

20 June 2025

REF: SHA/26573

**APPEAL AGAINST NHS SOUTH WEST LONDON ICB
DECISION TO REFUSE AN APPLICATION BY LIPS
BATTERSEA LIMITED FOR INCLUSION IN THE
PHARMACEUTICAL LIST OFFERING IDENTIFIED
IMPROVEMENTS OR BETTER ACCESS UNDER
REGULATION 17 AT 349-351 FIRST FLOOR, TURBINE
HALL B, BATTERSEA POWER STATION, CIRCUS
ROAD SOUTH, NINE ELMS, LONDON, SW11 8DD**

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10 South Colonnade
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1 Outcome

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

A copy of this decision is being sent to:

NHS South West London ICB
LIPS Battersea Limited
Boots UK Ltd
Day Lewis Pharmacy

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1 The Application

By application dated 22 January 2024, LIPS Battersea Ltd ("the Applicant") applied to NHS South West London ICB ("the Commissioner") for inclusion in the pharmaceutical list offering identified improvements or better access under Regulation 17 at 349-351, First Floor, Turbine Hall B, Battersea Power Station, Circus Road South, Nine Elms, London, SW11 8DD. In support of the application it was stated:

"In making this application I/we am/are seeking to secure the improvements or better access identified on page

- 1.1 Page 2: The Wandsworth PNA identifies that the Queenstown Ward, adjacent to Nine Elms, will have an increase of population due to 4,476 new dwellings.
- 1.2 Page 2: This identifies that flu vaccination in the over 65s and at risk groups is low.
- 1.3 Page 2 COVID-19, circulatory diseases and cancers were the biggest causes of life expectancy gap between the most and least deprived in the borough.
- 1.4 Page 3: This identifies that there will be an increase in demand for pharmacy provision in the area.
- 1.5 Page 63: Overall the number of pharmacies at 1.8 per 10,000 residents is below the London average of 2.2 per 10,000. Figure 7.1 clearly indicates that provision in the Nine Elms area is limited.
- 1.6 Page 65: Item 7.9 states that the maximum distance for residents to access pharmaceutical services should be no more than one mile. It is at least a mile for residents in the Battersea/Nine Elms developments.
- 1.7 Page 73: There are no 100 hour pharmacies in Wandsworth and no local access to pharmaceutical services beyond 7pm weekdays, 2pm on Saturdays and Sundays.
- 1.8 Page 107: Whilst the PNA states that there is sufficient capacity and access in Wandsworth to essential services, this does not take into account the significant rise in the local population and the opportunity to offer these services over extended hours, i.e., after 7pm on weekdays, after 2pm on Saturdays and on Sundays.
- 1.9 Page 107: Whilst the PNA states that there is sufficient capacity for advanced services at the time of writing, the CPCF has evolved since then with the addition of the contraception service, an expansion of the Hypertension case Finding service and the new Pharmacy First Clinical Pathways Service.

- 1.10 Page 108: This acknowledges the needs of the residents of the Battersea development should be considered of the HWB's pharmaceutical needs assessment."

"Please insert the identified improvement or better access you are offering to secure here.

- 1.11 What the PNA does not highlight is the 20,000 new dwellings that are occupied or under construction in the Nine Elms area, 4,000 of which are low cost housing:
- 1.12 <https://www.wandsworth.gov.uk/planning-and-building-control/planning-consultationsand-developments/housing-in-nine-elms/>
- 1.13 There is also an increased working population in the area with the Battersea Power Station centre, Apple's headquarters, the American Embassy, local hotel and other new businesses.
- 1.14 With over 98% of NHS prescriptions being sent by the Electronic Prescription Service (EPS), many people do not visit their GP practice and collect their dispensed medication from near their place of work or where they shop. In the absence of any 100 hour (often now 70 hour) pharmacies, the extended hours of opening of this application would provide improved access to pharmaceutical services beyond 7pm on weekdays, 2pm on Saturday and on Sundays.
- 1.15 This application would provide extended hour access to season flu vaccination and any other vaccines that may be commissioned, e.g. pneumococcal, shingles, COVID-19, HPV or MMR.
- 1.16 The inclusion of the contraception service into the CPCF will improve access to this important sexual health service.
- 1.17 The extension of the hypertension case finding (BP Check) service will facilitate the early detection of hypertension and cardiovascular risk to support the current gap in life expectancy due to circulatory diseases in the borough.
- 1.18 The new pharmacy will have a highly trained team of Pharmacists, some of whom (including the Superintendent Pharmacist), will be independent prescribers, Pharmacy Technicians, Healthcare Assistants and Health Champions. This team will deliver the full range of CPCF Essential and Advanced Services, plus any agreed and commissioned Enhanced services over extended hours. These could include a range of sexual health services (e.g. Chlamydia test and treat), vaccination and immunisation services (e.g. pneumococcal, shingles, HPV, MMR, COVID-19), extended hours palliative care service, and healthy lifestyle services (e.g. healthy diet and weight, smoking cessation).
- 1.19 The hypertension service can support the current gap in life expectancy for patients with circulatory diseases in the borough. Hypertension is the highest cause of cardiovascular disease. Once identified and referred for diagnosis, patients with hypertension and atrial fibrillation could be further supported through the new medicine service and ongoing monitoring of blood pressure. There is also the potential of utilising access to a pharmacist independent prescriber to commission ongoing management of these patients.
- 1.20 The pharmacy contraception service, which now includes initiation in addition to ongoing supply, will improve access to contraception services. This would be supported by the provision of emergency contraception and could be further extended by commissioning the provision of LARC and STI test and treat.
- 1.21 In addition, there will be the opportunity to support self-care, a pillar of the NHS Plan, through health campaigns, advice and treatment.

