



Resolution

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May 2019
FOI_3761

The following information was requested on 30 April 2019:

We are trying to get hold of the appeal of an unforeseen benefits application made by Boots in 2014, in the Wembley area, in relation to a pharmaceutical needs assessment.

I note that you only keep 3 years of decisions on the website. Would you be able to send through details of the appeal? If you would be able to get back to me as soon as possible, it would be greatly appreciated.

Our Response

Please find attached the requested information.

This concludes our response to your request.

If you are not satisfied with the service that you have received in response to your information request, it is open to you to make a complaint and request a formal review of our decisions. If you choose to do this, you should write to [Tinku Mitra](#), Head of Corporate and Information Governance for NHS Resolution, within 28 days of your receipt of this reply. Reviews of decisions made in relation to information requests are carried out by a person who was not involved in the original decision-making about the request.

If you are not content with the outcome of your complaint, you may apply directly to the Information Commissioner for a review of the decision. Generally, the Information Commissioner will not make a decision unless you have exhausted the local complaints procedure. The address of the Information Commissioner's Office is:

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

21 July 2014

REF: SHA/17539

1 Trevelyan Square
Boar Lane
Leeds
LS1 6AE

**APPEAL AGAINST NHS COMMISSIONING BOARD,
NORTH WEST LONDON LAT ("NHS ENGLAND")
DECISION TO REFUSE BOOTS UK LTD'S
APPLICATION FOR INCLUSION IN THE
PHARMACEUTICAL LIST OFFERING UNFORESEEN
BENEFITS AT LONDON DESIGNER OUTLET,
WEMBLEY PARK BOULEVARD, WEMBLEY HA9 0FD**

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1 The Application

By application dated 3 October 2013, Boots UK Ltd ("the Applicant") applied to the NHS Commissioning Board, North West London LAT ("NHS England") for inclusion in the pharmaceutical list offering unforeseen benefits at London Designer Outlet, Wembley Park Boulevard, Wembley HA9 0FD. In support of the application it was stated:

Area

- 1.1 The new London Designer Outlet is part of a new exciting regeneration scheme in Wembley and will become London's first designer outlet centre when it opens later in 2013.
- 1.2 It is situated to the west of Wembley stadium between Wembley Park Boulevard and Wembley Hill Rd, Empire Way and Wembley Park Drive.
- 1.3 The outlet will consist of 85 shopping outlets and 15 restaurants attracting many people to the area. There are many businesses in the area too, employers and employees therefore also travel to the area for work. This transient population, will benefit from being able to access pharmaceutical services before and after their working day and at lunchtimes if required.
- 1.4 It is estimated that up to 12 million people will visit Wembley per year.
- 1.5 The applicant believes that the new London Designer Outlet will be a destination area in its own right. It will have dedicated parking with ample of spaces allowing convenience for patients who are visiting and using the facilities here.

Existing Provision

- 1.6 The nearest pharmacy is approximately 500m away from the new proposed location. (Rasens pharmacy). The applicant proposes to open earlier in the morning, at 9.00am, and close at 8.00pm in the evening to allow access to pharmaceutical services for longer and more convenient hours. This will support not only the patients living in the area, but the transient population who are visiting and or working in the locality.
- 1.7 The applicant also proposes to open on a Wednesday afternoon and Sunday.
- 1.8 The applicant believes that their pharmacy would serve a different population to the existing providers. Parking outside the existing providers is limited.

Access

- 1.9 Securing a pharmacy contract here, would allow patients to be able to access pharmaceutical services at a time and place convenient to them. The proposed extended opening hours would allow access earlier and later than the existing contactors in the area. The store will be open on a Sunday when the nearest pharmacy is closed. The next nearest pharmacy is Chana Chemist on Wembley Park Drive and is approximately 900 metres away. They do not open on a Sunday either and would require negotiating the busy A479 if patients from the locality wished to access this pharmacy.
- 1.10 The NHS Brent Pharmaceutical Needs Assessment Amendment 2010, page 48 states:
- Para 6.3.2 - Future development which will effect demand for pharmaceutical services*
- 'Looking forward there are two strands of development which may precipitate the need or changes to pharmaceutical services*
- Our growing population, but growth is expected to be moderate, this will be influenced by development and regeneration which will include the following:*
- Alperton*
- Wembley City*
- Wembley Central*
- As consortia develop and take on responsibilities for commissioning, work will need to be undertaken to enable pharmacy to support new pathways of care and help enable delivery of care closer to peoples' homes. We will also consider if pharmacy services are required to support our urgent care models.'*
- 1.11 This clearly recognises that the Wembley area is under a regeneration programme and that the pharmacy provision will need to support this.
- 1.12 Page 84 of the PNA makes reference to future services.
- 1.13 They state that there is a requirement to develop services to support specific diseases e.g. Diabetes. COPD and CVD
- 1.14 The most common conditions in Brent are Hypertension, Diabetes and Asthma with Wembley locality having higher prevalence in more than half of the conditions:
- 1.14.1 Hypertension
- 1.14.2 Diabetes
- 1.14.3 Asthma
- 1.14.4 CHD - Chronic Heart Disease
- 1.14.5 CKD - Chronic Kidney Disease
- 1.15 The applicant can support the patient with advice and medicine usage via the innovative services we are able to offer which include the applicant's award winning diabetes condition led care service, Macmillan pharmacists in store, private PGDs, travel clinics and seasonal flu vaccinations.

