied to grant a contract to a single operator that has failed in the past or would they like to capitalise on this perfect opportunity to harness the strengths of the many talented pharmacists for the future? We consider the evidence apparent and ask NHS England to disregard the above application, promote NEL ICB to seek collaboration interests from many Tower Hamlets pharmacists and start to embrace a visionary healthcare journey for the population in Tower Hamlets.

2.87 Finally, please note that in the event that NHS England (or NHS Resolution in the event of an appeal) decides to hold First-tier Tribunal (Health, Education and Social Care) hearing, we would wish to attend such a hearing and make oral representations.

2.88 **Lincoln Pharmacy Comments**

2.89 I am writing to formally object to the automatic awarding of a Change to a Pharmaceutical Services (PhS) NHS Pharmaceutical contracts to Greenlight Healthcare Ltd at the following locations upon the expiration of their Local Pharmaceutical Services (LPS) contracts on 7th June 2025 and 1st April 2025 respectively.

2.90 St Andrews Health Centre, E3 3FF Ref - CAS-332489-K9Q7Q5

2.91 Harford Health Centre, E1 4FG Ref - CAS-332491-Q2G0X2

2.92 I strongly object to their applications to automatically change their Local Pharmaceutical services (LPS) contract to a Pharmaceutical services (PhS) contract upon expiration for the following reasons below:

2.93 **Both sites are designated LPS sites**

2.94 It is my understanding that whilst both these sites are LPS sites, no application for Pharmaceutical Services (PhS) should be considered at these sites or any site in the neighbourhoods.

2.95 "Pharmaceutical list applications means applications for inclusion in a Pharmaceutical list"

2.96 The relevant Regulations (made under this paragraph and other powers) are the National Health service (local Pharmaceutical Services etc) Regulations 2006 ("the LPS Regulations"). Regulation 4 provides:

2.97 "(1) Subject to following provisions of this Regulation a Primary Care Trust may designate neighbourhoods, premises or descriptions of premises for purpose of paragraph 2 of schedule 8A to the Act.

2.98 (2) Where a destination has been made or varied under this Regulation, the Primary Care Trust may defer consideration of all other part 2 applications in respect of the designated neighbourhoods, premises or description of premises, until such time as the designation is cancelled.

2.99 Furthermore, when these contracts were awarded, the then PCT confirmed by letter "that as this contract is a new contract there will be no right of return to the PCT's pharmaceutical list at either the end of the 10-year contract or at any other time where the contract is terminated."

2.100 **Purpose PCT considered LPS despite there being adequate NHS Pharmaceutical provision**

2.101 The PCT actively considered that LPS might play a role in innovative future provision and delivery of Pharmaceutical services with extended hours that would have a positive impact in the health and wellbeing of the local population and support the development of the Community Pharmacies within the respective neighbourhoods. On this basis the LPS contracts were granted to Greenlight in the hope they would fulfil this ambition under the protection of an LPS where no other PHS contact could apply or minor relocate to do the same within these neighbourhoods. I would like to remind the committee Waremoss Ltd was less than 500meters away and their application to minor relocate to this site was rejected.

2.102 Furthermore, Greenlight Healthcare Ltd were given financial support of public funds to achieve this whereas existing pharmacies within respective neighbourhoods did not have this umbrella of protection, security or funding. As far as we are concerned, they have not fulfilled on this ambition and no innovation has taken place that has had a positive impact on the health and wellbeing of the local population or the network of Pharmacies within the neighbourhoods.

2.103 In fact, they reduced their contracted working hours and access to services proving that there was more than adequate provision of services within both neighbourhoods. In all these years I was never contacted by Greenlight on how they could help me develop services in an innovate way or provide ground breaking support to me or all the other contractors. On the contrary they used this valuable funding to develop CPD of their own workforce and merely invited us to join in the training that we individually already had in place. In twelve years, never once have I been approached by Greenlight to ask me what are my teams training needs or my training needs to better serve my community.

2.104 I would go further to say that without any public funding, I have been more innovative, invested more in the community and have developed a state-of-the-art Pharmacy premises with three consultation rooms. I have invested in automation and have a total of 7 apprentices working their way to accuracy checking technicians. They are highly skilled in ear micro suction, vaccination, Phlebotomy and healthy living advice. We were the first Phase pharmacy to be involved in Covid vaccination delivery, polio vaccination delivery and now MMR vaccination delivery. We have supported all PCN networks which includes Harford Health Centre in vaccinating their housebound patients for Covid and Flu vaccinations over the last three campaigns. We have, I

believe, vaccinated more of the local population then both Greenlight Pharmacy sites put together.

2.105 I am an Independent Prescriber and have used this skill to support the local population. All this without using a penny of public funds. I am inviting the committee to come visit my practice to see for themselves the level of innovation and investment we have made and continue to make.

2.106 We along with all the other neighbouring pharmacies in both neighbourhoods are more than capable of fulfilling the Pharmaceutical needs to the local population when both these LPS ends and have already made investments and have the capacity to fulfil the needs of an increase in local population. Please see two supporting articles attached to this email for the committee to read and also a link to 360Degree Society:

2.107 Pharmacy Business Magazine – "Robotic revolution: Atul Patel's prescription for pharmacy innovation" (attached to email)

2.108 P3 Magazine – "A Vision for Community" Pages 1-8 (attached to email)

2.109 https://www.360degreesociety.org/about-us - (you can see my profile on this page)

2.110 **Contravention of Fair Competition Principles**

2.111 Automatically awarding the NHS contracts to Greenlight Pharmacy without opening the sites to a competitive application process breaches the principles of fair competition outlined in The Enterprise Act 2002 and The Competition Act 1998. Such a decision would preclude other potential providers from applying for these sites, which is inherently anti-competitive. This could lead to reduced innovation, diminished service quality, and a lack of transparency in the allocation process.

2.112 **Lack of a Proper Impact Assessment**

2.113 The Pharmaceutical Needs Assessment (PNA) has not accounted for the potential impact on local pharmacies if Greenlight Pharmacy to automatically switch from LPS contract to PsH contracts. Existing local pharmacies, including ours, have made significant investments in technology such as robotics, automation, and artificial intelligence, equipping them to meet the growing demands of the community without the need for additional NHS-funded contracts. No proper consultation or evaluation has been conducted to determine whether existing pharmacies could absorb the demand following the expiration of the LPS contracts as well as increase in expected population within both neighbourhoods.

2.114 We believe the Pharmaceutical needs Assessment (PNA) is outdated and the committee reject these applications and should defer any future applications until the new PNA is published in 2025 and a robust impact study has been carried out.

2.115 **Failure to Justify Continuation Under Pharmaceutical Services (PhS) NHS Pharmaceutical contracts**

2.116 Greenlight Pharmacy has benefited from local authority support during its tenure as an LPS provider, which is not available to other pharmacies in the area. There is no guarantee that Greenlight Pharmacy will continue to deliver the same level of services or maintain extended opening hours under an NHS contract. This raises concerns about the justification for their automatic award when other providers have proven their ability to meet community needs without additional support.

2.117 **Risk of Service Duplication and Inefficiency**

2.118 Automatically awarding these sites to Greenlight Pharmacy risks duplicating services already provided by existing pharmacies, leading to inefficiencies and potential over-saturation in the area. The transition from LPS to NHS contracts without proper evaluation could lead to redundant service provision, diverting resources away from more pressing community needs. Government world class commissioning guidelines on procuring new services clearly indicate that, commissioning of new services should not have any detriment effect or risk to the access of current services available to the population in the respective neighbourhoods. Granting of this application will clearly put at risk access to current services that are available to the communities via current PhS contracts in both neighbourhoods, especially in the current economic climate where many pharmacies have been forced to close. These applications are not in the best interest of the overall population and will destabilise the current investment in services by the current PhS contractors in the neighbourhoods. The committee needs to take all the above points into consideration now after the European Court of Justice ruling on 19th may 2009. Extract from the court order below:

2.119 It is undeniable that a Pharmacist, like other person, peruses the objective of making a profit. However, as a pharmacist by profession, he is presumed to operate the Pharmacy not with purely economic objective, but also from a professional viewpoint. His private interest connected and by the responsibility which he owes, given that any breach of rules of the law or professional conduct undermines not only the value of his investment but also his own professional existence.

2.120 **Prejudicing Future Applications**

2.121 Granting Greenlight Pharmacy automatic inclusion on the NHS Pharmaceutical list would deny other providers the opportunity to apply for PsH contracts if indeed the new robust PNA deems with a more detail impact study indicates there is a gap in Pharmaceutical services. This limits competition and fails to allow a fair process for determining the most suitable provider to meet the pharmaceutical needs of the community.

2.122 **Community Needs Can Be Met by Existing Pharmacies**

2.123 Local pharmacies in the vicinity have proactively invested in infrastructure to address the current and future needs of the population. These investments, made without external funding, demonstrate the capability and readiness of existing providers to meet the community's pharmaceutical requirements without the need for additional NHS contracts at these locations.

2.124 Once again I am inviting the committee to come see our practice before making any decision on both these applications made by Greenlight Healthcare Ltd.

2.125 **Conclusion**

2.126 For all the reasons outlined above, I strongly urge Pharmaceutical Services Regulations Committee refuse both these application made by Greenlight Healthcare Ltd and furthermore defer granting any future applications for a PsH contract until the new PNA is published in 2025 replacing this outdated PNA that has not taken into account the investment in premises improvements, automation, artificial intelligence, etc that current PsH contractors have made in both neighbourhoods. Pharmacies like myself made these investments in both neighbourhoods to ensure there would be no gaps in Pharmaceutical services in anticipation of these LPS contracts coming to an end and any anticipated increase in population via new developments.

2.127 Thank you for considering this objection. I trust that the committee will uphold the principles of fairness, transparency, and competition in its decision-making process.