- 1.22 The pharmacy will also provide travel health and other private services to patients accessing care.
- 1.23 The premises will represent the future of clinical pharmacy in the community with high standards of finish, two clinical consultation rooms, health-related inventory, and will embrace digital technologies in the delivery of its services.
- 1.24 The pharmacy team will engage with GP practices and other local health care providers, Primary Care Networks and the Integrated Care Board to ensure that two way communication and integration is effective for them and for patients.”

2 The Decision

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

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

DECISION REPORT

- 2.4 “Name of applicant: LIPS Battersea Limited
- 2.5 Fitness to practise: Cleared for inclusion.
- 2.6 Address/best estimate of proposed premises: 349-351, First Floor, Turbine Hall B, Battersea Power Station, Circus Road South, Nine Elms, London, SW11 8DD
- 2.7 Identified improvement or better access that the applicant is offering to secure, as stated in the HWB’s PNA [Please see Application section at 1.1 above.]
- 2.8 Status of location: Not a controlled locality.
- 2.9 Additional information: The PSRC have determined that there is enough information within the papers to decide the application without an oral hearing.
- 2.10 Regulation 31: There are no pharmacies adjacent to the site in question; therefore regulation 31 does not apply.
- 2.11 Regulation 32: There are currently no LPS designations in this area therefore regulation 32 is not engaged.
- 2.12 Applicants information from the application [see section at 1.13].
- 2.13 General comments: The relevant PNA for this application is the one that was published in 2023, this is the latest PNA. The HWB have not published any supplementary statements on their website for this area. Applicants have a choice regarding what type of application they submit when they wish to open a new pharmacy, and they will use the PNA and the PNA statements to determine which type of application to make.

- 2.14 This is an application for identified improvements or better access in Wandsworth HWB area. This means that the PNA should have identified any improvements or better access.
- 2.15 *On page 108 of the PNA conclusions, they address Improvements and better access.*
- 2.16 **Improvements and better access**
- 2.17 **Current and future access to essential services**
- 2.18 *8.38 In consideration of population health and wellbeing needs and needs of those who share protected characteristics, the PNA did not identify any services, that if provided, either now or in future, would secure improvements or better access to essential services. Further, there is sufficient capacity to meet any increased future demand.*
- 2.19 *The results of the PNA conclude that there are no unmet pharmaceutical needs in essential services, that if provided now or in the future, would secure improvements or better access to essential services during the lifetime of this PNA.*
- 2.20 *It is noted that there is mention on page 106 of the PNA as follows:*
- 2.21 **Future access to essential services**
- 2.22 **Future access to essential services during normal working hours**
- 2.23 *8.30 There are a number of large new dwelling developments planned in Wandsworth. The largest are located within Queenstown Ward and Fairfield Ward. A total of 4,476 new units are planned for Queenstown Ward. The largest development areas include:*
- 2.24 *8.31 It is projected that the population size of the Queenstown ward will increase by 16.8% to 26,914, in the lifetime of this PNA. It will increase by 63.4% by 2032. There is currently one pharmacy within this ward.*
- 2.25 *8.32 In addition, a new health centre is opening in Nine Elms which will lead to an increase demand of pharmaceutical services in the area.*
- 2.26 *8.33 A total of 1,207 new dwelling development units are planned for Fairfield Ward in the lifetime of this PNA, the largest being: Homebase, Swandon Way in Fairfield Ward with 480 units planned. The population of Fairfield Ward is projected to increase by 5.7% to 16,973. There is enough provision of pharmacies to service this population increase.*
- 2.27 *Royal Mail Group Site, Ponton Road (Nine Elms Park) in Queenstown Ward with 1,725 net units planned*
- 2.28 *New Covent Garden Market, Nine Elms Lane in Queenstown Ward with 981 net units planned*
- 2.29 *Market Towers, 1 Nine Elms Lane (One Nine Elms) in Queenstown Ward with 494 units planned*
- 2.30 *South Lambeth Goods Depot, Cringle St./Battersea Park Rd., Kirtling Street (Battersea Power Station) in Queenstown Ward with 425 units planned*
- 2.31 *8.31 It is projected that the population size of the Queenstown ward will increase by 16.8% to 26,914, in the lifetime of this PNA. It will increase by 63.4% by 2032. There is currently one pharmacy within this ward.*

