

31 January 2019

REF: SHA/20013

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**APPEAL AGAINST LONDON (SOUTH) AREA TEAM, NHS COMMISSIONING BOARD ("NHS ENGLAND") DECISION TO REFUSE AN APPLICATION BY SANJIVANI LTD T/A SHAD THAMES WELLNESS PHARMACY FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS AT 43 SHAD THAMES, LONDON SE1 2NJ UNDER REGULATION 18**

## 1 Outcome

- 1.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, confirms the decision of NHS England, therefore the application is refused.
- 1.2 The Committee determined that the application should be refused.

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### Advise / Resolve / Learn

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**1 The Application**

By application dated 20 February 2018, Sanjivani Ltd t/a Shad Thames Wellness Pharmacy ("the Applicant") applied to NHS Commissioning Board ("NHS England") for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at 43 Shad Thames, London SE1 2NJ. In support of the application it was stated:

- 1.1 The applicant stated that there are no other pharmacies or dispensing appliance contractor premises adjacent to or in close proximity to the location identified in this application.

Background

- 1.2 The applicant wishes to apply for inclusion in the pharmaceutical list under Regulation 18 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations"). The application is to provide pharmaceutical services in Shad Thames in Riverside Ward of Southwark. As at 2011 (2011 census data) there were 14,390 usual residents in Riverside Ward.
- 1.3 The improvements or better access that would be secured were not included in the relevant Pharmaceutical Needs Assessment ("PNA"). The application offers improvement and better access to pharmaceutical services in the HWB area. NHS England is required to have particular regard to the desirability of the matters under 18.2(b)(i), (ii) and (iii) and the applicant will deal with each of those in turn.

Choice (18.2(b)(i)) (There being reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB.)

- 1.4 It should be noted that in the 2015 PNA there were three pharmacies listed for Riverside Ward. There are now only two pharmacies listed for Riverside Ward in the draft 2018 Southwark PNA. It is therefore clear that the choice has reduced since the 2015 PNA was commissioned. In contrast, the population of Riverside Ward by the Office for National Statistics 2011 census data of 14,390 is higher than that listed in the PNA for 2015 i.e. 13,705. The PNA for 2018 (draft) shows that there are now

11.1 pharmacies per 100,000 of population whereas the 2015 PNA records 21.9 pharmacies per 100,000 population.

1.5 The nearest pharmacies are:-

1.5.1 Boots the Chemist at the Hay's Galleria retail development to the west which is eight to fifteen minutes' walk away (650 metres via the embankment). Due to one-way streets and pedestrian walkways, the quickest route by car is 3.6km and takes 16 minutes.

1.5.2 The next closest pharmacy is Amadi's Chemist at 107 Abbey Street, North Southwark SE1 3NP. This is a 15 minute walk and the distance is approximately 900 metres. It should be noted that the walking route involves crossing the busy Tooley Street and the railway line at either Tanner Street or Tower Bridge Road. Again because of the restrictive road system the distance to this pharmacy is 1.3km if driving. In peak times this journey can take 20 minutes.

1.5.3 The third closest but second pharmacy within the ward is to the southeast of the ward. This is Hobbs Pharmacy which is located within Bermondsey Health Spa Health Centre in a housing estate. The route for pedestrians from the proposed site is 1.1 km. which involves crossing Tooley Street. It is 1.2km by car.

1.6 Please see the map provided.

1.7 For those attempting to drive to the nearest pharmacies there is no parking or limited parking. In particular Boots at Hay's Galleria has no available parking. There is very limited on-street parking at Amadi's Chemist.

1.8 For the people accessing pharmaceutical services by public transport, because of the riverside location of the proposed pharmacy and nearest pharmacy, there is no direct public transport route and there is cost involved in this option.

1.9 In short the Shad Thames area has no current pharmacy service and a lack of choice in provision.

1.10 In the wider area accessibility to the local pharmaceutical services is limited because of the location of pharmacies and limited opening hours on Saturday and Sunday, thus reducing choice and accessibility at those times.

1.11 The proposed pharmacy would also provide choice for residents to the north of the River Thames, for example, the St Katherine's dock area, directly opposite Shad Thames, has a GP but no adjacent pharmacy.

1.12 Office workers and tourists would also significantly benefit from a pharmacy in the Shad Thames location.

Protected characteristics (18.2(b)(ii)) (People who share a protected characteristic having access to services that meet specific need for pharmaceutical services that, in the area of the relevant HWB are difficult for them to access.)

- 1.13 Accessibility of services generally has been discussed above with the conclusion that access is at times difficult, both geographically and because of the hours that existing services are offered.
- 1.14 In this locality, there are a significant number of people who share a protected characteristic and lack the NHS pharmacy services that they need. Riverside Ward, in which the proposed pharmacy is to be located, has just over 7,000 households as at the 2011 census; of these 34.3% are social rented housing and 32.3% are privately rented. Although there are patches of affluence in Southwark generally, there are significant areas of deprivation. High levels of deprivation are often linked to a significant level of people who live with long term sickness or disability and therefore would share that protected characteristic. 17% of households in Riverside ward have one person in the household with a long term health problem or disability.
- 1.15 It should also be noted that Southwark as a whole is one of the most densely populated areas in the country. In places the population reaches almost 48 times the national average. In addition, the population in Southwark is predicted to grow by over 12% between 2016 to 2021, and much of the predicted population growth will take place in the area in and around the Riverside Ward.
- 1.16 In relation to services in the Bermondsey and Rotherhithe locality (comprising Grange, Riverside, Rotherhithe and South Bermondsey and Surrey Docks Wards) there are no pharmacies providing sexual health level 2 services which relate to chlamydia treatment and condoms, there is only one pharmacy providing oral contraception and only one pharmacy providing health checks.
- 1.17 The focus of the applicant's pharmacy will be healthy living and will prioritise personalised medicine. A modern consultation room is planned for consultations and health diagnostic intervention. The applicant is in discussions to use the consulting room for osteopathic treatment, a podiatrist and a private GP (subject to D1 planning consent), functional medicine and homeopathy and clinical nutrition.
- 1.18 The applicant is planning to offer specific treatments to modify, prevent and reverse key chronic diseases; examples of these are Type 2 Diabetes and Cardiovascular health. There will also be programmes to look at cognitive decline. It is planned that specific personalised diets will be offered with exercise and lifestyle prescriptions. There will also be a range of herbal and homeopathic medicines for patients who wish to access alternative remedies. Patients who are suffering disability through obesity will also be able to take advantage of a tailored programme with targeted monitoring through BMI, Bioimpedance and blood markers.
- 1.19 The applicant has a particular interest in providing a phlebotomy service. A considerable amount of GP practice time is used by taking blood samples from those referred; having a pharmacy led service in the

Southwark area would offer an accessible service to patients. The applicant is a phlebotomist and functional medicine practitioner so is trained in drawing blood safely and assessing blood chemistry. The superintendent pharmacist and his team would be able to prepare HBA 1c, CRP, Blood glucose, lipid profiles on site. The equipment is already available. HIV and syphilis testing would be available.

- 1.20 For advance testing, the pharmacy staff will be able to draw blood and send to specialist labs for in depth analysis of blood chemistry, hormones such as thyroid and sex hormones, nutritional panel (vitamins and minerals), oxidative stress markers (markers which cause destruction to cells and DNA).
- 1.21 The superintendent pharmacist is a certified specialist in stool testing. This service would be offered as a tool for assessing digestive health.
- 1.22 For these services there would be a shared patient medication record to track progress and diarised follow ups would be offered.
- 1.23 There would also be a travel and vaccination clinic.

Innovation (18.1 .2(b)(iii)) (there being innovative approaches taken with regard to the delivery of pharmaceutical services)

- 1.24 The pharmacy's wellness and personalised medicine approach is novel and goes beyond the services offered by a standard healthy living pharmacy.
- 1.25 In summary:- Granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant Pharmaceutical Needs Assessment was published because:-
  - 1.25.1 The pharmacy would offer specific services that people with protected characteristic find difficult to access;
  - 1.25.2 The pharmacy would offer services in an area and at times where there is currently little or no choice.

Significant detriment

Pursuant to Regulation 18.2(a)(i)

- 1.26 Granting the application would not cause significant detriment to the proper planning in respect of the provision of pharmaceutical services as there appears to be a decrease in the number of pharmacies in Riverside Ward and overall the pharmacy provision in Southwark is stretched because of the high and increasing density of population in the area and the pockets of deprivation causing pressure on pharmaceutical services.

Pursuant to Regulation 18.2(a)(ii)

- 1.27 The application would not cause significant detriment to the arrangements that the NHSCB has in place for the provision of pharmaceutical services currently as the proposed location of the pharmacy is in an area where pharmaceutical services are difficult to

access because of geographic considerations and the times at which these services are offered.

1.28 The applicant intends to provide the following services:

1.28.1 Essential services.

1.28.2 Clinical governance.

1.28.3 Appliances as set out in Part IX of the Drug Tariff.

1.28.4 Advanced and Enhanced services as stated on the application form.

1.29 The applicant's proposed core opening hours are:

1.29.1 Mon to Fri 08:00 to 18:00

1.29.2 Sat 10: 00 to 17:00

1.29.3 Sun 11:00 to 16:00

1.30 The applicant's proposed total opening hours are:

1.30.1 As above.

## 2 **The Decision**

NHS England considered and decided to refuse the application. The decision letter dated 1 October 2018 states:

### Covering Letter

2.1 NHS England have considered the application and is writing to confirm it has been refused. The decision report provides full reasoning for the decision.

### Decision Report

2.2 London Region Pharmaceutical Services Regulations Committee

2.3 20 September 2018

2.4 Part 2, London Area *agenda item number 6A* – decision report for an application for inclusion in a pharmaceutical list: routine application offering to secure unforeseen benefits

2.5 Southwark HWBB

2.6 Name of applicant - Sanjivani Ltd t/a Shad Thames Wellness Pharmacy

2.7 Fitness to practise - Approved for inclusion

2.8 Address of proposed premises - 43 Shad Thames, London, SE1 2NJ

2.9 Status of location - Non-controlled locality.

### Relevant regulations and guidance

- 2.9.1 Regulations 18 and 19 – unforeseen benefits: additional matters and consequences.
- 2.9.2 Regulation 31 – refusal: same or adjacent premises.
- 2.9.3 Regulation 65 – core opening hours conditions.
- 2.9.4 DH market entry guidance chapter 8

### Interested parties notified of the application

- 2.10 (Listed)

### Additional information

- 2.11 The PSRC have determined that there is enough information within the papers to decide the application without an oral hearing.
- 2.12 The applicant has made the application based on the draft PNA for Southwark. It is important to note that the recommendations in this report are based on the published Southwark PNA.
- 2.13 NHS England is only able to look at services which are commissioned by NHS England.
- 2.14 The applicant is offering to provide 62 core hours. If the application is approved NHS England would accept these hours and issue a direction for the additional core hours.

### Distances

- 2.15 The applicant has stated that the distance between the proposed site and Boots at Hayes Galleria is 15 minutes, google maps states the walk is 8 minutes (650 m) and driving time is 7 minutes (1.1 km).
- 2.16 The applicant has stated the distance between the proposed site and the next nearest pharmacy (Amadi Chemist) is a 15 minute walk and approx. 900 m, google maps measures this as a 13 minute walk and is 1km, driving is 1.3m taking 6 minutes.

### Regulation 31

- 2.17 There are no pharmacies in the immediate vicinity of this application so regulation 31 is not engaged.

### Regulation 32

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

### General Comments

- 2.19 The pharmacy is offering to provide a number of unforeseen benefits as follows:

## Applicant Details

### Choice

- 2.20 The applicant has pointed to the fact that there were 3 pharmacies in the Riverside Ward in the 2015 PNA, but there are now only 2 pharmacies in the Riverside Ward which are Boots Pharmacy at Hayes Galleria and Amadi Chemist. And yet the population has grown see excerpt from the supporting statement.
- 2.21 It should be noted that in the 2015 PNA there were three pharmacies listed for Riverside Ward. There are now only two pharmacies listed for Riverside Ward in the draft 2018 Southwark PNA. It is therefore clear that the choice has reduced since the 2015 PNA was commissioned. In contrast, the population of Riverside Ward by the Office for National Statistics 2011 census data of 14390 is higher than that listed in the PNA for 2015 i.e. 13705. The PNA for 2018 (draft) shows that there are now 11.1 pharmacies per 100,000 of population whereas the 2015 PNA records 21.9 pharmacies per 100,000 population.”
- 2.22 The applicant states the nearest pharmacies are as follows:
- 2.23 Boots the Chemist at the Hays Galleria retail development to the west which is eight to fifteen minutes’ walk away (650 metres via the embankment). Due to one-way streets and pedestrian walkways, the quickest route by car is 3.6 km and takes 16 minutes.
- 2.24 The next closest pharmacy is Amadi’s Chemist at 107 Abbey Street, North Southwark SE1 3NP. This is a 15 minute walk and the distance is approximately 900 metres. It should be noted that the walking route involves crossing the busy Tooley Street and the railway line at either Tanner Street or Tower Bridge Road. Again because of the restrictive road system the distance to this pharmacy is 1.3km if driving. In peak times this journey can take 20 minutes.
- 2.25 The third closest but second pharmacy within the ward is to the southeast of the ward. This is Hobbs Pharmacy which is located within Bermondsey Spa Health Centre in a housing estate. The route for pedestrians from the proposed site is 1.1km which involves crossing Tooley Street. It is 1.3km by car.
- 2.26 For those attempting to drive to the nearest pharmacies there is no parking or limited parking. In particular Boots at Hay’s Galleria has no available parking. There is very limited on-street parking at Amadi’s Chemist.
- 2.27 For the people accessing pharmaceutical services by public services, because of the riverside location of the propose pharmacy and nearest pharmacy, there is no direct public transport route and there is cost involved in this option.
- 2.28 In short the Shad Thames area has no current pharmacy service and a lack of choice in provision.