2.128 **Sinclairs Pharmacy (Roman Road) Comments**

2.129 I am writing to formally express my objection to the applications submitted by Greenlight Healthcare Ltd. for the conversion of their Local Pharmaceutical Services (LPS) contracts to permanent NHS Pharmaceutical Services (PhS) contracts at the following locations:

2.129.1 St Andrews Health Centre (E3 3FF), Reference: CAS-332489-K9Q7Q5

2.130 I believe these applications should be rejected, and I will outline the key reasons for my objections for the committee's consideration.

2.131 **Unjustified Expansion of Services**

2.132 Greenlight Healthcare Ltd. was initially established as a temporary healthcare provider to meet increased demand during the 2012 Olympic Games. Since that period, the local area has been adequately served by a network of existing pharmacies, all of which hold NHS Pharmaceutical Services contracts. These providers have consistently delivered high-quality services and effectively addressed local pharmaceutical needs. Transitioning Greenlight to a permanent contract would introduce unfair competition and could disadvantage established local businesses that have been integral to the community for many years.

2.133 Given that the pharmaceutical services landscape in the area is already sufficiently robust, the establishment of an additional permanent provider would create unnecessary duplication and potentially undermine the financial stability of existing service providers.

2.134 **Potential Disruption to Existing Services**

2.135 Greenlight's operations have diverted patients away from established providers, leading to unnecessary disruption in the local pharmaceutical network and an increase in operational costs. The resulting destabilization of well-established services poses a significant risk to the ongoing viability of local pharmacies that have long served the community.

2.136 **Inconsistency with the Primary Care Needs Assessment (PNA)**

2.137 The local Primary Care Needs Assessment (PNA) clearly indicates that there are no identified gaps in the provision of pharmaceutical services. The existing NHS-contracted pharmacies are well-equipped to meet community needs and have demonstrated their ability to adapt to changing circumstances. Approval of Greenlight's application would contradict the PNA's findings, undermining the strategic planning intended to maintain an efficient and effective healthcare delivery system.

2.138 **Financial Implications**

2.139 Given the ongoing pressures on NHS funding, approving an additional permanent provider in a sufficiently served area would place further strain on already limited healthcare resources. The existing network of NHS-contracted pharmacies has consistently demonstrated its ability to manage resources effectively and expand services without the need for additional funding.

2.140 Granting Greenlight a permanent contract would represent an unnecessary financial burden.

2.141 **Breach of Original Contractual Terms**

2.142 The original LPS contracts explicitly stipulated that these sites would not transition automatically to the NHS Pharmaceutical Services contract list. Greenlight's application contravenes these terms and, if approved, would set a concerning precedent for future contractual arrangements.

2.143 **Risk to Local Pharmacy Investments**

2.144 Local pharmacies have made significant investments in service expansion, automation, and innovation to improve patient care. The introduction of a new permanent provider would undermine these investments, potentially devaluing the financial and strategic commitments made by existing businesses, and could deter future investment in the sector.

2.145 **Concerns Regarding Service Duplication**

2.146 Approving Greenlight's application would likely result in a duplication of services, leading to inefficient allocation of resources. This could divert attention from other critical areas of healthcare provision and potentially diminish the overall quality of services available to the community.

2.147 **Recommendations**

2.148 In light of the aforementioned concerns, I respectfully recommend the following actions:

2.148.1 Reject Greenlight Healthcare Ltd.'s applications for PhS contracts at both St Andrews Health Centre.

2.148.2 Support the continued operation of existing NHS Pharmaceutical Services contract holders who have demonstrated their ability to meet local healthcare needs.

2.148.3 Initiate a comprehensive review of local healthcare requirements as part of the 2025 Primary Care Needs Assessment to ensure continued alignment between service provision and community needs.

2.149 These measures will safeguard the stability and effectiveness of the local pharmacy network while protecting the interests of established providers and the broader community.

2.150 **Sinclairs Pharmacy (Ben Johnson Road) Comments**

2.151 I am writing to formally express my objection to the applications submitted by Greenlight Healthcare Ltd. for the conversion of their Local Pharmaceutical Services (LPS) contracts to permanent NHS Pharmaceutical Services (PhS) contracts at the following locations:

2.151.1 St Andrews Health Centre (E3 3FF), Reference: CAS-332489-K9Q7Q5

2.151.2 Harford Health Centre (E1 4FG), Reference: CAS-332491-Q2G0X2

2.152 I believe these applications should be rejected, and I will outline the key reasons for my objections for the committee's consideration.

2.153 **Unjustified Expansion of Services**

2.154 Greenlight Healthcare Ltd. was initially established as a temporary healthcare provider to meet increased demand during the 2012 Olympic Games. Since that period, the

local area has been adequately served by a network of existing pharmacies, all of which hold NHS Pharmaceutical Services contracts. These providers have consistently delivered high-quality services and effectively addressed local pharmaceutical needs. Transitioning Greenlight to a permanent contract would introduce unfair competition and could disadvantage established local businesses that have been integral to the community for many years.

2.155 Given that the pharmaceutical services landscape in the area is already sufficiently robust, the establishment of an additional permanent provider would create unnecessary duplication and potentially undermine the financial stability of existing service providers.

2.156 **Potential Disruption to Existing Services**

2.157 Greenlight's operations have diverted patients away from established providers, leading to unnecessary disruption in the local pharmaceutical network and an increase in operational costs. The resulting destabilization of well-established services poses a significant risk to the ongoing viability of local pharmacies that have long served the community.

2.158 **Inconsistency with the Primary Care Needs Assessment (PNA)**

2.159 The local Primary Care Needs Assessment (PNA) clearly indicates that there are no identified gaps in the provision of pharmaceutical services. The existing NHS-contracted pharmacies are well-equipped to meet community needs and have demonstrated their ability to adapt to changing circumstances. Approval of Greenlight's application would contradict the PNA's findings, undermining the strategic planning intended to maintain an efficient and effective healthcare delivery system.

2.160 **Financial Implications**

2.161 Given the ongoing pressures on NHS funding, approving an additional permanent provider in a sufficiently served area would place further strain on already limited healthcare resources. The existing network of NHS-contracted pharmacies has consistently demonstrated its ability to manage resources effectively and expand services without the need for additional funding.

2.162 Granting Greenlight a permanent contract would represent an unnecessary financial burden.

2.163 **Breach of Original Contractual Terms**

2.164 The original LPS contracts explicitly stipulated that these sites would not transition automatically to the NHS Pharmaceutical Services contract list. Greenlight's application contravenes these terms and, if approved, would set a concerning precedent for future contractual arrangements.

2.165 **Risk to Local Pharmacy Investments**

2.166 Local pharmacies have made significant investments in service expansion, automation, and innovation to improve patient care. The introduction of a new permanent provider would undermine these investments, potentially devaluing the financial and strategic commitments made by existing businesses, and could deter future investment in the sector.

2.167 **Concerns Regarding Service Duplication**

2.168 Approving Greenlight's application would likely result in a duplication of services, leading to inefficient allocation of resources. This could divert attention from other critical areas of healthcare provision and potentially diminish the overall quality of services available to the community.

2.169 **Recommendations**

2.170 In light of the aforementioned concerns, I respectfully recommend the following actions:

2.170.1 Reject Greenlight Healthcare Ltd.'s applications for PhS contracts at Harford Health Centre (E1 4FG), Reference: CAS-332491-Q2G0X2

2.170.2 Support the continued operation of existing NHS Pharmaceutical Services contract holders who have demonstrated their ability to meet local healthcare needs.

2.170.3 Initiate a comprehensive review of local healthcare requirements as part of the 2025 Primary Care Needs Assessment to ensure continued alignment between service provision and community needs.

2.171 These measures will safeguard the stability and effectiveness of the local pharmacy network while protecting the interests of established providers and the broader community.

2.172 **Tesco's Comments**

2.173 With the advent of Pharmacy First since the publication of the PNA, more patients are using our pharmacy for the last two hours of opening each night. However, this is still a low dispensing-volume Tesco pharmacy and approval of this application risks the closure of our pharmacy and the loss of core hours from the area.

2.174 **Cordeve Comments – received out of time**

2.175 I am writing to formally object to Greenlight Healthcare Ltd's applications to convert their Local Pharmaceutical Services (LPS) contracts to Pharmaceutical Services (PhS) contracts at Harford Health Centre, E1 4FG, and St Andrews Health Centre, E3 3FF, upon the expiration of their current contracts in 2025.

2.176 The following points outline the basis of my objection:

2.177 **Regulatory Constraints and Original LPS Contract Conditions**

2.178 When the LPS contracts were granted, the then-PCT explicitly stated that there would be no right of return to the pharmaceutical list at the end of the contracts. These contracts were issued as innovative, time-limited agreements with no guarantees for renewal.

2.179 The original designation of these sites as LPS premises allowed them to operate with exclusive protection, prohibiting applications from other providers. Allowing these contracts to now convert to PhS undermines the fairness and intent of the original agreement.

2.180 **Adequate Pharmaceutical Service Provision**

2.181 The most recent Pharmaceutical Needs Assessment (PNA) indicates that there are no gaps in pharmaceutical service provision in either area. Pharmacies within a 2km

radius of the sites—including Sinclair's Pharmacy, Medichem Pharmacy, and others—are already meeting community needs comprehensively.

2.182 Significant closures and consolidations in the sector have not led to service gaps. On the contrary, these changes have streamlined service provision and demonstrated the resilience and capacity of existing contractors.

2.183 **Lack of Innovation and Community Engagement**

2.184 Greenlight Healthcare has failed to deliver on the innovative promises that justified their LPS contracts. Instead, they reduced contracted working hours, indicating that existing provision was sufficient.

2.185 **Competition and Fairness**

2.186 Automatically awarding PhS contracts to Greenlight Healthcare would breach the principles of fair competition under the Competition Act 1998 and The Enterprise Act 2002.

2.187 Such a decision precludes other qualified providers from applying to meet community needs, limiting competition, innovation, and transparency. A competitive application process is essential to ensure the best outcomes for the local population.