- 2.32 8.32 In addition, a new health centre is opening in Nine Elms which will lead to an increase demand of pharmaceutical services in the area.
- 2.33 8.33 A total of 1,207 new dwelling development units are planned for Fairfield Ward in the lifetime of this PNA, the largest being: Homebase, Swandon Way in Fairfield Ward with 480 units planned. The population of Fairfield Ward is projected to increase by 5.7% to 16,973. There is enough provision of pharmacies to service this population increase.
- 2.34 There will be a gap in the future provision of essential pharmaceutical services in Nine Elms Ward (previously known as the Queenstown Ward) due to likely increased demand of pharmaceutical services as a result of projected population. increases in the area. This will need to be monitored and addressed in a planned way with reference to the new health centre development and its opening hours.”
- 2.35 As this is regarding possible future needs, this is subjective to events happening and an application being made as a future need.
- 2.36 **17(2)(a), 17(2)(b) & 17(2)(c) – Deferrals**
- 2.37 Details if the application has been deferred or a statement if it has not been deferred.
- 2.38 **17(2)(d) whether it is satisfied that, since the publication of the relevant pharmaceutical needs assessment, there have been changes to the profile of 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;**
- 2.39 There have been no changes to the profile of the pharmaceutical services in this HWB area since the publication of the PNA.
- 2.40 The applicant in their additional comments notes two pharmacy closures, however, the Lloyds closure is in the Lambeth HWBB area and was noted on page 71 of the PNA, where a footnote concluded that its closure in June 2023 is not expected to affect pharmacy need in Wandsworth. The other closure is in Putney and not nearby to this application.
- 2.41 **The recommendation is that the ICB is satisfied that since the publication of the PNA there have been no changes in pharmaceutical needs for the HWBB that are such that refusing the application is essential to prevent significant detriment to the provision of pharmaceutical services.**
- 2.42 **17(2)(e) whether it is satisfied that- (i) granting the application would only secure the improvements or better access 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 those improvements or that better access would be secured;**
- 2.43 The PNA has not identified any improvement or better access during the lifetime of the PNA, therefore the applicant cannot apply to meet this need. **The recommendation is that the ICB is satisfied that if granted the application would not meet the identified improvements or better access as none has been identified. This would also be unlikely to secure this in the foreseeable future. Therefore, this criterion has not been met.**
- 2.44 **17(2)(f) whether it is satisfied that, since the publication of the relevant pharmaceutical needs assessment, the improvements or better access mentioned in paragraph (1) have or has been secured by another person who is providing, or is due to be secured by another person who has undertaken to provide, either in the area of the relevant HWB or in the area of another HWB,**

NHS services- (i) pharmaceutical services from listed chemist premises, or (ii) local pharmaceutical services from LPS premises;

- 2.45 The PNA has not identified any improvement or better access during the lifetime of the PNA, therefore the applicant cannot apply to meet this need, neither has anyone else been secured to provide this.
- 2.46 **The recommendation is that the ICB is satisfied that since the publication of the PNA, the improvements or better access mentioned in the PNA (as none have been identified) have not been secured by or undertaken to provide by anyone else, therefore this this criterion has not been met.**
- 2.47 ***17(2)(g) whether it is satisfied that- (i) the improvements or better access mentioned in paragraph (1) were or was in respect of services other than essential services, and (ii) granting the application would result in an undesirable increase in the availability of essential services in the area of the relevant HWB;***
- 2.48 The PNA has not identified any improvement or better access during the lifetime of the PNA, therefore the applicant cannot apply to meet this need, neither has anyone else been secured to provide this.
- 2.49 **The recommendation is that the ICB is satisfied that there were no improvements of better access identified in the PNA, therefore if granted the application would not meet the identified improvements or better access. Therefore, this criterion has not been met.**
- 2.50 Consider the 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. Consider impact of decision on NHS England's duty on health inequality: None have been identified
- Decision
- 2.51 The PSRC have determined that there is enough information within the papers to decide both applications [sic] without an oral hearing.
- 2.52 With regard to Regulation 31, there are no pharmacies adjacent to the site in question; therefore regulation 31 does not apply.
- 2.53 With regard to 17(2)(d) the PSRC have determined that they are satisfied that since the publication of the PNA there have been no changes in pharmaceutical needs for the HWBB that are such that refusing the application is essential to prevent significant detriment to the provision of pharmaceutical services.
- 2.54 With regard to 17(2)(e) the PSRC have determined that granting of the application would not meet the identified improvement or better access as none has been identified and would be unlikely to secure this in the foreseeable future either.
- 2.55 With regard to 17(2)(f) the PSRC have determined that since the publication of the PNA, the improvements or better access mentioned in the PNA (as there are none that have been identified) have not been secured by or undertaken to be provided by anyone else, therefore this this criterion has not been met.
- 2.56 With regard to 17(2)(g) the PSRC have determined that there were no improvements or better access that identified in the PNA, granting of the application would therefore not meet the identified improvement or better access.