- 1.16 With extended opening hours, the applicant will be able to offer pharmaceutical services to patients when other providers cannot. The store will be open on Sundays. The applicant will offer any services that the LAT wish to commission, including those that are not available in the area at this present time.
- 1.17 The applicant will also be able to offer additional services such as Flu vaccinations, Erectile Dysfunction advice/support, hair retention and travel vaccinations as well as new innovative services such as diabetes risk assessment, smoking cessation, behavioural change service and support from our Macmillan pharmacists.
- 1.18 The applicant intends to provide the following services:
- Essential services.
- Clinical governance.
- Stoma and incontinence services, elastic hosiery (M&F), dressing and bandages and any other appliances as indicated in the drug tariff.
- Advanced and Enhanced services as indicated on the application form.
- 1.19 The applicant's proposed core opening hours are:
- | | |
|------------|----------------------------------|
| Mon to Fri | 10.00 to 13.00
14.00 to 18.00 |
| Sat | 10.00 to 13.00
14.00 to 16.00 |
| Sun | - |
- 1.20 The applicant's total proposed opening hours are:
- | | |
|------------|----------------|
| Mon to Sat | 09.00 to 20.00 |
| Sun | 11.00 to 17.00 |

2 The Decision

NHS England considered and decided to refuse the application. The decision letter dated 14 February 2014 states:

- 2.1 NHS England has considered the application and is writing to confirm that it has been refused.
- 2.2 The reasoning behind this decision is given in the decision report.
- Report extracts
- 2.3 Status of location - Non controlled locality.
- Relevant regulations and guidance
- 2.4 Regulations 18 and 19 - unforeseen benefits: additional matters and consequences.
- 2.5 Regulation 31 - refusal: same or adjacent premises.

- 2.6 DH market entry guidance chapter 8.
Information from NHS England Officer
- 2.7 The unforeseen benefit that the applicant is making is access to pharmaceutical services at a time and place convenient to patients.
- 2.8 London Designer outlet is the first of its type in the capital. There are 85 outlets, restaurants, cafes, a 9 screen Cineworld complex. There is a mix of retail outlets offering up to 70% off normal prices at leading high street stores. The site is next to Wembley Stadium and Wembley Arena, so is an area already high in visitors from across London and beyond. It is probably not the first port of call for dispensing a prescription.
- 2.9 Boots have officered to provide lots of additional services, quite a few of which are not currently offered as enhanced services, for the purpose of this application these services will not be considered as they are outside the scope. Boots have also not been able to give assurances that for services commissioned outside NHS England that these services would be commissioned. NHS England is not aware of any service that is being expanded currently.
- 2.10 Brent PNA states: *"Brent has more pharmacies per head of population, our pharmacies dispense fewer prescriptions when compared with pharmacies in our peer PCTs. The distribution of pharmacies in our localities varies, but provides a good level of provision when compared with our peers. We have concluded therefore, that there are no gaps in this service."*
- 2.11 There have been no changes since the PNA to the geography or demography of the area in which the application is made. As the applicant has pointed out the PNA did give reference to the development in Wembley, which does therefore make this a potential need foreseen rather than one unforeseen.
- 2.12 The PNA also states : *"The PCT has not identified services not provided in the localities that will, in specified future circumstances, need to be provided in order to meet a need for pharmaceutical services or to secure improvements or better access to pharmaceutical services."* P84
- 2.13 Access to services in this area is good and there is a reasonable choice in terms of location and times of the day that services are available, as demonstrated above. Granting this application would not secure improvements or better access to services in the area which were not foreseen when it published its PNA.
- 2.14 There are 15 pharmacies within 2 kms of the application.
- 2.15 As Brent has more pharmacies per head of population significant detriment to— than with other areas in London, granting a new pharmacy application could cause detriment to proper provision of pharmaceutical services planning or the arrangement in place for pharmaceutical in its area, or services.
- 2.16 In summary it may be concluded the granting of this services in its area; application may result in the over provision of essential services in the area. This may cause detriment to the planning of and current arrangements in place for the provision of pharmaceutical services in its area. At present there is no evidence that this will be significant.
- 2.17 As stated previously Brent has more pharmacies per improvements or better access were head of population than other local areas. This means not included in the relevant that patients do have considerable choice in providers.