2.188 **Service Duplication and Inefficiency**

2.189 Transitioning these sites to PhS contracts risks duplicating services already provided by existing pharmacies, leading to inefficiencies and destabilizing established providers. Many local pharmacies have invested in modern infrastructure, including robotics and AI, to absorb anticipated increases in demand without additional NHS-funded contracts.

2.190 **Timing and Future Planning**

2.191 A new PNA is scheduled for publication in October 2025. Making decisions about PhS contracts now, before this updated assessment, is premature. The committee should defer consideration of these applications until the new PNA is available and a robust consultation process has been conducted.

2.192 **Local Pharmacy Capability and Investment**

2.193 Existing pharmacies in the area have demonstrated their ability to meet current and future needs without public funding. Examples include advanced training for staff, the introduction of new services (e.g., vaccinations, phlebotomy), and investments in consultation rooms and other infrastructure.

2.194 These investments ensure that the community will not face any gaps in service provision after the expiration of the LPS contracts.

2.195 **Conclusion**

2.196 Given the points outlined above, I strongly urge the Pharmaceutical Services Regulations Committee to refuse these applications. Furthermore, I recommend deferring any future decisions until the updated PNA is published, ensuring decisions are based on accurate, up-to- date data and fair competition principles.

2.197 Thank you for considering this objection. I invite the committee to visit my pharmacy and others

2.198 in the area to witness firsthand the investments made and the level of service provided by existing providers.

2.199 **Applicant's Response**

2.200 I note that the parties repeat the same objections and I have therefore dealt with the objections by way of listing the points made rather than the identity of the objector.

2.201 **LPS Areas**

2.202 The Regulations give the ICB the power to defer hearing applications within LPS areas, however there is no obligation to do so. In this case the HWB has properly identified a future need for pharmaceutical services to meet the needs of patients once the LPS contract terminates and there is no justification for delaying consideration of the application.

2.203 **No "Right of Return" to the Pharmaceutical List**

2.204 Multiple objectors seem to be under the impression that my client is seeking a "right of return" to the pharmaceutical list or to "convert" its LPS contract to an entry on the pharmaceutical list. This is incorrect. Had a right of return to a pharmaceutical list existed then there would be no need for this identified future need application. Instead, it is acknowledged that the current LPS contract will cease with no right of return to the pharmaceutical list and my client is therefore using the correct procedure of making a new application for inclusion in the pharmaceutical list. My client has therefore followed the correct procedure.

2.205 **The Operation of / Success of the Current LPS Contract**

2.206 Multiple parties comment on the operation of the existing LPS contract. Respectfully, this is not relevant to the test that the ICB must apply in this case, which is set out in the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (as amended) (the "Regulations"). The operation of the LPS is a matter between the ICB and my client.

2.207 Fair Competition

2.208 It is open to any party to submit the same type of application that my client has already submitted and the ICB must make its decision by reference to the Regulations.

2.209 **Lack of Proper Impact Assessment**

2.210 The Regulations specifically do not permit grounds for opposing the application, which are a challenge to the legality or reasonableness of a pharmaceutical needs assessment, or to the fairness of the process by which a HWB or Primary Care Trust undertook that assessment.

2.211 **Service Duplication**

2.212 It is important to note that there is already a pharmacy at this location, but it will close. The HWB and my client wish to maintain access to a pharmacy and are not duplicating anything.

2.213 **Regulation 31**

2.214 One objector seeks to argue that my client's application must be refused under regulation 31. This is incorrect.

2.215 Regulation 31 states as follows; [quoted in full].

2.216 For regulation 31 to apply both of parts (a) and (b) must be true.

2.217 Regulation 31(a) only applies where “a person on the pharmaceutical list” is providing or has undertaken to provide pharmaceutical services (“the existing services”). Regulation 31 also makes it clear that the entry on the pharmaceutical list is not for the entire HWB but only relates to either (i) the premises to which the application relates, or (ii) adjacent premises.

2.218 An LPS chemist is not included on the pharmaceutical list and there is no person “on the pharmaceutical list” at St Andrews Centre or any adjacent premises.

2.219 It is notable that multiple objectors state forcefully that the LPS pharmacy has “no right of return to the pharmaceutical list”, so they are clearly aware that my client is not currently on the pharmaceutical list for any premises at Harford Health Centre.

2.220 Further, in this case the PNA has specifically stated that a condition of the approval of any application should be that the new pharmacy is not permitted to commence services until the LPS contract has terminated. It is therefore impossible for the new pharmacy to be providing services as the same time as the LPS pharmacy and as a result regulation 31(b) does not apply.

2.221 As neither regulation 31(a) nor (b) applies (and both must apply to refuse the application), regulation 31 is not relevant in this case.

2.222 **Regulation 15(2)(e)**

2.223 One contractor claims that regulation 15(2)(e) should apply in this case. This regulation states that the Commissioner should consider “whether it is satisfied that, **since the publication of the relevant pharmaceutical needs assessment**, there have been changes to the needs, or future needs, for pharmaceutical services in the area of the relevant HWB that are such that refusing the application is essential in order to prevent significant detriment to the provision of pharmaceutical services in that area;” [my emphasis]

2.224 The relevant PNA is the Tower Hamlets PNA. Whilst the PNA is titled “Pharmaceutical Needs Assessment 2023” and shows a date on each page of 27/04/2023, it was not in fact published until 23 September 2024 (see item 4.1 of attached HWB minutes) and this is why my client has had to wait until after this time to submit their application. The objectors do not identify any “changes to the needs, or future needs, for pharmaceutical services in the area of the relevant HWB” that have occurred since the PNA was published.

2.225 The objectors discuss access to pharmacies in the local area, but this is not relevant to the legal test that must be applied in this case.

2.226 As my client’s application meets all relevant legal tests under the Regulations it should be approved and we look forward to hearing from you in due course.

2.227 **General Comments**

2.228 Tower Hamlets last published a PNA on September 2024, this is the relevant PNA. The document does state 2023 on the cover but was only signed off by the HWBB in September 2024. The page that the applicant is relying on was in the draft document as well as the published PNA.

2.229 Page 67 of the PNA states:

2.230 *5.2 Local Pharmaceutical Services (LPS) contract*

2.231 *A Local Pharmaceutical Services (LPS) contract is one that is commissioned locally by the local commissioner, not nationally by NHSE. Tower Hamlets has two LPS contracts, initially commissioned by NHS London, both of which terminate in 2025.*

2.232 *…… (text removed for LPS not associated with this application).*

2.233 *Since 2012 a pharmacy has operated at 2 Hannaford Walk E3 3FF which is to expire on 7 June 2025, this being co-located with the St Andrews Health Centre, under a contract for local pharmaceutical services (a "LPS contract") in order to provide pharmaceutical services. Tower Hamlets Health & Wellbeing Board recognises the important function of a pharmacy at the St Andrews Health Centre and has determined that the termination of the current LPS contract will create a gap in provision. Tower Hamlets Health & Wellbeing Board determines that, an NHS pharmacy, at the same premises as the current LPS pharmacy, will be needed to secure access to pharmaceutical services in the event that the existing LPS pharmacy at St Andrews Health Centre ceases to provide pharmaceutical services under their LPS contract.*

2.234 *Any routine application should only be granted subject to a condition that pharmaceutical services are not provided at the premises to which the application relates until the services provided by the current LPS pharmacy at St Andrews Health Centre cease to be provided and this condition should be included within any approval of a routine application in accordance with Schedule 2, Part 5, 33(2)(a) of the Regulations*

2.235 *The conclusions of the PNA state:*

2.236 *The detailed conclusions are as follows (key types of pharmacy services are specifically detailed below).*

2.237 ***8.1 Essential services***

2.238 *No gaps have been identified in essential services that if provided either now or over the next three years would secure improvements, or better access, to essential services across the whole borough.*

2.239 *There is no gap in the provision of essential services during normal working hours across the whole borough.*

2.240 *There are no gaps in the provision of essential services outside of normal working hours across the whole borough.*

2.241 ***8.2 Advanced Services***

2.242 *No gaps have been identified that if provided either now or in the future would secure improvements, or better access to advanced services across the whole borough.*

2.243 *There are no gaps in the provision of advanced services across the whole borough.*

2.244 ***8.3 Enhanced Services***

2.245 *No gaps have been identified that if provided either now or in the future would secure improvements, or better access to enhanced services (relevant services) across the whole borough.*

2.246 *There are no gaps in the provision of enhanced services across the whole borough.*

2.247 ***8.4 Locally Commissioned Services***

2.248 *There are no gaps in the provision of locally commissioned services (relevant services) at present or over the next three years that would secure improvement or better access to locally commissioned services across the whole borough.*

2.249 *There are no gaps in the provision of locally commissioned services across the whole borough.*

2.250 The conclusions reached in this PNA report include assessments that have addressed protected characteristics of groups living in the borough localities in relation to access to pharmacies. The assessments show no evidence of any ovall [sic] differences between or within the localities in Tower Hamlets.

2.251 Based on the review of building plans and population projections, there may be a need to review the level of pharmacy services in specific places in the borough in the period up to 2025. Regular reviews of all the above services are recommended in order to establish if in the future whether changes in these services will secure improvement or better access to pharmacies across the whole borough.

2.252 Whether there is sufficient choice of pharmacy in Tower Hamlets has been reviewed, it was decided there was sufficient choice of pharmacy in Tower Hamlets. London boroughs have a greater choice of pharmacy provider compared to many other areas in England.

2.253 The PNA at page 67 states that if the LPS ceases on its expiry, that there is a need to secure pharmaceutical services at that location as a gap would have been created. When the conclusions were made, there was no confirmation that the LPS contracts would be renewed or terminated.

2.254 The two LPS contracts in Tower Hamlets at Harford St Health Centre and St Andrews Health Centre, have now been given a termination notice and will cease on the 25 March 2025 and 7 June 2025 respectively. This will trigger the future need determined by the HWBB in its PNA.