- 2.29 In the wider area accessibility to the local pharmaceutical services is limited because of the location of pharmacies and limited opening hours on Saturday and Sunday, thus reducing choice and accessibility at those times.
- 2.30 The proposed pharmacy would also provide choice for residents to the north of the River Thames for example, the St Katherine's dock area, directly opposite Shad Thames, as a GP but no adjacent pharmacy.
- 2.31 Office workers and tourists would also significantly benefit from a pharmacy in the Shad Thames location.

#### Protected Characteristics

- 2.32 The applicant has listed the following for protected characteristics
- 2.33 Accessibility of services generally has been discussed above with the conclusion that access is at times difficult, both geographically and because of the hours that existing services are offered.
- 2.34 In this locality, there are a significant number of people who share a protected characteristic and lack the NHS pharmacy services that they need. Riverside Ward, in which the proposed pharmacy is to be located, has just over 7,000 households as at the 2011 census; of these 34.3% are social rented housing and 32.3% are privately rented. Although there are patches of affluence in Southwark generally, there are significant areas of deprivation. High levels of deprivation are often linked to a significant level of people who live with long term sickness or disability and therefore would share that characteristic. 17% of households in Riverside ward have one person in the household with a long term health problem or disability.
- 2.35 It should also be noted that Southwark as a whole is one of the most densely populated areas in the country. In places the population reaches almost 48 times the national average. In addition, the population in Southwark is predicted to grow by 12% between 2016 to 2021, and much of the predicted population growth will take place in the area in and around the Riverside Ward.
- 2.36 In relation to services in the Bermondsey and Rotherhithe locality (comprising Grange, Riverside, Rotherhithe and South Bermondsey and Surrey Docks Wards) there are no pharmacies providing sexual health level 2 services which relate to Chlamydia treatment and condoms, there is only one pharmacy providing oral contraception and only one pharmacy providing health checks.
- 2.37 The focus of the applicant's pharmacy will be healthy living and will prioritise personalised medicine. A modern consultation room is planned for consultations and health diagnostic intervention. The applicant is in discussions to use the consulting room for osteopathic treatment, a podiatrist and a private GP (subject to D1 planning) consent), functional medicine and homeopathy and clinical nutrition.
- 2.38 The applicant is planning to offer specific treatments to modify, prevent and reverse key chronic diseases; examples of these are Type 2

Diabetes and Cardiovascular health. There will also be a programme to look at cognitive decline. It is planned that specific personalised diets will be offered with exercise and lifestyle prescriptions. There will also be a range of herbal and homeopathic medicines for patients who wish to access alternative remedies. Patients who are suffering disabilities through obesity will also be able to take advantage of a tailored programme with targeted monitoring through BMI, Bioimpedance and blood markers.

- 2.39 The applicant has a particular interest in providing a phlebotomy service. A considerable amount of GP practice time is used by taking blood samples from those referred; having a pharmacy led service in the Southwark area would offer an accessible service to patients. The applicant is a phlebotomist and functional medicine practitioner so is trained in drawing blood safely and assessing blood chemistry. The superintendent pharmacist and his team would be able to prepare HBA1c, CRP, Blood glucose, lipid profiles on site. The equipment is already available. HIV and syphilis testing would be available.
- 2.40 For advance testing, the pharmacy staff will be able to draw blood and sent to specialist labs for in depth analysis of blood chemistry, hormones such as thyroid and sex hormones, nutritional panel (vitamins and minerals), oxidative stress markers (markers which cause destruction to cells and DNA). The superintendent pharmacist is a certified specialist in stool testing. This service would be offered as a tool for assessing digestive health.
- 2.41 For these services there would be a shared patient medication record to track progress and diarised follow-ups would be offered.
- 2.42 There would also be a travel and vaccination clinic.

#### Innovation

- 2.43 The pharmacy's wellness and personalised medicine approach is novel and goes beyond the services offered by a standard healthy living pharmacy.
- 2.44 In summary – granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant Pharmaceutical Needs Assessment was published because:
- 2.44.1 The pharmacy would offer specific services that people with protected characteristics find characteristics find difficult to access.
- 2.44.2 The pharmacy would offer services in an area and at times where there is currently little or no choice.

#### NHS England Comments

- 2.45 NHS England has considered all the unforeseen benefits which the applicant has offered to provide as follows:

#### Choice

- 2.46 The applicant has pointed to the fact that there are only 2 pharmacies in the Riverside Ward of within the Southwark HWBB. In the 2015 PNA there were 3 pharmacies located in this ward, the 3rd pharmacy relocated their pharmacy which is now located in SE16 4TE (South Bermondsey Ward). The Southwark 2018 published PNA does not consider there to be any gaps in service across Southwark. The PNA does state "Consideration could be given to extending opening hours at the weekends to improve access and choice. This is particularly important given the vision from the Southwark Five Year Forward View to extend access to primary care (seven days a week 8am- 8pm).
- 2.47 The choice for patients in this area is not as much as in some areas; however it is the opinion of NHS England that there is still reasonable choice in this ward for patients. This area is bordered by the River Thames which forms a natural barrier and patients are unlikely to cross the river to have their prescriptions dispensed. The pharmacy which was previously located relocated their premises as the GP practice in the area relocated.

#### Protected Characteristics

- 2.48 The applicant has stated that Southwark is one of the most densely populated areas in the country and that the population is predicted to grow. It is opinion of the NHS England that the applicant may argue the need for additional services based on the above average density, however NHS England does not consider the increase growth to be relevant to this application as the HWB as addressed this in the PNA.
- 2.49 The PNA states:
- 2.49.1 *"The population in Southwark is predicted to grow by over 12% from around 313,200 in 2016 to 351,100 in 2021. The increase in population is predicted to vary across the borough with the largest growth projected to occur in the north, particularly in Cathedrals ward where the population is projected to increase by over 9,000 people in the coming years. Current areas of large-scale urban regeneration include Elephant and Castle, Old Kent Road and the Aylesbury estate.*
- 2.49.2 *The current network of (62) pharmacies corresponds to where future new housing developments will be located within the borough. The PNA has carefully considered the likely changes to the number of people requiring pharmaceutical services, the demography of each area and the risks to the health and wellbeing of people in the borough. The Health and Wellbeing Board consider that the current and the future needs of the population can be adequately addressed through the current service provision. In case of any significant change to current circumstances or when a need for new and/or additional pharmaceutical service is identified in the future, the PNA will be reviewed and a supplementary statement will be released as per Regulations."*
- 2.50 The applicant has further gone on to explain what services they can offer patients with protected characteristics. They particularly look at patients

with long term conditions It could be argued that the pharmacy is offering to provide services which would benefit patients, but they are not services which are currently or planned to be commissioned by NHS England in the future.

### Innovation

- 2.51 As the applicant explains the *“The pharmacy’s wellness and personalised medicine approach is novel and goes beyond the services offered by a standard healthy living pharmacy.”* Whilst this may be true these are not services which NHS Commissions or plans to commission in the future.
- 2.52 **18.**— whether it is satisfied that granting the application, or granting it in respect of some only of the services specified in it, would secure improvements, or better access to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB; and...
- 2.53 The applicant has looked at the improvements or better access to pharmaceutical services under choice, protected characteristics and innovation which are addressed below. It is the opinion of the PSRC that this application does not secure improvements or better access.
- 2.54 The PSRC have determined that if the application were granted this would not secure improvements and better access to pharmaceutical services.
- 2.55 (b) the improvements or better access that would be secured were or was not included in the relevant pharmaceutical needs assessment in accordance with paragraph 4 of Schedule 1, in determining whether it is satisfied as mentioned in section 129(2A) of the 2006 Act(a) (regulations as to pharmaceutical services), the NHSCB must have regard to the matters set out in paragraph (2)
- 2.56 The services which the applicant is offering to provide are not included in the Southwark PNA. However the services which the applicant is offering to provide are not services which are currently commissioned or planned to be commissioned by NHS England in the future.
- 2.57 (2) Those matters are—
- 2.57.1 (a) whether it is satisfied that granting the application would cause significant detriment to—
- 2.57.1.1(i) proper planning in respect of the provision of pharmaceutical services in its area, or
- 2.57.1.2(ii) the arrangements it has in place for the provision of pharmaceutical services in its area;
- 2.58 There are 32 pharmacies within 2km, (which are located to the South of the River Thames) of the application site, as the crow flies as per NHS Choices website. Granting a new pharmacy application could cause detriment to proper planning or the arrangement in place for pharmaceutical services.

- 2.59 NHS England considers that the Southwark PNA has already considered the need for Southwark and is satisfied with the number of pharmacies. The applicant points to the fact there were previously 3 pharmacies in the ward. NHS England is aware that one pharmacy previously in the ward did relocate, however this was prior to the completion of the 2018 PNA and the final PNA states *“The pharmaceutical service coverage in Southwark is considered adequate taking into consideration the pharmacy/population ratio (20.1/100,000 population) which is similar to neighbouring boroughs and compares favourably with the national average (18.3/100,000). The distribution of community pharmacies correlates well with areas and indices of deprivation in the borough. Southwark residents have a choice of pharmacy in the majority of wards, and our public survey suggests that the majority of respondents (95%) find it quite easy to get to a local pharmacy.”* Therefore the granting of this application may result in the over provision of essential services in the area.
- 2.60 In summary the PSRC have determined that granting of this application may result in the over provision of essential services in the area. This may cause detriment to proper planning of pharmaceutical services or the arrangements in place for the provision of pharmaceutical services in this area. At present there is no evidence that this will be significant.
- 2.61 (b) whether, notwithstanding that the improvements or better access were not included in the relevant pharmaceutical needs assessment, it is satisfied that, having regard in particular to the desirability of—
- 2.61.1 (i) there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB (taking into account also the NHSCB’s duties under sections 13I and 13P of the 2006 Act**(b)** (duty as to patient choice and duty as respects variation in provision of health services)),

Choice

Applicant

- 2.62 The applicant has pointed to the fact that there were 3 pharmacies in the Riverside Ward in the 2015 PNA, but there are now only 2 pharmacies in the Riverside Ward which are Boots Pharmacy at Hayes Galleria and Amadi Chemist. And yet the population has grown see excerpt from the supporting statement.
- 2.63 It should be noted that in the 2015 PNA there were three pharmacies listed for Riverside Ward. There are now only two pharmacies listed for Riverside Ward in the draft 2018 Southwark PNA. It is therefore clear that the choice has reduced since the 2015 PNA was commissioned. In contrast, the population of Riverside Ward by the Office for National Statistics 2011 census data of 14390 is higher than that listed in the PNA for 2015 i.e. 13.705. The PNA for 2018 (draft) shows that there are now 11.1 pharmacies per 100,000 of population whereas the 2015 PNA records 21.9 pharmacies per 100,000 population.”

- 2.64 The Committee noted the applicant's comment that the pharmacy would offer services in an area and at times where there is currently little or no choice.
- 2.65 The applicant states the nearest pharmacies are as follows:
- 2.65.1 Boots the Chemist at the Hays Galleria retail development to the west which is eight to fifteen minutes' walk away (650 metres via the embankment). Due to one-way streets and pedestrian walkways, the quickest route by car is 3.6 km and takes 16 minutes.
- 2.65.2 The next closest pharmacy is Amadi's Chemist at 107 Abbey Street, North Southwark SE1 3NP. This is a 15 minute walk and the distance is approximately 900 metres. It should be noted that the walking route involves crossing the busy Tooley Street and the railway line at either Tanner Street or Tower Bridge Road. Again because of the restrictive road system the distance to this pharmacy is 1.3km if driving. In peak times this journey can take 20 minutes.
- 2.65.3 The third closest but second pharmacy thing the ward is to the southeast of the ward. This is Hobbs Pharmacy which is located within Bermondsey Spa Health Centre in a housing estate. The route for pedestrians from the proposed site is 1.1km which involves crossing Tooley Street. It is 1.3km by car.
- 2.66 For those attempting to drive to the nearest pharmacies there is no parking or limited parking. In particular Boots at Hay's Galleria has no available parking. There is very limited on-street parking at Amadi's Chemist.
- 2.67 For the people accessing pharmaceutical services by public services, because of the riverside location of the proposed pharmacy and nearest pharmacy, there is no direct public transport route and there is cost involved in this option. In short the Shad Thames area has no current pharmacy service and a lack of choice in provision.
- 2.68 In the wider area accessibility to the local pharmaceutical services is limited because of the location of pharmacies and limited opening hours on Saturday and Sunday, thus reducing choice and accessibility at those times.
- 2.69 The proposed pharmacy would also provide choice for residents to the north of the River Thames for example, the St Katherine's Dock area, directly opposite Shad Thames, as Thames, as a GP but no adjacent pharmacy. Office workers and tourists would also significantly benefit from a pharmacy in the Shad Thames location.

#### NHS England Comments

- 2.70 The applicant has pointed to the fact that there are only 2 pharmacies in the Riverside Ward of within the Southwark HWBB. In the 2015 PNA there were 3 pharmacies located in this ward, the 3rd pharmacy relocated their pharmacy which is now located in SE16.4TE (South Bermondsey

Ward). The Southwark 2018 published PNA does not consider there to be any gaps in service across Southwark. The PNA does state "Consideration could be given to extending opening hours at the weekends to improve access and choice. This is particularly important given the vision from the Southwark Five Year Forward View to extend access to primary care (seven days a week 8am- 8pm).