2.57 The PSRC have determined that the applicant as above has NOT fulfilled the criteria as required in regulation 17 and therefore the Pharmaceutical Services Regulations Committee has refused the application.

2.58 **Determination made by London PSRC on behalf of NHS South West London ICB.”**

3 **The Appeal**

In a letter dated 19 March 2025 addressed to NHS Resolution, the Applicant appealed against the Commissioner’s decision. The grounds of appeal are:

3.1 “We are writing to appeal against the refusal of our application offering to secure identified improvements or better access at 349-351, First Floor, Turbine Hall B, Battersea Power Station, Circus Road South, Nine Elms, London, SW11 8DD.

3.2 The application is made under Regulation 17 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (“the Regulations”).

3.3 **The Decision**

3.4 The London Pharmaceutical Services Regulations Committee meeting for South West London ICB refused the application on the following basis:

3.5 In considering whether the granting of the application would confer significant benefits, the Committee determined that –

3.5.1 Since the publication of the PNA, there have been no changes in pharmaceutical needs for the HWBB that are such that refusing the application is essential to prevent significant detriment to the provision of pharmaceutical services.

3.5.2 Granting of the application would not meet the identified improvement or better access as none has been identified and would be unlikely to secure this in the foreseeable future either.

3.5.3 Since the publication of the PNA, the improvements or better access mentioned in the PNA (as there are none that have been identified) have not been secured by or undertaken to be provided by anyone else, therefore this criterion has not been met.

3.5.4 There were no improvements or better access that identified in the PNA [sic]. Granting of the application would therefore not meet the identified improvement or better access.

3.6 On the basis of the above, the Committee concluded that it was not satisfied that granting the application would confer significant benefits that would secure improvements or better access to pharmaceutical services.

3.7 **The Appeal**

3.8 The grounds of the appeal is that the committee misdirected itself and made an incorrect determination.

3.9 On the information available it does not appear that the decision to refuse the application was based on Regulation 17(1), Regulation 17(2)(a) - (c) and Regulation 17(3), so that does not form part of the grounds of appeal. It has been accepted by the Committee that Regulation 31 is not applicable to this application.

- 3.10 Our position is that the final determination by the Committee was incorrect and the decision by the ICB should be quashed and redetermined with a grant of our application.
- 3.11 Background
- 3.12 It may be helpful for Primary Care Appeals to understand the context of the application. Our company is familiar with the area, as we already own the premises and operate it as a private pharmacy. The pharmacy is located within Battersea Power Station, which has had significant recent expansion in terms of residential, retail, and business spaces, which has led to an increase in the number of people who travel into the Power Station on a daily basis. There is due to be a further increase in population from local housing developments.
- 3.13 In the Pharmaceutical Needs Assessment published in 2023, it was identified that there are significant dwelling developments planned within Wandsworth. In particular, there are 4,476 new units planned for the Queenstown area, which our pharmacy premises falls within. It was projected that the Queenstown ward will have a 16.8% increase in population in the lifetime of the Pharmaceutical Needs Assessment.
- 3.14 As such, the following conclusion was reached.
- 3.15 *"There will be a gap in the future provision of essential pharmaceutical services in Nine Elms Ward (previously known as the Queenstown Ward) due to likely increased demand of pharmaceutical services as a result of projected population increases in the area. This will need to be monitored and addressed in a planned way with reference to the new health centre development and its opening hours."*
- 3.16 As such, the following conclusion was reached. [sic]
- 3.17 *Source: London Borough of Wandsworth Pharmaceutical Needs Assessment 2023-2026, page 106*
- 3.18 However as the PNA indicated that there would not be a future need within the lifetime of the PNA.
- 3.19 When read with other statements of required benefits in the PNA, it is our position that there are improvements and better access indicated in the life of the current PNA.
- 3.20 These further statements are here:
- 3.21 Page 63: Overall the number of pharmacies at 1.8 per 10,000 residents is below the London average of 2.2 per 10,000. Figure 7.1 clearly indicates that provision in the Nine Elms area is limited.
- 3.22 Page 65: Item 7.9 states that the maximum distance for residents to access pharmaceutical services should be no more than one mile. It is at least a mile for residents in the Battersea/Nine Elms developments.
- 3.23 Page 73: There are no 100 hour pharmacies in Wandsworth and no local access to pharmaceutical services beyond 7pm weekdays, 2pm on Saturdays and Sundays.
- 3.24 It is our position that these statements together with the overall gap identified for the future provision of pharmaceutical services demonstrates that the application can be treated as falling within Regulation 17 of the NHS (Pharmaceutical and Local Pharmaceutical) Regulations 2013.