2.255 This application is NOT a right of return application, as this LPS was not given a right of return, this is a fresh application that has been made against the regulations. The LPS termination dates are published in the PNA and is available to anyone that read the PNA. Therefore, it is an option for anyone to apply to open a pharmacy.

2.256 *15(2)(a) to (e) Deferral*

2.257 This Application has not been deferred.

2.258 *15(2)(e) whether it is satisfied that, since the publication of the relevant pharmaceutical needs assessment, there have been changes to the needs, or future needs, for pharmaceutical services in the area of the relevant HWB that are such that refusing the application is essential in order to prevent significant detriment to the provision of pharmaceutical services in that area;*

2.259 Whilst there have been changes, these are not such that it is essential to refuse the application.

2.260 The LPS contract at St Andrews Health Centre will expire on 7 June 2025 and this has triggered the future need outlined in the PNA.

2.261 **The PSRC have determined that it is satisfied that since the publication of the PNA there have been changes to the future circumstances specified in the PNA**

and there is not sufficient evidence to suggest whether or not these are significant, and that the application should be refused in order to prevent significant detriment to the provision of pharmaceutical services in the area.

2.262 *15(2)(f) whether it is satisfied that, since the publication of the relevant pharmaceutical needs assessment, there have been changes to the needs, or future needs, for pharmaceutical services in the area of the relevant HWB that are such that*

2.262.1 *the future circumstances specified in accordance with paragraph 2(b) of Schedule 1 will not, or are now unlikely to, arise (in whole or in part), and*

2.262.2 *granting the application would not secure improvements, or better access, to pharmaceutical services in the area of the new HWB;*

2.263 The future need has arisen already as the LPS contracts will be ceasing. This application has been made to fill this future need. If this application were granted, this would fulfil the need identified at St Andrews Health Centre.

2.264 **The PSRC have determined that it is satisfied that since the publication of the PNA there have been changes to the future circumstances specified in the PNA, as the future need has arisen.**

2.265 *15(2)(g) whether it is satisfied that-*

2.265.1 *granting the application would only meet the future need mentioned in paragraph (1) in part, and*

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

2.266 The future need has arisen already as the LPS contracts will be ceasing. This application has been made to fill this future need. If this application were granted, this would fulfil the need identified at St Andrews Health Centre but not at the other location.

2.267 **The PSRC have determined that it is satisfied that granting this application would meet the future need in full for St Andrews Health Centre. The remaining need identified at Harford St Health Centre has been subject to another application which has been granted but is still in its appeal period. So is likely to be met in the foreseeable future.**

2.268 *15(2)(h) whether –*

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

2.268.2 *it considers that, if the application were granted, it would not be unlikely, in the reasonably foreseeable future, that the remainder of that need would be met.*

2.269 The future need has arisen already as the LPS contracts will be ceasing. This application has been made to fill this future need. If this application were granted, this would fulfil the need identified at St Andrews Health Centre but not at the other location.

2.270 **The PSRC have determined that it is satisfied that granting this application would meet the future need in full for St Andrews Health Centre, but not any other location, therefore only meeting in part. The remaining need identified at Harford St Health Centre has been subject to another application which has been granted but is still in its appeal period. So is likely to be met in the foreseeable future.**

2.271 *15(2)(i) whether it is satisfied that-*

2.271.1 *the future need mentioned in paragraph (1) was for services other than essential services, and*

2.271.2 *granting the application would result in an increase in the availability of essential services in the area of the relevant HWB.*

2.272 The future need identified is for essential services and not for other services, therefore this criterion has not been met.

2.273 **The PSRC have determined that the statement in the PNA only referred to essential services. Therefore, this part of the regulations does not apply.**

2.274 *15(2)(j) whether it is satisfied that, since the publication of the relevant pharmaceutical needs assessment, the future need mentioned in paragraph (1) has been met by another person who is providing, or is due to be met by another person who has undertaken to provide, either in the area of the relevant HWB or in the area of another HWB, NHS services.*

2.275 The future need mentioned in the PNA has not been met or due to be met by anyone else, therefore this criterion has not been met.

2.276 **The PSRC have determined that it is satisfied that there have not been changes that means the future need has been met or is due to be met.**

2.277 **Decision**

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

2.279 There are no pharmacies adjacent to the site in question; therefore regulation 31 does not apply.

2.280 15(1) The PSRC have determined that there is a future need identified in the PNA and the termination of the LPS contracts in Tower Hamlets at Harford St Health Centre and St Andrews Health Centre has triggered this future need. Therefore, the remaining parts of the regulations need to be assessed.

2.281 15(2)(1) to (d) The application was not deferred so these parts of the regulations do not apply.

2.282 15(2)(e) The PSRC have determined that it is satisfied that since the publication of the PNA there have been changes to the future circumstances specified in the PNA and there is not sufficient evidence to suggest whether or not these are significant, and that the application should be refused in order to prevent significant detriment to the provision of pharmaceutical services in the area.

2.283 15(2)(f) The PSRC have determined that it is satisfied that since the publication of the PNA there have been changes to the future circumstances specified in the PNA as the future need has arisen.

2.284 15(2)(g) The PSRC have determined that it is satisfied that granting this application would meet the future need in full for St Andrews Health Centre. The remaining need identified at Harford St Health Centre is likely to be met in the foreseeable future.

2.285 15(2)(h) The PSRC have determined that it is satisfied that granting this application would meet the future need in full for St Andrews Health Centre but not any other location, therefore meeting the need in part. The remaining need is likely to be met in the foreseeable future.

2.286 15(2)(i) The PSRC have determined that the statement in the PNA only referred to essential services. Therefore, this part of the regulations does not apply.

2.287 15(2)(j) The PSRC have determined that it is satisfied that there have not been changes that means the future need has been met or is due to be met.

2.288 The PSRC have determined that the application does fulfil the criteria at 15(2)(h) and has been granted.

2.289 **Determination made by London PSRC on behalf of NHS North East London ICB.**"

3 The Appeal

In a letter dated 12 March 2025, Kamsons Pharmacy ("the Appellant") appealed against the Commissioner's decision. The grounds of appeal are:

3.1 "I would like to appeal the decision of North East London ICB to approve the above application. This appeal is mainly based around Regulation 15(2)(e).

3.2 I have attached a copy of my original letter to PCSE on behalf of the ICB outlining my reasons why the application should not have been approved.

3.3 The ICB agreed that there have been changes since the publication of the PNA but that there was not enough evidence to support whether or not these are significant. In their minutes the ICB state:

3.4 15(2)(e) The PSRC have determined that it is satisfied that since the publication of the PNA there have been changes to the future circumstances specified in the PNA and there is not sufficient evidence to suggest whether or not these are significant, and that the application should be refused in order to prevent significant detriment to the provision of pharmaceutical services in the area.

3.5 I believe that enough evidence was provided to demonstrate the significance of these changes that have all occurred since the publication of the PNA in September 2024.

3.6 Some important additional points to consider are as follows.

3.7 Tesco, in their submission to the ICB stated:

3.7.1 *"With the advent of Pharmacy First since the publication of the PNA, more patients are using our pharmacy for the last two hours of opening each night. However, this is still a low dispensing-volume Tesco pharmacy and approval of this application* ***risks the closure of our pharmacy and the loss of core hours from the area****."* (my emphasis)

3.8 In my experience, it is unusual for Tesco to comment on any pharmacy application. For the multinational to comment, it indicates the significant risk of their pharmacy closing.

3.9 To add to this risk, Tesco have recently announced the closure of ten of its pharmacies and this has been reported in both the national (Tesco AXING key service in several stores in blow to shoppers | The Sun) and the professional press (Revealed: Tesco set to close 10 in-store pharmacies). At the time of writing, the locations of these ten

pharmacies are unknown. However it is fair to assume that the Tesco Pharmacy at Hancock Road, Bromley By Bow, London E3 3DA is likely to be at risk either in this round or in a future round of closures.

3.10 The reason why this Tesco Pharmacy, which is only a short ten minute flat walk away from the applicant's site, is at risk of closure is its high cost of operating for extended hours combined with very low dispensing volumes.

3.11 In my submission to the ICB, I noted the low dispensing volumes as follows:

The most recent published dispensing figures for the Tesco Pharmacy are as follows: Month (2024)	Prescription items dispensed
Aug	2883
July	2927
June	2695
May	2840
April	2767
March	2691

3.12 It is important to note that the average monthly prescription volume for a pharmacy in England is 7,230 (from page 69 of the PNA). This PNA figure is over two years old as it is from the year ending March 2022. It will have increased significantly since.

3.13 Tesco is dispensing an average (over the last six months) of 2,800 items per month. Tesco at Bow is therefore only dispensing 38.7% of the national average items.

3.14 It is important to emphasise again that should the Tesco close, there will be a significant loss of core hours in the locality.

3.15 This Tesco Pharmacy opened in October 2008 ie four years before the LPS contracted Greenlight Pharmacy. It is open for extended hours from 9am to 9pm for six days per week and from 12 noon to 6pm on Sundays.

3.16 The North East locality of Tower Hamlets, where Greenlight Pharmacy is situated, is the only locality within Tower Hamlets with two 100 hour pharmacies. The North West and the South West localities have zero 100 hour pharmacies (ref Table 16 on page 70 of the PNA). The North East locality is therefore already well served for extended hours provision.