- 2.71 The choice for patients in this area is not as much as in some areas, however it is the opinion of the NHS England that there is still reasonable choice in this ward for patients. This area is bordered by the River Thames which forms a natural barrier and patients are unlikely to cross the river to have their prescriptions dispensed. The pharmacy which was previously located relocated their premises as the GP practice in the area relocated.
- 2.72 The PSRC have determined that NHS England is satisfied that residents of this part of Southwark have a reasonable choice of pharmacies. Therefore if the application were granted this would not secure improvements and better access to pharmaceutical services.
- 2.73 (ii) people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access (taking into account also the NHSCB's duties under section 13G of the 2006 Act(c) (duty as to reducing inequalities)),

#### Applicant

- 2.74 The applicant has stated the following for patients with protected characteristics.
- 2.75 Accessibility of services generally has been discussed above with the conclusion that access is at times difficult, both geographically and because of the hours that existing services are offered.
- 2.76 In this locality, there are a significant number of people who share a protected characteristic and lack the NHS pharmacy services that they need. Riverside Ward, in which the proposed pharmacy is to be located, has just over 7,000 households as at the 2011 census; of these 34.3% are social rented housing and 32.3% are privately rented. Although there are patches of affluence in Southwark generally, there are significant areas of deprivation. High levels of deprivation are often significant areas of deprivation. High levels of deprivation are often linked to a significant level of people who live with long term sickness or disability and therefore would share that characteristic. 17% of households in Riverside ward have one person in the household with a long term health problem or disability.
- 2.77 It should also be noted that Southwark as a whole is one of the most densely populated areas in the country. In places the population reaches almost 48 times the national average. In addition, the population in Southwark is predicted to grow by 12% between 2016 to 2021, and much of the predicted population growth will take place in the area in and around the Riverside Ward.

- 2.78 In relation to services in the Bermondsey and Rotherhithe locality (comprising Grange, Riverside, Rotherhithe and South Bermondsey and Surrey Docks Wards) there are no pharmacies providing sexual health level 2 services which relate to Chlamydia treatment and condoms, there is only one pharmacy providing oral contraception and only one pharmacy providing health checks.
- 2.79 The focus of the applicant's pharmacy will be healthy living and will prioritise personalised medicine. A modern consultation room is planned for consultations and health diagnostic intervention. The applicant is in discussions to use the consulting room for osteopathic treatment, a podiatrist and a private GP (subject to D1 planning consent), functional medicine and homeopathy and clinical nutrition.
- 2.80 The applicant is planning to offer specific treatments to modify, prevent and reverse key chronic diseases; examples of these are Type 2 Diabetes and Cardiovascular health. There will also be a programme to look at cognitive decline. It is planned that specific personalised diets will be offered with exercise and lifestyle prescriptions. There will also be a range of herbal and homeopathic medicines for patients who wish to access alternative remedies. Patients who are suffering disabilities through obesity will also be able to take advantage of a tailored programme with targeted monitoring through BMI, Bioimpedance and blood markers.
- 2.81 The applicant has a particular interest in providing a phlebotomy service. A considerable amount of GP practice time is used by taking blood samples from those referred; having a pharmacy led service in the Southwark area would offer an accessible service to patients. The applicant is a phlebotomist and functional medicine practitioner so is trained in drawing blood safely and assessing blood chemistry. The superintendent pharmacist and his team would be able to prepare HBA1c, CRP, Blood glucose, lipid profiles on site. The equipment is already available. HIV and syphilis testing would be available.
- 2.82 For advance testing, the pharmacy staff will be able to draw blood and sent to specialist labs for in depth analysis of blood chemistry, hormones such as thyroid and sex hormones, nutritional panel (vitamins and minerals), oxidative stress markers (markers which cause destruction to cells and DNA).
- 2.83 The superintendent pharmacist is a certified specialist in stool testing. This service would be offered as a tool for assessing digestive health. For these services there would be a shared patient medication record to track progress and diarised follow-ups would be offered.
- 2.84 There would also be a travel and vaccination clinic.

#### NHS England Comments

- 2.85 The applicant has stated that Southwark is one of the most densely populated areas in the country and that the population is predicted to grow. It is the opinion of the NHS England that the applicant may argue the need for additional services based on the above average density,

however NHS England does not consider the increase growth to be relevant to this application as the HWB has addressed this in the PNA.

- 2.86 The PNA states “The population in Southwark is predicted to grow by over 12% from around 313,200 in 2016 to 351,100 in 2021. The increase in population is predicted to vary across the borough with the largest growth projected to occur in the north, particularly in Cathedrals ward where the population is projected to increase by over 9,000 people in the coming years. Current areas of large-scale urban regeneration include Elephant and Castle, Old Kent Road and the Aylesbury estate.
- 2.87 The current network of (62) pharmacies corresponds to where future new housing developments will be located within the borough. The PNA has carefully considered the likely changes to the number of people requiring pharmaceutical services, the demography of each area and the risks to the health and wellbeing of people in the borough. The Health and Wellbeing Board consider that the current and the future needs of the population can be adequately addressed through the current service provision. In case of any significant change to current circumstances or when a need for new and/or additional pharmaceutical service is identified in the future, the PNA will be reviewed and a supplementary statement will be released as per Regulations.”
- 2.88 (iii) there being innovative approaches taken with regard to the delivery of pharmaceutical services (taking into account also the NHSCB’s duties under section 13K of the 2006 Act(a) (duty to promote innovation)), granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant pharmaceutical needs assessment was published;

#### Applicant

- 2.89 The applicant has stated the following for innovation:
- 2.90 “The pharmacy’s wellness and personalised medicine approach is novel and goes beyond the services offered by a standard healthy living pharmacy.
- 2.91 In summary – Granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant Pharmaceutical Needs Assessment was published because:-
- 2.91.1 The pharmacy would offer specific services that people with protected characteristics find difficult to access.
- 2.91.2 The pharmacy would offer services in an area and at times where there is currently little or no choice.”

#### NHS England Comments

- 2.92 As the applicant explains the “*The pharmacy’s wellness and personalised medicine approach is novel and goes beyond the services offered by a standard healthy living pharmacy.*” Whilst this may be true these are not services which NHS Commissions or plans to commission in the future.

Further to this the only protected characteristic identified by the pharmacy is for those patients with long term conditions.

2.93 Regulation 19 – Deferral **n/a as not deferred.**

Decision

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

2.95 There are no pharmacies within the immediate vicinity of the application, so regulation 31 is not engaged.

2.96 With regard to 18(1)(a) & (b) the PSRC have determined granting of the application would not secure a significant improvement or better access in relation to pharmaceutical services.

2.97 With regard to 18(2)(a) the PSRC have determined that granting the application may lead to an over provision of essential services in the area of the proposed site, and granting the application would cause significant detriment to the proper planning or arrangements for the provision of pharmaceutical services.

2.98 With regard to 18(2)(b)(i) the applicants main unforeseen benefit is significant improvement to access in pharmaceutical services. The PSRC are satisfied that residents of this part of Southwark have a reasonable choice of pharmacies. Therefore if the application were granted this would not secure improvements and better access to pharmaceutical services.

2.99 PSRC have determined that the applicant has not fulfilled the criteria as required in regulation 18(1) & 18 (2) and therefore the Pharmaceutical Services Regulations Committee may determine NOT to grant the application.

### 3 **The Appeal**

In a letter dated 29 October 2018 addressed to NHS Resolution, the applicant appealed against NHS England's decision. The grounds of appeal are:

3.1 NHS England decided that the application should be refused for the following reasons:-

3.1.1 Regulation 31 is not engaged.

3.1.2 With regard to 18(1)(a) and (b) of the Regulations ... the application would not secure a significant improvement or better access in relation to pharmaceutical services.

3.1.3 With regard to 18(2)(a) ... the application may lead to an over provision of essential services in the area of the proposed site and granting the application would cause significant detriment to the proper planning or arrangements for the provision of pharmaceutical services.

3.1.4 With regard to 18(2)(b)(i), the applicant's main unforeseen benefit is significant improvement to access in pharmaceutical services.

3.1.5 The PSRC (Pharmaceutical Services Regulations Committee) are satisfied that the residents of this part of Southwark have reasonable choice of pharmacies. Therefore, if the application were granted, this would not secure improvements and better access to pharmaceutical services.

3.2 The applicant accepts the Committee's finding in relation to regulation 31 of the Regulations and agrees that there are no pharmacies within the immediate vicinity of the application.

#### Flawed process

3.3 In relation to the remainder of the decision, the applicant believes the NHS England decision making process is flawed.

3.4 Firstly, the applicant provided over 40 comments from local residents, many of whom had protected characteristics, showing that there is a need in the area to provide accessible pharmaceutical services for people who share protected characteristics. The only mention of protected characteristics in the decision making process was that: *"the only protected characteristic to be identified by the pharmacy [sic] were those patients with long-term conditions"*.

3.5 It appears that the decision making body failed to have regard to the comments of residents which evidence a real difficulty of people with protected characteristics gaining access to pharmaceutical services that they require.

3.6 Secondly, the reported decision is that the PSRC determined that the granting of the application may result in the over provision of essential services in the area which would cause significant detriment. ..

3.7 In fact what the PSRC said was:

3.7.1 *"Granting of this application may result in over provision of essential services in the area. This may cause detriment to proper planning of pharmaceutical services or the arrangements in place for the provision of pharmaceutical services in this area. At present, there is no evidence that this will be significant." (emphasis added).*

3.8 Therefore the decision as set out in the report mis-states the decision making process which found that there was no evidence of a significant detriment to the proper planning or arrangements for the provision of pharmaceutical services.

3.9 Thirdly of course, it is the applicant's case that the PSRC were wrong to find that the applicant had not fulfilled the criteria as required in regulation 18(1) and 18(2) of the Regulations and proceed to refuse the application.

## PNA

- 3.10 The application was drafted during the currency of the 2015 PNA. However, for the avoidance of doubt, the relevant PNA is now the 2018 PNA which does not include the improvements or better access offered by the application and therefore the application falls within regulation 18(1).

### Regulation 31

- 3.11 The applicant adopts NHS England's position in relation to regulation 31

### Choice

- 3.12 NHS England has to have regard to "*a desirability of there being reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB.*"

- 3.13 The application noted that in the 2015 PNA, there were three pharmacies listed for Riverside Ward. There are now only two pharmacies listed in the 2018 Southwark PNA. The applicant pointed to the reduced choice because of that reduction. In the decision letter, NHS England said that the third pharmacy relocated their pharmacy and it is now located at SE16 4TE; South Bermondsey Ward. This is not correct. The pharmacy at this location, which is still within Riverside ward, is Hobbs Pharmacy. In the 2015 PNA this pharmacy was owned by Medicx Ltd at the same postcode and it now appears to be under new ownership. The pharmacy known as Mill Pharmacy and also Dockhead Pharmacy at 29 Dockhead SE1 2BS is the pharmacy that closed. It appears to have done so just before the publication of the 2015 PNA. It was listed as the contact point for student halls of residence in 2013. The closure followed the retirement of the pharmacist owner.

- 3.14 The applicant reiterates the point that during that time the population of Riverside Ward has increased by 14,390. It is clear from the many comments enclosed from the residents of Riverside Ward that they do not think that they have sufficient choice or access to pharmacies in their area. Both the location of existing pharmacies and the service issues at Boots the Chemist limit the choice in the area. It should be noted that the two closest GP surgeries to the proposed NHS pharmacy do not have a pharmacy adjacent to them. These are Mill Street Surgery and St Katherine Docks practice. Since the closure of Mill Street Pharmacy due to retirement of the pharmacist, a patient with an acute prescription from Mill Street surgery will have to walk .8 mile going west to get to the nearest pharmacy. The St Katherine's Dock area is directly opposite Shad Thames and accessible via Tower Bridge. An application was granted to permit a pharmacy to open at the St Katharine's Dock site next to the GP surgery but no pharmacy has in fact opened.

- 3.15 The nearest pharmacies to the proposed site are:

- 3.15.1 Boots the Chemist at Hays Galleria Retail Development to the west which is 8 to 15 minutes' walk away (650 metres via the Embankment). Due to one-way streets and pedestrian walkways, the quickest route by car is 3.6 kilometres and takes 16 minutes.

- 3.15.2 Amadi's Chemist at 107 Abbey Street, North Southwark, SE1 3NP. This is a 15 minute walk and the distance is approximately 900 metres. The walking route involves crossing the busy Tooley Street and the railway line at either Tanner Street or Tower Bridge Road. Again because of the restrictive road system, the distance to this pharmacy is 1.3 kilometres if driving with an estimated driving time of 20 minutes in peak hours. This pharmacy did not object to our client's application.
- 3.15.3 Hobbs Pharmacy - the third closest but second pharmacy within the Ward. This is the pharmacy mentioned above, which is located within Bermondsey Health Spa Health Centre in a housing estate. The route for pedestrians from the proposed site is 1.1 kilometres which, again, involves crossing Tooley Street. It is 1.2 kilometres by car. Although this is the postcode given for the relocated pharmacy, this is still within the Ward and therefore would be shown on the 2015 and 2018 statistics. This pharmacy also did not object to the current application. It could be speculated that this is because it is a pharmacy within a Health Centre and almost exclusively services urgent prescriptions from that Health Centre.
- 3.16 For the reasons stated in the application, attempting to drive to the pharmacies is difficult and time consuming and there is little parking available at the locations. Public transport is also problematic. Because of the riverside location of the proposed pharmacy, there are more limited public transport options than usual in London. There is also a cost involved in this option.
- 3.17 The residents providing comments have also pointed to benefit for office workers and tourists of accessible pharmacy services at the Shad Thames location.
- 3.18 The pharmacy location is situated amongst a number of major London landmarks, including Brunei Museum, The Fashion and Textiles Museum, Tower Bridge, The Tower of London and the Shard, which together draw a considerable tourist population of around 6 million a year. In addition, Butlers Wharf student halls in Gainsford Street accommodates 280 students and the relocated Zoopla headquarters in Copper Row also currently employs around 500 people. Further, the Potters Field Tourist Garden has injected approximately £3 million in to its refurbishment project.
- 3.19 The current services are not meeting the need for a pharmacy in this location. Many of the letters in support of the application have highlighted problems with the service at Boots, including long waiting times, limited stock availability and, in the letter at p , that it is not a safe service.