- 3.25 It is our position that read together the statements indicate improvements or better access that can be offered in the location. For this reason, the appeal should be allowed and the application approved, in order to prevent this gap from increasing further.
- 3.26 LIPS Battersea Limited intends to run the proposed pharmacy with a focus on customer care and prompt service so that patients obtain access to timely advice and services when they require them but turning to the specific regulatory criteria: -
- 3.27 **Regulation 17(2)(d)**
- 3.28 **Whether there have been any changes to pharmaceutical needs within the HWBB, such that refusing the application is essential to prevent significant detriment to the provision of pharmaceutical services.**
- 3.29 As already highlighted within our application, there have been changes to the pharmaceutical needs within the Wandsworth HWBB due to the developments in the Nine Elms area. Wandsworth Council confirms that 20,000 new homes are being built around Nine Elms, with 4,000 of these available through low-cost housing schemes. (<https://www.wandsworth.gov.uk/planning-and-building-control/planningconsultations-and-developments/housing-in-nine-elms/>)
- 3.30 Additionally, within the Battersea Power Station itself, there are significant developments taking place.
- 3.31 Phase 3 is currently underway, and the below photograph from the Battersea Power Station website confirms that the Power Station developers have plans for 1,300 new homes to be built during this Phase.
- 3.32 *Source: Battersea Power Station: https://batterseapowerstation.co.uk/about/building-batterseathemasterplan/?_gl=1*1fbgsnz*_up*MQ..*_ga*NzU1MTc2MjA2LjE3NDIzOD E0MDU.*_ga_T207470CB7*MTc0MjM4MTQwNS4xLjEuMTc0MjM4MTQxMS4wLjAuMA.*
- 3.33 Across Phases 1, 2 and 3 of the development, over 150 shops, cafes and restaurants have been opened or are scheduled to open, in addition to businesses falling outside of these categories. These newly opened businesses will bring in large numbers of employees who would benefit from access to NHS pharmacy services within the Power Station. In our application, it was highlighted that 98% of NHS prescriptions are sent by the Electronic Prescription Service. This is particularly relevant to employees in the Power Station who may not live locally, but would be able to collect prescriptions in the Power Station.
- 3.34 However there are no changes that mean this application is required to be refused.
- 3.35 **Regulation 17(2)(e)**
- 3.36 **Whether improvements or better access identified in the PNA would be only secured in part and the remainder of the identified improvements or better access would not be secured in the reasonably foreseeable future.**
- 3.37 From the extract of the Pharmaceutical Needs Assessment included above, the Wandsworth Health and Wellbeing Board concluded that there would be a gap in the future provision of essential pharmaceutical services in Nine Elms. It is unclear how large this gap will be at this stage. However, it is our position that our pharmacy will be able to secure the improvements or better access to pharmaceutical services as a whole.
- 3.38 The opening hours within our application cover a significant portion of the week. From Monday to Friday, we have proposed core opening hours of 10:00-13:00 and 14:00 to

18:00, with supplementary hours from 18:00 to 21:00. On Saturdays, we have proposed core hours of 10:00 to 15:00 and supplementary hours of 15:00 to 21:00, plus supplementary hours on Sundays of 12:00 to 18:00. These hours include significant provision both inside and outside of normal working times, which would allow the pharmaceutical needs of the area to be effectively met for those working in and living near the area.

- 3.39 As included within the application, we are proposing to offer a significant number of advanced services, in addition to the required essential services. These, in combination with the proposed opening hours, will enable us to provide pharmaceutical services to meet the identified improvement or better access from the Pharmaceutical Needs Assessment.
- 3.40 **Regulation 17(2)(f)**
- 3.41 **Whether, since the publication of the PNA, the improvements or better access have been secured or are due to be secured by another person.**
- 3.42 The Pharmaceutical Services Regulations Committee determined that because there were no improvements or better access identified in the Pharmaceutical Needs Assessment, improvements or better access have not been secured and are not due to be secured by any other person.
- 3.43 Although LIPS Battersea Ltd does not agree that there were no improvements or better access identified for the reasons already outlined in relation to the population growth in the Nine Elms area, this conclusion does demonstrate that no improvements or better access have been secured. Therefore, it is our position that this criterion has been met.
- 3.44 **Regulation 17(2)(g)**
- 3.45 **Whether the improvements or better access identified were in respect of services other than essential services and granting the application would lead to an undesirable increase in the availability of essential services.**
- 3.46 The Wandsworth Pharmaceutical Needs Assessment was published prior to the introduction of the NHS Contraception Service, NHS Pharmacy First Service and the expansion of the Hypertension Case Finding Service, so the provision of these services throughout Wandsworth is unclear. However, as the overall proportion of pharmacies was noted to be 1.8 per 10,000 residents, lower than the London and England averages of 2.2 per 10,000, it is possible, if not likely, that there would be a gap within the provision of these services. If our appeal is allowed and the application granted, there would be improvements within the provision of these services.
- 3.47 LIPS Battersea Ltd contends that there would not be an undesirable increase in the availability of essential services if our application is allowed. The Pharmaceutical Needs Assessment determined that there would be a gap in the future provision of pharmaceutical services. Therefore, more essential services will be needed, and it is our position that these services are needed now.
- 3.48 Additionally, in the Pharmaceutical Needs Assessment, it is noted that the uptake of flu vaccinations in Wandsworth (69.8%) is within the worst percentile for over 65s – the most at risk group – and is lower than London and England average rates. This is a provision that LIPS Battersea Ltd would be able to provide, and which is beneficial to the provision of essential pharmaceutical services.
- 3.49 In summary, the application will provide significant benefits to the provision of pharmaceutical services in the area, and we ask NHS Resolution to allow our appeal and to quash the decision by NHS England and redetermine and grant our application.