3.17 **The applicant proposes to close 2 hours earlier every weekday and every Sunday and 5 hours earlier every Saturday than Tesco open for their core hours.**

3.18 The London Pharmaceutical Services Regulatory Committee in their written decision reports often note the opening times of pharmacies in the area. Interestingly, in this decision report they have not. This is an important aspect that it appears the ICB may have overlooked the significance of. Please note the current closing times of Tesco Pharmacy and those proposed by the applicant with the resultant loss of evening core hours should Tesco close as a result of the approval of this application:

Day of the week	Tesco closing time	Greenlight closing time	Loss of core hours
Mon	9pm	7pm	-2 hours
Tues	9pm	7pm	-2 hours
Wed	9pm	7pm	-2 hours
Thurs	9pm	7pm	-2 hours

Fri	9pm	7pm	-2 hours
Sat	9pm	4pm	**- 5 hours**
Sun	6pm	4pm	-2 hours

3.19 This Tesco Pharmacy is at increasing risk of closure because it has very low dispensing volumes, due to the Greenlight LPS pharmacy being situated so close to it. When the LPS contract ceases, it would be expected for the Tesco Pharmacy dispensing volume to increase so that it may approach being financially viable. The contractor themselves has stated that it is currently looking at pharmacies to close and it has stated that approval of this application ***"risks the closure of our pharmacy and the loss of core hours from the area".***

3.20 Other changes in the area, as outlined in my letter to PCSE, include the major redevelopment of the area around the nearby Kamsons Pharmacy and the closure of Stroudley Walk surgery. Some photos of the outside of Kamsons Pharmacy, taken last week, are below: [appendix B].

3.21 As you can see, the redevelopment of Stroudley Walk is having a significant impact on Kamsons Pharmacy with the premises currently not being visible and appearing, at first sight, to be inaccessible. Alongside the closure of the nearby Stroudley Walk Surgery, many patients are now choosing to use a pharmacy that is nearer to their GP surgery or which is visible on passing.

3.22 Since the publication of the PNA, both of the pharmacies nearest to where the application is for, Tesco Pharmacy and Kamsons Pharmacy, have become at greater risk.

3.23 To compound this, the impact of the static NHS global sum funding for community pharmacy is now causing greater financial difficulties for pharmacies with large numbers of closures due the pressures of increases in staff costs and the National Living Wage, increases in energy costs, increases in rent and increases in employer National Insurance contributions. These are significant changes since the publication of the PNA with Healthwatch reporting (in September 20024) that the financial pressures are now causing the closure of eight pharmacies per week (Pharmacy closures in England | Healthwatch).

3.24 In summary, this application should be refused under Regulation 15(2)(e) due to the following changes since the publication of the PNA:

3.24.1 the worsening financial situation for community pharmacies since the publication of the PNA such as the increase in National Living Wage, increased pharmacist and technician costs, increased energy costs, increased employer National Insurance contributions and increased inflation alongside static NHS funding.

3.24.2 The change in circumstances for Kamsons Pharmacy with its nearest surgery closing and redevelopment work happening outside it.

3.24.3 The Tesco Pharmacy, a few minutes walk, away dispensing very low volumes and being at risk of potential closure if this application is approved

3.24.4 The recent announcement by Tesco of its intention to close at least 10 of its pharmacies

3.24.5 Tesco stating that their nearby pharmacy is at risk of closure, *"With the advent of Pharmacy First since the publication of the PNA, more patients are using*

our pharmacy for the last two hours of opening each night. However, this is still a low dispensing-volume Tesco pharmacy and approval of this application ***risks the closure of our pharmacy and the loss of core hours from the area."***

3.24.6 The resultant loss of core hours every evening, seven days per week, with the loss of five hours every Saturday evening and two hours every weekday and Sunday evening should Tesco close its pharmacy because of the approval of this application.

3.25 There have been significant changes since the publication of the PNA. It is clear that existing pharmacies are able to and have the capacity to provide a full range of pharmaceutical services to the population. Approval of this application will be expected to cause the closure of the Tesco Pharmacy and the resultant loss to the neighbourhood of:

3.25.1 2 core hours every Sunday evening

3.25.2 5 core hours every Saturday evening

3.25.3 2 core hours every weekday evening

3.26 As approval of this application will cause significant detriment to the provision of pharmaceutical services in that area then under Regulation 15(2)(e) it should be refused."

Letter to the Commissioner dated 6 December 2024 [see 2.32 – 2.78.5 above].

Appendix 1 as referred to at 2.224:

3.27 "We are writing to update you of recent developments in the procurement of two Local Pharmaceutical Services (LPS) Contracts in Tower Hamlets

3.28 **Harford Street Health Centre, 115 Harford Street, London E1**

3.29 We are pleased to inform you that on 2nd April 2012 the PCT signed a 10-year LPS contract with Greenlight Healthcare Limited T/A Green Light Pharmacy. The pharmacy should be open and providing the LPS scheme at the end of April.

3.30 The details for this LPS scheme that have been developed are:-

3.30.1 The provision of the same services as described as essential and advanced services in the national community pharmacy contractual framework;

3.30.2 The provision of a range of locally commissioned services, in line with local enhanced services commissioned from other community pharmacies in Tower Hamlets;

3.30.3 The provision of an anticoagulation service;

3.30.4 The provision of 3 specific local pharmaceutical services, namely:-

3.30.4.1 Developing and implementing a model to support and improve medicines adherence, particularly in patients with a history of poor adherence.

3.30.4.2 Integrating the provision of the New Medicines Service (NMS) and targeted Medicines Use Reviews (tMUR) into care pathways and develop the MUR model with local GPs and other health care professional to meet local need.

3.30.4.3 To develop a fit for purpose pharmacy workforce across network 3 that is sufficiently up-skilled to deliver services as required by the commissioning bodies and support the delivery of the QIPP agenda.

3.30.5 The Contract includes a number of KPIs, the achievement of which will trigger agreed quality payments.

3.30.6 The pharmacy will be open 8am - 8pm each day of the year.

3.31 The PCT can confirm that as this contract is a new contract there is no right of return to the PCT's pharmaceutical list at either the end of the 10-year contract or at any other time where the contract is terminated.

3.32 **St. Andrew's Health Centre, Bow, London E3**

3.33 The PCT can confirm that it has appointed a preferred bidder to provide this LPS contract, and is now in the process of contract finalisation. It is the PCT's intention that the pharmacy will be open and providing services prior to the start of the Olympics in July 2012. The PCT will notify appropriate parties when the contract has been signed of the name of the successful bidder and the details of the scheme that has been developed.

3.34 The PCT can also confirm that as this contract is a new contract there will be no right of return to the PCT's pharmaceutical list at either the end of the 1 0-year contract or at any other time where the contract is terminated.

3.35 If you have any queries as to the content of this letter, please contact me via my email address."

4 Summary of Representations

In the interests of transparency and fairness, NHS Resolution sought to rely on the discretion afforded in paragraph 7 of Schedule 3 of the Regulations to vary the normal procedures and to circulate the '45 day comments' made to the Commissioner by Sinclairs Pharmacy (Ben Jonson Road) in response to the application as well as the Applicant's '14 day comments' received in response to the representations made to the Commissioner as these had not been seen by parties prior to the decision being made by the Commissioner [appendix C]. This is a summary of the representations received.

4.1 Rushport Advisory LLP on behalf of the Applicant

4.1.1 "Thank you for your letter of 8 April 2025. I act for Greenlight Healthcare Limited in the above application and have been instructed by my client to submit the following reply to the appeals received from interested parties.

4.1.2 I note that the parties repeat the same objections and I have therefore dealt with the appeal points and original objections mainly listing the points made rather than the identity of the objector. Some of the points raised in the objections are quite clearly irrelevant to the legal test or simply discuss issues such as pharmacy funding and we do not address those points directly as they should have no bearing on the outcome of this appeal.

4.1.3 **Background**

4.1.4 The future identified need that forms the basis for this application is contained in the current Tower Hamlets PNA 2023. Whilst the PNA states it is a 2023 document and has the date of 27/4/2023 on each page, the PNA was not in fact published until 23 September 2024. The Regulations repeatedly refer to the date of the PNA being published and this date is therefore of importance in some areas.

4.1.5 The future identified need can be found on page 67 of the PNA and states;

4.1.5.1 *Since 2012 a pharmacy has operated at 2 Hannaford Walk E3 3FF which is to expire on 7 June 2025, this being co-located with the St Andrews Health Centre, under a contract for local pharmaceutical services (a "LPS contract") in order to provide pharmaceutical services. Tower Hamlets Health & Wellbeing Board recognises the important function of a pharmacy at the St Andrews Health Centre and has determined that the termination of the current LPS contract will create a gap in provision. Tower Hamlets Health & Wellbeing Board determines that, an NHS pharmacy, at the same premises as the current LPS pharmacy, will be needed to secure access to pharmaceutical services in the event that the existing LPS pharmacy at St Andrews Health Centre ceases to provide pharmaceutical services under their LPS contract.*

4.1.5.2 *Any routine application should only be granted subject to a condition that pharmaceutical services are not provided at the premises to which the application relates until the services provided by the current LPS pharmacy at St Andrews Health Centre cease to be provided and this condition should be included within any approval of a routine application in accordance with Schedule 2, Part 5, 33(2)(a) of the Regulations.*

4.1.6 **No "Right of Return" to the Pharmaceutical List**

4.1.7 Appellants appear to be under the impression that my client is seeking a "right of return" to the pharmaceutical list or to "convert" its LPS contract to an entry on the pharmaceutical list. This is incorrect. Had a right of return to a pharmaceutical list existed then there would be no need for this identified future need application. Instead, it is acknowledged that the current LPS contract will cease with no right of return to the pharmaceutical list and my client is therefore using the correct procedure of making a new application for inclusion in the pharmaceutical list. My client has therefore followed the correct procedure.

4.1.8 **The Operation of / Success of the Current LPS Contract**

4.1.9 The objectors comment on the operation of the existing LPS contract. Respectfully, this is not relevant to the test that the Committee must apply in this case, which is set out in the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (as amended) (the "Regulations"). The operation of the LPS is a matter between the ICB and my client.

4.1.10 **Fair Competition**

4.1.11 It is open to any party to submit the same type of application that my client has already submitted and the decision maker must make its decision by reference to the proper regulatory test.