Protected Characteristics (18(2)(b)(ii))

- 3.20 *(People who share a protected characteristic having access to services that meet specific need for pharmaceutical services that in the area of the relevant HWB are difficult for them to access.)* The applicant sets out in detail the high levels of deprivation at the proposed site and the link of these high levels to patients with long-term health and disability in his

application. It was also set out that Southwark is an area of high density in population and therefore it would be expected that there was a correspondingly high level of pharmaceutical services in respect of this.

3.21 Sanjivani Ltd has now opened a pharmacy at the proposed location. The applicant attaches photographs of the pharmacy which demonstrate the highly professional environment that the applicant will be offering pharmaceutical services. Services in the Bermondsey and Rotherhithe locality are inadequate in that there are no pharmacies providing sexual health level 2 services which relate to chlamydia treatment and condoms. There is only one pharmacy providing oral contraception and only one pharmacy providing health checks. There is therefore a clear link with people who have the protected characteristic of gender not being able to gain access to sexual health and contraception services.

3.22 In order to illustrate the extent to which the application seeks to enhance the choice of services available to residents, the applicant provides a comparison of services offered by each of the closest pharmacies below.

Service	Amadi's Chemist	Boots Chemist	Hobbs Pharmacy	The Wellness Pharmacy
MUR	Yes	Yes	Yes	Yes
NMS	No	Yes	Yes	Yes
AUR	No	No	No	Yes
Stoma Appliance Customisation	No	No	No	No
Influenza	No	Yes	Yes	Yes
NHS Urgent Medicine Supply Advanced Service	No	No	No	Yes
Minor Ailment Scheme	No	No	No	Yes
Oral Hormonal Contraception service	No	No	No	Yes
Stop smoking Service	No	Yes	Yes	Yes

3.23 The applicant provided evidence from local residents in respect of the difficulties they were finding in obtaining services that they required because of their specific protected characteristics. The reception by local

residents to the opening of the pharmacy has been extremely positive although there has been disappointment that NHS services are not being offered. The applicant has received numerous comments from patients in the area and as the comments in relation to the NHS England consideration appear to have been overlooked, the applicant will specifically direct the panel to the relevant comments.

Protected Characteristic in	Issues	Page No. Reference
		Letters of support
Age	Reduced mobility and inability To access nearby pharmacies	1,6,11,14,27,28,29
Disability	Restricted mobility Osteoarthritis Heart conditions	1,5,6,7,8,13,23,28,31
Pregnancy and Maternity	Access for young families with babies and small children	1,11,18,29,32

Innovation (18(2)(b)(iii))

- 3.24 *There being innovative approaches taken with regard to the delivery of pharmaceutical services.)*
- 3.25 The pharmacy's wellness and personalised medicine approach is set out fully in the application. The treatments in relation to type 2 diabetes and cardiovascular health will particularly assist with the essential services of support for self-care, in particular, advice on help in managing a medical condition. This would be particularly useful in relation to diabetes as the management of the condition is particularly responsive to changes in the patient's lifestyle. The interventions discussed in the application would also be particularly important in prescription linked intervention. Paragraph 17 of the Pharmacists Terms of Service specifically state that *"he must as appropriate provide advice to that person with the aim of increasing that person's knowledge and understanding of the health issues which are relevant to that person's personal circumstance"*. With the Superintendent Pharmacist's specific training, the specific personalised diets will be an innovative way of offering this essential service.

Significant Detriment

- 3.26 The application would not cause significant detriment under regulation 18(2)(a)(i) and (ii) as there has been a decrease in the number of

pharmacies in Riverside Ward because of the closure of Mill Street (Dockhead) Pharmacy or, on NHS England's account, the relocation of Hobbs Pharmacy out of the Ward. It is also apparent from the PNA figures that the population density is high and the population levels are increasing in the area. There is currently no provider offering essential services immediately adjacent to the proposed location, so it cannot reasonably be said that there will be an over provision of essential services on the area.

- 3.27 The applicant considers this is a case where the application should be determined by an oral hearing but if an oral hearing is not arranged the applicant asks NHS Resolution to quash the decision of NHSCB and substitute a decision to grant his application for the reasons given above.

The following is a sample of the supporting comments provided by the applicant with its appeal letter

No. 1

- 3.28 This email is to support the application of The Wellness Pharmacy on Shad Thames, SE 1 for an NHS dispensing licence. I am writing in my capacity as a long-term resident, having lived in this area since 1989, and also as chair of STAMP, an active community collaboration of several hundred local stakeholders [www.loveshadthames.org](http://www.loveshadthames.org) . Without exception we are convinced that this facility is desperately needed in Shad Thames.
- 3.29 The resident population of the area is increasing and includes people with a wide range of needs, including families with babies and small children, and elderly residents. The working population has also substantially increased, for example the new ZPG office in Courage Yard has an extra 400 employees. In addition, the new Dixon Hotel on Tooley Street/Queen Elizabeth Street (opening November 2018) will substantially increase footfall with 200 bedrooms for hotel guests plus a large number of hotel staff.
- 3.30 The closest NHS pharmacy to Shad Thames is at least 15 minutes' walk away. This distance is unacceptable and in reality cannot be managed by many people, e.g. due of lack of mobility, acute illness or lack of time in their working day. In addition, it sometimes takes two trips to obtain a prescription. Therefore the argument that there are pharmacies elsewhere, e.g. at London Bridge, completely ignores the needs of those in the Shad Thames area. I personally have severe osteoarthritis and walking that distance can be impossible due to pain. Having an NHS pharmacy within Shad Thames would make a huge difference to me and countless neighbours by giving us facilities that we can easily walk to.
- 3.31 I strongly urge the NHS to grant this dispensing licence for the health and well-being of all local Shad Thames residents, businesses and visitors.

No. 2

- 3.32 Thames for a number of reasons, not least that it is a regular shop serving the community, and not just another coffee shop or chain restaurant, However, we are disappointed to find that no licence has been granted to dispense NHS prescriptions.

3.33 Since the closure of the pharmacy on Mill Street we have had no dispensing pharmacy in the area. We now have to walk to Boots at London Bridge - this is a 10 - 12 minute walk, not always easy for everyone. The Boots pharmacy is small, and serves a very large community, not only of residents, but the thousands of workers in the surrounding offices. There are long queues and waiting times. Prescriptions often cannot be dispensed immediately, which involves a return visit and further waiting time.

3.34 Given that there was a pharmacy in the area before, which had to close down when the pharmacist retired, it is hard to see why permission to reinstate this community amenity is being refused. Because the area is a visitor attraction, it is easy to overlook the fact that it is also a densely populated residential area, and that the people living here would benefit from a local NHS dispensing pharmacy, complementing the service given by the overstretched GP services.

3.35 I hope that the refusal of a licence can be reconsidered.

#### No. 3

3.36 I'm very pleased to see that we have a new pharmacy on Shad Thames. I live locally and work locally so it is very convenient for me.

3.37 It would be of great benefit to me and my partner if this pharmacy could sell NHS prescriptions as well though.

#### No.4

3.38 Why NHS would be desirable at Shad Thames

3.39 The 'Shad Thames' area has many thousands of residents, and no 'high street' facilities of its own.

3.40 There are many restaurants and cafes but no service shops so the addition of the Pharmacy in Courage Yard is very welcome.

3.41 Difficulties and challenges of going to other pharmacies.

3.42 The key difficulty that we have with going to other pharmacies is distance. The Boots pharmacy is over 20-25 minutes walk away so is not realistically an option when you are sick.

3.43 This facility is really needed in Courage Yard and urge you to support the application from the wellness pharmacy.

#### No.5

3.44 It is fantastic that the Wellness Pharmacy has opened in Shad Thames. It would be brilliant if it could become an NHS approved pharmacy for the purpose of issuing prescriptions. Whilst there is a Boots at London Bridge, that is quite a walk away for someone with a heart condition and

means crossing the busy Tower Bridge Road. Also Boots seems to run a very tight stock and is often out of my medication. It would be so much more convenient to pop around the corner. I believe that a pharmacy is an essential part of a local community and has been missing in Shad Thames.

No.6

- 3.45 I was so excited when you opened up. In every other neighbourhood I've lived in in London I've had a pharmacy a stone's throw from my home and been able to easily access prescriptions. Since I've moved to Shad Thames I've been diagnosed with inflammatory arthritis which makes walking very difficult some days, especially if there are added complications like bad weather. The closest pharmacy from my flat is either half a mile towards London Bridge station, or is .4 miles away and involves crossing a major street and going under the railway line which can be difficult in bad weather and involves a lot of up and down on sidewalks and curbs which is harder when I'm symptomatic. It would be so important to have an accessible pharmacy. The nearest NHS pharmacy that I have used before is often understocked and has twice filled my prescription incorrectly. We were so excited when you moved in. The nearest Boots is also very small and not a true pharmacy - half of the space is for gift cards and tourist trinkets due to its location at Hay's Galletia.
- 3.46 I urge the NHS to consider the disabled and elderly living in Shad Thames and give the neighbourhood a pharmacy that they can access easily. Like I've said - nowhere else I've lived in London has the pharmacy been so far from my home and with so few good choices.

No.7

- 3.47 I would like to state my support for the Wellness Pharmacy gaining an NHS contract.
- 3.48 Your pharmacy is a short walk from my flat and the nearest NHS pharmacy is Boots at London Bridge. I currently have limited mobility due to a chronic knee problem and cannot walk as far as Boots.
- 3.49 On the occasions when I have used the Wellness Pharmacy I have found their advice to be invaluable and they spend the time to understand my needs and advise accordingly. I have found the service to be better than at Boots.
- 3.50 Having an NHS dispensary in Shad Thames will fill a long needed gap.

No.8

- 3.51 I was very sorry to hear that you have been refused a contract to dispense NHS prescriptions as I was looking forward to being able to collect my prescriptions without having to take a bus journey.
- 3.52 I strongly support your application for an NHS contract for the following reasons:

- 3.53 There used to be a pharmacy at Dockhead, which served this area, but that closed several years ago.
- 3.54 I currently use the pharmacy at Jamaica Road which, because of the heavy traffic, is a return trip of about an hour on the bus.
- 3.55 Boots, at Hays Galleria, is a fifteen minute walk from here. I have mobility problems and that is not easy for me. In addition, the Boots store is very busy and there are often long queues waiting to be served.
- 3.56 The Shad Thames area has a large number of residents who would benefit from a pharmacy able to dispense NHS prescriptions. Giving a contract to the Tower bridge Wellness Pharmacy would provide the area with a service that was lost with the closure of the Dockhead pharmacy.

#### 4 **Summary of Representations on the PNA**

##### **Charles Russell Speechlys LLP on behalf the applicant in respect of the PNA**

- 4.1 The applicant is content that the decision of NHS England was taken in respect of the 2018 PNA. The appeal letter was drafted on the assumption that the 2018 PNA will be the relevant PNA for the determination by Primary Care Appeals.

This is a summary of representations received on the appeal.

##### **Boots UK Ltd**

- 4.2 Boots wish to object to this appeal as it believes the access and choice to pharmacy services are more than sufficient in this locality as previously determined by the NHS England committee.

##### Existing provision of choice and access

- 4.3 There are twenty pharmacies within approx. a one mile radius of the proposed location as per NHS Choices. Boots believe this to be more than an adequate choice with adequate accessibility to the patients.
- 4.4 Distance to the nearest pharmacy Amadi, is just over half a mile to the South (11 mins walk), and distance to Boots at Hays Galleria at half a mile to the West (9 mins walk) and Hobbs Pharmacy 0.7 miles to the West (13 mins walk).
- 4.5 Access by car to the closest pharmacies is straightforward but Boots are appreciative that parking is restricted, but no different than elsewhere in central London. NHS England will be more than aware the majority of patients/residents/commuters/visitors within Central London will travel by foot or by public transport. Therefore access to parking is less relevant in this location.
- 4.6 Boots store at Hay Galleria shopping centre opens from 7.30am until 7.00pm Monday — Friday, 10 am -6pm Saturday and 11am — 5pm on Sunday. These hours far exceed those offered by the applicant. Boots

store already offers all the services offered (if not NHS then offered privately) by the applicant as do many of the other pharmacies nearby.

- 4.7 Tesco's pharmacy in nearby Dunstan Rd (0.6 miles away) is a 100hr pharmacy opening 8am-9pm Mon-Sat and 11am-5pm Sundays. Boots patients and customers are roughly split between 1/3<sup>d</sup> residents, 1/3<sup>d</sup> workers and 1/3<sup>d</sup> tourists. Many local patients and residents work towards the Bermondsey location of the Riverside ward and Boots store there provides pharmacy services for many of them.
- 4.8 Pharmacies in the locality offer free delivery services, so would be able to accommodate deliveries to the Riverside ward area should those patients who have difficulty accessing pharmaceutical services, not be able to access them for one reason or another.
- 4.9 The application, appeal and some of the letters from residents pass comment around the pharmacy that used to be at Mill Street, this closed 5 years ago so you would assume during those following years patients have found new pharmacies to receive pharmaceutical services. It is inevitable that asking residents in the immediate vicinity of the location, would you like a pharmacy on your doorstep that the majority are likely to say yes. Boots believe this application potentially improves convenience for a minority, rather than a need for a majority, else that need would have been identified in both the 2015 and 2018 Southwark PNA.