If an oral hearing is arranged we would want to attend and be represented at that stage.”

4 Summary of Representations

This is a summary of representations received on the appeal.

4.1 Boots UK Limited

- 4.1.1 “Thank you for your letter dated 15th April 2025 informing us of the above appeal. We agree with the decision of the ICB and their reasoning for refusing the application.
- 4.1.2 We stand by our comments in our initial response to the application and attach these for your information with this appeal response and submit that this appeal should be dismissed, and the application be refused.
- 4.1.3 We would be grateful if you would inform us of the outcome of this appeal in due course and we would attend any hearing that may be held in connection to this appeal.”

Letter to the Commissioner dated 2 August 2024:

- 4.1.4 “Thank you for your letter dated 20th June 2024 regarding the above application. Boots UK Limited have the following comments to make.
- 4.1.5 This application is based on securing identified improvements and better access. We do not believe that the current Pharmaceutical Needs Assessment (PNA) for Wandsworth have identified anything to support this application.
- 4.1.6 The PNA 2023-2026 states on page 108 the following.
- 4.1.7 This statement clearly concludes that there is no additional need, now or in the future, that would secure improvements or better access in the area in the lifetime of the PNA. To our knowledge no changes have been made within the current PNA or any supplementary statements produced regarding current or future pharmacy provision in this location.
- 4.1.8 The PNA clearly recognises that there is change within the area and the development taking place and what is planned. The needs are being closely monitored and we believe that when or if a need is created, the PNA will be updated to reflect this.
- 4.1.9 For these reasons we respectfully urge the ICB to refuse this application.
- 4.1.10 Please be aware that we may wish to make further representations at a later stage and attend any oral hearing that may be held in relation to the application. We would therefore be most grateful if you could keep us informed of the progress of this application.”

4.2 The Commissioner

- 4.2.1 “I am writing in response to the above appeal, please read this in conjunction with our decision report.
- 4.2.2 The applicant has applied under regulation 17, to secure identified improvements or better access in the Wandsworth HWB area. Therefore, the PNA for the Wandsworth area would need to have a clear statement within the document detailing the identified improvements or better access in order for

the applicant to meet this need. The Wandsworth PNA details its conclusions and the PNA statements at chapter 8 from page 101 to page 108. The portion that relates to improvement and better access is at pages 107 & 108. There are statements for current and future essential services, advanced services, enhanced services and other NHS pharmacy services. All of the statements state that there is no additional need now or in the future that if provided would secure improvements or better access.

4.2.3 Whilst within the PNA there may be indications that there may be a need identified, all of these are then drawn together within the conclusions and for there to be a need, it should be detailed with these conclusions. As the PNA has not then identified any improvement or better access, the applicant cannot then apply to secure this need. Therefore, the London Region PSRC had no option but to refuse the application as the PNA had not identified any needs or better access that an application could offer to provide.

4.2.4 We therefore ask that the appeal be dismissed.”

5 **Summary of Observations**

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

6 **Consideration**

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

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

6.3 The Committee had before it a copy of the London Borough of Wandsworth Pharmaceutical Needs Assessment (“the PNA”) dated 2023-2026 and prepared by the Richmond and Wandsworth Pharmaceutical Needs Assessment Steering Group on behalf of the Richmond and Wandsworth Health and Wellbeing Boards, which had been provided by the Commissioner. The Committee noted 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 dealt with the appeal by way of reconsideration of the application.

6.6 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (“the Regulations”).

Regulation 31

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

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

(2) This paragraph applies where -

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

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

(ii) adjacent premises; and

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

- 6.8 The Committee noted the Commissioner's decision which stated that there are no pharmacies adjacent to the site in question and Regulation 31 does not apply. This had not been disputed by any party. Therefore, on the information before it, the Committee determined that it was not required to refuse either application under the provisions of Regulation 31.

Regulation 17

- 6.9 The application (which was to be determined in accordance with the procedures in Schedule 2 to the Regulations) was submitted by the Applicant, based on providing improvements, or better access, identified in the PNA (pursuant to Regulation 17).