4.1.12 **Lack of Proper Impact Assessment / Other Criticism of the PNA and/ or Process**

4.1.13 In order for an appeal to be valid it must satisfy the requirements of paragraph 30 “Third party rights of appeal to the Secretary of State where an application is granted”. Paragraph 30(3)(c) requires that an appellant;

4.1.14 (ii) has grounds for opposing the application, which—

4.1.14.1(aa) do not amount to a challenge to the legality or reasonableness of a pharmaceutical needs assessment, or to the fairness of the process by which a HWB or Primary Care Trust undertook that assessment, and

4.1.14.2(bb) are not vexatious or frivolous. [my emphasis].

4.1.15 The Regulations specifically do not permit grounds for opposing the application, which are a challenge to the legality or reasonableness of a pharmaceutical needs assessment, or to the fairness of the process by which a HWB or ICB undertook that assessment. All such points of appeal should be ignored.

4.1.16 **Service Duplication**

4.1.17 It is important to note that there is already an LPS pharmacy operated by my client at this location, but it will close. The HWB wishes to maintain access to a pharmacy and are not duplicating anything.

4.1.18 **Regulation 31**

4.1.19 Regulation 31 states as follows; [quoted in full].

4.1.20 For regulation 31 to apply both of parts (a) and (b) must be true.

4.1.21 Regulation 31(a) only applies where “a person on the pharmaceutical list” is providing or has undertaken to provide pharmaceutical services (“the existing services”). Regulation 31 also makes it clear that the entry on the pharmaceutical list is not for the entire HWB but only relates to either (i) the premises to which the application relates, or (ii) adjacent premises.

4.1.22 An LPS chemist is not included on the pharmaceutical list and there is no person “on the pharmaceutical list” at St Andrews Health Centre or any adjacent premises.

4.1.23 Further, in this case the PNA has specifically stated that a condition of the approval of any application should be that the new pharmacy is not permitted to commence services until the LPS contract has terminated. It is therefore impossible for the new pharmacy to be providing services as the same time as the LPS pharmacy and as a result regulation 31(b) does not apply.

4.1.24 As neither regulation 31(a) nor (b) applies (and both must apply to refuse the application), regulation 31 is not relevant in this case.

4.1.25 **Correct Approach to the Regulatory Test**

4.1.26 In relation to Regulation 15, the matters to which consideration will be given are:

4.1.26.1 *(e) whether it is satisfied that, since the publication of the relevant pharmaceutical needs assessment, there have been changes to the needs, or future needs, for pharmaceutical services in the area of the relevant Health and Wellbeing Board that are such that refusing the application is essential in order to prevent significant detriment to the provision of pharmaceutical services in its area;*

4.1.27 NOTE: Your letter of 8 April 2025 misstates the legal test and omits the words highlighted in bold above.

4.1.28 The relevant PNA is the Tower Hamlets PNA. Whilst the PNA is titled "Pharmaceutical Needs Assessment 2023" and shows a date on each page of 27/04/2023, it was not in fact published until 23 September 2024 (see item 4.1 of attached HWB minutes) and this is why my client has had to wait until after this time to submit their application. The objectors do not identify any "changes to the needs, or future needs, for pharmaceutical services in the area of the relevant HWB" that have occurred since the PNA was published. Nor have there been any such changes since 23 September 2024.

4.1.29 Kamsons refers to the possible closure of Tesco Pharmacy and it appears that Tesco was unaware that this application would not in fact increase the number of pharmacies in the area and would simply maintain existing provision. In any event, speculation over a closure is not a change to the need or future need for pharmaceutical services.

4.1.30 Similarly, Kamsons refers to development work around their premises which has been ongoing for some time and also the closure of Stroudley Walk Surgery. Neither of these events is a "change to the needs, or future needs, for pharmaceutical services in the area of the relevant HWB". For the sake of completeness, it should be noted that Stroudley Walk Surgery relocated to 1A Wellington Way (Wellington Way Surgery) during the early stages of the COVID pandemic and then merged with the Merchant Street Practice on 1 July 2022 which was operating from the same premises. The merged practices then renamed as Wellington Way Health Centre.

4.1.31 None of the issues raised by any party reflect any change in current or future need for pharmaceutical services since the publication of the PNA in September 2024.

4.1.31.1 *(f) whether it is satisfied that, since the publication of the relevant pharmaceutical needs assessment, there have been changes to the needs, or future needs, for pharmaceutical services in the area of the relevant Health and Wellbeing Board that are such that— (i) the future circumstances specified in accordance with paragraph 2(b) of Schedule 1 will not, or are now unlikely to, arise (in whole or in part), and (ii) granting the application would not secure improvements to, or better access to, pharmaceutical services in that area*

4.1.32 No such changes have been identified by any party and none have occurred.

4.1.32.1 *(g) whether it is satisfied that— (i) granting the application would only meet the future need mentioned in paragraph (1) in part, and (ii) if the application were granted, it would be unlikely, in the reasonably foreseeable future, that the remainder of that need would be met;*

4.1.33 The need identified would be met in full by granting the application.

4.1.33.1 *(h) whether — (i) it is satisfied that granting the application would only meet the future need mentioned in paragraph (1) in part, but (ii) it considers that, if the application were granted, it would not be unlikely, in the reasonably foreseeable future, that the remainder of that need would be met;*

4.1.34 The need identified would be met in full by granting the application.

4.1.34.1 *(i) whether it is satisfied that— (i) the future need mentioned in paragraph (1) was for services other than essential services, and (ii) granting the application would result in an increase in the availability of essential services in the area of the relevant HWB;*

4.1.35 The PNA identifies a need for "pharmaceutical services" and references the services provided by the existing LPS pharmacy (which included all essential services).

4.1.36 The term "pharmaceutical services" derives from the Health Act 2006, specifically section 126 which states,

4.1.36.1 *(8)The services provided under this section are, together with additional pharmaceutical services provided in accordance with a direction under section 127, referred to in this Act as "pharmaceutical services".*

4.1.37 The relevant services are listed at 126(3) and include jurisdictions of Scotland, Wales and Northern Ireland. In relation to England and in relation to pharmacies (rather than dental practitioners) the relevant services are*;*

4.1.37.1 *126 3)(a) proper and sufficient drugs and medicines and listed appliances which are ordered for those persons by a medical practitioner in pursuance of his functions in the health service, the Scottish health service, the Northern Ireland health service or the armed forces of the Crown,*

4.1.38 The provision of proper and sufficient drugs and medicines is an essential service and therefore regulation 15(i) does not apply in this case.

4.1.38.1 *(j) whether it is satisfied that, since the publication of the relevant pharmaceutical needs assessment, the future need mentioned in paragraph (1) has been met by another person who is providing, or is due to be met by another person who has undertaken to provide, either in the area of the relevant Health and Wellbeing Board or in the area of another Health and Wellbeing Board, NHS services.*

4.1.39 No party either is or has undertaken or would be able to meet the future need identified, which is specific to premises at St Andrews Health Centre and therefore cannot be met by pharmacies located elsewhere.

4.1.40 As my client's application meets all relevant legal tests under the Regulations it should be approved and the appeals dismissed. We look forward to hearing from you in due course."

4.1.41 [A copy of the Tower Hamlets PNA dated 2023 was also enclosed – see appendix D].

4.2 The Commissioner

4.2.1 “I am responding in relation to the above appeal. Please read this in conjunction with our decision report.

4.2.2 1. There are comments regarding regulation 31. From the comments made it appears that those making appeals have mis-understood this regulation.

4.2.3 For ease, the amended regulation states the following: [Regulation 31 quoted in full].

4.2.4 The interpretation of this regulation is that it only relates to premises on the pharmaceutical list, on the same site or adjacent to it, and that it is reasonable to apply the regulation to treat the services in the same way. LPS Pharmacies are listed separately so this regulation does not apply.

4.2.5 2.There are comments that relate to the LPS contract and services provided by this contract and hours that the contract operated. As this application is a future need application these are not relevant to this application. The application is assessed against the Pharmaceutical Needs Assessment (PNA) and the information provided as part of the application only.

4.2.6 3.There are also comments relating to the PNA. This is a document that is published by the Health & Well Being Board and it is for them to make the necessary assessments and, where relevant, mandate a new PNA, or issue a supplementary statement.

4.2.7 An application can only be assessed against the published PNA, other than to make the assessments under the regulations that do provide for an assessment of any changes.

4.2.8 The published PNA clearly states that if the LPS terminates this will create a gap in pharmacy provision. The supplementary detail being that that patients have been accessing the LPS for over 10 years, and this has become a part of the local health delivery, providing a service to patients.

4.2.9 Given, it was widely known that the LPS was expiring, any provider on the pharmaceutical list was at liberty to apply on the basis that there was an identified future need for pharmaceutical services. Had, other applications been forthcoming, PSRC (London) would have made a determination on these, subject to regulation. It should be noted that, apart from the application in question, no other applications were received in respect of this specific site.

4.2.10 The application in question was not automatically granted, as has been inferred, and was subject to the usual scrutiny that any application would have applied to it.

4.2.11 4.As there has been a service provided on this site for over 10 years, the comments in the Appeals regarding duplication of services or over saturation of pharmacies do not have any merit.

4.2.12 5.Comments regarding changes in the area have been made, and if these changes are such that they are significant, and the application should be refused in order to prevent significant detriment to the provision of pharmaceutical services in the area. It should be remembered that there has been an LPS contract has been on site for over 10 years and patients have been used to receiving services at this site, patients already have the choice to utilise services provided by other pharmacies if they wanted to.

4.2.13 Some of the changes noted are of a temporary nature whist redevelopment is taking place, these are not permanent changes and not sufficient to warrant refusing the application.

4.2.14 6. The HWBs are statutorily responsible for the mandating of PNAs and ensuring its publication. The timescale for updating a PNA is usually 3 years after the previous publication, or earlier if there are sufficient changes in the area. Currently, PSRC (London) and the Community Pharmacy commissioning function delivered to the ICBs have received no indication that a refreshed PNA will be undertaken during 2025.