#### Proposed location

- 4.10 The Wellness pharmacy has recently opened as a non-contract pharmacy at this address which is close to Tower Bridge, providing a limited range of over the counter medicine and fulfilling private prescriptions. They do appear to be advertising in their windows and in their practice leaflets that they provide prescription dispensing, whilst not differentiating that they don't dispense NHS prescriptions unless you ask. The same applies for Pharmacy services, again not displaying that they do not provide NHS services.
- 4.11 The Shad Thames development of approx.. 2,300 residents has been created from the old docklands wharf buildings. Apartments in these riverside buildings are currently for sale starting at just under a million pounds. A high proportion of these new residents are young professionals. Other blocks of apartments have been built as infill and these would appear to be less expensive to purchase. This gives the appearance that the area is in no way deprived, with regards housing. The majority of patients that are more elderly live closer to the surgery end of Shad Thames.
- 4.12 Facilities at the proposed address are very limited indicating that residents and patients are more than used to travelling around the area to access all the usual services including pharmacy but also banks, weekly food shop locations, post offices, their place of work and many others.
- 4.13 Boots site visit, involved it walking at an average speed from Boots store to the proposed location taking the river walk route, this took approx. 8 minutes, from then Boots employees walked to Mill Street surgery through the lower part of Shad Thames residential area, this took a

further 5 minutes. From the surgery Boots employees walked back to Boots along Tooley Street, this took 12 minutes. The route either way is straightforward with flat pavements, good street lighting and dropped kerbs.

#### Response to letters from local resident

- 4.14 In light of some of the comments in the letters from patients and/or residents Boots feels it should provide a response to some of them. Some of the letters seem to be a bit confused as to which Boots store they are commenting on, Boots also have a small convenience store within London Bridge station that does not have a pharmacy.
- 4.15 The letter on page 13 references the lack of availability of a certain drug, Boots believe the patient is referencing the manufacturing shortage of drug called Adalat that has been out of stock since the summer affecting all pharmacy contractors until at least spring 2019.
- 4.16 Some of the patients relate to queueing at peak times in Boots store, this was indeed an issue a while ago whilst we also had no permanent store manager. Boots UK was running a 99p lunchtime meal deal in conjunction with O2 on Mondays, which caused us problems due to the sheer volume of participants. This O2 offer ceased about 12 months ago and the store undertook a staff re-profiling exercise, ensuring Boots now have maximum staff available to help its customers and patients across peak times of 12-2 pm. Whilst Boots cannot always predict increases in customers across certain days, queues in the store and healthcare area are now appropriately managed.
- 4.17 In the last three years no patients with accessibility issues have contacted Boots store in Hays Galleria to request a delivery service due to them being unable access Boots store and in the last 9 months Boots have not received any customer or patient complaints of its service or otherwise. Boots have a number of its patients that are less abled, some with walking difficulties and some that have mobility scooters yet choose to come to Boots for pharmacy services. Boots step free access and push button electric doors aid them in getting into the store.
- 4.18 Boots submit a copy of a monthly report the store receives of 'feel good moments' that are submitted from customers, complementing the staff and service they have received. Boots customer care report for 2017/2018 based on feedback from patients and customers indicated 80% of them scored the customer service they received in the store excellent or very good. The store is a certified Healthy Living Pharmacy with two accredited champions in the store and the store has provided a high number of seasonal flu jabs this season with patients choosing us based on our 'accessibility and convenience.

PNA

- 4.19 Conclusion within the Southwark 2018 PNA states:

*4.19.1 The pharmaceutical service coverage in Southwark is considered adequate taking into consideration the pharmacy/population ratio (20/100, 000 population) which is similar to neighbouring*

*boroughs and compares favourably with the national average (18/100, 000). The distribution of community pharmacies correlates well with areas and indices of deprivation in the borough.*

*4.19.2 Southwark residents have a choice of pharmacy in the majority of wards, and our public survey suggests that the majority of respondents (95%) find it quite easy to get to a local pharmacy.*

4.20 Boots ask therefore that NHS Resolution refuse this appeal on the basis that the applicant has failed to meet the criteria of Regulation 18.

4.20.1 They have failed to provide sufficient evidence to prove there is a lack of choice of pharmaceutical contractors within the health and wellbeing board or that access to those contractors is poor and inadequate or that opening hours and services offered do not meet the current patient needs.

4.20.2 They have not provided significant evidence that those patients with protected characteristics are currently having difficulty accessing pharmacy services.

4.20.3 The applicant has not provided any innovation as part of their application.

#### **Lambeth, Southwark & Lewisham LPC**

4.21 With regards to the above appeals Lambeth, Southwark & Lewisham Local Pharmaceutical Committee has the following comments to make.

(2) Those matters are—

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

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

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

4.22 As pointed in the LPC's earlier response there are 8 Community Pharmacies within a relatively short walking distance from the applicant's Pharmacy. A recent site visit by the LPC illustrated the wide distribution of the existing Community Pharmacy network and a rather pleasant walk from the applicant's pharmacy to the nearest Boots Pharmacy along the South Bank. The Pharmacies in the area are separate enterprises except for one major Pharmacy Chain and inclusion of the application would result in an oversupply of Essential services within the area.

(b) whether, notwithstanding that the improvements or better access were not included in the relevant pharmaceutical needs

assessment, it is satisfied that, having regard in particular to the desirability of—

- (i) there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB (taking into account also the NHSCB's duties under sections 13I and 13P of the 2006 Act<sup>(2)</sup> (duty as to patient choice and duty as respects variation in provision of health services)),
- (ii) people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access (taking into account also the NHSCB's duties under section 13G of the 2006 Act<sup>(3)</sup> (duty as to reducing inequalities)), and

4.23 During the LPC site visit there was no evidence of “the high level of deprivation at the proposed site” indeed the neighbouring retail outlet's target customer base is the tourist market and those with high disposable incomes. It is extremely difficult to envisage populations from areas of deprivation accessing the applicant's pharmacy. Furthermore, during the site visit the LPC was not able to evidence any individuals with limited mobility that could not access the existing pharmacy network. Indeed, the location of the applicant's pharmacy meant that it is very difficult to access by car or public transport and the uneven alley way in front of the applicant's pharmacy is not a suitable surface for individuals with limited mobility. The LPC would argue that the applicant's pharmacy does not provide better access (choice) because of the very nature of its location.

4.24 There is nothing in evidence to suggest that the location is radically different from any other tourist or other parts of London with a high office worker population, the latter accessing pharmaceutical services nearer home or via Electronic Prescription Services (EPS), with Phase 4 being piloted in South East London. The location may have its own particular demographic or particular issues but none that can be considered extraordinary as to set the area apart from other London tourist/office areas. The residents are well aware of the constraints of living in such an area regarding cost of living, car ownership, public transport and access to all types of services and therefore would have to make the appropriate adjustments. All Pharmacies provide delivery services and individuals should they care to do so; can access pharmaceutical services online which dramatically increases choice for residents and patients services. The LPC would like to state that the applicant mistakenly advises “a comparison of services offered” by NHS listed Pharmacies and Wellness Pharmacy, the latter cannot provide NHS MUR, NHS NMS, NHS AUR, NHS SAC, NHS Flu Service, NUMSAS, Locally Commissioned Service MAS, Locally Commissioned Service EHC or Locally Commissioned Service Smoking Cessation. This statement is rather disingenuous as only NHS listed and locally accredited Pharmacies are allowed to provide these NHS services. It does cast doubt on the authenticity of the resident statements since they are not independently verified.

- (iii) there being innovative approaches taken with regard to the delivery of pharmaceutical services (taking into account

also the NHSCB's duties under section 13K of the 2006 Act(4) (duty to promote innovation)), granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant pharmaceutical needs assessment was published;

- 4.25 During the LPC site visit, there was no demonstrable innovation on display. There were many herbal products and others of similar ilk on display. The NHS is increasing use evidence to support any treatments provided by healthcare professionals and the LPC found no evidence to demonstrate any innovation. The Pharmacy's wellness and personalised medicine approach does not need a NHS contract it can be provided at present but the LPC did not see any evidence of this service during the site visit. Terms of service statement do not apply to the applicant and therefore it is irrelevant to the application. The applicant has not provided any creditable evidence base for personalised diets and how the evidence is compliant with NICE guidelines. All healthcare professionals have a professional duty to follow NICE guidelines and practice must be evidence based. The LPC has concerns for patient safety regarding non evidenced "treatments in relation to type 2 diabetes and cardiovascular health" provided in conjunction with "prescription linked interventions" and do not follow the NICE pathways.
- (c) whether it is satisfied that it would be desirable to consider, at the same time as the applicant's application, applications from other persons offering to secure the improvements or better access that the applicant is offering to secure;
  - (d) whether it is satisfied that another application offering to secure the improvements or better access has been submitted to it, and it would be desirable to consider, at the same time as the applicant's application, that other application;
  - (e) whether it is satisfied that an appeal relating to another application offering to secure the improvements or better access is pending, and it would be desirable to await the outcome of that appeal before considering the applicant's application;
  - (f) whether the application needs to be deferred or refused by virtue of any provision of Part 5 to 7.
- 4.26 NHS England can invite other pharmacies in the area to secure unforeseen benefits without resulting in an undesirable increase in the availability of essential services in the area.
- 4.27 Lambeth, Southwark & Lewisham Local Pharmaceutical Committee considers that there have been no changes to the Southwark PNA 2018 and does specify any circumstances in which the provision of specified services will secure benefits on choice, protected characteristics or innovation to pharmaceutical services.
- 4.28 The applicant has not provided any credible evidence to identify the unforeseen benefits on choice, protected characteristics or innovation and as such the appeal must be rejected.

Enclosure with the LPC's representations

4.29 Thank you for your letter dated 19 March 2018. Lambeth, Southwark & Lewisham Local Pharmaceutical Committee (LSL LPC) notes that this application is made under Regulation 18 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013. The application may only be approved if NHS England is satisfied that the application has been fully evidenced and if granted there is no detriment to the current provision of pharmaceutical services in the area.

4.30 LSL LPC has the following observations and representations to make:

Overall comment

4.31 The applicant has made references to the PNA 2015 and also the draft PNA 2018, to support this application. Applications should be made against the PNA at the time of application and not the draft PNA.

Pharmaceutical services to be provided at the proposed premises

4.32 The applicant has listed a range of services they intend to provide; most of these are local services and are outside the scope of this application. Also these local services are not commissioned at scale and only in areas of high deprivation and need.

Information in support of the application

4.33 The applicant states that there are 11.1 pharmacies per 100,000 population (with ref to draft PNA 2018, which is the figure for Riverside Ward only) and comparing it with the figure of 21.9 pharmacies per 100,000 population, which is the figure for whole of Southwark in the PNA 2015. This has no relevance to support the application.

Choice

4.34 Nearest pharmacies around SE1 2NJ area – information using Google maps

<u>Pharm/post code</u>	<u>Time taken by Car and road</u>	<u>Time taken walking and</u>	<u>Time taken by bicycle and</u>	<u>Other</u>
<u>comments</u>	<u>Distance</u>		<u>distance</u>	
Boots SE1 2HD	9mins 1.1.miles	8 mins 0.4 mile	5 mins 0.5 mile	Taking into Cons-
ideration				
Amadi Pharmacy	5 mins 0.7 mile	11 mins 0.7mile	4min 0.6 mile	
As above				
Hobbs Pharmacy above	5mins 0.7 mile	14 mins 0.7 mile	5 min 0.7 mile	As

Harfleur Pharmacy above	5 mins 0.6 mile	15 min 0.8 mile	5 min 0.7 mile	As
Jamaica Road Pharmacy above	8 min 1.3 mile	18 min 0.9 mile	6 min 1.1 mile	As
City Pharmacy above	11 min 1.3 mile	15 min 0.7 mile	8mile 0.8 mile	As
Boots above	17 min 1.8 mile	19 min 0.9 mile	11 min 1.2.mile	As
Superdrug above	18 mins 1.9 mile 1.10	19 mins 0.9 mile	11 min 1.1 mile	As

4.35 Listed above are pharmacies nearby the proposed site of the application, which are all within 20 minutes of walking time using pedestrian walkways and crossings in the area. Currently, there are road works along Tooley Street. It should be noted that these works are expected to be completed soon and therefore the time taken to access them by road will be much less.

4.36 The applicant states there are no or limited parking facilities near some of above nearby pharmacies. This also applies at the proposed site at Shad Thames. In fact, there are pay car parks near Tower Bridge and London Bridge and on-street parking, which can be used to access most of the above pharmacies. Also, there is an excellent public transport network within the area and neighbouring Southwark wards and boroughs.

4.37 All the above listed pharmacies provide the Electronic Prescription Service for repeat and acute prescriptions and most pharmacies also offer a prescription collection and delivery service where required to elderly, housebound and disabled individuals.

4.38 The applicant mentions benefit for workers and tourists in support of this application; these cohorts of the population are highly mobile and able to access pharmaceutical services almost anywhere in the area.

#### Protected characteristics

4.39 The application has failed to confer significant benefits that could be delivered in the area. If additional opening hours are identified as a need or a gap and requested by NHSE as a requirement, then the existing contractors in the area can be commissioned as there is no need for another pharmacy to open in the area as this will result in an undesirable increase in availability of essential services in the area.

- 4.40 The applicant states there are no pharmacies providing sexual health level 2 services in the area. This is a locally commissioned service, which is not commissioned at scale by Southwark Public Health.
- 4.41 The applicant has also stated that they are planning to offer various other services, which are not NHS commissioned services, but private services which will need to be paid for by service users. These services are not to be taken into consideration to support this application.