- 2.18 *The PNA states: Our current network of community pharmacies open across a broad range of opening hours, this provides good access throughout the week and at weekends We note that opening hours in Willesden are the least extensive, this may reflect the relatively smaller number of pharmacies in this locality. Willesden also has the smallest population. P51. In Brent all of our localities have more than one pharmacy provider with most centres of population having a choice of two or more providers. The choice available to our population has improved as the number of pharmacies serving our population has grown, our population also has better choice over a longer period of the day due to the new 100 hour pharmacies open in, and across our borders. We have concluded therefore that our population benefits from a reasonable choice with regard to obtaining pharmaceutical services in each of our localities. P54*
- 2.19 It may be concluded that patients have reasonable choice with regard to obtaining pharmaceutical services.
- 2.20 Within the application presented there were no services for people who share a protected characteristic in regard to the delivery of Pharmaceutical Services highlighted.
- 2.21 Within the application presented there were no innovative approaches in regard to the delivery of Pharmaceutical Services highlighted.
- 2.22 The panel determined not to defer determination of the application – details within the deferral report.
- 2.23 The panel accepted the best estimate given by the applicant.
- Decision
- 2.24 NHS England was of the opinion that there was enough information within the papers to decide the application without an oral hearing.
- 2.25 With regard to 18(1)(a) & (b) NHS England concluded that granting the application would not secure a significant improvement or better access in relation to pharmaceutical services.
- 2.26 With regard to 18(2)(a) the NHS England concluded that granting the application may lead to an over provision of essential services in the area of the proposed site. NHS England have no evidence that this is over provision would be significant.
- 2.27 With regard to 18(2)(b)(i) the applicants unforeseen benefit is access to services. The applicant must explain in the application why they believe that granting it would confer significant benefits in the area that were not foreseen when the PNA was published. It is not sufficient to simply offer to provide a service or services, for which there is no basis. NHS England also noted that the site was mentioned in the PNA as a site that may need to be reviewed in terms of services at a later date, which means that this as a site is not unforeseen within the PNA.
- 2.28 NHS England concluded that the applicant has not fulfilled the criteria as required in regulation 18(1) or 18(2)(b) and therefore determined not to grant the application.

3 The Appeal

In a letter to the Family Health Services Appeal Unit of the NHS Litigation Authority (“the Appeal Unit”), dated 25 February 2014, the Applicant appealed against NHS England's decision. The grounds of appeal are:

- 3.1 The decision refers to section 6.3.2. of the PNA which in turn refers to future development which will affect demand for pharmaceutical services including population growth in Wembley City and Central.
- 3.2 The decision letter goes on to state that *'This clearly recognises that the Wembley area is under a regeneration programme and that the pharmacy provision will need to support this.'*
- 3.3 Whilst the PNA concluded that the pharmacy network in Brent was sufficient to meet current needs of the population at the time of drafting the PNA the applicant believes the above statement clearly supports their view that Wembley has undergone substantial change due to the regeneration and resulting growth in population.
- 3.4 The applicant submits that the changes are now significant and will have had an effect on demand for pharmaceutical services.
- 3.5 The applicant's proposed pharmacy will therefore secure improvements or better access in accordance with regulation 18(1).
- 3.6 The applicant submits that the Committee have not given sufficient weight to the sizeable resident and resorting population and the needs of specific patient groups that will be present in the vicinity of the proposed pharmacy. Such patient groups will consist of resident population, visitors to retail and leisure facilities and employees of local businesses and public facilities (extract from Kallaway press release - provided).
- 3.7 The decision makes several references to Brent having more pharmacies per head of population; however Brent covers an area larger than Wembley.
- 3.8 Whilst the Brent area may have more pharmacies per head of population it does not necessarily follow that patients requiring services in the location of the proposed pharmacy will find these services accessible.
- 3.9 Given the nature of the area and that many people in the area of the applicant's proposed pharmacy will be visitors unfamiliar with the area, the applicant submits that they will not.
- 3.10 Furthermore, Page 84 of the PNA makes reference to future services, looking at diabetes, COPD & CVD.
- 3.11 The applicant proposes to offer a full range of advanced and enhanced services. In addition to commissioned services, the applicant proposes to offer Boots specific condition led care services to patients (free of charge) that will support those with conditions such as diabetes, cancer, asthma. These are innovative services which will help meet the health needs of the area.
- 3.12 Please be aware that the applicant may wish to make further representations and submit additional evidence to support their appeal. The applicant would also wish to attend any oral hearing that may be held.
- 3.13 In conclusion, the applicant submits that their application meets the required criteria of regulation 18, and respectfully urge the Litigation Authority to uphold this appeal accordingly.