4.2.15 The PSRC (London) has determined that the application fits the criteria for a future needs application and would request that the appeals are dismissed."

5 Summary of Observations

Following the comment from the Applicant in relation to the letters circulated by NHS Resolution, NHS Resolution reviewed the Regulations and notified the interested parties of the error at the same time as providing the correct wording of Regulation 15.

This is summary of observations received.

5.1 The Appellant

5.1.1 "Thank you for your letter dated 12th May enclosing comments on the above appeal.

5.1.2 I would like to make the following observations on the comments received.

5.1.3 The Senior Commissioning Manager for Pharmacy Market Entry writes in point 5 in her response, "Comments regarding changes in the area have been made, and if these changes are such that they are significant, and the application should be refused in order to prevent significant detriment to the provision of pharmaceutical services in the area."

5.1.4 She is absolutely correct that if you consider that the changes listed, since the publication of the PNA, are significant then the application should be refused in order to prevent the significant detriment that the loss of core hours on a weekend and every evening would cause.

5.1.5 Whether there has been a pharmacy on the site previously is not significant when considering Regulation 15(2)(e).

5.1.6 The changes to Kamsons Pharmacy are significant. These are pictures of the pharmacy as at the time of the publication of the PNA: [appendix E].

5.1.7 I visited the pharmacy on 2nd May and this is what it looked like: [appendix E].

5.1.8 The access is now via the tiny gap on the right of hoarding. This then entails walking along a narrow passage way of about 8 shop fronts before reaching Kamsons Pharmacy. It is too narrow for two wheelchairs or large buggies to pass in some places.

5.1.9 When these changes are combined with the impact that the closure of Stroudley Walk Surgery is now starting to have then these changes since the publication of the PNA are significant.

5.1.10 Of more importance was the announcement of 21 February, well after the publication of the PNA, of the impending closure of Tesco pharmacies.

5.1.11 https://www.thesun.co.uk/money/33494286/tesco-pharmacies-closing/

5.1.12 Approval of this application puts the continuation of the nearby very low-dispensing extended-hours Tesco Pharmacy at serious risk of closure with the resultant loss of core hours every single evening and weekend and to the significant detriment to the provision of pharmaceutical services in that area. Under Regulation 15(2)(e) this application should be refused."

6 Consideration

6.1 The Pharmacy Appeals Committee ("Committee") appointed by NHS Resolution, had before it the papers considered by the Commissioner, together with a plan of the area showing existing pharmacies and doctors' surgeries and the location of the proposed pharmacy.

6.2 It also had before it the responses to NHS Resolution's own statutory consultations.

6.3 The Committee had before it a copy of the Tower Hamlets Pharmaceutical Needs Assessment ("the PNA") dated 27 April 2023 and prepared by Tower Hamlets Health and Wellbeing Board ("the HWB"), which had been provided by the Commissioner. The Commissioner advised that there have been no further updates or Supplementary Statements to the PNA.

6.4 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.

6.5 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations").

6.6 As a preliminary matter, the Committee noted the Applicant's comment in relation to Regulation 30(3)(c). Whilst the Committee agreed with the Applicant's interpretation of this Regulation, it did not consider it to be relevant to this consideration, as it was not of the view that that Appellant had challenged the legality or reasonableness of the PNA nor the fairness of the process by which the Tower Hamlets HWB undertook that assessment.

6.7 The Committee dealt with the appeal by way of consideration of all the issues.

Regulation 31

6.8 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).

6.9 The Committee noted that in response to the question of Regulation 31 in the application form the Applicant had stated:

6.9.1 *"The existing pharmacy operating at the medical centre does so under an LPS contract and is therefore not inlcuded* [sic] *in the pharmaceutical list for the HWB.*

6.9.2 *Regulation 31(2)(a) is clear that an application would only be refused where there is an existing pharmacy that is "on the pharmaceutical list" and that is not the case here.*

6.9.3 *In addition, the PNA is clear that a condition must be placed upon the opening of a pharmacy following a successful future needs application which acts to ensure that the new pharmacy does not commence services until the previous LPS pharmacy ceases to provide services.*

6.9.4 *For these reasons regulation 31 does not apply."*

6.10 The Committee further noted the decision of the Commissioner that:

6.10.1 *"There are no pharmacies adjacent to the site in question; therefore regulation 31 does not apply.*

6.10.2 *There is currently an LPS on site under the same company name, however, this has been given notice of termination; to expire on 7 June 2025, a new pharmacy would not be opened until this had been closed."*

6.11 The Committee was mindful of the comments from the Appellant that Regulation 31 applied and that the application should be refused on the basis of Regulation 31.

6.12 The Committee noted that there was no dispute between parties that, at the time of the application, there was a pharmacy located at St Andrews Health Centre, Hannaford Walk, E3 3FF which is the proposed site of the pharmacy in the application. It is also agreed by all parties that this pharmacy operated under the provisions of an Local Pharmaceutical Services (LPS) contract and had done since 2 April 2012.

6.13 The Committee noted the underlying legislation in the NHS Act 2006 and in particular s147A which provides that:

(1) Regulations may make provision of the preparation, maintenance and publication by NHS England of one or more lists of

(a) persons approved for the purposes of assisting in the provision of pharmaceutical services and

(b) persons approved by NHS England for the purposes of performing local pharmaceutical services.

6.14 The Committee was of the view that there was a clear intention that there are two "lists".

6.15 The Committee then considered the Regulations and firstly noted the interpretation as set out in Regulation 2 of Part 1 which state:

6.15.1 "*LPS chemist*" means a party to

6.15.1.1*(a) an LPS pilot scheme or*

6.15.1.2*(b) and LPS scheme for the provision of LP services*

6.15.2 *"NHS chemist" means an NHS appliance contractor or an NHS pharmacist;*

6.15.3 *"NHS pharmacist" means a person included in a pharmaceutical list of the type referred to in regulation 10(2)(a).*

6.16 Part 3 of the Regulations "General matters relating to pharmaceutical lists and applications in respect of them" and in particular Regulation 10 "Pharmaceutical Lists" requires NHS England to prepare maintain and publish 2 lists of persons who undertake to provide pharmaceutical services from premises in the HWB area. Regulation 10(2)(a) states:

(2) Those lists (which are pharmaceutical lists) are –

(a) a list of persons who undertake to provide pharmaceutical services in particular by way of the provision of drugs; and

(b) a list of persons who undertake to provide pharmaceutical services only by way of the provision of appliances.

6.17 The Committee was mindful that there is no reference to LPS contained within Regulation 10.

6.18 As there is an LPS chemist located at the health centre which had been commissioned under the provision of an LPS contract, the Committee went on to consider the provisions of Part 13 "Local Pharmaceutical Services" of the Regulations and in particular Regulation 114 "Lists of LPS chemist".

6.19 The Committee noted that Regulation 114 states:

Lists of LPS chemists

114.—(1) In respect of the area of each HWB, NHS England must prepare, maintain and publish a list of the LPS chemists (if there are any) who provide local pharmaceutical services at or from premises situated in that area.

(2) The lists must include—

(a) the addresses of the premises at or from which the local pharmaceutical services are provided;

(b) the days on which and times at which, at those premises, the LPS chemist is to provide those services;

(c) a description of the services the LPS chemist is to provide.

(3) NHS England must ensure that each HWB has access to the lists of LPS chemists that it holds which is sufficient to enable the HWB to carry out its functions under these Regulations.

6.20 The Committee was of the view that Greenlight Healthcare Ltd had been included on the list of LPS chemists in accordance with Regulation 114.

6.21 The Committee was of the view that, as set out above, an LPS chemist is not included in the pharmaceutical list, therefore Regulation 31 did not apply in this case.

6.22 Based on the information before it, the Committee was not required to refuse the application under the provisions of Regulation 31.

Regulation 15

6.23 The Committee noted the comments from the Appellant that this is an application to "return to the pharmaceutical list". The Committee noted that the Applicant, in neither their original application form or any subsequent correspondence, either to the Commissioner or in subsequent representations has stated that they are applying under the provision of a "right to return to the pharmaceutical list".

6.24 The Committee noted that there is no dispute that the Applicant is the same body corporate who had held the LPS contract at the extant site. The Committee noted that, in the Regulations, there is provision for a LPS pharmacy to return to the pharmaceutical list under Regulation 108 "Right of return to pharmaceutical lists: LPS contractors". The Committee noted however that, as part of the LPS contract being awarded there was no such provision and this is confirmed in the NHS North East London and City letter of 12 April 2012 which states:

6.24.1 *"The PCT can also confirm that as this contract is a new contract there will be no right of return to the PCT's pharmaceutical list at either the end of the 10-year contract or at any other time where the contract is terminated."*

6.25 The Committee noted that the application had been made by the Applicant on an application form entitled "Chapter 13, Annex 1, Application Form "Application offering to meet an identified future need". The Committee noted that the application form, on page 1, in the standard opening paragraphs states:

6.25.1 *"Application for inclusion in the pharmaceutical list for the area of Tower Hamlets Health and Wellbeing Board.*

6.25.2 *This is an application to meet an identified future need and as such is a routine application under regulation 15 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (the Regulations)."*

6.26 The Committee further noted that the standard application form, as completed by the Applicant, at page 8 in section 6 under the heading "Information in support of the standard wording of the application" states:

6.26.1 *"In making this application I/we am/are seeking to meet the future need identified on page … of the HWB's pharmaceutical needs assessment"*

6.27 The Committee noted that the Applicant had completed this section of the application form and, as set out above in Section 1, had confirmed the relevant page number of the PNA.

6.28 The Committee was of the view that the Applicant had not sought to apply for a "right to return" to the pharmaceutical list. The application (which was to be determined in accordance with the procedures in Schedule 2) was submitted by the Applicant based on addressing a future need for pharmaceutical services.