#### Innovation

- 4.42 The applicant has failed to confer any significant innovation to support this application under the terms of the NHS Pharmaceutical Services Regulations.
- 4.43 Southwark PNA 2018: Which has now been published Page 11 and page 79 states:

*‘Consideration could be given to extending opening hours at the weekends to improve access and choice. This is particularly important given the vision from the Southwark Five Year Forward View to extend access to primary care (seven days a week 8am-8 pm).’*

**‘Consider commissioning a number of pharmacies to open on Sundays or work extra hours if deemed necessary.’**

- 4.44 Page 17 states:

#### PNA Conclusions

*‘The pharmaceutical service coverage in Southwark is considered adequate taking into consideration the pharmacy/population ratio (20.1/100,000 population) which is similar to neighbouring boroughs and compares favourably with the national average (18.3/100,000). The distribution of community pharmacies correlates well with areas and indices of deprivation in the borough. Southwark residents have a choice of pharmacy in the majority of wards, and our public survey suggests that the majority of respondents (95%) find it quite easy to get to a local pharmacy*

*We found that between normal opening hours of 9:30am and 5:00pm and Saturdays 9:00am to 1:00pm, there is adequate access and choice within Southwark, with the majority of our residents being afforded a reasonable choice of pharmacy either within their own ward or from a neighbouring ward. However, access to pharmacies open on Sunday and to those open 100 hours a week is more limited. Consideration could be given to extending opening hours at weekends to improve access and choice. This is particularly relevant with the delivery of extended access to primary care (seven days a week 8:00am-8:00pm). **The Health and Wellbeing Board consider that the current and future needs for essential pharmaceutical services in Southwark are met by the current pharmaceutical service provision within the borough.***

- 4.45 *However, there may be a need for increased Sunday provision. In case of any significant change to current circumstances or when a need for new or additional essential service is identified in the future, the PNA will be reviewed and a supplementary statement will be released as per regulations.’ Page 57*

- 4.46 *Consideration could be given to extending opening hours at weekends to improve access and choice. This is particularly important with the delivery of extended access to primary care (seven days a week 8:00am-8:00pm). **A resourced rota service in each locality could be considered to further improve access and choice.***

Regulatory aspects

- 4.47 *'... in determining whether it is satisfied as mentioned in section 129(2A) of the 2006 Act(1) (regulations as to pharmaceutical services), the NHSCB must have regard to the matters set out in paragraph (2). (2) Those matters are—*

*(a) whether it is satisfied that granting the application would cause significant detriment to— (i) proper planning in respect of the provision of pharmaceutical services in the area of the relevant HWB, or*

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

- 4.48 Regulation 18[2][a] applies, granting this application would cause significant detriment to pharmaceutical services in the area.

4.49 Regulation 19[5] applies.

*'... (5) If the NHSCB is satisfied as mentioned in regulation 17(2)(d) to (g) or 18(2)(a), it must refuse the application....'*

- 4.50 In conclusion, the LPC considers the application should be refused for the reasons stated.

**Lloyds Pharmacy Ltd**

- 4.51 Lloyds note the applicant has opened a non-NHS pharmacy at the proposed. This is not itself evidence the application should be granted under Regulation 18.

- 4.52 Lloyds also note the applicant/appellant refers to Hobbs Pharmacy having not objected to the initial application. Lloyds cannot speculate on the reasons for not commenting on an application but it cannot be assumed the lack of response is that they do not object or that they support the application.

**NHS England**

- 4.53 NHS England has used the current PNA which was published in 2018, as this is the latest PNA that is available

- 4.54 As this is an unforeseen benefits application, there should be no need identified by the HWB.

- 4.55 The PSRC London Region has considered each of the points in the appeal from Charles Russell on behalf of Sanjvani Limited, and are responding as below.

People with Protected Characteristics (18(2)b)(ii)/Flawed Process

- 4.56 Charles Russell refers to the fact that NHS has not had regard for the comments received from local residents some of whom fall within the protected characteristic groups. PSRC London Region has recognised that some of the

people who made comments may come from groups of people with protected characteristics, however the applicant did not explain how they will address these patient groups. Furthermore, this was a handful from the comments received.

#### Choice

- 4.57 Charles Russell states *“NHS England has to have regard to a desirability of there being reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB.”*
- 4.58 The applicant is correct in pointing out there were in fact 3 pharmacies in the ward in the 2015 PNA and there are now only 2 pharmacies in this ward, due to the natural barrier of the river this is a small ward and the PNA deemed there to be adequate provision. The fact that there are 2 pharmacies in the ward gives patients choice and furthermore these are 2 separate organisations holding the contracts for these pharmacies (one multiple and one independent pharmacy) thus giving the patients some choice. In addition, there are pharmacies close by within the neighbouring wards which give patients further choice of pharmacies.
- 4.59 The applicant has pointed out that the population of Riverside Ward has increased; however, the population increase has been considered by Southwark HWB in producing the 2018 PNA. Both the Southwark PNA and Tower Hamlets PNA have considered that provision is adequate and both boroughs have a good choice of multiple and independent pharmacies. In addition to the 2 pharmacies in the ward there are additional pharmacies in other wards nearby. The applicant has highlighted concerns about service issues at Boots. This has not been formally highlighted either to NHS England or the HWB. The applicant also refers to “choice” in the St Katherine’s Dock area which falls within the Tower Hamlets HWB, the Tower Hamlets PNA has taken into account the existing pharmacies and the expected growth population and also considers provision to be adequate.
- 4.60 As a point of clarification regarding the closure of the 3rd Pharmacy. Charles Russell have referred to Dockhead Pharmacy being a closed pharmacy. In fact Dockhead Pharmacy (Carefield Ltd) at 29 Dockhead moved to Eyot House and then changed ownership to Medixc, this was then taken over by Butt and Hobbs and remains at Eyot House under the ownership of Butt and Hobbs.

#### Regulation 18(1)(a) and (b) of the Pharmaceutical Services Regulation – “the application would not secure a significant improvement or better access in relation to pharmaceutical services”

- 4.61 PSRC London Region considered the comments of the local residents whilst reaching a decision not to grant the application. The residents explained the desirability to have a pharmacy nearby. The Southwark PNA is based on there being 2 pharmacies in the Riverside Ward and states: “The pharmaceutical service coverage in Southwark is considered adequate taking into consideration the pharmacy/population ratio (20.1/100,000 population) which is similar to neighbouring boroughs and compares favourably with the national average (18.3/100,000).
- 4.62 The distribution of community pharmacies correlates well with areas and indices of deprivation in the borough. Southwark residents have a choice of pharmacy in the majority of wards, and our public survey suggests that the majority of respondents (95%) find it quite easy to get to a local pharmacy.”

4.63 The applicant refers to capacity issues in the ward, however there is good access to pharmacy services close by and throughout Southwark. There is no evidence of any previous issues raised about capacity issues in any of the wards in Southwark. In addition, the applicant refers to residents in the St Katherine's Dock area, this is located in the borough of Tower Hamlets. The Tower Hamlets PNA states *"Based on the latest information on the projected changes in the THHWB geographical area over the next three years, alongside the latest information regarding building plans and expected additional population increases during this time, along with the increases in the daytime population, the THHWB has concluded that the current pharmacy services are adequate and have a good geographical spread. Although some measures of the number of pharmacies in the borough show a lower level of provision than elsewhere, the high population density in the borough indicates that no one is very far from a pharmacy. Tower Hamlets HWB has concluded that there are no significant gaps in necessary service provision."*

4.64 *The detailed conclusions are as follows:*

*4.64.1 There is no evidence that there are any significant current gaps in the provision of essential services (necessary services) across the borough.*

*4.64.2 There is no substantial evidence that there are any significant current gaps in the provision of advanced services (relevant services) across the borough.*

*4.64.3 There is no substantial evidence that there are any significant current gaps in the provision of enhanced services (relevant services) across the borough.*

*4.64.4 There is no substantial evidence that there are any significant current gaps in the provision of locally commissioned services, (relevant services) across the borough.*

*4.64.5 THHWB recognise that a number of HWBs which border Tower Hamlets contribute toward meeting the pharmaceutical needs of the Tower Hamlets residents and their contribution has been taken into consideration where appropriate.*

*4.64.6 There are population increases expected in the borough in the next three years particularly in the South East, but on current assumptions we believe these can be absorbed by the existing infrastructure of pharmacies, along with general developments in pharmacy services and the provision of services in different ways which will improve the delivery to the public.*

Regulation 18(2)(a) "the application may lead to an over provision of essential services in the area of the proposed site and granting the application would cause significant detriment to the proper planning or arrangements for the provision of pharmaceutical services."

4.65 The decision report set out the reasons that the PSRC London Region had concluded that granting the application would cause significant detriment to proper planning and the details of this are included below.

- 4.66 There are 32 pharmacies within 2km, (which are located to the South of the River Thames) of the application site, as the crow flies as per NHS Choices website. Granting a new pharmacy application could cause detriment to proper planning or the arrangement in place for pharmaceutical services.
- 4.67 PSRC London Region considers that the Southwark PNA has already considered the pharmaceutical need in Southwark and is satisfied with the number of pharmacies. The applicant points to the fact there were previously 3 pharmacies in the ward. NHS England is aware that one pharmacy previously in the ward did relocate, however this was prior to the completion of the 2018 PNA and the final PNA states *“The pharmaceutical service coverage in Southwark is considered adequate taking into consideration the pharmacy/population ratio (20.1/100,000 population) which is similar to neighbouring boroughs and compares favourably with the national average (18.3/100,000). The distribution of community pharmacies correlates well with areas and indices of deprivation in the borough. Southwark residents have a choice of pharmacy in the majority of wards, and our public survey suggests that the majority of respondents (95%) find it quite easy to get to a local pharmacy.”* Therefore, the granting of this application may result in the over provision of essential services in the area.
- 4.68 The conclusion made by the PSRC London Region is based on the statements in both the Southwark PNA and Tower Hamlets PNA which states that there is already adequate provision of essential services. Therefore, granting this application may lead to an over provision of essential services in the area of the proposed site. Whilst there are only 2 pharmacies in the Riverside Ward there are 32 pharmacies within a 2km radius of the proposed location.
- Regulation 18(2)(b)(i) “the applicant’s main unforeseen benefit is significant improvement to access in pharmaceutical services*
- 4.69 The PSRC London Region accept that the applicant has included details of some additional services which the pharmacy proposes to provide, however there are not unique services. The applicant has not provided any information that any commissioners, NHS England or any other would commission these services and therefore these would need to be offered as a private service.
- 4.70 NHS England considers that this application has not fulfilled the required criteria in regulation 18(1) & (2) and therefore has refused the application.

## 5 Observations

Observations received by NHS Resolution in response to the representations received on appeal.

### **Charles Russell Speechlys LLP ( on behalf of the applicant)**

- 5.1 Firstly, the applicant wishes to make a general point in relation to the comments made about the number of pharmacies within a 1 mile/2 kilometre radius of the pharmacy. These comments fail to address three issues. Firstly, that the proposed pharmacy location is within one of the most densely populated areas in England and, therefore, what would be a significant number of pharmacies within a certain radius in a rural or county town area, in inner London the level of pharmacy provision is, in relation to the applicant’s specific location, slightly less than the norm. The applicant provides a photograph of the 6 storey buildings looking East along Shad Thames, taken from the outside of the pharmacy.

Secondly, one of the characteristics of urban life is that fewer of the resident population have access to their own motor vehicle. Therefore, it is particularly important that services such as pharmaceutical services, are easily accessible. Thirdly, the comments about number of pharmacies per head of population do not take account of the very significant increase in temporary population. The applicant has been providing advice and over-the-counter medication to guests at The Tower Hotel, directly opposite the pharmacy and across the river (capacity 800 rooms), the Lalit Hotel and other local hotels. The applicant has also been providing non-NHS pharmaceutical services to workers in the area including Zoopla (just under 600 employees, immediately adjacent to the pharmacy) and to students. All have indicated that there is a real need for the provision of NHS services at this location.

- 5.2 The applicant has the following specific comments on the representations. (Where the applicant has not refuted a comment specifically this is not because it is agreed but because it does not want to repeat submissions made in earlier correspondence):-

NHS England

- 5.3 NHS England reiterates the comments within their determination and the PNA. The applicant has already set out its position in the appeal. The applicant notes the position on the closure or relocation of Dockhead Pharmacy but the fact remains that the nearest pharmacy to the East is now a significant distance away from the proposed site and outside the ward. A person in Shad Thames with an acute prescription from Mill Street Surgery will have a significant round trip to obtain the medication they require.

Boots UK Limited

- 5.4 In relation to the representations about delivery services, the applicant understands that Boots at Hayes Galleria does not offer a delivery service and that this is well known, therefore, the comment that no patients have asked for a delivery service is likely to be for this reason.
- 5.5 In respect of the proposed location, although Boots have speculated about the nature of the buildings and it is agreed that some of the riverside apartments are expensive, there are also areas of social housing nearby. It is a characteristic of the locality that very deprived areas can be found in close proximity to affluent areas. It appears that here the riverside is an expensive area and as one moves away from the river there are areas of high deprivation. The map included with the representations show that there is a large area to the north and west of Bermondsey underground station that is not served by an NHS pharmacy. The proposed pharmacy will serve the people with significant health needs in this deprived area. It will also serve people who do not live in social housing, some of whom have protected characteristics and a high need for pharmaceutical services that they are finding difficult to access. The applicant refers Primary Care Appeals to the letters from residents already submitted.
- 5.6 Boots suggests that residents would have to travel outside their immediate area for their everyday needs. This is incorrect. There is a supermarket, The Circle, very close to the proposed site and a larger Co-op supermarket on Mill Street. There is a dentist opposite the proposed NHS Pharmacy and an optician, Iris

Optical, at 6 Maguire Street. There are also numerous other retail premises such as coffee shops which are destination points and meeting areas.