4 **Summary of Representations**

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

NHS England

Letter dated 15 May 2014

- 4.1 There are no pharmacies in the immediate vicinity of this application; therefore regulation 31 does not apply.
- 4.2 The unforeseen benefit that the applicant is making is access to pharmaceutical services at a time and place convenient to patients.
- 4.3 London Designer Outlet is the first of its type to open in the Capital. There are 85 outlets, restaurants, cafés, and a 9-screen Cineworld complex. There is a mix of retail outlets offering up to 70% off normal prices at leading high street stores. The site is next to Wembley Stadium and Wembley Arena, so is an area already high in visitors from across London and beyond. It is probably not the first port of call for dispensing a prescription.
- 4.4 Boots have offered to provide lots of additional services, quite a few of which are not currently offered as enhanced services. For the purpose of this application these services will not be considered as they are outside the scope. Boots have also not been able to give assurances that for services commissioned outside NHS England that these services would be commissioned. NHS England is not aware of any service that is being expanded currently.
- 4.5 Brent PNA states: *“Brent has more pharmacies per head of population; our pharmacies dispense fewer prescriptions when compared with pharmacies in our peer PCTs. The distribution of pharmacies in our localities varies, but provides a good level of provision when compared with our peers. We have concluded, therefore, that there are no gaps in this service.” P56*
- 4.6 There have been no changes since the PNA to the geography or demography of the area in which the application is made. As the applicant has pointed out the PNA did give reference to the development in Wembley, which does therefore make this a potential need foreseen rather than one unforeseen.
- 4.7 The PNA also states: *“The PCT has not identified services not provided in the localities that will, in specified future circumstances, need to be provided in order to meet a need for pharmaceutical services or to secure improvements or better access to pharmaceutical services.” P84*
- 4.8 In their appeal letter Boots quote *“This clearly recognises that the Wembley area is under a regeneration programme and that the pharmacy provision will need to support this.”* which was stated in the decision letter. However this is a paragraph that was taken from their own application and used in the section relating to their own information provided. The fact that the PNA foresaw the potential for a development in this area within the document means that an application for an unforeseen benefit cannot be approved as this was foreseen.
- 4.9 The above fact would mean that the committee cannot put any weight on any changes to the area as this is not an unforeseen benefit.
- 4.10 Access to services in this area is good and there is a reasonable choice in terms of location and times of the day that services are available, as demonstrated above. Granting this application would not secure improvements or better access to services in the area which were not foreseen when it published its PNA.
- 4.11 There are 15 pharmacies within 2 kms of the application site. As Brent has more pharmacies per head of population than with other areas in London, granting a new pharmacy application could cause detriment to proper planning or the arrangement in place for pharmaceutical services.

- 4.12 In summary it may be concluded the granting of this application may result in the over provision of essential services in the area. This may cause detriment to the planning of and current arrangements in place for the provision of pharmaceutical services in its area. At present there is no evidence that this will be significant.
- 4.13 As stated previously Brent has more pharmacies per head of population than other local areas. This means that patients do have considerable choice in providers.
- 4.14 The PNA states: *Our current network of community pharmacies open across a broad range of opening hours, this provides good access throughout the week and at weekends We note that opening hours in Willesden are the least extensive, this may reflect the relatively smaller number of pharmacies in this locality. Willesden also has the smallest population.(P51)*

In Brent all of our localities have more than one pharmacy provider with most centres of population having a choice of two or more providers. The choice available to our population has improved as the number of pharmacies serving our population has grown; our population also has better choice over a longer period of the day due to the new 100 hour pharmacies open in, and across our borders. We have concluded therefore that our population benefits from a reasonable choice with regard to obtaining pharmaceutical services in each of our localities. (P54)

- 4.15 It may be concluded that patients have reasonable choice with regard to obtaining pharmaceutical services.
- 4.16 Within the application presented there were no services for people who share a protected characteristic in regard to the delivery of Pharmaceutical Services highlighted.
- 4.17 Within the application presented there were no innovative approaches in regard to the delivery of Pharmaceutical Services highlighted.
- 4.18 NHS England do not believe that there are innovative approaches to delivery of services that would confer significant benefits that were not foreseen when the PNA was published. The London Pharmaceutical Services Regulations Committee therefore believes that the applicant has not fulfilled the criteria as required in regulation 18 and therefore that this appeal should be dismissed.

NHS England's letter dated 19 June 2014

- 4.19 Boots have included a lot of background information regarding the site and the surrounding area which is not all evidenced.
- 4.20 In the supporting evidence Boots have outlined the following:

The proposed pharmacy will secure improvements and better access to pharmaceutical services in the area of Wembley City [in accordance with Regulation 18(1)] for the following reasons:

Section 6.3.2 of the Pharmaceutical Needs Assessment (PNA) for Brent recognises the future development which will affect demand for pharmaceutical services including population growth in Wembley City and Central.....

- 4.21 The application submitted by Boots (UK) Ltd was for unforeseen benefits (regulation 18), the test for this regulation is to secure improvements or better access to pharmaceutical services that were not foreseen by the PNA.
- 4.22 As this was a recognised potential development within the PNA (p 48, section 6.3.2), evidenced by Boots this means that it was not unforeseen and therefore an application on this basis is not appropriate and cannot be granted on this basis.

Whilst the remainder of the information may be valid (NHS England make no comment to that) it cannot be used in this context as evidence for an application for an unforeseen benefit.