6.29 The Committee considered whether the need on which the Applicant based its application satisfied the elements of Regulation 15(1) which reads as follows:

"(1) If—

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

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

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

6.30 The Committee noted that paragraph 2(b) of Schedule 1 states:

2. Necessary services: gaps in provision
A statement of the pharmaceutical services that the HWB has identified (if it has) as services that are not provided in the area of the HWB but which the HWB is satisfied—

(b) will, in specified future circumstances, need to be provided (whether or not they are located in the area of the HWB) in order to meet a future need for pharmaceutical services, or pharmaceutical services of a specified type, in its area.

6.31 The Committee noted that in its application form, the Applicant had referred to page 67 of the 2023 PNA which states:

"5.2 Local Pharmaceutical Services (LPS) contract

A Local Pharmaceutical Services (LPS) contract is one that is commissioned locally by the local commissioner, not nationally by NHSE. Tower Hamlets has two LPS contracts, initially commissioned by NHS London, both of which terminate in 2025. In addition, there is a nearby LPS pharmacy in Newham which will likewise terminate in 2024…

…Since 2012 a pharmacy has operated at 2 Hannaford Walk E3 3FF which is to expire on 7 June 2025, this being co-located with the St Andrews Health Centre, under a contract for local pharmaceutical services (a "LPS contract") in order to provide pharmaceutical services. Tower Hamlets Health & Wellbeing Board recognises the important function of a pharmacy at the St Andrews Health Centre and has determined that the termination of the current LPS contract will create a gap in provision. Tower Hamlets Health & Wellbeing Board determines that, an NHS pharmacy, at the same premises as the current LPS pharmacy, will be needed to secure access to pharmaceutical services in the event that the existing LPS pharmacy at St Andrews Health Centre ceases to provide pharmaceutical services under their LPS contract.

Any routine application should only be granted subject to a condition that pharmaceutical services are not provided at the premises to which the application relates until the services provided by the current LPS pharmacy at St Andrews Health Centre cease to be provided and this condition should be included within any approval of a routine application in accordance with Schedule 2, Part 5, 33(2)(a) of the Regulations.

6.32 The Committee noted that the PNA had considered the existing provision in the area of the HWB, which included the current provision of services at St Andrews Health Centre by way of an LPS contract. The HWB had also considered what would happen when the LPS contract ended, which was within the lifetime of the 2023 PNA. The Committee noted that the PNA states that the "termination of the current LPS contract

will create a gap in provision" and that the HWB had determined that a NHS pharmacy, at the same premises, will be needed to secure access to pharmaceutical services.

6.33 The Committee determined that the future need was included in the PNA dated 2023 in accordance with paragraph 2(b) of Schedule 1 as referred above.

6.34 In this case, the provisions of Regulation 15(1) were met.

6.35 The Committee therefore proceeded to consider the application having regard to those matters set out at 15(2), which states:

(a) whether it is satisfied that it would be desirable to consider, at the same time as the applicant's application, applications from other persons offering to meet the future need mentioned in paragraph (1) that the applicant is offering to meet;

6.36 The Committee was not aware of any other application for the area offering to meet the future need mention in paragraph (1).

(b) whether it is satisfied that it would be desirable to defer consideration of the application until some or all of the future circumstances specified in accordance with paragraph 2(b)of Schedule 1 have arisen (should they arise);

6.37 The Committee considered that, for the reasons provided above, it was satisfied that the future circumstances have arisen. In the Committee's view therefore, deferral under this paragraph was not necessary.

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

6.38 The Committee has already noted above, that there are no other applications for consideration in respect of the area of the Applicant's proposed pharmacy.

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

6.39 The Committee noted there are no other appeals pending so deferral under this paragraph was not necessary.

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

6.40 The Committee noted the comments from the Appellant with regard to the number of pharmacies already providing services in the area and the location of these pharmacies as well as the comments regarding the alleged closure of Tesco Pharmacy.

6.41 The Committee further noted the comments from the Appellant regarding development work around its pharmacy and the closure of Stroudley Walk Surgery. The Committee noted the Applicant's response that Stroudley Walk Surgery had relocated to Wellington Way Surgery during the early stages of the Covid-19 Pandemic and subsequently merged with Merchant Street Practice on 1 July 2022 before renaming the merged practices as Wellington Way Health Centre.

6.42 The LPS contract had originally been granted in 2012 against a backdrop that, following the 2012 Olympic Games, it was anticipated that there would be a significant increase in demand in East London (the site of the Olympic park and stadia). Whilst the Committee noted the Appellant's comments in relation to the background to the LPS contract, the Committee was mindful that Regulation 15 limits its consideration to changes to the needs or future needs which have occurred since the PNA was published.

6.43 The Committee was mindful that, as highlighted by the Commissioner, development work is a temporary matter and that the comments in regard to Tesco Pharmacy on Hancock Road were not statements of fact. It was also alive to the fact that Tesco Pharmacy had not responded to this appeal. Nevertheless, the Committee was of the view that the information provided did not demonstrate that changes to the needs or future needs had occurred since the publication of the PNA.

6.44 The Committee noted that granting the application would not change the number of providers in the area and whilst it sympathised with the comments from the Appellant regarding the stability of its own pharmacy and that of Tesco pharmacy as well as the financial situation of community pharmacies in general, it was of the view that there was nothing provided by any party, either on appeal or in subsequent representations, which demonstrated that refusing the application is essential in order to prevent significant detriment to the provision of pharmaceutical services.

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

(i) the future circumstances specified in accordance with paragraph 2(b) of Schedule 1 will not, or are now unlikely to, arise (in whole or in part), and

(ii) granting the application would not secure improvements, or better access, to pharmaceutical services in that area;

6.45 The Committee accepted, for the reasons stated above, the future circumstances referred to in the PNA have arisen. The Committee therefore considered that it was not satisfied as set out in this paragraph.

(g) whether it is satisfied that—

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

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

(h) whether —

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

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

6.46 The Committee considered that the PNA does not expressly refer to any particular requirements that form part of the future need other than securing access to pharmaceutical services. In the circumstances, the Committee considered that granting

the application would meet the future need in full. The Committee therefore considered that it was not satisfied as set out in these paragraphs.

(i) whether it is satisfied that—

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

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

6.47 The Committee again noted that the PNA did not specify a need for services other than securing access to pharmaceutical services. The Committee noted that this paragraph sets out a two part test. The Committee was not satisfied as to the first paragraph and so it could not be satisfied as set out in the second paragraph.

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

6.48 The Committee had no information to show that the future need referred to in the PNA has been met by another person who is providing, or is due to be met by another person who has undertaken to provide, either in the area of the relevant HWB or in the area of another HWB, NHS services.

(k) whether the application needs to be deferred or refused by virtue of any provision of Parts 5 to 7."

6.49 The Committee had no information to show that the application needed to be deferred or refused by virtue of any provision of Part 5 to 7.

Regulation 21(A)

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

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

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

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

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

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

6.51 The Committee considered that, in relation to Regulation 21A(1)(a), the Applicant's stated intention is to meet a need identified in the PNA. Regulation 21A(1)(b) states that the need is in respect of the days on which or the times at which essential services are provided in the area of the relevant HWB. The Committee considered that this means that Regulation 21A applies where the need refers to certain days on which and times at which essential services have been identified as needing to be provided.

6.52 The PNA had not specified the days on which or times at which pharmaceutical services were to be provided, just that "*an NHS pharmacy, at the same premises as the current LPS pharmacy, will be needed to secure access to pharmaceutical services in the event that the existing LPS pharmacy at St Andrews Health Centre ceases to provide pharmaceutical services under their LPS contract*." The Committee was mindful that whilst parties have sought to argue that an additional pharmacy could have adverse consequences there was no information to conclude that granting the application creates an undesirable increase in essential services. The Committee further noted that no party had specifically commented on the application of Regulation 21A. The Committee determined that granting the application would not result in an undesirable increase in the availability of essential services in the area of the relevant HWB.

Summary

6.53 The Committee was not required to refuse the application under the provisions of Regulation 31.

6.54 The Committee found reference in the PNA to services which would fall within the description set out in paragraph 2(b) of Schedule 1 to the Regulations.

6.55 The Committee determined that the provisions of Regulation 15(1) were met.

6.56 The Committee determined that the provisions of Regulation 15(2) were met.

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

6.57.1 confirm the Commissioner's decision;

6.57.2 quash the Commissioner's decision and redetermine the application;

6.57.3 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.

6.58 In those circumstances, although the Committee has reached the same conclusion as the Commissioner, the Committee had also considered Regulation 21A therefore the Committee determined that the decision of the Commissioner must be quashed.

6.59 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.

6.60 The Committee noted that representations on Regulation 15 had already been made by parties to the Commissioner, and these had been circulated and seen by all parties as part of the processing of the application by the Commissioner. The Committee further noted that when the appeal was circulated representations had been sought from parties on Regulation 15.

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

7 Decision

7.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of the Commissioner, for the reasons given above, and redetermines the application.

7.2 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.

7.3 The Committee has determined that the application should be granted for the following reason:

7.3.1 The PNA has identified a future need which this application could meet.

7.4 The Committee noted Schedule 2, Part 5 paragraph 33(2)(a) of the Regulations which states:

(2) Where this sub-paragraph applies, NHS England may grant the application subject to a condition that pharmaceutical services are not provided at the listed chemist premises to which the application relates (or at any premises to which the business relocates) until—

(a) some or all of the future circumstances, as a consequence of which the application was granted, have arisen;

7.5 Accordingly, the application is granted, subject to the condition as set out in the PNA that *"pharmaceutical services are not provided at the premises to which the application relates (St Andrews Health Centre, Hannaford Walk, E3 3FF) until the services provided by the current LPS pharmacy at St Andrews Health Centre cease to be provided".*

Case Manager
Primary Care Appeals