- 5.7 In Boot's paragraph on letters from local residents, the applicant finds it surprising that Boots set out in correspondence that a lunchtime meal deal was interfering with their service to patients in the locality. It is clear that Boots cannot offer any guarantees that this would not happen again and also that they would be prepared to prioritise this sort of promotion over patient needs. It is an illustration of why the applicant will offer significant benefits in the provision of pharmaceutical services if it is included on the pharmaceutical list. The applicant attaches a further emails from local residents pointing to difficulties with the service from Boots.
- 5.8 The applicant also notes that the list of "feel good moments" records only nine such moments in November, the only complete month recorded. Given the estimated level of patient demand, this would appear to be a very small minority of patients using the pharmaceutical services at Boots. In addition many of the comments do not appear to relate to pharmaceutical services.

#### Lambeth, Southwark and Lewisham Local Pharmaceutical Committee

- 5.9 Although the applicant notes the LPC refer to a site visit the applicant understands they did not come into the pharmacy so the applicant would ask that the comments in relation to services are disregarded. The applicant wishes to make it clear that Sanjivani Limited does not jeopardise patient safety and works within recognised guidelines and in conjunction with primary and secondary healthcare professionals. The applicant is now working with CQC registered Medicspot. An excerpt from the 2017 CQC inspection report is as follows:*Medicspot is a new service operating from the website:www.medicspot.co.uk. The service functions as an online GP practice providing pre-booked video consultations with patients in clinical stations based in pharmacies. We found this service provide safe, effective, caring, responsive and well led services in accordance with the relevant regulations.*
- 5.10 In providing NHS services the applicant would also work with other NHS healthcare practitioners.
- 5.11 In the circumstances, the applicant asks that NHS Resolution quash the decision of the NHSCB and substitute a decision to grant the application by Sanjivani Limited.

#### Emails in support of the application

##### Email 1

- 5.12 Since the demise of the pharmacist in Dockhead there is only one half-convenient pharmacist who can fulfil NHS prescriptions for those of us in the area whose focus is up-river - the Boots near London Bridge. I have a regular prescription for a very common drug, a statin. But more often than not this Boots does not have it in stock. I once asked the manager why this was and he explained that they don't have space to store much of even the most common drugs. So I avoid using the shop whenever I can.

- 5.13 Not only that, but Boots have a near-monopoly, especially in London. Competition should be encouraged.

#### Email 2

- 5.14 We live near St Saviours Wharf and we have now become regular users of the Tower Bridge Wellness Clinic. We always find their staff helpful and their service excellent. Due to my wife undergoing cancer treatment we always find their pharmacy supplies excellent and on the rare occasions they cannot supply a prescription, they normally supply by the next day after texting us. We have also been regular users of the Boots pharmacy at London Bridge. As a general comment we find this pharmacy inadequate. They frequently cannot supply a number of the prescription drugs my wife needs. They do not offer to order the prescription drugs which we found disappointing and frequently suggest a visit to a larger Boots branch at Liverpool Street Station which is not really helpful for our needs. Prior to our discovering Tower Bridge Wellness Clinic, we would have to walk down the whole of Borough High Street with little or no luck. At one point there were two creams dispensed for use on different areas, and the pharmacist at the Borough High Street pharmacy (after the creams were once again unavailable at Boots Hayes Galleria) just indicated 'use twice daily' failing to indicate which one was for which area, and did not give a copy of the prescription, hence forcing me to go back the next day. We hope the above points are helpful and we certainly support the need for a high quality "personalised" pharmacy in the Tower Bridge area.

## **6 Consideration**

- 6.2 The Pharmacy Appeals Committee ("the Committee"), appointed by NHS Resolution, had before it the papers considered by NHS England, together with a plan of the area showing existing pharmacies and doctors' surgeries and the location of the proposed pharmacy.
- 6.3 It also had before it the responses to NHS Resolution's own statutory consultations.
- 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").

### **Regulation 31**

- 6.6 The Committee first considered Regulation 31 of the Regulations which states:
- (1) A routine or excepted application, other than a consolidation application, must be refused where paragraph (2) applies*
- (2) This paragraph applies where –*
- (a) a person on the pharmaceutical list (which may or may not be the applicant) is providing or has undertaken to provide pharmaceutical services ("the existing services") from –*

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

*(ii) adjacent premises; and*

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

- 6.7 The Committee noted the applicant's application stated: "...there are no other pharmacies or dispensing appliance contractor premises adjacent to or in close proximity to the location identified in this application." The Committee further noted NHS England's decision letter includes: "...there are no pharmacies in the immediate vicinity of this application so regulation 31 is not engaged." The Committee, having noted the information provided to it including that the above had not been disputed on appeal, determined that it was not required to refuse the application under the provisions of Regulation 31.

### **Regulation 18**

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

"(1) If—

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

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

(2) *Those matters are—*

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

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

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

(b) *whether, notwithstanding that the improvements or better access were not included in the relevant pharmaceutical needs*

assessment, it is satisfied that, having regard in particular to the desirability of—

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

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

- (c) *whether it is satisfied that it would be desirable to consider, at the same time as the applicant's application, applications from other persons offering to secure the improvements or better access that the applicant is offering to secure;*
- (d) *whether it is satisfied that another application offering to secure the improvements or better access has been submitted to it, and it would be desirable to consider, at the same time as the applicant's application, that other application;*
- (e) *whether it is satisfied that an appeal relating to another application offering to secure the improvements or better access is pending, and it would be desirable to await the outcome of that appeal before considering the applicant's application;*
- (f) *whether the application needs to be deferred or refused by virtue of any provision of Part 5 to 7.*
- (g) *whether it is satisfied that the application presupposes that a gap in pharmaceutical services provision has been or is to be created—*
  - (i) *by the removal of chemist premises from a pharmaceutical list as a consequence of the grant of a consolidation application, and*

(ii) *since the last revision of the relevant HWB's pharmaceutical needs assessment other than by way of a supplementary statement.*

(3) *The NHSCB need only consider whether it is satisfied in accordance with paragraphs (2)(c) to (e) if it has reached at least a preliminary view (although this may change) that it is satisfied in accordance with paragraph (2)(b).*

- 6.9 The Committee considered that Regulation 18(1)(a) was satisfied in that it was required to determine whether it was satisfied that granting the application, or granting it in respect of some only of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB.
- 6.10 The Committee went on to consider whether Regulation 18(1)(b) was satisfied, i.e. whether the improvements or better access that would be secured if the application was granted were or was included in the PNA in accordance with paragraph 4 of Schedule 1 of the Regulations.
- 6.11 The Committee noted Regulation 22 states the relevant PNA for the purpose of determining a pharmacy application is the PNA that is current at the time it makes its determination unless in the Committee's opinion the only way to determine the application justly is with regard to an earlier PNA. Regulations 5 and 6 envisage that a revised PNA will have been published by each Health and Wellbeing Board by 1 April 2018. The Committee noted the decision of NHS England in this instance was taken in respect of the 2018-2021 PNA. Parties were asked for any comments that may have on that issue. There was no dispute that the relevant one for use in determination of the current application is the 2018-2021 PNA.
- 6.12 Paragraph 4 of Schedule 1 requires the PNA to include: "*a statement of the pharmaceutical services that the HWB had identified (if it has) as services that are not provided in the area of the HWB but which the HWB is satisfied (a) **would** if they were provided....secure improvements or better access, to pharmaceutical services... (b) **would** if in specified future circumstances they were provided...secure future improvements or better access to pharmaceutical services...*" (emphasis added).
- 6.13 The Committee considered the Southwark Pharmaceutical Needs Assessment 2018-2021 ("the PNA") prepared by Southwark Health and Wellbeing Board, conscious that the document provides an analysis of the situation as it was assessed at the date of publication. The Committee bears in mind that, under regulation 6(2), the body responsible for the PNA must make a revised assessment as soon as reasonably practicable (after identifying changes that have occurred that are relevant to the granting of applications) unless to do so appears to be a disproportionate response to those changes. Where it appears disproportionate, the responsible body may, but is not obliged to, issue a Supplementary Statement under regulation 6(3). Such a statement then forms part of the PNA. The Committee noted that the PNA was dated 26 March 2018 and that there had not been any supplementary statements.
- 6.14 The Committee noted that the PNA 'Executive Summary' includes:

### “Conclusions

- 6.15 *The pharmaceutical service coverage in Southwark is considered adequate taking into consideration the pharmacy/population ratio (20.1/100,000 population) which is similar to neighbouring boroughs and compares favourably with the national average (18.3/100,000).*
- 6.16 *The distribution of community pharmacies correlates well with areas and indices of deprivation in the borough. Southwark residents have a choice of pharmacy in the majority of wards, and our public survey suggests that the majority of respondents (95%) find it quite easy to get to a local pharmacy.*

### Essential Services

- 6.17 *These services are fundamental for patients to obtain prescribed medicines in a safe and reliable manner. All pharmacies are required to deliver and comply with the specifications for all essential services.*
- 6.18 *We found that between normal opening hours of 9:30am and 5:00pm and Saturdays 9:00am to 1:00pm, there is adequate access and choice within Southwark, with the majority of our residents being afforded a reasonable choice of pharmacy either within their own ward or from a neighbouring ward. However access to pharmacies open on Sunday and to those open 100 hours a week is more limited. Consideration could be given to extending opening hours at weekends to improve access and choice. This is particularly relevant with the delivery of extended access to primary care (seven days a week 8:00am-8:00pm).*
- 6.19 *The Health and Wellbeing Board consider that the current and future needs for essential pharmaceutical services in Southwark are met by the current pharmaceutical service provision within the borough. However there may be a need for increased Sunday provision. In case of any significant change to current circumstances or when a need for new or additional essential service is identified in the future, the PNA will be reviewed and a supplementary statement will be released as per regulations.*

### Advanced Services

- 6.20 *Currently Southwark pharmacies are not reaching the maximum threshold of 400 MURs per annum, suggesting there is capacity within the existing network of community pharmacies in Southwark to meet the anticipated increased demand.*

### Enhanced Services

- 6.21 *Provision of enhanced services by community pharmacies augments and complements existing strategies and services designed to improve the health and wellbeing of Southwark residents. There is potential for improvement in uptake of services or redistribution of existing provision in relation to certain locally commissioned programmes such as NHS Health Checks and Seasonal Influenza Vaccination.”*
- 6.22 *The Committee noted that the Applicant seeks to provide unforeseen benefits to the patients of Riverside Ward in the Southwark area of London. There is no specific reference in the PNA to the Riverside Ward. The Committee noted that*

the improvements or better access that the Applicant was claiming would be secured by its application were not included in the relevant pharmaceutical needs assessment in accordance with paragraph 4 of Schedule 1.

- 6.23 In order to be satisfied in accordance with Regulation 18(1), regard is to be had to those matters set out at 18(2). The Committee's consideration of the issues is set out below

**Regulation 18(2)(a)(i)**

- 6.24 The Committee had regard to:

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

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

- 6.25 The Committee noted NHS England's concern that granting the application may lead to an over provision of essential services in the area of the proposed site, causing detriment to the proper planning or arrangements for the provision of pharmaceutical services although there was no evidence that this would be significant.

- 6.26 The Committee also noted the applicant's claim that the application would not cause significant detriment under regulation 18(2)(a)(i) and (ii) as there has been a decrease in the number of pharmacies in Riverside Ward. Mill Street (Dockhead) Pharmacy had closed and Hobbs Pharmacy has relocated. The applicant further stated that figures in the PNA show that the population density in the area of the proposed pharmacy is high, and increasing. As regards the applicant's comments, these had not been challenged on appeal.

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

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

**Regulation 18(2)(a)(ii)**

- 6.29 The Committee had regard to:

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

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

- 6.30 The Committee considered that its conclusions at paragraphs 6.25 and 6.26 above, applied equally to Regulation 18(2)(a)(ii).

- 6.31 The Committee was therefore not satisfied that significant detriment to the arrangements currently in place for the provision of pharmaceutical services would result from a grant of the application.
- 6.32 In the absence of any significant detriment as described in Regulation 18(2)(a), the Committee was not obliged to refuse the application and went on to consider Regulation 18(2)(b).

### **Regulation 18(2)(b)**

- 6.33 The Committee had regard to:

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

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

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

*(iii) there being innovative approaches taken with regard to the delivery of pharmaceutical services (taking into account also the NHSCB's duties under section 13K of the 2006 Act (duty to promote innovation)), granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant pharmaceutical needs assessment was published.*

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

- 6.34 The Committee noted that the application is to provide pharmaceutical services at Shad Thames, located in Riverside Ward of Southwark.
- 6.35 The Committee noted that the applicant's proposed site is a city location where the population density is likely to be high. An indication that this is indeed the case was provided by the applicant's undisputed reference to the 2011 census showing 14,390 usual residents in the Riverside Ward alone. The Committee further noted the applicant's comment that Southwark is one of the most densely populated areas in the country, and is predicted to grow by over 12% between 2016 to 2021. Much of the predicted population growth will take place in the area in and around the Riverside Ward.
- 6.36 The Committee noted the applicant's comment that Riverside Ward, has just over 7,000 households as at the 2011 census. Of these, 34.3% are social rented housing and 32.3% privately rented. The applicant acknowledged that although there are patches of affluence in Southwark generally, there are also areas of deprivation.