- 4.23 NHS England believes that the applicant has not fulfilled the criteria as required in regulation 18 and therefore that the application should not be granted.

Brent & Harrow LPC

- 4.24 The original application focussed primarily and not unreasonably on the needs of shoppers visiting the London Designer Outlet. The LPC commented on that in its original representations to the application, pointing out that the Committee was not certain that those using the London Designer Outlet and its associated restaurants and cinema will necessarily have a need to obtain pharmaceutical services whilst there. The LPC believes that this commercial centre cannot be considered as being on the same scale as, say, Cribb's Causeway or Westfield Shopping Centre in Stratford, East London. The LPC also pointed out the range, depth and opening hours of pharmaceutical services very close by should visitors to the London Designer Outlet have a need, listing the number of pharmacies within a one mile radius. The LPC has attached a map with this response showing the current layout of the elements of the 'Wembley Village' Complex, together with the locations of the five nearest pharmacies to the London Designer Outlet, for illustrative purposes. These are (in miles) Chana Chemist (0.25), Rasons Pharmacy (0.37), Carters Pharmacy (0.56), Optipharm Ltd (0.63) and Asda Pharmacy (0.76) (source: NHS Choices).
- 4.25 This appeal appears to be looking more at the needs of new residents coming in to the area in 2016. The LPC would acknowledge that the area around Wembley Park is undergoing regeneration and that the London Designer Outlet forms part of that regeneration. There is a planned housing development of 475 dwellings which, according to the LPC's inquiries will be called Emerald Gardens. This will be located at the junction of Engineer's Way with Empire Way and is shown on the attached map as the space in front of Wembley Arena, some way from the London Designer Outlet. Chana Chemist at Wembley Park Drive is located less than 0.25 of a mile distant along Empire Way on the corner of Oakington Avenue and Wembley Park Drive. NHS Choices lists a further 12 pharmacies within a one mile radius, including those listed above.
- 4.26 As far as the LPC is aware, there are no plans to develop a new health centre or GP premises as part of Emerald Gardens, so it is likely that the new residents will be registering with one of the existing practices, currently being served by local pharmacies.
- 4.27 The LPC believes there is capacity in these local pharmacies to manage additional patients and these pharmacies have in the main expressed their willingness to provide a greater range of commissioned services. They will no doubt do so again as part of the process for compiling the new Pharmaceutical Needs Assessment to be published by April 1st 2015.
- 4.28 The LPC would welcome wider commissioning of pharmacy services to support patients with long term conditions and is pleased to see the appellant would also be keen to provide such services e.g. to patients with diabetes, COPD and cardiovascular disease. The LPC would add support for patients with cancer to that list.
- 4.29 The LPC is of the view that current pharmaceutical services meet the needs of the population and are likely to continue to do so once Emerald Gardens is completed and fully occupied. The LPC will, of course, be prepared to look again should any further residential development in the vicinity of the London Designer Outlet be confirmed in the future.

- 4.30 Finally, the LPC notes that the appellant is making no claim to provide pharmaceutical services to populations with a protected characteristic within the meaning of the Equality Act 2010, nor are they offering to provide innovative means of delivery of pharmaceutical services.

Boots UK Ltd (Applicant)

- 4.31 Unsolicited comments were received from Boots UK Ltd

Background

- 4.32 On the 3rd October 2013 Boots UK Limited applied to the NHS North West London Area Team for inclusion in the pharmaceutical list at London Designer Outlet, Wembley Park Boulevard, Wembley HA9 0FD.

- 4.33 The NHS North West London Area Team determined the application and notified interested parties by letter dated 14 February 2014 of its decision to refuse the application.

- 4.34 Boots UK Limited appealed the decision of the NHS North West London Area Team NHS Litigation Authority by way of letter dated 25 February 2014.

Previous Applications in Wembley

- 4.35 To the best of Boots' knowledge there had been only one additional application submitted under the 2013 Regulations for the area of Wembley. This was an application from Smartcare Pharmacy Ltd in respect of a distance selling pharmacy. The outcome of this decision is yet to be determined as far as Boots are aware.

Brent Unitary Development Plan

- 4.36 The Brent Unitary Development Plan published in 2004 provided the statutory land-use framework for the regeneration of the Wembley Area.

- 4.37 The plan included the Stadium and its surroundings, the main approaches and Wembley town centre. In this way the perception of 'two Wembleys' – the Stadium area and the town centre – can be overcome and the area planned as a whole

The Area and masterplan

- 4.38 Wembley lies within the London Borough of Brent and forms part of Outer London, it is one of the three main areas of the borough, along with Kilburn and Willesden. The local authority is Brent London Borough Council. The regeneration of Wembley is one of the largest regeneration projects in the country. With reference to the master plan the proposed location of the London Designer Outlet (and hence proposed site of Boots pharmacy) lies within the plan's '*District One: North West*' this District is set to become the new heart of Brent. It will define Brent as a community reinforced by thriving commerce and exceptional social infrastructure. Having a pharmacy at the centre of all this will be a facility that residents and visitors would normally expect of a development this size.