- 6.10 The Committee considered whether purported improvements or better access, on which the Applicant based its application, satisfied the elements of Regulation 17(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 secure improvements, or better access to pharmaceutical services of a specified type, in the area of the relevant HWB: and*
- (b) the improvements or better access that would be secured have or has been included in the relevant pharmaceutical needs assessment in accordance with paragraph 4(a) of Schedule 1,*

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

- 6.11 Paragraph 4(a) of Schedule 1, reads as follows:

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

- (a) would, if they were provided (whether or not they were located in the area of the HWB), secure improvements to, or better access to, pharmaceutical services, or pharmaceutical services of a specified type, in its area.*

- 6.12 The Committee noted in the application form the Applicant had focused on pages 2, 3, 63, 65, 73, 107, and 108 of the PNA, where the improvements or better access which the Applicant seeks to address, have been supposedly identified. The Committee noted that the Applicant seeks to address improvements or better access in the Nine Elms ward (previously known as the Queenstown ward) as defined in the PNA. The Committee further noted that the pages referenced did not include a heading encompassing identified improvements or better access and so considered the PNA on a page by page basis.

- 6.13 The Committee noted that page 2 of the PNA mentions the predicted growth of the population of the borough of Wandsworth which is *“projected to increase by 2.2% to 334,231 in the lifetime of this PNA. The largest increase will be seen in Queenstown ward due to 4,476 new dwelling developments planned in the area (Housing-led population projections, 2021).”* The Committee observed that the language used in the PNA—terms such as “projected” and “planned”—suggested that the document does not present a precise picture of the current situation. Instead, it outlines what could potentially occur over the lifetime of the PNA. Upon closer examination, the Committee concluded that the PNA does not clearly identify opportunities for securing improvements or better access to pharmaceutical services during its duration as envisaged under paragraph 4(a) of Schedule 1 to the Regulations. Rather, it simply notes the possibility of population growth as a result of new housing developments.
- 6.14 The Committee noted that the paragraphs on page 2 of the PNA fall under the headings “Key population demographics of Wandsworth” and “Health and Wellbeing Board statements on Service Provision”. The Committee also noted that page 2 of the PNA highlights a low uptake of flu vaccinations among those aged over 65—a service the Applicant, in their appeal, claims they can provide to benefit the local population. However, the Committee was of the view that the ‘health needs’ referenced on page 2 did not indicate a specific need for securing improvements or better access, as envisaged under paragraph 4(a) of Schedule 1 to the Regulations. Rather, these references were seen as general observations about the role of community pharmacies within the area.
- 6.15 It was further noted that on page 3, the PNA states:
- 6.16 *“There is good access to essential, advanced, enhanced and other pharmaceutical services for the residents of Wandsworth with no gaps in the current provision of these services identified.*
- However, there will be a need for future provision of essential services in Queenstown Ward where there are planned new dwelling developments and a new health centre opening. This will lead to an increase on the demand for pharmacy provision in the area which will need to be monitored and addressed.”*
- 6.17 The Applicant asserts that the statement in the PNA indicates an anticipated increase in demand for pharmaceutical services in the area. However, the Committee carefully considered the language used in the PNA, which states “there will be a need for future provision” and that service provision will need to be “monitored” in light of “planned” new developments. As above, this phrasing does not confirm an immediate need for improvements or better access to pharmaceutical services as envisaged under paragraph 4(a) of Schedule 1 to the Regulations.
- 6.18 The Committee noted that the Applicant refers to page 63 of the PNA in their appeal letter. The PNA states: *“The 60 community pharmacies in Wandsworth Great Longton equate to 1.8 community pharmacies per 10,000 residents (based on a 2022 population estimate of 327,010). This ratio is below the London and England averages, both of which stand at 2.2 based on 2014 data (LGA, 2022).”* The Applicant further argues that the data shown in Figure 7.1 on page 63 demonstrates that pharmaceutical service provision in the Nine Elms ward is limited and that *“it is possible, if not likely, that there would be a gap within the provision of... services.”* The Committee noted that the Applicant themselves used terms such as “possible” and “likely” in their argument, which does not present a definitive picture of whether there is an identified need which will secure improvements or better access as envisaged under paragraph 4(a) of Schedule 1 to the Regulations.
- 6.19 The Committee noted that the Applicant in its application form states that it is offering to provide pharmaceutical services after 7pm (i.e. core hours from 10am to 1pm and 2pm to 6pm and supplementary hours from 6pm to 9pm on weekdays) and on

Saturdays (i.e. core hours from 10am to 3pm on Saturdays) which it states “*would provide improved access to pharmaceutical services.*” The Committee noted that the Applicant proposes to provide pharmaceutical services outside of “*normal working times.*” However, it considered that the PNA does not identify a need for such extended hours, as envisaged under paragraph 4(a) of Schedule 1 to the Regulations.