- 6.37 The Committee was provided with a further insight into the nature of the area by Boots the Chemist Ltd. Boots noted that the Shad Thames development of approx. 2,300 residents has been created from the old docklands wharf buildings. Apartments in these riverside buildings are currently for sale starting at just under a million pounds. A high proportion of these new residents are young professionals. Other blocks of apartments have been built as infill and these would appear to be less expensive to purchase. Boots considered that the majority of elderly will live closer to the surgery end of Shad Thames. The Committee accepted the LPC's comment that residents in an area such as Shad Thames, are well aware of the constraints of living in such an area regarding cost of living, car ownership, public transport and access to all types of services.
- 6.38 The Committee took into account the applicant's comment that a large area to the north and west of Bermondsey underground station is not served by an NHS pharmacy. The Committee however noted two existing pharmacies near to the area north of Bermondsey station as referred to by the applicant. The Committee accepted that should the application be granted, the applicant's pharmacy could be used by persons from these areas including those from more deprived sections of the community. However that would be a matter for them given the existence of other pharmacies in the area which in the Committee's view may be closer or equidistant to the applicant's proposed site.
- 6.39 The Committee noted the applicant's comment that its proposed pharmacy location will serve a significant tourist population due to the presence in the area of a number of major London landmarks. In addition, the applicant noted Butlers Wharf student halls in Gainsford Street accommodates 280 students and the relocated Zoopla headquarters in Copper Row also currently employs around 500 people. The Committee was of the view that demand for pharmaceutical services from the tourists attending attractions was proportionately, likely to be very low. There was no information to indicate that demand was such that pharmacies in the area of many of the attractions referred to by the applicant, could not cater for any demand there is. As regards the student population and those persons employed in the area, the Committee had no information to indicate that these persons could not access existing pharmacies at a location convenient to themselves.
- 6.40 The Committee noted Boots suggestion that facilities around the applicant's proposed site are very limited and that this indicated persons are more than used to travelling around the area to access all the usual services including pharmacy. The applicant disagreed that services around its proposed site are limited and in doing so, referred to the existence of a supermarket very close to the proposed site, Also, a larger Co-op supermarket on Mill Street, a dentist situated opposite the proposed NHS Pharmacy and an optician, numerous other retail premises such as coffee shops which are destination points and meeting areas. The Committee appreciated that that such facilities as there are in the area are likely to be used by persons during the course of their everyday lives. However, the information provided by both parties suggested to the Committee that persons will need to travel more widely to meet some of their requirements, and in doing so may come into contact with existing pharmaceutical services.
- 6.41 The Committee noted NHS England's comment that there are thirty two pharmacies within 2km, (which are located to the South of the River Thames) of the application site, (as the crow flies) as per NHS Choices website. Boots also

referring to NHS Choices, noted twenty pharmacies within approx. a one mile radius of the proposed location. The Committee however did not find “as the crow flies” to be very helpful in assessing access to pharmaceutical services and whether such access was reasonable.

- 6.42 The Committee considered it a reasonable conclusion that the majority of patients/residents/commuters/visitors within Central London will likely travel by foot or by public transport.
- 6.43 The Committee noted Boots comment that the distance to the nearest existing pharmacies from the proposed site are Amadi at just over half a mile to the South (11 mins walk), and (Boots, Hays Galleria) half a mile to the West (9 mins walk) and Hobbs Pharmacy 0.7 miles to the West (13 mins walk). The Committee also noted the applicant’s view that Boots is an eight to fifteen minutes’ walk, and Amadi Chemist a 15 minute walk. The Committee did not regard the distance and time taken (which ever is accepted) to the nearest existing pharmacies as excessive, and considered that the information provided to it did not indicate that potential barriers referred to by the applicant regarding access to at least one of the pharmacies are significant and inhibiting access. The Committee concluded that persons in the Riverside Ward can reasonably access nearest existing pharmacies on foot.
- 6.44 The Committee noted the applicant’s comment that attempting to drive to the nearest existing pharmacies is difficult and time consuming and there is little parking available at the locations. Boots argued that access by car to the closest pharmacies is straightforward although accepted that parking is restricted, as is the case in many locations in London. The Committee had no information to show that there is a high incidence of car ownership in Southwark and that persons in the Riverside Ward area in particular are reliant on their vehicles to access facilities in the area including existing pharmaceutical services. For those people that are reliant on their own vehicle, the Committee noted the LPC comment that there is no or limited parking facilities at Shad Thames. The LPC further noted pay car parks near Tower Bridge and London Bridge and on-street parking, which the LPC said can be used to access existing pharmacies. The Committee concluded that trying to access existing pharmacies in the centre of the capital city is likely to be challenging and unlikely. That said, all the parties agree that some parking is available for those who choose to do so. The Committee was satisfied that in the context of trying to use a car to access any services in the city, accessing existing pharmacies by car is reasonable.
- 6.45 The Committee noted the applicant’s comment that for the people on foot and without a car, there is no direct public transport route from the riverside location to the nearest pharmacies. The Committee was provided with no information to support this claim, such as bus routes, timetables or underground routes, and considered that the lack of a direct route did not render public transport as not being an option to access existing pharmacies in the area. The Committee was mindful of the comprehensive array of public transport in London and that the cost was not likely to be excessive for what could be a relatively short journey. The Committee was satisfied that public transport is likely to be a reasonable option for persons without a car to reach existing pharmacies in the area.
- 6.46 During its site visit the LPC was not able to evidence any individuals with limited mobility that could not access the existing pharmacy network. The LPC noted

that the location of the applicant's pharmacy meant that it is very difficult to access by car or public transport and the uneven alley way in front is not a suitable surface for individuals with limited mobility. The LPC argued that the applicant's pharmacy does not provide better access (choice) because of the very nature of its location.

- 6.47 In considering Regulation 18(2)(b)(ii) the Committee reminded itself that it was required to address itself to people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that are difficult for them to access. The Committee was also aware of its duties under the Equality Act 2010 which include considering the elimination of discrimination and advancement of equality between patients who share protected characteristics and those without such characteristics.
- 6.48 The Committee noted the applicant's comment that the pharmacy would offer specific services that people with protected characteristic find difficult to access. It was said that many of these people are among the 40 comments the applicant has provided from local residents in support of its application. The Committee was of the view that a new pharmacy is always a popular prospect for those people located closest to it. The Committee noted that most of the supporting letters had commented on the convenience of a pharmacy closer to home. Whilst some had encountered other problems such as medication being out of stock, which the Committee understands is a national problem, overall the Committee concluded that the letters of support are very few from what is by the applicant's own admission a densely populated area. There was no information to show that persons requirements could not be met from other pharmacies in the area. The Committee considered that the information provided to it did not lead to the conclusion that there are persons sharing a protected characteristic that are having difficulties accessing services that meet their specific needs which cannot already be overcome.
- 6.49 The Committee was therefore not satisfied that, having regard to the desirability of people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that are difficult for them to access, granting the application would confer significant benefits on persons.
- 6.50 In considering Regulation 18(2)(b)(iii) the Committee had regard to the desirability of innovative approaches to the delivery of pharmaceutical services. In doing so, the Committee would consider whether there was something more over and above the usual delivery of pharmaceutical services that might be expected from all pharmacies, some 'added value' on offer at the location.
- 6.51 The Committee noted the applicant's reference to its proposed wellness and personalised medicine approach as set out in the application. These are:
- 6.51.1 A modern consultation room is planned for consultations and health diagnostic intervention. The applicant is in discussions to use the consulting room for osteopathic treatment, a podiatrist and a private GP (subject to D1 planning consent), functional medicine and homeopathy and clinical nutrition. The Committee was of the view that whilst these services were commendable for improving the health and wellbeing of patients they were not pharmaceutical services as defined.

- 6.51.2 The applicant is planning to offer specific treatments to modify, prevent and reverse key chronic diseases; examples of these are Type 2 Diabetes and Cardiovascular health. There will also be programmes to look at cognitive decline. It is planned that specific personalised diets will be offered with exercise and lifestyle prescriptions. The Committee was of the view that whilst these services were commendable for improving the health and wellbeing of patients they were not pharmaceutical services as defined.
- 6.51.3 There will also be a range of herbal and homeopathic medicines for patients who wish to access alternative remedies. Patients who are suffering disability through obesity will also be able to take advantage of a tailored programme with targeted monitoring through BMI, Bioimpedance and blood markers. The Committee was of the view that whilst these services were commendable for improving the health and wellbeing of patients they were not pharmaceutical services as defined.
- 6.51.4 The applicant has a particular interest in providing a phlebotomy service. The applicant is a phlebotomist and functional medicine practitioner so is trained in drawing blood safely and assessing blood chemistry. The superintendent pharmacist and his team would be able to prepare HBA 1c, CRP, Blood glucose, lipid profiles on site. The equipment is already available. HIV and syphilis testing would be available. The Committee was of the view that whilst these services were commendable for improving the health and wellbeing of patients they were not pharmaceutical services as defined.
- 6.51.5 For advance testing, the pharmacy staff will be able to draw blood and send to specialist labs for in depth analysis of blood chemistry, hormones such as thyroid and sex hormones, nutritional panel (vitamins and minerals), oxidative stress markers (markers which cause destruction to cells and DNA). The Committee was of the view that whilst these services were commendable for improving the health and wellbeing of patients they were not pharmaceutical services as defined.
- 6.51.6 The superintendent pharmacist is a certified specialist in stool testing. This service would be offered as a tool for assessing digestive health. The Committee was of the view that whilst these services were commendable for improving the health and wellbeing of patients they were not pharmaceutical services as defined.
- 6.51.7 For these services there would be a shared patient medication record to track progress and diarised follow ups would be offered. The Committee was of the view that whilst these services were commendable for improving the health and wellbeing of patients they were not pharmaceutical services as defined.
- 6.52 The Committee was not satisfied that, having regard to the desirability of there being innovative approaches taken with regard to the deliverability of pharmaceutical services, granting the application would confer significant benefits on persons

**Regulation 18(2)(b) generally**

- 6.53 The applicant referred to letters it had received in support of the application having highlighted problems with the service at Boots, including long waiting times and limited stock availability. The Committee had no information from NHS England to show that any difficulties encountered by some patients attending Boots (or any others) had placed the pharmacy in the position of breaching its terms of service. The Committee further noted that Boots had also provided examples of positive customer feedback it had received from customers.
- 6.54 The Committee noted the applicant's comment that the pharmacy provision in Southwark is stretched because of the high and increasing density of population in the area and the pockets of deprivation causing pressure on pharmaceutical services. The Committee had no information to show that existing pharmacies are, or will be unable to cope with increased demand for services
- 6.55 The applicant's proposed core opening hours are:
- 6.55.1 Mon to Fri 08:00 to 18:00
- 6.55.2 Sat 10: 00 to 17:00
- 6.55.3 Sun 11:00 to 16:00
- 6.56 The Committee noted the applicant's comment that in the wider area accessibility to the local pharmaceutical services is limited because of the location of pharmacies and limited opening hours on Saturday and Sunday, thus reducing choice and accessibility at those times. The Committee noted Boots comment that its store at Hay Galleria shopping centre opens from 7.30am until 7.00pm Monday to Friday, 10am - 6pm on Saturday and 11am - 5pm on Sunday. Further, Tesco's pharmacy in nearby Dunstan Rd (0.6 miles away) is a 100hr pharmacy opening 8am-9pm Mon-Sat and 11am-5pm Sundays.
- 6.57 The Committee noted NHS England's reference to the Southwark 2018, stating that "Consideration could be given to extending opening hours at the weekends to improve access and choice, particularly important given the vision from the Southwark Five Year Forward View to extend access to primary care (seven days a week 8am- 8pm)." The Committee was mindful that where it considers there is a gap in services, NHS England already has the power to bring about changes to the opening hours of existing pharmacies.
- 6.58 The Committee having regard to the above, was of the view that there was no information provided to support a finding that pharmaceutical services are not currently provided at such times as needed and therefore it was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits (in relation to opening hours) on persons.
- 6.59 The Committee noted that the applicant intends to provide the following services:
- 6.59.1 Essential services.
- 6.59.2 Clinical governance.
- 6.59.3 Appliances as set out in Part IX of the Drug Tariff.

6.59.4 Advanced and Enhanced services as stated on the application form.

6.60 The Committee noted the applicant's proposed services. The Committee noted NHS England's comment that it does not commission some of the services being proposed by the applicant, and in some instances services are voluntary and could be withdrawn at any time. The Committee noted the applicant's comments regarding the existing provision of services including in relation to services in the Bermondsey and Rotherhithe locality (comprising Grange, Riverside, Rotherhithe and South Bermondsey and Surrey Docks Wards) where the applicant claimed there are no pharmacies providing sexual health level 2 services which relate to chlamydia treatment and condoms, there is only one pharmacy providing oral contraception and only one pharmacy providing health checks. However, the Committee had no information to show that even where they are not already doing so, existing pharmacies are unable or unwilling to provide the services proposed by the applicant.

6.61 The Committee was of the view that in accordance with Regulation 18(2)(b) the granting of this application would not confer significant benefits on persons in the area of the HWB which were not foreseen when the PNA was published.

#### **Other considerations**

6.62 Having determined that Regulation 18(2)(b) had not been satisfied, the Committee did not need to have regard to Regulation 18(2)(c) to (e).

6.63 No deferral or refusal under Regulation 18(2)(f) was required in this case.

6.64 The Committee had regard to Regulation 18(2)(g) and found that nothing to show that it applies in this instance.

6.65 The Committee considered whether there were any further factors to be taken into account and concluded that there were not.

6.66 The Committee was not satisfied that the information provided demonstrates that there is difficulty in accessing current pharmaceutical services such that a pharmacy at the proposed site would provide better access to pharmaceutical services.

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

6.67.1 confirm NHS England's decision;

6.67.2 quash NHS England's decision and redetermine the application;

6.67.3 quash NHS England's decision and, if it considers that there should be a further notification to the parties to make representations, remit the matter to NHS England.

## **7 DECISION**

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

**Case Manager**  
**Primary Care Appeals**

A copy of this decision is being sent to:

Charles Russell Speechlys LLP – on behalf of the Applicant  
NHS England  
Boots UK Ltd  
Lloyds Pharmacy Ltd  
Lambeth Southwark and Lewisham LPC