Plans for Wembley – key features

- 4.39 Wembley Industrial Estate - located to the east of the Wembley Stadium has some communities which are among the most economically disadvantaged parts of Brent, therefore enabling these communities to benefit from new development and employment opportunities is essential.

- 4.40 Wembley High Road – a core element of the wider regeneration of the area, the existing area has declined over the last 20 years with a gradual loss of major retailers. The opportunity to develop it will benefit the public realm.
- 4.41 Visitors – The National Stadium and Wembley Arena already provide ‘big ticket’ visitor attractions. However, these visits are time specific, major surges are into and out of the area very quickly. The London Borough of Brent is aspiring for a diverse range of attractions that could stimulate activity at all times. Thus reinforcing the need for a pharmacy to operate extended opening hours.
- 4.42 Local residents and workers – there is a need to ensure a variety of other facilities more specifically tailored to local residents and workers. The area currently lacks a strong evening economy, and the incorporation of restaurants, bars, cultural facilities and performance spaces will be supported (particularly on Olympic Way). The concept of uses spilling out onto the street could ensure the success of Olympic Way, as it is currently a large open space which suffers from a lack of animation for most of the year.
- 4.43 Hotels – Wembley is an important growth area for hotel space. The area currently has four major hotels (plans have been approved for four others) but given the highly accessible links into London and the potential future demand, there is capacity to accommodate significantly more. Brent Council intends to support a range of visitor accommodation in appropriate locations in line with London Plan policy.
- 4.44 Retail – a new shopping street running parallel with Olympic Way and north from the Quintain Estates’ Stage 1 shopping boulevard is proposed. This will bring High Street shops to this part of London for the first time in many years, and contribute to a continuous retail offer from the High Road to Wembley Park, linking the three stations and creating a complementary range of retail uses. The approved Stage 1 scheme is comparable to Regent Street in scale and identity.
- 4.45 Office accommodation – the facilities outlined in the Masterplan will drive significant new employment opportunities in the service sectors.
- 4.46 Quintain’s Stage 1 area has consent for office floor space. Attracting new office development into the Masterplan area will diversify the range of activities taking place, breathing life into the area throughout the day and supporting the retail and allied businesses.
- 4.47 Creative and Industrial floor space – a small but important element in the Masterplan is the creation of floor space for the creative industries (the arts, media, music, publishing etc). This will assist in the diversification of jobs and create an energetic and vibrant identity.
- 4.48 Brent Civic Centre – Brent’s Civic Centre has brought together many services of Brent Council under one roof, incorporating a state-of-the-art modern library and a range of civic and community spaces.
- 4.49 Healthcare – for a fully supported and healthy community the Masterplan expects that there will be provision for a minimum of 1 doctor per 1,500 and 1 dentist per 2,000 new residents. The fundamental provision will be supported by a range of other alternative and complementary healthcare facilities. It should be noted that 2,800 m² of Healthcare space has been secured for Quintain’s Stage 1 lands. Around half of this space is currently under construction on Empire Way. This new facility will accommodate 6 GP’s and supporting dental and other Healthcare facilities.
- 4.50 The College of North West London - located to the north of the Masterplan area opposite Wembley Park Station. The college is currently reviewing its accommodation requirements and the masterplan offers the potential to accommodate replacement facilities in exciting and stimulating new buildings. Residential accommodation for

students will be suitable in areas of high public transport accessibility, but the council will seek a balance between the needs for student accommodation and other types of residential development.

- 4.51 Schools – given the predicted amount of development for the area, a demand will arise for the provision of one or two primary schools equating to four forms of entry.
- 4.52 Residential Uses – Wembley will be a residential destination, home to a healthy and sustainable community. Already approximately 4,000 residential units have been granted planning consent in the Stadium area, and there is scope to accommodate more than double this number. The council recognises that a mixed and balanced community should contain a range of homes for groups that are often socially disadvantaged and considers that there will be locations where market provided sheltered housing will be suitable. One of the council's current priorities is the provision of extra care housing for the elderly. The council support the Mayor of London's desire for more affordable family sized homes. There is a need to provide for family housing to encourage people to stay and contribute to the establishment of a long-term mixed and sustainable community.

Existing pharmaceutical provision in the area

- 4.53 The nearest pharmacy to the proposed site is Rason's Pharmacy at 323 Harrow Road, HA9 6BA, South of the London Designer Outlet.
- 4.54 According to Google Maps, the distance between the two pharmacies is 0.4 miles and approximately a 9 minute walk. Rason Pharmacy is not open on Sundays, and it does not open until 9:30am Monday-Friday according to NHS Choices.
- 4.55 There is also Chana Chemist, which lies North West of the London Designer Outlet. According to Google Maps the distance is 0.5 miles and approximately a 10 minute walk. Chana Chemist is also not open on Sundays as far as Boots are aware.