- 6.20 The Applicant refers to page 73 of the PNA, under the heading “100-Hour Pharmacies,” which states: “*NHS England do not have any 100-hour pharmacies (core hour) on their list for Wandsworth.*” The Committee acknowledged this point but also noted that the PNA goes on to clarify: “*However, there are seven 100-hour pharmacies which are outside the borough, but within 1 mile of its border.*” While the Committee accepted that there is no 100-hour pharmacy located within the Wandsworth area, it observed that the PNA does not identify this absence as a gap in service provision. Moreover, the Committee noted that the Applicant is not proposing to open a 100-hour pharmacy and therefore would not be securing improvements or better access on the basis of the lack of such a service. The Committee noted further that the following sentence indicates that services can be accessed within a 20 minute drive time and this is sufficiently accessible for residents in the Nine Elms ward, “*In terms of travel distance, 100% of Wandsworth residents live within 20-minute reach of an early opening and late closing pharmacy by public transport (OHID, SHAPE Atlas Tool, 2022).*” As such, the Committee was not satisfied that improvements or better access had been identified in the PNA as envisaged under paragraph 4(a) of Schedule 1 to the Regulations.
- 6.21 In its appeal, the Applicant made reference to page 106 of the PNA, which states that:
- 6.22 “*There will be a gap in the future provision of essential pharmaceutical services in Nine Elms Ward (previously known as the Queenstown Ward) due to likely increased demand of pharmaceutical services as a result of projected population. increases in the area. This will need to be monitored and addressed in a planned way with reference to the new health centre development and its opening hours.*”
- 6.23 The Applicant argued in its appeal that in reference to the above statement, “*When read with other statements of required benefits in the PNA, it is our position that there are improvements and better access indicated in the life of the current PNA.*” Whilst the Committee acknowledged references to population growth and the planned new health centre within the development, it also noted the PNA’s use of terms such as “*likely,*” “*projected,*” and the need to “*monitor*” future growth. Importantly, the Committee observed that page 106 of the PNA does not contain any explicit reference to a need for improvements or better access to pharmaceutical services as envisaged under paragraph 4(a) of Schedule 1 to the Regulations.
- 6.24 The Committee noted that the PNA does not contain any specific reference to a need for improvement or better access. In fact, the PNA explicitly states that there is no requirement for improvements or better access in relation to enhanced services, as outlined below:
- 6.25 “*The results of the PNA conclude that there are no unmet pharmaceutical needs in essential services, that if provided now or in the future, would secure improvements or better access to essential services during the lifetime of this PNA.*”
- 6.26 Page 108 of the PNA states that: “*[d]ue to the uncertainty of the demographic make-up of the population of the new residents in the Hornsea developments, the needs of these residents with respect to specific commissioned services cannot be determined but should continue to be considered.*” In the Committee’s view, this does not indicate a need for improvement or better access that the proposed application could address. Rather, it reflects that these developments remain in the planning stages, with growth still projected and not yet completed.

- 6.27 The Committee noted the information provided by the Applicant in respect of the test in Regulation 17(1). The Applicant had suggested where the application could, in their view, provide improvements or better access to the existing provision of pharmaceutical services to the Nine Elms ward. However, the Committee concluded that such improvements or better access were not identified in the 2023-2026 PNA in accordance with paragraph 4(a) of Schedule 1 of the Regulations and, as such, the provisions of Regulation 17 were not met.

Summary

- 6.28 The Committee was not required to refuse the application under the provisions of Regulation 31.
- 6.29 The Committee found no reference in the PNA to services which would fall within the description set out in paragraph 4(a) of Schedule 1 to the Regulations.
- 6.30 The Committee determined that, in the absence of specified circumstances in which the provision of services would secure improvements, or better access to, pharmaceutical services, the provisions of Regulation 17(1) were not met.
- 6.31 Therefore the Committee did not need to go on and consider Regulation 17(2).
- 6.32 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 6.32.1 confirm the Commissioner's decision;
 - 6.32.2 quash the Commissioner's decision and redetermine the application;
 - 6.32.3 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.
- 6.33 Although the Committee had reached the same conclusion as the Commissioner, it noted that the Commissioner had considered the tests in 17(2) without specific mention of 17(1). Given the lack of clarity in this respect, the Committee determined that the decision of the Commissioner must be quashed.
- 6.34 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.
- 6.35 The Committee noted that representations on Regulation 17 had already been made by parties to the Commissioner, and these had been circulated and seen by all parties who made representations on the application, 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 17.
- 6.36 The Committee concluded that further notification under paragraph 19 of Schedule 2 would not be helpful in this case.

7

Decision

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

- 7.2 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.
- 7.3 The Committee has determined that the application should be refused for the following reasons:
 - 7.3.1 The PNA does not specify any circumstances in which the provision of specified services will secure improvements to, or better access to, pharmaceutical services in Wandsworth.

Case Manager
Primary Care Appeals