Barrier to access

- 4.56 Boots submit that these two pharmacies are located in a parade of shops and serve the communities in which they are located. A visitor to the area of Wembley Park wouldn't necessarily know of their location when travelling to the area.

Regulation 18 – Unforeseen Benefits Application

- 4.57 The proposed pharmacy will secure improvements and better access to pharmaceutical services in the area of Wembley City [in accordance with Regulation 18(1)] for the following reasons:
- 4.58 Section 6.3.2 of the Pharmaceutical Needs Assessment (PNA) for Brent recognises the future development which will affect demand for pharmaceutical services including population growth in Wembley City and Central. This population growth will arise from:
- 4.58.1 The Brent Civic Centre – completed in 2012 – has brought with it 2000 office workers.
- 4.58.2 Student accommodation – construction of 660 dwellings.
- 4.59 Planning permission for 5500 homes, including one and two bed apartments and further housing.
- 4.60 There will be an anticipated 12 million visitors per annum to this area. The proposed pharmacy will be in a prominent position in the Designer Outlet.

- 4.61 The wide range of retailers attracts shoppers from an extensive catchment area.
- 4.62 The pharmacy will also serve employees in Wembley City and the surrounding commercial and industrial areas. The pharmacy will also be accessible for those residing in the adjacent residential area.
- 4.63 Patients that share a protected characteristic will find Boots pharmacy at the shopping park and the services we intend to provide of significant benefit.
- 4.64 The proposed pharmacy will be a modern, bespoke pharmacy, easily accessible and well laid out and with full consultation facilities. The pharmacy will be open 7 days a week until 8pm Monday to Saturday, and until 5pm on Sundays.
- 4.65 The pharmacy will offer a range of pharmaceutical services to meet local needs as detailed in the Pharmaceutical Needs Assessment.
- 4.66 Boots therefore respectfully request that their application be allowed.

Provided:

Extracts from the London Designer Outlet plan

Extracts from the Wembley Masterplan (direct link also below)

<http://www.brent.gov.uk/media/333266/Wembley%20Masterplan.pdf>

5 Observations

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

6 Consideration

- 6.1 The Pharmacy Appeals Committee (“the Committee”) appointed by the Family Health Services Appeal Unit of the NHS Litigation Authority, had before it the papers considered by NHS England, together with a plan of the area showing existing pharmacies and doctors’ surgeries and the site of the proposed pharmacy.
- 6.2 It also had before it the responses to the NHS LA’s own statutory consultations.
- 6.3 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.
- 6.4 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (“the Regulations”) as amended with effect from 1 April 2014.
- 6.5 The Committee first considered Regulation 31 of the regulations which states:
- (1) A routine or excepted 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).

- 6.6 The applicant had stated on their application form in respect of Regulation 31, 'Not applicable'. The Committee further noted that this had not been disputed, nor had it been provided with any information to persuade it otherwise.
- 6.7 The Committee was not required to refuse the application under the provisions of Regulation 31.
- 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.*
- (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 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:
- 6.9.1 confirm NHS England's decision;
- 6.9.2 quash NHS England's decision and redetermine the application;
- 6.9.3 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.
- 6.10 The Committee considered the Pharmaceutical Needs Assessment ("the PNA") prepared by NHS Brent, 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 14 January 2011 and that no supplementary statements had been issued.
- 6.11 The Committee noted that the Applicant seeks to provide unforeseen benefits to those visiting, shopping and working at the London Designer Outlet.

- 6.12 The Committee concluded that the PNA had noted the possibility of future developments in the area.
- 6.13 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)

- 6.14 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 its area ..."*
- 6.15 The Committee considered that whilst NHS England had suggested that some detriment could occur should the application be granted, their view was that this would not be significant.
- 6.16 On the basis of the information available, the Committee was 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 not be affected in a significant way.
- 6.17 The Committee was therefore satisfied that significant detriment to the proper planning of pharmaceutical services would not result from a grant of the application.

Regulation 18(2)(a)(ii)

- 6.18 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"*
- 6.19 Again, the Committee considered that whilst NHS England had suggested that some detriment could occur should the application be granted, their view was that this would not be significant.
- 6.20 The Committee was therefore satisfied that significant detriment to the arrangements currently in place for the provision of pharmaceutical services would not result from a grant of the application.
- 6.21 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)

- 6.22 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)

- 6.23 The Committee considered whether there is a reasonable choice with regard to obtaining pharmaceutical services. The Committee noted the large number of pharmacies in the area. The distance to the two nearest which are also operated by different contractors, was not significant. The Committee had no information aside from a comment regarding the A479 road which was not elaborated upon, to indicate that existing pharmacies cannot be reasonably and conveniently accessed on foot.
- 6.24 For those with access to their own vehicle, the Committee was aware of the applicant's comment that parking outside existing pharmacies can be difficult. The Committee considered that this in itself was not unusual in many places and the applicant had not demonstrated that the existing pharmacies cannot be reasonably accessed by car. The Committee had no information to show that existing pharmacies in the area cannot be accessed by public transport.
- 6.25 The Committee noted comments by the applicant indicating that not all those at the Designer Outlet would be aware of where existing pharmacies were in relation to the proposed site. However, the Committee had not been provided with any information to indicate why those who might be in need of a pharmacy during their visit, could not ask and be directed to other existing pharmacies.
- 6.26 The Committee was of the view that there is reasonable choice in obtaining pharmaceutical services in the area of the relevant HWB such, that the granting of this application would not lead to significant benefits based on choice in obtaining pharmaceutical services.
- 6.27 With regard to people who share a protected characteristic having access to services, the Committee was of the view that there was nothing provided by the applicant to show that those persons, sharing a protected characteristic, were having difficulty in accessing current pharmaceutical services in the area or that they would derive significant benefits from the grant of this application.
- 6.28 The Committee considered whether the applicant had offered any innovative approaches taken with regard to the delivery of pharmaceutical services. The

applicant had referred to a number of proposed services which they considered to be innovative. The Committee considered that these were not innovative approaches with regard to the delivery of pharmaceutical services as envisaged by the Regulations. The Committee concluded that the granting of this application would not lead to significant benefits by virtue of innovation.

Regulation 18(2)(b) general

- 6.29 The Committee noted that the proposed site is part of the new designer outlet which is the first of its type in the capital. The Committee appreciated that a large number of people will likely visit the area for the retail and leisure facilities. The Committee also took into account those visiting or working in the area generally, whether part of the outlet or not, and that the resident population that could increase as the result of new developments. The Committee has already noted that future developments were taken into account in the PNA and thus, the likely developments and increase in the population are not unforeseen. In any case the Committee was of the view that no information had been provided to indicate that existing pharmacies were unable to cope with any increase in demand due to any new developments. In the absence of arguments to the contrary, the Committee had no reason to doubt the LPC comment that there is capacity in local pharmacies to manage additional patients.
- 6.30 The Committee noted the applicant's proposed services. The Committee noted there was no information to show that these services are required in the area, or that where they are not doing so existing contractors are unable or unwilling to provide those services.
- 6.31 The Committee noted the applicant's proposed opening hours including earlier opening in the morning and later opening in the evening, and opening on Sundays. Whilst the applicant had suggested that this would be very convenient for some people, they had not demonstrated a demand for services at those times. The Committee also had no information to show that the applicant's proposed opening hours were a significant improvement on those provided by existing contractors in the area. The Committee was mindful that where it considered there is a need to do so, the Committee already has the power to bring about changes to the opening hours of existing contractors.


Summary

- 6.32 The Committee was not satisfied that the information provided demonstrates that there is difficulty in accessing current pharmaceutical services or that a pharmacy at the proposed site would improve access.
- 6.33 The Committee was not required to refuse the application under the provisions of Regulation 31.
- 6.34 The Committee concluded that there was no significant detriment of a kind described in regulation 18(2)(a).
- 6.35 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 relevant area of the HWB which were not foreseen when it published its PNA.
- 6.36 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).
- 6.37 No deferral or refusal under Regulation 18(2)(f) was required in this case.
- 6.38 The Committee considered whether there were any further factors to be taken into account and concluded that there were not.

- 6.39 The Committee concluded that the granting of this application would not provide better access to pharmaceutical services.
- 6.40 In those circumstances, the Committee determined that the decision of NHS England must be quashed.
- 6.41 The Committee went on to consider whether there should be a further notification to the parties to allow them to make further representations (in which case it would be appropriate to remit the matter to NHS England) or whether it was preferable for the Committee to redetermine the application.
- 6.42 The Committee noted that representations on Regulation 18 had already been made by parties to NHS England, and these had been circulated and seen by the applicant only, as part of the processing of the application by NHS England. The Committee further noted that when the appeal was circulated representations had been sought from parties on Regulation 18 and that parties had been made aware of the amendments to the 2013 Regulations and had been asked to comment upon them.
- 6.43 The Committee concluded that further notification under paragraph 19 of Schedule 2 would not be helpful in this case.

7 DECISION

- 7.1 The Committee quashes the decision of NHS England and redetermines the application.
- 7.2 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.
- 7.3 The Committee determined that the application should be refused on the following basis:
- 7.3.1 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 has concluded that it would not;
- 7.3.2 The Committee has also considered whether the granting of the application would secure better access to pharmaceutical services and has had regard to the fact that –
- 7.3.2.1 there is already a reasonable choice with regard to obtaining pharmaceutical services,
- 7.3.2.2 there is no evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services, and
- 7.3.2.3 there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services;
- 7.3.3 Having taken these matters into account, the Committee is not satisfied that granting the application would secure improvements or better access to pharmaceutical services.



Ray Bushell

FHSAU Case Manager

A copy of this decision is being sent to:

Mr J Dutczyn - Boots UK Ltd - Applicant/Appellant
Ms Sally-Anne Kayes - NHS England
Mr M Levitan – Brent & Harrow LPC